18 U.S.C.A. § 371

Effective: [See Text Amendments]

United States Code Annotated Currentness
Title 18. Crimes and Criminal Procedure (Refs & Annos)
Part I. Crimes (Refs & Annos)
Chapter 19. Conspiracy (Refs & Annos)

→§ 371. Conspiracy to commit offense or to defraud United States

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both.

If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.

CREDIT(S)

(June 25, 1948, c. 645, 62 Stat. 701; Sept. 13, 1994, Pub.L. 103-322, Title XXXIII, § 330016(1)(L), 108 Stat. 2147.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1948 Acts. Based on Title 18, U.S.C., 1940 ed., §§ 88, 294 (Mar. 4, 1909, c. 321, § 37, 35 Stat. 1096; Mar. 4, 1909, c. 321, § 178a, as added Sept. 27, 1944, c. 425, 58 Stat. 752).

This section consolidates said §§ 88 and 294 of Title 18 U.S.C., 1940 ed.

To reflect the construction placed upon said § 88 by the courts the words "or any agency thereof" were inserted. (See *Haas v. Henkel*, 1909, 30 S.Ct. 249, 216 U.S. 462, 54 L.Ed. 569, 17 Ann.Cas. 1112, where court said: "The statute is broad enough in its terms to include any conspiracy for the purpose of impairing, obstructing, or defeating the lawful functions of any department of government." Also, see *United States v. Walter*, 1923, 44 S.Ct. 10, 263 U.S. 15, 68 L.Ed. 137, and definitions of department and agency in § 6 of this title.)

The punishment provision is completely rewritten to increase the penalty from 2 years to 5 years except where the object of the conspiracy is a misdemeanor. If the object is a misdemeanor, the maximum imprisonment for a conspiracy to commit that offense, under the revised section, cannot exceed 1 year.

The injustice of permitting a felony punishment on conviction for conspiracy to commit a misdemeanor is described by the late Hon. Grover M. Moscowitz, United States district judge for the eastern district of New York, in an address delivered March 14, 1944, before the section on Federal Practice of the New York Bar Association, reported in 3 Federal Rules Decisions, pages 380 to 392.

Hon. John Paul, United States district judge for the western district of Virginia, in a letter addressed to Congressman Eugene J. Keogh dated January 27, 1944, stresses the inadequacy of the 2-year sentence prescribed by existing law in cases where the object of the conspiracy is the commission of a very serious offense.

The punishment provision of said § 294 was considered for inclusion in this revised section. It provided the same penalties for conspiracy to violate the provisions of certain counterfeiting laws, as are applicable in the case of conviction for the specific violations. Such a punishment would seem as desirable for all conspiracies as for such offenses as counterfeiting and transporting stolen property in interstate commerce.

A multiplicity of unnecessary enactments inevitably leads to confusion and disregard of law. (See reviser's note under § 493 of this title.)

Since consolidation was highly desirable and because of the strong objections of prosecutors to the general application of the punishment provision of said § 294, the revised section represents the best compromise that could be devised between sharply conflicting views.

A number of special conspiracy provisions, relating to specific offenses, which were contained in various sections incorporated in this title, were omitted because adequately covered by this section. A few exceptions were made, (1) where the conspiracy would constitute the only offense, or (2) where the punishment provided in this section would not be commensurate with the gravity of the offense. Special conspiracy provisions were retained in §§ 241, 286, 372, 757, 794, 956, 1201, 2271, 2384 and 2388 of this title. Special conspiracy provisions were added to §§ 2153 and 2154 of this title. 80th Congress House Report No. 304.

1994 Acts. House Report Nos. 103-324 and 103-489, and House Conference Report No. 103-711, see 1994 U.S. Code Cong. and Adm. News, p. 1801.

Amendments

1994 Amendments. Pub.L. 103-322, § 330016(1)(L), in sentence beginning "If two or" struck out "not more than $10,000" and inserted "under this title" following "shall be fined".

Canal Zone

Applicability of section to Canal Zone, see § 14 of this title.

CROSS REFERENCES

Civil rights, conspiracy against, see 18 USCA § 241.

Claims, conspiracy to obtain allowance or payment, see 18 USCA § 286.

Conspiracy to--
- Cast away or destroy vessel, see 18 USCA § 2271.
- Destroy national defense materials, see 18 USCA § 2155.
- Gather defense information, see 18 USCA § 794.
- Impede or injure officer, see 18 USCA § 372.
- Influence sporting contest by bribery, see 18 USCA § 224.
- Injure property of foreign government, see 18 USCA § 956.
- Kidnap, see 18 USCA § 1201.

"Federal health care offense" defined as in this section for purposes of preventing health care fraud and

abuse, see 18 USCA § 24.

Limitation period on conspiracy of attempting to evade or defeat any tax or the payment thereof, see 26 USCA § 6531.

Seditious conspiracy, see 18 USCA § 2384.

Wire or oral communications, authorization for interception, to provide evidence of conspiracies to commit certain offenses, see 18 USCA § 2516.

FEDERAL SENTENCING GUIDELINES

See Federal Sentencing Guidelines §§ 2A1.5, 2C1.7, 2T1.9, 2X1.1, 18 USCA.

CODE OF FEDERAL REGULATIONS

Prosecutions for obstruction of justice and related offenses, see 28 CFR § 0.179.

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"Willful" intent in criminal securities cases. Jed S. Rakoff, 213 N.Y.L.J. 3 (May 11, 1995).

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CJS Census § 11, Crimes.

CJS Conspiracy § 229, Corporations Representing Public Interests -- Banks.

CJS Conspiracy § 230, Mail or Wire Fraud.

CJS Conspiracy § 243, Deprivation of Rights Under Color of Law.

CJS Conspiracy § 245, Obstructing Course of Judicial Proceedings.

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3 ALR, Fed. 2nd Series 179, When Has Federal Prosecutor Breached Plea Agreement--Promises Related to

18 U.S.C.A. § 371

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186 ALR, Fed. 147, Construction and Application of Federal Domestic Terrorism Sentencing Enhancement, U.S.S.G. § 3a1.4.

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5 West's Federal Forms § 7431, Plea Agreement.

5 West's Federal Forms § 7432, Plea Agreement.

5 West's Federal Forms § 7433, Plea Agreement -- Another Form.

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Federal Procedure, Lawyers Edition § 63:404, Joinder; Severance.

Federal Procedure, Lawyers Edition § 63:434, Conspiracy to Commit Mail Fraud.

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Wright & Miller: Federal Prac. & Proc. § 144, Joinder of Defendants.

Wright & Miller: Federal Prac. & Proc. § 371, Trial by Jury.

NOTES OF DECISIONS

I. GENERALLY

<Subdivision Index>

1. Historical

"Section 37 [former section 88 of this title] first appears as § 30 of 'An act to amend existing laws relating to Internal Revenue, and for other purposes,' enacted on March 2, 1867, 14 Stat.L. 471, and, except for an omitted not

relevant provision, the section has continued from that time to this, in almost precisely its present form. It was carried into the revision of the United States Statutes of 1873-4 as § 5440 of Chapter 5, the title of which is 'Crimes against the Operations of the Government,' while another chapter, Chapter 7 of the revision, deals with 'Crimes against the Elective Franchise and Civil Rights of Citizens.' Forty-two years after its first enactment the section was carried into the Criminal Code (in force on and after January 1st, 1910) where it now appears as § 37, again in a chapter, now Chapter 4, devoted to 'Offenses against the Operations of the Government,' while Chapter 3 of the Code deals with 'Offenses against the Elective Franchise and Civil Rights of Citizens.' The section has been widely applied in the prosecution of frauds upon the revenue, in land cases and to other operations of the government." U.S. v. Gradwell, U.S.R.I.1917, 37 S.Ct. 407, 243 U.S. 476, 61 L.Ed. 857.

2. Constitutionality

The First Amendment did not preclude prosecution for conspiracy to defraud the United States by assisting in the filing of false tax returns, based upon defendant's conduct in advising taxpayers that they were nonresident aliens who were exempt from income taxes, when defendant knew that the taxpayers were not, despite defendant's claim that he was pursuing in good faith what he believed was the proper procedure to challenge the validity of tax laws. U.S. v. Ambort, C.A.10 (Utah) 2005, 405 F.3d 1109. Conspiracy 32; Constitutional Law 91

Defendant could be punished for arson, conspiracy to commit arson and mail fraud, and use of fire to commit mail fraud, without violating double jeopardy clause; government was required to, and did, prove additional fact for each offense that was not required by the others, i.e., arson required attempted destruction of a building, use of fire to commit a felony violation required use of mails to defraud another, and conspiracy to commit arson offense required agreement to use fire to destroy a building. U.S. v. Smith, C.A.5 (La.) 2003, 354 F.3d 390, certiorari denied 124 S.Ct. 1698, 541 U.S. 953, 158 L.Ed.2d 386. Double Jeopardy 151(4)

Statute prohibiting conspiracy to defraud the United States was not unconstitutionally vague as applied to prosecution of attorney for litigation-related conduct, where indictment alleged with particularity the essential nature of the alleged fraud and identified attorney's specific conduct which furthered the conspiracy. U.S. v. Cueto, C.A.7 (Ill.) 1998, 151 F.3d 620, certiorari denied 119 S.Ct. 1249, 526 U.S. 1016, 143 L.Ed.2d 347, habeas corpus denied 2005 WL 3448030. Conspiracy 23.5

If offense clause of statute criminalizing conspiracies against the United States covers act or offense, person cannot alternatively be convicted under statute's broad defraud clause. U.S. v. Sturman, C.A.6 (Ohio) 1991, 951 F.2d 1466, rehearing denied, certiorari denied 112 S.Ct. 2964, 504 U.S. 985, 119 L.Ed.2d 586.

Statutes proscribing conspiracy to defraud United States by impeding and impairing legal functions of Internal Revenue Service, willfully aiding and assisting in preparation of false individual income tax returns, and aiding and assisting in willful making of false statement to United States government, punish actions, not speech, and, thus, do not infringe the right to freedom of speech. U.S. v. Daly, C.A.5 (Tex.) 1985, 756 F.2d 1076, rehearing denied 763 F.2d 416, certiorari denied 106 S.Ct. 574, 474 U.S. 1022, 88 L.Ed.2d 558, certiorari denied 106 S.Ct. 575, 474 U.S. 1022, 88 L.Ed.2d 558.

This section has been widely applied in prosecutions for frauds upon the revenue and is not unconstitutional. U. S. v. Heck, C.A.9 (Cal.) 1974, 499 F.2d 778, certiorari denied 95 S.Ct. 677, 419 U.S. 1088, 42 L.Ed.2d 680, certiorari denied 95 S.Ct. 678, 419 U.S. 1088, 42 L.Ed.2d 680.

Former § 88 of this title [now this section], making conspiracy to commit offense against United States a felony, was valid. Cullen v. Esola, D.C.Cal.1927, 21 F.2d 877. Conspiracy 23; Conspiracy 28(3)

The certainty required in the definition of an offense may be accomplished by the use of words or terms of settled meaning, or which indicate offenses well known to and defined by the common law, and this has been

accomplished in former § 88 of this title [now this section] by the use of the terms "conspiracy" and "defraud." Crawford v. U S, App.D.C.1907, 30 App.D.C. 1, reversed 29 S.Ct. 260, 212 U.S. 183, 53 L.Ed. 465, 15 Am.Ann.Cas. 392.

Supreme Court's *Booker* decision, holding that mandatory application of Federal Sentencing Guidelines violated defendant's right to jury trial on any disputed factual subject that increased maximum punishment did not apply to defendant's convictions for conspiring to commit securities and wire fraud, money laundering, and making a false statement to a federal official, which were final on the date case was decided. Durante v. U.S., S.D.N.Y.2006, 425 F.Supp.2d 537. Courts 100(1)

Personal money judgment against defendant in the amount of $3,927,392.40, which was the greatest amount sought for his four convictions, did not violate the excessive fines clause of the Eighth Amendment; forfeiture was well under authorized penalty, was consonant with the harm defendant personally caused, and was not grossly disproportional to gravity of defendant's offenses of conspiracy to use interstate commerce facilities to promote prostitution, violation of Travel Act, inducement of interstate travel to engage in prostitution, and conspiracy to commit money laundering. U.S. v. Reiner, D.Me.2005, 397 F.Supp.2d 101. Forfeitures 3

Statute prohibiting two distinct forms of conspiracy, including conspiracy to commit specific offense against United States and conspiracy to defraud United States, was not unconstitutionally vague and overbroad as applied to charges made against doctor who allegedly improperly administered experimental drug program where charges detailed manner and means of conspiracy and listed the alleged overt acts and time frames involved. U.S. v. Najarian, D.Minn.1996, 915 F.Supp. 1460. Conspiracy 23.5

3. Construction

Conspiracy statute requirement that government show defendant conspired to commit one or more substantive offenses against United States, or that defendant conspired to defraud government in any manner or for any purpose, is written in disjunctive and should be interpreted as establishing two alternative means of committing violation. U.S. v. Harmas, C.A.11 (Fla.) 1992, 974 F.2d 1262.

Indictment is sufficient if it contains the elements of the offense charged and fairly informs defendant of the charge against which he must defend, and enables him to plead acquittal or conviction in bar of future prosecutions for the same offense. U.S. v. Mohney, C.A.6 (Mich.) 1991, 949 F.2d 899, rehearing denied.

Defendants indicted under "defraud" clause of federal conspiracy statute rather than "offense" clause--conspiracy to defraud the United States rather than conspiracy to commit an offense against the United States--could not be convicted where factual allegations of indictment and evidence adduced at trial only showed that they conspired to commit offense of concealing assets from Internal Revenue Service after receiving notice of assessment for taxes owed; statute's use of disjunctive meant that defendants could not be accused of conspiring to defraud but convicted of conspiring to commit specific offense. U.S. v. Minarik, C.A.6 (Tenn.) 1989, 875 F.2d 1186, rehearing denied.

To violate this section making it a crime to knowingly and willfully make a threat to take the life of the President of the United States, it is not necessary that a threat be uttered with a willful intent to carry it out; rather, it is sufficient that the defendant intentionally makes a statement, written or oral, in a context or under such circumstances wherein a reasonable person would foresee that the statement would be interpreted by those to whom the maker communicates it as a serious expression of intention to inflict bodily harm upon the President, and that the statement not be the result of a mistake, duress or coercion. U. S. v. Lincoln, C.A.6 (Tenn.) 1972, 462 F.2d 1368, certiorari denied 93 S.Ct. 298, 409 U.S. 952, 34 L.Ed.2d 224.

Where there are two conspiracy statutes, one general and the other specific, the specific must control. U. S. v.

Bates, C.A.9 (Nev.) 1970, 429 F.2d 557, certiorari denied 91 S.Ct. 61, 400 U.S. 831, 27 L.Ed.2d 61, certiorari denied 91 S.Ct. 175, 400 U.S. 916, 27 L.Ed.2d 155, rehearing denied 91 S.Ct. 452, 400 U.S. 1002, 27 L.Ed.2d 449.

Former § 88 of this title [now this section], making it a crime to conspire to defraud United States, was at least as co-extensive as conspiracy at common law. Falter v. U.S., C.C.A.2 (N.Y.) 1928, 23 F.2d 420, certiorari denied 48 S.Ct. 528, 277 U.S. 590, 72 L.Ed. 1003.

Former § 88 of this title [now this section] was construed as declaring not only against conspiracies to commit offenses, but also to conspiracies to defraud the United States, and to punish such conspiracies when supplemented by an overt act, though the wrong had not become effectual in its purpose. Curley v. U S, C.C.A.1 (Mass.) 1904, 130 F. 1, 64 C.C.A. 369, certiorari denied 25 S.Ct. 787, 195 U.S. 628, 49 L.Ed. 351.

This section is not so ambiguous as to fail to inform defendant of the nature and cause of the accusation against him. U. S. v. Buschman, E.D.Wis.1975, 386 F.Supp. 822, affirmed 527 F.2d 1082.

Former § 88 of this title [now this section] was strictly construed. Torres v. Swope, W.D.Wash.1938, 25 F.Supp. 483. See, also, France v. U.S., Ohio 1897, 17 S.Ct. 219, 164 U.S. 676, 41 L.Ed. 595; U.S. v. Robbins, D.C.Utah, 1907, 157 F. 999; Curley v. U.S., C.C.A.Mass.1904, 130 F. 1, 64 C.C.A. 369, certiorari denied 25 S.Ct. 787, 195 U.S. 628, 49 L.Ed. 351.

4. Other laws

Absentee ballot affidavits which defendant witnessed were relevant to count of conspiracy to violate absentee voter laws. U.S. v. Smith, C.A.11 (Ala.) 2000, 231 F.3d 800, certiorari denied 121 S.Ct. 1956, 532 U.S. 1019, 149 L.Ed.2d 752. Conspiracy 45

Generally, conviction and punishment for crime of conspiracy as well as crime of aiding and abetting does not violate U.S.C.A. Const. Amend. 5 double jeopardy clause in that such offenses are separate and distinct. U. S. v. Cowart, C.A.5 (Ga.) 1979, 595 F.2d 1023.

Part-time prison employee could not be convicted in drug prosecution under both general conspiracy statute, this section, and specific conspiracy statute, section 846 of Title 21, when conspiratorial agreement alleged under former statute was same as that alleged under latter. U. S. v. Corral, C.A.5 (Tex.) 1978, 578 F.2d 570.

Defendants could be properly charged with violation of both the general antifraud provision of section 77a et seq. of Title 15 or section 1341 of this title and this section since conspiracy required proof of an agreement to commit an offense against United States, not an element required for violation of section 77a et seq. of Title 15, and an element not common to both section 77a et seq. of Title 15 and section 1341 of this title was the offer or sale of security. U. S. v. Tallant, C.A.5 (Ga.) 1977, 547 F.2d 1291, certiorari denied 98 S.Ct. 262, 434 U.S. 889, 54 L.Ed.2d 174.

By including conspiracies within section 174 of Title 21, Congress intended to provide more severe penalties than are applicable under this title and did not intend to merge drug conspiracies in completed substantive crime or to preclude convictions for both. U. S. v. Sarno, C.A.1 (Mass.) 1972, 456 F.2d 875.

This section may apply to crimes made punishable by section 2 of this title, when two or more persons conspire willfully to cause act forbidden by section 2 of this title, they conspire to commit offense. U. S. v. Lester, C.A.6 (Ky.) 1966, 363 F.2d 68, certiorari denied 87 S.Ct. 705, 385 U.S. 1002, 17 L.Ed.2d 542, rehearing denied 87 S.Ct. 951, 386 U.S. 938, 17 L.Ed.2d 813.

Substantive offenses proscribed by mail fraud and fraud by wire sections, §§ 1341 and 1343 of this title, are closely

related to conspiracy to commit offense against United States as proscribed by this section. Isaacs v. U. S., C.A.8 (Minn.) 1962, 301 F.2d 706, certiorari denied 83 S.Ct. 32, 371 U.S. 818, 9 L.Ed.2d 58, certiorari denied 83 S.Ct. 33, 371 U.S. 818, 9 L.Ed.2d 58.

This section, applicable to all persons, and § 7214 of Title 26, applying specifically to every officer or agent appointed and acting under the authority of any revenue law of the United States, could not both be applied to employee of the Bureau of Internal Revenue, in so far as their application operated to produce cumulative punishment, and where fines were imposed under both statutes, the smaller of the two fines would be set aside. United States v. Grunewald, C.A.2 (N.Y.) 1956, 233 F.2d 556, certiorari granted 77 S.Ct. 91, 352 U.S. 866, 1 L.Ed.2d 74, reversed on other grounds 77 S.Ct. 963, 353 U.S. 391, 1 L.Ed.2d 931.

The Federal Kidnapping Act, § 1201 of this title, does not by implication repeal this section, and defendants charged with conspiracy to kidnap could be prosecuted under this section. U.S. v. Bazzell, C.A.7 (Ill.) 1951, 187 F.2d 878, certiorari denied 72 S.Ct. 73, 342 U.S. 849, 96 L.Ed. 641, rehearing denied 72 S.Ct. 171, 342 U.S. 889, 96 L.Ed. 667.

Former §§ 88 [now this section] and 338 of this title were broad in scope and not limited by the common law rules applicable to a prosecution for false pretenses. Deaver v. U.S., App.D.C.1946, 155 F.2d 740, 81 U.S.App.D.C. 148, certiorari denied 67 S.Ct. 121, 329 U.S. 766, 91 L.Ed. 659.

Former § 88 of this title [now this section] had nothing to do with conspiracy to unlawfully disclose information affecting the national defense under former § 34 of Title 50, fixing a maximum of 20 years' imprisonment, and hence prisoner who was serving an indeterminate sentence of 4 to 12 years for such conspiracy was not entitled to release on habeas corpus. Farnsworth v. Zerbst, C.C.A.5 (Ga.) 1938, 97 F.2d 255, rehearing denied 98 F.2d 541.

Former § 88 of this title [now this section] had no connection with such an offense as former § 51 of this title related to. U.S. v. Patrick, C.C.M.D.Tenn.1893, 54 F. 338.

Government did not act unreasonably by failing to charge conspiracy to violate the Clean Air Act and to defraud the United States until it had evidence supporting the crime of conspiracy. U.S. v. W.R. Grace, D.Mont.2006, 434 F.Supp.2d 889. Indictment And Information 7

Fact that carrier's alleged conduct was immune from liability under Sherman Act did not preclude government from filing criminal fraud charges against carriers based on same conduct, where Sherman Act count required that government show that carriers had effect on interstate or foreign commerce but not effect on government, and fraud statute required that government show that carriers defrauded government. U.S. v. Gosselin World Wide Moving N.V., E.D.Va.2004, 333 F.Supp.2d 497, affirmed in part, reversed in part and remanded 411 F.3d 502, certiorari denied 126 S.Ct. 1464, 164 L.Ed.2d 246. Conspiracy 33(2.1)

Authority to amend terms of national agreement between automobile manufacturer and union, allegedly demanded from manufacturer by defendant union officials to avoid continuation of strike, was not "thing of value," as required to support prosecution for conspiracy to violate provisions of Labor Management Relations Act prohibiting certain financial transactions; manufacturer's grant of authority to amend terms of agreement would have been invalid and unenforceable under express terms of agreement and union's constitution. U.S. v. Campbell, E.D.Mich.2003, 291 F.Supp.2d 547, reversed 398 F.3d 407, rehearing en banc denied, on remand 2006 WL 897436. Conspiracy 28(3)

No basis exists for concluding that Congress intended interdependent relationship between conspiracy statute and solicitation statute, and absent some evidence that two statutes were not to be applied independently, court is without cause to limit government's broad discretion in selecting charges on which case is brought. U.S. v. Holveck, D.Kan.1994, 867 F.Supp. 969. Criminal Law 29(3)

18 U.S.C.A. § 371

Language of this section and illegal transportation statute, section 2314 of this title, authorize punishments for each violation and do not place limitations on cumulative punishment for violation of these sections by single transaction, and this section requires proof of agreement and some overt act, while illegal transportation statute requires proof of transporting forged bank check with fraudulent intent; thus, imposition of multiple punishments based on convictions under these sections did not violate double jeopardy clause of U.S.C.A. Const.Amend. 5. Foster v. U.S., S.D.Ohio 1983, 577 F.Supp. 665, affirmed 740 F.2d 967.

Fact that this section and § 1503 of this title overlap to some extent does not bar a prosecution under either of them. U S v. Bonanno, S.D.N.Y.1959, 177 F.Supp. 106, on subsequent appeal 285 F.2d 408.

Conspiracy to commit kidnapping under the general conspiracy statute is an offense separate from conspiracy under kidnapping statute and carries a lesser penalty. U.S. v. Parrett, D.Utah 1994, 872 F.Supp. 910. Criminal Law 29(5.5)

5. Superseding provisions

Former § 88 of this title [now this section], penalizing conspiracy to commit offense against United States, and former § 242 of this title, penalizing conspiracy to influence verdict of jury, may overlap, but neither repealed or superseded the other. Burton v. U. S., C.A.5 (La.) 1949, 175 F.2d 960, rehearing denied 176 F.2d 865, certiorari denied 70 S.Ct. 347, 338 U.S. 909, 94 L.Ed. 560, rehearing denied 70 S.Ct. 565, 339 U.S. 916, 94 L.Ed. 1341.

Former § 34 of Title 50, prescribing punishment for conspiracy to violate former § 32 or 33 of that title, where an overt act was committed, superseded former § 88 of this title [now this section], as to such offenses. Enfield v. U.S., C.C.A.8 (Okla.) 1919, 261 F. 141.

The provisions of the Emergency Price Control Act, 50 App., former § 904(a), making it a crime to agree to violate said Act did not indicate congressional intent to cover the whole field of conspiracy to violate said Act and thereby to supersede former § 88 of this title [now this section]. U. S. v. Semel, D.C.Conn.1946, 66 F.Supp. 202.

6. Purpose

Two independent values served by the law of conspiracy are the protection of society from the dangers of concerted criminal activity and the identification of an agreement to engage in crime as sufficiently threatening to the social order to warrant its being the subject of criminal sanctions regardless of whether the crime agreed upon is actually committed. U. S. v. Feola, U.S.N.Y.1975, 95 S.Ct. 1255, 420 U.S. 671, 43 L.Ed.2d 541.

Legal concepts of conspiracy and complicity manifest general principle that society, having power to punish dangerous behavior, cannot be powerless against those who work to bring about that behavior. Scales v. U. S., U.S.N.C.1961, 81 S.Ct. 1469, 367 U.S. 203, 6 L.Ed.2d 782, rehearing denied 81 S.Ct. 1912, 366 U.S. 978, 6 L.Ed.2d 1267.

Scheme to take money, if in fact it is not bank money, is not enough to constitute proscribed conspiracy to take bank money, even if defendants may have mistakenly believed that it was or might be bank money, as Congress, in enacting this section, did not intend to make criminal schemes which, if successfully carried out, would not result in commission of substantive federal offenses. Lubin v. U. S., C.A.9 (Cal.) 1963, 313 F.2d 419.

This section is designed to punish concerted action which makes the crime easier to perpetrate and harder to detect. Woods v. U.S., C.A.D.C.1956, 240 F.2d 37, 99 U.S.App.D.C. 351, certiorari denied 77 S.Ct. 815, 353 U.S. 941, 1 L.Ed.2d 760, certiorari denied 77 S.Ct. 1385, 354 U.S. 926, 1 L.Ed.2d 1438.

One of purposes of this section is to punish concerted action involving a plurality of actors which makes crime

easier to perpetrate and harder to detect. U. S. v. Kohne, W.D.Pa.1972, 347 F.Supp. 1178.

This section was intended to insure wholesome administration of the government of the United States and to protect that government against being defrauded of its inherent right to honest, impartial, and efficient service of its employees. U.S. v. Bowles, D.C.Me.1958, 183 F.Supp. 237. See, also, U.S. v. Weinberg, D.C.Pa.1955, 129 F.Supp. 514, affirmed 226 F.2d 161, certiorari denied 76 S.Ct. 305, 350 U.S. 933, 100 L.Ed. 815.

Rationale behind creation of crime of conspiracy to violate state and federal laws was belief by Congress that mere agreement among members of persons to commit an offense was itself a danger to society demanding classification of a crime, and although an overt act is necessary for conviction, it is not necessary to prove that conspiracy was successful. U. S. v. Bonanno, S.D.N.Y.1960, 180 F.Supp. 71.

The purpose of this section is to protect the government from impositions through conspiracy to cheat and defraud in respect of its rights and privileges, operations and functions, as well as in respect of its property; it prohibits a conspiracy to defraud the United States in any manner or for any purpose. U. S. v. Gilboy, M.D.Pa.1958, 160 F.Supp. 442. See, also, Berenbeim v. U.S., C.C.A.Colo.1947, 164 F.2d 679, certiorari denied 68 S.Ct. 454, 533 U.S. 827, 92 L.Ed. 1113. Conspiracy 33(1)

7. Retroactive effect

Admitted successive overt acts occurring after this revised section increasing penalty for conspiracy became law were part of continuing crime for which defendants were indicted and convicted, and therefore such section was not an ex post facto law as applied to conspiracy which was commenced before effective date of such section but was continued by overt acts after its effective date. U.S. v. Goldberger, C.A.3 (N.J.) 1952, 197 F.2d 330, certiorari denied 73 S.Ct. 40, 344 U.S. 833, 97 L.Ed. 648.

Former § 88 of this title [now this section] applied with equal force to rights of the United States created subsequent to its passage, as well as those previously existing. Curley v. U S, C.C.A.1 (Mass.) 1904, 130 F. 1, 64 C.C.A. 369, certiorari denied 25 S.Ct. 787, 195 U.S. 628, 49 L.Ed. 351.

8. District of Columbia

A violation of D.C.Code, § 22-108, prohibiting the bringing into the district of stolen stock, was a "crime against the United States," within former § 88 of this title [now this section]. Arnstein v. U.S., App.D.C.1924, 296 F. 946, 54 App.D.C. 199, certiorari denied 44 S.Ct. 454, 264 U.S. 595, 68 L.Ed. 867. Conspiracy 28(1)

A conspiracy to violate D.C.Code, § 22-1510, by keeping a bucket shop was a conspiracy to commit an offense against the United States, within former § 88 of this title [now this section]. Easterday v. McCarthy, C.C.A.2 (N.Y.) 1919, 256 F. 651, 168 C.C.A. 45. See, also, U.S. v. Campbell, D.C.Pa.1910, 179 F. 762; U.S. v. Cella, 1911, 37 App.D.C. 423, certiorari denied 32 S.Ct. 526, 223 U.S. 728, 56 L.Ed. 633. Conspiracy 28

Even assuming that the common law as it existed in Maryland when the District of Columbia was ceded made misconduct in office a criminal offense, it was not an offense against the United States as a distinct sovereign in such sense that an indictment would lie under former § 88 of this title [now this section] for conspiracy to commit such offense in the District, especially against a person who was not a resident thereof. U.S. v. Haas, S.D.N.Y.1906, 167 F. 211. Conspiracy 23

A conspiracy to do any act which has been declared a crime by any law of the United States, although such law may be applicable to the District of Columbia alone, would be a conspiracy to commit an offense against the United States. In re Wolf, W.D.Ark.1886, 27 F. 606.

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Any conspiracy to obtain money by false pretenses in the District of Columbia is a conspiracy to commit an offense against the United States. In re Wolf, W.D.Ark.1886, 27 F. 606. Conspiracy 28(3)

Former § 88 of this title [now this section] applied to the District of Columbia. In re Wolf, W.D.Ark.1886, 27 F. 606.

Since a crime against the United States is committed by any person who violates either D.C.Code, § 22-2304, marking it an offense wrongfully to accuse any woman of unchastity, or D.C.Code, § 22-2501, denouncing perjury, an indictment for conspiracy to commit either of those crimes charged an offense under former § 88 of this title [now this section]. Fletcher v. U.S., App.D.C.1914, 42 App.D.C. 53, certiorari denied 35 S.Ct. 283, 235 U.S. 706, 59 L.Ed. 434.

Any one in the District of Columbia who committed a crime denounced by the District of Columbia Code committed a crime against the United States, and it follows that he was indictable for a conspiracy under former § 88 of this title [now this section]. U.S. v. Cella, App.D.C.1911, 37 App.D.C. 423, certiorari denied 32 S.Ct. 526, 223 U.S. 728, 56 L.Ed. 633. See, also, Fletcher v. U.S., 1914, 42 App.D.C. 53.

Official misconduct in office, being an offense under the common law, was an offense in the District of Columbia, and was an offense against the United States, whether it was an offense against the United States when committed by federal officers in any of the states or territories, and it was immaterial that such offense was a misdemeanor at common law, while the conspiracy to commit it, by reason of the character of the penalty prescribed by former § 88 of this title [now this section], became an infamous offense. Tyner v. U.S., App.D.C.1904, 23 App.D.C. 324. Criminal Law 10

9. Scope of section

Where a substantive offense embodies only a requirement of mens rea as to each of its elements, this section requires no more. U. S. v. Feola, U.S.N.Y.1975, 95 S.Ct. 1255, 420 U.S. 671, 43 L.Ed.2d 541.

This section can punish conspiratorial conduct which does not amount to a substantive violation of section 1955 of this title. U. S. v. Kohne, W.D.Pa.1972, 347 F.Supp. 1178.

10. Separate offenses

Charges of conspiracy to commit mail fraud and conspiracy to defraud United States by impeding lawful function of Department of Housing and Urban Development were not commensurate or lesser-included offenses of each other; former offense required proof that conspiracy to defraud existed, that defendant was party to conspiracy, and that act or acts constituting use of mails in furtherance of conspiracy had been performed, whereas latter offense required proof of agreement to defraud United States and proof that one or more persons acted in pursuit of that objective. U.S. v. Thompson, C.A.10 (Okla.) 1987, 814 F.2d 1472, certiorari denied 108 S.Ct. 101, 484 U.S. 830, 98 L.Ed.2d 61.

11. Civil remedies

County corrections officer's conviction on guilty plea to violating federal criminal conspiracy statute by conspiring to deprive inmate of his right to be free from cruel and unusual punishment conclusively established his civil liability for conspiring to deprive inmate of his Eighth Amendment right to be free from cruel and unusual punishment as incarcerated inmate. Pizzuto v. County of Nassau, E.D.N.Y.2003, 239 F.Supp.2d 301. Judgment 648

18 U.S.C.A. § 371

Federal statute providing for criminal penalties for conspiracies to commit any offense against United States does not authorize civil suit for damages. Willing v. Lake Orion Community Schools Bd. of Trustees, E.D.Mich.1996, 924 F.Supp. 815. Action 3

Violations of this section and sections 241, 242 and 1001 of this title governing conspiracy against rights of citizens, deprivation of rights under color of law, conspiracy to commit offense or to defraud United States, and the making of fraudulent statements or knowingly using any false document did not give rise to a civil cause of action. Fiorino v. Turner, D.C.Mass.1979, 476 F.Supp. 962.

Statute setting forth offense of conspiracy to commit offense against or to defraud the United States, standing alone, did not provide for civil remedy. D'Amato v. Rattoballi, C.A.2 (N.Y.) 2003, 83 Fed.Appx. 359, 2003 WL 22955858, Unreported. Conspiracy 7

12. Private right of action

There is no private right of action under federal criminal statutes, proscribing deprivation of rights under color of law and conspiracy to commit offense or to defraud the United States. Rockefeller v. U.S. Court of Appeals Office, for Tenth Circuit Judges, D.D.C.2003, 248 F.Supp.2d 17. Action 5; Civil Rights 1330(1)

Alleged conspiracy to defeat the laws of the United States by failing to register securities did not give rise to private cause of action under 18 U.S.C.A. § 371 for conspiracy to commit an offense or to defraud the United States. Rapoport v. Republic of Mexico, D.C.D.C.1985, 619 F.Supp. 1476.

Federal criminal statute, 18 U.S.C.A. § 371, proscribing conspiracy to commit offense or to defraud the United States, did not secure rights to state prisoner; thus, prisoner could not sue directly under that statute nor use that statute as a predicate for an action under 42 U.S.C.A. § 1983. Dugar v. Coughlin, S.D.N.Y.1985, 613 F.Supp. 849.

Portion of complaint brought by residents of Wounded Knee, South Dakota, who were allegedly kept from their homes or forcibly confined due to federal law enforcement activity allegedly engineered by defendants which alleged violations of this section, did not state causes of action since this section did not provide a private cause of action. Lamont v. Haig, D.C.S.D.1982, 539 F.Supp. 552.

II. NATURE AND ELEMENTS OF CONSPIRACY

<Subdivision Index>

41. Generally, nature and elements of conspiracy

The gist of a "conspiracy" is an agreement among conspirators to commit an offense, attended by an act of one or more of the conspirators to effect the object of the conspiracy. United States v. Falcone, U.S.N.Y.1940, 61 S.Ct. 204, 311 U.S. 205, 85 L.Ed. 128. See, also, Carter v. U.S., C.A.Kan.1964, 333 F.2d 354; Schnautz v. U.S., C.A.Tex.1959, 263 F.2d 523; Carlson v. U.S., C.A.Okl.1957, 249 F.2d 85; Rent v. U.S., C.A.Tex.1954, 209 F.2d 893; Tabor v. U.S., C.C.A.Md.1945, 152 F.2d 254; Bacon v. U.S., C.C.A.Okl.1942, 127 F.2d 985; Oliver v. U.S., C.C.A.N.M.1941, 121 F.2d 245, certiorari denied 62 S.Ct. 124, 314 U.S. 666, 86 L.Ed. 533; U.S. v. Patterson, D.C.La.1964, 235 F.Supp. 233; U.S. v. Bruun, C.A.7 (Ill.) 1987, 809 F.2d 397; Cave v. U.S., C.A. Iowa 1968, 390 F.2d 58, certiorari denied 88 S.Ct. 2059, 359 U.S. 906, 20 L.Ed.2d 1365; Kirschbaum v. U.S., C.A. Iowa 1969, 407 F.2d 562; U.S. v. Menichino, C.A.Fla.1974, 497 F.2d 935; U.S. v. McMahon, C.A.N.M.1977, 562 F.2d 1192; U.S. v. Romers, C.A.Tex.1979, 600 F.2d 1104, certiorari denied 100 S.Ct. 1025, 444 U.S. 1077, 62 L.Ed.2d 759. Conspiracy 23.1

In order to establish conspiracy, government must prove existence of agreement between two or more people to violate law of United States, that one of the conspirators committed overt act in furtherance of that agreement, and that defendants knew of conspiracy and voluntarily participated in it. U.S. v. Jobe, C.A.5 (Tex.) 1996, 101 F.3d 1046, certiorari denied 118 S.Ct. 81, 522 U.S. 823, 139 L.Ed.2d 39. Conspiracy 24(1); Conspiracy 24.5; Conspiracy 27

Conspiracy requires proof of agreement among conspirators to commit offense, specific intent to achieve objective of conspiracy, and, usually, overt act to effect object of conspiracy. U.S. v. Pinckney, C.A.2 (N.Y.) 1996, 85 F.3d 4. Conspiracy 23.1

To establish conspiracy to defraud United States, government must prove beyond reasonable doubt that two or more people agreed to pursue unlawful objective, that defendant voluntarily agreed to join conspiracy, and that one or more members of conspiracy performed overt act to further objective of conspiracy. U.S. v. Beuttenmuller, C.A.5 (Tex.) 1994, 29 F.3d 973. Conspiracy 33(1)

Conspiracy involves agreement willfully formed between two or more persons to commit offense, attended by act of one or more conspirators to effect object of conspiracy. U.S. v. Dolt, C.A.6 (Ky.) 1994, 27 F.3d 235. Conspiracy 23.1

Five elements must be present to establish conspiracy: there must be agreement, purpose of that agreement must be

to break the law, there must be overt acts, purpose of the acts must be to further the conspiracy, and defendant on trial must have entered conspiracy willfully. U.S. v. Nall, C.A.10 (N.M.) 1991, 949 F.2d 301. Conspiracy 23.1

Five elements must be present to establish conspiracy: there must be agreement, purpose of that agreement must be to break the law, there must be overt acts, purpose of the acts must be to further the conspiracy, and defendant on trial must have entered conspiracy willfully. U.S. v. Nall, C.A.10 (N.M.) 1991, 949 F.2d 301. Conspiracy 23.1

To prove conspiracy, Government must prove beyond reasonable doubt that two or more people agreed to pursue unlawful objective together, that defendant voluntarily agreed to join conspiracy, and that one of members of conspiracy performed overt act to further objectives of conspiracy. U.S. v. Parekh, C.A.5 (Tex.) 1991, 926 F.2d 402, rehearing denied. Conspiracy 24(1); Conspiracy 27

Conviction for conspiracy requires that Government prove beyond a reasonable doubt an agreement between two or more persons to commit a crime against the United States and an overt act committed by one of conspirators in furtherance of agreement; no element need be proved by direct evidence, but may be inferred from circumstantial evidence. U.S. v. Schmick, C.A.5 (Tex.) 1990, 904 F.2d 936, certiorari denied 111 S.Ct. 782, 498 U.S. 1067, 112 L.Ed.2d 845. Conspiracy 24(1); Conspiracy 27; Conspiracy 47(2)

"Conspiracy" is combination of two or more individuals formed for purpose of committing criminal act through their joint efforts. U.S. v. Gaddis, C.A.7 (Ind.) 1989, 877 F.2d 605, 108 A.L.R. Fed. 363. Conspiracy 23.1

Elements of the offense of conspiracy are an agreement between two or more persons to commit a crime against the United States and an overt act by one of them in furtherance of the agreement. U.S. v. Yamin, C.A.5 (La.) 1989, 868 F.2d 130, 10 U.S.P.Q.2d 1300, rehearing denied, certiorari denied 109 S.Ct. 3258, 492 U.S. 924, 106 L.Ed.2d 603. Conspiracy 23.1; Conspiracy 27

In order to support a charge of conspiracy to defraud the United States, the Government must prove the existence of an agreement, must prove that the defendants, having knowledge of that agreement, voluntarily joined the conspiracy, and must prove that an overt act was committed in furtherance of the conspiracy. U.S. v. Allred, C.A.5 (Tex.) 1989, 867 F.2d 856. Conspiracy 33(1)

In order to obtain conviction for criminal conspiracy, Government must prove beyond reasonable doubt that conspiracy directed to unlawful purpose existed, defendant knew of conspiracy, and defendant voluntarily agreed to join that conspiracy. U.S. v. Davis, C.A.5 (Tex.) 1987, 810 F.2d 474. Conspiracy 47(1)

Gist of substantive crime of conspiracy is that an unlawful combination and agreement becomes positive crime only when some of proved conspirators enter field of action pursuant to criminal design. Yates v. U. S., C.A.9 (Cal.) 1955, 225 F.2d 146, certiorari granted 76 S.Ct. 104, 350 U.S. 860, 100 L.Ed. 763, certiorari granted 76 S.Ct. 105, 350 U.S. 860, 100 L.Ed. 763, reversed on other grounds 77 S.Ct. 1064, 354 U.S. 298, 1 L.Ed.2d 1356. Conspiracy 27

The character and effect of a conspiracy are not to be judged by dismembering it and viewing its separate parts, but only by looking at it as a whole. Carlson v. U. S., C.A.10 (Kan.) 1951, 187 F.2d 366, certiorari denied 71 S.Ct. 1000, 341 U.S. 940, 95 L.Ed. 1367, rehearing denied 72 S.Ct. 22, 342 U.S. 843, 96 L.Ed. 637. See, also, Hazeltine Research, Inc. v. Zenith Radio Corp., D.C.Ill.1965, 239 F.Supp. 51. Conspiracy 23.1

Under former § 88 of this title [now this section] "conspiracy" was a joining of intentions to engage in or further some unlawful action together, plus the taking of any step by one or more of the parties toward effecting the mutual object. Phelps v. U. S., C.C.A.8 (Minn.) 1947, 160 F.2d 858, rehearing denied 161 F.2d 940, certiorari denied 68

S.Ct. 1525, 334 U.S. 860, 92 L.Ed. 1780. Conspiracy 24(1); Conspiracy 27

A "conspiracy" is a combination of two or more persons, by concerted action, to accomplish a criminal or unlawful purpose, or some purpose not in itself criminal or unlawful, by criminal or unlawful means. Pinkerton v. U. S., C.C.A.5 (Ala.) 1944, 145 F.2d 252. See, also, U.S. v. Hutto, Okl.1921, 41 S.Ct. 541, 256 U.S. 524, 65 L.Ed. 1073; Duplex Printing Press Co. v. Derring, N.Y.1921, 41 S.Ct. 172, 254 U.S. 443, 65 L.Ed. 349, 16 A.L.R. 196; Pettibone v. U.S., Idaho 1893, 13 S.Ct. 542, 148 U.S. 203, 37 L.Ed. 419; U.S. v. Bazzell, C.A.Ill.1951, 187 F.2d 878, affirmed 72 S.Ct. 235, 342 U.S. 237, 96 L.Ed. 275; Pinkerton v. U.S., C.C.A.Ala.1945, 151 F.2d 499, affirmed 66 S.Ct. 1180, 328 U.S. 640, 90 L.Ed. 1489, rehearing denied 67 S.Ct. 26, 329 U.S. 818, 91 L.Ed. 697; U.S. v. Schachtrup, C.C.A.Ill.1944, 140 F.2d 415; U.S. v. Perlstein, C.C.A.N.J.1942, 126 F.2d 789, certiorari denied 62 S.Ct. 1106, 316 U.S. 678, 86 L.Ed. 1752; Reavis v. U.S., C.C.A.Okl.1939, 106 F.2d 982; Troutman v. U.S., C.C.A.Colo.1938, 100 F.2d 628; Martin v. U.S., C.C.A.Colo.1938, 100 F.2d 490, certiorari denied 59 S.Ct. 590, 591, 306 U.S. 649, 83 L.Ed. 1047, 1048, 59 S.Ct. 642, 306 U.S. 651, 83 L.Ed. 1048; Beland v. U.S., C.C.A.Tex.1938, 100 F.2d 289, certiorari denied 59 S.Ct. 485, 306 U.S. 636, 83 L.Ed. 1037; Cooper v. O'Connor, 1938, 99 F.2d 135, 69 App.D.C. 100, 118 A.L.R. 1440, certiorari denied 59 S.Ct. 146, 305 U.S. 642, 83 L.Ed. 414, rehearing denied 59 S.Ct. 241, 305 U.S. 673, 83 L.Ed. 436, rehearing denied 59 S.Ct. 1030, 307 U.S. 651, 83 L.Ed. 1529; Marino v. U.S., C.C.A.Cal.1937, 91 F.2d 691, 113 A.L.R. 975, certiorari denied 58 S.Ct. 410, 302 U.S. 764, 82 L.Ed. 593; Fisher v. U.S., C.C.A.W.Va.1926, 13 F.2d 756; Alaska S.S. Co. v. International Longshoremen's Ass'n of Puget Sound, D.C.Wash.1916, 236 F. 964; U.S. v. Howell, D.C.Mo.1892, 56 F. 21; U.S. v. Weinberg, D.C.Pa.1955, 129 F.Supp. 514, affirmed 226 F.2d 161, certiorari denied 76 S.Ct. 305, 350 U.S. 933, 100 L.Ed. 815; U.S. v. Ozark Canners Ass'n, D.C.Ark.1943, 51 F.Supp. 150; U.S. v. Armour & Co., D.C.Okl.1943, 48 F.Supp. 801, reversed on other grounds 137 F.2d 269; U.S. v. Babcock, C.C.Mo.1876, Fed.Cas. No. 14,487; U.S. v. Smith, C.C.Ohio 1869, Fed.Cas. No. 16,322. Conspiracy 24(1)

The elements of a "criminal conspiracy," are an object to be accomplished, a plan or scheme embodying means to accomplish that object, an agreement or understanding between two or more of the defendants whereby they become definitely committed to co-operate for the accomplishment of the object by means embodied in the agreement, or by any effectual means and an overt act in jurisdictions where statutes so require. Pinkerton v. U. S., C.C.A.5 (Ala.) 1944, 145 F.2d 252. Conspiracy 23.1

The conspiracy, and not the overt act in pursuance of the conspiracy, is the gist of the crime. U.S. v. Cohen, C.C.A.2 (N.Y.) 1944, 145 F.2d 82, certiorari denied 65 S.Ct. 553, 323 U.S. 799, 89 L.Ed. 637, certiorari denied 65 S.Ct. 553, 323 U.S. 799, 89 L.Ed. 638, certiorari denied 65 S.Ct. 554, 323 U.S. 800, 89 L.Ed. 638. See, also, U.S. v. Pezzati, D.C.Colo.1958, 160 F.Supp. 787. Conspiracy 23.1

The gist of offense of "conspiracy" under former § 88 of this title [now this section] was an agreement among conspirators to commit an act prohibited by Act of Congress in interest of public policy of United States, and an act by one or more of the conspirators to effect object of the conspiracy. Egan v. U.S., C.C.A.8 (Mo.) 1943, 137 F.2d 369, certiorari denied 64 S.Ct. 195, 320 U.S. 788, 88 L.Ed. 474. Conspiracy 28(1)

Where an offense is committed, the "corpus delicti" is the act itself, but, where there is a conspiracy to commit such an offense, the corpus delicti is the conspiracy to do the act, and an overt act, pursuant to the conspiracy. Anderson v. U.S., C.C.A.6 (Tenn.) 1941, 124 F.2d 58, certiorari granted 62 S.Ct. 941, 316 U.S. 651, 86 L.Ed. 1732, reversed on other grounds 63 S.Ct. 599, 318 U.S. 350, 87 L.Ed. 829. Conspiracy 23.1; Criminal Law 26

"Conspiracy" is an affirmative act, measured by mutual understanding of participants, and terms of "conspiracy" are seldom, if ever, express, and the conspiracy must almost always be gathered by implication from conduct, and borders of agreement to conspire are to be determined with an eye to purpose of agreement. U S v. Mack, C.C.A.2 (N.Y.) 1940, 112 F.2d 290. Conspiracy 24(1)

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The crime of "conspiracy" consists in two or more persons combining or confederating with the purpose of committing a public offense. Wilder v. U.S., C.C.A.10 (Okla.) 1938, 100 F.2d 177. See, also, Weniger v. U.S., C.C.A.Wash.1931, 47 F.2d 692. Conspiracy 23.1

Gist of conspiracy is meeting of minds for definite criminal purpose ripened by doing of overt act. Sprague v. Aderholt, D.C.Ga.1930, 45 F.2d 790. Conspiracy 23

"Criminal conspiracy" is confederation to do something unlawful, either as means or an end. U.S. v. Wilson, D.C.W.Va.1927, 23 F.2d 112. Conspiracy 23.1

A "conspiracy" to commit crime under former § 88 of this title [now this section] was a substantive offense, completed by the unlawful agreement, the overt act being no part of the conspiracy. Bell v. U.S., C.C.A.8 (Utah) 1924, 2 F.2d 543.

The offense of conspiracy, under former § 88 of this title [now this section], consisted in the conspiracy alone, and not in both the conspiracy and the acts done to effect its object. U. S. v. Black, C.C.A.7 (Wis.) 1908, 160 F. 431, 87 C.C.A. 383. Conspiracy 25

The gist of the offense is conspiracy, combination, or agreement to effect an unlawful end, which offense is completed only on some one or more of the parties doing an act to effect the object of the conspiracy, termed an "overt act." U.S. v. Richards, D.C.Neb.1906, 149 F. 443.

Criminal "conspiracy" is agreement between two or more persons to join together to accomplish some unlawful purpose; government must prove beyond reasonable doubt that two or more persons made agreement to commit offenses charged in indictment, defendant knew unlawful purpose of the agreement and joined in it with intent to further the unlawful purpose, and one conspirator, during existence of conspiracy, knowingly committed at least one overt act described in indictment to accomplish some object or purpose of conspiracy. U.S. v. Ramming, S.D.Tex.1996, 915 F.Supp. 854. Conspiracy 23.1

In order to sustain conspiracy conviction, evidence must show agreement by two or more persons to combine efforts for illegal purposes and overt act in furtherance of the conspiracy by one of the members. U.S. v. Cannon, M.D.Ga.1993, 811 F.Supp. 1568, affirmed in part, reversed in part 41 F.3d 1462, certiorari denied 116 S.Ct. 86, 516 U.S. 823, 133 L.Ed.2d 44. Conspiracy 24(1); Conspiracy 27

To prove conspiracy to defraud United States Government or to commit offense against United States, prosecution must show agreement between defendant and others as to object of conspiracy, specific intent to achieve object of conspiracy, and at least one overt act in furtherance of conspiracy by defendant or coconspirator. U.S. v. Sprecher, S.D.N.Y.1992, 783 F.Supp. 133, 117 A.L.R. Fed. 767, affirmed 988 F.2d 318, habeas corpus denied, affirmed 50 F.3d 3, certiorari denied 116 S.Ct. 299, 516 U.S. 913, 133 L.Ed.2d 205. Conspiracy 28(1); Conspiracy 33(1)

Elements of offense of conspiracy are the agreement, offense-object toward which agreement is directed, and an overt act. U. S. v. Guterma, S.D.N.Y.1960, 189 F.Supp. 265. Conspiracy 23.1

"Conspiracy" is an agreement between two or more persons to achieve an unlawful object and essence of crime is agreement on part of each to effect the object involved, and they must each intend the accomplishment of object, and they must agree on this. U. S. v. Markowitz, E.D.Pa.1959, 176 F.Supp. 681. Conspiracy 23.1

"Conspiracy" is an unlawful design or agreement to do something and takes its character and quality from the nature of the law toward whose violation it is or was directed. Nani v. Brownell, D.C.D.C.1957, 153 F.Supp. 679. Conspiracy 23.1

18 U.S.C.A. § 371

The essence of crime of "conspiracy" is two or more persons combining with intent and purpose of committing a public offense by doing an unlawful act or doing a lawful act in an unlawful manner, and conspiracy is a distinct offense from that which the parties intend to accomplish as result of conspiracy. U S v. Flynn, S.D.N.Y.1951, 103 F.Supp. 925. Conspiracy 23.1; Conspiracy 28(2); Conspiracy 24(1)

To constitute a conspiracy under former § 88 of this title [now this section] there must have been an agreement between the parties, a unity of design and purpose, and an overt act committed by one for the purpose of effecting the object of the conspiracy. U. S. v. Hamilton, C.C.S.D.Ohio 1876, 26 F.Cas. 90, 8 Chi.Leg.N. 211, No. 15288. See, also, U.S. v. Harrison, C.C.A.N.J.1941, 121 F.2d 930, certiorari denied 62 S.Ct. 124, 314 U.S. 661, 86 L.Ed. 530; U.S. v. Olmstead, D.C.Wash.1925, 5 F.2d 712; U.S. v. Munday, C.C.Wash.1911, 186 F. 375, reversed on other grounds 32 S.Ct. 53, 222 U.S. 175, 56 L.Ed. 149; U.S. v. Hutchins, C.C.Ohio 1876, Fed.Cas. No. 15,430. Conspiracy 23.1

42. Statutory offense, nature and elements of conspiracy

Miscitation of this section in indictment charging defendant with conspiracy to violate former section 4705 of Title 26, making it a crime to sell, barter, exchange and give away narcotic drugs to others without a written order did not misinform defendant as to offense with which he was charged, and since he could not have been misled as to possible penalties involved, in that they were clearly proscribed by statute, and since defendant failed to make any showing that he was prejudiced by statutory miscitation, request for correction of sentence was properly denied. U. S. v. Haley, C.A.8 (Minn.) 1973, 478 F.2d 766, certiorari denied 94 S.Ct. 139, 414 U.S. 849, 38 L.Ed.2d 97. Sentencing And Punishment 2252; Indictment And Information 108

Conspiracy to violate federal laws is purely statutory offense. Steigleder v. U.S., C.C.A.8 (Okla.) 1928, 25 F.2d 959.

Former § 88 of this title [now this section] created the offense of conspiracy. Reilley v. U. S., C.C.A.6 (Ohio) 1901, 106 F. 896, 46 C.C.A. 25, reversed on other grounds 23 S.Ct. 334, 188 U.S. 375, 47 L.Ed. 508.

Indictment which charged conspiracy and referred to federal statute complied with rule requiring citation of statute claimed to be violated, and it was not necessary to cite the statute for the offense which was the object of conspiracy. U. S. v. De Sapio, S.D.N.Y.1969, 299 F.Supp. 436. Indictment And Information 108

43. Common law offenses, nature and elements of conspiracy

Statutory requirement that one or more of the conspirators do an act to effect the object of the conspiracy is what distinguishes the general statutory crime of conspiracy from common-law conspiracy. U. S. v. Bermudez, C.A.2 (N.Y.) 1975, 526 F.2d 89, certiorari denied 96 S.Ct. 2166, 425 U.S. 970, 48 L.Ed.2d 793. Conspiracy 27

At common law, the crime of "conspiracy" was complete when one had agreed with others either to do an unlawful act, or to do a lawful act in an unlawful way, and to these requirements former § 88 of this title [now this section] has added the requirement that some member of conspiracy has done an overt act in furtherance of the venture. Deacon v. U. S., C.C.A.1 (Mass.) 1941, 124 F.2d 352. Conspiracy 27

Under former § 88 of this title [now this section] federal courts and jurisdiction of a prosecution for conspiracy to punish the commission of what would have been a crime at common law, but was not made criminal by any federal statute. U.S. v. Galleanni, D.C.Mass.1917, 245 F. 977.

Conspiracy denounced by former § 88 of this title [now this section] was distinguishable from the common-law offense in that it required an overt act, which when committed completed the offense, without reference to the ultimate success of the conspiracy. Ryan v. U.S., C.C.A.7 (Ind.) 1914, 216 F. 13, 132 C.C.A. 257. Conspiracy

At common law proof of an overt act was not necessary to show a completed offense of conspiracy. Robinson v. U.S., C.C.A.8 (Minn.) 1909, 172 F. 105, 96 C.C.A. 307. See, also, McGinniss v. U.S., C.C.A.N.Y.1919, 256 F. 621; U.S. v. Rintelen, D.C.N.Y.1916, 233 F. 793; Jones v. U.S., Or.1908, 162 F. 417, 89 C.C.A. 303, certiorari denied 29 S.Ct. 685, 212 U.S. 576, 53 L.Ed. 657; U.S. v. Brace, D.C.Cal.1907, 149 F. 874.

While it is the general rule that there are no common-law offenses against the United States, such rule does not apply to the District of Columbia; and, the common law being in force in the District of Columbia when former § 88 of this title [now this section] was enacted, any common-law offense not repealed, superseded, or plainly inconsistent with existing legislation or necessarily obsolete was an offense against the United States within the meaning of said section. Tyner v. U.S., App.D.C.1904, 23 App.D.C. 324. Criminal Law 10

Common law principles of conspiracy require a meeting of the minds, and understanding, and explicit or implicit agreement or concert of action to demonstrate a conspiracy. Maynard v. Kear, N.D.Ohio 1979, 474 F.Supp. 794, 18 O.O.3d 274. Conspiracy 24(1)

"Conspiracy" is enlargement of common-law doctrine of aiding and abetting, or being a principal, or an accessory before the fact. U. S. v. Molin, D.C.Mass.1965, 244 F.Supp. 1015. Conspiracy 23.1

At common law, the crime of conspiracy was complete when defendants entered into the proscribed agreement. US v. Grunewald, S.D.N.Y.1958, 162 F.Supp. 626. Conspiracy 24(1)

At common law, the corpus delicti of conspiracy was fully established by proof that the coconspirators had actually entered into the agreement and there was no requirement that the prosecution prove in addition to the agreement the doing of an overt act pursuant to the agreement and the common-law rule has been carried forward into federal statutes. US v. Grunewald, S.D.N.Y.1958, 162 F.Supp. 626. Conspiracy 24(1); Conspiracy 27

Where it is impossible under any circumstances to commit substantive offense without cooperative action, preliminary agreement between same parties to commit the offense is not an indictable conspiracy either at common law or under this section. U. S. v. Anthony, M.D.Pa.1956, 145 F.Supp. 323. Conspiracy 28(1)

Under common law, act of conspiring, without more, was public offense. U. S. v. Schneiderman, S.D.Cal.1951, 102 F.Supp. 87. Conspiracy 23.1

44. Single offense, nature and elements of conspiracy

When a single agreement to commit one or more substantive crimes is evidenced by an overt act, the precise nature and extent of conspiracy must be determined by reference to the agreement which embraces and defines its objects, and whether the object of a single agreement is to commit one or many crimes, it is in either case that agreement which constitutes the "conspiracy" which former § 88 of this title [now this section] punished, and one agreement cannot be taken to be several agreements and hence several conspiracies, because it envisages the violation of several statutes rather than one. Braverman v. U.S., U.S.Mich.1942, 63 S.Ct. 99, 317 U.S. 49, 87 L.Ed. 23. Conspiracy 24(2)

A single agreement to commit an offense does not become several conspiracies because it continues over a period of time, and there may be such a single continuing agreement to commit several offenses. Braverman v. U.S., U.S.Mich.1942, 63 S.Ct. 99, 317 U.S. 49, 87 L.Ed. 23. See, also, U.S. v. Todaro, C.C.A.Conn.1944, 145 F.2d 977; U.S. v. Gilboy, D.C.Pa.1958, 160 F.Supp. 442. Conspiracy 24(2)

A single conspiracy may have for its objective the violation of two or more of the criminal laws, the substantive

offenses having perhaps different periods of limitation. U.S. v. Rabinowich, U.S.N.Y.1915, 35 S.Ct. 682, 238 U.S. 78, 59 L.Ed. 1211.

Separate spokes meeting at common center constitute "wagon wheel conspiracy" only if those spokes are enclosed by "rim." U.S. v. Evans, C.A.10 (Okla.) 1992, 970 F.2d 663, certiorari denied 113 S.Ct. 1288, 507 U.S. 922, 122 L.Ed.2d 680, denial of habeas corpus affirmed 51 F.3d 287, denial of habeas corpus affirmed 70 F.3d 1282, denial of post-conviction relief affirmed 82 F.3d 427. Conspiracy 24(3)

Mere fact that operation consists first of a robbery, planned and executed with the aid of an insider, and then of concealment of the money, executed by persons other than the insider, does not necessarily entitle the defendants to a multiple-conspiracy instruction. U.S. v. Maldonado-Rivera, C.A.2 (Conn.) 1990, 922 F.2d 934, certiorari denied 111 S.Ct. 2811, 501 U.S. 1211, 115 L.Ed.2d 984, certiorari denied 111 S.Ct. 2858, 501 U.S. 1233, 115 L.Ed.2d 1025, certiorari denied 111 S.Ct. 2858, 501 U.S. 1233, 115 L.Ed.2d 1026. Conspiracy 48.2(2)

Separate conspiracies exist when each of conspirators' agreements has its own end, and each constitutes an end in itself. U.S. v. Sababu, C.A.7 (Ill.) 1989, 891 F.2d 1308. Conspiracy 24(2)

Hostility and competition among purported tax-exempt churches in which defendants sold ministries did not preclude the finding that defendants were engaged in a single overall conspiracy to defraud the United States rather than in a series of multiple conspiracies when it was the defendants and their associates, not the churches, who were the ones who were alleged to have engaged in the conspiracy; it was not inconsistent with the alleged ongoing nature of the conspiracy that disputes might arise between the defendants and their associates and that switches in affiliation might occur from time to time. U.S. v. Heinemann, C.A.2 (N.Y.) 1986, 801 F.2d 86, certiorari denied 107 S.Ct. 1308, 479 U.S. 1094, 94 L.Ed.2d 163. Conspiracy 24(2)

Gist of criminal conspiracy may involve numerous transactions and fact that conspirators individually or in groups performed different task in pursuing common goal does not necessitate finding of several conspiracies. U.S. v. Smith, C.A.3 (Pa.) 1986, 789 F.2d 196, certiorari denied 107 S.Ct. 668, 479 U.S. 1017, 93 L.Ed.2d 720. Conspiracy 24(2)

When there is only one agreement, there is only one violation of this section even though the conspiratorial agreement may encompass diverse criminal objectives which would violate several statutes. U. S. v. Bendis, C.A.9 (Hawai'i) 1981, 681 F.2d 561, certiorari denied 103 S.Ct. 306, 459 U.S. 973, 74 L.Ed.2d 286. Conspiracy 24(2)

Commission or attempted commission of several offenses constitutes several crimes but one agreement to violate a number of laws remains but one crime if it is charged merely as a conspiracy and not as a substantive offense. U. S. v. Rodriguez, C.A.5 (Fla.) 1978, 585 F.2d 1234, on rehearing 612 F.2d 906, rehearing denied 617 F.2d 1214, certiorari denied 101 S.Ct. 108, 449 U.S. 835, 66 L.Ed.2d 41, certiorari granted 101 S.Ct. 69, 449 U.S. 818, 66 L.Ed.2d 20, affirmed 101 S.Ct. 1137, 450 U.S. 333, 67 L.Ed.2d 275. Conspiracy 28(1)

Where each of parties was to perform a different function, and each party knew exactly the role of the other, the agreement among them to so act constituted a single conspiracy. U. S. v. Burnett, C.A.8 (Mo.) 1976, 582 F.2d 436 . Conspiracy 24(3)

For a "wheel conspiracy" to exist, those people who form the spokes must have been aware of each other and must do something in furtherance of a single, illegal enterprise, and if there is not some interaction between those conspirators who form the spokes of the wheel as to at least one common illegal object, the "wheel" is incomplete, and more than one conspiracy is charged. U. S. v. Levine, C.A.5 (Fla.) 1977, 546 F.2d 658, rehearing denied 551 F.2d 687. Conspiracy 24(3)

Distinction must be made between separate conspiracies where certain parties are common to all and one overall continuing conspiracy with various parties joining and terminating their relationship at different times; various people knowingly joining together in furtherance of a common design or purpose constitute a single conspiracy, and while conspiracy may have a small group of core conspirators, other parties who knowingly participate with the core conspirators and others to achieve a common goal may be members of an overall conspiracy. U. S. v. Bastone, C.A.7 (Ill.) 1975, 526 F.2d 971, certiorari denied 96 S.Ct. 2172, 425 U.S. 973, 48 L.Ed.2d 797. Conspiracy 24(2)

Charging a single illicit agreement under several statutes does not make it more than one conspiracy. U. S. v. Honneus, C.A.1 (Mass.) 1974, 508 F.2d 566, certiorari denied 95 S.Ct. 1677, 421 U.S. 948, 44 L.Ed.2d 101. Conspiracy 28(1)

Evidence that plan or scheme to defraud was devised and existed and that the mails were used in furtherance of plan supported conviction for violation of this section. Romontio v. U.S., C.A.10 (Okla.) 1968, 400 F.2d 618, certiorari granted 91 S.Ct. 144, 400 U.S. 901, 27 L.Ed.2d 137, certiorari dismissed 91 S.Ct. 1384, 402 U.S. 903, 28 L.Ed.2d 644. Postal Service 49(11)

Conspiracy is a single crime whether it contemplates one or more substantive offenses. U. S. v. Magliano, C.A.4 (Md.) 1964, 336 F.2d 817. Conspiracy 24(2)

A single conspiracy was shown by evidence of an agreement pertaining to the supplying of and the sale of moonshine whiskey, and fact there were different groups involved in carrying out such agreement and that certain members of the conspiracy were largely strangers to each other was immaterial. Sigers v. U. S., C.A.5 (Fla.) 1963, 321 F.2d 843. Conspiracy 24(3)

The amendment to this section providing that punishment for conspiracy to commit a misdemeanor only shall not exceed that prescribed for such misdemeanor did not change rule that a single agreement of conspiractors is a single crime, no matter how many illegal objects it encompasses and even if some of them are felonies and others misdemeanors. Williams v. U.S., C.A.5 (Ga.) 1956, 238 F.2d 215, certiorari denied 77 S.Ct. 589, 352 U.S. 1024, 1 L.Ed.2d 596. Conspiracy 24(2)

Distinction between single conspiracy and several related conspiracies is whether there is single unified purpose, or common end in contradistinction to separate ends similar in character which characterize multiple conspiracies. United States v. Rosenberg, C.A.2 (N.Y.) 1952, 195 F.2d 583, certiorari denied 73 S.Ct. 20, 344 U.S. 838, 97 L.Ed. 652, rehearing denied 73 S.Ct. 134, 344 U.S. 889, 97 L.Ed. 687, certiorari denied 73 S.Ct. 21, 344 U.S. 838, 97 L.Ed. 652, rehearing denied 73 S.Ct. 180, 344 U.S. 889, 97 L.Ed. 687, rehearing denied 74 S.Ct. 860, 347 U.S. 1021, 98 L.Ed. 1142, motion denied 78 S.Ct. 91, 355 U.S. 860, 2 L.Ed.2d 67. Conspiracy 24(2)

This section, penalizing each of two or more persons who conspire either to commit any offense against the United States "or" to defraud the United States or any agency thereof, does not describe two offenses but describes the single crime of conspiracy. May v. United States, C.A.D.C.1949, 175 F.2d 994, 84 U.S.App.D.C. 233, certiorari denied 70 S.Ct. 58, 338 U.S. 830, 94 L.Ed. 505, order withheld 70 S.Ct. 81, 338 U.S. 854, motion denied 70 S.Ct. 94, motion denied 70 S.Ct. 95, rehearing denied 70 S.Ct. 154, 338 U.S. 882, 94 L.Ed. 542, rehearing denied 70 S.Ct. 155, 338 U.S. 882, 94 L.Ed. 542, order withheld 70 S.Ct. 80. Conspiracy 28(1); Conspiracy 33(1)

A "conspiracy" is determined by the design of the parties who originate it, and when a new person joins, if purposes remain the same, it continues to be the single venture which it was before, notwithstanding some of persons are strangers to each other. U. S. v. Feinberg, C.C.A.7 (Ill.) 1941, 123 F.2d 425, certiorari denied 62 S.Ct. 626, 315 U.S. 801, 86 L.Ed. 1201. Conspiracy 24(1); Conspiracy 24(3)

Where evidence allowed jury to find that there had existed over substantial period of time a conspiracy embracing

a great number of persons, whose object was to smuggle narcotics into port of New York and distribute them to addicts both in New York City and in Texas and Louisiana, thus requiring cooperation of smugglers, middlemen and two groups of retailers, one in New York and one in Texas and Louisiana, there was only one conspiracy, as against contention that there was a series of separate conspiracies. U S v. Bruno, C.C.A.2 (N.Y.) 1939, 105 F.2d 921, certiorari granted 60 S.Ct. 112, 308 U.S. 536, 84 L.Ed. 451, reversed on other grounds 60 S.Ct. 198, 308 U.S. 287, 84 L.Ed. 257. Conspiracy 43(12)

A single conspiracy may have for its object and purpose the violation of two or more criminal laws. Troutman v. U. S., C.C.A.10 (Colo.) 1938, 100 F.2d 628. See, also, U.S. v. Nomura Trading Co., D.C.N.Y.1963, 213 F.Supp. 704; U.S. v. Cafarelli, D.C.Utah 1959, 183 F.Supp. 734. Conspiracy 25

Fact that conspirators individually or in groups perform different tasks to common end does not split up conspiracy into several different conspiracies. Lefco v. U S, C.C.A.3 (Pa.) 1934, 74 F.2d 66. Conspiracy 24(2)

Single charge of conspiracy to defraud the United States can be based on multiple statutory offenses which the conspirators conspired to commit, and conviction will be upheld so long as there is sufficient evidence to show that coconspirators are guilty of any one of the separate offenses. U.S. v. Cook, W.D.Okla.1995, 893 F.Supp. 1002. Conspiracy 33(1); Conspiracy 47(6)

Multiple objectives attendant to single criminal agreement do not give rise to "multiple conspiracies.". U.S. v. Law Firm of Zimmerman & Schwartz, P.C., D.Colo.1990, 738 F.Supp. 407, reversed 943 F.2d 1246. Conspiracy 24(2)

All conspirators need not be acquainted with one another, nor need they have originally conceived or participated in conception of conspiracy and that conspirators individually or in groups perform different tasks to a common end does not split a conspiracy into several different conspiracies. U. S. v. Boyance, E.D.Pa.1963, 215 F.Supp. 390 . Conspiracy 24(3)

A conspiracy, no matter how many or diverse its objects, is but one offense. U. S. v. Boisvert, D.C.R.I.1960, 187 F.Supp. 781. Conspiracy 24(2)

A single conspiracy may embrace several related conspiracies. U S v. Greater Blouse, Skirt & Neckwear Contractors' Ass'n, Inc, S.D.N.Y.1959, 177 F.Supp. 213. Conspiracy 24(2)

Neither a multiplicity of objects nor of means converts a single conspiracy into more than one offense. U. S. v. Gilboy, M.D.Pa.1958, 160 F.Supp. 442. Conspiracy 24(2)

Test of whether activities constitute single conspiracy is whether there is common purpose underlying separate acts, whether same objective is being pursued in each instance, and whether there is concerted action to achieve that end. U.S. v. Speed, D.C.D.C.1948, 78 F.Supp. 366. Conspiracy 24(1)

Whether there is single conspiracy depends on whether there is single agreement, regardless of whether undertaking is to commit one or several crimes. U.S. v. Speed, D.C.D.C.1948, 78 F.Supp. 366. Conspiracy 28(1)

A single conspiracy may have many objects. U S v. Stromberg, S.D.N.Y.1957, 22 F.R.D. 513. Conspiracy 25

45. Separate and distinct offense, nature and elements of conspiracy

The commission of a substantive offense and a conspiracy to commit it are separate and distinct offenses. Callanan v. U.S., U.S.Mo.1961, 81 S.Ct. 321, 364 U.S. 587, 5 L.Ed.2d 312, rehearing denied 81 S.Ct. 687, 365 U.S. 825, 5

L.Ed.2d 703. See, also, U.S. v. Sykes, C.A.Ky.1962, 305 F.2d 172, reversed on other grounds 84 S.Ct. 881, 376 U.S. 364, 11 L.Ed.2d 777; U.S. v. Long, C.A.Mo.1971, 449 F.2d 288, certiorari denied 92 S.Ct. 1191, 1206, 405 U.S. 974, 31 L.Ed.2d 247; U.S. v. Bally Mfg. Corp., D.C.La.1972, 345 F.Supp. 410; U.S. v. Lozano, C.A.Ill.1975, 511 F.2d 1, certiorari denied 96 S.Ct. 94, 423 U.S. 850, 46 L.Ed.2d 74; U.S. v. Tombrello, C.A.11 (Ala). 1982, 666 F.2d 485, certiorari denied 102 S.Ct. 2279, 456 U.S. 994, 73 L.Ed.2d 1291. Conspiracy 28(2)

The Supreme Court will attribute to Congress a tacit purpose, in the absence of any inconsistent expression, to maintain a long-established distinction between substantive offenses and conspiracy. Callanan v. U.S., U.S.Mo.1961, 81 S.Ct. 321, 364 U.S. 587, 5 L.Ed.2d 312, rehearing denied 81 S.Ct. 687, 365 U.S. 825, 5 L.Ed.2d 703. Statutes 212.5

The commission of a substantive offense and a conspiracy to commit it are separate and distinct offenses, to each of which Congress may affix a different penalty. Pinkerton v. U. S., U.S.Ala.1946, 66 S.Ct. 1180, 328 U.S. 640, 90 L.Ed. 1489, rehearing denied 67 S.Ct. 26, 329 U.S. 818, 91 L.Ed. 697. See, also, U.S. v. Hall, C.A.Va.1965, 342 F.2d 849, certiorari denied 86 S.Ct. 28, 382 U.S. 812, 15 L.Ed.2d 60; Razete v. U.S., C.A.Ohio 1952, 199 F.2d 44, certiorari denied 73 S.Ct. 284, 344 U.S. 904, 97 L.Ed. 698; Blumenthal v. U.S., C.C.A.Cal.1946, 158 F.2d 883, rehearing denied 158 F.2d 762, certiorari denied 67 S.Ct. 1307, 331 U.S. 799, 91 L.Ed. 1824, affirmed 68 S.Ct. 248, 332 U.S. 539, 92 L.Ed. 154, rehearing denied 68 S.Ct. 385 (3 mems), 332 U.S. 856, 92 L.Ed. 154. Conspiracy 28(2)

Conspiracy to commit a crime is a different offense from the crime that is the object of the conspiracy. American Tobacco Co. v. U.S., U.S.Ky.1946, 66 S.Ct. 1125, 328 U.S. 781, 90 L.Ed. 1575. See, also, Blumenthal v. U.S., C.C.A.Cal.1946, 158 F.2d 883, affirmed 68 S.Ct. 248, 332 U.S. 539, 92 L.Ed. 154, rehearing denied 68 S.Ct. 358 (3 mems) 332 U.S. 856, 92 L.Ed. 425; U.S. v. Bechman, D.C.D.C.1958, 164 F.Supp. 898. Conspiracy 28(2)

A "conspiracy" is not the commission of the crime which it contemplates, and neither violates nor arises under the statute whose violation is its object. Braverman v. U.S., U.S.Mich.1942, 63 S.Ct. 99, 317 U.S. 49, 87 L.Ed. 23. See, also, U.S. v. Lutwak, C.A.Ill.1952, 195 F.2d 748, affirmed 73 S.Ct. 481, 344 U.S. 604, 97 L.Ed. 593, rehearing denied 73 S.Ct. 726, 345 U.S. 919, 97 L.Ed. 1352; Carrado v. U.S., 1954, 210 F.2d 712, 93 U.S.App.D.C. 183, certiorari denied 74 S.Ct. 874, 347 U.S. 1018, 98 L.Ed. 1140, and 74 S.Ct. 876, 347 U.S. 1020, 98 L.Ed. 1141, certiorari denied 75 S.Ct. 777, 349 U.S. 932, 99 L.Ed. 1262, certiorari denied 76 S.Ct. 310, 350 U.S. 938, 100 L.Ed. 819. Conspiracy 28(1)

A defendant could have been prosecuted under former § 88 of this title [now this section], for a conspiracy to violate a criminal or penal statute of the United States, notwithstanding the fact that the punishment prescribed for the offense created by such statute was less than that prescribed for conspiracy; the conspiracy in itself being a distinct and substantive offense. U.S. v. Stevenson, U.S.Mass.1909, 30 S.Ct. 37, 215 U.S. 200, 54 L.Ed. 157. See, also, Kelly v. U.S., Ohio 1919, 258 F. 392, 169 C.C.A. 408, certiorari denied 39 S.Ct. 391, 249 U.S. 616, 63 L.Ed. 803; Thomas v. U.S., Mo.1907, 156 F. 897, 84 C.C.A. 477, 17 L.R.A.,N.S., 720.

Fact that defendant was acquitted of conspiracy did not preclude his conviction for mail and wire fraud where the fraudulent scheme and the conspiracy were not coterminous. U.S. v. Funt, C.A.11 (Fla.) 1990, 896 F.2d 1288. Criminal Law 878(4)

A conspiracy to commit an offense against the United States is a crime, and the conspirators are subject to prosecution and punishment for engaging in the conspiracy, and the commission of the substantive offense and the conspiracy to commit it are separate and distinct offenses. U. S. v. Lupino, C.A.8 (Minn.) 1973, 480 F.2d 720, certiorari denied 94 S.Ct. 257, 414 U.S. 924, 38 L.Ed.2d 159. Conspiracy 28(1); Conspiracy 28(2)

Offense of conspiracy was separate from offenses of misprision and being accessory after fact of bank robbery, and

consecutive and cumulative penalty could be imposed for conspiracy. U. S. v. Daddano, C.A.7 (Ill.) 1970, 432 F.2d 1119, certiorari dismissed 91 S.Ct. 990, 401 U.S. 967, 28 L.Ed.2d 250, certiorari denied 91 S.Ct. 1366, 402 U.S. 905, 28 L.Ed.2d 645, certiorari denied 91 S.Ct. 1367, 402 U.S. 905, 28 L.Ed.2d 645, certiorari denied 91 S.Ct. 1391, 402 U.S. 905, 28 L.Ed.2d 645. Sentencing And Punishment 591

A conspiracy to commit a crime is a separate and distinct crime from the substantive offense. Downing v. U. S., C.A.5 (Tex.) 1965, 348 F.2d 594, certiorari denied 86 S.Ct. 235, 382 U.S. 901, 15 L.Ed.2d 155. Conspiracy 28(2)

Conspiracy to commit a crime is different offense from crime which may be object of conspiracy, and it is not necessary that conspiracy involve violation of specific substantive offense. Walker v. U. S., C.A.5 (Ga.) 1965, 342 F.2d 22, certiorari denied 86 S.Ct. 117, 382 U.S. 859, 15 L.Ed.2d 97. Conspiracy 28(2)

Conspiracy to commit offense can be made separate offense from commission of substantive offense itself. U. S. v. Gargano, C.A.6 (Ohio) 1964, 338 F.2d 893, certiorari denied 85 S.Ct. 1106, 380 U.S. 962, 14 L.Ed.2d 153. Conspiracy 28(1)

Crime of bank robbery and conspiracy to commit bank robbery crimes are separate and distinct offenses. McHenry v. U. S., C.A.10 (Utah) 1962, 308 F.2d 700, certiorari denied 83 S.Ct. 1878, 374 U.S. 833, 10 L.Ed.2d 1055. Conspiracy 28(3)

Conspiracy count charges different offense from crime which is object of conspiracy. Beitel v. U.S., C.A.5 (Tex.) 1962, 306 F.2d 665. Conspiracy 28(2)

Conspiracy to commit crime is different offense from crime which is object of conspiracy, and is punishable whether contemplated crime took place or not. Castro v. U. S., C.A.5 (Fla.) 1961, 296 F.2d 540. See, also, Hanford v. U.S., C.A.N.C.1956, 231 F.2d 661; Wilson v. U.S., C.A.S.C.1956, 230 F.2d 521, certiorari denied 76 S.Ct. 351 U.S. 931, 100 L.Ed. 1460; Marx v. U.S., C.C.A.Minn.1936, 86 F.2d 245. Conspiracy 28(2)

The crime of conspiracy is a separate and distinct offense. U. S. v. Campisi, C.A.2 (N.Y.) 1957, 248 F.2d 102, certiorari denied 78 S.Ct. 266, 355 U.S. 892, 2 L.Ed.2d 191. Conspiracy 28(2)

Commission of a substantive offense and a conspiracy to commit it constitutes separate and distinct offenses for which Congress can affix different penalties, except where the agreement of two or more persons is necessary for the commission of the substantive crime and there is no ingredient in the conspiracy which is not present in the completed crime. Pifer v. U.S., C.A.4 (W.Va.) 1957, 245 F.2d 704. Conspiracy 37

The commission of substantive offense and conspiracy to commit such are separate and distinct offenses. Toliver v. U. S., C.A.9 (Cal.) 1955, 224 F.2d 742. Conspiracy 28(2)

Conspiracy to commit a crime is a different offense from the crime itself. May v. United States, C.A.D.C.1949, 175 F.2d 994, 84 U.S.App.D.C. 233, certiorari denied 70 S.Ct. 58, 338 U.S. 830, 94 L.Ed. 505, order withheld 70 S.Ct. 81, 338 U.S. 854, motion denied 70 S.Ct. 94, motion denied 70 S.Ct. 95, rehearing denied 70 S.Ct. 154, 338 U.S. 882, 94 L.Ed. 542, rehearing denied 70 S.Ct. 155, 338 U.S. 882, 94 L.Ed. 542, order withheld 70 S.Ct. 80. See, also, Marcus v. U.S., C.C.A.Pa.1927, 20 F.2d 454, certiorari denied 48 S.Ct. 122, 275 U.S. 565, 72 L.Ed. 429 . Conspiracy 28(2)

Conspiracy is a crime separate from substantive crimes and may be prosecuted in connection with the substantive crimes. U.S. v. Freeman, C.C.A.7 (Ill.) 1948, 167 F.2d 786, certiorari denied 69 S.Ct. 37, 335 U.S. 817, 93 L.Ed. 372. Conspiracy 28(2)

A conspiracy to commit a crime is a different offense from the crime which is the object of the conspiracy, notwithstanding that the substantive offense is charged as one of the overt acts committed in furtherance of the conspiracy. Upshaw v. U.S., C.C.A.10 (Okla.) 1946, 157 F.2d 716. See, also, U.S. v. Bazzell, C.A.Ill.1951, 187 F.2d 878, affirmed 72 S.Ct. 235, 342 U.S. 237, 96 L.Ed. 275; Blue v. U.S., C.C.A.Ohio 1943, 138 F.2d 351, certiorari denied 64 S.Ct. 1046 (3 cases), 322 U.S. 736, 88 L.Ed. 1570, rehearing denied 64 S.Ct. 1259 (3 cases), 322 U.S. 771, 88 L.Ed. 1596; Enrique Rivera v. U.S., C.C.A.Porto Rico 1932, 57 F.2d 816; Gerson v. U.S., C.C.A.Okl.1928, 25 F.2d 49; Graham v. U.S., C.C.A.Okl.1926, 15 F.2d 740, certiorari denied 47 S.Ct. 587, 274 U.S. 743, 71 L.Ed. 1321; Morris v. U.S., C.C.A.Ark.1925, 7 F.2d 785, certiorari denied 46 S.Ct. 205, 270 U.S. 640, 70 L.Ed. 775; Linden v. U.S., C.C.A.N.J.1924, 2 F.2d 817; Riddle v. U.S., C.C.A.Ala.1922, 279 F. 216, certiorari denied 42 S.Ct. 589, 259 U.S. 586, 66 L.Ed. 1077; Kelly v. U.S., C.C.A.Ohio 1919, 258 F. 392, certiorari denied 39 S.Ct. 391, 249 U.S. 616, 63 L.Ed. 803; U.S. v. Schenley Distillers Corp., D.C.N.J.1945, 61 F.Supp. 601; U.S. v. Harrison, D.C.N.Y.1938, 23 F.Supp. 249, affirmed 99 F.2d 1017. Double Jeopardy 151(3.1)

A "conspiracy" to commit a crime is a different offense from the crime which is subject of the conspiracy, and a prosecution for conspiracy is not a prosecution under the statute whose violation is its object. Taub v. Bowles, Em.App.1945, 149 F.2d 817, certiorari denied 66 S.Ct. 39, 326 U.S. 732, 90 L.Ed. 435. See, also, Freeman v. U.S., C.C.A.Mich.1945, 146 F.2d 978. Conspiracy 28(2)

Conspiracy to commit a crime is a separate and distinct offense from crime which is object of conspiracy, and may be separately punished. Banghart v. U. S., C.C.A.4 (N.C.) 1945, 148 F.2d 521, certiorari denied 65 S.Ct. 1568, 325 U.S. 887, 89 L.Ed. 2001, rehearing denied 66 S.Ct. 133, 326 U.S. 807, 90 L.Ed. 492. See, also, Brennen v. U.S., C.A.Minn.1957, 240 F.2d 253, certiorari denied 77 S.Ct. 718, 353 U.S. 931, 1 L.Ed.2d 723; Frankfeld v. U.S., C.A.Md.1952, 198 F.2d 679, certiorari denied 73 S.Ct. 389, 344 U.S. 922, 97 L.Ed. 710, rehearing denied 73 S.Ct. 652, 345 U.S. 913, 97 L.Ed. 1348; U.S. v. Kosmol, D.C.N.Y.1959, 173 F.Supp. 280. Conspiracy 37

The substantive offenses of unlawfully selling heroin did not from their nature require concerted action of two or more persons, and were separate offenses from conspiracy to commit such substantive offenses. Freeman v. U.S., C.C.A.6 (Mich.) 1945, 146 F.2d 978. Conspiracy 37

A conspiracy to commit a substantive offense and the substantive offense are separate crimes. Robinson v. U.S., C.C.A.10 (Okla.) 1944, 143 F.2d 276. See, also, Ford v. U.S., Cal.1927, 47 S.Ct. 531, 273 U.S. 593, 71 L.Ed. 793; Colosacco v. U.S., C.A.Colo.1952, 196 F.2d 165; Doherty v. U.S., C.A.Utah 1951, 193 F.2d 487; Hall v. U.S., C.C.A.Okl.1935, 78 F.2d 168; Rush v. U.S., D.C.La.1964, 225 F.Supp. 843; U.S. v. Klock, D.C.N.Y.1951, 100 F.Supp. 230; U.S. v. Halbrook, D.C.Mo.1941, 36 F.Supp. 345. Conspiracy 37

A defendant could not complain of conviction of violating Securities Act, section 77q of Title 15, and of using the mails to defraud, embraced in several counts, and of conspiracy to effect scheme to defraud embodied in such counts, on ground that through conspiracy count he was twice convicted of same offense, since conspiracy was different offense from that charged in other counts. Holmes v. U. S., C.C.A.8 (Neb.) 1943, 134 F.2d 125, certiorari denied 63 S.Ct. 1434, 319 U.S. 776, 87 L.Ed. 1722. Double Jeopardy 151(4)

The crime of conspiracy is distinct from the offense which parties intended to accomplish as a result of the conspiracy, and it is completed when the agreement has been formed and one or more overt acts have been committed in furtherance of such unlawful design. Martin v. U. S., C.C.A.10 (Colo.) 1938, 100 F.2d 490, certiorari denied 59 S.Ct. 590, 306 U.S. 649, 83 L.Ed. 104, certiorari denied 59 S.Ct. 590, 306 U.S. 649, 83 L.Ed. 1047, certiorari denied 59 S.Ct. 590, 306 U.S. 649, 83 L.Ed. 1048, certiorari denied 59 S.Ct. 591, 306 U.S. 649, 83 L.Ed. 1048, certiorari denied 59 S.Ct. 642, 306 U.S. 651, 83 L.Ed. 1050. See, also, Troutman v. U.S., C.C.A.Colo.1938, 100 F.2d 628; Wilder v. U.S., C.C.A.Okl.1938, 100 F.2d 177. Conspiracy 23.1

Conspiracy is a distinct offense, and a defendant may be found guilty of both conspiracy and the substantive

offenses. Chew v. U.S., C.C.A.8 (Ark.) 1925, 9 F.2d 348. See, also, U.S. v. J. R. Watkins Co., D.C.Minn.1954, 127 F.Supp. 97.

Conspiracy to defraud the United States is a separate crime from substantive crime or crimes that alleged conspirators have conspired to commit. U.S. v. Cook, W.D.Okla.1995, 893 F.Supp. 1002. Conspiracy 28(3)

A defendant can be charged with conspiracy in violation of this section without charging an underlying substantive offense that is prescribed by another statute. U. S. v. Heinze, D.C.Del.1973, 361 F.Supp. 46. Conspiracy 43(6)

Conspiracy is a crime separate and distinct from the substantive offense, although it cannot exist in a vacuum. Nani v. Brownell, D.C.D.C.1957, 153 F.Supp. 679. Conspiracy 28(2)

Congress has the power to separate the substantive offense and the conspiracy to commit the separate offense. U. S. v. Petite, D.C.Md.1957, 147 F.Supp. 791, affirmed 262 F.2d 788, certiorari granted 79 S.Ct. 1293, 360 U.S. 908, 3 L.Ed.2d 1259, remanded on other grounds 80 S.Ct. 450, 361 U.S. 529, 4 L.Ed.2d 490. Conspiracy 28(2)

Conspiracy to commit a crime is a different offense from crime that is object of the conspiracy and the conspiracy neither violates nor arises under the statute, the violation of which is its object, as the conspiracy is the crime. U. S. v. Anthony, M.D.Pa.1956, 145 F.Supp. 323. Conspiracy 28(2)

The crime of wilfully attempting to evade payment of income taxes is a substantive offense in itself and separate from offense of conspiracy to do so. U.S. v. Werksman, D.C.N.J.1953, 113 F.Supp. 346. Internal Revenue 5282.1

The crime of conspiracy is distinct from the offense which the parties intended to accomplish as the result of the conspiracy, and it is completed when the agreement has been formed and one or more of overt acts have been committed in furtherance of such unlawful design. Ex parte Jones, W.D.Wash.1951, 100 F.Supp. 598. Conspiracy 28(2)

Court of indictment charging a conspiracy to commit felony against the United States charges offense distinct from substantive offense. U.S. v. Bruce, W.D.Ky.1943, 52 F.Supp. 150. Criminal Law 29(1)

46. Merger of offenses, nature and elements of conspiracy

Substantive offenses of unlawful use of communication facility to facilitate distribution and possession with intent to distribute schedule II controlled substance, and attempt to evade and defeat taxes failed to invoke concerns which underlie law of conspiracy, and therefore, substantive counts did not merge into conspiracy to distribute cocaine, defraud Internal Revenue Service, and prevent collection of income tax count so as to preclude imposition of consecutive sentences; rejecting *United States v. Sutton*, 642 F.2d 1001 (6th Cir.). U.S. v. Davis, C.A.10 (Colo.) 1986, 793 F.2d 246, certiorari denied 107 S.Ct. 400, 479 U.S. 931, 93 L.Ed.2d 353.

Substantive violations of immigration laws by defendants were not merged into conspiracy count even though conspiracy and substantive counts were closely related factually where the elements of proof necessary to sustain a conviction for aiding and abetting on one hand and conspiracy on the other were substantially different. U. S. v. Lozano, C.A.7 (Ill.) 1975, 511 F.2d 1, certiorari denied 96 S.Ct. 94, 423 U.S. 850, 46 L.Ed.2d 74. Conspiracy 37

In order for rule, that when to the idea of an offense plurality of agents is logically necessary, conspiracy, which assumes the voluntary accession of a person to a crime of such a nature that it is aggravated by plurality of agents,

cannot be maintained, to be applicable, the immediate effect of the act in view, which is the gist of the substantive offense, reaches only the participants therein, the agreement of the participants is necessary for completion of the substantive offense and the conspiracy must be in such close connection with substantive offense as to be inseparable from it. U. S. v. Bobo, C.A.4 (S.C.) 1973, 477 F.2d 974, certiorari denied 95 S.Ct. 1557, 421 U.S. 909, 43 L.Ed.2d 774. Conspiracy 28(1)

Defendant, who was convicted of conspiracy to unlawfully deliver marihuana and also unlawful delivery of marihuana, was not entitled to vacation of sentence on theory that overt acts in conspiracy count were identical with substantive offenses charged and substantive counts should be treated as merged with a conspiracy count for purposes of imposing sentences. Valdez v. U. S., C.A.5 (Tex.) 1957, 249 F.2d 539. Criminal Law 1478

A conspiracy to commit an offense against laws of United States and commission of such offense are separate and distinct offenses; a conspiracy count is not the same as, nor may it be merged with, a substantive count dealing with same matters. Valdez v. U. S., C.A.5 (Tex.) 1957, 249 F.2d 539. Conspiracy 28(2); Conspiracy 37

In prosecution of defendants for violation of lottery laws and conspiracy to violate laws, crime of conspiracy was not so merged in or indistinguishable from the lottery statute as to prevent conviction of defendants on both charges. Woods v. U.S., C.A.D.C.1956, 240 F.2d 37, 99 U.S.App.D.C. 351, certiorari denied 77 S.Ct. 815, 353 U.S. 941, 1 L.Ed.2d 760, certiorari denied 77 S.Ct. 1385, 354 U.S. 926, 1 L.Ed.2d 1438. Conspiracy 37

Where an indictment charges in separate counts a conspiracy to commit substantive offenses and the commission of the substantive offenses, the substantive offenses are not merged in the conspiracy even though the acts constituting the substantive offenses are pleaded and proved as overt acts in furtherance of the conspiracy. Doherty v. United States, C.A.10 (Utah) 1951, 193 F.2d 487. Conspiracy 37

The substantive offense is not merged in the charge of conspiracy, and the parties may be punished for their agreement to commit a crime as well as for the completed crime. U.S. v. Bazzell, C.A.7 (Ill.) 1951, 187 F.2d 878, certiorari denied 72 S.Ct. 73, 342 U.S. 849, 96 L.Ed. 641, rehearing denied 72 S.Ct. 171, 342 U.S. 889, 96 L.Ed. 667. Conspiracy 37

A charge of conspiracy to effect an escape from jail was not merged in substantive offense of attempting to escape, since guilt in sawing bars of cell did not depend upon whether saw was obtained by an unlawful conspiracy or otherwise. Rutledge v. U. S., C.C.A.8 (Ark.) 1948, 168 F.2d 776. Conspiracy 37

The test to be applied in determining whether the offense of unlawfully selling heroin was a different offense than the offense of conspiracy to commit offense of unlawfully selling heroin is whether it was necessary in proving the sales to prove every essential element of the conspiracy. Freeman v. U.S., C.C.A.6 (Mich.) 1945, 146 F.2d 978. Conspiracy 37

The crime of "conspiracy" to commit an offense against the United States is the agreement to commit and not the commission of the offense-object toward which the agreement is directed, but if the offense-object is committed, the crime of conspiracy does not vanish or merge. U.S. v. Offutt, App.D.C.1942, 127 F.2d 336, 75 U.S.App.D.C. 344. Conspiracy 28(1); Conspiracy 37

Conspiracy is merged in the substantive crime upon its commission. Weiss v. U. S., C.C.A.3 (Pa.) 1939, 103 F.2d 759. Conspiracy 37

Conspiracy to rob mail carrier, being felony, was not merged in overt act also felony. Bellande v. U.S., C.C.A.5 (La.) 1928, 25 F.2d 1, certiorari denied 48 S.Ct. 602, 277 U.S. 607, 72 L.Ed. 1012. Conspiracy 37

The crime of conspiracy to commit an offense is not merged in the completed offense. Sneed v. U.S., C.C.A.5

(Tex.) 1924, 298 F. 911, certiorari denied 44 S.Ct. 635, 265 U.S. 590, 68 L.Ed. 1195. See, also, Lisansky v. U.S., C.C.A.Md.1929, 31 F.2d 846, certiorari denied 49 S.Ct. 514, 279 U.S. 873, 7 L.Ed. 1008; Goukler v. U.S., C.C.A.N.J.1923, 294 F. 274; Vannata v. U.S., C.C.A.N.Y.1923, 289 F. 424; Lucadamo v. U.S., C.C.A.N.Y.1922, 280 F. 653; U.S. v. Scott, C.C.Ga.1905, 139 F. 697, affirmed 165 F. 172, 91 C.C.A. 206.

A misdemeanor, which is the object of a conspiracy, is not merged in the latter offense which is also a misdemeanor, nor is the offense of conspiracy merged in the consummated misdemeanor. Steigman v. U S, C.C.A.3 (N.J.) 1915, 220 F. 63, 135 C.C.A. 631. See, also, Berkowitz v. U.S., Pa.1899, 93 F. 452, 35 C.C.A. 379. Conspiracy 37

Where the object of a conspiracy is to commit a crime of a higher grade, and the object is accomplished, a prosecution for the conspiracy cannot be maintained, because the lesser offense is merged in the greater. U.S. v. Gardner, C.C.N.D.N.Y.1890, 42 F. 829. See, also, U.S. v. Fischer, D.C.Pa.1917, 245 F. 477.

Since offense of defrauding the United States, and other offense objects charged, were of a nature that could be committed by a single person, defendants could be charged with conspiracy to commit them. U. S. v. Boisvert, D.C.R.I.1960, 187 F.Supp. 781.

47. Wharton's rule, nature and elements of conspiracy

Wharton's Rule applies only to offenses that require concerted criminal activity, a plurality of criminal agents; in such cases, a closer relationship exists between the conspiracy and the substantive offense because both require collective criminal activity; the substantive offense therefore presents some of the same threats that the law of conspiracy normally is thought to guard against, and it cannot automatically be assumed that the legislature intended the conspiracy and the substantive offense to remain as discrete crimes upon consummation of the latter so that absent legislative intent to the contrary, the rule supports a presumption that the two merge when the substantive offense is proven. Iannelli v. U. S., U.S.Pa.1975, 95 S.Ct. 1284, 420 U.S. 770, 43 L.Ed.2d 616. Conspiracy 28(1)

"*Wharton's* Rule" prohibits conviction for both substantive offense and conspiracy to commit that offense if substantive offense necessarily requires participation and cooperation of more than one person. U.S. v. Brown, C.A.5 (Miss.) 1993, 7 F.3d 1155.

Wharton's rule did not apply to indictment charging both conspiracy and substantive offenses of defrauding United States and giving or receiving gratuities by public official since neither substantive offense required culpable participation of two persons for its violation. U. S. v. Previte, C.A.1 (Mass.) 1981, 648 F.2d 73.

Under "Wharton's Rule", an agreement between two people to commit a particular crime cannot be prosecuted as a conspiracy where the crime necessarily requires the participation of two persons for its commission. U. S. v. Rone, C.A.9 (Cal.) 1979, 598 F.2d 564, certiorari denied 100 S.Ct. 1345, 445 U.S. 946, 63 L.Ed.2d 780.

Classic "Wharton's Rule" offenses are adultery, incest, bigamy and dueling. U. S. v. Rone, C.A.9 (Cal.) 1979, 598 F.2d 564, certiorari denied 100 S.Ct. 1345, 445 U.S. 946, 63 L.Ed.2d 780.

"Wharton's Rule", which states that an agreement by two persons to commit a particular crime cannot be prosecuted as a conspiracy when the crime is of such a nature as necessarily to require the participation of two persons for its commission, is actually a limited exception to the well-established principle that a conspiracy to commit a substantive offense and the substantive offense itself can constitute separate offense. U. S. v. Ohlson, C.A.9 (Cal.) 1977, 552 F.2d 1347. Conspiracy 28(1)

Application of Wharton's rule that an agreement by two persons to commit crime cannot be prosecuted as a

conspiracy when the crime is such as to necessarily require the participation of two persons for its commission is limited to cases in which the essential participants are the only conspirators. U. S. v. Rueter, C.A.9 (Cal.) 1976, 536 F.2d 296. Conspiracy 28(1)

Where conspiracy conviction is challenged under principle that an agreement by two persons to commit particular crime cannot be prosecuted as conspiracy if crime is of such nature as to necessarily require participation of two or more persons for its commission, the challenge is determined by analysis of statute creating substantive offense and not by evidence introduced in particular case to prove offense. U. S. v. Pezzino, C.A.9 (Cal.) 1976, 535 F.2d 483, certiorari denied 97 S.Ct. 111, 429 U.S. 839, 50 L.Ed.2d 106. Conspiracy 28(1)

Wharton's rule did not preclude conviction of both the substantive offense of violating federal gambling law under section 1955 of this title and offense of conspiracy to violate the law. U. S. v. Crockett, C.A.5 (Ga.) 1975, 514 F.2d 64.

"Wharton's rule" affords a narrowly limited exception to principle that a conspiracy as well as the substantive offense may be prosecuted; rule provides that when to the idea of an offense plurality of agents is logically necessary, conspiracy, which assumes voluntary accession of a person to a crime of such a nature that it can be aggravated by a plurality of agents, cannot be maintained. U. S. v. Robertson, C.A.5 (Fla.) 1974, 504 F.2d 289, rehearing denied 506 F.2d 1056, certiorari denied 95 S.Ct. 1568, 421 U.S. 913, 43 L.Ed.2d 778.

If the statute defining the substantive offense requires concerted action and none participated other than the necessary parties, there is no additional danger to society and a charge of conspiracy to violate the statute will not lie. U. S. v. Boyle, C.A.D.C.1973, 482 F.2d 755, 157 U.S.App.D.C. 166, certiorari denied 94 S.Ct. 593, 414 U.S. 1076, 38 L.Ed.2d 483. Conspiracy 28(2)

An agreement by two persons to commit a particular crime cannot be prosecuted as a conspiracy when the crime is of such a nature as to necessarily require the participation of two persons for its commission, but such exception does not apply when offense could be committed by one of the conspirators alone; the exception to the general rule is also limited to cases where essential participants are the only conspirators. U. S. v. Lupino, C.A.8 (Minn.) 1973, 480 F.2d 720, certiorari denied 94 S.Ct. 257, 414 U.S. 924, 38 L.Ed.2d 159. Conspiracy 28(1)

The "Wharton rule", that when to the idea of an offense plurality of agents is logically necessary, conspiracy, which assumes the voluntary accession of a person to a crime of such nature that it is aggravated by a plurality of agents, cannot be maintained, was not applicable and did not make unindictable alleged conspiracy of defendants to manage, conduct, finance or operate an unlawful gambling operation. U. S. v. Bobo, C.A.4 (S.C.) 1973, 477 F.2d 974, certiorari denied 95 S.Ct. 1557, 421 U.S. 909, 43 L.Ed.2d 774.

Where both the conspiracy and the substantive offense do consist of the same acts or transactions, the conspiracy charge may not be added to the substantive charge. U. S. v. Skillman, C.A.8 (Mo.) 1971, 442 F.2d 542, certiorari denied 92 S.Ct. 82, 404 U.S. 833, 30 L.Ed.2d 63.

A conspiracy charged may not be added to a substantive charge where agreement of two persons is necessary for completion of the substantive crime and there is no ingredient in the conspiracy which is not present in the completed crime. Reno v. U. S., C.A.5 (Fla.) 1963, 317 F.2d 499, certiorari denied 84 S.Ct. 72, 375 U.S. 828, 11 L.Ed.2d 60. Conspiracy 28(1)

Wharton's rule precludes indictment for conspiracy to commit substantive offense where agreement of two persons is necessary for completion of substantive crime and stands as exception to general principle that conspiracy and substantive offense that is conspiracy's immediate end do not merge upon proof of latter. U.S. v. Finazzo, E.D.Mich.1975, 407 F.Supp. 1127.

Where a crime necessarily involves the mutual cooperation of two persons, and if they have in fact committed the crime, they may not be convicted of conspiracy to commit it, but this rule does not apply where the substantive offense can be committed by a single individual. U. S. v. Boisvert, D.C.R.I.1960, 187 F.Supp. 781.

48. Civil conspiracy, nature and elements of conspiracy

The essential elements whether of a criminal or civil conspiracy are the same. U.S. v. American Precision Products Corp., D.C.N.J.1953, 115 F.Supp. 823. Conspiracy 1.1; Conspiracy 23.1

49. Continuing offense, nature and elements of conspiracy

If the purpose of the conspiracy contemplated the commission of one offense, the continuance of the result of the commission of that offense would not necessarily continue the conspiracy, but if the purpose of the conspiracy contemplates continuous co-operation of the conspirators in the perpetration of a series of offenses against the United States within the scope and purpose of the conspiracy, it is in effect "a partnership in criminal purposes," and continues until the time of its abandonment, or the final accomplishment of its purpose. U.S. v. Kissel, U.S.N.Y.1910, 31 S.Ct. 124, 218 U.S. 601, 54 L.Ed. 1168. See, also, Remus v. U.S., C.C.A.Ohio 1923, 291 F. 501, certiorari denied 44 S.Ct. 180, 263 U.S. 717, 68 L.Ed. 522.

A conspiracy once established is presumed to continue until the contrary is established. Poliafico v. U. S., C.A.6 (Ohio) 1956, 237 F.2d 97, certiorari denied 77 S.Ct. 590, 352 U.S. 1025, 1 L.Ed.2d 597, rehearing denied 77 S.Ct. 718, 353 U.S. 931, 1 L.Ed.2d 725. Conspiracy 44.2

A conspiracy may be a continuing crime. Huff v. U.S., C.A.5 (Ga.) 1951, 192 F.2d 911, certiorari denied 72 S.Ct. 560, 342 U.S. 946, 96 L.Ed. 703. Criminal Law 150

Where conspirators continue their efforts to commit crime in pursuance of plan, conspiracy continues until abandonment or success thereof. Huff v. U.S., C.A.5 (Ga.) 1951, 192 F.2d 911, certiorari denied 72 S.Ct. 560, 342 U.S. 946, 96 L.Ed. 703. Criminal Law 150

Where once a conspiracy is shown to exist, which is not ended merely by lapse of time, it continues to exist as to all persons involved until there is shown some affirmative act of withdrawal by persons who attempt to evade responsibility for acts and declarations of their co-conspirators after the withdrawal, and the withdrawal must be evidenced by some act to disavow or defeat the purposes of the conspiracy. Blue v. U. S., C.C.A.6 (Ohio) 1943, 138 F.2d 351, certiorari denied 64 S.Ct. 1046, 322 U.S. 736, 88 L.Ed. 1570, rehearing denied 64 S.Ct. 1259, 322 U.S. 771, 88 L.Ed. 1596, certiorari denied 64 S.Ct. 1046, 322 U.S. 737, 88 L.Ed. 1570. Conspiracy 40.4

A conspiracy, once proved to exist, must be deemed to continue until the contrary is established, although a conspiracy is "complete" with the commission of the first overt act in the sense that the word is ordinarily used to represent a conspiracy. U.S. v. Perlstein, C.C.A.3 (N.J.) 1942, 126 F.2d 789, certiorari denied 62 S.Ct. 1106, 316 U.S. 678, 86 L.Ed. 1752. See, also, U.S. v. Weinberg, D.C.Pa.1955, 129 F.Supp. 514, affirmed 226 F.2d 161, certiorari denied 76 S.Ct. 305, 350 U.S. 933, 100 L.Ed. 815. Conspiracy 24.15; Criminal Law 315

When once a conspiracy is shown to exist which in its nature is not ended merely by lapse of time, it continues to exist until there is shown some affirmative act of termination. U.S. v. Rollnick, C.C.A.2 (N.Y.) 1937, 91 F.2d 911. Criminal Law 315

The purpose of a "conspiracy" to violate federal law may be continuous, in that it may contemplate commission of several offenses or overt acts. Marino v. U.S., C.C.A.9 (Cal.) 1937, 91 F.2d 691, certiorari denied 58 S.Ct. 410, 302 U.S. 764, 82 L.Ed. 593. Conspiracy 25

Conspiracy is not ended so long as there is intention to continue it, as respects required overt act. Bellande v. U.S., C.C.A.5 (La.) 1928, 25 F.2d 1, certiorari denied 48 S.Ct. 602, 277 U.S. 607, 72 L.Ed. 1012. Conspiracy 27

Conspiracy is a continuing crime, not renewable by other acts constituting several offenses. U.S. v. Olmstead, D.C.Wash.1925, 5 F.2d 712.

A conspiracy may be a continuous agreement, and, once established, may properly be found to continue until consummation of purpose or abandonment. Nyquist v. U.S., C.C.A.6 (Mich.) 1924, 2 F.2d 504, certiorari denied 45 S.Ct. 508, 267 U.S. 606, 69 L.Ed. 810. See, also, U.S. v. Wilson, D.C.W.Va.1927, 23 F.2d 112. Conspiracy 23

The joinder of new persons in a conspiracy after its formation, does not constitute a new conspiracy, since such joinders relate to the original formation, and there is in the eyes of the law but one continuing, and not many successive, conspiracies. Norton v. U.S., C.C.A.5 (Tex.) 1923, 295 F. 136.

A conspiracy by bankrupts to conceal their property from their trustee formed within thirty days of the filing of the petition in bankruptcy, and followed by actual concealment of the property, was an offense which continues to the date of the refusal to turn over the property to the trustee on his election, and an indictment for conspiracy under former § 88 of this title [now this section] properly charged the commission of the offense of such date. U S v. Stern, E.D.Pa.1911, 186 F. 854, affirmed 193 F. 888, 114 C.C.A. 102.

Where "the unlawful combination or agreement contemplates a series of acts for its accomplishments, requiring a considerable period of time for their performance, the conspiracy is a continuing offense as to conspirators who have not withdrawn therefrom, as long as any act or acts are committed by one or more of them in furtherance of the object thereof and such acts are not separate and distinct offenses, but merely a part of the substantive offense." U.S. v. Eccles, C.C.Or.1910, 181 F. 906. Conspiracy 43(10); Indictment And Information 125(5.5)

The offense is a continuing one so long as it is in process of execution, as manifested by overt acts in pursuance thereof. U.S. v. Brace, N.D.Cal.1907, 149 F. 874.

Where the evidence shows one continuous agreement or intention to secure such underrate, proof of a single overt act in furtherance of it is sufficient to make out the offense, but proof of separate overt acts will not show more than one offense where the agreement is continuous. U.S. v. Howell, W.D.Mo.1892, 56 F. 21. Conspiracy 47

In a conspiracy charge, the offense is continuing and acts performed at any time during its continuance are chargeable against defendants. U.S. v. Jackson, E.D.S.C.1951, 94 F.Supp. 912. Criminal Law 150

A conspiracy once shown to exist is presumed to continue whenever one conspirator does some act in furtherance of its purpose; and in a continuing conspiracy, proof of an overt act is necessary only to establish continued existence of the agreement, and to bring the existence thereof within the applicable period of limitations. U.S. v. Greater Kan. City Retail Coal Merchants' Ass'n, W.D.Mo.1949, 85 F.Supp. 503. Conspiracy 44.2; Conspiracy 46

50. Consummation of offense, nature and elements of conspiracy

An agreement or confederation to commit a crime is punishable as a "conspiracy", if any overt act is taken in pursuit of it, and the agreement is punishable regardless of whether the contemplated crime is consummated. U.S. v. Bayer, U.S.N.Y.1947, 67 S.Ct. 1394, 331 U.S. 532, 91 L.Ed. 1654, rehearing denied 68 S.Ct. 29, 332 U.S. 785, 92 L.Ed. 368. Conspiracy 28(1)

Under former § 88 of this title [now this section] it was not necessary that the alleged conspiracy should have been

successful to be punishable. Kramer v. U.S., U.S.N.Y.1918, 38 S.Ct. 168, 245 U.S. 478, 62 L.Ed. 413. See also, Goldman v. U.S., N.Y.1918, 38 S.Ct. 166, 245 U.S. 474, 62 L.Ed. 410; Marino v. U.S., C.C.A.Cal.1937, 91 F.2d 691, 113 A.L.R. 975, certiorari denied 58 S.Ct. 410, 302 U.S. 764, 82 L.Ed. 593; Kolbrenner v. U.S., C.C.A.Tex.1926, 11 F.2d 754, certiorari denied 46 S.Ct. 489, 271 U.S. 677, 70 L.Ed. 1146; Williams v. U.S., C.C.A.Tenn.1925, 3 F.2d 933; Grayson v. U.S., C.C.A.Tenn.1921, 272 F. 553; U.S. v. Downey, D.C.R.I.1919, 257 F. 364; U.S. v. Black, Wis.1908, 160 F. 431, 87 C.C.A. 383; U.S. v. Newton, D.C.1892, 52 F. 275.

A person cannot escape liability for conspiracy against the United States because he may have committed the substantive offense at which the conspiracy aims. Heike v. U.S., U.S.N.Y.1913, 33 S.Ct. 226, 227 U.S. 131, 57 L.Ed. 450. See, also, Lucadamo v. U.S., C.C.A.N.Y.1922, 280 F. 653; Riddle v. U.S., C.C.A.Ala.1922, 279 F. 216, certiorari denied 42 S.Ct. 589, 259 U.S. 586, 66 L.Ed. 1077; U.S. v. Rogers, D.C.N.Y.1915, 226 F. 512; Robinson v. U.S., Minn.1909, 172 F. 105, 96 C.C.A. 307. Conspiracy 37

Defendants could be charged with conspiracy to violate the conflict of interest of statute by making advance payment to a person whom they expected to be appointed to federal office and to continue to lobby for defendant's corporation, even though the person was never appointed. U.S. v. Wallach, C.A.2 (N.Y.) 1991, 935 F.2d 445, on remand 788 F.Supp. 739. Conspiracy 24.10; Conspiracy 28(3)

Conspiracy is punishable even though intended crime is accomplished. Beitel v. U.S., C.A.5 (Tex.) 1962, 306 F.2d 665. Conspiracy 28(2)

Conspiracy is crime even though contemplated offense may never be consummated. Harney v. U. S., C.A.1 (Mass.) 1962, 306 F.2d 523, certiorari denied 83 S.Ct. 254, 371 U.S. 911, 9 L.Ed.2d 171. Conspiracy 28(2)

Conspiracy to commit a crime may be punished even though the crime be not committed. U. S. v. Sykes, C.A.6 (Ky.) 1962, 305 F.2d 172, certiorari granted 83 S.Ct. 1541, 373 U.S. 931, 10 L.Ed.2d 689, reversed on other grounds 84 S.Ct. 881, 376 U.S. 364, 11 L.Ed.2d 777. See, also, U.S. v. Gargano, C.A.Ohio 1964, 338 F.2d 893, certiorari denied 85 S.Ct. 1106, 380 U.S. 962, 14 L.Ed.2d 153; Beitel v. U.S., C.A.Tex.1962, 306 F.2d 665; Frankfeld v. U.S., C.A.Md.1952, 198 F.2d 679, certiorari denied 73 S.Ct. 389, 344 U.S. 922, 97 L.Ed. 710, rehearing denied 73 S.Ct. 652, 345 U.S. 913, 97 L.Ed. 1348. Conspiracy 28(1)

Usual criterion for determining conclusion of a conspiracy is the arrest of the coconspirators. U.S. v. Clancy, C.A.7 (Ill.) 1960, 276 F.2d 617, certiorari granted 80 S.Ct. 1611, 363 U.S. 836, 4 L.Ed.2d 1723, reversed on other grounds 81 S.Ct. 645, 365 U.S. 312, 5 L.Ed.2d 574. Conspiracy 24.15

Final success of illegal agreement is not necessary to complete crime of conspiracy so long as there was the agreement together with some overt act towards its accomplishment. United States v. Tutino, C.A.2 (N.Y.) 1959, 269 F.2d 488. Conspiracy 24.10

Act of conspiracy to violate the Sherman Act, §§ 1 to 7 of Title 15, is an offense, and it is immaterial whether or not the purpose of the conspiracy was ever effectuated, and, where such offense is charged, it need not be proved that the conspiracy continued for the duration charged in the indictment. Pittsburgh Plate Glass Co. v. U.S., C.A.4 (Va.) 1958, 260 F.2d 397, certiorari granted 79 S.Ct. 289, 358 U.S. 917, 3 L.Ed.2d 237, certiorari granted 79 S.Ct. 290, 358 U.S. 918, 3 L.Ed.2d 237, affirmed 79 S.Ct. 1237, 360 U.S. 395, 3 L.Ed.2d 1323, rehearing denied 80 S.Ct. 42, 361 U.S. 855, 4 L.Ed.2d 94. Monopolies 29; Monopolies 31(2.1)

In a prosecution for a conspiracy, failure or success of conspiracy is of no relevance and failure to produce evidence of success is not fatal. U S v. Abel, C.A.2 (N.Y.) 1958, 258 F.2d 485, certiorari granted 79 S.Ct. 59, 358 U.S. 813, 3 L.Ed.2d 56, affirmed 80 S.Ct. 683, 362 U.S. 217, 4 L.Ed.2d 668, rehearing denied 80 S.Ct. 1056, 362 U.S. 984, 4 L.Ed.2d 1019. Conspiracy 24.10; Conspiracy 47(1)

Conspirators' lack of success does not lessen the criminality of their activities. U S v. Abel, C.A.2 (N.Y.) 1958, 258 F.2d 485, certiorari granted 79 S.Ct. 59, 358 U.S. 813, 3 L.Ed.2d 56, affirmed 80 S.Ct. 683, 362 U.S. 217, 4 L.Ed.2d 668, rehearing denied 80 S.Ct. 1056, 362 U.S. 984, 4 L.Ed.2d 1019. Conspiracy 24.10

It is not essential to conspiracy conviction that crime planned have been consummated, if alleged overt act has been done in furtherance of, and to carry out, illegal design. Shibley v. U. S., C.A.9 (Cal.) 1956, 237 F.2d 327, certiorari denied 77 S.Ct. 94, 352 U.S. 873, 1 L.Ed.2d 77, rehearing denied 77 S.Ct. 212, 352 U.S. 919, 1 L.Ed.2d 124. Conspiracy 27

A conspiracy is complete on the forming of the criminal agreement and the performance of an overt act in furtherance thereof. Poliafico v. U. S., C.A.6 (Ohio) 1956, 237 F.2d 97, certiorari denied 77 S.Ct. 590, 352 U.S. 1025, 1 L.Ed.2d 597, rehearing denied 77 S.Ct. 718, 353 U.S. 931, 1 L.Ed.2d 725. Conspiracy 23.5

The essence of a conspiracy is in the agreement or confederation to commit a crime, and that is what is punishable as a conspiracy, if any overt act is taken in pursuit of it, and the agreement is punishable whether or not the contemplated crime is consummated. Hanford v. U. S., C.A.4 (N.C.) 1956, 231 F.2d 661. Conspiracy 24(1)

Fact that conspiracy succeeds does not bar conviction for crime of conspiracy. United States v. Parnes, C.A.2 (N.Y.) 1954, 210 F.2d 141. Conspiracy 37

A conspiracy remains none the less a crime because, by its success, an additional crime has been committed. U.S. v. Bazzell, C.A.7 (Ill.) 1951, 187 F.2d 878, certiorari denied 72 S.Ct. 73, 342 U.S. 849, 96 L.Ed. 641, rehearing denied 72 S.Ct. 171, 342 U.S. 889, 96 L.Ed. 667. Conspiracy 37

A "conspiracy" is complete on the forming of the criminal agreement and the performance of at least one overt act in furtherance thereof. Pinkerton v. U. S., C.C.A.5 (Ala.) 1945, 151 F.2d 499, certiorari granted 66 S.Ct. 702, 327 U.S. 772, 90 L.Ed. 1002, affirmed 66 S.Ct. 1180, 328 U.S. 640, 90 L.Ed. 1489, rehearing denied 67 S.Ct. 26, 329 U.S. 818, 91 L.Ed. 697. See, also, Diehl v. U.S., C.C.A.Mo.1938, 98 F.2d 545; McDonald v. Hudspeth, D.C.Kan.1941, 41 F.Supp. 182. Conspiracy 1.1

A defendant may be convicted of a conspiracy to commit acts which he is found guilty of having committed under other counts of indictment, since liability for conspiracy is not taken away by its success. U.S. v. Uram, C.C.A.2 (N.Y.) 1945, 148 F.2d 187. Conspiracy 37

A conspiracy to endeavor to obstruct or impede due administration of justice was complete, regardless of success, when the first overt act to carry it out was committed. U.S. v. Minkoff, C.C.A.2 (N.Y.) 1943, 137 F.2d 402. Conspiracy 34

A "conspiracy" constitutes an offense irrespective of the number or variety of objects which the conspiracy seeks to attain or whether any of the ultimate objects are attained. U.S. v. Manton, C.C.A.2 (N.Y.) 1939, 107 F.2d 834, certiorari denied 60 S.Ct. 590, 309 U.S. 664, 84 L.Ed. 1012. Conspiracy 25

A conspiracy contemplating the payment of money to induce a Circuit Judge to exercise his judicial power in favor of bribe givers without regard to the merits, became complete the instant the conspiracy was formed, whether the object of the conspiracy ever was consummated, or, if consummated, whether the decisions finally rendered in pursuance of the conspiracy were legally sound or not. U.S. v. Manton, C.C.A.2 (N.Y.) 1939, 107 F.2d 834, certiorari denied 60 S.Ct. 590, 309 U.S. 664, 84 L.Ed. 1012. Conspiracy 34

Guilt of accused of conspiracy is not dependent upon accomplishment of the object or purpose of the conspiracy. Marx v. U.S., C.C.A.8 (Minn.) 1936, 86 F.2d 245. Conspiracy 24.10

Success or failure of criminal conspiracy is not determinative of guilt or innocence of conspirators. Beddow v. U. S., C.C.A.8 (Iowa) 1934, 70 F.2d 674. See, also, Horwitz v. U.S., C.C.A.Mass.1925, 5 F.2d 129. Conspiracy 28(1)

Liability for conspiracy is not removed by accomplishment of substantive offense at which conspiracy aims. Asgill v. U.S., C.C.A.4 (Va.) 1932, 60 F.2d 776. Conspiracy 37

It is not essential to prosecution for conspiracy that crime be consummated. Enrique Rivera v. U.S., C.C.A.1 (Puerto Rico) 1932, 57 F.2d 816. Conspiracy 24.10

Crime of conspiracy is complete on forming of criminal agreement and performing of at least one overt act in furtherance of unlawful design. Weniger v. U.S., C.C.A.9 (Idaho) 1931, 47 F.2d 692. See, also, Sloan v. U.S., C.C.A.Mo.1929, 31 F.2d 902; Brady v. U.S., C.C.A.Kan.1928, 24 F.2d 405; U.S. v. Wilson, D.C.W.Va.1927, 23 F.2d 112; Baker v. U.S., C.C.A.Va.1927, 21 F.2d 903, certiorari denied 48 S.Ct. 301, 276 U.S. 621, 72 L.Ed. 736. Conspiracy 23.1

Overt act in conspiracy against laws of United States need not be successful, completed, substantive act or offense. Steigleder v. U.S., C.C.A.8 (Okla.) 1928, 25 F.2d 959. Conspiracy 27

The gist of the crime of conspiracy is not the objective, the conspiracy being punishable whether the objective crime was accomplished or not. Shaffman v. U S, C.C.A.3 (Pa.) 1923, 289 F. 370.

The fact that the object of a conspiracy has been accomplished is no defense. U.S. v. Ram Chandra, N.D.Cal.1917, 254 F. 635. Conspiracy 37

Offense of conspiracy to commit crime may be consummated by doing of some overt act to effectuate purpose, although crime be not actually committed. Billingsley v. U.S., C.C.A.9 (Wash.) 1918, 249 F. 331, 161 C.C.A. 339, certiorari denied 38 S.Ct. 583, 247 U.S. 523, 62 L.Ed. 1247. See, also, Riddle v. U.S., C.C.A.Ala.1922, 279 F. 216, certiorari denied 42 S.Ct. 589, 259 U.S. 586, 66 L.Ed. 1077. Conspiracy 28(1)

The general scheme or conspiracy may be complete though its details are not planned. U.S. v. Baker, D.C.R.I.1917, 243 F. 741. Conspiracy 23.1

Persons may be guilty of conspiracy even if their conspiracy is thwarted and may be guilty even if their conspiracy succeeds and they complete certain "substantive" crimes. U. S. v. Palladino, D.C.Mass.1962, 203 F.Supp. 35. Conspiracy 24.10

In a prosecution for conspiracy, it does not matter whether any of the objects of the conspiracy are attained or not in order to obtain a conviction for commission of such crime. U. S. v. Anthony, M.D.Pa.1956, 145 F.Supp. 323. Conspiracy 25

Liability for conspiracy is not taken away by its success, i.e., by the accomplishment of the substantive offense at which the conspiracy aimed. U. S. v. Anthony, M.D.Pa.1956, 145 F.Supp. 323. Conspiracy 28(1)

A conspiracy may exist where overt acts performed in its execution fall short of accomplishment of the purpose of the conspiracy, and a conspiracy may exist, although it finally develops that the object thereof could not be accomplished at all. U.S. v. Ventimiglia, D.C.Md.1956, 145 F.Supp. 37, reversed on other grounds 242 F.2d 620. Conspiracy 25; Conspiracy 27

Where evidence shows beyond reasonable doubt that conspiracy was knowingly and willfully formed as alleged in indictment therefor, that defendants became parties to or members of conspiracy at inception of unlawful plan or

scheme or afterwards with specific intent charged and that one or more of conspirators knowingly committed one or more of overt acts charged in furtherance of object or purpose of conspiracy, success of conspiracy or failure thereof to accomplish common purpose or design is immaterial. U. S. v. Schneiderman, S.D.Cal.1952, 106 F.Supp. 906. Conspiracy 24.10

The offense of conspiracy to commit a crime may be consummated by doing one or more overt acts to effectuate the purpose, although the crime itself be not actually committed. Ex parte Jones, W.D.Wash.1951, 100 F.Supp. 598 . Conspiracy 28(1)

Wrongful intent or purpose is enough to establish a conspiracy without either alleging or proving that enterprise was successful. U.S. v. McWilliams, D.C.D.C.1944, 54 F.Supp. 791. Conspiracy 43(12)

51. Felony or misdemeanor, nature and elements of conspiracy

Conspiracy is now a crime with two degrees: a felony if even one of the objects is a felony, a misdemeanor otherwise. Williams v. U.S., C.A.5 (Ga.) 1956, 238 F.2d 215, certiorari denied 77 S.Ct. 589, 352 U.S. 1024, 1 L.Ed.2d 596. Criminal Law 27

As at common law a conspiracy to commit a misdemeanor or felony was only a misdemeanor, so conspiracy under former § 88 of this title [now this section], not being declared a felony, was also merely a misdemeanor. Berkowitz v. U S, C.C.A.3 (Pa.) 1899, 93 F. 452, 35 C.C.A. 379.

A conspiracy to commit an offense against the United States, under former § 88 of this title [now this section] was a misdemeanor. U.S. v. Gardner, C.C.N.D.N.Y.1890, 42 F. 829.

Whether crime of conspiracy is misdemeanor or felony turns upon punishment which can be imposed for violation of substantive offense which is object of conspiracy. U. S. v. Haim, S.D.N.Y.1963, 218 F.Supp. 922. Criminal Law 27

Conspiracy to possess gasoline ration coupons acquired unlawfully and to transfer such coupons unlawfully is a felony. U.S. v. Strickland, W.D.S.C.1945, 62 F.Supp. 468. Criminal Law 27

52. Partnership in crime, nature and elements of conspiracy

A "conspiracy" is a partnership in crime, and an overt act of one partner may be the act of all without any new agreement specifically directed to that act. U. S. v. Socony-Vacuum Oil Co., U.S.Wis.1940, 60 S.Ct. 811, 310 U.S. 150, 84 L.Ed. 1129, rehearing denied 60 S.Ct. 1091, 310 U.S. 658, 84 L.Ed. 1421. Conspiracy 41

Partnership in profits of criminal venture is not essential to show conspiracy, but defendant must at least have demonstrated an intent to further promote and cooperate in illegal activity. U. S. v. Alvarez, C.A.5 (Fla.) 1980, 610 F.2d 1250, on rehearing 625 F.2d 1196, certiorari denied 101 S.Ct. 2017, 451 U.S. 938, 68 L.Ed.2d 324. Conspiracy 24.5

Generally, mere willing participation in acts with alleged coconspirators, knowing in a general way that their intent was to break the law, is insufficient to establish a conspiracy. U. S. v. Purin, C.A.2 (N.Y.) 1973, 486 F.2d 1363, certiorari denied 94 S.Ct. 2392, 416 U.S. 987, 40 L.Ed.2d 764, certiorari denied 94 S.Ct. 2640, 417 U.S. 930, 41 L.Ed.2d 233. Conspiracy 40.1

A conspiracy is a partnership in crime; it has ingredients, as well as implications, distinct from the completion of the unlawful project. U. S. v. Skillman, C.A.8 (Mo.) 1971, 442 F.2d 542, certiorari denied 92 S.Ct. 82, 404 U.S. 833, 30 L.Ed.2d 63. Conspiracy 24.10

Once conspiracy is established, there is partnership in crime and partners act for each other in carrying it forward. Downing v. U. S., C.A.5 (Tex.) 1965, 348 F.2d 594, certiorari denied 86 S.Ct. 235, 382 U.S. 901, 15 L.Ed.2d 155. Conspiracy 41

"Conspiracy" is a partnership in criminal purposes, and the gist of the crime is the confederation or combination of minds, and to infer guilt from mere association between conspirators does not meet the necessary test. Ong Way Jong v. U. S., C.A.9 (Cal.) 1957, 245 F.2d 392. Conspiracy 24(1)

A "conspiracy" is a partnership agreement having crime as the partnership business done by overt acts and difficulty of accomplishment is not conclusive of the end of the agreement to act in concert. U.S. v. Rollnick, C.C.A.2 (N.Y.) 1937, 91 F.2d 911. See, also, Marino v. U.S., C.C.A.Cal.1937, 91 F.2d 691, 113 A.L.R. 975, certiorari denied 58 S.Ct. 410, 302 U.S. 764, 82 L.Ed. 593; U.S. v. Armour & Co., D.C.Okl.1943, 48 F.Supp. 801, reversed on other grounds 137 F.2d 269. Conspiracy 24(1)

"Conspiracy" exists when two or more persons formally or informally agree to share purposes of a crime; it is a partnership in criminal purposes. U. S. v. Molin, D.C.Mass.1965, 244 F.Supp. 1015. Conspiracy 24(1)

A "conspiracy" is a combination of two or more people to do something unlawful, and has been described as a partnership in crime. U.S. v. Belisle, W.D.Wash.1951, 107 F.Supp. 283. Conspiracy 23.1

A "conspiracy" is partnership in crime, and it has ingredients, as well as implications, distinct from completion of unlawful project. U. S. v. Schneiderman, S.D.Cal.1951, 102 F.Supp. 52, reversed on other grounds 193 F.2d 875. See, also, U.S. v. Spector, D.C.Cal.1951, 102 F.Supp. 75, reversed on other grounds 193 F.2d 1002. Conspiracy 23.1

53. Combination or concert of action, nature and elements of conspiracy

"For two or more to confederate and combine together to commit or cause to be committed a breach of the criminal laws, is an offense of the gravest character, some times quite outweighing in injury to the public, the mere commission of the contemplated crime. It involves deliberate plotting to subject the laws, educating and preparing the conspirators for further and habitual criminal practices. And it is characterized by secrecy, rendering it difficult of detention, and adding to the importance of punishing it when discovered." U.S. v. Rabinowich, U.S.N.Y.1915, 35 S.Ct. 682, 238 U.S. 78, 59 L.Ed. 1211. See, also, U.S. v. Spector, D.C.Cal.1951, 102 F.Supp. 75, reversed on other grounds 193 F.2d 1002; U.S. v. Schneiderman, D.C.Cal.1951, 102 F.Supp. 52, reversed on other grounds 193 F.2d 875.

The union in the unlawful purpose did not constitute the crime of conspiracy within former § 88 of this title [now this section], which required not only the unlawful conspiracy, but that some party must have done an act to effect its object. Hyde v. U.S., U.S.Dist.Col.1912, 32 S.Ct. 793, 225 U.S. 347, 56 L.Ed. 1114, Am.Ann.Cas. 1914A,614. See, also, U.S. v. Rabinowich, N.Y.1915, 35 S.Ct. 682, 238 U.S. 78, 59 L.Ed. 1211; Joplin Mercantile Co. v. U.S., Mo.1915, 35 S.Ct. 291, 236 U.S. 531, 59 L.Ed. 705; Becher v. U.S., C.C.A.N.Y.1924, 5 F.2d 45, certiorari denied 45 S.Ct. 462, 267 U.S. 602, 69 L.Ed. 808; Wilson v. U.S., C.C.A.N.Y.1921, 275 F. 307, certiorari denied 42 S.Ct. 571, 257 U.S. 649, 66 L.Ed. 416; McGinniss v. U.S., D.C.N.Y.1919, 256 F. 621; U.S. v. McHugh, D.C.Wash.1917, 253 F. 224; U.S. v. Bopp, D.C.Cal.1916, 237 F. 283; Shea v. U.S., Ohio 1916, 236 F. 97, 149 C.C.A. 307; Daly v. U.S., Mass.1909, 170 F. 321, 95 C.C.A. 107; Jones v. U.S., Or.1908, 162 F. 417, 89 C.C.A. 303, certiorari denied 29 S.Ct. 685, 212 U.S. 576, 53 L.Ed. 657. Conspiracy 27

A "conspiracy" consists of a combination or confederation between two or more persons formed for the purpose of committing, by their joint efforts, a criminal act. U. S. v. Hedman, C.A.7 (Ill.) 1980, 630 F.2d 1184, certiorari denied 101 S.Ct. 1481, 450 U.S. 965, 67 L.Ed.2d 614. Conspiracy 23.1

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A "conspiracy" is a combination of two or more persons to accomplish some unlawful purpose, or some lawful purpose by unlawful means. U. S. v. Heck, C.A.9 (Cal.) 1974, 499 F.2d 778, certiorari denied 95 S.Ct. 677, 419 U.S. 1088, 42 L.Ed.2d 680, certiorari denied 95 S.Ct. 678, 419 U.S. 1088, 42 L.Ed.2d 680. Conspiracy 23.1

This section requires some concert of plan and purpose between two or more persons. Romontio v. U.S., C.A.10 (Okla.) 1968, 400 F.2d 618, certiorari granted 91 S.Ct. 144, 400 U.S. 901, 27 L.Ed.2d 137, certiorari dismissed 91 S.Ct. 1384, 402 U.S. 903, 28 L.Ed.2d 644. Conspiracy 24(1)

It is not necessary to find express agreement, oral or written, to find conspiracy, but it is sufficient that concert of action be contemplated and that defendants conform to arrangement. Esco Corp. v. U. S., C.A.9 (Or.) 1965, 340 F.2d 1000. Conspiracy 24(1)

A "conspiracy" is a combination of two or more persons by concerted action to accomplish criminal or unlawful purpose, or to accomplish, by criminal or unlawful means some purpose not in itself criminal or unlawful. Saier v. State Bar of Mich., C.A.6 (Mich.) 1961, 293 F.2d 756, certiorari denied 82 S.Ct. 388, 368 U.S. 947, 7 L.Ed.2d 343 . Conspiracy 1.1

A conspiracy cannot be committed by a single individual acting alone; he must act in concert with another person. Herman v. U.S., C.A.5 (Fla.) 1961, 289 F.2d 362, certiorari denied 82 S.Ct. 174, 368 U.S. 897, 7 L.Ed.2d 93. Conspiracy 24(4.1)

Under this section making it a crime to conspire to commit an offense against the United States, the offense is complete when two or more persons combine to commit an offense against the United States and do any act to effect object of conspiracy. Jones v. U. S., C.A.10 (Okla.) 1958, 251 F.2d 288, certiorari denied 78 S.Ct. 703, 356 U.S. 919, 2 L.Ed.2d 715. Conspiracy 28(1)

The rule that a conspiracy to commit a crime is a different offense from the crime which is the object of the conspiracy does not include conspiracy to commit crimes which in their very nature require concerted action of all the participants, and in such cases the result has such a close connection with the objective offense as to be inseparable from it. Freeman v. U.S., C.C.A.6 (Mich.) 1945, 146 F.2d 978. Conspiracy 37

Where a scheme to defraud is shared in by two or more, it becomes a "conspiracy". Blue v. U. S., C.C.A.6 (Ohio) 1943, 138 F.2d 351, certiorari denied 64 S.Ct. 1046, 322 U.S. 736, 88 L.Ed. 1570, rehearing denied 64 S.Ct. 1259, 322 U.S. 771, 88 L.Ed. 1596, certiorari denied 64 S.Ct. 1046, 322 U.S. 737, 88 L.Ed. 1570. See, also, Van Riper v. U.S., C.C.N.Y.1926, 13 F.2d 961. Conspiracy 32

If a crime necessarily involves mutual cooperation of two persons and they have in fact committed the crime, they may not be convicted of a "conspiracy" to commit it. U S v. Zeuli, C.C.A.2 (N.Y.) 1943, 137 F.2d 845. Conspiracy 28(2)

A "conspiracy" is a group offense, and therefore two or more people must participate to create the crime. U. S. v. Fox, C.C.A.3 (Pa.) 1942, 130 F.2d 56, certiorari denied 63 S.Ct. 74, 317 U.S. 666, 87 L.Ed. 535. Conspiracy 24(1)

A mutually implied understanding is sufficient so far as combination or confederacy is concerned, and the agreement is generally a matter of inference deduced from the acts of the persons accused of unlawful conspiracy, which acts are done in pursuance of an apparent criminal purpose. Oliver v. U S, C.C.A.10 (N.M.) 1941, 121 F.2d 245, certiorari denied 62 S.Ct. 124, 314 U.S. 666, 86 L.Ed. 533, certiorari denied 62 S.Ct. 125, 314 U.S. 666, 86 L.Ed. 533. Conspiracy 24(1)

The gist of the crime of "conspiracy" to violate federal law is the confederation or combination of minds. Marino

v. U.S., C.C.A.9 (Cal.) 1937, 91 F.2d 691, certiorari denied 58 S.Ct. 410, 302 U.S. 764, 82 L.Ed. 593. See, also, U.S. v. Watson, D.C.Miss.1883, 17 F. 145; U.S. v. Renken, D.C.S.C.1944, 55 F.Supp. 1, affirmed 147 F.2d 905, certiorari denied 66 S.Ct. 44, 326 U.S. 734, 90 L.Ed. 437. Conspiracy 24(1)

Charge of conspiracy will not lie as to crimes that cannot be committed except by concerted action of at least two persons and of such a nature that immediate effect of their consummation reaches only participants, so that conspiracy to commit them is in such close connection with objective offense as to be inseparable therefrom. Curtis v. U.S., C.C.A.10 (Colo.) 1933, 67 F.2d 943. Conspiracy 28(1)

Crime requiring concerted action precludes charge of conspiracy only where concurrence and consummated act are so connected as to constitute one act. Lisansky v. U.S., C.C.A.4 (Md.) 1929, 31 F.2d 846, certiorari denied 49 S.Ct. 514, 279 U.S. 873, 73 L.Ed. 1008. Conspiracy 23.1

A combination or conspiracy is not necessarily unlawful. U.S. v. American Column & Lumber Co., W.D.Tenn.1920, 263 F. 147, motion denied 40 S.Ct. 588, affirmed 42 S.Ct. 114, 257 U.S. 377, 66 L.Ed. 284, 19 Ohio Law Rep. 529. Conspiracy 1.1

A combination or conspiracy in itself lawful may be made unlawful by acts in furtherance thereof, which are themselves unlawful. U.S. v. American Column & Lumber Co., W.D.Tenn.1920, 263 F. 147, motion denied 40 S.Ct. 588, affirmed 42 S.Ct. 114, 257 U.S. 377, 66 L.Ed. 284, 19 Ohio Law Rep. 529. Conspiracy 1.1

In a criminal prosecution for conspiracy, the unlawful combination and confederacy, rather than the overt acts done in pursuance of it, constitute the essential element of the offense. Howland v. Corn, C.C.A.2 (N.Y.) 1916, 232 F. 35, 146 C.C.A. 227. See, also, Becher v. U.S., C.C.A.N.Y.1924, 5 F.2d 45, certiorari denied 45 S.Ct. 462, 267 U.S. 602, 69 L.Ed. 808; Proffitt v. U.S., C.C.A.Cal.1920, 264 F. 299. Conspiracy 24

A conspiracy consists in the unlawful combination, and, but for the necessity of alleging an overt act, is committed when the combination is entered into, without anything further being done to effect the object. U.S. v. Raley, D.C.Or.1909, 173 F. 159. Conspiracy 27

"It is true that the act of unlawful combination is more dangerous and disturbing to the peace of society than would be the crime which is the object of the combination, when accomplished by a single individual. It has been declared that the confederacy of several persons to effect any injurious object creates such a new and additional power to cause injury as to require special criminal restraints. You can readily appreciate why this is true. A conspiracy will become powerful and effective in the accomplishment of its illegal purpose in proportion to the numbers, power, and strength of the combination to effect it. It is also true that, as it involves a number in a lawless enterprise, it is proportionately demoralizing to the well-being and law-abiding characters of the men engaged, and, as a consequence, to the community to which they belong. Such is the general idea of a conspiracy." U.S. v. Lancaster, C.C.S.D.Ga.1891, 44 F. 896.

Striking employees of a receiver, appointed by the court to manage railroad property were acting in contempt of the court when, by threats and intimidation, they induced others to leave their work and so made it difficult or impossible for the receiver to operate the railroad, and it was an offense under former § 88 of this title [now this section] for them to have conspired to commit that offense. U.S. v. Kane, C.C.Colo.1885, 23 F. 748.

"Conspiracy" is a combination or agreement of two or more persons joined together to attempt to accomplish some unlawful purpose; the essence of the offense is a combination on mutual agreement by two or more persons to either disobey or disregard the law. U. S. v. Masiello, D.C.S.C.1980, 491 F.Supp. 1154. Conspiracy 24(1)

A "conspiracy" need not be a formal agreement nor must it be embodied in a document, but it can be an implied agreement or a concert of action understood by the parties to be for a common end. Cape Cod Food Products v.

National Cranberry Ass'n, D.C.Mass.1954, 119 F.Supp. 900. Conspiracy 1.1

The offense of harboring and concealing a fugitive from justice itself requires concert of action, and hence it is not permissible to make a separate offense of conspiring to commit that offense out of the same concert of action. U.S. v. Hagan, W.D.Ky.1939, 27 F.Supp. 814. Conspiracy 28(1)

Though one defendant may be indicted for conspiracy with other persons not named as defendants in indictment, and crime of conspiracy is a distinct crime apart from commission of offense itself, where substantive offense requires concert of action or plurality of agents, parties committing offense cannot be indicted for a conspiracy to commit offense. U.S. v. Hagan, W.D.Ky.1939, 27 F.Supp. 814. Conspiracy 28(1)

Whether the rule that parties committing an offense requiring concert of action or plurality of agents cannot be indicted for a conspiracy to commit offense is applicable to any particular case depends on the facts. U.S. v. Hagan, W.D.Ky.1939, 27 F.Supp. 814. Conspiracy 28(1)

Employés, if acting without any illegal purpose, may quietly and peaceably leave the service of their employer by concerted action at a given time, so long as they do not violate any contract to remain longer, but it is unlawful for employés whose employment is at an end to combine to induce others to quit the same service at the same time, but before their employment has expired. U.S. v. Stevens, C.C.Me.1877, 27 F.Cas. 1312, No. 16392. Conspiracy 30

54. Intent, nature and elements of conspiracy

To support a conviction for conspiracy to commit mail fraud, government was not required to show an intent to use the mail to effect the scheme. U.S. v. Morales-Rodriguez, C.A.1 (Puerto Rico) 2006, 448 F.3d 50. Conspiracy 28(3)

Evidence supported finding that defendant intentionally participated in conspiracy to commit wire fraud, given that defendant developed founding documents for fraudulent investment company and forms used for agreements with investors, made presentations at staff meetings in which he described how investment program operated and estimated potential return on investment, was introduced to prospective investors as company's certified public accountant (CPA), was involved in creating bank accounts used to deposit investor money and was present at meeting in which codefendant indicated that accounts were used to make it difficult to trace transactions, recruited investors into program, and repaid one unsatisfied investor with funds he had solicited from another investor. U.S. v. Dazey, C.A.10 (Okla.) 2005, 403 F.3d 1147. Conspiracy 47(5)

Showing of willfulness required to establish charged conspiracy objective of violating Safe Drinking Water Act (SDWA) did not require that defendant know the specific provision of law he violated, and jury was thus properly instructed that act was willful if committed voluntarily and purposefully, with specific intent do something forbidden by law, that is, with bad purpose either to disobey or disregard the law. U.S. v. Overholt, C.A.10 (Okla.) 2002, 307 F.3d 1231. Conspiracy 24.5; Conspiracy 48.2(2)

Conspiracy is "specific intent" crime. U.S. v. Blair, C.A.10 (Okla.) 1995, 54 F.3d 639, certiorari denied 116 S.Ct. 220, 516 U.S. 883, 133 L.Ed.2d 151. Conspiracy 24.5

Evidence was sufficient to find defendant guilty of mail fraud and conspiracy to commit mail fraud; government was not required, in order to establish intent to defraud, to prove that victim lost money or that defendant wanted victim to lose money. U.S. v. Easton, C.A.8 (S.D.) 2002, 54 Fed.Appx. 242, 2002 WL 31814951, Unreported. Conspiracy 47(5); Postal Service 35(5); Postal Service 49(11)

Jury instructions defining elements of mail fraud and explaining consideration of actual harm to victim as evidence

of intent to defraud properly explained fraudulent intent, in prosecution for mail fraud and conspiracy to commit mail fraud; financial or economic harm was not necessary to establish intent to defraud, but existence of scheme could serve as evidence of intent. U.S. v. Easton, C.A.8 (S.D.) 2002, 54 Fed.Appx. 242, 2002 WL 31814951, Unreported. Postal Service 35(5); Postal Service 50

55. Agreement to commit offense, nature and elements of conspiracy-- Generally

Single agreement to commit several crimes constitutes one conspiracy; multiple agreements to commit separate crimes constitute multiple conspiracies. U.S. v. Broce, U.S.Kan.1989, 109 S.Ct. 757, 488 U.S. 563, 102 L.Ed.2d 927. Conspiracy 24(2)

An agreement to advocate forcible overthrow of the government does not of itself constitute an unlawful conspiracy if it does not call for advocacy of action. Yates v. U. S., U.S.Cal.1957, 77 S.Ct. 1064, 354 U.S. 298, 1 L.Ed.2d 1356. Conspiracy 28(3)

To prove conspiracy to commit wire fraud, the government must show (1) that there was a conspiracy, an agreement to commit wire fraud, (2) that defendants knew of the agreement, and (3) that they intentionally joined in the conspiracy. U.S. v. Johnson, C.A.8 (Mo.) 2006, 450 F.3d 366. Conspiracy 32

Although government need not prove commission of substantive offense or even that conspirators knew all details of conspiracy, in order to establish conspiracy, government must prove that intended future conduct conspirators agreed upon included all elements of substantive crime. U.S. v. Pinckney, C.A.2 (N.Y.) 1996, 85 F.3d 4. Conspiracy 24(1)

It was not necessary for each coconspirator to agree to or actually participate in every step of alleged conspiracy to procure and market stolen motor vehicles in interstate commerce as long as there remained one agreement, express or implied, among various coconspirators to contribute in different ways at different times in furtherance of a stolen car business for their mutual benefit. U.S. v. Spudic, C.A.7 (Ind.) 1986, 795 F.2d 1334. Conspiracy 41

Standard for determining existence of single conspiracy is whether there was one overall agreement among parties to carry out objectives of conspiracy. U.S. v. Bloch, C.A.9 (Cal.) 1982, 696 F.2d 1213. Conspiracy 24(2)

It is appropriate to punish an agreement to commit an act intended to aid another crime but inappropriate to impose conspiratorial liability on one who, without agreement, merely assists conspirators in achieving their object. U. S. v. Perry, C.A.2 (N.Y.) 1981, 643 F.2d 38, certiorari denied 102 S.Ct. 138, 454 U.S. 835, 70 L.Ed.2d 115. Conspiracy 40

Essence of conspiracy is proof of conspiratorial agreement, while aiding and abetting requires there be a community of unlawful intent between aider and abettor and principal. U. S. v. Bright, C.A.5 (Miss.) 1980, 630 F.2d 804. Conspiracy 23.1; Criminal Law 59(5)

Gist of conspiracy is agreement to commit offense; it is not necessary to prove that person charged with conspiracy participated in each aspect of the operation. U. S. v. Heller, C.A.5 (Fla.) 1980, 625 F.2d 594. Conspiracy 24(3)

Conspiracy law is directed only at persons who have intentionally agreed to further an illegal object; to convict, government must prove that there was an agreement to accomplish an illegal act. U. S. v. Wieschenberg, C.A.5 (Fla.) 1979, 604 F.2d 326. Conspiracy 24(1)

In a conspiracy indictment, gist of offense is agreement and specific intent to commit an unlawful act, and when required by statute, an overt act. U. S. v. Wander, C.A.3 (Pa.) 1979, 601 F.2d 1251. Conspiracy 23.5

18 U.S.C.A. § 371

Essence of crime of conspiracy and evil at which the crime is directed is an agreement to commit an unlawful act; it is such an element of agreement which serves to distinguish conspiracy from aiding and abetting which although based upon agreement does not require proof of such fact. U. S. v. Cowart, C.A.5 (Ga.) 1979, 595 F.2d 1023. Conspiracy 23.1

To support a conviction of conspiracy to defraud the United States, it is not necessary that government be subjected to property or pecuniary loss, nor is it necessary that conspirators receive a pecuniary advantage; rather, all that is required is an agreement to interfere with or obstruct one of the United States' lawful governmental functions by deceit, craft, or trickery, or at least by means that are dishonest. U. S. v. D'Andrea, C.A.7 (Ind.) 1978, 585 F.2d 1351, certiorari denied 99 S.Ct. 1795, 440 U.S. 983, 60 L.Ed.2d 244, rehearing denied 612 F.2d 1386. Conspiracy 33(1)

Mere knowledge, acquiescence or approval without cooperation or agreement to cooperate is not enough to constitute one a party to a conspiracy. U. S. v. Rodriguez, C.A.5 (Fla.) 1978, 585 F.2d 1234, on rehearing 612 F.2d 906, rehearing denied 617 F.2d 1214, certiorari denied 101 S.Ct. 108, 449 U.S. 835, 66 L.Ed.2d 41, certiorari granted 101 S.Ct. 69, 449 U.S. 818, 66 L.Ed.2d 20, affirmed 101 S.Ct. 1137, 450 U.S. 333, 67 L.Ed.2d 275. Conspiracy 40.1

Under this section, the precise nature and extent of conspiracy must be determined by reference to agreement which embraces and defines its objects; whether the object of single agreement is to commit one or many crimes, it is in either case that agreement which constitutes the conspiracy which statute punishes. U. S. v. Elliott, C.A.5 (Ga.) 1978, 571 F.2d 880, rehearing denied 575 F.2d 300, certiorari denied 99 S.Ct. 349, 439 U.S. 953, 58 L.Ed.2d 344. Conspiracy 24(2)

The gravamen of offense of conspiracy is the making of an agreement to commit crime. U. S. v. Borelli, C.A.2 (N.Y.) 1964, 336 F.2d 376, certiorari denied 85 S.Ct. 647, 379 U.S. 960, 13 L.Ed.2d 555. See, also, U.S. v. Quong, C.A.Tenn.1962, 303 F.2d 499, certiorari denied 83 S.Ct. 119, 371 U.S. 863, 9 L.Ed.2d 100; U.S. v. Anthony, D.C.Pa.1956, 145 F.Supp. 323. Conspiracy 24(1)

It is not necessary that there be any agreement to commit substantive offense from inception of scheme for there to be conspiracy, but if there is such agreement at any time, it is sufficient. U. S. v. Zuideveld, C.A.7 (Ill.) 1963, 316 F.2d 873, certiorari denied 84 S.Ct. 671, 376 U.S. 916, 11 L.Ed.2d 612. Conspiracy 24(1)

"Conspiracy" is agreement to perform illegal act. Maggiore v. Bradford, C.A.6 (Tenn.) 1962, 310 F.2d 519, certiorari denied 83 S.Ct. 881, 372 U.S. 934, 9 L.Ed.2d 766. Conspiracy 1.1

Conspiracy or unlawful agreement is gist of offense of conspiracy to defraud. Dennis v. U.S., C.A.10 (Colo.) 1962, 302 F.2d 5. Conspiracy 32

Though the law requires overt acts to complete criminal conspiracies, essence of offense of conspiracy, that which is punished, is the "agreement". Black v. U. S., C.A.9 (Cal.) 1958, 252 F.2d 93. Conspiracy 24(1)

Gist of offense of "conspiracy" is agreement among conspirators to commit offense attended by an act of one or more of them to effect the object of conspiracy. Hanis v. U. S., C.A.8 (Mo.) 1957, 246 F.2d 781. See, also, U.S. v. De Cavalcante, C.A.N.J.1971, 440 F.2d 1264. Conspiracy 23.1

The crime of conspiracy to commit offense against United States is complete when two or more persons agree or combine together to commit such an offense and supplement agreement or combination with overt act in furtherance thereof. O'Neal v. U. S., C.A.10 (Okla.) 1957, 240 F.2d 700. See, also, U.S. v. Salinas-Salinas, 555 F.2d 470. Conspiracy 28(1)

18 U.S.C.A. § 371

To constitute conspiracy to commit offense against United States, agreement to commit offense need not be in any particular form or susceptible of direct proof, but may be inferred from parties' statements and acts with other circumstances. O'Neal v. U. S., C.A.10 (Okla.) 1957, 240 F.2d 700. Conspiracy 47(2)

A "conspiracy" is an agreement by two or more persons to accomplish a lawful objective by unlawful means, or by lawful means an illegal objective. Yates v. U. S., C.A.9 (Cal.) 1955, 225 F.2d 146, certiorari granted 76 S.Ct. 104, 350 U.S. 860, 100 L.Ed. 763, certiorari granted 76 S.Ct. 105, 350 U.S. 860, 100 L.Ed. 763, reversed on other grounds 77 S.Ct. 1064, 354 U.S. 298, 1 L.Ed.2d 1356. Conspiracy 23.1

Gist of offense of conspiracy is the unlawful agreement. Toliver v. U. S., C.A.9 (Cal.) 1955, 224 F.2d 742. Conspiracy 24(1)

More than proof of a mere passive cognizance of a crime on part of a defendant is required to sustain a charge of conspiracy to commit such crime, and defendant must have done some act or made some agreement showing an intention to participate in some way in such conspiracy. Bridges v. U. S., C.A.9 (Cal.) 1952, 199 F.2d 811, rehearing denied 201 F.2d 254, certiorari granted 73 S.Ct. 648, 345 U.S. 904, 97 L.Ed. 1341, reversed on other grounds 73 S.Ct. 1055, 346 U.S. 209, 97 L.Ed. 1557. Conspiracy 40.1

An overt act alone is insufficient to constitute a conspiracy and there must be an unlawful agreement to which the overt act is referable. Hall v. U.S., C.C.A.10 (Okla.) 1940, 109 F.2d 976. Conspiracy 27

"Conspiracy" is established where two or more persons agree to commit crime and do overt act to effect object of conspiracy. Tinsley v. U.S., C.C.A.8 (S.D.) 1930, 43 F.2d 890. See, also, Castro v. U.S. C.A.Fla.1961, 296 F.2d 540; Johnson v. Wall, D.C.N.C.1963, 219 F.Supp. 4, affirmed 329 F.2d 149. Conspiracy 23.1

The offense consists not in the mere agreement, but in the existence of a conspiracy and the doing of an act to effect the object of the conspiracy. U.S. v. Baker, D.C.R.I.1917, 243 F. 741. See, also, Breese v. U.S., N.C.1913, 203 F. 824, 122 C.C.A. 142; U.S. v. Nunnemacher, C.C.Wis.1876, Fed.Cas. No. 15,902.

"Conspiracy," as defined by former § 88 of this title [now this section] meant an unlawful agreement to do some act which by some law of the United States has been made a crime and this is what is meant by agreeing to commit an offense against the United States. In re Wolf, W.D.Ark.1886, 27 F. 606. Conspiracy 25

It is in the nature of the crime of conspiracy that there be a meeting of minds or an agreement among individuals to violate the law. U. S. v. Bonanno, S.D.N.Y.1960, 180 F.Supp. 71. Conspiracy 24(1)

The essence of a "conspiracy" is an agreement, which means that two or more persons, however informal the medium may be, agree to do or refrain from doing one or more things, and the "conspiracy" may embrace an illegal object, or a legal purpose illegally to be effected. George W Warner & Co v. Black & Decker Mfg Co, E.D.N.Y.1959, 172 F.Supp. 221, reversed 277 F.2d 787. Conspiracy 1.1

Gravamen of corpus delicti of conspiracy is the agreement or combination even where the particular conspiracy statute requires an overt act. US v. Grunewald, S.D.N.Y.1958, 162 F.Supp. 626. Conspiracy 24(1)

An unlawful conspiracy may be formed without simultaneous action or agreement on part of conspirators. Noerr Motor Freight, Inc. v. Eastern R.R. Presidents Conference. Noerr Motor Freight, Inc. v. Eastern R. R. Presidents Conference, E.D.Pa.1957, 155 F.Supp. 768, affirmed 273 F.2d 218, certiorari granted 80 S.Ct. 862, 362 U.S. 947, 4 L.Ed.2d 866, reversed on other grounds 81 S.Ct. 523, 365 U.S. 127, 5 L.Ed.2d 464, rehearing denied 81 S.Ct. 899, 365 U.S. 875, 5 L.Ed.2d 864. Conspiracy 2

A "conspiracy" is agreement between two or more persons to do an evil act in concert, any plot or secret

combination for evil purpose, such as conspiracy against government, combination between two or more persons to commit any act punishable by law or effect a legal purpose by criminal or unlawful means, or any striking connivance of persons, classes or agencies. U S v. O'Connor, D.C.D.C.1955, 135 F.Supp. 590, reversed on other grounds 240 F.2d 404, 99 U.S.App.D.C. 373. Conspiracy 24(1)

Mere uniformity of action in performance of acts will not constitute a "conspiracy", but there must first be an agreement to do certain illegal acts or to do legal acts in an illegal manner. U.S. v. Armour & Co., W.D.Okla.1943, 48 F.Supp. 801, reversed on other grounds 137 F.2d 269. Conspiracy 24(1)

A mutual understanding between the parties or any two or more of them is all that is necessary to prove a "conspiracy". U.S. v. Direct Sales Co., W.D.S.C.1942, 44 F.Supp. 623, affirmed 131 F.2d 835, certiorari granted 63 S.Ct. 758, 318 U.S. 749, 87 L.Ed. 1125, affirmed 63 S.Ct. 1265, 319 U.S. 703, 87 L.Ed. 1674. Conspiracy 24(1)

Evidence was sufficient to find defendant guilty of mail fraud and conspiracy to commit mail fraud; government was not required, in order to establish intent to defraud, to prove that victim lost money or that defendant wanted victim to lose money. U.S. v. Easton, C.A.8 (S.D.) 2002, 54 Fed.Appx. 242, 2002 WL 31814951, Unreported. Conspiracy 47(5); Postal Service 35(5); Postal Service 49(11)

56. ---- Formal or express agreement to commit offense, nature and elements of conspiracy

Imposition of criminal liability for conspiracy to assault federal officers even though assailants were unaware that their victims, undercover narcotics agents, were federal officers, would not enlarge the conspirators' agreement beyond its terms as they understood them. U. S. v. Feola, U.S.N.Y.1975, 95 S.Ct. 1255, 420 U.S. 671, 43 L.Ed.2d 541. Conspiracy 28(3)

Agreement between conspirators need not be express, but rather can be informal tacit understanding. U.S. v. Murphy, C.A.8 (Mo.) 1992, 957 F.2d 550. Conspiracy 24(1)

Agreement to accomplish illegal objective, as element of conspiracy, need not be explicit; implicit agreement may be inferred from facts and circumstances. U.S. v. Boone, C.A.9 (Idaho) 1991, 951 F.2d 1526. Conspiracy 24(1); Conspiracy 44.2

Government need not prove formal agreement to establish existence of conspiracy to violate federal law; tacit or mutual understanding among parties will suffice. U.S. v. Ellzey, C.A.6 (Ohio) 1989, 874 F.2d 324, denial of post-conviction relief affirmed 940 F.2d 659. Conspiracy 24(1)

Agreement between the coconspirators and the defendant need not be proved by direct evidence but may be inferred from concert of actions; it is not necessary for all coconspirators to know each other or to work together on every phase of the criminal venture. U. S. v. Wilson, C.A.5 (Tex.) 1981, 657 F.2d 755, certiorari denied 102 S.Ct. 1456, 455 U.S. 951, 71 L.Ed.2d 667. Conspiracy 47(2)

To constitute a conspiracy under this section proscribing such crime, agreement need not be formal or express, and may consist of nothing more than tacit understanding. U. S. v. Pintar, C.A.8 (Minn.) 1980, 630 F.2d 1270. Conspiracy 24(1)

No formal agreement is necessary to constitute conspiracy; such agreement may be inferred from facts appearing in evidence. U. S. v. Cudia, C.A.7 (Ill.) 1965, 346 F.2d 227, certiorari denied 86 S.Ct. 428, 382 U.S. 955, 15 L.Ed.2d 359, rehearing denied 86 S.Ct. 612, 382 U.S. 1021, 15 L.Ed.2d 536. Conspiracy 24(1)

Ordinarily unlawful agreements can be established only by acts and conduct of conspirators and inferences to be

drawn therefrom. Dennis v. U.S., C.A.10 (Colo.) 1962, 302 F.2d 5. Conspiracy 47(1)

An express agreement is not necessary to prove a conspiracy. U. S. v. Frank, C.A.3 (Pa.) 1961, 290 F.2d 195, certiorari denied 82 S.Ct. 38, 368 U.S. 821, 7 L.Ed.2d 26. Conspiracy 47(1)

Conspiracy involves some action in concert among conspirators but there need not be an express agreement among them. U. S. v. Amedeo, C.A.3 (N.J.) 1960, 277 F.2d 375. See, also, U.S. v. Banks, D.C.S.D.1974, 383 F.Supp. 368. Conspiracy 24(1)

In prosecution for, among other things, conspiring to commit an offense against the United States, evidence of an express agreement is unnecessary. U.S. v. Clancy, C.A.7 (Ill.) 1960, 276 F.2d 617, certiorari granted 80 S.Ct. 1611, 363 U.S. 836, 4 L.Ed.2d 1723, reversed 81 S.Ct. 645, 365 U.S. 312, 5 L.Ed.2d 574. See, also, U.S. v. Morris, C.A.Ill.1955, 225 F.2d 91, certiorari denied 76 S.Ct. 179, 350 U.S. 901, 100 L.Ed. 791, rehearing denied 76 S.Ct. 300, 350 U.S. 943, 100 L.Ed. 823. Conspiracy 44.2

A conspiracy is seldom susceptible of direct proof and ordinarily it can be established only by acts and conduct of conspirators and inferences to be drawn therefrom, and agreement need not be in any particular form. Jones v. U. S., C.A.10 (Okla.) 1958, 251 F.2d 288, certiorari denied 78 S.Ct. 703, 356 U.S. 919, 2 L.Ed.2d 715. Conspiracy 47(2)

A "conspiracy" is an agreement to commit a crime or to engage in criminal activities attended by one or more overt acts. It needs no writing to make or prove it. It need not be explicit. It may be implicit. Duke v. U.S., C.A.5 (Ga.) 1956, 233 F.2d 897. See, also, U.S. v. Gilboy, D.C.Pa.1958, 160 F.Supp. 442. Conspiracy 23.1

To constitute criminal conspiracy, there must be an agreement among alleged conspirators, but it need not be in any particular form, nor be expressed, but it may be an implied understanding and must usually be inferred from circumstances shown. Nilva v. U.S., C.A.8 (Minn.) 1954, 212 F.2d 115, certiorari denied 75 S.Ct. 40, 348 U.S. 825, 99 L.Ed. 650, rehearing denied 75 S.Ct. 203, 348 U.S. 889, 99 L.Ed. 699. Conspiracy 24(1)

In order to establish conspiracy, it is not necessary to show any formal agreement between the conspirators, but the common plan can be established by what the alleged conspirators have done, as well as by what they may have said. U. S. v. Georga, C.A.3 (Pa.) 1954, 210 F.2d 45. Conspiracy 47(1)

It is not essential to constitute crime of "conspiracy" that agreement be in any specified form or that any particular words be used, but it is enough if the minds of the parties meet and join in an understanding way to accomplish a common purpose. Reavis v. U.S., C.C.A.10 (Okla.) 1939, 106 F.2d 982. See, also, Martin v. U.S., C.C.A.Colo.1938, 100 F.2d 490, certiorari denied 59 S.Ct. 590, 306 U.S. 649, 83 L.Ed. 1047; Beland v. U.S., C.C.A.Tex.1938, 100 F.2d 289, certiorari denied 59 S.Ct. 485, 306 U.S. 636, 83 L.Ed. 1037; Wilder v. U.S., C.C.A.Okl.1938, 100 F.2d 177; Marino v. U.S., C.C.A.Cal.1937, 91 F.2d 691, 113 A.L.R. 975, certiorari denied 58 S.Ct. 410, 302 U.S. 764, 82 L.Ed. 593; Marx v. U.S., C.C.A.Minn.1936, 86 F.2d 245; Stack v. U.S., C.C.A.Wash.1928, 27 F.2d 16; Pearlman v. U.S., C.C.A.Or.1927, 20 F.2d 113, certiorari denied 48 S.Ct. 85, 275 U.S. 549, 72 L.Ed. 419; U.S. v. Waltham Watch Co., D.C.N.Y.1942, 47 F.Supp. 524. Conspiracy 24(1)

Proof of meeting of minds by intelligent and deliberate agreement to commit offense establishes "conspiracy," though agreement is not manifested by formal words. Hoffman v. U.S., C.C.A.10 (Colo.) 1933, 68 F.2d 101. Conspiracy 24(1)

In dealing with conspiracy, it is not essential that persons acted together in formal manner found in ordinary lawful transactions. U.S. v. Wilson, D.C.W.Va.1927, 23 F.2d 112.

To sustain an indictment charging a conspiracy to commit an offense against the United States, under former § 88

of this title [now this section] it was not necessary that there should have been direct evidence of a formal agreement, but it was sufficient if the evidence of the separate details of the transaction as it was carried out indicate with the requisite certainty the existence of a preconcerted plan and purpose. Reilley v. U. S., C.C.A.6 (Ohio) 1901, 106 F. 896, 46 C.C.A. 25, reversed 23 S.Ct. 334, 188 U.S. 375, 47 L.Ed. 508. See, also, U.S. v. Wilson, D.C.Or.1894, 60 F. 890; U.S. v. Newton, D.C.Iowa 1892, 52 F. 275; The Mussel Slough Case, C.C.Cal.1881, 5 F. 680. Conspiracy 47(1)

While it is necessary to prove that coconspirators agreed on central objective of conspiracy, agreement may consist of nothing more than a passive understanding. U.S. v. Weiner, E.D.Mich.1991, 755 F.Supp. 748, affirmed 988 F.2d 629, certiorari denied 114 S.Ct. 142, 510 U.S. 848, 126 L.Ed.2d 105. Conspiracy 24(1)

Even absent express agreement, if two persons pursued the same object, one performing one part of the act, and the other another part of the act so as to complete it with a view to attainment of object which they are pursuing, this will be sufficient to constitute a conspiracy. Smith v. B & O R. Co., D.C.Md.1979, 473 F.Supp. 572. Conspiracy 1.1

To "conspire" is to agree to share an unlawful purpose, and two people may share an unlawful purpose without entering a formal or a written agreement, and it is sufficient if their agreement is shown by conduct by silent understanding to share a purpose to violate the law. U. S. v. Palladino, D.C.Mass.1962, 203 F.Supp. 35. Conspiracy 24(1)

It is not essential to a conspiracy that the precise person, time and place or precise methods be agreed upon. U. S. v. Gilboy, M.D.Pa.1958, 160 F.Supp. 442. Conspiracy 24(1)

57. Common design or purpose, nature and elements of conspiracy

To convict defendant of participation in a single conspiracy with other defendants, it is sufficient if it is established that parties to the agreement were aware that others were participating in the scheme; the coconspirators must have knowingly embraced a common criminal objective. U.S. v. Grier, C.A.7 (Wis.) 1989, 866 F.2d 908, rehearing denied. Conspiracy 24.5

Unity essential to a conspiracy is derived from the assent of its members to contribute to a common enterprise. U. S. v. Grassi, C.A.5 (Fla.) 1980, 616 F.2d 1295, rehearing denied 624 F.2d 1098, certiorari denied 101 S.Ct. 363, 449 U.S. 956, 66 L.Ed.2d 220. Conspiracy 24(3)

While conspiracy is seldom born of open covenants openly arrived at, there must be proof of common purpose and plan to prove that defendant has joined in conspiracy. U. S. v. Alvarez, C.A.5 (Fla.) 1980, 610 F.2d 1250, on rehearing 625 F.2d 1196, certiorari denied 101 S.Ct. 2017, 451 U.S. 938, 68 L.Ed.2d 324. Conspiracy 24(1)

Principal factors that court examines when resolving the issue of whether there exists a prejudicial variance between allegation of a single conspiracy in the indictment and proof at trial are the existence of a common goal, the nature of the scheme, and an overlapping of participants in the various dealings. U. S. v. Tilton, C.A.5 (Fla.) 1980, 610 F.2d 302. Conspiracy 43(12)

Parties to a conspiracy must at least know of the existence, though not necessarily the identity, of coconspirators and must share a common purpose with such known conspirators; such two requirements of an agreement are known as the "party dimension" and the "object dimension." U. S. v. Lindsey, C.A.7 (Ind.) 1979, 602 F.2d 785. Conspiracy 40.1

To establish conspiracy, proof that each conspirator knew exact limits of illegal plan or identity of all participants therein is not required, but it is required that it be established that there was single plan, essential nature and

general scope of which was known to each person who was to be held responsible for its consequences, and existence of such joint venture can be established by evidence as to repetitive or parallel transactions but not by evidence as to isolated instances, explicable without reference to continuing or broader program. Hoffman-La Roche, Inc. v. Greenberg, C.A.7 (Ill.) 1971, 447 F.2d 872. Conspiracy 2; Conspiracy 19

Single conspiracy can be shown without proof that every defendant participated in every transaction, so long as defendants participate in common plan or series of transactions. U. S. v. Hutul, C.A.7 (Ill.) 1969, 416 F.2d 607, certiorari denied 90 S.Ct. 562, 396 U.S. 1007, 24 L.Ed.2d 499, certiorari denied 90 S.Ct. 573, 396 U.S. 1012, 24 L.Ed.2d 504, rehearing denied 90 S.Ct. 1519, 397 U.S. 1081, 25 L.Ed.2d 820, certiorari denied 90 S.Ct. 599, 396 U.S. 1024, 24 L.Ed.2d 517. Conspiracy 41

Various people knowingly joining together in furtherance of a common design or purpose constitute a single conspiracy; while the conspiracy may have a small group of core conspirators, other parties who knowingly participate with these core conspirators and others to achieve a common goal may be members of an overall conspiracy. U. S. v. Varelli, C.A.7 (Ill.) 1969, 407 F.2d 735. Conspiracy 24(2)

Defendant can join conspiracy at any time and may be found to have done so when, with knowledge of its existence, he has undertaken to further its design. Cave v. U. S., C.A.8 (Iowa) 1968, 390 F.2d 58, certiorari denied 88 S.Ct. 2059, 392 U.S. 906, 20 L.Ed.2d 1365. Conspiracy 40.3

Common design is essence of conspiracy. U. S. v. Cudia, C.A.7 (Ill.) 1965, 346 F.2d 227, certiorari denied 86 S.Ct. 428, 382 U.S. 955, 15 L.Ed.2d 359, rehearing denied 86 S.Ct. 612, 382 U.S. 1021, 15 L.Ed.2d 536. Conspiracy 24(1)

Indispensable ingredient of conspiracy is that accused persons must have had common aim. U. S. v. Goss, C.A.4 (N.C.) 1964, 329 F.2d 180. Conspiracy 25

Common design is essence of conspiracy; it may be shown by proof of concert of action in commission of unlawful act from which plant, common design or agreement can be inferred. U. S. v. Zuideveld, C.A.7 (Ill.) 1963, 316 F.2d 873, certiorari denied 84 S.Ct. 671, 376 U.S. 916, 11 L.Ed.2d 612. Conspiracy 25; Conspiracy 47(1)

Conspiracy requires no formal agreement of the parties concerned and it is sufficient if there is concerted action, with all parties working together understandingly and with a single design for accomplishment of a common purpose. American Cyanamid Co. v. Sharff, C.A.3 (N.J.) 1962, 309 F.2d 790. Conspiracy 24(1)

Under general law of conspiracy common course of conduct between a defendant and third person need not be based upon express agreement, and existence of common scheme or fact of defendant's participation in it need not be proved by direct evidence and both may be inferred from a development and collocation of circumstances. Hernandez v. U. S., C.A.9 (Cal.) 1962, 300 F.2d 114. Conspiracy 24(1); Conspiracy 47(2)

Common design is the essence of "conspiracy". U. S. v. Lester, C.A.3 (Pa.) 1960, 282 F.2d 750, certiorari denied 81 S.Ct. 385, 364 U.S. 937, 5 L.Ed.2d 368. Conspiracy 24(1)

The agreement for conspiracy may be shown by a concert of action, all parties working together understandingly with a single design for accomplishment of a common purpose. American Tobacco Co. v. U.S., C.C.A.6 (Ky.) 1944, 147 F.2d 93, certiorari granted 65 S.Ct. 864, 324 U.S. 836, 89 L.Ed. 1400, certiorari granted 65 S.Ct. 865, 324 U.S. 836, 89 L.Ed. 1400, rehearing denied 65 S.Ct. 1021, 324 U.S. 891, 89 L.Ed. 1438, affirmed 66 S.Ct. 1125, 328 U.S. 781, 90 L.Ed. 1575. See, also, U.S. v. Olmstead, D.C.Wash.1925, 5 F.2d 712; Fowler v. U.S., C.C.A.Wash.1921, 273 F. 15; U.S. v. McHugh, D.C.Wash.1917, 253 F. 224. Conspiracy 47(1)

The common design is the essence of the crime of conspiracy and this may be made to appear when parties steadily pursue same object, whether acting separately or together, by common or different means, but always leading to the same unlawful result. American Tobacco Co. v. U.S., C.C.A.6 (Ky.) 1944, 147 F.2d 93, certiorari granted 65 S.Ct. 864, 324 U.S. 836, 89 L.Ed. 1400, certiorari granted 65 S.Ct. 865, 324 U.S. 836, 89 L.Ed. 1400, rehearing denied 65 S.Ct. 1021, 324 U.S. 891, 89 L.Ed. 1438, affirmed 66 S.Ct. 1125, 328 U.S. 781, 90 L.Ed. 1575. See, also, U.S. v. Randall, C.C.A.Ind.1947, 164 F.2d 284, certiorari denied 68 S.Ct. 729, 333 U.S. 856, 92 L.Ed. 1136, rehearing denied 68 S.Ct. 901, 333 U.S. 878, 92 L.Ed. 1153; Lefco v. U.S., C.C.A.Pa.1934, 74 F.2d 66. Conspiracy 47(1)

"Conspiracy" involves the element of agreement, of the existence of a single design for the accomplishment of common purpose and there must be a combination by concerted action to accomplish an unlawful result or to accomplish a lawful result in an unlawful manner. Schmeller v. U. S., C.C.A.6 (Ohio) 1944, 143 F.2d 544. Conspiracy 24(1)

Formal agreement is not necessary to constitute a conspiracy, it being sufficient if there is an association in purpose to defraud. Blue v. U. S., C.C.A.6 (Ohio) 1943, 138 F.2d 351, certiorari denied 64 S.Ct. 1046, 322 U.S. 736, 88 L.Ed. 1570, rehearing denied 64 S.Ct. 1259, 322 U.S. 771, 88 L.Ed. 1596, certiorari denied 64 S.Ct. 1046, 322 U.S. 737, 88 L.Ed. 1570. See, also, Blumenthal v. U.S., C.C.A.Cal.1946, 158 F.2d 883, rehearing denied 158 F.2d 762, certiorari denied 67 S.Ct. 1307, 331 U.S. 799, 91 L.Ed. 1824, affirmed 68 S.Ct. 248, 332 U.S. 539, 92 L.Ed. 154, rehearing denied 68 S.Ct. 358, 332 U.S. 856, 92 L.Ed. 154. Conspiracy 32

In conspiracy prosecution, proof of formal agreement of conspirators is not necessary, and agreement need not be manifest by any formal words, but it is sufficient to show that minds of conspirators reached a common understanding to jointly accomplish the illegal object. Cruz v. U S, C.C.A.10 (N.M.) 1939, 106 F.2d 828. See, also, District Sales Co. v. U.S., C.C.A.S.C.1942, 131 F.2d 835, affirmed 63 S.Ct. 1265, 319 U.S. 703, 87 L.Ed. 1674; U.S. v. Glasser et al., C.C.A.Ill.1941, 116 F.2d 690, modified on other grounds 62 S.Ct. 457, 315 U.S. 60, 86 L.Ed. 680. Conspiracy 47(1)

Conspiracy is proved when the jury is satisfied that two or more entered into an agreement to accomplish a common and unlawful design, followed by some act to carry it into execution. U.S. v. Barrett, C.C.S.C.1894, 65 F. 62, affirmed 18 S.Ct. 327, 169 U.S. 218, 42 L.Ed. 723. Conspiracy 24(1)

It means that, on the part of two or more persons, there was a common purpose, supported by a concerted action, to defraud; that each had the intent to do it; that it was common to each of them; and that each understood the others as having that purpose. U.S. v. Frisbie, C.C.E.D.La.1886, 28 F. 808, affirmed 15 S.Ct. 586, 157 U.S. 160, 39 L.Ed. 657. Conspiracy 23

Multiple conspiracies do not exist merely because the coconspirators perform varying functions or only knowingly align themselves with the "hub" of the conspiracy; if the plan or scheme has as its purpose a common goal to which the coconspirators align themselves, then a single conspiracy exists. U.S. v. Vigi, E.D.Mich.1973, 363 F.Supp. 314. Conspiracy 25

When two or more parties are found to have joined in a common scheme, all are responsible for acts and declarations of each co-schemer in furtherance of scheme while it is in progress regardless of whether conspiracy is charged in the indictment; when a common scheme has been found to exist, general rules of agency regarding joint liability are applied as a matter of evidence in determining guilt on substantive counts. U. S. v. Dukow, W.D.Pa.1971, 330 F.Supp. 360. Conspiracy 40.3

Character and effect of a conspiracy are not to be judged by dismembering it and viewing it in its separate parts but by looking at it as a whole, and it is the common design which is essence of the conspiracy or combination and this may be made to appear when parties steadily pursue the same object whether acting separately or together, by

common or different means but always leading to the same unlawful result. U. S. v. American Honda Motor Co., N.D.Cal.1967, 271 F.Supp. 979. Conspiracy 24(1)

Common design is the essence of conspiracy and the crime may be committed whether or not the parties comprehend its entire scope, whether they act separately or together, by the same or different means, known or unknown to some of them, but ever leading to same unlawful result. U. S. v. Boyance, E.D.Pa.1963, 215 F.Supp. 390. Conspiracy 24(3)

It is not necessary that all the defendants come into conspiracy at one time or that they should all know each other, the complete and exact scope of the conspiracy or all of its ramifications; it is not necessary that all contribute alike either to the making of the scheme or its fulfillment; it is enough if at some time during the continuance of the conspiracy there is a common design and purpose applicable to all. U. S. v. Gilboy, M.D.Pa.1958, 160 F.Supp. 442. Conspiracy 40

A "conspiracy" under federal law is a corrupt agreement or combination between two or more persons to commit an offense or offenses against the United States followed by an overt act, and a common design and purpose is the essence of the crime. U.S. v. Thomas, E.D.Wash.1943, 52 F.Supp. 571. See, also, Di Bonaventura v. U.S., C.C.A.W.Va.1926, 15 F.2d 494. Conspiracy 28(1)

58. Object of conspiracy, nature and elements of conspiracy--Generally

Conspiracy may have multiple objectives, and if one of its objectives, even though a minor one, is the evasion of federal taxes, the offense is made out, though the primary objective may be concealment of another crime. Ingram v. U.S., U.S.Ga.1959, 79 S.Ct. 1314, 360 U.S. 672, 3 L.Ed.2d 1503, rehearing denied 80 S.Ct. 42, 361 U.S. 856, 4 L.Ed.2d 96. Conspiracy 33(7)

Object of conspiracy constitutes essential element of the conspiracy offense. U.S. v. Gallerani, C.A.2 (Vt.) 1995, 68 F.3d 611. Conspiracy 25

Provision of conspiracy statute criminalizing conspiracy "to commit any offense against the United States" criminalizes those conspiracies that contemplate commission of offense that is made illegal by federal law. U.S. v. Loney, C.A.5 (Tex.) 1992, 959 F.2d 1332. Conspiracy 28(3)

Agreement to burn victim's trailer home and agreement to manufacture and possess an unregistered firearm constituted one basic conspiracy; conspirators had the one basic objective of burning the trailer and the use of an explosive was merely one facet of the scheme. U.S. v. Buchanan, C.A.10 (Okla.) 1986, 787 F.2d 477, grant of post-conviction relief reversed on other grounds 891 F.2d 1436, certiorari denied 110 S.Ct. 1829, 494 U.S. 1088, 108 L.Ed.2d 958. Conspiracy 24(2)

Count in indictment alleging that object of conspiracy to defraud United States was to deprive United States of honest and faithful services of United States senator stated offense despite defendant's contention that United States senator owes honest and faithful service only to citizens of his or her state and not to United States since numerous statutes enacted to punish criminal behavior by members of Congress demonstrated assertion of significant interest on part of national government in honest performance of duties by those elected to Congress. U.S. v. Williams, C.A.2 (N.Y.) 1983, 705 F.2d 603, certiorari denied 104 S.Ct. 524, 464 U.S. 1007, 78 L.Ed.2d 708, certiorari denied 104 S.Ct. 525, 464 U.S. 1007, 78 L.Ed.2d 708. Conspiracy 43(1)

Law of conspiracy requires agreement as to "object" of conspiracy; this does not mean that conspirators must be shown to have agreed on details of their criminal enterprise, but it does mean that "essential nature of the plan" must be shown. U. S. v. Rosenblatt, C.A.2 (N.Y.) 1977, 554 F.2d 36. Conspiracy 24(1)

A single conspiracy may have a multiplicity of objects; all of the multifarious objects to the conspiracy need not be alleged to satisfy the statutory requirement for the criminal conspiracy; however, the objects alleged must be an offense against the United States. U. S. v. Clay, C.A.7 (Ill.) 1974, 495 F.2d 700, certiorari denied 95 S.Ct. 207, 419 U.S. 937, 42 L.Ed.2d 164. Conspiracy 43(6)

Requirement under this section of conspiring to commit an "offense against the United States" is not fulfilled by an offense which fails to meet constitutional muster even though that offense is only one of several alleged. U. S. v. Baranski, C.A.7 (Ill.) 1973, 484 F.2d 556. Conspiracy 28(1)

This section providing criminal sanctions if two or more persons conspire either to commit any offense against the United States, or to defraud the United States or any agency thereof in any manner or for any purpose prohibits conspiracies having as their object the commission of unlawful acts subject to criminal prosecution or suit for penalty and conspiracies having as their purpose the impairing, obstructing or defeating the lawful function of any department of government. U.S. v. Levinson, C.A.6 (Mich.) 1968, 405 F.2d 971, certiorari denied 89 S.Ct. 1746, 395 U.S. 906, 23 L.Ed.2d 219, certiorari denied 89 S.Ct. 2097, 395 U.S. 958, 23 L.Ed.2d 744, rehearing denied 90 S.Ct. 37, 396 U.S. 869, 24 L.Ed.2d 124, rehearing denied 90 S.Ct. 36, 396 U.S. 869, 24 L.Ed.2d 124. Conspiracy 28(1); Conspiracy 33(1)

Conspiracy to commit several offenses against United States was "offense" within former § 88 of this title [now this section]. U S v. Quigley, D.C.Mass.1925, 9 F.2d 411.

A "conspiracy" is a combination of two or more persons to effect an illegal object as an end or means, and joint purpose or intent need not be to commit a crime, or even unlawful act, if it is intended to accomplish the act by surreptitious or unlawful means, especially when object is to effect contract with government officer. U.S. v. Pan-American Petroleum Co., D.C.Cal.1925, 6 F.2d 43, affirmed in part, reversed in part and remanded 9 F.2d 761, certiorari granted 46 S.Ct. 356, 270 U.S. 640, 70 L.Ed. 775, affirmed 47 S.Ct. 416, 273 U.S. 456, 71 L.Ed. 734.

Though some of objects of conspiracy may have been innocent, if one of them was to commit offense against United States, case falls within condemnation of former § 88 of this title [now this section]. Allen v. U.S., C.C.A.7 (Ind.) 1924, 4 F.2d 688, certiorari denied 45 S.Ct. 352, 267 U.S. 597, 69 L.Ed. 806, certiorari denied 45 S.Ct. 353, 267 U.S. 598, 69 L.Ed. 806, certiorari denied 45 S.Ct. 509, 268 U.S. 689, 69 L.Ed. 1158. See, also, Johnson v. U.S., 1925, 45 S.Ct. 509, 268 U.S. 689, 69 L.Ed. 1158; Mullen v. U.S., 1925, 45 S.Ct. 353, 267 U.S. 598, 69 L.Ed. 806.

Persons conspire to commit an offense against the United States when they conspire to commit an offense which can be carried into effect only by violating the laws of the United States. Wilson v. U.S., C.C.A.2 (N.Y.) 1911, 190 F. 427, 111 C.C.A. 231.

It was not enough under former § 88 of this title [now this section] that the conspiracy was directed to the attainment of some unlawful object, or to the attainment of some unlawful object by unlawful means, and it must have been directed to the attainment of one of the objects specified. Lonabaugh v. U.S., C.C.A.8 (Wyo.) 1910, 179 F. 476, 103 C.C.A. 56.

Under former § 88 of this title [now this section] it was sufficient that it was the conspirator's purpose to commit a willful fraud on the law, or some statutory requirement pertinent to be observed, in view of the present controlling conditions, and it was not necessary that there should have been a conspiracy to do an act that was an offense or crime by some statute of the general government, or to deprive the United States of its property or some property right. U.S. v. Raley, D.C.Or.1909, 173 F. 159.

Where a conspiracy was formed to defraud the United States in any manner, in violation of former § 88 of this title [now this section] the offense was complete when the conspiracy was formed, and the conspirators were subject to

prosecution whenever one or more of them has done any act in the furtherance of the unlawful scheme devised and agreed on; it being, therefore, sufficient that the conspiracy, when formed, was attended with corrupt motives and was for a corrupt purpose. U.S. v. Moore, C.C.Or.1909, 173 F. 122. Conspiracy 33(1)

A conspiracy to commit an offense against the United States, if followed by an overt act, is a crime. Marrin v. U S, C.C.A.3 (Pa.) 1909, 167 F. 951, 93 C.C.A. 351, certiorari denied 32 S.Ct. 523, 223 U.S. 719, 56 L.Ed. 629.

To constitute a criminal offense under former § 88 of this title [now this section] the object of the conspiracy must have been to commit some offense against the United States, that is, to have done some act made a crime by the laws thereof, or to defraud the United States, and something must have been done by one or more of the conspirators to effect the object of the agreement. In re Wolf, W.D.Ark.1886, 27 F. 606.

It is immaterial to commission of crime of conspiracy whether object of conspiracy is achieved, and offense is punishable as a conspiracy even though intended object is also achieved. U. S. v. De Sapio, S.D.N.Y.1969, 299 F.Supp. 436. Conspiracy 25; Conspiracy 37

To constitute a crime against the United States, the acts alleged as a violation of this section must have as their purposes either a purpose to defraud the government of some property right or pecuniary interest, or a purpose to obstruct or defeat some lawful function of the government, or a department or agency thereof. U. S. v. Kaiser, S.D.Ill.1960, 179 F.Supp. 545. Conspiracy 33(1)

To constitute a conspiracy in violation of this section, which makes it an offense for two or more persons to commit an offense against United States, either the object of the conspiracy or the means of accomplishing it must be illegal. U.S. v. Cawthon, M.D.Ga.1954, 125 F.Supp. 419. Conspiracy 25; Conspiracy 26

"Conspiracy", as a federal offense, ordinarily consists in uniting to violate a statutory provision in this title or the regulatory statutes of the United States, or in conspiring to defraud the United States of money or property, or in conspiring merely to interfere with the proper functioning of an agency of the United States. U.S. v. Bell, S.D.Cal.1943, 48 F.Supp. 986. Conspiracy 28(1); Conspiracy 33(1); Conspiracy 34

Either the means or the end of a conspiracy must be evil. U.S. v. Rhoads, D.C.D.C.1942, 48 F.Supp. 175. Conspiracy 25

Under former § 88 of this title [now this section], the conspiracy need not contemplate that conspirators or some of them shall themselves directly break the law, but it is sufficient if conspiracy contemplates that that shall be done which does violate the law since word "commit" in said former section means no more than bring about. U. S. v. Hipsch, W.D.Mo.1940, 34 F.Supp. 270.

59. ---- Violation of statute, object of conspiracy, nature and elements of conspiracy

Clean Water Act did not provide criminal penalties for discharges from vessels, and therefore defendants who pumped sewage into a river from a towboat which had been moored and converted for use as a tavern were not guilty of knowingly discharging raw sewage and conspiring to discharge raw sewage, even though the towboat, which was attached to two spud poles by 18 bolts, had been advertised as a permanently moored facility; bolts could easily be removed, and towboat floated on its own and thus was a "vessel" inasmuch as it was capable of use as a means of transportation on water, albeit under tow. U.S. v. Templeton, C.A.8 (Mo.) 2004, 378 F.3d 845. Conspiracy 28(3); Environmental Law 743

Object of conspiracy need not implicate separate statutory violation, so long as conduct impairs government function. U.S. v. Tham, C.A.9 (Cal.) 1991, 960 F.2d 1391. Conspiracy 25

18 U.S.C.A. § 371

Conspiracy conviction was valid, notwithstanding fact that one of two underlying substantive offenses did not reach defendant's conduct in using cloned satellite television descramblers for purpose of allowing users to avoid payment for television broadcasts; jury indicated by special verdict that it had relied on both valid and invalid underlying statutes in finding defendant guilty of conspiracy; since intent to violate statute imposing criminal sanctions for intentional interception of "electronic communications" alone could support finding of conspiracy, jury's improper reliance on additional statute dealing with counterfeit access devices did not have substantial influence upon guilty verdict. U.S. v. McNutt, C.A.10 (Okla.) 1990, 908 F.2d 561, certiorari denied 111 S.Ct. 955, 498 U.S. 1084, 112 L.Ed.2d 1043. Conspiracy 28(3)

Statute prohibiting parties from conspiring to "defraud" the United States criminalizes any willful impairment of legitimate government function, whether or not conspirators' acts or objectives are criminal under other statute, and whether or not Government suffers any pecuniary loss by fraud. U.S. v. Tuohey, C.A.9 (Cal.) 1989, 867 F.2d 534. Conspiracy 33(1)

Former § 88 of this title [now this section] did not in terms require that contemplated offense shall of itself have been a criminal offense, but act intended to have been effected must have been prohibited by Act of Congress in interest of public policy of the United States. Fulbright v. U.S., C.C.A.8 (Mo.) 1937, 91 F.2d 210. Conspiracy 25

Though a statute declaring an act to be a misdemeanor prescribes no penalty an indictment will lie for conspiracy to commit the forbidden act. U.S. v. Niroku Komai, S.D.Cal.1923, 286 F. 450.

A conspiracy against enforcement of the Draft Law of 1917, 50 App. former § 201 et seq., entered into before its passage, continuing up to and after the time it became effective, then became illegal, even if it was not before. Bryant v. U.S., C.C.A.5 (Tex.) 1919, 257 F. 378, 168 C.C.A. 418, motion denied 40 S.Ct. 117. Conspiracy 28

There can be no punishable conspiracy to violate a penal statute which is unconstitutional. U S v. U S Brewers' Ass'n, W.D.Pa.1916, 239 F. 163.

The offense to be committed must be a statutory one. Heike v. U.S., C.C.A.2 (N.Y.) 1911, 192 F. 83, 112 C.C.A. 615, certiorari granted 32 S.Ct. 527, 223 U.S. 730, 56 L.Ed. 633, affirmed 33 S.Ct. 226, 227 U.S. 131, 57 L.Ed. 450. See, also, U S v. Haas, C.C.N.Y.1908, 163 F. 908.

To constitute conspiracy against the United States, the object of the unlawful agreement must be the commission of some offense against the United States in the sense only that it must be some act made an offense by the laws of the United States. U.S. v. Lyman, D.C.Or.1911, 190 F. 414. Conspiracy 25

The words "any offense against the United States" in former § 88 of this title [now this section] have been construed to include any offense made a crime by the laws of the United States. Radin v. U.S., C.C.A.2 (N.Y.) 1911, 189 F. 568, 111 C.C.A. 6. See, also, U.S. v. Thomas, D.C.Mo.1906, 145 F. 74.

The words "offenses against the United States" in former § 88 of this title [now this section] had the same meaning as the words "offenses against the laws of the United States" in the original Act of March 2, 1867, the change being merely one of phraseology made by the revision commission, and said former section denounced conspiracies to commit offenses created by any of the statutes of the United States. Thomas v. U.S., C.C.A.8 (Mo.) 1907, 156 F. 897, 84 C.C.A. 477. Conspiracy 28

The commission of any act declared by law to be a crime may have been the object of a conspiracy under former § 88 of this title [now this section] whether it would have injured the government itself or would have been an infringement of private rights. U.S. v. Sanche, C.C.W.D.Tenn.1881, 7 F. 715. See, also, U.S. v. Dennee, C.C.La.1877, 3 Woods 47, 25 Fed.Cas. No. 14,948.

Defendant must violate some duty to government in order to be culpable under statute prohibiting conspiracy to defraud United States; to convict, government needs to prove that conspirators' actions violated duty reasonably owed to the government. U.S. v. Barker Steel Co., Inc., D.Mass.1991, 774 F.Supp. 65, reversed 985 F.2d 1123, rehearing denied 985 F.2d 1136. Conspiracy 33(1)

Although plan for payoff for award of contract by city had its origin prior to enactment of § 1952 of this title prohibiting interstate commerce with intent to distribute proceeds of bribery, upon adoption of that section, plan contemplating use of interstate facilities and interstate travel became unlawful, membership of defendants in plan was converted into membership in unlawful conspiracy and that conspiracy continued until accomplishment of last of its objects. U. S. v. Kubacki, E.D.Pa.1965, 237 F.Supp. 638. Bribery 1(1); Conspiracy 33(6)

To violate this section, conspirators must conspire to violate federal statute. U. S. v. Smith, E.D.Tenn.1961, 200 F.Supp. 227.

To conspire to bring about a violation of § 2554 of Title 26 [I.R.C.1939] was to conspire to commit an offense against the United States within provision of former § 88 of this title [now this section] making it a crime for two or more persons to conspire to commit any "offense against the United States". U. S. v. Hipsch, W.D.Mo.1940, 34 F.Supp. 270. Conspiracy 28(3)

60. ---- Knowledge, object of conspiracy, nature and elements of conspiracy

The state of knowledge of the parties to an agreement is not always irrelevant in a proceeding on a charge of violation of conspiracy law; the knowledge of the parties is relevant to the same issues and to the same extent as it may be for conviction of the substantive offense. U. S. v. Feola, U.S.N.Y.1975, 95 S.Ct. 1255, 420 U.S. 671, 43 L.Ed.2d 541. Conspiracy 45

A seller's intent to further, promote, and cooperate in buyer's illegal use of narcotics is not identical with mere knowledge that buyer purposes unlawful action, but cannot exist without such knowledge. Direct Sales Co. v. U.S., U.S.S.C.1943, 63 S.Ct. 1265, 319 U.S. 703, 87 L.Ed. 1674. Conspiracy 28(3)

Conspirator need not know the identity of all other members of conspiracy or be privy to all means used to effectuate each aspect of conspiracy, and it is generally sufficient for purposes of single-conspiracy finding that conspirator knowingly participated with core conspirator in achieving common objective with knowledge of larger venture. U.S. v. Daily, C.A.10 (Kan.) 1990, 921 F.2d 994, certiorari denied 112 S.Ct. 405, 502 U.S. 952, 116 L.Ed.2d 354. Conspiracy 24(3)

In conspiracy case, Government must prove beyond reasonable doubt that conspiracy existed, that defendant knew about it, and that defendant voluntarily joined it with that knowledge. U.S. v. Valdez, C.A.5 (La.) 1988, 861 F.2d 427, rehearing denied 864 F.2d 791, certiorari denied 109 S.Ct. 1539, 489 U.S. 1083, 103 L.Ed.2d 844. Conspiracy 47(1)

While prosecution must show knowledge of an intent to join conspiracy beyond a reasonable doubt, it need not show that defendant knew all details of the conspiracy; moreover, defendant's knowledge and intent can be shown by circumstances. U.S. v. Wheeler, C.A.5 (Miss.) 1986, 802 F.2d 778, certiorari denied 107 S.Ct. 1354, 480 U.S. 908, 94 L.Ed.2d 524. Conspiracy 47(1); Conspiracy 47(2)

A defendant may be found guilty of conspiracy if evidence demonstrates that he knew the essential objectives of conspiracy, and that rule stands even though the person may not know all of its details or played only a minor role in the overall scheme. U.S. v. Puerto, C.A.11 (Fla.) 1984, 730 F.2d 627, certiorari denied 105 S.Ct. 162, 469 U.S. 847, 83 L.Ed.2d 98. Conspiracy 40.1

An interdependence between participants and knowledge of scope of scheme or plan on part of participants is necessary in order for a single conspiratorial plan to exist. U. S. v. McMurray, C.A.10 (Utah) 1980, 656 F.2d 540, on rehearing 680 F.2d 695. Conspiracy 24(2)

It is a cardinal rule of conspiracy law that one does not become a coconspirator simply by virtue of knowledge of the conspiracy and association with conspirators. U. S. v. Grassi, C.A.5 (Fla.) 1980, 616 F.2d 1295, rehearing denied 624 F.2d 1098, certiorari denied 101 S.Ct. 363, 449 U.S. 956, 66 L.Ed.2d 220. Conspiracy 40.1

As to each conspirator, prosecution must show existence of conspiracy and that accused knowingly participated in it. U. S. v. Lichenstein, C.A.5 (Ga.) 1980, 610 F.2d 1272, certiorari denied 100 S.Ct. 2991, 447 U.S. 907, 64 L.Ed.2d 856. Conspiracy 40.1

Once the existence of a conspiracy is established, there must be substantial evidence that each alleged conspirator knew of, intended to join, and participated in the conspiracy. U. S. v. Avila-Dominguez, C.A.5 (Tex.) 1980, 610 F.2d 1266, rehearing denied 613 F.2d 314, certiorari denied 101 S.Ct. 242, 449 U.S. 887, 66 L.Ed.2d 113. Conspiracy 47(1)

A defendant does not join a conspiracy merely by participating in a substantive offense or by associating with persons who are members of a conspiracy; conspirator must knowingly agree to join others in concerted effort to bring about common end. U. S. v. Alvarez, C.A.5 (Fla.) 1980, 610 F.2d 1250, on rehearing 625 F.2d 1196, certiorari denied 101 S.Ct. 2017, 451 U.S. 938, 68 L.Ed.2d 324. Conspiracy 40.1

To sustain conspiracy conviction, it is not necessary for defendant to know each of other coconspirators or be privy to details of each enterprise comprising conspiracy so long as he knows of conspiracy and associates himself with it. U. S. v. Ochoa, C.A.5 (Tex.) 1980, 609 F.2d 198. Conspiracy 40.1

In order to prove a single conspiracy, it is sufficient to show that each defendant knew or had reason to know of the scope of the conspiracy and that each defendant had reason to believe that his own benefits were dependent upon the success of the entire venture. U. S. v. Kostoff, C.A.9 (Cal.) 1978, 585 F.2d 378. Conspiracy 40.1

Where knowledge of facts giving rise to federal jurisdiction is not necessary for the conviction of a substantive offense embodying a mens rea requirement, such knowledge is equally irrelevant to questions of responsibility for conspiring to commit such offense. U. S. v. Herrera, C.A.2 (N.Y.) 1978, 584 F.2d 1137. Conspiracy 28(1)

In conspiracy prosecution, Government was not compelled to prove that defendant was intimately familiar with each and every detail of conspiracy, but, rather, Government's showing that defendant had knowledge of agreement and associated with plan to promote its success was sufficient. U. S. v. Evans, C.A.5 (Tex.) 1978, 572 F.2d 455, rehearing denied 576 F.2d 931, certiorari denied 99 S.Ct. 200, 439 U.S. 870, 58 L.Ed.2d 182. Conspiracy 47(3.1)

Conspiracy charge does not require proof that conspirators were aware of criminality of their objectives; however, it does require at least knowledge required in substantive offense itself. U. S. v. Muncy, C.A.5 (Ga.) 1976, 526 F.2d 1261. Conspiracy 28(1)

Where a substantive offense requires specific knowledge, that same knowledge must be established before a defendant can be found to be a member of a conspiracy to commit the offense; this applies equally to an aider and abettor as to a conspirator, and the requisite knowledge cannot be imputed from one aider and abettor or conspirator to another. U. S. v. Tavoularis, C.A.2 (N.Y.) 1975, 515 F.2d 1070. Conspiracy 44.2

Without knowledge of some improper purpose, agreement to achieve some unlawful goal, the heart of any conspiracy indictment, cannot be inferred from acts, even acts which further purpose of the conspiracy. U. S. v.

Klein, C.A.3 (Pa.) 1975, 515 F.2d 751. Conspiracy 44.2

A conspiracy to be criminal must encompass a crime, and a defendant may be found guilty of conspiracy or aiding and abetting only if he knew of the unlawful purpose of the conspiracy. U. S. v. Aloi, C.A.2 (N.Y.) 1975, 511 F.2d 585, certiorari denied 96 S.Ct. 447, 423 U.S. 1015, 46 L.Ed.2d 386. Conspiracy 25; Conspiracy 40.1

Without knowledge, intent to participate in an established conspiracy cannot exist. Dennis v. U.S., C.A.10 (Colo.) 1962, 302 F.2d 5. Conspiracy 24.5

To establish intent, in conspiracy prosecution evidence of knowledge must be clear and not equivocal. Dennis v. U.S., C.A.10 (Colo.) 1962, 302 F.2d 5. Conspiracy 47(1)

Charge of conspiracy to violate a criminal law has implicit in it elements of knowledge and intent. Schnautz v. U.S., C.A.5 (Tex.) 1959, 263 F.2d 525, certiorari denied 79 S.Ct. 1294, 360 U.S. 910, 3 L.Ed.2d 1260. Conspiracy 43(4)

The offenses proscribed by this section precluding payment of commissions or gratuities by or on behalf of subcontractor to any officer, employee or agent of prime government contractor operating under cost-reimbursable contract or receipt by such persons of commissions or gratuities and of conspiracy to commit such offenses do not have as a substantive element knowledge on part of defendants that contractor was operating under a cost-reimbursable contract. Hanis v. U. S., C.A.8 (Mo.) 1957, 246 F.2d 781. Bribery 1(1)

Where the substantive offense involves knowledge, knowledge is an element of conspiracy to commit that offense. U.S. v. Ausmeier, C.C.A.2 (N.Y.) 1945, 152 F.2d 349. Conspiracy 24.5

The existence of a common undertaking, in which a defendant joined, merely to file statements in connection with application for defendant's registration as an alien, which statements were false but not known to defendant to be false, could not support conviction of conspiracy to file an application for registration containing statements known by him to be false. U.S. v. Ausmeier, C.C.A.2 (N.Y.) 1945, 152 F.2d 349. Conspiracy 43(12)

Where corrupt motive of defendants charged with conspiracy to commit criminal offense is established, defendants' knowledge of existence of law defining offense is imputed. Cruz v. U S, C.C.A.10 (N.M.) 1939, 106 F.2d 828. Conspiracy 24.5

Knowledge of membership in conspiracy to violate federal law, part played by each member, and division of spoils is immaterial to guilt, but accused must know purpose of conspiracy. Marino v. U.S., C.C.A.9 (Cal.) 1937, 91 F.2d 691, certiorari denied 58 S.Ct. 410, 302 U.S. 764, 82 L.Ed. 593. Conspiracy 24(3)

Defendant joins conspiracy if he or she agrees with coconspirator to one or more of the common criminal objectives set forth in indictments; it is immaterial whether defendant knows, has met with, or has agreed with every conspirator. U.S. v. Sims, N.D.Ill.1992, 808 F.Supp. 620. Conspiracy 24(1); Conspiracy 24(3)

Government need not prove that each conspirator knew identities of all his co-conspirators, or that he was aware of all details of alleged conspiracies; rather, each co-conspirator need only be aware of scheme's general scope. U.S. v. Law Firm of Zimmerman & Schwartz, P.C., D.Colo.1990, 738 F.Supp. 407, reversed 943 F.2d 1246. Conspiracy 24.5

61. ---- Intent to commit substantive offense, object of conspiracy, nature and elements of conspiracy

In order to sustain a judgment of conviction on a charge of conspiracy to violate a federal statute, government must prove at least the degree of criminal intent necessary for the substantive offense. U. S. v. Feola, U.S.N.Y.1975, 95

S.Ct. 1255, 420 U.S. 671, 43 L.Ed.2d 541. Conspiracy 28(1)

Conspiracy to commit particular substantive offense cannot exist without at least the degree of criminal intent necessary for substantive offense itself. Ingram v. U.S., U.S.Ga.1959, 79 S.Ct. 1314, 360 U.S. 672, 3 L.Ed.2d 1503, rehearing denied 80 S.Ct. 42, 361 U.S. 856, 4 L.Ed.2d 96. Conspiracy 28(1)

In order to establish conspiracy to defraud federally insured financial institution, defendants must have both intent to agree to participation in conspiracy and intent to commit underlying substantive offense. U.S. v. Brandon, C.A.1 (R.I.) 1994, 17 F.3d 409, certiorari denied 115 S.Ct. 80, 513 U.S. 820, 130 L.Ed.2d 34, certiorari denied 115 S.Ct. 81, 513 U.S. 820, 130 L.Ed.2d 34. Conspiracy 32

To prove conspiracy, government must show that defendants agreed to accomplish an illegal objective, defendants performed at least one overt act in furtherance of illegal objective, and the conspirators intended to commit the substantive offense. U.S. v. Scarbrough, C.A.7 (Ind.) 1993, 990 F.2d 296, certiorari denied 114 S.Ct. 121, 510 U.S. 839, 126 L.Ed.2d 85. Conspiracy 24(1)

To sustain a conviction for conspiracy, Government must prove the requisite intent to commit the substantive offense. U.S. v. Buford, C.A.5 (Tex.) 1989, 889 F.2d 1406. Conspiracy 44.2

Specific intent is an element of charge of conspiracy to export and attempt to export firearms on United States Munitions List without export license and to sustain conspiracy conviction; evidence must show that defendant agreed to export firearms without requisite licenses despite knowledge that exportation was unlawful. U.S. v. Adames, C.A.11 (Fla.) 1989, 878 F.2d 1374. Conspiracy 28(3)

Where defendants knew that in every count involving Farmers Home Administration borrowers the applicants misrepresented that they possessed the requisite farming or ranching experience to obtain such loan and in all counts loans were not utilized directly for purpose for which they were intended, finding of criminal intent necessary to support conviction for conspiring to convert and converting United States moneys in connection with FmHA loans was not based merely on defendants' possession of FmHA supervised funds. U.S. v. Barnes, C.A.5 (Tex.) 1985, 761 F.2d 1026. Larceny 3(1)

Despite defendant's claim that he was a dupe in alleged scheme to extort money from casino using highly sophisticated bomb, conclusion that defendant had requisite intent was supported by sufficient evidence, including physical appearance of bomb device, delivery involving peculiar circumstances, disguise of delivery van's license plate during delivery, defendant's registering in motel under fictitious name and address and defendant's wiping away all fingerprints in his motel room. U.S. v. Birges, C.A.9 (Nev.) 1984, 723 F.2d 666, certiorari denied 104 S.Ct. 1926, 466 U.S. 943, 80 L.Ed.2d 472, certiorari denied 105 S.Ct. 200, 469 U.S. 863, 83 L.Ed.2d 131. Extortion And Threats 32

In order to be convicted of conspiracy, one must have knowledge of the conspiracy and must intend to join or associate with the objective of conspiracy; one must be aware of the essential nature and scope of the enterprise and must intend to participate. U. S. v. Jordan, C.A.5 (Ala.) 1980, 627 F.2d 683. Conspiracy 40.1

For crime of conspiracy to be proved, there must be evidence sufficient to warrant belief beyond reasonable doubt that defendant intentionally entered into agreement to do illegal act with intention of consummating that act. U. S. v. Alvarez, C.A.5 (Fla.) 1980, 610 F.2d 1250, on rehearing 625 F.2d 1196, certiorari denied 101 S.Ct. 2017, 451 U.S. 938, 68 L.Ed.2d 324. Conspiracy 47(1)

In order to sustain judgment of conviction on charge of conspiracy to violate federal statute, government must prove at least the degree of criminal intent necessary for the substantive offense itself. U. S. v. Wieschenberg, C.A.5 (Fla.) 1979, 604 F.2d 326. Conspiracy 28(1)

Mere knowledge, approval of or acquiescence in the object or purpose of conspiracy, without intention and agreement to cooperate in the crime, is not sufficient to make one a conspirator, but once the existence of a conspiracy is established, slight evidence may be sufficient to connect defendant with it, and requisite evidence connecting defendant to the conspiracy may all be circumstantial in nature. U. S. v. Richardson, C.A.6 (Tenn.) 1979, 596 F.2d 157. Conspiracy 40.1; Conspiracy 47(1); Conspiracy 47(2)

Conspiracy to commit a particular substantive offense cannot exist without at least that degree of criminal intent necessary for substantive offense itself. U. S. v. Malatesta, C.A.5 (Fla.) 1979, 590 F.2d 1379, certiorari denied 99 S.Ct. 1508, 440 U.S. 962, 59 L.Ed.2d 777, certiorari denied 100 S.Ct. 91, 444 U.S. 846, 62 L.Ed.2d 59. Conspiracy 28(1)

The words "any act to effect the object of the conspiracy" in this section require only that the act be intended to have the described effect, not that it actually succeed. U. S. v. Rose, C.A.7 (Ill.) 1978, 590 F.2d 232, certiorari denied 99 S.Ct. 2859, 442 U.S. 929, 61 L.Ed.2d 297. Conspiracy 27

A single act may be foundation for drawing the actor within the ambit of a conspiracy; however, since conviction of conspiracy requires an intent to participate in the unlawful enterprise the single act must be such that one may reasonably infer from it such an intent. U. S. v. Anderson, C.A.7 (Wis.) 1976, 542 F.2d 428. Conspiracy 40.1

Criminal intent required to satisfy a conviction of conspiracy to violate a statute is not greater than that necessary to commit substantive crime. U. S. v. Mauro, C.A.2 (N.Y.) 1974, 501 F.2d 45, certiorari denied 95 S.Ct. 235, 419 U.S. 969, 42 L.Ed.2d 186. Conspiracy 28(1)

Where crime charged is conspiracy, conviction cannot be sustained unless Government establishes beyond reasonable doubt that defendant had specific intent to violate substantive statute. U. S. v. Cangiano, C.A.2 (N.Y.) 1974, 491 F.2d 906, certiorari denied 95 S.Ct. 188, 419 U.S. 904, 42 L.Ed.2d 149, affirmed 95 S.Ct. 204, 419 U.S. 933, 42 L.Ed.2d 162. Conspiracy 47(1)

Conceptually, federal crime of conspiracy requires proof of intent, actual or implied, to violate federal law. U. S. v. Garafola, C.A.6 (Mich.) 1972, 471 F.2d 291. Conspiracy 24.5

Although a conspiracy may have multiple objectives, if one of its objectives even a minor one, be the evasion of federal taxes, offense of conspiring to commit any offense against United States or to defraud the United States is made out, irrespective of fact that primary objective was concealment of another crime. U.S. v. DeNiro, C.A.6 (Ohio) 1968, 392 F.2d 753, certiorari denied 89 S.Ct. 89, 393 U.S. 826, 21 L.Ed.2d 97. Conspiracy 33(7)

Under this section, all that is required is an intent to injure or defraud. U. S. v. Luxenberg, C.A.6 (Ohio) 1967, 374 F.2d 241.

While intent to commit substantive offense is an essential ingredient of crime of conspiracy, offenses are separate and distinct and proof of one is not necessarily proof of the other. Carter v. U. S., C.A.10 (Kan.) 1964, 333 F.2d 354. Conspiracy 28(2)

At least that degree of criminal intent necessary under substantive count must be proved to sustain conviction for conspiracy to commit substantive offense. Danielson v. U. S., C.A.9 (Cal.) 1963, 321 F.2d 441. Conspiracy 24.5

While intent to defraud United States would be substantial element of conspiracy to utter forged instrument, mere showing of intent to defraud without evidence that purpose was to obtain or enable others to obtain sum from United States would not suffice to show conspiracy to forge savings bond, and accordingly instruction not requiring finding of such purpose was prejudicial and "plain error" which would require reversal of conviction

even in absence of compliance with rule 30, Federal Rules of Criminal Procedure, 18 U.S.C.A., respecting instructions. Danielson v. U. S., C.A.9 (Cal.) 1963, 321 F.2d 441. Conspiracy 33(5); Criminal Law 1038.1(4)

Parties to conspiracy to defraud, who did not intend to use mails in connection with the scheme, were not subject to conviction under former § 88 of this title [now this section]. Schwartzberg v. U.S., C.C.A.2 (N.Y.) 1917, 241 F. 348.

A conspiracy includes as an element, a corrupt motive. U.S. v. Moore, C.C.Or.1909, 173 F. 122.

In order to convict bank of conspiracy to defraud the United States, there had to be evidence from which jury could reasonably determine that at least one agent of the bank had specific intent to join the conspiracy to defraud the Government. U.S. v. LBS Bank-New York, Inc., E.D.Pa.1990, 757 F.Supp. 496. Conspiracy 33(2.1)

If with knowledge of a conspiracy and its essential plan a defendant at any point acted with intent to further the conspiracy he is guilty of aiding and abetting it and he need not know all the prior details or all its members, although knowledge of essential nature of plan can be relevant where scope of a coconspirator's assent serves as a basis for holding him responsible for substantive crimes committed by his confederates. U.S. v. Miller, N.D.Ill.1982, 552 F.Supp. 827, affirmed 729 F.2d 1464. Conspiracy 40.1

Intent required for the crime of conspiracy is the same degree of intent as required for the substantive offense alleged to be the object of the conspiracy. U. S. v. Koenig, S.D.N.Y.1974, 388 F.Supp. 670. Conspiracy 24.5

A specific intent to commit substantive offense is an inseparable element of crime of conspiring to defraud United States. U. S. v. Woll, E.D.Pa.1957, 157 F.Supp. 704. Conspiracy 33(1)

Evidence was sufficient to find defendant guilty of mail fraud and conspiracy to commit mail fraud; government was not required, in order to establish intent to defraud, to prove that victim lost money or that defendant wanted victim to lose money. U.S. v. Easton, C.A.8 (S.D.) 2002, 54 Fed.Appx. 242, 2002 WL 31814951, Unreported. Conspiracy 47(5); Postal Service 35(5); Postal Service 49(11)

Jury instructions defining elements of mail fraud and explaining consideration of actual harm to victim as evidence of intent to defraud properly explained fraudulent intent, in prosecution for mail fraud and conspiracy to commit mail fraud; financial or economic harm was not necessary to establish intent to defraud, but existence of scheme could serve as evidence of intent. U.S. v. Easton, C.A.8 (S.D.) 2002, 54 Fed.Appx. 242, 2002 WL 31814951, Unreported. Postal Service 35(5); Postal Service 50

62. Defrauding United States, nature and elements of conspiracy--Generally

That Congress relegated to the criminal law responsibility for dealing with false filings of non-Communist affidavits could not alter character or legal consequences of alleged conspiracy fraudulently to obtain services of National Labor Relations Board on behalf of union by filing false non-communist affidavits, and hence, such alleged conspiracy was fraudulent for purposes of indictment under this section. Dennis v. U. S., U.S.Colo.1966, 86 S.Ct. 1840, 384 U.S. 855, 16 L.Ed.2d 973. Conspiracy 33(2.1)

Charge of conspiracy to commit offense or to defraud United States requires proof of agreement among two or more persons to commit offense against United States, overt act in furtherance of conspiracy, and knowing participation in conspiracy by defendant. U.S. v. Hinkle, C.A.10 (Okla.) 1994, 37 F.3d 576. Conspiracy 28(1); Conspiracy 33(1)

"Defrauding" the government, within meaning of statute prohibiting conspiracies to defraud the United States or

any agency thereof in any manner or for any purpose, means obstructing operation of any government agency by any deceit, craft or trickery, or at least by means that are dishonest. U.S. v. Caldwell, C.A.9 (Or.) 1993, 989 F.2d 1056. Conspiracy 33(1)

To convict defendant of conspiracy to defraud Government, Government must prove agreement to accomplish illegal objective against United States, one or more overt acts in furtherance of illegal purpose, and intent to commit substantive offense; Government, however, need not prove that defendant knew of details of conspiracy, but only that he knew of conspiracy's essential objective. U.S. v. Gaddis, C.A.7 (Ind.) 1989, 877 F.2d 605, 108 A.L.R. Fed. 363. Conspiracy 33(1); Conspiracy 40.1

Agreement between various university officials that each would use his status as project director of job training programs at different state universities and agencies to insure that other entered into contracts financed by federal government and that their consulting fees would be set at amount which allowed them to skim profits fell within proscription of federal statute prohibiting conspiracies to "defraud the United States, or any agency thereof in any manner or for any purpose" [18 U.S.C.A. § 371]. U.S. v. Lane, C.A.9 (Mont.) 1985, 765 F.2d 1376. Conspiracy 33(2.1)

Term "defraud" as used in this section proscribing conspiracy to defraud the United States not only reaches financial or property loss through employment of a deceptive scheme, but also is designed and intended to protect integrity of the United States and its agencies, programs and policies. U. S. v. Burgin, C.A.5 (Miss.) 1980, 621 F.2d 1352, rehearing denied 627 F.2d 239, certiorari denied 101 S.Ct. 574, 449 U.S. 1015, 66 L.Ed.2d 474. Conspiracy 33(1)

To establish conspiracy to defraud the United States, prosecution must prove existence of agreement, overt act by one conspirator in furtherance of objectives of conspiracy, and intent on part of conspirators to agree, as well as to defraud the United States. U. S. v. Shoup, C.A.3 (Pa.) 1979, 608 F.2d 950. Conspiracy 33(1)

Agreement that might defraud the federal government in its functions at some time in the future, followed by an overt act, makes out conspiracy to defraud the United States in connection with the performance of its lawful government functions. U. S. v. Del Toro, C.A.2 (N.Y.) 1975, 513 F.2d 656, certiorari denied 96 S.Ct. 41, 423 U.S. 826, 46 L.Ed.2d 42. Conspiracy 33(1)

Except under unusual circumstances, fraud is essential ingredient of offense of violation of this section by conspiring to defraud United States. U. S. v. Vazquez, C.A.3 (N.J.) 1963, 319 F.2d 381. Conspiracy 33(1)

Agreement to defraud government and overt acts in willing furtherance of it were necessary before agreement became a crime under former § 88 of this title [now this section]. U.S. v. Goldstein, C.C.A.2 (N.Y.) 1943, 135 F.2d 359. Conspiracy 33(1)

"Conspiracy to defraud government" consists of unlawful scheme on which minds of conspirators have met, together with any act to effect object. Eddington v. U.S., C.C.A.8 (Okla.) 1928, 24 F.2d 50. See, also, Houston v. U.S., Wash.1914, 217 F. 852, 133 C.C.A. 562, certiorari denied 35 S.Ct. 284, 238 U.S. 613, 59 L.Ed. 1490. Conspiracy 33(1)

The term "defraud," as used in former § 88 of this title [now this section] was not construed as limited to frauds respecting property rights, but included the deprivation of any right by deception or artifice and was intended to secure the wholesome administration of the laws and affairs of the United States in the interests of the government. U.S. v. Moore, C.C.Or.1909, 173 F. 122. See, also, Haas v. Henkel, C.C.A.N.Y.1909, 166 F. 621, affirmed 30 S.Ct. 249, 216 U.S. 462, 54 L.Ed. 569, 17 Ann.Cas. 1112; U.S. v. Bradford, C.C.La.1905, 148 F. 413, affirmed 152 F. 616, 81 C.C.A. 606, certiorari denied 27 S.Ct. 795, 206 U.S. 563, 51 L.Ed. 1190; U.S. v. Stone, D.C.N.J.1905, 135 F. 392; McGregor v. U.S., Md.1904, 134 F. 187, 69 C.C.A. 477; Curley v. U.S., Mass.1904,

130 F. 1, 64 C.C.A. 369, certiorari denied 25 S.Ct. 787, 195 U.S. 628, 49 L.Ed. 351. Conspiracy 33(1)

Former § 88 of this title [now this section] was not limited in its operation to conspiracies to defraud the United States of its "revenue," but applied to all conspiracies to deprive the United States of any property or dues by means of misrepresentation or concealment of material facts. U.S. v. Owen, D.C.Or.1887, 32 F. 534, 13 Sawy. 53. Conspiracy 33(1)

A conspiracy to defraud the United States comprehends defrauding the United States in any manner whatever, whether the fraud has been declared a criminal fraud or not. U.S. v. Newton, D.C.Iowa 1891, 48 F. 218. See, also, U.S. v. Thompson, C.C.Or.1886, 29 F. 86, 12 Sawy. (U.S.) 151; U.S. v. Gordon, D.C.Minn.1884, 22 F. 250.

Federal conspiracy statute prohibits two types of conspiracies: conspiracy to commit any offense against United States; and conspiracy to defraud United States or any agency thereof. U.S. v. Ashley, E.D.N.Y.1995, 905 F.Supp. 1146. Conspiracy 28(1); Conspiracy 33(1)

Where government prosecuted defendant, division manager of company working on government contracts having cost redeterminable clauses, for conspiracy to defraud United States based on fact that defendant had certain company employees do private work on company time, any conspiracy to defraud was designed against the United States as well as against the company since defendant knew or had reason to know that government contracts contained cost redeterminable clauses. U. S. v. Woll, E.D.Pa.1957, 157 F.Supp. 704. Conspiracy 33(6)

"Defraud," as used in former § 88 of this title [now this section] was not limited to thought of deprivation of property by acts of wile or deceit, or to depredations upon property rights, but was broad enough to include any act which interferes with or hampers United States in successful prosecution of any policy established by law. U.S. v. Soeder, W.D.Mo.1935, 10 F.Supp. 944. See, also, U.S. v. Slater, D.C.Pa.1922, 278 F. 266. Conspiracy 33(1)

To "defraud the United States" within former § 88 of this title [now this section], it was not necessary that persons may have conspired to commit an offense against United States. U.S. v. Soeder, W.D.Mo.1935, 10 F.Supp. 944. Conspiracy 33(1)

To constitute conspiracy to defraud United States, it is not necessary that conspiracy should have been to violate a criminal statute. U.S. v. Terranova, N.D.Cal.1934, 7 F.Supp. 989. See, also, U.S. v. Stone, D.C.N.J.1905, 135 F. 392. Conspiracy 33(1)

63. ---- Agency of United States, defrauding United States, nature and elements of conspiracy

Private corporation which was receiving federal financial assistance and was subject of Federal Government supervision could not itself be treated as "the United States" for purposes of statute prohibiting conspiracies to defraud the United States. Tanner v. U.S., U.S.Fla.1987, 107 S.Ct. 2739, 483 U.S. 107, 97 L.Ed.2d 90, on remand 845 F.2d 266. Conspiracy 33(1)

A conspiracy to "defraud the United States in any manner," as denounced by former § 88 of this title [now this section] included a conspiracy to defraud the United States Emergency Fleet Corporation, which, if successful, would have resulted directly in pecuniary loss to the United States and impair the efficiency of the corporation as a governmental instrumentality. U.S. v. Walter, U.S.Fla.1923, 44 S.Ct. 10, 263 U.S. 15, 68 L.Ed. 137. See, also, U.S. v. Union Timber Products Co., D.C.Wash.1919, 259 F. 907.

Determination that target of conspiracy to defraud was United States or agency thereof, as required for conviction for conspiracy to defraud United States, was supported by evidence that defendant conspired to defraud state agency that was charged with administering Department of Housing and Urban Development (HUD) program. U.S. v. Gjerde, C.A.8 (Minn.) 1997, 110 F.3d 595, rehearing and suggestion for rehearing en banc denied,

certiorari denied 118 S.Ct. 367, 522 U.S. 949, 139 L.Ed.2d 285. Conspiracy 47(6)

This section prohibiting conspiracy to commit an offense against United States did not cover allegedly fraudulent action in violation of sections 1344 and 2113 of this title, taken by officers of corporation to divert corporate proceeds to their own use; offense was not directed against United States. U.S. v. Falcone, C.A.11 (Fla.) 1991, 934 F.2d 1528, rehearing granted and vacated 939 F.2d 1455, opinion reinstated on rehearing 960 F.2d 988, certiorari denied 113 S.Ct. 292, 506 U.S. 902, 121 L.Ed.2d 216. Conspiracy 28(3)

Count of indictment charging defendant with conspiracy to defraud United States and to conceal and cover up material facts in matter within jurisdiction of agency or department of United States required dismissal; indictment specifically alleged that defendant's conduct was aimed directly and exclusively at agencies and officials of county rather than at United States. U.S. v. Hope, C.A.11 (Fla.) 1988, 861 F.2d 1574. Conspiracy 33(1); Indictment And Information 144.1(1)

Conspiracy to frustrate or obstruct Internal Revenue Service's function of ascertaining and collecting income taxes falls within ban of statute proscribing conspiracies to defraud United States, or any agency thereof in any manner or for any purpose. U.S. v. Rosengarten, C.A.2 (N.Y.) 1988, 857 F.2d 76, certiorari denied 109 S.Ct. 799, 488 U.S. 1011, 102 L.Ed.2d 790. Conspiracy 33(7)

Convictions of conspiracy to defraud United States could not be upheld on appeal based on alternate theory that defendants caused private company to make false representations to Rural Electrification Administration, after rejection of principal theory that private corporation, which received federal funding, was the United States or "agency thereof"; Government did not receive or request jury instruction on alternate theory and failed to offer sufficient evidence on alternate theory at trial. U.S. v. Conover, C.A.11 (Fla.) 1988, 845 F.2d 266. Conspiracy 47(6); Conspiracy 48.2(2)

Reconstruction Finance Corporation is direct agency of United States, and conspiracy to obstruct proper use of funds thereof was within former § 88 of this title [now this section]. Langer v. U.S., C.C.A.8 (N.D.) 1935, 76 F.2d 817. Conspiracy 33(3)

A military post exchange, which is a voluntary association of companies, detachments, or other army units at military posts, permitted, but not required, by a special regulation of the War Department for the purpose of conducting for the benefit of the members of such units what is in effect a co-operative store and place of entertainment, with their own funds, and for whose contracts and obligations the United States is not responsible, and in whose funds it has no interest, though its business is conducted by an officer detailed for the purpose, was not a "department of the government," and proof of a conspiracy to defraud a post exchange did not sustain an indictment, under former § 88 of this title [now this section] for conspiracy to defraud the United States. Keane v. U.S., C.C.A.4 (Va.) 1921, 272 F. 577. Conspiracy 33(2.1)

Where a timekeeper and a laborer at the ship building plant at Hog Island conspired together to cause to be issued to the laborer fraudulent time checks, which he was to cash, the two were guilty of conspiracy to defraud the United States, within former § 88 of this title [now this section], the United States Shipping Board Emergency Fleet Corporation, having contracted, as authorized by executive order for the doing of the work on a cost plus basis, the funds expended being those of the United States, and the effect of the conspiracy being to deplete them. U S v. Carlin, E.D.Pa.1917, 259 F. 904. Conspiracy 33(5)

The United States abandons its sovereign capacity when it enters into commercial transactions, so one conspiring to defraud the Panama Railroad Company, of which the United States owned the entire stock, was not guilty of the offense of conspiring to defraud the United States, denounced by former § 88 of this title [now this section]. Salas v. U.S., C.C.A.2 (N.Y.) 1916, 234 F. 842, 148 C.C.A. 440. Conspiracy 33(3)

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Conspiracies to defraud Internal Revenue Service are indictable under general conspiracy statute. U.S. v. Steinmetz, M.D.Pa.1986, 643 F.Supp. 537. Conspiracy 28(3)

Indictment charging defendants with conspiring to defraud federal Government by obstructing and hindering Department of Health, Education and Welfare from properly administering and distributing federal funds pursuant to medical assistance program and of depriving federal Government of New York's honest participation in program through scheme to prevent elimination of podiatric services from New York State medicaid program by illegally influencing public officials adequately alleged offense of conspiracy to defraud United States, in view of pervasive involvement of federal Government in New York State medicaid program. U. S. v. Aloi, E.D.N.Y.1977, 449 F.Supp. 698. Conspiracy 43(10)

Conspiracy, effect of which was to impair integrity and efficiency of Interstate Commerce Commission, is a "conspiracy to defraud United States" of its governmental right to administration of its affairs, free from corruption and improper influence. U.S. v. Bowles, D.C.Me.1958, 183 F.Supp. 237. Conspiracy 33(2.1)

Under this section penalizing conspiracy to commit offense or defraud United States, conspiracy coupled with overt act to defraud United States is crime, and it is not requisite element that overtures be made to government or any agency or department thereof. U.S. v. Waldin, E.D.Pa.1956, 138 F.Supp. 791. Conspiracy 28(1); Conspiracy 33(1)

64. ---- Impairing, obstructing or defeating lawful functions, defrauding United States, nature and elements of conspiracy

To "defraud the United States," or any agency thereof in any manner or for any purpose, within this section is not confined to fraud as that term has been defined in the common law, and it reaches any conspiracy for the purpose of impairing, obstructing, or defeating the lawful function of any department of government. Dennis v. U. S., U.S.Colo.1966, 86 S.Ct. 1840, 384 U.S. 855, 16 L.Ed.2d 973. Conspiracy 33(1)

This section making it unlawful for two or more persons to conspire to commit any offense against United States or to defraud the United States or any agents encompasses not only conspiracies that might involve loss of government funds, but also any conspiracy for purpose of impairing, obstructing or defeating the lawful function of any department of government. U. S. v. Johnson, U.S.Md.1966, 86 S.Ct. 749, 383 U.S. 169, 15 L.Ed.2d 681. Conspiracy 28(1); Conspiracy 33(1)

Former § 88 of this title [now this section] was broad enough in its terms to include any conspiracy for the purpose of impairing, obstructing, or defeating the lawful function of any department of government. Haas v. Henkel, U.S.N.Y.1910, 30 S.Ct. 249, 216 U.S. 462, 54 L.Ed. 569, 17 Am.Ann.Cas. 1112.

Pre-1994 defendant could not be convicted of conspiracy to defraud government, stemming from allegations of illegal structuring, without showing of willfulness, meaning knowledge that structuring was illegal, as willfulness was element of structuring violation itself, and conspiracy count was based on no other type of illegal conduct. U.S. v. Alston, C.A.3 (Pa.) 1996, 77 F.3d 713, rehearing denied. Conspiracy 33(2.1)

In order to convict defendant for conspiring to defraud the United States by interfering with functions of Internal Revenue Service (IRS) in collection of income taxes, government did not have to prove that defendant agreed or had intent to commit substantive tax offense, but only that defendant agreed to interfere with or obstruct United States' ability to collect taxes by defrauding IRS. U.S. v. Cyprian, C.A.7 (Ind.) 1994, 23 F.3d 1189, certiorari denied 115 S.Ct. 211, 513 U.S. 879, 130 L.Ed.2d 139. Conspiracy 33(7)

Obstructing government functions by violence, robbery, or advocacy of illegal action is not "defrauding" within

meaning of statute prohibiting conspiracies to defraud the United States or any agency thereof in any manner or for any purpose. U.S. v. Caldwell, C.A.9 (Or.) 1993, 989 F.2d 1056. Conspiracy 33(2.1)

An information sufficiently alleged conspiracy to defraud United States, although it did not allege that defendants defrauded government of money or property; statute criminalizing conspiracies to defraud United States is broad enough in its terms to include any conspiracy for purpose of impairing, obstructing or defeating lawful function of any department of government. U.S. v. Barker Steel Co., Inc., C.A.1 (Mass.) 1993, 985 F.2d 1123, rehearing denied 985 F.2d 1136. Conspiracy 33(6)

Defendants could be convicted of conspiracy to defraud Internal Revenue Service (IRS) if they knowingly participated in laundering smuggler's drug proceeds and inevitably hindered IRS's ability to collect smuggler's taxes, even though money laundering was legal when defendants acted. U.S. v. Hurley, C.A.1 (Mass.) 1992, 957 F.2d 1, rehearing denied, certiorari denied 113 S.Ct. 60, 506 U.S. 817, 121 L.Ed.2d 28, rehearing denied 113 S.Ct. 1370, 507 U.S. 954, 122 L.Ed.2d 747, denial of post-conviction relief affirmed 1 F.3d 1231. Conspiracy 33(7)

Violation of statute proscribing conspiracies to defraud United States, or any agency thereof in any manner or for any purpose, may be predicated upon conspiracy to impair, obstruct or defeat lawful function of any governmental department. U.S. v. Rosengarten, C.A.2 (N.Y.) 1988, 857 F.2d 76, certiorari denied 109 S.Ct. 799, 488 U.S. 1011, 102 L.Ed.2d 790. Conspiracy 33(1)

Government need not prove that defendants intended to defraud United States of revenue to establish violation of statute prohibiting conspiracies to defraud United States, inasmuch as conspiracy to defraud includes attempts to interfere with or obstruct one of its lawful governmental functions by deceit, craft or trickery, or at least by means that are dishonest. U.S. v. Southland Corp., C.A.2 (N.Y.) 1985, 760 F.2d 1366, certiorari denied 106 S.Ct. 82, 474 U.S. 825, 88 L.Ed.2d 67. Conspiracy 33(2.1)

A conspiracy to defraud the United States need not involve an agreement to defraud the government out of money or property, but only requires an agreement to impede government's lawful functions. U. S. v. Everett, C.A.9 (Cal.) 1982, 692 F.2d 596, certiorari denied 103 S.Ct. 1498, 460 U.S. 1051, 75 L.Ed.2d 930, certiorari denied 103 S.Ct. 1502, 460 U.S. 1053, 75 L.Ed.2d 932. Conspiracy 28(3)

Crime of conspiring to defraud United States includes acts that interfere with or obstruct one of its lawful government functions by deceit, craft or trickery. U. S. v. Turkish, C.A.2 (N.Y.) 1980, 623 F.2d 769, certiorari denied 101 S.Ct. 856, 449 U.S. 1077, 66 L.Ed.2d 800. Conspiracy 33(1)

Wrongful influence of state senator and chairman of appropriations committee on director of the Department of Public Welfare, resulting in the Department's awarding of a contract to another, constituted "defrauding" of the government. U. S. v. Burgin, C.A.5 (Miss.) 1980, 621 F.2d 1352, rehearing denied 627 F.2d 239, certiorari denied 101 S.Ct. 574, 449 U.S. 1015, 66 L.Ed.2d 474. Fraud 68.10(3)

This section prohibiting conspiracy to defraud the United States does not require that government actually be harmed but reaches any conspiracy for purpose of impairing, obstructing or defeating lawful function of a department of government. U. S. v. Shoup, C.A.3 (Pa.) 1979, 608 F.2d 950. Conspiracy 33(1)

This section prohibiting conspiracy to defraud United States is not restricted to acts that cheat United States in pecuniary manner or in a manner concerning property and it is broad enough to encompass interfering with, obstructing or depriving it of one of its lawful administrative functions by deceptive means or means that are at least dishonest. U. S. v. Vazquez, C.A.3 (N.J.) 1963, 319 F.2d 381. Conspiracy 33(1)

To conspire to defraud United States means primarily to cheat United States out of property or money, but it also means to interfere with or obstruct one of its lawful governmental functions by deceit, craft, or trickery, or at least

by means that are dishonest. Harney v. U. S., C.A.1 (Mass.) 1962, 306 F.2d 523, certiorari denied 83 S.Ct. 254, 371 U.S. 911, 9 L.Ed.2d 171. See, also, U.S. v. Klein, C.A.N.Y.1957, 247 F.2d 908, certiorari denied 78 S.Ct. 365, 355 U.S. 924, 2 L.Ed.2d 354; U.S. v. Kaiser, D.C.Ill.1960, 179 F.Supp. 545. Conspiracy 33(1)

Former § 88 of this title [now this section] included any conspiracy to impair or obstruct lawful function of any department. Green v. U.S., C.C.A.8 (Okla.) 1928, 28 F.2d 965. See, also, U.S. v. Gradwell, D.C.R.I.1916, 234 F. 446, affirmed 37 S.Ct. 407, 243 U.S. 476, 61 L.Ed. 857; U.S. v. Dennee, C.C.La.1877, Fed.Cas. No. 14,948; U.S. v. Whalan, D.C.Mass.1868, Fed.Cas. No. 16,669. Conspiracy 33(1)

To "conspire to defraud the United States" means primarily to cheat the government out of money or property, but also means to interfere with or obstruct lawful governmental functions by deceit, craft, or trickery, or dishonest means, and, to annul government contract for conspiracy, property or pecuniary loss is not necessary, if legitimate official action and purpose, has been defeated by misrepresentation, chicane, or overreaching of government agents. U.S. v. Pan-American Petroleum Co., D.C.Cal.1925, 6 F.2d 43, affirmed in part, reversed in part and remanded 9 F.2d 761, certiorari granted 46 S.Ct. 356, 270 U.S. 640, 70 L.Ed. 775, affirmed 47 S.Ct. 416, 273 U.S. 456, 71 L.Ed. 734.

A conspiracy to defraud the United States by corruptly administering an Act of Congress, contrary to the true intent and policy thereof, constituted an indictable offense under former § 88 of this title [now this section]. U.S. v. Moore, C.C.Or.1909, 173 F. 122. Conspiracy 33(1)

Under statutory prohibition against conspiracy to commit offense against or to defraud United States, it is not necessary for Government to establish intent to defraud United States of money or property interest; rather, it is sufficient that defendant engaged in acts that interfered with or obstructed lawful government function by deceit, craft, trickery, or dishonest means. U.S. v. Sprecher, S.D.N.Y.1992, 783 F.Supp. 133, 117 A.L.R. Fed. 767, affirmed 988 F.2d 318, habeas corpus denied, affirmed 50 F.3d 3, certiorari denied 116 S.Ct. 299, 516 U.S. 913, 133 L.Ed.2d 205. Conspiracy 28(1); Conspiracy 33(1)

Offense of conspiracy to defraud the United States includes conspiracy to impede, instruct, and defeat the lawful functions of the Internal Revenue Service and the ascertainment, computation, assessment and collection of federal income tax. U.S. v. Weiner, E.D.Mich.1991, 755 F.Supp. 748, affirmed 988 F.2d 629, certiorari denied 114 S.Ct. 142, 510 U.S. 848, 126 L.Ed.2d 105. Conspiracy 33(7)

This section providing for criminal penalties if two or more persons conspire either to commit any offense against United States, or to defraud United States, or any agency thereof, in any manner or for any purpose, was broad enough to include conspiracy for purpose of impairing, obstructing, or defeating lawful function of any department of federal government, and the phrase "conspire to defraud the United States" includes within its meaning interference with or obstruction of one of functions of federal government by deceit, craft, trickery or dishonesty. U. S. v. Pezzati, D.C.Colo.1958, 160 F.Supp. 787. Conspiracy 28(1); Conspiracy 33(1)

The words "defraud the government" as used in this section providing that when two or more persons conspire to defraud government they may be prosecuted under this section, have been broadened to include interference with or hampering any legitimate government activity. U.S. v. Belisle, W.D.Wash.1951, 107 F.Supp. 283. Conspiracy 33(1)

Conspiracy is an "evil" within rule that either means or end of conspiracy must be evil, to frustrate or impede a government function, whether that function is performed under a constitutional or an unconstitutional law. U.S. v. Rhoads, D.C.D.C.1942, 48 F.Supp. 175. Conspiracy 33(1)

Conspiring to delay and withhold valuable tools from defense use, to injury of United States, was conspiracy to do a criminal act, since interference with a governmental function of United States was "defrauding" United States

within former § 88 of this title [now this section]. U.S. v. Rhoads, D.C.D.C.1942, 48 F.Supp. 175. Conspiracy 33(2.1)

If the object of a conspiracy is to deprive the United States of its rights and privileges or proper functioning of any agency through which it acts, offense of conspiring to defraud the United States is complete. U.S. v. Furer, S.D.Cal.1942, 47 F.Supp. 402. Conspiracy 33(1)

65. ---- Importance of information, defrauding United States, nature and elements of conspiracy

In context of conspiracy to defraud United States or agency thereof, it is not necessary to prove that deceived agency was actually influenced, and defendant accused of seeking to deceive by means of false statement may not claim that statement was not influential or information not important. U.S. v. Smith, C.A.9 (Wash.) 1989, 891 F.2d 703, amended on other grounds 906 F.2d 385, certiorari denied 111 S.Ct. 47, 498 U.S. 811, 112 L.Ed.2d 23, denial of post-conviction relief affirmed 964 F.2d 885. Conspiracy 33(2.1)

66. ---- Pecuniary loss to government, defrauding United States, nature and elements of conspiracy

Defendant who conspired with others to gain control of federally insured bank in manner which circumvented the reporting requirements of the Change in Bank Control Act was guilty of conspiring to "defraud" the United States in violation of federal statute, notwithstanding that conspirators did not deprive Government of any money or property or engage in conduct recognized as criminal by any other statute. U.S. v. Tuohey, C.A.9 (Cal.) 1989, 867 F.2d 534. Conspiracy 33(2.1)

Conspiracy to commit offense or to defraud United States need not cause any monetary loss to the government, so long as it interferes with or obstructs the government's lawful functions. U.S. v. Puerto, C.A.11 (Fla.) 1984, 730 F.2d 627, certiorari denied 105 S.Ct. 162, 469 U.S. 847, 83 L.Ed.2d 98. Conspiracy 28(1); Conspiracy 33(1)

Conspiracy in violation of this section proscribing conspiracy to commit offense or to defraud United States need not cause any monetary loss to government, so long as defendants interfere with or obstruct its lawful functions. (Per J. Skelly Wright, Circuit Judge, with two Judges concurring in the result.) In re Sealed Case, C.A.D.C.1982, 676 F.2d 793, 219 U.S.App.D.C. 195. Conspiracy 33(1)

In order to sustain finding of conspiracy to defraud the United States in the performance of its lawful government functions, it is not necessary that the agreement be to defraud the government out of money; it need only impede its lawful functions. U. S. v. Del Toro, C.A.2 (N.Y.) 1975, 513 F.2d 656, certiorari denied 96 S.Ct. 41, 423 U.S. 826, 46 L.Ed.2d 42. Conspiracy 33(1)

To support conviction of conspiring to defraud the United States, it is not necessary to show that the government was subjected to property or pecuniary loss by the fraud, but only that its legitimate official action and purpose had been defeated. U. S. v. Jacobs, C.A.2 (N.Y.) 1973, 475 F.2d 270, certiorari denied 94 S.Ct. 116, 414 U.S. 821, 38 L.Ed.2d 53, certiorari denied 94 S.Ct. 131, 414 U.S. 821, 38 L.Ed.2d 53. Conspiracy 33(1)

Neither pecuniary loss to the United States nor receipt of consideration is essential to a finding of violation of this section relating to conspiracy to defraud United States. U. S. v. Peltz, C.A.2 (N.Y.) 1970, 433 F.2d 48, certiorari denied 91 S.Ct. 974, 401 U.S. 955, 28 L.Ed.2d 238. Conspiracy 33(1)

In order to justify conviction for conspiracy to defraud United States, it is enough to show scheme whereby, through fraud, federal funds in normal course will be diverted from their true and lawful object. Harney v. U. S., C.A.1 (Mass.) 1962, 306 F.2d 523, certiorari denied 83 S.Ct. 254, 371 U.S. 911, 9 L.Ed.2d 171. Conspiracy

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A scheme designed to interfere with or obstruct a department or an agency of the government in respect of one or more of its lawful functions, by deceit, craft, chicanery, or trickery, attended by an overt act of one or more of the conspirators, in furtherance of the purpose, was within former § 88 of this title [now this section] though pecuniary or property loss to the government was not contemplated and did not result. Heald v. U. S., C.A.10 (Colo.) 1949, 175 F.2d 878, certiorari denied 70 S.Ct. 101, 338 U.S. 859, 94 L.Ed. 526, certiorari denied 70 S.Ct. 102, 338 U.S. 859, 94 L.Ed. 526. See, also, Hammerschmidt v. U.S., C.C.A.Ohio 1923, 287 F. 817, reversed on other grounds 44 S.Ct. 511, 265 U.S. 182, 68 L.Ed. 968; U.S. v. Terranova, D.C.Cal.1934, 7 F.Supp. 989. Conspiracy 33(1)

Under former § 88 of this title [now this section] to conspire to "defraud the United States" meant among other things to interfere with or obstruct one of its lawful governmental functions by dishonest means, and it was not necessary that the government shall have been subjected to property or pecuniary loss by the fraud. Braatelien v. U. S., C.C.A.8 (N.D.) 1945, 147 F.2d 888. See, also, U.S. v. Harding, 1936, 81 F.2d 563, 65 App.D.C. 161; Langer v. U.S., C.C.A.N.D.1935, 76 F.2d 817; U.S. v. Soeder, D.C.Mo.1935, 10 F.Supp. 944. Conspiracy 33(1)

That total value of cement allegedly lost to the government was $27 was no test of defendants' guilt to conspire to defraud the government by delivering underweight bags of cement to government project and obtaining payment of false and fraudulent claims. Mininsohn v. U.S., C.C.A.3 (N.J.) 1939, 101 F.2d 477. Conspiracy 38

Money granted or loaned to state by Reconstruction Finance Corporation or by Federal Emergency Relief Administrator did not cease to constitute funds of federal agencies, and persons charged with conspiracy to obstruct use thereof were not relieved from application of former § 88 of this title [now this section]. Langer v. U.S., C.C.A.8 (N.D.) 1935, 76 F.2d 817. Conspiracy 33(3)

Subjection of United States to financial loss is not essential to "conspiracy to defraud government." Wallenstein v. U.S., C.C.A.3 (N.J.) 1928, 25 F.2d 708, certiorari denied 49 S.Ct. 13, 278 U.S. 608, 73 L.Ed. 534. Conspiracy 33(1)

The fact that war materials were not worth more than defendant bid therefor was not inconsistent with existence of fraud in bringing about a sale, and a conviction for conspiracy to defraud the government was not thereby rendered improper. Browne v. U. S., C.C.A.6 (Mich.) 1923, 290 F. 870. Conspiracy 33(6)

Financial loss by the government is not a necessary element of the offense of conspiracy to defraud the United States. Wolf v. U.S., C.C.A.7 (Ill.) 1922, 283 F. 885, certiorari denied 43 S.Ct. 164, 260 U.S. 743, 67 L.Ed. 492. See, also, U.S. v. Amster, D.C.N.Y.1921, 273 F. 532; Gouled v. U.S., C.C.A.N.Y.1921, 273 F. 506; Stager v. U.S., Ohio 1915, 223 F. 510, 147 C.C.A. 396. Conspiracy 33(1)

The federal government, while in control and management of the railroads in pursuance of law, was a bailee for hire thereof, and as such had a special ownership of the railroad property sufficient to sustain a conviction for conspiracy to defraud the government by taking such property, under former § 88 of this title [now this section]. Fowler v. U.S., C.C.A.9 (Wash.) 1921, 273 F. 15. Conspiracy 33(3)

A conspiracy to secure for a person not duly elected to Congress the compensation payable to a congressman, was a conspiracy to inflict a property loss on the government, if such loss was necessary to the offense prohibited by former § 88 of this title [now this section]. U. S. v. Aczel, D.C.Ind.1915, 219 F. 917. Conspiracy 33(2.1)

It is not necessary that there should have been a purpose to defraud the United States of a thing of pecuniary value, or that the conspiracy should have been successful, or that the conspirators received pecuniary advantage therefrom. U.S. v. Bradford, C.C.E.D.La.1905, 148 F. 413, affirmed 152 F. 616, 81 C.C.A. 606, certiorari denied

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27 S.Ct. 795, 206 U.S. 563, 51 L.Ed. 1190. Conspiracy 25

It was not necessary, to sustain an indictment under former § 88 of this title [now this section] which made it an offense to conspire "to defraud the United States in any manner or for any purpose," that the consummation of the conspiracy would have caused pecuniary loss to the government, where the defendants were its officers or employé s. McGregor v. U.S., C.C.A.4 (Md.) 1904, 134 F. 187, 69 C.C.A. 477. Conspiracy 33(1)

To defraud the United States, within the meaning of former § 88 of this title [now this section], did not necessarily mean to do the United States a pecuniary injury, and any willful or corrupt misconduct on the part of an official of the Post Office Department, that operates to impair the administration of the affairs of that department, works a wrong to the United States and does them some substantial injury, within the meaning of said former section, and such injury may have been pecuniary in its nature, or one of general damage, not of a specific character, susceptible of certain ascertainment and pecuniary compensation. Tyner v. U.S., App.D.C.1904, 23 App.D.C. 324. Postal Service 36

Even absent proof of a governmental pecuniary loss from an alleged conspiracy to bribe General Services Administration employees, it was clear that defendant's activities undermined a lawful function of the Administration, and the Government thus proved a conspiracy to defraud it. U. S. v. Lowell, D.C.N.J.1980, 490 F.Supp. 897, affirmed 649 F.2d 950. Conspiracy 47(6)

Under this section making it a crime to conspire to defraud the United States, the fraud involved need not be pecuniary, and this section is broad enough to deal with unlawful means of interferences with governmental functions. U S v. Bonanno, S.D.N.Y.1959, 177 F.Supp. 106, on subsequent appeal 285 F.2d 408. Conspiracy 33(1)

That there was no profit accruing to defendants charged with conspiring to defraud the United States of money appropriated in connection with the National Industrial Recovery Act, Act of June 16, 1933, c. 90, 48 Stat. 195, or that there was no corrupt purpose would not necessarily relieve them to proper inferences of guilt if otherwise the testimony supported the charge. U.S. v. Haskins, W.D.Mo.1941, 40 F.Supp. 219. Conspiracy 33(2.1)

To make out case of conspiracy to defraud United States, any impairment of administration of governmental function will suffice without financial or property loss. U.S. v. Terranova, N.D.Cal.1934, 7 F.Supp. 989. Conspiracy 33(1)

A concert of action and of intent, though there was no pecuniary consideration or a definite absolute contract between the parties, was sufficient to constitute a conspiracy to defraud the United States, under former § 88 of this title [now this section]. U.S. v. Allen, C.C.N.Y.1868, 24 F.Cas. 772, No. 14432.

67. ---- Private benefits, defrauding United States, nature and elements of conspiracy

Fact that defendant received no money from conspiracy involving making of false statements to savings and loan to facilitate improper loan did not foreclose conviction inasmuch as defendant's participation in conspiracy resulted in his becoming head of savings and loan's wholly owned subsidiary and receiving significant salary. U.S. v. Smith, C.A.9 (Wash.) 1989, 891 F.2d 703, amended on other grounds 906 F.2d 385, certiorari denied 111 S.Ct. 47, 498 U.S. 811, 112 L.Ed.2d 23, denial of post-conviction relief affirmed 964 F.2d 885. Conspiracy 33(2.1)

An agreement whereby a federal employee will act to promote a private benefit in breach of his duty comes within this section relating to conspiracy to defraud United States if the proper functioning of the government is significantly affected thereby. U. S. v. Peltz, C.A.2 (N.Y.) 1970, 433 F.2d 48, certiorari denied 91 S.Ct. 974, 401 U.S. 955, 28 L.Ed.2d 238. Conspiracy 33(1)

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68. ---- Title to property, defrauding United States, nature and elements of conspiracy

Conspiracy to sell surplus army goods contrary to agreement or regulation not to do so, if entered into after title to goods had passed to defendants, would not constitute crime of conspiracy to defraud United States. U.S. v. Byers, C.C.A.2 (N.Y.) 1934, 73 F.2d 419. Conspiracy 33(6)

In a prosecution for conspiracy to defraud the United States by retaining more than proper share of proceeds from selling astray railroad freight, it is immaterial whether the government had the right to sell the freight, since it was at least a bailee of the goods, and entitled to possession of the proceeds as against defendants. U.S. v. U.S. Brokerage & Trading Co., S.D.N.Y.1919, 262 F. 459. Conspiracy 33(6)

Under a contract between the United States and one of the defendants for the manufacture of leather jerkins, which required the United States to furnish the linings, title did not pass, so that the contractor and a confederate, who conspired to obtain linings from the United States in excess of needs and sell the same, etc., were guilty of violating former §§ 87 and 88 [now this section] of this title. Borman v. U.S., C.C.A.2 (N.Y.) 1919, 262 F. 26. Conspiracy 33(6)

69. ---- False representations, defrauding United States, nature and elements of conspiracy

Wrongfully obtaining possession of non-dutiable merchandise by withholding facts concerning bill of lading was not "defrauding" of government within meaning of former § 88 of this title [now this section]. U.S. v. Cohn, U.S.Ill.1926, 46 S.Ct. 251, 270 U.S. 339, 70 L.Ed. 616. United States 121

Where alien's wife entered into marriage in good faith and with no knowledge of his ulterior motive, his representation to immigration authorities that he was actually married was not a false representation and he could not be convicted for violation of false statement provisions and conspiracy on the basis of such representation. U. S. v. Diogo, C.A.2 (N.Y.) 1963, 320 F.2d 898. Conspiracy 28(3); Fraud 68.10(1)

An agreement, accompanied by one or more overt acts, for concert of action by insurance agents to bring about the guarantee by Veterans Administration of premiums on policies procured by false representations constituted conspiracy to defraud the United States. Berenbeim v. U. S., C.C.A.10 (Colo.) 1947, 164 F.2d 679, certiorari denied 68 S.Ct. 454, 333 U.S. 827, 92 L.Ed. 1113. Conspiracy 33(6)

70. ---- False personation, defrauding United States, nature and elements of conspiracy

Conspiracy to have another plead guilty of violation of National Prohibition Act, former § 1 et seq. of Title 27, and suffer penalty, instead of guilty persons, was punishable as conspiracy to defraud. Cendagarda v. U.S., C.C.A.10 (Utah) 1933, 64 F.2d 182. Conspiracy 33(2.1)

Where defendant H., desiring to procure appointment as a letter carrier, a position in the classified civil service of the United States, unlawfully agreed with defendant C. that the latter should falsely impersonate H. at a civil service examination, and do all acts required by the examiners, and sign H.'s name to the examination papers to be delivered to C. for examination while be should impersonate H. and C., in pursuance of such conspiracy, gained entrance to the examination, and falsely signed H.'s name to a declaration sheet which was required to be in the handwriting and on the honor of the applicant, such acts constituted a conspiracy to defraud the United States, prohibited by former § 88 of this title [now this section]. Curley v. U S, C.C.A.1 (Mass.) 1904, 130 F. 1, 64 C.C.A. 369, certiorari denied 25 S.Ct. 787, 195 U.S. 628, 49 L.Ed. 351.

Where an applicant for a government clerkship filed a sworn application in the form required for an examination by the civil service commission, and was afterwards notified by postal card to appear for examination at a time stated, and by previous arrangement, another person, impersonating the applicant, presented himself for

examination, and filled out a paper known as the "Declaration Sheet," which contained questions concerning the applicant, and signed the applicant's name thereto, these two persons were indictable, under former §§ 72 and 88 [now this section] of this title, which denounced respectively the offense of conspiring to commit any offense against the United States or to defraud the United States, and the offense of falsely making, altering, or forging various enumerated papers, including affidavits or other writings, for the purpose of defrauding the United States. U S v. Bunting, E.D.Pa.1897, 82 F. 883.

Conspiring to commit a fraud upon the government, by forging papers and impersonating an applicant in an examination before civil service commissioner, was an offense under former § 88 of this title. U S v. Bunting, E.D.Pa.1897, 82 F. 883.

71. ---- Postal offenses, defrauding United States, nature and elements of conspiracy

A conspiracy to increase the gross receipts of a postoffice upon which the postmaster's salary is to be fixed by the unlawful sale and purchase at that office of large quantities of stamps for use in mailing matter outside the delivery of such office, is one to defraud the United States, especially when the postmaster of the office where the stamps are to be used receives a fixed salary. U.S. v. Foster, U.S.Mass.1914, 34 S.Ct. 666, 233 U.S. 515, 58 L.Ed. 1074. Conspiracy 33(2.1)

Defendant was improperly convicted of conspiracy to defraud the United States where government neither pled nor proved agreement on essential nature of fraud, and evidence showed that although defendant made false entries in accounts payable records at postal service head-quarters, thereby obtaining checks drawn on United States Treasury which were payable to individuals having no claim to payment from postal service, he did not reveal his true actions to coconspirator, but led him to believe that checks were valid and that purpose of having coconspirator "launder" such check was to help some payees evade taxes and to help other payees conceal kickbacks on government contracts. U. S. v. Rosenblatt, C.A.2 (N.Y.) 1977, 554 F.2d 36. Conspiracy 43(12)

Where defendants, charged with conspiring to obstruct movement of mails, were shown to have conspired to stop railroad transportation in certain areas, those defendants in area in which railroad carried no mail were properly found guilty along with others under evidence that conspiracy would have failed if activities in any area had not occurred. U.S. v. Anderson, C.C.A.7 (Ill.) 1939, 101 F.2d 325, certiorari denied 59 S.Ct. 822, 307 U.S. 625, 83 L.Ed. 1502, certiorari denied 59 S.Ct. 822, 307 U.S. 625, 83 L.Ed. 1503, certiorari denied 59 S.Ct. 823, 307 U.S. 625, 83 L.Ed. 1503, certiorari denied 59 S.Ct. 823, 307 U.S. 625, 83 L.Ed. 1504, certiorari denied 59 S.Ct. 823, 307 U.S. 625, 83 L.Ed. 1504, 86 L.Ed. 1504, certiorari denied 59 S.Ct. 824, 307 U.S. 625, 83 L.Ed. 1505, certiorari denied 59 S.Ct. 824, 307 U.S. 625, 83 L.Ed. 1506, certiorari denied 59 S.Ct. 825, 307 U.S. 625, 83 L.Ed. 1506, certiorari denied 59 S.Ct. 825, 307 U.S. 625, 83 L.Ed. 1507, certiorari denied 59 S.Ct. 825, 307 U.S. 625, 83 L.Ed. 1508, certiorari denied 59 S.Ct. 826, 307 U.S. 625, 83 L.Ed. 1508, certiorari denied 59 S.Ct. 826, 307 U.S. 625, 83 L.Ed. 1509. Conspiracy 40

A scheme whereby the publishers of a newspaper attempted to procure the special rate to publishers of one cent a pound, instead of the transient rate of four cents a pound, by deceiving the postoffice employees as to the circulation of the paper, did not constitute a conspiracy to defraud the United States, where the paper was entitled under the law to the one cent a pound rate for its entire issue. U.S. v. Atlanta Journal Co., C.C.N.D.Ga.1911, 185 F. 656, error dismissed 33 S.Ct. 775, 229 U.S. 605, 57 L.Ed. 1348. Conspiracy 33(2.1)

On the trial of one indicted for conspiring to defraud the United States by mailing old newspapers for the purpose of fraudulently increasing the weight of mail matter (transported over a railway post route during a period fixed by the postal authorities for weighing such mail matter, as a basis for ascertaining the additional compensation to be paid the railway company), it is not necessary, to justify a verdict of guilty, that the conspiracy should have been formed and in full existence prior to the weighing of such fraudulent mail matter, and it is sufficient if the defendant and any other person at any time during the weighing formed a common design to defraud the

government in connection with such weighing, and that then the defendant or such other person committed an overt act in connection therewith. U.S. v. Atlanta Journal Co., C.C.N.D.Ga.1911, 185 F. 656, error dismissed 33 S.Ct. 775, 229 U.S. 605, 57 L.Ed. 1348.

Government could charge defendants in connection with scheme to bribe federal employee to refer fellow employees to private hospital for which defendants worked under "defraud" clause of general conspiracy statute, rather than "offense" clause; facts alleged did not constitute only conspiracy to violate single statute, but, rather, violated at least two statutes, alleged conspiracy extended beyond statutory offenses and included efforts to conceal offensive conduct, and defendants' ability to prepare for trial was not prejudiced as government adequately delineated overt acts. U.S. v. Jackson, D.Kan.1994, 850 F.Supp. 1481. Conspiracy 43(6); Conspiracy 43(10); Criminal Law 29(3)

72. ---- Mail fraud, defrauding United States, nature and elements of conspiracy

Offense of conspiracy to commit mail fraud requires that fraudulent scheme be object of conspiracy and that it be reasonably foreseeable that mails will be used in furtherance of scheme. U. S. v. Shelton, C.A.7 (Ill.) 1982, 669 F.2d 446, certiorari denied 102 S.Ct. 1989, 456 U.S. 934, 72 L.Ed.2d 454. Conspiracy 28(3)

Where mails were necessarily used in interstate banking transactions in which defendants deposited as "currency" worthless checks usually drawn on out-of-state banks and then, after determining that currency credits had occurred, withdrew cash from accounts before check-clearing process returned original, now dishonored checks, use of mails by defendants, two of whom were experienced businessmen and the other a state university finance major, was foreseeable and relation of scheme, success of which depended on delay caused by use of mail in check-clearing process, and the mail was sufficiently close to justify application of this section and section 1341 of this title. U. S. v. Johnston, C.A.5 (Fla.) 1977, 547 F.2d 282, rehearing denied 550 F.2d 1285, certiorari denied 97 S.Ct. 2660, 431 U.S. 942, 53 L.Ed.2d 261, rehearing denied 98 S.Ct. 249, 434 U.S. 882, 54 L.Ed.2d 167, rehearing denied 98 S.Ct. 1288, 434 U.S. 1089, 55 L.Ed.2d 796. Postal Service 35(10)

Defendant's knowing participation in a scheme to defraud is an essential element of mail fraud and of conspiracy to commit mail fraud. Windsor v. U. S., C.A.9 (Idaho) 1967, 384 F.2d 535. Postal Service 35(5)

Acts innocent in themselves may in combination constitute a "fraud" or intention to commit fraud, as basis of conviction of violating Securities Act, § 77q of Title 15, of using the mails to defraud and of conspiracy to effect scheme to defraud. Holmes v. U. S., C.C.A.8 (Neb.) 1943, 134 F.2d 125, certiorari denied 63 S.Ct. 1434, 319 U.S. 776, 87 L.Ed. 1722. Postal Service 35(10); Securities Regulation 193

The essence of the offense of "conspiracy" to use the mails in furtherance of a scheme to defraud is two or more persons combining with the intent and purpose of committing a public offense by doing an unlawful act or doing a lawful act in an unlawful manner, and it is not essential that the agreement be in any specified form or that any particular words be used, but it is enough if the minds of the parties meet and unite in an understanding way to accomplish a common purpose. Pietch v. U.S., C.C.A.10 (Okla.) 1940, 110 F.2d 817, certiorari denied 60 S.Ct. 1100, 310 U.S. 648, 84 L.Ed. 1414. Conspiracy 23.1

The offense of conspiracy to use the mails in furtherance of a scheme to defraud consists of a scheme devised or intended to be devised to defraud and use of mails in execution or attempted execution thereof. U.S. v. McNamara, C.C.A.2 (N.Y.) 1937, 91 F.2d 986. Conspiracy 32

To establish criminal liability of officers and directors of mortgage guaranty company for conspiracy to use mails to defraud in sale of mortgage participation certificates, proof of intentional combination to defraud public, although not expressly agreed on, would be sufficient to establish scheme to defraud if government showed that combination was willful and intentional, that defendants deliberately worked together to accomplish fraudulent

purpose, and that overt acts were performed by one or more of conspirators in furtherance of common objective. U.S. v. McNamara, C.C.A.2 (N.Y.) 1937, 91 F.2d 986. Conspiracy 47(5)

Scheme to use mails to defraud, criminally shared among several participating therein, becomes "conspiracy." U.S. v. Herzig, D.C.N.Y.1928, 26 F.2d 487. Conspiracy 32

That defendants, charged under this section with mailing letters pursuant to joint scheme to defraud, and with conspiracy, had no belief that stocks had the value ascribed to them by letters, was sufficient to constitute offense. Van Riper v. U.S., C.C.A.2 (N.Y.) 1926, 13 F.2d 961, certiorari denied 47 S.Ct. 102, 273 U.S. 702, 71 L.Ed. 848. Conspiracy 32; Postal Service 35(5)

Prosecution, for mailing letters pursuant to joint scheme to defraud and for conspiracy, did not involve separate schemes to defraud, because of continuance of same scheme by different defendants. Van Riper v. U.S., C.C.A.2 (N.Y.) 1926, 13 F.2d 961, certiorari denied 47 S.Ct. 102, 273 U.S. 702, 71 L.Ed. 848. Conspiracy 43(12); Postal Service 48(8)

A scheme to induce persons to purchase stock under the false representation that they were purchasing treasury stock was held within former §§ 88 [now this section] and 338 of this title. Myers v. U.S., C.C.A.2 (N.Y.) 1915, 223 F. 919, 139 C.C.A. 399, certiorari denied 37 S.Ct. 13, 242 U.S. 627, 61 L.Ed. 535. Postal Service 35(12)

The use of the mails in a scheme to defraud was made a crime by former § 338 of this title, and it was the depositing in or the taking out of a letter pursuant to such scheme that constituted the offense, and a conspiracy to commit the offense was a confederating together of two or more persons to carry out a scheme of that kind in that way. Marrin v. U S, C.C.A.3 (Pa.) 1909, 167 F. 951, 93 C.C.A. 351, certiorari denied 32 S.Ct. 523, 223 U.S. 719, 56 L.Ed. 629.

Where accused and others conspired to further a scheme to defraud through the Post Office Department, each overt act of mailing a letter pursuant to such scheme or withdrawing a letter from the post office warranted a charge of conspiracy to commit such offense, so that an indictment therefor would not shield from a subsequent indictment for another conspiracy of the same person to commit another and additional offense, though of the same kind. Francis v. U S, C.C.A.3 (Pa.) 1907, 152 F. 155, 81 C.C.A. 407, certiorari denied 27 S.Ct. 797, 206 U.S. 565, 51 L.Ed. 1191.

73. ---- Tax collection, defrauding United States, nature and elements of conspiracy

Defendants could be convicted of conspiracy to defraud the United States based on their attempt to frustrate collection of taxes on illegal gambling income despite their claims that they could be convicted only if they violated a specific tax provision and that they had no general duty to assist Internal Revenue Service (IRS) in its effort to collect taxes. U.S. v. Goulding, C.A.7 (Ill.) 1994, 26 F.3d 656, rehearing and suggestion for rehearing en banc denied, post-conviction relief denied 1994 WL 687458, affirmed 92 F.3d 1187, certiorari denied 117 S.Ct. 690, 519 U.S. 1059, 136 L.Ed.2d 614, rehearing denied 117 S.Ct. 1121, 520 U.S. 1111, 137 L.Ed.2d 321, certiorari denied 115 S.Ct. 673, 513 U.S. 1061, 130 L.Ed.2d 605, rehearing denied 115 S.Ct. 957, 513 U.S. 1136, 130 L.Ed.2d 899. Conspiracy 33(7)

Charged conspiracy against the United States whereby defendants set up complex system of foreign and domestic organizations, made transactions among corporations, and opened foreign bank accounts to prevent Internal Revenue Service (IRS) from performing its auditing and assessment functions, committed wide variety of income tax violations, and engaged in numerous acts to conceal income could be charged as conspiracy to defraud the United States, rather than as conspiracy to commit specific internal revenue offenses, considering totality and scope of conspiracy; only broad defraud clause of conspiracy statute could adequately cover all nuances of charged conspiracy. U.S. v. Sturman, C.A.6 (Ohio) 1991, 951 F.2d 1466, rehearing denied, certiorari denied 112 S.Ct.

2964, 504 U.S. 985, 119 L.Ed.2d 586, post-conviction relief denied. Criminal Law 29(3)

Mere failure to disclose taxable income would not be sufficient to show crime of conspiring to defraud United States. U.S. v. Klein, C.A.2 (N.Y.) 1957, 247 F.2d 908, certiorari denied 78 S.Ct. 365, 355 U.S. 924, 2 L.Ed.2d 354. Conspiracy 33(7)

Government could charge defendants with single conspiracy under "defraud" clause of federal conspiracy statute, rather than with multiple conspiracies under statute's "offense" clause, even though charge was based on specific alleged violations of internal revenue laws; government alleged conspiracy spanning 20 years and touching upon at least four provisions of Internal Revenue Code, Fair Labor Standards Act, and social security withholding requirements, and there was no danger of confusion over charges being brought. U.S. v. Gambone, E.D.Pa.2000, 125 F.Supp.2d 128. Conspiracy 43(10)

74. Lawful acts, nature and elements of conspiracy

An act lawful when done by one may become wrongful when done by many acting in concert, taking on the form of a conspiracy, which may be prohibited, if the result be hurtful to the public, or to the individual against whom the concerted action is directed. F. T. C. v. Raymond Bros.-Clark Co., U.S.Iowa 1924, 44 S.Ct. 162, 263 U.S. 565, 68 L.Ed. 448. See, also, U.S. v. Waltham Watch Co., D.C.N.Y.1942, 47 F.Supp. 524. Conspiracy 25

Mere agreement to advance a lawful object cannot support a conspiracy charge. U.S. v. Fernandez, C.A.11 (Fla.) 1989, 892 F.2d 976, certiorari dismissed 110 S.Ct. 2201, 495 U.S. 944, 109 L.Ed.2d 527. Conspiracy 25

Fact that certain actions of either defendant, when viewed as separate occurrences, may not have been illegal did not eliminate their illegality when together they constituted a plan of influence for pay the result of which was to deprive the government of the unobstructed operations of its federally funded program. U. S. v. Burgin, C.A.5 (Miss.) 1980, 621 F.2d 1352, rehearing denied 627 F.2d 239, certiorari denied 101 S.Ct. 574, 449 U.S. 1015, 66 L.Ed.2d 474. Conspiracy 33(2.1)

Acts lawful in themselves lose that character when they become elements of conspiracy, but prosecution must first prove existence of conspiracy and fact that defendant knowingly participated in it. U. S. v. Palacios, C.A.5 (Tex.) 1977, 556 F.2d 1359. Conspiracy 23.1

That alleged coconspirators had identifiable, verifiable, legitimate purpose for communicating supports assumption of innocence of their contacts, but does not preclude possibility that there were other, less admirable purposes at same time. U. S. v. Kompinski, C.A.2 (N.Y.) 1967, 373 F.2d 429. Conspiracy 44.2

Where unlawful agreement is set up, even though means intended to be used are entirely legal, if ultimate objective be criminal, a conspiracy is alleged. Yates v. U. S., C.A.9 (Cal.) 1955, 225 F.2d 146, certiorari granted 76 S.Ct. 104, 350 U.S. 860, 100 L.Ed. 763, certiorari granted 76 S.Ct. 105, 350 U.S. 860, 100 L.Ed. 763, reversed on other grounds 77 S.Ct. 1064, 354 U.S. 298, 1 L.Ed.2d 1356. Conspiracy 25

The agreement which forms the basis of a conspiracy may be to do an unlawful act or to do a lawful act in an unlawful manner or through unlawful means. Wilder v. U.S., C.C.A.10 (Okla.) 1938, 100 F.2d 177. Conspiracy 25

If the purpose of a conspiracy was unlawful and was carried out either by lawful or unlawful means, former § 88 of this title [now this section] was violated. Marino v. U.S., C.C.A.9 (Cal.) 1937, 91 F.2d 691, certiorari denied 58 S.Ct. 410, 302 U.S. 764, 82 L.Ed. 593. Conspiracy 25

A combination to effect an unlawful object through lawful means may constitute a criminal conspiracy. U.S. v.

Rintelen, S.D.N.Y.1916, 233 F. 793. Conspiracy 26

Concerted activity for an unlawful purpose is unlawful, even though acts of each individual, taken separately, may be legal. Brown for and on Behalf of N. L. R. B. v. American Federation of Television and Radio Artists, San Francisco Local, N.D.Cal.1961, 191 F.Supp. 676. Conspiracy 1.1

If purpose of conspiracy is unlawful it may not be carried out even by means that otherwise would be legal; it therefore need not itself be a crime; still less the very crime that is the object of the conspiracy; it may be a wholly innocent act. U. S. v. Gilboy, M.D.Pa.1958, 160 F.Supp. 442. Conspiracy 26

A "conspiracy" cannot be grounded upon the doing of a lawful act unless the means are unlawful. U.S. v. Food and Grocery Bureau of Southern California, S.D.Cal.1942, 43 F.Supp. 966. See, also, U.S. v. Food and Grocery Bureau of Southern California, D.C.Cal.1942, 43 F.Supp. 974, affirmed 139 F.2d 973. Conspiracy 26

75. Overt acts, nature and elements of conspiracy--Generally

Mere association of two or more persons to accomplish legal and possibly illegal goals, accompanied by discussions to promote those goals, but with no discernible direction toward either the legal or illegal objectives does not amount to criminal conduct under conspiracy statute. U. S. v. Moschetta, C.A.5 (Fla.) 1982, 673 F.2d 96. Conspiracy 24(1)

To sustain conspiracy conviction there must be proof of agreement among two or more persons to accomplish something that constitutes offense against the United States, and an overt act by one of them in furtherance of conspiracy. U. S. v. Lichenstein, C.A.5 (Ga.) 1980, 610 F.2d 1272, certiorari denied 100 S.Ct. 2991, 447 U.S. 907, 64 L.Ed.2d 856. Conspiracy 23.1

To make out crime of conspiracy, once unlawful agreement is shown, proof of single overt act in furtherance of that agreement by single conspirator establishes guilt of each member of conspiracy; it is unnecessary to show that any other conspirator was present in commission of that overt act. U. S. v. Veltre, C.A.5 (Tex.) 1979, 591 F.2d 347 . Conspiracy 27

In addition to an agreement of two or more persons to combine their efforts to achieve an illegal purpose, an overt act by one person in favor of the agreement is necessary to establish a conspiracy. U. S. v. Anderson, C.A.7 (Wis.) 1976, 542 F.2d 428. Conspiracy 27

The "overt act" requirement for charging a conspiracy under the general conspiracy statute does not apply where a particular type of conspiracy has been made a specific, substantive offense, i.e., is permissible on the common-law footing. U. S. v. Bermudez, C.A.2 (N.Y.) 1975, 526 F.2d 89, certiorari denied 96 S.Ct. 2166, 425 U.S. 970, 48 L.Ed.2d 793. Conspiracy 27

"Overt act" is an outward act done in pursuance of crime and a manifestation of an intent or design, looking toward accomplishment of crime. Chavez v. U. S., C.A.9 (Cal.) 1960, 275 F.2d 813. Conspiracy 27

In a criminal conspiracy, the conspiracy is the gist of the crime, and the function of the overt act is to show that agreeing or conspiring has progressed from field of thought and talk into action and it completes the offense. Hoffman v. Halden, C.A.9 (Or.) 1959, 268 F.2d 280. Conspiracy 27

The conspiracy alone cannot constitute offense of conspiracy to violate federal statute, but overt act required by this section must be added, so that such act is not merely evidence of conspiracy, but constitutes execution or part execution thereof, and successive overt acts are but steps toward accomplishment of conspiracy. Huff v. U.S., C.A.5 (Ga.) 1951, 192 F.2d 911, certiorari denied 72 S.Ct. 560, 342 U.S. 946, 96 L.Ed. 703. Conspiracy 27

18 U.S.C.A. § 371

Conspiracy is made up of unlawful agreement and overt act to further it, and is not complete without the overt act. Hunnicutt v. U.S., C.C.A.5 (Ga.) 1945, 149 F.2d 888, certiorari denied 66 S.Ct. 99, 326 U.S. 757, 90 L.Ed. 455. See, also, Blumenthal v. U.S., C.C.A.Cal.1946, 158 F.2d 883, rehearing denied 158 F.2d 762, certiorari denied 67 S.Ct. 1307, 331 U.S. 799, 91 L.Ed. 1824, affirmed 68 S.Ct. 248, 332 U.S. 539, 92 L.Ed. 154, rehearing denied 68 S.Ct. 385, 332 U.S. 856, 92 L.Ed. 425. Conspiracy 24(1)

The gist of conspiracy is making illegal agreements, combinations, confederacy or conspiracy, and overt acts are simply steps along the route or movements in the direction of consummation. Takahashi v. U.S., C.C.A.9 (Wash.) 1944, 143 F.2d 118. Conspiracy 27

The commission of the offense-object toward which an illegal agreement to commit an offense against the United States is directed can be an overt act. U.S. v. Offutt, App.D.C.1942, 127 F.2d 336, 75 U.S.App.D.C. 344. Conspiracy 27

An overt act is a part of the conspiracy itself, and not mere evidence of a conspiracy. Smith v. U.S., C.C.A.9 (Hawai'i) 1937, 92 F.2d 460. Conspiracy 27

Purpose of requiring overt act is to afford a locus poenitentiae, when conspirators may abandon unlawful purpose. U.S. v. Olmstead, D.C.Wash.1925, 5 F.2d 712. Conspiracy 27

A conspiracy is not effective until an overt act is committed by one or more of the conspirators, and therefore no prosecution can be had until that time, and then only against those consciously participating at the time in the effectuation of the unlawful purpose. U.S. v. Eccles, C.C.Or.1910, 181 F. 906.

The conspiracy is the essence of the crime, while the act done is a mere concrete indication of the conspiracy. Daly v. U S, C.C.A.1 (Mass.) 1909, 170 F. 321, 95 C.C.A. 107.

The agreement of combination was the offense, but performance of the act to effectuate it was necessary to make it indictable under former § 88 of this title [now this section]. U S v. Sacia, D.C.N.J.1880, 2 F. 754. Conspiracy 27

"Overt act" is any transaction or event, even one which may be entirely innocent when considered alone, which is knowingly committed by a conspirator in an effort to accomplish some object of the conspiracy. U. S. v. Masiello, D.C.S.C.1980, 491 F.Supp. 1154. Conspiracy 27

76. ---- Independent act, overt acts, nature and elements of conspiracy

To sustain a conviction under this section relating to a conspiracy to commit an offense against or to defraud the United States, the prosecution must demonstrate an unlawful agreement and at least one independent act in furtherance of the agreement, but it need not show that the conspirators committed the substantive crime which is charged in the indictment as the object of the conspiracy, nor is it necessary to substantiate each of the overt acts alleged in the indictment. U. S. v. Williams, C.A.5 (Ga.) 1973, 474 F.2d 1047. Conspiracy 43(12)

The "overt act" of a conspiracy must be a subsequent independent act following the conspiracy and done to carry into effect the object thereof, and cannot succeed the completion of the contemplated crime. Hall v. U.S., C.C.A.10 (Okla.) 1940, 109 F.2d 976. See, also, U.S. v. McGee, D.C.Wyo.1952, 108 F.Supp. 909. Conspiracy 27

Overt act must be independent of conspiracy. U.S. v. Grossman, D.C.N.Y.1931, 55 F.2d 408. See, also, Joplin Mercantile Co. v. U.S., Mo.1915, 35 S.Ct. 291, 236 U.S. 531, 535, 59 L.Ed. 705. Conspiracy 27

An overt act, required to constitute conspiracy, must be a subsequent independent act, following the complete agreement or conspiracy, and done to carry into effect the object of the original combination. U.S. v. Richards, D.C.Neb.1906, 149 F. 443. Conspiracy 27

The unity essential to a conspiracy is derived from the assent of members to contribute to a common enterprise; seemingly independent transactions may be revealed as parts of a single conspiracy by their place in a pattern of regularized activity involving a significant continuity of membership. U.S. v. Fernandez, E.D.Tex.1983, 576 F.Supp. 397, affirmed 777 F.2d 248, certiorari denied 106 S.Ct. 1493, 475 U.S. 1096, 89 L.Ed.2d 895, certiorari denied 106 S.Ct. 2921, 476 U.S. 1184, 91 L.Ed.2d 549. Conspiracy 24(3)

Different acts and statements of each defendant relied upon to establish charges against him and his knowing participation in claimed conspiracy are not to be viewed in isolation; they are to be considered in their relation to his other acts and statements, and the totality of his conduct is to be viewed in its relation to totality of conduct of each other defendant. U. S. v. Beigel, S.D.N.Y.1966, 254 F.Supp. 923, affirmed 370 F.2d 751, certiorari denied 87 S.Ct. 2049, 387 U.S. 930, 18 L.Ed.2d 989, certiorari denied 87 S.Ct. 2053, 387 U.S. 930, 18 L.Ed.2d 989, certiorari denied 87 S.Ct. 2062, 387 U.S. 936, 18 L.Ed.2d 998. Conspiracy 47(1)

77. ---- Illegality or criminality, overt acts, nature and elements of conspiracy

In a prosecution for conspiracy, it is not necessary that an overt act be the substantive crime charged in the indictment as the object of the conspiracy nor that such an act, taken by itself, even be criminal in nature, since the function of the overt act in a conspiracy prosecution is simply to manifest that the conspiracy is at work. Yates v. U. S., U.S.Cal.1957, 77 S.Ct. 1064, 354 U.S. 298, 1 L.Ed.2d 1356. Conspiracy 5

The overt act, without proof of which a charge of "conspiracy" cannot be submitted to jury, may be that of only a single one of conspirators and need not be itself a crime. Braverman v. U.S., U.S.Mich.1942, 63 S.Ct. 99, 317 U.S. 49, 87 L.Ed. 23. Conspiracy 27

While an overt act, done to effect the object of a conspiracy, is essential to render a conspiracy punishable, such an act need not be a criminal act, much less an act constituting the crime that is the object of the conspiracy. U.S. v. Holte, U.S.Wis.1915, 35 S.Ct. 271, 236 U.S. 140, 59 L.Ed. 504. See, also, Newton v. U.S., 1922, 42 S.Ct. 589, 259 U.S. 586, 66 L.Ed. 1076; U.S. v. Rabinowich, N.Y.1915, 35 S.Ct. 682, 238 U.S. 78, 59 L.Ed. 1211; Joplin Mercantile Co. v. U.S., Mo.1915, 35 S.Ct. 291, 236 U.S. 531, 59 L.Ed. 705; Carter v. U.S., C.A.Kan.1964, 333 F.2d 354; Curtis v. U.S., C.C.A.Colo.1933, 67 F.2d 943; Coates v. U.S., C.C.A.Cal.1932, 59 F.2d 173; Heskett v. U.S., C.C.A.Cal.1932, 58 F.2d 897, certiorari denied 53 S.Ct. 89, 287 U.S. 643, 77 L.Ed. 556; Luxemberg v. U.S., C.C.A.W.Va.1930, 45 F.2d 497, certiorari denied 51 S.Ct. 345, 283 U.S. 820, 75 L.Ed. 1436; U.S. v. Austin-Bagley Corporation, C.C.A.N.Y.1929, 31 F.2d 229, certiorari denied 49 S.Ct. 479, 279 U.S. 863, 73 L.Ed. 1002; Blaine v. U.S., C.C.A.Tex.1929, 29 F.2d 651, certiorari denied 49 S.Ct. 342, 279 U.S. 845, 73 L.Ed. 990; Cook v. U.S., C.C.A.Okl.1928, 28 F.2d 730; U.S. v. Eisenminger, D.C.Del.1926, 16 F.2d 816; Felder v. U.S., C.C.A.N.Y.1925, 9 F.2d 872, certiorari denied 46 S.Ct. 348, 270 U.S. 648, 70 L.Ed. 779; Williams v. U.S., C.C.A.Tenn.1925, 3 F.2d 933; Brolaski v. U.S., C.C.A.Cal.1922, 279 F. 1, certiorari denied 42 S.Ct. 381, 258 U.S. 625, 66 L.Ed. 797; Manning v. U.S., C.C.A.Mo.1921, 275 F. 29; Grayson v. U.S., C.C.A.Tenn.1921, 272 F. 553, certiorari denied 42 S.Ct. 49, 257 U.S. 637, 66 L.Ed. 409; Clark v. U.S., C.C.A.Mo.1920, 265 F. 104; U.S. v. Bogy, D.C.Tenn.1936, 16 F.Supp. 407, affirmed 96 F.2d 734, certiorari denied 59 S.Ct. 68, 305 U.S. 608, 83 L.Ed. 387.

Overt act necessary to establish conspiracy need not be substantive crime that is object of conspiracy, nor even criminal in character; its function is to show operation of conspiracy; on the other hand, it does not follow that an overt act cannot be another crime. U.S. v. Medina, C.A.1 (Puerto Rico) 1985, 761 F.2d 12. Conspiracy 27

An overt act in furtherance of a criminal conspiracy need not itself be criminal. U.S. v. Andreen, C.A.9 (Cal.)

1980, 628 F.2d 1236. Conspiracy 27

Overt act need not itself be criminal act, as its only function is to demonstrate that conspiracy is operative. U. S. v. Buckner, C.A.9 (Cal.) 1979, 610 F.2d 570, certiorari denied 100 S.Ct. 1646, 445 U.S. 961, 64 L.Ed.2d 235. Conspiracy 27

For purposes of charging conspiracy, overt acts required to be stated need not be criminal in themselves. U. S. v. Sterkel, C.A.10 (Colo.) 1970, 430 F.2d 1262. Conspiracy 43(5)

As regards criminal conspiracy, requisite overt act need not be substantive offense which is object of conspiracy, and it need not in itself be a wrong. Jordan v. U. S., C.A.10 (Okla.) 1966, 370 F.2d 126, certiorari denied 87 S.Ct. 1484, 386 U.S. 1033, 18 L.Ed.2d 595, rehearing denied 87 S.Ct. 2110, 388 U.S. 924, 18 L.Ed.2d 1379. Conspiracy 27

Overt act charged by prosecution as having been done in furtherance of conspiracy need not itself be a crime or part of offense charged, and is proved only to eliminate possibility of abandonment of conspiracy. Castro v. U. S., C.A.5 (Fla.) 1961, 296 F.2d 540. Conspiracy 27

The commission of an overt act pursuant to the formation of an illegal agreement need not constitute a crime in order to establish a conspiracy. Poliafico v. U. S., C.A.6 (Ohio) 1956, 237 F.2d 97, certiorari denied 77 S.Ct. 590, 352 U.S. 1025, 1 L.Ed.2d 597, rehearing denied 77 S.Ct. 718, 353 U.S. 931, 1 L.Ed.2d 725. Conspiracy 27

In ordinary conspiracy cases, overt act proven need not have inherent criminal attributes or connotations, if it carries illegal design into field of action. Yates v. U. S., C.A.9 (Cal.) 1955, 225 F.2d 146, certiorari granted 76 S.Ct. 104, 350 U.S. 860, 100 L.Ed. 763, certiorari granted 76 S.Ct. 105, 350 U.S. 860, 100 L.Ed. 763, reversed on other grounds 77 S.Ct. 1064, 354 U.S. 298, 1 L.Ed.2d 1356. Conspiracy 27

Overt acts need not be in themselves criminal, and still less need they constitute the crime that is the object of the conspiracy nor need it appear that all conspirators join in them or any one of them. U. S. v. Aderman, C.A.7 (Wis.) 1951, 191 F.2d 980, certiorari denied 72 S.Ct. 366, 342 U.S. 927, 96 L.Ed. 691, rehearing denied 72 S.Ct. 552, 342 U.S. 950, 96 L.Ed. 706. Conspiracy 15; Conspiracy 27

An "overt act in furtherance of conspiracy" need not necessarily be a criminal act; an innocent act by a third party, if caused by previous act or conduct of a conspirator, is sufficient. U. S. v. Johnson, C.C.A.3 (Pa.) 1947, 165 F.2d 42, certiorari denied 68 S.Ct. 355, 332 U.S. 852, 92 L.Ed. 421, motion granted 68 S.Ct. 357, rehearing denied 68 S.Ct. 457, 333 U.S. 834, 92 L.Ed. 1118, certiorari denied 68 S.Ct. 355, 332 U.S. 852, 92 L.Ed. 422. Conspiracy 27

Although to support charge of conspiracy there must be proof of an overt act, it need not be in itself a criminal act, but it must be an act done in furtherance of conspiracy. Rose v. U.S., C.C.A.9 (Cal.) 1945, 149 F.2d 755. Conspiracy 27

An essential element of "conspiracy" against United States is intent to commit crime against United States or to defraud United States, and it is not necessary to conviction that accused perform any overt act or that conspiracy succeed, but conviction may rest on proof of doing of any overt act by any of accused's coconspirators to effect object of conspiracy, and it is not necessary that overt act in itself be prohibited by law. Bergen v. U. S., C.C.A.8 (N.D.) 1944, 145 F.2d 181. Conspiracy 27; Conspiracy 28(3); Conspiracy 33(1)

The overt act need not in itself be criminal nor need it constitute the crime that is the subject of conspiracy, and acquittal of conspiracy is no bar to prosecution for substantive crime even when that was the overt act charged in conspiracy count. Holmes v. U. S., C.C.A.8 (Neb.) 1943, 134 F.2d 125, certiorari denied 63 S.Ct. 1434, 319 U.S.

776, 87 L.Ed. 1722. Conspiracy 27; Double Jeopardy 151(3.1)

An "overt act" which completes crime of conspiracy to violate federal law is something apart from conspiracy and is an act to effect the object of the conspiracy, and need be neither a criminal act, nor crime that is object of conspiracy, but must accompany or follow agreement and must be done in furtherance of object of agreement. Marino v. U.S., C.C.A.9 (Cal.) 1937, 91 F.2d 691, certiorari denied 58 S.Ct. 410, 302 U.S. 764, 82 L.Ed. 593. See, also, U.S. v. Schneiderman, D.C.Cal.1952, 106 F.Supp. 906. Conspiracy 27

To constitute "conspiracy," not more than one of the conspirators need take part in the overt act, and the overt act need not of itself be a crime. Tramp v. U.S., C.C.A.8 (Neb.) 1936, 86 F.2d 82. Conspiracy 27

That overt acts charged under former § 88 of this title [now this section], did not constitute an offense or were insufficient to effect a crime was not an objection if they tended to effect the object of the conspiracy. U.S. v. Ault, W.D.Wash.1920, 263 F. 800. Conspiracy 27

The overt acts in execution or furtherance of the conspiracy, may be innocent or criminal. U.S. v. Rogers, N.D.N.Y.1915, 226 F. 512. See, also, Clark v. U.S., C.C.A.Mo.1920, 265 F. 104.

One cannot be held for conspiracy to do an act which is not a crime. Woo Wai v. U.S., C.C.A.9 (Cal.) 1915, 223 F. 412, 137 C.C.A. 604.

The fact that the overt act charged to have been committed may constitute a substantive offense on the part of one or more of the accused under the statute which they conspired to violate does not relieve them from liability to prosecution for the conspiracy at least where such offense is also a misdemeanor. U.S. v. Thomas, W.D.Mo.1906, 145 F. 74. See, also, U.S. v. Britton, Mo.1883, 2 S.Ct. 531, 108 U.S. 199, 27 L.Ed. 698; U.S. v. Rogers, D.C.N.Y.1915, 226 F. 512; McConkey v. U.S., Minn.1909, 171 F. 829, 96 C.C.A. 501.

Overt act in support of conspiracy need not be, in and of itself, criminal. U.S. v. Brown, E.D.Va.1992, 784 F.Supp. 322. Conspiracy 27

Overt act need not itself be unlawful to warrant prosecution for conspiracy. U. S. v. Kane, S.D.N.Y.1965, 243 F.Supp. 746. Conspiracy 27

An overt act must be taken by at least one of the conspirators in pursuance of the agreement to effect object of conspiracy; such overt act need not itself be a crime; still less need it be the very crime that is object of the conspiracy. U. S. v. Anthony, M.D.Pa.1956, 145 F.Supp. 323. Conspiracy 27

"Overt act" is vital element when grounded in this section and mere conspiracy, without overt act done in pursuance thereof, is not criminally punishable, but overt act need not be of itself criminal act and still less need it constitute very crime which is object of conspiracy. U.S. v. Waldin, E.D.Pa.1956, 138 F.Supp. 791. Conspiracy 27

Under former § 88 of this title [now this section] requiring, in addition to the unlawful agreement, the commission of an overt act to effect the object of the conspiracy, the overt act was not a part of the conspiracy and may or may not have constituted a crime itself. U.S. v. Halbrook, E.D.Mo.1941, 36 F.Supp. 345. Conspiracy 27

An overt act need not be in itself criminal; it is the agreement which is punishable, not the overt act, which is the means of executing the crime of conspiracy. U S v. Stromberg, S.D.N.Y.1957, 22 F.R.D. 513. Conspiracy 27

78. ---- Furtherance of conspiracy, overt acts, nature and elements of conspiracy

Conviction for conspiracy to commit money laundering does not require proof of an overt act in furtherance of the conspiracy; given the clarity of the statutory text, mere silence in the legislative history did not justify reading an overt-act requirement or a cross-reference to text of general conspiracy statute into the statute governing conspiracy to commit money laundering. Whitfield v. U.S., U.S.2005, 125 S.Ct. 687, 543 U.S. 209, 160 L.Ed.2d 611. Conspiracy 28(3)

Overt acts in prosecution for conspiracy to defraud the United States by operation of a tax fixing ring are meaningful only if they are within scope of conspiratorial agreement, and if such agreement did not, expressly or impliedly, contemplate that conspiracy would continue in its efforts to protect taxpayers in order to immunize them from tax prosecution, then scope of agreement could not be broadened retroactively by fact that conspirators took steps after conspiracy which incidentally had that effect. Grunewald v. U.S., U.S.N.Y.1957, 77 S.Ct. 963, 353 U.S. 391, 1 L.Ed.2d 931. Conspiracy 27

Evidence that son of defendant, a drug supplier, was transporting cocaine on defendant's behalf, and that he also transported aliens at the same time, was insufficient to demonstrate that son was transporting aliens on defendant's behalf in furtherance of conspiracy involving one of defendant's dealers to bribe a public official to aid in illegal green-card operation to pay for drugs; son testified that he was transporting aliens at request of the dealer, for which he was to be paid, and there was no evidence of any conversation between defendant and his son near the date of transport. U.S. v. Ceballos, C.A.2 (N.Y.) 2003, 340 F.3d 115. Conspiracy 47(6)

Finding defendant used her position in Department of Housing and Urban Development to facilitate funding for rehabilitation in project, thus committing overt act in furtherance of conspiracy to defraud the government, was supported by evidence that she was approached by representatives of developers and indicated that application would be looked upon favorably, that she later indicated that she was pleased with proposal and that it would have her support, and that the funding was provided. U.S. v. Dean, C.A.D.C.1995, 55 F.3d 640, 312 U.S.App.D.C. 75, rehearing in banc denied, certiorari denied 116 S.Ct. 1288, 516 U.S. 1184, 134 L.Ed.2d 232. Conspiracy 47(6)

Overt acts in furtherance of the conspiracy may be proved by evidence used to prove the substantive offense. U. S. v. Watson, C.A.8 (Ark.) 1982, 677 F.2d 689. Conspiracy 47(1)

After agreeing to unlawful plan to transport property worth more than $5,000 in interstate commerce, conspiracy was complete when first overt act was perpetrated to advance cause. U. S. v. Tombrello, C.A.11 (Ala.) 1982, 666 F.2d 485, certiorari denied 102 S.Ct. 2279, 456 U.S. 994, 73 L.Ed.2d 1291. Conspiracy 27

Overt act of conspiracy need not be a completed offense or ultimate goal of conspiracy and need only be an action taken in furtherance of conspiracy by one or more of the conspirators. U. S. v. Murzyn, C.A.7 (Ind.) 1980, 631 F.2d 525, certiorari denied 101 S.Ct. 1373, 450 U.S. 923, 67 L.Ed.2d 351. Conspiracy 27

This section requires proof both of an agreement and overt act in furtherance of it; however, overt act need not be criminal in nature or create a danger to victim or society; it suffices if, however innocent, act furthers criminal venture. U. S. v. Alvarez, C.A.5 (Fla.) 1980, 610 F.2d 1250, on rehearing 625 F.2d 1196, certiorari denied 101 S.Ct. 2017, 451 U.S. 938, 68 L.Ed.2d 324. Conspiracy 27

If an accused's participation in conspiracy has been established, accused is culpable for everything said, written or done by any of other conspirators in furtherance of common purpose of conspiracy. U. S. v. Overshon, C.A.8 (Mo.) 1974, 494 F.2d 894, certiorari denied 95 S.Ct. 142, 419 U.S. 878, 42 L.Ed.2d 118, certiorari denied 95 S.Ct. 96, 419 U.S. 853, 42 L.Ed.2d 85. Conspiracy 41

To establish the essential elements of conspiracy to rob bank, proof had to show that defendant agreed with one or more other persons to combine their efforts to rob bank, and it also had to show an overt act by one conspirator in

furtherance of that agreement. U. S. v. Edwards, C.A.5 (Fla.) 1974, 488 F.2d 1154. Conspiracy 28(3)

In prosecution for making wilful misrepresentations on claim forms for payment from United States for physical therapy services, and for conspiracy, conduct of defendant doctor subsequent to time that claims were filed by nonphysician defendant was germane only to extent that such conduct supported inference that he had planned with such nonphysician defendant to file the claims containing the misrepresentation, and physician's conduct upon receipt of checks in payment of claims could not constitute overt act in furtherance of conspiracy, which had run its course eo instante upon filing of the claims. U.S. v. Peterson, C.A.5 (Tex.) 1974, 488 F.2d 645, certiorari denied 95 S.Ct. 49, 419 U.S. 828, 42 L.Ed.2d 53. Conspiracy 27

A "conspiracy," in violation of this section making it unlawful to conspire to commit any offense against the United States or to defraud the United States, is an inchoate and distinct crime that requires proof of both an agreement to do some unlawful act and some act in furtherance of the agreement. U. S. v. Harvey, C.A.5 (Fla.) 1972, 464 F.2d 1286, certiorari denied 93 S.Ct. 1399, 410 U.S. 938, 35 L.Ed.2d 604. Conspiracy 28(1)

In prosecution for conspiracy to rob federally insured bank, there was sufficient proof of overt act in furtherance of conspiracy where, if jury believed government witness, her testimony proved first overt act, that conspirators had driven route to and from bank to make sure that they knew route and to check things out otherwise, and where circumstantial evidence proved that one conspirator had arranged to have automobile stolen and delivered. U.S. v. Bazinet, C.A.8 (Minn.) 1972, 462 F.2d 982, certiorari denied 93 S.Ct. 453, 409 U.S. 1010, 34 L.Ed.2d 303. Conspiracy 47(11)

It is necessary for conviction of conspiracy that conspirator be found to have committed one of overt acts in furtherance of the conspiracy. U. S. v. Goodwin, C.A.10 (Okla.) 1972, 455 F.2d 710, certiorari denied 93 S.Ct. 146, 409 U.S. 859, 34 L.Ed.2d 105. Conspiracy 27

Defendant in counterfeiting conspiracy prosecution could be found to have furthered continuing object of conspiracy, i.e., disposal of currency, by leaving his share of counterfeit money with another participant and permitting its storage, even if he otherwise had parted company with group. U. S. v. Gonzalez-Carta, C.A.2 (N.Y.) 1969, 419 F.2d 548. Conspiracy 40.4

A particular defendant charged with conspiracy need not commit any specific alleged overt act as long as one of his coconspirators was involved in an overt act and in order to be guilty of conspiracy one need only knowingly contribute his efforts in furtherance of conspiracy. U. S. v. Francisco, C.A.8 (Minn.) 1969, 410 F.2d 1283. Conspiracy 41

This section does not require "mission accomplished", only "mission attempted", and an overt act by conspirators in effort to accomplish mission satisfies requirement of this section. Cross v. U. S., C.A.8 (Ark.) 1968, 392 F.2d 360.

Offense of conspiracy is complete when agreement is made to commit unlawful act and any overt act is made in furtherance of agreement whether or not contemplated crime is consummated. Cave v. U. S., C.A.8 (Iowa) 1968, 390 F.2d 58, certiorari denied 88 S.Ct. 2059, 392 U.S. 906, 20 L.Ed.2d 1365. Conspiracy 28(2)

Commission by one of conspirators of overt act to effect object of conspiracy is essential element of conspiring to transport forged securities in interstate commerce. Hansen v. U. S., C.A.9 (Wash.) 1963, 326 F.2d 152. Conspiracy 27

To constitute a conspiracy, an overt act must accompany or follow the agreement, and it must be done in furtherance of the object of it. Williams v. U.S., C.A.4 (N.C.) 1959, 271 F.2d 703. Conspiracy 27

18 U.S.C.A. § 371

Generally, an overt act must be one in furtherance of the conspiracy and not one which occurs after the conspiracy has ended, but the termination of the conspiracy need not coincide with the completion of the crime nor even with the arrest of a conspirator. Cleaver v. U. S., C.A.10 (Colo.) 1956, 238 F.2d 766. Conspiracy 27

Although innocent in itself, an overt act is sufficient to complete the crime of conspiracy if performed in furtherance thereof, for the overt act merely manifests that conspiracy is at work. Carlson v. U. S., C.A.10 (Kan.) 1951, 187 F.2d 366, certiorari denied 71 S.Ct. 1000, 341 U.S. 940, 95 L.Ed. 1367, rehearing denied 72 S.Ct. 22, 342 U.S. 843, 96 L.Ed. 637. Conspiracy 27

The "overt act" of a conspiracy must reach far enough toward the accomplishment of desired result to at least amount to commencement of the consummation, and if act of a conspirator be done with purpose of putting the unlawful agreement into effect, it is sufficient as an "overt act," though it has no tendency to accomplish its object. Hall v. U.S., C.C.A.10 (Okla.) 1940, 109 F.2d 976. Conspiracy 27

It was enough that "any act" of one of the conspirators "to effect the object of the conspiracy," under former § 88 of this title [now this section], made an element of the offense of conspiracy against the United States, have been done with the purpose of putting the unlawful agreement into effect, though it had no tendency to accomplish its object. Collier v. U. S., C.C.A.5 (Ala.) 1918, 255 F. 328, 166 C.C.A. 498. Conspiracy 27

Acts alleged to have been done in furtherance of a conspiracy to defraud the United States were constituted overt acts committed within the jurisdiction of the court. U.S. v. Burke, S.D.N.Y.1914, 218 F. 83. Criminal Law 97(1); Conspiracy 27

The overt act must be directed to the attainment of the object which brings the conspiracy within the class made criminal. Lonabaugh v. U.S., C.C.A.8 (Wyo.) 1910, 179 F. 476, 103 C.C.A. 56.

To constitute an indictable conspiracy there must be some overt act, which must tend to carry out the object of the conspiracy, or in some way effectuate it, and if the conspiracy ceases without an overt act it would not constitute an offense, though when consummated it is the conspiracy rather than the overt act which constitutes the crime. U.S. v. McLaughlin, D.C.Minn.1908, 169 F. 302. Conspiracy 27

In order to establish conspiracy to commit offense against United States in violation of former § 88 of this title [now this section], there had to be not only an agreement or combination to commit crime or unlawful purpose, but also an overt act apart from conspiracy, done to carry object of original combination into effect. U.S. v. Cole, W.D.Tex.1907, 153 F. 801. Conspiracy 27

"The words 'any act to effect the object of the conspiracy' apply as well to an act which of itself fully accomplishes that object as to an act merely in furtherance of it." Berkowitz v. U S, C.C.A.3 (Pa.) 1899, 93 F. 452, 35 C.C.A. 379.

In conspiracy prosecution under general conspiracy statute, government is required to allege and prove commission of at least one overt act in furtherance of conspiratorial agreement that occurred within five-year statute of limitations period. U.S. v. Treto, S.D.Fla.1995, 904 F.Supp. 1374. Conspiracy 27

Coconspirator's liability as participant in conspiracy does not depend on his awareness of total membership or full extent of conspiracy, so long as he understands and agrees to its common object and acts in furtherance of some conspiratorial purpose. U. S. v. Allied Asphalt Paving Co., N.D.Ill.1978, 451 F.Supp. 804. Conspiracy 40.1

"Overt act" need not be in and of itself of such character as to be integral part of conspiracy, such that failure of it would cause collapse of planned object, and act itself may be lawful and of no particular significance by itself, but if it is directed toward desired object which is unlawful, it is punishable. U.S. v. Waldin, E.D.Pa.1956, 138

18 U.S.C.A. § 371

F.Supp. 791. Conspiracy 27

An "overt act," required to be shown to warrant conviction of conspiracy, is any act committed by one of conspirators to effect an object or accomplish a purpose of conspiracy. U. S. v. Schneiderman, S.D.Cal.1952, 106 F.Supp. 906. Conspiracy 27

79. ---- Necessity for violation of other statutes, overt acts, nature and elements of conspiracy

Former § 83 of this title, so far as it declared that every person who enters into any agreement, combination, or conspiracy to defraud the government of the United States, or any department or officer thereof, by obtaining, or aiding to obtain, the payment or allowance of any false or fraudulent claim, shall be punished without requiring any act in furtherance of the conspiracy, was modified by former § 88 of this title [now this section], so that a mere conspiracy, without some overt act in execution of it, was not an indictable offense. U.S. v. Reichert, C.C.Cal.1887, 32 F. 142, 12 Sawy. 643. Conspiracy 27; Conspiracy 33(1)

Conspiracies under Sherman Act, §§ 1 to 7 of Title 15, are complete when formed and overt acts in furtherance of conspiracy, which were essential under former § 88 of this title [now this section], are no part of the offense. U.S. v. Safeway Stores, Maryland, D.C.Kan.1943, 51 F.Supp. 448, reversed 144 F.2d 824, certiorari denied 65 S.Ct. 121, 323 U.S. 768, 89 L.Ed. 615, certiorari granted 65 S.Ct. 132, 323 U.S. 699, 89 L.Ed. 564, certiorari granted 65 S.Ct. 133, 323 U.S. 699, 89 L.Ed. 564, certiorari denied 65 S.Ct. 188, 323 U.S. 777, 89 L.Ed. 621, reversed 65 S.Ct. 661, 324 U.S. 293, 89 L.Ed. 951. Monopolies 29

Under former § 1138d(f) of Title 12, making it an offense to conspire to accomplish any of the acts made unlawful by such former section an overt act need not have been shown as was necessary in a prosecution under former § 88 of this title [now this section]. U.S. v. Halbrook, E.D.Mo.1941, 36 F.Supp. 345. Conspiracy 27

80. ---- Telephone calls and telegrams, overt acts, nature and elements of conspiracy

Defendant's telephone conversations and meetings with undercover agent discussing and arranging sale of heroin constituted overt acts in furtherance of conspiracy to distribute heroin. U. S. v. Alvarez, C.A.5 (Fla.) 1980, 610 F.2d 1250, on rehearing 625 F.2d 1196, certiorari denied 101 S.Ct. 2017, 451 U.S. 938, 68 L.Ed.2d 324.

Telephone call to coconspirator by defendants to inform him that they had obtained approval for stock swindler's participation in securities fraud was made for the purpose of "executing" the stock swindle scheme within meaning of section 1343 of this title governing wire fraud where approval of coconspirator was, to the conspirators, at least, a required part of the scheme. U. S. v. Aloi, C.A.2 (N.Y.) 1975, 511 F.2d 585, certiorari denied 96 S.Ct. 447, 423 U.S. 1015, 46 L.Ed.2d 386. Telecommunications 1014(6)

Where party in Huntington, West Virginia, telephoned defendant in Chicago relative to possibility of obtaining counterfeit currency, and defendant telephoned the party in Huntington informing him that money could be obtained and party called third party in Huntington from Chicago and had him come to Chicago where defendant showed the parties samples of the bogus money, demonstrated ways it could be passed, sold it to them and showed them how to discolor bills to make them less susceptible to discovery, the telephone conversations were "overt acts" in Huntington, West Virginia, in furtherance of a conspiracy to foist bogus money on the public. Bartoli v. U.S., C.A.4 (W.Va.) 1951, 192 F.2d 130. Conspiracy 27

A telephone call in furtherance of a conspiracy to violate former § 398 of this title was a criminal act and sufficient to constitute an overt act under former § 88 of this title [now this section]. Smith v. U.S., C.C.A.9 (Hawai'i) 1937, 92 F.2d 460. Conspiracy 27

Telegraphic orders by one conspirator to another directing shipment of intoxicating liquor to be made were overt

acts under former § 88 of this title [now this section], to effect a conspiracy to violate former § 388 of this title. Witte v. Shelton, C.C.A.8 (Mo.) 1917, 240 F. 265, 153 C.C.A. 191, certiorari denied 37 S.Ct. 745, 244 U.S. 660, 61 L.Ed. 1376. Conspiracy 27

81. ---- Time of commission, overt acts, nature and elements of conspiracy

Defendant could not properly be convicted of having conspired to transport stolen securities across state lines merely on proof that he helped to dispose of the stolen securities after the interstate shipment was concluded. Bollenbach v. U.S., U.S.N.Y.1946, 66 S.Ct. 402, 326 U.S. 607, 90 L.Ed. 350. Conspiracy 28(3)

Fact that federal agents did not discover codefendant's part in conspiracy to sell narcotics until near end of investigation did not negate codefendant's part in it. U. S. v. Quintana, C.A.7 (Ill.) 1975, 508 F.2d 867. Conspiracy 47(12)

Evidence indicating that everything done to carry out conspiracy in connection with counterfeiting operation was carried out by defendant and that acts committed by codefendant were not committed until the conspiracy had been consummated would not support conviction of codefendant for conspiracy. U. S. v. Keach, C.A.10 (Okla.) 1973, 480 F.2d 1274. Conspiracy 47(3.1)

Existence of conspiracy on or about a certain date may be proved by showing actions of person, who later perfected the conspiracy, leading up to the date on which the conspiracy was actually formed. U. S. v. Milisci, C.A.5 (Fla.) 1972, 465 F.2d 700, certiorari denied 93 S.Ct. 684, 409 U.S. 1076, 34 L.Ed.2d 664, certiorari denied 93 S.Ct. 1508, 410 U.S. 984, 36 L.Ed.2d 180, certiorari denied 93 S.Ct. 1511, 410 U.S. 984, 36 L.Ed.2d 180. Criminal Law 422(3)

Where jury could find that defendant conspired but not that conspiracy began before substantive offense was committed, conviction for substantive offense could not rest on doctrine that defendant could be found guilty of substantive offense if he at time of offense was party to conspiracy and substantive offense charged was in fact committed in furtherance of such conspiracy. U. S. v. Cantone, C.A.2 (N.Y.) 1970, 426 F.2d 902, certiorari denied 91 S.Ct. 55, 400 U.S. 827, 27 L.Ed.2d 57. Criminal Law 59(5)

As to defendants who carried on narcotics trafficking business after return of indictment charging narcotics trafficking conspiracy, the conspiracy was not terminated until their arrests. U. S. v. Cole, C.A.7 (Ill.) 1966, 365 F.2d 57, certiorari denied 87 S.Ct. 741, 385 U.S. 1024, 17 L.Ed.2d 672, rehearing denied 87 S.Ct. 971, 386 U.S. 951, 17 L.Ed.2d 879, certiorari denied 87 S.Ct. 741, 385 U.S. 1027, 17 L.Ed.2d 674, certiorari denied 87 S.Ct. 764, 385 U.S. 1032, 17 L.Ed.2d 679, rehearing denied 87 S.Ct. 979, 386 U.S. 951, 17 L.Ed.2d 879. Conspiracy 28(3)

Evidence, which showed that kickback scheme was in operation well before defendant testified before Securities and Exchange Commission and that all involved had agreed to destroy any possible incriminating records and to conceal fact of cash payments and which showed that upon being served defendant had immediately met with others to discuss subpoena, did not require finding as matter of law that conspiracy to give false testimony to Commission had not been formed until after defendant testified. U. S. v. Mahler, C.A.2 (N.Y.) 1966, 363 F.2d 673 . Conspiracy 48.1(2.1)

A conspiracy ends at the moment of any conspirator's arrest since at that moment the conspiracy has been thwarted and presumably no other overt act contributing to the conspiracy can possibly take place, at least so far as the arrested conspirator is concerned. Sandez v. U. S., C.A.9 (Cal.) 1956, 239 F.2d 239, rehearing denied 245 F.2d 712. Criminal Law 424(1)

The time when a continuing conspiracy terminates depends upon the particular facts and purposes of such

conspiracy, but completion of the object of a conspiracy completes the conspiracy. Cleaver v. U. S., C.A.10 (Colo.) 1956, 238 F.2d 766. Conspiracy 24.15

Officers of federal credit union could have "conspired," even before issuance of credit union's charter, to embezzle and misapply credit union funds. Robinson v. U.S., C.A.D.C.1954, 210 F.2d 29, 93 U.S.App.D.C. 347. Conspiracy 30

Overt acts beyond the three year limit of statute of limitations are not relevant to show guilt of conspiracy, but to convict, an overt act must be alleged and proved which occurred within the three year statute. Pinkerton v. U. S., C.C.A.5 (Ala.) 1944, 145 F.2d 252. Indictment And Information 166

Although gist of charge of "conspiracy" under former § 88 of this title [now this section] was the agreement to commit an offense against or a fraud on United States, an overt act must have been done pursuant to the agreement before the crime was complete. Hamner v. U.S., C.C.A.5 (Tex.) 1943, 134 F.2d 592. See, also, Dahly v. U.S., C.C.A.Minn.1931, 50 F.2d 37. Conspiracy 27

That proved activities of some of defendants charged with conspiracy occurred more than three years before indictments did not establish their innocence, in absence of any affirmative act indicating their withdrawal, where there was substantial evidence that conspiracy was continuing one. U.S. v. Anderson, C.C.A.7 (Ill.) 1939, 101 F.2d 325, certiorari denied 59 S.Ct. 822, 307 U.S. 625, 83 L.Ed. 1502, certiorari denied 59 S.Ct. 822, 307 U.S. 625, 83 L.Ed. 1503, certiorari denied 59 S.Ct. 823, 307 U.S. 625, 83 L.Ed. 1503, certiorari denied 59 S.Ct. 823, 307 U.S. 625, 83 L.Ed. 1504, certiorari denied 59 S.Ct. 823, 307 U.S. 625, 83 L.Ed. 1504, 86 L.Ed. 1504, certiorari denied 59 S.Ct. 824, 307 U.S. 625, 83 L.Ed. 1505, certiorari denied 59 S.Ct. 824, 307 U.S. 625, 83 L.Ed. 1506, certiorari denied 59 S.Ct. 825, 307 U.S. 625, 83 L.Ed. 1506, certiorari denied 59 S.Ct. 825, 307 U.S. 625, 83 L.Ed. 1507, certiorari denied 59 S.Ct. 825, 307 U.S. 625, 83 L.Ed. 1508, certiorari denied 59 S.Ct. 826, 307 U.S. 625, 83 L.Ed. 1508, certiorari denied 59 S.Ct. 826, 307 U.S. 625, 83 L.Ed. 1509. Conspiracy 47(1)

Acts and statements of defendant before conspiracy was formed cannot be considered as overt acts. Dahly v. U.S., C.C.A.8 (Minn.) 1931, 50 F.2d 37. Conspiracy 27

Grand jury was justified in finding that conspiracy existed before commission of overt act charged in indictment as first overt act. Pearlman v. U.S., C.C.A.9 (Or.) 1927, 20 F.2d 113, certiorari denied 48 S.Ct. 85, 275 U.S. 549, 72 L.Ed. 419. Indictment And Information 10.2(10)

Offense of conspiracy to conceal assets from trustee in bankruptcy may be committed before bankruptcy. Carter v. U.S., C.C.A.8 (Mo.) 1927, 19 F.2d 431. Conspiracy 28

In prosecution of three individuals and corporation for conspiracy to violate Bankruptcy Act, § 1 et seq. of Title 11, by concealing bankrupt's property from trustee, in which individuals were alleged to have conspired to organize corporation, obtain goods through it, sell them, and escape with as much of the proceeds as possible, and let company become bankrupt, fact that overt act, consisting of interview between two individuals, was alleged to have taken place before corporation was formed, was immaterial. Kaplan v. U.S., C.C.A.2 (N.Y.) 1925, 7 F.2d 594, certiorari denied 46 S.Ct. 107, 269 U.S. 582, 70 L.Ed. 423.

The offense of conspiracy may be committed though the conspiracy was formed and the overt act done on the same day provided the conspiracy preceded the overt act in actual point of time. Goukler v. U.S., C.C.A.3 (N.J.) 1923, 294 F. 274.

An indictment under former § 88 of this title [now this section] for conspiracy to devise a scheme to defraud by the use of the mails, was not insufficient because the overt acts charged were committed after the scheme had been devised; the conspiracy being a continuing one until the scheme was executed. Wilson v. U.S., C.C.A.2 (N.Y.)

1921, 275 F. 307, certiorari denied 42 S.Ct. 57, 257 U.S. 649, 66 L.Ed. 416. Conspiracy 27

Where bankruptcy of partnership was inevitable, a plan agreed upon by the partners and their attorney, pursuant to which proceeds of customer's checks were converted by a partner, and upon his bankruptcy individually and as a member of the firm were withheld from trustee, was a conspiracy to commit offense against United States, under former § 88 of this title [now this section] the concealment of check proceeds from trustee being in violation of former § 52 of Title 11. Malvin v. U.S., C.C.A.2 (N.Y.) 1918, 252 F. 449, 164 C.C.A. 373, certiorari denied 39 S.Ct. 8, 248 U.S. 564, 63 L.Ed. 423. Conspiracy 28

An indictment for conspiracy to conceal assets of a bankrupt in violation of former § 52 of Title 11 was not objectionable because there was no existing bankruptcy when the conspiracy originated. Roukous v. U.S., C.C.A.1 (R.I.) 1912, 195 F. 353, 115 C.C.A. 255, certiorari denied 32 S.Ct. 840, 225 U.S. 710, 56 L.Ed. 1267. See, also, Radin v. U.S., N.Y.1911, 189 F. 568, 111 C.C.A. 6, certiorari denied 31 S.Ct. 724, 220 U.S. 623, 55 L.Ed. 614. Conspiracy 28(3)

The overt act essential to conviction for conspiracy cannot succeed the completion of the contemplated crime. U.S. v. Ehrgott, C.C.S.D.N.Y.1910, 182 F. 267. Conspiracy 27

When the object which brings the conspiracy within the class made criminal, is attained, "the object of the conspiracy" is effected, and there can be no further overt act. Lonabaugh v. U.S., C.C.A.8 (Wyo.) 1910, 179 F. 476, 103 C.C.A. 56. See, also, U.S. v. Ehrgott, C.C.N.Y.1910, 182 F. 267; Ex parte Black, D.C.Wis.1906, 147 F. 832, affirmed 160 F. 431.

An indictment will lie for conspiracy to conceal from the trustee of one of the defendants in bankruptcy, property belonging to his estate in bankruptcy, and such indictment is not demurrable because the date of the conspiracy and concealment is laid prior to the bankruptcy proceedings where it is charged as a part of the conspiracy that a plan was formed to bring about such proceedings pursuant to which the property was removed and concealed, purposely omitted from the bankrupt's schedules, and kept concealed from the trustee after his appointment. U.S. v. Cohn, C.C.S.D.N.Y.1906, 142 F. 983. Conspiracy 28

Fact that objectives of conspiracy were completed prior to commission of the overt acts alleged in the indictment did not preclude conviction for conspiracy as the scope of the conspiracy is not narrowed upon completion of one aspect of it. U. S. v. Mount Fuji Japanese Steak House, Inc., E.D.N.Y.1977, 435 F.Supp. 1194. Conspiracy 27

The overt acts charged must be found to have been committed subsequently to the formation and during the continuance of the conspiracy. U.S. v. Noblom, C.C.La.1878, 27 F.Cas. 181, No. 15896.

82. ---- Place of commission, overt acts, nature and elements of conspiracy

Member of criminal conspiracy that took place both in the United States and in foreign country could be convicted of engaging in conspiracy, even though member performed no overt act within the United States. U.S. v. Inco Bank & Trust Corp., C.A.11 (Fla.) 1988, 845 F.2d 919. Criminal Law 97(.5)

In prosecution for conspiring to defraud United States by obstructing government's administration and enforcement of Special Administrative Measures (SAMs) limiting prisoner's communication and prohibiting him from communicating with news media, it was not necessary for government to prove that the fraud was actually committed, and thus, defendant's failure to accomplish the fraud due to the government's videotaping of defendant's visits to prisoner in which defendant delivered messages to and received messages from prisoner to pass on to third parties and news media did not preclude her conviction. U.S. v. Sattar, S.D.N.Y.2005, 395 F.Supp.2d 79. Conspiracy 33(2.1)

18 U.S.C.A. § 371

83. ---- Number, overt acts, nature and elements of conspiracy

In order to sustain conspiracy conviction, government need not prove occurrence of every overt act alleged in indictment; proof of one overt act in furtherance of conspiracy will suffice and overt act need not be criminal in nature, so long as it furthers objective of conspiracy. U. S. v. McCarty, C.A.8 (S.D.) 1979, 611 F.2d 220, certiorari denied 100 S.Ct. 1319, 445 U.S. 930, 63 L.Ed.2d 764. Conspiracy 43(12)

A defendant may be convicted for participation in an illegal conspiracy despite fact that he performs only a single function or is later replaced by others. U. S. v. Ochoa, C.A.5 (Tex.) 1980, 609 F.2d 198. Conspiracy 40.1

Even a single act may be enough to draw a defendant within the ambit of a conspiracy where it is established that the defendant knew of the conspiracy and associated himself with it. U.S. v. Kirk, C.A.8 (Mo.) 1976, 534 F.2d 1262, certiorari denied 97 S.Ct. 1174, 430 U.S. 906, 51 L.Ed.2d 581, certiorari denied 97 S.Ct. 2971, 433 U.S. 907, 53 L.Ed.2d 1091, conviction vacated in part on other grounds 723 F.2d 1379, certiorari denied 104 S.Ct. 1717, 466 U.S. 930, 80 L.Ed.2d 189. Conspiracy 40

One need not participate in each act of conspiracy to be part of it; single act may suffice, if it is one from which knowledge of general conspiracy can be inferred. U. S. v. Santana, C.A.2 (N.Y.) 1974, 503 F.2d 710, certiorari denied 95 S.Ct. 632, 419 U.S. 1053, 42 L.Ed.2d 649, certiorari denied 95 S.Ct. 1352, 420 U.S. 963, 43 L.Ed.2d 439, certiorari denied 95 S.Ct. 1450, 420 U.S. 1006, 43 L.Ed.2d 764. Conspiracy 40.1

A single act may be enough to draw a defendant within ambit of conspiracy but it must be such that intent may reasonably be inferred from it or government must submit independent evidence that defendant knew of conspiracy and associated with it. U. S. v. Bentvena, C.A.2 (N.Y.) 1963, 319 F.2d 916, certiorari denied 84 S.Ct. 345, 375 U.S. 940, 11 L.Ed.2d 271, rehearing denied 90 S.Ct. 894, 397 U.S. 928, 25 L.Ed.2d 108, rehearing denied 84 S.Ct. 515, 375 U.S. 989, 11 L.Ed.2d 476, certiorari denied 84 S.Ct. 346, 375 U.S. 940, 11 L.Ed.2d 271, rehearing denied 84 S.Ct. 1162, 377 U.S. 913, 12 L.Ed.2d 183, certiorari denied 84 S.Ct. 353, 375 U.S. 940, 11 L.Ed.2d 272, certiorari denied 84 S.Ct. 354, 375 U.S. 940, 11 L.Ed.2d 272, certiorari denied 84 S.Ct. 355, 375 U.S. 940, 11 L.Ed.2d 272, certiorari denied 84 S.Ct. 360, 375 U.S. 940, 11 L.Ed.2d 272. See, also, U.S. v. Aviles, C.A.N.Y.1960, 274 F.2d 179, certiorari denied 80 S.Ct. 1057-1059, 1068, 1071, 1073, 362 U.S. 974, 982, 4 L.Ed.2d 1009, 1010, 1015, 1016, rehearing denied 80 S.Ct. 1610, 363 U.S. 858, 4 L.Ed.2d 1739; U.S. v. Cardi, C.A.Ill. 1973, 478 F.2d 1362, certiorari denied 94 S.Ct. 147, 355, 414 U.S. 852, 1001, 38 L.Ed.2d 101, 237. Conspiracy 47(1)

To complete crime of conspiracy at least one of conspirators must have performed at least one overt act in furtherance of conspiracy. Herman v. U.S., C.A.5 (Fla.) 1961, 289 F.2d 362, certiorari denied 82 S.Ct. 174, 368 U.S. 897, 7 L.Ed.2d 93. Conspiracy 27

A conspiracy is complete on the forming of the criminal agreement and the performance of at least one overt act in furtherance thereof. Singer v. U.S., C.A.6 (Mich.) 1953, 208 F.2d 477. Conspiracy 23.1

A "conspiracy" is complete on forming of criminal agreement, and performance of at least one overt act in furtherance thereof, and if several overt acts are charged it is sufficient to show that one or more of those acts were committed in furtherance of the conspiracy. Hall v. U.S., C.C.A.10 (Okla.) 1940, 109 F.2d 976. Conspiracy 27

One overt act is all that is required to complete the offense of conspiracy. Jung Quey v. U.S., C.C.A.9 (Cal.) 1915, 222 F. 766, 138 C.C.A. 314. See, also, U.S. v. Orr, D.C.R.I.1916, 233 F. 717; Tillinghast v. Richards, D.C.R.I.1916, 233 F. 710. Conspiracy 27

This section requires as essential element commission by conspirator of at least one overt act to effect object of

conspiracy. U. S. v. U. S. Steel Corp., S.D.N.Y.1964, 233 F.Supp. 148. See, also, U.S. v. Boisvert, D.C.R.I.1960, 187 F.Supp. 781. Conspiracy 27

84. ---- Miscellaneous acts constituting, overt acts, nature and elements of conspiracy

Partial payment to undercover FBI agent as perpetrator was "overt act" in conspiracy to commit murder for hire. U.S. v. Pardue, C.A.8 (Ark.) 1993, 983 F.2d 835, rehearing denied, certiorari denied 113 S.Ct. 3043, 509 U.S. 925, 125 L.Ed.2d 728. Conspiracy 27

Armored truck robbery was properly charged as overt act of conspiracy in indictment charging defendants with participating in racketeering organization that committed series of armored truck robberies or attempted robberies, though entire organization did not commit specific robbery or share in its proceeds, where there was evidence that leader of organization served as "consultant" in robbery and that he adjusted his personnel plans in later robbery as result of experience. U.S. v. Beale, C.A.11 (Fla.) 1991, 921 F.2d 1412, certiorari denied 112 S.Ct. 100, 502 U.S. 829, 116 L.Ed.2d 71, certiorari denied 112 S.Ct. 264, 502 U.S. 894, 116 L.Ed.2d 217, certiorari denied 112 S.Ct. 99, 502 U.S. 829, 116 L.Ed.2d 71. Conspiracy 43(5)

Evidence that partnership, in which defendants were partners, kept participation agreements secret and that there was an agreement to keep bank president's interest secret, and that president was made a partner solely because of his ability to lend bank's money, and president's testimony that payments did affect his lending decisions, and that several of his actions were for the purpose of avoiding detection by the Federal Deposit Insurance Corporation (FDIC), was sufficient to find existence of an agreement and the required overt act to support defendants' convictions for conspiracy to commit an offense against the United States. U.S. v. Frost, C.A.6 (Tenn.) 1990, 914 F.2d 756. Conspiracy 47(3.1)

Defendant's check kitings could be considered as overt acts in furtherance of conspiracy to defraud a Federal Deposit Insurance Corp.-insured bank; even if the check kitings were not deemed overt acts in furtherance of a conspiracy to defraud, evidence of a separate overt act to support a conviction was found in presentation as attempted negotiation by defendant's agents of fraudulent letter of credit. U.S. v. Slocum, C.A.2 (N.Y.) 1982, 695 F.2d 650, certiorari denied 103 S.Ct. 1260, 460 U.S. 1015, 75 L.Ed.2d 487. Conspiracy 27

Violation of state Gaming Commission regulation could not of itself form predicate for state law violation required for federal prosecution under Travel Act, section 1952 of this title, but, under conspiracy count, violation of regulations alone would be considered as overt acts by defendants committing them which were ingredients of crime of conspiracy. U. S. v. Goldfarb, C.A.6 (Mich.) 1981, 643 F.2d 422, certiorari denied 102 S.Ct. 117, 454 U.S. 827, 70 L.Ed.2d 101, certiorari denied 102 S.Ct. 118, 454 U.S. 827, 70 L.Ed.2d 101. Conspiracy 27; Gaming 66

Constitutionally protected speech may be an overt act in a conspiracy case. U. S. v. Donner, C.A.7 (Ind.) 1974, 497 F.2d 184, certiorari denied 95 S.Ct. 619, 419 U.S. 1047, 42 L.Ed.2d 641, certiorari denied 95 S.Ct. 620, 419 U.S. 1047, 42 L.Ed.2d 641. Conspiracy 27

Proof of concealment of stolen guns, independently shown, was sufficient proof of overt act to justify submission of court charging conspiracy to violate National Firearms Act, section 5861 of Title 26, to the jury. U. S. v. Marrapese, C.A.2 (Conn.) 1973, 486 F.2d 918, certiorari denied 94 S.Ct. 1597, 415 U.S. 994, 39 L.Ed.2d 891. Conspiracy 48.1(2.1)

Introduction by accused of conspirator to another prospective participant in conspiracy to pass counterfeit obligations would constitute both adherence by the accused to the conspiracy and an overt act toward accomplishment of conspiracy. U. S. v. Barone, C.A.3 (Pa.) 1972, 458 F.2d 1027. Conspiracy 27

Receipt of $6,000 kickback from architects on county hospital project under Hill-Burton Act, section 291 et seq. of Title 42, in return for causing architects to be employed in such construction was an overt act in furtherance of a conspiracy to obstruct a lawful government function. U. S. v. Thompson, C.A.6 (Tenn.) 1966, 366 F.2d 167, certiorari denied 87 S.Ct. 512, 385 U.S. 973, 17 L.Ed.2d 436. Conspiracy 27

In prosecution for conspiracy for advocating and teaching the duty and necessity of overthrowing and destroying the government of the United States by force and violence and to organize Communist Party as a group advocating overthrow of government by force and violence, acts of defendants in attending and participating in meetings and educationals held and conducted for purpose of advocating, promoting, or furthering incitement to action in an effort to overthrow the government by force and violence were overt acts in furtherance of the conspiracy charged in the indictment even though such acts, by themselves, were not unlawful. Bary v. U. S., C.A.10 (Colo.) 1957, 248 F.2d 201. Conspiracy 27

Conspiracy to make and pass a statement known to be false for purpose of influencing action of Federal Housing Administration with reference to a loan is committed when, as an overt act pursuant to the conspiracy, a credit statement application in form prescribed by regulations but knowingly falsified and thus not in the good faith of the regulations is made for the purpose of passing it on to the administration. C. I. T. Corp. v. U.S., C.C.A.9 (Wash.) 1945, 150 F.2d 85. Conspiracy 33(2.1)

Exhibition and advertisement of prize fight films unlawfully transported in interstate commerce were not acts "to effect object of conspiracy." Rose v. St. Clair, D.C.Va.1928, 28 F.2d 189. Conspiracy 27

Alleged purchase and resale by codefendant of bankrupt's stock constituted act done to effect conspiracy to conceal bankrupt's assets. Gerson v. U.S., C.C.A.8 (Okla.) 1928, 25 F.2d 49. Conspiracy 27

In prosecution of individuals and corporation for conspiracy to violate Bankruptcy Act, § 1 et seq. of Title 11, by concealment of property of bankrupt corporation, where conspirators planned to incorporate company, to obtain supplies, make quick sales, collect proceeds, and allow company to fall into bankruptcy and escape with such loot as might have been gathered, interview before incorporation of company by conspirators was sufficient overt act on which to base prosecution of individuals. Kaplan v. U.S., C.C.A.2 (N.Y.) 1925, 7 F.2d 594, certiorari denied 46 S.Ct. 107, 269 U.S. 582, 70 L.Ed. 423.

In an indictment for conspiracy to evade payment of an income tax, the preparation, signing, and acknowledgment of a false return, alleged as overt acts, would not constitute an attempt to evade payment of the tax, but the filing of the false return with the collector, thereby putting it out of control of defendants, which was also alleged as an overt act, would be an attempt. U.S. v. Rachmil, S.D.N.Y.1921, 270 F. 869. Conspiracy 27

Filing of petition in bankruptcy was a sufficient overt act to support conviction of conspiracy to conceal property. Gretsch v. U.S., C.C.A.3 (N.J.) 1917, 242 F. 897, 155 C.C.A. 485, certiorari denied 38 S.Ct. 12, 245 U.S. 654, 62 L.Ed. 532. Conspiracy 27

The overt act must be something more than evidence of a conspiracy and thus a complete confession of a conspiracy would not be equivalent to an overt act, which must constitute execution, or part execution. Tillinghast v. Richards, D.C.R.I.1915, 225 F. 226.

Where defendants conspired to obtain Umatilla reservation lands by procuring false applications to purchase, defendant's act in procuring some person to make an application to purchase, and a false oath accompanying it, would constitute a sufficient overt act. U.S. v. Raley, D.C.Or.1909, 173 F. 159. Conspiracy 27

Where defendants were charged with having conspired to defraud several corporations engaged in selling merchandise, etc., by mail, by means of catalogues, and it was alleged that the scheme to defraud was to be effected

by the use of the post office by soliciting from such corporations catalogues and samples requesting price lists and estimates on spurious bills of lumber by falsely representing that defendants were desirous of purchasing such materials, etc., letters and postal cards sent through the mails by which defendants requested catalogues, prices, samples, and estimates, but in none of which was there any representation that the signer or any of the defendants intended to purchase such materials from the addressees, were insufficient to constitute an overt act required to make out a criminal conspiracy. U.S. v. McLaughlin, D.C.Minn.1908, 169 F. 302. Conspiracy 27

85. Consummation of substantive offense, nature and elements of conspiracy

Nature of the crime of conspiracy is an agreement to commit a substantive crime, accompanied by an overt act in furtherance of the agreement; whether the substantive crime itself is, or is likely to be, committed is irrelevant. U. S. v. Rose, C.A.7 (Ill.) 1978, 590 F.2d 232, certiorari denied 99 S.Ct. 2859, 442 U.S. 929, 61 L.Ed.2d 297. Conspiracy 28(2)

This section making it unlawful to conspire to commit an offense against or to defraud the United States does not require that the mission be accomplished but only that it be attempted, and any overt act by conspirators in an effort to accomplish the mission satisfies requirement of this section. U. S. v. Root, C.A.9 (Cal.) 1966, 366 F.2d 377, certiorari denied 87 S.Ct. 861, 386 U.S. 912, 17 L.Ed.2d 784. Conspiracy 28(1); Conspiracy 33(1)

Substantive crime is not necessary ingredient of conspiracy. U.S. v. J.R. Watkins Co., D.C.Minn.1954, 127 F.Supp. 97. Conspiracy 28(2)

Mere fact that a party may be guilty of a substantive offense does not justify finding him guilty of a conspiracy to commit it. U. S. v. Boyer, E.D.Pa.1949, 84 F.Supp. 905.

86. Termination, nature and elements of conspiracy

Arrest of party involved in conspiracy does not necessarily terminate his participation in conspiracy as matter of law; conspiracy is presumed to continue unless defendant makes substantial affirmative showing of withdrawal, abandonment, or defeat of conspiratorial purpose. U.S. v. Branch, C.A.5 (Tex.) 1988, 850 F.2d 1080, certiorari denied 109 S.Ct. 816, 488 U.S. 1018, 102 L.Ed.2d 806. Conspiracy 40.4; Conspiracy 44.2

Criminal conspiracy continues until objects for which it was formed have been accomplished. U. S. v. James, C.A.D.C.1974, 494 F.2d 1007, 161 U.S.App.D.C. 88, certiorari denied 95 S.Ct. 495, 419 U.S. 1020, 42 L.Ed.2d 294. Conspiracy 24.15

Generally, conspiracy terminates when its central objective is achieved, and no subsidiary conspiracy to conceal crime may be implied. U. S. v. Hickey, C.A.7 (Ill.) 1966, 360 F.2d 127, certiorari denied 87 S.Ct. 284, 385 U.S. 928, 17 L.Ed.2d 210. Conspiracy 34

Persons conspiring to defraud United States continue criminally liable until conspiracy is ended or until they disassociate themselves therefrom. H. Wagner & Adler Co. v. Mali, C.C.A.2 (N.Y.) 1935, 74 F.2d 666.

87. Parties, nature and elements of conspiracy

Conspiracy is determined by design of parties who originate it and when person joins, if purpose remains same, it continues to be the single venture which it was before, notwithstanding theoretical difficulty of reconciling such a result with definition of conspiracy as continuing act of agreement. U.S. v. Bletterman, C.A.2 (N.Y.) 1960, 279 F.2d 320. Conspiracy 24(2)

Identity of conspiracy is not destroyed by the connection at a subsequent time of new parties therewith. U. S. v. Nunnemacher, C.C.Wis.1876, 27 F.Cas. 197, 7 Biss. 111, No. 15902. See, also, Hagen v. U.S., C.C.A.Wash.1920, 268 F. 344, certiorari denied 41 S.Ct. 323, 255 U.S. 569, 65 L.Ed. 790.

88. Informers, nature and elements of conspiracy

There can be no conspiracy involving only a defendant and government informer, because it takes two to conspire and government informer is not a true conspirator. U. S. v. Martino, C.A.5 (Fla.) 1981, 648 F.2d 367, on reconsideration in part 650 F.2d 651, certiorari denied 102 S.Ct. 2006, 456 U.S. 943, 72 L.Ed.2d 465, certiorari denied 102 S.Ct. 2007, 456 U.S. 943, 72 L.Ed.2d 465, certiorari denied 102 S.Ct. 2020, 456 U.S. 949, 72 L.Ed.2d 474, on rehearing 681 F.2d 952, certiorari granted 103 S.Ct. 721, 459 U.S. 1101, 74 L.Ed.2d 948, affirmed 104 S.Ct. 296, 464 U.S. 16, 78 L.Ed.2d 17. Conspiracy 24(7)

As it takes two to conspire, there can be no indictable conspiracy with a government informer who secretly intends to frustrate the conspiracy. Sears v. U. S., C.A.5 (Ga.) 1965, 343 F.2d 139. Conspiracy 24(7)

89. Withdrawal from conspiracy, nature and elements of conspiracy

Mere fact that coconspirator who withdraws becomes government informant unbeknownst to his former coconspirators, does not prevent continuation of conspiracy if at least two coconspirators remain. U.S. v. Miranda-Ortiz, C.A.2 (N.Y.) 1991, 926 F.2d 172, certiorari denied 112 S.Ct. 347, 502 U.S. 928, 116 L.Ed.2d 287.

Conspiracy between defendants was not ended merely because coconspirator acted to frustrate objectives of conspiracy and was arrested and became government agent; it was necessary for defendants to show evidence of their own withdrawal from conspiracy, absent which their participation in conspiracy was presumed to continue until last overt act by any conspirator. U. S. v. Katz, C.A.2 (N.Y.) 1979, 601 F.2d 66.

Fact that codefendants had told coconspirator that they would like to quit conspiracy prior to shipment of heroin did not constitute actual termination of the conspiracy. Granza v. U. S., C.A.5 (Tex.) 1967, 381 F.2d 190.

Withdrawal of a conspirator does not terminate the conspiracy. U. S. v. Lester, C.A.3 (Pa.) 1960, 282 F.2d 750, certiorari denied 81 S.Ct. 385, 364 U.S. 937, 5 L.Ed.2d 368.

The addition of new members to a conspiracy or the withdrawal of old ones from it does not change the status of the other conspirators. Poliafico v. U. S., C.A.6 (Ohio) 1956, 237 F.2d 97, certiorari denied 77 S.Ct. 590, 352 U.S. 1025, 1 L.Ed.2d 597, rehearing denied 77 S.Ct. 718, 353 U.S. 931, 1 L.Ed.2d 725.

The withdrawal of a single conspirator, by arrest or otherwise, does not terminate the conspiracy or change the status of the remaining members. U.S. v. Cohen, C.A.3 (N.J.) 1952, 197 F.2d 26.

Where, after formation of conspiracy to violate federal law, one of conspirators withdraws, such withdrawal neither creates new conspiracy nor changes status of remaining members. Marino v. U.S., C.C.A.9 (Cal.) 1937, 91 F.2d 691, certiorari denied 58 S.Ct. 410, 302 U.S. 764, 82 L.Ed. 593. Conspiracy 40.4

A voluntary withdrawal of one member of conspiracy does not terminate the unlawful combine as to other members who do not withdraw; at most it is a personal severance which affects and limits the responsibility of the withdrawing member alone. U. S. v. Labate, E.D.Pa.1958, 168 F.Supp. 531, affirmed 270 F.2d 122, certiorari denied 80 S.Ct. 211, 361 U.S. 900, 4 L.Ed.2d 157.

Where there has been no overt act in furtherance of conspiracy, policy of the law is to permit conspirators to withdraw. U.S. v. Belisle, W.D.Wash.1951, 107 F.Supp. 283.

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90. Victim of conspiracy, nature and elements of conspiracy

In establishing conspiracy "to commit any offense against the United States," government need not allege or prove that United States or agency thereof was intended victim of conspiracy; overruling *United States v. Hope*, 861 F.2d 1574. U.S. v. Falcone, C.A.11 (Fla.) 1992, 960 F.2d 988, certiorari denied 113 S.Ct. 292, 506 U.S. 902, 121 L.Ed.2d 216. Conspiracy 33(1); Conspiracy 43(10)

United States was not required to be "target" of defendant's conspiracy for defendant to be convicted of conspiracy to commit wire fraud under provision of conspiracy statute criminalizing conspiracy "to commit any offense against the United States." U.S. v. Loney, C.A.5 (Tex.) 1992, 959 F.2d 1332. Conspiracy 33(2.1)

III. PARTIES LIABLE FOR CONSPIRACY

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111. Generally, parties liable for conspiracy

Gist of criminal conspiracy, the agreement between coconspirators, may continue over extended period of time and involve numerous transactions; parties may join conspiracy after its inception and may withdraw and terminate their relationship with conspiracy prior to its completion. U. S. v. Boyd, C.A.3 (Pa.) 1978, 595 F.2d 120. Conspiracy 24(1)

Where defendant is charged with participation in one central conspiracy involving many transactions, evidence of mere participation in single transaction will not ordinarily justify conviction for conspiracy unless defendant knew that single transaction was in execution of larger venture which made up conspiracy. U. S. v. Kane, C.A.2 (N.Y.) 1965, 351 F.2d 600. Conspiracy 47(11)

That defendant, charged with possessing and conspiring to possess counterfeit money, allegedly participated only in single transaction was not insufficient to draw him within ambit of conspiracy, where transaction in which he participated was raison d'etre for conspiracy, and there was no larger venture. U. S. v. Kane, C.A.2 (N.Y.) 1965, 351 F.2d 600. Conspiracy 40.1

Separate groups acting as conspirators among themselves may still constitute members of an overall conspiracy. Sigers v. U. S., C.A.5 (Fla.) 1963, 321 F.2d 843. Conspiracy 40

One who is a part of a conspiracy is responsible for all that may be or has been done. U. S. v. Doran, C.A.7 (Ill.) 1962, 299 F.2d 511, certiorari denied 82 S.Ct. 1563, 370 U.S. 925, 8 L.Ed.2d 504, certiorari denied 82 S.Ct. 1565, 370 U.S. 925, 8 L.Ed.2d 505, rehearing denied 83 S.Ct. 17, 371 U.S. 854, 9 L.Ed.2d 92. Conspiracy 41

A defendant is not guilty of conspiracy by reason of his commission of an overt act, unless he was party to unlawful agreement. U. S. v. Cherry, C.A.4 (N.C.) 1961, 295 F.2d 842. Conspiracy 40

Each conspirator is a partner and agent of every other member of a conspiracy. U. S. v. Copeland, C.A.4 (N.C.) 1961, 295 F.2d 635, certiorari denied 82 S.Ct. 398, 368 U.S. 955, 7 L.Ed.2d 388. See, also, Braatelien v. U.S., C.C.A.N.D.1945, 147 F.2d 888. Conspiracy 40

Joint participants in a crime may be denominated "conspirators" and the joint act or scheme may be called a conspiracy, since such words do not lose all of their ordinary content merely because Congress separately created crime of conspiracy. Kumpe v. U. S., C.A.5 (Tex.) 1957, 250 F.2d 125. Criminal Law 779

One may be prosecuted as principal and as conspirator to commit offense. Westfall v. U.S., C.C.A.6 (Mich.) 1927, 20 F.2d 604, 5 Ohio Law Abs. 587. Double Jeopardy 151(3.1)

When men enter into an agreement for an unlawful end they become ad hoc agents for one another; what one does pursuant to their common objective all do. U. S. v. Gilboy, M.D.Pa.1958, 160 F.Supp. 442. Conspiracy 41

In order to become a party to a crime, one must affirmatively unite oneself with the venture, or, in the case of a conspiracy, must agree to take some part therein. U.S. v. Corlin, S.D.Cal.1942, 44 F.Supp. 940. Conspiracy 40; Criminal Law 59(5)

112. Number of persons conspiring, parties liable for conspiracy

Fact that one person's agreement is feigned should not prevent a conspiracy conviction when there are at least two others involved whose mutual adherence to the common plan is genuine. U. S. v. Rose, C.A.7 (Ill.) 1978, 590 F.2d 232, certiorari denied 99 S.Ct. 2859, 442 U.S. 929, 61 L.Ed.2d 297. Conspiracy 24(4.1)

A single defendant can be indicted and convicted of conspiracy providing an unlawful agreement with others can be proved. Kitchell v. U. S., C.A.1 (Mass.) 1966, 354 F.2d 715, certiorari denied 86 S.Ct. 1970, 384 U.S. 1011, 16 L.Ed.2d 1032. Conspiracy 24(4.1)

Two or more persons can enter into unlawful agreement to commit three substantive crimes either simultaneously or in succession. Shibley v. U. S., C.A.9 (Cal.) 1956, 237 F.2d 327, certiorari denied 77 S.Ct. 94, 352 U.S. 873, 1 L.Ed.2d 77, rehearing denied 77 S.Ct. 212, 352 U.S. 919, 1 L.Ed.2d 124. Conspiracy 24(2)

A "conspiracy" may be established even though one of the two parties named is not a member of the conspiracy, if the evidence showed that there were other persons in existence one or more of whom were parties to the conspiracy. U. S. v. Fox, C.C.A.3 (Pa.) 1942, 130 F.2d 56, certiorari denied 63 S.Ct. 74, 317 U.S. 666, 87 L.Ed. 535. See, also, U.S. v. Weinberg, D.C.Pa.1955, 129 F.Supp. 514, affirmed 226 F.2d 161, certiorari denied 76 S.Ct. 305, 350 U.S. 933, 100 L.Ed. 815. Conspiracy 47(1)

One defendant alone cannot be convicted of conspiracy. Bartkus v. U.S., C.C.A.7 (Ill.) 1927, 21 F.2d 425. See, also, Mackreth v. U.S., C.C.A.Ala.1939, 103 F.2d 495; De Camp v. U.S., App.D.C.1926, 10 F.2d 984; Cape Cod Food Products v. National Cranberry Ass'n, D.C.Mass.1954, 119 F.Supp. 900.

In the prosecution of the manager, officers, and salesmen of a concern for conspiring to use the mails in executing a scheme to defraud, in violation of former § 88 of this title [now this section], in which it was claimed that the defendants induced persons by means of fraud to enter into contracts appointing the concern their agent in the purchase of Indian lands, the manager could not have been convicted on evidence showing that he was the sole planner and actor. Van Tress v. U.S., C.C.A.6 (Ohio) 1923, 292 F. 513, 2 Ohio Law Abs. 370. Conspiracy 24(4.1); Postal Service 35(2)

When a conviction for conspiracy to violate the White Slave Act, § 2421 et seq. of this title was set aside as to one defendant for insufficiency of the evidence, it must have been set aside as to the other, conspiracy being an offense which could have been committed only by two or more persons. Williams v. U.S., C.C.A.4 (S.C.) 1922, 282 F. 481 . Conspiracy 24(6)

Former § 88 of this title [now this section] applied only to conspiracies, and did not cover the case of one, acting alone, who induced another to fail to register pursuant to the Selective Service Act of 1917, 50 App. former § 201 et seq. U.S. v. Prieth, D.C.N.J.1918, 251 F. 946. Armed Services 40(2); Conspiracy 24

A conspiracy to defraud an individual, even though the mails were made use of for the purpose, did not fall within the terms of former § 88 of this title [now this section], and what was there provided for was a conspiracy of two or more either to commit an offense against the United States or to defraud it. U S v. Clark, M.D.Pa.1903, 121 F. 190. Conspiracy 32

It is basic in law of conspiracy that you must have at least two persons or entities to have conspiracy. Colonial Penn Ins. Co. v. Value Rent-A-Car Inc., S.D.Fla.1992, 814 F.Supp. 1084. Conspiracy 2

Generally, if crime is such that participation of at least two persons is necessary and concert of action is essential to offense indictment will not lie charging conspiracy to commit such offense, but if offense could be committed by one of conspirators alone and the essential participants in the offense are not the only conspirators indictment may properly charge both substantive offense and conspiracy to commit such offense. U. S. v. Cogan, S.D.N.Y.1967, 266 F.Supp. 374. Conspiracy 28(1); Indictment And Information 129(1)

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113. Husband and wife, parties liable for conspiracy

A husband and wife are legally capable of conspiring within condemnation of statute making it an offense for two persons to conspire, and a husband and wife would not be deemed outside the scope of the conspiracy statute on theory that a married woman is a person whose legal personality is merged in that of her husband making the two one. U. S. v. Dege, U.S.Cal.1960, 80 S.Ct. 1589, 364 U.S. 51, 4 L.Ed.2d 1563, rehearing denied 81 S.Ct. 29, 364 U.S. 854, 5 L.Ed.2d 77. Husband And Wife 107

Husband is legally capable of conspiracy with his wife. Pegram v. U. S., C.A.8 (Iowa) 1966, 361 F.2d 820. Husband And Wife 107

A woman can be found guilty of conspiracy with her husband to violate the white slavery statute, § 2421 of this title. Wright v. U.S., C.A.5 (Ga.) 1957, 243 F.2d 569, certiorari denied 78 S.Ct. 45, 355 U.S. 831, 2 L.Ed.2d 43. Husband And Wife 107

Relationship of husband and wife does not prevent two persons from being guilty of conspiring to commit an offense. Thompson v. U.S., C.A.5 (Ga.) 1955, 227 F.2d 671. Husband And Wife 107

Where two persons were charged with conspiracy to violate White Slave Traffic Act, § 2421 of this title, one of the persons alone could not be adjudged guilty of conspiracy. Thompson v. U.S., C.A.5 (Ga.) 1955, 227 F.2d 671. Conspiracy 24(6)

It was not legally possible for husband and wife to conspire to violate White Slave Act, § 2421 et seq. of this title, when there were no other parties to conspiracy. Dawson v. U.S., C.C.A.9 (Idaho) 1926, 10 F.2d 106, certiorari denied 46 S.Ct. 638, 271 U.S. 687, 70 L.Ed. 1152.

A husband and wife could not conspire to violate § 1 et seq. of Title 11, where there were no other parties to the conspiracy. U. S. v. Shaddix, S.D.Miss.1942, 43 F.Supp. 330. Husband And Wife 107

114. Prostitutes, parties liable for conspiracy

A woman could conspire to commit an offense against the United States within former § 88 of this title [now this section] though the object of the conspiracy was her own transportation in interstate commerce for purposes of prostitution, contrary to former § 397 et seq. of this title. U.S. v. Holte, U.S.Wis.1915, 35 S.Ct. 271, 236 U.S. 140, 59 L.Ed. 504. Conspiracy 28(3)

Where woman merely consents to be transported from one state to another for purpose of prostitution she cannot be guilty of conspiracy to violate § 2421 of this title, prohibiting interstate transportation of women for purpose of prostitution. U. S. v. Holz, E.D.Ill.1950, 103 F.Supp. 191, reversed on other grounds 191 F.2d 569. Conspiracy 40

115. Partners, parties liable for conspiracy

In prosecution for conspiracy to defraud Government of floor stock tax on distilled spirits and wines by concealing and failure to inventory almost two-thirds of stock, absence of one partner when inventory was taken and testimony that he told other partner to check stock carefully did not absolve such partner in view of other evidence connecting him with conspiracy under rule that a conspiracy may be shown by inferences or by circumstances. Auerbach v. U.S., C.C.A.6 (Tenn.) 1943, 136 F.2d 882. Conspiracy 47(9)

Partners may be prosecuted for conspiracy to defraud government of income taxes by making false partnership return and individual returns based thereon. Lisansky v. U.S., C.C.A.4 (Md.) 1929, 31 F.2d 846, certiorari denied

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49 S.Ct. 514, 279 U.S. 873, 73 L.Ed. 1008. Conspiracy 37

116. Corporations, parties liable for conspiracy

Corporate defendant, a defense contractor, could be convicted of conspiracy to defraud or make false statements to federal government, notwithstanding its contention that, as it was vicariously liable for each of its employees, conspiracy between employees would necessitate finding that defendant conspired with itself; statute does not exclude criminal liability for corporation where its employees are actual coconspirators. U.S. v. Hughes Aircraft Co., Inc., C.A.9 (Cal.) 1994, 20 F.3d 974, as amended, certiorari denied 115 S.Ct. 482, 513 U.S. 987, 130 L.Ed.2d 395. Conspiracy 24(5)

Defendant who was only person associated with corporation, could not conspire with corporation to defraud Government; although corporation could be party to conspiracy, two or more natural persons were required to be involved. U.S. v. Stevens, C.A.11 (Fla.) 1990, 909 F.2d 431.

Evidence was insufficient to establish conspiracy among the principal owners, officers and management employees of engineering firm in connection with various invoices and construction plans and specifications involved in substantive charges of making false statements in matters within the jurisdiction of a department or agency of the United States; it was not sufficient to prove conspiracy that firm was a small closely held family corporation in which all of the individual defendants were officers and primarily responsible for the operation of the business or that all of the individual defendants financially benefited from the operation of the firm. U.S. v. Richmond, C.A.8 (N.D.) 1983, 700 F.2d 1183.

A corporation may conspire with its own officers, agents and employees in violation of this section. U. S. v. Hartley, C.A.11 (Fla.) 1982, 678 F.2d 961, rehearing denied 688 F.2d 852, certiorari denied 103 S.Ct. 815, 459 U.S. 1170, 74 L.Ed.2d 1014, certiorari denied 103 S.Ct. 834, 459 U.S. 1183, 74 L.Ed.2d 1027.

Corporation is criminally responsible for acts of its officers and can be charged with their conspiracies. U. S. v. Sherpix, Inc., C.A.D.C.1975, 512 F.2d 1361, 168 U.S.App.D.C. 121.

The term "persons" in this section relating to conspiracy to commit offense against United States, or to defraud United States, or any agency, includes corporation. Alamo Fence Co. of Houston v. U.S., C.A.5 (Tex.) 1957, 240 F.2d 179.

In prosecution of corporate money lender for conspiracy to cause to be made or passed statements which it knew to be false for purpose of influencing Federal Housing Administration to insure loans, money lender can not contend that area manager, who had sole authority to cause to be made credit statement applications in such area to be passed on for presentation to FHA for insurance had no corporate power to commit acts of bad faith with criminal intent imputable to money lender. C. I. T. Corp. v. U.S., C.C.A.9 (Wash.) 1945, 150 F.2d 85.

In prosecution for conspiracy to cause to be made or passed statements, known to money lender to be false, for purpose of influencing Federal Housing Administration to insure certain loans, money lender is not relieved of guilt because its manager charged with duty of passing upon credit statements of applicants for FHA loans did not make a personal profit or because certain loan applications were not passed on to administration. C. I. T. Corp. v. U.S., C.C.A.9 (Wash.) 1945, 150 F.2d 85.

The guilty intent of corporate officers to commit a crime may be imputed to corporation to prove corporation's guilt. Mininsohn v. U.S., C.C.A.3 (N.J.) 1939, 101 F.2d 477.

Officers of corporation could have been indicted under former § 88 of this title [now this section] for conspiracy to conceal property from trustee in bankruptcy of corporation. Barron v. U.S., C.C.A.1 (Mass.) 1925, 5 F.2d 799.

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A corporation may be liable criminally for the crime of conspiracy. Joplin Mercantile Co. v. U.S., C.C.A.8 (Mo.) 1914, 213 F. 926, 131 C.C.A. 160, Am.Ann.Cas. 1916C,470, affirmed 35 S.Ct. 291, 236 U.S. 531, 59 L.Ed. 705. See, also, U.S. v. MacAndrews & Forbes Co., C.C.N.Y.1906, 149 F. 823, error dismissed 29 S.Ct. 681, 212 U.S. 585, 53 L.Ed. 661.

Individuals could be guilty of conspiracy to conceal assets of a bankrupt corporation, even if it could not be charged as a conspirator. Roukous v. U.S., C.C.A.1 (R.I.) 1912, 195 F. 353, 115 C.C.A. 255, certiorari denied 32 S.Ct. 840, 225 U.S. 710, 56 L.Ed. 1267.

While conducting company business, officer or representative of corporation cannot conspire with corporation of which he forms indispensable part. Colonial Penn Ins. Co. v. Value Rent-A-Car Inc., S.D.Fla.1992, 814 F.Supp. 1084.

Corporation generally cannot conspire with its own agents and employees. Williams v. Kansas Gas and Elec. Co., D.Kan.1992, 805 F.Supp. 890.

Related corporations can be held to conspire. Finance Co. of America v. BankAmerica Corp., D.C.Md.1980, 493 F.Supp. 895, 209 U.S.P.Q. 992.

Since corporation cannot conspire with itself, claim of corporate conspiracy could not be maintained against corporate defendants in products liability action whether one defendant was a division of where one defendant was a division of the other. Jagielski v. Package Mach. Co., E.D.Pa.1980, 489 F.Supp. 232.

Corporation could be found guilty of criminal conspiracy under this section. U. S. v. Griffin, S.D.Ind.1975, 401 F.Supp. 1222, affirmed 541 F.2d 284.

A corporation was capable of being a party to a conspiracy between corporation and its president and principal stockholder and its superintendent to commit an offense against the United States or to defraud United States. U. S. v. Kemmel, M.D.Pa.1958, 160 F.Supp. 718.

It is necessary to have two persons or entities to have a conspiracy and a corporation cannot conspire with itself. Packaged Programs, Inc. v. Westinghouse Broadcasting Co., W.D.Pa.1957, 156 F.Supp. 76, reversed on other grounds 255 F.2d 708. Conspiracy 1.1

Ordinarily, an officer of a corporation and his own corporation cannot conspire together, but if an officer of one corporation is also interested in another, and he acts both for the one corporation and for the other, or both for the one corporation and on his own account, it is possible to find a conspiracy, since such officer would then be acting in a dual role and would be, in contemplation of law, two persons. Cape Cod Food Products v. National Cranberry Ass'n, D.C.Mass.1954, 119 F.Supp. 900.

117. Employees, parties liable for conspiracy

If employee has knowledge that government property purchased by his employer has been stolen and that his employer intends to convert it to his own use, and if he conspires with his employer and others to effectuate that plan and actively participates therein, he is guilty of engaging in unlawful conspiracy to commit offense against the United States. Baker v. U. S., C.A.9 (Cal.) 1968, 393 F.2d 604, certiorari denied 89 S.Ct. 110, 393 U.S. 836, 21 L.Ed.2d 106.

An employee who assists his employer in receiving and concealing stolen government property purchased by the employer is not necessarily guilty of aiding and abetting, a violation of section 641 of this title making it unlawful to steal public property, or of conspiring to commit such an offense. Baker v. U. S., C.A.9 (Cal.) 1968, 393 F.2d

604, certiorari denied 89 S.Ct. 110, 393 U.S. 836, 21 L.Ed.2d 106.

Mere fact that certain defendants charged with violations of the gambling tax laws might have been employees instead of proprietors of an establishment at which gambling operations were conducted did not necessarily exclude them as co-conspirators engaged in an attempt, among other things, to defeat their own tax liabilities, where such defendants accepted or received bets. U. S. v. Sams, W.D.Pa.1963, 219 F.Supp. 164, affirmed in part, vacated in part on other grounds 340 F.2d 1014, certiorari denied 85 S.Ct. 1336, 380 U.S. 974, 14 L.Ed.2d 270, on remand 241 F.Supp. 427.

118. Bankrupts and conspirators, parties liable for conspiracy

In prosecution for conspiracy to violate Bankruptcy Act, § 1 et seq. of Title 11, by concealing property of bankrupt from trustee, while conspiracy must comprehend participation of bankrupt, it is enough if it does though he never joins. Kaplan v. U.S., C.C.A.2 (N.Y.) 1925, 7 F.2d 594, certiorari denied 46 S.Ct. 107, 269 U.S. 582, 70 L.Ed. 423 .

Insolvent debtors may properly be convicted of a conspiracy to conceal their assets, so that their creditors cannot reach the assets through bankruptcy proceedings which the debtors are expecting to be instituted. Meyer v. U.S., C.C.A.7 (Ill.) 1919, 258 F. 212, 169 C.C.A. 280.

Those conspiring before a petition in bankruptcy was filed to receive the property of the bankrupt, under an agreement which contemplated further action after the petition was filed, may be convicted of a conspiracy to receive the property after bankruptcy, and § 23 of Title 11 affords no protection to witnesses other than the bankrupt who testified in the bankruptcy proceedings, and who were subsequently charged with conspiring to receive property of the bankrupt. Knoell v. U S, C.C.A.3 (Pa.) 1917, 239 F. 16, 152 C.C.A. 66, error dismissed 38 S.Ct. 316, 246 U.S. 648, 62 L.Ed. 920.

119. Law enforcement officers, parties liable for conspiracy

The mere failure of county officers and their deputies to enforce state liquor laws or to prevent a conspiracy to violate them without more is insufficient to support conviction for conspiracy to commit an offense against the United States, but it is necessary to prove that the officers or their deputies consented in some affirmative way to become a party to the concert of action. Wilder v. U.S., C.C.A.10 (Okla.) 1938, 100 F.2d 177.

Failure of officer to prevent carrying out of a conspiracy may make him a party to it but failure of sheriff to enforce state law does not make him party to conspiracy to violate federal law, unless inaction is with view of aiding conspiracy. Burkhardt v. U. S., C.C.A.6 (Ohio) 1926, 13 F.2d 841.

120. Judicial officers, parties liable for conspiracy

The alleged fact that acts were committed by accused in his judicial capacity in performance of his duties as conciliation commissioner did not preclude prosecution of accused for conspiring to defraud the United States by corruptly administering and procuring the corrupt administration of the Frazier-Lemke Act, §§ 201-203 of Title 11. Braatelien v. U. S., C.C.A.8 (N.D.) 1945, 147 F.2d 888.

A judge of city court of Beverly Hills, appointed by city council, while acting in his judicial capacity and within his jurisdiction in imposing sentence and probation upon a person who pleaded guilty to charge of vagrancy, was immune from prosecution under former § 88 of this title [now this section] and former § 52 of this title, making it a crime to deprive citizens of civil rights under color of state laws. U.S. v. Chaplin, S.D.Cal.1944, 54 F.Supp. 926.

An agreement of a commissioner by which he was to receive a contingent fee of $5,000 for services in taking testimony in an alleged false claim against the government is not necessarily a guilty agreement and he must have had knowledge of the falsity and fraudulent character of the claim to render him guilty as a conspirator. U.S. v. Noblom, C.C.La.1878, 27 F.Cas. 181, No. 15896.

121. Attorneys, parties liable for conspiracy

Attorney, who was served with subpoena, could validly assert privilege against self-incrimination in response to questions asked of her in proceedings before special master to determine whether attorney's former clients should be held in civil contempt of district court order and whether matter should be referred to prosecutor for criminal contempt, in that attorney, in her individual capacity, was at least a secondary target of the possible criminal contempt prosecution, and attorney's answers to master's interrogation could provide evidence, or link in chain of evidence, that could later be used against attorney not only in prosecution for criminal contempt but most likely also for criminal conspiracy. In re Kave, C.A.1 (Mass.) 1985, 760 F.2d 343.

It is appropriate to consider canons of professional responsibility as a factor in determining an attorney's willing participation in a crime. U. S. v. DeLucca, C.A.5 (Ala.) 1980, 630 F.2d 294, certiorari denied 101 S.Ct. 1520, 450 U.S. 983, 67 L.Ed.2d 819.

It is no defense to a criminal prosecution for conspiracy to commit an offense against the United States that defendant acted in his professional capacity as an attorney. Baird v. U.S., C.C.A.8 (Neb.) 1912, 196 F. 778, 116 C.C.A. 73.

Fact that no clients of attorneys were charged with tax evasion did not preclude indictment of attorneys for conspiracy to defraud the Government as a result of a tax evasion scheme developed by the attorneys. U. S. v. Baskes, N.D.Ill.1977, 433 F.Supp. 799.

In prosecution for conspiracy to violate the Smith Act, § 2385 of this title, it is no defense that particular defendant was a member of the bar of federal court. U.S. v. Frankfeld, D.C.Md.1952, 103 F.Supp. 48.

If a client and his attorney enter into a conspiracy to resist an officer in performing his duty both are equally guilty. U. S. v. Smith, C.C.E.D.Ark.1870, 27 F.Cas. 1161, No. 16333.

122. Principal and agent, parties liable for conspiracy

Acquittal of principal did not preclude conviction of defendant on charge of aiding and abetting principal. U. S. v. Musgrave, C.A.5 (Tex.) 1973, 483 F.2d 327, certiorari denied 94 S.Ct. 447, 414 U.S. 1023, 38 L.Ed.2d 315, certiorari denied 94 S.Ct. 450, 414 U.S. 1025, 38 L.Ed.2d 316.

The acts of agents and employés in furtherance of a conspiracy are the acts of the principal. Alaska S.S. Co. v. International Longshoremen's Ass'n of Puget Sound, W.D.Wash.1916, 236 F. 964.

An indictment would lie under former § 88 of this title [now this section] for conspiracy to commit an offense in violation of § 1 of Title 49, against an agent of a railroad company and others, to whom by agreement he issued interstate free passes, and who pursuant to such agreement sold the same in violation thereof, and the agent could not defend on the ground that his principal had no knowledge of the fact, and therefore committed no offense under said section. U.S. v. Clark, W.D.Mo.1908, 164 F. 75.

Where indictment charged a conspiracy to defraud the United States by mailing old newspapers for the purpose of fraudulently increasing the weight of mail matter, if such mailing was done by defendant's servants or agents, as such, and not as parties to, or members or abettors of, the common design, they will not be deemed co-conspirators,

nor will such mailing amount to an overt act. U.S. v. Newton, S.D.Iowa 1892, 52 F. 275. Conspiracy 40

Principal cannot conspire with his agent. Tobman v. Cottage Woodcraft Shop, S.D.Cal.1961, 194 F.Supp. 83.

123. Aiders and abettors, parties liable for conspiracy

Operator of photographic identification machine, who produced fraudulent photographic identification cards at request of members of conspiracy to correspond with names of payees of stolen checks, actively assisted and participated in conspiracy to receive and unlawfully possess stolen checks and could be convicted, where operator ordered recipient of false identification card to return share of illegally obtained funds and identification card, operator received payments totaling $280, and operator provided identification necessary for cashing of stolen checks. U.S. v. Collazo, C.A.7 (Ill.) 1987, 815 F.2d 1138.

A person can be convicted of aiding the filing of a false tax return even though he did not actually prepare it; all that is required is that he knowingly participated in providing information that results in a materially fraudulent tax return, whether or not taxpayer is aware of the false statements. U.S. v. Nealy, C.A.4 (W.Va.) 1984, 729 F.2d 961.

Evidence in counterfeiting prosecution that defendant initially asked third party to print counterfeit notes, obtained plates and ink necessary for printing, instructed third party on how to print the notes, was present when third party ran the printing machine, and cut the notes to the appropriate size established that defendant was guilty of exactly the conduct with which he was charged in the indictment, that is, aiding another in the violation of the federal counterfeiting statute, and fact that he was indicted for "aiding and abetting," while third party, the principal, was not convicted nor even indicted, did not compel a different result. U. S. v. Brunson, C.A.7 (Ind.) 1981, 657 F.2d 110, certiorari denied 102 S.Ct. 1019, 454 U.S. 1151, 71 L.Ed.2d 306.

A defendant may wittingly aid a criminal act and be liable as an aider and abettor, but not be liable for conspiracy, which requires knowledge of voluntary participation in agreement to do illegal act. U. S. v. Bright, C.A.5 (Miss.) 1980, 630 F.2d 804.

Conspiring to commit crime with another and aiding and abetting in its substantive commission were distinct crimes, and Government should not have been forced to choose between deleting the aiding and abetting element of second count of indictment or dropping conspiracy charge under third count. U.S. v. Townes, C.A.6 (Mich.) 1975, 512 F.2d 1057, certiorari denied 96 S.Ct. 84, 423 U.S. 846, 46 L.Ed.2d 67.

Defendant's acquittal of conspiracy to sell cocaine did not bar subsequent conviction for aiding and abetting the substantive offense on theory that the acquittal was an adjudication that defendant lacked the requisite criminal intent to sustain a conviction for conspiracy. Ottomano v. U. S., C.A.1 (Mass.) 1972, 468 F.2d 269, certiorari denied 93 S.Ct. 948, 409 U.S. 1128, 35 L.Ed.2d 260, rehearing denied 93 S.Ct. 1383, 410 U.S. 948, 35 L.Ed.2d 616.

Conspiracy to commit a substantive offense and aiding and abetting commission of same offense constitute separate and distinct crimes and a defendant may be convicted of both. U. S. v. Tropiano, C.A.2 (Conn.) 1969, 418 F.2d 1069, certiorari denied 90 S.Ct. 1258, 397 U.S. 1021, 25 L.Ed.2d 530, certiorari denied 90 S.Ct. 1262, 397 U.S. 1021, 25 L.Ed.2d 530.

Where defendant not only knew of intended illegal use of obscene film but also furthered, promoted, and cooperated in it by supplying merchandise banned from interstate commerce which he delivered in furtive and clandestine manner in order to avoid detection, he thus aided and abetted such transportation and conspired to so transport. U. S. v. Russo, C.A.2 (Conn.) 1960, 284 F.2d 539.

One does not become a party to conspiracy by aiding and abetting it, through sales of supplies or otherwise, unless

he knows of the conspiracy, and the inference of such knowledge cannot be drawn merely from knowledge the buyer will use the goods illegally. Van Huss v. United States, C.A.10 (N.M.) 1952, 197 F.2d 120. See, also, U.S. v. Giuliano, C.A.N.J.1959, 263 F.2d 582. Conspiracy 47(2); Conspiracy 40.1

Where two persons act in concert to commit a wrong each is liable for entire injury resulting therefrom, and on who abets a wrongful act is equally liable with the perpetrator. International Longshoremen's & Warehousemen's Union v. Juneau Spruce Corp., C.A.9 (Alaska) 1951, 189 F.2d 177, 13 Alaska 291, certiorari granted 72 S.Ct. 89, 342 U.S. 857, 13 Alaska 455, 96 L.Ed. 645, affirmed 72 S.Ct. 235, 342 U.S. 237, 13 Alaska 536, 96 L.Ed. 275.

A person does not become a "conspirator" nor is he chargeable as a "co-conspirator" simply because he sells material or merchandise knowing that it will be used for unlawful purpose. Bacon v. U.S., C.C.A.10 (Okla.) 1942, 127 F.2d 985.

The seller of goods does not become a "conspirator" or an "abettor" merely because he does not refrain from selling goods which he knows the buyers intend to use in committing a crime, but he must in some sense promote their venture himself, make it his own, or have a stake in its outcome, before he is guilty as a "conspirator" or an "abettor". U.S. v. Falcone, C.C.A.2 (N.Y.) 1940, 109 F.2d 579, certiorari granted 60 S.Ct. 1075, 310 U.S. 620, 84 L.Ed. 1393, affirmed 61 S.Ct. 204, 311 U.S. 205, 85 L.Ed. 128.

Jobber, wholesalers, and distributor, who supplied sugar, yeast, and cans out of which alcohol was illicitly distilled or in which it was sold, were not guilty of conspiring with buyers to operate illicit stills even if they knew of illegal use to which the products were being put, notwithstanding that distributor of yeast operated under a certificate taken out for him by a cousin who swore falsely that he was to do the business. U.S. v. Falcone, C.C.A.2 (N.Y.) 1940, 109 F.2d 579, certiorari granted 60 S.Ct. 1075, 310 U.S. 620, 84 L.Ed. 1393, affirmed 61 S.Ct. 204, 311 U.S. 205, 85 L.Ed. 128.

Participation in formation of conspiracy is not essential to culpability, if, after it was formed, accused aided or abetted it with understanding of its purpose. Luteran v. U.S., C.C.A.8 (Mo.) 1937, 93 F.2d 395, certiorari denied 58 S.Ct. 642, 303 U.S. 644, 82 L.Ed. 1103, rehearing denied 58 S.Ct. 756, 303 U.S. 668, 82 L.Ed. 1124, certiorari denied 58 S.Ct. 643, 303 U.S. 644, 82 L.Ed. 1104.

Defendant aiding in conspiracy to violate liquor law by selling materials after knowledge of such conspiracy is coconspirator. Pattis v. U.S., C.C.A.9 (Idaho) 1927, 17 F.2d 562, certiorari denied 47 S.Ct. 764, 274 U.S. 750, 71 L.Ed. 1332.

One with knowledge of conspiracy, and aiding conspirators in carrying out unlawful design, is equally guilty with them. Di Bonaventura v. U.S., C.C.A.4 (W.Va.) 1926, 15 F.2d 494. See, also, Johnson v. U.S., 1925, 45 S.Ct. 509, 268 U.S. 689, 69 L.Ed. 1158; Mullen v. U.S., 1925, 45 S.Ct. 353, 267 U.S. 598, 69 L.Ed. 806; Burkhardt v. U.S., C.C.A.Ohio 1926, 13 F.2d 841; Simpson v. U.S., C.C.A.W.Va.1926, 11 F.2d 591, certiorari denied 46 S.Ct. 488, 271 U.S. 674, 70 L.Ed. 1145; Allen v. U.S., C.C.A.Ind.1925, 4 F.2d 688, certiorari denied 45 S.Ct. 352, 267 U.S. 597, 69 L.Ed. 806. Conspiracy 40.1

Where the evidence showed a continuing conspiracy for the illegal purchase and sale of liquor, persons who, with knowledge of the conspiracy, contributed to its carrying out by knowingly selling liquor to the initial conspirators, though at different times and without knowledge of each other became parties to the conspiracy. Rudner v. U. S., C.C.A.6 (Ohio) 1922, 281 F. 516, 2 Ohio Law Abs. 242, certiorari denied 43 S.Ct. 95, 260 U.S. 734, 67 L.Ed. 487.

Courts are not authorized to hold as a matter of law that one who aids and abets another in the commission of an offense is a conspirator. Louie v. U.S., C.C.A.9 (Wash.) 1914, 218 F. 36, 134 C.C.A. 58.

Defendant, even if not "agreeing" member of conspiracy, may be found guilty of conspiracy if he knew of

conspiracy's existence at time of his acts, and his acts knowingly aided or abetted business of conspiracy. U.S. v. Sims, N.D.Ill.1992, 808 F.Supp. 620.

Defendant's role as knowing aider and abetter to conspiracy offense provided basis upon which to find him liable as a coconspirator where he actually enabled the agreement itself to come into being by communicating between the other coconspirators the messages by which their conspiracy was formed. U.S. v. Ammons, W.D.N.C.1988, 682 F.Supp. 1332.

Conviction of one indicted as principal will stand even though evidence shows he was aider or an abettor, and government is not required to explicitly allege that defendant was aider or abettor, nor is government required to refer to section 2 of this title in the indictment. Murzyn v. U.S., N.D.Ind.1984, 578 F.Supp. 254, affirmed 753 F.2d 1076.

An aider and abettor is punished for assisting in commission of a crime whereas a conspirator is punished for joining with one or more others in a plan to commit a crime regardless of whether the planned crime is actually committed. U.S. v. Miller, N.D.Ill.1982, 552 F.Supp. 827, affirmed 729 F.2d 1464.

Conspiracy and aiding and abetting are distinct offenses; finding of insufficiency of the evidence to establish that defendants aided and abetted one another in the commission of specific offenses is not necessarily inconsistent with existence of conspiracy with both of the defendants as knowing and willful participants. U. S. v. Talbott, S.D.Ohio 1978, 460 F.Supp. 253, affirmed 590 F.2d 192.

The conspiracy doctrine will incriminate persons on fringe of offending who would not be guilty of aiding and abetting, or of becoming an accessory, for those charges only lie where an act which is a crime has already been committed. U. S. v. Anthony, M.D.Pa.1956, 145 F.Supp. 323.

Aiding and abetting in commission of crime is distinct from conspiracy to commit crime, and neither conviction nor acquittal of one is per se bar to prosecution for other. U.S. v. J.R. Watkins Co., D.C.Minn.1954, 127 F.Supp. 97.

Aiding and abetting is not independent crime, and acts constituting basis of charge of aiding and abetting must be acts which tend to commission of some substantive offense, while overt act necessary to conspiracy may itself be innocent. U.S. v. J.R. Watkins Co., D.C.Minn.1954, 127 F.Supp. 97.

To be a party to a conspiracy, whether criminal or civil, one must actually participate therein by aiding or abetting it in some way, and mere acquiescence or standing by and watching others conspire does not suffice to impose either criminal or civil conspiratorial responsibility. U.S. v. American Precision Products Corp., D.C.N.J.1953, 115 F.Supp. 823.

124. Nonfeasors, parties liable for conspiracy

The failure to prevent carrying out of conspiracy to violate federal law, though accused has power to do so, will not make him guilty of offense without further proof that he has in some affirmative way consented to be a party thereto. Marino v. U.S., C.C.A.9 (Cal.) 1937, 91 F.2d 691, certiorari denied 58 S.Ct. 410, 302 U.S. 764, 82 L.Ed. 593.

125. Prisoners, parties liable for conspiracy

Prisoners paying for privilege of leaving jail were parties to conspiracies to disobey writs of commitment, and violate statute as to escapes. U.S. v. Hoffman, D.C.Ill.1925, 13 F.2d 269, affirmed 13 F.2d 278, affirmed 13 F.2d 280, certiorari dismissed 57 S.Ct. 755, 296 U.S. 666. See, also, Westbrook v. U.S., C.C.A.1926, 13 F.2d 280.

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126. Persons beyond territorial jurisdiction, parties liable for conspiracy

Officers and crew of liquor-laden vessel were subject to prosecution for conspiracy to violate laws of United States, though corporeally at all times outside jurisdiction of United States. Ford v. U.S., U.S.Cal.1927, 47 S.Ct. 531, 273 U.S. 593, 71 L.Ed. 793.

Though a foreign naval commander is safe from arrest under federal warrant while on his foreign vessel, his status does not sanctify a conspiracy with him to violate United States laws. Farnsworth v. Zerbst, C.C.A.5 (Ga.) 1938, 98 F.2d 541.

Citizens or subjects of foreign nation beyond territorial jurisdiction may commit offense of conspiracy against United States. Woitte v. U.S., C.C.A.9 (Or.) 1927, 19 F.2d 506, certiorari denied 48 S.Ct. 84, 275 U.S. 545, 72 L.Ed. 417.

127. Foreign officials, parties liable for conspiracy

Foreign officials may not be prosecuted under the general conspiracy statute for conspiring to violate the Foreign Corrupt Practices Act (FCPA). U.S. v. Castle, C.A.5 (Tex.) 1991, 925 F.2d 831.

Canadian officials, whom Government conceded it could not prosecute for violation of Foreign Corrupt Practices Act, could not be prosecuted under general conspiracy statute for conspiring to violate Act; evidence of Congressional intent to exempt foreign officials from prosecution for receiving bribes from Americans was overwhelming, and allowing conspiracy prosecution would permit executive branch to override such intent. U.S. v. Blondek, N.D.Tex.1990, 741 F.Supp. 116, affirmed 925 F.2d 831.

128. Immunity, parties liable for conspiracy

Where attention given in evidence is to substance of defendant congressman's speech on floor of House and his motivation in making it was not incidental part of government's prosecution under charge of conspiracy to defraud United States, since conspiracy theory depended on showing that speech was made solely or primarily to serve private interests and that defendant was not acting in good faith, the judicial inquiry was in violation of language of constitutional provision of U.S.C.A. Const. Art. 1, § 6, cl. 1, stating that for any speech or debate in either house the senators and representatives shall not be questioned in any other place and the policies underlying it. U. S. v. Johnson, U.S.Md.1966, 86 S.Ct. 749, 383 U.S. 169, 15 L.Ed.2d 681.

If there was a real agreement between defendant and agents of Iraqi Intelligence Service (IIS) for defendant to act in United States as agent of Iraq without notifying Attorney General, diplomatic titles held by those IIS agents could not save defendant from being prosecuted for conspiracy to act as agent. U.S. v. Dumeisi, C.A.7 (Ill.) 2005, 424 F.3d 566, certiorari denied 126 S.Ct. 1570, 164 L.Ed.2d 305. Ambassadors And Consuls 3

The immunity from prosecution of a foreign diplomat who conspires with United States citizen to commit crime will not excuse the citizen. Farnsworth v. Zerbst, C.C.A.5 (Ga.) 1938, 98 F.2d 541.

A United States citizen was not, by virtue of alleged immunity from prosecution of his coconspirators, immune from prosecution for conspiring with Japanese diplomats and naval commander to deliver to Japan information, concerning the national defense. Farnsworth v. Zerbst, C.C.A.5 (Ga.) 1938, 98 F.2d 541.

Defendant's agreement with state officials guaranteeing him immunity from prosecution was not binding on federal

government under equitable immunity doctrine, in prosecution for conspiracy to commit bribery, where federal government knew or should have known that defendant was cooperating witness, but there was no evidence federal government's decisions were made with deliberate intention of distorting judicial fact finding process. U.S. v. Roberts, D.Del.2003, 280 F.Supp.2d 325. Criminal Law 42

129. Knowledge, parties liable for conspiracy--Generally

Government was not required to prove that defendant had knowledge of all details of conspiracy or each of its members, provided that prosecution established his knowledge of the essentials of the conspiracy. U. S. v. Alvarez, C.A.5 (Fla.) 1980, 625 F.2d 1196, certiorari denied 101 S.Ct. 2017, 451 U.S. 938, 68 L.Ed.2d 324.

To establish culpability of each individual defendant in a conspiracy to defraud, government must prove beyond reasonable doubt that each defendant knew of conspiracy and had the deliberate knowing and specific intent to join the conspiracy. U.S. v. Becker, C.A.5 (Tex.) 1978, 569 F.2d 951, rehearing denied 576 F.2d 931, certiorari denied 99 S.Ct. 188, 439 U.S. 865, 58 L.Ed.2d 174, certiorari denied 99 S.Ct. 726, 439 U.S. 1048, 58 L.Ed.2d 708.

Person can be convicted of guilty participation in conspiracy on basis of acts innocent in themselves only if he had guilty knowledge that what he did was in furtherance of corrupt enterprise. U. S. v. Rappaport, C.A.3 (Pa.) 1961, 292 F.2d 261, certiorari denied 82 S.Ct. 48, 368 U.S. 827, 7 L.Ed.2d 31.

One who has no knowledge of the object of a conspiracy cannot be a conspirator for the intent to participate is lacking. Stanley v. U. S., C.A.6 (Ky.) 1957, 245 F.2d 427, motion denied 249 F.2d 64.

Fact that defendant committed illegal acts which furthered the object of conspiracy did not constitute him a conspirator unless he did so with some knowledge of conspiracy. Henderson v. U.S., C.A.5 (Fla.) 1956, 237 F.2d 169.

It is not necessary that conspirators should know in advance precisely what contingencies will arise, in order to agree as to how they will deal with all possible contingencies which appear likely to have the results which the conspirators seek to avoid. United States v. Grunewald, C.A.2 (N.Y.) 1956, 233 F.2d 556, certiorari granted 77 S.Ct. 91, 352 U.S. 866, 1 L.Ed.2d 74, reversed on other grounds 77 S.Ct. 963, 353 U.S. 391, 1 L.Ed.2d 931.

Mere knowledge that coconspirator is engaged in other criminal conspiracies, with other persons, of the same general nature, is not sufficient to make conspirator a party thereto. Canella v. U.S., C.C.A.9 (Cal.) 1946, 157 F.2d 470.

If one's intent is to defraud when he joins a dishonest scheme, he becomes a part of the scheme, although he may know nothing but his own share in the aggregate wrongdoing. Blue v. U. S., C.C.A.6 (Ohio) 1943, 138 F.2d 351, certiorari denied 64 S.Ct. 1046, 322 U.S. 736, 88 L.Ed. 1570, rehearing denied 64 S.Ct. 1259, 322 U.S. 771, 88 L.Ed. 1596, certiorari denied 64 S.Ct. 1046, 322 U.S. 737, 88 L.Ed. 1570.

A party who, without more, furnishes supplies to an illicit distiller is not guilty of "conspiracy" even though his sale may have furthered the object of a conspiracy to which the distiller was a party but of which the party furnishing supplies had no knowledge. U.S. v. Harrison, C.C.A.3 (N.J.) 1941, 121 F.2d 930, certiorari denied 62 S.Ct. 124, 314 U.S. 661, 86 L.Ed. 530.

Knowledge of existence of a conspiracy is not alone enough to constitute one a party to it, so as to sustain conspiracy conviction. U.S. v. Potash, C.C.A.2 (N.Y.) 1941, 118 F.2d 54, certiorari denied 61 S.Ct. 1103, 313 U.S. 584, 85 L.Ed. 1540. See, also, McDaniel v. U.S., C.C.A.Fla.1928, 24 F.2d 303; U.S. v. Armour & Co., D.C.Okl.1943, 48 F.Supp. 801, reversed on other grounds, 137 F.2d 269. Conspiracy 40.1

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In prosecution for selling securities in violation of the Securities Act, §§ 77e(a)(1) and 77q(a)(1) of Title 15, for using mails to promote fraud, and for conspiracy, if any particular defendant were ignorant of facts from the knowledge of which, alone, fraudulent intent could be inferred, such defendant could not be convicted unless his ignorance resulted from failure to exercise such discretion in ascertaining the facts as would be expected of a reasonably prudent person. Stone v. U. S., C.C.A.6 (Tenn.) 1940, 113 F.2d 70.

A charge of engaging in a far-reaching conspiracy cannot be avoided by showing that what the accused conceived to be a limited conspiracy turned out to be a conspiracy of wider range of which the supposed smaller one was in fact but a segment, and it is enough that accused knew he had connected himself with a criminal conspiracy, even though he was unaware of its full extent. U.S. v. Manton, C.C.A.2 (N.Y.) 1939, 107 F.2d 834, certiorari denied 60 S.Ct. 590, 309 U.S. 664, 84 L.Ed. 1012.

Knowledge on part of individual conspirator is a matter of inference from facts proved, and it is unnecessary that he be fully informed concerning scope of conspiracy to justify inference of knowledge on his part. U.S. v. Anderson, C.C.A.7 (Ill.) 1939, 101 F.2d 325, certiorari denied 59 S.Ct. 822, 307 U.S. 625, 83 L.Ed. 1502, certiorari denied 59 S.Ct. 822, 307 U.S. 625, 83 L.Ed. 1503, certiorari denied 59 S.Ct. 823, 307 U.S. 625, 83 L.Ed. 1503, certiorari denied 59 S.Ct. 823, 307 U.S. 625, 83 L.Ed. 1504, certiorari denied 59 S.Ct. 823, 307 U.S. 625, 83 L.Ed. 1504, 86 L.Ed. 1504, certiorari denied 59 S.Ct. 824, 307 U.S. 625, 83 L.Ed. 1505, certiorari denied 59 S.Ct. 824, 307 U.S. 625, 83 L.Ed. 1506, certiorari denied 59 S.Ct. 825, 307 U.S. 625, 83 L.Ed. 1506, certiorari denied 59 S.Ct. 825, 307 U.S. 625, 83 L.Ed. 1507, certiorari denied 59 S.Ct. 825, 307 U.S. 625, 83 L.Ed. 1508, certiorari denied 59 S.Ct. 826, 307 U.S. 625, 83 L.Ed. 1508, certiorari denied 59 S.Ct. 826, 307 U.S. 625, 83 L.Ed. 1509.

To constitute a "conspiracy," it is not necessary that all of the parties be personally acquainted with each other, nor that one has direct contact with all others, it being sufficient if, with knowledge that others have combined to violate the law, one knowingly co-operates in some affirmative manner to further the purpose of the conspiracy. Martin v. U. S., C.C.A.10 (Colo.) 1938, 100 F.2d 490, certiorari denied 59 S.Ct. 590, 306 U.S. 649, 83 L.Ed. 104, certiorari denied 59 S.Ct. 590, 306 U.S. 649, 83 L.Ed. 1047, certiorari denied 59 S.Ct. 590, 306 U.S. 649, 83 L.Ed. 1048, certiorari denied 59 S.Ct. 591, 306 U.S. 649, 83 L.Ed. 1048, certiorari denied 59 S.Ct. 642, 306 U.S. 651, 83 L.Ed. 1050.

Guilt of conspirator is not dependent on knowledge of entire scope of conspiracy or as to who all members of conspiracy were. U.S. v. Wilson, D.C.W.Va.1927, 23 F.2d 112.

Persons having knowledge of purpose in interstate transportation of prize fight films and furthering such undertaking may be found guilty of conspiracy. U.S. v. Wilson, D.C.W.Va.1927, 23 F.2d 112.

Guilt of conspirator is not dependent on his knowledge of entire scope of conspiracy. McDonnell v. U.S., C.C.A.1 (Mass.) 1927, 19 F.2d 801, certiorari denied 48 S.Ct. 114, 275 U.S. 551, 72 L.Ed. 421.

It is not necessary that each coconspirator have knowledge of all details of conspiracy or means to be used. U.S. v. Olmstead, D.C.Wash.1925, 5 F.2d 712.

One could not be convicted of conspiracy to defraud the United States, consisting in exercising, under a certain circular issued by the Treasury Department, the privilege of converting First Liberty Loan 4 per cent. bonds into Third Liberty Loan 4 1/2 per cent. bonds after the time limit set out in the circular had expired, using for that purpose bonds of the United States deposited with the Federal Reserve Bank, unless it was shown that the accused had knowledge of the terms of the circular or of the time within which the conversion privilege could be exercised. U S v. Jenks, E.D.Pa.1919, 258 F. 763.

Knowledge by an alleged co-conspirator that the other defendants are attempting to defraud is not sufficient to

involve him in the conspiracy, nor is mere suspicion that he is a party to the conspiracy. Marrash v. U.S., C.C.A.2 (N.Y.) 1909, 168 F. 225, 93 C.C.A. 511.

In order to convict a defendant of conspiracy, government need not prove that defendant knew of all of the facts of the scheme, or knew of identity of each of the coconspirators, or played parts of equal importance or activity with other persons within conspiracy; evidence need merely show that each defendant possessed full knowledge of conspiracy's general scope and purpose. U. S. v. Simms, W.D.La.1980, 508 F.Supp. 1188.

To be included as a coconspirator, the individual need only know the general purpose of the conspiracy and not the part played by each of the members of the conspiracy. U.S. v. Vigi, E.D.Mich.1973, 363 F.Supp. 314.

Person does not become liable as a conspirator unless he knows of the existence of the conspiracy, agrees to become a party, and with that knowledge commits some act in furtherance thereof, and such knowledge and participation may be inferred from circumstances and acts and conduct of the parties. U. S. v. Kensil, E.D.Pa.1961, 195 F.Supp. 115, affirmed 295 F.2d 489, certiorari denied 82 S.Ct. 439, 368 U.S. 967, 7 L.Ed.2d 396 . See, also, Jones v. U.S., C.A.Okl.1958, 251 F.2d 288, certiorari denied, 78 S.Ct. 703, 356 U.S. 919, 2 L.Ed.2d 715. Conspiracy 24.5; Conspiracy 47(1)

Some degree of knowledge and consent to conspiracy, or some kind of knowing assistance given in furtherance of it, is usually required to impose liability. Riss & Co. v. Association of American Railroads, D.C.D.C.1959, 170 F.Supp. 354, certiorari denied 267 F.2d 659, 105 U.S.App.D.C. 382, certiorari denied 80 S.Ct. 108, 361 U.S. 804, 4 L.Ed.2d 57.

Persons having no knowledge of conspiracy are not conspirators. U. S. v. Gilboy, M.D.Pa.1958, 160 F.Supp. 442.

An intention to become a party to an illegal enterprise must be predicated on some affirmative action and a person having no knowledge of a conspiracy cannot be a conspirator. U. S. v. Weinberg, M.D.Pa.1955, 129 F.Supp. 514, affirmed 226 F.2d 161, certiorari denied 76 S.Ct. 305, 350 U.S. 933, 100 L.Ed. 815.

To participate "wilfully" in conspiracy means to participate voluntarily and purposely, with specific intent to violate law or reckless disregard as to whether participant's act is violation of law, so that person intentionally encouraging, advising or assisting other conspirators for purpose of furthering their enterprise or scheme, with understanding of its unlawful character, becomes a willful participant in conspiracy. U. S. v. Schneiderman, S.D.Cal.1952, 106 F.Supp. 906.

Where the substantive offense requires the mutual cooperation of one seller and one buyer for its commission, the seller must know of the existence of the conspiracy charged in the indictment and that he is furthering its purpose before he can be convicted as a co-conspirator, otherwise venture terminates with sale and seller can have no intention of helping conspirators obtain the fruits of their labors. U. S. v. Boyer, E.D.Pa.1949, 84 F.Supp. 905.

Where a charge of conspiracy is limited to two persons, the guilty knowledge must have been shared by both to warrant conviction of either. U.S. v. Cunningham, M.D.Ga.1941, 40 F.Supp. 399.

130. ---- Object of conspiracy, knowledge, parties liable for conspiracy

Defendants could be convicted of conspiracy to defraud bank, to misapply its funds, to transport fraudulently obtained money in interstate commerce, to make false entries in bank's records, to make false representations to bank in connection with loan application, and to use interstate wire or telephone communications system to further those wrongs, in light of evidence they had knowledge of two of conspiracy's primary objectives, even though they did not know exact scope of conspiracy. U.S. v. Rapp, C.A.11 (Fla.) 1989, 871 F.2d 957, certiorari denied 110 S.Ct. 233, 493 U.S. 890, 107 L.Ed.2d 184.

A person may be guilty of the conspiracy even though he has limited knowledge as to the scope of the conspiracy and no knowledge of details of the plan or operation in furtherance thereof or of the membership in the conspiracy or of the part played by each member and the division of the spoils, however, to sustain a conviction, the defendant must know the purpose of the conspiracy. U. S. v. Chambers, C.A.6 (Ohio) 1967, 382 F.2d 910.

Knowledge on the accused's part of the object of conspiracy after the conspiracy has ended and the offense is committed is not sufficient to convict him as member of conspiracy. Stanley v. U. S., C.A.6 (Ky.) 1957, 245 F.2d 427, motion denied 249 F.2d 64.

While it is not necessary to prove that each participant in conspiracy knows exact parameters of plan, they must at least share general conspiratorial objective. Haupt v. Dillard, D.Nev.1992, 794 F.Supp. 1480, affirmed in part, reversed in part 17 F.3d 285, as amended.

One who knowingly and intentionally joins a going conspiracy, aware of its objectives, may be held, whether his role was minor or major and whether or not he knew all alleged members of claimed conspiracy. U. S. v. Nomura Trading Co., S.D.N.Y.1963, 213 F.Supp. 704.

131. ---- Illegal purpose, knowledge, parties liable for conspiracy

Jobbers and distributors who sold sugar, yeast, and cans, with knowledge that the materials would be used in illicit distilling operations, but without knowledge that buyers were parties to a conspiracy, were not guilty of "conspiracy" with buyers to operate illicit stills, even if the sales furthered object of the conspiracy to which buyers were parties. United States v. Falcone, U.S.N.Y.1940, 61 S.Ct. 204, 311 U.S. 205, 85 L.Ed. 128.

In order to connect a defendant to a conspiracy, prosecution must demonstrate that defendant entered into an agreement with others knowingly and for purpose of achieving an illegal objective. U. S. v. DeLucca, C.A.5 (Ala.) 1980, 630 F.2d 294, certiorari denied 101 S.Ct. 1520, 450 U.S. 983, 67 L.Ed.2d 819.

A conspirator must agree to and participate in a scheme which he knows to have an illegal objective. U.S. v. Gleason, C.A.2 (N.Y.) 1979, 616 F.2d 2, certiorari denied 100 S.Ct. 1037, 444 U.S. 1082, 62 L.Ed.2d 767, certiorari denied 100 S.Ct. 1320, 445 U.S. 931, 63 L.Ed.2d 764.

It is not necessary that all of persons taking part in conspiracy should play parts of equal importance or activity; it is sufficient to convict defendant of conspiracy if he knows in a general way of purpose of other persons to violate the law and then assists in any way to accomplish such purpose no matter how great or small his activities may be. U. S. v. Bryant, C.A.4 (S.C.) 1966, 364 F.2d 598.

Where original conspiracy to steal and transport goods in interstate commerce contemplates eventual sale of goods to innocent purchaser, goods continue in interstate commerce until they reach that destination and anyone who purchases goods from one in conspiracy knowing that they were stolen and transported in interstate commerce becomes part of conspiracy. U. S. v. Cardillo, C.A.2 (N.Y.) 1963, 316 F.2d 606, certiorari denied 84 S.Ct. 123, 375 U.S. 857, 11 L.Ed.2d 84, rehearing denied 84 S.Ct. 203, 375 U.S. 917, 11 L.Ed.2d 158, certiorari denied 84 S.Ct. 60, 375 U.S. 822, 11 L.Ed.2d 55, rehearing denied 84 S.Ct. 263, 375 U.S. 926, 11 L.Ed.2d 169.

One who sells materials with knowledge that they are intended for use in distilling illicit spirits does not thereby become party to conspiracy. U. S. v. Cherry, C.A.4 (N.C.) 1961, 295 F.2d 842.

Even if defendant, who, in Texas, purchased maps stolen from Pittsburgh office of oil company, did not expressly agree to transport the maps across state lines, where maps had to be taken from Pittsburgh and placed in his hands and had to be taken to areas they depicted in order to exploit them, agreement on his part to so transport them was inherent part of scheme and he could be convicted of conspiracy to transport the maps in interstate commerce,

knowing them to have been stolen. U. S. v. Lester, C.A.3 (Pa.) 1960, 282 F.2d 750, certiorari denied 81 S.Ct. 385, 364 U.S. 937, 5 L.Ed.2d 368.

If there be knowledge by an individual defendant that he is a participant in a general plan designed to place narcotics in hands of ultimate users, such person may be deemed to be regarded as an accredited member of the conspiracy. U. S. v. Rich, C.A.2 (N.Y.) 1959, 262 F.2d 415.

Conspirators are held to have intended consequences of their act, and by purposely engaging in a conspiracy which necessarily and directly produces a prohibited result, they are, in contemplation of law, chargeable with intending that result. Ingram v. U. S., C.A.5 (Ga.) 1958, 259 F.2d 886, certiorari granted 79 S.Ct. 234, 358 U.S. 905, 3 L.Ed.2d 227, affirmed in part, reversed in part on other grounds 79 S.Ct. 1314, 360 U.S. 672, 3 L.Ed.2d 1503, rehearing denied 80 S.Ct. 42, 361 U.S. 856, 4 L.Ed.2d 96.

Mere knowledge of illegal purpose on part of buyer may be sufficient to convict seller of engaging in conspiracy with buyer. Quirk v. U. S., C.A.1 (Mass.) 1957, 250 F.2d 909, certiorari denied 78 S.Ct. 669, 356 U.S. 913, 2 L.Ed.2d 585.

Mere association with conspirators in matters not connected with the unlawful undertaking does not make one a conspirator, even though he may know that an unlawful undertaking is in the making by those with whom he associates. Butler v. U. S., C.A.10 (Okla.) 1952, 197 F.2d 561.

Rule that sale of sugar and yeast with knowledge that materials are to be used in illicit distilling operations but without knowledge that buyers were parties to a conspiracy does not make sellers guilty of conspiracy, did not preclude convicting of conspiracy sellers who knew that buyers had formed a conspiracy to violate internal revenue laws. U S v. Mule, C.C.A.2 (N.Y.) 1944, 141 F.2d 487.

Where evidence shows continuing conspiracy for illegal purchase and sale of liquor, persons contributing to effectuation of such conspiracy, with knowledge thereof, by knowingly selling liquor to initial conspirators, though at different times and without knowledge of each other, become parties to conspiracy. Braverman v. U.S., C.C.A.6 (Mich.) 1942, 125 F.2d 283, certiorari granted 62 S.Ct. 1037, 316 U.S. 653, 86 L.Ed. 1733, reversed on other grounds 63 S.Ct. 99, 317 U.S. 49, 87 L.Ed. 23.

A defendant who sold counterfeit bills to second party who sold same bills to third person who was arrested while trying to pass them, all three parties having knowledge that bills were counterfeit, was not a party to a "conspiracy" by which third person should possess the bills, where defendant had no concern with bills after second party paid for them. U.S. v. Peoni, C.C.A.2 (N.Y.) 1938, 100 F.2d 401.

One who commits an overt act with knowledge of conspiracy to violate federal law is guilty, though he is absent when crime which is object of conspiracy is committed, and though his knowledge as to scope of conspiracy is limited and he does not know all details of plan or operations. Marino v. U.S., C.C.A.9 (Cal.) 1937, 91 F.2d 691, certiorari denied 58 S.Ct. 410, 302 U.S. 764, 82 L.Ed. 593.

That each of several defendants acted illegally or maliciously with same end in view will not establish conspiracy, unless it appears that such acts were done pursuant to mutual agreement. Asgill v. U.S., C.C.A.4 (Va.) 1932, 60 F.2d 780.

Person selling liquor with knowledge that it is to be transported actively participates in plan to transport, as affects liability of purchaser on charge of conspiracy. Anstess v. U.S., C.C.A.7 (Ind.) 1927, 22 F.2d 594.

Landlord knowing of the manufacture of liquor on premises, and failing to stop it, is not necessarily guilty of conspiracy to violate National Prohibition Act, former § 1 et seq. of Title 27. Di Bonaventura v. U.S., C.C.A.4

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(W.Va.) 1926, 15 F.2d 494.

Sellers of liquor with knowledge that the purchasers intended to illegally transport and sell the same are chargeable with conspiracy, though after the sale they had no interest in it. Costal v. U. S., C.C.A.6 (Ohio) 1926, 13 F.2d 843.

Defendants, conspiring to sell denatured alcohol for conversion into beverage alcohol, were guilty of conspiracy to violate Prohibition Act, former § 1 et seq. of Title 27. Jones v. U.S., C.C.A.4 (Md.) 1926, 11 F.2d 98, certiorari denied 46 S.Ct. 633, 271 U.S. 682, 70 L.Ed. 1149.

Wholesale druggists selling intoxicating liquor for nonbeverage purposes, in purported pursuance of National Prohibition Act, former § 1 et seq., Title 27, without corrupt intent to violate the regulations of the Treasury Department limiting sales, were not guilty of conspiracy under former § 88 of this title [now this section]. Landen v. U. S., C.C.A.6 (Ohio) 1924, 299 F. 75.

Before court can sustain conspiracy conviction there must be evidence tending to show that defendant entered into agreement and knew that agreement had specific unlawful purpose charged in indictment; inferences arising from merely "keeping bad company" are not enough to convict defendant of conspiracy. U.S. v. Bevans, E.D.Pa.1990, 728 F.Supp. 340, affirmed 914 F.2d 244.

To constitute criminal conspiracy, all conspirators need not be acquainted with each other nor have previously associated together, but party knowingly cooperating with one member of conspiracy to further object thereof, with knowledge that others have combined to violate law, becames party to conspiracy. U. S. v. Schneiderman, S.D.Cal.1952, 106 F.Supp. 892.

If a person join an association in ignorance of its illegal purposes, he would be guilty as a conspirator if, after he became a member, he had reason to know that the true object of the conspiracy was illegal and still remained a member. U.S. v. Mitchell, C.C.S.C.1871, 26 F.Cas. 1283, No. 15790.

132. ---- Identity of conspirators, knowledge, parties liable for conspiracy

At least two persons are required to constitute a conspiracy but the identity of the other members of the conspiracy need not be shown, inasmuch as one person may be convicted of conspiracy with persons whose names are unknown. Rogers v. U.S., U.S.Colo.1951, 71 S.Ct. 438, 340 U.S. 367, 95 L.Ed. 344, rehearing denied 71 S.Ct. 619, 341 U.S. 912, 95 L.Ed. 1348.

Proof that party knew that he could not alone accomplish unlawful object permits the inference of a conspiracy between the party and those persons foreseeably required to effect the object, whether or not the party knows the identity or specific activities of the others. U.S. v. Fernandez, C.A.11 (Fla.) 1989, 892 F.2d 976, certiorari dismissed 110 S.Ct. 2201, 495 U.S. 944, 109 L.Ed.2d 527.

That all participants did not know each other did not prevent existence of conspiracy, but, rather, it is enough that each one knew of conspiracy and voluntarily participated in it. U.S. v. Capo, C.A.11 (Fla.) 1982, 693 F.2d 1330, certiorari denied 103 S.Ct. 1793, 460 U.S. 1092, 76 L.Ed.2d 359, on rehearing 716 F.2d 1355.

In prosecution charging defendants with stealing and purloining money from federally insured bank and with interstate transportation of falsely made and forged checks, there was sufficient evidence to prove that defendants were involved in a single conspiracy, even if each coconspirator did not know all of the participants in the conspiracy. U. S. v. Simmons, C.A.3 (N.J.) 1982, 679 F.2d 1042, certiorari denied 103 S.Ct. 3117, 462 U.S. 1134, 77 L.Ed.2d 1370.

An alleged coconspirator may be included in an overall agreement without knowing all the participants in the conspiracy. U. S. v. Castro, C.A.7 (Ill.) 1980, 629 F.2d 456.

It is not necessary for each conspirator to have knowledge of the identity and role of each of his coconspirators. U. S. v. Grassi, C.A.5 (Fla.) 1980, 616 F.2d 1295, rehearing denied 624 F.2d 1098, certiorari denied 101 S.Ct. 363, 449 U.S. 956, 66 L.Ed.2d 220.

Identity of other members of a conspiracy is not needed, inasmuch as one person can be convicted of conspiring with persons whose names are unknown. U. S. v. Allen, C.A.3 (Pa.) 1980, 613 F.2d 1248.

Defendants need not know each other or be privy to details of each enterprise comprising conspiracy to defraud as long as evidence is sufficient to show that each defendant possessed full knowledge of conspiracy's general purpose and scope. U.S. v. Becker, C.A.5 (Tex.) 1978, 569 F.2d 951, rehearing denied 576 F.2d 931, certiorari denied 99 S.Ct. 188, 439 U.S. 865, 58 L.Ed.2d 174, certiorari denied 99 S.Ct. 726, 439 U.S. 1048, 58 L.Ed.2d 708.

That defendant did not know each of the other coconspirators and was not aware of each part of the unlawful plan was entirely compatible with jury's conclusion that defendant was nevertheless a coconspirator. U. S. v. Avalos, C.A.5 (Fla.) 1976, 541 F.2d 1100, rehearing denied 545 F.2d 168, certiorari denied 97 S.Ct. 1656, 430 U.S. 970, 52 L.Ed.2d 363.

A conspirator need not know the identity or even the number of his confederates. U. S. v. Braverman, C.A.7 (Ill.) 1975, 522 F.2d 218, certiorari denied 96 S.Ct. 392, 423 U.S. 985, 46 L.Ed.2d 302.

It was not necessary that defendant know each of other coconspirators or be aware of each part of unlawful plan in order to warrant conviction of conspiracy to import cocaine; it was only necessary that defendant know of conspiracy and associate himself with it. U. S. v. Rodriguez, C.A.5 (Fla.) 1975, 509 F.2d 1342.

Even where a number of defendants are charged with having conspired together, government need not prove that defendants knew each other's identity or had direct contact with each other, although they must have known of each other's existence. U. S. v. Wilson, C.A.7 (Ill.) 1974, 506 F.2d 1252.

It is not necessary that each coconspirator know all the other conspirators or that each be involved throughout the entire conspiracy; likewise, it is not essential that each conspirator participate in all activities in furtherance of the conspiracy or have knowledge of them. U.S. v. Wilson, C.A.5 (Tex.) 1974, 500 F.2d 715, certiorari denied 95 S.Ct. 1403, 420 U.S. 977, 43 L.Ed.2d 658, post-conviction relief denied 916 F.2d 984, rehearing en banc granted 925 F.2d 827, on rehearing 937 F.2d 228, certiorari denied 112 S.Ct. 978, 502 U.S. 1076, 117 L.Ed.2d 141.

One can be party to conspiracy even though he does not know of existence or identity of all his coconspirators, and even though he does not participate in all of their acts. U. S. v. Friedman, C.A.9 (Cal.) 1971, 445 F.2d 1076, certiorari denied 92 S.Ct. 326, 404 U.S. 958, 30 L.Ed.2d 275.

Proof that defendant and associates arranged to have two members of their group put counterfeit money into circulation established single conspiracy and it was immaterial that defendant may not have known the persons recruited to help in uttering money or that such persons were not among group which originally planned illegal enterprise. U. S. v. Wenzel, C.A.4 (Md.) 1962, 311 F.2d 164.

It is not necessary to support finding of existence of overall scheme or conspiracy that each participant knew others involved therein or precise part each was playing. Isaacs v. U. S., C.A.8 (Minn.) 1962, 301 F.2d 706, certiorari denied 83 S.Ct. 32, 371 U.S. 818, 9 L.Ed.2d 58, certiorari denied 83 S.Ct. 33, 371 U.S. 818, 9 L.Ed.2d 58. See, also, Sears v. U.S., C.A.Ga.1965, 343 F.2d 139. Conspiracy 47(1)

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A person who acts in concert with original conspirators, with knowledge of criminal design and with a purpose to effect objects of conspiracy, can be held liable if he joins conspiracy while it is still in effect and its purposes and objects have not yet been attained and he need not know all of members or the part played by them and his knowledge as to the scope of the conspiracy, details of the plan and operations thereof may be limited. Lile v. United States, C.A.9 (Alaska) 1958, 264 F.2d 278.

In order to participate in an unlawful combination, one need not know the description or identity of the principal conspirators or the number or names of the other associates in kind, although one must know the illegal nature of the enterprise and its general purposes and implications, and voluntarily and willfully act in concert with the others in the criminal activities. Leyvas v. U. S., C.A.9 (Cal.) 1958, 264 F.2d 272.

If one joins in criminal acts with intent willfully to carry out the illegal design shared in common with others, he need not know the extent of the operations or the number of confederates in order to be guilty of conspiracy. Leyvas v. U. S., C.A.9 (Cal.) 1958, 264 F.2d 272.

Persons can be involved in a conspiracy even though they do not know all of the members of conspiracy or participate in each phase of conspiracy. U. S. v. Rich, C.A.2 (N.Y.) 1959, 262 F.2d 415.

That those who assisted accused in purchasing field corn above ceiling price were not personally acquainted with purchaser of the corn and had no particular knowledge of his part in conspiracy to violate Emergency Price Control Act, 50 App., former § 901 et seq., was immaterial in determining accused's guilt since to constitute a "conspiracy" it is not necessary that all of the parties be personally acquainted with each other nor that one have direct contact with all others. Quirk v. U.S., C.C.A.8 (Iowa) 1947, 161 F.2d 138.

That some participants in conspiracy to defraud the United States did not know all their fellow participants or did not all participate at the same time was unimportant. McGunnigal v. U. S., C.C.A.1 (Mass.) 1945, 151 F.2d 162, certiorari denied 66 S.Ct. 267, 326 U.S. 776, 90 L.Ed. 469.

An individual conspirator knowing of conspiracy and its objects adopts as his own the past and future acts of other conspirators, even though he does not know all of them, and subsequent activities are extended beyond his original intent. U.S. v. Anderson, C.C.A.7 (Ill.) 1939, 101 F.2d 325, certiorari denied 59 S.Ct. 822, 307 U.S. 625, 83 L.Ed. 1502, certiorari denied 59 S.Ct. 822, 307 U.S. 625, 83 L.Ed. 1503, certiorari denied 59 S.Ct. 823, 307 U.S. 625, 83 L.Ed. 1503, certiorari denied 59 S.Ct. 823, 307 U.S. 625, 83 L.Ed. 1504, certiorari denied 59 S.Ct. 823, 307 U.S. 625, 83 L.Ed. 1504, 86 L.Ed. 1504, certiorari denied 59 S.Ct. 824, 307 U.S. 625, 83 L.Ed. 1505, certiorari denied 59 S.Ct. 824, 307 U.S. 625, 83 L.Ed. 1506, certiorari denied 59 S.Ct. 825, 307 U.S. 625, 83 L.Ed. 1506, certiorari denied 59 S.Ct. 825, 307 U.S. 625, 83 L.Ed. 1507, certiorari denied 59 S.Ct. 825, 307 U.S. 625, 83 L.Ed. 1508, certiorari denied 59 S.Ct. 826, 307 U.S. 625, 83 L.Ed. 1508, certiorari denied 59 S.Ct. 826, 307 U.S. 625, 83 L.Ed. 1509.

Conspirators need not have been acquainted and working in each other's presence, provided each knowingly cooperates with knowledge that other coconspirators have combined to violate law. Capriola v. U.S., C.C.A.7 (Ill.) 1932, 61 F.2d 5, certiorari denied 53 S.Ct. 315, 287 U.S. 671, 77 L.Ed. 579.

Knowledge of membership in conspiracy or division of spoils is immaterial. Coates v. U.S., C.C.A.9 (Cal.) 1932, 59 F.2d 173. See, also, U.S. v. Boyer, D.C.Pa.1949, 84 F.Supp. 905. Conspiracy 24.5

Where saloon keeper, police officer, and manufacturers and distributors of beer, charged with conspiracy, were each engaged in common unlawful purpose to manufacture and sell beer, and each did his part in furtherance thereof, it was immaterial that the different groups were wholly or partly strangers to each other, some not knowing where the distributors got the beer, and the manufacturers not knowing to whom the distributors were selling. Jezewski v. U. S., C.C.A.6 (Mich.) 1926, 13 F.2d 599, certiorari denied 47 S.Ct. 243, 273 U.S. 735, 71 L.Ed. 865.

"It is not necessary that the conspirators should meet together in order to constitute the unlawful combination. If they have a mutual understanding, and act through one or more individuals, as a consequence of such mutual understanding, the conspiracy may be complete. * * * It is, indeed, not necessary that all the conspirators should be acquainted even with each other. If they conspire to accomplish the illegal purpose through one common acquaintance or go-between, the conspiracy may be complete." U.S. v. Lancaster, C.C.S.D.Ga.1891, 44 F. 896.

A defendant furnishing sugar to operate an illegal still could be convicted of conspiracy notwithstanding he did not know the identity or even the number of all his confederates. U. S. v. Kensil, E.D.Pa.1961, 195 F.Supp. 115, affirmed 295 F.2d 489, certiorari denied 82 S.Ct. 439, 368 U.S. 967, 7 L.Ed.2d 396.

Individual member of combination need not be aware of all of its ramifications or be cognizant of number or identity of all of other participants but if he knows of its existence and intentionally takes some part in furthering it, he becomes member of conspiracy. U.S. v. Speed, D.C.D.C.1948, 78 F.Supp. 366.

A party to conspiracy need not know identity or even number of his confederates, and when he embarks upon a definite criminal venture he takes his chances as to its contents and membership if they fall within common purposes as he understands them; but he must be aware of purposes and accept them if he is to be charged with what others may do in execution of them. U. S. v. Johnson, M.D.Pa.1946, 65 F.Supp. 42.

Where some of defendants had been engaged over ten-year period in conspiracy to obstruct administration of justice in various court proceedings, fact that another defendant may have conspired with them to obstruct administration of justice in a particular case would not make him a party to general conspiracy in absence of conscious participation therein. U. S. v. Johnson, M.D.Pa.1946, 65 F.Supp. 42.

To constitute a "conspiracy" it is not necessary that all conspirators meet together or agree simultaneously or know exact part which every other participant is playing or know all other participants therein, nor is it necessary that simultaneous action be had for those who come on later and cooperate in common effort to obtain unlawful result to become parties thereto and assume responsibility for all that has been done before. U. S. v. Empire Hat & Cap Mfg. Co., E.D.Pa.1942, 47 F.Supp. 395.

The guilt of a conspirator is not dependent on his knowledge of entire scope of conspiracy, and one conspirator need not know who all the other conspirators are. U.S. v. Direct Sales Co., W.D.S.C.1942, 44 F.Supp. 623, affirmed 131 F.2d 835, certiorari granted 63 S.Ct. 758, 318 U.S. 749, 87 L.Ed. 1125, affirmed 63 S.Ct. 1265, 319 U.S. 703, 87 L.Ed. 1674.

In conspiracy case, it is not necessary that one of defendants be acquainted with all other defendants. U.S. v. Lang, E.D.N.Y.1941, 40 F.Supp. 414.

133. Association, parties liable for conspiracy

Association with a conspirator, without more, is insufficient to establish the requisite degree of participation in a conspiratorial venture. U. S. v. Steinberg, C.A.2 (N.Y.) 1975, 525 F.2d 1126, certiorari denied 96 S.Ct. 2167, 425 U.S. 971, 48 L.Ed.2d 794.

It takes more than close and repeated association with those who are proved to be operating an illegal enterprise to make one a coconspirator. U. S. v. Anderson, C.A.6 (Tenn.) 1965, 352 F.2d 500, certiorari denied 86 S.Ct. 1576, 384 U.S. 955, 16 L.Ed.2d 550.

In order to convict defendant of being a participant in a conspiracy it was necessary to government's evidence that defendant knew of conspiracy and associated himself with it. United States v. Aviles, C.A.2 (N.Y.) 1960, 274 F.2d 179, certiorari denied 80 S.Ct. 1057, 362 U.S. 974, 4 L.Ed.2d 1009, certiorari denied 80 S.Ct. 1057, 362 U.S. 974,

4 L.Ed.2d 1010, certiorari denied 80 S.Ct. 1058, 362 U.S. 974, 4 L.Ed.2d 1010, certiorari denied 80 S.Ct. 1059, 362 U.S. 974, 4 L.Ed.2d 1010, rehearing denied 80 S.Ct. 1610, 363 U.S. 858, 4 L.Ed.2d 1739, certiorari denied 80 S.Ct. 1068, 362 U.S. 982, 4 L.Ed.2d 1015, certiorari denied 80 S.Ct. 1071, 362 U.S. 982, 4 L.Ed.2d 1016, certiorari denied 80 S.Ct. 1073, 362 U.S. 982, 4 L.Ed.2d 1016. See, also, U.S. v. Dardi, C.A.N.Y.1964, 330 F.2d 316. Conspiracy 40.1

Mere casual association is not proof of participation in a conspiracy, and presumptions of guilt are not lightly to be indulged from mere meetings. U.S. v. Moloney, C.A.7 (Ill.) 1952, 200 F.2d 344.

134. Agreement, parties liable for conspiracy

Once a conspiracy is shown to exist, evidence sufficient to link another defendant to it need not be overwhelming; however, evidence must show that defendant, even if unaware of contours of broader conspiracy, at least had knowledge that a common unlawful endeavor existed, and that defendant agreed to join that endeavor. U.S. v. Casamento, C.A.2 (N.Y.) 1989, 887 F.2d 1141, certiorari denied 110 S.Ct. 1138, 493 U.S. 1081, 107 L.Ed.2d 1043, certiorari denied 110 S.Ct. 2175, 495 U.S. 933, 109 L.Ed.2d 504, certiorari denied 110 S.Ct. 2564, 495 U.S. 958, 109 L.Ed.2d 746, post-conviction relief denied 926 F.2d 1311, post-conviction relief dismissed, denial of post-conviction relief affirmed in part, vacated in part 47 F.3d 72.

To be liable as a conspirator, one must be voluntary participant in a common venture although one need not have agreed on details of conspiratorial scheme or even know who the other conspirators are; it is enough if one understands general objectives of the scheme, accepts them, and agrees, either explicitly or implicitly, to participate and further the objectives. Jones v. City of Chicago, C.A.7 (Ill.) 1988, 856 F.2d 985, rehearing denied.

To be convicted as a member of a conspiracy, a defendant need not know every objective of the conspiracy, every detail of its operation or means employed to achieve the agreed-upon criminal objective or even the identity of every coconspirator; however, there must be agreement on the essential nature of the plan and on the kind of criminal conduct in fact contemplated. U.S. v. Gleason, C.A.2 (N.Y.) 1979, 616 F.2d 2, certiorari denied 100 S.Ct. 1037, 444 U.S. 1082, 62 L.Ed.2d 767, certiorari denied 100 S.Ct. 1320, 445 U.S. 931, 63 L.Ed.2d 764.

Mere knowledge or approval of or acquiescence in object and purpose of conspiracy without agreement to cooperate to accomplish such object or purpose is not sufficient to constitute one a party to conspiracy. Jones v. U. S., C.A.10 (Okla.) 1966, 365 F.2d 87.

A defendant accused of conspiracy can be held only for an agreement reasonably inferable as to him. U. S. v. Borelli, C.A.2 (N.Y.) 1964, 336 F.2d 376, certiorari denied 85 S.Ct. 647, 379 U.S. 960, 13 L.Ed.2d 555.

A defendant must join in illegal scheme, design, or agreement to be guilty of violation of this section. U. S. v. Ford, C.A.7 (Ill.) 1963, 324 F.2d 950.

Mere knowledge, approval of or acquiescence in the object or the purpose of a conspiracy, without an intention and agreement to cooperate in the crime, is insufficient to constitute one a "conspirator." Cleaver v. U. S., C.A.10 (Colo.) 1956, 238 F.2d 766. See, also, Dennis v. U.S., C.A.Colo.1962, 302 F.2d 5; Lucadamo v. U.S., C.C.A.N.Y.1922, 280 F. 653; U.S. v. Thomas, D.C.Wash.1943, 52 F.Supp. 571. Conspiracy 24(1)

The fact that A makes a criminal agreement with B does not cause A to become a party to the conspiracy into which B may enter or may have entered with third persons, but scope of agreement actually made measures conspiracy. U.S. v. Andolschek, C.C.A.2 (N.Y.) 1944, 142 F.2d 503.

It is not essential that each member of conspiracy know all details of agreement or events planned nor is it necessary that conspiracy be successfully concluded; it is agreement, and defendant's participation in it, which

constitutes the crime. U.S. v. Cuervelo, S.D.N.Y.1989, 726 F.Supp. 103, affirmed 930 F.2d 911.

An intention to become a party to a conspiracy must be predicated upon some affirmative action. U. S. v. Gilboy, M.D.Pa.1958, 160 F.Supp. 442.

135. Participation, parties liable for conspiracy

Where defendant knew of coconspirator's misrepresentations to State Beverage Department, yet helped conceal such misrepresentations, evidence was sufficient to support finding that defendant participated in conspiracy to commit mail fraud. U.S. v. Haimowitz, C.A.11 (Fla.) 1984, 725 F.2d 1561, certiorari denied 105 S.Ct. 563, 469 U.S. 1072, 83 L.Ed.2d 504.

An individual becomes a member of conspiracy when a person knowingly contributes his or her efforts in furtherance of objective of a conspiracy. U. S. v. Burchinal, C.A.8 (Mo.) 1981, 657 F.2d 985, certiorari denied 102 S.Ct. 646, 454 U.S. 1086, 70 L.Ed.2d 622.

To establish that each individual defendant was a culpable member of a conspiracy, government must prove that defendant knew of the agreement and, with that knowledge, voluntarily participated in the agreement. U. S. v. Michel, C.A.5 (Tex.) 1979, 588 F.2d 986, certiorari denied 100 S.Ct. 47, 444 U.S. 825, 62 L.Ed.2d 32.

In a conspiracy prosecution, government must show that each member participated in conspiracy with knowledge of its illegal purpose and not merely that a member associated with a bad person. U. S. v. Frick, C.A.5 (La.) 1979, 588 F.2d 531, certiorari denied 99 S.Ct. 2013, 441 U.S. 913, 60 L.Ed.2d 385.

To sustain federal conspiracy conviction, it need only be shown that defendant participated in conspiracy and committed one overt act with knowledge that it was in furtherance of some object or purpose of conspiracy. Sanders v. U. S., C.A.5 (Fla.) 1969, 416 F.2d 194, certiorari denied 90 S.Ct. 978, 397 U.S. 952, 25 L.Ed.2d 135.

Active participation in alleged conspiracy must be established, mere knowledge of others' illegal acts being insufficient. Turcott v. U.S., C.C.A.7 (Ill.) 1927, 21 F.2d 829.

It requires more than proof of mere passive cognizance of a crime on the part of a defendant to sustain a charge of conspiracy to commit it, and the jury must find that such prisoner did some act or made some agreement showing an intention to participate in some way in such conspiracy. U.S. v. Lancaster, C.C.S.D.Ga.1891, 44 F. 896. Conspiracy 47(1)

Co-defendants who had overlapping relationships and a shared interest in jihad, who attended a terrorist training camp in Pakistan, and who were part of the trusted circle of a suspected terrorist supporter, and who were each guilty of conspiring to commit at least one object of the conspiracy, were guilty of conspiracy offense. U.S. v. Khan, E.D.Va.2004, 309 F.Supp.2d 789. Conspiracy 41

136. Extent of participation, parties liable for conspiracy

It is not crucial to existence of a conspiracy that each conspirator participate in every phase of the criminal venture. U. S. v. Grassi, C.A.5 (Fla.) 1980, 616 F.2d 1295, rehearing denied 624 F.2d 1098, certiorari denied 101 S.Ct. 363, 449 U.S. 956, 66 L.Ed.2d 220.

It was not necessary in conspiracy prosecution to show that particular defendant was a "driving force" in the conspiracy; it was sufficient that evidence sustained determination that defendant joined the conspiracy. U. S. v. Morrow, C.A.5 (Fla.) 1976, 537 F.2d 120, rehearing denied 541 F.2d 282, certiorari denied 97 S.Ct. 1602, 430

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U.S. 956, 51 L.Ed.2d 806. Conspiracy 47(1)

It is not necessary for each defendant in conspiracy prosecution to participate in all of overt acts alleged in indictment; even though each defendant plays different role and may have had dissimilar motives for participating in transaction, this does not mean that single conspiracy did not exist. U. S. v. Camacho, C.A.9 (Ariz.) 1976, 528 F.2d 464, certiorari denied 96 S.Ct. 2208, 425 U.S. 995, 48 L.Ed.2d 819.

Fact that defendant may not have participated in all prior sales of narcotics did not necessarily mean that more than one conspiracy was involved, as problem was essentially one of agreement, the essence of conspiracy. U. S. v. Quintana, C.A.7 (Ill.) 1975, 508 F.2d 867.

Conspirator need not participate in all activities of conspiracy in order to be held liable for the unlawful scheme. U. S. v. Flaxman, C.A.7 (Ill.) 1974, 495 F.2d 344, certiorari denied 95 S.Ct. 512, 419 U.S. 1031, 42 L.Ed.2d 306.

Fact that different defendants may have had somewhat different roles and were present on different occasions with respect to conspiracy did not preclude conviction of all defendants for participation in the general conspiracy. U. S. v. Kellerman, C.A.2 (N.Y.) 1970, 431 F.2d 319, certiorari denied 91 S.Ct. 356, 400 U.S. 957, 27 L.Ed.2d 266, certiorari denied 91 S.Ct. 871, 401 U.S. 909, 27 L.Ed.2d 808.

Where one of the defendants was present at meetings among alleged conspirators at which details of scheme were planned and carried out, and he received substantial shares of proceeds of fraudulently obtained advance fees, and he presented himself, or was presented, to various victims under aliases and in false capacities and made a variety of misrepresentations to victims about corporation, he was properly convicted of seven counts of wire and mail fraud, interstate travel in execution of a fraud and conspiracy. U. S. v. Crisona, C.A.2 (N.Y.) 1969, 416 F.2d 107, certiorari denied 90 S.Ct. 991, 397 U.S. 961, 25 L.Ed.2d 253, certiorari denied 90 S.Ct. 993, 397 U.S. 961, 25 L.Ed.2d 253.

Where defendants who acted as purchasers of silver on first shipment of hijacked truck load entered into a further agreement to dispose of future silver shipments from hijackings, such defendants by their further agreement became part of conspiracy in that they agreed to assume a primary role in distributing further silver shipments so that such defendants were more than purchasers who had knowledge of character of the goods. U. S. v. Varelli, C.A.7 (Ill.) 1969, 407 F.2d 735.

Conspirator need not participate in all activities of conspiracy, nor is it necessary that he become member of conspiracy at its inception, and it is only necessary that he knowingly contribute his efforts in furtherance of it. U. S. v. Hickey, C.A.7 (Ill.) 1966, 360 F.2d 127, certiorari denied 87 S.Ct. 284, 385 U.S. 928, 17 L.Ed.2d 210.

Codefendant who was on scene of events which positively or by fair inference could be deemed part of moonshine liquor distribution conspiracy but who was not linked to any integral element of the plan except by presence and association was not guilty of conspiracy to possess and transport nontax-paid whiskey. U. S. v. Webb, C.A.6 (Ky.) 1966, 359 F.2d 558, certiorari denied 87 S.Ct. 55, 385 U.S. 824, 17 L.Ed.2d 61.

Where several acts or transactions are alleged to constitute single conspiracy, there must be proof of common purpose of all defendants connecting all acts or transactions, but this does not mean that each defendant must have participated in each act or that each knew identity or function of all alleged conspirators or that all worked together consciously nor does it mean that single defendant can join continuing conspiracy long after others have commenced it and claim immunity for actions taking place before or after his active participation, as long as he remains active participant. Esco Corp. v. U. S., C.A.9 (Or.) 1965, 340 F.2d 1000.

One participating in a criminal conspiracy is no less liable because his part is minor and subordinate. Sabari v. U. S., C.A.9 (Nev.) 1964, 333 F.2d 1019. See, also, U.S. v. Wilson, C.A.Tex.1974, 500 F.2d 715, certiorari denied

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95 S.Ct. 1403, 420 U.S. 977, 43 L.Ed.2d 658. Conspiracy 40.1

It was not necessary that each coconspirator should have known all others or each witness mention all, or that each one be involved throughout entire conspiracy span of seven years, but convictions were properly sustained on evidence showing one conspiracy with one defendant at the center and several codefendant conspirators radiating from him. U.S. v. Green, C.A.7 (Ill.) 1964, 327 F.2d 715, certiorari denied 84 S.Ct. 1350, 377 U.S. 944, 12 L.Ed.2d 306, certiorari denied 84 S.Ct. 1360, 377 U.S. 944, 12 L.Ed.2d 307.

It is not essential that each conspirator participate in all activities in furtherance of conspiracy or have knowledge of them, and it is sufficient if conspiracy is established and that convicted persons knowingly contributed their efforts in furtherance of it. McManaman v. U. S., C.A.10 (Kan.) 1964, 327 F.2d 21, certiorari denied 84 S.Ct. 1351, 377 U.S. 945, 12 L.Ed.2d 307.

It is not necessary that every act undertaken in carrying out of conspiracy be participated in by every member of conspiring group and to unite different groups playing different parts in carrying out purpose of conspiracy in single conspiracy it is only necessary that activities of each individual or group be directed toward accomplishing single criminal objective. U. S. v. Wenzel, C.A.4 (Md.) 1962, 311 F.2d 164.

Mere fact that certain members of a conspiracy dealt recurrently with only one or two others did not exclude finding that they were bound together in one conspiracy. U.S. v. Agueci, C.A.2 (N.Y.) 1962, 310 F.2d 817, certiorari denied 83 S.Ct. 1013, 372 U.S. 959, 10 L.Ed.2d 11, certiorari denied 83 S.Ct. 1016, 372 U.S. 959, 10 L.Ed.2d 12, post-conviction relief dismissed 741 F.Supp. 409, reconsideration denied, affirmed 930 F.2d 910. See, also, U.S. v. Vega, C.A.2 (N.Y.) 1972, 458 F.2d 1234, certiorari denied 93 S.Ct. 1506, 410 U.S. 982, 36 L.Ed.2d 177, affirmed 487 F.2d 170. Conspiracy 40

Merely because the government did not show that each defendant in a "chain conspiracy" knew each and every conspirator and every step taken by them did not place such conspirators outside the scope of the single conspiracy charged, and each defendant could be found to have contributed to the success of the overall conspiracy notwithstanding that he operated on only one level. U.S. v. Agueci, C.A.2 (N.Y.) 1962, 310 F.2d 817, certiorari denied 83 S.Ct. 1013, 372 U.S. 959, 10 L.Ed.2d 11, certiorari denied 83 S.Ct. 1016, 372 U.S. 959, 10 L.Ed.2d 12, post-conviction relief dismissed 741 F.Supp. 409, reconsideration denied, affirmed 930 F.2d 910. See, also, U.S. v. Vega, C.A.2 (N.Y.) 1972, 458 F.2d 1234, certiorari denied 93 S.Ct. 1506, 410 U.S. 982, 36 L.Ed.2d 177, affirmed 487 F.2d 170. Conspiracy 40.1

That defendant who had committed overt act in connection with planned bank robbery did not participate in ultimate robbery of bank would not free him from guilt of conspiracy. Collins v. U.S., C.A.6 (Tenn.) 1960, 284 F.2d 517, certiorari denied 81 S.Ct. 753, 365 U.S. 837, 5 L.Ed.2d 746.

Defendants' purchases of narcotics for resale from one or more of the central conspirators on numerous occasions was enough to make them participants in the conspiracy since they knew the nature of the operation, regardless of whether they knew its full extent and all of its activities. United States v. Aviles, C.A.2 (N.Y.) 1960, 274 F.2d 179, certiorari denied 80 S.Ct. 1057, 362 U.S. 974, 4 L.Ed.2d 1009, certiorari denied 80 S.Ct. 1057, 362 U.S. 974, 4 L.Ed.2d 1010, certiorari denied 80 S.Ct. 1058, 362 U.S. 974, 4 L.Ed.2d 1010, certiorari denied 80 S.Ct. 1059, 362 U.S. 974, 4 L.Ed.2d 1010, rehearing denied 80 S.Ct. 1610, 363 U.S. 858, 4 L.Ed.2d 1739, certiorari denied 80 S.Ct. 1068, 362 U.S. 982, 4 L.Ed.2d 1015, certiorari denied 80 S.Ct. 1071, 362 U.S. 982, 4 L.Ed.2d 1016, certiorari denied 80 S.Ct. 1073, 362 U.S. 982, 4 L.Ed.2d 1016.

It is not necessary that all conspirators participate to same degree in fulfillment of conspiracy. U. S. v. Phillips, C.A.2 (N.Y.) 1959, 270 F.2d 175.

Each conspirator need not participate in or have knowledge of all the operations of the conspiracy, but it is

sufficient if a conspiracy is formed and several persons convicted knowingly contributed their efforts in furtherance of it. Young v. U. S., C.C.A.10 (Kan.) 1948, 168 F.2d 242.

Where accused have a legal responsibility in the premises with some interest in the accomplishment of plan of action, if they are aware of steps taken by others to attain their purpose, and if they know that such activities are illegal, and if such activities are so numerous as to constitute a course of business, or so related as to constitute a system of unlawful conduct continuing over a period of time, a jury on evidence of such facts is warranted in finding accused guilty as conspirators. Braatelien v. U. S., C.C.A.8 (N.D.) 1945, 147 F.2d 888.

If transaction was itself within general scope of a scheme to use mails to defraud on which all defendants had embarked, those not immediately concerned in any particular fraud would none the less be liable, so long as that fraud was within kind on which all had agreed. U.S. v. Cohen, C.C.A.2 (N.Y.) 1944, 145 F.2d 82, certiorari denied 65 S.Ct. 553, 323 U.S. 799, 89 L.Ed. 637, certiorari denied 65 S.Ct. 553, 323 U.S. 799, 89 L.Ed. 638, certiorari denied 65 S.Ct. 554, 323 U.S. 800, 89 L.Ed. 638.

Where accused is not in some beneficial, responsible, or interested relation to alleged conspirators, and their activities, and alleged activities of the conspirators consist of but a few transactions, mere knowledge, acquiescence, and indifference will be insufficient, in absence of some word or deed, to connect accused with the conspiracy. Egan v. U.S., C.C.A.8 (Mo.) 1943, 137 F.2d 369, certiorari denied 64 S.Ct. 195, 320 U.S. 788, 88 L.Ed. 474.

In prosecution for conspiracy to violate the internal revenue laws relating to stills and intoxicating liquors, it was not necessary that defendant or any other member of the group participate in all the acts. U.S. v. Valenti, C.C.A.2 (N.Y.) 1943, 134 F.2d 362, certiorari denied 63 S.Ct. 1317, 319 U.S. 761, 87 L.Ed. 1712, rehearing denied 64 S.Ct. 29, 320 U.S. 809, 88 L.Ed. 489.

In prosecution for use of mails to defraud insurance companies by filing false claims and for conspiracy, conviction of physician could be affirmed even though testimony showed that physician was participant in limited conspiracy instead of a conspiracy with all defendants, in view of charge of court and evidence. U S v. Weiss, C.C.A.2 (N.Y.) 1939, 103 F.2d 348, certiorari granted 59 S.Ct. 1043, 307 U.S. 621, 83 L.Ed. 1500, reversed on other grounds 60 S.Ct. 269, 308 U.S. 321, 84 L.Ed. 298.

Where there is a concert of purpose, it is not necessary to constitute conspiracy that each conspirator participate in every detail of its execution. Ryan v. U.S., C.C.A.8 (Mo.) 1938, 99 F.2d 864, certiorari denied 59 S.Ct. 484, 306 U.S. 635, 83 L.Ed. 1037, rehearing denied 59 S.Ct. 586, 306 U.S. 668, 83 L.Ed. 1063. See, also, Marx v. U.S., C.C.A.Minn.1936, 86 F.2d 245. Conspiracy 24(3)

Defendant, if proved party to conspiracy, though individual conspirators performed acts in furtherance of common unlawful design unknown to others, is guilty of conspiracy. U.S. v. Grossman, D.C.N.Y.1931, 55 F.2d 408.

If defendants participated in conspiracy, it was immaterial whether either committed overt act. Babb v. U.S., C.C.A.8 (Iowa) 1928, 27 F.2d 80, certiorari denied 49 S.Ct. 26, 278 U.S. 624, 73 L.Ed. 544.

Where offenses are being committed, of such character that they are necessarily the result of concert of action, all who participated in the things which are done resulting in such offenses may, if the inference fairly arises out of everything which has been done, be found guilty of conspiracy to commit the offenses. U S v. Stilson, E.D.Pa.1918, 254 F. 120, affirmed 40 S.Ct. 28, 250 U.S. 583, 63 L.Ed. 1154.

Defendant, indicted with H. for conspiring with employés of a carrier to have the employés deliver intoxicants to defendant and H. under a fictitious name, in violation of former § 388 of this title, may be convicted of conspiracy, notwithstanding delivery to H., defendant taking no part therein, the doctrine of agency not being available to show

defendant's participation in the completed offense. McKnight v. U.S., C.C.A.8 (Okla.) 1918, 252 F. 687, 164 C.C.A. 527, certiorari denied 39 S.Ct. 388, 249 U.S. 614, 63 L.Ed. 802.

"It is not necessary that each conspirator participate in each step or stage of the common general design. One of them may do one thing; another, another. Some may take major parts, while the participation of others may be in a minor degree." Lew Moy v. U S, C.C.A.8 (N.M.) 1916, 237 F. 50, 150 C.C.A. 252.

All persons working together in furtherance of the common design are members of the conspiracy, although the part any one is to take is subordinate, or is to be executed at a remote distance. U.S. v. Cassidy, N.D.Cal.1895, 67 F. 698. Conspiracy 40.1

It is not necessary that the conspiracy should originate with the person charged. U S v. Sacia, D.C.N.J.1880, 2 F. 754. Conspiracy 40

Co-defendants who had overlapping relationships and a shared interest in jihad, who attended a terrorist training camp in Pakistan, and who were part of the trusted circle of a suspected terrorist supporter, and who were each guilty of conspiring to commit at least one object of the conspiracy, were guilty of conspiracy offense. U.S. v. Khan, E.D.Va.2004, 309 F.Supp.2d 789. Conspiracy 41

A defendant may be held fully liable for consequences of conspiracy even though its degree of participation was less than that of other defendants. Riss & Co. v. Association of American Railroads, D.C.D.C.1959, 170 F.Supp. 354, certiorari denied 267 F.2d 659, 105 U.S.App.D.C. 382, certiorari denied 80 S.Ct. 108, 361 U.S. 804, 4 L.Ed.2d 57.

137. Overt acts, parties liable for conspiracy

All the conspirators need not join in the overt act. U.S. v. Rabinowich, U.S.N.Y.1915, 35 S.Ct. 682, 238 U.S. 78, 59 L.Ed. 1211. See, also, Joplin Mercantile Co. v. U.S., Mo.1915, 35 S.Ct. 291, 236 U.S. 531, 59 L.Ed. 705; U.S. v. Anderson, C.C.A.Wash.1929, 31 F.2d 436; Grayson v. U.S., C.C.A.Tenn.1921, 272 F. 553, certiorari denied 42 S.Ct. 49, 257 U.S. 637, 66 L.Ed. 409; U.S. v. Bergdoll, D.C.Pa.1921, 272 F. 498, error dismissed 279 F. 404, certiorari denied 42 S.Ct. 589, 259 U.S. 585, 66 L.Ed. 1076; U.S. v. Phillips, D.C.N.Y.1920, 270 F. 281; Hamburg-American Steam Packet Co. v. U.S., C.C.A.N.Y.1918, 250 F. 747, certiorari denied 38 S.Ct. 333, 246 U.S. 662, 62 L.Ed. 927.

It is impossible to conspire with government agents; however, it is only necessary for one coconspirator to participate in an overt act with the government agents. U. S. v. Enstam, C.A.5 (Tex.) 1980, 622 F.2d 857, certiorari denied 101 S.Ct. 1351, 450 U.S. 912, 67 L.Ed.2d 336, certiorari denied 101 S.Ct. 1974, 451 U.S. 907, 68 L.Ed.2d 294.

Fact that a conspirator is not present at, or does not participate in, the commission of any of the overt acts does not, by itself, exonerate him. U. S. v. James, C.A.5 (Miss.) 1976, 528 F.2d 999, rehearing denied 532 F.2d 1054, certiorari denied 97 S.Ct. 382, 429 U.S. 959, 50 L.Ed.2d 326, rehearing denied 97 S.Ct. 770, 429 U.S. 1055, 50 L.Ed.2d 772, certiorari denied 97 S.Ct. 383, 429 U.S. 959, 50 L.Ed.2d 326.

It is not necessary that all or more than one of the conspirators participate in a particular overt act of the conspiracy. U. S. v. Robinson, C.A.7 (Ill.) 1974, 503 F.2d 208, certiorari denied 95 S.Ct. 1333, 420 U.S. 949, 43 L.Ed.2d 427.

One defendant's own failure to perform more than a few overt acts would be immaterial to his guilt of conspiracy, so long as he had joined therein. U. S. v. Kahaner, C.A.2 (N.Y.) 1963, 317 F.2d 459, certiorari denied 84 S.Ct. 62, 375 U.S. 835, 11 L.Ed.2d 65, rehearing denied 84 S.Ct. 478, 375 U.S. 982, 11 L.Ed.2d 429, certiorari denied 84

S.Ct. 73, 375 U.S. 836, 11 L.Ed.2d 65, certiorari denied 84 S.Ct. 74, 375 U.S. 836, 11 L.Ed.2d 65, rehearing denied 84 S.Ct. 263, 375 U.S. 926, 11 L.Ed.2d 169.

One who commits an overt act with the knowledge of the conspiracy is guilty of crime of conspiracy even though he is absent when the criminal object of the conspiracy is committed. Poliafico v. U. S., C.A.6 (Ohio) 1956, 237 F.2d 97, certiorari denied 77 S.Ct. 590, 352 U.S. 1025, 1 L.Ed.2d 597, rehearing denied 77 S.Ct. 718, 353 U.S. 931, 1 L.Ed.2d 725.

So long as conspiracy to defraud United States in the sale of eggs, butter and cheese exists, members act for one another in carrying it forward and the criminal intent to file false claims with a government agency is established by the formation of the conspiracy. Nye & Nissen v. U.S., C.C.A.9 (Cal.) 1948, 168 F.2d 846, certiorari granted 69 S.Ct. 81, 335 U.S. 852, 93 L.Ed. 400, affirmed 69 S.Ct. 766, 336 U.S. 613, 93 L.Ed. 919.

An essential element of "conspiracy" against United States is intent to commit crime against United States or to defraud United States, and it is not necessary to conviction that accused perform any overt act or that conspiracy succeed, but conviction may rest on proof of doing of any overt act by any of accused's coconspirators to effect object of conspiracy, and it is not necessary that overt act in itself be prohibited by law. Bergen v. U. S., C.C.A.8 (N.D.) 1944, 145 F.2d 181.

That accused's employees allegedly entered into conspiracy with third person to violate former § 223 of Title 27 would not render employer liable as "conspirator" unless he knew of existence of conspiracy and with knowledge thereof committed some act in furtherance thereof. Bacon v. U.S., C.C.A.10 (Okla.) 1942, 127 F.2d 985.

Persons who conspire together to obstruct justice in proceedings before United States Commissioner or in a federal district court, which they expect or fear will be instituted, may be prosecuted for conspiracy to endeavor to obstruct the due administration of justice even if it be assumed that they could not be found guilty of the substantive crime of obstructing justice, provided one of them does an overt act designed to consummate their purpose and the commission of that act affects a pending proceeding. U.S. v. Perlstein, C.C.A.3 (N.J.) 1942, 126 F.2d 789, certiorari denied 62 S.Ct. 1106, 316 U.S. 678, 86 L.Ed. 1752.

Where conspiracy is charged, it is not essential that all of the conspirators take part in an overt act or acts arising from the conspiracy, but it is enough if an overt act was committed by one of the conspirators in furtherance of the conspiracy. Brock v. Hudspeth, C.C.A.10 (Kan.) 1940, 111 F.2d 447. See, also, Curtis v. U.S., C.C.A.Colo.1933, 67 F.2d 943. Conspiracy 41

So long as a party charged with conspiring with others to commit the offense of harboring a federal fugitive took part in the conspiracy, it was immaterial whether he committed an overt act, or knew of it, provided an overt act was committed by one of conspirators. Brock v. Hudspeth, C.C.A.10 (Kan.) 1940, 111 F.2d 447.

The particular manner or means by which the overt act of a conspiracy is done is immaterial nor is it necessary that all conspirators join in the overt act or in every one of the several overt acts of the conspiracy. Hall v. U.S., C.C.A.10 (Okla.) 1940, 109 F.2d 976.

A person committing an overt act with knowledge of conspiracy is guilty if he knows purpose of conspiracy. Lee v. U.S., C.C.A.9 (Wash.) 1939, 106 F.2d 906.

The breadth of conspiracy is not limited by effective limitations of overt act committed by one of conspirators, and, if one participates in conspiracy, it is immaterial that he has committed no overt act. U.S. v. Anderson, C.C.A.7 (Ill.) 1939, 101 F.2d 325, certiorari denied 59 S.Ct. 822, 307 U.S. 625, 83 L.Ed. 1502, certiorari denied 59 S.Ct. 822, 307 U.S. 625, 83 L.Ed. 1503, certiorari denied 59 S.Ct. 823, 307 U.S. 625, 83 L.Ed. 1503, certiorari denied 59 S.Ct. 823, 307 U.S. 625, 83 L.Ed. 1504, certiorari denied 59 S.Ct. 823, 307 U.S. 625, 83 L.Ed. 1504, 86 L.Ed.

1504, certiorari denied 59 S.Ct. 824, 307 U.S. 625, 83 L.Ed. 1505, certiorari denied 59 S.Ct. 824, 307 U.S. 625, 83 L.Ed. 1506, certiorari denied 59 S.Ct. 825, 307 U.S. 625, 83 L.Ed. 1506, certiorari denied 59 S.Ct. 825, 307 U.S. 625, 83 L.Ed. 1507, certiorari denied 59 S.Ct. 825, 307 U.S. 625, 83 L.Ed. 1508, certiorari denied 59 S.Ct. 826, 307 U.S. 625, 83 L.Ed. 1508, certiorari denied 59 S.Ct. 826, 307 U.S. 625, 83 L.Ed. 1509.

An accused did not violate former § 88 of this title [now this section] if he did not join in agreement made, even if he committed an overt act. Marino v. U.S., C.C.A.9 (Cal.) 1937, 91 F.2d 691, certiorari denied 58 S.Ct. 410, 302 U.S. 764, 82 L.Ed. 593.

Persons entering into agreement, tacit or otherwise, to commit unlawful act are guilty of conspiracy, if one of them does some act in pursuance thereof. Chaplin v. U.S., C.C.A.4 (S.C.) 1928, 28 F.2d 567.

Former § 88 of this title [now this section] did not make it crime to conspire that some person other than conspirators shall commit crime. Bartkus v. U.S., C.C.A.7 (Ill.) 1927, 21 F.2d 425.

It is no bar to the existence of a conspiracy that it is to be executed entirely by one conspirator. Ferguson v. U S, C.C.A.8 (N.M.) 1923, 293 F. 361.

It is not necessary that all conspirators take part in the overt act though "they, the said defendants," generally were alleged to have committed such acts. Bullock v. U.S., C.C.A.6 (Ky.) 1923, 289 F. 29.

To bring a case within former § 88 of this title [now this section], making it a crime to conspire to commit an offense against the United States where one or more of the parties "do any act to effect the object of the conspiracy", the conspirator must himself have done the act or have authorized it to be done, and a mere failure on his part to prevent another from doing it was not sufficient. U.S. v. McClarty, W.D.Ky.1911, 191 F. 518.

If defendants were parties to conspiracy to defraud the United States by manufacturing and otherwise handling non-tax-paid distilled spirits, neither their knowledge nor their participation in alleged overt acts was necessary to make them guilty. U. S. v. Turner, E.D.Tenn.1967, 274 F.Supp. 412.

A particular defendant accused of conspiracy need not commit an overt act within the district. U. S. v. Gilboy, M.D.Pa.1958, 160 F.Supp. 442.

138. Acts of others attributable to all, parties liable for conspiracy

So long as a partnership in crime continues, the partners act for each other in carrying it forward. Pinkerton v. U. S., U.S.Ala.1946, 66 S.Ct. 1180, 328 U.S. 640, 90 L.Ed. 1489, rehearing denied 67 S.Ct. 26, 329 U.S. 818, 91 L.Ed. 697.

An overt act of one partner in crime may be the act of all without any new agreement specifically directed to that act. Pinkerton v. U. S., U.S.Ala.1946, 66 S.Ct. 1180, 328 U.S. 640, 90 L.Ed. 1489, rehearing denied 67 S.Ct. 26, 329 U.S. 818, 91 L.Ed. 697.

Pinkerton doctrine of coconspirator liability for crimes committed by coconspirators was extended to include reasonably foreseeable but originally unintended substantive crimes; however, extension of *Pinkerton* doctrine is limited to conspirators who played more than minor rule in conspiracy or who had actual knowledge of at least some of circumstances and events culminating in reasonably foreseeable but unintended substantive crime. U.S. v. Mothersill, C.A.11 (Fla.) 1996, 87 F.3d 1214, certiorari denied 117 S.Ct. 531, 519 U.S. 1017, 136 L.Ed.2d 416, certiorari denied 117 S.Ct. 1109, 520 U.S. 1105, 137 L.Ed.2d 311, certiorari denied 117 S.Ct. 1328, 520 U.S. 1151, 137 L.Ed.2d 489. Conspiracy 41

Given that defendants conspired to operate farmers' cooperative scheme, it was not necessary that each defendant have committed fraudulent act with respect to each count, but, rather, each defendant was vicariously liable for overt acts committed by other conspirators to further overall scheme. U. S. v. Shelton, C.A.7 (Ill.) 1982, 669 F.2d 446, certiorari denied 102 S.Ct. 1989, 456 U.S. 934, 72 L.Ed.2d 454.

As coconspirator, defendant was chargeable with crimes of his fellow coconspirators committed in furtherance of the conspiracy, and thus defendant was properly convicted on assault charges brought in connection with shots another defendant fired from van at pursuing police even though defendant merely drove the van. Government of Virgin Islands v. Dowling, C.A.3 (Virgin Islands) 1980, 633 F.2d 660, certiorari denied 101 S.Ct. 374, 449 U.S. 960, 66 L.Ed.2d 228.

Party to a continuing conspiracy can be held responsible for substantive offenses committed by coconspirators if such acts were committed in furtherance of a conspiracy even though the defendant neither participated in the acts of the coconspirators nor actually knew about them. U. S. v. Tilton, C.A.5 (Fla.) 1980, 610 F.2d 302.

While each conspirator is part of the conspiracy, he is responsible for his coconspirators' acts committed pursuant to and in furtherance of the conspiracy. U. S. v. Beecroft, C.A.9 (Cal.) 1979, 608 F.2d 753.

Once found to be a member of a conspiracy, a defendant may be held criminally liable for acts of other conspirators if such acts are done as part of a general scheme or plan. U. S. v. Molina, C.A.2 (N.Y.) 1978, 581 F.2d 56.

It is immaterial that each of conspirators did not participate in all activities or even know all the details of conspiracy; they are bound as long as the results fall within the common purposes of the conspiracy and conspirators knowingly contributed towards its furtherance. U. S. v. Fitzgerald, C.A.7 (Ind.) 1978, 579 F.2d 1014, certiorari denied 99 S.Ct. 610, 439 U.S. 1002, 58 L.Ed.2d 677, certiorari denied 99 S.Ct. 611, 439 U.S. 1002, 58 L.Ed.2d 677.

Once defendant becomes associated with conspiracy, he is responsible for all acts of it, even though acts occurred before or after his association with it. U. S. v. Netterville, C.A.5 (Tex.) 1977, 553 F.2d 903, certiorari denied 98 S.Ct. 189, 434 U.S. 861, 54 L.Ed.2d 135, certiorari denied 98 S.Ct. 719, 434 U.S. 1009, 54 L.Ed.2d 752.

Defendant was responsible for the substantive illegal acts of his coconspirators, done in furtherance of the conspiracy, even though he may not have participated directly in them. U. S. v. Head, C.A.2 (N.Y.) 1976, 546 F.2d 6, certiorari denied 97 S.Ct. 1551, 430 U.S. 931, 51 L.Ed.2d 775.

Once defendant was implicated in fraudulent scheme his participation in specific acts was irrelevant, since acts of other parties were attributable to him. U. S. v. Pollack, C.A.D.C.1976, 534 F.2d 964, 175 U.S.App.D.C. 227, certiorari denied 97 S.Ct. 324, 429 U.S. 924, 50 L.Ed.2d 292.

Once it is shown that conspiracy existed and that defendant participated in it, acts of coconspirators done in furtherance of the conspiracy are attributable to defendant and he becomes equally liable for them. U. S. v. Pearson, C.A.5 (Fla.) 1975, 508 F.2d 595, certiorari denied 96 S.Ct. 82, 423 U.S. 845, 46 L.Ed.2d 66; U.S. v. Sanchez, C.A.Tex.1975, 508 F.2d 388, certiorari denied 96 S.Ct. 45, 423 U.S. 827, 46 L.Ed.2d 44; U.S. v. Warner, C.A.Tex.1971, 441 F.2d 821, certiorari denied 92 S.Ct. 65, 404 U.S. 829, 30 L.Ed.2d 58. Conspiracy 41

Each conspirator is responsible for the acts of his coconspirators committed pursuant to and in furtherance of the conspiracy, even if the conspirator charged is not aware of the performance of those acts or the existence of the actors. U. S. v. Murray, C.A.9 (Cal.) 1973, 492 F.2d 178, certiorari denied 95 S.Ct. 98, 419 U.S. 854, 42 L.Ed.2d 87, certiorari denied 95 S.Ct. 210, 419 U.S. 942, 42 L.Ed.2d 166.

In "wheel conspiracy" in which members of a "core" group deal with number of contacts who are connected with each other only through the core conspirators, whether the contacts may be found to be members along with the core conspirators depends on whether or not the contacts knew or had reason to know the existence of but not necessarily the identity, of one or more of the other contacts in the conspiracy. U. S. v. Manarite, C.A.2 (N.Y.) 1971, 448 F.2d 583, certiorari denied 92 S.Ct. 281, 404 U.S. 947, 30 L.Ed.2d 264, certiorari denied 92 S.Ct. 285, 404 U.S. 947, 30 L.Ed.2d 264, certiorari denied 92 S.Ct. 287, 404 U.S. 947, 30 L.Ed.2d 264, certiorari denied 92 S.Ct. 298, 404 U.S. 947, 30 L.Ed.2d 264.

Once connected with conspiracy, defendant was chargeable with whatever was said or done previously by his coconspirators. U. S. v. Cerrito, C.A.7 (Ill.) 1969, 413 F.2d 1270, certiorari denied 90 S.Ct. 554, 396 U.S. 1004, 24 L.Ed.2d 495.

A conspirator is liable for all the crimes of his co-conspirators. Wangrow v. U. S., C.A.8 (Minn.) 1968, 399 F.2d 106, certiorari denied 89 S.Ct. 292, 393 U.S. 933, 21 L.Ed.2d 270.

Each member of conspiracy is chargeable with acts performed by other members in furtherance of conspiracy. U. S. v. Wechsler, C.A.4 (Va.) 1968, 392 F.2d 344, certiorari denied 88 S.Ct. 2283, 392 U.S. 932, 20 L.Ed.2d 1389, rehearing denied 89 S.Ct. 71, 393 U.S. 902, 21 L.Ed.2d 191, rehearing denied 408 F.2d 1184, certiorari denied 89 S.Ct. 2130, 395 U.S. 978, 23 L.Ed.2d 766, certiorari denied 89 S.Ct. 2131, 395 U.S. 978, 23 L.Ed.2d 766, rehearing denied 90 S.Ct. 40, 396 U.S. 870, 24 L.Ed.2d 126, certiorari denied 89 S.Ct. 2150, 395 U.S. 984, 23 L.Ed.2d 773.

Once a criminal agreement becomes operative and a defendant has joined a conspiracy, the acts of any member are attributable to each partner to the conspiracy and the partners act for each other in carrying out its objective. Grimes v. U. S., C.A.5 (Tex.) 1967, 379 F.2d 791, certiorari denied 88 S.Ct. 104, 389 U.S. 846, 19 L.Ed.2d 113.

Once existence of common scheme is established, very little is required to show that defendant became a party and once it is found that defendant was connected with conspiracy, he is equally liable with those who originated it and dominated common scheme, though he joined in it after its inception and his part was minor, and he is responsible not only for acts of conspirators in furtherance of conspiracy following his joinder, but also for those that preceded it and he is liable for acts of his co-conspirators though he was not aware of performance of those acts, nor even of existence of actors. Hernandez v. U. S., C.A.9 (Cal.) 1962, 300 F.2d 114.

Every overt act of each co-conspirator is the act of all. U. S. v. Vittoria, C.A.7 (Ill.) 1960, 284 F.2d 451. See, also, Palmero v. U.S., C.C.A.Mass.1940, 112 F.2d 922; Jung Quey v. U.S., Cal.1915, 222 F. 766, 138 C.C.A. 314; U.S. v. Richards, D.C.Neb.1906, 149 F. 443. Conspiracy 41

Proof of an overt act by any one of conspirators is sufficient to satisfy requirement as to all; since act of one conspirator is imputed to the other conspirators. United States v. Piampiano, C.A.2 (N.Y.) 1959, 271 F.2d 273.

In joint prosecutions for conspiring to wilfully or maliciously injure or destroy means of communication controlled or operated by United States, two defendants during conspiracy were bound by knowledge of remaining defendants that many of the circuits to be destroyed were operated and controlled by the Government, and all defendants were bound by what would have been the natural consequences of their conspiracy. Abbate v. U.S., C.A.5 (Miss.) 1957, 247 F.2d 410, certiorari granted 78 S.Ct. 330, 355 U.S. 902, 2 L.Ed.2d 258, affirmed 79 S.Ct. 666, 359 U.S. 187, 3 L.Ed.2d 729.

Once a conspiracy is established, a substantive offense committed by one conspirator pursuant to conspiracy is attributable to all other conspirators, even though they were not present when the substantive offense was committed. Poliafico v. U. S., C.A.6 (Ohio) 1956, 237 F.2d 97, certiorari denied 77 S.Ct. 590, 352 U.S. 1025, 1 L.Ed.2d 597, rehearing denied 77 S.Ct. 718, 353 U.S. 931, 1 L.Ed.2d 725.

Common purpose makes acts of one conspirator acts of all, and each conspirator is liable for acts of every other conspirator done in pursuance of conspiracy. United States v. Sansone, C.A.2 (N.Y.) 1956, 231 F.2d 887, certiorari denied 76 S.Ct. 1055, 351 U.S. 987, 100 L.Ed. 1500. See, also, U.S. v. Cryan, D.C.N.J.1980, 490 F.Supp. 1234, affirmed 636 F.2d 1211. Conspiracy 41

Acts of one conspirator in pursuance of conspiracy to possess stolen sheet steel moving as part of interstate shipment were, in contemplation of law, the acts of the other conspirator. Singer v. U.S., C.A.6 (Mich.) 1953, 208 F.2d 477.

The liability of a coconspirator for crimes in furtherance of the conspiracy does not depend upon the scope or existence of a conspiracy count, and the act of one or more defendants in furtherance of common plan shown to exist is the act of all. Nye & Nissen v. U.S., C.C.A.9 (Cal.) 1948, 168 F.2d 846, certiorari granted 69 S.Ct. 81, 335 U.S. 852, 93 L.Ed. 400, affirmed 69 S.Ct. 766, 336 U.S. 613, 93 L.Ed. 919. See, also, Bogy v. U.S., C.C.A.Tenn.1938, 96 F.2d 734, certiorari denied 59 S.Ct. 68, 305 U.S. 608, 83 L.Ed. 387; U.S. v. Olmstead, D.C.Wash.1925, 5 F.2d 712; McGinniss v. U.S., C.C.A.N.Y.1919, 256 F. 621. Conspiracy 41

In law of conspiracy, the overt act of one of several prisoners in shooting prison guard while an attempt to escape from prison was under way in carrying out a conspiracy between prisoners, was attributable to all participants in the attempt to escape. Shockley v. U.S., C.C.A.9 (Cal.) 1948, 166 F.2d 704, certiorari denied 68 S.Ct. 1502, 334 U.S. 850, 92 L.Ed. 1773.

A party to a criminal conspiracy becomes bound by all acts of any of the conspirators performed in furthering the scheme or purpose of the conspiracy during its existence. Harper v. U. S., C.C.A.8 (Mo.) 1944, 143 F.2d 795.

A party to a conspiracy need not know identity or even know the number of his confederates, but when he embarks on a criminal venture of indefinite outline, he takes his chances as to its content and membership, if they fall within the common purpose as he understands them, but he must be aware of those purposes and must accept them and their implications if he is to be charged with what others may do in execution of them. U.S. v. Andolschek, C.C.A.2 (N.Y.) 1944, 142 F.2d 503.

Defendant is bound by acts of his fellow conspirators done within scope of the conspiracy. Kann v. U.S., C.C.A.4 (Md.) 1944, 140 F.2d 380, certiorari granted 64 S.Ct. 938, 321 U.S. 761, 88 L.Ed. 1059, reversed on other grounds 65 S.Ct. 148, 323 U.S. 88, 89 L.Ed. 88. See, also, Burns v. U.S., C.C.A.Okl.1922, 279 F. 982. Conspiracy 41

Where scheme continues over a long period of time, and conspiracy is proved, acts and declarations of one of the conspirators toward the accomplishment of the unlawful scheme are the acts of all. Blue v. U.S., C.C.A.Ohio 1943, 138 F.2d 351, certiorari denied 64 S.Ct. 1046 (3 cases), 322 U.S. 736, 88 L.Ed. 1570, rehearing denied 64 S.Ct. 1259 (3 cases), 322 U.S. 771, 88 L.Ed. 1596. Blue v. U. S., C.C.A.6 (Ohio) 1943, 138 F.2d 351, certiorari denied 64 S.Ct. 1046, 322 U.S. 736, 88 L.Ed. 1570, rehearing denied 64 S.Ct. 1259, 322 U.S. 771, 88 L.Ed. 1596, certiorari denied 64 S.Ct. 1046, 322 U.S. 737, 88 L.Ed. 1570.

The gist of offense of "conspiracy" is an unlawful combination, which must be proven against all conspirators, each of whom is them held responsible for acts of all, but an overt act need not be proven against each conspirator. Braverman v. U.S., C.C.A.6 (Mich.) 1942, 125 F.2d 283, certiorari granted 62 S.Ct. 1037, 316 U.S. 653, 86 L.Ed. 1733, reversed on other grounds 63 S.Ct. 99, 317 U.S. 49, 87 L.Ed. 23.

The rule that each conspirator is chargeable with acts of his fellows done in furtherance of the joint venture requires that acts so imputed must be in execution of the venture as all understood it so far as concerns those terms which constitute the substantive crime. U S v. Crimmins, C.C.A.2 (N.Y.) 1941, 123 F.2d 271.

A conspirator is liable though he was never in the state where the overt act was committed. Ferracane v. U. S.,

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C.C.A.7 (Ind.) 1928, 29 F.2d 691.

Defendant was chargeable with acts of co-conspirators in scheme to defraud insurance companies by using mails to falsely represent that loss was accidental. Spirou v. U.S., C.C.A.2 (N.Y.) 1928, 24 F.2d 796, certiorari denied 48 S.Ct. 559, 277 U.S. 596, 72 L.Ed. 1006.

Defendant is responsible for acts of co-conspirators committed before as well as after he joined conspiracy and overt act need not be proved against all conspirators. Baker v. U. S., C.C.A.4 (Va.) 1927, 21 F.2d 903, certiorari denied 48 S.Ct. 301, 276 U.S. 621, 72 L.Ed. 736.

Erection of still, or manufacture or keeping of liquor for sale, by one pursuant to agreement renders all conspirators guilty of conspiracy. Liberato v. U.S., C.C.A.9 (Wash.) 1926, 13 F.2d 564.

In prosecution under former § 88 of this title [now this section], for conspiracy to misuse mails contrary to former § 338 of this title, it was not necessary that accused himself should commit overt act charged, since, if conspiracy was established, and any one or more of the parties thereto acted in furtherance of common design, such act of one conspirator was overt act of all. Morris v. U. S., C.C.A.8 (Ark.) 1925, 7 F.2d 785, certiorari denied 46 S.Ct. 205, 270 U.S. 640, 70 L.Ed. 775.

In a prosecution for conspiracy to purchase intoxicating liquors for transportation in interstate commerce, which alleged as one overt act joint purchase by two defendants, the act of either in pursuance of the conspiracy would have been the act of both. Tacon v. U.S., C.C.A.5 (La.) 1921, 270 F. 88.

If several defendants were associated in a scheme to defraud by use of the mails, the act of one in receiving a letter in the course of the scheme was the act of the other defendants also. Grant v. U.S., C.C.A.6 (Ky.) 1920, 268 F. 443, certiorari denied 41 S.Ct. 538, 256 U.S. 700, 65 L.Ed. 1178.

Where defendant and others conspired to receive, conceal, etc., opium prepared for smoking imported from a foreign country, the commission of an overt act by any of the conspirators fixed the crime upon all. Proffitt v. U.S., C.C.A.9 (Cal.) 1920, 264 F. 299.

It is not essential to prove that scheme contemplated use of mails, if mails were in fact used, and, where execution of scheme would have been utterly impossible without use of mails, all who participated would be guilty, although not actually using mails. Preeman v. U.S., C.C.A.7 (Ill.) 1917, 244 F. 1, 156 C.C.A. 429, certiorari denied 38 S.Ct. 12, 245 U.S. 654, 62 L.Ed. 533.

Where the existence of an unlawful conspiracy is proved, an overt act by one of the parties thereto becomes the act of all, and they are all alike guilty. Jung Quey v. U.S., C.C.A.9 (Cal.) 1915, 222 F. 766, 138 C.C.A. 314. See, also, Pinkerton v. U.S., C.C.A.Ala.1945, 151 F.2d 499, affirmed 66 S.Ct. 1180, 328 U.S. 640, 90 L.Ed. 1489, rehearing denied 67 S.Ct. 26, 329 U.S. 818, 91 L.Ed. 697; U.S. v. Beck, C.C.A.Ill.1941, 118 F.2d 178, certiorari denied 61 S.Ct. 1121, 313 U.S. 587, 85 L.Ed. 1542; Davis v. U.S., C.C.A.Fla.1926, 12 F.2d 253, certiorari denied 46 S.Ct. 639, 271 U.S. 688, 70 L.Ed. 1153; Chew v. U.S., C.C.A.Ark.1925, 9 F.2d 348; Vannata v. U.S., C.C.A.N.Y.1923, 289 F. 424; Shaffman v. U.S., C.C.A.Pa.1923, 289 F. 370; Grayson v. U.S., C.C.A.Tenn.1921, 272 F. 553, certiorari denied 42 S.Ct. 49, 257 U.S. 637, 66 L.Ed. 409; Hamburg-American Steam Packet Co. v. U.S., N.Y.1918, 250 F. 747, 163 C.C.A. 79, certiorari denied 38 S.Ct. 333, 246 U.S. 662, 62 L.Ed. 927.

"If the defendants and others conspired to defraud the United States of the possession and use of its lands by fraudulent entries, made with intent of the entrymen not to comply with the law, the act and procurement of one conspirator in furtherance thereof is imputable to the others, though they might be ignorant of a particular entry so induced and the fraudulent intent of the particular entryman. And if the conspiracy existed, and the details of its execution were intrusted to agents who procured such entries to be made, the illegal intent of the entrymen would

be material for consideration, though actually unknown to the defendants. If the conspiracy contemplated false, fictitious, or fraudulent entries of the kind in question, a party to it is chargeable with the acts consummating it, though not personally cognizant with all the details. Indeed, he might be guilty, though no entries were made at all." Richards v. U. S., C.C.A.8 (Neb.) 1909, 175 F. 911, 99 C.C.A. 401.

Where two or more persons combine with the intent to do an unlawful thing, and, in the prosecution of the unlawful enterprise, commit some crime not originally contemplated, all are equally guilty, under the law. U.S. v. Sweeney, C.C.W.D.Ark.1899, 95 F. 434. Conspiracy 24.5

Where a party of men combine with intent to do an unlawful thing, and in the prosecution of that unlawful intent one of the party goes a step further than the others and does acts which the others do not themselves perform, all are responsible for what the one does, but it is essential, however, that there should be a concert of action,--and an agreement to do some unlawful thing. U.S. v. Kane, C.C.Colo.1885, 23 F. 748. Conspiracy 41

All parties to conspiracy are chargeable with any act done by any one of them in furtherance of conspiracy, and during its existence, and before its termination, if act is reasonably related to carrying out the crime. U. S. v. Molin, D.C.Mass.1965, 244 F.Supp. 1015. Conspiracy 41

A conspirator who has admitted his participation in the conspiracy is liable for all overt acts of his coconspirators whether he participated in them or not. U S v.Gelb, S.D.N.Y.1959, 175 F.Supp. 267, affirmed 269 F.2d 675, certiorari denied 80 S.Ct. 66, 361 U.S. 822, 4 L.Ed.2d 66.

In civil antitrust suit brought by common carrier by motor vehicle in interstate commerce seeking an injunction against, and treble damages from, railroads which had allegedly conspired in unreasonable restraint of trade and commerce to injure or destroy motor carrier's business and to acquire monopoly of land transportation to property, even if certain of defendants had only taken a small part in alleged conspiracy, they would have to assume equal responsibility for acts of all of conspirators if they had done so with knowledge of conspiracy and had consented to take part in it. Riss & Co. v. Association of American Railroads, D.C.D.C.1959, 170 F.Supp. 354, certiorari denied 267 F.2d 659, 105 U.S.App.D.C. 382, certiorari denied 80 S.Ct. 108, 361 U.S. 804, 4 L.Ed.2d 57.

The activities of certain members of conspiracy are binding upon all members of the conspiracy. U. S. v. Labate, E.D.Pa.1958, 168 F.Supp. 531, affirmed 270 F.2d 122, certiorari denied 80 S.Ct. 211, 361 U.S. 900, 4 L.Ed.2d 157 .

An overt act of one conspirator may be the act of all without any new agreements specifically directed to that act; it must however be done in furtherance of the conspiracy. U. S. v. Gilboy, M.D.Pa.1958, 160 F.Supp. 442.

If one has knowledge of conspiracy and with that knowledge intentionally does some act or thing in furtherance thereof he may be held liable; if so, he adopts as his own the past and future acts of all his conspirators. U. S. v. Gilboy, M.D.Pa.1958, 160 F.Supp. 442.

One overt act by one of the conspirators to effect the object of the conspiracy is sufficient; it then becomes the act of all. U. S. v. Gilboy, M.D.Pa.1958, 160 F.Supp. 442.

Conspirator is criminally liable for acts of his coconspirators committed within any federal judicial district if such acts were in furtherance of the common design. U. S. v. Brandt, N.D.Ohio 1955, 139 F.Supp. 367.

Guilt is personal, but personal guilt may be incurred by joining conspiracy, and in such case "guilt by association" makes one responsible for acts of others committed in pursuance of such association. U. S. v. Schneiderman, S.D.Cal.1951, 102 F.Supp. 52, reversed on other grounds 193 F.2d 875.

Generally, coconspirators are vicariously responsible for acts committed in furtherance of joint venture, subject to limitation that acts so imputed must be in execution of venture as all understand it. Winkler-Koch Engineering Co. v. Universal Oil Products Co. (Del.), S.D.N.Y.1947, 79 F.Supp. 1013, 79 U.S.P.Q. 328.

Where a continuing conspiracy is proved which involves several defendants and an overt act was done by some defendants but not participated in by all, all defendants would be bound as members of the conspiracy though they had no direct part in the particular transaction. U. S. v. Johnson, M.D.Pa.1947, 76 F.Supp. 542, affirmed 165 F.2d 42, certiorari denied 68 S.Ct. 355, 332 U.S. 852, 92 L.Ed. 421, motion granted 68 S.Ct. 357, rehearing denied 68 S.Ct. 457, 333 U.S. 834, 92 L.Ed. 1118, certiorari denied 68 S.Ct. 355, 332 U.S. 852, 92 L.Ed. 422.

A coconspirator whose connection with alleged conspiracy was limited to a particular case was not chargeable with unlawful conduct of his codefendants unless that conduct was within reasonable intendment of their unlawful agreement as he understood it. U. S. v. Johnson, M.D.Pa.1946, 65 F.Supp. 46.

Each member of a conspiracy is responsible for every act of every other member, done by common consent in furtherance of the illegal purposes, and also for such acts, though not consented to beforehand, if assented to afterwards. U.S. v. Mitchell, C.C.S.C.1871, 26 F.Cas. 1283, No. 15790. Conspiracy 41; Criminal Law 59(3)

When two or more persons combined for the purpose of interfering with the passage of a train carrying the mail, and one or more of the parties did any act to effect such object, all of the parties were liable to a criminal prosecution for conspiracy under former § 83 of this title. 1894, 21 Op.Atty.Gen. 9.

139. Stake in success of conspiracy, parties liable for conspiracy

A party's stake in alleged conspiracy is relevent to question whether he participated therein, though not essential. Direct Sales Co. v. U.S., U.S.S.C.1943, 63 S.Ct. 1265, 319 U.S. 703, 87 L.Ed. 1674.

A party's stake in a conspiracy is relevant to the question of his or her participation. U. S. v. Hawes, C.A.5 (Ga.) 1976, 529 F.2d 472.

Knowledge of existence and goals of conspiracy does not of itself make one a co-conspirator; one must also have a stake in the venture. U. S. v. Cianchetti, C.A.2 (Conn.) 1963, 315 F.2d 584.

One must have a stake in the success of the conspiracy in order that he may be considered a party to it. U.S. v. Di Re, C.C.A.2 (N.Y.) 1947, 159 F.2d 818, certiorari granted 67 S.Ct. 1348, 331 U.S. 800, 91 L.Ed. 1824, affirmed 68 S.Ct. 222, 332 U.S. 581, 92 L.Ed. 210.

Where wrongful object of a conspiracy is charged against all defendants, crime is not excused because some defendants have different benefits from others and to that extent may be acting in legal opposition to others charged with the wrong. U.S. v. Rhoads, D.C.D.C.1942, 48 F.Supp. 175.

140. Compensation, parties liable for conspiracy

Fact that defendant received no pay for his aid in distribution of cocaine did not preclude finding that defendant conspired to distribute cocaine. U. S. v. Yaniz-Cremata, C.A.5 (Fla.) 1974, 503 F.2d 963.

141. Persons incapable of substantive offense, parties liable for conspiracy

A person may be guilty of conspiring although incapable of committing the objective offense. U. S. v. Socony-Vacuum Oil Co., U.S.Wis.1940, 60 S.Ct. 811, 310 U.S. 150, 84 L.Ed. 1129, rehearing denied 60 S.Ct.

1091, 310 U.S. 658, 84 L.Ed. 1421. See, also, U.S. v. Rabinowich, N.Y.1915, 35 S.Ct. 682, 238 U.S. 80, 59 L.Ed. 1211; Farnsworth v. Zerbst, C.C.A.Ga.1938, 98 F.2d 541; Israel v. U.S., C.C.A.Ohio 1925, 3 F.2d 743; Jelke v. U.S., Ill.1918, 255 F. 264, 166 C.C.A. 434; U.S. v. Lyman, D.C.Or.1911, 190 F. 414; U.S. v. Stevens, D.C.Minn.1890, 44 F. 132; U.S. v. Holz, D.C.Ill.1950, 103 F.Supp. 191, reversed on other grounds 191 F.2d 569; U.S. v. Sweet, D.C.Me.1879, 2 Hask. 310, 28 Fed.Cas. No. 16,427; U.S. v. Bayer, C.C.Minn.1876, 4 Dill. 407, 24 Fed.Cas. No. 14,547; U.S. v. Martin, C.C.Mass.1870, 4 Cliff 156, 26 Fed.Cas. No. 15,728. Conspiracy 40.2

Conviction under this section was not precluded on theory that only alleged conspirators were defendant and government agent, although defendant had no direct dealings with anyone other than with government agent, where agent was "link" between defendant and real conspirators, it was obvious and known to defendant that in order to obtain weapons to be sold it was necessary to procure cooperation of other participants in enterprise or conspiracy, and defendant, to time of his forced withdrawal from deal, was au courant with progress of negotiations agent was conducting with other coconspirators engaged in furtherance of criminal enterprise. U.S. v. Fincher, C.A.11 (Ga.) 1984, 723 F.2d 862, rehearing denied 729 F.2d 1468.

If the only coconspirators were government agents, conviction under this section could not stand. Brown v. U. S., C.A.5 (Fla.) 1966, 367 F.2d 145, certiorari denied 87 S.Ct. 2082, 387 U.S. 947, 18 L.Ed.2d 1334.

Private persons could be convicted of conspiring to deprive victim of civil rights, on allegation of collaboration with police officers, despite private persons' incapacity to act under color of law. U. S. v. Lester, C.A.6 (Ky.) 1966, 363 F.2d 68, certiorari denied 87 S.Ct. 705, 385 U.S. 1002, 17 L.Ed.2d 542, rehearing denied 87 S.Ct. 951, 386 U.S. 938, 17 L.Ed.2d 813.

Fact that defendant's only connection with and knowledge of unknown coconspirators was through a government informer did not vitiate the conspiracy, but defendant, by agreeing to furnish protection to operation of an illicit still by government informer and his co-conspirators was chargeable as a conspirator even though no conspiracy could have existed between defendant and government informer alone. Sears v. U. S., C.A.5 (Ga.) 1965, 343 F.2d 139.

Fact that neither defendant nor his alleged conspirator were taxpayers or revenue agents had no bearing upon their capacity to conspire to evade and defeat income taxes due and owing United States by third parties in violation of provision of § 7201 of Title 26 making it unlawful to willfully attempt to evade or defeat any tax. U.S. v. Gordon, C.A.3 (Pa.) 1957, 242 F.2d 122, certiorari denied 77 S.Ct. 1378, 354 U.S. 921, 1 L.Ed.2d 1436.

It is sufficient for conviction under this section if any one of the parties to a conspiracy is legally capable of committing the substantive offense to which the conspiracy relates. Brown v. U. S., C.A.6 (Tenn.) 1953, 204 F.2d 247.

Conspiracy is a separate and different offense from the crime which is the object of the conspiracy, and addicts and others may be guilty of a conspiracy to effect a violation of § 2550 et seq. of Title 26 even though they could not be guilty of a substantive offense under such sections. Richards v. U. S., C.A.10 (Okla.) 1951, 193 F.2d 554, certiorari denied 72 S.Ct. 764, 343 U.S. 930, 96 L.Ed. 1340.

Though county treasurer could not have committed objective offense of making false entries in books and reports of national bank as principal, he could conspire with bank cashier to commit such offense. Curtis v. U.S., C.C.A.10 (Colo.) 1933, 67 F.2d 943.

There may be an unlawful conspiracy that one shall give and an officer shall receive a bribe, though neither can be guilty of the offense which it is contemplated the other shall commit. Ex parte O'Leary, C.C.A.7 (Wis.) 1931, 56 F.2d 515.

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Persons not bankrupts may conspire to conceal property from trustee. Carter v. U.S., C.C.A.8 (Mo.) 1927, 19 F.2d 431. See, also, Israel v. U.S., C.C.A.Ohio 1925, 3 F.2d 743; U.S. v. Young, etc., Co., C.C.R.I.1909, 170 F. 110, modified on other grounds 195 F. 353, certiorari denied 32 S.Ct. 840, 225 U.S. 710, 56 L.Ed. 1267; Ohen v. U.S., N.Y.1907, 157 F. 651, 85 C.C.A. 113, certiorari denied 28 S.Ct. 261, 207 U.S. 596, 52 L.Ed. 357. Conspiracy 28

Persons who were not government officers could have been convicted, under former § 88 of this title [now this section] of conspiracy with officers in asking for and receiving bribe for not reporting liquor found in search under warrant. Downs v. U.S., C.C.A.3 (N.J.) 1925, 3 F.2d 855, certiorari denied 45 S.Ct. 509, 268 U.S. 689, 69 L.Ed. 1158.

Other persons than a bankrupt may commit an offense by conspiring with him that he shall conceal his goods. Tapack v. US, C.C.A.3 (N.J.) 1915, 220 F. 445, 137 C.C.A. 39, certiorari denied 35 S.Ct. 664, 238 U.S. 627, 59 L.Ed. 1495. See, also, U.S. v. Holte, Wis.1915, 35 S.Ct. 271, 236 U.S. 140, 59 L.Ed. 504, L.R.A.1915D, 281.

Although an indictment for conspiracy will not lie where a plurality of agents is logically necessary to complete the crime which it was the object of the conspiracy to commit, it is, on the other hand, sufficient if one of the parties to a conspiracy is legally capable of committing the offense, while the other party or parties may not have had that capacity. Chadwick v. U. S., C.C.A.6 (Ohio) 1905, 141 F. 225, 72 C.C.A. 343.

142. Entering conspiracy after formation, parties liable for conspiracy

Where indictment charged that defendants conspired to obstruct due administration of justice in prosecution of another, alleged fact that the other entered conspiracy after it was formed by defendants did not affect existence of general scheme. Craig v. U. S., U.S.Cal.1936, 56 S.Ct. 670, 298 U.S. 637, 80 L.Ed. 1371.

Prior actions of coconspirators in furtherance of conspiracy are attributable to one who later joins conspiracy. U. S. v. Davis, C.A.5 (Ga.) 1982, 666 F.2d 195.

Under general conspiracy law where a conspirator is held responsible for acts of the conspiracy before he joined, it is necessary to show an overt act of one of the conspirators thereafter. U. S. v. Peraino, C.A.6 (Tenn.) 1981, 645 F.2d 548.

New conspirators may join the criminal agreement after its inception and others may terminate their membership in the conspiracy after its inception. U. S. v. Castro, C.A.7 (Ill.) 1980, 629 F.2d 456.

Defendant may not escape criminal responsibility on grounds that he did not join conspiracy until well after its inception or because he played only a minor role in total scheme. U. S. v. Alvarez, C.A.5 (Fla.) 1980, 625 F.2d 1196, certiorari denied 101 S.Ct. 2017, 451 U.S. 938, 68 L.Ed.2d 324.

Defendant's relatively late entry into the marijuana-smuggling operation did not preclude his conviction as a participant in the conspiracy. U. S. v. Bates, C.A.5 (Tex.) 1979, 600 F.2d 505.

Fact that new members joined conspiracy as time went on and old members might have dropped out did not preclude a finding that a single, ongoing conspiracy existed. U. S. v. Green, C.A.2 (N.Y.) 1975, 523 F.2d 229, certiorari denied 96 S.Ct. 858, 423 U.S. 1074, 47 L.Ed.2d 84.

Where there was evidence from which reasonable men could conclude that defendant joined conspiracy to import cocaine with knowledge of unlawful enterprise and acted to further it, defendant was liable for acts of other conspirators even if those acts occurred prior to his joining in conspiracy. U. S. v. Reynolds, C.A.5 (Fla.) 1975, 511 F.2d 603.

One who joins an existing conspiracy takes it as it is, and is therefore accountable for the prior conduct of the coconspirators. U. S. v. Torres, C.A.2 (N.Y.) 1974, 503 F.2d 1120. Conspiracy 41

An individual cannot be held criminally liable for substantive offenses committed by members of conspiracy before that individual had joined or after he had withdrawn from conspiracy. U. S. v. Knippenberg, C.A.7 (Ill.) 1974, 502 F.2d 1056.

If there was only one continuing conspiracy manifesting itself in different forms, party who joined conspiracy would be responsible for acts occurring prior to his joining conspiracy. U. S. v. Brown, C.A.1 (Mass.) 1974, 495 F.2d 593, certiorari denied 95 S.Ct. 226, 419 U.S. 965, 42 L.Ed.2d 179.

While a conspiracy may have small core of conspirators, other parties who join and terminate their relationships at various times in order to participate with core conspirators to achieve a common goal may be members of the overall conspiracy. U. S. v. Cervantes, C.A.7 (Ill.) 1972, 466 F.2d 736, certiorari denied 93 S.Ct. 108, 409 U.S. 886, 34 L.Ed.2d 143.

Fact that one has adhered to criminal scheme after it has been initiated and partly carried out and without knowing all of the details does not prevent his knowing participation in the enterprise from making him member of overall conspiracy. U. S. v. Barone, C.A.3 (Pa.) 1972, 458 F.2d 1027.

Person who joins already formed conspiracy knowing of unlawful purpose may be held responsible for acts done in furtherance of conspiracy both prior and subsequent to his joinder. U. S. v. McGann, C.A.5 (Tex.) 1970, 431 F.2d 1104, certiorari denied 91 S.Ct. 904, 401 U.S. 919, 27 L.Ed.2d 821.

Where conspiracy is already in progress, latecomer who knowingly joins it takes it as he finds it and may be held responsible for acts committed in furtherance of conspiracy before he joined it. U.S. v. Cimini, C.A.6 (Mich.) 1970, 427 F.2d 129, certiorari denied 91 S.Ct. 137, 400 U.S. 911, 27 L.Ed.2d 151, rehearing denied 91 S.Ct. 364, 400 U.S. 984, 27 L.Ed.2d 396.

Party to conspiracy is liable as a principal for all offenses committed in furtherance of conspiracy while he is a member of it, but a latecomer cannot be convicted as principal for substantive offenses which were committed in furtherance of conspiracy before he joined it or after he withdrew from it. Gradsky v. U.S., C.A.5 (Fla.) 1967, 376 F.2d 993, certiorari denied 88 S.Ct. 224, 389 U.S. 908, 19 L.Ed.2d 224, rehearing denied 88 S.Ct. 488, 389 U.S. 998, 19 L.Ed.2d 505.

Nobody is liable in conspiracy except for fair import of concerted purpose or agreement as he understands it; if later comer changed that, he is not liable for the change; his liability is limited to the common purposes while he remains in it. U. S. v. Borelli, C.A.2 (N.Y.) 1964, 336 F.2d 376, certiorari denied 85 S.Ct. 647, 379 U.S. 960, 13 L.Ed.2d 555.

A defendant need not be a member of the conspiracy from its inception to its termination; defendant coconspirators in many instances need not even know their fellow conspirators or the particular part they are playing. U.S. v. Dardi, C.A.2 (N.Y.) 1964, 330 F.2d 316, certiorari denied 85 S.Ct. 117, 379 U.S. 869, 13 L.Ed.2d 73, certiorari denied 85 S.Ct. 50, 379 U.S. 845, 13 L.Ed.2d 50, rehearing denied 85 S.Ct. 640, 379 U.S. 986, 13 L.Ed.2d 579, certiorari denied 85 S.Ct. 51, 379 U.S. 845, 13 L.Ed.2d 50.

Defendant who joined conspiracy to transport in interstate commerce geophysical maps knowing them to have been stolen was responsible for acts occurring prior to his joining conspiracy. U. S. v. Lester, C.A.3 (Pa.) 1960, 282 F.2d 750, certiorari denied 81 S.Ct. 385, 364 U.S. 937, 5 L.Ed.2d 368.

It is not necessary that all conspirators be acquainted with each other or have originally conceived or participated

in conception of conspiracy, but those who come on later and cooperate in the common effort to obtain the unlawful results become parties thereto and assume responsibility for all done before, nor does mere fact that conspirators individually or in groups perform different tasks to common end split up conspiracy into several different conspiracies. U. S. v. Lester, C.A.3 (Pa.) 1960, 282 F.2d 750, certiorari denied 81 S.Ct. 385, 364 U.S. 937, 5 L.Ed.2d 368.

If a person joins a criminal concert later, knowing of the criminal design, and acts in concert with the original conspirators, he may be held responsible, not only for everything which may be done thereafter, but also for everything which has been done prior to his adherence to the criminal design. Lile v. United States, C.A.9 (Alaska) 1958, 264 F.2d 278.

After a conspiracy has been formed, adherence to criminal design by a new confederate does not constitute a different conspiracy and original members who conceived and formulated original design and who performed original overt act which made it punishable are not relieved from responsibility. Lile v. United States, C.A.9 (Alaska) 1958, 264 F.2d 278.

Defendant who joined a functioning conspiracy was bound by it. United States v. Kessler, C.A.2 (N.Y.) 1958, 253 F.2d 290.

A conspirator may join at any point in the progress of the conspiracy and be held responsible for all that may be done or has been done. Poliafico v. U. S., C.A.6 (Ohio) 1956, 237 F.2d 97, certiorari denied 77 S.Ct. 590, 352 U.S. 1025, 1 L.Ed.2d 597, rehearing denied 77 S.Ct. 718, 353 U.S. 931, 1 L.Ed.2d 725. See, also, Braverman v. U.S., C.C.A.Mich.1942, 125 F.2d 283, reversed on other grounds 63 S.Ct. 99, 317 U.S. 49, 87 L.Ed. 23; U.S. v. Olmstead, D.C.Wash.1925, 5 F.2d 712; Samara v. U.S., C.C.A.N.Y.1920, 263 F. 12; U.S. v. Jackson, 1979, 627 F.2d 1198, 201 U.S.App.D.C. 212. Conspiracy 41

One who joins an existing conspiracy takes it as it is, and is accountable for prior conduct of co-conspirators. United States v. Sansone, C.A.2 (N.Y.) 1956, 231 F.2d 887, certiorari denied 76 S.Ct. 1055, 351 U.S. 987, 100 L.Ed. 1500. See, also, U.S. v. Greater Blouse, Skirt & Neckwear Contractors' Ass'n, Inc., D.C.N.Y.1959, 177 F.Supp. 213. Conspiracy 41

All members of conspiracy were liable for any acts whatsoever done in furtherance of conspiracy, even if done before one of conspirators joined conspiracy. U.S. v. McKee, C.A.2 (Vt.) 1955, 220 F.2d 266.

All who subsequently join a conspiracy are accountable for, and adopt as their own, all prior conduct of their coconspirators. U.S. v. Bucur, C.A.7 (Ind.) 1952, 194 F.2d 297.

One who joins a conspiracy previously formed and assists in its execution becomes liable with the others not only for the acts done thereafter but also for the original conspiracy and acts done in furtherance thereof. U.S. v. Spadafora, C.A.7 (Ill.) 1950, 181 F.2d 957, certiorari denied 71 S.Ct. 234, 340 U.S. 897, 95 L.Ed. 650, rehearing denied 71 S.Ct. 283, 340 U.S. 916, 95 L.Ed. 662.

A defendant can join a conspiracy at any time and may be found to have done so when with knowledge of its existence, he has undertaken to further its design. Phelps v. U. S., C.C.A.8 (Minn.) 1947, 160 F.2d 858, rehearing denied 161 F.2d 940, certiorari denied 68 S.Ct. 1525, 334 U.S. 860, 92 L.Ed. 1780.

The circumstances of an individual defendant's participation in an established conspiracy can become substantial from their weight in position and context, though in abstraction they may seem only slight. Phelps v. U. S., C.C.A.8 (Minn.) 1947, 160 F.2d 858, rehearing denied 161 F.2d 940, certiorari denied 68 S.Ct. 1525, 334 U.S. 860, 92 L.Ed. 1780.

A person joining an existing group engaged in commission of joint crimes assumes responsibility for all done theretofore. Deacon v. U. S., C.C.A.1 (Mass.) 1941, 124 F.2d 352. See, also, Van Riper v. U.S., C.C.A.N.Y.1926, 13 F.2d 961; Rudner v. U.S., C.C.A.Ohio 1922, 281 F. 516, certiorari denied 43 S.Ct. 95, 260 U.S. 734, 67 L.Ed. 487; U.S. v. Lang, D.C.N.Y.1941, 40 F.Supp. 414. Criminal Law 59(1)

Where there was a general plan to violate narcotic laws in which plan all of defendants participated, it was immaterial when any of parties entered or whether some of those participating were strangers to each other, since they were all engaged in a common unlawful purpose and each and all contributed their part to the "conspiracy". U. S. v. Feinberg, C.C.A.7 (Ill.) 1941, 123 F.2d 425, certiorari denied 62 S.Ct. 626, 315 U.S. 801, 86 L.Ed. 1201.

It is not necessary that each of the conspirators participate in or have knowledge of all of the operations of a conspiracy, but a conspirator may join at any point in its progress and be held responsible for all that may be or has been done. U.S. v. Manton, C.C.A.2 (N.Y.) 1939, 107 F.2d 834, certiorari denied 60 S.Ct. 590, 309 U.S. 664, 84 L.Ed. 1012.

A "conspiracy" imports a concert of purpose, and nobody is liable in conspiracy except for fair import of concerted purpose, or agreement as conspirator understands it, and if later comers change that, he is not liable for the change, his liability being limited to common purposes while he remains in it. U.S. v. Peoni, C.C.A.2 (N.Y.) 1938, 100 F.2d 401.

Where conspiracy has been formed to violate federal law, joinder thereof by new member does not create new conspiracy or change status of other conspirators, and new member is as guilty as though he was an original conspirator. Marino v. U.S., C.C.A.9 (Cal.) 1937, 91 F.2d 691, certiorari denied 58 S.Ct. 410, 302 U.S. 764, 82 L.Ed. 593. See, also, Calcutt v. Gerig, C.C.A.Tenn.1921, 271 F. 220. Conspiracy 40.3

All conspirators need not have been acquainted, and need not have originally conceived or participated in conception of conspiracy, and parties coming in later and co-operating in common effort to obtain unlawful results become parties thereto and assume responsibility for all done before. Lefco v. U S, C.C.A.3 (Pa.) 1934, 74 F.2d 66 . See, also, Hagen v. U.S., C.C.A.Wash.1920, 268 F. 344, certiorari denied 41 S.Ct. 323, 255 U.S. 569, 65 L.Ed. 790; U.S. v. Cassidy, D.C.Cal.1895, 67 F. 698; U.S. v. Barrett, C.C.S.C.1894, 65 F. 62; U.S. v. Howell, D.C.Mo.1892, 56 F. 21; U.S. v. Sacia, D.C.N.J.1880, 2 F. 754. Conspiracy 40.3

One purposely taking part in carrying conspiracy into effect is party thereto, though he joined at later stage or took minor part, or may not have known all conspirators. Mendelson v. U.S., App.D.C.1932, 58 F.2d 532, 61 App.D.C. 127.

If defendant, after becoming police chief, became party to conspiracy formed before, he would be guilty of conspiracy if overt act was done in furtherance thereof. U.S. v. Grossman, D.C.N.Y.1931, 55 F.2d 408.

Persons joining and participating in conspiracy after formation are equally guilty with originators. U.S. v. Wilson, D.C.W.Va.1927, 23 F.2d 112. See, also, Johnson v. U.S., 1925, 45 S.Ct. 509, 268 U.S. 689, 69 L.Ed. 1158; Mullen v. U.S., 1925, 45 S.Ct. 353, 267 U.S. 598, 69 L.Ed. 806; Dowdy v. U.S., C.C.A.N.C.1931, 46 F.2d 417; Allen v. U.S., C.C.A.Ind.1925, 4 F.2d 688, certiorari denied 45 S.Ct. 352, 267 U.S. 597, 69 L.Ed. 806; Nyquist v. U.S., C.C.A.Mich.1924, 2 F.2d 504, certiorari denied 45 S.Ct. 508, 267 U.S. 606, 69 L.Ed. 810; Thomas v. U.S., Mo.1907, 156 F. 897, 84 C.C.A. 477, 17 L.R.A.,N.S., 720; U.S. v. Boyer, D.C.Pa.1949, 84 F.Supp. 905. Conspiracy 40.3

It is immaterial at what time a defendant joined a criminal conspiracy, where it is shown that he joined with others in carrying out the common design. U S v. Schenck, E.D.Pa.1918, 253 F. 212, affirmed 39 S.Ct. 247, 249 U.S. 47, 63 L.Ed. 470, 17 Ohio Law Rep. 149.

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One who joins existing conspiracy takes it as it is and is accountable for prior conduct of co-conspirators. U. S. v. Sobell, S.D.N.Y.1962, 204 F.Supp. 225, affirmed 314 F.2d 314, certiorari denied 83 S.Ct. 1906, 374 U.S. 857, 10 L.Ed.2d 1077.

If a person knowingly joins an existing conspiracy, he accepts as binding upon him, whatever conspirators have already said or done to carry out the conspiracy, but if a person does not know of the purposes of the conspiracy and does not share such purposes, he is not bound. U. S. v. Palladino, D.C.Mass.1962, 203 F.Supp. 35.

When one enters after inception of continuing conspiracy he becomes liable for acts of all conspirators, since conspiracy is, in effect, renewed each day of its existence. Riss & Co. v. Association of American Railroads, D.C.D.C.1959, 170 F.Supp. 354, certiorari denied 267 F.2d 659, 105 U.S.App.D.C. 382, certiorari denied 80 S.Ct. 108, 361 U.S. 804, 4 L.Ed.2d 57.

As soon as a person joins in a conspiracy, he is equally as guilty as he would have been if he had joined the conspiracy when it began, and he assumes responsibility for all that has been done before he joins, and fact that person plays a lesser or even a minor part in conspiracy, and is not the dominant member, in no way lessens his guilt. U. S. v. Nedley, W.D.Pa.1957, 153 F.Supp. 887, reversed on other grounds 255 F.2d 350. Conspiracy 40

Any one who joins a conspiracy at any time during its life, knowing that such conspiracy is going on, and who makes himself a party to it, is as liable as if he were one of the original members. U.S. v. Belisle, W.D.Wash.1951, 107 F.Supp. 283.

A "conspiracy" is a partnership in criminal purposes and gist of offense is combination or agreement to violate law, so that one knowingly and willfully joining existing conspiracy is charged with same responsibility as if he had been one of instigators or originators thereof. U. S. v. Schneiderman, S.D.Cal.1952, 106 F.Supp. 906.

143. Withdrawal from conspiracy, parties liable for conspiracy

Some affirmative action to defeat the purpose of a continuing conspiracy to defraud the United States, contrary to former § 88 of this title [now this section] must have been taken by a conspirator to prevent the overt act of an associate from continuing him in the conspiracy. Hyde v. U.S., U.S.Dist.Col.1912, 32 S.Ct. 793, 225 U.S. 347, 56 L.Ed. 1114, Am.Ann.Cas. 1914A,614.

Defendant did not withdraw from conspiracy prior to the enactment of new sentencing guidelines, and thus application of amended sentencing guidelines was proper; although many goals of the conspiracy had already been accomplished at the time of the enactment of the new guidelines, following the enactment, defendant recruited another accomplice and continued to receive treasury checks from his co-conspirators. U.S. v. Vaughn, C.A.7 (Wis.) 2006, 433 F.3d 917. Sentencing And Punishment 664(6)

There was sufficient evidence for reasonable jury to conclude that even if defendant had told other members of conspiracy that he renounced scheme and ceased contact with conspiracy, his subsequent acts neutralized his withdrawal and indicated his continued acquiescence; therefore, defendant was liable for continuing acts in furtherance of conspiracy by other conspirators, including those acts which accrued within statute of limitations period. U.S. v. Lash, C.A.6 (Mich.) 1991, 937 F.2d 1077, rehearing denied, certiorari denied 112 S.Ct. 397, 502 U.S. 949, 116 L.Ed.2d 347, certiorari denied 112 S.Ct. 943, 502 U.S. 1061, 117 L.Ed.2d 113.

In order to avoid complicity in a conspiracy, one must withdraw before any overt act is taken in furtherance of the agreement. U.S. v. Luttrell, C.A.9 (Cal.) 1989, 889 F.2d 806, rehearing granted 906 F.2d 1384, opinion vacated in part on other grounds and amended on other grounds on rehearing 923 F.2d 764, certiorari denied 112 S.Ct. 1558, 503 U.S. 959, 118 L.Ed.2d 207.

"Withdrawal" marks a conspirator's disapproval or abandonment of the conspiratorial agreement and after defendant withdraws he is no longer a member of the conspiracy and later acts of the conspirators do not bind him but defendant is still liable for his previous agreement and for prior acts of his coconspirators in pursuit of the conspiracy. U.S. v. Read, C.A.7 (Ill.) 1981, 658 F.2d 1225.

In conspiracy prosecution, defendant, who was shown to have committed overt act required to establish his participation in conspiracy, did not establish that he withdrew from the conspiracy so as to be entitled to acquittal. U. S. v. Boyd, C.A.8 (Minn.) 1979, 610 F.2d 521, certiorari denied 100 S.Ct. 1052, 444 U.S. 1089, 62 L.Ed.2d 777 .

Withdrawal from a conspiracy requires affirmative action to disavow or defeat the purpose of a conspiracy. U. S. v. James, C.A.2 (N.Y.) 1979, 609 F.2d 36, certiorari denied 100 S.Ct. 1082, 445 U.S. 905, 63 L.Ed.2d 321.

In order to withdraw from a conspiracy, an individual must take affirmative action, either making a clean breast to the authorities or communicating his withdrawal in a manner reasonably calculated to reach coconspirators. U. S. v. Parnell, C.A.10 (Okla.) 1978, 581 F.2d 1374, certiorari denied 99 S.Ct. 852, 439 U.S. 1076, 59 L.Ed.2d 44; U.S. v. Mardian, 1976, 546 F.2d 973, 178 U.S.App.D.C. 207. Conspiracy 40.4

Although the arrest or incarceration of a conspirator may constitute a withdrawal from the conspiracy, it does not constitute a withdrawal as a matter of law. U. S. v. Harris, C.A.7 (Ind.) 1976, 542 F.2d 1283, certiorari denied 97 S.Ct. 1558, 430 U.S. 934, 51 L.Ed.2d 779.

Participation in a conspiracy may continue beyond the performance of an overt act by the alleged conspirator, if the conspiracy continues in existence thereafter; affirmative proof of withdrawal is generally required to terminate liability. U. S. v. Cirillo, C.A.2 (N.Y.) 1972, 468 F.2d 1233, certiorari denied 93 S.Ct. 1501, 410 U.S. 989, 36 L.Ed.2d 188.

In order to sustain a claim of withdrawal from a conspiracy a defendant must prove an affirmative action to disavow or defeat the purpose of the conspiracy, or some definite, decisive and positive step which shows that his disassociation is full, decisive and complete. U. S. v. Chester, C.A.3 (N.J.) 1969, 407 F.2d 53, certiorari denied 89 S.Ct. 1642, 394 U.S. 1020, 23 L.Ed.2d 45.

Convictions of defendant for substantive offenses committed by members of conspiracy after time that defendant had left his employment and the conspiracy must be vacated, but his convictions of substantive offenses of which there was no doubt as to his guilt must be affirmed. Meadors v. U.S., C.A.5 (Fla.) 1967, 376 F.2d 998. Criminal Law 1182; Criminal Law 1186.1

Imprisonment of defendant does not necessarily show his withdrawal from conspiracy. U. S. v. Borelli, C.A.2 (N.Y.) 1964, 336 F.2d 376, certiorari denied 85 S.Ct. 647, 379 U.S. 960, 13 L.Ed.2d 555.

Participation in a conspiracy may continue beyond performance of overt act by alleged conspirator, if conspiracy continues in existence thereafter; affirmative proof of withdrawal is generally required. U. S. v. Cianchetti, C.A.2 (Conn.) 1963, 315 F.2d 584.

While arrest or incarceration may constitute a withdrawal from a conspiracy it does not necessarily follow that in every instance it must. U.S. v. Agueci, C.A.2 (N.Y.) 1962, 310 F.2d 817, certiorari denied 83 S.Ct. 1013, 372 U.S. 959, 10 L.Ed.2d 11, certiorari denied 83 S.Ct. 1016, 372 U.S. 959, 10 L.Ed.2d 12, post-conviction relief dismissed 741 F.Supp. 409, reconsideration denied, affirmed 930 F.2d 910.

A defendant once shown to have been a member of conspiracy which lasts until beginning of limitation period must satisfy jury by affirmative proof that he disconnected himself from conspiracy before that period began to assert

defense of limitations. U.S. v. Compagna, C.C.A.2 (N.Y.) 1944, 146 F.2d 524, certiorari denied 65 S.Ct. 912, 324 U.S. 867, 89 L.Ed. 1422, rehearing denied 65 S.Ct. 1084, 325 U.S. 892, 89 L.Ed. 2004, certiorari denied 65 S.Ct. 913, 324 U.S. 867, 89 L.Ed. 1423.

If, as contended by accused, he became involved innocently in conspiracy to transport lottery tickets in interstate commerce by entering into agreement with codefendant for codefendant to conduct contests for benefit of hospital of which accused was head, it was accused's duty, after learning of criminal nature of scheme, to take some definite and positive step of withdrawal from venture in order to escape criminal liability. Deacon v. U. S., C.C.A.1 (Mass.) 1941, 124 F.2d 352.

Generally, where overt act is essential to conspiracy, conspirator may avoid guilt by withdrawing from the conspiracy before commission of an overt act, but when once a conspiracy is shown to exist, which is not ended merely by lapse of time, it continues to exist as to all persons involved until some affirmative act of withdrawal is shown. U. S. v. Beck, C.C.A.7 (Ill.) 1941, 118 F.2d 178, certiorari denied 61 S.Ct. 1121, 313 U.S. 587, 85 L.Ed. 1542.

Conviction for use of mails to defraud insurance companies by filing false claims and for conspiracy could not be reversed on ground that defendant had dropped out of conspiracy after giving disability certificate in one instance, in absence of proof that defendant took any affirmative step to withdraw from the conspiracy. U S v. Weiss, C.C.A.2 (N.Y.) 1939, 103 F.2d 348, certiorari granted 59 S.Ct. 1043, 307 U.S. 621, 83 L.Ed. 1500, reversed on other grounds 60 S.Ct. 269, 308 U.S. 321, 84 L.Ed. 298.

A conspirator to violate federal law may avoid guilt by withdrawing from conspiracy prior to commission of overt act, but affirmative action is required to show withdrawal, for conspiracy once established is presumed to continue until contrary is established. Marino v. U.S., C.C.A.9 (Cal.) 1937, 91 F.2d 691, certiorari denied 58 S.Ct. 410, 302 U.S. 764, 82 L.Ed. 593. See, also, Miller v. U.S., C.C.A.S.C.1921, 277 F. 721. Conspiracy 40.4; Conspiracy 44.2

Absent any affirmative withdrawal from conspiracy, defendant remains part of ongoing criminal enterprise notwithstanding absence of any overt acts. U.S. v. Burger, D.Kan.1991, 770 F.Supp. 598, affirmed 968 F.2d 21, certiorari denied 113 S.Ct. 1382, 507 U.S. 959, 122 L.Ed.2d 758, on remand.

A conspirator may withdraw from a continuing conspiracy and thereby avoid prosecution for acts committed by remaining members at a later date if he proves that he performed affirmative acts inconsistent with the object of the conspiracy and communicated in a manner reasonably calculated to reach coconspirators. U. S. v. Lowell, D.C.N.J.1980, 490 F.Supp. 897, affirmed 649 F.2d 950.

A conspiracy, if any, to commit an offense against United States terminated, so far as defendant was concerned, when defendant affirmatively withdrew from conspiracy, and prosecution for alleged conspiracy was barred by former § 582 of this title, where defendant withdrew more than three years before filing of indictment. U S v. Ames, S.D.N.Y.1941, 39 F.Supp. 885.

A person who has joined a conspiracy may abandon it and thereby escape liability for subsequent acts of coconspirators, but he cannot escape such liability unless he informs them of his purpose to abandon them and he must show affirmatively that he has withdrawn, which is a question of fact for jury under proper instructions. U. S. v. Gilbert, S.D.Ohio 1939, 31 F.Supp. 195.

144. Substantive offense, parties liable for conspiracy

Where sufficient evidence is adduced to support finding that conspiracy existed and that defendant was part of that conspiracy, jury may find defendant guilty not only of conspiracy but of substantive crime committed by

coconspirators in furtherance of conspiracy, even though he does not participate in commission of substantive offense. U.S. v. Casperson, C.A.8 (S.D.) 1985, 773 F.2d 216.

Party to a continuing conspiracy may be held responsible for a substantive offense committed with a coconspirator in furtherance of the conspiracy even though that party does not participate in the substantive offense or have any knowledge of it. U. S. v. Diaz, C.A.5 (Fla.) 1981, 655 F.2d 580, certiorari denied 102 S.Ct. 1257, 455 U.S. 910, 71 L.Ed.2d 448.

Conspirator can be found guilty of a substantive offense committed by a coconspirator in furtherance of the conspiracy so long as the coconspirator's acts are within the reasonably foreseeable scope of the conspiracy. U. S. v. Hodges, C.A.5 (Ala.) 1979, 606 F.2d 520, certiorari denied 100 S.Ct. 708, 444 U.S. 1035, 62 L.Ed.2d 671.

Once a conspiracy and a particular defendant's knowing participation in it has been established beyond a reasonable doubt, that defendant is guilty of substantive acts committed in furtherance of the conspiracy by any of his criminal partners. U. S. v. Michel, C.A.5 (Tex.) 1979, 588 F.2d 986, certiorari denied 100 S.Ct. 47, 444 U.S. 825, 62 L.Ed.2d 32.

Where at least one of appealing defendants performed one or more of illegal acts charged, and acts charged were in furtherance of conspiracy, all of them became guilty of substantive acts by virtue of their participation in the conspiracy. U. S. v. Kaplan, C.A.9 (Cal.) 1977, 554 F.2d 958, certiorari denied 98 S.Ct. 483, 434 U.S. 956, 54 L.Ed.2d 315, rehearing denied 98 S.Ct. 755, 434 U.S. 1026, 54 L.Ed.2d 774.

A defendant may be convicted of a substantive offense which he did not himself commit if it is clear that the offense was committed in furtherance of a conspiracy of which defendant was a member. U. S. v. Trotter, C.A.3 (N.J.) 1976, 529 F.2d 806.

Charge, in effect, that conspirator was liable for reasonably foreseeable crimes committed by coconspirator in furtherance of and during venture was not improper on ground that such charge is warranted only if substantive count includes reference to this section. U. S. v. Carroll, C.A.2 (N.Y.) 1975, 510 F.2d 507, certiorari denied 96 S.Ct. 2633, 426 U.S. 923, 49 L.Ed.2d 378.

Defendant as party to continuing conspiracy was accountable for a substantive offense committed by coconspirator in furtherance of the conspiracy, even though defendant did not directly participate in the substantive offense. U. S. v. Falco, C.A.5 (Fla.) 1974, 496 F.2d 1359.

Where defendant arranged through intermediary to supply gasoline ration coupons to service station operator, who paid intermediary, who turned over payment to defendant who rewarded intermediary with food ration stamps, and each person involved in carrying out the conspiracy learned who the other participants were, there was no such cooperation in the commission of the substantive offense that defendant could not be convicted of conspiracy to commit such misdemeanor. U.S. v. Simonds, C.C.A.2 (N.Y.) 1945, 148 F.2d 177.

Although accused was not guilty of conspiracy to import intoxicating liquor into Oklahoma in violation of former § 223 of Title 27, if facts warranted he would be guilty of substantive offense of aiding and abetting in violation of said former section. Bacon v. U.S., C.C.A.10 (Okla.) 1942, 127 F.2d 985.

Where a defendant does not physically participate in substantive offense, his association with such an act depends exclusively upon charge of conspiracy and should evidence fail to establish defendant's participation in the conspiracy, his conviction on both the conspiracy count and count charging underlying substantive offense must be set aside. U. S. v. Simms, W.D.La.1980, 508 F.Supp. 1188.

Where alleged conspiracy to carry on an illegal gambling business involved agreement on part of more participants

than the five which were necessary for the commission of the substantive offense, defendants could be convicted of both conspiracy and of the substantive offense. U. S. v. Mainello, E.D.N.Y.1972, 345 F.Supp. 863.

IV. PARTICULAR FRAUDS AND OFFENSES

<Subdivision Index>

171. Agriculture, particular frauds and offenses

An agreement between a clerk or employé in the Department of Agriculture and others pursuant to which such clerk furnished to the others advance information of the contents of a report to be afterward made public by the department regarding the condition of the cotton crop, based on which information the outsiders speculated in the market for the benefit of all parties to the agreement, did not constitute a conspiracy to defraud the United States within the meaning of former § 88 of this title [now this section]. U.S. v. Haas, S.D.N.Y.1906, 167 F. 211. Conspiracy 33(2.1)

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A conspiracy to cause the publication of incorrect monthly agricultural reports concerning the cotton crop of the current year constituted a "conspiracy to defraud" prohibited by former § 88 of this title. Haas v. Henkel, C.C.S.D.N.Y.1909, 166 F. 621, affirmed 30 S.Ct. 249, 216 U.S. 462, 54 L.Ed. 569, 17 Am.Ann.Cas. 1112. See, also, U.S. v. Haas, C.C.N.Y.1908, 163 F. 908. Conspiracy 33(2.1)

A conspiracy to obtain advance information of government agricultural reports and statistics before official publication did not constitute a "conspiracy to defraud" prohibited by former § 88 of this title [now this section]. Haas v. Henkel, C.C.S.D.N.Y.1909, 166 F. 621, affirmed 30 S.Ct. 249, 216 U.S. 462, 54 L.Ed. 569, 17 Am.Ann.Cas. 1112. Conspiracy 33(2.1)

172. Attempt, particular frauds and offenses

It is permitted to charge violation of this section for plan to violate specific statutory prohibition defining attempt offense against United States. U. S. v. Dearmore, C.A.9 (Or.) 1982, 672 F.2d 738. Conspiracy 43(6)

Indictment alleging conspiracy to attempt to enter savings and loan association was not insufficient, on ground that an attempt is an inchoate offense and cannot properly be the object of a conspiracy, since while entering a savings and loan was obviously an object of the conspiracy and a federal crime, the defendants necessarily contemplated their attempt to gain entry in the building and such attempts are expressly prescribed by section 2113 of this title. U. S. v. Clay, C.A.7 (Ill.) 1974, 495 F.2d 700, certiorari denied 95 S.Ct. 207, 419 U.S. 937, 42 L.Ed.2d 164. Conspiracy 43(6)

173. Bankruptcy, particular frauds and offenses

Where bankrupt alone removed and secreted assets prior to bankruptcy, the offense of concealment within federal statute was a continuing one, and defendant who entered into conspiracy with bankrupt after bankruptcy to conceal such assets was guilty of conspiracy to conceal assets even though defendant's actions in aid of such conspiracy took place two months after bankrupt had first removed and secreted the assets. Sultan v. U. S., C.A.5 (Fla.) 1957, 249 F.2d 385. Conspiracy 40.3

The crime of conspiracy to defraud the United States by corruptly administering or procuring the corrupt administration of the Frazier-Lemke Act, §§ 201 to 203 of Title 11, was complete when unlawful agreement was made and an overt act was consummated by any one of the conspirators, even though such overt act was not one laid in the indictment. Braatelien v. U. S., C.C.A.8 (N.D.) 1945, 147 F.2d 888. Conspiracy 33(1)

Concealment of bankrupt's assets, to constitute overt act, must have occurred after conspiracy was formed. Morrow v. U.S., C.C.A.8 (Mo.) 1926, 11 F.2d 256. Conspiracy 27

Whether bankruptcy was voluntary or involuntary is immaterial, in prosecution for conspiracy to violate Bankruptcy Act, § 1 et seq. of Title 11. Morrow v. U.S., C.C.A.8 (Mo.) 1926, 11 F.2d 256. Criminal Law 25

Conspiracy to violate Bankruptcy Act by concealing property of bankrupt from trustee, was separate crime from that of concealment. Kaplan v. U.S., C.C.A.2 (N.Y.) 1925, 7 F.2d 594, certiorari denied 46 S.Ct. 107, 269 U.S. 582, 70 L.Ed. 423. Conspiracy 32

Persons could have been indicted under former § 88 of this title [now this section] for a conspiracy to conceal assets. Wolff v. U S, C.C.A.1 (Mass.) 1924, 299 F. 90.

It was an offense for bankrupts to conspire to conceal their assets from their trustee, and others who conspired with them to effectuate that purpose could be indicted and convicted for conspiracy, though it was not an offense for them to conceal the assets of the bankrupts. Jollit v. U. S., C.C.A.5 (Ala.) 1922, 285 F. 209, certiorari denied 43

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S.Ct. 519, 261 U.S. 624, 67 L.Ed. 832.

To support charge of conspiracy to conceal bankrupt's assets, actual commission of crime, or verbal expression of purpose to have bankrupt become such, was not necessary, nor was it material whether the proceedings were voluntary or involuntary. U S v. Fischer, E.D.Pa.1917, 245 F. 477, affirmed 250 F. 793, 163 C.C.A. 125. Conspiracy 28

Under former § 88 of this title [now this section] persons could commit an offense by conspiring with a bankrupt to conceal his goods. Tapack v. US, C.C.A.3 (N.J.) 1915, 220 F. 445, 137 C.C.A. 39, certiorari denied 35 S.Ct. 664, 238 U.S. 627, 59 L.Ed. 1495. Conspiracy 28

Conspirators for a fraudulent concealment of assets in future bankruptcy proceedings were liable as for concealment from the trustee, whether the particular injury was intended or not. Roukous v. U.S., C.C.A.1 (R.I.) 1912, 195 F. 353, 115 C.C.A. 255, certiorari denied 32 S.Ct. 840, 225 U.S. 710, 56 L.Ed. 1267. Conspiracy 25

An indictment would not lie under former § 88 of this title [now this section] for a conspiracy to effect the concealment by a bankrupt of property from his trustee, in violation of Bankruptcy Act, Title 11, where the trustee himself was charged as one of the conspirators, and the averments of the indictment showed that there was, in fact, no concealment of property from him, and no purpose that there should be such concealment. Johnson v. U.S., C.C.A.5 (Tex.) 1907, 158 F. 69, 85 C.C.A. 399, 14 Am.Ann.Cas. 153. Conspiracy 43(6)

Agreement between bidders at bankruptcy auction not to competitively bid, to hold later auction between themselves, and to split profits was conspiracy to defraud United States; in light of bankruptcy court and bankruptcy trustee's position between debtor and creditor, Government was target of the fraud. U.S. v. Seville Indus. Machinery Corp., D.N.J.1988, 696 F.Supp. 986. Conspiracy 33(2.1)

174. Banks and banking, particular frauds and offenses

A conspiracy between the directors of a banking association to misapply its moneys by procuring the declaration of a dividend greater than the net profits, in violation of § 56 of Title 12 was not a criminal offense. U.S. v. Britton, U.S.Mo.1883, 2 S.Ct. 531, 108 U.S. 199, 27 L.Ed. 698. Conspiracy 31; Conspiracy 32

Evidence permitted finding that defendant knew he was deceiving bank in arranging nominal loan transactions and intended to do so, and thus supported convictions for bank fraud and conspiracy to commit bank fraud, when loan documents contained no information that loan proceeds were actually flowing to defendant or his companies, pledged collateral actually belonged to defendant or to entity controlled by him, rather than to nominal borrower, which substantially increased bank's risk, bank officer testified that defendant came up with nominal loan scheme after being told that bank would no longer loan him money and bullied officer into participating, and one nominal borrower testified that defendant suggested that nominal borrower sign loan applications so that defendant could get more credit. U.S. v. Waldroop, C.A.10 (Okla.) 2005, 431 F.3d 736. Conspiracy 47(4)

Actions of defendant within perimeters of his legal rights to assert claims of his corporation against admittedly invalid mortgage on corporation's property were insufficient to support conviction for conspiracy to commit bank fraud; absent some scheme of deceit or material misrepresentation, defendant was entitled to act as he did in pursuing available legal remedies to regain control of property for corporation. U.S. v. Campbell, C.A.5 (Tex.) 1995, 64 F.3d 967. Conspiracy 33(2.1)

Defendants could be convicted of conspiring to defraud federally insured financial institution, through implementation of fraudulent scheme creating impressions that down payments had been made on sales of condominium units for which loans were issued covering balance of purchase price, without prosecution

establishing that defendants knew creditor bank was federally insured. U.S. v. Brandon, C.A.1 (R.I.) 1994, 17 F.3d 409, certiorari denied 115 S.Ct. 80, 513 U.S. 820, 130 L.Ed.2d 34, certiorari denied 115 S.Ct. 81, 513 U.S. 820, 130 L.Ed.2d 34. Conspiracy 32

Defendant could be convicted of conspiring to willfully and knowingly avoid filing currency transaction reports on basis of his agreement with bank branch manager to willfully conceal bank's duty to file currency transaction reports, even though defendant himself could not have been held liable for failure to file those reports. U.S. v. Donahue, C.A.3 (Pa.) 1989, 885 F.2d 45, 113 A.L.R. Fed. 883, rehearing denied. Conspiracy 40.2

Where bank, as defendants knew, was national bank, required by law to be federally insured, it had once been insured, it continued to represent to public that it was insured, and for all anyone knew at time of offense it still was insured, proof that bank was insured during period of conspiracy was not required to sustain convictions of conspiracy to violate sections 656 and 1014 of this title. U.S. v. Shively, C.A.7 (Ill.) 1983, 715 F.2d 260, certiorari denied 104 S.Ct. 1001, 465 U.S. 1007, 79 L.Ed.2d 233. Conspiracy 32

In prosecution for conspiring to make and making false statements to bank insured by Federal Deposit Insurance Corporation, proof that financial institution involved is insured by FDIC is not mere formality, but, rather, it is essential element of federal offense and federal jurisdiction depends on that status. U. S. v. Platenburg, C.A.5 (La.) 1981, 657 F.2d 797. Banks And Banking 509.20

On an indictment for conspiracy to obstruct and misapply the funds of a national bank in violation of § 592 of Title 12, if the defendants conspired to get the moneys of the bank and committed an overt act in furtherance of such conspiracy, they would be guilty even if they believed the moneys received from a co-conspirator, who was an employee of the bank, were his own moneys. Oppenheim v. U.S., C.C.A.2 (N.Y.) 1917, 241 F. 625, 154 C.C.A. 383.

While it is a settled rule of criminal law that an indictment for conspiracy will not lie where a plurality of agents is logically necessary to complete the crime which it was the object of the conspiracy to commit, such rule did not apply to an indictment under former § 88 of this title [now this section] for a conspiracy between the defendant, who had no official connection with a national bank, and an officer of such bank to violate §§ 501 and 591 of Title 12, by causing a check of defendant drawn on the bank to be certified by such officer when defendant did not have a sufficient amount of deposit to pay the same. Chadwick v. U. S., C.C.A.6 (Ohio) 1905, 141 F. 225, 72 C.C.A. 343. Banks And Banking 256(2); Conspiracy 28(1)

Something more than a mere certification of a check in excess of a deposit was necessary to make the offense punishable under former § 88 of this title [now this section], as a wrongful intent was of the essence, and the act of certification must have been willful, and there must have been an evil design, and a wrongful purpose. Chadwick v. U. S., C.C.A.6 (Ohio) 1905, 141 F. 225, 72 C.C.A. 343.

A conspiracy to violate § 592 of Title 12 by causing false entries to be made in the books of a national bank by an officer or agent thereof for the purpose of defrauding the bank or others, or deceiving an agent appointed to examine the affairs of the bank, was one to commit "an offense against the United States." Scott v. U.S., C.C.A.6 (Ohio) 1904, 130 F. 429, 64 C.C.A. 631. Banks And Banking 256(1); Conspiracy 28(3)

No conspiracy or bank fraud resulted from participation in "yield program" designed to improve capital positions of troubled banks by selling high yield packaged notes to banks and purchasing troubled assets from those same banks given that transactions involved willing participants and were made with adequate consideration; transactions were properly documented and records were available to bank regulators, disputed document changes were not material to permanent records of bank, and there was no evidence that relevant documents were forged, backdated, or destroyed. U.S. v. Ramming, S.D.Tex.1996, 915 F.Supp. 854. Banks And Banking 509.10; Conspiracy 33(2.1)

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National banks directors and borrower who knowingly made loans in excess of 10 per cent. of bank's authorized capital contrary to §§ 84 and 93 of Title 12 were not indictable for conspiracy to commit an "offense" against laws of the United States. U.S. v. Brown, W.D.Ky.1933, 6 F.Supp. 331, appeal dismissed 54 S.Ct. 531, 291 U.S. 686, 78 L.Ed. 1073. Conspiracy 28(3)

Under former § 88 of this title [now this section] it was an offense for an officer of a national bank to conspire with another, not an officer, to abstract or embezzle the funds thereof, and an indictment charging the two with a conspiracy to commit such offense was good. U S v. Martin, C.C.Mass.1870, 26 F.Cas. 1175, No. 15728.

175. Bribery, particular frauds and offenses

Evidence was sufficient to support defendant's conviction for conspiracy to obtain FICA recovery contracts from state and local entities through bribery; there was evidence that defendant had incorporated California corporation and sent stock in corporation to Pennsylvania officials, and coconspirator had testified that defendant was aware of reason for sending stock, stock options and check to Pennsylvania officials. U.S. v. Smith, C.A.3 (Pa.) 1986, 789 F.2d 196, certiorari denied 107 S.Ct. 668, 479 U.S. 1017, 93 L.Ed.2d 720. Conspiracy 47(13)

Local draft board, under its duty to assist War Department with information and recommendations consistent with facts pertaining to inductees, has sufficient jurisdiction with respect to recommending furlough of an inductee and consulting its appeal agent concerning such recommendation, to support a charge against appeal agent and another of conspiracy to ask a bribe within requirement of former § 207 of this title that person so charged must have been acting for or on behalf of the United States in an official capacity. Cohen v. U.S., C.C.A.9 (Cal.) 1944, 144 F.2d 984, certiorari denied 65 S.Ct. 440, 323 U.S. 797, 89 L.Ed. 636, order withheld 65 S.Ct. 441, rehearing denied 65 S.Ct. 586, 324 U.S. 885, 89 L.Ed. 1435. Conspiracy 28(3)

Agreement between persons not officers and officers to give and receive a bribe may be prosecuted as conspiracy though substantive offenses of giver and receiver of bribe are defined by different statutes. Ex parte O'Leary, C.C.A.7 (Wis.) 1931, 53 F.2d 956.

An agreement to bribe officer encountered may be sufficiently definite to constitute conspiracy. U.S. v. Frank, D.C.R.I.1926, 12 F.2d 796. Conspiracy 25

An agreement between a member of Congress and another, the one to receive a bribe for aiding to procure an office and the other to pay the same, constituted a substantive offense under former § 202 of this title by each of the parties thereto, and could not have been made the basis of an indictment under former § 88 of this title [now this section] for a conspiracy to commit an offense against the United States. U.S. v. Dietrich, C.C.Neb.1904, 126 F. 664.

A conspiracy to procure, by bribery, the making of a false certificate by the board of examining surgeons, whereby the commissioner of pensions may be induced to allow a fraudulent increase of pension, was a conspiracy to defraud the United States, within the meaning of former § 88 of this title [now this section]. U. S. v. Van Leuven, N.D.Iowa 1894, 62 F. 62.

Conspiracy to bribe a public official can be equated with concept of conspiracy to defraud the United States. U. S. v. Greenberg, S.D.N.Y.1963, 223 F.Supp. 350. Conspiracy 34

The United States government is entitled to honest and uncorrupted services of its agents and employees, and when a person conspires to corrupt an agent or employee of the Internal Revenue Service, he thereby conspires to defraud the United States. U.S. v. Waldin, E.D.Pa.1957, 149 F.Supp. 912, affirmed 253 F.2d 551, rehearing denied, certiorari denied 78 S.Ct. 1136, 356 U.S. 973, 2 L.Ed.2d 1147. Conspiracy 33(1)

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176. Counterfeiting, particular frauds and offenses

Conviction of a criminal conspiracy to utter and possess counterfeit securities involved an "aggravated felony" under INA removal statute where substantive crime that was conspiratorial objective qualified as an aggravated felony "relating to counterfeiting." Kamagate v. Ashcroft, C.A.2 (N.Y.) 2004, 385 F.3d 144. Aliens 53.2(3)

Evidence was sufficient for jury to find that a single overall conspiracy to make and pass counterfeit money did exist and that each defendant was a knowing member of it notwithstanding claim of defendants that the government failed to prove a single conspiracy but rather introduced evidence as to at least two separate and distinct conspiracies to pass $20 counterfeit bills and to pass $10 counterfeit bills. U. S. v. Cervantes, C.A.7 (Ill.) 1972, 466 F.2d 736, certiorari denied 93 S.Ct. 108, 409 U.S. 886, 34 L.Ed.2d 143. Conspiracy 48.1(2.1)

Imitating or counterfeiting mark or device of patentee was "offense against United States," within this section. Winner v. U.S., C.C.A.7 (Ill.) 1929, 33 F.2d 507. Conspiracy 28

A conspiracy to commit a crime denounced by the District of Columbia Code or against the common law of the District is a conspiracy to commit an offense against the United States, and a conspiracy to violate the District of Columbia gambling laws was punishable under the federal conspiracy statute. U.S. v. Manuel, D.C.D.C.1955, 126 F.Supp. 618. Conspiracy 28(3)

177. Elections, particular frauds and offenses

Former § 88 of this title [now this section] was never intended to apply to congressional elections, and a conspiracy to bribe voters to vote at such an election was not such a fraud upon the United States or upon candidates or the laws of a state as fell within either the terms or purposes of said former section. U.S. v. Gradwell, U.S.R.I.1917, 37 S.Ct. 407, 243 U.S. 476, 61 L.Ed. 857. See, also, U.S. v. Bathgate, Ohio 1918, 38 S.Ct. 269, 246 U.S. 220, 62 L.Ed. 676; U.S. v. O'Toole, D.C.W.Va.1916, 236 F. 993.

Under former § 88 of this title [now this section] an indictment would lie against state election officials for a conspiracy to omit the returns from certain precincts at an election for member of Congress from their count and return to the state election board, as former § 51 of this title applied to such acts. U. S. v. Mosley, U.S.Okla.1915, 35 S.Ct. 904, 238 U.S. 383, 59 L.Ed. 1355.

Former § 88 of this title [now this section] conferred authority to punish a conspiracy to prevent or interfere with the security and protection of elections held for representatives and delegates to Congress, by proceedings in the federal courts, and it was a criminal offense for an inspector of elections or other election officer at an election for a member of Congress, to whom is committed the safe-keeping and delivery to the board of canvassers of the poll books, tally sheets, and certificates of votes, to fail or omit to perform the duty of safe-keeping and delivery. Ex parte Coy, U.S.Ind.1888, 8 S.Ct. 1263, 127 U.S. 731, 32 L.Ed. 274.

The alteration, by officers of an election, of the statement upon the tally sheets of the vote for certain local officers, in pursuance of a conspiracy, was not an offense against the United States. Ex parte Perkins, C.C.Ind.1887, 29 F. 900.

Defendants could be prosecuted, under general conspiracy statute, for alleged concerted violation of reporting obligations under Federal Election Campaign Act (FECA), even though some charged activity involved "soft money" contributions other than to candidates for federal office to which FECA was inapplicable; there was also activity related to "hard money" contributions to candidates for federal office to which FECA applied, and scope of applicable claims could be established at trial. U.S. v. Kanchanalak, D.D.C.1999, 41 F.Supp.2d 1, reversed 192 F.3d 1037, 338 U.S.App.D.C. 200. Conspiracy 33(2.1); Conspiracy 43(10)

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178. Escape, particular frauds and offenses

Any prisoner in jail who perceived that an escape would be attempted during disorder and who decided to leave his cell and act in furtherance of that objective could properly be deemed as joining the larger conspiracy to escape which was being carried out while rebellious inmates tortured and hid behind hostages in an unlawful attempt to obtain their freedom. U. S. v. Bridgeman, C.A.D.C.1975, 523 F.2d 1099, 173 U.S.App.D.C. 150, certiorari denied 96 S.Ct. 1743, 425 U.S. 961, 48 L.Ed.2d 206, certiorari denied 96 S.Ct. 1744, 425 U.S. 961, 48 L.Ed.2d 206. Conspiracy 40.1

Conspiracy to aid convict to escape from hospital was "conspiracy" to aid escape within former § 88 of this title [now this section]. U.S. ex rel. Silverstein v. Hecht, D.C.N.Y.1923, 10 F.2d 370, affirmed 10 F.2d 371. Conspiracy 28

179. Espionage, particular frauds and offenses

Fact that defendant had been forcibly returned to United States authorities by Mexican security police did not impair power of federal District Court to try defendant for espionage conspiracy. United States v. Sobell, C.A.2 (N.Y.) 1957, 244 F.2d 520, certiorari denied 78 S.Ct. 120, 355 U.S. 873, 2 L.Ed.2d 77, rehearing denied 78 S.Ct. 338, 355 U.S. 920, 2 L.Ed.2d 280, certiorari denied 78 S.Ct. 121, 355 U.S. 873, 2 L.Ed.2d 77. Criminal Law 99

In prosecution for conspiracy to commit espionage, fact that the defendant might have had to take the stand to present his story does not mean he was denied his constitutional rights of due process. U S v. Sobell, S.D.N.Y.1956, 142 F.Supp. 515, affirmed 244 F.2d 520, certiorari denied 78 S.Ct. 120, 355 U.S. 873, 2 L.Ed.2d 77, rehearing denied 78 S.Ct. 338, 355 U.S. 920, 2 L.Ed.2d 280, certiorari denied 78 S.Ct. 121, 355 U.S. 873, 2 L.Ed.2d 77. Constitutional Law 266(2)

Pamphlets, printed following the outbreak of war between the United States and Japan and denouncing the entry of the United States into the war, which were patently seditious, and any other documents which showed participation of persons indicted and arrested for conspiracy to violate the Espionage Act, former § 31 et seq. of Title 50, in the circulation and distribution of the pamphlets, constituted "instrumentalities of the crime" and tended to connect such persons with the commission of a crime, and seizure of the pamphlets and other documents in connection with the arrests was legal though made without a search warrant. U.S. v. Bell, S.D.Cal.1943, 48 F.Supp. 986. Arrest 71.1(5)

180. Extortion, particular frauds and offenses

Where government's basic contention in prosecution on charges of violating section 1952 of this title and this section was that defendants, who allegedly controlled a numbers operation in New York, forced one of its messengers to travel to Puerto Rico to secure funds to be paid to defendants pursuant to an extortion conspiracy, question was not whether person in acting as messenger for numbers operation had himself obtained money illegally but rather whether he was ordered to Puerto Rico to obtain proceeds of what was clearly an illegal operation carried on by defendants. U. S. v. Marquez, C.A.2 (N.Y.) 1971, 449 F.2d 89, certiorari denied 92 S.Ct. 1167, 405 U.S. 963, 31 L.Ed.2d 239, certiorari denied 92 S.Ct. 1173, 405 U.S. 963, 31 L.Ed.2d 239. Commerce 82.10; Lotteries 28

An agreement between state law enforcement officers and others to extort money from inhabitants of the United States by causing their arrest and imprisonment, without justification, by such officers and under color of state law, constituted a "conspiracy" to commit an offense against the United States in violation of this section of which federal district court had jurisdiction. Culp v. U. S., C.C.A.8 (Ark.) 1942, 131 F.2d 93. Conspiracy 43(8)

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That dockets of local magistrates' indicated victims of alleged conspiracy by local officers acting under color of law to deprive citizens of the United States of rights and immunities protected by the due process of law clause of U.S.C.A.Const. Amend. 14 had entered pleas of guilty to charges of violating local laws or ordinances did not preclude conviction of the officers for conspiracy on proof that proceedings before local magistrates were a mere pretense brought about by the unlawful acts of the officers in furtherance of the conspiracy charged. Culp v. U. S., C.C.A.8 (Ark.) 1942, 131 F.2d 93. Conspiracy 29

Fact that defendant is not a public official does not preclude an "official right" extortion prosecution, if defendant aided, abetted, or conspired with public official to commit extortion; further, if victim reasonably perceives defendant as exercising control over official decision making, "official right" charge is also proper. U.S. v. Marcy, N.D.Ill.1991, 777 F.Supp. 1393, reconsideration denied 777 F.Supp. 1398. Extortion And Threats 4; Extortion And Threats 10

181. Gambling, particular frauds and offenses

Knowing use of interstate facilities was not essential element of either substantive offense of use of wire facilities in interstate commerce for transmission of wagering information or of the conspiracy to commit the offense. U. S. v. Swank, C.A.9 (Cal.) 1971, 441 F.2d 264. Conspiracy 28(3); Gaming 62

Absent a clear legislative intent to contrary, persons conspiring with members of an established illegal gambling business and committing an overt act not amounting to a substantive violation, but facilitating such a business or aimed at eventual criminal participation therein, can be held responsible under this section. U. S. v. Kohne, W.D.Pa.1972, 347 F.Supp. 1178. Conspiracy 40.1

182. Harboring fugitives, particular frauds and offenses

In order to establish conspiracy to harbor or conceal fugitive, Government had to prove: defendants entered in agreement; agreement had as its objective a violation of the laws; and that one of those in agreement committed an act in furtherance of the objective. U.S. v. Udey, C.A.8 (Ark.) 1984, 748 F.2d 1231, certiorari denied 105 S.Ct. 3477, 472 U.S. 1017, 87 L.Ed.2d 613, certiorari denied 105 S.Ct. 3478, 472 U.S. 1017, 87 L.Ed.2d 613. Conspiracy 28(3)

Knowledge of existence of federal warrant is essential element of federal crime of harboring and is equally essential element of conspiring to harbor. U. S. v. Hogg, C.A.4 (S.C.) 1982, 670 F.2d 1358. Compounding Offenses 3.5; Conspiracy 28(3)

Fugitive's spouse did not aid fugitive in avoiding detection and apprehension and did not engage in conspiracy to harbor or conceal fugitive by obtaining prescription medications for him, repackaging the pills to send to him, placing a credit card in fugitive's name in a bag to be sent to fugitive, and having knowledge of wire transfer to him; supplying financial assistance alone was not an act of harboring or concealing, and nothing indicated that providing the medication was intended to assist fugitive to avoid apprehension or detection. U.S. v. Bahna, C.D.Cal.2005, 413 F.Supp.2d 1095. Conspiracy 34

183. Immigration offenses, particular frauds and offenses

Where aliens and veterans did not understand at the time of their marriage ceremonies that they were undertaking to establish a life together and assume certain duties and obligations and their purpose was to gain admission of aliens to United States under the War Brides Act, former § 180a of Title 8, validity of marriages was immaterial in determining whether defendants conspired to defraud United States and to commit offenses against United States by illegally obtaining entry of aliens as spouses of veterans. Lutwak v. U.S., U.S.Ill.1953, 73 S.Ct. 481, 344 U.S.

604, 97 L.Ed. 593, rehearing denied 73 S.Ct. 726, 345 U.S. 919, 97 L.Ed. 1352. Conspiracy 28(3); Conspiracy 33(2.1)

Assisting the importation of alien contract laborers was an "offense against the United States," within the meaning of former § 88 of this title [now this section]. U.S. v. Stevenson, U.S.Mass.1909, 30 S.Ct. 37, 215 U.S. 200, 54 L.Ed. 157. See, also, U.S. v. Tsokas, C.C.N.Y.1908, 163 F. 129.

Fact that aliens were acting as informants for the Immigration and Naturalization Service and neither alien was remaining illegally in United States at time of defendant's involvement in attempting to transport them into United States did not prevent defendant from being prosecuted for conspiracy or attempt to unlawfully transport illegal aliens into United States; crime of conspiracy was complete upon agreement to do unlawful act as implemented by one or more overt acts, and factual impossibility was no defense to charge of either conspiracy or attempt. U.S. v. Medina-Garcia, C.A.1 (Puerto Rico) 1990, 918 F.2d 4. Aliens 56; Conspiracy 24(7); Conspiracy 38

Aliens could not be convicted of making false statements with respect to claimed marital status to immigration officials and of conspiracy to commit such substantive offenses where government failed to show that marriages were void at time representations were made. U. S. v. Diogo, C.A.2 (N.Y.) 1963, 320 F.2d 898. Conspiracy 44.2; Fraud 69(1)

Parties who arranged marriage of citizen wife and alien husband were not guilty of conspiracy to defraud United States in administration of Immigration Laws by arranging marriage allegedly to enable alien to remain permanently in United States, where wife did not agree that marriage was to be in form only as charged in indictment. U. S. v. Vazquez, C.A.3 (N.J.) 1963, 319 F.2d 381. Conspiracy 33(2.1)

Whether false information in application for re-entry permit was required was immaterial, as respected conviction for conspiracy to violate immigration laws by impersonation of another in application. Shimi Miho v. U.S., C.C.A.9 (Cal.) 1932, 57 F.2d 491. Conspiracy 45

A conspiracy to secure the approval of the application of a Chinese person, desiring temporarily to go abroad, for preinvestigation of his claimed mercantile status, when he was not entitled to the same, was a violation of former § 88 of this title [now this section]. U.S. v. Fung Sam Wing, N.D.Cal.1918, 254 F. 500. Conspiracy 33(2.1)

Accused, lured by United States officers to undertake to bring Chinese across the Mexican border, was not guilty of a conspiracy to commit a criminal act under former § 88 of this title [now this section]. Woo Wai v. U.S., C.C.A.9 (Cal.) 1915, 223 F. 412, 137 C.C.A. 604. Conspiracy 28(3)

Under an indictment charging a conspiracy to aid and abet the landing from certain vessels named of Chinese laborers not entitled to enter United States, it was immaterial whether any Chinese laborers were in fact landed as a result of the alleged conspiracy, if the criminal agreement was entered into, and any of the overt acts alleged were committed. U.S. v. Wilson, D.C.Or.1894, 60 F. 890. Conspiracy 27

Interfering with or obstructing by deceit, craft, or trickery, or dishonest means, the deportation of aliens violated former § 88 of this title [now this section]. U S v. Sotak, M.D.Pa.1933, 2 F.Supp. 323. Conspiracy 33(1)

184. Injunctions, particular frauds and offenses

A conspiracy to violate an injunction issued by a court of the United States was one to commit an "offense against the United States," within the meaning of former § 88 of this title [now this section] in view of former § 241 of this title. Taylor v. U.S., C.C.A.7 (Ill.) 1924, 2 F.2d 444, certiorari denied 45 S.Ct. 226, 266 U.S. 634, 69 L.Ed. 479.

185. Interstate commerce offenses, particular frauds and offenses

Weapons were "otherwise obtained," for purposes of statute prohibiting person from transporting into or receiving in state where he resides any firearm purchased or otherwise obtained by such person outside that state, where Texas resident bought weapons in Texas and delivered weapons to New York resident in New York. U.S. v. Mitchell, C.A.2 2003, 328 F.3d 77. Weapons 4

Where persons conspired to impose a direct restraint on interstate commerce, benevolent motives or the activities of third parties do not save them from criminal prosecution for violation of § 1 of Title 15. U.S. v. General Motors Corp., C.C.A.7 (Ind.) 1941, 121 F.2d 376, certiorari denied 62 S.Ct. 105, 314 U.S. 618, 86 L.Ed. 497, motion granted 62 S.Ct. 124, 314 U.S. 579, 86 L.Ed. 469, rehearing denied 62 S.Ct. 178, 314 U.S. 710, 86 L.Ed. 566. Monopolies 12(1.6)

Accused who had allegedly entered freight car and stolen sacks of sugar therefrom after consignee had accepted the car, broken the seal, removed part of its contents, and placed its private padlock on door was not guilty of conspiring to commit an offense against the United States by removing part of interstate shipment from freight car, since the goods at time of taking had been completely "delivered" and were no longer a subject of "interstate commerce." O'Kelley v. U. S., C.C.A.8 (Ark.) 1941, 116 F.2d 966. Commerce 82.6; Conspiracy 28(3)

An indictment would lie under former § 88 of this title [now this section] for conspiracy to violate § 6 of Title 49, by the granting of unlawful rebates. U.S. v. Grand Trunk Ry. Co. of Canada, W.D.N.Y.1915, 225 F. 283.

Where defendants were indicted for conspiracy to commit an offense against the United States, to wit, the transportation of explosives on passenger cars or trains in interstate commerce, in violation of former § 382 et seq. of this title, and the carriage as averred was the subject of the conspiracy in any measure, the violation of said former section would have been sufficient to form the basis of conspiracy within former § 88 of this title [now this section], regardless of the fact that the ultimate purpose was the destruction of "open shop" steel constructions in the United States, an object not within federal cognizance. Ryan v. U.S., C.C.A.7 (Ind.) 1914, 216 F. 13, 132 C.C.A. 257. Conspiracy 28(3)

Where a conspiracy to transport nitroglycerin in passenger trains and cars in interstate commerce was alleged to have been entered into December 1, 1906, the overt acts having been committed beginning January 20, 1908, and extending to August 27, 1911, it was immaterial that dynamite was not named in the enactments in force at the inception of the conspiracy, or that former § 382 of this title, had been amended in the meantime; the carriage of nitroglycerin having been prohibited by Act July 3, 1866, and continuously since that time. Ryan v. U.S., C.C.A.7 (Ind.) 1914, 216 F. 13, 132 C.C.A. 257. Conspiracy 28(3)

A conspiracy to induce the giving or receiving of rebates in violation of § 41 et seq. of Title 49 was punishable under former § 88 of this title [now this section], where the persons charged were not limited to the giver and receiver of the rebate alone. Thomas v. U.S., C.C.A.8 (Mo.) 1907, 156 F. 897, 84 C.C.A. 477. Conspiracy 28

A conspiracy to prevent a railroad company from performing its duties as defined by Interstate Commerce Act, §§ 3 and 10 of Title 49, was a conspiracy within former § 88 of this title [now this section] to violate the laws of the United States. Wabash R. Co. v. Hannahan, C.C.E.D.Mo.1903, 121 F. 563.

Where two or more men wrongfully agree among themselves, either for the purpose of creating sympathy in a threatened strike, or for any other purpose, to cause trains carrying interstate commerce to be stopped, or to discharge their employés or refuse to employ new men, so as to stop such trains, they are guilty of conspiracy. U.S. v. Debs, C.C.N.D.Ill.1894, 63 F. 436. Monopolies 16(1)

It being an offense for any person to do, or omit to do, any act forbidden or directed to be done by the Interstate Commerce Law, § 1 et seq. of Title 49, it was a crime under former § 88 of this title [now this section] for persons to enter into a combination in restraint of such commerce. In re Charge to Grand Jury, N.D.Ill.1894, 62 F. 828.

See, also, In re Grand Jury, D.C.Cal.1894, 62 F. 840; In re Grand Jury, D.C.Cal.1894, 62 F. 834; U.S. v. Howell, D.C.Mo.1892, 56 F. 21.

An agreement between two or more persons that the employés of railroads carrying mails and interstate commerce should quit, and that all others should, by threats or violence, be prevented from taking their places, constitutes a criminal conspiracy to obstruct interstate commerce. In re Charge to Grand Jury, N.D.Ill.1894, 62 F. 828. Monopolies 16(1)

A combination for the purpose of compelling railway companies to break their contracts with the owner of certain cars, for the use thereof by them, is an unlawful conspiracy. Thomas v. Cincinnati, N.O. & T.P. Ry. Co., C.C.S.D.Ohio 1894, 62 F. 803, 32 W.L.B. 280. Conspiracy 8; Torts 12

A combination by employés to compel their employers, by threats of quitting and by actually quitting their service, to withdraw from a mutually profitable relation with a third person having no effect on the character or reward of the employés' services, for the purpose of injuring such third person, is a boycott, and an unlawful conspiracy. Thomas v. Cincinnati, N.O. & T.P. Ry. Co., C.C.S.D.Ohio 1894, 62 F. 803, 32 W.L.B. 280. Conspiracy 8; Labor And Employment 1410; Torts 241; Torts 12

Where an indictment, under former § 88 of this title [now this section], for a conspiracy to commit the offense created by § 10 of Title 49, charged a conspiracy between lumber merchants and their servants and an employé of a railroad company to procure less than the established rates by falsely weighing the lumber shipped, such weighing being done by the railroad employé, the jury, in order to convict, was required to find an agreement between two or more of defendants for the purpose named, and also, as an overt act, the actual false weighing of lumber by such employé. U.S. v. Howell, W.D.Mo.1892, 56 F. 21. Carriers 38(5); Conspiracy 47

Under an indictment for conspiracy to obtain an unlawful discrimination in rates, the shippers of lumber may be convicted if their servants procured an unlawful discrimination in rates, provided they knew of such unlawful acts, permitted them to continue, and received, directly or indirectly, the benefit of them; for it was their duty to see that the law was not violated by their subordinates by reason of their own negligence. U.S. v. Howell, W.D.Mo.1892, 56 F. 21. Carriers 38(3)

A combination of locomotive engineers, which will have the effect to defeat the provisions of the Interstate Commerce Act, § 1 et seq. of Title 49, inhibiting discriminations in the transportation of freight and passengers, and further to restrain the commerce of the country, is obnoxious to the penalties prescribed in this section. Waterhouse v. Comer, C.C.S.D.Ga.1893, 55 F. 149. Conspiracy 28(3); Labor And Employment 3273

186. Kickbacks, particular frauds and offenses

Defendants, who as members of county council, solicited and received $6,000 kickback from architects on county hospital project under Hill-Burton Act, section 291 et seq. of Title 42, in return for causing employment of architects for such project violated this section and committed crime against United States. U. S. v. Thompson, C.A.6 (Tenn.) 1966, 366 F.2d 167, certiorari denied 87 S.Ct. 512, 385 U.S. 973, 17 L.Ed.2d 436. Conspiracy 33(2.1)

The planning, establishing, and administering of arrangement whereby president of area management broker for Department of Housing and Urban Development required a 10% payment by contractors out of revenue they received on HUD jobs in return for favoritism and the awarding of contracts on such jobs constituted a conspiracy against the United States. U. S. v. Griffin, S.D.Ind.1975, 401 F.Supp. 1222, affirmed 541 F.2d 284. Conspiracy 33(6)

187. Liquor offenses, particular frauds and offenses

Conviction for conspiracy to defraud the United States was valid, although there was no evidence that defendant grape broker intended to defraud the United States and its agency, the Bureau of Alcohol, Tobacco and Firearms (BATF), when it sold wine which was not packaged in conformity with Treasury regulations, where there was sufficient evidence of a second object of charged conspiracy, i.e., defrauding a buyer and others by selling them cheaper grapes than ordered. U.S. v. Licciardi, C.A.9 (Cal.) 1994, 30 F.3d 1127. Conspiracy 47(6)

Although, in prosecution for conspiracy to violate liquor laws, there was substantial evidence of governmental inducement, defendant's entrapment defense was vitiated by other evidence, such as testimony as to moonshine liquor supplier's remark that he would only do business with the defendant, tending to show readiness and willingness to commit the act without persuasion. U. S. v. Jones, C.A.5 (Ala.) 1973, 473 F.2d 293, certiorari denied 93 S.Ct. 2280, 411 U.S. 984, 36 L.Ed.2d 961. Criminal Law 569

Though defendant had not joined in original conspiracy to take truck load of whiskey, he could properly be convicted of conspiracy to receive and have possession of chattels, moving as part of interstate shipment, known to have been stolen where after original conspirators discovered that truck contained gin instead of whiskey defendant joined conspiracy and where the gin was brought to place of planned delivery by two of original conspirators. U. S. v. Jackson, C.A.6 (Ohio) 1970, 422 F.2d 975. Conspiracy 40.3

Accused, a sugar dealer, who sold sugar for use in illicit distilling operations, and did not report the sale as required by law and who used a fictitious consignee, a false bill of lading, and furnished a guide to show truck driver where to take the sugar, and instructed an employee to attempt deception of government agent, was guilty of "conspiracy" to defraud the revenue through operation of unregistered and untaxed still. U.S. v. Harrison, C.C.A.3 (N.J.) 1941, 121 F.2d 930, certiorari denied 62 S.Ct. 124, 314 U.S. 661, 86 L.Ed. 530. Conspiracy 33(7)

Conspiracy by which physicians' prescriptions signed in blank were sold to druggists who dispensed whiskey unlawfully was "conspiracy to defraud United States in governmental function." Wallenstein v. U.S., C.C.A.3 (N.J.) 1928, 25 F.2d 708, certiorari denied 49 S.Ct. 13, 278 U.S. 608, 73 L.Ed. 534. Conspiracy 33(2.1)

Conspiracy to violate department regulations for enforcement of Prohibition Act, former § 1 et seq. of Title 27, constituted an offense. U.S. v. Austin-Bagley Corporation, D.C.N.Y.1928, 24 F.2d 527. Conspiracy 28

Conspiracy to import intoxicating liquors without paying duties is an offense. Smith v. U.S., C.C.A.9 (Cal.) 1925, 9 F.2d 386, certiorari denied 46 S.Ct. 488, 271 U.S. 674, 70 L.Ed. 1145. See, also, Horwitz v. U.S., C.C.A.Mass.1925, 5 F.2d 129. Conspiracy 33(7)

Conspiracy was one to defraud United States, within former § 88 of this title [now this section] when purpose was to have permits issued contrary to the regulations, for purpose of withdrawing liquor for beverage purposes. U.S. v. Catrow, D.C.N.Y.1922, 7 F.2d 510.

Conspiracy by two or more persons on American vessel on high seas to smuggle dutiable or prohibited merchandise into United States was a crime, under former § 88 of this title [now this section]. U.S. v. Tello, D.C.Mass.1925, 6 F.2d 579.

Crime of conspiracy to defraud government of customs duties and internal revenue taxes by fraudulent withdrawal of liquor from bonded warehouse, was complete as soon as agreement was made and any step in its execution had taken place, and it was not necessary that liquor should be deposited in bonded warehouse or even imported. Becher v. U.S., C.C.A.2 (N.Y.) 1924, 5 F.2d 45. Conspiracy 27

An indictment lay under former § 88 of this title [now this section], for conspiracy to violate National Prohibition Act, former § 1 et seq. of Title 27, by the unlawful transportation of intoxicating liquors. Welter v. U.S., C.C.A.8 (Neb.) 1925, 4 F.2d 342. See, also, Laughter v. U.S., C.C.A.Tenn.1919, 259 F. 94, certiorari denied 39 S.Ct. 388,

18 U.S.C.A. § 371

249 U.S. 613, 63 L.Ed. 802.

Purpose of employés, agents, or officers of corporation to evade payment of tax on oleomargarine, due from the corporation, supplied intent to defraud, essential to conspiracy to defraud the United States. U.S. v. Orr, D.C.R.I.1915, 223 F. 220. Conspiracy 33(7)

An indictment would lie, under former § 88 of this title [now this section] for conspiracy to remove distilled spirits on which the tax had not been paid, in violation of § 2913 of Title 26 although it was charged that the purpose of the conspiracy was accomplished. Scott v. U.S., C.C.A.5 (Ga.) 1908, 165 F. 172, 91 C.C.A. 206. Conspiracy 37

Indictment charging mother and son with attempting to evade payment of income tax by filing false and fraudulent return stated a conspiracy to violate Revenue Laws rather than a conspiracy to defraud the United States. U.S. v. Patenotre, S.D.N.Y.1948, 81 F.Supp. 1000. Conspiracy 43(6)

A conspiracy to conceal or destroy papers relating to imported merchandise in violation of former § 120 of this title, sent by the consignor to the consignee, showing its fraudulent entry, was punishable under former § 88 of this title [now this section]. U.S. v. De Grieff, C.C.N.Y.1879, 25 F.Cas. 799, No. 14936.

188. Narcotics, particular frauds and offenses

That all transactions between physician and mail order house from which he procured narcotics for illegal resales were carried on by mail did not bar conviction of mail order house for "conspiracy" to violate the Harrison Anti-Narcotic Act, §§ 2553 and 2554 of Title 26 [I.R.C.1939], notwithstanding that accused's overt acts consisted solely of sales which, but for their volume, frequency, and prolonged repetition, coupled with accused's unlawful intent to further physician's project, would have been wholly lawful. Direct Sales Co. v. U.S., U.S.S.C.1943, 63 S.Ct. 1265, 319 U.S. 703, 87 L.Ed. 1674. Conspiracy 26

A seller of narcotics to physicians is not immune from prosecution for conspiracy to violate the Harrison Anti-Narcotic Act, §§ 2553 and 2554 of Title 26 [I.R.C.1939], merely because seller receives the required order form for each sale. Direct Sales Co. v. U.S., U.S.S.C.1943, 63 S.Ct. 1265, 319 U.S. 703, 87 L.Ed. 1674. Conspiracy 38

In prosecution for conspiracy to violate the Harrison Anti-Narcotic Act, §§ 2553 and 2554 of Title 26 [I.R.C.1939] seller's intent to further, promote, and co-operate in buyer's illegal use, is, when given effect by overt act, the gist of the "conspiracy". Direct Sales Co. v. U.S., U.S.S.C.1943, 63 S.Ct. 1265, 319 U.S. 703, 87 L.Ed. 1674. Conspiracy 28(3)

A mail order house which, over long period, sold narcotics to physician in far greater quantities than he could have lawfully used, and which actively stimulated physician's purchases by soliciting quantity sales and giving discounts thereon although warned by narcotics bureau of illegal use of narcotics sold by it, was guilty of "conspiracy" to violate the Harrison Anti-Narcotic Act, §§ 2553 and 2554 of Title 26 [I.R.C.1939]. Direct Sales Co. v. U.S., U.S.S.C.1943, 63 S.Ct. 1265, 319 U.S. 703, 87 L.Ed. 1674. Conspiracy 40

Record supported finding that defendant, who was found just yards from where unloading had taken place and a short distance from where a great deal of marijuana was located, participated in conspiracy to import marijuana into United States and that he aided and abetted in substantive offense involving such importation. U.S. v. Leon, C.A.3 (N.J.) 1984, 739 F.2d 885. Conspiracy 47(12); Controlled Substances 86

The rule that a conspiracy cannot be proven by a single transaction between buyer and seller is only applied when buyer and seller are the only participants in the conspiracy and when courts are compelled to grapple with the

difficult problem of whether, in a particular case, it is fair to hold the buyer or a minor participant to be part of a large conspiracy consisting often of smuggler, distributors, middlemen, and other buyers. U. S. v. Renfro, C.A.6 (Mich.) 1980, 620 F.2d 569, certiorari denied 101 S.Ct. 274, 449 U.S. 902, 66 L.Ed.2d 133, denial of post-conviction relief affirmed 99 F.3d 1139. Conspiracy 47(1)

Crime of conspiring to import marijuana was complete on the agreement to violate the law and, thus, whether or not the substance involved was marijuana was irrelevant. U. S. v. Thompson, C.A.9 (Cal.) 1974, 493 F.2d 305, certiorari denied 95 S.Ct. 60, 419 U.S. 834, 42 L.Ed.2d 60. Conspiracy 28(3); Criminal Law 1172.4

Mere fact that government, in prosecution for conspiring to import narcotics into the United States and to buy, sell, conceal and facilitate the transportation, concealment, and sale of narcotics illegally imported, did not show that each defendant knew each and every conspirator and every step taken by them did not place complaining defendants outside scope of a single conspiracy, in that each defendant might be found to have contributed to success of overall conspiracy, notwithstanding that he operated on only one level. U. S. v. Vega, C.A.2 (N.Y.) 1972, 458 F.2d 1234, certiorari denied 93 S.Ct. 1506, 410 U.S. 982, 36 L.Ed.2d 177, appeal reinstated 487 F.2d 170. Conspiracy 44.2

Defendant, who had neither physical custody nor control over alleged illegally imported narcotic drugs, did not have necessary "possession" to sustain a conviction for possession of illegally imported drugs although he had engaged in a common scheme or plan with a third person, not on trial, who did have such personal custody or control of drugs. Hernandez v. U. S., C.A.9 (Cal.) 1962, 300 F.2d 114. Controlled Substances 39

Conspiracy involving violations of narcotic laws is somewhat broader than general law of conspiracy. Valentine v. U. S., C.A.8 (Mo.) 1961, 293 F.2d 708, certiorari denied 82 S.Ct. 848, 369 U.S. 830, 7 L.Ed.2d 795. Conspiracy 28(3)

Where defendant admitted that her sister had received from "connection" the bindle of narcotics sold to informer, that while sale was in progress sister had told both defendant and informer that sister was well aware that narcotics were being transferred, and wanted to taste some, such admissions served to show that sister, the alleged coconspirator, had guilty knowledge of unlawful activity and knowingly committed an act in furtherance of its perpetration, and by passing narcotics from connection to defendant and by tasting some of cocaine which passed through her hands, sister demonstrated a clear intent to work in concert with defendant to achieve unlawful ends and crime of conspiracy was established. Buford v. U. S., C.A.9 (Cal.) 1959, 272 F.2d 483. Conspiracy 47(12)

It is not essential to conspiracy to traffic in narcotics that each member know all of the detailed ramifications of the conspiracy or participate in every sale. U S v. De Fillo, C.A.2 (N.Y.) 1958, 257 F.2d 835, certiorari denied 79 S.Ct. 591, 359 U.S. 915, 3 L.Ed.2d 577. Conspiracy 28(3)

Unlawful importation of narcotics was accomplished when heroin, in coconspirator's custody, was brought within territorial waters of United States, and fact of importation was not affected by fact that herein was removed from ship by narcotic agent rather than a coconspirator. U. S. v. Morello, C.A.2 (N.Y.) 1957, 250 F.2d 631. Controlled Substances 39

In prosecution for conspiracy to violate narcotic laws against defendant who, though not present at time of arrangements for sale, or subsequent delivery of narcotics to government agent, was present and participated in subsequent discussions following which second sale to agent was refused on suspicion of his identity, evidence warranted finding that defendant was member of conspiracy. United States v. Williams, C.A.2 (N.Y.) 1956, 239 F.2d 517. Conspiracy 47(12)

Suppliers of marihuana who sold it to an intermediary group knowing it was purchased for resale were not mere suppliers who could not be held as coconspirators even though knowing of the illegal purpose of the purchaser but,

because their sales were illegal and clandestine, each supplier, through them, became himself a part of the conspiracy for their intended resale. U. S. v. Tramaglino, C.A.2 (N.Y.) 1952, 197 F.2d 928, certiorari denied 73 S.Ct. 105, 344 U.S. 864, 97 L.Ed. 670. Conspiracy 40.1

Where object of alleged conspiracy was to smuggle narcotics into port of New York and to distribute them to addicts both in New York City and in Texas and Louisiana, contention that there were two conspiracies, one including the smugglers, middlemen and New York retailers, and the other the smugglers, middlemen and Texas and Louisiana retailers, could not be sustained, since it was of no moment to smugglers whether middlemen sold to one or more groups of retailers and each retailer knew that he was a necessary link in a scheme of distribution and the others, whom he knew to be convenient to its execution, were a part of a single undertaking. U S v. Bruno, C.C.A.2 (N.Y.) 1939, 105 F.2d 921, certiorari granted 60 S.Ct. 112, 308 U.S. 536, 84 L.Ed. 451, reversed on other grounds 60 S.Ct. 198, 308 U.S. 287, 84 L.Ed. 257. Conspiracy 43(12)

If there is only one agreement, Government may not separately charge a defendant for conspiring to import marijuana and conspiring to import cocaine. U.S. v. Hawes, E.D.N.C.1991, 774 F.Supp. 965. Criminal Law 29(5.5)

189. Obligations of United States, particular frauds and offenses

It was a violation of former § 88 of this title [now this section], for defendants to purchase war savings certificates with stamps affixed thereto from persons not authorized to sell them, knowing that they were not transferable, and were not payable to any one save the original purchaser, and to conspiracy to obtain blank certificates of a maturity value in excess of $100, and affix thereto stamps detached from other certificates purchased by them, and write thereon the name of some person other than any one of the defendants, and present them for payment. U S v. Janowitz, U.S.N.Y.1921, 42 S.Ct. 40, 257 U.S. 42, 66 L.Ed. 120. Conspiracy 33(5)

War savings certificates with stamps attached are "obligations of the United States," so as to support an indictment for conspiracy to defraud the United States and alter obligations of the United States. Rossi v. U.S., C.C.A.9 (Or.) 1922, 278 F. 349. Conspiracy 33(5)

The possession of stolen war savings stamps, or a conspiracy to have such possession, is not an offense against the United States, unless the stamps are the property of the government. Rossi v. U.S., C.C.A.9 (Or.) 1922, 278 F. 349 . Conspiracy 33(5)

190. Obstruction of justice, particular frauds and offenses

Evidence did not support convictions for conspiracy to obstruct justice, even if defendants knowingly entered into agreement to impede potential grand jury proceeding or to obstruct justice in connection with their roles in two shootings, given absence of showing that, at time of alleged agreement, defendants reasonably could have foreseen grand jury investigation, and of evidence that either defendant or alleged coconspirator specifically intended that statements which they made to their relatives, denying involvement in shootings, would eventually be passed along to grand jury, or asked such relatives to lie to grand jury. U.S. v. Bruno, C.A.2 (N.Y.) 2004, 383 F.3d 65. Conspiracy 47(13)

To convict defendant of conspiracy to obstruct justice, government was required to prove that there was an agreement whose object was to obstruct justice, that defendant knowingly and voluntarily joined in the agreement, and that at least one overt act was committed in furtherance of object of agreement. U.S. v. Mullins, C.A.6 (Mich.) 1994, 22 F.3d 1365. Conspiracy 24(1); Conspiracy 24.5; Conspiracy 27

Even though obstruction of justice can arise only when justice is being administered, that is, when a proceeding is pending, a conspiracy to obstruct the due administration of justice in a proceeding which becomes pending in the

future was cognizable under former § 88 of this title [now this section]. U.S. v. Perlstein, C.C.A.3 (N.J.) 1942, 126 F.2d 789, certiorari denied 62 S.Ct. 1106, 316 U.S. 678, 86 L.Ed. 1752. Conspiracy 34

Crime of conspiracy to obstruct due administration of justice in certain criminal prosecution was completed when defendants agreed on scheme, conspiracy being essentially crime of intent. Craig v. U.S., C.C.A.9 (Cal.) 1936, 81 F.2d 816, certiorari dismissed 56 S.Ct. 670, 298 U.S. 637, 80 L.Ed. 1371, certiorari dismissed 56 S.Ct. 671, 298 U.S. 637, 80 L.Ed. 1371, rehearing denied 83 F.2d 450, certiorari denied 56 S.Ct. 959, 298 U.S. 690, 80 L.Ed. 1408, rehearing denied 57 S.Ct. 6, 299 U.S. 620, 81 L.Ed. 457. Conspiracy 34

A conspiracy could be formed to procure United States attorney to dismiss prosecution. Felder v. U.S., C.C.A.2 (N.Y.) 1925, 9 F.2d 872, certiorari denied 46 S.Ct. 348, 270 U.S. 648, 70 L.Ed. 779. Conspiracy 28

An agreement whereby one of the defendants, who had been sentenced to the workhouse for a violation of an Act of Congress, and who was at liberty on bail, agreed to pay another defendant a fixed sum of money to surrender himself at the workhouse and serve the sentence, the convicted defendant meanwhile remaining in hiding, was a conspiracy to commit an offense against the United States, either by violation of former § 246 of this title, making it an offense to conceal a person against whom process has been issued, or certainly against former § 385 of Title 28, making it a contempt criminally punishable to disobey or resist the lawful process of the United States court. Biskind v. U. S., C.C.A.6 (Ohio) 1922, 281 F. 47, 1 Ohio Law Abs. 132, certiorari denied 43 S.Ct. 93, 260 U.S. 731, 67 L.Ed. 486. Conspiracy 34

A conspiracy to corruptly obstruct and impede the due administration of justice in a court of the United States in a civil action between private parties in violation of former § 241 of this title was a conspiracy to commit an offense against the United States within the meaning of former § 88 of this title [now this section], and was indictable thereunder. Wilder v. U.S., C.C.A.4 (W.Va.) 1906, 143 F. 433, 74 C.C.A. 567, certiorari denied 27 S.Ct. 787, 204 U.S. 674, 51 L.Ed. 674. Conspiracy 34

191. Perjury and subornation, particular frauds and offenses

It was an indictable offense under former § 88 of this title [now this section] to conspire to commit subornation of perjury in connection with soldiers' declaratory statements, to be filed by defendant as agent covering public lands under the Homestead Law, § 271 et seq. of Title 43, the perjury set forth in the indictment consisting in false swearing before notaries public and clerks of state courts to declaratory statements, although an affidavit to such statement is not required by statute, but by a regulation of the commissioner of the general land office, promulgated with the approval of the Secretary of the Interior. U.S. v. Morehead, U.S.Mont.1917, 37 S.Ct. 458, 243 U.S. 607, 61 L.Ed. 926.

A conspiracy by two or more to procure the commission of perjury, which embraced an unsuccessful attempt, was punishable under former § 88 of this title [now this section], even though an attempt by one person to suborn another to commit perjury may not have been so punishable. Williamson v. U.S., U.S.Or.1908, 28 S.Ct. 163, 207 U.S. 425, 52 L.Ed. 278.

The precise persons to be suborned, or the time and place of such suborning, need not be agreed upon in the minds of the conspirators, in order to constitute the crime of conspiracy to suborn perjury. Williamson v. U.S., U.S.Or.1908, 28 S.Ct. 163, 207 U.S. 425, 52 L.Ed. 278. Conspiracy 34

Expert's knowledge of perjured testimony, relating to his testimony that he had personally participated in ink forensic tests about which he testified, or that of other Secret Service Forensic Services Division employees, would not be attributed to the government, for purposes of defendants' motion for a new trial; expert acted as an ordinary expert witness and not as part of the prosecution team by performing a role limited to matters concerning his area of expertise and by analyzing a single document, explaining the forensic ink tests that had been performed,

discussing potential testimony by the defense ink expert, assisting prosecutors to develop cross-examination questions addressing certain technical aspects of ink testing, and participating in mock examination on ink issues to prepare for trial. U.S. v. Stewart, C.A.2 (N.Y.) 2006, 433 F.3d 273.

Instructions in prosecution for banking related offenses were insufficient even though court told jury that it was to determine whether defendants were guilty of the "conspiracy charged in the indictment," and jury was given copy of indictment, where court at no point explicitly directed jury to read indictment or to note specific objectives of conspiracy alleged in indictment and gave description of alleged objectives that stressed defendants' nondisclosure of their interests in bank loans but did not mention intent to violate banking laws. U.S. v. Gallerani, C.A.2 (Vt.) 1995, 68 F.3d 611. Conspiracy 48.2(2)

Where defendant and others conspired to defraud entrymen on public lands of the location fees, and, in order to induce them to enter the lands, M. represented to them that he was the agent of a fictitious corporation of whom a fictitious person was president, which corporation desired to purchase the land and would do so from the entrymen, either for a specified amount, or in accordance with an estimate of timber thereon, and pursuant to such conspiracy, defendants induced the entrymen to sign and swear to entry affidavits declaring that the entrymen were purchasing the land for their own benefit, and not for speculation, and that they had no contract or agreement to transfer the same after they had contracted to convey the land to such corporation, since M. would have been personally liable on such contracts under the rule that one who holds himself out as an agent of a nonexisting principal is personally liable, the affidavits were in fact false and constituted perjury, though there was no intention on defendant's part at any time to carry them out or purchase the land. Nickell v. U.S., C.C.A.9 (Or.) 1908, 161 F. 702, 88 C.C.A. 562, affirmed 167 F. 741, 93 C.C.A. 229, certiorari denied 29 S.Ct. 699, 214 U.S. 517, 53 L.Ed. 1064. Perjury 7

Under Laws Alaska 1917, c. 56, § 3, requiring a statement under oath in order to secure a marriage license, a false oath in such matter was not an "offense against the United States" and petitioner who was indicted for having conspired in Alaska to commit offense of perjury before a United States commissioner in order to secure issuance of a marriage license was entitled to maintain proceedings for discharge from custody of warden of federal penitentiary. Torres v. Swope, W.D.Wash.1938, 25 F.Supp. 483. Conspiracy 28(3); Habeas Corpus 474

192. Postal offenses, particular frauds and offenses

A conspiracy can be committed by mail. Direct Sales Co. v. U.S., U.S.S.C.1943, 63 S.Ct. 1265, 319 U.S. 703, 87 L.Ed. 1674. Conspiracy 26

Regardless of whether a conspiracy to make an unauthorized loan of postage stamps merges into substantive offense, conspiracy portion of indictment against postal employee did not fail to state an offense where it alleged facts sufficient to charge cognizable offense of conspiring to conceal such a loan. U.S. v. Carter, C.A.7 (Ill.) 1983, 720 F.2d 941. Conspiracy 43(1)

To support conviction for mail fraud, government's evidence must show that defendant agreed to participate in scheme to defraud and that he caused mails to be used in furtherance of scheme. U. S. v. Sturm, C.A.3 (Pa.) 1982, 671 F.2d 749, certiorari denied 103 S.Ct. 95, 459 U.S. 842, 74 L.Ed.2d 86. Postal Service 35(2)

Evidence sustained conviction for conspiring to abstract articles from mail depositories and to unlawfully receive, conceal and possess such articles in violation of section 1708 of this title. U. S. v. Watson, C.A.5 (Fla.) 1972, 466 F.2d 549. Conspiracy 47(11)

Object of conspiracy to rob mail carrier was not accomplished until mail had been removed from place of concealment and converted. Bellande v. U.S., C.C.A.5 (La.) 1928, 25 F.2d 1, certiorari denied 48 S.Ct. 602, 277 U.S. 607, 72 L.Ed. 1012. Conspiracy 23

18 U.S.C.A. § 371

A combination of railway employés, where the members intend to stop all mail trains as well as other trains, and do delay many, in violation of former § 324 of this title, was an unlawful conspiracy, though the obstruction was effected by merely quitting employment. Thomas v. Cincinnati, N.O. & T.P. Ry. Co., C.C.S.D.Ohio 1894, 62 F. 803, 32 W.L.B. 280. Conspiracy 28(3); Postal Service 28

Being an offense under former § 324 of this title, for any person knowingly and wilfully to obstruct or retard the passage of a train carrying the mail, it was a crime under former section for persons to enter into a combination to commit that offense. 1894, 21 Op.Atty.Gen. 8. See, also, In re Lennon, Ohio 1897, 17 S.Ct. 658, 166 U.S. 548, 41 L.Ed. 1110; In re Debs, Ill.1895, 15 S.Ct. 900, 158 U.S. 564, 39 L.Ed. 1092; U.S. v. Sweeney, C.C.Ark.1899, 95 F. 434; U.S. v. Cassidy, D.C.Cal.1895, 67 F. 698; In re Grand Jury, D.C.Cal.1894, 62 F. 840; In re Grand Jury, D.C.Cal.1894, 62 F. 834; In re Grand Jury, D.C.Ill.1894, 62 F. 828; U.S. v. Stevens, C.C.Me.1877, 2 Hask. 164, 27 Fed.Cas. No. 16,392.

193. Price control offenses, particular frauds and offenses

Defendants charged with conspiring to sell whisky at overceiling prices were properly prosecuted under former § 88 of this title [now this section] even though the Emergency Price Control Act, 50 App. former § 904(a), made it unlawful, as a misdemeanor, to sell or deliver any commodity in violation of price regulation or to agree to do any of the prohibited acts. Blumenthal v. U.S., U.S.Cal.1947, 68 S.Ct. 248, 332 U.S. 539, 92 L.Ed. 154, rehearing denied 68 S.Ct. 385, 332 U.S. 856, 92 L.Ed. 425. Conspiracy 28(3)

Former § 88 of this title [now this section] applied to a conspiracy to violate a regulation issued by the O.P.A. under Emergency Price Control Act, 50 App. § 901 et seq. Samuel v. U.S., C.C.A.9 (Cal.) 1948, 169 F.2d 787. Conspiracy 28(3)

Conspiracy to violate Emergency Price Control Act, 50 App. former § 901 et seq., could have been prosecuted under former § 88 of this title [now this section]. U. S. ex rel. Semel v. Fitch, D.C.Conn.1946, 66 F.Supp. 206. Conspiracy 28(3)

194. Public lands, particular frauds and offenses

Persons conspiring to acquire fraudulently school lands of the states of California and Oregon, and to corrupt officers of the General Land Office to facilitate their selection in exchange for other public lands, could not urge, to escape conviction under former § 88 of this title [now this section], that the titles obtained from the state were valid, except as to the particular state which had given the title, and which alone could assail it. Hyde v. U.S., U.S.Dist.Col.1912, 32 S.Ct. 793, 225 U.S. 347, 56 L.Ed. 1114, Am.Ann.Cas. 1914A,614. Conspiracy 38

A conspiracy to induce entrymen who have made application under the Timber and Stone Act, § 311 et seq. of Title 43 to agree to convey after patent was not one to defraud the United States "in any manner or for any purpose," within former § 88 of this title [now this section]. U. S. v. Biggs, U.S.Colo.1909, 29 S.Ct. 181, 211 U.S. 507, 53 L.Ed. 305. See, also, U.S. v. Sullenberger, Colo.1909, 29 S.Ct. 186, 211 U.S. 522, 53 L.Ed. 311; U.S. v. Freeman, Colo.1909, 29 S.Ct. 185, 211 U.S. 525, 53 L.Ed. 311. Conspiracy 33(4)

A conspiracy to obtain title to coal lands of the United States, in clear violation of the prohibition of the coal land laws against making more than one entry, was embraced by former § 88 of this title [now this section]. U.S. v. Keitel, U.S.Colo.1908, 29 S.Ct. 123, 211 U.S. 370, 53 L.Ed. 230. See, also, U.S. v. Munday, Wash.1911, 32 S.Ct. 53, 222 U.S. 175, 56 L.Ed. 149; U.S. v. Herr, Colo.1908, 29 S.Ct. 135, 211 U.S. 406, 53 L.Ed. 252; U.S. v. Herr, Colo.1908, 29 S.Ct. 134, 211 U.S. 404, 53 L.Ed. 251. Conspiracy 33(4)

A conspiracy to obtain school lands from the states of California and Oregon in the names of fictitious or disqualified persons by the use of forged affidavits, assignments, and other documents, and to relinquish them to

the United States under Act June 4, 1897, c. 2, 30 Stat. 36, in exchange for other public lands, could not escape condemnation under former § 88 of this title [now this section], forbidding conspiracies to defraud the United States, on the theory that the United States having received the school lands in lieu of the other lands patented, had not been defrauded, even assuming that the United States stood in the position of a bona fide purchaser in respect to the school lands. Hyde v. Shine, U.S.Cal.1905, 25 S.Ct. 760, 199 U.S. 62, 50 L.Ed. 90. See, also, Dimond v. Shine, Cal.1905, 25 S.Ct. 766, 199 U.S. 88, 50 L.Ed. 99. Conspiracy 33(4)

Where certain entrymen took land temporarily from the public domain and placed it beyond the reach of other entrymen and it retained the status until the relinquishments were filed, and the defendants purchased those relinquishments and withheld them from the records in the interim covering the records with contests, thereby keeping the land out of the public domain and beyond the reach of other entrymen, such acts did not effect the objects of a conspiracy to interfere with the due administration of the law. Fain v. U.S., C.C.A.8 (S.D.) 1913, 209 F. 525, 126 C.C.A. 347.

An erroneous statement regarding a fact in a pleading or affidavit in a contest of a homestead entry could not sustain a charge of conspiring to defraud the United States in violation of former § 88 of this title [now this section]. Fain v. U.S., C.C.A.8 (S.D.) 1913, 209 F. 525, 126 C.C.A. 347. Conspiracy 33(4)

"An entry on the public lands made not in good faith, or in evasion of the provisions of the law, is a fraud upon the government, and a combination of two or more persons to induce others to make such entries is a conspiracy punishable." Chaplin v. U.S., C.C.A.9 (Cal.) 1912, 193 F. 879, 114 C.C.A. 93, certiorari denied 32 S.Ct. 838, 225 U.S. 705, 56 L.Ed. 1266.

Where defendants employed dummies to make coal entries on public lands under §§ 71 and 74 of Title 30, for the benefit of a corporation to be formed, and the defendants committed an overt act in furtherance of such arrangement, they were properly charged with conspiracy. U.S. v. Wells, C.C.A.2 (N.Y.) 1912, 192 F. 870, 113 C.C.A. 194, certiorari denied 32 S.Ct. 842, 225 U.S. 714, 56 L.Ed. 1269. Conspiracy 33(4)

In a prosecution for conspiracy to obtain excessive coal entries under § 71 of Title 30, by means of dummy entrymen, it was not essential to the government's case that the entrymen be shown to have been coconspirators. U.S. v. Wells, C.C.A.2 (N.Y.) 1912, 192 F. 870, 113 C.C.A. 194, certiorari denied 32 S.Ct. 842, 225 U.S. 714, 56 L.Ed. 1269. Conspiracy 33(4)

To obtain land of the government open to entry under its homestead laws by means of false proof in respect to the entryman's residence or improvements thereon, or for the use or benefit of another, was not only a fraud in fact, but a fraud on the homestead law, a conspiracy to commit which constituted a violation of former § 88 of this title [now this section]. Jones v. U.S., C.C.A.9 (Or.) 1908, 162 F. 417, 89 C.C.A. 303, certiorari denied 29 S.Ct. 685, 212 U.S. 576, 53 L.Ed. 657. Conspiracy 33(4)

Under Stone and Timber Act, § 311 of Title 43, making such lands subject to entry as are available chiefly for timber but unfit for cultivation, an entryman having made an affidavit that he sought to purchase the land for his own benefit and not for speculation could not escape punishment for conspiracy on the ground that his pre-existing contract of sale related to the timber only. Nickell v. U.S., C.C.A.9 (Or.) 1908, 161 F. 702, 88 C.C.A. 562, affirmed 167 F. 741, 93 C.C.A. 229, certiorari denied 29 S.Ct. 699, 214 U.S. 517, 53 L.Ed. 1064. Perjury 7

To constitute a violation of former § 88 of this title [now this section], by conspiring to defraud the government of public lands subject to entry under Timber and Stone Act, § 311 of Title 43, it was not essential that a patent for the lands be issued and delivered, a violation of said former section not depending on the success of the conspiracy, and becoming complete when the final step was taken by the conspirators in inducing fraudulent entries and the issuance of certificates of purchase. U. S. v. Black, C.C.A.7 (Wis.) 1908, 160 F. 431, 87 C.C.A. 383. See, also, U.S. v. Richards, D.C.Neb.1906, 149 F. 443.

18 U.S.C.A. § 371

Where defendants entered into an agreement, the purpose of which was to obtain title to a large tract of coal lands from the United States and to vest such title in a company organized by them for the purpose, and pursuant to such agreement, they procured third persons to make individual entries under the statute which were secured by false testimony, and defendants furnished the money to pay for the lands, and, when final receipts were obtained, they took the same, paid small sums to the entrymen, and took deeds from them to the company, such agreement was a conspiracy to defraud the United States, within the meaning of former § 88 of this title [now this section]. U.S. v. Lonabaugh, D.C.Wyo.1907, 158 F. 314, reversed 179 F. 476, 103 C.C.A. 56. Conspiracy 33(4)

A conspiracy to secure the title to coal lands from the United States through a homestead entry could have constituted a conspiracy to defraud the United States, within former § 88 of this title [now this section], although such lands were not subject to lawful homestead entry, where the title was secured by means of false proofs. U.S. v. Lonabaugh, D.C.Wyo.1907, 158 F. 314, reversed 179 F. 476, 103 C.C.A. 56. Conspiracy 33(4)

A conspiracy to induce the Land Department of the United States by fraudulent means to dispose of public lands in a way not authorized by the statutes was one to defraud the United States, within the meaning of former § 88 of this title [now this section], although it received payment for the lands and suffered no pecuniary loss, and, if accompanied by an overt act, was indictable thereunder. U S v. Lonabaugh, D.C.Wyo.1907, 158 F. 314, reversed on other grounds 179 F. 476, 103 C.C.A. 56. Conspiracy 33(4); Mines And Minerals 8

Where defendants entered into a conspiracy to defraud the United States of title to and the possession of large tracts of coal land by procuring others to enter the land in separate parcels as cash purchasers, defendants furnishing the money, and the entrymen holding the land in secret trust for defendants, the gist of the conspiracy being the intent to give such entries a false appearance for the purpose of misleading the United States, it constituted a conspiracy to defraud the United States, prohibited by former § 88 of this title [now this section], though defendants did not stand in such a position to the government as to require a disclosure of the true facts. U.S. v. Robbins, D.C.Utah 1907, 157 F. 999. Conspiracy 33(4)

A conspiracy to defraud the United States of the possession of public lands by means of fraudulent homestead entries was within former § 88 of this title [now this section], although there was no purpose to carry the preliminary entries to final entry and patent. Stearns v. U.S., C.C.A.8 (Minn.) 1907, 152 F. 900, 82 C.C.A. 48. Conspiracy 33(4)

Where a timber culture entry under Act June 14, 1878, § 2 (repealed) was not forfeited by the Land Department for the entryman's failure to make final proof within five years next succeeding the expiration of eight years after the entry, it did not become absolutely void, but was merely suspended, and was therefore sufficient to sustain a prosecution for conspiracy for combining to obtain title to the land by false and fraudulent proof. U. S. v. Burkett, D.C.Kan.1907, 150 F. 208.

Persons may be guilty of conspiracy to defraud the United States by obtaining title to public mineral lands by means of a homestead entry, since a patent to such lands so obtained would not be void. U.S. v. Peuschel, S.D.Cal.1902, 116 F. 642. Conspiracy 33(4)

A conspiracy by two persons to enter a certain tract of land in the name of one of them, under the former timber-culture act (repealed) with the money of the other, for the purpose of selling and disposing of the location, for the benefit of the party furnishing the money, to any one who might desire to enter the same, was not a conspiracy to defraud the United States of its title to or dominion over said land, but it might be a conspiracy to defraud the United States of the possession thereof for an indefinite period. U.S. v. Thompson, C.C.Or.1886, 29 F. 86, 12 Sawy. 151. Conspiracy 33(4)

195. Securities offenses, particular frauds and offenses

18 U.S.C.A. § 371

Alleged scheme not to provide required information to Securities and Exchange Commission (SEC) and to generate tax losses and false claims for deductions could be prosecuted as conspiracy to defraud SEC and Internal Revenue Service (IRS). U.S. v. Bilzerian, C.A.2 (N.Y.) 1991, 926 F.2d 1285, certiorari denied 112 S.Ct. 63, 502 U.S. 813, 116 L.Ed.2d 39, post-conviction relief granted, post-conviction relief denied, affirmed 125 F.3d 843, affirmed 127 F.3d 237, certiorari denied 119 S.Ct. 2365, 527 U.S. 1021, 144 L.Ed.2d 770. Conspiracy 33(2.1); Conspiracy 33(7)

Where codefendants conspired with securities swindler and gave him a carte blanche to conceive, manage and carry out securities fraud, defendants became liable for use of false and misleading offering circular made by swindler in furtherance of conspiracy. U. S. v. Aloi, C.A.2 (N.Y.) 1975, 511 F.2d 585, certiorari denied 96 S.Ct. 447, 423 U.S. 1015, 46 L.Ed.2d 386. Securities Regulation 193

Representations as to value, soundness and worth of securities may go so far beyond what may be considered the proper limits of exaggerating enthusiasm of normal salesman, or the mistaken judgment of the honest man, as to impress them with badge of "fraud" as basis of prosecution for violating Securities Act, § 77q of Title 15, using the mails to defraud, and conspiring to effect scheme to defraud. Holmes v. U. S., C.C.A.8 (Neb.) 1943, 134 F.2d 125, certiorari denied 63 S.Ct. 1434, 319 U.S. 776, 87 L.Ed. 1722. Postal Service 35(12); Securities Regulation 193

Alleged efforts of defendants to influence lawful functions of the Securities and Exchange Commission, while concealing the purported motive for those efforts, were within range of activities proscribed by this section prohibiting a conspiracy to defraud the United States. U. S. v. Mitchell, S.D.N.Y.1973, 372 F.Supp. 1239, appeal dismissed 485 F.2d 1290. Conspiracy 33(2.1)

Conspiracy to violate securities laws was one to defraud United States, within this section, where part of agreement was that Securities and Exchange Commission should be denied. U. S. v. McGuire, S.D.N.Y.1965, 249 F.Supp. 43, affirmed 381 F.2d 306, certiorari denied 88 S.Ct. 800, 389 U.S. 1053, 19 L.Ed.2d 848, certiorari denied 88 S.Ct. 801, 389 U.S. 1053, 19 L.Ed.2d 848. Conspiracy 33(2.1)

In prosecution for using the mails to sell and to deliver after sale unregistered securities and for conspiring to violate § 77c of Title 15 it was sufficient to establish that defendants willfully and intentionally sold or delivered unregistered securities by use of the mails, since actual knowledge that security was being sold in violation of said section was not an element of the crime charged. U. S. v. Sussman, E.D.Pa.1941, 37 F.Supp. 294. Securities Regulation 192; Conspiracy 47(5); Postal Service 49(8.1)

196. Selective service offenses, particular frauds and offenses

Conspiracy to defeat the purpose of the Selective Draft Act, 50 App., former § 201 et seq., by inducing persons to refuse to register under it was not a conspiracy to defraud the United States within former § 88 of this title [now this section]. Hammerschmidt v. U.S., U.S.Ohio 1924, 44 S.Ct. 511, 265 U.S. 182, 68 L.Ed. 968.

Evidence sustained conviction of conspiracy to fire bomb selective service state headquarters, to hinder and interfere with administration of Military Selective Service Act, section 451 et seq. of Title 50 App., and to possess unregistered firearm, i.e., a Molotov cocktail. U. S. v. Yaple, C.A.9 (Or.) 1971, 450 F.2d 308. Armed Services 40.1(11.1); Conspiracy 47(3.1); Weapons 17(4)

Conspiracy to counsel evasion was within former § 88 of this title [now this section]. Fraina v. U.S., C.C.A.2 (N.Y.) 1918, 255 F. 28, 166 C.C.A. 356.

It was an indictable offense at common law to counsel and solicit a person subject to registration not to register under the Selective Draft Act, 50 App., former § 201 et seq., and a conspiracy to commit the said common-law

offense was punishable as a conspiracy to commit "any offense against the United States" under former § 88 of this title [now this section]. U.S. v. Galleanni, D.C.Mass.1917, 245 F. 977. See, also, Firth v. U.S., C.C.A.W.Va.1918, 253 F. 36.

Conspiracy to resist raising of army by conscription was a conspiracy denounced by former § 88 of this title [now this section] though the scheme was chimerical and impossible of success. U.S. v. Bryant, N.D.Tex.1917, 245 F. 682. Conspiracy 28

197. Shipping offenses, particular frauds and offenses

A conspiracy to obtain a clearance by false manifests and false statement of destination is one to "defraud" the United States. Hamburg-American Steam Packet Co. v. U.S., C.C.A.2 (N.Y.) 1918, 250 F. 747, 163 C.C.A. 79, certiorari denied 38 S.Ct. 333, 246 U.S. 662, 62 L.Ed. 927.

A conspiracy to obtain a clearance by presenting to the collector of customs sworn manifests falsely stating the destination was with "corrupt intent," though the purpose for which the clearance was desired, viz., the avoidance of capture by the vessels of a belligerent, was not of itself unlawful, and it was not necessary that the parties should know of the illegality of their acts and it was immaterial that the agents who swore to the manifests believed them to be true. Hamburg-American Steam Packet Co. v. U.S., C.C.A.2 (N.Y.) 1918, 250 F. 747, 163 C.C.A. 79, certiorari denied 38 S.Ct. 333, 246 U.S. 662, 62 L.Ed. 927.

A conspiracy to plunder a wrecked vessel within the admiralty and maritime jurisdiction of the United States was an offense against the United States, within the meaning of former § 88 of this title [now this section], that act being a crime within former § 488 of this title. U.S. v. Sanche, C.C.W.D.Tenn.1881, 7 F. 715.

For purposes of this section, the term "offense against the United States" is not limited to crimes, and encompasses conduct prohibited by a Federal statute and made punishable only by a civil suit for a statutory penalty; thus, a violation of paragraph Second of section 815 of Title 46, Shipping, is an offense within the meaning of this section. 1978 (Counsel-Inf.Op.) 2 Op.O.L.C. 5.

198. Stolen property, particular frauds and offenses

Although section 2314 of this title pertaining to transportation of stolen goods in interstate or foreign commerce cannot be violated unless there are in fact stolen goods, a conspiracy to violate section 2314 of this title occurs when two or more persons agree to attempt to commit acts which include all the elements of a crime under that statute and any overt act is done pursuant to the agreement. U. S. v. Rose, C.A.7 (Ill.) 1978, 590 F.2d 232, certiorari denied 99 S.Ct. 2859, 442 U.S. 929, 61 L.Ed.2d 297. Conspiracy 28(3)

Defendant could be convicted of conspiracy to receive stolen goods although evidence showed that he in fact stole them. U. S. v. Anderson, C.A.8 (Minn.) 1977, 552 F.2d 1296. Conspiracy 28(3)

Where two defendant knowingly purchased stolen vehicles from members of conspiracy with knowledge of the conspiracy and its purposes and had prior or contemporaneous understanding of the conspiracy beyond the mere sales agreements, they could be convicted of conspiracy to violate the Dyer Act, section 2313 of this title. U. S. v. Mayes, C.A.6 (Ky.) 1975, 512 F.2d 637, certiorari denied 95 S.Ct. 2629, 422 U.S. 1008, 45 L.Ed.2d 670, certiorari denied 96 S.Ct. 69, 423 U.S. 840, 46 L.Ed.2d 59. Conspiracy 40.1

It was not necessary in prosecution for conspiracy to receive and conceal stolen goods moving in interstate commerce to establish formal agreement between defendants, but it was sufficient if unlawful agreement could be inferred from all circumstances. U. S. v. Hearn, C.A.6 (Tenn.) 1974, 496 F.2d 236, certiorari denied 95 S.Ct. 622, 419 U.S. 1048, 42 L.Ed.2d 642. Conspiracy 47(11)

18 U.S.C.A. § 371

Where defendants planned to sell stolen securities, regardless of whether they had an interstate or intrastate character, scope of the conspiracy could be found broad enough to imply intent to commit a federal crime. U. S. v. Iacovetti, C.A.5 (Fla.) 1972, 466 F.2d 1147, certiorari denied 93 S.Ct. 963, 410 U.S. 908, 35 L.Ed.2d 270, certiorari denied 93 S.Ct. 973, 410 U.S. 908, 35 L.Ed.2d 270. Conspiracy 28(3)

Conspiracy to violate Motor Vehicle Theft Act, § 2312 of this title, in transportation of stolen automobile in interstate commerce is not ended by illegal transportation of stolen automobile when fruits of such transportation are yet to be obtained and divided by conspirators. Koury v. U.S., C.A.6 (Mich.) 1954, 217 F.2d 387. Conspiracy 28(3)

There could have been no conviction of a conspiracy to violate National Stolen Property Act, former § 415 of this title, without knowledge that the checks had been forged and counterfeited. U.S. v. Gardner, C.A.7 (Ind.) 1948, 171 F.2d 753.

In prosecution for receiving and having possession of stolen goods moving in foreign commerce and for conspiracy to steal and conceal the goods, so far as respects receiving, it was enough that defendants knew that the goods had been stolen, and it was not necessary that they should also know them to have been stolen from foreign commerce, but such a scienter was necessary as respects prosecution for conspiracy. U.S. v. Sherman, C.A.2 (N.Y.) 1948, 171 F.2d 619, certiorari denied 69 S.Ct. 1484, 337 U.S. 931, 93 L.Ed. 1738. Conspiracy 24.5; Receiving Stolen Goods 3

In prosecution charging transportation in interstate commerce of stolen goods and conspiracy to transport stolen goods in interstate commerce, record showed that slot machines forming basis of charge were taken from defendants' premises by state officers under a valid search warrant and turned over to sheriff, so that subsequent removal of the machines by defendants constituted a theft. Reynolds v. U.S., C.C.A.5 (Ala.) 1945, 152 F.2d 586, certiorari denied 66 S.Ct. 959, 327 U.S. 803, 90 L.Ed. 1028. Receiving Stolen Goods 2

Interstate transportation must be involved in conspiracy to support a conviction of conspiracy to transport in interstate commerce stolen money of the value of $5,000 or more. Crain v. U.S., C.C.A.5 (Fla.) 1945, 148 F.2d 615. Conspiracy 28(3)

That one of three alleged conspirators had left the state, and that the other two were on the point of leaving for points outside the state when arrested, did not show unlawful agreement to transport or cause to be transported in interstate commerce stolen money of the value of $5,000 or more in violation of former § 418a of this title. Crain v. U.S., C.C.A.5 (Fla.) 1945, 148 F.2d 615. Conspiracy 28(3)

Knowledge that securities are being moved in interstate commerce is necessary to a conviction for conspiring to transport them. United States v. Bollenbach, C.C.A.2 (N.Y.) 1944, 147 F.2d 199, certiorari granted 65 S.Ct. 915, 324 U.S. 837, 89 L.Ed. 1401, reversed on orher grounds 66 S.Ct. 402, 326 U.S. 607, 90 L.Ed. 350. Conspiracy 24.5

A conspiracy to cause stolen securities to be transported in interstate commerce does not exist unless it is understood to be a part of the project that the securities shall cross state lines. U S v. Crimmins, C.C.A.2 (N.Y.) 1941, 123 F.2d 271. Conspiracy 34

Receipt of stolen automobile for personal use, without knowledge of interstate transportation or participation in general plan did not warrant conviction of conspiracy to violate National Motor Vehicle Theft Act, § 2312 of this title. Linde v. U.S., C.C.A.8 (S.D.) 1926, 13 F.2d 59. Conspiracy 47(11)

Where United States marshal had seized automobile used in transportation of intoxicating liquor, conspiracy to deprive the United States of its title and possession was conspiracy to defraud the United States of property

interest, in violation of former § 88 of this title [now this section], whether the automobile had been obtained by legal or illegal seizure. Cagle v. U.S., C.C.A.6 (Tenn.) 1925, 3 F.2d 746.

Defendant, who offered to pay other persons certain amount if they would get possession of automobile, which had been seized by United States marshal, and deliver it to certain place, was guilty of conspiracy to defraud the United States, under former § 88 of this title [now this section], when offerees acted on offer, though, after taking possession of automobile, they abandoned it without delivery at such place. Cagle v. U.S., C.C.A.6 (Tenn.) 1925, 3 F.2d 746.

Custody of garage keeper, holding by direction of marshal, was sufficient possession by United States to sustain prosecution, under former § 88 of this title [now this section], for conspiracy to defraud the United States of title and possession of automobile, seized by marshal because used in transportation of intoxicating liquor. Cagle v. U.S., C.C.A.6 (Tenn.) 1925, 3 F.2d 746.

199. Subversive activities, particular frauds and offenses

A conspiracy under Smith Act, § 2385 of this title, is proved only if the government can show a conspiracy to teach people to take concrete action toward the violent overthrow of existing government as soon as possible. U. S. v. Kuzma, C.A.3 (Pa.) 1957, 249 F.2d 619. Conspiracy 47(3.1)

An individual defendant cannot be convicted of wilful and knowing adherence to a Smith Act conspiracy, § 2385 of this title, unless something said by him or communicated to him shows his understanding that, beyond endorsing the idea and objective of violent overthrow of the existing government, particular action to that end is projected and is to be advocated. U. S. v. Kuzma, C.A.3 (Pa.) 1957, 249 F.2d 619. Conspiracy 28(3)

In prosecution for conspiracy for advocacy of overthrow of government by force or violence and to organize Communist Party as group advocating overthrow by force and violence, trial court could determine as a matter of law that a near and present danger existed that the government would be overthrown by force or violence due to the acts of the defendants arising out of statements, utterances and teachings of defendants which justified the application of the Smith Act, § 2385 of this title, and such application did not violate U.S.C.A. Amend. 1, and trial court's refusal to hold hearing for presentation of evidence upon issue of existence of near and present danger was not error. Bary v. U. S., C.A.10 (Colo.) 1957, 248 F.2d 201. Conspiracy 45; Constitutional Law 90.1(2)

In prosecution for conspiracy for advocacy of overthrow of the government by force and violence and to organize Communist Party as group advocating such overthrow by force and violence, existence of clear and present danger that government would be overthrown by force and violence arising out of acts and conduct of defendants was not an essential element of the crime charged in the indictment but was merely judicial yardstick to be used in determining whether U.S.C.A. Amend. 1 immunized from punishment the statements, utterances, and teachings of defendants, and failure of indictment to charge that defendants' conduct constituted such clear and present danger did not render indictment void. Bary v. U. S., C.A.10 (Colo.) 1957, 248 F.2d 201. Conspiracy 28(3); Conspiracy 43(6)

In prosecution for conspiracy to violate the Smith Act, § 2385 of this title, making it an offense to advocate forcible overthrow of the government, trial court was not required to find that alleged conspirators had agreed on a precise set of circumstances under which they would attempt to strike down the government and the existence or likely existence of those particular circumstances in order to determine that there was a "clear and present danger" within meaning of rule that one has no constitutional right of free speech to advocate that which constitutes a "clear and present danger" to the government. United States v. Flynn, C.A.2 (N.Y.) 1954, 216 F.2d 354, certiorari denied 75 S.Ct. 295, 348 U.S. 909, 99 L.Ed. 713, order withheld 75 S.Ct. 285, 99 L.Ed. 1298, rehearing denied 75 S.Ct. 436, 348 U.S. 956, 99 L.Ed. 747. Constitutional Law 90.1(2)

Where a conspiracy to destroy the government by force or violence in violation of the Smith Act, § 2385 of this title, is involved, "clear and present danger" within meaning of rule that one has no constitutional right of free speech to advocate that which constitutes a "clear and present danger" to the government, connotes no more than that setting in which defendants have conspired is such as to lead reasonably to conclusion that their teachings may result in an attempt at overthrow of the government. United States v. Flynn, C.A.2 (N.Y.) 1954, 216 F.2d 354, certiorari denied 75 S.Ct. 295, 348 U.S. 909, 99 L.Ed. 713, order withheld 75 S.Ct. 285, 99 L.Ed. 1298, rehearing denied 75 S.Ct. 436, 348 U.S. 956, 99 L.Ed. 747. Constitutional Law 90.1(2)

Former § 11 of this title, making it unlawful to conspire to advocate overthrow or destruction of the government by force or violence, did not prohibit the teaching or advocacy of peaceful change in social, economic or political institutions, no matter how fundamental or far-reaching or drastic such proposals might be. U.S. v. Foster, S.D.N.Y.1949, 9 F.R.D. 367. Conspiracy 28(3)

200. Travel and transportation, particular frauds and offenses

If defendant was a party to conspiracy to violate the Mann Act, section 2421 et seq. of this title, it was immaterial whether girl rode across state line in his automobile or in automobile of a confederate. U. S. v. Day, C.A.6 (Ky.) 1968, 392 F.2d 192, certiorari denied 89 S.Ct. 113, 393 U.S. 838, 21 L.Ed.2d 108. Conspiracy 41

In prosecution for conspiracy to violate the Mann Act, § 2422 of this title, a government witness who was the one concerned in the transaction was not a conspirator even though a willing object of interstate transportation for the purposes of prostitution. U. S. v. Frank, C.A.3 (Pa.) 1961, 290 F.2d 195, certiorari denied 82 S.Ct. 38, 368 U.S. 821, 7 L.Ed.2d 26. Criminal Law 507(1)

Defendants who induced prostitutes to keep appointments a few city blocks from houses of prostitution in Washington, D.C., knowing that many prostitutes traveled by taxicab, were not guilty of conspiracy to violate White Slave Traffic Act, § 2422 of this title, making it a felony for any person knowingly to "transport or cause to be transported", a woman for immoral purposes. Graham v. U.S., App.D.C.1946, 154 F.2d 325, 81 U.S.App.D.C. 49. Conspiracy 28(3)

Convictions for conspiracy to violate White Slave Traffic Act, § 2422 of this title, could not be sustained on theory that defendants conspired to violate former § 399 of this title, dealing with the offense of inducing transportation of a woman by common carrier for immoral purposes, where indictment did not allege that defendant conspired to cause anyone to be transported on the line or route of any common carrier, and record showed that cases were tried and jury was instructed only with reference to former § 398 of this title dealing with the transportation of a woman for immoral purposes. Graham v. U.S., App.D.C.1946, 154 F.2d 325, 81 U.S.App.D.C. 49. Conspiracy 28(3)

Conduct of defendant, charged with having transported in interstate commerce girl for immoral purposes and with having conspired to commit such offense, is beyond federal punishment, in absence of essential factor of interstate transportation in furtherance of immoral purposes. Ellis v. U.S., C.C.A.8 (Mo.) 1943, 138 F.2d 612. Conspiracy 28(3)

201. Weapons offenses, particular frauds and offenses

Crime of using or carrying firearms during and in relation to commission of drug trafficking offense is "offense against the United States," and thus, it may be charged as unlawful objective of conspiracy. U.S. v. Hill, C.A.10 (Okla.) 1992, 971 F.2d 1461. Conspiracy 25; Conspiracy 28(3)

Count of indictment charging that defendant and at least three other individuals, acting in concert and in order to carry out a well-planned scheme, caused one of conspirators to commit the substantive offense of receiving a firearm which had traveled in interstate commerce did not fail to charge conspiracy on theory that section 1202 of

Appendix to this title proscribing receiving and possessing of firearm which had moved in interstate commerce, after conviction of a felony, did not purport to punish one who "causes" a felon to receive a proscribed firearm. U. S. v. Lupino, C.A.8 (Minn.) 1973, 480 F.2d 720, certiorari denied 94 S.Ct. 257, 414 U.S. 924, 38 L.Ed.2d 159. Conspiracy 43(6)

Elements of conspiracy to violate National Firearms Act, section 5801 et seq. of Title 26, under this section are that two or more persons in some manner, whether positively or tacitly, came to mutual understanding to try to accomplish common and unlawful plan, i.e., to violate certain provisions of section 5801 et seq. of Title 26, that defendant knowingly and willfully became member of such conspiracy, that one of conspirators during existence of conspiracy knowingly committed at least one of overt acts described in indictment, and that such overt act was knowingly committed in furtherance of conspiracy. U.S. v. Mulherin, S.D.Ga.1981, 529 F.Supp. 916, affirmed 710 F.2d 731, certiorari denied 104 S.Ct. 402, 464 U.S. 964, 78 L.Ed.2d 343, certiorari denied 104 S.Ct. 1305, 465 U.S. 1034, 79 L.Ed.2d 703. Conspiracy 28(3)

202. Miscellaneous frauds and conspiracies, particular frauds and offenses

When Congress provides criminal sanctions for violations of executive orders that it empowers the President to issue, such violation constitutes an "offense" for purposes of conspiracy statute. U.S. v. Arch Trading Co., C.A.4 (Va.) 1993, 987 F.2d 1087. Conspiracy 28(1)

Scheme, object of which was to defraud United States of right to implement its foreign policy free from stealth, false statement and fraud, would support conviction of conspiracy to defraud the Government. U.S. v. Elkins, C.A.11 (Ga.) 1989, 885 F.2d 775, certiorari denied 110 S.Ct. 1300, 494 U.S. 1005, 108 L.Ed.2d 477. Conspiracy 33(2.1)

Defendant could be convicted of conspiring with several other defendants to defraud the United States by impeding Internal Revenue Service's efforts to ascertain and assess revenues through a scheme designed to conceal true nature and correct amounts of moneys paid by corporation for purchase of scrap metal, although defendant contended Government had not proven Internal Revenue Service was impeded by cash payment scheme. U.S. v. Olgin, C.A.3 (Pa.) 1984, 745 F.2d 263, certiorari denied 105 S.Ct. 2321, 471 U.S. 1099, 85 L.Ed.2d 840. Conspiracy 33(7)

Conspiring to fail to file currency transaction report in order to impair Internal Revenue Service's ability to collect data that would have been in reports involves dishonest impeding of lawful governmental function, and therefore, constitutes conspiracy to defraud United States. U.S. v. Sans, C.A.11 (Fla.) 1984, 731 F.2d 1521, rehearing denied 738 F.2d 451, certiorari denied 105 S.Ct. 791, 469 U.S. 1111, 83 L.Ed.2d 785. Conspiracy 33(7)

Conspiracy against the United States can encompass transactions in which conspirators do not realize benefits directly from the United States but conspire to defraud United States for direct benefit of others and indirect benefit of themselves. U.S. v. Carruth, C.A.9 (Cal.) 1983, 699 F.2d 1017, certiorari denied 104 S.Ct. 698, 464 U.S. 1038, 79 L.Ed.2d 164. Conspiracy 33(1)

This section making it an offense to conspire to defraud the United States is broad enough to cover alleged conduct of defendants in conspiring to defraud United States of its rights to have the official business of the SBA conducted honestly and impartially, to have personnel of the agency free to conduct business without exertion upon them of undue pressure and influence, and of right to the unbiased services of supervisory loan specialist free from bias and fraud resulting from his personal and pecuniary interest in business sought to be financed by the SBA guaranteed loan. U. S. v. Smith, C.A.10 (Okla.) 1974, 496 F.2d 185, certiorari denied 95 S.Ct. 225, 419 U.S. 964, 42 L.Ed.2d 179, rehearing denied 95 S.Ct. 646, 419 U.S. 1060, 42 L.Ed.2d 658. Conspiracy 33(3)

Financial loss to telephone company and gain to defendants was unnecessary to conviction for conspiracy to

commit offenses against United States and for transmitting by wire and radio communications in interstate commerce certain signals and sounds in furtherance of preconceived scheme to defraud telephone company of revenue for use of long distance telephone service and facilities. Brandon v. U. S., C.A.10 (Okla.) 1967, 382 F.2d 607. Conspiracy 28(3); Telecommunications 1014(7)

The offenses of mail fraud and conspiracy with relation to defendant's use of "referral plan" for sale of television sets did not depend on whether prospective buyers who had been referred by customers were disqualified, in view of misrepresentations and pretenses with relation to sponsorship and financing of commissions and bonuses and obtaining of sets without payment of money out of pocket. Nickles v. U. S., C.A.10 (Utah) 1967, 381 F.2d 258. Postal Service 35(10)

Seller's talk, if within any proper and reasonable bounds, was not indictable under former §§ 88 [now this section] and 338 of this title, but honest belief in business success would not serve to purify a scheme, that was in fact fraudulent. Deaver v. U.S., App.D.C.1946, 155 F.2d 740, 81 U.S.App.D.C. 148, certiorari denied 67 S.Ct. 121, 329 U.S. 766, 91 L.Ed. 659. Conspiracy 32; Postal Service 35(10)

The offense of setting on foot a military expedition against the territory of any foreign prince, etc., with whom the United States are at peace, denounced by former § 25 of this title, did not require such a plurality of agents that those plotting such expedition could not have been punished for conspiracy, under former § 88 of this title [now this section]. U.S. v. Ram Chandra, N.D.Cal.1917, 254 F. 635. Conspiracy 28(3)

A defendant cannot have been guilty of conspiracy to violate former § 44 of this title, by conspiring to return a person to a condition of peonage, if the condition contemplated was not that of "peonage" as the latter term has been authoritatively defined. Taylor v. U.S., C.C.A.4 (S.C.) 1917, 244 F. 321, 156 C.C.A. 607.

Where servant prosecuted before state magistrate for breach of contract of employment had paid all indebtedness to master, magistrate would not have rendered himself liable to conviction of conspiracy to violate peonage statute, former § 444 of this title, though he had some agreement with master that latter might take servant into his custody. Taylor v. U.S., C.C.A.4 (S.C.) 1917, 244 F. 321, 156 C.C.A. 607. Conspiracy 28(3); Slaves 24

A conspiracy to make settlement on Indian lands and to return to the Indian country, after being removed therefrom, was not an indictable offense, within the meaning of former § 88 of this title [now this section] or one that could have been prosecuted by criminal proceedings. U.S. v. Payne, D.C.Kan.1884, 22 F. 426. Conspiracy 33(2.1)

Defendants' alleged actions of misrepresenting its price for medical supplies could constitute a material fraud on Medicare, and therefore indictment sufficiently laid out a crime of fraud and conspiracy to defraud; indictment alleged that defendants knew Medicare conducted audits of purchasing records apparently for the purpose of uncovering improper activities, such as illegal kickbacks, and indictment further alleged that defendants attempted to help customer overcome any appearances of improper activity by altering receipts to show customer paid something for pumps rather than nothing, and thus, defendants actions may have assisted customer in hiding improper activities, such as illegal kickbacks. U.S. v. Carroll, S.D.Ill.2004, 320 F.Supp.2d 748. Health 988

Jobs for third parties demanded by defendant union officials from automobile manufacturer to avoid continuation of strike were not things of value to defendants, as required to support conviction for conspiracy to violate provisions of Labor Management Relations Act prohibiting certain financial transactions; defendants were not recipients of wages paid by manufacturer, and manufacturer received services in exchange for wages it paid to third parties. U.S. v. Campbell, E.D.Mich.2003, 291 F.Supp.2d 547, reversed 398 F.3d 407, rehearing en banc denied, on remand 2006 WL 897436. Conspiracy 28(3)

Defendants did not violate statute prohibiting conspiracy to defraud United States by allegedly using a Minority

18 U.S.C.A. § 371

Business Enterprise (MBE) "front company" with respect to federally assisted construction project contracts to frustrate the "lawful governmental function" of various federal agencies; Government did not allege defendants violated any MBE program statute, and did not state what duty defendants violated that was owed to Government, but rather claimed that federally assisted construction contracts were improperly credited toward MBE goals of various governmental agencies. U.S. v. Barker Steel Co., Inc., D.Mass.1991, 774 F.Supp. 65, reversed 985 F.2d 1123, rehearing denied 985 F.2d 1136. Conspiracy 33(6)

Creation of artificial tax deductions by using fraudulent appraisal is "deceit" or "craft" for purposes of prohibition against conspiracy to defraud United States. U.S. v. Mauser, S.D.N.Y.1989, 723 F.Supp. 995. Conspiracy 33(7)

V. JURISDICTION AND PRELIMINARY MATTERS

<Subdivision Index>

231. Jurisdiction, jurisdiction and preliminary matters--Generally

Federal court would have jurisdiction to entertain prosecution for conspiring to receive stolen goods if any of members of conspiracy believed that goods were traveling from outside the state, even if there was no such travel. U.S. v. Rosa, C.A.2 (N.Y.) 1994, 17 F.3d 1531, certiorari denied 115 S.Ct. 211, 130 L.Ed.2d 140.

United States would have jurisdiction over one who, while in a foreign country, conspires with persons in the United States to kill someone outside of the United States. Melia v. U. S., C.A.2 (Conn.) 1981, 667 F.2d 300. Criminal Law 97(.5)

The district court has jurisdiction over a conspiracy and all those proved to be conspirators if the conspiracy is designed to have criminal effects within the United States and if there is sufficient proof that at least one of the conspirators committed an overt act in furtherance of the conspiracy within the territorial jurisdiction of the district court. U. S. v. Winter, C.A.5 (Fla.) 1975, 509 F.2d 975, certiorari denied 96 S.Ct. 39, 423 U.S. 825, 46 L.Ed.2d 41 . Criminal Law 97(.5)

If venue is proper, Texas Federal District Court would have jurisdiction to try case involving unlawful transportation in interstate commerce of falsely made and forged checks and of conspiracy to unlawfully transport such. Downing v. U. S., C.A.5 (Tex.) 1965, 348 F.2d 594, certiorari denied 86 S.Ct. 235, 382 U.S. 901, 15 L.Ed.2d 155. Criminal Law 93

Federal District Court did not lose jurisdiction of prosecution for conspiracy to violate former section 123 of Title 27, prohibiting importation of liquor into dry state, where after completion of conspiracy and overt acts in furtherance thereof state prohibition law was repealed. Barker v. U.S., C.C.A.8 (Ark.) 1936, 86 F.2d 284. Criminal Law 15

Where an indictment charges a conspiracy formed in each of two federal districts to commit a crime and overt acts committed in each district, it is not essential to jurisdiction in one district that all defendants should have participated in overt acts in that district, but it is sufficient if some of them did. Rudner v. U. S., C.C.A.6 (Ohio) 1922, 281 F. 516, 2 Ohio Law Abs. 242, certiorari denied 43 S.Ct. 95, 260 U.S. 734, 67 L.Ed. 487. Criminal Law 113

Agency expertise and policymaking abilities were not needed to decide whether any organizations referenced in indictment charging defendant with health care fraud and related conspiracy were "related organizations" with respect to defendant's home health agencies, insofar as that determination affected whether defendant knowingly concealed organizations' related status in submitting Medicare cost reports, and no statute or regulation unambiguously required that question of whether organizations involved were related be referred to administrative body, and therefore doctrine of primary jurisdiction did not apply to warrant stay or dismissal of defendant's prosecution. U.S. v. Seibert, S.D.Iowa 2005, 403 F.Supp.2d 904. Health 987

The mere fact that one of persons charged with conspiracy, in indictment clearly alleging venue and commission of overt acts in district, participated outside district in conspiracy, does not affect district court's jurisdiction of such person or offense. Kranz v. Hiatt, M.D.Pa.1948, 79 F.Supp. 436, affirmed 174 F.2d 741, certiorari denied 69 S.Ct. 1508, 337 U.S. 948, 93 L.Ed. 1750. Criminal Law 113

232. ---- Place of formation of conspiracy, jurisdiction, jurisdiction and preliminary matters

If a conspiracy is entered into within the jurisdiction of the trial court, the indictment will lie there, though an overt act is shown to have been committed in another jurisdiction, or even in a foreign country. Hyde v. Shine, U.S.Cal.1905, 25 S.Ct. 760, 199 U.S. 62, 50 L.Ed. 90. See, also, Baker v. U.S., C.C.A.Va.1927, 21 F.2d 903, certiorari denied 48 S.Ct. 301, 276 U.S. 621, 72 L.Ed. 736; U.S. v. Wells, N.Y.1912, 192 F. 870, 113 C.C.A. 194, certiorari denied 32 S.Ct. 842, 225 U.S. 714, 56 L.Ed. 1269.

Conspiracy indictment may be prosecuted either at place where conspiracy was formed or where any of overt acts were committed. U. S. v. Boswell, C.A.4 (S.C.) 1967, 372 F.2d 781, certiorari denied 87 S.Ct. 2033, 387 U.S. 919, 18 L.Ed.2d 972. Criminal Law 113

Conspiracy may be prosecuted either at place where conspiracy was formed or at place where any of the overt acts were submitted. Finley v. U.S., C.A.5 (Ga.) 1959, 271 F.2d 777, certiorari denied 80 S.Ct. 1065, 362 U.S. 979, 4 L.Ed.2d 1014. Criminal Law 112(3)

18 U.S.C.A. § 371

The federal district court for district from which persons charged with conspiracy to transport women in interstate commerce for purpose of prostitution set out on their interstate journeys had jurisdiction of prosecution, and venue thereof in such district was proper. Dodson v. U. S., C.A.6 (Ky.) 1954, 215 F.2d 196. Criminal Law 113

In conspiracy prosecution, overt acts need not have been committed within jurisdiction of court where defendants conspired at a point within jurisdiction of the court. Chew v. U.S., C.C.A.8 (Ark.) 1925, 9 F.2d 348.

Court for federal district wherein a conspiracy was entered into to prepare a military expedition against a country with which the United States was at peace, in violation of former § 25 of this title had jurisdiction of prosecution, though supplies for expedition were shipped and stored outside district. De Orozco v. U.S., C.C.A.5 (Tex.) 1916, 237 F. 1008, 151 C.C.A. 70. Criminal Law 113

Where conspirators had been doing business together in the judicial district in which they were tried prior to and at the time of the crime, and there was no evidence that they had been together outside of the district, the jury could find the conspiracy to have been in that district. Marrash v. U.S., C.C.A.2 (N.Y.) 1909, 168 F. 225, 93 C.C.A. 511 . Criminal Law 564(3)

It is not necessary to the conviction of persons charged with a conspiracy that they should have resided within the jurisdiction of the court trying the indictment at the time the conspiracy was formed, if the conspiracy was entered into, and had its headquarters, in that jurisdiction. U.S. v. Howell, W.D.Mo.1892, 56 F. 21. Criminal Law 97(1)

A conspiracy may be prosecuted either in the district where the conspiracy was formed or at any place where any of the overt acts were committed. U. S. v. Brandom, W.D.Mo.1970, 320 F.Supp. 520. Criminal Law 113

All members of a conspiracy may be prosecuted where conspiracy was formed or where any overt act was committed. U. S. v. Boyance, E.D.Pa.1963, 215 F.Supp. 390. Criminal Law 113

Place of conspiracy is immaterial if jurisdiction is fixed by averment of commission of overt act within district. U. S. v. Merrick, W.D.Mo.1962, 207 F.Supp. 929. Conspiracy 23.1

A conspiracy to do an unlawful act, formed in one district, and in part executed there, is punishable in that district, though it was consummated in other parts of the United States. U.S. v. Noblom, C.C.La.1878, 27 F.Cas. 181, No. 15896. Criminal Law 113

233. ---- Place where overt act committed, jurisdiction, jurisdiction and preliminary matters

Jurisdiction for prosecution of federal conspiracy charge exists in any district where overt acts have been committed. U. S. v. Phillips, C.A.8 (Mo.) 1970, 433 F.2d 1364, certiorari denied 91 S.Ct. 900, 401 U.S. 917, 27 L.Ed.2d 819. Criminal Law 113

Defendant charged with unlawful transportation in interstate commerce of falsely made and forged checks and with conspiracy to unlawfully transport such was subject to prosecution in district for any criminal conduct of his coconspirators committed there in furtherance of conspiracy as partner in crime and as an aider and abettor even though defendant never was present in the district. Downing v. U. S., C.A.5 (Tex.) 1965, 348 F.2d 594, certiorari denied 86 S.Ct. 235, 382 U.S. 901, 15 L.Ed.2d 155. Criminal Law 113

Pennsylvania federal district court did not lack jurisdiction over conspirator whose criminal activity was confined to New Jersey, where several overt acts of the other conspirators occurred within the federal district in Pennsylvania. U. S. v. Boyance, C.A.3 (Pa.) 1964, 329 F.2d 372, certiorari denied 84 S.Ct. 1645, 377 U.S. 965, 12 L.Ed.2d 736. Criminal Law 113

Where other defendants had formed conspiracy and committed overt acts within territorial jurisdiction of court, and appealing defendant knowingly joined such conspiracy and committed overt acts in furtherance of conspiracy outside territorial limits of court, and later other defendants committed additional overt acts in furtherance of conspiracy within territorial limits of court, court had jurisdiction to try appealing defendant for offense of conspiracy. Dedmore v. U. S., C.A.9 (Wash.) 1963, 322 F.2d 938. Criminal Law 113

Where overt acts, which were pleaded and proved in prosecution in the United States district court for the Southern District of New York for conspiracy to take possession of merchandise stolen while moving in interstate commerce, occurred in New York City, jurisdictional requirements were satisfied. U. S. v. Patrisso, C.A.2 (N.Y.) 1958, 262 F.2d 194. Criminal Law 113

A court has jurisdiction over a conspiracy prosecution if any overt act in furtherance of conspiracy is committed within territorial jurisdiction of court, even though other overt acts may be alleged to have occurred elsewhere. McDonough v. U.S., C.A.10 (Okla.) 1955, 227 F.2d 402. Criminal Law 113

Where one of the specifically alleged overt acts in furtherance of conspiracy was allegedly committed in district in which conspiracy prosecution was laid, that District Court had jurisdiction, even though conspiracy was formed in another district. McDonough v. U.S., C.A.10 (Okla.) 1955, 227 F.2d 402. Criminal Law 113

Proof that alleged conspiracy to transport women in interstate commerce for purpose of prostitution was formed in federal district wherein defendants were indicted and tried was unnecessary to invest district court for such district with jurisdiction of prosecution, as prosecution for conspiracy may be maintained in any federal district wherein an overt act was committed in furtherance of conspiracy. Dodson v. U. S., C.A.6 (Ky.) 1954, 215 F.2d 196. Criminal Law 113

In prosecution for conspiracy to commit offenses against the United States relating to the purchase, sale, receipt, and transportation of narcotics, evidence was sufficient to establish that federal District Court in New Jersey had jurisdiction, though some of the activities occurred beyond the borders of New Jersey. U.S. v. Cohen, C.A.3 (N.J.) 1952, 197 F.2d 26. Criminal Law 564(1)

If any overt act in furtherance of conspiracy occurred within jurisdiction of trial court, then that court has jurisdiction of conspiracy prosecution, even though other overt acts may have been committed or conspiracy may have been entered into in a different district or state. U.S. v. Bazzell, C.A.7 (Ill.) 1951, 187 F.2d 878, certiorari denied 72 S.Ct. 73, 342 U.S. 849, 96 L.Ed. 641, rehearing denied 72 S.Ct. 171, 342 U.S. 889, 96 L.Ed. 667. Criminal Law 113

In prosecution for conspiracy to violate former §§ 31 to 42 of Title 50, by unlawfully disclosing information affecting national defense, fact that defendant's participation in conspiracy may have been outside the district of New Jersey where prosecution was had was of no consequence, where six of the overt acts set forth in indictment were clearly alleged to have taken place in New Jersey and there was evidence to sustain allegation as to some of them. U. S. ex rel. Kranz v. Humphrey, C.A.3 (Pa.) 1949, 174 F.2d 741, certiorari denied 69 S.Ct. 1508, 337 U.S. 948, 93 L.Ed. 1750. Criminal Law 113

Proof that alleged conspiracy to transport in interstate commerce more than $5,000 of stolen money knowing it to be stolen or alleged overt act to effect the object of such conspiracy, or both, occurred in Arkansas, was required to establish jurisdiction of federal court in Arkansas. Buchanan v. U. S., C.C.A.8 (Ark.) 1947, 164 F.2d 15. Criminal Law 113

A prosecution for conspiracy may be maintained in any federal district where an overt act is committed in furtherance thereof even though some conspirators never entered that state or district. Davis v. U.S., C.C.A.5 (Ga.) 1945, 148 F.2d 203, certiorari denied 65 S.Ct. 1570, 325 U.S. 888, 89 L.Ed. 2001. See, also, Easterday v.

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McCarthy, C.C.A.N.Y.1919, 256 F. 651. Criminal Law 113

In prosecution for conspiracy, where some of the overt acts committed by other defendants in furtherance of conspiracy occurred in Georgia, Federal District Court in Georgia had jurisdiction notwithstanding that defendant was a resident of Florida, that conspiracy was formed in Florida, and that only overt acts participated in by defendant took place in Florida. Davis v. U.S., C.C.A.5 (Ga.) 1945, 148 F.2d 203, certiorari denied 65 S.Ct. 1570, 325 U.S. 888, 89 L.Ed. 2001. Criminal Law 113

Federal court for district in which government contracts which were obtained pursuant to conspiracy to defraud the United States were carried out had jurisdiction of prosecution for such conspiracy. Winebrenner v. U.S., C.C.A.8 (Mo.) 1945, 147 F.2d 322, certiorari denied 65 S.Ct. 1197, 325 U.S. 863, 89 L.Ed. 1983. Criminal Law 113

Where each of substantive offense counts charged that accused and his codefendants mailed a threatening letter in the Western Division of Western District of Tennessee, and another count of indictment charged that an overt act in furtherance of conspiracy was committed in such district, and accused pleaded guilty, court had jurisdiction over offenses charged and person of accused. Spencer v. Hunter, C.C.A.10 (Kan.) 1944, 139 F.2d 828. Criminal Law 113

Where false affidavits executed in connection with the sale of gold to the mint at San Francisco in the Southern Division of the Northern District of California were addressed to the superintendent of the mint at San Francisco and were acted upon at San Francisco, offenses of presenting false claims and of conspiring to commit an offense against the United States were triable in the Southern Division of the Northern District of California, though the affidavits were executed in the Northern Division and were allegedly presented there with the gold to a bank for transmission to the mint. Fuller v. U.S., C.C.A.9 (Cal.) 1940, 110 F.2d 815, certiorari denied 61 S.Ct. 29, 311 U.S. 669, 85 L.Ed. 430. Criminal Law 113

In prosecution for conspiring to deal in distilled spirits on which no tax had been paid, evidence that overt acts in furtherance of the conspiracy were committed in the Eastern District of Missouri was sufficient to support a charge of a Missouri conspiracy, notwithstanding that proof allegedly established an Illinois conspiracy because conspiracy was formed there. Diehl v. U.S., C.C.A.8 (Mo.) 1938, 98 F.2d 545. Criminal Law 113

Place of conspiracy is immaterial, provided overt act is committed within court's jurisdiction. Enrique Rivera v. U.S., C.C.A.1 (Puerto Rico) 1932, 57 F.2d 816. See, also, Diehl v. U.S., C.C.A.Mo.1938, 98 F.2d 545; U.S. v. Eliopoulos, D.C.N.J.1942, 45 F.Supp. 777. Criminal Law 97(.5)

Doing overt act in district of Massachusetts in furtherance of alleged conspiracy was sufficient to vest jurisdiction of crimes alleged in United States court for that district. U.S. v. Rotman, D.C.R.I.1928, 23 F.2d 860. Conspiracy 27; Criminal Law 113

Commission of necessary overt act confers jurisdiction on court where overt act is committed. Baker v. U. S., C.C.A.4 (Va.) 1927, 21 F.2d 903, certiorari denied 48 S.Ct. 301, 276 U.S. 621, 72 L.Ed. 736. See, also, Burton v. Smithers, C.C.A.Va.1929, 31 F.2d 966. Criminal Law 113

Place of conspiracy is immaterial, if overt acts were committed within court's jurisdiction. Woitte v. U.S., C.C.A.9 (Or.) 1927, 19 F.2d 506, certiorari denied 48 S.Ct. 84, 275 U.S. 545, 72 L.Ed. 417. See, also, Crosby v. U.S., C.A.Fla.1956, 231 F.2d 679, certiorari denied 77 S.Ct. 46, 352 U.S. 831, 1 L.Ed.2d 52, rehearing denied 77 S.Ct. 322, 352 U.S. 955, 1 L.Ed.2d 245. Conspiracy 23

Conspiracy trial might be held in Texas, where overt acts were committed by some of defendants therein, although other defendants remained in another state. Chapman v. U.S., C.C.A.5 (Tex.) 1925, 10 F.2d 124, certiorari denied 46 S.Ct. 482, 271 U.S. 667, 70 L.Ed. 1141. Criminal Law 97(1)

18 U.S.C.A. § 371

In prosecution for conspiracy to violate Bankruptcy Act, former § 52 of Title 11, by concealing property of bankrupt, where one overt act laid was interview between two conspirators, and two other acts were alleged, though these acts did not include one conspirator, he might still be indicted and tried where interview took place. Kaplan v. U.S., C.C.A.2 (N.Y.) 1925, 7 F.2d 594, certiorari denied 46 S.Ct. 107, 269 U.S. 582, 70 L.Ed. 423.

Where some of the defendants, charged with criminal conspiracy in restraint of interstate commerce, in violation of Sherman Anti-Trust Act, §§ 1 to 7 of Title 15, were corporations of other states, but the conspiracy was in part carried on within a district, and some of the defendants were inhabitants of the district and found there, the court of that district had jurisdiction. U. S. v. National Malleable & Steel Castings Co., D.C.Ohio 1924, 6 F.2d 40.

It is not necessary that the overt act shall have been committed within the jurisdiction in which the conspiracy was entered into. Brolaski v. U.S., C.C.A.9 (Cal.) 1922, 279 F. 1, certiorari denied 42 S.Ct. 381, 258 U.S. 625, 66 L.Ed. 797, certiorari denied 42 S.Ct. 589, 259 U.S. 586, 66 L.Ed. 1076. See, also, Newton v. U.S., 1922, 42 S.Ct. 589, 259 U.S. 586, 66 L.Ed. 1076.

A conspiracy to do a certain thing is not ended for all purposes when the plan is completed, but carries on through every act done in the execution of that plan, and a charge of conspiracy to illegally transport liquor from one state into another, and the carriage of the liquor into the latter state, was sufficient to give the court in that district jurisdiction of the offense. Lucas v. U. S., C.C.A.8 (Colo.) 1921, 275 F. 405, certiorari denied 42 S.Ct. 272, 258 U.S. 620, 66 L.Ed. 795. Criminal Law 97(1)

A conspirator, who caused trunks containing liquor to be transported on checks, and who was himself personally present in the district of the trial and on the same train with the trunks, was constructively engaged in the transportation within that district, through the railroad company as his agent. Grayson v. U.S., C.C.A.6 (Tenn.) 1921, 272 F. 553, certiorari denied 42 S.Ct. 49, 257 U.S. 637, 66 L.Ed. 409. Criminal Law 113

A prosecution for conspiracy to impede administration of justice, under former § 88 of this title [now this section] was properly brought against all conspirators in the division and district where the overt act was performed, regardless of the place where the conspiracy was formed. Harrington v. U. S., C.C.A.8 (Iowa) 1920, 267 F. 97. Criminal Law 113

It was not necessary in prosecution under former § 88 of this title [now this section], that overt act should have been done in same jurisdiction in which conspiracy was entered into. U.S. v. Baker, D.C.R.I.1917, 243 F. 741. Conspiracy 27; Criminal Law 113

The District Court for Ohio had jurisdiction under former § 88 of this title [now this section] and former § 103 of Title 28, of a prosecution for a conspiracy to use mails to defraud where some of the overt acts occurred in Ohio and others in Michigan. Shea v. U. S., C.C.A.6 (Ohio) 1916, 236 F. 97, 149 C.C.A. 307. Criminal Law 113

Where, pursuant to conspiracy to defraud the United States of internal revenue, overt acts were committed within a federal district, the court for that district had jurisdiction, regardless of where the conspiracy was entered into, and an indictment found in the Southern District of New York against defendants, who manufactured oleomargarine in Rhode Island, charging them with conspiracy to defraud the federal internal revenue laws, charged an offense of which the District Court of New York had jurisdiction. Tillinghast v. Richards, D.C.R.I.1916, 233 F. 710, appeal dismissed 37 S.Ct. 403, 243 U.S. 629, 61 L.Ed. 937.

Persons charged as conspirators to commit a federal offense are properly tried where an act was committed by co-conspirators. U. S. v. Reddin, E.D.Wis.1912, 193 F. 798. Criminal Law 113

Persons accused of conspiring to violate a law in a particular place may be tried there if they participate in overt acts there, though the unlawful agreement was made elsewhere, since participation may be proved by evidence of

their conduct elsewhere. U S v. Campbell, E.D.Pa.1910, 179 F. 762.

Conspiracy may be prosecuted at place where it was formed or where any of overt acts were committed. U. S. v. Luros, N.D.Iowa 1965, 243 F.Supp. 160, certiorari denied 86 S.Ct. 433, 382 U.S. 956, 15 L.Ed.2d 361. Criminal Law 113

Although constitutional amendment requires criminal charges to be tried in state and district wherein alleged crime was committed, in conspiracy case the place of trial may be in any state and district where overt act in furtherance of conspiracy took place. U. S. v. Merrick, W.D.Mo.1962, 207 F.Supp. 929. Criminal Law 113

Fact that one conspirator was not within state of jurisdiction when acts in furtherance of the conspiracy were committed would not serve to exculpate him. U. S. v. Brandt, N.D.Ohio 1955, 139 F.Supp. 367. Conspiracy 40.2

A conspiracy prosecution may be maintained in any district where the illegal agreement was entered into, or where any alleged overt acts took place. U S v. Kranz, D.C.N.J.1949, 86 F.Supp. 776. Criminal Law 113

Federal court for district in which overt acts allegedly were committed would have jurisdiction of prosecution for conspiracy to violate a law of the United States. U.S. v. Hughes Tool Co., D.C.Hawai'i 1948, 78 F.Supp. 409. Federal Courts 6; Criminal Law 113

In conspiracy case, conspirator may be tried in district with which he has had no contact if his coconspirators have committed overt acts there. U. S. v. Bloom, E.D.Pa.1977, 78 F.R.D. 591. Criminal Law 113

234. ---- Double jurisdiction, jurisdiction and preliminary matters

The doing of the overt act prescribed by former § 88 of this title [now this section], as necessary to the conspiracy to defraud, rendered applicable where the place of the act and of the entry into the unlawful combination were in different federal districts, provisions of former § 103 of Title 28, creating a double jurisdiction where the offense is begun in one district and completed in another. Hyde v. U.S., U.S.Dist.Col.1912, 32 S.Ct. 793, 225 U.S. 347, 56 L.Ed. 1114, Am.Ann.Cas. 1914A,614. See, also, Sloan v. U.S., C.C.A.Mo.1929, 31 F.2d 902. Criminal Law 113

In prosecution arising out of application for FHA repair loan for an indigent family with intent to divert proceeds, federal District Court in New York had jurisdiction on basis of evidence authorizing a finding that the conspiracy and overt acts, as well as charges of concealment and the making of false statements, all took place in New York, even though loan application was submitted for credit approval in New Jersey and federal court in New Jersey also could have exercised jurisdiction. U.S. v. Uram, C.C.A.2 (N.Y.) 1945, 148 F.2d 187. Criminal Law 113

A conspirator may be tried either at the place where the conspiracy was entered into or where overt act was committed. Pullin v. U.S., C.C.A.5 (Ga.) 1939, 104 F.2d 57, certiorari denied 60 S.Ct. 97, 308 U.S. 552, 84 L.Ed. 464. See, also, Hickok v. Hunter, C.C.A.Kan.1945, 150 F.2d 635, certiorari denied 66 S.Ct. 137, 326 U.S. 765, 90 L.Ed. 461; Hudspeth v. McDonald, C.C.A.Kan.1941, 120 F.2d 962, certiorari denied 62 S.Ct. 110, 314 U.S. 617, 86 L.Ed. 496, rehearing denied 65 S.Ct. 1181, 325 U.S. 892, 89 L.Ed. 2004; Smith v. U.S., C.C.A.Hawaii 1937, 92 F.2d 460; Dowdy v. U.S., C.C.A.N.C.1931, 46 F.2d 417. Criminal Law 113

Where indictment charged conspiracy between defendants residing in Pennsylvania and Ohio districts and commission of overt acts in both districts, Ohio District Court had jurisdiction. U S v. Mayer, D.C.Pa.1927, 22 F.2d 827. See, also, Arnold v. Weil, D.C.Wis.1907, 157 F. 429; U.S. v. B. Goedde & Co., D.C.Ill.1941, 40 F.Supp. 523. Criminal Law 113

18 U.S.C.A. § 371

Fact that persons accused, under former § 88 of this title [now this section] of conspiracy to misuse mails contrary to former § 338 of this title, might have conspired in number of places, did not defeat prosecution in one of such places within jurisdiction of court. Morris v. U. S., C.C.A.8 (Ark.) 1925, 7 F.2d 785, certiorari denied 46 S.Ct. 205, 270 U.S. 640, 70 L.Ed. 775.

Under U.S.C.A.Const. Amend. 6, giving accused the right to a trial in the district where the crime was committed, and former § 103 of Title 28, providing that an offense begun in one district and completed in another may be tried in either district, prosecutions for conspiracy under former § 88 of this title [now this section] could have been maintained either in the district in which the conspiracy was formed, or in any district in which an act was done to effectuate its object. Grayson v. U.S., C.C.A.6 (Tenn.) 1921, 272 F. 553, certiorari denied 42 S.Ct. 49, 257 U.S. 637, 66 L.Ed. 409. See, also, U.S. ex rel. Tassell v. Mathues, C.C.A.Pa.1926, 11 F.2d 53; Ford v. U.S., C.C.A.Cal.1926, 10 F.2d 339, affirmed 47 S.Ct. 531, 273 U.S. 593, 71 L.Ed. 793; Shea v. U.S., Ohio 1916, 236 F. 97. Criminal Law 113

Where a conspiracy to defraud the United States of public lands was originally formed in one federal district, but was carried out by means of false and fraudulent entries of such lands in another district, made with the knowledge and consent of all the conspirators, each of such overt acts constituted a renewal of the conspiracy in the latter district, and the offense might be prosecuted in either district. Arnold v. Weil, E.D.Wis.1907, 157 F. 429. Criminal Law 113

235. Affecting commerce, jurisdiction and preliminary matters

Defendant's criminal activity of setting fire to building that housed his retail dress shop substantially affected interstate commerce, and thus district court denied defendant's motion to dismiss conspiracy to commit arson and arson resulting in death charges; retail dress shop involved was end point of complicated interstate and international web of garment production and sale, and multiple dwelling apartment building was inherently part of much broader commercial market in rental properties affecting interstate commerce. U.S. v. Ferranti, E.D.N.Y.1996, 928 F.Supp. 206, affirmed 135 F.3d 116, certiorari denied 118 S.Ct. 1581, 523 U.S. 1096, 140 L.Ed.2d 795, denial of post-conviction relief affirmed 6 Fed.Appx. 67, 2001 WL 273827, certiorari denied 122 S.Ct. 58, 534 U.S. 823, 151 L.Ed.2d 27. Arson 5; Conspiracy 30

236. Venue, jurisdiction and preliminary matters

The requirement of U.S.C.A.Const. Amend. 6, that the criminal prosecution shall be had in the state and district where the crime is committed, was satisfied by laying the venue of the trial of an indictment for conspiracy to defraud the United States, contrary to former § 88 of this title [now this section] at the place where an overt act was performed. Hyde v. U.S., U.S.Dist.Col.1912, 32 S.Ct. 793, 225 U.S. 347, 56 L.Ed. 1114, Am.Ann.Cas. 1914A,614 . Criminal Law 113

Venue was proper in prosecution for conspiracy to defraud automobile distributor, defendants' former employer; in light of similarity in pattern of accepting valuable consideration from dealers or prospective dealers for new dealer franchises, common core of insider participants, and temporal overlap, there was sufficient evidence that defendants and coconspirators agreed, at leased tacitly, to defraud distributor, and there was evidence that at least one overt act by coconspirator occurred in trial district. U.S. v. Josleyn, C.A.1 (N.H.) 1996, 99 F.3d 1182, certiorari denied 117 S.Ct. 959, 519 U.S. 1116, 136 L.Ed.2d 845. Criminal Law 113

Venue in conspiracy case may be laid in district where overt acts in furtherance of conspiracy took place. U. S. v. Strickland, C.A.5 (Ga.) 1974, 493 F.2d 182, certiorari dismissed 95 S.Ct. 9, 419 U.S. 801, 42 L.Ed.2d 32. Criminal Law 113

Venue is proper in a conspiracy charge in any district in which any of overt acts occurred. U. S. v. Guy, C.A.8

(Mo.) 1972, 456 F.2d 1157, certiorari denied 93 S.Ct. 136, 409 U.S. 896, 34 L.Ed.2d 153, rehearing denied 93 S.Ct. 327, 409 U.S. 1002, 34 L.Ed.2d 263, certiorari denied 93 S.Ct. 344, 409 U.S. 1001, 34 L.Ed.2d 263, certiorari denied 93 S.Ct. 948, 409 U.S. 1127, 35 L.Ed.2d 260. Criminal Law 113

United States District Court for Northern District of Illinois, Eastern Division, had venue of prosecution for conspiracy to use mails in scheme to defraud and for unlawfully causing transportation in interstate commerce of forged or falsely altered securities, where check was made in Chicago, deposited in conspirator's account in Chicago, mailed in Chicago and returned in mail to Chicago. U. S. v. Doran, C.A.7 (Ill.) 1962, 299 F.2d 511, certiorari denied 82 S.Ct. 1563, 370 U.S. 925, 8 L.Ed.2d 504, certiorari denied 82 S.Ct. 1565, 370 U.S. 925, 8 L.Ed.2d 505, rehearing denied 83 S.Ct. 17, 371 U.S. 854, 9 L.Ed.2d 92. Criminal Law 113

Where party, who stole geophysical maps from oil company's Pittsburgh office, and turned them over to second party, knew maps were being taken out of state and sold to defendant and another in Texas, although party who stole maps was unconcerned with their destination, took them from motive of vengeance rather than profit, and may not have had knowledge of scope or all details of conspiracy to transport the maps in interstate commerce, knowing them to have been stolen, conspiracy commenced with the thefts from Pittsburgh office, and venue for prosecution of defendant, for such conspiracy, was properly laid in United States District Court for the Western District of Pennsylvania. U. S. v. Lester, C.A.3 (Pa.) 1960, 282 F.2d 750, certiorari denied 81 S.Ct. 385, 364 U.S. 937, 5 L.Ed.2d 368. Criminal Law 113

In prosecution of defendant, who, in Texas, purchased geophysical maps stolen from Pittsburgh office of oil company, for conspiring to transport in interstate commerce geophysical maps knowing them to have been stolen, evidence that maps were stolen after defendant joined conspiracy and were turned over to party from whom defendant purchased the maps was proof of overt acts committed in Pittsburgh for purposes of venue. U. S. v. Lester, C.A.3 (Pa.) 1960, 282 F.2d 750, certiorari denied 81 S.Ct. 385, 364 U.S. 937, 5 L.Ed.2d 368. Criminal Law 561(1)

In prosecution for unlawful sales of government owned wool being made into army jackets, a conspiracy to defraud the government and for making of false statements about disposition of wool serge furnished manufacturer, where overt acts alleged in the conspiracy count were filings in the Southern District of New York of false statements with respect to Government contracts and the proof showed that the statements were to be submitted to the Contracting Officer whose office was in New York City and that completed forms were found in the files of the agency, venue was properly sustained in the Southern District. U. S. v. Fabric Garment Co., C.A.2 (N.Y.) 1958, 262 F.2d 631, certiorari denied 79 S.Ct. 1117, 359 U.S. 989, 3 L.Ed.2d 978. Criminal Law 113

In prosecution for unlawful sales of government owned wool being made into army jackets, a conspiracy to defraud the government and for making of false statements about disposition of wool serge furnished manufacturer, where even if the completed forms had been dispatched from Brooklyn, the crimes charged were completed when the statement became a part of the agency files in Manhattan, venue of the prosecution was properly made in the Southern District. U. S. v. Fabric Garment Co., C.A.2 (N.Y.) 1958, 262 F.2d 631, certiorari denied 79 S.Ct. 1117, 359 U.S. 989, 3 L.Ed.2d 978. Criminal Law 113

In prosecution for conspiracy to violate the Internal Revenue Laws, evidence was sufficient to establish venue in the Macon Division of the District Court. Duke v. U.S., C.A.5 (Ga.) 1956, 233 F.2d 897. Criminal Law 564(1)

Venue in the prosecution for conspiracy may be laid in any district in which any act in furtherance thereof was committed by any of the conspirators. Ladner v. U. S., C.C.A.5 (La.) 1948, 168 F.2d 771, certiorari denied 69 S.Ct. 53, 335 U.S. 827, 93 L.Ed. 381. See, also, Hyde v. U.S., Dist.Col.1912, 32 S.Ct. 793, 225 U.S. 347, 56 L.Ed. 1114; U.S. v. Cohen, C.A.N.J.1952, 197 F.2d 26; Winebrenner v. U.S., C.C.A.Mo.1945, 147 F.2d 322, certiorari denied 65 S.Ct. 1197, 325 U.S. 863, 89 L.Ed. 1983; Spencer v. Hunter, C.C.A.Kan.1944, 139 F.2d 828;

Sell v. Rustad, C.C.A.Minn.1927, 22 F.2d 968; Morris v. U.S., C.C.A.Ark.1925, 7 F.2d 785, certiorari denied 46 S.Ct. 205, 270 U.S. 640, 70 L.Ed. 775; Wing v. U.S., C.C.A.Fla.1922, 280 F. 112; Tillinghast v. Richards, D.C.R.I.1915, 225 F. 226; Robinson v. U.S., Minn.1909, 172 F. 105, 96 C.C.A. 307; U.S. v. Rindskopf, D.C.Wis.1874, 6 Biss. 259, 27 Fed.Cas. No. 16,165; U.S. v. Empire Hat & Cap Mfg. Co., D.C.Pa.1942, 47 F.Supp. 395. Criminal Law 113

Under former § 88 of this title [now this section] although offense was complete upon entering into agreement to commit an offense an overt act in pursuance thereof was properly a part of the offense and could have been used as basis of fixing venue in jurisdiction in which overt act occurred. Kott v. U. S., C.C.A.5 (La.) 1947, 163 F.2d 984, certiorari denied 68 S.Ct. 609, 333 U.S. 837, 92 L.Ed. 1122, rehearing denied 68 S.Ct. 731, 333 U.S. 858, 92 L.Ed. 1138, rehearing denied 69 S.Ct. 13, 335 U.S. 838, 93 L.Ed. 390. Criminal Law 113

Evidence of overt acts done in Western District of Missouri in furtherance of conspiracy to defraud the United States was sufficient to establish venue in that district of prosecution for such offense, though conspiracy was not formed there. Winebrenner v. U.S., C.C.A.8 (Mo.) 1945, 147 F.2d 322, certiorari denied 65 S.Ct. 1197, 325 U.S. 863, 89 L.Ed. 1983. Criminal Law 564(1)

A conspirator was properly tried in the Newman Division of the Northern District of Georgia, where some overt acts were committed in such division, notwithstanding that other overt acts were committed in another division. Pullin v. U.S., C.C.A.5 (Ga.) 1939, 104 F.2d 57, certiorari denied 60 S.Ct. 97, 308 U.S. 552, 84 L.Ed. 464. Criminal Law 113

Proof of venue in district of trial was sufficient, in prosecution for causing presentation of false claim against United States. Summers v. U.S., C.C.A.4 (Va.) 1926, 11 F.2d 583, certiorari denied 46 S.Ct. 632, 271 U.S. 681, 70 L.Ed. 1149. Criminal Law 737(2)

Venue of prosecution for conspiracy to violate federal firearms laws was proper in district where some overt acts of conspiracy occurred. U.S. v. Hunter, E.D.Mich.1994, 863 F.Supp. 462. Criminal Law 113

Venue of prosecution for conspiracy to defraud United States by failing to declare as taxable income proceeds of gambling business was proper in district in which at least one overt act in furtherance of conspiracy was committed. U.S. v. Giovanelli, S.D.N.Y.1989, 747 F.Supp. 875. Criminal Law 113

In conspiracy prosecution, venue is appropriate where any of the overt acts occurred. U.S. v. Cole, E.D.Pa.1989, 717 F.Supp. 309. Criminal Law 113

Where allegedly obscene materials were received in Northern District of Iowa through mails, venue was proper there for prosecution of substantive offenses and also for conspiracy to commit offenses. U. S. v. Luros, N.D.Iowa 1965, 243 F.Supp. 160, certiorari denied 86 S.Ct. 433, 382 U.S. 956, 15 L.Ed.2d 361. Criminal Law 113

Proper venue for prosecution for conspiring to induce citizen to act as foreign agent without prior notification of Secretary of State and aiding and abetting him was in district where conspiracy and aiding and abetting were alleged to have occurred rather than in District of Columbia where any registration would take place. U. S. v. Melekh, N.D.Ill.1961, 193 F.Supp. 586. Criminal Law 113

Trial of indictment charging conspiracy will lay in a district where overt act was committed. Hesse v. U. S., E.D.N.Y.1960, 187 F.Supp. 375. Criminal Law 113

The venue of a conspiracy charge is fixed by the activities of the conspiracy. McDonald v. Hudspeth, D.C.Kan.1941, 41 F.Supp. 182. Criminal Law 108(1)

18 U.S.C.A. § 371

237. Change of venue, jurisdiction and preliminary matters

Substantial evidence before the United States commissioner and the court, tending to show that a penal statute of the United States had been violated, and that there was probable cause for believing the accused guilty of conspiracy to compass that violation within the district in which the indictment charging such conspiracy was returned, justified an order for the removal of the accused to that district. Gayon v. McCarthy, U.S.N.Y.1920, 40 S.Ct. 244, 252 U.S. 171, 64 L.Ed. 513.

Indictments for conspiracy to defraud the United States under former § 88 of this title [now this section] were sufficient for the purposes of a proceeding for the removal of the defendant from another district for trial and to establish probable cause in such proceeding. Green v. MacDougall, U.S.N.Y.1905, 26 S.Ct. 748, 199 U.S. 601, 50 L.Ed. 328. Criminal Law 242(4)

Trial court in prosecution for violations of Securities and Exchange Act, § 78a et seq. of Title 15, for using mails to defraud, and for conspiracy, did not abuse its discretion, under the circumstances, in denying defendants' motion for a change of venue. Addison v. U. S., C.A.5 (Tex.) 1963, 317 F.2d 808, certiorari denied 84 S.Ct. 658, 376 U.S. 905, 11 L.Ed.2d 605, stay denied 84 S.Ct. 791, 376 U.S. 936, 11 L.Ed.2d 657, rehearing denied 84 S.Ct. 1121, 376 U.S. 966, 11 L.Ed.2d 984. Criminal Law 121

In prosecution for conspiring to teach and advocate overthrow of United States government by force and violence, action of court in denying change of venue was not abuse of discretion, where, although publicity was widespread and continuing, it was no different than type accorded to all those who make the news, where there was no indication of a convict-or-else campaign by various media of publicity, and there was no reason to believe that general community feeling about Communism in area of trial was significantly different from that which may have permeated entire country. U. S. v. Mesarosh, C.A.3 (Pa.) 1955, 223 F.2d 449, certiorari granted 76 S.Ct. 218, 350 U.S. 922, 100 L.Ed. 807, reversed on other grounds 77 S.Ct. 1, 352 U.S. 1, 1 L.Ed.2d 1. Criminal Law 126(2)

Where indictment charging defendant with conspiring to defraud the United States by violating statutes governing taxing of alcohol, charged a crime and only rebuttal evidence introduced by defendant on petition for removal to another district for trial was character evidence, application for warrant of removal should have been granted. Reing v. U S ex rel Girard, C.C.A.3 (Pa.) 1936, 84 F.2d 624. Criminal Law 242(5)

Indictments alleging that apparently separate schemes were component part of scheme to defraud was sufficient to support removal to another district for trial. U.S. v. Wood, D.C.Tex.1927, 26 F.2d 908, affirmed 26 F.2d 912. Criminal Law 242(4)

Evidence was insufficient to justify belief of probable cause and guilt of conspiracy to violate National Prohibition Act, former § 201 et seq. of Title 27, in violation of former § 88 of this title [now this section] so as to warrant removal of defendants. U.S. v. Motlow, D.C.Tenn.1926, 13 F.2d 645. Criminal Law 242(7)

Dismissal of petition for warrant of removal, on ground that indictment purporting to charge general conspiracy to violate National Prohibition Act, former § 201 et seq. of Title 27, and enumerating numerous overt acts was practically void, was unwarranted. Snyder v. Hunter, App.D.C.1925, 8 F.2d 902, 56 App.D.C. 41, motion denied 11 F.2d 336, 56 App.D.C. 164. Criminal Law 242(4)

Though court in proceedings for removal of accused to another district may hear competent evidence rebutting prima facie showing made by indictment, merits of accused's guilt or innocence were not triable in such proceedings, where accused failed to appear for trial under indictment charging use of mails to defraud and conspiracy under former §§ 88 [now this section] and 338 of this title and capias was issued for his arrest, and other joint defendants had been convicted. Hawkins v. Borthwick, C.C.A.6 (Ohio) 1925, 5 F.2d 564.

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An indictment for conspiracy, under former § 88 of this title [now this section] though insufficient as a criminal pleading to charge conspiracy to commit the offense denounced by Bankruptcy Act, former § 52 of Title 11, alleged as its object, in that defendants were incapable of committing such offense, contained sufficient to show that they were charged with acts which would amount to a criminal offense, and warranted their removal for trial. Simon v. Keville, D.C.Mass.1925, 4 F.2d 575, affirmed 7 F.2d 1021.

An indictment charging a criminal conspiracy introduced in evidence in proceedings before a United States commissioner for removal of defendant, to another district for trial is itself prima facie evidence of probable cause, and evidence was sufficient to show probable cause that defendant was guilty of a conspiracy to cause an agent of an interstate carrier to deliver intoxicating liquors to a fictitious person. Witte v. Shelton, C.C.A.8 (Mo.) 1917, 240 F. 265, 153 C.C.A. 191, certiorari denied 37 S.Ct. 745, 244 U.S. 660, 61 L.Ed. 1376. Habeas Corpus 729

Persons who had not been in Wyoming until after consummation of an alleged conspiracy to defraud the government by unlawfully obtaining public coal lands, and who had not been in direct or indirect communication with any one there, should not be removed to that state for trial on that charge, since any offense by them was committed elsewhere. Ireland v. Henkle, C.C.S.D.N.Y.1910, 179 F. 993. Criminal Law 113

On an application to remove persons to another federal district where they were charged with conspiring to defraud the United States of public lands, certified copies of general land office records showing that all the entries of public lands mentioned in the indictment were perfected and issued therefor prior to all the alleged overt acts under the alleged conspiracy, and more than three years before the indictment was filed, were admissible on the question of probable cause for the charge. U. S. v. Black, C.C.A.7 (Wis.) 1908, 160 F. 431, 87 C.C.A. 383. Criminal Law 242(7)

Defendants moving for transfer of conspiracy prosecution, but producing only two three-year-old newspaper articles about the case failed to make any showing of prejudice which would authorize transfer. U. S. v. Hinton, E.D.La.1967, 268 F.Supp. 728. Criminal Law 134(4)

In prosecution against seven defendants for conspiracy to defraud United States, request of only one defendant to transfer place of trial within district from Scranton to Harrisburg would be denied in view of absence of divisions in the district and the physical facilities such as the court room and library and availability of records, and the convenience of all the parties concerned. U. S. v. Gilboy, M.D.Pa.1958, 160 F.Supp. 442. Criminal Law 120

Where defendant had been indicted for alleged violation, in Puerto Rico, of § 2385 of this title and this section, fact that Puerto Rico had acquired commonwealth status would not make defendant's removal from New York to the District of Puerto Rico for trial unlawful. Arbona v. Kenton, S.D.N.Y.1954, 126 F.Supp. 366. Criminal Law 242(1)

The fact that codefendant, an attorney, appeared as attorney for a Georgia sheriff in Illinois extradition proceedings regarding return of farm hands, who had been employed on defendant's Georgia farm, to Georgia for prosecution on indictments charging burglary was not sufficient to make a question of fact as to whether codefendant was participating in defendant's alleged purpose to return farm hands to a condition of slavery, as regards application by United States to remove defendant and codefendant from Middle District of Georgia to Northern District of Illinois for trial on indictment charging conspiracy to injure farm hands in enjoyment of their right to be free from slavery. U.S. v. Cunningham, M.D.Ga.1941, 40 F.Supp. 399. Criminal Law 242(7)

Where, on application by United States for removal of defendants charged with conspiracy from one federal district to another for trial, evidence for codefendant established conclusively, that codefendant was not a party to any alleged conspiracy with defendant, the application would be denied and defendants discharged. U.S. v. Cunningham, M.D.Ga.1941, 40 F.Supp. 399. Criminal Law 242(7)

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238. Foreign nations, jurisdiction and preliminary matters

Any conspiratorial act occurring outside the United States is within United States jurisdiction if overt act in furtherance of the conspiracy occurs in this country; this jurisdiction also extends to acts which are not in themselves illegal. U.S. v. Endicott, C.A.9 (Wash.) 1986, 803 F.2d 506, post-conviction relief denied 896 F.2d 555, certiorari denied 111 S.Ct. 529, 498 U.S. 989, 112 L.Ed.2d 540, denial of habeas corpus affirmed 977 F.2d 593, certiorari denied 114 S.Ct. 456, 510 U.S. 971, 126 L.Ed.2d 388. Criminal Law 97(.5)

Where overt acts charged in indictment were committed in the United States, and the conspiracy charged had for its object crime in the United States although carried on partly in and partly out of the United States, conspiracy was within jurisdiction of the United States. U. S. v. Correa-Negron, C.A.9 (Cal.) 1972, 462 F.2d 613. Criminal Law 97(.5)

Defendant, who was a citizen of the United States, could be punished in the United States for conspiring to smuggle amphetamine tablets into the United States notwithstanding that the acts leading to such crime may have been committed in Mexico. Brulay v. U. S., C.A.9 (Cal.) 1967, 383 F.2d 345, certiorari denied 88 S.Ct. 469, 389 U.S. 986, 19 L.Ed.2d 478. Criminal Law 97(.5)

In a prosecution under former §§ 88 [now this section] and 489 of this title, where defendants to aid Germany conspired to attach to munition bearing ships while in the waters of the United States infernal machines which would explode while they were on the high seas, the offense was deemed to have been committed within the United States, which was the place where the last conscious act of the wrongdoers was performed. Daeche v. U.S., C.C.A.2 (N.Y.) 1918, 250 F. 566, 162 C.C.A. 582. Criminal Law 114

239. Extradition, jurisdiction and preliminary matters

Since extradition treaty limiting extraditable conspiracies and attempts to those punishable by more than three years by the laws of both parties and United States rather than New York, the place of extradition hearing, was a party to the treaty, treaty impelled federal court to look to the laws of the federal government under which conspiracy to commit felony as charged by Israel was punishable by five years imprisonment and such count, also punishable in Israel for more than three years' imprisonment was extraditable. Shapiro v. Ferrandina, C.A.2 (N.Y.) 1973, 478 F.2d 894, certiorari dismissed 94 S.Ct. 204, 414 U.S. 884, 38 L.Ed.2d 133. Extradition And Detainers 5

240. Grand jury proceedings, jurisdiction and preliminary matters

Count charging defendants with conspiring to appropriate funds from two local unions for their own use should have gone to trial on the merits and should not have been dismissed pretrial on ground that based on examination of grand jury record there was neither direct nor circumstantial proof of any agreement to accomplish a violation of section 501 of Title 29, as the indictment was valid on its face and grand jury was legally constituted. U. S. v. Short, C.A.6 (Ohio) 1982, 671 F.2d 178, certiorari denied 102 S.Ct. 2932, 457 U.S. 1119, 73 L.Ed.2d 1332. Indictment And Information 144.1(3)

Defendant, who voluntarily turned over papers to grand jury cannot afterwards insist that he was denied rights guaranteed under Constitution. Thompson v. U.S., C.C.A.7 (Ill.) 1926, 10 F.2d 781, certiorari denied 46 S.Ct. 352, 270 U.S. 654, 70 L.Ed. 782. Criminal Law 692

In grand jury investigation of existence of conspiracy to distribute obscene materials, investigation can reasonably extend to records of corporations which jury has probable cause to believe are involved in conspiracy, as inspection of corporate records can be expected to reveal relevant information such as names of conspirators, scope of conspiracy, and methods employed by participants to achieve their objectives. U. S. v. Luros, N.D.Iowa 1965,

243 F.Supp. 160, certiorari denied 86 S.Ct. 433, 382 U.S. 956, 15 L.Ed.2d 361. Grand Jury 36.2

Subpoenas issued by Grand Jury in investigation of existence of conspiracy to distribute obscene materials requiring corporations to produce general ledgers, cash receipts journals, cash disbursement journals, minute books, stock record books, and canceled checks were not too broad nor were they vague and lacking in specificity. U. S. v. Luros, N.D.Iowa 1965, 243 F.Supp. 160, certiorari denied 86 S.Ct. 433, 382 U.S. 956, 15 L.Ed.2d 361. Grand Jury 36.4(2)

Defendant charged with conspiracy to obtain defense information and to induce a United States citizen to act illegally as a foreign agent and acting illegally as a foreign agent made insufficient showing to warrant disclosure of grand jury minutes. U. S. v. Melekh, N.D.Ill.1961, 193 F.Supp. 586. Criminal Law 627.9(5)

In prosecution for conspiracy to defraud United States, defendants' requests for a transcript of their grand jury testimony was denied. U. S. v. Gilboy, M.D.Pa.1958, 160 F.Supp. 442. Criminal Law 627.9(1)

In prosecution for conspiracy to defraud United States, defendant's unsupported allegations as to publicity surrounding grand jury inquiry did not warrant dismissal of indictment returned by grand jury. U. S. v. Gilboy, M.D.Pa.1958, 160 F.Supp. 442. Indictment And Information 144.1(2)

In prosecution for conspiracy to defraud United States in exercise of its governmental function concerning official inspection of eggs and to bribe three egg inspectors, defendants were not entitled to inspect Grand Jury transcript for purpose of determining whether there was evidence sufficient to support charge of single conspiracy rather than more than one conspiracy as claimed by defendants. U S v. Cohen, S.D.N.Y.1953, 113 F.Supp. 955. Criminal Law 627.9(2.1)

In prosecution for conspiring to defraud United States in exercise of its governmental function concerning official inspection of eggs and to bribe egg inspectors evidence which was adduced before Grand Jury was sufficient to raise inference of a single conspiracy. U S v. Cohen, S.D.N.Y.1953, 113 F.Supp. 955. Indictment And Information 10.2(10)

In prosecution for conspiracy to advocate and teach duty of overthrowing federal government by force and to organize a group of persons who teach and advocate overthrowing of federal government by force, record did not clearly prove intentional or systematic exclusion of manual workers or Negroes from indicting grand jury, and from grand jury panel from which indicting grand jury was selected, and from grand jury master list, and motion to dismiss indictment for such alleged intentional or systematic exclusion was required to be dismissed. U S v. Flynn, S.D.N.Y.1951, 103 F.Supp. 925. Indictment And Information 144.1(2)

Women defendants charged in Federal District Court for California with offenses under indictments charging violation of former § 88 of this title [now this section] were not deprived of protection of "due process" and "equal protection" clauses of U.S.C.A.Const. Amend. 5, by the fact that women were excluded from the group from which members of grand jury which found indictment were drawn and from array of panel of petit jurors. U.S. v. Ballard, S.D.Cal.1940, 35 F.Supp. 105. Constitutional Law 224(4); Constitutional Law 265

In prosecution for income tax evasion and conspiring to violate certain enumerated laws of the United States, evidence was insufficient to show that Grand Jury Commission did not comply with requirements of statute for the drawing of a grand jury. U.S. v. Wortman, E.D.Ill.1960, 26 F.R.D. 183. Indictment And Information 144.1(2)

241. Search and seizure, jurisdiction and preliminary matters

Probable cause existed for search warrant issued as to business and residence of suspect in tax and conspiracy crimes, since issuing magistrate properly determined that there was fair probability that evidence of crimes would

be found in particular places; Internal Revenue Service (IRS) had reviewed suspect's tax returns from prior years, and found that he had declared decreasing amounts of business and personal income until his offshore company began filing nonresident alien income tax returns. U.S. v. Leveto, W.D.Pa.2004, 343 F.Supp.2d 434. Internal Revenue 5126

Affidavits relating almost entirely to Federal Wagering Tax laws and referring to telephone calls without specifying whether calls were interstate did not furnish probable cause for issuance of warrants in connection with alleged violations of this section and section 1952 of this title. Silbert v. U. S., D.C.Md.1968, 289 F.Supp. 318. Gaming 60

Search warrants which alleged that evidence to be seized was "being used by persons who are engaged in the bookmaking business, who transmit bets and wagers and information assisting into placing of bets and wagers in interstate commerce" in violation of this section and sections 1084, 1952 of this title were not void because as to two of the three sections which the warrants charged the evidence to be seized was being used in violation of, the defendant might claim privilege against self-incrimination under U.S.C.A. Const. Amend. 5. Dudley v. State, Ga.1972, 186 S.E.2d 875, 228 Ga. 551. Gaming 60

242. Arrest, jurisdiction and preliminary matters

Officers were authorized to arrest one conspiring in their presence to maintain liquor nuisance and to search place contemporaneously without warrant, and ledger and bills for gas, electric light, etc., were lawfully seized. Marron v. U.S., U.S.Cal.1927, 48 S.Ct. 74, 275 U.S. 192, 72 L.Ed. 231, rehearing denied 48 S.Ct. 206, 277 U.S. 613, 72 L.Ed. 1016. Arrest 71.1(2.1); Intoxicating Liquors 249

Where government automobile was following vehicle in which known narcotic law violators were traveling after having picked up a known narcotic violator who had just crossed the border, and, as government automobile stopped vehicle in which defendants were riding, a narcotic addict's kit was thrown therefrom, defendants were stopped as part of a lawful border search, arrested as result of and only after evidence which they had attempted to discard had been found without a search, which evidence created probable cause for their arrest. Murgia v. U. S., C.A.9 (Cal.) 1960, 285 F.2d 14, certiorari denied 81 S.Ct. 1946, 366 U.S. 977, 6 L.Ed.2d 1265. Arrest 63.4(16)

In prosecution for conspiracy to rob military facility, where defendant sought to suppress certain admissions made to newspaper and television reporters, evidence sustained finding that original arrest was made by state officers without inducement by FBI agents and detention was by state and not federal authorities. Papworth v. U. S., C.A.5 (Tex.) 1958, 256 F.2d 125, certiorari denied 79 S.Ct. 85, 358 U.S. 854, 3 L.Ed.2d 88, rehearing denied 79 S.Ct. 239, 358 U.S. 914, 3 L.Ed.2d 235. Criminal Law 394.2(2)

Officers making arrest had probable cause to believe felony under former § 88 of this title [now this section] and other sections was being committed. Billingsley v. U.S., C.C.A.8 (Okla.) 1926, 16 F.2d 754. Arrest 63.4(1)

243. Advising of rights, jurisdiction and preliminary matters

Where statements by defendant to FBI agent were made at time when defendant was not in custody or deprived of his freedom in any significant way, defendant was warned by agent that he did not have to make a statement, that any statement he made could be used against him and that he was entitled to consult an attorney before giving any statement and defendant corroborated statement at trial for conspiracy to commit an offense against the United States and for receiving stolen government property, defendant was not prejudiced by agent's failure to inform defendant that he had right to presence of an attorney, either retained or appointed, during the questioning. Grogan v. U. S., C.A.5 (Ga.) 1967, 394 F.2d 287, certiorari denied 89 S.Ct. 97, 393 U.S. 830, 21 L.Ed.2d 100. Criminal Law 1169.12

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Rule of Escobedo v. Illinois was inapplicable to prosecutions for conspiracy and extortion where officers carefully alerted defendants to their rights to remain silent and to procure counsel. Calhoun v. U. S., C.A.9 (Nev.) 1966, 368 F.2d 59. Criminal Law 412.2(3)

244. Speedy trial, jurisdiction and preliminary matters

In prosecution for conspiracy wherein well over 25 motions were filed by 16 defendants who went to trial and there were 11 changes of counsel, denial of speedy trial was not shown by mere fact that three years and 23 days elapsed between indictment and commencement of trial. U. S. v. Perez, C.A.5 (La.) 1973, 489 F.2d 51, rehearing denied 488 F.2d 552, certiorari denied 94 S.Ct. 3067, 417 U.S. 945, 41 L.Ed.2d 664, certiorari denied 94 S.Ct. 3068, 417 U.S. 945, 41 L.Ed.2d 664. Criminal Law 577.15(4)

Delay from January 16, 1970 when bank was robbed to April 16, 1971 when second indictment charging conspiracy, bank robbery and interstate transportation of stolen money was returned following prior dismissal on November 23, 1970 of original indictment charging bank robbery was not prejudicial and did not deny defendants the right to speedy trial or due process where there was no showing that delay was a purposeful device to gain tactical advantage over defendants or to harass them, no loss of key defense witnesses or other prejudice was shown and prosecutorial overreaching was absent. U. S. v. Davis, C.A.5 (Tex.) 1973, 487 F.2d 112, rehearing denied 486 F.2d 1403, certiorari denied 94 S.Ct. 1573, 415 U.S. 981, 39 L.Ed.2d 878, rehearing denied 94 S.Ct. 2005, 416 U.S. 975, 40 L.Ed.2d 565. Constitutional Law 268(4); Criminal Law 1166(7); Indictment And Information 7

Where indictment charging defendant with conspiracy to pass and sell counterfeit federal reserve notes and with selling federal reserve notes, knowing them to be counterfeit, was returned within applicable statute of limitations, defendant could not assert, as ground for reversal, that he was denied speedy trial because government unreasonably delayed bringing of charges against him. U. S. v. Panczko, C.A.7 (Ill.) 1966, 367 F.2d 737, certiorari denied 87 S.Ct. 716, 385 U.S. 1009, 17 L.Ed.2d 546, rehearing denied 87 S.Ct. 771, 385 U.S. 1043, 17 L.Ed.2d 688. Indictment And Information 7

245. Fair trial, jurisdiction and preliminary matters

Evidence indicating that one defendant printed counterfeit federal reserve notes in different denominations on different occasions and delivered them to various conspirators and that second defendant joined conspiracy with full knowledge of the enterprise when he agreed to take $15,000 in counterfeit bills from one of the other coconspirators established that successive stages and relationship among the coconspirators constituted various phases of one basis and overriding plan, and thus that defendants were not denied a fair trial because indictment charged, and court submitted to the jury, a single conspiracy rather than multiple conspiracies. U. S. v. Wilson, C.A.8 (Mo.) 1974, 497 F.2d 602, certiorari denied 95 S.Ct. 655, 419 U.S. 1069, 42 L.Ed.2d 664. Conspiracy 43(12)

246. Bail, jurisdiction and preliminary matters

Where original bail of $100,000 each on charge of burglarizing federally insured bank and conspiring to burglarize federally insured bank was subsequently significantly reduced, defendants were released some 35 days prior to trial but could not be located when some 6 days thereafter order was entered permitting them to leave district and defendants were taken into custody some 9 days after order and cancellation of appearance bonds, defendants were not deprived of any constitutional right in respect to bail and restrictions imposed as to travel were reasonable and did not prejudice trial preparations. Brooks v. U. S., C.A.5 (Miss.) 1969, 416 F.2d 1044, rehearing denied 424 F.2d 554, certiorari denied 91 S.Ct. 81, 400 U.S. 840, 27 L.Ed.2d 75. Bail 42; Bail 75.1

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Where indictments for conspiring to violate Smith Act, § 2385 of this title, were defective for failure to allege requisite intent but Government represented that it expected to prove that defendants had acted with the required intent, in granting defendants' motion to dismiss indictments court would proceed upon assumption that all defects in existing indictments would be promptly cured, and would, therefore, order bail of defendants at liberty continued and would order that defendants held in custody in default of bail should continue to be held for period of ten days, pending filing of new indictment. U. S. v. Schneiderman, S.D.Cal.1951, 102 F.Supp. 87. Indictment And Information 144.2

247. Discovery and inspection, jurisdiction and preliminary matters

In prosecutions for conspiracy to violate § 52 of Title 11, court did not err in denying accused's demand for permission to inspect memoranda made by federal agents during investigation of crime, where agents refreshed their recollection from memoranda before testifying at preliminary hearing and trial, but did not use memoranda while testifying. Goldman v. U.S., U.S.N.Y.1942, 62 S.Ct. 993, 316 U.S. 129, 86 L.Ed. 1322. Criminal Law 627.6(4)

Government's failure to provide defendants, charged with conspiracy to defraud United States by impeding, impairing, obstructing and defeating lawful function of Internal Revenue Service and Department of Treasury in collection of tax revenue, with witness' statements that one defendant's Central American real estate holdings were nonexistent except on paper did not mandate reversal of convictions under *Brady* since statements were not exculpatory. U.S. v. Little, C.A.9 (Cal.) 1984, 753 F.2d 1420. Criminal Law 1166(10.10)

In prosecution for conspiracy to violate narcotics laws, presentation to jury of evidence consisting of mistaken identification of one defendant by government witness was not prejudicial to such defendant on theory that such evidence was not disclosed to him before trial, where defense counsel acknowledged that effect of misidentification could only have been favorable to defendant in eyes of jury, where, once Government had conceded that crucial witness had erred in identifying defendant, it was in defendant's interest that trial continue with same jury, free to draw from incident conclusions unfavorable to reliability of witness, and where any prejudice that could conceivably have resulted was clearly avoided by trial judge's prompt and repeated curative instruction. U. S. v. Zayas, C.A.2 (N.Y.) 1978, 575 F.2d 56, certiorari denied 99 S.Ct. 101, 439 U.S. 828, 58 L.Ed.2d 121. Criminal Law 1169.8

Where defendants knew witnesses and could have examined them before trial and where statements were given to defense counsel before witnesses testified and information contained in the statements was not necessarily exculpatory, there was no erroneous failure on the part of the Government to give particular defendant all exculpatory material as required by judicial decision. U. S. v. Nicholson, C.A.5 (La.) 1976, 525 F.2d 1233, certiorari denied 96 S.Ct. 2170, 425 U.S. 972, 48 L.Ed.2d 795, certiorari denied 97 S.Ct. 105, 429 U.S. 837, 50 L.Ed.2d 103. Criminal Law 627.7(3)

Government's nondisclosure of prior criminal conduct of defendants, admissible to prove conspiracy and to prove planning of substantive offenses, was not error where no specific request was made to elicit such information, where no continuance was sought to meet such evidence when it was introduced, and where evidence of the prior episodes added only slight additional weight to overwhelming evidence of participation in crime charged. U. S. v. Carroll, C.A.2 (N.Y.) 1975, 510 F.2d 507, certiorari denied 96 S.Ct. 2633, 426 U.S. 923, 49 L.Ed.2d 378. Criminal Law 700(3)

Nature of prosecution for conspiracy to distribute cocaine, with its evidence of far-flung dealing in several states for several months in large quantities of the drug, involving numerous people, was such as to warrant its treatment as an exceptional case warranting limitations in informed discretion of trial judge upon time and amount of pre-trial discovery. U. S. v. Sanchez, C.A.5 (Tex.) 1975, 508 F.2d 388, certiorari denied 96 S.Ct. 45, 423 U.S. 827, 46 L.Ed.2d 44. Criminal Law 627.5(2)

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In prosecution for conspiratorial and substantive violations of gambling laws, Government was entitled to appeal order permitting defendants to discover names and addresses of all government witnesses who purchased football cards or made bets with or through defendants or who would testify concerning involvement of defendants in gambling ring. U. S. v. Richter, C.A.9 (Wash.) 1973, 488 F.2d 170. Criminal Law 1024(1)

Statements withheld under provisions of Jencks Act, section 3500 of this title, were examined by Court of Appeals and it was determined that defendant in prosecution for conspiracy to defraud the government and for bribery was not entitled to examination of any of statements withheld. U. S. v. Ellenbogen, C.A.2 (N.Y.) 1966, 365 F.2d 982, certiorari denied 87 S.Ct. 892, 386 U.S. 923, 17 L.Ed.2d 795. Criminal Law 627.8(4)

In prosecution for conspiracy to violate internal revenue laws relating to liquor, wherein government's evidence was sufficient to warrant conviction without testimony of a certain witness before grand jury, and such witness' testimony dealt with only a small part of overall plan and covered but a brief period of long-continuing offense, denial of defendant's motion for in camera examination of such witness' grand jury testimony was not an abuse of discretion. U. S. v. Bryant, C.A.4 (S.C.) 1966, 364 F.2d 598. Criminal Law 627.9(1)

Denial of motion before trial to take deposition of member of brokerage firm, as he was then fugitive from justice, was proper, in prosecution for conspiracy to defraud public by distribution of oil company stock at grossly inflated prices. U. S. v. Kelly, C.A.2 (N.Y.) 1965, 349 F.2d 720, certiorari denied 86 S.Ct. 1467, 384 U.S. 947, 16 L.Ed.2d 544. Criminal Law 627.2

In prosecution for conspiracy to defraud United States Government, where two of the defendants claimed reversible error because of trial court's refusal to order government to produce for inspection statement made by government witness to agents of Senate Investigating Committee, since recently enacted § 3500 of this title which would govern new trial did not require production of such statement, which was only a summary of interview, rather than verified copy, error was harmless. U S v. Lev, C.A.2 (N.Y.) 1958, 258 F.2d 9, certiorari granted 79 S.Ct. 231, 358 U.S. 903, 3 L.Ed.2d 226, affirmed 79 S.Ct. 1431, 360 U.S. 470, 36 L.Ed.2d 1531, rehearing denied 80 S.Ct. 41, 361 U.S. 856, 4 L.Ed.2d 95. Criminal Law 1166(10.10)

Where subpoena was directed against one, as manager of corporation charged with making defective war materials and with conspiracy to defraud federal government in its war effort, to compel him to produce books of corporation, fact that one against whom subpoena was directed might no longer have held office of manager at time of service of the subpoena would not make issuance of the subpoena improper if the books were actually in his control. U.S. v. Antonelli Fireworks Co., C.C.A.2 (N.Y.) 1946, 155 F.2d 631, certiorari denied 67 S.Ct. 49, 329 U.S. 742, 91 L.Ed. 640, rehearing denied 67 S.Ct. 182, 329 U.S. 826, 91 L.Ed. 701. Witnesses 298

Where government investigator testified for prosecution concerning a corporation's financial condition, trial judge stated that investigator "can" produce the original work-sheets from which reports to his superiors were compiled, and investigator said that he had "them all available," it was too late at the close of the prosecution's case for the defense to demand opportunity to examine such work-sheets. U.S. v. Dilliard, C.C.A.2 (N.Y.) 1938, 101 F.2d 829, certiorari denied 59 S.Ct. 484, 306 U.S. 635, 83 L.Ed. 1036. Criminal Law 627.6(4)

Denying possession to defendants of memoranda used by witnesses to refresh recollection, or separation of portions, was not erroneous, in view of opportunity for inspection. Green v. U.S., C.C.A.9 (Wash.) 1927, 19 F.2d 850, certiorari denied 48 S.Ct. 117, 275 U.S. 557, 72 L.Ed. 424, 72 L.Ed. 729, rehearing granted 48 S.Ct. 207, 276 U.S. 609, 72 L.Ed. 729, affirmed 48 S.Ct. 564, 277 U.S. 438, 72 L.Ed. 944. Witnesses 256

Refusal to require government to produce affidavit and search warrant on file in office of issuing justice was not error. Marin v. U. S., C.C.A.6 (Mich.) 1926, 10 F.2d 271. Criminal Law 441

In prosecution of mine operator and individual officers for conspiring to violate Clean Air Act via release of

asbestos-contaminated materials, medical records underlying federal agency's study of alleged victims were material, warranting pretrial disclosure order; indictment charged that "nearly 1,200" persons had suffered effects of contamination, not just the 16 victim-witnesses for government, and government intended to rely on agency's study in its case-in-chief, to prove allegations of risk of harm and attendant health effects of asbestos exposure. U.S. v. W. R. Grace, D.Mont.2005, 401 F.Supp.2d 1093. Criminal Law 627.6(6)

Defendants charged with conspiracy to defraud the United States by impeding collection of income taxes were entitled to list of names and addresses of government witnesses, since offense charged was not crime of violence, bulk of evidence would likely involve documents, defense counsel represented that defendants would not seek to intimidate witnesses, and supplying witnesses' names prior to trial would not increase likelihood that witnesses would not appear or would refuse to testify at trial. U. S. v. Turkish, S.D.N.Y.1978, 458 F.Supp. 874. Criminal Law 629(5)

Defendants were not entitled, in absence of showing of materiality and reasonableness, to inspection and copying of all books, papers, documents or tangible objects which had any relation to conspiracy indictments. U. S. v. McCarthy, S.D.N.Y.1968, 292 F.Supp. 937. Criminal Law 627.6(2); Criminal Law 627.6(3)

Defendant accused of conspiring with others to defraud the United States by manufacturing and otherwise handling nontax-paid distilled spirits was not entitled to discover a list of all persons interviewed by federal agents in the course of their investigation nor to discover copies of all statements or reports of interview of coconspirators not named in the indictment and the transcripts or statements of their grand jury testimony under rule 16, Federal Rules of Criminal Procedure, 18 U.S.C.A. U. S. v. Turner, E.D.Tenn.1967, 274 F.Supp. 412. Criminal Law 627.6(2)

Defendants charged with, inter alia, mail fraud and conspiracy should be permitted to inspect seized materials in Government's possession for purpose of designating, without copying, those records represented to be needed by defendants for trial preparation purposes, upon receipt of a written representation by defendants that such records were needed by them to prepare for trial and that, pending trial, they would not use the records to engage in any of the activities alleged in the indictments, including requests of or demands upon any persons for payment of money. U. S. v. Zovluck, S.D.N.Y.1967, 274 F.Supp. 385. Criminal Law 627.6(2); Criminal Law 627.8(3)

Defendant in prosecution for conspiracy to violate mail fraud and wire fraud statutes and for scheme to defraud by use of the mails was entitled to inspect and copy all statements made by defendant which were in the hands of the government, all books of account in government's possession and which it intended to offer in evidence upon trial and recorded testimony of defendant before grand jury. U. S. v. Pilnick, S.D.N.Y.1967, 267 F.Supp. 791. Criminal Law 627.6(1); Criminal Law 627.7(2); Criminal Law 627.9(1)

Where conspiracy for which defendant was convicted was committed prior to his sentencing on a charge of unlawful transportation of stolen treasury bonds, prior crimes of defendant were not merged in probationary period nor did sentence on treasury bond charge bar prosecution for prior crimes, and there was no requirement on government to disclose to judge in treasury bond prosecution of any pending investigations against defendant which might ultimately result in an indictment, and government's failure to do so, if such an investigation was pending, did not affect in any way government's right to obtain indictment on conspiracy charge. U S v.Gelb, S.D.N.Y.1959, 175 F.Supp. 267, affirmed 269 F.2d 675, certiorari denied 80 S.Ct. 66, 361 U.S. 822, 4 L.Ed.2d 66. Double Jeopardy 152; Criminal Law 700(3)

In prosecution for conspiracy to file false non-Communist affidavits of union officers with National Labor Relations Board, government was not bound to furnish to defendants the product of its own investigation into background of government's witness. U. S. v. West, N.D.Ohio 1959, 170 F.Supp. 200, affirmed 274 F.2d 885, certiorari denied 81 S.Ct. 688, 365 U.S. 811, 5 L.Ed.2d 691, rehearing denied 81 S.Ct. 899, 365 U.S. 875, 5 L.Ed.2d 864, certiorari denied 81 S.Ct. 701, 365 U.S. 819, 5 L.Ed.2d 697, rehearing denied 81 S.Ct. 906, 365 U.S.

875, 5 L.Ed.2d 864. Criminal Law 627.6(1)

In prosecution for conspiracy to defraud United States, request for return of certain books, documents and records in possession of government as result of subpoena duces tecum or a request and voluntary surrender, during course of grand jury investigation, would be denied where all of such materials were necessary for complying with defendants' request for inspection, the government's preparation for and use at the trial, which would be shortly forthcoming. U. S. v. Gilboy, M.D.Pa.1958, 160 F.Supp. 442. Criminal Law 627.6(2)

In prosecution of defendant, division manager of company working on government contracts under a cost redeterminable clause, for conspiracy to defraud the United States because of defendant's alleged use of company employees for private work on company time, failure of court to allow defendant to inspect classified contracts was not error where the cost redeterminable clauses had been made part of record. U. S. v. Woll, E.D.Pa.1957, 157 F.Supp. 704. Criminal Law 627.5(5)

In prosecution for conspiring to teach and advocate the overthrow of United States Government by force and violence, defendants were not entitled to production of F.B.I. reports made by a government witness, where defendants requested production of all reports which dealt with matters concerning which such witness testified without specifying the particular reports desired, and testimony of such witness covered a period of approximately 9 years. U. S. v. Mesarosh, W.D.Pa.1953, 116 F.Supp. 345, affirmed 223 F.2d 449, certiorari granted 76 S.Ct. 218, 350 U.S. 922, 100 L.Ed. 807, reversed on other grounds 77 S.Ct. 1, 352 U.S. 1, 1 L.Ed.2d 1. Criminal Law 627.6(5)

Where defendants in prosecution for conspiracy to violate this section and § 2385 of this title moved for order directing the government to produce for inspection and use by defense on cross-examination of government's witness reports which witness had made to FBI, and the government conceded that no secrets of state or other confidential information of importance was involved, but contended that reports would reveal identity of confidential informants who had attended Communist Party gatherings, but on direct examination of government's witness government asked witness to name persons present at gatherings, government would be deemed to have waived right to invoke public policy favoring protection from disclosure of identity of any informant. U. S. v. Schneiderman, S.D.Cal.1952, 106 F.Supp. 731. Witnesses 219(1)

In prosecution under indictment charging conspiracy to commit offenses against the United States prohibited by this section and § 2385 of this title, by organizing and helping to organize the Communist Party, both contention of defendants that notwithstanding regulations of Attorney General dealing with custody, use, and preservation of records of Department of Justice, defendants were entitled as of right to inspect reports of FBI, and contention of Attorney General that he was entitled as of right to withhold production and inspection and use of reports, were both unsound, and matter was one resting within discretion of court. U. S. v. Schneiderman, S.D.Cal.1952, 106 F.Supp. 731. Witnesses 223

Proper exercise of discretion in determining whether documents identifying confidential informers should be produced and inspected prior to trial upon charges of conspiracy to violate Smith Act, § 2385 of this title, required that public policy favoring protection of identity of informers be weighed against defendants' interest in inspection of document preparatory to trial. U. S. v. Schneiderman, S.D.Cal.1952, 104 F.Supp. 405. Criminal Law 627.5(2)

Even if informants were certain to be used as prosecution witnesses in trial of defendants for conspiracy to violate Smith Act, § 2385 of this title, weighing of public policy favoring protection of identity of confidential informants against defendants' interest in inspection of documents which revealed identity of informants prior to trial required that defendants' motion for the production and inspection of such documents be denied, in view of fact that government might elect not to use documents rather than reveal identity of informers. U. S. v. Schneiderman, S.D.Cal.1952, 104 F.Supp. 405. Criminal Law 627.6(2)

18 U.S.C.A. § 371

In prosecution for conspiracy to file and for filing with National Labor Relations Board false affidavits of non-Communist union officer, motions for inspection and copying of all books, etc. obtained or belonging to defendants or obtained from others by seizure or by process would be denied when defendants did not specify and documents or papers in their motions, there was no showing that they were material to preparation of defense or that defendants' request was reasonable, and United States Attorney had stated that Government had obtained no documents from defendants or others by seizure or process. U. S. v. Haug, N.D.Ohio 1957, 21 F.R.D. 22. Criminal Law 627.8(3)

Where case involved conspiracy charge against 21 defendants, it was essential that each have an opportunity to examine, before trial, documents which might be introduced against him but which he had not seen before. U S v. Cohen, S.D.N.Y.1953, 15 F.R.D. 269. Criminal Law 627.6(2)

248. Transcripts, jurisdiction and preliminary matters

In prosecution for using mails to defraud and for conspiracy, motions for copies of testimony given by defendants before Securities and Exchange Commission, sought on ground that testimony was a necessary part of their defense, were denied without prejudice to subsequent application if need for such testimony arose. U.S. v. Feinberg, E.D.N.Y.1943, 50 F.Supp. 976, affirmed 140 F.2d 592, certiorari denied 64 S.Ct. 943, 322 U.S. 726, 88 L.Ed. 1562. Criminal Law 627.7(2)

249. Injunctions, jurisdiction and preliminary matters

Defendants seeking to enjoin issuance of warrant of removal to New York, seeking to obtain a three-judge United States district court to hear and declare the execution of the removal unconstitutional, and seeking a declaratory judgment that this section and section 1465 of this title relating to conspiracy to transport interstate obscene materials and to interstate transportation of obscene materials were unconstitutional, were not entitled to relief. Alexander v. Zimpfer, C.A.8 (Minn.) 1970, 431 F.2d 704. Declaratory Judgment 124.1; Federal Courts 1004.1; Injunction 27

Injunction will lie to restrain employees of telegraph company engaged in interstate business from conspiring to prevent plaintiff from performing its contracts by compelling it to discharge its employees who are not members of labor unions with which defendant employees are affiliated. Western Union Telegraph Co. v. International Brotherhood of Electrical Workers, Local Union No. 134, N.D.Ill.1924, 2 F.2d 993, affirmed 6 F.2d 444.

Threatened offenses under former § 88 of this title [now this section], in the nature of conspiracies to violate the provisions of interstate commerce law, may have been met by orders issuing from a court of equity in the nature of temporary restraining orders or temporary mandatory injunctions. Toledo, A. A. & N. M. Ry. Co. v. Pennsylvania Co., C.C.N.D.Ohio 1893, 54 F. 730, appeal dismissed 14 S.Ct. 123, 150 U.S. 393, 37 L.Ed. 1120. See, also, In re Lennon, Ohio 1897, 17 S.Ct. 658, 166 U.S. 548, 41 L.Ed. 1110; In re Debs, Ill.1895, 15 S.Ct. 900, 158 U.S. 564, 30 L.Ed. 1092; U.S. v. Sweeney, C.C.Ark.1899, 95 F. 434.

250. Severance of defendants, jurisdiction and preliminary matters

Trial court did not abuse its discretion in denying alleged coconspirator's motion for severance; defense strategies of the respective defendants were not irreconcilable, and jury could reasonably be expected to be able to compartmentalize the evidence against movant and independently determine his guilt or innocence. U.S. v. Reda, C.A.8 (Iowa) 1985, 765 F.2d 715. Criminal Law 622.7(6); Criminal Law 622.7(8)

Where defendant and codefendant both mounted same defense to embezzlement conspiracy charges, namely, that third party did it, their defenses were not of antagonistic nature such as would require severance, notwithstanding possibility that joint trial forced codefendant to choose between supporting defendant's story and defending herself

at defendant's expense by holding to her original claim that defendant's questions about her work at bank suggested his involvement in the crime. U.S. v. Archer, C.A.5 (Tex.) 1984, 733 F.2d 354, certiorari denied 105 S.Ct. 196, 469 U.S. 861, 83 L.Ed.2d 128, certiorari denied 105 S.Ct. 198, 469 U.S. 862, 83 L.Ed.2d 130. Criminal Law 622.7(6)

Defenses of codefendants in conspiracy prosecution were not antagonistic such as would have permitted granting of severance. U. S. v. Horton, C.A.5 (Tex.) 1981, 646 F.2d 181, rehearing denied 655 F.2d 1131, certiorari denied 102 S.Ct. 516, 454 U.S. 970, 70 L.Ed.2d 388, certiorari denied 102 S.Ct. 1274, 455 U.S. 919, 71 L.Ed.2d 459. Criminal Law 622.7(6)

Denial of motion for severance in prosecution for conspiring to commit extortion and bribery and substantive bribery offenses was not shown to have prejudiced defendant since evidence of codefendant's participation in earlier conspiracy and pretrial publicity indicating codefendant was underworld character did not have the slightest tendency to prove defendant's participation in crimes charged in indictment, since judge made it crystal clear to jury that defendant was not involved in earlier conspiracy, since there was no suggestion or evidence that defendant had ever met or spoken to codefendant, and since it is not an abuse of discretion to deny severance because of the remote possibility that the jury might draw so irrational an inference. U. S. v. DeSapio, C.A.2 (N.Y.) 1970, 435 F.2d 272, certiorari denied 91 S.Ct. 2170, 402 U.S. 999, 29 L.Ed.2d 166, rehearing denied 91 S.Ct. 2249, 403 U.S. 941, 29 L.Ed.2d 722. Criminal Law 1166(6)

Where it was not self-evident that codefendant was the only source of exculpatory evidence as to defendant's conduct at one particular meeting, court would deny defendant's motion for severance with leave to reassert the motion following presentation of evidence at trial. U. S. v. Baskes, N.D.Ill.1977, 433 F.Supp. 799. Criminal Law 622.7(10)

In prosecution on charge that defendants, while simultaneously holding offices in bank and another company, conspired to misapply bank funds and make false entries in bank records, defendant's motion for severance would be granted, as the Government intended to offer as evidence an agreement signed by codefendants but not by defendant, as the agreement was inculpatory of defendant, as the references to past transactions were not too indefinite to be inculpatory, and as, irrespective of whether the Government would rely "primarily" on other evidence, the relevant "Bruton" issue was whether the jury should be allowed to consider the agreement at all against defendant. U. S. v. Corgiat, N.D.Ill.1976, 431 F.Supp. 45. Criminal Law 662.10; Criminal Law 622.7(9)

VI. INDICTMENT OR INFORMATION

<Subdivision Index>

271. Infamous crime, indictment or information

Conspiracy to commit an offense against the United States, or to defraud the United States punishable under former § 88 of this title [now this section] was an infamous crime, within U.S.C.A.Const. Amend. 5, providing that no person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury. Mackin v. U.S., U.S.Ill.1886, 6 S.Ct. 777, 117 U.S. 348, 29 L.Ed. 909. Indictment And Information 3

272. Defrauding United States, indictment or information

Indictment properly charged, and with required specificity, a conspiracy under this section, against those who allegedly had filed false non-Communist affidavits and against others who were equally interested in conspiratorial purpose and were directly and culpably involved in alleged scheme fraudulently to obtain services of National Labor Relations Board on behalf of union by filing false non-Communist affidavits. Dennis v. U. S., U.S.Colo.1966, 86 S.Ct. 1840, 384 U.S. 855, 16 L.Ed.2d 973. Conspiracy 43(10)

An information sufficiently alleged conspiracy to defraud United States where government alleged that Minority Business Enterprise (MBE) programs of federal agencies were target of defendants' conspiracy to defraud. U.S. v. Barker Steel Co., Inc., C.A.1 (Mass.) 1993, 985 F.2d 1123, rehearing denied 985 F.2d 1136. Conspiracy 33(6)

18 U.S.C.A. § 371

Indictment did not have to specify substantive offense that defendant conspired to commit, but could charge defendant with generic conspiracy to defraud United States. U.S. v. Reynolds, C.A.7 (Wis.) 1990, 919 F.2d 435, certiorari denied 111 S.Ct. 1402, 499 U.S. 942, 113 L.Ed.2d 457. Conspiracy 43(10)

Indictment, which charged that state senator and chairman of appropriations committee and his associate, a former state senator, were involved in a silent scheme whereby the state senator, in exchange for remuneration, was to use his political influence as an elected official to insure that state funds would be appropriated or to exert influence in his official capacity on various state officials in order to enable another to enter into or maintain contracts financed by federal funds, charged a violation of this section proscribing conspiracies to defraud the United States in any manner or for any purpose. U. S. v. Burgin, C.A.5 (Miss.) 1980, 621 F.2d 1352, rehearing denied 627 F.2d 239, certiorari denied 101 S.Ct. 574, 449 U.S. 1015, 66 L.Ed.2d 474. Conspiracy 43(10)

Conspiracy to defraud government must be sufficiently charged under statute, and cannot be aided by averments of acts done by one or more of conspirators in furtherance of object of conspiracy. Asgill v. U.S., C.C.A.4 (Va.) 1932, 60 F.2d 780. Conspiracy 43(10)

273. Offense against the United States, indictment or information

Indictment was not defective on theory it charged defendant with a conspiracy to defraud, when the government was in fact trying to prosecute him for conspiring to commit a specific offense, that is, aiding and assisting in the preparation or presentation of false income tax returns, where the government steadfastly asserted that defendant participated in a far-ranging *Klein* conspiracy to prevent the internal Revenue Service (IRS) from determining clients' income and tax liabilities by both creating and inflating expenses. U.S. v. Fletcher, C.A.8 (Ark.) 2003, 322 F.3d 508. Conspiracy 43(10)

Indictment claiming that defendants had conspired to commit offense against United States was not required to contain allegation that United States or one of its agencies was target of conspiracy; conspiracy could involve violation of United States laws. U.S. v. Brandon, C.A.1 (R.I.) 1994, 17 F.3d 409, certiorari denied 115 S.Ct. 80, 513 U.S. 820, 130 L.Ed.2d 34, certiorari denied 115 S.Ct. 81, 513 U.S. 820, 130 L.Ed.2d 34. Conspiracy 43(6)

Where a count of an indictment charged that defendants, their codefendants and others conspired to commit offenses against the United States, namely, violations of section 545 of this title providing penalties for knowingly, and with intent to defraud, introducing into the United States certain birds contrary to law, and that defendants and their coconspirators did thirty-five acts to effect the object of the conspiracy, the count charged an offense against the United States, namely, a conspiracy to commit any offense against the United States. Steiner v. U. S., C.A.9 (Cal.) 1956, 229 F.2d 745, certiorari denied 76 S.Ct. 845, 351 U.S. 953, 100 L.Ed. 1476, rehearing denied 77 S.Ct. 24, 352 U.S. 860, 1 L.Ed.2d 70, certiorari denied 76 S.Ct. 847, 351 U.S. 953, 100 L.Ed. 1476. Conspiracy 43(6)

Indictment charging that defendant "knowingly and intentionally conspired to defraud the United states by impeding, impairing, obstructing and defeating the lawful Government functions of the Internal Revenue Service (IRS) of the Treasury Department, an agency and department of the United States, in the ascertainment, computation, assessment and collection of revenue, to wit, income taxes," was sufficient, as a matter of law; it fully informed defendant of the elements of the crime, including the dishonesty or deceit element, indictment tracked statutory language, and defendant admitted at plea allocution that he agreed with others to defraud the government by impairing the ability of IRS to ascertain income taxes. Coluccio v. U.S., E.D.N.Y.2004, 313 F.Supp.2d 150. Conspiracy 43(10)

18 U.S.C.A. § 371

274. Elements of offense, indictment or information

Indictment for conspiring to commit offense need not allege all elements essential to commission of offense which is object of conspiracy. Wong Tai v. U.S., U.S.Cal.1927, 47 S.Ct. 300, 273 U.S. 77, 71 L.Ed. 545. See, also, Hartson v. U.S., C.C.A.N.Y.1926, 14 F.2d 561; U.S. v. Kendzierski, D.C.N.Y.1944, 54 F.Supp. 164. Conspiracy 43(6)

Indictment sufficiently alleged the elements of the mail and wire fraud offenses underlying charge of conspiracy to commit mail and wire fraud in connection with an illegal kickback scheme between defendant, a personal injury attorney, and a chiropractor; the indictment stated the fiduciary relationship between the attorney and his clients, clearly alleged attorney's misuse of the fiduciary relationship by stating that the kickback arrangement was concealed from attorney's clients in violation of fiduciary duty, alleged that attorney gained over $70,000 in kickback payments, and plainly stated that defendants used interstate mails or wire communications systems in furtherance of the scheme. U.S. v. Hausmann, C.A.7 (Wis.) 2003, 345 F.3d 952, rehearing and suggestion for rehearing en banc denied, certiorari denied 124 S.Ct. 2412, 541 U.S. 1072, 158 L.Ed.2d 981. Conspiracy 43(9)

Conspiracy indictment need not allege every element of underlying offense, but need only put defendants on notice that they are being charged with conspiracy to violate underlying substantive offense. U.S. v. Werme, C.A.3 (Pa.) 1991, 939 F.2d 108, certiorari denied 112 S.Ct. 1165, 502 U.S. 1092, 117 L.Ed.2d 412. Conspiracy 43(1)

In conspiracy charge, illegality charge need not be alleged as precisely as would be necessary in a substantive count. U. S. v. Clark, C.A.7 (Ind.) 1981, 649 F.2d 534. Conspiracy 43(1)

Conspiracy indictment need not allege essential elements of underlying offense which is object of conspiracy, a requirement of indictment charging a substantive offense. U. S. v. Wander, C.A.3 (Pa.) 1979, 601 F.2d 1251. Conspiracy 43(6)

Since the essence of conspiracy is unlawful agreement rather than accomplishment of the unlawful objective, it is not necessary that conspiracy indictment allege with technical precision all elements essential to commission of the offense which is the object of the conspiracy, or that the indictment state such object with the detail that would be required in an indictment for the substantive offense. U. S. v. Cuesta, C.A.5 (Fla.) 1979, 597 F.2d 903, certiorari denied 100 S.Ct. 451, 444 U.S. 964, 62 L.Ed.2d 377, certiorari denied 100 S.Ct. 452, 444 U.S. 964, 62 L.Ed.2d 377. Conspiracy 43(6)

All that is necessary in charging conspiracy is that there be certainty sufficient to identify the offense which the defendants allegedly conspired to commit. U. S. v. Cuesta, C.A.5 (Fla.) 1979, 597 F.2d 903, certiorari denied 100 S.Ct. 451, 444 U.S. 964, 62 L.Ed.2d 377, certiorari denied 100 S.Ct. 452, 444 U.S. 964, 62 L.Ed.2d 377. Conspiracy 43(6)

It is not necessary in a conspiracy count that the object of the conspiracy be described in detail required in an indictment for substantive offense itself. U. S. v. Mendoza, C.A.5 (Tex.) 1972, 473 F.2d 692. Conspiracy 43(1)

While an indictment charging conspiracy to transport altered securities in interstate commerce need not allege underlying offense with same degree of specificity that is required to charge offense itself, indictments under broad language of this section must be scrutinized carefully to insure that they at least aver essential elements upon which underlying offense rests. Nelson v. U. S., C.A.10 (Colo.) 1969, 406 F.2d 1136. Conspiracy 43(6)

It is not necessary in conspiracy indictment to allege with precision all elements essential to the offense which is the object of conspiracy, and allegations clearly identifying the offense defendants conspired to commit are

sufficient. U. S. v. Kahn, C.A.7 (Ill.) 1967, 381 F.2d 824, certiorari denied 88 S.Ct. 591, 389 U.S. 1015, 19 L.Ed.2d 661, rehearing denied 88 S.Ct. 2272, 392 U.S. 948, 20 L.Ed.2d 1413, certiorari denied 88 S.Ct. 592, 389 U.S. 1015, 19 L.Ed.2d 661, rehearing denied 88 S.Ct. 2272, 392 U.S. 948, 20 L.Ed.2d 1414. Conspiracy 43(6)

A conspiracy count need not plead the substantive offense letter-perfect because purpose of conspiracy may have been accomplished even though such activity fell short of completing a substantive offense. U.S. v. Knox Coal Co., C.A.3 (Pa.) 1965, 347 F.2d 33, certiorari denied 86 S.Ct. 239, 382 U.S. 904, 15 L.Ed.2d 157. Conspiracy 43(6)

An indictment charging a conspiracy to commit a crime need not allege with technical precision all elements essential to commission of the offense which is the object of the conspiracy, nor must it state such object with detail required of an indictment charging the substantive offense. Lott v. U.S., C.A.5 (Tex.) 1962, 309 F.2d 115, certiorari denied 83 S.Ct. 504, 371 U.S. 950, 9 L.Ed.2d 498. See, also, U.S. v. Patterson, D.C.La.1964, 235 F.Supp. 233; U.S. v. Horton, D.C.Pa.1962, 202 F.Supp. 681; U.S. v. Melekh, D.C.Ill.1961, 193 F.Supp. 586; U.S. v. Guterma, D.C.N.Y.1960, 189 F.Supp. 265; U.S. v. Pope, D.C.N.Y.1960, 189 F.Supp. 12; U.S. v. Schneiderman, D.C.Cal.1951, 102 F.Supp. 87. Conspiracy 43(6)

It is not necessary that substantive offense, which is aim and object of conspiracy, should be described with same particularity in conspiracy count as in indictment for substantive offense itself. Beitel v. U.S., C.A.5 (Tex.) 1962, 306 F.2d 665. Conspiracy 43(6)

Sufficiency of an indictment is to be determined on basis of practical rather than technical considerations, and it is not necessary to charge a conspiracy to commit an offense that all the elements be alleged. Medrano v. United States, C.A.9 (Cal.) 1960, 285 F.2d 23, certiorari denied 81 S.Ct. 1931, 366 U.S. 968, 6 L.Ed.2d 1258, rehearing denied 82 S.Ct. 64, 368 U.S. 872, 7 L.Ed.2d 73. Conspiracy 43(6)

It is not necessary to allege with particularity offenses which are objects of conspiracy or to state such objects with detail that would be required in an indictment for committing the substantive offense. Schnautz v. U.S., C.A.5 (Tex.) 1959, 263 F.2d 525, certiorari denied 79 S.Ct. 1294, 360 U.S. 910, 3 L.Ed.2d 1260. See, also, Walker v. U.S., C.A.Ga.1965, 342 F.2d 22. Conspiracy 43(6)

A conspiracy indictment need not describe substantive crime with particularity of an indictment for that offense. U.S. v. Switzer, C.A.2 (N.Y.) 1958, 252 F.2d 139, certiorari denied 78 S.Ct. 1363, 357 U.S. 922, 2 L.Ed.2d 1366, rehearing denied 79 S.Ct. 16, 358 U.S. 859, 3 L.Ed.2d 93.

To charge conspiracy to commit an offense, all elements need not be precisely alleged. Rose v. U.S., C.C.A.9 (Cal.) 1945, 149 F.2d 755. See, also, U.S. v. Liss, D.C.N.Y.1942, 43 F.Supp. 203. Conspiracy 43(1)

The details need not be described in an indictment charging a conspiracy with same particularity as is required in charging commission of a substantive offense. Old Monastery Co. v. U.S., C.C.A.4 (S.C.) 1945, 147 F.2d 905, certiorari denied 66 S.Ct. 44, 326 U.S. 734, 90 L.Ed. 437. See, also, Braatelien v. U.S., C.C.A.N.D.1945, 147 F.2d 888; Miller v. U.S., C.C.A.Mich.1942, 125 F.2d 517, 48 Am.Bankr.Rep.N.S. 585, certiorari denied 62 S.Ct. 1276, 316 U.S. 687, 86 L.Ed. 1758; Reing v. U.S. ex rel. Girard, C.C.A.Pa.1936, 84 F.2d 624; Craig v. U.S., C.C.A.Cal.1936, 81 F.2d 816, certiorari dismissed 56 S.Ct. 670, 671, 298 U.S. 637, 80 L.Ed. 1371, rehearing denied 83 F.2d 450, certiorari denied 56 S.Ct. 959, 298 U.S. 690, 80 L.Ed. 1408, rehearing denied 57 S.Ct. 6, 299 U.S. 620, 81 L.Ed. 65; Hill v. U.S., C.C.A.Md.1930, 42 F.2d 812; Olmstead v. U.S., C.C.A.Wash.1927, 19 F.2d 842, 53 A.L.R. 1472, affirmed 48 S.Ct. 564, 277 U.S. 438, 72 L.Ed. 944; U.S. v. Gouled, D.C.N.Y.1918, 253 F. 239; U.S. v. Central Supply Ass'n, D.C.Ohio 1940, 40 F.Supp. 964; U.S. v. Main, D.C.Tex.1939, 28 F.Supp. 550. Conspiracy 43(1)

An indictment for conspiracy to commit an offense need not describe offense with the same certainty as would be required in an indictment for the offense. Center v. U.S., C.C.A.4 (S.C.) 1938, 96 F.2d 127. See, also, U.S. v. Eisenminger, D.C.Del.1926, 16 F.2d 816; U.S. v. Dwyer, D.C.N.Y.1926, 13 F.2d 427; Belvin v. U.S., C.C.A.Va.1926, 12 F.2d 548; Ford v. U.S., C.C.A.Cal.1926, 10 F.2d 339, affirmed 47 S.Ct. 531, 273 U.S. 593, 71 L.Ed. 793; Grace v. U.S., C.C.A.La.1925, 4 F.2d 658, certiorari denied 45 S.Ct. 637, 269 U.S. 702, 69 L.Ed. 1165; Taylor v. U.S., C.C.A.Ill.1924, 2 F.2d 444, certiorari denied 45 S.Ct. 226, 266 U.S. 634, 69 L.Ed. 479; Jelke v. U.S., C.C.A.Ill.1918, 255 F. 264; U.S. v. D'Arcy, D.C.R.I.1916, 243 F. 739; Knauer v. U.S., Iowa 1916, 237 F. 8, 150 C.C.A. 210; Aczel v. U.S., C.C.A.Tex.1916, 232 F. 652; U.S. v. Carter & Co., D.C.Ky.1944, 56 F.Supp. 311; U.S. v. Kendzierski, D.C.N.Y.1944, 54 F.Supp. 164. Conspiracy 43(6)

Crime which is object of conspiracy need not be described with same particularity in indictment for conspiracy as in indictment for crime itself. Enrique Rivera v. U.S., C.C.A.1 (Puerto Rico) 1932, 57 F.2d 816. See, also, Thornton v. U.S., Ga.1926, 46 S.Ct. 585, 271 U.S. 414, 70 L.Ed. 1013; Green v. U.S., C.C.A.Okl.1928, 28 F.2d 965; Harper v. U.S., C.C.A.Ark. 1928, 27 F.2d 77; U.S. v. O'Toole, D.C.R.I.1951, 101 F.Supp. 123; U.S. v. Renken, D.C.S.C.1944, 55 F.Supp. 1, affirmed 147 F.2d 905, certiorari denied 66 S.Ct. 44, 326 U.S. 734, 90 L.Ed. 437. Conspiracy 43(6)

Indictment for conspiracy should state essential elements of substantive offense constituting object of conspiracy. Bartkus v. U.S., C.C.A.7 (Ill.) 1927, 21 F.2d 425. Conspiracy 43(6)

Indictment for conspiracy must show that act intended embraced all elements essential to constitute offense. U.S. v. Eisenminger, D.C.Del.1926, 16 F.2d 816. Conspiracy 43(6)

An indictment for conspiracy need not charge substantive crime which is object of conspiracy with same particularity as if substantive crime were charged, but crime may not be charged by way of inference, and indictment must set forth accurately every ingredient of which offense is composed, to enable court to say whether facts are sufficient in law to support conviction, and must set forth facts and not law. U.S. v. Olmstead, D.C.Wash.1925, 5 F.2d 712.

A conspiracy to commit a crime is a different offense from the crime that is the object of the conspiracy, and the distinction in the rules of pleading is well settled. U.S. v. Downey, D.C.R.I.1919, 257 F. 364. Conspiracy 28(2); Conspiracy 37

While an indictment charging a conspiracy to commit an offense need not describe the offense which defendants conspired to commit with all the particularity required in an indictment charging its commission as a substantive offense, it does not follow that no particulars whatever need be given. U.S. v. Bopp, N.D.Cal.1916, 230 F. 723.

While it was usual to charge that the defendants did "conspire, combine, confederate and agree between and among themselves," the use of the words "did conspire to defraud" was sufficient, under former § 556 of this title to put the defendant upon notice of the offense with which he was charged. Wright v. U.S., C.C.A.5 (La.) 1901, 108 F. 805, 48 C.C.A. 37, certiorari denied 21 S.Ct. 924, 181 U.S. 620, 45 L.Ed. 1031.

The elements of federal criminal conspiracy are identical to those of a civil conspiracy under § 1983. Pizzuto v. County of Nassau, E.D.N.Y.2003, 239 F.Supp.2d 301. Conspiracy 7.5(1); Conspiracy 23.1

An offense alleged as an object of a conspiracy need not be as perfectly pleaded as a substantive offense; in addition, it need not be charged with the same completeness as is required for the substantive offense. U. S. v. Balistrieri, E.D.Wis.1972, 346 F.Supp. 341. Conspiracy 43(6)

It is necessary for some indication in the indictment of scheme alleged to have been devised by defendant although the offense-object in conspiracy charge need not be as perfectly pleaded as required if it were being alleged as a

substantive offense. U. S. v. De Sapio, S.D.N.Y.1969, 299 F.Supp. 436. Conspiracy 43(1)

Conspiracy indictment does not require the detail necessary in an indictment charging commission of substantive offense and need only sufficiently identify offense which defendants are alleged to have conspired to commit. U. S. v. Barrow, E.D.Pa.1962, 212 F.Supp. 837. Conspiracy 43(6)

An indictment charging conspiracy to commit crime need not set out that crime with all particularity necessary in indictment charging that crime as substantive offense. U.S. v. Devine's Milk Laboratories, Inc., D.C.Mass.1960, 179 F.Supp. 799. Conspiracy 43(6)

Conspiracy indictment which did not describe with particularity offense which defendants were charged with conspiring to commit could not be sustained by supplying by inference, from overt acts alleged, general description of such specific crime not otherwise designated. U.S. v. Devine's Milk Laboratories, Inc., D.C.Mass.1960, 179 F.Supp. 799. Conspiracy 43(5)

Indictment for conspiracy to commit offense need not allege with technical precision all the elements essential to commission of offense which is object of conspiracy, or to state such object in detail; the indictment need only identify the offense. U. S. v. Gilboy, M.D.Pa.1958, 160 F.Supp. 442. Conspiracy 43(6)

Rule that where object of a conspiracy is to commit a crime, the crime to be committed need not be described with the same degree of particularity that might be required in an indictment charging its commission as a substantive offense, does not mean that no particulars whatever as to such crime need be given, especially where statute employs broad and comprehensive language descriptive of the general nature of the offense denounced. U. S. v. Apex Distributing Co., D.C.R.I.1957, 148 F.Supp. 365. Conspiracy 43(6)

An indictment for conspiracy should state essential elements of substantive offense constituting conspiracy, though it need not be stated with same particularity as in substantive charge. U.S. v. Cawthon, M.D.Ga.1954, 125 F.Supp. 419. Conspiracy 43(6)

The gist of crime of conspiracy is unlawful agreement, and where conspiracy is alleged, it is not necessary to set out criminal object of conspiracy with as great certainty as is required in cases where such object is charged as a substantive offense. U.S. v. Westbrook, W.D.Ark.1953, 114 F.Supp. 192. Conspiracy 24(1); Conspiracy 43(1)

275. Allegations, indictment or information--Generally

Permitting jury, in prosecution for crossing state borders to further unlawful activity, conspiracy to do same, and interstate transportation of gambling paraphernalia, to see entire indictment including name of person, who was listed as codefendant, and such person's pen name, did not prejudice defendant where letter admitted at trial proved that someone had used such pen name. U. S. v. Marquez, C.A.2 (N.Y.) 1970, 424 F.2d 236, certiorari denied 91 S.Ct. 56, 400 U.S. 828, 27 L.Ed.2d 58. Criminal Law 1174(6)

To charge an offense under former § 88 of this title [now this section] an indictment must charge a conspiracy to commit an offense against the United States or to defraud the United States. Fuller v. U.S., C.C.A.9 (Cal.) 1940, 114 F.2d 698. Conspiracy 43(6); Conspiracy 43(10)

An indictment for conspiracy alone, instead of for conspiracy and for substantive crime in separate counts, is proper. Weiss v. U. S., C.C.A.3 (Pa.) 1939, 103 F.2d 759. Conspiracy 37

Fact that conspiracy as charged encompassed commission of many substantive crimes, some of which constituted other conspiracies, did not make indictment bad. Capriola v. U.S., C.C.A.7 (Ill.) 1932, 61 F.2d 5, certiorari denied

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53 S.Ct. 315, 287 U.S. 671, 77 L.Ed. 579. Indictment And Information 125(5.5)

Indictment for conspiracy need only allege conspiracy to commit offense and overt act to effect its object. Bellande v. U.S., C.C.A.5 (La.) 1928, 25 F.2d 1, certiorari denied 48 S.Ct. 602, 277 U.S. 607, 72 L.Ed. 1012. Conspiracy 43(5)

Indictment charging that certain persons conspired together with certain other persons sufficiently charged that persons in first group conspired with those in second group, and that all conspired to commit offenses charged. A Guckenheimer & Bros Co v. U S, C.C.A.3 (Pa.) 1925, 3 F.2d 786, certiorari denied 45 S.Ct. 509, 268 U.S. 688, 69 L.Ed. 1157.

An indictment charging a conspiracy to do two things was good, under former § 88 of this title [now this section] if one of such things constituted an offense against the United States. U.S. v. Drawdy, S.D.Fla.1923, 288 F. 567. Conspiracy 43(6)

An indictment for conspiracy, which sets forth the names of the conspirators and alleges that the conspiracy was to commit an offense against the United States, the nature of the offense, the time and place, and the overt acts committed to execute the conspiracy, is sufficient. U S v. Pennsylvania Central Coal Co, W.D.Pa.1918, 256 F. 703 . Conspiracy 43(6)

"In an indictment for conspiracy the omission of an essential element of the offense cannot be cured by the statement of the acts done to effect it, though it may be looked at to ascertain the sense in which terms are used. Stearns v. U.S., Minn.1907, 152 F. 900, 82 C.C.A. 48. This is so because the offense is the conspiracy alone, and overt acts are not a part of it, but simply a requirement to show it was not a mere evil conception of the mind, without move to accomplishment. See U.S. v. Britton, Mo.1883, 2 S.Ct. 531, 108 U.S. 199, 204, 27 L.Ed. 698. As to most conspiracies the statutes require an overt act; but where none is required, as in a conspiracy to deprive a citizen of a right under the Constitution and laws of the United States (Rev. Stat. § 5508 [former section 51 of this title]) it is held not necessary to aver one, and that when averments of that character are made they are referable to the conspiracy as describing or particularizing it. Smith v. U.S., Mo.1907, 157 F. 721, 85 C.C.A. 353." Spear v. U. S., C.C.A.8 (Ark.) 1915, 228 F. 485, 143 C.C.A. 67.

An indictment must be free from ambiguity, uncertainty, and repugnance, and clearly state every ingredient of the offense charged. It is not necessary, however, to set out the means by which a conspiracy is to be carried out; nor that they are a part of the agreement or confederation; nor what part each conspirator is to play; nor the character of the acts to be performed to effectuate the purpose. It is the conspiracy to do the unlawful thing that is the gravamen of the offense. U.S. v. Dahl, W.D.Wash.1915, 225 F. 909, affirmed 234 F. 618, 148 C.C.A. 384.

The indictment must charge the act constituting the offense with reasonable certainty, and not by mere inference. U.S. v. Atlanta Journal Co., C.C.N.D.Ga.1911, 185 F. 656, error dismissed 33 S.Ct. 775, 229 U.S. 605, 57 L.Ed. 1348.

Conspiracy must be charged "with that degree of certainty requisite in all indictments under the laws of the United States." Tyner v. U.S., App.D.C.1904, 23 App.D.C. 324.

Breadth of this section requires that any indictment returned thereunder must be carefully drawn to ensure that offense charged is clearly stated. U. S. v. Heinze, D.C.Del.1973, 361 F.Supp. 46. Conspiracy 43(1)

Indictment charging conspiracy must allege only that conspiracy was in existence and that at least one overt act was committed by one of conspirators in district trying case during period of limitations. U. S. v. Luros, N.D.Iowa 1965, 243 F.Supp. 160, certiorari denied 86 S.Ct. 433, 382 U.S. 956, 15 L.Ed.2d 361. Indictment And Information 87(6)

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Indictment naming defendants and others as alleged coconspirators, specifying the nature of their illegal agreement, and describing the stated objective of the conspiracy, and specifying acts in furtherance of the conspiracy to effect its objects, was sufficient. U. S. v. Pope, S.D.N.Y.1960, 189 F.Supp. 12. Conspiracy 43(1)

Indictments in conspiracy cases do not have to set forth the description of the manner in which defendants joined the conspiracy. U S v. Bitz, S.D.N.Y.1959, 179 F.Supp. 80, reversed 282 F.2d 465. Conspiracy 43(1)

An indictment for conspiracy to defraud the United States may include the known and the unknown. U. S. v. Gilboy, M.D.Pa.1958, 160 F.Supp. 442. Indictment And Information 69

Where one allegation of indictment set forth a conspiracy that was subject to criminal prosecution, indictment was sufficient, without regard to whether additional allegations were sufficient if they stood alone. U.S. v. Bryan, D.C.D.C.1947, 72 F.Supp. 58, affirmed 167 F.2d 241, 83 U.S.App.D.C. 127, certiorari denied 68 S.Ct. 1511, 334 U.S. 843, 92 L.Ed. 1767, rehearing denied 70 S.Ct. 1001, 339 U.S. 971, 94 L.Ed. 1379. Conspiracy 43(1)

Rule for charging substantive offenses, that every element of crime must have been alleged, does not apply to indictments for conspiracy. U.S. v. Noble, W.D.N.Y.1937, 18 F.Supp. 808. Conspiracy 43(1)

Conspiracy indictment was not defective because period of conspiracy was alleged to be in excess of six years, because of number of conspirators, because of the geographical area of conspiracy's operation, because of the number of its objects, nor the number of acts done in its furtherance. U S v. Stromberg, S.D.N.Y.1957, 22 F.R.D. 513. Conspiracy 43(1)

276. ---- Language of statute, allegations, indictment or information

An information sufficiently alleged conspiracy to defraud United States in language of statute and with sufficient supporting detail to adequately notify defendants of charges against them; information charged defendant with conspiring with others to defraud federal agencies in implication of their Minority Business Enterprise (MBE) programs by using "front company" to win MBE set aside contracts which defendants would not otherwise have been eligible to receive. U.S. v. Barker Steel Co., Inc., C.A.1 (Mass.) 1993, 985 F.2d 1123, rehearing denied 985 F.2d 1136. Conspiracy 43(10); Indictment And Information 110(10)

Charge of conspiracy is sufficient if it follows statutory language and contains adequate statement of overt act to effectuate object of conspiracy, and requisite overt act need not be criminal in itself. U. S. v. Watson, C.A.10 (Okla.) 1979, 594 F.2d 1330, certiorari denied 100 S.Ct. 78, 444 U.S. 840, 62 L.Ed.2d 51. Conspiracy 27; Indictment And Information 110(10)

Conspiracy count charging, inter alia, that laboratories received fees and shared them with doctors who had referred specimens to lab failed to charge conduct plainly and unmistakably falling within proscription of this section, and thus failed to charge criminal conspiracy. U. S. v. Porter, C.A.5 (Fla.) 1979, 591 F.2d 1048. Conspiracy 43(1)

Information charging conspiracy is sufficient if it follows the statutory language and contains an adequate statement of an overt act to effectuate the object of the conspiracy. U. S. v. Sterkel, C.A.10 (Colo.) 1970, 430 F.2d 1262. Indictment And Information 110(10)

Indictment charging violation of this section and section 2314 of this title relating to conspiracy and to interstate transportation of stolen goods, in the exact language of this section and section 2314 of this title, was sufficient. Grene v. U. S., C.A.5 (Fla.) 1966, 360 F.2d 585, certiorari denied 87 S.Ct. 522, 385 U.S. 978, 17 L.Ed.2d 440. Indictment And Information 110(10); Indictment And Information 110(18)

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Indictment which charged unlawful transportation in interstate commerce of falsely made and forged checks and conspiracy to unlawfully transport such and which substantially followed language of statutes involved and in each count contained official citation of statute which defendant was alleged to have violated, was sufficient. Downing v. U. S., C.A.5 (Tex.) 1965, 348 F.2d 594, certiorari denied 86 S.Ct. 235, 382 U.S. 901, 15 L.Ed.2d 155. Indictment And Information 110(10); Indictment And Information 110(18)

Generally, indictment which follows language of statute is sufficient unless statute omits an essential element of offense. Downing v. U. S., C.A.5 (Tex.) 1965, 348 F.2d 594, certiorari denied 86 S.Ct. 235, 382 U.S. 901, 15 L.Ed.2d 155. Indictment And Information 110(3)

Count charging conspiracy to violate forgery provision in assertedly knowingly falsely making, forging and counterfeiting and knowingly uttering and publishing as true United States savings bonds for purpose of obtaining and receiving money from United States was not fatally defective, and absence of phrase, of § 495 of this title, "or of enabling any other person, either directly or indirectly to obtain or receive" sum did not affect validity of indictment. Danielson v. U. S., C.A.9 (Cal.) 1963, 321 F.2d 441. Conspiracy 43(10)

Indictment which was substantially in wording of statutes adequately charged crimes of conspiracy to enter by force a specified bank and forcible entry of such bank with intent to commit larceny. Scott v. U. S., C.A.6 (Ky.) 1962, 304 F.2d 706, certiorari denied 83 S.Ct. 82, 371 U.S. 847, 9 L.Ed.2d 82. Indictment And Information 110(10); Indictment And Information 110(52)

Indictment charging conspiracy is sufficient if it follows language of statute and contains sufficient statement of an overt act to effectuate object of conspiracy. Madsen v. U. S., C.C.A.10 (Kan.) 1947, 165 F.2d 507. See, also, Williams v. U.S., C.C.A.Tenn.1925, 3 F.2d 933; Rudner v. U.S., C.C.A.Ohio 1922, 281 F. 516, certiorari denied 43 S.Ct. 95, 260 U.S. 734, 67 L.Ed. 487; Jelke v. U.S., Ill.1918, 255 F. 264, 166 C.C.A. 434; U.S. v. Sharpe, D.C.Ky.1945, 61 F.Supp. 237. Conspiracy 43(5); Indictment And Information 110(10)

In prosecution for conspiracy to advocate the overthrow of the United States government by force and to advocate insubordination in the armed forces, count following the wording of former § 11 of this title closely in stating the broad purposes of the conspiracy and clearly stating that the conspiracy was to do the forbidden things in the particular manner set forth was sufficient where the statutory definition of the offense was definitely descriptive. Dunne v. U. S., C.C.A.8 (Minn.) 1943, 138 F.2d 137, certiorari denied 64 S.Ct. 205, 320 U.S. 790, 88 L.Ed. 476, rehearing denied 64 S.Ct. 260, 320 U.S. 814, 88 L.Ed. 492, rehearing denied 64 S.Ct. 426, 320 U.S. 815, 88 L.Ed. 493. Indictment And Information 110(10)

An indictment charging conspiracy was sufficient if it followed the language of former § 88 of this title [now this section] and contained a sufficient statement of an overt act to effect the object of the conspiracy, except where the object of the conspiracy was in itself lawful, in which case the means must have been set forth with such particularity as to disclose their illegality and the intended criminal intent. Culp v. U. S., C.C.A.8 (Ark.) 1942, 131 F.2d 93. Indictment And Information 110(10)

An indictment charging a conspiracy to violate a criminal statute in the words of former § 88 of this title [now this section] and containing a sufficient description of the object of the conspiracy to fairly and reasonably inform accused of character of offense charged was sufficient. Center v. U.S., C.C.A.4 (S.C.) 1938, 96 F.2d 127. Indictment And Information 110(10)

Indictment for conspiracy to commit offense, charging in words of former § 88 of this title [now this section] conspiracy to violate criminal statute and sufficiently describing object of conspiracy to reasonably inform accused of character of offense, was sufficient. Hill v. U.S., C.C.A.4 (Md.) 1930, 42 F.2d 812, certiorari denied 51 S.Ct. 87, 282 U.S. 884, 75 L.Ed. 780. Indictment And Information 110(10)

"It is the general rule that an indictment attempting to charge conspiracy to commit a crime is sufficient if it follows the language of the statute and contains a sufficient statement of an overt act to effect the object of the conspiracy, unless the conspiracy involves its carrying out in such a manner that the defendants would not be fairly and reasonably informed of the character of the offense without detailed statement of the means, the time and the place." Rudner v. U. S., C.C.A.6 (Ohio) 1922, 281 F. 516, 2 Ohio Law Abs. 242, certiorari denied 43 S.Ct. 95, 260 U.S. 734, 67 L.Ed. 487.

It is no objection to an indictment for conspiracy that the agreement constituting the conspiracy is laid in the words of the statute. U.S. v. White, C.C.S.D.N.Y.1909, 171 F. 775. Indictment And Information 110(10)

All that is required for indictment charging conspiracy is that it be laid in language of this section. U. S. v. Wolfson, D.C.Del.1968, 294 F.Supp. 267. Indictment And Information 110(10)

Count of indictment charging, in language of statute, conspiracy to violate statute to obtain defense information was not fatally defective for failure to allege that information concerned was guarded or secret but count was sufficient. U. S. v. Melekh, N.D.Ill.1961, 193 F.Supp. 586. Indictment And Information 110(10)

Indictment charging violation of the National Firearms Act, § 5801 et seq. of Title 26, and the Federal Firearms Act, § 901 et seq. of Title 15, and a conspiracy to do so essentially in the language of the statutes, and in addition revealing means by which conspiracy was to be carried on and detailing what the defendants did to constitute the substantive offenses was not subject to objection that it failed to inform defendants of nature of the accusations. U. S. v. Bachman, D.C.D.C.1958, 164 F.Supp. 898. Indictment And Information 110(38)

An indictment charging a conspiracy ordinarily is sufficient if it follows the language of the statute and contains a sufficient description of the object of the conspiracy and a sufficient statement of an overt act to effect the object of the conspiracy. U. S. v. Gilboy, M.D.Pa.1958, 160 F.Supp. 442. Conspiracy 43(5); Indictment And Information 110(10)

Where a statute creating an offense sets forth fully, directly and expressly all of the essential elements necessary to constitute crime intended to be punished, it is sufficient if indictment charges offense in words of statute, but where statute is in general terms and does not set out expressly all of elements necessary to constitute offense, indictment must descend to particulars and charge every ingredient of which crime is composed. U.S. v. Cawthon, M.D.Ga.1954, 125 F.Supp. 419. Indictment And Information 110(3); Indictment And Information 110(4)

Indictment charging some of defendants with income tax evasion, one of defendants with aiding in the preparation of false and fraudulent income tax returns, and all of defendants with conspiring to violate certain enumerated federal laws, following substantially the language of the statute and embodying all of the elements of the crime and setting out the alleged acts constituting the offense, was sufficient. U.S. v. Wortman, E.D.Ill.1960, 26 F.R.D. 183. Indictment And Information 110(10); Indictment And Information 110(30)

Allegations of the overt act are not required to be as full and minute in an indictment for conspiracy as in an indictment for fraud without any charge of a conspiracy and if an overt act, in violation of law is charged as "in pursuance of" the agreement, instead of following the language of the statute that it was done "to effect the object" thereof, it is sufficient. U. S. v. Dustin, C.C. S.D.Ohio 1869, 25 F.Cas. 944, 2 Bond 332, No. 15011. See, also, Dealy v. U.S., N.D.1894, 14 S.Ct. 680, 152 U.S. 539, 38 L.Ed. 545; U.S. v. Nunenmacher, C.C.Wis.1876, 7 Biss. 129, Fed.Cas. No. 15,903; U.S. v. Boyden, C.C.Mass.1868, 1 Lowell 266, Fed.Cas. No. 14,632. Conspiracy 43(5)

277. ---- References to other statutes, allegations, indictment or information

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In prosecution for conspiring to commit an offense against the United States, the statute upon which the indictment was founded, within meaning of former § 682 of this title, was the statute, at the violation of which the conspiracy was aimed. U.S. v. Kapp, U.S.Okla.1937, 58 S.Ct. 182, 302 U.S. 214, 82 L.Ed. 205. Federal Courts 491

Conspiracy to defraud United States is itself a substantive offense and count of indictment charging such offense need not refer to any other statute. U. S. v. Vazquez, C.A.3 (N.J.) 1963, 319 F.2d 381. Conspiracy 43(10)

Where indictment charging conspiracy to violate narcotic laws erroneously referred to this section which was not applicable, but defendant was advised by Assistant United States Attorney, after jury was sworn but before evidence was taken, as to § 7237(a) of Title 26, and it did not appear that defendant was prejudiced thereby, mistake of grand jury in referring to wrong statute in indictment was of no consequence. United States v. McKnight, C.A.2 (N.Y.) 1958, 253 F.2d 817. Indictment And Information 108

An indictment based on former § 88 of this title [now this section], covering conspiracies against the United States, was valid though breach of no other federal statute was charged. United States v. Bayer, C.C.A.2 (N.Y.) 1946, 156 F.2d 964, certiorari granted 67 S.Ct. 354, 329 U.S. 706, 91 L.Ed. 615, reversed on other grounds 67 S.Ct. 1394, 331 U.S. 532, 91 L.Ed. 1654, rehearing denied 68 S.Ct. 29, 332 U.S. 785, 92 L.Ed. 368. Conspiracy 43(1)

Indictment charging defendants with entering into scheme to "launder" money by, inter alia, making numerous bank deposits in sums less than $10,000 in order to avoid triggering provisions of Bank Secrecy Act [31 U.S.C.A. § 5311 et seq.] requiring banks to file currency transaction reports with the Internal Revenue Service was sufficient to allege that defendants violated statute [18 U.S.C.A. § 371] prohibiting conspiracy to commit offense against United States by conspiring to violate statute [18 U.S.C.A. § 1001] prohibiting concealing by trick material facts within jurisdiction of Treasury Department. U.S. v. Richter, N.D.Ill.1985, 610 F.Supp. 480, affirmed 785 F.2d 312, affirmed 793 F.2d 1296, certiorari denied 107 S.Ct. 191, 479 U.S. 855, 93 L.Ed.2d 124. Conspiracy 43(10)

Count charging defendant with conspiring to commit offenses against United States, namely, injuring by means of a destructive device a mathematics research center and property contained in named hall at state university, was sufficient to allege a conspiracy in violation of this section, as against contention that such count failed to aver the essential elements of substantive offenses, where indictment also listed statutory sections of the substantive offenses and incorporated by reference acts described in specified substantive counts of the indictment. U. S. v. Fine, W.D.Wis.1976, 413 F.Supp. 728. Conspiracy 43(6)

Contention that indictment charging violations of sections 891-894 and 1951 of this title was infirm for failure to name of identify victims of alleged extortion was rendered moot by grand jury's filing of new indictment in which victims were named or identified. U. S. v. Calegro De Lutro, S.D.N.Y.1970, 309 F.Supp. 462. Indictment And Information 15(4)

Indictment's charging defendants with conspiracy "in violation of" section 1341 of this title, while this section prohibited conspiracies "to violate," did not make indictment fatally defective. U. S. v. Wolfson, D.C.Del.1968, 294 F.Supp. 267. Indictment And Information 110(10)

Since the inclusion of the words "or conspires" in the Harrison Act, § 7237(a) of Title 26, and the Jones-Miller Act, § 174 of Title 21, a conspiracy to violate such laws is now a crime arising under such statutes, and an indictment charging a conspiracy to violate such laws need not refer to the general conspiracy statutes. U.S. v. Shackelford, S.D.N.Y.1957, 180 F.Supp. 857. Conspiracy 28(3); Indictment And Information 108

Fact that conspiracy in its alleged existence embraced violation of various statutes or regulations, some of which were not in existence at inception of alleged conspiracy, would not render indictment charging existence of such alleged conspiracy fatally defective. U. S. v. J. R. Watkins Co., D.C.Minn.1954, 120 F.Supp. 154. Conspiracy 43(6)

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To show "conspiracy" the fact charged must bring the act or acts to be committed within provisions of some other criminal statute. U.S. v. Gilliland, E.D.Tex.1940, 35 F.Supp. 181, probable jurisdiction noted 61 S.Ct. 33, reversed on other grounds 61 S.Ct. 518, 312 U.S. 86, 85 L.Ed. 598. Conspiracy 43(6)

Indictments charging defendants with a conspiracy to commit offenses charged against them in preceding counts of indictments, and setting out citations to statutes covering offenses referred to and manner and means by which they were committed, was sufficient to state facts constituting an offense against laws of United States. U. S. v. Bogy, W.D.Tenn.1936, 16 F.Supp. 407, affirmed 96 F.2d 734, certiorari denied 59 S.Ct. 68, 305 U.S. 608, 83 L.Ed. 387. Conspiracy 43(9)

278. ---- Notice to court and defendants, allegations, indictment or information

Indictment charging conspiracy to misapply funds of federally insured savings and loan association and to conceal material facts from and falsify statements to the Government, etc., was not insufficient, where indictment fairly apprised defendants of the activities alleged to be unlawful. U. S. v. Grizaffi, C.A.7 (Ill.) 1972, 471 F.2d 69, certiorari denied 93 S.Ct. 2141, 411 U.S. 964, 36 L.Ed.2d 684, certiorari denied 93 S.Ct. 2142, 411 U.S. 964, 36 L.Ed.2d 684. Indictment And Information 71.4(3)

The offense-object of a conspiracy to commit an offense against the United States need not be charged with the same completeness as when an indictment for the crime itself is drawn, but the indictment with some precision must acquaint defendant with the nature of the offense-object. U.S. v. Offutt, App.D.C.1942, 127 F.2d 336, 75 U.S.App.D.C. 344. Conspiracy 43(6)

In prosecution for conspiracy to commit offenses against United States indictment including specific allegations as to persons, time, place, and events, was sufficient to advise defendants of what was charged. Wainer v. U.S., C.C.A.7 (Ill.) 1937, 87 F.2d 77, certiorari denied 57 S.Ct. 511, 300 U.S. 669, 81 L.Ed. 876. Conspiracy 43(1)

Indictment for conspiracy must plead facts identifying offense and enabling defendants to prepare for trial. U.S. v. Eisenminger, D.C.Del.1926, 16 F.2d 816. Conspiracy 43(6)

Sufficient recital of details is required to enable defendants to make defense, and to protect them against another prosecution. Ford v. U.S., C.C.A.9 (Cal.) 1926, 10 F.2d 339, certiorari granted 46 S.Ct. 475, 271 U.S. 652, 70 L.Ed. 1133, affirmed 47 S.Ct. 531, 273 U.S. 593, 71 L.Ed. 793. See, also, U.S. v. Aviles, D.C.Cal.1915, 222 F. 474. Indictment And Information 71.2(3); Indictment And Information 71.2(4)

It is not necessary to the validity of an indictment for conspiracy, as protecting defendants against future prosecutions or enabling them to prepare their defense, to set out the manner in which they came into the conspiracy. Rudner v. U. S., C.C.A.6 (Ohio) 1922, 281 F. 516, 2 Ohio Law Abs. 242, certiorari denied 43 S.Ct. 95, 260 U.S. 734, 67 L.Ed. 487. Conspiracy 43(2)

The indictment must be sufficient to inform the court of the facts alleged, so that it may decide whether they are sufficient in law to sustain a conviction if one should be had. Knauer v. U. S., C.C.A.8 (Iowa) 1916, 237 F. 8, 150 C.C.A. 210.

Count of indictment charging eight defendants with conspiracy to defraud the government was sufficient to plead offense even without specific statutory offense as to object of conspiracy where sections of indictment pleaded agreement with respect to essential nature of alleged fraud and, in conjunction with overt acts, notified defendants of nature of charge against them. U.S. v. Anderson, D.C.Wyo.1983, 577 F.Supp. 223, reversed 778 F.2d 602. Conspiracy 43(1)

Conspiracy indictment, which alleged the agreement in first paragraph of first count and then alleged that one of

the objects of conspiracy was to violate federal statute proscribing obstruction of commerce and affecting movement in commerce by extortion and specified electricity and gas provided by named company as the affected commodities, fully apprised defendants of offenses which it was claimed they conspired to commit and was sufficient. U. S. v. De Sapio, S.D.N.Y.1969, 299 F.Supp. 436. Conspiracy 43(6)

Indictment alleging conspiracy to violate law prohibiting obstruction of commerce and the affecting of movement of goods in commerce by extortion and alleging that coconspirator would misuse power as city official at direction of defendants and that defendants would inform company that they could cause coconspirator to misuse power with the result that company would enter into contracts with particular defendant who would make payments to other defendants set forth the unlawful purpose with sufficient particularity to enable court to ascertain that the conspiracy was illegal. U. S. v. De Sapio, S.D.N.Y.1969, 299 F.Supp. 436. Indictment And Information 71.4(3)

In indictment charging conspiracy to commit crime, that crime should be described with sufficient particularity to enable defendants to know what specific offenses they are charged with conspiring to commit. U.S. v. Devine's Milk Laboratories, Inc., D.C.Mass.1960, 179 F.Supp. 799. Indictment And Information 71.4(3)

279. ---- Specificity, allegations, indictment or information

Because of secretive nature of conspiracies, less particularity is required in their pleading and proof than would be required in other criminal cases. e.g., allegations and proofs that certain acts were committed by unknown persons at unknown places are generally permissible. U. S. v. Gorham, C.A.D.C.1975, 523 F.2d 1088, 173 U.S.App.D.C. 139, supplemented 536 F.2d 410, 175 U.S.App.D.C. 383. Conspiracy 43(12)

Indictment for conspiracy need not charge particular defendant with particular crime. U.S. v. Olmstead, D.C.Wash.1925, 5 F.2d 712. Conspiracy 43(1)

An indictment for conspiracy may be as general as the conspiracy it seeks to punish. Wing v. U.S., C.C.A.5 (Fla.) 1922, 280 F. 112. Conspiracy 43(1)

A conspiracy indictment need not set forth in detail each separate transaction, and the part each of the individuals engaged therein performed. U.S. v. Greater Kan. City Retail Coal Merchants' Ass'n, W.D.Mo.1949, 85 F.Supp. 503. Conspiracy 43(1)

280. ---- Agreement to commit offense, allegations, indictment or information

An indictment charging a conspiracy to commit offenses against the United States is sufficient if it alleges an agreement, the unlawful object toward which the agreement is directed and an overt act in furtherance of conspiracy. U. S. v. Giese, C.A.9 (Or.) 1979, 597 F.2d 1170, certiorari denied 100 S.Ct. 480, 444 U.S. 979, 62 L.Ed.2d 405. Conspiracy 43(1)

Though indictment charging theft of government property and retention of the same knowing that it was stolen and conspiracy to commit that offense would have been subject to objection on the ground that it was improper to include an alleged agreement to conceal as part of the original conspiracy, where no such objection was made and where the indictment was fully sufficient to state an actionable conspiracy in other respects, it was not plain error to proceed with the trial under this indictment as drawn. U. S. v. Green, C.A.9 (Cal.) 1979, 594 F.2d 1227, certiorari denied 100 S.Ct. 108, 444 U.S. 853, 62 L.Ed.2d 70. Criminal Law 1032(5)

Scope of conspiratorial agreement alleged in indictment determines both the duration of the conspiracy and whether act relied on as an overt act may properly be regarded as in furtherance of the conspiracy. U. S. v. Davis, C.A.5 (Tex.) 1976, 533 F.2d 921. Conspiracy 43(12)

An indictment for a conspiracy to violate the Mann Act, § 2422 of this title, was not defective because it did not set out an agreement on the defendant's part. U. S. v. Frank, C.A.3 (Pa.) 1961, 290 F.2d 195, certiorari denied 82 S.Ct. 38, 368 U.S. 821, 7 L.Ed.2d 26. Conspiracy 43(6)

In prosecution for conspiracy to commit offenses against United States in connection with bankruptcy proceeding, indictment was insufficient for failure to allege conspiratorial agreement to violate bankruptcy laws during time when bankruptcy was pending. U. S. v. Deutsch, C.A.3 (Pa.) 1957, 243 F.2d 435. Conspiracy 43(6)

Although what was done is often good evidence of what was agreed to be done, an allegation of such evidence in indictment for conspiracy is not an allowable substitute for a clear statement of the agreement which is proposed to be proven. Hamner v. U.S., C.C.A.5 (Tex.) 1943, 134 F.2d 592. See, also, U.S. v. Kendzierski, D.C.N.Y.1944, 54 F.Supp. 164. Conspiracy 43(1)

An indictment charging a conspiracy to commit an offense against the United States must charge an agreement to commit the offense, the offense-object toward which the agreement is directed, and an overt act. U.S. v. Offutt, App.D.C.1942, 127 F.2d 336, 75 U.S.App.D.C. 344. See, also, Jelke v. U.S., Ill.1918, 255 F. 264, 166 C.C.A. 434; U.S. v. Grand Trunk R. Co., D.C.N.Y.1915, 225 F. 283; U.S. v. Wupperman, D.C.N.Y.1914, 215 F. 135; U.S. v. Melfi, D.C.Del.1902, 118 F. 899; U.S. v. Taffe, D.C.Or.1898, 86 F. 113; U.S. v. Adler, D.C.Iowa 1892, 49 F. 736; In re Wolf, D.C.Ark.1886, 27 F. 606. Conspiracy 43(5); Conspiracy 43(6)

When charge of conspiracy is laid, terms of agreement must be set forth therein, and until that is done, evidence of parties' conduct is not competent or responsive to unalleged agreement. Asgill v. U.S., C.C.A.4 (Va.) 1932, 60 F.2d 780. Conspiracy 43(12)

An indictment for conspiracy, under former § 88 of this title [now this section] must have alleged some overt act on the part of the defendants as well as the fact of the unlawful agreement. Harrison v. Moyer, N.D.Ga.1915, 224 F. 224. See, also, U.S. v. Kissel, C.C.N.Y.1909, 173 F. 823, reversed on other grounds 31 S.Ct. 124, 218 U.S. 601, 54 L.Ed. 1168; Ex parte Black, D.C.Wis.1906, 147 F. 832, affirmed 160 F. 431; U.S. v. Reichert, C.C.Cal.1887, 32 F. 142; U.S. v. Watson, D.C.Miss.1883, 17 F. 145; U.S. v. Blunt, C.C.N.C.1875, Fed.Cas. No. 14,615.

"To allege that the defendants conspired is, at least, to allege that they agreed to do the matters which are set forth as the substance of their conspiracy. I do not mean to say that the mere fact that a conspiracy is alleged is sufficient to show that the conspiracy was unlawful, but that, taken at its lowest terms, to allege a conspiracy is to allege an agreement." U.S. v. White, C.C.S.D.N.Y.1909, 171 F. 775.

Indictment alleging that defendants and certain other named individual from on or about Dec. 1, 1965, until Jan. 16, 1969, willfully conspired with each other and with diverse other persons to violate certain statutes sufficiently alleged, as an element of offense of conspiring to commit offense against United States, an "agreement" between defendants during specified period of time. U. S. v. Manetti, D.C.Del.1971, 323 F.Supp. 683. Conspiracy 43(1)

Indictment charging conspiracy must distinctly and directly allege agreement to commit offense against United States, and inference and implication will not suffice. U. S. v. Mathies, W.D.Pa.1962, 203 F.Supp. 797. See, also, Hamner v. U.S., C.C.A.Tex.1943, 134 F.2d 592. Conspiracy 43(6)

281. ---- Object of conspiracy, allegations, indictment or information

When the criminality of a conspiracy consists in an unlawful agreement of two or more persons to compass or promote some criminal or illegal purpose, that purpose must be fully and clearly stated in the indictment. Pettibone v. U.S., U.S.Idaho 1893, 13 S.Ct. 542, 148 U.S. 197, 37 L.Ed. 419. See, also, U.S. v. Olmstead, D.C.Wash.1925, 5 F.2d 712; Hedderly v. U.S., Or.1912, 193 F. 561, 114 C.C.A. 227; U.S. v. Cawthon, D.C.Ga.1954, 125 F.Supp.

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419. Conspiracy 23.1

Conspiracy indictment adequately alleged as object of conspiracy obstruction of customs service, despite claims that none of alleged overt acts related to obstruction of customs service and that Government improperly "pyramided" offenses. U. S. v. Hajecate, C.A.5 (Tex.) 1982, 683 F.2d 894, certiorari denied 103 S.Ct. 2086, 461 U.S. 927, 77 L.Ed.2d 298. Conspiracy 43(11)

Conspiracy, rather than accomplishment of its underlying objectives, is gravamen of offense of conspiracy, and, therefore, it is not necessary that object of conspiracy be described in detail in indictment in manner which would be required in charging violation of substantive offense. U. S. v. Evans, C.A.5 (Tex.) 1978, 572 F.2d 455, rehearing denied 576 F.2d 931, certiorari denied 99 S.Ct. 200, 439 U.S. 870, 58 L.Ed.2d 182. Conspiracy 43(1)

A charge in indictment that parties have conspired to commit an offense against United States must include a showing that object of conspiracy is to commit an offense under laws of United States. U. S. v. Konovsky, C.A.7 (Ill.) 1953, 202 F.2d 721. Conspiracy 43(6)

A statement in indictment as to the alleged objects, motives, purposes, and acts of the conspirators was no part of the charge of conspiracy to defraud the United States and served only to advise defendants of the scope of the government's evidence and to limit the inquiry at the trial. Joyce v. U. S., C.C.A.8 (N.D.) 1946, 153 F.2d 364, certiorari denied 66 S.Ct. 1349, 328 U.S. 860, 90 L.Ed. 1631. Conspiracy 43(5)

Indictment charging conspiracy to commit offense against United States must show purpose to contravene statute creating substantive offense. U. S. v. Goldman, D.C.Conn.1928, 28 F.2d 424. Conspiracy 43(6)

Count of conspiracy indictment is demurrable, if failing to show object of conspiracy to be offense against United States. Brown v. U.S., C.C.A.5 (Ga.) 1927, 21 F.2d 827. Conspiracy 43(6)

An indictment for conspiracy is not bad for indefiniteness, where it alleges the purpose of the conspiracy, and describes the precise methods taken for carrying it out. Firth v. U.S., C.C.A.4 (W.Va.) 1918, 253 F. 36, 165 C.C.A. 56. Conspiracy 43(1)

An indictment merely charging a conspiracy to do a thing, but not alleging the thing was done, does not show the completed offense within principle that indictment for conspiracy does not lie when it makes that showing. Grant v. U.S., C.C.A.8 (Okla.) 1918, 252 F. 692, 164 C.C.A. 532. Conspiracy 43(5)

It is essential in an indictment for conspiracy to commit a crime against the United States to charge acts sufficient to show that the design of the conspiracy was to commit an offense against the United States. Stanley v. U.S., C.C.A.8 (Okla.) 1912, 195 F. 896, 115 C.C.A. 584. Indictment And Information 125(5.5)

"An indictment for conspiracy, to be good under the statute, must charge that the conspiracy was to do some act made criminal by the laws of the United States, and must state with sufficient certainty the facts to show that such a criminal act was the object of the conspiracy. It is unusual to set out the overt acts, those acts which may have been done by any one or more of the conspirators in pursuance of the conspiracy, and in order to effect the common purpose; but this is not requisite if the indictment charges what is in itself an unlawful conspiracy. The offense is complete on the consummation of the conspiracy, and the overt acts may be either regarded as matters of aggravation or disregarded as surplusage. Where an indictment for a conspiracy does not set forth the object specifically, and show that such object is a legal crime, it should particularly set forth the means to be used by the conspirators, and show that these means are criminal". U.S. v. Gardner, C.C.N.D.N.Y.1890, 42 F. 829.

To constitute a good information or indictment, under former § 88 of this title [now this section], it must charge

that the conspiracy was to do some act made a crime by the laws of the United States, and must state with sufficient certainty the offense intended to be committed, and must then state some act done by one of the conspirators towards effecting the object of the conspiracy. In re Wolf, W.D.Ark.1886, 27 F. 606. See, also, U.S. v. Wupperman, D.C.N.Y.1914, 215 F. 135; U.S. v. Watson, D.C.Miss.1883, 17 F. 145.

If the indictment is to be valid, the object alleged in a charge of conspiracy based on violation of this section must be an offense against the United States. U. S. v. Fine, W.D.Wis.1976, 413 F.Supp. 728. Conspiracy 43(6)

282. ---- Multiple objects of conspiracy, allegations, indictment or information

Conspiracy count which alleged multiple objects of conspiracy did not violate rule requiring indictments to be plain, concise, and definite, in light of rule's specific approval of enumerating multiple objects. U.S. v. Linn, C.A.10 (Wyo.) 1994, 31 F.3d 987. Conspiracy 43(1)

Single conspiracy, utilizing the facilities of interstate commerce, to obtain kickback from contractors doing business with city and county government violated section 1952 of this title, proscribing conspiracies utilizing facilities of interstate commerce, as well as this section, each of which statutes permits a different range of sentence; thus, it was proper to charge both violations as separate counts of the indictment. U. S. v. Kenny, C.A.3 (N.J.) 1972, 462 F.2d 1205, certiorari denied 93 S.Ct. 233, 409 U.S. 914, 34 L.Ed.2d 176, certiorari denied 93 S.Ct. 234, 409 U.S. 914, 34 L.Ed.2d 176. Indictment And Information 129(1)

All illegal objects of conspiracy need not be set forth in single count of indictment therefor, but all felonies and all mere misdemeanor objects of conspiracy should be listed in separate counts of indictment. Williams v. U.S., C.A.5 (Ga.) 1956, 238 F.2d 215, certiorari denied 77 S.Ct. 589, 352 U.S. 1024, 1 L.Ed.2d 596. Indictment And Information 131

283. ---- Certainty as to a common intent, allegations, indictment or information

An indictment showing certainty to a common intent was sufficiently definite to inform defendants of the charges against them. Glasser v. U.S., U.S.Ill.1942, 62 S.Ct. 457, 315 U.S. 60, 86 L.Ed. 680, rehearing denied 62 S.Ct. 629, 315 U.S. 827, 86 L.Ed. 1222, rehearing denied 62 S.Ct. 637, 315 U.S. 827, 86 L.Ed. 1222. See, also, U.S. v. B. Goedde & Co., D.C.Ill.1941, 40 F.Supp. 523; Fletcher v. U.S., 1914, 42 App.D.C. 53; U.S. v. Cella, 1911, 37 App.D.C. 423, certiorari denied 32 S.Ct. 526, 223 U.S. 728, 56 L.Ed. 633. Indictment And Information 71.2(2)

The act of conspiracy is the gist of the crime and only certainty to a common intent is necessary. Williamson v. U.S., U.S.Or.1908, 28 S.Ct. 163, 207 U.S. 425, 52 L.Ed. 278. See, also, Crawford v. U.S., Dist.Col.1909, 29 S.Ct. 260, 212 U.S. 183, 53 L.Ed. 465, 15 Ann.Cas. 392; Davis v. U.S., C.A.Ky.1958, 253 F.2d 24; Jelke v. U.S., Ill.1918, 255 F. 264, 166 C.C.A. 434; Preeman v. U.S., Ill.1917, 244 F. 1, 156 C.C.A. 429, certiorari denied 38 S.Ct. 12, 245 U.S. 654, 62 L.Ed. 533.

In charging conspiracy it is not law that all elements of offense be charged with technical precision but, as gist of offense is conspiracy, only certainty to common intent, sufficient to identify offense which defendants conspired to commit, is necessary. Danielson v. U. S., C.A.9 (Cal.) 1963, 321 F.2d 441. See, also, Beitel v. U.S., C.A.Tex.1962, 306 F.2d 665; Williamson v. U.S., C.A.Cal.1962, 310 F.2d 192; U.S. v. Patterson, D.C.La.1964, 235 F.Supp. 233; U.S. v. Boisvert, D.C.R.I.1960, 187 F.Supp. 781. Conspiracy 43(1)

It is unnecessary in count for conspiracy to allege with technical precision all elements essential to commission of offense which is object of conspiracy, or to state such object in detail as required by indictment for committing substantive offense, and certainty to common intent, sufficient to identify offense which defendants conspired to commit, is all that is necessary. Stein v. U. S., C.A.9 (Cal.) 1962, 313 F.2d 518, certiorari denied 83 S.Ct. 1307,

373 U.S. 918, 10 L.Ed.2d 417, rehearing denied 84 S.Ct. 32, 375 U.S. 872, 11 L.Ed.2d 102. Conspiracy 43(1)

Certainty to a common intent sufficient to identify the offense which the defendants conspired to commit is all that is required. Zucker v. U.S., C.C.A.3 (N.J.) 1923, 288 F. 12, certiorari denied 43 S.Ct. 525, 262 U.S. 750, 67 L.Ed. 1214, certiorari denied 43 S.Ct. 703, 262 U.S. 756, 67 L.Ed. 1218. See, also, Harper v. U.S., C.C.A.Mo.1944, 143 F.2d 795; Rulovitch v. U.S., C.C.A.N.J.1923, 286 F. 315, certiorari denied 43 S.Ct. 434, 261 U.S. 622, 67 L.Ed. 831; Weisman v. U.S., C.C.A.Minn.1921, 277 F. 221, certiorari denied 42 S.Ct. 272, 258 U.S. 618, 66 L.Ed. 793; Bank v. U.S., C.C.A.Minn.1921, 277 F. 220; Goldberg v. U.S., C.C.A.Minn.1921, 277 F. 211; U.S. v. U.S. Brewers' Ass'n, D.C.Pa.1916, 239 F. 163; Aczel v. U.S., Ind.1916, 232 F. 652, 146 C.C.A. 578; Ching v. U.S., Md.1902, 118 F. 538, 55 C.C.A. 304, certiorari denied 23 S.Ct. 849, 189 U.S. 509, 47 L.Ed. 923; U.S. v. Guterma, D.C.N.Y.1960, 189 F.Supp. 265; U.S. v. Nunnemacher, C.C.Wis.1876, 7 Biss. 129, 27 Fed.Cas. No. 15,903.

In conspiracy prosecution, it is an identification of offense, rather than its definition, which must be indicated "with certainty to a common intent" in indictment. U. S. v. Guterma, S.D.N.Y.1960, 189 F.Supp. 265. Conspiracy 43(1)

Where conspiracy to commit an offense is charged, conspiracy is gist of crime, and certainty, to a common intent, sufficient to identify offense which defendants conspired to commit, is all that is requisite in stating object of conspiracy. U. S. v. Schneiderman, S.D.Cal.1951, 102 F.Supp. 87. Conspiracy 28(1); Indictment And Information 71.4(3)

284. ---- Knowledge and intent, allegations, indictment or information

An indictment charging a defendant with a conspiracy to "commit an offense against the United States" must state an agreement to do acts which, if done, would constitute a specific offense, and where an intent is an essential part of such offense, as defined by the statute, such intent must be averred. Green v. MacDougall, U.S.N.Y.1905, 26 S.Ct. 748, 199 U.S. 601, 50 L.Ed. 328. Conspiracy 43(6)

An indictment for conspiracy to commit an offense against the United States need not allege that defendants "feloniously" conspired, as felonious intent is not a part of the description of the offense in the statute, and the infamous character of the punishment affixed does not of itself render the offense a felony. Bannon v. U.S., U.S.Or.1895, 15 S.Ct. 467, 156 U.S. 464, 39 L.Ed. 494. Conspiracy 43(1); Indictment And Information 91(2)

Disconnect in indictment charging mail fraud defendant with mailing to rental unit owners' statements that knowingly withheld information concerning rental dates and amount of money received from rentals, and charging defendant with having stayed or having allowed others to stay in rental units without notice and payment to the owners was, at most, a non-fatal variance; the omitted information from the owners' statements was relevant to the same charge, namely, mail fraud, and the grand jury indicted defendants for unauthorized stays without notice or payment to the owners. U.S. v. Montgomery, C.A.9 (Or.) 2004, 384 F.3d 1050. Postal Service 48(8)

Indictment which charged defendant with conspiracy to defraud federally insured savings and loan association was not defective because of omission of element of intent to defraud. U. S. v. Musgrave, C.A.5 (Tex.) 1971, 444 F.2d 755. Conspiracy 43(9)

Indictment sufficiently charged that acts forming object of alleged conspiracy to violate section 2314 of this title, prohibiting unlawful and fraudulent interstate transportation of securities known to be forged had been done with the requisite intent. U. S. v. Chamley, C.A.7 (Ill.) 1967, 376 F.2d 57, certiorari denied 88 S.Ct. 221, 389 U.S. 898, 19 L.Ed.2d 220. Conspiracy 43(6)

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Failure to mention "intent to defraud the United States" in count of indictment charging conspiracy was not defect. Walker v. U. S., C.A.5 (Ga.) 1965, 342 F.2d 22, certiorari denied 86 S.Ct. 117, 382 U.S. 859, 15 L.Ed.2d 97. Conspiracy 43(4)

Indictment charging defendant among other things with conspiring to enter into illegal sales and transportation of marihuana was not objectionable on ground that it did not charge that conspirators "unlawfully" entered into conspiracy and that they "knowingly and wilfully" entered into conspiracy. Schnautz v. U.S., C.A.5 (Tex.) 1959, 263 F.2d 525, certiorari denied 79 S.Ct. 1294, 360 U.S. 910, 3 L.Ed.2d 1260. Conspiracy 43(1); Conspiracy 43(4)

Conspiracy to violate criminal law is bottomed on unlawful and wilful intention, and intent to accomplish an object cannot be alleged more clearly than by stating that parties conspired to accomplish it. Williams v. U.S., C.A.5 (Fla.) 1953, 208 F.2d 447, certiorari denied 74 S.Ct. 531, 347 U.S. 928, 98 L.Ed. 1081. Conspiracy 43(4)

Indictment charging defendant with conspiring to steal property of United States, and to receive such property, knowing that it was stolen, sufficiently alleged defendant's criminal intent by stating that defendant and his co-conspirators conspired to accomplish it. Williams v. U.S., C.A.5 (Fla.) 1953, 208 F.2d 447, certiorari denied 74 S.Ct. 531, 347 U.S. 928, 98 L.Ed. 1081. Conspiracy 43(4)

Conspiracy to violate law is bottomed on unlawful and willful intention, and allegation of conspiracy to violate criminal law involves deliberate plotting to subvert the laws. Razete v. U. S., C.A.6 (Ohio) 1952, 199 F.2d 44, certiorari denied 73 S.Ct. 284, 344 U.S. 904, 97 L.Ed. 698. Conspiracy 28(1)

In prosecution for use of mails in furtherance of scheme to defraud owners of public investment trust units, for violation of § 77q et seq. of Title 15 and for conspiracy to commit such crimes, intent was required to be alleged and proved, since intent was an element of the crimes charged. Troutman v. U. S., C.C.A.10 (Colo.) 1938, 100 F.2d 628. Conspiracy 43(4); Postal Service 48(4.3); Securities Regulation 195

Allegation of indictment for conspiracy that defendants knowingly caused bail bonds to be approved by federal commissioner by implication charged them with knowledge that there was a federal commissioner and knowledge of his function and authority to approve bail bonds. Henry v. U.S., C.C.A.9 (Cal.) 1926, 15 F.2d 624, certiorari denied 47 S.Ct. 575, 274 U.S. 737, 71 L.Ed. 1316. Conspiracy 43(4)

An allegation of conspiring included element of intent. Chew v. U.S., C.C.A.8 (Ark.) 1925, 9 F.2d 348. Conspiracy 43(4)

Indictment charging that defendants "unlawfully, wickedly, corruptly, and feloniously conspired" sufficiently charged conspiracy, and was not defective because of failure to charge that conspiracy was "knowingly" entered into. Waldeck v. U.S., C.C.A.7 (Ind.) 1924, 2 F.2d 243, certiorari denied 45 S.Ct. 232, 267 U.S. 595, 69 L.Ed. 805.

In a charge of conspiracy, the conspiracy is the gist of the offense, and an indictment charging a "willful" conspiracy to commit an offense against the United States was not insufficient because the word "willfully" was not again used in describing the offense intended to be committed, though willfulness is an element of such offense as defined in the statute. Rumely v. U.S., C.C.A.2 (N.Y.) 1923, 293 F. 532, certiorari denied 44 S.Ct. 38, 263 U.S. 713, 68 L.Ed. 520. Conspiracy 43(6)

"It is contended that the first count is fatally defective for the reason that the conspiracy and the overt acts set forth are not alleged to have been wullful. To this it is sufficient to say that the definition of the offense of conspiracy under which the defendants were indicted does not contain the word 'willful,' or any provision to indicate that it was the intention of Congress to make willfulness an ingredient of the offense. The indictment in the first count does, however, charge that the conspiracy was entered into unlawfully and feloniously, and each of the overt acts is

alleged to have been done in pursuance of said unlawful and felonious conspiracy, and it is charged that the conspiracy was to commit the offense of unlawfully, feloniously and willfully causing and attempting to cause insubordination, etc. It is the general rule that it is not necessary to charge that the offense was done willfully, unless the statute defining the same makes willfulness an element thereof; and it is also generally held that words which import an exercise of the will, such as 'feloniously' and 'unlawfully,' will supply the place of the word 'willfully.' " Howenstine v. U.S., C.C.A.9 (Cal.) 1920, 263 F. 1.

An indictment charging a conspiracy to violate the Harrison Drug Act, § 2550 et seq. of Title 26, sufficiently averred accused's knowledge of unlawfulness of his co-conspirator's act. Wallace v. U.S., C.C.A.7 (Ill.) 1917, 243 F. 300, 156 C.C.A. 80, certiorari denied 38 S.Ct. 11, 245 U.S. 650, 62 L.Ed. 531. Conspiracy 43(4)

Where it is alleged that certain persons confederated to do a lawful act by criminal means, the indictment must charge that the means employed were attended by a corrupt motive. U.S. v. Moore, C.C.Or.1909, 173 F. 122. Conspiracy 43(4)

In an indictment for conspiracy, the corrupt motive may be alleged, by charging that the object was to accomplish an unlawful act, in which case the intent is made to appear by the charge of a combination to do the unlawful act, or by charging a combination to do the lawful act, or the act innocent in itself by unlawful means, where the intent must appear by allegation of the means. U.S. v. Moore, C.C.Or.1909, 173 F. 122. Conspiracy 43(4)

An indictment under former § 88 of this title [now this section] for conspiracy to defraud, which set out the unlawful agreement, need not have averred an intent upon the part of the accused to defraud the United States. U.S. v. Stone, D.C.N.J.1905, 135 F. 392. Conspiracy 43(4)

A charge that the object of the conspiracy was the procuring of false evidence for use in a certain named case then pending, is a sufficient averment that the defendants had knowledge of that case. Fletcher v. U.S., App.D.C.1914, 42 App.D.C. 53, certiorari denied 35 S.Ct. 283, 235 U.S. 706, 59 L.Ed. 434.

Even if indictment charging defendants with conspiracy to distribute obscene materials failed to allege that each defendant had actual knowledge of shipment of sexually explicit materials into judicial district in which they were tried, indictment was not defective on that basis, since indictment sufficiently notified each defendant of their role in furthering scheme to distribute sexually explicit material; conspiracy did not require proof that all defendants had knowledge of all details of conspiracy or its participants. U.S. v. Krasner, M.D.Pa.1993, 841 F.Supp. 649. Indictment And Information 86(3)

Conspiracy indictment was not rendered defective for failure to state defendant's knowledge of interstate commerce in which stolen goods allegedly moved. U. S. v. Wilson, D.C.Md.1973, 356 F.Supp. 463. Conspiracy 43(6)

Mere allegation that defendants conspired to commit statutory offense would denote wilfullness. U. S. v. Schneiderman, S.D.Cal.1951, 102 F.Supp. 87. Conspiracy 43(6)

Indictment charging defendants with unlawfully conspiring to commit offenses against the United States was not defective for failure to allege that conspiracy was feloniously entered into since felonious intent was no part of statutory description of conspiracy charged. U.S. v. O'Toole, D.C.R.I.1951, 101 F.Supp. 123. Conspiracy 43(6)

In an indictment against a distiller for conspiracy to defraud the United States, it is not essential to state, in addition to an intent to defraud, the facts showing such intent. U.S. v. Ulrici, C.C.Mo.1875, Fed.Cas. No. 16,594.

285. ---- Means of accomplishing conspiracy, allegations, indictment or information

18 U.S.C.A. § 371

Indictment charging formation of a conspiracy to deprive an individual under color or pretext of state authority of the rights, privileges, and immunities guaranteed him by U.S.C.A.Const. Amend. 14 by assaulting and torturing him to force him to confess the commission of a criminal offense and charging the substantive offense thereof charged an offense under the laws of the United States. Apodaca v. U. S., C.A.10 (N.M.) 1951, 188 F.2d 932. Civil Rights 1809

An indictment charging continuing conspiracy to defraud United States by delivering, grading, selling, etc., inferior products to different general departments, by obstructing inspection, false grading and weighing sufficiently shows what governmental functions the defendants conspired to impede and what means the defendants planned to use. Nye & Nissen v. U.S., C.C.A.9 (Cal.) 1948, 168 F.2d 846, certiorari granted 69 S.Ct. 81, 335 U.S. 852, 93 L.Ed. 400, affirmed 69 S.Ct. 766, 336 U.S. 613, 93 L.Ed. 919. Conspiracy 43(10)

Indictment charging defendant with violating former §§ 88 [now this section] and 338 of this title, as result of use of mails in connection with the development, promotion and sale of burial lots, which enumerated fraudulent representations by which customers were induced to part with their money and property and which charged that mails were used in furtherance of the promotion plan was sufficient without charging that there was any fraudulent failure to convey title to land sold or to account for moneys or securities received from customers. Deaver v. U.S., App.D.C.1946, 155 F.2d 740, 81 U.S.App.D.C. 148, certiorari denied 67 S.Ct. 121, 329 U.S. 766, 91 L.Ed. 659. Indictment And Information 71.4(9)

The essence of conspiracy is the unlawful combination, and if object of conspiracy is accomplishment of some unlawful act means by which unlawful act is to be accomplished need not be set forth in indictment. Rose v. U.S., C.C.A.9 (Cal.) 1945, 149 F.2d 755. See, also, Pollock v. U.S., C.C.A.Md.1929, 35 F.2d 174; U.S. v. Weiss, D.C.Ill.1923, 293 F. 992. Conspiracy 26; Conspiracy 43(3)

An indictment for conspiracy to violate Emergency Price Control Act of 1942, 50 App. former § 901 et seq., and regulations thereunder, which alleged a conspiracy of a number of people "that they would in the course of trade or business buy, sell and deliver packaged distilled spirits at prices in excess of the maximum price established by said Maximum Price Regulations", and which set out in detail the various overt acts by parties to the conspiracy, was not defective on ground that it omitted to plead any facts showing the scheme by which alleged conspiracy was to be consummated. Old Monastery Co. v. U.S., C.C.A.4 (S.C.) 1945, 147 F.2d 905, certiorari denied 66 S.Ct. 44, 326 U.S. 734, 90 L.Ed. 437. Conspiracy 43(6)

An indictment which charged violation of Securities Act, § 77q of Title 15, use of mails to defraud and conspiracy to effect scheme to defraud, which contained detailed description of scheme, named persons to be defrauded, and means devised and used to that end, and which stated facts constituting scheme to defraud, and charged use of mails for purpose of promoting it, was not demurrable. Holmes v. U. S., C.C.A.8 (Neb.) 1943, 134 F.2d 125, certiorari denied 63 S.Ct. 1434, 319 U.S. 776, 87 L.Ed. 1722. Securities Regulation 195; Postal Service 48(4.1)

An indictment charging a conspiracy to obstruct justice and to defraud the United States was not bad as charging a conspiracy to accept and secure bribes which is not an indictable conspiracy, where scheme of resorting to bribery was averred only to be a way of consummating the conspiracy as purely ancillary to the substantive offense. U.S. v. Manton, C.C.A.2 (N.Y.) 1939, 107 F.2d 834, certiorari denied 60 S.Ct. 590, 309 U.S. 664, 84 L.Ed. 1012. Conspiracy 43(10); Conspiracy 43(11)

Conspiracy indictment charging that defendants were to represent that defendants could corruptly influence action of government officials in accused's favor by means of political influence, things of value, sums of money, or "gratuitously," was not objectionable on ground that it merely charged that defendants conspired to bring about dismissal of prosecution, but without unlawful means. Craig v. U.S., C.C.A.9 (Cal.) 1936, 81 F.2d 816, certiorari dismissed 56 S.Ct. 670, 298 U.S. 637, 80 L.Ed. 1371, certiorari dismissed 56 S.Ct. 671, 298 U.S. 637, 80 L.Ed.

1371, rehearing denied 83 F.2d 450, certiorari denied 56 S.Ct. 959, 298 U.S. 690, 80 L.Ed. 1408, rehearing denied 57 S.Ct. 6, 299 U.S. 620, 81 L.Ed. 457. Conspiracy 43(11)

Indictment charging that government's engineer-examiner on irrigation projects had duty to pass on plans and make recommendations to Administrator of Public Works, and was induced, by codefendants' offer of position at increased salary, to recommend substitute plan for constructing irrigation project, and that codefendants, in order to obtain excessive profit, had secured exclusive control of redwood to be used under substitute plan, was sufficient to charge conspiracy to defraud United States. U.S. v. Harding, App.D.C.1936, 81 F.2d 563, 65 App.D.C. 161. Conspiracy 33(6)

Merely alleging means intended to be used or that were used cannot be taken inferentially to support conspiracy indictment, unless essential elements of unlawful agreement and purpose have been fully and clearly stated. Asgill v. U.S., C.C.A.4 (Va.) 1932, 60 F.2d 780. Conspiracy 43(3)

Indictment for conspiracy is sufficient if it contains general description of means by which object is to be attained. Enrique Rivera v. U.S., C.C.A.1 (Puerto Rico) 1932, 57 F.2d 816. See, also, U.S. v. Raley, D.C.Or.1909, 173 F. 159. Conspiracy 43(3)

An indictment for conspiracy to violate a law of the United States need not set out the means to be used, or that they were a part of the agreement, or what each conspirator was to do, or the character of the acts to be performed. U.S. v. Dahl, W.D.Wash.1915, 225 F. 909, affirmed 234 F. 618, 148 C.C.A. 384. Conspiracy 43(3)

Where the first part of a count in an indictment set forth that certain persons "unlawfully did conspire" to defraud the United States, the conspiracy "to be effected in the manner following; that is to say"--and the following part stated the details of the alleged conspiracy, the latter part was not to be construed as a videlicet separate from the charge of the indictment, but the whole sentence may be considered as the charging part. Browne v. U.S., C.C.A.2 (N.Y.) 1905, 145 F. 1, 76 C.C.A. 31, certiorari denied 26 S.Ct. 755, 200 U.S. 618, 50 L.Ed. 623. Conspiracy 43(10)

According to the settled practice on indictments for conspiracy, whether the means to be employed are in themselves lawful, or unlawful, it is not sufficient to merely allege in such general terms that the defendants have conspired to defraud. The indictment must allege, to some extent at least, the means intended to be used in defending." U.S. v. Grunberg, C.C.Mass.1904, 131 F. 137.

"Allegation of an agreement to do an act by the employment of certain means sufficiently alleges an agreement not only to do such act but to employ such means." U.S. v. Wilson, D.C.Or.1894, 60 F. 890.

Indictment charging defendant with conspiracy to defraud government in connection with creation of warehouse banking system allegedly designed to impede Internal Revenue Service (IRS) in assessing taxes was facially invalid, in that it failed to allege essential element that obstruction was to be accomplished by deceitful or dishonest means, which permitted grand jury to issue indictment upon erroneous assumption that any attempt to impair or impede IRS could constitute attempt to defraud IRS. U.S. v. Cote, D.Or.1996, 929 F.Supp. 364. Conspiracy 33(7); Conspiracy 43(10)

In prosecution for conspiracy to defraud the United States, it is not necessary to allege in the indictment which of the various ways the government might be defrauded was in the minds of the conspirators. U. S. v. Gilboy, M.D.Pa.1958, 160 F.Supp. 442. Conspiracy 43(10)

In prosecution for conspiracy to defraud the United States, the indictment sufficiently charged all seven defendants with a violation of this section, described the nature of the defrauding, the means by which it was accomplished, and alleged a series of overt acts by the defendants to effect the object thereof. U. S. v. Gilboy, M.D.Pa.1958, 160

F.Supp. 442. Conspiracy 43(1)

Where object of conspiracy is accomplishment of unlawful act, means by which unlawful act is to be accomplished need not be set forth in indictment; nor are particularity of time, place, circumstances and causes, etc., in stating the manner and means of effecting the object of the conspiracy essential to the indictment. U. S. v. Gilboy, M.D.Pa.1958, 160 F.Supp. 442. Conspiracy 43(1); Conspiracy 43(3)

Where criminality of alleged conspiracy consists in an agreement to accomplish a lawful purpose by criminal or unlawful means, the means must be set out. U.S. v. Cawthon, M.D.Ga.1954, 125 F.Supp. 419. Conspiracy 43(3)

Where criminality of conspiracy consists in unlawful agreement to compass or promote some criminal or illegal purpose, such purpose must be fully and clearly stated in indictment, and, if criminality consists in agreement to accomplish a purpose not in itself criminal or unlawful by criminal or unlawful means, the means must be set out. U.S. v. Armour & Co., W.D.Okla.1943, 48 F.Supp. 801, reversed on other grounds 137 F.2d 269. See, also, Rudner v. U.S., C.C.A.Ohio 1922, 281 F. 516, certiorari denied 43 S.Ct. 95, 260 U.S. 734, 67 L.Ed. 487; Proffitt v. U.S., C.C.A.Cal.1920, 264 F. 299; Davey v. U.S., Ind.1913, 208 F. 237, 125 C.C.A. 437, certiorari denied 34 S.Ct. 320, 231 U.S. 747, 58 L.Ed. 464; Benson v. U.S., Mo. 1909, 169 F. 31, 94 C.C.A. 399; Perrin v. U.S., Cal.1909, 169 F. 17, 94 C.C.A. 385; Stearns v. U.S., C.C.A.Minn.1907, 152 F. 900, 82 C.C.A. 48; U.S. v. Milner, C.C.Ala.1888, 36 F. 890; U.S. v. Dennee, C.C.La.1877, Fed.Cas. No. 14,948; U.S. v. Dustin, C.C.Ohio 1869, 2 Bond, 332, 25 Fed.Cas. No. 15,011. Conspiracy 43(1); Conspiracy 43(3)

286. ---- Time and place, allegations, indictment or information

An indictment charging a conspiracy to defraud the United States, in stating manner and means of effecting object of conspiracy, was not required to state with particularity time, place, circumstances, and causes, but such specificity of detail fell rather within the scope of a bill of particulars which defendants requested and received. Glasser v. U.S., U.S.Ill.1942, 62 S.Ct. 457, 315 U.S. 60, 86 L.Ed. 680, rehearing denied 62 S.Ct. 629, 315 U.S. 827, 86 L.Ed. 1222, rehearing denied 62 S.Ct. 637, 315 U.S. 827, 86 L.Ed. 1222. Indictment And Information 71.4(3); Indictment And Information 86(2); Indictment And Information 87(2)

Indictment for conspiracy to have unregistered still in possession, custody and control sufficiently alleged two overt acts, from standpoint of specification of time and place. U. S. v. Cudia, C.A.7 (Ill.) 1965, 346 F.2d 227, certiorari denied 86 S.Ct. 428, 382 U.S. 955, 15 L.Ed.2d 359, rehearing denied 86 S.Ct. 612, 382 U.S. 1021, 15 L.Ed.2d 536. Conspiracy 43(5)

Where indictment charged that defendants, an owner of a construction company and an employee of a savings and loan association whose accounts were insured by a federal agency, conspired to violate § 1006 of this title relating to defrauding federal credit institutions whose accounts are insured by a federal agency and that conspiracy began in May, 1956 and continued into November, 1956, a ruling limiting government's proof to events on and after July 28, 1956, effective date of amendment of said section to include officers, agents or employees of institution whose accounts are insured by federal agency, did not erroneously effect a substantial change in indictment. U. S. v. Spector, C.A.7 (Ill.) 1963, 326 F.2d 345. Indictment And Information 159(1)

If, in an indictment for conspiracy, there is any vagueness in averment as to time of its formation, time may be fixed and made certain by a reference to allegations of overt acts. Schnautz v. U.S., C.A.5 (Tex.) 1959, 263 F.2d 525, certiorari denied 79 S.Ct. 1294, 360 U.S. 910, 3 L.Ed.2d 1260. Indictment And Information 87(2)

Indictment which contained a count alleging that commencing on or about February 1 and continuing to and through February 20, defendant and another conspired to commit certain specified offenses and that certain overt acts were committed pursuant to conspiracy, six of which overt acts were set forth and alleged to have been

committed on February 2, and that offenses charged in three other counts were committed on or about February 2, was not defective on ground that time when conspiracy was formed was not alleged with sufficient particularity. Schnautz v. U.S., C.A.5 (Tex.) 1959, 263 F.2d 525, certiorari denied 79 S.Ct. 1294, 360 U.S. 910, 3 L.Ed.2d 1260. Indictment And Information 87(7)

Indictment charging conspiracy to violate narcotics laws sufficiently fixed the time and place of formation of conspiracy by overt acts set forth in indictment. Toliver v. U. S., C.A.9 (Cal.) 1955, 224 F.2d 742. Indictment And Information 86(2); Indictment And Information 87(2)

Time and place of formation of conspiracy is sufficiently charged if set forth in recital of offense or of overt act. Enrique Rivera v. U.S., C.C.A.1 (Puerto Rico) 1932, 57 F.2d 816. Indictment And Information 86(2)

Conspiracy may be alleged as having been formed at place unknown or in several places. Grigg v. Bolton, C.C.A.9 (Mont.) 1931, 53 F.2d 158, certiorari denied 52 S.Ct. 311, 285 U.S. 538, 76 L.Ed. 931. Indictment And Information 86(3)

Indictment charging conspiracy commencing on June 1, 1924, and continuing until about August 1, 1930, sufficiently alleged date. U.S. v. Hosier, D.C.La.1931, 50 F.2d 971. Indictment And Information 87(6)

Indictment for continuing conspiracy is not bad for charging related conspiracies at different times and places. U.S. v. Austin-Bagley Corporation, D.C.N.Y.1928, 24 F.2d 527. Indictment And Information 125(5.5)

Time and place of conspiracy to possess and transport intoxicating liquor was sufficiently fixed by overt acts charged in indictment. Rubio v. U.S., C.C.A.9 (Cal.) 1927, 22 F.2d 766, certiorari denied 48 S.Ct. 213, 276 U.S. 619, 72 L.Ed. 734. Conspiracy 43(1); Indictment And Information 86(2)

Reference in charge of conspiracy to time set out in charge of overt acts sufficiently fixes time of conspiracy. Woitte v. U.S., C.C.A.9 (Or.) 1927, 19 F.2d 506, certiorari denied 48 S.Ct. 84, 275 U.S. 545, 72 L.Ed. 417. Indictment And Information 87(2)

Although, ordinarily, charge of conspiracy is not circumscribed or limited by averments as to time when, or place where, conspiracy was formed, it is limited by terms of indictment itself. Terry v. U.S., C.C.A.9 (Cal.) 1925, 7 F.2d 28. Conspiracy 43(12); Indictment And Information 176

A charge of conspiracy in an indictment is made definite as to time by allegations of the time of overt acts. Fisher v. U. S., C.C.A.4 (W.Va.) 1924, 2 F.2d 843, certiorari denied 45 S.Ct. 128, 266 U.S. 629, 69 L.Ed. 476.

Where an indictment for conspiracy charged that the overt act alleged was committed in pursuance of and to effect the object of the conspiracy, it sufficiently appeared that it was committed subsequent to the formation of the conspiracy, and the exact date was not material to the allegation. Goldberg v. U.S., C.C.A.5 (Ga.) 1924, 297 F. 98. See, also, Remus v. U.S., C.C.A.Ohio 1923, 291 F. 501, certiorari denied 44 S.Ct. 180, 263 U.S. 717, 68 L.Ed. 522. Conspiracy 43(5)

An indictment under former § 88 of this title [now this section] for conspiracy to commit an offense against the United States, was not bad because the overt act was alleged to have been committed on the same day the conspiracy was entered into, where it was alleged to have been committed "afterward." Goukler v. U.S., C.C.A.3 (N.J.) 1923, 294 F. 274. Conspiracy 43(5)

An indictment for conspiracy under former § 88 of this title [now this section] need not have alleged the exact time or place of the conspiracy or of the overt acts, where the facts alleged were sufficient to show an offense not barred by time and within the jurisdiction of the court. Baker v. U.S., C.C.A.5 (Ga.) 1922, 285 F. 15, certiorari denied 43

18 U.S.C.A. § 371

S.Ct. 248, 260 U.S. 749, 67 L.Ed. 494. Conspiracy 43(1)

Where an indictment charged that the defendant on the 27th day of February, 1920, did conspire, and that said conspiracy was continuously in existence "throughout all of the time from and after the said 27th day of February 1921, in this indictment mentioned and referred to," etc., the mistake in the repetition of the date, being obvious, was not prejudicial to the defendant and must give way to the direct charge that the conspiracy was formed in 1920. Iponmatsu Ukichi v. U.S., C.C.A.9 (Hawai'i) 1922, 281 F. 525, certiorari denied 43 S.Ct. 92, 260 U.S. 729, 67 L.Ed. 485.

An averment in an indictment that the conspiracy charged was formed "on the ___ day of May, 1917," was sufficiently definite, where the statute charged to have been violated was enacted on May 18, 1917. Firth v. U.S., C.C.A.4 (W.Va.) 1918, 253 F. 36, 165 C.C.A. 56. Indictment And Information 87(8)

An indictment for conspiracy, which alleged that conspiracy extended between January 1, 1913, and September 20, 1913, was insufficient on demurrer, the overt act occurring on September 20th, this being true though averments as to time were preceded by a videlicet. U.S. v. Baker, D.C.R.I.1917, 243 F. 746. Conspiracy 43(5)

"It is claimed that this is sufficiently uncertain to make the indictment bad, for two reasons: First, it is claimed that the indictment does not show that the crime is not barred by the statute of limitations. This, however, cannot be maintained, because the charge in the indictment is certain as to the year. The phrase 'on or about' does not qualify the allegation that the conspiracy was formed in 1914. There is an authority that a similar expression does not qualify the month, but only qualifies the particular day of the month. U.S. v. McKinley (C.C.Or.1903) 127 F. 169. It is well established that an allegation of a date in an indictment does not confine the prosecution to the proof of that particular date; therefore a certain date is not a necessary allegation in an indictment. Section 1025 R.S. [former section 556 of this title] * * * provides that the indictment shall not be held insufficient in matter of form only which shall not tend to the prejudice of the defendant. Under similar statutes, in some states, it has been held that an indictment charging on or before a particular date is sufficient. Many courts have held that the date is a matter of form only. The Supreme Court of the United States has held that an indictment which alleged the day of the month as follows: 'on the ___ day of April, 1906,' was a sufficient allegation of the date. Ledbetter v. U.S., Iowa 1898, 18 S.Ct. 774, 170 U.S. 606, 42 L.Ed. 1162." U.S. v. Aviles, S.D.Cal.1915, 222 F. 474.

"It would be requiring much too exact a standard * * * to compel specific statement as to just when every defendant in a conspiracy where the utmost secrecy was necessary actually came in." U. S. v. Reddin, E.D.Wis.1912, 193 F. 798.

An indictment under former § 88 of this title [now this section] for conspiracy to defraud the United States was not insufficient because it charged that the conspiracy was formed on a date more than three years prior to the time it was found, and set out overt acts at different times thereafter up to and within the three years, where it was also charged that the conspiracy was in continuous operation and continuously in process of execution at all times down to that of the last overt act specified. U.S. v. Eccles, C.C.Or.1910, 181 F. 906. Conspiracy 43(10); Indictment And Information 87(6)

Where an indictment for conspiracy in violation of former § 88 of this title [now this section] alleged the formation of the conspiracy on September 1, 1901, and that on April 10, 1905, within the period of limitation, defendants, in furtherance of the conspiracy and to carry out and effect its object, performed certain overt acts specified, each being alleged to have taken place within three years prior to the indictment, the indictment sufficiently charged that the original conspiracy was continuously in existence, and was not defective as indicating that the overt acts only, and not the conspiracy, had been committed within three years, though it did not in terms allege a new or renewed conspiracy. U. S. v. Barber, W.D.Wis.1907, 157 F. 889. Conspiracy 43(10)

An indictment under former § 88 of this title [now this section] need not have averred with exact accuracy the date

of the formation or beginning of the conspiracy, nor, if the date was alleged, need it have been proved as laid, but it was sufficient if the conspiracy was proved to have existed prior to the commission of the overt act charged, and that it continued to exist at that time. Bradford v. U.S., C.C.A.5 (La.) 1907, 152 F. 617, 81 C.C.A. 607. Conspiracy 43(12)

The indictment must allege the time and place of the act done to effect the object of the conspiracy, so as to identify the act, and show that it postdated the conspiracy, and was not merely a part of it. U. S. v. Milner, C.C.N.D.Ala.1888, 36 F. 890. Conspiracy 43(5)

Overt act alleged in conspiracy prosecution must be alleged to have occurred within limitation period. U. S. v. Stein, E.D.Pa.1966, 249 F.Supp. 873. Indictment And Information 87(2)

Indictment alleging conspiracy of several years' duration was not defective for failure to allege date on which government claims defendant joined conspiracy. U. S. v. Nomura Trading Co., S.D.N.Y.1963, 213 F.Supp. 704. Indictment And Information 87(2); Indictment And Information 87(1)

When count of indictment charged essential elements of conspiracy to defraud the United States and sufficiently informed defendants of charge against them, indictment was sufficient despite lack of particularity of time, place, and circumstances in stating manner and means of effecting object of conspiracy. U.S. v. Albanese, S.D.N.Y.1954, 123 F.Supp. 732, affirmed 224 F.2d 879, certiorari denied 76 S.Ct. 87, 350 U.S. 845, 100 L.Ed. 753. Indictment And Information 71.4(3)

Failure to allege dates with respect to overt act allegedly committed in furtherance of criminal conspiracy is not material. U.S. v. Westbrook, W.D.Ark.1953, 114 F.Supp. 192. Indictment And Information 87(1)

The particularity of time, place, circumstances, causes, etc., in stating manner and means of effecting object of a conspiracy is not essential to an indictment charging conspiracy. U S v. Kendzierski, E.D.N.Y.1944, 54 F.Supp. 164. Indictment And Information 71.4(3); Indictment And Information 86(2); Indictment And Information 87(1)

Government in indictment for conspiracy should not be required to specify particular time and place of formation of conspiracy, or to be specific with reference to each overt act and such things that it intended to prove at trial. U S v. Farrington, M.D.Pa.1935, 11 F.Supp. 214. Indictment And Information 121.2(3)

The time and place of conspiracy must be alleged in the indictment. U.S. v. Soper, C.C.Dist.Col.1835, 27 F.Cas. 1260, 4 Cranch C.C. 623, No. 16353, 4 D.C. 623. Conspiracy 43(1)

287. ---- Jurisdiction, allegations, indictment or information

The exact place of the formation of a conspiracy to use the mails to defraud, denounced by former § 338 of this title, need not have been stated in an indictment which laid the venue in the place where an overt act was committed. Brown v. Elliott, U.S.Cal.1912, 32 S.Ct. 812, 225 U.S. 392, 56 L.Ed. 1136. Indictment And Information 86(1); Postal Service 48(4.1)

In prosecution for conspiracy to sell heroin brought in District Court for Eastern District of New York, allegations that many of overt acts scheduled in conspiracy count of indictment took place in Eastern District, many of sales were negotiated and deliveries actually made in Eastern District, were sufficient to give court jurisdiction, even though there was no evidence that defendant had ever been in Eastern District of New York. U. S. v. Campisi, C.A.2 (N.Y.) 1957, 248 F.2d 102, certiorari denied 78 S.Ct. 266, 355 U.S. 892, 2 L.Ed.2d 191. Criminal Law 113

An indictment for conspiracy to violate former § 398 of this title, not alleging where the conspiracy was formed, but alleging, as one of the overt acts, that defendant telephoned from Honolulu to Los Angeles, charges the commission of an offense within the Southern District of California, in view of former § 103 of Title 28, providing that, when an offense is begun in one judicial district and completed in another, it shall be deemed committed in either. Smith v. U.S., C.C.A.9 (Hawai'i) 1937, 92 F.2d 460. Criminal Law 113

An indictment charging that the defendants conspired at a time and place unknown and that continued to a certain date and was then carried into a named county within the jurisdiction is good. U S v. Seidman, D.C.Pa.1930, 45 F.2d 178.

Indictment for conspiracy "on and prior to" certain date "in the said division of said district" was sufficiently definite. Foreman v. U.S., C.C.A.8 (Ark.) 1928, 28 F.2d 768. Indictment And Information 86(2); Indictment And Information 87(2)

Indictment charging conspiracy to violate National Prohibition Act, former § 201 et seq. of Title 27, alleging that conspiracy was formed and that overt acts had been committed at various places including Cleveland, Ohio, stated a public offense triable in Eastern division of Northern district of Ohio. U. S. v. Fogel, D.C.Minn.1926, 22 F.2d 823.

Indictment charging conspiracy to transport liquor transferred from boat into district of Oregon properly laid venue within such district. Woitte v. U.S., C.C.A.9 (Or.) 1927, 19 F.2d 506, certiorari denied 48 S.Ct. 84, 275 U.S. 545, 72 L.Ed. 417. Criminal Law 113

Allegation that an overt act to effect a conspiracy elsewhere formed was committed within district where indictment is found is sufficient to show jurisdiction. Lucking v. U.S., C.C.A.7 (Ind.) 1926, 14 F.2d 881, certiorari denied 47 S.Ct. 455, 273 U.S. 749, 71 L.Ed. 872, certiorari denied 47 S.Ct. 455, 273 U.S. 749, 71 L.Ed. 873, certiorari denied 47 S.Ct. 455, 273 U.S. 750, 71 L.Ed. 873. Indictment And Information 86(2)

Indictment charging formation and existence of conspiracy in Missouri, having as an object the transportation of whisky into and through Indiana, sufficiently charges existence of conspiracy in district of Indiana. Lucking v. U.S., C.C.A.7 (Ind.) 1926, 14 F.2d 881, certiorari denied 47 S.Ct. 455, 273 U.S. 749, 71 L.Ed. 872, certiorari denied 47 S.Ct. 455, 273 U.S. 749, 71 L.Ed. 873, certiorari denied 47 S.Ct. 455, 273 U.S. 750, 71 L.Ed. 873.

Since the overt act in furtherance of a conspiracy need not have been committed within the jurisdiction in which the conspiracy was formed, an indictment alleging the venue of the conspiracy and of all the overt acts but one was not insufficient because of its failure to allege the venue as to that act. Brolaski v. U.S., C.C.A.9 (Cal.) 1922, 279 F. 1, certiorari denied 42 S.Ct. 381, 258 U.S. 625, 66 L.Ed. 797, certiorari denied 42 S.Ct. 589, 259 U.S. 586, 66 L.Ed. 1076. See, also, Newton v. U.S., 1922, 42 S.Ct. 589, 259 U.S. 586, 66 L.Ed. 1076. Conspiracy 43(1); Indictment And Information 86(2)

An indictment under former § 88 of this title [now this section] for a conspiracy to commit an offense against the United States is not defective because it fails to allege the division of the district where the offense was committed, except by reference to the caption. Harrington v. U. S., C.C.A.8 (Iowa) 1920, 267 F. 97.

An indictment for conspiracy is not fatally defective, where it alleges the place where the overt acts are charged to have been done, although the venue of the conspiracy is not set out. U S v. Jenks, E.D.Pa.1919, 258 F. 763. Indictment And Information 86(2)

In an indictment for conspiracy to commit an offense against the United States, where the conspiracy is alleged to have been formed within the district of indictment, it is not necessary to set forth the place of performance of the object of the conspiracy. Vane v. U.S., C.C.A.9 (Idaho) 1918, 254 F. 28, 165 C.C.A. 438. Indictment And

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Where the jurisdiction of the court depends solely upon an overt act alleged in an indictment for conspiracy, it must be alleged with all the certainty of any other jurisdictional fact, and the connection between the overt act and the conspiracy must be made to appear specifically. Tillinghast v. Richards, D.C.R.I.1915, 225 F. 226. Conspiracy 43(5)

Under former § 88 of this title [now this section] an indictment alleging conspiracy to violate the White Slave Traffic Act, § 2424 of this title and setting out overt acts done within jurisdiction of the court, was good, notwithstanding U.S.C.A.Const. Amend. 6, as to venue in criminal cases, though conspiracy was formed in a foreign country. U.S. v. Linton, W.D.Wash.1915, 223 F. 677. Conspiracy 43(6)

Where indictment charged a conspiracy to defraud the United States by mailing old newspapers for the purpose of fraudulently increasing the weight of mail matter, if the fraudulent mailing was committed within the judicial district charged in the indictment, it is immaterial where the alleged conspiracy was formed, or whether or not the parties thereto, or either of them, were ever within such district. U.S. v. Newton, S.D.Iowa 1892, 52 F. 275. Conspiracy 43(10)

Allegations in count charging conspiracy that defendant committed specified overt acts in Southwestern Division of Western District of Missouri were sufficient to fix venue in such district, and court's authority to try defendants in such district was not defeated by failure of indictment to allege that conspiracy itself occurred within Western District of Missouri. U. S. v. Merrick, W.D.Mo.1962, 207 F.Supp. 929. Indictment And Information 86(2)

Venue allegations of indictment must appear with particularity and definiteness. U.S. v. Safeway Stores, Maryland, D.C.Kan.1943, 51 F.Supp. 448, reversed on other grounds 144 F.2d 824, certiorari denied 65 S.Ct. 121, 323 U.S. 768, 89 L.Ed. 615, certiorari granted 65 S.Ct. 132, 323 U.S. 699, 89 L.Ed. 564, certiorari granted 65 S.Ct. 133, 323 U.S. 699, 89 L.Ed. 564, certiorari denied 65 S.Ct. 188, 323 U.S. 777, 89 L.Ed. 621, reversed 65 S.Ct. 661, 324 U.S. 293, 89 L.Ed. 951. Indictment And Information 86(2)

An indictment charging conspiracy need not allege that conspiracy was conceived in district where indictment is found, but any district where one of overt acts was committed is proper venue for trial of charge of conspiracy. U.S. v. Liss, S.D.N.Y.1942, 43 F.Supp. 203. See, also, Pope v. U.S., C.C.A.Pa.1923, 289 F. 312, certiorari denied 44 S.Ct. 33, 263 U.S. 703, 68 L.Ed. 515; U.S. v. Aviles, D.C.Cal.1915, 222 F. 474. Criminal Law 113; Indictment And Information 86(2)

288. ---- Consummation of offense, allegations, indictment or information

It is not necessary to charge that the unlawful conspiracy proceeded to a successful determination as designed, it being sufficient that the conspiracy, unless interrupted, might have accomplished its unlawful purpose. U. S. v. Burkett, D.C.Kan.1907, 150 F. 208.

The indictment need not show that the conspiracy was a success. U.S. v. Sanche, C.C.W.D.Tenn.1881, 7 F. 715. See, also, U.S. v. Greene, D.C.Ga.1902, 115 F. 343; Gantt v. U.S., Ala.1901, 108 F. 61, 47 C.C.A. 210; U.S. v. Benson, Cal.1895, 70 F. 591, 17 C.C.A. 293; U.S. v. Van Leuven, D.C.Iowa, 1894, 65 F. 78; U.S. v. Newton, D.C.Iowa, 1891, 48 F. 218; U.S. v. Gilliland, D.C.Tex.1940, 35 F.Supp. 181, reversed on other grounds 61 S.Ct. 518, 312 U.S. 86, 85 L.Ed. 598; U.S. v. Carpenter, 1889, 6 Dak. 294, 50 N.W. 123.

289. ---- Identification of conspirators, allegations, indictment or information

At least two persons are required to constitute a conspiracy but the identity of the other members of the conspiracy need not be shown, inasmuch as one person may be convicted of conspiracy with persons whose names are

unknown. Rogers v. U.S., U.S.Colo.1951, 71 S.Ct. 438, 340 U.S. 367, 95 L.Ed. 344, rehearing denied 71 S.Ct. 619, 341 U.S. 912, 95 L.Ed. 1348. Conspiracy 24(4.1); Conspiracy 47(1)

Even though indictment did not name defendant's alleged coconspirators, it was not on that basis so vague that it failed to apprise him of conspiracy charges, where indictment tracked statutory language and specified different overt acts allegedly done in furtherance of conspiracy, together with dates and locations. U.S. v. American Waste Fibers Co., Inc., C.A.4 (N.C.) 1987, 809 F.2d 1044. Indictment And Information 110(10)

Even where his named coconspirators are acquitted, an alleged conspirator can be convicted of conspiring with persons where names are unknown as long as the indictment asserts that such other persons exist and the evidence supports their existence and complicity. U.S. v. Espinosa-Cerpa, C.A.5 (Fla.) 1980, 630 F.2d 328. Conspiracy 24(8)

Where indictment did not charge that only defendant and codefendant were involved in conspiracy but included "others known and unknown," a determination that there were other members of the conspiracy would not preclude a finding that defendant and codefendant were guilty of conspiracy. U. S. v. Glickman, C.A.9 (Cal.) 1979, 604 F.2d 625, certiorari denied 100 S.Ct. 1032, 444 U.S. 1080, 62 L.Ed.2d 764. Conspiracy 48.3

Even when codefendants are known and not prosecuted, person may be convicted of conspiring with them so long as indictment asserts that such other persons exist and evidence supports their existence. U. S. v. Lance, C.A.5 (Tex.) 1976, 536 F.2d 1065. Conspiracy 24(8)

Government may introduce evidence at trial of a person's participation in a conspiracy and thereby ascribe his acts and statements to the coconspirators even it that person is not named in the indictment. U. S. v. Briggs, C.A.5 (Fla.) 1975, 514 F.2d 794. Criminal Law 427(1)

Conviction of single conspirator may be upheld if indictment alleges that conspiracy involved unknown persons. U. S. v. Fleming, C.A.7 (Ill.) 1974, 504 F.2d 1045. Conspiracy 24(8)

Person can be convicted of conspiring with persons who are not identified by name in indictment so long as indictment asserts that such other persons exist and evidence supports such assertion, and this is no less true simply because coconspirators named as codefendants in indictment were not prosecuted for conspiracy. U. S. v. Goodwin, C.A.5 (Fla.) 1974, 492 F.2d 1141. Conspiracy 40

It is not necessary in order to sustain conviction for conspiracy that coconspirators be charged. Ng Pui Yu v. U. S., C.A.9 (Cal.) 1965, 352 F.2d 626. Conspiracy 43(1)

An indictment charging conspiracy to defraud the United States was not repugnant and inconsistent on ground that it alleged that defendants conspired with each other and with other persons to the grand jurors unknown. U.S. v. Glasser, C.C.A.7 (Ill.) 1940, 116 F.2d 690, certiorari granted 61 S.Ct. 835, 313 U.S. 551, 85 L.Ed. 1515, modified on other grounds 62 S.Ct. 457, 315 U.S. 60, 86 L.Ed. 680, rehearing denied 62 S.Ct. 629, 315 U.S. 827, 86 L.Ed. 1222, rehearing denied 62 S.Ct. 637, 315 U.S. 827, 86 L.Ed. 1222. Indictment And Information 73(1)

Count of indictment for conspiracy was not insufficient because of failure to enumerate one of alleged conspirators known to grand jury. Fox v. U. S., C.C.A.7 (Wis.) 1930, 45 F.2d 364. Conspiracy 43(2)

Conspiracy to possess and transport intoxicating liquors and parties thereto were sufficiently described in indictment, without stating names of alleged unknown conspirators since ascertained. Rubio v. U.S., C.C.A.9 (Cal.) 1927, 22 F.2d 766, certiorari denied 48 S.Ct. 213, 276 U.S. 619, 72 L.Ed. 734. Conspiracy 43(6)

The names of parties to a conspiracy other than those indicted need not be set out. Norton v. U.S., C.C.A.5 (Tex.)

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1923, 295 F. 136. Conspiracy 43(1)

Under an indictment charging conspiracy between defendants and with others unknown, where the conspiracy between defendants and the overt acts alleged are proved, and that they must have been aided by others, it is not essential to conviction that the names of such others be shown. Nee v. U S, C.C.A.3 (Pa.) 1920, 267 F. 84.

The unessential quoted words of an indictment, that the three defendants had conspired "with other persons to the grand jury unknown," may be ignored, there being no evidence of there having been more than the three conspirators. Meyer v. U.S., C.C.A.7 (Ill.) 1919, 258 F. 212, 169 C.C.A. 280. Indictment And Information 119

Indictment charging defendant with conspiracy to commit possession of firearm by a felon was not required to allege that the guns were in fact delivered to convicted felon or identify defendant or someone else in receipt of the guns as a felon. U.S. v. Brown, E.D.Va.1992, 784 F.Supp. 322. Conspiracy 43(6)

Indictment is not subject to attack of variance where it is disclosed by evidence that grand jury knew name of co-conspirator but failed to state it. U. S. v. Melekh, N.D.Ill.1961, 193 F.Supp. 586. Indictment And Information 173

In prosecution of defendants, who organized and operated five trade schools, for conspiring to defraud Government by fraudulently inflating cost basis of tuition rate and by fraudulently increasing cost to be charged to Veterans' Administration, naming of three other persons as co-conspirators was a nullity and of no effect in absence of testimony to show participation by any persons other than the two defendants. U. S. v. Weinberg, M.D.Pa.1955, 129 F.Supp. 514, affirmed 226 F.2d 161, certiorari denied 76 S.Ct. 305, 350 U.S. 933, 100 L.Ed. 815. Conspiracy 33(2.1)

290. ---- Participation, allegations, indictment or information

It is not essential in charging "conspiracy" to show that all conspirators participated in its beginning, or that all contributed alike, provided there is common design and purpose applicable to all conspirators at some period during conspiracy. U.S. v. Harding, App.D.C.1936, 81 F.2d 563, 65 App.D.C. 161. Conspiracy 43(2)

It is not necessary to set forth the particular part to be assumed or undertaken by each conspirator in the consummation of the unlawful scheme and it is sufficient if the object of the conspiracy is clearly stated, the time when and the place where it was entered into and the manner in which it was to be carried out. U.S. v. Cella, App.D.C.1911, 37 App.D.C. 423, certiorari denied 32 S.Ct. 526, 223 U.S. 728, 56 L.Ed. 633. Conspiracy 43(1)

291. ---- Evidentiary matters, allegations, indictment or information

Any variance between conspiracy offense charged against codefendants and government's proof was not plain error where defendant was neither charged with nor convicted of conspiracy. U.S. v. Neely, C.A.7 (Ill.) 1992, 980 F.2d 1074. Criminal Law 1032(7)

Indictment charging defendant with conspiracy to transport stolen bonds having value in excess of $5,000 was sufficiently detailed, where it included, among other things, identification of bonds involved by issuing authority and certificate numbers, incorporated additional substantive count as overt act of conspiracy, and included dates, locations and addresses of transactions, names of codefendants and others involved, amounts of checks received in exchange for cashing bonds and recipients of checks issued. U.S. v. James, C.A.7 (Ill.) 1991, 923 F.2d 1261. Indictment And Information 71.4(3)

Evidence including testimony showing that, after navy investigation began, one defendant removed certain records,

another defendant had certain materials gathered and stored at his house and that other defendants executed insincere statements that they had no dealings with outside contractors that would generate any conflict of interest with navy work was sufficient to support finding of single conspiracy, as charged by indictment. U. S. v. Kenny, C.A.9 (Cal.) 1981, 645 F.2d 1323, certiorari denied 101 S.Ct. 3059, 452 U.S. 920, 69 L.Ed.2d 425, certiorari denied 102 S.Ct. 121, 454 U.S. 828, 70 L.Ed.2d 104. Conspiracy 47(6)

Where indictment, in addition to alleging overt acts, consisting of accused's participation in stealing government property, also alleged that it was "part of the conspiracy that the defendants would conceal the existence of this conspiracy by making false and misleading statements to the investigators" and that an overt act in furtherance of the conspiracy was the accused's concealment of "the truth about this conspiracy from agents of the FBI" and where it appeared that the alleged act of concealment occurred after the principal objects of the conspiracy had been accomplished, the indictment would have been subject to objection on the ground that including the agreement to conceal as part of the original conspiracy was improper. U. S. v. Green, C.A.9 (Cal.) 1979, 594 F.2d 1227, certiorari denied 100 S.Ct. 108, 444 U.S. 853, 62 L.Ed.2d 70. Conspiracy 43(6)

In view of existence of some competent evidence to support indictment for conspiracy to violate antihypothecation statute, section 78h of Title 15, trial court did not abuse its discretion in declining to dismiss indictment. U. S. v. Schwartz, C.A.2 (N.Y.) 1972, 464 F.2d 499, certiorari denied 93 S.Ct. 443, 409 U.S. 1009, 34 L.Ed.2d 302. Indictment And Information 10.2(10)

In indictment charging that accuseds conspired to induce defendants in a criminal action to testify falsely it was not incumbent upon the government to set forth the claimed false testimony. U. S. v. Root, C.A.9 (Cal.) 1966, 366 F.2d 377, certiorari denied 87 S.Ct. 861, 386 U.S. 912, 17 L.Ed.2d 784. Conspiracy 43(11)

Conspiracy indictment alleging scheme for accomplishing criminal goals of conspiracy, including reference to role each of the five defendants was to play in the attainment of these goals, was sufficient and it was not necessary to plead evidentiary detail. Carbo v. U. S., C.A.9 (Cal.) 1963, 314 F.2d 718, certiorari denied 84 S.Ct. 1625, 377 U.S. 953, 12 L.Ed.2d 498, rehearing denied 84 S.Ct. 1902, 377 U.S. 1010, 12 L.Ed.2d 1058, certiorari denied 84 S.Ct. 1626, 377 U.S. 953, 12 L.Ed.2d 498, rehearing denied 84 S.Ct. 1903, 377 U.S. 1010, 12 L.Ed.2d 1058, certiorari denied 84 S.Ct. 1627, 377 U.S. 953, 12 L.Ed.2d 498. Conspiracy 43(1); Indictment And Information 65

Where indictment alleging conspiracy contained allegation of substantive crime, such allegation of evidentiary matter was not substitute for charging essence of the conspiracy itself. U. S. v. Deutsch, C.A.3 (Pa.) 1957, 243 F.2d 435. Conspiracy 43(6)

The evidence to support the charge need not be set out in conspiracy indictment. Braatelien v. U. S., C.C.A.8 (N.D.) 1945, 147 F.2d 888. Indictment And Information 65

When a written document is relied on to sustain the prosecution it must be set out either verbatim or in substance, and not by a statement of the opinion of the pleader as to its effect. U.S. v. Watson, N.D.Miss.1883, 17 F. 145.

Indictment need not set forth evidence, whether of conspiracy or other matters. U. S. v. Barnes, E.D.Pa.1963, 213 F.Supp. 510. Indictment And Information 65

In prosecution for conspiracy, it is the agreement and offense-object which must be clearly described in indictment, not detailed participation of each defendant, and it is not necessary to plead evidence from which a jury could ultimately infer guilt. U. S. v. Guterma, S.D.N.Y.1960, 189 F.Supp. 265. Conspiracy 43(1)

In prosecution for conspiracy to commit offense, it is not necessary to set forth matters of evidence in indictment. U. S. v. Gilboy, M.D.Pa.1958, 160 F.Supp. 442. Indictment And Information 65

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292. ---- Negativing exceptions, allegations, indictment or information

An indictment charging conspiracy to transfer rubber tires and tubes in violation of rationing regulations was not inadequate for failure to negative exceptions to regulations permitting transfers in certain circumstances by retailers. Rose v. U.S., C.C.A.9 (Cal.) 1945, 149 F.2d 755. Indictment And Information 111(1)

An indictment charging a conspiracy to violate a statute need not negative an exception contained in such statute either by proviso or other distinct or substantive provision. Edwards v. U.S., C.C.A.10 (Okla.) 1940, 113 F.2d 286, certiorari granted 61 S.Ct. 51, 311 U.S. 632, 85 L.Ed. 402, reversed 61 S.Ct. 669, 312 U.S. 473, 85 L.Ed. 957. See, also, Jelke v. U.S., C.C.A.Ill.1918, 255 F. 264; U.S. v. Stone, D.C.N.J.1905, 135 F. 392. Indictment And Information 111(1)

Count of indictment, charging conspiracy to sell securities and to use mails in connection therewith, was not demurrable on ground of failure to charge that the securities were not of the class exempted. Edwards v. U.S., C.C.A.10 (Okla.) 1940, 113 F.2d 286, certiorari granted 61 S.Ct. 51, 311 U.S. 632, 85 L.Ed. 402, reversed on other grounds 61 S.Ct. 669, 312 U.S. 473, 85 L.Ed. 957. Indictment And Information 111(1)

Indictment charging a like offense sufficiently averred place of commission of overt acts, not bad for indefiniteness and not required to negative exceptions found in statute. U.S. v. D'Arcy, D.C.R.I.1916, 243 F. 739. Conspiracy 43(6)

Indictment charging the transfer of new commercial vehicles contrary to provisions of order of War Production Board, and a conspiracy, was not objectionable for failure to allege that vehicles were not secondhand or used ones, since meaning of word "new" was known to everyone and indictment was not re quired to allege a negative. U.S. v. Pyramid Auto Sales, E.D.N.Y.1943, 50 F.Supp. 868. War And National Emergency 315

293. Overt acts, indictment or information--Generally

At common law, it was not necessary to aver or prove an overt act in order to complete the offense of conspiracy but under former § 88 of this title [now this section] an overt act was essential. Fiswick v. U.S., U.S.N.J.1946, 67 S.Ct. 224, 329 U.S. 211, 91 L.Ed. 196. See, also, U.S. v. Olmstead, D.C.Wash.1925, 5 F.2d 712. Conspiracy 27

In prosecution for conspiring to mail obscene material, inclusion of overt acts in indictment was proper despite defendants' contention that acts contained prejudicial information. U. S. v. Gilman, C.A.9 (Cal.) 1982, 684 F.2d 616. Conspiracy 43(5)

Allegations of overt acts may be considered in judging sufficiency of conspiracy indictment. U. S. v. Watson, C.A.10 (Okla.) 1979, 594 F.2d 1330, certiorari denied 100 S.Ct. 78, 444 U.S. 840, 62 L.Ed.2d 51. Conspiracy 43(1)

A conspiracy indictment must allege an unlawful purpose and must go further and allege overt acts. U. S. v. Root, C.A.9 (Cal.) 1966, 366 F.2d 377, certiorari denied 87 S.Ct. 861, 386 U.S. 912, 17 L.Ed.2d 784. Conspiracy 43(4); Conspiracy 43(5)

Conspirator need not be charged with personal participation in one of the overt acts charged so long as evidence of his own conduct has proved his participation in conspiracy and some one of the overt acts charged has been performed by co-conspirator in behalf of all. U. S. v. Brown, C.A.2 (N.Y.) 1964, 335 F.2d 170. Conspiracy 43(5)

The fact that certain overt acts referred to in indictment charging a conspiracy to commit an offense against the

United States were insufficiently alleged would not invalidate the indictment where the commission of other overt acts was sufficiently charged. Culp v. U. S., C.C.A.8 (Ark.) 1942, 131 F.2d 93. Conspiracy 43(5)

An "overt act", the commission of which must be charged in an indictment charging a conspiracy to commit offense against the United States, need not be a wrong, but it must be a manifestation that the conspiracy is at work. U.S. v. Offutt, App.D.C.1942, 127 F.2d 336, 75 U.S.App.D.C. 344. Conspiracy 43(5)

Indictment for conspiracy must allege commission of overt act. Enrique Rivera v. U.S., C.C.A.1 (Puerto Rico) 1932, 57 F.2d 816. See, also, U.S. v. Noble, D.C.N.Y.1937, 18 F.Supp. 808. Conspiracy 43(5)

Averment of overt act is not ordinarily intended to be a statement of object of conspiracy. Baugh v. U.S., C.C.A.9 (Idaho) 1928, 27 F.2d 257, certiorari denied 49 S.Ct. 34, 278 U.S. 639, 73 L.Ed. 554. Conspiracy 43(5)

Overt act alleged is sufficient to make indictment good, if done by one or more of alleged conspirators. U.S. v. Rotman, D.C.R.I.1928, 23 F.2d 860. See, also, Williams v. U.S., C.C.A.Tenn.1925, 3 F.2d 933. Conspiracy 43(5)

The overt act need not be in itself unlawful, and it is sufficient if it is alleged that it was done to effect the object of the conspiracy and in pursuance thereof. Rumely v. U.S., C.C.A.2 (N.Y.) 1923, 293 F. 532, certiorari denied 44 S.Ct. 38, 263 U.S. 713, 68 L.Ed. 520. See, also, Marron v. U.S., C.C.A.Cal.1925, 8 F.2d 251. Conspiracy 27

Where an indictment for conspiracy contained two counts, the first charging a conspiracy in restraint of trade under Sherman Anti-Trust, § 1 et seq. of Title 15, and the other charging an offense under former § 88 of this title [now this section] the first count need not have alleged an overt act, but the second count must. U.S. v. Hency, N.D.Tex.1923, 286 F. 165. Conspiracy 43(5); Monopolies 31(1.4)

The overt act charged in an indictment for conspiracy, under former § 88 of this title [now this section], may easily, if it does not necessarily, comprehend an attempt to commit the crime to which the conspiracy relates. Wiener v. U S, C.C.A.3 (Pa.) 1922, 282 F. 799.

The fact that an indictment for conspiracy alleges a number of overt acts, which may or may not have been crimes in themselves, has no bearing on the validity of the indictment. U.S. v. Vannatta, E.D.N.Y.1922, 278 F. 559. Conspiracy 43(5)

What is technically known as an overt act is peculiar to an indictment for conspiracy, and has no application to specific crimes. Proffitt v. U.S., C.C.A.9 (Cal.) 1920, 264 F. 299. Conspiracy 43(5)

Such allegations may be regarded as meeting objections to the generality of the charge in the indictment, and as giving specifications of the completed acts done pursuant to the conspiracy. U.S. v. Downey, D.C.R.I.1919, 257 F. 364.

An indictment for conspiracy is sufficient if some of the overt acts are properly pleaded. De Lacey v. U.S., C.C.A.9 (Cal.) 1918, 249 F. 625, 161 C.C.A. 535. Conspiracy 43(5)

An indictment for conspiracy must plainly set out the overt acts, or some of them, and if one was to do the overt act, and the other should aid him, the indictment necessarily and properly charges what each was to do. U.S. v. Rogers, N.D.N.Y.1915, 226 F. 512. Conspiracy 43(5)

The fact that the overt acts set forth in an indictment were innocent and commonplace, when unconnected with the conspiracy, does not invalidate the indictment where they were done pursuant to a conspiracy and to effect an unlawful purpose. U.S. v. Grand Trunk Ry. Co. of Canada, W.D.N.Y.1915, 225 F. 283.

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Where an overt act alleged in an indictment for conspiracy must be qualified by circumstances to make it relevant to the particular conspiracy charged, it should be pleaded with the circumstances which make it relevant. Tillinghast v. Richards, D.C.R.I.1915, 225 F. 226. Conspiracy 43(5)

Fact that overt act charged was also criminal in nature did not make indictment which charged conspiracy and listed acts performed to effectuate conspiracy duplicitous. U. S. v. Azzarelli Const. Co., E.D.Ill.1978, 459 F.Supp. 146. Indictment And Information 125(42)

Where conspiracy count of an indictment alleged that all overt acts were committed in pursuance of one agreement, such count could not be dismissed on theory that it dealt with ten different objectives and did not allege a continuing conspiracy. U. S. v. Okin, D.C.N.J.1955, 154 F.Supp. 553. Conspiracy 43(5)

In averment of overt acts in indictment for conspiring to commit offense, in which conspiracy is gist of crime, it is not necessary to allege with technical precision all elements essential to commission of offense which is object of conspiracy. U. S. v. Silverman, D.C.Conn.1955, 129 F.Supp. 496. Conspiracy 43(5)

The overt acts may not ordinarily be considered in aid of averments of conspiracy in charging clauses of indictment, although they are sometimes resorted to in order to interpret doubtful terminology in charging clauses. U. S. ex rel. Semel v. Fitch, D.C.Conn.1946, 66 F.Supp. 206. See, also, Anderson v. U.S., C.C.A.Kan.1921, 273 F. 20, certiorari denied 42 S.Ct. 56, 257 U.S. 647, 66 L.Ed. 415. Conspiracy 43(5)

Conspiracy indictment against several defendants need not allege that any overt act was committed by one defendant. U S v. Stromberg, S.D.N.Y.1957, 22 F.R.D. 513. Conspiracy 43(5)

294. ---- Number, overt acts, indictment or information

Government need not set out with precision every overt act alleged to have been committed by defendants charged with conspiracy. U. S. v. Bolzer, C.A.9 (Mont.) 1977, 556 F.2d 948. Conspiracy 43(5)

The purpose of alleging in an indictment charging conspiracy to commit an offense against the United States that one or more overt acts were committed in execution of the conspiracy was to show that it was the kind of conspiracy denounced by former § 88 of this title [now this section] and such overt acts need not have been described in that part of indictment charging conspiracy. Culp v. U. S., C.C.A.8 (Ark.) 1942, 131 F.2d 93. Conspiracy 43(5)

Indictment for conspiracy was not rendered bad merely because more overt acts were alleged than necessary. Capriola v. U.S., C.C.A.7 (Ill.) 1932, 61 F.2d 5, certiorari denied 53 S.Ct. 315, 287 U.S. 671, 77 L.Ed. 579. Conspiracy 43(5)

Allegation of one overt act is sufficient. Onderdonk v. U. S., C.C.A.5 (Ala.) 1926, 16 F.2d 116. Conspiracy 43(5)

Only one overt act is necessary, and, where one is sufficiently charged in indictment, it is good against demurrer, regardless of deficiencies in other charges of overt acts. U.S. v. Baker, D.C.R.I.1917, 243 F. 741. Conspiracy 28(1); Conspiracy 43(5)

In a prosecution for conspiracy, it is not necessary to charge all the overt acts done or necessary to be done to render the object of the conspiracy effective. U. S. v. Burkett, D.C.Kan.1907, 150 F. 208.

An indictment charging conspiracy to obstruct the mails is not restricted to the allegation of a single overt act in

pursuance thereof, since the gist of the offense is the conspiracy. U.S. v. Debs, N.D.Ill.1895, 65 F. 210. Postal Service 48(7.5)

Government is not required to allege all overt acts committed in furtherance of a conspiracy. U. S. v. Cafaro, S.D.N.Y.1979, 480 F.Supp. 511. Conspiracy 43(5)

Conspiracy count may allege any combination to commit multiple offenses. U. S. v. Wilson, D.C.Md.1973, 356 F.Supp. 463. Indictment And Information 125(5.5)

Where earlier tried conspiracy and conspiracy which was subject of present indictment both involved the bribery of the same individual but related to different contracts and were separate and distinct conspiracies, there was no basis for dismissal of conspiracy indictment on ground of public policy to the effect that several offenses arising out of single transaction should be alleged and tried together and not be made the basis of multiple prosecutions. U. S. v. De Sapio, S.D.N.Y.1969, 299 F.Supp. 436. Conspiracy 37

Only one overt act whether lawful or unlawful committed in pursuance of a conspiracy is sufficient to charge defendants with commission of an unlawful act. U. S. v. Turner, E.D.Tenn.1967, 274 F.Supp. 412. Conspiracy 27

Where some overt acts alleged in indictment for conspiracy to defraud United States were properly and sufficiently charged, sufficiency of indictment was not affected by alleged insufficiency in allegation of other overt acts. U. S. v. Boisvert, D.C.R.I.1960, 187 F.Supp. 781. Conspiracy 43(10)

In prosecution for conspiracy to commit offense, the indictment is sufficient if one overt act is well pleaded; the indictment need not say how the overt act tended to further the conspiracy. U. S. v. Gilboy, M.D.Pa.1958, 160 F.Supp. 442. Conspiracy 43(5)

To sustain a charge of conspiracy to commit a crime only one overt act need be alleged and proved, and the overt act need not in itself be criminal, and indictment need not set forth how alleged overt act in fact furthered conspiracy. U.S. v. Westbrook, W.D.Ark.1953, 114 F.Supp. 192. Conspiracy 43(5)

An indictment for conspiracy need not allege overt acts on part of each member of conspiracy. U.S. v. Liss, S.D.N.Y.1942, 43 F.Supp. 203. Conspiracy 43(5)

Where conspiracy count in indictment alleged all of the elements of the offense, and then alleged extremely vague parts and objects of conspiracy but also it alleged 63 overt acts, 21 of which were allegedly participated in by defendant, it could not be said that count was so vague that its dismissal was constitutionally required. U. S. v. Smith, N.D.Ga.1974, 65 F.R.D. 464. Indictment And Information 71.4(3)

295. ---- Formation of conspiracy, overt acts, indictment or information

Allegations in indictment of certain overt acts in furtherance of conspiracy to illegally use money of federally insured financial institutions, naming or at least intimating each of defendants to have official position with some of the financial institutions involved, could be looked to to cure failure of indictment to allege requisite capacity called for in sections 656, 657, 1005 and 1006 of this title and satisfied requirement that at least one of conspirators was connected in some capacity with financial institutions named in count. U. S. v. Kahn, C.A.7 (Ill.) 1967, 381 F.2d 824, certiorari denied 88 S.Ct. 591, 389 U.S. 1015, 19 L.Ed.2d 661, rehearing denied 88 S.Ct. 2272, 392 U.S. 948, 20 L.Ed.2d 1413, certiorari denied 88 S.Ct. 592, 389 U.S. 1015, 19 L.Ed.2d 661, rehearing denied 88 S.Ct. 2272, 392 U.S. 948, 20 L.Ed.2d 1414. Conspiracy 43(6)

Where there was ample proof in record to show existence of agreement without necessity of relying upon any one of overt acts charged, certain conduct was not precluded from being charged as an overt act on ground that it amounted to agreement or consent that constituted conspiracy itself. Condrey v. U. S., C.A.5 (Fla.) 1965, 351 F.2d 456. Conspiracy 27

It is necessary to allege and prove an overt act in prosecution for conspiracy, but the overt act does not constitute the offense. Hudspeth v. McDonald, C.C.A.10 (Kan.) 1941, 120 F.2d 962, certiorari denied 62 S.Ct. 110, 314 U.S. 617, 86 L.Ed. 496, rehearing denied 65 S.Ct. 1181, 325 U.S. 892, 89 L.Ed. 2004. Conspiracy 43(12)

Averments of conspiracy cannot be aided by allegations respecting overt acts. Luxenberg v. U.S., C.C.A.4 (W.Va.) 1930, 45 F.2d 497, certiorari denied 51 S.Ct. 345, 283 U.S. 820, 75 L.Ed. 1436. See, also, U.S. v. Robinson, D.C.Okl.1920, 266 F. 240; Anderson v. U.S., C.C.A.Ark.1919, 260 F. 557; Steers v. U.S., Ky.1911, 192 F. 1, 112 C.C.A. 423; Dwinnell v. U.S., Cal.1911, 186 F. 754, 108 C.C.A. 624; U.S. v. Black, Wis.1908, 160 F. 431, 435, 87 C.C.A. 383; U.S. v. Milner, C.C.Ala.1888, 36 F. 890; Tyner v. U.S., 1904, 23 App.D.C. 324; U.S. v. Britton, Mo.1883, 2 S.Ct. 531, 108 U.S. 199, 27 L.Ed. 698; U.S. ex rel. Clark v. Mathues, D.C.Pa.1927, 17 F.2d 187; Rulovitch v. U.S., C.C.A.N.J.1923, 286 F. 315, certiorari denied 43 S.Ct. 434, 261 U.S. 622, 67 L.Ed. 831; U.S. v. Dowling, D.C.Fla.1922, 278 F. 630; U.S. v. Vannatta, D.C.N.Y.1922, 278 F. 559; U.S. v. Beiner, D.C.Pa.1921, 275 F. 704; Manning v. U.S., C.C.A.Mo.1921, 275 F. 29; U.S. v. Amster, D.C.N.Y.1921, 273 F. 532. Conspiracy 43(5)

Conspiracy must be specially charged in indictment, and cannot be added to former acts done by one or more of conspirators in furtherance of conspiracy. U.S. v. Olmstead, D.C.Wash.1925, 5 F.2d 712.

Overt acts must be charged as in pursuance of a conspiracy previously completely and definitely set forth. U.S. v. Vannatta, E.D.N.Y.1922, 278 F. 559.

The plan of the conspiracy must be found in the clause of the indictment which sets it forth and it cannot be enlarged by the overt acts alleged. Tillinghast v. Richards, D.C.R.I.1915, 225 F. 226.

Overt acts set forth in a conspiracy indictment may be referred to in order to clarify charging paragraphs. U. S. v. Heinze, D.C.Del.1973, 361 F.Supp. 46. Conspiracy 43(5)

Conspiracy count charging as overt acts that defendants met and conferred at certain places on or about certain dates in pursuance of conspiracy and to effect the objects thereof, was not defective on ground that the overt acts alleged were not in reality overt acts, but merely acts leading to the formation of the conspiracy. US v. Coplon, S.D.N.Y.1949, 88 F.Supp. 912. Conspiracy 43(5)

Although sufficiency of conspiracy indictment cannot be established by overt acts alleged, such overt acts as are alleged may be used as explanatory of the conspiracy portion. U.S. v. Carter & Co., W.D.Ky.1944, 56 F.Supp. 311 . Conspiracy 43(5)

296. ---- Tendency to accomplish object, overt acts, indictment or information

Indictment need not show that alleged overt act would effect object of conspiracy. U.S. v. Eisenminger, D.C.Del.1926, 16 F.2d 816. Conspiracy 43(5)

The indictment need not show a necessary or logical relation of the overt act to the conspiracy, it being sufficient if it charges that act was in furtherance of unlawful scheme. Marron v. U.S., C.C.A.9 (Cal.) 1925, 8 F.2d 251.

While in an indictment for conspiracy, an averment of some overt act is required, it is sufficient if it is alleged that it was done to effect the object of the conspiracy and in pursuance thereof. Rumely v. U.S., C.C.A.2 (N.Y.) 1923,

293 F. 532, certiorari denied 44 S.Ct. 38, 263 U.S. 713, 68 L.Ed. 520. Conspiracy 27

The act charged as an overt act must be alleged to have been done "to effect the object of the conspiracy," or words to that effect, and is not sufficient to allege that it was done "pursuant to said unlawful conspiracy." U.S. v. Dowling, S.D.Fla.1922, 278 F. 630. Conspiracy 43(5)

An indictment for conspiracy need not allege in what manner the overt acts tended to effect the purpose of the conspiracy, it being sufficient to allege that the overt acts were done to effect the object of the conspiracy. Howenstine v. U.S., C.C.A.9 (Cal.) 1920, 263 F. 1. See, also, St. John v. U.S., C.C.A.Ill.1920, 268 F. 808; Haywood v. U.S, C.C.A.Ill.1920, 268 F. 795, certiorari denied 41 S.Ct. 449, 256 U.S. 689, 65 L.Ed. 1172; Clark v. U.S., C.C.A.Mo.1920, 265 F. 104; U.S. v. Pennsylvania Central Coal Co., D.C.Pa.1918, 256 F. 703; Gruher v. U.S., C.C.A.N.Y.1918, 255 F. 474; De Lacey v. U.S., Cal.1918, 249 F. 625, 161 C.C.A. 535; Gantt v. U.S., Ala.1901, 168 F. 61, 47 C.C.A. 210; U.S. v. Benson, Cal.1895, 70 F. 591, 17 C.C.A. 293; U.S. v. Van Leuven, D.C.Iowa, 1894, 65 F. 78; U.S. v. Newton, D.C.Iowa, 1891, 48 F. 218; U.S. v. Sanche, C.C.Tenn.1881, 7 F. 715. Conspiracy 43(5)

"The offense to be committed must be described with sufficient particularity, but I do not understand that the overt act or acts charged must appear on their face to have been acts which necessarily would aid in the commission of the crime charged. Some act must have been done by one or more to effect the object of the conspiracy, but in and of itself it may have been an innocent act and one entirely disconnected from the crime itself. And it was not necessary to point out in this indictment why or how the doing of the overt act would or did, or was intended to aid in effecting, or carrying out, the object of the conspiracy. It is sufficient that the act done was done to aid in effecting the object of the conspiracy; was so intended, even if the doing of such act, instead of actually aiding to effect the object of the conspiracy, defeated the conspirators and actually operated to prevent the commission of the crime. And in charging a conspiracy to commit a crime against the United States and overt acts done to effect the object of such conspiracy it is not necessary to allege that the crime which the parties conspired to commit was actually committed, or that any act in and of itself evil was done in aid of effecting the object of such conspiracy." U.S. v. Wupperman, N.D.N.Y.1914, 215 F. 135.

In an indictment under former § 88 of this title [now this section] for conspiracy to commit an offense against the United States by bringing Chinamen into the country from Mexico in violation of the statute by means of a certain vessel, the provisioning of such vessel for the outward voyage and the sailing of such vessel from an American port to Mexico for the purpose of accomplishing the purpose of the conspiracy could have been averred as overt acts. Daly v. U S, C.C.A.1 (Mass.) 1909, 170 F. 321, 95 C.C.A. 107.

An allegation that defendant entered into an agreement which was corrupt, and with a bad intent, does not sufficiently describe the act done to effect the object of the conspiracy, since it fails to show whether the agreement was written or oral, active or passive, and leaves uncertain the matter and persons concerned. U. S. v. Milner, C.C.N.D.Ala.1888, 36 F. 890. Conspiracy 43(5)

In prosecution for conspiracy to violate Smith Act, § 2385 of this title, relating to advocating overthrow of Government, defendants' motion to strike overt acts of one defendant in that he used false name during particular period for specified purpose, would be denied where reasonable inference could be drawn from inclusion in description of overt act that purpose of such act was part of general purpose to effect objects of alleged conspiracy. U. S. v. Silverman, D.C.Conn.1955, 129 F.Supp. 496. Indictment And Information 137(1)

297. ---- Substantive offense, overt acts, indictment or information

The same overt acts charged in a conspiracy count may also be charged and proved as substantive offenses, since the agreement to do the act is distinct from the act itself. U.S. v. Bayer, U.S.N.Y.1947, 67 S.Ct. 1394, 331 U.S. 532, 91 L.Ed. 1654, rehearing denied 68 S.Ct. 29, 332 U.S. 785, 92 L.Ed. 368. Double Jeopardy 151(1)

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Substantive offense may be charged and punished as a distinct crime, even though conspiracy charge in same indictment also sets out facts involved in such substantive offense as an overt act of the conspiracy. Brown v. U. S., C.C.A.8 (Ark.) 1948, 167 F.2d 772. Conspiracy 28(2)

A substantive crime when charged as an overt act of a conspiracy need not be a part of the conspiracy. Hall v. U.S., C.C.A.10 (Okla.) 1940, 109 F.2d 976. Conspiracy 27

Commission of the offense which was the alleged purpose of the conspiracy may be charged as the overt act in an indictment for the conspiracy. Welter v. U.S., C.C.A.8 (Neb.) 1925, 4 F.2d 342. See, also, Miller v. U.S., C.C.A.Ill.1925, 4 F.2d 228, certiorari denied 45 S.Ct. 511, 268 U.S. 692, 69 L.Ed. 1160; U.S. v. Rogers, D.C.N.Y.1915, 226 F. 512.

Overt acts, which in themselves are substantive offenses, are material allegations in an indictment charging conspiracy to commit such acts. Bell v. U.S., C.C.A.8 (Utah) 1924, 2 F.2d 543.

Charges that accused committed overt acts constituting substantive offenses in violation of § 1138 et seq. of Title 12 could properly have been included in indictment under former § 88 of this title [now this section] charging conspiracy to violate § 1138 et seq. of Title 12 and relying upon same overt acts. U.S. v. Halbrook, E.D.Mo.1941, 36 F.Supp. 345. Indictment And Information 129(1)

298. ---- Acts of others, overt acts, indictment or information

An indictment setting forth various acts performed by several of the defendants in furtherance of the conspiracy is not defective as to a defendant as against whom it fails to aver the commission of any such act, the gist of the offense being the unlawful combination, although an overt act by one or more of the parties must be alleged and proved. Bannon v. U.S., U.S.Or.1895, 15 S.Ct. 467, 156 U.S. 464, 39 L.Ed. 494. Conspiracy 43(5)

Overt act necessary to activate conspiracy could be that of any conspirator, and indictment containing no allegation of overt act of one of alleged conspirators was not faulty as to such conspirator. McMurray v. U. S., C.A.10 (Okla.) 1961, 298 F.2d 619, certiorari denied 82 S.Ct. 950, 369 U.S. 860, 8 L.Ed.2d 18. Conspiracy 27; Conspiracy 43(5)

Count was sufficient though omitting defendant from list of those committing overt acts. Chew v. U.S., C.C.A.8 (Ark.) 1925, 9 F.2d 348. Conspiracy 43(5)

Paragraph in indictment stating that it was further part of conspiracy that defendants would misrepresent, conceal, hide and cause to be misrepresented, concealed and hidden for purposes of any acts done in furtherance of the conspiracy was not so confusing and prejudicial to defendants that it had to be stricken. U. S. v. Amidzich, E.D.Wis.1975, 396 F.Supp. 1140. Indictment And Information 137(7)

Indictment alleging that, in violation of this section prohibiting conspiring to commit offense against United States, certain defendants on or about November 21, 1965 traveled from specified point in Delaware to specified point in Maryland and that on or about December 24, 1968, certain defendant traveled between specified points in Delaware sufficiently alleged specific overt acts which member or members of alleged conspiracy are claimed to have committed in furtherance of conspiracy, though some other alleged overt acts were not expressly identified as acts of any conspirator. U. S. v. Manetti, D.C.Del.1971, 323 F.Supp. 683. Conspiracy 43(5)

Although a co-conspirator, who has allegedly committed an overt act in furtherance of conspiracy, has pleaded guilty, government must plead and prove the act as necessary overt act against another conspirator and such act may be properly alleged in indictment. U. S. v. Bennett, S.D.N.Y.1958, 190 F.Supp. 181. Conspiracy 43(12)

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299. Counts, indictment or information

A count which, coming after a conspiracy count, alleges a substantive violation against several defendants and also alleges a violation of section 2 of this title is not such a conspiracy allegation as to offend any rule against duplicitous charges. U. S. v. Nims, C.A.5 (La.) 1975, 524 F.2d 123, certiorari denied 96 S.Ct. 2646, 426 U.S. 934, 49 L.Ed.2d 385. Indictment And Information 125(3)

Indictment charging defendant with conspiring to counterfeit obligations of United States, counterfeiting such obligations and causing such counterfeit obligations to be sold was not multiplicitous or duplicitous, since each count charged separate offense for which different elements of proof were necessary to sustain conviction. U. S. v. Simone, C.A.8 (Mo.) 1974, 495 F.2d 752. Indictment And Information 125(6)

Three conspiracy count did not constitute an improper multiplication of counts where each count involved a separate transaction, although similar in nature, in which government agent was key figure, and over acts were different in each count and involved at least one different coconspirator. Stephens v. U. S., C.A.5 (Tex.) 1965, 347 F.2d 722, certiorari denied 86 S.Ct. 324, 382 U.S. 932, 15 L.Ed.2d 343. Indictment And Information 130

Alleging in one count conspiracy to commit more than one offense, e.g., forging and uttering, is not duplicitous. Danielson v. U. S., C.A.9 (Cal.) 1963, 321 F.2d 441. Indictment And Information 125(5.5)

The language of indictment charging in counts 1-8 that federal employee received 8 separate payments for services rendered in relation to two government contracts was sufficiently broad to permit government to prove that each payment was for a separate service, even when considered with conspiracy count charging four of the payments as overt acts, and counts 2-8 should not have been dismissed as duplicitous of count 1; even if § 281 of this title forbidding federal employee to receive compensation for services rendered in relation to government contract permitted only one punishment for the 8 separate payments, dismissal of counts 2-8 was still unwarranted. U. S. v. Ketchum, C.A.2 (N.Y.) 1963, 320 F.2d 3, certiorari denied 84 S.Ct. 194, 375 U.S. 905, 11 L.Ed.2d 145. Indictment And Information 125(15); United States 52

Although proof showed only one conspiracy, two counts in indictment were permissible to meet the different interpretations which might be placed on the evidence by the jury. United States v. McKnight, C.A.2 (N.Y.) 1958, 253 F.2d 817. Indictment And Information 128

In prosecution under this section and § 1010 of this title, making it unlawful knowingly to make or cause to be made false statements to obtain loan intending that it be offered to Federal Housing Administration for insurance, counts of indictment complained of were not objectionable as duplicitous. Ross v. U. S., C.A.6 (Ohio) 1950, 180 F.2d 160. Indictment And Information 125(1)

Count of indictment alleging conspiracy under both the "specific offenses" clause and the "defraud" clause of conspiracy statute was not duplicitous; the statute does not create two separate conspiracy offenses. U.S. v. Dale, D.D.C.1991, 782 F.Supp. 615. Indictment And Information 125(19.1)

Counts charging conspiracy to bribe a United States Senator in order to obtain a favorable disposition on pending legislation and alleging nine separate wire fraud violations were not multiplicious so as to compel the government to elect between them, notwithstanding that evidence as to each overlapped, where crimes charged were distinct with necessary proof of a conspiracy to bribe and proof of a scheme to defraud being largely independent. U. S. v. Dorfman, N.D.Ill.1981, 532 F.Supp. 1118. Indictment And Information 132(3)

A count of an indictment is not duplicitous when it contains allegations of objects of conspiracy as well as the conspiracy itself. U. S. v. Wolfson, D.C.Del.1968, 294 F.Supp. 267. Indictment And Information 125(5.5)

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Count charging single conspiracy to commit several offenses was not duplicitous. U. S. v. Luros, N.D.Iowa 1965, 243 F.Supp. 160, certiorari denied 86 S.Ct. 433, 382 U.S. 956, 15 L.Ed.2d 361. Indictment And Information 125(5.5)

The naming of individual counts in conspiracy count does not make conspiracy count duplicitous. U. S. v. Hanlin, W.D.Mo.1962, 29 F.R.D. 481. Indictment And Information 125(5.5)

300. Joinder, indictment or information--Counts

Count charging conspiracy to violate section 1006 of this title relating to defrauding federal credit institutions should not have been joined with counts charging the making of false statements to federal housing administration, where there was no identity of defendants, of the character of the offenses, the allegations of fact, or of the time. U. S. v. Spector, C.A.7 (Ill.) 1963, 326 F.2d 345. Indictment And Information 130

Defendants were not prejudiced by joinder of counts of indictment charging conspiracy to defraud the United States by defeating operation of Agricultural Adjustment Act, and causing fraudulent income tax returns to be filed and count charging one of the defendants with making false, fraudulent, and fictitious statements in his income tax return. Gajewski v. U.S., C.A.8 (N.D.) 1963, 321 F.2d 261, certiorari denied 84 S.Ct. 486, 375 U.S. 968, 11 L.Ed.2d 416. Criminal Law 1167(2)

Joinder of substantive counts for alleged federal narcotics law violations and conspiracy counts against three defendants with conspiracy counts as to other ten defendants, with joint trial of all defendants on all counts, was so prejudicial as to require reversal of their substantive convictions. U. S. v. Bentvena, C.A.2 (N.Y.) 1963, 319 F.2d 916, certiorari denied 84 S.Ct. 345, 375 U.S. 940, 11 L.Ed.2d 271, rehearing denied 90 S.Ct. 894, 397 U.S. 928, 25 L.Ed.2d 108, rehearing denied 84 S.Ct. 515, 375 U.S. 989, 11 L.Ed.2d 476, certiorari denied 84 S.Ct. 346, 375 U.S. 940, 11 L.Ed.2d 271, rehearing denied 84 S.Ct. 1162, 377 U.S. 913, 12 L.Ed.2d 183, certiorari denied 84 S.Ct. 353, 375 U.S. 940, 11 L.Ed.2d 272, certiorari denied 84 S.Ct. 354, 375 U.S. 940, 11 L.Ed.2d 272, certiorari denied 84 S.Ct. 355, 375 U.S. 940, 11 L.Ed.2d 272, certiorari denied 84 S.Ct. 360, 375 U.S. 940, 11 L.Ed.2d 272. Criminal Law 622.7(4); Criminal Law 1166(6)

Count charging conspiracy to smuggle, setting up filing of false affidavit as one of the overt acts, and count charging perjury, based upon the filing of such false affidavit, can stand together in one indictment. Murray v. U. S., C.A.9 (Cal.) 1954, 217 F.2d 583. Indictment And Information 130

It is not good practice to join in an indictment counts charging distinct offenses against separate defendants. U. S. v. Tuffanelli, C.C.A.7 (Ill.) 1942, 131 F.2d 890, certiorari denied 63 S.Ct. 769, 318 U.S. 772, 87 L.Ed. 1142. Indictment And Information 130

Indictment, charging fifteen defendants in forty-four counts with use of mails to defraud and in one count with conspiracy, was not bad as misjoining counts and charging three convicted defendants with several separate and distinct offenses. Stern v. U.S., C.C.A.7 (Ind.) 1936, 85 F.2d 394, certiorari denied 57 S.Ct. 40, 299 U.S. 576, 81 L.Ed. 424. Indictment And Information 129(1)

Conspiracy and crime of which t is object may ordinarily be laid as separate counts in one indictment. U.S. v. Wexler, C.C.A.2 (N.Y.) 1935, 79 F.2d 526, certiorari denied 56 S.Ct. 384, 297 U.S. 703, 80 L.Ed. 991. See, also, U.S. v. Olmstead, D.C.Wash.1925, 5 F.2d 712; Sneed v. U.S., C.C.A.Tex.1924, 298 F. 911, certiorari denied 44 S.Ct. 635, 265 U.S. 590, 68 L.Ed. 1195; Goodfriend v. U.S., C.C.A.Idaho 1923, 293 F. 964; Anderson v. U.S., C.C.A.Kan.1921, 273 F. 20, certiorari denied 42 S.Ct. 56, 257 U.S. 647, 66 L.Ed. 415; McGregor v. U.S., Md.1904, 134 F. 187, 69 C.C.A. 477. Indictment And Information 129(1)

Counts for conspiracy and substantive offenses were properly joined. Perry v. U.S., C.C.A.8 (Okla.) 1927, 18 F.2d

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Counts charging counterfeiting, making of counterfeit plates, and conspiracy were not misjoined, and election was unnecessary. Litkofsky v. U.S., C.C.A.2 (N.Y.) 1925, 9 F.2d 877. Indictment And Information 132(5)

Under former section 557 of this title counts for using the mails to defraud, in violation of former section 338 of this title, and for conspiracy to commit such offense under former section 88 of this title [now this section] where based upon the same transaction, could have been joined in one indictment. Chew v. U.S., C.C.A.8 (Ark.) 1925, 9 F.2d 348. See, also, Ader v. U.S., C.C.A.Ill.1922, 284 F.13, certiorari denied 43 S.Ct. 247, 260 U.S. 746, 67 L.Ed. 493; Sidebotham v. U.S., C.C.A.Mont.1918, 253 F. 417; U.S. v. Clark, D.C.Pa.1903,125 F. 92.

An indictment for conspiracy may charge a conspiracy to commit acts constituting offenses under different statutes, and may in separate counts charge the same conspiracy to commit an offense under each statute, with pertinent overt acts. Powers v. U.S., C.C.A.9 (Wash.) 1923, 293 F. 964. Indictment And Information 130

Where defendants are indicted in one count for the commission of an offense, and in another count for conspiracy to commit the offense set for the in the first count, the count for conspiracy falls if the other count is found insufficient. Spear v. U. S., C.C.A.8 (Ark.) 1915, 228 F. 485, 143 C.C.A. 67.

A count charging codefendant with perjury before grand jury was properly joined with counts charging all defendants with conspiracy and substantive offenses of making false statements, notwithstanding that alleged perjury occurred almost two years after the making of the last false statement, where codefendant's alleged role in conspiracy was to prepare and file false certificates in respect of spirits exported to United States and perjury count charged that codefendant knew that her testimony before grand jury was false when she stated that she received the certificates in the mail. U. S. v. Haim, S.D.N.Y.1963, 218 F.Supp. 922. Indictment And Information 130

Count of conspiracy to commit offenses against United States could be consolidated with counts of aiding and abetting misapplication of bank funds and aiding and abetting making of false entries in bank records and of violations of mail fraud statute, section 1341 of this title. U. S. v. Scoblick, M.D.Pa.1954, 124 F.Supp. 881, affirmed 225 F.2d 779. Criminal Law 620(6)

301. ---- Offenses, joinder, indictment or information

Government was not authorized to string together for common trial eight or more separate and distinct conspiracies to violate the National Housing Act, section 1731 of Title 12, when the only nexus among them lay in fact that one man participated in all. Kotteakos v. U.S., U.S.N.Y.1946, 66 S.Ct. 1239, 328 U.S. 750, 90 L.Ed. 1557. Indictment And Information 125(2)

Despite defendant's claim that the count charged three nonjoinable conspiracies, count charging that five persons conspired to devise a scheme to defraud various insurance companies in fact charged a single conspiracy. U. S. v. Leach, C.A.5 (Fla.) 1980, 613 F.2d 1295. Conspiracy 43(1)

Indictment charging violations of section 152 of this title, this section, and section 1341 of this title was not objectionable on theory of misjoinder of offenses. U.S. v. Goodman, C.A.5 (Fla.) 1960, 285 F.2d 378, certiorari denied 81 S.Ct. 1651, 366 U.S. 930, 6 L.Ed.2d 389. Indictment And Information 130

When an accused is charged with conspiracy to commit a federal offense in one count and then in a second is charged with commission of the substantive offense which is the object of the conspiracy, the indictment states two offenses, each of which is punishable. Callanan v. U.S., C.A.8 (Mo.) 1960, 274 F.2d 601, certiorari granted 80 S.Ct. 807, 362 U.S. 939, 4 L.Ed.2d 769, affirmed 81 S.Ct. 321, 364 U.S. 587, 5 L.Ed.2d 312, rehearing denied 81 S.Ct. 687, 365 U.S. 825, 5 L.Ed.2d 703. Sentencing And Punishment 520(3)

18 U.S.C.A. § 371

Conspiracy to embezzle and misapply funds, conspiracy to conceal material facts, and conspiracy to make false statements and entries, were closely related offenses which could be charged in single count. Robinson v. U.S., C.A.D.C.1954, 210 F.2d 29, 93 U.S.App.D.C. 347. Indictment And Information 125(5.5)

Commission of offense defined by section 1584 of Title 22, prohibiting making of gifts to procurement officers of United States in connection with procurement of materials and a conspiracy to commit such offense are separate evidence being required to establish the unlawful agreement, and indictment could properly contain separate counts charging the substantive offense and the conspiracy. Razete v. U. S., C.A.6 (Ohio) 1952, 199 F.2d 44, certiorari denied 73 S.Ct. 284, 344 U.S. 904, 97 L.Ed. 698. Indictment And Information 130

Even if several counts of indictment for violation of this section were invalid, when one count of indictment was valid, and verdict was general, and sentences imposed under various counts were concurrent, indictment was sufficient to sustain judgment. Razete v. U. S., C.A.6 (Ohio) 1952, 199 F.2d 44, certiorari denied 73 S.Ct. 284, 344 U.S. 904, 97 L.Ed. 698. Indictment And Information 203

The charge of conspiracy against defendant also charged with substantive offenses of using mails to defraud in sale of mining stock was not an abuse of this section. Allen v. U.S., C.A.9 (Wash.) 1951, 186 F.2d 439, certiorari denied 71 S.Ct. 1015, 341 U.S. 948, 95 L.Ed. 1372. Conspiracy 32

An indictment containing count charging that defendant conspired to transport girl from Minnesota to Oklahoma for the purpose of engaging in prostitution, and count charging that defendant did so transport girl, charged separate and distinct offenses for both of which defendant could be imprisoned. Upshaw v. U.S., C.C.A.10 (Okla.) 1946, 157 F.2d 716. Double Jeopardy 151(4)

Where proof shows two conspiracies to violate federal law, in each of which some of accused participated, but in both of which all accused did not participate, one accused cannot complain if his substantial rights are not affected. Marino v. U.S., C.C.A.9 (Cal.) 1937, 91 F.2d 691, certiorari denied 58 S.Ct. 410, 302 U.S. 764, 82 L.Ed. 593. Criminal Law 1169.11; Criminal Law 1169.1(2.1)

Indictment for conspiracy to defraud government, charging only one crime and charging all defendants with guilt, thereof, was not demurrable for misjoinder of parties and separate offenses. Asgill v. U.S., C.C.A.4 (Va.) 1932, 60 F.2d 780. Indictment And Information 125(5.5)

There was no misjoinder of offenses, where evidence failed to connect some of defendants in conspiracy charge with substantive offense. Chapman v. U.S., C.C.A.5 (Tex.) 1925, 10 F.2d 124, certiorari denied 46 S.Ct. 482, 271 U.S. 667, 70 L.Ed. 1141. Indictment And Information 130

Counts alleging conspiracy to operate gambling business and conspiracy to receive and dispose of stolen merchandise and launder money were improperly joined, requiring severance, when only connection was one suggestion, quickly rejected, that money received in payment for stolen jewelry could be laundered through gambling operation. U.S. v. Gruttadauria, E.D.N.Y.2006, 439 F.Supp.2d 240. Indictment And Information 129(1)

Lumping of 1962-1963 transaction as part of one conspiracy with 1960 transaction was not prejudicial to defendants, in view of evidence that both transactions had been part of one conspiracy and that both defendants had been involved in both transactions. U. S. v. Kubacki, E.D.Pa.1965, 237 F.Supp. 638. Criminal Law 915

Reason for rule against charging multiple conspiracies as one is danger of transference of guilt. U. S. v. Kubacki, E.D.Pa.1965, 237 F.Supp. 638. Conspiracy 43(1)

Indictment was not subject to dismissal merely because it charged conspiracy to commit both a misdemeanor and a

felony; the possibility of harm to defendants could be obviated if defendants would request a charge to the jury calling for a special verdict or a verdict indicating the degree of the offense. U. S. v. Haim, S.D.N.Y.1963, 218 F.Supp. 922. Criminal Law 870; Indictment And Information 144.1(1)

Inclusion of conspiracy count in indictment which also contained counts based upon acts which were alleged to constitute substantive offenses, and which were in part also basis for the conspiracy charge, was proper. U. S. v. Johnson, D.C.Md.1963, 215 F.Supp. 300. Conspiracy 43(1)

Consolidation of charge of conspiracy to cheat and defraud and misbehavior in office with charges against other of obtaining money by false pretense involved a question of law calling for exercise of trial court's discretion and did not encompass question of due process as basis for habeas corpus relief. Torrance v. Salzinger, M.D.Pa.1961, 195 F.Supp. 804, affirmed 297 F.2d 902, certiorari denied 82 S.Ct. 1161, 369 U.S. 887, 8 L.Ed.2d 288. Criminal Law 622.7(4); Habeas Corpus 478

Where a person is charged with conspiracy to violate some federal law under the general conspiracy statute and then is charges separately with doing the substantive overt act which is the object of the conspiracy, he may be charged, tried and sentenced separately on each count or offense. U.S. v. Callanan, E.D.Mo.1959, 173 F.Supp. 98, affirmed 274 F.2d 601, certiorari granted 80 S.Ct. 807, 362 U.S. 939, 4 L.Ed.2d 769, affirmed 81 S.Ct. 321, 364 U.S. 587, 5 L.Ed.2d 312, rehearing denied 81 S.Ct. 687, 365 U.S. 825, 5 L.Ed.2d 703. Criminal Law 29(5.5); Sentencing And Punishment 520(3)

Where, in prosecution for conspiring to sell, and causing to be sold, and for unlawfully withdrawing and using specially denatured alcohol in liquid medicinal preparation for internal human use without payment of federal tax due upon such alcohol, no showing was made that any defendants would be prejudiced by reason of their joinder as defendants or that any confusion or under complexity would result therefrom, substantive count did not contain a misjoinder of offenses and of parties. U. S. v. J. R. Watkins Co., D.C.Minn.1954, 120 F.Supp. 154. Indictment And Information 124(1); Indictment And Information 127

Joinder in same indictment of charge of using mails to defraud in sale of stock, charge of conspiring to defraud by offering stock for sale, and charge of violating Securities Act by sale of stock was permissible. U. S. v. Alluan, N.D.Tex.1936, 13 F.Supp. 289. Indictment And Information 129(1)

302. ---- Parties, joinder, indictment or information

Although defendants were not all charged in each count of indictment, joinder of defendants was proper, since one count alleged that all defendants were members of same conspiracy to defraud savings and loan institutions through device of fraudulent land loans and that each defendant played important role in this conspiracy, and other counts emanated from same alleged conspiracy. U.S. v. Faulkner, C.A.5 (Tex.) 1994, 17 F.3d 745, rehearing and rehearing en banc denied 21 F.3d 1110, certiorari denied 115 S.Ct. 193, 513 U.S. 870, 130 L.Ed.2d 125, rehearing dismissed 115 S.Ct. 786, 513 U.S. 1105, 130 L.Ed.2d 679, certiorari denied 115 S.Ct. 663, 513 U.S. 1056, 130 L.Ed.2d 598. Indictment And Information 124(1)

Joinder of defendants was proper in prosecution for conspiracy to commit mail fraud and violation of Racketeer Influenced and Corrupt Organizations Act as a result of scheme to obtain, buy and sell police promotional and entrance examinations, although defendants contended Government should have tried general conspiracy count involving one defendant separately from subsidiary counts involving other defendants; acts that were central to subsidiary conspiracy also formed part of general conspiracy and were also charged as overt acts in furtherance of general conspiracy. U.S. v. Doherty, C.A.1 (Mass.) 1989, 867 F.2d 47, certiorari denied 109 S.Ct. 3243, 492 U.S. 918, 106 L.Ed.2d 590, post-conviction relief denied 729 F.Supp. 165, affirmed 42 F.3d 1384. Indictment And Information 124(5)

18 U.S.C.A. § 371

Charges against one defendant for interstate transportation of stolen property and conspiracy involving transportation in interstate commerce, and receipt and disposition of stolen property, were sufficiently interrelated with charges against other defendants, which included conspiracy involving transportation in interstate commerce, and receipt and disposition of its own property and receipt of stolen property that had been transported interstate, to permit joinder of defendants, despite objection to charges and proof that codefendants were involved in other unlawful acts not involving defendant. U.S. v. Lawson, C.A.6 (Ohio) 1985, 780 F.2d 535. Indictment And Information 124(5)

District court did not abuse its discretion in trying defendants charged with conspiracy and various other crimes jointly where, although there were over 200 exhibits admitted into evidence, trial was neither unusually lengthy nor complex and jury could compartmentalize evidence as to each of defendants and properly apply it to court's instructions. U.S. v. Pack, C.A.10 (Okla.) 1985, 773 F.2d 261. Criminal Law 622.7(8)

Where bank fraud scheme, described by its organizer as continuing fraud, constituted single conspiracy, all transactions involved same fraudulent technique, transactions had common object of securing money from banking system before it could discover worthless checks, and there was evidence that cash from earlier frauds financed later transactions, defendants who were involved in same series of bank fraud transactions were properly joined in prosecution for mail fraud and conspiracy. U. S. v. Johnston, C.A.5 (Fla.) 1977, 547 F.2d 282, rehearing denied 550 F.2d 1285, certiorari denied 97 S.Ct. 2660, 431 U.S. 942, 53 L.Ed.2d 261, rehearing denied 98 S.Ct. 249, 434 U.S. 882, 54 L.Ed.2d 167, rehearing denied 98 S.Ct. 1288, 434 U.S. 1089, 55 L.Ed.2d 796. Indictment And Information 124(5)

Even assuming, without supporting facts, that in indictment alleging conspiracy to distribute obscene films, appellant properly appeared in overt act charge with other defendants in respect to placing one telephone call among 20 other overt acts which pointed overwhelmingly to the existence of two unrelated conspiracies to distribute obscene films, connection was too tenuous to support the substantial identity of facts or participants necessary to justify joinder of defendants. U. S. v. Levine, C.A.5 (Fla.) 1977, 546 F.2d 658, rehearing denied 551 F.2d 687. Indictment And Information 124(1)

Even if district court had dismissed conspiracy count, that would not have retroactively affected the validity of joinder based on that count, absent bad faith by the prosecutor; in any event, the district court in the instant case did not dismiss the conspiracy count and the record showed that there was ample evidence from which the jury could have found a conspiracy, meaning that the joinder of defendants was not error. U. S. v. Nims, C.A.5 (La.) 1975, 524 F.2d 123, certiorari denied 96 S.Ct. 2646, 426 U.S. 934, 49 L.Ed.2d 385. Indictment And Information 124(1)

Joinder of two defendants, who were charged with receiving stolen property and with conspiracy to receive stolen property, with third defendant, who had allegedly made unrelated purchase, did not prejudice defendants, even though there was want of evidence regarding conspiracy, where evidence as to each defendant's guilt was unusually clear. U. S. v. Braico, C.A.7 (Ill.) 1970, 422 F.2d 543, certiorari denied 90 S.Ct. 1712, 398 U.S. 912, 26 L.Ed.2d 74, certiorari denied 90 S.Ct. 2171, 398 U.S. 958, 26 L.Ed.2d 543. Criminal Law 1167(1)

The number of possible conspiracies and conspirators is not the sole criterion for propriety of joinder; such a nexus is different from an overall common purpose required for a finding of a single conspiracy; the nexus is at least concerned with identity of parties to the transaction, character of transaction, modus operandi, area of operations, lapse of time, etc. U. S. v. Varelli, C.A.7 (Ill.) 1969, 407 F.2d 735. Criminal Law 620(1); Indictment And Information 124(1)

Where indictment demonstrated a common participant throughout all counts, a similar scheme to defraud the same bank in all counts, identical transactions in each instance, offenses all occurring within the defined period of time alleged in the conspiracy count and that defendants were aiders and abettors to the common participant, a "clear

discernible pattern of action" involving defendant and his accomplices in the "same series of transactions" could be implied, so that joinder of defendant and his accomplices was within discretion of trial court and was not prejudicial per se. Haggard v. U. S., C.A.8 (Mo.) 1966, 369 F.2d 968, certiorari denied 87 S.Ct. 1379, 386 U.S. 1023, 18 L.Ed.2d 461. Indictment And Information 124(5)

Where government's evidence was sufficient to permit a finding of a single continuing conspiracy by several defendants and sufficed also to show that other defendants had joined with them in one phase of their criminal enterprise and still another defendant in another phase, this met the joinder requirements of the rule, and such variance as there was from the indictment required only the giving of appropriate instructions. U. S. v. Borelli, C.A.2 (N.Y.) 1964, 336 F.2d 376, certiorari denied 85 S.Ct. 647, 379 U.S. 960, 13 L.Ed.2d 555. Indictment And Information 124(1)

If government honestly believes that many defendants have played a part in the conspiracy, they may be joined as defendants. U.S. v. Dardi, C.A.2 (N.Y.) 1964, 330 F.2d 316, certiorari denied 85 S.Ct. 117, 379 U.S. 869, 13 L.Ed.2d 73, certiorari denied 85 S.Ct. 50, 379 U.S. 845, 13 L.Ed.2d 50, rehearing denied 85 S.Ct. 640, 379 U.S. 986, 13 L.Ed.2d 579, certiorari denied 85 S.Ct. 51, 379 U.S. 845, 13 L.Ed.2d 50. Indictment And Information 124(1)

If government honestly believes that many defendants have played a part in the conspiracy, they may be joined as defendants. U.S. v. Dardi, C.A.2 (N.Y.) 1964, 330 F.2d 316, certiorari denied 85 S.Ct. 117, 379 U.S. 869, 13 L.Ed.2d 73, certiorari denied 85 S.Ct. 50, 379 U.S. 845, 13 L.Ed.2d 50, rehearing denied 85 S.Ct. 640, 379 U.S. 986, 13 L.Ed.2d 579, certiorari denied 85 S.Ct. 51, 379 U.S. 845, 13 L.Ed.2d 50. Indictment And Information 124(1)

There was no unlawful joinder of defendants in prosecution under indictment charging in the first count a conspiracy by four defendants with unknown persons to violate § 659 of this title dealing with possession of merchandise stolen while moving in interstate commerce, charging in second count one of the defendants with possession, charging in the third count another defendant with possession, charging in the fourth count another defendant with possession, charging in the fifth count one of the defendants with interstate transportation, and charging in the sixth count another defendant with interstate transportation. U. S. v. Patrisso, C.A.2 (N.Y.) 1958, 262 F.2d 194. Indictment And Information 124(5)

Where offenses of conspiracy to bribe and bribery charged in indictment were of the same or similar character, and defendants charged with such crimes were alleged to have participated in same conspiracy, joinder of offenses and defendants in the indictment was permissible under rule 8, of Federal Rules of Criminal Procedure, Title 18. Monroe v. U.S., C.A.D.C.1956, 234 F.2d 49, 98 U.S.App.D.C. 228, certiorari denied 77 S.Ct. 94, 352 U.S. 872, 1 L.Ed.2d 76, certiorari denied 77 S.Ct. 94, 352 U.S. 873, 1 L.Ed.2d 76, rehearing denied 77 S.Ct. 219, 352 U.S. 937, 1 L.Ed.2d 170, rehearing denied 78 S.Ct. 114, 355 U.S. 875, 2 L.Ed.2d 79. Indictment And Information 124(5); Indictment And Information 129(1)

Discretion with respect to denial of a motion for severance is right of the government to join in a conspiracy all of those against whom it has or believes it has evidence, and it is duty of the court to permit the proper joinder and only in a case where the joinder is on its face excessive and unreasonable, should the refusal to grant a severance be held reversible error. Duke v. U.S., C.A.5 (Ga.) 1956, 233 F.2d 897. Criminal Law 622.6(3); Criminal Law 1166(6); Criminal Law 622.7(3)

Suppliers of marihuana who had no dealings with one another but who sold such marihuana to an intermediary group, knowing that purchases were for resale, were part of an over-all conspiracy with intermediary group and were properly indicted with them for conspiring to commit offenses involving purchase and sale of narcotics and marihuana. U. S. v. Tramaglino, C.A.2 (N.Y.) 1952, 197 F.2d 928, certiorari denied 73 S.Ct. 105, 344 U.S. 864, 97 L.Ed. 670. Conspiracy 40.1

18 U.S.C.A. § 371

The statutory crime of conspiracy to defraud the United States is broad enough in its terms to include any conspiracy for the purpose of impairing, obstructing, or defeating the lawful function of any department of government, and government officials are not necessary parties to such a conspiracy. Joyce v. U. S., C.C.A.8 (N.D.) 1946, 153 F.2d 364, certiorari denied 66 S.Ct. 1349, 328 U.S. 860, 90 L.Ed. 1631. Conspiracy 33(1); Conspiracy 40

That one of the men charged with conspiring to commit an offense against the United States by depriving inhabitants of the United States of rights protected by U.S.C.A.Const. Amend. 14 and federal laws was not a law enforcement officer acting under color of any law did not invalidate indictment where indictment charged a conspiracy with others who were state officers capable of committing the offense charged. Culp v. U. S., C.C.A.8 (Ark.) 1942, 131 F.2d 93. Conspiracy 43(8)

Unknown conspirators may be indicted along with named conspirators. U.S. v. Harrison, C.C.A.3 (N.J.) 1941, 121 F.2d 930, certiorari denied 62 S.Ct. 124, 314 U.S. 661, 86 L.Ed. 530. See, also, U.S. v. Vannatta, D.C.N.Y.1922, 278 F. 559. Indictment And Information 124(4)

In prosecution for conspiracy to violate internal revenue laws, trial court's refusal to treat as an accomplice or co-conspirator a government witness, the indictment against whom had been ignored by grand jury, was proper, the presumption being that such witness was innocent. U. S. v. Hannon, C.C.A.3 (Pa.) 1939, 105 F.2d 390, certiorari denied 60 S.Ct. 124, 308 U.S. 594, 84 L.Ed. 497, certiorari denied 60 S.Ct. 125, 308 U.S. 594, 84 L.Ed. 497, certiorari denied 60 S.Ct. 125, 308 U.S. 594, 84 L.Ed. 498. Criminal Law 507.5

Indictment for conspiracy to defraud government, charging only one crime and charging all defendants with guilt thereof, was not demurrable for misjoinder of parties and separate offenses. Asgill v. U.S., C.C.A.4 (Va.) 1932, 60 F.2d 780. Indictment And Information 125(5.5)

Indictment charging conspiracy was not defective for misjoinder because some of defendants might be guilty of substantive crimes. U S v. Ford, D.C.Pa.1932, 58 F.2d 1029. Indictment And Information 125(5.5)

Indictment for conspiracy will not be quashed on ground persons charged to have conspired with defendants were not indicted. U.S. v. Hosier, D.C.La.1931, 50 F.2d 971. Indictment And Information 137(1)

If a person may alone be charged with a crime, another whose concert with him is not necessary for the commission of that crime may properly be joined with him in an indictment for a conspiracy to commit the crime. U S v. Katz, D.C.Pa.1925, 5 F.2d 527, affirmed 46 S.Ct. 513, 271 U.S. 354, 70 L.Ed. 986. Conspiracy 40

There is no requirement in the law that all conspirators be joined in a single indictment, and only such as may well be tried in one case should be named in one indictment. Goldberg v. U.S., C.C.A.5 (Ga.) 1924, 297 F. 98. See, also, U.S. v. Heitler, D.C.Ill.1921, 274 F. 401, error dismissed 43 S.Ct. 163, 260 U.S. 703, 67 L.Ed. 472 and case transferred to Court of Appeals 43 S.Ct. 185, 260 U.S. 438, 67 L.Ed. 338, certiorari denied 44 S.Ct. 135, 263 U.S. 728, 68 L.Ed. 528.

That an indictment for conspiracy to receive, buy, and sell opium, knowing it to have been imported contrary to law, in violation of section 172 et seq. of Title 21, alleged as overt acts, sales of such opium to persons named did not make it necessary to charge such persons as conspirators. Iponmatsu Ukichi v. U.S., C.C.A.9 (Hawai'i) 1922, 281 F. 525, certiorari denied 43 S.Ct. 92, 260 U.S. 729, 67 L.Ed. 485. Conspiracy 43(2); Indictment And Information 110(10)

That an indictment for conspiracy to receive, buy, and sell opium, knowing it to have been imported contrary to law, in violation of § 172 et seq. of Title 21, alleged as overt acts, sales of such opium to persons named did not make it necessary to charge such persons as conspirators. Iponmatsu Ukichi v. U.S., C.C.A.9 (Hawai'i) 1922, 281

F. 525, certiorari denied 43 S.Ct. 92, 260 U.S. 729, 67 L.Ed. 485. Conspiracy 43(2); Indictment And Information 110(10)

It is not necessary to join in an indictment for conspiracy, all the alleged coconspirators or to explain why those omitted were not indicted. Katz v. U.S., C.C.A.1 (R.I.) 1921, 273 F. 157, certiorari denied 42 S.Ct. 52, 257 U.S. 641, 66 L.Ed. 412. Conspiracy 43(1)

Where there was evidence of the original formation of a single joint conspiracy among the defendants to sell the stock of a corporation by false and fraudulent representations and of an original community of interests and general plan in which all the defendants participated, to a greater or lesser degree, they were not improperly joined in an indictment because they later formed agencies to sell the stock in different parts of the country, though some of the defendants profited from one agency, some from another, and one from both. Wilson v. U.S., C.C.A.2 (N.Y.) 1911, 190 F. 427, 111 C.C.A. 231. Indictment And Information 124(4)

When certain persons combine to perform certain acts, and some of them combine with others engaged in totally different acts, though all may have a similar general purpose in view, it is improper to join them in an indictment for conspiracy. Wilson v. U.S., C.C.A.2 (N.Y.) 1911, 190 F. 427, 111 C.C.A. 231. Indictment And Information 124(4)

Where there was evidence of the original formation of a single joint conspiracy among the defendants to sell the stock of a corporation by false and fraudulent representations and of an original community of interests and general plan in which all the defendants participated, to a greater or less degree, they were not improperly joined in an indictment because they later formed agencies to sell the stock in different parts of the country, though some of the defendants profited from one agency, some from another, and one from both. Wilson v. U.S., C.C.A.2 (N.Y.) 1911, 190 F. 427, 111 C.C.A. 231. Indictment And Information 124(4)

In prosecution under 50-court indictment charging 12 defendants with conspiracy to commit mail and wire fraud and substantive acts of mail and wire fraud, possibility of prejudice from joint trial of nine defendants who remained after two pleaded guilty and one was severed was too remote to justify further severance where no defendant had informed the court what evidence the government might offer against some codefendants that would be unduly prejudicial to others nor was there any showing that exculpatory testimony would be available if the defendants were tried separately or that a well-instructed jury would be unable to consider the evidence for its proper purposes. U. S. v. Abrahams, D.C.Mass.1978, 466 F.Supp. 552. Criminal Law 622.7(10)

Two defendants who have allegedly conspired to effectuate a single scheme to defraud and who are accordingly guilty of the same offenses, if they are guilty of any offenses at all, may be indicted together, tried together, and ultimately acquitted or convicted together. U. S. v. Tallant, N.D.Ga.1975, 407 F.Supp. 878. Criminal Law 622.6(4); Indictment And Information 124(1)

Where government's evidence was sufficient to permit a finding of a single continuing conspiracy by several defendants and sufficed also to show that other defendants had joined with them in one phase, this met the joinder requirements of the rule, and such variance as there was from the indictment required only the giving of appropriate instructions. U. S. v. Borelli, C.A.2 (N.Y.) 1964, 336 F.2d 376, certiorari denied 85 S.Ct. 647, 379 U.S. 960, 13 L.Ed.2d 555. Indictment And Information 124(1)

Where all four of defendants were charged in conspiracy count while two of defendants were charged in both counts two and three and the charges in the three counts were related to one another and were in same series of acts, there was no misjoinder of defendants. U. S. v. Bachman, D.C.D.C.1958, 164 F.Supp. 898. Indictment And Information 124(5)

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counts two and three and the charges in the three counts were related to one another and were in same series of acts, there was no misjoinder of defendants. U. S. v. Bachman, D.C.D.C.1958, 164 F.Supp. 898. Indictment And Information 124(5)

All conspirators need not be joined in a single indictment. U. S. v. Skurla, W.D.Pa.1954, 126 F.Supp. 713. Indictment And Information 124(2)

303. Splitting of offenses, indictment or information

Single conspiracy may not be subdivided arbitrarily for purposes of prosecution. U. S. v. Young, C.A.3 (Pa.) 1974, 503 F.2d 1072. Double Jeopardy 151(2)

Single conspiracy cannot be split up for purpose of prosecution. U. S. v. Edwards, C.A.2 (N.Y.) 1966, 366 F.2d 853, certiorari denied 87 S.Ct. 852, 386 U.S. 908, 17 L.Ed.2d 782, certiorari denied 87 S.Ct. 882, 386 U.S. 919, 17 L.Ed.2d 790. Double Jeopardy 151(2)

There may not be more than one punishment for a single conspiracy, but a single conspiracy may be charged as a crime in several counts to meet different interpretations that might be placed upon evidence by jury. U. S. v. Maryland State Licensed Beverage Ass'n, C.A.4 (Md.) 1957, 240 F.2d 420. Indictment And Information 128

Though a prosecution for one conspiracy is no bar to a prosecution for participation in another conspiracy, a single conspiracy cannot be split up for purpose of prosecution. U.S. v. Cohen, C.A.3 (N.J.) 1952, 197 F.2d 26. Double Jeopardy 151(2)

Single conspiracy cannot be split up for purpose of prosecution. U.S. v. Owen, D.C.Ill.1927, 21 F.2d 868. Criminal Law 200(6)

The government cannot make several conspiracies out of one. Powe v. U. S., C.C.A.5 (Ala.) 1926, 11 F.2d 598. Criminal Law 29(5.5)

The government cannot split up one conspiracy into different indictments, and prosecute all of them, but prosecution for any part of a single crime bars any further prosecution based upon the whole or a part of the same crime. Murphy v. U.S., C.C.A.7 (Ill.) 1923, 285 F. 801, certiorari denied 43 S.Ct. 362, 261 U.S. 617, 67 L.Ed. 829 . See, also, In re Snow, Utah 1887, 7 S.Ct. 556, 120 U.S. 274, 30 L.Ed. 658; U.S. v. Weiss, D.C.Ill.1923, 293 F. 992.

There could be but one prosecution for conspiracy in violation of former § 88 of this title [now this section] regardless of the number of overt acts committed in pursuance thereof. U.S. v. Brace, N.D.Cal.1907, 149 F. 874. Conspiracy 27; Conspiracy 37

Government may not break down a single conspiracy into component subagreements for purpose of multiple punishments or multiple prosecutions. U. S. v. Phillips Petroleum Co., N.D.Okla.1977, 435 F.Supp. 622. Conspiracy 24(2)

Single conspiracy cannot be split up for purposes of prosecution nor may a single conspiracy be split up to provide separate counts in one indictment if it has as its object the commission of several crimes. U. S. v. De Sapio, S.D.N.Y.1969, 299 F.Supp. 436. Conspiracy 37; Indictment And Information 128

Indictments charging filing of false affidavits of non-Communist union officer with National Labor Relations Board were not dismissible on ground that indictments split alleged offense in separate counts where charges made in separate counts involved statements in affidavits which had been made in the disjunctive so that it was better

practice to state the charges in two counts rather than in the alternative in a single count. U. S. v. Haug, N.D.Ohio 1957, 21 F.R.D. 22. Indictment And Information 128

304. Duplicity, indictment or information--Generally

Indictment charging conspiracy to defraud the United States and conspiracy to commit mail fraud was not duplicitous under Court of Appeals' decision in *Gordon*, holding that indictment that charges conspiracy to defraud the United States and a second conspiracy to cover up fraud is duplicitous; instant indictment did not charge separate coverup conspiracy but a mail fraud conspiracy, and although portion of mail fraud did turn on evidence showing cover-up conspiracy, a substantial part of evidence showed mail fraud as part of main conspiracy. U.S. v. Licciardi, C.A.9 (Cal.) 1994, 30 F.3d 1127. Indictment And Information 125(5.5)

Indictment that charged defendants with conspiring to avoid payment of federal gasoline excise taxes was not duplicitous, even if alleged scheme involved creation of sham "daisy chain" transfers and involved use of transfers to "shell companies" to make it appear that taxes had been paid on gasoline when taxes had not and would not be paid; charge of conspiracy could be characterized as one continuing scheme that involved different companies in series of transfers for single purpose. U.S. v. Aracri, C.A.2 (N.Y.) 1992, 968 F.2d 1512. Indictment And Information 125(42)

Indictment which charged, in addition to a conspiracy count, that defendants unlawfully used the mails with intent to carry on an unlawful business enterprise involving prostitution offenses, in violation of specified state statutes, was not insufficient by reason of the fact that it failed to set forth the elements of the offenses defined in the several state statutes; nor could the indictment be said to be duplicitous, since defendants were not charged with commission of the substantive offenses under state law and since the allegations as to state law only identified as unlawful the enterprise which the use of interstate facilities was designed to promote. U. S. v. Rizzo, C.A.7 (Ill.) 1969, 418 F.2d 71, certiorari denied 90 S.Ct. 1006, 397 U.S. 967, 25 L.Ed.2d 260. Indictment And Information 125(3)

An indictment charging conspiracy was not duplicitous although it contained allegations of acts which amounted to commission of the substantive offense, such allegations merely being descriptive of the conspiracy. Reno v. U. S., C.A.5 (Fla.) 1963, 317 F.2d 499, certiorari denied 84 S.Ct. 72, 375 U.S. 828, 11 L.Ed.2d 60. Indictment And Information 125(5.5)

Any possible duplicity in an indictment was harmless error where trial was limited to charge of conspiracy. Reno v. U. S., C.A.5 (Fla.) 1963, 317 F.2d 499, certiorari denied 84 S.Ct. 72, 375 U.S. 828, 11 L.Ed.2d 60. Criminal Law 1167(1)

If count of indictment was duplicitous, such defect was cured by verdict. U. S. v. Poppa, C.A.7 (Ind.) 1951, 190 F.2d 112. Indictment And Information 202(8)

Where a common thread runs through all the actions and a common purpose animates all the conspirators, that many persons came into and many acts are embraced in the conspiracy does not make the charge duplicitous. Nye & Nissen v. U.S., C.C.A.9 (Cal.) 1948, 168 F.2d 846, certiorari granted 69 S.Ct. 81, 335 U.S. 852, 93 L.Ed. 400, affirmed 69 S.Ct. 766, 336 U.S. 613, 93 L.Ed. 919. Indictment And Information 125(5.5)

Where indictment charges a continuing conspiracy from January 1, 1938, to June 20, 1945, to defraud United States by delivering, grading, selling, etc., inferior products to War Shipping Administration, War Department, and Navy Department, that War Shipping Administration did not come into existence until 1942, does not make the indictment duplicitous. Nye & Nissen v. U.S., C.C.A.9 (Cal.) 1948, 168 F.2d 846, certiorari granted 69 S.Ct. 81, 335 U.S. 852, 93 L.Ed. 400, affirmed 69 S.Ct. 766, 336 U.S. 613, 93 L.Ed. 919. Indictment And Information 125(43.1)

18 U.S.C.A. § 371

An indictment, charging conspiracy to defraud the United States by charging that defendant and another designed to obstruct justice both by corruptly administering the Frazier Lemke Act, §§ 201 to 203 of Title 11, and at the same time by procuring its corrupt administration, was not thereby rendered duplicitous, where no claim was made that defendant was prejudiced by such allegations. Joyce v. U. S., C.C.A.8 (N.D.) 1946, 153 F.2d 364, certiorari denied 66 S.Ct. 1349, 328 U.S. 860, 90 L.Ed. 1631. Indictment And Information 125(5.5)

Where indictment for violation of former § 338 of this title, and § 77q of Title 15, and for conspiracy charged that defendants devised a scheme to defraud by sale of fractional parts of practically worthless oil leases, that after selling as many as possible of the lease units defendants would further "reload" the investors by selling them shares of stock of certain companies and that when defendants should find investors with more money than they could be induced to invest in the lease and stock, defendants would endeavor to borrow money from the investors on notes which defendants did not intend to pay, the indictment was not objectionable on ground that it was "duplicitous" in that each count charged three separate schemes to defraud. Simons v. U.S., C.C.A.9 (Wash.) 1941, 119 F.2d 539, certiorari denied 62 S.Ct. 78, 314 U.S. 616, 86 L.Ed. 496. Indictment And Information 125(24)

An indictment charging conspiracy to defraud United States of and concerning its governmental function to be honestly and faithfully represented in courts of United States by an Assistant United States Attorney to prosecute delinquents for crimes, free from corruption, dishonesty, and improper influence, and alleging that one of defendants was an Assistant United States Attorney and that money was solicited and used to influence him in the exercise of his official functions, charged merely a conspiracy to defraud United States, and was not "duplicitous". U.S. v. Glasser, C.C.A.7 (Ill.) 1940, 116 F.2d 690, certiorari granted 61 S.Ct. 835, 313 U.S. 551, 85 L.Ed. 1515, modified on other grounds 62 S.Ct. 457, 315 U.S. 60, 86 L.Ed. 680, rehearing denied 62 S.Ct. 629, 315 U.S. 827, 86 L.Ed. 1222, rehearing denied 62 S.Ct. 637, 315 U.S. 827, 86 L.Ed. 1222. Indictment And Information 125(3)

An indictment alleging that a conspiracy contemplated the violation of a criminal statute and also the defrauding of the United States was not bad for duplicity. U.S. v. Manton, C.C.A.2 (N.Y.) 1939, 107 F.2d 834, certiorari denied 60 S.Ct. 590, 309 U.S. 664, 84 L.Ed. 1012. Indictment And Information 125(5.5)

Indictment charging conspiracy between government's engineer-examiner and others, whereby defendants, except engineer-examiner, proposed substitute plan for construction of irrigation system financed by Public Works Administration, and procured exclusive right to quote prices on redwood to be used under substitute plan, and that they induced engineer-examiner to use his influence to secure approval of substitute plan by offering him position paying increased salary, was not duplicitous. U.S. v. Harding, App.D.C.1936, 81 F.2d 563, 65 App.D.C. 161. Indictment And Information 125(5.5)

Counts for conspiracy, possession, and manufacture of liquor were not duplicitous nor called for double punishment. Perry v. U.S., C.C.A.8 (Okla.) 1927, 18 F.2d 477. Sentencing And Punishment 533

An indictment charging a conspiracy to defraud the United States and to alter war savings certificates and stamps by removing the stamps from the certificates and erasing registration or identification marks, was not duplicitous. Rossi v. U.S., C.C.A.9 (Or.) 1922, 278 F. 349. Indictment And Information 125(5.5)

Indictment charging that defendants conspired to set up or keep house of ill fame, brothel, or bawdyhouse within prohibited zone of military post, in violation of former Selective Service Act May 18, 1917, § 13 (temporary), was not duplicitous, as charging several offenses, conspiracy alone being charged. U. S. v. Casey, S.D.Ohio 1918, 247 F. 362. Indictment And Information 125(5.5)

An indictment for conspiracy against United States was not bad for duplicity in alleging overt acts in and of themselves constituting a crime under § 592 of Title 12, in view of former § 550 of this title, making an abettor a principal. U.S. v. Rogers, N.D.N.Y.1915, 226 F. 512. Indictment And Information 125(40)

18 U.S.C.A. § 371

An indictment charging a bankrupt and another with conspiracy to conceal property from the bankrupt's trustee and also alleging such concealment by the bankrupt, is not bad for duplicity. Steigman v. U S, C.C.A.3 (N.J.) 1915, 220 F. 63, 135 C.C.A. 631. Indictment And Information 125(40)

That an indictment under former § 88 of this title [now this section] for conspiracy showed in charging overt acts that the completed offense charged as the object of the conspiracy was committed did not render it bad for duplicity. Stanley v. U.S., C.C.A.8 (Okla.) 1912, 195 F. 896, 115 C.C.A. 584. Indictment And Information 125(5.5)

An indictment, which after reciting the original scheme, charges a conspiracy at a later date to apply it, in pursuance of which overt acts were committed, is not objectionable on the ground of duplicity. U.S. v. Greene, S.D.Ga.1902, 115 F. 343.

Second superseding indictment of chromium electroplating company and plant manager, alleging multiple violations of Clean Water Act (CWA), was not "gilded" version of first indictment for purposes of Speedy Trial Act; although first indictment was grounded in federal conspiracy claim, second indictment added new conspiracy objectives of making and using false documents and falsifying, tampering with, and rendering inaccurate monitoring devices and methods, which required wholly different elements of proof. U.S. v. Hajduk, D.Colo.2005, 370 F.Supp.2d 1103. Criminal Law 577.14

Indictment charging conspiracy to violate section 610 of this title prohibiting labor unions from making political contributions was not subject to dismissal on ground that it charged three distinct conspiracies, therefore making it duplicitous, where indictment charged a continuing conspiracy. U. S. v. Boyle, D.C.D.C.1972, 338 F.Supp. 1028. Indictment And Information 125(5.5)

Fact that conspiracy includes violation of more than one statute does not make conspiracy count of indictment duplicitous. U. S. v. Sanders, W.D.La.1967, 266 F.Supp. 615. Indictment And Information 125(5.5)

Indictment which charged defendant with conspiring to violate the Jones-Miller Act, §§ 173 and 174 of Title 21, and conspiring to violate the Harrison Act, § 4701 et seq. of Title 26, and with conspiring to violate the United States laws, this section, was duplicitous. U.S. v. Shackelford, S.D.N.Y.1957, 180 F.Supp. 857. Indictment And Information 125(5.5)

Where indictment charged defendant with conspiring to violate the Jones-Miller Act, §§ 173 and 174 of Title 21, and conspiring to violate the Harrison Act, § 4701 et seq. of Title 26, and conspiring to violate the United States laws, this section, and the crimes charged entailed different punishments so that the duplicity was more than technical, defendant's failure by motion prior to trial to raise objection to indictment was not a waiver of defendant's right to object after verdict to the duplicitous indictment. U.S. v. Shackelford, S.D.N.Y.1957, 180 F.Supp. 857. Indictment And Information 196(7)

An indictment charging violations of former § 338 by using mails to fraudulently induce people to send money to defendants for coin operated vending machines and confections and alleging a conspiracy to violate said former section was not duplicitous on ground that counts charging scheme to defraud by use of mails named 17 persons as being parties to such scheme and that count charging conspiracy charged that the same persons conspired with others whose names were unknown to grand jurors. U.S. v. Main, S.D.Tex.1939, 28 F.Supp. 550. Indictment And Information 125(3)

305. ---- Several overt acts, duplicity, indictment or information

Indictment charging a continuous conspiracy to import intoxicating liquor into the United States was not duplicitous although in proof of it different circumstances constituting it, and overt acts in pursuance of it, were

disclosed. Ford v. U.S., U.S.Cal.1927, 47 S.Ct. 531, 273 U.S. 593, 71 L.Ed. 793.

If the charge of conspiracy is complete, allegations charging two or more specific crimes as overt acts do not make the indictment duplicitous. Frohwerk v. U.S., U.S.Mo.1919, 39 S.Ct. 249, 249 U.S. 204, 63 L.Ed. 561. See, also, U.S. v. Vannatta, D.C.N.Y.1922, 278 F. 559; Anderson v. U.S., C.C.A.Kan.1921, 273 F. 20, certiorari denied 42 S.Ct. 56, 257 U.S. 647, 66 L.Ed. 415.

District court did not err in failing to grant defendant's motion to dismiss count charging conspiracy for duplicity on grounds that first conspiracy concerned acts leading to fraudulently obtaining Small Business Administration loan, whereas second related to acts surrounding subsequent use of proceeds, where acts alleged as leading up to obtaining loan were the necessary precursors to acts performed to reduce loan monies to possession so that indictment charged only one overall conspiracy in which defendant was involved. U.S. v. Haimowitz, C.A.11 (Fla.) 1983, 706 F.2d 1549, rehearing denied 712 F.2d 457, certiorari denied 104 S.Ct. 974, 464 U.S. 1069, 79 L.Ed.2d 212. Indictment And Information 144.1(1)

Count of indictment charging two Congressmen and two other defendants with conspiracy to defraud the United States was not duplicitous because it alleged that one of the Congressmen made a speech in Congress and also had discussions with members of Justice Department. U. S. v. Johnson, C.A.4 (Md.) 1964, 337 F.2d 180, certiorari granted 85 S.Ct. 703, 379 U.S. 988, 13 L.Ed.2d 609, affirmed 86 S.Ct. 749, 383 U.S. 169, 15 L.Ed.2d 681, certiorari denied 87 S.Ct. 134, 385 U.S. 889, 17 L.Ed.2d 117, certiorari denied 87 S.Ct. 44, 385 U.S. 846, 17 L.Ed.2d 77. Indictment And Information 125(5.5)

Where indictment for conspiracy to violate certain laws set forth with care the nature of the conspiracy, the period of time covered by it, the participants therein, the statutes to be violated and twenty-eight overt acts in furtherance of the conspiracy, the indictment was not demurrable on ground that it was "duplicitous" or too indefinite to acquaint defendant with the precise charges against him. Stewart v. U. S., C.C.A.5 (Ala.) 1942, 131 F.2d 624, certiorari denied 63 S.Ct. 854, 318 U.S. 779, 87 L.Ed. 1147. Indictment And Information 71.4(3); Indictment And Information 125(5.5)

In indictment for conspiracy, mention of two criminal laws whose violation was included in conspiracy did not work duplicity, since, there being but one conspiracy, it was immaterial as to how many criminal acts it contemplated. Outlaw v. U.S., C.C.A.5 (Tex.) 1936, 81 F.2d 805, certiorari denied 56 S.Ct. 747, 298 U.S. 665, 80 L.Ed. 1389. Indictment And Information 125(5.5)

If there is only one criminal plan to defraud two persons and break two criminal statutes, there is but one criminal conspiracy, notwithstanding multiplication of overt acts, and if there is but one criminal plan, though involving defrauding of two persons, breaking of two statutes, or many overt acts, it should be pleaded in one count. Sprague v. Aderholt, D.C.Ga.1930, 45 F.2d 790. Indictment And Information 125(5.5)

Indictment setting forth series of acts consecutively performed in committing crime relating to certain specified and described smoking opium, which followed language of statute, was not duplicitous, as charging different offenses in single count. Yip Wah v. U.S., C.C.A.9 (Wash.) 1925, 8 F.2d 478, certiorari denied 46 S.Ct. 336, 270 U.S. 645, 70 L.Ed. 777. Indictment And Information 125(5.5)

The charging in a single count of an indictment under former § 88 of this title [now this section] for conspiracy to commit an offense against the United States, of more than one distinct and separate overt act, was not charging separate and distinct offenses, and did not render the indictment bad for duplicity. Stanley v. U.S., C.C.A.8 (Okla.) 1912, 195 F. 896, 115 C.C.A. 584. See, also, U.S. v. McKeighan, D.C.Mich.1932, 58 F.2d 298. Indictment And Information 125(5.5)

The crime of conspiracy to defraud the United States [now this section] within former § 88 of this title, was not

necessarily complete when the first overt act was committed, but, where it contemplates a series of acts, it was a continuing offense as to all conspirators who had not withdrawn therefrom as long as any act or acts were committed by one or more of them in furtherance of the object thereof, and such acts were not separate and distinct offenses, but a part of the substantive offense, and could have been charged in the same count of an indictment, without rendering it bad for duplicity. U.S. v. Eccles, C.C.Or.1910, 181 F. 906. Conspiracy 43(10); Indictment And Information 125(5.5)

Where there is only one agreement to engage in criminal activity, charging of a separate conspiracy for each criminal act would be prejudicial to defendants, and indictment itself would be subject to attack as multiplicious. U. S. v. Boyle, D.C.D.C.1972, 338 F.Supp. 1028. Indictment And Information 125(5.5)

306. ---- Conspiracy to commit several offenses, duplicity, indictment or information

The allegation in a single count of conspiracy to commit several crimes is not "duplicitous", since conspiracy is the crime, and that is one however diverse its objects. Braverman v. U.S., U.S.Mich.1942, 63 S.Ct. 99, 317 U.S. 49, 87 L.Ed. 23. Indictment And Information 125(5.5)

Where each count of indictment alleges a conspiracy to violate a different penal statute it may be proper to conclude, in absence of bill of exceptions bringing up the evidence, that several conspiracies are charged rather than one, and that conviction is for each. Braverman v. U.S., U.S.Mich.1942, 63 S.Ct. 99, 317 U.S. 49, 87 L.Ed. 23 . Criminal Law 1090.5

Conspiracies to possess and transfer unregistered firearms and to sell property of United States were actually single conspiracy and were improperly charged in multiplicious counts; evidence revealed overall agreement with same overt acts covering same general time frame to violate various statutory provisions concerning procurement and sale or transfer of same government munitions and explosives. U.S. v. Anderson, C.A.11 (Fla.) 1989, 872 F.2d 1508, certiorari denied 110 S.Ct. 566, 493 U.S. 1004, 107 L.Ed.2d 560. Conspiracy 23.1; Indictment And Information 128

Indictment charging defendant with two counts of conspiracy to import and distribute hashish and one count of conspiracy to defraud and make false statements to United States was not multiplicious, under *Blockburger* test, where first two counts required proof of conspiracy to import hashish into United States and of conspiracy to distribute hashish, and third count required no such proof, but did require proof of different element of conspiracy to defraud United States agency by impeding collection of currency information and to make false statements concerning matters within jurisdiction of United States department or agency; calling into doubt *United States v. Corral*, 578 F.2d 570(5th Cir.); *United States v. Mori*, 444 F.2d 240 (5th Cir.). U.S. v. Nakashian, C.A.2 (N.Y.) 1987, 820 F.2d 549, certiorari denied 108 S.Ct. 451, 484 U.S. 963, 98 L.Ed.2d 392. Indictment And Information 130

Count charging defendant with conspiring to counterfeit, conspiring to pass counterfeit bills and passing $26,000 in counterfeit $10 bills to special agent of secret service was not defective in charging multiple conspiracies as single conspiracy, since successive stages, arrangements and agreements between and among coconspirators constituted various phases in achieving one basic and ultimate conspiracy to counterfeit obligations of United States and sell them in which defendant's role was but one part of basic overriding plan. U. S. v. Simone, C.A.8 (Mo.) 1974, 495 F.2d 752. Conspiracy 43(1)

Conspiracy prosecution under section 1951 of this title assertedly alleging conspiracy to commit several substantive offenses, was not duplicitous. U. S. v. Addonizio, C.A.3 (N.J.) 1971, 451 F.2d 49, certiorari denied 92 S.Ct. 949, 405 U.S. 936, 30 L.Ed.2d 812, rehearing denied 92 S.Ct. 1309, 405 U.S. 1048, 31 L.Ed.2d 591. Indictment And Information 125(5.5)

18 U.S.C.A. § 371

Indictment, which in count one charged defendant and three others with conspiring to receive, conceal and convert stolen government property to their own use and which in count three charged defendant with receiving, concealing and converting a quantity of government property, did not charge defendant with two identical crimes, and thus dismissal of one of counts was not required. Baker v. U. S., C.A.9 (Cal.) 1968, 393 F.2d 604, certiorari denied 89 S.Ct. 110, 393 U.S. 836, 21 L.Ed.2d 106. Conspiracy 28(3)

Indictment charging in several counts conspiracy to commit offenses under three sections of this title and charging substantive offense of kidnapping and three separate offenses of transmitting communications in interstate commerce demanding ransom money and charging, receiving, possessing and disposing of ransom money charged separate offenses and was not duplicitous. Amsler v. U. S., C.A.9 (Cal.) 1967, 381 F.2d 37. Indictment And Information 125(2)

Prosecution of defendants for both conspiracy to transport counterfeit traveler's checks in interstate commerce and conspiracy to counterfeit and pass Series E United States Savings Bonds was neither error nor an abuse or misuse of authority where the traveler's checks conspiracy antedated the savings bond conspiracy by several months and involved some different conspirators. U. S. v. D'Antonio, C.A.7 (Ill.) 1966, 362 F.2d 151, certiorari denied 87 S.Ct. 204, 385 U.S. 900, 17 L.Ed.2d 131. Conspiracy 28(3)

A conspiracy count may allege a purpose to commit multiple substantive offenses, and it is not duplicitous if it does so. U.S. v. Knox Coal Co., C.A.3 (Pa.) 1965, 347 F.2d 33, certiorari denied 86 S.Ct. 239, 382 U.S. 904, 15 L.Ed.2d 157. Indictment And Information 125(5.5)

Indictment for conspiring to traffic illegally in narcotic drugs was not subject to claimed infirmity of duplicity in charging defendants with conspiring to violate three different penal statutes. Carrado v. U.S., C.A.D.C.1953, 210 F.2d 712, 93 U.S.App.D.C. 183, certiorari denied 74 S.Ct. 874, 347 U.S. 1018, 98 L.Ed. 1140, certiorari denied 74 S.Ct. 876, 347 U.S. 1020, 98 L.Ed. 1141, certiorari denied 75 S.Ct. 777, 349 U.S. 932, 99 L.Ed. 1262, certiorari denied 76 S.Ct. 310, 350 U.S. 938, 100 L.Ed. 819. Indictment And Information 125(5.5)

Allegation in single count of conspiracy to commit several crimes is not "duplicitous"; since conspiracy is the crime, and that is one, however diverse its objects. Carrado v. U.S., C.A.D.C.1953, 210 F.2d 712, 93 U.S.App.D.C. 183, certiorari denied 74 S.Ct. 874, 347 U.S. 1018, 98 L.Ed. 1140, certiorari denied 74 S.Ct. 876, 347 U.S. 1020, 98 L.Ed. 1141, certiorari denied 75 S.Ct. 777, 349 U.S. 932, 99 L.Ed. 1262, certiorari denied 76 S.Ct. 310, 350 U.S. 938, 100 L.Ed. 819. Indictment And Information 125(5.5)

The allegation in a single count of a conspiracy to commit several crimes is not duplicitous, for the conspiracy is the crime, and that is one, however diverse its objects. U.S. v. Lutwak, C.A.7 (Ill.) 1952, 195 F.2d 748, certiorari granted 73 S.Ct. 13, 344 U.S. 809, 97 L.Ed. 630, affirmed 73 S.Ct. 481, 344 U.S. 604, 97 L.Ed. 593, rehearing denied 73 S.Ct. 726, 345 U.S. 919, 97 L.Ed. 1352. Indictment And Information 125(5.5)

In prosecution of two corporate defendants and five individual defendants under indictments charging conspiracy to defraud United States by delivery under contracts with Federal Surplus Commodity Corporation of rejected egg powder and conspiracy to defraud United States by obtaining payment of certain false claims, indictments each charged only a single conspiracy, as against defendant's contention that indictments on their face alleged seven separate conspiracies, of which six were included in the second indictment. U.S. v. Samuel Dunkel & Co., C.A.2 (N.Y.) 1950, 184 F.2d 894, certiorari denied 71 S.Ct. 491, 340 U.S. 930, 95 L.Ed. 671. Conspiracy 24(2)

Indictment charging four defendants with conspiracy to commit offense against the United States, through violation of former § 203 of this title, prohibiting members of Congress from receiving compensation in matter affecting the government, and to defraud the United States, was not objectionable as duplicitous on theory that it charged more than one offense. May v. United States, C.A.D.C.1949, 175 F.2d 994, 84 U.S.App.D.C. 233, certiorari denied 70 S.Ct. 58, 338 U.S. 830, 94 L.Ed. 505, order withheld 70 S.Ct. 81, 338 U.S. 854, motion denied 70 S.Ct. 94, motion

denied 70 S.Ct. 95, rehearing denied 70 S.Ct. 154, 338 U.S. 882, 94 L.Ed. 542, rehearing denied 70 S.Ct. 155, 338 U.S. 882, 94 L.Ed. 542, order withheld 70 S.Ct. 80. Indictment And Information 125(19.1)

Indictment charging congressman and individuals with conspiracy to commit offense against the United States and defrauding the United States through violation of former § 203 of this title, prohibiting members of Congress from receiving compensation in matters affecting the government, and charging in separate counts receipt by congressman of compensation for services in relation to matters before the War Department and that other defendants aided and abetted, was not invalid on ground that it was duplicitous on theory that conspiracy count was merged into substantive offenses charged in separate counts. May v. United States, C.A.D.C.1949, 175 F.2d 994, 84 U.S.App.D.C. 233, certiorari denied 70 S.Ct. 58, 338 U.S. 830, 94 L.Ed. 505, order withheld 70 S.Ct. 81, 338 U.S. 854, motion denied 70 S.Ct. 94, motion denied 70 S.Ct. 95, rehearing denied 70 S.Ct. 154, 338 U.S. 882, 94 L.Ed. 542, rehearing denied 70 S.Ct. 155, 338 U.S. 882, 94 L.Ed. 542, order withheld 70 S.Ct. 80. Indictment And Information 125(5.5)

A conspiracy may contemplate several offenses, and may be alleged as broadly as the conspiracy really was. Burton v. U. S., C.A.5 (La.) 1949, 175 F.2d 960, rehearing denied 176 F.2d 865, certiorari denied 70 S.Ct. 347, 338 U.S. 909, 94 L.Ed. 560, rehearing denied 70 S.Ct. 565, 339 U.S. 916, 94 L.Ed. 1341. Indictment And Information 125(5.5)

That indictment alleges a conspiracy to influence more than one juror, does not make it duplicitous if there was but one conspiracy. Burton v. U. S., C.A.5 (La.) 1949, 175 F.2d 960, rehearing denied 176 F.2d 865, certiorari denied 70 S.Ct. 347, 338 U.S. 909, 94 L.Ed. 560, rehearing denied 70 S.Ct. 565, 339 U.S. 916, 94 L.Ed. 1341. Indictment And Information 125(5.5)

A single conspiracy may embrace several related conspiracies and have for its object two or more wrongful acts, and an indictment charging such conspiracy is not duplicitous for that reason. Nye & Nissen v. U.S., C.C.A.9 (Cal.) 1948, 168 F.2d 846, certiorari granted 69 S.Ct. 81, 335 U.S. 852, 93 L.Ed. 400, affirmed 69 S.Ct. 766, 336 U.S. 613, 93 L.Ed. 919. See, also, U.S. v. McKieghan, D.C.Mich.1932, 58 F.2d 298; Foreman v. U.S., C.C.A.1928, 28 F.2d 768; Chapman v. U.S., C.C.A.Tex.1926, 10 F.2d 124, certiorari denied 46 S.Ct. 482, 271 U.S. 667, 70 L.Ed. 1141; Taylor v. U.S., C.C.A.Ill.1924, 2 F.2d 444, certiorari denied 45 S.Ct. 226, 266 U.S. 634, 69 L.Ed. 479; Magon v. U.S., C.C.A.Cal.1919, 260 F. 811; Knoell v. U.S., Pa.1917, 239 F. 16, 152 C.C.A. 66, error dismissed 38 S.Ct. 316, 246 U.S. 648, 62 L.Ed. 920; Steigman v. U.S., N.J.1915, 220 F. 63, 135 C.C.A. 631; U.S. v. Aczel, D.C.Ind.1915, 219 F. 917; John Gund Brewing Co. v. U.S., N.D.1913, 206 F. 386, 124 C.C.A. 268; U.S. v. Carter & Co., D.C.Ky.1944, 56 F.Supp. 311; U.S. v. Bogy, D.C.Tenn.1936, 16 F.Supp. 407, affirmed 96 F.2d 734, certiorari denied 59 S.Ct. 68, 305 U.S. 608, 83 L.Ed. 387. Indictment And Information 125(5.5)

Indictment attempting to charge conspiracy to commit three offenses against the United States was sufficient if it charged a conspiracy to commit only one offense. Chevillard v. U.S., C.C.A.9 (Cal.) 1946, 155 F.2d 929. Conspiracy 43(6)

An indictment is not "duplicitous" because it alleges a conspiracy to commit two or more distinct offenses of the same general character. Stewart v. U. S., C.C.A.5 (Ala.) 1942, 131 F.2d 624, certiorari denied 63 S.Ct. 854, 318 U.S. 779, 87 L.Ed. 1147. See, also, Troutman v. U.S., C.C.A.Colo.1938, 100 F.2d 628. Indictment And Information 125(5.5)

An indictment charging a conspiracy to violate former § 338 of this title and § 77q of title 15 was not duplicitous. Troutman v. U. S., C.C.A.10 (Colo.) 1938, 100 F.2d 628. Indictment And Information 125(5.5)

An indictment charging a statutory offense must follow the statute creating it, but where the statute denounces several acts as a crime, they may be charged in one indictment or in a single count if they are connected in the conjunctive, and an indictment drawn in that manner is not duplicitous. Troutman v. U. S., C.C.A.10 (Colo.) 1938,

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100 F.2d 628. Indictment And Information 110(3); Indictment And Information 125(20)

A single count in an indictment for conspiring to commit two substantive offenses is not bad for duplicity. Center v. U.S., C.C.A.4 (S.C.) 1938, 96 F.2d 127. Indictment And Information 125(5.5)

Conspiracy may be entered into to commit several crimes, and gist of the offense is the conspiracy, which is single, though its object is to commit a number of crimes. Tramp v. U.S., C.C.A.8 (Neb.) 1936, 86 F.2d 82. Conspiracy 28(1)

That conspiracy contemplated numerous violations of law as object does not make indictment duplicitous. Dowdy v. U.S., C.C.A.4 (N.C.) 1931, 46 F.2d 417. See, also, U.S. v. Austin-Bagley Corporation, D.C.N.Y.1928, 24 F.2d 527; McDonnell v. U.S., C.C.A.Mass.1927, 19 F.2d 801, certiorari denied 48 S.Ct. 114, 275 U.S. 551, 72 L.Ed. 421; Norton v. U.S., C.C.A.Tex.1924, 295 F. 136. Indictment And Information 125(5.5)

Indictment under former §§ 88 [now this section] and 338 of this title, alleging general purpose of inducing persons to buy or exchange for mortgage company stock at prices in excess of its value, was not defective, as charging plurality of schemes, artifices, or conspiracies. Scheib v. U.S., C.C.A.7 (Ind.) 1926, 14 F.2d 75, certiorari denied 47 S.Ct. 95, 273 U.S. 700, 71 L.Ed. 847, certiorari denied 47 S.Ct. 95, 273 U.S. 701, 71 L.Ed. 847, certiorari denied 47 S.Ct. 95, 273 U.S. 701, 71 L.Ed. 848, certiorari denied 47 S.Ct. 113, 273 U.S. 718, 71 L.Ed. 856. Indictment And Information 125(5.5)

An indictment charging conspiracy to receive, conceal, buy, sell, and facilitate transportation, concealment, and sale of smoking opium was not duplicitous. Yip Wah v. U.S., C.C.A.9 (Wash.) 1925, 8 F.2d 478, certiorari denied 46 S.Ct. 336, 270 U.S. 645, 70 L.Ed. 777. Indictment And Information 125(5.5)

A count of an indictment is not duplicitous because it charges object of conspiracy to have been to commit more than one offense against United States; conspiracy being unit, however varied its effect. U.S. v. Olmstead, D.C.Wash.1925, 5 F.2d 712.

Two different conspiracies, one aimed solely at keeping the mine operating despite Clean Air Act violations and ending when mine shut down, and one aimed at avoidance of liability for defendants' actions, were not charged in same count of indictment, and therefore indictment was not duplicitous; rather, conspiracy count could be fairly read to charge a single offense, i.e., a conspiracy with the dual purposes of violating the Clean Air Act and defrauding the government in order to facilitate operation of the mine and avoid liability for the effects of asbestos-contaminated vermiculite on humans and the environment. U.S. v. W.R. Grace, D.Mont.2006, 429 F.Supp.2d 1207. Indictment And Information 125(5.5)

Count in indictment charging defendants with conspiracy to commit an offense against the United States, and to defraud the United States, was not duplicitous, where defendants' alleged course of conduct encompassed offenses under both prongs of statute proscribing conspiracy either to commit any offense against the United States or to defraud the United States, in that they allegedly fraudulently moved investor funds through interstate wire transfers for their own personal enrichment, and concealed existence and location of these funds from the United States to avoid assessment and collection of income taxes thereon. U.S. v. Lowry, W.D.Va.2006, 409 F.Supp.2d 732. Indictment And Information 125(5.5)

Count charging defendants with conspiracy to defraud Food and Drug Administration (FDA), to unlawfully offer gratuities to physicians in connection with sale of medical devices, and to commit mail fraud was not duplicitous and properly joined three offenses into single conspiracy count. U.S. v. Hughes, N.D.Ind.1993, 823 F.Supp. 593. Indictment And Information 125(5.5)

Indictment alleging several underlying offenses committed by means of alleged conspiracy to commit offense

against the United States was not "duplicitous," as conspiracy itself was the crime, not the underlying offenses. U.S. v. Gleave, W.D.N.Y.1992, 786 F.Supp. 258, reversed 16 F.3d 1313, certiorari denied 115 S.Ct. 574, 513 U.S. 1015, 130 L.Ed.2d 490, rehearing denied 115 S.Ct. 925, 513 U.S. 1122, 130 L.Ed.2d 804. Indictment And Information 125(5.5)

Count which alleged that defendants conspired to defraud bankruptcy court in relation to particular bankruptcy cases, to defraud Department of the Treasury by defeating lawful functions of the Internal Revenue Service (IRS) in the collection of income taxes, and to commit specified offenses against the United States was not duplicitous, although it was argued that count charged two conspiracies, one to defraud bankruptcy court and Department of the Treasury and another to commit offenses against the United States. U.S. v. Levine, D.Colo.1990, 750 F.Supp. 1433, affirmed 968 F.2d 22, affirmed 970 F.2d 681, certiorari denied 113 S.Ct. 289, 506 U.S. 901, 121 L.Ed.2d 214. Indictment And Information 125(20)

Indictment which alleged conspiracy over four and one-half years between twelve defendants to commit multiple offenses against United States did not charge improper multiple conspiracies; evidence before grand jury showed probable cause to believe each defendant entered into alleged conspiracy to liquidate profit sharing and pension plans of certain defendants, to divert proceeds to law firm and accounting firm trust accounts, to convert those funds for personal use, including capitalization of new enterprise without disclosure to creditors, and to take affirmative measures to conceal the claimed fraud. U.S. v. Law Firm of Zimmerman & Schwartz, P.C., D.Colo.1990, 738 F.Supp. 407, reversed 943 F.2d 1246. Conspiracy 43(1)

Despite contention of defendant that first count of indictment charged one conspiracy to make false statements and destroy documents, another to obstruct congressional inquiries, and a third to obstruct other congressional inquiries, count charged but one single conspiracy to defeat congressional inquiries by various means, and thus, was permissible method of charging conspiracy. U.S. v. Poindexter, D.D.C.1989, 725 F.Supp. 13. Indictment And Information 125(19.1)

Charges of conspiracy to defraud Food and Drug Administration and conspiracy to violate Federal Food, Drug, and Cosmetic Act were not duplicitous. U.S. v. General Nutrition, Inc., W.D.N.Y.1986, 638 F.Supp. 556. Indictment And Information 125(43.1)

Defendant was not entitled to quash count of indictment charging conspiracy to import morphine or count charging conspiracy to possess morphine with intent to distribute on asserted ground that, in substance, counts were but one offense and that by charging him with two counts there was violation of principles of double jeopardy. U. S. v. Nolan, W.D.Pa.1981, 523 F.Supp. 1235. Indictment And Information 137(1)

It is permissible to charge a conspiracy to commit several crimes, all in one count of an indictment without it being duplicitous. U. S. v. Kernodle, M.D.N.C.1973, 367 F.Supp. 844. Indictment And Information 125(5.5)

Count of indictment alleging conspiracy under both this section and under section 1962 of this title proscribing certain conduct incident to racketeering activity was not duplicitous. U. S. v. Amato, S.D.N.Y.1973, 367 F.Supp. 547. Indictment And Information 125(5.5)

Count of indictment charging conspiracy in one paragraph to violate statute proscribing obstruction of commerce and affecting movement in commerce by extortion and in another paragraph a conspiracy to violate statute proscribing use of interstate commerce facilities with intent to carry on unlawful activity of bribery was not duplicitous where only one agreement was alleged in indictment even though bribery and extortion were two separate crimes. U. S. v. De Sapio, S.D.N.Y.1969, 299 F.Supp. 436. Indictment And Information 125(5.5)

Count charging a continuing conspiracy to commit various violations was not duplicitous as attempting to charge several separate and distinct conspiracies and substantive offenses. U. S. v. Tanner, N.D.Ill.1967, 279 F.Supp. 457

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. Indictment And Information 125(5.5)

The fact that a single count of an indictment charges a conspiracy to violate more than one statutory provision does not in and of itself make indictment duplicitous. U. S. v. Haim, S.D.N.Y.1963, 218 F.Supp. 922. Indictment And Information 125(5.5)

Conspiracy count was not duplicitous but merely charged single conspiracy to defraud United States, where parts or objects of conspiracy charged all dealt with general subject of one defendant's connection with savings and loan associations named as co-conspirators, with indictment against defendant and others on charges arising from operation of the associations, and with services allegedly rendered by defendant congressman, in speech on floor of House of Representatives and in dealing with Department of Justice, in connection with related matters. U. S. v. Johnson, D.C.Md.1963, 215 F.Supp. 300. Indictment And Information 125(5.5)

Indictment was not duplicitous because of joinder of conspiracy charge against all defendants with substantive counts naming only some of them. U. S. v. Nomura Trading Co., S.D.N.Y.1963, 213 F.Supp. 704. Indictment And Information 125(5.5)

Conspiracy indictment was not duplicitous because scope of alleged conspiracy embraced violations of two different statutes. U. S. v. Nomura Trading Co., S.D.N.Y.1963, 213 F.Supp. 704. Indictment And Information 125(3)

That indictment for conspiracy to defraud United States was similar to another pending indictment against same defendants for conspiracy to commit a different offense did not establish that there was but one conspiracy, and that conspiracy charged in instant indictment had been fragmented from whole conspiracy for purpose of prosecution to prejudice of defendants. U. S. v. Boisvert, D.C.R.I.1960, 187 F.Supp. 781. Conspiracy 43(10)

A count charging the defendants with a conspiracy to violate the National Firearms Act, § 5801 et seq. of Title 26, and rules and regulations thereunder and the Federal Firearms Act, § 901 et seq. of Title 15, and rules and regulations thereunder and stating in eight paragraphs different parts of the conspiracy was not duplicitous. U. S. v. Bachman, D.C.D.C.1958, 164 F.Supp. 898. Indictment And Information 125(5.5)

Indictment was not duplicitous for alleging that defendant conspired to commit an offense against the United States and to defraud the United States. U. S. v. Kemmel, M.D.Pa.1958, 160 F.Supp. 718. Indictment And Information 125(5.5)

Conspiracy is a crime regardless of the diversity of its objects, and fact that single count of indictment charged conspiracy to commit three separate offenses against the United States did not render count invalid as duplicitous. U.S. v. Catamore Jewelry Co., D.C.R.I.1954, 124 F.Supp. 846. Indictment And Information 125(5.5)

Where statute allegedly violated is this section, allegation in conspiracy count that its objects were to violate several statutes or to achieve several unlawful purposes would not be duplicitous. U. S. v. J. R. Watkins Co., D.C.Minn.1954, 120 F.Supp. 154. Indictment And Information 125(5.5)

Allegations of conspiracy to commit several offenses is not defective for duplicity. U. S. v. Bennett, E.D.S.C.1964, 36 F.R.D. 103. Indictment And Information 125(5.5)

307. ---- Felonies or misdemeanors, duplicity, indictment or information

Indictment charging defendant with conspiring to acquire marihuana without paying transfer tax, to transfer marihuana without written order required by §§ 4741, 4742 of Title 26, and to receive, conceal, sell and facilitate transportation, concealment and sale of unlawfully imported marihuana was not objectionable on ground that it

charged a conspiracy to commit three offenses, when each of such offenses was a felony. Schnautz v. U.S., C.A.5 (Tex.) 1959, 263 F.2d 525, certiorari denied 79 S.Ct. 1294, 360 U.S. 910, 3 L.Ed.2d 1260. Indictment And Information 125(5.5)

308. ---- Participants, duplicity, indictment or information

It was immaterial, for purpose of determining whether only a single conspiracy was charged in indictment, that one of the participants entered the scheme after it had started and that her connection with the scheme resulted in additional substantive crimes being committed. U. S. v. Bernstein, C.A.2 (N.Y.) 1976, 533 F.2d 775, certiorari denied 97 S.Ct. 523, 429 U.S. 998, 50 L.Ed.2d 608. Conspiracy 43(6)

Joinder of a defendant in a conspiracy during its continuance relates back to the date of its formation, and an indictment is subject to the charge of neither uncertainty nor duplicity, as charging a new conspiracy, because it alleges the joinder therein at different times after the date when it is charged to have been formed. Norton v. U.S., C.C.A.5 (Tex.) 1923, 295 F. 136. Conspiracy 43(1); Indictment And Information 125(5.5)

An indictment for conspiracy to commit a crime against the government, charging bank teller's abstraction, misapplication and embezzlement of its funds, and the other defendants with having abetted such acts, was not bad for duplicity, since under former § 550 of this title all were principals in the same crime. U.S. v. Rogers, N.D.N.Y.1915, 226 F. 512. Indictment And Information 125(40)

309. ---- Means of accomplishing conspiracy, duplicity, indictment or information

Indictment for conspiracy and use of mails to defraud by sale of corporate securities was not duplicitous because it set out various means. Sunderland v. U.S., C.C.A.8 (Neb.) 1927, 19 F.2d 202. Indictment And Information 125(19.1)

An indictment for conspiracy is not duplicitous because it alleges different means of accomplishing purpose. U.S. v. B. Goedde & Co., E.D.Ill.1941, 40 F.Supp. 523. Indictment And Information 125(19.1)

310. Severance of counts, indictment or information

Although trial on conspiracy-related charges was long, denial of defendant's motion for severance was not abuse of discretion, since jury was able to follow evidence and charge and reach fair verdict, each defendant was acquitted on one or more counts, and charging jury that it was to consider each offense and evidence pertaining to it separately as to each defendant was sufficient to cure any prejudice to defendant by counts relating to events occurring after his alleged "retirement," which evidence indicated may have been sham. U.S. v. Faulkner, C.A.5 (Tex.) 1994, 17 F.3d 745, rehearing and rehearing en banc denied 21 F.3d 1110, certiorari denied 115 S.Ct. 193, 513 U.S. 870, 130 L.Ed.2d 125, rehearing dismissed 115 S.Ct. 786, 513 U.S. 1105, 130 L.Ed.2d 679, certiorari denied 115 S.Ct. 663, 513 U.S. 1056, 130 L.Ed.2d 598. Criminal Law 622.7(1)

Failure of trial court to grant motion for severance filed by defendant charged with bribery and conspiracy to bribe criminal investigators of Immigration and Naturalization Service after conspiracy count had been dismissed was prejudicial where, even though conspiracy charge was made in good faith, evidence concerning nefarious reputation of codefendants who were tried for both bribery and conspiracy to bribe, and tape recordings containing codefendants' inculpatory statements would probably not have been admitted at trial of defendant alone. U. S. v. Ong, C.A.2 (N.Y.) 1976, 541 F.2d 331, certiorari denied 97 S.Ct. 814, 429 U.S. 1075, 50 L.Ed.2d 793, certiorari denied 97 S.Ct. 1559, 430 U.S. 934, 51 L.Ed.2d 780. Criminal Law 622.7(4)

Irrespective of whether there was a single overall conspiracy, or two separate conspiracies each involving robbery of two different banks, and even if defendant's motion at close of Government's case for a severance of defendants

and charges raised issue as to multiple conspiracies, denial of severance did not constitute an abuse of discretion or plain error, in view of fact that, if there were two conspiracies, defendant was a participant in each, and in view of commonality of the proofs involved, both as to offenses and as to defendants. U. S. v. Scott, C.A.8 (Iowa) 1975, 511 F.2d 15, certiorari denied 95 S.Ct. 2403, 421 U.S. 1002, 44 L.Ed.2d 670. Criminal Law 617; Criminal Law 622.7(4)

Where codefendants had been police officers but defendant had not, and where trial court was careful to charge, with respect to each witness who testified only against one former police officer, that the testimony was not admitted against defendant, and where defendant was not charged in count which charged obstruction of justice against the police officers, it was not error to deny defendant's motion which sought to have the count charging conspiracy to obstruct justice severed from the remainder of the conspiracy and substantive charges. U. S. v. Papadakis, C.A.2 (N.Y.) 1975, 510 F.2d 287, certiorari denied 95 S.Ct. 1682, 421 U.S. 950, 44 L.Ed.2d 104. Criminal Law 620(6)

In prosecution involving stolen and forged securities, there was no error in failure to sever substantive and conspiracy counts in absence of motion therefor. U. S. v. Smith, C.A.9 (Cal.) 1971, 445 F.2d 861, certiorari denied 92 S.Ct. 212, 404 U.S. 883, 30 L.Ed.2d 165. Criminal Law 620(7)

Where single conspiracy to burglarize post offices was formed with one common aim and the two defendants knowingly became active participants in attaining objects of the scheme, trial court's refusal to sever different counts of indictment or the defendants was not prejudicial. Miller v. U. S., C.A.8 (Mo.) 1969, 410 F.2d 1290, certiorari denied 90 S.Ct. 81, 396 U.S. 830, 24 L.Ed.2d 80. Criminal Law 1166(6)

Since existence of multiple conspiracies is really a fact question as to the nature of the agreement, it is for jury to decide whether there is one agreement or several, and hence district judge should not under Rule 14, Federal Rules of Criminal Procedure, this title, grant a severance or order an election by the government of which conspiracy it would prosecute, but when the possibility of a variance appears, should instruct the jury on multiple conspiracies as well. U. S. v. Varelli, C.A.7 (Ill.) 1969, 407 F.2d 735. Conspiracy 48.2(1); Criminal Law 622.6(4); Criminal Law 678(1)

A defendant charged with others of conspiring to violate the internal revenue laws relating to liquor was not entitled to severance of substantive counts in which he was not named as a defendant and which were not set forth as overt acts in conspiracy count since all defendants need not be charged in each count. U. S. v. Bryant, C.A.4 (S.C.) 1966, 364 F.2d 598. Criminal Law 622.7(4)

Where defendant and his codefendant were charged in first count with conspiracy involving a series of acts relating to embezzlement of public money, filing false claims, and making false statements in matters affecting the government, fact that count 5 charged defendant alone with substantive offense of making the same false statements did not entitle defendant to a severance of the substantive counts. U. S. v. Godel, C.A.4 (Va.) 1966, 361 F.2d 21, certiorari denied 87 S.Ct. 87, 385 U.S. 838, 17 L.Ed.2d 72. Criminal Law 622.7(4)

Where motion for severance was made and argued more than a month before trial on ground there was no relation between substantive counts and conspiracy counts, and indictment demonstrated that overt acts were also involved in substantive counts, severance was properly denied. Semler v. U. S., C.A.9 (Ariz.) 1964, 332 F.2d 6, certiorari denied 85 S.Ct. 61, 379 U.S. 831, 13 L.Ed.2d 39. Criminal Law 620(6)

It was proper to sever part of count of an indictment charging conspiracy in regard to defendant, and to dispose of charges against codefendants according to their pleas of guilty. Overstreet v. U. S., C.A.5 (Tex.) 1963, 321 F.2d 459, certiorari denied 84 S.Ct. 675, 376 U.S. 919, 11 L.Ed.2d 614. Criminal Law 273(1)

Defendant was not improperly denied severance, where substantive counts in which defendant was not charged still

constituted over acts attributable to him on the two conspiracy counts in which he was charged. Carbo v. U. S., C.A.9 (Cal.) 1963, 314 F.2d 718, certiorari denied 84 S.Ct. 1625, 377 U.S. 953, 12 L.Ed.2d 498, rehearing denied 84 S.Ct. 1902, 377 U.S. 1010, 12 L.Ed.2d 1058, certiorari denied 84 S.Ct. 1626, 377 U.S. 953, 12 L.Ed.2d 498, rehearing denied 84 S.Ct. 1903, 377 U.S. 1010, 12 L.Ed.2d 1058, certiorari denied 84 S.Ct. 1627, 377 U.S. 953, 12 L.Ed.2d 498. Criminal Law 622.7(4)

Defendant's motion for severance and separate trial of three counts in which he was named as defendant on ground that evidence might be introduced in connection with other counts that would be highly prejudicial to him was properly denied as general unsupported assertion of prejudice was not sufficient to justify severance of counts properly joined. Williamson v. U. S., C.A.9 (Cal.) 1962, 310 F.2d 192. Criminal Law 622.7(8)

In prosecution for wilful misapplication of bank funds, conspiracy to commit offenses against United States, making false entries in bank records, and violating mail fraud statute, § 1341 of this title, trial court's refusal to sever conspiracy count from other 29 counts of indictment was not erroneous. U. S. v. Scoblick, C.A.3 (Pa.) 1955, 225 F.2d 779. Criminal Law 620(6)

Defendant was not entitled to severance of count charging her with conspiracy to defraud the United States from count charging her with negotiating social security checks with forged endorsements, though she intended to deny her involvement in conspiracy, but not to testify regarding negotiation counts, where her testimony on conspiracy would involve underlying negotiations counts, jury would be instructed to consider each charge separately, and both charges shared common issues of fact based substantially on same evidence. U.S. v. Owens, D.Conn.1993, 824 F.Supp. 24. Criminal Law 620(6)

Severance of mail fraud and obstruction of justice charges against one defendant was not required to protect rights of second defendant who was charged in same indictment with mail fraud in connection with separate operation and whose rights could be adequately safeguarded by limiting instructions to prevent jury confusion, evidentiary spillover, and cumulation of evidence despite number of counts and complexity of evidence. U.S. v. Rogers, D.Colo.1986, 636 F.Supp. 237. Criminal Law 620(6)

In prosecution of three defendants for conspiracy and interstate transportation of a stolen security, defense severance motion was properly denied, despite the state incarceration of one of the defendants and defense counsel's claim that because of that fact the defendants were unable to confer inter se and with counsel, since government's evidence was to be substantially similar against all defendants and same counsel represented all the defendants and would conduct cross-examination of government witnesses, since incarceration of the one defendant could possibly extend for several years, and since a severance would have visited undue hardship and expense upon government. U. S. v. Riccobene, E.D.Pa.1970, 320 F.Supp. 196, affirmed 451 F.2d 586. Criminal Law 622.7(4); Criminal Law 622.7(8)

Defendant was not entitled to have conspiracy count against him severed from substantive count with which he was not charged but codefendants were charged, where it appeared that, with proper instructions, any possible prejudice could be avoided. U. S. v. Wolfson, S.D.N.Y.1967, 282 F.Supp. 772. Criminal Law 620(6)

Where indictment charging conspiracy to violate mail fraud and wire fraud statutes charged a single conspiracy, defendant's motion for severance on ground that there were two conspiracies was premature. U. S. v. Pilnick, S.D.N.Y.1967, 267 F.Supp. 791. Criminal Law 622.8(3)

Severance of conspiracy and perjury charges relating to same acts and transactions would not be granted where severance would impose a burdensome duplication of effort on part of government without affording defendants a commensurate advantage. U. S. v. Haim, S.D.N.Y.1963, 218 F.Supp. 922. Criminal Law 622.7(4)

Conspiracy count against defendant and co-defendants would not be severed from 58 substantive counts against

co-defendants where government's proof to establish conspiracy count in large measure would necessarily include evidence it would have to rely on to establish substantive counts. U. S. v. Nomura Trading Co., S.D.N.Y.1963, 213 F.Supp. 704. Criminal Law 620(6)

Count nine of indictment charging all four defendants with conspiracy to violate § 2314 of this title dealing with transportation of security taken by fraud, and count twelve charging conspiracy of three defendants to violate same statute should be severed and be tried separately, where counts alleged different period of conspiracy and pre-conspiracy overt acts. U. S. v. Talenfeld, W.D.Pa.1960, 190 F.Supp. 108. Criminal Law 622.7(4)

311. Election of counts, indictment or information

Defendant charged with conspiring to make interstate trip to consummate extortion was not entitled to require government to elect whether it would try him on the theory that conspiracy as to its aspect of interstate travel had for its intent to "promote" or to "carry on" or to "facilitate the promotion * * * or carrying on" of the alleged extortion. U. S. v. Phillips, C.A.8 (Mo.) 1970, 433 F.2d 1364, certiorari denied 91 S.Ct. 900, 401 U.S. 917, 27 L.Ed.2d 819. Criminal Law 678(1)

Where defendant union official was charged with a conspiracy to violate § 186 of Title 29 making it unlawful for representative of any employee to receive or accept from employer any money or thing of value and for any employer to give any money or thing of value to representative of his employees, and it was alleged that union official arranged with employer to have payments made to other labor representative in union and with representatives to receive payments, government was not required to elect between counts charging violations of both sections. Brennan v. U.S., C.A.8 (Minn.) 1957, 240 F.2d 253, certiorari denied 77 S.Ct. 718, 353 U.S. 931, 1 L.Ed.2d 723. Indictment And Information 132(3)

In prosecution under conspiracy count and under substantive counts for violation of narcotic laws, mere fact that when draft of order directing government to file bill of particulars stating which of defendants were charged as principals and which of defendants were charged as co-conspirators and aiders and abettors, was submitted to trial judge, court struck from draft word "co-conspirators" did not constitute election by government to abandon co-conspirator theory under substantive counts, where bill of particulars pointed out not only that government hoped to show that other defendants had aided and abetted one of their members but also that they had been guilty of substantive charges as co-conspirators with him and neither court nor defendants objected to inclusion of co-conspirator theory in bill of particulars. Carrado v. U.S., C.A.D.C.1953, 210 F.2d 712, 93 U.S.App.D.C. 183, certiorari denied 74 S.Ct. 874, 347 U.S. 1018, 98 L.Ed. 1140, certiorari denied 74 S.Ct. 876, 347 U.S. 1020, 98 L.Ed. 1141, certiorari denied 75 S.Ct. 777, 349 U.S. 932, 99 L.Ed. 1262, certiorari denied 76 S.Ct. 310, 350 U.S. 938, 100 L.Ed. 819. Indictment And Information 132(1)

In prosecution for using mails in furtherance of scheme to defraud, court properly refused to compel prosecution to elect between conspiracy count and substantive offenses. U.S. v. Freeman, C.C.A.7 (Ill.) 1948, 167 F.2d 786, certiorari denied 69 S.Ct. 37, 335 U.S. 817, 93 L.Ed. 372. Indictment And Information 132(5)

Court did not abuse discretion by refusing to require district attorney to elect between indictment for conspiring to defraud government and consolidated indictment for fraudulently using mails by predating postmark on bid for construction of post office, different proof being required. Johnson v. U.S., C.C.A.6 (Ky.) 1936, 82 F.2d 500, certiorari denied 56 S.Ct. 957, 298 U.S. 688, 80 L.Ed. 1407. Indictment And Information 132(2)

The court properly refused to require election on which count the case should be submitted to jury, where indictment charged defendant and others with conspiracy under former § 88 of this title [now this section], to commit the crime defined by former §§ 409 and 410 of this title, relating to the unlawful breaking of seals of railroad cars containing interstate or foreign shipments and stealing of freight therefrom, and that defendant unlawfully broke the seal of a car and other defendants aided and abetted, and another entered the car and

defendant aided and abetted, and defendant stole property from the car and the others aided and abetted, and defendant and another had the stolen goods in their possession, knowing the same to have been stolen, and the others aided and abetted, all being offenses growing out of the same transaction and properly joined in one indictment, under former § 557 of this title. Caudle v. U.S., C.C.A.8 (Mo.) 1921, 278 F. 710. Indictment And Information 132(5)

Under former § 557 of this title, government could not, in a prosecution for conspiring to violate and for violating Harrison Drug Act, § 2550 et seq. of Title 26, have been required at close of its case to elect on which of acts conviction would be sought, several charges being joined in one indictment. Wallace v. U.S., C.C.A.7 (Ill.) 1917, 243 F. 300, 156 C.C.A. 80, certiorari denied 38 S.Ct. 11, 245 U.S. 650, 62 L.Ed. 531. Criminal Law 678(1); Indictment And Information 132(2)

In prosecution for using mails to defraud and for conspiracy to commit such act, United States Attorney could not be compelled to elect on which indictment he would proceed on ground that an acquittal or conviction on one would be a bar to prosecution on the other, since a plea of former jeopardy will not prevail where substantive charge is one overt act in a conspiracy indictment. U. S. v. Gilbert, S.D.Ohio 1939, 31 F.Supp. 195. Indictment And Information 132(2)

Where indictment charged one conspiracy with many aims, government would not be required to elect to prosecute defendants for separate conspiracies to accomplish each of the aims. U S v. Stromberg, S.D.N.Y.1957, 22 F.R.D. 513. Indictment And Information 132(1)

Defendants' motion to require government to elect to proceed on counts of indictment charging misapplication of funds and false entries in books of bank or count charging conspiracy to commit such offenses alone or, if such election be not made, to order separate trial on conspiracy count divorced from such other counts and from another indictment for using mails to defraud, must be denied, in absence of showing of prejudice to defendants if tried on all counts of both indictments together. U. S. v. Scoblick, M.D.Pa.1954, 15 F.R.D. 183. Criminal Law 620(6); Criminal Law 621(1); Criminal Law 678(1)

312. Consolidation of indictments, indictment or information

Consolidation, for trial, of indictment, which charged two counts of sales of stolen drugs during 1967 and with one count of conspiracy to steal drugs and sell them from April 1967 to December 31, 1968, and of indictment, which charged unlawful delivery of phenmetrazine in November 1969, was error in that indictments did not charge offenses, which were of similar character, were based on same transaction or were part of common scheme or plan; and such error prejudiced accused, who was convicted on the one-count indictment, where it resulted in tying accused to offense other than offense charged in such indictment. U. S. v. Graci, C.A.3 (Pa.) 1974, 504 F.2d 411. Criminal Law 620(1); Criminal Law 1166(6)

That indictment for substantive offenses did not allege that those offenses were committed in pursuance of conspiracy did not operate to defeat consolidation of trials on substantive indictment and conspiracy indictment. U. S. v. Pullings, C.A.7 (Ill.) 1963, 321 F.2d 287. Criminal Law 622.7(4)

Indictments charging sales of narcotics and concealment of narcotics were properly consolidated for trial with indictment charging conspiracy to violate narcotic laws, where sales were mentioned as overt acts in conspiracy indictment and alleged concealment fell within period covered by alleged conspiracy. U. S. v. Pullings, C.A.7 (Ill.) 1963, 321 F.2d 287. Criminal Law 622.7(4)

Indictment charging defendant and his corporation with making a false written statement to the Office of Price Administration regarding quantity of sugar used by corporation in base year was properly consolidated for trial with indictment charging a conspiracy between defendant, attorney, and investigator for OPA to defraud the United

States by depriving it of the services of investigator. U.S. v. Gottfried, C.C.A.2 (N.Y.) 1948, 165 F.2d 360, certiorari denied 68 S.Ct. 738, 333 U.S. 860, 92 L.Ed. 1139, rehearing denied 68 S.Ct. 910, 333 U.S. 883, 92 L.Ed. 1157. Criminal Law 622.7(4)

Consolidation of indictment charging sale of morphine with indictment charging conspiracy to make the identical sale was proper where under circumstances evidence of sale would have been admissible under indictment for conspiracy and evidence of co-conspirator's connection with defendant would have been admissible under indictment for sale. U.S. v. Marzano, C.C.A.2 (N.Y.) 1945, 149 F.2d 923. Criminal Law 622.7(4)

Where offenses charged in indictment charging conspiracy and in indictment charging violation of Internal Revenue Laws relating to manufacture of spiritous liquors were clearly related and involved the same distillery, and all but one of the defendants named in the indictment charging violation of Internal Revenue Laws were named as defendants in the indictment charging conspiracy, action of trial court in ordering indictments consolidated for trial was not error. Adams v. U.S., C.C.A.5 (Ga.) 1942, 128 F.2d 820, certiorari denied 63 S.Ct. 61, 317 U.S. 632, 87 L.Ed. 510. Criminal Law 622.7(2)

Indictment for conspiring to defraud government and indictment for fraudulently using mails by predating postmark on bid for construction of post office was properly consolidated, defendants being identical, and charges in one indictment being for acts or transactions connected with those in other. Johnson v. U.S., C.C.A.6 (Ky.) 1936, 82 F.2d 500, certiorari denied 56 S.Ct. 957, 298 U.S. 688, 80 L.Ed. 1407. Criminal Law 619

Consolidation for trial of indictment for conspiracy with one for the substantive offenses does not prevent conviction and punishment under both. Humphries v. Biddle, C.C.A.8 (Kan.) 1927, 19 F.2d 193. Criminal Law 620(1)

Consolidation of indictments for conspiracy and substantive offense was permissible. Hostetter v. U. S., C.C.A.8 (Colo.) 1926, 16 F.2d 921. Criminal Law 620(1)

It is within discretion of court to consolidate indictments for trial. Cardigan v. Biddle, C.C.A.8 (Kan.) 1925, 10 F.2d 444. Criminal Law 620(1)

Two indictments, one charging conspiracy to conceal the assets of a bankrupt, and the other charging concealment of the same assets, were properly consolidated for trial. Frieden v. U.S., C.C.A.4 (Va.) 1925, 5 F.2d 556. Criminal Law 619

Consolidation for trial of indictments for conspiracy to transport liquor and unlawful possession and sale thereof was within court's discretion. Goldberg v. U.S., C.C.A.5 (Ga.) 1924, 297 F. 98. Criminal Law 620(2)

Where defendants were charged with violation of the Sherman Act, § 1 et seq. of Title 15, as well as violating former § 88 of this title [now this section] by conspiring to form a military enterprise, in violation of former § 25 of this title, against the dominions of a foreign prince with whom United States was at peace, and the several acts charged were practically the same, the indictments were consolidated and tried together. U.S. v. Bopp, N.D.Cal.1916, 237 F. 283. Criminal Law 622.7(2); Criminal Law 622

Under former § 338 of this title, where five persons were joined in six indictments, the five for fraudulent use of the mails under such section, and one for conspiracy under former § 88 of this title [now this section], the fact that the conspiracy indictment charged conspiracy against the defendants and divers persons unknown did not prevent its consolidation with the others. Emanuel v. U.S., C.C.A.2 (N.Y.) 1912, 196 F. 317, 116 C.C.A. 137. Criminal Law 619

On Government's motion to consolidate indictments for conspiracy to organize the Communist Party, and for

membership in such party, the court was left with a reasonable doubt of the propriety of such consolidation and would therefore resolve such doubt in favor of the defendants and deny the motion in order to insure defendants of a fair and impartial trial. U.S. v. Foster, S.D.N.Y.1948, 80 F.Supp. 479. Criminal Law 622.7(4)

Five indictments charging a conspiracy to violate White Slave Traffic Act, § 2422 of this title, and substantive violations of said former section by various defendants, all of which substantive violations were charged as overt acts in the conspiracy indictment, were properly consolidated for trial, though a defendant named in conspiracy and another indictment was not a defendant in the other three indictments, since evidence as to substantive offenses charted would be evidence of commission of overt acts charged in conspiracy indictment. U. S. v. Alfano, W.D.Pa.1945, 59 F.Supp. 270, affirmed 152 F.2d 395. Criminal Law 622.7(4)

The United States Attorney's motion to consolidate indictment charging use of mails to defraud with indictment charging conspiracy to commit such act would be sustained. U. S. v. Gilbert, S.D.Ohio 1939, 31 F.Supp. 195. Criminal Law 619

313. Reference between counts, indictment or information

Repetition may be avoided by referring from one count to another, a rule well-recognized by courts and text-writers, where the reference expressly imports the description of the conspiracy set forth in the first count. Blitz v. U.S., U.S.Mo.1894, 14 S.Ct. 924, 153 U.S. 308, 38 L.Ed. 725. See, also, Browne v. U.S., N.Y.1905, 145 F. 1, 76 C.C.A. 31, certiorari denied 26 S.Ct. 755, 200 U.S. 618, 50 L.Ed. 623.

Unless the charging part of a conspiracy count specifically refers to or incorporates by reference allegations which appear under the heading of overt acts, resort to those allegations may not be had to supply the insufficiency of the charging language itself. U.S. v. Knox Coal Co., C.A.3 (Pa.) 1965, 347 F.2d 33, certiorari denied 86 S.Ct. 239, 382 U.S. 904, 15 L.Ed.2d 157. Conspiracy 43(1)

Where second count of indictment, charging attempt to escape, recited in connection with allegations as to custody that all of first count was adopted as part of second count, such recital did not intend to charge defendant again with conspiracy as charged in first count. Brown v. U. S., C.C.A.8 (Ark.) 1948, 167 F.2d 772. Indictment And Information 99

Where a count in indictment alleged that defendant and codefendants had conspired to commit offenses charged in previous counts, which counts charged violations of former § 338 of this title, and that defendant and codefendants, to effect object of conspiracy had done certain acts, the count charged an offense under former § 88 of this title [now this section]. Cornes v. U. S., C.C.A.9 (Ariz.) 1941, 119 F.2d 127. Conspiracy 43(6)

Reference in one count of indictment, seeking to incorporate allegations in another count, should be clear and specific. Asgill v. U.S., C.C.A.4 (Va.) 1932, 60 F.2d 780. Indictment And Information 99

Where the second and subsequent counts of an indictment for conspiracy to defraud the United States out of public lands selected and to be selected charged that the conspiracy was entered into "under circumstances and conditions set forth in the said first count"; that the defendants conspired to defraud the United States out of the title to public lands "by obtaining from the said United States by means of the false and fraudulent practice described in the said first count," and appropriating such title for their benefit "as in the said first count set forth," and "that in pursuance of the said unlawful conspiracy," and "to effect the object of the same," the alleged overt act was done; and that the described public lands were selected by the defendants "in pursuance of the same fraudulent practice, and in the manner and by the means in said first count set forth"--the references in such second and subsequent counts to the matter in the first count were sufficiently full to incorporate such matter into them, so as to make unnecessary the repetition of the language of the first count in the succeeding counts. Hyde v. U.S., App.D.C.1906, 27 App.D.C. 362. Indictment And Information 99

18 U.S.C.A. § 371

Where in an indictment for conspiracy to defraud the United States the averments in the first count setting out the dishonest scheme and fraud were clearly meant to apply to all the remaining counts, and the counts charging the conspiracy expressly referred to the "same dishonest scheme and arrangement described and set forth in the first count," this reference was sufficient, especially in support of a judgment of conviction in view of former § 556 of this title. Lorenz v. U.S., App.D.C.1904, 24 App.D.C. 337, certiorari denied 25 S.Ct. 796, 196 U.S. 640, 49 L.Ed. 631. Indictment And Information 194

Where Count 1 part "A" of indictment charging conspiracy was sufficient, but part "B" was insufficient because no details or particulars as to any of the specific offenses against the United States were given, part "B" could not be aided by resort to the averments of overt acts contained in part "A" in absence of any reference in part "B" to the clauses in part "A" setting forth the overt acts. U. S. v. Apex Distributing Co., D.C.R.I.1957, 148 F.Supp. 365. Indictment And Information 117

Allegations of counts of indictment, which charged false book entries, which were insufficient because of failure to allege wherein falsities of such entries consisted, could not be incorporated by reference into count of indictment charging criminal conspiracy as overt acts committed in furtherance of the conspiracy. U.S. v. Westbrook, W.D.Ark.1953, 114 F.Supp. 192. Indictment And Information 99

Where count in indictment charging conspiracy to violate former § 338 of this title followed language of former § 88 of this title [now this section] and alleged that purposes of conspiracy were to violate said former § 338 by using mails in furtherance of and to effect the object of a scheme set out in previous counts charging violations of said former section and conspiracy count expressly incorporated by reference all allegations of previous counts, the count charging conspiracy was not objectionable as failing to show nature of scheme or conspiracy with sufficient clarity. U.S. v. Main, S.D.Tex.1939, 28 F.Supp. 550. Indictment And Information 110(10)

314. Surplusage, indictment or information

Holding that charge of violating treaty contained in conspiracy indictment was surplusage was not improper amendment. Ford v. U.S., U.S.Cal.1927, 47 S.Ct. 531, 273 U.S. 593, 71 L.Ed. 793. Indictment And Information 159(1)

There was no plain error in failure of trial court to sua sponte strike alleged prejudicial surplusage in indictment which delineated with great specificity numerous charges alleged by the government against each defendant charged with conspiracy relating to distribution of cocaine, money laundering, and making straw purchases of firearms, in which 94 overt acts were alleged, particularly where jury was instructed that indictment was not evidence. U.S. v. Marshall, C.A.7 (Ind.) 1993, 985 F.2d 901, certiorari denied 113 S.Ct. 2445, 508 U.S. 952, 124 L.Ed.2d 662, certiorari denied 114 S.Ct. 102, 510 U.S. 831, 126 L.Ed.2d 69. Criminal Law 1032(5)

An accused charged with offense may be convicted on evidence showing that he aided and abetted another in commission of that offense, even though indictment does not allege this theory of liability; hence, language of indictment charging accused with aiding and abetting is surplusage. U. S. v. Roselli, C.A.9 (Cal.) 1970, 432 F.2d 879, certiorari denied 91 S.Ct. 883, 401 U.S. 924, 27 L.Ed.2d 828, certiorari denied 91 S.Ct. 884, 401 U.S. 924, 27 L.Ed.2d 828, rehearing denied 91 S.Ct. 1366, 402 U.S. 924, 28 L.Ed.2d 665. Indictment And Information 119; Indictment And Information 174

Where all matters set forth in indictment prior to the eighth paragraph thereof were descriptive and the eighth paragraph used language of the statute in charging that the accuseds and others confederated and conspired together, the descriptive material might be subject to a motion to strike, but the surplusage was not fatal to validity of indictment. U. S. v. Root, C.A.9 (Cal.) 1966, 366 F.2d 377, certiorari denied 87 S.Ct. 861, 386 U.S. 912, 17 L.Ed.2d 784. Indictment And Information 120

18 U.S.C.A. § 371

Count charging that defendants conspired to defraud United States of and concerning its governmental functions in administration of immigration laws properly alleged crime under this section and unnecessary words in count with respect to committing certain offenses against United States must be considered as surplusage. U. S. v. Vazquez, C.A.3 (N.J.) 1963, 319 F.2d 381. Conspiracy 43(10); Indictment And Information 119

Averments in counts charging sales of morphine and conspiracy which are inappropriate and inapplicable to facts established may be treated as surplusage. Roberts v. U. S., C.C.A.8 (Mo.) 1938, 96 F.2d 39. Indictment And Information 119

In view of evident intent to allege conspiracy as gist of indictment, averments allegedly rendering indictment duplicitous were surplusage, if not properly descriptive of conspiracy or overt acts. U.S. v. McKieghan, D.C.Mich.1932, 58 F.2d 298. Indictment And Information 120

An indictment charging that defendants conspired to commit an offense against and to defraud the United States in violation of this section, and to unlawfully and willfully aid and counsel unknown persons to refuse to register under the former Selective Draft Act May 18, 1917 (temporary), did not charge two distinct offenses, no facts being alleged to show a conspiracy to defraud the United States, so that the allegation as to fraud was surplusage. Sugar v. U.S., C.C.A.6 (Mich.) 1918, 252 F. 79, 164 C.C.A. 191, certiorari denied 39 S.Ct. 19, 248 U.S. 578, 63 L.Ed. 429. Indictment And Information 125(5.5)

Motion of defendant in prosecution for conspiracy to violate mail and wire fraud statutes and for scheme to defraud by use of the mails, to strike certain language from indictment as surplusage would be denied where included matter might be relevant to conspiracy charge and its inclusion was neither prejudicial nor inflammatory. U. S. v. Pilnick, S.D.N.Y.1967, 267 F.Supp. 791. Indictment And Information 137(1)

Where Count 1 part "A" sufficiently charged a conspiracy to defraud the United States, and part "B" was legally insufficient, part "B" could be regarded as surplusage and be withdrawn from consideration of the jury, and part "A" would not be dismissed. U. S. v. Apex Distributing Co., D.C.R.I.1957, 148 F.Supp. 365. Indictment And Information 119; Indictment And Information 144.2

Where indictment charges conspiracy to commit several offenses against the United States, one of which is not an offense, the latter may be regarded as surplusage and ignored, and such action does not constitute a forbidden amendment of indictment. U.S. v. Albanese, S.D.N.Y.1954, 123 F.Supp. 732, affirmed 224 F.2d 879, certiorari denied 76 S.Ct. 87, 350 U.S. 845, 100 L.Ed. 753. Indictment And Information 119

315. Bill of particulars, indictment or information--Generally

Where indictment charges a continuing conspiracy, the government should not ordinarily be limited in its evidence by a bill of particulars to specific overt acts. Braatelien v. U. S., C.C.A.8 (N.D.) 1945, 147 F.2d 888. Indictment And Information 121.5

The effect of a "bill of particulars" is to limit the evidence to transactions set out in the bill of particulars, but the prosecution is not required to specify in the bill all the evidence it will produce in support of the charges against accused, and, where the issue is whether the accused is guilty of a general conspiracy, is is competent to prove distinct overt acts in any way connected with the conspiracy charged. U.S. v. Glasser, C.C.A.7 (Ill.) 1940, 116 F.2d 690, certiorari granted 61 S.Ct. 835, 313 U.S. 551, 85 L.Ed. 1515, modified on other grounds 62 S.Ct. 457, 315 U.S. 60, 86 L.Ed. 680, rehearing denied 62 S.Ct. 629, 315 U.S. 827, 86 L.Ed. 1222, rehearing denied 62 S.Ct. 637, 315 U.S. 827, 86 L.Ed. 1222. Indictment And Information 121.4; Indictment And Information 121.5

Where the conspiracy alleged in the indictment is so extensive that the trial court may determine, in its discretion,

that the defendants should have more adequate notice, the trial court has power to require the government to furnish the defendants with a bill of particulars of the evidence intended to be relied on. Hyde v. U.S., App.D.C.1906, 27 App.D.C. 362. Indictment And Information 121.1(7)

Defendants charged with conspiracy to defraud United States by impeding collection of income taxes were entitled to bills of particulars more extensively detailing charges against them. U. S. v. Turkish, S.D.N.Y.1978, 458 F.Supp. 874. Indictment And Information 121.2(3)

Defendant charged with conspiracy to commit mail fraud was entitled to bill of particulars disclosing time and place of alleged crime, means employed to perpetrate criminal deed, identities of co-conspirators, amounts of money co-conspirators received for their offense and time of such receipt. U. S. v. Burgio, S.D.N.Y.1968, 279 F.Supp. 843. Indictment And Information 121.2(9)

Defendant in prosecution for conspiracy to violate mail fraud and wire fraud statutes and for scheme to defraud by use of mails was entitled to have set forth in bill of particulars whether government intended upon trial to offer evidence of false and fraudulent pretenses, representations and promises not stated in indictment. U. S. v. Pilnick, S.D.N.Y.1967, 267 F.Supp. 791. Indictment And Information 121.2(9)

Where defendant was indicted for conspiracy and bribery of internal revenue agents and aiding and abetting receipt of bribes, government was required by bill of particulars to state approximate date and time of acts, amount of money given, offered or promised and sums coconspirators were authorized by law to receive and applicable section thereof. U. S. v. Cogan, S.D.N.Y.1967, 266 F.Supp. 374. Indictment And Information 121.2(1)

Where defendant in conspiracy prosecution claimed that missing co-defendant was a material witness, government was required to furnish defendant particulars with respect to what information it had as to present and last known address of missing co-defendant. U. S. v. Nomura Trading Co., S.D.N.Y.1963, 213 F.Supp. 704. Indictment And Information 121.2(3)

Defendant in conspiracy prosecution was entitled to bill of particulars concerning matters connecting him with offense but not to such an extent as would amount to a full exposure of government's evidence in advance of trial. U. S. v. Nomura Trading Co., S.D.N.Y.1963, 213 F.Supp. 704. Indictment And Information 121.2(3)

In prosecution for conspiracy and using mails to defraud, defendants were entitled to bill of particulars containing names of defendants who allegedly made false or fraudulent representations, names of persons to whom representations were made, the manner by which the representations were made and whether the newspapers containing the advertising were sent through the mails and the dates on which the advertisements were caused to appear in the newspapers. U. S. v. Garrison, E.D.Wis.1958, 168 F.Supp. 622. Indictment And Information 121.2(9)

Defendants who sought bill of particulars in prosecution for conspiring to advocate and teach duty of overthrowing federal government by force and to organize a group of persons who teach and advocate overthrowing of federal government by force were not entitled to government's evidence. U S v. Flynn, S.D.N.Y.1951, 103 F.Supp. 925. Indictment And Information 121.2(1)

Where mail fraud indictment charged defendants, officers of company engaged in extensive realty and mortgage business running into millions of dollars and covering thousands of transactions, with unlawful scheme to defraud others induced to buy stock of company by means of false balance sheets and fraudulent revaluation of assets of company, defendants were entitled to bill of particulars as to parcels of realty of company and its subsidiaries which were alleged to have been overvalued in revaluation of assets. U.S. v. Greve, E.D.N.Y.1934, 12 F.Supp. 372 . Indictment And Information 121.2(9)

18 U.S.C.A. § 371

Where mail fraud indictment charged defendants, officers of company engaged in extensive realty and mortgage business, with unlawful scheme to defraud others induced to buy stock of company, defendants were entitled to bill of particulars identifying false communications allegedly mailed and respect in which each was alleged to be fraudulent. U.S. v. Greve, E.D.N.Y.1934, 12 F.Supp. 372. Indictment And Information 121.2(9)

To the extent the Government in prosecution for conspiring to defraud the United States by impeding Internal Revenue Service in its function of computing defendant's income taxes and submitting false income tax returns, relied on cash expenditures method of proof, Government was required to file bill of particulars approximating cash on hand or its equivalent at beginning of each tax year charged and itemizing expenditures during each reporting period, stating whether it was claimed each expenditure was deductible. U.S. v. DeGroote, W.D.N.Y.1988, 122 F.R.D. 131. Indictment And Information 121.2(3); Indictment And Information 121.2(6)

Defendants charged with conspiracy were not entitled to bills of particulars stating date and place each entered into conspiracy, names of all persons whom government contended entered into conspiracy, manner in which each participated in formation of conspiracy, source of bribes given to one defendant or dates, places and descriptions of payments or gifts not charged in indictment. U. S. v. Simon, S.D.N.Y.1962, 30 F.R.D. 53. Indictment And Information 121.2(3)

In prosecution for violations of narcotics laws and for conspiracy to violate them, government would be compelled to answer, but only approximately, defendant's request for particulars as to date when defendant entered into conspiracy, situs of conspiracy, and date, time and place of two overt acts alleged. U. S. v. Lopez, S.D.N.Y.1960, 26 F.R.D. 174. Indictment And Information 121.2(7); Indictment And Information 121.4

In conspiracy prosecution, the government would be directed to furnish by bill of particulars, when and if the information was available to it, a more exact date for the commission of certain of the overt acts, where only a month and year were charged, and to furnish the name of the carrier by which the airplane flights charged in certain overt acts were made. U S v. Stromberg, S.D.N.Y.1957, 22 F.R.D. 513. Indictment And Information 121.2(3)

In prosecution for conspiracy to file and for filing with the National Labor Relations Board false affidavits of nonCommunist union officer, bill of particulars furnished by government stating that names of persons with whom a defendant was appointed to maintain communications were undisclosed was not clear, and hence objectionable, since if government did not know the names of such persons, it should say so. U. S. v. Haug, N.D.Ohio 1957, 21 F.R.D. 22. Indictment And Information 121.4

In prosecution for conspiracy to smuggle and clandestinely introduce diamonds into United States, government would not be required to state in bill of particulars whether it claimed that defendant had done any act concerning acquisition of diamonds by second codefendant and transfer by second codefendant to third codefendant or as to any acts pursuant to conspiracy except overt acts charged. U.S. v. Lieberman, S.D.N.Y.1953, 15 F.R.D. 278. Indictment And Information 121.2(3)

316. ---- Notice to court and defendants, bill of particulars, indictment or information

Indictment which specified five separate means and methods used to carry out conspiracy and detailed 15 overt acts gave defendant fair notice of the charges against him and he was not entitled to a bill of particulars. U.S. v. Ayers, C.A.9 (Cal.) 1991, 924 F.2d 1468, rehearing denied. Conspiracy 43(1); Conspiracy 43(5); Indictment And Information 121.2(3)

Indictment charging defendants with conspiracy to commit terrorist acts in exchange for payment from Libya was sufficient to inform defendants of nature of charges against them, and thus defendants were not prejudiced by trial court's refusal of request for bill of particulars; indictment listed dates and times of various telephone calls,

provided name of each coconspirator, enumerated specific threatened acts of violence underlying conspiracy, and specifically listed dates of travel to Libya and Panama to meet with Libyan officials. U.S. v. McAnderson, C.A.7 (Ill.) 1990, 914 F.2d 934, post-conviction relief denied 817 F.Supp. 723, affirmed 23 F.3d 410, certiorari denied 115 S.Ct. 372, 513 U.S. 953, 130 L.Ed.2d 323. Criminal Law 1167(1)

In conspiracy prosecution, bill of particulars was sufficient to apprise defendants that a proffer of evidence would be made concerning particular overt acts relating to the conspiracy charged, and evidence concerning the acts was properly admitted, especially where, in the order directing the United States to file a bill of particulars, the United States' right to offer additional evidence was reserved. U.S. v. Glasser, C.C.A.7 (Ill.) 1940, 116 F.2d 690, certiorari granted 61 S.Ct. 835, 313 U.S. 551, 85 L.Ed. 1515, modified on other grounds 62 S.Ct. 457, 315 U.S. 60, 86 L.Ed. 680, rehearing denied 62 S.Ct. 629, 315 U.S. 827, 86 L.Ed. 1222, rehearing denied 62 S.Ct. 637, 315 U.S. 827, 86 L.Ed. 1222. Indictment And Information 121.4

Although indictment contained all elements necessary to prove violation for conspiracy to defraud the United States, it did not sufficiently inform defendant of offense charged so that he would not be misled while preparing his defense and did not show with accuracy extent to which defendant could plead former acquittal or conviction; therefore, bill of particulars was appropriate to inform defendant of precise charges and establish parameters of Government's case. U.S. v. Cole, E.D.Pa.1989, 717 F.Supp. 309. Indictment And Information 121.2(3)

317. ---- Refusal of bill of particulars, indictment or information

Where defendant was indicted for corruptly influencing juror and for conspiracy to obstruct justice and influence jurors and the indictment and numerous overt acts pleaded by the Government failed to give names of, or identify, the acquaintances through whom, it was alleged, the defendant sought to interfere with jurors, the defendant was entitled of a bill of particulars, and refusal of trial court to order Government to file bill of particulars constituted an abuse of discretion. Cefalu v. U.S., C.A.10 (Colo.) 1956, 234 F.2d 522. Indictment And Information 121.2(1)

That defendants cannot know in advance of trial, facts and circumstances relied on as proof of alleged conspiracy, does not show prejudice from denial of bill of particulars. Nye & Nissen v. U.S., C.C.A.9 (Cal.) 1948, 168 F.2d 846, certiorari granted 69 S.Ct. 81, 335 U.S. 852, 93 L.Ed. 400, affirmed 69 S.Ct. 766, 336 U.S. 613, 93 L.Ed. 919 . Criminal Law 1167(1)

In prosecution for violations of the Mail Fraud Act, former § 338 of this title, for violations of fraud provisions of the Securities Act of 1933, § 77q(a)(1) of Title 15, and for conspiracy to violate said sections, denial of part of defendants' requests for particulars was not error where there was ample time and opportunity for defendants to present their case in fullest possible measure and there was no showing of surprise occurring during the trial. U. S. v. Monjar, C.C.A.3 (Del.) 1944, 147 F.2d 916, certiorari denied 65 S.Ct. 1191, 325 U.S. 859, 89 L.Ed. 1979, certiorari denied 65 S.Ct. 1192, 325 U.S. 859, 89 L.Ed. 1979, certiorari denied 65 S.Ct. 1192, 325 U.S. 859, 89 L.Ed. 1980, certiorari denied 65 S.Ct. 1193, 325 U.S. 859, 89 L.Ed. 1980, certiorari denied 65 S.Ct. 1194, 325 U.S. 859, 89 L.Ed. 1981. Indictment And Information 121.2(9)

In prosecution for conspiring to defraud the United States by corruptly administering and procuring the corrupt administration of the Frazier-Lemke Act, §§ 201 to 203 of Title 11, where a defendant, who had been conciliation commissioner during period covered by indictment filed motion for bill of particulars demanding that wrongful acts committed by him should be specified with names of persons and places, refusal to require specification, in advance, of the particular cases relied upon by government, was not prejudicial. Braatelien v. U. S., C.C.A.8 (N.D.) 1945, 147 F.2d 888. Criminal Law 1167(1)

In prosecution for using mails to defraud and for conspiracy, defendants were not entitled to know in advance, by obtaining bill of particulars, what conclusions would be drawn from their books. U.S. v. Dilliard, C.C.A.2 (N.Y.)

1938, 101 F.2d 829, certiorari denied 59 S.Ct. 484, 306 U.S. 635, 83 L.Ed. 1036. Indictment And Information 121.2(1)

In prosecution of officers of mortgage participation company for using mails to defraud and for conspiracy, denial of bill of particulars, sought to compel showing of details concerning misrepresentations allegedly made and other details, was not prejudicial error where the prosecution developed its case for 24 days, during which defendants had ample opportunity to examine the papers. U.S. v. Dilliard, C.C.A.2 (N.Y.) 1938, 101 F.2d 829, certiorari denied 59 S.Ct. 484, 306 U.S. 635, 83 L.Ed. 1036. Criminal Law 1167(1)

Defendants, charged with conspiracy, were not entitled to bill of particulars naming all persons with whom conspiracy was alleged to have been entered into. U.S. v. Hosier, D.C.La.1931, 50 F.2d 971. Indictment And Information 121(2)

Denying bill of particulars was not error, where indictment charged conspiracy to import and sell, transport, deliver, and possess liquors. Hoagland v. U.S., C.C.A.9 (Cal.) 1928, 28 F.2d 871. Indictment And Information 121.2(7)

Bill of particulars, setting forth every act connecting each defendant with conspiracy to possess and transport intoxicating liquor, cannot be required. Rubio v. U.S., C.C.A.9 (Cal.) 1927, 22 F.2d 766, certiorari denied 48 S.Ct. 213, 276 U.S. 619, 72 L.Ed. 734. Indictment And Information 121.2(7)

Refusal, in prosecution for conspiracy to violate National Prohibition Act, former § 1 et seq. of Title 27, to require bill of particulars setting up numerous details, was not abuse of discretion. Olmstead v. U.S., C.C.A.9 (Wash.) 1927, 19 F.2d 842, certiorari denied 48 S.Ct. 117, 275 U.S. 557, 72 L.Ed. 424, 72 L.Ed. 729, rehearing granted 48 S.Ct. 207, 276 U.S. 609, 72 L.Ed. 729, affirmed 48 S.Ct. 564, 277 U.S. 438, 72 L.Ed. 944. Indictment And Information 121.2(7)

An indictment charging conspiracy to interfere with the prosecution by the United States of war with Germany was sufficiently definite, and accused not entitled to bill of particulars setting forth names of persons solicited and to whom pamphlets containing alleged false statements regarding military operations of United States were delivered. U.S. v. Pierce, N.D.N.Y.1917, 245 F. 888. Indictment And Information 121(2)

Mine operator and employees indicted in connection with alleged release of asbestos-contaminated vermiculite were not entitled to bill of particulars seeking additional information regarding overt acts allegedly committed in furtherance of conspiracy to violate Clean Air Act (CAA); defendants' participation in agreement, not subsequent acts in furtherance, were relevant to issue whether they were members of conspiracy. U.S. v. Grace, D.Mont.2005, 401 F.Supp.2d 1103. Indictment And Information 121.2(3)

Defendants would not be granted detailed bill of particulars with reference to indictment for conspiracy to defraud United States, arising from alleged scheme to take income tax deductions for legal services that were not provided; upon consideration of allegations of deficiencies in indictment, discovery and grand jury materials provided by Government, and nature of extensive filings by defendants and Government, District Court concluded that defendants were sufficiently informed of details of charges against them, were not significantly impaired in preparing defense, and were not likely to face prejudicial surprise at trial. U.S. v. Danella, E.D.Pa.1996, 931 F.Supp. 374. Indictment And Information 121.2(3)

Defendants who were charged with, inter alia, a conspiracy were entitled to be informed, via bill of particulars, as to approximate address of place of meeting and approximate date of meeting but were not entitled to be informed of exact time or exact date thereof. U. S. v. Tanner, N.D.Ill.1967, 279 F.Supp. 457. Indictment And Information 121.2(3)

Since indictment charged defendants with reasonable particularity and definiteness both as to crime charged and overt acts allegedly committed, defendants were not entitled to bill of particulars. U. S. v. Patterson, E.D.La.1964, 235 F.Supp. 233. Indictment And Information 121.1(2)

Defendant was not entitled to know by bill of particulars the particular day on which he was alleged to have entered conspiracy, as such was minutia not necessary to preparation of case, but matter the disclosure of which might seriously hamper or foreclose prosecutor in proof. U. S. v. Bozza, E.D.N.Y.1964, 234 F.Supp. 15. Indictment And Information 121.2(3)

Defendant was not entitled to learn with respect to bill of particulars as to conspiracy counts whether it was charged that he ever had in his possession alleged stolen money orders or had forged them where such were details evidentiary in character and unnecessary in preparation of defendant's case. U. S. v. Bozza, E.D.N.Y.1964, 234 F.Supp. 15. Indictment And Information 121.2(3)

Defendant charged with conspiracy and with substantive offenses, some of which were clearly of continuous nature, involving theft of money orders, their transportation, forging, and publishing of orders was not entitled by bill of particulars to learn when offenses so charged were claimed to have been committed, whether in morning, afternoon or night of days charged, absent any showing that information was necessary to prepare for trial or to prevent surprise. U. S. v. Bozza, E.D.N.Y.1964, 234 F.Supp. 15. Indictment And Information 121.2(1)

Bill of particulars in conspiracy prosecution will not be ordered to extent that it would be tantamount to a preview of government's case in advance of trial. U. S. v. Nomura Trading Co., S.D.N.Y.1963, 213 F.Supp. 704. Indictment And Information 121.2(3)

In prosecution for conspiring to advocate and teach duty of overthrowing federal government by force and to organize a group of persons who teach and advocate overthrowing of federal government by force, indictment was sufficiently specific for defendants' trial preparation and protection and defendants were not entitled to bill of particulars. U S v. Flynn, S.D.N.Y.1951, 103 F.Supp. 925. Indictment And Information 121.2(1)

In prosecution for violating 50 App. § 1152 by transferring trucks manufactured after July 31, 1941, contrary to provisions of War Production Board order, and for conspiracy, the government was not required to furnish bill of particulars showing precise date of manufacture of the trucks allegedly sold. U.S. v. Pyramid Auto Sales, E.D.N.Y.1943, 50 F.Supp. 868. Indictment And Information 121.2(1)

The government may not be required to furnish defendants in a conspiracy case the names of witnesses or the evidence on which it will rely in the trial of the case. U.S. v. General Petroleum Corp. of Cal., S.D.Cal.1940, 33 F.Supp. 95. Indictment And Information 121.2(3)

Indictment for conspiracy was sufficiently specific without a bill of particulars as to the overt acts, time and place of their commission, and time and place of commencement of conspiracy. U S v. Farrington, M.D.Pa.1935, 11 F.Supp. 214. Indictment And Information 121.2(3)

Where items which government refused to furnish in response to defendant's request for particulars amounted to evidence rather than facts needed to prepare for trial, avoid surprise or enable defendant to plead double jeopardy, in prosecution for conspiracy to possess certain drugs and with aiding and abetting sale of stimulant or depressant drugs, defendant was not entitled to the items refused. U. S. v. Cummings, S.D.N.Y.1969, 49 F.R.D. 160. Indictment And Information 121.2(3)

Indictment charging conspiracy was not insufficient and bill of particulars was not warranted on ground that specific dates and certain locations had been omitted and names of individuals had been excluded, where charges were pleaded in detail and were adequate to give defendants notice of allegations against them and to enable them

to plead an acquittal or conviction thereto in bar of any future prosecution for same offense. U. S. v. Maletteri, E.D.Pa.1964, 35 F.R.D. 225. Indictment And Information 121.2(3)

In conspiracy prosecution, a defendant was not entitled to bill of particulars disclosing (1) the names of persons who testified before grand jury as to overt act in which such defendant was mentioned, (2) list of subpoenas issued to her by grand jury, (3) the dates she attended, (4) number of grand jurors present when she attended, (5) certified statement as to legal formation of grand jury and names and addresses and occupations of members of grand jury voting her indictment, (6) the dates on which original and superseding indictments were filed, and (7) a statement as to whether United States Attorney knew that grand jury was illegally formed. U S v. Stromberg, S.D.N.Y.1957, 22 F.R.D. 513. Indictment And Information 121.2(3)

In prosecution for conspiracy to file and for filing with the National Labor Relations Board false affidavits of nonCommunist union officer, motions for bill of particulars would be overruled where much of information elicited called for evidentiary matters which the Government was not required to disclose, or facts within defendants' own knowledge. U. S. v. Haug, N.D.Ohio 1957, 21 F.R.D. 22. Indictment And Information 121.2(4)

In prosecution for having conspired to smuggle and clandestinely introduce diamonds into the United States, government would not be required to provide by bill of particulars information as to where alleged conspiracy was formed. U.S. v. Lieberman, S.D.N.Y.1953, 15 F.R.D. 278. Indictment And Information 121.2(3)

In prosecution for conspiracy to smuggle and clandestinely introduce diamonds into United States, defendant's request for bill of particulars as to act presumed to have been performed pursuant to the conspiracy but as to which indictment contained no allegation would be denied. U.S. v. Lieberman, S.D.N.Y.1953, 15 F.R.D. 278. Indictment And Information 121.2(3)

Prosecution for conspiring to defraud the United States in exercise of its governmental function concerning official egg inspection and to bribe egg inspectors was not a proper case for a bill of particulars. U S v. Cohen, S.D.N.Y.1953, 15 F.R.D. 269. Indictment And Information 121.2(4)

318. ---- Motion for bill of particulars, indictment or information

Trial court did not err in denying defendant's motion for bill of particulars in prosecution for conspiracy and violation of section 1952 of this title wherein indictment was sufficiently complete and precise to enable defendant to prepare defense and avoid prejudicial surprise and risk of double jeopardy and where motion appeared to be improper request for evidentiary detail. U. S. v. Barbieri, C.A.10 (Okla.) 1980, 614 F.2d 715. Indictment And Information 121.2(1); Indictment And Information 121.2(3)

Court's decision on the demand for a bill of particulars under previous perjury indictment did not deprive trial court of right to exercise its discretion on such demand under conspiracy indictment. U. S. v. Brill, C.A.2 (N.Y.) 1965, 350 F.2d 171, certiorari denied 86 S.Ct. 538, 382 U.S. 973, 15 L.Ed.2d 465, rehearing denied 86 S.Ct. 883, 383 U.S. 922, 15 L.Ed.2d 678, certiorari denied 86 S.Ct. 550, 382 U.S. 973, 15 L.Ed.2d 465. Indictment And Information 121.1(3)

In case in which indictment alleged period of conspiracy to be from March 7, 1963 to April 6, 1963 and dates of overt acts were within such general period and record failed to show surprise or prejudice, denial of motion for bill of particulars was within the trial court's discretion. U. S. v. Cudia, C.A.7 (Ill.) 1965, 346 F.2d 227, certiorari denied 86 S.Ct. 428, 382 U.S. 955, 15 L.Ed.2d 359, rehearing denied 86 S.Ct. 612, 382 U.S. 1021, 15 L.Ed.2d 536 . Indictment And Information 121.2(3)

In prosecution for conspiring to smuggle psittacine birds into the United States, record revealed that a defendant, by requesting bill of particulars, was merely attempting to get government to disclose its evidence before trial and

that trial court committed no abuse of discretion in refusing it. Duke v. U.S., C.A.9 (Cal.) 1958, 255 F.2d 721, certiorari denied 78 S.Ct. 1361, 357 U.S. 920, 2 L.Ed.2d 1365. Indictment And Information 121.2(3)

In prosecution for conspiracy to violate Emergency Price Control Act, 50 App. former § 901 et seq., by selling whiskey at prices in excess of maximum prices, refusal to order bill of particulars, on motion by one of the defendants, requesting government to furnish the maximum wholesale and retail price of the whiskey in question at time of alleged conspiracy, was error. Samuel v. U.S., C.C.A.9 (Cal.) 1948, 169 F.2d 787. Indictment And Information 121.2(3)

In prosecution for willfully attempting to evade payment of income taxes and for conspiracy to do so, wherein indictments clearly informed defendants of annual amount of income on account of which taxes were allegedly evaded, and figures given were intelligibly broken down, defendants had their records in their own possession, there was no showing of surprise, and no continuance was requested, denying defendants' motion for bill of particulars was not an abuse of discretion. Maxfield v. U.S., C.C.A.9 (Nev.) 1945, 152 F.2d 593, certiorari denied 66 S.Ct. 821, 327 U.S. 794, 90 L.Ed. 1021. Indictment And Information 121.2(6)

In prosecution for conspiracy to transfer rubber tires and tubes in violation of rationing regulations, denial of motions for bills of particulars as to what statute and what provisions of regulations accused had conspired to violate and how conspiring to violate such provisions constituted an offense was not an abuse of discretion, where indictment referred specifically to regulations and statutes involved. Rose v. U.S., C.C.A.9 (Cal.) 1945, 149 F.2d 755. Indictment And Information 121.2(3)

In prosecution for using mails in furtherance of a scheme to defraud by sale of cemetery lots to the public for purposes of investment and for criminal conspiracy to commit that offense, refusal of court to grant motion for bills of particulars did not constitute error. Blue v. U. S., C.C.A.6 (Ohio) 1943, 138 F.2d 351, certiorari denied 64 S.Ct. 1046, 322 U.S. 736, 88 L.Ed. 1570, rehearing denied 64 S.Ct. 1259, 322 U.S. 771, 88 L.Ed. 1596, certiorari denied 64 S.Ct. 1046, 322 U.S. 737, 88 L.Ed. 1570. Criminal Law 622.7(4); Indictment And Information 121.2(9)

In prosecution for violating §§ 483 and 1593 of Title 19, by assisting in the importation of undeclared gold bullion and for conspiring with others to violate such sections, denial of motion for bill of particulars was not error, where motion unreasonably sought detailed information. U.S. v. Kushner, C.C.A.2 (N.Y.) 1943, 135 F.2d 668, certiorari denied 63 S.Ct. 1449, 320 U.S. 212, 87 L.Ed. 1850, rehearing denied 64 S.Ct. 32, 320 U.S. 808, 88 L.Ed. 488. Indictment And Information 121.2(1)

Where defendants' counsel had entire week within which to seek information concerning conspiracy case and ask for bill of particulars and request for bill of particulars was not made until date of trial and upon making the request, information then sought was immediately given orally by government counsel and the district court expressly limited bounds of prosecution to the information thus given to the defendants, the failure to grant the motion for bill of particulars was not an abuse of discretion. Adams v. U.S., C.C.A.5 (Ga.) 1942, 128 F.2d 820, certiorari denied 63 S.Ct. 61, 317 U.S. 632, 87 L.Ed. 510. Indictment And Information 121.2(3)

On a trial for mail fraud and conspiracy in connection with the sale of stock in a corporation where the court ordered that defendants be permitted to examine such books and records of the corporation as might be in the possession of the United States Attorney or the post office inspector, the denial of a motion for a bill of particulars did not deny defendants any substantial right. Williams v. U.S., C.C.A.9 (Cal.) 1937, 93 F.2d 685. Indictment And Information 121.2(9)

Trial court will on application require United States to furnish bill of particulars in prosecution for conspiracy to defraud government, if defendant wishes further details. U.S. v. Harding, App.D.C.1936, 81 F.2d 563, 65 App.D.C. 161. Indictment And Information 121.2(3)

Where defendant did not become police chief until after beginning of alleged liquor conspiracy, and there was no claim that defendant was party thereto prior to his appointment, defendant's motion for bill of particulars, setting forth how and when he would give "protection" to and prevent "interference" with codefendants, was granted. U.S. v. Grossman, D.C.N.Y.1931, 55 F.2d 408. Indictment And Information 121.2(3)

Indictment which alleged, in the language of this section, elements of the offense of conspiracy with which defendants were charged was sufficient and was not required to be made more definite. U. S. v. Buschman, E.D.Wis.1975, 386 F.Supp. 822, affirmed 527 F.2d 1082. Indictment And Information 110(10)

Where prosecution was directed in prosecution for fraud in sale of securities in violation of Securities Act, section 77a et seq. of Title 15, and for using mails to defraud, and for conspiracy to violate those laws to make all records of several corporations named in indictment available to defendants pursuant to their motions for discovery and inspection, and great mass of material was deposited by prosecution with clerk, government would be required to designate all portions of record that would form a basis for expert testimony to be used on the trial. U. S. v. Sanders, W.D.La.1967, 266 F.Supp. 615. Criminal Law 627.8(1)

Where indictment charged violation of conspiracy statute and alleged particular overt acts within jurisdiction of court, defendant, if he required further detail to prepare for trial, could request bill of particulars. U. S. v. Merrick, W.D.Mo.1962, 207 F.Supp. 929. Indictment And Information 121.2(3)

Defendants' motions for bill of particulars filed in prosecution for conspiracy to obtain defense information, conspiracy to induce United States citizen to act as foreign agent and for other stated offenses would be denied to the extent that they requested minutiae of evidence but would be granted to the extent that they sought identity of such United States citizen. U. S. v. Melekh, N.D.Ill.1961, 193 F.Supp. 586. Indictment And Information 121.2(3)

In prosecution for conspiracy to defraud United States, defendants' motion for bill of particulars would be denied where defendants in effect were asking complete discovery of government's entire case and grand jury's indictment was unusually complete and specific and contained extensive and intensive account of modus operandi and spelled out 39 overt acts and defendants were sufficiently informed as to nature of charge to prepare their defense and to avoid surprise at trial and could later plead double jeopardy. U. S. v. Gilboy, M.D.Pa.1958, 160 F.Supp. 442. Indictment And Information 121.2(3)

Where defendants were twice indicted for conspiracy, the second indictment being for essentially the same matter as first indictment with some additional wording, and parties stipulated that all motions, objections and rulings thereon, and facts, figures, arguments and orders in the previous case should be considered applicable to case under the second indictment, motions for bill of particulars and to dismiss the indictment in the second case would be overruled for reasons stated with respect to similar motions in the former case. U.S. v. Frankfeld, D.C.Md.1952, 103 F.Supp. 48. Stipulations 14(11)

Where it appeared that motions for bills of particulars sought to discover in advance of trial the government's evidence and to limit the government in its proof of indictments for conspiracy to organize Communist Party and for membership in such party and it appeared that the indictments were sufficiently specific to enable the defendants to adequately prepare for and proceed to trial, motions for bills of particulars would be denied. U.S. v. Foster, S.D.N.Y.1948, 80 F.Supp. 479. Indictment And Information 121.2(3)

Demands in motion by one of several defendants for bill of particulars for information as to whether movant received any money or other reward for entering into conspiracies alleged in indictment which does not charge that he received money or other reward therefor, should be denied as demands for government's evidence to be considered by jury on question whether movant entered into conspiracies and what part he took therein. U.S. v. Lang, E.D.N.Y.1941, 40 F.Supp. 414. Indictment And Information 121.2(3)

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Demands in motion for bill of particulars by one of several defendants charged with conspiracies for information as to which of defendants movant will be claimed to have had dealings, contracts or relations with in entering into or furthering conspiracies, and what movant will be claimed to have agreed to do in furtherance thereof, called for government's evidence and witnesses' names and should not be allowed. U.S. v. Lang, E.D.N.Y.1941, 40 F.Supp. 414. Indictment And Information 121.2(3)

Demands in motion for bill of particulars for information as to where and when moving defendant entered into conspiracies alleged in indictment, stating that conspiracies existed between certain dates and that such defendant committed certain overt acts on specified days in pursuance of conspiracy, are denied as calling for information unduly limiting government's proof and concerning which it may not yet be advised. U.S. v. Lang, E.D.N.Y.1941, 40 F.Supp. 414. Indictment And Information 121.2(3)

In prosecution for using mails to defraud and for conspiracy to commit such act, a motion for bill of particulars to state when named defendant did any act in furtherance of conspiracy, which motion was made for purpose of showing that defendant had not participated within three years before prosecution, would be denied, since even though it would be stated in bill of particulars that such defendant had done no overt act within three years, it would not necessarily follow that he had withdrawn from conspiracy. U. S. v. Gilbert, S.D.Ohio 1939, 31 F.Supp. 195. Indictment And Information 121.1(2)

Where government, in prosecution for stock manipulation, conspiracy, and mail fraud, had already answered large portion of defendants' requests in their motion for bill of particulars, by reference to other portions of indictment or by specifically referring to documents already available for counsel's inspection, where government had further agreed to make available large portions of Jencks material 45 days prior to trial, and where indictment itself was clear and definite, granting of requests for particulars not already complied with by Government would not be proper. U. S. v. Bloom, E.D.Pa.1977, 78 F.R.D. 591. Indictment And Information 121.2(1); Indictment And Information 121.2(3); Indictment And Information 121.2(4)

319. Motion to strike, indictment or information

In prosecution for conspiring to carry on manufacture, transportation and sale of illicit, nontaxpaid moonshine whiskey and to protect participants from all law enforcement activity, refusing to strike names of coconspirators named as such but not as defendants from indictment was not error. U. S. v. Penney, C.A.6 (Tenn.) 1969, 416 F.2d 850, certiorari denied 90 S.Ct. 1832, 398 U.S. 932, 26 L.Ed.2d 98, rehearing denied 90 S.Ct. 2214, 399 U.S. 917, 26 L.Ed.2d 577. Indictment And Information 137(1)

The whole indictment in conspiracy prosecution did not become void because court allegedly erroneously struck out certain of overt acts, where court thereafter modified its order striking the overt acts by stating that it had no power to strike part of the indictment, the court having power to modify its order to make it speak truly. Johnson v. U.S., C.C.A.5 (Ga.) 1941, 124 F.2d 101. Indictment And Information 153

Refusal to strike paragraphs of indictment charging particular overt acts for reason that persons aiding in such acts were separate from defendants was not error, such question being for jury. Fisher v. U.S., C.C.A.1 (R.I.) 1925, 8 F.2d 978, certiorari denied 46 S.Ct. 482, 271 U.S. 666, 70 L.Ed. 1140. Indictment And Information 137(4)

In prosecution for bank fraud and conspiracy to defraud United States, references in indictment to violations of federal regulations and internal banking policies and procedures were relevant to defendants' intent and motive in structuring transactions as they did; thus, references to alleged violations of regulations and internal banking policies would not be stricken as surplusage. U.S. v. Gressett, D.Kan.1991, 773 F.Supp. 270. Indictment And Information 119

Motion to strike paragraphs of mail fraud and conspiracy indictment alleging that defendants concealed fact that

conditional sales contracts would be and were sold or assigned to finance company, and that defendants concealed facts regarding endless chain aspect of referral system of selling involved matters that could not be determined in pretrial motion and would have to await trial for decision after hearing evidence. U. S. v. National Marketing, Inc., D.C.Minn.1969, 306 F.Supp. 1238. Indictment And Information 137(1)

Pre-trial motion, in conspiracy prosecution, to have defendants' asserted aliases stricken from caption and body of indictment on theory that they would put defendants in opprobrious light was premature but if government proved that aliases were integral part of conspiracy, defendants had no just cause for complaint. U. S. v. Melekh, N.D.Ill.1961, 193 F.Supp. 586. Indictment And Information 81(5); Indictment And Information 139

In prosecution for attempts to evade taxes and for conspiracies to evade tax and to defraud the government in assessment and collection of income taxes, allegations concerning Office of Price Administration controversies, in which defendants were previously involved, would not be stricken on motions of defendants where the government charged that defendants were engaged in manipulating OPA regulations for purpose of perpetrating criminal tax violations charged in the indictment. U.S. v. Klein, S.D.N.Y.1954, 124 F.Supp. 476, affirmed 247 F.2d 908, certiorari denied 78 S.Ct. 365, 355 U.S. 924, 2 L.Ed.2d 354. Indictment And Information 137(7)

Where defendants contended that indictment did not allege facts which constituted violation of regulation forbidding manufacture of medicinal preparations for internal use from denatured alcohol, but that conspiracy-to-defraud count limited agreement to plan and scheme to sell such medicines in violation of law, and indictment did not recite that liniment which defendant conspired to sell was manufactured for internal use extent, if any, to which alleged illegal conspiracy embraced such regulation was matter which would be left to proof and would not, upon motion to dismiss, be stricken from indictment. U. S. v. J. R. Watkins Co., D.C.Minn.1954, 120 F.Supp. 154. Indictment And Information 144.2

320. Motion to quash, indictment or information

Indictment charging conspiracy to violate sections 1084 and 1952 of this title, and various substantive offenses was not subject to being quashed on ground that none of the four main government witnesses presented evidence to grand jury and the only evidence presented was hearsay testimony by FBI agents who related statements made to officers by such witnesses. U. S. v. Covello, C.A.2 (N.Y.) 1969, 410 F.2d 536, certiorari denied 90 S.Ct. 150, 396 U.S. 879, 24 L.Ed.2d 136, rehearing denied 90 S.Ct. 897, 397 U.S. 929, 25 L.Ed.2d 110. Indictment And Information 10.2(10)

In prosecution for conspiracy and smuggling, court properly denied a motion to quash indictment on grounds that it failed to specify by number the particular provisions of law to which it referred where indictment clearly advised defendants of essential elements of offenses with which they were charged, stated facts showing illegal aspects of importation of explosives, and no prejudice was demonstrated by omission of specific citations. U. S. v. Bowe, C.A.2 (N.Y.) 1966, 360 F.2d 1, certiorari denied 87 S.Ct. 401, 385 U.S. 961, 17 L.Ed.2d 306, certiorari denied 87 S.Ct. 779, 385 U.S. 1042, 17 L.Ed.2d 686, rehearing denied 87 S.Ct. 1040, 386 U.S. 969, 18 L.Ed.2d 127. Indictment And Information 137(6)

Indictment was not subject to being quashed merely because principal government witness had made no mention in grand jury testimony of defendant by name, but such witness adequately identified such defendant in referring to him by another appellation and indicating that he had a club foot. U. S. v. Bentvena, C.A.2 (N.Y.) 1963, 319 F.2d 916, certiorari denied 84 S.Ct. 345, 375 U.S. 940, 11 L.Ed.2d 271, rehearing denied 90 S.Ct. 894, 397 U.S. 928, 25 L.Ed.2d 108, rehearing denied 84 S.Ct. 515, 375 U.S. 989, 11 L.Ed.2d 476, certiorari denied 84 S.Ct. 346, 375 U.S. 940, 11 L.Ed.2d 271, rehearing denied 84 S.Ct. 1162, 377 U.S. 913, 12 L.Ed.2d 183, certiorari denied 84 S.Ct. 353, 375 U.S. 940, 11 L.Ed.2d 272, certiorari denied 84 S.Ct. 354, 375 U.S. 940, 11 L.Ed.2d 272, certiorari denied 84 S.Ct. 355, 375 U.S. 940, 11 L.Ed.2d 272, certiorari denied 84 S.Ct. 360, 375 U.S. 940, 11 L.Ed.2d 272. Indictment And Information 137(4)

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Where defendants made motion before trial attacking indictment charging them with conspiracy to bribe police officer and also for bribery itself on ground of alleged misjoinder of substantive charges, such motion went to validity of indictment and not to question of advisability of separate trials. Monroe v. U.S., C.A.D.C.1956, 234 F.2d 49, 98 U.S.App.D.C. 228, certiorari denied 77 S.Ct. 94, 352 U.S. 872, 1 L.Ed.2d 76, certiorari denied 77 S.Ct. 94, 352 U.S. 873, 1 L.Ed.2d 76, rehearing denied 77 S.Ct. 219, 352 U.S. 937, 1 L.Ed.2d 170, rehearing denied 78 S.Ct. 114, 355 U.S. 875, 2 L.Ed.2d 79. Criminal Law 1044.2(1)

Indictment charging conspiracy to harbor fugitive from justice could not be invalidated for technical objections which were not prejudicial. Piquett v. U.S., C.C.A.7 (Ill.) 1936, 81 F.2d 75, certiorari denied 56 S.Ct. 749, 298 U.S. 664, 80 L.Ed. 1388. Criminal Law 1167(1)

Indictment for conspiracy will be quashed, where grand jury returned it without any evidence of overt act. Brady v. U.S., C.C.A.8 (Kan.) 1928, 24 F.2d 405. Indictment And Information 137(4)

A count in an indictment charging a conspiracy under former § 88 of this title [now this section] to violate Act Aug. 10, 1917, § 9 (repealed) was quashed, as it charged a conspiracy to commit the offense of conspiracy. U.S. v. Armstrong, D.C.Ind.1920, 265 F. 683. See, also, U.S. v. Pacific, etc., R., etc., Co., 1912, 4 Alaska 518. Conspiracy 25

Fair reading of indictment charging bank fraud and conspiracy to defraud United States showed that charges in indictment were not founded upon defendants' fiduciary breaches, but rather, were founded upon defendants' actions in conspiring to conceal affiliate interests in various loans; thus, indictment would not be dismissed on grounds that it charged defendants with violating their "fundamental duties" to bank, none of which allegedly could result in criminal liability, or that indictment was unconstitutionally vague. U.S. v. Gressett, D.Kan.1991, 773 F.Supp. 270. Banks And Banking 509.25; Conspiracy 43(9)

On motion to dismiss conspiracy indictment, inquiry is whether charge includes agreement, unlawful object, and overt act. U. S. v. Wilson, D.C.Md.1973, 356 F.Supp. 463. Conspiracy 43(1)

A news article appearing in two newspapers and dealing with indictment returned against defendants for conspiracy to violate mail fraud statute and quoting Assistant United States Attorney as estimating amount of money involved in the alleged mail fraud did not show a prejudice to one defendant that would support dismissing indictment against him. U. S. v. Wolfson, D.C.Del.1968, 294 F.Supp. 267. Indictment And Information 144.1(3)

Defendant was not entitled to dismissal of indictment charging violation of Securities Act, § 77a et seq. of Title 15, and conspiracy to do so on ground that indictment had been returned against her because she had declined to be voluntary witness for government and that no evidence of crime had been submitted to grand jury which indicted her, inasmuch as it appeared that motion rested on nothing more than guess, speculation and conjecture. U. S. v. Steel, S.D.N.Y.1965, 238 F.Supp. 580. Indictment And Information 144.1(3)

The statutory offense, under § 1503 of this title, of endeavoring to influence witness before grand jury is not type of substantive crime that precludes count of indictment for conspiracy by offender and another to commit such offense, and alleged conspirators' motion to dismiss conspiracy count on face of indictment must be denied as at best premature. U S v. Brothman, S.D.N.Y.1950, 93 F.Supp. 924. Conspiracy 34; Indictment And Information 144

On motion to quash indictments for conspiracy to form Communist Party and for membership in such party on ground that the indictments were returned solely as result of undue and unlawful influence and pressure exerted on the grand jury, evidence did not sustain such motion. U.S. v. Foster, S.D.N.Y.1948, 80 F.Supp. 479. Indictment And Information 140(2)

18 U.S.C.A. § 371

An indictment charging defendants with conspiracy to defraud the United States of internal revenue taxes upon drugs imported in violation of § 174 of Title 21 would be quashed for lack of jurisdiction in the federal District Court of New Jersey where defendants were in Europe when alleged conspiracy was entered into, and the only overt act alleged to have been committed in the district was that defendants imported drugs at Hoboken, New Jersey, on a date when defendants admittedly were not in the United States. U.S. v. Eliopoulos, D.C.N.J.1942, 45 F.Supp. 777. Criminal Law 113

Counts of indictment against consignee's bookkeeper and others for receiving rebates of difference between true weight of shipments and minimum weight under railroad's schedules and tariffs charged offense against United States, and hence count, charging conspiracy to commit offense against United States was not vulnerable to motion to quash. U.S. v. Miller, D.C.Neb.1937, 18 F.Supp. 389. Conspiracy 43(6)

321. Demurrers, indictment or information

Counts of indictment charging conspiracy to violate mail fraud statute, former § 338 of this title, and the fraud provisions of the Securities Act of 1933, § 77q(a)(1) of Title 15, were not demurrable. U. S. v. Monjar, C.C.A.3 (Del.) 1944, 147 F.2d 916, certiorari denied 65 S.Ct. 1191, 325 U.S. 859, 89 L.Ed. 1979, certiorari denied 65 S.Ct. 1192, 325 U.S. 859, 89 L.Ed. 1979, certiorari denied 65 S.Ct. 1192, 325 U.S. 859, 89 L.Ed. 1980, certiorari denied 65 S.Ct. 1193, 325 U.S. 859, 89 L.Ed. 1980, certiorari denied 65 S.Ct. 1194, 325 U.S. 859, 89 L.Ed. 1981. Conspiracy 43(9)

Indictment charging that continuously from October 1, 1943, to April 28, 1943, and within three years of filing of indictment (which was on September 9, 1943), a described conspiracy was carried on and overt acts were done to carry it out at dates ranging from October 18, 1941, to April 27, 1943, was good against general demurrer and a special demurrer which did not point out the conflict in the allegations of time but merely claimed that the overt acts were not alleged to have occurred during time covered by indictment. Neely v. U. S., C.C.A.5 (Ala.) 1944, 145 F.2d 828. Indictment And Information 87(7)

Where indictment for conspiracy to to commit an offense against the United States was not bad on ground that it alleged a conspiracy under former § 80 of this title which did not cover conspiracy, where upon demurrer the reference to such section was explained as merely a typographical error and that the conspiracy charged was made an offense by former § 88 of this title [now this section]. Smith v. U.S., C.C.A.10 (Okla.) 1944, 145 F.2d 643, certiorari denied 65 S.Ct. 563, 323 U.S. 803, 89 L.Ed. 641. Indictment And Information 79

Where indictment for conspiracy to violate certain laws set forth with care the nature of the conspiracy, the period of time covered by it, the participants therein, the statutes to be violated and twenty-eight overt acts in furtherance of the conspiracy, the indictment was not demurrable on ground that it was "duplicitous" or too indefinite to acquaint defendant with the precise charges against him. Stewart v. U. S., C.C.A.5 (Ala.) 1942, 131 F.2d 624, certiorari denied 63 S.Ct. 854, 318 U.S. 779, 87 L.Ed. 1147. Indictment And Information 71.4(3); Indictment And Information 125(5.5)

Where there were overt acts charged in indictment for conspiracy to violate the internal revenue laws relating to operation of stills and liquor taxes which supported the charge, indictment was sufficient on demurrer notwithstanding that it was subject to criticism for its length and for charging as overt acts certain acts of officers and of third persons or mere sayings of a conspirator after arrest. Reece v. U.S., C.C.A.5 (Ga.) 1942, 131 F.2d 186, certiorari denied 63 S.Ct. 529, 318 U.S. 759, 87 L.Ed. 1132. Conspiracy 43(5)

An indictment charging lawyer and registrant with conspiracy to violate 50 App. former § 301 et seq., by causing registrant to fail to report for induction, was not demurrable for failure to allege overt acts connected with object to illegal agreement, where failure of registrant to report was charged as an overt act. U.S. v. Offutt, App.D.C.1942, 127 F.2d 336, 75 U.S.App.D.C. 344. Conspiracy 43(5)

18 U.S.C.A. § 371

An indictment charging lawyer and registrant with conspiracy to violate 50 App. former § 301 et seq., by causing registrant to neglect willfully to report for induction and willfully to evade service and requirement of said sections, was not demurrable on ground that a conspiracy to cause one of two persons to neglect a duty is a legal impossibility because of necessity of an overt act. U.S. v. Offutt, App.D.C.1942, 127 F.2d 336, 75 U.S.App.D.C. 344. Conspiracy 43(5)

An indictment charging lawyer and registrant with conspiracy to violate 50 App. former § 301 et seq., alleging that registrant had been registered, classified, designated, and notified to fill call on April 19, 1941, that knowing all that conspiracy was entered into on April 14, object of which was to fail to report on April 19, and that overt acts were done on April 14 to 19, inclusive, was not demurrable for failure to state that designation and notification were in effect on April 14 or from April 14 to 19. U.S. v. Offutt, App.D.C.1942, 127 F.2d 336, 75 U.S.App.D.C. 344. Conspiracy 43(6)

Even if District Court erred in striking portions of indictment relating to certain of overt acts on defendants' demurrer to the indictment as a whole, the whole indictment did not thereby become void. Johnson v. U.S., C.C.A.5 (Ga.) 1941, 124 F.2d 101. Indictment And Information 153

Indictment for conspiracy is sufficient on demurrer if it apprises defendant of what he must be prepared to meet and secures him against second jeopardy. U.S. v. Harding, App.D.C.1936, 81 F.2d 563, 65 App.D.C. 161. See, also, U.S. v. Direct Sales Co., D.C.S.C.1941, 40 F.Supp. 917. Indictment And Information 71.4(3)

Demurrer to plea in bar of indictment under former § 88 of this title [now this section] was overruled. U.S. v. Pardue, S.D.Tex.1923, 294 F. 543.

When indictment charged a conspiracy by all defendants to defraud the United States through the unlawful issuance of permits to purchase liquor, to be accomplished through several groups, who were to carry out parts of the conspiracy, and that each defendant knew of the general conspiracy, the question whether the evidence would show such knowledge, or would show that the so-called general conspiracy was in fact the doing of things having similar unlawful purposes in view by separate groups was of no concern on demurrer, but raised trial questions. U S v. McConnell, E.D.Pa.1923, 285 F. 164. Conspiracy 43(10)

"The charging portion of the indictment must define all the necessary elements of the conspiracy, and also all the necessary elements of the acts which are alleged to constitute either an offense under the laws of the United States or a fraud upon the United States. But the defendant cannot, by misinterpreting or assuming according to his own ideas the crime of fraud charged, present successfully a demurrer upon the theory that the indictment fails to set forth all the elements which he thinks are necessary to support the charge which he has in mind." U.S. v. Amster, E.D.N.Y.1921, 273 F. 532.

Where an indictment for conspiracy sets out the plan of the conspirators, an averment that the overt acts alleged were for executing such conspiracy does not preclude the court from determining on demurrer whether or not they tend to effect its purpose. U.S. v. Ault, W.D.Wash.1920, 263 F. 800. Indictment And Information 150

Though one overt act is sufficient to support a conviction for conspiracy to defraud revenue laws with relation to sale of colored oleomargarine, an indictment alleging several overt acts is not demurrable as containing surplusage. U.S. v. Orr, D.C.R.I.1916, 233 F. 717. Conspiracy 43(5); Conspiracy 43(10)

Where an indictment charged a conspiracy by a postmaster and others, the object of which was that the postmaster should make false returns to the First Assistant Postmaster General for the purpose of fraudulently increasing his salary by failing to report, in the gross receipts required to be made monthly, large and irregular sales of postage stamps for use outside the district served by such post office, the fact that no such report of gross receipts as was described in the indictment was required of the postmaster did not render the indictment demurrable, since its

allegations on demurrer would be taken as true. U.S. v. Foster, D.C.Mass.1913, 211 F. 206, reversed 34 S.Ct. 666, 233 U.S. 515, 58 L.Ed. 1074.

A demurrer to an indictment for conspiracy did not challenge the sufficiency of the indictment, so far as it charged a conspiracy as distinguished from allegations of overt acts. Hedderly v. U.S., C.C.A.9 (Or.) 1912, 193 F. 561, 114 C.C.A. 227. Indictment And Information 148

The objection that it is within the exclusive jurisdiction of the land department to determine questions of fact involved in the trial of an indictment for conspiracy to defraud the United States by an illegal entry of public lands cannot be raised by demurrer, where the indictment does not show that any proceeding relating to such entry is pending in the department. U.S. v. Peuschel, S.D.Cal.1902, 116 F. 642. Indictment And Information 147

A motion challenging adequacy of indictment to charge a conspiracy was the equivalent of a demurrer, and in ruling on the motion allegations of the indictment had to be accepted as written and movant could not find support in what facts it might believe that the trial would disclose. U. S. v. American Oil Co., D.C.N.J.1968, 286 F.Supp. 742. Indictment And Information 146; Indictment And Information 150

An indictment charging conspiracy under former § 88 of this title [now this section] to unlawfully buy and sell gasoline ration coupons issued by Office of Price Administration sufficiently identified offense which defendants were charged with having conspired to commit, and was not subject to demurrer on ground that it was too vague and indefinite to be effectual protection to defendants against being put in jeopardy for same offense again at a subsequent time. U S v. Kendzierski, E.D.N.Y.1944, 54 F.Supp. 164. Indictment And Information 71.4(3)

Indictment charging conspiracy to violate Fair Labor Standards Act, § 201 et seq. of Title 29, by paying employees wages at less than one and one-half times their regular rates of pay for all hours worked in excess of applicable maximum statutory hours was demurrable where indictment did not sufficiently allege that such employees were within said sections. U.S. v. Berke Cake Co., E.D.N.Y.1943, 50 F.Supp. 947. Conspiracy 43(6); Labor And Employment 2534

Where a statute creating evil or wrong has no lawful existence, it cannot be said that an "evil" is committed within rule that either means or end of conspiracy must be evil, and hence attack on indictment is "direct", but attack is "collateral" so as not to be available on demurrer, where evil alleged is frustrating or impeding a government function performed under law which is attacked. U.S. v. Rhoads, D.C.D.C.1942, 48 F.Supp. 175. Indictment And Information 147

In prosecution for conspiracy to defraud United States by delaying and withholding tools from defense use, constitutionality of Acts of Congress requiring the reporting and making available of war materials, and of delegation of powers by Congress, were "collateral" to issues raised and hence not available upon demurrer to indictment. U.S. v. Rhoads, D.C.D.C.1942, 48 F.Supp. 175. Constitutional Law 46(2)

Where first three pages of indictment set forth conspiracy in general terms, allegations in 11 additional pages as to details of conspiracy could not be rejected as "surplusage", and indictment was required to be tested, on demurrer, by sufficiency of such allegations. U.S. v. Regan, N.D.Ill.1940, 39 F.Supp. 309. Indictment And Information 119

322. Dismissal of indictment or information

If charges are never brought against other alleged coconspirators, if charges are dismissed against all other coconspirators, or if coconspirator has not yet been tried, dismissal of charges against remaining coconspirator is not required. U.S. v. Sachs, C.A.6 (Mich.) 1986, 801 F.2d 839, 231 U.S.P.Q. 197. Conspiracy 24(4.1)

18 U.S.C.A. § 371

False testimony before grand jury that vehicle identification number had been discovered in December of 1983 on frame of car seized in Chicago when, in fact, number was not discovered until approximately six months later did not warrant dismissal of indictment charging defendants with conspiring to transport stolen property in interstate commerce and knowingly concealing and transporting such property in interstate commerce, because defendants failed to show that statements rose to level of perjury or that grand jury heard no evidence competent to sustain indictment. U.S. v. Johnson, C.A.8 (Mo.) 1985, 767 F.2d 1259. Indictment And Information 10.2(2)

Dismissal was required when essential element of offense was omitted from indictment for conspiracy to defraud government, which rendered indictment constitutionally defective, particularly when error was compounded by grand jury instructions that also omitted element. U.S. v. Cote, D.Or.1996, 929 F.Supp. 364. Indictment And Information 144.1(1)

Orders denying defendants' motions to dismiss indictments charging them with conspiracy to defraud the government were not final, appealable orders. U.S. v. Kailing, C.A.9 (Hawai'i) 2004, 102 Fed.Appx. 615, 2004 WL 1435152, Unreported. Criminal Law 1023(3)

323. Amendments, indictment or information

Failure to require Government to prove money laundering did not amount to constructive amendment of indictment charging defendant with conspiracy to defraud Internal Revenue Service; neither evidence nor jury instructions modified essential element of offense that transactions were fabricated for purpose of being reported and were reported on specified tax returns. U.S. v. Attanasio, C.A.2 (N.Y.) 1989, 870 F.2d 809. Indictment And Information 159(1)

Striking of overt act alleging a meeting with one drug supplier did not constitute an impermissible amendment of the indictment since such action did not charge defendant with a new and different crime. U. S. v. Sir Kue Chin, C.A.2 (N.Y.) 1976, 534 F.2d 1032. Indictment And Information 159(2)

The addition of names of two persons as coconspirators in two counts of indictment in which the persons had not been named by the grand jury did not so change the basic theory of the alleged conspiratorial agreement as to constitute an amendment to the indictment. U. S. v. Gross, C.A.3 (N.J.) 1975, 511 F.2d 910, certiorari denied 96 S.Ct. 266, 423 U.S. 924, 46 L.Ed.2d 249. Indictment And Information 159(1)

Amendment of indictment charging defendants with conspiracy to defraud government and Securities and Exchange Commission and with substantive offenses under securities laws by striking allegations of stockholder and creditor fraud narrowed rather than broadened reach of conspiracy count and was permissible without resubmission to grand jury. U. S. v. Colasurdo, C.A.2 (N.Y.) 1971, 453 F.2d 585, certiorari denied 92 S.Ct. 1766, 406 U.S. 917, 32 L.Ed.2d 116.

Government did not constructively amend indictment charging antique firearms dealer and co-defendant with conspiracy to commit wire and postal fraud by introducing evidence relating to co-defendant's agency relationship with collector, where indictment stated that co-defendant was collector's agent, and agency relationship was relevant to collector's reliance on co-defendant's assurances that prices he was paying for handguns were reasonable and that letters from dealer and third party were legitimate and valid. U.S. v. Zomber, E.D.Pa.2005, 358 F.Supp.2d 442. Indictment And Information 159(2)

VII. SUFFICIENCY OF PARTICULAR INDICTMENTS OR INFORMATIONS

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Advocating overthrow of Government 351

351. Advocating overthrow of Government, sufficiency of particular indictments or informations

In prosecution for conspiracy to advocate the overthrow of the United States government by force, and to advocate insubordination in the armed forces, count was not rendered defective by use of word "would" instead of "to" to state the purposes of the conspiracy. Dunne v. U. S., C.C.A.8 (Minn.) 1943, 138 F.2d 137, certiorari denied 64 S.Ct. 205, 320 U.S. 790, 88 L.Ed. 476, rehearing denied 64 S.Ct. 260, 320 U.S. 814, 88 L.Ed. 492, rehearing denied 64 S.Ct. 426, 320 U.S. 815, 88 L.Ed. 493.

In prosecution for conspiring to advocate and teach duty of overthrowing federal government by force and to organize a group of persons who teach and advocate overthrowing of federal government by force, indictment was sufficient to state an offense under Smith Act, § 2385 of this title. U S v. Flynn, S.D.N.Y.1951, 103 F.Supp. 925.

A charge of conspiring to commit acts prohibited by the Smith Act, § 2385 of this title, by knowingly advocating and teaching the duty and necessity of overthrowing Government of United States by force and violence and by knowingly helping to organize society which teaches and advocates overthrow and destruction of United States Government by force and violence would be covered by this section, which requires, as essential element of offense, that overt act be done to effect object of conspiracy. U. S. v. Schneiderman, S.D.Cal.1951, 102 F.Supp. 87

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In indictment charging defendants with unlawfully conspiring to commit offenses against United States by unlawfully doing acts prohibited by Smith Act, § 2385 of this title, the adverb "unlawfully" was but conclusion of pleader that what was done was in violation of law. U. S. v. Schneiderman, S.D.Cal.1951, 102 F.Supp. 87.

Where at time of alleged conspiracy to organize Communist Party and at time indictments were returned allegation of overt acts was unnecessary, subsequent change of law in respect to such matter could not be availed of by defendants. U.S. v. Foster, S.D.N.Y.1948, 80 F.Supp. 479.

352. Agricultural offenses, sufficiency of particular indictments or informations

Government agent and jury were sufficiently apprised of nature of charges in conspiracy counts of indictment which specified nature of charged fraud on United States, and that object was in one case to allow growth of excess rice and in other two cases to transfer rice acreage allotments unlawfully from one county to another, all in violation of agent's duty to see that transfers and allocations were made only in compliance with laws and regulations. Stephens v. U. S., C.A.5 (Tex.) 1965, 347 F.2d 722, certiorari denied 86 S.Ct. 324, 382 U.S. 932, 15 L.Ed.2d 343.

Indictment charging that defendants conspired to defraud the United States by selling it pigs as property of producers thereof when pigs belonged to one defendant who was not a producer stated an offense irrespective of validity of Agricultural Adjustment Act, § 601 et seq. of Title 7. U.S. v. MacDonald, W.D.Mo.1935, 10 F.Supp. 948.

Indictments charging conspiracy to defraud the United States by falsely pretending to comply with regulations of Secretary of Agriculture and by thereby selling hogs to government contrary to purposes of Agricultural Adjustment Act, § 601 et seq. of Title 7, charged a conspiracy to "defraud the United States," within former § 88 of this title [now this section], making such act a criminal offense. U.S. v. Soeder, W.D.Mo.1935, 10 F.Supp. 944.

353. Alien enemies and enemy property, sufficiency of particular indictments or informations

Indictment against Alien Property Custodian for conspiring to allow illegal claims stated crime. Miller v. U.S., C.C.A.2 (N.Y.) 1928, 24 F.2d 353, certiorari denied 48 S.Ct. 421, 276 U.S. 638, 72 L.Ed. 421.

Where plaintiffs in error were convicted under an indictment which charged them with having conspired to defraud the United States by obstructing and preventing the United States from seizing and administering a certain indebtedness of the defendant Rumely to the imperial German government, and it was alleged as part of the conspiracy that the defendants should conceal the fact of such indebtedness to the German government, and should make false and misleading reports to the Alien Property Custodian of the United States, and so obstruct and prevent the transfer and payment of that indebtedness to such custodian, the indictment was sufficient. Rumely v. U.S., C.C.A.2 (N.Y.) 1923, 293 F. 532, certiorari denied 44 S.Ct. 38, 263 U.S. 713, 68 L.Ed. 520.

An indictment for conspiring to aid enemy aliens to escape from custody, into which they had been taken under the President's order for their arrest and confinement, which alleged several overt acts, was not defective because it did not set forth, verbatim or in substance, letters alleged as overt acts. De Lacey v. U.S., C.C.A.9 (Cal.) 1918, 249 F. 625, 161 C.C.A. 535.

354. Assault, sufficiency of particular indictments or informations

Indictment for conspiracy to assault or interfere with employees of Bureau of Animal Industry of Agricultural Department in execution of duties need not allege that regulations of Secretary of Agriculture for suppression and

extirpation of disease among live stock have been certified to and accepted by executive authority of state, nor need it allege that cattle being dipped by employees were subject-matter of interstate commerce, it being sufficient to describe generally that employees were performing their duties under statute. Thornton v. U.S., U.S.Ga.1926, 46 S.Ct. 585, 271 U.S. 414, 70 L.Ed. 1013.

355. Bail offenses, sufficiency of particular indictments or informations

Indictment for conspiracy to procure fraudulent bail bonds, by procuring surety having property of much less value than liability on bond, charged "conspiracy to defraud United States." Henry v. U.S., C.C.A.9 (Cal.) 1926, 15 F.2d 624, certiorari denied 47 S.Ct. 575, 274 U.S. 737, 71 L.Ed. 1316.

356. Banking offenses, sufficiency of particular indictments or informations

Indictment sufficiently alleged conspiracy among bank customers to violate Bank Secrecy Act resulting in failure of bank to file currency transaction reports for customers' purchase of money orders totaling more than $10,000 on one day; indictment alleged that bank officer participated in scheme such that bank had knowledge of purchase and had duty to file currency transaction reports in connection with purchases. U.S. v. Farm & Home Sav. Ass'n, C.A.8 (Mo.) 1991, 932 F.2d 1256, certiorari denied 112 S.Ct. 179, 502 U.S. 860, 116 L.Ed.2d 141.

Charge that bank president did knowingly conspire to defraud the Government by impairing collection of data on currency transaction reports, to violate federal statutes prescribing fraudulent entries in bank records, and to violate federal statutes requiring filing of currency transaction reports was sufficient to enable bank president to defend and avoid double jeopardy. U.S. v. Penagaricano-Soler, C.A.1 (Puerto Rico) 1990, 911 F.2d 833.

Indictment contained sufficient facts to establish that customer conspired with financial institution to avoid currency transaction reporting requirement, and to defraud the government, where customer was aware of reporting requirement and participated in conduct that encouraged and rewarded financial institution for unlawful conduct. U.S. v. Cure, C.A.11 (Fla.) 1986, 804 F.2d 625.

Read as a whole, indictment's first count, charging defendants with conspiracy to steal money from two banks, supported defendants' felony convictions; although the first paragraph did not include an allegation of value, second paragraph stated that it was part of a conspiracy to attempt to transfer $5 million from one bank, and third paragraph stated that the conspiracy encompassed another attempted transfer in which defendants tried "to transfer a substantial amount of [second bank's] funds by wire to accounts at other banks owned and controlled by defendants." U.S. v. Gironda, C.A.7 (Ill.) 1985, 758 F.2d 1201, certiorari denied 106 S.Ct. 523, 474 U.S. 1004, 88 L.Ed.2d 456.

Count charging senior vice-president of bank's investment division with making false entries in bank records with intent to defraud by causing bank to enter into fictitious foreign exchange contracts showing a nonexisting profit would not be dismissed on ground that the vice-president had not personally participated in foreign exchange transactions since under the evidence the jury could find that the vice-president joined a conspiracy to falsify bank's first-quarter financial statement and could reasonably anticipate that his partners in crime might commit other criminal acts, including use of fictitious foreign exchange transactions. U.S. v. Gleason, C.A.2 (N.Y.) 1979, 616 F.2d 2, certiorari denied 100 S.Ct. 1037, 444 U.S. 1082, 62 L.Ed.2d 767, certiorari denied 100 S.Ct. 1320, 445 U.S. 931, 63 L.Ed.2d 764.

Indictment alleging conspiracy to commit bank robbery, challenged on ground that it failed to allege an overt act subsequent to the alleged formation of the conspiracy, was sufficient to support conviction under this section. U. S. v. Hodges, C.A.5 (Fla.) 1977, 556 F.2d 366, certiorari denied 98 S.Ct. 735, 434 U.S. 1016, 54 L.Ed.2d 762.

Counts of indictment charging conspiracy to violate section 1005 of this title and alleging that bank loan officer,

who was an unindicted coconspirator, willfully and knowingly and without authority issued letters of credit and that defendants counseled or induced officer's offenses failed to allege a federal offense, in absence of allegation of an intent to injure or defraud. U. S. v. Pollack, C.A.9 (Cal.) 1974, 503 F.2d 87.

A count of an indictment, charging conspiracy to embezzle funds of a national bank and to make and cause to be made false entries in bank's records with intent to injure bank and to deceive its officers who were appointed to examine its affairs and records, was not demurrable for failure to aver that overt acts charged were done without knowledge and consent of bank's directors. Wilson v. U.S., C.C.A.6 (Ky.) 1940, 109 F.2d 895.

An indictment charging the president of a national bank with conspiring with others to commit an offense against the United States by making false entry in books of the bank with intent to deceive any agent who might thereafter be appointed by the Comptroller of the Currency to examine the affairs of the bank did not state an offense under former § 88 of this title [now this section] where the overt act charged to have been committed by defendant consisted in his concealing from the bookkeeper who actually made the alleged false entries, but who was not charged with being a party to the conspiracy, the issuance of certain drafts, which should have been credited to the account of said reserve bank. U.S. v. McClarty, W.D.Ky.1911, 191 F. 518.

Where a count in an indictment against a bank's officers and alleged aiders and abettors charged conspiracy to violate § 592 of Title 12, prohibiting willful misapplication of funds of a national bank, and that to effect the object of the conspiracy defendant K., one of the parties thereto, drew and accepted a draft, set out, presented it to the bank, and obtained credit for the amount thereof for the drawer of the draft in which company K. was interested, the indictment sufficiently charged that an act was done by one of the parties to the alleged conspiracy to effect the object thereof and sufficiently specified such act to withstand a demurrer. Prettyman v. U. S., C.C.A.6 (Ohio) 1910, 180 F. 30, 103 C.C.A. 384.

Since, under § 592 of Title 12, making it an offense to misapply the funds of a national bank, that offense can only be committed by an officer or agent of the bank, under a count of an indictment for conspiracy to misapply funds of the national bank, it is sufficient to show an agreement to commit that offense made between either the cashier or the vice president of the bank and the defendants for whose benefit the money is alleged to have been withdrawn. Prettyman v. U. S., C.C.A.6 (Ohio) 1910, 180 F. 30, 103 C.C.A. 384.

An indictment alleging a conspiracy to defraud the United States in the exercise of its governmental and fiscal functions, by deliberately giving false information regarding the financial condition of a national bank, the fraud resulting in lessening the power of the federal government by failure to maintain in efficient condition one portion of the national fiscal system, stated an offense against the United States, it being possible to have a conspiracy to defraud by merely deceiving a governmental officer, though neither the government nor the officer was deprived thereby of money or money value. U.S. v. Morse, C.C.S.D.N.Y.1908, 161 F. 429.

An indictment under former § 88 of this title [now this section], against two defendants, charging them with a conspiracy to commit an offense against the United States by making certain false entries in the books of a national bank of which one of the defendants was an officer, in violation of § 592 of Title 12, was not bad because, in stating the details of the overt act committed by defendants, it was averred that the entries which were made in the books of the bank were made by the hand of the defendant who was not an officer thereof, it being averred that both defendants were present, and participated in the carrying out of the plan formed between them to make such entries. Scott v. U.S., C.C.A.6 (Ohio) 1904, 130 F. 429, 64 C.C.A. 631.

Allegations in indictment, that bank employees had conspired with bank to structure deposits so as to avoid federal deposit reporting requirements, was sufficient to state charges against employees for conspiring with bank to defraud the United States and for concealing material facts from the IRS. U.S. v. Kraselnick, D.N.J.1988, 702 F.Supp. 480.

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Indictment charging that defendants engaged in scheme to "launder" money by making numerous bank deposits in sums less than $10,000 in order to avoid triggering requirements under Bank Secrecy Act [31 U.S.C.A. § 5311 et seq.] that bank file currency transaction reports with the Internal Revenue Service was sufficient to allege crime of conspiracy to defraud United States in violation of 18 U.S.C.A. § 371. U.S. v. Richter, N.D.Ill.1985, 610 F.Supp. 480, affirmed 785 F.2d 312, affirmed 793 F.2d 1296, certiorari denied 107 S.Ct. 191, 479 U.S. 855, 93 L.Ed.2d 124.

Indictment was sufficient to charge crimes of conspiracy to commit an offense against United States and for unlawful entry into federally insured bank with intent to commit larceny. Scott v. U. S., E.D.Ky.1961, 199 F.Supp. 680, affirmed 304 F.2d 706, certiorari denied 83 S.Ct. 82, 371 U.S. 847, 9 L.Ed.2d 82.

Indictment, which charged defendant with conspiring to rob military banking facility established by national bank was sufficient to state a cause of action. U. S. v. Papworth, N.D.Tex.1957, 156 F.Supp. 842, affirmed 256 F.2d 125, certiorari denied 79 S.Ct. 85, 358 U.S. 854, 3 L.Ed.2d 88, rehearing denied 79 S.Ct. 239, 358 U.S. 914, 3 L.Ed.2d 235.

Where conspiracy indictment charged defendants willfully and unlawfully agreed that two of defendants should draw checks on accounts at a national bank knowing accounts did not have sufficient funds to pay checks, and that other defendant who was cashier in bank should willfully misapply bank's funds by paying and honoring checks, indictment did not allege sufficient facts to set forth either an illegal purpose or an agreement to use illegal means to accomplish a legal purpose, and indictment was fatally defective. U.S. v. Cawthon, M.D.Ga.1954, 125 F.Supp. 419.

Indictment charging conspiracy to embezzle, abstract, purloin and willfully misapply moneys, funds and credits of bank, and alleging that defendants in furtherance of said conspiracy had made false entries in bank reports and statements, that certain conversations had been had concerning reimbursement of bank for money shortage, that one defendant had refused to send bank statements regularly to depositors, and that one defendant had given person check for $1,400, sufficiently alleged overt acts in furtherance of conspiracy. U.S. v. Westbrook, W.D.Ark.1953, 114 F.Supp. 192.

An indictment charging that named individual "was an employee, to wit, Supervisor" of certain trust, "of a certain national banking association," and that he misapplied funds of bank in violation of § 592 of Title 12, and that three other individuals did abet him in violation of former § 550 of this title and that all conspired to misapply bank funds in violation of former § 88 of this title [now this section], was not defective on ground that it failed to allege that the individual named as "Supervisor" was an officer, director, agent, or employee of a federal reserve bank, within meaning of § 592 of Title 12. U.S. v. Jacobson, D.C.N.J.1940, 34 F.Supp. 214.

An indictment charging that named individual was supervisor of certain trust of a certain national banking association and misapplied bank's funds, and that three other individuals did abet him, and that all conspired to misapply bank funds, was not defective on ground that it appeared that money allegedly misapplied was not the money of the bank, but of the trust, in view of § 248(k) of Title 12, providing that national banks shall segregate all assets held in any fiduciary capacity from the general assets of the bank and that sums deposited or held in trust shall be carried in a separate account. U.S. v. Jacobson, D.C.N.J.1940, 34 F.Supp. 214.

357. Bankruptcy offenses, sufficiency of particular indictments or informations

Indictment was sufficient to charge conspiracy to commit offenses against Bankruptcy Act, § 1 et seq. of Title 11, but insufficient to show conspiracy to violate § 1341 of this title. U.S. v. Goodman, C.A.5 (Fla.) 1960, 285 F.2d 378, certiorari denied 81 S.Ct. 1651, 366 U.S. 930, 6 L.Ed.2d 389.

Presence of surplusage did not justify dismissal of count which was otherwise sufficient to charge conspiracy to

commit offenses against Bankruptcy Act, § 1 et seq. of Title 11. U.S. v. Goodman, C.A.5 (Fla.) 1960, 285 F.2d 378, certiorari denied 81 S.Ct. 1651, 366 U.S. 930, 6 L.Ed.2d 389.

An indictment charging conspiracy to transfer bankrupt's property illegally was not defective because indictment made no reference to concealment since the actual intent of Congress is best served by prohibiting either transfer or concealment, for either one may defeat the purpose of title 11. U.S. v. Switzer, C.A.2 (N.Y.) 1958, 252 F.2d 139, certiorari denied 78 S.Ct. 1363, 357 U.S. 922, 2 L.Ed.2d 1366, rehearing denied 79 S.Ct. 16, 358 U.S. 859, 3 L.Ed.2d 93.

Indictment charging that defendants unlawfully conspired to defraud the United States by corruptly administering and procuring the corrupt administration of the Frazier-Lemke Act, §§ 201 to 203 of Title 11, summarizing the provisions of said sections, stating the part which defendants had in administering it, and describing the wrongful acts of the conspirators was not objectionable as too general, vague and confusing. Braatelien v. U. S., C.C.A.8 (N.D.) 1945, 147 F.2d 888.

The overt acts alleged in an indictment charging a conspiracy to violate Bankruptcy Act, former § 52 of Title 11, need not have been unlawful in themselves. U.S. v. Goodman, C.C.A.2 (N.Y.) 1942, 129 F.2d 1009.

In prosecution for conspiracy to conceal assets of bankrupt corporation from its receiver, count of indictment following language of former § 88 of this title [now this section] and containing sufficient statements of overt acts to effect object of conspiracy was sufficient. Miller v. U.S., C.C.A.6 (Mich.) 1942, 125 F.2d 517, certiorari denied 62 S.Ct. 1276, 316 U.S. 687, 86 L.Ed. 1759.

Indictment charging conspiracy against government by fraudulently concealing assets from trustee in bankruptcy was sufficient. Gerson v. U.S., C.C.A.8 (Okla.) 1928, 25 F.2d 49.

In indictment for conspiracy that bankrupt corporation withhold property from trustee, allegation that corporation had been adjudged bankrupt and trustee appointed was not essential. Bartkus v. U.S., C.C.A.7 (Ill.) 1927, 21 F.2d 425. See, also, Steigman v. U.S., N.J.1915, 220 F. 63, 135 C.C.A. 631. Conspiracy 43(6)

Indictment for conspiracy to conceal property of bankrupt's estate from trustee sufficiently described conspiracy. Carter v. U.S., C.C.A.8 (Mo.) 1927, 19 F.2d 431.

Allegation that defendant sold stock at reduced prices and converted proceeds was sufficient allegation of overt act in indictment for conspiracy to conceal assets. Kolbrenner v. U.S., C.C.A.5 (Tex.) 1926, 11 F.2d 754, certiorari denied 46 S.Ct. 489, 271 U.S. 677, 70 L.Ed. 1146.

An indictment charging a conspiracy to conceal assets from a trustee in bankruptcy need not allege an adjudication in bankruptcy. Jollit v. U. S., C.C.A.5 (Ala.) 1922, 285 F. 209, certiorari denied 43 S.Ct. 519, 261 U.S. 624, 67 L.Ed. 832.

An indictment alleging that on or about the 1st day of September, 1920, and continuously during the period from that date to January 3, 1921, the defendants conspired to conceal assets from a trustee in bankruptcy, and alleging overt acts as committed prior to the last-named date, is not objectionable as alleging overt acts which antedated the formation of the conspiracy. Jollit v. U. S., C.C.A.5 (Ala.) 1922, 285 F. 209, certiorari denied 43 S.Ct. 519, 261 U.S. 624, 67 L.Ed. 832.

An indictment under former § 88 of this title [now this section] for conspiracy to conceal assets from a trustee in bankruptcy, need not have alleged that there were other assets of the bankrupts in addition to those delivered to the trustee, or that the conspiracy was continued after adjudication in bankruptcy, which would have been necessary only on the untenable theory that the conspiracy must have been successful. Jollit v. U. S., C.C.A.5 (Ala.) 1922,

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285 F. 209, certiorari denied 43 S.Ct. 519, 261 U.S. 624, 67 L.Ed. 832.

Where the defendants were convicted of having conspired to conceal assets from their trustee in bankruptcy in violation of the Bankruptcy Act, former § 52 of Title 11, and the indictment alleged that in pursuance of such conspiracy the defendants had turned over to a third person a certain check belonging to them, a contention that the indictment did not show that the overt act was done to effect the object of the conspiracy was overruled. Meyer v. U.S., C.C.A.7 (Ill.) 1919, 258 F. 212, 169 C.C.A. 280.

Indictment for conspiracy to conceal assets from trustee in bankruptcy was not subject to motion to quash. Malvin v. U.S., C.C.A.2 (N.Y.) 1918, 252 F. 449, 164 C.C.A. 373, certiorari denied 39 S.Ct. 8, 248 U.S. 564, 63 L.Ed. 423 .

Indictment alleging conspiracy in anticipation of involuntary bankruptcy to conceal from trustee to be appointed merchandise belonging to estate, which alleged concealment after appointment of trustee occurring during period of conspiracy, was not bad for failure to aver overt act within such period, but it was defective in averments of overt acts of concealment which it was not alleged were committed by defendants. U.S. v. Baker, D.C.R.I.1917, 243 F. 741.

In an indictment for conspiracy to conceal property of a bankrupt from the trustee in bankruptcy an allegation that certain property "was thereafter concealed" from the trustee, is ineffective as an averment of an overt act, if it be not alleged that such concealment was by the defendants. U.S. v. Baker, D.C.R.I.1917, 243 F. 741.

An indictment charging conspiracy in anticipation of involuntary bankruptcy, to conceal assets, was sufficient against various objections. U.S. v. Baker, D.C.R.I.1917, 243 F. 741.

An indictment was sufficient to charge conspiracy to receive property of the bankrupt after bankruptcy, contrary to former § 52 of Title 11. Knoell v. U S, C.C.A.3 (Pa.) 1917, 239 F. 16, 152 C.C.A. 66, error dismissed 38 S.Ct. 316, 246 U.S. 648, 62 L.Ed. 920.

An indictment charging that defendants, expecting an involuntary petition in bankruptcy against one of them and appointment of a receiver, conspired to conceal property of the expected bankrupt, and setting forth overt acts done, is sufficient, though not alleging that owner was a bankrupt at the time of conspiracy. Friedman v. U.S., C.C.A.7 (Ill.) 1916, 236 F. 816, 150 C.C.A. 653.

An indictment charging a conspiracy to conceal, contrary to former § 88 of this title [now this section], property belonging to a copartnership which subsequently filed a voluntary petition in bankruptcy, was sufficient. Frankfurt v. U.S., C.C.A.5 (Tex.) 1916, 231 F. 903, 146 C.C.A. 99, certiorari denied 37 S.Ct. 111, 242 U.S. 639, 61 L.Ed. 540.

An indictment for conspiring to conceal bankrupt's property, in violation of Bankruptcy Act, former § 52 of Title 11, was not defective for failure to use the words "knowingly and fraudulently," in view of former § 556 of this title. Tapack v. US, C.C.A.3 (N.J.) 1915, 220 F. 445, 137 C.C.A. 39, certiorari denied 35 S.Ct. 664, 238 U.S. 627, 59 L.Ed. 1495.

A conspiracy by bankrupts to conceal their property from their trustee formed within 30 days of the filing of the petition in bankruptcy, and followed by actual concealment of the property, was an offense which continued to the date of the refusal to turn over the property to the trustee on his election, and an indictment for conspiracy under former § 88 of this title [now this section] properly charged the commission of the offense as of such date. U S v. Stern, E.D.Pa.1911, 186 F. 854, affirmed 193 F. 888, 114 C.C.A. 102.

In such an indictment an averment that a person named was "duly" appointed trustee is sufficient, the matter of

appointment being an incidental matter only, and not a vital element of the crime. Kerrch v. U.S., C.C.A.1 (Mass.) 1909, 171 F. 366, 96 C.C.A. 258, certiorari denied 30 S.Ct. 402, 215 U.S. 602, 54 L.Ed. 344.

An indictment against a bankrupt and others, charging a conspiracy to conceal property, did not charge an offense under former § 88 of this title [now this section] where it showed that the conspiracy was formed and executed prior to the bankruptcy, and did not aver that it was in contemplation of bankruptcy, or that any overt act was committed after the bankruptcy, although it charged a further conspiracy thereafter to continue the concealment. U.S. v. Grodson, N.D.Ill.1908, 164 F. 157.

An indictment for conspiracy to purchase goods and go into bankruptcy, and to conceal the goods, in violation of former § 52 of Title 11 was not insufficient because the conspiracy was formed and the goods were to have been concealed prior to the bankruptcy, where it also averred that it was the intention to continue the concealment thereafter. Alkon v. U.S., C.C.A.1 (Mass.) 1908, 163 F. 810, 90 C.C.A. 116.

An indictment for conspiracy that a corporation as a bankrupt should fraudulently conceal property from its trustee in violation of former § 52 of Title 11, was not insufficient because it charged that the property was removed and concealed prior to the bankruptcy, where it also averred that, with the consent and connivance of defendants, the concealment was continued after the bankruptcy and the appointment of a trustee, and the property was not scheduled by the bankrupt. Cohen v. U.S., C.C.A.2 (N.Y.) 1907, 157 F. 651, 85 C.C.A. 113, certiorari denied 28 S.Ct. 261, 207 U.S. 596, 52 L.Ed. 357.

Conspiracy count of indictment charging that defendants conspired to conceal assets from trustee in bankruptcy was required to be dismissed, where there was no allegation of overt act within limitation period. U. S. v. Stein, E.D.Pa.1966, 249 F.Supp. 873.

Object of agreement must be specifically set forth in indictment charging conspiracy to violate Bankruptcy Act, § 1 et seq. of Title 11. U. S. v. Mathies, W.D.Pa.1962, 203 F.Supp. 797.

An indictment charging a conspiracy to commit an offense against the Bankruptcy Act, former § 52 of Title 11, was not to have been brought under that section but under former § 88 of this title [now this section]. U.S. v. Fraidin, D.C.Md.1945, 63 F.Supp. 271.

In prosecution for conspiracy to violate the Bankruptcy Act, § 1 et seq. of Title 11, indictment alleging that defendants conspired to receive goods from insolvent person without alleging that conspiracy had for its object receipt of goods from insolvent person, as a bankrupt, after filing of proceeding under said sections, did not charge an offense. U.S. v. Cohen, D.C.Mass.1944, 58 F.Supp. 16.

An indictment charging defendant with conspiracy in bankruptcy and with concealment of assets would not be quashed on ground that defendant had never been declared a bankrupt in any bankruptcy proceeding and that no trustee had been appointed for him or on ground that indictment failed to state a crime. U S v. Agresti, E.D.N.Y.1941, 39 F.Supp. 16, affirmed 130 F.2d 152.

An indictment charging a conspiracy to have a bankrupt account for his property by falsely pretending that he had given a valid mortgage thereon to secure a consideration a part of which he should falsely pretend to have been stolen, set out an offense under former § 88 of this title as a conspiracy to attempt to account for property by fictitious losses. U.S. v. Swett, D.C.Me.1879, 28 F.Cas. 3, No. 16427. Bankruptcy 3862

358. Bribery, sufficiency of particular indictments or informations

An indictment charging a conspiracy to defraud the United States, and averring a scheme of resorting to bribery as a way of consummating the conspiracy is not defective as charging a conspiracy to commit the substantive offense

of bribery requiring concerted action. Glasser v. U.S., U.S.Ill.1942, 62 S.Ct. 457, 315 U.S. 60, 86 L.Ed. 680, rehearing denied 62 S.Ct. 629, 315 U.S. 827, 86 L.Ed. 1222, rehearing denied 62 S.Ct. 637, 315 U.S. 827, 86 L.Ed. 1222. Conspiracy 43(10)

Indictment charging defendants with conspiring with others to defraud United States by agreeing to receive bribes from named persons and others as to purchase by government agency of foodstuffs and other merchandise was not indefinite for failure to specify "other" conspirators, vendors and merchandise and, even if indefinite, it was not prejudicial where government did not attempt to prove transactions with vendors other than those named, or sale of merchandise other than foodstuffs, and failed to call any other vendors as witnesses. Harlow v. U. S., C.A.5 (Tex.) 1962, 301 F.2d 361, certiorari denied 83 S.Ct. 25, 371 U.S. 814, 9 L.Ed.2d 56, rehearing denied 83 S.Ct. 204, 371 U.S. 906, 9 L.Ed.2d 167. Criminal Law 1167(1); Indictment And Information 71.4(3)

Indictment charging that appeal agent of local draft board and a third party conspired to ask an inductee for money with intent to influence appeal agent's official action concerning application of inductee for recommendation to the Army for an extension of a furlough pending before inductee's draft board stated a federal offense. Cohen v. U.S., C.C.A.9 (Cal.) 1944, 144 F.2d 984, certiorari denied 65 S.Ct. 440, 323 U.S. 797, 89 L.Ed. 636, order withheld 65 S.Ct. 441, rehearing denied 65 S.Ct. 586, 324 U.S. 885, 89 L.Ed. 1435. Conspiracy 43(6)

Indictment charging that constable received money under agreement to protect another against prosecution was sufficient to charge overt act. Cook v. U.S., C.C.A.8 (Okla.) 1928, 28 F.2d 730. Conspiracy 43(5)

Indictment sufficiently charged defendants with conspiring among themselves and with unknown persons to take bribes. Harvey v. U.S., C.C.A.2 (N.Y.) 1928, 23 F.2d 561. Conspiracy 43(6)

An indictment charging conspiracy to commit offense against the United States in asking for and receiving bribe for not reporting liquor found in search under warrant, alleging in the terms of former section 207 of this title that certain of the defendants were persons "acting for and in behalf of the United States in an official capacity" as federal prohibition agents in the matter of searching certain premises for liquor under search warrant and making report of results to federal prohibition director, was sufficient to show the official capacity in which such defendants acted in entering into the conspiracy. Downs v. U.S., C.C.A.3 (N.J.) 1925, 3 F.2d 855, certiorari denied 45 S.Ct. 509, 268 U.S. 689, 69 L.Ed. 1158.

An indictment charging that one of the defendants agreed with another, who was an officer authorized to make contracts on behalf of United States, to procure funds from manufacturers desiring to sell to United States, and to divide with the defendant officer and other officers, who made contracts with the contributing manufacturers, alleged a true agreement or conspiracy to defraud the United States, within former section 88 of this title [now this section] and not merely an acceptance by the officer of bribes procured by the other defendant. Gouled v. U.S., C.C.A.2 (N.Y.) 1921, 273 F. 506. Conspiracy 43(10)

An indictment which charged a confederated effort to deprive the national government of the right and privilege of proper service in the Department of Agriculture by corrupting an employee of such department, and inducing him to secretly furnish advance information of crop conditions, contrary to the rules of the department, and to issue false reports to the public as to such conditions, charged a conspiracy to defraud the United States under former section 88 of this title [now this section]. U.S. v. Haas, C.C.S.D.N.Y.1908, 163 F. 908. Conspiracy 43(10)

In an indictment under former section 88 of this title [now this section] for conspiracy to defraud the United States by bribing a member of a board of examining surgeons to make a false report to the commissioner of pensions, it was unnecessary to aver that the commissioner had authority to grant pensions, for such authority was given by general statutes, of which the court would take judicial notice. U. S. v. Van Leuven, N.D.Iowa 1894, 62 F. 62.

An indictment charging a conspiracy with intent to defraud the United States by obtaining the dismissal or

discontinuance of certain suits which by law might be brought by the United States, cannot be considered as charging a conspiracy to commit an offense against the United States, to wit, bribery, there being no specific hint of such an offense, except in the allegations of acts done to effect the object of the conspiracy. U. S. v. Milner, C.C.N.D.Ala.1888, 36 F. 890. Conspiracy 43(10)

Where the conspiracy charged was predicted upon an attempted fraud upon the United States by means of the tender of an agreement to pay bribes to "certain federal officials, to wit, the officers of court of the United States," the description of the officials was too indefinite to identify either the agreement or tender. U. S. v. Milner, C.C.N.D.Ala.1888, 36 F. 890.

First count of indictment alleging that object of conspiracy of District Supervisor of Bureau of Motor Carriers, Interstate Commerce Commission, and defendant, who allegedly paid him money, was defrauding of United States in its governmental rights and functions, and particularly of its right to have business of commission conducted honestly and efficiently and to have duties of commission employees, specifically District Supervisor, performed honestly, faithfully, and impartially, free from corruption and improper influence, and that, in effectuating objects of conspiracy, District Supervisor unlawfully and corruptly received money from other defendant for services rendered by District Supervisor, in his official capacity, in assisting in consummation of sale of controlling interest in interstate trucking company operating under jurisdiction of commission, clearly charged conspiracy to defraud United States, though means by which count alleged that conspiracy was effectuated constituted a violation of section 281 of this title making unlawful payment of compensation to employees of the United States in matters affecting the government. U.S. v. Bowles, D.C.Me.1958, 183 F.Supp. 237. Conspiracy 43(10)

Where bribee is an officer of the United States, there is no need for indictment charging a conspiracy to defraud the United States of and concerning governmental functions, to allege that officer was acting in an official capacity, and it is sufficient to allege that the bribe was given with intent to influence the officer to commit or aid in the committing of any fraud on the United States. Buchanan v. New York Cent. R. Co., E.D.Pa.1957, 148 F.Supp. 732.

Count 1 part "B" of indictment charging conspiracy to commit certain offenses against the United States, namely, the crime of bribery in violation of certain statutes, the crime of knowingly making false statements and entries in violation of section 1001 of this title, and the crime of knowingly and fraudulently obtaining from the united States moneys in excess of $100, by means of false and fictitious invoices in violation of section 1003 of this title, the crime of knowingly making false, fictitious, and fraudulent claims on and against the United States in violation of section 287 of this title, and the crime of knowingly and with intent to defraud and mislead, introducing and delivering for introduction into interstate commerce, certain misbranded food in violation of section 331 of Title 21 without giving any details or particulars as to any of such crimes, was legally insufficient. Buchanan v. New York Cent. R. Co., E.D.Pa.1957, 148 F.Supp. 732.

In prosecution for conspiring with another to obtain by offering of a bribe to a United States employee certain property of the United States in violation of existing law, overt acts charged did not remedy the lack of sufficient allegation that the property had in fact been stolen not the total failure to set forth the capacity in which the employee was employed by the United States and hence indictment was insufficient. U. S. v. Numrich, D.C.Mass.1956, 144 F.Supp. 812. Conspiracy 43(5)

Indictment charging that defendants entered into conspiracy to secure contract from airplane builders to make tools and parts for military airplanes which United States government was purchasing under contracts whereby cost to government depended in part on cost of construction, by bribing employee of the builders, charged a conspiracy to defraud the government. U.S. v. Furer, S.D.Cal.1942, 47 F.Supp. 402. Conspiracy 43(10)

359. Census offenses, sufficiency of particular indictments or informations

In an indictment for conspiring with a census enumerator to insert a certain number of false and fictitious names in

the census schedules, it is sufficient to state a few only of the names alleged to have been so wrongfully inserted by the enumerator, as certainty to common intent is all that is required in an indictment for conspiracy. U.S. v. Stevens, D.C.Minn.1890, 44 F. 132. Conspiracy 43(1)

The court granted a motion in arrest of judgment for want of averment of an overt act after conviction on an indictment for conspiracy to make out a false census roll, etc., with intent to defraud the government, without alleging that the defendants did make false roll, etc. U.S. v. Blunt, C.C.N.C.1875, 24 F.Cas. 1183, 7 Chi.Leg.N. 258, No. 14615.

360. Civil rights offenses, sufficiency of particular indictments or informations

Conspiracy count of indictment charging that, under color of law, superintendent of police of town and others had object to subject, or cause to be subjected, "any Negro inhabitant" of United States who sought to lease, occupy, possess, or enjoy access to any property in town, and particularly specified property, to deprivation of any right to do so, defined sufficiently class or group of persons who were to suffer deprivation charged and constituted a charge of conspiracy to commit offense against United States. U. S. v. Konovsky, C.A.7 (Ill.) 1953, 202 F.2d 721. Conspiracy 43(6)

An indictment charging a conspiracy to commit the offense punishable by former section 52 of this title, punishing any one who under color of any law deprives an inhabitant by reason of color or race of any rights secured by the federal Constitution or laws, which alleged that a state law required that the official ballots in a designated part of the state should be arranged in alphabetical order with a designation of the political party, and that sample ballots must be posted before the election, and that in other parts of the state, the supervisors of election might arrange the names of the candidates in any order without party designation and without furnishing sample ballots, that the Legislature in enacting the law intended to give the supervisors of election of the counties where the negro population was large the opportunity to so arrange the ballots as to deprive negro voters of the right to vote, and that defendants by the form of the ballots adopted made it extremely difficult for negro voters to vote their choice at congressional election, etc. - was sufficient as against a demurrer, though it did not allege that the state statute was on its face, directed against negro voters and did not disclose an intent to discriminate against negro voters. U. S. v. Stone, D.C.Md.1911, 188 F. 836. Conspiracy 43(8)

361. Condemnation, sufficiency of particular indictments or informations

Indictment alleging that defendants and others conspired to divert personal use of one or more defendants money, which was paid by Commonwealth of Massachusetts for realty condemned for federal aid highway, in derogation of purposes of federal aid highway program, alleged violation of this section dealing with conspiracy to defraud United States. Harney v. U. S., C.A.1 (Mass.) 1962, 306 F.2d 523, certiorari denied 83 S.Ct. 254, 371 U.S. 911, 9 L.Ed.2d 171. Conspiracy 43(10)

362. Customs violations, sufficiency of particular indictments or informations

An indictment for conspiracy to defraud the United States by means of a false invoice, is sufficient which sets forth such a conspiracy, notwithstanding that it does not set forth the consummation of the fraud not include an allegation that the fraud could have been accomplished, if not detected. U.S. v. Stamatopoulos, C.C.E.D.N.Y.1908, 164 F. 524. See, also, U.S. v. Haas, C.C.N.Y.1908, 163 F. 908. Conspiracy 43(10)

Indictment charging conspiracy extending from February 9, 1930, to August 9, 1931, to violate section 1593(a) of Title 19 becoming effective on June 17, 1930, was not demurrable, since all acts alleged in furtherance of crime charged occurred after effective date of section. Davidson v. U.S., C.C.A.1 (R.I.) 1933, 63 F.2d 90. Conspiracy 43(6)

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Counts charging conspiracy made on board American vessel on high seas to smuggle dutiable or prohibited merchandise into United States were good in substance, in view of former section 88 of this title [now this section]. U.S. v. Tello, D.C.Mass.1925, 6 F.2d 579.

Indictment for conspiracy to defraud the United States out of customs duties on imported coal by false weights was sufficient, in absence of objection before trial or to testimony or request, to limit scope of the charge, although an indictment charging in general terms a conspiracy to defraud the United States would be insufficient to charge a conspiracy to defraud the United States of customs duties in connection with imported coal. Smith v. U.S., C.C.A.9 (Cal.) 1916, 231 F. 25, 145 C.C.A. 213, certiorari denied 37 S.Ct. 19, 242 U.S. 636, 61 L.Ed. 539. Criminal Law 1032(5); Indictment And Information 196(5)

An indictment charging a conspiracy to deposit, conceal, or withdraw goods removed from a warehouse for exportation and to introduce them unconditionally unto the country effecting a surreptitious entry by which the duties would become due instanter, sufficiently charged a crime. U.S. v. Ehrgott, C.C.S.D.N.Y.1910, 182 F. 267.

An allegation of conspiracy to defraud the government of customs duties is sufficiently made in an indictment that alleges conspiracy with respect to merchandise to be imported into the United States without invoicing or entering the same and without paying the duties then and there accruing thereon. U.S. v. White, C.C.S.D.N.Y.1909, 171 F. 775. Conspiracy 43(10)

The allegation in an indictment for conspiracy to defraud the customs revenue, that certain acts were done "to the end that" less than the legal amount of duties should be collected by the collector of customs, was sufficient as an allegation of corrupt and fraudulent intent. Browne v. U.S., C.C.A.2 (N.Y.) 1905, 145 F. 1, 76 C.C.A. 31, certiorari denied 26 S.Ct. 755, 200 U.S. 618, 50 L.Ed. 623. Customs Duties 134

An indictment for conspiracy to defraud the United States of sums to become due to it as customs duties must allege, to some extent at least, the means intended to be used to defraud - as that it was by smuggling, or by forged or false invoices, or the like - although the details of the plan need not be set out, since they may not have been known to the grand jury or to the conspirators themselves. U.S. v. Grunberg, C.C.Mass.1904, 131 F. 137.

In an indictment in a federal court it is not necessary to allege the tenor of an instrument unless it touches the very pith of the crime itself, as in forgery, or counterfeiting, and an indictment for conspiracy to defraud the United States by obtaining the entry of imported merchandise without payment of the legal duty thereon need not allege the tenor of an instrument by means of which, as charge, it was intended to accomplish the fraudulent entry. U.S. v. Doe, N.D.Cal.1904, 127 F. 982.

An indictment charging defendants with unlawfully carrying aboard an exporting carrier for export 20 pounds of platinum without first presenting to Collector of Customs of the Port of Baltimore a license so to do, contrary to requirements of General Regulations of Board of Economic Warfare promulgated pursuant to 50 App. § 701, and with conspiring to commit such acts, was sufficient. U.S. v. Bareno, D.C.Md.1943, 50 F.Supp. 520. War And National Emergency 514

An indictment charging a conspiracy to commit the offense defined and made punishable by former section 120 of this title, was sufficient when it particularized the act as being an agreement between the defendants to conceal and destroy certain described papers relating to the importation of certain merchandise, entered into by the defendants for the purpose of suppressing evidence contained therein of fraud in connection with that importation, though the facts setting forth the object of the conspiracy might not be sufficient to support an indictment laid alleging the commission of the offense. U.S. v. De Grieff, C.C.N.Y.1879, 25 F.Cas. 799, No. 14936.

363. Defrauding United States, sufficiency of particular indictments or informations--Generally

Fact that alleged events included the filing of false statements did not in and of itself make the conspiracy to defraud the United States clause of this section unavailable for indictment alleging a conspiracy fraudulently to obtain services of National Labor Relations Board on behalf of union by filing false non-Communist affidavits. Dennis v. U. S., U.S.Colo.1966, 86 S.Ct. 1840, 384 U.S. 855, 16 L.Ed.2d 973.

An indictment charging that the United States was defrauded by depriving it of its lawful governmental functions by dishonest means charged a "defrauding" within the meaning of former § 88 of this title [now this section] defining the offense of conspiring to defraud the United States. Glasser v. U.S., U.S.Ill.1942, 62 S.Ct. 457, 315 U.S. 60, 86 L.Ed. 680, rehearing denied 62 S.Ct. 629, 315 U.S. 827, 86 L.Ed. 1222, rehearing denied 62 S.Ct. 637, 315 U.S. 827, 86 L.Ed. 1222.

Alleged conspiracy against United States, whereby defendants obstructed governmental function of collecting data and currency transaction reports (CTR) through concealment of transactions over $10,000 from Internal Revenue Service (IRS), was properly charged under defraud clause of conspiracy statute in addition to offense clause, where defendants received specific notice of crimes, defendants' activity was broad in terms of temporal duration, number of events, and variety of crimes implicated, and defendants' duties were not sufficiently technical. U.S. v. Khalife, C.A.6 (Mich.) 1997, 106 F.3d 1300, rehearing and suggestion for rehearing en banc denied, certiorari denied 118 S.Ct. 685, 522 U.S. 1045, 139 L.Ed.2d 632. Conspiracy 43(10)

Prosecution may proceed against defendant under either defraud clause or offense clause, of 18 U.S.C.A. § 371, regardless of whether there is specific statute describing conduct alleged in conspiracy and regardless of whether object of conspiracy was designated a misdemeanor. U.S. v. Harmas, C.A.11 (Fla.) 1992, 974 F.2d 1262.

Indictment which alleged that defendants conspired to commit certain enumerated offenses against the United States and to defraud the United States adequately put defendant on notice that she was charged with conspiring to defraud the United States as well as conspiring to commit the specific offenses. U.S. v. Helmsley, C.A.2 (N.Y.) 1991, 941 F.2d 71, certiorari denied 112 S.Ct. 1162, 502 U.S. 1091, 117 L.Ed.2d 409, denial of post-conviction relief affirmed 985 F.2d 1202, post-conviction relief granted.

Indictment contained sufficiently definite statement of essential facts constituting conspiracy to defraud United States where indictment specified names of three persons alleged to have agreed to defraud United States, at least three overt acts, alleged defendants intended to agree to defraud the United States by impairing the lawful function of the United States District Court, and alleged that agreement to impair functioning of court came in context of specific issue in specific case. U.S. v. Rankin, C.A.3 (Pa.) 1989, 870 F.2d 109, rehearing denied.

Even though indictment count contained language regarding conspiracy "to defraud and mislead" federal and state agencies, indictment charging that defendant conspired to commit offenses against the United States failed to allege conspiracy to defraud the United States, the offense of which defendant was convicted. U.S. v. Haga, C.A.5 (Tex.) 1987, 821 F.2d 1036.

Indictment alleging only that corporation reported as entity on whose behalf currency transfer had been made did little or no business, had few or no assets, and issued stock offering so that defendants could launder money failed to allege crime under statute proscribing defrauding the United States; indictment did not allege scheme to deprive government of tax revenue, and particular activities which were alleged had not been proscribed by criminal statute. U.S. v. Murphy, C.A.9 (Or.) 1987, 809 F.2d 1427.

In considering alleged conspiracy to defraud the United States, court had to be mindful that this section is a broad one, and that there is danger that prosecutors may use it arbitrarily to punish activity not properly within ambit of federal criminal sanction, and thus indictment charging conspiracy had to be carefully scrutinized. U. S. v. Shoup, C.A.3 (Pa.) 1979, 608 F.2d 950.

18 U.S.C.A. § 371

Count of indictment charging two Congressmen and two other defendants with conspiracy to "defraud" the United States was not fatally defective because it failed to charge any false statement, misrepresentation or deceit, where count alleged that as part of conspiracy one of Congressmen was paid to make speech in Congress and to persuade officials of Department of Justice to cause postponement and eventual dismissal of criminal actions then pending against one of the defendants. U. S. v. Johnson, C.A.4 (Md.) 1964, 337 F.2d 180, certiorari granted 85 S.Ct. 703, 379 U.S. 988, 13 L.Ed.2d 609, affirmed 86 S.Ct. 749, 383 U.S. 169, 15 L.Ed.2d 681, certiorari denied 87 S.Ct. 134, 385 U.S. 889, 17 L.Ed.2d 117, certiorari denied 87 S.Ct. 44, 385 U.S. 846, 17 L.Ed.2d 77.

Count of indictment charging two Congressmen and two other defendants with conspiracy to defraud United States and alleging that one of Congressmen was paid to persuade officials of Department of Justice to cause postponement and eventual dismissal of criminal actions then pending against one of defendants was not defective, on ground that it was not within power of Department of Justice to effectuate postponement of trial or dismissal of indictment because that power was solely in court, since decision of Department of Justice to postpone or abandon case has great, if not decisive, influence with court. U. S. v. Johnson, C.A.4 (Md.) 1964, 337 F.2d 180, certiorari granted 85 S.Ct. 703, 379 U.S. 988, 13 L.Ed.2d 609, affirmed 86 S.Ct. 749, 383 U.S. 169, 15 L.Ed.2d 681, certiorari denied 87 S.Ct. 134, 385 U.S. 889, 17 L.Ed.2d 117, certiorari denied 87 S.Ct. 44, 385 U.S. 846, 17 L.Ed.2d 77.

Indictment charging a conspiracy of defendant, with others, to conceal commodities to defraud the government of the tax thereon and charging 16 overt acts was sufficient, notwithstanding that some of the overt acts formed basis of substantive charges in other counts and that some were barred by limitation. Pinkerton v. U. S., C.C.A.5 (Ala.) 1945, 151 F.2d 499, certiorari granted 66 S.Ct. 702, 327 U.S. 772, 90 L.Ed. 1002, affirmed 66 S.Ct. 1180, 328 U.S. 640, 90 L.Ed. 1489, rehearing denied 67 S.Ct. 26, 329 U.S. 818, 91 L.Ed. 697.

An indictment, alleging that city officers and Works Progress Administration employee conspired to use services of laborers employed by such Administration in razing brick structures, purchased by one of such officers, and removing and cleaning bricks and to sell cleaned bricks to city at prices materially exceeding their previous value, charged conspiracy to defraud United States, not to violate Emergency Relief Appropriation Act, Act of Apr. 8, 1935, c. 48, § 9, 49 Stat. 118. U.S. v. Holt, C.C.A.7 (Ind.) 1939, 108 F.2d 365, certiorari denied 60 S.Ct. 616, 309 U.S. 672, 84 L.Ed. 1018, rehearing denied 60 S.Ct. 806, 309 U.S. 698, 84 L.Ed. 1037.

Indictment under former § 88 of this title [now this section], was insufficient to charge conspiracy to defraud United States. Asgill v. U.S., C.C.A.4 (Va.) 1932, 60 F.2d 780. See, also, Stager v. U.S., N.Y.1916, 233 F. 510, 147 C.C.A. 396; U.S. v. Orr, D.C.R.I.1915, 223 F. 220; Houston v. U.S., Wash.1914, 217 F. 852, 133 C.C.A. 562, certiorari denied 35 S.Ct. 284, 238 U.S. 613, 59 L.Ed. 1490. Conspiracy 43(10)

As the offense of conspiring to defraud the United States, in violation of former § 88 of this title [now this section] was complete, though the mode or details of execution were not fully agreed upon, it was impracticable and unnecessary for the indictment to set forth the object of the conspiracy with the same particularity of detail as in cases of completed acts constituting a past offense. U.S. v. Downey, D.C.R.I.1919, 257 F. 364.

While a charge of conspiracy to defraud the United States under former § 88 of this title [now this section] which wholly omitted some essential element of the offense, could not have been aided by the statement of acts done to effect its object, this did not prevent reference to such statement for the purpose of ascertaining the sense in which terms were used in charging the conspiracy. Stearns v. U.S., C.C.A.8 (Minn.) 1907, 152 F. 900, 82 C.C.A. 48.

An indictment under former § 88 of this title [now this section] was sufficient where it charged that the defendants named "unlawfully did conspire to defraud the United States," etc., followed by a statement of the nature and purpose of the conspiracy and the acts done to effect its object, and the use, in connection with the verb "conspire," of other words or phrases of similar import, such as "combine," "confederate," "agree together," or "agree between and among themselves," while usual and proper indictments for conspiracy, was not essential, since such words

add nothing to the meaning expressed by the word "conspire," as defined by lexicographers and as used in said former section, and their omission, if a defect, was one of form only, which did not tend to the prejudice of the defendants, and must therefore be disregarded, under former § 556 of this title. Wright v. U.S., C.C.A.5 (La.) 1901, 108 F. 805, 48 C.C.A. 37, certiorari denied 21 S.Ct. 924, 181 U.S. 620, 45 L.Ed. 1031.

In an indictment for conspiring to defraud, it was sufficient to charge an unlawful combination and agreement as actually made, and, in addition, to describe any act by one of the parties, as an act relied on to show the agreement in operation, without showing how such act would tend to effect the object, or that the object was actually effected. U.S. v. Benson, C.C.A.9 (Cal.) 1895, 70 F. 591, 17 C.C.A. 293. Conspiracy 43(5); Conspiracy 43(10)

Although objects in count alleging conspiracy to commit offense against or defraud United States which tracked "fuzzy" nature of fraud prong of that statute were legally sufficient for purposes of indictment, defendants could not be convicted on basis of acts that did not rise to level of corruption forbidden by statute and Government would be required to make explicit showing in that regard at trial. U.S. v. Recognition Equipment, Inc., D.D.C.1989, 711 F.Supp. 1.

Indictment charging defendant with conspiracy to defraud federal Government need not elaborate as to state law and need not allege identity of public servant to be bribed. U. S. v. Aloi, E.D.N.Y.1977, 449 F.Supp. 698.

Indictment charging a violation of this section was sufficient although it did not allege with technical precision all of the elements of substantive offense alluded to, namely a violation of § 1001 of this title making it a crime to conceal by trick or scheme any material fact from a department or agency of the United States. U. S. v. Patterson, E.D.La.1964, 235 F.Supp. 233.

Charge of conspiracy to defraud the United States is not precluded by fact that indictment as a whole shows that violations of specific statutes are involved. U. S. v. Johnson, D.C.Md.1963, 215 F.Supp. 300.

Indictment charging conspiracy to defraud United States sufficiently informed defendants of nature and cause of accusation, and stated facts sufficient to constitute an offense. U. S. v. Boisvert, D.C.R.I.1960, 187 F.Supp. 781.

In prosecution against corporation, its president and principal stockholder, and its superintendent for conspiracy to commit an offense against or to defraud the United States by applying less paint than was provided for in corporation's subcontract for painting of warehouses being constructed at a military installation of United States, indictment stated sufficient facts to constitute an offense against the United States. U. S. v. Kemmel, M.D.Pa.1958, 160 F.Supp. 718.

Count 1 part "A" of the indictment was sufficient to charge a conspiracy to defraud the United States of and concerning governmental functions. U. S. v. Apex Distributing Co., D.C.R.I.1957, 148 F.Supp. 365.

Counts of indictment charging defendants with conspiracy to commit certain offenses in violation of § 1341 of this title dealing with frauds and swindles, and the commission of certain overt acts in furtherance of conspiracy, were legally sufficient. U. S. v. Sugarman, D.C.R.I.1956, 139 F.Supp. 878.

In prosecution of deputy collector of internal revenue for conspiracy to commit offense or defraud United States, and for failure to collect and pay over tax, the seven overt acts alleged were sufficient to support conspiracy charge. U.S. v. Waldin, E.D.Pa.1956, 138 F.Supp. 791.

Indictment was sufficient to charge a conspiracy to defraud the United States in violation of this section. U S v. Long, D.C.Puerto Rico 1954, 118 F.Supp. 857.

Indictment charging that defendants had conspired to defraud the United States by procuring loans from

Reconstruction Finance Corporation and had, in furtherance of such conspiracy, removed collateral pledged to support the loan was defective for failure to allege overt act to effect the conspiracy, where the loans had been made prior to removal of collateral. U.S. v. McGee, D.C.Wyo.1952, 108 F.Supp. 909. Conspiracy 43(5)

An indictment charging that defendants employed in plant making airplanes for the government absented themselves from work, that some defendants would sign the time cards to make it appear that the absentees were present, and that the payroll would be made up from the cards of the employees and submitted to the United States which would pay the employer, alleged a conspiracy to defraud the United States. Ex parte Graham, E.D.Tex.1944, 58 F.Supp. 576.

An indictment charging that defendants conspired to defraud the United States of money appropriated in connection with the National Industrial Recovery Act, Act of June 16, 1933, c. 90, 48 Stat. 195, by favoring a certain building material and closing specifications with respect to it so that other materials of equal efficiency were excluded, and charging that by means of such exclusion, and by favoring the particular material, larger prices were charged for its use, contained sufficient averments to make the indictment a valid charge. U.S. v. Haskins, W.D.Mo.1941, 40 F.Supp. 219.

The crime of conspiracy to defraud the United States is materially different from the offense of conspiracy as it existed at common law, and every ingredient of the offense must be clearly alleged. U.S. v. De Grieff, C.C.N.Y.1879, 25 F.Cas. 799, No. 14936.

364. ---- Alteration of obligations of United States, defrauding United States, sufficiency of particular indictments or informations

Indictment charging defendant with conspiracy to make counterfeit money was valid even if only hearsay was presented to the grand jury and even if assistant United States Attorney failed to inform grand jury that one of the witnesses against defendant was a heroin addict. U.S. v. Herndon, C.A.8 (Mo.) 1982, 693 F.2d 57.

An indictment charging defendant with passing, uttering and publishing as true certain altered obligations of the United States, to wit, United States internal revenue documentary stamps, and with possession of such altered stamps in violation of former § 265 of this title, and with conspiracy to violate the substantive counts in the indictment, sufficiently charged an offense under said former section making it an offense to falsely alter any "obligation of the United States" with intent to defraud. Roberts v. Hunter, C.C.A.10 (Kan.) 1943, 140 F.2d 38.

365. ---- False affidavits, defrauding United States, sufficiency of particular indictments or informations

Indictment alleging that defendants, unable to secure for their union the benefit of Labor Board process except by submitting non-Communist affidavits, deliberately concocted a fraudulent scheme, and in furtherance of that scheme, some of defendants did in fact submit false affidavits and the union did thereafter use Labor Board facilities made available to them properly charged a conspiracy to defraud the United States. Dennis v. U. S., U.S.Colo.1966, 86 S.Ct. 1840, 384 U.S. 855, 16 L.Ed.2d 973.

366. ---- False and fraudulent claims, defrauding United States, sufficiency of particular indictments or informations

Indictment charging that various university officials agreed that each would use his status as project director at different universities and agencies to insure that others entered into contracts financed by federal government and that their consulting fees would be set at amount which allowed them to skim profits was sufficient to charge violation of federal statute prohibiting conspiracies to "defraud the United States, or any agency thereof in any manner or for any purpose" [18 U.S.C.A. § 371]; while indictment lacked explicit allegations of arrangement for equal dollar payments, conspiracy to defraud United State was alleged, and recitation of overt acts was sufficient to

apprise defendant of facts upon which charges were based. U.S. v. Lane, C.A.9 (Mont.) 1985, 765 F.2d 1376.

In prosecution for conspiracy to violate section 1001 of this title by knowingly making or causing to be made false, fictitious and fraudulent representations in an application to Small Business Administration for the guaranty of a bank loan, it was incumbent upon Government to prove to satisfaction of jury beyond reasonable doubt that alleged coconspirators formed an agreement, however clandestine or informal, to violate section 1001 of this title by the making of false representations in an application to the Small Business Administration concerning a material fact, that is, either (1) the financial condition of the company which was to receive the loan or (2) the intended purposes of the loan, and that someone committed an overt act in furtherance of this object. U. S. v. Kramer, C.A.10 (Colo.) 1975, 521 F.2d 1073, certiorari denied 96 S.Ct. 1104, 424 U.S. 909, 47 L.Ed.2d 313.

Indictment for conspiracy to violate § 287 of this title by presenting claims for education and training allowances to the Veterans Administration knowing them to be false and fraudulent was sufficient. U. S. v. Chicago Professional Schools, Inc., C.A.7 (Ill.) 1961, 290 F.2d 285.

Count charging defendants with conspiracy to submit false claims to federal agency with respect to Federal Housing Administration loans with purpose in mind that money so loaned to various homeowners would not be used for home improvements was not violative of rule prohibiting charges of multiple conspiracies in a single conspiracy count even though there were involved a number of loans to be made to a number of homeowners. Shayne v. U.S., C.A.9 (Cal.) 1958, 255 F.2d 739, certiorari denied 79 S.Ct. 39, 358 U.S. 823, 3 L.Ed.2d 64.

In prosecution for conspiracy to defraud United States by inducing Veterans' Administration through alleged fraudulent representations to guarantee home loan to veteran, receipt by defendant real estate agent of earnest money deposit from veteran and balance of down payment, the signing by sellers of document accepting veteran's purchase offer for home and certain personal property located therein for an additional sum, obtaining as security a second mortgage on real estate and chattel mortgage on personal property and promissory note from veteran conditioned on payment by veteran for personal property were committed in furtherance of general scheme to fraudulently induce Veterans' Administration to guarantee the home loan and supported a conspiracy charge against real estate agent. U. S. v. Aderman, C.A.7 (Wis.) 1951, 191 F.2d 980, certiorari denied 72 S.Ct. 366, 342 U.S. 927, 96 L.Ed. 691, rehearing denied 72 S.Ct. 552, 342 U.S. 950, 96 L.Ed. 706.

Indictment charging a conspiracy to cause lender to make and use false certificate, which certificate defendant real estate dealer knew contained fictitious statements and entries, for purpose of inducing the Veterans' Administration to guarantee a loan to a veteran eligible for such loan and alleging certificate to be false in representing purchase price of property and charging that false certificate was caused to be made and used by lender, knowing it contained fictitious statements and entries, sufficiently showed a violation of law and enabled defendant to know nature and cause of accusation. U. S. v. Aderman, C.A.7 (Wis.) 1951, 191 F.2d 980, certiorari denied 72 S.Ct. 366, 342 U.S. 927, 96 L.Ed. 691, rehearing denied 72 S.Ct. 552, 342 U.S. 950, 96 L.Ed. 706.

In prosecution under this section and § 1010 of this title, making it unlawful knowingly to make or cause to be made false statements to obtain loan intending that it be offered to the Federal Housing Administration for insurance, indictment charging substantive offenses was sufficiently certain to state an offense. Ross v. U. S., C.A.6 (Ohio) 1950, 180 F.2d 160.

Indictment, charging that defendants conspired to cause to be presented for payment a false claim upon the Government, to cause to be made false statements or representations in a matter within the jurisdiction of a department or agency of the United States, and to knowingly and willfully conceal or cover up by a trick, scheme or device a material fact in a matter within the jurisdiction of a department or agency of the United States, and charging certain overt acts, sufficiently charged the offense of conspiring to commit offenses against the United States and doing acts to effect the object of the conspiracy. Chevillard v. U.S., C.C.A.9 (Cal.) 1946, 155 F.2d 929.

18 U.S.C.A. § 371

An indictment under former §§ 80 and 88 [now this section] of this title which alleged that defendants, who were officers of a corporation, prepared a false claim and voucher, which they submitted to an officer of the United States army, was insufficient, because not showing that the officer was clothed with authority to examine and approve the claim and voucher. U.S. v. Christopherson, E.D.Mo.1919, 261 F. 225.

Where it was charged that such defendants made a false claim for furnishing cans of black pepper, which purported to weigh one-quarter of a pound each, when in truth they did not contain one-quarter of a pound of such pepper, the indictment should have clearly shown the exact facts as they existed, and an indictment which merely alleged that the cans purported to weigh one-quarter of a pound, but did not contain that much pepper, was defective, though not fatally defective, because it was obvious that the can or container must have weighed something. U.S. v. Christopherson, E.D.Mo.1919, 261 F. 225.

An indictment for conspiracy to defraud the United States by a false invoice is not vitiated by the particularity with which the overt act is set forth, if the conspiracy of itself be sufficient. U.S. v. Stamatopoulos, C.C.E.D.N.Y.1908, 164 F. 524.

A count in an indictment for conspiracy to defraud the United States, which charges as an overt act done in pursuance of the conspiracy the knowing and willful presentation and payment of false and fraudulent claims, against the United States, is not insufficient because it does not specify the particulars in which such claims were fraudulent, the only purpose of such count being to show that the unlawful agreement was carried into actual operation. U.S. v. Greene, S.D.Ga.1902, 115 F. 343.

In an indictment charging a conspiracy to defraud the United States by aiding in obtaining payment of a false claim, it is not necessary to aver what particular official might have been deceived if the conspiracy had been carried to a successful issue. U.S. v. Newton, S.D.Iowa 1891, 48 F. 218. Conspiracy 43(10)

Allegations that defendants aided and abetted evasion of income and FICA taxes by paying employees of their corporation "off the books" without withholding deductions, provided "off the books" employees with false W-2 forms which were used by employees in filing false federal income tax returns, and filed false Employer's Quarterly Federal Tax Returns with Internal Revenue Service were sufficient to support charge of conspiracy to defraud United States. U.S. v. Standard Drywall Corp., E.D.N.Y.1985, 617 F.Supp. 1283.

Indictment which identified prime contractor, the prime contract, the nature of prime contract, the subcontractor, nature of subcontract, and date on which subcontract was awarded and which contained allegation of conspiracy to make a false claim, identifying the participants and duration of conspiracy and stating that subcontractor was to make the false claim, sufficiently identified false and fraudulent claim and was sufficient to charge commission of offense under this section making it a crime to conspire to commit an offense against or to defraud the United States. U. S. v. Strycker, E.D.Wis.1960, 182 F.Supp. 677.

Indictment charging corporation and three of its officers with conspiracy to commit offense against United States denounced by statutes making it offense to make or use false, fraudulent, or fictitious statements in matters within jurisdiction of Department of Army and to knowingly and wilfully make and present false, fictious and fraudulent claims to Department was insufficient in that it failed to indicate what specific false statements or claims were alleged to have been made or presented or even to indicate transaction or general subject matter in connection with which any false statements or claims were allegedly made or presented and indictment would be dismissed. U.S. v. Devine's Milk Laboratories, Inc., D.C.Mass.1960, 179 F.Supp. 799.

Indictment which charged defendants, who organized and operated five trade schools, with conspiring to defraud Government by fraudulently inflating cost basis of tuition rate and by fraudulently increasing cost to be charged to Veterans' Administration, was sufficient and it was not necessary to allege what acts were done to effect object of conspiracy nor set out all means agreed upon to carry it forward. U. S. v. Weinberg, M.D.Pa.1955, 129 F.Supp.

514, affirmed 226 F.2d 161, certiorari denied 76 S.Ct. 305, 350 U.S. 933, 100 L.Ed. 815.

In indictment charging primarily a conspiracy to commit offenses against the United States by willfully making or presenting false claims in order to defraud the United States, allegation as to bribery of Army inspector, whether alleged as one of many means of effectuating conspiracy or as constituting an essential characteristic of the conspiracy, could in no wise militate against the definite admission by plea of guilty that the conspiracy charged was one primarily to obtain the payment of a knowingly false claim by the United States and that pleading defendants participated in such conspiracy. U. S. v. Ben Grunstein & Sons Co., D.C.N.J.1955, 127 F.Supp. 907.

Indictment charging conspiracy to defraud the United States by causing false claims against the government to be presented was not defective because of absence of allegation of direct contractual relationship between United States and defendant. U. S. v. Gonzales, D.C.Mass.1944, 56 F.Supp. 995.

Indictment charging that employees of shipyard engaged in making ships for United States Navy Department under contracts providing that United States would reimburse shipyard for cost incurred in performing contracts, including cost of labor, conspired to make out false tally sheets on the basis of which they were paid and shipyard was reimbursed, charged offense of conspiracy to defraud United States by causing false claims against government to be presented. U. S. v. Gonzales, D.C.Mass.1944, 56 F.Supp. 995.

367. ---- False entries, defrauding United States, sufficiency of particular indictments or informations

In context of charge of conspiracy to defraud the United States, government adequately alleged and proved interference with lawful government function by individual defendant who acquired semiautomatic rifles on basis of his status as law enforcement officer and then resold rifles to corporate defendant; indictment alleged and government proved that defendants acted in concert so as to interfere with function of Bureau of Alcohol, Tobacco and Firearms in regulating sales of such weapons by providing Bureau with false documents. U.S. v. F.J. Vollmer & Co., Inc., C.A.7 (Ill.) 1993, 1 F.3d 1511, certiorari denied 114 S.Ct. 688, 510 U.S. 1043, 126 L.Ed.2d 655.

In indictment charging that defendants, an owner of a construction company and an employee of a savings and loan association whose accounts were insured by federal agency, conspired to violate § 1006 of this title relating to defrauding federal credit institutions, allegation that employee would approve loans to owner's customers by falsely concealing from officers of association the true facts of the conduct and practice of owner sufficiently charged that defendants conspired that employee would make false entries in books and records of association with intent to defraud the association or to deceive its officers. U. S. v. Spector, C.A.7 (Ill.) 1963, 326 F.2d 345.

368. Election offenses, sufficiency of particular indictments or informations

In an indictment in a federal court for a conspiracy to induce officers of election to omit the duty of safekeeping and delivering to the board of canvassers the poll books, tally sheets, and certificates of votes, it was not necessary to allege or prove the intention of the conspirators to effect the election of the member of Congress who was voted for at that place, the returns of which were in the same poll books, tally sheets, and certificates with those for state officers. Ex parte Coy, U.S.Ind.1888, 8 S.Ct. 1263, 127 U.S. 731, 32 L.Ed. 274.

Indictment charging defendants with conspiracy to violate constitutional rights of qualified voters was not defective on grounds that it alleged in part violation of right not recognized by United States Constitution or that general conspiracy statute had been preempted by specific statute concerning vote fraud. U.S. v. Howard, C.A.7 (Ill.) 1985, 774 F.2d 838.

If indictment for conspiracy to intimidate voter was intended to charge a direct threat to have sentence pronounced, it was argumentative and lacked positiveness. U.S. v. Welch, D.C.R.I.1917, 243 F. 996.

18 U.S.C.A. § 371

An indictment under former § 88 of this title [now this section], for conspiracy to corrupt election for Representative in Congress, was so vague, uncertain, insufficient, and duplicitous as not to sufficiently apprise defendants of the nature of the charge. U.S. v. Gradwell, D.C.R.I.1916, 234 F. 446, affirmed 37 S.Ct. 407, 243 U.S. 476, 61 L.Ed. 857.

Where an indictment charged that the defendants were officers of an election held at a certain precinct in the city of New Orleans on the 17th day of November, A.D. 1882, for a member of congress, and that they, "being then and there officers of said election, with intent then and there to affect said election and its result," "did acts unauthorized, in this: that they, being required to keep a list of the persons then and there voting, and to swear to said list as correct, did then and there add to said list," it was good, and it was unnecessary that there should have been added the words, "which they then and there, as such officers as aforesaid, kept." U.S. v. Bader, C.C.E.D.La.1883, 16 F. 116. Conspiracy 43(11); Elections 328(3)

Indictment charging conspiracy to commit offense against § 250 of Title 2, by making and causing to be made an expenditure and to pay and cause to be paid, certain sums of money to divers persons to vote in a general election at which names of candidates for United States Senate and United States House of Representatives appeared on official printed ballot was sufficient. U.S. v. Blanton, E.D.Mo.1948, 77 F.Supp. 812.

369. Embezzlement, sufficiency of particular indictments or informations

Indictment in which it was alleged that defendant and codefendant conspired to embezzle, steal, purloin, and convert to their own use funds of United States exceeding $100, that defendant diverted federal funds from the Department of Housing and Urban Development (HUD) which were intended for loans to minority owned businesses, that defendant utilized funds to purchase certificates of deposit and arrange lines of credit, that lines of credit were used to make unauthorized loan, and that defendant and codefendant shared proceeds of that unauthorized loan, properly charged conspiracy to commit offense against the United States; indictment specifically alleged that object of conspiracy was embezzlement and theft of federal funds and specifically identified source of those funds as HUD. U.S. v. Hope, C.A.11 (Fla.) 1990, 901 F.2d 1013, certiorari denied 111 S.Ct. 713, 498 U.S. 1041, 112 L.Ed.2d 702.

An indictment that defendants conspired to violate an order of the Director General requiring railroads to sell certain unclaimed freight at public auction to the highest bidder, by delivering certain freight under a corrupt agreement and not at public auction, etc., was insufficient, since the word "delivery" need not import a final disposition, and was consistent with an agreement to sell at public auction and thereafter embezzle the proceeds. U.S. v. U.S. Brokerage & Trading Co., S.D.N.Y.1919, 262 F. 459.

Indictment charging conspiracy to defraud United States by scheme by defendant bridge toll collector to embezzle a part of the tolls paid by motorists using a bridge over a navigable stream and alleging that the city constructed the bridge pursuant to an act of Congress permitting it to collect tolls from the users of the bridge to pay the cost of operation and for amortization of the cost of construction of the bridge failed to charge an offense against the United States, since the offense, if any, of the defendants was against the city and the state of Illinois. U. S. v. Kaiser, S.D.Ill.1960, 179 F.Supp. 545.

370. Escape, sufficiency of particular indictments or informations

Good-faith basis existed to charge prison escapees with conspiracy where all three sought to escape at same place on same day at same time, all three lived in same unit and range at prison and all three worked at same job at same time within prison. U.S. v. Garza, C.A.7 (Ill.) 1981, 664 F.2d 135, certiorari denied 102 S.Ct. 1620, 455 U.S. 993, 71 L.Ed.2d 854.

Indictment alleging conspiracy to commit offense of causing or attempting to cause escape of named prisoners was

insufficient to charge such conspiracy, in view of fact that one of the named prisoners was defendant. Kahl v. U.S., C.A.10 (Okla.) 1953, 204 F.2d 864.

Indictment charging conspiracy to violate former § 753g of this title, pertaining to persons who procure the escape of prisoner properly committed to custody of Attorney General, was sufficient, notwithstanding indictment charged prior conviction of prisoner and that by judgment and sentence he was duly sentenced to imprisonment in Federal Penitentiary, since all those exercising physical custody over him as prisoner were doing so under supervision of Attorney General. Galatas v. U.S., C.C.A.8 (Mo.) 1935, 80 F.2d 15, certiorari denied 56 S.Ct. 574, 297 U.S. 711, 80 L.Ed. 998, certiorari denied 56 S.Ct. 575, 297 U.S. 711, 80 L.Ed. 998. See, also, Farmer v. U.S., 1936, 56 S.Ct. 574, 297 U.S. 711, 80 L.Ed. 998; Mulloy v. U.S., 1936, 56 S.Ct. 575, 297 U.S. 711, 80 L.Ed. 998. Conspiracy 43(6)

An indictment charging that petitioner conspired with his official custodian and another to permit petitioner to escape stated an offense against the United States. Ex parte Lyman, W.D.Wash.1913, 202 F. 303.

Since it is made an offense by federal statute for any person directly or indirectly to aid, abet, or assist another person to escape, and conspiracy to commit such an offense is a separate crime, an indictment, alleging that accused, together with other named persons, conspired to commit an offense against the United States, to wit, to aid, abet, and assist himself to escape from an officer, was not fatally defective on the theory that, inasmuch as there was no law making it an offense for a prisoner to escape or attempt to escape, he could not be guilty of aiding, abetting, or assisting himself to do so. U.S. v. Lyman, D.C.Or.1911, 190 F. 414.

371. Espionage, sufficiency of particular indictments or informations

An indictment averring a conspiracy to violate § 33 of Title 50, by causing insubordination in the military or naval forces of the United States, by means of a pamphlet distributed to persons in part belonging to the military forces, and also to obstruct the recruiting service, etc., was sufficient to charge those offenses. U.S. v. Nearing, S.D.N.Y.1918, 252 F. 223.

In prosecution for conspiracy to violate one of the provisions of § 33 of Title 50, by obstructing recruiting and enlistment service of the United States by means of newspaper articles, indictment was not subject to objection that it was defective, because not alleging that the articles were intended to be publications which defendant might not lawfully publish, or that they were untrue in fact. U.S. v. Prieth, D.C.N.J.1918, 251 F. 946.

The indictment was sufficient, although it did not state names of persons whom conspiracy was designed to induce not to enlist, etc., or allege that names were unknown to grand dury, it being manifest that names of such persons could not be known to grand jury. U.S. v. Prieth, D.C.N.J.1918, 251 F. 946.

372. False personation, sufficiency of particular indictments or informations

In indictment for conspiracy to personate federal officers, time of formation of conspiracy, though not alleged, was sufficiently fixed by overt acts. Heskett v. U.S., C.C.A.9 (Cal.) 1932, 58 F.2d 897, certiorari denied 53 S.Ct. 89, 287 U.S. 643, 77 L.Ed. 556.

In indictment for conspiracy to personate immigrant inspectors, allegation that defendants, in pursuance of conspiracy, twice visited intended victim's residence, was sufficient allegation of overt acts. Heskett v. U.S., C.C.A.9 (Cal.) 1932, 58 F.2d 897, certiorari denied 53 S.Ct. 89, 287 U.S. 643, 77 L.Ed. 556.

An indictment charging a conspiracy that one of the defendants should "unlawfully and feloniously assume and pretend to be" an officer of the United States, and should in such assumed character, with intent to defraud, obtain

from a person named a thing of value described, sufficiently charged that such defendant should "falsely" assume and pretend to be such officer within former § 76 of this title. Ferguson v. U S, C.C.A.8 (N.M.) 1923, 293 F. 361.

373. Food and drug violations, sufficiency of particular indictments or informations

Evidence that defendants provided codefendant with cash that was used to buy food stamps from undercover police officer and that officer saw defendants take food stamps that he had transferred to codefendant was sufficient to sustain convictions of conducting illegal traffic in food stamps. U.S. v. Andrews, C.A.11 (Ala.) 1985, 765 F.2d 1491, rehearing denied 772 F.2d 918, certiorari denied 106 S.Ct. 815, 474 U.S. 1064, 88 L.Ed.2d 789.

Count in economic adulteration case charging violation of provision of Food, Drug, and Cosmetic Act, § 301 et seq. of Title 21, in that defendants conspired to introduce into interstate commerce with intent to defraud and mislead a food which was adulterated within meaning of § 342 of Title 21 did not state an offense in its failure to meet required standards in setting out manner by which specified federal laws had been violated. Van Liew v. U. S., C.A.5 (Tex.) 1963, 321 F.2d 664.

Indictment charging conspiracy to sell a quantity of lysergic acid diethylamide was sufficient to apprise defendants, who made no showing that they had technical knowledge of chemistry which prejudicially misled them into believing that disposition of the acid in the salt form, as opposed to the base form was lawful, that they were being charged with conspiracy to dispose of the acid in either the salt or free base form; the government was not required to prove that confiscated pills, d-lysergic acid diethylamide in the salt form, were in the free base form. U. S. v. Farber, N.D.Cal.1969, 306 F.Supp. 48.

374. Foreign agents, registration of, sufficiency of particular indictments or informations

An indictment for conspiracy to violate Foreign Agents Registration Act, § 612 of Title 22, sufficiently alleged facts from which it affirmatively appeared that federal district court for New Jersey had jurisdiction. U.S. v. German-American Vocational League, C.C.A.3 (N.J.) 1946, 153 F.2d 860, certiorari denied 66 S.Ct. 976, 328 U.S. 833, 90 L.Ed. 1608, certiorari denied 66 S.Ct. 976, 328 U.S. 833, 90 L.Ed. 1609, certiorari denied 66 S.Ct. 977, 328 U.S. 833, 90 L.Ed. 1609, certiorari denied 66 S.Ct. 977, 328 U.S. 834, 90 L.Ed. 1609, certiorari denied 66 S.Ct. 977, 328 U.S. 834, 90 L.Ed. 1610, certiorari denied 66 S.Ct. 978, 328 U.S. 834, 90 L.Ed. 1610.

An indictment for conspiracy to violate the Foreign Agents Registration Act, § 612 of Title 22, and to defraud the United States adequately stated essential elements of crime charged. U.S. v. German-American Vocational League, C.C.A.3 (N.J.) 1946, 153 F.2d 860, certiorari denied 66 S.Ct. 976, 328 U.S. 833, 90 L.Ed. 1608, certiorari denied 66 S.Ct. 976, 328 U.S. 833, 90 L.Ed. 1609, certiorari denied 66 S.Ct. 977, 328 U.S. 833, 90 L.Ed. 1609, certiorari denied 66 S.Ct. 977, 328 U.S. 834, 90 L.Ed. 1609, certiorari denied 66 S.Ct. 977, 328 U.S. 834, 90 L.Ed. 1610, certiorari denied 66 S.Ct. 978, 328 U.S. 834, 90 L.Ed. 1610.

Indictments charging that defendants conspired to transmit information relating to national defense and conspired to act as agents of another nation without prior notification to Secretary of State would not be dismissed on ground that United States placed defendants' alleged coconspirators, who were prospective witnesses, beyond jurisdiction of court without notice to defendants, where there was no proof of suppression of evidence or even existence thereof. U. S. v. Egorov, E.D.N.Y.1964, 232 F.Supp. 732.

Count of indictment charging that defendants conspired to induce United States citizen to act as agent of foreign government without prior notification of Secretary of State adequately alleged that citizen concerned knew of his role as foreign agent. U. S. v. Melekh, N.D.Ill.1961, 193 F.Supp. 586.

375. Forgery, sufficiency of particular indictments or informations

18 U.S.C.A. § 371

Under an indictment charging conspiracy and the substantive offense of altering, forging and uttering certain papers for the purpose of obtaining money from the United States or any of its officers, it is sufficient to authorize a conviction if any one of the named defendants committed the forgery, alteration, and uttering alleged. Morrison v. Hunter, C.C.A.10 (Kan.) 1947, 161 F.2d 723.

376. Gold offenses, sufficiency of particular indictments or informations

Indictment charging a criminal conspiracy to defraud United States in exercise of its governmental functions in that defendants without a license transported and offered to sell and dispose of gold in quantifies in excess of that permitted by gold regulations stated facts sufficient to sustain charge that defendants conspired to defraud the United States, and there was no error in giving such charge even if so much of the indictment was defective as related to a conspiracy to defraud United States due to its failure to allege deceit, craft or trickery, or means that were dishonest. Hunsaker v. U. S., C.A.9 (Or.) 1960, 279 F.2d 111, certiorari denied 81 S.Ct. 52, 364 U.S. 819, 5 L.Ed.2d 49.

An indictment charging defendant and others with conspiring to acquire and transport gold without a license issued by Secretary of Treasury, which did not state facts from which it could be inferred that acquisition or transportation which it charged defendant and others conspired to effect was one for which a license was required, failed to charge a conspiracy to violate § 442 or 443 of Title 31, or any regulation thereunder. Fuller v. U.S., C.C.A.9 (Cal.) 1940, 114 F.2d 698.

An indictment charging defendant and others with conspiring to acquire and transport gold without a license issued by Secretary of Treasury, which failed to charge a conspiracy to violate Gold Reserve Act of 1934, §§ 442 and 443 of Title 31, or any regulation thereunder, could not be upheld on ground that it charged a violation of Trading with the Enemy Act, § 95a of Title 12, and Executive Order issued thereunder, since said section and Executive Order issued thereunder relate to gold coin, gold bullion and gold certificates, and not to gold, as such. Fuller v. U.S., C.C.A.9 (Cal.) 1940, 114 F.2d 698.

A count of an indictment charging a conspiracy to defraud United States by an agreement to effect sale of gold to United States mint by falsely concealing in required affidavit true origin of gold was not insufficient because of absence of allegation that United States suffered pecuniary damage or property loss in purchase, since obstruction of governmental function in purchase of gold was a "fraud" within meaning of former § 88 of this title [now this section]. Hills v. U.S., C.C.A.9 (Cal.) 1938, 97 F.2d 710.

Indictment charging that defendants conspired to violate the Gold Reserve Act of 1934, §§ 440 to 443 of Title 31, and the gold regulations issued and promulgated thereunder, and to defraud the United States in the exercise of its governmental functions regulating the value of money, and to acquire excess quantities of gold and to divert and dispose of the same without an appropriate license sufficiently stated an offense under this section dealing with conspiracy to commit offense or to defraud the United States. U S v. Barrios, S.D.N.Y.1952, 124 F.Supp. 807.

Indictment charging defendant with unlawfully conspiring to commit offenses against the United States by violating Gold Reserve Act of 1934, § 440 et seq. of Title 31, and to defraud United States in exercise of its governmental functions of regulating value of money and controlling acquisition, and custody, of fine gold for industrial, professional and artistic use, without a license issued pursuant to said sections by fraudulently altering gold license, charged a fraud within meaning of this section and it was not necessary to allege or show that there was a loss to United States in the transaction. U.S. v. O'Toole, D.C.R.I.1951, 101 F.Supp. 123.

Indictment charging defendant with unlawfully conspiring to commit offenses against the United States by violating Gold Reserve Act of 1934, § 440 et seq. of Title 31, and regulations promulgated thereunder, was not defective for failure to set forth number of rules and regulations which defendants were alleged to have violated. U.S. v. O'Toole, D.C.R.I.1951, 101 F.Supp. 123.

18 U.S.C.A. § 371

Indictment charging defendants with conspiracy to violate Gold Reserve Act of 1934, § 440 et seq. of Title 31, and rules and regulations promulgated pursuant thereto, was not subject to objection that it charged a conspiracy to violate said sections and rules and regulations issued pursuant thereto for which no punishment was provided by law. U.S. v. O'Toole, D.C.R.I.1951, 101 F.Supp. 123.

377. Housing offenses, sufficiency of particular indictments or informations

Indictment, charging conspiracy to violate National Housing Act, § 1701 et seq. of Title 12, which referred by section number to certain parts of said sections in addition to the penal section directly involved and then attempted an explanation of the regulations and of the practices to be followed in making home modernization loans, was not defective. U.S. v. Groopman, C.C.A.2 (N.Y.) 1945, 147 F.2d 782, certiorari denied 66 S.Ct. 29, 326 U.S. 745, 90 L.Ed. 445.

378. Immigration offenses, sufficiency of particular indictments or informations

Where defendant was observed bringing food into garage and driving persons away from "drop house" in his van and where evidence indicated that defendant had knowledge that illegal aliens were being transported in light of codefendant's arrest for transporting illegal aliens in defendant's vehicle, evidence was sufficient to sustain conviction of conspiracy to smuggle, induce, harbor and transport illegal aliens. U. S. v. Sanchez-Murillo, C.A.9 (Cal.) 1979, 608 F.2d 1314.

Indictment charging defendants with conspiracy to harbor and conceal an alien not lawfully entitled to enter or reside within the United States was sufficient where it alleged agreement between defendants to commit the particular specified offense, contained allegations either expressly or by necessary implication that defendant knowingly, willfully and jointly actually committed the offense so agreed on, and alleged overt acts. Reno v. U. S., C.A.5 (Fla.) 1963, 317 F.2d 499, certiorari denied 84 S.Ct. 72, 375 U.S. 828, 11 L.Ed.2d 60.

Indictment charging conspiracy to conceal, harbor, shield and transport an alien not entitled to enter or reside in the United States charged an offense even though concert of action on part of the illegal alien and defendant was required, where an ingredient was alleged in the conspiracy not present in the completed crime, namely participation of at least one of defendant's co-conspirators in addition to participation of the alien. Reno v. U. S., C.A.5 (Fla.) 1963, 317 F.2d 499, certiorari denied 84 S.Ct. 72, 375 U.S. 828, 11 L.Ed.2d 60.

An indictment for conspiracy to bring into the United States Chinese persons, contrary to the Chinese Exclusion Act, former § 263 et seq. of Title 8, need not allege that the Chinamen intended to be brought in did not belong to the classes excepted. Wing v. U.S., C.C.A.5 (Fla.) 1922, 280 F. 112.

A count charging that defendant and others conspired, in violation of former § 88 of this title [now this section] and Chiness Immigration Act, former § 269 of Title 8, to bring Chinese persons, not lawfully entitled to enter, into the United States, and that in furtherance of the conspiracy one of the defendants delivered to another certain letters containing questions and answers to be used by the applicants, was not defective for failure to allege in detail what defendant did with records which were delivered and contained questions to be used by the applicants. Kaphan v. U.S., C.C.A.9 (Cal.) 1920, 264 F. 323.

A count in an indictment charging that defendant and others conspired, in violation of former § 234 of this title, to conceal, remove, and mutilate public records of an immigration office, and that certain overt acts were committed, including the abstraction of certain official files pertaining to certain Chinese persons, was not defective for failure to allege what defendant did with the files and records, and whether the Chinese persons named therein were entitled to enter. Kaphan v. U.S., C.C.A.9 (Cal.) 1920, 264 F. 323.

An indictment alleging that defendants conspired to secure the approval of the application of a Chinese person

desiring to go abroad for preinvestigation of his claimed mercantile status was, in view of the requirement of the rule of the Department of Labor that application should be made 30 days before proposed departure, and the Chinese Exclusion Acts, insufficient, as it merely alleged defendants knew the applicant had not been a merchant for one year before his application. U.S. v. Fung Sam Wing, N.D.Cal.1918, 254 F. 500.

An indictment under former § 88 of this title [now this section], charging conspiracy to bring into the United States, in violation of § 269 of Title 8, Chinese persons not entitled to enter or remain, was sufficient, though giving the mere outlines of the plot. Lew Moy v. U S, C.C.A.8 (N.M.) 1916, 237 F. 50, 150 C.C.A. 252.

An indictment for conspiracy to bring in Chinese not entitled to enter under Chinese Exclusion Act, former § 263 et seq. of Title 8, charged a general conspiracy, so that names of Chinese need not be given or alleged to be unknown. Dahl v. U.S., C.C.A.9 (Wash.) 1916, 234 F. 618, 148 C.C.A. 384.

Where an indictment alleged that defendants feloniously conspired with divers other persons, whose names were to the grand jurors unknown, to willfully, etc., aid and abet the landing of unknown Chinese persons in the United States from certain vessels, the names of which were to the grand jurors unknown, from ports or places in the empire of China to the grant jurors unknown, etc., and that, to effect the object of such conspiracy, defendant W.D., whose true name was to the grant jurors unknown, did bribe one B., deputy sheriff, in charge of certain Chinese persons whose names were unknown, who had been sentenced to deportation, to cause certain other Chinese persons, whose names were to the grand jurors unknown, to be substituted therefor, etc., it was not defective for failure to allege the detailed facts stated to be unknown. Wong Din v. U.S., C.C.A.9 (Cal.) 1905, 135 F. 702, 68 C.C.A. 340.

An indictment charging a conspiracy to commit the offense of aiding and abetting the landing of Chinese laborers not entitled to enter the United States, by furnishing them with false and fraudulent evidence of identification, was sufficient under former § 88 of this title [now this section]. U.S. v. Wilson, D.C.Or.1894, 60 F. 890. Conspiracy 28(3)

Indictment properly charged defendants with conspiring to defraud United States by interfering with deportation of aliens. U S v. Sotak, M.D.Pa.1933, 2 F.Supp. 323.

379. Interstate commerce offenses, sufficiency of particular indictments or informations

Indictment was sufficient to charge defendants with conspiracy to cause victims of alleged extortion to travel in interstate commerce with intent to promote and facilitate extortion. U. S. v. De Cavalcante, C.A.3 (N.J.) 1971, 440 F.2d 1264.

An indictment for conspiracy to steal goods from a shipment in interstate commerce was not defective merely because it did not allege that a particular defendant took part in overt acts relied on. U.S. v. McCarthy, C.A.2 (N.Y.) 1948, 170 F.2d 267.

In prosecution for conspiracy to interfere with interstate commerce, it was not necessary to allege with technical precision all the elements essential to the commission of the substantive offenses that were the object of the conspiracy. Ladner v. U. S., C.C.A.5 (La.) 1948, 168 F.2d 771, certiorari denied 69 S.Ct. 53, 335 U.S. 827, 93 L.Ed. 381.

An indictment charging dining car employees with conspiring to unlawfully take money from dining cars on trains moving in interstate commerce charges a crime against the United States. Stone v. U.S., C.C.A.9 (Cal.) 1946, 153 F.2d 331.

Indictment which charged that defendants conspired, within jurisdiction of District Court which tried them, to

transport stolen money in interstate commerce, and alleged overt acts committed in furtherance of conspiracy charged an offense over which District Court had jurisdiction, and indictment was therefore not fatally defective though it did not allege transportation of the stolen money from, into, or through the jurisdiction of such courts. Hickok v. Hunter, C.C.A.10 (Kan.) 1945, 150 F.2d 635, certiorari denied 66 S.Ct. 137, 326 U.S. 765, 90 L.Ed. 461.

Indictments, charging carrier's employees with conspiracy to collect for transportation accommodations more than regular fares fixed by tariffs and another employee with collecting for transportation accommodations more than regular fares fixed by tariffs, stated offenses though no participation or connivance by any carrier was alleged. Howitt v. U.S., C.C.A.5 (Fla.) 1945, 150 F.2d 82, certiorari granted 66 S.Ct. 92, 326 U.S. 706, 90 L.Ed. 417, affirmed 66 S.Ct. 923, 328 U.S. 189, 90 L.Ed. 1162.

Indictment for conspiracy to violate law forbidding interstate transportation of prize fight films charged offense against United States. Cullen v. Esola, D.C.Cal.1927, 21 F.2d 877. Conspiracy 43(6)

An indictment under former § 88 of this title [now this section] which alleged that the defendants conspired among themselves "to steal from a certain railroad freight car certain goods then and there moving as and constituting a part of an interstate shipment of freight, with the intent then and there to convert said goods to their own use," was defective as not sufficiently identifying the offense with which the defendants were charged. Anderson v. U. S., C.C.A.8 (Ark.) 1919, 260 F. 557, 171 C.C.A. 341. See, also, Booker v. U.S., Ark.1919, 260 F. 561, 171 C.C.A. 345. Conspiracy 43(6)

An indictment charging that defendants conspired together to violate former § 405 of this title, prohibiting the introduction of prize fight pictures, charged a violation of former § 88 of this title [now this section]. U.S. v. Johnston, N.D.N.Y.1916, 232 F. 970.

In an indictment under former § 88 of this title [now this section] for a conspiracy to commit an offense against the United States, all facts necessary to constitute the conspiracy, including the overt act, must have been averred with all the particularity required in criminal pleadings, but no high degree of particularity was required in describing the offense to which the conspiracy related which was necessarily defined by the statute, and where an indictment charged a conspiracy to induce a shipper to receive rebates from railroad companies in violation of the federal statute, it was not essential to aver the names of such railroad companies which were not known to the grand jury. Thomas v. U.S., C.C.A.8 (Mo.) 1907, 156 F. 897, 84 C.C.A. 477.

Under the Elkins Act, §§ 41 and 42 of Title 49, abolishing imprisonment as a punishment for offenses committed against the acts regulating interstate commerce, an indictment alleging that the agents of a shipper and the agents of a railroad company engaged in interstate commerce stipulated to give and receive rebates on the transportation of sugar from New York to Detroit, and thereafter gave and received such rebates in pursuance of such fraudulent conspiracy, merely alleged a violation of the Interstate Commerce Act, § 1 et seq. of Title 49, and was therefore not sustainable as alleging a conspiracy to commit an offense against the United States. U.S. v. New York Cent. & H.R.R. Co., C.C.S.D.N.Y.1906, 146 F. 298, affirmed 29 S.Ct. 304, 212 U.S. 481, 53 L.Ed. 613, affirmed 29 S.Ct. 309, 212 U.S. 500, 53 L.Ed. 624.

In an indictment for conspiracy to obtain an unlawful discrimination in rates by underweighing, the allegation that the railroad employé therein named was employed by the railroad to weigh the lumber shipped was material, so far as concerned the overt acts of underweighing therein charged, but it was immaterial whether he was generally employed for the purpose. U.S. v. Howell, W.D.Mo.1892, 56 F. 21. Conspiracy 43(5)

Indictment charging that defendants for purpose of bribery conspired to violate statute making it an offense to travel in interstate or foreign commerce or to use any facility in that commerce with the intent of furthering an unlawful activity and if there is in fact a furthering of the unlawful activity or an attempt to do so charged an offense over objection that giver and receiver of bribe cannot be prosecuted for conspiracy because crime of

bribery requires participation of two parties, since indictment did not charge conspiracy to commit bribery. U. S. v. Corallo, S.D.N.Y.1968, 281 F.Supp. 24.

An indictment alleging that defendants entered into an unlawful conspiracy whereby certain defendants would produce excessive amounts of oil from described leases, and that certain other defendants, without authority of Texas Railroad Commission or Federal Tender Board, would cause oil to be manufactured into contraband products and sold in interstate commerce in violation of laws of United States sufficiently charged a "conspiracy" under former § 88 of this title [now this section] to violate Connally Hot Oil Act, §§ 715b, 715d, and 715e of Title 15, it being immaterial that certain allegations of fact were intended to show an unlawful undertaking to commit offenses under former § 80 of this title, concerning presenting false claims against United States. U.S. v. Gilliland, E.D.Tex.1940, 35 F.Supp. 181, probable jurisdiction noted 61 S.Ct. 33, reversed on other grounds 61 S.Ct. 518, 312 U.S. 86, 85 L.Ed. 598.

380. Jury offenses, sufficiency of particular indictments or informations

Defendant was properly charged with conspiring to commit offenses against United States where, under indictment, substantive offenses were offenses of influencing a juror and of impeding justice, and the jurors were not parties to conspiracy. Slade v. U.S., C.C.A.10 (Utah) 1936, 85 F.2d 786.

The averment, in an indictment under former § 88 of this title [now this section], that defendants conspired to commit the "offense of corruptly endeavoring to influence a petit jury of the circuit court of the United States for the district of Oregon in the discharge of its duty," was insufficient, because it omitted any averment of facts constituting the offense for which the conspiracy was formed, by which it could be identified. U.S. v. Taffe, D.C.Or.1898, 86 F. 113. Conspiracy 43(6)

An allegation in an indictment that the defendants intended to influence the jury to return a large verdict in a case brought by the United States to condemn a right of way was insufficient, in failing to state facts showing that the effect of what was intended would have been to defraud the United States. U.S. v. Taffe, D.C.Or.1898, 86 F. 113. Conspiracy 43(10)

381. Labor offenses, sufficiency of particular indictments or informations

Indictment charging conspiracy to defraud the United States in effectuating, on behalf of union, compliance with former subsection (h) of § 159 of Title 29 by means of filing of false non-Communist, affidavits was sufficient. Dennis v. U.S., C.A.10 (Colo.) 1962, 302 F.2d 5.

An indictment for conspiracy to commit an offense against the United States by receiving money and things of value for or on behalf of defendant, the representative of employees employed in an industry affecting interstate commerce, from the employers of such employees, charged an offense. U. S. v. Downes, M.D.Pa.1958, 161 F.Supp. 291.

Indictment charging defendants with conspiracy to defraud United States by fraudulently effecting a compliance with the National Labor Relations Act, § 139(h) of Title 29, requiring non-Communist affidavits, by fraudulently obtaining for union use of facilities of National Labor Relations Board and by perverting and defeating administration of act by Board charged a conspiracy to defraud United States and sufficiently stated an offense against United States. U. S. v. Pezzati, D.C.Colo.1958, 160 F.Supp. 787.

In order that defendants may be held to answer charge of conspiracy to violate Fair Labor Standards Act, § 201 et seq. of Title 29, it must be alleged that employees against whom alleged conspiracy was directed were within coverage of said sections. U.S. v. Berke Cake Co., E.D.N.Y.1943, 50 F.Supp. 947.

18 U.S.C.A. § 371

382. Larceny, sufficiency of particular indictments or informations

Where an indictment averred that defendant, and S. and H. "together with divers other evil-disposed persons," did conspire to steal certain chattels, "the property of and in the possession of the United States," and that thereafter "the said S., together with the said divers other evil-disposed persons," in execution and furtherance of said conspiracy, did unlawfully and feloniously steal, etc., the indictment charged defendant with the conspiracy only, and not with the larceny. U.S. v. Gardner, C.C.N.D.N.Y.1890, 42 F. 829. Conspiracy 43(1)

In an indictment for conspiracy to commit larceny, the averment of the commission of the larceny is an ample averment of an overt act. U.S. v. Gardner, C.C.N.D.N.Y.1890, 42 F. 829. Conspiracy 43(5)

In an indictment for conspiracy, the averment of the commission of larceny, which was the object of the conspiracy, sufficiently charges an overt act in furtherance of the conspiracy. U.S. v. Gardner, C.C.N.D.N.Y.1890, 42 F. 829. Conspiracy 43(5)

383. Liquor offenses, sufficiency of particular indictments or informations--Generally

In indictment for conspiracy to violate National Prohibition Act, former § 1 et seq. of Title 27, and Tariff Act, § 1001 of Title 19, charge of violating treaty with Great Britain, which creates no offense, was surplusage. Ford v. U.S., U.S.Cal.1927, 47 S.Ct. 531, 273 U.S. 593, 71 L.Ed. 793.

An indictment charging a conspiracy to introduce liquors into the Indian country related to intrastate shipments only. Joplin Mercantile Co. v. U.S., U.S.Mo.1915, 35 S.Ct. 291, 236 U.S. 531, 59 L.Ed. 705.

Omission of any averment in indictment charging a conspiracy to introduce liquors into the Indian territory, that the conspiracy was to introduce such liquors from without the state, was not a defect in form to have been ignored under former § 556 of this title. Joplin Mercantile Co. v. U.S., U.S.Mo.1915, 35 S.Ct. 291, 236 U.S. 531, 59 L.Ed. 705.

Indictment charging plan to deceive by use of physicians' prescriptions to cover unlawful sale of liquor charged conspiracy to defraud government in regulating medicinal use of liquor. Wallenstein v. U.S., C.C.A.3 (N.J.) 1928, 25 F.2d 708, certiorari denied 49 S.Ct. 13, 278 U.S. 608, 73 L.Ed. 534.

Indictment charging conspiracy to violate National Prohibition Act, former § 1 et seq. of Title 27, charged offense against United States. U S v. Mayer, D.C.Pa.1927, 22 F.2d 827.

Count in prosecution for conspiracy to violate National Prohibition Act, former § 1 et seq. of Title 27, sufficiently advised defendants of accusation. Olmstead v. U.S., C.C.A.9 (Wash.) 1927, 19 F.2d 842, certiorari denied 48 S.Ct. 117, 275 U.S. 557, 72 L.Ed. 424, 72 L.Ed. 729, rehearing granted 48 S.Ct. 207, 276 U.S. 609, 72 L.Ed. 729, affirmed 48 S.Ct. 564, 277 U.S. 438, 72 L.Ed. 944.

Separate and distinct offenses were charged by counts for conspiracy and possession and manufacture of liquor. Perry v. U.S., C.C.A.8 (Okla.) 1927, 18 F.2d 477.

Indictment for conspiracy to manufacture, unlawfully remove, and dispose of beer was defective in its reference to manufacture, not charged to be unlawful. U.S. v. Eisenminger, D.C.Del.1926, 16 F.2d 816.

Charge of conspiracy to violate National Prohibition Act, former § 1 et seq. of Title 27, is insufficient to charge conspiracy to commit offense against United States. U.S. v. Eisenminger, D.C.Del.1926, 16 F.2d 816.

Indictment for conspiracy to violate National Prohibition Act, former § 1 et seq. of Title 27, by manufacture of

beer, and unlawful removal and disposal thereof, was insufficient. U.S. v. Eisenminger, D.C.Del.1926, 16 F.2d 816 .

An indictment for conspiracy to violate National Prohibition Act, former § 1 et seq. of Title 27, need not allege that liquors were fit, sold, transported, or possessed for beverage purposes. Belvin v. U.S., C.C.A.4 (Va.) 1926, 12 F.2d 548, certiorari denied 47 S.Ct. 98, 273 U.S. 706, 71 L.Ed. 850.

An indictment of master and crew of schooner for acts committed 24 miles off coast did not charge violation of former § 88 of this title [now this section]. U.S. v. Archer, D.C.Ala.1926, 12 F.2d 137.

An indictment for conspiracy to defraud the United States, by having withdrawal permits issued to a druggist in amounts exceeding the quantity to which he is entitled under the conditions and limitations of his basic permit and the department regulations, need not allege the amount to which he would be entitled thereunder. U.S. v. Catrow, D.C.N.Y.1922, 7 F.2d 510.

Conspiracy to commit an offense against United States, within former § 88 of this title [now this section] has been pleaded when it was shown the plan was to violate department rules made to guard against liquor traffic, authority for making which was given by Volstead Act, former § 83 of Title 27, and penalty for violating which was prescribed by former § 85 of Title 27. U.S. v. Catrow, D.C.N.Y.1922, 7 F.2d 510.

Former § 49 of Title 27 was intended to simplify indictments for conspiracy to violate National Prohibition Act, former § 1 et seq. of Title 27. Haynes v. U.S., C.C.A.2 (N.Y.) 1925, 4 F.2d 889, certiorari denied 45 S.Ct. 638, 268 U.S. 703, 69 L.Ed. 1166.

An indictment for conspiracy to unlawfully possess intoxicating liquor containing more than one-half of 1 per centum of alcohol by volume and fit for beverage purposes were sufficient to charge an offense. U.S. v. Bockol, D.C.Del.1924, 3 F.2d 197.

An indictment charging conspiracy under former § 88 of this title [now this section], to manufacture and sell distilled spirits for beverage purposes, was insufficient to charge a violation of the National Prohibition Act, former § 1 et seq. of Title 27, in view of a failure to state that the spirits were fit for beverage purposes. Brauer v. U.S., C.C.A.3 (N.J.) 1924, 299 F. 10. Conspiracy 43(6)

In an indictment charging in separate counts a conspiracy to unlawfully manufacture whisky, to have in possession stills and apparatus designed and intended for the unlawful manufacture of whisky, and to unlawfully furnish, sell, and keep in possession whisky, the words "unlawfully" and "unlawful," in view of National Prohibition Act, former § 49 of Title 27, sufficiently excluded the exceptional cases in which the things charged could lawfully have been done under said section. U.S. v. Jones, E.D.Ill.1924, 298 F. 131.

An indictment for conspiracy to unlawfully manufacture or sell liquor need not allege that it was intended for beverage purposes, in view of National Prohibition Act, former §§ 12 and 49 of Title 27. U.S. v. Jones, E.D.Ill.1924, 298 F. 131.

Indictment charging conspiracy to unlawfully possess Mexican tequila, in violation of National Prohibition Act, former § 1 et seq. of Title 27, alleging that defendants agreed to possess 1,000 quarts of tequila, and that the agreement intended using it for beverage purposes, was sufficient as against contention that indictment did not show that the liquor was intoxicating, or was fit for beverage purposes, or that possession was unlawful, since § 49 of Title 27 made it unnecessary to include defensive negative averments, and since the designation of the liquor as "Mexican tequila" was descriptive merely, and added nothing to and took nothing from the averment that the liquor was intoxicating, and since the averment that the liquor was intended for beverage purposes included averment that it was suitable for such purposes. Powers v. U.S., C.C.A.5 (Tex.) 1923, 294 F. 512.

Insufficiency of an indictment for conspiracy to use nonbeverage alcohol for beverage purposes was not cured by verdict. Brenner v. U.S., C.C.A.2 (N.Y.) 1922, 287 F. 636.

An indictment charging in one count that defendants conspired to violate the National Prohibition Act, former § 1 et seq. of Title 27, in that they "would then and there possess certain intoxicating liquors (describing them), contrary to the provisions of said act," and in the second count that the same persons, at the same time and place "unlawfully and knowingly did possess certain intoxicating liquors" described, was insufficient to charge an offense in either count. Hilt v. U.S., C.C.A.5 (Fla.) 1922, 279 F. 421.

An indictment under former § 88 of this title [now this section], charging conspiracy to violate the National Prohibition Act, former § 1 et seq. of Title 27, and a regulation of the Commissioner of Internal Revenue, charged an offense, since it charged a conspiracy to commit a crime and the violation of the regulation would defraud the United States. Brolaski v. U.S., C.C.A.9 (Cal.) 1922, 279 F. 1, certiorari denied 42 S.Ct. 381, 258 U.S. 625, 66 L.Ed. 797, certiorari denied 42 S.Ct. 589, 259 U.S. 586, 66 L.Ed. 1076.

An indictment for conspiracy to violate the National Prohibition Act, former § 1 et seq. of Title 27, by possessing "certain intoxicating liquors [stating the number of cases], contrary to the provisions of said act," without alleging any facts to show that such possession was unlawful, either on account of the time, place, or purpose of the possession, or the character of the liquor, did not charge an offense. U.S. v. Dowling, S.D.Fla.1922, 278 F. 630.

That some of the defendants charged in an indictment for conspiracy to violate the National Prohibition Act, former § 1 et seq. of Title 27, as shown by the averments were the intended purchasers of the liquor, which purchase is not in itself an offense did not render the indictment demurrable as to such defendants, where the ultimate purpose of the conspiracy as charged, to which such defendants were parties, was to effect the unlawful sale. U S v. Slater, E.D.Pa.1922, 278 F. 266.

Counts of an indictment charging that defendants conspired to possess intoxicating liquor with intent to use, in violation of the National Prohibition Act, former § 1 et seq. of Title 27, and to effect the object of the conspiracy had possession of 600 quarts of liquor with intent so to use it, and conspired to transport intoxicating liquor without permit or without making record, and to effect the object of the conspiracy transported such liquor, were sufficient. Violette v. U.S., C.C.A.9 (Mont.) 1922, 278 F. 163, certiorari denied 42 S.Ct. 382, 258 U.S. 626, 66 L.Ed. 798.

A count charging that defendants conspired to use and sell for beverage purposes a large quantity of distilled spirits manufactured from food, etc., and did make sales between July 1, 1919, and November 15, 1919, was good as charging an offense under the War Prohibition Act (temporary). Maresca v. U.S., C.C.A.2 (N.Y.) 1921, 277 F. 727, certiorari denied 42 S.Ct. 183, 257 U.S. 657, 66 L.Ed. 420.

An indictment under former § 88 of this title [now this section] charging that defendants conspired to violate the National Prohibition Act, former § 1 et seq. of Title 27, "in that they would unlawfully, willfully, and knowingly sell, barter, transport, deliver, furnish, and possess distilled spirits and intoxicating liquors otherwise than as authorized in the aforesaid act, * * * particularly Title 2 thereof" was insufficient, as too indefinite to charge any offense. U S v. Beiner, W.D.Pa.1921, 275 F. 704.

384. ---- Transportation, liquor offenses, sufficiency of particular indictments or informations

Indictment for conspiracy to possess and transport intoxicating liquor was sufficient. Rubio v. U.S., C.C.A.9 (Cal.) 1927, 22 F.2d 766, certiorari denied 48 S.Ct. 213, 276 U.S. 619, 72 L.Ed. 734. See, also, U.S. v. Frank, D.C.R.1926, 12 F.2d 796; Belvin v. U.S., C.C.A.Va.1926, 12 F.2d 548; Ford v. U.S., C.C.A.Cal.1926, 10 F.2d 339, affirmed 47 S.Ct. 531, 273 U.S. 593, 71 L.Ed. 793; U.S. v. Olmstead, D.C.Wash.1925, 5 F.2d 712. Conspiracy 43(6)

Indictment for conspiracy to transport intoxicating liquor must show it was to be fit for beverage purposes. Brown v. U.S., C.C.A.5 (Ga.) 1927, 21 F.2d 827.

An indictment for conspiracy to import or transport intoxicating liquors unlawfully, charging the general purpose and alleging an overt act, is sufficient. U.S. v. Frank, D.C.R.I.1926, 12 F.2d 796.

An indictment charging conspiracy to violate National Prohibition Act, former § 12 of Title 27, through unlawful agreements to possess, sell, transport, store, and deal in intoxicating liquor, and specifying certain overt acts, was sufficient, without charging transportation to be without permit, in view of former § 49 of Title 27, nor was it invalid as charging various separate and distinct offenses in one count. Williams v. U.S., C.C.A.6 (Tenn.) 1925, 3 F.2d 933.

An indictment for conspiracy to possess, sell, and transport intoxicating liquor, sufficiently informed defendant of the nature and cause of the accusation against him, though the persons with whom the accused was alleged to have conspired, alleged in the indictment to be unknown to the grand jury, were known to that body. Leverkuhn v. U.S., C.C.A.5 (Tex.) 1924, 297 F. 590, certiorari denied 45 S.Ct. 91, 266 U.S. 603, 69 L.Ed. 463. See, also, Briggs v. U.S., C.C.A.Tex.1924, 297 F. 593. Conspiracy 43(2)

An indictment charging that defendants did "unlawfully, willfully, and feloniously conspire to commit an offense against the United States, that is, to then and there willfully and unlawfully transport certain intoxicating liquors, to wit, whisky, the said transporting of such intoxicating liquors being then and there prohibited and unlawful," was sufficient to raise the necessary implication that the transportation was without permit. Huth v. U.S., C.C.A.6 (Ky.) 1924, 295 F. 35.

In an indictment for conspiracy unlawfully to purchase and transport intoxicating liquor "without obtaining a permit so to do, that is to say, upon a false, forged, and fictitious permit," the averment quoted was not required to be proved, and was regarded as surplusage, and a prosecution on such indictment was a bar to a prosecution on a second indictment charging the same conspiracy unlawfully to purchase, transport, possess, and sell the liquor for beverage purposes. U.S. v. Weiss, N.D.Ill.1923, 293 F. 992.

An indictment charging that defendants conspired and agreed to unlawfully and willfully violate National Prohibition Act, former §§ 16, 22, and 39 of Title 27, in that two of them would transport intoxicating liquor from Canada to Cleveland and there sell it to the other defendant in violation of such sections, sufficiently charged the violation of law intended without charging that the transportation was to be without a permit, without making a record, etc. De Witt v. U. S., C.C.A.6 (Ohio) 1923, 291 F. 995, certiorari denied 44 S.Ct. 134, 263 U.S. 714, 68 L.Ed. 521.

An indictment alleging that defendants conspired to import into, and to transport within, the United States intoxicating liquors, without a permit to do so, with averment of overt acts, was sufficient under former § 88 of this title [now this section] and the National Prohibition Act, former § 1 et seq. of Title 27. U.S. v. Drawdy, S.D.Fla.1923, 288 F. 567.

In view of Volstead Act, § 12 of Title 27, forbidding the transportation and possession of intoxicating liquor, except as therein authorized, and of regulation No. 60, forbidding the purchasing, etc., for nonbeverage purposes without a permit, an indictment charging conspiracy with F. and others to sell to F. whisky fit for beverage purposes, when defendant had no permit and F. had none to make a further sale, sufficiently charged a conspiracy to commit an offense against the United States, though buying intoxicating liquor is not a crime. U.S. v. Vannatta, E.D.N.Y.1922, 278 F. 559.

In an indictment charging conspiracy, under this section to violate the Reed Amendment (superseded in part), by transporting for beverage purposes intoxicating liquors into a state where the sale of such liquors for that purpose

was prohibited, it was not necessary to charge that the transportation alleged as the overt act was for beverage purposes, since the overt act need not be in itself criminal. Grayson v. U.S., C.C.A.6 (Tenn.) 1921, 272 F. 553, certiorari denied 42 S.Ct. 49, 257 U.S. 637, 66 L.Ed. 409.

A charge of an indictment that the purpose of defendant was to wrongfully, unlawfully, and feloniously transport the liquor was sufficient to import an unlawful motive. Hockett v. U. S., C.C.A.9 (Ariz.) 1920, 265 F. 588, certiorari denied 41 S.Ct. 13, 254 U.S. 638, 65 L.Ed. 451.

The indictment need not allege the place from which the liquors were to have been transported, since that need not have been agreed upon, but the purpose may have been to transport them into the state from any place where they could be procured. Hockett v. U. S., C.C.A.9 (Ariz.) 1920, 265 F. 588, certiorari denied 41 S.Ct. 13, 254 U.S. 638, 65 L.Ed. 451.

In an indictment for conspiracy to ship liquor from California into Washington, in violation of former § 390 of this title, making it an offense to ship any package containing liquor from one state into another, "unless such package be so labeled on the outside cover as to plainly show the name of the consignee, the nature of its contents, and the quantity contained therein," it was not necessary to allege that the state of Washington was dry territory. Richards v. U.S., C.C.A.9 (Wash.) 1920, 264 F. 654.

385. Lottery offenses, sufficiency of particular indictments or informations

The crime of conspiracy to violate lottery laws and lottery statute violations are not so closely connected as to render applicable a proposition that where a concert of action between two or more persons is logically necessary to a crime's completion, a charge of conspiracy will not lie against such persons. Woods v. U.S., C.A.D.C.1956, 240 F.2d 37, 99 U.S.App.D.C. 351, certiorari denied 77 S.Ct. 815, 353 U.S. 941, 1 L.Ed.2d 760, certiorari denied 77 S.Ct. 1385, 354 U.S. 926, 1 L.Ed.2d 1438.

An indictment for conspiracy to carry from one state to another a list of prizes drawn or awarded by lottery in violation of former § 387 of this title did not charge an offense, where transmission of "mutuel prices" was charged and such term was treated as being synonymous with "closing odds" for races, since "closing odds" were not lists of prizes drawn or awarded by lottery within said former section. U.S. v. Regan, N.D.Ill.1940, 39 F.Supp. 309.

386. Money laundering, sufficiency of particular indictments or informations

Allegations in indictment that defendants had knowingly and wilfully conducted financial transactions involving money that one defendant had embezzled from bank at which she was employed over three-year period, the last date of which was within five-year limitations period prior to filing of charges, were sufficient to charge defendants with conspiracy to commit money laundering. U.S. v. Blackwell, D.N.J.1997, 954 F.Supp. 944. Conspiracy 43(6)

387. Narcotics offenses, sufficiency of particular indictments or informations

Indictment for conspiring to violate Opium Act, § 171 et seq. of Title 21, sufficiently informed defendant of nature and cause of accusation. Wong Tai v. U.S., U.S.Cal.1927, 47 S.Ct. 300, 273 U.S. 77, 71 L.Ed. 545.

Conspiracy alleged in indictment had two objectives, namely, possession with intent to distribute cocaine and possession with intent to distribute marijuana; therefore, where defendants did not challenge sufficiency of proof as to marijuana prong of the conspiracy, evidence was sufficient to sustain conviction for the conspiracy itself. U.S. v. Alvarez, C.A.11 (Fla.) 1984, 735 F.2d 461.

Inasmuch as defendant was specifically charged with conspiring to violate § 4705(a) of Title 26 with respect to

narcotic offenses, reference to this section in indictment was miscitation and more specific statute dealing with narcotic offenses was controlling. Tanksley v. U. S., C.A.8 (Minn.) 1963, 321 F.2d 647.

Indictment alleging conspiracy to import marihuana contrary to law and to receive, conceal and sell marihuana, knowing it to have been imported contrary to law, was sufficient to charge conspiracy without specifying respect in which importation was illegal and statute which made it so, where such omissions were not relevant to defense. Williamson v. U. S., C.A.9 (Cal.) 1962, 310 F.2d 192.

In count charging conspiracy to import marihuana contrary to law, conspiracy was gist of crime and it was not necessary to allege with technical precision all elements essential to commission of offense which was subject of conspiracy. Williamson v. U. S., C.A.9 (Cal.) 1962, 310 F.2d 192.

Indictment charging defendant with conspiring to acquire marihuana without paying transfer tax, to transfer marihuana without written order required by §§ 4741, 4742 of Title 26, and to receive, conceal, sell and facilitate transportation, concealment and sale of unlawfully imported marihuana was not defective because of absence of allegations of a conspiracy to commit specifically designated offenses. Schnautz v. U.S., C.A.5 (Tex.) 1959, 263 F.2d 525, certiorari denied 79 S.Ct. 1294, 360 U.S. 910, 3 L.Ed.2d 1260.

Separate indictments for conspiracy to unlawfully import cocaine, to deal in cocaine without registering and paying the special tax, and for importing and dealing in the same without registering and paying the tax, did not charge the same offense, but each a different offense. Vlassis v. U. S., C.C.A.9 (Ariz.) 1925, 3 F.2d 905.

It is not necessary to include in a charge of unlawful importation of opium the names of persons who received the opium from one alleged to be a conspirator, since such receiver is not necessarily one of the conspirators, as, for instance, where he received the opium innocently. Iponmatsu Ukichi v. U.S., C.C.A.9 (Hawai'i) 1922, 281 F. 525, certiorari denied 43 S.Ct. 92, 260 U.S. 729, 67 L.Ed. 485.

An indictment for conspiring to commit the offense of receiving, concealing, buying, selling, and facilitating the transportation, concealment, and sale of opium prepared for smoking and imported from a foreign country was sufficient. Proffitt v. U.S., C.C.A.9 (Cal.) 1920, 264 F. 299.

An indictment charging conspiracy to obtain certain drugs for purposes other than those specified in the statute need not set forth specifically what was the wrongful object or purpose. U.S. v. D'Arcy, D.C.R.I.1916, 243 F. 739.

An indictment charging a similar conspiracy was sufficient to allege the conspiracy to dispose of drugs in the First District of Illinois, in which it was charged that accused's coconspirator was not registered, and not defective for failure to aver the coconspirator had not registered his place of business. Wallace v. U.S., C.C.A.7 (Ill.) 1917, 243 F. 300, 156 C.C.A. 80, certiorari denied 38 S.Ct. 11, 245 U.S. 650, 62 L.Ed. 531.

An indictment charging a conspiracy to violate the Harrison Act, § 2550 et seq. of Title 26, regulating the sale of narcotics, fully informed the defendants of the charge, so as to be sufficient to put them on trial. Thurston v. U.S., C.C.A.5 (Tex.) 1917, 241 F. 335, 154 C.C.A. 215, certiorari denied 38 S.Ct. 9, 245 U.S. 646, 62 L.Ed. 529.

Charging of offenses in the conjunctive which are in the statute in the disjunctive is in accordance with a well-known rule of criminal pleading, and an indictment was sufficient where this method of pleading was adopted in describing, as the offense which the defendants were alleged to have conspired to commit, the offense specified in § 172 et seq. of Title 21, prohibiting the fraudulent importation of opium. Shepard v. U.S., C.C.A.9 (Cal.) 1916, 236 F. 73, 149 C.C.A. 283.

An indictment charging defendant with conspiring to have opium in the possession of M. was insufficient, in absence of a charge that M. had it in his possession for any of the purposes for which he would have to register and

pay the tax. U S v. Jin Fuey Moy, W.D.Pa.1915, 225 F. 1003, affirmed 36 S.Ct. 658, 241 U.S. 394, 60 L.Ed. 1061.

An indictment which expressly alleged that the defendants did wilfully, unlawfully and feloniously conspire together and with divers other persons "to wilfully, fraudulently and knowingly receive and conceal" a certain quantity of opium "which they then and there knew had been imported into the United States contrary to law" sufficiently charged that the overt acts alleged were committed "knowingly, unlawfully and feloniously," and sufficiently alleged a conspiracy to do an unlawful act. Jung Quey v. U.S., C.C.A.9 (Cal.) 1915, 222 F. 766, 138 C.C.A. 314.

Government adequately alleged that conspiracy to interfere with witnesses was single conspiracy, even if various offenses charged as objectives of conspiracy involved murder of individual witnesses or attempts to intimidate or solicit murder of individual witnesses, since government alleged that entire purpose of conspiracy was concealment of conspirator's drug trafficking activities. U.S. v. Johnson, N.D.Iowa 2002, 239 F.Supp.2d 897, reconsideration denied 270 F.Supp.2d 1060. Conspiracy 43(2)

Indictment plainly drawn under this section for alleged conspiracy to buy or distribute narcotics not in or from original stamped package did not allege offense of class defined by § 7237 of Title 26 governing enhanced penalties for second narcotics offenses. U. S. v. Panebianco, E.D.N.Y.1963, 212 F.Supp. 590.

Indictment, charging conspiracy unlawfully to import a narcotic, sufficiently charged commission of an overt act in pursuance of conspiracy. U. S. v. Litterio, S.D.Tex.1957, 153 F.Supp. 329, affirmed 244 F.2d 956, certiorari denied 78 S.Ct. 75, 355 U.S. 849, 2 L.Ed.2d 58, certiorari denied 81 S.Ct. 818, 365 U.S. 852, 5 L.Ed.2d 817, certiorari denied 82 S.Ct. 1153, 369 U.S. 880, 8 L.Ed.2d 282.

An indictment for conspiracy to violate § 3220 of Title 26 by wholesaler's sale of narcotic drugs to physician pursuant to official order form used to obtain drugs for unlawful purpose was not bad as not adequately informing defendant wholesaler of nature and cause of accusation because it left determination of amount of such drugs which may be dispensed by licensees to discretion of court or jury, thereby delegating to them Congress' power to define crime in violation of U.S.C.A.Const. Amends. 5 and 6. U.S. v. Direct Sales Co., W.D.S.C.1941, 40 F.Supp. 917.

Indictment charging that named persons conspired together for the purpose of effecting certain unlawful objects, which were set forth, and charging that certain overt acts were committed in furtherance of the conspiracy was sufficient. U S v. Stromberg, S.D.N.Y.1957, 22 F.R.D. 513.

388. Neutrality laws, sufficiency of particular indictments or informations

An indictment was sufficient to charge a conspiracy to set on foot a "military enterprise" within the meaning of that term as used in former § 25 of this title. U.S. v. Tauscher, S.D.N.Y.1916, 233 F. 597.

An indictment that defendants conspired to set on foot or provide means for a military enterprise against Canada was a mere conclusion, and did not charge a conspiracy to do any acts which would constitute a setting on foot of a military enterprise or a providing of means therefor, nor was it aided by allegations as to defendants' intention, since an attempt to destroy tunnels, etc., was not necessarily a military enterprise, especially as it was not even alleged that the purpose of such destruction was to prevent the transportation of munitions of war. U.S. v. Bopp, N.D.Cal.1916, 230 F. 723.

389. Obstruction of justice, sufficiency of particular indictments or informations

In an indictment charging a conspiracy corruptly and by threats and force to obstruct the due administration of justice in a United States court, the combination of minds for the unlawful purpose and the overt act in effectuation of that purpose must be averred, and it must also be averred and proved that the accused knew that the witness or

officer was a witness or officer in order to convict of the charge of impeding such witness or officer in the discharge of his duty, and the accused should have knowledge or notice or information of the pendency of the proceedings before he can be found guilty of obstructing the same. Pettibone v. U.S., U.S.Idaho 1893, 13 S.Ct. 542, 148 U.S. 197, 37 L.Ed. 419. See, also, Fletcher v. U.S., 1914, 42 App.D.C. 53.

Indictment which charged that defendants "did unlawfully, willfully and knowingly, conspire, combine, confederate, and agree, together and with each other * * * to obstruct the due administration of justice in the federal grand jury investigation" of defendant, sufficiently stated that prosecution was for conspiring to commit offense against United States, as opposed to conspiring to defraud United States. U.S. v. Lahey, C.A.7 (Ind.) 1995, 55 F.3d 1289, rehearing denied. Conspiracy 43(11)

Indictment charging defendant and others with the conspiratorial object and purpose of obstructing justice and stealing government property by obtaining and passing on secret grand jury information, as well as alleged overt act in furtherance of alleged agreement, sufficiently charged the requisite elements of a conspiracy. U.S. v. Jeter, C.A.6 (Ky.) 1985, 775 F.2d 670, certiorari denied 106 S.Ct. 1796, 475 U.S. 1142, 90 L.Ed.2d 341.

Indictment alleging that as a part of a conspiracy defendants would willfully and knowingly endeavor by means of bribery and intimidation to obstruct, delay and prevent the communication of information by named individual relating to violations of specified narcotics statute to special agents of the Federal Bureau of Narcotics and Dangerous Drugs, and that defendants did so, sufficiently alleged both the conspiracy and the substantive offense. U.S. v. Lippman, C.A.6 (Mich.) 1974, 492 F.2d 314, certiorari denied 95 S.Ct. 779, 419 U.S. 1107, 42 L.Ed.2d 803 .

Count of indictment charging two Congressmen and two other defendants with conspiracy to defraud United States of its right to have official business of Department of Justice conducted honestly, to have personnel of Department of Justice free of unlawful, improper, and undue pressure, to have Congressmen free from corruption, and not to be deprived of faithful, loyal and conscientious services of Congressmen was not vague and indefinite. U. S. v. Johnson, C.A.4 (Md.) 1964, 337 F.2d 180, certiorari granted 85 S.Ct. 703, 379 U.S. 988, 13 L.Ed.2d 609, affirmed 86 S.Ct. 749, 383 U.S. 169, 15 L.Ed.2d 681, certiorari denied 87 S.Ct. 134, 385 U.S. 889, 17 L.Ed.2d 117, certiorari denied 87 S.Ct. 44, 385 U.S. 846, 17 L.Ed.2d 77.

Count of indictment charging defendants with conspiracy to obstruct administration of justice was sufficient to authorize conviction notwithstanding the conspiracy was entered into at a time when there was no proceeding pending in federal district court, where the conspiracy continued into a period when there were proceedings pending in that court and acts in furtherance of the conspiracy were committed both prior to and after the commencement of such proceedings. U.S. v. Perlstein, C.C.A.3 (N.J.) 1942, 126 F.2d 789, certiorari denied 62 S.Ct. 1106, 316 U.S. 678, 86 L.Ed. 1752.

Where defendants organized to suppress evidence and to keep persons, who were familiar with operations of still, from disclosing what they knew to any investigating agency, indictment charging conspiracy to obstruct justice could not be defeated on theory that offense, if any, was misprision of felony. U.S. v. Perlstein, C.C.A.3 (N.J.) 1942, 126 F.2d 789, certiorari denied 62 S.Ct. 1106, 316 U.S. 678, 86 L.Ed. 1752.

An indictment charging a conspiracy to defraud the United States of and concerning its governmental function to be honestly and faithfully represented in the courts of the United States by an Assistant United States Attorney to prosecute delinquents for crimes free from corruption, dishonesty, and improper influence, sufficiently apprised defendants of the charge against them with reasonable particularity as to the persons, time, place, and circumstances. U.S. v. Glasser, C.C.A.7 (Ill.) 1940, 116 F.2d 690, certiorari granted 61 S.Ct. 835, 313 U.S. 551, 85 L.Ed. 1515, modified on other grounds 62 S.Ct. 457, 315 U.S. 60, 86 L.Ed. 680, rehearing denied 62 S.Ct. 629, 315 U.S. 827, 86 L.Ed. 1222, rehearing denied 62 S.Ct. 637, 315 U.S. 827, 86 L.Ed. 1222.

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An indictment alleging that defendants conspired to defraud the United States of and concerning its governmental function to be honestly and faithfully represented in the courts of the United States by an Assistant United States Attorney to prosecute delinquents for crimes free from corruption, dishonesty, and improper influence, and that defendants solicited and used money to influence the attorney in his official functions, charged a "conspiracy" to defraud the United States, as against contention that indictment alleged a case where concerted action was necessary and that conspiracy would not lie in such case. U.S. v. Glasser, C.C.A.7 (Ill.) 1940, 116 F.2d 690, certiorari granted 61 S.Ct. 835, 313 U.S. 551, 85 L.Ed. 1515, modified on other grounds 62 S.Ct. 457, 315 U.S. 60, 86 L.Ed. 680, rehearing denied 62 S.Ct. 629, 315 U.S. 827, 86 L.Ed. 1222, rehearing denied 62 S.Ct. 637, 315 U.S. 827, 86 L.Ed. 1222.

An indictment charging a general conspiracy constituting an agreement between a Circuit Judge and an acquaintance by the terms of which, without a time limit, acquaintance should seek out litigants and parties, known or unknown, who were interested in suits then or thereafter pending and in effect represent to each of them that judge would accept money in return for corrupt judicial action by him favorable to the interests of those who paid, charged a conspiracy to obstruct the administration of justice and to defraud the United States as a single continuing offense, and did not charge a number of distinct offenses. U.S. v. Manton, C.C.A.2 (N.Y.) 1939, 107 F.2d 834, certiorari denied 60 S.Ct. 590, 309 U.S. 664, 84 L.Ed. 1012.

Indictment alleging that defendants conspired to endeavor to obstruct, corruptly, due administration of justice in criminal prosecution by stating to defendant therein that for a large sum of money, they would bring about corruptly a dismissal of indictment against him, sufficiently charged acts constituting obstruction to administration of justice. Craig v. U.S., C.C.A.9 (Cal.) 1936, 81 F.2d 816, certiorari dismissed 56 S.Ct. 670, 298 U.S. 637, 80 L.Ed. 1371, certiorari dismissed 56 S.Ct. 671, 298 U.S. 637, 80 L.Ed. 1371, rehearing denied 83 F.2d 450, certiorari denied 56 S.Ct. 959, 298 U.S. 690, 80 L.Ed. 1408, rehearing denied 57 S.Ct. 6, 299 U.S. 620, 81 L.Ed. 457.

Indictment alleging that defendants conspired to endeavor to obstruct, corruptly, due administration of justice by corruptly obtaining dismissal of indictment against another and alleging that conspiracy was to be carried out in certain ways, including payment of $50,000 by the other, alleged completed and unconditional conspiracy, notwithstanding the other did not in fact pay money. Craig v. U.S., C.C.A.9 (Cal.) 1936, 81 F.2d 816, certiorari dismissed 56 S.Ct. 670, 298 U.S. 637, 80 L.Ed. 1371, certiorari dismissed 56 S.Ct. 671, 298 U.S. 637, 80 L.Ed. 1371, rehearing denied 83 F.2d 450, certiorari denied 56 S.Ct. 959, 298 U.S. 690, 80 L.Ed. 1408, rehearing denied 57 S.Ct. 6, 299 U.S. 620, 81 L.Ed. 457.

In indictment charging conspiracy to obstruct due administration of justice in certain prosecution, statements of complete details of plan could not have prejudiced defendants' substantial rights, although complete details were not required to have been alleged. Craig v. U.S., C.C.A.9 (Cal.) 1936, 81 F.2d 816, certiorari dismissed 56 S.Ct. 670, 298 U.S. 637, 80 L.Ed. 1371, certiorari dismissed 56 S.Ct. 671, 298 U.S. 637, 80 L.Ed. 1371, rehearing denied 83 F.2d 450, certiorari denied 56 S.Ct. 959, 298 U.S. 690, 80 L.Ed. 1408, rehearing denied 57 S.Ct. 6, 299 U.S. 620, 81 L.Ed. 457.

Count of indictment charging conspiracy to "defraud" United States was sufficient, where based on giving of false testimony in certain case before grand jury, since government was to be defrauded of doing justice, and defrauding meant by former § 88 of this title [now this section] was not only pecuniary loss but also any defeat of lawful governmental function. Outlaw v. U.S., C.C.A.5 (Tex.) 1936, 81 F.2d 805, certiorari denied 56 S.Ct. 747, 298 U.S. 665, 80 L.Ed. 1389.

Indictment charging conspiracy to obstruct justice by giving certain false testimony before grand jury was sufficient to apprise defendant of charge. Outlaw v. U.S., C.C.A.5 (Tex.) 1936, 81 F.2d 805, certiorari denied 56 S.Ct. 747, 298 U.S. 665, 80 L.Ed. 1389.

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Indictment charging defendants with conspiracy to corruptly administer and procure administration of acts of Congress for promotion of their own political interests and for their financial gain was sufficient to allege conspiracy to defraud. Langer v. U.S., C.C.A.8 (N.D.) 1935, 76 F.2d 817.

Indictment charging conspiracy to institute false prosecution against government witness was sufficient. Harper v. U. S., C.C.A.8 (Ark.) 1928, 27 F.2d 77.

An indictment for conspiracy to violate former § 250 of this title, by extorting money for not informing of a violation of a law of the United States, was sufficient. Roberts v. U.S., C.C.A.9 (Wash.) 1918, 248 F. 873, 160 C.C.A. 631, certiorari denied 38 S.Ct. 583, 247 U.S. 522, 62 L.Ed. 1247.

An indictment under former § 88 of this title [now this section] for conspiring to commit an offense against the United States by obstructing the due administration of justice in a court of the United States, in violation of former § 241 of this title, was good. Wilder v. U.S., C.C.A.4 (W.Va.) 1906, 143 F. 433, 74 C.C.A. 567, certiorari denied 27 S.Ct. 787, 204 U.S. 674, 51 L.Ed. 674. See, also, Sneed v. U.S., C.C.A.Tex.1924, 298 F. 911, 37 A.L.R. 772, certiorari denied 44 S.Ct. 635, 265 U.S. 590, 68 L.Ed. 1195. Conspiracy 34

In prosecution for conspiracy to obstruct justice by influencing petit juror and for corruptly endeavoring to influence juror in discharge of his duty, in view of allegation in indictment that a juror was given $1,000 and "other things of value," government would be directed, on motion, to clarify such vague phrase and provide list of specific items, and to provide dates or approximate dates of "approximately six occasions" on which money was given to juror and to indicate whether allegations in one count were tape recorded or otherwise monitored, and, if so, indicate tape and section thereof on which statement appeared. U.S. v. Osticco, M.D.Pa.1983, 563 F.Supp. 727.

Since defendants were charged with conspiracy to obstruct justice, one defendant's prior conviction of a substantive offense was not an essential element of charge in indictment. U. S. v. Hubbard, D.C.D.C.1979, 474 F.Supp. 64.

Indictment was sufficient to charge defendants with a corrupt endeavor to obstruct justice in relation to Securities and Exchange Commission investigation of, and subsequent agency and judicial proceedings against, named individual and conspiracy to obstruct justice and to defraud the United States, despite contention that the "means" alleged in indictment did not constitute violations of section 1501 et seq. of this title. U. S. v. Mitchell, S.D.N.Y.1973, 372 F.Supp. 1239, appeal dismissed 485 F.2d 1290.

Indictment charging defendants with conspiring to defraud United States and agencies thereof in connection with government's lawful function to have its business and affairs conducted honestly and impartially and free from fraud, undue influence and obstructions; and government's lawful right to have its officers and employees free to transact official business unhindered by exertion on them of dishonest and undue pressure and influence was within prohibition embraced by this section outlawing schemes to defraud United States or to interfere with or obstruct lawful governmental functions by deceit. U. S. v. Sweig, S.D.N.Y.1970, 316 F.Supp. 1148.

Indictment charging defendants with conspiring to defraud United States, to obstruct justice and to commit perjury based on alleged agreement among defendants at a meeting that if they were asked by anyone, including federal grand juries, about nature and circumstances of meeting, they would endeavor to frustrate the inquiry by evasion, silence or lies, alleged criminal offenses and not just a conspiracy to conceal a crime, and indictment was sufficient. U S v. Bonanno, S.D.N.Y.1959, 177 F.Supp. 106, on subsequent appeal 285 F.2d 408.

Indictment charging a conspiracy to obstruct and mislead grand juries to be convened, last overt act in furtherance of which was committed only a few days before filing of indictment, was not deficient because it did not allege that there was a particular grand jury in session at the moment when the alleged conspiracy was formed. U S v. Bonanno, S.D.N.Y.1959, 177 F.Supp. 106, on subsequent appeal 285 F.2d 408.

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A count of indictment, charging that named persons unlawfully conspired to defraud United States in exercise of governmental function of administering and enforcing criminal laws and to influence, obstruct and impede due administration of justice, in violation of § 1503 of this title, prescribing punishment for endeavoring to influence, obstruct or impede administration of justice corruptly or by threats or force, sufficiently charged conspiracy to violate such section. U S v. Brothman, S.D.N.Y.1950, 93 F.Supp. 924.

390. Packers and Stockyards Act, sufficiency of particular indictments or informations

An indictment for conspiracy to violate the Packers and Stockyards Act, § 181 et seq. of Title 7, which did not allege any hearing, finding, or order of the Secretary under §§ 213 to 215 of Title 7 did not charge a conspiracy to commit an offense against the United States within former § 88 of this title [now this section]. U.S. v. Brown, D.C.Okla.1925, 4 F.2d 270.

391. Pensions, sufficiency of particular indictments or informations

An indictment under former § 88 of this title [now this section] was sufficient when it charged that defendants conspired together to fraudulently obtain a pension for one of them in the name of a dead soldier, and that they knowingly caused to be made and presented to the commissioner of pensions a false affidavit in support of a claim for such pension,--an act made criminal by former § 126 of Title 38. U.S. v. Adler, S.D.Iowa 1892, 49 F. 736. Conspiracy 43(10)

392. Perjury and subornation of perjury, sufficiency of particular indictments or informations

Any doubt as to whether the allegations of an indictment charging a conspiracy to suborn the commission of perjury in proceedings to purchase public land under the Timber and Stone Act, § 311 et seq. of Title 43, embrace a conspiracy to suborn perjury in respect to the making of final proofs, as well as in making the original applications, must be resolved in favor of the accused. Williamson v. U.S., U.S.Or.1908, 28 S.Ct. 163, 207 U.S. 425, 52 L.Ed. 278.

The object of the conspiracy is sufficiently charged where the allegations plainly import that the unlawful agreement contemplates a future solicitation of unnamed individuals to enter public lands under the Timber and Stone Act, § 311 et seq. of Title 43, who is so doing will necessarily knowingly state and subscribe under oath, before a named person, stated to be a United States commissioner of the district of Oregon material false statements as to their purpose in respect to entering the land, known to be such by the conspirators. Williamson v. U.S., U.S.Or.1908, 28 S.Ct. 163, 207 U.S. 425, 52 L.Ed. 278.

Indictment charging accuseds with conspiring with others to induce defendants in criminal trial to tell a false story at trial and to impede administration of justice and to suborn perjury was sufficient. U. S. v. Root, C.A.9 (Cal.) 1966, 366 F.2d 377, certiorari denied 87 S.Ct. 861, 386 U.S. 912, 17 L.Ed.2d 784.

Indictment charging conspiracy to impede and obstruct justice by perjury need not allege details of means to be used and precise false testimony to be given. Outlaw v. U.S., C.C.A.5 (Tex.) 1936, 81 F.2d 805, certiorari denied 56 S.Ct. 747, 298 U.S. 665, 80 L.Ed. 1389.

Indictment charging conspiracy to commit offense against United States by violating former § 232 of this title, making penal a subornation of perjury, was not invalid as against contention that inducing by one person of another to swear falsely could not have been conspiracy to violate said former section. Outlaw v. U.S., C.C.A.5 (Tex.) 1936, 81 F.2d 805, certiorari denied 56 S.Ct. 747, 298 U.S. 665, 80 L.Ed. 1389.

Where an indictment charged that defendants willfully, etc., conspired at a particular time and place within the district to suborn certain named persons at a stated time, before one alleged to be the duly appointed, qualified, and

acting register of the land office at R., by applying pursuant to Timber and Stone Act, § 311 et seq. of Title 43, for certain of the public lands of the United States by swearing to and filing with such land officer a statement required by said sections and regulations of the Land Department alleging that the applicant did not apply to purchase for speculation but in good faith and to appropriate to his own exclusive use and benefit, etc.; whereas, in truth the statement was willfully false and intended to be so by each of them, in that it was intended that each should have a distinct agreement with the defendants that the land should be for defendant's benefit, the indictment was not fatally defective for failure to show that the precise piece or pieces of land to be acquired had been agreed on by the alleged conspirators at the time the conspiracy was formed or for failure to allege the persons to be suborned or the particular time and place of such subornation, but the indictment sufficiently stated the offense of conspiracy to defraud the United States denounced by former § 88 of this title [now this section]. Dwinnell v. U.S., C.C.A.9 (Cal.) 1911, 186 F. 754, 108 C.C.A. 624.

An indictment under former § 88 of this title [now this section] for conspiracy to defraud the United States of public lands and to commit an offense against the United States by suborning entrymen to commit perjury in making oath to homestead affidavits, was sufficient. Richards v. U. S., C.C.A.8 (Neb.) 1909, 175 F. 911, 99 C.C.A. 401.

Where an indictment for conspiracy to induce certain persons to commit perjury in the making of public land entries alleged that the acts were knowingly done, and that defendants knew that the entrymen were applying to purchase the lands on speculation, and not in good faith, to appropriate the same to their exclusive use and benefit, the indictment was not fatally defective for failure in terms to allege that such acts were "willfully" committed under former § 556 of this title. Nickell v. U.S., C.C.A.9 (Or.) 1908, 161 F. 702, 88 C.C.A. 562, affirmed 167 F. 741, 93 C.C.A. 229, certiorari denied 29 S.Ct. 699, 214 U.S. 517, 53 L.Ed. 1064.

Where the facts alleged, in an indictment for conspiracy to commit an offense against the United States by subornation of perjury in proceedings to acquire public lands, necessarily import willfulness on the part of the persons giving such testimony, the failure of the indictment to use the word itself is not fatal. Van Gesner v. U.S., C.C.A.9 (Or.) 1907, 153 F. 46, 82 C.C.A. 180.

An indictment charging that defendants unlawfully conspired with another to commit an offense against the United States, by causing the violation of former § 139 of this title, in this: That they induced 21 persons named to obtain certificates of citizenship by means of false statements, made with intent to procure such certificates; that such other party, to effect such object, appeared before the district court of the United States and the superior court of the state, and made certain false statements to such courts, with intent to procure the issuance of such certificates of citizenship under the laws relating to the naturalization of aliens; that such false statements were to the effect that such persons had resided in the state one year at least, which statement was false--did not charge against the defendants any offense against the United States, as an indictment charging a conspiracy to commit an offense against the United States by violation of said former section, must have alleged that the persons who should obtain, accept, or receive certificates of citizenship should do so with knowledge that they had been procured by means of false statements, made with the intent to procure or aid in procuring the issue of such certificates. U.S. v. Melfi, D.C.Del.1902, 118 F. 899.

The indictment did not charge conspiracy to violate former § 142 of this title, as to false swearing in naturalization proceedings. U.S. v. Melfi, D.C.Del.1902, 118 F. 899.

Indictment charging defendants with conspiring to defraud the United States, to obstruct justice, and to commit perjury based on alleged agreement among defendants at a meeting that if they were asked by anyone, including federal grand juries, about nature and circumstances of meeting they would endeavor to frustrate the inquiry by evasion, silence or lies, sufficiently apprised the defendants of what they must prepare to meet, and was not too vague. U S v. Bonanno, S.D.N.Y.1959, 177 F.Supp. 106, on subsequent appeal 285 F.2d 408.

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393. Postal offenses, sufficiency of particular indictments or informations--Generally

An indictment for conspiracy to violate provisions of postal laws relating to salary of postmasters was sufficient. U.S. v. Foster, U.S.Mass.1914, 34 S.Ct. 666, 233 U.S. 515, 58 L.Ed. 1074.

An indictment under former § 88 of this title [now this section], charging conspiracy to violate former § 334 of this title, by sending through the mails indecent matter of a character tending to incite murder and assassination, was sufficient, without setting out the matter. U.S. v. Wells, W.D.Wash.1917, 262 F. 833.

A conspiracy to rob the custodian of certain mail matter was sufficient though it did not (1) state with technical accuracy the relationship of the named custodian to the mail; (2) specify the nature of the mail matter or its destination; (3) allege that the defendants knew the mail was part of the United States mail; (4) allege intent other than by the general averment of wilfulness, or (5) allege the place of the performance of the conspiracy. Vane v. U.S., C.C.A.9 (Idaho) 1918, 254 F. 28, 165 C.C.A. 438.

Under laws then in force defining second-class mail matter, and the rate of postage thereon, an indictment for conspiracy to defraud the United States by securing for papers sent out in addition to the regular circulation the one cent a pound rate instead of the one cent for four ounce rate was insufficient, where it did not allege that the papers were designed primarily for advertising purposes or for free circulation or for circulation at nominal rates. U.S. v. Atlanta Journal Co., C.C.N.D.Ga.1911, 185 F. 656, error dismissed 33 S.Ct. 775, 229 U.S. 605, 57 L.Ed. 1348.

An indictment for conspiracy to commit the offense described in former § 324 of this title, which failed to allege that defendants conspired to "knowingly and wilfully" obstruct or retard the passage of the mails, in the manner set out, was fatally defective. Conrad v. U.S., C.C.A.5 (La.) 1904, 127 F. 798, 62 C.C.A. 478.

Where an indictment for conspiracy to knowingly and wilfully obstruct the passage of the mails was defective for failure to charge that defendants conspired to "knowingly and wilfully" obstruct the mails, the defect was not cured by the allegation that they did "knowingly, unlawfully, and feloniously combine, conspire," etc., to obstruct the mails, or by the part of the indictment charging the overt act alleging that such act was "knowingly and willfully" committed. Conrad v. U.S., C.C.A.5 (La.) 1904, 127 F. 798, 62 C.C.A. 478.

An indictment charging that defendants conspired together to obstruct a mail train must allege that the defendants knew that the mails were carried upon the train which they conspired to obstruct. Salla v. U.S., C.C.A.9 (Idaho) 1900, 104 F. 544, 44 C.C.A. 26.

An indictment charging conspiracy, and overt acts in pursuance thereof, to obstruct the United States mails under former § 324 of this title need not allege that the acts done were done "feloniously," since the offense of obstructing the mails was not a common-law felony. U.S. v. Debs, N.D.Ill.1895, 65 F. 210.

Where an indictment for conspiracy to obstruct the United States mails charged the defendants with the overt acts of retarding the mail trains it was not necessary to charge them with having known at the time that the trains carried the mails. U.S. v. Debs, N.D.Ill.1895, 65 F. 210.

An indictment charging railway officials with conspiring to deceive the postal officers and defraud the United States by sending old newspapers through the mails to increase the mails when they were being weighed was sufficient under former § 88 of this title. U.S. v. Newton, S.D.Iowa 1892, 52 F. 275.

Editorials advocating restoration of celestial or plural marriages because God allegedly has restored the principle thereof did not contain "obscene", "lewd", or "lascivious" matter within former § 334 of this title denouncing as a crime the mailing of such matter and indictment charging conspiracy to commit an offense against the United States by mailing copies of publication containing such editorials did not state a Federal offense. U S v. Barlow,

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D.C.Utah 1944, 56 F.Supp. 795, appeal dismissed 65 S.Ct. 25, 323 U.S. 805, 89 L.Ed. 642.

394. ---- Mail fraud, postal offenses, sufficiency of particular indictments or informations

Upon a charge of conspiracy to commit an offense described in former § 338 of this title, it must have been alleged in the indictment and established by the evidence that the persons charged intended to effect this scheme, by opening or intending to open correspondence with some other person through the post office establishment, or by inciting such other person to open communication with them; and that, in carrying out such scheme, such persons either deposited a letter or packet in the post office, or took or received one therefrom. Stokes v. U.S., U.S.Ala.1895, 15 S.Ct. 617, 157 U.S. 187, 39 L.Ed. 667.

The second requisite of such an indictment, namely, a charge that defendants intended to effect the scheme by opening correspondence with some other person through the post-office department, or by inciting such other person to open communication with them, was sufficiently complied with by an allegation that the post-office establishment of the United States was to be used for the purpose of executing such scheme to defraud, pursuant to said conspiracy, by opening correspondence with said persons, and by inciting said persons to open correspondence with defendants by means of said post-office establishment. Stokes v. U.S., U.S.Ala.1895, 15 S.Ct. 617, 157 U.S. 187, 39 L.Ed. 667. Conspiracy 43(9); Postal Service 48(4.7)

Deficiency in mail fraud conspiracy count of indictment in failing to sufficiently identify underlying mail fraud did not prejudice defendant, and thus did not require reversal of conviction; months before trial, district court decision on defense motion informed defendant that it was necessary to prove for defendant charged inflated rates in order to make alleged kickbacks, documents provided during discovery reveal overcharges that formed basis for conspiracy, and defendant took 24 days to present his defense, thoroughly exploring his involvement. U.S. v. Yefsky, C.A.1 (Mass.) 1993, 994 F.2d 885.

Indictment, alleging agreement among defendants to knowingly and willfully devise and intend to devise scheme to obtain money by means of false and fraudulent pretenses and, for purposes of executing scheme, to knowingly cause to be delivered by mail letters, policies, claims, proofs of losses, and other matters required in processing insurance claims, and, to further execute scheme, to transmit sounds in interstate commerce by means of telephone, and setting out specifics as the overt act committed in furtherance of the conspiracy, sufficiently set forth elements of conspiracy to commit mail fraud and wire fraud. U.S. v. Gordon, C.A.5 (Miss.) 1986, 780 F.2d 1165.

Count of indictment charging conspiracy to defraud by use of United States mails was sufficiently detailed and unambiguous to apprise defendants of the range of activities alleged to be unlawful, including both illegalities related to home repair business and to stock transaction, where any doubt as to interpretation of paragraph that defendants were charged with falsely representing their business and services it would perform prior to inducing victim to buy stock was resolved by portion of indictment setting forth overt acts which referred to business dealings and "checks" received before stock transaction was ever broached. U. S. v. Clark, C.A.7 (Ind.) 1981, 649 F.2d 534.

Claims that indictment was inadequate and duplicitous, that conspiracy count should have been stricken, that motion for bill of particulars should not have been denied, that prior indictment should not have been superseded, that prosecutor was guilty of improper summation, that certain instructions should not have been given and that sentence was improper did not warrant reversal of conviction for using mails to defraud in sale of securities, using mails in furtherance of scheme to defraud and conspiracy. U. S. v. Dinneen, C.A.5 (La.) 1970, 421 F.2d 834, certiorari denied 91 S.Ct. 81, 400 U.S. 840, 27 L.Ed.2d 75.

Indictment was not ambiguous because it charged conspiracy and outlined alleged mail fraud, where indictment charged defendant with having conspired to commit offenses in violation of § 1341 of this title, and indictment was in proper form. Mee v. U. S., C.A.8 (Minn.) 1963, 316 F.2d 467, certiorari denied 84 S.Ct. 1923, 377 U.S. 997,

12 L.Ed.2d 1049, rehearing denied 85 S.Ct. 20, 379 U.S. 873, 13 L.Ed.2d 80.

Where eight-count indictment charged in counts one through seven that defendant's alleged coconspirator had committed mail fraud and had fraudulently concealed and transferred assets in contemplation of bankruptcy and where the last count of indictment charged defendant with conspiracy to commit mail fraud and conspiracy to conceal assets in contemplation of bankruptcy and where last count included charges that defendant had willfully, knowingly, unlawfully and feloniously conspired, combined, and agreed to conceal assets and charged that defendant had endorsed and negotiated a certain check in the sum of $45,000 in furtherance of the illegal object, indictment failed to adequately charge conspiracy to violate mail fraud statute but was legally sufficient to charge defendant with conspiracy to conceal assets in contemplation of bankruptcy. U.S. v. Strauss, C.A.5 (Fla.) 1960, 283 F.2d 155.

Where defendant was not charged with any offenses in the first 12 counts of the indictment charging her codefendants with substantive offenses of using the mails to defraud and using the mails in a scheme to defraud in the sale of securities in interstate commerce but 13th count, charging defendant and codefendants with conspiracy to commit the substantive offenses, realleged and incorporated the first 12 counts of the indictment and designated them as overt acts done in pursuance of and to effect the objects of the conspiracy, and alleged in addition 28 other overt acts, and defendant was named in four of such overt acts, the indictment sufficiently charged defendant with conspiracy. Davenport v. U.S., C.A.9 (Or.) 1958, 260 F.2d 591, certiorari denied 79 S.Ct. 585, 359 U.S. 909, 3 L.Ed.2d 573.

Indictment charging use of mails to effectuate a scheme to defraud and conspiracy to commit such offense was sufficient. Reining v. U.S., C.C.A.5 (Fla.) 1948, 167 F.2d 362, certiorari denied 69 S.Ct. 49, 335 U.S. 830, 93 L.Ed. 383. See, also, Ex parte King, D.C.Ga.1912, 200 F. 622. Conspiracy 43(6); Postal Service 48(4.1)

An indictment charging a scheme to defraud in connection with sale of allegedly potential oil lands and use of mails in furtherance of scheme, and employment of a fraudulent scheme in the sale of securities, and a conspiracy in furtherance of the scheme, was sufficient, where the entire alleged fraudulent scheme was disclosed and the defendants were fully informed of the nature and cause of the accusations against them. Mansfield v. U.S., C.C.A.5 (Tex.) 1946, 155 F.2d 952, certiorari denied 67 S.Ct. 364, 329 U.S. 792, 91 L.Ed. 678.

Indictment, charging use of mails in furtherance of fraudulent scheme which contemplated signing of franchise-holder agreements for electrical directories for hotel lobbies and for conspiracy to commit such offense, was not objectionable on ground that substantial part thereof was surplusage. Marshall v. U.S., C.C.A.9 (Cal.) 1944, 146 F.2d 618.

An indictment charging defendants with using mails to defraud in that they used mails to aid them in conduct of their "I Am movement", in which defendants represented by reason of their high spiritual attainments they had been selected as divine messengers, and thereafter induced persons to give money and property to the movement, and also charged defendants with conspiracy to do such acts, was sufficient. Ballard v. U.S., C.C.A.9 (Cal.) 1943, 138 F.2d 540, certiorari granted 64 S.Ct. 427, 320 U.S. 733, 88 L.Ed. 434, reversed on other grounds 64 S.Ct. 882, 322 U.S. 78, 88 L.Ed. 1148, on remand 152 F.2d 941.

An indictment charging conspiracy to use mails to defraud was not defective because it alleged that defendants conspired at various places within the district of trial court and at places in other districts, since prosecution for conspiracy to use mails to defraud may be maintained in any district where an overt act in furtherance of conspiracy is committed, although prosecution might be held at place of formation of conspiracy, regardless of place of commission of the overt act. Walker v. U.S., C.C.A.9 (Wash.) 1940, 116 F.2d 458.

A count charging that defendants charged in other counts with using United States mails to promote frauds, conspired to commit an offense against the United States, was sufficient, notwithstanding failure to charge that

defendants conspired to use the mails. U.S. v. Womack, C.C.A.7 (Ill.) 1938, 98 F.2d 742.

Indictment for using mails to defraud and for conspiracy was not defective for failure to set forth terms of letters. U.S. v. Herzig, D.C.N.Y.1928, 26 F.2d 487.

Indictment for conspiracy to use mails to defraud by sale of securities, alleging scheme to hold corporation out as owner of lands, that defendants represented themselves as owners, and that corporation was not owner, was not invalid for "repugnancy." Sunderland v. U.S., C.C.A.8 (Neb.) 1927, 19 F.2d 202.

In indictment for conspiracy and use of mails to defraud by sales of corporate bonds, allegations as to individual defendants' ownership of land was surplusage, and instruction so to treat it not in effect amendment of indictment. Mathews v. U.S., C.C.A.8 (Neb.) 1926, 15 F.2d 139.

Scheme alleged in indictment for conspiracy and using mails to defraud in selling mortgage company stock at prices in excess of its value, was sufficiently definite, and constituted fraudulent scheme contemplated by former § 338 of this title. Scheib v. U.S., C.C.A.7 (Ind.) 1926, 14 F.2d 75, certiorari denied 47 S.Ct. 95, 273 U.S. 700, 71 L.Ed. 847, certiorari denied 47 S.Ct. 95, 273 U.S. 701, 71 L.Ed. 847, certiorari denied 47 S.Ct. 95, 273 U.S. 701, 71 L.Ed. 848, certiorari denied 47 S.Ct. 113, 273 U.S. 718, 71 L.Ed. 856.

In prosecution under former §§ 88 [now this section] and 338 of this title for scheme to defraud in sale of mortgage company stock by use of mails, it was not necessary that indictment set out or describe letters charged to have been mailed. Scheib v. U.S., C.C.A.7 (Ind.) 1926, 14 F.2d 75, certiorari denied 47 S.Ct. 95, 273 U.S. 700, 71 L.Ed. 847, certiorari denied 47 S.Ct. 95, 273 U.S. 701, 71 L.Ed. 847, certiorari denied 47 S.Ct. 95, 273 U.S. 701, 71 L.Ed. 848, certiorari denied 47 S.Ct. 113, 273 U.S. 718, 71 L.Ed. 856.

Allegation that fraudulent scheme was to be effected by use of mails was unnecessary, in prosecution for violation of former § 338 of this title against fraudulent use of mails. Tincher v. U.S., C.C.A.4 (W.Va.) 1926, 11 F.2d 18, certiorari denied 46 S.Ct. 475, 271 U.S. 664, 70 L.Ed. 1139.

Indictment charging defendants with having devised a scheme to defraud and obtain money by false pretenses, and for purpose of executing it with having deposited in and received from the mails letters, certificates, and the like, and charging in usual language conspiracy to commit crimes and offenses already charged, was sufficient under former § 88 [now this section] and § 338 of this title. Tank v. U.S., C.C.A.7 (Wis.) 1925, 8 F.2d 697.

In prosecution under former § 88 of this title [now this section], for conspiracy to use mails to defraud, contrary to former § 338 of this title, count of indictment, charging overt act in district in which conspiracy was claimed to have been formed and in which venue was laid, was not indefinite for charging conspiracy at many different places to violate said former section. Morris v. U. S., C.C.A.8 (Ark.) 1925, 7 F.2d 785, certiorari denied 46 S.Ct. 205, 270 U.S. 640, 70 L.Ed. 775.

In indictment under former § 88 of this title [now this section], for conspiracy to defraud by use of mails, contrary to former § 338 of this title, it was not necessary that overt acts charged have been effective in execution of scheme. Morris v. U. S., C.C.A.8 (Ark.) 1925, 7 F.2d 785, certiorari denied 46 S.Ct. 205, 270 U.S. 640, 70 L.Ed. 775.

In an indictment for conspiracy to use the mails to defraud, the intention to commit the offense prohibited by former § 338 of this title, must have been averred. U. S. v. Morse, D.C.Conn.1923, 287 F. 906.

In an indictment for conspiracy to use the mails to defraud, allegations, as overt acts, of the mailing of letters, should allege that they were "to be sent or delivered by the post office establishment of the United States." U. S. v. Morse, D.C.Conn.1923, 287 F. 906.

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An indictment for conspiracy to commit the offense of using the mails to defraud, as defined in former § 338 of this title, sufficiently charged the intended use of the mails to effect the object of the conspiracy. Riddle v. U. S., C.C.A.5 (Ala.) 1922, 279 F. 216, certiorari denied 42 S.Ct. 589, 259 U.S. 586, 66 L.Ed. 1077.

An indictment under former § 88 of this title [now this section] for conspiring to use the mails to defraud, charging that defendants devised a scheme to sell stock of a copper company, that false representations were made, that they used the mails in distributing letters and circulars containing such representations, that they contracted with a stock brokerage firm for sale of such stock, and that a certain defendant had paid another defendant money for securing his aid was sufficient. Tjosevig v. Boyle, C.C.A.9 (Wash.) 1920, 268 F. 813.

An indictment setting forth fraudulent representations to induce the purchase of mining stock which representations were known to the defendants to be false and fraudulent and that to effect the object of the scheme the defendants placed or caused to be placed certain letters in the mail which letters are set forth, was sufficient under former § 88 of this title [now this section]. Rowe v. Boyle, C.C.A.9 (Wash.) 1920, 268 F. 809, certiorari denied 41 S.Ct. 218, 254 U.S. 656, 65 L.Ed. 460.

An indictment under former §§ 88 [now this section] and 338 of this title, charging conspiracy to violate and violation of said former § 338 sufficiently alleged that letters were mailed for purpose of executing scheme; that matters stated in mail had power to effect object of conspiracy; and was not bad for failure to set out contract with the victims or that such contract was made, nor for failure to state that collection agency through which defendants realized on scheme was corporation, etc., or show relation of defendants to agency. Preeman v. U.S., C.C.A.7 (Ill.) 1917, 244 F. 1, 156 C.C.A. 429, certiorari denied 38 S.Ct. 12, 245 U.S. 654, 62 L.Ed. 533.

Indictment for conspiracy to use mails in furtherance of scheme to defraud was good against objection that charges as to use of post office could not strengthen the charge of conspiracy. McKelvey v. U.S., C.C.A.9 (Cal.) 1917, 241 F. 801, 154 C.C.A. 503.

Allegation in indictment for conspiracy to defraud the state of South Dakota "and divers persons to the grand jury unknown" in the filing of animal bounty claims under Act S.D. March 3, 1905, Laws 1905, c. 177, in so far as it charged a scheme to defraud unknown persons might be rejected as surplusage. Fall v. U.S., C.C.A.8 (S.D.) 1913, 209 F. 547, 126 C.C.A. 369.

An indictment under former § 88 of this title [now this section] for conspiracy to use the mails to defraud, need not have charged that the defendants conspired and did commit the offense of attempting to defraud, if the facts set out showed that they actually tried to carry out a scheme to defraud by the use of mails. U. S. v. Maxey, E.D.Ark.1912, 200 F. 997.

An indictment for conspiring to defraud by means of the post office establishment was not fatally defective because the intent to defraud was charged in the description, as distinguished from the charging part, of the indictment. U. S. v. Maxey, E.D.Ark.1912, 200 F. 997.

Where an indictment for conspiracy to further a scheme to defraud by means of the post office establishment stated an offense under former § 338 of this title, it was immaterial that it recited that the facts showed a violation of that section, which had not gone into effect when the conspiracy was formed. Ex parte King, N.D.Ga.1912, 200 F. 622.

An indictment for conspiracy to defraud by use of the post office establishment was not defective for failing to allege that it was part of the conspiracy to place or cause to be placed letters and circulars in the United States post office. Emanuel v. U.S., C.C.A.2 (N.Y.) 1912, 196 F. 317, 116 C.C.A. 137.

Where an indictment charged a conspiracy to devise a scheme to defraud in the sale of corporate stock and to have furthered such scheme by opening correspondence through the mail, it sufficiently charged a conspiracy to commit

an offense against the United States. Wilson v. U.S., C.C.A.2 (N.Y.) 1911, 190 F. 427, 111 C.C.A. 231.

An indictment, under former § 88 of this title [now this section] for conspiracy to commit an offense under former § 338 of this title, by devising a scheme to defraud intended to be carried out by the use of the mails, must have charged a conspiracy to commit acts which, if committed, would constitute an offense under the latter section, but it need not have charged separately that defendants specifically conspired to commit each element of the defense. McConkey v. U.S., C.C.A.8 (Minn.) 1909, 171 F. 829, 96 C.C.A. 501.

Where defendants were indicted for conspiracy to devise a scheme and artifice to defraud by using the mails in violation of former § 338 of this title, a demurrer was sustained because there was not in the overt acts charged in the indictment anything germane to the subject of the alleged fraud. U.S. v. McLaughlin, D.C.Minn.1908, 169 F. 302.

In an indictment for conspiracy to use the mails to carry out a scheme to defraud, the names of as many persons defendant planned to defraud may be used in the indictment as the pleader may know, and all mail connected with the scheme, shown to have passed through the post office to any person whether named in the indictment or not, is evidence upon the question of the existence of the scheme. US v. Marrin, E.D.Pa.1908, 159 F. 767, affirmed 167 F. 951, 93 C.C.A. 351, certiorari denied 32 S.Ct. 523, 223 U.S. 719, 56 L.Ed. 629.

While, in an indictment, under former § 88 of this title [now this section] for a conspiracy to use the mails to defraud, a fraudulent purpose must have been averred and proved, and where a purpose to defraud two jointly was charged, it must have been proved as laid, where the sending of individual letters to parties named was charged in different counts, an averment in general terms of an intent to defraud these parties did not necessarily import that the conspiracy contemplated a joint defrauding of the whole number named, the parties not being jointly interested in the property which it was the aim to secure. US v. Marrin, E.D.Pa.1908, 159 F. 767, affirmed 167 F. 951, 93 C.C.A. 351, certiorari denied 32 S.Ct. 523, 223 U.S. 719, 56 L.Ed. 629.

Facts which clearly show a conspiracy to devise a scheme or artifice to defraud, an intention to defraud, an intention to use the post-office establishment as a part of the scheme for the purpose of executing it, the use of that establishment for that purpose, and the scheme of artifice itself, are essential to a valid indictment, and must be alleged in the pleading. Cohen v. U.S., C.C.A.2 (N.Y.) 1907, 157 F. 651, 85 C.C.A. 113, certiorari denied 28 S.Ct. 261, 207 U.S. 596, 52 L.Ed. 357. See, also, Miller v. U.S., N.D.1904, 133 F. 337, 66 C.C.A. 399.

An indictment charging accused with conspiring to devise a scheme to defraud persons unknown to the grand jury was not insufficient because the names were not stated in the indictment, if it contained a true averment that they were unknown. Miller v. U.S., C.C.A.8 (N.D.) 1904, 133 F. 337, 66 C.C.A. 399.

An allegation of an indictment that a part of a scheme to defraud, which the defendants conspired to devise, was that the scheme "was to be effected" by opening correspondence by means of the mails with unknown persons was held a sufficient averment of an intent by the accused to use the mails to execute their scheme. Miller v. U.S., C.C.A.8 (N.D.) 1904, 133 F. 337, 66 C.C.A. 399.

An indictment for conspiracy to defraud by the use of the mails, in violation of former § 338 of this title, was not bad for repugnancy because it charged in the same count that defendant conspired to defraud "by dealing and pretending to deal" in what is commonly called "green articles" and "spurious Treasury notes." Lehman v. U.S., C.C.A.2 (N.Y.) 1903, 127 F. 41, 61 C.C.A. 577.

Although indictment for conspiracy to commit mail and wire fraud did not specify a list of overt acts, indictment was sufficient in alleging that acts were committed in furtherance of conspiracy and was sufficient to put defendants on notice of acts government intended to prove under those counts, where indictment began with phrase "It was part of the scheme that," and was followed by certain actions taken by defendants. U.S. v. Donato,

W.D.Va.1994, 866 F.Supp. 288. Conspiracy 43(5)

Conspiracy principles apply to multidefendant mail fraud schemes even though conspiracy was not formally charged in the indictment and thus, every act of codefendant in furtherance of scheme would be imputed to other codefendants. U. S. v. Stout, E.D.Pa.1980, 499 F.Supp. 598.

In prosecution for conspiracy and using mails to defraud, allegations concerning placing of various newspapers in mails for distribution properly set forth the advertising in newspapers as one of the elements of the scheme and as having been done pursuant to the alleged conspiracy. U. S. v. Garrison, E.D.Wis.1958, 168 F.Supp. 622.

In prosecution for conspiracy to use mails to defraud, allegation that defendant approved invoices for payment knowing that superintendent of the company was the real owner of goods in question was insufficient to spell participation in scheme of superintendent to sell fraudulently graded mohair owned by him to the company while representing it as being sold by a legitimate broker. U.S. v. Holdsworth, D.C.Me.1948, 77 F.Supp. 148.

Indictment charging conspiracy to violate mail fraud statute, former § 338 of this title, by scheme to obtain money by mortgages and certificates was sufficient, notwithstanding omission of allegation that making of false representations was integral part of scheme to defraud. U.S. v. Stevens, S.D.N.Y.1936, 13 F.Supp. 909.

In indictment for conspiracy to use the mails to defraud, it is sufficient to state that conspiracy was entered into within territorial limits of court in which prosecution was instituted. U.S. v. National Title Guaranty Co., E.D.N.Y.1935, 12 F.Supp. 473.

395. Price control offenses, sufficiency of particular indictments or informations

Indictment for violation of Emergency Price Control Act, 50 App. former § 901 et seq., and for conspiracy setting out approximate place and date of alleged violations, names of purchasers, type of meat sold, invoice numbers in maximum price for which meat could have been sold, was sufficiently definite and defendants were not entitled to bill of particulars. Stillman v. U.S., C.A.9 (Cal.) 1949, 177 F.2d 607.

An indictment for conspiracy to commit an offense against the United States by violating Federal Control Act, § 11 (temporary), which did not allege any facts showing an intention to commit any act which was made an offense by said section, was insufficient. U.S. v. Geraci, S.D.Fla.1922, 280 F. 256.

An indictment under Act Aug. 10, 1917, c. 53, § 25 (temporary) authorizing the fixing of the price of coal by the President, which charged that defendants with full knowledge that the price had been fixed conspired to demand a greater price with allegation of overt acts, was sufficient, though an indictment for the specific offense would have had to allege both the price fixed and the price demanded. U S v. Pennsylvania Central Coal Co, W.D.Pa.1918, 256 F. 703.

396. Public contracts, sufficiency of particular indictments or informations

An indictment for a conspiracy to defraud the United States, in violation of former § 88 of this title [now this section], which charged a corrupt agreement by which an officer of the United States was, in substance, to have a secret interest in a public contract as to the fulfilling of which by the contractor that officer was to be the judge, was sufficient without averring that the interest was given him or the money paid to him to influence his official conduct upon the very contract in question, or alleging which of the various ways of defrauding the government was in the minds of the conspirators, or that they all were. Crawford v. U.S., U.S.Dist.Col.1909, 29 S.Ct. 260, 212 U.S. 183, 53 L.Ed. 465, 15 Am.Ann.Cas. 392.

An indictment under former § 88 of this title [now this section] for conspiracy to defraud which averred that

defendant and an officer of the United States "unlawfully did conspire, combine, confederate, and agree together * * * knowingly to defraud the said United States in the manner following, that is to say," followed by an averment that defendant promised and agreed with said officer to pay him a commission on the price of each and every one of certain articles which should be purchased by the United States by procurement of said officer, fairly imports an assent or agreement on the part of the officer, and was sufficient in such respect to charge conspiracy, although the officer's assent was not directly averred. Green v. MacDougall, U.S.N.Y.1905, 26 S.Ct. 748, 199 U.S. 601, 50 L.Ed. 328. Conspiracy 43(10)

An indictment charging that from about January 1, 1938 and continuing to June 20, 1945, defendants conspired to defraud United States by delivering, grading, selling, etc., inferior products to the War Shipping Administration, War Department and Navy Department through frauds and deceptions practiced upon them; by obstructing inspection of such products and by avoiding standards to which purchases thereof were subject through false grading and weighing, followed by description of plan and allegation of several overt acts is sufficiently certain to inform defendants of the charges against them. Nye & Nissen v. U.S., C.C.A.9 (Cal.) 1948, 168 F.2d 846, certiorari granted 69 S.Ct. 81, 335 U.S. 852, 93 L.Ed. 400, affirmed 69 S.Ct. 766, 336 U.S. 613, 93 L.Ed. 919.

In a prosecution for conspiracy to defraud the United States by use of fraudulent practices as to the inspection of goods manufactured by the defendants for the United States under war contracts, the indictment need not set out the contracts in full, allege the authority of the officials who signed the contracts on behalf of the government, nor allege that the government suffered injury through the defendant's fraud. Wolf v. U.S., C.C.A.7 (Ill.) 1922, 283 F. 885, certiorari denied 43 S.Ct. 164, 260 U.S. 743, 67 L.Ed. 492.

An indictment charging a conspiracy to collusively submit false and fraudulent bids for tea offered for sale by the Surplus Property Division of the Army was sufficient as charging a conspiracy to defraud the United States. U.S. v. Amster, E.D.N.Y.1921, 273 F. 532.

An indictment charging that defendants were employés of a firm of contractors for government work, one being in charge of the pay roll; that under the contract the contractors were to be reimbursed for their expenditures and paid a commission as their compensation; that defendants conspired to have one of them, employed as a fireman, placed on the pay roll as an engineer, whereby he would receive a higher rate of pay; and that he was so placed by his codefendant--was sufficient to charge a conspiracy to defraud the United States. Belvin v. U.S., C.C.A.4 (Va.) 1919, 260 F. 455, 171 C.C.A. 281, certiorari denied 40 S.Ct. 15, 250 U.S. 673, 63 L.Ed. 1200.

Indictment charging a conspiracy to defraud the United States, between an army officer, defendant, and another, averring that conspiracy contemplated contracts should be submitted to and passed on by the army officer, etc., sufficiently inform the defendant of the facts. U.S. v. Gouled, S.D.N.Y.1918, 253 F. 239.

An indictment which charged that one of the defendants was a person acting for and on behalf of the United States in an official capacity as manager of the commissary department of the Subsistence Department of the Isthmian Canal Commission and that the other two defendants were engaged in buying and selling supplies, tobacco, and merchandise in Colon, Panama; that it was planned and agreed that Burke should purchase large quantities of tobacco from Salas, for which favor he was to receive, for his own benefit, from the other two defendants, large sums of money, was sufficient. U.S. v. Burke, S.D.N.Y.1915, 221 F. 1014, reversed 234 F. 842, 148 C.C.A. 440.

An indictment charging that defendant, a contractor, conspired with certain postal officials, one of whom was charged with the duty of procuring supplies through contracts let after advertisements or in open market at reasonable prices, to defraud the United States by having let to him a contract without competition, at exorbitant prices, for articles for which there was no immediate necessity, in pursuance of which conspiracy the articles were purchased from defendant thereafter, and the voucher approved by one of the officials, was sufficient to charge an offense under former § 88 of this title [now this section]. In re Runkle, C.C.S.D.N.Y.1903, 125 F. 996.

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A charge in an indictment that defendants conspired with an engineer officer in charge of government work to defraud the United States by obtaining through such officer contracts by which they were to be paid high prices for inferior work; that large amounts of useless and unnecessary work were to be done and paid for; that such officer was to exercise the powers of his office fraudulently and corruptly in favor of the contractors in such contracts as might be so obtained by the conspirators by approving and accepting the work so fraudulently done,--was supported by averments of overt acts in presenting for payment to such officer a false and fraudulent claim against the United States for work done, pursuant to such conspiracy, and in the approval and payment of such claim by the officer, although it is further averred that such claim and payment were made under a contract antedating the alleged conspiracy, the conspiracy alleged being broader than one for the purpose alone of obtaining a contract and extending to the manner of conducting the work generally, and the obtaining of payment therefor. U.S. v. Greene, S.D.Ga.1902, 115 F. 343.

An indictment of railway officers for conspiring to defraud the United States, by "deceiving the officials" having charge of the mails as to the amount of mail matter carried over the line, need not aver what particular officer was intended to be deceived. U.S. v. Newton, S.D.Iowa 1891, 48 F. 218. Conspiracy 43(10)

"The indictment avers that Machen, as superintendent of the free-delivery division of the Postoffice Department, was charged with the duty of ascertaining the cost of articles needed in the administration of the business of that division, and, when so ascertained, with, in good faith, advising the First Assistant Postmaster-General to order the purchase of, and payment for, the same at the prices. Therefore, when, as is also charged, he advised and procured the purchase of any number of such articles at the price of $1.25 each, knowing, at the same time, that they could be bought for 75 cents, the proposition that the United States were defrauded is too plain to admit of argument. If, then, as charged, he confederated with others in the doing of such an act, all concerned therein were guilty of a conspiracy to defraud the United States. The fact that he may have participated in a division of the proceeds of such transactions aggravated the offense, and supplied express evidence of his corrupt intent as well as a circumstance tending to show the existence of the conspiracy. As regards the objection that the indictment fails to charge the want of knowledge of the First Assistant Postmaster-General, or that he had been deceived and fraudulently imposed upon by the acts and representations of his subordinate, Machen, it is enough to say that the conspiracy charged was one to defraud the United States and none other. The First Assistant Postmaster-General was not the United States, but their agent merely, as was Machen also, and his knowledge, if such were the case, could not be imputed to them so as to prevent criminality from attaching to the latter's conduct. It was proved on the trial that the First Assistant Postmaster-General had no knowledge of the conditions under which the purchases were made; but had it been shown that he had full knowledge, or was even a party to the conspiracy, the fraud perpetrated upon the United States would be none the less." Lorenz v. U.S., App.D.C.1904, 24 App.D.C. 337, certiorari denied 25 S.Ct. 796, 196 U.S. 640, 49 L.Ed. 631.

It was not necessary that the indictment should aver that the contemplated fraud was successful, or the fraudulent mail matter of sufficient weight to entitle the railway company to increased compensation, or that the forwarding of the matter would not be continued beyond the period fixed for weighing the mails. Lorenz v. U.S., App.D.C.1904, 24 App.D.C. 337, certiorari denied 25 S.Ct. 796, 196 U.S. 640, 49 L.Ed. 631.

An indictment charging conspiracy to secure contract from airplane builders to make tools and parts for military airplanes purchased by United States government under contracts whereby cost depended in part on cost of construction, by bribing employees of builders, was not defective because pecuniary loss to the government was not pleaded. U.S. v. Furer, S.D.Cal.1942, 47 F.Supp. 402.

An indictment charging the conspiracy to consist in "certifying that certain false and fraudulent accounts and vouchers for material furnished for use in the construction of said customhouse and post office, and for labor performed on said building, were true and correct," was bad for uncertainty. U.S. v. Walsh, C.C.Mo.1878, 28 F.Cas. 394, No. 16636. Conspiracy 43(10)

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397. Public lands, sufficiency of particular indictments or informations-- Generally

Where gravamen of indictment was that defendant having access to property of the United States used for military purposes unlawfully conveyed such property to codefendants who purchased it with knowledge that property was contraband, indictment charged all the elements of a conspiracy to violate former § 10 of this title, and hence was valid notwithstanding the United States attorney stated that he intended to charge a conspiracy to violate the void, former § 87 of this title. Smith v. U.S., C.C.A.10 (Okla.) 1944, 145 F.2d 643, certiorari denied 65 S.Ct. 563, 323 U.S. 803, 89 L.Ed. 641.

Notwithstanding a desert land entry may be assigned, § 321 et seq. of Title 43 required a bona fide entry with an intention to improve the land, and hence an indictment charging a conspiracy to cause to be made false, fraudulent, and fictitious entries of such land stated an offense under former § 88 of this title [now this section]. Chaplin v. U.S., C.C.A.9 (Cal.) 1912, 193 F. 879, 114 C.C.A. 93, certiorari denied 32 S.Ct. 838, 225 U.S. 705, 56 L.Ed. 1266.

An indictment charging a conspiracy to defraud the United States by means of fraudulent entries of desert land was not defective for failure to allege that the entries were in fact made nor for failure to contain certain allegations to show that, if the conspiracy had been carried out, the United States would have been defrauded. Chaplin v. U.S., C.C.A.9 (Cal.) 1912, 193 F. 879, 114 C.C.A. 93, certiorari denied 32 S.Ct. 838, 225 U.S. 705, 56 L.Ed. 1266.

An indictment under former § 88 of this title [now this section] for conspiracy to defraud the United States of public lands did not charge a conspiracy to do an act not unlawful in itself, because there was no separate statute making it a crime to defraud the United States, as said former section itself makes a conspiracy to defraud the United States a distinct crime, and no further offense need be averred nor proved. Mays v. U.S., C.C.A.9 (Or.) 1910, 179 F. 610, 103 C.C.A. 168.

In an indictment for conspiracy to defraud the United States by making a false oath or affidavit in connection with the purchase of Umatilla reservation lands, it was not necessary to set out the details of the administration of the oath, by whom administered, or that the person officiating was an officer qualified to do so. U.S. v. Raley, D.C.Or.1909, 173 F. 159.

An indictment for conspiracy in procuring false public land affidavits was not defective for failure to allege in what respect the affidavits were false or fraudulent. U.S. v. Raley, D.C.Or.1909, 173 F. 159.

Where an indictment for conspiracy to defraud the United States alleged that defendant conspired to obtain Umatilla reservation lands by procuring persons to make false affidavits for the purchase of the lands on defendant's account, and by procuring persons to make contracts prior to such purchase whereby the title was to inure to defendant's benefit, and by procuring them to make false proofs of residence and cultivation of the lands, all of which acts were forbidden and unlawful, it sufficiently charged the means by which the conspiracy was to be effectuated. U.S. v. Raley, D.C.Or.1909, 173 F. 159.

An indictment charging that defendants did conspire, combine, confederate, and agree together to defraud the United States, by corruptly and for their own gains administering and procuring the administration of Act March 3, 1901, c. 853, 31 Stat. 1133, appropriating money to survey public lands, in a manner contrary to the true intent and purpose thereof, and wasteful of the money so appropriated and apportioned, prejudicial to the welfare and interest of the United States and the public service thereof, did not charge a conspiracy to defraud the government of its money or property, but charged a conspiracy to defraud the United States by corruptly administering an Act of Congress. U.S. v. Moore, C.C.Or.1909, 173 F. 122.

An indictment for conspiracy, alleging that defendants conspired to procure the maladministration of Act March 3, 1901, c. 853, 31 Stat. 1133, appropriating money for the survey of public lands in a specified order, by procuring the use of such funds for the survey of lands which were nonagricultural and the subject of fictitious entries,

sufficiently charged the conspirators' corrupt purpose, and was therefore not objectionable for failure to allege that defendants had guilty knowledge of the falsity of the entries. U.S. v. Moore, C.C.Or.1909, 173 F. 122.

An indictment charging that defendants conspired together to defraud the government of the title to a portion of the public domain, to wit, etc., and in pursuance of the conspiracy performed the overt acts of obtaining and using before the register and receiver of the local land office false and bogus affidavits, represented by defendants to be genuine, in making proof of a timber culture entry theretofore regularly made on the land by H., since deceased, under an agreement with his widow that they were to succeed by conveyance from her to all the rights of the government secured by virtue of a patent issued by the government based on such proofs, was not defective for uncertainty. U. S. v. Burkett, D.C.Kan.1907, 150 F. 208.

An indictment alleging that defendants during all the times between May 25, 1902, and the commission of the last overt act therein set forth continued to conspire together to defraud the United States of the title to its public lands in the manner and by the means agreed on between them on May 25, 1902, was not equivalent to a charge that defendants subsequent to that date entered into a new conspiracy to accomplish their unlawful design, but was merely an allegation that the conspiracy formed on that day was never abandoned, but was in continuous operation thereafter until the date of the last overt act charged. U.S. v. Brace, N.D.Cal.1907, 149 F. 874.

Averments in an indictment for conspiracy under former § 88 of this title [now this section] that defendants conspired to fraudulently obtain the issuance by the United States of land scrip in satisfaction of a confirmed private land claim, which scrip when issued could be located on public lands of the United States, and that such conspiracy was carried out by fraudulently procuring the appointment of an administrator of the succession of the true claimant, on whose application the scrip was issued, and by whom it was sold, and the proceeds converted by defendants to their own use, were sufficient to sustain the charge that the conspiracy was one to defraud the United States. U.S. v. Bradford, C.C.E.D.La.1905, 148 F. 413, affirmed 152 F. 616, 81 C.C.A. 606, certiorari denied 27 S.Ct. 795, 206 U.S. 563, 51 L.Ed. 1190.

An indictment under former § 88 of this title [now this section] which charged that defendants knowingly, unlawfully, wickedly, and corruptly conspired to defraud the United States out of its title to certain public lands by means of false, fraudulent, and fictitious entries of the same under the land laws, and that in pursuance of, and to effect the object of, such conspiracy, certain acts set forth were committed by one or more of the defendants, was not insufficient, because it did not expressly aver that such acts were done with knowledge of the fraudulent and illegal character of the entries, since the essence of the offense is the conspiracy, and while an overt act is an essential element under the statute, the use of the word "knowingly" in charging the conspiracy must fairly be held to apply to and characterize the acts specifically charged to have been done in furtherance of such conspiracy, and for the purpose of carrying it into effect. U.S. v. Mitchell, C.C.Or.1905, 141 F. 666.

Where an indictment alleged that defendants, knowing of a contract for the survey of certain lands between a United States deputy surveyor and a United States surveyor general, conspired to defraud the United States, and that, in pursuance of the conspiracy, and with intent to effect the same, one of them caused a fraudulent, fictitious and pretended survey to be made, and fraudulent field notes to be made, whereby the surveyor general was deceived into certifying the amounts due the deputy surveyor, it was held that the indictment was sufficient, though it failed to show how the acts charged would tend to effect the fraudulent object, or that defendants had actually profited by the conspiracy. U.S. v. Benson, C.C.A.9 (Cal.) 1895, 70 F. 591, 17 C.C.A. 293.

An indictment under former § 88 of this title [now this section] which charged an intent to defraud the United States by obtaining the dismissal of certain suits which by law might have been brought by the United States to recover certain lands "alleged to have been fraudulently and unlawfully obtained" from the United States did not charge a conspiracy to defraud the United States, since the use of the word "alleged" rendered the fraud an open question. U. S. v. Milner, C.C.N.D.Ala.1888, 36 F. 890. Conspiracy 43(10)

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Where the words of the affidavit required to be taken by an applicant for public land are set forth in the statute under which the application is made, it is sufficient, in an indictment for conspiracy to defraud the United States, to refer to or describe it as the affidavit required of such applicant by law. U.S. v. Thompson, C.C.Or.1886, 29 F. 86, 12 Sawy. 151. Conspiracy 43(10)

A count in an indictment charging a conspiracy to defraud the United States by hiring 28 persons to enter at a land office, under color of the pre-emption laws, certain public lands of the United States, solely for the purpose of selling the same on speculation to defendant and L., and some other person to the grand jury unknown, was good. U.S. v. Gordon, D.C.Minn.1884, 22 F. 250. Conspiracy 43(10)

A count in an indictment which charged a conspiracy to defraud the United States by presenting for approval to a land office false and fraudulent affidavits and proofs of settlement and improvement, under the pre-emption law, of 28 persons, stating that such persons were entitled to enter public lands, and had severally complied with the pre-emption laws, and had severally entered such lands for their individual benefit, and not for speculation, was sufficient. U.S. v. Gordon, D.C.Minn.1884, 22 F. 250. Conspiracy 43(10)

398. ---- Coal, public lands, sufficiency of particular indictments or informations

An indictment charging a conspiracy by defendants to defraud the United States by obtaining title to upwards of 5,000 acres of coal lands in Alaska of the value of $2,000,000 by means of 39 false, fraudulent, and fictitious entries made by as many different persons, ostensibly for their own benefit, but in fact for the benefit of the defendants, whereby the defendants would be enabled to receive and enjoy the benefit of a greater number of coal entries and locations and a greater quantity of coal lands than was permissible under the law, charged a crime. U.S. v. Doughten, C.C.E.D.Wash.1911, 186 F. 226.

An indictment under former § 88 of this title [now this section] for conspiracy to defraud the United States charged an offense where it averred the purpose of the conspiracy to be to acquire coal lands of the United States by means of false, fictitious, and fraudulent entries and applications, and to induce and hire others to make like entries, at the cost and for the benefit of defendants to whom such entrymen were to convey the lands so entered, and where it fully set out such means and overt acts committed for the purpose of effecting the object of such conspiracy. Arnold v. Weil, E.D.Wis.1907, 157 F. 429.

An indictment which charged defendants with conspiracy to defraud the United States, by obtaining for a certain corporation coal lands of the United States, in excess of the quantity which it could lawfully acquire under the coal land purchase laws, by means of entries to be made by certain of the defendants as individuals, thereby securing patents to themselves, paying for the lands with money furnished by the corporation, and thereupon conveying such lands to the corporation, and which charged as overt acts the making of applications for such entries, the acquiring of patents, and the making of such conveyances, did not state an offense under former § 88 of this title [now this section] where it did not aver that such defendants were employed or procured by the corporation to make applications for the entries in its behalf, that there was any fraudulent intention in fact in making the entries, or that the patents issued thereon were void, there being nothing in the statute to prevent the corporation from lawfully acquiring by purchase any quantity of coal lands, the title to which or the preference right to purchase which had been lawfully acquired by others. Pereles v. Weil, E.D.Wis.1907, 157 F. 419.

399. ---- Homestead entries, public lands, sufficiency of particular indictments or informations

Where an indictment under former § 88 of this title [now this section] charged conspiracy to defraud the United States of public lands by means of false entries under the homestead laws, and the description of the overt acts charged included matters subsequent to the "entry" of the lands, in the technical sense of the preliminary application under the homestead laws, the word "entries" was not to be taken with such technical meaning, but in its popular sense, as meaning the proceedings as a whole. Dealy v. U.S., U.S.N.D.1894, 14 S.Ct. 680, 152 U.S.

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539, 38 L.Ed. 545. Conspiracy 43(5)

An indictment under former § 88 of this title [now this section] for conspiracy to defraud the United States of public lands and to commit an offense against the United States by suborning entrymen to commit perjury in making oath to homestead affidavits, was sufficient. Richards v. U. S., C.C.A.8 (Neb.) 1909, 175 F. 911, 99 C.C.A. 401.

Where an indictment charged that defendants, with others, conspired to obtain from the government certain specified tracts of land open to homestead entry by procuring certain named persons to enter the same by means of false proof in respect to their residence on and improvement of the land, and with respect to the intent with which and the purpose for which the entries were made, and in pursuance of such conspiracy and to effect the object thereof defendants caused and procured C. to make the homestead proof in respect to the land entered by him and the final affidavit required by homestead claimants, including a statement that his family consisted of himself and wife, and that they had resided continuously on the land since first establishing residence thereon, which proof was subscribed by C. and certified by defendant W., and that each of the defendants knew that the proof was false, etc., the indictment was sufficient. Jones v. U.S., C.C.A.9 (Or.) 1908, 162 F. 417, 89 C.C.A. 303, certiorari denied 29 S.Ct. 685, 212 U.S. 576, 53 L.Ed. 657.

An indictment under former § 88 of this title [now this section] which charged a conspiracy to defraud the United States of certain of its lands by means of false, forged and fraudulent entries thereof under the homestead law, and averred that such lands were "in the district of lands subject to entry under the homestead laws of the United States" at a certain land office, and also in stating the acts done pursuant to such conspiracy charged the filing of applications for homestead entry of certain described "public lands of the United States subject to homestead entry," and was not fatally defective, because in charging the conspiracy it did not expressly aver that the lands of which it was the purpose to defraud the United States were public lands, subject to homestead entry. Stearns v. U.S., C.C.A.8 (Minn.) 1907, 152 F. 900, 82 C.C.A. 48.

In an indictment for conspiracy to defraud the United States by means of a false and fraudulent entry of public lands under the homestead law, the word "entry" may properly be used and construed as applying to any or all of the steps necessary to acquire title under such law. Bradford v. U.S., C.C.A.5 (La.) 1907, 152 F. 617, 81 C.C.A. 607.

Where an indictment charged that defendants did unlawfully conspire together to defraud the United States out of a portion of its public lands on homestead entry, etc., such allegation included all proceedings as a whole necessary to complete the transfer of the title. U.S. v. Cunningham, D.C.Or.1904, 129 F. 833.

An allegation in an indictment that defendants did unlawfully conspire to defraud the United States out of a portion of its public land, by means "of procuring persons" to make false and fraudulent entries on such land, was not inconsistent with a further allegation as to the overt acts charged showing that the false proofs and entries were made by defendants themselves, and not by others procured by them. U.S. v. Cunningham, D.C.Or.1904, 129 F. 833.

Where an indictment for conspiracy to deprive the government of land by reason of a fraudulent homestead entry alleged that the lands sought to be acquired were "public lands," and that defendants had conspired to defraud the United States out of a portion of such land, it was not demurrable for failure to allege other facts showing that the land was in fact public land or subject to homestead entry. U.S. v. McKinley, C.C.Or.1903, 126 F. 242.

Where an indictment for conspiracy to defraud the government out of public lands by a fraudulent homestead entry alleged facts showing that the conspiracy in fact succeeded, and that by reason of fraudulent and forged proofs the land sought to be acquired was actually patented by the government in pursuance of such proofs, the indictment was not objectionable for failure to allege that the overt acts of the conspirators in furtherance of the conspiracy

were effective in accomplishing its object. U.S. v. McKinley, C.C.Or.1903, 126 F. 242.

Since it was not necessary to a conviction for conspiracy to deprive the United States of public lands by a fraudulent homestead entry that it should be proved that the conspiracy was with reference to any particular tract of land or to land within the district, it was not necessary that the indictment particularly describe the land affected by the conspiracy. U.S. v. McKinley, C.C.Or.1903, 126 F. 242.

To constitute a criminal conspiracy to defraud the United States by obtaining title and possession, through homestead entry, to mineral lands not subject to entry, the fact that the land contained valuable minerals, and knowledge of such fact by the conspirators at the time the conspiracy was formed, are essential, and must be averred in the indictment, and indictment which, after charging such conspiracy and the subsequent making of an affidavit, and the filing of an application for entry in furtherance thereof, avers that the defendants "then and there" well knew that the land contained valuable mineral deposits, is uncertain, and fatally defective, in failing to charge such knowledge at the time the conspiracy was formed. U.S. v. Peuschel, S.D.Cal.1902, 116 F. 642.

An indictment under former § 88 of this title [now this section] charging a conspiracy to defraud the United States by depriving it of the title to certain lands by means of a fraudulent entry under the homestead laws, which averred that the entry was made, and that by means of it the accused obtained possession of the land, and cut the timber thereon, was sufficient, though it did not allege that the land was subject to homestead entry, since the conspiracy constitutes the offense, and it need not be shown how the overt act tended to effect its purpose, or that it was successful. Gantt v. U. S., C.C.A.5 (Ala.) 1901, 108 F. 61, 47 C.C.A. 210.

400. ---- Lands obtained by exchange, public lands, sufficiency of particular indictments or informations

An indictment for conspiracy to defraud the United States of public lands by fraudulently obtaining the title to worthless state lands, securing the establishment of a forest reserve including such lands and then exchanging the same for public lands of the United States under the law authorizing such exchange, is not bad because it does not describe the state lands to be so acquired, further than to state the counties in which they are situated, where they had not been obtained and no further description was possible. Mays v. U.S., C.C.A.9 (Or.) 1910, 179 F. 610, 103 C.C.A. 168.

An indictment under former § 88 of this title [now this section] charging a conspiracy to defraud the United States by fraudulently obtaining title to and possession of certain described public lands, was not insufficient because it further charges that the purpose was to be accomplished through the state by securing the selection of the lands by the state in lieu of school lands included in a government forest reservation and their fraudulent transfer from the state to defendants, nor because the state was entitled to select such lands under the law. Perrin v. U.S., C.C.A.9 (Cal.) 1909, 169 F. 17, 94 C.C.A. 385. See, also, Benson v. U.S., Mo.1909, 169 F. 31, 94 C.C.A. 399. Conspiracy 43(10)

An indictment charged a conspiracy to defraud the United States, within former § 88 of this title [now this section], where it averred that defendants conspired to obtain the legal title to school lands within public forest reservations from certain states by means of acts and representations set out, and which were of such fraudulent character that the equitable title to such lands would remain in the states, and to then exchange such lands for public lands of the United States, under the provisions of Act June 4, 1897, c. 2, § 1, 30 Stat. 36, repealed, which authorized such exchanges, but which contemplated that the government should obtain the full, fee-simple title to the lands for which it made the exchange, including the equitable as well as the legal title. U.S. v. Hyde, N.D.Cal.1904, 132 F. 545, affirmed 25 S.Ct. 760, 199 U.S. 62, 50 L.Ed. 90.

Where an indictment for conspiracy under former § 88 of this title [now this section] charged that petitioner conspired with others to obtain by means of fictitious applications and other false and fraudulent practices from the states of California and Oregon the title to large amounts of school lands owned by said several states, and lying

within the boundaries of United States forest reservations, and then to exchange such lands, under the federal statutes providing therefor, for public lands of the United States subject to homestead entry outside of such reservations, while such acts would constitute a conspiracy to defraud the states, the indictment did not charge a "conspiracy to commit any offense against the United States or to defraud the United States in any manner," within the meaning of the statute since it appeared from its averments that the United States would obtain title to the school lands by the exchanges contemplated. In re Benson, C.C.S.D.N.Y.1904, 131 F. 968.

401. Rationing offenses, sufficiency of particular indictments or informations

An indictment for conspiring to buy false ration cheques and to obtain subsidies from the Defense Supplies Corporation by fraud was not invalid on the ground that, where object of the conspiracy is a crime to which conspirators are the only parties and which they have consummated, they may not be indicted for a conspiracy to commit it. U.S. v. Center Veal & Beef Co., C.C.A.2 (N.Y.) 1947, 162 F.2d 766.

An indictment charging conspiracy to transfer rubber tires and tubes in violation of rationing regulations was not demurrable on ground that indictment charged a conspiracy commencing December 12, 1941, to violate amendment of former § 88 of this title [now this section] which was not adopted until March 27, 1942 where conspiracy was unlawful under previous statutes named in indictment and continued to be unlawful under subsequently-enacted statutes. Rose v. U.S., C.C.A.9 (Cal.) 1945, 149 F.2d 755.

An indictment charging conspiracy to transfer rubber tires and tubes in violation of rationing regulations was not insufficient for indefiniteness as failing to specify what acts were to be done under conspiracy, where terms of applicable regulations were mentioned and overt acts in furtherance of object of conspiracy were set forth. Rose v. U.S., C.C.A.9 (Cal.) 1945, 149 F.2d 755.

An indictment charging conspiracy to violate gasoline ration order was not defective on ground that it charged conspiracy which began before ration order had become effective, where the conspiracy was also charged to have continued until after effective date of order. U.S. v. Randall, C.C.A.2 (N.Y.) 1944, 140 F.2d 70.

Even if buying or selling automobile tires for consumption without a rationing certificate was an offense against United States prior to amendment of 50 Appendix former § 901 et seq. by 50 Appendix § 633, fixing criminal penalties for violation of rationing regulations, an indictment alleging generally that defendants conspired to commit offenses and frauds, but which did not allege what offenses and frauds were agreed to be committed, was insufficient to charge a conspiracy, as against demurrer. Hamner v. U.S., C.C.A.5 (Tex.) 1943, 134 F.2d 592.

Indictment, in so far as it charged a conspiracy on part of defendants to commit offenses of selling or delivering nylons without being specifically authorized in writing to do so by the War Production Board, was sufficient to apprise defendants fully of crimes with which they were charged. U.S. v. Schautz, D.C.N.J.1946, 65 F.Supp. 985.

Indictment charging conspiracy under former § 88 of this title [now this section] to unlawfully buy and sell gasoline ration coupons issued by Office of Price Administration was sufficient. U S v. Kendzierski, E.D.N.Y.1944, 54 F.Supp. 164.

402. Securities offenses, sufficiency of particular indictments or informations

An indictment charging violations of the Securities Act of 1933, § 77q(a)(1) of Title 15, and Mail Fraud Act, former § 338 of this title, and conspiracy to commit the substantive offenses was required to set out the scheme and artifice to defraud only with sufficient particularity to advise the defendant with what he would be confronted at trial. Harper v. U. S., C.C.A.8 (Mo.) 1944, 143 F.2d 795.

An indictment charging violations of Securities Act of 1933, § 77q(a)(1) of Title 15, and Mail Fraud Act, former §

338 of this title, and conspiracy of commit the substantive offenses, which charged that defendant contemplated defrauding certain named victims and other unknown victims of money and property by selling them various worthless evidences of indebtedness described in indictment, and also stocks of certain corporations and interest in oil and gas leases, was not subject to demurrer on ground that the scheme and artifice to defraud was not charged with sufficient certainty, especially in absence of a demand for a bill of particulars. Harper v. U. S., C.C.A.8 (Mo.) 1944, 143 F.2d 795.

In prosecution for violating Securities Act, § 77q of Title 15, for using the mails to defraud and for conspiracy to effect scheme to defraud, indictment was not required to allege violation of a particular statute as offense charged was to be determined and classified by allegations of the indictment. Holmes v. U. S., C.C.A.8 (Neb.) 1943, 134 F.2d 125, certiorari denied 63 S.Ct. 1434, 319 U.S. 776, 87 L.Ed. 1722.

An indictment alleging conspiracy to commit acts made offenses by § 77q of Title 15 and former § 338 of this title, and alleging 17 overt acts with definite identification of time, place, and details, was sufficient. U.S. v. Carter & Co., W.D.Ky.1944, 56 F.Supp. 311.

Indictments charging defendants with conspiring to use mails to defraud and to violate Securities Act, § 77q of Title 15, were not demurrable on ground that, if violations of said section were not properly charged, recitations relating thereto were mere surplusage. U. S. v. Bogy, W.D.Tenn.1936, 16 F.Supp. 407, affirmed 96 F.2d 734, certiorari denied 59 S.Ct. 68, 305 U.S. 608, 83 L.Ed. 387.

Count of indictments charging conspiracy to commit offense of engaging in a fraudulent interstate transaction in sale of securities was not demurrable on ground that indictment did not allege that any sale was actually made, where terms of Securities Act, § 77q of Title 15, covered not only a sale of, but disposition of, attempt or offer to dispose of, or solicitation of offer to buy, a security. U. S. v. Bogy, W.D.Tenn.1936, 16 F.Supp. 407, affirmed 96 F.2d 734, certiorari denied 59 S.Ct. 68, 305 U.S. 608, 83 L.Ed. 387.

403. Sedition, sufficiency of particular indictments or informations

In an indictment for seditious conspiracy against the United States, it is not necessary that the overt act charged should be the accomplishment of the design of the conspiracy. Phipps v. U.S., C.C.A.4 (Va.) 1918, 251 F. 879, 164 C.C.A. 95.

404. Selective service offenses, sufficiency of particular indictments or informations

An indictment charging lawyer and registrant with conspiracy to violate former § 301 et seq., of Title 50, App., by causing registrant to neglect willfully to report for induction and willfully to evade service and requirement of said sections, charged specific offense-object of violating 50 App. § 311, by failing to report for induction, and indictment was not demurrable notwithstanding vague references to evading service and requirement of said sections. U.S. v. Offutt, App.D.C.1942, 127 F.2d 336, 75 U.S.App.D.C. 344.

Indictments charging conspiracy to prevent registration or induce persons not to register were good. Anderson v. U.S., C.C.A.9 (Cal.) 1920, 269 F. 65, certiorari denied 41 S.Ct. 447, 255 U.S. 576, 65 L.Ed. 794. See, also, U.S. v. Prieth, D.C.N.J.1918, 251 F. 946; U.S. v. Galleanni, D.C.Mass.1916, 245 F. 977.

An indictment was sufficient which charged a conspiracy to cause an evasion of military duty "through and by means of soliciting persons too numerous to mention, who were subject to and might be subject to service in the military and naval forces of the United States, to go to an oculist and optician and be fitted with eyeglasses that would so impair their vision and physical condition that they would thereby be rejected and discharged from service in said military and naval forces, and by also advising said persons that the President of the United States was an Englishman, and that he and the United States were fighting England's battles." Howenstine v. U.S.,

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C.C.A.9 (Cal.) 1920, 263 F. 1.

An indictment charging conspiracy to oppose by force the authority of the United States and to resist such authority by mutiny and armed force, by circulating after declaration of war with Germany printed matter set out, advising forcible resistance to conscription, charged an offense, although at the time the Selective Draft Act of 1917, 50 App. former § 201 et seq., had not been enacted, but was pending in Congress. U.S. v. Wells, W.D.Wash.1917, 262 F. 833.

An indictment under former § 88 of this title [now this section], charging a conspiracy to violate the Selective Service Law, was sufficient where it alleged that the conspiracy, although formed prior to the enactment of such law, was continued thereafter and overt acts performed after its passage. U.S. v. Wells, W.D.Wash.1917, 262 F. 833.

Indictment charging that defendant conspired with officials of a draft board to violate the provisions of Selective Service Act, § 6, charged the commission of an offense against the United States. Gruher v. U.S., C.C.A.2 (N.Y.) 1918, 255 F. 474, 166 C.C.A. 550.

Count of indictment charging conspiracy by defendants, to commit offense against United States by aiding, abetting, counseling, etc., persons unknown unlawfully to evade and to aid others to evade the requirements of Selective Service Act, § 6, stated an offense under former §§ 88 [now this section] and 550 of this title. Fraina v. U.S., C.C.A.2 (N.Y.) 1918, 255 F. 28, 166 C.C.A. 356.

Indictment charging conspiracy, in violation of former § 88 of this title [now this section], to violate Conscription Act, was sufficient, though not alleging violation of act, nor was it bad because including in single count charge of conspiracy to commit an offense, as well as to defraud United States. U.S. v. Sugar, E.D.Mich.1917, 243 F. 423, affirmed 252 F. 79, 164 C.C.A. 191, certiorari denied 39 S.Ct. 19, 248 U.S. 578, 63 L.Ed. 429.

Since section 462 of Title 50, Appendix, making it unlawful to willfully interfere with administration of section 451 et seq. of Title 50, Appendix, contains its own conspiracy provision, that provision controlled, and reference in indictment to this section making it unlawful to conspire to commit offense against United States was improper, but absent showing by accused that he was prejudiced by this reference, indictment would not be dismissed. U. S. v. Cullen, E.D.Wis.1969, 305 F.Supp. 695.

Where first count in indictment alleged a conspiracy to evade provisions of Selective Service Act, 50 App. § 301 et seq., and not a conspiracy in violation of former § 88 of this title [now this section], the count was not defective for failure to allege an overt act. U. S. v. Valenti, W.D.Pa.1947, 74 F.Supp. 718.

405. Shipping offenses, sufficiency of particular indictments or informations

The provision of former § 88 of this title [now this section] which makes it a criminal offense to conspire "to defraud the United States in any manner or for any purpose," was not limited in its application to conspiracies to deprive the United States of money or property, but should be broadly construed to protect the government in its rights, privileges, operations, and functions against all fraudulent operations, and an indictment is good thereunder which avers facts sufficiently showing that defendants conspired to deceive inspectors of the United States in the exercise of their official functions by fraudulently inducing them to approve life preservers which did not in fact comply with the requirements of the federal law, and that they committed overt acts pursuant to such conspiracy. U.S. v. Stone, D.C.N.J.1905, 135 F. 392.

An indictment for conspiracy to defraud the United States, which charged that defendants secretly inserted a piece of iron weighing half a pound in the center of each of a large number of cork blocks made by them, intending that such blocks should be used in making life preservers for the equipment of steamers navigating the ocean and lakes,

bays and sounds of the United States, sufficiently showed that life preservers so made would not fulfill the law and regulations of the United States, which require that every such life preserver shall be made of good, sound cork blocks, and shall contain at least six pounds of good cork, which shall have a bouyancy of at least four pounds to each pound of cork. U.S. v. Stone, D.C.N.J.1905, 135 F. 392.

An indictment that avers in any form of language that some act has been done to carry out the agreement, is sufficient, whether it appears from the face of the pleading that the act averred would tend to effect the object or not, that being a matter of proof and a question for the jury, and therefore, an averment that one of the alleged conspirators "furnished and loaned" a skiff to be used by the others in plundering a wrecked vessel was within former § 88 of this title [now this section] and sufficient as a pleading. U.S. v. Sanche, C.C.W.D.Tenn.1881, 7 F. 715. Conspiracy 43(5)

406. Smuggling, sufficiency of particular indictments or informations

In prosecution for a conspiracy to illegally smuggle cattle into the United States and for conspiring to receive, conceal and transport the cattle knowing them to have been illegally imported, indictment was not required to allege any particular place at which the customs law was first violated but it was enough that it was violated somewhere and that accused, with knowledge of the facts, possessed and concealed the cattle. Babb v. U.S., C.A.5 (Tex.) 1954, 210 F.2d 473.

Counts of indictment were sufficient to charge the offense of conspiring to smuggle cattle into the United States contrary to law and conspiracy to transport cattle knowing them to have been illegally imported where all counts were practically in the language of §§ 371, 545, 2316, and 2317 of this title. Babb v. U.S., C.A.5 (Tex.) 1954, 210 F.2d 473.

Indictment sufficiently charging conspiracy to smuggle intoxicating liquor into United States may not be dismissed on plea to jurisdiction of the court. U.S. v. Schouweiler, S.D.Cal.1927, 19 F.2d 387.

In prosecution for having smuggled and clandestinely introduced diamonds into United States and for having conspired to do so, allegations in conspiracy count that pursuant to conspiracy second codefendant had diamonds in his possession and had entered designated apartment and that, in furtherance of the conspiracy, defendant had entered the apartment on the next day sufficiently stated the manner in which it was claimed that defendant's entry of the apartment was an overt act in the conspiracy. U.S. v. Lieberman, S.D.N.Y.1953, 15 F.R.D. 278.

407. Stolen property, sufficiency of particular indictments or informations

Indictment charging defendant with conspiracy to unlawfully transport stolen motor vehicles and stolen property in foreign commerce was not defective for failing to allege elements of substantive violation of unlawful transportation of stolen motor vehicles and stolen property. U. S. v. Graves, C.A.5 (Tex.) 1982, 669 F.2d 964.

Indictment charging two counts of aiding and abetting interstate transportation of stolen securities and one count of conspiracy to do so was sufficient to identify substantive crimes charged to give defendant notice of offenses, to enable him to prepare his defense and to protect against subsequent prosecution for same offense. U. S. v. Brown, C.A.2 (N.Y.) 1964, 335 F.2d 170.

Where, in prosecution for conspiring to violate § 2312 of this title by transportation of stolen automobiles in interstate and foreign commerce, indictment alleged the commission of overt acts, in furtherance of the conspiracy, by defendants other than appellant, it was not necessary to allege an actual violation of the substantive provisions of said section nor to allege that appellant as distinguished from the other alleged conspirators, had committed an overt act or to describe the vehicles transported. United States v. Russo, C.A.2 (N.Y.) 1956, 235 F.2d 477, certiorari denied 77 S.Ct. 364, 352 U.S. 972, 1 L.Ed.2d 325.

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Indictment for conspiracy to transport stolen automobile in foreign commerce with knowledge of its stolen character was not voided by allegation that conspiracy was in process of execution "between, on or about September 29, 1952 to September 31, 1952, and each and every day intervening". Beeler v. U.S., C.A.5 (Tex.) 1953, 205 F.2d 454, certiorari denied 74 S.Ct. 130, 346 U.S. 877, 98 L.Ed. 385.

Indictment charging that defendants conspired, confederated, and combined with others unknown to commit certain offenses against United States in violation of National Motor Vehicle Theft Act, former § 408 of this title, by receiving, concealing, selling, and transporting stolen motor vehicles in interstate commerce, and listing overt acts committed in effectuating conspiracy, was sufficient though not expressly alleging wrongful intent by use of such words as "knowingly, wilfully, feloniously, intentionally or unlawfully", since such words are unnecessary where the allegations necessarily or fairly import guilty knowledge. Madsen v. U. S., C.C.A.10 (Kan.) 1947, 165 F.2d 507.

In an indictment for conspiracy to transport, conceal, etc., motor vehicles, knowing the same to have been stolen, in violation of former § 408 of this title, it was unnecessary to set out the facts relating to the theft. Grace v. U.S., C.C.A.5 (La.) 1925, 4 F.2d 658, certiorari denied 45 S.Ct. 637, 268 U.S. 702, 69 L.Ed. 1165.

In prosecution under former § 88 of this title [now this section] for conspiracy to defraud the United States of the title and possession of an automobile, seized by the marshal because used in transportation of liquor, and allegation that United States was in actual possession was unnecessary, a charge that government had interest therein being sufficient. Cagle v. U.S., C.C.A.6 (Tenn.) 1925, 3 F.2d 746.

408. Tax offenses, sufficiency of particular indictments or informations-- Income tax

Attorney was properly charged under "defraud" clause rather than "offense" clause of conspiracy statute for his role in concealing client's assets from Internal Revenue Service (IRS) because long-standing and wide-ranging scheme alleged in indictment violated more than one specific statute and indictment gave attorney adequate notice of the conduct constituting the charges against him. U.S. v. Kraig, C.A.6 (Ohio) 1996, 99 F.3d 1361. Conspiracy 43(10)

Alleged conspiracy to file false income tax returns and to conceal taxable income in order to prevent accurate ascertainment in collection of income taxes was chargeable under either the "offense" or the "defraud" clause of statute prohibiting conspiracies against the United States. U.S. v. Notch, C.A.10 (Colo.) 1991, 939 F.2d 895.

Indictments charging defendants with federal tax evasion violations in connection with defendants' alleged creation of trusts into which investors allegedly transferred income and assets for tax avoidance purposes was not fatally defective on ground it alleged that defendants represented to potential investors that legitimate business purpose for organizations existed; defendants could conspire to defraud United States regardless of whether entities used were shams. U.S. v. Schmidt, C.A.4 (N.C.) 1991, 935 F.2d 1440.

To sustain conviction for conspiracy to obstruct tax collecting function of Internal Revenue Service (IRS) Government must prove beyond reasonable doubt that alleged conspirators agreed among themselves to defraud United States by obstructing tax collecting function of IRS and must prove at least one overt act in furtherance of this agreement. U.S. v. Chesson, C.A.5 (La.) 1991, 933 F.2d 298, certiorari denied 112 S.Ct. 583, 502 U.S. 981, 116 L.Ed.2d 608.

Indictment adequately particularized alleged conspiracy to obstruct Internal Revenue Service, despite claims that purpose of one defendant in allegedly obstructing the Service was fatally lacking, that it was unclear as to whose taxes the Service was obstructed from ascertaining, and that terms of indictment, such as "shell company," "affiliates" and "utilized and controlled," were ambiguous. U. S. v. Hajecate, C.A.5 (Tex.) 1982, 683 F.2d 894, certiorari denied 103 S.Ct. 2086, 461 U.S. 927, 77 L.Ed.2d 298.

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Indictment, which charged defendant with creation of artificial tax losses for a business by fraudulent manipulation of prices in a commodity market, was sufficient to charge defendant with conspiring to defraud the United States. U. S. v. Turkish, C.A.2 (N.Y.) 1980, 623 F.2d 769, certiorari denied 101 S.Ct. 856, 449 U.S. 1077, 66 L.Ed.2d 800 .

Indictment which charged taxpayer and tax preparer with conspiracy to defraud United States by impeding, impairing, obstructing and defeating lawful functions of IRS and which alleged that defendants failed to file corporate income tax returns for various corporations for which they had responsibility of filing returns, that defendant falsely represented to IRS agents that returns had been filed, that defendants falsely represented that certain payments were properly reported as income, and that defendants falsely represented that various documents came into existence on date in advance of those on which documents were actually prepared was sufficient to charge defendants with conspiracy to obstruct lawful functions of IRS. U. S. v. Miller, C.A.5 (Fla.) 1974, 491 F.2d 638, rehearing denied 493 F.2d 664, certiorari denied 95 S.Ct. 236, 419 U.S. 970, 42 L.Ed.2d 186.

Under record, a count of indictment charging conspiracy between corporation and individuals to evade income tax was not deficient on ground that count did not fully and clearly set forth purpose of conspiracy. U.S. v. Knox Coal Co., C.A.3 (Pa.) 1965, 347 F.2d 33, certiorari denied 86 S.Ct. 239, 382 U.S. 904, 15 L.Ed.2d 157.

The failure of charging part of indictment alleging a conspiracy between corporation and individuals to evade income tax to declare that a tax in excess of that reported was due was not fatal since in a conspiracy count the conspiracy is the gist of the offense, and where purpose of conspiracy is the performing of acts which are made an offense by another section of the criminal code, every element of that offense need not be set forth. U.S. v. Knox Coal Co., C.A.3 (Pa.) 1965, 347 F.2d 33, certiorari denied 86 S.Ct. 239, 382 U.S. 904, 15 L.Ed.2d 157.

Count of indictment charging conspiracy to commit "the offenses of willful attempt" to evade and defeat corporate income taxes was not prejudicial to one of defendants even though it was not necessary to assert agreement to commit the offense in the plural, since conspiracy count may allege a purpose to commit multiple substantive offenses. U.S. v. Knox Coal Co., C.A.3 (Pa.) 1965, 347 F.2d 33, certiorari denied 86 S.Ct. 239, 382 U.S. 904, 15 L.Ed.2d 157.

In prosecution for conspiracy to obstruct Treasury Department's collection of revenue, it was not necessary that charge be based on conspiracy to violate the substantive offense of tax evasion as defined in Title 26 rather than conspiracy to defraud United States. U.S. v. Klein, C.A.2 (N.Y.) 1957, 247 F.2d 908, certiorari denied 78 S.Ct. 365, 355 U.S. 924, 2 L.Ed.2d 354.

Separate counts of indictment properly charged conspiracy to defraud the United States by obstructing the lawful functions of internal revenue officials, and income tax evasion, since the same overt acts charged in a conspiracy count may also be charged and proved as substantive offenses, for the agreement to do the act is distinct from the act itself. Kobey v. U.S., C.A.9 (Cal.) 1953, 208 F.2d 583.

A count in indictment charging defendants with a conspiracy extending over a period of years to defraud United States of income taxes due from one defendant and alleging overt acts of defendants in furtherance of conspiracy charged a "continuing offense" and was valid as against demurrer. U.S. v. Johnson, C.C.A.7 (Ill.) 1941, 123 F.2d 111, certiorari granted 62 S.Ct. 625, 315 U.S. 790, 86 L.Ed. 1193, certiorari granted 62 S.Ct. 625, 315 U.S. 790, 86 L.Ed. 1194, reversed on other grounds 63 S.Ct. 1233, 319 U.S. 503, 87 L.Ed. 1546, rehearing denied 64 S.Ct. 25, 320 U.S. 808, 88 L.Ed. 488.

Indictment charging attempt to evade and defeat large part of federal tax on income of a corporation was not bad because authority of special assistants to Attorney General was limited to investigating offenses under revenue laws and they also participated in investigation which resulted in indictment for conspiracy to violate the revenue laws. U.S. v. Molasky, C.C.A.7 (Ill.) 1941, 118 F.2d 128, certiorari granted 61 S.Ct. 1110, 313 U.S. 557, 85 L.Ed. 1518,

certiorari granted 61 S.Ct. 1111, 313 U.S. 557, 85 L.Ed. 1518, reversed on other grounds 62 S.Ct. 374, 314 U.S. 513, 86 L.Ed. 383, rehearing denied 62 S.Ct. 620, 315 U.S. 826, 86 L.Ed. 1222, rehearing denied 62 S.Ct. 621, 315 U.S. 826, 86 L.Ed. 1222.

An indictment for a conspiracy to defeat and evade the income tax sufficiently sets forth an overt act where it alleges the filing of a false return with the collector of internal revenue, since by the filing of the return it is then placed beyond the control of the defendant and the collector in the usual course will use such return as a basis of assessing the tax. U.S. v. Rachmil, S.D.N.Y.1921, 270 F. 869.

In a prosecution for conspiracy to defeat and evade the income tax, it is necessary to allege and prove an overt act done in pursuance of, and to effectuate, the object of the conspiracy. U.S. v. Rachmil, S.D.N.Y.1921, 270 F. 869.

Indictment for conspiracy to defraud United States, arising from alleged scheme to take income tax deductions for legal services that were not provided, was not rendered legally insufficient by fact that additional substantive offenses charged in indictment of filing false income tax returns required higher mens rea of willfulness than conspiracy charge; indictment for conspiracy charged "classic" *Klein* conspiracy, for which proof of knowledge of illegality was not required. U.S. v. Danella, E.D.Pa.1996, 931 F.Supp. 374. Conspiracy 43(10)

Dismissal of indictment charging that defendants set up sham trust entities to conceal taxable income and assets from the Internal Revenue Service, on theory that conduct alleged in indictment was lawful, based on defendants' representations was not warranted, in that a fact finder was required to make an objective determination of whether a legitimate business purpose existed for the trust, and the representations made could not be characterized as an objective determination that a valid business purpose existed for the transactions. U.S. v. Lewis, W.D.N.C.1990, 730 F.Supp. 691.

Conspiracy count's third paragraph, stating that conspiracy's third object was to submit and file and cause to be submitted and filed several form 11 returns, for listed periods, which were not true and correct as to every material matter, did not sufficiently state an offense against the United States and thus did not set forth an illegal object of the alleged conspiracy, since lack of belief in the truth and correctness of the matter represented is the essence of the offense under section 7206 of Title 26 prohibiting the willful making and subscribing of returns, verified by a specified declaration, without belief in their truth and correctness, whereas the count, rather than alleging lack of belief, simply charged that the statement was incorrect. U. S. v. Balistrieri, E.D.Wis.1972, 346 F.Supp. 341.

Count of indictment charging that defendants did unlawfully, wilfully, and knowingly combine, conspire, confederate, and agree together and with each other to defraud the United States in the exercise of its governmental functions in the assessment and collection of income taxes imposed by law and in management of the revenue, in that defendants attempted to conceal and continued to conceal the nature of their business activities and the source and nature of their income would not be dismissed, on ground that facts sufficient to constitute an offense against the United States had not been alleged, that allegations were duplicitous and uncertain, and that allegations were so vague as to violate U.S.C.A.Const. Amend. 6. U.S. v. Klein, S.D.N.Y.1954, 124 F.Supp. 476, affirmed 247 F.2d 908, certiorari denied 78 S.Ct. 365, 355 U.S. 924, 2 L.Ed.2d 354.

Count of indictment charging one of defendants with income tax evasion by filing a false joint income tax return stating a net income of $50,200.94 for 1953 when he knew that joint net income was $92,209.78 or more and charging in another count that all of defendants conspired to violate specific sections of Internal Revenue Code, Title 26, and this title, and setting forth the dates involved and the overt acts and identifying the tax returns involved, was sufficient and a bill of particulars was not warranted. U.S. v. Wortman, E.D.Ill.1960, 26 F.R.D. 183.

409. ---- Liquor, tax offenses, sufficiency of particular indictments or informations

Indictment charging that defendants conspired to commit certain acts "made offenses against the United States of

America by section 5691 of Title 26" and that they conspired to "carry on the business of retail liquor dealers," was sufficient to charge an offense, though it did not specifically charge that defendants conspired to carry on the business without paying special tax as required by law. Davis v. U. S., C.A.6 (Ky.) 1958, 253 F.2d 24.

Indictment charging violations of § 5691 of Title 26 and § 1262 of this title, relating to transportation of intoxicants into dry state, and charging conspiracy in connection therewith sufficiently charged manner, method and means by which conspiracy was formed and accomplished. McDonough v. U.S., C.A.10 (Okla.) 1955, 227 F.2d 402.

Indictment charging conspiracy to possess, transport and sell distilled spirits, in unstamped containers should have alleged that such possession, transportation and sale were to be done in the United States and would constitute offenses against United States, but trial would not be upset for failure of indictment to so state where record showed that everyone concerned knew during trial what grand jury meant, and it was alleged that conspiracy was formed in United States and each overt act alleged was done in United States. Johns v. U.S., C.A.5 (Ga.) 1952, 195 F.2d 77.

Allegations of overt acts in indictment charging conspiracy are important to show that the conspiracy alleged ripened into a crime, and to fix venue, but they do not constitute part of the description of the conspiracy charged. Johns v. U.S., C.A.5 (Ga.) 1952, 195 F.2d 77.

Indictment charging that defendants and other named persons conspired to violate §§ 2831, 2857, 2860 and 3253 of Title 26, by carrying on business of wholesale liquor dealer without paying special taxes, purchasing and receiving distilled spirits in quantities greater than 20 gallons from persons other than authorized dealers, wilfully failing to keep records of such business, and failing to keep sign posted stating they were wholesale liquor dealers was sufficient. Briggs v. U.S., C.A.10 (Okla.) 1949, 176 F.2d 317, certiorari denied 70 S.Ct. 102, 338 U.S. 861, 94 L.Ed. 528, rehearing denied 70 S.Ct. 158, 338 U.S. 882, 94 L.Ed. 541, certiorari denied 70 S.Ct. 103, 338 U.S. 861, 94 L.Ed. 528.

Counts of indictment relating to violation of § 2810 of Title 26, will not be quashed on ground they did not allege offenses charged with sufficient fullness and definiteness as to time, place and other circumstances since if more precise information was necessary, proper remedy was by seeking bill of particulars. Kitt v. U.S., C.C.A.4 (Va.) 1942, 132 F.2d 920.

Count of indictment charging conspiracy to violate, 26 U.S.C.A. §§ 2810, 2833, 2834, and 2913 [I.R.C.1939] was not subject to demurrer on ground that word "unlawful" was used to describe overt acts charged to have been committed in furtherance of conspiracy. Kitt v. U.S., C.C.A.4 (Va.) 1942, 132 F.2d 920.

Where indictment charged conspiracy, it was permissible to allege the conspiracy was for purpose of aiding bootleggers in committing a number of substantive offenses for purpose of defrauding the United States. Blackmon v. U. S., C.C.A.5 (Ala.) 1942, 126 F.2d 214.

An indictment which adequately charged a conspiracy to violate internal revenue laws was not insufficient on ground that scheme to violate the laws by possessing stills, manufacturing and selling liquor was too generally alleged. Johnson v. U.S., C.C.A.5 (Ga.) 1941, 124 F.2d 101.

An indictment charging a conspiracy and the possession of 50 gallons of liquor on which the tax had not been paid was sufficient where it was substantially in the form of the statute and charged specific overt acts in regard to the defendant. Pullin v. U.S., C.C.A.5 (Ga.) 1939, 104 F.2d 57, certiorari denied 60 S.Ct. 97, 308 U.S. 552, 84 L.Ed. 464.

An overt act charged in indictment for conspiracy to violate national liquor laws, of driving automobile wherein

were concealed jugs of moonshine whisky, did not alone charge an offense, in absence of allegation that liquor was tax unpaid, that containers were unstamped, or that concealment was for purpose of defrauding the United States. Hughes v. U.S., C.C.A.5 (Fla.) 1938, 95 F.2d 538.

Indictment charging conspiracy against the United States in connection with illegal distilling with intent to defraud United States of taxes on distilled spirits was not invalid on ground that it was based upon internal revenue laws antedating prohibition and that former § 3 of Title 27 was unconstitutional. Wainer v. U.S., C.C.A.7 (Ill.) 1937, 87 F.2d 77, certiorari denied 57 S.Ct. 511, 300 U.S. 669, 81 L.Ed. 876.

Indictment charging defendant with conspiring to defraud United States by delivering certain shipments of alcohol subject to tax to person other than consignee was sufficient, notwithstanding failure to negative exception in statute "unless upon written order in each instance of the bona fide consignee." Reing v. U S ex rel Girard, C.C.A.3 (Pa.) 1936, 84 F.2d 624.

Indictment charing conspiracy to import intoxicating liquor without permit and without paying customs duties sufficiently charged conspiracy to violate Revenue Laws, since at time involved there could be no lawful importation of liquors under National Prohibition Act, former § 1 et seq. of Title 27, without permit, and offense charged was not affected by repeal of Eighteenth Amendment. Moyer v. U.S., C.C.A.9 (Cal.) 1935, 78 F.2d 624.

Count of indictment charging conspiracy to import intoxicating liquor without permit and without paying customs duties charged one offense of conspiracy, and did not present question such as charging two offenses in single count. Moyer v. U.S., C.C.A.9 (Cal.) 1935, 78 F.2d 624.

Indictment charging conspiracy to violate liquor law was not defective as charging several conspiracies because alleging defendants conspired in different counties. U S v. Ford, D.C.Pa.1932, 58 F.2d 1029.

In prosecution for conspiracy to defraud United States of customs duties and internal revenue taxes by fraudulent withdrawal of liquor from bonded warehouse, indictment, describing forged permits by means of which liquor was withdrawn as similar to customs permit with specified number, was sufficient. Becher v. U.S., C.C.A.2 (N.Y.) 1924, 5 F.2d 45.

In prosecution for conspiracy to violate the Internal Revenue Laws respecting distilled spirits, indictment was not defective on the ground that there was a variance between allegations and proof and that the government proved a number of isolated smaller conspiracies rather than a single over-all conspiracy. U. S. v. Kensil, E.D.Pa.1961, 195 F.Supp. 115, affirmed 295 F.2d 489, certiorari denied 82 S.Ct. 439, 368 U.S. 967, 7 L.Ed.2d 396.

Count which alleged that defendants had conspired to commit an offense against §§ 3072 and 3115(a) of Title 26, by knowingly selling, and causing to be sold, liquid medicinal preparation, containing specially denatured alcohol, for internal human use without payment of lawful tax due thereon, was sufficient to allege essential elements of a conspiracy. U. S. v. J. R. Watkins Co., D.C.Minn.1954, 120 F.Supp. 154.

In indictment for conspiracy to commit, with intent to defraud United States, violations of laws governing withdrawal and shipment of tax free alcohol, allegation of overt acts charging that defendant inspector and storekeeper-gauger in Bureau of Industrial Alcohol and in alcohol tax unit made reports purporting to show amounts of denatured alcohol received and mixed for manufacture of white distilled vinegar was not insufficient as indefinite, uncertain, and confusing in view of charging part of indictment stating in detail false and fraudulent acts claimed to have been done by such defendants. U.S. v. Noble, W.D.N.Y.1937, 18 F.Supp. 808.

In indictment for conspiracy to commit, with intent to defraud United States, violations of laws governing withdrawal and shipment of tax free alcohol, allegations of overt acts charging execution of false reports purporting to show amount of denatured alcohol received at designated plant was not insufficient for failure to allege that list

or return was made to collector showing articles and objects charged with tax, since making of such return was not essential element of conspiracy charged. U.S. v. Noble, W.D.N.Y.1937, 18 F.Supp. 808.

In indictment for conspiracy to commit, with intent to defraud United States, violations of laws governing withdrawal and shipment of tax free alcohol, allegation of overt acts of defendant motor freight company and its officers and employees was not insufficient for failure to show that officers and employees of motor freight company were authorized to do acts charged, where indictment charged that company as well as such individuals made false entries and reports as to transportation of alcohol and that the company was authorized to transport denatured alcohol. U.S. v. Noble, W.D.N.Y.1937, 18 F.Supp. 808.

An indictment charging a conspiracy to defraud the United States of the taxes due upon distilled spirits need not allege the specific mode agreed upon by which the object of the conspiracy was to be carried out. U. S. v. Dustin, C.C.S.D.Ohio 1869, 25 F.Cas. 944, 2 Bond 332, No. 15011. Conspiracy 43(3); Internal Revenue 5283

In an indictment for a conspiracy to defraud the United States, the subjectmatter was sufficiently described as "taxes upon distilled spirits, distilled in the United States, and situated in certain bonded warehouses." U S v. Boyden, C.C.Mass.1868, 24 F.Cas. 1213, No. 14632. Indictment And Information 21

410. ---- Manufacturers' tax, tax offenses, sufficiency of particular indictments or informations

An indictment for conspiracy to defraud the United States of the special tax of 10 cents per pound, imposed on manufacturers of colored oleomargarine was sufficient. Jelke v. U.S., C.C.A.7 (Ill.) 1918, 255 F. 264, 166 C.C.A. 434.

As indictment charging a conspiracy to defraud the United States of taxes on artificially colored oleomargarine was sufficient to charge such a conspiracy, and contained a sufficient averment of over acts; it being unnecessary to allege that the scheme was completed or the government defrauded. U.S. v. Orr, D.C.R.I.1916, 233 F. 717.

An indictment for conspiracy to defraud the United States by the removal of oleomargarine from a factory without payment of the tax need not allege that the defrauding was to be accomplished by deceit, misrepresentation, or concealment. Tillinghast v. Richards, D.C.R.I.1915, 225 F. 226.

411. Trading with the Enemy Act offenses, sufficiency of particular indictments or informations

Company could properly be charged with conspiracy to commit an "offense" for violation of executive orders prohibiting United States persons from dealing with government of Iraq after Iraq invaded Kuwait, where International Emergency Economic Powers Act authorized President to issue executive orders proscribing conduct, and statute made criminal the disobedience of order issued under the Act. U.S. v. Arch Trading Co., C.A.4 (Va.) 1993, 987 F.2d 1087.

In prosecution for conspiracy to violate, and for substantive offenses of, violation, Trading with the Enemy Act, § 1 et seq. of Title 50, Appendix, and regulations thereunder, by dealing in Chinese-type drugs, interest of foreign nationals in proscribed merchandise was sufficiently alleged and proved. U. S. v. Quong, C.A.6 (Tenn.) 1962, 303 F.2d 499, certiorari denied 83 S.Ct. 119, 371 U.S. 863, 9 L.Ed.2d 100.

412. Travel and transportation, sufficiency of particular indictments or informations

In prosecution for conspiracy to violate the Mann Act, § 2422 of this title, erroneous allegation of an overt act could be disregarded where there were five overt acts charged and only one had to be proved. U. S. v. Frank, C.A.3 (Pa.) 1961, 290 F.2d 195, certiorari denied 82 S.Ct. 38, 368 U.S. 821, 7 L.Ed.2d 26.

413. Wire communication offenses, sufficiency of particular indictments or informations

Indictment alleging plan whereby defendants lured party into Mexico and partly by use of telephone persuaded party's father to pay money to procure party's release from arrest was sufficient to allege violations of Wire Fraud Statute, § 1343 of this title and of conspiracy to do so. Huff v. U. S., C.A.5 (Tex.) 1962, 301 F.2d 760, certiorari denied 83 S.Ct. 289, 371 U.S. 922, 9 L.Ed.2d 230.

Count of indictment alleging that defendants and unknown persons conspired together to intercept wire communications and divulge and publish contents of communications, without authority of senders, in violation of § § 501 and 605 of Title 47, and describing the acts and alleging that they were done by one or both of the defendants, sufficiently charged an offense under this section dealing with conspiracy to commit any offense against the United States, Elkins v. U.S., C.A.9 (Or.) 1959, 266 F.2d 588, certiorari granted 80 S.Ct. 61, 361 U.S. 810, 4 L.Ed.2d 58, vacated on other grounds 80 S.Ct. 1437, 364 U.S. 206, 4 L.Ed.2d 1669.

Indictment charging conspiracy to commit offenses against the United States in violation of provision of § 605 of Title 47, prohibiting wire tapping and the divulgence of information obtained thereby, charged a crime. U.S. v. Gruber, S.D.N.Y.1941, 39 F.Supp. 291.

414. Miscellaneous indictments and informations, sufficiency of particular indictments or informations

Where prime contract between prime contractor and the United States Air Force contained several references to its being a fixed-price contract and provided in each instance specified unit prices for various units of aircraft and parts produced, but provisions thereof contemplated that in course of renegotiation and revision in prices for items delivered, reimbursement for costs incurred would be made in some instances, prime contract was not exclusively a "fixed price contract" as distinguished from a "cost reimbursable contract" within meaning of §§ 51 to 54 of Title 41 forbidding kick-backs by subcontractors on cost-plus-a-fixed-fee or "cost reimbursable contracts," and indictments alleging a conspiracy to violate such sections by employees of prime contractor and subcontractors were sufficient. U. S. v. Barnard, C.A.10 (Kan.) 1958, 255 F.2d 583, certiorari denied 79 S.Ct. 287, 358 U.S. 919, 3 L.Ed.2d 238.

Sections 51 to 54 of Title 41 relating to kick-backs by subcontractors on cost-plus-a-fixed-fee or cost reimbursable contracts do not make knowledge of the terms of the prime contract an essential element of the offense to be charged in the indictment, and indictments charging conspiracy to violate such sections were not objectionable because they did not charge that donors or recipients of kickbacks knew of the existence of a cost reimbursable contract between the prime contractor and the United States Air Force. U. S. v. Barnard, C.A.10 (Kan.) 1958, 255 F.2d 583, certiorari denied 79 S.Ct. 287, 358 U.S. 919, 3 L.Ed.2d 238.

Indictment charging conspiracy to harbor fugitive from justice was not invalid on ground that statement that warrant for fugitive was issued under indictment for conspiracy to violate federal law was not tantamount to saying that fugitive was charged with crime as a defendant nor that warrant was issued for his arrest. Piquett v. U.S., C.C.A.Ill.1936, 81 F.2d 75, certiorari denied 56 S.Ct. 749. Piquett v. U.S., C.C.A.7 (Ill.) 1936, 81 F.2d 75, certiorari denied 56 S.Ct. 749, 298 U.S. 664, 80 L.Ed. 1388.

An information charging "an unlawful combination and intention to violate [the] order of the court," but also charging an actual violation, did not charge conspiracy, a crime defined and triable only by jury under former § 88 of this title [now this section] but a contempt of court. Kelton v. U S, C.C.A.3 (Pa.) 1923, 294 F. 491, certiorari denied 44 S.Ct. 403, 264 U.S. 590, 68 L.Ed. 864.

Indictment sufficiently alleged single ongoing conspiracy to commit insurance fraud within five-year statute of limitations when indictment alleged that defendant, his brother, and other coconspirators were engaged in scheme to defraud insurance companies by submitting fraudulently inflated insurance claims for losses purportedly

resulting from fires that occurred over more than 10-year period, indictment listed 34 overt acts covering time period of alleged single conspiracy, and final overt act occurred within limitations period, when defendant allegedly deposited proceeds of disbursement from insurance claim filed for losses sustained in last fire. U.S. v. Schlesinger, E.D.N.Y.2005, 360 F.Supp.2d 512. Criminal Law 150

An indictment for conspiring to delay and withhold valuable tools from defense use was not defective because some defendants were alleged to have dealt in legal opposition to others by reason of contractual relationship, where nevertheless benefit to each defendant depended upon accomplishing object of conspiracy and all defendants allegedly united in and agreed upon wrongful object. U.S. v. Rhoads, D.C.D.C.1942, 48 F.Supp. 175.

415. Travel Act, sufficiency of particular indictments or informations

Indictment charging defendant with conspiracy to violate Travel Act was sufficient and did not amount to deprivation of significant protection of indictment process; indictment put defendant on notice that he was charged with conspiracy to commit state law bribery through interstate travel or use of interstate facilities, and was specific enough to provide double jeopardy protection. U.S. v. Werme, C.A.3 (Pa.) 1991, 939 F.2d 108, certiorari denied 112 S.Ct. 1165, 502 U.S. 1092, 117 L.Ed.2d 412.

VIII. TRIAL PROCEEDINGS GENERALLY

<Subdivision Index>

441. Representation by counsel, trial proceedings generally

Joint representation of defendants one of whom admitted existence of conspiracy but claimed entrapment and the other of whom denied guilt was not prejudicial on theory that counsel could not adequately present conflicting positions where defendants were involved in different aspects of the conspiracy. U. S. v. Lovano, C.A.2 (N.Y.)

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1970, 420 F.2d 769, certiorari denied 90 S.Ct. 1515, 397 U.S. 1071, 25 L.Ed.2d 694.

442. Pleas, trial proceedings generally--Generally

Signed statement of facts, which defendant admitted on record was accurate representation of what happened, established sufficient factual basis for defendant's guilty plea to offenses of laundering monetary instruments and conspiring to conceal assets from bankruptcy trustee. U.S. v. DeFusco, C.A.4 (Va.) 1991, 949 F.2d 114, certiorari denied 112 S.Ct. 1703, 503 U.S. 997, 118 L.Ed.2d 412. Criminal Law 273(4.1)

Fact that conspiracy count was only generally addressed in guilty plea allocution did not warrant reversal of finding that pleas to conspiracy and substantive count, which was read and explained in detail, were informed and voluntary. U.S. v. DeFusco, C.A.5 (Tex.) 1991, 930 F.2d 413, rehearing denied 933 F.2d 1006, certiorari denied 112 S.Ct. 239, 502 U.S. 885, 116 L.Ed.2d 194. Criminal Law 1167(5)

Prosecution for conspiracy against defendant who concealed purpose and scope of his criminal activities and subsequently lied to grand jury investigating such activities was not barred by defendant's agreement to plead guilty and his plea of guilty to misuse of a government seal, even though the Government had agreed not to charge defendant with any other possible violations arising out of such activities, where, at time plea agreement was made and plea was entered, Government knew only that using a false I.D. card defendant had entered United States Attorney's Office and used photocopying machine therein. U. S. v. Heldt, C.A.D.C.1981, 668 F.2d 1238, 215 U.S.App.D.C. 206, certiorari denied 102 S.Ct. 1971, 456 U.S. 926, 72 L.Ed.2d 440. Criminal Law 273.2(1)

Fact that the United States was unsuccessful in its efforts to convict codefendant of robbing a federally insured bank and of conspiring to rob such a bank did not vitiate the validity of defendant's guilty plea to the conspiracy count, notwithstanding the fact that the codefendant was the only additional individual named as a coconspirator in the indictment to which defendant pleaded guilty. U. S. v. Strother, C.A.5 (Miss.) 1972, 458 F.2d 424, certiorari denied 93 S.Ct. 456, 409 U.S. 1011, 34 L.Ed.2d 305. Criminal Law 273(1)

Petitioner was entitled to an evidentiary hearing on his claim that his guilty pleas to charges of conspiring to rob a federally insured bank and of concealing a stolen motor vehicle transported in interstate commerce were not entered with understanding of the pleas' consequences, in view of his testimony that he was permitted to plead guilty to the conspiracy charge although he told his appointed attorney and court that alleged coconspirator had in no way been involved in robbery, and in view of his testimony, supported to some extent by a conversation in open court between his attorney and trial judge, that no one explained to him the consequences of pleading guilty to the concealment charge. U. S. v. Strother, C.A.5 (Miss.) 1970, 434 F.2d 1292. Criminal Law 1655(3)

That trial judge permitted codefendant to plead guilty during course of lengthy stock conspiracy trial was not error or prejudicial to codefendants, under circumstances that guilty plea was not made in presence of jury, and jurors were not in any way apprised of fact that it had been made. U. S. v. Kelly, C.A.2 (N.Y.) 1965, 349 F.2d 720, certiorari denied 86 S.Ct. 1467, 384 U.S. 947, 16 L.Ed.2d 544. Criminal Law 273(4.1)

Where prisoner, in presence of his counsel, entered voluntary pleas of guilty at federal court at Kansas City, prisoner waived right to be tried in southwestern division of federal court for western district of Missouri on counts of indictment charging armed bank robbery and conspiracy to commit such robbery at site within southwestern division, and court at Kansas City had jurisdiction to accept pleas of guilty and impose sentence. Potter v. U. S., C.A.8 (Mo.) 1962, 304 F.2d 664. Criminal Law 145

Evidence supported finding that accused was "ably represented" by counsel appointed by court at time of entering plea of guilty to charges of bank robbery, kidnapping, and conspiracy, even though such counsel advised plea of guilty. Crum v. Hunter, C.C.A.10 (Kan.) 1945, 151 F.2d 359, certiorari denied 66 S.Ct. 1117, 328 U.S. 850, 90 L.Ed. 1623. Habeas Corpus 721(2)

A plea of guilty to indictment charging conspiracy to corruptly administer the Frazier-Lemke Act, § 203 of Title 11, was an admission that accused entered into conspiracy with some one or all of codefendants to commit a crime against United States or to defraud United States by means of a corrupt administration of said section and that he or one of codefendants had committed one of overt acts charged in indictment or some other overt act for purpose of effecting object of conspiracy. Bergen v. U. S., C.C.A.8 (N.D.) 1944, 145 F.2d 181. Criminal Law 273.3

A plea of guilty to charge of conspiracy to violae Frazier-Lemke Act, § 203 of Title 11, was a waiver of fundamental rights against which every reasonable presumption is indulged. Bergen v. U. S., C.C.A.8 (N.D.) 1944, 145 F.2d 181. Criminal Law 273.4(1)

In prosecution for conspiracy to operate illicit stills, where existence of some kind of conspiracy was proved beyond peradventure and only important issue was whether accused were connected with enterprise, permitting others of accused to plead guilty in presence of jury was harmless, particularly in view of charge that jury disregard the incident. U.S. v. Falcone, C.C.A.2 (N.Y.) 1940, 109 F.2d 579, certiorari granted 60 S.Ct. 1075, 310 U.S. 620, 84 L.Ed. 1393, affirmed 61 S.Ct. 204, 311 U.S. 205, 85 L.Ed. 128. See, also, Grunberg v. U.S., C.C.A.Mass.1906, 145 F. 81, 76 C.C.A. 51. Criminal Law 1166.6

Defendant gave a knowing, intelligent, and voluntary guilty plea to offense of conspiracy to defraud the government, despite defendant's contention that he was not aware of the element of dishonesty or deceitful conduct; defendant admitted during plea allocution that he agreed with others to defraud government, and counsel asserted that he advised defendant of all elements of offense and discussed the defenses available to him. Coluccio v. U.S., E.D.N.Y.2004, 313 F.Supp.2d 150. Criminal Law 273.1(4)

Agreement whereby corporation and chief executive officer pled guilty to misdemeanor violations of illegal corporate campaign contributions barred subsequent prosecution of the corporation, such officer and others for conspiring to defraud the government by impeding investigation into ascertainment of corporate income taxes, specifically, investigation as to nature and source of funds used to make the contributions, where plea agreement left open prosecution for violations of the tax code and at time of agreement government knew of source, generation or handling of the funds, which allegedly had not previously been recorded as income, and defendant were induced by and relied on the agreement in entering the pleas. U. S. v. Phillips Petroleum Co., N.D.Okla.1977, 435 F.Supp. 622. Criminal Law 273.1(2)

In count of indictment charging primarily a conspiracy to commit offenses against the United States by willfully making or presenting false claims in order to defraud the United States, relatively brief allegations as to bribery of Army inspector merely alleged one of the means used by defendants to effectuate the conspiracy charged, and plea of guilty to such count did not constitute admission of such an alleged bribery. U. S. v. Ben Grunstein & Sons Co., D.C.N.J.1955, 127 F.Supp. 907. Criminal Law 273.3

Plea of guilty to charge of criminal conspiracy admits only the existence of the particular conspiracy charged in its essential nature and participation therein by defendant so pleading. U. S. v. Ben Grunstein & Sons Co., D.C.N.J.1955, 127 F.Supp. 907. Criminal Law 273.3

In prosecutions for conspiracy, pleas of guilty constitute an admission of existence of conspiracy, participation therein by defendants, and commission by defendant so pleading, or by one of his codefendants, of overt acts charged in indictment or any overt act which has as its purpose effectuation of objects of conspiracy. U.S. v. American Packing Corp., D.C.N.J.1953, 113 F.Supp. 223. Criminal Law 273.3

443. ---- Withdrawal of pleas, trial proceedings generally

Any misleading statement during plea colloquy concerning the district court's discretion to upwardly depart during sentencing did not violate defendant's substantial rights, and thus defendant was not entitled to withdraw his guilty

plea to conspiracy to escape from the custody of the Attorney General and to attempt to escape; defendant was warned of a term of five years of imprisonment on each count but was sentenced only to four years on each count, and overwhelming evidence of defendant's guilt existed, making it unlikely that defendant would have withdrawn the plea and faced a jury trial, which would have deprived defendant of the three-level acceptance of responsibility reduction. U.S. v. Parker, C.A.7 (Ill.) 2004, 368 F.3d 963. Criminal Law 274(3.1)

Because examination of transcript of arraignment proceedings showed that district court's explanation of what basic facts must be proved to establish charged crimes of conspiracy to commit gambling offenses and the substantive gambling offense was incomplete and misleading in light of construction placed on statute by United States Supreme Court, record did not show that court correctly stated to defendant or that he truly understood the elements necessary to prove the offenses charged judgment of conviction on plea of nolo contendere must be vacated and defendant allowed to withdraw plea. U. S. v. Cantor, C.A.3 (Pa.) 1972, 469 F.2d 435. Criminal Law 275

Record showing that at time of sentencing court was under mistaken impression that defendant had entered plea of guilty to charge of conspiracy rather than use of mails in scheme to defraud and that when mistake was discovered several days later sentence was vacated and defendant ordered to appear disclosed no reversible error in denial of motion to withdraw plea of guilty and to reinstate plea of not guilty and in resentencing defendant. U. S. v. Crowe, C.A.3 (Del.) 1967, 373 F.2d 797, certiorari denied 88 S.Ct. 31, 389 U.S. 833, 19 L.Ed.2d 93. Criminal Law 1167(5)

District Court did not abuse its discretion in denying defendants' application for leave to withdraw their pleas of guilty to conspiracy to defraud the government and defrauding the government by upgrading poultry furnished the army, where it appeared that their pleas were voluntarily, understandingly, and deliberately entered, and that it was only their dissatisfaction with sentences imposed which caused them to make such application. Friedman v. U.S., C.A.8 (Iowa) 1952, 200 F.2d 690, certiorari denied 73 S.Ct. 784, 345 U.S. 926, 97 L.Ed. 1357, rehearing denied 73 S.Ct. 937, 345 U.S. 961, 97 L.Ed. 1381. Criminal Law 274(5)

On motion for leave to withdraw plea of guilty to indictment charging conspiracy to defraud United States, which plea was entered without advice of counsel, question was not the probable guilt of accused nor what caused him to change his mind, but whether, when he entered plea, he had requisite understanding of charge against him, and, if he did not, the fact that third parties, for motives of their own, by explanation or influence, were able to show him his error or induce him to change his plea was of no significance. Bergen v. U. S., C.C.A.8 (N.D.) 1944, 145 F.2d 181. Criminal Law 274(7)

Where accused, when he entered plea of guilty to indictment charging conspiracy to defraud United States by corruptly administering Frazier-Lemke Act, § 203 of Title 11, gave trial judge a written statement which, though admitting solicitation of farmers to file proceedings for relief under said section, denied that he was guilty of conspiracy to defraud and stated that in such soliciting he acted under advice of counsel, his subsequent motion for leave to withdraw plea of guilty before sentence should have been granted under circumstances. Bergen v. U. S., C.C.A.8 (N.D.) 1944, 145 F.2d 181. Criminal Law 274(3.1)

Where accused who was represented by an able lawyer, after due consideration, entered plea of guilty to charge of conspiracy to obstruct justice and to defraud the United States, and became a government witness, refusal to allow accused to withdraw the plea after nolle prosequi had been entered as to his codefendant, after failure of two juries to reach verdict, was not abuse of discretion, even though the prosecuting officers recommended that accused be allowed to withdraw his plea. U. S. v. Fox, C.C.A.3 (Pa.) 1942, 130 F.2d 56, certiorari denied 63 S.Ct. 74, 317 U.S. 666, 87 L.Ed. 535. Criminal Law 274(4)

In prosecution for conspiring to obstruct movement of mails and to restrain trade, court's denial of defendants' motion to set aside pleas of not guilty and to permit them to file demurrers was in trial court's discretion, which was

not abused. U.S. v. Anderson, C.C.A.7 (Ill.) 1939, 101 F.2d 325, certiorari denied 59 S.Ct. 822, 307 U.S. 625, 83 L.Ed. 1502, certiorari denied 59 S.Ct. 822, 307 U.S. 625, 83 L.Ed. 1503, certiorari denied 59 S.Ct. 823, 307 U.S. 625, 83 L.Ed. 1503, certiorari denied 59 S.Ct. 823, 307 U.S. 625, 83 L.Ed. 1504, certiorari denied 59 S.Ct. 823, 307 U.S. 625, 83 L.Ed. 1504, 86 L.Ed. 1504, certiorari denied 59 S.Ct. 824, 307 U.S. 625, 83 L.Ed. 1505, certiorari denied 59 S.Ct. 824, 307 U.S. 625, 83 L.Ed. 1506, certiorari denied 59 S.Ct. 825, 307 U.S. 625, 83 L.Ed. 1506, certiorari denied 59 S.Ct. 825, 307 U.S. 625, 83 L.Ed. 1507, certiorari denied 59 S.Ct. 825, 307 U.S. 625, 83 L.Ed. 1508, certiorari denied 59 S.Ct. 826, 307 U.S. 625, 83 L.Ed. 1508, certiorari denied 59 S.Ct. 826, 307 U.S. 625, 83 L.Ed. 1509. Criminal Law 274(2)

Prosecuting attorney's motion to nolle prosequi indictment of two defendants charged with conspiracy did not entitle a third defendant, who had been jointly indicted and who pleaded guilty, to leave to withdraw his plea of guilty, or to be heard on government's motion as to his codefendants. U.S. v. Lieberman, D.C.N.Y.1925, 8 F.2d 318. Criminal Law 274

Where defendant after discussion with his attorney had voluntarily chosen to enter plea of nolo contendere to bribery charge, and did not claim mistake of fact or law, he was not entitled to withdraw plea merely because his alleged co-conspirators were acquitted and because such plea was allegedly "improvident". U. S. v. Suba, W.D.Pa.1964, 227 F.Supp. 445. Criminal Law 275

Where indictment alleging conspiracy did not name as co-conspirators persons unknown, and verdict of not guilty rendered by jury in earlier trial of alleged co-conspirators did not leave more than one defendant whose case was undisposed of, defendant whose case alone remained open would be permitted to withdraw plea of nolo contendere. U. S. v. Suba, W.D.Pa.1964, 227 F.Supp. 445. Criminal Law 275

In prosecution for conspiracy to steal property of the United States, or property being manufactured for the Army or Navy, and for conspiracy to receive property of the United States theretofore stolen, where there was no evidence that a defendant who pleaded guilty had any connection with the stealing of the property which was being manufactured for the Army and Navy, and there was no evidence that the stolen property so received was the property of the United States, such defendant would be permitted to withdraw his plea of guilty. U. S. v. Crawford, E.D.Pa.1943, 52 F.Supp. 843. Criminal Law 274(8)

444. Jurors, trial proceedings generally--Generally

Juror's letter to defendant about ten days after trial and the essentially uninformed opinions of psychiatrists regarding the letter fell considerably short of justifying any further inquiry into competence of such juror during her service in prosecution for conspiracy and substantive counts relating to violations of federal security laws and regulations and federal mail and wire fraud laws. U. S. v. Dioguardi, C.A.2 (N.Y.) 1974, 492 F.2d 70, certiorari denied 95 S.Ct. 134, 419 U.S. 873, 42 L.Ed.2d 112, certiorari denied 95 S.Ct. 49, 419 U.S. 829, 42 L.Ed.2d 53, motion denied 95 S.Ct. 616, 419 U.S. 1044, 42 L.Ed.2d 638. Criminal Law 956(10)

Trial court did not abuse its discretion in prosecution for fraudulent sale of securities, fraud in the use of the mails and for conspiracy by permitting jury to take indictment and exhibits into the jury room. Wall v. U. S., C.A.10 (Utah) 1967, 384 F.2d 758. Criminal Law 858(3)

Defendant was not prejudiced by trial court's permitting juror who became ill during course of trial to be excused and be replaced by an alternate in prosecution for conspiracy to defraud the government and for bribery where substitution was made with defendant's consent. U. S. v. Ellenbogen, C.A.2 (N.Y.) 1966, 365 F.2d 982, certiorari denied 87 S.Ct. 892, 386 U.S. 923, 17 L.Ed.2d 795. Criminal Law 1166.16

The receipt by seven jurors trying narcotics conspiracy case of unsigned letters referring to defendants in uncomplimentary terms and urging the jurors to find the defendants guilty demonstrates need for precautions

assuring that addresses, and perhaps even the names, of jurors in similar cases be held in confidence. U. S. v. Borelli, C.A.2 (N.Y.) 1964, 336 F.2d 376, certiorari denied 85 S.Ct. 647, 379 U.S. 960, 13 L.Ed.2d 555. Criminal Law 855(8)

In prosecution for conspiring to defraud United States wherein defendants moved for change of venue on ground, among others, that they could not have a fair and impartial trial in district because of prejudicial publicity largely contained in daily newspapers published in St. Louis, order entered by court on its own motion directing that, in selecting jurors, residents of city and county of St. Louis be excluded from list of prospective jurors, did not eliminate any particular class and was proper. Connelly v. U.S., C.A.8 (Mo.) 1957, 249 F.2d 576, certiorari denied 78 S.Ct. 700, 356 U.S. 921, 2 L.Ed.2d 716, rehearing denied 78 S.Ct. 991, 356 U.S. 964, 2 L.Ed.2d 1072, certiorari denied 78 S.Ct. 701, 356 U.S. 921, 2 L.Ed.2d 716. Jury 33(3)

In prosecution for conspiracy to violate the Smith Act, § 2385 of this title, making it an offense to advocate forcible overthrow of the government, trial judge did not err in overruling defendants' challenge to petit jury array, on ground that jury clerks failed to employe methods which would insure representation of a cross section. United States v. Flynn, C.A.2 (N.Y.) 1954, 216 F.2d 354, certiorari denied 75 S.Ct. 295, 348 U.S. 909, 99 L.Ed. 713, order withheld 75 S.Ct. 285, 99 L.Ed. 1298, rehearing denied 75 S.Ct. 436, 348 U.S. 956, 99 L.Ed. 747. Jury 120

In prosecution for conspiracy to violate the Smith Act, § 2385 of this title, making it an offense to advocate forcible overthrow of the government, trial judge did not err in overruling defendants' challenge to petit jury array, on ground that composition of the jury precluded a fair trial. United States v. Flynn, C.A.2 (N.Y.) 1954, 216 F.2d 354, certiorari denied 75 S.Ct. 295, 348 U.S. 909, 99 L.Ed. 713, order withheld 75 S.Ct. 285, 99 L.Ed. 1298, rehearing denied 75 S.Ct. 436, 348 U.S. 956, 99 L.Ed. 747. Jury 120

Where, during trial of conspiracy prosecution, one of the jurors asked whether defendants, who had not sought a bill of particulars, might have done so and thereby obtained government evidence before trial, court satisfactorily answered the question when court made it clear that no adverse inference should be drawn from failure of defendants to seek such a bill. U.S. v. Witt, C.A.2 (N.Y.) 1954, 215 F.2d 580, certiorari denied 75 S.Ct. 207, 348 U.S. 887, 99 L.Ed. 697. Criminal Law 864

In prosecution for conspiracy to organize Communist Party of United States as a group to teach and advocate overthrow of government by force or violence, juror testifying that he could give defendants a fair trial would not be disqualified by previous speech in which he stated that "We are already fighting a war with Communism and it should be a fight to the death". U.S. v. Dennis, C.A.2 (N.Y.) 1950, 183 F.2d 201, certiorari granted 71 S.Ct. 91, 340 U.S. 863, 95 L.Ed. 630, affirmed 71 S.Ct. 857, 341 U.S. 494, 95 L.Ed. 1137, rehearing denied 72 S.Ct. 20, 342 U.S. 842, 96 L.Ed. 636, rehearing denied 78 S.Ct. 409, 355 U.S. 936, 2 L.Ed.2d 419. Jury 103(3)

In a prosecution in the District of Columbia for conspiring to violate §§ 1184 and 1397 of Title 26, the jury is not illegally constituted merely because certain employees of the government serve as jurors. Smith v. U.S., App.D.C.1937, 91 F.2d 556, 67 App.D.C. 251. Jury 92

445. ---- Voir dire, jurors, trial proceedings generally

Voir dire examination of jurors, during which trial judge elected to deal with problem of massive pretrial publicity, much of it negative, by extensively questioning jurors concerning prior media impact and juror associations coupled with many dismissals based on even hints of possible prejudice, by substantially increasing number of peremptory challenges available to each defendant, and by relying on defendants' use of detailed questionnaires concerning all potential jurors coupled with sensitive responses by court to any of defendants' challenges arising from such use, sufficed to produce impartial jury and fundamentally fair trial. U.S. v. Blanton, C.A.6 (Tenn.) 1983, 719 F.2d 815, certiorari denied 104 S.Ct. 1592, 465 U.S. 1099, 80 L.Ed.2d 125. Jury 99.1

18 U.S.C.A. § 371

In prosecution for conspiracy to commit mail fraud, mail fraud and tax evasion, district court conducted adequate voir dire of jury concerning pretrial publicity. U. S. v. Shelton, C.A.7 (Ill.) 1982, 669 F.2d 446, certiorari denied 102 S.Ct. 1989, 456 U.S. 934, 72 L.Ed.2d 454. Jury 131(7)

Essential demands of fairness did not require trial judge in conspiracy and bribery trial to determine possible bias or prejudice of prospective jurors by asking whether jurors had any prejudice against lawyers or persons with income tax problems, whether they thought someone guilty merely because he was charged with crime and arrested, whether they would give more credence to a government agent than to a lay witness, and whether they would have any prejudice against a client because his counsel objected to admission of evidence. Gorin v. U.S., C.A.1 (Mass.) 1963, 313 F.2d 641, certiorari denied 83 S.Ct. 1870, 374 U.S. 829, 10 L.Ed.2d 1052. Jury 131(10)

In prosecution for making a false statement of material fact to agents of United States Treasury Department, willfully attempting to evade a substantial amount of wagering excise taxes due and owing, and conspiring to commit offense against United States, court did not abuse its discretion in asking on voir dire examination whether prospective jurors taught Sunday School and would be prejudiced against anyone who accepted wagers. U.S. v. Clancy, C.A.7 (Ill.) 1960, 276 F.2d 617, certiorari granted 80 S.Ct. 1611, 363 U.S. 836, 4 L.Ed.2d 1723, reversed on other grounds 81 S.Ct. 645, 365 U.S. 312, 5 L.Ed.2d 574. Jury 131(6)

In prosecution for exporting platinum group metals without license in violation of Presidential Proclamation and of conspiracy to export such metals, permitting government to ask prospective jurors on voir dire as to whether they had any connection with axis governments or were members of any specified organizations friendly to the Facist movement in those countries, or of American organizations which might be disloyal, whether they dissented from the declaration of war or had a desire for a negotiated peace, and whether they had received decorations from any of those countries, was proper. U.S. v. Kertess, C.C.A. 2 1944, 139 F.2d 923, certiorari denied 64 S.Ct. 847, 321 U.S. 795, 88 L.Ed. 1084. Jury 131(6)

Defendant accused of bank fraud and conspiracy to defraud United States did not show that pretrial publicity was sufficiently inflammatory or malicious to mandate use of individual voir dire procedure. U.S. v. Gressett, D.Kan.1991, 773 F.Supp. 270. Jury 131(13)

In prosecution for conspiring to teach and advocate overthrow of United States Government by force and violence, district court, in conducting voir dire examination, properly propounded general questions to entire jury panel to determine which should be excused because of health or hardship or because they or their families were government employees or pensioners, etc., and those remaining were properly asked specific questions concerning their occupation, opinions, etc., and whether they had read specified articles or articles by specified authors, or belonged to specified organizations. U. S. v. Mesarosh, W.D.Pa.1953, 116 F.Supp. 345, affirmed 223 F.2d 449, certiorari granted 76 S.Ct. 218, 350 U.S. 922, 100 L.Ed. 807, reversed on other grounds 77 S.Ct. 1, 352 U.S. 1, 1 L.Ed.2d 1. Jury 131(4); Jury 131(13)

In prosecution for conspiring to teach and advocate overthrow of United States Government by force and violence district court properly conducted voir dire examination under federal rule, where it appeared that if counsel were permitted to conduct or participate in the questioning, voir dire examination would require months of interrogation and would resolve itself into trap questions, lengthy expirations of deeper recesses of jurors' minds, and psychological arguments. U. S. v. Mesarosh, W.D.Pa.1953, 116 F.Supp. 345, affirmed 223 F.2d 449, certiorari granted 76 S.Ct. 218, 350 U.S. 922, 100 L.Ed. 807, reversed on other grounds 77 S.Ct. 1, 352 U.S. 1, 1 L.Ed.2d 1. Jury 131(10)

446. ---- Peremptory challenges, jurors, trial proceedings generally

Former § 541 of this title did not, because of former § 532 of this title, apply to a prosecution under former § 88 of

this title [now this section] for the offense of conspiracy committed prior to the enactment of the Criminal Code, and the defendant in such prosecution was entitled to but three peremptory challenges. Heike v. U.S., C.C.A.2 (N.Y.) 1911, 192 F. 83, 112 C.C.A. 615, certiorari granted 32 S.Ct. 527, 223 U.S. 730, 56 L.Ed. 633, affirmed 33 S.Ct. 226, 227 U.S. 131, 57 L.Ed. 450. Jury 136(5)

447. ---- Motion to withdraw, jurors, trial proceedings generally

Refusal to excuse juror during course of 9 months' stock conspiracy trial, on disclosure that he had read news article stating possibility of strategy by defense counsel of consuming a much time as possible, was not improper, in view of juror's statement that article would not influence his verdict, though he might feel slight animosity toward whole proceedings. U. S. v. Kelly, C.A.2 (N.Y.) 1965, 349 F.2d 720, certiorari denied 86 S.Ct. 1467, 384 U.S. 947, 16 L.Ed.2d 544. Criminal Law 867

Where one of the jurors, during trial of conspiracy prosecution, went to library to see if he could find out about the ethics of a lawyer in taking cases, but he did not find what he was looking for and did not tell any of his fellow jurors about his investigation, and prosecutor moved that such juror be excused and an alternative juror be substituted, but defense counsel refused to join in the prosecutor's motion, and the motion was denied, defendants could not successfully assert on appeal that there was error. U.S. v. Witt, C.A.2 (N.Y.) 1954, 215 F.2d 580, certiorari denied 75 S.Ct. 207, 348 U.S. 887, 99 L.Ed. 697. Criminal Law 1137(8)

In prosecution for conspiracy to organize Communist Party of United States as a group to teach and advocate overthrow of government by force or violence, refusal to discharge juror who disregarded trial judge's injunctions and talked about case and who expressed hostility for Communism and weariness during the prolonged trial was not abuse of discretion, where juror was acutely aware of difference between the Communism to which he was so hostile and the particular charge on which he was to pass, and juror refused to let himself be diverted from deciding the charge either by his hostility or his weariness. U.S. v. Dennis, C.A.2 (N.Y.) 1950, 183 F.2d 201, certiorari granted 71 S.Ct. 91, 340 U.S. 863, 95 L.Ed. 630, affirmed 71 S.Ct. 857, 341 U.S. 494, 95 L.Ed. 1137, rehearing denied 72 S.Ct. 20, 342 U.S. 842, 96 L.Ed. 636, rehearing denied 78 S.Ct. 409, 355 U.S. 936, 2 L.Ed.2d 419. Jury 149

In prosecution involving question whether accused had participated in illegal importation of gold bullion, where witness testified that codefendants could not have secured permit from authorities of foreign country for exportation of gold because the gold was stolen and court immediately struck out testimony and ordered jury to disregard it, failure to grant motion to withdraw juror was not error. U.S. v. Kushner, C.C.A.2 (N.Y.) 1943, 135 F.2d 668, certiorari denied 63 S.Ct. 1449, 320 U.S. 212, 87 L.Ed. 1850, rehearing denied 64 S.Ct. 32, 320 U.S. 808, 88 L.Ed. 488. Criminal Law 751

Trial court in prosecution for conspiracy involving possession and use of counterfeit money properly refused to grant defendant's motion to withdraw a juror when prosecutor asked government informer, on redirect examination, what would have happened if conspirators had found written memorandum on the informer's person where defendant's counsel on cross-examination questioned informer sharply and extensively about his failure to have memorandum of various meanings and transactions involved and questioning implied that informer had made but failed to keep memorandum so that there would be no writing to contradict his oral testimony. U. S. v. Boyance, E.D.Pa.1963, 215 F.Supp. 390. Criminal Law 751

448. Continuance, trial proceedings generally

In prosecution for conspiracy, district court did not abuse its discretion in refusing to grant defendant a continuance after the fourth day of trial so that he could locate and produce two additional witnesses. U.S. v. Howard, C.A.8 (Mo.) 1983, 706 F.2d 267, certiorari denied 104 S.Ct. 341, 464 U.S. 934, 78 L.Ed.2d 309. Criminal Law 649(2)

Trial court was not required to grant continuance for purpose of producing nephew of victim of burglary who allegedly had given conspirator certain information about amount and location of money in uncle's home where conspirators knew of existence of such person at least week before requesting continuance, they made no effort to secure his presence, and they had no genuine interest in securing his testimony which in any case was of doubtful relevance. U. S. v. Falange, C.A.2 (N.Y.) 1970, 426 F.2d 930, certiorari denied 91 S.Ct. 149, 400 U.S. 906, 27 L.Ed.2d 144. Criminal Law 598(2)

Where conspiracy to pass counterfeit federal reserve notes trial commenced almost 11 weeks after magazine article concerning defendant's activities had been published, defendant did not represent that any publicity attributable to the article had so permeated territory at time of trial as to prevent selection of impartial jury and defendant did not seek removal of case to another jurisdiction, trial court did not abuse its discretion in denying defendant's pretrial motion to postpone trial. U. S. v. Panczko, C.A.7 (Ill.) 1966, 367 F.2d 737, certiorari denied 87 S.Ct. 716, 385 U.S. 1009, 17 L.Ed.2d 546, rehearing denied 87 S.Ct. 771, 385 U.S. 1043, 17 L.Ed.2d 688. Criminal Law 586

Where defense counsel was given opportunity to examine government's documentary evidence in prosecution for conspiracy to defraud the United States and for bribery, no issue of entrapment was raised and counsel did not know what he expected to find from examination, trial court did not abuse its discretion by denying defendant's motion made during trial for continuance for additional time in which to examine documents. U. S. v. Ellenbogen, C.A.2 (N.Y.) 1966, 365 F.2d 982, certiorari denied 87 S.Ct. 892, 386 U.S. 923, 17 L.Ed.2d 795. Criminal Law 590(2)

A defendant who claims error in denial of continuance because of absence of witness must normally demonstrate a likelihood of prejudice and ordinarily such showing may be made by affidavit of absent witness' expected testimony. Reiss v. U. S., C.A.1 (Mass.) 1963, 324 F.2d 680, certiorari denied 84 S.Ct. 667, 376 U.S. 911, 11 L.Ed.2d 609. Criminal Law 608

A defendant who complains of court's failure to grant a continuance because of absence of a witness has the burden of showing an abuse of discretion. Reiss v. U. S., C.A.1 (Mass.) 1963, 324 F.2d 680, certiorari denied 84 S.Ct. 667, 376 U.S. 911, 11 L.Ed.2d 609. Criminal Law 1151

Where defendant, who was charged with conspiring to defraud in connection with two highway condemnations, sought a continuance because of illness of his intended real estate witness and defendant produced an affidavit from such person which unaccountably gave only a single dollar figure for the two takings combined, court did not err in denying continuance based on conclusion that defendant would never have any witness who would have helped him on the charge. Reiss v. U. S., C.A.1 (Mass.) 1963, 324 F.2d 680, certiorari denied 84 S.Ct. 667, 376 U.S. 911, 11 L.Ed.2d 609. Criminal Law 608

Disposition of continuance request rests in sound discretion of trial judge, and exercise of that discretion will not be disturbed unless a clear abuse is shown. U. S. v. Bentvena, C.A.2 (N.Y.) 1963, 319 F.2d 916, certiorari denied 84 S.Ct. 345, 375 U.S. 940, 11 L.Ed.2d 271, rehearing denied 90 S.Ct. 894, 397 U.S. 928, 25 L.Ed.2d 108, rehearing denied 84 S.Ct. 515, 375 U.S. 989, 11 L.Ed.2d 476, certiorari denied 84 S.Ct. 346, 375 U.S. 940, 11 L.Ed.2d 271, rehearing denied 84 S.Ct. 1162, 377 U.S. 913, 12 L.Ed.2d 183, certiorari denied 84 S.Ct. 353, 375 U.S. 940, 11 L.Ed.2d 272, certiorari denied 84 S.Ct. 354, 375 U.S. 940, 11 L.Ed.2d 272, certiorari denied 84 S.Ct. 355, 375 U.S. 940, 11 L.Ed.2d 272, certiorari denied 84 S.Ct. 360, 375 U.S. 940, 11 L.Ed.2d 272. Criminal Law 586

Time consumed in oral discussion and legal research is not crucial test of necessity of continuance for preparation but proof of efficiency lies in character of resultant proceedings. U. S. v. Bentvena, C.A.2 (N.Y.) 1963, 319 F.2d 916, certiorari denied 84 S.Ct. 345, 375 U.S. 940, 11 L.Ed.2d 271, rehearing denied 90 S.Ct. 894, 397 U.S. 928, 25 L.Ed.2d 108, rehearing denied 84 S.Ct. 515, 375 U.S. 989, 11 L.Ed.2d 476, certiorari denied 84 S.Ct. 346, 375 U.S. 940, 11 L.Ed.2d 271, rehearing denied 84 S.Ct. 1162, 377 U.S. 913, 12 L.Ed.2d 183, certiorari denied 84

S.Ct. 353, 375 U.S. 940, 11 L.Ed.2d 272, certiorari denied 84 S.Ct. 354, 375 U.S. 940, 11 L.Ed.2d 272, certiorari denied 84 S.Ct. 355, 375 U.S. 940, 11 L.Ed.2d 272, certiorari denied 84 S.Ct. 360, 375 U.S. 940, 11 L.Ed.2d 272. Criminal Law 577

Trial judge's action in setting case peremptorily against both sides and in directing trial on stated date was a reasonable step and not an abuse of discretion with respect to defendant's claiming denial of effective assistance of counsel for want of necessary time adequately to prepare, in view of zeal and quality of performance rendered. U. S. v. Bentvena, C.A.2 (N.Y.) 1963, 319 F.2d 916, certiorari denied 84 S.Ct. 345, 375 U.S. 940, 11 L.Ed.2d 271, rehearing denied 90 S.Ct. 894, 397 U.S. 928, 25 L.Ed.2d 108, rehearing denied 84 S.Ct. 515, 375 U.S. 989, 11 L.Ed.2d 476, certiorari denied 84 S.Ct. 346, 375 U.S. 940, 11 L.Ed.2d 271, rehearing denied 84 S.Ct. 1162, 377 U.S. 913, 12 L.Ed.2d 183, certiorari denied 84 S.Ct. 353, 375 U.S. 940, 11 L.Ed.2d 272, certiorari denied 84 S.Ct. 354, 375 U.S. 940, 11 L.Ed.2d 272, certiorari denied 84 S.Ct. 355, 375 U.S. 940, 11 L.Ed.2d 272, certiorari denied 84 S.Ct. 360, 375 U.S. 940, 11 L.Ed.2d 272. Criminal Law 577

The trial of individual properly joined with others in conspiracy indictment should not be delayed indefinitely to await capture of fugitive co-conspirator. U. S. v. Cianchetti, C.A.2 (Conn.) 1963, 315 F.2d 584. Criminal Law 575

Denial of motions for continuance or transfer, the judge having earlier granted continuance on ground of adverse publicity as to one defendant and having announced that need for continuance would be determined as trial progressed, was not abuse of discretion. Rizzo v. U. S., C.A.8 (Mo.) 1962, 304 F.2d 810, certiorari denied 83 S.Ct. 188, 371 U.S. 890, 9 L.Ed.2d 123. Criminal Law 614(1)

In prosecution of alleged Communists for conspiracy to violate the Smith Act, § 2385 of this title, making it an offense to advocate forcible overthrow of the government, denial of motions of defendants for a continuance because of alleged public sentiment against Communists did not infringe any rights of alleged Communists. United States v. Flynn, C.A.2 (N.Y.) 1954, 216 F.2d 354, certiorari denied 75 S.Ct. 295, 348 U.S. 909, 99 L.Ed. 713, order withheld 75 S.Ct. 285, 99 L.Ed. 1298, rehearing denied 75 S.Ct. 436, 348 U.S. 956, 99 L.Ed. 747. Criminal Law 589(1)

Proof of an overt act other than the one alleged in indictment charging conspiracy does not constitute a fatal variance but may warrant a continuance on the ground of surprise. U.S. v. Negro, C.C.A.2 (N.Y.) 1947, 164 F.2d 168. Conspiracy 43(12); Criminal Law 599

A district attorney's agreement that an absent witness would testify that there was no conspiracy between defendants, but not admitting truth of the testimony, would not require the overruling of a motion for continuance based on absence of the witness, if the motion was otherwise incomplete. Chastain v. U.S., C.C.A.5 (Ga.) 1943, 138 F.2d 413. Criminal Law 600(3)

Where defendants were apprised of conspiracy indictment on October 31, 1941, and on following day they employed counsel and the case, which was a simple one, was not called for trial until November 7, 1941, when it was consolidated with another case for trial, the action of the district court in refusing to grant motion for continuance based on allegations of surprise, lack of time for preparation for trial and securing of absent witnesses was not abuse of discretion. Adams v. U.S., C.C.A.5 (Ga.) 1942, 128 F.2d 820, certiorari denied 63 S.Ct. 61, 317 U.S. 632, 87 L.Ed. 510. Criminal Law 590(1); Criminal Law 594(1)

Where court granted continuance because attorney for one defendant was engaged in trial in state court but stated that cause would have to proceed to trial on date to which cause was continued, but on that date attorney did not appear, continuance was denied, and, upon request, court appointed attorney for one of other defendants to represent defendant who sought continuance, refusal to grant the second continuance was not an abuse of discretion. U.S. v. Glasser, C.C.A.7 (Ill.) 1940, 116 F.2d 690, certiorari granted 61 S.Ct. 835, 313 U.S. 551, 85

L.Ed. 1515, modified on other grounds 62 S.Ct. 457, 315 U.S. 60, 86 L.Ed. 680, rehearing denied 62 S.Ct. 629, 315 U.S. 827, 86 L.Ed. 1222, rehearing denied 62 S.Ct. 637, 315 U.S. 827, 86 L.Ed. 1222. Criminal Law 587

Refusal of continuance to accused because of insufficient opportunity to prepare for trial because not furnished list of government witnesses was not abuse of discretion. Benese v. U.S., C.C.A.5 (La.) 1928, 25 F.2d 231, certiorari denied 49 S.Ct. 17, 278 U.S. 612, 73 L.Ed. 536. Criminal Law 590(1)

In prosecution for conspiracy to defraud by use of mails, contrary to former § 338 of this title, where attorney, member of one of firms conducting defense, appeared only on first day of trial, and suddenly died three days thereafter, refusal of continuance because thereof was not abuse of trial court's discretion. Morris v. U. S., C.C.A.8 (Ark.) 1925, 7 F.2d 785, certiorari denied 46 S.Ct. 205, 270 U.S. 640, 70 L.Ed. 775.

In prosecution for conspiracy, under former § 88 of this title [now this section], to transport whisky in violation of the National Prohibition Act, former § 1 et seq. of Title 27, where accused was represented by two attorneys, and ten days after commencing taking of testimony his chief counsel announced that he was ill, refusal of adjournment and direction to other counsel to proceed with case was not abuse of discretion. Means v. U.S., C.C.A.2 (N.Y.) 1925, 6 F.2d 975.

Despite the state incarceration of one of the defendants, charged with conspiracy and interstate transportation of a stolen security, involvement of counsel in another matter, and alleged noncooperation of government in pretrial discovery, defendants were not entitled to a continuance, where defense counsel entered his appearance more than two months before trial's commencement, government counsel represented that much pretrial discovery had been effected, the one defendant's incarceration was not one of brief duration but would have involved a continuance of possibly several years, and the government alleged that life of their key witness was in jeopardy and any further delay might result in his permanent unavailability. U. S. v. Riccobene, E.D.Pa.1970, 320 F.Supp. 196, affirmed 451 F.2d 586. Criminal Law 589(1)

Trial of prosecution for conspiracy would not be adjourned pending taking of deposition of absent witness where witness was also named as a co-defendant with result that his testimony could not be compelled and in absence of any indication that witness was either prepared to waive privilege against self-incrimination or to testify on behalf of movant. U. S. v. Nomura Trading Co., S.D.N.Y.1963, 213 F.Supp. 704. Criminal Law 649(2)

Motions of defendant union officials to postpone indefinitely or for substantial period of time the trials of indictment charging conspiracy on part of union officials and another to violate section of Communications Act making unlawful unauthorized publication or use of communications, and of indictment charging one of the union officials with perjury before federal grand jury, on ground that union officials could not obtain a fair and impartial trial because of widespread adverse pretrial publicity about them, would be denied, on ground that their constitutional rights to trial by fair and impartial jury would be protected by proper utilization of voir dire. U S v. Hoffa, S.D.N.Y.1957, 156 F.Supp. 495. Criminal Law 591

Where indictments of Communists for conspiracy to advocate the overthrow and destruction of government by force and violence were filed July 20, 1948, and after numerous preliminary motions and hearings trial date was set for January 17, 1949, defendants were not entitled to further continuance because of insufficient opportunity to prepare for trial. U.S. v. Foster, S.D.N.Y.1948, 81 F.Supp. 281. Criminal Law 614(1)

Affidavits and exhibits indicating hostility toward Communism, but making little mention of particular Communists who had been indicted for conspiracy to advocate overthrow and destruction of government by force and violence, were insufficient to show inflamed and prejudiced public opinion as ground for continuance, in absence of local outburst of popular feeling. U.S. v. Foster, S.D.N.Y.1948, 81 F.Supp. 281. Criminal Law 608

449. Separate trials, trial proceedings generally--Generally

Even if one defendant who was charged with conspiracy and overt acts as part of the "Watergate" cover-up had been given the separate trial which he sought, government would still have been entitled to prove in that trial the scope of the entire conspiracy and would not have been restricted to the limited involvement of the one defendant. U. S. v. Haldeman, C.A.D.C.1976, 559 F.2d 31, 181 U.S.App.D.C. 254, certiorari denied 97 S.Ct. 2641, 431 U.S. 933, 53 L.Ed.2d 250, rehearing denied 97 S.Ct. 2992, 433 U.S. 916, 53 L.Ed.2d 1103. Conspiracy 45

Separate elements of time, persons, places, offenses, and overt acts will, if shown to be substantially distinct, support separate conspiracy prosecutions. U. S. v. Ingman, C.A.9 (Wash.) 1976, 541 F.2d 1329. Conspiracy 24(2)

Two defendants in securities fraud conspiracy prosecution were not denied due process as result of being tried with third defendant whose reputation as an underworld figure, extensive criminal record, and associations with various other notorious persons were introduced at trial where the role each defendant played in conspiracy was important to enable jury to understand overall scheme. U. S. v. Aloi, C.A.2 (N.Y.) 1975, 511 F.2d 585, certiorari denied 96 S.Ct. 447, 423 U.S. 1015, 46 L.Ed.2d 386. Constitutional Law 268(2.5)

Where evidence was sufficient to show that two defendants were connected with single conspiracy to counterfeit United States obligations, rather than with two separate conspiracies, it was not error for trial court to deny defendants' motions for severance. U. S. v. Efronson, C.A.5 (Fla.) 1974, 505 F.2d 104. Criminal Law 622.7(4)

Though trial of several defendants in mail fraud and conspiracy prosecution lasted over one month and involved testimony of more than 50 witnesses, record including verdicts revealing unusual degree of discrimination on part of jury refuted claim that complexity of evidence required severance. U. S. v. Hutul, C.A.7 (Ill.) 1969, 416 F.2d 607, certiorari denied 90 S.Ct. 562, 396 U.S. 1007, 24 L.Ed.2d 499, certiorari denied 90 S.Ct. 573, 396 U.S. 1012, 24 L.Ed.2d 504, rehearing denied 90 S.Ct. 1519, 397 U.S. 1081, 25 L.Ed.2d 820, certiorari denied 90 S.Ct. 599, 396 U.S. 1024, 24 L.Ed.2d 517. Criminal Law 622.7(4)

With respect to propriety of severance in trial of coconspirators or codefendants, it is necessary to determine whether joint trial infringes defendants' right to fundamentally fair trial and determination is made by asking whether it is within jury's capacity, given complexity of the case, to follow admonitory instructions and to keep separate, collate and appraise evidence relevant only to each defendant. U. S. v. Kahn, C.A.7 (Ill.) 1967, 381 F.2d 824, certiorari denied 88 S.Ct. 591, 389 U.S. 1015, 19 L.Ed.2d 661, rehearing denied 88 S.Ct. 2272, 392 U.S. 948, 20 L.Ed.2d 1413, certiorari denied 88 S.Ct. 592, 389 U.S. 1015, 19 L.Ed.2d 661, rehearing denied 88 S.Ct. 2272, 392 U.S. 948, 20 L.Ed.2d 1414. Criminal Law 622.7(8)

Where record disclosed that there were many others, including a defendant, who played minor part in which some, but not all, conspirators participated, but such were all integral parts of a general unified conspiracy to accomplish a single criminal objective of violating internal revenue laws relating to liquor, such defendant's motion for severance on ground that evidence established numerous separate and unrelated conspiracies rather than a single conspiracy as alleged in indictment was properly denied. U. S. v. Bryant, C.A.4 (S.C.) 1966, 364 F.2d 598. Criminal Law 622.7(4)

Record, in prosecution of several defendants for conspiracy to fraudulently effectuate on behalf of union compliance with former subsection (h) of § 159 of Title 29 by filing false non-Communist affidavits, revealed no abuse of discretion in denying motion of one defendant who had been previously convicted in same court for filing false affidavit, for severance, continuance or change of venue or in denying motion for severance of other defendants objecting to trial with him. Dennis v. U.S., C.A.10 (Colo.) 1962, 302 F.2d 5. Criminal Law 121; Criminal Law 586; Criminal Law 622.7(4)

There was no error in denying separate trial on conspiracy count where indictments charged conspiracy as well as

substantive counts. U. S. v. Sahadi, C.A.2 (Conn.) 1961, 292 F.2d 565. Criminal Law 618

A defendant is not entitled to a severance in a conspiracy case. Poliafico v. U. S., C.A.6 (Ohio) 1956, 237 F.2d 97, certiorari denied 77 S.Ct. 590, 352 U.S. 1025, 1 L.Ed.2d 597, rehearing denied 77 S.Ct. 718, 353 U.S. 931, 1 L.Ed.2d 725. Criminal Law 622.6(4)

In prosecution of defendant for conspiracy to defraud the United States and for falsely representing financial status of borrower to Federal Housing Administration, there was no error in refusing to grant severance of defendant's prosecution from prosecution of other salesman for similar offenses. U.S. v. Rosenfeld, C.A.7 (Ind.) 1956, 235 F.2d 544, certiorari denied 77 S.Ct. 226, 352 U.S. 928, 1 L.Ed.2d 163. Criminal Law 622.7(4)

In prosecution for conspiracy to violate § 2421 et seq. of this title, wherein it appeared that one defendant was a white woman while other defendants were Negro men, and white woman filed a motion to sever because of alleged racial prejudice present at trial, record did not warrant conclusion that racial prejudice and bias attended the trial, and denial of motion to sever on that ground was not error. Cwach v. U.S., C.A.8 (Minn.) 1954, 212 F.2d 520. Criminal Law 622.7(3)

Where defendant was indicted for conspiring with others to violate the Harrison Anti-Narcotic Act, §§ 2553 and 2554 of Title 26 and §§ 173 and 174 of Title 21, and codefendants were indicted for substantive offenses defined thereunder, and subject-matter of both indictments arose out of identical series of acts, and same evidence that proved defendant's guilt was relevant to prove guilt of codefendant, defendant was not denied a fair trial because court ordered the cases tried together. U.S. v. Brandenburgh, C.C.A.2 (N.Y.) 1945, 146 F.2d 878. Criminal Law 622.7(4)

In prosecution for using mails in furtherance of a scheme to defraud by sale of cemetery lots to the public for purposes of investment and for criminal conspiracy to commit that offense, refusal of court to grant motion for separate trial did not constitute error. Blue v. U. S., C.C.A.6 (Ohio) 1943, 138 F.2d 351, certiorari denied 64 S.Ct. 1046, 322 U.S. 736, 88 L.Ed. 1570, rehearing denied 64 S.Ct. 1259, 322 U.S. 771, 88 L.Ed. 1596, certiorari denied 64 S.Ct. 1046, 322 U.S. 737, 88 L.Ed. 1570. Criminal Law 622.7(4); Indictment And Information 121.2(9)

Defendant in conspiracy prosecution was not entitled to a separate trial merely because an unfavorable atmosphere might be created by the presence on the trial of codefendants. U.S. v. Glasser, C.C.A.7 (Ill.) 1940, 116 F.2d 690, certiorari granted 61 S.Ct. 835, 313 U.S. 551, 85 L.Ed. 1515, modified on other grounds 62 S.Ct. 457, 315 U.S. 60, 86 L.Ed. 680, rehearing denied 62 S.Ct. 629, 315 U.S. 827, 86 L.Ed. 1222, rehearing denied 62 S.Ct. 637, 315 U.S. 827, 86 L.Ed. 1222. Criminal Law 622.7(4)

Trial of separate groups of defendants on indictment charging a single conspiracy, which superseded two prior indictments filed against each group separately, was not error. U.S. v. Twentieth Century Bus Operators, C.C.A.2 (N.Y.) 1939, 101 F.2d 700, certiorari denied 59 S.Ct. 821, 307 U.S. 624, 83 L.Ed. 1502. Criminal Law 621(2)

Where indictment for conspiring to obstruct movement of mails and two counts of indictment for conspiring to restrain trade were based upon same facts, both indictments and all defendants were properly tried at the same time by same jury. U.S. v. Anderson, C.C.A.7 (Ill.) 1939, 101 F.2d 325, certiorari denied 59 S.Ct. 822, 307 U.S. 625, 83 L.Ed. 1502, certiorari denied 59 S.Ct. 822, 307 U.S. 625, 83 L.Ed. 1503, certiorari denied 59 S.Ct. 823, 307 U.S. 625, 83 L.Ed. 1503, certiorari denied 59 S.Ct. 823, 307 U.S. 625, 83 L.Ed. 1504, certiorari denied 59 S.Ct. 823, 307 U.S. 625, 83 L.Ed. 1504, 86 L.Ed. 1504, certiorari denied 59 S.Ct. 824, 307 U.S. 625, 83 L.Ed. 1505, certiorari denied 59 S.Ct. 824, 307 U.S. 625, 83 L.Ed. 1506, certiorari denied 59 S.Ct. 825, 307 U.S. 625, 83 L.Ed. 1506, certiorari denied 59 S.Ct. 825, 307 U.S. 625, 83 L.Ed. 1507, certiorari denied 59 S.Ct. 825, 307 U.S. 625, 83 L.Ed. 1508, certiorari denied 59 S.Ct. 826, 307 U.S. 625, 83 L.Ed. 1508, certiorari denied 59 S.Ct. 826, 307 U.S. 625, 83 L.Ed. 1509. Criminal Law 622.7(4)

18 U.S.C.A. § 371

In prosecution under indictment charging conspiracy to violate former § 317 of this title, which also charged each defendant with substantive offense of violating said former section, in procuring, handling, selling, and attempting to sell bonds stolen from the mail, denial of application for severance was not error. Sullivan v. U.S., C.C.A.8 (Okla.) 1925, 7 F.2d 355, certiorari denied 46 S.Ct. 348, 270 U.S. 648, 70 L.Ed. 779.

One of two defendants charged with conspiracy may be separately tried. Miller v. U.S., C.C.A.4 (S.C.) 1921, 277 F. 721. Criminal Law 622.6(4)

That one codefendant acted as government informant during period in which machine gun conversion kit registrations and transfers took place, giving rise to prosecution for violating federal firearm laws, did not entitle defendant to severance of trial, in absence of evidence that there was any quid pro quo for informant's assistance other than money received for information. U.S. v. Hunter, E.D.Mich.1994, 863 F.Supp. 462. Criminal Law 622.7(1)

Defendant charged with conspiracy was not entitled to be separately tried from codefendant, charged with conspiracy and perjury, on theory that absent severance he would be incurably prejudiced should the Government introduce certain portions of the latter's grand jury testimony and should the latter decline to take the witness stand; only if the twin circumstances anticipated by the motion occurred would the court be required to consider whether the grand jury testimony was the sort of out-of-court statement of a codefendant to which governing case law is addressed. U. S. v. Hilliard, S.D.N.Y.1977, 436 F.Supp. 66. Criminal Law 622.7(9)

Fact that indictment charging three defendants with conspiracy to violate laws relating to distilled spirits mentioned only one defendant with reference to certain overt acts did not entitle other two defendants to severance. U. S. v. Montague, N.D.Miss.1970, 326 F.Supp. 911. Criminal Law 622.7(4)

That defendant's interests were antagonistic to those of several co-defendants in conspiracy prosecution did not require a severance on ground that he would be denied a fair trial. U. S. v. Nomura Trading Co., S.D.N.Y.1963, 213 F.Supp. 704. Criminal Law 622.7(6)

In prosecution for conspiracy and using mails to defraud, motions of some of the defendants for a severance and a separate trial were denied. U. S. v. Garrison, E.D.Wis.1958, 168 F.Supp. 622. Conspiracy 48.1(3); Criminal Law 622.7(4)

In conspiracy case, where charge against all defendants may be largely proved by same evidence and results from similar series of acts, severance should not be granted except for strong and cogent reasons. U. S. v. Silverman, D.C.Conn.1955, 129 F.Supp. 496. See, also, U.S. v. Bayance, D.C.Pa.1962, 30 F.R.D. 146. Criminal Law 622.7(4)

In prosecution for conspiracy, if alleged conspirators were not parties to conspiracy, they would be entitled to an acquittal upon trial, but, if they are shown to have participated in conspiracy, they cannot be prejudiced by proof of acts and statements of other conspirators in furtherance of conspiracy, and, therefore, such alleged conspirators would not be granted severance on ground that they were not parties to such conspiracy and that evidence produced at their trial against other defendants would prejudice their rights. U S v. Cohen, S.D.N.Y.1953, 113 F.Supp. 955. Criminal Law 622.7(4); Criminal Law 622.7(8)

In prosecution of six defendants for conspiracy to violate the Smith Act, § 2385 of this title, one defendant was not entitled to severance on ground that indictment was for a political offense and that jury would be unable to give proper recognition to propriety of such defendant's activities as a lawyer in professionally representing Communists. U.S. v. Frankfeld, D.C.Md.1952, 103 F.Supp. 48. Criminal Law 622.7(4)

In prosecution of three individual defendants and a corporation for using mails to defraud and for conspiracy,

motion of two individual defendants for severance was denied in absence of any substantial reason for such separation. U.S. v. Feinberg, E.D.N.Y.1943, 50 F.Supp. 976, affirmed 140 F.2d 592, certiorari denied 64 S.Ct. 943, 322 U.S. 726, 88 L.Ed. 1562. Criminal Law 622.7(4)

The possible improvement in atmosphere resulting from granting motions for separate trial made by defendants charged with conspiracy to commit offenses against § 2550 et seq. of Title 26, relating to narcotics, was insufficient justification for subjecting government to the large expense of four separate trials. U.S. v. Liss, S.D.N.Y.1942, 43 F.Supp. 203. Criminal Law 622.7(4)

All persons indicted for conspiracy should be tried together, especially where indictment charges no substantive crime, and motion by one of them for severance and separate trial will be denied. U.S. v. Lang, E.D.N.Y.1941, 40 F.Supp. 414. Criminal Law 622.6(4)

In determining whether some of 53 defendants charged with scheme to use mails to defraud and with conspiracy to commit such act were entitled to separate trial, the government's plea that it would be greatly more expensive to have separate trials should not be considered. U. S. v. Gilbert, S.D.Ohio 1939, 31 F.Supp. 195. Criminal Law 622.7(13)

Where two or more defendants are indicted for a joint transaction, it is inadvisable to split up case into many parts for separate trials, in absence of very strong and cogent reason therefor, especially with respect to conspiracy charges. U.S. v. Wortman, E.D.Ill.1960, 26 F.R.D. 183. Criminal Law 622.6(4); Criminal Law 622.7(2)

In prosecution for income tax evasion and for conspiring to violate certain enumerated federal laws, defendants were not entitled to a severance on ground that jury would have insurmountable difficulty in distinguishing the alleged acts of one defendant from the alleged acts of his codefendants, that evidence admissible against one might be inadmissible against another, that each defendant would obtain a fair and more impartial trial if tried alone, that there was a misjoinder of defendants and offenses, or that continued mass of publicity made it impossible for certain of defendants to obtain a fair and impartial trial while joined with another defendant who had been convicted of a felony. U.S. v. Wortman, E.D.Ill.1960, 26 F.R.D. 183. Criminal Law 622.7(1); Criminal Law 622.7(8)

Reasonably construed, indictment charging gaming conspiracy in one count and setting forth substantive offenses in other counts alleged that various defendants named therein had participated in same series of acts or transactions, and hence defendants would be denied a severance, notwithstanding absence of blanket allegation in indictment to effect that defendants had participated in same series of acts or transactions. U.S. v. Welsh, D.C.D.C.1953, 15 F.R.D. 189. Criminal Law 622.7(1)

450. ---- Prejudice, separate trials, trial proceedings generally

Tactical errors and outrageous statements made by defendant did not so prejudice codefendants as to render district court's refusal to sever defendant's trial from that of codefendants an abuse of discretion, where alleged improprieties happened outside presence of jury, were restatements of admitted evidence, or concerned only defendant. U.S. v. Daly, C.A.5 (Tex.) 1985, 756 F.2d 1076, rehearing denied 763 F.2d 416, certiorari denied 106 S.Ct. 574, 474 U.S. 1022, 88 L.Ed.2d 558, certiorari denied 106 S.Ct. 575, 474 U.S. 1022, 88 L.Ed.2d 558. Criminal Law 622.7(3)

Defendant who, although the least active, was nevertheless a fully implicated conspirator in attempted escape from prison was not prejudiced by evidence admitted against his coconspirators since most of evidence of which he complained would have been admissible against him in a separate trial as acts of coconspirators in furtherance of a conspiracy; thus, denial of motion for severance was not improper. U.S. v. Bari, C.A.2 (N.Y.) 1984, 750 F.2d 1169, certiorari denied 105 S.Ct. 3482, 472 U.S. 1019, 87 L.Ed.2d 617. Criminal Law 622.7(4); Criminal

Law 622.7(8)

Defendants did not meet their burden of demonstrating the specific and compelling prejudice necessary for finding that trial court abused its discretion in denying their motion for severance on grounds that other defendants had prior felony convictions which if presented to jury would prejudice their right to a fair trial. U. S. v. Ocanas, C.A.5 (Tex.) 1980, 628 F.2d 353, rehearing denied 633 F.2d 582, certiorari denied 101 S.Ct. 2316, 451 U.S. 984, 68 L.Ed.2d 840. Criminal Law 622.7(8)

No prejudice was caused by joint trial of nine defendants charged with conspiracy to violate narcotics laws; both size and complexity of alleged conspiracy was well within applicable bounds. U. S. v. Zayas, C.A.2 (N.Y.) 1978, 575 F.2d 56, certiorari denied 99 S.Ct. 101, 439 U.S. 828, 58 L.Ed.2d 121. Criminal Law 622.7(4); Criminal Law 622.7(13)

In absence of showing of real prejudice to individual defendant, persons charged in conspiracy shall be tried together. U. S. v. Verdoorn, C.A.8 (Iowa) 1976, 528 F.2d 103. Criminal Law 620(1); Criminal Law 622.7(4)

In prosecution for a conspiracy to import cocaine and importation of cocaine, refusal to sever trial of defendant, who allegedly sold cocaine in question to codefendant, from codefendant's trial was within district court's discretion where codefendant's self-interest in testifying for the Government as well as his prior convictions were amply demonstrated to jury and there was no showing of prejudice to defendant on account of the joint trial. U. S. v. Miller, C.A.5 (Fla.) 1975, 513 F.2d 791. Criminal Law 622.7(4)

There was no error in refusal to grant severance to any of 24 codefendants in a conspiracy prosecution despite contention that defendants were prejudiced by evidence relating to some defendants and not others, that they were deprived of the right to control their own defense, and that they were unduly burdened by the length of expense of the trial. U. S. v. Mayes, C.A.6 (Ky.) 1975, 512 F.2d 637, certiorari denied 95 S.Ct. 2629, 422 U.S. 1008, 45 L.Ed.2d 670, certiorari denied 96 S.Ct. 69, 423 U.S. 840, 46 L.Ed.2d 59. Criminal Law 622.7(8); Criminal Law 622.7(13)

Where two codefendants elected to take the stand in prosecution for securities fraud conspiracy, Government was entitled to inquire into their past criminal activity notwithstanding defendant's contention that such inquiry constituted prejudice which should have justified severance as to him since he allegedly played only a minor role in the conspiracy. U. S. v. Aloi, C.A.2 (N.Y.) 1975, 511 F.2d 585, certiorari denied 96 S.Ct. 447, 423 U.S. 1015, 46 L.Ed.2d 386. Witnesses 337(4)

No such showing of prejudice was made with respect to district court's refusal to sever the trial of each defendant in conspiracy prosecutions to warrant finding that court's refusal was an abuse of discretion. U. S. v. Cerone, C.A.7 (Ill.) 1971, 452 F.2d 274, certiorari denied 92 S.Ct. 1168, 405 U.S. 964, 31 L.Ed.2d 240, certiorari denied 92 S.Ct. 1169, 405 U.S. 964, 31 L.Ed.2d 240. Criminal Law 622.7(4)

Where proof showed not single conspiracy as charged but a series of smaller conspiracies, court, on motion of defendants, should have ordered government to elect, should have directed severance of defendants and offenses or should have ordered another trial altogether, as it deemed necessary to avoid prejudice. U. S. v. Goss, C.A.4 (N.C.) 1964, 329 F.2d 180. Criminal Law 622.7(4); Criminal Law 915; Indictment And Information 132(2)

Where some 16 persons were indicted for participating in an alleged over-all conspiracy to violate federal narcotic laws and at least three separate conspiracies were proved, prejudicial burden was placed on defendant charged with participating in an over-all conspiracy of which he apparently did not know, not only in preparation for trial but also in looking out for and safeguarding against evidence affecting other defendants to prevent its transference as

harmless error or by psychological effect, in spite of instructions for keeping separate transactions separate. Daily v. U. S., C.A.9 (Cal.) 1960, 282 F.2d 818, on rehearing 293 F.2d 33. Conspiracy 43(12)

On trial to court without a jury, refusal to grant separate trial to one of two defendants charged with violation of former § 398 of this title and conspiracy to violate said former section was not error, in absence of any showing of prejudice. Long v. U.S., C.C.A.10 (Okla.) 1947, 160 F.2d 706. Criminal Law 622.7(4)

Severance of trials of defendants, charged with conspiracies to operate illegal gambling business and to receive stolen property and engage in money laundering, would not be ordered on grounds of prejudice, even though there was only one overlapping defendant charged in both conspiracies; proper presentation of case and jury instructions could eliminate any prejudicial confusion. U.S. v. Gruttadauria, E.D.N.Y.2006, 439 F.Supp.2d 240. Criminal Law 622.7(4)

In absence of a showing that the joint trial of alleged coconspirators would be so prejudicial to one or more of their number that it would be in effect a denial of a fair trial altogether, the defendants should be tried together, particularly when the evidence would be substantially the same at multiple trials. U. S. v. Ong, S.D.N.Y.1975, 397 F.Supp. 385. Criminal Law 622.6(4)

In a conspiracy case a severance should not be granted except for strong and cogent reasons such as a strong showing of prejudice. U. S. v. Gilboy, M.D.Pa.1958, 160 F.Supp. 442. Criminal Law 622.6(4)

451. ---- Charges and evidence against coconspirators, separate trials, trial proceedings generally

Defendants were not entitled to severance of their trials on narcotics, racketeering, and weapons charges from those of codefendants even though codefendants were charged with acts of violence while defendants were not; evidence was ample that defendants were integral part of racketeering enterprise, evidence of inner workings of enterprise would have been admissible at separate trial, enterprise's usual modus operandi included acts of violence, and court instructed jury that it should consider offense and defendants separately. U.S. v. Rosa, C.A.2 (N.Y.) 1993, 11 F.3d 315, certiorari denied 114 S.Ct. 1565, 511 U.S. 1042, 128 L.Ed.2d 211, certiorari denied 114 S.Ct. 1864, 511 U.S. 1096, 128 L.Ed.2d 485. Criminal Law 622.7(1)

Where coconspirators of defendants in prosecution for conspiring to transport money obtained by fraud were not codefendants, and would have been just as available to testify for prosecution in separate trial involving only defendant, trial court did not abuse its discretion in denying defendant's motion to sever case from that of codefendants on grounds of possibility of transference of guilt from such coconspirators and their admitted schemes. U. S. v. Dearden, C.A.5 (Fla.) 1977, 546 F.2d 622, rehearing denied 550 F.2d 42, certiorari denied 98 S.Ct. 295, 434 U.S. 902, 54 L.Ed.2d 188, rehearing denied 98 S.Ct. 535, 434 U.S. 976, 54 L.Ed.2d 468, certiorari denied 98 S.Ct. 296, 434 U.S. 902, 54 L.Ed.2d 188. Criminal Law 622.7(10)

Admission of misdeeds by earlier coconspirators did not mandate severance of trial against defendant for conspiracy to transport money obtained by fraud. U. S. v. Dearden, C.A.5 (Fla.) 1977, 546 F.2d 622, rehearing denied 550 F.2d 42, certiorari denied 98 S.Ct. 295, 434 U.S. 902, 54 L.Ed.2d 188, rehearing denied 98 S.Ct. 535, 434 U.S. 976, 54 L.Ed.2d 468, certiorari denied 98 S.Ct. 296, 434 U.S. 902, 54 L.Ed.2d 188. Criminal Law 622.7(4)

Testimony of codefendant on his cross-examination denying he carried a gun all his life, a statement which was in contradiction to his previous tape recorded statement introduced earlier by Government, did not disclose defendant was prejudiced by the denial of his motion for severance of his trial on charge of conspiracy to transport stolen semitrailers in interstate commerce, where judge instructed jury that the conversation was to be considered only against the speaker. U. S. v. Bastone, C.A.7 (Ill.) 1975, 526 F.2d 971, certiorari denied 96 S.Ct. 2172, 425 U.S.

973, 48 L.Ed.2d 797. Criminal Law 1166(6)

Negro was not prejudiced by lack of a trial separate from that of his white common-law wife in prosecution for offense involving prostitution, despite wife's incriminating statements after her arrest and lack of opportunity to cross-examine wife due to her failure to testify, in view of instruction that confession is evidence of guilt only to person making statement. Baker v. U. S., C.A.10 (Colo.) 1964, 329 F.2d 786, certiorari denied 85 S.Ct. 101, 379 U.S. 853, 13 L.Ed.2d 56. Criminal Law 1166(6)

It was not an abuse of discretion to deny a motion for severance in trial of defendants who were charged with conspiracy on ground that each defendant would be confronted with so much testimony and so many acts and statements of other defendants not in his presence and without his authorization or knowledge that jury could not overcome prejudicial effect of testimony or consider each defendant's case on its own individual merits. Gorin v. U.S., C.A.1 (Mass.) 1963, 313 F.2d 641, certiorari denied 83 S.Ct. 1870, 374 U.S. 829, 10 L.Ed.2d 1052. Criminal Law 622.7(4); Criminal Law 622.7(9)

That in joint trial there will be evidence against one defendant which is not evidence against another does not require separate trials. Rizzo v. U. S., C.A.8 (Mo.) 1962, 304 F.2d 810, certiorari denied 83 S.Ct. 188, 371 U.S. 890, 9 L.Ed.2d 123. Criminal Law 622.7(8)

Conspirator was not entitled to have his trial severed from that of coconspirators even though one coconspirator's testimony before grand jury mentioned a "brother" of conspirator's brother and though both coconspirators had made confessions, in view of fact that jury was properly instructed on use of such confession. United States v. Bando, C.A.2 (N.Y.) 1957, 244 F.2d 833, certiorari denied 78 S.Ct. 67, 355 U.S. 844, 2 L.Ed.2d 53. Criminal Law 622.7(9)

In conspiracy case, defendants are not entitled to severance, and evidence admissible against one defendant, but inadmissible against other defendants, is properly received if jury is properly admonished as to its bearing upon question of guilt or innocence of other defendants. Metcalf v. U.S., C.A.6 (Ky.) 1952, 195 F.2d 213. Criminal Law 622.6(4); Criminal Law 673(4); Criminal Law 622.7(8)

In prosecution for using mails to defraud and for conspiring to use mails in scheme to defraud, denying defendant's motion for severance, although codefendant had pleaded guilty in state court to charge of grand larceny, was not abuse of discretion. U.S. v. Fradkin, C.C.A.2 (N.Y.) 1935, 81 F.2d 56, rehearing denied 81 F.2d 609, certiorari denied 56 S.Ct. 598, 297 U.S. 720, 80 L.Ed. 1005. Criminal Law 622.7(1); Criminal Law 622.7(4)

Where allegations of conspiracy indictment, did not appear to attribute minor roles to two of the defendants who had moved for severance of their trials or put such defendants on outer edges of conspiracy, and it appeared that conspiracy might be proved against such defendants by same evidence resulting from same or similar series of acts, severance was denied despite claims of defendants that they were not insiders and that a joint trial would prevent moving defendants from calling codefendants as their witnesses and from commenting on their failure to take stand. U. S. v. Wolfson, S.D.N.Y.1968, 289 F.Supp. 903. Criminal Law 622.7(10)

In prosecution for conspiracy defendant was not entitled to a separate trial on the ground that defendant would be unable to obtain a fair trial in the company of other defendants who had already pleaded guilty to a separate indictment and in the company of a defendant who had a criminal record, where to grant a severance, would necessitate two complete trials of the same issues. U S v. Stracuzza, S.D.N.Y.1958, 158 F.Supp. 522. Criminal Law 622.7(4)

The fact that pleas of guilty were offered by some of defendants charged with conspiracy furnishes one of them no ground for severance, as any act or statement of any conspirator in furtherance of conspiracy and for purpose of effecting object thereof is admissible in evidence against all conspirators. U.S. v. Lang, E.D.N.Y.1941, 40 F.Supp.

414. Criminal Law 423(1); Criminal Law 622.7(9)

In prosecution for income tax evasion and for conspiring to violate certain enumerated federal laws, fact that one defendant had a prior felony conviction was not ground for a severance as to his codefendants. U.S. v. Wortman, E.D.Ill.1960, 26 F.R.D. 183. Criminal Law 622.7(8)

452. ---- Disproportionate evidence, separate trials, trial proceedings generally

Fact that evidence adduced against other coconspirators is greater than that adduced against one defendant does not of itself constitute grounds for severance. U.S. v. Sababu, C.A.7 (Ill.) 1989, 891 F.2d 1308. Criminal Law 622.7(11)

It was not adequate ground for severance that government's case contained a disproportionate amount of evidence against one defendant, the "kingpin" of the alleged conspiracy with which all three defendants were charged. U.S. v. Kopelciw, C.A.8 (Neb.) 1987, 815 F.2d 1235. Criminal Law 622.7(11)

Defendant in prosecution for securities fraud conspiracy was not prejudiced by failure of trial court to sever his trial from that of other defendants where evidence produced as to defendant's role in conspiracy was not so disproportionate in relationship to that of the others as to require a severance and where proof of other defendant's submission of false documents to Securities Exchange Commission, an offense not charged to the defendant claiming prejudice, would nevertheless have been admissible in joint trial to show other defendant's consciousness of guilt in regard to counts charged against all defendants. U. S. v. Koss, C.A.2 (N.Y.) 1974, 506 F.2d 1103, certiorari denied 95 S.Ct. 1402, 420 U.S. 977, 43 L.Ed.2d 657, certiorari denied 95 S.Ct. 1565, 421 U.S. 911, 43 L.Ed.2d 776. Criminal Law 1166(6)

Court properly denied severances claimed on ground that evidence failed to prove a single conspiracy with respect to narcotics violations, where a continuing, chain relationship between defendants as importers, distributors, and sellers was proven and evidence against particular defendants who requested severance was not so little or so vastly disproportionate in comparison to that admitted against remainder of defendants, and court instructed jury not to consider evidence against any defendant once he had ceased to be member of conspiracy. U. S. v. Capra, C.A.2 (N.Y.) 1974, 501 F.2d 267, certiorari denied 95 S.Ct. 1424, 420 U.S. 990, 43 L.Ed.2d 670. Criminal Law 622.7(4)

The fact that one of several defendants charged with conspiracy had small part therein as compared with other conspirators does not entitle such defendant to severance. U.S. v. Lang, E.D.N.Y.1941, 40 F.Supp. 414. Criminal Law 622.7(4)

453. ---- Illness of defendant, separate trials, trial proceedings generally

District court did not abuse its discretion in severing trails of defendant and alleged coconspirator in prosecution for conspiracy to defraud or commit an offense against the Small Business Administration, especially in light of fact that coconspirator suffered from physical and mental infirmities and was granted a continuance as a result. U. S. v. Swarek, C.A.8 (Ark.) 1981, 656 F.2d 331, certiorari denied 102 S.Ct. 573, 454 U.S. 1034, 70 L.Ed.2d 478. Criminal Law 622.7(4)

Refusal to grant severance requested by defendant during course of lengthy trial involving charges of conspiracy to defraud public by distribution of oil company stock at grossly inflated prices was abuse of discretion under circumstances involving length of trial, defendant's illness, and applicability of much of evidence solely to codefendants. U. S. v. Kelly, C.A.2 (N.Y.) 1965, 349 F.2d 720, certiorari denied 86 S.Ct. 1467, 384 U.S. 947, 16 L.Ed.2d 544. Criminal Law 622.7(4); Criminal Law 622.7(8)

Judge who concluded from his own observation and from psychiatric reports respecting defendant who had climbed into jury box and pushed jurors and who had been found hanging by belt in cell that his conduct was deliberate and calculated to disrupt trial did not abuse discretion in denying severance sought on theory that he was so mentally ill during trial that his continued presence and conduct prejudiced rights of codefendants to a fair trial. U. S. v. Bentvena, C.A.2 (N.Y.) 1963, 319 F.2d 916, certiorari denied 84 S.Ct. 345, 375 U.S. 940, 11 L.Ed.2d 271, rehearing denied 90 S.Ct. 894, 397 U.S. 928, 25 L.Ed.2d 108, rehearing denied 84 S.Ct. 515, 375 U.S. 989, 11 L.Ed.2d 476, certiorari denied 84 S.Ct. 346, 375 U.S. 940, 11 L.Ed.2d 271, rehearing denied 84 S.Ct. 1162, 377 U.S. 913, 12 L.Ed.2d 183, certiorari denied 84 S.Ct. 353, 375 U.S. 940, 11 L.Ed.2d 272, certiorari denied 84 S.Ct. 354, 375 U.S. 940, 11 L.Ed.2d 272, certiorari denied 84 S.Ct. 355, 375 U.S. 940, 11 L.Ed.2d 272, certiorari denied 84 S.Ct. 360, 375 U.S. 940, 11 L.Ed.2d 272. Criminal Law 622.7(1)

On motion by one of several defendants, charged with conspiracy, for severance and separate trial, moving defendant's mental condition cannot be determined, as such question is for trial judge to determine at time of trial. U.S. v. Lang, E.D.N.Y.1941, 40 F.Supp. 414. Criminal Law 625(1)

454. ---- Discretion of court, separate trials, trial proceedings generally

Where several defendants are charged with a conspiracy and there is a confession by one of the defendants made after conspiracy has ended, and confession refers to other defendants in such a way as to make deletion of names of other defendants futile, choice between separate trials for all of the defendants and a joint trial in which the confession would be admitted under appropriate instructions lies largely within the discretion of trial judge. Delli Paoli v. U.S., U.S.N.Y.1957, 77 S.Ct. 294, 352 U.S. 232, 1 L.Ed.2d 278. Criminal Law 622.7(9)

Where one of the sales mentioned in indictment which charged defendant with conspiracy to illegally export firearms was a sale in which defendant was allegedly directly involved as the seller, trial court did not abuse its discretion in denying defendant's motions for separate trial. U. S. v. Cruz, C.A.9 (Cal.) 1976, 536 F.2d 1264. Criminal Law 622.7(4)

In absence of any showing of prejudice, trial court did not abuse its discretion in denying motion for separate trial of defendants jointly charged with conspiracy and possession of stolen interstate shipment of beef. U. S. v. Verdoorn, C.A.8 (Iowa) 1976, 528 F.2d 103. Criminal Law 622.7(4)

In view of fact that government's evidence, if believed, established a single conspiracy involving both defendants of which the alleged transactions were a part, and in light of fact that much of evidence with respect to codefendant which defendant argued was prejudicial to him would have been admissible against defendant even if he were tried separately, refusal to sever defendant's trial from that of codefendant did not constitute error. U. S. v. Curry, C.A.4 (N.C.) 1975, 512 F.2d 1299, certiorari denied 96 S.Ct. 55, 423 U.S. 832, 46 L.Ed.2d 50. Criminal Law 622.7(4); Criminal Law 622.7(8)

Where there were many issues of fact common to prosecution of two defendants for conspiring to defraud United States and forging and uttering forged indorsements on United States Treasury checks, trial court did not abuse its discretion in denying motion for separate trial of defendants. U. S. v. Goodson, C.A.5 (Tex.) 1974, 502 F.2d 1303. Criminal Law 622.7(4)

Refusal to grant severance to defendant charged with knowing possession of goods having value in excess of $100, knowing them to have been stolen from an interstate shipment, and conspiracy to commit the theft, was not an abuse of discretion. U. S. v. Walker, C.A.5 (Tex.) 1974, 497 F.2d 1050, certiorari denied 95 S.Ct. 524, 419 U.S. 1037, 42 L.Ed.2d 314. Criminal Law 620(6)

Denial of motions for severance and for continuance in prosecutions for conspiring to defraud and for defrauding certain persons through the use of mails and interstate telephonic communications was not an abuse of discretion.

U. S. v. Frick, C.A.5 (La.) 1973, 490 F.2d 666, certiorari denied 95 S.Ct. 55, 419 U.S. 831, 42 L.Ed.2d 57. Criminal Law 586; Criminal Law 622.7(4)

Record on appeal from conviction of use of interstate telephone facilities for gambling activities and for conspiring to commit such offenses established that refusal of motion by defendant, who allegedly gave codefendants line information, for severance was not an abuse of discretion. U. S. v. Fuller, C.A.4 (S.C.) 1971, 441 F.2d 755, certiorari denied 92 S.Ct. 73, 404 U.S. 830, 30 L.Ed.2d 59, certiorari denied 92 S.Ct. 74, 404 U.S. 830, 30 L.Ed.2d 59. Criminal Law 622.7(4)

Denial of motion for separate trials of defendants charged with conspiracy and substantive offenses based on use of interstate facilities with intent to carry on a prostitution enterprise was not an abuse of discretion where defendants made no showing of prejudice on their motion. U. S. v. Lyon, C.A.7 (Wis.) 1968, 397 F.2d 505, certiorari denied 89 S.Ct. 131, 393 U.S. 846, 21 L.Ed.2d 117. Criminal Law 622.7(4)

Failure to order separate individual trials sua sponte in prosecutions for conspiracy to violate the Federal Train Wreck Act, section 1992 of this title, and the substantive offense of violating it was not abuse of discretion. U. S. v. Hensley, C.A.6 (Ky.) 1967, 374 F.2d 341, certiorari denied 87 S.Ct. 2139, 388 U.S. 923, 18 L.Ed.2d 1373, rehearing denied 88 S.Ct. 25, 389 U.S. 891, 19 L.Ed.2d 210. Criminal Law 622.7(4)

District judge in prosecution for narcotics law violation and conspiracy did not abuse discretion in denying severance. U. S. v. Pullings, C.A.7 (Ill.) 1963, 321 F.2d 287. Criminal Law 622.7(4)

Denial of motions for separate trials of two defendants charged with conspiracy was not abuse of discretion. Rizzo v. U. S., C.A.8 (Mo.) 1962, 304 F.2d 810, certiorari denied 83 S.Ct. 188, 371 U.S. 890, 9 L.Ed.2d 123. Criminal Law 622.7(1)

Matter of granting motion for separate trial is one of discretion on part of trial judge. Rizzo v. U. S., C.A.8 (Mo.) 1962, 304 F.2d 810, certiorari denied 83 S.Ct. 188, 371 U.S. 890, 9 L.Ed.2d 123. Criminal Law 622.6(3)

Motion of defendant for severance of trial on count of indictment charging her with conspiracy from trial on counts charging her codefendants with substantive offenses was addressed to discretion of District Court. Davenport v. U.S., C.A.9 (Or.) 1958, 260 F.2d 591, certiorari denied 79 S.Ct. 585, 359 U.S. 909, 3 L.Ed.2d 573. Criminal Law 622.6(4)

It was within sound discretion of trial judge to say whether defendants charged with conspiracy in smuggling psittacine birds into the United States should be tried separately or together and record revealed no abuse of discretion in denying severance. Duke v. U.S., C.A.9 (Cal.) 1958, 255 F.2d 721, certiorari denied 78 S.Ct. 1361, 357 U.S. 920, 2 L.Ed.2d 1365. Criminal Law 622.7(4)

Motion for trial separate from codefendant whose confessions were introduced was addressed to court's discretion. Johnson v. U.S., C.C.A.6 (Ky.) 1936, 82 F.2d 500, certiorari denied 56 S.Ct. 957, 298 U.S. 688, 80 L.Ed. 1407. Criminal Law 622.6(3)

Refusal of severance so that codefendant's wife might testify in defendant's behalf was not abuse of discretion in conspiracy case. Dowdy v. U.S., C.C.A.4 (N.C.) 1931, 46 F.2d 417. Criminal Law 622.7(1)

Denials in conspiracy prosecution of severance to defendant, having represented other defendants as attorney, was not abuse of discretion. Olmstead v. U.S., C.C.A.9 (Wash.) 1927, 19 F.2d 842, certiorari denied 48 S.Ct. 117, 275 U.S. 557, 72 L.Ed. 424, 72 L.Ed. 729, rehearing granted 48 S.Ct. 207, 276 U.S. 609, 72 L.Ed. 729, affirmed 48 S.Ct. 564, 277 U.S. 438, 72 L.Ed. 944. Criminal Law 622.7(12)

Determining severance in conspiracy cases is discretionary, and not subject to review, except for abuse. Olmstead v. U.S., C.C.A.9 (Wash.) 1927, 19 F.2d 842, certiorari denied 48 S.Ct. 117, 275 U.S. 557, 72 L.Ed. 424, 72 L.Ed. 729, rehearing granted 48 S.Ct. 207, 276 U.S. 609, 72 L.Ed. 729, affirmed 48 S.Ct. 564, 277 U.S. 438, 72 L.Ed. 944. Criminal Law 622.6(3); Criminal Law 1148

Granting or denying of separate trials to defendants, charged with conspiracy, is within court's discretion. Waldeck v. U.S., C.C.A.7 (Ind.) 1924, 2 F.2d 243, certiorari denied 45 S.Ct. 232, 267 U.S. 595, 69 L.Ed. 805. See, also, Schwartzberg v. U.S., N.Y.1917, 241 F. 348, 154 C.C.A. 228; U.S. v. Lang, D.C.N.Y.1941, 40 F.Supp. 414; U.S. v. Rose, D.C.Ky.1940, 31 F.Supp. 249.

In conspiracy prosecution, motions for severance on ground of prejudicial joinder of defendants present the task of fairly balancing the prejudice of the government from separate trials against the prejudice to defendants from a mass trial; the resolution of the conflicting interests of the government and the defendants is a matter within the sound discretion of the trial judge. U S v. Stromberg, S.D.N.Y.1957, 22 F.R.D. 513. Criminal Law 622.6(4)

In conspiracy prosecution against 46 defendants, motions for severance on ground of prejudicial joinder of defendants would be denied at the pretrial stage without prejudice to their renewal before trial judge who would be in a position to make a more realistic appraisal of the appropriate considerations. U S v. Stromberg, S.D.N.Y.1957, 22 F.R.D. 513. Criminal Law 622.7(13)

455. ---- Admonition to jury, separate trials, trial proceedings generally

District court was not required to grant motion for severance and mistrial once other defendants changed their pleas to guilty during trial on charges of conspiracy and interstate travel in aid of racketeering, where district court's instructions to jury about the unexpected occurrence fully protected defendant. U. S. v. Johnson, C.A.4 (Va.) 1971, 451 F.2d 1321, certiorari denied 92 S.Ct. 1298, 405 U.S. 1018, 31 L.Ed.2d 480. Criminal Law 622.7(4); Criminal Law 867

Joint trial of three defendants indicted as conspirators in scheme to illegally use moneys of federally insured banks and savings associations and charging defendants as principals or as aider-abettors in illegally misapplying funds deposited in federally insured institutions, where complete admonitory instructions were given, did not infringe defendants' right to fair trial and refusal to grant severance was not abuse of discretion. U. S. v. Kahn, C.A.7 (Ill.) 1967, 381 F.2d 824, certiorari denied 88 S.Ct. 591, 389 U.S. 1015, 19 L.Ed.2d 661, rehearing denied 88 S.Ct. 2272, 392 U.S. 948, 20 L.Ed.2d 1413, certiorari denied 88 S.Ct. 592, 389 U.S. 1015, 19 L.Ed.2d 661, rehearing denied 88 S.Ct. 2272, 392 U.S. 948, 20 L.Ed.2d 1414. Criminal Law 622.7(5)

On record presented in prosecution for conspiracy to violate internal revenue laws by operating illicit liquor businesses, trial judge, who had carefully cautioned jury against considering evidence in passing on charges against defendants other than the one against whom alone such evidence was admitted, could not be charged with abuse of discretion in denying one defendant's motion for severance. Dowling v. U. S., C.A.5 (Ga.) 1957, 249 F.2d 746. Criminal Law 622.7(8)

Some of 53 defendants charged with using mails to defraud and with conspiracy to commit such act were not entitled to separate trials, where rights of each defendant could be guarded by judge in charge to jury and there would be no disadvantage from practical standpoint to such defendants. U. S. v. Gilbert, S.D.Ohio 1939, 31 F.Supp. 195. Criminal Law 622.7(3); Criminal Law 622.7(13)

456. ---- Motion, separate trials, trial proceedings generally

Even if a defendant does not move for severance of his trial from that of codefendants, trial judge has continuing duty to sever if prejudice appears during trial in a situation where proof of conspiracy count has failed on a

multicount indictment. U. S. v. Donner, C.A.7 (Ind.) 1974, 497 F.2d 184, certiorari denied 95 S.Ct. 619, 419 U.S. 1047, 42 L.Ed.2d 641, certiorari denied 95 S.Ct. 620, 419 U.S. 1047, 42 L.Ed.2d 641. Criminal Law 622.8(3)

If defendants, who were charged with conspiracy to bribe police officer and also for bribery to influence officer in enforcement of gambling laws, wished to be tried separately on those charges, request for separate trial on such charges should have been made in the trial court by motion under rule 14, Federal Rules of Criminal Procedure, Title 18, providing for such relief. Monroe v. U.S., C.A.D.C.1956, 234 F.2d 49, 98 U.S.App.D.C. 228, certiorari denied 77 S.Ct. 94, 352 U.S. 872, 1 L.Ed.2d 76, certiorari denied 77 S.Ct. 94, 352 U.S. 873, 1 L.Ed.2d 76, rehearing denied 77 S.Ct. 219, 352 U.S. 937, 1 L.Ed.2d 170, rehearing denied 78 S.Ct. 114, 355 U.S. 875, 2 L.Ed.2d 79. Criminal Law 622.8(2)

Where defendant and another were indicted for conspiracy and defendant had several opportunities to raise question of severance of trial but failed to do so, any error in failing to make a formal severance of trial was waived. U. S. v. Koritan, E.D.Pa.1960, 182 F.Supp. 143, affirmed 283 F.2d 516. Criminal Law 622.9

457. Seating of defendants, trial proceedings generally

In conspiracy prosecution, where there were 29 individual defendants and one corporation on trial, there was no objection to seating defendants in order in which their names appeared in indictment and in court's requesting prosecuting attorney to prepare diagram showing names of defendants and order in which they were seated and giving each of jurors a copy to enable them to follow testimony and distinguish defendants whose names were difficult to pronounce and remember. U.S. v. Carlisi, E.D.N.Y.1940, 32 F.Supp. 479. Criminal Law 633(1)

458. Restraint of defendants, trial proceedings generally

There was no abuse of discretion in trial judge's action, taken to preserve security of courtroom, ordering two defendants gagged and shackled after one had climbed into jury box and pushed jurors and another had thrown chair at Assistant United States Attorney and directing that additional marshals be present and did not abuse discretion in failing either to declare mistrial or to sever unruly defendants. U. S. v. Bentvena, C.A.2 (N.Y.) 1963, 319 F.2d 916, certiorari denied 84 S.Ct. 345, 375 U.S. 940, 11 L.Ed.2d 271, rehearing denied 90 S.Ct. 894, 397 U.S. 928, 25 L.Ed.2d 108, rehearing denied 84 S.Ct. 515, 375 U.S. 989, 11 L.Ed.2d 476, certiorari denied 84 S.Ct. 346, 375 U.S. 940, 11 L.Ed.2d 271, rehearing denied 84 S.Ct. 1162, 377 U.S. 913, 12 L.Ed.2d 183, certiorari denied 84 S.Ct. 353, 375 U.S. 940, 11 L.Ed.2d 272, certiorari denied 84 S.Ct. 354, 375 U.S. 940, 11 L.Ed.2d 272, certiorari denied 84 S.Ct. 355, 375 U.S. 940, 11 L.Ed.2d 272, certiorari denied 84 S.Ct. 360, 375 U.S. 940, 11 L.Ed.2d 272. Criminal Law 622.7(1); Criminal Law 637; Criminal Law 867

459. Opening statement, trial proceedings generally

Conspiracy count was improperly dismissed after Government's opening statement, though Government conceded that it would not prove exactly how conspiracy began, that all defendants ever got together in single group and agreed to single, unified plan, or that defendants communicated with each other frequently; nothing in Government's opening statement was necessarily inconsistent with judgment of conviction under single conspiracy count. U.S. v. Donsky, C.A.3 (N.J.) 1987, 825 F.2d 746. Criminal Law 703

In prosecution for conspiracy to violate Hobbs and Travel Acts, sections 1951 and 1952 of this title, and extortion from businesses engaged in interstate commerce, references in prosecutor's opening statement to defendant's complicity in conspiracies did not deprive defendant of fair trial even though he was subsequently acquitted on conspiracy counts, absent any indication that prosecutor had outlined facts that he did not believe could be substantiated. U. S. v. Somers, C.A.3 (N.J.) 1974, 496 F.2d 723, certiorari denied 95 S.Ct. 56, 419 U.S. 832, 42 L.Ed.2d 58, certiorari denied 95 S.Ct. 57, 419 U.S. 832, 42 L.Ed.2d 58. Criminal Law 703

18 U.S.C.A. § 371

In prosecution for wilful misapplication of bank funds, making false entries in bank records, conspiracy to commit offenses against United States, and violation of mail fraud statute, § 1341 of this title, certain exaggerations in opening statement with respect to amount of money and number of checks allegedly involved did not constitute grounds for new trial, where such exaggerations were not made in bad faith and did not constitute misconduct. U. S. v. Scoblick, C.A.3 (Pa.) 1955, 225 F.2d 779. Criminal Law 1171.2

In prosecution for violation of National Housing Act, § 1731(a) of Title 12, for presenting false claims and for conspiracy arising out of a loan to an indigent family solicited by defendants ostensibly for repairs, it was proper for U.S. attorney to refer to in his opening remarks, and later to adduce evidence concerning, a prior loan transaction of a similar nature, in which also only a small percentage of proceeds of loan was used for repairs, to establish defendants' purpose. U.S. v. Uram, C.C.A.2 (N.Y.) 1945, 148 F.2d 187. Criminal Law 371(1); Criminal Law 703

In prosecution for violations of Mail Fraud Act, former § 338 of this title, for violations of fraud provisions of Securities Act of 1933, § 77q(a)(1) of Title 15, and for conspiracy to violate said sections, by promotion of membership club with object of obtaining money and property from club members, where opening statement of prosecuting attorney had to do with investigation of the club in other cities for purpose of showing knowledge of defendants, charged with conspiracy, of the existence of personal loans and of circumstances surrounding the case generally, but trial court ruled out such evidence and admonished jury, there was no harmful error. U. S. v. Monjar, C.C.A.3 (Del.) 1944, 147 F.2d 916, certiorari denied 65 S.Ct. 1191, 325 U.S. 859, 89 L.Ed. 1979, certiorari denied 65 S.Ct. 1192, 325 U.S. 859, 89 L.Ed. 1979, certiorari denied 65 S.Ct. 1192, 325 U.S. 859, 89 L.Ed. 1980, certiorari denied 65 S.Ct. 1193, 325 U.S. 859, 89 L.Ed. 1980, certiorari denied 65 S.Ct. 1194, 325 U.S. 859, 89 L.Ed. 1981. Criminal Law 1171.2

In prosecution for conspiracy to use the mails to defraud and for using mails in a scheme to defraud, prosecutor's opening statement to jury that a defendant had been convicted of violating the National Prohibition Act, former § 1 et seq. of Title 27, while it was in force, was not improper where such fact was alleged in indictment, since fact of conviction, though excluded by court, was properly admissible. U.S. v. Feinberg, C.C.A.2 (N.Y.) 1944, 140 F.2d 592, certiorari denied 64 S.Ct. 943, 322 U.S. 726, 88 L.Ed. 1562. Criminal Law 703

In prosecution for using and conspiring to use the mails to defraud gullible individuals by collecting fees for enrolling them as heirs of mythical Baker estate, prosecuting attorney's statement in address to jury that, "We have got to convict these people. They will go wild with this kind of thing. The only way it can be done is by conviction," was prejudicial. U. S. v. Sprengel, C.C.A.3 (Pa.) 1939, 103 F.2d 876. Criminal Law 723(3)

In prosecution for using and conspiring to use the mails to defraud gullible individuals by collecting fees for enrolling them as heirs of mythical Baker estate, prosecuting attorney's statement in address to jury that, if accused were acquitted, they would have letterheads printed stating that they had been acquitted and that all Baker heirs should now enroll, was prejudicial because of reference to possible future conduct. U. S. v. Sprengel, C.C.A.3 (Pa.) 1939, 103 F.2d 876. Criminal Law 723(1)

In prosecution for using and conspiring to use the mails to defraud gullible individuals by collecting fees for enrolling them as heirs of mythical Baker estate, prosecuting attorney's explanation, that reference to case of another who was indicted was to show that accused were dealing with people indicted and a coconspirator was prejudicial. U. S. v. Sprengel, C.C.A.3 (Pa.) 1939, 103 F.2d 876. Criminal Law 720(7.1)

In prosecution for conspiracy to violate revenue laws relating to untax-paid distilled spirits, prosecutor's opening statement, in presence of jury, to effect that government would not have indicted defendant had he not been guilty, was prejudicial. Minker v. U S, C.C.A.3 (Pa.) 1936, 85 F.2d 425. Criminal Law 703

Defendant's counsel should not have made opening statement, if he did not expect to introduce evidence to

substantiate it. Lewis v. U. S., C.C.A.6 (Mich.) 1926, 11 F.2d 745. Criminal Law 704

460. Witnesses, trial proceedings generally--Generally

In prosecution for conspiracy to embezzle and misapply bank funds, trial court did not err in permitting the use of FBI report to refresh recollection of prosecution witness, since recollection can be refreshed from documents made by persons other than the witness. U. S. v. Landof, C.A.9 (Cal.) 1978, 591 F.2d 36. Witnesses 255(4)

In light of quasi-nebulous relevance of asserted testimony of witnesses who died before defendants were indicted for conspiracy and stock fraud, judgment of experienced trial judge should be determinative as to whether defendants were deprived of a fair trial. U. S. v. Quinn, C.A.2 (N.Y.) 1971, 445 F.2d 940, certiorari denied 92 S.Ct. 87, 404 U.S. 850, 30 L.Ed.2d 90, certiorari denied 92 S.Ct. 299, 404 U.S. 945, 30 L.Ed.2d 261. Criminal Law 1158(2)

In trial of conspiracy case, each witness is offered for dual purpose, first, to show individual participation in conspiracy by its various numbers and second, to prove conspiracy itself and even though testimony of witness is temporarily limited to first purpose, his testimony is nonetheless offered for second purpose. U. S. v. Hickey, C.A.7 (Ill.) 1966, 360 F.2d 127, certiorari denied 87 S.Ct. 284, 385 U.S. 928, 17 L.Ed.2d 210. Conspiracy 45

A defendant charged with conspiracy to counterfeit money was not deprived of chance to testify as to charge in indictment because of introduction of cards which evidenced another offense and the refusal of an advance assurance that he would not be cross-examined concerning them. U. S. v. Lukasik, C.A.7 (Ill.) 1965, 341 F.2d 325, certiorari denied 85 S.Ct. 1770, 381 U.S. 938, 14 L.Ed.2d 702. Witnesses 88

It was not error to try defendants for selling heroin and for conspiracy while government informer was unavailable as witness. U. S. v. Cimino, C.A.2 (N.Y.) 1963, 321 F.2d 509, certiorari denied 84 S.Ct. 486, 375 U.S. 967, 11 L.Ed.2d 416, rehearing denied 89 S.Ct. 1992, 395 U.S. 941, 23 L.Ed.2d 458, certiorari denied 84 S.Ct. 491, 375 U.S. 974, 11 L.Ed.2d 418. Criminal Law 666(1)

In prosecution of individuals and congressman for conspiracy to defraud the United States through violation of former § 203 of this title, prohibiting members of Congress from receiving compensation in matters affecting the government, arising out of actions of congressman in relation to matters before the War Department, permitting prosecution to refuse to inform defense whether it intended to call military witness was proper. May v. United States, C.A.D.C.1949, 175 F.2d 994, 84 U.S.App.D.C. 233, certiorari denied 70 S.Ct. 58, 338 U.S. 830, 94 L.Ed. 505, order withheld 70 S.Ct. 81, 338 U.S. 854, motion denied 70 S.Ct. 94, motion denied 70 S.Ct. 95, rehearing denied 70 S.Ct. 154, 338 U.S. 882, 94 L.Ed. 542, rehearing denied 70 S.Ct. 155, 338 U.S. 882, 94 L.Ed. 542, order withheld 70 S.Ct. 80. Criminal Law 627.6(1)

In prosecution of individuals and congressman for conspiracy to defraud the United States through violation of former § 203 of this title, prohibiting members of Congress from receiving compensation in matters affecting the government, court properly refused to permit calling of Secretary of State and witnesses similarly circumstanced until defendants, without giving list to prosecution, informed court what testimony would be expected from such witnesses. May v. United States, C.A.D.C.1949, 175 F.2d 994, 84 U.S.App.D.C. 233, certiorari denied 70 S.Ct. 58, 338 U.S. 830, 94 L.Ed. 505, order withheld 70 S.Ct. 81, 338 U.S. 854, motion denied 70 S.Ct. 94, motion denied 70 S.Ct. 95, rehearing denied 70 S.Ct. 154, 338 U.S. 882, 94 L.Ed. 542, rehearing denied 70 S.Ct. 155, 338 U.S. 882, 94 L.Ed. 542, order withheld 70 S.Ct. 80. Witnesses 2(1)

In prosecution for using mails to defraud and for conspiracy to commit the substantive crime, district judge's failure to place more restraint upon a confessed confederate when testifying for prosecution did not constitute error. U.S. v. Cohen, C.C.A.2 (N.Y.) 1944, 145 F.2d 82, certiorari denied 65 S.Ct. 553, 323 U.S. 799, 89 L.Ed. 637, certiorari denied 65 S.Ct. 553, 323 U.S. 799, 89 L.Ed. 638, certiorari denied 65 S.Ct. 554, 323 U.S. 800, 89 L.Ed. 638.

18 U.S.C.A. § 371

Criminal Law 633(1)

Where question whether witness had endorsed any of the contracts of a company was not material to charges in indictment, whether witness could name a contract that he had endorsed to which company was obligor was properly excluded. Harper v. U. S., C.C.A.8 (Mo.) 1944, 143 F.2d 795. Criminal Law 382

In prosecution for conspiracy to violate internal revenue laws relating to liquors, where one of the defendants had been apprehended driving into Alabama with a truckload of liquor, ruling that question asked of such defendant on direct examination if he had had any purpose in coming into the state other than to collect money in payment for the truck was not error, where it was not revealed what the answer would have been. Burt v. U.S., C.C.A.5 (Ala.) 1943, 139 F.2d 73, certiorari denied 64 S.Ct. 936, 321 U.S. 799, 88 L.Ed. 1087. Criminal Law 670

In prosecution for conspiracy to violate narcotic laws, § 171 et seq. of Title 21, wherein district attorney was surprised by adverse testimony of government witness who was an alleged co-conspirator, district court's action in permitting witness to be questioned concerning prior inconsistent statements allegedly made by him at time of his arrest and before the grand jury was not abuse of discretion. Pastrano v. U.S., C.C.A.4 (Md.) 1942, 127 F.2d 43. Witnesses 323

In prosecution for conspiracy to violate internal revenue laws, district court did not commit prejudicial error in permitting one of defendants to be questioned concerning a conviction for a liquor offense during prohibition, in order to impeach his credibility. U.S. v. Wroblewski, C.C.A.7 (Ind.) 1939, 105 F.2d 444. Criminal Law 1170.5(5); Witnesses 337(14)

Transaction having been testified to on cross-examination of government's witness, permitting redirect examination in respect thereto was not error. Cook v. U.S., C.C.A.8 (Okla.) 1928, 28 F.2d 730. Witnesses 287(1)

Asking one of defendants in conspiracy prosecution as to assisting another in narcotic smuggling transaction was not prejudicial, in absence of bad faith, where question was stricken out and jury instructed to disregard it. Kuhn v. U.S., C.C.A.9 (Cal.) 1928, 24 F.2d 910, modified on denial of rehearing 26 F.2d 463, certiorari denied 49 S.Ct. 11, 278 U.S. 605, 73 L.Ed. 533. Criminal Law 730(3); Criminal Law 1171.8(2)

Denying application for experimental test of witness' ability to identify voices over telephone was not abuse of discretion. Green v. U.S., C.C.A.9 (Wash.) 1927, 19 F.2d 850, certiorari denied 48 S.Ct. 117, 275 U.S. 557, 72 L.Ed. 424, 72 L.Ed. 729, rehearing granted 48 S.Ct. 207, 276 U.S. 609, 72 L.Ed. 729, affirmed 48 S.Ct. 564, 277 U.S. 438, 72 L.Ed. 944. Criminal Law 650

Admission in evidence of incriminating statement by one defendant, without first permitting cross-examination of witness through whom it was offered, was not error. Lewis v. U. S., C.C.A.6 (Mich.) 1926, 11 F.2d 745. Criminal Law 427(3)

Permitting the prosecution to introduce in evidence a statement signed by one of its witnesses was not prejudicial error, although it was not admissible as evidence on the issues, where the witness was first interrogated in regard to making the statement on his cross-examination. Cohen v. U.S., C.C.A.2 (N.Y.) 1907, 157 F. 651, 85 C.C.A. 113, certiorari denied 28 S.Ct. 261, 207 U.S. 596, 52 L.Ed. 357.

Defendant, who was convicted of aiding and abetting robbery of bank and of conspiracy to rob bank, and who apparently made no effort or request to have persons in question served, was not entitled to relief, in proceeding on motion to vacate sentence, on theory that failure of prosecution or trial court, on their own initiative, to subpoena witnesses for defense denied defendant his right to compulsory process of witnesses. Calvert v. U. S., W.D.Ky.1971, 323 F.Supp. 112. Criminal Law 1541

18 U.S.C.A. § 371

Where verdict of guilty on charges of conspiracy and illegal sale of narcotics was set aside and new trial granted because of failure of government to produce, or show reasonable efforts to produce, at trial, former special employee, who defendants claimed induced them to make illegal sales, government was directed forthwith to issue and make reasonable efforts to serve necessary process for appearance of former employee at trial. U. S. v. Clarke, E.D.Pa.1963, 220 F.Supp. 905. Criminal Law 965

461. ---- List, witnesses, trial proceedings generally

Where in prosecution for conspiracy and substantive violations of section 77e and section 77q of Title 15 and section 1341 of this title most, if not all, witnesses appearing before grand jury were already known, government would be directed to provide the defense, on day of trial, a list of all witnesses appearing before grand jury. U. S. v. Anzelmo, E.D.La.1970, 319 F.Supp. 1106. Criminal Law 629(3.1)

462. ---- Competency, witnesses, trial proceedings generally

Defendants in prosecution for securities fraud conspiracy were not deprived of due process of law by government's use of an untiring securities con artist as prosecution witness even though witness participated wholeheartedly in fraud scheme where jury was fully advised regarding witness' relations with the United States attorney's office as well as witness' criminal background and judge's charge fully and fairly cautioned jury regarding care it should exercise in evaluating the testimony of an accomplice. U. S. v. Koss, C.A.2 (N.Y.) 1974, 506 F.2d 1103, certiorari denied 95 S.Ct. 1402, 420 U.S. 977, 43 L.Ed.2d 657, certiorari denied 95 S.Ct. 1565, 421 U.S. 911, 43 L.Ed.2d 776. Constitutional Law 268(10)

Testimony of alleged coconspirator concerning threats allegedly made against him by defendant was competent and relevant as indicating defendant's animus where all hearsay factual statements and threats by others than defendant had been excluded. U. S. v. Davis, C.A.5 (Tex.) 1973, 487 F.2d 112, rehearing denied 486 F.2d 1403, certiorari denied 94 S.Ct. 1573, 415 U.S. 981, 39 L.Ed.2d 878, rehearing denied 94 S.Ct. 2005, 416 U.S. 975, 40 L.Ed.2d 565. Criminal Law 412(3)

In prosecution for conspiracy to violate narcotic laws and for receiving, concealing, transporting and selling heroin, a witness for the government would not be deemed unworthy of belief even if he was in fact a "narcotic addict, a perjurer, a thief and a robber, a pimp, and a smuggler of heroin" since it might be suggested that these were possible reasons for use of such witness by defendants in their conspiracy in dealing with narcotic drugs. Leyvas v. U. S., C.A.9 (Cal.) 1958, 264 F.2d 272. Criminal Law 553

In prosecution for conspiracy, testimony of interpreter who acted for treasury agent in France was competent, where agent testified that he knew enough French to understand what was being said and interpreter was himself an accomplice. United States v. Reina, C.A.2 (N.Y.) 1957, 242 F.2d 302, certiorari denied 77 S.Ct. 1294, 354 U.S. 913, 1 L.Ed.2d 1427, rehearing denied 78 S.Ct. 9, 355 U.S. 852, 2 L.Ed.2d 61. Witnesses 230

Statements or confessions of one conspirator made after the conspiracy is ended are not admissible evidence against the other conspirators, but this does not render a conspirator incompetent to testify as to activities of various defendants on trial during conspiracy. Smith v. U.S., C.A.5 (Tex.) 1955, 224 F.2d 58, certiorari denied 76 S.Ct. 138, 350 U.S. 885, 100 L.Ed. 780. Criminal Law 422(1); Criminal Law 424(1)

In prosecution for bank robbery, placing lives of bank employees in peril and for conspiracy, fact that young witness described robbers' clothing in way which did not agree with description given by other witnesses was matter which at most affected credibility and not competency. U. S. v. Avellino, C.A.3 (Pa.) 1954, 216 F.2d 877. Robbery 24.40

A conspirator, although an accomplice whose testimony is uncorroborated, is a competent witness against

co-conspirator, not only as to existence of conspiracy but also as to participation of co-conspirator therein. Colt v. U.S., C.C.A.5 (Fla.) 1947, 160 F.2d 650. Criminal Law 508(1)

In prosecution for conspiracy by state and local officers acting under color of law to deprive inhabitants of United States of rights and immunities protected by U.S.C.A.Const. Amend. 14 and federal laws, victims of the conspiracy not specifically named in indictment were competent to testify concerning their treatment at the hands of defendants of a nature similar to that charged in indictment, even though the overt acts charged in indictment did not specifically include the subject matter of such testimony. Culp v. U. S., C.C.A.8 (Ark.) 1942, 131 F.2d 93. Conspiracy 45

In prosecution for conspiracy by state and local officers to deprive inhabitants of the United States of rights and immunities secured and protected by U.S. C.A.Const. Amend. 14 and federal laws, one who was taken into custody without cause by one of the defendants and beaten and shot by him was competent to testify for the government, notwithstanding he was not formally arrested or imprisoned and no charge was filed against him before any magistrate. Culp v. U. S., C.C.A.8 (Ark.) 1942, 131 F.2d 93. Conspiracy 45

That witnesses testifying in prosecution for conspiring to violate former § 241 of this title, defining offense of corruptly endeavoring to influence a witness in a federal court, were serving terms in the penitentiary might be considered by the jury as affecting their veracity but did not make them incompetent witnesses. Samples v. U. S., C.C.A.5 (Ala.) 1941, 121 F.2d 263, certiorari denied 62 S.Ct. 129, 314 U.S. 662, 86 L.Ed. 530. Witnesses 48(1); Witnesses 345(1)

Wife of defendant charged with conspiracy to violate National Prohibition Act, former § 1 et seq. of Title 27, was competent witness. Green v. U.S., C.C.A.9 (Wash.) 1927, 19 F.2d 850, certiorari denied 48 S.Ct. 117, 275 U.S. 557, 72 L.Ed. 424, 72 L.Ed. 729, rehearing granted 48 S.Ct. 207, 276 U.S. 609, 72 L.Ed. 729, affirmed 48 S.Ct. 564, 277 U.S. 438, 72 L.Ed. 944. Witnesses 52(7)

In a prosecution for conspiring to defraud the United States, the fact that the trial court declined to allow defendant's wife to testify, on the ground that the competency of witnesses in a criminal case was governed by the common-law rules in force when Judiciary Act 1789 was passed, was no ground for reversal. Fitter v. U.S., C.C.A.2 (N.Y.) 1919, 258 F. 567, 169 C.C.A. 507. Witnesses 52(7)

The wife of a co-conspirator with defendants on trial is competent to testify as to facts which do not involve her husband in any way. U S v. Knoell, E.D.Pa.1916, 230 F. 509, affirmed 239 F. 16, 152 C.C.A. 66, error dismissed 38 S.Ct. 316, 246 U.S. 648, 62 L.Ed. 920.

A plea of guilty does not render a conspirator incompetent to testify and there must be a judgment of conviction pronounced to have that effect. U.S. v. Wilson, D.C.Or.1894, 60 F. 890. Witnesses 48(3)

463. ---- Self-incrimination, witnesses, trial proceedings generally

In prosecution for conspiracy to defraud the United States by operation of a tax fixing ring and for influencing witnesses and impeding a grand jury investigation, permitting prosecuting attorney to ask defendant on cross-examination whether he had invoked his constitutional privilege against self-incrimination before grand jury in response to the same or similar questions in response to which he had testified fully on the trial constituted prejudicial error under circumstances of the case. Grunewald v. U.S., U.S.N.Y.1957, 77 S.Ct. 963, 353 U.S. 391, 1 L.Ed.2d 931. Criminal Law 1170.5(5); Witnesses 277(2.1)

In prosecution for conspiracy to defraud the United States by operation of a tax fixing ring and for influencing witnesses and impeding a grand jury investigation, prosecutor on cross-examination was improperly permitted to ask defendant whether he had invoked his constitutional privilege against self-incrimination before grand jury in

response to the same or similar questions in response to which he had testified fully on the trial, where defendant's claim of privilege before grand jury was wholly consistent with innocence and had he answered questions before grand jury in same way he subsequently answered on the trial, that nevertheless would have provided the government with incriminating evidence from defendant's own mouth. Grunewald v. U.S., U.S.N.Y.1957, 77 S.Ct. 963, 353 U.S. 391, 1 L.Ed.2d 931. Witnesses 277(2.1)

Privilege against self-incrimination permitted attorney to refuse to produce, in response to subpoena duces tecum, notes and memoranda written by attorney regarding preparation for and conduct of hearing on petition for contempt against her client, office diaries, billing records, and telephone logs, and notes, letters, and other correspondence written by client and sent or delivered to attorney, in that the documents were "personal business records" and were in the possession of attorney, who was a sole practitioner, and production could have constituted incriminatory testimonial act by attorney in regard to possible prosecution of her for criminal contempt or criminal conspiracy. In re Kave, C.A.1 (Mass.) 1985, 760 F.2d 343. Witnesses 298

In prosecution for conspiracy and possession of goods stolen from interstate commerce, testimony given on direct examination by unindicted coconspirator who testified as chief, prosecution witness, disclosing witness' unreported criminal activity, did not waive witness' U.S.C.A. Const. Amend. 5 privilege as to questions on cross-examination regarding details of his participation in such activity since disclosure of details would have presented real and appreciable danger of criminal prosecution not raised by witness' testimony on direct. U. S. v. LaRiche, C.A.6 (Ohio) 1977, 549 F.2d 1088, certiorari denied 97 S.Ct. 1687, 430 U.S. 987, 52 L.Ed.2d 383, certiorari denied 98 S.Ct. 506, 434 U.S. 966, 54 L.Ed.2d 452. Witnesses 305(1)

Codefendant's invocation of privilege against self-incrimination did not constitute withdrawal from conspiracy and did not preclude admission against codefendant of evidence of matters subsequently occurring in prosecution for conspiracy to defraud government and SEC and for substantive violations of securities laws. U. S. v. Colasurdo, C.A.2 (N.Y.) 1971, 453 F.2d 585, certiorari denied 92 S.Ct. 1766, 406 U.S. 917, 32 L.Ed.2d 116. Conspiracy 45

Where defense counsel revealed that defendant would raise mental incapacity as defense to offenses charged, permitting government psychiatrist, who did not testify as to any statement of defendant relating to his guilt or innocence, to testify on basis of psychiatric examination, which defendant had been ordered to submit to, did not violate defendant's right against self incrimination. U. S. v. Weiser, C.A.2 (N.Y.) 1969, 428 F.2d 932, certiorari denied 91 S.Ct. 1606, 402 U.S. 949, 29 L.Ed.2d 119. Criminal Law 393(1)

Although coconspirator's plea of privilege under U.S.C.A. Const. Amend. 5, in prosecution for conspiracy to use and actual use of facilities in interstate commerce to carry on an unlawful gambling business, may have operated to deprive defendant of his right to confront and cross-examine coconspirator with respect to coconspirator's federal wagering tax stamp filings, which had been admitted into evidence to prove conspiracy count, defendant's right of confrontation was incumbent on a timely assertion of such right; accordingly, right was waived where defendant rested his case without moving for a directed verdict or mistrial or in any way complaining of denial of confrontation. Nolan v. U. S., C.A.10 (Okla.) 1969, 423 F.2d 1031, certiorari denied 91 S.Ct. 47, 400 U.S. 848, 27 L.Ed.2d 85. Criminal Law 698(1)

Where codefendant who was jointly indicted with defendant was separately tried and at time of defendant's trial was in process of appealing his conviction and he did not waive his privilege against self-incrimination, he could not be required to testify in defendant's behalf. Holsen v. U. S., C.A.5 (Ala.) 1968, 392 F.2d 292, certiorari denied 89 S.Ct. 640, 393 U.S. 1029, 21 L.Ed.2d 573. Witnesses 5

Fairness of trial was not vitiated when government called to stand person who allegedly had taken part in conspiracy on theory that government knew he would refuse to testify and claim privilege against self-incrimination, where it appeared that government in good faith reasonably expected the district judge to order

the witness to testify. U. S. v. Edwards, C.A.2 (N.Y.) 1966, 366 F.2d 853, certiorari denied 87 S.Ct. 852, 386 U.S. 908, 17 L.Ed.2d 782, certiorari denied 87 S.Ct. 882, 386 U.S. 919, 17 L.Ed.2d 790. Criminal Law 706(7)

Constitutional privilege against self-incrimination of defendants, who were charged with conspiracy to violate section 1341 of this title should have been invoked at time civil depositions were taken if the defendants were reasonably apprehensive that their disclosures could be used in criminal prosecution or could lead to evidence that might be so used, and when defendants proceeded to give their depositions without claiming the privilege they thereby waived the protection of the privilege. U. S. v. Wolfson, D.C.Del.1968, 294 F.Supp. 267. Federal Civil Procedure 1332

Defendant in mail fraud and conspiracy prosecution did not have his privilege against self-incrimination and right to effective assistance of counsel infringed by attorney's representing other coconspirators where defendant repeated to assistant United States Attorney everything he had previously told the former attorney. U. S. v. Pilnick, S.D.N.Y.1967, 267 F.Supp. 791. Criminal Law 393(1); Criminal Law 641.5(2.1)

Bar employees who were called as witnesses in federal investigation of employer's possible occupational tax stamp liability were conceivably subject to prosecution for conspiracy or aiding and abetting an attempt to defeat payment of gaming stamp tax, and could assert privilege against self-incrimination in refusing to respond to questions, the answers to which might constitute injurious disclosures as to them personally, but were not justified in refusing to answer questions not falling in that category. George v. Lindberg, D.C.Minn.1956, 138 F.Supp. 77. Witnesses 297(11)

464. ---- Immunity, witnesses, trial proceedings generally

In prosecution of fur trade union officials for, inter alia, conspiracy to accept payments from fur manufacturers, conducting union affairs through pattern of racketeering and with accepting such payments, Government was not obligated to grant immunity to fur manufacturers so that they could be called to testify. U. S. v. Stofsky, C.A.2 (N.Y.) 1975, 527 F.2d 237, stay denied 96 S.Ct. 1490, 425 U.S. 902, 47 L.Ed.2d 751, certiorari denied 97 S.Ct. 65, 429 U.S. 819, 50 L.Ed.2d 80, certiorari denied 97 S.Ct. 66, 429 U.S. 819, 50 L.Ed.2d 80. Criminal Law 42

Where statement which defendant alleged codefendant would make if he were to testify constituted broad denials of critical allegations of indictment, such a conclusory proffer was insufficient to demonstrate that codefendant's testimony would be exculpatory and, thus, requisite showing for grant of judicially fashioned use immunity to codefendant so as to allow codefendant to testify in defendant's favor at his trial was not made. U. S. v. Stout, E.D.Pa.1980, 499 F.Supp. 605. Witnesses 304(1)

465. ---- Examination by trial judge, witnesses, trial proceedings generally

In prosecution for using interstate wire facilities in carrying out scheme to defraud certain hotel casinos and for conspiracy involving same scheme, no prejudice to defendants occurred from trial judge's questioning of witnesses where on one occasion trial judge instructed jury to disregard his question and answer thereto, on another occasion trial judge withdrew question, on another occasion jury was not even in room, and no objection by defendants' counsel was made on remaining occasions, save one. U. S. v. Scallion, C.A.5 (La.) 1976, 533 F.2d 903, certiorari denied 97 S.Ct. 824, 429 U.S. 1079, 50 L.Ed.2d 799, rehearing denied 97 S.Ct. 1342, 430 U.S. 923, 51 L.Ed.2d 602, on rehearing 548 F.2d 1168, certiorari denied 98 S.Ct. 2843, 436 U.S. 943, 56 L.Ed.2d 784. Criminal Law 1170.5(5.5)

Where trial judge in conspiracy prosecution interrogated defendant at some length and similarly interrogated the opposite number witness for the government in seeking to "ferret out the truth", and judge was conscious of his

proper role and necessity of keeping within it, court's questioning did not result in substantial error. U. S. v. Kelly, C.A.3 (N.J.) 1964, 329 F.2d 314. Criminal Law 656(2)

Trial judge's breaking into examination of witnesses with questions of his own and examining some of witnesses at length was not improper and was not prejudicial, where participation was without bias or prejudice toward either side which would render proceeding unfair. Herman v. U.S., C.A.5 (Fla.) 1961, 289 F.2d 362, certiorari denied 82 S.Ct. 174, 368 U.S. 897, 7 L.Ed.2d 93. Criminal Law 656(2)

Within exercise of reasonable discretion, it is proper for trial judge to break into examination of witnesses with questions of his own and to examine witnesses. Herman v. U.S., C.A.5 (Fla.) 1961, 289 F.2d 362, certiorari denied 82 S.Ct. 174, 368 U.S. 897, 7 L.Ed.2d 93. Criminal Law 656(2)

In prosecution for conspiracy to violate laws relating to distilled spirits, record failed to establish that defendants were denied a fair and impartial trial on theory that district judge excessively questioned witnesses. Davis v. U. S., C.A.4 (N.C.) 1960, 279 F.2d 127, certiorari denied 81 S.Ct. 60, 364 U.S. 822, 5 L.Ed.2d 53. Criminal Law 656(2)

In prosecution for transporting two automobiles across state lines, knowing the same to have been stolen, and for conspiracy to commit such offenses, in view of fact that the evidence presented a close case to the jury as to whether the defendant had knowledge that automobiles were stolen, unjustified and extensive intervention of the trial judge in questioning defendant and other witnesses constituted prejudicial error. U. S. v. Carmel, C.A.7 (Ill.) 1959, 267 F.2d 345. Criminal Law 656(2); Criminal Law 1166.22(5)

In prosecution for conspiracy to traffic in narcotics, record did not reveal that trial court's action in interrogating witnesses in matters possibly bearing on their credibility resulted in an unfair trial. U S v. De Fillo, C.A.2 (N.Y.) 1958, 257 F.2d 835, certiorari denied 79 S.Ct. 591, 359 U.S. 915, 3 L.Ed.2d 577. Criminal Law 1166.22(5)

The trial judge had right to examine witnesses in prosecution for presenting false claims to the United States and conspiring to do so. U.S. v. Breen, C.C.A.2 (N.Y.) 1938, 96 F.2d 782, certiorari denied 58 S.Ct. 1061, 304 U.S. 585, 82 L.Ed. 1546. Witnesses 246(2)

In prosecution for presenting false claims to United States in connection with contracts for supplying equipment for projects of Works Progess Administration by representing that higher wages had been paid employees than were actually paid, action of trial judge in asking defendants if witnesses who had testified that they had been paid less than he had said testified falsely was not error. U.S. v. Breen, C.C.A.2 (N.Y.) 1938, 96 F.2d 782, certiorari denied 58 S.Ct. 1061, 304 U.S. 585, 82 L.Ed. 1546. Witnesses 246(2)

Where a defendant, who was acquitted, testified strongly in favor of his codefendants, any attempt to hamper or discredit his testimony, as by the court's examination of such defendant, would be prejudicial to his codefendants. Williams v. U.S., C.C.A.9 (Cal.) 1937, 93 F.2d 685. Witnesses 246(2)

Witness is properly interrogated by court, in absence of jury, in determining admissibility of testimony. Cooper v. U.S., C.C.A.8 (Iowa) 1925, 9 F.2d 216. Criminal Law 671

466. ---- Examination by juror, witnesses, trial proceedings generally

It was within discretion of trial judge during trial of conspiracy prosecution to permit some of the jurors to put questions to witnesses and receive answers. U.S. v. Witt, C.A.2 (N.Y.) 1954, 215 F.2d 580, certiorari denied 75 S.Ct. 207, 348 U.S. 887, 99 L.Ed. 697. Witnesses 246(1)

467. ---- Hostile witness, witnesses, trial proceedings generally

It was not error for trial judge to declare one of government's witnesses to be a hostile witness and allow him to be cross-examined on basis of prior affidavit. U. S. v. Cantone, C.A.2 (N.Y.) 1970, 426 F.2d 902, certiorari denied 91 S.Ct. 55, 400 U.S. 827, 27 L.Ed.2d 57. Witnesses 380(5.1)

Where government witness who was member of alleged conspiracy was obviously reluctant witness, court did not err in permitting him to be declared hostile or in permitting government to cross-examine. U.S. v. Duff, C.A.6 (Mich.) 1964, 332 F.2d 702. Witnesses 323

Where government witness who was declared hostile witness gave no testimony which involved defendants in crimes charged, it was of no consequence whether jury believed it or not and use of witness' prior inconsistent statement which was damaging to some defendants was improper; instructions two weeks later did not cure error, and reversal and new trial were required as to such defendants. U.S. v. Duff, C.A.6 (Mich.) 1964, 332 F.2d 702. Criminal Law 1170.5(6); Witnesses 383

468. ---- Cross examination, witnesses, trial proceedings generally

Federal district court did not abuse its discretion, in wire fraud/conspiracy prosecution arising from unauthorized stock options trades, by limiting on grounds of repetition and confusion defendant's cross-examination of supervisory employees at financial services firm that employed codefendant/coconspirator; defendant, who sought to show that supervisors were aware of codefendant's unauthorized trades, was permitted to conduct substantial cross-examination including codefendant's supervisor's knowledge of certain trades and steps she took to investigate them, but cross-examination was cut short when it became repetitive or suggested that firm was to blame for losses. U.S. v. Callipari, C.A.1 (R.I.) 2004, 368 F.3d 22, vacated 125 S.Ct. 985, 543 U.S. 1098, 160 L.Ed.2d 998. Witnesses 282.5

In prosecution for conspiracy by members of organization known as Aryan Nations to bomb homosexual bar, term "Aryan Warrior" was relevant to background material and was referred to in testimony and other evidence presented to jury, and thus it was not improper for prosecutor to mention it when questioning one of the defendants. U.S. v. Winslow, C.A.9 (Idaho) 1992, 962 F.2d 845, as amended. Criminal Law 706(4)

In prosecution for conspiracy to defraud the United States, district court did not abuse its discretion in sustaining government's objection to defense counsel's attempt during cross-examination to probe into government's legal strategy for search of defendants' office or in denying defendants' motion to strike witness' testimony, where cross-examination related to collateral matters which had no bearing on truth of witness' direct testimony; moreover, none of evidence seized in search was used at trial so that any error resulting from refusal to strike witness' testimony was harmless. U.S. v. Little, C.A.9 (Cal.) 1984, 753 F.2d 1420. Criminal Law 696(8); Criminal Law 1168(4); Witnesses 270(2)

Where, in cross-examination of one defendant in prosecution for conspiracy, inter alia, no other defendant was even impliedly mentioned, there could be no prejudice to codefendants from questions not prejudicial to defendant witness. U.S. v. Plotke, C.A.11 (Fla.) 1984, 725 F.2d 1303, certiorari denied 105 S.Ct. 151, 469 U.S. 843, 83 L.Ed.2d 89. Criminal Law 1169.7

Where evidence regarding defendant's lack of involvement in offense charged in one count of ten-count indictment was clear and trial court plainly pointed such out to jury, defendant was not prejudiced by limitation of cross-examination intended to emphasize defendant's lack of involvement in such offense. U.S. v. Ackal, C.A.5 (La.) 1983, 706 F.2d 523, rehearing denied 711 F.2d 1054. Criminal Law 1170.5(5)

In prosecution for conspiracy to use mails in furtherance of scheme to defraud and conspiracy to defraud United States by obstructing Internal Revenue Service, trial court did not abuse its discretion in limiting cross-examination of government witness by sustaining Government's objections to four questions relating to criminal penalties that

witness faced and his receipt of immunity, in view of fact that jury had ample information on witness' receipt of immunity and the benefits he derived from immunity. U. S. v. Fitzgerald, C.A.7 (Ind.) 1978, 579 F.2d 1014, certiorari denied 99 S.Ct. 610, 439 U.S. 1002, 58 L.Ed.2d 677, certiorari denied 99 S.Ct. 611, 439 U.S. 1002, 58 L.Ed.2d 677. Witnesses 372(2)

In prosecution for bribery and conspiracy to bribe criminal investigators of the Immigration and Naturalization Service, trial court did not commit reversible error in refusing to permit defense counsel to ask investigator on cross-examination if he had tried to involve defendant in a narcotics deal, in view of facts that evidence concerning narcotics activities had been permitted on direct examination only to demonstrate cordial relationship among defendants and investigators in order to rebut contention of coercion and that total cross-examination was sufficient to afford jury basis to evaluate defense theory. U. S. v. Ong, C.A.2 (N.Y.) 1976, 541 F.2d 331, certiorari denied 97 S.Ct. 814, 429 U.S. 1075, 50 L.Ed.2d 793, certiorari denied 97 S.Ct. 1559, 430 U.S. 934, 51 L.Ed.2d 780. Criminal Law 1170.5(5)

Trial court properly permitted counsel to thoroughly cross-examine alleged co-conspirator with respect to his guilty plea and his expectations as to leniency, in view of coconspirator's plea and testimony in behalf of Government. U. S. v. Verdoorn, C.A.8 (Iowa) 1976, 528 F.2d 103. Witnesses 366

In prosecution for conspiracy, it was not abuse of discretion to allow prosecutor to ask particular defendant's character witness whether he had heard that on certain date such defendant was cited for contempt of court by certain court, where, from form of prosecutor's question, trial judge could reasonably have found that there was factual basis for the inquiry and where question was relevant in context of the examination. U. S. v. Heckman, C.A.3 (Pa.) 1973, 479 F.2d 726. Witnesses 274(2)

In prosecution for possession and concealment of counterfeit notes and for conspiracy to commit such violation, in which defendant testified as to his activities during period of three days, cross-examination as to defendant's travels and meetings with named persons during period of several days prior to the dates testified to on direct examination was permissible, despite contention that the trips and contacts were never connected to the issues in the case, in light of fact that defendant had no visible means of support yet traveled extensively, and to establish pattern of companionship and communication involving defendant and his alleged coconspirators. Leeper v. U. S., C.A.10 (Okla.) 1971, 446 F.2d 281, certiorari denied 92 S.Ct. 695, 404 U.S. 1021, 30 L.Ed.2d 671. Witnesses 277(5)

In conspiracy prosecution in which one conspirator was principal witness for the government, it was not reversible error to curtail cross-examination as to such conspirator's specific address. U. S. v. Kellerman, C.A.2 (N.Y.) 1970, 431 F.2d 319, certiorari denied 91 S.Ct. 356, 400 U.S. 957, 27 L.Ed.2d 266, certiorari denied 91 S.Ct. 871, 401 U.S. 909, 27 L.Ed.2d 808. Criminal Law 1170.5(5)

Where defendant charged with conspiracy and substantive offenses elected to elicit from codefendant, a defense witness, fact that he had pleaded guilty to one offense, prosecution was entitled to show on cross-examination that the guilty plea had been entered to the conspiracy charge. Isaac v. U. S., C.A.9 (Cal.) 1970, 431 F.2d 11. Witnesses 278

Conspirators' testimony of statements that they themselves made out of court was subject to cross-examination. White v. U. S., C.A.9 (Cal.) 1968, 394 F.2d 49. Witnesses 277(4)

Cross-examination of defendants as to financial manipulations which bordered on illegality was relevant to establish motive--impending financial disaster--for charge of conspiracy to commit mail fraud. Suhl v. U. S., C.A.9 (Cal.) 1968, 390 F.2d 547, certiorari denied 88 S.Ct. 2035, 391 U.S. 964, 20 L.Ed.2d 879. Criminal Law 371(12)

In prosecution for conspiracy to violate Internal Revenue Laws and on substantive counts arising under such laws,

permitting a defense witness to be asked about his prior arrest was not error, where witness had testified as to reputation of a prosecution witness for truthfulness and on cross-examination witness was asked, "Were you arrested" on certain date, to which there was no objection and witness answered that he had been arrested while "helping another fellow" with some moonshine whiskey, and then followed a series of objections, none of which raised question whether inquiring as to a prior arrest, without showing a conviction, was proper. Benefield v. U. S., C.A.5 (Ala.) 1966, 370 F.2d 912. Criminal Law 698(1)

Even though trial judge took umbrage over what he perhaps mistakenly thought was suggestion that sentencing in court below could be part of a "deal" and stated "I think we have touched on it enough", there was no improper curtailment of cross-examination of alleged coconspirator, where (1) defendant was permitted to inquire whether that witness had been promised consideration for pleading guilty or had been told by his lawyer that he might receive some consideration and (2) defendant failed to make known to judge his desire to inquire further. U. S. v. Mahler, C.A.2 (N.Y.) 1966, 363 F.2d 673. Witnesses 372(2)

Refusal to permit cross-examination of SEC attorney on various SEC rulings on exemptions and views of text writers, was proper, in stock conspiracy prosecution wherein witness had given no expert or opinion evidence on direct examination, as probably productive of confusion in jurors' minds. U. S. v. Kelly, C.A.2 (N.Y.) 1965, 349 F.2d 720, certiorari denied 86 S.Ct. 1467, 384 U.S. 947, 16 L.Ed.2d 544. Witnesses 266

Cross-examination of defendant, charged with conspiracy to take fraudulent deductions on corporate income tax return, regarding alleged prior conviction of grand larceny, which cross-examination was based on erroneous FBI report, was not prejudicial where judge told jury to disregard reference to grand larceny conviction. U.S. v. Haskell, C.A.2 (Conn.) 1964, 327 F.2d 281, certiorari denied 84 S.Ct. 1351, 377 U.S. 945, 12 L.Ed.2d 307. Criminal Law 1170.5(6)

Cross-examination of witness, in prosecution for conspiracy to take fraudulent deductions on corporate income tax return, as to whether witness had given defendant any other money over and above his salary from corporation was not error on ground that it tended to show defendant was guilty of another crime, as it was proper to determine whether moneys reported as advanced for travel expenses on defendant's personal return had ever been paid from funds other than check which had never cleared. U.S. v. Haskell, C.A.2 (Conn.) 1964, 327 F.2d 281, certiorari denied 84 S.Ct. 1351, 377 U.S. 945, 12 L.Ed.2d 307. Criminal Law 369.2(4)

Generally, it is grossly improper for cross-examiner to suggest that witness has been convicted of crimes, especially felonies, when he has no support for suggestion. U.S. v. Haskell, C.A.2 (Conn.) 1964, 327 F.2d 281, certiorari denied 84 S.Ct. 1351, 377 U.S. 945, 12 L.Ed.2d 307. Criminal Law 706(3)

Where court sustained defendants' general objection to the asking of two questions of a witness improperly suggesting an illegal payoff, defendants could not later claim prejudicial misconduct by the assistant prosecutor in asking such questions in the absence of clear prejudice. Reiss v. U. S., C.A.1 (Mass.) 1963, 324 F.2d 680, certiorari denied 84 S.Ct. 667, 376 U.S. 911, 11 L.Ed.2d 609. Criminal Law 1170.5(6)

Record refuted contention that defendants were unduly restricted in their cross-examination of principal prosecution witness who was admittedly part of conspiracy where, in addition to extensive and repetitious examinations, defendants had abundance of materials from which to examine him including, but not limited to, statements produced under Jencks Act, § 3500 of this title, grand jury minutes, and his testimony at prior trial. U. S. v. Bentvena, C.A.2 (N.Y.) 1963, 319 F.2d 916, certiorari denied 84 S.Ct. 345, 375 U.S. 940, 11 L.Ed.2d 271, rehearing denied 90 S.Ct. 894, 397 U.S. 928, 25 L.Ed.2d 108, rehearing denied 84 S.Ct. 515, 375 U.S. 989, 11 L.Ed.2d 476, certiorari denied 84 S.Ct. 346, 375 U.S. 940, 11 L.Ed.2d 271, rehearing denied 84 S.Ct. 1162, 377 U.S. 913, 12 L.Ed.2d 183, certiorari denied 84 S.Ct. 353, 375 U.S. 940, 11 L.Ed.2d 272, certiorari denied 84 S.Ct. 354, 375 U.S. 940, 11 L.Ed.2d 272, certiorari denied 84 S.Ct. 355, 375 U.S. 940, 11 L.Ed.2d 272, certiorari denied 84 S.Ct. 360, 375 U.S. 940, 11 L.Ed.2d 272. Criminal Law 1119(2)

18 U.S.C.A. § 371

Testimony of F.B.I. agent, in prosecution for robbery of veterans' administration hospital and for conspiracy to commit the robbery, as to questioning and telephone calls between agent and defendant concerning defendant's knowledge of robbery and of activities of other individuals involved, and cross-examination of defendant as to whether or not he had made the statements and telephone calls to discover what F.B.I. knew of the crime and to conceal the crime and its conspirators, was not inadmissible on theory that the F.B.I. agent's testimony when considered in conjunction with the cross-examination would mislead jury into finding defendant guilty of a crime with which he was not charged, namely, a continuing conspiracy to conceal the crime and obstruct justice. Feyrer v. U. S., C.A.9 (Wash.) 1963, 314 F.2d 110. Criminal Law 369.2(8)

Refusal of federal District Court to permit inspection of criminal records of co-conspirator who was testifying for government in prosecution of defendant for robbery of veterans' administration hospital, and for conspiracy to commit the robbery, was not unfair where defendant's counsel was given a wide latitude in examination of witness as to his previous conviction and criminal activities. Feyrer v. U. S., C.A.9 (Wash.) 1963, 314 F.2d 110. Criminal Law 627.6(6)

In prosecution for conspiracy to defraud the United States by depriving it of the services of OPA investigator, cross-examination of investigator as to why he had claimed his privilege when he was questioned by district attorney and before the grand jury was not improper. U.S. v. Gottfried, C.C.A.2 (N.Y.) 1948, 165 F.2d 360, certiorari denied 68 S.Ct. 738, 333 U.S. 860, 92 L.Ed. 1139, rehearing denied 68 S.Ct. 910, 333 U.S. 883, 92 L.Ed. 1157. Witnesses 309

In prosecution on charge of violating former §§ 88 [now this section] and 338 of this title cross-examination as to whether witness considered any of certain letters "fraudulent of any part of a scheme to defraud at the time" he received them was properly denied as calling for a legal conclusion. Deaver v. U.S., App.D.C.1946, 155 F.2d 740, 81 U.S.App.D.C. 148, certiorari denied 67 S.Ct. 121, 329 U.S. 766, 91 L.Ed. 659. Criminal Law 450

In prosecution for conspiracy to defraud the United States by obtaining entry of an alien by false representations and willful concealment of material facts, impeaching defendant's credibility on cross-examination by asking him whether he had ever been disbarred or suspended was proper. U.S. v. Rubenstein, C.C.A.2 (N.Y.) 1945, 151 F.2d 915, certiorari denied 66 S.Ct. 168, 326 U.S. 766, 90 L.Ed. 462. Witnesses 337(4)

In prosecution for using mails to defraud and for conspiracy to commit the substantive crime, question asked one of defendants upon cross-examination as to whether he knew that several of his associates had been convicted of various crimes all involving deceits was proper. U.S. v. Cohen, C.C.A.2 (N.Y.) 1944, 145 F.2d 82, certiorari denied 65 S.Ct. 553, 323 U.S. 799, 89 L.Ed. 637, certiorari denied 65 S.Ct. 553, 323 U.S. 799, 89 L.Ed. 638, certiorari denied 65 S.Ct. 554, 323 U.S. 800, 89 L.Ed. 638. Conspiracy 45; Postal Service 49(5)

Where cross-examination of internal revenue officer indicated that a contention of entrapment was to be raised, testimony on redirect examination that he had disguised himself and undertaken to buy liquor on orders of his superiors in Internal Revenue Department on information of numerous violations of revenue laws was justified. Reece v. U.S., C.C.A.5 (Ga.) 1942, 131 F.2d 186, certiorari denied 63 S.Ct. 529, 318 U.S. 759, 87 L.Ed. 1132. Witnesses 288(2)

In prosecution for conspiracy to violate internal revenue laws relating to liquor taxes and operation of stills, cross-examination of one defendant by way of impeachment as to former conviction of crime was not prejudicial to two of alleged conspirators who were convicted, where defendant who was cross-examined was acquitted and testified to nothing either for or against defendants who were convicted. Reece v. U.S., C.C.A.5 (Ga.) 1942, 131 F.2d 186, certiorari denied 63 S.Ct. 529, 318 U.S. 759, 87 L.Ed. 1132. Criminal Law 1170.5(5)

In prosecution for conspiracy to transport stolen jewelry in interstate commerce, where accused testified on direct examination that during an interval of several years prior to arrest for offense then on trial he had been neither

arrested nor convicted of any other crime, had been living with his wife and engaging in several legitimate businesses in Chicago, cross-examination as to his arrest during such interval for a jewel robbery in Omaha and the circumstances of trial therefor, was proper. Banning v. U.S., C.C.A.6 (Mich.) 1942, 130 F.2d 330, certiorari denied 63 S.Ct. 434, 317 U.S. 695, 87 L.Ed. 556. Witnesses 277(3)

In prosecution for use of mail to carry on a scheme to defraud a named person and to defraud the investing public and for a conspiracy to violate the mail fraud statute, former § 338 of this title, cross-examination of defendant about his contacts with some women as possible investors, though such incidents were not specially mentioned in the indictment nor in the evidence for the prosecution was proper, since the incidents were relevant to the charge of general scheme to defraud, and, in any event, cross-examination was harmless where defendant did not admit anything to his detriment. Ryan v. U. S., C.C.A.5 (Ala.) 1942, 129 F.2d 783. Criminal Law 1170.5(5); Postal Service 49(5)

In prosecution for conspiracy to defraud the revenue through operation of an unregistered and therefore untaxed still, cross-examination of accused, showing that accused was familiar with regulations of Bureau of Internal Revenue requiring him to report sales of sugar but during time of the alleged conspiracy, he refused to make such reports, concerned an overt act from which participation in common design might be inferred and was therefore proper. U.S. v. Harrison, C.C.A.3 (N.J.) 1941, 121 F.2d 930, certiorari denied 62 S.Ct. 124, 314 U.S. 661, 86 L.Ed. 530. Witnesses 277(2.1)

In prosecution for using mails to defraud and for conspiracy, alleged misconduct of assistant district attorney in cross-examining certain defendants was not prejudicial in view of the evidence. U. S. v. Beck, C.C.A.7 (Ill.) 1941, 118 F.2d 178, certiorari denied 61 S.Ct. 1121, 313 U.S. 587, 85 L.Ed. 1542. Criminal Law 1171.8(2)

In prosecution of Assistant United States Attorney and others for conspiracy to defraud the United States, where such assistant attorney testified on direct examination that United States Attorney to whom he was assistant had stated to him that he would tell grand jury there was nothing in assistant's official conduct which would require investigation, and United States Attorney testified in rebuttal that he did not make such statement, cross-examination of United States Attorney was not unduly restricted by trial court's limiting cross-examination to subject of his examination in chief. U.S. v. Glasser, C.C.A.7 (Ill.) 1940, 116 F.2d 690, certiorari granted 61 S.Ct. 835, 313 U.S. 551, 85 L.Ed. 1515, modified on other grounds 62 S.Ct. 457, 315 U.S. 60, 86 L.Ed. 680, rehearing denied 62 S.Ct. 629, 315 U.S. 827, 86 L.Ed. 1222, rehearing denied 62 S.Ct. 637, 315 U.S. 827, 86 L.Ed. 1222. Witnesses 269(2.1)

In prosecution for conspiracy to transport and for transporting girls in interstate commerce for purpose of prostitution and debauchery, United States attorney's cross-examination of government witness who contradicted her previous statement to Federal agent that she had gone to Ohio town to practice prostitution was not reversible error, notwithstanding district judge's failure to put word "substantial" before word "evidence" in charge that previous statement was not evidence and that cross-examination was permitted merely to get the whole truth from the witness. Townsend v. U. S., C.C.A.3 (Pa.) 1939, 106 F.2d 273. Criminal Law 1170.5(5)

In prosecution for using and conspiring to use the mails to defraud gullible individuals by collecting fee for enrolling them as heirs of mythical Baker estate, where conspirators kept in close and often competitive contact with other exploiting groups, prosecuting attorney was entitled to examine conspirators concerning their knowledge of activities of other groups. U. S. v. Sprengel, C.C.A.3 (Pa.) 1939, 103 F.2d 876. Conspiracy 45; Postal Service 49(5)

In prosecution for use of mails to defraud insurance companies by filing false claims and for conspiracy, error, if any, in permitting improper cross-examination of defendant who had stated on direct that he had never had anything to do with a false claim, was sufficiently cured by admonition of court. U S v. Weiss, C.C.A.2 (N.Y.) 1939, 103 F.2d 348, certiorari granted 59 S.Ct. 1043, 307 U.S. 621, 83 L.Ed. 1500, reversed on other grounds 60

S.Ct. 269, 308 U.S. 321, 84 L.Ed. 298. Criminal Law 1170.5(5)

In prosecution for use of mails to defraud insurance companies by filling false claims and for conspiracy, cross-examination of defendant as to activities of former associate and alleged confession of third person for whom he had filled out insurance forms was improper. U S v. Weiss, C.C.A.2 (N.Y.) 1939, 103 F.2d 348, certiorari granted 59 S.Ct. 1043, 307 U.S. 621, 83 L.Ed. 1500, reversed on other grounds 60 S.Ct. 269, 308 U.S. 321, 84 L.Ed. 298. Witnesses 277(2.1)

In prosecution for use of mails to defraud insurance companies by filing false claims and for conspiracy, questions asked defendant on cross-examination which assumed facts without sufficient basis in record were improper. U S v. Weiss, C.C.A.2 (N.Y.) 1939, 103 F.2d 348, certiorari granted 59 S.Ct. 1043, 307 U.S. 621, 83 L.Ed. 1500, reversed on other grounds 60 S.Ct. 269, 308 U.S. 321, 84 L.Ed. 298. Witnesses 281

In prosecution for use of mails to defraud insurance companies by filing false claims and for conspiracy, cross-examination of defendant physician was justified in view of his own testimony on direct with reference to other disability cases. U S v. Weiss, C.C.A.2 (N.Y.) 1939, 103 F.2d 348, certiorari granted 59 S.Ct. 1043, 307 U.S. 621, 83 L.Ed. 1500, reversed on other grounds 60 S.Ct. 269, 308 U.S. 321, 84 L.Ed. 298. Witnesses 269(1)

In prosecution for conspiracy to sell narcotics, defendant was entitled to cross-examine government's witnesses thoroughly to show that he had made no agreements with witnesses to sell and to make clear all that was said, done, and intended. Lambert v. U. S., C.C.A.5 (La.) 1939, 101 F.2d 960. Witnesses 268(3)

In prosecution for conspiracy to import intoxicating liquor, where only testimony regarding dates of alleged conversations with defendant, who denied such conversations came from codefendant who was an admitted accomplice, searching cross-examination of codefendant was justified, and limitations imposed thereon by court were improper. Moyer v. U.S., C.C.A.9 (Cal.) 1935, 78 F.2d 624. Witnesses 278

Government was entitled to wide range in cross-examining defendant respecting check claimed to have been given for purchase of intoxicating liquor. Madden v. U.S., C.C.A.9 (Cal.) 1927, 20 F.2d 289, certiorari denied 48 S.Ct. 116, 275 U.S. 554, 72 L.Ed. 423. Witnesses 277(2.1)

Refusal, on cross-examination to impeach rebutting testimony, to require witness to write certain words, was proper. Green v. U.S., C.C.A.9 (Wash.) 1927, 19 F.2d 850, certiorari denied 48 S.Ct. 117, 275 U.S. 557, 72 L.Ed. 424, 72 L.Ed. 729, rehearing granted 48 S.Ct. 207, 276 U.S. 609, 72 L.Ed. 729, affirmed 48 S.Ct. 564, 277 U.S. 438, 72 L.Ed. 944. Witnesses 326; Witnesses 330(1)

Cross-examination of defendant as to matter not covered by his examination in chief did not require reversal, where his connection with conspiracy charged was directly and positively proved. Apt v. U.S., C.C.A.8 (Mo.) 1926, 13 F.2d 126. Criminal Law 1170.5(5)

In prosecution for conspiracy to conceal assets, cross-examining defendant concerning testimony at first meeting of creditors of bankrupt was within sound discretion of trial court, if evidence was properly admitted. Kolbrenner v. U.S., C.C.A.5 (Tex.) 1926, 11 F.2d 754, certiorari denied 46 S.Ct. 489, 271 U.S. 677, 70 L.Ed. 1146. Witnesses 269(2.1)

Ruling limiting accused's cross-examination of codefendant, for purpose of showing quarrel with accused, was not error. Meadows v. U.S., C.C.A.9 (Cal.) 1926, 11 F.2d 718, certiorari denied 47 S.Ct. 97, 273 U.S. 702, 71 L.Ed. 848. Witnesses 278

On the trial of an indictment for conspiracy to defraud the government by procuring other persons to make entries

of public lands under the Timber and Stone Act, § 311 et seq. of Title 43, for the benefit of defendants, the intent and motive of such entrymen in making the entries is the material question in issue, and where they are placed on the stand by the prosecution, and testify to facts and circumstances from which it is sought to infer an illegal purpose and agreement, it is competent for the defendants, on cross-examination, to question them directly as to the purpose with which the entries were made, and as to whether they had made any contracts to sell or convey the lands to others. Olson v. U.S., C.C.A.8 (Minn.) 1904, 133 F. 849, 67 C.C.A. 21. Conspiracy 45

469. Argument of counsel, trial proceedings generally

"Conspiracy bus" simile which prosecutor discussed during closing arguments, stating that defendant is guilty of conspiracy if he knows of others' criminal activity and does not take affirmative steps to "get off the bus," did not deprive defendant of fair trial in prosecution for possession of cocaine with intent to distribute, conspiracy to possess cocaine with intent to distribute, aiding and abetting possession of cocaine, and conspiracy to commit money laundering, where court gave accurate explanation of conspiracy law, court instructed that arguments of counsel are not evidence, and evidence supported conviction. U.S. v. Fierro, C.A.5 (Tex.) 1994, 38 F.3d 761, certiorari denied 115 S.Ct. 1388, 514 U.S. 1030, 131 L.Ed.2d 240, certiorari denied 115 S.Ct. 1431, 514 U.S. 1051, 131 L.Ed.2d 312. Criminal Law 730(5)

In prosecution for conspiracy and mail fraud arising out of alleged insurance fraud scheme, prosecutor did not improperly introduce a new theory of fraud in his rebuttal argument by arguing that defendant's fraud included the submission of doctor bills to insurance companies larger than the $200 paid to a specified doctor, since indictment clearly put the fraudulent nature of the $200 payments at issue. U. S. v. Witschner, C.A.8 (Mo.) 1980, 624 F.2d 840, certiorari denied 101 S.Ct. 532, 449 U.S. 994, 66 L.Ed.2d 291. Criminal Law 718

In prosecution for conspiracy to file false statements with United States Department of State and to violate sections 5811, 5812 and 5861 of Title 26 and making false representations in matters within jurisdiction of the United States Department of State, prosecutor's consistent position was that defendant's name on certificate was there with defendant's full knowledge and authorization, but not as result of his penmanship, and prosecutor's assertion of such distinction did not constitute prosecutorial misconduct. U. S. v. Rodriguez, C.A.2 (N.Y.) 1977, 556 F.2d 638, certiorari denied 98 S.Ct. 1233, 434 U.S. 1062, 55 L.Ed.2d 762. Criminal Law 713

In joint prosecution for conspiracy and possession of goods stolen from interstate commerce, Government's closing argument, which allegedly contained personal endorsement of credibility of chief prosecution witness, did not constitute plain error requiring reversal in absence of defense objection where lengthy government summation included disclaimer of any personal knowledge of case on part of prosecutor. U. S. v. LaRiche, C.A.6 (Ohio) 1977, 549 F.2d 1088, certiorari denied 97 S.Ct. 1687, 430 U.S. 987, 52 L.Ed.2d 383, certiorari denied 98 S.Ct. 506, 434 U.S. 966, 54 L.Ed.2d 452. Criminal Law 1037.1(1)

Government's closing argument in prosecution for conspiracy to defraud government and Securities and Exchange Commission and for substantive violations of securities laws that jury could infer that notes used by codefendant during public Commission proceedings contained anticipated questions and answers and had been prepared for consistency's sake was not improper as argument of inference which might be drawn in view of all evidence. U. S. v. Colasurdo, C.A.2 (N.Y.) 1971, 453 F.2d 585, certiorari denied 92 S.Ct. 1766, 406 U.S. 917, 32 L.Ed.2d 116. Criminal Law 720(7.1)

Prosecutrix' argument in conspiracy prosecution, concerning disposition of money, was not impermissible comment on defendant's failure to testify. U. S. v. Knight, C.A.9 (Ariz.) 1969, 416 F.2d 1181. Criminal Law 721(3)

In prosecution of various defendants for mail fraud and conspiracy, comment of counsel for one defendant that such defendant took stand and testified and that he did whatever he did in good faith and was the only one who testified in the case was not prejudicial comment on failure of other defendants to testify. U. S. v. Hutul, C.A.7

(Ill.) 1969, 416 F.2d 607, certiorari denied 90 S.Ct. 562, 396 U.S. 1007, 24 L.Ed.2d 499, certiorari denied 90 S.Ct. 573, 396 U.S. 1012, 24 L.Ed.2d 504, rehearing denied 90 S.Ct. 1519, 397 U.S. 1081, 25 L.Ed.2d 820, certiorari denied 90 S.Ct. 599, 396 U.S. 1024, 24 L.Ed.2d 517. Criminal Law 1171.5

Government attorney's statement to jury that defendant's attorney had overlooked testimony which incriminated his client by forgetting to mention that alleged coconspirator had testified "uncontradicted" that he had told something to defendant did not require mistrial on ground that prosecutor had improperly commented upon defendant's failure to testify by characterizing conspirator's testimony as uncontradicted, where court admonished jury to disregard statement and specifically directed jurors not to draw any unfavorable inference from failure of defendant to testify in his own behalf and on following day repeated such instructions. U. S. v. Edwards, C.A.2 (N.Y.) 1966, 366 F.2d 853, certiorari denied 87 S.Ct. 852, 386 U.S. 908, 17 L.Ed.2d 782, certiorari denied 87 S.Ct. 882, 386 U.S. 919, 17 L.Ed.2d 790. Criminal Law 730(10)

Refusal to allow defendants' counsel to argue points involving instructions and requests for instructions orally and repetitively at length was not improper as denial of procedural due process, in prosecution for conspiracy to defraud public by distribution of defendants' oil company stock at grossly inflated prices. U. S. v. Kelly, C.A.2 (N.Y.) 1965, 349 F.2d 720, certiorari denied 86 S.Ct. 1467, 384 U.S. 947, 16 L.Ed.2d 544. Constitutional Law 268(2.1)

In prosecution for (1) knowingly transporting in interstate commerce, for purpose of sale or distribution, obscene, lascivious and filthy film and (2) for conspiring with others to so transport, wherein there was evidence that interstate telephone call had been made on defendant's telephone but there was no evidence as to conversation which might have occurred during such call, hypothetical conversation should not have been created by prosecutor during summation; but any effect of such comment was eliminated by court's charge, and in light of definite proof presented on determinative issue of knowledge of intended interstate transportation, such hyperbole of forensic advocacy did not deprive defendant of fair trial. U. S. v. Russo, C.A.2 (Conn.) 1960, 284 F.2d 539. Criminal Law 719(1); Criminal Law 730(7)

Where a United States Attorney, in his argument, in a conspiracy prosecution, merely reviewed certain testimony, and added, truthfully, that there was no evidence in contradiction, his argument could not be said to have deprived defendants of a fair and impartial trial on theory that the argument constituted a forbidden comment on failure of defendants to testify. Davis v. U. S., C.A.4 (N.C.) 1960, 279 F.2d 127, certiorari denied 81 S.Ct. 60, 364 U.S. 822, 5 L.Ed.2d 53. Criminal Law 721(5)

In prosecution against officer of corporation selling fuel oil to the government and against government civilian employee for conspiracy, for bribery and for making false entries of competitive bids on government purchase orders, wherein relatively small amounts of money were involved in any profits made by president from fuel oil sold to the government during the period covered by indictment, argument of government's counsel which was plain effort to have jury believe that defendants were guilty of other and more profitable frauds was improper as a wholly impermissible development of a theme on which government counsel had reached the outer limits of proper argument in his opening statement. Wagner v. U.S., C.A.5 (Fla.) 1959, 263 F.2d 877. Criminal Law 722.5

In prosecution for conspiracy, for bribery, and for making false entries of competitive bids on government purchase orders, argument of government's counsel that he had hoped that defendants would cross-examine defendants' bookkeeper "because she would have lowered the boom on them. But they didn't do that. They told you she was the bookkeeper. She knew all about this. She did that. But you notice they didn't ask too much about it," was improper, since the government had to rely on evidence which it introduced, and could not properly ask jury to assume that there was more damaging evidence against defendants which would have been brought to light if defendants' counsel had cross-examined such bookkeeper more extensively. Wagner v. U.S., C.A.5 (Fla.) 1959, 263 F.2d 877. Criminal Law 721.5(2)

18 U.S.C.A. § 371

In prosecution for conspiracy to traffic in narcotics, it was proper for prosecutor, in argument, to draw inferences from letters which passed between codefendants, referring to sale of suits at rate of $600 for each suit, that "suits" may well not have referred to suits of clothing. U S v. De Fillo, C.A.2 (N.Y.) 1958, 257 F.2d 835, certiorari denied 79 S.Ct. 591, 359 U.S. 915, 3 L.Ed.2d 577. Criminal Law 720(7.1)

In prosecution for concealing assets from trustee in bankruptcy and conspiring to transfer assets from one corporation to another in contemplation of bankruptcy, allowing prosecutor in his summation to read part of defendant's testimony given before grand jury was not error where defendant previously had been confronted with it on cross-examination, and his counsel stipulated that grand jury stenographer, if called as a witness, would testify to the accuracy of the excerpts. U.S. v. Switzer, C.A.2 (N.Y.) 1958, 252 F.2d 139, certiorari denied 78 S.Ct. 1363, 357 U.S. 922, 2 L.Ed.2d 1366, rehearing denied 79 S.Ct. 16, 358 U.S. 859, 3 L.Ed.2d 93. Criminal Law 714

In prosecution of defendants for conspiracy to violate narcotics laws, argument of counsel for government during prosecution was not prejudicial, in absence of current objection, though, in any event, record disclosed no error in this respect. Shepherd v. U. S., C.A.D.C.1956, 244 F.2d 750, 100 U.S.App.D.C. 302, certiorari granted 77 S.Ct. 867, 353 U.S. 957, 1 L.Ed.2d 908, reversed on other grounds 78 S.Ct. 1190, 357 U.S. 301, 2 L.Ed.2d 1332, certiorari denied 82 S.Ct. 81, 368 U.S. 849, 7 L.Ed.2d 47. Criminal Law 1037.1(1)

In prosecution of defendant for conspiracy to defraud the United States in administration of immigration laws, wherein it appeared that defendant had entered country on temporary visa for purpose of marrying honorably discharged soldier, but that she had thereafter married her first cousin, which was followed by annulment, wherein objection was sustained to argument of government counsel in respect to quotas of immigrants from Greece, argument wherein counsel continued to discuss matter of immigration quotas, and effect upon them of defendant's conduct, was prejudicially erroneous, despite attempted correction by instructions. U. S. v. Georga, C.A.3 (Pa.) 1954, 210 F.2d 45. Criminal Law 719(1); Criminal Law 1171.3

In prosecution for conspiracy to organize Communist Party of United States as a group to teach and advocate overthrow of government by force or violence, refusal to allow a defendant to sum up to the jury at the conclusion of the evidence was not error where such defendant had been represented during the whole trial by an attorney with great skill, loyalty and address, and such defendant had not indicated the slightest dissatisfaction with such attorney, and trial judge feared that to let such defendant address the jury would be an opportunity again to resort to an outburst which the judge had found it hard to control on previous occasions during the trial. U.S. v. Dennis, C.A.2 (N.Y.) 1950, 183 F.2d 201, certiorari granted 71 S.Ct. 91, 340 U.S. 863, 95 L.Ed. 630, affirmed 71 S.Ct. 857, 341 U.S. 494, 95 L.Ed. 1137, rehearing denied 72 S.Ct. 20, 342 U.S. 842, 96 L.Ed. 636, rehearing denied 78 S.Ct. 409, 355 U.S. 936, 2 L.Ed.2d 419. Criminal Law 668

In prosecution for conspiracy in connection with embezzlement of bank funds, denial of request of defendant's counsel to argue to jury that a conviction would deprive defendant of citizenship was not error. U. S. v. Randall, C.C.A.7 (Ind.) 1947, 164 F.2d 284, certiorari denied 68 S.Ct. 729, 333 U.S. 856, 92 L.Ed. 1136, rehearing denied 68 S.Ct. 901, 333 U.S. 878, 92 L.Ed. 1153, certiorari denied 68 S.Ct. 733, 333 U.S. 856, 92 L.Ed. 1136. Criminal Law 723(1)

In conspiracy prosecution, alleged error in argument that accused's common-law wife by her plea of guilty admitted her part in conspiracy, that she would not lie for anyone, and had not taken the stand and supported accused's claim of nonparticipation in scheme, was not prejudicial where record disclosed that decision against calling common-law wife was not reached on score of unwillingness to testify but merely on considerations of trial tacties, and evidence of accused's guilt was persuasive. Clayton v. U.S., C.C.A.9 (Wash.) 1945, 152 F.2d 402. Criminal Law 1171.3

In prosecution for conspiracy to extort money and narcotics by impersonating a federal officer, district attorney's argument that accused's common-law wife had by her plea of guilty admitted her part in conspiracy, that she would

not lie for anyone, and that she had not taken the stand and supported accused's claim of nonparticipation in scheme, was not prejudicial, especially where counsel and court were aware that common-law wife could not be compelled to testify, no instruction covering the point was requested, and court's ruling on objection to argument was not construable as a refusal to give such instruction or as being tantamount to an instruction to the contrary. Clayton v. U.S., C.C.A.9 (Wash.) 1945, 152 F.2d 402. Criminal Law 1037.2

In prosecution for conspiracy to use mails to defraud and for use of mails to defraud, statement in district attorneys' summation that certain purchasers of certificates named in the indictment had died before they could be called as witnesses was not subject to criticism that it was insinuated that such persons had committed suicide as the result of their losses, and other passages objected to were not objectionable and did not justify reversal. U.S. v. Mortimer, C.C.A.2 (N.Y.) 1941, 118 F.2d 266, certiorari denied 62 S.Ct. 58, 314 U.S. 616, 86 L.Ed. 496. Criminal Law 1171.1(6)

In prosecution for conspiracy to violate internal revenue laws, United States Attorney's statement in his closing argument that several individuals had admitted their part in conspiracy and had plead guilty was improper, but was not prejudicial, where one of the defendants had testified fully and freely about the sale of alcohol to those referred to as having plead guilty. U.S. v. Wroblewski, C.C.A.7 (Ind.) 1939, 105 F.2d 444. Criminal Law 1171.6

In prosecution for use of mails to defraud insurance companies by filing false claims and for conspiracy, statements of United States Attorney in summation did not constitute reversible error although subject to criticism, where statements did not affect result. U S v. Weiss, C.C.A.2 (N.Y.) 1939, 103 F.2d 348, certiorari granted 59 S.Ct. 1043, 307 U.S. 621, 83 L.Ed. 1500, reversed on other grounds 60 S.Ct. 269, 308 U.S. 321, 84 L.Ed. 298. Criminal Law 1171.1(2.1)

In prosecution for using mails to defraud and for conspiracy, growing out of sale of mortgage participation certificates, statements to jury by prosecutors that the public was watching the result, and that acquittal would be a license to others to sell securities by false representations, constituted fair comment. U.S. v. Dilliard, C.C.A.2 (N.Y.) 1938, 101 F.2d 829, certiorari denied 59 S.Ct. 484, 306 U.S. 635, 83 L.Ed. 1036. Criminal Law 723(1)

In prosecution of officers and directors of mortgage guaranty company for conspiracy to use mails to defraud in sale of mortgage participation certificates, inflammatory personal references to defendants in course of summation was prejudicial error. U.S. v. McNamara, C.C.A.2 (N.Y.) 1937, 91 F.2d 986. Criminal Law 723(1)

In prosecution of officers and directors of mortgage guaranty company for conspiracy to use mails to defraud in sale of mortgage participation certificates, inflammatory reference by counsel for government in summation to other mortgage companies which were not pertinent to issues was prejudicial error. U.S. v. McNamara, C.C.A.2 (N.Y.) 1937, 91 F.2d 986. Criminal Law 723(1)

In prosecution for conspiracy and use of mails to defraud in sale of gold mining stock, statement of government's counsel in argument that mining engineer who was to be given interest by one of defendants in certain mining property for his services in looking property over wrote letter signifying he was not interested in property was not prejudicial, if letter was withdrawn, where writer stated in oral testimony that he had terminated his relations with such defendant. Levine v. U.S., C.C.A.9 (Wash.) 1935, 79 F.2d 364. Criminal Law 1171.3

In a prosecution for conspiracy to conceal the interest of an enemy alien in a corporation under former § 88 of this title [now this section], the characterizing of one of the defendants in the prosecuting attorney's argument as a Prussian, whose loyalty to the enemy alien and to Germany prevented him from being faithless to his employers, did not require a reversal. Hodgskin v. U.S., C.C.A.2 (N.Y.) 1922, 279 F. 85. Criminal Law 723(1)

In prosecution for conspiracy to extort by impersonating a narcotics officer, where codefendant, a principal actor in conspiracy who had entered a plea of guilty but who remained unsentenced, was living with defendant and her

counsel was co-counsel for defendant, and under circumstances codefendant's testimony, if given, could not be affected by fear or favor growing out of detention, codefendant was accessible to defendant as a witness and peculiarly available to him, and defendant's failure to call codefendant was properly subject to comment by United States Attorney. U.S. v. Doores, E.D.Wash.1945, 58 F.Supp. 491. Criminal Law 721.5(2)

470. Judicial notice, trial proceedings generally

Court properly took judicial notice of existence of Wisconsin statutes recited in indictment charging defendant with conspiracy and substantive offenses based on use of interstate facilities to carry on a prostitution enterprise unlawful in the state of Wisconsin, and government was not required to prove existence of such statutes. U. S. v. Lyon, C.A.7 (Wis.) 1968, 397 F.2d 505, certiorari denied 89 S.Ct. 131, 393 U.S. 846, 21 L.Ed.2d 117. Criminal Law 304(9)

The court will not take judicial notice that cocaine, morphine, and morphine sulphate are derivatives of opium and coca leaves. U. S. v. Hammers, S.D.Fla.1917, 241 F. 542.

In a prosecution for conspiracy to defraud the customs revenue, it is not requisite that proof should be given that the imports involved were dutiable, or were not within a provision exempting from duty goods of American origin, since the court can take judicial knowledge of the laws of the United States and the fact that the imports were dutiable. Marrash v. U.S., C.C.A.2 (N.Y.) 1909, 168 F. 225, 93 C.C.A. 511. Criminal Law 304(9)

471. Questions for court, trial proceedings generally

If at conclusion of trial the court determines that prosecution has not demonstrated defendant's participation in a conspiracy by a preponderance of the evidence, the judge must decide whether a cautionary instruction will cleanse the record of prejudice due to admission of the coconspirator's extrajudicial statements, or whether a mistrial is required. U. S. v. Grassi, C.A.5 (Fla.) 1980, 616 F.2d 1295, rehearing denied 624 F.2d 1098, certiorari denied 101 S.Ct. 363, 449 U.S. 956, 66 L.Ed.2d 220. Criminal Law 768(1); Criminal Law 867

Determination on admissibility of alleged coconspirator's statement is preliminary question for judge, not for jury. U. S. v. Watson, C.A.10 (Okla.) 1979, 594 F.2d 1330, certiorari denied 100 S.Ct. 78, 444 U.S. 840, 62 L.Ed.2d 51 . Criminal Law 736(1)

In a conspiracy case it is for the court, rather than the jury, to make an assessment of whether there is sufficient, independent, nonhearsay evidence to establish a conspiracy and the defendant's participation in it. U. S. v. Cirillo, C.A.2 (N.Y.) 1972, 468 F.2d 1233, certiorari denied 93 S.Ct. 1501, 410 U.S. 989, 36 L.Ed.2d 188. Conspiracy 48.1(1)

Issue of materiality in prosecution for conspiracy to defraud the United States and for aiding and abetting making of false statements to, and concealment of material facts from, the Immigration and Naturalization Service was a question of law for the court. U. S. v. Bernard, C.A.2 (N.Y.) 1967, 384 F.2d 915. Fraud 69(6)

In prosecution for conspiracy to violate the Foreign Agents Registration Act, § 612 of Title 22, question of expert's competency to give testimony on subject of propaganda was for trial court. U.S. v. German-American Vocational League, C.C.A.3 (N.J.) 1946, 153 F.2d 860, certiorari denied 66 S.Ct. 976, 328 U.S. 833, 90 L.Ed. 1608, certiorari denied 66 S.Ct. 976, 328 U.S. 833, 90 L.Ed. 1609, certiorari denied 66 S.Ct. 977, 328 U.S. 833, 90 L.Ed. 1609, certiorari denied 66 S.Ct. 977, 328 U.S. 834, 90 L.Ed. 1609, certiorari denied 66 S.Ct. 977, 328 U.S. 834, 90 L.Ed. 1610, certiorari denied 66 S.Ct. 978, 328 U.S. 834, 90 L.Ed. 1610. Criminal Law 481

In prosecution for conspiracy to violate National Prohibition Act, former § 1 et seq. of Title 27, admissibility of evidence discovered by prohibition agent in automobile, claimed to be incompetent because search without warrant

was unreasonable, was question for court, and not for jury. Ungerleider v. U.S., C.C.A.4 (W.Va.) 1925, 5 F.2d 604, certiorari denied 46 S.Ct. 101, 269 U.S. 574, 70 L.Ed. 419.

Whether an act charged in an indictment for conspiracy as an overt act to effect the object of such conspiracy was such overt act may be determined by the court, where it is clear from the face of the indictment that it could not by any possibility have tended to effect the object of the conspiracy. U.S. v. Biggs, D.C.Colo.1907, 157 F. 264, affirmed 29 S.Ct. 181, 211 U.S. 507, 53 L.Ed. 305. Conspiracy 48.1(1)

472. Motion for acquittal, trial proceedings generally

In prosecution for conspiracy to violate the Internal Revenue Laws, motion for judgment of acquittal on the ground that there was a fatal variance between the indictment and proof in that instead of proving one conspiracy as alleged, several different conspiracies were proved and a large part of the matters proven were so completely disconnected with and separate from the conspiracy charged that it was impossible for the error not to prejudice the defendants was properly overruled. Duke v. U.S., C.A.5 (Ga.) 1956, 233 F.2d 897. Conspiracy 43(12)

Where indictment charged defendants with conspiracy as well as a substantive count, if substantive count was unconstitutional, court should have granted motion for acquittal on conspiracy count, since defendants could not be convicted for a conspiracy to commit acts which for any reason did not constitute an offense. O'Malley v. U. S., C.A.1 (Mass.) 1955, 227 F.2d 332, certiorari denied 76 S.Ct. 434, 350 U.S. 966, 100 L.Ed. 838. Conspiracy 25

Overruling of motion to direct acquittal on certain counts is harmless where sentences on all counts run concurrently. Jay v. U.S., C.C.A.10 (Okla.) 1929, 35 F.2d 553.

In ruling on motion for acquittal on conspiracy charge, court must determine whether a reasonable mind might fairly conclude beyond a reasonable doubt that the conspiracy as charged in the indictment actually existed, that the objective of the conspiracy was to violate federal law or to achieve a legitimate goal through violation of federal law, that the particular defendant under consideration knowingly and willfully became a participant in the conspiracy, and that at least one of the conspirators committed an overt act in furtherance of the conspiracy. U. S. v. Koenig, S.D.N.Y.1974, 388 F.Supp. 670. Conspiracy 48.1(1)

On motion for judgment of acquittal of conspiracy, court must examine evidence in light most favorable to government, recognizing and respecting the right of jury to draw inferences. U. S. v. Barrow, E.D.Pa.1964, 229 F.Supp. 722, affirmed in part, reversed in part on other grounds 363 F.2d 62, certiorari denied 87 S.Ct. 703, 385 U.S. 1001, 17 L.Ed.2d 541. Criminal Law 977(4)

473. Mistrial, trial proceedings generally

Single incident in which prosecutor made improper facial expressions and sarcastic comments during cross-examination of defendant did not warrant mistrial, in prosecution for conspiracy to defraud the United States, filing false claims against the United States, and theft of property of the United States; district court found conduct was unintentional and issued warning to prosecutor. U.S. v. Peters, C.A.8 (Neb.) 1995, 59 F.3d 732, rehearing denied. Criminal Law 706(4)

In prosecution for conspiracy to dispense heroin, single remark of government witness that defendant was "involved in everything" did not warrant mistrial, in case in which defendant did not request mistrial, in light of all the evidence and court's acting swiftly to cure improper statement by sustaining defendant's objection and admonishing jury to disregard testimony. U. S. v. Lopez, C.A.10 (Kan.) 1978, 576 F.2d 840. Criminal Law 867

18 U.S.C.A. § 371

In prosecution for conspiracy to rob federally insured bank, mistrial was not required for codefendant because defendant was referred to as political radical and because prosecutor elicited allusion to defendant's politically radical philosophy where court sustained objection to reference to defendant as political radical and gave cautionary instructions, where there was no objection to prosecutor's elicitation of allusion to defendant's politically radical philosophy and where such allusion was innocuous and was related to motivation for robbery. U.S. v. Bazinet, C.A.8 (Minn.) 1972, 462 F.2d 982, certiorari denied 93 S.Ct. 453, 409 U.S. 1010, 34 L.Ed.2d 303. Criminal Law 730(12)

Refusal to grant mistrial on ground elderly witness' answers were not responsive to questions in prosecution for conspiracy to pass counterfeit federal reserve notes was not error where jury was specifically instructed to disregard testimony and jury was probably able to differentiate between witness' responsive answers and nonresponsive answers attributable to sorrow and resentment in belief that his son had been killed. U. S. v. Panczko, C.A.7 (Ill.) 1966, 367 F.2d 737, certiorari denied 87 S.Ct. 716, 385 U.S. 1009, 17 L.Ed.2d 546, rehearing denied 87 S.Ct. 771, 385 U.S. 1043, 17 L.Ed.2d 688. Criminal Law 867

That, while trial was in progress, newspaper published article reporting arrest of defendant's brother as a scoff-law and referred to brother as "Mafia King of Wall Street" did not entitle defendant charged with conspiracy to transport stolen securities in interstate commerce to mistrial, inasmuch as newspaper article made no mention that person named in article had a brother, and only an oblique reference to brother was made at trial, and court acted well within its discretion in declining to poll jurors to determine if their judgment had been affected by the news item. U. S. v. Edwards, C.A.2 (N.Y.) 1966, 366 F.2d 853, certiorari denied 87 S.Ct. 852, 386 U.S. 908, 17 L.Ed.2d 782, certiorari denied 87 S.Ct. 882, 386 U.S. 919, 17 L.Ed.2d 790. Criminal Law 855(5)

Admission of testimony of F.B.I. agent concerning interview with one of the defendants in conspiracy trial did not require granting of motion for mistrial where testimony was no more than evidence of surrounding circumstances tending to illuminate principal fact in such way as to reflect entire transaction. Marroso v. U. S., C.A.5 (Fla.) 1964, 331 F.2d 601, certiorari denied 85 S.Ct. 185, 379 U.S. 899, 13 L.Ed.2d 174, certiorari denied 85 S.Ct. 193, 379 U.S. 899, 13 L.Ed.2d 174, rehearing denied 85 S.Ct. 437, 379 U.S. 951, 13 L.Ed.2d 549, rehearing denied 85 S.Ct. 436, 379 U.S. 951, 13 L.Ed.2d 549. Criminal Law 867

That codefendant in course of government's presentation testified as government witness regarding alleged conspiracy did not require granting of mistrial, where there was no showing of any additional circumstances. Hansen v. U. S., C.A.9 (Wash.) 1963, 326 F.2d 152. Criminal Law 867

Refusal, in conspiracy prosecution to grant defendant's motion for mistrial and severance when trial judge instructed jury that co-defendant who had voluntarily absented himself from jurisdiction would be tried in absentia was not error and defendant was not prejudiced, since his attorney could protect his rights by raising appropriate objection to matters deemed prejudicial to defendant. U. S. v. Cianchetti, C.A.2 (Conn.) 1963, 315 F.2d 584. Criminal Law 622.7(13); Criminal Law 867

In prosecution for receiving and selling stolen motor vehicles and for conspiracy to transport stolen motor vehicles in interstate commerce, where government witness in response to questions stated that the exhibits shown were authentic New Jersey certificates of ownership, but gratuitously added that such certificates were stolen at gunpoint, and trial judge admonished witness and instructed jury to disregard last statement, denial of motion for mistrial was not an abuse of discretion. U. S. v. Lubertazzi, C.A.3 (N.J.) 1960, 283 F.2d 152. Criminal Law 867

In prosecution for violation of Mann Act, § 2421 of this title, and conspiracy to violate Mann Act, where certain testimony was admitted in evidence, court later struck such evidence from record, and offered defendant's counsel opportunity to move for mistrial at stated time, and indicated that if such motion were made "we will start over again", failure to move for mistrial was not due to inadvertence, but was deliberate choice, and defendant waived

his right to assert that harm, if any, resulting from admission of the testimony was not cured. Ladakis v. United States, C.A.10 (Utah) 1960, 283 F.2d 141. Criminal Law 1044.1(5.1)

In prosecution for conspiracy in regard to marihuana and for substantive violations of law in regard to marihuana wherein trial court had sustained defendant's motion for severance which motion was based on grounds that codefendant actually intended to be a government witness under guise of plea of not guilty and that there was an animosity between codefendant and her husband, another of codefendants, denial of defendant's motion for mistrial because of arrangement made by court with codefendant's counsel, which was not known to defendant's counsel until later in trial, that codefendant would be tried by court at same time that defendant was being tried by jury was not prejudicial under the record. Padron v. U.S., C.A.5 (Tex.) 1958, 254 F.2d 574, certiorari denied 79 S.Ct. 22, 358 U.S. 815, 3 L.Ed.2d 57. Criminal Law 1174(1)

In prosecution for uttering and passing counterfeit Kingdom of Belgium bonds, with intent to defraud, and for conspiring to negotiate similar bonds, trial court did not err in denying motion of defendant for mistrial because of admission of testimony of police officer concerning flight of a co-defendant and co-conspirator, and because of admission of post-conspiracy statements of another co-defendant and co-conspirator, where proper instructions were given limiting use of such evidence as against co-defendants and co-conspirators only. U.S. v. Kaye, C.A.2 (N.Y.) 1958, 251 F.2d 87, certiorari denied 78 S.Ct. 702, 356 U.S. 919, 2 L.Ed.2d 714. Criminal Law 673(4)

In prosecution for conspiring to defraud United States, wherein court declared mistrial as to one of defendants who suffered a heart attack after commencement of trial, motion for mistrial as to remaining defendants because of court's declaration of mistrial as to one was addressed to sound judicial discretion of trial court, and court did not abuse its discretion in denying the motion. Connelly v. U.S., C.A.8 (Mo.) 1957, 249 F.2d 576, certiorari denied 78 S.Ct. 700, 356 U.S. 921, 2 L.Ed.2d 716, rehearing denied 78 S.Ct. 991, 356 U.S. 964, 2 L.Ed.2d 1072, certiorari denied 78 S.Ct. 701, 356 U.S. 921, 2 L.Ed.2d 716. Criminal Law 867

In prosecution for conspiring to defraud United States, court's declaration of mistrial as to one of defendants, who suffered heart attack about sixteen days after commencement of trial, accompanied with instructions withdrawing from jury's consideration all testimony admitted as to such defendant alone, was not prejudicial to remaining defendants. Connelly v. U.S., C.A.8 (Mo.) 1957, 249 F.2d 576, certiorari denied 78 S.Ct. 700, 356 U.S. 921, 2 L.Ed.2d 716, rehearing denied 78 S.Ct. 991, 356 U.S. 964, 2 L.Ed.2d 1072, certiorari denied 78 S.Ct. 701, 356 U.S. 921, 2 L.Ed.2d 716. Criminal Law 1174(1)

In prosecution of alleged Communists for conspiracy to violate the Smith Act, § 2385 of this title, making it an offense to advocate forcible overthrow of the government, denial of motions for mistrial because of alleged adverse public opinion concerning Communists did not infringe rights of alleged Communists. United States v. Flynn, C.A.2 (N.Y.) 1954, 216 F.2d 354, certiorari denied 75 S.Ct. 295, 348 U.S. 909, 99 L.Ed. 713, order withheld 75 S.Ct. 285, 99 L.Ed. 1298, rehearing denied 75 S.Ct. 436, 348 U.S. 956, 99 L.Ed. 747. Criminal Law 867

In prosecution for conspiring to operate distillery, to manufacture distilled spirits without giving bond, and to transport distilled spirits in nontax-paid containers, wherein court, on motion, struck statement of government's witness, who was Alcohol Tax Unit agent, that he thought one defendant might have known witness prior to such defendant's arrest, ground for mistrial did not exist. United States v. Giallo, C.A.2 (N.Y.) 1953, 206 F.2d 207, certiorari granted 74 S.Ct. 129, 346 U.S. 871, 98 L.Ed. 380, affirmed 74 S.Ct. 319, 346 U.S. 929, 98 L.Ed. 421. Criminal Law 867

In prosecution of liquor dealer for conspiracy to violate §§ 2831, 2857, 2860 and 3253 of Title 26, by carrying on business of wholesale dealer without paying special taxes, statements made by prosecuting attorney on voir dire to effect that defendant was a convicted bootlegger which were made not to put character in issue, but as part of facts which were later proven, and which bore directly on guilt of crime charged, were not ground for mistrial. Briggs v. U.S., C.A.10 (Okla.) 1949, 176 F.2d 317, certiorari denied 70 S.Ct. 102, 338 U.S. 861, 94 L.Ed. 528, rehearing

denied 70 S.Ct. 158, 338 U.S. 882, 94 L.Ed. 541, certiorari denied 70 S.Ct. 103, 338 U.S. 861, 94 L.Ed. 528. Criminal Law 722.5

The failure of district court to enter a mistrial of its own motion after witness' voluntary statement, which court immediately excluded and instructed jury to disregard, was not error. Claunch v. U.S., C.C.A.5 (Tex.) 1946, 155 F.2d 261. Criminal Law 867

In prosecution for use of mail to defraud and for conspiracy to violate the mail fraud statute, former § 338 of this title, remarks of prosecuting attorney during the taking of testimony did not demand a mistrial in view of rebuke administered by trial judge. Ryan v. U. S., C.C.A.5 (Ala.) 1942, 129 F.2d 783. Criminal Law 867

The alleged fact that, after a witness who had been called by the government and recalled by the accused had given his testimony, he was arrested in presence of jury on a charge of perjury, was not ground for mistrial in absence of anything in record to indicate that any of the remaining witnesses was in fact intimidated by the making of the arrest. U.S. v. Maggio, C.C.A.3 (N.J.) 1942, 126 F.2d 155, certiorari denied 62 S.Ct. 1275, 316 U.S. 686, 86 L.Ed. 1758. Criminal Law 867

In prosecution for possessing an illicit still, making alcohol, and for conspiracy to commit such offenses, where revenue agents testified that two defendants had been previous violators and liquor law but in three of the four instances complained of attorneys for the defense called for the answer and in the other the agent volunteered it and judge at once struck it out, judge was not bound to declare a mistrial. U.S. v. Salli, C.C.A.2 (N.Y.) 1940, 115 F.2d 292. Criminal Law 867

Where conspiracy to violate Federal Narcotics Act, § 2550 et seq. of Title 26, was charged and each of illegal sales alleged as overt acts were charged as substantive offenses, but verdict was directed for alleged coconspirator on all counts and for accused on conspiracy count, failure to declare mistrial after dismissal of alleged coconspirator because of testimony, which was admitted without objection or motion to strike, by government witness that when he had purchased morphine in office of accused, alleged coconspirator told witness not to go out with the morphine in his hand but to put it away so nobody would see it, was not ground for reversal, though the conversation was in absence of accused. Weaver v. U. S., C.C.A.8 (Neb.) 1940, 111 F.2d 603. Criminal Law 1036.1(3.1); Criminal Law 1044.1(5.1)

Where character of evidence improperly admitted is such that it is likely to create so strong an impression on minds of jurors to prejudice of defendant that jurors will be unable to cast it aside in the consideration of the case, a mistrial should be ordered. Holt v. U.S., C.C.A.10 (Okla.) 1937, 94 F.2d 90. Criminal Law 1169.5(1)

Where motions for severance which were made by defendants charged with conspiracy and solicitation of bribe by public official were denied and during trial one defendant changed plea to nolo contendere in absence of jury and care was taken to avoid any suggestion that plea had been entered and no evidence had been received that would not have been admissible in trial of remaining defendant, court's denial of remaining defendant's motion for mistrial was not error. U. S. v. Heffler, E.D.Pa.1967, 270 F.Supp. 79, affirmed 402 F.2d 924, certiorari denied 89 S.Ct. 1280, 394 U.S. 946, 22 L.Ed.2d 480. Criminal Law 867

In prosecution for conspiring to teach and advocate overthrow of United States Government by force and violence, refusal to declare a mistrial because of withdrawal of defense counsel on account of illness after trial had already been in progress for more than three months, subject to many delays, was not abuse of discretion, in view of representations made by defendants with respect to procuring other counsel or proceeding pro se and their refusal to permit associate counsel of record maintaining an office in the district to represent them as trial counsel, opportunity afforded defendants to procure substitute counsel, ability of substitute counsel and intelligence and ability of defendants as disclosed by their opening and closing to jury. U. S. v. Mesarosh, W.D.Pa.1953, 116 F.Supp. 345, affirmed 223 F.2d 449, certiorari granted 76 S.Ct. 218, 350 U.S. 922, 100 L.Ed. 807, reversed 77

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S.Ct. 1, 352 U.S. 1, 1 L.Ed.2d 1. Criminal Law 641.10(2)

Where defendants on trial for conspiring to teach and advocate the overthrow of United States Government by force and violence made a motion for mistrial based on newspaper account of testimony given before Senate Subcommittee on Internal Security by a witness who had testified for government at trial, district court properly interrogated each juror under oath and out of the presence of other jurors concerning their knowledge of the matter and where such interrogation disclosed almost no knowledge of the matter by jurors or resulting prejudice, court was not required to presume that such publicity was prejudicial to defendants and properly refused to declare a mistrial on such ground. U. S. v. Mesarosh, W.D.Pa.1953, 116 F.Supp. 345, affirmed 223 F.2d 449, certiorari granted 76 S.Ct. 218, 350 U.S. 922, 100 L.Ed. 807, reversed 77 S.Ct. 1, 352 U.S. 1, 1 L.Ed.2d 1. Criminal Law 867

474. Objections and exceptions, trial proceedings generally

In prosecution for unlawful sale of opium and conspiracy to sell opium, in which government agent, who had, by means of receiving set tuned to microphone hidden on person of undercover agent, overheard conversation between accused and undercover agent wherein accused made incriminating statements, testified as to such conversation, objection that "that is objected to" was at best a general objection, and was insufficient to preserve specific claim that government had violated search and seizure provision of U.S.C.A.Const. Amend. 4 in obtaining such evidence. On Lee v. U. S., U.S.N.Y.1952, 72 S.Ct. 967, 343 U.S. 747, 96 L.Ed. 1270, rehearing denied 73 S.Ct. 5, 344 U.S. 848, 97 L.Ed. 659. Criminal Law 1043(2)

In prosecution for unlawful sale of opium and conspiracy to sell opium, in which government agent, who had, by means of receiving set tuned to microphone hidden on person of undercover agent, overheard conversation between accused and undercover agent wherein accused made incriminating statements, testified as to such conversation, objection to testimony of conversations alleged to have been had between the two agents not in the hearing of defendant or in his presence was not even addressed to testimony describing conversation between undercover agent and accused, and was properly overruled. On Lee v. U. S., U.S.N.Y.1952, 72 S.Ct. 967, 343 U.S. 747, 96 L.Ed. 1270, rehearing denied 73 S.Ct. 5, 344 U.S. 848, 97 L.Ed. 659. Criminal Law 1043(2)

Trial court's error, in overruling objection to prosecutor's compound question about defendant's efforts to cover-up arson, which assumed facts not in evidence, during cross-examination of witness, was harmless; subsequent questioning of witness clarified his response to question, and there was overwhelming evidence of defendant's complicity in the arson, conspiracy, and subsequent cover-up, including her own tape-recorded statements. U.S. v. Smith, C.A.5 (La.) 2003, 354 F.3d 390, certiorari denied 124 S.Ct. 1698, 541 U.S. 953, 158 L.Ed.2d 386. Criminal Law 1170.5(1); Witnesses 281

Sustaining of prosecution's objection to question asking defense witness whether it was proper for defendant, charged with conspiracy to take fraudulent expense deductions on corporate income tax return, to claim deductions for travel expenses was not error where defense counsel, stating he was merely attempting to show such expenses were proper deductions received affirmative reply to question. U.S. v. Haskell, C.A.2 (Conn.) 1964, 327 F.2d 281, certiorari denied 84 S.Ct. 1351, 377 U.S. 945, 12 L.Ed.2d 307. Criminal Law 1168(1)

Use of the term "dishonest methods" in defining fraud was not objectionable on ground that charge was too broad because of ambiguity or otherwise. Reiss v. U. S., C.A.1 (Mass.) 1963, 324 F.2d 680, certiorari denied 84 S.Ct. 667, 376 U.S. 911, 11 L.Ed.2d 609. Criminal Law 805(3)

Upon timely objection to witness' testimony in conspiracy trial, court has discretion to require government to come forward with independent evidence linking defendant with conspiracy, before admitting testimony of member's declarations, outside defendant's presence, linking him with conspiracy. Landers v. U. S., C.A.5 (Ga.) 1962, 304 F.2d 577. Criminal Law 427(2)

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Where self-confessed coconspirator who testified for prosecution categorically denied that he had received any promise of immunity, trial court committed no reversible error in sustaining objection to cross-examination of him as to asserted immunity promise. Collins v. U.S., C.A.6 (Tenn.) 1960, 284 F.2d 517, certiorari denied 81 S.Ct. 753, 365 U.S. 837, 5 L.Ed.2d 746. Criminal Law 1170.5(5)

In prosecution for conspiring to violate narcotics laws, it was not error to sustain objection to question asked of government witness as to where he had been living upon a certain date when witness stated he did not wish to give his address because of fear of intimidation and when counsel for defendant did not show materality of address. U. S. v. Rich, C.A.2 (N.Y.) 1959, 262 F.2d 415. Witnesses 270(2)

In prosecution for uttering and passing counterfeit Kingdom of Belgium bonds, with intent to defraud, and for conspiring to negotiate similar bonds, trial court properly sustained objection to defendant's proffered evidence showing value of such bonds, according to investment manual, over 10 year period, where such period included period of German occupation of Belgium, and times and circumstances too remote from period of alleged conspiracy to have probative value on issues in case. U.S. v. Kaye, C.A.2 (N.Y.) 1958, 251 F.2d 87, certiorari denied 78 S.Ct. 702, 356 U.S. 919, 2 L.Ed.2d 714. Criminal Law 384

Trial judge, who had recordings of conversations between defendants and police officer in prosecution for conspiracy to bribe and bribery of the police officer played out of presence of jury so that she could rule on any objections raised by defendants before jury heard recordings, followed correct procedure. Monroe v. U.S., C.A.D.C.1956, 234 F.2d 49, 98 U.S.App.D.C. 228, certiorari denied 77 S.Ct. 94, 352 U.S. 872, 1 L.Ed.2d 76, certiorari denied 77 S.Ct. 94, 352 U.S. 873, 1 L.Ed.2d 76, rehearing denied 77 S.Ct. 219, 352 U.S. 937, 1 L.Ed.2d 170, rehearing denied 78 S.Ct. 114, 355 U.S. 875, 2 L.Ed.2d 79. Criminal Law 671

Where, in prosecution for conspiracy, defendant did not object to testimony on direct examination but cross-examined witness at length and then moved to strike his testimony, refusal to grant motion did not constitute error even if reception of such testimony, as proof of another crime, would have been error. United States v. Parnes, C.A.2 (N.Y.) 1954, 210 F.2d 141. Criminal Law 696(8)

Testimony of fellow conspirator in prosecution for violation of § 794 of this title by furnishing secret information to Russia with requisite intent, when not objected to at trial as being inadmissible as hearsay, would thereafter be considered and accorded its natural probative effect, as if it were in law admissible. United States v. Rosenberg, C.A.2 (N.Y.) 1952, 195 F.2d 583, certiorari denied 73 S.Ct. 20, 344 U.S. 838, 97 L.Ed. 652, rehearing denied 73 S.Ct. 134, 344 U.S. 889, 97 L.Ed. 687, certiorari denied 73 S.Ct. 21, 344 U.S. 838, 97 L.Ed. 652, rehearing denied 73 S.Ct. 180, 344 U.S. 889, 97 L.Ed. 687, rehearing denied 74 S.Ct. 860, 347 U.S. 1021, 98 L.Ed. 1142, motion denied 78 S.Ct. 91, 355 U.S. 860, 2 L.Ed.2d 67. Criminal Law 698(1)

In conspiracy prosecution, objection that claimed inadmissible evidence was "collateral" was not sufficient to call trial court's attention to claimed inadmissibility, within meaning of rule that objection to admission of testimony cannot be made for first time on appeal. U.S. v. Rubenstein, C.C.A.2 (N.Y.) 1945, 151 F.2d 915, certiorari denied 66 S.Ct. 168, 326 U.S. 766, 90 L.Ed. 462. Criminal Law 1043(2)

In prosecution for conspiracy to transfer rubber tires and tubes in violation of rationing regulations, objection to use of tires as evidence which was made for the first time more than seven months after tires were seized was waived, even if search and seizure were illegal. Rose v. U.S., C.C.A.9 (Cal.) 1945, 149 F.2d 755. Criminal Law 693

Where one of the false representations charged in indictment was that the people behind a certain company had $80,000,000, sustaining of government's objections to questions put to witness on cross-examination as to his statements to one of defendants was not prejudicial, where it did not appear that witness' testimony would have established truth of the representation. Harper v. U. S., C.C.A.8 (Mo.) 1944, 143 F.2d 795. Criminal Law

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1170.5(5)

Where accused objected to officer's testimony concerning what a government witness, who was an alleged coconspirator, said at time of his arrest, and it was obvious that officer's testimony would have shown statements of government witness inconsistent with his testimony at the trial, accused whose objection to officer's testimony was sustained could not contend that trial court erred in permitting district attorney to cross-examine government witness concerning prior inconsistent statements because the prior statements were not proved. Pastrano v. U.S., C.C.A.4 (Md.) 1942, 127 F.2d 43. Criminal Law 1137(2)

In prosecution for conspiracy to violate revenue laws by operating a still for the manufacture of liquor, objection to inquiry on cross-examination of police officer with respect to the record for dealing in whisky of a person not on trial, but who subsequently testified for the prosecution, was properly sustained, since question was material for purposes of impeachment only. Bryant v. U.S., C.C.A.5 (Fla.) 1941, 120 F.2d 483. Witnesses 269(15)

In prosecution for violation of former § 88 of this title [now this section] and § 77q of Title 15 and for conspiracy to violate such sections, testimony of witness, who originally had been indicted but as to whom indictment had been dismissed, that after he was indicted defendant informed the witness that witness had nothing to worry about, that defendant and a codefendant were arranging affairs so that witness "would be washed out of the deal altogether" and that they would assist witness with counsel and attend to matters so that he would not be implicated in the matter was not objectionable as containing insinuation that defendant had promised to "fix" the case. Simons v. U.S., C.C.A.9 (Wash.) 1941, 119 F.2d 539, certiorari denied 62 S.Ct. 78, 314 U.S. 616, 86 L.Ed. 496. Criminal Law 351(1)

In prosecution of corporation officers for posting letters in pursuance of scheme to defraud and for conspiracy, wherein prosecution showed that one officer padded financial statements, but allegedly failed to show that other officers were privy thereto, other officers could ask at most that jury should not consider such padding as part of the conspiracy, and could not object to admission of evidence thereof. U.S. v. Dilliard, C.C.A.2 (N.Y.) 1938, 101 F.2d 829, certiorari denied 59 S.Ct. 484, 306 U.S. 635, 83 L.Ed. 1036. Criminal Law 423(3)

Counsel are not held to strict accountability for failure to object or except when the questions are asked by court. Williams v. U.S., C.C.A.9 (Cal.) 1937, 93 F.2d 685. Criminal Law 660; Criminal Law 698(1)

Objection to testimony as far as affecting one defendant was ineffectual, where testimony was admissible against another defendant. Vachuda v. U.S., C.C.A.2 (N.Y.) 1927, 21 F.2d 409. Criminal Law 695(1)

Objections to questions by defendants' counsel, calling for conclusions of witness, were properly sustained. Lewis v. U. S., C.C.A.6 (Mich.) 1926, 11 F.2d 745. Criminal Law 448(1)

General objection to evidence, admissible against some of the defendants, was insufficient. Silkworth v. U.S., C.C.A.2 (N.Y.) 1926, 10 F.2d 711, certiorari denied 46 S.Ct. 475, 271 U.S. 664, 70 L.Ed. 1139. Criminal Law 695(3)

It is function of the court to determine what evidence is admissible and the court must determine facts necessary to be determined in passing on objections to testimony. Ford v. U.S., C.C.A.9 (Cal.) 1926, 10 F.2d 339, certiorari granted 46 S.Ct. 475, 271 U.S. 652, 70 L.Ed. 1133, affirmed 47 S.Ct. 531, 273 U.S. 593, 71 L.Ed. 793.

Although statements of a conspirator who has pleaded guilty are inadmissible in prosecution against others, error in their reception is waived by failure to make specific objection. Harrison v. U.S., C.C.A.2 (N.Y.) 1925, 7 F.2d 259.

In prosecution against corporation and 13 individuals for conspiracy to obtain release of whisky from bond by means of forged permits, and to sell it unlawfully, if seizure of corporation's papers was illegal under

U.S.C.A.Const. Amend. 4, its rights only were invaded, and it alone could object to introduction of papers in evidence. A Guckenheimer & Bros Co v. U S, C.C.A.3 (Pa.) 1925, 3 F.2d 786, certiorari denied 45 S.Ct. 509, 268 U.S. 688, 69 L.Ed. 1157.

Objection to question to witness whether a man who at that time had not been a witness had or had not stated a legal result, was properly sustained. Gruher v. U.S., C.C.A.2 (N.Y.) 1918, 255 F. 474, 166 C.C.A. 550. Criminal Law 448(12)

475. Verdict, trial proceedings generally--Generally

Where an indictment under former § 88 of this title [now this section] contained several counts charging the conspiracy to defraud in substantially the same language, but each charging a different overt act, and a nolle was entered as to some counts, and a verdict of guilty was rendered on all the others except one, that the acquittal on one count was not a finding against any conspiracy, which would work an acquittal as to all. Dealy v. U.S., U.S.N.D.1894, 14 S.Ct. 680, 152 U.S. 539, 38 L.Ed. 545.

General verdict of guilty to offense of conspiracy to defraud United States, which was charged as dual-objective conspiracy, was permissible where defendant did not challenge one object of conspiracy and there was sufficient evidence to convict her under other object. U.S. v. Beverly, C.A.7 (Ill.) 1990, 913 F.2d 337, certiorari denied 111 S.Ct. 766, 498 U.S. 1052, 112 L.Ed.2d 786, certiorari granted 111 S.Ct. 951, 498 U.S. 1082, 112 L.Ed.2d 1039, affirmed 112 S.Ct. 466, 502 U.S. 46, 116 L.Ed.2d 371, rehearing denied 112 S.Ct. 1253, 502 U.S. 1125, 117 L.Ed.2d 484, dismissal of habeas corpus affirmed 972 F.2d 351, post-conviction relief denied, habeas corpus granted in part. Criminal Law 881(1)

Once a defendant is found guilty of participating in a conspiracy, it is unnecessary that the verdict specify the particular statutory provision which defendant conspired to violate. U. S. v. Avila-Dominguez, C.A.5 (Tex.) 1980, 610 F.2d 1266, rehearing denied 613 F.2d 314, certiorari denied 101 S.Ct. 242, 449 U.S. 887, 66 L.Ed.2d 113. Conspiracy 48.3

Whether the evidence of a conspiracy is direct or circumstantial, the test of sufficiency thereof is whether a reasonably minded jury could find the evidence inconsistent with every hypothesis of innocence. U. S. v. Barrentine, C.A.5 (Ala.) 1979, 591 F.2d 1069, rehearing denied 599 F.2d 1054, certiorari denied 100 S.Ct. 521, 444 U.S. 990, 62 L.Ed.2d 419. Conspiracy 47(1)

Fact that defendants convicted on count charging conspiracy to commit offenses recited in three substantive counts questioned the constitutionality of only one of the three unlawful "objects" of the conspiracy did not preclude challenge to the conspiracy conviction where because of a general verdict on the conspiracy charge the court could not know which of the three statutes, the violations of which were the "objects" of the conspiracy, the jury relied on in convicting the defendants. U. S. v. Baranski, C.A.7 (Ill.) 1973, 484 F.2d 556. Constitutional Law 42.1(3)

Where conspiracy count charged violation of two statutes and violation of one statute was shown, even though violation of the other was not established, conviction of conspiracy was not improper on theory that it was impossible to determine upon which overt act the jury based its conspiracy conviction. U. S. v. Goodwin, C.A.10 (Okla.) 1972, 455 F.2d 710, certiorari denied 93 S.Ct. 146, 409 U.S. 859, 34 L.Ed.2d 105. Conspiracy 43(12)

Court in prosecution of two defendants for conspiracy properly submitted two forms of verdicts as to each defendant, one form finding him guilty and the other finding him not guilty. U. S. v. Cudia, C.A.7 (Ill.) 1965, 346 F.2d 227, certiorari denied 86 S.Ct. 428, 382 U.S. 955, 15 L.Ed.2d 359, rehearing denied 86 S.Ct. 612, 382 U.S. 1021, 15 L.Ed.2d 536. Criminal Law 798.5

Where evidence established one overall scheme to defraud foundation and its contributors, and that following

overall agreement each defendant participated in some but not all of acts which furthered objective of conspiracy, that some defendants were found guilty only of some counts and that other defendants were found not guilty of some counts of which other defendants were found guilty did not indicate the jury's conclusion that there were separate schemes. Koolish v. U. S., C.A.8 (Minn.) 1965, 340 F.2d 513, certiorari denied 85 S.Ct. 1805, 381 U.S. 951, 14 L.Ed.2d 724. Conspiracy 48.3

That jury found three defendants in conspiracy case guilty but found one not guilty made no difference. Robinson v. U. S., C.A.5 (Ala.) 1964, 333 F.2d 950, certiorari denied 85 S.Ct. 277, 379 U.S. 921, 13 L.Ed.2d 335. Conspiracy 24(6)

All defendants named as conspirators need not be convicted, and even if case goes to verdict, the verdict as to one may be set aside without affecting the others. Reiss v. U. S., C.A.1 (Mass.) 1963, 324 F.2d 680, certiorari denied 84 S.Ct. 667, 376 U.S. 911, 11 L.Ed.2d 609. Conspiracy 24(6); Criminal Law 910

In prosecution for conspiracy to bribe police officer and also for bribery to influence officer in enforcement of gambling laws, defendants, who were convicted on only part of the substantive counts, and who were not involved in the conspiracy, were not prejudiced by trial of the conspiracy charge and bribery charges together, in view of the different number of convictions entered against the different defendants indicating that the jury was selective and was returning verdicts only upon basis of evidence relevant to each count and each defendant and also where court charged in considerable detail as to the separate substantive counts. Monroe v. U.S., C.A.D.C.1956, 234 F.2d 49, 98 U.S.App.D.C. 228, certiorari denied 77 S.Ct. 94, 352 U.S. 872, 1 L.Ed.2d 76, certiorari denied 77 S.Ct. 94, 352 U.S. 873, 1 L.Ed.2d 76, rehearing denied 77 S.Ct. 219, 352 U.S. 937, 1 L.Ed.2d 170, rehearing denied 78 S.Ct. 114, 355 U.S. 875, 2 L.Ed.2d 79. Criminal Law 1166(6)

Where conspiracy charged embraced many unlawful objects aside from unlawful transportation of unstamped spirits, and depended on numerous overt acts in addition to transportation, conviction, for conspiracy and also for substantive offense of transporting unstamped spirits, was authorized. Moss v. U.S., C.C.A.6 (Mich.) 1943, 132 F.2d 875. Conspiracy 37

In conspiracy prosecution, alleged failure of evidence to show guilt of all persons indicted did not preclude conviction of defendants whose guilt was shown by evidence. Weiss v. U. S., C.C.A.3 (Pa.) 1939, 103 F.2d 759. Conspiracy 40

In prosecution under indictment charging use of mails in furtherance of scheme to defraud, and indictment charging conspiracy to commit offense, general verdict finding defendants guilty was finding of guilt on conspiracy count alone, where trial judge submitted case only on conspiracy count and did not give instructions on substantive offenses. Lefco v. U S, C.C.A.3 (Pa.) 1934, 74 F.2d 66. Postal Service 50

Verdict under indictment charging particular conspiracy cannot be sustained by evidence which establishes another conspiracy or several other conspiracies different from conspiracy charged. Lefco v. U S, C.C.A.3 (Pa.) 1934, 74 F.2d 66. Conspiracy 43(12)

Defendants can be convicted only for crime for which they have been indicted, and hence conviction for one conspiracy cannot be sustained under indictment for separate and distinct conspiracy. U.S. v. Byers, C.C.A.2 (N.Y.) 1934, 73 F.2d 419. Indictment And Information 171

Conviction of single defendant for conspiracy will be upheld, where evidence shows more than one person participated in corrupt understanding. Rosenthal v. U. S., C.C.A.8 (Iowa) 1930, 45 F.2d 1000. Conspiracy 24(1)

Each defendant is entitled to separate jury finding as to his individual connection with offense. Linde v. U.S.,

18 U.S.C.A. § 371

C.C.A.8 (S.D.) 1926, 13 F.2d 59. Conspiracy 48.3

On a trial for conspiracy to commit an offense against the United States, the verdict "guilty of conspiracy," was a general and not a special verdict, and was to be understood as referring to the conspiracy charged in the indictment, and was sufficient. Huff v. U.S., C.C.A.5 (Ga.) 1916, 228 F. 892, 143 C.C.A. 290, certiorari denied 36 S.Ct. 551, 241 U.S. 667, 60 L.Ed. 1228. Conspiracy 48.3

General jury verdict with regard to count charging defendant with conspiracy to commit three felonies and one misdemeanor was unambiguous and permitted defendant to be sentenced for felony conspiracy, where evidence was sufficient to support felony conspiracy conviction. U.S. v. Rice, W.D.N.C.1993, 815 F.Supp. 158, affirmed 16 F.3d 413, certiorari denied 115 S.Ct. 116, 513 U.S. 836, 130 L.Ed.2d 62, rehearing denied 115 S.Ct. 617, 513 U.S. 1033, 130 L.Ed.2d 525. Criminal Law 881(3); Criminal Law 893

If defendant is charged in single count with conspiracy to achieve any one of a number of illegal objectives and jury returns general verdict of guilty on that count, then, where there is insufficient evidence to support conviction of conspiracy with regard to one or more but not all of the multiple objectives, conviction must be vacated. Williams v. Cuyler, E.D.Pa.1980, 491 F.Supp. 272. Criminal Law 1534

Mere fact that fourteen people were charged with conspiracy to interfere and hamper government in obtaining competitive bids for automobiles did not require that jury find them all guilty or all not guilty, but any two persons might be found guilty in that it takes but two to make a conspiracy. U.S. v. Belisle, W.D.Wash.1951, 107 F.Supp. 283. Conspiracy 24(6)

In prosecution for conspiracy, jury may find all defendants guilty or not guilty or find one or more of them guilty and others not guilty. U. S. v. Schneiderman, S.D.Cal.1952, 106 F.Supp. 906. Conspiracy 24(6)

Where indictment charges a conspiracy to commit several offenses, a conviction for having conspired to commit any one of the offenses charged is good if supported by evidence. U.S. v. Direct Sales Co., W.D.S.C.1942, 44 F.Supp. 623, affirmed 131 F.2d 835, certiorari granted 63 S.Ct. 758, 318 U.S. 749, 87 L.Ed. 1125, affirmed 63 S.Ct. 1265, 319 U.S. 703, 87 L.Ed. 1674. Criminal Law 990.1

In prosecution for conspiracy to advocate the overthrow or destruction of the government by force or violence, verdict was to be reached uninfluenced by consideration of punishment which might be inflicted. U.S. v. Foster, S.D.N.Y.1949, 9 F.R.D. 367. Criminal Law 749; Criminal Law 753(2)

476. ---- Consistency, verdict, trial proceedings generally

Jury verdicts acquitting defendant of conspiracy to defraud United States in connection with solicitation and award of construction contract, but convicting defendant of knowingly uttering counterfeit payment and performance bond, were not inconsistent, even though uttering was charged as act in furtherance of conspiracy; literal minded jury might have believed that uttering itself was proved amply but that "agreement" element of conspiracy had not been established. U.S. v. Stern, C.A.1 (Mass.) 1994, 13 F.3d 489. Criminal Law 878(4)

Defendant was not entitled to reversal on theory of inconsistency of verdict in convicting him of conspiracy to commit bank robbery and possession of stolen bank funds, while acquitting him on charges of armed robbery, assault on bank employees and possession of firearms in the bank. U.S. v. Blankenship, C.A.4 (Va.) 1983, 707 F.2d 807. Criminal Law 878(4)

Under evidence that defendant refused to participate in conspiracy to pass counterfeit obligations to the extent of personally passing counterfeit money but did undertake to introduce coconspirator to another prospect, acquittal by jury on substantive counterfeiting count was not inconsistent with conviction on conspiracy count. U. S. v. Barone,

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C.A.3 (Pa.) 1972, 458 F.2d 1027. Criminal Law 878(4)

Guilty verdicts on counts charging defendant with causing misbranded drugs to be introduced into interstate commerce, with repacking and mislabeling drugs which had been shipped in interstate state commerce, and with using mails to defraud were not impaired by verdict "guilty as a misdemeanor" on conspiracy count. U. S. v. Taller, C.A.2 (N.Y.) 1968, 394 F.2d 435, certiorari denied 89 S.Ct. 115, 393 U.S. 839, 21 L.Ed.2d 109. Criminal Law 878(1)

Consistency in the verdict is not necessary; each count being regarded as separate indictment. Koolish v. U. S., C.A.8 (Minn.) 1965, 340 F.2d 513, certiorari denied 85 S.Ct. 1805, 381 U.S. 951, 14 L.Ed.2d 724. Criminal Law 878(4)

Fact that defendant's coconspirator had been dismissed when jury found him not guilty did not require reversal of defendant's conviction even if dismissal was inconsistent. Sabari v. U. S., C.A.9 (Nev.) 1964, 333 F.2d 1019. Criminal Law 1175

Inconsistency in a jury's verdict is of no significance in a conspiracy case where several defendants are convicted. U.S. v. Samuel Dunkel & Co., C.A.2 (N.Y.) 1950, 184 F.2d 894, certiorari denied 71 S.Ct. 491, 340 U.S. 930, 95 L.Ed. 671. Criminal Law 878(4)

Acquittal on count charging conspiracy to transport stolen meat and butter was not inconsistent with conviction on count charging transportation of stolen meat and butter but in any case, consistency in verdict was not necessary, since each count in indictment is regarded as if it were a separate indictment. U.S. v. Denny, C.C.A.7 (Ind.) 1947, 165 F.2d 668, certiorari denied 68 S.Ct. 662, 333 U.S. 844, 92 L.Ed. 1127. Criminal Law 878(4)

Verdict finding corporate defendant, its president, and three supervisory employees, guilty of charges in indictment charging them with conspiracy to defraud federal government in its war efforts and not guilty of charges under indictment charging them with making defective war materials, was not repugnant. U.S. v. Antonelli Fireworks Co., C.C.A.2 (N.Y.) 1946, 155 F.2d 631, certiorari denied 67 S.Ct. 49, 329 U.S. 742, 91 L.Ed. 640, rehearing denied 67 S.Ct. 182, 329 U.S. 826, 91 L.Ed. 701. Criminal Law 876.5

Where indictment of seven defendants contained an unnumbered count for conspiracy and 14 numbered counts, verdict, which without reference to any count found two defendants guilty and rest not guilty and with reference to counts one to 14 found all defendants not guilty, was a finding of guilt of two defendants of unnumbered conspiracy count and did not disclose "contradictory verdicts" so as to require granting of motion in arrest of judgment. Reece v. U.S., C.C.A.5 (Ga.) 1942, 131 F.2d 186, certiorari denied 63 S.Ct. 529, 318 U.S. 759, 87 L.Ed. 1132. Criminal Law 878(4)

Fact that there might be inconsistency in acquitting defendant on substantive counts in indictment while convicting him of conspiracy count would be immaterial as to count on which defendant was convicted. U.S. v. Goodman, C.C.A.2 (N.Y.) 1942, 129 F.2d 1009. Criminal Law 878(4)

In prosecution for conspiracy to use mails in furtherance of a scheme to defraud by inducing purchase of participating oil royalty certificates, verdict of guilty as to trust company could not be set aside on ground that it was inconsistent with acquittal of officer of trust company, where there was evidence that action on behalf of trust company with respect to transaction involved was taken without direction or control from such officer. Whealton v. U.S., C.C.A.3 (N.J.) 1940, 113 F.2d 710. Criminal Law 877

Jury's failure to agree as to guilt of one charged to be at head of conspiracy to violate National Prohibition Act, former § 1 et seq. of Title 27, was not inconsistent with finding of existence of conspiracy and guilt of others. Belvin v. U.S., C.C.A.4 (Va.) 1926, 12 F.2d 548, certiorari denied 47 S.Ct. 98, 273 U.S. 706, 71 L.Ed. 850.

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Conspiracy 23.1

Where indictment in three counts charged, first, conspiracy to violate the National Prohibition Act, former § 1 et seq. of Title 27, to possess and sell intoxicating liquor, based on two unlawful sales made by co-conspirators, and in the second and third counts charged as specific offenses unlawful sales, alleged in count 1, verdict of not guilty on counts 2 and 3, but guilty on count 1, was not inconsistent. Collins v. U.S., C.C.A.8 (Okla.) 1925, 7 F.2d 615, certiorari denied 46 S.Ct. 348, 270 U.S. 647, 70 L.Ed. 779.

Conviction for conspiring to maintain common nuisance by unlawfully selling intoxicating liquor on premises, in violation of National Prohibition Act, former § 1 et seq. of Title 27, under one count, was not inconsistent with acquittal for sale and possession of liquor charged in other counts. Hacker v. U.S., C.C.A.9 (Nev.) 1925, 5 F.2d 132. Conspiracy 47(10)

477. ---- Directed verdict, trial proceedings generally

Conspiracy is offense separate and distinct from substantive violation, and court directing judgment of acquittal on conspiracy count was not required to direct judgment of acquittal on count charging substantive violation. U. S. v. Hassel, C.A.4 (Va.) 1965, 341 F.2d 427. Conspiracy 28(2)

Evidence sustained trial court's refusal to direct judgment of acquittal in case wherein defendants were convicted of conspiring to make false statements to veterans administration in violation of this section and § 1001 of this title relating to false statements. Smith v. U. S., C.A.5 (Ala.) 1964, 340 F.2d 126, certiorari denied 85 S.Ct. 1813, 381 U.S. 954, 14 L.Ed.2d 726. Conspiracy 48.1(3)

In prosecution for conspiracy to import heroin in violation of narcotic laws, §§ 173 and 174 of Title 21, wherein there was ample evidence to make case for jury, defendants were not entitled to peremptory instruction of acquittal in event that jury should disbelieve special narcotic agent's testimony as to alleged co-conspirator. U. S. v. Morello, C.A.2 (N.Y.) 1957, 250 F.2d 631. Conspiracy 48.3

Where evidence was insufficient to take to jury questions of three women defendants' guilt of conspiracy to transport them in interstate commerce for purpose of prostitution and motions of two of three men charged with such offense for directed verdicts of not guilty were granted, third man's conviction thereof must be set aside, as he could not conspire by himself. Dodson v. U. S., C.A.6 (Ky.) 1954, 215 F.2d 196. Conspiracy 24(6)

In prosecution of three men and two women for conspiracy to transport such women in interstate commerce for purpose of prostitution, district court should have directed verdicts for women defendants, in absence of evidence supporting inference that either of them did anything more than consent to her own transportation for such purpose. Dodson v. U. S., C.A.6 (Ky.) 1954, 215 F.2d 196. Conspiracy 48.1(2.1)

In prosecution for conspiracy to violate Second War Powers Act, 50 App. § 1152, and rationing orders, defendant was not entitled to directed verdict under evidence that defendant possessed many counterfeit ration stamps which were used by coconspirator in illegal purchase of sugar. Hunnicutt v. U.S., C.C.A.5 (Ga.) 1945, 149 F.2d 888, certiorari denied 66 S.Ct. 99, 326 U.S. 757, 90 L.Ed. 455. Conspiracy 48.1(2.1)

Defendant's testimony concerning nature of evidence offered under previous indictment concerning conspiracy in North Carolina to violate rationing orders showed transactions different from those relied on under instant indictment for conspiracy in Georgia to violate rationing orders, and hence verdict was properly directed against plea of former jeopardy. Hunnicutt v. U.S., C.C.A.5 (Ga.) 1945, 149 F.2d 888, certiorari denied 66 S.Ct. 99, 326 U.S. 757, 90 L.Ed. 455. Criminal Law 296

Where evidence, though circumstantial, tended as a whole to show extensive and long-continued illicit distillery

operations around homes of defendants, which operations were known to and participated in by defendants, refusing to direct an acquittal of the charge of conspiracy to violate internal revenue laws was not error. Chastain v. U.S., C.C.A.5 (Ga.) 1943, 138 F.2d 413. Conspiracy 48.2(2)

In prosecution for impersonating a United States officer and for conspiracy to commit such offense with contractor who obtained money from building owner by representing that owner had violated the law in obtaining loan from Federal Housing Administration, accused was not entitled to directed verdict on ground that only testimony was that of contractor and owner who were accomplices and co-conspirators, where owner was neither an "accomplice" nor a "coconspirator" but was the victim. Westenrider v. U.S., C.C.A.9 (Nev.) 1943, 134 F.2d 772. Conspiracy 48.1(2.1); False Pretenses 51

Failure to direct verdict for accused because of fact that government's witness testified as to alleged happenings on a day not included in the calendar, and could not remember names of certain men with whom he testified he was in partnership, was proper, where court properly instructed jury to scrutinize testimony of the witness with care. U. S. v. Hannon, C.C.A.3 (Pa.) 1939, 105 F.2d 390, certiorari denied 60 S.Ct. 124, 308 U.S. 594, 84 L.Ed. 497, certiorari denied 60 S.Ct. 125, 308 U.S. 594, 84 L.Ed. 497, certiorari denied 60 S.Ct. 125, 308 U.S. 594, 84 L.Ed. 498. Criminal Law 753.2(2)

Where there was no material variance between charges in indictment and proof and there was substantial evidence to support conspiracy conviction, request for peremptory instruction of not guilty was properly refused. Pullin v. U.S., C.C.A.5 (Ga.) 1939, 104 F.2d 57, certiorari denied 60 S.Ct. 97, 308 U.S. 552, 84 L.Ed. 464. Criminal Law 753.2(4)

Refusal to direct verdict for defendants in not error, where evidence would sustain verdict of guilty. Chapman v. U.S., C.C.A.5 (Tex.) 1925, 10 F.2d 124, certiorari denied 46 S.Ct. 482, 271 U.S. 667, 70 L.Ed. 1141. Criminal Law 753(2)

A motion by defendants jointly charged with conspiracy, for directed verdict on the ground of insufficiency of the evidence is properly denied, if there is evidence to take the case to the jury as to any one. Norton v. U.S., C.C.A.5 (Tex.) 1923, 295 F. 136. Conspiracy 48

In a prosecution for conspiracy to use the mails to defraud, in violation of former § 88 of this title [now this section], the denial of defendant's motions for a directed verdict would not have been error, even though there was no substantial evidence to support the theory of guilt charged in the indictment and maintained during the trial, if there was evidence supporting a subsidiary theory of guilt, which could fairly be deduced from the indictment, and which had been fairly developed during the trial and was distinctly submitted to the jury. Van Tress v. U.S., C.C.A.6 (Ohio) 1923, 292 F. 513, 2 Ohio Law Abs. 370. Conspiracy 48.1(3); Postal Service 50

On the trial of a bankrupt's attorney for conspiring with the bankrupt to conceal his assets from the trustee, evidence was insufficient to justify the court's refusal to direct a verdict of acquittal. Miller v. U.S., C.C.A.4 (S.C.) 1921, 277 F. 721. Conspiracy 48.1(2.1)

In conspiracy prosecution against corporation and its officers for knowingly and wilfully making and causing to be made false and fraudulent representation in matter within jurisdiction of department and agency of United States by falsely representing to representatives of Eleventh naval district that defendant corporation was obligated under lease with city to remove warehouse buildings and installations erected by navy on land leased by city to defendant company, record established that representation, if made, was true, so that defendants were entitled to judgment of acquittal. U. S. v. Outer Harbor Dock & Wharf Co., S.D.Cal.1954, 124 F.Supp. 337. Conspiracy 48.1(3)

478. ---- Acquittal of others, verdict, trial proceedings generally

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Corporate defendant, a defense contractor, was not entitled to judgment of acquittal on charge of conspiracy to defraud and make false statements to federal government, even though individual codefendant, its employee, was acquitted; some evidence of conspiracy was offered against defendant alone, and jury could have found defendant vicariously guilty based on acts or omissions of employees other than codefendant. U.S. v. Hughes Aircraft Co., Inc., C.A.9 (Cal.) 1994, 20 F.3d 974, as amended, certiorari denied 115 S.Ct. 482, 513 U.S. 987, 130 L.Ed.2d 395. Conspiracy 24(6)

"Rule of consistency" did not require reversal of narcotics defendant's conspiracy conviction even though evidence was found not sufficient against defendant's only indicted co-conspirator; defendant was also charged with conspiring with "others," and rational juror could find beyond reasonable doubt that defendant had conspired with others to possess and import cocaine. U.S. v. Rodriguez, C.A.2 (N.Y.) 1993, 983 F.2d 455.

Acquittal of all other defendants charged with conspiracy does not mandate acquittal of remaining conspirator; overruling *Herman v. United States*, 289 F.2d 362; *United States v. Sheikh*, 654 F.2d 1057. U.S. v. Zuniga-Salinas, C.A.5 (Tex.) 1992, 952 F.2d 876.

Jury's acquittal of defendant's sole alleged coconspirator in trial for conspiracy to commit bribery did not mandate acquittal of defendant; defendant had stipulated that evidence was sufficient to support his conspiracy conviction. U.S. v. Bucuvalas, C.A.1 (Mass.) 1990, 909 F.2d 593.

Defendant, who was convicted of conspiracy in joint trial while codefendant was acquitted was not entitled to acquittal on basis of inconsistency of jury verdict; explanations for inconsistency existed which had nothing to do with whether defendant actually conspired with codefendant to commit crime and further, sufficient evidence of conspiracy between defendant and codefendant existed to support jury's verdict against defendant; overruling *Herman v. U.S.*, 289 F.2d 362. U.S. v. Andrews, C.A.11 (Fla.) 1988, 850 F.2d 1557, certiorari denied 109 S.Ct. 842, 488 U.S. 1032, 102 L.Ed.2d 974.

Acquittal of one defendant belied assertions that jury could not keep evidence separate as to each defendant, as bearing upon whether severance should have been granted in prosecution for conspiracy. U.S. v. Plotke, C.A.11 (Fla.) 1984, 725 F.2d 1303, certiorari denied 105 S.Ct. 151, 469 U.S. 843, 83 L.Ed.2d 89.

Theory of conspiracy between defendant and codefendant was barred by jury's determination that it was not shown beyond reasonable doubt that codefendant took part in conspiracy with defendant, and thus acquittal of codefendant required acquittal of defendant, where only defendant and codefendant were indicted on conspiracy charge and there was no evidence implicating anyone else as coconspirator. U.S. v. Hopkins, C.A.10 (Okla.) 1982, 716 F.2d 739, on rehearing 744 F.2d 716.

Conviction of only one defendant in a conspiracy prosecution will not be upheld when all other alleged coconspirators on trial are acquitted; defendant may be convicted of conspiring with persons whose names are unknown or who have not been tried and acquitted if the indictment asserts that such other persons exist and the evidence supports their existence and the existence of conspiracy. U.S. v. Sheikh, C.A.5 (Tex.) 1981, 654 F.2d 1057, certiorari denied 102 S.Ct. 1617, 455 U.S. 991, 71 L.Ed.2d 852.

Acquittal of coconspirator on conspiracy count did not preclude conviction of defendant on that count where unindicted coconspirator testified that he and defendant acted in concert to commit crime. U. S. v. Hopkinson, C.A.10 (Wyo.) 1980, 631 F.2d 665, certiorari denied 101 S.Ct. 1489, 450 U.S. 969, 67 L.Ed.2d 620.

Where named coconspirators were acquitted, alleged conspirator could not be convicted of conspiring with persons whose names were unknown, where there was no direct evidence at trial of the participation of anyone other than the named coconspirators. U.S. v. Espinosa-Cerpa, C.A.5 (Fla.) 1980, 630 F.2d 328.

Even if codefendant was not guilty, defendant would not be entitled to an acquittal on two conspiracy counts where there was considerable evidence that defendant conspired with unknown persons other than the codefendant. U. S. v. Artuso, C.A.2 (N.Y.) 1980, 618 F.2d 192, certiorari denied 101 S.Ct. 164, 449 U.S. 861, 66 L.Ed.2d 77, certiorari denied 101 S.Ct. 226, 449 U.S. 879, 66 L.Ed.2d 102.

There was evidence in prosecution for conspiring to transport and distribute stolen automobile engines and parts to show a single four-link conspiracy even though jury did not convict members of fourth link in chain. U. S. v. Diana, C.A.4 (S.C.) 1979, 605 F.2d 1307, certiorari denied 100 S.Ct. 1067, 444 U.S. 1102, 62 L.Ed.2d 787.

Rule that where all other alleged coconspirators are acquitted of a conspiracy, conviction of one person on that charge cannot be upheld must be limited to those cases in which allegations of indictment and proofs at trial admit of no other conspiratorial agreement than that existing between the one convicted defendant and other conspirators, all of whom have been acquitted of the specific charge. U. S. v. Sandy, C.A.6 (Tenn.) 1979, 605 F.2d 210, certiorari denied 100 S.Ct. 490, 444 U.S. 984, 62 L.Ed.2d 412.

Generally, conviction of only one defendant in conspiracy prosecution will not be upheld if all other alleged coconspirators are acquitted. U. S. v. Goodwin, C.A.5 (Fla.) 1974, 492 F.2d 1141; U.S. v. Musgrave, C.A.Tex.1973, 483 F.2d 327, certiorari denied 94 S.Ct. 447, 450, 414 U.S. 1023, 1025, 38 L.Ed.2d 315, 316. Conspiracy 24(6)

Generally, where two or more defendants in conspiracy prosecution have been lawfully convicted, fact that additional defendants have been acquitted is immaterial. U. S. v. Musgrave, C.A.5 (Tex.) 1973, 483 F.2d 327, certiorari denied 94 S.Ct. 447, 414 U.S. 1023, 38 L.Ed.2d 315, certiorari denied 94 S.Ct. 450, 414 U.S. 1025, 38 L.Ed.2d 316.

Where codefendant was tried on theory he aided and abetted defendant, if the principal defendant was acquitted then codefendant should also have been found not guilty, and the error which damaged principal defendant's defense was also prejudicial to codefendant. U. S. v. Smith, C.A.D.C.1973, 478 F.2d 976, 156 U.S.App.D.C. 66.

Conviction of two or more alleged conspirators is not affected by the fact that trial of some other defendant did not result in conviction; thus, acquittal of one defendant on count charging conspiracy to sell, transfer and deliver counterfeit obligations did not require acquittal of other coconspirators. U. S. v. Banks, C.A.5 (Fla.) 1972, 465 F.2d 1235, certiorari denied 93 S.Ct. 568, 409 U.S. 1062, 34 L.Ed.2d 514.

Fact that alleged coconspirators were acquitted by jury while defendants were convicted was not ground for reversal where jury could reasonably have found that evidence was insufficient to prove beyond reasonable doubt that alleged coconspirators had actually participated in conspiracy. U. S. v. Penney, C.A.6 (Tenn.) 1969, 416 F.2d 850, certiorari denied 90 S.Ct. 1832, 398 U.S. 932, 26 L.Ed.2d 98, rehearing denied 90 S.Ct. 2214, 399 U.S. 917, 26 L.Ed.2d 577.

Where count of indictment alleged that defendant and three other specifically named individual codefendants were sole perpetrators of conspiracy, and the three codefendants were acquitted, conspiracy conviction was reversed. Romontio v. U.S., C.A.10 (Okla.) 1968, 400 F.2d 618, certiorari granted 91 S.Ct. 144, 400 U.S. 901, 27 L.Ed.2d 137, certiorari dismissed 91 S.Ct. 1384, 402 U.S. 903, 28 L.Ed.2d 644.

Where indictment names persons unknown as coconspirators, and evidence supports charge that one of two defendants conspired with unknown persons, conviction of such defendant can stand even though other defendant is acquitted. Cross v. U. S., C.A.8 (Ark.) 1968, 392 F.2d 360.

Defendant, who was charged with fraudulently importing opium and with conspiracy to commit that offense, could be convicted of conspiracy, though indictment charging 14 Chinese crew members with conspiracy was dismissed.

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Ng Pui Yu v. U. S., C.A.9 (Cal.) 1965, 352 F.2d 626.

Failure of government to prove that all alleged members of conspiracy were involved in it would not prevent conviction of two defendants for their participation therein. Carter v. U. S., C.A.8 (Mo.) 1964, 332 F.2d 728, certiorari denied 85 S.Ct. 79, 379 U.S. 841, 13 L.Ed.2d 47.

Conspiracy requires a plurality of actors and an acquittal of one of two conspirators is an acquittal of the other. Lubin v. U. S., C.A.9 (Cal.) 1963, 313 F.2d 419.

Where all but one of charged conspirators are acquitted, verdict against one will not stand. Herman v. U.S., C.A.5 (Fla.) 1961, 289 F.2d 362, certiorari denied 82 S.Ct. 174, 368 U.S. 897, 7 L.Ed.2d 93.

Conviction of one defendant for conspiracy could not be sustained where only overt act in furtherance of conspiracy was done by another defendant, and all other defendants were acquitted. Herman v. U.S., C.A.5 (Fla.) 1961, 289 F.2d 362, certiorari denied 82 S.Ct. 174, 368 U.S. 897, 7 L.Ed.2d 93.

If, in prosecution for conspiracy, indictment names persons unknown as co-conspirators, and evidence supports charge that one of two named defendants conspired with the unknown persons, conviction of one defendant may stand in spite of codefendant's acquittal. U.S. v. Gordon, C.A.3 (Pa.) 1957, 242 F.2d 122, certiorari denied 77 S.Ct. 1378, 354 U.S. 921, 1 L.Ed.2d 1436.

Two persons are necessary to form a conspiracy, and, therefore, acquittal of one person indicted on conspiracy charge requires acquittal of other person indicted in absence or evidence implicating any one else. U.S. v. Gordon, C.A.3 (Pa.) 1957, 242 F.2d 122, certiorari denied 77 S.Ct. 1378, 354 U.S. 921, 1 L.Ed.2d 1436.

Fact that one of three alleged conspirators had been acquitted of charge of conspiracy would not be of avail to other conspirators upon other conspirators' appeal from judgment of conviction and would not affect verdict as to such other conspirators. Lazarov v. U.S., C.A.6 (Tenn.) 1955, 225 F.2d 319, certiorari denied 76 S.Ct. 140, 350 U.S. 886, 100 L.Ed. 781, rehearing denied 76 S.Ct. 341, 350 U.S. 955, 100 L.Ed. 831.

In prosecution for a conspiracy to violate the Gold Reserve Act, § 440 et seq. of Title 31, and Regulations and to defraud the United States, that jury convicted defendant while acquitting a co-defendant was not ground for complaint by defendant where the jury may have considered the codefendant's defense of entrapment well founded. United States v. Wiesner, C.A.2 (N.Y.) 1954, 216 F.2d 739.

In prosecution of two corporate defendants and five individual defendants under two indictments charging conspiracy to defraud United States by delivery under contracts with Federal Surplus Commodity Corporation of rejected egg powder and conspiracy to defraud United States by obtaining payment of certain false claims, acquittal of one of the individual defendants of a charge under second indictment on a prior trial did not deprive court of jurisdiction to try the other defendants on the second indictment. U.S. v. Samuel Dunkel & Co., C.A.2 (N.Y.) 1950, 184 F.2d 894, certiorari denied 71 S.Ct. 491, 340 U.S. 930, 95 L.Ed. 671.

In prosecution of individuals for conspiracy to defraud the United States through violation of former § 203 of this title, prohibiting members of Congress from receiving compensation in matters affecting the government, fact that court directed acquittal of one defendant who was employee of corporations and acted in behalf of other individual defendants, on ground that he did not know that individuals were buying congressman's services, did not require striking out of all evidence as to acquitted individual. May v. United States, C.A.D.C.1949, 175 F.2d 994, 84 U.S.App.D.C. 233, certiorari denied 70 S.Ct. 58, 338 U.S. 830, 94 L.Ed. 505, order withheld 70 S.Ct. 81, 338 U.S. 854, motion denied 70 S.Ct. 94, motion denied 70 S.Ct. 95, rehearing denied 70 S.Ct. 154, 338 U.S. 882, 94 L.Ed. 542, rehearing denied 70 S.Ct. 155, 338 U.S. 882, 94 L.Ed. 542, order withheld 70 S.Ct. 80.

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In prosecution for conspiracy to endeavor to impede due administration of justice in criminal prosecution by improper influence of jurors, that one of the alleged conspirators was acquitted, did not preclude conviction of others. Burton v. U. S., C.A.5 (La.) 1949, 175 F.2d 960, rehearing denied 176 F.2d 865, certiorari denied 70 S.Ct. 347, 338 U.S. 909, 94 L.Ed. 560, rehearing denied 70 S.Ct. 565, 339 U.S. 916, 94 L.Ed. 1341.

The fact that a partner of defendant was acquitted of the charge of conspiracy to carry on the business of a wholesale liquor dealer without paying the special taxes required by law did not vitiate the jury's verdict of guilty as to the defendant. Young v. U. S., C.C.A.10 (Kan.) 1948, 168 F.2d 242.

Acquittal of district judge, around whom alleged conspiracy to obstruct the administration of justice allegedly centered, did not preclude conviction of other alleged conspirators, since jury could reasonably find that persons around the judge were conspiring to obtain illegal advantage but that judge himself was not concerned in the transactions, and, in any event, jury's action in conviction some alleged conspirators and acquitting others need not be consistent in order to be legal. U. S. v. Johnson, C.C.A.3 (Pa.) 1947, 165 F.2d 42, certiorari denied 68 S.Ct. 355, 332 U.S. 852, 92 L.Ed. 421, motion granted 68 S.Ct. 357, rehearing denied 68 S.Ct. 457, 333 U.S. 834, 92 L.Ed. 1118, certiorari denied 68 S.Ct. 355, 332 U.S. 852, 92 L.Ed. 422.

The acquittal of some defendants on conspiracy charge does not vitiate conviction of others where it is shown that criminal conspiracy existed. U.S. v. Monroe, C.C.A.2 (N.Y.) 1947, 164 F.2d 471, certiorari denied 68 S.Ct. 452, 333 U.S. 828, 92 L.Ed. 1113.

Corporate officers were not improperly convicted of conspiracy to sell liquor at wholesale in excess of ceiling prices because the corporation, alleged principal in conspiracy, was found innocent, where corporation sold liquor at ceiling prices and officers, by means of exorbitant premium collected independently of ceiling price, but in negotiation of such ceiling price, turned legitimate sale into an illegal one without benefit to corporation or awareness on part of other stockholders or employees. U.S. v. Hare, C.C.A.7 (Ind.) 1946, 153 F.2d 816, certiorari denied 66 S.Ct. 982, 328 U.S. 836, 90 L.Ed. 1612, certiorari denied 66 S.Ct. 983, 328 U.S. 836, 90 L.Ed. 1612.

In prosecution for conspiracy to defraud the United States by corruptly administering or procuring the corrupt administration of the Frazier Lemke Act, §§ 20 to 203 of Title 11, the fact that conciliation commissioners, who were jointly charged with defendant and another in the indictment, were acquitted, did not prevent the conviction of defendant and another for their part in attempting to procure the corrupt administration of said sections. Joyce v. U. S., C.C.A.8 (N.D.) 1946, 153 F.2d 364, certiorari denied 66 S.Ct. 1349, 328 U.S. 860, 90 L.Ed. 1631.

Conviction of one alleged conspirator is not vitiated because of the possible later acquittal of codefendants not yet tried or even apprehended. U. S. v. Fox, C.C.A.3 (Pa.) 1942, 130 F.2d 56, certiorari denied 63 S.Ct. 74, 317 U.S. 666, 87 L.Ed. 535.

The conviction of some alleged conspirators does not fall because others named are acquitted, even though conviction of the others is logically required for the finding of guilty of those convicted. U. S. v. Fox, C.C.A.3 (Pa.) 1942, 130 F.2d 56, certiorari denied 63 S.Ct. 74, 317 U.S. 666, 87 L.Ed. 535.

Where an indictment for conspiracy names only two persons, an acquittal or reversal as to one is an acquittal or reversal as to the other. U. S. v. Fox, C.C.A.3 (Pa.) 1942, 130 F.2d 56, certiorari denied 63 S.Ct. 74, 317 U.S. 666, 87 L.Ed. 535.

The fact that only one of four persons charged with conspiracy to violate revenue laws was convicted was not a fatal inconsistency invalidating the verdict, where one of the persons thus charged in the indictment was not a defendant in the case. Bryant v. U.S., C.C.A.5 (Fla.) 1941, 120 F.2d 483. See, also, West v. U.S., C.C.A.Ga.1947, 161 F.2d 452. Criminal Law 877

18 U.S.C.A. § 371

The rule that acquittal of all but one of alleged conspirators results in the acquittal of all applies to acquittals on the merits, on ground that such judgments prove that there was in fact no criminal agreement. Farnsworth v. Zerbst, C.C.A.5 (Ga.) 1938, 98 F.2d 541. See, also, U.S. v. Fox, C.C.A.Pa.1942, 130 F.2d 56, certiorari denied 63 S.Ct. 74, 317 U.S. 666, 87 L.Ed. 535. Conspiracy 22

Conviction of conspiracy of only one defendant cannot be sustained, if all other principal conspirators are acquitted. U.S. v. Austin-Bagley Corporation, C.C.A.2 (N.Y.) 1929, 31 F.2d 229, certiorari denied 49 S.Ct. 479, 279 U.S. 863, 73 L.Ed. 1002. Conspiracy 23

Acquittal of two conspirators, unexplainable under evidence, does not require reversal of conviction of other conspirators. U.S. v. Austin-Bagley Corporation, C.C.A.2 (N.Y.) 1929, 31 F.2d 229, certiorari denied 49 S.Ct. 479, 279 U.S. 863, 73 L.Ed. 1002. Conspiracy 23

Disagreement of jury as to guilt of one alleged conspirator to defraud United States did not preclude conviction of the other. Miller v. U.S., C.C.A.2 (N.Y.) 1928, 24 F.2d 353, certiorari denied 48 S.Ct. 421, 276 U.S. 638, 72 L.Ed. 421.

Indictment charging conspiracy with six unknown persons was sufficient to authorize prosecution after acquittal of other named defendants under court's instruction. McDonald v. U.S., C.C.A.8 (Okla.) 1925, 9 F.2d 506.

If one of two defendants charged with conspiracy is acquitted, the other must also be acquitted, and if the charge against one be nol. pros'd, the other cannot afterwards be convicted. U.S. v. Wray, D.C.Ga.1925, 8 F.2d 429. See, also, Miller v. U.S., C.C.A.S.C.1921, 277 F. 721; Feder v. U.S., C.C.A.N.Y.1919, 257 F. 694; U.S. v. Hamilton, C.C.Ohio 1876, Fed.Cas. No. 15,288.

In prosecution of three individuals and corporation for conspiracy to violate Bankruptcy Act, former § 52 of Title 11, by concealing property of bankrupt from trustee, allowing jury to find two individuals guilty of charge was not error, because of fact that verdict of not guilty was directed as to other individuals, and corporation was not found guilty. Kaplan v. U.S., C.C.A.2 (N.Y.) 1925, 7 F.2d 594, certiorari denied 46 S.Ct. 107, 269 U.S. 582, 70 L.Ed. 423.

Where an indictment for conspiracy charged that not only those indicted, but others to the grand jury unknown, were parties to the conspiracy, and the evidence also implicated others, the acquittal of all except one of those indicted did not entitle him to an acquittal. Grove v. U.S., C.C.A.4 (Md.) 1925, 3 F.2d 965, certiorari denied 45 S.Ct. 511, 268 U.S. 691, 69 L.Ed. 1159.

Where two defendants were charged with conspiracy with others, to the grand jury unknown, to commit an offense, and the evidence sustained the allegation that others were engaged in the conspiracy, the acquittal of one defendant charged was not inconsistent with conviction of the other. Donegan v. U.S., C.C.A.2 (N.Y.) 1922, 287 F. 641, certiorari denied 43 S.Ct. 251, 260 U.S. 751, 67 L.Ed. 495.

Though the union of the minds of at least two persons is a prerequisite to the commission of the crime of conspiracy, yet one may be convicted after the other accused is dead before conviction, but, if one be acquitted, the other also must be acquitted, as is the case if the prosecutor enter a nolle prosequi as to one. Feder v. U.S., C.C.A.2 (N.Y.) 1919, 257 F. 694, 168 C.C.A. 644.

Where only two persons are charged as conspirators, it results that, except in extreme cases, such as the death of one of the alleged conspirators or his absence from the jurisdiction, unless both can be legally convicted, neither can be. Alkon v. U.S., C.C.A.1 (Mass.) 1908, 163 F. 810, 90 C.C.A. 116.

Where jury acquitted one of three defendants on conspiracy charge, and courts found that evidence was insufficient

to sustain conviction of second defendant on conspiracy charge, third defendant's conviction on conspiracy charge would have to be set aside. U. S. v. Whitfield, E.D.Pa.1974, 378 F.Supp. 184, affirmed 515 F.2d 506, affirmed 515 F.2d 507.

Acquittal of all other co-conspirators precludes the conviction of remaining conspirator, notwithstanding grant of severance and separate trial of co-conspirators. U. S. v. Bruno, E.D.Pa.1971, 333 F.Supp. 570.

Where three persons were indicted for conspiracy in connection with false statements to Veterans Administration for purpose of securing insured loan and there was no doubt that evidence overwhelmingly established particular defendant was guilty of conspiracy, even though one of the persons had not been tried on charge and the other defendant was acquitted on that count, defendant could be properly convicted of conspiracy. U. S. v. Koritan, E.D.Pa.1960, 182 F.Supp. 143, affirmed 283 F.2d 516.

Where indictment for conspiracy names only two, an acquittal or reversal as to one is an acquittal or reversal as to the other. U. S. v. Weinberg, M.D.Pa.1955, 129 F.Supp. 514, affirmed 226 F.2d 161, certiorari denied 76 S.Ct. 305, 350 U.S. 933, 100 L.Ed. 815.

A charge of conspiracy among defendants and divers persons unknown does not collapse with the acquittal of all except one defendant. U. S. v. Skurla, W.D.Pa.1954, 126 F.Supp. 713.

When more than two are joined in an indictment, any two may be found guilty and the others acquitted, provided the overt act is shown to have been committed by one of the convicted persons. U. S. v. Rindskopf, W.D.Wis.1874, 27 F.Cas. 813, 6 Biss. 259, 8 Chi.Leg.N. 9, No. 16165.

Under those counts which charge two defendants with conspiring with persons to the grand jurors unknown, if the evidence satisfies the jury that although the defendants may not have conspired together, yet if one of them did commit the offenses charged with some third person unknown, and either one of such persons did any one of the overt acts charged, the defendant who so conspired may be found guilty. U. S. v. Hamilton, C.C.S.D.Ohio 1876, 26 F.Cas. 90, 8 Chi.Leg.N. 211, No. 15288.

479. ---- Acquittal or conviction on conspiracy count, verdict, trial proceedings generally

Determination on appeal that evidence was insufficient to support convictions for conspiracy to commit mail and wire fraud required reversal of defendants' conspiracy convictions, although remaining objects of conspiracy, such as money laundering, alone would have been legally sufficient to support conspiracy convictions, where jury used general verdict form which gave no indication which objects of conspiracy formed basis of their decision, making it impossible to know which objects jury relied on in its decision to convict defendants of conspiracy. U.S. v. Manarite, C.A.9 (Nev.) 1995, 44 F.3d 1407, amended on denial of rehearing, certiorari denied 115 S.Ct. 2610, 515 U.S. 1158, 132 L.Ed.2d 854, certiorari denied 116 S.Ct. 148, 516 U.S. 851, 133 L.Ed.2d 93. Criminal Law 1190

If judge in multiple-object conspiracy prosecution instructs jury that it need only find one of multiple objects and reviewing court holds any of supporting counts legally insufficient, conspiracy count also fails. U.S. v. DeLuca, C.A.9 (Cal.) 1982, 692 F.2d 1277.

Where judge in his instructions concerning conspiracy count repeatedly charged that the overt acts must be alleged in the indictment, jury's verdict of guilty on charge of conspiracy by bank teller to misapply monies of a federally insured bank and verdict of not guilty on substantive counts of fraudulent check cashing constituted plain error since jury's verdict of not guilty with respect to the substantive crimes of fraudulent check cashing constituted, in effect, a finding that none of the alleged overt acts took place. U. S. v. Morales, C.A.1 (Puerto Rico) 1982, 677 F.2d 1.

Where an allegation of conspiracy is properly submitted to the jury, the fact that the jury acquits on the conspiracy count and convicts on the substantive counts does not affect the propriety of joinder. U. S. v. Nims, C.A.5 (La.) 1975, 524 F.2d 123, certiorari denied 96 S.Ct. 2646, 426 U.S. 934, 49 L.Ed.2d 385.

Where in two indictments defendants were charged with conspiring to violate laws relating to manufacture of whiskey, any possibility of prejudice to defendants by inclusion of conspiracy count in second indictment was vitiated by jury's acquittal of defendants on conspiracy charge in second case. U. S. v. Harris, C.A.6 (Tenn.) 1968, 391 F.2d 348, certiorari denied 89 S.Ct. 169, 393 U.S. 874, 21 L.Ed.2d 145.

Acquittal of defendant on conspiracy count was not inconsistent with conviction on substantive counts. U. S. v. Palmiotto, C.A.2 (N.Y.) 1965, 347 F.2d 223.

In prosecution for false statements in obtaining loans to be insured by federal housing administration and for conspiracy to commit the substantive offense, fact that defendants were acquitted on the conspiracy count did not require that they also be acquitted on the substantive counts. Ross v. U. S., C.A.6 (Ohio) 1952, 197 F.2d 660, certiorari denied 73 S.Ct. 40, 344 U.S. 832, 97 L.Ed. 648, certiorari denied 73 S.Ct. 46, 344 U.S. 832, 97 L.Ed. 648 .

Where defendant was tried on two counts, one charging conspiracy to sell a stolen automobile and the other charging transportation of a stolen automobile in interstate commerce, acquittal on conspiracy count was not a determination of the facts essential to conviction of the substantive offense. United States v. Rainone, C.A.2 (N.Y.) 1951, 192 F.2d 860.

Acquittal on count of indictment charging conspiracy to violate § 103 of Title 50, prohibiting the making of war material in a defective manner, did not bar conviction on count charging the substantive offense of making war material in a defective manner. Schmeller v. U. S., C.C.A.6 (Ohio) 1944, 143 F.2d 544.

A verdict of not guilty of one count of an indictment alleging conspiracy does not prevent a conviction on the other counts charging the same counts as substantive offenses. Harris v. U.S., C.C.A.2 (N.Y.) 1921, 273 F. 785, certiorari denied 42 S.Ct. 55, 257 U.S. 646, 66 L.Ed. 414.

Where two were indicted for conspiracy to insure a vessel and have her cast away, and one of them was indicted individually for the same thing, and both were acquitted of the conspiracy, the individual must also be acquitted if he could not be found guilty without assuming the existence of the conspiracy. U.S. v. Morris, D.C.Md.1868, 26 F.Cas. 1320, No. 15812. Conspiracy 38

480. ---- Acquittal or conviction on substantive counts, verdict, trial proceedings generally

Conspiracy convictions could not stand, given instruction that jury could convict under conspiracy statute if government proved beyond reasonable doubt that defendants conspired to commit at least one of three offenses charged as objects of conspiracy, as defendants could not be convicted of wire fraud based on Canadian smuggling scheme and it was impossible to tell which ground jury based conspiracy conviction upon; jury may not have considered, with respect to all defendants, whether conspiratorial agreement extended to valid objects, which were interstate travel with intent to commit bribery and scheme to defraud another of honest services, but may instead have focused on overall conspiratorial agreement to transport tobacco into Canada without paying taxes and duties, and the two legally sufficient objects of conspiracy were not so intricately intertwined with invalid wire fraud count that court could necessarily infer that conspiracy conviction had legally correct basis. U.S. v. Boots, C.A.1 (Me.) 1996, 80 F.3d 580, certiorari denied 117 S.Ct. 263, 519 U.S. 905, 136 L.Ed.2d 188. Criminal Law 881(3)

Evidence was sufficient to support conviction for conspiracy to unlawfully modify and distribute decoders to be used for unauthorized decryption of satellite television transmissions, even though defendant was found not guilty

of substantive offenses; although verdicts were inconsistent, there was ample evidence that defendant had agreed to modify decoders and had modified decoders for business which sold decoders to consumers. U.S. v. Suppenbach, C.A.8 (Mo.) 1993, 1 F.3d 679, rehearing denied.

Acquittal on stealing count did not preclude conviction on charge of conspiracy to steal goods from interstate shipment with intent to convert such goods to defendant's own use. U. S. v. Shigemura, C.A.8 (Mo.) 1982, 682 F.2d 699, certiorari denied 103 S.Ct. 741, 459 U.S. 1111, 74 L.Ed.2d 962.

Defendant's acquittal on substantive counts charging violation of section 201(c) of this title prohibiting bribery of public officials did not serve as an acquittal on counts charging conspiracy to defraud United States and to violate section 201(f), (g) of this title proscribing the giving and receiving of gratuities by public officials. U. S. v. Previte, C.A.1 (Mass.) 1981, 648 F.2d 73.

Completion of objective is not element of conspiracy and, therefore, acquittal on substantive count does not preclude conviction on conspiracy count with substantive offense as its object. U. S. v. Carman, C.A.9 (Cal.) 1978, 577 F.2d 556.

Defendant could be convicted of conspiracy even though he was acquitted on all substantive counts. U. S. v. Dearden, C.A.5 (Fla.) 1977, 546 F.2d 622, rehearing denied 550 F.2d 42, certiorari denied 98 S.Ct. 295, 434 U.S. 902, 54 L.Ed.2d 188, rehearing denied 98 S.Ct. 535, 434 U.S. 976, 54 L.Ed.2d 468, certiorari denied 98 S.Ct. 296, 434 U.S. 902, 54 L.Ed.2d 188.

Where defendant was acquitted on substantive charges of violation of Securities Act, section 77a et seq. of Title 15, and mail fraud, and where conspiracy count, on which defendant was convicted, covered three objects, defendant was not prejudiced even if government did alter its theory of the case, during summation, with respect to one of the substantive counts. U. S. v. Frank, C.A.2 (N.Y.) 1975, 520 F.2d 1287, certiorari denied 96 S.Ct. 878, 423 U.S. 1087, 47 L.Ed.2d 97.

Acquittal on substantive counts of indictment does not require acquittal on conspiracy count. Castro v. U. S., C.A.5 (Fla.) 1961, 296 F.2d 540.

Where substantive offense is overt act supporting conviction on conspiracy count, acquittal of substantive offense operates as acquittal of conspiracy count, if acquittal of substantive offense constitutes determination that overt act was not committed, but if acquittal of substantive offense does not necessarily constitute determination that overt act was not committed, acquittal does not preclude conviction on conspiracy count. Herman v. U.S., C.A.5 (Fla.) 1961, 289 F.2d 362, certiorari denied 82 S.Ct. 174, 368 U.S. 897, 7 L.Ed.2d 93.

Fact that defendant was acquitted on substantive counts did not entitle defendant to judgment of acquittal on conspiracy charge. Shayne v. U.S., C.A.9 (Cal.) 1958, 255 F.2d 739, certiorari denied 79 S.Ct. 39, 358 U.S. 823, 3 L.Ed.2d 64.

The fact that defendant was acquitted as to substantive crime of theft did not preclude conviction of conspiracy to commit that crime. U.S. v. Winters, C.C.A.2 (N.Y.) 1946, 158 F.2d 674. See, also, U.S. v. Anderson, C.C.A.Wash.1929, 31 F.2d 436; Rothman v. U.S., C.C.A.N.Y.1920, 270 F. 31, certiorari denied 41 S.Ct. 149, 254 U.S. 652, 65 L.Ed. 458. Double Jeopardy 151(4)

A mere characterization of criminal liability arising from facts pleaded, as liability for conspiracy, will not preclude conviction for substantive offense if accused is advised of what he has to meet and if the trial proceeds as it would have proceeded if no conspiracy had been charged. U S v. Zeuli, C.C.A.2 (N.Y.) 1943, 137 F.2d 845.

In trial for violations of and conspiracy to violate mail fraud statute, former § 338 of this title, verdict of conviction

of one defendant on count of indictment charging conspiracy was not invalid because of inconsistency arising from his acquittal on counts charging violations thereof. Philbrook v. U. S., C.C.A.8 (Neb.) 1941, 117 F.2d 632, certiorari denied 61 S.Ct. 1097, 313 U.S. 577, 85 L.Ed. 1534.

Conviction of conspiracy to commit substantive crimes would not be reversed for alleged inconsistency, in verdict, because verdict acquitted accused on counts charging commission of the substantive crimes. U.S. v. Pandolfi, C.C.A.2 (N.Y.) 1940, 110 F.2d 736, certiorari denied 60 S.Ct. 1103, 310 U.S. 651, 84 L.Ed. 1416.

Fact that accused was acquitted under eighteen counts of indictment, charging scheme to defraud, and depositing in pursuance thereof letter in United States mails, did not render conviction under former § 88 of this title [now this section], for conspiracy to defraud by misuse of mails, contrary to former § 338 of this title, error, since the overt acts alleged and performed being other than substantive offenses charged in counts under which he was acquitted. Morris v. U. S., C.C.A.8 (Ark.) 1925, 7 F.2d 785, certiorari denied 46 S.Ct. 205, 270 U.S. 640, 70 L.Ed. 775.

Where indictment charged conspiracy under former § 88 of this title [now this section] to violate National Prohibition Act, former § 1 et seq. of Title 27, and in another count charged unlawful possession, conviction on latter count was valid, notwithstanding disagreement as to conspiracy count. Linden v. U.S., C.C.A.3 (N.J.) 1924, 2 F.2d 817.

481. ---- Conclusiveness, verdict, trial proceedings generally

In prosecution for conspiracy to defraud the income tax, jury's verdict was conclusive as to defendants' guilt where it was concurred in by both the District Court and the Circuit Court of Appeals. U.S. v. Johnson, U.S.Ill.1943, 63 S.Ct. 1233, 319 U.S. 503, 87 L.Ed. 1546, rehearing denied 64 S.Ct. 25, 320 U.S. 808, 88 L.Ed. 488.

Where evidence supported theory of indictment that operations of defendants in several areas had common purpose of stopping coal production by stopping railroad transportation, verdict of guilty was binding upon reviewing court, as against contention that depredations in each area were unrelated to others. U.S. v. Anderson, C.C.A.7 (Ill.) 1939, 101 F.2d 325, certiorari denied 59 S.Ct. 822, 307 U.S. 625, 83 L.Ed. 1502, certiorari denied 59 S.Ct. 822, 307 U.S. 625, 83 L.Ed. 1503, certiorari denied 59 S.Ct. 823, 307 U.S. 625, 83 L.Ed. 1503, certiorari denied 59 S.Ct. 823, 307 U.S. 625, 83 L.Ed. 1504, certiorari denied 59 S.Ct. 823, 307 U.S. 625, 83 L.Ed. 1504, 86 L.Ed. 1504, certiorari denied 59 S.Ct. 824, 307 U.S. 625, 83 L.Ed. 1505, certiorari denied 59 S.Ct. 824, 307 U.S. 625, 83 L.Ed. 1506, certiorari denied 59 S.Ct. 825, 307 U.S. 625, 83 L.Ed. 1506, certiorari denied 59 S.Ct. 825, 307 U.S. 625, 83 L.Ed. 1507, certiorari denied 59 S.Ct. 825, 307 U.S. 625, 83 L.Ed. 1508, certiorari denied 59 S.Ct. 826, 307 U.S. 625, 83 L.Ed. 1508, certiorari denied 59 S.Ct. 826, 307 U.S. 625, 83 L.Ed. 1509.

482. Motion in arrest of judgment, trial proceedings generally

District Court did not err in overruling motion in arrest of judgment after conviction of conspiracy to transport stolen money in interstate commerce on ground that indictment failed to allege that overt acts set forth therein were committed in furtherance of conspiracy. Crain v. U.S., C.C.A.5 (Fla.) 1945, 148 F.2d 615.

The objection that an indictment for conspiracy to defraud the United States of certain public lands does not make it altogether clear to what lands the conspiracy related cannot be taken by a motion in arrest of judgment. Stearns v. U.S., C.C.A.8 (Minn.) 1907, 152 F. 900, 82 C.C.A. 48.

IX. EVIDENCE

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Agreement, circumstantial evidence 552

511. Order of proof, evidence

Although the preferred order of proof requires a showing of the conspiracy and of defendant's connection with it before admitting declarations of a coconspirator, when the trial court determines that it is not reasonably practicable to require the showing before admitting the statements, it may admit them subject to being connected up. U. S. v. Ocanas, C.A.5 (Tex.) 1980, 628 F.2d 353, rehearing denied 633 F.2d 582, certiorari denied 101 S.Ct. 2316, 451 U.S. 984, 68 L.Ed.2d 840. Criminal Law 427(3)

Trial court did not err by allowing testimony to be introduced subject to Government's subsequent establishment of independent facts connecting defendants with the conspiracy. U. S. v. Harris, C.A.7 (Ind.) 1976, 542 F.2d 1283, certiorari denied 97 S.Ct. 1558, 430 U.S. 934, 51 L.Ed.2d 779. Criminal Law 427(3)

Trial court did not abuse its discretion in order of proof in prosecution of defendant on conspiracy and substantive charges arising out of violation of firearms statutes. Brinlee v. U. S., C.A.8 (N.D.) 1974, 496 F.2d 351, certiorari denied 95 S.Ct. 142, 419 U.S. 878, 42 L.Ed.2d 118. Criminal Law 622.7(4); Criminal Law 680(1)

Admission of statements of conspirators before the conspiracy had been proved was question of order of proof within trial court's discretion. U. S. v. Smith, C.A.9 (Cal.) 1971, 445 F.2d 861, certiorari denied 92 S.Ct. 212, 404 U.S. 883, 30 L.Ed.2d 165. Criminal Law 427(3)

Order of proof in conspiracy case is within discretion of trial judge; generally he may either admit evidence subject to later motion by prosecutor to apply evidence to all or certain defendants or may admit evidence as to all defendants, subject to motion to strike if not connected up with all or certain defendants. U. S. v. Knight, C.A.9 (Ariz.) 1969, 416 F.2d 1181. Criminal Law 680(1)

In prosecution for conspiring to carry on manufacture, transportation and sale of illicit, nontaxpaid moonshine whiskey and to protect participants of conspiracy from all law enforcement activity, allowing government to prove overt acts of alleged conspiracy without first presenting independent proof of existence of conspiracy was not error, since order of proof in conspiracy prosecution is in trial court's discretion. U. S. v. Penney, C.A.6 (Tenn.) 1969, 416 F.2d 850, certiorari denied 90 S.Ct. 1832, 398 U.S. 932, 26 L.Ed.2d 98, rehearing denied 90 S.Ct. 2214, 399 U.S. 917, 26 L.Ed.2d 577. Criminal Law 680(1)

Permitting government witness to testify as to acts and statements made in furtherance of conspiracy, before conspiracy and defendant's connection therewith had been established, was not abuse of discretion. Nelson v. U. S., C.A.5 (Tex.) 1969, 415 F.2d 483, certiorari denied 90 S.Ct. 751, 396 U.S. 1060, 24 L.Ed.2d 754. Criminal Law 427(3)

There is no requirement that conspiracy be proved at trial of one alleged conspirator before declarations by alleged coconspirators are admitted, and the order in which evidence is received is within court's discretion. U. S. v.

Halpin, C.A.7 (Wis.) 1967, 374 F.2d 493, certiorari denied 87 S.Ct. 1482, 386 U.S. 1032, 18 L.Ed.2d 594. Criminal Law 427(3)

In cases charging commission of substantive offenses as well as conspiracy, trial court has broad discretion with respect to order of proof. Downing v. U. S., C.A.5 (Tex.) 1965, 348 F.2d 594, certiorari denied 86 S.Ct. 235, 382 U.S. 901, 15 L.Ed.2d 155. Criminal Law 680(1)

Introduction of evidence of existence of conspiracy in Oklahoma to unlawfully transport in interstate commerce forged checks and subsequently of proof of commission of overt act in western district of Texas did not constitute an objectionable order and sequence of proof. Downing v. U. S., C.A.5 (Tex.) 1965, 348 F.2d 594, certiorari denied 86 S.Ct. 235, 382 U.S. 901, 15 L.Ed.2d 155. Criminal Law 680(1)

Order of proof requiring proof of conspiracy before proof of other conspirator's acts become relevant and admissible against all does not bar all evidence during progress of trial until particular defendant's participation has been established. Esco Corp. v. U. S., C.A.9 (Or.) 1965, 340 F.2d 1000. Conspiracy 48.3; Criminal Law 427(3)

Order of proof in conspiracy case is matter almost entirely within trial court's discretion, and error may not be predicated on admission of evidence as to act of alleged coconspirator before proof that defendant was connected with conspiracy. Esco Corp. v. U. S., C.A.9 (Or.) 1965, 340 F.2d 1000. Conspiracy 48.3; Criminal Law 427(3)

Order of proof in conspiracy case is left to discretion of trial court. Strauss v. U. S., C.A.5 (Fla.) 1963, 311 F.2d 926, certiorari denied 83 S.Ct. 1299, 373 U.S. 910, 10 L.Ed.2d 412. Criminal Law 680(1)

There was no warrant in law for asking court to prescribe order of proof by prosecution in run-of-mine conspiracy case and there was no abuse of discretion in denial of motion. Strauss v. U. S., C.A.5 (Fla.) 1963, 311 F.2d 926, certiorari denied 83 S.Ct. 1299, 373 U.S. 910, 10 L.Ed.2d 412. Criminal Law 680(1)

Introduction into evidence of a statement offered to prove a conspiracy was not an abuse of discretion, even if it was offered prior to introduction of independent evidence of the conspiracy. U. S. v. Copeland, C.A.4 (N.C.) 1961, 295 F.2d 635, certiorari denied 82 S.Ct. 398, 368 U.S. 955, 7 L.Ed.2d 388. Criminal Law 427(3)

In a conspiracy case or case tried on theory of joint enterprise, trial court has large discretion as to order in which the evidence may be introduced. Anthony v. U. S., C.A.9 (Cal.) 1958, 256 F.2d 50. Criminal Law 680(1)

In conspiracy prosecution, objection to testimony concerning statements made by coconspirator in defendant's absence going only to the order of proof was addressed to the discretion of the District Court. U.S. v. Manton, C.C.A.2 (N.Y.) 1939, 107 F.2d 834, certiorari denied 60 S.Ct. 590, 309 U.S. 664, 84 L.Ed. 1012. Criminal Law 427(3)

Much latitude is allowed to trial court's discretion in determining order of introducing testimony to prove conspiracy. Feigenbutz v. U.S., C.C.A.8 (Mo.) 1933, 65 F.2d 122. Criminal Law 427(3)

Court in conspiracy prosecution did not abuse its discretion in permitting recall of government witness for further testimony, which was relevant and material. Kuhn v. U.S., C.C.A.9 (Cal.) 1928, 24 F.2d 910, modified on denial of rehearing 26 F.2d 463, certiorari denied 49 S.Ct. 11, 278 U.S. 605, 73 L.Ed. 533. Witnesses 264

Objection that government presented evidence irregularly in prosecution for conspiracy to violate National Prohibition Act, former § 1 et seq. of Title 27, was without merit. Baker v. U. S., C.C.A.4 (Va.) 1927, 21 F.2d 903, certiorari denied 48 S.Ct. 301, 276 U.S. 621, 72 L.Ed. 736. Criminal Law 680(1)

It is better practice to require evidence establishing a conspiracy before receiving evidence of overt acts to effect the conspiracy's object. McGinniss v. U.S., C.C.A.2 (N.Y.) 1919, 256 F. 621, 167 C.C.A. 651. Criminal Law 680(1)

The facts and circumstances from which a conspiracy is to be inferred may be and often must be shown singly and their collocation is for the jury, but the order in which they may be shown is generally one "in the discretion of the court." Chadwick v. U. S., C.C.A.6 (Ohio) 1905, 141 F. 225, 72 C.C.A. 343.

The order of the proof rests in the sound discretion of the court. Taylor v. U.S., C.C.A.9 (Idaho) 1898, 89 F. 954, 32 C.C.A. 449. See, also, Bartlett v. U.S., C.C.A.N.M.1948, 166 F.2d 920.

512. Offer of proof, evidence

In prosecution for conspiracy to import intoxicating liquor and to transport same, where defendants, some of whom were officers, filed written report of liquor seized with sheriff's assistants, and then stated to them substance of such report, an offer to prove such oral statements was properly rejected, where written report was not produced and failure to produce it was unexcused. Parmenter v. U. S., C.C.A.6 (Mich.) 1924, 2 F.2d 945, certiorari denied 45 S.Ct. 514, 268 U.S. 697, 69 L.Ed. 1163.

In prosecution for conspiracy to defraud the United States by making false documents to secure insurance under modernization of homes provisions of National Housing Act, § 1701 et seq. of Title 12, offer of proof that some of defendants acted on advice of counsel was objectionable, where offer did not state that defendants had made a full disclosure to counsel, and offer showed that defendants did not rely on advice of counsel. U.S. v. Thomas, E.D.Wash.1943, 52 F.Supp. 571. Criminal Law 670

In prosecution for conspiracy to defraud the United States by making false documents to secure insurance under modernization of homes provisions of National Housing Act, § 1701 et seq. of Title 12, offer of proof that defendants acted on advice of counsel was objectionable where language of certificates allegedly falsified was so clear that it was not subject to interpretation by any lawyer. U.S. v. Thomas, E.D.Wash.1943, 52 F.Supp. 571. Criminal Law 670

In prosecution against financing corporation, its branch office manager, store owners, and their sales manager for conspiracy to defraud the United States by making false documents to secure insurance under modernization of homes provisions of National Housing Act, § 1701 et seq. of Title 12, admissibility, in favor of corporation and office manager, of testimony of statement by other defendants that practice of making false certificates was approved by their attorney, did not cure defects in offer of proof regarding advice of counsel. U.S. v. Thomas, E.D.Wash.1943, 52 F.Supp. 571. Criminal Law 670

513. Matters to be proved, evidence--Generally

To prove conspiracy, government must show by direct or circumstantial evidence that two or more persons agreed to violate the law, that defendant knew at least essential objectives of conspiracy, that defendant knowingly and voluntarily became part of it, and that alleged coconspirators were interdependent. U.S. v. Dimeck, C.A.10 (Kan.) 1994, 24 F.3d 1239. Conspiracy 24(1); Conspiracy 24.5

To prove conspiracy to make, possess, conceal and detonate destructive devices transported in interstate commerce, the government had to establish: agreement to engage in the criminal activity charged; one or more overt acts taken to implement the agreement; and requisite intent to commit the substantive crime. U.S. v. Winslow, C.A.9 (Idaho) 1992, 962 F.2d 845, as amended. Conspiracy 28(3)

For a defendant to be convicted of conspiracy, the prosecution must prove beyond reasonable doubt that a

conspiracy existed, that the defendant knew of it, and that he intended to join or associate himself with the objectives of it. U. S. v. Thevis, C.A.5 (Ga.) 1982, 665 F.2d 616, rehearing denied 671 F.2d 1379, certiorari denied 102 S.Ct. 2300, 456 U.S. 1008, 73 L.Ed.2d 1303, certiorari denied 102 S.Ct. 3489, 458 U.S. 1109, 73 L.Ed.2d 1370, certiorari denied 103 S.Ct. 57, 459 U.S. 825, 74 L.Ed.2d 61. Conspiracy 47(1)

To prove a criminal conspiracy, the government must show that there was an agreement among conspirators to commit an offense against the United States, accompanied by an overt act by one of the conspirators in furtherance of that agreement. U.S. v. Caicedo-Asprilla, C.A.5 (Fla.) 1980, 632 F.2d 1161, certiorari denied 101 S.Ct. 1707, 450 U.S. 1000, 68 L.Ed.2d 201. Conspiracy 23.1

In prosecution for conspiracy to commit offenses against United States and for transmission by wire and radio communication in interstate commerce of certain sounds and signals in furtherance of preconceived scheme to defraud telephone company of revenue for use of long distance telephone service and facilities in violation of section 1343 of this title, government was not required to prove that a false representation had been made by defendants to company nor that it had actually been deceived. Brandon v. U. S., C.A.10 (Okla.) 1967, 382 F.2d 607. Conspiracy 43(12); Telecommunications 1014(9)

The government is not bound to introduce evidence throughout the period of a continuing offense as set out in a valid conspiracy indictment. Arnold v. U. S., C.A.9 (Wash.) 1964, 336 F.2d 347, certiorari denied 85 S.Ct. 1348, 380 U.S. 982, 14 L.Ed.2d 275. Indictment And Information 176

The fundamental problem in each conspiracy case is to establish the nature and scope of conspiracy agreement and connection of defendants with the conspiracy. Hayes v. U. S., C.A.8 (Mo.) 1964, 329 F.2d 209, certiorari denied 84 S.Ct. 1883, 377 U.S. 980, 12 L.Ed.2d 748. Conspiracy 44.2

An indictment charging as the object of a conspiracy the violation of a number of statutes is sustained by proof of conspiracy to violate any one of them. Andrews v. U.S., C.C.A.4 (W.Va.) 1939, 108 F.2d 511. Conspiracy 43(12)

In prosecution for conspiracy, it is not necessary to prove that all defendants in indictment conspired together, but it is sufficient to prove that they conspired one with the other, notwithstanding that indictment charges one general conspiracy. Beland v. U. S., C.C.A.5 (Tex.) 1938, 100 F.2d 289, certiorari denied 59 S.Ct. 485, 306 U.S. 636, 83 L.Ed. 1037. Conspiracy 43(12)

Existence of conspiracy as laid must be satisfactorily established before overt acts alleged may play their jurisdictional part in consummation of offense charged. Feigenbutz v. U.S., C.C.A.8 (Mo.) 1933, 65 F.2d 122. Criminal Law 427(3)

Where conspiracy to commit several offenses is charged in one count, proof of conspiracy to commit any one of them will sustain a conviction. Christiansen v. U.S., C.C.A.5 (Ga.) 1931, 52 F.2d 950.

It is only necessary to show conspiracy between two or more of all those charged with conspiracy to warrant conviction of those shown to have conspired. Bryant v. U.S., C.C.A.5 (Tex.) 1919, 257 F. 378, 168 C.C.A. 418, motion denied 40 S.Ct. 117. Conspiracy 43(12)

To warrant conviction, it must appear (1) that a conspiracy existed as charged in the indictment; (2) that if such conspiracy existed, the overt act charged was committed in furtherance of such conspiracy; (3) and that the defendant was one of the conspirators. U.S. v. Cassidy, N.D.Cal.1895, 67 F. 698. See, also, U.S. v. Newton, D.C.Iowa 1892, 52 F. 275; U.S. v. Goldberg, C.C.Wis.1876, 7 Biss. 175, 25 Fed.Cas. No. 15,223.

In order that one be found guilty as a conspirator, it need only be shown that, with knowledge of conspiracy, he

knowingly performed acts designed to promote or aid in attainment of object thereof. Noerr Motor Freight, Inc. v. Eastern R. R. Presidents Conference, E.D.Pa.1957, 155 F.Supp. 768, affirmed 273 F.2d 218, certiorari granted 80 S.Ct. 862, 362 U.S. 947, 4 L.Ed.2d 866, reversed on other grounds 81 S.Ct. 523, 365 U.S. 127, 5 L.Ed.2d 464, rehearing denied 81 S.Ct. 899, 365 U.S. 875, 5 L.Ed.2d 864. Conspiracy 13

Indictment for conspiracy will not fail merely because all of the ramifications alleged are not established. U. S. v. Russo, D.C.Mass.1957, 155 F.Supp. 251. Conspiracy 43(12)

514. ---- Formation of conspiracy, matters to be proved, evidence

Where tape was found in defendants' possession and their voices were identified on such tape and FBI agents through whose hands the tape passed testified that it had not been altered and that its condition at time of trial, on charges of use of interstate telephone facilities for gambling activities and for conspiring to commit such offenses, was identical to that at time of seizure, sufficient foundation for accuracy of tape had been laid. U. S. v. Fuller, C.A.4 (S.C.) 1971, 441 F.2d 755, certiorari denied 92 S.Ct. 73, 404 U.S. 830, 30 L.Ed.2d 59, certiorari denied 92 S.Ct. 74, 404 U.S. 830, 30 L.Ed.2d 59. Criminal Law 444

Where the allegation is one of a continuing conspiracy, the government may prove that the conspiracy was formed at any time during the period referred to in the indictment. U. S. v. Calise, S.D.N.Y.1962, 217 F.Supp. 705. Indictment And Information 176

Proof of a conspiracy does not require disclosure of formation of a conspiracy by proof of a specific meeting at which express agreements were entered into. U. S. v. Boyance, E.D.Pa.1963, 215 F.Supp. 390. Conspiracy 24(1)

515. ---- Agreement to commit offense, matters to be proved, evidence

"Conspiracy" is an inchoate offense, the essence of which is an agreement to commit an unlawful act; the agreement need not be shown to have been explicit; it can instead be inferred from the facts and circumstances of the case. Iannelli v. U. S., U.S.Pa.1975, 95 S.Ct. 1284, 420 U.S. 770, 43 L.Ed.2d 616. Conspiracy 24(1); Conspiracy 47(2)

Conviction for conspiracy under this section cannot be sustained unless there is proof of an agreement to commit an offense against United States, although there need not be proof that the conspirators were aware of the criminality of their objective. Ingram v. U.S., U.S.Ga.1959, 79 S.Ct. 1314, 360 U.S. 672, 3 L.Ed.2d 1503, rehearing denied 80 S.Ct. 42, 361 U.S. 856, 4 L.Ed.2d 96. Conspiracy 24(1)

Record did not reflect existence of agreement between defendant doctors to defraud the United States by filing false claims with Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) by misrepresenting what surgical procedures were performed for purposes of statute making it unlawful to conspire to defraud the United States; proof that defendants practiced medicine together, shared one billing system, assisted each other in surgery and advertised heavily in area did not constitute facts upon which reasonable juror could infer agreement to commit mail fraud and neither did testimony of operating room nurses who testified generally that they heard defendants discuss insurance filing procedures so that payment might be had and expert witness' testimony that, in his opinion, defendants were performing operations together and then billing them in fraudulent manner was not sufficient evidence of agreement. U.S. v. Migliaccio, C.A.10 (Okla.) 1994, 34 F.3d 1517. Conspiracy 47(6)

Drug distribution conspiracies are often "chain" conspiracies such that agreement can be inferred from interdependence of enterprise, i.e., one can assume that participants understand that they are participating in joint enterprise because success is dependent on success of those from whom they buy and to whom they sell;

circumstantial evidence is sufficient to show this agreement. U.S. v. Bourjaily, C.A.6 (Ohio) 1986, 781 F.2d 539, certiorari granted in part 107 S.Ct. 268, 479 U.S. 881, 93 L.Ed.2d 246, affirmed 107 S.Ct. 2775, 483 U.S. 171, 97 L.Ed.2d 144. Conspiracy 44.2; Conspiracy 47(2)

To sustain conviction for conspiracy, government must prove agreement or understanding between two or more persons to commit criminal act and overt act by one of coconspirators in furtherance of conspiracy. U.S. v. Caudle, C.A.4 (N.C.) 1985, 758 F.2d 994. Conspiracy 43(12)

In order to convict defendant of conspiracy, existence of conspiracy must be established with substantial evidence showing presence of agreement between two or more persons to commit crime and overt act in furtherance of agreement by one of the conspirators. U. S. v. Arredondo-Morales, C.A.5 (Tex.) 1980, 624 F.2d 681. Conspiracy 23.1

Crime of conspiracy is separate and distinct from the related substantive offense; it requires proof of the additional element of an agreement between the alleged coconspirators. U. S. v. Dansker, C.A.3 (N.J.) 1976, 537 F.2d 40, certiorari denied 97 S.Ct. 732, 429 U.S. 1038, 50 L.Ed.2d 748. Conspiracy 28(3)

To establish defendant's guilt of conspiracy to possess marihuana with intent to distribute same, government was required to prove only that defendant was party to an agreement which contemplated that marihuana in question would be held for distribution. U. S. v. Ramirez, C.A.5 (Tex.) 1975, 513 F.2d 72, rehearing denied 515 F.2d 1184, certiorari denied 96 S.Ct. 215, 423 U.S. 912, 46 L.Ed.2d 140. Conspiracy 44.2

The government is not required to prove that the agreement in a conspiracy case necessitated a precise advance definition of each member's role. U. S. v. Cirillo, C.A.2 (N.Y.) 1972, 468 F.2d 1233, certiorari denied 93 S.Ct. 1501, 410 U.S. 989, 36 L.Ed.2d 188. Conspiracy 44.2

In conspiracy prosecution, proof of the agreement or common purpose must rest upon inferences drawn from relevant and competent circumstantial evidence, ordinarily, the acts and conduct of the conspirators themselves. U. S. v. Warner, C.A.5 (Tex.) 1971, 441 F.2d 821, certiorari denied 92 S.Ct. 65, 404 U.S. 829, 30 L.Ed.2d 58. Conspiracy 47(2)

Conviction of conspiracy to commit offense or to defraud United States cannot be sustained unless there is proof of agreement to commit offense against United States. Nelson v. U. S., C.A.5 (Tex.) 1969, 415 F.2d 483, certiorari denied 90 S.Ct. 751, 396 U.S. 1060, 24 L.Ed.2d 754. Conspiracy 28(1); Conspiracy 33(1)

A single act performed with parties who are involved in more than one conspiracy may be insufficient to draw an inference of existence of an agreement between the parties in case of multiple conspiracies; knowledge of existence of other parties to conspiracies is insufficient. U. S. v. Varelli, C.A.7 (Ill.) 1969, 407 F.2d 735. Conspiracy 24(3)

In conspiracy prosecution it is essential to determine what kind of agreement or understanding to commit crime existed as to each defendant. U. S. v. Borelli, C.A.2 (N.Y.) 1964, 336 F.2d 376, certiorari denied 85 S.Ct. 647, 379 U.S. 960, 13 L.Ed.2d 555. Conspiracy 24(1)

It is usual and often necessary in conspiracy cases for the agreement to commit crime to be proved by inference from acts. U. S. v. Borelli, C.A.2 (N.Y.) 1964, 336 F.2d 376, certiorari denied 85 S.Ct. 647, 379 U.S. 960, 13 L.Ed.2d 555. Conspiracy 47(1)

Proof of an agreement, express or implied, to commit offense, is required, to sustain conspiracy charge. Hanis v. U. S., C.A.8 (Mo.) 1957, 246 F.2d 781. Conspiracy 24(1)

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To establish a conspiracy to use mails to defraud, there must be proof of an agreement of intended use of the mails. Abbott v. U.S., C.A.5 (Tex.) 1956, 239 F.2d 310. Conspiracy 24(1)

To sustain a charge of conspiracy, the Government need not furnish proof of the unlawful plan or agreement, but such charge may be sustained by evidence showing concert of action in commission of unlawful act, or by proof of other facts from which natural inference arises that unlawful acts were in furtherance of a common design of alleged conspiracy. U.S. v. Nelson, C.A.7 (Ill.) 1950, 185 F.2d 758. Conspiracy 47(1)

A conspiracy to commit an offense can rarely be proved by direct evidence, and it is not necessary that the participation of one charged with conspiracy should be shown by direct evidence. U.S. v. Nelson, C.A.7 (Ill.) 1950, 185 F.2d 758. Conspiracy 47(2)

In order to prove a conspiracy, it is necessary to prove agreement by defendants to co-operate in order to accomplish an illegal purpose, or to violate a law to accomplish a legal purpose, and some act in furtherance of the agreement. Samuel v. U.S., C.C.A.9 (Cal.) 1948, 169 F.2d 787. Conspiracy 44.2

In prosecution for conspiracy to defraud the United States by corruptly administering or procuring the corrupt administration of the Frazier Lemke Act, §§ 201 to 203 of Title 11, it was necessary to prove that the conspirators did agree to procure a corrupt administration of said sections and that an overt act was committed, but it was not necessary that the conciliation commissioners should themselves be corrupt or that they should knowingly participate in the corrupt means used by the conspirators to accomplish their purpose. Joyce v. U. S., C.C.A.8 (N.D.) 1946, 153 F.2d 364, certiorari denied 66 S.Ct. 1349, 328 U.S. 860, 90 L.Ed. 1631. Conspiracy 33(2.1); Conspiracy 33(2.1)

In prosecution for engaging in conspiracy to violate internal revenue laws relating to intoxicating liquors, it was necessary to show that accused had agreed to act in concert with some one to commit the substantive crimes charged. U S v. Silva, C.C.A.2 (N.Y.) 1942, 131 F.2d 247. Conspiracy 33(7)

To establish conspiracy, actual proof of definite plan or agreement entered into by conspirators need not be offered, but evidence showing concert of action in commission of unlawful act or other facts and circumstances from which natural inference arises that unlawful overt act was in furtherance of common design, intent and purpose of alleged conspirators to commit it, is sufficient. Braverman v. U.S., C.C.A.6 (Mich.) 1942, 125 F.2d 283, certiorari granted 62 S.Ct. 1037, 316 U.S. 653, 86 L.Ed. 1733, reversed on other grounds 63 S.Ct. 99, 317 U.S. 49, 87 L.Ed. 23. Conspiracy 47(2)

A "conspiracy" is usually established by a number of apparently disconnected circumstances which when taken together throw light on whether the accused have an understanding or are in common agreement. U.S. v. Glasser, C.C.A.7 (Ill.) 1940, 116 F.2d 690, certiorari granted 61 S.Ct. 835, 313 U.S. 551, 85 L.Ed. 1515, modified on other grounds 62 S.Ct. 457, 315 U.S. 60, 86 L.Ed. 680, rehearing denied 62 S.Ct. 629, 315 U.S. 827, 86 L.Ed. 1222, rehearing denied 62 S.Ct. 637, 315 U.S. 827, 86 L.Ed. 1222. Conspiracy 47(2)

To sustain charge of conspiracy, government need not prove unlawful plan or agreement, but evidence showing concert of action in commission of unlawful acts of proof of other facts from which natural inference arises that such acts were in furtherance of common design of alleged conspiracy is sufficient. U.S. v. Holt, C.C.A.7 (Ind.) 1939, 108 F.2d 365, certiorari denied 60 S.Ct. 616, 309 U.S. 672, 84 L.Ed. 1018, rehearing denied 60 S.Ct. 806, 309 U.S. 698, 84 L.Ed. 1037. Conspiracy 47(2)

In conspiracy cases, the unlawful combination, the confederacy, and agreement between two or more persons, that is, the conspiracy itself, is the gist of the action, and is the corpus delicti charged and therefore the agreement must be established to sustain a conviction. Shannabarger v. U.S., C.C.A.8 (Mo.) 1938, 99 F.2d 957. Conspiracy 24(1); Conspiracy 47(1)

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Evidence of conspiracy must disclose something further than participation in offense which is object of conspiracy at some stage of its execution, for there must be proof of an unlawful agreement, either express or implied. Luteran v. U.S., C.C.A.8 (Mo.) 1937, 93 F.2d 395, certiorari denied 58 S.Ct. 642, 303 U.S. 644, 82 L.Ed. 1103, rehearing denied 58 S.Ct. 756, 303 U.S. 668, 82 L.Ed. 1124, certiorari denied 58 S.Ct. 643, 303 U.S. 644, 82 L.Ed. 1104. Conspiracy 47(1)

Proof of unlawful agreement and of defendants' participation therein with knowledge of agreement is essential in prosecution for conspiracy, and mere evidence of participation in offense which is object of conspiracy is insufficient. Langer v. U.S., C.C.A.8 (N.D.) 1935, 76 F.2d 817. Conspiracy 47(1)

Government, to sustain charge of conspiracy, need not furnish proof of unlawful plan or agreement. U.S. v. Wilson, D.C.W.Va.1927, 23 F.2d 112. Conspiracy 47(1)

Proof of conspiracy to violate statute requires evidence of more than participation in substantive offense, namely, unlawful agreement and participation with knowledge thereof. Dickerson v. U.S., C.C.A.8 (Iowa) 1927, 18 F.2d 887. Conspiracy 23

To sustain conviction for conspiracy to violate a federal statute, a combination or understanding, tacit or otherwise, must be shown. Graham v. U.S., C.C.A.8 (Okla.) 1926, 15 F.2d 740, certiorari denied 47 S.Ct. 587, 274 U.S. 743, 71 L.Ed. 1321. Conspiracy 24(1)

Proof of unlawful agreement, as well as participation in offense which is object of conspiracy, is necessary to establish conspiracy to violate criminal statute. Linde v. U.S., C.C.A.8 (S.D.) 1926, 13 F.2d 59. Conspiracy 24(1)

Combinations and conspiracies are seldom to be proved by formal agreements and all the facts and circumstances must be considered and the acts of the particular defendants must be looked at with reference to them. Wilson v. U.S., C.C.A.2 (N.Y.) 1911, 190 F. 427, 111 C.C.A. 231.

"The rule of law is well settled that in conspiracy cases it is often necessary to resort to inferences, and that it is proper so to do. It is also settled that it is not required to prove by direct evidence and agreement to act together, and that 'ordinarily it is only necessary to prove the acts of particular defendants leaving the question of conspiracy to be determined by inference.' " Alkon v. U.S., C.C.A.1 (Mass.) 1908, 163 F. 810, 90 C.C.A. 116.

Evidence need not show that the alleged members of the conspiracy entered into any express or formal agreement or that they directly stated between themselves the details of the scheme and its object or purpose or the precise means by which the object or purpose was to be accomplished; neither need it be shown that all persons charged to have been members of the conspiracy were members of the conspiracy or that the alleged conspirators actually succeeded in accomplishing their unlawful objective. U. S. v. Masiello, D.C.S.C.1980, 491 F.Supp. 1154. Conspiracy 47(1)

To establish conspiracy, the Government must prove that defendants entered into unlawful agreement to violate criminal statute and that thereafter at least one overt act in furtherance of unlawful conspiracy was performed by one or more of the coconspirators. U. S. v. Garramone, E.D.Pa.1974, 380 F.Supp. 590, affirmed 506 F.2d 1050, affirmed 506 F.2d 1051, affirmed 506 F.2d 1052, affirmed 506 F.2d 1053, certiorari denied 95 S.Ct. 1428, 420 U.S. 992, 43 L.Ed.2d 673. Conspiracy 28(1)

Conspiracy to commit an offense against United States under this section cannot be deemed to be proved unless there is proof of an agreement to commit an offense against the United States. U.S. v. DeLoache, W.D.Mo.1968, 279 F.Supp. 720. Conspiracy 47(1)

Agreement constituting a conspiracy need not be expressed but may be tacitly understood, and may be inferred from actions of alleged conspirators, but it is still necessary that an agreement be found to exist even though proof of it may be circumstantial. U. S. v. Markowitz, E.D.Pa.1959, 176 F.Supp. 681. Conspiracy 24(1)

Proof of the unlawful agreement charged plus commission of any overt act, but not necessarily all those alleged, is sufficient to support a conviction for conspiracy, and hence such conviction, whether on verdict or plea of guilty, is not sufficient of itself, without further evidence, to prove that defendant either admitted or was found guilty by jury of committing any particular overt act. U. S. v. Ben Grunstein & Sons Co., D.C.N.J.1955, 127 F.Supp. 907. Conspiracy 47(1); Judgment 648

To prove a "conspiracy", evidence must be produced from which it may be reasonably inferred that there was a joint assent or agreement of the minds of two or more parties to the prosecution of the unlawful object, and disconnected circumstances, any one of which or all of which are just as consistent with a lawful purpose as with an unlawful undertaking, are insufficient to establish a conspiracy. U.S. v. Haskins, W.D.Mo.1941, 40 F.Supp. 219. Conspiracy 47(1)

That previous indictment against one defendant for possessing still was dismissed did not preclude prosecution of such defendant for conspiracy to possess the same still and mash and distilled spirits and to commence business of distiller without filing notice of intention, since all that need be proven to make conspiracy complete was the unlawful agreement between two or more persons to possess the still set up, mash and distilled spirits, and performance of one or more overt acts in furtherance of the conspiracy. U.S. v. Carlisi, E.D.N.Y.1940, 32 F.Supp. 479. Double Jeopardy 151(4)

The evidence to establish a conspiracy is sufficient if it proves the existence of an agreement to do the unlawful act, although its terms and the time and place where it was entered into are not shown. U. S. v. Hutchins, C.C.S.D.Ohio 1876, 26 F.Cas. 442, No. 15430. See, also, U.S. v. Hamilton, C.C.Ohio 1876, Fed.Cas. No. 15,288.

516. ---- Common design or purpose, matters to be proved, evidence

Fact that each defendant charged with conspiracy to violate Racketeer Influenced and Corrupt Organizations Act (RICO) had individual interests that motivated him to participate in conspiracy and that at times put him at odds with coconspirators was not inconsistent with inference that the three were acting in unison to achieve their shared overall goal and did not preclude conspiracy conviction. U.S. v. Ford, C.A.7 (Ill.) 1994, 21 F.3d 759. Conspiracy 24(1); Conspiracy 44.2

Although a single conspiracy does require proof of mutual dependence, that dependence need not be absolute; conspirators often sell in parallel strands rather than in links essential to one another through networks which are vertically integrated and loosely knit. U.S. v. Whaley, C.A.7 (Ind.) 1987, 830 F.2d 1469, certiorari denied 108 S.Ct. 1738, 486 U.S. 1009, 100 L.Ed.2d 202. Conspiracy 24(3)

Common enterprise necessary for admission of hearsay statement under coconspirator rule cannot be established solely by words of self-proclaimed participant but rather there must be clear preponderance of evidence independent of hearsay statement to satisfy judge that declarant was a participant. U. S. v. Trowery, C.A.3 (Pa.) 1976, 542 F.2d 623, certiorari denied 97 S.Ct. 1132, 429 U.S. 1104, 51 L.Ed.2d 555. Criminal Law 427(5)

Having established the presence of an illegal conspiracy, the government need only introduce slight evidence to connect an individual defendant to the common scheme. U. S. v. Crockett, C.A.5 (Ga.) 1976, 534 F.2d 589. Conspiracy 47(1)

If the totality of the evidence is sufficient to show a concert of action, all parties working together understandingly, with a single design for the accomplishment of a common purpose, then conspiracy may be found. U. S. v. Prout,

C.A.5 (La.) 1976, 526 F.2d 380, rehearing denied 529 F.2d 999, certiorari denied 97 S.Ct. 114, 429 U.S. 840, 50 L.Ed.2d 109. Conspiracy 24(1)

Where circumstances are such as to warrant a jury in finding that conspirators had a unity of purpose or a common design and understanding, or a meeting of minds in an unlawful arrangement, conclusion that a conspiracy is established is justified. U. S. v. American Radiator & Standard Sanitary Corp., C.A.3 (Pa.) 1970, 433 F.2d 174, certiorari denied 91 S.Ct. 928, 401 U.S. 948, 28 L.Ed.2d 231, certiorari denied 91 S.Ct. 929, 401 U.S. 948, 28 L.Ed.2d 231. Conspiracy 47(1)

To prove a single conspiracy, prosecution must show, among other things, that all defendants agreed to effectuate a central criminal design. Daily v. U. S., C.A.9 (Cal.) 1960, 282 F.2d 818, on rehearing 293 F.2d 33. Conspiracy 47(1)

Where defendant was charged with conspiracy to commit an offense against or to defraud the United States, it was not necessary for government's proof to show that defendant actually agreed in terms with others to have a common design and to strive to accomplish it by same means, but it was sufficient if from the evidence it appeared that defendant acted in furtherance of the same illegal object as the other persons. Badon v. U.S., C.A.5 (La.) 1959, 269 F.2d 75, certiorari denied 80 S.Ct. 199, 361 U.S. 894, 4 L.Ed.2d 152. Conspiracy 44.2

Evidence of successive details of scheme, indicating with requisite certainty existence of preconceived plan to commit crime, is sufficient to establish unlawful conspiracy, though all participants did not contribute alike to making or fulfillment of scheme, as what one conspirator does, pursuant to common purpose, all do. U.S. v. Holt, C.C.A.7 (Ind.) 1939, 108 F.2d 365, certiorari denied 60 S.Ct. 616, 309 U.S. 672, 84 L.Ed. 1018, rehearing denied 60 S.Ct. 806, 309 U.S. 698, 84 L.Ed. 1037. Conspiracy 47(1)

If the proof in a prosecution for conspiracy shows a previous meeting and a concert of action thereafter, each of the parties doing some act contributing to accomplish an unlawful purpose, a jury is justified in finding that they were conspiring together to accomplish that purpose. Radin v. U.S., C.C.A.2 (N.Y.) 1911, 189 F. 568, 111 C.C.A. 6. Conspiracy 47

It is sufficient to show that the parties are acting together understandingly to accomplish the same unlawful purpose, even though individual conspirators may do acts in furtherance of the common unlawful design, apart from and unknown to others. Marrash v. U.S., C.C.A.2 (N.Y.) 1909, 168 F. 225, 93 C.C.A. 511. Conspiracy 47

"If the evidence shows a detail of facts and circumstances in which the alleged conspirators are involved, separately or collectively, and which are clearly referable to a preconcert of the actors, and there is a moral probability that they would not have occurred as they did without such preconcert, that is sufficient if it satisfies the jury of the conspiracy beyond a reasonable doubt." Davis v. U.S., C.C.A.6 (Tenn.) 1901, 107 F. 753, 46 C.C.A. 619.

It is not necessary to prove that defendants actually agreed in terms upon a design to be pursued by common means, but where they pursued the same objects with a view to its attainment, the jury may conclude that they were engaged in a conspiracy to effect it. The Mussel Slough Case, C.C.Cal.1881, 5 F. 680, 6 Sawy. 612. Conspiracy 44.2; Conspiracy 47(1)

If it be proved that the defendants pursued by their acts the same objects, often by the same means, one performing one part and another another part of the same, so as to complete it with a view to the attainment of the same object, the jury will be justified in the conclusion that they were engaged in a conspiracy to effect that object. The Mussel Slough Case, C.C.Cal.1881, 5 F. 680, 6 Sawy. 612. Conspiracy 44.2; Conspiracy 47(1)

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In prosecution for conspiracy, Government need not prove that all means or methods stated in indictment for carrying out conspiracy were agreed on or actually used by defendants, but evidence establishing to jury's satisfaction beyond reasonable doubt that one or more of such means or methods was agreed on by defendants to effect or accomplish an object or purpose of conspiracy is sufficient on such issue. U. S. v. Schneiderman, S.D.Cal.1952, 106 F.Supp. 906. Conspiracy 47(1)

A conspiracy may be proved by direct and positive evidence, or by facts showing that there was a concert of action and a unity of purpose in effecting an unlawful object. U. S. v. Smith, C.C.S.D.Ohio 1869, 27 F.Cas. 1144, 2 Bond 323, No. 16322. Conspiracy 24(1); Conspiracy 47(2)

517. ---- Knowledge and intent, matters to be proved, evidence

With the exception of the situation in which reference to the knowledge of the parties to an illegal agreement is necessary to establish the existence of federal jurisdiction, where knowledge of the facts giving rise to federal jurisdiction is not necessary for conviction of a substantive offense embodying a mens rea requirement, such knowledge is equally irrelevant to questions of responsibility for conspiracy to commit that offense. U. S. v. Feola, U.S.N.Y.1975, 95 S.Ct. 1255, 420 U.S. 671, 43 L.Ed.2d 541. Conspiracy 28(1)

Motive or intent may be proved by the acts or declarations of some of conspirators in furtherance of the common objective. Pinkerton v. U. S., U.S.Ala.1946, 66 S.Ct. 1180, 328 U.S. 640, 90 L.Ed. 1489, rehearing denied 67 S.Ct. 26, 329 U.S. 818, 91 L.Ed. 697. Criminal Law 423(1)

Conscious avoidance jury instruction at trial for conspiracy to commit securities and tender offer fraud did not impermissibly dilute mens rea requirement for conspiracy charge, where it made clear that guilty knowledge could not be established by showing that defendant was merely negligent, foolish, or mistaken, and instruction as a whole repeatedly and emphatically instructed jury that it had to find that defendant intentionally engaged in charged scheme. U.S. v. Svoboda, C.A.2 (N.Y.) 2003, 347 F.3d 471, certiorari denied 124 S.Ct. 2196, 541 U.S. 1044, 158 L.Ed.2d 735. Criminal Law 772(5)

Mere knowledge of illegal activity, even in conjunction with participation in small part of conspiracy, does not by itself establish that person has joined in grand conspiracy. U.S. v. Dimeck, C.A.10 (Kan.) 1994, 24 F.3d 1239. Conspiracy 40.1

In establishing conspiracy to defraud federally insured financial institution, government must establish defendants' participation in conspiracy with intent to further its aims. U.S. v. Brandon, C.A.1 (R.I.) 1994, 17 F.3d 409, certiorari denied 115 S.Ct. 80, 513 U.S. 820, 130 L.Ed.2d 34, certiorari denied 115 S.Ct. 81, 513 U.S. 820, 130 L.Ed.2d 34. Conspiracy 32

Once the intent for the crime charged has been established, it is immaterial that the defendant may also have a second intent. U.S. v. Allred, C.A.5 (Tex.) 1989, 867 F.2d 856. Criminal Law 20

Conviction for conspiracy to obstruct the IRS was sufficiently supported by evidence that defendant knowingly participated in scheme to launder untaxed money, and that scheme was structured so as to prevent IRS detection, regardless of whether defendant knew that money came from sale of illegal drugs. U.S. v. Montalvo, C.A.5 (Miss.) 1987, 820 F.2d 686. Conspiracy 47(9)

Offense of conspiracy to defraud United States did not require proof of antifederal intent, since whether persons who planned to defraud United States in fact realized that federal dollars were object of their scheme was irrelevant to this section's primary goal of safeguarding federal fiscal resources. U.S. v. Sorrow, C.A.11 (Ga.) 1984, 732 F.2d 176. Conspiracy 33(1)

Fact that issue of intent had been waived by pretrial motion did not prevent the government from putting on proof in nature of motive or intent to establish the fact of conspiracy. U. S. v. Marino, C.A.5 (La.) 1980, 617 F.2d 76, rehearing denied 620 F.2d 300, certiorari denied 101 S.Ct. 575, 449 U.S. 1015, 66 L.Ed.2d 474. Criminal Law 338(1)

Showing that defendant was aware of illegal plan charged in conspiracy count and even approved of it might impugn his character but did not alone place him in violation of this section. U. S. v. Grassi, C.A.5 (Fla.) 1980, 616 F.2d 1295, rehearing denied 624 F.2d 1098, certiorari denied 101 S.Ct. 363, 449 U.S. 956, 66 L.Ed.2d 220. Conspiracy 47(1)

In a conspiracy prosecution, the government is not compelled to prove that a defendant was familiar with each and every detail of the conspiracy but, rather, that defendant had knowledge of the agreement and associated with the plan in order to promote its success. U. S. v. Cuesta, C.A.5 (Fla.) 1979, 597 F.2d 903, certiorari denied 100 S.Ct. 451, 444 U.S. 964, 62 L.Ed.2d 377, certiorari denied 100 S.Ct. 452, 444 U.S. 964, 62 L.Ed.2d 377. Conspiracy 40.1

Where conspiracy is charged, Government must prove specific intent to violate substantive statute beyond reasonable doubt. U. S. v. Bertolotti, C.A.2 (N.Y.) 1975, 529 F.2d 149. Conspiracy 47(1)

Evidence that defendant knew of conspiracy almost from its inception and that in at least one respect he acted to further its objectives was all that was required to support a finding of his complicity; from knowledge of the conspiracy and an act in furtherance of it, participation in the illegal agreement could be inferred. U. S. v. Calaway, C.A.9 (Cal.) 1975, 524 F.2d 609, certiorari denied 96 S.Ct. 1462, 424 U.S. 967, 47 L.Ed.2d 733. Criminal Law 427(5)

Evidence of mere attendance at a meeting or knowledge of a conspiratorial act, without more, is not sufficient to support inference of active participation in a conspiracy. U. S. v. Sisca, C.A.2 (N.Y.) 1974, 503 F.2d 1337, certiorari denied 95 S.Ct. 328, 419 U.S. 1008, 42 L.Ed.2d 283. Conspiracy 47(2)

To establish person as a participant in a conspiracy, evidence must show that accused intended to join and cooperate in illegal venture. U. S. v. Amato, C.A.5 (Fla.) 1974, 495 F.2d 545, rehearing denied 497 F.2d 1368, certiorari denied 95 S.Ct. 333, 419 U.S. 1013, 42 L.Ed.2d 286. Conspiracy 47(1)

It is not fatal to prosecution's conspiracy case that it does not prove that defendants knew or participated in every phase of the unlawful scheme, and it is only necessary that the defendants knew of conspiracy, associated themselves with it, and knowingly contributed their efforts in its furtherance. U.S. v. Levinson, C.A.6 (Mich.) 1968, 405 F.2d 971, certiorari denied 89 S.Ct. 1746, 395 U.S. 906, 23 L.Ed.2d 219, certiorari denied 89 S.Ct. 2097, 395 U.S. 958, 23 L.Ed.2d 744, rehearing denied 90 S.Ct. 37, 396 U.S. 869, 24 L.Ed.2d 124, rehearing denied 90 S.Ct. 36, 396 U.S. 869, 24 L.Ed.2d 124. Conspiracy 40.1

Proof of the requisite knowledge and intent on the part of conspirators need not be made by direct evidence; the conspiracy may be shown by circumstantial evidence or permissible inferences or deductions from the facts. U. S. v. Chambers, C.A.6 (Ohio) 1967, 382 F.2d 910. Conspiracy 47(2)

Intent, motive, and purpose of accused charged with violations of and conspiracy to violate White Slave Traffic Act, section 2421 of this title, may be proved by circumstantial evidence and environment, and conduct of the parties within reasonable time before and after transportation may be considered. Johnson v. U. S., C.A.10 (Kan.) 1967, 380 F.2d 810. Conspiracy 45; Conspiracy 47(3.1)

Proof of a conspiracy to violate federal gambling laws requires at least the degree of criminal intent necessary for the substantive offenses themselves. U.S. v. Chase, C.A.4 (Va.) 1967, 372 F.2d 453, certiorari denied 87 S.Ct.

1688, 387 U.S. 907, 18 L.Ed.2d 626, certiorari denied 87 S.Ct. 1701, 387 U.S. 913, 18 L.Ed.2d 635. Conspiracy 28(3)

Since secrecy and concealment are essential features of successful conspiracy, conviction of those discovered may be allowed upon showing sufficiently the essential nature of plan and their connection with it without requiring evidence of knowledge of all its details. U. S. v. Miller, C.A.6 (Ky.) 1966, 358 F.2d 696. Conspiracy 47(1)

Conspirator's intent to defraud may be inferred from fact that he personally knew that venture was operating deceitfully, but since it is personal knowledge of invidious fact which warrants such inference, nothing less than personal knowledge of that fact will do to establish the fact even circumstantially. Phillips v. U. S., C.A.9 (Or.) 1965, 356 F.2d 297, certiorari denied 86 S.Ct. 1573, 384 U.S. 952, 16 L.Ed.2d 548. Conspiracy 44.2; Fraud 69(3)

To establish intent essential to conviction for conspiracy, evidence of knowledge must be clear and not equivocal, and a suspicion, however strong is not proof. Causey v. U. S., C.A.5 (Ga.) 1965, 352 F.2d 203. Conspiracy 47(1)

Once defendant's knowledge of general purpose of conspiracy was shown in prosecution of defendant for conspiracy to import obscene matter into United States, prosecution was not required to show defendant's familiarity with every detail of conspiracy. U. S. v. Mishkin, C.A.2 (N.Y.) 1963, 317 F.2d 634, certiorari denied 84 S.Ct. 71, 375 U.S. 827, 11 L.Ed.2d 60. Conspiracy 43(12)

Scienter is a necessary element for a conviction for conspiracy to commit crime of importing obscene matter, but eyewitness testimony of bookseller's perusal of book is unnecessary to prove scienter, and circumstances may warrant inference that bookseller was aware of what book contained. U. S. v. Mishkin, C.A.2 (N.Y.) 1963, 317 F.2d 634, certiorari denied 84 S.Ct. 71, 375 U.S. 827, 11 L.Ed.2d 60. Conspiracy 35; Conspiracy 47(3.1)

There need not be proof that conspirators were aware of criminality of their objective, but knowledge of commission of substantive offenses must be brought home to them to supply ingredient of intent. U. S. v. Zuideveld, C.A.7 (Ill.) 1963, 316 F.2d 873, certiorari denied 84 S.Ct. 671, 376 U.S. 916, 11 L.Ed.2d 612. Conspiracy 24.5

To convict for conspiracy it is only necessary to prove knowledge of conspiracy and that some act in furtherance of it was intentionally done by defendant charged. Huff v. U. S., C.A.5 (Tex.) 1962, 301 F.2d 760, certiorari denied 83 S.Ct. 289, 371 U.S. 922, 9 L.Ed.2d 230. Conspiracy 47(1)

Evidence of the same intent or knowledge is required to convict defendants for conspiring to obstruct justice and commit perjury as would be required to convict them of the substantive offenses. U.S. v. Bufalino, C.A.2 (N.Y.) 1960, 285 F.2d 408. Conspiracy 28(3); Conspiracy 34

A conviction for conspiracy to commit perjury and obstruct justice by giving false and evasive testimony requires not only proof of an agreement to lie, but proof that the conspirators intended to lie under oath or envisaged proceedings where they would be called upon to testify under oath. U.S. v. Bufalino, C.A.2 (N.Y.) 1960, 285 F.2d 408. Conspiracy 28(3); Conspiracy 34

Where evidence supported finding, in a conspiracy prosecution, that defendant participated in the alleged conspiracy as a partner, it was not essential to prove that defendant knew all the details of the conspiracy. U. S. v. Vittoria, C.A.7 (Ill.) 1960, 284 F.2d 451. Conspiracy 47(1)

In order to convict party of participation in a conspiracy, evidence of his knowledge of object of conspiracy must be clear and not equivocal. Stanley v. U. S., C.A.6 (Ky.) 1957, 245 F.2d 427, motion denied 249 F.2d 64.

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Conspiracy 47(1)

Where two or more persons are shown to be engaged in the same unlawful conspiracy, having for its object the same common and unlawful purpose, it is unnecessary to prove knowledge by one of the defendants of the dealings, or even of the existence, of the others, in order to render evidence of the actions of the others admissible against defendant. Poliafico v. U. S., C.A.6 (Ohio) 1956, 237 F.2d 97, certiorari denied 77 S.Ct. 590, 352 U.S. 1025, 1 L.Ed.2d 597, rehearing denied 77 S.Ct. 718, 353 U.S. 931, 1 L.Ed.2d 725. Criminal Law 423(1)

To convict one of conspiracy there must be proof, circumstantial or direct or both, that person charged had knowledge of the existence of the conspiracy and with that knowledge intentionally did some act or thing to further and carry it on. Duke v. U.S., C.A.5 (Ga.) 1956, 233 F.2d 897. Conspiracy 47(2)

In prosecution for conspiracy to defraud the United States, knowledge that concerted action was contemplated and invited and adherence to the fraudulent scheme and participation in it are sufficient to convict. McGunnigal v. U. S., C.C.A.1 (Mass.) 1945, 151 F.2d 162, certiorari denied 66 S.Ct. 267, 326 U.S. 776, 90 L.Ed. 469. Conspiracy 47(6)

Evidence showing merely that defendant, as a part-time employee of conspirators, performed services which conspirators made use of in effecting object of conspiracy and failing to show that defendant had knowledge of conspiracy did not authorize conviction for violation of former § 88 of this title [now this section]. Canning v. U. S., C.C.A.9 (Ariz.) 1941, 119 F.2d 130. Conspiracy 47(1)

In prosecution for conspiracy to violate § 12 of Emergency Relief Appropriation Act 1937, §§ 721 to 728 note of Title 15, evidence that accused coerced political contributions from Works Progress Administration workers and influenced workers' votes under threat of loss of jobs was sufficient to establish a corrupt motive, and hence knowledge of statute would be imputed to accused and need not be proved. Cruz v. U S, C.C.A.10 (N.M.) 1939, 106 F.2d 828. Conspiracy 44.2; Conspiracy 47(3.1)

To establish criminal conspiracy, corrupt motive or intent must be shown, and there must be an evil design or wrongful purpose, but knowledge of existence of law defining offense need not be shown to establish conspiracy to commit criminal offense, even where offense is merely mala prohibita. Cruz v. U S, C.C.A.10 (N.M.) 1939, 106 F.2d 828. See, also, Fall v. U.S., S.D.1913, 209 F. 547, 126 C.C.A. 369; Mackreth v. U.S., C.C.A.Ala.1939, 103 F.2d 495. Conspiracy 24.5

An intent on part of woman to conspire with man transporting such woman in interstate commerce for purpose of debauchery must be proved by very clear evidence, since ordinarily woman would be considered merely victim of the substantive offense. Mackreth v. U. S., C.C.A.5 (Ala.) 1939, 103 F.2d 495. Conspiracy 47(3.1)

In prosecution of officers and directors of mortgage guaranty company for conspiracy to use mails to defraud in sale of mortgage participation certificates, wrongful intent could be implied from intentional doing of wrongful acts. U.S. v. McNamara, C.C.A.2 (N.Y.) 1937, 91 F.2d 986. Conspiracy 47(5)

To sustain conviction for conspiracy to obtain whisky from bond by forged permits and its subsequent sale, it was not necessary to prove that accused knew and participated in every action of every other conspirator, but it was sufficient to show that he agreed to take part in conspiracy. A Guckenheimer & Bros Co v. U S, C.C.A.3 (Pa.) 1925, 3 F.2d 786, certiorari denied 45 S.Ct. 509, 268 U.S. 688, 69 L.Ed. 1157.

Under former § 88 of this title [now this section], an intent to defraud was essential to a conviction. Salas v. U.S., C.C.A.2 (N.Y.) 1916, 234 F. 842, 148 C.C.A. 440. Conspiracy 33(1)

Under an indictment charging in one count a conspiracy to violate former § 338 of this title, the government had to

sustain a heavier burden of proof as to the intent of the conspirators than under other counts in the indictment charging a violation of said former section, and in order to sustain the charge of conspiracy, it was necessary to prove an intent, not only to defraud, but also to defraud by the use of the mails. Farmer v. U.S., C.C.A.2 (N.Y.) 1915, 223 F. 903, 139 C.C.A. 341.

In a prosecution for conspiracy to procure fraudulent homestead entries of government land, if a conspiracy is shown, and persons were procured to make entries in pursuance thereof, who did not in fact intend to live on the land, it is not essential to conviction that it should be proved that defendants had actual knowledge of such intention. Richards v. U. S., C.C.A.8 (Neb.) 1909, 175 F. 911, 99 C.C.A. 401. Conspiracy 33(4)

Where an indictment for conspiracy to defraud the United States of government land by fraudulent homestead entries charged defendants with conspiring to defraud the government of lands embraced in certain homestead claims filed by certain named persons, the government was properly permitted, for the purpose of proving defendants' intent and guilty knowledge, to show that various other persons had also filed on and made final proof on various other tracts of land under the homestead laws, in pursuance of an agreement with the defendants and for their benefit. Jones v. U.S., C.C.A.9 (Or.) 1908, 162 F. 417, 89 C.C.A. 303, certiorari denied 29 S.Ct. 685, 212 U.S. 576, 53 L.Ed. 657. Criminal Law 371(1); Conspiracy 45

Where an indictment under former § 88 of this title [now this section] charged that defendants conspired to defraud the United States by unlawfully and fraudulently procuring the issuance of, and converting to their own use, certain land script, and that to effect the objects of the conspiracy they "unlawfully, knowingly, falsely, and fraudulently" applied for and procured the appointment of a pretended administrator of the succession of a person to whom a private land claim had been confirmed, on whose application the script was issued, it was not necessary that the government should prove that defendants had actual knowledge of the true facts in relation to the succession, or knowledge that the allegations made in their petition for the appointment of the administrator were false, but it was sufficient if defendants had no knowledge of their truth, or reason to believe them to be true, and they were in fact false, and this was true although the indictment averred actual knowledge, such an averment being surplusage, and one which need not be proved. U.S. v. Bradford, C.C.E.D.La.1905, 148 F. 413, affirmed 152 F. 616, 81 C.C.A. 606, certiorari denied 27 S.Ct. 795, 206 U.S. 563, 51 L.Ed. 1190. Conspiracy 43(12)

While a conspiracy cannot exist without a guilty intent being then present in the minds of the conspirators, this does not mean that they must know that they are violating the statutes of the United States. U.S. v. Newton, S.D.Iowa 1892, 52 F. 275.

Where a particular motive for the conspiracy is alleged in the indictment, and the jury is justified from the evidence in finding that such motive did really exist, it is immaterial that the evidence shows that the conspirators had different motives additional to that the indictment describes. U.S. v. Lancaster, C.C.S.D.Ga.1891, 44 F. 896. Conspiracy 43(12)

To convict defendant of conspiracy to distribute a controlled substance, Government was required to prove beyond reasonable doubt that defendant was in possession of a controlled substance and that he had the intent to distribute that controlled substance. U. S. v. Masiello, D.C.S.C.1980, 491 F.Supp. 1154. Conspiracy 47(12)

Proof of knowledge on part of participant in alleged conspiracy is essential element, as well as showing of intent to agree to do wrongful act. U. S. v. Munford, E.D.Pa.1977, 431 F.Supp. 278. Conspiracy 24.5

Once conspiracy is established beyond reasonable doubt from all the credible evidence, it must be determined whether defendant unlawfully, knowingly and wilfully entered into it. U.S. v. Gisehaltz, S.D.N.Y.1967, 278 F.Supp. 434. Conspiracy 40.1

Defendant's guilty state of mind is essential to conspiracy, and proof of that state of mind may be circumstantial.

U. S. v. Cisneros, N.D.Cal.1961, 191 F.Supp. 924, affirmed 322 F.2d 948. Conspiracy 24.5; Conspiracy 47(2)

In order to sustain conviction for conspiracy to interfere and hamper government in obtaining competitive bids for automobiles, government was required to prove, not only the act of conspiracy, but also that it was done and entered into with specific criminal intent to do an unlawful act. U.S. v. Belisle, W.D.Wash.1951, 107 F.Supp. 283. Conspiracy 24.5

518. ---- Means of accomplishing conspiracy, matters to be proved, evidence

The government, in prosecution under former § 88 of this title [now this section], for conspiracy, was not required to prove in detail all allegations relating solely to means employed to carry out conspiracy. Langley v. U.S., C.C.A.6 (Ky.) 1925, 8 F.2d 815, certiorari denied 46 S.Ct. 204, 269 U.S. 588, 70 L.Ed. 427. Conspiracy 43(12)

Acts of coconspirators, constituting part of means employed to accomplish object of conspiracy in violation of National Prohibition Act, former § 12 of Title 27, were none of them essential elements of conspiracy, and hence proof thereof was not essential to proof of guilt. Langley v. U.S., C.C.A.6 (Ky.) 1925, 8 F.2d 815, certiorari denied 46 S.Ct. 204, 269 U.S. 588, 70 L.Ed. 427. Conspiracy 43(12)

It is sufficient for the prosecution to show that any one of the means described in the indictment as having been used to carry out the conspiracy was used to execute that purpose. U.S. v. Cassidy, N.D.Cal.1895, 67 F. 698. Conspiracy 43(12)

To establish existence of conspiracy, government is not required to prove that each of methods allegedly employed to effect its objectives were brought into play. U. S. v. Kane, S.D.N.Y.1965, 243 F.Supp. 746. Conspiracy 47(1)

519. ---- Consummation of offense, matters to be proved, evidence

To convict for conspiracy, it is not necessary to prove that conspiracy was successful. Collins v. U.S., C.A.6 (Tenn.) 1960, 284 F.2d 517, certiorari denied 81 S.Ct. 753, 365 U.S. 837, 5 L.Ed.2d 746. Conspiracy 24.10

Proof of accomplishment of object of conspiracy is not necessary to conviction, if overt act in furtherance thereof was committed. Lewis v. U. S., C.C.A.6 (Mich.) 1926, 11 F.2d 745. Conspiracy 27

520. ---- Commission of substantive offense, matters to be proved, evidence

Proof of conspiracy, even if established by circumstantial evidence, must be such as to establish beyond a reasonable doubt the defendant's agreement to a plan to commit a federal substantive offense. U. S. v. Pepe, C.A.3 (Del.) 1975, 512 F.2d 1129. Conspiracy 47(2)

Under indictment charging conspiracy to violate § 1791 of this title by agreement to introduce or attempt to introduce on grounds of federal penal institution five jars of instant coffee without knowledge or consent of warden, government case was made for jury on conspiracy count by proof of agreement to introduce coffee into penitentiary grounds without knowledge and consent of warden and payment of money to effectuate object of agreement, and it was unnecessary to prove commission of substantive offense alleged as second overt act to effectuate object of conspiracy. Carter v. U. S., C.A.10 (Kan.) 1964, 333 F.2d 354. Conspiracy 48.1(2.1)

Proof of the substantive crime of unlawful importation of heroin was not essential to prove crime of conspiracy to

import heroin in violation of narcotic laws, §§ 173 and 174 of Title 21. U. S. v. Morello, C.A.2 (N.Y.) 1957, 250 F.2d 631. Conspiracy 47(12)

In order to prove conspiracy, it is not necessary to prove the commission of any substantive offense, and proof of any substantive offense does not necessarily prove the conspiracy. Samuel v. U.S., C.C.A.9 (Cal.) 1948, 169 F.2d 787. Conspiracy 28(1)

In prosecution for conspiracy to personate federal officers, government need prove only agreement and overt acts charged, not commission of substantive offense. Heskett v. U.S., C.C.A.9 (Cal.) 1932, 58 F.2d 897, certiorari denied 53 S.Ct. 89, 287 U.S. 643, 77 L.Ed. 556. Conspiracy 44.2

Proof of crime, without connection with conspiracy charged, will not support conviction of conspiracy. Wyatt v. U S, C.C.A.3 (Pa.) 1928, 23 F.2d 791, certiorari denied 48 S.Ct. 436, 277 U.S. 588, 72 L.Ed. 1002. Conspiracy 47

Government may prove several offenses committed by conspirators pursuant to their criminal scheme. Harvey v. U.S., C.C.A.2 (N.Y.) 1928, 23 F.2d 561. Criminal Law 372(6)

Commission of crime may be evidence that those committing it conspired to commit it. Bartkus v. U.S., C.C.A.7 (Ill.) 1927, 21 F.2d 425. Conspiracy 47

Conspiracy alleged may fail in proof, as well as proved conspiracy may fail in execution; hence failure to prove the existence of a conspiracy alleged to have been formed to defraud the United States cannot affect the right, regardless of conspiracy, to prove that the fraud which was the alleged object of the conspiracy was actually committed. Kelly v. U. S., C.C.A.6 (Ohio) 1919, 258 F. 392, 169 C.C.A. 408, certiorari denied 39 S.Ct. 391, 249 U.S. 616, 63 L.Ed. 803. Indictment And Information 171

Evidence of substantive offense is not sufficient to prove conspiracy or agreement to commit overt act. U. S. v. Holz, E.D.Ill.1950, 103 F.Supp. 191, reversed 191 F.2d 569. Conspiracy 47(1)

521. ---- Parties to conspiracy, matters to be proved, evidence

To establish that defendant was participant in conspiracy, government must prove beyond reasonable doubt that defendant knew of conspiracy and that defendant intended to join in furthering conspiracy's aims. U.S. v. Roberts, C.A.7 (Ind.) 1994, 22 F.3d 744, rehearing and suggestion for rehearing en banc denied, certiorari denied 115 S.Ct. 744, 513 U.S. 1086, 130 L.Ed.2d 645. Conspiracy 24.5

A conspirator must be proved to have joined conspiracy solely by evidence of his own acts and declarations. U. S. v. Murzyn, C.A.7 (Ind.) 1980, 631 F.2d 525, certiorari denied 101 S.Ct. 1373, 450 U.S. 923, 67 L.Ed.2d 351. Conspiracy 47(1)

Simply proving the existence of a conspiracy cannot sustain a verdict against an individual defendant; there must also be a showing of that defendant's knowledge of the conspiracy's purpose and some action indicating his participation; these elements, knowledge and participation, may also be proven by circumstantial evidence. U. S. v. Laughman, C.A.4 (S.C.) 1980, 618 F.2d 1067, certiorari denied 100 S.Ct. 3018, 447 U.S. 925, 65 L.Ed.2d 1117. Conspiracy 40.1

Once government has established existence of conspiracy, even slight evidence connecting particular defendant to conspiracy may be substantial and therefore sufficient proof of defendant's involvement in scheme. U. S. v. McCarty, C.A.8 (S.D.) 1979, 611 F.2d 220, certiorari denied 100 S.Ct. 1319, 445 U.S. 930, 63 L.Ed.2d 764. Conspiracy 47(1)

Once the Government has established the existence of a conspiracy, even slight evidence connecting a particular defendant to the conspiracy may be substantial and therefore sufficient proof of the defendant's involvement in the scheme. U.S. v. Kirk, C.A.8 (Mo.) 1976, 534 F.2d 1262, certiorari denied 97 S.Ct. 1174, 430 U.S. 906, 51 L.Ed.2d 581, certiorari denied 97 S.Ct. 2971, 433 U.S. 907, 53 L.Ed.2d 1091, conviction vacated in part on other grounds 723 F.2d 1379, certiorari denied 104 S.Ct. 1717, 466 U.S. 930, 80 L.Ed.2d 189. Conspiracy 47(1)

Once the existence or common scheme of a conspiracy is shown, slight evidence is all that is required to connect a particular defendant with the conspiracy. U. S. v. James, C.A.5 (Miss.) 1976, 528 F.2d 999, rehearing denied 532 F.2d 1054, certiorari denied 97 S.Ct. 382, 429 U.S. 959, 50 L.Ed.2d 326, rehearing denied 97 S.Ct. 770, 429 U.S. 1055, 50 L.Ed.2d 772, certiorari denied 97 S.Ct. 383, 429 U.S. 959, 50 L.Ed.2d 326; U.S. v. Kates, C.A.Pa.1975, 508 F.2d 308; U.S. v. See, C.A.Cal.1974, 505 F.2d 845, certiorari denied 95 S.Ct. 1428, 420 U.S. 992, 43 L.Ed.2d 673; U.S. v. Prieto, C.A.Fla.1974, 505 F.2d 8; U.S. v. Smith, C.A.La.1974, 504 F.2d 560; U.S. v. Nunez, C.A.Ariz.1973, 483 F.2d 453, certiorari denied 94 S.Ct. 594, 414 U.S. 1076, 38 L.Ed.2d 483. Conspiracy 47(1)

Where agreement or common scheme of conspiracy exists, slight evidence is all that is necessary to connect individual defendants to the conspiracy. U. S. v. Reynolds, C.A.5 (Fla.) 1975, 511 F.2d 603. Conspiracy 47(1)

Neither associations with conspirators nor knowledge that something illegal is going on by themselves constitute proofs of participation in a conspiracy. U. S. v. Quintana, C.A.7 (Ill.) 1975, 508 F.2d 867. Conspiracy 47(1)

In order to obtain conviction in prosecution for conspiracy, Government need not show that defendant participated in every transaction or even that he knew identities of his alleged conspirators or precise role which they played. U. S. v. Kates, C.A.3 (Pa.) 1975, 508 F.2d 308. Conspiracy 47(1)

While mere association with conspirators or knowledge of illegal activity does not of itself constitute proof of participation in the conspiracy it does constitute some evidence of such participation. U. S. v. Johnson, C.A.7 (Ill.) 1974, 504 F.2d 622. Conspiracy 47(2)

Issue of whether defendant, who was charged with substantive and conspiracy counts, had ever met with another conspirator at a particular restaurant was material, since it tended to establish that defendant, who was later charged with making false declarations for having denied that he had ever met with the conspirator at the restaurant, was part of the conspiracy. U. S. v. Gugliaro, C.A.2 (N.Y.) 1974, 501 F.2d 68. Perjury 11(2)

When the existence of a conspiracy is shown, slight evidence may be sufficient to connect the accused with the conspiracy. U.S. v. Wilson, C.A.5 (Tex.) 1974, 500 F.2d 715, certiorari denied 95 S.Ct. 1403, 420 U.S. 977, 43 L.Ed.2d 658, post-conviction relief denied 916 F.2d 984, rehearing en banc granted 925 F.2d 827, on rehearing 937 F.2d 228, certiorari denied 112 S.Ct. 978, 502 U.S. 1076, 117 L.Ed.2d 141. Conspiracy 47(1)

Government must prove an individual defendant's participation in an unlawful conspiracy by his own words and actions and not those of other participants. U. S. v. Cardi, C.A.7 (Ill.) 1973, 478 F.2d 1362, certiorari denied 94 S.Ct. 147, 414 U.S. 852, 38 L.Ed.2d 101, certiorari denied 94 S.Ct. 355, 414 U.S. 1001, 38 L.Ed.2d 237. Conspiracy 47(1)

Once a conspiracy has been established, only slight evidence is necessary to support jury verdict that individual defendant was a member. U. S. v. Gimelstob, C.A.3 (N.J.) 1973, 475 F.2d 157, certiorari denied 94 S.Ct. 49, 414 U.S. 828, 38 L.Ed.2d 62, rehearing denied 94 S.Ct. 606, 414 U.S. 1086, 38 L.Ed.2d 491. Conspiracy 47(1)

Before jury may be permitted to consider other conspirators' hearsay statements in furtherance of conspiracy as means of determining particular defendant's guilt, trial judge must first conclude from all evidence that defendant

in question has been shown to be member of that conspiracy by fair preponderance of evidence independent of hearsay utterances. U. S. v. Calarco, C.A.2 (N.Y.) 1970, 424 F.2d 657, certiorari denied 91 S.Ct. 46, 400 U.S. 824, 27 L.Ed.2d 53, rehearing denied 91 S.Ct. 1522, 402 U.S. 934, 28 L.Ed.2d 870. Criminal Law 427(2)

Fact that jury announced, in prosecution for conspiracy to travel interstate to further unlawful activity, that it had found defendant guilty of conspiracy, but that it was divided as to whether codefendant was guilty, did not indicate inconsistency, in view of evidence sufficient to support finding that defendant had been engaged in interstate conspiracy with one other than codefendant. U. S. v. Marquez, C.A.2 (N.Y.) 1970, 424 F.2d 236, certiorari denied 91 S.Ct. 56, 400 U.S. 828, 27 L.Ed.2d 58. Conspiracy 48.3

It is sufficient to connect defendant with conspiracy if his acts and conduct were of such character that minds of reasonable men could conclude therefrom that unlawful agreement or understanding existed and that defendant, with knowledge of existence of unlawful enterprise, acted to further it. U. S. v. Knight, C.A.9 (Ariz.) 1969, 416 F.2d 1181. Conspiracy 47(2)

Once existence of conspiracy is clearly established, only evidence which viewed alone is of relatively slight import is needed to connect each conspirator with it. U. S. v. Pardo-Bolland, C.A.2 (N.Y.) 1965, 348 F.2d 316, certiorari denied 86 S.Ct. 388, 382 U.S. 944, 15 L.Ed.2d 353, certiorari denied 86 S.Ct. 407, 382 U.S. 946, 15 L.Ed.2d 354. Conspiracy 47(1)

Conviction for conspiracy to evade federal gambling tax laws cannot be sustained without proof that defendants were parties to agreement to defeat or evade taxes, or that defendants had knowledge that taxes were due and were not being paid, plus conduct in furtherance of plan to evade them. U.S. v. Andrews, C.A.6 (Ky.) 1965, 347 F.2d 207, certiorari denied 86 S.Ct. 431, 382 U.S. 956, 15 L.Ed.2d 360, rehearing denied 86 S.Ct. 613, 382 U.S. 1021, 15 L.Ed.2d 537, certiorari denied 86 S.Ct. 436, 382 U.S. 956, 15 L.Ed.2d 360, rehearing denied 86 S.Ct. 615, 382 U.S. 1021, 15 L.Ed.2d 537, rehearing denied 86 S.Ct. 614, 382 U.S. 1021, 15 L.Ed.2d 537, certiorari denied 86 S.Ct. 437, 382 U.S. 956, 15 L.Ed.2d 360. Conspiracy 47(7)

Defendant's participation in conspiracy must be proved by evidence relating to his participation; existence of conspiracy may be proved by act of any of conspirators. Esco Corp. v. U. S., C.A.9 (Or.) 1965, 340 F.2d 1000. Conspiracy 47(1)

Testimony in conspiracy prosecution of two deliveries of narcotics to a defendant, on the instructions of one partner on one occasion and another partner on another occasion would not justify a finding that defendant had thereby made himself a part of whatever narcotics enterprises the partners and their future partners might engage in for the rest of their lives, provided only that these were uninterrupted; the government must present evidence justifying the jury in finding beyond a reasonable doubt that the particular agreement into which defendant entered continued into the period not barred by limitation. U. S. v. Borelli, C.A.2 (N.Y.) 1964, 336 F.2d 376, certiorari denied 85 S.Ct. 647, 379 U.S. 960, 13 L.Ed.2d 555. Conspiracy 47(12)

Proper manner of proving defendant's role in gambling operation on which was based charge of conspiring to engage in business of accepting wagers without payment of special federal occupational tax was for government agents to follow defendant and determine what, if anything, he did with numbers slips collected from another person, and defect resulting from agents' failure to do so could not be remedied by agents' assuming role of experts and stating their opinions as to that which they had to prove. U. S. v. Sette, C.A.2 (Conn.) 1964, 334 F.2d 267. Conspiracy 47(7); Criminal Law 494

Slight evidence is all that is needed to connect defendant with conspiracy. Sabari v. U. S., C.A.9 (Nev.) 1964, 333 F.2d 1019. Conspiracy 47(1)

A defendant's participation in conspiracy can be established only by proof, properly admitted into evidence, of own

words and deeds, and such independent proof must be substantial and not too slight. U. S. v. Bentvena, C.A.2 (N.Y.) 1963, 319 F.2d 916, certiorari denied 84 S.Ct. 345, 375 U.S. 940, 11 L.Ed.2d 271, rehearing denied 90 S.Ct. 894, 397 U.S. 928, 25 L.Ed.2d 108, rehearing denied 84 S.Ct. 515, 375 U.S. 989, 11 L.Ed.2d 476, certiorari denied 84 S.Ct. 346, 375 U.S. 940, 11 L.Ed.2d 271, rehearing denied 84 S.Ct. 1162, 377 U.S. 913, 12 L.Ed.2d 183, certiorari denied 84 S.Ct. 353, 375 U.S. 940, 11 L.Ed.2d 272, certiorari denied 84 S.Ct. 354, 375 U.S. 940, 11 L.Ed.2d 272, certiorari denied 84 S.Ct. 355, 375 U.S. 940, 11 L.Ed.2d 272, certiorari denied 84 S.Ct. 360, 375 U.S. 940, 11 L.Ed.2d 272. Conspiracy 47(1)

Suspicion of participation in conspiracy is inadequate to sustain conviction therefor. U. S. v. Nardiello, C.A.3 (N.J.) 1962, 303 F.2d 876. Conspiracy 47(1)

To sustain charge of conspiracy, there must be proof beyond a reasonable doubt that each accused was connected with conspiracy, and venue jurisdiction must be proved. Knight v. U. S., C.A.5 (Ga.) 1962, 297 F.2d 675, certiorari denied 82 S.Ct. 1565, 370 U.S. 923, 8 L.Ed.2d 503. Criminal Law 561(2); Indictment And Information 166

Absent evidence showing that a defendant's acts aided conspiracy, much less that she was aware that her conduct was connected therewith, her conspiracy conviction could not stand. U. S. v. Rappaport, C.A.3 (Pa.) 1961, 292 F.2d 261, certiorari denied 82 S.Ct. 48, 368 U.S. 827, 7 L.Ed.2d 31. Conspiracy 40.1

Defendants' participation in conspiracy can be established only by proof, properly admitted into evidence, of their own words and deeds. U S v. Russano, C.A.2 (N.Y.) 1958, 257 F.2d 712. Conspiracy 43(12)

Normally a conspiracy indictment need not fail if proof is lacking to implicate some of the defendants or coconspirators charged. U. S. v. Silverman, C.A.2 (Conn.) 1957, 248 F.2d 671, certiorari denied 78 S.Ct. 427, 355 U.S. 942, 2 L.Ed.2d 422. Indictment And Information 10.2(10)

It was not necessary that each of the alleged conspirators be connected by proof with crime of conspiracy charged against defendant so long as defendant himself was proved, beyond a reasonable doubt, to be guilty of the conspiracy, nor was it necessary that the evidence establish defendant's guilt of each and all overt acts charged but only of commission of any one or more thereof to effect the objects and purposes of the conspiracy. Jolley v. U.S., C.A.5 (Ga.) 1956, 232 F.2d 83. Conspiracy 47(1)

Proof of active membership during entire alleged life of a conspiracy is not required to sustain a conviction of guilty. United States v. Markman, C.A.2 (N.Y.) 1952, 193 F.2d 574. Conspiracy 40.1

In prosecution for participation in a conspiracy to traffic in narcotic drugs in violation of the laws of the United States, where there was competent proof that conspiracy continued after enactment of this section creating offense of conspiracy to traffic in narcotic drugs, defendant if he was to claim disassociation from the conspiracy was required to adduce affirmative proof to that effect, which he failed to do, although defendant contended that there was no proof that he took any active part in conspiracy charged after the effective date of this section. United States v. Markman, C.A.2 (N.Y.) 1952, 193 F.2d 574. Conspiracy 44.2

In prosecution of individuals and congressman for conspiracy to defraud the United States through violation of former § 203 of this title, prohibiting members of Congress from receiving compensation in matters affecting the government, participation of each conspirator could be proved by his own acts done in absence of coconspirators. May v. United States, C.A.D.C.1949, 175 F.2d 994, 84 U.S.App.D.C. 233, certiorari denied 70 S.Ct. 58, 338 U.S. 830, 94 L.Ed. 505, order withheld 70 S.Ct. 81, 338 U.S. 854, motion denied 70 S.Ct. 94, motion denied 70 S.Ct. 95, rehearing denied 70 S.Ct. 154, 338 U.S. 882, 94 L.Ed. 542, rehearing denied 70 S.Ct. 155, 338 U.S. 882, 94 L.Ed. 542, order withheld 70 S.Ct. 80. Conspiracy 45

Where a conspiracy is clearly established, slight evidence may be sufficient to connect a defendant with it. Nye & Nissen v. U.S., C.C.A.9 (Cal.) 1948, 168 F.2d 846, certiorari granted 69 S.Ct. 81, 335 U.S. 852, 93 L.Ed. 400, affirmed 69 S.Ct. 766, 336 U.S. 613, 93 L.Ed. 919. See, also, Poliafico v. U.S., C.A.Ohio, 1956, 237 F.2d 97, certiorari denied 77 S.Ct. 590, 352 U.S. 1025, 1 L.Ed.2d 597, rehearing denied 77 S.Ct. 718, 353 U.S. 931, 1 L.Ed.2d 725; Meyers v. U.S., C.C.A.Mich.1938, 94 F.2d 433, certiorari denied 58 S.Ct. 1059, 304 U.S. 583, 82 L.Ed. 1545, rehearing denied 59 S.Ct. 59, 305 U.S. 670, 83 L.Ed. 434; Marx v. U.S., C.C.A.Minn.1936, 86 F.2d 245. Conspiracy 47(1)

Evidence of conspiracy need not be first received as condition precedent to admissibility of evidence showing participation of defendant. Rand v. U. S., C.C.A.8 (Iowa) 1935, 77 F.2d 52. Criminal Law 427(3)

One charged with conspiring with several may be convicted on proof of his conspiracy with some of them. Hardy v. U.S., C.C.A.5 (Tex.) 1919, 256 F. 284, 167 C.C.A. 456, certiorari denied 40 S.Ct. 9, 250 U.S. 659, 63 L.Ed. 1194. Conspiracy 43(12)

Any of the defendants may be found to have participated in conspiracy even if they joined or terminated their relationship with core conspirators at different times. U.S. v. Sims, N.D.Ill.1992, 808 F.Supp. 620. Conspiracy 24(3)

In prosecution for violating narcotics laws and for participation in conspiracy to violate such laws, the government failed to sustain its burden of proof as to identification of one defendant and hence such defendant would be acquitted. U. S. v. Beigel, S.D.N.Y.1966, 254 F.Supp. 923, affirmed 370 F.2d 751, certiorari denied 87 S.Ct. 2049, 387 U.S. 930, 18 L.Ed.2d 989, certiorari denied 87 S.Ct. 2053, 387 U.S. 930, 18 L.Ed.2d 989, certiorari denied 87 S.Ct. 2062, 387 U.S. 936, 18 L.Ed.2d 998. Criminal Law 566

Where accused was not present or physically connected with act, party carrying burden must show conspiracy between accused and one actually committing act. General Am. Life Ins. Co. v. Cole, E.D.Mo.1961, 195 F.Supp. 867. Conspiracy 44.2

Evidence adduced at voir dire hearing, on question of competency of proposed testimony concerning telephone conversation, sufficiently established that woman with whom witness spoke was defendant. U S v. Lo Bue, S.D.N.Y.1960, 180 F.Supp. 955. Criminal Law 386

Once a conspiracy is clearly established, slight evidence may be sufficient to connect a defendant with it. U. S. v. Gilboy, M.D.Pa.1958, 160 F.Supp. 442. Conspiracy 47(1)

While one may become a party to or member of conspiracy without full knowledge of all details thereof or means to be used by conspirators, a person having no knowledge of conspiracy, but acting in a way which furthers an object thereof, does not become a conspirator, as some wilful participation by him in conspiracy with intent to further common purpose or design must be shown to establish his guilt of conspiracy. U. S. v. Schneiderman, S.D.Cal.1952, 106 F.Supp. 906. Conspiracy 40.1

To prove conspiracy, evidence need not show that parties thereto entered into express or formal agreement or directly stated between themselves, by words or in writing, their object or purpose, details thereof or means of achieving it, but evidence that they positively or tacitly came to mutual understanding to accomplish common and unlawful design in any way or manner or through any contrivance is sufficient. U. S. v. Schneiderman, S.D.Cal.1952, 106 F.Supp. 906. Conspiracy 47(1)

522. ---- Overt acts, matters to be proved, evidence

In prosecution for conspiracy, government must prove that one of conspirators performed an overt act in

furtherance of the agreement's illegal objective; such overt act must be susceptible of demonstrating that the conspirators had more than a subjective mental intent to commit a crime. U. S. v. Wieschenberg, C.A.5 (Fla.) 1979, 604 F.2d 326. Conspiracy 27

In conspiracy prosecution, the Government is not limited in its proof at trial to those overt acts alleged in the indictment, and is under no obligation to prove every overt act alleged. U. S. v. Adamo, C.A.3 (N.J.) 1976, 534 F.2d 31, certiorari denied 97 S.Ct. 116, 429 U.S. 841, 50 L.Ed.2d 110. Conspiracy 43(12)

To make out crime of conspiracy, once unlawful agreement is shown, proof of single overt act in furtherance of agreement by single conspirator establishes guilt of each member of conspiracy. U. S. v. Fontenot, C.A.5 (Ga.) 1973, 483 F.2d 315. Conspiracy 47(1)

Conspiracy to smuggle merchandise into the United States is established if evidence establishes the commission of any of the over acts specified in the indictment. U. S. v. Montgomery, C.A.9 (Cal.) 1971, 440 F.2d 694, certiorari denied 92 S.Ct. 221, 404 U.S. 884, 30 L.Ed.2d 166. Conspiracy 47(3.1)

It is not necessary to conviction of party to conspiracy that he perform any overt act or that conspiracy succeed, and conviction may rest on proof of doing of any overt act by any of his coconspirators for purpose of effecting object of conspiracy, and it is not necessary to conviction that overt act in itself be one prohibited by law. Cave v. U. S., C.A.8 (Iowa) 1968, 390 F.2d 58, certiorari denied 88 S.Ct. 2059, 392 U.S. 906, 20 L.Ed.2d 1365. Conspiracy 40

A conspiracy conviction can rest upon proof of an overt act not charged in the indictment. Brulay v. U. S., C.A.9 (Cal.) 1967, 383 F.2d 345, certiorari denied 88 S.Ct. 469, 389 U.S. 986, 19 L.Ed.2d 478. Conspiracy 43(12)

Evidence to establish existence of a general conspiracy requires proof that an act was committed in furtherance of the conspiracy. Downing v. U. S., C.A.5 (Tex.) 1965, 348 F.2d 594, certiorari denied 86 S.Ct. 235, 382 U.S. 901, 15 L.Ed.2d 155. Conspiracy 27

Failure to specify in indictment any particular piece of conduct as overt act does not prevent proof thereof in conspiracy case. Napolitano v. U. S., C.A.1 (Mass.) 1965, 340 F.2d 313. Conspiracy 43(12)

At common law, an overt act in furtherance of conspiracy need not be alleged or proven. U. S. v. Garfoli, C.A.7 (Ill.) 1963, 324 F.2d 909. Conspiracy 43(12)

Substantial similarity between facts alleged in overt act and those proved is all that is required. Strauss v. U. S., C.A.5 (Fla.) 1963, 311 F.2d 926, certiorari denied 83 S.Ct. 1299, 373 U.S. 910, 10 L.Ed.2d 412. Conspiracy 43(12)

In order to sustain a conviction for conspiracy, it is not necessary to prove each of the overt acts alleged in the indictment, and failure to prove one overt act is therefore not fatal. U. S. v. Vittoria, C.A.7 (Ill.) 1960, 284 F.2d 451. Conspiracy 43(12)

Previous acts of coconspirators were sufficient to satisfy overt act requirements of crime of conspiracy. U.S. v. Bletterman, C.A.2 (N.Y.) 1960, 279 F.2d 320. Conspiracy 27

Proof of overt acts in themselves is not sufficient to prove a conspiracy for it must be established that a conspiracy or agreement, which is charged to have existed and which is the gist of the offense, had been formed before and was existing at the time of the commission of the overt act or acts. Harms v. U.S., C.A.4 (Va.) 1959, 272 F.2d 478, certiorari denied 80 S.Ct. 590, 361 U.S. 961, 4 L.Ed.2d 543. Conspiracy 47(1)

18 U.S.C.A. § 371

Overt acts done in apparent pursuance of a common plan serve as evidence to demonstrate existence of conspiracy. U. S. v. Giuliano, C.A.3 (N.J.) 1959, 263 F.2d 582. See, also, U.S. v. Migliorino, C.A.Pa.1956, 238 F.2d 7. Conspiracy 46

Proof of commission of an overt act might also be proof of an agreement among conspirators depending on nature of act and character of proof. Schnautz v. U.S., C.A.5 (Tex.) 1959, 263 F.2d 525, certiorari denied 79 S.Ct. 1294, 360 U.S. 910, 3 L.Ed.2d 1260. Conspiracy 47(1)

To warrant prosecution for allegedly continuing conspiracy, there must be some overt act within the period of limitation and such act must be proved. United States v. Reina, C.A.2 (N.Y.) 1957, 242 F.2d 302, certiorari denied 77 S.Ct. 1294, 354 U.S. 913, 1 L.Ed.2d 1427, rehearing denied 78 S.Ct. 9, 355 U.S. 852, 2 L.Ed.2d 61. Criminal Law 150

Overt acts of the parties may be considered with other evidence and attending circumstances in determining whether a conspiracy exists, and where the overt acts are of a character which are usually, if not necessarily, done pursuant to a previous scheme and plan, proof of acts have a tendency to show such pre-existing conspiracy, so that when proven they may be considered as evidence of the conspiracy charged. U.S. v. Morris, C.A.7 (Ill.) 1955, 225 F.2d 91, certiorari denied 76 S.Ct. 179, 350 U.S. 901, 100 L.Ed. 792, rehearing denied 76 S.Ct. 300, 350 U.S. 943, 100 L.Ed. 823. Conspiracy 46

Where conspiracy count charged six overt acts, proof of one overt act in carrying out conspiracy would support conviction. Robinson v. U.S., C.A.D.C.1954, 210 F.2d 29, 93 U.S.App.D.C. 347. Conspiracy 47(1)

The overt act necessary to be proved in conspiracy cases is an act to effect the object of the conspiracy. Singer v. U.S., C.A.6 (Mich.) 1953, 208 F.2d 477. Conspiracy 27

The telephoning of prospective buyer of sheet steel, which defendant had allegedly conspired to possess after its theft from interstate commerce, constituted such an overt act, proof of which is essential to conviction for conspiracy. Singer v. U.S., C.A.6 (Mich.) 1953, 208 F.2d 477. Conspiracy 27

Overt acts of parties may be considered with other evidence and attending circumstances in determining whether a conspiracy exists, and where overt acts are of a character which are usually, if not necessarily, done pursuant to a previous scheme and plan, proof of acts has tendency to show such pre-existing conspiracy, so that when proven they may be considered as evidence of conspiracy charged. U. S. v. Crowe, C.A.7 (Ill.) 1951, 188 F.2d 209. Conspiracy 46

Proof of overt acts may prove a conspiracy. U.S. v. Nelson, C.A.7 (Ill.) 1950, 185 F.2d 758. Conspiracy 47(1)

Overt acts not alleged in a conspiracy indictment may be proved at the trial. Culp v. U. S., C.C.A.8 (Ark.) 1942, 131 F.2d 93. See, also, U.S. v. Westbrook, D.C.Ark.1953, 114 F.Supp. 192. Conspiracy 43(12)

The finding of letters written by alleged conspirator and finding of opium in alleged coconspirators' possession constituted evidence that "overt acts", which had been charged in the indictment, had been committed. Pastrano v. U.S., C.C.A.4 (Md.) 1942, 127 F.2d 43. Conspiracy 47(12)

The offense of "conspiracy" becomes complete when the agreement is made, and the only effect of a statutory requirement that an overt act be shown is to permit an abandonment of the conspiracy in the meantime and the consequent avoidance of the penalty which the statute imposes. U.S. v. Manton, C.C.A.2 (N.Y.) 1939, 107 F.2d 834, certiorari denied 60 S.Ct. 590, 309 U.S. 664, 84 L.Ed. 1012. Conspiracy 27

18 U.S.C.A. § 371

Conspiracy may be proved by overt acts. Stack v. U.S., C.C.A.9 (Wash.) 1928, 27 F.2d 16. Conspiracy 47(1)

Under indictment for conspiracy to rob mail carrier, proof of overt act is necessary. Bellande v. U.S., C.C.A.5 (La.) 1928, 25 F.2d 1, certiorari denied 48 S.Ct. 602, 277 U.S. 607, 72 L.Ed. 1012. Conspiracy 43(12)

In proof of conspiracy, government is not limited to overt acts pleaded. Marcus v. U S, C.C.A.3 (Pa.) 1927, 20 F.2d 454, certiorari denied 48 S.Ct. 122, 275 U.S. 565, 72 L.Ed. 429. See, also, Finley v. U.S., C.A.Ga.1959, 271 F.2d 777, certiorari denied 80 S.Ct. 1065, 362 U.S. 979, 4 L.Ed.2d 1014. Conspiracy 43(12)

It is unnecessary to prove more than one of the overt acts alleged, or that more than one conspirator took part in it. Burkhardt v. U. S., C.C.A.6 (Ohio) 1926, 13 F.2d 841. Conspiracy 43(12)

Proof of overt act, in addition to fact of conspiracy, is essential to valid conviction. Weinstein v. U.S., C.C.A.1 (Mass.) 1926, 11 F.2d 505, certiorari denied 47 S.Ct. 94, 273 U.S. 699, 71 L.Ed. 847. Conspiracy 43(12)

The government need not prove all overt acts alleged in the indictment, and it is sufficient if it establishes any one of the acts alleged. Williams v. U.S., C.C.A.6 (Tenn.) 1925, 3 F.2d 933. See, also, Christensen v. U.S., C.C.A.Or.1926, 16 F.2d 29; Tacon v. U.S., C.C.A.La.1921, 270 F. 88; De Lacey v. U.S., Cal.1918, 249 F. 625, 161 C.C.A. 535; U.S. v. Richards, D.C.Neb.1906, 149 F. 443; People v. Arnstein, 1926, 218 N.Y.S. 633, 128 Misc. 176.

Proof of overt act alone will not warrant conviction for conspiracy, which requires proof of both overt act and unlawful agreement. Bell v. U.S., C.C.A.8 (Utah) 1924, 2 F.2d 543.

To warrant conviction for conspiracy, under former § 88 of this title [now this section], the overt act charged in the indictment, or one of the overt acts charged must have been proved. Fredericks v. U.S., C.C.A.9 (Wash.) 1923, 292 F. 856. Conspiracy 43(12)

Under an indictment charging conspiracy to commit numerous violations of the National Prohibition Act, former § 1 et seq. of Title 27, it was incumbent on the government to prove beyond a reasonable doubt that the defendants, or two or more of them, entered into a conspiracy for the unlawful purpose charged prior to the commission of the overt acts alleged in the indictment, and that one or more of the overt acts was committed by one or more of the defendants after the conspiracy had been formed, and while it was still in existence, and in furtherance of the purposes of that conspiracy. Remus v. U. S., C.C.A.6 (Ohio) 1923, 291 F. 501, certiorari denied 44 S.Ct. 180, 263 U.S. 717, 68 L.Ed. 522. Conspiracy 44.2; Intoxicating Liquors 223(1)

The overt acts charged must be proved as laid. U.S. v. Ault, W.D.Wash.1920, 263 F. 800.

In prosecution for conspiracy to evade and to aid others in evading Selective Service Act, § 6 (temporary), the prosecution could prove what might have been laid as overt act, but was not so charged, not being confined to overt acts charged, as there can be no legal complaint of testimony tending to show object of conspiracy, which evidence one may call overt act. Fraina v. U.S., C.C.A.2 (N.Y.) 1918, 255 F. 28, 166 C.C.A. 356. Conspiracy 43(12)

Certain acts charged to have been committed by conspirators in furtherance of a conspiracy were not mere part and parcel of the formation of the conspiracy but constituted overt acts, proof of any one of which was sufficient to sustain a conviction. Donaldson v. U.S., C.C.A.9 (Cal.) 1913, 208 F. 4, 125 C.C.A. 316. Conspiracy 27

The government is not required to prove that all the overt acts alleged were committed, nor that all defendants named in the indictment were engaged in the conspiracy, and, in such a prosecution, the fact that there was evidence tending to show that the conspiracy in which some of the defendants not on trial were engaged was

separate from that in which those on trial were engaged, did not entitle the latter to an acquittal. Jones v. U.S., C.C.A.9 (Or.) 1910, 179 F. 584, 103 C.C.A. 142. Conspiracy 47(6)

It need only be shown that one or more of the overt acts charged in the indictment have been committed and that they were done in furtherance of the conspiracy. U.S. v. Cassidy, N.D.Cal.1895, 67 F. 698. See, also, U.S. v. Van Leuven, D.C.Iowa 1894, 65 F. 78; U.S. v. Newton, D.C.Iowa 1892, 52 F. 275; U.S. v. Nunnemacher, C.C.Wis.1876, 7 Biss. 111, 27 Fed.Cas. No. 15,902; U.S. v. Goldberg, C.C.Wis.1876, 7 Biss. 175, 25 Fed.Cas. No. 15,223.

Proof of ordering of goods by several persons, not intending to pay for them, will not support an indictment for conspiracy to defraud by using the mails, without proof that the orders were given pursuant to a prearranged plan. U.S. v. Barrett, C.C.S.C.1894, 65 F. 62, affirmed 18 S.Ct. 327, 169 U.S. 218, 42 L.Ed. 723. Conspiracy 47(5); Postal Service 49(11)

In prosecution for conspiracy to commit offense against or to defraud the United States, proof of felonious conspiracy requires proof of specific intent and proof of overt act in furtherance of conspiracy. U. S. v. Nu-Phonics, Inc., E.D.Mich.1977, 433 F.Supp. 1006. Conspiracy 27; Conspiracy 28(1); Conspiracy 33(1)

In prosecution for conspiracy, prosecution was entitled to prove overt acts not pleaded in the indictment in order to toll the statute of limitations. US v. Grunewald, S.D.N.Y.1958, 162 F.Supp. 626. Conspiracy 43(12)

Where substantive offenses which defendants conspired to commit could have been committed by one person, and there were ingredients in the conspiracy not present in the completed crime, same overt acts charged in conspiracy could also be charged and proved as substantive offenses and separately punished. U. S. v. Anthony, M.D.Pa.1956, 145 F.Supp. 323. Conspiracy 28(1)

In order to justify conviction for conspiracy, at least one of the alleged overt acts committed for purpose of carrying conspiracy into effect must be proved beyond reasonable doubt the same as the conspiracy itself. U.S. v. McGee, D.C.Wyo.1952, 108 F.Supp. 909. Conspiracy 47(1)

Conviction of conspiracy to do an unlawful act requires the commission of some overt act in furtherance of conspiracy by some one of the conspirators. U.S. v. Belisle, W.D.Wash.1951, 107 F.Supp. 283. Conspiracy 27

The "overt act" which must be proved in conspiracy prosecution is any act committed by any one or more of conspirators which has a tendency to forward its purpose. U.S. v. Anderson, S.D.Cal.1942, 45 F.Supp. 943. Conspiracy 27

Former § 88 of this title [now this section] was satisfied by averment and proof that one or more of parties did any act to effect object of conspiracy. U S v. Sotak, M.D.Pa.1933, 2 F.Supp. 323. Conspiracy 43(12)

Proof of unlawful agreement, plus commission of any of overt acts alleged in indictment, suffices to support verdict of guilty of criminal conspiracy and it is unnecessary to prove commission of all alleged overt acts. U. S. v. Myers, N.D.Cal.1964, 38 F.R.D. 194. Conspiracy 47(1)

No conviction of criminal conspiracy suffices of itself to establish that defendant was found guilty of committing any particular overt act. U. S. v. Myers, N.D.Cal.1964, 38 F.R.D. 194. Judgment 751

Where indictment alleged thirteen overt acts in furtherance of conspiracy to file and for filing with National Labor Relations Board false affidavits of non-Communist union officer, the government in order to establish its case

would be required to prove beyond a reasonable doubt one or more of the overt acts. U. S. v. Haug, N.D.Ohio 1957, 21 F.R.D. 22. Conspiracy 43(12)

In prosecution for conspiracy to file and for filing with the National Labor Relations Board false affidavits of non-Communist union officer, fact that indictment, in pleading overt acts, used the phrase "among others" did not dispense with proof of alleged overt acts or enlarge the indictment so as to include outside overt acts. U. S. v. Haug, N.D.Ohio 1957, 21 F.R.D. 22. Conspiracy 43(12)

Indictments for conspiracy to file and for filing with National Labor Relations Board false affidavits of non-Communist union officer were not dismissible on ground that the overt acts charged were not done in furtherance of the conspiracy, where overt acts were properly pleaded, and whether they were committed in furtherance of conspiracy was a factual matter which would have to be determined at trial. U. S. v. Haug, N.D.Ohio 1957, 21 F.R.D. 22. Indictment And Information 144.2

There must be satisfactory evidence not only of the conspiracy charged, but of the overt act averred, to carry into effect the object of the conspiracy. U. S. v. Smith, C.C.S.D.Ohio 1869, 27 F.Cas. 1144, 2 Bond 323, No. 16322. Conspiracy 47(1)

Acts charged to have been done to effect the object of the conspiracy must be proved as laid, but time and quantity need not be proved. U.S. v. Hutchins, C.C.Ohio 1876, Fed.Cas. No. 15,430. U. S. v. Hutchins, C.C.S.D.Ohio 1876, 26 F.Cas. 442, No. 15430.

523. ---- Time and place, matters to be proved, evidence

Mere presence at scene of a crime is not enough to prove participation in the conspiracy behind that crime. U. S. v. James, C.A.5 (Miss.) 1976, 528 F.2d 999, rehearing denied 532 F.2d 1054, certiorari denied 97 S.Ct. 382, 429 U.S. 959, 50 L.Ed.2d 326, rehearing denied 97 S.Ct. 770, 429 U.S. 1055, 50 L.Ed.2d 772, certiorari denied 97 S.Ct. 383, 429 U.S. 959, 50 L.Ed.2d 326. Conspiracy 40; Criminal Law 59(3)

Government, in prosecution for using mails to defraud and for conspiracy, must prove mailing was within jurisdiction of court in authorized depository. U.S. v. Herzig, D.C.N.Y.1928, 26 F.2d 487. Postal Service 49(1)

Recital of indictment that conspiracy existed between certain dates did not limit prosecution to events transpiring between those dates. Hood v. U.S., C.C.A.8 (Okla.) 1927, 23 F.2d 472, certiorari denied 48 S.Ct. 436, 277 U.S. 588, 72 L.Ed. 1002. Indictment And Information 176

Date alleged in indictment for conspiracy need not be proved as laid, but it is sufficient if conspiracy is shown to exist before commission of overt act charged. Pearlman v. U.S., C.C.A.9 (Or.) 1927, 20 F.2d 113, certiorari denied 48 S.Ct. 85, 275 U.S. 549, 72 L.Ed. 419. Indictment And Information 176

It is not necessary for the government to prove that a conspiracy was formed on the exact date averred in the indictment. Goldberg v. U.S., C.C.A.1 (Mass.) 1924, 295 F. 447. See, also, Remus v. U.S., C.C.A.Ohio 1923, 291 F. 501, certiorari denied 44 S.Ct. 180, 263 U.S. 717, 68 L.Ed. 522; U.S. v. Goldberg, C.C.Wis.1876, Fed.Cas. No. 15,223.

Under an indictment for conspiracy, based on former § 88 of this title [now this section], an allegation that the conspiracy was formed within the district need not have been proved, where it was alleged and proved that overt acts were committed within the district. Baker v. U.S., C.C.A.5 (Ga.) 1922, 285 F. 15, certiorari denied 43 S.Ct. 248, 260 U.S. 749, 67 L.Ed. 494. Conspiracy 43(12)

Proof of the formation by the defendant and others, more than three years before the indictment, of such a conspiracy as that charged in the indictment and of an overt act thereunder prior to the three years is insufficient to sustain the charge of a conspiracy within the three years. Ware v. U. S., C.C.A.8 (Neb.) 1907, 154 F. 577, 84 C.C.A. 503, 12 Am.Ann.Cas. 233, certiorari denied 28 S.Ct. 255, 207 U.S. 588, 52 L.Ed. 353. Criminal Law 150

An indictment under former § 88 of this title [now this section] need not have averred with exact accuracy the date of the formation or beginning of the conspiracy, nor, if the date was alleged, need it have been proved as laid, but it was sufficient if the conspiracy was proved to have existed prior to the commission of the overt act charged, and that it continued to exist at that time. Bradford v. U.S., C.C.A.5 (La.) 1907, 152 F. 617, 81 C.C.A. 607. Conspiracy 43(12)

An indictment charging that the defendants conspired together "before and on July 30, 1901" could not be sustained by evidence showing, as an act constituting with others the conspiracy something done subsequent to that date. Browne v. U.S., C.C.A.2 (N.Y.) 1905, 145 F. 1, 76 C.C.A. 31, certiorari denied 26 S.Ct. 755, 200 U.S. 618, 50 L.Ed. 623.

Where indictment was returned on Oct. 4, 1983, government had burden of proving that conspiracy was still in existence on Oct. 4, 1978 and that at least one overt act in furtherance of conspiracy was performed after that date. U.S. v. Walls, N.D.Ga.1984, 577 F.Supp. 772. Criminal Law 330

524. ---- Bankruptcy offenses, matters to be proved, evidence

Indictment alleging conspiracy to conceal bankrupt's merchandise and cash received from sale thereof did not limit proof of concealment of cash to that received from concealed merchandise. Gerson v. U.S., C.C.A.8 (Okla.) 1928, 25 F.2d 49. Conspiracy 43(12)

Government in prosecution for conspiracy to conceal bankrupt's assets had burden to show facts and circumstances excluding every other hypothesis than that of guilt. Gerson v. U.S., C.C.A.8 (Okla.) 1928, 25 F.2d 49. Conspiracy 47(3.1)

525. ---- Collusion, matters to be proved, evidence

Collusion to perform illegal acts need not be established by direct evidence thereof, but may be inferred from acts of the parties. Ilseng v. U.S., C.C.A.9 (Cal.) 1941, 120 F.2d 823, certiorari denied 62 S.Ct. 125, 314 U.S. 665, 86 L.Ed. 532, certiorari denied 62 S.Ct. 126, 314 U.S. 665, 86 L.Ed. 532. Conspiracy 47(2)

Where indictment for conspiracy to interfere and hamper government in obtaining competitive bids for automobiles charged the making and submitting of collusive bids, such charge of collusion could not be established by mere showing of making of identical bids, since collusion would occur only if there was dishonest pretense of bid. U.S. v. Belisle, W.D.Wash.1951, 107 F.Supp. 283. Conspiracy 47(6)

526. ---- Customs offenses, matters to be proved, evidence

Where, in a trial of a member of a firm for conspiracy to defraud the customs revenue, there was proof that his firm was concerned in such conspiracy, it was not mere partnership in the firm, nor relation to some acts, that the law required to be done in the course of passing goods through the custom house, that was demanded to show guilty connection with the conspiracy, but it must inevitably appear that such connection was used, or such relation assumed for the purposes of subserving the conspiracy. U.S. v. Cohn, C.C.S.D.N.Y.1904, 128 F. 615, affirmed 145 F. 1, 76 C.C.A. 31, certiorari denied 26 S.Ct. 755, 200 U.S. 618, 50 L.Ed. 623. Conspiracy 40

527. ---- Defrauding United States, matters to be proved, evidence

Ratzlaf intent element, requiring knowledge that conduct was unlawful, need not be proven to establish that defendant conspired to defraud United States. U.S. v. Khalife, C.A.6 (Mich.) 1997, 106 F.3d 1300, rehearing and suggestion for rehearing en banc denied, certiorari denied 118 S.Ct. 685, 522 U.S. 1045, 139 L.Ed.2d 632. Conspiracy 33(1)

Statutes under which contractors were convicted of conspiring to defraud and defrauding federal agencies did not require minimum loss to victim, and Government's utter failure to prove any loss thus did not mean that defendants would go scot-free, but merely that Government would not be awarded bonus punishment points. U.S. v. Schneider, C.A.7 (Ill.) 1991, 930 F.2d 555. Conspiracy 28(3); Fraud 68.10(1)

In prosecution for conspiracy to defraud government, it was not necessary for government to prove that government employees received portion of bribe; it was enough that they knowingly caused bribe to be made to third person. U.S. v. Ackal, C.A.5 (La.) 1983, 706 F.2d 523, rehearing denied 711 F.2d 1054. Conspiracy 33(2.1)

Since agreement itself, along with other evidence of criminal or fraudulent purposes, demonstrates that parties to it manifest a disposition to criminal activity and pose inherent danger to community by their concerted mutually enforcing actions, element of compensation is not necessary to guard against danger that innocent will become ensnared in net of conspiracy prosecution, and thus, although anticipated benefit may be evidence of alleged coconspirator's mens rea, a benefit or "stake in the venture" is not element of conspiracy to defraud the United States that must be proved with respect to each conspirator. U. S. v. Shoup, C.A.3 (Pa.) 1979, 608 F.2d 950. Conspiracy 33(1)

When government proceeds under conspiracy-to-defraud clause of this section, it must plead and prove agreement with respect to essential nature of alleged fraud; thus, just as particular offense must be specified under "offense" branch, fraudulent scheme must be alleged and proved under conspiracy-to-defraud clause. U. S. v. Rosenblatt, C.A.2 (N.Y.) 1977, 554 F.2d 36. Conspiracy 43(12)

In order to find defendant guilty of crime of conspiracy to defraud United States by concealing, possessing, and passing counterfeit Federal Reserve notes, government must prove defendant guilty of substantive crime of possessing and passing counterfeit money with intent to defraud, pass, utter, publish, sell or possess or conceal, falsely made, counterfeited, forged or altered obligations of the United States. U. S. v. Crocker, C.A.10 (Okla.) 1975, 510 F.2d 1129. Conspiracy 33(2.1)

Conviction for conspiracy under this section cannot be sustained unless there is proof of agreement to commit offense against United States. Jones v. U. S., C.A.10 (Okla.) 1966, 365 F.2d 87. Conspiracy 47(1)

Once the conspiracy to defraud the government was established it was not necessary to show that fraud was actually perpetrated, since the crime consists of entering into conspiracy and is complete as soon as one or more of conspirators does an overt act to effect the object of the conspiracy. Wagner v. U.S., C.A.5 (Fla.) 1959, 263 F.2d 877. Conspiracy 33(1)

In prosecution for conspiring to defraud the United States by inflating cost basis of tuition rate and increasing cost charged to Veterans Administration for supplies for veterans' training under Servicemen's Readjustment Act of 1944, [see § 1501 et seq. of Title 38], showing of extent to which Veterans Administration had been fooled was not necessary to establish the conspiracy. U. S. v. Weinberg, C.A.3 (Pa.) 1955, 226 F.2d 161, certiorari denied 76 S.Ct. 305, 350 U.S. 933, 100 L.Ed. 815. Conspiracy 33(2.1)

In a prosecution under former § 88 of this title [now this section] it was unnecessary, to warrant conviction of

conspiring to defraud the government, to show that the government was actually defrauded. Stager v. U.S., C.C.A.2 (N.Y.) 1916, 233 F. 510, 147 C.C.A. 396.

In a prosecution for conspiracy to defraud the United States by the execution of straw bail, it was not necessary that the government should prove that the accused did not appear on the day required, since the government was defrauded when the accused were released on the strength of a recognizance, apparently good, but worthless in fact. Radford v. U.S., C.C.A.2 (N.Y.) 1904, 129 F. 49, 63 C.C.A. 491. Conspiracy 33(2.1)

Conspiracy to defraud United States means to interfere with or obstruct one of its lawful governmental functions by deceit, craft or trickery, or at least by means that are dishonest; deceit or trickery is essential to satisfy the defrauding requirement of the statute and when government proceeds under conspiracy-to-defraud clause it must plead and prove an agreement with respect to the essential nature of the alleged fraud. U.S. v. Cogswell, N.D.Cal.1985, 637 F.Supp. 295. Conspiracy 33(1); Conspiracy 43(12)

Although Government need not show actual pecuniary loss to successfully maintain prosecution for fraud, it must show that some legitimate government activity has been hampered. U. S. v. Woll, E.D.Pa.1957, 157 F.Supp. 704. Conspiracy 33(1)

528. ---- Election offenses, matters to be proved, evidence

To sustain a conviction for a conspiracy to procure persons to go into another county to vote illegally, it need not be shown that illegal votes were actually cast or offered, or that any person went into the other county to vote illegally. U.S. v. Wrape, C.C.Ind.1879, 28 F.Cas. 780, No. 16767. Conspiracy 27

529. ---- Immigration offenses, matters to be proved, evidence

In prosecution for conspiracy to violate Alien Registration Act of 1940, § 457(c) of Title 8, by filing application containing false answers, it was necessary for a conviction of any defendant to prove that he gave an answer in his application for registration which he knew to be untruthful. U.S. v. Ausmeier, C.C.A.2 (N.Y.) 1945, 152 F.2d 349. Conspiracy 44.2

530. ---- Liquor offenses, matters to be proved, evidence

In prosecution for conspiracy to violate the internal revenue laws relating to liquor, it was not necessary to a conviction that either the whiskey, manufactured by conspirators or a chemist's analysis thereof be introduced in evidence. Butler v. U. S., C.A.4 (Va.) 1957, 243 F.2d 567. Conspiracy 47(10)

In prosecution for concealing alcohol with intent to defraud the government of tax thereon, while under former § 550 of this title accused need not have been shown to have been present at places where crimes were committed or to know all the details thereof, government had burden to prove that accused did with intent to defraud, aid, abet, counsel, command, induce or procure the removal, deposit or concealment of the particular alcohol and it was insufficient merely to prove that he was a member of conspiracy to manufacture illicit alcohol and that in course of conspiracy the particular crimes were committed by other conspirators. U.S. v. Sall, C.C.A.3 (N.J.) 1940, 116 F.2d 745. Criminal Law 59(3); Internal Revenue 5291.1; Internal Revenue 5307

In prosecution for conspiracy to unlawfully sell and transport intoxicating liquor, evidence need not show a conspiracy to both sell and transport. Anstess v. U.S., C.C.A.7 (Ind.) 1927, 22 F.2d 594. Conspiracy 43(12); Indictment And Information 168

In prosecution under former section for conspiracy to violate the National Prohibition Act, former § 1 et seq. of Title 27, and § 497 of Title 19, government must prove that defendants were parties to crime committed in the

district. Ford v. U.S., C.C.A.9 (Cal.) 1926, 10 F.2d 339, certiorari granted 46 S.Ct. 475, 271 U.S. 652, 70 L.Ed. 1133, affirmed 47 S.Ct. 531, 273 U.S. 593, 71 L.Ed. 793. Conspiracy 44.2; Criminal Law 325

To warrant conviction against two of several defendants for conspiring unlawfully to transport and sell whisky for beverage purposes, in violation of National Prohibition Act, former § 12 of Title 27, government was not required to establish guilt of any other individual defendant. Langley v. U.S., C.C.A.6 (Ky.) 1925, 8 F.2d 815, certiorari denied 46 S.Ct. 204, 269 U.S. 588, 70 L.Ed. 427. Conspiracy 43(12)

Where indictment for conspiracy to violate National Prohibition Act, former § 1 et seq. of Title 27, charged but one combination or conspiracy, which had many different objects, no accused could be convicted thereunder, unless shown to be member of, or party to, such conspiracy. Terry v. U.S., C.C.A.9 (Cal.) 1925, 7 F.2d 28.

In a prosecution for a conspiracy to violate the National Prohibition Act, former § 1 et seq. of Title 27, where the liquor in question was shown by allegation and proof to have been "whisky," its alcoholic content need not have been proved, in view of the provision of former § 4 of Title 27, that "intoxicating liquor" shall be construed to include whisky. Robinson v. U.S., C.C.A.2 (N.Y.) 1923, 290 F. 755, certiorari denied 44 S.Ct. 6, 263 U.S. 700, 68 L.Ed. 513. See, also, Weinstein v. U.S., C.C.A.Mass.1926, 11 F.2d 505.

On an indictment under former § 88 of this title [now this section], the government was not bound to strict proof of the ownership of the rectifying distillery to which it was alleged spirits were unlawfully removed. U. S. v. Smith, C.C.S.D.Ohio 1869, 27 F.Cas. 1144, 2 Bond 323, No. 16322. Conspiracy 43(12); Internal Revenue 5290

To prove a conspiracy to remove whisky without paying the tax, it is only necessary to show that defendants were acting in concert, or with a mutual understanding, to effect the removal without inspection and branding according to law. U.S. v. Noblom, C.C.La.1878, 27 F.Cas. 181, No. 15896.

531. ---- Lottery offenses, matters to be proved, evidence

To warrant conviction of employees of operators of numbers game for conspiracy to evade and defeat payment of federal taxes imposed on lottery operations, a showing of knowledge on part of employees that employers were liable for federal taxes by reason of the gambling operation was an essential ingredient of proof, for without knowledge the intent could not exist. Ingram v. U.S., U.S.Ga.1959, 79 S.Ct. 1314, 360 U.S. 672, 3 L.Ed.2d 1503, rehearing denied 80 S.Ct. 42, 361 U.S. 856, 4 L.Ed.2d 96. Conspiracy 33(7)

532. ---- Mail fraud, matters to be proved, evidence

To complete proof in prosecution for use of mails to defraud, and for conspiracy, it was not necessary to prove intent of defendants to use mails but it was enough to show that mails were actually used, where conspiracy was shown. U. S. v. Tenenbaum, C.A.7 (Ill.) 1964, 327 F.2d 210, certiorari denied 84 S.Ct. 1165, 377 U.S. 905, 12 L.Ed.2d 177. Postal Service 35(6)

To sustain conviction for conspiracy to commit mail fraud, it is sufficient to show that mails were used and that scheme was one which reasonably contemplated use of mails. Fisher v. U. S., C.A.8 (Minn.) 1963, 324 F.2d 775, certiorari denied 84 S.Ct. 1935, 377 U.S. 999, 12 L.Ed.2d 1049, rehearing denied 85 S.Ct. 24, 379 U.S. 873, 13 L.Ed.2d 81, certiorari denied 84 S.Ct. 1936, 377 U.S. 999, 12 L.Ed.2d 1049. Conspiracy 32

In prosecution for using mails to defraud and of conspiring to do so, it was not necessary to prove that defendants schemed to make all representations set forth in the indictment. Ballard v. U.S., C.C.A.9 (Cal.) 1943, 138 F.2d 540, certiorari granted 64 S.Ct. 427, 320 U.S. 733, 88 L.Ed. 434, reversed on other grounds 64 S.Ct. 882, 322 U.S. 78, 88 L.Ed. 1148, on remand 152 F.2d 941. Conspiracy 43(12); Postal Service 48(8)

18 U.S.C.A. § 371

In prosecution for conspiracy to use mails in furtherance of scheme to defraud, with regard to intent to use mails, it is enough to show that mails were used and that scheme was one which reasonably contemplated the use of the mails. Blue v. U. S., C.C.A.6 (Ohio) 1943, 138 F.2d 351, certiorari denied 64 S.Ct. 1046, 322 U.S. 736, 88 L.Ed. 1570, rehearing denied 64 S.Ct. 1259, 322 U.S. 771, 88 L.Ed. 1596, certiorari denied 64 S.Ct. 1046, 322 U.S. 737, 88 L.Ed. 1570. Conspiracy 47(5)

The intent to use the mails to effect a scheme to defraud is a necessary element to establish offense of conspiracy to use the mails to defraud, but such intent is not a necessary element of the substantive offense of using mails to defraud. Guardalibini v. U. S., C.C.A.5 (Ala.) 1942, 128 F.2d 984. Conspiracy 32; Postal Service 35(6)

In prosecution of corporation officers for posting letters in pursuance of scheme to defraud and for conspiracy to use mails to defraud, the prosecution need not prove that the conspiracy included all the misrepresentations laid in the indictment, since there was a "scheme to defraud" and a conspiracy to use the mails in a "scheme to defraud," if defendants united to use the mails for any of the fraudulent misrepresentations charged. U.S. v. Dilliard, C.C.A.2 (N.Y.) 1938, 101 F.2d 829, certiorari denied 59 S.Ct. 484, 306 U.S. 635, 83 L.Ed. 1036. Conspiracy 43(12)

In prosecution for conspiracy to use the mails to defraud, intent to use the mails to effect scheme must be shown in addition to proving a scheme to defraud. Mazurosky v. U.S., C.C.A.9 (Or.) 1939, 100 F.2d 958. Conspiracy 32

The intended use of the mails is a substantive element of the offense, and without proof of such element a conviction cannot be sustained. Burns v. U.S., C.C.A.8 (Okla.) 1922, 279 F. 982. See, also, Morris v. U.S., C.C.A.Ark.1925, 7 F.2d 785, certiorari denied 46 S.Ct. 205, 270 U.S. 640, 70 L.Ed. 775. Conspiracy 32

For conviction of conspiracy to use the mails in furtherance of a scheme to defraud, it is not necessary that the person defrauded should have been, in the formation of the original conspiracy, selected as its victim, nor is is necessary that defendant was present at the time of the defrauding. Shea v. U. S., C.C.A.6 (Ohio) 1918, 251 F. 433, 163 C.C.A. 451, certiorari denied 39 S.Ct. 132, 248 U.S. 581, 63 L.Ed. 431. Conspiracy 32; Postal Service 35(2)

To establish conspiracy under former § 88 of this title [now this section] to commit violation of former § 338 of this title, punishing the use of mails to promote frauds, the government had to prove an intent to defraud and a defrauding by use of the mails. Farmer v. U.S., C.C.A.2 (N.Y.) 1915, 223 F. 903, 139 C.C.A. 341. Conspiracy 32

While in an indictment under former § 88 of this title [now this section] for a conspiracy to use the mails to defraud, a fraudulent purpose must have been averred and proved, and where a purpose to defraud two jointly was charged, it must have been proved as laid, where the sending of individual letters to parties named was charged in different counts, an averment in general terms of an intent to defraud these parties did not necessarily import that the conspiracy contemplated a joint defrauding of the whole number named; the parties not being jointly interested in the property which it was the aim to secure. Marrin v. U S, C.C.A.3 (Pa.) 1909, 167 F. 951, 93 C.C.A. 351, certiorari denied 32 S.Ct. 523, 223 U.S. 719, 56 L.Ed. 629.

Where one was tried for conspiring to use the mails to carry out a scheme to defraud, it was sufficient for the government to show that written or printed matter about the scheme charged was mailed to one of the three persons named in the indictment as the persons defendant planned to defraud, and that copies of the same printed matter were sent through the mails to a mailing list throughout the United States. US v. Marrin, E.D.Pa.1908, 159 F. 767, affirmed 167 F. 951, 93 C.C.A. 351, certiorari denied 32 S.Ct. 523, 223 U.S. 719, 56 L.Ed. 629.

Conspiracy to commit mail fraud requires proof of agreement to defraud. U. S. v. Allen, C.D.Cal.1982, 539 F.Supp. 296. Conspiracy 47(5)

18 U.S.C.A. § 371

533. ---- Narcotics offenses, matters to be proved, evidence

Testimony in conspiracy prosecution of two deliveries of narcotics to a defendant, on the instructions of one partner on one occasion and another partner on another occasion would not justify a finding that defendant had thereby made himself a part of whatever narcotics enterprises the partners and their future partners might engage in for the rest of their lives, provided only that these were uninterrupted; the government must present evidence justifying the jury in finding beyond a reasonable doubt that the particular agreement into which defendant entered continued into the period not barred by limitation. U. S. v. Borelli, C.A.2 (N.Y.) 1964, 336 F.2d 376, certiorari denied 85 S.Ct. 647, 379 U.S. 960, 13 L.Ed.2d 555. Conspiracy 47(12)

Government was required to show, in prosecution for conspiracy and narcotic offenses, more than that defendant was acquainted with seller of narcotics or that the two men were friends, and proof that defendant knew seller of narcotics and rode 70 blocks in same vehicle with him was not enough to prove that defendant had been seller's "partner" in the illegal sale of narcotics. U. S. v. Euphemia, C.A.2 (N.Y.) 1958, 261 F.2d 441. Conspiracy 47(12); Controlled Substances 45; Internal Revenue 5291.1

In conspiracy to violate narcotic laws, it is not necessary to prove that a conspirator engaged directly in the buying and selling of narcotics or received a profit therefrom. Poliafico v. U. S., C.A.6 (Ohio) 1956, 237 F.2d 97, certiorari denied 77 S.Ct. 590, 352 U.S. 1025, 1 L.Ed.2d 597, rehearing denied 77 S.Ct. 718, 353 U.S. 931, 1 L.Ed.2d 725. Conspiracy 44.2

In prosecution for conspiracy to violate narcotic laws, where evidence showed that one of the defendants delivered to other defendants a substance that all of them assumed to be heroin and they adulterated it and made samples thereof for customers, it was not necessary for government to prove that substance delivered by defendant was actually heroin in order to convict him of the conspiracy to violate narcotic laws. Poliafico v. U. S., C.A.6 (Ohio) 1956, 237 F.2d 97, certiorari denied 77 S.Ct. 590, 352 U.S. 1025, 1 L.Ed.2d 597, rehearing denied 77 S.Ct. 718, 353 U.S. 931, 1 L.Ed.2d 725. Conspiracy 44.2

In prosecution for a conspiracy to violate narcotic laws, it was not necessary to show financial interest of defendants in conspiracy, since to comply with rule that it must be shown that defendant had a stake in the enterprise, the interest shown could be that of seeking by action to make the venture succeed. Poliafico v. U. S., C.A.6 (Ohio) 1956, 237 F.2d 97, certiorari denied 77 S.Ct. 590, 352 U.S. 1025, 1 L.Ed.2d 597, rehearing denied 77 S.Ct. 718, 353 U.S. 931, 1 L.Ed.2d 725. Conspiracy 40

In prosecution under conspiracy count and under substantive counts for violation of narcotic laws, co-conspirators could be found guilty under substantive counts if one of their members had done the affirmative acts pursuant to and in furtherance of conspiracy. Carrado v. U.S., C.A.D.C.1953, 210 F.2d 712, 93 U.S.App.D.C. 183, certiorari denied 74 S.Ct. 874, 347 U.S. 1018, 98 L.Ed. 1140, certiorari denied 74 S.Ct. 876, 347 U.S. 1020, 98 L.Ed. 1141, certiorari denied 75 S.Ct. 777, 349 U.S. 932, 99 L.Ed. 1262, certiorari denied 76 S.Ct. 310, 350 U.S. 938, 100 L.Ed. 819. Controlled Substances 45

There was sufficient evidence of defendant's participation in drug conspiracy to warrant denial of his motion for acquittal; defendant possessed a beeper, defendant was present at time and place of delivery of cocaine, his actions at time of delivery could be construed to be those of lookout, beeper contract was renewed at same time as that of convicted conspirator, and defendant belonged to same health club as codefendants. U.S. v. Cuervelo, S.D.N.Y.1989, 726 F.Supp. 103, affirmed 930 F.2d 911. Conspiracy 48.1(4)

To establish a conspiracy to violate narcotics laws, proof of actual dealings in narcotics is not required; such conspiracy may be established by adequate proof of unlawful agreement, commission of an overt act in furtherance thereof, and that a defendant knowingly associated himself with the conspiracy; an additional element is knowledge by alleged conspirator of illegal importation of narcotics. U. S. v. Beigel, S.D.N.Y.1966, 254 F.Supp.

923, affirmed 370 F.2d 751, certiorari denied 87 S.Ct. 2049, 387 U.S. 930, 18 L.Ed.2d 989, certiorari denied 87 S.Ct. 2053, 387 U.S. 930, 18 L.Ed.2d 989, certiorari denied 87 S.Ct. 2062, 387 U.S. 936, 18 L.Ed.2d 998. Conspiracy 47(12)

Government is not required to prove name and address of contemplated or prospective purchasers of stimulant or depressant drugs, in prosecution for unlawful sale of drugs. U. S. v. Cummings, S.D.N.Y.1969, 49 F.R.D. 160. Controlled Substances 34; Controlled Substances 68

534. ---- Securities offenses, matters to be proved, evidence

In prosecution for mail fraud and securities fraud, government is not required to prove that anyone was defrauded or that any investors sustained loss. Farrell v. U. S., C.A.9 (Cal.) 1963, 321 F.2d 409, certiorari denied 84 S.Ct. 631, 375 U.S. 992, 11 L.Ed.2d 478. Postal Service 49(1); Securities Regulation 193

In prosecution for violating Securities Act, § 77q of Title 15, for using the mails to defraud, and for conspiracy to effect scheme to defraud, government was required to prove falsity of statements and representations made to purchasers of securities. Holmes v. U. S., C.C.A.8 (Neb.) 1943, 134 F.2d 125, certiorari denied 63 S.Ct. 1434, 319 U.S. 776, 87 L.Ed. 1722. Securities Regulation 193; Postal Service 49(1)

All the allegations relative to false representations need not be proved as part of scheme to warrant conviction of violating Securities Act, § 77q of Title 15, using the mails to defraud and conspiring to effect scheme to defraud, since a scheme to defraud necessarily consists of numerous elements, no particular one of which need be proved if sufficient is shown to constitute the scheme. Holmes v. U. S., C.C.A.8 (Neb.) 1943, 134 F.2d 125, certiorari denied 63 S.Ct. 1434, 319 U.S. 776, 87 L.Ed. 1722. Securities Regulation 195; Postal Service 48(8)

In prosecution for violating Securities Act, § 77q of Title 15, for using the mails to defraud and for conspiracy to effect scheme to defraud, a charge of falsity of scheme in each count of indictment necessitated proof of fraudulent character of scheme and falsity of representations and a denial of the bona fide character of the scheme. Holmes v. U. S., C.C.A.8 (Neb.) 1943, 134 F.2d 125, certiorari denied 63 S.Ct. 1434, 319 U.S. 776, 87 L.Ed. 1722. Securities Regulation 195; Postal Service 48(8)

In prosecution for conspiracy and use of mails to defraud in sale of stock, all misrepresentations alleged in indictment need not be proved, although some of them must be proved beyond reasonable doubt. Levine v. U.S., C.C.A.9 (Wash.) 1935, 79 F.2d 364. Conspiracy 43(12); Postal Service 48(8)

535. ---- Stolen property, matters to be proved, evidence

When charge was not substantive offense of receiving stolen goods, but was conspiracy to receive stolen goods, government was not required to prove that goods were in fact stolen; all that was necessary as to mens rea was proof of defendants' belief that goods they conspired to purchase were stolen. U.S. v. Rosa, C.A.2 (N.Y.) 1994, 17 F.3d 1531, certiorari denied 115 S.Ct. 211, 513 U.S. 879, 130 L.Ed.2d 140. Conspiracy 24.5; Conspiracy 28(3)

Proof of defendants' knowledge that ring was stolen was not required in prosecution for conspiracy to commit wire fraud in planning to recover from police ring stolen from murder victim; government was only required to prove that defendants were members of conspiracy and sought to obtain ring by fraud in furtherance of that conspiracy. U.S. v. Homick, C.A.9 (Nev.) 1992, 964 F.2d 899. Conspiracy 28(3)

Offense of receiving stolen property, knowing it to be stolen, does not require specific intent; thus, offense of conspiring to receive stolen property also does not require specific intent. U.S. v. Henneberry, C.A.8 (Mo.) 1983, 719 F.2d 941, certiorari denied 104 S.Ct. 1612, 465 U.S. 1107, 80 L.Ed.2d 141. Receiving Stolen Goods 3

18 U.S.C.A. § 371

In prosecution for receiving and possessing stolen goods moving in interstate commerce with value of more than $100, knowing goods have been stolen, and conspiracy to receive and possess such goods, brief custody of stolen pharmaceuticals by detectives at undercover trucking company did not amount to "recovery" of drugs for their rightful owner and eliminate stolen character of goods; rather, use of company's facilities as "drop" for stolen pharmaceuticals merely facilitated surveillance of unlawful transaction and enabled detectives to apprehend ultimate purchaser. U. S. v. Muzii, C.A.2 (N.Y.) 1982, 676 F.2d 919, certiorari denied 103 S.Ct. 139, 459 U.S. 863, 74 L.Ed.2d 118. Receiving Stolen Goods 2

To convict for conspiracy to receive stolen property knowing same to have been stolen in violation of section 2315 of this title, it is not necessary to prove actual knowledge, but only that defendant could reasonably anticipate that property might have been embezzled or stolen in course of interstate transportation. U. S. v. Smith, C.A.5 (Fla.) 1974, 502 F.2d 1250. Conspiracy 47(11)

Convictions of conspiring to defraud the United States by causing Treasury bills to be presented for payment, knowing that they had been stolen, was not defeated, notwithstanding that the United States might not have suffered pecuniary loss from paying stolen bills, in that true owner was required to post indemnity bond when it was repaid pursuant to section 738a of Title 31; conviction could be supported on ground that the legitimate official action and purpose of the United States in raising funds and controlling supply of money through issuance and redemption of short term bearer bills was defeated when the government paid party who had obtained obligations from thief. U. S. v. Jacobs, C.A.2 (N.Y.) 1973, 475 F.2d 270, certiorari denied 94 S.Ct. 116, 414 U.S. 821, 38 L.Ed.2d 53, certiorari denied 94 S.Ct. 131, 414 U.S. 821, 38 L.Ed.2d 53. Conspiracy 33(5)

To justify convictions for conspiracy to receive stolen chattels knowing that the chattels had been stolen while in course of interstate transportation, one of the express or implied terms of the agreement among the conspirators must be to commit the federal offense. Clark v. U.S., C.A.5 (Fla.) 1954, 213 F.2d 63. Conspiracy 28(3)

In prosecution for conspiracy to steal certain goods and chattels from an interstate shipment of freight on truck containing whiskey, with intent to convert same to defendants' own use, testimony by checker at corporation where whiskey was loaded on truck, that carton was filled with whiskey at time it was shipped, was sufficient proof of contents of truck. U.S. v. Nelson, C.A.7 (Ill.) 1950, 185 F.2d 758. Conspiracy 47(11)

Gravamen of charge of conspiracy to transport stolen motor cars in interstate commerce and conceal them while moving in such commerce is an agreement or understanding between two or more of defendants and while certain evidence under such counts charging the substantive offense of transporting and concealing stolen automobiles is identical, much of the evidence necessary to establish conspiracy is not required nor proper for proof of the substantive charge. U.S. v. Sharpe, E.D.Ky.1945, 61 F.Supp. 237, affirmed 164 F.2d 94. Receiving Stolen Goods 8(2); Conspiracy 28(3)

536. ---- Tax offenses, matters to be proved, evidence

Conviction for conspiracy to defraud the United States by impeding the assessment and collection of income tax did not require proof that defendant intended to avoid paying a particular tax, or on the calculation of a particular tax liability. U.S. v. Tucker, C.A.8 (Ark.) 2005, 419 F.3d 719, rehearing and rehearing en banc denied, certiorari denied 126 S.Ct. 1583, 164 L.Ed.2d 301. Conspiracy 33(7)

Intent element of conspiracy to defraud United States by obstructing and impeding the ability of Internal Revenue Service (IRS) to ascertain and collect taxes does not require government to prove that conspirators were aware of criminality of their objective, but it does require government to show that conspirators knew of liability for federal taxes. U.S. v. Collins, C.A.6 (Ky.) 1996, 78 F.3d 1021, rehearing and suggestion for rehearing en banc denied, certiorari denied 117 S.Ct. 189, 519 U.S. 872, 136 L.Ed.2d 127. Conspiracy 33(7)

18 U.S.C.A. § 371

Conspiracy to impede the Internal Revenue Service in the ascertainment, computation and collection of federal income taxes is comprised of three elements: existence of agreement, overt act by one conspirator in furtherance of agreement's objectives, and intent on part of conspirators to agree, as well as to defraud the United States. U.S. v. Vogt, C.A.4 (N.C.) 1990, 910 F.2d 1184, rehearing denied, certiorari denied 111 S.Ct. 955, 498 U.S. 1083, 112 L.Ed.2d 1043, dismissal of habeas corpus affirmed 17 F.3d 1435, certiorari denied 114 S.Ct. 1648, 511 U.S. 1071, 128 L.Ed.2d 367. Conspiracy 33(7)

Conviction for conspiracy and for possession of sugar intended for use in violating internal revenue laws required proof beyond reasonable doubt that defendants acted in concert pursuant to common understanding, that one or more of overt acts charged were committed, that defendants possessed the sugar, and that it was intended for use in violation of internal revenue laws. U. S. v. Ragland, C.A.4 (Md.) 1962, 306 F.2d 732, certiorari denied 83 S.Ct. 504, 371 U.S. 949, 9 L.Ed.2d 498. Conspiracy 47(9); Internal Revenue 5307

In prosecution for conspiracy to evade income taxes, government was not required to prove that the prosecution was not barred by limitations. U.S. v. Keenan, C.A.7 (Ill.) 1959, 267 F.2d 118, certiorari denied 80 S.Ct. 121, 361 U.S. 863, 4 L.Ed.2d 104, rehearing denied 80 S.Ct. 254, 361 U.S. 921, 4 L.Ed.2d 189. Indictment And Information 166

In prosecution for conspiracy to defraud government by filing false tax returns, it is only necessary to show that sum was amount due, and that returns were knowingly false in that respect. Cooper v. U.S., C.C.A.8 (Iowa) 1925, 9 F.2d 216. Conspiracy 43(12)

"Lack of good faith" and "intent to violate the law" embraced in compromise, by corporate taxpayer with commissioner, of all civil and criminal liability for violations of internal revenue laws due to withdrawal and use by taxpayer or its officers, directors and employees of specially denatured alcohol in liniment for sale for internal human use, could be proved without showing scheme between two or more persons and were distinct from crime of conspiracy, and such compromise would not bar prosecution for conspiring to defraud United States by selling, for internal human purposes, liniment made with specially denatured alcohol without payment of taxes thereon. U.S. v. J.R. Watkins Co., D.C.Minn.1954, 127 F.Supp. 97. Internal Revenue 5280

537. ---- Travel and transportation, matters to be proved, evidence

In a prosecution for inducing another to travel by common carrier interstate for the purpose of prostitution and for conspiracy, where proof of interstate transportation was not disputed, what happened after the victim got to her destination was immaterial and the offense was complete when there was transportation of the female in interstate commerce for immoral purposes. Bell v. U.S., C.A.8 (Minn.) 1958, 251 F.2d 490. Prostitution 1

In order to sustain convictions for violation of conspiracy and white slavery statute, § 2421 of this title, it is not necessary that the victim of the transportation be innocent of prior sexual misconduct. Wright v. U.S., C.A.5 (Ga.) 1957, 243 F.2d 569, certiorari denied 78 S.Ct. 45, 355 U.S. 831, 2 L.Ed.2d 43. Conspiracy 28(3)

538. Standard of proof, evidence

To establish intent essential to conviction for conspiracy, evidence of knowledge must be clear and not equivocal, for without knowledge intent cannot exist. Ingram v. U.S., U.S.Ga.1959, 79 S.Ct. 1314, 360 U.S. 672, 3 L.Ed.2d 1503, rehearing denied 80 S.Ct. 42, 361 U.S. 856, 4 L.Ed.2d 96. Conspiracy 47(1)

To establish seller's intent to further, promote, and co-operate in buyer's illegal use of narcotics, evidence of seller's knowledge that buyer purposed unlawful action must be clear and not equivocal. Direct Sales Co. v. U.S., U.S.S.C.1943, 63 S.Ct. 1265, 319 U.S. 703, 87 L.Ed. 1674. Conspiracy 47(2)

18 U.S.C.A. § 371

Conviction for conspiracy to defraud the United States requires that government prove beyond reasonable doubt that defendants agreed to defraud the United States and that one of the conspirators committed overt act in furtherance of conspiracy. U.S. v. Migliaccio, C.A.10 (Okla.) 1994, 34 F.3d 1517. Conspiracy 27; Conspiracy 33(1)

To establish guilt for conspiracy, government must prove beyond reasonable doubt that two or more people agreed to pursue unlawful objective together, that defendant voluntarily agreed to join conspiracy, and that one of members of conspiracy performed overt act to further conspiracy. U.S. v. Faulkner, C.A.5 (Tex.) 1994, 17 F.3d 745, rehearing and rehearing en banc denied 21 F.3d 1110, certiorari denied 115 S.Ct. 193, 513 U.S. 870, 130 L.Ed.2d 125, rehearing dismissed 115 S.Ct. 786, 513 U.S. 1105, 130 L.Ed.2d 679, certiorari denied 115 S.Ct. 663, 513 U.S. 1056, 130 L.Ed.2d 598. Conspiracy 24(1); Conspiracy 27

Government must prove beyond a reasonable doubt that the defendant knew of the conspiracy and that he voluntarily became part of it. U.S. v. Yamin, C.A.5 (La.) 1989, 868 F.2d 130, 10 U.S.P.Q.2d 1300, rehearing denied, certiorari denied 109 S.Ct. 3258, 492 U.S. 924, 106 L.Ed.2d 603. Conspiracy 47(1)

In prosecution on charge of conspiracy to defraud by use of mails, government has burden of proving beyond reasonable doubt that conspiracy to defraud existed, that defendant was party to conspiracy, and that act or acts which would constitute use of mails were performed in furtherance thereof. U. S. v. Lynn, C.A.10 (Wyo.) 1972, 461 F.2d 759. Conspiracy 47(5)

Evidence of defendant's knowledge of purpose of conspiracy must be clear and unequivocal; it may, however, be inferred from circumstances, acts and conduct of parties. U. S. v. Fellabaum, C.A.7 (Ill.) 1969, 408 F.2d 220, certiorari denied 90 S.Ct. 125, 396 U.S. 858, 24 L.Ed.2d 109, certiorari denied 90 S.Ct. 55, 396 U.S. 818, 24 L.Ed.2d 69. Conspiracy 47(2)

While proof of conspiracy may be circumstantial or direct or both, it must convince beyond a reasonable doubt that a conspiracy existed, that the defendant knew it, and that with that knowledge he intentionally did some act or thing to further or carry out that conspiracy. Causey v. U. S., C.A.5 (Ga.) 1965, 352 F.2d 203. Conspiracy 47(2)

Government had burden of submitting to jury sufficient evidence showing beyond reasonable doubt that conspiracy charged existed and that defendants were members thereof. U. S. v. Allegretti, C.A.7 (Ill.) 1964, 340 F.2d 243, on rehearing 340 F.2d 254, certiorari denied 85 S.Ct. 1531, 381 U.S. 911, 14 L.Ed.2d 433, rehearing denied 85 S.Ct. 1800, 381 U.S. 956, 14 L.Ed.2d 728, certiorari denied 85 S.Ct. 1532, 381 U.S. 911, 14 L.Ed.2d 433, certiorari denied 88 S.Ct. 830, 390 U.S. 908, 19 L.Ed.2d 876. Conspiracy 47(1)

A count charging conspiracy is an accusation of a distinct crime, and evidence to support it must be so clear and convincing as to leave no reasonable doubt. U S v. Silva, C.C.A.2 (N.Y.) 1942, 131 F.2d 247. Criminal Law 561(2)

Where guilt in prosecution for using mails to defraud, violation of § 77a et seq. of Title 15, and conspiracy rests upon circumstantial evidence, government has burden of proving its case not only beyond a reasonable doubt, but to exclusion of every reasonable hypothesis of innocence. Beckman v. U. S., C.C.A.5 (La.) 1938, 96 F.2d 15. Conspiracy 47(5); Postal Service 49(11); Securities Regulation 199

The facts proven must be of such a character that, in connection with all explanations given, the jury could rightly think them inconsistent with innocence. Green v. U. S., C.C.A.6 (Ohio) 1925, 8 F.2d 140, 4 Ohio Law Abs. 254.

To establish a conspiracy to violate a certain criminal statute, the evidence must convince the jury that defendants did something more than participate in the substantive offense which was the object of the conspiracy. U.S. v. Heitler, N.D.Ill.1921, 274 F. 401, error dismissed 43 S.Ct. 163, 260 U.S. 703, 67 L.Ed. 472, transferred 43 S.Ct.

185, 260 U.S. 438, 67 L.Ed. 338, affirmed 289 F. 1021, certiorari dismissed 44 S.Ct. 135, 263 U.S. 728, 68 L.Ed. 528. Conspiracy 47

In prosecution for conspiracy to violate Smith Act, § 2385 of this title, by advocating and teaching and helping to organize as Communist Party persons teaching and advocating overthrow of Government by force, burden is on prosecution to prove beyond reasonable doubt existence of conspiracy charged, defendants' knowing and willful membership therein, commission of at least one of overt acts charged within limitation period before filing of indictment, and knowing commission of such act in furtherance of an object or purpose of conspiracy. U. S. v. Schneiderman, S.D.Cal.1952, 106 F.Supp. 906. Conspiracy 47(3.1)

Government had burden of proving defendant, charged with conspiracy, guilty beyond reasonable doubt. U. S. v. Boyer, E.D.Pa.1949, 84 F.Supp. 905. See, also, U.S. v. Silva, C.C.A.N.Y.1942, 131 F.2d 247; Haning v. U.S., C.C.A.Neb.1927, 21 F.2d 508. Criminal Law 561(2)

To justify conviction of conspiracy, it must be found beyond a reasonable doubt that defendant was a party to conspiracy and that unlawful agreement charged continued up to time an overt act was committed. U.S. v. Anderson, S.D.Cal.1942, 45 F.Supp. 943. Criminal Law 561(1)

539. Burden of proof, evidence--Generally

Government was required to prove only conspiracy to commit theft, not conspiracy involving United States, to obtain convictions for conspiracy to commit offense against United States, based on indictment charging conspiracy to violate statute prohibiting theft from Indian tribal organization. U.S. v. Brave Thunder, C.A.8 (N.D.) 2006, 445 F.3d 1062. Conspiracy 28(3)

To show that defendant acted with specific intent, of kind required to support his conviction of conspiring to trade with Cuba in violation of the American-Cuban embargo in place under the Trading with the Enemy Act (TWEA) and the Cuban Assets Control Regulations (CACRs), government had to prove that defendant had general knowledge of the law which forbade his actions and acted with specific intent to circumvent that law, but did not need not prove that defendant had knowledge of specific regulation governing the conduct in question; defendant could not avoid prosecution by claiming that he had not brushed up on the law. U.S. v. Brodie, C.A.3 (Pa.) 2005, 403 F.3d 123. Conspiracy 28(3)

In conspiracy prosecution, not only must Government prove knowledge of illegal objective, it must also prove agreement with coconspirator to pursue that objective as common one. U.S. v. Krasovich, C.A.9 (Ariz.) 1987, 819 F.2d 253. Conspiracy 24(1)

Although government may not have established that defendant knew every detail of conspiracy to commit arson, such was not its burden in conspiracy prosecution. U. S. v. Benmuhar, C.A.1 (Puerto Rico) 1981, 658 F.2d 14, certiorari denied 102 S.Ct. 2927, 457 U.S. 1117, 73 L.Ed.2d 1328, rehearing denied 103 S.Ct. 16, 458 U.S. 1132, 73 L.Ed.2d 1402. Conspiracy 44.2

In prosecution for conspiracy to accept bribes and to aid an inmate's escape wherein defendant claimed that he had been entrapped, it was the government's burden to prove beyond a reasonable doubt that defendant was ready and willing to commit the offense if given an opportunity to do so. U. S. v. Martinez-Carcano, C.A.2 (N.Y.) 1977, 557 F.2d 966. Criminal Law 569

Where conspiracy is charged, Government has burden of establishing that defendant had specific intent to violate substantive statute; required intent is neither less nor more than that necessary to commit substantive crime. U. S. v. Friedman, C.A.8 (Ark.) 1974, 506 F.2d 511, certiorari denied 95 S.Ct. 2407, 421 U.S. 1004, 44 L.Ed.2d 673, rehearing denied 96 S.Ct. 160, 423 U.S. 885, 46 L.Ed.2d 116. Conspiracy 44.2

18 U.S.C.A. § 371

Government has burden of proving that each defendant charged with conspiracy had criminal intent necessary to meet requirements set forth in substantive offense. U. S. v. Downen, C.A.10 (Kan.) 1974, 496 F.2d 314, certiorari denied 95 S.Ct. 177, 419 U.S. 897, 42 L.Ed.2d 142. Conspiracy 44.2

Government carries burden at trial of proving existence of conspiracy alleged, but existence of a criminal conspiracy or an accused's participation in that scheme need not be proven by direct evidence. U. S. v. Overshon, C.A.8 (Mo.) 1974, 494 F.2d 894, certiorari denied 95 S.Ct. 142, 419 U.S. 878, 42 L.Ed.2d 118, certiorari denied 95 S.Ct. 96, 419 U.S. 853, 42 L.Ed.2d 85. Conspiracy 44.2; Conspiracy 47(2)

Where there was no evidence of coercion, fear or duress of any kind, in relation to inculpatory statements made by defendant charged with bank robbery and conspiracy, and where defendant in fact testified that he was told that he had the right to be quiet until he saw a lawyer, government sustained its burden of establishing that there was a voluntary waiver of Miranda rights. U. S. v. Howell, C.A.2 (N.Y.) 1971, 447 F.2d 1114. Criminal Law 414

Initial burden was on defendant to go forward with some evidence, but more than a scintilla, that government informers had induced him to commit offense, but "burden of going forward" was not to be confused with "burden of proof," sometimes referred to as "risk of nonpersuasion." U. S. v. Groessel, C.A.5 (Tex.) 1971, 440 F.2d 602, certiorari denied 91 S.Ct. 2263, 403 U.S. 933, 29 L.Ed.2d 713. Criminal Law 330

Where evidence of guilt was overwhelming and evidence as to overt acts three, four and five was clearly sufficient, appellant, who had failed to urge below his argument that submission to jury of first overt act alleged in conspiracy count of indictment was error, failed to sustain burden of demonstrating "plain error." U. S. v. Mahler, C.A.2 (N.Y.) 1966, 363 F.2d 673. Criminal Law 1035(1)

While no formal agreement is necessary to constitute conspiracy to commit substantive offense under this section, government has burden of proving what amounts to an agreement to do so. U. S. v. Zuideveld, C.A.7 (Ill.) 1963, 316 F.2d 873, certiorari denied 84 S.Ct. 671, 376 U.S. 916, 11 L.Ed.2d 612. Conspiracy 44.2

In prosecution for unlawful sales of government owned wool being made into army jackets, a conspiracy to defraud the government and for making of false statements about disposition of wool serge furnished manufacturer, test establishing the yardage of serge going into a jacket did not bring into play safeguards of net worth tax evasion cases and burden was not on the government to prove the amount of wool which permissibly went into scrap but was never returned or accounted for, since the problem related not to the defendants' property but to the property of the government, title to which remained in the government throughout the manufacturing process and which defendants had a duty to return in form of finished articles or scrap. U. S. v. Fabric Garment Co., C.A.2 (N.Y.) 1958, 262 F.2d 631, certiorari denied 79 S.Ct. 1117, 359 U.S. 989, 3 L.Ed.2d 978. Criminal Law 388.2

Where both an illegal sale of narcotics and a conspiracy to make such a sale were induced by a Government agent, Government had burden of proving a sufficient excuse for the inducement, in reply to defense of entrapment. United States v. Masciale, C.A.2 (N.Y.) 1956, 236 F.2d 601, certiorari granted 77 S.Ct. 568, 352 U.S. 1000, 1 L.Ed.2d 545, affirmed 78 S.Ct. 827, 356 U.S. 386, 2 L.Ed.2d 859, rehearing denied 78 S.Ct. 1367, 357 U.S. 933, 2 L.Ed.2d 1375. Criminal Law 327

In prosecution for violation of narcotics law, § 4704 et seq. of Title 26 [I.R.C.1939] and for conspiracy to commit the offense, burden was upon the government to prove the conspiracy charge, by either direct proof or circumstantial evidence or both. U. S. v. Iacullo, C.A.7 (Ill.) 1955, 226 F.2d 788, certiorari denied 76 S.Ct. 435, 350 U.S. 966, 100 L.Ed. 839. Conspiracy 47(12)

In prosecution for possessing goods with knowledge that they had been stolen while a part of an interstate shipment of freight, and for conspiring to commit such offense, burden was on defendant to show that other goods were substituted for those stolen while the goods were in the possession of the thieves from whom defendant allegedly

purchased the goods, as contended by defendant. U.S. v. Smolin, C.A.2 (N.Y.) 1950, 182 F.2d 782. Receiving Stolen Goods 8(1)

On a charge of conspiracy to violate former § 338 of this title, the government had to sustain a heavier burden of proof as to intent of the conspirators, not only to defraud, but also to defraud by the use of the mails. Blue v. U. S., C.C.A.6 (Ohio) 1943, 138 F.2d 351, certiorari denied 64 S.Ct. 1046, 322 U.S. 736, 88 L.Ed. 1570, rehearing denied 64 S.Ct. 1259, 322 U.S. 771, 88 L.Ed. 1596, certiorari denied 64 S.Ct. 1046, 322 U.S. 737, 88 L.Ed. 1570. Conspiracy 44.2

In prosecution for conspiracy to conceal and for concealing alcohol with intent to defraud government of tax thereon, the government's burden of proof to sustain charge of concealment might have been met by production of direct evidence of participation or by production of circumstantial evidence from which participation might fairly be inferred. U.S. v. Sall, C.C.A.3 (N.J.) 1940, 116 F.2d 745. Criminal Law 552(1); Internal Revenue 5307

Where government established prima facie case of conspiracy to violate a statute, burden of adducing evidence to rebut presumption of knowledge of existence of statute rested on defendants, since lack of knowledge was a fact peculiar within defendants' knowledge. Cruz v. U S, C.C.A.10 (N.M.) 1939, 106 F.2d 828. Conspiracy 44.2

In a prosecution for conspiracy to unlawfully transport liquor, the burden is not on the government to prove that defendants did not have a permit for the transportation. Goldberg v. U.S., C.C.A.5 (Ga.) 1924, 297 F. 98. Intoxicating Liquors 224

It is the duty of the government to prove guilty knowledge of accused. Stirlen v. U.S., C.C.A.7 (Ill.) 1910, 183 F. 302, 105 C.C.A. 514, certiorari denied 31 S.Ct. 721, 220 U.S. 617, 55 L.Ed. 611.

Where an indictment for conspiracy to willfully misapply the funds of a national bank charged that the conspiracy had been formed between officers of the bank and defendant K. to willfully misapply the bank funds to the use of a company, and that such conspiracy was accomplished by defendant K. in drawing and accepting a draft in behalf of the company, and in depositing the draft in the bank, and obtaining credit therefor in the company's account, to effect the object of the conspiracy, the burden was on the government to prove that the conspiracy as alleged was entered into, that defendant K. was a party to it, and that the acts referred to were done by him to effect the object of the conspiracy. Prettyman v. U. S., C.C.A.6 (Ohio) 1910, 180 F. 30, 103 C.C.A. 384. Banks And Banking 257(2); Conspiracy 44.2

Petitioner failed to show that there was a fundamental legal error in his conviction for conspiracy, based on underlying substantive offense of honest services wire fraud, as would warrant relief through writ of error coram nobis, where information charged petitioner with a federal crime, and petitioner agreed to the underlying facts of that crime at plea hearing; facts included in information and conceded at plea hearing provided a rational basis for a plausible inference that petitioner, a public official whose job included issuing search warrants, intended to engage in a scheme to deprive state of his honest services. U.S. v. George, D.Mass.2006, 436 F.Supp.2d 274. Criminal Law 1451

The government, on indictment for conspiracy to defraud government, had burden of proving beyond reasonable doubt the material allegations of the indictment by which defendants were charged. U.S. v. Belisle, W.D.Wash.1951, 107 F.Supp. 283. Criminal Law 561(2)

In prosecution for conspiracy to violate § 2385 of this title, burden of proof was on defendants to show alleged tapping of defendants' telephone wires by the government. U.S. v. Frankfeld, D.C.Md.1951, 100 F.Supp. 934. Criminal Law 394.5(4)

18 U.S.C.A. § 371

In prosecution for conspiracy to violate and for violation of espionage laws, burden was on the government to establish that evidence it intended to offer to substantiate the charges, sprang from independent sources, untainted by and not traceable to unlawful wire tapping of telephones. U.S. v. Coplon, S.D.N.Y.1950, 88 F.Supp. 921. Criminal Law 394.5(4)

In prosecution under indictment charging that named individual as employee of national banking association misapplied funds of bank and that three other individuals did abet him and that all conspired to misapply bank funds, burden would be on government to submit proper proofs to sustain its charges. U.S. v. Jacobson, D.C.N.J.1940, 34 F.Supp. 214. Banks And Banking 257(3)

Evidence was sufficient to find defendant guilty of mail fraud and conspiracy to commit mail fraud; government was not required, in order to establish intent to defraud, to prove that victim lost money or that defendant wanted victim to lose money. U.S. v. Easton, C.A.8 (S.D.) 2002, 54 Fed.Appx. 242, 2002 WL 31814951, Unreported. Conspiracy 47(5); Postal Service 35(5); Postal Service 49(11)

540. ---- Withdrawal from conspiracy, burden of proof, evidence

Burden of proof for withdrawal from conspiracy is on defendant. U.S. v. Payne, C.A.6 (Ohio) 1992, 962 F.2d 1228, rehearing denied, certiorari denied 113 S.Ct. 306, 506 U.S. 909, 121 L.Ed.2d 229, certiorari denied 113 S.Ct. 811, 506 U.S. 1033, 121 L.Ed.2d 684.

Burden of proving withdrawal from conspiracy rests upon defendant; defendant must take affirmative action, either making clean breast to authorities or communicating his withdrawal in manner reasonably calculated to reach coconspirators, and mere cessation of activities is not enough. U.S. v. Granados, C.A.8 (Neb.) 1992, 962 F.2d 767, denial of post-conviction relief reversed 168 F.3d 343. Conspiracy 40.4; Conspiracy 44.2

In conspiracy prosecution, burden is on defendant, having once been member of conspiracy, to demonstrate his withdrawal. U. S. v. Boyd, C.A.8 (Minn.) 1979, 610 F.2d 521, certiorari denied 100 S.Ct. 1052, 444 U.S. 1089, 62 L.Ed.2d 777. Conspiracy 44.2

Burden of proof of withdrawal from a conspiracy rests on the allegedly withdrawing defendant. U. S. v. James, C.A.2 (N.Y.) 1979, 609 F.2d 36, certiorari denied 100 S.Ct. 1082, 445 U.S. 905, 63 L.Ed.2d 321. Conspiracy 44.2

Period of conspiracy was matter for trial and for proof and burden was on defendant to show his disassociation from conspiracy, once he had been connected with it, and he could not narrow period of conspiracy merely by relating count charging conspiracy to substantive counts. Strauss v. U. S., C.A.5 (Fla.) 1963, 311 F.2d 926, certiorari denied 83 S.Ct. 1299, 373 U.S. 910, 10 L.Ed.2d 412. Conspiracy 44.2

A confederate, once shown to have been such, has burden of satisfying jury that he has withdrawn from the enterprise in order to escape conviction. U.S. v. Cohen, C.C.A.2 (N.Y.) 1944, 145 F.2d 82, certiorari denied 65 S.Ct. 553, 323 U.S. 799, 89 L.Ed. 637, certiorari denied 65 S.Ct. 553, 323 U.S. 799, 89 L.Ed. 638, certiorari denied 65 S.Ct. 554, 323 U.S. 800, 89 L.Ed. 638. Conspiracy 44.2

In prosecution for conspiracy to defraud the United States of taxes on distilled spirits wherein there was evidence that the conspiracy had actually continued after the time the accused considered that it had terminated, accused had duty to prove his disassociation from the conspiracy after the time on which he relied, and testimony for government concerning events which took place after that date was admissible. U.S. v. Novick, C.C.A.2 (N.Y.) 1941, 124 F.2d 107, certiorari denied 62 S.Ct. 795, 315 U.S. 813, 86 L.Ed. 1212, rehearing denied 62 S.Ct. 913, 315 U.S. 830, 86 L.Ed. 1224. Conspiracy 44.2; Conspiracy 45

Defendant has burden of proving withdrawal from conspiracy in order to avoid admission of overt acts occurring after alleged withdrawal. U.S. v. Burger, D.Kan.1991, 773 F.Supp. 1430. Conspiracy 44.2

Burden of proof as to withdrawal from a conspiracy is on the defendant. U. S. v. Lowell, D.C.N.J.1980, 490 F.Supp. 897, affirmed 649 F.2d 950. Conspiracy 44.2

Defendant who was alleged to be coconspirator or co-schemer in stock manipulation conspiracy had burden of establishing defense of withdrawal, and, where both conspiracy and nonconspiracy counts of indictment were facially proper, question of whether defense of withdrawal was established was singularly inappropriate for pretrial decision on motion to dismiss and would be left for jury. U. S. v. Bloom, E.D.Pa.1977, 78 F.R.D. 591. Criminal Law 330; Indictment And Information 144.2

541. Presumptions, evidence--Generally

Presumptions of guilt of conspiracy are not lightly to be indulged from mere meetings. U. S. v. Di Re, U.S.N.Y.1948, 68 S.Ct. 222, 332 U.S. 581, 92 L.Ed. 210. Conspiracy 44.2

Government failed to rebut presumption, arising from facts set forth by defendant, that the narcotics conspiracy for which he had been previously convicted and the narcotics conspiracy of which he was convicted at present trial were in fact one conspiracy so that the second conspiracy conviction could not stand. U. S. v. Mallah, C.A.2 (N.Y.) 1974, 503 F.2d 971, certiorari denied 95 S.Ct. 1425, 420 U.S. 995, 43 L.Ed.2d 671. Criminal Law 295

It would not be presumed that government investigators had tampered with jars of whiskey admitted into evidence in prosecution for conspiracy to sell distilled spirits not evidencing required revenue stamps and for making such unlawful sales. O'Quinn v. U. S., C.A.10 (Okla.) 1969, 411 F.2d 78. Criminal Law 322

Defendant cannot be found guilty merely by association, and his contacts with alleged coconspirators are presumed innocent unless circumstances indicate otherwise. U. S. v. Kompinski, C.A.2 (N.Y.) 1967, 373 F.2d 429. Conspiracy 40; Conspiracy 44.2

Presumptions of guilt of conspiracy are not lightly to be indulged from mere meetings. Rent v. U.S., C.A.5 (Tex.) 1954, 209 F.2d 893. Conspiracy 44.2

Where the specific results of a conspiracy have been shown, the conspirators are presumed to have intended the natural consequences of their acts. U.S. v. General Motors Corp., C.C.A.7 (Ind.) 1941, 121 F.2d 376, certiorari denied 62 S.Ct. 105, 314 U.S. 618, 86 L.Ed. 497, motion granted 62 S.Ct. 124, 314 U.S. 579, 86 L.Ed. 469, rehearing denied 62 S.Ct. 178, 314 U.S. 710, 86 L.Ed. 566. Criminal Law 24

The defendants charged with conspiring to obstruct passage of mail, and who were shown to have conspired to stop railroad transportation, were presumed to have intended consequences of their acts which interfered with mails, and hence proof of express agreement to interfere therewith was unnecessary. U.S. v. Anderson, C.C.A.7 (Ill.) 1939, 101 F.2d 325, certiorari denied 59 S.Ct. 822, 307 U.S. 625, 83 L.Ed. 1502, certiorari denied 59 S.Ct. 822, 307 U.S. 625, 83 L.Ed. 1503, certiorari denied 59 S.Ct. 823, 307 U.S. 625, 83 L.Ed. 1503, certiorari denied 59 S.Ct. 823, 307 U.S. 625, 83 L.Ed. 1504, certiorari denied 59 S.Ct. 823, 307 U.S. 625, 83 L.Ed. 1504, 86 L.Ed. 1504, certiorari denied 59 S.Ct. 824, 307 U.S. 625, 83 L.Ed. 1505, certiorari denied 59 S.Ct. 824, 307 U.S. 625, 83 L.Ed. 1506, certiorari denied 59 S.Ct. 825, 307 U.S. 625, 83 L.Ed. 1506, certiorari denied 59 S.Ct. 825, 307 U.S. 625, 83 L.Ed. 1507, certiorari denied 59 S.Ct. 825, 307 U.S. 625, 83 L.Ed. 1508, certiorari denied 59 S.Ct. 826, 307 U.S. 625, 83 L.Ed. 1508, certiorari denied 59 S.Ct. 826, 307 U.S. 625, 83 L.Ed. 1509. Conspiracy 44.2; Criminal Law 24

Where an indictment for conspiracy avers that defendant conspired with persons to the grand jury unknown, and

there is no evidence to the contrary, the truth of the averment of want of knowledge by the grand jury will be presumed. Roberts v. U.S., C.C.A.9 (Wash.) 1918, 248 F. 873, 160 C.C.A. 631, certiorari denied 38 S.Ct. 583, 247 U.S. 522, 62 L.Ed. 1247. Conspiracy 44.2

In habeas corpus proceedings to procure discharge from an order directing petitioners to be taken to another district for trial, allegations of the indictment against petitioners that the overt acts were committed in furtherance of the object of the conspiracy cannot be presumed to be false in the absence of conclusive evidence in conflict therewith. Witte v. Shelton, C.C.A.8 (Mo.) 1917, 240 F. 265, 153 C.C.A. 191, certiorari denied 37 S.Ct. 745, 244 U.S. 660, 61 L.Ed. 1376. Habeas Corpus 85.1(1)

542. ---- Continuation of conspiracy, presumptions, evidence

Conspiracy is presumed to continue until there is affirmative evidence of abandonment, withdrawal, disavowal, or defeat of purposes of conspiracy. U.S. v. Bloch, C.A.9 (Cal.) 1982, 696 F.2d 1213. Conspiracy 44.2

Where conspiracy contemplates continuity of purpose and continued performance of acts, it is presumed to exist until there has been affirmative showing that it has terminated and its members continue to be conspirators until there has been affirmative showing that they have withdrawn. U. S. v. Hamilton, C.A.6 (Ky.) 1982, 689 F.2d 1262, certiorari denied 103 S.Ct. 753, 459 U.S. 1117, 74 L.Ed.2d 971, certiorari denied 103 S.Ct. 754, 459 U.S. 1117, 74 L.Ed.2d 971. Conspiracy 44.2

The time when a continuing conspiracy terminates depends upon particular facts and purposes of the conspiracy, and an unlawful conspiracy is presumed to continue until its objectives or purpose is achieved. U. S. v. Armocida, C.A.3 (Pa.) 1975, 515 F.2d 29, certiorari denied 96 S.Ct. 111, 423 U.S. 858, 46 L.Ed.2d 84. Conspiracy 44.2

A conspiracy is completed when the intended purpose thereof is accomplished, but where a conspiracy contemplates a continuity of purpose and a continued performance of acts, it is presumed to exist until there has been an affirmative showing that it has terminated, and its members continue to be conspirators until there has been an affirmative showing that they have withdrawn. U. S. v. Mayes, C.A.6 (Ky.) 1975, 512 F.2d 637, certiorari denied 95 S.Ct. 2629, 422 U.S. 1008, 45 L.Ed.2d 670, certiorari denied 96 S.Ct. 69, 423 U.S. 840, 46 L.Ed.2d 59. Conspiracy 40; Conspiracy 44.2

Fact that government did not offer proof of continued existence of conspiracy at regular intervals during period charged did not require finding that it had ended, absent some affirmative act of withdrawal. U. S. v. Cantone, C.A.2 (N.Y.) 1970, 426 F.2d 902, certiorari denied 91 S.Ct. 55, 400 U.S. 827, 27 L.Ed.2d 57. Conspiracy 44.2

Conspiracy, especially one which contemplates a continuity of purpose and a continued performance of acts, is presumed to continue until there has been affirmative showing that it has terminated, and its members continue to be conspirators until there has been an affirmative showing that they have withdrawn. U. S. v. Etheridge, C.A.6 (Tenn.) 1970, 424 F.2d 951, certiorari granted 91 S.Ct. 462, 400 U.S. 991, 27 L.Ed.2d 437, certiorari denied 91 S.Ct. 463, 400 U.S. 993, 27 L.Ed.2d 442, certiorari denied 91 S.Ct. 464, 400 U.S. 1000, 27 L.Ed.2d 452, rehearing denied 91 S.Ct. 885, 401 U.S. 926, 27 L.Ed.2d 830, certiorari dismissed 91 S.Ct. 2174, 402 U.S. 547, 29 L.Ed.2d 102, rehearing denied 92 S.Ct. 32, 404 U.S. 875, 30 L.Ed.2d 122. Conspiracy 44.2

A presumption existed that conspiracy which was shown to exist continued. U. S. v. Baxa, C.A.7 (Ill.) 1965, 340 F.2d 259, certiorari granted 85 S.Ct. 1556, 381 U.S. 353, 14 L.Ed.2d 681. Criminal Law 315

A conspiracy, once established, is presumed to continue until the contrary is demonstrated. U. S. v. Bentvena, C.A.2 (N.Y.) 1963, 319 F.2d 916, certiorari denied 84 S.Ct. 345, 375 U.S. 940, 11 L.Ed.2d 271, rehearing denied 90 S.Ct. 894, 397 U.S. 928, 25 L.Ed.2d 108, rehearing denied 84 S.Ct. 515, 375 U.S. 989, 11 L.Ed.2d 476,

certiorari denied 84 S.Ct. 346, 375 U.S. 940, 11 L.Ed.2d 271, rehearing denied 84 S.Ct. 1162, 377 U.S. 913, 12 L.Ed.2d 183, certiorari denied 84 S.Ct. 353, 375 U.S. 940, 11 L.Ed.2d 272, certiorari denied 84 S.Ct. 354, 375 U.S. 940, 11 L.Ed.2d 272, certiorari denied 84 S.Ct. 355, 375 U.S. 940, 11 L.Ed.2d 272, certiorari denied 84 S.Ct. 360, 375 U.S. 940, 11 L.Ed.2d 272. See, also, Continental Baking Co. v. U.S., C.A.Tenn.1960, 281 F.2d 137; U.S. v. Stromberg, C.A.N.Y.1959, 268 F.2d 256, certiorari denied 80 S.Ct. 119, 123, 361 U.S. 863, 4 L.Ed.2d 102, certiorari denied 80 S.Ct. 124, 130, 361 U.S. 863, 868, 4 L.Ed.2d 102, 108; U.S. v. Labate, D.C.Pa.1958, 168 F.Supp. 531, affirmed 270 F.2d 122, certiorari denied 80 S.Ct. 211, 361 U.S. 900, 4 L.Ed.2d 157. Conspiracy 44.2

Arrest of conspirator removes presumption of continuing participation by him in conspiracy. U.S. v. Consolidated Laundries Corp., C.A.2 (N.Y.) 1961, 291 F.2d 563. Conspiracy 44.2

Where defendants were shown to have become parties to conspiracy on particular date, it was presumed that they continued in conspiracy until they proved that they had left it. United States v. Reina, C.A.2 (N.Y.) 1957, 242 F.2d 302, certiorari denied 77 S.Ct. 1294, 354 U.S. 913, 1 L.Ed.2d 1427, rehearing denied 78 S.Ct. 9, 355 U.S. 852, 2 L.Ed.2d 61. Criminal Law 315

Where a conspiracy contemplates a continuity of purpose and a continuation of performance of acts in furtherance of its express objectives, that single conspiracy continues in operation at law until there is a showing that the conspiracy has ended. Silkwood v. Kerr-McGee Corp., W.D.Okla.1978, 460 F.Supp. 399, affirmed 637 F.2d 743, certiorari denied 102 S.Ct. 132, 454 U.S. 833, 70 L.Ed.2d 111. Conspiracy 1.1

Once membership in a conspiracy is proved, there is a presumption that membership continued unless there is affirmative evidence of withdrawal offered by defendant. U. S. v. Bentvena, S.D.N.Y.1960, 193 F.Supp. 485. See, also, U.S. v. Ogull, D.C.N.Y.1957, 149 F.Supp. 272. Criminal Law 315

543. Inferences, evidence--Generally

Charges of conspiracy are not to be made out by piling inference upon inference. Ingram v. U.S., U.S.Ga.1959, 79 S.Ct. 1314, 360 U.S. 672, 3 L.Ed.2d 1503, rehearing denied 80 S.Ct. 42, 361 U.S. 856, 4 L.Ed.2d 96. See, also, Direct Sales Co. v. U.S., S.C.1943, 63 S.Ct. 1265, 319 U.S. 703, 87 L.Ed. 1674; Causey v. U.S., C.A.Ga.1965, 352 F.2d 203. Conspiracy 47(1)

Each element of conspiracy may be inferred from circumstantial evidence. U.S. v. Faulkner, C.A.5 (Tex.) 1994, 17 F.3d 745, rehearing and rehearing en banc denied 21 F.3d 1110, certiorari denied 115 S.Ct. 193, 513 U.S. 870, 130 L.Ed.2d 125, rehearing dismissed 115 S.Ct. 786, 513 U.S. 1105, 130 L.Ed.2d 679, certiorari denied 115 S.Ct. 663, 513 U.S. 1056, 130 L.Ed.2d 598. Conspiracy 47(2)

Crime of conspiracy is rarely susceptible of proof by direct evidence, but may be inferred from circumstantial evidence. U. S. v. Shelton, C.A.7 (Ill.) 1982, 669 F.2d 446, certiorari denied 102 S.Ct. 1989, 456 U.S. 934, 72 L.Ed.2d 454. Conspiracy 47(2)

Guilt of conspiracy cannot be inferred from the mere presence of a defendant at the scene of the crime or the mere association with members of a criminal conspiracy. U. S. v. Graham, C.A.8 (Iowa) 1977, 548 F.2d 1302. Conspiracy 44.2

Charges of conspiracy are not to be made out by piling inference on inference, and when first or basic inference is impermissibly drawn, it cannot thereafter serve to support other inferences on which a subsequent finding is based. U. S. v. Grow, C.A.4 (Va.) 1968, 394 F.2d 182, certiorari denied 89 S.Ct. 118, 393 U.S. 840, 21 L.Ed.2d 111, certiorari denied 89 S.Ct. 120, 393 U.S. 840, 21 L.Ed.2d 111. Conspiracy 47(1)

An otherwise innocent act of relatively slight moment may, when viewed in context of surrounding circumstances, justify inference of complicity. U. S. v. Ragland, C.A.2 (Conn.) 1967, 375 F.2d 471, certiorari denied 88 S.Ct. 860, 390 U.S. 925, 19 L.Ed.2d 987. Criminal Law 59(5)

Speed with which defendant, charged with conspiracy to import narcotic drugs, proffered alleged coconspirator in Mexico as a supplier once original deal with another alleged supplier fell through, and his subsequent success, afforded some warrant for inference that they had a long-standing arrangement. U. S. v. Padilla, C.A.2 (N.Y.) 1967, 374 F.2d 996. Criminal Law 427(5)

Conspiracy may not be inferred from mere association, and trial judge must guard against such possibility by scrutinizing evidence as to each defendant before submitting case to jury. U. S. v. Hickey, C.A.7 (Ill.) 1966, 360 F.2d 127, certiorari denied 87 S.Ct. 284, 385 U.S. 928, 17 L.Ed.2d 210. Conspiracy 44.2; Conspiracy 48.1(1)

Although witnesses did not in every instance state both street and city when testifying to addresses, venue in Northern District of Illinois was clearly established in conspiracy case by many references to events occurring in Chicago and Cicero, Illinois, so as to permit jury to infer that offense was committed where venue was laid. U. S. v. Lukasik, C.A.7 (Ill.) 1965, 341 F.2d 325, certiorari denied 85 S.Ct. 1770, 381 U.S. 938, 14 L.Ed.2d 702. Criminal Law 564(1)

Any conspiracy can ordinarily only be proved by inferences drawn from relevant and competent circumstantial evidence, including conduct of defendants charged. Esco Corp. v. U. S., C.A.9 (Or.) 1965, 340 F.2d 1000. Conspiracy 47(2)

Common purpose and plan may be inferred from development and collocation of circumstances. Marroso v. U. S., C.A.5 (Fla.) 1964, 331 F.2d 601, certiorari denied 85 S.Ct. 185, 379 U.S. 899, 13 L.Ed.2d 174, certiorari denied 85 S.Ct. 193, 379 U.S. 899, 13 L.Ed.2d 174, rehearing denied 85 S.Ct. 437, 379 U.S. 951, 13 L.Ed.2d 549, rehearing denied 85 S.Ct. 436, 379 U.S. 951, 13 L.Ed.2d 549. Conspiracy 44.2

Conspiracy cannot be established by mere inferences no more valid than others equally supported by reason and experience. Reiss v. U. S., C.A.1 (Mass.) 1963, 324 F.2d 680, certiorari denied 84 S.Ct. 667, 376 U.S. 911, 11 L.Ed.2d 609. Conspiracy 47(1)

Guilt of conspiracy may not be inferred from mere association. Evans v. U. S., C.A.9 (Cal.) 1958, 257 F.2d 121, certiorari denied 79 S.Ct. 98, 358 U.S. 866, 3 L.Ed.2d 99, rehearing denied 79 S.Ct. 221, 358 U.S. 901, 3 L.Ed.2d 150. Conspiracy 47(1)

In prosecution for uttering and passing counterfeit Kingdom of Belgium bonds, with intent to defraud, and for conspiring to negotiate similar bonds, wherein counterfeit nature of four bonds placed in evidence was directly proved, jury was entitled to infer from circumstances proved that remaining 240 bonds were also counterfeit, where 159 of them bore numbers of bonds, which had prior to that time been cancelled by perforation, as shown by business records kept in normal course of business by Belgium government's fiscal agent. U.S. v. Kaye, C.A.2 (N.Y.) 1958, 251 F.2d 87, certiorari denied 78 S.Ct. 702, 356 U.S. 919, 2 L.Ed.2d 714. Conspiracy 47(3.1); Counterfeiting 18

Conspiracy, being seldom capable of proof by direct testimony, may be inferred from things actually done, and it is enough if minds of parties meet and unite in an understanding way with a single design to accomplish a common purpose, which may be established by circumstantial evidence or by deduction from facts from which natural inference arises that overt acts were in furtherance of a common design, intent and purpose. U.S. v. Morris, C.A.7 (Ill.) 1955, 225 F.2d 91, certiorari denied 76 S.Ct. 179, 350 U.S. 901, 100 L.Ed. 792, rehearing denied 76 S.Ct. 300, 350 U.S. 943, 100 L.Ed. 823. Conspiracy 47(2)

Generally, a conspiracy can be established only from the acts and conducts of the conspirators and the general inferences deducible therefrom, and such evidence will be sufficient if it logically and consistently points to and supports the charge. Butler v. U. S., C.A.10 (Okla.) 1952, 197 F.2d 561. Conspiracy 47(1)

The connection with conspiracy of acts of co-conspirator apart from and unknown to the others may be inferred from such circumstances in evidence as legitimately tend to sustain inference that the overt acts were in furtherance of the common design, intent, and purpose. U. S. v. Randall, C.C.A.7 (Ind.) 1947, 164 F.2d 284, certiorari denied 68 S.Ct. 729, 333 U.S. 856, 92 L.Ed. 1136, rehearing denied 68 S.Ct. 901, 333 U.S. 878, 92 L.Ed. 1153, certiorari denied 68 S.Ct. 733, 333 U.S. 856, 92 L.Ed. 1136. Conspiracy 41

Generally, a conspiracy is established by circumstances and conclusions that reasonably flow from conduct of conspirators, but conspiracy must be established by competent evidence, direct or circumstantial. Bacon v. U.S., C.C.A.10 (Okla.) 1942, 127 F.2d 985. Conspiracy 47(2)

A common purpose sufficient to sustain conviction for conspiracy may be inferred where parties concerned are pursuing the same object and adopt means leading to the same unlawful result. U.S. v. Potash, C.C.A.2 (N.Y.) 1941, 118 F.2d 54, certiorari denied 61 S.Ct. 1103, 313 U.S. 584, 85 L.Ed. 1540. Conspiracy 44.2

Natural and reasonable inference from facts and circumstances is sufficient to sustain conviction for conspiracy. Anstess v. U.S., C.C.A.7 (Ind.) 1927, 22 F.2d 594. Conspiracy 47(2)

In prosecution for conspiracy to violate National Prohibition Act, former § 1 et seq. of Title 27, evidence that liquors landed in the secrecy of night were intoxicating and fit for beverage, was unnecessary, such inference being warranted by attendant circumstances. McDonnell v. U.S., C.C.A.1 (Mass.) 1927, 19 F.2d 801, certiorari denied 48 S.Ct. 114, 275 U.S. 551, 72 L.Ed. 421.

Conspiracy to conceal assets from trustee in bankruptcy may be shown by inference. Carter v. U.S., C.C.A.8 (Mo.) 1927, 19 F.2d 431. Conspiracy 47

Conspiracy may be determined by inference from the facts proved, to make a case for the jury. Alkon v. U.S., C.C.A.1 (Mass.) 1908, 163 F. 810, 90 C.C.A. 116.

A conspiracy may be inferred where it is shown that any two or more of the parties charged, aimed, by their acts, to accomplish the same unlawful purposes or object, one performing one part and another another part of the same, so as to complete it, although they never met together to concert the means, or to give effect to the design. U S v. Sacia, D.C.N.J.1880, 2 F. 754. Conspiracy 47

A single conversation may be innocent or reflect no illicit purpose, and by itself permit no inference of wrongful conduct; even a discussion apparently relating to illicit activity followed by removal and delivery by one of conversing participants to the other of a brown paper bag may have no particular significance, but when considered with other incidents, some of them clandestine, all related in purpose and subject, and followed by actual delivery of a substantial quantity of narcotics, each incident not only gains color from the others, but may permit a reasonable inference they were in furtherance of a conspiratorial objective. U. S. v. Beigel, S.D.N.Y.1966, 254 F.Supp. 923, affirmed 370 F.2d 751, certiorari denied 87 S.Ct. 2049, 387 U.S. 930, 18 L.Ed.2d 989, certiorari denied 87 S.Ct. 2053, 387 U.S. 930, 18 L.Ed.2d 989, certiorari denied 87 S.Ct. 2062, 387 U.S. 936, 18 L.Ed.2d 998. Conspiracy 47(12)

Inference of conspiracy may be drawn from simultaneous doing of similar acts by persons connected with same corporation. U. S. v. Outer Harbor Dock & Wharf Co., S.D.Cal.1954, 124 F.Supp. 337. Conspiracy 44.2

A conspiracy to advocate and teach necessity and duty of overthrowing United States Government by force or

conspirators' intent to cause or bring about such end by such means as speedily as circumstances permit, cannot be inferred by jury from alleged conspirators' expressions of opinions deemed by jurors to be crudely intemperate, to contain falsehoods, or to be designed to embarrass government. U. S. v. Schneiderman, S.D.Cal.1952, 106 F.Supp. 906. Conspiracy 28(3)

In conspiracy prosecution, direct evidence when available supplies the necessary foundations on which guilt of the offense charged may be properly predicated, but it is principally the reasonable deductions and irresistible inferences of the trier of facts arising from such premises that may justify his conclusion of the illegality of the questioned joint purpose. U.S. v. General Petroleum Corp. of Cal., S.D.Cal.1940, 33 F.Supp. 95. Conspiracy 47(2)

544. ---- Existence of conspiracy, inferences, evidence

Existence of a conspiracy may be proved by circumstantial evidence and may be inferred from concert of action. U.S. v. Yamin, C.A.5 (La.) 1989, 868 F.2d 130, 10 U.S.P.Q.2d 1300, rehearing denied, certiorari denied 109 S.Ct. 3258, 492 U.S. 924, 106 L.Ed.2d 603. Conspiracy 44.2; Conspiracy 47(2)

Existence of an agreement constituting a conspiracy need not be proved by direct evidence but may be inferred from the actions of the parties. U. S. v. Wrehe, C.A.8 (S.D.) 1980, 628 F.2d 1079. Conspiracy 47(2)

To establish a conspiracy, government need not prove the existence of a formal agreement; agreement may be inferred from the acts of the parties and other circumstantial evidence indicating concert of action for accomplishment of a common purpose. U. S. v. Martin, C.A.9 (Cal.) 1977, 567 F.2d 849. Conspiracy 47(1); Conspiracy 47(2)

Proof of conspiracy must ordinarily rest upon inference drawn from competent circumstantial evidence. Miller v. U. S., C.A.9 (Ariz.) 1967, 382 F.2d 583, certiorari denied 88 S.Ct. 1108, 390 U.S. 984, 19 L.Ed.2d 1285, rehearing denied 88 S.Ct. 2037, 391 U.S. 971, 20 L.Ed.2d 888. Conspiracy 47(2)

Associations formed among those accomplished in criminal endeavor are seldom manifested by clear and direct evidence and proof of existence of such conspiracies must rest upon inferences drawn from relevant and competent circumstantial evidence. Rodriguez v. U. S., C.A.5 (Fla.) 1967, 373 F.2d 17. Conspiracy 47(2)

In conspiracy prosecution, existence of agreement or joint assent of minds may be inferred by jury from other facts proved. McClanahan v. U.S., C.A.5 (Tex.) 1956, 230 F.2d 919, certiorari denied 77 S.Ct. 33, 352 U.S. 824, 1 L.Ed.2d 47. Conspiracy 44.2

Existence of conspiracy may be inferred from circumstantial evidence. Stillman v. U.S., C.A.9 (Cal.) 1949, 177 F.2d 607. See, also, Braverman v. U.S., C.C.A.Mich.1942, 125 F.2d 283, reversed on other grounds 63 S.Ct. 99, 317 U.S. 49, 87 L.Ed. 23; U.S. v. Laughman, C.A.4 (S.C.) 1980, 618 F.2d 1067, certiorari denied 100 S.Ct. 3018, 447 U.S. 925, 65 L.Ed.2d 1117. Conspiracy 47(2)

The existence of a conspiracy may be shown by inference. Israel v. U. S., C.C.A.6 (Ohio) 1925, 3 F.2d 743, 3 Ohio Law Abs. 416. See, also, Jelke v. U.S., C.C.A.Ill.1918, 255 F. 264; Smith v. U.S., Mo.1907, 157 F. 721, 85 C.C.A. 353, certiorari denied 28 S.Ct. 569, 208 U.S. 618, 52 L.Ed. 647. Conspiracy 47(1); Criminal Law 559

545. ---- Agreement, inferences, evidence

Although agreement between conspirators and defendant is essential element of conspiracy conviction, agreement may be inferred from concert of action. U. S. v. Berry, C.A.5 (Ala.) 1981, 644 F.2d 1034. Conspiracy 24(1)

The agreement of the conspirators need not be proved by direct evidence; it can be inferred from the facts and circumstances of the case. U. S. v. Bankston, C.A.5 (Tex.) 1979, 603 F.2d 528. Conspiracy 47(2)

No proof of formal agreement is necessary to establish an unlawful conspiracy; conspiracy may be proved by inferences arising from concerted actions of parties working toward a common design. U. S. v. Anderson, C.A.6 (Tenn.) 1965, 352 F.2d 500, certiorari denied 86 S.Ct. 1576, 384 U.S. 955, 16 L.Ed.2d 550. Conspiracy 47(1)

Mutual consent need not be bottomed on express agreement, for any conformance to agreed or contemplated pattern of conduct will warrant inference of conspiracy; exchange of words is not required, and even lack of action may support inference. Esco Corp. v. U. S., C.A.9 (Or.) 1965, 340 F.2d 1000. Conspiracy 44.2

Although purchase or sale of contraband may warrant inference in conspiracy prosecution of an agreement to commit crime going well beyond the particular transaction, a sale or a purchase is not a sufficient basis for inferring agreement to cooperate with opposite parties for whatever period they continue to deal in this type of contraband, unless some such understanding is evidenced by other conduct which accompanies or supplements the transaction. U. S. v. Borelli, C.A.2 (N.Y.) 1964, 336 F.2d 376, certiorari denied 85 S.Ct. 647, 379 U.S. 960, 13 L.Ed.2d 555. Conspiracy 47(3.1)

No direct proof of agreement is essential in criminal conspiracy cases and evidence taken as a whole is proper basis for drawing necessary inferences. United States v. Pagano, C.A.2 (N.Y.) 1955, 224 F.2d 682, certiorari denied 76 S.Ct. 137, 350 U.S. 884, 100 L.Ed. 779. Conspiracy 47(1)

A joining of intentions of the parties into a conspiracy may be established by inference from evidence of relationships and conduct and other probative circumstances. Phelps v. U. S., C.C.A.8 (Minn.) 1947, 160 F.2d 858, rehearing denied 161 F.2d 940, certiorari denied 68 S.Ct. 1525, 334 U.S. 860, 92 L.Ed. 1780. Conspiracy 47(2)

546. ---- Participation, inferences, evidence

Agreement between defendants to accomplish objective of conspiracy of impeding operation of Federal Home Loan Bank Board (FHLBB), could be inferred from evidence that defendants joined in structuring condominium transactions and preparing necessary documentation in such a way as to conceal one defendant's participation from FHLBB. U.S. v. Molinaro, C.A.9 (Cal.) 1993, 11 F.3d 853, certiorari denied 115 S.Ct. 668, 513 U.S. 1059, 130 L.Ed.2d 602. Conspiracy 44.2

Although defendant's mere proximity to scene of crime is insufficient to establish his knowing participation in conspiracy, seemingly innocent acts, when viewed in proper context, may support inference of guilt. U.S. v. Buena-Lopez, C.A.9 (Ariz.) 1993, 987 F.2d 657. Conspiracy 47(1)

Although mere proximity to scene of illicit activity is not sufficient to establish involvement in a conspiracy, a defendant's presence may support such an inference when viewed in context with other evidence. U.S. v. Thomas, C.A.9 (Mont.) 1989, 887 F.2d 1341. Conspiracy 40

Participation in conspiracy need not be proved by direct evidence, but may be inferred from actions of accused or by circumstantial evidence of a scheme. U.S. v. Carter, C.A.11 (Fla.) 1985, 760 F.2d 1568. Conspiracy 47(1); Conspiracy 47(2)

Once conspiracy is proved, slight evidence is all that is required to connect defendant with the conspiracy. U. S. v. Beecroft, C.A.9 (Cal.) 1979, 608 F.2d 753. Conspiracy 47(1)

Conspiracy is almost always a matter of inferences deduced from the acts of the accused. U. S. v. Barrentine,

C.A.5 (Ala.) 1979, 591 F.2d 1069, rehearing denied 599 F.2d 1054, certiorari denied 100 S.Ct. 521, 444 U.S. 990, 62 L.Ed.2d 419. Conspiracy 47(2)

In prosecution under indictment charging aiding and abetting the interstate transportation of falsely made and forged securities and conspiracy to commit the substantive offenses, where the underlying scheme was to purchase grain from grainaries in five states, using as payment falsely made and forged cashier's checks, and then to quickly resell the grain to other grain dealers, it was a reasonable inference that each participant must have known that the scheme could not achieve its desired end by his action alone. U. S. v. Parnell, C.A.10 (Okla.) 1978, 581 F.2d 1374, certiorari denied 99 S.Ct. 852, 439 U.S. 1076, 59 L.Ed.2d 44. Conspiracy 44.2

Membership in a conspiracy to defraud and requisite knowledge may be based upon reasonable inferences and circumstantial evidence. U.S. v. Becker, C.A.5 (Tex.) 1978, 569 F.2d 951, rehearing denied 576 F.2d 931, certiorari denied 99 S.Ct. 188, 439 U.S. 865, 58 L.Ed.2d 174, certiorari denied 99 S.Ct. 726, 439 U.S. 1048, 58 L.Ed.2d 708. Conspiracy 47(4)

The slight evidence necessary to connect any given defendant with an established conspiracy must be of quality which will reasonably support conclusion that particular defendant in question willfully participated in the unlawful plan with intent to further some object or purpose of conspiracy; common purpose and plan need not be proved by direct evidence but may be inferred from development and collocation of circumstances. U. S. v. Freie, C.A.9 (Ariz.) 1976, 545 F.2d 1217, certiorari denied 97 S.Ct. 1645, 430 U.S. 966, 52 L.Ed.2d 356. Conspiracy 47(1); Conspiracy 47(2)

Once existence of agreement or common scheme of conspiracy is shown, usually by inference from relevant and competent circumstantial evidence, slight evidence is all that is required to connect particular defendant with such conspiracy. U. S. v. Sanchez, C.A.5 (Tex.) 1975, 508 F.2d 388, certiorari denied 96 S.Ct. 45, 423 U.S. 827, 46 L.Ed.2d 44. Conspiracy 47(1)

Though a single transaction with, or function performed for, a representative of the core group as a narcotics conspiracy may under some circumstances be insufficient to warrant inference of knowledge of the extensive nature of the core group's activities, it would be unrealistic to assume that major producers, importers, wholesalers or retailers did not know that the actions are inextricably linked to a large ongoing plan or conspiracy. U. S. v. Cirillo, C.A.2 (N.Y.) 1974, 499 F.2d 872, certiorari denied 95 S.Ct. 638, 419 U.S. 1056, 42 L.Ed.2d 653. Conspiracy 44.2

The driving of automobile in which one of conspirators as well as another party rode was insufficient evidence from which jury could reasonably infer that driver intended to participate in conspiracy or knew of conspiracy and associated himself with it. U. S. v. Baker, C.A.7 (Ind.) 1974, 499 F.2d 845, certiorari denied 95 S.Ct. 659, 419 U.S. 1071, 42 L.Ed.2d 667. Conspiracy 48.1(1)

From defendant's continued close association with codefendant, his direct participation in a check kite in early stages of codefendant's manipulations, and his efforts in later stages to reassure several bankers worried about overdrafts, the jury could reasonably conclude that defendant was and continued to be a conspirator with codefendant in a scheme to defraud, notwithstanding defendant's claim that he was related to codefendant and the corporations against whose accounts checks were drawn only as an attorney and that evidence relied upon by government was as consistent with his lack of knowledge about and participation in the conspiracy as with guilt. U. S. v. Alper, C.A.3 (Pa.) 1971, 449 F.2d 1223, certiorari denied 92 S.Ct. 1248, 405 U.S. 988, 31 L.Ed.2d 453, rehearing denied 92 S.Ct. 1605, 406 U.S. 911, 31 L.Ed.2d 822. Conspiracy 47(4)

Mere presence at scene of offense when accused is likely to be aware that offense is to occur may be sufficient to base an inference of complicity if such presence either facilitates or permits the unlawful act. U. S. v. Ragland, C.A.2 (Conn.) 1967, 375 F.2d 471, certiorari denied 88 S.Ct. 860, 390 U.S. 925, 19 L.Ed.2d 987. Criminal Law

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59(3)

Guilt of conspiracy may not be inferred from mere association. Causey v. U. S., C.A.5 (Ga.) 1965, 352 F.2d 203. Conspiracy 44.2

Evidence in prosecution for conspiring to counterfeit silver certificates permitted jury to infer that both defendants conspired to counterfeit bills with intent to defraud. U. S. v. Lukasik, C.A.7 (Ill.) 1965, 341 F.2d 325, certiorari denied 85 S.Ct. 1770, 381 U.S. 938, 14 L.Ed.2d 702. Conspiracy 47(3.1)

Participation in criminal conspiracy need not be proved by direct evidence; a common purpose and plan may be inferred from a development and collocation of circumstances. U. S. v. Zuideveld, C.A.7 (Ill.) 1963, 316 F.2d 873, certiorari denied 84 S.Ct. 671, 376 U.S. 916, 11 L.Ed.2d 612. See, also, Thogmartin v. U.S., C.A.Iowa 1963, 313 F.2d 589; Harney v. U.S., C.A.Mass.1962, 306 F.2d 523, certiorari denied 83 S.Ct. 254, 371 U.S. 911, 9 L.Ed.2d 171; Pittsburgh Plate Glass Co. v. U.S., C.A.Va.1958, 260 F.2d 397, affirmed 79 S.Ct. 1237, 360 U.S. 395, 3 L.Ed.2d 1323, rehearing denied 80 S.Ct. 42, 361 U.S. 855, 4 L.Ed.2d 94; Poliafico v. U.S., C.A.Ohio 1956, 237 F.2d 97, certiorari denied 77 S.Ct. 590, 352 U.S. 1025, 1 L.Ed.2d 597, rehearing denied 77 S.Ct. 718, 353 U.S. 931, 1 L.Ed.2d 725. Conspiracy 47(2)

To prove an over-all single conspiracy, government need not prove that each accused knew identity and function of all his alleged co-conspirators or that all worked together consciously to achieve a desired end, and proof that defendant was aware that he was not alone in plotting with common conspirators to violate law is sufficient to raise necessary inference that he had joined in an over-all agreement. Daily v. U. S., C.A.9 (Cal.) 1960, 282 F.2d 818, on rehearing 293 F.2d 33. Conspiracy 47(1)

Where defendant upon his arrest for conspiracy to violate narcotic laws had $2,000 in cash on his person although he had not been employed for four or five months but he refused to explain his possession of money and stated to police officers that they knew what they were talking about and he was not going to say any more, such direct refusal to exculpate oneself after arrest could not be considered an inference, standing alone, to prove participation in conspiracy. Chavez v. U. S., C.A.9 (Cal.) 1960, 275 F.2d 813. Conspiracy 47(12)

When two men join together to commit single robbery one may infer from their common participation in robbery that they have conspired to commit the robbery but in a multiparty conspiracy with actors performing many different tasks in many places, inference does not necessarily follow from one contact with one member of conspiracy. United States v. Aviles, C.A.2 (N.Y.) 1960, 274 F.2d 179, certiorari denied 80 S.Ct. 1057, 362 U.S. 974, 4 L.Ed.2d 1009, certiorari denied 80 S.Ct. 1057, 362 U.S. 974, 4 L.Ed.2d 1010, certiorari denied 80 S.Ct. 1058, 362 U.S. 974, 4 L.Ed.2d 1010, certiorari denied 80 S.Ct. 1059, 362 U.S. 974, 4 L.Ed.2d 1010, rehearing denied 80 S.Ct. 1610, 363 U.S. 858, 4 L.Ed.2d 1739, certiorari denied 80 S.Ct. 1068, 362 U.S. 982, 4 L.Ed.2d 1015, certiorari denied 80 S.Ct. 1071, 362 U.S. 982, 4 L.Ed.2d 1016, certiorari denied 80 S.Ct. 1073, 362 U.S. 982, 4 L.Ed.2d 1016. Conspiracy 44.2

Accused's participation or knowledge of conspiracy might not be inferred from his casual and unexplained meetings with other conspirators charged. Dennert v. U.S., C.C.A.6 (Ky.) 1945, 147 F.2d 286. Conspiracy 44.2

To warrant conviction of conspiracy, accused's participation therein need not be shown by direct evidence, but his connection therewith may be inferred from such facts and circumstances in evidence as legitimately tend to sustain such inference. Braverman v. U.S., C.C.A.6 (Mich.) 1942, 125 F.2d 283, certiorari granted 62 S.Ct. 1037, 316 U.S. 653, 86 L.Ed. 1733, reversed on other grounds 63 S.Ct. 99, 317 U.S. 49, 87 L.Ed. 23. See, also, U.S. v. Glasser, et al., C.C.A.Ill.1941, 116 F.2d 690, modified on other grounds 62 S.Ct. 457, 315 U.S. 60, 86 L.Ed. 680; U.S. v. Manton, C.C.A.N.Y.1938, 107 F.2d 834, certiorari denied 60 S.Ct. 590, 309 U.S. 664, 84 L.Ed. 1012; U.S. v. Weinberg, D.C.Pa.1955, 129 F.Supp. 514, affirmed 226 F.2d 161, certiorari denied 76 S.Ct. 305, 350 U.S. 933,

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100 L.Ed. 815. Conspiracy 47(2)

In prosecution for conspiracy to defraud the revenue through the operation of an unregistered and therefore untaxed still, fact that certain unknown parties were coconspirators might be inferred from circumstances and was not required to be directly proved. U.S. v. Harrison, C.C.A.3 (N.J.) 1941, 121 F.2d 930, certiorari denied 62 S.Ct. 124, 314 U.S. 661, 86 L.Ed. 530. Conspiracy 44.2

Single act or conversation can suffice to connect defendant to conspiracy if that act leads to reasonable inference of intent to participate in unlawful enterprise. U.S. v. Sims, N.D.Ill.1992, 808 F.Supp. 620. Conspiracy 47(1)

While jury is free to draw inference that defendants are guilty of conspiracy to possess illegal drugs with intent to distribute from their presence on board vessel carrying large quantity of same, that presence is not always conclusive and must be considered with other factors such as size of vessel, closeness of relationship between captain and crew, absence of equipment necessary to vessel's proper use, witnessed participation of crew members, obviousness of drugs, inculpatory statements made after apprehension, and suspicious conduct by crew before apprehension. U.S. v. Perez, S.D.Fla.1986, 645 F.Supp. 887. Conspiracy 44.2

Person does not become liable as a conspirator unless he knows of the existence of the conspiracy, agrees to become a party, and with that knowledge commits some act in furtherance thereof, and such knowledge and participation may be inferred from circumstances and acts and conduct of the parties. U. S. v. Kensil, E.D.Pa.1961, 195 F.Supp. 115, affirmed 295 F.2d 489, certiorari denied 82 S.Ct. 439, 368 U.S. 967, 7 L.Ed.2d 396 . Conspiracy 24.5; Conspiracy 47(1)

Presence of female defendant at a distillery site raised a statutory presumption sufficient to authorize her conviction for conspiracy to violate the law respecting distilled spirits. U. S. v. Kensil, E.D.Pa.1961, 195 F.Supp. 115, affirmed 295 F.2d 489, certiorari denied 82 S.Ct. 439, 368 U.S. 967, 7 L.Ed.2d 396. Conspiracy 44.2

547. ---- Knowledge and intent, inferences, evidence

Prosecution did not negligently ignore indications that ink expert overstated his participation in initial ink tests, for purposes of defendants' motion for a new trial; the absence of expert's name on the forensic report was not necessarily suspicious, nor was it inconsistent with his representation that he worked with another employee, expert's explanations of initial failure to test the ink content of the computer dash did nothing to put prosecutors on notice that expert would later misrepresent the extent of his participation in the testing, and co-worker's description of an initial meeting with prosecutors did not establish that she informed them that she alone conducted the ink testing. U.S. v. Stewart, C.A.2 (N.Y.) 2006, 433 F.3d 273. Criminal Law 919(2)

It is not necessary that members of conspiracy know all details of plan, but they must be aware of essential nature and scope of enterprise and intend to participate; such knowledge must be clear and unequivocal, but it can be inferred from circumstances and conduct of parties involved. U. S. v. Conroy, C.A.5 (Fla.) 1979, 589 F.2d 1258, rehearing denied 594 F.2d 241, certiorari denied 100 S.Ct. 60, 444 U.S. 831, 62 L.Ed.2d 40. Conspiracy 40.1

The "single transaction rule" recognizes that single isolated act does not, per se, support inference that defendant had knowledge of, or acquiesced in, larger conspiratorial scheme; it is only when there is no independent evidence tending to prove that defendant had some knowledge of broader conspiracy and when single transaction is not in itself one from which such knowledge might be inferred that single act is insufficient predicate upon which to link actor to overall conspiracy. U. S. v. Magnano, C.A.2 (N.Y.) 1976, 543 F.2d 431, certiorari denied 97 S.Ct. 1100, 429 U.S. 1091, 51 L.Ed.2d 536, certiorari denied 97 S.Ct. 1101, 429 U.S. 1091, 51 L.Ed.2d 536. Conspiracy 40.1

In prosecution for conspiracy to possess and possession of treasury bills, knowing them to have been stolen from a

bank, there was no direct evidence to establish that defendants knew the bills were stolen "from a bank," nor could such knowledge be inferred from possession of the recently stolen bills, since, on the evidence presented, no rational inference could be drawn of participation by defendants in the theft; further, the bills' serial numbers were not sequential. there was nothing on their face to indicate their source, there was no evidence that any defendant was acquainted with the thieves, and such bills may be stolen from institutions other than banks. U. S. v. Tavoularis, C.A.2 (N.Y.) 1975, 515 F.2d 1070. Conspiracy 47(11)

The reasons for stock swindler's admission to defendants that he was indebted to them in the amount of $10,000, arising out of prior securities transaction with swindler, were irrelevant to the charge that defendants conspired with swindler and others to violate federal securities law where Government produced no evidence to support its contention that defendants must have known that prior securities transaction was a swindle thereby giving rise to inference of guilty knowledge on part of defendants in dealings with swindler which formed basis for conspiracy charges. U. S. v. Aloi, C.A.2 (N.Y.) 1975, 511 F.2d 585, certiorari denied 96 S.Ct. 447, 423 U.S. 1015, 46 L.Ed.2d 386. Conspiracy 45

One who deals in large amounts of narcotics is held to knowledge that there is a large criminal organization which is making that deal possible and one is liable as a coconspirator even though one has no personal knowledge of the identity of many of the coconspirators. U. S. v. Mallah, C.A.2 (N.Y.) 1974, 503 F.2d 971, certiorari denied 95 S.Ct. 1425, 420 U.S. 995, 43 L.Ed.2d 671. Conspiracy 40.1; Criminal Law 314

Association with alleged coconspirator may raise strong suspicion of knowledge and intent of accused, but this is not the only reasonable inference which may be drawn from such conduct. U. S. v. Amato, C.A.5 (Fla.) 1974, 495 F.2d 545, rehearing denied 497 F.2d 1368, certiorari denied 95 S.Ct. 333, 419 U.S. 1013, 42 L.Ed.2d 286. Conspiracy 44.2

Intent to defraud, for purposes of proving conspiracy to defraud, can be inferred from one's knowledge that scheme operated in deceitful manner, but such knowledge must be possessed by each individual. U. S. v. Piepgrass, C.A.9 (Idaho) 1970, 425 F.2d 194. Conspiracy 44.2

Association with alleged coconspirator may raise strong suspicion of knowledge and intent to conspire, but such is not the only reasonable inference which may be drawn from such conduct. Miller v. U. S., C.A.9 (Ariz.) 1967, 382 F.2d 583, certiorari denied 88 S.Ct. 1108, 390 U.S. 984, 19 L.Ed.2d 1285, rehearing denied 88 S.Ct. 2037, 391 U.S. 971, 20 L.Ed.2d 888. Conspiracy 44.2

One aiding conspiracy, through sales of supplies or otherwise, is not party unless he knows of conspiracy, and inference of knowledge cannot be drawn from knowledge that buyer will use goods illegally. U. S. v. Carlucci, C.A.3 (Pa.) 1961, 288 F.2d 691, certiorari denied 81 S.Ct. 1920, 366 U.S. 961, 6 L.Ed.2d 1253. Conspiracy 40.1

Jury may reasonably infer existence of an agreement and joint responsibility of defendant in prosecution for conspiracy from any substantial evidence that defendant acted in furtherance of it with knowledge of existence of an unlawful enterprise. Badon v. U.S., C.A.5 (La.) 1959, 269 F.2d 75, certiorari denied 80 S.Ct. 199, 361 U.S. 894, 4 L.Ed.2d 152. Conspiracy 47(2)

"Fraudulent intent", as a mental element of crime, may be inferred from a series of seemingly isolated acts if they are sufficiently numerous, even though each act standing by itself may seem unimportant. Nassan v. U.S., C.C.A.4 (Md.) 1942, 126 F.2d 613. Criminal Law 20

In prosecution for use of mails to defraud, and for conspiracy to use mails to defraud, fact that a defendant was president of company selling securities by means of the mail, that during period in question he was in active charge of company's policies along with two others, that he conferred regularly with them on all matters of general

importance and received frequent reports on all aspects of the company's business, was sufficient to justify an inference that such defendant was not unaware of customary practices of company or conditions of general significance. U.S. v. Mortimer, C.C.A.2 (N.Y.) 1941, 118 F.2d 266, certiorari denied 62 S.Ct. 58, 314 U.S. 616, 86 L.Ed. 496. Conspiracy 47(5); Postal Service 49(11)

Where guilty knowledge is an element in an offense, as in a conspiracy charge and charge of use of mails to defraud, the knowledge must be found from evidence beyond a reasonable doubt, but knowledge may be inferred. Stone v. U. S., C.C.A.6 (Tenn.) 1940, 113 F.2d 70. Conspiracy 47(1); Postal Service 35(5)

In prosecution for conspiracy, the jury may infer agreement and joint responsibility of a defendant from the fact that the defendant aided with knowledge of the existence of the unlawful enterprise. Alexander v. U.S., C.C.A.8 (Mo.) 1938, 95 F.2d 873, certiorari denied 59 S.Ct. 100, 305 U.S. 637, 83 L.Ed. 409, certiorari denied 59 S.Ct. 100, 305 U.S. 637, 83 L.Ed. 410, certiorari denied 59 S.Ct. 99, 305 U.S. 637, 83 L.Ed. 409. See, also, Debeh v. U.S., 1939, 59 S.Ct. 99, 305 U.S. 637, 83 L.Ed. 409; Diehl v. U.S., C.C.A.Mo.1938, 98 F.2d 545. Conspiracy 47(1)

Knowledge of facts on defendant's part, from which an intent to engage in the conspiracy, may be inferred, but mere acquiescence is not sufficient; the evidence must show intentional participation." Jianole v. U. S., C.C.A.8 (Neb.) 1924, 299 F. 496. Conspiracy 47(1)

"An unlawful or wrongful intent may be implied from the intentional doing of an unlawful act." Chadwick v. U. S., C.C.A.6 (Ohio) 1905, 141 F. 225, 72 C.C.A. 343.

"Knowledge that the act which it was the object of the conspiracy to do would be in violation of the law is imputed and need not be proven. Neither do we understand that in courts of the United States the fact that the object of the conspiracy was to do an act which is only mala prohibita requires evidence of knowledge of the unlawfulness of the act purposed by the conspirators." Chadwick v. U. S., C.C.A.6 (Ohio) 1905, 141 F. 225, 72 C.C.A. 343.

One may be a member of the conspiracy without full knowledge of all of the details of the unlawful scheme or the names and identities of all the other alleged conspirators. U. S. v. Masiello, D.C.S.C.1980, 491 F.Supp. 1154. Conspiracy 40.1

In prosecution for conspiracy to violate Title 26, jury was entitled to infer knowledge on part of defendant conspirators that distillation of intoxicating liquor without proper permits and payment of taxes was illegal. U. S. v. Markowitz, E.D.Pa.1959, 176 F.Supp. 681. Criminal Law 313

The intent to promote common design of conspirators may be inferred from the evidence and from acts and declarations of members of conspiracy, made while conspiracy is in progress. U.S. v. Anderson, S.D.Cal.1942, 45 F.Supp. 943. Conspiracy 47(2)

Where the syndic of a firm is charged with conspiracy to defraud the United States in preferring a false claim, there is no conclusive presumption that he had acquired all the knowledge from the books of the firm which a proper execution of his trust would have required him to gain. U.S. v. Noblom, C.C.La.1878, Fed.Cas. No. 15,896.

548. ---- Continuation of conspiracy, inferences, evidence

Jury could infer from possession of large number of guns on date of arrest that at least some of them had been possessed for substantial period of time, and therefore that defendants had possessed guns on or before date of robbery. U. S. v. Ravich, C.A.2 (N.Y.) 1970, 421 F.2d 1196, certiorari denied 91 S.Ct. 69, 400 U.S. 834, 27 L.Ed.2d 66. Criminal Law 404.65; Robbery 23(3)

The participation in a single isolated transaction is an insufficient basis upon which to bottom an inference of continuing participation in a conspiracy. U.S. v. Santore, C.A.2 (N.Y.) 1959, 290 F.2d 51, certiorari denied 81 S.Ct. 745, 365 U.S. 834, 5 L.Ed.2d 743, certiorari denied 81 S.Ct. 745, 365 U.S. 835, 5 L.Ed.2d 745, certiorari denied 81 S.Ct. 746, 365 U.S. 834, 5 L.Ed.2d 743, certiorari denied 81 S.Ct. 749, 365 U.S. 834, 5 L.Ed.2d 744, certiorari denied 81 S.Ct. 752, 365 U.S. 834, 5 L.Ed.2d 744. Conspiracy 40.1

549. ---- Concealment, inferences, evidence

After the central criminal purposes of a conspiracy have been attained, a subsidiary conspiracy to conceal may not be implied from circumstantial evidence showing merely that conspiracy was kept a secret and that conspirators took care to cover up their crime in order to escape detection and punishment, since allowing such conspiracy to conceal to be inferred or implied, from mere overt acts of concealment would result in an awesome widening of the scope of conspiracy prosecutions, and would extend life of conspiracy indefinitely. Grunewald v. U.S., U.S.N.Y.1957, 77 S.Ct. 963, 353 U.S. 391, 1 L.Ed.2d 931. Conspiracy 47(2)

Although case law states that after central criminal purposes of a conspiracy have been attained, a subsidiary conspiracy to conceal may not be implied from circumstantial evidence showing merely that the conspiracy was kept a secret and that the conspirators took care to cover up their crime in order to avoid detection and punishment, such does not mean that acts of concealment can never have significance in furthering a criminal conspiracy. U. S. v. Davis, C.A.1 (R.I.) 1980, 623 F.2d 188. Criminal Law 424(1)

An agreement to conceal ownership is not necessarily a conspiracy in criminal sense, but it closely resembles a conspiracy in that underlying characteristic is secrecy, and like a conspiracy, proof of its existence is ordinarily to be found from the circumstances. Feller v. McGrath, W.D.Pa.1952, 106 F.Supp. 147, affirmed 201 F.2d 670, certiorari denied 74 S.Ct. 24, 346 U.S. 831, 98 L.Ed. 355. Conspiracy 24(1)

550. Circumstantial evidence--Generally

Conspiracy agreement need not be express or formal and may be established by circumstantial evidence. U.S. v. Armstrong, C.A.8 (S.D.) 1994, 16 F.3d 289. Conspiracy 24(1); Conspiracy 47(2)

Because of the secret nature of the crime, conspiracy is especially subject to proof by circumstantial evidence. U. S. v. McPartlin, C.A.7 (Ill.) 1979, 595 F.2d 1321, certiorari denied 100 S.Ct. 65, 444 U.S. 833, 62 L.Ed.2d 43. Conspiracy 47(2)

A fraudulent scheme and conspiracy may be and usually is established by circumstantial evidence, i.e., by inferences from the evidence of the relationship of the parties and by overt acts, conduct and other probative circumstances. U. S. v. Conzemius, C.A.8 (Minn.) 1978, 586 F.2d 97, certiorari denied 99 S.Ct. 1533, 440 U.S. 971, 59 L.Ed.2d 787. Conspiracy 47(2); Fraud 69(5)

In conspiracy prosecution, proof of illegal agreement or common purpose may rest upon either direct evidence or upon inferences drawn from relevant and competent circumstantial evidence. U. S. v. Palacios, C.A.5 (Tex.) 1977, 556 F.2d 1359. Conspiracy 47(2)

It is not necessary that circumstantial evidence exclude every reasonable hypothesis consistent with innocence to support a conviction of conspiracy, but the evidence must nevertheless rise above mere speculation and conjecture and must suffice to prove the elements of a conspiracy beyond a reasonable doubt. U. S. v. Pepe, C.A.3 (Del.) 1975, 512 F.2d 1129. Conspiracy 47(2)

Existence of conspiracy may be proved by circumstantial evidence, by testimony of coconspirator who has turned state's evidence, or by evidence of out-of-court declarations or acts of coconspirator or of defendant himself, and if

totality of these types of evidence is adequate to show concert of action, all parties working together understandingly with single design for accomplishment of common purpose, then conspiracy may be found. U. S. v. Perez, C.A.5 (La.) 1973, 489 F.2d 51, rehearing denied 488 F.2d 552, certiorari denied 94 S.Ct. 3067, 417 U.S. 945, 41 L.Ed.2d 664, certiorari denied 94 S.Ct. 3068, 417 U.S. 945, 41 L.Ed.2d 664. Conspiracy 47(1); Conspiracy 47(2)

Circumstantial evidence is sufficient to sustain a conspiracy conviction; it need not be inconsistent with any conclusion save that of guilt, provided it establishes a case from which a jury can find defendant guilty beyond a reasonable doubt. U. S. v. Chambers, C.A.6 (Ohio) 1967, 382 F.2d 910. Conspiracy 47(2)

Largely circumstantial evidence had as much probative value as direct evidence in proving conspiracy. U. S. v. Marchisio, C.A.2 (N.Y.) 1965, 344 F.2d 653. Conspiracy 47(2)

Proof necessary to support a conviction for conspiracy is necessarily not direct or clear, and nature of offense and secrecy involved require that elements of crime be established by circumstantial evidence. Baker v. U. S., C.A.10 (Colo.) 1964, 329 F.2d 786, certiorari denied 85 S.Ct. 101, 379 U.S. 853, 13 L.Ed.2d 56. Conspiracy 47(1)

A conspiracy may be established by circumstantial evidence, and common purpose and plan may be inferred from development and collocation of circumstances. Rizzo v. U. S., C.A.8 (Mo.) 1962, 304 F.2d 810, certiorari denied 83 S.Ct. 188, 371 U.S. 890, 9 L.Ed.2d 123. See, also, Isaacs v. U.S., C.A.Minn.1962, 301 F.2d 706, certiorari denied 83 S.Ct. 32, 33, 371 U.S. 818, 9 L.Ed.2d 58. Conspiracy 47(2)

Fraudulent scheme and conspiracy may be and usually is established by circumstantial evidence, by inferences from evidence of relationship of parties and by overt acts, conduct and other probative circumstances. Isaacs v. U. S., C.A.8 (Minn.) 1962, 301 F.2d 706, certiorari denied 83 S.Ct. 32, 371 U.S. 818, 9 L.Ed.2d 58, certiorari denied 83 S.Ct. 33, 371 U.S. 818, 9 L.Ed.2d 58. Conspiracy 47(4); Fraud 69(5)

A conspiracy charge may be sustained on circumstantial evidence alone. U. S. v. Frank, C.A.3 (Pa.) 1961, 290 F.2d 195, certiorari denied 82 S.Ct. 38, 368 U.S. 821, 7 L.Ed.2d 26. See, also, Harris v. U.S., C.A.Md.1960, 283 F.2d 923; U.S. v. Amedeo, C.A.N.J.1960, 277 F.2d 375; U.S. v. Monticello, C.A.N.J.1959, 264 F.2d 47; U.S. v. Giuliano, C.A.N.J.1959, 263 F.2d 582; Mott v. U.S., C.A.Ariz.1967, 387 F.2d 610; U.S. v. Brooks, C.A.Cal.1973, 473 F.2d 817. Conspiracy 47(2)

Circumstantial evidence of a conspiracy need not be inconsistent with every conclusion save that of guilt provided that it does establish a case from which jury can find defendant guilty beyond a reasonable doubt. U. S. v. Monticello, C.A.3 (N.J.) 1959, 264 F.2d 47. Conspiracy 47(2)

Criminal plottings are spawned in secrecy, and the nature of conspiracy often precludes proof by direct evidence, and, therefore, a conspiracy charge may be sustained on circumstantial evidence alone. U.S. v. Migliorino, C.A.3 (Pa.) 1956, 238 F.2d 7. Conspiracy 47(2)

Evidence to prove a conspiracy need not be direct and may be circumstantial and it is not necessary that all persons guilty of it should come into it at one time or that they should all know each other, the complete and exact scope of the conspiracy and all of its understandings, ramifications and activities. Duke v. U.S., C.A.5 (Ga.) 1956, 233 F.2d 897. Conspiracy 24(1); Conspiracy 47(2)

A criminal conspiracy may be established by circumstantial evidence, and overt acts and circumstances under which they were committed may be considered with other evidence in support of conspiracy charge. Nilva v. U.S., C.A.8 (Minn.) 1954, 212 F.2d 115, certiorari denied 75 S.Ct. 40, 348 U.S. 825, 99 L.Ed. 650, rehearing denied 75 S.Ct. 203, 348 U.S. 889, 99 L.Ed. 699. Conspiracy 47(2)

Ordinarily, criminal conspiracies must of necessity be established largely by indirect and circumstantial evidence and by inferences largely deducible from the acts and conduct of the conspirators. Madsen v. U. S., C.C.A.10 (Kan.) 1947, 165 F.2d 507. Conspiracy 47(2)

Conspiracy may be proved by circumstantial evidence. Rose v. U.S., C.C.A.9 (Cal.) 1945, 149 F.2d 755. See, also, U.S. v. Polin, C.A.N.J.1963, 323 F.2d 549; U.S. v. McCormick, C.A.Ill.1962, 309 F.2d 367, certiorari denied 83 S.Ct. 724, 372 U.S. 911, 9 L.Ed.2d 719; Ritter v. U.S., C.A.Okl.1956, 230 F.2d 324; Dodson v. U.S., C.A.Ky.1954, 215 F.2d 196; Blumenthal v. U.S., C.C.A.Cal.1946, 158 F.2d 883, rehearing denied 158 F.2d 762, certiorari denied 67 S.Ct. 1307, 331 U.S. 799, 91 L.Ed. 1824, affirmed 68 S.Ct. 248, 332 U.S. 539, 92 L.Ed. 154, rehearing denied 68 S.Ct. 385 (3 mems.), 332 U.S. 856, 92 L.Ed. 425; Ledford v. U.S., C.C.A.Ky., 155 F.2d 574; Ellis v. U.S., C.C.A.Mo.1943, 138 F.2d 612; Pastrano v. U.S., C.C.A.Md.1942, 127 F.2d 43; Robinson v. U.S., C.C.A.Tex.1938, 94 F.2d 752; Marx v. U.S., C.C.A.Minn.1936, 86 F.2d 245; Coates v. U.S., C.C.A.Cal.1932, 59 F.2d 173; Baugh v. U.S., C.C.A.Idaho 1928, 27 F.2d 257, certiorari denied 49 S.Ct. 34, 278 U.S. 639, 73 L.Ed. 554; Susnjar v. U.S., C.C.A.Ohio 1928, 27 F.2d 223; Stack v. U.S., C.C.A.Wash.1928, 27 F.2d 16; Gerson v. U.S., C.C.A.Okl.1928, 25 F.2d 49; U.S. v. Wilson, D.C.W.Va.1927, 23 F.2d 112; Shook v. U.S., C.C.A.Miss.1926, 10 F.2d 151, certiorari denied 46 S.Ct. 482, 271 U.S. 666, 70 L.Ed. 1141; U.S. v. Gilboy, D.C.Pa.1958, 160 F.Supp. 442; U.S. ex rel. Marcus v. Hess, D.C.Pa.1941, 41 F.Supp. 197, reversed on other grounds 127 F.2d 233, rehearing denied 63 S.Ct. 756, 318 U.S. 799, 87 L.Ed. 1163; U.S. v. Haskins, D.C.Mo.1941, 40 F.Supp. 219. Conspiracy 47(2)

Where circumstances warrant jury in finding that conspirators had some unity of purpose or common design and undertaking or some meeting of minds in an unlawful arrangement, conclusion that a conspiracy is established, is justified. American Tobacco Co. v. U.S., C.C.A.6 (Ky.) 1944, 147 F.2d 93, certiorari granted 65 S.Ct. 864, 324 U.S. 836, 89 L.Ed. 1400, certiorari granted 65 S.Ct. 865, 324 U.S. 836, 89 L.Ed. 1400, rehearing denied 65 S.Ct. 1021, 324 U.S. 891, 89 L.Ed. 1438, affirmed 66 S.Ct. 1125, 328 U.S. 781, 90 L.Ed. 1575. Conspiracy 47(2)

Direct proof of conspiracy is not necessary but the offense may be proved by circumstantial evidence and it may be deduced from statements, acts and conduct of the parties. Reavis v. U.S., C.C.A.10 (Okla.) 1939, 106 F.2d 982. Conspiracy 47(2)

A conspiracy may be proved by circumstantial evidence, and overt acts of the parties, with other attending circumstances, may be considered in determining whether a conspiracy exists. U.S. v. Wroblewski, C.C.A.7 (Ind.) 1939, 105 F.2d 444. Conspiracy 45; Conspiracy 47(2)

In prosecution for conspiracy to injure and oppress voters of certain precinct through depriving them of an honest count and honest certification of ballots cast, government could prove its case by either direct or circumstantial evidence or by both. Devoe v. U.S., C.C.A.8 (Mo.) 1939, 103 F.2d 584, certiorari denied 60 S.Ct. 84, 308 U.S. 571, 84 L.Ed. 479. Conspiracy 47(3.1)

To prove conspiracy, evidence must legitimately tend to compel belief in and finding of defendants' guilt and may not consist merely of circumstances so remotely related to facts to be proved as to have only possible relevancy. Kassin v. U.S., C.C.A.5 (Fla.) 1937, 87 F.2d 183. Conspiracy 47(2)

Links in chain of guilt forged by purely circumstantial evidence must be clearly proved and, taken together, point to moral certainty, not merely possibility or probability, of guilt, to justify conviction of conspiracy. Kassin v. U.S., C.C.A.5 (Fla.) 1937, 87 F.2d 183. Conspiracy 47(2); Criminal Law 552(3)

In conspiracy prosecution, circumstantial evidence disclosing conduct of defendant pointing to conspiracy may be produced at any stage of case if evidence is connected up so that when case is submitted there is sufficient to show guilt of defendant to satisfaction of jury beyond reasonable doubt. McNeil v. U.S., App.D.C.1936, 85 F.2d 698, 66 App.D.C. 199. Criminal Law 680(1)

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Conspiracy may be proved by evidence of parties' conduct and attending circumstances. Feigenbutz v. U.S., C.C.A.8 (Mo.) 1933, 65 F.2d 122. Conspiracy 47(2)

Circumstantial evidence is equally available with direct evidence to prove conspiracy but suspicion or conjecture cannot take place of evidence. Dahly v. U.S., C.C.A.8 (Minn.) 1931, 50 F.2d 37. Conspiracy 47(2)

Conspiracy may be deduced from conduct of parties. Babb v. U.S., C.C.A.8 (Iowa) 1928, 27 F.2d 80, certiorari denied 49 S.Ct. 26, 278 U.S. 624, 73 L.Ed. 544. Conspiracy 47(2)

Conspiracy may be proved by circumstances, and it is unnecessary that defendants know all conspirators. Zottarelli v. U. S., C.C.A.6 (Ohio) 1927, 20 F.2d 795, 5 Ohio Law Abs. 584, certiorari denied 48 S.Ct. 159, 275 U.S. 571, 72 L.Ed. 432. Conspiracy 24(3); Conspiracy 47(2)

Conspiracy may be established by circumstantial evidence, or by deduction from facts. Burkhardt v. U. S., C.C.A.6 (Ohio) 1926, 13 F.2d 841. See, also, Jezewski v. U.S., C.C.A.Mich.1926, 13 F.2d 599; Cooper v. U.S., C.C.A.Iowa 1925, 9 F.2d 216; Morris v. U.S., C.C.A.Ark.1925, 7 F.2d 785, certiorari denied 46 S.Ct. 205, 270 U.S. 640, 70 L.Ed. 775; Allen v. U.S., C.C.A.Ind.1925, 4 F.2d 688, certiorari denied 45 S.Ct. 352, 353, 267 U.S. 597, 598, 69 L.Ed. 806, and 45 S.Ct. 509, 268 U.S. 689, 69 L.Ed. 1158; Murray v. U.S., C.C.A.Ark.1922, 282 F. 617; Farmer v. U.S., N.Y.1915, 223 F. 903, 139 C.C.A. 341, certiorari denied 35 S.Ct. 940, 238 U.S. 638, 59 L.Ed. 1500; Marrash v. U.S., N.Y.1909, 168 F. 225, 93 C.C.A. 511; The Mussel Slough Case, C.C.Cal.1880, 5 F. 680.

Proving conspiracy by circumstantial evidence does not amount to building of one presumption on another. Cooper v. U.S., C.C.A.8 (Iowa) 1925, 9 F.2d 216. Criminal Law 306

In prosecutions for criminal conspiracy it is as competent to prove the conspiracy by circumstances as by direct evidence, but proof of the combination charged must almost always be extracted from the circumstances connected with the transaction which forms the subject of the accusation. U.S. v. Breese, C.C.W.D.N.C.1909, 173 F. 402. Conspiracy 47(2)

Circumstantial evidence need not be inconsistent with every conclusion save that of guilt; it need only establish a case which is sufficient to convince jury beyond a reasonable doubt. U. S. v. Barrow, E.D.Pa.1964, 229 F.Supp. 722, affirmed in part, reversed in part on other grounds 363 F.2d 62, certiorari denied 87 S.Ct. 703, 385 U.S. 1001, 17 L.Ed.2d 541. Criminal Law 552(3)

Conspiracy, ordinarily, is not proved by direct evidence and can only be established by piecing together fragments of evidence as to conduct, speech and writings of parties to the conspiracy. U.S. v. General Ry. Signal Co., W.D.N.Y.1952, 110 F.Supp. 422. Conspiracy 19

A conspiracy is a secret, furtive crime and by its very nature must usually be proved by circumstantial evidence. U. S. v. Boyer, E.D.Pa.1949, 84 F.Supp. 905. See, also, Ryan v. U.S., C.C.A.Mo.1939, 99 F.2d 864, certiorari denied 59 S.Ct. 484, 306 U.S. 635, 83 L.Ed. 1037, rehearing denied 59 S.Ct. 586, 306 U.S. 668, 83 L.Ed. 1063. Conspiracy 47(2)

To convict any one of several defendants charged with conspiracy, jury must believe that circumstances proved as to him exclude all possibility of his innocence, and that, after considering all of inferences reasonably to be drawn from circumstances, sound judgment requires jury to reject other inferences and accept only the inference of guilt. U.S. v. Thomas, E.D.Wash.1943, 52 F.Supp. 571. See, also, U.S. v. Richards, D.C.Neb.1906, 149 F. 443. Conspiracy 47(2)

551. ---- Existence of conspiracy, circumstantial evidence

The requisite agreement supporting a conspiracy conviction need not be express, but rather can be an informal, tacit understanding between the coconspirators and can be proved entirely by circumstantial evidence. U.S. v. Fletcher, C.A.8 (Ark.) 2003, 322 F.3d 508. Conspiracy 24(1); Conspiracy 47(2)

Existence of an agreement may be shown, in a conspiracy case, by circumstances indicating that criminal defendants acted in concert to achieve a common goal. U. S. v. Green, C.A.2 (N.Y.) 1975, 523 F.2d 229, certiorari denied 96 S.Ct. 858, 423 U.S. 1074, 47 L.Ed.2d 84. Conspiracy 47(2); Conspiracy 24(2)

Proof of conspiracy may rest on indirect or circumstantial evidence; existence of conspiracy may be inferred from evidence of related facts and circumstances from which it appears, as reasonable and logical inference, that activities of participants in criminal venture could not have been carried on except as result of preconceived scheme or common understanding. U. S. v. Barrow, C.A.3 (Pa.) 1966, 363 F.2d 62, certiorari denied 87 S.Ct. 703, 385 U.S. 1001, 17 L.Ed.2d 541. Conspiracy 47(2)

Existence of a conspiracy may be shown by inference and circumstantial evidence and any substantial evidence of knowledge and participation in a conspiracy will justify a verdict of guilty. Wilson v. U. S., C.A.5 (Ala.) 1963, 320 F.2d 493. Conspiracy 47(2)

The existence of a conspiracy and participation of defendants need not be established by direct proof, but circumstantial evidence is sufficient, when facts and circumstances are such as legitimately tend to sustain the inference of their existence. U. S. v. Iacullo, C.A.7 (Ill.) 1955, 226 F.2d 788, certiorari denied 76 S.Ct. 435, 350 U.S. 966, 100 L.Ed. 839. Conspiracy 47(2)

Existence of conspiracy may be established by inferences from circumstantial evidence. Prichard v. U.S., C.A.6 (Ky.) 1950, 181 F.2d 326, affirmed 70 S.Ct. 1029, 339 U.S. 974, 94 L.Ed. 1380. Conspiracy 47(2)

Existence of a conspiracy need not be established by direct evidence, but proof of circumstances from which existence of a conspiracy may fairly be inferred is sufficient. Briggs v. U.S., C.A.10 (Okla.) 1949, 176 F.2d 317, certiorari denied 70 S.Ct. 102, 338 U.S. 861, 94 L.Ed. 528, rehearing denied 70 S.Ct. 158, 338 U.S. 882, 94 L.Ed. 541, certiorari denied 70 S.Ct. 103, 338 U.S. 861, 94 L.Ed. 528. Conspiracy 47(2)

Where acts and declarations of an alleged conspirator during existence of conspiracy and in furtherance thereof is sought to be introduced against alleged coconspirator, existence of conspiracy need not be established by direct evidence, but proof of circumstances from which existence of conspiracy fairly may be inferred is sufficient. Bartlett v. United States, C.C.A.10 (N.M.) 1948, 166 F.2d 920. Criminal Law 427(5)

Circumstantial evidence is sufficient to establish existence of conspiracy when circumstances are such as legitimately tend to sustain an inference of its existence. Braatelien v. U. S., C.C.A.8 (N.D.) 1945, 147 F.2d 888. Conspiracy 47(2)

In conspiracy prosecution, a common purpose must be shown, but its existence may be proved by circumstantial evidence. U.S. v. Potash, C.C.A.2 (N.Y.) 1941, 118 F.2d 54, certiorari denied 61 S.Ct. 1103, 313 U.S. 584, 85 L.Ed. 1540. Conspiracy 47(2)

Existence of a "conspiracy" may be shown by inference and circumstantial evidence, and any substantial evidence of knowledge and participation in a conspiracy will justify conviction. Beland v. U. S., C.C.A.5 (Tex.) 1941, 117 F.2d 958, certiorari denied 61 S.Ct. 1110, 313 U.S. 585, 85 L.Ed. 1541, rehearing denied 62 S.Ct. 54, 314 U.S. 708, 86 L.Ed. 565. See, also, Pullin v. U.S., C.C.A.Ga.1939, 104 F.2d 57, certiorari denied 60 S.Ct. 97, 308 U.S. 552, 84 L.Ed. 464; Beland v. U.S., C.C.A.Tex.1938, 100 F.2d 289, certiorari denied 59 S.Ct. 485, 306 U.S. 636, 83 L.Ed. 1037. Conspiracy 47(1)

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552. ---- Agreement, circumstantial evidence

Conspiracy conviction was supported by circumstantial evidence that there was agreement to defraud state Treasurer by deputy state treasurer and her associates through illegal kickback scheme that appeared as superficially legal transactions; while there was no direct proof, circumstantial evidence was that once deputy treasurer knew she would be named state's chief trader, she contacted her associates who set up brokerage account for state and agreed to share their commissions with deputy, and that kickbacks took form of direct money transfers, associates' funding of mortgage trust on deputy's new home, and associate purchasing deputy's former home and former business for significant amounts. U.S. v. Pretty, C.A.10 (Okla.) 1996, 98 F.3d 1213, certiorari denied 117 S.Ct. 2436, 520 U.S. 1266, 138 L.Ed.2d 197, post-conviction relief denied 6 Fed.Appx. 810, 2001 WL 331955. Conspiracy 47(6)

Ample circumstantial evidence allowed jury to infer existence of conspiracy to impair Internal Revenue Service's (IRS) ability to collect income taxes could be inferred, even though there was no evidence that defendant ever discussed effect of alleged extortion scheme and its financial transactions on the IRS; there was evidence that defendant and conspirators obtained extortion money under guise of legal payments as political contributions, gifts and business investments, and that disguise effectively foreclosed ability of IRS to attribute, ascertain, compute and collect taxes properly. U.S. v. Collins, C.A.6 (Ky.) 1996, 78 F.3d 1021, rehearing and suggestion for rehearing en banc denied, certiorari denied 117 S.Ct. 189, 519 U.S. 872, 136 L.Ed.2d 127. Conspiracy 47(9)

Evidence was sufficient for jury to infer defendant's agreement to join conspiracy to defraud United States of lawful government functions of Federal Home Loan Bank Board, where defendant was aware of use of sham liens to disguise excess profits from real estate transactions financed by savings association, and defendant-controlled entities and associates were employed to disguise fact that these loan proceeds were then being used to purchase "real estate owned" (REO) that savings association had acquired through foreclosure, thereby allowing association to remove those properties from its books without suffering any loss due to depressed real estate values. U.S. v. Pettigrew, C.A.5 (Tex.) 1996, 77 F.3d 1500. Conspiracy 47(6)

That defendants were together both when they passed counterfeit bills at business and when they visited various other businesses in area from which counterfeit bills were later recovered and that they were on a cross-country camping trip during which they spent numerous hours together, on road and off, supported inference that they conspired to utter counterfeit obligations, justifying conviction for conspiracy. U.S. v. Armstrong, C.A.8 (S.D.) 1994, 16 F.3d 289. Conspiracy 47(3.1)

In finding existence of conspiracy, jury may consider presence or association, as well as the development and collocation of circumstances. U.S. v. Allred, C.A.5 (Tex.) 1989, 867 F.2d 856. Conspiracy 23.1

Existence of agreement and cooperation of defendant may be proved by circumstantial evidence, such as inferences from conduct of alleged participants in conspiracy or from circumstantial evidence of scheme. U.S. v. Smith, C.A.11 (Ga.) 1983, 700 F.2d 627. Conspiracy 47(2)

Initial agreement to participate in an illegal venture, as well as actual knowledge of the plan and association in it, which are required elements of a conspiracy conviction, may be inferred from performance of acts that further its objectives and may be proved by circumstantial evidence. U. S. v. DeLucca, C.A.5 (Ala.) 1980, 630 F.2d 294, certiorari denied 101 S.Ct. 1520, 450 U.S. 983, 67 L.Ed.2d 819. Conspiracy 44.2

Evidence of knowledge and association may be combined with other circumstantial evidence to prove an agreement to join a conspiracy. U. S. v. Grassi, C.A.5 (Fla.) 1980, 616 F.2d 1295, rehearing denied 624 F.2d 1098, certiorari denied 101 S.Ct. 363, 449 U.S. 956, 66 L.Ed.2d 220. Conspiracy 47(2)

Agreement may be shown by circumstantial evidence, and once conspiracy is established, even slight evidence may

suffice to link a particular defendant to conspiracy. U. S. v. Dalzotto, C.A.7 (Ill.) 1979, 603 F.2d 642, certiorari denied 100 S.Ct. 530, 444 U.S. 994, 62 L.Ed.2d 425. Conspiracy 47(1); Conspiracy 47(2)

In a conspiracy prosecution, proof of the illegal agreement or common purpose may rest on either direct evidence or on inferences drawn from relevant and competent circumstantial evidence. U. S. v. Houde, C.A.5 (Tex.) 1979, 596 F.2d 696, rehearing denied 604 F.2d 671, certiorari denied 100 S.Ct. 452, 444 U.S. 965, 62 L.Ed.2d 377. Conspiracy 47(2)

Direct proof of an agreement is not necessary in a prosecution for conspiracy; circumstantial evidence supporting conclusion that there was an agreement is sufficient. U. S. v. Frick, C.A.5 (La.) 1979, 588 F.2d 531, certiorari denied 99 S.Ct. 2013, 441 U.S. 913, 60 L.Ed.2d 385. Conspiracy 47(2)

Knowledge of a criminal plan is a factual issue which may be proved by circumstantial evidence; it is not necessary that there be evidence of a formal agreement in order to have an unlawful conspiracy. U. S. v. Votteller, C.A.6 (Ky.) 1976, 544 F.2d 1355. Conspiracy 47(2)

Agreement constituting conspiracy may be inferred from acts of parties. U. S. v. Camacho, C.A.9 (Ariz.) 1976, 528 F.2d 464, certiorari denied 96 S.Ct. 2208, 425 U.S. 995, 48 L.Ed.2d 819. Conspiracy 44.2

Existence of agreement between coconspirators need not be established by direct proof; the agreement may be proven by circumstantial evidence from which the trier of fact may infer a common design to achieve an unlawful end. U. S. v. Miller, C.A.7 (Ill.) 1974, 508 F.2d 444. Conspiracy 47(2)

Gist of a conspiracy is an agreement; however slight or circumstantial evidence may be, it must, in order to be sufficient to warrant finding of conspiracy, tend to prove that defendant entered into some form of agreement, formal or informal, with his alleged coconspirators. U. S. v. Kates, C.A.3 (Pa.) 1975, 508 F.2d 308. Conspiracy 24(1)

While conscious agreement must be proved in trial for conspiracy, such agreement may be proved by circumstantial evidence and such proof will be sufficient if it places defendant "at the hub of the wheel of events" so that jury may reasonably find that evidence excludes every reasonable hypothesis except that of guilt. U. S. v. Goodson, C.A.5 (Tex.) 1974, 502 F.2d 1303. Conspiracy 47(2)

Government may rely upon circumstantial evidence of a concert of action among defendants to prove conspiracy. U. S. v. Flaxman, C.A.7 (Ill.) 1974, 495 F.2d 344, certiorari denied 95 S.Ct. 512, 419 U.S. 1031, 42 L.Ed.2d 306. Conspiracy 47(2)

Proof of formal agreement between conspirators is unnecessary; an agreement may be proven entirely by circumstantial evidence and may be shown if there be concert of action, all the parties working together understandingly, with single design for accomplishment of common purpose. U. S. v. Ford, C.A.7 (Ill.) 1963, 324 F.2d 950. Conspiracy 47(2)

Since partnership in crime is seldom evidenced by written agreement or other writing between or among other persons, finding of agreement to violate law ordinarily must rest upon inference drawn from relevant and competent circumstantial evidence including conduct of defendants. Daily v. U. S., C.A.9 (Cal.) 1960, 282 F.2d 818, on rehearing 293 F.2d 33. Conspiracy 47(2)

While agreement of conspiracy may be established by circumstantial evidence, and even though it is not necessary that such circumstantial evidence exclude every reasonable hypothesis consistent with innocence, evidence should be sufficient to prove this element of crime beyond a reasonable doubt. Harms v. U.S., C.A.4 (Va.) 1959, 272 F.2d 478, certiorari denied 80 S.Ct. 590, 361 U.S. 961, 4 L.Ed.2d 543. Conspiracy 47(2)

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Offense of conspiracy can rarely be proved by direct evidence because no formal agreement is necessary to constitute an unlawful conspiracy, and therefore conspiracy may be proved by circumstantial evidence. Davenport v. U.S., C.A.9 (Or.) 1958, 260 F.2d 591, certiorari denied 79 S.Ct. 585, 359 U.S. 909, 3 L.Ed.2d 573. Conspiracy 47(2)

Since a conspiracy is seldom capable of proof by direct testimony, it may be inferred from things actually done and it is enough if the minds of the parties meet in an understanding way with a single design to accomplish a common purpose which may be established by circumstantial evidence or deduction from the facts from which the natural inference arises that the overt acts were in furtherance of a common design, intent and purpose. Castle v. U. S., C.A.8 (Minn.) 1956, 238 F.2d 131. Conspiracy 47(2)

Conspiracies are rarely established from direct evidence and it is sufficient if the circumstances, acts and conduct of the parties are of such character that minds of reasonable men can conclude therefrom that an unlawful agreement or understanding exists. Heald v. U. S., C.A.10 (Colo.) 1949, 175 F.2d 878, certiorari denied 70 S.Ct. 101, 338 U.S. 859, 94 L.Ed. 526, certiorari denied 70 S.Ct. 102, 338 U.S. 859, 94 L.Ed. 526. See, also, Cruz v. U.S., C.C.A.N.M.1939, 106 F.2d 828. Conspiracy 47(2)

In prosecution for conspiracy, the union of minds may be proved by circumstantial evidence. Martin v. U. S., C.C.A.10 (Colo.) 1938, 100 F.2d 490, certiorari denied 59 S.Ct. 590, 306 U.S. 649, 83 L.Ed. 104, certiorari denied 59 S.Ct. 590, 306 U.S. 649, 83 L.Ed. 1047, certiorari denied 59 S.Ct. 590, 306 U.S. 649, 83 L.Ed. 1048, certiorari denied 59 S.Ct. 591, 306 U.S. 649, 83 L.Ed. 1048, certiorari denied 59 S.Ct. 642, 306 U.S. 651, 83 L.Ed. 1050. Conspiracy 47(2)

In conspiracy prosecution, proof of an agreement in writing or in formal words is unnecessary but the agreement may be inferred from statements and circumstances and may be established by circumstantial evidence. Wilder v. U.S., C.C.A.10 (Okla.) 1938, 100 F.2d 177. Conspiracy 47(2)

In conspiracy cases, the agreement between two or more persons, that is, the conspiracy itself, may be proven by circumstantial evidence. Shannabarger v. U.S., C.C.A.8 (Mo.) 1938, 99 F.2d 957. See, also, U.S. v. Pintar, C.A.8 (Minn.) 1980, 630 F.2d 1270. Conspiracy 47(2)

Where the government relies upon circumstantial evidence to establish a conspiracy, the circumstances must be such as to warrant the jury in finding that the conspirators had some unity of purpose, some common design and undertaking, and some meeting of minds in unlawful arrangement, and did some overt act to effect its object. Shannabarger v. U.S., C.C.A.8 (Mo.) 1938, 99 F.2d 957. Conspiracy 47(2)

Where the government relies upon circumstantial evidence to establish a conspiracy, the circumstances relied on must be not only consistent with the guilt of the defendants but must be inconsistent with their innocence.? Shannabarger v. U.S., C.C.A.8 (Mo.) 1938, 99 F.2d 957. Conspiracy 47(2)

Conspiracy may be deduced from conduct of parties and circumstances showing mutual implied understanding. Goode v. U.S., C.C.A.8 (Mo.) 1932, 58 F.2d 105. Conspiracy 47(2)

Agreement need not be proved by direct evidence, and conduct pointing to concerted action is sufficient to make out membership in, and the presence of, a conspiracy. Noerr Motor Freight, Inc. v. Eastern R. R. Presidents Conference, E.D.Pa.1957, 155 F.Supp. 768, affirmed 273 F.2d 218, certiorari granted 80 S.Ct. 862, 362 U.S. 947, 4 L.Ed.2d 866, reversed on other grounds 81 S.Ct. 523, 365 U.S. 127, 5 L.Ed.2d 464, rehearing denied 81 S.Ct. 899, 365 U.S. 875, 5 L.Ed.2d 864. Conspiracy 19

Circumstantial evidence may be shown to prove existence of an agreement to accomplish unlawful act. U. S. v. Holz, E.D.Ill.1950, 103 F.Supp. 191, reversed 191 F.2d 569. Conspiracy 47(2)

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553. ---- Common design or purpose, circumstantial evidence

Participation in a criminal conspiracy need not be proved by direct evidence; a common purpose and plan may be inferred from a development and collocation of circumstances. U. S. v. Wyant, C.A.8 (S.D.) 1978, 576 F.2d 1312. Conspiracy 47(2)

In conspiracy prosecution, direct proof of agreement is not required; proof of agreement or common purpose may rest upon inferences drawn from relevant and competent circumstantial evidence--ordinarily, acts and conduct of conspirators themselves. U. S. v. Netterville, C.A.5 (Tex.) 1977, 553 F.2d 903, certiorari denied 98 S.Ct. 189, 434 U.S. 861, 54 L.Ed.2d 135, certiorari denied 98 S.Ct. 719, 434 U.S. 1009, 54 L.Ed.2d 752. Conspiracy 47(2)

To establish existence of criminal conspiracy, underlying common scheme or plan may be inferred from circumstantial evidence, which evidence is no less probative than direct evidence. U. S. v. Peterson, C.A.9 (Nev.) 1977, 549 F.2d 654. Conspiracy 47(2)

Where circumstances are such as to warrant a jury in finding that conspirators had a unity of purpose or a common design and understanding or a meeting of minds in an unlawful arrangement, conclusion that a conspiracy is established is justified. U.S. v. Lutwak, C.A.7 (Ill.) 1952, 195 F.2d 748, certiorari granted 73 S.Ct. 13, 344 U.S. 809, 97 L.Ed. 630, affirmed 73 S.Ct. 481, 344 U.S. 604, 97 L.Ed. 593, rehearing denied 73 S.Ct. 726, 345 U.S. 919, 97 L.Ed. 1352. Conspiracy 47(1)

In prosecution of accused, a sugar dealer, for conspiracy to defraud the revenue through operation of an unregistered and therefore untaxed still, testimony of accused's truck driver concerning a "tail" automobile which joined the convoy while truck loaded with sugar was being driven in direction of the still site and concerning warning given by automobile's occupants that truck was being followed was admissible as "circumstantial evidence" of common design. U.S. v. Harrison, C.C.A.3 (N.J.) 1941, 121 F.2d 930, certiorari denied 62 S.Ct. 124, 314 U.S. 661, 86 L.Ed. 530. Criminal Law 338(2)

It is sufficient if the evidence shows a concert of action in the commission of the unlawful act or other facts and circumstances from which the natural inference arises that the unlawful, overt act was in furtherance of a common design, intent, and purpose of the alleged conspirators. Windsor v. U. S., C.C.A.6 (Ohio) 1923, 286 F. 51, 1 Ohio Law Abs. 339, certiorari denied 43 S.Ct. 523, 262 U.S. 748, 67 L.Ed. 1212. See, also, Keith v. U.S., C.C.A.Ky.1926, 11 F.2d 933; Green v. U.S., C.C.A.Ohio 1925, 8 F.2d 140; Williams v. U.S., C.C.A.Tenn.1925, 3 F.2d 933; Hammerschmidt v. U.S., C.C.A.Ohio 1923, 287 F. 817, reversed on other grounds 44 S.Ct. 511, 265 U.S. 182, 68 L.Ed. 968; Davidson v. U.S., C.C.A.Ohio 1921, 274 F. 285.

The common design which is the essence of conspiracy may be shown by proof of acts or circumstances from which a mutual understanding may be inferred. U.S. v. Silverthorne, W.D.N.Y.1920, 265 F. 853. See, also, Chadwick v. U.S., Ohio 1905, 141 F. 225, 72 C.C.A. 343. Conspiracy 47

It was not necessary for the government to prove that the defendants actually agreed in formal terms upon the design, yet there must be evidence from which some concerted action can be inferred; for an agreement to do the unlawful act charged was as indispensable an ingredient as the overt act done in pursuance thereof. In Pettibone v. U.S., Idaho, 148 U.S. 197, 13 S.Ct. 542, 37 L.Ed. 419.

It is impossible in most cases to show by direct evidence that the persons charged met together and agreed to do certain unlawful things; since agreements are usually made secretly, nearly all conspiracies are proven by circumstantial evidence. Murry v. U.S., C.C.A.Ark.1922, 282 F. 617.

554. ---- Knowledge, circumstantial evidence

Use of circumstantial evidence to support conspiracy conviction does not relieve the prosecution from showing some knowledge, explicit or implied, in each defendant of the principal purpose of the conspiracy and some act or action indicating participation therein. Miller v. U. S., C.A.9 (Ariz.) 1967, 382 F.2d 583, certiorari denied 88 S.Ct. 1108, 390 U.S. 984, 19 L.Ed.2d 1285, rehearing denied 88 S.Ct. 2037, 391 U.S. 971, 20 L.Ed.2d 888. Conspiracy 47(2)

Essential proof of requisite knowledge and intent of conspirators need not be made by direct evidence but conspiracy may be shown by circumstantial evidence or permissible inferences or deductions from facts. U. S. v. Zuideveld, C.A.7 (Ill.) 1963, 316 F.2d 873, certiorari denied 84 S.Ct. 671, 376 U.S. 916, 11 L.Ed.2d 612. Conspiracy 47(2)

Proof of a conspiracy must be circumstantial, and the step between innocent knowledge and guilty intent and agreement may be shown by prolonged and interested cooperation, indicating a stake in the venture. Van Huss v. United States, C.A.10 (N.M.) 1952, 197 F.2d 120. Conspiracy 47(2)

555. ---- Participation, circumstantial evidence

Participation in a criminal conspiracy may be shown by circumstantial as well as direct evidence. Delli Paoli v. U.S., U.S.N.Y.1957, 77 S.Ct. 294, 352 U.S. 232, 1 L.Ed.2d 278. See, also, Beatrice Foods Co. v. U.S., C.A.Neb.1963, 312 F.2d 29; Maggiore v. Bradford, C.A.Tenn.1962, 310 F.2d 519, certiorari denied 83 S.Ct. 881, 372 U.S. 934, 9 L.Ed.2d 766. Conspiracy 47(2)

Participation in a criminal conspiracy need not be proved by direct evidence, but a common purpose and plan may be inferred from a development and collocation of circumstances. Glasser v. U.S., U.S.Ill.1942, 62 S.Ct. 457, 315 U.S. 60, 86 L.Ed. 680, rehearing denied 62 S.Ct. 629, 315 U.S. 827, 86 L.Ed. 1222, rehearing denied 62 S.Ct. 637, 315 U.S. 827, 86 L.Ed. 1222. See, also, Mosheim v. U.S., C.A.Tex.1960, 285 F.2d 949, certiorari denied 81 S.Ct. 903, 365 U.S. 868, 5 L.Ed.2d 859; Blumenfield v. U.S., C.A.Minn.1960, 284 F.2d 46; William v. U.S., C.A.N.C.1959, 271 F.2d 703; U.S. v. Hack, C.A.Ind.1953, 205 F.2d 723, certiorari denied 74 S.Ct. 127, 346 U.S. 875, 98 L.Ed. 383; U.S. v. Randall, C.C.A.Ind.1947, 164 F.2d 284, certiorari denied 68 S.Ct. 729, 333 U.S. 856, 92 L.Ed. 1136, rehearing denied 68 S.Ct. 901, 333 U.S. 878, 92 L.Ed. 1153; Braatelien v. U.S., C.C.A.N.D.1945, 147 F.2d 888; U.S. v. Beigel, D.C.N.Y.1966, 254 F.Supp. 923, affirmed 370 F.2d 751, certiorari denied 87 S.Ct. 2049, 2053, 2062, 387 U.S. 930, 936, 18 L.Ed.2d 989, 998; Cane v. U.S., C.A. Iowa 1968, 390 F.2d 58, certiorari denied 88 S.Ct. 2059, 392 U.S. 906, 20 L.Ed.2d 1363; U.S. v. Luxenberg, C.A. Ohio 1967, 374 F.2d 241. Conspiracy 47(2)

Participation in conspiracy need not be proved by direct evidence; common purpose and plan may be inferred from development and collection of circumstances. U.S. v. Chesson, C.A.5 (La.) 1991, 933 F.2d 298, certiorari denied 112 S.Ct. 583, 502 U.S. 981, 116 L.Ed.2d 608. Conspiracy 47(2)

Knowledge and participation in conspiracy may be proved by circumstantial evidence. U.S. v. Norris, C.A.4 (Va.) 1984, 749 F.2d 1116, certiorari denied 105 S.Ct. 2139, 471 U.S. 1065, 85 L.Ed.2d 496. Conspiracy 47(2)

Although proof of knowledge on part of participant in a conspiracy is an essential element of the offense, circumstantial evidence is sufficient to connect an alleged coconspirator with the conspiracy. U. S. v. Hedman, C.A.7 (Ill.) 1980, 630 F.2d 1184, certiorari denied 101 S.Ct. 1481, 450 U.S. 965, 67 L.Ed.2d 614. Conspiracy 47(2)

Whether circumstantial evidence of criminal acts is sufficient as a matter of law to support a guilty verdict on the substantive crime does not bear on the sufficiency of that same evidence to convict for conspiracy. U. S. v. Anderson, C.A.4 (N.C.) 1979, 611 F.2d 504. Conspiracy 47(2)

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Once conspiracy is established, evidence establishing beyond a reasonable doubt a connection of defendant with the conspiracy, even though the connection is slight, is sufficient to convict him with knowing participation in the conspiracy. U. S. v. Bailey, C.A.9 (Wash.) 1979, 607 F.2d 237, certiorari denied 100 S.Ct. 1327, 445 U.S. 934, 63 L.Ed.2d 769. Conspiracy 47(1)

Intentional participation in a criminal conspiracy need not be proved by direct evidence. U. S. v. Harbin, C.A.5 (Fla.) 1979, 601 F.2d 773, certiorari denied 100 S.Ct. 433, 444 U.S. 954, 62 L.Ed.2d 327. Conspiracy 47(2)

Participation in a criminal conspiracy may be shown by circumstantial evidence. U. S. v. Barrentine, C.A.5 (Ala.) 1979, 591 F.2d 1069, rehearing denied 599 F.2d 1054, certiorari denied 100 S.Ct. 521, 444 U.S. 990, 62 L.Ed.2d 419. Conspiracy 47(2)

Defendant's participation in conspiracy must be shown, with proof that defendant knowingly contributed efforts in furtherance of it. U. S. v. Brown, C.A.8 (Minn.) 1978, 584 F.2d 252, certiorari denied 99 S.Ct. 1220, 440 U.S. 910, 59 L.Ed.2d 458. Conspiracy 47(1)

Once existence of conspiracy has been established by satisfactory proof, particular individual's participation in conspiracy may be established by evidence that otherwise seems slight; such proof may be established by circumstantial evidence. U. S. v. Hassell, C.A.8 (Mo.) 1977, 547 F.2d 1048, certiorari denied 97 S.Ct. 1338, 430 U.S. 919, 51 L.Ed.2d 599. Conspiracy 47(2)

Mere fact that a conspiracy has been established does not mean that the evidence needed to sustain a conviction regarding an individual's participation in the conspiracy is any less than that needed to uphold a finding that a person has participated in any other crime. U. S. v. Harris, C.A.7 (Ind.) 1976, 542 F.2d 1283, certiorari denied 97 S.Ct. 1558, 430 U.S. 934, 51 L.Ed.2d 779. Conspiracy 47(1)

Direct admission against background of persuasive circumstantial proof of particular defendant's role was sufficient to establish such defendant's participation in narcotics conspiracy independent of hearsay evidence admitted pursuant to coconspirator exception. U. S. v. Santana, C.A.2 (N.Y.) 1974, 503 F.2d 710, certiorari denied 95 S.Ct. 632, 419 U.S. 1053, 42 L.Ed.2d 649, certiorari denied 95 S.Ct. 1352, 420 U.S. 963, 43 L.Ed.2d 439, certiorari denied 95 S.Ct. 1450, 420 U.S. 1006, 43 L.Ed.2d 764. Criminal Law 414

Although defendant did not appear at meeting at which arrest and seizure of cashiers' checks stolen from national bank took place, where testimony of defendant's prior meeting with an undercover agent clearly established his partnership with coconspirator, his knowledge of existence of stolen checks, and his financial stake in proceeds of venture, evidence was sufficient to establish that defendant was a participant in conspiracy to dispose of checks. U. S. v. Mauro, C.A.2 (N.Y.) 1974, 501 F.2d 45, certiorari denied 95 S.Ct. 235, 419 U.S. 969, 42 L.Ed.2d 186. Conspiracy 47(11)

Proof of agreement in conspiracy trials must usually rest on inferences to be drawn from circumstantial evidence, but mere proof of association with one "bad man" is insufficient without more to show necessary agreement to commit criminal acts. U. S. v. Oliva, C.A.5 (Fla.) 1974, 497 F.2d 130. Conspiracy 47(2)

Direct proof of defendant's state of mind or participation in criminal conspiracy is not required; intent, knowledge, and participation in conspiracy may be inferred from activities of parties and thus may be proved by circumstantial evidence. U. S. v. Prince, C.A.5 (Tex.) 1974, 496 F.2d 1289, rehearing denied 502 F.2d 1168, certiorari denied 95 S.Ct. 779, 419 U.S. 1107, 42 L.Ed.2d 804. Conspiracy 47(2)

Participation in criminal conspiracy may be shown by circumstantial as well as direct evidence. U. S. v. Mendez, C.A.5 (Tex.) 1974, 496 F.2d 128. Conspiracy 47(2)

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Participation in conspiracy need not be proved by direct evidence, and a common purpose and plan may be inferred from a development and collocation of circumstances. U.S. v. Levinson, C.A.6 (Mich.) 1968, 405 F.2d 971, certiorari denied 89 S.Ct. 1746, 395 U.S. 906, 23 L.Ed.2d 219, certiorari denied 89 S.Ct. 2097, 395 U.S. 958, 23 L.Ed.2d 744, rehearing denied 90 S.Ct. 37, 396 U.S. 869, 24 L.Ed.2d 124, rehearing denied 90 S.Ct. 36, 396 U.S. 869, 24 L.Ed.2d 124. Conspiracy 47(2)

Participation in a criminal conspiracy need not be proved by direct evidence; a common purpose and plan may be inferred from a development and a collocation of circumstances. U. S. v. Santos, C.A.7 (Ind.) 1967, 385 F.2d 43, certiorari denied 88 S.Ct. 1048, 390 U.S. 954, 19 L.Ed.2d 1148. Conspiracy 47(2)

Element of knowing participation in a scheme to defraud may be established circumstantially, but cannot be based on "constructive" knowledge because of facts known to others with whom defendant was involved in mail fraud scheme. Windsor v. U. S., C.A.9 (Idaho) 1967, 384 F.2d 535. Postal Service 49(11)

Participation in conspiracy need not be shown by direct evidence. U. S. v. Doran, C.A.7 (Ill.) 1962, 299 F.2d 511, certiorari denied 82 S.Ct. 1563, 370 U.S. 925, 8 L.Ed.2d 504, certiorari denied 82 S.Ct. 1565, 370 U.S. 925, 8 L.Ed.2d 505, rehearing denied 83 S.Ct. 17, 371 U.S. 854, 9 L.Ed.2d 92. See, also, Lile v. U.S., C.A.Alaska 1958, 264 F.2d 278; Bridges v. U.S., C.A.Cal.1952, 199 F.2d 811, rehearing denied 201 F.2d 254, reversed on other grounds 73 S.Ct. 1055, 345 U.S. 209, 97 L.Ed. 1557. Conspiracy 47(2)

Court may consider conduct, knowledge and statements of defendants and others in establishing their participation in conspiracy. U.S. v. Sims, N.D.Ill.1992, 808 F.Supp. 620. Criminal Law 427(4)

Participation in a conspiracy can be proved circumstantially even if precise date of entry into conspiracy of a defendant is unknown and direct proof of entry of any particular person into conspiracy is not necessary. U. S. v. Bennett, S.D.N.Y.1958, 190 F.Supp. 181. Conspiracy 47(2)

556. Corroboration, evidence

Admissions made by codefendant in his taped conversation with a coconspirator were made during the course of the conspiracy, rather than after its consummation, and might be sufficient to establish the codefendant's guilt even without corroboration; however, if corroboration was required, it was provided by, inter alia, a letter from drug supplier to the codefendant. U. S. v. Head, C.A.2 (N.Y.) 1976, 546 F.2d 6, certiorari denied 97 S.Ct. 1551, 430 U.S. 931, 51 L.Ed.2d 775.

Federal rule is that testimony of accomplices in criminal conspiracy case need not be corroborated. U. S. v. Kelly, C.A.2 (N.Y.) 1965, 349 F.2d 720, certiorari denied 86 S.Ct. 1467, 384 U.S. 947, 16 L.Ed.2d 544.

Testimony of accomplice need not be corroborated to support conviction. U. S. v. Vita, C.A.2 (N.Y.) 1961, 294 F.2d 524, certiorari denied 82 S.Ct. 837, 369 U.S. 823, 7 L.Ed.2d 788, certiorari denied 82 S.Ct. 1032, 369 U.S. 866, 8 L.Ed.2d 85. See, also, U.S. v. Lena, W.D.Pa.1980, 497 F.Supp. 1352, affirmed 649 F.2d 861. Criminal Law 510

Witness who had been an active participant in criminal venture almost from its inception, knowing full well that venture encompassed forging and uttering of checks in Alaska, could have been indicted and punished for offenses of which defendants were convicted (uttering and publishing forged checks) and was therefore an accomplice whose testimony was required to be corroborated. Ing v. United States, C.A.9 (Alaska) 1960, 278 F.2d 362.

In prosecution for conspiring to violate § 212 of this title prohibiting bribery of customs officials and §§ 173, 174 of Title 21 concerning narcotics laws, statements by one of defendants to government witness, whom such defendant and others were seeking to have participate in conspiracy, made during conspiracy, were not admissions

after the fact and it was not necessary that such declarations be corroborated. United States v. Stromberg, C.A.2 (N.Y.) 1959, 268 F.2d 256, certiorari denied 80 S.Ct. 119, 361 U.S. 863, 4 L.Ed.2d 102, certiorari denied 80 S.Ct. 123, 361 U.S. 863, 4 L.Ed.2d 102, certiorari denied 80 S.Ct. 124, 361 U.S. 863, 4 L.Ed.2d 102, certiorari denied 80 S.Ct. 130, 361 U.S. 868, 4 L.Ed.2d 108.

The uncorroborated testimony of an accomplice is sufficient to sustain a verdict of guilty. Poliafico v. U. S., C.A.6 (Ohio) 1956, 237 F.2d 97, certiorari denied 77 S.Ct. 590, 352 U.S. 1025, 1 L.Ed.2d 597, rehearing denied 77 S.Ct. 718, 353 U.S. 931, 1 L.Ed.2d 725.

Testimony of accomplice need not be corroborated to support a conviction. United States v. Moran, C.C.A.2 (N.Y.) 1945, 151 F.2d 661. See, also, Westenrider v. U.S., C.C.A.Nev.1943, 134 F.2d 772; U.S. v. Quinn, C.C.A.N.Y.1941, 124 F.2d 378; Anderson v. U.S., C.C.A.Tenn.1941, 124 F.2d 58, reversed on other grounds 63 S.Ct. 599, 318 U.S. 350, 87 L.Ed. 829; U.S. v. Gallo, C.C.A.N.Y.1941, 123 F.2d 229; Wolf v. U.S., C.C.A.Ill.1922, 283 F. 885, certiorari denied 43 S.Ct. 164, 260 U.S. 743, 67 L.Ed. 492; U.S. v. Heitler, D.C.Ill.1921, 274 F. 401, error dismissed 43 S.Ct. 163, 260 U.S. 703, 67 L.Ed. 472, case transferred to Court of Appeals, 43 S.Ct. 185, 260 U.S. 438, 67 L.Ed. 338, affirmed 289 F. 1021, certiorari denied 44 S.Ct. 135, 263 U.S. 728, 63 L.Ed. 528; Harrington v. U.S., C.C.A.Iowa, 1920, 267 F. 97; Gretsch v. U.S., N.Y.1916, 242 F. 897, 155 C.C.A. 485, certiorari denied 38 S.Ct. 12, 245 U.S. 654, 62 L.Ed. 532; Knoell v. U.S., Pa.1917, 239 F. 16, 152 C.C.A. 66, error dismissed 38 S.Ct. 316, 246 U.S. 648, 62 L.Ed. 920; Erber v. U.S., N.J.1917, 234 F. 221, 148 C.C.A. 123; Wong Din v. U.S., Cal.1905, 135 F. 702, 68 C.C.A. 340; U.S. v. Dewinksy, D.C.N.J.1941, 41 F.Supp. 149; U.S. v. Ryan, D.C.Mo.1938, 23 F.Supp. 513. Criminal Law 510

Generally, a conviction of conspiracy may not be sustained solely on an admission or confession of the accused, unless corroborated by independent evidence of the corpus delicti. U.S. v. Di Orio, C.C.A.3 (N.J.) 1945, 150 F.2d 938, certiorari denied 66 S.Ct. 175, 326 U.S. 771, 90 L.Ed. 465. See, also, Colt v. U.S., C.C.A.Fla.1947, 160 F.2d 650; Tabor v. U.S., C.C.A.Md.1945, 152 F.2d 254. Criminal Law 535(2)

"Corroboration", within rule that confession must be corroborated by other proof of the crime to warrant a conviction, means to strengthen or add weight and credibility to a thing. Anderson v. U.S., C.C.A.6 (Tenn.) 1941, 124 F.2d 58, certiorari granted 62 S.Ct. 941, 316 U.S. 651, 86 L.Ed. 1732, reversed on other grounds 63 S.Ct. 599, 318 U.S. 350, 87 L.Ed. 829.

Evidence found in confession need not be corroborated by other positive evidence, and all that is required is some proof that the crime charged has been committed or circumstances corroborating and fortifying the confession, and proof of any of such facts consistent with truth of confession or which confession has led to discovery of, tending to show commission of offense, is sufficient "corroboration". Anderson v. U.S., C.C.A.6 (Tenn.) 1941, 124 F.2d 58, certiorari granted 62 S.Ct. 941, 316 U.S. 651, 86 L.Ed. 1732, reversed on other grounds 63 S.Ct. 599, 318 U.S. 350, 87 L.Ed. 829.

In conspiracy prosecution evidence other than confessions of defendants was not required to be such as independently of confessions established corpus delicti or confessing defendant's guilt beyond reasonable doubt, and if, in addition to confessions, there were circumstances which, although susceptible of an innocent construction, would suggest commission of crime and for explanation of which confession of particular defendant furnished key, case could not be taken from jury for failure to show corroboration, and all that was required was that there be such substantial corroborative circumstances as would, when taken in connection with the confessions, establish corpus delicti beyond reasonable doubt. Anderson v. U.S., C.C.A.6 (Tenn.) 1941, 124 F.2d 58, certiorari granted 62 S.Ct. 941, 316 U.S. 651, 86 L.Ed. 1732, reversed on other grounds 63 S.Ct. 599, 318 U.S. 350, 87 L.Ed. 829.

The testimony of an accomplice was required to be subjected to close scrutiny and minute examination and weighed with great care and caution and could be attacked before jury as incredible, unworthy of belief, and

prompted by unworthy motives, but nevertheless a conviction for conspiracy could rest upon the uncorroborated testimony of an accomplice. U.S. v. Glasser, C.C.A.7 (Ill.) 1940, 116 F.2d 690, certiorari granted 61 S.Ct. 835, 313 U.S. 551, 85 L.Ed. 1515, modified on other grounds 62 S.Ct. 457, 315 U.S. 60, 86 L.Ed. 680, rehearing denied 62 S.Ct. 629, 315 U.S. 827, 86 L.Ed. 1222, rehearing denied 62 S.Ct. 637, 315 U.S. 827, 86 L.Ed. 1222.

Although an accomplice's testimony may be attacked before trier of facts as unworthy of belief, it is competent evidence and may, standing alone, support a conviction. U.S. v. Corso, C.C.A.7 (Ill.) 1938, 100 F.2d 604.

In prosecution for conspiracy, corpus delicti cannot be established by defendant's admissions or confessions alone, but they must be corroborated by independent proof, although such proof need not be strong enough of itself to establish corpus delicti. Ryan v. U.S., C.C.A.8 (Mo.) 1938, 99 F.2d 864, certiorari denied 59 S.Ct. 484, 306 U.S. 635, 83 L.Ed. 1037, rehearing denied 59 S.Ct. 586, 306 U.S. 668, 83 L.Ed. 1063. Criminal Law 517.3(2)

When a state statute provides that no person shall be convicted of a crime upon the uncorroborated testimony of an accomplice, the same rule should be observed in similar trials in the federal courts within such state. U. S. v. Van Leuven, N.D.Iowa 1894, 65 F. 78.

Existence of alleged criminal conspiracy cannot be proved solely by evidence of defendants' declarations or statements, but there must be some corroborating evidence of existence of such corpus delicti aliunde defendants' extra-judicial incriminatory statements or declarations, unless they were made before crime or themselves constitute offense charged or essential element thereof. U. S. v. Schneiderman, S.D.Cal.1952, 106 F.Supp. 892.

That conspiracy was carried out in accordance with plans laid down by original conspirators constitutes corroboration, although not definite proof, of fact that conspiracy was entered into. U.S. v. Ryan, W.D.Mo.1938, 23 F.Supp. 513.

557. Examination of witness, evidence

Defendant having testified on cross-examination that he did not remember transactions, it was not error to permit government to show transactions existed, and were within scope of conspiracy charged. Madden v. U.S., C.C.A.9 (Cal.) 1927, 20 F.2d 289, certiorari denied 48 S.Ct. 116, 275 U.S. 554, 72 L.Ed. 423. Witnesses 277(1)

558. Suppression of evidence--Generally

Joint motion of certain defendants to quash search warrant and suppress evidence was properly overruled in prosecution for accepting wagers as copartners and conspiring to evade large part of excise tax on wagers where warrant showed its adequacy on its face and stated sufficient grounds for its issuance and all items seized thereunder were instrumentalities of crimes charged. U.S. v. Shaffer, C.A.7 (Ind.) 1961, 291 F.2d 689, certiorari denied 82 S.Ct. 192, 368 U.S. 915, 7 L.Ed.2d 130, rehearing denied 82 S.Ct. 392, 368 U.S. 962, 7 L.Ed.2d 393, certiorari denied 82 S.Ct. 193, 368 U.S. 914, 7 L.Ed.2d 130. Criminal Law 394.4(5.1); Internal Revenue 5126

In prosecution for conspiring to defraud United States, suppression of all testimony given by defendants before grand jury after date that prosecutor had definitely decided to seek indictment against them, but admitting of evidence given by witnesses before such date, was fair. Connelly v. U.S., C.A.8 (Mo.) 1957, 249 F.2d 576, certiorari denied 78 S.Ct. 700, 356 U.S. 921, 2 L.Ed.2d 716, rehearing denied 78 S.Ct. 991, 356 U.S. 964, 2 L.Ed.2d 1072, certiorari denied 78 S.Ct. 701, 356 U.S. 921, 2 L.Ed.2d 716. Criminal Law 394.6(1)

Where police officers had a warrant only for occupant of house, and when police went to the house they found occupant of house, defendant, and third person seated at a table, and occupant of house was filling capsules with a compound containing heroin, and in front of defendant there were a number of empty capsules, commission of a

felony in presence of officers justified seizure of compound containing heroin and the arrest of the defendant, and therefore court did not err in conspiracy prosecution in overruling defendant's motion to suppress the evidence. Powell v. U. S., C.A.6 (Ohio) 1953, 208 F.2d 618, certiorari denied 74 S.Ct. 710, 347 U.S. 961, 98 L.Ed. 1104, rehearing denied 74 S.Ct. 789, 347 U.S. 979, 98 L.Ed. 1118, certiorari denied 75 S.Ct. 357, 348 U.S. 939, 99 L.Ed. 736. Criminal Law 394.4(8); Controlled Substances 128; Controlled Substances 106; Arrest 63.4(16)

Only defendant corporation, and not its president or supervisory employees who were jointly indicted with corporation on charges of making defective war materials and of conspiring to defraud federal government in its war effort, had right to demand suppression of evidence obtained by examination of corporation's records. U.S. v. Antonelli Fireworks Co., C.C.A.2 (N.Y.) 1946, 155 F.2d 631, certiorari denied 67 S.Ct. 49, 329 U.S. 742, 91 L.Ed. 640, rehearing denied 67 S.Ct. 182, 329 U.S. 826, 91 L.Ed. 701. Criminal Law 394.5(2)

In trial for criminal conspiracy, court did not err in denying one defendant's motion to suppress, and allowing introduction of, evidence which government agents obtained by use of detectaphone in room adjoining office in which conspirators met, since no evidence was obtained as result of secret entry into such office or trespass on such premises and no communication by wire or radio was intercepted. U S v. Goldman, C.C.A.2 (N.Y.) 1941, 118 F.2d 310, certiorari denied 61 S.Ct. 1109, 313 U.S. 588, 85 L.Ed. 1543, rehearing denied 63 S.Ct. 22, 317 U.S. 703, 87 L.Ed. 562, certiorari denied 61 S.Ct. 1110, 313 U.S. 588, 85 L.Ed. 1543, certiorari denied 61 S.Ct. 1111, 313 U.S. 588, 85 L.Ed. 1543, certiorari granted 62 S.Ct. 119, 314 U.S. 704, 86 L.Ed. 563, affirmed 62 S.Ct. 993, 316 U.S. 129, 86 L.Ed. 1322. Criminal Law 394.3

Refusal to suppress evidence obtained by unlawful search of codefendant's room at time of arrest was not error. Benese v. U.S., C.C.A.5 (La.) 1928, 25 F.2d 231, certiorari denied 49 S.Ct. 17, 278 U.S. 612, 73 L.Ed. 536. Criminal Law 394.5(2)

Defendants having no interest in premises searched are not entitled to have evidence suppressed. Nielson v. U.S., C.C.A.9 (Wash.) 1928, 24 F.2d 802. Searches And Seizures 162

On motion to suppress evidence, burden of proof was on defendants. Ford v. U.S., C.C.A.9 (Cal.) 1926, 10 F.2d 339, certiorari granted 46 S.Ct. 475, 271 U.S. 652, 70 L.Ed. 1133, affirmed 47 S.Ct. 531, 273 U.S. 593, 71 L.Ed. 793. Criminal Law 394.5(4)

Petition for return of liquor by defendant indicted for conspiracy to transport intoxicating beverages was granted in absence of evidence that it was contraband. U.S. v. Burns, D.C.Fla.1925, 4 F.2d 131.

On defendant's preliminary motion to suppress evidence seized, it is unnecessary for government to prove that seized items were actually used or intended to be used as instrumentalities of criminal conspiracy and search was not unreasonable if items were reasonably capable of such use. U. S. v. Pardo-Bolland, S.D.N.Y.1964, 229 F.Supp. 473. Criminal Law 394.6(1)

Where search warrant did not describe recording equipment seized by state police officers, who were lawfully on premises of one defendant, and unauthorized divulgence of unlawfully intercepted telephonic conversations was not committed in officers' presence, seizure of recording equipment was unlawful, and even though federal officers were not involved and notwithstanding silver platter doctrine, defendants were entitled to have equipment suppressed as evidence in prosecution for violation of Communications Act and conspiracy to do so. U. S. v. Elkins, D.C.Or.1961, 195 F.Supp. 757. Criminal Law 394.2(2); Criminal Law 394.4(7); Criminal Law 394.6(2)

Defendants, who were charged with intercepting and divulging telephone communications and conspiracy to do so and who admitted that they owned recording equipment seized by state police officers, had standing to object to

seizure and had right to move for return of it and suppression of its use as evidence on ground that it was not described in search warrant. U. S. v. Elkins, D.C.Or.1961, 195 F.Supp. 757. Searches And Seizures 164

In prosecution for conspiring to rob military banking facility, motion to suppress voluntary statements made by defendant while in custody of city police to newspaper reporters and to television reporter on ground that statements were made during alleged illegal detention by city officers was properly denied. U. S. v. Papworth, N.D.Tex.1957, 156 F.Supp. 842, affirmed 256 F.2d 125, certiorari denied 79 S.Ct. 85, 358 U.S. 854, 3 L.Ed.2d 88, rehearing denied 79 S.Ct. 239, 358 U.S. 914, 3 L.Ed.2d 235. Criminal Law 394.6(2)

In numbers game prosecution, wherein defendants moved to suppress evidence and for return of property, evidence established that police officers, who had submitted affidavits upon which warrants had issued, had had probable cause to believe, through personal contact, knowledge, observation and information, that the premises searched were being used for operation of a numbers lottery and that evidence of crime was there concealed. U.S. v. Bell, D.C.D.C.1955, 126 F.Supp. 612, reconsideration denied 17 F.R.D. 13. Criminal Law 394.4(6)

Where subpoenas served on various government representatives in prosecution for conspiring to advocate and teach duty of overthrowing federal government by force and to organize a group of persons who teach and advocate overthrowing of federal government by force, were served in connection with defendants' motion to suppress evidence of wire-tapping, etc., and trial court denied motion for hearing on question of illegal evidence, which hearing the subpoenas pre-supposed, subpoenas had no independent standing and would be quashed on motion of government. U S v. Flynn, S.D.N.Y.1951, 103 F.Supp. 925. Witnesses 16

Motion of defendants charged with conspiracy to advocate and teach duty of overthrowing federal government by force and to organize a group of persons who teach and advocate overthrowing of federal government by force, for suppression of evidence allegedly illegally obtained as result of intercepted telephonic communications of defendants or attorneys who had appeared for defendants, would be denied where motion was indefinite as to what particular messages were intercepted and United States attorney had sworn in affidavit that no evidence acquired illegally would be used at trial. U S v. Flynn, S.D.N.Y.1951, 103 F.Supp. 925. Criminal Law 394.6(1)

In prosecution of several defendants for conspiracy to obstruct the administration of justice, where one defendant in effect moved to suppress documents obtained by the prosecution from him under lawful process, on ground of violation of the privilege against self-incrimination, court refused to consider the defense in advance of trial reserving final decision until such time as defendant might raise the question in a trial on the merits. U. S. v. Johnson, M.D.Pa.1947, 76 F.Supp. 538. Criminal Law 394.6(3)

Where accused was arrested without warrant by officer of the United States upon reasonable cause showing a conspiracy to violate the alcohol tax laws, evidence consisting of an automobile license, a memorandum, and wallet which were taken from accused's person at time of arrest, would not be suppressed under indictment charging conspiracy to violate alcohol tax laws. U. S. v. Biddle, E.D.Pa.1941, 39 F.Supp. 203. Criminal Law 394.4(9)

559. ---- Time of motion, suppression of evidence

In prosecution for selling narcotics and for conspiracy to violate federal narcotic laws, motion to suppress evidence not made until second day of trial and more than three months after seizure of evidence was untimely and denial thereof was not an abuse of discretion. U. S. v. Romero, C.A.2 (N.Y.) 1957, 249 F.2d 371. Criminal Law 394.6(3)

Where no motion to suppress evidence allegedly seized in unreasonable search and seizure of defendants' printing shop was made before or at trial, in prosecution under conspiracy count and substantive counts pertaining to counterfeiting, even though there was period of 10 months in which such motion might have been made, and record clearly disclosed that consent to search had in fact been given, thus obviating necessity for search warrant,

admission of such evidence would not require reversal of convictions. U. S. v. Sferas, C.A.7 (Ill.) 1954, 210 F.2d 69, certiorari denied 74 S.Ct. 630, 347 U.S. 935, 98 L.Ed. 1086. Criminal Law 1169.1(8)

560. Variance between indictment and proof, evidence--Generally

Government constructively amended indictment charging income tax fraud to allege general conspiracy to defraud Government; prosecutor's argument that defendants could have been indicted for one count of conspiring to defraud Government, admission of evidence of money laundering scheme, without showing that scheme was part of income tax conspiracy, improper argument that witness allegedly involved in money laundering scheme was coconspirator and jury instruction on conspiracy count all combined to raise possibility that defendant was convicted of offense for which he was not charged in indictment. U.S. v. Mollica, C.A.2 (N.Y.) 1988, 849 F.2d 723 . Indictment And Information 159(2)

There was no variance between indictment and evidence presented in prosecution for tax fraud, since evidence showed that defendants knew deductions limited partners would take on their tax returns were based in large part on nonexistent transactions and that the Treasury would be deprived of substantial sums in tax revenues as a result, evidence showed that defendants' intent in putting together tax shelter schemes was to defeat lawful collection of tax revenues, and conspiracy could encompass transaction in which conspirators did not realize benefits directly from the United States. U.S. v. Carruth, C.A.9 (Cal.) 1983, 699 F.2d 1017, certiorari denied 104 S.Ct. 698, 464 U.S. 1038, 79 L.Ed.2d 164. Internal Revenue 5290

Where government presented overwhelming proof at trial of conspiracy directed towards systematic defrauding of United States through improper production and testing of concrete pipe, aided by bribery of inspectors and performance of repairs meant to conceal rather than correct, and where there was abundant evidence that defendant participated in fraudulent testing, there was no fatal variance between his indictment, which charged that single conspiracy to defraud United States had been carried out by defendants, and proof adduced by government at trial. U. S. v. DeLillo, C.A.2 (N.Y.) 1980, 620 F.2d 939, certiorari denied 101 S.Ct. 107, 449 U.S. 835, 66 L.Ed.2d 41, certiorari denied 101 S.Ct. 108, 449 U.S. 835, 66 L.Ed.2d 41. Conspiracy 43(12)

Where, although indictment required Government to prove that defendants conspired to forge, falsely make and alter government instruments, Government's evidence was directed entirely toward proving that defendants conspired to place false endorsements on otherwise valid instruments, there was a fatal divergence between indictment and proof. U. S. v. Goodson, C.A.5 (Tex.) 1974, 502 F.2d 1303. Conspiracy 43(12)

In prosecution for conspiracy to stage automobile collisions to create false personal injury claims against insurers, there was such interdependence among links of enterprise that jury could find that, apart from one "accident" which trial court viewed as separate and distinct conspiracy, each appealing defendant had been participant in single overall conspiracy, as charged by indictment, and there was thus no variance affecting substantial rights of defendants. U. S. v. Perez, C.A.5 (La.) 1973, 489 F.2d 51, rehearing denied 488 F.2d 552, certiorari denied 94 S.Ct. 3067, 417 U.S. 945, 41 L.Ed.2d 664, certiorari denied 94 S.Ct. 3068, 417 U.S. 945, 41 L.Ed.2d 664. Conspiracy 43(12)

Where defendants were charged with conspiracy relating to 17 automobiles but government proved conspiracy with respect to only 14, failure of government fully to connect up remaining automobiles with defendants was not such error as would warrant reversal of convictions because of failure of court to strike all evidence dealing with remaining automobiles, where there was uncontroverted evidence clearly connecting defendants to conspiracy charge. Eldridge v. U.S., C.A.5 (Ala.) 1965, 346 F.2d 186. Criminal Law 1168(4)

Where indictment charged one overall conspiracy to obtain money and property by false pretenses from charitable foundation and its contributors, and each defendant was charged with performance of certain acts which contributed to fraudulent objective, there was no fatal variance because it was not shown that each conspirator took

part in each of such acts charged. Koolish v. U. S., C.A.8 (Minn.) 1965, 340 F.2d 513, certiorari denied 85 S.Ct. 1805, 381 U.S. 951, 14 L.Ed.2d 724. Conspiracy 43(12)

Variance between indictment charging that defendant conspired with others to forge and utter as true United States savings bonds and evidence that bonds were valid bonds which had been stolen from their registered owner and that co-defendant signed rightful owner's name on reverse side of bonds in place provided therefor required reversal of conviction. Danielson v. U. S., C.A.9 (Cal.) 1963, 321 F.2d 441. Conspiracy 43(12)

Variance between allegata of indictment charging conspiracy to defraud United States in administration of immigration laws by arranging marriage in form only between alien and citizen and probata establishing that there was no agreement between parties that marriage was to be in form only rendered indictment fatally defective. U. S. v. Vazquez, C.A.3 (N.J.) 1963, 319 F.2d 381. Conspiracy 43(12)

Variance which arose when indictment for violation of Mann Act, § 2421 et seq. of this title, and conspiracy to violate the Mann Act, § 2421 et seq. of this title, alleged that certain telephone call in furtherance of the conspiracy was made by one defendant, when proof showed that it was in fact made by second defendant, was not fatal in that it was not prejudicial to the defendants charged with the conspiracy but it adequately informed them of the matters therein alleged. Cwach v. U.S., C.A.8 (Minn.) 1954, 212 F.2d 520. Criminal Law 1167(1)

Under indictment for conspiracy to export platinum without license, clearly setting out overt acts involving all transactions and providing sufficient notice to accused, proof of consecutive shipments by boat, trip to Canada, and shipments by airplane did not constitute prejudicial variance in view of evidence which authorized finding of close interrelation among the transactions. U.S. v. Rosenberg, C.C.A.2 (N.Y.) 1945, 150 F.2d 788, certiorari denied 66 S.Ct. 90, 326 U.S. 752, 90 L.Ed. 451, certiorari denied 66 S.Ct. 91, 326 U.S. 752, 90 L.Ed. 451. Conspiracy 43(12)

In prosecution for conspiracy to make false statements to secure loans for modernization of old houses under National Housing Act, § 1701 et seq. of Title 12, where evidence showed that work had not been completed as certified in each instance to lender by borrower and dealer in making application for loan, there was no variance between indictment and proof. U.S. v. Groopman, C.C.A.2 (N.Y.) 1945, 147 F.2d 782, certiorari denied 66 S.Ct. 29, 326 U.S. 745, 90 L.Ed. 445. Conspiracy 43(12)

The alleged variance between allegation of conspiracy to receive, dispose of, and transport stolen merchandise in interstate commerce, and proof which failed to show a receipt and disposal of the merchandise was not fatal. Andrews v. U.S., C.C.A.4 (W.Va.) 1939, 108 F.2d 511. Conspiracy 43(12)

In prosecution for conspiring to obstruct the administration of justice and to defraud the United States, even if Circuit Judge's codefendant was not criminally connected with general conspiracy and was involved in a separate conspiracy, there was not a fatal variance between allegations and proof, but proof in respect of conspiracy with which codefendant was not connected could be regarded as incompetent with respect to him, where indictment alleged in a separate paragraph pendency of appeal in a particular case with which codefendant was allegedly connected, proof corresponded with those allegations, and District Judge instructed jury to confine themselves, in passing on question of codefendant's guilt or innocence, to evidence relating to him without reference to that which related only to Circuit Judge. U.S. v. Manton, C.C.A.2 (N.Y.) 1939, 107 F.2d 834, certiorari denied 60 S.Ct. 590, 309 U.S. 664, 84 L.Ed. 1012. Conspiracy 43(12)

Indictment was not variant from proof that at one stage it was thought expedient to ask for smaller sum than ultimately agreed on. Green v. U.S., C.C.A.8 (Okla.) 1928, 28 F.2d 965. Conspiracy 43(12)

In prosecution for conspiracy to withhold property from bankruptcy trustee, there was no fatal variance between allegation that bankrupt was "electrical company" and proof that it was "electric company." Bartkus v. U.S.,

18 U.S.C.A. § 371

C.C.A.7 (Ill.) 1927, 21 F.2d 425. Conspiracy 43(12)

Assuming, but not conceding that knowledge by the grand jury of a more particular description of the goods recovered would constitute a variance, the court below correctly sustained the objections of the government to questions which sought to elicit testimony to that effect. Throughout the case counsel seem to overlook the fact that this is an indictment for conspiracy. The material inquiry is, not what goods the trustee found and dragged out of hiding places, but what goods the defendants conspired to conceal. The fact that they only partially succeeded is entirely consistent with the indictment, and with the idea that the defendants themselves, at the time they entered into the conspiracy, and while they were committing overt acts under it, had not determined upon the particular goods or the particular description of goods they would conceal. An indictment may be as general as the conspiracy it seeks to punish." Jollit v. U. S., C.C.A.5 (Ala.) 1922, 285 F. 209, certiorari denied 43 S.Ct. 519, 261 U.S. 624, 67 L.Ed. 832.

Where an indictment charged a conspiracy to defraud the United States of moneys thereafter to become due from a certain mercantile firm as customs duties, proof that the merchandise in question was consigned to a firm of customs brokers, who paid the duties thereon, was not a variance, the goods being owned by the mercantile firm, and so consigned only for convenience of entry. Grunberg v. U.S., C.C.A.1 (Mass.) 1906, 145 F. 81, 76 C.C.A. 51. Customs Duties 134

561. ---- Means of accomplishing conspiracy, variance between indictment and proof, evidence

Prejudicial variance did not exist between indictment charging single conspiracy to defraud United States in various ways and proof that certain types of fraudulent practices occurred during one period and other types at different periods, where evidence disclosed one continuous and persistent conspiracy to defraud. Nye & Nissen v. U.S., U.S.Cal.1949, 69 S.Ct. 766, 336 U.S. 613, 93 L.Ed. 919. Criminal Law 1167(1)

562. ---- Overt acts, variance between indictment and proof, evidence

Variance between allegation in indictment that defendant transported currency and evidence that defendant did not actually transport the money was immaterial as there was little question that defendant accompanied government agent on entire trip and that he physically carried the money part of the way, and consequently, despite legally immaterial variance, defendant's actions, as proved, sufficed as an overt act. U. S. v. Enstam, C.A.5 (Tex.) 1980, 622 F.2d 857, certiorari denied 101 S.Ct. 1351, 450 U.S. 912, 67 L.Ed.2d 336, certiorari denied 101 S.Ct. 1974, 451 U.S. 907, 68 L.Ed.2d 294. Conspiracy 43(12)

Government is not limited to overt acts pleaded in the indictment in proving a conspiracy; it may show other acts of conspirators occurring during the life of the conspiracy. U. S. v. Elliott, C.A.5 (Ga.) 1978, 571 F.2d 880, rehearing denied 575 F.2d 300, certiorari denied 99 S.Ct. 349, 439 U.S. 953, 58 L.Ed.2d 344. Conspiracy 43(12)

Where four overt acts were alleged to have been committed by defendants in furtherance of a conspiracy, defendants could not have been prejudiced by variance as to only one of them so that fact that indictment alleged that the defendants had, while conspiring to rob United States mail, conducted surveillance of postal facility of Livingston, Montana, whereas it was proved at trial that they had conducted surveillance only of the postal facility at Bozeman, Montana, was not fatal. U. S. v. Bolzer, C.A.9 (Mont.) 1977, 556 F.2d 948. Conspiracy 43(12)

Where each of the seven overt acts charged in support of conspiracy relating to destruction of draft records occurred by terms of indictment on or about a specified date, introduction of statements made by defendants at press conference held some 20 days later on ground that the press conference was arguably a continuation of conspiracy made out in indictment was not a variance in proof which affected substantial rights of defendants who were aware that evidence of press conference would be sought to be introduced at trial. U. S. v. Donner, C.A.7

(Ind.) 1974, 497 F.2d 184, certiorari denied 95 S.Ct. 619, 419 U.S. 1047, 42 L.Ed.2d 641, certiorari denied 95 S.Ct. 620, 419 U.S. 1047, 42 L.Ed.2d 641. Conspiracy 43(12)

Variance between the indictment charging that defendant accused of conspiracy to smuggle amphetamine tablets into United States caused transportation of approximately 1,958 pounds of amphetamine tablets from garage to another location and the proof that defendant drove an automobile whose trunk contained amphetamine tablets, was not fatal to conviction where there was no motion for bill of particulars, there was no objection except on U.S.C.A. Const. Amend. 4 grounds when evidence of the overt act found was admitted, and at no time did defendant claim surprise and thus no substantial right of the defendant was affected. Brulay v. U. S., C.A.9 (Cal.) 1967, 383 F.2d 345, certiorari denied 88 S.Ct. 469, 389 U.S. 986, 19 L.Ed.2d 478. Conspiracy 43(12)

In prosecution for conspiracy to transport stolen automobile in foreign commerce with knowledge of its stolen character, legal prejudice did not result from allegation in indictment of overt acts which were not proven. Beeler v. U.S., C.A.5 (Tex.) 1953, 205 F.2d 454, certiorari denied 74 S.Ct. 130, 346 U.S. 877, 98 L.Ed. 385. Criminal Law 1167(1)

Proof of an overt act other than the one alleged in indictment charging conspiracy does not constitute a fatal variance, but may warrant a continuance on the ground of surprise. U.S. v. Negro, C.C.A.2 (N.Y.) 1947, 164 F.2d 168. Conspiracy 43(12); Criminal Law 599

Even if evidence of first overt act in conspiracy was evidence of existence of conspiracy, there was no variance, where indictment charged subsequent overt acts. Pearlman v. U.S., C.C.A.9 (Or.) 1927, 20 F.2d 113, certiorari denied 48 S.Ct. 85, 275 U.S. 549, 72 L.Ed. 419. Conspiracy 43(12)

Variance between indictment under former § 88 of this title [now this section], charging the presentation of a false claim in bankruptcy proceeding, and proof of its presentation in a composition, was not fatal, nor was variance between indictment charging an overt act in the state of the prosecution, and proof of the overt act there and conspiracy in another state, fatal. Bernstein v. U.S., C.C.A.4 (Va.) 1916, 238 F. 923, 151 C.C.A. 657, certiorari denied 37 S.Ct. 246, 242 U.S. 653, 61 L.Ed. 546. Conspiracy 43(12)

In conspiracy prosecution, government is not limited in its proof at trial to those overt acts alleged in indictment; nor is government under obligation to prove every overt act alleged. U. S. v. Pugh, E.D.Pa.1977, 437 F.Supp. 944, affirmed 578 F.2d 1376. Conspiracy 45

563. ---- Participants, variance between indictment and proof, evidence

Variance is not "material" where indictment charges a conspiracy involving several persons, and the proof establishes conspiracy against only some of them. Berger v. U.S., U.S.N.Y.1935, 55 S.Ct. 629, 295 U.S. 78, 79 L.Ed. 1314. Conspiracy 43(12)

Defendant's conviction for conspiracy involving two persons could not be permitted to stand on ground that it was proved that he conspired with others, especially where indictment and bill of particulars failed to disclose conspiracy between defendant and such others. Harlow v. U. S., C.A.5 (Tex.) 1962, 301 F.2d 361, certiorari denied 83 S.Ct. 25, 371 U.S. 814, 9 L.Ed.2d 56, rehearing denied 83 S.Ct. 204, 371 U.S. 906, 9 L.Ed.2d 167. Conspiracy 43(12)

Under indictment charging 14 defendants in one count with single conspiracy, proof tending to connect some of defendants in common conspiracy, but failing to connect others therewith and thus failing to connect all defendants in one general conspiracy, constituted a fatal variance. Brooks v. U.S., C.C.A.5 (Ga.) 1947, 164 F.2d 142. Conspiracy 43(12)

18 U.S.C.A. § 371

Where accused was charged with conspiring with others to violate Emergency Price Control Act, 50 U.S.C.A.App. former § 904, in paying for field corn above the ceiling price, that more persons appeared to have been involved with him than were charged in indictment did not present such variance from indictment against accused as to inure to his advantage. Quirk v. U.S., C.C.A.8 (Iowa) 1947, 161 F.2d 138. Conspiracy 43(12)

It was not a fatal variance of which defendant could complain on ground of insufficiency of evidence that conspiracy in which he participated did not last as long or include as many persons as indictment alleged. Neely v. U. S., C.C.A.5 (Ala.) 1944, 145 F.2d 828. Conspiracy 43(12)

Conviction of accused who was charged with conspiracy to violate internal revenue laws relating to intoxicating liquor and acquittal of other defendant did not give rise to fatal inconsistency, where indictment alleged and proof showed that other persons participated in the conspiracy. Heflin v. U.S., C.C.A.5 (Fla.) 1943, 132 F.2d 907. Criminal Law 878(4)

It must affirmatively appear that persons other than those named in indictment were known to grand jurors, to establish variance. Pearlman v. U.S., C.C.A.9 (Or.) 1927, 20 F.2d 113, certiorari denied 48 S.Ct. 85, 275 U.S. 549, 72 L.Ed. 419. Indictment And Information 184

An indictment charging conspiracy with person unknown was not at fatal variance with proof showing one known person was unnamed. Jones v. U.S., C.C.A.4 (Md.) 1926, 11 F.2d 98, certiorari denied 46 S.Ct. 633, 271 U.S. 682, 70 L.Ed. 1149. Indictment And Information 184

In prosecution against six defendants for conspiracy to sell cocaine, in violation of Harrison Act, § 2550 et seq. of Title 26, nolle prosequi against one of defendants was not to avoid conviction of other five, it being no variance to allege conspiracy of six and prove one of five. Harrison v. U.S., C.C.A.2 (N.Y.) 1925, 7 F.2d 259.

In a prosecution for conspiracy to violate the National Prohibition Act former § 1 et seq. of Title 27, by shipping a carload of whisky and distributing it among bootleggers or dealers, where the indictment named 31 conspirators, and there were various other persons who may or may not have been parties to the conspiracy, there was no fatal variance, because the indictment charged the defendants named with conspiring with divers other persons to the grand jurors unknown, while offered evidence would have shown that some of the other persons were known to the grand jurors, where the indictment alleged the means and overt acts with sufficient particularity to inform defendants of the nature and cause of the accusation, as required by U.S.C.A.Const. Amend. 6. U.S. v. Heitler, N.D.Ill.1921, 274 F. 401, error dismissed 43 S.Ct. 163, 260 U.S. 703, 67 L.Ed. 472, transferred 43 S.Ct. 185, 260 U.S. 438, 67 L.Ed. 338, affirmed 289 F. 1021, certiorari dismissed 44 S.Ct. 135, 263 U.S. 728, 68 L.Ed. 528. Indictment And Information 184

The doing by one of an overt act to effect the object of a previously formed conspiracy being sufficient, under former § 88 of this title [now this section], to complete the offense, variance between indictment and proof as to number participating in such act was immaterial. Hardy v. U.S., C.C.A.5 (Tex.) 1919, 256 F. 284, 167 C.C.A. 456, certiorari denied 40 S.Ct. 9, 250 U.S. 659, 63 L.Ed. 1194. Conspiracy 43(12)

There was not a fatal variance between indictment and proof in a prosecution for conspiracy under former § 88 of this title [now this section], because the indictment charged that the defendants conspired with each other and with others to the grand jurors unknown, while the evidence showed that the name of another conspirator was in fact known, where the indictment fully set out his connection with the conspiracy, and designated him by name, so as to clearly advise the defendants of the charge against them. Jones v. U.S., C.C.A.9 (Or.) 1910, 179 F. 584, 103 C.C.A. 142. Conspiracy 43(12)

Under an indictment against a number of defendants for conspiracy to defraud the government out of certain public lands, charged to have been illegally entered for the benefit of the defendants, it is not a fatal variance that the

proof shows that some of them only shared in the benefit, the offense being complete if the conspiracy is established and an overt act committed in pursuance thereof. Olson v. U.S., C.C.A.8 (Minn.) 1904, 133 F. 849, 67 C.C.A. 21. Conspiracy 43(12)

Statement in which head of 1993 plot to bomb World Trade Center (WTC) failed to name defendant as participant in bombing was not exculpatory, and thus was not *Brady* material, in prosecution of defendant for conspiring to levy war of urban terrorism against United States; evidence showed that defendant did not join conspiracy for which he was convicted until after WTC bombing. Elgabrowny v. U.S., S.D.N.Y.2003, 2003 WL 22416167, Unreported. Criminal Law 700(3)

564. ---- Prejudice, variance between indictment and proof, evidence

That indictment charged conspiracy to utter counterfeit federal reserve bank notes and that proof showed two separate conspiracies within the indictment, except that one defendant was a party to both conspiracies, did not require reversal of conviction where no prejudice to substantial rights of an alleged member of one of the conspiracies was shown. Berger v. U.S., U.S.N.Y.1935, 55 S.Ct. 629, 295 U.S. 78, 79 L.Ed. 1314. Criminal Law 1168(1)

Variance is fatal where indictment charges one large conspiracy and proof shows two different and disconnected smaller conspiracies, provided defendant's substantial rights have been prejudiced. Berger v. U.S., U.S.N.Y.1935, 55 S.Ct. 629, 295 U.S. 78, 79 L.Ed. 1314. Conspiracy 43(12)

Even when variance exists between allegation in indictment, charging single conspiracy between defendant and codefendants, and proof at trial, Court of Appeals reverses conviction on ground that defendant was denied fair trial only upon showing of "substantial prejudice," i.e., that evidence proving conspiracies in which defendant did not participate prejudiced case against him in conspiracy to which he was party. U.S. v. Johansen, C.A.2 (N.Y.) 1995, 56 F.3d 347, as amended. Criminal Law 1167(1)

Evidence established one continuous conspiracy between codefendant and defendant, joined in by lesser coconspirators, to enable codefendant to evade payment of substantial federal taxes on his 1974-1975 taxable income and to take such steps as might become necessary to defraud government into belief that all income taxes due for those years had been paid and therefore there was no fatal variance between indictment, which charged a single conspiracy, and the proof; furthermore, since defendant participated in unlawful activities from the beginning to the end, he could not claim, even if multiple conspiracies had been shown, prejudice. U.S. v. Cunningham, C.A.2 (N.Y.) 1983, 723 F.2d 217, certiorari denied 104 S.Ct. 2154, 466 U.S. 951, 80 L.Ed.2d 540. Conspiracy 43(12); Criminal Law 1167(1)

Possibility of prejudice resulting from a variance between indictments charging a single overall conspiracy and proof showing a number of smaller ones increases with the number of defendants tried and the number of conspiracies proven, and while question of prejudice is not solely quantitative, a consideration of the numbers involved in case is an appropriate starting point for analysis of whether the variance resulted in prejudice to defendants requiring reversal of their convictions. U. S. v. Bertolotti, C.A.2 (N.Y.) 1975, 529 F.2d 149. Criminal Law 1167(1)

Variance between indictment charging a single conspiracy and proof revealing three small conspiracies was not prejudicial where defendant was essential figure in each of the alleged three small conspiracies and was not subjected to danger that he might be convicted on basis of evidence that related only to a conspiracy of which he was not a part. U. S. v. Moore, C.A.9 (Cal.) 1975, 522 F.2d 1068, certiorari denied 96 S.Ct. 775, 423 U.S. 1049, 46 L.Ed.2d 637. Criminal Law 1167(1)

In conspiracy prosecution, evidence which suggested a smaller conspiracy in addition to the bigger, overall

conspiracy charged in the indictment was at most a variance not affecting substantial rights of defendants. U. S. v. Wayman, C.A.5 (Ga.) 1975, 510 F.2d 1020, certiorari denied 96 S.Ct. 84, 423 U.S. 846, 46 L.Ed.2d 67. Conspiracy 43(12)

Even assuming variance between proof, which allegedly showed two separate narcotics conspiracies, and indictment which alleged a single ongoing conspiracy, no prejudice resulted where there were only eight alleged coconspirators and at most two separate conspiracies each from which was proved beyond a reasonable doubt by evidence relating only to it and where court cautioned jury that whether a particular defendant was a member of a conspiracy had to be determined on evidence as to his own actions, conduct and statements and his own connection with the acts and conduct with other alleged coconspirators. U. S. v. Cirillo, C.A.2 (N.Y.) 1974, 499 F.2d 872, certiorari denied 95 S.Ct. 638, 419 U.S. 1056, 42 L.Ed.2d 653. Criminal Law 1167(1)

Inquiry with respect to variance is properly limited to whether there has been such a variance as to affect substantial rights of accused. U. S. v. McCormick, C.A.7 (Ill.) 1962, 309 F.2d 367, certiorari denied 83 S.Ct. 724, 372 U.S. 911, 9 L.Ed.2d 719. Criminal Law 1167(1)

In prosecution for conspiracy to operate illicit stills, where prosecution was trying to prove that 22 stills were being operated in concert, admission of evidence as to the existence of illicit stills with which accused were not shown to have been connected, and instruction that such evidence bore on existence of conspiracy, was not fatal, but at worst was only an immaterial variance, though stills were not shown to have been operated under a single scheme. U.S. v. Falcone, C.C.A.2 (N.Y.) 1940, 109 F.2d 579, certiorari granted 60 S.Ct. 1075, 310 U.S. 620, 84 L.Ed. 1393, affirmed 61 S.Ct. 204, 311 U.S. 205, 85 L.Ed. 128. Conspiracy 43(12)

565. ---- Time and place, variance between indictment and proof, evidence

Employment of evidence respecting conversations between parties prior to time of conspiracy alleged in indictment did not constitute a material variance between proofs and indictment as long as defendant was not misled to his prejudice or exposed to danger of double jeopardy. U. S. v. Enright, C.A.6 (Mich.) 1978, 579 F.2d 980. Conspiracy 43(12)

Where conspiracy was within the period charged in the indictment and any discrepancy was insubstantial, there was no fatal variance arising from fact that indictment alleged that conspiracy began in May of 1971 and fact that there was no proof of the precise date of its commencement. U. S. v. Hathaway, C.A.1 (Mass.) 1976, 534 F.2d 386, certiorari denied 97 S.Ct. 64, 429 U.S. 819, 50 L.Ed.2d 79. Indictment And Information 176

That indictment charged that in furtherance of conspiracy defendant met with alleged coconspirator on or about July 14, 1962 and at trial government's evidence showed that meeting took place on or about June 20 was not a fatal variance nor prejudicial to the defendant, who, although informed by court that he could have any additional time which might be necessary to prove defense because of the difference in dates, did not request a continuance. U. S. v. Edwards, C.A.2 (N.Y.) 1966, 366 F.2d 853, certiorari denied 87 S.Ct. 852, 386 U.S. 908, 17 L.Ed.2d 782, certiorari denied 87 S.Ct. 882, 386 U.S. 919, 17 L.Ed.2d 790. Indictment And Information 176

Variance between indictment charging as overt act that, between November 8, 1957 and March 27, 1958, checks were drawn by one individual payable to another in amount totaling $80,225.69 and proof that 11 checks were drawn between June 3 and August 29, 1957, payable to such individual in amount of $86,879.91, was not prejudicial to defendant in prosecution for conspiracy to transfer and conceal assets of a corporation in contemplation of bankruptcy, and the court was justified in reading the overt act from the indictment to the jury. Strauss v. U. S., C.A.5 (Fla.) 1963, 311 F.2d 926, certiorari denied 83 S.Ct. 1299, 373 U.S. 910, 10 L.Ed.2d 412. Conspiracy 43(12); Criminal Law 633(2)

There was no such material variance between "March 16" and "about March 1" as would invalidate conviction,

under indictment charging conspiracy to embezzle and misapply federal credit union funds within period from about March 1, 1949, to about March 16, 1952, merely because it appeared that charter of credit union had not been issued until March 16, 1949. Robinson v. U.S., C.A.D.C.1954, 210 F.2d 29, 93 U.S.App.D.C. 347. Indictment And Information 176

In prosecution for participation in a conspiracy to traffic in narcotic drugs in violation of the laws of the United States, in view of competent evidence with regard to codefendant that conspiracy was functioning in 1947 and that he was a part of it, lack of such proof for years 1945 and 1946 did not support his claim of variance, even though indictment charged that conspiracy was instituted during that year. United States v. Markman, C.A.2 (N.Y.) 1952, 193 F.2d 574. Conspiracy 43(12)

Variance between testimony and date set forth in indictment for theft would not have been fatal, where defendant was convicted of conspiracy to commit theft, but acquitted of theft. U.S. v. Winters, C.C.A.2 (N.Y.) 1946, 158 F.2d 674. Criminal Law 1167(1)

Where indictment charged illegal carrying on of business of wholesale liquor dealer on specifically described premises, and government proved that on certain dates defendant sold tax unpaid alcohol, but there was no evidence indicating where the particular liquor came from, overruling defendant's motion to strike the testimony on the ground of "variance" between allegations as to place of business and the proof was error. U. S. v. Tuffanelli, C.C.A.7 (Ill.) 1942, 131 F.2d 890, certiorari denied 63 S.Ct. 769, 318 U.S. 772, 87 L.Ed. 1142. Criminal Law 696(3)

It must be alleged and proved that crime involved was committed prior to date of indictment, within period of limitation and within jurisdiction of court, but any variance between pleading and proof is immaterial unless indictment fails to inform a defendant fully and correctly of the criminal act with which he is charged, taking into consideration the proof which is introduced against him. U.S. v. Perlstein, C.C.A.3 (N.J.) 1942, 126 F.2d 789, certiorari denied 62 S.Ct. 1106, 316 U.S. 678, 86 L.Ed. 1752. Indictment And Information 166; Indictment And Information 175; Indictment And Information 176

Indictment alleging land was situated in range 18 east was not fatal variance with proof showing range 8 east. Green v. U.S., C.C.A.8 (Okla.) 1928, 28 F.2d 965. Conspiracy 43(12)

In prosecution for conspiracy to conceal goods from trustee in bankruptcy, variance as to address of bankrupt's place of business, described as "No. 113 East Third street" in information, and shown by evidence to be "No. 114 East Third street," was immaterial. Israel v. U. S., C.C.A.6 (Ohio) 1925, 3 F.2d 743, 3 Ohio Law Abs. 416. Bankruptcy 3862; Conspiracy 48.1(2.1)

Proof that a conspiracy was formed some three months prior to the date alleged in the indictment, but within the statute of limitation, is an immaterial variance. Goldberg v. U.S., C.C.A.5 (Ga.) 1924, 297 F. 98. Conspiracy 43(12)

Where an indictment under former § 88 of this title [now this section] and under § 10 of Title 49, charged a conspiracy between lumber merchants and their servants and an employé of a railroad company to procure less than the established rate by falsely weighing the lumber shipped, and alleged that a shipment was made from East Atchison, Mo., where the underweighing was accomplished, and the evidence showed that the lumber was shipped from Atchison, Kan., and that the rates from Atchison and East Atchison were the same, this variance was immaterial, if the overt act charged--the underweighing--was accomplished at East Atchison, within the jurisdiction of the district court trying the case. U.S. v. Howell, W.D.Mo.1892, 56 F. 21. Carriers 38(5); Conspiracy 47

A variance between the indictment and the evidence as to the time when the alleged overt act was committed is

immaterial. U.S. v. Graff, C.C.N.Y.1878, 26 F.Cas. 1, No. 15244. Indictment And Information 176

566. ---- Separate conspiracies, variance between indictment and proof, evidence

There was no fatal variance between single conspiracy alleged in indictment and evidence adduced at trial, and jury did not find more than one conspiracy, even though defendants were convicted on count alleging their participation in one conspiracy to defraud savings and loan institutions through fraudulent land loans, but jury did not find same underlying substantive offenses as to each defendant, since nature of dealings among defendants was such that all were integral and important participants, and by nature of scheme different participants played different but important functions necessary to its success. U.S. v. Faulkner, C.A.5 (Tex.) 1994, 17 F.3d 745, rehearing and rehearing en banc denied 21 F.3d 1110, certiorari denied 115 S.Ct. 193, 513 U.S. 870, 130 L.Ed.2d 125, rehearing dismissed 115 S.Ct. 786, 513 U.S. 1105, 130 L.Ed.2d 679, certiorari denied 115 S.Ct. 663, 513 U.S. 1056, 130 L.Ed.2d 598. Conspiracy 43(12)

Notwithstanding fact that Government's proof at trial of multiple conspiracies to defraud United States varied from proof of single conspiracy alleged in indictment, defendant could not have been prejudiced given proof that defendant was party to each conspiracy to defraud Government in its effort to collect taxes. U.S. v. Zimmerman, C.A.8 (Iowa) 1987, 832 F.2d 454. Conspiracy 43(12)

Proof of separate conspiracies after an indictment charging one conspiracy is not per se prejudicial. U. S. v. Grassi, C.A.5 (Fla.) 1980, 616 F.2d 1295, rehearing denied 624 F.2d 1098, certiorari denied 101 S.Ct. 363, 449 U.S. 956, 66 L.Ed.2d 220. Conspiracy 43(12)

A fatal variance between allegations in indictment and proof at trial was not shown in prosecution for conspiring to transport and distribute stolen automobile engines and parts, notwithstanding claim that indictment alleged one overall conspiracy while proof at trial showed many separate conspiracies, where there was evidence on which a finding of a single four-part conspiracy might have been based even though ultimate receivers were acquitted. U. S. v. Diana, C.A.4 (S.C.) 1979, 605 F.2d 1307, certiorari denied 100 S.Ct. 1067, 444 U.S. 1102, 62 L.Ed.2d 787. Conspiracy 43(12)

Though two companies were used in scheme to defraud, no fatal variance was shown between proof and indictment charging conspiracy, as against contention that scheme constituted not one but two conspiracies. U. S. v. Netterville, C.A.5 (Tex.) 1977, 553 F.2d 903, certiorari denied 98 S.Ct. 189, 434 U.S. 861, 54 L.Ed.2d 135, certiorari denied 98 S.Ct. 719, 434 U.S. 1009, 54 L.Ed.2d 752. Conspiracy 43(12)

There was no improper variance in prosecution for conspiracy to transport money obtained by fraud between single conspiracy charged and multiple conspiracies allegedly proved by introducing evidence of prior schemes of coconspirators. U. S. v. Dearden, C.A.5 (Fla.) 1977, 546 F.2d 622, rehearing denied 550 F.2d 42, certiorari denied 98 S.Ct. 295, 434 U.S. 902, 54 L.Ed.2d 188, rehearing denied 98 S.Ct. 535, 434 U.S. 976, 54 L.Ed.2d 468, certiorari denied 98 S.Ct. 296, 434 U.S. 902, 54 L.Ed.2d 188. Conspiracy 43(12)

Existence of a spillover or guilt transference effect, wherein jury convicts one set of conspirators not on basis of evidence relating to them, but by imputing to them guilt based on activities of other set of conspirators, turns in part on whether number of conspiracies and conspirators involved is too great for jury to give each defendant the separate and individual consideration of evidence against him to which he is entitled. U. S. v. Toliver, C.A.2 (N.Y.) 1976, 541 F.2d 958. Conspiracy 43(12)

Considering the character of the property involved and the nature of the crime in alleged conspiracy for distribution of stolen and counterfeit securities, there was a permissible inference of knowledge on the part of any one member of the conspiracy concerning the existence and function of other members of the conspiracy, and evidence was sufficient to establish a single conspiracy, rather than several independent conspiracies, so that there was no fatal

variance between indictment and proof at trial, though the evidence disclosed a variety of criminal activities and though there existed two groups of suppliers of securities and two groups of retailers, acting through a number of middlemen. U. S. v. Morrow, C.A.5 (Fla.) 1976, 537 F.2d 120, rehearing denied 541 F.2d 282, certiorari denied 97 S.Ct. 1602, 430 U.S. 956, 51 L.Ed.2d 806. Conspiracy 43(12); Conspiracy 44.2

Even if evidence presented at trial showed two different conspiracies, such conspiracies could properly have been joined in the same indictment since there was only one defendant; hence, defendant could not have been prejudiced by failure of the indictment to charge two conspiracies rather than one. U. S. v. Sir Kue Chin, C.A.2 (N.Y.) 1976, 534 F.2d 1032. Conspiracy 43(12); Criminal Law 1167(1); Indictment And Information 127

Evidence supported conclusion that defendant, who contended that there was a prejudicial variance because the proof established two conspiracies while indictment charged only one, was consciously acting as part of a single conspiracy of which he was the hub; however, if the two suppliers had been defendants the case might have been different. U. S. v. Sir Kue Chin, C.A.2 (N.Y.) 1976, 534 F.2d 1032. Conspiracy 43(12)

Variance between court in indictment which alleged a single overall conspiracy and named 29 defendants, 17 of whom remained by the time case went to jury, and proof of at least four separate conspiracies was prejudicial to seven convicted defendants requiring reversal of their convictions. U. S. v. Bertolotti, C.A.2 (N.Y.) 1975, 529 F.2d 149. Criminal Law 1167(1)

Proof plainly demonstrated one overall agreement among the various parties to perform different functions in order to carry out single objective of conspiracy which was the sale of stolen semitrailers contrary to claim of defendant that there was a variance between the indictment charging a single conspiracy and proof showing a number of unrelated conspiracies. U. S. v. Bastone, C.A.7 (Ill.) 1975, 526 F.2d 971, certiorari denied 96 S.Ct. 2172, 425 U.S. 973, 48 L.Ed.2d 797. Conspiracy 43(12)

Variance between indictment which alleged a single conspiracy and court instruction to the effect that jury could properly conclude that there were three conspiracies did not prejudice any defendant. U. S. v. La Vecchia, C.A.2 (N.Y.) 1975, 513 F.2d 1210. Criminal Law 1172.6

Proof of multiple conspiracies does not automatically constitute a fatal variance from a single offense as charged in the indictment. U. S. v. Wayman, C.A.5 (Ga.) 1975, 510 F.2d 1020, certiorari denied 96 S.Ct. 84, 423 U.S. 846, 46 L.Ed.2d 67. Conspiracy 43(12)

There was no variance between indictment and proof adduced thereunder in prosecution for participation in conspiracy to obstruct justice, despite defendant's contention that conspiracy, if any, in which he participated was a separate and "lesser" conspiracy from that referred to in indictment. U. S. v. Brasseaux, C.A.5 (La.) 1975, 509 F.2d 157, rehearing denied 511 F.2d 1192. Conspiracy 43(12)

Even if evidence established multiple conspiracies rather than large, single conspiracy, defendant could claim no prejudice where variance could not have affected his substantial rights. U. S. v. Santana, C.A.2 (N.Y.) 1974, 503 F.2d 710, certiorari denied 95 S.Ct. 632, 419 U.S. 1053, 42 L.Ed.2d 649, certiorari denied 95 S.Ct. 1352, 420 U.S. 963, 43 L.Ed.2d 439, certiorari denied 95 S.Ct. 1450, 420 U.S. 1006, 43 L.Ed.2d 764. Criminal Law 1167(1)

Mere fact that an agreement to commit unlawful acts might violate different statutes did not create separate conspiracies out of one conspiracy, it was proper for indictment to allege only one conspiracy, and evidence as to different statutes did not create variance. U. S. v. Basurto, C.A.9 (Ariz.) 1974, 497 F.2d 781. Conspiracy 43(12)

On defendants' assertion of variance between indictment charging single conspiracy and proof which assertedly

revealed plural conspiracies, court's inquiry was necessarily whether variance actually existed and whether in fact it affected substantial rights of defendants. U. S. v. Perez, C.A.5 (La.) 1973, 489 F.2d 51, rehearing denied 488 F.2d 552, certiorari denied 94 S.Ct. 3067, 417 U.S. 945, 41 L.Ed.2d 664, certiorari denied 94 S.Ct. 3068, 417 U.S. 945, 41 L.Ed.2d 664. Conspiracy 43(12)

Requirements for sustaining verdict in which there has been a variance have been met when there is no double jeopardy problem, no use of unfair surprise deriving from proof of two conspiracies rather than one, the several conspiracies could have been joined in a single indictment or consolidated for a single trial and the conduct of trial was such that danger resulting from admission of evidence not chargeable to any appellant was minimal. U. S. v. Calabro, C.A.2 (N.Y.) 1972, 467 F.2d 973, certiorari denied 93 S.Ct. 1357, 410 U.S. 926, 35 L.Ed.2d 587, certiorari denied 93 S.Ct. 1358, 410 U.S. 926, 35 L.Ed.2d 587, rehearing denied 93 S.Ct. 1891, 411 U.S. 941, 36 L.Ed.2d 404, certiorari denied 93 S.Ct. 1386, 410 U.S. 926, 35 L.Ed.2d 587, certiorari denied 93 S.Ct. 1403, 410 U.S. 926, 35 L.Ed.2d 587. Conspiracy 43(12)

Fact that testimony given during course of prosecution for conspiring to rob a federally insured bank was largely uniform among accomplices while their grand jury testimony varied among them and from their trial testimony was not a basis for concluding that testimony was perjured to falsely implicate defendants and that assistant United States attorney had procured fabrication in order to incriminate defendants, where there was no direct evidence of procurement, where variation between testimony given at trial and before grand jury related only to minor facets of recounting of conspiracy, and where none of statements of witnesses relied on to formulate assertion of perjury was substantially exculpatory of defendants. U. S. v. Hamilton, C.A.8 (Mo.) 1971, 452 F.2d 472, certiorari denied 92 S.Ct. 1796, 406 U.S. 925, 32 L.Ed.2d 126. Criminal Law 706(2)

Even if the evidence had revealed distinct conspiracies to transport forged money orders and forged checks in interstate commerce, defendant, who was shown by that evidence to be member of both those conspiracies, was not prejudiced by variance between single conspiracy charged and proof of the multiple conspiracies. U. S. v. Chamley, C.A.7 (Ill.) 1967, 376 F.2d 57, certiorari denied 88 S.Ct. 221, 389 U.S. 898, 19 L.Ed.2d 220. Criminal Law 1167(1)

Variance between indictment charging single conspiracy and proof showing three conspiracies could constitute a "fatal variance" only if it affected substantial rights of defendant. Robinson v. U. S., C.A.5 (Ala.) 1964, 333 F.2d 950, certiorari denied 85 S.Ct. 277, 379 U.S. 921, 13 L.Ed.2d 335. Conspiracy 43(12)

If at least one conspiracy was proved of which defendant was guilty, there was no variance affecting his substantial right between indictment charging single conspiracy and proof assertedly showing three separate conspiracies. Robinson v. U. S., C.A.5 (Ala.) 1964, 333 F.2d 950, certiorari denied 85 S.Ct. 277, 379 U.S. 921, 13 L.Ed.2d 335. Conspiracy 43(12)

Where under evidence any conspiracy found to exist with respect to defendants would fall within framework of conspiracy charged in indictment, proof of separate conspiracies did not constitute a fatal variance. Hayes v. U. S., C.A.8 (Mo.) 1964, 329 F.2d 209, certiorari denied 84 S.Ct. 1883, 377 U.S. 980, 12 L.Ed.2d 748. Conspiracy 43(12)

Where indictment charged single conspiracy but evidence showed at best a series of separate and unconnected conspiracies, in that episodes shown were far apart and differently peopled, there was variance which violated rule as to joinder and vitiated convictions. U. S. v. Goss, C.A.4 (N.C.) 1964, 329 F.2d 180. Conspiracy 43(12)

That indictment alleges single conspiracy while proof shows two separate ones will not avail a defendant clearly implicated in both aspects of scheme. U. S. v. Benjamin, C.A.2 (N.Y.) 1964, 328 F.2d 854, certiorari denied 84 S.Ct. 1631, 377 U.S. 953, 12 L.Ed.2d 497. Conspiracy 43(12)

18 U.S.C.A. § 371

Variance between language of indictment stating only one conspiracy and evidence showing two distinct conspiracies was not necessarily fatal, and question was whether there had been such a variance as to affect substantial rights of accused. Grissette v. U. S., C.A.5 (Fla.) 1963, 313 F.2d 187. Conspiracy 43(12)

Variance between indictment, whose language charged defendant with legal conspiracy to violate Internal Revenue Laws relating to moonshine whiskey, and evidence, allegedly showing two distinct conspiracies involving one defendant between dates referred to in indictment, was not fatal, as there was no risk of defendant being surprised to his prejudice. Grissette v. U. S., C.A.5 (Fla.) 1963, 313 F.2d 187. Conspiracy 43(12)

Evidence warranted finding of a single continuous conspiracy, and therefore there was no variance between indictment which contained a charge of a single continuing conspiracy and certain proof which tended to show several separate and independent conspiracies. U.S. v. Agueci, C.A.2 (N.Y.) 1962, 310 F.2d 817, certiorari denied 83 S.Ct. 1013, 372 U.S. 959, 10 L.Ed.2d 11, certiorari denied 83 S.Ct. 1016, 372 U.S. 959, 10 L.Ed.2d 12, post-conviction relief dismissed 741 F.Supp. 409, reconsideration denied, affirmed 930 F.2d 910. Conspiracy 43(12)

There was no fatal variance between proof showing two conspiracies and indictment charging only one conspiracy affecting substantial rights of defendants where evidence of their participation in main conspiracy was overwhelming. Harlow v. U. S., C.A.5 (Tex.) 1962, 301 F.2d 361, certiorari denied 83 S.Ct. 25, 371 U.S. 814, 9 L.Ed.2d 56, rehearing denied 83 S.Ct. 204, 371 U.S. 906, 9 L.Ed.2d 167. Conspiracy 43(12)

To sustain verdict on indictment charging one particular conspiracy, evidence must establish conspiracy charged, and evidence that established another conspiracy or several other conspiracies will not sustain the verdict. U. S. v. Lester, C.A.3 (Pa.) 1960, 282 F.2d 750, certiorari denied 81 S.Ct. 385, 364 U.S. 937, 5 L.Ed.2d 368. Conspiracy 43(12)

In prosecution for conspiracy to defraud United States Government where indictment charged a single conspiracy but evidence showed conspiracy to defraud with respect to two separate contracts, in so far as one of the defendants, who admittedly had nothing to do with one of the contracts was concerned, inspection of court's charge which scrupulously protected such defendant's rights, revealed that variance between indictment and proof was, at most harmless error. U S v. Lev, C.A.2 (N.Y.) 1958, 258 F.2d 9, certiorari granted 79 S.Ct. 231, 358 U.S. 903, 3 L.Ed.2d 226, affirmed 79 S.Ct. 1431, 360 U.S. 470, 36 L.Ed.2d 1531, rehearing denied 80 S.Ct. 41, 361 U.S. 856, 4 L.Ed.2d 95. Criminal Law 1167(1)

Fact that one member of a conspiracy to traffic in narcotics may not have known of two particular deliveries pursuant to the conspiracy did not make them part of a second independent conspiracy, and fact that testimony thereof was admitted in a prosecution against her did not result in a fatal variance between the indictment and the proof. U S v. De Fillo, C.A.2 (N.Y.) 1958, 257 F.2d 835, certiorari denied 79 S.Ct. 591, 359 U.S. 915, 3 L.Ed.2d 577. Conspiracy 43(12)

In conspiracy prosecution against one alleged to be prime conspirator with two co-conspirators one of whom pleaded guilty and the other of whom was acquitted, where indictment alleged but one conspiracy, record on appeal from conviction revealed that, even if proof indicated two conspiracies, that there was no variance prejudicial to the asserted prime conspirator. Hanis v. U. S., C.A.8 (Mo.) 1957, 246 F.2d 781. Criminal Law 1167(1)

If alleged variance existed between count of indictment which charged one conspiracy of all the defendants to bribe police officer, and evidence which allegedly showed several conspiracies, such variance was not reversible error in regard to convictions of two of the defendants on the conspiracy count, where conspiracy of the two convicted embraced the other defendants in the plan, thus preventing surprise, and also in view of fact that the defendants would not be prejudiced by the variance in defending on ground of present conviction in event of attempted second prosecution for same offense, as resort could be had by defendants to record of evidence or even to parol evidence

if necessary. Monroe v. U.S., C.A.D.C.1956, 234 F.2d 49, 98 U.S.App.D.C. 228, certiorari denied 77 S.Ct. 94, 352 U.S. 872, 1 L.Ed.2d 76, certiorari denied 77 S.Ct. 94, 352 U.S. 873, 1 L.Ed.2d 76, rehearing denied 77 S.Ct. 219, 352 U.S. 937, 1 L.Ed.2d 170, rehearing denied 78 S.Ct. 114, 355 U.S. 875, 2 L.Ed.2d 79. Criminal Law 1167(1)

If more than one conspiracy was proven in prosecution for conspiracy, and defendant was guilty of at least one of such conspiracies, variance, if any, between indictment charging one continuous conspiracy and alleged proof of two or more conspiracies would not affect defendant's substantial rights. Jolley v. U.S., C.A.5 (Ga.) 1956, 232 F.2d 83. Conspiracy 43(12)

In prosecution for conspiring to commit offense against the United States pertaining to liquor law violations, fatal variance between indictment and proof did not exist on ground that one conspiracy was charged but that proof indicated two or more conspiracies, in view of fact that those charged knew purpose of the conspiracy and agreed to become parties to a plan to effectuate that purpose. Ritter v. U.S., C.A.10 (Okla.) 1956, 230 F.2d 324. Conspiracy 43(12)

Variance, if any, between indictment and proof on ground one conspiracy was charged and two or more proven, was not material or prejudicial, in view of facts that indictment and proof substantially corresponded, that defendants were not misled at trial, that there was not misapprehension of jury from collateral evidence, and that defendants were not deprived of protection from other prosecutions for the same offense. Ritter v. U.S., C.A.10 (Okla.) 1956, 230 F.2d 324. Criminal Law 1167(1)

In prosecution for using the mails in furtherance of scheme to defraud, using instrumentality of communication in interstate commerce to sell or attempt to sell fraudulent securities, and conspiracy, there was no material variance between proof and indictment, on ground that proof showed separate distinct schemes. Owens v. U.S., C.A.5 (Fla.) 1955, 221 F.2d 351. Conspiracy 43(12); Postal Service 48(8); Securities Regulation 195; Securities Regulation 326

Variance between indictment charging a single conspiracy and proof establishing two or more different and disconnected conspiracies is fatal. Berenbeim v. U. S., C.C.A.10 (Colo.) 1947, 164 F.2d 679, certiorari denied 68 S.Ct. 454, 333 U.S. 827, 92 L.Ed. 1113 Conspiracy 43(12)

In prosecution for conspiracy fraudulently to cause the United States, through the Veterans Administration, to guarantee payments of premiums on life policies, evidence that conspiring insurance agents were working for the same company, under the same management, that they were in close proximity and followed with precision identical methods and techniques established but a single conspiracy not at variance with indictment. Berenbeim v. U. S., C.C.A.10 (Colo.) 1947, 164 F.2d 679, certiorari denied 68 S.Ct. 454, 333 U.S. 827, 92 L.Ed. 1113 Conspiracy 43(12)

In prosecution for conspiracy to violate the internal revenue laws relating to stills and intoxicating liquors where evidence showed that defendant's alleged coconspirators were variously connected with illicit distilleries and three alcohol drops, there was no "variance" in pleading and proof by showing of only small and unrelated conspiracies instead of a single broad conspiracy alleged in the indictment, in view of fact that evidence was such that jury could find a general design on part of many. U.S. v. Valenti, C.C.A.2 (N.Y.) 1943, 134 F.2d 362, certiorari denied 63 S.Ct. 1317, 319 U.S. 761, 87 L.Ed. 1712, rehearing denied 64 S.Ct. 29, 320 U.S. 809, 88 L.Ed. 489. Conspiracy 43(12)

Where substance of charge of conspiracy to use mails to defraud was that defendants devised scheme to induce named persons to purchase cemetery lots, if all misrepresentations were in furtherance of such conspiracy under general plan in which all defendants participated, fact that one group of salesmen made one type of misrepresentation and another group a different misrepresentation would not divide the conspiracy charged into

separate conspiracies so as to establish "fatal variance" between indictment and proof. U. S. v. Beck, C.C.A.7 (Ill.) 1941, 118 F.2d 178, certiorari denied 61 S.Ct. 1121, 313 U.S. 587, 85 L.Ed. 1542. Conspiracy 43(12)

Where one conspiracy is specially charged, proof of different and disconnected conspiracies will not sustain conviction. U. S. v. Beck, C.C.A.7 (Ill.) 1941, 118 F.2d 178, certiorari denied 61 S.Ct. 1121, 313 U.S. 587, 85 L.Ed. 1542. Conspiracy 43(12)

Conviction under indictment charging a single conspiracy, though based on a finding of two distinct conspiracies, was merely a variance between allegations and proof, which should not result in reversal unless prejudicial. U.S. v. Twentieth Century Bus Operators, C.C.A.2 (N.Y.) 1939, 101 F.2d 700, certiorari denied 59 S.Ct. 821, 307 U.S. 624, 83 L.Ed. 1502. Criminal Law 1175

In prosecution for conspiracy to violate Motor Carrier Act of 1935, § 301 et seq. of Title 49, there was no material variance as against contention that indictment charged nationwide conspiracy to violate the statute by the employment of unlicensed carriers in interstate commerce, while proof showed, if anything, several small conspiracies. Martin v. U. S., C.C.A.10 (Colo.) 1938, 100 F.2d 490, certiorari denied 59 S.Ct. 590, 306 U.S. 649, 83 L.Ed. 104, certiorari denied 59 S.Ct. 590, 306 U.S. 649, 83 L.Ed. 1047, certiorari denied 59 S.Ct. 590, 306 U.S. 649, 83 L.Ed. 1048, certiorari denied 59 S.Ct. 591, 306 U.S. 649, 83 L.Ed. 1048, certiorari denied 59 S.Ct. 642, 306 U.S. 651, 83 L.Ed. 1050. Conspiracy 43(12)

Proof of two conspiracies, one of which was barred by limitations, was fatal variance with indictment alleging single conspiracy. U.S. v. Siebricht, C.C.A.2 (N.Y.) 1932, 59 F.2d 976. Conspiracy 43(12)

Evidence showing separate and distinct conspiracies from that charged in indictment is insufficient to support conviction. Tinsley v. U.S., C.C.A.8 (S.D.) 1930, 43 F.2d 890. Criminal Law 374

Proof of different and disconnected smaller conspiracies will not sustain conviction, single large one being charged. Wyatt v. U S, C.C.A.3 (Pa.) 1928, 23 F.2d 791, certiorari denied 48 S.Ct. 436, 277 U.S. 588, 72 L.Ed. 1002. Conspiracy 43(12)

The government cannot charge conspiracy to commit one offense and prove a conspiracy to commit a different offense, but a charge of conspiracy to commit several offenses against the United States is sustained by proof of conspiracy to commit any one of such offenses. Kepl v. U.S., C.C.A.9 (Wash.) 1924, 299 F. 590, certiorari denied 45 S.Ct. 97, 266 U.S. 617, 69 L.Ed. 470.

Indictment charging defendant with conspiracy involving possession and passing of counterfeit federal reserve notes within a designated federal district was sufficient to put defendant on notice of charge against him and indictment was sufficiently detailed in names, dates and overt acts to protect him against a similar charge in the future, and such variance as existed between the indictment and the proof did not affect substantial rights of accused. U. S. v. Boyance, E.D.Pa.1963, 215 F.Supp. 390. Conspiracy 43(12); Indictment And Information 71.4(3)

Where a single conspiracy is charged but multiple conspiracies are proven, a fatal defect exists between the pleading and proof. U. S. v. Boyance, E.D.Pa.1963, 215 F.Supp. 390. Conspiracy 43(12)

Where indictment charges single conspiracy and proof shows several conspiracies, there is variance, but variance is not fatal unless defendants have been prejudiced. U.S. v. Speed, D.C.D.C.1948, 78 F.Supp. 366. Conspiracy 43(12)

Proof of a single agreement or of a common design to perpetrate numerous embezzlements of funds from several branches of international union tended to establish but a single conspiracy, not at variance with indictment charging

a single conspiracy. U.S. v. Speed, D.C.D.C.1948, 78 F.Supp. 366. Conspiracy 43(12)

567. ---- Tax offenses, variance between indictment and proof, evidence

There was no significant variance between proof and indictment in prosecution for conspiracy to defraud the Internal Revenue Service (IRS) and aiding and assisting preparation of false and fraudulent tax returns; though indictment referred to income representations on "line twenty-two," those amounts were but arithmetic derivations of the "line seven" wage and salary income upon which focus was brought to bear at trial. U.S. v. Crockett, C.A.10 (Utah) 2006, 435 F.3d 1305. Conspiracy 43(12)

X. ADMISSIBILITY OF EVIDENCE

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591. Generally, admissibility of evidence

In conspiracy prosecution, evidence was sufficiently connected with conspiracy to be admissible, or merely cumulative, and its admission harmless. Ford v. U.S., U.S.Cal.1927, 47 S.Ct. 531, 273 U.S. 593, 71 L.Ed. 793.

Evidence obtained by city police officers while searching entirely on their own initiative in furtherance of their duties as local officers was properly admitted in federal prosecution for conspiracy to violate and violations of narcotic laws. Fredericks v. U. S., C.A.5 (Tex.) 1953, 208 F.2d 712, certiorari denied 74 S.Ct. 875, 347 U.S. 1019, 98 L.Ed. 1140.

Coat, bill, and signal code abandoned by fleeing defendants were admissible. Rubio v. U.S., C.C.A.9 (Cal.) 1927, 22 F.2d 766, certiorari denied 48 S.Ct. 213, 276 U.S. 619, 72 L.Ed. 734.

Testimony tending to prove controverted fact was properly retained, although confused. Dawson v. U.S., C.C.A.9 (Idaho) 1926, 10 F.2d 106, certiorari denied 46 S.Ct. 638, 271 U.S. 687, 70 L.Ed. 1152.

In prosecution for conspiracy to use deadly weapons against employees of Bureau of Animal Industry, with intent to prevent them from discharging their duties of supervising the dipping of cattle, in order to prevent spread of diseases and to eradicate cattle fever tick, in violation of former § 118 of this title, contract between state veterinarian and Chief of Bureau of Animal Industry was admissible to show that federal employees were present by authority of the state, and were not merely intruders. Thornton v. U.S., C.C.A.5 (Ga.) 1924, 2 F.2d 561, certiorari granted 45 S.Ct. 354, 267 U.S. 589, 69 L.Ed. 801, affirmed 46 S.Ct. 585, 271 U.S. 414, 70 L.Ed. 1013.

Where defendant and others were charged with purchasing goods for fictitious company on credit, disposing of them without payment, and pocketing proceeds, evidence showing defendant knew of existence of sellers from which fictitious company received goods was admissible, but not evidence that defendant had not paid personal debts due such sellers. Erber v. U.S., C.C.A.2 (N.Y.) 1916, 234 F. 221, 148 C.C.A. 123.

592. History of continuing conspiracy, admissibility of evidence

The entire history of a continuing conspiracy is admissible, although prosecution for some of the period may be barred by the statute of limitations at the time of trial. Continental Baking Co. v. U.S., C.A.6 (Tenn.) 1960, 281 F.2d 137.

Admission of testimony which was so closely a part of the history of alleged conspiracy and of substantive act as to be part of an interwoven chain of relevant circumstances was discretionary. Gordon v. U.S., C.C.A.6 (Mich.) 1947, 164 F.2d 855, certiorari denied 68 S.Ct. 741, 333 U.S. 862, 92 L.Ed. 1141.

593. Discretion of court, admissibility of evidence

District court did not abuse its discretion in admitting other acts evidence of prior arrest for possession of firearm, in trial for conspiracy to violate statute prohibiting person from transporting into or receiving in state where he resides any firearm purchased or otherwise obtained by such person outside that state, where evidence of prior arrest went to whether defendant knew his conduct was illegal and nevertheless decided to disregard law. U.S. v. Mitchell, C.A.2 2003, 328 F.3d 77. Criminal Law 370

In prosecution of members of organization known as Aryan Nations for conspiracy to bomb a homosexual bar, there was no abuse of discretion in admitting testimony which referred to controversial aspects of the organization, permitting limited explanation of some practices of the organization while not allowing prosecutor to offer in-depth explanations. U.S. v. Winslow, C.A.9 (Idaho) 1992, 962 F.2d 845, as amended.

Absent showing that audit reports of outside auditors examining finances of local community action agency related to subject matter of indictment charging defendant with conspiracy to defraud United States, with substantive theft offenses, and with perjury, it was not abuse of discretion to refuse to admit the audit reports, upon which defendant claimed he relied in administering the agency, into evidence in the prosecution, which resulted in conviction on conspiracy charge. U. S. v. Vincent, C.A.5 (La.) 1981, 648 F.2d 1046.

In prosecution for transportation of illegal aliens, exclusion of evidence of subsequent similar incident occurring in same area as previous interception but at which defendant was not arrested was not abuse of discretion, since probative value of proffered evidence was at best minimal and the danger of confusion of the issues, undue delay and wasted time was great. U. S. v. Hendrix, C.A.9 (Cal.) 1977, 549 F.2d 1225, certiorari denied 98 S.Ct. 58, 434 U.S. 818, 54 L.Ed.2d 74, rehearing denied 98 S.Ct. 493, 434 U.S. 960, 54 L.Ed.2d 321.

In prosecution for illegal gambling conspiracy under section 1511 of this title, admission of testimony concerning payments made to defendant to protect illegal sale of alcoholic beverages and operation of lounge beyond legal hours for purpose of showing intent, scheme or plan was within discretion of trial judge. U. S. v. Crockett, C.A.5 (Ga.) 1975, 514 F.2d 64.

Admission, in prosecution for wilful misapplication of bank funds, wilful making of false entries in bank records, and conspiracy to misapply bank funds, of credit report that bore defendant's handwritten initials was not abuse of discretion. U. S. v. Silverthorne, C.A.9 (Cal.) 1970, 430 F.2d 675, certiorari denied 91 S.Ct. 585, 400 U.S. 1022, 27 L.Ed.2d 633.

Refusal to permit defendant charged with conspiracy to deal in narcotics to present his testimony with aid of interpreter was not abuse of discretion, in absence of any showing that defendant was hampered in understanding or testifying and in view of fact that trial was to court and that court could understand Spanish. U. S. v. Sosa, C.A.7 (Ill.) 1967, 379 F.2d 525, certiorari denied 88 S.Ct. 94, 389 U.S. 845, 19 L.Ed.2d 111.

District Court did not abuse discretion in denying defendants charged with conspiracy and smuggling an opportunity to present evidence at a hearing in support of their claims of discrimination as to grand jury selection, where affidavit of their attorney contained conclusory allegations of systematic exclusion based on alleged discussions with unnamed political persons and information supplied by unnamed political figures. U. S. v. Bowe, C.A.2 (N.Y.) 1966, 360 F.2d 1, certiorari denied 87 S.Ct. 401, 385 U.S. 961, 17 L.Ed.2d 306, certiorari denied 87 S.Ct. 779, 385 U.S. 1042, 17 L.Ed.2d 686, rehearing denied 87 S.Ct. 1040, 386 U.S. 969, 18 L.Ed.2d 127.

Trial court's refusal to order production of signed statement given by government's witness to French police in reliance on representation of French officer that French law forbade its production was within its discretion. U. S. v. Pardo-Bolland, C.A.2 (N.Y.) 1965, 348 F.2d 316, certiorari denied 86 S.Ct. 388, 382 U.S. 944, 15 L.Ed.2d 353, certiorari denied 86 S.Ct. 407, 382 U.S. 946, 15 L.Ed.2d 354.

In prosecution of defendant, who, in Texas, purchased maps stolen from Pittsburgh office of oil company, for conspiracy to transport in interstate commerce geophysical maps knowing them to have been stolen, admission of testimony to effect that defendant knew that certain maps, which he exhibited to exploration manager of a Canadian oil company but which were not set forth in indictment or bill of particulars, had been stolen was within sound discretion of trial judge in determining whether any prejudicial effect was counterbalanced by testimony's relevance and materiality on question of guilty knowledge. U. S. v. Lester, C.A.3 (Pa.) 1960, 282 F.2d 750, certiorari denied 81 S.Ct. 385, 364 U.S. 937, 5 L.Ed.2d 368.

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Where, in prosecution for conspiracy, trial judge offered to hold a preliminary hearing at time conspirator's confession was to be introduced, but conspirator and his counsel stated that such would not be satisfactory and they "stood mute throughout the remainder of the trial", refusal to interrupt testimony of alleged accomplice to inquire into voluntariness of conspirator's confession constituted a proper exercise of trial judge's discretion. United States v. Bando, C.A.2 (N.Y.) 1957, 244 F.2d 833, certiorari denied 78 S.Ct. 67, 355 U.S. 844, 2 L.Ed.2d 53.

In a conspiracy case wide latitude is allowed in presenting evidence, and it is within the discretion of trial court to admit evidence which even remotely tends to establish conspiracy charged. Nye & Nissen v. U.S., C.C.A.9 (Cal.) 1948, 168 F.2d 846, certiorari granted 69 S.Ct. 81, 335 U.S. 852, 93 L.Ed. 400, affirmed 69 S.Ct. 766, 336 U.S. 613, 93 L.Ed. 919. See, also, Egan v. U.S., C.C.A.Mo.1943, 137 F.2d 369, certiorari denied 64 S.Ct. 195, 320 U.S. 788, 88 L.Ed. 474; Devoe v. U.S., C.C.A.Mo.1939, 103 F.2d 584, certiorari denied 60 S.Ct. 84, 308 U.S. 571, 84 L.Ed. 479. Conspiracy 45

In a conspiracy case, much discretion is left to the trial court in its rulings on the admission of evidence, and its rulings will be sustained on appeal, if the testimony which is admitted tends even remotely to establish the ultimate fact. Phelps v. U. S., C.C.A.8 (Minn.) 1947, 160 F.2d 858, rehearing denied 161 F.2d 940, certiorari denied 68 S.Ct. 1525, 334 U.S. 860, 92 L.Ed. 1780.

In conspiracy prosecution, trial judge could in his discretion allow testimony which tended to throw light upon a particular fact, to explain the conduct of a particular defendant, or to show his purpose, knowledge, or design, notwithstanding the testimony tended to show guilt of an independent crime. U.S. v. Glasser, C.C.A.7 (Ill.) 1940, 116 F.2d 690, certiorari granted 61 S.Ct. 835, 313 U.S. 551, 85 L.Ed. 1515, modified on other grounds 62 S.Ct. 457, 315 U.S. 60, 86 L.Ed. 680, rehearing denied 62 S.Ct. 629, 315 U.S. 827, 86 L.Ed. 1222, rehearing denied 62 S.Ct. 637, 315 U.S. 827, 86 L.Ed. 1222.

In conspiracy prosecution, much latitude in scope of admission of evidence is permitted and much dependence should be placed upon the wide discretion of the trial judge, to admit testimony tending to prove existence of an unlawful combination, and to exclude prejudicial testimony so remote from point of inquiry as to result in practical injustice to defendants. Walker v. U.S., C.C.A.4 (W.Va.) 1939, 104 F.2d 465.

In prosecuting for conspiracy, much discretion is vested in trial court with reference to admissibility of evidence of circumstances, and ruling of trial court will ordinarily be sustained if testimony which is admitted tends in some degree to establish ultimate fact, or makes evidence intelligible. Walker v. U.S., C.C.A.8 (Mo.) 1937, 93 F.2d 383, certiorari denied 58 S.Ct. 642, 303 U.S. 644, 82 L.Ed. 1103, rehearing denied 58 S.Ct. 755, 303 U.S. 668, 82 L.Ed. 1124, rehearing denied 58 S.Ct. 756, 303 U.S. 668, 82 L.Ed. 1124. See, also, Smith v. U.S., C.C.A.Neb.1920, 267 F. 665, rehearing denied 269 F. 365, certiorari denied 41 S.Ct. 450, 256 U.S. 691, 65 L.Ed. 1174. Conspiracy 45

Proof of conspiracy to violate federal law may be by circumstantial evidence or by overt acts alone, in which case much is left to discretion of the trial court, which will not be reversed unless practical injustice has been done by admission of irrelevant testimony. Marino v. U.S., C.C.A.9 (Cal.) 1937, 91 F.2d 691, certiorari denied 58 S.Ct. 410, 302 U.S. 764, 82 L.Ed. 593.

In conspiracy cases, great latitude is allowed in introduction of testimony, and it is sufficient if evidence offered tends to elucidate inquiry or to assist in determining truth. McNeil v. U.S., App.D.C.1936, 85 F.2d 698, 66 App.D.C. 199.

Trial court has wide discretion in admission of evidence of one conspirator's acts and statements in trial for conspiracy. Barkley v. U.S., C.C.A.4 (N.C.) 1933, 66 F.2d 74.

Relevancy of evidence regarding acts of conspirators in prosecution for conspiracy rests in discretion of trial judge.

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Harvey v. U.S., C.C.A.2 (N.Y.) 1928, 23 F.2d 561.

In conspiracy cases, broad discretion and great latitude are permitted in the reception of evidence. U. S. v. General Elec. Co., D.C.N.J.1949, 82 F.Supp. 753, 80 U.S.P.Q. 195.

District Court was within its discretion in admitting at trial for conspiring to commit bank fraud, bank fraud, and possession of a forged security evidence regarding defendant's history of depositing forged checks, where evidence was relevant to issues of knowledge and intent, in that uncharged bad acts and charged acts both involved attempt to obtain money from banks by submitting falsified documents. U.S. v. Mingo, C.A.2 (N.Y.) 2003, 76 Fed.Appx. 379, 2003 WL 22221358, Unreported. Criminal Law 370; Criminal Law 371(1)

594. Conditions, admissibility of evidence

It was not necessary to admissibility of statements made by alleged coconspirator after his arrest that government prove what, if anything, third person had actually done to "straighten out the case" and evidence, including showing that alleged coconspirator had stated when released on bond that third person would "straighten out the whole case", sufficiently established continuance of conspiracy after arrest of alleged coconspirator. U. S. v. Allegretti, C.A.7 (Ill.) 1964, 340 F.2d 254, certiorari denied 85 S.Ct. 1531, 381 U.S. 911, 14 L.Ed.2d 433, rehearing denied 85 S.Ct. 1800, 381 U.S. 956, 14 L.Ed.2d 728, certiorari denied 85 S.Ct. 1532, 381 U.S. 911, 14 L.Ed.2d 433, certiorari denied 88 S.Ct. 830, 390 U.S. 908, 19 L.Ed.2d 876. Criminal Law 427(5)

In prosecution for violations of Mail Fraud Act, former § 338 of this title, for violations of fraud provisions of Securities Act of 1933, § 77q(a)(1) of Title 15, and for conspiracy to violate said sections by promotion of membership club with ultimate object of obtaining money and property from club members, reception in evidence of sworn statement of some of defendants made to an internal revenue agent was not objectionable on ground that it violated a promise to defendants, in view of fact that oral promise made by agent to defendants was that he would not cooperate with Securities and Exchange Commission's investigation then in progress and agent testified that he had kept that promise. U. S. v. Monjar, C.C.A.3 (Del.) 1944, 147 F.2d 916, certiorari denied 65 S.Ct. 1191, 325 U.S. 859, 89 L.Ed. 1979, certiorari denied 65 S.Ct. 1192, 325 U.S. 859, 89 L.Ed. 1979, certiorari denied 65 S.Ct. 1192, 325 U.S. 859, 89 L.Ed. 1980, certiorari denied 65 S.Ct. 1193, 325 U.S. 859, 89 L.Ed. 1980, certiorari denied 65 S.Ct. 1194, 325 U.S. 859, 89 L.Ed. 1981.

595. Acquittal or conviction of others, admissibility of evidence

Evidence as to defendant's alleged involvement in thefts of property from one government installation, for which defendant had been acquitted, was admissible in prosecution for conspiracy to steal goods from a second government installation in order to show knowledge and intent, and evidence was not inadmissible on theory that its potential for unfair prejudice substantially outweighed its probative value. U. S. v. Moore, C.A.9 (Cal.) 1975, 522 F.2d 1068, certiorari denied 96 S.Ct. 775, 423 U.S. 1049, 46 L.Ed.2d 637.

Acquittal of an alleged fellow conspirator is not evidence for defendant being tried for conspiracy. U. S. v. Toner, C.A.3 (Pa.) 1949, 173 F.2d 140.

Conviction of an alleged fellow conspirator after trial is not admissible as against defendant being charged. U. S. v. Toner, C.A.3 (Pa.) 1949, 173 F.2d 140.

596. Acts after termination of conspiracy, admissibility of evidence

Where essential fact of conspiracy to defraud United States and to commit offenses against United States by illegally obtaining entry of aliens as spouses of veterans was existence of phony marriage ceremonies entered into for sole purpose of deceiving immigration authorities and perpetrating fraud on the United States, acts which took

place after conspiracy ended and which were relevant to show spuriousness of marriages and intent of parties in going through the ceremonies were competent. Lutwak v. U.S., U.S.Ill.1953, 73 S.Ct. 481, 344 U.S. 604, 97 L.Ed. 593, rehearing denied 73 S.Ct. 726, 345 U.S. 919, 97 L.Ed. 1352.

A conspirator's acts which are relevant to prove the conspiracy are admissible even though such acts may have occurred after the conspiracy has ended. Lutwak v. U.S., U.S.Ill.1953, 73 S.Ct. 481, 344 U.S. 604, 97 L.Ed. 593, rehearing denied 73 S.Ct. 726, 345 U.S. 919, 97 L.Ed. 1352.

In prosecution for conspiracy to defraud United States and to commit offenses against United States by illegally obtaining entry of aliens as spouses of veterans who entered into foreign marriage ceremonies with aliens, evidence that aliens and veterans lived apart after coming to United States, that money was paid to veterans for their part in the so-called marriages, and that suits were started to terminate whatever legal relationship there might have been upon the record, was competent to show spuriousness of marriages and intent of parties thereto, notwithstanding that such matters took place after conspiracy ended. Lutwak v. U.S., U.S.Ill.1953, 73 S.Ct. 481, 344 U.S. 604, 97 L.Ed. 593, rehearing denied 73 S.Ct. 726, 345 U.S. 919, 97 L.Ed. 1352.

The act of one partner in crime is admissible against the others where it is in furtherance of the criminal undertaking, but all such responsibility is at an end when the conspiracy ends. Fiswick v. U.S., U.S.N.J.1946, 67 S.Ct. 224, 329 U.S. 211, 91 L.Ed. 196.

In prosecution for conspiracy to defraud lending institutions, the district court committed reversible error in admitting evidence that, approximately five months after the last act of the conspiracy had ended, defendant attempted to extort money from one of his alleged coconspirators; the testimony relating to defendant's extortion attempt was of slight probative value and was highly and unfairly prejudicial. U.S. v. Hodges, C.A.9 (Cal.) 1985, 770 F.2d 1475.

Testimony of co-conspirator concerning acts of another co-conspirator and himself on subsequent trip to Oregon in disposing of masks, cash box and other articles used in robbery of veterans' administration hospital were admissible in prosecution of third co-conspirator even if conspiracy had ended prior to disposing of articles. Feyrer v. U. S., C.A.9 (Wash.) 1963, 314 F.2d 110.

Acts done by a conspirator even after termination of conspiracy are properly admissible as having probative value as bearing on intent and purpose of conspirator in doing acts during existence of conspiracy. Connelly v. U.S., C.A.8 (Mo.) 1957, 249 F.2d 576, certiorari denied 78 S.Ct. 700, 356 U.S. 921, 2 L.Ed.2d 716, rehearing denied 78 S.Ct. 991, 356 U.S. 964, 2 L.Ed.2d 1072, certiorari denied 78 S.Ct. 701, 356 U.S. 921, 2 L.Ed.2d 716.

While the act of one partner in crime is admissible against others where it is in furtherance of the criminal undertaking, all such responsibility is at an end when the conspiracy ends. Sandez v. U. S., C.A.9 (Cal.) 1956, 239 F.2d 239, rehearing denied 245 F.2d 712.

In prosecution for conspiracy to mail threatening letters for purpose of extortion, testimony showing circumstances and actions of accused and codefendant at a time nearly three days after conspiracy charged had terminated was not admissible and could not be considered as proof of that charge. U.S. v. Moloney, C.A.7 (Ill.) 1952, 200 F.2d 344.

Evidence of payment of money in April was inadmissible in prosecution for conspiracy ending in March of same year. Giordano v. U.S., C.C.A.2 (N.Y.) 1925, 9 F.2d 830.

597. Acts during conspiracy, admissibility of evidence

Evidence established that defendants participated in a single, overall conspiracy to counterfeit beginning in 1981 and ending in 1983, and thus, evidence of 1983 events was admissible. U.S. v. Sandridge, C.A.8 (Mo.) 1985, 770

F.2d 744, certiorari denied 106 S.Ct. 808, 474 U.S. 1062, 88 L.Ed.2d 783. Criminal Law 374

598. Admissions, admissibility of evidence

Defendant's admission to Federal Bureau of Investigation agents that he set fire was voluntary where the agents advised defendant that he was under no obligation to speak with them, that he was a potential defendant in a later criminal action, that he could terminate interview at any time, and that they would inform United States attorney of defendant's cooperation but that the Bureau was not authorized to grant defendant immunity, and where defendant said that he understood the points made by the Bureau agents. U.S. v. Costello, C.A.7 (Ill.) 1984, 750 F.2d 553.

In prosecution for conspiracy to use mails in furtherance of scheme to defraud and conspiracy to defraud United States by obstructing Internal Revenue Service, trial court did not err in admitting auditor's testimony concerning certain out-of-court statements allegedly made by one of defendants, in view of fact that evidence sustained finding that defendant's alleged statements were made in furtherance of conspiracy; even if admission of such statements was error, it was harmless, in view of fact that each conspirator's involvement was established by overwhelming evidence, and out-of-court statements added nothing substantial. U. S. v. Fitzgerald, C.A.7 (Ind.) 1978, 579 F.2d 1014, certiorari denied 99 S.Ct. 610, 439 U.S. 1002, 58 L.Ed.2d 677, certiorari denied 99 S.Ct. 611, 439 U.S. 1002, 58 L.Ed.2d 677.

In conspiracy prosecution, document which defendant had submitted to his draft board in which he characterized himself as a "revolutionary" and as a member of an underground group could have been admissible as an admission. U. S. v. Baumgarten, C.A.8 (Mo.) 1975, 517 F.2d 1020, certiorari denied 96 S.Ct. 152, 423 U.S. 878, 46 L.Ed.2d 111.

Where attorney who had been subpoenaed to appear before grand jury investigating narcotics case arrived too late to appear before grand jury and went instead to office of Assistant United States Attorney handling case and there pressed Assistant to explain reason for subpoena and was warned of his rights, admissions made to the Assistant United States Attorney were admissible against defendant attorney in prosecution for narcotics conspiracy, though attorney was not advised, when he made the statements, that he was already under indictment. U. S. v. Santana, C.A.2 (N.Y.) 1974, 503 F.2d 710, certiorari denied 95 S.Ct. 632, 419 U.S. 1053, 42 L.Ed.2d 649, certiorari denied 95 S.Ct. 1352, 420 U.S. 963, 43 L.Ed.2d 439, certiorari denied 95 S.Ct. 1450, 420 U.S. 1006, 43 L.Ed.2d 764.

Trial court properly admitted as admission against interest first defendant's out-of-court admission concerning overt acts which occurred during period outside the period stated in the conspiracy indictment. U. S. v. Hernandez, C.A.9 (Ariz.) 1973, 480 F.2d 1044.

Defendant's statement at time of arrest to effect that he had not participated in hijacking in five years, which would have been at or about time of hijacking involved, was spontaneous, volunteered admission on his part, and was admissible. U. S. v. Augello, C.A.2 (N.Y.) 1971, 452 F.2d 1135, certiorari denied 92 S.Ct. 1787, 406 U.S. 922, 32 L.Ed.2d 122, certiorari denied 93 S.Ct. 145, 409 U.S. 859, 34 L.Ed.2d 105.

In prosecution for possessing goods stolen from interstate shipment and conspiracy to effect the possession, if any incrimination against defendant existed in overheard statement made to defendant by third party that he did not believe anything that codefendant said until he produced the merchandise, defendant's overheard rejoinder that he was beginning to believe the third party constituted adoption of such incrimination and third party's statement thus became effectively defendant's own admission, and testimony as to the statements made was not inadmissible on ground that third party had not been sufficiently proved to be member of alleged conspiracy to entitle any statements on his part to be admitted against defendant. U. S. v. Metcalf, C.A.8 (Mo.) 1970, 430 F.2d 1197.

In prosecution on charge of conspiring to violate customs laws, trustworthiness of defendants' admissions was established by ample substantial independent evidence. U. S. v. Tourine, C.A.2 (N.Y.) 1970, 428 F.2d 865,

certiorari denied 91 S.Ct. 581, 400 U.S. 1020, 27 L.Ed.2d 631, rehearing denied 91 S.Ct. 968, 401 U.S. 966, 28 L.Ed.2d 249.

Where defendant's participation in conspiracy to present false claims to Government had already been proved at time co-conspirator took witness stand, and since conversation between defendant and co-conspirator took place during course of conspiracy and was in furtherance of its purposes, such conversation was properly admissible against defendant. U. S. v. Tyminski, C.A.2 (N.Y.) 1969, 418 F.2d 1060, certiorari denied 90 S.Ct. 1523, 397 U.S. 1075, 25 L.Ed.2d 810.

Conspirator's admission to FBI agent after conspiracy ended was not admissible against co-conspirator; however, where admission did not directly inculpate co-conspirator, the error did not reach constitutional proportions. U. S. v. Fellabaum, C.A.7 (Ill.) 1969, 408 F.2d 220, certiorari denied 90 S.Ct. 125, 396 U.S. 858, 24 L.Ed.2d 109, certiorari denied 90 S.Ct. 55, 396 U.S. 818, 24 L.Ed.2d 69.

In prosecution for aiding and abetting and for conspiracy to travel in interstate commerce and to use mail and wire facilities in interstate commerce to promote a gambling enterprise, the introduction of defendant's income tax return in which he stated that his business was gaming did not violate rights under U.S.C.A. Const. Amend. 5, since defendant's statement in return amounted to a voluntary admission which could be used in the prosecution in that he had right to claim self-incrimination at time of return. Grimes v. U. S., C.A.5 (Tex.) 1967, 379 F.2d 791, certiorari denied 88 S.Ct. 104, 389 U.S. 846, 19 L.Ed.2d 113.

Statements made by defendant to government witness were admissible against defendant as admissions and acts in furtherance of conspiracy with which defendant was charged. U. S. v. Cardillo, C.A.2 (N.Y.) 1963, 316 F.2d 606, certiorari denied 84 S.Ct. 123, 375 U.S. 857, 11 L.Ed.2d 84, rehearing denied 84 S.Ct. 203, 375 U.S. 917, 11 L.Ed.2d 158, certiorari denied 84 S.Ct. 60, 375 U.S. 822, 11 L.Ed.2d 55, rehearing denied 84 S.Ct. 263, 375 U.S. 926, 11 L.Ed.2d 169.

Admission made by one defendant to police after arrest and long after conspiracy had ceased, that he had given codefendant key a few weeks before money disappeared from truck, denied by the alleged declarant on the stand was properly received against him and excluded as to codefendant. Lubin v. U. S., C.A.9 (Cal.) 1963, 313 F.2d 419.

Defendant's hearsay statement to government agent that he did not know codefendants on certain date was properly received as an admission and was relevant to show consciousness of guilt on defendant's part with respect to conspiracy charge. Williamson v. U. S., C.A.9 (Cal.) 1962, 310 F.2d 192.

Relevant declarations or admissions of a conspirator made in the absence of a coconspirator, and not in furtherance of the conspiracy, may be admissible in a trial for conspiracy as against the declarant to prove the declarant's participation therein. Harris v. U.S., C.A.4 (Md.) 1960, 283 F.2d 923.

In prosecutions for conspiracy to smuggle psittacine birds into United States, for smuggling such birds into United States, and for receiving, concealing and transporting such birds, recordings of testimony recorded subsequently to termination of conspiracy and other statements of defendants were admissible as admissions against interest where offered only against defendant making such admission. Murray v. U.S., C.A.9 (Cal.) 1957, 250 F.2d 489, certiorari denied 78 S.Ct. 1375, 357 U.S. 932, 2 L.Ed.2d 1373.

Conspirator's confession, made after termination of the conspiracy, is admissible only against himself because it is hearsay as to other conspirators, but, if trial judge makes this clear to the jury by proper instruction, which strictly limits the use of the confession to use against declarant alone, coconspirators are sufficiently protected. United States v. Bando, C.A.2 (N.Y.) 1957, 244 F.2d 833, certiorari denied 78 S.Ct. 67, 355 U.S. 844, 2 L.Ed.2d 53.

18 U.S.C.A. § 371

In prosecution for conspiracy to organize Communist Party of United States as a group to teach and advocate overthrow of government by force or violence, evidence of what a defendant had said off the stand was incompetent. U.S. v. Dennis, C.A.2 (N.Y.) 1950, 183 F.2d 201, certiorari granted 71 S.Ct. 91, 340 U.S. 863, 95 L.Ed. 630, affirmed 71 S.Ct. 857, 341 U.S. 494, 95 L.Ed. 1137, rehearing denied 72 S.Ct. 20, 342 U.S. 842, 96 L.Ed. 636, rehearing denied 78 S.Ct. 409, 355 U.S. 936, 2 L.Ed.2d 419.

Where statement made by defendant to F.B.I. agents after his arrest incriminated defendant, statement was admissible against defendant without the necessity of establishing the corpus delicti independently of statement, since corpus delicti might have been established by statement itself plus corroborating evidence. Chevillard v. U.S., C.C.A.9 (Cal.) 1946, 155 F.2d 929.

Accused's voluntary admission to policemen at time of his arrest that accused was operating a still was admissible, notwithstanding that accused was not previously warned that his statement might be used against him. United States v. Heitner, C.C.A.2 (N.Y.) 1945, 149 F.2d 105, certiorari denied 66 S.Ct. 33, 326 U.S. 727, 90 L.Ed. 432, rehearing denied 66 S.Ct. 164, 326 U.S. 809, 90 L.Ed. 494.

In prosecution for violations of Mail Fraud Act, former § 338 of this title, for violations of fraud provisions of Securities Act of 1933, § 77q(a)(1) of Title 15, and for conspiracy to violate said sections by promotion of membership club with ultimate object of obtaining money and property from club members, reception in evidence of sworn statement of some of defendants made to an internal revenue agent was not contrary to Treasury Regulation and did not compel defendants to be witnesses against themselves in violation of U.S.C.A.Const. Amend. 5. U. S. v. Monjar, C.C.A.3 (Del.) 1944, 147 F.2d 916, certiorari denied 65 S.Ct. 1191, 325 U.S. 859, 89 L.Ed. 1979, certiorari denied 65 S.Ct. 1192, 325 U.S. 859, 89 L.Ed. 1979, certiorari denied 65 S.Ct. 1192, 325 U.S. 859, 89 L.Ed. 1980, certiorari denied 65 S.Ct. 1193, 325 U.S. 859, 89 L.Ed. 1980, certiorari denied 65 S.Ct. 1194, 325 U.S. 859, 89 L.Ed. 1981.

In prosecution for conspiracy to operate unregistered stills, testimony of admissions made by accused to an agent of Alcohol Tax Unit that accused had sold sugar to bootleggers in the past, etc., was properly admitted where admissions referred to sales which had been proved. U S v. Loew, C.C.A.2 (N.Y.) 1944, 145 F.2d 332, certiorari denied 65 S.Ct. 587, 324 U.S. 840, 89 L.Ed. 1403.

In prosecution for conspiracy to defraud Government of floor stock tax on distilled spirits and wine, where offense was established by other evidence, testimony of Government officer as to statements made by one defendant in nature of an admission was competent. Auerbach v. U.S., C.C.A.6 (Tenn.) 1943, 136 F.2d 882.

In prosecution for conspiracy to defraud Government of floor stock tax on distilled spirits and wine, testimony as to statement against interest of one defendant which was limited to such defendant was not inadmissible because witness was not positive in identification of such defendant. Auerbach v. U.S., C.C.A.6 (Tenn.) 1943, 136 F.2d 882 .

In a prosecution for conspiring to violate §§ 2833 and 3253 of Title 26, admitting written statements procured from certain defendants relating solely to a murder committed by one of defendants for personal reasons is error, since the statements are irrelevant and hearsay and are not admissible as showing the connection of certain defendants with other defendants, nor as the confession of one conspirator against another. Smith v. U.S., App.D.C.1937, 91 F.2d 556, 67 App.D.C. 251.

In conspiracy prosecution accused's statements to government agent were admissible as voluntary admissions tending to prove guilt. Baker v. U. S., C.C.A.4 (Va.) 1927, 21 F.2d 903, certiorari denied 48 S.Ct. 301, 276 U.S. 621, 72 L.Ed. 736.

In prosecution for conspiracy, declarations by each and all of defendants admitting conspiracy was competent.

18 U.S.C.A. § 371

Cummings v. U.S., C.C.A.9 (Wash.) 1926, 15 F.2d 168.

Admissions at time of arrest were admissible against conspirators who made them, and not prejudicial to other defendants, where court instructed jury not to consider admissions against persons not making them. Campanelli v. U.S., C.C.A.9 (Cal.) 1926, 13 F.2d 750.

Admissions by alleged conspirators were at least admissible against those making them, even if conspiracy had not been prima facie proved. Smith v. U.S., C.C.A.9 (Cal.) 1925, 9 F.2d 386, certiorari denied 46 S.Ct. 488, 271 U.S. 674, 70 L.Ed. 1145.

In a prosecution for conspiring to defraud the United States, confessions made by alleged coconspirators to a naval intelligence officer, who stated that it was the best thing for such persons to tell the truth, could not be excluded as involuntary where no inducements were held out. Fitter v. U.S., C.C.A.2 (N.Y.) 1919, 258 F. 567, 169 C.C.A. 507.

Testimony, given without claim of privilege before the referee in bankruptcy by those subpoenaed as witnesses was voluntary and admissible in a subsequent prosecution of witnesses for conspiring to receive property of the bankrupt, for § 25(10), of Title 11, affords no protection to witnesses other than the bankrupt. Knoell v. U S, C.C.A.3 (Pa.) 1917, 239 F. 16, 152 C.C.A. 66, error dismissed 38 S.Ct. 316, 246 U.S. 648, 62 L.Ed. 920.

On the trial of an indictment for conspiracy, letters shown to be in the handwriting of the defendant, addressed to an alleged co-conspirator and containing self-charging admissions, were admissible in evidence, although it was not proved that they were transmitted to the persons to whom they were addressed, and their interpretation and weight were matters for determination by the jury in the light of all of the evidence in the case. Chadwick v. U. S., C.C.A.6 (Ohio) 1905, 141 F. 225, 72 C.C.A. 343.

Admission in joint trial, on indictments charging conspiracy and counterfeiting activities, of post indictment conversations between two of the three codefendants, overheard by federal agency through pre-arrangement with one participant in conversation, was not, in view of totality of evidence, prejudicial to third defendant who was mentioned but not incriminated in conversation in which he did not participate. U. S. v. Beatty, D.C.Md.1968, 282 F.Supp. 202.

Admissions which a defendant made in testimony before grand jury, after terminal date of alleged conspiracy, were not binding upon or admissible against his codefendants and coconspirators. U S v. Grunewald, S.D.N.Y.1958, 164 F.Supp. 640.

In prosecution for charges arising from scheme to sell stock in sham companies through fraudulent private placements, admission of plea allocutions of three co-conspirators pursuant to hearsay exception for statements against penal interest was not an abuse of the district court's discretion and did not violate defendants' due process or Confrontation Clause rights; particularized guarantees of trustworthiness were present, as plea subjected conspirators to risk of lengthy term of imprisonment, allocutions were given under oath, and trial judge gave clear limiting instructions. U.S. v. Donovan, C.A.2 (N.Y.) 2003, 55 Fed.Appx. 16, 2003 WL 77196, Unreported, certiorari denied 123 S.Ct. 2110, 538 U.S. 1047, 155 L.Ed.2d 1088. Criminal Law 662.11

599. Affidavits, admissibility of evidence

The admission in evidence in a trial for conspiracy of affidavits made by certain of the defendants, which were competent evidence against them, was not prejudicial to the rights of a codefendant tried jointly with them, the evidence not being admitted as against him. Vane v. U.S., C.C.A.9 (Idaho) 1918, 254 F. 28, 165 C.C.A. 438.

In proceeding for conspiracy in restraint of trade, affidavits submitted to Bureau of Internal Revenue in tax proceeding which affidavits contained statements of co-conspirators concerning acts done in furtherance of the

conspiracy would be admitted against all conspirators subject to be stricken should no conspiracy be proved. U.S. v. E.I. Du Pont De Nemours & Co., D.C.Del.1952, 107 F.Supp. 324.

600. Books and records, admissibility of evidence

Where an indictment under former § 338 of this title for conspiracy to defraud through the mails, charged as one of the acts in furtherance of the conspiracy that B. deposited in the post office a letter addressed to D., applying for an agency to sell its shoes, and ordering shoes, railroad waybills showing a shipment of the shoes by D., and an order by B. to a freight agent to deliver his freight to a certain person, were admissible. Stokes v. U.S., U.S.Ala.1895, 15 S.Ct. 617, 157 U.S. 187, 39 L.Ed. 667. Conspiracy 43(12); Postal Service 49(5)

Corporate minute book which had been given to defendant by alleged master mind of money laundering scheme and which allegedly was introduced to impeach defendant's testimony as to stock ownership was authenticated in view of defendant's identifying the book as the minute book of the corporation that had been given to him by the "mastermind." U. S. v. Enstam, C.A.5 (Tex.) 1980, 622 F.2d 857, certiorari denied 101 S.Ct. 1351, 450 U.S. 912, 67 L.Ed.2d 336, certiorari denied 101 S.Ct. 1974, 451 U.S. 907, 68 L.Ed.2d 294.

Refusal to admit unauthenticated financial statements relating to corporations which were formed by defendant, an attorney, and which were owned by codefendant did not constitute abuse of discretion, in mail fraud prosecutions where the statements might have been used by jury to draw inferences improperly favorable to codefendant or might have led to other confusion. U. S. v. Alper, C.A.3 (Pa.) 1971, 449 F.2d 1223, certiorari denied 92 S.Ct. 1248, 405 U.S. 988, 31 L.Ed.2d 453, rehearing denied 92 S.Ct. 1605, 406 U.S. 911, 31 L.Ed.2d 822. Criminal Law 663

Where money and gambling slips seized at time of defendant's arrest were probative as to existence of allegedly prior conspiracy to cross state borders to further unlawful activity, even if conspiracy had terminated prior to such seizure, such items were admissible to show existence of conspiracy. U. S. v. Marquez, C.A.2 (N.Y.) 1970, 424 F.2d 236, certiorari denied 91 S.Ct. 56, 400 U.S. 828, 27 L.Ed.2d 58.

Trial court did not abuse its discretion in prosecution for conspiracy to defraud the government and for bribery by admitting into evidence chart based upon bid and purchase records of government purchasing agent that showed purchase orders issued to defendant's company and which contained fictitious bids where trial court carefully cautioned jury that chart was only to assist them in understanding figures and that where there was conflict between chart and underlying data, the underlying data would control. U. S. v. Ellenbogen, C.A.2 (N.Y.) 1966, 365 F.2d 982, certiorari denied 87 S.Ct. 892, 386 U.S. 923, 17 L.Ed.2d 795.

Notebooks of alleged narcotics distributor were admissible in view of entries therein as instrumentalities used in narcotics trafficking conspiracy. U. S. v. Cole, C.A.7 (Ill.) 1966, 365 F.2d 57, certiorari denied 87 S.Ct. 741, 385 U.S. 1024, 17 L.Ed.2d 672, rehearing denied 87 S.Ct. 971, 386 U.S. 951, 17 L.Ed.2d 879, certiorari denied 87 S.Ct. 741, 385 U.S. 1027, 17 L.Ed.2d 674, certiorari denied 87 S.Ct. 764, 385 U.S. 1032, 17 L.Ed.2d 679, rehearing denied 87 S.Ct. 979, 386 U.S. 951, 17 L.Ed.2d 879.

In prosecution for making false statement of material fact to Internal Revenue Agents, willfully attempting to evade wagering excise taxes and conspiring to commit offense against the United States, books, memoranda, tickets, pads, tablets and papers recording receipt of money from and money paid out in connection with operation of wagering business and files, desks, tables and receptacles for storing of such books, memoranda, et cetera, were relevant and properly admitted. U.S. v. Clancy, C.A.7 (Ill.) 1960, 276 F.2d 617, certiorari granted 80 S.Ct. 1611, 363 U.S. 836, 4 L.Ed.2d 1723, reversed on other grounds 81 S.Ct. 645, 365 U.S. 312, 5 L.Ed.2d 574.

In conspiracy prosecution, diary entries, which had been made by one of the defendants of his engagements, and which contained same initials as those of another defendant, and a somewhat similar name, were properly admitted

over objection that they were irrelevant, where defendant making the entries admittedly received checks from the other defendant at lunch on dates noted in diary, and where evidence was sufficient to go to jury on question of identity of the other defendant as one referred to in diary. United States v. Schiller, C.A.2 (N.Y.) 1951, 187 F.2d 572.

In prosecution of county sheriff for conspiracy to commit offenses against United States through furnishing "protection" to owners and operators of illicit stills, a book containing memoranda of disbursements made during and in connection with operation of stills was admissible, where it appeared that entries in book had been made by a co-owner of the stills. U.S. v. Quick, C.C.A.3 (N.J.) 1942, 128 F.2d 832.

In prosecution of county sheriff for conspiracy to commit offenses against United States through furnishing "protection" to owners and operators of illicit stills, where book containing memoranda of disbursements made during and in connection with operation of stills was admitted in evidence, hearsay testimony of two witnesses who had nothing to do with making book entries was not admissible for purpose of giving meaning thereto. U.S. v. Quick, C.C.A.3 (N.J.) 1942, 128 F.2d 832.

In prosecution for conspiracy to commit an offense against the United States, where conspirators organized and controlled a corporation used in furtherance of conspiracy and caused such corporation to acquire a controlling interest in a second corporation which was also controlled by conspirators, that part of second corporation's ledger covering a period before controlling interest in such corporation was acquired by conspirators was admissible. Cornes v. U. S., C.C.A.9 (Ariz.) 1941, 119 F.2d 127.

Where a corporation was organized by defendant and his coconspirators in furtherance of conspiracy, and corporation was at all pertinent times controlled by them, and in furtherance of conspiracy the conspirators caused corporation to acquire controlling interest in a second corporation, which was dominated by conspirators, and records of both corporations were made and kept by or under supervision of one of the conspirators and were made and kept in furtherance of conspiracy, such records were admissible against defendant. Cornes v. U. S., C.C.A.9 (Ariz.) 1941, 119 F.2d 127.

In prosecution for conspiracy to commit an offense against the United States where conspirators organized and controlled a corporation used in furtherence of conspiracy, a summary of corporation's assets and liabilities as of a certain date, and which summary was made by the government's witness, a qualified accountant, was admissible against defendant, where summary was properly identified and was based on other records which were properly in evidence against defendant. Cornes v. U. S., C.C.A.9 (Ariz.) 1941, 119 F.2d 127.

In prosecution for conspiracy to violate revenue laws relating to untax-paid distilled spirits, journal kept by witness as accountant for some of alleged conspirators, of which entries were copied under supervision of witness from information contained on slips given defendant by alleged coconspirators, was inadmissible until conspiracy involving defendant as coconspirator had been in fact proved. Minker v. U S, C.C.A.3 (Pa.) 1936, 85 F.2d 425.

In prosecution for conspiracy to violate revenue laws relating to nontax-paid distilled spirits, testimony as to entries contained in journal kept by witness as accountant for some of alleged conspirators, copied from information contained on slips given defendant by alleged coconspirators purporting to represent sales and purchases of nontax-paid distilled spirits by conspirators during period not covered by charges in indictment, were inadmissible. Minker v. U S, C.C.A.3 (Pa.) 1936, 85 F.2d 425.

In prosecution for conspiracy in using mails to defraud, books of corporations which were completely dominated and controlled by defendants were admissible, notwithstanding that persons who made entries were not shown to have had knowledge of facts to which they related. Wilkes v. U.S., C.C.A.9 (Cal.) 1935, 80 F.2d 285.

In prosecution for conspiracy and using mails to defraud, admission of summaries of book entries and records of

partnership which was composed of two of several defendants against all defendants to show connection of each with fraudulent scheme was prejudicial error as to defendants not members of partnership. Wilkes v. U.S., C.C.A.9 (Cal.) 1935, 80 F.2d 285.

There being evidence that defendant in liquor conspiracy prosecution admitted receiving bribe to let bootlegger "down easy," copy of docket entries and register of actions was admissible. Metzler v. U.S., C.C.A.9 (Cal.) 1933, 64 F.2d 203.

Government agents' testimony as to contents of books and records voluntarily left with them for auditing, was not inadmissible, as obtained in unconstitutional manner. Lisansky v. U.S., C.C.A.4 (Md.) 1929, 31 F.2d 846, certiorari denied 49 S.Ct. 514, 279 U.S. 873, 73 L.Ed. 1008.

Evidence found in account book taken from defendant was properly admitted. Cholacoff v. U. S., C.C.A.6 (Ohio) 1926, 10 F.2d 505.

In prosecution under former § 88 of this title [now this section] for conspiracy to violate the National Prohibition Act, former § 1 et seq. of Title 27, and the Tariff Act of 1922 (incorporated in chapter 3 of Title 19), by unlawfully importing liquor, where prima facie showing of conspiracy was made, there was no error in receiving in evidence logs of British vessel seized. Ford v. U.S., C.C.A.9 (Cal.) 1926, 10 F.2d 339, certiorari granted 46 S.Ct. 475, 271 U.S. 652, 70 L.Ed. 1133, affirmed 47 S.Ct. 531, 273 U.S. 593, 71 L.Ed. 793.

Admission in evidence of account ledger kept by defendants charged with conspiracy to violate National Prohibition Act, former § 1 et seq. of Title 27, which showed purchases and sales of liquors and payments of money to police officer, was not violation of U.S.C.A.Const. Amend. 5, as compelling defendants to be witnesses against themselves, particularly in view of § 22 of Title 27, requiring record of manufacture, purchase, or sale of liquor, as one who records his affairs in a book subject to inspection under statute cannot complain of consequent invasion of his privacy. Marron v. U.S., C.C.A.9 (Cal.) 1925, 8 F.2d 251.

False receipts, purporting to evidence a sale by one defendant charged with conspiracy to another of toilet articles containing alcohol, produced at a meeting of the conspirators and there given to the supposed buyer, was admissible against all on a trial for the conspiracy. Bockol v. U.S., C.C.A.3 (Del.) 1925, 6 F.2d 795.

In prosecution for conspiracy to violate National Prohibition Act, former § 1 et seq. of Title 27, by many defendants, including lawyers, who apparently had a monopoly of business affecting such matters at place involved, record of city court, judge of which was also defendant, showing manner of handling prosecutions, was admissible. Allen v. U.S., C.C.A.7 (Ind.) 1924, 4 F.2d 688, certiorari denied 45 S.Ct. 352, 267 U.S. 597, 69 L.Ed. 806, certiorari denied 45 S.Ct. 353, 267 U.S. 598, 69 L.Ed. 806, certiorari denied 45 S.Ct. 509, 268 U.S. 689, 69 L.Ed. 1158.

In a prosecution for conspiracy to obstruct the draft, minutes of meetings of an executive committee kept by one of defendants, a committee member, showing passage of resolutions pursuant to which the other defendant caused circulars to be printed and mailed to persons drafted, were admissible against both defendants. U S v. Schenck, E.D.Pa.1918, 253 F. 212, affirmed 39 S.Ct. 247, 249 U.S. 47, 63 L.Ed. 470, 17 Ohio Law Rep. 149.

In prosecution for violation of and conspiracy to violate former § 338 of this title as to illegal use of mails, rule against varying written contracts by parol was inapplicable to contract with victims; account book of collection agency through which defendants operated was sufficiently identified; evidence that bankrupt debtors of victims had been discharged was competent on the intent of defendants and admitting account book showing receipt of $130,000 realization charge was without prejudice. Preeman v. U.S., C.C.A.7 (Ill.) 1917, 244 F. 1, 156 C.C.A. 429, certiorari denied 38 S.Ct. 12, 245 U.S. 654, 62 L.Ed. 533.

In a prosecution against two for conspiracy to defraud the United States out of public lands, the books of one of the defendants, showing advances to entrymen, were inadmissible against his codefendant. Worden v. U. S., C.C.A.6 (Mich.) 1913, 204 F. 1, 122 C.C.A. 315.

Books of a corporation were inadmissible against an officer and superintendent of a corporation to establish a conspiracy to defraud the United States of public lands entered under the Timber & Stone Act, § 311 et seq. of Title 43, where it appeared that defendants had no knowledge of the entries nor any connection with the keeping of the books. Worden v. U. S., C.C.A.6 (Mich.) 1913, 204 F. 1, 122 C.C.A. 315.

In a trial for conspiring to use the mails in carrying out a scheme to defraud, the cashbook, checks, and entries of cash in defendant's deposit book in a trust company, made during the continuance of the scheme, were properly admitted to show the conspiracy. US v. Marrin, E.D.Pa.1908, 159 F. 767, affirmed 167 F. 951, 93 C.C.A. 351, certiorari denied 32 S.Ct. 523, 223 U.S. 719, 56 L.Ed. 629.

On the trial of defendants charged with having conspired with a person named and with others to the grand jurors unknown to induce a partnership to accept rebates from railroad companies on shipments in violation of the Interstate Commerce Act, § 1 et seq. of Title 49, where there was evidence tending to establish the conspiracy, and that the arrangement for the illegal rebates was made between defendants and one member of such partnership, entries in a private memorandum book kept by such partner, showing sums received as "freight commissions" and distributed between the partners individually, which transactions did not appear on the books of the firm, were admissible in evidence. Thomas v. U.S., C.C.A.8 (Mo.) 1907, 156 F. 897, 84 C.C.A. 477.

In prosecution against bank president and holder of corporate accounts in bank for conspiracy to misapply bank funds and to make false entries, exhibits consisting of checks drawn on Canadian bank and left with the president to be used to cover the codefendant's account overdrafts in event that bank examiners visited the bank, photocopies of those checks shown to the president by an FBI agent for his identification, and deposit slips in amounts of the checks admittedly used by the president to deposit the checks were properly admitted, where evidence disclosed the relevancy of such exhibits. U. S. v. Mayr, S.D.Fla.1972, 350 F.Supp. 1291, affirmed 487 F.2d 67, certiorari denied 94 S.Ct. 2615, 417 U.S. 914, 41 L.Ed.2d 218.

In prosecution of defendants, who organized and operated five trade schools, for conspiring to defraud Government of money by fraudulently inflating cost basis of tuition rate and by increasing cost to be charged Veterans' Administration, defendants' books of account could be used as admissions against interest, and when so using them Government was not obliged to prove they were correct, in absence of challenge by way of credible evidence. U. S. v. Weinberg, M.D.Pa.1955, 129 F.Supp. 514, affirmed 226 F.2d 161, certiorari denied 76 S.Ct. 305, 350 U.S. 933, 100 L.Ed. 815.

In conspiracy prosecution, a book of account which was found in home of one conspirator and identified by others who were witnesses, which books was admitted after proper foundation was laid under former § 695 of Title 28, was not required to be limited as to its probative effect. U.S. v. Dewinsky, D.C.N.J.1941, 41 F.Supp. 149.

In prosecution for using mails in scheme to defraud in sale of securities, for using mails to sell and to deliver after sale certain unregistered securities and conspiring to violate the mail fraud statute, former § 215 of this title and the Securities Act, § 77a et seq. of Title 15, where employee of the company whose stock was involved identified certain entries in books as having been made by her, some having been made by other employees under her supervision and in some instances identified the handwriting of certain employees, and positively identified the books, records and documents as being those of the company, the books and records were properly admitted in evidence. U. S. v. Sussman, E.D.Pa.1941, 37 F.Supp. 294.

In prosecution for using mails to sell and to deliver after sale certain unregistered securities and for conspiring to violate the provisions of § 77 et seq. of Title 15, authenticated certificates to effect that search of records of office

of Securities and Exchange Commission where the securities sold should have been registered failed to disclose that any registration certificate had been filed were admissible. U. S. v. Sussman, E.D.Pa.1941, 37 F.Supp. 294.

601. Character and reputation, admissibility of evidence

Evidence of personal relationship between petitioner's former wife and investigator for Bureau of Alcohol, Tobacco and Firearms (BATF) would not have raised reasonable doubt as to guilt and was not material under *Brady* in prosecution for manufacture and possession of unregistered firearm and conspiracy, even though sensational nature of evidence could have affected verdict; investigator testified that firebomb used to destroy trailer of former wife's mother constituted firearm under federal law; and former wife's testimony was not necessary to convict. U.S. v. Buchanan, C.A.10 (Okla.) 1989, 891 F.2d 1436, certiorari denied 110 S.Ct. 1829, 494 U.S. 1088, 108 L.Ed.2d 958.

If guns found in searches of defendants and their motel rooms were offered as evidence to prove that defendants were sort of persons who carried guns, and therefore were more likely than most to have committed armed robbery, introduction of such evidence might run afoul of rule that prosecution may not introduce evidence of criminal character or generally of commission of crime on one occasion to prove commission of crime on another. U. S. v. Ravich, C.A.2 (N.Y.) 1970, 421 F.2d 1196, certiorari denied 91 S.Ct. 69, 400 U.S. 834, 27 L.Ed.2d 66.

Rifles and ammunition taken from defendant charged with conspiracy and smuggling in relation to plot to blow up Statute of Liberty were properly received both to contradict evidence of character and to impeach defendant's veracity as a witness were defendant had testified previously that he was associated with nonaction groups participating in civil rights movement and that he vigorously opposed any violent action. U. S. v. Bowe, C.A.2 (N.Y.) 1966, 360 F.2d 1, certiorari denied 87 S.Ct. 401, 385 U.S. 961, 17 L.Ed.2d 306, certiorari denied 87 S.Ct. 779, 385 U.S. 1042, 17 L.Ed.2d 686, rehearing denied 87 S.Ct. 1040, 386 U.S. 969, 18 L.Ed.2d 127.

In prosecution for conspiracy to defraud the United States by setting up an unregistered still for manufacture of alcohol to be possessed and sold without payment of stamp taxes, evidence of a defendant's reputation as to moral character was admissible. U.S. v. Latin, C.C.A.2 (N.Y.) 1943, 139 F.2d 569.

602. Confessions, admissibility of evidence

The confession or admission of a conspirator after he has been apprehended is not in furtherance of the object of the conspiracy so as to be admissible against coconspirators. Fiswick v. U.S., U.S.N.J.1946, 67 S.Ct. 224, 329 U.S. 211, 91 L.Ed. 196.

Any error in admitting codefendant's confession with incriminating references to defendant deleted and replaced by phrase "the other person" was harmless where other evidence against defendant was overwhelming and events recited in codefendant's statement related to only one of the 19 overt acts in conspiracy count naming defendant. U. S. v. Bobo, C.A.5 (Ala.) 1978, 586 F.2d 355, certiorari denied 99 S.Ct. 1546, 440 U.S. 976, 59 L.Ed.2d 795, rehearing denied 99 S.Ct. 2188, 441 U.S. 957, 60 L.Ed.2d 1062.

Postarrest confessions and admissions of a conspirator are not admissible against fellow conspirator since they are not in furtherance of the conspiracy. U. S. v. Register, C.A.5 (Ga.) 1974, 496 F.2d 1072, certiorari denied 95 S.Ct. 802, 419 U.S. 1120, 42 L.Ed.2d 819.

Admission of nonincriminating statements made by defendant after his arrest on conspiracy charge and at a time when he was not represented by counsel was not reversible error where defendant was warned of his constitutional rights including right to remain silent and right to counsel, defendant never asked for or was denied assistance of counsel, statements were offered solely to corroborate testimony by prosecution witnesses that they had met with defendant and counsel for defendant read extensively from statement during trial and finally offered it in evidence.

U. S. v. Thompson, C.A.6 (Tenn.) 1966, 366 F.2d 167, certiorari denied 87 S.Ct. 512, 385 U.S. 973, 17 L.Ed.2d 436.

Admission after he had pleaded guilty to conspiracy to transport worthless securities in interstate commerce of extrajudicial confession by codefendant which implicated defendant in the conspiracy was reversible error. U. S. v. Boyce, C.A.4 (N.C.) 1964, 340 F.2d 418.

In prosecution for bank robbery and conspiracy to commit bank robbery, codefendant's written confession incriminating defendant did not prejudice defendant where trial court emphasized at time of admission and in final instructions to jury that confession was to be considered only as evidence of guilt of person making the confession. Maupin v. U. S., C.A.10 (Colo.) 1955, 225 F.2d 680. Criminal Law 673(4)

Statements made by a coconspirator, not in the course of the carrying out of the conspiracy, but by way of confession after arrest, are not admissible against conspirator. Rimmer v. U.S., C.A.5 (Tex.) 1949, 172 F.2d 954.

In prosecution for conspiracy to defraud the United States by depriving it of the services of an OPA investigator, admission of confession by investigator with the caution several times repeated that it must be considered only against the investigator was not erroneous as to the other defendants. U.S. v. Gottfried, C.C.A.2 (N.Y.) 1948, 165 F.2d 360, certiorari denied 68 S.Ct. 738, 333 U.S. 860, 92 L.Ed. 1139, rehearing denied 68 S.Ct. 910, 333 U.S. 883, 92 L.Ed. 1157.

In prosecution for conspiracy, confession by defendant who pleaded guilty was not admissible as aiding in determination of such defendant's guilt on theory that such defendant might withdraw plea of guilty if conspiracy were not proved, since jury were not charged with duty of determining such defendant's guilt. Gambino v. U. S., C.C.A.3 (Pa.) 1939, 108 F.2d 140.

Oral testimony of confessions was not error, where supplemented by written statement. Litkofsky v. U.S., C.C.A.2 (N.Y.) 1925, 9 F.2d 877.

Admission under proper instructions, of confessions alleged to have been obtained by duress, was not error. Litkofsky v. U.S., C.C.A.2 (N.Y.) 1925, 9 F.2d 877.

It is not error to admit in evidence a confession of one conspirator on the joint trial of himself and others, where the jury is instructed that it may be considered only as against him. Hagen v. U.S., C.C.A.9 (Wash.) 1920, 268 F. 344, certiorari denied 41 S.Ct. 323, 255 U.S. 569, 65 L.Ed. 790.

603. Corroboration, admissibility of evidence

Rule regarding corroboration of defendant's statements is that the corroborative evidence need not be sufficient, independent of statements, to establish the corpus delicti but must tend to establish the trustworthiness of the statement and provide substantial independent evidence that the conspiracy had been committed. U. S. v. Todd, C.A.8 (Mo.) 1981, 657 F.2d 212, certiorari denied 102 S.Ct. 1288, 455 U.S. 926, 71 L.Ed.2d 469.

Testimony by coconspirators concerning numerous flimflams and other criminal activities over a long period of time was admissible to support argument by defendant that, while his codefendants had engaged in flimflams, he had never before been involved. U. S. v. Cochran, C.A.5 (Fla.) 1974, 499 F.2d 380, rehearing denied 502 F.2d 1168, certiorari denied 95 S.Ct. 810, 419 U.S. 1124, 42 L.Ed.2d 825.

In prosecution in connection with counterfeiting of United States obligations, testimony concerning defendants' possession of blank counterfeit state drivers' licenses was properly admitted as corroborative evidence of the

overall conspiracy, subject to instruction that defendants were not charged with counterfeiting said licenses. U. S. v. Wilson, C.A.8 (Mo.) 1974, 497 F.2d 602, certiorari denied 95 S.Ct. 655, 419 U.S. 1069, 42 L.Ed.2d 664.

In making determination that corroborative evidence was of sufficient quality and quantity to permit jury to consider testimony of alleged coconspirator as evidence of a conspiracy, trial court, as stated to jury, was only deciding a question of fact on which competency of evidence depended and, as such, was properly performing one of its functions. U. S. v. Pisciotta, C.A.10 (Colo.) 1972, 469 F.2d 329.

Informer's testimony relating to extrajudicial admissions by word or act of a defendant was properly admitted against that defendant on ground that such admissions were not hearsay but were admissible absent other reasons for exclusion, and, as evidence independent of hearsay statement of a coconspirator, such admissions constituted corroborative evidence sufficient to justify admission of coconspirator's hearsay declarations. U. S. v. Cerone, C.A.7 (Ill.) 1971, 452 F.2d 274, certiorari denied 92 S.Ct. 1168, 405 U.S. 964, 31 L.Ed.2d 240, certiorari denied 92 S.Ct. 1169, 405 U.S. 964, 31 L.Ed.2d 240.

In conspiracy prosecution, admission of testimony of defendant's mistress was not error on ground that such testimony disparaged defendant's character at a time when his character was not in issue, where probative value of such testimony in corroboration of a codefendant far outweighed the possible prejudice to defendant. U. S. v. Del Purgatorio, C.A.2 (N.Y.) 1969, 411 F.2d 84.

Where, in prosecution for conspiracy and for endeavoring to influence a witness, before telephone record cards were offered in evidence, witness testified that she had made or received calls to or from defendant at days and time shown on the cards, it was permissible to show in corroboration that calls were in fact made between the relevant numbers on those days at those times, and there was no requirement, as in perjury prosecution of same defendants where such cards were ruled to be inadmissible, that the corroboration be convincing. Laughlin v. U. S., C.A.D.C.1967, 385 F.2d 287, 128 U.S.App.D.C. 27, certiorari denied 88 S.Ct. 1245, 390 U.S. 1003, 20 L.Ed.2d 103.

Admission of corroborative evidence rests in sound discretion of trial court. U. S. v. Bentvena, C.A.2 (N.Y.) 1963, 319 F.2d 916, certiorari denied 84 S.Ct. 345, 375 U.S. 940, 11 L.Ed.2d 271, rehearing denied 90 S.Ct. 894, 397 U.S. 928, 25 L.Ed.2d 108, rehearing denied 84 S.Ct. 515, 375 U.S. 989, 11 L.Ed.2d 476, certiorari denied 84 S.Ct. 346, 375 U.S. 940, 11 L.Ed.2d 271, rehearing denied 84 S.Ct. 1162, 377 U.S. 913, 12 L.Ed.2d 183, certiorari denied 84 S.Ct. 353, 375 U.S. 940, 11 L.Ed.2d 272, certiorari denied 84 S.Ct. 354, 375 U.S. 940, 11 L.Ed.2d 272, certiorari denied 84 S.Ct. 355, 375 U.S. 940, 11 L.Ed.2d 272, certiorari denied 84 S.Ct. 360, 375 U.S. 940, 11 L.Ed.2d 272.

Evidence corroborative of that of an accomplice must be considered without aid of testimony to be corroborated, and must connect or tend to connect accused with commission of crime with which he is charged; and such testimony is not sufficient if it requires interpretation and direction of testimony to be corroborated. Ing v. United States, C.A.9 (Alaska) 1960, 278 F.2d 362.

In prosecution for conspiracy to defraud United States in sale of eggs, testimony that after some eggs had passed inspection and cases containing them had been stamped accordingly, employee was instructed to remove the eggs and substitute inferior eggs which she did is properly admitted to prove specific allegations regarding such practice and to corroborate other witnesses and to prove fraud. Nye & Nissen v. U.S., C.C.A.9 (Cal.) 1948, 168 F.2d 846, certiorari granted 69 S.Ct. 81, 335 U.S. 852, 93 L.Ed. 400, affirmed 69 S.Ct. 766, 336 U.S. 613, 93 L.Ed. 919.

Where a defendant confesses, corroborating facts may be found from facts material to proof of offense discovered as result of confessions, or they may be such as tend to prove the corpus delicti. Anderson v. U.S., C.C.A.6 (Tenn.) 1941, 124 F.2d 58, certiorari granted 62 S.Ct. 941, 316 U.S. 651, 86 L.Ed. 1732, reversed on other grounds 63 S.Ct. 599, 318 U.S. 350, 87 L.Ed. 829.

18 U.S.C.A. § 371

In prosecution for conspiracy to import, sell and possess narcotics, where government agent who was posing as buyer of narcotics testified that while agent was bargaining with a New York distributor in New York the distributor said that drug was in defendant's possession and then called up defendant, who was also in New York, and talked to him in Italian, record of dictagraph machine which had been interposed in a circuit leading from the telephone was admissible to corroborate the agent's testimony. U S v. Bruno, C.C.A.2 (N.Y.) 1939, 105 F.2d 921, certiorari granted 60 S.Ct. 112, 308 U.S. 536, 84 L.Ed. 451, reversed on other grounds 60 S.Ct. 198, 308 U.S. 287, 84 L.Ed. 257.

In prosecution for conspiracy to harbor fugitive from justice, disallowing corroboration of accused's testimony of his efforts to cause surrender of another fugitive from justice was not error. Piquett v. U.S., C.C.A.7 (Ill.) 1936, 81 F.2d 75, certiorari denied 56 S.Ct. 749, 298 U.S. 664, 80 L.Ed. 1388.

Evidence that witness' brother gave him money, which he paid defendant as bribe, was not hearsay, and its admission to corroborate evidence regarding bribe was not abuse of discretion. Harvey v. U.S., C.C.A.2 (N.Y.) 1928, 23 F.2d 561.

604. Credibility, admissibility of evidence

District court did not abuse its discretion in admitting witness' testimony that defendant told her he was from organized crime family in trial on making of forged checks charges, despite statement's prejudicial effect, where witness' credibility had been attacked; statement enhanced witness' credibility by providing convincing explanation of why witness followed defendant's instructions to steal blank checks from employer and followed his wishes by becoming prostitute, and witness' belief in defendant's organized crime connection made it less likely that she would concoct story against him subjecting herself to whatever revenge organized crime family might take against her. U.S. v. Delia, C.A.2 (N.Y.) 1991, 944 F.2d 1010.

Admissibility of tape recording of conversation between buyer of stolen postage stamps and burglar was not abuse of discretion, notwithstanding statement that categorical denial of defendant was sufficient for limited admission of tape, where one count of indictment charged conspiracy to receive and dispose of postage stamps and tape was admitted only to attack credibility of defendant, who denied having conversation with burglar. U. S. v. Skillman, C.A.8 (Mo.) 1971, 442 F.2d 542, certiorari denied 92 S.Ct. 82, 404 U.S. 833, 30 L.Ed.2d 63.

In prosecution for violation of section 1343 of this title, inducing interstate travel in execution of a fraud, and interstate transportation of proceeds of a fraud, and conspiracy, trial court did abuse discretion in failing to make anticipatory ruling that defendants could not be impeached by prior convictions if they testified. U. S. v. Crisona, C.A.2 (N.Y.) 1969, 416 F.2d 107, certiorari denied 90 S.Ct. 991, 397 U.S. 961, 25 L.Ed.2d 253, certiorari denied 90 S.Ct. 993, 397 U.S. 961, 25 L.Ed.2d 253.

Testimony of defendant and his uncle concerning alleged offer of co-conspirator's wife and co-conspirator to testify favorably for defendant for $10,000 was not admissible as an explanation or a "legitimate repair measure" with respect to the hostile and "inaccurate" testimony of the wife who had testified as a witness for defendant. U. S. v. Walsh, C.A.6 (Ohio) 1962, 305 F.2d 821, certiorari denied 83 S.Ct. 146, 371 U.S. 876, 9 L.Ed.2d 114. Criminal Law 338(6)

605. Destruction of evidence, admissibility of evidence

In prosecution of attorney for conspiracy to defraud United States and to obstruct lawful functions of Internal Revenue Service in assessment and collection of revenue, evidence that attorney attempted to conceal evidence during trial by having associate take from attorney's offices records desired by prosecution was admissible where attorney was connected with removal of those records. U. S. v. Mastropieri, C.A.2 (N.Y.) 1982, 685 F.2d 776, certiorari denied 103 S.Ct. 260, 459 U.S. 945, 74 L.Ed.2d 203.

18 U.S.C.A. § 371

Evidence was properly admitted in conspiracy prosecution to show that after termination of conspiracy some of conspirators destroyed evidence showing conspiracy. Harney v. U. S., C.A.1 (Mass.) 1962, 306 F.2d 523, certiorari denied 83 S.Ct. 254, 371 U.S. 911, 9 L.Ed.2d 171.

In prosecution for conspiracy to defraud the United States and of attempting to deliver defence information to a citizen of a foreign nation, that original records of New York tappings of the telephone of defendant were destroyed by an agent at direction of his superior in Washington did not authorize the inference, in accordance with the canon "contra spoliatorem", that the records so destroyed, contained "leads" to some of the evidence introduced, in view of the circumstances. United States v. Coplon, C.A.2 (N.Y.) 1950, 185 F.2d 629, certiorari denied 72 S.Ct. 362, 342 U.S. 920, 96 L.Ed. 688.

In conspiracy prosecution for violation of former § 338 of this title, evidence of the attempted destruction by defendant of certain papers which he had removed from a Montreal bank vault was inadmissible in absence of a proper foundation identifying papers. U.S. v. Groves, C.C.A.2 (N.Y.) 1941, 122 F.2d 87, certiorari denied 62 S.Ct. 135, 314 U.S. 670, 86 L.Ed. 536.

606. Dying declarations, admissibility of evidence

In prosecution for using mails in furtherance of scheme to defraud and for conspiracy to use mails in furtherance of scheme to defraud by representing an imposter to be heir to valuable mineral rights and inducing others to enter into contracts regarding mineral rights, imposter's purported dying declaration giving complete narrative of what occurred between the imposter and his alleged coconspirators from the beginning was inadmissible, since the statement tended to defeat rather than further the conspiracy. Holt v. U.S., C.C.A.10 (Okla.) 1937, 94 F.2d 90.

607. Evidence illegally obtained, admissibility of evidence

Where federal agents installed listening apparatus in office wherein members of conspiracy subsequently engaged in conversations, but, when such apparatus failed to work, placed detectaphone against partition wall of office, evidence obtained by use of detectaphone was not inadmissible because of agents' trespass when they installed listening apparatus in office. Goldman v. U.S., U.S.N.Y.1942, 62 S.Ct. 993, 316 U.S. 129, 86 L.Ed. 1322.

Fact that evidence in liquor conspiracy prosecution was obtained by wire tapping, in violation of state law, did not affect its admissibility. Olmstead v. U.S., U.S.Wash.1928, 48 S.Ct. 564, 277 U.S. 438, 72 L.Ed. 944.

Ample competent evidence existed before grand jury to justify bringing defendants to trial on charges of conspiracy and endeavoring to influence a witness, and it could not be said as a matter of law that recordings, which had been ruled to have been illegally obtained in prior perjury trial, might have had such force in establishing the charges that the admission of such recordings tainted the entire proceedings. Laughlin v. U. S., C.A.D.C.1967, 385 F.2d 287, 128 U.S.App.D.C. 27, certiorari denied 88 S.Ct. 1245, 390 U.S. 1003, 20 L.Ed.2d 103.

In prosecution of defendant for conspiring to smuggle amphetamine tablets into the United States, admission into evidence of amphetamine tablets found in defendant's automobile in Mexico was proper notwithstanding that Mexican police, who were not acting at instigation of United States customs and narcotics officials, had not procured a warrant for defendant's arrest or for search of his automobile. Brulay v. U. S., C.A.9 (Cal.) 1967, 383 F.2d 345, certiorari denied 88 S.Ct. 469, 389 U.S. 986, 19 L.Ed.2d 478.

That federal agent electronically eavesdropped on conversation did not violate Illinois eavesdropping statute, S.H.A.Ill. ch. 38, § 14-5, where one party to conversation had consented, and record of evidence was admissible in narcotics conspiracy prosecution. U. S. v. Pullings, C.A.7 (Ill.) 1963, 321 F.2d 287.

18 U.S.C.A. § 371

Record would not sustain contention that wire tap made in violation of § 605 of Title 47 furnished basis for testimony of prosecution witness and for indictment where wire tap in question had occurred some nine months after a principal prosecution witness began to cooperate with government and six months after he had introduced federal agent to conspiracy. U. S. v. Bentvena, C.A.2 (N.Y.) 1963, 319 F.2d 916, certiorari denied 84 S.Ct. 345, 375 U.S. 940, 11 L.Ed.2d 271, rehearing denied 90 S.Ct. 894, 397 U.S. 928, 25 L.Ed.2d 108, rehearing denied 84 S.Ct. 515, 375 U.S. 989, 11 L.Ed.2d 476, certiorari denied 84 S.Ct. 346, 375 U.S. 940, 11 L.Ed.2d 271, rehearing denied 84 S.Ct. 1162, 377 U.S. 913, 12 L.Ed.2d 183, certiorari denied 84 S.Ct. 353, 375 U.S. 940, 11 L.Ed.2d 272, certiorari denied 84 S.Ct. 354, 375 U.S. 940, 11 L.Ed.2d 272, certiorari denied 84 S.Ct. 355, 375 U.S. 940, 11 L.Ed.2d 272, certiorari denied 84 S.Ct. 360, 375 U.S. 940, 11 L.Ed.2d 272.

In prosecution for conspiracy to violate the internal revenue laws relating to liquor, admitting evidence allegedly obtained by an illegal search was not improper where jury was instructed not to consider such evidence. Butler v. U. S., C.A.4 (Va.) 1957, 243 F.2d 567. Criminal Law 673(1)

In prosecution for conspiracy and bank robbery, money and other articles seized in the defendant's hotel room at the time of arrest were not inadmissible for lack of a search warrant where the seizure was incidental to a lawful arrest. United States v. Nirenberg, C.A.2 (N.Y.) 1957, 242 F.2d 632, certiorari denied 77 S.Ct. 1405, 354 U.S. 941, 1 L.Ed.2d 1539.

In prosecution for conspiracy to bribe police officer and also for bribery itself, to influence officer in enforcement of gambling laws, contention that recordings of conversations between police officer, who was subject of the conspiracy and bribery, and defendants were illegally intercepted and used in preparation of Government's trial was without merit where police officer himself made the recordings and transmitted the same information legally to other police officers to be utilized in preparation for trial of defendants. Monroe v. U.S., C.A.D.C.1956, 234 F.2d 49, 98 U.S.App.D.C. 228, certiorari denied 77 S.Ct. 94, 352 U.S. 872, 1 L.Ed.2d 76, certiorari denied 77 S.Ct. 94, 352 U.S. 873, 1 L.Ed.2d 76, rehearing denied 77 S.Ct. 219, 352 U.S. 937, 1 L.Ed.2d 170, rehearing denied 78 S.Ct. 114, 355 U.S. 875, 2 L.Ed.2d 79.

In prosecution for conspiracy to violate revenue laws, a receipt, showing that accused had paid for repairs on pump used in connection with still, was not inadmissible because improperly obtained by city police officers in raid in which federal officers in no way participated. Bryant v. U.S., C.C.A.5 (Fla.) 1941, 120 F.2d 483.

In prosecution for conspiracy to commit offenses against the United States, evidence procured by federal officers' intercepting intrastate telephone communications was inadmissible. U. S. v. Klee, C.C.A.3 (Pa.) 1938, 101 F.2d 191.

Evidence of intrastate communications procured by federal agents by tapping telephone wires is inadmissible in a federal District Court and therefore in prosecution for conspiracy to commit offenses against the United States admission of evidence procured by government agents' intercepting and divulging intrastate telephone communications between the parties to the conspiracy constituted reversible error. Sablowsky v. U. S., C.C.A.3 (Pa.) 1938, 101 F.2d 183.

Introduction of evidence obtained by tapping telephone wires were not in violation of defendants' constitutional rights. Olmstead v. U.S., C.C.A.9 (Wash.) 1927, 19 F.2d 842, certiorari denied 48 S.Ct. 117, 275 U.S. 557, 72 L.Ed. 424, 72 L.Ed. 729, rehearing granted 48 S.Ct. 207, 276 U.S. 609, 72 L.Ed. 729, affirmed 48 S.Ct. 564, 277 U.S. 438, 72 L.Ed. 944.

Testimony of prohibition official as to conversations heard by tapping telephone were not incompetent, because not covering all conversations heard. Olmstead v. U.S., C.C.A.9 (Wash.) 1927, 19 F.2d 842, certiorari denied 48 S.Ct. 117, 275 U.S. 557, 72 L.Ed. 424, 72 L.Ed. 729, rehearing granted 48 S.Ct. 207, 276 U.S. 609, 72 L.Ed. 729, affirmed 48 S.Ct. 564, 277 U.S. 438, 72 L.Ed. 944.

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Prohibition agent was properly permitted to use memoranda copied from originals in testifying to conversations heard by tapping telephone. Olmstead v. U.S., C.C.A.9 (Wash.) 1927, 19 F.2d 842, certiorari denied 48 S.Ct. 117, 275 U.S. 557, 72 L.Ed. 424, 72 L.Ed. 729, rehearing granted 48 S.Ct. 207, 276 U.S. 609, 72 L.Ed. 729, affirmed 48 S.Ct. 564, 277 U.S. 438, 72 L.Ed. 944.

U.S.C.A.Const. Amend. 4 is no limitation on authority of state officers, and testimony with reference to raids by state officers in which federal officers had no part is admissible in prosecution for conspiracy to violate National Prohibition Act, former § 1 et seq. of Title 27. Marron v. U.S., C.C.A.9 (Cal.) 1925, 8 F.2d 251.

If the premises of one defendant or conspirator have been unreasonably searched without a proper search warrant or pursuant to a defective one, and property seized, he alone will be heard to complain thereof, and the evidence, if any, so obtained is admissible against all other defendants. U.S. v. Wexler, D.C.N.Y.1925, 4 F.2d 391.

Under U.S.C.A.Const. Amend. 4, declaring against unreasonable searches and seizures, and Amend. 5, declaring that no person shall be compelled to be a witness against himself, it was an arbitrary and unlawful violation of defendant's constitutional rights for officers of the secret service to demand from his wife ledgers and delivery slips for use as evidence in a prosecution for conspiring to defraud the United States, and, where the wife delivered the same on demand, such documents were inadmissible in evidence. Fitter v. U.S., C.C.A.2 (N.Y.) 1919, 258 F. 567, 169 C.C.A. 507.

In prosecution for conspiracy to violate narcotic laws, admission of phonographic record of conversation between an informer and defendant procured by attachment of device to telephone wire inside house of narcotic agent's associate from which call was made at agent's direction was not erroneous on ground that § 605 of Title 47, prohibiting interception of communications had been violated. U. S. v. Yee Ping Jong, W.D.Pa.1939, 26 F.Supp. 69.

608. Exhibits, admissibility of evidence

Where relevance of checks tending to refute defendants' contention that purpose of SBA guaranteed loan was to make company an operating business did not become significant until the Friday preceding the Monday when the trial commenced, checks were admissible even though copies of the checks were not furnished to the defense within five days as ordered in the pretrial order and were given to the defense when the trial on charge of conspiracy to defraud the United States opened. U. S. v. Smith, C.A.10 (Okla.) 1974, 496 F.2d 185, certiorari denied 95 S.Ct. 225, 419 U.S. 964, 42 L.Ed.2d 179, rehearing denied 95 S.Ct. 646, 419 U.S. 1060, 42 L.Ed.2d 658.

In prosecution for mail fraud and conspiracy, admission of certain government charts and summaries was not error on ground that they were misleading and speculative, where charts and summaries were based upon substantial evidence introduced by the government through its own witnesses or in cross-examination of defendants' witnesses, all of whom were subject to cross-examination or reexamination by defendants' counsel. Koolish v. U. S., C.A.8 (Minn.) 1965, 340 F.2d 513, certiorari denied 85 S.Ct. 1805, 381 U.S. 951, 14 L.Ed.2d 724.

Blackboard diagram of farm area, which contained, inter alia, unregistered still, drawn and used by alcohol and tobacco tax agent for purpose of illustrating his testimony, in prosecution for violating revenue laws in regard to alcohol, was admissible, although it was not drawn to scale, where various distances marked thereon were measurements made by witness while he was present at locality represented in diagram. U. S. v. D'Antonio, C.A.3 (N.J.) 1963, 324 F.2d 667, certiorari denied 84 S.Ct. 662, 376 U.S. 909, 11 L.Ed.2d 607.

Admission of exhibits showing delivery of heroin to other conspirators before defendant joined conspiracy was proper under rule that when one joins conspiracy, evidence of previous conspiratorial acts are admissible as evidence against him, in prosecution for conspiracy to violate narcotic laws. United States v. Williams, C.A.2 (N.Y.) 1956, 239 F.2d 517.

18 U.S.C.A. § 371

In prosecution of two corporate defendants and five individual defendants on charges of conspiracy to defraud United States by delivery under contracts with Federal Surplus Commodities Corporation of rejected egg powder and conspiracy to defraud United States by obtaining payment of certain false claims, exhibit consisting of accountant's summary compiled from exhibits previously admitted, which gave the total barrels, total weight and total contract price of rejected lots of egg powder, was relevant and properly admitted over defendant's objection that the total contract price would unduly prejudice jury and was unnecessary. U.S. v. Samuel Dunkel & Co., C.A.2 (N.Y.) 1950, 184 F.2d 894, certiorari denied 71 S.Ct. 491, 340 U.S. 930, 95 L.Ed. 671.

In prosecution for using mails to defraud and for conspiracy, admission in evidence of certain charts prepared by post office inspector was not erroneous since the charts were prepared on basis of proper interpretation by inspector of two identical clauses of two trust agreements. U.S. v. Bramson, C.C.A.2 (N.Y.) 1943, 139 F.2d 598, certiorari denied 64 S.Ct. 636, 321 U.S. 783, 88 L.Ed. 1075.

Admission, in prosecution for conspiracy to defraud national bank, of exhibit showing number of embezzlements by defendant and others, was not erroneous under circumstances. Fox v. U. S., C.C.A.7 (Wis.) 1930, 45 F.2d 364.

609. Expert testimony, admissibility of evidence

Expert's proposed testimony, in prosecution, based on rebate program, for mail and wire fraud and conspiracy to commit mail and wire fraud, was both unreliable and irrelevant, such that exclusion of testimony was not abuse of discretion; expert had no adequate basis for comparing rebate program to other programs, inasmuch as he had never encountered a program like that run by defendant and his personal knowledge related only to other programs, and expert would have added nothing that a juror could not understand on basis of common sense. U.S. v. Fredette, C.A.10 (Wyo.) 2003, 315 F.3d 1235, dismissal of habeas corpus affirmed 65 Fed.Appx. 929, 2003 WL 1795858, certiorari denied 123 S.Ct. 2100, 538 U.S. 1045, 155 L.Ed.2d 1084. Criminal Law 478(1)

Internal Revenue Service (IRS) agent's testimony that there was minimum of 20 "false" tax returns in connection with defendant's involvement in real estate transaction and that falsified IRS filings "obstruct[ed] and defeat[ed]" entire process was admissible expert testimony in prosecution for bank fraud and conspiracy to impair and impede local functioning of IRS and Federal Home Loan Bank Board, even though testimony embraced ultimate issue; and agent did not couch opinions in terms deriving definitions from judicial interpretations, based testimony on personal knowledge, and merely posited factual conclusions. U.S. v. Duncan, C.A.2 (Conn.) 1994, 42 F.3d 97. Criminal Law 470(3)

In prosecution for conspiracy to cause false entries to be made in building and loan association's books and records, concealing material facts from government agencies and devising a scheme to defraud, testimony of accounting expert was properly excluded when it became evidence that he would do no more than make basic arithmetical computations with figures supplied to him by counsel, since it is a proper exercise of discretion for court to exclude expert testimony concerning matters clearly within realm of jurors' comprehension. U. S. v. Grizaffi, C.A.7 (Ill.) 1972, 471 F.2d 69, certiorari denied 93 S.Ct. 2141, 411 U.S. 964, 36 L.Ed.2d 684, certiorari denied 93 S.Ct. 2142, 411 U.S. 964, 36 L.Ed.2d 684.

Where defense counsel revealed that defendant would raise mental incapacity as defense to offenses charged, permitting government psychiatrist, who did not testify as to any statement of defendant relating to his guilt or innocence, to testify on basis of psychiatric examination, which defendant had been ordered to submit to, did not violate defendant's right against self incrimination. U. S. v. Weiser, C.A.2 (N.Y.) 1969, 428 F.2d 932, certiorari denied 91 S.Ct. 1606, 402 U.S. 949, 29 L.Ed.2d 119.

In prosecution for stealing, uttering and publishing United States Treasury checks and for conspiracy, expert testimony relating to handwriting exemplars obtained from one of the defendants was clearly relevant, and, where handwriting exemplars were themselves admissible, expert testimony concerning such evidence was similarly

admissible. U. S. v. King, C.A.6 (Tenn.) 1969, 415 F.2d 737, certiorari denied 90 S.Ct. 465, 396 U.S. 974, 24 L.Ed.2d 443.

Where government's case against indigent for conspiracy to pass, utter and publish forged and altered United States postal money orders depended almost entirely upon testimony of two handwriting and fingerprinting experts, denial of defense motions for appointment of such experts for indigent was error requiring reversal. Bradford v. U. S., C.A.5 (Miss.) 1969, 413 F.2d 467.

In prosecution for engaging in business of accepting wagers as copartners and attempting to evade part of excise on wagers, court did not err in admitting testimony of government witness as to his computation of gross amount of wagers reflected in records found by him on basis of hypothetical questions where court instructed that jury was not to take for granted that statements contained in questions were true. U.S. v. Shaffer, C.A.7 (Ind.) 1961, 291 F.2d 689, certiorari denied 82 S.Ct. 192, 368 U.S. 915, 7 L.Ed.2d 130, rehearing denied 82 S.Ct. 392, 368 U.S. 962, 7 L.Ed.2d 393, certiorari denied 82 S.Ct. 193, 368 U.S. 914, 7 L.Ed.2d 130.

In prosecution for conspiracy to organize Communist Party as group advocating overthrow of government by force and violence and for knowingly advocating and teaching duty and necessity of overthrowing government as speedily as circumstances would permit, testimony of witness who detailed his career as member of Communist Party for period of 15 years and who testified as expert in respect to ultimate aims and objectives of the party was admissible. Bary v. U. S., C.A.10 (Colo.) 1957, 248 F.2d 201.

In prosecution for conspiring to commit offense against the United States by attempting to willfully evade income taxes due United States by third parties, error, if any, in admitting testimony of government tax expert as to falsity of report filed by alleged co-conspirator, who was acquitted, could not have been prejudicial to defendant. U.S. v. Gordon, C.A.3 (Pa.) 1957, 242 F.2d 122, certiorari denied 77 S.Ct. 1378, 354 U.S. 921, 1 L.Ed.2d 1436.

In prosecution for conspiracy to organize Communist Party of United States as a group to teach and advocate overthrow of government by force or violence, former Communist Party member was competent to testify as to meanings of terms constantly recurring in Communist writings and having accepted conventional meaning among Party members, and concerning certain passages in Communist Constitution which were innocent upon their face but which were understood by Party members to be only a cover for violent methods advocated and taught. U.S. v. Dennis, C.A.2 (N.Y.) 1950, 183 F.2d 201, certiorari granted 71 S.Ct. 91, 340 U.S. 863, 95 L.Ed. 630, affirmed 71 S.Ct. 857, 341 U.S. 494, 95 L.Ed. 1137, rehearing denied 72 S.Ct. 20, 342 U.S. 842, 96 L.Ed. 636, rehearing denied 78 S.Ct. 409, 355 U.S. 936, 2 L.Ed.2d 419.

Where records of company whose stocks and bonds defendants had been active in selling were introduced in evidence to support government's contention that concern was operated as a stock selling scheme, it was not error to admit testimony of an expert accountant who summarized and analyzed the records, especially where case was being tried to court. Harper v. U. S., C.C.A.8 (Mo.) 1944, 143 F.2d 795.

In prosecution of physician for conspiracy to violate § 2550 et seq. of Title 26, testimony of a physician that in his opinion the use of morphine in the treatment of one of defendant's patients was not justified, was not prejudicial, where there was prior testimony, received without objection, to the same effect and testimony of physician could not have affected result of trial. Heller v. U.S., C.C.A.4 (S.C.) 1939, 104 F.2d 446.

In prosecution of physician for conspiracy to violate § 2550 et seq. of Title 26, testimony as to how much morphine was proper in treatment of one of defendant's patients who was suffering from myocarditis was a matter for expert opinion. Heller v. U.S., C.C.A.4 (S.C.) 1939, 104 F.2d 446.

In prosecution for use of mails in furtherance of scheme to defraud owners of public investment trust units, for violation of § 77a of Title 15 and for conspiracy to commit such crimes, record did not disclose that trial court

abused its discretion in permitting a public accountant who had examined accounts of company issuing the units and testified that in his opinion company was insolvent to testify as an expert, or that testimony called for a special cautionary instruction regarding weight to be given it. Troutman v. U. S., C.C.A.10 (Colo.) 1938, 100 F.2d 628.

In prosecution of bank employee for conspiracy to commit grand larceny and embezzlement, admission of testimony of expert witness as to conclusions resulting from investigation and examination of books of bank was not error, where grounds for conclusions were explained and expert testimony was necessary for jury to understand case. McNeil v. U.S., App.D.C.1936, 85 F.2d 698, 66 App.D.C. 199.

Expert testimony as to when and why net worth basis of computing income was proper was properly excluded, in trial for conspiracy to defraud government by making false returns. Lisansky v. U.S., C.C.A.4 (Md.) 1929, 31 F.2d 846, certiorari denied 49 S.Ct. 514, 279 U.S. 873, 73 L.Ed. 1008.

Experts' opinions that defendants need not report profits on usurious loans until repaid was inadmissible in trial for conspiracy to defraud government by making false income tax returns. Lisansky v. U.S., C.C.A.4 (Md.) 1929, 31 F.2d 846, certiorari denied 49 S.Ct. 514, 279 U.S. 873, 73 L.Ed. 1008.

Expert testimony that glass burial caskets were not commercially feasible was admissible in trial for conspiracy to defraud by selling stock in corporation manufacturing them. De Camp v. U.S., App.D.C.1926, 10 F.2d 984, 56 App.D.C. 119.

The admissibility of expert testimony, depending on the qualification of a witness, is to be determined by the trial judge. U S v. Fischer, E.D.Pa.1917, 245 F. 477, affirmed 250 F. 793, 163 C.C.A. 125.

In a prosecution for conspiring to use the mails to sell corporate stock by false representations, evidence that defendants knew of possible invalidity of one of the patents owned by the corporation, and represented to be of great value, was admissible on the question of their good faith, but expert testimony as to the validity of patents was inadmissible. Menefee v. U.S., C.C.A.9 (Or.) 1916, 236 F. 826, 150 C.C.A. 88.

Expert testimony that defendant suffered from exceptionally and excessively rigid thinking was inadmissible in prosecution for conspiracy to defraud government through commingling of funds in warehouse bank, given that such thinking was not defense to willful violation of tax laws. U.S. v. Anderson, C.A.9 (Or.) 2004, 94 Fed.Appx. 487, 2004 WL 604937, Unreported, certiorari denied 125 S.Ct. 192, 543 U.S. 863, 160 L.Ed.2d 105, rehearing denied, rehearing denied 125 S.Ct. 493, 543 U.S. 984, 160 L.Ed.2d 367, certiorari denied 125 S.Ct. 203, 543 U.S. 863, 160 L.Ed.2d 105. Conspiracy 45

610. Grand jury testimony, admissibility of evidence

Defendant, who had made self-incriminating statement to grand jury which was introduced at his trial with the names of his associates deleted therefrom so as not to prejudice other defendants, was not prejudiced by prosecution's reference in summation to statement's contents respecting names of other defendants, since statement concerning associates was not inadmissible against him, and his conviction for conspiracy and substantive crime of transporting stolen cigarettes in interstate commerce was affirmed. Kitchell v. U. S., C.A.1 (Mass.) 1966, 354 F.2d 715, certiorari denied 86 S.Ct. 1970, 384 U.S. 1011, 16 L.Ed.2d 1032.

If witness had testified before grand jury, defendants would have been entitled to have judge inspect minutes and turn over any parts useful for cross-examination of witness; the government ought not to be allowed, by having its principal witness speak to the grand jury through the voice of another, to deprive a defendant of this right to impeach by contradiction; that inconsistencies found in grand jury testimony of such a surrogate are less susceptible of effective use than if the witness himself had testified is not sufficient reason for the trial court's refusing to open this avenue of impeachment. U. S. v. Borelli, C.A.2 (N.Y.) 1964, 336 F.2d 376, certiorari denied

18 U.S.C.A. § 371

85 S.Ct. 647, 379 U.S. 960, 13 L.Ed.2d 555.

In prosecution for conspiracy, statements in grand jury testimony of one conspirator were admissible as against such conspirator. United States v. Bando, C.A.2 (N.Y.) 1957, 244 F.2d 833, certiorari denied 78 S.Ct. 67, 355 U.S. 844, 2 L.Ed.2d 53.

Where witness had made incriminating statements to district attorney and investigators and had repeated them under oath before grand jury but when called as witness in prosecution gave exculpatory testimony, evidence of the previous extrajudicial incriminating statements was admissible, but the previous statements could not be considered as evidence of the alleged facts recited in them. Ellis v. U.S., C.C.A.8 (Mo.) 1943, 138 F.2d 612.

In prosecution for conspiring to cheat and defraud State Turnpike Commission, transcript of testimony before grand jury of one of conspirators was admissible, limited to such conspirator. Torrance v. Salzinger, M.D.Pa.1961, 195 F.Supp. 804, affirmed 297 F.2d 902, certiorari denied 82 S.Ct. 1161, 369 U.S. 887, 8 L.Ed.2d 288.

Admissibility of transcript of testimony before grand jury of one of co-conspirators in a conspiracy to cheat and defraud State Turnpike Commission was a matter for state court. Torrance v. Salzinger, M.D.Pa.1961, 195 F.Supp. 804, affirmed 297 F.2d 902, certiorari denied 82 S.Ct. 1161, 369 U.S. 887, 8 L.Ed.2d 288.

In prosecution for conspiracy to obstruct administration of justice, prosecution could present testimony of each of several defendants before grand jury as against him alone on ground that it contained admissions against interest under instruction that proof of conspiracy and doing of an overt act must be found before admissions of a defendant could be used to determine whether that defendant was a participant in the conspiracy. U. S. v. Johnson, M.D.Pa.1947, 76 F.Supp. 542, affirmed 165 F.2d 42, certiorari denied 68 S.Ct. 355, 332 U.S. 852, 92 L.Ed. 421, motion granted 68 S.Ct. 357, rehearing denied 68 S.Ct. 457, 333 U.S. 834, 92 L.Ed. 1118, certiorari denied 68 S.Ct. 355, 332 U.S. 852, 92 L.Ed. 422.

611. Hearsay, admissibility of evidence

Tape made by undercover police officer as he was looking through window of defendant's home, recording his impressions on allegedly seeing defendant take food stamps from codefendant and give him money in return, while hearsay recorded out of presence of defendant, was admissible in prosecution for conducting illegal traffic in food stamps as prior consistent statements offered to rebut defendant's claim of fabrication and improper motive when she alleged that it would have been impossible for officer to see inside house from his position in parked car in driveway. U.S. v. Andrews, C.A.11 (Ala.) 1985, 765 F.2d 1491, rehearing denied 772 F.2d 918, certiorari denied 106 S.Ct. 815, 474 U.S. 1064, 88 L.Ed.2d 789.

Witness' testimony concerning the substance of one defendant's threats toward another presented no hearsay problems, as Government did not offer defendant's statement to prove that the witness and another would in fact end up dead if they did not cooperate in the criminal venture; rather, the Government intended to show that threats were part of the conspiracy and that defendant was involved in the conspiracy. U.S. v. Gironda, C.A.7 (Ill.) 1985, 758 F.2d 1201, certiorari denied 106 S.Ct. 523, 474 U.S. 1004, 88 L.Ed.2d 456.

In prosecution for wire fraud, testimony concerning phone call to victim in which victim was fraudulently induced to disclose his credit card number and piece of paper used by caller which bore victim's phone and credit card number as well as alias of defendant was not hearsay where contents of conversation and piece of paper were not offered for truth of matters asserted therein but to show how fraud was conducted and how defendant was connected to it and where they constituted admissible statements of coconspirators in furtherance of conspiracy. U. S. v. Saavedra, C.A.9 (Cal.) 1982, 684 F.2d 1293.

Once question of admissibility of evidence of conspiracy has been determined, jury is free to consider hearsay and acts of other coconspirators in arriving at its verdict, just as it is permissible for court to consider hearsay in determining sufficiency of evidence. U. S. v. Hartley, C.A.11 (Fla.) 1982, 678 F.2d 961, rehearing denied 688 F.2d 852, certiorari denied 103 S.Ct. 815, 459 U.S. 1170, 74 L.Ed.2d 1014, certiorari denied 103 S.Ct. 834, 459 U.S. 1183, 74 L.Ed.2d 1027.

Conspirator's testimony to coconspirator's statement that he and defendant would be splitting profits arising from marijuana smuggling operation did not constitute hearsay where conspirator testified to defendant's personal participation in meeting and to talk that itself established anticipation if not implied agreement that defendant would profit from venture. U.S. v. Ruppel, C.A.5 (Tex.) 1982, 666 F.2d 261, rehearing denied 671 F.2d 1378, certiorari denied 102 S.Ct. 3487, 458 U.S. 1107, 73 L.Ed.2d 1369, rehearing denied 103 S.Ct. 17, 458 U.S. 1132, 73 L.Ed.2d 1402.

Although evidence that 700 proofs of claim, totaling $1.2 million, were filed in bankruptcy court one and one-half years after subject "business" commenced operation would have been hearsay if introduced, in prosecution for mail fraud and conspiring to conceal property of a bankrupt, to show how much the bankrupt owed his creditors, proof of such claims was not hearsay for purpose of inferring that business was not a typical, good-faith operation, and fact that proper use thereof resulted in raising essentially the same inference that improper use would have raised did not bar admission. U. S. v. Ciampaglia, C.A.1 (Mass.) 1980, 628 F.2d 632, certiorari denied 101 S.Ct. 365, 449 U.S. 956, 66 L.Ed.2d 221, certiorari denied 101 S.Ct. 618, 449 U.S. 1038, 66 L.Ed.2d 501.

End of testimony in a conspiracy trial where hearsay statements have been received subject to connection requires that two independent decisions be made by trial court; first, court must determine whether prosecution has proved, by substantial independent evidence, existence of conspiracy and of defendant's participation therein so that hearsay statements of coconspirators may be admitted against defendant as equivalent to his own admissions, and, second, court must determine whether to submit entire case to jury, applying standard whether reasonable mind might fairly conclude guilt beyond a reasonable doubt. U. S. v. Jackson, C.A.D.C.1980, 627 F.2d 1198, 201 U.S.App.D.C. 212.

If corporate minute book given by alleged "mastermind" of money laundering scheme to one defendant, which book allegedly was introduced to impeach defendant's testimony that the "mastermind" had not identified fellow stockholders, was not used to prove truth of matter asserted it was not hearsay and, hence, it was irrelevant that book was not part of conspiracy to defraud United States by impeding the computation and collection of income taxes and, furthermore, if statement in the book was not hearsay then there was no denial of coconspirator's right to confront witnesses against him. U. S. v. Enstam, C.A.5 (Tex.) 1980, 622 F.2d 857, certiorari denied 101 S.Ct. 1351, 450 U.S. 912, 67 L.Ed.2d 336, certiorari denied 101 S.Ct. 1974, 451 U.S. 907, 68 L.Ed.2d 294.

Letter from alleged coconspirator to defendant was not admissible under the rule authorizing admission of out-of-court statements made by a coconspirator of a party during the course and in the furtherance of the conspiracy where the letter was not written during the course and in furtherance of the conspiracy and where the letter was offered by the defendant. U. S. v. Montgomery, C.A.10 (N.M.) 1978, 582 F.2d 514, certiorari denied 99 S.Ct. 850, 439 U.S. 1075, 59 L.Ed.2d 42.

Witness' testimony that others had told him on various occasions that defendant was member of conspiracy was hearsay as to defendant and was incompetent to link defendant with conspiracy. Harlow v. U. S., C.A.5 (Tex.) 1962, 301 F.2d 361, certiorari denied 83 S.Ct. 25, 371 U.S. 814, 9 L.Ed.2d 56, rehearing denied 83 S.Ct. 204, 371 U.S. 906, 9 L.Ed.2d 167.

Where there was ample evidence of conspiracy between two defendants to defraud victim, conversations of one of the defendants with victim pursuant to conspiracy were not hearsay as to the other defendant. Pereira v. U.S., C.A.5 (Tex.) 1953, 202 F.2d 830, certiorari granted 73 S.Ct. 1134, 345 U.S. 990, 97 L.Ed. 1399, affirmed 74 S.Ct.

358, 347 U.S. 1, 98 L.Ed. 435.

In conspiracy prosecution proof that a certain statement was made is not "hearsay" of that fact, but is hearsay of truth of statement. Murray v. U.S., C.C.A.7 (Ill.) 1925, 10 F.2d 409, certiorari denied 46 S.Ct. 486, 271 U.S. 673, 70 L.Ed. 1144.

In prosecution for having conspired to violate Selective Service Act, § 6, temporary, a question as to what a third person told the witness during a conversation regarding the conspiracy was calculated to elicit hearsay testimony. Gruher v. U.S., C.C.A.2 (N.Y.) 1918, 255 F. 474, 166 C.C.A. 550.

612. Declarations of coconspirators, admissibility of evidence--Generally

Where a conspiracy or privity of design has been established, the acts and declarations of any of the conspirators, done or made during the pendency of the conspiracy and in furtherance thereof, are admissible against the others. Wiborg v. U S, U.S.Pa.1896, 16 S.Ct. 1127, 163 U.S. 632, 41 L.Ed. 289. See, also, Braatelien v. U.S., C.C.A.N.D.1945, 147 F.2d 888; American Tobacco Co. v. U.S., C.C.A.Ky.1944, 147 F.2d 93, rehearing denied 65 S.Ct. 1021, 324 U.S. 891, 89 L.Ed. 1400, affirmed 66 S.Ct. 1125, 328 U.S. 781, 90 L.Ed. 1575; U.S. v. Perlstein, C.C.A.N.J.1942, 126 F.2d 789, certiorari denied 62 S.Ct. 1106, 316 U.S. 678, 86 L.Ed. 1752; Simons v. U.S., C.C.A.Wash.1941, 119 F.2d 539, certiorari denied 62 S.Ct. 78, 314 U.S. 616, 86 L.Ed. 496; Marino v. U.S., C.C.A.Cal.1937, 91 F.2d 691, 113 A.L.R. 975, certiorari denied 58 S.Ct. 410, 302 U.S. 764, 82 L.Ed. 593; Rowan v. U.S., C.C.A.Tex.1922, 281 F. 137, certiorari denied 43 S.Ct. 12, 260 U.S. 721, 67 L.Ed. 481; Reeder v. U.S., C.C.A.Okl.1919, 262 F. 36, certiorari denied 40 S.Ct. 346, 252 U.S. 581, 64 L.Ed. 726; Hallowell v. U.S., C.C.A.Or.1918, 253 F. 865, certiorari denied 39 S.Ct. 390, 249 U.S. 615, 63 L.Ed. 803, affirmed on rehearing 258 F. 237, certiorari denied 40 S.Ct. 180, 251 U.S. 559, 64 L.Ed. 413; U.S. v. Richards, D.C.Neb.1906, 149 F. 443; U.S. v. Food and Grocery Bureau of Southern California, D.C.Cal.1942, 43 F.Supp. 966. Criminal Law 423(1)

In criminal proceedings for money laundering and wire fraud, the admission of co-conspirators' guilty plea allocutions against defendants violated the Confrontation Clause, given that the statements were testimonial and the defendants did not have the prior opportunity to cross-examine the co-conspirators. U.S. v. McClain, C.A.2 (N.Y.) 2004, 377 F.3d 219, supplemented 108 Fed.Appx. 670, 2004 WL 1950415. Criminal Law 662.10

Where conspiracy is not charged in the indictment but two or more defendants are joint participators in the commission of substantive offenses, in order for hearsay declaration of joint participator to be admissible as statement of a coconspirator, independent evidence must merely show that combination existed, but it is not necessary to show by such evidence that combination was unlawful, for that element may be shown by hearsay declarations and may be shown after proof of existence of the combination. U. S. v. Jackson, C.A.D.C.1980, 627 F.2d 1198, 201 U.S.App.D.C. 212.

Statements made by agent in course of his employment are vicarious admissions of principal, and, because conspirator is agent in criminal venture, his admissions are likewise received against his coconspirator. U. S. v. Price, C.A.9 (Wash.) 1978, 577 F.2d 1356, certiorari denied 99 S.Ct. 835, 439 U.S. 1068, 59 L.Ed.2d 33.

In order for out of court declaration of coconspirator to be admissible against defendant, it is not necessary that defendant's complicity in conspiracy be proved beyond reasonable doubt; ordinary civil standard of preponderance of evidence is sufficient, since ruling involves admissibility of evidence, not ultimate guilt. U. S. v. Bell, C.A.8 (Minn.) 1978, 573 F.2d 1040.

Coconspirator exception to hearsay rule, rationale of which is commonsense appreciation that person who has authorized another to speak or to act to some joint end will be held responsible for what is later said or done by his agent, whether in his presence or not, is merely rule of evidence founded, to some extent, on concepts of agency

law and may be applied in both civil and criminal cases. U. S. v. Trowery, C.A.3 (Pa.) 1976, 542 F.2d 623, certiorari denied 97 S.Ct. 1132, 429 U.S. 1104, 51 L.Ed.2d 555.

Where statement made by coconspirator concerning defendant's knowledge was not an assertion of a past fact, where the coconspirator had personal knowledge of the identity and roles of the other participants in the crime, where the possibility of faulty recollection by the coconspirator was remote, and where circumstances under which the statement was made did not provide reason to believe that the coconspirator misrepresented defendant's involvement in the crime, admission of testimony concerning coconspirator's statements as to defendant's participation in the crime did not violate defendant's confrontation rights. U. S. v. Cruz, C.A.9 (Cal.) 1976, 536 F.2d 1264.

If statements made by one defendant outside presence of other defendant were made in furtherance of an established conspiracy and if they were relevant to substantive counts in prosecution on one count charging a conspiracy to import and to possess heroin with intent to distribute it and on two other counts of federal drug offenses, such statements could be considered by jury for all three counts. U. S. v. Mendoza, C.A.5 (Tex.) 1973, 473 F.2d 697.

Declarations of one conspirator made in furtherance of objects of conspiracy, and during its existence, are admissible against all members of conspiracy. U. S. v. Nall, C.A.5 (Tex.) 1971, 437 F.2d 1177.

Statements of alleged coconspirators were inadmissible to prove defendant's specific intent to adhere to illegal portions of alleged agreement. U. S. v. Spock, C.A.1 (Mass.) 1969, 416 F.2d 165.

Testimony of accomplice, in response to question whether in various conversations with defendant there was any discussion in accomplice's presence about sharing of the proceeds of planned robbery, that accomplice gave defendant "10% of every score" was sufficiently related to charge of conspiracy to rob federally insured bank to be admissible. U. S. v. Carella, C.A.2 (N.Y.) 1969, 411 F.2d 729, certiorari denied 90 S.Ct. 131, 396 U.S. 860, 24 L.Ed.2d 112.

Declarations of co-conspirators are competent against defendant because they are part of execution of plan and have been impliedly authorized. U. S. v. Birnbaum, C.A.2 (N.Y.) 1964, 337 F.2d 490.

The problem of co-conspiratorial declarations is one of admissibility of evidence under well recognized exception to hearsay rule; it is not substantive question as to qualitative sufficiency of evidence necessary to prove existence of conspiracy. Carbo v. U. S., C.A.9 (Cal.) 1963, 314 F.2d 718, certiorari denied 84 S.Ct. 1625, 377 U.S. 953, 12 L.Ed.2d 498, rehearing denied 84 S.Ct. 1902, 377 U.S. 1010, 12 L.Ed.2d 1058, certiorari denied 84 S.Ct. 1626, 377 U.S. 953, 12 L.Ed.2d 498, rehearing denied 84 S.Ct. 1903, 377 U.S. 1010, 12 L.Ed.2d 1058, certiorari denied 84 S.Ct. 1627, 377 U.S. 953, 12 L.Ed.2d 498.

In conspiracy cases, acts and declarations of coconspirator in furtherance of common objects are admissible against all conspirators, whether or not they have knowledge thereof. Continental Baking Co. v. U.S., C.A.6 (Tenn.) 1960, 281 F.2d 137.

Where a conspiracy exists, acts and declarations of any conspirator are admissible as to all conspirators. Marbs v. U.S., C.A.8 (Mo.) 1957, 250 F.2d 514, certiorari denied 78 S.Ct. 703, 356 U.S. 919, 2 L.Ed.2d 715.

Conspirators have identity of interest, and therefore admissions of one member have probative value against another and hence are admissible in evidence as against other. United States v. Sansone, C.A.2 (N.Y.) 1956, 231 F.2d 887, certiorari denied 76 S.Ct. 1055, 351 U.S. 987, 100 L.Ed. 1500.

Declarations are competent against accused in prosecution for conspiracy or for any other concerted venture where

declarations are made in execution of enterprise to which accused and declarant are both parties, and the enterprise itself comprises making some such declaration as a step in its realization. U.S. v. Dennis, C.A.2 (N.Y.) 1950, 183 F.2d 201, certiorari granted 71 S.Ct. 91, 340 U.S. 863, 95 L.Ed. 630, affirmed 71 S.Ct. 857, 341 U.S. 494, 95 L.Ed. 1137, rehearing denied 72 S.Ct. 20, 342 U.S. 842, 96 L.Ed. 636, rehearing denied 78 S.Ct. 409, 355 U.S. 936, 2 L.Ed.2d 419.

In prosecution for conspiracy between 1945 and 1948 to organize Communist Party of the United States as a group to teach and advocate overthrow of government by force or violence, declarations of any of the defendants or of any other persons acting in concert with them during the period between 1945 to 1948 and also prior to the time that the acts charged became a crime were competent and relevant. U.S. v. Dennis, C.A.2 (N.Y.) 1950, 183 F.2d 201, certiorari granted 71 S.Ct. 91, 340 U.S. 863, 95 L.Ed. 630, affirmed 71 S.Ct. 857, 341 U.S. 494, 95 L.Ed. 1137, rehearing denied 72 S.Ct. 20, 342 U.S. 842, 96 L.Ed. 636, rehearing denied 78 S.Ct. 409, 355 U.S. 936, 2 L.Ed.2d 419.

In prosecution for conspiracy to organize Communist Party of United States as a group to teach and advocate overthrow of government by force or violence, declarations of woman to whom informer was referred when he wished to join the Party were admissible where woman was a member of the executive of a club in New York, and it was reasonable to infer that she was acquainted with Party doctrines and that what she said was in execution of the Party purposes. U.S. v. Dennis, C.A.2 (N.Y.) 1950, 183 F.2d 201, certiorari granted 71 S.Ct. 91, 340 U.S. 863, 95 L.Ed. 630, affirmed 71 S.Ct. 857, 341 U.S. 494, 95 L.Ed. 1137, rehearing denied 72 S.Ct. 20, 342 U.S. 842, 96 L.Ed. 636, rehearing denied 78 S.Ct. 409, 355 U.S. 936, 2 L.Ed.2d 419.

Every act or declaration of each member of conspiracy in furtherance thereof is considered the act and declaration of all conspirators and is evidence against each of them. Barnett v. U.S., C.A.9 (Wash.) 1949, 171 F.2d 721. See, also, Rose v. U.S., C.C.A.Cal.1945, 149 F.2d 755; U.S. v. Harrison, C.C.A.N.J.1941, 121 F.2d 930, certiorari denied 62 S.Ct. 124, 314 U.S. 661, 86 L.Ed. 530; U.S. v. Goldman, C.C.A.N.Y.1941, 118 F.2d 310, certiorari denied 61 S.Ct. 1109-1111, 313 U.S. 588, 85 L.Ed. 1543, affirmed 62 S.Ct. 993, 316 U.S. 129, 86 L.Ed. 1322, rehearing denied 63 S.Ct. 22 (2 cases), 317 U.S. 703, 87 L.Ed. 562; Whealton v. U.S., C.C.A.N.J.1940, 113 F.2d 710; Landay v. U.S., et al., C.C.A.Mich.1939, 108 F.2d 698, certiorari denied 60 S.Ct. 721, 722, 309 U.S. 681, 84 L.Ed. 1024, 1025; Holt v. U.S., C.C.A.Okl.1938, 94 F.2d 90; Clark v. U.S., C.C.A.Ga.1932, 61 F.2d 409; Miller v. U.S., C.C.A.N.Y.1928, 24 F.2d 353, certiorari denied 48 S.Ct. 421, 276 U.S. 638, 72 L.Ed. 745; Harvey v. U.S., C.C.A.N.Y.1928, 23 F.2d 561; Camp v. U.S., C.C.A.Ky.1926, 16 F.2d 370, certiorari denied 47 S.Ct. 766, 274 U.S. 754, 71 L.Ed. 1333; Sullivan v. U.S., C.C.A.Okl.1925, 7 F.2d 355, certiorari denied 46 S.Ct. 348, 270 U.S. 648, 70 L.Ed. 779; Murray v. U.S., C.C.A.Ill.1926, 10 F.2d 409, certiorari denied 46 S.Ct. 486, 271 U.S. 673, 70 L.Ed. 1144.

Everything done by conspirators including declarations of later entrants is competent evidence against all so of far as it may fairly be found to be in execution of concert to which accused is privy. U.S. v. Peoni, C.C.A.2 (N.Y.) 1938, 100 F.2d 401.

When men enter into an agreement for an unlawful end, they become ad hoc agents for one another, and declarations or acts done pursuant to the common purpose, are competent against all. Van Riper v. U.S., C.C.A.2 (N.Y.) 1926, 13 F.2d 961, certiorari denied 47 S.Ct. 102, 273 U.S. 702, 71 L.Ed. 848.

Admission in a statement by one of the defendants charged with conspiracy of knowledge of a fact connected with the conspiracy, rendered testimony to such fact admissible. Vandell v. U.S., C.C.A.2 (N.Y.) 1925, 6 F.2d 188.

Declarations of an alleged coconspirator to a witness were inadmissible to prove the existence of the conspiracy as against another party thereto. Hauger v. U. S., C.C.A.4 (W.Va.) 1909, 173 F. 54, 97 C.C.A. 372.

Activities and statements of each conspirator made pursuant to conspiracy are admissible against all

co-conspirators. U S v. Cohen, S.D.N.Y.1953, 113 F.Supp. 955.

Declaration of a co-conspirator is admissible against all conspirators even though made only to other members of the co-conspirator's business organization or to other third parties. U.S. v. E.I. Du Pont De Nemours & Co., D.C.Del.1952, 107 F.Supp. 324.

After a conspiracy has been established, and while it is in existence, the statements of any conspirators are, in legal effect, the statements of all. U.S. v. Belisle, W.D.Wash.1951, 107 F.Supp. 283.

613. ---- Absence of conspiracy charge, declarations of coconspirators, admissibility of evidence

Absence of conspiracy count in prosecution for distribution of heroin was without legal significance in determining whether alleged coconspirator's statements were admissible against defendant; Government only had to prove conspiracy in fact between alleged coconspirator and defendant to make words of one, spoken in furtherance of some joint purpose, the words of the other as well. U. S. v. Trowery, C.A.3 (Pa.) 1976, 542 F.2d 623, certiorari denied 97 S.Ct. 1132, 429 U.S. 1104, 51 L.Ed.2d 555.

Under the coconspirator exception to hearsay rule, accounts of extrajudicial statements may be admitted if it is established by evidence other than hearsay that the defendant was involved in a criminal conspiracy with the declarant, whether or not the indictment contains a formal conspiracy count. U. S. v. Craig, C.A.6 (Tenn.) 1975, 522 F.2d 29.

Where indictment charges two or more persons with a substantive offense and evidence establishes a conspiracy between them to commit such offense, acts and declarations of one during existence of conspiracy and in furtherance thereof are admissible against the other, although no conspiracy is charged. Bartlett v. United States, C.C.A.10 (N.M.) 1948, 166 F.2d 920.

614. ---- Order of proof, declarations of coconspirators, admissibility of evidence

Better practice in determining admissibility of hearsay declarations of coconspirators is for trial court to determine before hearsay evidence is admitted that the evidence independent of the hearsay testimony proves the existence of the conspiracy sufficient to justify admission of the hearsay declarations; however, trial court is vested with considerable discretion to admit particular items of evidence subject to connection, and then, if at the close of the government's case or at any other critical point necessary connection has not been proven, trial court must then strike testimony that has not been sufficiently connected and direct jury to disregard it. U. S. v. Jackson, C.A.D.C.1980, 627 F.2d 1198, 201 U.S.App.D.C. 212.

New rule requiring specific determination of existence of conspiracy by court on record in order to render out-of-court statements of alleged coconspirator admissible does not alter traditional discretion of trial judge to allow Government to place statement into evidence on condition that it be later shown by sufficient independent evidence that conspiracy existed, but it is preferable whenever possible that government's independent proof of conspiracy be introduced first, thereby avoiding danger of injecting record with inadmissible hearsay in anticipation of proof of conspiracy which never materializes. U. S. v. Macklin, C.A.8 (Mo.) 1978, 573 F.2d 1046, certiorari denied 99 S.Ct. 160, 439 U.S. 852, 58 L.Ed.2d 157.

In conspiracy case, judge may permit declarations of coconspirator to be admitted "subject to connection" but judge must determine, when all evidence is in, whether prosecution has proved participation in conspiracy by defendant against whom hearsay was offered, by fair preponderance of evidence independent thereof; if there has been such proof, jury is to consider such hearsay with all other evidence in determining guilt beyond reasonable doubt; if there has not, judge must instruct jury to disregard hearsay or if this was so large a proportion of proof as

to render cautionary instruction of doubtful utility, declare mistrial on defendant's request. U. S. v. Stanchich, C.A.2 (N.Y.) 1977, 550 F.2d 1294.

Statements made in furtherance of unlawful association are not hearsay and are admissible, provided that concert of action is established by independent evidence; such statements may be conditionally admitted subject to being "connected up" by subsequent independent proof of concert of action. U. S. v. Harris, C.A.8 (Ark.) 1976, 546 F.2d 234.

If out-of-court statements by alleged coconspirators are testified to in course of a conspiracy trial, the court may wait until all the evidence is in to determine if a conspiracy has been sufficiently established by nonhearsay evidence to allow the jury to consider the hearsay testimony as well; and if the judge does allow the jury to consider the out-of-court statements, the Court of Appeals must assume that he made the necessary finding and the Court of Appeals' only task is to decide if he had reasonable grounds for doing so. U. S. v. Green, C.A.2 (N.Y.) 1975, 523 F.2d 229, certiorari denied 96 S.Ct. 858, 423 U.S. 1074, 47 L.Ed.2d 84. Criminal Law 1144.12

Declarations made by a member of a conspiracy cannot be used against other members unless there is other substantial evidence of the existence of the conspiracy; the order of proof is not important; the important consideration is establishing existence of the conspiracy by other substantial evidence. Klein v. U. S., C.A.9 (Ariz.) 1973, 472 F.2d 847.

Trial court in conspiracy prosecution did not err in failing to pass on admissibility of statements of coconspirators before allowing them to be presented to jury, and instruction that certain evidence should not be considered as against defendant unless jury found beyond reasonable doubt that there was conspiracy in which defendant was member, or that statement or act was done or made in furtherance of conspiracy, was unduly generous to defendant. U. S. v. Knight, C.A.9 (Ariz.) 1969, 416 F.2d 1181.

Judge properly admitted testimony as to conversations between alleged co-conspirators with continued admonition that he would strike testimony should conspiracy not be proved with respect to defendants on trial for conspiracy. Enriquez v. U. S., C.A.9 (Cal.) 1963, 314 F.2d 703. Criminal Law 422(1)

Under circumstances in conspiracy prosecution, and in absence of objection, trial court did not abuse discretion in permitting witness to testify to conversation in which member of alleged conspiracy referred to defendant's participation, although defendant had not yet been linked with conspiracy by independent evidence. Landers v. U. S., C.A.5 (Ga.) 1962, 304 F.2d 577.

The admission in evidence of declarations made by one of the alleged conspirators before proof of the conspiracy was not prejudicial, where such proof was subsequently made by evidence other than the declarations. Cohen v. U.S., C.C.A.2 (N.Y.) 1907, 157 F. 651, 85 C.C.A. 113, certiorari denied 28 S.Ct. 261, 207 U.S. 596, 52 L.Ed. 357.

Proof of the acts and declarations of the alleged conspirators may be introduced, although not properly admissible at the time because community of intent and design has not been established, but if received, the error may be cured by the subsequent introduction of proof of the conspiracy existing at the time the alleged declarations were made. 1899, 22 Op.Atty.Gen. 589.

615. ---- Discretion of court, declarations of coconspirators, admissibility of evidence

Whether there is substantial independent evidence of conspiracy necessary to reception of testimony under coconspirator exception to hearsay rule is question of admissibility of evidence to be decided by trial judge. U. S. v. Nixon, U.S.Dist.Col.1974, 94 S.Ct. 3090, 418 U.S. 683, 41 L.Ed.2d 1039.

When coconspirator rule of evidence is invoked, either in civil or criminal proceedings, its applicability is for the

court to decide as a question of competence of evidence. U. S. v. Trowery, C.A.3 (Pa.) 1976, 542 F.2d 623, certiorari denied 97 S.Ct. 1132, 429 U.S. 1104, 51 L.Ed.2d 555.

It was within trial court's discretion to require Government to submit all of its evidence of conspiracy before submitting any coconspirator's declarations and to thus interrupt direct examination of one witness in order to call other witnesses so as not to permit any evidence of coconspirator's declarations until the conspiracy was established. U. S. v. Hathaway, C.A.1 (Mass.) 1976, 534 F.2d 386, certiorari denied 97 S.Ct. 64, 429 U.S. 819, 50 L.Ed.2d 79.

In order to be properly admitted under coconspirator exception to hearsay rule, there must be independent evidence linking declarant to defendant, but trial judge has a wide discretion and need only be satisfied, if he accepts independent evidence as credible, that such evidence is sufficient to support a finding of joint undertaking. U. S. v. Rodrigues, C.A.3 (N.J.) 1974, 491 F.2d 663.

It is discretionary with trial court to admit evidence of declarations of alleged conspirators subject to later proof as to existence of conspiracy. Rizzo v. U. S., C.A.8 (Mo.) 1962, 304 F.2d 810, certiorari denied 83 S.Ct. 188, 371 U.S. 890, 9 L.Ed.2d 123.

In passing upon whether a sufficient showing has been made to render competent the acts and declarations of a coconspirator, District Court has much discretion and its rulings are not to be lightly disturbed. U.S. v. Von Clemm, C.C.A.2 (N.Y.) 1943, 136 F.2d 968, certiorari denied 64 S.Ct. 81, 320 U.S. 769, 88 L.Ed. 459.

Whether there is some evidence of existence of alleged criminal conspiracy dehors defendants' extra-judicial statements or declarations and proof aliunde of other alleged conspirators' acts and statements or declarations showing defendant's connection with conspiracy are preliminary fact issues for trial judge to decide in determining whether such acts and statements or declarations shall be received as evidence against defendants. U. S. v. Schneiderman, S.D.Cal.1952, 106 F.Supp. 892.

616. ---- Foundation, declarations of coconspirators, admissibility of evidence

Before government can take advantage of exception to hearsay rule, it must show by preponderance of evidence that conspiracy existed, that defendant against whom hearsay is offered was member of conspiracy and that hearsay statement was made in course and in furtherance of conspiracy. U. S. v. Hamilton, C.A.6 (Ky.) 1982, 689 F.2d 1262, certiorari denied 103 S.Ct. 753, 459 U.S. 1117, 74 L.Ed.2d 971, certiorari denied 103 S.Ct. 754, 459 U.S. 1117, 74 L.Ed.2d 971.

Extrajudicial, hearsay statement of a coconspirator may be admitted against a criminal defendant only if the statement was made by one who conspired with the party against whom the statement is offered, was made during the course of the conspiracy, and was made in furtherance of the conspiracy; those requirements must be established by preponderance of independent evidence. U. S. v. Wilson, C.A.5 (Tex.) 1981, 657 F.2d 755, certiorari denied 102 S.Ct. 1456, 455 U.S. 951, 71 L.Ed.2d 667.

Government's independent evidence that on one occasion alleged coconspirator used car once registered to defendant to make drug delivery, and that on second occasion defendant was in general vicinity of drug transaction and conversed freely with person making sale, did not establish sufficient foundation for admission of hearsay statement by coconspirator that car belonged to coconspirator's source of supply. U. S. v. Zule, C.A.5 (Tex.) 1978, 581 F.2d 1218.

When the threshold requirement of demonstrating a likelihood of an illicit association by any defendant with the conspiracy is fulfilled, hearsay declarations of any of the conspirators are admissible against the others. U. S. v. Schoenhut, C.A.3 (Pa.) 1978, 576 F.2d 1010, certiorari denied 99 S.Ct. 450, 439 U.S. 964, 58 L.Ed.2d 421.

18 U.S.C.A. § 371

Out-of-court declaration of coconspirator is admissible against defendant if government demonstrates that conspiracy existed, that defendant and declarant were members of conspiracy, and that declaration was made during course and in furtherance of conspiracy. U. S. v. Bell, C.A.8 (Minn.) 1978, 573 F.2d 1040.

In order to invoke the coconspirator exception to the hearsay rule, it is necessary to demonstrate by substantial evidence, other than the statement in question, a prima facie case of conspiracy. Joyner v. U. S., C.A.4 (Va.) 1977, 547 F.2d 1199.

A fair preponderance of nonhearsay evidence is the quantum of proof which must be established before hearsay declaration of associates in an illicit venture may be admitted against a defendant; such standard is less than proof beyond a reasonable doubt. U. S. v. Glazer, C.A.2 (N.Y.) 1976, 532 F.2d 224, certiorari denied 97 S.Ct. 123, 429 U.S. 844, 50 L.Ed.2d 115.

Any act or declaration by one coconspirator committed in furtherance of the conspiracy and during its pendency is admissible against another coconspirator provided that a foundation for admissibility is laid by independent proof of the conspiracy. U. S. v. Prout, C.A.5 (La.) 1976, 526 F.2d 380, rehearing denied 529 F.2d 999, certiorari denied 97 S.Ct. 114, 429 U.S. 840, 50 L.Ed.2d 109.

Evidence, including evidence that defendant met initial instigator of conspiracy to violate federal gambling laws, that such individual put defendant to work, telling him how to approve markers and pointing out regular customers, that defendant was paid by such individual, that defendant oversaw preparation of ledger sheets and that reason defendant was present at premises was to protect another's interest, was sufficient not only to justify admission of hearsay statements by other conspirator implicating him in the conspiracy but also the conviction itself. U. S. v. Calaway, C.A.9 (Cal.) 1975, 524 F.2d 609, certiorari denied 96 S.Ct. 1462, 424 U.S. 967, 47 L.Ed.2d 733.

Otherwise inadmissible hearsay declarations of a coconspirator may be received into evidence when the proper foundation is developed; such foundation consists of showing that the declaration is in furtherance of conspiracy, that it was made during pendency of the conspiracy and that there is independent proof of existence of conspiracy and of connection of declarant and defendant; if the independent evidence adduced in support of existence of the conspiracy makes a prima facie case therefor, the foundation requirements can be satisfied. U. S. v. Ellsworth, C.A.9 (Cal.) 1973, 481 F.2d 864, certiorari denied 94 S.Ct. 544, 414 U.S. 1041, 38 L.Ed.2d 332.

In conspiracy to receive stolen property, statements by one conspirator which were made during questioning at scene of crime were properly admitted where there was ample evidence of existence of conspiracy, witness was shown to be a co-conspirator, and there was no evidence that conspiracy had ended. U. S. v. Baxa, C.A.7 (Ill.) 1965, 340 F.2d 259, certiorari granted 85 S.Ct. 1556, 381 U.S. 353, 14 L.Ed.2d 681.

Declarations, as to defendants other than declarant, constitute hearsay; yet with a proper foundation they will qualify under well recognized exception which permits introduction of declarations of co-conspirator; the necessary foundation consists of three distinct prerequisites: (1) that declaration is in furtherance of conspiracy, (2) that it was made during pendency of conspiracy, and (3) that there is independent proof of existence of conspiracy and of connection of declarant and defendant with it. Carbo v. U. S., C.A.9 (Cal.) 1963, 314 F.2d 718, certiorari denied 84 S.Ct. 1625, 377 U.S. 953, 12 L.Ed.2d 498, rehearing denied 84 S.Ct. 1902, 377 U.S. 1010, 12 L.Ed.2d 1058, certiorari denied 84 S.Ct. 1626, 377 U.S. 953, 12 L.Ed.2d 498, rehearing denied 84 S.Ct. 1903, 377 U.S. 1010, 12 L.Ed.2d 1058, certiorari denied 84 S.Ct. 1627, 377 U.S. 953, 12 L.Ed.2d 498.

Before acts and declarations of third persons become binding upon individual under law of conspiracy, there must be shown to be an illegal agreement to commit crime by two or more persons, that particular defendant was knowing and wilful participant, and that act or declaration by third party conspirator was in pursuance to and in order to bring about criminal objective. Yates v. U. S., C.A.9 (Cal.) 1955, 225 F.2d 146, certiorari granted 76 S.Ct. 104, 350 U.S. 860, 100 L.Ed. 763, certiorari granted 76 S.Ct. 105, 350 U.S. 860, 100 L.Ed. 763, reversed on

other grounds 77 S.Ct. 1064, 354 U.S. 298, 1 L.Ed.2d 1356.

617. ---- Furtherance of conspiracy, declarations of coconspirators, admissibility of evidence

Co-conspirator's hearsay statements may be admitted against accused for no purpose whatever unless made during and in furtherance of conspiracy. Wong Sun v. U.S., U.S.Cal.1963, 83 S.Ct. 407, 371 U.S. 471, 9 L.Ed.2d 441.

Hearsay statement of co-conspirator to be admissible against others must have been made in furtherance of the conspiracy charged. Krulewitch v. U.S., U.S.N.Y.1949, 69 S.Ct. 716, 336 U.S. 440, 93 L.Ed. 790. See, also, Tofanelli v. U.S., C.C.A.Cal.1928, 28 F.2d 581. Criminal Law 423(1)

Where defendants were indicted on charges of conspiracy to violate tax laws, witness' testimony that one of defendants asked him to falsify certain reports was admissible as evidence of act performed in furtherance of conspiracy, even though witness could not remember which defendant had made request. U.S. v. Barshov, C.A.11 (Fla.) 1984, 733 F.2d 842, certiorari denied 105 S.Ct. 904, 469 U.S. 1158, 83 L.Ed.2d 919.

Declarations and acts of various members of the conspiracy made during the conspiracy in furtherance of the conspiracy are admissible against the coconspirator and, conversely, acts and declarations by a coconspirator not made in furtherance of the conspiracy during the conspiracy are not admissible against each coconspirator. U. S. v. Davis, C.A.1 (R.I.) 1980, 623 F.2d 188.

Substance of telephone conversation in which caller stated that he was acting as representative of named German company, for which one defendant was in fact a representative, and in which caller sought to obtain approval of language in letter of credit so that bank would loan money to defendants' corporation, was admissible against the defendant agent as a statement of a coconspirator, regardless of the identity of the caller, since it was apparent that call was made in furtherance of the object of conspiracy, obtaining a bank loan. U. S. v. James, C.A.2 (N.Y.) 1979, 609 F.2d 36, certiorari denied 100 S.Ct. 1082, 445 U.S. 905, 63 L.Ed.2d 321.

In a conspiracy in which consideration of alternative strategies plays a central role, statements which narrate past events are not necessarily "mere narratives" and thus inadmissible even under the co-conspirator exception to the hearsay rule if they constitute activity which is plainly and importantly in furtherance of the conspiracy. U. S. v. Haldeman, C.A.D.C.1976, 559 F.2d 31, 181 U.S.App.D.C. 254, certiorari denied 97 S.Ct. 2641, 431 U.S. 933, 53 L.Ed.2d 250, rehearing denied 97 S.Ct. 2992, 433 U.S. 916, 53 L.Ed.2d 1103.

Otherwise inadmissible declarations of coconspirators are admissible in evidence when declaration was in furtherance of conspiracy, it was made during pendency of conspiracy, and there is independent proof of existence of conspiracy and of connection of declarant and defendant with it. U. S. v. Peterson, C.A.9 (Nev.) 1977, 549 F.2d 654.

Requirement that, in order to be admissible against a criminal defendant, a statement by a coconspirator must be made "in furtherance of" the conspiracy remains viable in federal courts. U. S. v. Harris, C.A.8 (Ark.) 1976, 546 F.2d 234.

Statements made by conspirator were admissible against coconspirator where statements were made during course of and in furtherance of ongoing conspiracy. U. S. v. Pate, C.A.5 (Ala.) 1976, 543 F.2d 1148, rehearing denied 545 F.2d 1298.

In order for statements by conspirator to be admissible against other conspirators, statements must have been in furtherance of conspiracy charged. U. S. v. Truslow, C.A.4 (W.Va.) 1975, 530 F.2d 257.

Government introduced ample nonhearsay testimony to establish a conspiracy to steal frozen seafood from New

York City piers dating at least from 1965 to 1973 and including each of the defendants, and thus evidence of related criminal activity throughout that period and out-of-court statements of coconspirators made in furtherance of that conspiracy were admissible. U. S. v. Green, C.A.2 (N.Y.) 1975, 523 F.2d 229, certiorari denied 96 S.Ct. 858, 423 U.S. 1074, 47 L.Ed.2d 84.

Declarations of one conspirator may be used against another if declaration was made during course of and in furtherance of conspiracy charged. U. S. v. Smith, C.A.8 (Iowa) 1975, 520 F.2d 1245.

Incriminating statements of one conspirator can be used against a coconspirator to prove that either conspirator committed an overt act in furtherance of the conspiracy. U. S. v. Rich, C.A.8 (Mo.) 1975, 518 F.2d 980, certiorari denied 96 S.Ct. 3193, 427 U.S. 907, 49 L.Ed.2d 1200.

In prosecution for conspiring to defraud the United States by impeding the Internal Revenue Service in the collection of income taxes, involving a series of real estate transactions, a letter from an attorney for the seller of a parcel purchased and later resold by defendant, which letter stated that defendant was the actual mortgagor of the property even though the property was held in the name of defendant's mother, was admissible over a hearsay objection, even though the attorney testified that an unindicted coconspirator had told him that defendant was the mortgagor, since the coconspirator's statement was made long before the conspiracy ended and was in furtherance of the conspiracy. U. S. v. Diez, C.A.5 (Fla.) 1975, 515 F.2d 892, rehearing denied 521 F.2d 815, certiorari denied 96 S.Ct. 780, 423 U.S. 1052, 46 L.Ed.2d 641.

To be admissible, statements of coconspirators must be made in course and furtherance of the conspiracy and prior to its termination. U. S. v. Snyder, C.A.5 (Ala.) 1974, 505 F.2d 595, certiorari denied 95 S.Ct. 1433, 420 U.S. 993, 43 L.Ed.2d 676.

To be admitted under coconspirator exception to hearsay rule, statements must be made in furtherance of the "main aim" of the conspiracy; statements made in efforts to prevent detection and punishment are inadmissible. U. S. v. Arias-Diaz, C.A.5 (Fla.) 1974, 497 F.2d 165, rehearing denied 504 F.2d 760, certiorari denied 95 S.Ct. 1445, 420 U.S. 1003, 43 L.Ed.2d 761, certiorari denied 95 S.Ct. 1446, 420 U.S. 1003, 43 L.Ed.2d 761.

Out-of-court statement of one conspirator is admissible against his fellow conspirator if made during the course of the conspiracy and in furtherance of any of its objects. U. S. v. Register, C.A.5 (Ga.) 1974, 496 F.2d 1072, certiorari denied 95 S.Ct. 802, 419 U.S. 1120, 42 L.Ed.2d 819.

Once independent evidence is received establishing conspiracy and defendant's connection with it, out-of-court statements by coconspirators during its furtherance are admissible against him. U. S. v. Jimenez, C.A.5 (Tex.) 1974, 496 F.2d 288, rehearing denied 504 F.2d 760, certiorari denied 95 S.Ct. 1407, 420 U.S. 979, 43 L.Ed.2d 660.

Where conspiracy to violate prospective witness' civil rights terminated with her death and purpose of testimony of defendant's accomplice, whose testimony as only eyewitness to murder was essential and whose credibility was subject to attack, regarding statements made without defendant's authority by defendant's wife, uncle and friends, who were not available for cross-examination, implicating defendant in witness' murder was to get before jury fact that defendant's associates believed him guilty, accomplice's testimony was not admissible as declarations of coconspirator made in course of conspiracy or as evidence of acts designed to show illegal activity on part of conspirators or as admissions by defendant's agents but was inadmissible hearsay which, being admitted, constituted reversible error. U. S. v. Pacelli, C.A.2 (N.Y.) 1974, 491 F.2d 1108, certiorari denied 95 S.Ct. 43, 419 U.S. 826, 42 L.Ed.2d 49.

Statements of coconspirators made in furtherance and in course of conspiracy are admissible as each of the conspirators is agent of the other conspirators, and therefore, such statements are evidence against all those involved in the conspiracy. U. S. v. Manarite, C.A.2 (N.Y.) 1971, 448 F.2d 583, certiorari denied 92 S.Ct. 281,

404 U.S. 947, 30 L.Ed.2d 264, certiorari denied 92 S.Ct. 285, 404 U.S. 947, 30 L.Ed.2d 264, certiorari denied 92 S.Ct. 287, 404 U.S. 947, 30 L.Ed.2d 264, certiorari denied 92 S.Ct. 298, 404 U.S. 947, 30 L.Ed.2d 264.

Testimony as to activities and declarations of alleged coconspirators was properly admitted as evidence of acts in furtherance of conspiracy, existence of which had been established, and was not prejudicial as against third coconspirator. U. S. v. Pardo-Bolland, C.A.2 (N.Y.) 1965, 348 F.2d 316, certiorari denied 86 S.Ct. 388, 382 U.S. 944, 15 L.Ed.2d 353, certiorari denied 86 S.Ct. 407, 382 U.S. 946, 15 L.Ed.2d 354. Criminal Law 423(1)

Incriminating statements by one coconspirator during pendency and in furtherance of conspiracy are admissible as an exception to hearsay rule once a conspiracy has been shown. Dennis v. U. S., C.A.10 (Colo.) 1965, 346 F.2d 10, certiorari granted 86 S.Ct. 291, 382 U.S. 915, 15 L.Ed.2d 231, reversed 86 S.Ct. 1840, 384 U.S. 855, 16 L.Ed.2d 973.

Where extrajudicial statements of third person, who was a coconspirator, were made in furtherance of conspiracy at time when conspiracy was still in being, evidence of those statements was properly received and considered. U. S. v. Magliano, C.A.4 (Md.) 1964, 336 F.2d 817.

Declarations of coconspirator are admissible as substantive evidence of guilt of alleged conspirator when made in furtherance of existing conspiracy. Newman v. U. S., C.A.8 (Ark.) 1964, 331 F.2d 968, certiorari denied 85 S.Ct. 672, 379 U.S. 975, 13 L.Ed.2d 566.

If conspiracy has been proven by independent evidence, declarations of one conspirator made in furtherance of the conspiracy are admissible against each co-conspirator. Atkins v. U. S., C.A.9 (Wash.) 1962, 307 F.2d 937. See, also, U.S. v. Carminati, C.A.N.Y.1957, 247 F.2d 640, certiorari denied 78 S.Ct. 150, 355 U.S. 883, 2 L.Ed.2d 113. Criminal Law 427(2)

Statement of alleged coconspirator implicating defendant could not be considered as evidence against defendant unless jury found that there was a conspiracy and that statement was made in furtherance thereof. U.S. v. Dorsey, C.A.6 (Tenn.) 1961, 290 F.2d 893, certiorari denied 82 S.Ct. 44, 368 U.S. 825, 7 L.Ed.2d 29.

In prosecution for conspiracy to violate the Smith Act, § 2385 of this title, making it an offense to advocate forcible overthrow of the government, the ordinary rule admitting against all defendants evidence of the acts and declarations of co-conspirators in furtherance of a common illegal enterprise was applicable. United States v. Flynn, C.A.2 (N.Y.) 1954, 216 F.2d 354, certiorari denied 75 S.Ct. 295, 348 U.S. 909, 99 L.Ed. 713, order withheld 75 S.Ct. 285, 99 L.Ed. 1298, rehearing denied 75 S.Ct. 436, 348 U.S. 956, 99 L.Ed. 747.

To be admissible against others than declarant, a declaration must not only be made while conspiracy charged is pending but must also be in furtherance of object of conspiracy and by some one embraced within it. U. S. v. Konovsky, C.A.7 (Ill.) 1953, 202 F.2d 721. See, also, Gerson v. U.S., C.C.A.Okl.1928, 25 F.2d 49. Criminal Law 423(1)

Where conspiracy contemplates a series of crimes, acts and declarations of a conspirator made during existence of conspiracy and in furtherance of the general plan of conspiracy, although after commission of the specific crime for which accused is on trial, are admissible. Bartlett v. United States, C.C.A.10 (N.M.) 1948, 166 F.2d 920.

The acts and declarations of confederates, past or future, are never competent against a party except so far as they are steps in furtherance of a purpose common to him and them. Canella v. U.S., C.C.A.9 (Cal.) 1946, 157 F.2d 470 .

The acts and declarations of confederates, past or future, are not competent against a party, except in so far as they are steps in furtherance of a purpose common to him and them. United States v. Lekacos, C.C.A.2 (N.Y.) 1945,

151 F.2d 170, certiorari granted 66 S.Ct. 169, 326 U.S. 711, 90 L.Ed. 420, reversed on other grounds 66 S.Ct. 1239, 328 U.S. 750, 90 L.Ed. 1557. See, also, U.S. v. Food and Grocery Bureau of Southern California, D.C.Cal.1942, 43 F.Supp. 966. Criminal Law 423(1)

Declarations of the various confederates were all admissible while the scheme was in process of realization, provided they were in furtherance of it, and it would not make any difference that declarations were made after indictment was found if the scheme had not yet ended. U.S. v. Cohen, C.C.A.2 (N.Y.) 1944, 145 F.2d 82, certiorari denied 65 S.Ct. 553, 323 U.S. 799, 89 L.Ed. 637, certiorari denied 65 S.Ct. 553, 323 U.S. 799, 89 L.Ed. 638, certiorari denied 65 S.Ct. 554, 323 U.S. 800, 89 L.Ed. 638.

Testimony of divorced wife of one of defendants as to making a loan from bank on a note endorsed by one of alleged victims of defendant's fraudulent scheme was admissible as testimony in regard to an act of a conspirator carrying out object of conspiracy and it was binding on all the conspirators. Harper v. U. S., C.C.A.8 (Mo.) 1944, 143 F.2d 795.

The rule that mere communications between alleged conspirators are not proof of a scheme or conspiracy to use mails to defraud is not applicable where such communications are directed to advancing and effecting the conspiracy. Blue v. U. S., C.C.A.6 (Ohio) 1943, 138 F.2d 351, certiorari denied 64 S.Ct. 1046, 322 U.S. 736, 88 L.Ed. 1570, rehearing denied 64 S.Ct. 1259, 322 U.S. 771, 88 L.Ed. 1596, certiorari denied 64 S.Ct. 1046, 322 U.S. 737, 88 L.Ed. 1570.

The statement by alleged conspirator, to be admissible against others than declarant, must not only be made while conspiracy is pending, but must also be in furtherance of object of conspiracy, and mere narrative declarations are excluded. U.S. v. Goodman, C.C.A.2 (N.Y.) 1942, 129 F.2d 1009.

The fact that a coconspirator tells another something relevant to the conspiracy does not alone make the declaration competent, and to be admissible the declaration must itself be an act in furtherance of the common object. U S v. Nardone, C.C.A.2 (N.Y.) 1939, 106 F.2d 41, certiorari granted 60 S.Ct. 103, 308 U.S. 539, 84 L.Ed. 454, reversed on other grounds 60 S.Ct. 266, 308 U.S. 338, 84 L.Ed. 307.

Statements made by coconspirators in furtherance of conspiracy were admissible against defendant charged with conspiracy to violate internal revenue laws, where defendant's connection with conspiracy was abundantly shown by evidence aliunde. White v. U.S., C.C.A.4 (Va.) 1935, 80 F.2d 515.

In prosecution for conspiracy to counterfeit money, conspirator's statements to wife that defendant's wife made money belt, that defendant knew some one in South America who could handle counterfeit money, that defendant might take conspirator to South America with him to dispose of money, that defendant said it would be best if they carried counterfeit bills under their clothes, and for conspirator to carry money as money around defendant's waist would make him look much larger than normal, and that shortly before sailing conspirator told wife that defendant had agreed to give conspirator money, part of which was to be used to finance trip, inadmissible, being merely narrative of past events, and not in furtherance of object of conspiracy. Mayola v. U.S., C.C.A.9 (Cal.) 1934, 71 F.2d 65.

Testimony of defendant in conspiracy prosecution relative to division of profits was admissible, as statement of one performing services in furtherance of conspiracy. Green v. U.S., C.C.A.9 (Wash.) 1927, 19 F.2d 850, certiorari denied 48 S.Ct. 117, 275 U.S. 557, 72 L.Ed. 424, 72 L.Ed. 729, rehearing granted 48 S.Ct. 207, 276 U.S. 609, 72 L.Ed. 729, affirmed 48 S.Ct. 564, 277 U.S. 438, 72 L.Ed. 944.

Where two or more persons were associated for the same illegal purpose, any declaration or act of one of the persons in reference to the common object is admissible when they are in furtherance of the common object or constitute a part of the res gestae. Fitter v. U.S., C.C.A.2 (N.Y.) 1919, 258 F. 567, 169 C.C.A. 507.

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Affidavit made by one of defendants charged with conspiracy, but not in furtherance of conspiracy, was not admissible against coconspirator. Holsman v. U.S., C.C.A.9 (Cal.) 1918, 248 F. 193, 160 C.C.A. 271, certiorari denied 39 S.Ct. 258, 249 U.S. 600, 63 L.Ed. 796.

Declarations made by one conspirator while the conspiracy was in progress, and relating to its object, although not in furtherance thereof, are admissible as part of the res gestae against each conspirator. Jones v. U.S., C.C.A.9 (Or.) 1910, 179 F. 584, 103 C.C.A. 142.

Statements made in furtherance of objectives of going conspiracy are receivable in evidence against conspirators as exception to hearsay rule. U. S. v. Garrison, E.D.Wis.1958, 168 F.Supp. 622.

618. ---- Time and continuity of conspiracy, declarations of coconspirators, admissibility of evidence

That a conspiracy produces a continuing result does not make the conspiracy a continuing one so as to make admissible acts or declarations of a conspirator against coconspirators, but continuity of action to effect the object of the conspiracy is necessary, since a "conspiracy" is a partnership in crime. Fiswick v. U.S., U.S.N.J.1946, 67 S.Ct. 224, 329 U.S. 211, 91 L.Ed. 196.

In prosecution for conspiracy to violate the National Prohibition Act, former § 1 et seq. of Title 27, testimony given by one of the conspirators of what another conspirator who had died, had told the witness, during the progress of the conspiracy, was competent. Delaney v. U. S., U.S.Wis.1924, 44 S.Ct. 206, 263 U.S. 586, 68 L.Ed. 462. Criminal Law 423(1)

Statements of coconspirators concerning burning of ransom pickup car were admissible in prosecution for conspiracy to commit extortion and extortion based on a kidnapping because conspiracy continued so long as conspirators were acting together to destroy incriminating evidence. U.S. v. Medina, C.A.1 (Puerto Rico) 1985, 761 F.2d 12.

Admission of one partner tending to establish conspiracy are admissible against other partners so long as admissions were made during existence of alleged conspiracy. Greer v. United States, C.A.10 (Utah) 1955, 227 F.2d 546.

Evidence of acts and declarations of coconspirators made while the conspiracy was active was admissible against a conspirator which joined the conspiracy subsequent to its formation. U.S. v. General Motors Corp., C.C.A.7 (Ind.) 1941, 121 F.2d 376, certiorari denied 62 S.Ct. 105, 314 U.S. 618, 86 L.Ed. 497, motion granted 62 S.Ct. 124, 314 U.S. 579, 86 L.Ed. 469, rehearing denied 62 S.Ct. 178, 314 U.S. 710, 86 L.Ed. 566.

The "pendency" of conspiracy with relation to admissibility of declarations of a coconspirator relates to period during which conspiracy, in fact, existed, and is not restricted to period charged in indictment. U. S. v. Barrow, E.D.Pa.1964, 229 F.Supp. 722, affirmed in part, reversed in part 363 F.2d 62, certiorari denied 87 S.Ct. 703, 385 U.S. 1001, 17 L.Ed.2d 541. Criminal Law 422(1)

While conspiracy is in action, anything which one of the conspirators does or says in furtherance of conspiracy is admissible against the others. U.S. v. Food and Grocery Bureau of Southern California, S.D.Cal.1942, 43 F.Supp. 966.

619. ---- Independent evidence of conspiracy, declarations of coconspirators, admissibility of evidence

Declarations by one defendant may be admissible against other defendants upon sufficient showing, by independent evidence, of conspiracy among one or more other defendants and declarant and that declarations at issue were in furtherance of that conspiracy. U. S. v. Nixon, U.S.Dist.Col.1974, 94 S.Ct. 3090, 418 U.S. 683, 41

L.Ed.2d 1039.

Witnesses' testimony, along with a number of documents, constituted independent evidence sufficient to permit introduction of tape-recorded conversations between coconspirators. U.S. v. Davanzo, C.A.11 (Fla.) 1983, 699 F.2d 1097.

There was substantial evidence, independent of statement to be introduced, that conspiracy existed to which defendant belonged, as required to allow into evidence against defendant statements of alleged coconspirator of defendant during course of and in furtherance of conspiracy. U. S. v. Miller, C.A.11 (Fla.) 1981, 664 F.2d 826.

In order for a declaration of one coconspirator to be admissible against another, conspiracy must be established by independent evidence and evidence must then establish that statements were made during course and in furtherance of conspiracy. U. S. v. McMurray, C.A.10 (Utah) 1980, 656 F.2d 540, on rehearing 680 F.2d 695.

Trial court did not fail to make determination as to admissibility of coconspirator's statements even though it did not specifically say that there was sufficient independent evidence of the conspiracy and that defendant and coconspirator were involved in it. U. S. v. Horton, C.A.5 (Tex.) 1981, 646 F.2d 181, rehearing denied 655 F.2d 1131, certiorari denied 102 S.Ct. 516, 454 U.S. 970, 70 L.Ed.2d 388, certiorari denied 102 S.Ct. 1274, 455 U.S. 919, 71 L.Ed.2d 459.

Before coconspirator's statements can be considered by a court, government must show by preponderance of the evidence, independent of those conversations, that a conspiracy existed, that coconspirator and defendant were members of that conspiracy, and that the statements were made during course of and in furtherance of the conspiracy. U. S. v. Horton, C.A.5 (Tex.) 1981, 646 F.2d 181, rehearing denied 655 F.2d 1131, certiorari denied 102 S.Ct. 516, 454 U.S. 970, 70 L.Ed.2d 388, certiorari denied 102 S.Ct. 1274, 455 U.S. 919, 71 L.Ed.2d 459.

Test for admissibility of out-of-court statements of a coconspirator is whether there is sufficient, substantial evidence apart from the statements which establish prima facie case of a conspiracy and defendant's slight connection to the conspiracy. U. S. v. Batimana, C.A.9 (Cal.) 1980, 623 F.2d 1366, certiorari denied 101 S.Ct. 617, 449 U.S. 1038, 66 L.Ed.2d 500.

When in a criminal case the Government seeks, under the coconspirator rationale, to introduce as an admission the out-of-court statement of declarant other than the defendant, trial judge must make preliminary determination that there is sufficient independent evidence to establish that a conspiracy existed, that conspiracy was still in existence at time the statement was made, that declarations were made in furtherance of conspiracy, and that both declarant and defendant participated in the conspiracy. U. S. v. Lyles, C.A.2 (N.Y.) 1979, 593 F.2d 182, certiorari denied 99 S.Ct. 1537, 440 U.S. 972, 59 L.Ed.2d 789, certiorari denied 99 S.Ct. 1545, 440 U.S. 975, 59 L.Ed.2d 794, certiorari denied 100 S.Ct. 94, 444 U.S. 847, 62 L.Ed.2d 61.

The admissibility of statements made by a coconspirator during the course and in furtherance of a conspiracy is dependent upon Government's proving the existence of conspiracy and the involvement with the conspiracy of the party against whom the statement is offered. U. S. v. Del Valle, C.A.5 (Fla.) 1979, 587 F.2d 699, certiorari denied 99 S.Ct. 2822, 442 U.S. 909, 61 L.Ed.2d 274.

Statements by a coconspirator during course of and in furtherance of a conspiracy cannot serve as a sole proof that the defendant against whom they are admitted was a member of the conspiracy; Government must produce independent evidence both that the conspiracy existed and, with respect to any defendant coconspirator against whom the statements are admitted, that he or she was a member of the conspiracy. U. S. v. Fredericks, C.A.5 (Fla.) 1978, 586 F.2d 470, certiorari denied 99 S.Ct. 1507, 440 U.S. 962, 59 L.Ed.2d 776.

Independent evidence in drug prosecution was sufficient to establish conspiracy and thus render admissible

extrajudicial statements of coconspirator. U. S. v. Durland, C.A.10 (Colo.) 1978, 575 F.2d 1306.

For admissibility of extrajudicial statements made by coconspirators out of presence of defendant, independent evidence of conspiracy must be sufficient to make out prima facie case against defendant, i.e., judge must decide that reasonable jury could convict on basis of the independent evidence. U. S. v. Hansen, C.A.5 (Fla.) 1978, 569 F.2d 406.

Out-of-court declarations of a coconspirator may be introduced against the defendant only if there is substantial independent evidence, apart from the statement, of the conspiracy sufficient to establish a prima facie case that a conspiracy existed and that the member against whom the conversation is introduced had knowledge of and participated in the particular conspiracy alleged. U. S. v. Testa, C.A.9 (Hawai'i) 1977, 548 F.2d 847.

To determine whether evidence is competent as against nondeclarant under coconspirator rule, trial judge must determine whether it has been proved, by preponderance of the evidence, that joint undertaking existed at time of statement or action; no lesser burden of proof would be satisfactory since defendant does not have opportunity to cross-examine declarant. U. S. v. Trowery, C.A.3 (Pa.) 1976, 542 F.2d 623, certiorari denied 97 S.Ct. 1132, 429 U.S. 1104, 51 L.Ed.2d 555. Criminal Law 427(5)

Testimony of coconspirators is admissible in prosecution for conspiracy if there exists substantial, independent evidence of the conspiracy to take question to jury. U.S. v. Kirk, C.A.8 (Mo.) 1976, 534 F.2d 1262, certiorari denied 97 S.Ct. 1174, 430 U.S. 906, 51 L.Ed.2d 581, certiorari denied 97 S.Ct. 2971, 433 U.S. 907, 53 L.Ed.2d 1091, conviction vacated in part on other grounds 723 F.2d 1379, certiorari denied 104 S.Ct. 1717, 466 U.S. 930, 80 L.Ed.2d 189.

Hearsay statements made to a government agent by a coconspirator are properly admissible if the prosecution proves the conspiracy's existence by independent evidence. U. S. v. Urdiales, C.A.5 (Tex.) 1975, 523 F.2d 1245, rehearing denied 528 F.2d 928, certiorari denied 96 S.Ct. 2625, 426 U.S. 920, 49 L.Ed.2d 373.

If independent, nonhearsay evidence establishes both a joint criminal enterprise on part of two or more individuals as well as a party's involvement in such conspiracy, coconspirator exception to hearsay rule may be invoked to admit testimony regarding statements of coconspirators, notwithstanding absence of a formal conspiracy indictment. U. S. v. Snyder, C.A.5 (Ala.) 1974, 505 F.2d 595, certiorari denied 95 S.Ct. 1433, 420 U.S. 993, 43 L.Ed.2d 676.

Statements of conspirators are admissible against other members of the conspiracy so long as there is other independent evidence showing that, in fact, there was a conspiracy between the defendant and the other conspirators. U. S. v. Brierly, C.A.8 (Iowa) 1974, 501 F.2d 1024, certiorari denied 95 S.Ct. 631, 419 U.S. 1052, 42 L.Ed.2d 648.

Before out-of-court conversations of a coconspirator may be used as evidence against a defendant, there must be proof from a source apart from the statement that a conspiracy existed and that member against whom conversation is introduced had knowledge of and participated in particular conspiracy alleged. U. S. v. Ledesma, C.A.9 (Cal.) 1974, 499 F.2d 36, certiorari denied 95 S.Ct. 501, 419 U.S. 1024, 42 L.Ed.2d 298.

Evidence relating to financial dealings of defendants charged with conspiring to defraud the United States in procuring SBA guaranteed loan furnished independent proof of conspiracy for purpose of admitting evidence relating to transactions and declarations of defendants. U. S. v. Smith, C.A.10 (Okla.) 1974, 496 F.2d 185, certiorari denied 95 S.Ct. 225, 419 U.S. 964, 42 L.Ed.2d 179, rehearing denied 95 S.Ct. 646, 419 U.S. 1060, 42 L.Ed.2d 658.

Admission of declarations of a coconspirator, in prosecution for conspiracy to manufacture and dispense

methamphetamine, was not abuse of discretion where there was ample proof of the existence of the conspiracy before the challenged statements were offered. U. S. v. Shockley, C.A.9 (Wash.) 1971, 441 F.2d 1151.

Statements of conspirators are admissible against all members of a conspiracy so long as there is other independent evidence showing that there was, in fact, a conspiracy between the declarant and the others. National Dairy Products Corp. v. U. S., C.A.8 (Mo.) 1965, 350 F.2d 321, vacated 86 S.Ct. 1913, 384 U.S. 883, 16 L.Ed.2d 995, on remand 262 F.Supp. 447.

Statement by one conspirator is permitted to be received as against another if made during pendency of conspiracy and if there is independent evidence of existence of conspiracy and of objecting party's participation in it. Rogers v. U. S., C.A.5 (Fla.) 1964, 334 F.2d 83, certiorari denied 85 S.Ct. 892, 380 U.S. 915, 13 L.Ed.2d 800, rehearing denied 85 S.Ct. 1102, 380 U.S. 967, 14 L.Ed.2d 157.

Amount of proof aliunde as to existence of conspiracy that is required to render such evidence admissible is not as high as amount needed to warrant submission of a conspiracy charge to jury. U. S. v. Ross, C.A.2 (N.Y.) 1963, 321 F.2d 61, certiorari denied 84 S.Ct. 170, 375 U.S. 894, 11 L.Ed.2d 123, certiorari denied 84 S.Ct. 175, 375 U.S. 894, 11 L.Ed.2d 123.

In applying the hearsay rule exception which permits the introduction of co-conspirator's declarations made in absence of defendant, the preliminary question of existence of conspiracy and connection of co-conspirator and defendant with it is not to be resolved by jury upon independent proof beyond reasonable doubt, nor is the question to be decided by jury on basis of prima facie case rather than proof beyond reasonable doubt; it is for the judge to resolve the question, and in making this determination the test is whether, accepting the independent evidence as credible, the judge is satisfied that a prima facie case (one which would support a finding) has been made; thereafter it is jury's function to determine whether evidence, including declarations, is credible and convincing beyond reasonable doubt. Carbo v. U. S., C.A.9 (Cal.) 1963, 314 F.2d 718, certiorari denied 84 S.Ct. 1625, 377 U.S. 953, 12 L.Ed.2d 498, rehearing denied 84 S.Ct. 1902, 377 U.S. 1010, 12 L.Ed.2d 1058, certiorari denied 84 S.Ct. 1626, 377 U.S. 953, 12 L.Ed.2d 498, rehearing denied 84 S.Ct. 1903, 377 U.S. 1010, 12 L.Ed.2d 1058, certiorari denied 84 S.Ct. 1627, 377 U.S. 953, 12 L.Ed.2d 498.

Record disclosed that independent evidence made out such a prima facie case of existence of conspiracy and of connection of conspirators with it as to make admissible out-of-court declarations of conspirators as against co-conspirators who were not present when declarations were made. Carbo v. U. S., C.A.9 (Cal.) 1963, 314 F.2d 718, certiorari denied 84 S.Ct. 1625, 377 U.S. 953, 12 L.Ed.2d 498, rehearing denied 84 S.Ct. 1902, 377 U.S. 1010, 12 L.Ed.2d 1058, certiorari denied 84 S.Ct. 1626, 377 U.S. 953, 12 L.Ed.2d 498, rehearing denied 84 S.Ct. 1903, 377 U.S. 1010, 12 L.Ed.2d 1058, certiorari denied 84 S.Ct. 1627, 377 U.S. 953, 12 L.Ed.2d 498.

Extrajudicial statements were admissible against declarants, who were charged with conspiracy to rob and substantive offense of robbery, for all purposes, where admissions of each defendant were corroborated by independent evidence. Atkins v. U. S., C.A.9 (Wash.) 1962, 307 F.2d 937.

To render evidence of acts or declarations of an alleged conspirator admissible against an alleged co-conspirator, existence of the conspiracy must be shown and connection of the latter therewith established by independent evidence, and the conspiracy cannot be established against an alleged conspirator by evidence of acts or declarations of his co-conspirators done or made in his absence. Glover v. U. S., C.A.10 (Colo.) 1962, 306 F.2d 594.

Where conspiracy counts were amply proved and were dismissed only to simplify issues, declarations of coconspirators were admissible. U. S. v. Campisi, C.A.2 (N.Y.) 1962, 306 F.2d 308, certiorari denied 83 S.Ct. 287, 371 U.S. 920, 9 L.Ed.2d 229, rehearing denied 83 S.Ct. 500, 371 U.S. 959, 9 L.Ed.2d 507, certiorari denied 83 S.Ct. 293, 371 U.S. 925, 9 L.Ed.2d 233, rehearing denied 83 S.Ct. 502, 371 U.S. 959, 9 L.Ed.2d 507.

In order that declarations of alleged coconspirators may be admissible against defendant, there must be proof aliunde of alleged declarations of existence of conspiracy, and declarations must have been made pursuant to and in furtherance of conspiracy. Rizzo v. U. S., C.A.8 (Mo.) 1962, 304 F.2d 810, certiorari denied 83 S.Ct. 188, 371 U.S. 890, 9 L.Ed.2d 123.

Independent evidence of existence of conspiracy, and evidence linking defendant to it at time of member's conversation with witness, was sufficient to permit witness' testimony as to conversation in which member referred to defendant as participant. Landers v. U. S., C.A.5 (Ga.) 1962, 304 F.2d 577.

Admissions and statements of a codefendant may be admissible as against other defendant in absence of a conspiracy count in indictment if there is sufficient independent evidence of a concert of action between defendants. Fuentes v. U. S., C.A.9 (Cal.) 1960, 283 F.2d 537.

Statements and admissions of a codefendant may be used against a defendant upon a showing by independent evidence that there was a combination between them and it is not necessary to show by independent evidence that combination was criminal or otherwise unlawful. Fuentes v. U. S., C.A.9 (Cal.) 1960, 283 F.2d 537.

An act cannot be considered in furtherance of a three-party conspiracy when there is no evidence to connect one of the parties to the other two at the time the act was committed. Continental Baking Co. v. U.S., C.A.6 (Tenn.) 1960, 281 F.2d 137.

Even if declarations of one coconspirator are erroneously received as evidence against another coconspirator, there is no reversible error if there is other competent evidence sufficient to prove the facts sought to be established by such declarations. U.S. v. Clancy, C.A.7 (Ill.) 1960, 276 F.2d 617, certiorari granted 80 S.Ct. 1611, 363 U.S. 836, 4 L.Ed.2d 1723, reversed on other grounds 81 S.Ct. 645, 365 U.S. 312, 5 L.Ed.2d 574.

Where defendant's connection with conspiracy was shown by independent evidence, there was no error in admitting statements of asserted coconspirators. U. S. v. Pellegrino, C.A.2 (N.Y.) 1960, 273 F.2d 570.

In prosecution for conspiracy to defraud United States with respect to contracts, evidence linking two of the defendants to conspiracy was sufficient to justify admitting in evidence against them the admissions of other coconspirators. U S v. Lev, C.A.2 (N.Y.) 1958, 258 F.2d 9, certiorari granted 79 S.Ct. 231, 358 U.S. 903, 3 L.Ed.2d 226, affirmed 79 S.Ct. 1431, 360 U.S. 470, 36 L.Ed.2d 1531, rehearing denied 80 S.Ct. 41, 361 U.S. 856, 4 L.Ed.2d 95.

Before one can be proven to be a conspirator and bound by admissions of a coconspirator, there must be some evidence produced of a conspiracy, and of his connection with the crime. Ong Way Jong v. U. S., C.A.9 (Cal.) 1957, 245 F.2d 392.

In prosecution for conspiracy to violate the narcotics law, declarations of alleged coconspirator were not binding or admissible against the defendant where the conspiracy was not established. Ong Way Jong v. U. S., C.A.9 (Cal.) 1957, 245 F.2d 392.

When independent evidence, together with acts and declarations of one conspirator, established the conspiracy, and independent evidence, together with acts and declarations of other conspirator, establish the conspiracy, the declarations of each coconspirator made during pendency of conspiracy and in furtherance of its object are admissible against both. Bartlett v. United States, C.C.A.10 (N.M.) 1948, 166 F.2d 920.

The declarations of one alleged conspirator are not admissible against coconspirator unless existence of conspiracy is established by other evidence, but declarations of each coconspirator are admissible against him and the whole evidence may be considered in determining whether a conspiracy has been established. Bartlett v. United States,

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C.C.A.10 (N.M.) 1948, 166 F.2d 920.

Testimony of a co-conspirator was admissible against defendant without antecedent proof by the government of the existence of a conspiracy. Colt v. U.S., C.C.A.5 (Fla.) 1947, 160 F.2d 650.

In conspiracy prosecution, where there was ample evidence from which district judge could conclude that defendant and alleged coconspirator were acting in concert, witnesses were properly permitted to testify as to conversations and dealings with alleged coconspirator. U.S. v. Von Clemm, C.C.A.2 (N.Y.) 1943, 136 F.2d 968, certiorari denied 64 S.Ct. 81, 320 U.S. 769, 88 L.Ed. 459.

The conspiracy must be proved prima facie or acts and declarations of coconspirators are inadmissible, and such declarations are made competent only after the conspiracy has been shown to exist. Hauger v. U. S., C.C.A.4 (W.Va.) 1909, 173 F. 54, 97 C.C.A. 372.

Once there is proof aliunde of existence of conspiracy, any act or declaration of a coconspirator made during and in furtherance of it is admissible against all other coconspirators. U. S. v. Barrow, E.D.Pa.1964, 229 F.Supp. 722, affirmed in part, reversed in part on other grounds 363 F.2d 62, certiorari denied 87 S.Ct. 703, 385 U.S. 1001, 17 L.Ed.2d 541. Criminal Law 427(2)

Conversations between witness and co-conspirator were admissible against defendant also charged with conspiracy, where at time testimony was offered there was clear evidence of a conspiracy between defendant, witness and other co-conspirator. U. S. v. Cisneros, N.D.Cal.1961, 191 F.Supp. 924, affirmed 322 F.2d 948.

Evidence must show existence of alleged conspiracy before evidence of acts, conduct and declarations or statements of defendants' alleged co-conspirators during period covered by indictment may be considered. U. S. v. Schneiderman, S.D.Cal.1952, 106 F.Supp. 892.

620. ---- Independent evidence of participation, declarations of coconspirators, admissibility of evidence

Defendant's acknowledgment of responsibility for honoring down payment to his son for illegal cactus sale in 1987 established knowing participation in conspiracy with son, and, thus, son's out-of-court statements that his father had taken him to cactus and was given $200 of down payment were admissible under hearsay rule; son's statements were also corroborated by recent vehicle tracks to cactus and fact that defendant provided directions to cactus on state land. U.S. v. Miller, C.A.9 (Ariz.) 1992, 981 F.2d 439, certiorari denied 113 S.Ct. 2945, 508 U.S. 966, 124 L.Ed.2d 693.

In prosecution for mail fraud, conspiracy, and interstate travel to facilitate an unlawful activity, nonhearsay proof, independent of coconspirators' statements, established a prima facie case of the existence of a conspiracy and defendant's participation in that conspiracy, and therefore, trial court properly admitted alleged coconspirators' statements. U. S. v. Tilton, C.A.5 (Fla.) 1980, 610 F.2d 302. Criminal Law 427(5)

Defendant's presence inside a coconspirator's pickup truck, along with the finding of a wrapped package of cocaine partly under the passenger's seat, was not sufficient to constitute the "slight evidence" of defendant's knowledge and participation in narcotics conspiracy; consequently, the coconspirators' statements were improperly admitted against defendant at his trial. U. S. v. Weaver, C.A.9 (Cal.) 1979, 594 F.2d 1272.

In prosecution for conspiracy, mail fraud, and wire fraud, admission of codefendant's secretary's testimony that codefendant had instructed her to make herself available to defendant and that she had sexual intercourse with defendant on one occasion warranted reversal of defendant's conviction, in view of fact that Government's evidence linking defendant to conspiracy and his role in schemes was far from overwhelming. U. S. v. Frick, C.A.5 (La.) 1979, 588 F.2d 531, certiorari denied 99 S.Ct. 2013, 441 U.S. 913, 60 L.Ed.2d 385.

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Hearsay declarations of coconspirators are inadmissible if no substantial independent evidence links defendant to conspiracy; hearsay declarations cannot serve as requisite independent evidence of participation and conspiracy. U. S. v. Peterson, C.A.9 (Nev.) 1977, 549 F.2d 654.

Hearsay testimony of conspirators bearing on defendant's participation in conspiracy was not admissible against defendant until the Government was able to link defendant to the conspiracy by other evidence. U. S. v. Morrow, C.A.5 (Fla.) 1976, 537 F.2d 120, rehearing denied 541 F.2d 282, certiorari denied 97 S.Ct. 1602, 430 U.S. 956, 51 L.Ed.2d 806. Criminal Law 427(2)

Testimony by purchaser of gun regarding defendant's invitation to the purchaser to buy the gun and the purchaser's testimony concerning sale of a second gun by defendant to the purchaser was sufficient to show defendant's participation in conspiracy to sell gun to nonresident so as to make testimony concerning another's statement to the effect that defendant knew about the sales admissible under the coconspirator exception to the hearsay rule. U. S. v. Cruz, C.A.9 (Cal.) 1976, 536 F.2d 1264.

Evidence as to what one alleged coconspirator had told second concerning what first had been told by a third concerning activities of a fourth was admissible as further proof of fourth alleged coconspirator's membership in conspiracy, where such evidence was not offered to prove truth of report made by third to first, but in any event was not prejudicial where such fourth person's membership in conspiracy had already been established by other competent evidence and where she was acquitted of substantive charges. U.S. v. Vigi, C.A.6 (Mich.) 1975, 515 F.2d 290, certiorari denied 96 S.Ct. 215, 423 U.S. 912, 46 L.Ed.2d 140.

In prosecution for conspiracy to import cocaine, evidence concerning meeting at which government agent told defendant that he had made arrangements with others for shipment of quantity of cocaine but that he had no knowledge whether final arrangements had been made and defendant replied that he did not know the others but that he would contact drug supplier to resolve agent's problem established defendant's participation in charged conspiracy by evidence other than hearsay and provided basis for admission of extrajudicial statements made by codefendants outside presence of defendant under conspiracy exception to hearsay rule. U. S. v. Rodriguez, C.A.5 (Fla.) 1975, 509 F.2d 1342.

Independent evidence necessary to permit reception of testimony of hearsay declarations of coconspirator need not establish alleged coconspirator's participation beyond reasonable doubt; such statements are admissible if trial court finds independent evidence credible and sufficient to support finding of concerted action. U. S. v. Johnson, C.A.1 (Mass.) 1972, 467 F.2d 804, certiorari denied 93 S.Ct. 963, 410 U.S. 909, 35 L.Ed.2d 270.

Independent evidence of membership in conspiracy is needed to ground decision to admit hearsay declaration by coconspirators, but once admitted, declarations are available on all issues. U. S. v. Marquez, C.A.2 (N.Y.) 1970, 424 F.2d 236, certiorari denied 91 S.Ct. 56, 400 U.S. 828, 27 L.Ed.2d 58.

Evidence of conspirator that he was dealing with coconspirator in later phase of conspiracy was admissible against coconspirator only if other evidence permitted the inference that he had associated himself with the continuing venture. U. S. v. Borelli, C.A.2 (N.Y.) 1964, 336 F.2d 376, certiorari denied 85 S.Ct. 647, 379 U.S. 960, 13 L.Ed.2d 555.

There must be independent evidence establishing a defendant's participation in a conspiracy if declarations of a co-conspirator made pursuant to and in furtherance of conspiracy are to be used against that defendant, but there is no requirement that jury must first find from the independent evidence that a conspiracy existed and that the defendants were members of it before considering the hearsay. U. S. v. Stadter, C.A.2 (N.Y.) 1964, 336 F.2d 326, certiorari denied 85 S.Ct. 1028, 380 U.S. 945, 13 L.Ed.2d 964, certiorari denied 85 S.Ct. 1029, 380 U.S. 945, 13 L.Ed.2d 964.

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Hearsay statements which implicated defendant in conspiracy and which were made before its termination were admissible as competent and substantial evidence against defendant, where defendant had been linked to conspiracy by independent evidence. U. S. v. Boyance, C.A.3 (Pa.) 1964, 329 F.2d 372, certiorari denied 84 S.Ct. 1645, 377 U.S. 965, 12 L.Ed.2d 736.

Each defendant must be connected with alleged conspiracy by evidence independent of statements of coconspirators before statements are admissible against him. Hansen v. U. S., C.A.9 (Wash.) 1963, 326 F.2d 152.

Permitting alleged coconspirator to testify, over objection, to statements made to him by another alleged co-conspirator implicating defendants in conspiratorial scheme was not improper, where there was sufficient independent evidence to establish prima facie the participation of each of defendants in conspiracy. Hansen v. U. S., C.A.9 (Wash.) 1963, 326 F.2d 152.

Test in determining whether statements of conspirators are admissible against alleged coconspirators is not whether coconspirators' connection had by independent evidence been proved beyond reasonable doubt, but whether, accepting independent evidence as credible, judge is satisfied that prima facie case has been made and thereafter it is jury's function to determine whether evidence, including declarations, is credible and convincing beyond reasonable doubt. Hansen v. U. S., C.A.9 (Wash.) 1963, 326 F.2d 152.

It is declarant and those sought to be bound by his statements, and not witness to declarations, who must be shown to be coconspirators to render declarations of one admissible against the others. Hansen v. U. S., C.A.9 (Wash.) 1963, 326 F.2d 152.

While hearsay declarations of conspirator are admissible against his co-conspirators if made pursuant to and in furtherance of conspiracy, there must be independent evidence establishing defendant's participation in conspiracy before such declarations are admissible against him. U. S. v. Bentvena, C.A.2 (N.Y.) 1963, 319 F.2d 916, certiorari denied 84 S.Ct. 345, 375 U.S. 940, 11 L.Ed.2d 271, rehearing denied 90 S.Ct. 894, 397 U.S. 928, 25 L.Ed.2d 108, rehearing denied 84 S.Ct. 515, 375 U.S. 989, 11 L.Ed.2d 476, certiorari denied 84 S.Ct. 346, 375 U.S. 940, 11 L.Ed.2d 271, rehearing denied 84 S.Ct. 1162, 377 U.S. 913, 12 L.Ed.2d 183, certiorari denied 84 S.Ct. 353, 375 U.S. 940, 11 L.Ed.2d 272, certiorari denied 84 S.Ct. 354, 375 U.S. 940, 11 L.Ed.2d 272, certiorari denied 84 S.Ct. 355, 375 U.S. 940, 11 L.Ed.2d 272, certiorari denied 84 S.Ct. 360, 375 U.S. 940, 11 L.Ed.2d 272.

Before statements of alleged coconspirator may be received in evidence as exception to hearsay rule, it is necessary that there be some competent proof, aliunde, from which jury can conclude that speaker was member of conspiracy. Dennis v. U.S., C.A.10 (Colo.) 1962, 302 F.2d 5.

Declarations by alleged coconspirators are admissible against alleged conspirator only where there is proof aliunde of his connection with conspiracy. Tripp v. U. S., C.A.10 (Okla.) 1961, 295 F.2d 418.

Statements made by defendant's brother to undercover agent in carrying out conspiracy to violate narcotics laws were admissible against defendant where there was eyewitness testimony of agents as to defendant's participation in similar transaction a month earlier involving defendant and his brother. U. S. v. Campisi, C.A.2 (N.Y.) 1961, 292 F.2d 811, certiorari denied 82 S.Ct. 401, 368 U.S. 958, 7 L.Ed.2d 389.

Where proof in the record, in a conspiracy prosecution, was sufficient to show that defendant was a participant in the conspiracy charged, as a coconspirator, it was not error to permit introduction of evidence of the acts and declarations of other coconspirators. U. S. v. Vittoria, C.A.7 (Ill.) 1960, 284 F.2d 451.

In conspiracy prosecution, that evidence of one defendant's declarations were properly admitted did not establish that they might be used against his codefendant, absent a finding that the defendant was a co-conspirator or partner in the common criminal enterprise. U. S. v. Fabric Garment Co., C.A.2 (N.Y.) 1958, 262 F.2d 631, certiorari

denied 79 S.Ct. 1117, 359 U.S. 989, 3 L.Ed.2d 978.

Evidence as to declarations of one alleged conspirator is admissible against an alleged coconspirator only if there is other proof connecting coconspirator with the conspiracy. Fowler v. U.S., C.A.5 (Ga.) 1957, 242 F.2d 860.

In conspiracy prosecution, declarations of accused's coconspirators do not become admissible against accused until accused is independently connected with the conspiracy. U S v. Nardone, C.C.A.2 (N.Y.) 1939, 106 F.2d 41, certiorari granted 60 S.Ct. 103, 308 U.S. 539, 84 L.Ed. 454, reversed on other grounds 60 S.Ct. 266, 308 U.S. 338, 84 L.Ed. 307.

Statements of defendant not on trial to officers while under arrest was admissible, where evidence connected him with conspiracy. Green v. U.S., C.C.A.9 (Wash.) 1927, 19 F.2d 850, certiorari denied 48 S.Ct. 117, 275 U.S. 557, 72 L.Ed. 424, 72 L.Ed. 729, rehearing granted 48 S.Ct. 207, 276 U.S. 609, 72 L.Ed. 729, affirmed 48 S.Ct. 564, 277 U.S. 438, 72 L.Ed. 944.

The knowledge of one conspirator cannot be charged or admitted against an alleged coconspirator until his participation in the conspiracy is shown. Kelton v. U S, C.C.A.3 (Pa.) 1923, 294 F. 491, certiorari denied 44 S.Ct. 403, 264 U.S. 590, 68 L.Ed. 864.

Before the evidence of an alleged co-conspirator can be admissible, the conspiracy must be shown, and it must also be shown that the defendant against whom the evidence was offered was a party to such conspiracy. Pope v. U S, C.C.A.3 (Pa.) 1923, 289 F. 312, certiorari denied 44 S.Ct. 33, 263 U.S. 703, 68 L.Ed. 515.

When the prosecution had produced evidence that defendant was the boss, and that those who made a sale of narcotics were merely his agents, the acts and declarations of the agents were binding on the defendant. Parisi v. U.S., C.C.A.2 (N.Y.) 1922, 279 F. 253.

621. ---- Absence of coconspirator, declarations of coconspirators, admissibility of evidence

Relevant declarations or admissions of a conspirator made in absence of co-conspirator, and not in furtherance of conspiracy, may be admissible in trial for conspiracy as against declarant to prove declarant's participation therein. Delli Paoli v. U.S., U.S.N.Y.1957, 77 S.Ct. 294, 352 U.S. 232, 1 L.Ed.2d 278.

Conspirator's declaration made in furtherance of conspiracy may be used against another conspirator not present on the theory that declarant is agent of the other, and the admissions of one are admissible against both under standard exception to hearsay rule applicable to statements of party. Delli Paoli v. U.S., U.S.N.Y.1957, 77 S.Ct. 294, 352 U.S. 232, 1 L.Ed.2d 278.

Relevant declarations or admissions of a conspirator made in the absence of the co-conspirator, and not in furtherance of the conspiracy, may be admissible in a trial for conspiracy as against the declarant to prove the declarant's participation therein, and the trial court must be careful at the time of the admission and by its instruction to make it clear that the evidence is limited as against the declarant only. Lutwak v. U.S., U.S.Ill.1953, 73 S.Ct. 481, 344 U.S. 604, 97 L.Ed. 593, rehearing denied 73 S.Ct. 726, 345 U.S. 919, 97 L.Ed. 1352.

Declarations of one conspirator may be used against the other conspirator not present on the theory that the declarant is the agent of the other, and admissions of one are admissible against both under a standard exception to the hearsay rule applicable to the statements of a party, but such declaration can be used against the co-conspirator only when made in furtherance of the conspiracy, and there can be no furtherance of a conspiracy that has ended, and therefore, the declarations of a conspirator do not bind the co-conspirator if made after the conspiracy had ended. Lutwak v. U.S., U.S.Ill.1953, 73 S.Ct. 481, 344 U.S. 604, 97 L.Ed. 593, rehearing denied 73 S.Ct. 726, 345 U.S. 919, 97 L.Ed. 1352.

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Declarations of one conspirator in furtherance of the object of the conspiracy made to a third party are admissible over the objections of an alleged coconspirator who was not present when they were made only if there is proof from another source that he is connected with the conspiracy. Glasser v. U.S., U.S.Ill.1942, 62 S.Ct. 457, 315 U.S. 60, 86 L.Ed. 680, rehearing denied 62 S.Ct. 629, 315 U.S. 827, 86 L.Ed. 1222, rehearing denied 62 S.Ct. 637, 315 U.S. 827, 86 L.Ed. 1222.

Declarations of a coconspirator are admissible over the objection of an alleged coconspirator who was not present when they were made only if there is proof aliunde that he is connected with the conspiracy, for, otherwise, hearsay would lift itself by its own bootstraps to the level of competent evidence. U. S. v. Jackson, C.A.D.C.1980, 627 F.2d 1198, 201 U.S.App.D.C. 212.

Coconspirator declarations are not admissible against a defendant not present when they were made until the prosecution, by independent evidence, establishes the conspiracy's existence, and the absent defendant's participation in it. U. S. v. Nelson, C.A.5 (Tex.) 1974, 498 F.2d 1247.

Declarations of one conspirator made in absence of another conspirator may be used against the other on theory that declarant is agent of absent conspirator, but there must be proof aliunde that declarant is connected with conspiracy, and jury must be instructed as to bearing declarations have on conspirators not present. U. S. v. Rodrigues, C.A.3 (N.J.) 1974, 491 F.2d 663.

In prosecution for conspiracy and other offenses, testimony concerning declarations made by coconspirators when defendant was not present was admissible against defendant where conversations occurred during pendency of conspiracy and concerned furtherance of objects of the conspiracy. U. S. v. Davis, C.A.5 (Tex.) 1973, 487 F.2d 112, rehearing denied 486 F.2d 1403, certiorari denied 94 S.Ct. 1573, 415 U.S. 981, 39 L.Ed.2d 878, rehearing denied 94 S.Ct. 2005, 416 U.S. 975, 40 L.Ed.2d 565.

Defendant's connection with conspiracy cannot be established by the extrajudicial declarations of a coconspirator made out of presence of the defendant and there must be proof aliunde of the existence of the conspiracy, and of the defendant's connection with it, before such statements become admissible as against a defendant not present when they were made. U. S. v. Nall, C.A.5 (Tex.) 1971, 437 F.2d 1177.

Testimony of various conversations by one or more conspirators, not made in presence of another alleged conspirator, and principally telephone calls to various businesses arranging for merchandise made outside of presence of such other alleged conspirator was properly admitted, in prosecution for conspiracy in connection with interstate transportation of goods of value of more than $5,000 obtained by fraud, in view of proof aliunde in record. Cave v. U. S., C.A.8 (Iowa) 1968, 390 F.2d 58, certiorari denied 88 S.Ct. 2059, 392 U.S. 906, 20 L.Ed.2d 1365.

Where jury was entitled to find agreement between alleged coconspirator and defendant charged with conspiracy to import narcotics antedating defendant's New York trip, defendant's overtures in New York could be regarded as on behalf of alleged coconspirator and other narcotics suppliers in Mexico if deal with named supplier fell through even though he was expected at time to be beneficiary, thus providing overt act in pursuance of conspiracy and warranting prosecution in New York. U. S. v. Padilla, C.A.2 (N.Y.) 1967, 374 F.2d 996.

The existence of a conspiracy and defendant's participation in it must be established before any evidence of conversation of coconspirators outside defendant's presence is admissible against him. U. S. v. Plata, C.A.7 (Ill.) 1966, 361 F.2d 958, certiorari denied 87 S.Ct. 94, 385 U.S. 841, 17 L.Ed.2d 74.

Declarations of one conspirator may be used against another conspirator not present, on theory that declarant is agent of the other and the admissions of one are admissible against both under a standard exception to hearsay rule. U. S. v. Accardi, C.A.2 (N.Y.) 1965, 342 F.2d 697, certiorari denied 86 S.Ct. 426, 382 U.S. 954, 15 L.Ed.2d 359.

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Declarations by one alleged conspirator against another made out of the latter's presence and without proof that he had in any manner authorized it are inadmissible. U. S. v. Wortman, C.A.7 (Ill.) 1964, 326 F.2d 717.

Because trial court could properly infer defendants' knowledge of and participation in conspiracies of which they were convicted, out-of-court statements made by other conspirators in carrying out object of conspiracy were properly admitted against defendants, even though they were not present at time acts or declarations of coconspirators were made. Dedmore v. U. S., C.A.9 (Wash.) 1963, 322 F.2d 938.

The declarations of one conspirator in furtherance of objects of conspiracy, made to third party, are admissible against his co-conspirators; however, such declarations are admissible, over objection of co-conspirator who was not present when they were made, only if there is proof independent of declaration that he is connected with conspiracy. Carbo v. U. S., C.A.9 (Cal.) 1963, 314 F.2d 718, certiorari denied 84 S.Ct. 1625, 377 U.S. 953, 12 L.Ed.2d 498, rehearing denied 84 S.Ct. 1902, 377 U.S. 1010, 12 L.Ed.2d 1058, certiorari denied 84 S.Ct. 1626, 377 U.S. 953, 12 L.Ed.2d 498, rehearing denied 84 S.Ct. 1903, 377 U.S. 1010, 12 L.Ed.2d 1058, certiorari denied 84 S.Ct. 1627, 377 U.S. 953, 12 L.Ed.2d 498.

Testimony concerning actions and words of an alleged co-conspirator outside the presence of the defendant in prosecution for conspiracy to transport stolen securities was properly received against defendant where there was sufficient proof aliunde of the conspiracy. Thogmartin v. U. S., C.A.8 (Iowa) 1963, 313 F.2d 589.

Declarations of conspirator are admissible over objections of alleged co-conspirator who was not present when they were made, only if there is proof aliunde that he is connected with conspiracy. Beatrice Foods Co. v. U. S., C.A.8 (Neb.) 1963, 312 F.2d 29, certiorari denied 83 S.Ct. 1289, 373 U.S. 904, 10 L.Ed.2d 199.

A person cannot be connected with conspiracy solely by declaration made by alleged coconspirator in his absence. Rizzo v. U. S., C.A.8 (Mo.) 1962, 304 F.2d 810, certiorari denied 83 S.Ct. 188, 371 U.S. 890, 9 L.Ed.2d 123.

Existence of conspiracy cannot be established against an alleged conspirator by evidence of acts or declarations of his alleged coconspirators made or done in his absence, and such declarations are admissible against him only where there is proof aliunde of his connection with the conspiracy. Ferina v. U. S., C.A.8 (Mo.) 1962, 302 F.2d 95, certiorari denied 83 S.Ct. 35, 371 U.S. 819, 9 L.Ed.2d 59.

Existence of conspiracy cannot be established against alleged conspirator by evidence of acts or declarations of his alleged coconspirators in his absence. Tripp v. U. S., C.A.10 (Okla.) 1961, 295 F.2d 418.

Statements of alleged coconspirators in absence of defendants were inadmissible against defendants, where no proof was adduced connecting defendants with conspiracy. Tripp v. U. S., C.A.10 (Okla.) 1961, 295 F.2d 418.

A codefendant's statement to a special government employee, made in absence of other defendants was admissible against defendants without independent proof of a conspiracy, in view of observations of several law enforcement officers and special employee unsupported by reference to such codefendant's declarations establishing concert of action between codefendant and other defendants. Williams v. U. S., C.A.9 (Cal.) 1961, 289 F.2d 598.

No charge or proof of conspiracy need be produced in order to justify admission of a confederate statement, made in defendant's absence, but such third-party statement may be admitted if there is adequate independent evidence of concert of action between third party and defendant. Williams v. U. S., C.A.9 (Cal.) 1961, 289 F.2d 598.

Extrajudicial declarations of conspirator made in furtherance of conspiracy are admissible against his coconspirators, but extrajudicial declarations made not in furtherance of conspiracy, while admissible against declarant, are not admissible against another who was not present when declaration was made. Ward v. U. S., C.A.4 (N.C.) 1960, 288 F.2d 820.

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Declarations of one conspirator may be used against the other not present, on theory that declarant is agent of the other and the admissions or statements of one are admissible against both. Blumenfield v. U. S., C.A.8 (Minn.) 1960, 284 F.2d 46, certiorari denied 81 S.Ct. 693, 365 U.S. 812, 5 L.Ed.2d 692.

In conspiracy prosecution, no error was committed in admitting evidence of statements said to have been made by a member of the conspiracy at times and places when and where defendants were not present. Padgett v. U. S., C.A.5 (Fla.) 1960, 283 F.2d 244. Criminal Law 422(6)

In prosecution for conspiracy to violate internal revenue liquor laws and for possession and sale of nontax-paid distilled spirits, evidence was sufficient to establish existence of conspiracy between alleged coconspirator and the rest of the defendants on trial, thereby rendering admissible in evidence the alleged conversations between government witness and alleged coconspirator outside the presence of any defendants on trial. Cash v. U.S., C.A.5 (Ga.) 1960, 279 F.2d 159, certiorari denied 81 S.Ct. 221, 364 U.S. 894, 5 L.Ed.2d 187.

A defendant's connection with a conspiracy may not be established by extrajudicial statement of an alleged coconspirator made out of presence of defendant. Taylor v. U.S., C.A.D.C.1958, 260 F.2d 737, 104 U.S.App.D.C. 219.

Declarations of one conspirator, made in furtherance of objects of conspiracy and during its existence, are admissible against all members of conspiracy; but a defendant's connection with a conspiracy cannot be established by extrajudicial declarations of a co-conspirator made out of presence of defendant, and there must be proof aliunde of existence of conspiracy, and of defendant's connection with it before such declarations become admissible as against defendant not present when they were made. Panci v. U. S., C.A.5 (La.) 1958, 256 F.2d 308.

Coconspirator exception to hearsay rule does not allow introduction of words or deeds of a government agent to an alleged coconspirator out of presence of defendants. U. S. v. Morello, C.A.2 (N.Y.) 1957, 250 F.2d 631.

Declarations of one member of conspiracy, or of one of the joint members of some other unlawful undertaking, are admissible against members not present, where the declaration has been made for the purpose of furthering in any way the conspiracy or undertaking. Ebeling v. U.S., C.A.8 (Mo.) 1957, 248 F.2d 429, certiorari denied 78 S.Ct. 334, 355 U.S. 907, 2 L.Ed.2d 261.

Admissions of one alleged conspirator, not made in the presence of the other alleged conspirators, cannot be binding upon conspirators who were not in a position to controvert it. Stanley v. U. S., C.A.6 (Ky.) 1957, 245 F.2d 427, motion denied 249 F.2d 64.

There must be substantial evidence of a conspiracy before acts and declarations of a supposed conspirator become admissible against any other defendant if they are not done or said in his presence. Ong Way Jong v. U. S., C.A.9 (Cal.) 1957, 245 F.2d 392.

It was proper, after prima facie showing of conspiracy and concert of action, to admit testimony concerning conversations of witness with co-conspirator outside presence of defendant. Shibley v. U. S., C.A.9 (Cal.) 1956, 237 F.2d 327, certiorari denied 77 S.Ct. 94, 352 U.S. 873, 1 L.Ed.2d 77, rehearing denied 77 S.Ct. 212, 352 U.S. 919, 1 L.Ed.2d 124.

Statements of alleged coconspirators made outside the presence of a defendant are not admissible against defendant unless made during the progress of the conspiracy and in furtherance of its objects. Scarborough v. U. S., C.A.5 (Ala.) 1956, 232 F.2d 412.

Even though made out of his presence, statements by defendant's cohorts in furtherance of conspiracy were competent evidence against him in prosecution for conspiracy to illegally transfer narcotic drugs. Lott v. U.S.,

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C.A.5 (Tex.) 1956, 230 F.2d 915, certiorari denied 76 S.Ct. 848, 351 U.S. 953, 100 L.Ed. 1477, rehearing denied 77 S.Ct. 25, 352 U.S. 860, 1 L.Ed.2d 70.

In prosecution for violation of narcotics law, § 4704 et seq. of Title 26, and for conspiracy to commit the offense, evidence of a witness for the government of conversations between a co-conspirator and the witness out of the presence of a defendant was properly admitted, where at the time it was received, the government had already proved a prima facie case of conspiracy as charged. U. S. v. Iacullo, C.A.7 (Ill.) 1955, 226 F.2d 788, certiorari denied 76 S.Ct. 435, 350 U.S. 966, 100 L.Ed. 839.

The connection of a defendant with a conspiracy can not be established by extrajudicial declarations of a co-conspirator, made out of presence of defendant, and there must be proof aliunde of existence of the conspiracy and of defendant's connection with it, before such statements become admissible against defendant not present when they were made. Montford v. U.S., C.A.5 (Fla.) 1952, 200 F.2d 759.

The acts or declarations of one co-conspirator, made in furtherance of conspiracy and before its termination, are binding upon, and may be proved against, all coconspirators, even though some of various acts and declarations occurred out of presence of certain of coconspirators, and even though individual coconspirator was not member of conspiracy until after acts were committed or declarations made. U.S. v. Bucur, C.A.7 (Ind.) 1952, 194 F.2d 297.

In prosecution of sheriff and liquor dealer for carrying on business of wholesale dealer without paying special taxes, hearsay statements made to and by alleged co-conspirators out of sheriff's presence and to which he was not a party, were properly admitted against sheriff under evidence sufficient to establish a prima facie conspiracy between sheriff and liquor dealer and under instructions during trial that testimony was not to be considered unless alleged conspiracy was established. Briggs v. U.S., C.A.10 (Okla.) 1949, 176 F.2d 317, certiorari denied 70 S.Ct. 102, 338 U.S. 861, 94 L.Ed. 528, rehearing denied 70 S.Ct. 158, 338 U.S. 882, 94 L.Ed. 541, certiorari denied 70 S.Ct. 103, 338 U.S. 861, 94 L.Ed. 528.

Participation of an alleged conspirator can be proved by his own acts done in absence of others, rule being that one defendant's connection with a conspiracy cannot be established by acts or declarations of other defendants in his absence; and a defendant cannot be bound by acts or declarations of other defendants until conspiracy has been established and defendant's participation in the conspiracy has been established. May v. United States, C.A.D.C.1949, 175 F.2d 994, 84 U.S.App.D.C. 233, certiorari denied 70 S.Ct. 58, 338 U.S. 830, 94 L.Ed. 505, order withheld 70 S.Ct. 81, 338 U.S. 854, motion denied 70 S.Ct. 94, motion denied 70 S.Ct. 95, rehearing denied 70 S.Ct. 154, 338 U.S. 882, 94 L.Ed. 542, rehearing denied 70 S.Ct. 155, 338 U.S. 882, 94 L.Ed. 542, order withheld 70 S.Ct. 80.

In prosecution for conspiracy to violate former Emergency Price Control Act, 50 App. former § 901 et seq., by selling whiskey at prices in excess of maximum prices, to engage in business of buying distilled spirits for resale at wholesale without having secured a basic permit, and to carry on a wholesale liquor business without having paid required tax, evidence was sufficient to establish the corpus delicti, so as to render conversations made outside the presence of one of the defendants as to whiskey sales, evidence against him. Samuel v. U.S., C.C.A.9 (Cal.) 1948, 169 F.2d 787.

The existence of conspiracy cannot be established against an alleged conspirator by evidence of acts or declarations of his alleged coconspirator done or made in his absence. Bartlett v. United States, C.C.A.10 (N.M.) 1948, 166 F.2d 920.

An admission or statement by one conspirator made in the absence of co-conspirator is not admissible against the latter, unless shown to have been in furtherance of a conspiracy to which both were parties. Colt v. U.S., C.C.A.5 (Fla.) 1947, 160 F.2d 650.

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Declarations of a conspirator made in absence of an objecting defendant cannot be admitted against him when independent evidence is lacking to show existence of conspiracy, and defendant's connection with it, but it is not necessary to show by independent evidence that conspiracy was criminal or otherwise unlawful. Braatelien v. U. S., C.C.A.8 (N.D.) 1945, 147 F.2d 888.

Evidence of conversations between conspirators in accused's absence as to statements by one of accused was competent, and not hearsay. Murray v. U.S., C.C.A.7 (Ill.) 1925, 10 F.2d 409, certiorari denied 46 S.Ct. 486, 271 U.S. 673, 70 L.Ed. 1144.

In prosecution against two defendants, where they were charged with stealing, etc., and conspiring to steal, from a mail or express car, interstate shipments of money, the admission of testimony by the express messenger, who it was claimed was a party to the conspiracy, that after the robbery was effected one of the defendants paid him a sum of money as his part, was inadmissible against the other defendant, who was not present at the time. Heard v. U.S., C.C.A.8 (Ark.) 1919, 255 F. 829, 167 C.C.A. 157.

A statement tending to show a conspiracy to commit a crime between the person making it and the persons to whom it was made is not admissible against a third person who was not present, and to whom it is not shown to have been communicated, on his trial for the crime, unless his connection with the conspiracy is affirmatively shown. Dolan v. U S, C.C.A.9 (Alaska) 1903, 123 F. 52, 59 C.C.A. 176.

Declarations of one conspirator in furtherance of conspiracy are admissible against a co-conspirator who was not present when declarations were made if there is proof aliunde that the latter is connected with the conspiracy. U. S. v. Boyance, E.D.Pa.1963, 215 F.Supp. 390.

Conversations of conspirators in furtherance of objects of conspiracy are admissible against all conspirators, though all conspirators are not present at conversations. U. S. v. Cisneros, N.D.Cal.1961, 191 F.Supp. 924, affirmed 322 F.2d 948.

622. ---- Prior to existence of conspiracy, declarations of coconspirators, admissibility of evidence

Assertive conduct or declarations made by one conspirator before formation of the conspiracy are not admissible against a coconspirator. U. S. v. Morris, C.A.10 (Colo.) 1980, 623 F.2d 145, certiorari denied 101 S.Ct. 793, 449 U.S. 1065, 66 L.Ed.2d 609.

In conspiracy prosecution, admission of testimony of a conversation between defendant and coconspirator was not error on ground that conversation antedated the conspiracies, where conversation was relevant to show beginning of defendant's involvement in the criminal enterprise and his state of mind at the time, and conversation was relevant to the conspiracies because of reference to a certain telephone number as an explanation of the number's origin and significance. U. S. v. Del Purgatorio, C.A.2 (N.Y.) 1969, 411 F.2d 84.

Previous acts and declarations of fellow conspirators are admissible against defendant who may have entered the conspiracy at a later date, at least insofar as they tend to show nature and objective of conspiracy which defendant joined. U. S. v. Santos, C.A.7 (Ind.) 1967, 385 F.2d 43, certiorari denied 88 S.Ct. 1048, 390 U.S. 954, 19 L.Ed.2d 1148.

Where no conspiracy is charged but defendants are charged jointly with committing substantive offense, acts and declarations of one are admissible against the other subject to qualifications that existence of conspiracy must be shown by independent evidence and that acts and declarations of one conspirator either before formation of or after termination of conspiracy are not admissible against coconspirator. Mares v. U.S., C.A.10 (Colo.) 1967, 383 F.2d 805.

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Statement of one conspirator to another during act and course of conspiracy giving full setting of upset in plans, with purpose of getting reassurance or other help, does not cease to be in furtherance of conspiracy because it contains natural and pertinent reference to past fact. U. S. v. Pardo-Bolland, C.A.2 (N.Y.) 1965, 348 F.2d 316, certiorari denied 86 S.Ct. 388, 382 U.S. 944, 15 L.Ed.2d 353, certiorari denied 86 S.Ct. 407, 382 U.S. 946, 15 L.Ed.2d 354. See, also, U.S. v. Curry, C.A.N.C.1975, 512 F.2d 1299, certiorari denied 96 S.Ct. 55, 423 U.S. 832, 46 L.Ed.2d 50. Criminal Law 423(6)

Testimony as to the frequent presence of defendant, charged with conspiracy, in apartment of co-defendant prior to date fixed in indictment as beginning of conspiracy was not irrelevant to issue and while alone not enough to establish conspiracy had sufficient bearing thereon to make it admissible. Williamson v. U. S., C.A.9 (Cal.) 1962, 310 F.2d 192.

In prosecution for conspiracy to defraud the United States through violation of former § 203 of this title, prohibiting members of Congress from receiving compensation in matters affecting the government, evidence of incident which occurred prior to alleged inauguration of conspiracy was admissible in view of fact that details of incident were shown by defendants in explanation of a payment shown by the government to have been made after alleged beginning of the conspiracy, which payment itself was an overt act which government contended constituted compensation to the congressman. May v. United States, C.A.D.C.1949, 175 F.2d 994, 84 U.S.App.D.C. 233, certiorari denied 70 S.Ct. 58, 338 U.S. 830, 94 L.Ed. 505, order withheld 70 S.Ct. 81, 338 U.S. 854, motion denied 70 S.Ct. 94, motion denied 70 S.Ct. 95, rehearing denied 70 S.Ct. 154, 338 U.S. 882, 94 L.Ed. 542, rehearing denied 70 S.Ct. 155, 338 U.S. 882, 94 L.Ed. 542, order withheld 70 S.Ct. 80.

The acts or declarations of a conspirator prior to formation of conspiracy or after its termination are not admissible against his coconspirator. Bartlett v. United States, C.C.A.10 (N.M.) 1948, 166 F.2d 920. Criminal Law 422(3); Criminal Law 424(1)

The fact that one who joins with another in a criminal venture knows that his confederate is engaged in other criminal undertakings with other persons, even though they be of same general nature, is not enough to make him a party to the conspiracy in its earlier phases, so that declarations of other conspirators, even though made before he has entered, are competent against him. United States v. Lekacos, C.C.A.2 (N.Y.) 1945, 151 F.2d 170, certiorari granted 66 S.Ct. 169, 326 U.S. 711, 90 L.Ed. 420, reversed on other grounds 66 S.Ct. 1239, 328 U.S. 750, 90 L.Ed. 1557.

Evidence of wrongful acts committed by codefendant before dates of alleged conspiracy was relevant as bearing on codefendant's motive or intent touching conspiracy charged against him, but those transactions were not competent evidence as against defendant unless and until it was shown that he had knowledge thereof or was criminally connected therewith, and permitting evidence of those transactions to go to the jury generally was prejudicial to defendant. Wilson v. U.S., C.C.A.6 (Ky.) 1940, 109 F.2d 895.

When once a connection was shown between defendant and conspiracy, evidence of earlier activities of codefendants tending to prove origin and existence of conspiracy was admissible against defendant. U.S. v. Buckner, C.C.A.2 (N.Y.) 1940, 108 F.2d 921, certiorari denied 60 S.Ct. 613, 309 U.S. 669, 84 L.Ed. 1016.

Acts prior to conspiracy were improperly admitted on prosecution for transportation of narcotics. Jay v. U.S., C.C.A.10 (Okla.) 1929, 35 F.2d 553.

Testimony that prohibition agents, charged with conspiracy to accept bribes, attempted to get bribe from witness before conspiracy charged in indictment, was admissible. Harvey v. U.S., C.C.A.2 (N.Y.) 1928, 23 F.2d 561.

Testimony respecting transactions arising before formation of conspiracy charged was competent to show defendants' course of dealing. Madden v. U.S., C.C.A.9 (Cal.) 1927, 20 F.2d 289, certiorari denied 48 S.Ct. 116,

18 U.S.C.A. § 371

275 U.S. 554, 72 L.Ed. 423.

Acts of person committed prior to the formation of a conspiracy are not admissible against his subsequent coconspirator. Morrow v. U.S., C.C.A.8 (Mo.) 1926, 11 F.2d 256.

Evidence of act of one alleged conspirator before date of conspiracy alleged was improperly allowed to remain in record, where no subsequent evidence showed conspiracy existed at time of such act. Morrow v. U.S., C.C.A.8 (Mo.) 1926, 11 F.2d 256.

Admission of testimony as to transaction occurring two years before the conspiracy charged existed was error. Cooper v. U.S., C.C.A.8 (Iowa) 1925, 9 F.2d 216.

In a prosecution for conspiracy to transport intoxicating liquor into a state, evidence that one of the defendants, before the conspiracy was formed, transported such liquor into the state, was admissible as tending to prove the subsequent formation of the conspiracy and the connection of that defendant with it. Grayson v. U.S., C.C.A.6 (Tenn.) 1921, 272 F. 553, certiorari denied 42 S.Ct. 49, 257 U.S. 637, 66 L.Ed. 409.

Where a person enters into a conspiracy, after its formation the acts and declarations of the other conspirators, jointly indicted, before he entered, are admissible in evidence against him. Roberts v. U.S., C.C.A.9 (Wash.) 1918, 248 F. 873, 160 C.C.A. 631, certiorari denied 38 S.Ct. 583, 247 U.S. 522, 62 L.Ed. 1247.

623. ---- After termination of conspiracy, declarations of coconspirators, admissibility of evidence

Declaration made by one conspirator after termination of the conspiracy, may only be used against the declarant and under appropriate instructions to jury. Delli Paoli v. U.S., U.S.N.Y.1957, 77 S.Ct. 294, 352 U.S. 232, 1 L.Ed.2d 278.

Statements defendant made to coconspirator about machine gun named in indictment had bearing on charge of whether he knowingly conspired to transfer specifically named weapon, and therefore they were not inadmissible other acts evidence, though statements may have been made after close of conspiratorial period. U.S. v. Buckner, C.A.7 (Ill.) 1996, 91 F.3d 34. Criminal Law 369.2(3.1)

In prosecution for mail fraud, making false statements to federally insured savings and loan associations, and conspiracy, trial court erred in admitting hearsay testimony of coconspirator, since statements by coconspirator were made after conspiracy had ended; however, since coconspirator's statements were shown by other evidence, and since evidence of defendant's guilt was overwhelming, the admission of the testimony was harmless beyond a reasonable doubt. U. S. v. Miller, C.A.9 (Cal.) 1982, 676 F.2d 359, certiorari denied 103 S.Ct. 126, 459 U.S. 856, 74 L.Ed.2d 109, certiorari denied 103 S.Ct. 145, 459 U.S. 866, 74 L.Ed.2d 123.

If conspiracy has terminated, purported statements of coconspirators are inadmissible as hearsay. U. S. v. McMurray, C.A.10 (Utah) 1980, 656 F.2d 540, on rehearing 680 F.2d 695.

Assertive conduct or declarations made by one conspirator after termination of the conspiracy are not admissible against a coconspirator. U. S. v. Morris, C.A.10 (Colo.) 1980, 623 F.2d 145, certiorari denied 101 S.Ct. 793, 449 U.S. 1065, 66 L.Ed.2d 609.

Statements of coconspirators in narcotics conspiracy which were made after delivery and seizure of heroin and one conspirator's arrest were admissible, despite contention that such events ended the conspiracy, as its goal had been accomplished, where integral element of the scheme involved the payment of tribute money which had not yet taken place, and the conversations in question dealt specifically with arrangements for such payment, and where the remaining coconspirators were unaware that conspirator had been arrested. U. S. v. Testa, C.A.9 (Hawai'i) 1977,

18 U.S.C.A. § 371

548 F.2d 847.

Evidence demonstrated that one conspirator's participation in the conspiracy continued even after his arrest and incarceration so that evidence of conversation engaged in by the conspirator following his arrest was properly admitted into evidence in conspiracy trial. U. S. v. Harris, C.A.7 (Ind.) 1976, 542 F.2d 1283, certiorari denied 97 S.Ct. 1558, 430 U.S. 934, 51 L.Ed.2d 779.

Rule that hearsay statements of one defendant in joint trial are generally inadmissible against codefendants applies to statements made by one conspirator after conclusion of conspiracy which tend to implicate another conspirator. U. S. v. Truslow, C.A.4 (W.Va.) 1975, 530 F.2d 257.

Where declarant's role as a coconspirator had ended by reason of his arrest, his later declaration to effect that other defendants had threatened to kill informer should not have been admitted against those other defendants, but the error in admission of such testimony was harmless in light of the overwhelming evidence against those other defendants. U. S. v. Arias-Diaz, C.A.5 (Fla.) 1974, 497 F.2d 165, rehearing denied 504 F.2d 760, certiorari denied 95 S.Ct. 1445, 420 U.S. 1003, 43 L.Ed.2d 761, certiorari denied 95 S.Ct. 1446, 420 U.S. 1003, 43 L.Ed.2d 761.

Statements implicating defendant, made by coconspirators after their arrest, were admissible in view of evidence that the overall conspiracy was still active after the coconspirators were arrested. U. S. v. Register, C.A.5 (Ga.) 1974, 496 F.2d 1072, certiorari denied 95 S.Ct. 802, 419 U.S. 1120, 42 L.Ed.2d 819.

Testimony by prosecution's witness, an accomplice, concerning telephone conversation with a defendant several days after proceeds of conspiracy had been divided was not inadmissible on ground that conversations took place after completion of a conspiracy. U. S. v. Iacovetti, C.A.5 (Fla.) 1972, 466 F.2d 1147, certiorari denied 93 S.Ct. 963, 410 U.S. 908, 35 L.Ed.2d 270, certiorari denied 93 S.Ct. 973, 410 U.S. 908, 35 L.Ed.2d 270.

Alleged coconspirator's declaration that conspiracy existed was admissible against him, over contention that statement was postconspiratorial and thus was a personal confession rather than a coconspirator's verbal act admissible against all defendants, and against all those present who by their silence or other conduct assented to the truth of the declaration. U. S. v. DeCicco, C.A.2 (N.Y.) 1970, 435 F.2d 478.

Although declarations of coconspirator made after termination of conspiracy and not in furtherance thereof are admissible only against declarant and not against other alleged conspirators, evidence of acts of coconspirators committed subsequent to the termination of the conspiracy are admissible if relevant to prove the conspiracy and demonstrate its existence and illegal purposes. U.S. v. Levinson, C.A.6 (Mich.) 1968, 405 F.2d 971, certiorari denied 89 S.Ct. 1746, 395 U.S. 906, 23 L.Ed.2d 219, certiorari denied 89 S.Ct. 2097, 395 U.S. 958, 23 L.Ed.2d 744, rehearing denied 90 S.Ct. 37, 396 U.S. 869, 24 L.Ed.2d 124, rehearing denied 90 S.Ct. 36, 396 U.S. 869, 24 L.Ed.2d 124.

Conspirator's declarations made after conspiracy were admissible only as to such conspirator to prove his participation in conspiracy and were not binding on coconspirator. White v. U. S., C.A.9 (Cal.) 1968, 394 F.2d 49.

Conspiracy had terminated at time all defendants were in custody and under arrest, and statements later given were admissible only against declarant and under appropriate instructions. Green v. U. S., C.A.10 (Okla.) 1967, 386 F.2d 953.

After a conspiracy has ended acts of a conspirator occurring thereafter are admissible against his former coconspirators only where they are relevant to show the previous existence of the conspiracy or the attainment of its illegal ends, and subsequent declarations, if otherwise relevant, are admissible only against the declarant. U.S. v. Chase, C.A.4 (Va.) 1967, 372 F.2d 453, certiorari denied 87 S.Ct. 1688, 387 U.S. 907, 18 L.Ed.2d 626, certiorari denied 87 S.Ct. 1701, 387 U.S. 913, 18 L.Ed.2d 635.

Where, at time statements implicating defendant were made by an alleged coconspirator, all of alleged conspirators had been arrested and jailed and automobile and forged checks allegedly involved in conspiracy had been seized by police, conspiracy had come to an end, statements made could not be in furtherance of conspiracy, testimony of federal agent repeating statements was hearsay and was not rendered admissible on basis that statements had been made in furtherance of conspiracy and admission of such testimony over proper objection was prejudicial error. Woodring v. U. S., C.A.10 (Okla.) 1966, 367 F.2d 968.

Admittance of evidence of post-conspiracy interview with acquitted defendant in conspiracy prosecution under instruction that statements could be considered only in acquitted defendant's case was not error, where statements implicated only another defendant who was acquitted. U. S. v. Barrow, C.A.3 (Pa.) 1966, 363 F.2d 62, certiorari denied 87 S.Ct. 703, 385 U.S. 1001, 17 L.Ed.2d 541.

Post conspiracy declarations by codefendants in joint conspiracy trial were admissible against declarant where court had given precise limiting instructions both prior to receipt of statements and in final charge. Marroso v. U. S., C.A.5 (Fla.) 1964, 331 F.2d 601, certiorari denied 85 S.Ct. 185, 379 U.S. 899, 13 L.Ed.2d 174, certiorari denied 85 S.Ct. 193, 379 U.S. 899, 13 L.Ed.2d 174, rehearing denied 85 S.Ct. 437, 379 U.S. 951, 13 L.Ed.2d 549, rehearing denied 85 S.Ct. 436, 379 U.S. 951, 13 L.Ed.2d 549.

In joint trial, post conspiracy declarations by codefendants are admissible against declarant under proper limiting instructions. Marroso v. U. S., C.A.5 (Fla.) 1964, 331 F.2d 601, certiorari denied 85 S.Ct. 185, 379 U.S. 899, 13 L.Ed.2d 174, certiorari denied 85 S.Ct. 193, 379 U.S. 899, 13 L.Ed.2d 174, rehearing denied 85 S.Ct. 437, 379 U.S. 951, 13 L.Ed.2d 549, rehearing denied 85 S.Ct. 436, 379 U.S. 951, 13 L.Ed.2d 549.

Testimony of F.B.I. agent concerning statements made by alleged coconspirator of defendant to agent was inadmissible against defendant, where statements were made after alleged conspiracy had ended and were not made in furtherance of alleged conspiracy or its objects, and admission of that testimony was prejudicial error. Gay v. U. S., C.A.10 (Utah) 1963, 322 F.2d 208.

Statements made by co-conspirators at garage after robbery of veterans' administration hospital and conversations during a subsequent trip back to Oregon were admissible in prosecution of defendant for robbery, and for conspiracy to commit robbery, where defendant did not object, and even had he objected, the statements were not prejudicial to defendant in light of other evidence in the record. Feyrer v. U. S., C.A.9 (Wash.) 1963, 314 F.2d 110 .

Extrajudicial statements are not admissible in a conspiracy prosecution against a non-declarant if made after chief objective of the conspiracy has ended either in success or failure. Atkins v. U. S., C.A.9 (Wash.) 1962, 307 F.2d 937.

Statements made by one of several co-conspirators after the termination of the conspiracy and in absence of other co-conspirators are admissible only against the person making them. U. S. v. Sykes, C.A.6 (Ky.) 1962, 305 F.2d 172, certiorari granted 83 S.Ct. 1541, 373 U.S. 931, 10 L.Ed.2d 689, reversed on other grounds84 S.Ct. 881, 376 U.S. 364, 11 L.Ed.2d 777.

Testimony of an agent of the FBI that a codefendant told him in 1958 that there was an agreement that down payment check for purchase of realty would be destroyed after an FHA insured loan was approved, was not admissible against defendant as a statement by an accomplice or a coconspirator made in furtherance of a criminal transaction, where it occurred long after the charged criminal conspiracy to make false statements in an FHA transaction terminated, and it was not admissible as to defendant to prove the conspiracy, nor the substantive offense. U. S. v. Dunn, C.A.6 (Ky.) 1962, 299 F.2d 548.

Written statement given by one of several defendants to Special Agent of Secret Service was admissible only

against that defendant and not against other defendants, where statement was made after conspiracy had terminated and was not made in furtherance of conspiracy. Tripp v. U. S., C.A.10 (Okla.) 1961, 295 F.2d 418.

While the act of one conspirator is admissible against others if it is in furtherance of the criminal undertaking, all such responsibility ends when the conspiracy ends. Trussell v. U.S., C.A.6 (Ky.) 1960, 278 F.2d 478.

A postconspiratorial statement by coconspirator is no part of conspiracy itself and is not admissible against his coconspirators. U.S. v. Lev, C.A.2 (N.Y.) 1960, 276 F.2d 605, certiorari denied 80 S.Ct. 1248, 363 U.S. 812, 4 L.Ed.2d 1153.

Where it appears that two or more persons have conspired to commit an offense, anything said or done by one of them during the conspiracy and in furtherance of the conspiracy is admissible in evidence against all, but, after the conspiracy has come to an end, admissions of one conspirator, by way of narrative of past facts, are not admissible in evidence against the others. Cleaver v. U. S., C.A.10 (Colo.) 1956, 238 F.2d 766.

A conspiracy generally is ended, by the arrest of one of the confederates, and therefore his declarations to arresting officers are not admissible against his coconspirators since they do not partake of the singleness of purpose which marks the conspiracy, and are hearsay in the trial of the coconspirators. Cleaver v. U. S., C.A.10 (Colo.) 1956, 238 F.2d 766.

Extrajudicial admission made by conspirator subsequent to termination of conspiracy was not admissible as against other conspirator. Yokely v. United States, C.A.9 (Alaska) 1956, 237 F.2d 455, 16 Alaska 444.

Once the concerted action has ended, a declaration of one of several defendants on trial for conspiracy, is inadmissible, as hearsay, against defendants other than declarant. United States v. Delli Paoli, C.A.2 (N.Y.) 1956, 229 F.2d 319, certiorari granted 76 S.Ct. 544, 350 U.S. 992, 100 L.Ed. 858, affirmed 77 S.Ct. 294, 352 U.S. 232, 1 L.Ed.2d 278.

Declaration of one of several conspirators, made after concerted action has ended, is competent evidence, in joint trial of several defendants, only against declarant, and then only if trial court admonishes jury not to consider evidence in determining guilt of defendants other than declarant. United States v. Delli Paoli, C.A.2 (N.Y.) 1956, 229 F.2d 319, certiorari granted 76 S.Ct. 544, 350 U.S. 992, 100 L.Ed. 858, affirmed 77 S.Ct. 294, 352 U.S. 232, 1 L.Ed.2d 278.

Generally, admissions or acts of a conspirator after conspiracy has terminated or prior to its formation are not competent evidence against a coconspirator. Christianson v. U. S., C.A.8 (N.D.) 1955, 226 F.2d 646, certiorari denied 76 S.Ct. 543, 350 U.S. 994, 100 L.Ed. 859.

Statements or confessions of one conspirator made after the conspiracy is ended are not admissible evidence against the other conspirators, but this does not render a conspirator incompetent to testify as to activities of various defendants on trial during conspiracy. Smith v. U.S., C.A.5 (Tex.) 1955, 224 F.2d 58, certiorari denied 76 S.Ct. 138, 350 U.S. 885, 100 L.Ed. 780.

Statements made by conspirator to witness after conspiracy had ended was admissible against such conspirator but was not admissible in evidence against his coconspirators. Metcalf v. U.S., C.A.6 (Ky.) 1952, 195 F.2d 213.

Where statements made by conspirators to witness after conspiracy had ended were read, at request of counsel for two other conspirators, upon cross-examination of witness, such statements were thereby made competent as to such conspirators. Metcalf v. U.S., C.A.6 (Ky.) 1952, 195 F.2d 213.

In prosecution for causing to be transported and transporting a forged check drawn on an Oklahoma bank to

Louisiana and back to Oklahoma and for conspiring to commit offense against United States by transporting of such forged check, evidence with respect to handling and disposition in Oklahoma of whiskey acquired in Louisiana with forged check and evidence of statements made by defendant's alleged co-conspirators in connection with handling of such whiskey was properly admitted to present to jury true picture of broader criminal plan of which specific conspiracy charged was an integral part and to establish the defendant's connection with such conspiracy and substantive offenses even though such acts occurred after objects of specific conspiracy charged had been effected. Byford v. U.S., C.A.10 (Okla.) 1950, 185 F.2d 171.

In prosecution of commissioner, deputy clerk and interpreters for conspiracy to defraud the government by issuance of passports wherein court reserved decision on motion for acquittal on behalf of clerk, court could properly admit statements of clerk made after termination of conspiracy containing references to commissioner under instruction that jury should not consider testimony damaging evidence or evidence at all against commissioner, and then grant motion on behalf of clerk at close of all the evidence. U. S. v. Griffin, C.A.3 (Pa.) 1949, 176 F.2d 727, certiorari denied 70 S.Ct. 478, 338 U.S. 952, 94 L.Ed. 588, rehearing denied 70 S.Ct. 559, 339 U.S. 916, 94 L.Ed. 1341.

In prosecution for conspiracy to evade payment of income taxes, admissions, statements and acts of individual defendants made or performed after termination of conspiracy were not admissible and could not be utilized in support of conspiracy charge. U.S. v. Rosenblum, C.A.7 (Ind.) 1949, 176 F.2d 321, certiorari denied 70 S.Ct. 239, 338 U.S. 893, 94 L.Ed. 548, rehearing denied 70 S.Ct. 344, 338 U.S. 940, 94 L.Ed. 579, certiorari denied 70 S.Ct. 240, 338 U.S. 893, 94 L.Ed. 549, rehearing denied 70 S.Ct. 344, 338 U.S. 940, 94 L.Ed. 580.

The acts and declarations of a conspirator, made after termination of conspiracy, are not admissible against his coconspirators, but such declarations are admissible against the conspirator who makes them. Bartlett v. United States, C.C.A.10 (N.M.) 1948, 166 F.2d 920. See, also, Logan v. U.S., Tex.1892, 12 S.Ct. 617, 144 U.S. 263, 36 L.Ed. 429; Quirk v. U.S., C.C.A.Iowa 1947, 161 F.2d 138; Phelps v. U.S., C.C.A.Minn.1947, 160 F.2d 858, rehearing denied 161 F.2d 940, certiorari denied 68 S.Ct. 1525, 334 U.S. 860; U.S. v. Alfano, C.C.A.Pa.1945, 152 F.2d 395; Anderson v. U.S., C.C.A.Tenn.1941, 124 F.2d 58, reversed on other grounds 63 S.Ct. 599, 318 U.S. 350, 87 L.Ed. 829; Bryan v. U.S., C.C.A.Tex.1927, 17 F.2d 741; Johnson v. U.S., C.C.A.W.Va.1925, 5 F.2d 471, certiorari denied, 46 S.Ct. 101, 269 U.S. 574, 70 L.Ed. 419; Leady v. U.S., C.C.A.N.D.1922, 280 F. 864; Hendrey v. U.S., Tenn.1916, 233 F. 5, 147 C.C.A. 75. Criminal Law 424(1)

In prosecution for conspiracy to violate Emergency Price Control Act, 50 App. former § 904, by purchasing field corn in excess of ceiling price, testimony of codefendants, concerning conversations they had with accused after conspiracy had terminated to effect that accused informed codefendants that government inspectors were investigating the case and that accused had told codefendants not to tell inspectors about the "corn deal" was properly admitted as an admission against interest by accused. Quirk v. U.S., C.C.A.8 (Iowa) 1947, 161 F.2d 138.

In prosecution for violation of former § 338 of this title by fraudulently procuring a commission from a corporation, coconspirator's testimony that another conspirator had told him that half of the commission was actually paid to the "principals" of the person for whom the commission had been procured was admissible, where statement was by way of final settlement with coconspirator in completion of conspiracy. U.S. v. Groves, C.C.A.2 (N.Y.) 1941, 122 F.2d 87, certiorari denied 62 S.Ct. 135, 314 U.S. 670, 86 L.Ed. 536.

Under the substantive law of agency and of conspiracy, rather than of evidence, agent has no authority on behalf of principal and accomplice has no authority on behalf of coconspirators to act, as by making admissions, after agency is terminated or conspiracy is over, and hence such admissions are not admissible as part of the "res gestae" but are "hearsay." Gambino v. U. S., C.C.A.3 (Pa.) 1939, 108 F.2d 140.

In prosecution for possessing with intent to pass and utter counterfeit $10 silver certificates of the United States government, and with conspiracy to possess, pass, and utter the counterfeit money, testimony of government agents

as to conversation with one of the conspirators which was in nature of confession of such conspirator, who had previously placed himself in custody of the government, and thereby terminated the conspiracy, was inadmissible. U.S. v. Corso, C.C.A.7 (Ill.) 1938, 100 F.2d 604.

Generally arrest of coconspirators precludes any further concerted action, and puts an end to conspiracy, as affects admissibility of acts or declarations of codefendants. Graham v. U.S., C.C.A.8 (Okla.) 1926, 15 F.2d 740, certiorari denied 47 S.Ct. 587, 274 U.S. 743, 71 L.Ed. 1321.

Acts and declarations of conspirators after robbery were admissible. Murray v. U.S., C.C.A.7 (Ill.) 1925, 10 F.2d 409, certiorari denied 46 S.Ct. 486, 271 U.S. 673, 70 L.Ed. 1144.

Evidence as to statements of alleged conspirator shortly after arrest, when all were present in attempted performance of conspiracy, was not inadmissible, on theory that conspiracy had then been frustrated. Fisher v. U.S., C.C.A.1 (R.I.) 1925, 8 F.2d 978, certiorari denied 46 S.Ct. 482, 271 U.S. 666, 70 L.Ed. 1140.

On trial together of two defendants charged with conspiracy, evidence of incriminating statements made by one, after the conspiracy had ended was properly admitted, where the jury was charged that it was not to be considered against his codefendant. Gwinn v. U.S., C.C.A.5 (Tex.) 1923, 294 F. 878.

On a trial for removing and concealing whisky to evade payment of the tax and for conspiracy to do so, the statement of defendant's brother, after the conspiracy had been frustrated and not in defendant's presence, that he was transferring liquor under defendant's direction, was inadmissible. Parilla v. U.S., C.C.A.6 (Ohio) 1922, 280 F. 761.

"Then it is said that error was committed in allowing the attorney for Antoon to testify that, after the latter had told the former as to his transactions with the Samaras, the attorney took Antoon to the United States attorney's office, which led to the indictment in this case. We are told that this is a clear violation of the rule that what is said or done by one of the conspirators after the conspiracy is ended, in the absence of the defendants on trial, is totally inadmissible. The rule is admitted, but its application to the facts is denied. On his direct examination Antoon testified that he first went to his attorney and told his story, and that his attorney took him to the District Judge, to whom he confessed his crime. The attorney was permitted to testify that, after Antoon confessed to him, instead of taking Antoon first to the district attorney, he took him direct to the District Judge. This is simply a part of the history of the transaction, and as such the government was entitled to it. The objection at all events seems to us quite unimportant, and we fail to perceive any relation between this occurrence and the rule that the statement of a conspirator in the absence of his coconspirators, after the conspiracy is ended, is not admissible." Samara v. U.S., C.C.A.2 (N.Y.) 1920, 263 F. 12.

In a prosecution of two defendants for conspiracy to defraud the United States, testimony of statements or admissions by one defendant made to a representative of the Department of Justice after the conspiracy, if it had existed, had ended in failure, was inadmissible against the other defendant. Feder v. U.S., C.C.A.2 (N.Y.) 1919, 257 F. 694, 168 C.C.A. 644.

Statements by alleged party to scheme to defraud, in furtherance of which mails were used after scheme was ended, were hearsay as to other parties. McDonald v. U.S., C.C.A.6 (Tenn.) 1917, 241 F. 793, 154 C.C.A. 495.

In a prosecution for conspiring to bring or cause to be brought into United States, Chinese persons not allowed to enter, acts and statements of one coconspirator after Chinese were brought across the international boundary were admissible against others, conspiracy not being there ended. Lew Moy v. U S, C.C.A.8 (N.M.) 1916, 237 F. 50, 150 C.C.A. 252.

Declarations of one co-conspirator, after the conspiracy was at an end, were inadmissible, as well as letters

identified by declarant, against another co-conspirator. Erber v. U.S., C.C.A.2 (N.Y.) 1916, 234 F. 221, 148 C.C.A. 123.

It was not error to admit declarations made by the several defendants, but not in the presence of each other, after the termination of all acts in furtherance of the object of the conspiracy, where the evidence was expressly offered and received as against the party making the same alone, and the court charged the jury that the declarations could be considered only against the parties who made them, and then only for the purpose of connecting them with the conspiracy if they should find that one had been entered into, and further that "this evidence is not to be considered by the jury in considering the question as to whether or not the defendants are guilty of the crime of conspiracy, but only as tending to prove the relation which the parties making the same may have had to any conspiracy that may have existed prior to that time." Lorenz v. U.S., App.D.C.1904, 24 App.D.C. 337, certiorari denied 25 S.Ct. 796, 196 U.S. 640, 49 L.Ed. 631.

624. ---- Withdrawal from conspiracy, declarations of coconspirators, admissibility of evidence

Had defendant withdrawn from alleged conspiracy to obstruct justice and defraud the United States, declarations of co-conspirators uttered after the date of his withdrawal would have been inadmissible against defendant. U. S. v. Mardian, C.A.D.C.1976, 546 F.2d 973, 178 U.S.App.D.C. 207.

Declarations of coconspirator in the course of his affirmative efforts to salvage what was left in criminal enterprise, after one member of conspiracy resigned from governmental post and several members of conspiracy were indicted for offenses other than those for which instant prosecution was instituted, were admissible even though objectives of conspiracy had become more limited and the hoped repetition of the conspiratorial endeavor was impossible. U. S. v. DeSapio, C.A.2 (N.Y.) 1970, 435 F.2d 272, certiorari denied 91 S.Ct. 2170, 402 U.S. 999, 29 L.Ed.2d 166, rehearing denied 91 S.Ct. 2249, 403 U.S. 941, 29 L.Ed.2d 722.

In conspiracy case, where statement of coconspirator to his mistress that a person was taking place of particular defendant because such defendant had withdrawn from conspiracy was nothing more than repetition and amplification of earlier statement which announced such withdrawal and was necessary to explain presence of person being substituted, "agency" to communicate withdrawal was sufficient to make statement admissible against defendant though he had already withdrawn. U. S. v. Geaney, C.A.2 (N.Y.) 1969, 417 F.2d 1116, certiorari denied 90 S.Ct. 1276, 397 U.S. 1028, 25 L.Ed.2d 539.

Out-of-court declarations, made when the declarant is no longer a conspirator and offered to prove the truth of their contents, are not admissible against one of the declarant's partners in crime. Granza v. U. S., C.A.5 (Tex.) 1967, 377 F.2d 746, rehearing denied 381 F.2d 190, certiorari denied 88 S.Ct. 291, 389 U.S. 939, 19 L.Ed.2d 292.

A statement by a person, on a chance encounter with principal witness in narcotics conspiracy case, that the person thought the difficulties which the principals had had with a certain person had been resolved, would better have been excluded, both because of lack of evidence that any bond with the person making the remark still existed and because this declaration, made after the witness' severance with one of the principals, appeared to have been narrative only. U. S. v. Borelli, C.A.2 (N.Y.) 1964, 336 F.2d 376, certiorari denied 85 S.Ct. 647, 379 U.S. 960, 13 L.Ed.2d 555.

In a conspiracy case the scope of defendant's agreement is often pertinent to admissibility of implicating declarations by coconspirators and to relevance of evidence of their acts; however, many, perhaps most, declarations concerning a defendant who was no longer participating in conspiracy would be barred in any event by requirement that these be in furtherance of conspiracy and not be merely narrative. U. S. v. Borelli, C.A.2 (N.Y.) 1964, 336 F.2d 376, certiorari denied 85 S.Ct. 647, 379 U.S. 960, 13 L.Ed.2d 555.

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Where utterances were offered as acts rather than as declarations, their admissibility against a defendant would not be destroyed by his previous withdrawal from conspiracy. U. S. v. Ross, C.A.2 (N.Y.) 1963, 321 F.2d 61, certiorari denied 84 S.Ct. 170, 375 U.S. 894, 11 L.Ed.2d 123, certiorari denied 84 S.Ct. 175, 375 U.S. 894, 11 L.Ed.2d 123.

In prosecution of defendant, who, in Texas, purchased geophysical maps stolen from Pittsburgh office of oil company, for conspiracy to transport in interstate commerce geophysical maps knowing them to have been stolen, although coconspirator had withdrawn from conspiracy, admission of statement to coconspirator that second coconspirator had obtained maps from company and transported them to other states was not error. U. S. v. Lester, C.A.3 (Pa.) 1960, 282 F.2d 750, certiorari denied 81 S.Ct. 385, 364 U.S. 937, 5 L.Ed.2d 368.

In prosecution for conspiracy to defraud government, declarations made by a defendant after he severed his connection with other defendants and after alleged conspiracy came to end were inadmissible as against co-conspirator. Greer v. United States, C.A.10 (Utah) 1955, 227 F.2d 546.

625. ---- Acquittal of coconspirators, declarations of coconspirators, admissibility of evidence

Acquittal of one defendant on conspiracy count did not invalidate use against him of declarations of conspirators in furtherance of conspiracy where trial judge was amply justified in concluding that prosecutor had proved the acquitted defendant's participation in the conspiracy by a fair preponderance of the evidence independent of the hearsay utterances. U. S. v. Jacobs, C.A.2 (N.Y.) 1973, 475 F.2d 270, certiorari denied 94 S.Ct. 116, 414 U.S. 821, 38 L.Ed.2d 53, certiorari denied 94 S.Ct. 131, 414 U.S. 821, 38 L.Ed.2d 53.

Statements by alleged coconspirator to defendant were admissible in conspiracy prosecution despite alleged coconspirator's earlier acquittal on conspiracy charge. U. S. v. Bass, C.A.8 (Ark.) 1973, 472 F.2d 207, certiorari denied 93 S.Ct. 2751, 412 U.S. 928, 37 L.Ed.2d 155.

626. ---- Concealment, declarations of coconspirators, admissibility of evidence

In federal conspiracy trials the hearsay exception that allows evidence of out-of-court statement of one conspirator to be admitted against fellow conspirators applies only if the statement was made in the course of and in furtherance of conspiracy, and not during subsequent period when the conspirators were engaged in nothing more than concealment of the criminal enterprise. (Per Mr. Justice Stewart with The Chief Justice and two justices concurring and one justice concurring in result.) Dutton v. Evans, U.S.Ga.1970, 91 S.Ct. 210, 400 U.S. 74, 27 L.Ed.2d 213, on remand 441 F.2d 657.

A conspiracy does not always imply an agreement of the conspirators to collaborate to conceal the conspiracy, as respects admissibility of acts and declarations of the conspirators. Lutwak v. U.S., U.S.Ill.1953, 73 S.Ct. 481, 344 U.S. 604, 97 L.Ed. 593, rehearing denied 73 S.Ct. 726, 345 U.S. 919, 97 L.Ed. 1352.

Coconspirators' statements concerning defendants' attempts to conceal arson-for-profit scheme were admissible, where conspiracy to maliciously destroy property by explosives and commit mail fraud in order to obtain insurance benefits for remodeling purposes continued throughout period of all statements in question. U.S. v. Zabic, C.A.7 (Ill.) 1984, 745 F.2d 464.

Admissions made after a robbery were not inadmissible in prosecution for conspiracy to rob on theory conspiracy

had ended, where criminal aim of the conspiracy was not only to commit the robbery but to take profit by illegal means, and fruits of the crime had not been disposed of at time of the admissions, and admissions were made while defendants were in process of violating § 2113(c) of this title proscribing concealment of money knowing it to have been stolen. Atkins v. U. S., C.A.9 (Wash.) 1962, 307 F.2d 937.

In prosecution for conspiracy to defraud the United States by obtaining entry of an alien by concealment of material facts where evidence established that defendant knew that alien had entered into an unconsummated marriage with a citizen to obtain a visa and had agreed to a divorce after visa was obtained, evidence of defendant's activities in procuring alien's divorce based on false affidavit of service and false testimony was relevant, notwithstanding that conspiracy had previously ended when alien entered under the immigration visa, since divorce went to confirm testimony of alien and her husband as to what they had originally intended and agreed upon with defendant. U.S. v. Rubenstein, C.C.A.2 (N.Y.) 1945, 151 F.2d 915, certiorari denied 66 S.Ct. 168, 326 U.S. 766, 90 L.Ed. 462.

While the declarations of co-conspirators made after the enterprise has ended are not admissible against each other, yet, if they are made in pursuance of the enterprise, and tending to the accomplishment of the object for which the conspiracy was made and overt acts were performed, they are admissible. U.S. v. Lancaster, C.C.S.D.Ga.1891, 44 F. 896.

Although every conspiracy does not necessarily include implicit agreement to prevent detection and punishment, it does not necessarily follow that acts and declarations made after conspiracy ended are not admissible; if act committed by one conspirator after conspiracy has ended is relevant to prove essential fact of conspiracy, evidence of that act is competent. U. S. ex rel. Wilson v. Essex County Court, Law Division, D.C.N.J.1976, 406 F.Supp. 991
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627. ---- Defendants against whom admitted, declarations of coconspirators, admissibility of evidence

Declaration made by one conspirator, in furtherance of a conspiracy and prior to its termination, may be used against the other conspirators. Delli Paoli v. U.S., U.S.N.Y.1957, 77 S.Ct. 294, 352 U.S. 232, 1 L.Ed.2d 278. See, also, U.S. v. Sapperstein, C.A.Md.1963, 312 F.2d 694. Criminal Law 423(1)

Statements made by one conspirator may be used not only against the declarant but also against his coconspirators where made during course and in furtherance of the conspiracy. U. S. v. Morris, C.A.10 (Colo.) 1980, 623 F.2d 145, certiorari denied 101 S.Ct. 793, 449 U.S. 1065, 66 L.Ed.2d 609.

Out-of-court declarations by conspirator made during course of and in furtherance of conspiracy are admissible against other members of conspiracy as well as declarant. U. S. v. Macklin, C.A.8 (Mo.) 1978, 573 F.2d 1046, certiorari denied 99 S.Ct. 160, 439 U.S. 852, 58 L.Ed.2d 157.

Declarations of one conspirator made in furtherance of the conspiracy, and during its existence, are admissible against all members of the conspiracy. U. S. v. Crockett, C.A.5 (Ga.) 1976, 534 F.2d 589.

Acts and declarations of each of conspirators in furtherance of conspiracy are admissible against all of them; hearsay rule is inapplicable. Downing v. U. S., C.A.5 (Tex.) 1965, 348 F.2d 594, certiorari denied 86 S.Ct. 235, 382 U.S. 901, 15 L.Ed.2d 155.

Declarations made by one conspirator in furtherance of conspiracy are admissible against all co-conspirators. U. S. v. Mishkin, C.A.2 (N.Y.) 1963, 317 F.2d 634, certiorari denied 84 S.Ct. 71, 375 U.S. 827, 11 L.Ed.2d 60. See, also, Montford v. U.S., C.A.Fla.1952, 200 F.2d 759. Criminal Law 423(1)

Every act or declaration of each member of conspiracy in furtherance thereof, while conspiracy is in operation, is

considered the act or declaration of each member of that conspiracy. Walker v. U. S., C.A.9 (Cal.) 1962, 298 F.2d 217.

In prosecution for conspiring to defraud United States, any act or admission by any of participants in conspiracy occurring during its existence and in furtherance of its purposes was admissible as to all defendants. Connelly v. U.S., C.A.8 (Mo.) 1957, 249 F.2d 576, certiorari denied 78 S.Ct. 700, 356 U.S. 921, 2 L.Ed.2d 716, rehearing denied 78 S.Ct. 991, 356 U.S. 964, 2 L.Ed.2d 1072, certiorari denied 78 S.Ct. 701, 356 U.S. 921, 2 L.Ed.2d 716.

The rule admitting evidence of acts and declarations of co-conspirators in furtherance of the conspiracy against all defendants applies equally to motive and intent as to other issues. United States v. Flynn, C.A.2 (N.Y.) 1954, 216 F.2d 354, certiorari denied 75 S.Ct. 295, 348 U.S. 909, 99 L.Ed. 713, order withheld 75 S.Ct. 285, 99 L.Ed. 1298, rehearing denied 75 S.Ct. 436, 348 U.S. 956, 99 L.Ed. 747.

Evidence relating to acts and declarations of all conspirators in furtherance of conspiracy are admissible against all whether or not each defendant is tried alone or jointly. U. S. v. Silverman, D.C.Conn.1955, 129 F.Supp. 496.

Regardless of whether defendant joined the alleged conspiracy early or late, all acts and statements of co-conspirators in furtherance of the conspiracy would be admissible against him regardless of whether he were tried separately or jointly. U S v. Dioguardi, S.D.N.Y.1956, 20 F.R.D. 10.

628. ---- Government agents, declarations of coconspirators, admissibility of evidence

Even if purported innocent party who consented to having her telephone conversations with coconspirator taped was, in effect, a government agent so that her portion of conversations with coconspirator were not admissible as statements by coconspirator against defendants, where recorded conversations, which were legitimate evidence, would have been rendered unintelligible if all of innocent party's portion of conversation had been excised and where such innocent party was present at trial and subjected to rigorous cross-examination by defendants' portions of conversations attributable to innocent party were admissible against defendants. U. S. v. Ledesma, C.A.9 (Cal.) 1974, 499 F.2d 36, certiorari denied 95 S.Ct. 501, 419 U.S. 1024, 42 L.Ed.2d 298.

Statement made by participant in counterfeiting transactions, if hearsay as to defendant, was inadmissible under the coconspirator exception to the hearsay rule where the "coconspirator" was actually a government agent whose sole purpose was to effect the arrest of the conspirators; but no reversible error was committed in admitting such statement where the agent who made it testified and was cross-examined at trial. U. S. v. Wilkerson, C.A.5 (Tex.) 1972, 469 F.2d 963, certiorari denied 93 S.Ct. 1515, 410 U.S. 986, 36 L.Ed.2d 184.

Testimony of government informer to effect that defendants, charged with conspiracy, had said and done certain things out of court and out of presence of other defendants was properly admitted even though defendants claimed that witness as a government informer did not have requisite criminal intent and was not a conspirator, as government informer's testimony was not a restatement of his own prior statements offered as tending to prove truth of his assertions. U. S. v. Cerone, C.A.7 (Ill.) 1971, 452 F.2d 274, certiorari denied 92 S.Ct. 1168, 405 U.S. 964, 31 L.Ed.2d 240, certiorari denied 92 S.Ct. 1169, 405 U.S. 964, 31 L.Ed.2d 240.

Testimony of undercover agent about what conspirators said was clearly admissible against the defendants being prosecuted for various substantive violations of federal revenue laws governing distilled spirits and for conspiracy to violate those laws. U. S. v. Williamson, C.A.5 (Miss.) 1971, 450 F.2d 585, certiorari denied 92 S.Ct. 1297, 405 U.S. 1026, 31 L.Ed.2d 486, rehearing denied 92 S.Ct. 1784, 406 U.S. 939, 32 L.Ed.2d 140.

Although government's witness by his own account feigned his participation in conspiracy charged, his testimony concerning statements made in connection with conspiracy was admissible where he was not the declarant but only witness to declarations made by persons shown to coconspirators. Hansen v. U. S., C.A.9 (Wash.) 1963, 326 F.2d

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152.

In narcotics prosecution, where first Government witness connected defendant with first co-conspirator and second Government witness testified that he dealt with first and second co-conspirators, testimony of second Government witness as to first co-conspirator's declaration was competent as to defendant, including declaration connecting second co-conspirator with the conspiracy, if made in execution of the venture, notwithstanding that such declarations were hearsay. U.S. v. Marzano, C.C.A.2 (N.Y.) 1945, 149 F.2d 923.

In prosecution of corporation and vice president for conspiracy, testimony of revenue agents that one of alleged conspirators had stated to them that the people at corporation's place of business had warned him to beware of the officers was inadmissible as hearsay. U.S. v. Goldsmith, C.C.A.2 (N.Y.) 1937, 91 F.2d 983, certiorari denied 58 S.Ct. 38, 302 U.S. 718, 82 L.Ed. 555.

629. ---- Nondefendants, declarations of coconspirators, admissibility of evidence

Declarations of unindicted coconspirators may be admissible against named defendants upon sufficient showing, by independent evidence, of conspiracy among one or more defendants and declarant, and that declarations at issue were in furtherance of that conspiracy. U. S. v. Nixon, U.S.Dist.Col.1974, 94 S.Ct. 3090, 418 U.S. 683, 41 L.Ed.2d 1039.

Acts and declarations with reference to the common object, by conspirators who are not indicted or on trial are admissible. Clune v. U.S., U.S.Cal.1895, 16 S.Ct. 125, 159 U.S. 590, 40 L.Ed. 269. See, also, Lewis v. U.S., C.C.A.Mich.1926, 11 F.2d 745; Isenhouer v. U.S., C.C.A.Okl.1919, 256 F. 842; U.S. v. General Motors Corporation, C.C.A.Ind.1941, 121 F.2d 376, certiorari denied 62 S.Ct. 105, 314 U.S. 618, 86 L.Ed. 497, rehearing denied 62 S.Ct. 178, 314 U.S. 707, 86 L.Ed. 566.

It is not necessary that conspirators be tried jointly in order for statements of one conspirator to be admissible against another. U. S. v. Schroeder, C.A.8 (Minn.) 1970, 433 F.2d 846, certiorari denied 91 S.Ct. 590, 400 U.S. 1024, 27 L.Ed.2d 636, certiorari denied 91 S.Ct. 951, 401 U.S. 943, 28 L.Ed.2d 224. Criminal Law 422(1)

Mere fact that co-conspirator was not formally indicted for conspiracy did not preclude application of rule allowing his statement made in furtherance of the conspiracy prior to its termination into evidence in prosecution against other conspirators. U. S. v. Sapperstein, C.A.4 (Md.) 1963, 312 F.2d 694.

Where proof showed that four defendants in prosecution on various counts had acted as agents of conspirators in course of conspiracy, the acts and declarations of such defendants were admissible in evidence against the conspirators, even though such four defendants were not named as defendants in conspiracy count. U.S. v. Lev, C.A.2 (N.Y.) 1960, 276 F.2d 605, certiorari denied 80 S.Ct. 1248, 363 U.S. 812, 4 L.Ed.2d 1153.

In conspiracy prosecution, declarations of one of the parties to alleged conspiracy, otherwise proven, are admissible if they were made in attempt to carry conspiracy into execution, regardless of whether such party is a defendant. Heflin v. U.S., C.C.A.5 (Fla.) 1943, 132 F.2d 907.

Testimony as to statement of defendant not on trial, tending to show that he and another of the defendants charged with conspiracy were acquainted. was admissible. Bilodeau v. U.S., C.C.A.9 (Cal.) 1926, 14 F.2d 582, certiorari denied 47 S.Ct. 245, 273 U.S. 737, 71 L.Ed. 866.

Act of defendant not on trial in showing officer workable rectifier in his house was not in nature of confession of conspiracy to violate internal revenue law. Bilodeau v. U.S., C.C.A.9 (Cal.) 1926, 14 F.2d 582, certiorari denied 47 S.Ct. 245, 273 U.S. 737, 71 L.Ed. 866.

In determining whether a conspiracy was formed and whether acts were done to effect the same, the acts and conduct of a defendant not on trial may be considered in connection with those of the defendant or defendants on trial. U.S. v. Breese, C.C.W.D.N.C.1909, 173 F. 402.

Statement by co-conspirator to third party concerning some act done in furtherance of a conspiracy is admissible against all conspirators, although the actual making of the statement in no way furthered the conspiracy. U.S. v. E.I. Du Pont De Nemours & Co., D.C.Del.1952, 107 F.Supp. 324.

630. ---- Intoxication, declarations of coconspirators, admissibility of evidence

The admission that accomplices were intoxicated during period when forged checks were issued and passed did not eliminate their testimony nor render it inadmissible. Sabari v. U. S., C.A.9 (Nev.) 1964, 333 F.2d 1019. Criminal Law 508(1); Criminal Law 508(9)

631. ---- Limited admission, declarations of coconspirators, admissibility of evidence

In conspiracy prosecution, declarations that are admissible as against all of the alleged conspirators and declarations that are admissible only as to the declarant and those present who by their silence or other conduct assent to the truth of the declaration must be carefully and clearly limited by the court at the time of their admission and the jury must be instructed as to such declarations and the limitations put upon them. Lutwak v. U.S., U.S.Ill.1953, 73 S.Ct. 481, 344 U.S. 604, 97 L.Ed. 593, rehearing denied 73 S.Ct. 726, 345 U.S. 919, 97 L.Ed. 1352.

Testimony of witness pertaining to defendant's statements made to her during course of conspiracy was, although statements pertained to past events, clearly admissible as to defendant making statements, since statements were claimed to have been made by him, and judge carefully instructed jury on proper limitations of use of statements as to other of the coconspirators. U. S. v. Etheridge, C.A.6 (Tenn.) 1970, 424 F.2d 951, certiorari granted 91 S.Ct. 462, 400 U.S. 991, 27 L.Ed.2d 437, certiorari denied 91 S.Ct. 463, 400 U.S. 993, 27 L.Ed.2d 442, certiorari denied 91 S.Ct. 464, 400 U.S. 1000, 27 L.Ed.2d 452, rehearing denied 91 S.Ct. 885, 401 U.S. 926, 27 L.Ed.2d 830, certiorari dismissed 91 S.Ct. 2174, 402 U.S. 547, 29 L.Ed.2d 102, rehearing denied 92 S.Ct. 32, 404 U.S. 875, 30 L.Ed.2d 122.

Conviction for conspiracy arising from operation of numbers racket which crossed state lines would be reversed where trial judge had failed to carefully and clearly limit consideration of evidence of another conspirator's acts and declarations after date when conspiracy ended as to other conspirator. U. S. v. Smith, C.A.4 (Va.) 1968, 390 F.2d 420. Criminal Law 1168(2)

Extrajudicial declaration made by conspirator not in furtherance of conspiracy may be admitted in joint trial of conspirators against declarant when restricted by court's instructions to declarant's case. Ward v. U. S., C.A.4 (N.C.) 1960, 288 F.2d 820.

Though declarations of co-conspirator are not admissible to establish that another defendant has become member of conspiracy, such declarations are admissible to establish criminal nature of combination which other direct evidence has shown that a defendant has joined. U. S. v. Avellino, C.A.3 (Pa.) 1954, 216 F.2d 877.

Admitting coconspirator's testimony as to his previous false statements without limitation was not error. Camp v. U.S., C.C.A.6 (Ky.) 1926, 16 F.2d 370, certiorari denied 47 S.Ct. 766, 274 U.S. 754, 71 L.Ed. 1333.

District court did not abuse its discretion in admitting evidence of defendant's statements to a government witness relating to a crime family, in prosecution for conspiracy to interfere with commerce by threats or violence and conspiracy to engage in interstate transportation of stolen property, as evidence was offered to prove that witness

believed defendant had the ability to participate in a truck hijacking, which was probative of defendant's involvement in charged conspiracies and was not prejudicial, particularly in light of judge's limiting instruction to jury. U.S. v. Bruno, C.A.2 (N.Y.) 2003, 83 Fed.Appx. 361, 2003 WL 22955859, Unreported, post-conviction relief denied 2005 WL 3311992, reconsideration denied 2005 WL 3262972. Criminal Law 369.2(1)

632. Identification, admissibility of evidence

Notwithstanding that, because identification procedure used only one photograph, it was unnecessarily suggestive, prosecution witness' identification of federal fugitive as man who accompanied defendant was reliable and thus admissible in prosecution for conspiracy to harbor and harboring federal fugitive, as witness could not have known that man she later identified as federal fugitive was a fugitive when he came into her restaurant, she closely observed him, she paid attention to him because he was one of the few customers in the restaurant and described his physical features, including his tattoos, she was positive of her identification, and approximately two months had elapsed between first meeting and confrontation. U.S. v. Burke, C.A.11 (Ga.) 1984, 738 F.2d 1225.

Evidence was sufficient to sustain conspiracy conviction of particular defendant despite contention that such defendant was not the person of the same name who participated in the conspiracy, and though government informer was unable to make a positive in-court identification of such defendant, whose appearance had radically changed in the year prior to trial. U. S. v. Morrow, C.A.5 (Fla.) 1976, 537 F.2d 120, rehearing denied 541 F.2d 282, certiorari denied 97 S.Ct. 1602, 430 U.S. 956, 51 L.Ed.2d 806. Conspiracy 47(1)

Testimony dealing with local sales of stolen semitrailers was proper in prosecution of defendants for conspiracy to transport stolen semitrailers in interstate commerce, since testimony of local sales showed identity of parties in the conspiracy, its funding and its operation. U. S. v. Bastone, C.A.7 (Ill.) 1975, 526 F.2d 971, certiorari denied 96 S.Ct. 2172, 425 U.S. 973, 48 L.Ed.2d 797.

Where in-court identification of defendant by two witnesses who had accompanied defendant to Mexico and who had been arrested when they brought car containing drugs across border rested upon their association with defendant during the trip to Mexico, fact that witnesses had viewed defendant at police station following his arrest when no one else was present except a police officer was not ground for reversal even if procedure constituted an improperly conducted lineup. U. S. v. Montgomery, C.A.9 (Cal.) 1971, 440 F.2d 694, certiorari denied 92 S.Ct. 221, 404 U.S. 884, 30 L.Ed.2d 166.

633. Informers, admissibility of evidence

Government, in conspiracy prosecution, properly relied on testimony of informers even though they served, in part, as links connecting the conspirators, where activities of the informers were entirely in accordance with instructions from defendants. Sigers v. U. S., C.A.5 (Fla.) 1963, 321 F.2d 843.

In prosecution for violation of federal liquor laws and for conspiracy to violate such laws, testimony of witness, who had been employed by the government as a spy or "stool pigeon," was admissible, though, on cross-examination, witness became confused and made conflicting statements about length of his government service and procedure and amounts of his payment. Newman v. U.S., C.A.5 (Ga.) 1955, 220 F.2d 289, certiorari denied 76 S.Ct. 51, 350 U.S. 824, 100 L.Ed. 736, rehearing denied 76 S.Ct. 148, 350 U.S. 897, 100 L.Ed. 789.

In conspiracy prosecution, government could use informers' testimony. U.S. v. Dennis, C.A.2 (N.Y.) 1950, 183 F.2d 201, certiorari granted 71 S.Ct. 91, 340 U.S. 863, 95 L.Ed. 630, affirmed 71 S.Ct. 857, 341 U.S. 494, 95 L.Ed. 1137, rehearing denied 72 S.Ct. 20, 342 U.S. 842, 96 L.Ed. 636, rehearing denied 78 S.Ct. 409, 355 U.S. 936, 2 L.Ed.2d 419.

634. Judicial decisions and orders, admissibility of evidence

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In view of Canadian Trade Agreement, 49 Stat. 3960, 3962, 3980; Cuban Trade Agreement of 1934, art. 3, 49 Stat. 3561, in prosecution against whiskey importer and assistant cashier of national bank for conspiracy wilfully to misapply funds of national bank by loaning bank's funds on warehouse receipts for whiskey which was without competitive value because not aged for four years or because it had been adulterated, evidence of two decisions of the United States Customs Court that certain affidavits of age were a sufficient compliance with treasury regulations were properly excluded as without probative value on issue whether whiskey pledged was aged for four years or had been adulterated. U S v. Haim, C.C.A.2 (N.Y.) 1940, 113 F.2d 243, on rehearing 114 F.2d 566.

In prosecution for using, and conspiracy to use, mails to defraud, wherein one of conspirators introduced order to show cause in proceeding to enjoin certain of the conspirators from selling stock by use of any instrument in interstate commerce and by using mails to defraud, prosecution could show the outcome of the service of the show cause order and hence introduce consent decree in such proceeding. U.S. v. Rollnick, C.C.A.2 (N.Y.) 1937, 91 F.2d 911.

635. Legal memoranda, admissibility of evidence

In prosecution of corporate defendant for conspiracy to violate, and violation of, Public Utility Holding Company Act, § 79l of Title 15, admission of legal memorandum prepared by attorney employed at request of vice president of corporate defendant which stated that Mo.R.S.A. § 11786 expressly prohibited campaign contributions by corporations to any political party or candidate for office was not error, where effect of such evidence was properly limited by instructions. Egan v. U.S., C.C.A.8 (Mo.) 1943, 137 F.2d 369, certiorari denied 64 S.Ct. 195, 320 U.S. 788, 88 L.Ed. 474.

636. Letters and other correspondence, admissibility of evidence

Letter from president of racing company to bribe offeror, which was received for limited purpose of showing the communication between them, which contained statement based on information given by the bribe offeror was admissible in prosecution of the offerees under the coconspirator's exception. U. S. v. Isaacs, C.A.7 (Ill.) 1974, 493 F.2d 1124, certiorari denied 94 S.Ct. 3183, 417 U.S. 976, 41 L.Ed.2d 1146, rehearing denied 94 S.Ct. 3234, 418 U.S. 955, 41 L.Ed.2d 1178, certiorari denied 94 S.Ct. 3184, 417 U.S. 976, 41 L.Ed.2d 1146.

Admission of letter sent by witness to owner of stolen securities relating one defendant's statements as to burglary in which securities were taken and implicating two codefendants was error, in joint trial of the three defendants for conspiracy to unlawfully transport stolen securities, where there were no instructions limiting consideration of letter to issue of credibility of witness and it would have been practically impossible for jury not to consider the letter as substantive evidence against codefendants. U. S. v. Nall, C.A.5 (Tex.) 1971, 437 F.2d 1177.

Where letter written by alleged unidentified coconspirator was admitted, in prosecution for conspiracy to travel interstate to further unlawful activity, without objection on ground of hearsay, letter could be considered on question of membership in conspiracy. U. S. v. Marquez, C.A.2 (N.Y.) 1970, 424 F.2d 236, certiorari denied 91 S.Ct. 56, 400 U.S. 828, 27 L.Ed.2d 58.

Admission of documentary evidence despite denial of motions before trial to take depositions abroad of persons involved in their preparation or execution on ground in one case that person was fugitive from justice, was not violative of defendants' constitutional rights of confrontation and to fair trial, under circumstances, in prosecution for conspiracy to defraud public by distribution of oil company stock at grossly inflated prices. U. S. v. Kelly, C.A.2 (N.Y.) 1965, 349 F.2d 720, certiorari denied 86 S.Ct. 1467, 384 U.S. 947, 16 L.Ed.2d 544.

Admission of letter exhibits introduced to prove defendants' ownership of secret Swiss trust and that trust was medium through which defendants collected their 10% kick-back from coconspirator, was proper, under business records hearsay rule exception, in prosecution for conspiracy to defraud public by distribution of oil company stock

at grossly inflated prices. U. S. v. Kelly, C.A.2 (N.Y.) 1965, 349 F.2d 720, certiorari denied 86 S.Ct. 1467, 384 U.S. 947, 16 L.Ed.2d 544.

Unsigned copy of three-page letter to coconspirator was properly proved authentic by virtue of testimony of coconspirator, and corroboration by other government exhibits, for purpose of its introduction in evidence as business record in prosecution for conspiracy to defraud public by distribution of oil company stock at grossly inflated prices. U. S. v. Kelly, C.A.2 (N.Y.) 1965, 349 F.2d 720, certiorari denied 86 S.Ct. 1467, 384 U.S. 947, 16 L.Ed.2d 544.

Admission of unsigned copy of three-page letter to coconspirator, was proper, within business records exception to hearsay rule, despite its unorthodox character as business document, in prosecution for conspiracy to defraud public by distribution of oil company stock at grossly inflated prices. U. S. v. Kelly, C.A.2 (N.Y.) 1965, 349 F.2d 720, certiorari denied 86 S.Ct. 1467, 384 U.S. 947, 16 L.Ed.2d 544.

In prosecution of physician for conspiracy to violate § 2550 et seq. of Title 26, a carbon copy of a letter written by a government agent to the physician and a druggist, asking them to send him narcotics by an informer, was admissible under the "best evidence" rule, where physician denied having received the letter, notwithstanding no notice to produce was given, since such notice would have been unavailing and in any event was not required. Barnett v. U.S., C.A.9 (Wash.) 1949, 171 F.2d 721.

In conspiracy prosecution, admission of portion of letter received in evidence only against a particular defendant was not error as against convicted defendants where jury was instructed that it was to be considered only against that particular defendant and he was acquitted. Phelps v. U. S., C.C.A.8 (Minn.) 1947, 160 F.2d 858, rehearing denied 161 F.2d 940, certiorari denied 68 S.Ct. 1525, 334 U.S. 860, 92 L.Ed. 1780.

In conspiracy prosecution, admitting in evidence certain letters, papers and documents as proof of overt acts of defendant without it first having been proved that defendant took part in the conspiracy was not error. McDonald v. U.S., App.D.C.1942, 133 F.2d 23, 77 U.S.App.D.C. 33.

In prosecution for using and for conspiring to use mails to defraud in sale of stock in gold mines, letters from engineer in charge of mine to stockholder who sold mine to mining company did not, except for portions of one letter which were excluded from evidence by agreement of counsel, contain prejudicial conclusions or hearsay opinions as would justify reversal, especially where all matters involved were shown by other precise and convincing testimony. U.S. v. Bob, C.C.A.2 (N.Y.) 1939, 106 F.2d 37, certiorari denied 60 S.Ct. 115, 308 U.S. 589, 84 L.Ed. 493.

In prosecution for using and conspiring to use the mails to defraud gullible individuals by collecting fees for enrolling them as heirs of mythical Baker estate, correspondence between one of conspirators and an enrollee in which enrollee referred to magazine article with respect to conviction of members of competing group of conspirators, and in which conspirator distinguished between his activities and those of competing group, was properly admitted, together with the magazine article. U. S. v. Sprengel, C.C.A.3 (Pa.) 1939, 103 F.2d 876.

Letter of codefendant, in prosecution to use mails to defraud, was properly admitted against accused, in view of instruction not to consider it against accused, unless joint purpose was first found. Davis v. U.S., C.C.A.8 (Ark.) 1925, 9 F.2d 826.

Where evidence strongly tended to show unlawful combination to defraud by use of mails, letters signed by accused's coconspirators were properly admitted against all persons involved therein, especially where instructions correctly stated law, respecting accused's responsibility for letters not mailed or signed by him. Nix v. U.S., C.C.A.9 (Cal.) 1925, 4 F.2d 652.

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A letter written by one alleged conspirator to a coconspirator, but never received by the latter, was admissible against all conspirators, if it was an act adapted to carry out the conspiracy. Browne v. U. S., C.C.A.6 (Mich.) 1923, 290 F. 870.

If there was sufficient testimony to support a finding that a conspiracy existed, then the act of one conspirator in furtherance of the common purpose was in law the act of all, and letters written by certain of the conspirators were admissible against another conspirator. Burns v. U.S., C.C.A.8 (Okla.) 1922, 279 F. 982.

In a prosecution for conspiracy to use the mails to defraud, letters written by defendants to persons charged to have been defrauded, asking further remittances, were admissible in evidence under the charge in the indictment. Hallowell v. U.S., C.C.A.9 (Or.) 1918, 253 F. 865, 165 C.C.A. 345, certiorari denied 39 S.Ct. 390, 249 U.S. 615, 63 L.Ed. 803, affirmed on rehearing 258 F. 237, 169 C.C.A. 303, certiorari denied 40 S.Ct. 180, 251 U.S. 559, 64 L.Ed. 413.

In prosecution for conspiracy to use mails in connection with a scheme to defraud, replies to decoy letters sent by post office inspectors, are admissible to shwo that conspiracy actually existed. Holsman v. U.S., C.C.A.9 (Cal.) 1918, 248 F. 193, 160 C.C.A. 271, certiorari denied 39 S.Ct. 258, 249 U.S. 600, 63 L.Ed. 796.

Correspondence of a self-serving nature was not competent. Holsman v. U.S., C.C.A.9 (Cal.) 1918, 248 F. 193, 160 C.C.A. 271, certiorari denied 39 S.Ct. 258, 249 U.S. 600, 63 L.Ed. 796.

Under former § 638 of Title 28, it was proper in prosecution for using the mails in connection with scheme to defraud, to prove signature of defendant, to admit documents as to which witnesses testified they had seen defendant append his signature. Bowers v. U.S., C.C.A.9 (Cal.) 1917, 244 F. 641, 157 C.C.A. 89.

Defendant's self-serving answer to accusatory letter was not admissible on trial for conspiracy to pass counterfeit coins by reason of the admission of the accusatory letter which he offered in evidence. York v. U.S., C.C.A.9 (Cal.) 1916, 241 F. 656, 154 C.C.A. 414.

In a prosecution for using the mails to defraud, permission to an attorney for a corporation involved to read to the jury a letter written by him charging one defendant with crime and falsehoods, as a statement made to that defendant was error. Hart v. U.S., C.C.A.2 (N.Y.) 1917, 240 F. 911, 153 C.C.A. 597.

In a prosecution for conspiring to defraud the government, where the evidence did not establish the conspiracy, letters written by accused's alleged coconspirator, tending to show his guilt and participation in the conspiracy, were inadmissible, being hearsay. Stager v. U.S., C.C.A.2 (N.Y.) 1916, 233 F. 510, 147 C.C.A. 396.

In a prosecution for conspiracy to defraud the United States in violation of former § 88 of this title [now this section], a letter written by one defendant after completion of the fraudulent acts charged was inadmissible against his codefendant. Fain v. U.S., C.C.A.8 (S.D.) 1913, 209 F. 525, 126 C.C.A. 347.

The admission of unanswered letters written to a defendant on trial for using the mails to defraud by an associate in the business, containing intimations that the business was conducted by dishonest methods, was prejudicial error. Marshall v. U.S., C.C.A.2 (N.Y.) 1912, 197 F. 511, 117 C.C.A. 65, certiorari denied 33 S.Ct. 112, 226 U.S. 607, 57 L.Ed. 379.

On the trial of a defendant under former § 88 of this title [now this section] for conspiracy to commit an offense against the United States, a letter passing between others of the alleged conspirators was competent against the defendant as tending to prove the conspiracy, in the absence of specific objection to the part of it referring to defendant. Stirlen v. U.S., C.C.A.7 (Ill.) 1910, 183 F. 302, 105 C.C.A. 514, certiorari denied 31 S.Ct. 721, 220 U.S. 617, 55 L.Ed. 611.

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Evidence in a prosecution for conspiracy had a sufficient tendency to show the connection of other defendants with the conspiracy, to render letters written by them, charged in the indictment as overt acts, admissible in evidence against the defendants on trial. Jones v. U.S., C.C.A.9 (Or.) 1910, 179 F. 584, 103 C.C.A. 142.

On the trial of defendants for conspiracy to defraud the United States of certain lands, where a special agent for the Land Department testified that he asked one of the defendants for a statement as to the transaction, and in reply received a letter from him stating, "I send herewith the statement of Mr. Williams, covering, as I believe, all the points you suggested," and in closing an affidavit of said Williams to which were attached copies of contracts of different dates between the defendants relating to the acquisition of the lands in question, it was error to permit the prosecution to detach the copy of one of the contracts from the affidavit and to introduce the same, together with the letter in evidence, as a declaration or admission of defendant, and at the same time to exclude the affidavit and copies of the other contracts which formed an integral part of the statement. Perrin v. U.S., C.C.A.9 (Cal.) 1909, 169 F. 17, 94 C.C.A. 385. See, also, Benson v. U.S., Mo.1909, 169 F. 31, 94 C.C.A. 399. Criminal Law 409

On the trial of defendants charged with using the mails in the execution of a scheme to defraud, in which it was an important issue whether a bank conducted by defendants and others was honestly operated or merely used as a means for fraudulently obtaining money from innocent persons, an unauthenticated paper purporting to be a copy of a letter written by one unidentified third person to another, and making charges against the solvency and management of the bank, was not competent evidence merely because there was testimony that it had been shown to one of the defendants, and its admission was prejudicial error. Lemon v. U.S., C.C.A.8 (Ark.) 1908, 164 F. 953, 90 C.C.A. 617.

Evidence that a defendant, charged with having entered into a conspiracy with other defendants to make and utter counterfeit coins, was a relative of others of the defendants, that he resided with one of them for six weeks, during which time the counterfeit coins were there made, that he wrote the letter ordering the machine with which they were made, and that, after the arrest of one of the defendants, he wrote offering to assist in procuring bail--was sufficient as connecting defendant with the conspiracy to authorize the admission against him of statements of his coconspirators. Taylor v. U.S., C.C.A.9 (Idaho) 1898, 89 F. 954, 32 C.C.A. 449. Criminal Law 427(5)

In prosecution for conspiracy to violate narcotic laws, admission of letter of introduction given by defendant to narcotic agent and of testimony concerning purchase of opium pursuant to its delivery was not erroneous as indicating a different conspiracy than that charged, notwithstanding failure of indictment to mention person to whom letter was directed, where agent's agreement with defendant included introduction of agent to others engaged in narcotic traffic. U. S. v. Yee Ping Jong, W.D.Pa.1939, 26 F.Supp. 69.

637. Motive and intent, admissibility of evidence

In prosecution for conspiracy to defraud the United States, the district court did not err in admitting testimony concerning witness' dealings with one of the defendants, even though the statements of that defendant were not in furtherance of the conspiracy, where they did tend to connect that defendant with it by explaining his state of mind. Glasser v. U.S., U.S.Ill.1942, 62 S.Ct. 457, 315 U.S. 60, 86 L.Ed. 680, rehearing denied 62 S.Ct. 629, 315 U.S. 827, 86 L.Ed. 1222, rehearing denied 62 S.Ct. 637, 315 U.S. 827, 86 L.Ed. 1222.

Evidence of prior stock rental transaction involving another insurance company was relevant to show intent in broker's prosecution for fraud and conspiracy to defraud state insurance regulators by inflating insurance company's assets and admissible if its probative value outweighed its prejudicial effect. U.S. v. Cavin, C.A.5 (La.) 1994, 39 F.3d 1299. Criminal Law 371(1)

Guilty plea by former president of savings and loan to multiple criminal charges relating to unlawful real estate transaction between savings and loan and its owner was evidence of president's "intent to cause loss" to savings and loan, but did not establish liability under fidelity bond, as matter of law, where president admitted wrongdoing and

poor judgment at plea hearing but never admitted to intending to cause loss to savings and loan and instead testified that he believed transaction would benefit savings and loan. F.D.I.C. v. Oldenburg, C.A.10 (Utah) 1994, 34 F.3d 1529, rehearing denied. Evidence 265(11)

In prosecution for conspiracy to defraud government, evidence that defendant independently extorted $25,000 from government contractor was admissible as to such defendant, as relevant to issue of his intent to commit fraud, where his defense was that acts at issue constituted legitimate business deal as far as he was concerned. U.S. v. Ackal, C.A.5 (La.) 1983, 706 F.2d 523, rehearing denied 711 F.2d 1054.

In prosecution to defraud the United States of taxes, income tax returns of one defendant were admissible to show his intent to defraud, and to impeach his testimony and admission of records was not prejudicial to defendant. U.S. v. Carruth, C.A.9 (Cal.) 1983, 699 F.2d 1017, certiorari denied 104 S.Ct. 698, 464 U.S. 1038, 79 L.Ed.2d 164.

Substantial evidence, including evidence of defendant's knowledge of tax effects of sham bookkeeping entries of corporation and his corresponding deductions on books of fictitious company, established specific intent of defendant to defraud the United States regarding federal income taxes. U. S. v. Shermetaro, C.A.6 (Mich.) 1980, 625 F.2d 104.

In prosecution for conspiracy and violation of section 1952 of this title in attempt to set up interstate prostitution ring, evidence of defendant's earlier attempts to organize prostitution operation was properly admitted to prove intent and plan. U. S. v. Barbieri, C.A.10 (Okla.) 1980, 614 F.2d 715.

In prosecution under indictment charging aiding and abetting the interstate transportation of falsely made and forged securities and conspiracy to commit the substantive offenses, district court properly admitted testimony concerning a check scheme that was carried out prior to the conspiracy where the testimony was admissible as proof of motive, intent and the continuation of a common plan and where the testimony established that one of the codefendants was deeply involved in both operations, thus tending to show knowledge or absence of mistake on the codefendant's part as to the true nature of the counterfeit cashier's checks. U. S. v. Parnell, C.A.10 (Okla.) 1978, 581 F.2d 1374, certiorari denied 99 S.Ct. 852, 439 U.S. 1076, 59 L.Ed.2d 44.

Evidence of a conspirator's actions, even though they may have occurred before beginning of conspiracy alleged in indictment, are nevertheless admissible as proof of motive or intent touching upon conspiracy charge in indictment. U. S. v. Enright, C.A.6 (Mich.) 1978, 579 F.2d 980.

In prosecution for conspiracy to steal and possess part of interstate shipment of freight, theft of freight, and possession of goods stolen from interstate shipment, conversation between one defendant and owner of shop, at which stolen goods were allegedly stored, following police raid was admissible as evidence of defendant's guilty mind concerning goods stored at shop, including stolen goods in question. U. S. v. Trotter, C.A.3 (N.J.) 1976, 529 F.2d 806.

Evidence concerning history and philosophy of students' society and overall radical movement was relevant and admissible, in conspiracy prosecution, to show intent, purpose, aim and motives of the parties to the conspiracy; similarly admissible was transcript containing document which one of them submitted to his draft board in which he characterized himself as a "revolutionary" and as a member of an underground group. U. S. v. Baumgarten, C.A.8 (Mo.) 1975, 517 F.2d 1020, certiorari denied 96 S.Ct. 152, 423 U.S. 878, 46 L.Ed.2d 111.

Evidence that one defendant's girl friend, who was cashier at savings and loan association, embezzled traveler's checks from institution at defendant's bequest and on his assurance that checks would be covered during a subsequent robbery and evidence of agreement among defendants, the girl friend and another to rob institution during daylight hours was properly admitted in prosecution for conspiring to attempt to enter institution, since both the embezzlement and robbery agreement contributed to achieving the object of the charged conspiracy,

notwithstanding that such other criminal acts were not alleged in the indictment; in any event, such evidence was properly admitted to prove intent or motive. U. S. v. Clay, C.A.7 (Ill.) 1974, 495 F.2d 700, certiorari denied 95 S.Ct. 207, 419 U.S. 937, 42 L.Ed.2d 164.

Testimony of codefendant and alleged coconspirator in scheme to defraud was admissible not only to attest to the acts and declarations of defendant during execution of conspiracy to which he was a privy, but also to prove motive and design and to establish a common scheme relating to the matter on trial, as against defendant's contention that because codefendant was not fully apprised of the scheme his testimony was irrelevant and immaterial. U. S. v. Silvern, C.A.7 (Ill.) 1973, 494 F.2d 355, rehearing granted 484 F.2d 879.

Testimony going to proof of sale of three stolen shotguns by defendant and possession by defendant in his home of four stolen shotguns was admissible in prosecution for conspiring to transport and ship stolen firearms in interstate commerce, aiding and abetting transporting of stolen firearms, and for transporting certain stolen shotgun in interstate commerce on issue of whether defendant and persons unknown were acting in furtherance of existing conspiracy when such acts were committed and whether defendant and certain coconspirator shortly became members of such conspiracy and on issue of intent. U. S. v. Clifton, C.A.5 (Ga.) 1971, 447 F.2d 970.

Gun carried by defendant on airline flight from Indianapolis to St. Louis where his companion was to receive money from extortion victim was relevant and competent as probative element on question of intent involved in making the interstate trip to St. Louis and was properly admitted in prosecution for conspiring to make interstate trip to consummate extortion. U. S. v. Phillips, C.A.8 (Mo.) 1970, 433 F.2d 1364, certiorari denied 91 S.Ct. 900, 401 U.S. 917, 27 L.Ed.2d 819.

Evidence of prior acts establishing that a loan was a fraud on bank, that alleged accomplice cashed worthless checks at bank, that defendant had been advised that alleged accomplice was a "confidence man" and that defendant told alleged accomplice about banking procedures at banks so that alleged accomplice would know how to float nonsufficient fund checks could be properly introduced to show intent, plan and knowledge and was also admissible to refute defendant's testimony that he never knew of other's check kiting operations prior to certain date. U. S. v. Jones, C.A.9 (Cal.) 1970, 425 F.2d 1048, certiorari denied 91 S.Ct. 44, 400 U.S. 823, 27 L.Ed.2d 51.

In prosecution for burglary of bank and conspiracy to commit burglary, statements made by defendant to effect that he had been arrested for previously burglarizing a post office and that he needed money and proposed to find a place to burglarize for purpose of getting the needed funds was properly admitted to show motive. Bruinsma v. U. S., C.A.5 (Tex.) 1968, 402 F.2d 261.

Testimony of an FBI agent that while he was present at defendants' place of business he was approached by a lady who offered her services as a prostitute and that such offer was made in presence of defendant who was charged with conspiracy and substantive offenses of use of interstate facilities to carry on prostitution was admissible to show defendant's knowledge and intent, and existence of continuing course of conduct. U. S. v. Lyon, C.A.7 (Wis.) 1968, 397 F.2d 505, certiorari denied 89 S.Ct. 131, 393 U.S. 846, 21 L.Ed.2d 117.

Evidence which was admissible to establish motive of defendants charged with conspiracy to commit mail fraud was properly admitted even though it showed that defendants may have committed other crimes. Suhl v. U. S., C.A.9 (Cal.) 1968, 390 F.2d 547, certiorari denied 88 S.Ct. 2035, 391 U.S. 964, 20 L.Ed.2d 879.

Statement of defendant to secretary, after receiving phone call from codefendant, that he had to go over to Miami to get something that codefendant did not want to bring into the colony was admissible, as exception to hearsay rule, as a statement of defendant's intention and part of res gestae giving meaning to his trip to Miami and back. Rogers v. U. S., C.A.5 (Fla.) 1964, 334 F.2d 83, certiorari denied 85 S.Ct. 892, 380 U.S. 915, 13 L.Ed.2d 800, rehearing denied 85 S.Ct. 1102, 380 U.S. 967, 14 L.Ed.2d 157.

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In prosecution for conspiracy and interstate transportation of a forged security, wherein there was evidence that defendants had placed interstate instrument in a certain bank account, evidence that they had placed forged intrastate instruments in same account was admissible to show knowledge and intent, and to demonstrate overt acts committed in pursuance of conspiracy. Gardner v. U. S., C.A.10 (Colo.) 1960, 283 F.2d 580.

In prosecution for conspiracy, mail theft, and uttering and forging a United States Treasury check, evidence that defendant, who did not personally break open the mailbox or forge or cash the check, shared the fruits of the conspiracy was properly admitted to show defendant's motive in joining in the conspiracy and to tie him in with the commission of the crimes, contrary to his story of innocence. U S v. Johnson, C.A.2 (N.Y.) 1958, 254 F.2d 175, certiorari dismissed 78 S.Ct. 1378, 357 U.S. 933, 2 L.Ed.2d 1369.

Evidence of acts or transactions not done in furtherance of conspiracy may nevertheless be admitted if they tend to connect the conspirator with the conspiracy by explaining his state of mind. Connelly v. U.S., C.A.8 (Mo.) 1957, 249 F.2d 576, certiorari denied 78 S.Ct. 700, 356 U.S. 921, 2 L.Ed.2d 716, rehearing denied 78 S.Ct. 991, 356 U.S. 964, 2 L.Ed.2d 1072, certiorari denied 78 S.Ct. 701, 356 U.S. 921, 2 L.Ed.2d 716.

In prosecution for conspiring to defraud United States of proper administration of internal revenue laws and regulations, wherein one of defendants was repeatedly asked on cross-examination whether he had received any money, property, gifts or anything of value from one of other defendants, during time of transactions in question and witness was evasive but finally answered that his wife might have received some small gifts and that he also might have, evidence on rebuttal to effect that defendant accepted gifts of clothing from such other defendant was admissible on question of credibility of witness and on question of intent. Connelly v. U.S., C.A.8 (Mo.) 1957, 249 F.2d 576, certiorari denied 78 S.Ct. 700, 356 U.S. 921, 2 L.Ed.2d 716, rehearing denied 78 S.Ct. 991, 356 U.S. 964, 2 L.Ed.2d 1072, certiorari denied 78 S.Ct. 701, 356 U.S. 921, 2 L.Ed.2d 716.

In criminal conspiracy cases, utterances of a defendant reported in court by other witnesses have always been received to determine intent. Yates v. U. S., C.A.9 (Cal.) 1955, 225 F.2d 146, certiorari granted 76 S.Ct. 104, 350 U.S. 860, 100 L.Ed. 763, certiorari granted 76 S.Ct. 105, 350 U.S. 860, 100 L.Ed. 763, reversed on other grounds 77 S.Ct. 1064, 354 U.S. 298, 1 L.Ed.2d 1356.

In prosecution for conspiring to teach and advocate overthrow of United States government by force and violence, evidence of acts and declarations made prior to year charged in indictment as base year in which conspiracy began, was not violative of hearsay rule, where such evidence was not admitted as probative of truth of such declarations but rather as to fact of making such declarations. U. S. v. Mesarosh, C.A.3 (Pa.) 1955, 223 F.2d 449, certiorari granted 76 S.Ct. 218, 350 U.S. 922, 100 L.Ed. 807, reversed on other grounds 77 S.Ct. 1, 352 U.S. 1, 1 L.Ed.2d 1.

In prosecution for conspiring to teach and advocate overthrow of the United States government by force and violence, testimony of government witness that one of defendants had instructed a class that revolution could be brought about only by violent overthrow of government, was admissible against such defendant on question of his intent as well as to prove objective fact of Communist Party teachings, and such evidence was not hearsay. U. S. v. Mesarosh, C.A.3 (Pa.) 1955, 223 F.2d 449, certiorari granted 76 S.Ct. 218, 350 U.S. 922, 100 L.Ed. 807, reversed on other grounds 77 S.Ct. 1, 352 U.S. 1, 1 L.Ed.2d 1.

Under criminal statutes involving proof of a specific intent, a person may not be convicted simply on basis of an imputed intent, and he himself must be shown to have had the requisite intent, but it does not follow that proof of such an intent is limited to the particular person's own acts and declarations, whether prosecution be for a substantive crime or for crime of conspiracy. United States v. Flynn, C.A.2 (N.Y.) 1954, 216 F.2d 354, certiorari denied 75 S.Ct. 295, 348 U.S. 909, 99 L.Ed. 713, order withheld 75 S.Ct. 285, 99 L.Ed. 1298, rehearing denied 75 S.Ct. 436, 348 U.S. 956, 99 L.Ed. 747.

In prosecution for conspiracy to violate the Smith Act, § 2385 of this title, making it an offense to advocate

forcible overthrow of the government, relationships of defendants and of others acting in concert with them, defendants' positions of responsibility in the Communist Party, their activities in carrying forward the objectives of the Communist Party, and the nature of those objectives were all matters properly to be considered on the intent of any particular defendant. United States v. Flynn, C.A.2 (N.Y.) 1954, 216 F.2d 354, certiorari denied 75 S.Ct. 295, 348 U.S. 909, 99 L.Ed. 713, order withheld 75 S.Ct. 285, 99 L.Ed. 1298, rehearing denied 75 S.Ct. 436, 348 U.S. 956, 99 L.Ed. 747.

In prosecution of corporation and its president for conspiracy to defraud Government by obstructing proper functions of Internal Revenue Bureau in ascertaining levying, assessing and collecting taxes and penalties, testimony of chief accountant in Internal Revenue Collector's office and another as to defendants' machinations with such accountant regarding another corporation's account with collector and Government's exhibit with reference to such account were properly admitted in evidence to show defendants' criminal intent. Benatar v. U.S., C.A.9 (Cal.) 1954, 209 F.2d 734, certiorari denied 74 S.Ct. 786, 347 U.S. 974, 98 L.Ed. 1114.

In prosecution for conspiracy to commit offenses against United States by violating immigration statutes by effectuating illegal entry of three aliens as spouses of veterans of World War II, where case turned almost entirely on question of validity of three Parisian marriages and whether they were valid, in turn, depended on intent of parties at time ceremonies occurred, not only what was said and done prior to time of marriages, but conduct of parties and their statements after they returned to America were relevant and competent for jury to consider in determining whether they reflected an intent to have performed valid marriages or whether they tended to show intent was merely to pretend to be married. U.S. v. Lutwak, C.A.7 (Ill.) 1952, 195 F.2d 748, certiorari granted 73 S.Ct. 13, 344 U.S. 809, 97 L.Ed. 630, affirmed 73 S.Ct. 481, 344 U.S. 604, 97 L.Ed. 593, rehearing denied 73 S.Ct. 726, 345 U.S. 919, 97 L.Ed. 1352.

In prosecution for conspiracy to violate § 794 of this title by furnishing secret information to Russia with requisite intent, testimony of alleged coconspirator, who was not named as defendant in present case, that certain defendant had admitted stealing proximity fuse from his place of employment and giving same to Russia, from which word "stealing" was stricken on objection, was admissible to show intent on defendant's part to aid Russia, and it was not error to refuse to strike all of such testimony. United States v. Rosenberg, C.A.2 (N.Y.) 1952, 195 F.2d 583, certiorari denied 73 S.Ct. 20, 344 U.S. 838, 97 L.Ed. 652, rehearing denied 73 S.Ct. 134, 344 U.S. 889, 97 L.Ed. 687, certiorari denied 73 S.Ct. 21, 344 U.S. 838, 97 L.Ed. 652, rehearing denied 73 S.Ct. 180, 344 U.S. 889, 97 L.Ed. 687, rehearing denied 74 S.Ct. 860, 347 U.S. 1021, 98 L.Ed. 1142, motion denied 78 S.Ct. 91, 355 U.S. 860, 2 L.Ed.2d 67. Criminal Law 371(1); Criminal Law 696(1)

In prosecution of household implement dealer for conspiracy to cause to be made an instrument known to be false for purpose of influencing Federal Housing Administration to insure a loan to borrower to purchase household implements, wherein Government relied upon defendant's signature to a certificate to lender, which allegedly contained false statements, defendant is entitled to show his absence of criminal intent and that, the instrument being of doubtful interpretation, he acted on advice of his attorney, and exclusion of such showing is error. C. I. T. Corp. v. U.S., C.C.A.9 (Wash.) 1945, 150 F.2d 85.

In conspiracy prosecution, where issue included motives which actuated witness in his negotiations with defendant, it was relevant to show how acquaintance began, and in so doing it was competent to show that at time of original meeting between witness and defendant one of defendant's companions placed a gun on witness' desk. U.S. v. Compagna, C.C.A.2 (N.Y.) 1944, 146 F.2d 524, certiorari denied 65 S.Ct. 912, 324 U.S. 867, 89 L.Ed. 1422, rehearing denied 65 S.Ct. 1084, 325 U.S. 892, 89 L.Ed. 2004, certiorari denied 65 S.Ct. 913, 324 U.S. 867, 89 L.Ed. 1423.

Evidence outside of fraudulent scheme charged may be admitted which tends to elucidate or clarify false statements for purpose of showing intent. Harper v. U. S., C.C.A.8 (Mo.) 1944, 143 F.2d 795.

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Proof of defendant's knowledge of an agreement among alleged conspirators to commit an act prohibited by an Act of Congress in interest of public policy of United States is relevant in conspiracy prosecution for purpose of showing knowledge of existence of the agreement and an intent to participate in carrying it out. Egan v. U.S., C.C.A.8 (Mo.) 1943, 137 F.2d 369, certiorari denied 64 S.Ct. 195, 320 U.S. 788, 88 L.Ed. 474.

Where evidence showed that agreement for political contributions by holding company was on foot before date on which Public Utility Holding Company Act, § 79 et seq. of Title 15, became applicable to corporate defendant, and that agreement continued after that date in violation of said sections, it was permissible to prove acts occurring before said sections became applicable to corporate defendant for purpose of showing existence of the conspiracy and the intent of conspirators. Egan v. U.S., C.C.A.8 (Mo.) 1943, 137 F.2d 369, certiorari denied 64 S.Ct. 195, 320 U.S. 788, 88 L.Ed. 474.

In prosecution for conspiracy to transport stolen jewelry in interstate commerce, evidence that one with whom defendants traveled by automobile from Chicago to Nashville, some time after robbery and while conspiracy was in full operation, was subsequently convicted of prior armed jewelry robbery had some probative value in rebutting defendants' statements that trip with him was in a peaceful pursuit. Banning v. U.S., C.C.A.6 (Mich.) 1942, 130 F.2d 330, certiorari denied 63 S.Ct. 434, 317 U.S. 695, 87 L.Ed. 556.

Where the object of a conspiracy is criminal, evidence of conduct otherwise lawful but intended to achieve criminal objectives may properly be received to prove the conspiracy. American Medical Ass'n v. U.S., App.D.C.1942, 130 F.2d 233, 76 U.S.App.D.C. 70, certiorari granted 63 S.Ct. 44, 317 U.S. 613, 87 L.Ed. 497, affirmed 63 S.Ct. 326, 317 U.S. 519, 87 L.Ed. 434.

In conspiracy prosecution, where evidence when offered was admissible against codefendant, but no testimony had, at that time, definitely connected defendant with the conspiracy, trial court properly admitted the evidence with instruction that it was not to be considered as against defendant until other evidence was offered tending to show that he had knowingly joined the conspiracy. U.S. v. Ritchie, C.C.A.3 (N.J.) 1942, 128 F.2d 798.

In prosecution for use of mails in furtherance of scheme to defraud owners of public investment trust units, for violation of chapter 2A of Title 15 and for conspiracy to commit such crimes, evidence that company issuing units had failed to forward to trustee for safekeeping money collected from investors, and letters and telegraphic correspondence between company and trustee in relation to such default was admissible on question of fraudulent intent, notwithstanding the first default occurred and much of the correspondence passed before date on which it was alleged that fraudulent scheme was formed, and notwithstanding evidence tended to establish time of embezzlement or of defrauding the trustee. Troutman v. U. S., C.C.A.10 (Colo.) 1938, 100 F.2d 628.

In prosecution for conspiracy to defraud United States by agreement to sell gold to mint by falsely concealing in required affidavit true origin of gold, where government relied upon circumstantial evidence to show that supposed producers named in affidavit were non-existent, defendants were entitled to present all evidence tending to relieve them of implication of willful deception, or to establish their good faith. Hills v. U.S., C.C.A.9 (Cal.) 1938, 97 F.2d 710.

On trial of officers for conspiracy to import and transport liquor, where government proved making of false report of the transaction, evidence of true oral reports was not inadmissible, as self-serving, in view of its bearing on question of intent. Parmenter v. U. S., C.C.A.6 (Mich.) 1924, 2 F.2d 945, certiorari denied 45 S.Ct. 514, 268 U.S. 697, 69 L.Ed. 1163.

On trial of defendant on an indictment charging him with defrauding the government, by using in the manufacture of army shoes inner and outer soles not of the quality called for by the contract, evidence that he also knowingly used bad middle soles was competent on the question of intent. Sears v. U.S., C.C.A.1 (Mass.) 1920, 264 F. 257.

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In a prosecution for conspiracy to defraud the government of taxes on oleomargarine, a state statute prohibiting the sale of colored oleomargarine was admissible as throwing light on defendants' intent, in connection with evidence that defendants sold to certain retailers inconsiderable quantities of colored oleomargarine, and further evidence tending to show that they subsequently sold to the same purchasers large quantities of uncolored, which the purchasers colored and used to refill the original higher tax stamped package. Jelke v. U.S., C.C.A.7 (Ill.) 1918, 255 F. 264, 166 C.C.A. 434.

A defendant charged with conspiracy to defraud may properly testify to the absence of fraudulent intent and motive on his part. Sparks v. U.S., C.C.A.6 (Tenn.) 1917, 241 F. 777, 154 C.C.A. 479.

Where the intent with which defendants entered upon an unperfected homestead and removed improvements was material, they might show statements of third persons to establish their intent. Buchanan v. U.S., C.C.A.8 (Colo.) 1916, 233 F. 257, 147 C.C.A. 263.

Where two of four defendants jointly indicted for conspiracy had pleaded guilty, it was proper to refuse to permit them to testify as to their intent in doing certain acts. Cooper v. U.S., C.C.A.2 (N.Y.) 1916, 232 F. 81, 146 C.C.A. 273, certiorari denied 36 S.Ct. 725, 241 U.S. 675, 60 L.Ed. 1232.

In a prosecution for a similar conspiracy evidence of acts of the alleged perjurers committed long after they had sworn to and filed their statements, and that subsequent to such filing they had agreed with defendant D. for a money consideration to file a relinquishment of their applications at such a time as he could manage to take it up with script, together with a relinquishment so filed, was inadmissible to show motive. Dwinnell v. U.S., C.C.A.9 (Cal.) 1911, 186 F. 754, 108 C.C.A. 624.

Under an indictment for conspiracy to induce persons to swear falsely that they were applying to purchase public lands for their own benefit it was competent for the government to show, by the persons who made such applications to purchase lands, that it was their intention and understanding at the time that the lands should be conveyed by them to defendants, contrary to their sworn statements and testimony. Van Gesner v. U.S., C.C.A.9 (Or.) 1907, 153 F. 46, 82 C.C.A. 180.

On the trial of defendants, charged with conspiracy to defraud the United States, evidence is admissible to show the state of mind of one charged as a co-conspirator with respect to the matters to which the alleged conspiracy related, prior to the date when it is alleged to have been formed. U.S. v. Greene, S.D.Ga.1906, 146 F. 784.

Evidence that one of several alleged conspirators had conceived a fraudulent intent before he entered into the conspiracy is not competent to show that his alleged coconspirators, who had no knowledge of the facts, had such an intent before or at the time the conspiracy was charged. Miller v. U.S., C.C.A.8 (N.D.) 1904, 133 F. 337, 66 C.C.A. 399.

In prosecution for bank fraud and conspiracy to defraud United States, evidence of default, loss, and benefits received by defendants was relevant to defendants' intent and knowledge. U.S. v. Gressett, D.Kan.1991, 773 F.Supp. 270.

Borough councilman's testimony that garbage hauler was "still paying off" his municipality along with three others was admissible, in prosecution of the hauler and one councilman for, among other things, obstruction of justice and making a false material declaration to a grand jury, for purpose of showing motive, intent, knowledge and plan or design and for refuting defendants' story that payments were made for raffle tickets; Government was entitled to indicate or suggest to jury that garbage hauler was knowingly engaged in criminal activity and that payment was part of a design or course of conduct with which he was familiar. U. S. v. Long, W.D.Pa.1976, 421 F.Supp. 1355, affirmed 574 F.2d 761, certiorari denied 99 S.Ct. 577, 439 U.S. 985, 58 L.Ed.2d 657.

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Where indictment charging conspiracy to receive kickback and agreement to receive improper payment in connection with pension loan fund clearly raised issues of motive and intent, evidence of defendant's involvement in prior similar kickback arrangement was admissible to show course of conduct reasonably contemporaneous with acts charged. U. S. v. Wenger, S.D.N.Y.1970, 320 F.Supp. 1269.

In prosecution for conspiracy to violate Smith Act, § 2385 of this title, by advocating and teaching, and helping to organize as Communist Party persons teaching and advocating, overthrow of government by force, evidence as to government's previous civil action against one of defendants to cancel his citizenship certificate on ground that he was not attached to principles of Constitution, but was member of and supported principles of communist organizations advocating and teaching violent overthrow of government, at time of his naturalization, was admissible on issue of defendants' intent, though Supreme Court did not determine any issues raised by conspiracy indictment in judgment cancelling certificate. U. S. v. Schneiderman, S.D.Cal.1952, 106 F.Supp. 892.

The common design, which is essence of crime of conspiracy to commit offenses against United States, may be shown by evidence of alleged conspirators' steady pursuit of same object, whether acting separately or together or by common or different means, but ever leading to same unlawful result. U. S. v. Schneiderman, S.D.Cal.1952, 106 F.Supp. 892.

638. Opinion evidence, admissibility of evidence

Opinions of Executive Assistant of Commissioner of State Insurance Department interpreting documents which had been filed with department and which concerned life insurance company were admissible as expert testimony in prosecution for violations of Securities Act, section 77a et seq. of Title 15, mail fraud and conspiracy in absence of objection to witness' qualifications as expert in financial aspects of state chartered insurance companies; fact that witness was not in office at time documents were filed was irrelevant. McMahan v. U. S., C.A.7 (Ill.) 1970, 424 F.2d 1216, certiorari denied 91 S.Ct. 51, 400 U.S. 826, 27 L.Ed.2d 55.

In prosecution of defendants who allegedly made fraudulent credit statements and, as part of conspiracy, allegedly obtained false credit reports to substantiate credit information, testimony that there was similarity between credit statements and credit reports was permissible description of voluminous documents rather than impermissible invasion of jury's function. U. S. v. Lewis, C.A.7 (Ill.) 1969, 406 F.2d 486, certiorari denied 89 S.Ct. 1630, 394 U.S. 1013, 23 L.Ed.2d 39.

Testimony of bank auditor, who was not qualified by Government as expert witness, was not inadmissible as being expression of opinion by unqualified expert in prosecution for conspiring with assistant cashier of bank to defraud bank, where Government did not offer auditor as an expert witness, and matters to which he testified were not opinions but conclusions based on particulars drawn from data either observed by him or transmitted to him by those closely supervised, and data was available to defendant for use in cross-examination. U. S. v. Paxton, C.A.3 (N.J.) 1968, 403 F.2d 631, certiorari denied 89 S.Ct. 863, 393 U.S. 1082, 21 L.Ed.2d 775.

In prosecution for conspiring to teach and advocate overthrow of United States government by force and violence, admission of testimony by former Communist instructor in party classes as to meaning of terms in party constitution was not erroneous but was within trial court's discretion as to admission of opinion evidence. U. S. v. Mesarosh, C.A.3 (Pa.) 1955, 223 F.2d 449, certiorari granted 76 S.Ct. 218, 350 U.S. 922, 100 L.Ed. 807, reversed on other grounds 77 S.Ct. 1, 352 U.S. 1, 1 L.Ed.2d 1.

In a prosecution for conspiracy to defraud the United States out of public land, expressions of opinion by entrymen as to the value of the lands were irrelevant, except so far as defendants could be shown to be responsible therefor. Worden v. U. S., C.C.A.6 (Mich.) 1913, 204 F. 1, 122 C.C.A. 315.

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639. Overt acts, admissibility of evidence--Generally

In prosecution for conspiracy to convert union funds in which government attempted to prove conspiracy by proof that another purpose of the conspiracy, destruction of nonunion equipment, was achieved, proof that two nonunion contractors had equipment damaged during relevant time period was relevant especially where testimony clearly demonstrated defendant's involvement in the vandalism. U.S. v. Hickerson, C.A.7 (Ill.) 1984, 732 F.2d 611, certiorari denied 105 S.Ct. 159, 469 U.S. 846, 83 L.Ed.2d 95.

In prosecution for conspiracy in check-kiting scheme, testimony about opening and closing of six savings accounts, which did not constitute criminal acts, was admissible as proof of an overt act in furtherance of a conspiracy. U. S. v. Khamis, C.A.5 (Tex.) 1982, 674 F.2d 390.

Evidence of overt acts which occur after a conspiracy is formed and which are related to the object of the conspiracy is admissible regardless of whether the overt acts are charged in the indictment. U. S. v. Harris, C.A.7 (Ind.) 1976, 542 F.2d 1283, certiorari denied 97 S.Ct. 1558, 430 U.S. 934, 51 L.Ed.2d 779.

Admission of pre-statute of limitations evidence as to overt acts of conspiracy to prove nature and continuity of conspiracy was not erroneous where indictment was not limited to a conspiracy to corrupt defendant's behavior only during period of alleged conspiracy or to corrupt him only by payments at time he was assigned to one particular employer, and where indictment alleged a general conspiracy and no evidence indicated defendant's withdrawal from the conspiracy or a change in operation so as to vitiate any inference of agreement from prior acts. U. S. v. Seuss, C.A.1 (Mass.) 1973, 474 F.2d 385, certiorari denied 93 S.Ct. 2751, 412 U.S. 928, 37 L.Ed.2d 155.

Where there was evidence that defendants were almost without money prior to bank robbery, that afterwards they divided over $300,000 with another party, that during their journeys they and their girl friends gambled for high stakes, and that women were instructed to keep large sums on their persons for purposes of getaway, evidence as to large sum of money found in defendant's wallet and search of his motel room and in purse of other defendant's girl friend was relevant and admissible. U. S. v. Ravich, C.A.2 (N.Y.) 1970, 421 F.2d 1196, certiorari denied 91 S.Ct. 69, 400 U.S. 834, 27 L.Ed.2d 66.

Though hearsay declarations of coconspirator are admissible against the others only if made during and in furtherance of the conspiracy, acts relevant to prove conspiracy are admissible even if they occurred after conspiracy had ended. U. S. v. Bennett, C.A.2 (N.Y.) 1969, 409 F.2d 888, rehearing denied 415 F.2d 1113, certiorari denied 90 S.Ct. 113, 396 U.S. 852, 24 L.Ed.2d 101, rehearing denied 90 S.Ct. 376, 396 U.S. 949, 24 L.Ed.2d 256, certiorari denied 90 S.Ct. 117, 396 U.S. 852, 24 L.Ed.2d 101, certiorari denied 91 S.Ct. 1670, 402 U.S. 984, 29 L.Ed.2d 149.

That overt acts offered to prove conspiracy are also offered to prove successful accomplishment of purpose of conspiracy is immaterial if the offenses are separate and distinct. U.S. v. Shapiro, C.C.A.2 (N.Y.) 1939, 103 F.2d 775.

Overt acts of parties with other attending circumstances may be considered in determining whether conspiracy exists. Marx v. U.S., C.C.A.8 (Minn.) 1936, 86 F.2d 245.

Admission in conspiracy prosecution of evidence with regard to certain overt acts not mentioned in indictment was not erroneous. Lias v. U. S., C.C.A.4 (W.Va.) 1931, 51 F.2d 215, certiorari granted 52 S.Ct. 32, 284 U.S. 604, 76 L.Ed. 518, affirmed 52 S.Ct. 128, 284 U.S. 584, 76 L.Ed. 505.

Overt acts other than those charged in indictment for conspiracy may be shown, but only as corroborative of those charged. U.S. v. Hosier, D.C.La.1931, 50 F.2d 971.

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Acts occurring before alleged formation of conspiracy are admissible, if they tend to prove ultimate facts. Vendetti v. U.S., C.C.A.9 (Wash.) 1928, 27 F.2d 856, certiorari denied 49 S.Ct. 94, 278 U.S. 650, 73 L.Ed. 561.

Admission of evidence of overt act before requiring prima facie proof of conspiracy was not error. Eddington v. U.S., C.C.A.8 (Okla.) 1928, 24 F.2d 50.

Evidence of overt act, committed by one defendant and alleged to have been committed by another, is admissible. Kolbrenner v. U.S., C.C.A.5 (Tex.) 1926, 11 F.2d 754, certiorari denied 46 S.Ct. 489, 271 U.S. 677, 70 L.Ed. 1146 .

Any act of conspirators occurring during life of conspiracy is admissible for purpose of proving it, and government is not limited to proving overt acts alleged. Kolbrenner v. U.S., C.C.A.5 (Tex.) 1926, 11 F.2d 754, certiorari denied 46 S.Ct. 489, 271 U.S. 677, 70 L.Ed. 1146.

Evidence of an overt act not charged is admissible, if done in furtherance of conspiracy. Morrow v. U.S., C.C.A.8 (Mo.) 1926, 11 F.2d 256. See, also, Worthington v. U.S., C.C.A.Ill.1924, 1 F.2d 154, certiorari denied 45 S.Ct. 125, 266 U.S. 626, 69 L.Ed. 475; Houston v. U.S., Wash.1914, 217 F. 852, 133 C.C.A. 562, certiorari denied 35 S.Ct. 284, 238 U.S. 613, 59 L.Ed. 1490. Conspiracy 43(12)

Evidence of acts in furtherance of conspiracy by defendants' corporation were admissible, where the indictment charged that defendants conspired with parties to grand jury unknown. Ford v. U.S., C.C.A.9 (Cal.) 1926, 10 F.2d 339, certiorari granted 46 S.Ct. 475, 271 U.S. 652, 70 L.Ed. 1133, affirmed 47 S.Ct. 531, 273 U.S. 593, 71 L.Ed. 793.

Evidence of overt act is admissible in connection with other evidence in determining existence of conspiracy charged. Langley v. U.S., C.C.A.6 (Ky.) 1925, 8 F.2d 815, certiorari denied 46 S.Ct. 204, 269 U.S. 588, 70 L.Ed. 427. See, also, U.S. v. Richards, D.C.Neb.1906, 149 F. 443. Conspiracy 46

Evidence of any act tending to show conspiracy is relevant in prosecution for conspiracy, though only one act be alleged. Westfall v. U. S., C.C.A.6 (Ohio) 1924, 2 F.2d 973, 3 Ohio Law Abs. 481.

Where overt acts are of the character which are usually, if not necessarily, done pursuant to a previous scheme and plan, proof of the acts has at least a substantial tendency to show a pre-existing conspiracy. Parilla v. U.S., C.C.A.6 (Ohio) 1922, 280 F. 761.

Under an indictment for conspiracy, evidence of overt acts, though committed prior to the period of limitation, may be considered as bearing on the question of conspiracy. Baker v. U.S., C.C.A.8 (Okla.) 1921, 276 F. 283.

Overt acts, other than those charged in the indictment for conspiracy, tending to show defendant guilty, are admissible as against objection of irrelevancy. McKnight v. U.S., C.C.A.8 (Okla.) 1918, 252 F. 687, 164 C.C.A. 527, certiorari denied 39 S.Ct. 388, 249 U.S. 614, 63 L.Ed. 802.

In a prosecution for conspiring to violate the laws of the United States by giving and receiving rebates, alleged overt acts, which were in themselves lawful, being connected with the object of the conspiracy, may be shown in evidence. U.S. v. Grand Trunk Ry. Co. of Canada, W.D.N.Y.1915, 225 F. 283.

Under an indictment charging defendants as individuals, evidence of acts done in the name of corporations of which defendants were officers were admissible. Houston v. U.S., C.C.A.9 (Wash.) 1914, 217 F. 852, 133 C.C.A. 562, certiorari denied 35 S.Ct. 284, 238 U.S. 613, 59 L.Ed. 1490.

An overt act committed by one of the alleged coconspirators within the three years pursuant to a conspiracy

between him and the defendant, formed and followed by an overt act more than three years prior to the filing of the indictment without the defendant's consent or agreement within the three years to the continued existence and execution of the conspiracy, was incompetent to establish its existence and his participation therein within the three years. Ware v. U. S., C.C.A.8 (Neb.) 1907, 154 F. 577, 84 C.C.A. 503, 12 Am.Ann.Cas. 233, certiorari denied 28 S.Ct. 255, 207 U.S. 588, 52 L.Ed. 353.

Proof of the formation by the defendant and others, more than three years before the indictment, of such a conspiracy as that charged in the indictment and of an overt act thereunder prior to the three years, is insufficient to sustain the charge of a conspiracy within the three years, but in connection with evidence aliunde of the existence of the conspiracy and of the defendant's conscious participation in it within the three years, it is competent evidence for the consideration of the jury in determining the issue presented by the indictment. Ware v. U. S., C.C.A.8 (Neb.) 1907, 154 F. 577, 84 C.C.A. 503, 12 Am.Ann.Cas. 233, certiorari denied 28 S.Ct. 255, 207 U.S. 588, 52 L.Ed. 353.

Where an indictment charged the defendants with having conspired together "before and on" a certain date while evidence of acts done after that date was inadmissible as direct proof of an act then done in furtherance of the conspiracy, it was competent as proof of acts done before or on said date. Browne v. U.S., C.C.A.2 (N.Y.) 1905, 145 F. 1, 76 C.C.A. 31, certiorari denied 26 S.Ct. 755, 200 U.S. 618, 50 L.Ed. 623.

An overt act when proved may be considered as evidence of the conspiracy charged. U.S. v. Howell, W.D.Mo.1892, 56 F. 21.

The fact that the overt acts charged and proven were severally criminal is no answer in an indictment for conspiracy, and such overt acts may be proven to show the existence of the conspiracy charged. U. S. v. Rindskopf, W.D.Wis.1874, 27 F.Cas. 813, 6 Biss. 259, 8 Chi.Leg.N. 9, No. 16165. Conspiracy 37

640. ---- Acts of others, overt acts, admissibility of evidence

Coconspirators' acts, in selling counterfeit checks to undercover agent and talking with other agent about purchase of check-printing machine, were highly relevant to establish existence of conspiracy and its workings, so that district court did not abuse its discretion in admitting evidence of acts in prosecution for conspiracy to commit bank theft. U.S. v. Crocker, C.A.1 (Mass.) 1986, 788 F.2d 802.

Where conspiracy was in embryonic existence between accomplice and defendant's codefendant when accomplice referred federal agent to codefendant to do job that was intended to be fraud on federal government, statement by accomplice to federal agent was admissible against defendant as coconspirator's statement in furtherance of conspiracy, even though defendant joined conspiracy at later time. U.S. v. Harris, C.A.7 (Ill.) 1984, 729 F.2d 441.

Alleged overt act in nature of conversation between coconspirator and government undercover agents was properly retained in indictment since it was immaterial that only one coconspirator participated since such acts, if proven, clearly sufficed to show that the conspiracy was operative and such conversation as well as alleged trip by one conspirator involved attempts by the latter to fulfill the purpose of the conspiracy. U. S. v. Enstam, C.A.5 (Tex.) 1980, 622 F.2d 857, certiorari denied 101 S.Ct. 1351, 450 U.S. 912, 67 L.Ed.2d 336, certiorari denied 101 S.Ct. 1974, 451 U.S. 907, 68 L.Ed.2d 294.

Acts and declarations of one coconspirator are admissible against another if the existence of a conspiracy is in fact first established by independent evidence and if the acts and declarations occurred during and in furtherance of the conspiracy. U. S. v. Andrews, C.A.10 (Colo.) 1978, 585 F.2d 961.

Defendant's arrest prior to accomplishment of planned robbery of hotel did not constitute withdrawal from conspiracy to rob the hotel, absent showing of affirmative action of withdrawal, and, therefore, evidence of

coconspirators' conduct subsequent to defendant's arrest was admissible against defendant. U. S. v. Pearson, C.A.5 (Fla.) 1975, 508 F.2d 595, certiorari denied 96 S.Ct. 82, 423 U.S. 845, 46 L.Ed.2d 66.

Evidence of acts of coconspirators which occur after the entire conspiracy has ended and is complete may be introduced against all of the coconspirators if the evidence tends to prove the existence of the conspiracy. U. S. v. Payseur, C.A.9 (Cal.) 1974, 501 F.2d 966.

Conversations showing defendant's participation in narcotics conspiracy could not be admitted on theory that they constituted "verbal acts" of a coconspirator, where the statements relied on were not those of coconspirator, with respect to personal dealings with defendant but of another coconspirator who had no personal relationship with defendant. U. S. v. Cirillo, C.A.2 (N.Y.) 1974, 499 F.2d 872, certiorari denied 95 S.Ct. 638, 419 U.S. 1056, 42 L.Ed.2d 653.

Testimony by coconspirators concerning numerous flimflams and other criminal activities over a long period of time was admissible to support an attack on credibility of coconspirators developed by defendant on cross-examination. U. S. v. Cochran, C.A.5 (Fla.) 1974, 499 F.2d 380, rehearing denied 502 F.2d 1168, certiorari denied 95 S.Ct. 810, 419 U.S. 1124, 42 L.Ed.2d 825.

In view of the ample independent proof of conspiracy to which defendant was a party, evidence of telephone calls to bank by person representing himself as defendant was clearly admissible on theory that the calls were made by a coconspirator or on alternative theory that defendant actually made the calls. U. S. v. Zane, C.A.2 (N.Y.) 1974, 495 F.2d 683, certiorari denied 95 S.Ct. 174, 419 U.S. 895, 42 L.Ed.2d 139.

When two or more persons have conspired to commit criminal offense anything said or done by one of them, during the existence of the conspiracy, and in furtherance of the common design, may be admitted as evidence against the others. U. S. v. Vaught, C.A.4 (S.C.) 1973, 485 F.2d 320.

Where evidence was more than sufficient to show that coconspirators participated in overt acts in furtherance of conspiracy, such overt acts were properly admitted against another coconspirator, regardless of lack of proof as to participation by latter, and whether or not latter was present at time acts were committed. U. S. v. Fontenot, C.A.5 (Ga.) 1973, 483 F.2d 315.

In conspiracy prosecution, defendant's alleged overt act in favor of another alleged coconspirator was admissible although alleged coconspirator had been acquitted on conspiracy charge in earlier trial. U. S. v. Bass, C.A.8 (Ark.) 1973, 472 F.2d 207, certiorari denied 93 S.Ct. 2751, 412 U.S. 928, 37 L.Ed.2d 155.

Evidence that simultaneously with offenses, two alleged coconspirators deposited large amounts of cash and bearer bonds in custodial accounts identified only by number provided an ample nexus with the conspiracy for purpose of admitting evidence of activities in relation to account. U. S. v. Kenny, C.A.3 (N.J.) 1972, 462 F.2d 1205, certiorari denied 93 S.Ct. 233, 409 U.S. 914, 34 L.Ed.2d 176, certiorari denied 93 S.Ct. 234, 409 U.S. 914, 34 L.Ed.2d 176.

Unarrested coconspirator still operating in furtherance of conspiracy may say and do things which may be introduced against coconspirator, who has been arrested prior to the saying and doing of such things, if conspiracy is still in operation. U. S. v. Wentz, C.A.9 (Cal.) 1972, 456 F.2d 634.

Rule that acts and declarations of each participant in a conspiracy are admissible against all governed complaints made as to evidence on conduct of two defendants vis-a-vis acts and admissions of coconspirator, and likewise provided nexus for establishing defendants' culpability on all substantive counts, even though one or both defendants did not actually make alleged fraudulent mailings or sales. U. S. v. Henderson, C.A.8 (N.D.) 1971, 446 F.2d 960, certiorari denied 92 S.Ct. 536, 404 U.S. 991, 30 L.Ed.2d 543.

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Previous acts and declarations of fellow conspirators became admissible against defendant who may have entered conspiracy at later date, at least insofar as they tended to show nature and objectives of conspiracy he joined. U. S. v. Hickey, C.A.7 (Ill.) 1966, 360 F.2d 127, certiorari denied 87 S.Ct. 284, 385 U.S. 928, 17 L.Ed.2d 210.

Disposal of murder weapon by coconspirator fleeing from police is act in furtherance of conspiracy and probative against both conspirators. U. S. ex rel. Wilson v. Essex County Court, Law Division, D.C.N.J.1976, 406 F.Supp. 991.

In prosecution for conspiracy to violate narcotic laws, prejudicial joinder could not be based upon claim that evidence of third overt act, alleged to have been committed by codefendant alone, would unduly influence jury in determining guilt or innocence of defendant, where third overt act alleged appeared to be an act in furtherance of the conspiracy. U. S. v. Ashlock, W.D.Mo.1974, 387 F.Supp. 19.

Acts by fellow conspirators in carrying out conspiracy are receivable in evidence against defendants charged with the crime of conspiracy. U. S. v. Garrison, E.D.Wis.1958, 168 F.Supp. 622.

641. Pecuniary interest of defendants, admissibility of evidence

In prosecution for conspiracy, evidence that defendant shared in fruits of conspiracy helped to paint the entire picture of the conspiracy and thus was relevant and admissible unless otherwise objectionable. U S v. Johnson, C.A.2 (N.Y.) 1958, 254 F.2d 175, certiorari dismissed 78 S.Ct. 1378, 357 U.S. 933, 2 L.Ed.2d 1369.

In conspiracy prosecution, introduction of memorandum showing pecuniary interest of all of defendants was not error, where limited as against defendant who wrote it. Kuhn v. U.S., C.C.A.9 (Cal.) 1928, 24 F.2d 910, modified on denial of rehearing 26 F.2d 463, certiorari denied 49 S.Ct. 11, 278 U.S. 605, 73 L.Ed. 533.

642. Photographs, admissibility of evidence

Trial court, in prosecution for interstate transportation of counterfeit payroll checks and conspiracy, did not abuse its discretion in admitting photographs showing one defendant cashing such checks where the purpose and function of the photographic apparatus, as well as the conditions under which the photographs were made, were adequately explained by the government's witnesses, and there was no question of the photographs' relevancy to the issues of sub judice. U. S. v. Moseley, C.A.5 (Fla.) 1971, 450 F.2d 506, certiorari denied 92 S.Ct. 1200, 405 U.S. 975, 31 L.Ed.2d 250.

There was no prejudicial effect in admission, in prosecution for conspiracy to counterfeit, of photographs of items found in room where printing activities were assertedly carried out and in rejection of requirement that equipment and materials themselves be produced in court. U. S. v. Lukasik, C.A.7 (Ill.) 1965, 341 F.2d 325, certiorari denied 85 S.Ct. 1770, 381 U.S. 938, 14 L.Ed.2d 702.

"Rogues gallery" photographs of defendant's alleged co-conspirators, who had previously pleaded guilty to conspiracy, were validly used to enable various witnesses to establish identity of co-conspirators, as bearing upon their relationship to, and association with, defendant; and there being no jury, presence of police numbers on photographs was not prejudicial, especially in light of assurances by trial judge against such harm. U. S. v. Boston, C.A.2 (N.Y.) 1964, 330 F.2d 937, certiorari denied 84 S.Ct. 1940, 377 U.S. 1004, 12 L.Ed.2d 1053.

In prosecution of superintendent of police of a town for conspiring to deprive Negro inhabitants of rights, privileges and immunities secured to them by Constitution and laws of United States, and in prosecution of such superintendent and two police officers for subjecting Negro inhabitants to deprivation of rights, privileges and immunities, under color of law, permitting introduction into evidence of photographs showing destruction of and damage to personalty contained in building in which involved Negro attempted to reside, which destruction and

damage allegedly resulted from riots of townspeople, was error prejudicial to defendants because of their inflammatory character. U. S. v. Konovsky, C.A.7 (Ill.) 1953, 202 F.2d 721.

Photographs of scene of seizure of liquor was competent against defendant not directly identified and testimony that defendant urged government witness to refuse to testify on ground of self-incrimination was competent as tending to show conscious guilt. Madden v. U.S., C.C.A.9 (Cal.) 1927, 20 F.2d 289, certiorari denied 48 S.Ct. 116, 275 U.S. 554, 72 L.Ed. 423.

643. Photostats, admissibility of evidence

Admission of photostatic copies of letters written to one of defendants by her husband, since deceased, which letters had been put in evidence at previous trial, was not error as violative of U.S.C.A.Const. Amends. 4, 5, or 6, on ground that letters were involuntarily produced by reason of necessity of rebutting erroneous position that Government took at former trial. Ballard v. U.S., C.C.A.9 (Cal.) 1943, 138 F.2d 540, certiorari granted 64 S.Ct. 427, 320 U.S. 733, 88 L.Ed. 434, reversed 64 S.Ct. 882, 322 U.S. 78, 88 L.Ed. 1148, on remand 152 F.2d 941.

In prosecution for violating §§ 483 and 1593 of Title 19, and for conspiring to violate such sections, photostatic copies of defendant's bank statements showing $15,000 withdrawal on February 13, 1940, was admissible to corroborate testimony of witness that in early February, 1940, defendant met witness at bank and handed him $15,000 in cash, and the use of the photostatic copies was not excluded by the "best evidence" rule, where contents of statements were not questioned. U.S. v. Kushner, C.C.A.2 (N.Y.) 1943, 135 F.2d 668, certiorari denied 63 S.Ct. 1449, 320 U.S. 212, 87 L.Ed. 1850, rehearing denied 64 S.Ct. 32, 320 U.S. 808, 88 L.Ed. 488.

Photostatic copies of government documents, duly authenticated, were properly admitted. Cooper v. U.S., C.C.A.8 (Iowa) 1925, 9 F.2d 216.

644. Tape recordings, admissibility of evidence

In conspiracy trial, trial court properly admitted taped conversations even though investigation into the alleged conspiracy occurred years after the conspiracy ended. U.S. v. Davanzo, C.A.11 (Fla.) 1983, 699 F.2d 1097.

In joint trial of various defendants for conspiracy, inter alia, tape recording of telephone conversations between particular defendant and government informant was properly played before jury in entirety, in view of cautionary instruction given before and after admission that it was being admitted only against particular defendant, in view of admissibility of references to codefendants for impeachment of particular defendant who in his testimony had denied wrongdoing by codefendants, and in view of there being no Bruton confrontation problem being presented. U. S. v. Kenny, C.A.9 (Cal.) 1981, 645 F.2d 1323, certiorari denied 101 S.Ct. 3059, 452 U.S. 920, 69 L.Ed.2d 425, certiorari denied 102 S.Ct. 121, 454 U.S. 828, 70 L.Ed.2d 104. Criminal Law 673(4)

Admission of certain tape-recorded conversations between defendant and alleged coconspirator was not an abuse of discretion as long as trial court carefully considered objection that portions of recording were inaudible and carefully regulated jury's consideration of same. U. S. v. Enright, C.A.6 (Mich.) 1978, 579 F.2d 980.

In prosecution for bribery and conspiracy to bribe criminal investigators of Immigration and Naturalization Service, trial court did not abuse its discretion in admitting into evidence portions of tape recordings indicating that one defendant had knowledge of narcotics activities, in view of facts that recorded conversations revealed awareness rather than involvement in narcotics activities, that trial judge persistently admonished jury that traffic in narcotics was irrelevant to issues before them, and that conversations were probative of prosecution's contention that cordial relations existed between defendant and criminal investigators. U. S. v. Ong, C.A.2 (N.Y.) 1976, 541 F.2d 331, certiorari denied 97 S.Ct. 814, 429 U.S. 1075, 50 L.Ed.2d 793, certiorari denied 97 S.Ct. 1559, 430 U.S. 934, 51 L.Ed.2d 780.

Where one of the members of conspiracy, as a government informer, allowed himself to be equipped with a radio transmitter, tape recording of defendants' conversations with informer as recorded by government agents on receiving end of transmitter was properly admitted in evidence after trial judge out of presence of jury passed on its audibility and there was adequate testimony from which jury could draw its conclusions as to voice identification and accuracy of transcript. U. S. v. Marrapese, C.A.2 (Conn.) 1973, 486 F.2d 918, certiorari denied 94 S.Ct. 1597, 415 U.S. 994, 39 L.Ed.2d 891.

Where court, prior to trial, ordered counsel for both parties to listen to tapes to determine where they disagreed as to words heard on the tapes, where parties agreed that the transcripts accurately reflected the words on the tapes, with certain exceptions as to which it was agreed that the transcripts would contain the version believed accurate by each party, and where government agreed with most of the changes sought by defense counsel, it was not an abuse of discretion to admit the tapes and transcripts into evidence, in prosecution for conspiracy to travel in interstate commerce in furtherance of bribery, and for perjury, nor to allow jury to retain the transcripts during trial and during their deliberations. U. S. v. Carson, C.A.2 (N.Y.) 1972, 464 F.2d 424, certiorari denied 93 S.Ct. 268, 409 U.S. 949, 34 L.Ed.2d 219.

Tapes and transcripts of conversations between defendant and persons, who did not testify, were admissible, in prosecution of internal revenue agent for various counts growing out of alleged bribery of fellow agent, as declarations in furtherance of conspiracy where as to each conversation there was showing of joint venture to which defendant was party though formal conspiracy charge had not been brought against several persons involved in such conversations. U. S. v. Weiser, C.A.2 (N.Y.) 1969, 428 F.2d 932, certiorari denied 91 S.Ct. 1606, 402 U.S. 949, 29 L.Ed.2d 119.

Failure of trial court to have tape recording of conversation between defendant and conspiracy victim played to jury after tape recording had been admitted into evidence was not prejudicial on theory that tape was exculpatory. U. S. v. Littman, C.A.2 (N.Y.) 1970, 421 F.2d 981, certiorari denied 91 S.Ct. 448, 400 U.S. 991, 27 L.Ed.2d 438.

645. Prior convictions, admissibility of evidence

In prosecution for conspiracy to steal funds from and armed larceny of savings and loan association in which defendant was found not guilty of killing to avoid apprehension for larceny, evidence of murder was not so insubstantial that it was introduced purely to prejudice jury against defendant and, therefore, admission of that evidence was not error. U.S. v. Jackson, C.A.9 (Cal.) 1985, 756 F.2d 703.

Evidence regarding a prior bust out attempt was admissible in mail fraud prosecution as evidence detailing the early stages of single, continuing conspiracy. U. S. v. Crockett, C.A.5 (Ga.) 1976, 534 F.2d 589.

There was no error in allowing Government to present evidence of other crimes to show system and intent in prosecution for conspiring to defraud and for defrauding certain persons through the use of mails and interstate telephonic communications. U. S. v. Frick, C.A.5 (La.) 1973, 490 F.2d 666, certiorari denied 95 S.Ct. 55, 419 U.S. 831, 42 L.Ed.2d 57.

Previous acts of coconspirator may be admissible against a defendant once a prima facie case of conspiracy is proved and previous acts show nature and objectives of the conspiracy. U. S. v. Morton, C.A.8 (Ark.) 1973, 483 F.2d 573.

In prosecution for conspiracy to violate revenue laws dealing with distilled spirits, permitting jury to consider defendant's prior criminal offenses for the purpose of determining his intent and guilty knowledge was not improper, especially in light of defendant's contention that he had no guilty intent or knowledge with respect to whiskey transactions in Alabama. U. S. v. Dryden, C.A.5 (Ala.) 1970, 423 F.2d 1175, certiorari denied 90 S.Ct. 1869, 398 U.S. 950, 26 L.Ed.2d 290.

Testimony of coconspirator admitting pleading guilty to charge similar to one for which defendants were prosecuted, passing counterfeit money, admitting presence of defendants at time of offense and that he had received note from them, was admissible. U. S. v. Gleeson, C.A.10 (Kan.) 1969, 411 F.2d 1091.

Defendant who testified on direct examination that he had no connection with narcotics opened door to proof impeaching such specific testimony so that court could, without error, permit government to ask him what prior conviction was for and to introduce record thereof. U. S. v. Bentvena, C.A.2 (N.Y.) 1963, 319 F.2d 916, certiorari denied 84 S.Ct. 345, 375 U.S. 940, 11 L.Ed.2d 271, rehearing denied 90 S.Ct. 894, 397 U.S. 928, 25 L.Ed.2d 108, rehearing denied 84 S.Ct. 515, 375 U.S. 989, 11 L.Ed.2d 476, certiorari denied 84 S.Ct. 346, 375 U.S. 940, 11 L.Ed.2d 271, rehearing denied 84 S.Ct. 1162, 377 U.S. 913, 12 L.Ed.2d 183, certiorari denied 84 S.Ct. 353, 375 U.S. 940, 11 L.Ed.2d 272, certiorari denied 84 S.Ct. 354, 375 U.S. 940, 11 L.Ed.2d 272, certiorari denied 84 S.Ct. 355, 375 U.S. 940, 11 L.Ed.2d 272, certiorari denied 84 S.Ct. 360, 375 U.S. 940, 11 L.Ed.2d 272.

In prosecution for conspiracy in regard to marihuana and for substantive violations of laws in regard to marihuana, permitting government to inquire of defendant as to other alleged offenses was not error where purpose of inquiry was merely to show that the felony offense of which on his direct examination defendant had admitted he had been convicted, was an offense concerning marihuana. Padron v. U.S., C.A.5 (Tex.) 1958, 254 F.2d 574, certiorari denied 79 S.Ct. 22, 358 U.S. 815, 3 L.Ed.2d 57.

In prosecution for conspiracy to transport stolen motor vehicles in interstate commerce, and for knowingly aiding and abetting in sale of such automobiles, evidence of prior conviction of defendant in Juvenile Court in relation to wrongful possession of automobile was admissible even though conviction was remote in time, if trial court, in sound exercise of its discretion, concluded that offense had bearing upon credibility of witness. U.S. v. Bucur, C.A.7 (Ind.) 1952, 194 F.2d 297.

In prosecution for conspiracy, bribery and evading service in armed forces, evidence of defendant's conviction of robbery by assault in 1933 was admissible for purposes of impeachment where defendant took the witness stand in his own behalf. Claunch v. U.S., C.C.A.5 (Tex.) 1946, 155 F.2d 261.

In prosecution for conspiracy to transport in interstate commerce securities of value of $5,000, knowing them to have been stolen, admission of evidence that accused had been convicted for earlier crimes of the same sort was not error, notwithstanding defendant had confessed in writing the commission of the earlier crimes. United States v. Bollenbach, C.C.A.2 (N.Y.) 1944, 147 F.2d 199, certiorari granted 65 S.Ct. 915, 324 U.S. 837, 89 L.Ed. 1401, reversed on other grounds 66 S.Ct. 402, 326 U.S. 607, 90 L.Ed. 350.

In prosecution for violation of federal liquor laws and conspiracy to violate such laws, where an alleged accomplice testified as a government witness, government was warranted in bringing out on direct examination that the witness had been previously convicted of serious crimes as bearing on credibility of the witness. U.S. v. Vanco, C.C.A.7 (Ill.) 1942, 131 F.2d 123.

In prosecution for conspiracy to sell liquors on which taxes were not paid, with intent to defraud the United States, and for unlawful possession, sale and transfer of distilled spirits in unstamped containers, evidence of convictions of liquor violations several years before and of specific unlawful acts was not admissible, though defendant introduced evidence of general reputation for integrity, in absence of proof that prior convictions and unlawful acts were known to the community or impaired defendant's reputation for integrity. Eley v. U. S., C.C.A.6 (Ohio) 1941, 117 F.2d 526.

Permitting prosecuting attorney, by questions asked, to disclose purported prior conviction of defendant, was reversible error, where defendant did not testify. Mercer v. U S, C.C.A.3 (Pa.) 1926, 14 F.2d 281.

The court, as trier of the fact, gives strong heed to admonition that mere suspicious conduct is insufficient to

support criminal charges; that association with alleged conspirators or known criminals does not supply the required degree of proof; and that a defendant has a criminal record or that one even admits his sole income during period covered by indictment was derived from various criminal activities, including sale of narcotics, is no evidence of specific charge made against a defendant, but character and prior record of a defendant who testified on his own behalf bear upon and may properly be considered upon issue of his credibility. U. S. v. Beigel, S.D.N.Y.1966, 254 F.Supp. 923, affirmed 370 F.2d 751, certiorari denied 87 S.Ct. 2049, 387 U.S. 930, 18 L.Ed.2d 989, certiorari denied 87 S.Ct. 2053, 387 U.S. 930, 18 L.Ed.2d 989, certiorari denied 87 S.Ct. 2062, 387 U.S. 936, 18 L.Ed.2d 998.

Evidence of defendant's prior convictions on charges for offenses similar to offense with which defendant is charged with conspiring to commit is relevant to show guilty knowledge and intent. U. S. v. Cisneros, N.D.Cal.1961, 191 F.Supp. 924, affirmed 322 F.2d 948.

Where prosecutor called two coconspirators to testify in trial of accused for conspiracy and accused knew of whereabouts of remaining coconspirators and called two of them as witnesses, accused could not complain that he was prejudiced because testimony of coconspirators called by accused was discredited upon cross-examination by their admissions of convictions of prior offenses. U. S. v. Peterson, E.D.Pa.1938, 24 F.Supp. 470.

646. Privileged communications, admissibility of evidence

Tapes of project meetings were admissible under crime-fraud exception to attorney-client privilege, as transcripts of those tapes, along with independent evidence, demonstrated that attorney was retained in order to promote intended or continuing criminal or fraudulent activity; purpose of project was to cover up past criminal wrongdoing, and project involved discussion and planning for future frauds against Internal Revenue Service. U.S. v. Zolin, C.A.9 (Cal.) 1990, 905 F.2d 1344, certiorari denied 111 S.Ct. 1309, 499 U.S. 920, 113 L.Ed.2d 244.

Error in admitting privileged conversation between defendant and attorney regarding propriety of employment of government officer, in criminal prosecution related to that employment, could not be deemed harmless, in that conversation was central to Government's proof that defendant had criminal intent necessary for charge of conspiring to defraud the United States. U.S. v. White, C.A.D.C.1989, 887 F.2d 267, 281 U.S.App.D.C. 39.

Evidence in prosecution for conspiracy to embezzle and misapply bank funds sustained finding that attorney who was present at a meeting between defendant and his counsel was not acting as an attorney or an agent at that meeting, and therefore, defendant's comments at such meeting did not come within the attorney-client privilege. U. S. v. Landof, C.A.9 (Cal.) 1978, 591 F.2d 36.

Where husband and wife are engaged in criminal conspiracy, extrajudicial statements of either made in furtherance of conspiracy may be admitted against other. U. S. v. Price, C.A.9 (Wash.) 1978, 577 F.2d 1356, certiorari denied 99 S.Ct. 835, 439 U.S. 1068, 59 L.Ed.2d 33.

Spousal privilege belongs both to party spouse, who may prevent spouse from testifying, and to nonparty spouse, who may sua sponte refuse to testify. U. S. v. Trotter, C.A.3 (N.J.) 1976, 529 F.2d 806.

Admission of defendant's wife's statement that she had told defendant that he was going to get in trouble "messing" with his brother and "those counterfeits" was prejudicial error as to defendant, even though statement was made in presence of defendant and even if wife was a coconspirator, where statement was made after defendant's arrest. U. S. v. Williams, C.A.5 (Fla.) 1971, 447 F.2d 894.

Admission of testimony by telegraph company employee identifying and explaining company records which had been subpoenaed to show that one defendant had wired money to another defendant over objection that testimony as to confidential messages was prohibited by the Communications Act, section 605 of Title 47, was not error

where coconspirators had informed prosecution of the communication prior to trial and a subpoena duces tecum had been issued directing an agent of telegraph company to bring records to court. Woodring v. U. S., C.A.10 (Okla.) 1967, 376 F.2d 619, certiorari denied 88 S.Ct. 153, 389 U.S. 885, 19 L.Ed.2d 182.

Statement of defendant's common-law wife reciting wife's participation in conspiracy with defendant to transport women in interstate commerce for prostitution purposes was admissible in prosecution for the conspiracy, despite references to conversations with defendant, in absence of indication that the conversations were intended to be privileged. Baker v. U. S., C.A.10 (Colo.) 1964, 329 F.2d 786, certiorari denied 85 S.Ct. 101, 379 U.S. 853, 13 L.Ed.2d 56.

In prosecution for using and for conspiring to use mails to defraud in sale of stock in gold mines, testimony on behalf of government by one-time attorney for one of defendants was not privileged where it related to conversations and communications with defendant during the commission and in furtherance of the crime and where a prima facie case had already been established by other testimony. U.S. v. Bob, C.C.A.2 (N.Y.) 1939, 106 F.2d 37, certiorari denied 60 S.Ct. 115, 308 U.S. 589, 84 L.Ed. 493.

Testimony by witness, who was an attorney, about statement made to him by one of defendants was not subject to attorney-client privilege objection where defendant did not come to witness to consult him as an attorney, and witness did not testify to information volunteered on the occasion in question. U. S. v. Barrow, E.D.Pa.1964, 229 F.Supp. 722, affirmed in part, reversed in part 363 F.2d 62, certiorari denied 87 S.Ct. 703, 385 U.S. 1001, 17 L.Ed.2d 541. Witnesses 198(2); Witnesses 199(1)

In prosecution of defendants, who were organizers and operators of five trade schools, for conspiring to defraud Government by fraudulently inflating cost basis of tuition rate and by fraudulently increasing cost to be charged to Veterans' Administration, loss of privilege of confidential communication with respect to certain conversations between defendants and an attorney who had been a director and secretary of three of trade schools, was not dependent upon showing of a conspiracy. U. S. v. Weinberg, M.D.Pa.1955, 129 F.Supp. 514, affirmed 226 F.2d 161, certiorari denied 76 S.Ct. 305, 350 U.S. 933, 100 L.Ed. 815.

In prosecution of defendants who organized and operated five trade schools, for conspiracy to defraud Government by fraudulently inflating cost basis of tuition rates and by fraudulently inflating and increasing cost to be charged to Veterans' Administration, testimony by witness, who had been secretary and director of three of schools and who had been named in indictment as co-conspirator but had not been indicted, offered for purpose of clearing his own reputation was not objectionable on theory it concerned confidential communications between defendants and witness, who was an attorney. U. S. v. Weinberg, M.D.Pa.1955, 129 F.Supp. 514, affirmed 226 F.2d 161, certiorari denied 76 S.Ct. 305, 350 U.S. 933, 100 L.Ed. 815.

In prosecution for conspiracy, stock manipulation, and mail fraud, criminal reference report or other documents of transmittal from Securities and Exchange Commission to Department of Justice were privileged as internal government memoranda and need not be revealed to defendants until trial. U. S. v. Bloom, E.D.Pa.1977, 78 F.R.D. 591.

647. Regulations, admissibility of evidence

In prosecution for conspiracy to make false statements to secure home modernization loans under National Housing Act, § 1701 et seq. of Title 12, admission of regulations of Administrator which did not become effective until after all loans but one had been made was not error, where it was not pointed out in what important respect the regulations differed from prior regulations in effect when other loans were made. U.S. v. Groopman, C.C.A.2 (N.Y.) 1945, 147 F.2d 782, certiorari denied 66 S.Ct. 29, 326 U.S. 745, 90 L.Ed. 445.

18 U.S.C.A. § 371

Where a general regulation promulgated by the General Land Office respecting homestead entries of public land, for the government of the officers of local land offices, was pertinent to the issue as to the criminal intent of a defendant charged with a criminal offense under the land laws as corroborating his testimony as to his understanding of the requirement of the law, by showing that such understanding was in accordance with that of the Land Department until after the alleged offense, he was entitled to have such regulation placed before the jury as a matter of evidence, and its exclusion was error. Nurnberger v. U.S., C.C.A.8 (N.D.) 1907, 156 F. 721, 84 C.C.A. 377.

648. Relations between parties, admissibility of evidence

Evidence concerning history and philosophy of students' society and overall radical movement was relevant and admissible, in conspiracy prosecution, to show association of defendants with one another prior to date fixed in indictment; similarly admissible was society newsletter containing reference to meeting attended by two alleged conspirators. U. S. v. Baumgarten, C.A.8 (Mo.) 1975, 517 F.2d 1020, certiorari denied 96 S.Ct. 152, 423 U.S. 878, 46 L.Ed.2d 111.

Evidence warranted trial court's findings, with respect to plan of former lawyer for two defendants to tape-record conversations in his office allegedly to prevent persons involved in charged conspiracy to misapply funds of a national bank from changing their stories in effort to implicate him further in the case, that the government neither participated in nor encouraged such tape-recording and did not in any way utilize any information so obtained. U. S. v. Fanning, C.A.5 (Fla.) 1973, 477 F.2d 45, rehearing denied 477 F.2d 596, certiorari denied 94 S.Ct. 365, 414 U.S. 1006, 38 L.Ed.2d 243, rehearing denied 94 S.Ct. 935, 414 U.S. 1172, 39 L.Ed.2d 121.

Where there was ample evidence that one conspirator was a knowing participant in system to extort money from government contractors and in the efforts of its members to secrete proceeds of their joint efforts and there was conflict as to whether participation by the one conspirator in making a concealed investment in a corporation was undertaken on behalf of alleged ringleader of conspiracy or as an investment for legitimate business purpose, evidence of concealed investment was properly admitted. U. S. v. Kenny, C.A.3 (N.J.) 1972, 462 F.2d 1205, certiorari denied 93 S.Ct. 233, 409 U.S. 914, 34 L.Ed.2d 176, certiorari denied 93 S.Ct. 234, 409 U.S. 914, 34 L.Ed.2d 176.

Admission in prosecution for conspiracy to counterfeit currency of evidence of blank reproductions of selective service and voter registration cards together with evidence of a defendant's statement that he had printed them for codefendant, though incidentally proving that the defendant doing the printing had committed independent crime, was proper where introduced to show that he had performed printing job at direction of codefendant and to show close relationship between alleged conspirators. U. S. v. Lukasik, C.A.7 (Ill.) 1965, 341 F.2d 325, certiorari denied 85 S.Ct. 1770, 381 U.S. 938, 14 L.Ed.2d 702.

In prosecution for unlawful sales of government owned wool being made into army jackets, a conspiracy to defraud the government and for making of false statements about disposition of wool serge furnished manufacturer, that the jury acquitted one defendant of conspiracy with the other defendants, did not make such defendant's acts and declarations inadmissible against the codefendant where there was evidence relating to such defendant's relationship to his codefendant which justified the admission of the testimony. U. S. v. Fabric Garment Co., C.A.2 (N.Y.) 1958, 262 F.2d 631, certiorari denied 79 S.Ct. 1117, 359 U.S. 989, 3 L.Ed.2d 978.

Joint actions of defendants, preceding dates set out in indictment, were competent to show their association. Hood v. U.S., C.C.A.8 (Okla.) 1927, 23 F.2d 472, certiorari denied 48 S.Ct. 436, 277 U.S. 588, 72 L.Ed. 1002.

In prosecution for conspiracy to transport and sell whisky, admission of testimony of coconspirator as to his relations with defendant prior to time covered in indictment was not error, where limited to its bearing on matters

in indictment. Langley v. U.S., C.C.A.6 (Ky.) 1925, 8 F.2d 815, certiorari denied 46 S.Ct. 204, 269 U.S. 588, 70 L.Ed. 427.

On a trial for conspiracy, evidence tending to show the relations between defendants and the relation of some of them to acts in furtherance of the purpose of the alleged conspiracy was properly admitted. Jacobsen v. U.S., C.C.A.7 (Ill.) 1920, 272 F. 399, certiorari denied 41 S.Ct. 625, 256 U.S. 703, 65 L.Ed. 1179.

In a prosecution for conspiring to violate and violating Harrison Drug Act, § 2550 et seq. of Title 26, evidence of accused's assistance to his coconspirator in prior prosecution for violating state drug acts was admissible to show relations between parties, etc. Wallace v. U.S., C.C.A.7 (Ill.) 1917, 243 F. 300, 156 C.C.A. 80, certiorari denied 38 S.Ct. 11, 245 U.S. 650, 62 L.Ed. 531.

Guilty connection of a conspirator may be established by showing association by the persons accused in and for the purpose of procuring the illegal object. U.S. v. Cole, W.D.Tex.1907, 153 F. 801.

In a prosecution for conspiracy to defraud the United States of certain public land under homestead entries, the fact that defendants advanced money to the entryman to pay his entry fee and to make improvements on the land was not in itself unlawful, and could only be considered in determining whether or not there was a conspiracy or unlawful agreement with the entryman, of which such advancement formed a part. U.S. v. Richards, D.C.Neb.1906, 149 F. 443. Conspiracy 47(6)

Previous intimacy between persons charged with conspiracy is competent and important proof on the trial, and proof of close intimacy is especially important, if the duties of the parties respectively were intended to be in opposition, and should the occasion arise might forbid such intimacy, as where the conspiracy charged was to defraud the government in respect to contracts for public work, and the alleged conspirators were respectively contractors for such work and the government engineer officer in charge of the same. U.S. v. Greene, S.D.Ga.1906, 146 F. 803, affirmed 154 F. 401, 85 C.C.A. 251, certiorari denied 28 S.Ct. 261, 207 U.S. 596, 52 L.Ed. 357.

Judge determines admissibility, against defendant on trial, of what another has said or done out of court and must decide whether he is satisfied, by a preponderance of evidence, that agency existed between that other and the defendant before the evidence may be admitted. U. S. v. Cryan, D.C.N.J.1980, 490 F.Supp. 1234, affirmed 636 F.2d 1211.

Evidence of defendants' prior acts of illegal dumping was admissible in prosecution for conspiracy to interfere with commerce by threats or violence and conspiracy to engage in interstate transportation of stolen property, as evidence was offered to show that checks passing between the defendants were due to the charged crimes, which was highly probative of the relationship between the defendants and their connection to the charged crimes. U.S. v. Bruno, C.A.2 (N.Y.) 2003, 83 Fed.Appx. 361, 2003 WL 22955859, Unreported, post-conviction relief denied 2005 WL 3311992, reconsideration denied 2005 WL 3262972. Criminal Law 369.2(3.1)

Testimony tending to show such a relation or understanding between alleged conspirators as would be indicative of a purpose to defraud the government by means of contracts for public works to be given out and carried on under charge of the accused would be admissible, even though it related to matters antedating the time of the particular conspiracy charged. 1899, 22 Op.Atty.Gen. 589.

649. Res gestae, admissibility of evidence

Statements of unidentified persons not shown to have any connection with a conspiracy are not admissible in evidence in conspiracy prosecution as being part of res gestae. U. S. v. Konovsky, C.A.7 (Ill.) 1953, 202 F.2d 721.

18 U.S.C.A. § 371

650. Secondary evidence, admissibility of evidence

"Report of the Commission on Obscenity and Pornography" was properly excluded in prosecution for conspiracy to transport obscene material in interstate commerce as being irrelevant and as usurping function of the jury. U. S. v. Manarite, C.A.2 (N.Y.) 1971, 448 F.2d 583, certiorari denied 92 S.Ct. 281, 404 U.S. 947, 30 L.Ed.2d 264, certiorari denied 92 S.Ct. 285, 404 U.S. 947, 30 L.Ed.2d 264, certiorari denied 92 S.Ct. 287, 404 U.S. 947, 30 L.Ed.2d 264, certiorari denied 92 S.Ct. 298, 404 U.S. 947, 30 L.Ed.2d 264.

Secondary evidence of contents of checks offered as bribe to officers making arrest were competent, where accused retained checks. Madden v. U.S., C.C.A.9 (Cal.) 1927, 20 F.2d 289, certiorari denied 48 S.Ct. 116, 275 U.S. 554, 72 L.Ed. 423.

In conspiracy and oil stock mail fraud case, certified copy of lease assignment to defendant was irrelevant and not best evidence. Nelson v. U. S., C.C.A.8 (Ark.) 1926, 16 F.2d 71.

651. Similar acts or transactions, admissibility of evidence

In prosecution for conspiracy to defraud United States and for presentation of six separate false invoices to War Shipping Administration, evidence showing presentation of 11 other false invoices, received in support of conspiracy count, was also admissible as showing consistent pattern of conduct highly relevant to issue of intent with which the six invoices were presented. Nye & Nissen v. U.S., U.S.Cal.1949, 69 S.Ct. 766, 336 U.S. 613, 93 L.Ed. 919.

Testimony that the same course of conduct was going on long before the date in the indictment when it was alleged that the defendants conspired to commit an offense against the United States is admissible. Heike v. U.S., U.S.N.Y.1913, 33 S.Ct. 226, 227 U.S. 131, 57 L.Ed. 450.

On the trial of a defendant for conspiracy to defraud the United States of public lands, evidence that he had previously been engaged in the illegal acquisition of public lands elsewhere by a different method was admissible as bearing upon the questions of intent, purpose, and design. Williamson v. U.S., U.S.Or.1908, 28 S.Ct. 163, 207 U.S. 425, 52 L.Ed. 278. See, also, Jones v. U.S., Or.1910, 179 F. 584, 103 C.C.A. 142.

Admission of lists of possible arson "jobs" was not error, even though the lists evidenced a larger conspiracy beyond scope of conspiracy alleged in the indictment, where the lists were an inextricable part of proof of plan to burn subject store and larger scheme of which it was a part, defendant had referred to subject store as "one of the places * * * on the list" and referred to other "jobs" which unindicted coconspirator and another could do if they helped him with subject "job," court instructed jury to consider the other acts only on question of plan, intent, and knowledge, and only three out of 256 pages of transcript contained references to the other contemplated arsons. U.S. v. Byrd, C.A.7 (Ill.) 1984, 750 F.2d 585.

It was not error to refuse to outline evidence referred to in "related offenses" charge, i.e., that evidence concerning alleged acts related to those charged in indictment was admitted for limited purpose, as trial court felt that analyzing evidence was a more appropriate subject for counsel's argument, jury was told that other offense evidence could not be used until after it determined beyond a reasonable doubt that defendant or defendants had committed acts alleged in the indictment and attempt by the court to review the complicated facts might have caused more confusion than clarification. U. S. v. Enstam, C.A.5 (Tex.) 1980, 622 F.2d 857, certiorari denied 101 S.Ct. 1351, 450 U.S. 912, 67 L.Ed.2d 336, certiorari denied 101 S.Ct. 1974, 451 U.S. 907, 68 L.Ed.2d 294.

Evidence of other crimes is admissible in sound discretion of trial court if probative value of evidence, in relation to issue other than propensity to commit crimes, outweighs its prejudicial effect. U. S. v. Trotter, C.A.3 (N.J.) 1976, 529 F.2d 806.

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Evidence of acts which are similar to acts alleged with respect to charged conspiracy but which have occurred prior to the alleged conspiracy is admissible as bearing on issues of plan, state of mind, intent and lack of innocent purpose. U. S. v. Nunez, C.A.9 (Ariz.) 1973, 483 F.2d 453, certiorari denied 94 S.Ct. 594, 414 U.S. 1076, 38 L.Ed.2d 483.

Admission of similar acts in evidence and sending of exhibits to jury room were proper in prosecution for transporting falsely made bank checks in interstate commerce and for conspiring to do so. U. S. v. Foster, C.A.6 (Ohio) 1969, 407 F.2d 1335, certiorari denied 90 S.Ct. 134, 396 U.S. 862, 24 L.Ed.2d 114.

Fact that gambling suspect, after alleged conspiracy with several other defendants had ended, engaged in identical activities with defendant who acted as government agent was not admissible as shedding light on whether previous conspiracy in fact existed or as proving attainment of any of its illegal objectives, and admission of such evidence was prejudicial error as to former alleged coconspirator defendant. U.S. v. Chase, C.A.4 (Va.) 1967, 372 F.2d 453, certiorari denied 87 S.Ct. 1688, 387 U.S. 907, 18 L.Ed.2d 626, certiorari denied 87 S.Ct. 1701, 387 U.S. 913, 18 L.Ed.2d 635.

Both prior and subsequent acts substantially similar to subject matter forming basis of conspiracy indictment are admissible to prove intent, where acts are not too far removed in time from transactions in issue. U. S. v. Marchisio, C.A.2 (N.Y.) 1965, 344 F.2d 653.

In prosecution for mail fraud and conspiracy to defraud a charitable foundation and its contributors, testimony of some of defendants' business dealings with other charitable organizations was properly admitted for purpose of indicating intent, knowledge and absence of any mistake or accident in their method of operating solicitations for charitable organizations. Koolish v. U. S., C.A.8 (Minn.) 1965, 340 F.2d 513, certiorari denied 85 S.Ct. 1805, 381 U.S. 951, 14 L.Ed.2d 724.

In prosecution for violation of narcotics law, § 4704 et seq. of Title 26, and for conspiracy to commit the offense, proof of another complete offense of which defendant was not charged in the indictment was admissible, in view of the similarity of the manner in which such offense was committed and its remarkable conformity to pattern of other transactions involved in the conspiracy charged against the defendant. U. S. v. Iacullo, C.A.7 (Ill.) 1955, 226 F.2d 788, certiorari denied 76 S.Ct. 435, 350 U.S. 966, 100 L.Ed. 839.

In prosecution for conspiracy to violate §§ 2803, 2833, 3253, 3321 of Title 26 by aiding in transportation of tax-unpaid liquor with intent to defraud the United States, testimony that witness 15 years before had illegal liquor transactions with accused was not inadmissible as being too remote since no limit is placed upon power of court to admit evidence of prior similar transactions committed by accused in ordinary course of his business, where a specific intent to defraud is an element of offense. Orloff v. U.S., C.C.A.6 (Mich.) 1946, 153 F.2d 292.

In prosecution for conspiracy to violate §§ 2803, 2833, 3253, 3321 of Title 26 by aiding in transportation of tax-unpaid liquor with intent to defraud the United States, testimony that accused was engaged in illicit liquor business 15 years before period covered by indictment was admissible only upon existence of fraudulent intent. Orloff v. U.S., C.C.A.6 (Mich.) 1946, 153 F.2d 292.

In prosecution for conspiracy to violate §§ 2803, 2833, 3253, 3321 of Title 26, by aiding in transportation by truck of tax-unpaid liquor with intent to defraud the United States, wherein principal defense was that accused's connection with transactions was explained by accused's friendship with codefendant, testimony that accused was engaged in illicit liquor business 15 years before period covered by indictment was relevant on guilty knowledge, and length of time went only to weight of such testimony. Orloff v. U.S., C.C.A.6 (Mich.) 1946, 153 F.2d 292.

Evidence that defendant had been involved in the stealing of other securities on other occasions was competent to show guilty knowledge in prosecution for conspiracy to transport stolen bonds in interstate commerce. U.S. v.

Turley, C.C.A.2 (N.Y.) 1943, 135 F.2d 867, certiorari denied 64 S.Ct. 47, 320 U.S. 745, 88 L.Ed. 442.

In prosecution for conspiracy to transport stolen jewelry in interstate commerce, detailed evidence as to participation of defendants in a subsequent jewel robbery similar to the robbery charged as an overt act in indictment was admissible, notwithstanding it tended to show defendants had committed other offense. Banning v. U.S., C.C.A.6 (Mich.) 1942, 130 F.2d 330, certiorari denied 63 S.Ct. 434, 317 U.S. 695, 87 L.Ed. 556.

In prosecution of garage operator, salesman, and another for conspiracy to receive, dispose of, and transport stolen merchandise in interstate commerce, where testimony as to other in no way involved operator and salesman or pointed to their guilt, proof of independent but similar conspiracy between other and shipping clerk for manufacturer along with proof of principal conspiracy between shipping clerk and operator and salesman was not prejudicial to operator and salesman, though indictment charged a single conspiracy. Andrews v. U.S., C.C.A.4 (W.Va.) 1939, 108 F.2d 511.

In conspiracy prosecutions, evidence of similar acts committed at or about the same time with a fraudulent purpose is admissible as bearing on motive or intent in proving a fraudulent or criminal deed. Lambert v. U. S., C.C.A.5 (La.) 1939, 101 F.2d 960. See, also, Johnson v. U.S., C.C.A.Ky.1936, 82 F.2d 500, certiorari denied 56 S.Ct. 957, 298 U.S. 688, 80 L.Ed. 1407; Sartain v. U.S., C.C.A.Ga.1927, 16 F.2d 704; U.S. v. Ault, D.C.Wash.1920, 263 F. 800; Erber v. U.S., N.Y.1916, 234 F. 221, 148 C.C.A. 123. Criminal Law 371(1); Criminal Law 371(12)

In prosecution against members of coal miners' union for conspiring to obstruct mails and to restrain trade, exclusion of evidence of similar acts by others was proper, in absence of any showing that those acts were connected with depredations charged against miners. U.S. v. Anderson, C.C.A.7 (Ill.) 1939, 101 F.2d 325, certiorari denied 59 S.Ct. 822, 307 U.S. 625, 83 L.Ed. 1502, certiorari denied 59 S.Ct. 822, 307 U.S. 625, 83 L.Ed. 1503, certiorari denied 59 S.Ct. 823, 307 U.S. 625, 83 L.Ed. 1503, certiorari denied 59 S.Ct. 823, 307 U.S. 625, 83 L.Ed. 1504, certiorari denied 59 S.Ct. 823, 307 U.S. 625, 83 L.Ed. 1504, 86 L.Ed. 1504, certiorari denied 59 S.Ct. 824, 307 U.S. 625, 83 L.Ed. 1505, certiorari denied 59 S.Ct. 824, 307 U.S. 625, 83 L.Ed. 1506, certiorari denied 59 S.Ct. 825, 307 U.S. 625, 83 L.Ed. 1506, certiorari denied 59 S.Ct. 825, 307 U.S. 625, 83 L.Ed. 1507, certiorari denied 59 S.Ct. 825, 307 U.S. 625, 83 L.Ed. 1508, certiorari denied 59 S.Ct. 826, 307 U.S. 625, 83 L.Ed. 1508, certiorari denied 59 S.Ct. 826, 307 U.S. 625, 83 L.Ed. 1509.

In prosecution for conspiring to defraud and for fraudulently using mails, evidence of similar acts at or about same time, with like alleged fraudulent purpose, is admissible as bearing on motive. Johnson v. U.S., C.C.A.6 (Ky.) 1936, 82 F.2d 500, certiorari denied 56 S.Ct. 957, 298 U.S. 688, 80 L.Ed. 1407.

In prosecution for conspiring to defraud government and fraudulently using mails by predating postmark on bid for construction of post office, evidence that on two other occasions within preceding three months defendants sent late bids for other government contracts under predated postmarks was relevant and admissible. Johnson v. U.S., C.C.A.6 (Ky.) 1936, 82 F.2d 500, certiorari denied 56 S.Ct. 957, 298 U.S. 688, 80 L.Ed. 1407.

In prosecution for conspiracy to personate, and for personating, federal officers, testimony respecting similar offense was admissible to show intent. Heskett v. U.S., C.C.A.9 (Cal.) 1932, 58 F.2d 897, certiorari denied 53 S.Ct. 89, 287 U.S. 643, 77 L.Ed. 556.

Evidence as to offense of which accused had been acquitted was admissible to prove conspiracy to commit other offenses. Woodman v. U.S., C.C.A.5 (Tex.) 1929, 30 F.2d 482, certiorari denied 49 S.Ct. 351, 279 U.S. 855, 73 L.Ed. 997.

In a conspiracy case, where evidence tends to prove that defendant and others entered into common scheme to commit crime, such as transportation of liquor, evidence of other like offenses by defendant in carrying on common

enterprise is relevant as showing his knowledge or intent, if such connection between different transactions is shown as raises fair inference of common motive in each. Crowley v. U.S., C.C.A.9 (Cal.) 1925, 8 F.2d 118.

In prosecution for conspiracy to violate National Prohibition Act, former § 1 et seq. of Title 27, at certain time and place, proof that one of accused was concerned in violation at another place six weeks prior thereto was prejudicial, in absence of testimony tending to connect conspiracy alleged with such offense. Terry v. U.S., C.C.A.9 (Cal.) 1925, 7 F.2d 28.

In prosecution under former § 88 of this title [now this section] for conspiracy to transport whisky contrary to National Prohibition Act, former § 1 et seq. Title 27, where accused explained various transactions on ground that it was part of work which he had undertaken as special investigator of prohibition situation, evidence of similar transactions not charged in indictment was admissible to show intent of accused. Means v. U.S., C.C.A.2 (N.Y.) 1925, 6 F.2d 975.

In prosecution for conspiracy to import liquor and to transport same where some of defendants were former officers, evidence as to another defendant's recent bootlegging importations was not prejudicial as to certain other defendants, and properly received against defendant in question as material on issue of intent in procuring officers to seize liquor involved. Parmenter v. U. S., C.C.A.6 (Mich.) 1924, 2 F.2d 945, certiorari denied 45 S.Ct. 514, 268 U.S. 697, 69 L.Ed. 1163.

Where the government's evidence tended to show that defendant purchased intoxicating liquor unlawfully brought from Canada, and ordered certain other liquor, only part of which had been delivered when vessel was seized and confiscated, and that A., learning of the unfilled part of defendant's order, obtained defendant's confirmation thereof, and turned it over to persons whose transportation of liquor in compliance therewith constituted basis of charge of conspiracy, the transactions were so connected that evidence concerning the earlier transactions was relevant on question of defendant's participation in the conspiracy, and hence not inadmissible because also tending to show other crimes. De Witt v. U. S., C.C.A.6 (Ohio) 1923, 291 F. 995, certiorari denied 44 S.Ct. 134, 263 U.S. 714, 68 L.Ed. 521.

In a prosecution under former § 88 of this title [now this section] for conspiracy to deal in and sell morphine sulphate, a derivative of opium, in violation of the registration and tax provisions of § 2550 et seq. of Title 26, evidence was admissible of a violation of the state law, where the evidence of such violation was concealed in the same way and in the same place that evidence of the offense against the federal law was charged to be concealed. Nee v. U S, C.C.A.3 (Pa.) 1920, 267 F. 84.

On a trial for conspiracy to defraud the United States by the use of counterfeiting stamping devices in a factory engaged in the manufacture of shoes for the government, the general rule that on the trial for one offense evidence of another distinct and unrelated offense committed by the defendant is not admissible, unless it is offered for one of the purposes which constitute exceptions to the general rule, applied. MacDonald v. U S, C.C.A.1 (Mass.) 1920, 264 F. 733.

Evidence of a corrupt understanding with a government inspector in connection with a previous contract with the government was not admissible to show that defendant had an evil disposition, and that his character was such that he would be likely to enter into a conspiracy such as that charged. MacDonald v. U S, C.C.A.1 (Mass.) 1920, 264 F. 733.

Where defendant denied all knowledge that the counterfeit stamps had been procured or used, evidence that he placed a government inspector at the factory under a previous contract on the factory pay roll under an assumed name was not admissible, as it did not tend to show his knowledge that the counterfeit stamps were procured and used, and the question was not whether he had guilty knowledge, but whether he had any knowledge at all. MacDonald v. U S, C.C.A.1 (Mass.) 1920, 264 F. 733.

In a prosecution, under this section, brought against druggists and a physician for conspiracy to violate Harrison Anti-Narcotic Act, § 2550 et seq. of Title 26, where purchases of narcotics by the druggist were alleged as overt acts, purchases in excess of those alleged were provable as additional and similar overt acts. Friedman v. U. S., C.C.A.6 (Tenn.) 1919, 260 F. 388, 170 C.C.A. 254, certiorari denied 40 S.Ct. 15, 250 U.S. 671, 63 L.Ed. 1199.

Defendant, prosecuted for conspiracy to transport liquor into the part of Oklahoma formerly the Indian Territory, was not entitled to show that before the conspiracy he was advised by the district attorney that a certain previous transaction was not criminal, the identity between the transactions in material respects not being shown, so as to make the advice apply to the transaction in issue. Hardy v. U.S., C.C.A.5 (Tex.) 1919, 256 F. 284, 167 C.C.A. 456, certiorari denied 40 S.Ct. 9, 250 U.S. 659, 63 L.Ed. 1194.

In a prosecution for conspiracy to violate a statute, it was within the discretion of the court to admit evidence of acts by defendants prior to the taking effect of the particular statute to show motive and intent, where they were closely connected with and were similar to subsequent acts, and where a similar statute was then in force. Jelke v. U.S., C.C.A.7 (Ill.) 1918, 255 F. 264, 166 C.C.A. 434.

On the trial of an indictment for conspiracy to violate former § 338 of this title, partly by means of suits and threatened suits for alleged disgraceful acts, evidence was admissible for the prosecution that the defendant had, at about the same time, instituted other suits of a like character and for a like purpose, from which the jury might infer the intent with which the suits involved in the prosecution were being brought or threatened. McKelvey v. U.S., C.C.A.9 (Cal.) 1917, 241 F. 801, 154 C.C.A. 503.

On trial for conspiracy to pass counterfeit coins, evidence of previous attempt by one of the defendants to pass such a coin was admissible to show guilty knowledge. York v. U.S., C.C.A.9 (Cal.) 1916, 241 F. 656, 154 C.C.A. 414.

In a prosecution for conspiracy to violate former § 336 of this title, and defraud by fake betting on pretended horse races, evidence of other fraudulent acts by defendants at or about the same time, terminating in fake horse-race betting, were admissible as bearing upon defendants' motives or intent, though such other acts were offenses in themselves, and were not precisely identical in character with those involved in the case on trial, except as they were means to the same end. Shea v. U. S., C.C.A.6 (Ohio) 1916, 236 F. 97, 149 C.C.A. 307.

Where a defendant charged with conspiracy to ship misbranded bags of coffee denied all knowledge of the misbranding and asserted that it was "put over him" by faithless servants in his office, acting secretly with brokers, evidence was admissible on behalf of the government of other orders that had passed through his office for the misbranding of coffee, as a circumstance to be considered by the jury in determining whether he had knowledge of such nefarious features in the sale of coffee. Mitchell v. U.S., C.C.A.2 (N.Y.) 1916, 229 F. 357, 143 C.C.A. 477.

On trial for conspiring to arrest a person with intent to hold him in a condition of peonage, evidence of other similar acts was admissible to show accord and combination and the defendants' intent. Huff v. U.S., C.C.A.5 (Ga.) 1916, 228 F. 892, 143 C.C.A. 290, certiorari denied 36 S.Ct. 551, 241 U.S. 667, 60 L.Ed. 1228.

On a trial for conspiracy to induce a partnership to accept rebates on shipments in violation of the Interstate Commerce Act, § 1 et seq. of Title 49, evidence of contemporaneous contracts made by defendants with other large shippers, similar in all respects to that made with the partnership named, and that such shippers also received sums of money indirectly which they understood to come from defendants, and to be in fact rebates, was admissible on the question of intent and motive in the transaction charged in the indictment. Thomas v. U.S., C.C.A.8 (Mo.) 1907, 156 F. 897, 84 C.C.A. 477.

Under an indictment charging the defendants with conspiracy to defraud the United States of a large quantity of public lands, the overt act charged being the causing of an illegal entry of a tract described by a person named for their benefit, evidence tending to show that defendants induced the entry of other tracts by different persons at the

same time and under similar circumstances was competent, in proof of the conspiracy and the fraudulent motive, and hence, where such indictment was consolidated with others covering such other entries, the dismissal of the latter after the evidence had been taken thereon was not prejudicial to the defendants. Olson v. U.S., C.C.A.8 (Minn.) 1904, 133 F. 849, 67 C.C.A. 21.

In prosecution for using mails to defraud and for conspiracy to commit such act, proof of facts disclosed in prior prosecution which resulted in acquittal and which were charged as overt acts in indictments in prosecution is admissible as going to show intent or motive or carrying out of a definite scheme. U. S. v. Gilbert, S.D.Ohio 1939, 31 F.Supp. 195. Criminal Law 371(1); Criminal Law 371(12); Criminal Law 372(6)

Admission, under other acts rule, of evidence that defendant previously had pleaded guilty to charge that he participated in "black money" conspiracy was not abuse of discretion in trial for conspiracy to commit wire fraud arising from "black money" scheme, inasmuch as sheer improbability of defendant's innocent participation in scheme that was virtually identical to one in which he had earlier participated made evidence of prior participation highly probative in assessing defendant's knowledge of charged scheme, even though defendant's role in two schemes was different and amounts involved were different. U.S. v. Ezeh, C.A.2 (N.Y.) 2003, 64 Fed.Appx. 275, 2003 WL 1970445, Unreported. Criminal Law 370

652. Telegrams, admissibility of evidence

Before telegram may be received in evidence, proof must connect it with its alleged author. Ford v. U.S., C.C.A.9 (Cal.) 1926, 10 F.2d 339, certiorari granted 46 S.Ct. 475, 271 U.S. 652, 70 L.Ed. 1133, affirmed 47 S.Ct. 531, 273 U.S. 593, 71 L.Ed. 793.

Where the indictment charged the sending of a telegram as one of the overt acts in furtherance of a conspiracy to transport intoxicating liquor, the telegram, properly identified as having been delivered by one of the defendants to a telegraph company for transmission, was competent evidence, without proof that it was ever received. Alderman v. U.S., C.C.A.5 (Fla.) 1922, 279 F. 259, certiorari denied 42 S.Ct. 586, 259 U.S. 584, 66 L.Ed. 1075.

Telegram sent by defendants' coconspirator to another victim, the day after he lost his money, was not inadmissible, as being act done after the fraudulent scheme was at an end, the general fraudulent scheme, fake horse race betting in sham turf exchanges, not being shown to have then been abandoned, and the telegram being part of the res gestae. Shea v. U. S., C.C.A.6 (Ohio) 1918, 251 F. 440, 163 C.C.A. 458, certiorari denied 39 S.Ct. 132, 248 U.S. 581, 63 L.Ed. 431.

Letters and telegrams sent by an engineer in charge of government work to one of the contractors, charged with conspiring with him to defraud the government prior to the conspiracy charged but at a time when defendants were connected with the work, which informed the defendant addressed of the publication of an affidavit made by an inspector on the work, charging such defendant with an attempt to bribe the affiant, and with stating that he had power to cause affiant's removal by the engineer, and which telegrams and letters urged such defendant to send a statement and an affidavit dictated therein in denial were admissible in evidence for the purpose of showing the attitude of the engineer in the matter, and such joint action as to indicate an improper understanding and relation between the defendants on trial and the engineer officer, where it was proposed to follow it by other evidence showing a continuance of such intimacy and relation to the time of the conspiracy charged. U.S. v. Greene, S.D.Ga.1906, 146 F. 784.

653. Telephone calls, admissibility of evidence

In prosecution to defraud by depriving the United States of faithful services of an army officer, where long-distance telephone call bore directly on defense of extortion, refusal to permit unsworn, unverified long-distance call slip from telephone company records to be put into evidence, in corroboration of witness who had testified to receiving

such a call, four hours after case had been submitted to jury, was not reversible error, where proffer of evidence was technically deficient and no excuse for untimeliness of offer appeared. U.S. v. Bayer, U.S.N.Y.1947, 67 S.Ct. 1394, 331 U.S. 532, 91 L.Ed. 1654, rehearing denied 68 S.Ct. 29, 332 U.S. 785, 92 L.Ed. 368.

In prosecution for mail fraud and conspiracy, testimony of accused's coconspirators, induced by divulging to such coconspirators contents of intercepted telephone messages to which they were parties but to which accused were not parties, was admissible, notwithstanding § 605 of Title 47, prohibiting interception of communication by wire. Goldstein v. United States, U.S.N.Y.1942, 62 S.Ct. 1000, 316 U.S. 114, 86 L.Ed. 1312.

Where telephone conversation between government agent and alleged coconspirator, proffered for the truth of the matters asserted, occurred after the time when the object of conspiracy had ostensibly been achieved and there was no evidence that the conspiracy was continuing, despite coconspirator's statement to agent before she left scene of narcotics transaction that she was to telephone if she was not satisfied, evidence of the telephone call should not have been received, and error was not harmless where it was heavily relied on both by the government in summation and by the jury, to whom the tape of the call was replayed pursuant to request. U. S. v. DeVaugn, C.A.2 (N.Y.) 1978, 579 F.2d 225.

In light of what defendant had already told informer and was later to tell source of counterfeit securities in informer's presence, there was no reason why secrecy from informer of defendant's talk with security source should have been of concern to defendant, and therefore claim that informer's overhearing of conversation was a forbidden invasion of defendant's right to privacy could not be sustained since facts were not significantly different from those in Hoffa v. United States, 385 U.S. 293, 87 S.Ct. 408, 17 L.Ed.2d 374 (1966); in any event, episode was inconsequential, where informer had given ample leads to FBI quite apart from overheard conversation, and where informer did not testify at trial. U. S. v. Friedland, C.A.2 (N.Y.) 1971, 441 F.2d 855, certiorari denied 92 S.Ct. 143, 404 U.S. 867, 30 L.Ed.2d 111, certiorari denied 92 S.Ct. 239, 404 U.S. 914, 30 L.Ed.2d 188.

That FBI agent overheard portion of call made by defendants in telephone booth did not require that all evidence and testimony developed subsequently be excluded, in prosecution for use of interstate telephone facilities for gambling activities and for conspiring to commit such offenses, as tainted product of unlawful seizure where defendants did not establish pertinent facts and overheard conversation did not reveal anything that agents did not already know. U. S. v. Fuller, C.A.4 (S.C.) 1971, 441 F.2d 755, certiorari denied 92 S.Ct. 73, 404 U.S. 830, 30 L.Ed.2d 59, certiorari denied 92 S.Ct. 74, 404 U.S. 830, 30 L.Ed.2d 59.

Evidence of telephone calls charged to third party who was neither a coconspirator in alleged illegal gambling activities nor named in bill of particulars, 300 of which calls were received at either defendant's number in Tulsa or that of a coconspirator in Baton Rouge, was admissible as competent proof of alleged conspiracy, although indictment was confined to transactions to and from Baton Rouge and Tulsa. Nolan v. U. S., C.A.10 (Okla.) 1969, 423 F.2d 1031, certiorari denied 91 S.Ct. 47, 400 U.S. 848, 27 L.Ed.2d 85.

Testimony as to content of several telephone conversations between wife of co-conspirator and defendant's uncle concerning an alleged $10,000 offer to the wife to testify favorably for defendant was inadmissible. U. S. v. Walsh, C.A.6 (Ohio) 1962, 305 F.2d 821, certiorari denied 83 S.Ct. 146, 371 U.S. 876, 9 L.Ed.2d 114. Criminal Law 386

In prosecution for conspiring to defraud United States of proper administration of internal revenue laws and regulations, testimony of telephone conversations between defendants and Chief Counsel of Bureau of Internal Revenue based upon transcript made by Chief Counsel's secretaries in regular course of their official duties was admissible under Federal Business Records Act, § 1733 of Title 28. Connelly v. U.S., C.A.8 (Mo.) 1957, 249 F.2d 576, certiorari denied 78 S.Ct. 700, 356 U.S. 921, 2 L.Ed.2d 716, rehearing denied 78 S.Ct. 991, 356 U.S. 964, 2 L.Ed.2d 1072, certiorari denied 78 S.Ct. 701, 356 U.S. 921, 2 L.Ed.2d 716.

18 U.S.C.A. § 371

In prosecution for conspiring to commit an offense against United States by transportation of a forged check, where one of defendant's alleged co-conspirators testified to certain long distance telephone communications between him and defendant in which defendant gave him instructions concerning purchase and disposition of whiskey purchased with forged check, three telephone toll tickets showing long distance calls from co-conspirator's telephone at Oklahoma to defendant at Louisiana which were fully and properly identified except for certain code marks were properly admitted. Byford v. U.S., C.A.10 (Okla.) 1950, 185 F.2d 171.

In prosecution upon indictment charging criminal conspiracy, memorandum of telephone conversation between defendant and bank employee who was not available at trial as a witness because serving in armed forces, which memorandum was produced from bank's records and was made as a routine matter in regular course of bank's business was admissible as a "business entry". United States v. Moran, C.C.A.2 (N.Y.) 1945, 151 F.2d 661.

In prosecution for conspiracy to defraud the United States of taxes on distilled spirits, telephone company toll slips showing extensive calls to and from public phones in the accused's restaurant to various of the accused's codefendants were admissible as showing means of communication between the defendants and fact that they were in constant communication with one another. U.S. v. Novick, C.C.A.2 (N.Y.) 1941, 124 F.2d 107, certiorari denied 62 S.Ct. 795, 315 U.S. 813, 86 L.Ed. 1212, rehearing denied 62 S.Ct. 913, 315 U.S. 830, 86 L.Ed. 1224.

In prosecution for conspiring to defraud the United States of taxes on distilled spirits, records of telephone company showing calls between telephone in accused's home and telephones registered in names of codefendants who had pleaded guilty were admissible even though they might be of very slight probative value. U.S. v. Gallo, C.C.A.2 (N.Y.) 1941, 123 F.2d 229.

In prosecution for conspiring to defraud the United States of taxes on distilled spirits, use of records of telephone company showing calls between telephone in accused's home and telephones registered in names of codefendants who pleaded guilty in evidence against the accused was not forbidden by § 605 of Title 47. U.S. v. Gallo, C.C.A.2 (N.Y.) 1941, 123 F.2d 229.

In prosecution for conspiracy to violate the laws relating to distillation and taxation of alcohol, witness' testimony that defendant had personally ordered yeast from witness and had paid for yeast which had been delivered to conspiracy headquarters was not rendered incompetent by his admission on cross-examination that he could not distinguish telephone voices which had ordered yeast. Pernatto v. U.S., C.C.A.3 (N.J.) 1939, 104 F.2d 427.

Testimony of an employee of a telephone company from records produced by him, as to the installation of telephones at certain places, and records of telephone calls between places occupied by, or in use by, members of a conspiracy, was admissible in the sound discretion of the trial court though such evidence would have been inadmissible at common law under the hearsay rule, especially where much of the testimony was corroborated by other testimony. Valli v. U.S., C.C.A.1 (Mass.) 1938, 94 F.2d 687, certiorari granted 58 S.Ct. 760, 303 U.S. 632, 82 L.Ed. 1092, certiorari dismissed 58 S.Ct. 1053, 304 U.S. 586, 82 L.Ed. 1547.

As a general rule, before evidence as to telephone conversation may be admitted into evidence, it is necessary to have other participant's voice identified, and such identification may be made on basis of witness' then existing familiarity with other participant's voice, or on basis of a subsequent conversation with other participant and retroactive recognition of voice used in antecedent conversation; but requirement of direct recognition of voice is not an inexorable or mechanical rule, and circumstantial evidence may be sufficient to identify other participant, and, indeed, substance of communication may itself be enough to make prima facie proof. U S v. Lo Bue, S.D.N.Y.1960, 180 F.Supp. 955.

Where foundation proof for introduction of evidence of telephone conversation consists of aggregate of circumstances establishing that it was extremely remote or highly improbable that anyone other than defendant was person with whom witness conversed, there is sufficient proof of defendant's identity. U S v. Lo Bue,

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S.D.N.Y.1960, 180 F.Supp. 955.

654. Testimony of coconspirators, admissibility of evidence

Settled rule that declarations of coconspirators may not be admitted unless there is independent evidence showing conspiracy and defendant's participation therein applies only to out-of-court declarations of coconspirator and does not exclude proof of conspiracy by direct testimony of parties to it. Brinlee v. U. S., C.A.8 (N.D.) 1974, 496 F.2d 351, certiorari denied 95 S.Ct. 142, 419 U.S. 878, 42 L.Ed.2d 118.

Existence of the conspiracy need not be shown by independent evidence before a coconspirator can be called to testify to any relevant matter of which he has personal knowledge. Klein v. U. S., C.A.9 (Ariz.) 1973, 472 F.2d 847 .

Government witness was properly permitted to testify in conspiracy prosecution that he had entered plea of guilty and that he knew one of the defendants, over objection that co-conspirator is not allowed to testify unless conspiracy has been proven and that conspiracy had not yet been proven. U. S. v. Vanover, C.A.7 (Ill.) 1965, 339 F.2d 987.

Evidence of conspirator that he was dealing with coconspirator in later phase of conspiracy was admissible against co-conspirator only if other evidence permitted the inference that he had associated himself with the continuing venture. U. S. v. Borelli, C.A.2 (N.Y.) 1964, 336 F.2d 376, certiorari denied 85 S.Ct. 647, 379 U.S. 960, 13 L.Ed.2d 555. Conspiracy 45

Testimony of a co-conspirator must be received with caution and should be corroborated by other evidence. Smith v. U.S., C.A.5 (Tex.) 1955, 224 F.2d 58, certiorari denied 76 S.Ct. 138, 350 U.S. 885, 100 L.Ed. 780.

That witness may have been a self-confessed active hired accomplice in offense charged in indictment does not require, as a matter of law, the rejection of his testimony. Anderson v. U.S., C.C.A.6 (Tenn.) 1941, 124 F.2d 58, certiorari granted 62 S.Ct. 941, 316 U.S. 651, 86 L.Ed. 1732, reversed on other grounds 63 S.Ct. 599, 318 U.S. 350, 87 L.Ed. 829.

In prosecution for conspiracy to set up a still, declaration by person engaged in the undertaking that he was working in the interest of particular defendant was not competent taken by itself, but was made competent by such person's help to such defendant, showing their concert of action. U S v. Pecoraro, C.C.A.2 (N.Y.) 1940, 115 F.2d 245, certiorari denied 61 S.Ct. 611, 312 U.S. 685, 85 L.Ed. 1123.

The testimony of a coconspirator is competent. U S v. Sacia, D.C.N.J.1880, 2 F. 754. See, also, U.S. v. Barrett, C.C.S.C.1894, 65 F. 62; U.S. v. Howell, D.C.Mo.1892, 56 F. 21; U.S. v. McKee, C.C.Mo.1876, 3 Dill. 546, 26 Fed.Cas. No. 15,685; U.S. v. Babcock, C.C.Mo.1876, 3 Dill. 581, 24 Fed.Cas. No. 14,487; U.S. v. Goldberg, C.C.Wis.1876, 7 Biss. 175, 25 Fed.Cas. No. 15,223; U.S. v. Smith, C.C.Ohio 1869, 2 Bond 323, 27 Fed.Cas. No. 16,332; U.S. v. Callicott, C.C.N.Y.1868, 7 Int.Rev.Rec. 177, Fed.Cas. No. 14,710.

655. Threats, admissibility of evidence

In prosecution for extortion, conspiracy, impersonation of federal officers, and utilization of interstate travel to promote an extortion scheme, evidence of possible threats made by main prosecution witness against his former wife, the main defense witness, was inadmissible as irrelevant and because its probative value was outweighed by its prejudice. U.S. v. Dorman, C.A.11 (Fla.) 1985, 752 F.2d 595, certiorari denied 106 S.Ct. 106, 474 U.S. 834, 88 L.Ed.2d 86.

In prosecution for conspiracy to defraud United States in the construction of a federally funded sewer project, trial

court did not err in admitting testimony regarding threat made by father of corporate defendant's chief operating officer to the effect that whoever the Federal Bureau of Investigation informant was "if he hurts my son he will be looking over his shoulder for the rest of his life," in view of fact that recipient of threat, who was available for cross-examination, testified against corporate defendant but avoided implicating chief executive officer, so that threat evidence was tantamount to impeachment of recipient of threat. U. S. v. DeLillo, C.A.2 (N.Y.) 1980, 620 F.2d 939, certiorari denied 101 S.Ct. 107, 449 U.S. 835, 66 L.Ed.2d 41, certiorari denied 101 S.Ct. 108, 449 U.S. 835, 66 L.Ed.2d 41.

Statement by defendant to accomplice to the effect that defendant would break accomplice's legs should he tell anyone else about the working arrangement was admissible in conspiracy to transport stolen semi-trailers in interstate commerce; theory of admissibility was academic because defense did not make timely objections to the testimony and used the subject matter as a basis for impeachment of the witness. U. S. v. Bastone, C.A.7 (Ill.) 1975, 526 F.2d 971, certiorari denied 96 S.Ct. 2172, 425 U.S. 973, 48 L.Ed.2d 797.

In conspiracy prosecution, testimony concerning defendant's statement at a public meeting constituting a threat against any person who should testify against defendant was competent. U.S. v. Compagna, C.C.A.2 (N.Y.) 1944, 146 F.2d 524, certiorari denied 65 S.Ct. 912, 324 U.S. 867, 89 L.Ed. 1422, rehearing denied 65 S.Ct. 1084, 325 U.S. 892, 89 L.Ed. 2004, certiorari denied 65 S.Ct. 913, 324 U.S. 867, 89 L.Ed. 1423.

656. Transcripts of prior trials, admissibility of evidence

Trial judge committed no error when he permitted government to read testimony given at first trial by witness who was unavailable and who had subsequently recanted and permitted defense counsel to take her deposition in Canada as if it were cross-examination and to read it to jury. U. S. v. Bentvena, C.A.2 (N.Y.) 1963, 319 F.2d 916, certiorari denied 84 S.Ct. 345, 375 U.S. 940, 11 L.Ed.2d 271, rehearing denied 90 S.Ct. 894, 397 U.S. 928, 25 L.Ed.2d 108, rehearing denied 84 S.Ct. 515, 375 U.S. 989, 11 L.Ed.2d 476, certiorari denied 84 S.Ct. 346, 375 U.S. 940, 11 L.Ed.2d 271, rehearing denied 84 S.Ct. 1162, 377 U.S. 913, 12 L.Ed.2d 183, certiorari denied 84 S.Ct. 353, 375 U.S. 940, 11 L.Ed.2d 272, certiorari denied 84 S.Ct. 354, 375 U.S. 940, 11 L.Ed.2d 272, certiorari denied 84 S.Ct. 355, 375 U.S. 940, 11 L.Ed.2d 272, certiorari denied 84 S.Ct. 360, 375 U.S. 940, 11 L.Ed.2d 272.

Where a defendant was tried with several coconspirators for conspiring to obstruct administration of justice, transcript of testimony from a prior trial for conspiracy to commit an entirely different crime, and of which conspiracy defendant was acquitted, was not admissible in a later conspiracy prosecution, though the two trials related to the same incidents in part. U. S. v. Johnson, M.D.Pa.1947, 76 F.Supp. 542, affirmed 165 F.2d 42, certiorari denied 68 S.Ct. 355, 332 U.S. 852, 92 L.Ed. 421, motion granted 68 S.Ct. 357, rehearing denied 68 S.Ct. 457, 333 U.S. 834, 92 L.Ed. 1118, certiorari denied 68 S.Ct. 355, 332 U.S. 852, 92 L.Ed. 422.

657. Advocating overthrow of Government, admissibility of evidence

Acts and declarations by defendants in prosecution for conspiracy to teach and advocate overthrow of United States government by force and violence, made prior to indictment period, were significant in determining intent of defendants. U. S. v. Mesarosh, C.A.3 (Pa.) 1955, 223 F.2d 449, certiorari granted 76 S.Ct. 218, 350 U.S. 922, 100 L.Ed. 807, reversed on other grounds 77 S.Ct. 1, 352 U.S. 1, 1 L.Ed.2d 1.

In prosecution for conspiring to teach and advocate overthrow of United States government by force and violence, evidence of acts and declarations prior to 1945, which was year charged in indictment as base year for beginning of conspiracy, was admissible against all defendants to show illegal purposes of Communist Party. U. S. v. Mesarosh, C.A.3 (Pa.) 1955, 223 F.2d 449, certiorari granted 76 S.Ct. 218, 350 U.S. 922, 100 L.Ed. 807, reversed on other grounds 77 S.Ct. 1, 352 U.S. 1, 1 L.Ed.2d 1.

In prosecution for conspiracy to violate the Smith Act, § 2385 of this title, making it an offense to advocate

forcible overthrow of the government, testimony of government's witness, who had previously been an official in the Communist Party, that he was taken to a cellar by group of Communists including a co-conspirator of defendants for hearing on charge that he was collaborating with American intelligence authorities, that he was threatened with a pistol, rubber hose, and knives, and that he was forced to sign a statement that he was given a fair and impartial hearing, and that thereafter he was expelled from the Communist Party was properly admitted to show the objectives and methods of operation of the Communist Party, though there was no showing that defendants knew of or authorized such actions of the group of Communists. United States v. Flynn, C.A.2 (N.Y.) 1954, 216 F.2d 354, certiorari denied 75 S.Ct. 295, 348 U.S. 909, 99 L.Ed. 713, order withheld 75 S.Ct. 285, 99 L.Ed. 1298, rehearing denied 75 S.Ct. 436, 348 U.S. 956, 99 L.Ed. 747.

In prosecution for conspiracy to violate the Smith Act, § 2385 of this title, making it an offense to advocate forcible overthrow of the government, trial judge did not abuse his discretion in permitting the government to introduce relevant testimony of government's witness, who had previously been an official in the Communist Party, that he was taken to a cellar by group of Communists including a co-conspirator of defendants for hearing on charge that he was a traitor to the Communist Party, that he was threatened with a pistol, rubber hose, and knives, and that he was forced to sign a statement that he was given a fair and impartial hearing, because probative value of testimony was not so far outweighed by its tendency to inflame that trial judge should have excluded it in exercise of a sound discretion. United States v. Flynn, C.A.2 (N.Y.) 1954, 216 F.2d 354, certiorari denied 75 S.Ct. 295, 348 U.S. 909, 99 L.Ed. 713, order withheld 75 S.Ct. 285, 99 L.Ed. 1298, rehearing denied 75 S.Ct. 436, 348 U.S. 956, 99 L.Ed. 747.

Where evidence was produced connecting defendants with Communist Party, evidence establishing criminal nature of conspiracy of such party was admissible against defendants, even though such evidence related to matters which occurred prior to time defendants became members. Frankfeld v. U.S., C.A.4 (Md.) 1952, 198 F.2d 679, certiorari denied 73 S.Ct. 389, 344 U.S. 922, 97 L.Ed. 710, rehearing denied 73 S.Ct. 652, 345 U.S. 913, 97 L.Ed. 1348.

In prosecution for conspiracy to organize Communist Party of United States as a group to teach and advocate overthrow of government by force or violence, permitting prosecution to put in evidence such passages of documents as prosecution thought relevant to support the charge and allowing defense to put in only those other passages which contradicted, modified or otherwise threw any light upon the prosecution's passages was not abuse of discretion, as against defendants' insistence that either the whole document or no part of the document was competent. U.S. v. Dennis, C.A.2 (N.Y.) 1950, 183 F.2d 201, certiorari granted 71 S.Ct. 91, 340 U.S. 863, 95 L.Ed. 630, affirmed 71 S.Ct. 857, 341 U.S. 494, 95 L.Ed. 1137, rehearing denied 72 S.Ct. 20, 342 U.S. 842, 96 L.Ed. 636, rehearing denied 78 S.Ct. 409, 355 U.S. 936, 2 L.Ed.2d 419.

In prosecution for conspiracy to organize Communist Party of United States as a group to teach and advocate overthrow of government by force or violence, exclusion of Party publications containing no advocacy of violence was not error where such publications did not disclaim resort to violence and 26 exhibits containing no advocacy or teaching of violence were admitted. U.S. v. Dennis, C.A.2 (N.Y.) 1950, 183 F.2d 201, certiorari granted 71 S.Ct. 91, 340 U.S. 863, 95 L.Ed. 630, affirmed 71 S.Ct. 857, 341 U.S. 494, 95 L.Ed. 1137, rehearing denied 72 S.Ct. 20, 342 U.S. 842, 96 L.Ed. 636, rehearing denied 78 S.Ct. 409, 355 U.S. 936, 2 L.Ed.2d 419.

In prosecution for conspiracy to organize Community Party of United States as a group to teach and advocate overthrow of government by force or violence, refusal to allow a particular defendant to testify what he understood to be the meaning of the principles of Marxism-Leninism was not prejudicial to such defendant where such defendant subsequently managed to go into a long disquisition as to what he had told the Party's board were the principles of Marxism-Leninism. U.S. v. Dennis, C.A.2 (N.Y.) 1950, 183 F.2d 201, certiorari granted 71 S.Ct. 91, 340 U.S. 863, 95 L.Ed. 630, affirmed 71 S.Ct. 857, 341 U.S. 494, 95 L.Ed. 1137, rehearing denied 72 S.Ct. 20, 342 U.S. 842, 96 L.Ed. 636, rehearing denied 78 S.Ct. 409, 355 U.S. 936, 2 L.Ed.2d 419.

Evidence setting forth the doctrines of Marxism-Leninism was admissible under indictment charging that

defendants conspired to organize the Communist Party of the United States as a group to teach and advocate overthrow of government of United States by force and violence. U.S. v. Dennis, C.A.2 (N.Y.) 1950, 183 F.2d 201, certiorari granted 71 S.Ct. 91, 340 U.S. 863, 95 L.Ed. 630, affirmed 71 S.Ct. 857, 341 U.S. 494, 95 L.Ed. 1137, rehearing denied 72 S.Ct. 20, 342 U.S. 842, 96 L.Ed. 636, rehearing denied 78 S.Ct. 409, 355 U.S. 936, 2 L.Ed.2d 419.

658. Alien enemies and enemy property, admissibility of evidence

Telegrams between Alien Property Custodian and his secretary relating to claim alleged to have been improperly allowed in carrying out conspiracy to defraud United States were admissible in evidence. Miller v. U.S., C.C.A.2 (N.Y.) 1928, 24 F.2d 353, certiorari denied 48 S.Ct. 421, 276 U.S. 638, 72 L.Ed. 421.

In a prosecution for conspiracy to conceal from the Alien Property Custodian the fact of an indebtedness due from a defendant to the Imperial German government, evidence showing the pro-German sympathies and activities of such defendant in 1914 and 1915, was admissible. Rumely v. U.S., C.C.A.2 (N.Y.) 1923, 293 F. 532, certiorari denied 44 S.Ct. 38, 263 U.S. 713, 68 L.Ed. 520.

In a prosecution under former § 88 of this title [now this section] for conspiracy to defraud the United States under the Trading with the Enemy Act, temporary, by hiding the interest of an enemy alien in a corporation, evidence of destruction by one accused of a letter press copy book containing records of communications with the enemy alien was relevant to show a course of conduct on the part of such defendant, showing a consciousness of guilt, in the sense of attempting to hide all evidence of communication between the corporation and the enemy alien though it never appeared what those communications were. Hodgskin v. U.S., C.C.A.2 (N.Y.) 1922, 279 F. 85.

In the same prosecution, acts of accused before the United States entered the war in trying to get goods past the British sea power, by hiding the interest of the enemy alien, were admissible to establish a general plan of the defendants for the purpose of protecting the interests of the enemy alien. Hodgskin v. U.S., C.C.A.2 (N.Y.) 1922, 279 F. 85.

In such prosecution the fact that a defendant, who was the apparent owner of corporate stock, never filed any claim for the return of the stock after it was seized by the Alien Property Custodian was admissible, as tending to show consciousness of guilt and lack of faith in the truthfulness of his assertion that he was the beneficial owner of the stock. Hodgskin v. U.S., C.C.A.2 (N.Y.) 1922, 279 F. 85.

659. Banking offenses, admissibility of evidence

In prosecution charging defendant with conspiring to take money belonging to bank from person and presence of bank's president, president's testimony relating how his wife was held hostage by one conspirator while he was forced to accompany another conspirator to bank to obtain money and describing agony president and his wife suffered while they were held hostage, though not describing acts committed by defendant, nevertheless was properly admitted, since testimony was highly instrumental in proving the existence and scope of the conspiracy to which defendant had been linked by the testimony of unindicted coconspirators and was not unfairly prejudicial. U.S. v. Silva, C.A.5 (Tex.) 1984, 748 F.2d 262.

In prosecution for conspiracy to embezzle funds from a federally insured bank, court properly declined to suppress evidence of defendant's flight and inculpatory statements made by him when he was attempting to escape arrest in spite of his argument that crime had already been completed before acts charged against him were committed. U. S. v. Veltre, C.A.5 (Tex.) 1979, 591 F.2d 347.

In prosecution for robbery of money from bank, conspiracy to take money from bank and interstate transportation of stolen money, travelers checks which had been taken in robbery of bank, some of which had been found in

possession of defendant at time of arrest and some of which, according to Government's evidence, had been negotiated by a witness who had received them from defendant were admissible to connect defendant to bank robbery even though theft of travelers checks had not been mentioned in the indictment. U. S. v. Davis, C.A.5 (Tex.) 1973, 487 F.2d 112, rehearing denied 486 F.2d 1403, certiorari denied 94 S.Ct. 1573, 415 U.S. 981, 39 L.Ed.2d 878, rehearing denied 94 S.Ct. 2005, 416 U.S. 975, 40 L.Ed.2d 565.

Money received by witness who loaned his cab to defendant was admissible in prosecution for bank robbery and conspiracy to corroborate testimony of witness that defendant paid him for the use of the cab, and it was not necessary for government to exclude all other possibilities of possession and surrender of such money by friend of witness to establish its authentication and admissibility, over objection that there was no proof that the money came from the bank. U. S. v. Howell, C.A.2 (N.Y.) 1971, 447 F.2d 1114.

Admission, in prosecution for wilful misapplication of bank funds, wilful making of false entries in bank records, and conspiracy to misapply bank funds, of summaries of bank documents prepared by employee of Federal Deposit Insurance Corporation was proper where documents had been admitted into evidence and identified. U. S. v. Silverthorne, C.A.9 (Cal.) 1970, 430 F.2d 675, certiorari denied 91 S.Ct. 585, 400 U.S. 1022, 27 L.Ed.2d 633.

Evidence concerning a so-called seminar on techniques for successful bank robberies in which defendant and an accomplice were alleged to have participated prior to crime was admissible, even though seminar was alleged to have taken place in jail, where there was other evidence to prove that defendant was no stranger to a jail cell. U. S. v. Sutherland, C.A.5 (Tex.) 1970, 428 F.2d 1152.

Federal district court acted well within its discretionary limits in not requiring production of original bank records in prosecution for conspiring with assistant cashier of national bank to defraud bank contrary to section 656 of this title, and it was proper for district court to admit testimony of bank auditor as to his conclusions concerning original bank records, where records were voluminous and were, for most part, on microfilms. U. S. v. Paxton, C.A.3 (N.J.) 1968, 403 F.2d 631, certiorari denied 89 S.Ct. 863, 393 U.S. 1082, 21 L.Ed.2d 775.

Evidence that alleged conspirator had stated that "it would be easier to rob the bank" was admissible in prosecution for conspiracy to rob banking institution. Rizzo v. U. S., C.A.8 (Mo.) 1962, 304 F.2d 810, certiorari denied 83 S.Ct. 188, 371 U.S. 890, 9 L.Ed.2d 123.

Evidence that alleged coconspirator had stated her belief that purloined currency could not be traced by serial numbers and could be safely used without fear of detection was admissible against both alleged conspirators, where it appeared that they had started realizing fruits within ten days after offense. Rizzo v. U. S., C.A.8 (Mo.) 1962, 304 F.2d 810, certiorari denied 83 S.Ct. 188, 371 U.S. 890, 9 L.Ed.2d 123.

In prosecution for conspiracy to rob bank, for attempt to rob bank, and for putting life of bank teller in jeopardy, one of the defendants was properly permitted to testify, while a witness for the prosecution, that one of the other defendants, who was her husband, told her before the attempted bank robbery about the parts that the various defendants were to play in the bank robbery, and that after he returned she heard him say that "It didn't come off," over objection that the statements were narrative and not made in furtherance of the conspiracy. United States v. Tarricone, C.A.2 (N.Y.) 1957, 242 F.2d 555.

In prosecution for bank robbery, placing lives of bank employees in peril and for conspiracy, evidence was sufficient to support jury finding that two robbery suspects were engaged in common enterprise on certain evening, and therefore declarations made by one of them to a third became admissible against the first to show nature of joint undertaking, i.e., that it was conspiracy to rob the bank. U. S. v. Avellino, C.A.3 (Pa.) 1954, 216 F.2d 877.

In prosecution for bank robbery, for placing lives of bank employees in peril and for conspiracy, testimony of alleged accomplice relating defendant's admission as to how they entered bank, tied up charlady, etc., was

admissible. U. S. v. Avellino, C.A.3 (Pa.) 1954, 216 F.2d 877.

In prosecution of bank employee for conspiracy to commit grand larceny and embezzlement, daily settlement sheets of bank's head teller were admissible as part of records of bank where proved by persons in bank who had control of them and who worked on them. McNeil v. U.S., App.D.C.1936, 85 F.2d 698, 66 App.D.C. 199.

In prosecution of bank employee for conspiracy to commit grand larceny and embezzlement, regular records of bank appertaining to keeping of accounts in question were admissible, after proper identification, to show method of conducting business of bank, notwithstanding that some of records were prepared by particular witness only in part, and that fictitious entries were made by person other than defendant, where person by whom fictitious entries were made was designated and in every case of an overt act evidence showed knowledge or connection or benefit by defendant in transaction. McNeil v. U.S., App.D.C.1936, 85 F.2d 698, 66 App.D.C. 199.

In prosecution of bank employee for conspiracy to commit grand larceny and embezzlement, introduction of bank's records, in evidence in advance of specific proof of conspiracy was not error, where proof of conspiracy was circumstantial. McNeil v. U.S., App.D.C.1936, 85 F.2d 698, 66 App.D.C. 199.

Testimony of bank cashier was competent to show that drafts payable to one alleged conspirator were sold and delivered to another. Hoxie v. U S, C.C.A.9 (Alaska) 1926, 15 F.2d 762, certiorari denied 47 S.Ct. 459, 273 U.S. 755, 71 L.Ed. 876.

Proof of conversation in which agreement was made was not hearsay, but the best evidence of the agreement, and testimony of bank cashier as to arrangement with correspondent bank was a conclusion, the admission of which did not justify the exclusion of the actual conversation. Sparks v. U.S., C.C.A.6 (Tenn.) 1917, 241 F. 777, 154 C.C.A. 479.

In a prosecution against officers of a national bank and certain alleged aiders and abetters for the willful misappropriation of the bank's funds a question to one of the officers, if he had any arrangement with the vice president of the bank by which the bank was to be defrauded by willfully abstracting its funds and appropriating them to illegitimate purposes, should have been allowed. Prettyman v. U. S., C.C.A.6 (Ohio) 1910, 180 F. 30, 103 C.C.A. 384.

Where, in a prosecution against officers of a national bank and alleged aiders and abetters for misapplying the bank's funds, it was claimed that such application was made partly through overdrafts by defendant K., and that he had conspired with certain officers of the bank to defraud it of its funds, evidence that many other customers of the bank had made overdrafts on it, the details of which were exhibited on certain pages of the bank's individual ledger offered in evidence, was admissible as bearing on defendant's criminal intent. Prettyman v. U. S., C.C.A.6 (Ohio) 1910, 180 F. 30, 103 C.C.A. 384.

Where an indictment against officers of a national bank and others, alleged to have aided and abetted them in the misapplication of the bank's funds, charged conspiracy and intent to willfully misapply the bank's funds in several ways, and, among them, of procuring it to make large loans to a hosiery company by paper indorsed by a woolen company, which, it was claimed, was then largely indebted to the bank, proof that funds of the bank were loaned on paper of the hosiery company which was indorsed by the woolen company was admissible, but not evidence of a mortgage given by the woolen company to the bank, nor as to notes which the woolen company made to the bank to secure its individual obligations, and not as indorser of the hosiery company. Prettyman v. U. S., C.C.A.6 (Ohio) 1910, 180 F. 30, 103 C.C.A. 384.

660. Bankruptcy offenses, admissibility of evidence

Sworn testimony given before state fire marshal by apparent central figure in scheme to transfer and conceal

property of a corporation in contemplation of bankruptcy and to conceal corporate property from the receiver, trustee and creditors as well as evidence of conversations between such figure and two others about the defendant was given in furtherance of main criminal objectives of the conspiracy and, as such, was admissible against defendant, who claimed that he merely set fire which allegedly destroyed corporate property but who was shown to have had knowledge of the bankruptcy scheme and that fire was part of plan of bankruptcy fraud. U. S. v. Davis, C.A.1 (R.I.) 1980, 623 F.2d 188.

Testimony to effect that codefendant reacted violently when questioned over telephone about disappearance of merchandise was relevant and admissible in prosecution for conspiring to violate bankruptcy laws. Jacobs v. U. S., C.A.8 (Iowa) 1968, 395 F.2d 469.

Evidence of transactions and occurrences in furtherance of conspiracy to defraud bankrupt corporation's creditors by fraudulently transferring company's assets was properly admitted in prosecution for violating and conspiring to violate this section. U. S. v. Castellana, C.A.2 (N.Y.) 1965, 349 F.2d 264, certiorari denied 86 S.Ct. 934, 383 U.S. 928, 15 L.Ed.2d 847, certiorari denied 86 S.Ct. 935, 383 U.S. 928, 15 L.Ed.2d 847, rehearing denied 86 S.Ct. 1368, 384 U.S. 923, 16 L.Ed.2d 444.

In prosecution for conspiracy with bankrupt to conceal bankruptcy assets, admission of defendant's written statements before corpus delicti had been established was technical defect which was removed by establishment of corpus delicti and such admission was not reversible error. Sultan v. U. S., C.A.5 (Fla.) 1957, 249 F.2d 385.

In prosecution for conspiring to defraud the United States by corruptly administering and procuring the corrupt administration of the Frazier-Lemke Act, §§ 201 to 203 of Title 11, evidence of declarations of an absent conspirator implicating a defendant who objected to the declarations as hearsay because made in his absence was properly admitted, where there was evidence sufficient to warrant jury in finding that the objecting defendant was connected with the conspiracy. Braatelien v. U. S., C.C.A.8 (N.D.) 1945, 147 F.2d 888.

In prosecution for conspiracy to violate Bankruptcy Act, former § 52 of Title 11, by concealing assets from trustee in bankruptcy of bankrupt corporation by transferring assets of such corporation in contemplation of its bankruptcy and with intent to defeat § 1 et seq. of Title 11, and by concealing, mutilating, and falsifying books and records of bankrupt corporation, testimony of president of bankrupt corporation who was an alleged coconspirator that defendant had been a partner in bankrupt's business constituted merely a "narrative declaration" of a past fact and was improperly admitted. U.S. v. Goodman, C.C.A.2 (N.Y.) 1942, 129 F.2d 1009.

Affidavit signed by defendant and check obtained in deposition were admissible in prosecution for conspiracy to conceal bankrupt's assets. Gerson v. U.S., C.C.A.8 (Okla.) 1928, 25 F.2d 49.

Failure to produce copy of letter requesting financial statement did not render statement inadmissible in prosecution for conspiracy to conceal bankrupt's assets. Gerson v. U.S., C.C.A.8 (Okla.) 1928, 25 F.2d 49.

Bankrupt's financial statement, if given before alleged conspiracy to conceal assets, was not admissible as against bankrupt's codefendants. Gerson v. U.S., C.C.A.8 (Okla.) 1928, 25 F.2d 49.

Deposit slips and ledger pages of bank account were admissible to show failure to deposit checks and cash, as charged in indictment for conspiracy to conceal assets. Kolbrenner v. U.S., C.C.A.5 (Tex.) 1926, 11 F.2d 754, certiorari denied 46 S.Ct. 489, 271 U.S. 677, 70 L.Ed. 1146.

Under an indictment for conspiracy to commit an offense by the concealment by one of the defendants, while a bankrupt, of money received for goods sold from his trustee, testimony to his sale of goods shortly before bankruptcy was relevant and competent. Wolff v. U S, C.C.A.1 (Mass.) 1924, 299 F. 90.

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Evidence of conditions existing prior to the alleged conspiracy was competent under an indictment of bankrupts for a conspiracy to conceal assets from their trustee, to show whereby it was facilitated and made possible at the time at which it was alleged to have been formed. Goldberg v. U.S., C.C.A.1 (Mass.) 1924, 295 F. 447.

In a prosecution for conspiracy to conceal assets from a trustee in bankruptcy, where the indictment alleged that the goods which the conspirators were to conceal were unknown to the grand jurors, it was proper to exclude evidence that the grand jury had a list of the goods which the bankrupts failed to turn over to their trustee, and which were subsequently discovered by the trustee, since it did not necessarily follow that those goods were the particular goods which the conspirators designed to conceal. Jollit v. U. S., C.C.A.5 (Ala.) 1922, 285 F. 209, certiorari denied 43 S.Ct. 519, 261 U.S. 624, 67 L.Ed. 832.

661. Bribery, admissibility of evidence

Existence of consulting contract was properly admitted in conspiracy prosecution of former state officials, for exchanging state consulting contracts for political fund-raising efforts, as direct evidence of unindicted acts of conspiracy, rather than other bad act evidence. U.S. v. Moeller, C.A.5 (Tex.) 1996, 80 F.3d 1053. Criminal Law 369.2(3.1)

In prosecution arising from corporation's alleged bribery of city officials, there was no prosecutorial misconduct by reason of the Government raising, during its closing argument, an inference that defendant towing company president bribed someone in the Illinois Commerce Commission to procure a certificate of public necessity and convenience for the corporation, since, inter alia, the indictment described in broad language the objects of the bribery scheme as "public officers and employees" so that proof of bribes to Commerce Commission officials was within the scope of the scheme alleged. U. S. v. McPartlin, C.A.7 (Ill.) 1979, 595 F.2d 1321, certiorari denied 100 S.Ct. 65, 444 U.S. 833, 62 L.Ed.2d 43.

Recordings of personal conversations between a revenue officer of Internal Revenue Service and attorney of taxpayers in attorney's office and in attorney's automobile and of telephone conversation between them were properly admitted in prosecution of revenue officer for conspiring to defraud United States and for conspiring to demand and receive bribe, where recording devices were installed in attorney's office and automobile and recordings were made with attorney's express consent. Harris v. U. S., C.A.1 (Mass.) 1966, 367 F.2d 633, certiorari denied 87 S.Ct. 862, 386 U.S. 915, 17 L.Ed.2d 787.

In prosecution for conspiracy to bribe police officer and also for bribery itself to influence officer in enforcement of gambling laws, trial court did not abuse its discretion by admitting in evidence partially incoherent and inaudible recordings of conversations between the police officer and defendants. Monroe v. U.S., C.A.D.C.1956, 234 F.2d 49, 98 U.S.App.D.C. 228, certiorari denied 77 S.Ct. 94, 352 U.S. 872, 1 L.Ed.2d 76, certiorari denied 77 S.Ct. 94, 352 U.S. 873, 1 L.Ed.2d 76, rehearing denied 77 S.Ct. 219, 352 U.S. 937, 1 L.Ed.2d 170, rehearing denied 78 S.Ct. 114, 355 U.S. 875, 2 L.Ed.2d 79.

In prosecution of individuals and congressman for conspiracy to defraud the United States through violation of former § 203 of this title, prohibiting members of Congress from receiving compensation in matters affecting the government, direct testimony of congressman and individuals as to motives, facts and circumstances of payments, and fact of calls by congressman on the War Department, were admissible to establish whether congressman acted because of complaints he heard or because of money he received. May v. United States, C.A.D.C.1949, 175 F.2d 994, 84 U.S.App.D.C. 233, certiorari denied 70 S.Ct. 58, 338 U.S. 830, 94 L.Ed. 505, order withheld 70 S.Ct. 81, 338 U.S. 854, motion denied 70 S.Ct. 94, motion denied 70 S.Ct. 95, rehearing denied 70 S.Ct. 154, 338 U.S. 882, 94 L.Ed. 542, rehearing denied 70 S.Ct. 155, 338 U.S. 882, 94 L.Ed. 542, order withheld 70 S.Ct. 80.

In prosecution against management engineering consultants and their corporation for conspiracy to defraud United

States of faithful services of one of consultants by making use of consultant's position with navy to induce contractors whose plants he inspected to employ services of corporation, reports of investigations which were made by contractor after consultant's adverse report to navy were not admissible on theory that defense "opened the door" by cross-examination of contractor's president concerning investigations and resulting recommendations, where nothing in testimony given on cross-examination required supplementation to make investigations and recommendations clearly understandable. U.S. v. Corrigan, C.C.A.2 (N.Y.) 1948, 168 F.2d 641.

In prosecution for conspiracy to defraud the United States by depriving the United States of honest and conscientious services of an assistant United States Attorney, reports of alcohol tax unit which gave information for attorney to act or not act upon, and which therefore threw light upon question of deprivation of honest and conscientious services of the attorney, were properly admitted although allegedly containing hearsay information, and reference therein to one of defendants as being of Jewish descent was not prejudicial, especially where trial court instructed jury that the reports were not evidence against some of the defendants. U.S. v. Glasser, C.C.A.7 (Ill.) 1940, 116 F.2d 690, certiorari granted 61 S.Ct. 835, 313 U.S. 551, 85 L.Ed. 1515, modified on other grounds 62 S.Ct. 457, 315 U.S. 60, 86 L.Ed. 680, rehearing denied 62 S.Ct. 629, 315 U.S. 827, 86 L.Ed. 1222, rehearing denied 62 S.Ct. 637, 315 U.S. 827, 86 L.Ed. 1222.

In prosecution of prohibition agents for conspiracy to accept bribes, admitting evidence that one defendant, with unknown men, asked witness for bribe, was not reversible error. Harvey v. U.S., C.C.A.2 (N.Y.) 1928, 23 F.2d 561 .

Evidence that witness saw prohibition agents, charged with conspiracy to accept bribes, receive money from men running "speak-easies," was admissible. Harvey v. U.S., C.C.A.2 (N.Y.) 1928, 23 F.2d 561.

Evidence regarding one defendant's attempt to obtain bribe was improperly limited to that defendant. Harvey v. U.S., C.C.A.2 (N.Y.) 1928, 23 F.2d 561.

Promise by one conspirator to pay sheriff for permission to transport liquor was admissible against others. Martin v. U.S., C.C.A.5 (Fla.) 1927, 17 F.2d 973, certiorari denied 48 S.Ct. 20, 275 U.S. 527, 72 L.Ed. 408.

Testimony of money exacted from prisoner by warden as alleged loan was admissible in prosecution for conspiracy to receive bribes from prisoners. Sartain v. U.S., C.C.A.5 (Ga.) 1927, 16 F.2d 704.

In a prosecution for conspiracy to defraud the United States and to bribe government inspectors, testimony that in a quantity of shoe soles purchased from a concern was found a large percentage of sole of a better grade than those bought was properly excluded, as too remote, when offered to establish the presumption that a quantity purchased from the same concern a year before, when market conditions were different, also contained such percentage of the higher quality. Sears v. U.S., C.C.A.1 (Mass.) 1920, 264 F. 257.

662. Burglary, admissibility of evidence

Guns seized in search of automobiles of defendants charged with conspiracy to burgle were relevant to prove conspiracy and were properly admitted into evidence even though there was no direct evidence that guns were actually used by defendants. Wangrow v. U. S., C.A.8 (Minn.) 1968, 399 F.2d 106, certiorari denied 89 S.Ct. 292, 393 U.S. 933, 21 L.Ed.2d 270.

663. Counterfeiting, admissibility of evidence

In prosecution for conspiracy to possess counterfeit bill admission of bills which were seized in Philadelphia and which had same serial number as counterfeit money defendant offered state's witnesses was proper, despite

contention that there was no evidence that such bills were bills from the conspiracy. U. S. v. Rizzo, C.A.2 (N.Y.) 1974, 492 F.2d 443, certiorari denied 94 S.Ct. 3069, 417 U.S. 944, 41 L.Ed.2d 299, certiorari denied 94 S.Ct. 3069, 417 U.S. 944, 41 L.Ed.2d 665.

Admission, in prosecution for conspiracy to make, possess, pass and cause to be made, possessed and passed, certain counterfeit $20 federal reserve notes, of testimony that concerned transactions, which were not included in pretrial memorandum, and proof of which was not necessary to support conviction was not abuse of discretion. U. S. v. Lloyd, C.A.5 (Tex.) 1970, 425 F.2d 711.

Alleged fact that undercover agent threatened one of defendants in order to insure his attendance at meeting of alleged conspirators, did not require exclusion of his testimony in prosecution for conspiracy to transfer or deliver counterfeit government obligations. U.S. v. Lefner, C.A.9 (Cal.) 1970, 422 F.2d 1021.

Evidence established conspiracy between defendant and others to counterfeit federal reserve notes, and hence testimony of witness wherein he related conversations between him and third party and gave a narrative of their activities was properly admitted on ground that the witness and such third party were members of such conspiracy. U. S. v. Plata, C.A.7 (Ill.) 1966, 361 F.2d 958, certiorari denied 87 S.Ct. 94, 385 U.S. 841, 17 L.Ed.2d 74.

Notations such as names of those who surrendered counterfeit bills to authorities or fact that bills were being used in instant prosecution for conspiring to counterfeit bills could not have been misleading or prejudicial, and reception of counterfeit bills accompanied by such notations formed no ground for reversal. U. S. v. Lukasik, C.A.7 (Ill.) 1965, 341 F.2d 325, certiorari denied 85 S.Ct. 1770, 381 U.S. 938, 14 L.Ed.2d 702.

No prejudice appeared from reception in prosecution for alleged conspiracy to counterfeit currency of handbills printed by a defendant. U. S. v. Lukasik, C.A.7 (Ill.) 1965, 341 F.2d 325, certiorari denied 85 S.Ct. 1770, 381 U.S. 938, 14 L.Ed.2d 702.

In prosecution for conspiring to pass counterfeit bills, testimony of witness as to similarity of serial numbers of counterfeit bills received from the defendant was admissible, notwithstanding that the acts of defendant as related by witness were not in furtherance of the conspiracy charged in the indictment where they were but links in the chain of circumstantial evidence tending to prove the defendant's connection and participation in the conspiracy between the persons charged in the indictment. Harris v. U.S., C.A.4 (Md.) 1960, 283 F.2d 923.

Where arrest of defendant by United States Secret Service agents under warrant was lawful, and search of defendant's effects in envelope by secret service agent at county jail shortly after defendant's arrest was incident to a lawful arrest, the search was lawful, and forged card discovered in the search was properly admitted in prosecution for conspiracy to forge checks of the United States and for conspiracy to utter counterfeit and forged writings to defraud the United States. Baskerville v. U.S., C.A.10 (Colo.) 1955, 227 F.2d 454.

If forged card was never in possession of defendant and was not taken from his person at time of search of defendant's effects at county jail, and he had no interest therein, seizure of the card by United States Secret Service agent was a matter with respect to which defendant had no right to complain in prosecution for conspiracy to forge checks of the United States and for conspiracy to utter counterfeit and forged writings to defraud the United States. Baskerville v. U.S., C.A.10 (Colo.) 1955, 227 F.2d 454.

In prosecution for conspiring to pass, utter, publish and sell counterfeit money, independent evidence was sufficient to connect defendant with the conspiracy and court did not abuse his discretion in admitting co-conspirator's statements concerning the conspiracy. U.S. v. Morris, C.A.7 (Ill.) 1955, 225 F.2d 91, certiorari denied 76 S.Ct. 179, 350 U.S. 901, 100 L.Ed. 792, rehearing denied 76 S.Ct. 300, 350 U.S. 943, 100 L.Ed. 823. Criminal Law 422(1); Criminal Law 427(5)

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In prosecution for unlawful uttering, publishing, passing, possessing, buying, receiving, selling, delivering, and transferring counterfeited $10 bills and for conspiracy, court properly admitted in evidence under conspiracy charge counterfeited bills found in automobile of one of the defendants on November 10, 1949, while it was in possession of one of the other defendants, to whom it had been loaned, though count charging conspiracy alleged that conspiracy existed from on or about April 15, 1950 and continued until on or about May 1, 1950, where the government contended that conspiracy was in existence prior to April 1950, and court by instructions properly limited effect of testimony. U. S. v. Crowe, C.A.7 (Ill.) 1951, 188 F.2d 209.

Declarations by co-conspirators in prosecution for conspiracy involving possession and use of counterfeit money purporting to involve defendant in conspiracy before there was any showing that defendant was a party was properly admitted over defendant's objections where trial court instructed jury that it was to consider such statements only against those persons who made the statements or those who were present when statements were made, and that statements were not to be considered against an absent defendant unless and until absent defendant was tied into the conspiracy by independent evidence, and such precautionary instructions were repeated in instructions given to jury. U. S. v. Boyance, E.D.Pa.1963, 215 F.Supp. 390.

Defendant failed to establish that he was prejudiced by introduction of his guilty plea colloquy from state counterfeiting prosecution, in federal prosecution for conspiracy to sell and pass counterfeit United States currency; jury was not told defendant's statements were made in court, and jury, which never found out that defendant had been previously convicted for counterfeiting, acquitted him of federal counterfeiting charges for which this evidence was most probative. U.S. v. Bibbs, C.A.3 (Pa.) 2005, 152 Fed.Appx. 247, 2005 WL 2840088, Unreported. Criminal Law 1169.12

664. Customs offenses, admissibility of evidence

Court properly admitted articles seized by government, pursuant to search warrant, from home of defendant charged with conspiracy and smuggling in relation to alleged plot to blow up Statute of Liberty, where materials seized were not intended for use on Statute of Liberty but were relevant to the conspiracy. U. S. v. Bowe, C.A.2 (N.Y.) 1966, 360 F.2d 1, certiorari denied 87 S.Ct. 401, 385 U.S. 961, 17 L.Ed.2d 306, certiorari denied 87 S.Ct. 779, 385 U.S. 1042, 17 L.Ed.2d 686, rehearing denied 87 S.Ct. 1040, 386 U.S. 969, 18 L.Ed.2d 127.

Testimony of alleged co-conspirator of defendant that after co-conspirator was arrested for attempting to smuggle obscene books ashore from vessel he cooperated with customs officials by placing books in subway locker and delivering locker key to defendant in accordance with instructions of senders in England was properly admitted in prosecution for conspiracy to import obscene matter into the United States. U. S. v. Mishkin, C.A.2 (N.Y.) 1963, 317 F.2d 634, certiorari denied 84 S.Ct. 71, 375 U.S. 827, 11 L.Ed.2d 60.

Testimony of witness as to arrangements made by him in England to bring obscene books to United States and deliver them to defendant was properly admitted in prosecution for conspiracy to import obscene matter, over objection that testimony was hearsay, where persons in England were co-conspirators of defendant. U. S. v. Mishkin, C.A.2 (N.Y.) 1963, 317 F.2d 634, certiorari denied 84 S.Ct. 71, 375 U.S. 827, 11 L.Ed.2d 60.

Slips of paper, which had unpublished telephone number of defendant and his first name on them, and which were found in wallet of alleged coconspirator when he attempted to pick up obscene books from subway locker, were properly admitted in prosecution for conspiracy to import obscene matter into the United States, to prove that one arrested had received locker key from defendant. U. S. v. Mishkin, C.A.2 (N.Y.) 1963, 317 F.2d 634, certiorari denied 84 S.Ct. 71, 375 U.S. 827, 11 L.Ed.2d 60.

Obscene books were properly admitted in evidence in prosecution for conspiracy to import obscene matter into the United States, though defendant conceded that books were obscene. U. S. v. Mishkin, C.A.2 (N.Y.) 1963, 317 F.2d 634, certiorari denied 84 S.Ct. 71, 375 U.S. 827, 11 L.Ed.2d 60.

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In prosecution for conspiracy to export platinum without license, evidence that one confederate made written agreement insuring others' interest if United States should enter war was admissible against such confederate and, once the conspiracy was established, was admissible against the others. U.S. v. Rosenberg, C.C.A.2 (N.Y.) 1945, 150 F.2d 788, certiorari denied 66 S.Ct. 90, 326 U.S. 752, 90 L.Ed. 451, certiorari denied 66 S.Ct. 91, 326 U.S. 752, 90 L.Ed. 451.

In prosecution for conspiracy to export platinum without license, evidence of one conspirator's bank account, showing large deposits during period involved, was admissible against such confederate and, once the conspiracy was established, was admissible against others. U.S. v. Rosenberg, C.C.A.2 (N.Y.) 1945, 150 F.2d 788, certiorari denied 66 S.Ct. 90, 326 U.S. 752, 90 L.Ed. 451, certiorari denied 66 S.Ct. 91, 326 U.S. 752, 90 L.Ed. 451.

665. Defrauding United States, admissibility of evidence--Generally

Summary testimony of Internal Revenue Service (IRS) agent who was involved in investigation of case was properly admitted in prosecution for conspiring to defraud the United States, involving alleged attempt to conceal income, to show connection between defendants, Swiss bank accounts, and failure to report signature authority and income, where agent did not comment directly on credibility of any specific witness, but rather gave his view of events. U.S. v. Sturman, C.A.6 (Ohio) 1991, 951 F.2d 1466, rehearing denied, certiorari denied 112 S.Ct. 2964, 504 U.S. 985, 119 L.Ed.2d 586.

In prosecution for conspiracy to violate currency reporting provisions of Bank Secrecy Act and conspiracy to defraud the Government, any prejudicial error caused by momentary admission of business card which was found on defendant's person following his arrest was cured by court's immediate and unequivocal cautionary instructions and did not deprive defendant of fair trial. U.S. v. Valdes-Guerra, C.A.11 (Fla.) 1985, 758 F.2d 1411.

Trial court did not abuse its discretion in prosecution of defendant for conspiracy to defraud or commit an offense against the Small Business Administration by admitting evidence indicating that misrepresentations were made concerning movie and refinery sold by defendant's corporation, as the contested evidence was part of a pattern of deceit which was relevant in establishing defendant's attempted fraud, and as any potential prejudice was diminished by limiting instruction. U. S. v. Swarek, C.A.8 (Ark.) 1981, 656 F.2d 331, certiorari denied 102 S.Ct. 573, 454 U.S. 1034, 70 L.Ed.2d 478.

In joint trial of uncle and nephew on charge of conspiring to defraud the United States by impeding the Internal Revenue Service in the collection of income taxes, nephew's preconspiracy financial statement which purported to list nephew's outstanding obligations, yet made no mention of a loan from uncle, was admissible as evidence casting doubt on whether nephew had made a $3,200 interest payment to uncle for a loan, thus supporting government's charge of a conspiracy to conceal nephew's income. U. S. v. Diez, C.A.5 (Fla.) 1975, 515 F.2d 892, rehearing denied 521 F.2d 815, certiorari denied 96 S.Ct. 780, 423 U.S. 1052, 46 L.Ed.2d 641.

Evidence of defendant's efforts to induce home buyers to conceal facts from federal investigators was admissible against defendant who was charged with conspiracy to defraud the Federal Housing Administration and with submitting false documents to the Federal Housing Administration as proof of guilty knowledge. Tripp v. U. S., C.A.9 (Cal.) 1967, 381 F.2d 320.

Alleged coconspirators' actual knowledge of customers' letters was not constructive knowledge to defendants for purpose of establishing defendants' intent to defraud, and letters, which were offered to prove defendants' knowledge of customers' complaints and requests, were not admissible without showing that defendants had actual knowledge of letters. Phillips v. U. S., C.A.9 (Or.) 1965, 356 F.2d 297, certiorari denied 86 S.Ct. 1573, 384 U.S. 952, 16 L.Ed.2d 548.

In prosecution for conspiring to defraud United States by inflating cost basis of tuition rates and increasing cost

charged to Veterans Administration for supplies in veterans' training under the Servicemen's Readjustment Act of 1944, § 693 et seq. of Title 38, refusal to admit evidence which concerned alleged receipts given by veteran students, and which was offered to counteract charge of tool deficiency, was not serious error, even though offered under the Federal Shop Book Rule, § 1732 of Title 28, in view of facts that defendants' books were available for examination at trial, and that there had been evidence of tampering with like receipts. U. S. v. Weinberg, C.A.3 (Pa.) 1955, 226 F.2d 161, certiorari denied 76 S.Ct. 305, 350 U.S. 933, 100 L.Ed. 815.

In prosecution for conspiring to defraud United States by inflating cost basis of tuition rate and increasing cost charged to Veterans Administration for supplies in veterans' training under the Servicemen's Readjustment Act of 1944, § 693 et seq. of Title 38, testimony that tools sufficient to furnish veteran students with full sets had not been purchased and that school rent had been overstated was an integral part of fraud charge and, therefore, admissible. U. S. v. Weinberg, C.A.3 (Pa.) 1955, 226 F.2d 161, certiorari denied 76 S.Ct. 305, 350 U.S. 933, 100 L.Ed. 815.

In prosecution of two corporate defendants and five individual defendants on charges of conspiracy to defraud United States by delivering under contracts with Federal Surplus Commodities Corporation rejected egg powder and conspiracy to defraud United States by obtaining payment of certain false claims, testimony as to salaries paid to two of the individual defendants was relevant as indicative of their managerial responsibility and proof of their stake in the enterprise. U.S. v. Samuel Dunkel & Co., C.A.2 (N.Y.) 1950, 184 F.2d 894, certiorari denied 71 S.Ct. 491, 340 U.S. 930, 95 L.Ed. 671.

In prosecution of corporation and its president and employees for conspiracy to defraud United States in sale of eggs, butter, and cheese, where president on both direct and cross-examination denied that he knew of any complaints other than one about eggs, letters complaining about rotten eggs are not inadmissible as concerning a collateral matter, but are admissible to prove president's knowledge and interest and to contradict his testimony. Nye & Nissen v. U.S., C.C.A.9 (Cal.) 1948, 168 F.2d 846, certiorari granted 69 S.Ct. 81, 335 U.S. 852, 93 L.Ed. 400, affirmed 69 S.Ct. 766, 336 U.S. 613, 93 L.Ed. 919.

In prosecution for conspiracy to defraud the United States in rationing of rubber tires, exclusion of testimony of deputy director in charge of rationing that he had made a speech that rationing executives, when confronted with peculiar conditions and emergencies, should meet them regardless of regulations, was discretionary. Phelps v. U. S., C.C.A.8 (Minn.) 1947, 160 F.2d 858, rehearing denied 161 F.2d 940, certiorari denied 68 S.Ct. 1525, 334 U.S. 860, 92 L.Ed. 1780.

In prosecution for conspiracy to defraud the United States in rationing of rubber tires, exclusion of various bulletins and communications from regional office and national office of Office of Price Administration dealing with rationing programs, was discretionary because of the remoteness of the bulletins and communications. Phelps v. U. S., C.C.A.8 (Minn.) 1947, 160 F.2d 858, rehearing denied 161 F.2d 940, certiorari denied 68 S.Ct. 1525, 334 U.S. 860, 92 L.Ed. 1780.

In prosecution for conspiracy to defraud government, evidence as to market prices of goods sold by government officer was competent to prove minimum price at which officer could sell. Falter v. U.S., C.C.A.2 (N.Y.) 1928, 23 F.2d 420, certiorari denied 48 S.Ct. 528, 277 U.S. 590, 72 L.Ed. 1003.

In a prosecution for conspiracy to defraud United States in building hospitals, testimony relative to payments to be made to one of conspirators for obtaining introduction and indorsements of the others to officials of republic of Columbia, with which contracts were sought, was properly admitted. Thompson v. U.S., C.C.A.7 (Ill.) 1926, 10 F.2d 781, certiorari denied 46 S.Ct. 352, 270 U.S. 654, 70 L.Ed. 782.

Under an indictment under former § 88 of this title [now this section] for conspiracy to defraud the United States in respect to its trust duties toward members of certain Indian tribes by inducing the Secretary of the Interior by means of fraud and deceit to believe that certain Indian heirs were competent, and to cause the issuance to them of

unrestricted patents for allotments held in trust, and by thereafter procuring conveyances of the lands from the patentees to defendants or others, the procuring of such conveyances after issuance of the patents constituted overt acts within the conspiracy charged, proof of which was competent. Baker v. U.S., C.C.A.8 (Okla.) 1921, 276 F. 283.

On trial for conspiring to defraud United States in connection with sale of zinc, evidence as to sales to others by the conspirators was admissible to show market value. Meyer v. U.S., C.C.A.9 (Wash.) 1915, 220 F. 800, 135 C.C.A. 564.

The purchasing and withholding from filing of homestead relinquishments and the institution of contests supported by probable cause, being authorized by law, could not constitute acts to effect the object of a conspiracy to defraud the United States, in violation of former § 88 of this title [now this section], and hence were not admissible in evidence to prove the charge. Fain v. U.S., C.C.A.8 (S.D.) 1913, 209 F. 525, 126 C.C.A. 347.

Evidence of contests of valid entries by defendants, and that some of their statements on immaterial issues in their affidavits of contest were false, were inadmissible, in a prosecution for a conspiracy in violation of former § 88 of this title [now this section] to defraud the United States by inducing false homestead entries and clouding title to land and instituting false contests. Fain v. U.S., C.C.A.8 (S.D.) 1913, 209 F. 525, 126 C.C.A. 347.

In a prosecution for a conspiracy to defraud in violation of former § 88 of this title [now this section], in relation to homestead entries, evidence that an entryman was intoxicated at a certain time, and that a person who made a corroborating affidavit in a contest instituted by defendant was a "professional contester" was inadmissible where it did not tend to prove any fraud on the government. Fain v. U.S., C.C.A.8 (S.D.) 1913, 209 F. 525, 126 C.C.A. 347.

In a prosecution for conspiracy to defraud the United States out of public land entered under the Timber and Stone Act, § 311 et seq. of Title 43, by alleged prior agreements, to purchase with entrymen, allegations in their final proofs that the purchases were made for the entrymen alone were admissible as bearing on defendants' good faith. Worden v. U. S., C.C.A.6 (Mich.) 1913, 204 F. 1, 122 C.C.A. 315.

In a prosecution for conspiracy to defraud the United States out of certain public land under the Timber and Stone Act, § 311 et seq. of Title 43, evidence of the making of 27 other entries than those described in the indictment and proof that the land was immediately transferred to defendants or a lumber company operated by them was admissible as bearing on defendant's good faith. Worden v. U. S., C.C.A.6 (Mich.) 1913, 204 F. 1, 122 C.C.A. 315 .

The prosecution on a trial for conspiracy to defraud the government of its public lands was entitled to show that entrymen understood that the lands entered on should be turned over to the conspirators. Hedderly v. U.S., C.C.A.9 (Or.) 1912, 193 F. 561, 114 C.C.A. 227.

Evidence of the fraudulent acquisition of the state lands was material as showing the basis of the conspiracy and the method of procedure adopted to carry it into effect. Mays v. U.S., C.C.A.9 (Or.) 1910, 179 F. 610, 103 C.C.A. 168 .

On the prosecution of defendant for conspiracy to defraud the United States of public lands by fraudulently acquiring state lands of little or no value, procuring their inclusion in a national forest reservation, and obtaining lieu lands of greater value from the government in exchange therefor, evidence of such fraudulent acquiring of state lands within the boundaries of the reservation subsequently established more than three years before the finding of the indictment, and the sale of which by the state had afterward been validated by an act of the Legislature, was admissible as tending to prove the intent and design of the conspiracy. Jones v. U.S., C.C.A.9 (Or.) 1910, 179 F. 584, 103 C.C.A. 142.

In the same prosecution, where one of the defendants was at the time of the transactions Commissioner of the General Land Office, evidence that the reservation was established on his recommendation, that news of the fact was given out in advance of the official announcement, and that his resignation was afterward requested by his superiors because of his conduct in relation to forest reservations was competent on the trial of a codefendant. Jones v. U.S., C.C.A.9 (Or.) 1910, 179 F. 584, 103 C.C.A. 142.

On the trial of a defendant charged with a like conspiracy testimony that defendant correctly explained the requirements of the homestead law as to residence, etc., to persons who were not mentioned in the indictment or the government's evidence as having any connection with the offense charged was irrelevant, and not admissible as part of the res gestae. Huntington v. U. S., C.C.A.8 (Neb.) 1909, 175 F. 950, 99 C.C.A. 440.

On the trial of defendants charged with conspiracy to defraud the United States by procuring fraudulent homestead entries of public lands, testimony of the entrymen that they did not intend to go upon the land and establish an actual residence was admissible. Richards v. U. S., C.C.A.8 (Neb.) 1909, 175 F. 911, 99 C.C.A. 401.

In prosecution of defendant, division manager of company working on government contracts under cost redeterminable clauses, for conspiracy to defraud United States based on defendant having certain company employees do private work on company's time, time cards of employees were admissible since defendant, in his official position, must have been aware that employees in his charge made out time cards and charged time in manner indicated by established company policy. U. S. v. Woll, E.D.Pa.1957, 157 F.Supp. 704.

In prosecution of defendant, company division manager, for conspiracy to defraud United States in connection with defendant having certain company employees work on his sister's home during company time, admission of the cost redeterminable clauses of two government classified contracts did not deny confrontation by accusers, since it was inconceivable that defendant, in his official position, did not at least have knowledge of the use of cost redetermination clauses in contract and hence contracts were not hearsay as to him. U. S. v. Woll, E.D.Pa.1957, 157 F.Supp. 704.

Evidence that defendant was member of Mormon church was not admissible in trial for conspiracy to defraud government, given defendant's failure to show that his church membership was relevant to his willfulness defense, and that probative value of such evidence was substantially outweighed by potential for unfair prejudice. U.S. v. Anderson, C.A.9 (Or.) 2004, 94 Fed.Appx. 487, 2004 WL 604937, Unreported, certiorari denied 125 S.Ct. 192, 543 U.S. 863, 160 L.Ed.2d 105, rehearing denied, rehearing denied 125 S.Ct. 493, 543 U.S. 984, 160 L.Ed.2d 367, certiorari denied 125 S.Ct. 203, 543 U.S. 863, 160 L.Ed.2d 105. Conspiracy 45; Criminal Law 338(7)

666. ---- Alteration of obligations of United States, defrauding United States, admissibility of evidence

That coins found in possession of defendants had been altered was admissible to show intent, purpose or motive, in prosecution for fraudulently altering coins and admission thereof was not an abuse of discretion where jury was carefully instructed to consider testimony wholly on issue of intent. Barnett v. U. S., C.A.5 (Miss.) 1967, 384 F.2d 848.

The fraudulent alteration of war savings certificates and stamps was an offense, whether the stamps were registered or unregistered, and hence, in a prosecution for conspiracy, evidence as to the mode of registering such stamps, objected to on the ground that the indictment did not show that the stamps were registered, was immaterial. Rossi v. U.S., C.C.A.9 (Or.) 1922, 278 F. 349.

667. ---- False and fraudulent claims, defrauding United States, admissibility of evidence

In prosecution resulting in convictions for making false claims to federal agency, for illegally converting funds of

the agency to defendant's own use, and for conspiracy, defendant, who had operated secretarial services should and who had secured student financing through federal programs, was not entitled to introduce into evidence interdepartmental government memorandum stating that "the [Guaranteed Student Loan] program is not intended to provide gifts of funds to educational institutions for use as they see fit without being held accountable for those funds," contrary to claim that such memorandum showed that other schools acted in same manner as defendant's school did and that defendant could therefore believe that he was acting properly in his use of federal funds. U. S. v. Wehling, C.A.5 (Tex.) 1982, 676 F.2d 1053, rehearing denied 683 F.2d 1373.

In defendants' trial for conspiracy to defraud the United States by falsifying invoices to make it appear that milk, instead of orangeade, was being sold to school which was participating in federally funded school lunch program, evidence of records of school attendance and milk delivery for three years prior to the period covered by the indictment was property excluded as irrelevant, confusing, and misleading. U. S. v. Jordan, C.A.5 (Ala.) 1980, 627 F.2d 683.

In prosecution for conspiring to defraud United States by submitting and causing submission of false cost reports for medicare and medicaid payments to nursing home, evidence pertaining to periods later than those in which allegedly fraudulent activities occurred was properly admitted to show relationship between defendant and coconspirator and knowledge and intent with which defendant handled fraudulent aspects of nursing home's transactions. U. S. v. Nemes, C.A.2 (N.Y.) 1977, 555 F.2d 51.

In prosecution for conspiracy to willfully make or use a false writing in a matter within the jurisdiction of a department of the United States, trial court properly permitted government to use testimony of an employee of a company for which one of the defendants worked to the effect that one of such defendants stated he had a deal with codefendant, in view of fact such declaration was made for purpose of inducing witness to prepare the fraudulent invoices in furtherance of the conspiracy. Ebeling v. U.S., C.A.8 (Mo.) 1957, 248 F.2d 429, certiorari denied 78 S.Ct. 334, 355 U.S. 907, 2 L.Ed.2d 261.

In prosecution for presenting false claims against government and for conspiracy to commit such offense, extrajudicial statements made by co-defendant to F.B.I. were hearsay and improperly admitted, since they had effect of supporting twice over in writing, all testimony of co-defendant at trial concerning defendant's activities. U. S. v. Toner, C.A.3 (Pa.) 1949, 173 F.2d 140.

In prosecution for conspiracy to defraud the United States, for whom employer was building three vessels, by making false claims as to amount of work done, contracts between employer and the United States under which the vessels were being built and employer's bookkeeping records and vouchers were properly admitted in evidence, particularly where the defendants' rights were adequately protected by the charge. McGunnigal v. U. S., C.C.A.1 (Mass.) 1945, 151 F.2d 162, certiorari denied 66 S.Ct. 267, 326 U.S. 776, 90 L.Ed. 469.

In prosecution for mail fraud against defendants who allegedly told purchasers of central vacuum cleaning system that they were participating in profit-sharing program and concealed fact that it was referral method of selling, witness' statements seeking to impeach or contradict written statements, agreements or contracts signed by such witnesses would not be inadmissible on theory that such testimony violated parol evidence rule, thus pretrial motion to restrain government from offering such testimony would be denied. U. S. v. National Marketing, Inc., D.C.Minn.1969, 306 F.Supp. 1238.

In prosecution against financing corporation, its branch office manager, store owners, and their sales manager for conspiracy to defraud the United States by making false documents to secure insurance under modernization of homes provisions of National Housing Act, § 1701 et seq. of Title 12, testimony that store co-owner and sales manager said that practice of making false certificates was approved by their attorney was admissible on behalf of corporation and branch office manager, who denied having given instructions regarding the certificates. U.S. v. Thomas, E.D.Wash.1943, 52 F.Supp. 571.

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668. Election offenses, admissibility of evidence

An affidavit of one of officers of corporate defendant implicating individual defendant in conspiracy was properly admitted in conspiracy prosecution, where affidavit was read in individual defendant's presence during course of investigation by Securities and Exchange Commission of charge that corporate defendant had made political contributions in violation of Public Utility Holding Company Act, § 79l of Title 15, and a reasonable inference was that individual defendant would, under the circumstances, naturally have contradicted the statement if he did not consent to it. Egan v. U.S., C.C.A.8 (Mo.) 1943, 137 F.2d 369, certiorari denied 64 S.Ct. 195, 320 U.S. 788, 88 L.Ed. 474.

In prosecution for conspiracy to injure and oppress voters through depriving them of an honest count and honest certification of ballots cast, evidence relating to alleged agreement between co-conspirators relative to padding of registration list and stuffing ballot box was admissible as tending to demonstrate that conversation between government's witness and accused, as related by witness who testified that accused ordered witness to give Republican candidates certain number of votes, was not improbable. Devoe v. U.S., C.C.A.8 (Mo.) 1939, 103 F.2d 584, certiorari denied 60 S.Ct. 84, 308 U.S. 571, 84 L.Ed. 479.

In prosecution for conspiracy to injure and oppress voters of certain precinct through depriving them of an honest count and honest certification of ballots cast, fact that testimony of a conspirator that he was told by accused to give Republican candidates an average of 47 votes would have sustained conviction, did not preclude government from introducing evidence as to other relevant facts. Devoe v. U.S., C.C.A.8 (Mo.) 1939, 103 F.2d 584, certiorari denied 60 S.Ct. 84, 308 U.S. 571, 84 L.Ed. 479.

In prosecution for conspiracy to injure and oppress voters through depriving them of an honest count and honest certification of ballots cast, evidence relating to alleged agreement between coconspirators relative to padding of registration list and stuffing ballot box was admissible as tending to show motive which actuated alleged conspirators to engage in the conspiracy, to disclose their common intent and to indicate that existence of conspiracy and participation in it by accused was not improbable. Devoe v. U.S., C.C.A.8 (Mo.) 1939, 103 F.2d 584, certiorari denied 60 S.Ct. 84, 308 U.S. 571, 84 L.Ed. 479.

669. Embezzlement, admissibility of evidence

In prosecution for conspiracy to embezzle and misapply bank funds, trial court did not err in permitting prosecution's use of evidence showing that defendant had spent corporate funds for gambling, since such evidence rebutted defendant's defense that he thought the extra transactions in the corporate account were special dealings of coconspirator. U. S. v. Landof, C.A.9 (Cal.) 1978, 591 F.2d 36.

On trial of two defendants, charged with conspiracy to embezzle bonds from a bank, evidence showing deposits by one defendant in another bank of checks of the brokerage firm which sold the bonds, and payment of checks drawn by the depositor to his codefendant, aggregating one-half the amount of such deposits, was competent to establish division of the proceeds of the embezzlement, and as evidence of the conspiracy. U S v. Jenks, E.D.Pa.1920, 264 F. 697.

670. Espionage, admissibility of evidence

In prosecution of foreign espionage agent for conspiring to violate espionage laws, wherein another foreign espionage agent testified that he and defendant attempted to contact an Army master sergeant who had served for a time as motor sergeant at American Embassy in Moscow, testimony by Army sergeant as to contacts with various Russian civilians and members of military service and instruction he received from Soviet agents upon return to United States and his movements thereafter was properly admitted to corroborate testimony of such other agent. U S v. Abel, C.A.2 (N.Y.) 1958, 258 F.2d 485, certiorari granted 79 S.Ct. 59, 358 U.S. 813, 3 L.Ed.2d 56, affirmed

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80 S.Ct. 683, 362 U.S. 217, 4 L.Ed.2d 668, rehearing denied 80 S.Ct. 1056, 362 U.S. 984, 4 L.Ed.2d 1019.

In prosecution for conspiracy to violate and for violation of espionage laws, records made by government agents of writings and marks appearing on mail wrappers and information obtained by exploring through waste paper baskets and rubbish and piecing together torn and discarded writings were admissible. U.S. v. Coplon, S.D.N.Y.1950, 88 F.Supp. 921.

671. Extortion, admissibility of evidence

In prosecution for conspiracy to violate Hobbs and Travel Acts, sections 1951 and 1952 of this title, and extortion from businesses engaged in interstate commerce, protective order precluding defendant's counsel from demonstrating that statement which witness had given to FBI and which allegedly contradicted witness' testimony referred to codefendant was not prejudicial where both defendant and codefendant took stand and testified and codefendant was subjected to cross-examination by defendant. U. S. v. Somers, C.A.3 (N.J.) 1974, 496 F.2d 723, certiorari denied 95 S.Ct. 56, 419 U.S. 832, 42 L.Ed.2d 58, certiorari denied 95 S.Ct. 57, 419 U.S. 832, 42 L.Ed.2d 58.

In prosecution for extortion and conspiracy to extort, victim could testify as to other extortionate demands which were relevant in bearing upon intent and in showing defendant's general plan or scheme to dominate the professional boxing field. Carbo v. U. S., C.A.9 (Cal.) 1963, 314 F.2d 718, certiorari denied 84 S.Ct. 1625, 377 U.S. 953, 12 L.Ed.2d 498, rehearing denied 84 S.Ct. 1902, 377 U.S. 1010, 12 L.Ed.2d 1058, certiorari denied 84 S.Ct. 1626, 377 U.S. 953, 12 L.Ed.2d 498, rehearing denied 84 S.Ct. 1903, 377 U.S. 1010, 12 L.Ed.2d 1058, certiorari denied 84 S.Ct. 1627, 377 U.S. 953, 12 L.Ed.2d 498.

672. False personation, admissibility of evidence

On a trial for conspiracy to impersonate a United States marshal and thereby obtain things of value, the impersonator's commission as deputy sheriff was admissible. Ferguson v. U S, C.C.A.8 (N.M.) 1923, 293 F. 361.

673. Foreign agents, registration of, admissibility of evidence

In prosecution for conspiracy to violate the Foreign Agents Registration Act, § 612 of Title 22, testimony of Government's expert witness as to nature of publications circulated by defendants was admissible, and court properly left weight of witness' testimony to jury. U.S. v. German-American Vocational League, C.C.A.3 (N.J.) 1946, 153 F.2d 860, certiorari denied 66 S.Ct. 976, 328 U.S. 833, 90 L.Ed. 1608, certiorari denied 66 S.Ct. 976, 328 U.S. 833, 90 L.Ed. 1609, certiorari denied 66 S.Ct. 977, 328 U.S. 833, 90 L.Ed. 1609, certiorari denied 66 S.Ct. 977, 328 U.S. 834, 90 L.Ed. 1609, certiorari denied 66 S.Ct. 977, 328 U.S. 834, 90 L.Ed. 1610, certiorari denied 66 S.Ct. 978, 328 U.S. 834, 90 L.Ed. 1610.

674. Immigration offenses, admissibility of evidence

In absence of any evidence establishing as a part of the conspiracy that conspirators agreed to conceal conspiracy by doing what was necessary and expedient to prevent its disclosure, conspiracy to defraud United States and to commit offenses against United States by illegally obtaining entry of aliens as spouses of veterans ended on the date that the last of the aliens was admitted to the United States, as respects admissibility of acts and declarations of conspirators. Lutwak v. U.S., U.S.Ill.1953, 73 S.Ct. 481, 344 U.S. 604, 97 L.Ed. 593, rehearing denied 73 S.Ct. 726, 345 U.S. 919, 97 L.Ed. 1352.

Judgments of conviction of nine of the 41 aliens found hiding in brush on Texas side of Rio Grande River for offense of unlawfully entering United States were erroneously admitted in prosecution for conspiracy to move within United States an alien present in United States in violation of the law where sole purpose was to prove

illegal status of aliens in United States; however, error was harmless beyond a reasonable doubt since issue at trial was not legal or illegal status of the 41 aliens, but defendant's involvement in scheme to move aliens within United States, and, in any case, other evidence of aliens' illegal status was overwhelming. U.S. v. Crispin, C.A.5 (Tex.) 1985, 757 F.2d 611.

Admission of photographs of defendant's brother-in-law, who entered United States illegally, and of passport of unidentified female, which items were seized on illegal search of defendant's automobile, as well as testimony related to key, which was found on brother-in-law and insertion of which in lock of defendant's automobile commenced the illegal search, when considered with resulting inference that defendant's vehicle was to be used to transport the aliens and receipt of testimony that key fit the automobile, was prejudicial error requiring reversal of conviction of conspiracy and of smuggling and unlawfully transporting aliens. U. S. v. Portillo-Reyes, C.A.9 (Cal.) 1975, 529 F.2d 844, certiorari denied 97 S.Ct. 267, 429 U.S. 899, 50 L.Ed.2d 185.

Validity of marriage of alien to American citizen was irrelevant in prosecution for conspiring to defraud United States of its right to have administration of immigration laws conducted honestly. U. S. v. Pantelopoulos, C.A.2 (N.Y.) 1964, 336 F.2d 421.

In prosecution of commissioner, deputy clerk and interpreters for conspiracy to defraud the Government by issuance of passports, testimony of commissioner's secretary concerning person who was citizen of the United States and entitled to passport sought by him was admissible to indicate commissioner's course of conduct and state of mind in connection with fraudulent passport scheme. U. S. v. Griffin, C.A.3 (Pa.) 1949, 176 F.2d 727, certiorari denied 70 S.Ct. 478, 338 U.S. 952, 94 L.Ed. 588, rehearing denied 70 S.Ct. 559, 339 U.S. 916, 94 L.Ed. 1341.

In prosecution for conspiracy to defraud the United States by willful concealment of a material fact in obtaining the entry of an alien, evidence of defendant's knowledge that when alien married a citizen the parties proposed a divorce within six months, which was a fact material to the granting of the visa, was relevant. U.S. v. Rubenstein, C.C.A.2 (N.Y.) 1945, 151 F.2d 915, certiorari denied 66 S.Ct. 168, 326 U.S. 766, 90 L.Ed. 462.

Where proof of a collusive divorce became essential in prosecution for conspiracy to defraud the United States by obtaining the entry of an alien by false representations, and proof of such divorce by proof of the record thereof, indicated that defendant was author of false affidavits and of false testimony, evidence that defendant procured such false affidavits and false testimony was relevant. U.S. v. Rubenstein, C.C.A.2 (N.Y.) 1945, 151 F.2d 915, certiorari denied 66 S.Ct. 168, 326 U.S. 766, 90 L.Ed. 462.

In prosecution for conspiring and for bringing alien into United States, admitting evidence that defendant cooperated in unlawfully bringing in another alien was not error, though conspiracy count was later abandoned. Emmanuel v. U.S., C.C.A.5 (Fla.) 1928, 24 F.2d 905, certiorari denied 49 S.Ct. 79, 278 U.S. 643, 73 L.Ed. 557.

Evidence of acts and declarations of party to conspiracy to violate Immigration Law was competent as against another. Giordano v. U.S., C.C.A.2 (N.Y.) 1925, 9 F.2d 830. Criminal Law 422(1)

In a prosecution for conspiring to bring into the United States aliens not entitled to enter where there was evidence that defendants were to also bring in opium, evidence that they did so was admissible though there was no charge of unlawfully importing opium. Louie Ding v. U.S., C.C.A.9 (Wash.) 1917, 246 F. 80, 158 C.C.A. 306.

Evidence that defendant, pursuant to an understanding with another defendant to smuggle in Chinese, brought in four not entitled to enter was admissible on prosecution for general conspiracy to bring in Chinese not entitled to enter. Dahl v. U.S., C.C.A.9 (Wash.) 1916, 234 F. 618, 148 C.C.A. 384.

675. Interstate commerce offenses, admissibility of evidence

Even though defendant was not charged with the burglary of house, where such burglary was a key overt act in charge of conspiring to transport in interstate commerce items taken from house, handguns and tools identified by one of burglars as being used in the burglary were admissible. U. S. v. Ricketson, C.A.7 (Ill.) 1974, 498 F.2d 367, certiorari denied 95 S.Ct. 227, 419 U.S. 965, 42 L.Ed.2d 180.

In prosecution for causing and conspiring to cause forged securities to pass in interstate commerce, three guns purchased in Vermont with forged securities stolen in Oregon were admissible as tending to establish the conspiracy charged and as showing the interstate character of the crime. U. S. v. Rathburn, C.A.2 (Vt.) 1969, 414 F.2d 767, certiorari denied 90 S.Ct. 2209, 399 U.S. 912, 26 L.Ed.2d 567.

An admittance card furnished customers for use in defendants' prostitution business was properly received in evidence in conspiracy prosecution based on use of interstate facilities with intent to carry on a prostitution enterprise where proper foundation was raised through testimony as to use of similar cards in defendants' prostitution business, and fact there was no showing that defendants made entries on the cards was an insufficient basis for exclusion thereof. U. S. v. Lyon, C.A.7 (Wis.) 1968, 397 F.2d 505, certiorari denied 89 S.Ct. 131, 393 U.S. 846, 21 L.Ed.2d 117.

Testimony of government witness that he had incurred a gambling debt to defendant and had later received a threatening telephone call from defendant who had told him that to collect the debt he was sending out a man who specialized in "roughing up" people, and testimony of sheriff that witness had reported to him the gambling debt and the threats received was admissible in prosecution for conspiring to violate federal antiracketeering statute, section 1952 of this title, by attempting to collect another gambling debt through use of extortive means for limited purpose of demonstrating a continuing course of conduct on part of defendant to win money in gambling games and then employ threats to collect. Collins v. U. S., C.A.10 (Kan.) 1967, 383 F.2d 296.

Even if alleged conspirator entered conspiracy to steal, take, and carry away with intent to convert goods out of interstate commerce after its inception, he took conspiracy as he found it, and if he only participated in arranging sale of merchandise involved, he still would adopt prior acts and declarations of his fellow conspirators. Nassif v. U. S., C.A.8 (Minn.) 1966, 370 F.2d 147.

In prosecution for (1) knowingly transporting in interstate commerce, for purpose of sale or distribution, obscene, lascivious and filthy film and (2) for conspiring with others to so transport, there was sufficient independent evidence of all elements of conspiracy, and trial judge was not in error in refusing to strike hearsay declarations of defendant's alleged coconspirators. U. S. v. Russo, C.A.2 (Conn.) 1960, 284 F.2d 539.

In prosecution for conspiring to transport in interstate commerce lewd and obscene motion picture film, trial court properly permitted jury to view the film notwithstanding admission by defendant that the film was lewd and obscene. Parr v. U. S., C.A.5 (Tex.) 1958, 255 F.2d 86, certiorari denied 79 S.Ct. 40, 358 U.S. 824, 3 L.Ed.2d 64.

In prosecution for conspiring to transport in interstate commerce lewd and obscene motion picture film, evidence of conduct of defendant and his co-conspirators prior to date laid in indictment was properly admitted to shed light upon and tend to establish the conspiracy. Parr v. U. S., C.A.5 (Tex.) 1958, 255 F.2d 86, certiorari denied 79 S.Ct. 40, 358 U.S. 824, 3 L.Ed.2d 64.

In prosecution for conspiracy to steal cotton sheets moving as part of interstate shipment and for theft of sheets, where evidence amply supported conclusion that the sheets were shipped in interstate commerce and that codefendant was involved in their theft, the sheets were admissible against the codefendant and, on proof of conspiracy, against defendant. U.S. v. Winters, C.C.A.2 (N.Y.) 1946, 158 F.2d 674.

In a prosecution for conspiracy to steal goods from interstate shipments, testimony by a witness that he was acquainted with a method of opening doors of a freight car to permit entrance without breaking the seal, and a

description of the method was competent. Fowler v. U.S., C.C.A.9 (Wash.) 1921, 273 F. 15.

On the trial of defendants charged with having conspired to prevent the shipment of certain tobacco in interstate commerce, statements made by one of defendants while the tobacco was being withheld from shipment, at their instance, were admissible against them. Steers v. U.S., C.C.A.6 (Ky.) 1911, 192 F. 1, 112 C.C.A. 423.

676. Kidnapping, admissibility of evidence

District Court's error, if any, in admitting testimony of government witness who had been taken hostage and held for ransom, to show defendant's motivation in participating in a different hostage-taking, and then excluding for lack of relevance testimony of an employer regarding defendant's alleged role in securing release of an employee, was harmless, where government witness's testimony was of minimal value to government, or harm to defendant, because record was already replete with compelling and uncontradicted evidence that defendant was a willing participant in hostage-taking at issue, and there was overwhelming evidence that defendant conspired to commit hostage-taking and committed hostage-taking. U.S. v. Tchibassa, C.A.D.C.2006, 452 F.3d 918. Criminal Law 1170(1)

Testimony respecting kidnapping of government's witness was not incompetent, because last overt act charged in conspiracy indictment had occurred previously on same day. Hood v. U.S., C.C.A.8 (Okla.) 1927, 23 F.2d 472, certiorari denied 48 S.Ct. 436, 277 U.S. 588, 72 L.Ed. 1002.

677. Liquor offenses, admissibility of evidence

Fingerprints of codefendant found on brake fluid can in truck seized at illegal distillery were admissible in prosecution for conspiracy to violate internal revenue liquor laws. U. S. v. Jeffords, C.A.5 (Ga.) 1974, 491 F.2d 90.

Where an operation involving production of illicit whiskey was under way, declarations constituting instructions and information necessary to further performance of the work by alleged conspirators were a part of the res gestae, and were admissible. U. S. v. Copeland, C.A.4 (N.C.) 1961, 295 F.2d 635, certiorari denied 82 S.Ct. 398, 368 U.S. 955, 7 L.Ed.2d 388.

A statement of a witness that when he asked a conspirator if he had seen defendant, the reply was that defendant had been seen early in the day at one place, but was no longer there and was probably at a still or out gathering sugar, was admissible where evidence showed defendant involved at such time as a major participant in illicit production of whiskey, as such statement was in furtherance of the conspiracy and was made in the process thereof, and thus did not constitute hearsay. U. S. v. Copeland, C.A.4 (N.C.) 1961, 295 F.2d 635, certiorari denied 82 S.Ct. 398, 368 U.S. 955, 7 L.Ed.2d 388.

In prosecution for bringing intoxicants into a dry state and conspiracy to commit this crime, evidence that defendant's codefendants might have purchased liquor from other sources than defendant was properly excluded. McDonough v. U.S., C.A.10 (Okla.) 1955, 227 F.2d 402.

Admission of evidence concerning discovery of stills or evidence of stills at premises with which accused was not shown to have had direct connection was not error as to the accused, where evidence authorized finding that they were part of activities by which conspiracy joined in by the accused was carried out. U.S. v. Waldau, C.C.A.2 (N.Y.) 1940, 115 F.2d 486.

In prosecution for unlawful possession of stills, making mash, operation of an unbonded distillery and conspiracy, admission of evidence showing that defendant's bank balance, normally at an amount between $500 and $1,000, had in a year increased to more than $8,000, was not error. U.S. v. Jackskion, C.C.A.2 (N.Y.) 1939, 102 F.2d 683,

certiorari denied 59 S.Ct. 1032, 307 U.S. 635, 83 L.Ed. 1517.

There being evidence that certain defendants including district attorney in liquor conspiracy prosecution shared bribes for protection against liquor prosecutions, evidence of ineffective liquor presecution was admissible. Metzler v. U.S., C.C.A.9 (Cal.) 1933, 64 F.2d 203.

Testimony that liquor had flavor identical with that previously manufactured by defendant was not incompetent as tending to show another offense. Nielson v. U.S., C.C.A.9 (Wash.) 1928, 24 F.2d 802.

Testimony that liquor found by officers had flavor identical with liquor previously manufactured by one defendant was admissible. Nielson v. U.S., C.C.A.9 (Wash.) 1928, 24 F.2d 802.

Evidence of landing intoxicating liquors before date of overt acts charged in indictment for conspiracy to possess and transport such liquors was admissible. Rubio v. U.S., C.C.A.9 (Cal.) 1927, 22 F.2d 766, certiorari denied 48 S.Ct. 213, 276 U.S. 619, 72 L.Ed. 734.

Evidence whether vessel, chartered ostensibly for coastwise trade, could have been operated profitably in legitimate coastwise trade, was admissible in prosecution for conspiracy to violate National Prohibition Act, former § 1 et seq. of Title 27. Baker v. U. S., C.C.A.4 (Va.) 1927, 21 F.2d 903, certiorari denied 48 S.Ct. 301, 276 U.S. 621, 72 L.Ed. 736.

Evidence as to finding bottles on vessel was admissible to prove testimony respecting rum running. Baker v. U. S., C.C.A.4 (Va.) 1927, 21 F.2d 903, certiorari denied 48 S.Ct. 301, 276 U.S. 621, 72 L.Ed. 736.

Testimony that truck drivers coming for liquor informed witness that liquor came from certain vessel was competent, the drivers being defendants' agents and coconspirators. Madden v. U.S., C.C.A.9 (Cal.) 1927, 20 F.2d 289, certiorari denied 48 S.Ct. 116, 275 U.S. 554, 72 L.Ed. 423.

That defendant's colessee referred landlord to defendant for rent was admissible under rule as to act or declaration of conspirators, in prosecution for maintaining liquor nuisance. Mitrovich v. U.S., C.C.A.9 (Or.) 1926, 15 F.2d 163 .

Evidence relating to accounts and settlements for liquor in previous transactions between defendant in liquor conspiracy case and another was admissible. Campanelli v. U.S., C.C.A.9 (Cal.) 1926, 13 F.2d 750.

On trial for conspiracy to import liquor, admission of testimony that defendant had account in trust company showing large deposit was not error. Campanelli v. U.S., C.C.A.9 (Cal.) 1926, 13 F.2d 750.

Evidence of liquor, bottles, and apparatus found on defendant's premises in prior searches was properly received, in prosecution for conspiracy to violate prohibition laws and for unlawful possession. Keith v. U.S., C.C.A.6 (Ky.) 1926, 11 F.2d 933.

Testimony in reference to liquor taken from person of one of defendants was properly admitted against him, in such prosecution. Keith v. U.S., C.C.A.6 (Ky.) 1926, 11 F.2d 933.

Testimony in reference to liquor taken from person of one of defendants was admissible against other defendants, in prosecution for conspiracy to violate National Prohibition Act, former § 1 et seq. of Title 27. Keith v. U.S., C.C.A.6 (Ky.) 1926, 11 F.2d 933.

In prosecution for conspiracy to violate National Prohibition Act, former § 1 et seq. of Title 27, testimony by members of alleged association, but not indicted, was properly admitted as coming from coconspirators. Weinstein

v. U.S., C.C.A.1 (Mass.) 1926, 11 F.2d 505, certiorari denied 47 S.Ct. 94, 273 U.S. 699, 71 L.Ed. 847.

Testimony about liquor secured from vessel and delivered to defendant was admissible. Ford v. U.S., C.C.A.9 (Cal.) 1926, 10 F.2d 339, certiorari granted 46 S.Ct. 475, 271 U.S. 652, 70 L.Ed. 1133, affirmed 47 S.Ct. 531, 273 U.S. 593, 71 L.Ed. 793.

Admission of mutilated $1 bills on which lists of liquor were written was not error. Ford v. U.S., C.C.A.9 (Cal.) 1926, 10 F.2d 339, certiorari granted 46 S.Ct. 475, 271 U.S. 652, 70 L.Ed. 1133, affirmed 47 S.Ct. 531, 273 U.S. 593, 71 L.Ed. 793.

Evidence of co-operation or concert of action of defendants in possession and control of liquor was sufficient proof of corpus delicti to warrant admission of evidence of statements made by defendants. Shook v. U.S., C.C.A.5 (Miss.) 1925, 10 F.2d 151, certiorari denied 46 S.Ct. 482, 271 U.S. 666, 70 L.Ed. 1141.

In prosecution for conspiracy to transport and sell whisky for beverage purposes, certain testimony was admissible to show what and how much liquor was subject of conspiracy. Langley v. U.S., C.C.A.6 (Ky.) 1925, 8 F.2d 815, certiorari denied 46 S.Ct. 204, 269 U.S. 588, 70 L.Ed. 427.

Testimony as to difference in current prices of whisky when sold for lawful or unlawful purposes was admissible in the same prosecution. Langley v. U.S., C.C.A.6 (Ky.) 1925, 8 F.2d 815, certiorari denied 46 S.Ct. 204, 269 U.S. 588, 70 L.Ed. 427.

Where police officer, charged with others with conspiracy to violate National Prohibition Act, former § 1 et seq. of Title 27, testified that he had never been able to gain admittance to flat he was supposed to have had under observation, it was not error to admit, in rebuttal, testimony of another witness that witness had seen officer in flat and that officer had seen witness take a drink. Marron v. U.S., C.C.A.9 (Cal.) 1925, 8 F.2d 251.

Evidence as to liquor seized in residence of one charged with conspiracy to violate National Prohibition Act, former § 1 et seq. of Title 27, in conduct of business at another place, was relevant. Marron v. U.S., C.C.A.9 (Cal.) 1925, 8 F.2d 251.

In trial for a similar conspiracy, admission of prohibition agent's testimony, that he arrested defendant and seized liquor being transported by him on date seven months before that on which conspiracy was alleged to have begun, was error and prejudicial, such evidence being wholly collateral to issue as to place, time, and circumstances of conspiracy charged. Crowley v. U.S., C.C.A.9 (Cal.) 1925, 8 F.2d 118.

In prosecution for conspiracy to violate National Prohibition Act, former § 1 et seq. of Title 27, by purchase of alcohol from United States for industrial purposes under agreement to denature it before removal, and by removal and sale thereof without denaturing it, persons to whom alcohol was shipped, who sold it with knowledge of the conspiracy, became parties thereto, though not parties at its inception, so that evidence as to what occurred at inception of conspiracy was admissible against them. Johnson v. U.S., C.C.A.4 (W.Va.) 1925, 5 F.2d 471, certiorari denied 46 S.Ct. 101, 269 U.S. 574, 70 L.Ed. 419.

In prosecution of city and judicial officials and owners of soft drink establishments for conspiracy to violate National Prohibition Act, former § 1 et seq. of Title 27, evidence of campaign contribution under fictitious names by operators of soft drink places, evidence as to frequency and character of prosecutions in city and punishment imposed, and evidence showing the maintenance of houses of ill fame wherein liquor was sold, was properly admitted. Allen v. U.S., C.C.A.7 (Ind.) 1924, 4 F.2d 688, certiorari denied 45 S.Ct. 352, 267 U.S. 597, 69 L.Ed. 806, certiorari denied 45 S.Ct. 353, 267 U.S. 598, 69 L.Ed. 806, certiorari denied 45 S.Ct. 509, 268 U.S. 689, 69 L.Ed. 1158.

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In the same prosecution, admission of testimony of newspaper reporter that he had visited soft drink parlors and homes of vice, where intoxicating liquors were openly sold, was not error, nor violative of substantial rights of parties, under former § 391 of Title 28. Allen v. U.S., C.C.A.7 (Ind.) 1924, 4 F.2d 688, certiorari denied 45 S.Ct. 352, 267 U.S. 597, 69 L.Ed. 806, certiorari denied 45 S.Ct. 353, 267 U.S. 598, 69 L.Ed. 806, certiorari denied 45 S.Ct. 509, 268 U.S. 689, 69 L.Ed. 1158.

In prosecution of many defendants for conspiracy to violate National Prohibition Act (Title 27, Intoxicating Liquors), admission of testimony of newspaper reporter that he had visited soft drink parlors and homes of vice, where intoxicating liquors were openly sold, and testimony as to conversation had at one place with unidentified woman, relative to amount paid by her for protection, was held not error, nor violative of substantial rights of parties; there being evidence sufficient to establish a prima facie case showing such woman to be a conspirator, rendering her admission receivable against other conspirators. Allen v. U.S., C.C.A.7 (Ind.) 1924, 4 F.2d 688, certiorari denied 45 S.Ct. 352, 267 U.S. 597, 69 L.Ed. 806, certiorari denied 45 S.Ct. 353, 267 U.S. 598, 69 L.Ed. 806, certiorari denied 45 S.Ct. 509, 268 U.S. 689, 69 L.Ed. 1158.

Evidence that third person was clandestinely engaged in producing from denatured alcohol and selling pure alcohol fit for beverage purposes, and that defendants each purchased a large amount of such liquor, and caused removal of same with such third person's knowledge and connivance, was competent and substantial evidence of conspiracy to transport liquor unlawfully for beverage purposes, without proof of chemical examination. Betz v. U.S., C.C.A.6 (Ky.) 1924, 2 F.2d 552.

In prosecution for conspiracy to have and possess intoxicating liquors for sale, it was reversible error to admit evidence that defendant accepted a certain sum from witnesses, in order to pay it over to general prohibition agent as protection money, so that liquor shipments of other persons could be transported without hindrance, the conspiracy charged having ceased more than a month before such money was claimed to have been paid. Weil v. U.S., C.C.A.5 (Ga.) 1924, 2 F.2d 145.

In a prosecution for conspiracy to manufacture and sell distilled spirits, in which the government offered evidence to prove that the beverage alleged to have been manufactured and sold by defendants contained wood alcohol, the admission of evidence that a certain person had died supposedly from drinking wood alcohol, was prejudicial error, in the absence of evidence that such person actually died from drinking wood alcohol, or that he died from drinking the spirits made by defendants. Brauer v. U.S., C.C.A.3 (N.J.) 1924, 299 F. 10.

In a prosecution for conspiring to violate National Prohibition Act, former § 1 et seq. of Title 27, evidence that two newspapers with printed labels containing name of one of the defendants were found by the searching officers on the premises where the still was in operation was admissible. Goodfriend v. U.S., C.C.A.9 (Idaho) 1923, 294 F. 148.

In the same prosecution, testimony that witness had served abatement papers on a hotel in which one of the defendants roomed, was admissible, in view of testimony showing the effect of the abatement proceedings on the other defendants. Goodfriend v. U.S., C.C.A.9 (Idaho) 1923, 294 F. 148.

Where defendants conspired to violate the National Prohibition Act, former § 1 et seq. of Title 27, by transporting liquor from Canada to Cleveland and there selling it, statement of one conspirator to captain of vessel by which it was transported that it was intended for a certain club reasonably pertained to execution of conspiracy and was admissible, however broad may be the rule that such statements to be admissible against other conspirators must be of importance to carrying out of the plan. De Witt v. U. S., C.C.A.6 (Ohio) 1923, 291 F. 995, certiorari denied 44 S.Ct. 134, 263 U.S. 714, 68 L.Ed. 521.

In a prosecution for conspiracy to violate Reed Amendment March 3, 1917, § 5 (superseded), the general rule forbidding proof of other and distinct offenses was not violated by the testimony that some of the defendants had

been handling liquors and were operating automobiles and that one of them, during the period covered by the alleged conspiracy, paid protection money to the officer whose bribery was the object of the alleged conspiracy. Wilkes v. U.S., C.C.A.6 (Tenn.) 1923, 291 F. 988, certiorari denied 44 S.Ct. 181, 263 U.S. 719, 68 L.Ed. 523. See, also, Robilio v. U.S., C.C.A.1923, 291 F. 975. Criminal Law 372(6)

In a prosecution of numerous defendants for a conspiracy to violate the National Prohibition Act, former § 1 et seq. of Title 27, evidence that two of the defendants had attempted to bribe a federal prohibition director in the furtherance of the alleged conspiracy was competent, although the indictment did not charge such bribery as an overt act. Remus v. U. S., C.C.A.6 (Ohio) 1923, 291 F. 501, certiorari denied 44 S.Ct. 180, 263 U.S. 717, 68 L.Ed. 522.

In a prosecution for conspiracy to violate the National Prohibition Act, former § 1 et seq. of Title 27, and for transporting and possessing intoxicating liquors in violation of said former sections, evidence as to the transportation and possession of such liquors which varied from the overt acts alleged in the conspiracy charge was competent on the charges of transportation and possession, when confined by the court's charge thereto. Alderman v. U.S., C.C.A.5 (Fla.) 1922, 279 F. 259, certiorari denied 42 S.Ct. 586, 259 U.S. 584, 66 L.Ed. 1075.

On a charge of conspiracy to illegally procure and transport liquor in violation of National Prohibition Act, former § 16 of Title 27, evidence that in organizing a corporation, in whose name a permit was obtained, defendants used fictitious names, was competent as tending to show a fraudulent purpose. Reid v. U. S., C.C.A.6 (Ohio) 1921, 276 F. 253.

In a prosecution for conspiracy to ship intoxicating liquors into Indian Territory, where the evidence showed that triplicate invoices were made by the wholesale dealer when orders were received by defendants, and that the duplicate invoice was sent to defendant and the triplicate used by the shipping clerk in filling the order, and that defendant during a long course of business made no objection that the shipments did not conform to the orders or the duplicate invoices furnished, it was not error to admit the original and triplicate invoices in evidence, without calling clerks to testify that the invoice conformed to the order and that the liquor called for thereby had been shipped. Ammerman v. U.S., C.C.A.8 (Okla.) 1920, 267 F. 136, certiorari denied 41 S.Ct. 147, 254 U.S. 650, 65 L.Ed. 457.

678. Lottery offenses, admissibility of evidence

That alleged coconspirator had been seen talking to defendant on day before that on which such alleged coconspirator allegedly informed government agent that he had turned his numbers work over to defendant did not establish that conspiracy was in existence on that date; and in absence of evidence that conspiracy was then in existence, agent's testimony with regard to alleged conversation was inadmissible against defendant, in prosecution for conspiracy to commit lottery offenses. Taylor v. U.S., C.A.D.C.1958, 260 F.2d 737, 104 U.S.App.D.C. 219.

In prosecution of numerous defendants for violation of lottery laws and conspiracy to violate those laws, where evidence obtained at one of several places raided was inadmissible because it had been obtained as a result of illegal entry into premises, but mass of other evidence legally seized sustained convictions, error in admitting such illegally obtained evidence was not, except as to one defendant who was found guilty of possessing lottery slips seized at such address, prejudicial. Woods v. U.S., C.A.D.C.1956, 240 F.2d 37, 99 U.S.App.D.C. 351, certiorari denied 77 S.Ct. 815, 353 U.S. 941, 1 L.Ed.2d 760, certiorari denied 77 S.Ct. 1385, 354 U.S. 926, 1 L.Ed.2d 1438.

In prosecution for conspiracy to transport lottery tickets in interstate commerce on theory that accused, who was head of a hospital, made agreement for codefendant to conduct contests for benefit of hospital, testimony of codefendant's counsel at time of alleged conspiracy as to conversation with codefendant in which codefendant told him that he did not trust accused in connection with money paid to accused for payment of hospital's bills and asking his counsel to see that money was used to pay bills of hospital was relevant. Deacon v. U. S., C.C.A.1

(Mass.) 1941, 124 F.2d 352.

In prosecution for conspiracy to transport lottery tickets in interstate commerce by accused, who was head of a hospital, entering into contract with codefendant to conduct contests for hospital and accused's subsequent participation in the conspiracy with knowledge of its illegality, admission in evidence of a lottery ticket issued by company operated by codefendant and of delivery receipt indicating that package of printed matter had been shipped by a printing company under an alias used by codefendant was proper as tending to prove the illegal nature of codefendant's activities and as link in chain of shipment of lottery tickets and advertisements in interstate commerce. Deacon v. U. S., C.C.A.1 (Mass.) 1941, 124 F.2d 352.

679. Narcotics offenses, admissibility of evidence

Although evidence of other financial transactions was admissible as direct evidence to prove defendant's involvement in conspiracy to conduct financial transaction involving proceeds of narcotics trafficking, it was admissible with respect to count charging conduct of financial transaction involving proceeds of narcotics trafficking on or about particular date only to show defendant's guilty knowledge and intent, and only if limiting instruction was given. U.S. v. Gonzalez, C.A.11 (Fla.) 1992, 975 F.2d 1514.

Evidence of drug transactions between defendant and undercover agent was not inadmissible prior bad act evidence in trial for conspiracy to commit terrorist acts in exchange for payment from Libya, where defendant inquired about possibility of acquiring rocket from agent, and thus evidence of cocaine transaction was part of case in chief and necessary to demonstrate agent's familiarity with defendant, his reason for contacting him, and his credibility in remembering defendant's statements and actions. U.S. v. McAnderson, C.A.7 (Ill.) 1990, 914 F.2d 934, post-conviction relief denied 817 F.Supp. 723, affirmed 23 F.3d 410, certiorari denied 115 S.Ct. 372, 130 L.Ed.2d 323.

In prosecution for unlawful acquisition of food-stamp coupons and conspiracy to acquire food stamps unlawfully, inasmuch as defendant was charged with, among other things, conspiring with codefendant to provide cocaine and other controlled substances to investigating government agents in exchange for food stamps, evidence of certain conversations about narcotics were clearly relevant and there was no error in their admission. U. S. v. Faltico, C.A.8 (Mo.) 1982, 687 F.2d 273, certiorari denied 103 S.Ct. 1783, 460 U.S. 1088, 76 L.Ed.2d 353.

Defendant was not prejudiced by admission of evidence of heroin sale which trial court struck and charged jury to completely disregard, in view of substantial independent evidence in the record to support conclusion that defendant was involved in conspiracy at the time of the sale and that trial judge would have been justified in refusing to strike testimony concerning the sale and in allowing case to go to the jury. U. S. v. Jackson, C.A.D.C.1980, 627 F.2d 1198, 201 U.S.App.D.C. 212.

Heroin sold to undercover officers, heroin seized from home of chief manager of drug smuggling conspiracy and money seized from latter's home and safety deposit boxes was not highly prejudicial as regards codefendant on ground that latter's involvement with conspiracy was tenuous since heroin had been obtained soon after alleged drug smuggling trip, heroin and cash seized from coconspirator's residence were probative on question of whether the conspiracy existed and there was failure to timely object and no request for limiting instruction. U. S. v. Praetorius, C.A.2 (N.Y.) 1979, 622 F.2d 1054, certiorari denied 101 S.Ct. 162, 449 U.S. 860, 66 L.Ed.2d 76.

Although evidence that a witness, defendant and others had snorted cocaine in defendant's office was relevant to show that defendant, charged with conspiring to impede Internal Revenue Service in collection of income taxes, had knowledge of the legal source of the money being laundered, cocaine sales, prejudicial effect did not outweigh probative value in view of extensive evidence of cocaine dealing profits and defense was that defendant participated in various acts without knowledge that moneys laundered were illegal cocaine profits. U. S. v. Enstam, C.A.5 (Tex.) 1980, 622 F.2d 857, certiorari denied 101 S.Ct. 1351, 450 U.S. 912, 67 L.Ed.2d 336, certiorari

denied 101 S.Ct. 1974, 451 U.S. 907, 68 L.Ed.2d 294.

Evidence concerning former police officer's arrest of narcotics suspects, the appropriation of their cash by the policeman and others, the division of spoils among certain policeman, the taking of part of the contraband for "flaking" or for sale, and the solicitation of bribes to conceal evidence was admissible in defendant's trial for conspiracy to obstruct lawful operations of the Government and conspiracy to violate narcotics laws. U. S. v. Papadakis, C.A.2 (N.Y.) 1975, 510 F.2d 287, certiorari denied 95 S.Ct. 1682, 421 U.S. 950, 44 L.Ed.2d 104.

Eight thermometers which were in paper bag being carried by defendant at time of his arrest six days after return of narcotics conspiracy indictment were properly admitted into evidence on ground that they constituted narcotics paraphernalia notwithstanding fact that they were the wrong type of thermometers which, it was argued, defendant mistakenly purchased since possession of thermometers was relevant to defendant's state of mind, and his intent with respect to conspiracy. U. S. v. Mallah, C.A.2 (N.Y.) 1974, 503 F.2d 971, certiorari denied 95 S.Ct. 1425, 420 U.S. 995, 43 L.Ed.2d 671.

Evidence of attempt to smuggle narcotics into country in ski-poles in effort to raise bail money for jailed conspirator so that he could resume his active role as participant in conspiracy was admissible to show participation in narcotics conspiracy and together with other evidence including background of nonjailed defendant's smuggling of letters from such jailed defendant permitted finding that nonjailed defendant participated in broad narcotics conspiracy alleged. U. S. v. Santana, C.A.2 (N.Y.) 1974, 503 F.2d 710, certiorari denied 95 S.Ct. 632, 419 U.S. 1053, 42 L.Ed.2d 649, certiorari denied 95 S.Ct. 1352, 420 U.S. 963, 43 L.Ed.2d 439, certiorari denied 95 S.Ct. 1450, 420 U.S. 1006, 43 L.Ed.2d 764.

In prosecution based on alleged conspiracy to distribute large quantities of heroin, small quantities of cocaine found on two defendants at time of their arrest were admissible both to anticipate defense that heroin was planted on one defendant as frameup by arresting officers and as evidence of guilty knowledge on the part of the defendants who possessed the cocaine. U. S. v. Cirillo, C.A.2 (N.Y.) 1974, 499 F.2d 872, certiorari denied 95 S.Ct. 638, 419 U.S. 1056, 42 L.Ed.2d 653.

Slip of paper, which was found on person of alleged coconspirator at time of his arrest and which bore defendant's nickname and a telephone number almost identical to that of defendant and which was introduced, not to prove truth or falsity of its contents, but to support inference that alleged coconspirator knew defendant and anticipated calling him on telephone was not inadmissible hearsay. U. S. v. Ruiz, C.A.2 (N.Y.) 1973, 477 F.2d 918, certiorari denied 94 S.Ct. 361, 414 U.S. 1004, 38 L.Ed.2d 240.

In prosecution for conspiracy to sell narcotics not in original stamped package and without written order, it was not error to admit statements of codefendant made to federal undercover agents during transaction in question outside presence of defendant, since they were made in furtherance of the conspiracy of which defendant was a member. Holsen v. U. S., C.A.5 (Ala.) 1968, 392 F.2d 292, certiorari denied 89 S.Ct. 640, 393 U.S. 1029, 21 L.Ed.2d 573.

Although defendant was not shown to have transported narcotics, where it was uncontradicted that he had facilitated another's sales to narcotics bureau agent by driving seller to his meetings with agent and where conversations between seller and agent created strong inference that defendant was seller's supplier, evidence implicating defendant, independent of agent's recounting of seller's extrajudicial declarations authorized admission against defendant of seller's statements spoken in defendant's absence. U. S. v. Ragland, C.A.2 (Conn.) 1967, 375 F.2d 471, certiorari denied 88 S.Ct. 860, 390 U.S. 925, 19 L.Ed.2d 987.

If remarks of alleged coconspirator to undercover agent were regarded as verbal acts, that is, encouragements to agent to rely on defendant, charged with conspiracy to import narcotics, they were admissible even without other evidence of conspiracy, and, even if they were viewed as hearsay, the permissible inference arising from defendant's expeditious offer and production in Mexico of alleged coconspirator as a supplier after original deal

fell through was enough to warrant consideration by jury of statements of alleged coconspirator, although inference might not have sufficed for a conviction if statements were not also thrown on the scale. U. S. v. Padilla, C.A.2 (N.Y.) 1967, 374 F.2d 996.

Circumstances that alleged narcotics trafficking conspirator met death in automobile while being pursued by federal narcotics agents and that heroin was then found in the vehicle were admissible against defendants charged with the conspiracy as relevant to explain condition of the heroin and absence of container in which deceased conspirator had originally received the heroin the night of the chase. U. S. v. Cole, C.A.7 (Ill.) 1966, 365 F.2d 57, certiorari denied 87 S.Ct. 741, 385 U.S. 1024, 17 L.Ed.2d 672, rehearing denied 87 S.Ct. 971, 386 U.S. 951, 17 L.Ed.2d 879, certiorari denied 87 S.Ct. 741, 385 U.S. 1027, 17 L.Ed.2d 674, certiorari denied 87 S.Ct. 764, 385 U.S. 1032, 17 L.Ed.2d 679, rehearing denied 87 S.Ct. 979, 386 U.S. 951, 17 L.Ed.2d 879.

Evidence concerning discussion of plan to import heroin from Italy was not improperly admitted on ground that it was attempt to prove separate conspiracy beyond purview of indictment, where indictment charged that conspiracy existed during period beginning before and continuing after discussion and evidence was admissible as act and declaration in furtherance of conspiracy to receive and distribute unlawfully acquired heroin. U. S. v. Accardi, C.A.2 (N.Y.) 1965, 342 F.2d 697, certiorari denied 86 S.Ct. 426, 382 U.S. 954, 15 L.Ed.2d 359.

In narcotics conspiracy case, where there was evidence that witness had joined with principals in one phase of the conspiracy which was still being wound up, the witness' remark which could be construed as indicating that there was some thought of reviving the partnership of the principals and a source of supply was admissible. U. S. v. Borelli, C.A.2 (N.Y.) 1964, 336 F.2d 376, certiorari denied 85 S.Ct. 647, 379 U.S. 960, 13 L.Ed.2d 555.

A statement by a person, on a chance encounter with principal witness in narcotics conspiracy case, that the person thought the difficulties which the principals had had with a certain person had been resolved, would better have been excluded, both because of lack of evidence that any bond with the person making the remark still existed and because this declaration, made after the witness' severance with one of the principals, appeared to have been narrative only. U. S. v. Borelli, C.A.2 (N.Y.) 1964, 336 F.2d 376, certiorari denied 85 S.Ct. 647, 379 U.S. 960, 13 L.Ed.2d 555.

Evidence of prior marijuana dealings between defendants was admissible in prosecution for unlawfully selling and conspiring to sell heroin, even if they tended to show other crimes, where such evidence was relevant on organization and structure of the conspiracy and on individual role played by each conspirator, and on intent of the parties to commit the substantive crime of selling heroin. U. S. v. Stadter, C.A.2 (N.Y.) 1964, 336 F.2d 326, certiorari denied 85 S.Ct. 1028, 380 U.S. 945, 13 L.Ed.2d 964, certiorari denied 85 S.Ct. 1029, 380 U.S. 945, 13 L.Ed.2d 964.

Proof that defendants who were charged with unlawful selling of heroin and of conspiring to do so had engaged in a marijuana business prior to sales of heroin alleged in the indictment was properly allowed with instructions limiting its consideration to its tendency to show that the transactions in marijuana were integral parts of broad conspiracy which culminated in sales of heroin charged in the indictment. U. S. v. Stadter, C.A.2 (N.Y.) 1964, 336 F.2d 326, certiorari denied 85 S.Ct. 1028, 380 U.S. 945, 13 L.Ed.2d 964, certiorari denied 85 S.Ct. 1029, 380 U.S. 945, 13 L.Ed.2d 964.

Testimony of government witness that he and others met and agreed to raise money for purchase of narcotics was competent in prosecution for conspiracy, where witness placed all four alleged conspirators together with no one else present, though it was contended that witness' statements were general and did not identify speakers in conversations. U.S. v. Duff, C.A.6 (Mich.) 1964, 332 F.2d 702.

Statement by first defendant to government agent outside presence of second defendant that second defendant was source of heroin sold by first defendant was not competent evidence against second defendant in conspiracy

prosecution. U. S. v. Cimino, C.A.2 (N.Y.) 1963, 321 F.2d 509, certiorari denied 84 S.Ct. 486, 375 U.S. 967, 11 L.Ed.2d 416, rehearing denied 89 S.Ct. 1992, 395 U.S. 941, 23 L.Ed.2d 458, certiorari denied 84 S.Ct. 491, 375 U.S. 974, 11 L.Ed.2d 418.

Government agent in prosecution for conspiracy to violate narcotic laws was properly permitted to testify to fact of a defendant's statements at time that that defendant received instructions from complaining defendant. U. S. v. Pullings, C.A.7 (Ill.) 1963, 321 F.2d 287.

Admission of testimony, after proper foundation, of contents of narcotics prosecution exhibits which had been, apparently, inadvertently destroyed after analysis by agents who were unaware that they were to be used in future criminal proceeding, was not prejudicial error, although defendants claimed that they would have been aided by physical examination of exhibits. U. S. v. Pullings, C.A.7 (Ill.) 1963, 321 F.2d 287.

Testimony of government agent concerning admissions and declarations made by a codefendant or other unindicted coconspirators with regard to operations and scheme from which a conspiracy for importing narcotics was formed was properly admitted as to defendants who were members of the conspiracy during period that the testimony covered. Walker v. U. S., C.A.9 (Cal.) 1962, 298 F.2d 217.

In prosecution for conspiracy to violate the antinarcotics laws, paraphernalis for the adulteration of heroin seized in defendant's apartment in the search conducted as an incident to his arrest was admissible as relevant to the conspiracy charges. U S v. Allen, C.A.2 (N.Y.) 1959, 267 F.2d 491. Criminal Law 394.4(9)

In prosecution for, among other things, conspiracy to violate the narcotics laws, in view of evidence showing defendants joined in criminal acts with intent willfully to carry out the illegal design shared in common with others, of violating the narcotics laws, defendants were not prejudiced by evidence as to the nature and extent of acts of others who joined in illegal transactions in furtherance of a conspiracy of which certain of defendants were originators and key figures, even though some of such other defendants were acquitted. Leyvas v. U. S., C.A.9 (Cal.) 1958, 264 F.2d 272.

In prosecution for conspiracy to traffic in narcotics, once participation of a defendant in conspiracy was established, all sales made by her codefendant, whether to other coconspirators or not, were admissible in evidence against such defendant. U S v. De Fillo, C.A.2 (N.Y.) 1958, 257 F.2d 835, certiorari denied 79 S.Ct. 591, 359 U.S. 915, 3 L.Ed.2d 577.

In prosecution for conspiracy to traffic in narcotics, testimony of one who purchased narcotics from a codefendant outside of the presence of other defendant was admissible against such other defendant when it was shown that the sale was in furtherance of the conspiracy, irrespective of whether the purchaser was a member of the conspiracy. U S v. De Fillo, C.A.2 (N.Y.) 1958, 257 F.2d 835, certiorari denied 79 S.Ct. 591, 359 U.S. 915, 3 L.Ed.2d 577.

In prosecution for conspiracy to traffic in narcotics, testimony tending to implicate one defendant in narcotics traffic was hearsay and admissible against her only if her participation in the alleged conspiracy was first proved by evidence of her own words and acts. U S v. Russano, C.A.2 (N.Y.) 1958, 257 F.2d 712.

In prosecution for knowingly selling or facilitating sale of marijuana, admission into evidence of codefendant's declarations made in defendant's absence was not reversible error, in view of sufficiency of other evidence to show existence of joint enterprise or concert of action. Anthony v. U. S., C.A.9 (Cal.) 1958, 256 F.2d 50.

In prosecutions for narcotic violations and conspiracy involving defendants and other persons who had pleaded guilty to charge, there was no error in allowing government to call as a witness one of those who had pleaded guilty, even though witness refused to answer certain questions on grounds of U.S.C.A.Const. Amend. 5. U. S. v. Gernie, C.A.2 (N.Y.) 1958, 252 F.2d 664, certiorari denied 78 S.Ct. 1006, 356 U.S. 968, 2 L.Ed.2d 1073,

rehearing denied 78 S.Ct. 1383, 357 U.S. 944, 2 L.Ed.2d 1558.

In prosecution for conspiracy to import heroin in violation of Narcotic Act, §§ 173 and 174 of Title 21, testimony of special narcotic agent that he gave coconspirator funds furnished by narcotics authorities on account of shipment of heroin which another narcotic agent had carried off ship, was admissible, even though defendants had not personally participated in receipt of shipment and did not know that it had been brought ashore from ship nor that payment had been made, where there was evidence that defendants were members of conspiracy previous to arrival of ship and that they thereafter participated in plans for continuation of conspiracy which was in active existence when payment was made. U. S. v. Morello, C.A.2 (N.Y.) 1957, 250 F.2d 631.

In prosecution for conspiracy to import heroin in violation of narcotic laws, §§ 173 and 174 of Title 21, wherein background evidence furnished ample ground for inference that material which person named as coconspirator gave special agent of narcotics bureau was heroin and that words and deeds of such person in connection with incident were binding both upon him and on defendants if found by independent evidence to be coconspirators, special agent's testimony that person had told him that he would give him sample of heroin to be contained in future shipment and that he did so was admissible, even though sample was not offered in evidence and there was no evidence showing that sample was in fact a narcotic. U. S. v. Morello, C.A.2 (N.Y.) 1957, 250 F.2d 631.

Fact that defendants charged with conspiracy to import heroin in violation of narcotics laws, §§ 173 and 174 of Title 21, may have believed that narcotics agents were their coconspirators did not render letter of narcotic agent sent to an alleged coconspirator admissible, where letter was sent out of presence of defendants. U. S. v. Morello, C.A.2 (N.Y.) 1957, 250 F.2d 631.

In prosecution for conspiracy to violate certain narcotics laws, trial court did not err in admitting testimony of statements made by coconspirator before conspiracy was shown by independent evidence, in view of fact trial court admitted such evidence subject to a motion to strike should there be a failure to connect it up, and in view of fact such connection was made and a conspiracy was shown. Parente v. U.S., C.A.9 (Cal.) 1957, 249 F.2d 752.

The word "stuff" has a customary meaning peculiar to illegal narcotics trade, and therefore, in prosecution for conspiracy to unlawfully sell narcotics, trial court did not err in permitting a witness to testify as to what a defendant meant when he used the word "stuff". Parente v. U.S., C.A.9 (Cal.) 1957, 249 F.2d 752.

In prosecution for conspiracy to deal in heroin and for sale of heroin, evidence that defendant broke from custody of arresting officer and attempted to escape was admissible as proof of consciousness of guilt. U. S. v. Campisi, C.A.2 (N.Y.) 1957, 248 F.2d 102, certiorari denied 78 S.Ct. 266, 355 U.S. 892, 2 L.Ed.2d 191.

In prosecution for conspiracy to deal in heroin, testimony of narcotics agent as to conversation in which party, who had delivered heroin to agent, named defendant as source of heroin was admissible as declaration of co-conspirator in furtherance of conspiracy. U. S. v. Campisi, C.A.2 (N.Y.) 1957, 248 F.2d 102, certiorari denied 78 S.Ct. 266, 355 U.S. 892, 2 L.Ed.2d 191.

In prosecution for conspiracy to deal in heroin and for sale of heroin, evidence that in room where defendant, clothed only in underwear top, pair of slacks and a pair of shoes, was found under the bed, police officers uncovered a suit of clothes in which there was a small cardboard box containing a syringe, a hypodermic needle, a small silver spoon and a packet of white powder was admissible and it was permissible for jury to infer that those articles were in defendant's possession in absence of any proof to the contrary. U. S. v. Campisi, C.A.2 (N.Y.) 1957, 248 F.2d 102, certiorari denied 78 S.Ct. 266, 355 U.S. 892, 2 L.Ed.2d 191. Conspiracy 45; Controlled Substances 69

In prosecution resulting in conviction upon an indictment charging several defendants with conspiracy to violate narcotics laws, statement made by one defendant to another that he had supplied another defendant with heroin was

admissible against first defendant and properly received as an admission by first defendant of his part in conspiracy. U S v. Carminati, C.A.2 (N.Y.) 1957, 247 F.2d 640, certiorari denied 78 S.Ct. 150, 355 U.S. 883, 2 L.Ed.2d 113.

Where admission concerning participation of one defendant in conspiracy to violate narcotics laws had been properly admitted, second defendant's disclosure to third defendant that first defendant was his supplier together with certain envelopes found in first defendant's possession, constituted sufficient independent evidence of first defendant's participation in conspiracy to justify conviction. U S v. Carminati, C.A.2 (N.Y.) 1957, 247 F.2d 640, certiorari denied 78 S.Ct. 150, 355 U.S. 883, 2 L.Ed.2d 113.

Where certain designated envelopes shown to be connected with a conspiracy to violate narcotic laws had been introduced in evidence, similar envelopes found in one defendant's possession were admissible, even though standing alone they might not have been sufficient to sustain a conviction. U S v. Carminati, C.A.2 (N.Y.) 1957, 247 F.2d 640, certiorari denied 78 S.Ct. 150, 355 U.S. 883, 2 L.Ed.2d 113.

In prosecution for violation of the Harrison Narcotic Act, §§ 4704, 7237 of the Title 26, and the Jones-Miller Act, § 174 of Title 21, and for conspiracy to violate those Acts, woman's testimony that she had purchased narcotics from defendant and that she had worked for him as a "call girl" was admissible to impeach such defendant, who had made a sweeping denial that he had either seen or possessed narcotics; and any possible prejudice was removed when trial judge instructed jury that such witness' testimony had been admitted solely for impeachment purposes. Ferrari v. U. S., C.A.9 (Cal.) 1957, 244 F.2d 132, certiorari denied 78 S.Ct. 124, 355 U.S. 873, 2 L.Ed.2d 78, certiorari denied 78 S.Ct. 125, 355 U.S. 873, 2 L.Ed.2d 78.

In prosecution for conspiring to illegally sell and transfer narcotic drugs, detective's testimony, that he had seen defendant's alleged co-conspirators enter apartment where radio transmitter operated and that he was familiar with most of their voices and that he could identify voices of conversers by fact that they spoke in response to questions put to them, wherein their names were mentioned, and by fact that he could easily recognize voice of informer, who was confessed narcotic addict, and that informer, in turn, could identify those persons to whom he spoke, established a sufficient connection, and evidence as to conversations by alleged co-conspirators, overheard by detective through radio receiving set, was properly admissible. Lott v. U.S., C.A.5 (Tex.) 1956, 230 F.2d 915, certiorari denied 76 S.Ct. 848, 351 U.S. 953, 100 L.Ed. 1477, rehearing denied 77 S.Ct. 25, 352 U.S. 860, 1 L.Ed.2d 70.

In prosecution for conspiring to illegally sell and transfer narcotic drugs, detective's testimony that he was satisfied in his own mind that it was defendant's co-conspirators whom he had heard, through radio receiving set, conversing with confessed narcotic addict, was admissible, notwithstanding detective's admission that he would not be able to swear it was they; the qualification affecting merely the probative force of his testimony. Lott v. U.S., C.A.5 (Tex.) 1956, 230 F.2d 915, certiorari denied 76 S.Ct. 848, 351 U.S. 953, 100 L.Ed. 1477, rehearing denied 77 S.Ct. 25, 352 U.S. 860, 1 L.Ed.2d 70.

In prosecution for conspiring to commit and for committing violations of §§ 173 and 174 of Title 21 and § 2591(a) of Title 26, where dates given by witnesses as those on which defendant made sales were within few weeks of one or another of the indictment dates, such dates were substantially similar to the indictment date and did not prevent defendants from preparing an alibidefense. U. S. v. Tramaglino, C.A.2 (N.Y.) 1952, 197 F.2d 928, certiorari denied 73 S.Ct. 105, 344 U.S. 864, 97 L.Ed. 670.

In prosecution, for conspiring to commit, and for the commission of violations of §§ 173 and 174 of Title 21 and § 2591(a) of Title 26, where defense counsel who was counsel neither for alleged co-conspirator nor for appellant, elicited from alleged co-conspirator the statement, on cross-examination, that appellant had sold him marihuana at a date outside period named in indictment, admission of such evidence was error, but was not prejudicial where other evidences of appellant's guilt were so strong that it was unbelievable that a rational jury would have acquitted

if the error had not occurred. U. S. v. Tramaglino, C.A.2 (N.Y.) 1952, 197 F.2d 928, certiorari denied 73 S.Ct. 105, 344 U.S. 864, 97 L.Ed. 670.

In prosecution for conspiracy to commit certain offenses against the United States relating to the purchase, sale, receipt, and transportation of narcotics, court properly admitted testimony of coconspirator as to his relations with defendants after he was arrested and made contacts with defendants under direction and surveillance of narcotics agents. U.S. v. Cohen, C.A.3 (N.J.) 1952, 197 F.2d 26.

In prosecution for selling and conspiring to sell narcotics, evidence of defendant's co-conspirators' conversations in defendant's absence was admissible under conspiracy count. Barnett v. U.S., C.A.9 (Wash.) 1949, 171 F.2d 721.

Testimony that defendant had some conversation with man who agreed to obtain narcotics for informer to buy, while he was making arrangements which resulted in sale and delivery of narcotics, warranted inference as to a conspiracy to make the sale and rendered admissible on conspiracy count testimony as to what the man said to informer at time sale was being negotiated. U. S. v. Perillo, C.C.A.2 (N.Y.) 1947, 164 F.2d 645.

In prosecution of physician under § 2550 et seq. of Title 26, wherein witness, who was a narcotic addict, had testified that he had traveled about 360 miles each week end, besides carrying on his usual business, to secure from the physician narcotic prescriptions issued for "incurable chronic angina and chronic amoebic dysentery," trial court did not err in permitting a physician to testify that the use of morphine was not justified in such case, notwithstanding that facts on which question was hypothecated had been testified to by witnesses, and that hypothesis of question did not cover fact that witness was in fact an addict. Heller v. U.S., C.C.A.4 (S.C.) 1939, 104 F.2d 446.

In a prosecution for conspiring to violate the Harrison Anti-Narcotic Act, § 2550 of Title 26, et seq. acts and declarations of alleged coconspirators were competent to establish a conspiracy. Smith v. U.S., C.C.A.8 (Mo.) 1922, 284 F. 673, certiorari denied 43 S.Ct. 362, 261 U.S. 617, 67 L.Ed. 829.

In a prosecution for conspiracy to deal illegally in narcotic drugs, evidence that a person to whom one defendant gave a check received drugs of such kind from a Canadian custom house as agent for a firm which was a dealer in drugs was admissible. Nee v. U S, C.C.A.3 (Pa.) 1920, 267 F. 84.

In a prosecution for conspiracy to deal illegally in narcotic drugs, a check made by one of defendants, payable to one of the same name as a proved agent of an importer of such drugs, supplemented by evidence of identity of the indorsement on the check with a proved signature of such agent, was admissible, under the rule that in conspiracy cases the court has a wide discretion on the admission of evidence. Nee v. U S, C.C.A.3 (Pa.) 1920, 267 F. 84.

In a prosecution of druggists under former § 88 of this title [now this section] for a conspiracy to violate the Harrison Act, § 2554 of Title 26, evidence of the quantities of narcotic drugs purchased and sold, and of the quantities of non-narcotic drugs sold, by other druggists, was admissible to show the true nature and purposes of the defendants' business. Friedman v. U. S., C.C.A.6 (Tenn.) 1919, 260 F. 388, 170 C.C.A. 254, certiorari denied 40 S.Ct. 15, 250 U.S. 671, 63 L.Ed. 1199.

Under an indictment for conspiracy for the sale of narcotic drugs in connection with a physician in violation of Harrison Act, §§ 2554, 2563, and 2564 of Title 26, evidence of sales made by defendants in the same manner after such physician had withdrawn and another had taken his place were admissible, as tending to show a continuing conspiracy and guilty knowledge and intent. Workin v. U.S., C.C.A.2 (N.Y.) 1919, 260 F. 137, 171 C.C.A. 173, certiorari denied 40 S.Ct. 9, 250 U.S. 659, 63 L.Ed. 1194, error dismissed 41 S.Ct. 147, 254 U.S. 615, 65 L.Ed. 440.

680. Obstruction of justice, admissibility of evidence

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In prosecution for conspiring to endeavor to obstruct or impede due administration of justice by obtaining mistrial of another prosecution against alleged coconspirator, cross-examination testimony of defendant that he had read in paper that alleged coconspirator had served in penitentiary was admissible to show that defendant knew that if coconspirator was convicted he would stand before court for sentence as a second offender. U.S. v. Minkoff, C.C.A.2 (N.Y.) 1943, 137 F.2d 402.

681. Perjury and subornation, admissibility of evidence

Evidence as to how the entrymen of timber and stone lands understood their arrangement with one of the defendants charged with a conspiracy to suborn perjury, and of their purpose in applying for the land, was admissible where no formal contracts were executed between the alleged conspirators and the proposed entrymen, the alleged understandings being of an ambiguous nature, and proof of the conspiracy depending upon a variety of circumstances tending to show motive or intent. Williamson v. U.S., U.S.Or.1908, 28 S.Ct. 163, 207 U.S. 425, 52 L.Ed. 278.

When person testifies falsely under grant of immunity, government may use that testimony as evidence of conspiracy to commit perjury; exception to statutory prohibition of use of immunized testimony in criminal prosecutions for prosecutions for perjury, giving false statement, or "otherwise failing to comply with" immunity order encompasses conspiracy to commit perjury as such conspiracy is simply agreement not to comply with order, frustrating purpose of grant of immunity. U.S. v. Duran, C.A.9 (Cal.) 1994, 41 F.3d 540. Criminal Law 42

In view of instructions requiring independent evidence of existence of joint venture and of defendant's participation in it, witness' statement, in prosecution for perjury and conspiracy, relating what witness' partner had told witness concerning what partner had heard by telephone from third man was admissible where partner and third man had that sort of common purpose which makes certain declarations of one admissible against another, though third man was nondefendant who died before trial and partner was not named as coconspirator. U. S. v. Marchisio, C.A.2 (N.Y.) 1965, 344 F.2d 653.

Where an indictment for conspiracy to commit an offense against the United States by subornation of perjury charged that defendants procured and instigated a number of persons to make application for the purchase of public lands in a certain township under the Timber and Stone Act, § 311 et seq. of Title 43, and to falsely swear in their applications and proofs that they were not seeking to purchase such lands on speculation, but for their own exclusive benefit and use, and that they had not made any contract or agreement by which the title would inure to the benefit of another, whereas, in truth and fact, such persons were applying to purchase the lands on speculation and under prior agreements to convey the title to defendants, under such indictment the motive of the parties to the transactions was a material fact to be proved, and evidence that defendants had induced other persons to file on or purchase state lands in the same vicinity, which were subsequently conveyed to defendants, was properly admitted, where the jury were instructed to consider it only as bearing on such question of motive. Van Gesner v. U.S., C.C.A.9 (Or.) 1907, 153 F. 46, 82 C.C.A. 180.

Under an indictment for conspiracy to commit an offense against the United States by subornation of perjury in procuring persons to make application for the purchase of lands under the Timber and Stone Act, § 311 et seq. of Title 43, under agreements to convey the same to defendants, and to falsely swear, among other things, that such lands were chiefly valuable for timber, it was not error to permit the government to prove that the lands were not valuable for the timber upon them, but were chiefly valuable for grazing purposes, although such evidence tended to show that the lands were not subject to entry under the act. Van Gesner v. U.S., C.C.A.9 (Or.) 1907, 153 F. 46, 82 C.C.A. 180.

Perjury charges, even if severed from indictment, were admissible since alleged perjury was material and relevant to charge of conspiracy to avoid detection. U. S. v. Hubbard, D.C.D.C.1979, 474 F.Supp. 64.

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682. Postal offenses, admissibility of evidence--Generally

On the trial of an indictment charging a conspiracy to obstruct the passage of the mails, telegrams showing upon their face more or less direct reference to the stopping of the mail trains might be introduced in evidence, if they were identified and brought home to the defendants. Clune v. U.S., U.S.Cal.1895, 16 S.Ct. 125, 159 U.S. 590, 40 L.Ed. 269.

Government witness' testimony that codefendant described defendant as a "fence" was admissible against codefendant in prosecution for forgery of postal money orders and conspiracy. Hawkins v. U. S., C.A.5 (Tex.) 1969, 417 F.2d 1271, certiorari denied 90 S.Ct. 917, 397 U.S. 914, 25 L.Ed.2d 95.

Where Alabama police officer knew before vehicle was stopped that defendant was in rear seat handling a shotgun while he and woman occupant were drinking beer and where, after the vehicle was stopped, the officer observed that defendant and driver were drunk, neither arrest of all three occupants of drinking offenses, to which they pleaded guilty, nor officer's discovery of stolen postal money order forms in automobile by looking in window or actual search were pretextual, and money orders were admissible against defendant in prosecution for conspiracy to pass, utter, and publish forged and altered money orders and for stealing post office department's property and aiding and abetting thereof. Swinney v. U. S., C.A.5 (Miss.) 1968, 391 F.2d 190.

In prosecution against members of coal miners' union for conspiring to obstruct movement of mails and to restrain trade in course of controversy with mine owners, article published in union newspaper setting forth union's program was properly admitted. U.S. v. Anderson, C.C.A.7 (Ill.) 1939, 101 F.2d 325, certiorari denied 59 S.Ct. 822, 307 U.S. 625, 83 L.Ed. 1502, certiorari denied 59 S.Ct. 822, 307 U.S. 625, 83 L.Ed. 1503, certiorari denied 59 S.Ct. 823, 307 U.S. 625, 83 L.Ed. 1503, certiorari denied 59 S.Ct. 823, 307 U.S. 625, 83 L.Ed. 1504, certiorari denied 59 S.Ct. 823, 307 U.S. 625, 83 L.Ed. 1504, 86 L.Ed. 1504, certiorari denied 59 S.Ct. 824, 307 U.S. 625, 83 L.Ed. 1505, certiorari denied 59 S.Ct. 824, 307 U.S. 625, 83 L.Ed. 1506, certiorari denied 59 S.Ct. 825, 307 U.S. 625, 83 L.Ed. 1506, certiorari denied 59 S.Ct. 825, 307 U.S. 625, 83 L.Ed. 1507, certiorari denied 59 S.Ct. 825, 307 U.S. 625, 83 L.Ed. 1508, certiorari denied 59 S.Ct. 826, 307 U.S. 625, 83 L.Ed. 1508, certiorari denied 59 S.Ct. 826, 307 U.S. 625, 83 L.Ed. 1509.

Where indictments against part of the defendants, charged with a conspiracy to commit an offense against the United States by a violation of the postal laws, were dismissed, the failure to prove either the necessary intent or action in respect of the use of the mail as to some of the defendants did not eliminate from the conspiracy or fraudulent scheme those who did not happen to go the statutory length of using or causing to be used the postal establishment of the United States in the execution of what all the defendants intended to accomplish, to wit, the defrauding of a portion of the public, and evidence showing their participation in devising the scheme was nevertheless proper. Lefkowitz v. U.S., C.C.A.2 (N.Y.) 1921, 273 F. 664, certiorari denied 42 S.Ct. 49, 257 U.S. 637, 66 L.Ed. 409.

Where accused was indicted for conspiracy to rob the post office at L., evidence was incompetent to show a general conspiracy, in which accused participated, to rob banks and everything that was "robbable." Rabens v. U.S., C.C.A.4 (S.C.) 1906, 146 F. 978, 77 C.C.A. 224.

On the trial of one indicted for conspiring to defraud the United States by mailing old newspapers for the purpose of fraudulently increasing the weight of mail matter (transported over a railway post route during a period fixed by the postal authorities for weighing such mail matter, as a basis for ascertaining the additional compensation to be paid the railway company), evidence that the newspapers, the fraudulent mailing of which within the district constituted the overt act charged in the indictment, were rewrapped and remailed over the postal route in question, from a place without the district, by an alleged co-conspirator, was not competent as proof of such overt act, but might be considered as showing the nature, extent, plan, and operations of the conspiracy, if one existed. U.S. v. Newton, S.D.Iowa 1892, 52 F. 275. Conspiracy 45

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683. ---- Mail fraud, postal offenses, admissibility of evidence

Later edition of American Dental Association's (ADA) publication which classified dental procedures for billing was admissible in defendant's prosecution for mail fraud and conspiracy to commit mail fraud by overbilling for dental procedures, where edition contained identical code numbers and descriptions of all procedures as edition in existence at time dentist allegedly prepared fraudulent bills. U.S. v. Hinkle, C.A.10 (Okla.) 1994, 37 F.3d 576. Criminal Law 434

In prosecution for conspiracy to commit mail fraud, jury could rely on evidence that two defendants participated in attempt to block state investigation by bribing state official to conclude that those defendants were engaged in conspiracy to operate farmers' cooperative in fraudulent and illegal manner, even though no evidence was introduced that bribe was actually offered to any state official. U. S. v. Shelton, C.A.7 (Ill.) 1982, 669 F.2d 446, certiorari denied 102 S.Ct. 1989, 456 U.S. 934, 72 L.Ed.2d 454.

It was within discretion of trial court to allow a "sucker" exhibit to be introduced as evidence in prosecution for conspiring to defraud and for defrauding certain persons through the use of mails and interstate communications. U. S. v. Frick, C.A.5 (La.) 1973, 490 F.2d 666, certiorari denied 95 S.Ct. 55, 419 U.S. 831, 42 L.Ed.2d 57.

In prosecution for mail fraud and conspiracy, it was prejudicial error to admit, over objection, records showing calls made between one defendant's home in Illinois and company headquarters in Washington, D.C., the records being admitted by the court under sponsorship of employee of subsidiary of large corporation who had no knowledge as to preparation of the records. U. S. v. Blake, C.A.5 (Ala.) 1973, 488 F.2d 101.

Recipients' testimony that letter gave them the impression that it was a notice of mandatory registration requirements from some United States agency was admissible in prosecution for mail fraud and for conspiracy to commit mail fraud, notwithstanding contention that such testimony invaded province of jury and deprived accused of due process. U. S. v. Wilson, C.A.5 (Ala.) 1973, 487 F.2d 510, certiorari denied 94 S.Ct. 1997, 416 U.S. 972, 40 L.Ed.2d 561.

Admission of evidence of fraudulent automobile sales transactions between defendant and another person which were similar to transactions between defendant and coconspirator, for purpose of showing knowledge and intent as to latter transactions, was not abuse of discretion. U. S. v. Marine, C.A.7 (Ill.) 1969, 413 F.2d 214, certiorari denied 90 S.Ct. 550, 396 U.S. 1001, 24 L.Ed.2d 493. Criminal Law 370; Criminal Law 371(3)

In prosecution for mail fraud and conspiracy in faking automobile collisions for purpose of defrauding insurance companies, testimony of two witnesses who had pleaded guilty to mail fraud charge was not inadmissible notwithstanding such witnesses were subjected to great pressure and there was doubt as to witnesses' veracity. Barnard v. U. S., C.A.9 (Or.) 1965, 342 F.2d 309, certiorari denied 86 S.Ct. 403, 382 U.S. 948, 15 L.Ed.2d 356, rehearing denied 86 S.Ct. 567, 382 U.S. 1002, 15 L.Ed.2d 491, rehearing denied 86 S.Ct. 567, 382 U.S. 1002, 15 L.Ed.2d 492, certiorari denied 86 S.Ct. 404, 382 U.S. 948, 15 L.Ed.2d 356, rehearing denied 86 S.Ct. 568, 382 U.S. 1002, 15 L.Ed.2d 492.

In prosecution for use of mails to defraud, and for conspiracy, testimony that one defendant had applied for insurance but that company did not issue policy to her was relevant to supplement testimony of her application, which was an overt act charged, and her false statement to insurer's agent concerning her earnings from an employer. U. S. v. Tenenbaum, C.A.7 (Ill.) 1964, 327 F.2d 210, certiorari denied 84 S.Ct. 1165, 377 U.S. 905, 12 L.Ed.2d 177.

In prosecution for mail fraud and for conspiracy to defraud, testimony by persons to whom representations were made, as to the representations made by defendants' salesmen, was admissible. Harris v. U. S., C.A.9 (Cal.) 1958, 261 F.2d 792, certiorari denied 79 S.Ct. 1446, 360 U.S. 933, 3 L.Ed.2d 1546, rehearing denied 80 S.Ct. 117, 361

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U.S. 871, 4 L.Ed.2d 111.

In prosecution for use of mails in attempt to defraud in sale of accident and sickness insurance policies and for conspiracy to commit the same offense, court did not err in admitting government's evidence as to loss ratios developed on policies sold by defendants. U. S. v. Sylvanus, C.A.7 (Ill.) 1951, 192 F.2d 96, certiorari denied 72 S.Ct. 555, 342 U.S. 943, 96 L.Ed. 701.

In prosecution for use of the mails in attempt to defraud in sale of accident and sickness insurance policies and for conspiracy to commit the same offense, wherein court admitted evidence of the government as to loss ratios developed on policies sold by defendants, refusal to admit in evidence a booklet offered by defendants to show loss ratios developed on policies of third persons was not error, since such evidence was immaterial. U. S. v. Sylvanus, C.A.7 (Ill.) 1951, 192 F.2d 96, certiorari denied 72 S.Ct. 555, 342 U.S. 943, 96 L.Ed. 701.

In prosecution of several defendants for using mails to defraud and for conspiracy to commit the substantive crime, evidence of a concert between three of defendants in selling of interests in supposedly oil-producing lands was properly admitted, although all transactions proved were not shown to have been parts of that concert. U.S. v. Cohen, C.C.A.2 (N.Y.) 1944, 145 F.2d 82, certiorari denied 65 S.Ct. 553, 323 U.S. 799, 89 L.Ed. 637, certiorari denied 65 S.Ct. 553, 323 U.S. 799, 89 L.Ed. 638, certiorari denied 65 S.Ct. 554, 323 U.S. 800, 89 L.Ed. 638.

In prosecution for conspiracy to use mails to defraud and for using mails in a scheme to defraud involving sale of corporate assets, the books of corporations were admissible against defendants who had made representations regarding financial condition of the corporations. U.S. v. Feinberg, C.C.A.2 (N.Y.) 1944, 140 F.2d 592, certiorari denied 64 S.Ct. 943, 322 U.S. 726, 88 L.Ed. 1562.

In prosecution for conspiracy to use mails to defraud, and for using mails in scheme to defraud involving sale of corporate assets, books of companies were competent against a defendant who had been in complete control of the companies for a long time. U.S. v. Feinberg, C.C.A.2 (N.Y.) 1944, 140 F.2d 592, certiorari denied 64 S.Ct. 943, 322 U.S. 726, 88 L.Ed. 1562.

In prosecution for conspiracy to use mails to defraud and for using mails in a scheme to defraud, by obtaining control of business of corporation by means of false statements and disregard of interest of minority shareholders, statements issued by corporation to its shareholders and reports of accountants for corporation to board of directors were admissible against all who were directors at the time. U.S. v. Feinberg, C.C.A.2 (N.Y.) 1944, 140 F.2d 592, certiorari denied 64 S.Ct. 943, 322 U.S. 726, 88 L.Ed. 1562.

In prosecution for using mails to defraud and for conspiracy, where no motion to strike out books and records of a corporation was made after they had been admitted, with leave to defendants to move to strike out the records, summaries of the records prepared by a post office inspector were admissible. U.S. v. Bramson, C.C.A.2 (N.Y.) 1943, 139 F.2d 598, certiorari denied 64 S.Ct. 636, 321 U.S. 783, 88 L.Ed. 1075.

In prosecution for using mails to defraud and for conspiracy, testimony by government relating to transactions in connection with stock of oil company was relevant as showing that one of defendants had caused some trust certificates to be canceled, reissued in name of his family and then redeemed, thereby depriving certificate holders of a bona fide chance of having their certificates selected for redemption by lot, and diverting the income of the trusts to himself or his family. U.S. v. Bramson, C.C.A.2 (N.Y.) 1943, 139 F.2d 598, certiorari denied 64 S.Ct. 636, 321 U.S. 783, 88 L.Ed. 1075.

In prosecution for mail fraud in sale of oil leases and stock, where fraudulently obtained check was deposited with bank which mailed check to trust company, air mail stamp shown to have been affixed in regular course of business to letters received by air mail was admissible as part of proof of ordinary business practice, as a record made in ordinary course of business, and under former § 695 of Title 28, prescribing what writings are admissible. U.S. v.

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Leathers, C.C.A.2 (N.Y.) 1943, 135 F.2d 507.

In prosecution for using and conspiring to use the mails to defraud, the testimony of a witness who had received his information after the termination of the conspiracy in the form of a mere narrative relation thereof was improperly admitted, but the admission thereof was not prejudicial to defendant where the testimony was merely corroborative and the case against defendant without that testimony was unusually strong. U.S. v. Groves, C.C.A.2 (N.Y.) 1941, 122 F.2d 87, certiorari denied 62 S.Ct. 135, 314 U.S. 670, 86 L.Ed. 536.

Where it was shown in prosecution for violation of former § 338 of this title that shortly after indictment was returned defendant had removed papers from a Montreal bank vault and had sought to have them destroyed, testimony that codefendant had said to his wife that the papers were just evidence of what the government wanted and that it was very awkward that defendant could not burn them was inadmissible against defendant as "hearsay" constituting a narrative statement made after the termination of the conspiracy charged. U.S. v. Groves, C.C.A.2 (N.Y.) 1941, 122 F.2d 87, certiorari denied 62 S.Ct. 135, 314 U.S. 670, 86 L.Ed. 536.

In prosecution for use of mails in execution of scheme to defraud by sale of fractional parts of practically worthless oil leases, evidence was sufficient to connect transaction involving sale by one defendant of a lease and an attempt to obtain refund from him with the general plan to defraud so as to render evidence of the attempt to obtain refund admissible against all of the co-conspirators and therefore the admission of the evidence but limited to such defendant was not error. Simons v. U.S., C.C.A.9 (Wash.) 1941, 119 F.2d 539, certiorari denied 62 S.Ct. 78, 314 U.S. 616, 86 L.Ed. 496.

In prosecution for using mail in execution of scheme to defraud investors in units of oil leases, for violation of this section, and for conspiracy to violate it, where indictment alleged that defendants organized three corporations for the purpose of carrying out their fraudulent scheme, evidence of stock manipulations of the corporations was admissible on question of defendants' guilt or innocence where it appeared that the records of the corporations were manipulated by defendants in an effort to conceal the true relationship of the coconspirators. Simons v. U.S., C.C.A.9 (Wash.) 1941, 119 F.2d 539, certiorari denied 62 S.Ct. 78, 314 U.S. 616, 86 L.Ed. 496.

In prosecution for conspiracy to use mails to defraud and use of mails to defraud, evidence that defendant refused to accept grand jury's invitation to appear before it was relevant to issue of defendant's credibility. U.S. v. Mortimer, C.C.A.2 (N.Y.) 1941, 118 F.2d 266, certiorari denied 62 S.Ct. 58, 314 U.S. 616, 86 L.Ed. 496.

In prosecution for using mails to defraud and for conspiracy, committed by fraudulent sales of cemetery lots through a corporation, court did not err in excluding testimony by one defendant's employee who was in charge of construction work, concerning statement made by such employee in conversation with one who subsequently purchased the entire cemetery, as to estimated cost of final development of undeveloped lots. U. S. v. Beck, C.C.A.7 (Ill.) 1941, 118 F.2d 178, certiorari denied 61 S.Ct. 1121, 313 U.S. 587, 85 L.Ed. 1542.

In prosecution for using mails to defraud and for conspiracy, committed by fraudulent sales of cemetery lots through a corporation, minute books of former owner of the cemetery lots were admissible to show value of the lots. U. S. v. Beck, C.C.A.7 (Ill.) 1941, 118 F.2d 178, certiorari denied 61 S.Ct. 1121, 313 U.S. 587, 85 L.Ed. 1542.

In prosecution for using mails to defraud and for conspiracy, committed by fraudulent sale of cemetery lots through a corporation, letters from the corporation to purchaser of lots were admissible to show guilty knowledge of salesman's methods in making sales. U. S. v. Beck, C.C.A.7 (Ill.) 1941, 118 F.2d 178, certiorari denied 61 S.Ct. 1121, 313 U.S. 587, 85 L.Ed. 1542.

In prosecution for conspiracy to use mails in furtherance of a scheme to defraud where it was part of government's theory that a defendant had paid codefendant money for services in connection with sale of oil royalty certificates

before codefendant left position of state assistant attorney general, on June 1, 1934, and where government's counsel directed defendant to examine schedule and state when for first time he paid codefendant any money, and defendant answered, "On the 2d of July 1934", testimony that defendant had told witness in April, 1934 that another had demanded $1,500 for payment to the codefendant or the codefendant would send out letters derogatory to the certificates, and that defendant then paid codefendant $500, was erroneously admitted in rebuttal, since proper foundation for impeachment had not been laid and the testimony was not rebuttal. Whealton v. U.S., C.C.A.3 (N.J.) 1940, 113 F.2d 710.

In prosecution for conspiracy to use mails in furtherance of a scheme to defraud by inducing purchase of participating oil royalty certificates by false representations, admitting a statement signed by a defendant after funds of corporation had been allegedly misapplied, and stating, "I do not condone any of the offenses nor by the same token do I excuse what may appear to be compounding a felony", was error even though the statement was received in evidence as to the writer alone, where the statement contained no facts relevant to the establishment of crime charged and merely implied a legal conclusion of the writer without reciting facts whereon the conclusion was based. In such prosecution, admitting as to writer alone, a statement, made after funds of corporation had been allegedly misapplied, that it was his duty to go to criminal authorities and report facts so that officers and directors of corporation could be prosecuted, was error, since the statement represented no more than the writer's opinion and was not competent as evidence. Whealton v. U.S., C.C.A.3 (N.J.) 1940, 113 F.2d 710.

In prosecution for conspiracy to use mails in furtherance of a scheme to defraud by inducing purchase of participating oil royalty certificates by false representations, statement signed by a defendant that, if any moneys were paid to certain individuals improperly, a named individual was entirely ignorant of such payments, was inadmissible even against writer. Whealton v. U.S., C.C.A.3 (N.J.) 1940, 113 F.2d 710.

In prosecution for using and conspiring to use the mails to defraud gullible individuals by collecting fees for enrolling them as heirs of mythical Baker estate, evidence that competing group of conspirators had attempted to bribe a register of wills was improperly admitted in absence of testimony connecting accused therewith. U. S. v. Sprengel, C.C.A.3 (Pa.) 1939, 103 F.2d 876.

In prosecution for using and conspiring to use the mails to defraud gullible individuals by collecting fees for enrolling them as heirs of mythical Baker estate, bulletins published by the "Baker Heirs' Genealogical Association" were improperly introduced, in absence of testimony that accused were responsible for sending the bulletins through the mails or aided in their preparation or publication. U. S. v. Sprengel, C.C.A.3 (Pa.) 1939, 103 F.2d 876.

In prosecution for using and conspiring to use the mails to defraud gullible individuals by collecting fees for enrolling them as heirs of mythical Baker estate, postal inspector's testimony that in many cases investigated by post office department fraud orders were secured against persons operating Baker heirs groups was improperly admitted in absence of showing that accused were connected with activities wherein fraud orders were granted. U. S. v. Sprengel, C.C.A.3 (Pa.) 1939, 103 F.2d 876.

In prosecution for using and conspiring to use the mails to defraud gullible individuals by collecting fees for enrolling them as heirs of mythical Baker estate, where conspirators kept in close and often competitive contact with other exploiting groups, evidence as to activities of groups not directly connected with conspirators was properly admitted to test "good-faith" defense, as long as connection with or knowledge of activities of such groups was brought home to conspirators. U. S. v. Sprengel, C.C.A.3 (Pa.) 1939, 103 F.2d 876.

In prosecution for use of mails to defraud insurance companies by filing false claims and for conspiracy, admission of evidence on cross-examination of defendant physician about default judgment obtained against him by patient in action predicated on negligence was discretionary especially since evidence could not have affected result in view of answer. U S v. Weiss, C.C.A.2 (N.Y.) 1939, 103 F.2d 348, certiorari granted 59 S.Ct. 1043, 307 U.S. 621, 83

L.Ed. 1500, reversed on other grounds 60 S.Ct. 269, 308 U.S. 321, 84 L.Ed. 298.

In prosecution for using mails in furtherance of scheme to defraud by means of confidence game and for conspiring to commit such offense, record kept in usual course of business by bank often used to enable those defrauded to convert securities into cash, showing that on a certain date a cashier's check for $4,000 payable to a defendant had been purchased in another defendant's name was admissible. U.S. v. Graham, C.C.A.2 (N.Y.) 1939, 102 F.2d 436, certiorari denied 59 S.Ct. 1041, 307 U.S. 643, 83 L.Ed. 1524, rehearing denied 60 S.Ct. 68, 308 U.S. 632, 84 L.Ed. 526.

In prosecution for using mails in furtherance of scheme to defraud by means of confidence game and for conspiring to commit such offense, witness' testimony that he was a convicted swindler who had taken victims to Reno, Nev., knowing that he would have to pay a defendant 15 per cent. of proceeds of fraud and that he had prior arrangements with such defendant, witness' further testimony that the percentage was the usual one paid by confidence men for aid furnished by defendant in accordance with a general custom was admissible to show the greater probability that the specific arrangements testified to with the defendant were actually made. U.S. v. Graham, C.C.A.2 (N.Y.) 1939, 102 F.2d 436, certiorari denied 59 S.Ct. 1041, 307 U.S. 643, 83 L.Ed. 1524, rehearing denied 60 S.Ct. 68, 308 U.S. 632, 84 L.Ed. 526.

In prosecution of corporation officers for using the mails to defraud and for conspiracy, based on sale of mortgage participation certificates by company of which defendants were officers, document showing a lower appraisal of mortgaged property than was used by defendants in evaluating safety of the certificates, on which one defendant had made a notation, was admissible despite such defendant's testimony that he made the notation after making his own appraisal. U.S. v. Dilliard, C.C.A.2 (N.Y.) 1938, 101 F.2d 829, certiorari denied 59 S.Ct. 484, 306 U.S. 635, 83 L.Ed. 1036.

In prosecution of corporation officers for posting letters in pursuance of scheme to defraud and for conspiracy, evidence of one defendant's fraud in increasing cash items in financial statements was competent against such defendant upon the substantive counts independently of the conspiracy, and notwithstanding such defendant's acquittal on the substantive counts. U.S. v. Dilliard, C.C.A.2 (N.Y.) 1938, 101 F.2d 829, certiorari denied 59 S.Ct. 484, 306 U.S. 635, 83 L.Ed. 1036.

In prosecution for using, and conspiracy to use, mails to defraud, income tax return of one of conspirators was properly admissible as against him, being properly limited to such defendant. U.S. v. Rollnick, C.C.A.2 (N.Y.) 1937, 91 F.2d 911.

In prosecution for using, and conspiracy to use, mails to defraud by selling watered stock, balance sheet showing operating losses sustained by corporation and its subsidiaries was admissible against all conspirators and not solely against conspirator who mailed it to stockholders, notwithstanding evidence indicating that conspiracy had been broken up by attack upon some members resulting in difficulty of carrying out conspiracy successfully, where it could be inferred conspirators intended to carry on with conspiracy. U.S. v. Rollnick, C.C.A.2 (N.Y.) 1937, 91 F.2d 911.

In prosecution for conspiracy and using mails to defraud, that books of corporations offered in evidence were not admissible against all defendants was not ground for exclusion of books. Wilkes v. U.S., C.C.A.9 (Cal.) 1935, 80 F.2d 285.

In a prosecution for conspiracy to use the mails to defraud by sending letters threatening to murder the addressee unless he deposited a sum of money as directed, evidence that a defendant, when arrested, had in his possession weapons which might be used to carry out the threats, was admissible. Fasulo v. U.S., C.C.A.9 (Cal.) 1925, 7 F.2d 961, certiorari granted 46 S.Ct. 203, 269 U.S. 551, 70 L.Ed. 407, reversed 47 S.Ct. 200, 272 U.S. 620, 71 L.Ed. 443.

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In prosecution under former § 88 of this title [now this section], for conspiracy to defraud by misuse of mails, contrary to former § 338 of this title, if accused was in conspiracy alleged, acts of other conspirators in carrying out purpose of conspiracy could have been shown. Morris v. U. S., C.C.A.8 (Ark.) 1925, 7 F.2d 785, certiorari denied 46 S.Ct. 205, 270 U.S. 640, 70 L.Ed. 775.

On trial of numerous defendants for conspiracy to use the mails to defraud, tentative admission of evidence of overt acts by some of the defendants in advance of proof connecting them with the conspiracy was within the discretion of the court. Smith v. U. S., C.C.A.8 (Neb.) 1920, 267 F. 665, rehearing denied 269 F. 365, certiorari denied 41 S.Ct. 450, 256 U.S. 691, 65 L.Ed. 1174.

On a trial for fraudulent use of mails and conspiracy, receipts or bills of lading were admissible in connection with testimony that goods of which parties were to be defrauded were packed and taken to a carrier in response to orders from defendants. U S v. Fischer, E.D.Pa.1917, 245 F. 477, affirmed 250 F. 793, 163 C.C.A. 125.

In a trial for conspiring to use the mails in carrying out a scheme to defraud, all mail connected with the scheme, shown to have passed through the post office to any person, whether named in the indictment or not, was evidence upon the question of the existence of the scheme. US v. Marrin, E.D.Pa.1908, 159 F. 767, affirmed 167 F. 951, 93 C.C.A. 351, certiorari denied 32 S.Ct. 523, 223 U.S. 719, 56 L.Ed. 629.

684. Securities offenses, admissibility of evidence

Defendant in securities fraud conspiracy prosecution was not prejudiced by trial court's exclusion of defendant's customer account cards which were offered to establish that defendant had not intentionally submitted false documents to the SEC where defense counsel could not identify a single entry in cards that supported such a defense. U. S. v. Koss, C.A.2 (N.Y.) 1974, 506 F.2d 1103, certiorari denied 95 S.Ct. 1402, 420 U.S. 977, 43 L.Ed.2d 657, certiorari denied 95 S.Ct. 1565, 421 U.S. 911, 43 L.Ed.2d 776.

Evidence with respect to transfers involving property used to obtain control of corporation was admissible as background in prosecution for conspiracy to defraud government and Securities and Exchange Commission and for violation of securities laws, and was not rendered inadmissible by removal of allegations of stockholder and creditor fraud from jury's consideration. U. S. v. Colasurdo, C.A.2 (N.Y.) 1971, 453 F.2d 585, certiorari denied 92 S.Ct. 1766, 406 U.S. 917, 32 L.Ed.2d 116.

Admission, in prosecution for fraud in sale of securities, mail fraud, conspiracy, and making of false statements, of evidence of defendants' actions in 1964 and 1965 was not error where there was considerable evidence tending to prove that defendants were cooperating together in scheme to defraud investors throughout such period and where two substantive offenses were alleged to have occurred in 1965. U. S. v. Livengood, C.A.9 (Wash.) 1970, 427 F.2d 420.

Admission in evidence, in prosecution for conspiracy and for interstate transportation of stolen securities, of letters and documents sent by person from whom the securities were stolen to stock transfer agents reporting the theft was error where such letters and documents were not made by transfer agents and were not their business records, so that such documents would constitute only self-serving declarations of the writer and would not be proof of facts stated therein. U.S. v. Sherfey, C.A.6 (Mich.) 1967, 384 F.2d 786.

Admission in evidence in fraud and conspiracy prosecution of documents received by numerous investors which did not bear defendant's signature was harmless error, if it was error at all, where there was much additional documentary evidence of similar type introduced against defendant dealing with his own participation in activities of three companies with which he was associated, which documents were enclosed in letters actually signed by the defendant. Muir v. U. S., C.A.5 (Fla.) 1967, 373 F.2d 712.

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Evidence involving parts of codefendants' post-conspiracy testimony before SEC and attorney general and codefendant's letter to defendant, which charged defendant with giving out false information about oil company and in no uncertain terms told him to stop, constituted inadmissible and prejudicial hearsay as against defendant, in prosecution for conspiracy to defraud public by distribution of oil company stock at grossly inflated prices. U. S. v. Kelly, C.A.2 (N.Y.) 1965, 349 F.2d 720, certiorari denied 86 S.Ct. 1467, 384 U.S. 947, 16 L.Ed.2d 544.

Evidence relating to financial transactions between corporations was relevant to show the mechanics for attaining major purpose of conspiracy to sell unregistered securities. U.S. v. Dardi, C.A.2 (N.Y.) 1964, 330 F.2d 316, certiorari denied 85 S.Ct. 117, 379 U.S. 869, 13 L.Ed.2d 73, certiorari denied 85 S.Ct. 50, 379 U.S. 845, 13 L.Ed.2d 50, rehearing denied 85 S.Ct. 640, 379 U.S. 986, 13 L.Ed.2d 579, certiorari denied 85 S.Ct. 51, 379 U.S. 845, 13 L.Ed.2d 50.

Testimony of unfortunate buyers of stock was relevant in prosecution for conspiracy and for illegal sale of unregistered stock. U.S. v. Dardi, C.A.2 (N.Y.) 1964, 330 F.2d 316, certiorari denied 85 S.Ct. 117, 379 U.S. 869, 13 L.Ed.2d 73, certiorari denied 85 S.Ct. 50, 379 U.S. 845, 13 L.Ed.2d 50, rehearing denied 85 S.Ct. 640, 379 U.S. 986, 13 L.Ed.2d 579, certiorari denied 85 S.Ct. 51, 379 U.S. 845, 13 L.Ed.2d 50.

In prosecution for mail fraud, securities fraud and conspiracy, evidence of losses sustained by investors was relevant and material in establishing quality of securities sold and financial condition of corporation which issued securities. Farrell v. U. S., C.A.9 (Cal.) 1963, 321 F.2d 409, certiorari denied 84 S.Ct. 631, 375 U.S. 992, 11 L.Ed.2d 478.

In prosecution for mail fraud, securities fraud and conspiracy, fact that summary of "sell orders" contained other information did not render it inadmissible as summary. Farrell v. U. S., C.A.9 (Cal.) 1963, 321 F.2d 409, certiorari denied 84 S.Ct. 631, 375 U.S. 992, 11 L.Ed.2d 478.

In prosecution for violation of Securities Act, § 77a et seq. of Title 15, mail fraud and conspiracy in sale of debentures of corporation from 1951 to 1955, based on false representations concerning current condition of the corporation, evidence of corporation's financial condition in 1956 and 1957, after it was in hands of trustee in bankruptcy and was operating without burden of payments for debt service, was irrelevant. U. S. v. Tellier, C.A.2 (N.Y.) 1958, 255 F.2d 441, certiorari denied 79 S.Ct. 33, 358 U.S. 821, 3 L.Ed.2d 62.

In prosecution for violating and for conspiring to violate Securities Act of 1933, § 77q of Title 15, admission of 814 mutual agreement notes, 248 promissory notes payable in 90 days, and 50 promissory notes payable in 60 days for purpose of showing scope and extent of scheme whereby defendants allegedly obtained money for their own use by false representations was proper. Llanos v. U. S., C.A.9 (Hawai'i) 1953, 206 F.2d 852, certiorari denied 74 S.Ct. 310, 346 U.S. 923, 98 L.Ed. 417.

In prosecution for using mails to defraud, for using mails for sale of securities not registered with Securities and Exchange Commission, and for conspiracy to commit such crimes, defendant's letters to another accused, written seven or eight years before transaction involved, were admissible to disclose relations between defendant and the other accused where defendant contended that the other was not his confederate. U.S. v. Bronson, C.C.A.2 (N.Y.) 1944, 145 F.2d 939.

In prosecution for violations of Securities Act of 1933, § 15q(a)(1) of Title 15, and Mail Fraud Act, former § 338 of this title, and conspiracy to carry out substantive offenses, testimony of witness that one of defendants had given her a mortgage on oil tank to secure payment of $7,500.00 note which tank defendant thereafter sold for $300.00 giving purchaser a forged release of mortgage, and that purchaser thereafter sold tank for $625.00, was properly admitted. Harper v. U. S., C.C.A.8 (Mo.) 1944, 143 F.2d 795.

Where sale of an interest in a water bleeder was not charged as an offense in prosecution for violations of

Securities Act of 1933, § 77q(a)(1) of Title 15, and Mail Fraud Act, former § 338 of Title 18, and conspiracy to carry out substantive offenses, documents pertaining to the water bleeder and transactions connected with that instrumentality were properly excluded. Harper v. U. S., C.C.A.8 (Mo.) 1944, 143 F.2d 795.

In prosecution for conspiracy to use mails to defraud and for using mails in a scheme to defraud by obtaining control of corporate business by means of false statements and disregard of interest of minority stockholders, it was proper to show what the defendants did with the company after they got possession of it. U.S. v. Feinberg, C.C.A.2 (N.Y.) 1944, 140 F.2d 592, certiorari denied 64 S.Ct. 943, 322 U.S. 726, 88 L.Ed. 1562.

In prosecution for using mails in furtherance of scheme to defraud in sale of mining stock and for conspiracy to defraud, admitting in evidence numerous letters and documents en masse with the comment that any instrument shown to be incompetent would be stricken on motion and admonishing jury at defendants' request not to consider letters not identified and that case must be proved by sworn testimony or proved directly by competent letters, was not error. Estep v. U.S., C.C.A.10 (Utah) 1943, 140 F.2d 40.

In prosecution for conspiracy and for use of mails in execution of scheme to defraud by sale of fractional parts of practically worthless oil leases, admission of testimony that two defendants sent witness to investors to instruct them that certain bonds were gilt edged and that the defendants had told witness that somebody had informed the investors that the investment was not good and that it was witness' job to keep the investors pacified was not error where conversation between witness and defendants took place at time when the conspiracy charged was in its formation and tended to prove close relationship existing between defendants and jury could infer that the acts testified to were in furtherance of general scheme to defraud. Simons v. U.S., C.C.A.9 (Wash.) 1941, 119 F.2d 539, certiorari denied 62 S.Ct. 78, 314 U.S. 616, 86 L.Ed. 496.

Where indictment for conspiracy, for violation of former § 338 of this title and § 77q of Title 15 charged that after selling investors as many as possible of oil lease units, defendants would further "reload" the investors by selling them shares of stock of certain companies representing to investors that a defendant had acquired the stock as his personal property, evidence of the sale of the stock was admissible notwithstanding all of the defendants did not actively participate in sale and the stock belonged to only one defendant. Simons v. U.S., C.C.A.9 (Wash.) 1941, 119 F.2d 539, certiorari denied 62 S.Ct. 78, 314 U.S. 616, 86 L.Ed. 496.

In prosecution for use of mails in execution of scheme to defraud by sale of fractional parts of practically worthless oil leases, and for conspiracy, where indictment alleged that it was part of scheme to defraud that when defendants should find investors with more money than they could be induced to invest in the leases, defendants would endeavor to sell investors other securities of little or no value and borrow money from the investors on notes which defendants did not intend to pay, testimony regarding one defendant's sale of certain bonds to an investor and subsequent exchange of such defendant's personal note for the bonds was admissible where transaction occurred at time when such defendant was attempting by various methods to raise money for carrying out of general fraudulent scheme. Simons v. U.S., C.C.A.9 (Wash.) 1941, 119 F.2d 539, certiorari denied 62 S.Ct. 78, 314 U.S. 616, 86 L.Ed. 496.

In prosecution of officers of mortgage corporation for using mails to defraud and for conspiracy, testimony of numerous victims who had lost money by investing in company's participation certificates, to show how long advertising material containing misrepresentations was distributed, and what representations were made to induce them to buy, was admissible when restricted to matters which could be connected with the defendants. U.S. v. Dilliard, C.C.A.2 (N.Y.) 1938, 101 F.2d 829, certiorari denied 59 S.Ct. 484, 306 U.S. 635, 83 L.Ed. 1036.

In prosecution of officers and directors of mortgage guaranty company for conspiracy to use mails to defraud in sale of mortgage participation certificates, introduction of evidence that defendants repurchased two-thirds of certificates which had been issued to investor representing interest in mortgage on which foreclosure had been commenced, to shatter reputation of defendant by showing attempt to buy off investigation, was reversible error in

view of other evidence. U.S. v. McNamara, C.C.A.2 (N.Y.) 1937, 91 F.2d 986.

In prosecution of officers and directors of mortgage guaranty company for use of mails to defraud in sale of mortgage participation certificates, admission of testimony that at time of purchases of mortgage participation certificates, purchasers did not know that insurance commissioner had prohibited company from issuing further guaranties, was reversible error, where insurance commissioner had no authority under McKinney's N.Y.Insurance Law, § 173, to prohibit company from issuing further guaranties. U.S. v. McNamara, C.C.A.2 (N.Y.) 1937, 91 F.2d 986.

In conspiracy and oil stock mail fraud case, testimony that defendant believed he had title was properly excluded. Nelson v. U. S., C.C.A.8 (Ark.) 1926, 16 F.2d 71.

Evidence of defendant's sale of particular bonds was competent in prosecution for conspiracy to deal in securities stolen from mails. Murdick v. U.S., C.C.A.8 (Minn.) 1926, 15 F.2d 965, certiorari denied 47 S.Ct. 765, 274 U.S. 752, 71 L.Ed. 1332.

Statements and acts of members of brokerage firm and clerk in furtherance of its scheme to defraud customers were admissible against participants in the scheme. Silkworth v. U.S., C.C.A.2 (N.Y.) 1926, 10 F.2d 711, certiorari denied 46 S.Ct. 475, 271 U.S. 664, 70 L.Ed. 1139.

Where indictment charged in setting forth scheme to defraud by use of mails that stock of corporation sold pursuant to scheme would be and was of little or no value, and charged continued conspiracy from June 27, 1921, to October 12, 1922, testimony of trustee in bankruptcy, who took over assets of corporation in October, 1922, as to what assets then were, was not too remote, it being during continuance of the conspiracy as charged. Tank v. U.S., C.C.A.7 (Wis.) 1925, 8 F.2d 697.

In prosecution for obtaining money by false pretenses and conspiracy, under scheme to buy stock for investors on payment of 20 per cent. of value, confirmation of stock purchases, written for by defendant on demand of auditors, which were false and forged by one of defendants, were properly admitted as to both defendants, where defendant writing for confirmations knew of falsity, as defendant forging them thereby showed willingness to aid in carrying in fraudulent transaction. Kriebel v. U.S., C.C.A.7 (Ill.) 1925, 8 F.2d 692, certiorari denied 46 S.Ct. 119, 269 U.S. 582, 70 L.Ed. 424, certiorari denied 46 S.Ct. 120, 269 U.S. 583, 70 L.Ed. 424.

In prosecution for conspiracy having as its object an attempt to quash Securities and Exchange Commission investigation in return for cash contribution to political organization and an attempt to avoid disclosing facts relating to the contribution, portion of bill of particulars referring to disbursements made from the contribution to specified individuals constituted an attempt to introduce collateral and prejudicial evidence of "Watergate break-in" and would be struck subject to offer of proof at time of trial. U. S. v. Mitchell, S.D.N.Y.1973, 372 F.Supp. 1239, appeal dismissed 485 F.2d 1290. Indictment And Information 121.2(3)

685. Shipping offenses, admissibility of evidence

In a prosecution under former § 88 of this title [now this section], for conspiracy to sink a German vessel in navigable waters of the United States, etc., evidence as to the condition of the ship, and that the valves were open, etc., was admissible, the injury to the equipment of ship contributing to the sinking. Wierse v. U.S., C.C.A.4 (S.C.) 1918, 252 F. 435, 164 C.C.A. 359, certiorari denied 39 S.Ct. 10, 248 U.S. 568, 63 L.Ed. 425.

Where one of defendants, all of whom were charged with conspiring to defraud United States by obtaining false clearance for vessels intended to provision and coal German warships on high seas, reimbursed owner of chartered vessel, who paid fine of master for making false statements in manifest, that transaction was admissible on question of defendant's knowledge of statements and their falsity. Hamburg-American Steam Packet Co. v. U.S., C.C.A.2

(N.Y.) 1918, 250 F. 747, 163 C.C.A. 79, certiorari denied 38 S.Ct. 333, 246 U.S. 662, 62 L.Ed. 927.

686. Smuggling, admissibility of evidence

In prosecution of defendant for conspiring to smuggle amphetamine tablets into the United States, evidence that a certain individual was dealing in amphetamine tablets in the United States, that these tablets were made by the same press as those found in defendant's possession, and that numerous telephone calls were made between the telephone listed to such individual and a telephone which had been listed by defendant under an assumed name, was admissible as tending to prove defendant's connection with importation of the tablets into the United States. Brulay v. U. S., C.A.9 (Cal.) 1967, 383 F.2d 345, certiorari denied 88 S.Ct. 469, 389 U.S. 986, 19 L.Ed.2d 478.

In prosecutions for conspiracy to smuggle psittacine birds into United States, for smuggling such birds into United States, and for receiving, concealing and transporting such birds, testimony of one conspirator relating to events occurring prior to termination of conspiracy was admissible as to all conspirators where such statements related to communications made during and in course of conspiracy. Murray v. U.S., C.A.9 (Cal.) 1957, 250 F.2d 489, certiorari denied 78 S.Ct. 1375, 357 U.S. 932, 2 L.Ed.2d 1373.

In prosecution for conspiracy to smuggle cattle into the United States contrary to law and conspiring to receive, conceal and transport the cattle, evidence with reference to the seizure by the custom officers of the cattle was not inadmissible though it indicated the commission of a federal crime not mentioned in indictment where the seizures were merely explanatory of how the cattle came into the possession of the custom officers. Babb v. U.S., C.A.5 (Tex.) 1954, 210 F.2d 473.

In prosecution for illegally conspiring to smuggle and introduce cattle into the United States, admitting testimony of witness who declined to haul the cattle because he did not think it was quite right, which was prejudicial only to the trucking contractors who were acquitted. was not prejudicial to the defendants who were the head of the conspiracy and the principal actors in its execution. Babb v. U.S., C.A.5 (Tex.) 1954, 210 F.2d 473.

In prosecution for smuggling and concealing alcohol and for conspiracy to do so, testimony of sailor that wireless operator on rum-running vessel showed sailor a list of owners of the vessel, which included name of an accused, was admissible where evidence indicated that the declaration of the wireless operator was probably a part of his duty inasmuch as he was employed to keep in touch with owners ashore and advise them of any troubles that might arise, notwithstanding fact that ordinarily only the master would be authorized to disclose such information. U S v. Nardone, C.C.A.2 (N.Y.) 1939, 106 F.2d 41, certiorari granted 60 S.Ct. 103, 308 U.S. 539, 84 L.Ed. 454, reversed on other grounds 60 S.Ct. 266, 308 U.S. 338, 84 L.Ed. 307.

In prosecution for smuggling and concealing alcohol and for conspiracy to do so, evidence of landing of certain alcohol from vessel which was interrupted by treasury agents while it was in progress and which developed into a shooting affray was admissible as being in execution of the conspiracy, as against contention that the evidence was likely to divert jury's mind from the crime to one of its distracting incidents. U S v. Nardone, C.C.A.2 (N.Y.) 1939, 106 F.2d 41, certiorari granted 60 S.Ct. 103, 308 U.S. 539, 84 L.Ed. 454, reversed on other grounds 60 S.Ct. 266, 308 U.S. 338, 84 L.Ed. 307.

In prosecution for smuggling and concealing alcohol and for conspiracy to do so, admission of testimony of sailor that wireless operator on rum-running vessel showed sailor a list of owners of the vessel which included name of an accused, even if erroneous, was harmless, where the accused was amply connected with the conspiracy without the sailor's testimony. U S v. Nardone, C.C.A.2 (N.Y.) 1939, 106 F.2d 41, certiorari granted 60 S.Ct. 103, 308 U.S. 539, 84 L.Ed. 454, reversed on other grounds 60 S.Ct. 266, 308 U.S. 338, 84 L.Ed. 307.

On an indictment for consipracy to defraud the United States by smuggling goods, an affidavit indorsed by the master on the manifest, a month after it was filed, was not admissible as a part thereof. U.S. v. Graff,

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C.C.N.Y.1878, 26 F.Cas. 1, No. 15244. Customs Duties 134

687. Stolen property, admissibility of evidence--Generally

Government agents did not "create" exigent circumstances by using stolen tickets that were stamped "void," and thus, warrantless entry of defendant's house for purposes of arresting defendant on charge of conspiring to deal in stolen goods in interstate commerce, was not rendered invalid; Government's decision to mark tickets "void" was reasonable in light of concern that something might go wrong with operation and tickets might be disseminated to public. U.S. v. Zabare, C.A.2 (N.Y.) 1989, 871 F.2d 282, certiorari denied 110 S.Ct. 161, 493 U.S. 856, 107 L.Ed.2d 119.

Testimony of witness from various business establishments, which had supplied items such as air conditioners, stereo phonographs, vacuum cleaners and colored television sets to drugstore pursuant to telephone requests by defendants, as to retail value of such items, was properly received in prosecution for conspiracy in connection with interstate transportation of goods of value of more than $5,000 obtained by fraud. Cave v. U. S., C.A.8 (Iowa) 1968, 390 F.2d 58, certiorari denied 88 S.Ct. 2059, 392 U.S. 906, 20 L.Ed.2d 1365.

Money orders which were allegedly stolen and which allegedly bore fictitious signatures were admissible in prosecution under this section and section 2314 of this title relating to conspiracy and to interstate transportation of stolen goods upon being identified by officer of company which distributed the money orders. Woodring v. U. S., C.A.10 (Okla.) 1967, 376 F.2d 619, certiorari denied 88 S.Ct. 153, 389 U.S. 885, 19 L.Ed.2d 182.

In prosecution for possessing goods with knowledge that they had been stolen while a part of an interstate shipment of freight, and for conspiring to commit such offense, admission of evidence of statements made by thieves to each other in planning theft and disposal of goods was not error as to defendant, though such evidence was not admissible as against defendant, where evidence was admitted solely as against co-defendant who was the go-between. U.S. v. Smolin, C.A.2 (N.Y.) 1950, 182 F.2d 782.

In prosecution for possessing goods with knowledge that they had been stolen while a part of an interstate shipment of freight, and for conspiring to commit such offense, evidence showing that the goods had been stolen was admissible. U.S. v. Smolin, C.A.2 (N.Y.) 1950, 182 F.2d 782.

In prosecution for causing stolen goods to be transported in interstate commerce and of a conspiracy to cause such transportation testimony as to theft of the goods was properly admitted against defendant who had not participated in the original theft since it was necessary to show that the goods were stolen in order to connect such defendant with the substantive offense as well as with the conspiracy. U.S. v. Tannuzzo, C.A.2 (N.Y.) 1949, 174 F.2d 177, certiorari denied 70 S.Ct. 38, 338 U.S. 815, 94 L.Ed. 493, rehearing denied 70 S.Ct. 233, 338 U.S. 896, 94 L.Ed. 551.

In prosecution charging transportation in interstate commerce of stolen goods and conspiracy to transport stolen goods in interstate commerce, where value of property transported was measured by its fair market value and was not governed by maximum price regulation, trial court did not err in admitting evidence of sales of the property for purpose of establishing its value. Reynolds v. U.S., C.C.A.5 (Ala.) 1945, 152 F.2d 586, certiorari denied 66 S.Ct. 959, 327 U.S. 803, 90 L.Ed. 1028.

In prosecution for conspiracy to transport stolen property in interstate commerce, evidence concerning the finding of pistols, ammunition, a black jack and mask in automobile and apartment of one of the defendants at the time of his arrest was admissible. Banning v. U.S., C.C.A.6 (Mich.) 1942, 130 F.2d 330, certiorari denied 63 S.Ct. 434, 317 U.S. 695, 87 L.Ed. 556.

In prosecution for conspiracy to transport stolen jewelry in interstate commerce, where it was proved that jewelry

had been stolen and transported in interstate commerce, evidence of defendants' association with other persons engaged in committing such offenses was admissible as tending to show the conspiracy and the means, preparation and disposition to commit the offense charged, particularly where defendants denied participation in the offense. Banning v. U.S., C.C.A.6 (Mich.) 1942, 130 F.2d 330, certiorari denied 63 S.Ct. 434, 317 U.S. 695, 87 L.Ed. 556.

That testimony of codefendant, who pleaded guilty to charge of conspiracy to transport stolen jewelry in interstate commerce, that he and codefendants participated in another jewel robbery was uncorroborated, did not render such testimony inadmissible in the prosecution for conspiracy. Banning v. U.S., C.C.A.6 (Mich.) 1942, 130 F.2d 330, certiorari denied 63 S.Ct. 434, 317 U.S. 695, 87 L.Ed. 556.

In prosecution for conspiracy to transport stolen jewelry in interstate commerce, evidence that one with whom defendants traveled by automobile from Chicago to Nashville, some time after robbery and while conspiracy was in full operation, was subsequently convicted of prior armed jewelry robbery had some probative value in rebutting defendants' statements that trip with him was in a peaceful pursuit. Banning v. U.S., C.C.A.6 (Mich.) 1942, 130 F.2d 330, certiorari denied 63 S.Ct. 434, 317 U.S. 695, 87 L.Ed. 556.

Where defendants testified in their own behalf in prosecution for conspiracy to transport stolen jewelry in interstate commerce, rebuttal evidence that one of defendants while conspiracy was in full operation had tried to brine police officer to falsify record so as to indicate that he had been arrested in Calumet Park, Illinois, more than a year prior thereto in connection with a jewel robbery in Omaha, Nebraska, was admissible as showing plan to avoid detection and punishment. Banning v. U.S., C.C.A.6 (Mich.) 1942, 130 F.2d 330, certiorari denied 63 S.Ct. 434, 317 U.S. 695, 87 L.Ed. 556.

In prosecution of garage operator, salesman, and another for conspiracy to receive, dispose of, and transport stolen merchandise in interstate commerce, where evidence of the guilt of operator and salesman was overwhelming, evidence that after garage operator dropped out as a go-between for shipping clerk of manufacturer and salesman, clerk dealt directly with salesman was not prejudicial either to operator or salesman though indictment charged but a single conspiracy. Andrews v. U.S., C.C.A.4 (W.Va.) 1939, 108 F.2d 511.

688. ---- Motor vehicles, stolen property, admissibility of evidence

Evidence that police officers were disarmed by defendant and that one defendant thereafter departed in stolen police car was admissible in defendants' trial for two violations of the Dyer Act, section 2312 of this title, and conspiracy to violate the Dyer Act as it formed necessary link in chain of events between defendants' first interstate transportation of stolen automobile and interstate transportation of second stolen automobile which defendants took after leaving the police car. U. S. v. Miller, C.A.7 (Ill.) 1974, 508 F.2d 444.

Government witness' testimony to effect that defendant, who was charged with conspiring to transport in interstate commerce a stolen automobile, had stated that he had arranged for delivery of stolen automobiles in specified places and had explained stolen automobile licensing system used upon automobile described in indictment was admissible as relevant to offense charged, although it incidentally disclosed evidence of other crimes, and was also admissible to show intent. Evenson v. U. S., C.A.8 (Mo.) 1963, 316 F.2d 94.

Conspiracy may be proved not only by evidence as to what conspirators expressly planned, but also by what they did in concert with each other in violating law, and evidence that, prior to theft of automobile accused in company with another had obtained false registration in state other than that in which automobile was stolen was admissible in prosecution for conspiracy to violate Motor Vehicle Theft Act, § 2312 of this title, in transportation of stolen automobile in interstate commerce. Koury v. U.S., C.A.6 (Mich.) 1954, 217 F.2d 387.

Evidence that accused, under assumed name, claimed letter containing payment for stolen automobile sold in another state was admissible, in prosecution for conspiracy to violate Motor Vehicle Theft Act, § 2312 of this title,

in transportation of stolen automobile in interstate commerce, over objection that conspiracy ended when automobile was sold. Koury v. U.S., C.A.6 (Mich.) 1954, 217 F.2d 387.

In prosecution for conspiracy to transport stolen motor vehicles in interstate commerce, and for knowingly aiding and abetting in sale of such automobiles, testimony of coconspirator as to declarations made by second coconspirator in telephone conversation with defendant were supported by sufficient circumstantial evidence to justify submission to jury of issue of defendant's identification as recipient of declarations, and were admissible as declarations of coconspirator. U.S. v. Bucur, C.A.7 (Ind.) 1952, 194 F.2d 297.

In prosecution of garage operator, salesman, and another for conspiracy to receive, dispose of, and transport stolen merchandise in interstate commerce, where evidence justified inference that operator and salesman were parties to conspiracy charged, acts and conduct of each in furtherance of the conspiracy could be considered against both of them. Andrews v. U.S., C.C.A.4 (W.Va.) 1939, 108 F.2d 511.

In prosecution for conspiracy to conceal and to receive automobile transported in interstate commerce, testimony as to the relations between defendant, who had purchased the car and one who had been active in inducing sale thereof to such defendant, was admissible. Baugh v. U.S., C.C.A.9 (Idaho) 1928, 27 F.2d 257, certiorari denied 49 S.Ct. 34, 278 U.S. 639, 73 L.Ed. 554.

Testimony as to other stolen cars than those named in indictment for conspiracy to violate National Motor Vehicle Theft Act, former § 408 of this title, was material on issue of existence of conspiracy, intent, and general course of dealing. Linde v. U.S., C.C.A.8 (S.D.) 1926, 13 F.2d 59.

689. Tax offenses, admissibility of evidence--Generally

Examination of record in prosecution for conspiracy, obtaining property by false pretenses, and forgery showed that information obtained by Internal Revenue agents, who were conducting valid civil tax audits of the principals, prior to those persons being advised of the rights of criminal suspects was obtained properly with respect to the defendants who were persons well versed in finance, taxation and the law. U. S. v. Stamp, C.A.D.C.1971, 458 F.2d 759, 147 U.S.App.D.C. 340, certiorari denied 92 S.Ct. 2424, 406 U.S. 975, 32 L.Ed.2d 675, rehearing denied 93 S.Ct. 188, 409 U.S. 900, 34 L.Ed.2d 160, certiorari denied 93 S.Ct. 104, 409 U.S. 842, 34 L.Ed.2d 81.

In prosecution for engaging in business of accepting wagers as copartners and attempting to evade part of excise on wagers, defendants' privilege against self-incrimination was not violated by admission of testimony that only one defendant filed excise tax returns but such evidence was relevant and material. U.S. v. Shaffer, C.A.7 (Ind.) 1961, 291 F.2d 689, certiorari denied 82 S.Ct. 192, 368 U.S. 915, 7 L.Ed.2d 130, rehearing denied 82 S.Ct. 392, 368 U.S. 962, 7 L.Ed.2d 393, certiorari denied 82 S.Ct. 193, 368 U.S. 914, 7 L.Ed.2d 130.

In prosecution for engaging in business of accepting wagers as copartners and conspiring to attempt to evade large part of excise tax due on wagers, reception of evidence concerning previous partnership relationship of a defendant in club operation and special returns and applications for registry-wagering filed by him was not erroneous where evidence was limited to such defendant and such evidence was admissible to show his knowledge of requirement of § 4412 of Title 26. U.S. v. Shaffer, C.A.7 (Ind.) 1961, 291 F.2d 689, certiorari denied 82 S.Ct. 192, 368 U.S. 915, 7 L.Ed.2d 130, rehearing denied 82 S.Ct. 392, 368 U.S. 962, 7 L.Ed.2d 393, certiorari denied 82 S.Ct. 193, 368 U.S. 914, 7 L.Ed.2d 130.

In prosecution for conspiring to defraud United States of proper administration of internal revenue laws and regulations, document taken from account books of co-conspirator showing disbursement of certain funds and earmarking of remaining funds for purpose of carrying out conspiracy, was admissible against defendants. Connelly v. U.S., C.A.8 (Mo.) 1957, 249 F.2d 576, certiorari denied 78 S.Ct. 700, 356 U.S. 921, 2 L.Ed.2d 716, rehearing denied 78 S.Ct. 991, 356 U.S. 964, 2 L.Ed.2d 1072, certiorari denied 78 S.Ct. 701, 356 U.S. 921, 2

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L.Ed.2d 716.

In prosecution of employee of the Bureau of Internal Revenue for conspiracy to defraud the United States through a tax fixing ring, testimony, which tended to support allegation that a continuing agreement to conceal was part of the single integrated conspiracy entered into by the employee and his coconspirators, was properly admitted. U.S. v. Grunewald, C.A.2 (N.Y.) 1956, 233 F.2d 556, certiorari granted 77 S.Ct. 91, 352 U.S. 866, 1 L.Ed.2d 74, reversed 77 S.Ct. 963, 353 U.S. 391, 1 L.Ed.2d 931.

In prosecution of internal revenue agents for conspiracy to defraud the United States, court did not err in admitting testimony of the bribing of first revenue agent, because indictment did not specifically charge that second agent conspired to corrupt first revenue agent, since second revenue agent, as a member of single, comprehensive conspiracy, was responsible for the acts of his co-conspirators. U.S. v. Witt, C.A.2 (N.Y.) 1954, 215 F.2d 580, certiorari denied 75 S.Ct. 207, 348 U.S. 887, 99 L.Ed. 697.

In prosecution of internal revenue agents for conspiracy to defraud the United States, evidence concerning an incident in which internal revenue agents and accountant allegedly fixed government claim based on defective income tax return was properly admissible to show the way the conspiracy came into being and its modus operandi when it operated, though such incident occurred before the earliest date named in the indictment as to the existence of the conspiracy. U.S. v. Witt, C.A.2 (N.Y.) 1954, 215 F.2d 580, certiorari denied 75 S.Ct. 207, 348 U.S. 887, 99 L.Ed. 697.

In prosecution of internal revenue agents for conspiracy to defraud the United States, evidence concerning incident when revenue agents and others allegedly fixed government claim based on defective income tax return was admissible to show the nature of the conspiracy in existence when revenue agents joined it, though incident occurred without their knowledge and before time when they became conspirators. U.S. v. Witt, C.A.2 (N.Y.) 1954, 215 F.2d 580, certiorari denied 75 S.Ct. 207, 348 U.S. 887, 99 L.Ed. 697.

690. ---- Income tax, tax offenses, admissibility of evidence

Defendant's and co-defendant's testimony, as to their good faith belief that they were pursuing the proper procedure to attempt to change federal income tax laws by instructing taxpayers that anyone could claim to be a "nonresident alien" to escape income tax liability, was not relevant to the issue of defendant's wilfulness, in prosecution for conspiracy to defraud the United States by assisting in the preparation of false tax returns, and aiding and assisting in the preparation of false federal tax returns, where defendant admitted that he knew that his view of the tax laws had been repeatedly rejected. U.S. v. Ambort, C.A.10 (Utah) 2005, 405 F.3d 1109. Conspiracy 45; Internal Revenue 5294

Defendant's income tax returns were admissible on charge of conspiracy to defraud the United States in the collection of income taxes. U.S. v. Ayers, C.A.9 (Cal.) 1991, 924 F.2d 1468, rehearing denied.

In prosecution of manager of cooperative and independent auditor of cooperative for conspiring to defraud United States by impairing or impeding Internal Revenue Service in collection of corporate income taxes from cooperative and for willfully subscribing to false and fraudulent cooperative income tax returns, manager's personal income tax returns were admissible where his personal finances were so intertwined with those of cooperative that entries on his returns became relevant on issue of defendants' intent to impair or impede Internal Revenue Service collection of taxes from cooperative. U. S. v. White, C.A.8 (Ark.) 1982, 671 F.2d 1126.

In prosecution for conspiracy to impair collection of income taxes, trial judge did not err by not admitting certain evidence offered by defendant, since evidence that defendant engaged in certain legal trades was irrelevant as to whether he knew that trades in question were illegal. U. S. v. Winograd, C.A.7 (Ill.) 1981, 656 F.2d 279, certiorari denied 102 S.Ct. 1612, 455 U.S. 989, 71 L.Ed.2d 848.

Duplicate copy of a blank piece of corporate stationery that had been given to undercover agents, which stationery bore letterhead of corporation that had been created for purpose of "laundering" proceeds of drug sales, was properly admitted in conspiracy prosecution over objection that question was raised as to authenticity of duplicate since duplicate was properly identified as a copy of the original and question as to authenticity was spurious, in that defendant attacked its admission not because the copy was inauthentic, but rather because there was no explanation for disappearance of the original and because the copy did not show the original's colorings. U. S. v. Enstam, C.A.5 (Tex.) 1980, 622 F.2d 857, certiorari denied 101 S.Ct. 1351, 450 U.S. 912, 67 L.Ed.2d 336, certiorari denied 101 S.Ct. 1974, 451 U.S. 907, 68 L.Ed.2d 294.

In prosecution against corporation and others for conspiracy to evade income tax, statements of corporation's president as coconspirator that certain checks were paid to fictitious individuals were properly admitted against corporation, and codefendant could not complain of such admission where such statements were not used against him, and court admonished jury that statements applied only to corporation. U.S. v. Knox Coal Co., C.A.3 (Pa.) 1965, 347 F.2d 33, certiorari denied 86 S.Ct. 239, 382 U.S. 904, 15 L.Ed.2d 157.

In prosecution for conspiring to willfully attempt to evade federal taxes due from corporation for fiscal year ended March 31, 1953, by omitting income obtained by defrauding municipality in respect to cigarette tax, and for commission of certain overt acts to effect object of conspiracy, proof of use of counterfeit cigarette tax stamp die was admissible, notwithstanding fact that discovery of counterfeit was not made until after end of tax year in question. Giardano v. U.S., C.A.8 (Mo.) 1958, 251 F.2d 109, certiorari denied 78 S.Ct. 1136, 356 U.S. 973, 2 L.Ed.2d 1147, rehearing denied 78 S.Ct. 1382, 357 U.S. 944, 2 L.Ed.2d 1558.

In prosecution for conspiracy to willfully attempt to evade payment of income taxes, evidence of occurrences prior to six-year period of limitations was properly admitted in proof of existence of criminal conspiracy within period of limitations. Maxfield v. U.S., C.C.A.9 (Nev.) 1945, 152 F.2d 593, certiorari denied 66 S.Ct. 821, 327 U.S. 794, 90 L.Ed. 1021.

In prosecution for conspiracies and attempts to defraud income tax, fact that accused's wife was kept off stand did not, as contended, make it unfair to admit her checks and deposit slips. U.S. v. Wexler, C.C.A.2 (N.Y.) 1935, 79 F.2d 526, certiorari denied 56 S.Ct. 384, 297 U.S. 703, 80 L.Ed. 991.

In prosecution for conspiracies and attempts to defraud income tax, where government contended that accused derived large profits from sales of illicit beer from brewery which accused took over after deaths of two of former owners, and accused testified that he was merely acting for two others who were real successors of former owners, evidence as to deaths of such alleged successors as well as deaths of former owners was relevant and admissible. U.S. v. Wexler, C.C.A.2 (N.Y.) 1935, 79 F.2d 526, certiorari denied 56 S.Ct. 384, 297 U.S. 703, 80 L.Ed. 991.

Testimony as to contents of defendant's books and records and photostatic copies of pages thereof was admissible as best evidence lawfully obtainable. Lisansky v. U.S., C.C.A.4 (Md.) 1929, 31 F.2d 846, certiorari denied 49 S.Ct. 514, 279 U.S. 873, 73 L.Ed. 1008.

Testimony as to defendant's income tax returns for 1924 was admissible in trial for conspiracy to defraud government by making false returns for 1923. Lisansky v. U.S., C.C.A.4 (Md.) 1929, 31 F.2d 846, certiorari denied 49 S.Ct. 514, 279 U.S. 873, 73 L.Ed. 1008.

691. ---- Distilled spirits, tax offenses, admissibility of evidence

Where testimony related activities which were not in and of themselves proof of charged conspiracy to violate statutory provisions relating to manufacture, sale, possession, transportation, and distribution of untax-paid whiskey, but evidence of such activities was material and relevant to showing of general plan and method of entire criminal enterprise, testimony was admissible. Roberson v. U.S., C.A.6 (Tenn.) 1960, 282 F.2d 648, certiorari

denied 81 S.Ct. 167, 364 U.S. 879, 5 L.Ed.2d 102.

In prosecution for conspiracy to violate statutory provisions relating to manufacture, sale, possession, transportation, and distribution of untax-paid whiskey, wherein address book containing notation "GA Boy 5-3004" was shown to be relevant, and one of defendants was shown to have telephone number 5-3004 and to be known as "Georgia Boy", book was admissible. Roberson v. U.S., C.A.6 (Tenn.) 1960, 282 F.2d 648, certiorari denied 81 S.Ct. 167, 364 U.S. 879, 5 L.Ed.2d 102.

In prosecution for conspiracy to violate federal statutes by dealing in untaxed liquor, authenticated copy of witness' original list of automobile license numbers belonging to vehicles observed to be around a garage was properly admitted as a record of past recollection, where witness testified that he correctly recorded the numbers on original list and that he could no longer refresh his memory by the list. Papalia v. U.S., C.A.5 (Fla.) 1957, 243 F.2d 437.

In prosecution for conspiracy to violate federal statutes by dealing in untaxed liquor, there was no error in admitting authenticated copy of original list of automobile license numbers observed by witness to be coming to and from garage, where it had been established that the original list was unavailable. Papalia v. U.S., C.A.5 (Fla.) 1957, 243 F.2d 437.

Evidence that defendant in March of 1951 visited a store dealing in oil burners and that he inquired whether a certain oil burner would operate a still was admissible to show defendant's interest in setting up still in a prosecution for conspiracy to operate illegal still which was discovered on July 16, 1951, even though there was no evidence that defendant bought oil burner, or that oil burner about which he inquired, or one like it, was found near the still. Tenore v. U. S., C.A.1 (N.H.) 1953, 207 F.2d 565.

In prosecution for conspiracy to operate illegal still which was discovered on July 16, 1951, evidence that defendant had purchased hand operated pump on July 2, 1951 and that a carton in which a pump of the same kind was packaged was found on the premises where alcohol from still was stored, was admissible even though no pump was found. Tenore v. U. S., C.A.1 (N.H.) 1953, 207 F.2d 565.

In prosecution for conspiring to operate distillery, to manufacture distilled spirits without giving bond, and to transport distilled spirits in nontax-paid containers, invoices, which were found in coat of one defendant on farm on which still was located and which contained items which could be used in connection with operation of still, and paper, which was found in vest belonging to such defendant and which contained name of person indicated as co-defendant, were admissible as part of items discovered on premises containing still. United States v. Giallo, C.A.2 (N.Y.) 1953, 206 F.2d 207, certiorari granted 74 S.Ct. 129, 346 U.S. 871, 98 L.Ed. 380, affirmed 74 S.Ct. 319, 346 U.S. 929, 98 L.Ed. 421.

In prosecution for conspiracy to violate §§ 2803, 2833, 3253, 3321 of Title 26 by aiding in transportation by truck of tax-unpaid liquor with intent to defraud the United States, refusal to admit written statement made by truck driver at time accused desired to introduce such statement in evidence was not reversible error where court indicated that accused's counsel could renew the application but counsel failed to take advantage of opportunity. Orloff v. U.S., C.C.A.6 (Mich.) 1946, 153 F.2d 292.

Evidence establishing the existence of a conspiracy between two or more persons with reference to a still and its illicit operation was sufficient proof of the existence of the corpus delicti to service as a predicate for the receipt in evidence of the admissions by defendant. U.S. v. Di Orio, C.C.A.3 (N.J.) 1945, 150 F.2d 938, certiorari denied 66 S.Ct. 175, 326 U.S. 771, 90 L.Ed. 465.

In prosecution for conspiracy to violate revenue laws concerning distilled spirits, based on circumstantial evidence, evidence of seizure of truck carrying liquor, which defendant had driven several times before, was admissible though driver escaped at time of seizure and was not identified. Hall v. U.S., C.C.A.5 (Ga.) 1945, 150 F.2d 281,

certiorari denied 66 S.Ct. 53, 326 U.S. 741, 90 L.Ed. 442.

Evidence that automobile supposedly driven by defendant interfered with chase of a liquor truck, occupied by man who frequently hauled liquors from distilleries which defendant allegedly conspired to maintain, was not inadmissible because not clearly connected with the distilleries or conspiracy charged. Hall v. U.S., C.C.A.5 (Ga.) 1945, 150 F.2d 280, certiorari denied 66 S.Ct. 140, 326 U.S. 760, 90 L.Ed. 457.

In prosecution for possessing and operating an ilegal still and for conspiracy to commit the same offense, where there was evidence that the still was being used to make liquor out of prune juice, admitting in evidence a paper, found in the pocket of one of defendants at the time of his arrest, which bore the telephone number of a prune pitter, was not error. United States v. Heitner, C.C.A.2 (N.Y.) 1945, 149 F.2d 105, certiorari denied 66 S.Ct. 33, 326 U.S. 727, 90 L.Ed. 432, rehearing denied 66 S.Ct. 164, 326 U.S. 809, 90 L.Ed. 494.

An officer who stepped through the door of defendant's barn, which was approachable from an open parking lot used by the public, and counted empty liquor cans and packages of distiller's materials, but seized nothing, did not make an "unlawful search and seizure" though he had no warrant, and he could testify as to what he saw. Burt v. U.S., C.C.A.5 (Ala.) 1943, 139 F.2d 73, certiorari denied 64 S.Ct. 936, 321 U.S. 799, 88 L.Ed. 1087.

Where one defendant was tried separately in prosecution for conspiracy to violate internal revenue laws relating to intoxicating liquors and for removing and concealing tax-unpaid liquors, evidence that one of the other defendants had bee acquitted of the conspiracy charge was properly rejected in the separate trial, and court properly refused requested charges which assumed such other defendant's acquittal. Burt v. U.S., C.C.A.5 (Ala.) 1943, 139 F.2d 73, certiorari denied 64 S.Ct. 936, 321 U.S. 799, 88 L.Ed. 1087.

In prosecution for conspiracy to violate internal revenue laws relating to liquors, acts and sayings of alleged coconspirators were admissible under proper instructions as to their use. Burt v. U.S., C.C.A.5 (Ala.) 1943, 139 F.2d 73, certiorari denied 64 S.Ct. 936, 321 U.S. 799, 88 L.Ed. 1087.

In prosecution for conspiring to defraud government of taxes on distilled spirits, where still had been seized and some of conspirators arrested, merchant's testimony that a conspirator had paid for sugar after still had been seized and had admonished merchant to say nothing if he came to court was admissible generally, since conspiracy had not ended. U.S. v. Goldstein, C.C.A.2 (N.Y.) 1943, 135 F.2d 359.

In prosecution for conspiracy to violate internal revenue laws relating to stills and intoxicating liquors, evidence of defendant's previous connection with business could be considered even though, because of passage of time or of previous prosecution, it could not be used as basis of prosecution of a substantive crime, since it afforded a background against which to consider the evidence of later acts as bearing on defendant's asserted severance of all connection with the conspirators. U.S. v. Valenti, C.C.A.2 (N.Y.) 1943, 134 F.2d 362, certiorari denied 63 S.Ct. 1317, 319 U.S. 761, 87 L.Ed. 1712, rehearing denied 64 S.Ct. 29, 320 U.S. 809, 88 L.Ed. 489.

In prosecution for conspiracy to violate the internal revenue laws relating to stills and intoxicating liquors, where internal revenue agent, a witness for government, was being cross-examined by codefendant's counsel regarding raid involving appealing defendant's son and brother, and upon persistent urging to state all of the conversation witness had on that occasion, witness testified that he stated he would give $1,000 to have their father where they were, and that he did not get any fun out of arresting 19-year-old boys, there was no error prejudicial to appealing defendant. U.S. v. Valenti, C.C.A.2 (N.Y.) 1943, 134 F.2d 362, certiorari denied 63 S.Ct. 1317, 319 U.S. 761, 87 L.Ed. 1712, rehearing denied 64 S.Ct. 29, 320 U.S. 809, 88 L.Ed. 489.

Where indictment charged removals of alcohol on which no tax had been paid, and charged conspiracy to commit the substantive offenses, testimony regarding act of defendants involving the removals of alcohol not charged in the indictment was admissible. U. S. v. Tuffanelli, C.C.A.7 (Ill.) 1942, 131 F.2d 890, certiorari denied 63 S.Ct. 769,

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318 U.S. 772, 87 L.Ed. 1142.

In prosecution for engaging in illegal liquor operations and for conspiring to violate §§ 2803, 2810, 2833, and 2834 of Title 26, it was not error to admit in evidence as against two defendants statement made to officers by codefendant, as to whom a mistrial and severance was granted, on ground that statement was made when those defendants were not present, where codefendant was one of the principal actors in the illegal undertaking and his statement was relevant to what was going on. Miller v. U.S., C.C.A.5 (Fla.) 1942, 126 F.2d 771, certiorari denied 62 S.Ct. 1289, 316 U.S. 695, 86 L.Ed. 1765, certiorari denied 62 S.Ct. 1290, 316 U.S. 695, 86 L.Ed. 1765.

In prosecution for violating and conspiring to violate, internal revenue laws relating to stills, testimony that a witness rented house where he intended to install a still, which was not connected with any of the charges in the indictment, was inadmissible. U.S. v. Maggio, C.C.A.3 (N.J.) 1942, 126 F.2d 155, certiorari denied 62 S.Ct. 1275, 316 U.S. 686, 86 L.Ed. 1758.

In prosecution for violating and conspiring to violate internal revenue laws relating to stills, wherein proof established that an accused lived at a certain address and was acquainted with others allegedly involved in the still enterprise, evidence that two of the others allegedly involved made telephone call to the accused's address on certain date was admissible, as against contention that there was no showing made that accused was on the receiving end of the conversation. U.S. v. Maggio, C.C.A.3 (N.J.) 1942, 126 F.2d 155, certiorari denied 62 S.Ct. 1275, 316 U.S. 686, 86 L.Ed. 1758.

In prosecution for conspiracy to violate internal revenue laws, testimony of government agents that accused who were not apprehended until after raid which disclosed equipment for operation of still, were seen together after the raid was admissible where government witness at the time accused were seen together after the raid first identified them as being the same men whom witness previously had seen at the premises where the raid was conducted. U. S. v. Hannon, C.C.A.3 (Pa.) 1939, 105 F.2d 390, certiorari denied 60 S.Ct. 124, 308 U.S. 594, 84 L.Ed. 497, certiorari denied 60 S.Ct. 125, 308 U.S. 594, 84 L.Ed. 497, certiorari denied 60 S.Ct. 125, 308 U.S. 594, 84 L.Ed. 498.

In prosecution for conspiracy to violate internal revenue laws, a slip of paper containing list of telephone numbers, found five days after the raid in portion of raided premises where still was found, the building having been padlocked in the interim, was admissible as "res gestae." U. S. v. Hannon, C.C.A.3 (Pa.) 1939, 105 F.2d 390, certiorari denied 60 S.Ct. 124, 308 U.S. 594, 84 L.Ed. 497, certiorari denied 60 S.Ct. 125, 308 U.S. 594, 84 L.Ed. 497, certiorari denied 60 S.Ct. 125, 308 U.S. 594, 84 L.Ed. 498.

In prosecution for conspiracy to violate internal revenue laws wherein an accused answered in the negative a question relating to whether an accused at time of his arrest stated "Who squawked?" admission of evidence of arresting officers that such accused made the statement was not prejudicial to other accused since the remark implicated only the accused who made it. U. S. v. Hannon, C.C.A.3 (Pa.) 1939, 105 F.2d 390, certiorari denied 60 S.Ct. 124, 308 U.S. 594, 84 L.Ed. 497, certiorari denied 60 S.Ct. 125, 308 U.S. 594, 84 L.Ed. 497, certiorari denied 60 S.Ct. 125, 308 U.S. 594, 84 L.Ed. 498.

In prosecution for conspiracy to violate internal revenue laws, wherein testimony of government agents that accused who were not apprehended until after raid which disclosed equipment for operation of still, were seen together on a certain occasion after the raid was admissible, admission of testimony that such accused were likewise seen together on other occasions following the raid was not prejudicial. U. S. v. Hannon, C.C.A.3 (Pa.) 1939, 105 F.2d 390, certiorari denied 60 S.Ct. 124, 308 U.S. 594, 84 L.Ed. 497, certiorari denied 60 S.Ct. 125, 308 U.S. 594, 84 L.Ed. 497, certiorari denied 60 S.Ct. 125, 308 U.S. 594, 84 L.Ed. 498.

In prosecution for conspiracy to violate internal revenue laws, and for doing acts in pursuance thereof, evidence that before an accused, who was justice of the peace, was appointed to that office, his neighborhood was overrun

with lawlessness and that the accused decreased law violations in his district and was consequently unpopular with his neighbors whom he prosecuted was inadmissible. Walker v. U.S., C.C.A.4 (W.Va.) 1939, 104 F.2d 465.

In prosecution for conspiracy to violate internal revenue laws and for doing acts in pursuance of conspiracy, evidence of acts of violence and maltreatment committed by an accused who was a justice of the peace in the arrest and confinement of persons charged with violations of law was inadmissible as irrelevant. Walker v. U.S., C.C.A.4 (W.Va.) 1939, 104 F.2d 465.

In prosecution for conspiracy to violate internal revenue laws, and for doing acts in pursuance thereof, evidence relating to use of intoxicating liquors by an accused was admissible in so far as tending to show that accused or other conspirators were obtaining illicit liquor from liquor dealers who were violating the law with knowledge of accused and were using such liquor. Walker v. U.S., C.C.A.4 (W.Va.) 1939, 104 F.2d 465.

In trial for conspiracy to evade liquor taxes, testimony of former government inspector as to calculation of such production of beer at brewery operated by defendant from materials reported to government showing discrepancy too great to be accounted for by any margin of error was relevant. Miller v. U. S., C.C.A.3 (Pa.) 1939, 104 F.2d 97.

692. Travel and transportation, admissibility of evidence

In prosecution for conspiracy to violate the Mann Act, § 2422 of this title, testimony that in presence of witness and in her hearing in codefendant's apartment, a "person to person" call was made by codefendant to defendant and that as a result of conversation, arrangements were made for witness to travel to another point and there serve as a prostitute in defendant's hotel and that she made trip and did so serve was admissible. U. S. v. Frank, C.A.3 (Pa.) 1961, 290 F.2d 195, certiorari denied 82 S.Ct. 38, 368 U.S. 821, 7 L.Ed.2d 26.

In prosecution for conspiracy to violate White Slave Traffic Act, § 2422 of this title, testimony that after the transportation involved in prosecution, coconspirator told witness to be careful what she said and that it would be better for them to take the blame than the defendant, was not inadmissible on ground that the conspiracy ended with the transportation, since conspiracy continued for purposes of concealment and statements made were part of attempt to carry out concealment. U.S. v. Krulewitch, C.C.A.2 (N.Y.) 1948, 167 F.2d 943, certiorari granted 69 S.Ct. 43, 335 U.S. 811, 93 L.Ed. 367, reversed 69 S.Ct. 716, 336 U.S. 440, 93 L.Ed. 790.

In prosecution for transporting in interstate commerce girls for immoral purposes, and for conspiring to commit such offense, testimony that during investigation of case the girls, an investigator, an assistant state prosecutor and father of one of girls located and identified cabin in which the girls stated that they and defendants had once tarried illicitly was hearsay and incompetent. Ellis v. U.S., C.C.A.8 (Mo.) 1943, 138 F.2d 612.

In prosecution for transporting in interstate commerce girl for immoral purposes and for conspiring to commit such offense, evidence disclosing defendant's relations with such girl and other girls, even though they were intrastate transactions, was properly received on element of intent. Ellis v. U.S., C.C.A.8 (Mo.) 1943, 138 F.2d 612.

693. Wire communication offenses, admissibility of evidence

In prosecution for conspiring to violate the wire and travel fraud statutes, and substantive violations thereof, arising from corporation's alleged bribery of city officials to secure a sludge-hauling contract, evidence of defendant businessman's political associations was properly introduced via the testimony of that defendant's brother, as the door to such testimony was opened by defendant himself, who portrayed political associations, which he sufficiently indicated he did not have, as a unique requirement for accomplishing that with which he was charged. U. S. v. McPartlin, C.A.7 (Ill.) 1979, 595 F.2d 1321, certiorari denied 100 S.Ct. 65, 444 U.S. 833, 62 L.Ed.2d 43.

In prosecution of four defendants for conspiring to wilfully and maliciously injure and destroy means of

communication controlled or operated by United States, evidence that facilities included in the defendants' plans were destroyed by dynamite near Jackson, Miss., two days after two defendants had been arrested in Chciago was relevant as additional proof of the conspiracy inasmuch as two defendants were still at large at that time. Abbate v. U.S., C.A.5 (Miss.) 1957, 247 F.2d 410, certiorari granted 78 S.Ct. 330, 355 U.S. 902, 2 L.Ed.2d 258, affirmed 79 S.Ct. 666, 359 U.S. 187, 3 L.Ed.2d 729.

In prosecution of four defendants for conspiring to wilfully or maliciously injure or destroy means of communication operated or controlled by the United States, statements made by two defendants after they undertook to withdraw from conspiracy and after they had already committed overt acts were admissible against those two defendants, and their subsequent withdrawal could be considered only in the fixing of their punishment. Abbate v. U.S., C.A.5 (Miss.) 1957, 247 F.2d 410, certiorari granted 78 S.Ct. 330, 355 U.S. 902, 2 L.Ed.2d 258, affirmed 79 S.Ct. 666, 359 U.S. 187, 3 L.Ed.2d 729.

In prosecution of four defendants for conspiring to wilfully or maliciously injure or destroy means of communication operated or controlled by the United States, statements made by two of defendants after their withdrawal from conspiracy were not admissible in evidence against remaining two defendants, and such error was not cured by trial court's mild admonition that statements could be considered only against those defendants who had made them. Abbate v. U.S., C.A.5 (Miss.) 1957, 247 F.2d 410, certiorari granted 78 S.Ct. 330, 355 U.S. 902, 2 L.Ed.2d 258, affirmed 79 S.Ct. 666, 359 U.S. 187, 3 L.Ed.2d 729.

Probative value of evidence that defendant, who was charged with conspiracy to commit wire fraud in connection with "black money" scheme, had previously pleaded guilty to charge involving participation in virtually identical scheme was not substantially outweighed by potential for unfair prejudice, particularly in light of limiting instructions given by district court. U.S. v. Ezeh, C.A.2 (N.Y.) 2003, 64 Fed.Appx. 275, 2003 WL 1970445, Unreported. Criminal Law 369.2(3.1)

XI. SUFFICIENCY OF EVIDENCE

<Subdivision Index>

18 U.S.C.A. § 371

721. Testimony of coconspirators, sufficiency of evidence

Testimony of an accomplice is sufficient to sustain conspiracy conviction unless it is incredible or insubstantial on its face. U. S. v. Watson, C.A.8 (Ark.) 1982, 677 F.2d 689.

722. Informers, sufficiency of evidence

Evidence was sufficient to sustain conspiracy conviction, even though an informer acted as a conduit between certain defendants. Sigers v. U. S., C.A.5 (Fla.) 1963, 321 F.2d 843. Conspiracy 47(1)

723. Advocating overthrow of Government, sufficiency of evidence

In prosecution for conspiring to advocate and teach violent overthrow of government, evidence of membership or holding of office in Communist Party was insufficient to establish conspiracy to advocate forcible action and was too meager to justify putting defendants to a new trial upon reversal of their conviction. Yates v. U. S., U.S.Cal.1957, 77 S.Ct. 1064, 354 U.S. 298, 1 L.Ed.2d 1356. Conspiracy 47(3.1); Criminal Law 1189

Where there was some evidence that the defendants subscribed to and approved teaching of revolutionary doctrine of "Marxism-Leninism" around which much of the case for the prosecution for violation of Smith Act, § 2385 of this title, had been built, but it had not been indicated that such defendants had gone beyond that and had subscribed to a program of teaching such action toward violent overthrow of the government, evidence was insufficient to sustain conviction of conspiracy to violate such section. U. S. v. Kuzma, C.A.3 (Pa.) 1957, 249 F.2d 619. Conspiracy 47(3.1)

In prosecution for conspiring to teach and advocate overthrow of United States government by force and violence, evidence was sufficient to support jury finding that purpose and intent of Communist Party conspirators was actually forceful overthrow of government, rather than academic discussion of devitalized Communist principles. U. S. v. Mesarosh, C.A.3 (Pa.) 1955, 223 F.2d 449, certiorari granted 76 S.Ct. 218, 350 U.S. 922, 100 L.Ed. 807, reversed on other grounds 77 S.Ct. 1, 352 U.S. 1, 1 L.Ed.2d 1. Conspiracy 47(3.1)

In prosecution for conspiring to teach and advocate overthrow of United States government by force and violence, evidence was sufficient that each of defendants possessed illegal intent necessary for conviction. U. S. v. Mesarosh, C.A.3 (Pa.) 1955, 223 F.2d 449, certiorari granted 76 S.Ct. 218, 350 U.S. 922, 100 L.Ed. 807, reversed on other grounds 77 S.Ct. 1, 352 U.S. 1, 1 L.Ed.2d 1. Conspiracy 47(3.1)

In prosecution of alleged Communist for conspiracy from April 1, 1945, to June 20, 1951, to violate the Smith Act, § 2385 of this title, making it an offense to advocate forcible overthrow of the government, evidence sustained trial judge's finding that there was present a "clear and present danger" within meaning of rule that one has no constitutional right of free speech to advocate that which constitutes a "clear and present danger" to the

government. United States v. Flynn, C.A.2 (N.Y.) 1954, 216 F.2d 354, certiorari denied 75 S.Ct. 295, 348 U.S. 909, 99 L.Ed. 713, order withheld 75 S.Ct. 285, 99 L.Ed. 1298, rehearing denied 75 S.Ct. 436, 348 U.S. 956, 99 L.Ed. 747. Constitutional Law 90.1(2)

Evidence sustained convictions for conspiracy to advocate the overthrow of the United States government by force and to advocate insubordination in the armed forces. Dunne v. U. S., C.C.A.8 (Minn.) 1943, 138 F.2d 137, certiorari denied 64 S.Ct. 205, 320 U.S. 790, 88 L.Ed. 476, rehearing denied 64 S.Ct. 260, 320 U.S. 814, 88 L.Ed. 492, rehearing denied 64 S.Ct. 426, 320 U.S. 815, 88 L.Ed. 493. Conspiracy 47(3.1)

In prosecution for conspiracy to violate Smith Act, § 2385 of this title, by advocating and teaching, and helping to organize as Communist Party persons teaching and advocating, overthrow of Government by force, evidence of Communist Party's nature, character, aims and objectives and activities of persons connected with such party was sufficient to take to jury question of existence of conspiracy charged. U. S. v. Schneiderman, S.D.Cal.1952, 106 F.Supp. 906. Conspiracy 48.1(2.1)

724. Agricultural offenses, sufficiency of evidence

Evidence sustained convictions for conspiracy to defraud United States by defeating operation of Agricultural Adjustment Act, § 1281 et seq. of Title 7, and to cause fraudulent income tax returns to be filed. Gajewski v. U.S., C.A.8 (N.D.) 1963, 321 F.2d 261, certiorari denied 84 S.Ct. 486, 375 U.S. 968, 11 L.Ed.2d 416. Conspiracy 47(6)

In prosecution of a cooperative marketing association made up of rice growers, and of corporations which engaged commercially in milling and sale of rice, for conspiring to sell rice to an agency of federal Government under Rice Price Support Program, which rice allegedly was not eligible for purchase thereunder, evidence did not justify conviction. U. S. v. Rice Growers Ass'n of Cal., N.D.Cal.1953, 110 F.Supp. 667. Conspiracy 47(6)

725. Alien enemies and enemy property, sufficiency of evidence

Evidence supported conviction of conspiracy to defraud the United States, based on attempted transfer of bank account and securities of nationals of Belgium or France in violation of Ex.Ord. No. 8389, set out in note under § 95a of Title 12, "freezing" property of such nationals. United States v. Moran, C.C.A.2 (N.Y.) 1945, 151 F.2d 661 . Conspiracy 47(6)

Evidence of conspiracy to defraud United States by allowance of claims respecting property seized by Alien Property Custodian without proper investigation was sufficient to go to jury. Miller v. U.S., C.C.A.2 (N.Y.) 1928, 24 F.2d 353, certiorari denied 48 S.Ct. 421, 276 U.S. 638, 72 L.Ed. 421. Conspiracy 48

In a prosecution for conspiracy to defraud the United States and to commit an offense against the same, by failing to transmit to the Alien Property Custodian a list of stockholders and of stock in which enemy aliens had an interest, evidence warranted a finding that an enemy alien was a beneficial owner of stock standing in the name of defendant citizen, and that the latter was guilty under former § 88 of this title [now this section]. Hodgskin v. U.S., C.C.A.2 (N.Y.) 1922, 279 F. 85. Conspiracy 47

726. Arson, sufficiency of evidence

Evidence supported convictions for conspiracy to damage by means of fire and explosive a building used by organization receiving federal financial assistance, attempt to damage or destroy such building, and use of destructive device during crime of violence, arising from defendant's participation in plan that culminated in coconspirator throwing Molotov cocktail on victim's back porch; one coconspirator testified that defendant became

leader of group and that nobody questioned what he told them to do, another testified that defendant came up with idea to set fire to victim's porch, defendant paid that coconspirator for unsuccessful attempt to do so, defendant paid for gasoline used in second attempt on victim's house, and defendant watched coconspirator when he threw Molotov cocktail. U.S. v. Davis, C.A.4 (Va.) 1996, 98 F.3d 141, certiorari denied 117 S.Ct. 1274, 520 U.S. 1129, 137 L.Ed.2d 351, appeal from denial of post-conviction relief dismissed 13 Fed.Appx. 68, 2001 WL 640451, habeas corpus dismissed 2001 WL 1301342. Conspiracy 47(3.1); Explosives 5; Malicious Mischief 9

Evidence was sufficient to convict defendant of conspiracy to commit arson and mail fraud and aiding and abetting mail fraud; defendant was experiencing severe financial difficulties, obtained loan to pay off mortgage on home and reinstate property insurance, within nine months home was destroyed by two fires in one day, and defendant submitted insurance claims for property she had never purchased. U.S. v. Markum, C.A.10 (Okla.) 1993, 4 F.3d 891. Conspiracy 47(3.1); Conspiracy 47(5); Postal Service 49(11)

There was sufficient evidence that defendant was both aware of and participant in conspiracy to burn home and share in insurance proceeds to support her conviction of that conspiracy, where defendant told investigators home was unoccupied while she and her spouse were on vacation, but telephone calls were made from her hotel room to home on night of blaze, truck was seen being loaded in front of home two weeks before vacation, home was found to contain no family mementos following blaze, defendant displayed no great concern in reaction to fire immediately upon return, and defendant was involved in transparent insurance fraud which was aim of charged conspiracy. U.S. v. Shively, C.A.5 (Tex.) 1991, 927 F.2d 804, certiorari denied 111 S.Ct. 2806, 501 U.S. 1209, 115 L.Ed.2d 979. Conspiracy 47(3.1)

Evidence established business owner's conspiracy with manager and codefendant to commit arson; business had been in financial decline; owner's rent was increased a few months prior to fire; owner purchased insurance for first time three months before fire, was having affair with manager, had a sale at store prior to fire, and asked manager to return some goods that she held on consignment; and manager and codefendant were stopped 12 days before fire with gasoline and matches in trunk of car. U.S. v. Candoli, C.A.9 (Cal.) 1989, 870 F.2d 496. Conspiracy 47(3.1)

Evidence that first defendant helped to instigate arson by introducing second defendant to undercover agent posing as arsonist, and by suggesting possibility that second defendant would be interested in burning his restaurant, that both defendants were "cooperating" in enterprise, hiring undercover agent on same terms and that both defendants met with undercover agent to discuss specifics of how arsons would be carried out, including how keys to their businesses would be turned over to undercover agent and when arsons would take place, was sufficient to show that defendants engaged in informed and interested cooperation, and indeed had "stake in the venture," for purpose of conspiracy conviction. U.S. v. Gabriel, C.A.7 (Ill.) 1987, 810 F.2d 627. Conspiracy 47(3.1)

727. Banking offenses, sufficiency of evidence

Evidence was sufficient to establish that bank customer willfully entered into an agreement with bank officer to violate the bank fraud and money laundering statutes and that he and officer committed overt acts in furtherance of that conspiracy; evidence showing that customer obtained a $1.5 million increase in his line of credit with the intention of that it be used by officer for an investment in which customer had declined to participate, that loan transaction was structured in such a way that officer received no direct payments from customer, and that financial statement that customer and officer prepared did not list the loan established a pattern of concealment of the loan from customer to officer. U.S. v. Weidner, C.A.10 (Kan.) 2006, 437 F.3d 1023. Conspiracy 47(4)

Evidence was insufficient to prove that defendant willfully joined or participated in a conspiracy, as required to support conviction for conspiracy to commit bank robbery; although defendant was found to be an occupant of the same vehicle in which bank robbery suspects were found, and jury could have inferred that defendant was present

in an apartment where some of the cash and other evidence of the robbery were found, there was no showing of communication between defendant and conspirators prior to the date of the robbery, no witness saw defendant at the bank robbery or entering or leaving the apartment, and no evidence connected to the robbery was discovered on defendant's person. U.S. v. Summers, C.A.10 (N.M.) 2005, 414 F.3d 1287. Conspiracy 47(11)

Evidence was sufficient to support defendant's conviction for conspiracy to rob a credit union; defendant worked in building in which credit union was located, government presented videotaped encounter between coconspirator and defendant about the time coconspirator sought to introduce the inside guy to other conspirators, two sketches, with defendant's handwriting which were said by coconspirator to have been supplied by the inside guy, showing where the money was located, uniforms, patches, and union flyers, which were given to coconspirator by the inside guy and which could easily have been procured by defendant, and a statement by one of the conspirators that the inside guy had defendant's name. U.S. v. Savarese, C.A.2 (N.Y.) 2005, 404 F.3d 651. Conspiracy 47(11)

Evidence of defendants' presentation of obviously fraudulent cashier's check to bank employees, and their false statements about check to influence bank to negotiate it, was sufficient to prove "materiality," for purposes of bank fraud charges, even though bank was not actually influenced or actually deceived. U.S. v. Rashid, C.A.8 (Mo.) 2004, 383 F.3d 769, certiorari denied 125 S.Ct. 941, 543 U.S. 1080, 160 L.Ed.2d 823, vacated 126 S.Ct. 300, 163 L.Ed.2d 36, on remand 437 F.3d 715. Banks And Banking 509.25

Conviction of bank officer and owner of consulting company for conspiring to defraud bank was supported by evidence that purported agreement between officer, owner and purported joint venturer, by which money transferred to officer would constitute proceeds of loan from joint venturer to officer, was fabrication designed to cover up kickbacks that officer was receiving from owner. U.S. v. Cihak, C.A.5 (Tex.) 1998, 137 F.3d 252, rehearing denied, certiorari denied 119 S.Ct. 118, 525 U.S. 847, 142 L.Ed.2d 95, certiorari denied 119 S.Ct. 203, 525 U.S. 888, 142 L.Ed.2d 167. Conspiracy 47(4)

Extensive paper trail tying defendant to phony businesses at which fictitious credit card purchases were made using stolen credit cards was sufficient to support defendant's conviction, on aiding and abetting theory, as participant in scheme to defraud banks through use of unauthorized access devices. U.S. v. Ismoila, C.A.5 (Tex.) 1996, 100 F.3d 380, rehearing denied, certiorari denied 117 S.Ct. 1712, 520 U.S. 1219, 137 L.Ed.2d 836, certiorari denied 117 S.Ct. 1858, 520 U.S. 1247, 137 L.Ed.2d 1060. False Pretenses 49(1)

Finding that defendant committed overt acts to ensure the collection of stolen funds from federally insured bank was supported by evidence that defendant made threatening telephone call to undercover agent in which defendant explicitly asked agent to withdraw funds from "the bank." U.S. v. Wallace, C.A.2 (N.Y.) 1996, 85 F.3d 1063. Conspiracy 47(4)

Evidence supported conviction of defendants, who were directors of savings and loan institution, of conspiracy to obtain profits from institution; jury could find that defendants had conspired to cause institution to make "kickback" payments to one defendant, ostensibly for "officer fees," with payments passing through corporation wholly owned by second defendant. U.S. v. Baker, C.A.5 (Tex.) 1995, 61 F.3d 317. Conspiracy 47(4)

Evidence that defendant conducted automated teller machine (ATM) transaction that resulted in "bill trap" that would have eventually brought service personnel to ATM, that codefendant provided defendant with cards she used in causing bill trap and that codefendant had hidden guns in bush near ATM was sufficient to support conspiracy convictions. U.S. v. Harper, C.A.9 (Cal.) 1994, 33 F.3d 1143, certiorari denied 115 S.Ct. 917, 513 U.S. 1118, 130 L.Ed.2d 798. Conspiracy 47(3.1)

Evidence supported finding that defendants convicted of conspiracy to commit bank fraud and money laundering agreed to defraud banks in connection with scheme to abrogate general banking prohibition against third-party processing of telemarketing charges; defendants knew that banks would not allow third-party processing because

of its potential for increased risks, and defendants encouraged recruitment of new merchants, did not reveal their own activities to banks, and encouraged other alleged participants not to reveal their activities to their banks. U.S. v. Brown, C.A.7 (Ill.) 1994, 31 F.3d 484, rehearing and suggestion for rehearing en banc denied. Conspiracy 47(4)

There was ample evidence that defendants conspired together to defraud various banks in one large conspiracy; government demonstrated connection between the two defendants, connection between one or both defendants and each of various targets, and defendants' mutual interest in and benefit from the activity in all of the various bank accounts. U.S. v. Carr, C.A.6 (Ohio) 1993, 5 F.3d 986. Conspiracy 47(4)

Evidence was sufficient to support bank officer's conviction for conspiracy to make false entries in bank records with the intent to deceive examiners; effecting transactions requiring series of loan upgrades in which expanding debt and underlying collateral were shifted among a group of individuals with a shared interest in gaining access to bank funds required preparation of numerous documents which contained both false entries and factual omissions which disguised nature of loans and actual borrowers from examiners. U.S. v. Chaney, C.A.5 (Tex.) 1992, 964 F.2d 437, rehearing denied. Conspiracy 47(3.1)

Evidence supported conviction for conspiracy to defraud federally insured banks and savings and loan associations by fraudulently obtaining car loans, even though defendant denied knowledge of illicit purpose of conspiracy, where defendant made applications for loans over phone, answered phone inquiries from banks about vehicle descriptions and vehicle identification numbers, provided at least one false bill of sale in connection with loan, joined imposter loan applicants when they picked up loan checks from banks, and defendant cashed loan checks. U.S. v. Kane, C.A.7 (Ind.) 1991, 944 F.2d 1406. Conspiracy 47(4)

Alleged coconspirator's testimony, along with corroborating circumstantial evidence, was sufficient to link defendant to conspiracy to commit bank access device fraud and bank fraud; coconspirator's testimony was corroborated by surveillance photographs of coconspirator using stolen credit cards while defendant stood nearby, defendant was present when one card was used to purchase airplane tickets, and, at time of arrest, defendant was driving car that had been rented with stolen credit card and was carrying large quantity of cash and items used to make false identification cards. U.S. v. Marshall, C.A.8 (Neb.) 1990, 922 F.2d 479. Conspiracy 47(4)

Evidence supported conclusion that managing partner for lending partnership conspired to defraud United States by presenting promissory notes for borrower to sign and president of lending bank to pay from bank funds; partner knew that borrower was overdrawn at the bank. U.S. v. Hoffman, C.A.6 (Ky.) 1990, 918 F.2d 44, rehearing denied. Conspiracy 47(6)

Evidence that bank president and bank employees willfully disregarded federal legal requirements to submit currency transaction reports and structured many currency transactions to conceal reportable nature supported conviction for conspiracy stemming from bank's failure to report currency transactions. U.S. v. Penagaricano-Soler, C.A.1 (Puerto Rico) 1990, 911 F.2d 833. Conspiracy 47(3.1)

Evidence was sufficient to sustain defendant's conviction for conspiracy to defraud United States, in connection with bank's payment of defendant's checks exceeding defendant's deposits; even though defendant and bank's bookkeeping supervisor may not have had explicit agreement, facts that supervisor held some of defendant's checks for period of four years and discussed matter with defendant were sufficient to show at least tacit agreement or mutual understanding between parties. U.S. v. Hughes, C.A.6 (Ky.) 1989, 891 F.2d 597, rehearing denied. Conspiracy 47(6)

Evidence supported conclusion that defendants conspired to defraud bank; loan applicants testified they contacted defendant consultant to arrange meeting with defendant bank officer, that applicants paid commissions out of loan proceeds to both defendants, and that both defendants knew information in loan application was false. U.S. v.

Castro, C.A.9 (Cal.) 1989, 887 F.2d 988. Conspiracy 47(4)

Evidence that sole motive for referrals of clients to investment firm by defendant, an assistant vice-president of a bank, was to evade currency reporting requirements was sufficient to support defendant's conviction of conspiracy to defraud the United States by impeding investigation of large currency transactions and to circumvent currency reporting requirements. U.S. v. Sanchez, C.A.11 (Fla.) 1986, 790 F.2d 1561. Conspiracy 47(6)

Evidence supported conviction for conspiracy to commit an offense against the United States, arising out of misapplication of bank funds insured by Federal Deposit Insurance Corporation; evidence showed that defendant was under severe financial pressure during period of conspiracy, that defendant started making clandestine telephone calls to bank official on daily basis and received fraudulent loans after defendant's confrontation with bank president concerning delinquent loan, that defendant forged loan application made out in name of business associate, that defendant's handwriting was identified on loan application in fictitious name, and that his fingerprint was found on another "fictitious borrower" application. U.S. v. Centracchio, C.A.7 (Ill.) 1985, 774 F.2d 856. Conspiracy 47(3.1)

Testimony of witness revealing that bank customer asked witness to sign promissory notes for customer because customer's credit was overextended and bank examiners were coming and evidence demonstrating that bank customer transferred at least $40,000 in loan proceeds to defendant, the vice-president and head cashier of bank, and that bank customer assisted defendant in commodity trading activity for which both needed funds, adequately supported conclusion that bank customer participated in conspiracy with defendant in violation of this section. U.S. v. Mohr, C.A.8 (Iowa) 1984, 728 F.2d 1132, certiorari denied 105 S.Ct. 148, 469 U.S. 843, 83 L.Ed.2d 87. Conspiracy 47(6); Conspiracy 47(11)

Direct evidence in testimony of coconspirator that latter had told defendant about bankruptcy fraud scheme and circumstantial evidence showing that arson was knowingly committed in furtherance of the bankruptcy fraud conspiracy warranted conviction of conspiring to transfer and conceal property of a corporation in contemplation of its bankruptcy and to conceal corporate property from its receiver, trustee and creditors, with defendant claiming that he only conspired to set fire to the building and did not know of the alleged bankruptcy fraud. U. S. v. Davis, C.A.1 (R.I.) 1980, 623 F.2d 188. Conspiracy 47(4)

In prosecution for conspiracy to embezzle funds from a federally insured bank, evidence that defendant and bank teller discussed embezzlement on evening before crime was committed and worked out details of crime was sufficient evidence of defendant's participation in conspiracy to support jury verdict. U. S. v. Veltre, C.A.5 (Tex.) 1979, 591 F.2d 347. Conspiracy 47(11)

Conviction of conspiracy and willful misapplication of bank funds was supported by evidence, including evidence that individuals whom warehouse president sent to bank to contact manager to obtain sham loans were not questioned by the latter respecting their ability to pay although they had no previous dealings with him, that vice-president directed prospective borrowers to bank, that manager processed loans without borrower's authorization or knowledge and that president told borrowers that he had taken care of the "guy" at the bank. U. S. v. Gallagher, C.A.3 (N.J.) 1978, 576 F.2d 1028. Banks And Banking 62; Conspiracy 47(3.1)

Conviction of bank mortgage officer of conspiring to violate various statutory duties to the bank and the public was supported by evidence, including evidence of ongoing conspiracy involving managers of mortgage broker, which had warehousing agreement with bank, concerning funding through such agreement of a corporation organized by them to acquire development property, evidence that officer had substantial dealings with the group and was given equal membership in the corporation, that requested funds were made available through warehousing line and that officer knew of activities of conspirators and advised them how to obtain funds. U. S. v. Schoenhut, C.A.3 (Pa.) 1978, 576 F.2d 1010, certiorari denied 99 S.Ct. 450, 439 U.S. 964, 58 L.Ed.2d 421. Conspiracy 47(3.1)

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Evidence that defendant not only knew that cashiers' checks were from a national bank, but that they were stolen and that payee's name had been forged was sufficient to sustain conviction of participating in conspiracy to dispose of cashiers' checks stolen from a national bank. U. S. v. Mauro, C.A.2 (N.Y.) 1974, 501 F.2d 45, certiorari denied 95 S.Ct. 235, 419 U.S. 969, 42 L.Ed.2d 186. Conspiracy 47(11)

Where the proof clearly showed the existence of both an illegal agreement to rob bank and overt acts by members of that conspiracy in furtherance of the plan, only "slight evidence" was required to connect defendant with the conspiracy; and such was provided by two taxicab drivers' identifications, and by defendant's travel to Florida and his presence in motel room during conspiratorial conclave, his trip with codefendant to another's residence shortly after the robbery, and defendant's latent fingerprint on money wrapper. U. S. v. Edwards, C.A.5 (Fla.) 1974, 488 F.2d 1154. Conspiracy 47(11)

Fact that defendant visited cabin at time cabin was occupied by codefendants, whose guilt was sufficiently established, was insufficient to support conviction of defendant for conspiring to commit offenses against the United States in respect to crimes against federally insured banks. Brooks v. U. S., C.A.5 (Miss.) 1969, 416 F.2d 1044, rehearing denied 424 F.2d 554, certiorari denied 91 S.Ct. 81, 400 U.S. 840, 27 L.Ed.2d 75. Conspiracy 47(3.1)

Evidence that defendant discussed robbery of bank with co-defendants, that defendant was seated in co-defendant's automobile with motor running while co-defendant entered bank and presented to teller note demanding money and containing bomb threat and evidence that co-defendant who presented note did not know contents of note was sufficient to support conviction of conspiracy to violate bank robbery statutes and of aiding and abetting. Thomas v. U. S., C.A.5 (Fla.) 1967, 398 F.2d 531. Conspiracy 47(11)

Evidence sustained conviction for conspiring to rob a bank insured by the Federal Deposit Insurance Corporation. Johns v. U. S., C.A.5 (Ga.) 1963, 323 F.2d 421. Conspiracy 47(11)

Evidence on question of conspiracy to rob any armored truck carrying bank money was insufficient to sustain conviction for conspiracy to steal bank property. Lubin v. U. S., C.A.9 (Cal.) 1963, 313 F.2d 419. Conspiracy 47(11)

Evidence sustained conviction for sending cables between New York and Rio de Janeiro in furtherance of scheme to defraud banks and of conspiring to send such fraudulent cables in violation of this section. U. S. v. Whiting, C.A.2 (N.Y.) 1962, 308 F.2d 537, certiorari denied 83 S.Ct. 722, 372 U.S. 909, 9 L.Ed.2d 718, certiorari denied 83 S.Ct. 734, 372 U.S. 919, 9 L.Ed.2d 718. Conspiracy 47(4); Telecommunications 1018(4)

Evidence was sufficient to sustain conviction of defendants for violations of the federal bank robbery laws, and conspiracy to commit bank robbery. Atkins v. U. S., C.A.9 (Wash.) 1962, 307 F.2d 937. Conspiracy 47(11); Robbery 24.15(1)

Evidence sustained conviction for conspiracy to purloin or steal money from trust company. Rizzo v. U. S., C.A.8 (Mo.) 1962, 304 F.2d 810, certiorari denied 83 S.Ct. 188, 371 U.S. 890, 9 L.Ed.2d 123. Conspiracy 47(11)

Evidence aliunde of alleged coconspirator's declarations made in defendant's absence was sufficient to connect defendant with conspiracy. Rizzo v. U. S., C.A.8 (Mo.) 1962, 304 F.2d 810, certiorari denied 83 S.Ct. 188, 371 U.S. 890, 9 L.Ed.2d 123. Conspiracy 47(1)

Evidence sustained convictions for robbing national bank, putting in jeopardy lives of persons by use of dangerous weapon while committing robbery, and conspiring to commit robbery. U. S. v. Vita, C.A.2 (N.Y.) 1961, 294 F.2d 524, certiorari denied 82 S.Ct. 837, 369 U.S. 823, 7 L.Ed.2d 788, certiorari denied 82 S.Ct. 1032, 369 U.S. 866, 8 L.Ed.2d 85. Conspiracy 47(11); Robbery 24.15(2)

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Evidence was sufficient to sustain conviction of conspiracy with others to unlawfully burglarize bank for purpose of stealing money therefrom, for purpose of carrying away money, and for purpose of receiving such money knowing it to have been stolen. Way v. U. S., C.A.10 (Colo.) 1960, 285 F.2d 253. Conspiracy 47(11)

Evidence showing that defendant took part in forming conspiracy to burglarize bank, that he knew of conspiracy's existence, and that with such knowledge, he and others did acts or things in furtherance of it, was sufficient to warrant conviction on charge of conspiring to commit robbery and burglary, even though he was not present at burglary and robbery and did not participate in it. Way v. U. S., C.A.10 (Colo.) 1960, 285 F.2d 253. Conspiracy 47(11)

Evidence sustained conviction for bank robbery, conspiracy, and aiding and abetting. U.S. v. Pravato, C.A.2 (N.Y.) 1960, 282 F.2d 587, certiorari denied 81 S.Ct. 705, 365 U.S. 824, 5 L.Ed.2d 702, certiorari denied 81 S.Ct. 811, 365 U.S. 849, 5 L.Ed.2d 813. Conspiracy 47(11); Robbery 24.10

Evidence sustained conviction for conspiracy to rob bank. United States v. Tarricone, C.A.2 (N.Y.) 1957, 242 F.2d 555. Conspiracy 47(11)

Record on appeal from federal court judgment for conspiracy sustained conviction. Wacker v. U. S., C.A.4 (N.C.) 1956, 231 F.2d 659. Conspiracy 47(11); Robbery 24.15(1)

In prosecution for misapplication of bank funds, making false entries in bank records, conspiracy to commit offenses against United States, and violation of mail fraud statute, § 1341 of this title, evidence was sufficient to establish corporate existence of corporate defendant. U. S. v. Scoblick, C.A.3 (Pa.) 1955, 225 F.2d 779. Corporations 32(11)

In prosecution for bank robbery, placing lives of bank employees in peril and for conspiracy, testimony concerning circumstances of bank robbery was such that jury could infer robbers were acting in accordance with prearranged plans and sustained finding of existence of conspiracy to rob. U. S. v. Avellino, C.A.3 (Pa.) 1954, 216 F.2d 877. See, also, U.S. v. Avellino, C.A.Pa.1954, 216 F.2d 875. Conspiracy 47(11)

In prosecution for bank robbery, for placing lives of bank employees in peril and for conspiracy, testimony of 12 year old boy and 13 year old girl, which identified defendant as robber and which was corroborated by testimony of alleged accomplice, was sufficient to sustain verdict of guilt. U. S. v. Avellino, C.A.3 (Pa.) 1954, 216 F.2d 875. Robbery 24.40

A charge under former § 88 of this title [now this section], of conspiracy between officers of a national bank to embezzle, abstract, or willfully misapply its funds in violation of § 592 of Title 12, was supported by evidence that, acting together with a common understanding, defendants largely overdrew their respective accounts with the bank, to such an extent that they were wholly unable to meet the same, as they must have known, and that, to cover up such overdrafts, by a common understanding they placed worthless notes in the bank with the intent and result of injuring and defrauding the bank. U.S. v. Breese, C.C.W.D.N.C.1909, 173 F. 402. Conspiracy 47(11)

Evidence that defendant knowingly signed false construction certificates, failed to advise board properly, omitted from regulators as to practice of bank of paying principal and interest in non-complying loans through new unrelated loans, and failed to properly report loans as losses, was sufficient to support convictions for bank fraud, misapplying bank funds, making false entries in banking records, and participating in conspiracies to perpetuate those offenses. U.S. v. Munoz Franco, D.Puerto Rico 2005, 356 F.Supp.2d 20. Banks And Banking 509.25; Conspiracy 47(4)

Evidence was sufficient to find defendant, an officer and employee of a bank, guilty beyond a reasonable doubt of wilfully and knowingly making false statement "In our years of experience with these people they have met all their

obligations with us completely as agreed" to Small Business Administration for purpose of influencing action of the Administration on loan application. U. S. v. Ticknor, D.C.S.D.1973, 359 F.Supp. 978. Fraud 69(5)

In prosecution against bank president and holder of corporate accounts in bank for conspiracy to misapply bank funds and to make false entries, evidence of continuing grossly excessive overdrafts accompanied by concealment of overdraft status when examiners entered the bank was sufficient to take conspiracy count to jury. U. S. v. Mayr, S.D.Fla.1972, 350 F.Supp. 1291, affirmed 487 F.2d 67, certiorari denied 94 S.Ct. 2615, 417 U.S. 914, 41 L.Ed.2d 218. Conspiracy 48.1(2.1)

Proof of mere association with actual offenders and proof of mere presence at scene of a crime, as opposed to proof of some additional act of participation, is not sufficient to support even a verdict of aiding and abetting, not to mention a conspiracy conviction. U. S. v. Johnson, W.D.Mo.1971, 334 F.Supp. 982, affirmed 462 F.2d 608, certiorari denied 93 S.Ct. 299, 409 U.S. 952, 34 L.Ed.2d 224. Criminal Law 59(3); Criminal Law 59(5)

In prosecution for conspiracy to commit offense against United States, for aiding and abetting attempted armed robbery of national bank, and for being an accessory after the fact to principal offender in the robbery, evidence was sufficient to show that defendant was guilty of the crimes as charged. U. S. v. Anthony, M.D.Pa.1956, 145 F.Supp. 323. Conspiracy 47(11); Robbery 24.15(2)

Evidence was sufficient to sustain verdict of guilty of misapplication of bank funds and conspiracy to misapply bank funds. U. S. v. Nystrom, W.D.Pa.1953, 116 F.Supp. 771, affirmed 237 F.2d 218. Banks And Banking 257(3); Conspiracy 47(11)

There was sufficient evidence that defendant was knowing member of bank fraud scheme to support convictions for conspiring to commit bank fraud, bank fraud, and possession of a forged security; evidence showed that co-defendant provided undercover FBI agent with various financial documents in a false identity, defendant appeared at conspiratorial meeting and told agent that she had recently obtained line of credit with similar documents, and defendant had in her possession a counterfeit check when she was arrested. U.S. v. Mingo, C.A.2 (N.Y.) 2003, 76 Fed.Appx. 379, 2003 WL 22221358, Unreported. Banks And Banking 509.25; Conspiracy 47(4); Forgery 44(.5)

Convictions for bank robbery, conspiring to commit bank robbery, and possessing firearm during crime of violence were supported by bank teller's testimony that woman and man approached her station, demanding that money be placed in bag, and that demand made her fear for her life since woman had hand tucked under her arm as if she were carrying gun, teller's identification of defendant as female robber, neighbors' testimony that defendant and her son bragged about robbing bank while dumping money and pistol out of bag similar to that used by robbers, neighbor's testimony that defendant had previously asked for pistol bullets for weeks, explaining that she wanted to rob bank, evidence that stolen bills were found in son's socks after defendant and son were arrested, and recovery of pistol from vehicle in which defendant and son were traveling. U.S. v. Johnson, C.A.7 (Ill.) 2003, 76 Fed.Appx. 737, 2003 WL 22017513, Unreported. Conspiracy 47(11); Robbery 24.10; Robbery 24.40; Weapons 17(4)

728. Bankruptcy offenses, sufficiency of evidence

Direct testimony of unindicted coconspirator of illegal agreement to conceal assets from bankruptcy trustee, together with circumstantial evidence that defendants removed items from debtor's warehouse on pretense of preparing merchandise for auction and filed false proofs of claims on computer lease with debtor, even though computer had previously been repossessed, was sufficient to support convictions for conspiracy to conceal assets in bankruptcy. U.S. v. Murray, C.A.9 (Cal.) 1985, 751 F.2d 1528, certiorari denied 106 S.Ct. 381, 474 U.S. 979, 88 L.Ed.2d 335. Conspiracy 47(3.1)

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In prosecution for offenses against bankruptcy laws and conspiracy, evidence justified jury in finding that bankrupt corporation, president of that corporation, and corporation employee had deliberately aborted sale of bankrupt's stock under arrangement whereby its obligations would have been assumed by purchaser and had then helped themselves to bankrupt's property by going into business under name of theretofore, inactive corporation and using bankrupt's property in operation of that corporation. U. S. v. Dioguardi, C.A.2 (N.Y.) 1970, 428 F.2d 1033, certiorari denied 91 S.Ct. 50, 400 U.S. 825, 27 L.Ed.2d 54, certiorari denied 91 S.Ct. 51, 400 U.S. 825, 27 L.Ed.2d 54. Bankruptcy 3863

Evidence sustained convictions for violating and conspiring to violate § 152 of this title. U. S. v. Castellana, C.A.2 (N.Y.) 1965, 349 F.2d 264, certiorari denied 86 S.Ct. 934, 383 U.S. 928, 15 L.Ed.2d 847, certiorari denied 86 S.Ct. 935, 383 U.S. 928, 15 L.Ed.2d 847, rehearing denied 86 S.Ct. 1368, 384 U.S. 923, 16 L.Ed.2d 444. Conspiracy 47(3.1)

Evidence sustained convictions for making false oaths in bankruptcy proceedings and conspiracy to swear falsely in such proceedings. Mosheim v. U. S., C.A.5 (Tex.) 1960, 285 F.2d 949, certiorari denied 81 S.Ct. 903, 365 U.S. 868, 5 L.Ed.2d 859. Bankruptcy 3863; Conspiracy 47(13)

In prosecution for conspiracy to transfer assets of one corporation to another in contemplation of bankruptcy with intent to defeat title 11, evidence including testimony of defendant's coconspirators warranted conclusion that defendant knowingly and fraudulently transferred property of the old corporation to new corporation and to the favored creditors in violation of Title 11. U.S. v. Switzer, C.A.2 (N.Y.) 1958, 252 F.2d 139, certiorari denied 78 S.Ct. 1363, 357 U.S. 922, 2 L.Ed.2d 1366, rehearing denied 79 S.Ct. 16, 358 U.S. 859, 3 L.Ed.2d 93. Bankruptcy 3863

Evidence sustained conviction of conspiracy with bankrupt to conceal assets from bankruptcy receiver. Sultan v. U. S., C.A.5 (Fla.) 1957, 249 F.2d 385. Conspiracy 47(3.1)

In prosecution for conspiracy to commit an offense against the United States relating to bankruptcy proceedings, even if indictment could be viewed after verdict as sufficient to charge conspiracy, proof was insufficient for failure to show the existence of some conspiratorial scheme during bankruptcy to conceal part of estate from receiver. U. S. v. Deutsch, C.A.3 (Pa.) 1957, 243 F.2d 435. Conspiracy 47(3.1)

Evidence was sufficient to sustain conviction of two defendants for conspiracy to violate and for violation of the National Bankruptcy Act, § 1 et seq. of Title 11, but evidence was insufficient to sustain conviction of another defendant for violation of the Bankruptcy Act, § 1 et seq. of Title 11. Barnes v. U.S., C.A.5 (Ga.) 1951, 192 F.2d 466, certiorari denied 72 S.Ct. 1035, 343 U.S. 942, 96 L.Ed. 1347. Bankruptcy 3863; Conspiracy 47(3.1)

Evidence that defendant and another, acting in concert, persuaded financially distressed farmers to file petitions under the Frazier-Lemke Act, §§ 201 to 203 of Title 11, and assisted and advised them in preparing petitions and schedules from which they omitted property that should have been schedule, advised and induced many of them to prefer local creditors, procured appraisals of their property for less than its fair market value, and collected for their services, was sufficient to support conviction of conspiracy to defraud the United States by procuring the corrupt administration of said sections. Joyce v. U. S., C.C.A.8 (N.D.) 1946, 153 F.2d 364, certiorari denied 66 S.Ct. 1349, 328 U.S. 860, 90 L.Ed. 1631. Conspiracy 47(6)

Evidence sustained conviction for conspiring to defraud the United States by corruptly administering and procuring the corrupt administration of the Frazier-Lemke Act, §§ 201-203 of Title 11. Braatelien v. U. S., C.C.A.8 (N.D.) 1945, 147 F.2d 888. Conspiracy 47(6)

The trial court's finding, on denying accused's motion for leave to withdraw plea of guilty to indictment charging conspiracy to defraud United States by corruptly procuring farmers to institute proceedings for relief under

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Frazier-Lemke Act, § 203 of Title 11, that accused was not confused as to charge against him, was not supported by evidence. Bergen v. U. S., C.C.A.8 (N.D.) 1944, 145 F.2d 181. Criminal Law 274(6)

In trial for conspiracy to obtain money for acting or forbearing to act in bankruptcy proceeding, evidence was sufficient to take to jury question whether defendants acted in good faith solely for best interests of bankrupt's creditors or fraudulently planned to compel attorney for assignee for creditors' benefit, under threat of bankruptcy proceeding, to let defendants control situation, create secret fund and divide it in violation of statute, so that there was ample proof of conspiracy and adequate evidence of defendants' connection with the scheme. U S v. Goldman, C.C.A.2 (N.Y.) 1941, 118 F.2d 310, certiorari denied 61 S.Ct. 1109, 313 U.S. 588, 85 L.Ed. 1543, rehearing denied 63 S.Ct. 22, 317 U.S. 703, 87 L.Ed. 562, certiorari denied 61 S.Ct. 1110, 313 U.S. 588, 85 L.Ed. 1543, certiorari denied 61 S.Ct. 1111, 313 U.S. 588, 85 L.Ed. 1543, certiorari granted 62 S.Ct. 119, 314 U.S. 704, 86 L.Ed. 563, affirmed 62 S.Ct. 993, 316 U.S. 129, 86 L.Ed. 1322. Conspiracy 48.1(2.1)

Evidence was insufficient to sustain conviction for conspiracy to conceal from trustee merchandise purchased by bankrupt and proceeds thereof. Gerson v. U.S., C.C.A.8 (Okla.) 1928, 25 F.2d 49. Conspiracy 47(3.1)

Bank's purchase of merchandise alleged to have been fraudulently concealed was not shown by affidavit of correctness of claims filed in bankruptcy proceeding. Gerson v. U.S., C.C.A.8 (Okla.) 1928, 25 F.2d 49. Conspiracy 47(3.1)

Evidence was insufficient to support conviction of defendants for conspiring with president of bankrupt corporation to withhold property from trustee. Bartkus v. U.S., C.C.A.7 (Ill.) 1927, 21 F.2d 425. Conspiracy 47

In prosecution for conspiracy to violate Bankruptcy Act, former § 52 of Title 11, by concealing property of bankrupt corporation, evidence was sufficient to connect one of accused with conspiracy. Kaplan v. U.S., C.C.A.2 (N.Y.) 1925, 7 F.2d 594, certiorari denied 46 S.Ct. 107, 269 U.S. 582, 70 L.Ed. 423.

Evidence sustained conviction for conspiracy to commit an offense against the United States by concelling assets of an estate in bankruptcy. Frieden v. U.S., C.C.A.4 (Va.) 1925, 5 F.2d 556. See, also, U.S. v. Aronoff, C.C.A.N.Y.1943, 138 F.2d 911, 55 AmBankr.Rep.N.S. 87, certiorari denied 64 S.Ct. 522, 321 U.S. 765, 88 L.Ed. 1062; Chaplan v. U.S., C.C.A.S.C.1928, 28 F.2d 567; Jollit v. U.S., C.C.A.Ala.1923, 285 F. 209, certiorari denied 43 S.Ct. 519, 261 U.S. 624, 67 L.Ed. 832; Samara v. U.S., C.C.A.N.Y.1920, 263 F. 12; Rabinowitz v. U.S., N.Y.1915, 222 F. 846, 138 C.C.A. 272.

In prosecution for conspiracy, under this section to conceal from trustee in bankruptcy goods belonging to bankrupt estate, evidence was sufficient for submission of case to jury. Israel v. U. S., C.C.A.6 (Ohio) 1925, 3 F.2d 743, 3 Ohio Law Abs. 416. Bankruptcy 3862; Conspiracy 48.1(2.1)

Where a bankrupt testified to every fact necessary to convict him and his attorney of conspiracy to conceal assets, his expressed opinion that what was done did not constitute concealment and conspiracy did not prevent a conviction of the attorney. Miller v. U.S., C.C.A.4 (S.C.) 1921, 277 F. 721. Criminal Law 493

In a prosecution for conspiracy, evidence sustained a count of indictment alleging the receiving of property of a bankrupt after petition filed. U S v. Knoell, E.D.Pa.1916, 230 F. 509, affirmed 239 F. 16, 152 C.C.A. 66, error dismissed 38 S.Ct. 316, 246 U.S. 648, 62 L.Ed. 920.

In a trial for conspiring to conceal assets in bankruptcy, evidence was insufficient to show that a particular defendant committed any unlawful act in the district. Roukous v. U.S., C.C.A.1 (R.I.) 1912, 195 F. 353, 115 C.C.A. 255, certiorari denied 32 S.Ct. 840, 225 U.S. 710, 56 L.Ed. 1267. Conspiracy 47(3.1)

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A charge of conspiracy for the concealment of property by a bankrupt, in violation of former § 52 of Title 11, was supported by evidence that the property was sold under a chattel mortgage given by the bankrupt prior to the bankruptcy, where it was shown that such mortgage and sale were merely colorable, and that the property, in fact, remained that of the bankrupt. Cohen v. U.S., C.C.A.2 (N.Y.) 1907, 157 F. 651, 85 C.C.A. 113, certiorari denied 28 S.Ct. 261, 207 U.S. 596, 52 L.Ed. 357. Conspiracy 47

729. Bribery, sufficiency of evidence

Evidence sustained conviction of subcontractor for inducing federal employee to accept compensation for services to be rendered in connection with federal contract, and for conspiracy. Opper v. U. S., U.S.Ohio 1954, 75 S.Ct. 158, 348 U.S. 84, 99 L.Ed. 101. Bribery 11; Conspiracy 47(13)

Evidence that defendant, a drug supplier, fronted large amounts of narcotics to undercover agents through one of his dealers without requiring immediate payment was insufficient to support finding that defendant was aware, prior to telephone call with one of agents, of conspiracy dealer was involved in to bribe a public official to aid in illegal green-card operation to pay for drugs, as required to support conviction for involvement in conspiracy, where there was no evidence that defendant knew part of the money he received came from aliens who were obtaining fraudulent green cards. U.S. v. Ceballos, C.A.2 (N.Y.) 2003, 340 F.3d 115. Conspiracy 47(6)

Agreement to violate the law and intent to be influenced or rewarded, required to support conspiracy and bribery convictions of former state government officials, who exchanged agency consulting contracts for political fund-raising, was established by evidence that consultants met with and solicited contributions from regulated businesses while officials were present and during government time, and that officials handled money raised by consultants' efforts. U.S. v. Moeller, C.A.5 (Tex.) 1996, 80 F.3d 1053. Bribery 11; Conspiracy 47(13)

Convictions of conspiracy to commit bribery, aiding and abetting bribery and interstate travel to commit bribery were supported by evidence from which juror could conclude that proposal of two Federal Bureau of Investigation agents posing as wealthy Arabs involved payment of bribe to congressman and that defendant intentionally participated in scheme to achieve that end. U.S. v. Weisz, C.A.D.C.1983, 718 F.2d 413, 231 U.S.App.D.C. 1, certiorari denied 104 S.Ct. 1285, 465 U.S. 1027, 79 L.Ed.2d 688, certiorari denied 104 S.Ct. 1305, 465 U.S. 1034, 79 L.Ed.2d 704. Bribery 11; Commerce 82.10; Conspiracy 47(13)

In prosecution for conspiracy to bribe criminal investigators of Immigration and Naturalization Service, evidence was sufficient to allow jury to conclude beyond reasonable doubt that defendants knew of the existence of other members of a joint bribery plan and that each was aware that his arrangement with investigators had been made in concert with arrangements made for other gambling house operators. U. S. v. Ong, C.A.2 (N.Y.) 1976, 541 F.2d 331, certiorari denied 97 S.Ct. 814, 429 U.S. 1075, 50 L.Ed.2d 793, certiorari denied 97 S.Ct. 1559, 430 U.S. 934, 51 L.Ed.2d 780. Conspiracy 47(13)

Evidence that one defendant's blank invoices were made available to second defendant who received bribe, and that checks used to pay the bribe were made out to defendant and cashed by him was sufficient to sustain defendants' convictions for conspiracy. U. S. v. Hathaway, C.A.1 (Mass.) 1976, 534 F.2d 386, certiorari denied 97 S.Ct. 64, 429 U.S. 819, 50 L.Ed.2d 79. Conspiracy 47(13)

Evidence that defendant committed bribery on three separate occasions and submitted false statements in order to obtain FHA mortgage insurance on 18 occasions, that her position was near the center of the conspiracy, and that she played an active role in bringing one of the conspirators into bribery phase of the conspiracy was sufficient to sustain defendant's conviction for conspiracy despite contention that the single act doctrine was applicable to her. U. S. v. Bernstein, C.A.2 (N.Y.) 1976, 533 F.2d 775, certiorari denied 97 S.Ct. 523, 429 U.S. 998, 50 L.Ed.2d 608 . Conspiracy 47(13)

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Evidence was sufficient to sustain conviction on charges against some of defendants of conspiring to bribe and bribery of Internal Revenue officer and to sustain conviction of other defendant of conspiring to defraud the United States in its governmental functions. Gorin v. U.S., C.A.1 (Mass.) 1963, 313 F.2d 641, certiorari denied 83 S.Ct. 1870, 374 U.S. 829, 10 L.Ed.2d 1052. Bribery 11; Conspiracy 47(3.1)

Evidence failed to sustain conviction of one employee of government agency for conspiring to receive bribes and kick-backs from certain sellers of goods to agency. Harlow v. U. S., C.A.5 (Tex.) 1962, 301 F.2d 361, certiorari denied 83 S.Ct. 25, 371 U.S. 814, 9 L.Ed.2d 56, rehearing denied 83 S.Ct. 204, 371 U.S. 906, 9 L.Ed.2d 167. Conspiracy 47(13)

In prosecution for conspiring to violate § 212 of this title prohibiting bribery of customs officials and §§ 173, 174 of Title 21 concerning narcotics laws, evidence of introduction of customs official to one of other conspirators before conspiracy began was insufficient alone to support conviction of such officer. United States v. Stromberg, C.A.2 (N.Y.) 1959, 268 F.2d 256, certiorari denied 80 S.Ct. 119, 361 U.S. 863, 4 L.Ed.2d 102, certiorari denied 80 S.Ct. 123, 361 U.S. 863, 4 L.Ed.2d 102, certiorari denied 80 S.Ct. 124, 361 U.S. 863, 4 L.Ed.2d 102, certiorari denied 80 S.Ct. 130, 361 U.S. 868, 4 L.Ed.2d 108. Conspiracy 47(12); Conspiracy 47(13)

In prosecution for conspiring to violate § 212 of this title prohibiting bribery of customs officials and §§ 173, 174 of Title 21 concerning narcotics laws, wherein only evidence of participation of certain customs official was his delivery of two suitcases, later found to contain heroin, to two other conspirators, evidence as to customs officer's single transaction with conspiracy was insufficient to support inference that he knew or accepted conspiratorial aims or that his participation went beyond single transaction and was insufficient to sustain his conviction. United States v. Stromberg, C.A.2 (N.Y.) 1959, 268 F.2d 256, certiorari denied 80 S.Ct. 119, 361 U.S. 863, 4 L.Ed.2d 102, certiorari denied 80 S.Ct. 123, 361 U.S. 863, 4 L.Ed.2d 102, certiorari denied 80 S.Ct. 124, 361 U.S. 863, 4 L.Ed.2d 102, certiorari denied 80 S.Ct. 130, 361 U.S. 868, 4 L.Ed.2d 108. Conspiracy 47(12); Conspiracy 47(13)

In prosecution for conspiring to violate § 212 of this title prohibiting bribery of customs officials and §§ 173, 174 of Title 21 concerning narcotics laws, independent evidence connecting two customs officers with conspiracy was insufficient to sustain conviction of such officials. United States v. Stromberg, C.A.2 (N.Y.) 1959, 268 F.2d 256, certiorari denied 80 S.Ct. 119, 361 U.S. 863, 4 L.Ed.2d 102, certiorari denied 80 S.Ct. 123, 361 U.S. 863, 4 L.Ed.2d 102, certiorari denied 80 S.Ct. 124, 361 U.S. 863, 4 L.Ed.2d 102, certiorari denied 80 S.Ct. 130, 361 U.S. 868, 4 L.Ed.2d 108. Conspiracy 47(12)

Evidence sustained conviction for offering a bribe to a United States internal revenue agent, giving such bribe to such agent, and for conspiring to offer and give such bribe. Marbs v. U.S., C.A.8 (Mo.) 1957, 250 F.2d 514, certiorari denied 78 S.Ct. 703, 356 U.S. 919, 2 L.Ed.2d 715. Bribery 11; Conspiracy 47(13)

In prosecution of buyer employed by prime government contractor operating under cost-reimbursable contract, and others, for conspiracy to violate statute precluding the payment of gratuities by subcontractors to officers or agents of persons operating under such contracts, evidence showing requisite criminal intent supported finding that buyer and at least one co-conspirator entered into illegal plan and that overt acts were committed to carry it into effect. Hanis v. U. S., C.A.8 (Mo.) 1957, 246 F.2d 781. Conspiracy 47(6)

Conviction for bribery of a government employee and conspiracy to violate laws of United States was sustained by evidence. Wolin v. U.S., C.A.4 (Va.) 1954, 211 F.2d 770, certiorari denied 75 S.Ct. 30, 348 U.S. 819, 99 L.Ed. 645. Bribery 11; Conspiracy 47(13)

In prosecution under indictment charging defendants with a general conspiracy to defraud United States of honest and impartial services of defendants as revenue officers through bribe taking, extortion and solicitation, evidence of participation was enough to hold defendant who was head of Fraud Unit and a codefendant as co-conspirators in

four bribery transactions and to sanction admissions as to guilt by a co-conspirator of defendant who was head of Fraud Unit. United States v. Ganey, C.A.2 (N.Y.) 1951, 187 F.2d 541. Conspiracy 47(6); Criminal Law 427(5)

In prosecution of congressman and individuals for conspiracy to defraud the United States through violation of former § 203 of this title, prohibiting members of Congress from receiving compensation in matters affecting the government, evidence that press and radio articles which came to attention of jurors had prejudicial results was insufficient to justify impeaching integrity of the jury. May v. United States, C.A.D.C.1949, 175 F.2d 994, 84 U.S.App.D.C. 233, certiorari denied 70 S.Ct. 58, 338 U.S. 830, 94 L.Ed. 505, order withheld 70 S.Ct. 81, 338 U.S. 854, motion denied 70 S.Ct. 94, motion denied 70 S.Ct. 95, rehearing denied 70 S.Ct. 154, 338 U.S. 882, 94 L.Ed. 542, rehearing denied 70 S.Ct. 155, 338 U.S. 882, 94 L.Ed. 542, order withheld 70 S.Ct. 80. Criminal Law 956(13)

Evidence supported conviction of congressman and three individuals under indictment charging conspiracy to defraud the United States through violation of former § 203 of this title, prohibiting members of Congress from receiving compensation in matters affecting the government charging receipt by congressman of compensation for services in relation to matters before the War Department, and charging individuals were aiders and abettors. May v. United States, C.A.D.C.1949, 175 F.2d 994, 84 U.S.App.D.C. 233, certiorari denied 70 S.Ct. 58, 338 U.S. 830, 94 L.Ed. 505, order withheld 70 S.Ct. 81, 338 U.S. 854, motion denied 70 S.Ct. 94, motion denied 70 S.Ct. 95, rehearing denied 70 S.Ct. 154, 338 U.S. 882, 94 L.Ed. 542, rehearing denied 70 S.Ct. 155, 338 U.S. 882, 94 L.Ed. 542, order withheld 70 S.Ct. 80. Conspiracy 47(6); United States 52

Evidence warranted conviction of management engineering consultants and their corporation for conspiracy to defraud United States of faithful and impartial services of one of consultants as civilian employee of navy and as naval officer by making use of consultant's position with navy to induce contractors whose plants he inspected to employ services of corporation. U.S. v. Corrigan, C.C.A.2 (N.Y.) 1948, 168 F.2d 641. Conspiracy 47(6)

Evidence warranted conviction for conspiracy, bribery of person acting for and in behalf of the United States in an official function, and evading service in armed forces. Claunch v. U.S., C.C.A.5 (Tex.) 1946, 155 F.2d 261. Armed Services 40(7); Bribery 11; Conspiracy 47(13)

In prosecution for conspiracy of draft board appeal agent and another to ask a bribe with intent to influence agent's action in matter of inductee's application for a recommendation from draft board for an extension of furlough, evidence that before conspiracy was former Army had granted an extension of furlough did not establish that there was no matter pending before agent so as to eliminate an essential element of the offense, in view of other evidence that Army acted upon recommendation when made after discovering mistake in granting furlough without recommendation. Cohen v. U.S., C.C.A.9 (Cal.) 1944, 144 F.2d 984, certiorari denied 65 S.Ct. 440, 323 U.S. 797, 89 L.Ed. 636, order withheld 65 S.Ct. 441, rehearing denied 65 S.Ct. 586, 324 U.S. 885, 89 L.Ed. 1435. Conspiracy 47(13)

Evidence sustained conviction for accepting bribe in furtherance of, and conspiracy to obstruct, justice. Tyson v. U.S., C.C.A.5 (Tex.) 1931, 54 F.2d 26, certiorari denied 52 S.Ct. 407, 285 U.S. 551, 76 L.Ed. 941. Bribery 11

In prosecution for conspiracy to commit offense against the United States under former § 207 of this title in asking for and receiving a bribe for not reporting liquor found on search under warrant, evidence was sufficient for submission of question of conspiracy to jury. Downs v. U.S., C.C.A.3 (N.J.) 1925, 3 F.2d 855, certiorari denied 45 S.Ct. 509, 268 U.S. 689, 69 L.Ed. 1158.

Evidence insufficient to connect one of the defendants with the conspiracy charged to bribe an officer of the United States to permit the illegal transportation of liquor into Indian country, but to sustain a conviction of the other defendants. Hardy v. U.S., C.C.A.5 (Tex.) 1920, 269 F. 134, certiorari denied 41 S.Ct. 449, 256 U.S. 689, 65

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Evidence insufficient to sustain a conviction of one of two defendants jointly indicted for conspiracy to bribe a post office clerk, but sufficient to sustain the conviction of his codefendant. Kirkwood v. U S, C.C.A.8 (Mo.) 1919, 256 F. 825, 168 C.C.A. 171. Bribery 11; Conspiracy 47

There was sufficient evidence to support defendant's convictions for bribery of public official and conspiracy to bribe public official, in light of evidence that undercover officers posing as drug dealers told defendant that they would help her obtain permanent resident alien status for fee, officers introduced her to putative immigration official, and official asked, in her presence, whether money had been paid before he agreed to stamp her passport. U.S. v. Guevara, C.A.2 (N.Y.) 2004, 96 Fed.Appx. 745, 2004 WL 692624, Unreported. Bribery 11; Conspiracy 47(13)

730. Condemnation, sufficiency of evidence

Evidence sustained finding that appraiser and officer of corporate owner of condemned property conspired in the making of the appraisals but evidence was insufficient to sustain finding that state officer who appointed the appraiser was a party to the conspiracy. Reiss v. U. S., C.A.1 (Mass.) 1963, 324 F.2d 680, certiorari denied 84 S.Ct. 667, 376 U.S. 911, 11 L.Ed.2d 609. Conspiracy 47(6)

Evidence that defendants and others conspired to divert to personal use of one or more defendants money, which was paid by Commonwealth of Massachusetts for realty condemned for federal aid highway, in derogation of purposes of federal aid highway program, sustained convictions of defendants for violating this section dealing with conspiracy to defraud United States. Harney v. U. S., C.A.1 (Mass.) 1962, 306 F.2d 523, certiorari denied 83 S.Ct. 254, 371 U.S. 911, 9 L.Ed.2d 171. Conspiracy 43(10)

731. Copyright offenses, sufficiency of evidence

Evidence was sufficient to support jury's necessary finding that defendants knew sound-recording tapes were not simulations but were real performances of famous artists, in prosecution for conspiracy to violate copyrights of sound recordings and for specific infringement of copyrighted sound recordings. U. S. v. Sherman, C.A.10 (Okla.) 1978, 576 F.2d 292, 200 U.S.P.Q. 561, certiorari denied 99 S.Ct. 284, 439 U.S. 913, 58 L.Ed.2d 259. Copyrights And Intellectual Property 70

732. Counterfeiting, sufficiency of evidence

There was sufficient evidence that defendant knowingly agreed to join his roommate and undercover agents' contact and to assist them in their production of counterfeit identification documents to support defendant's conspiracy conviction; contact took agents to defendant's residence to obtain counterfeit documents, defendant appeared at contact's apartment approximately two hours later, when delivery of counterfeit cards was expected, agents never spotted roommate, and, moreover, letter in kitchen area of defendant's apartment was addressed to defendant and requested that he send social security documents to specified location. U.S. v. Marquez, C.A.7 (Ill.) 1995, 48 F.3d 243. Conspiracy 47(3.1)

Evidence admitted in counterfeiting conspiracy prosecution was sufficient to establish beyond reasonable doubt that defendant knowingly conspired to make, possess and deliver counterfeit obligations with intent to defraud United States, notwithstanding fact that defendant was not present when bills were made, where defendant and other coconspirators caused approximately $800,000 in counterfeit obligations to be printed, and defendant not only suggested that obligations be printed, but provided paper, arranged distribution network, aided and abetted collection of the elicit proceeds, and personally recovered undistributed counterfeit bills. U.S. v. Rodriguez

Alvarado, C.A.1 (Puerto Rico) 1993, 985 F.2d 15. Conspiracy 47(3.1)

Defendant's conviction for conspiracy to traffic in counterfeit labels and goods and criminal infringement of copyright was supported by evidence, notwithstanding claim that he lacked knowledge and intent necessary to join conspiracy; intent could be inferred from facts that defendant had control over some of the counterfeit tapes and key to warehouse leased to his brother which was used in counterfeiting operation, showed warehouse worker how to use tape duplicating machines, and helped transport counterfeit tapes to self-storage unit. U.S. v. Hernandez, C.A.9 (Cal.) 1991, 952 F.2d 1110, 21 U.S.P.Q.2d 1502, certiorari denied 113 S.Ct. 334, 506 U.S. 920, 121 L.Ed.2d 252. Conspiracy 47(3.1); Copyrights And Intellectual Property 70

Evidence was sufficient to support finding that defendant knowingly joined conspiracy to sell counterfeit alien registration and social security cards based on his involvement in repeated recorded telephone conversations with confidential informant concerning details of delivery of false documents, his references to prior contacts with codefendant concerning transaction and evidence indicating that defendant had informed a coparticipant of nature of and arranged for delivery of documents to be exchanged for cash. U.S. v. Carrasco, C.A.7 (Ill.) 1989, 887 F.2d 794. Conspiracy 47(3.1)

Finding that defendant had conspired with government agent, prior to his becoming government agent, to deliver counterfeit bills was sufficiently supported by officer's testimony as to conversation between defendant and agent, in which defendant indicated that he did not have any "more" counterfeit money for agent. U.S. v. Vasquez, C.A.11 (Fla.) 1989, 874 F.2d 1515, certiorari denied 110 S.Ct. 845, 493 U.S. 1046, 107 L.Ed.2d 840. Conspiracy 47(3.1)

Evidence that first defendant purchased merchandise from various stores with counterfeit $100 bills, that second and third defendants were found carrying merchandise which had been purchased with counterfeit conspiracy, that first and second defendants had counterfeit notes in their possession, and that defendants denied knowing each other when initially detained was sufficient to support defendants' convictions of conspiracy to pass, utter, possess and conceal counterfeit notes. U.S. v. Guida, C.A.11 (Fla.) 1986, 792 F.2d 1087. Conspiracy 47(3.1)

In prosecution for conspiracy to counterfeit, evidence concerning cooperation between defendant and another in their joint endeavor was sufficient to sustain finding of an agreement to seek to achieve the criminal object of counterfeiting, despite defendant's contention that there was no conspiracy to counterfeit but rather only one "to learn how to counterfeit." U. S. v. Molovinsky, C.A.4 (Md.) 1982, 688 F.2d 243, certiorari denied 103 S.Ct. 1228, 459 U.S. 1221, 75 L.Ed.2d 462. Conspiracy 47(3.1)

Testimony of one witness that first, second and third defendants were discussing counterfeit money and that first and second defendants told third that they had passed a lot of counterfeit money and testimony of another witness, the third defendant, that he didn't know whether counterfeit money which he got from first defendant belonged to first defendant or second and that second didn't have but two or three "notes" at his house was insufficient to convict second defendant of selling, possessing or uttering counterfeit money, or conspiracy. U. S. v. Bostic, C.A.6 (Tenn.) 1973, 480 F.2d 965. Conspiracy 47(3.1); Counterfeiting 18

Evidence including testimony as to defendant's continuous association with codefendants, his overheard statement "As long as we don't get busted" and his presence in counterfeit printing plant after government had obtained evidence from trash bags taken therefrom was sufficient to sustain defendant's conviction for conspiracy to produce counterfeit notes. U. S. v. Mustone, C.A.1 (Mass.) 1972, 469 F.2d 970. Conspiracy 47(3.1)

Evidence on issue of whether defendants had knowledge of interlocking alliances employed in carrying out counterfeit money distribution scheme during spring and summer months, with roles of various participants being tied together by one individual as a connecting link, was sufficient to support conviction under conspiracy count charging violation of federal laws relating to counterfeit money. U. S. v. Kilpatrick, C.A.7 (Ill.) 1972, 458 F.2d

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864. Conspiracy 47(3.1)

Testimony of coconspirator, who had previously pled guilty, that one defendant charged with interstate transportation of counterfeit payroll checks and conspiracy had given him a quantity of the checks to be cashed, had driven him to various places to cash the checks and had taken the proceeds was sufficient to support such defendant's conviction. U. S. v. Moseley, C.A.5 (Fla.) 1971, 450 F.2d 506, certiorari denied 92 S.Ct. 1200, 405 U.S. 975, 31 L.Ed.2d 250. Conspiracy 47(11); Receiving Stolen Goods 8(3)

Evidence that defendants were active participants in meetings and telephone conversations relating to sale of counterfeit currency, and that envelope containing counterfeit currency was transferred by defendants to undercover agent, and that both defendants participated in discussion and handled counterfeit currency sustained conviction for conspiracy to transfer or deliver counterfeit government obligations. U.S. v. Lefner, C.A.9 (Cal.) 1970, 422 F.2d 1021. Conspiracy 47(3.1)

Where defendants were charged with three counts involving counterfeit government obligations and evidence sustained conviction on count charging them with transferring and delivering such obligations and sentence imposed upon guilty verdict on that count was to run concurrent with guilty verdict on count charging them with possession and concealment of counterfeit government obligations, court need not consider sufficiency of evidence to convict on concealment count. Loraine v. U. S., C.A.9 (Cal.) 1968, 396 F.2d 335, certiorari denied 89 S.Ct. 292, 393 U.S. 933, 21 L.Ed.2d 270. Criminal Law 1134(3)

Evidence consisting of indicted and unindicted co-conspirators' testimony which was not entirely without corroboration was sufficient to support convictions for conspiracy to transport counterfeit traveler's checks in interstate commerce and conspiracy to counterfeit United States savings bonds and to pass, utter, and sell such counterfeited bonds. U. S. v. Nitti, C.A.7 (Ill.) 1967, 374 F.2d 750, certiorari denied 87 S.Ct. 2141, 388 U.S. 920, 18 L.Ed.2d 1366. Conspiracy 47(3.1)

Evidence that defendant and codefendant had given their former prisonmate counterfeit money to pass in exchange for good money which would be shared upon passer's return was sufficient to sustain defendant's convictions for conspiracy to pass and sell counterfeit federal reserve notes and of selling, transferring and delivering federal reserve notes, knowing them to be counterfeit. U. S. v. Panczko, C.A.7 (Ill.) 1966, 367 F.2d 737, certiorari denied 87 S.Ct. 716, 385 U.S. 1009, 17 L.Ed.2d 546, rehearing denied 87 S.Ct. 771, 385 U.S. 1043, 17 L.Ed.2d 688. Conspiracy 47(3.1); Counterfeiting 18

Evidence sustained conviction for transporting counterfeit debentures from Miami to Nassau with knowledge that they were counterfeited and conspiring to transport such documents. Rogers v. U. S., C.A.5 (Fla.) 1964, 334 F.2d 83, certiorari denied 85 S.Ct. 892, 380 U.S. 915, 13 L.Ed.2d 800, rehearing denied 85 S.Ct. 1102, 380 U.S. 967, 14 L.Ed.2d 157. Conspiracy 47(3.1); Receiving Stolen Goods 8(3)

Evidence was sufficient to sustain conviction for conspiracy to possess counterfeit money with intent to defraud, even though two of the persons involved in the conspiracy had agreed to deceive a third person involved in the conspiracy. U. S. v. Gersh, C.A.2 (N.Y.) 1964, 328 F.2d 460, certiorari denied 84 S.Ct. 1919, 377 U.S. 992, 12 L.Ed.2d 1045. Conspiracy 47(3.1)

Evidence sustained conviction for conspiracy to make counterfeit obligations, for publishing counterfeit money, and for aiding and abetting making of counterfeit money. U. S. v. Alger, C.A.7 (Ind.) 1963, 325 F.2d 502, certiorari denied 84 S.Ct. 1124, 376 U.S. 963, 11 L.Ed.2d 981. Conspiracy 47(3.1); Counterfeiting 18

Evidence was sufficient to sustain conviction for conspiring to pass, utter, publish, sell and transfer counterfeit bills. Harris v. U.S., C.A.4 (Md.) 1960, 283 F.2d 923. Conspiracy 47(3.1)

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In prosecution on indictment charging conspiracy to pass, and substantive offenses respecting, counterfeit obligations of the United States, evidence was sufficient to show that the bills were counterfeit and that the defendant had guilty knowledge that they were. McMillon v. U.S., C.A.5 (Tex.) 1959, 272 F.2d 170, certiorari denied 80 S.Ct. 805, 362 U.S. 940, 4 L.Ed.2d 769. Conspiracy 47(3.1); Counterfeiting 18

Evidence sustained conviction of all four defendants under conspiracy count and conviction of three of four defendants under substantive counts pertaining to counterfeiting. U. S. v. Sferas, C.A.7 (Ill.) 1954, 210 F.2d 69, certiorari denied 74 S.Ct. 630, 347 U.S. 935, 98 L.Ed. 1086. Conspiracy 47(3.1); Counterfeiting 18

Evidence was sufficient to sustain conviction for sale of counterfeit notes and conspiracy to commit such offense. U.S. v. Detente, C.A.7 (Ill.) 1952, 199 F.2d 286. Conspiracy 47(3.1); Counterfeiting 18

Evidence that defendant sold counterfeit bills and showed buyers how to discolor bills to make them less susceptible to discovery and demonstrated quality by using money to make bets and that he promised future supply, established that defendant was participant and coconspirator in scheme to foist bogus money upon the public. Bartoli v. U.S., C.A.4 (W.Va.) 1951, 192 F.2d 130. Conspiracy 47(3.1)

In prosecution for counterfeiting, possession of counterfeit currency, and for conspiracy to violate former §§ 262 and 265 of this title, evidence sustained conviction. U.S. v. Karavias, C.A.7 (Ill.) 1948, 170 F.2d 968. Conspiracy 47(3.1); Counterfeiting 18

In prosecution for counterfeiting, possession of counterfeit currency and conspiracy to violate former §§ 262, 265 of this title, evidence warranted inference that the crimes were committed at Chicago, in the Northern District of Illinois, as alleged in the indictment. U.S. v. Karavias, C.A.7 (Ill.) 1948, 170 F.2d 968. Criminal Law 564(1)

Evidence sustained conviction for possessing, selling and transferring certain federal reserve notes in violation of former §§ 264, 265 and 268 of this title against counterfeiting and for conspiring with others to commit an offense by unlawfully possessing, transferring, and using, with intent to defraud, falsely made, forged, and counterfeit obligations of the United States. U. S. v. Sorcey, C.C.A.7 (Wis.) 1945, 151 F.2d 899, certiorari denied 66 S.Ct. 821, 327 U.S. 794, 90 L.Ed. 1021. Conspiracy 47(11); Counterfeiting 18

Evidence justified conviction for "conspiracy" of defendants to have in their possession and under their control counterfeit coins and to attempt to pass, utter and sell such coins as true and genuine. Reavis v. U.S., C.C.A.10 (Okla.) 1939, 106 F.2d 982. Conspiracy 47(3.1)

Evidence sustained conviction of conspiracy to possess, pass, and utter counterfeit $10 silver certificates of United States government. U.S. v. Corso, C.C.A.7 (Ill.) 1938, 100 F.2d 604. Conspiracy 47(3.1)

Evidence was sufficient to sustain conviction on count indictment charging conspiracy to keep in possession and conceal and to pass and utter counterfeit notes. Maugeri v. U.S., C.C.A.9 (Cal.) 1935, 80 F.2d 199. Conspiracy 47(3.1)

Evidence sustained conviction of engaging in conspiracies to possess and sell counterfeited obligations of United States, where it showed that defendant was driver of automobile wherein negotiations for sale of counterfeit notes were within his hearing conducted between government agent and convicted codefendant, wherein money was paid for purchase of notes, and by which, with defendant still driving, counterfeit bills were later delivered to purchaser. Simon v. U.S., C.C.A.6 (Mich.) 1935, 78 F.2d 454. Conspiracy 47(3.1); Counterfeiting 18

Evidence in prosecution for conspiracy and for substantive offense of selling counterfeit war savings stamps sustained conviction. Zottarelli v. U. S., C.C.A.6 (Ohio) 1927, 20 F.2d 795, 5 Ohio Law Abs. 584, certiorari denied 48 S.Ct. 159, 275 U.S. 571, 72 L.Ed. 432. Conspiracy 47(3.1); Counterfeiting 18

Defendants' confessions that plates for counterfeiting were thrown into river were sufficient proof of corpus delicti, when corroborated and corroboration was sufficient. Litkofsky v. U.S., C.C.A.2 (N.Y.) 1925, 9 F.2d 877. Criminal Law 535(2)

Evidence justified finding of possession of counterfeit plates and use and showed conspiracy to violate former § 264 of this title against counterfeiting. Litkofsky v. U.S., C.C.A.2 (N.Y.) 1925, 9 F.2d 877. Conspiracy 47; Counterfeiting 18

Evidence sustained conviction for conspiracy involving possession and passing of counterfeit federal reserve notes. U. S. v. Boyance, E.D.Pa.1963, 215 F.Supp. 390. Conspiracy 47(3.1)

Evidence sustained conviction for conspiring with juvenile and others to transfer to juvenile counterfeited twenty dollar notes with intent that they be passed as true and genuine, with possessing counterfeit twenty dollar note with intent to defraud and with transferring to juvenile counterfeited twenty dollar note with intent that it be passed as true and genuine. U. S. v. Ross, E.D.Pa.1962, 203 F.Supp. 100. Conspiracy 47(3.1); Counterfeiting 18

733. Currency offenses, sufficiency of evidence

Evidence was sufficient to sustain convictions of conspiracy to structure currency transactions, structuring currency transactions, money laundering and distribution of crack cocaine for scheme in which money obtained through illegal drug activity was wired across country under different aliases and in split transactions so as to avoid currency transaction reporting requirements. U.S. v. Walcott, C.A.8 (Minn.) 1995, 61 F.3d 635, rehearing and suggestion for rehearing en banc denied, certiorari denied 116 S.Ct. 953, 516 U.S. 1132, 133 L.Ed.2d 877. Conspiracy 47(3.1); Controlled Substances 76; United States 34

Defendant's conviction for conspiracy to obstruct currency transaction reporting (CTR) requirements was supported by coconspirator's testimony that he received $42,000 from defendant, who ran drug distribution conspiracy, to purchase property, that coconspirator titled property in his name and set up fictitious lease to defendant, that defendant's initial payment of $13,000 caused issuance of report upon deposit, that, thereafter, defendant gave coconspirator payments of $10,000 or less, that coconspirator funneled payments through his nephew's produce center, which, as grocery enterprise, was exempt from CTR requirements, and that coconspirator handled subsequent transactions for defendant in similar manner. U.S. v. Winfield, C.A.4 (Va.) 1993, 997 F.2d 1076. Conspiracy 47(6)

734. Customs offenses, sufficiency of evidence

Evidence that defendant talked to another about the purchase and sale of a particular weapon, that defendant was present and overheard many of the conversations between the purchaser and another which led to the sale of guns, that defendant was aware that the purchaser was not a resident of United States, and that defendant personally sold the purchaser one weapon was sufficient to sustain defendant's conviction for conspiracy to illegally export firearms. U. S. v. Cruz, C.A.9 (Cal.) 1976, 536 F.2d 1264. Conspiracy 47(3.1)

In prosecution for conspiracy to export platinum without license in violation of Proc. No. 2413, evidence made a jury case as to all defendants. U.S. v. Rosenberg, C.C.A.2 (N.Y.) 1945, 150 F.2d 788, certiorari denied 66 S.Ct. 90, 326 U.S. 752, 90 L.Ed. 451, certiorari denied 66 S.Ct. 91, 326 U.S. 752, 90 L.Ed. 451. Conspiracy 48.1(2.1)

Evidence supported conviction of president of a domestic corporation, who was also the New York representative of a German corporation, of exporting platinum group metals without licenses in violation of Presidential Proclamation and of conspiracies to export such metals, based on a shipment of such metals to a consignor in Colombia under licenses issued in name of company other than one of which defendant was president. U.S. v.

Kertess, C.C.A. 2 1944, 139 F.2d 923, certiorari denied 64 S.Ct. 847, 321 U.S. 795, 88 L.Ed. 1084. War And National Emergency 514; Conspiracy 47(3.1)

Evidence supported conviction of president of domestic corporation, who was also New York representative of a German corporation, of exporting platinum group metals without license in violation of Presidential Proclamation and of conspiracy to export such metals, based on delivery of rhodium to one who thereafter sailed to Germany with the metals in her possession, as against contention that defendant was at most a mere seller of rhodium, with knowledge of an intended unlawful act by buyer. U.S. v. Kertess, C.C.A. 2 1944, 139 F.2d 923, certiorari denied 64 S.Ct. 847, 321 U.S. 795, 88 L.Ed. 1084. War And National Emergency 514; Conspiracy 47(3.1)

Even if affidavit made at request of federal income revenue agent by defendant who was president of domestic corporation and also the New York representative of a German corporation prior to time defendant had been charged with any crime constituted an admission requiring corroboration to warrant of conviction of exporting platinum group metals without license in violation of a Presidential Proclamation or of conspiracy to export such metals, evidence amply corroborated defendant's affidavit. U.S. v. Kertess, C.C.A. 2 1944, 139 F.2d 923, certiorari denied 64 S.Ct. 847, 321 U.S. 795, 88 L.Ed. 1084. Criminal Law 409(6.1)

Evidence supported conviction of individual defendant and corporate defendant which was organized by individual defendant of conspiring to bring to United States diamonds that were cut in Holland or Belgium under false declaration that they were cut in Germany and to cause diamonds to be paid for without securing requisite license therefor. U.S. v. Von Clemm, C.C.A.2 (N.Y.) 1943, 136 F.2d 968, certiorari denied 64 S.Ct. 81, 320 U.S. 769, 88 L.Ed. 459. Conspiracy 47(3.1)

Conviction for conspiracy to export arms was not sustained as to one employed on ship as cabin boy. Kuhn v. U.S., C.C.A.9 (Cal.) 1928, 26 F.2d 463, certiorari denied 49 S.Ct. 11, 278 U.S. 605, 73 L.Ed. 533. Conspiracy 47(3.1)

Evidence was sufficient for conspiracy to steal arms furnished for the army and to export arms to Mexico without license. Holmes v. U.S., C.C.A.5 (Tex.) 1920, 267 F. 529, certiorari denied 41 S.Ct. 13, 254 U.S. 640, 65 L.Ed. 452.

Evidence was insufficient to support conviction in a prosecution against an examiner at the appraiser's stores for conspiring to defraud the government. Stager v. U.S., C.C.A.2 (N.Y.) 1916, 233 F. 510, 147 C.C.A. 396. Conspiracy 47

735. Defrauding United States, sufficiency of evidence--Generally

Evidence was sufficient to sustain conviction for conspiring to defraud by depriving the government of the faithful services of an army officer. U.S. v. Bayer, U.S.N.Y.1947, 67 S.Ct. 1394, 331 U.S. 532, 91 L.Ed. 1654, rehearing denied 68 S.Ct. 29, 332 U.S. 785, 92 L.Ed. 368. Conspiracy 47(6)

Evidence was sufficient to sustain convictions of an assistant United States Attorney and of an attorney in private practice for conspiring to defraud the United States of and concerning its governmental function to be honestly, faithfully, and dutifully represented in the federal courts in certain matters free from corruption, improper influence, dishonesty, or fraud. Glasser v. U.S., U.S.Ill.1942, 62 S.Ct. 457, 315 U.S. 60, 86 L.Ed. 680, rehearing denied 62 S.Ct. 629, 315 U.S. 827, 86 L.Ed. 1222, rehearing denied 62 S.Ct. 637, 315 U.S. 827, 86 L.Ed. 1222. Conspiracy 47(6)

There was sufficient evidence of defendant's knowledge of bid-rigging agreements to support his conviction for conspiracy to violate Sherman Antitrust Act and to commit fraud; letter prepared for defendant's signature same day as agreement on one contract, raising bid on contract, invited inference that defendant knew bid was being

raised pursuant to illegal agreement, there was testimony that defendant was present and taking part in discussion at meeting in which agreement on contract was discussed and amended and that defendant wrote down the agreement, testimony that defendant was prominent conspirator's contact in United States and testimony implying that defendant knew bidding process had been subverted, and there was evidence that defendant was present at numerous meetings at which bids were rigged or agreements were discussed. U.S. v. Anderson, C.A.11 (Ala.) 2003, 326 F.3d 1319, rehearing and rehearing en banc denied 71 Fed.Appx. 824, 2003 WL 21432589, certiorari denied 124 S.Ct. 178, 540 U.S. 825, 157 L.Ed.2d 46. Conspiracy 47(3.1); Monopolies 31(2.4)

Evidence was sufficient to support conviction for conspiracy to defraud the United States; testimony and other evidence showed that defendant and coconspirators discussed all business transactions, that they discussed acquiring bank, that they considered coconspirators' conflict of interest in owning another company doing business with the bank, which was against banking regulations, that defendant agreed to acquire other company to avoid the conflict of interest, that defendant did not use any of his own money to purchase the company, that coconspirators received secret payments from company after defendant's purchase, and that neither defendant nor coconspirators revealed company's relationship to coconspirators when they sought approval to purchase the bank from the Office of the Comptroller of the Currency (OCC). U.S. v. Wintermute, C.A.8 (Mo.) 2006, 443 F.3d 993.

Evidence was sufficient to support finding that stolen government items found in defendant's home were being used by defendant, as well as by his wife, a co-conspirator, as required to sustain conviction for conspiracy to defraud the United States; evidence demonstrated that defendant took several affirmative steps to secure a stolen laptop computer for his son, and that defendant obtained the computer through the agreement and cooperation of his wife. U.S. v. Mellen, C.A.D.C.2004, 393 F.3d 175, 364 U.S.App.D.C. 152. Conspiracy 47(6)

Evidence was sufficient to submit to jury charges that mine owner conspired to make false statements, and willfully made or aided and abetted making of false statements on forms certifying that miners had received training required by Federal Mine Safety and Health Act of 1977; although owner did not sign forms, she directly benefitted from savings realized from falsifying information, gave forms containing false certifications to employee to fill out further information about miners, and had access to all relevant information. U.S. v. Turner, C.A.4 (Va.) 1996, 102 F.3d 1350. Fraud 69(6)

Convictions for conspiracy to defraud the Food and Drug Administration (FDA) were sustained by evidence that defendant and coconspirator, knowing their marketing scheme contravened the law, repeatedly instructed persons to whom they sent unauthorized literature touting medicinal powers of their products to conceal use and possession of this information to prevent FDA's discovery of their unlawful activities, and that defendant helped to organize and became distributor in new company selling same products after FDA began investigating old company's distribution of those products, which showed defendant's agreement to obstruct FDA's lawful function of regulating marketing and distribution of medical devices and drugs; showing of actual contact between defendant and FDA or its agents was not required. U.S. v. Ballistrea, C.A.2 (N.Y.) 1996, 101 F.3d 827, certiorari denied 117 S.Ct. 1327, 520 U.S. 1150, 137 L.Ed.2d 488. Conspiracy 47(6)

Evidence of defendant's position in the Department of Housing and Urban Development and evidence of memorandum written by someone who had spoken to someone who had spoken to one of defendant's alleged conspirators stating that the conspirator's friend in the Department had indicated that problems with project for which funds were sought could be favorably handled was insufficient to show that defendant conspired to defraud the United States by facilitating decisions favorable to the project. U.S. v. Dean, C.A.D.C.1995, 55 F.3d 640, 312 U.S.App.D.C. 75, rehearing in banc denied, certiorari denied 116 S.Ct. 1288, 516 U.S. 1184, 134 L.Ed.2d 232. Conspiracy 47(6)

Defendant's conviction for conspiracy to defraud the government based on improper use of her position at the Department of Housing and Urban Development to facilitate waiver of rent regulations for friend's client was supported by friend's testimony that part of his job was to act as advocate on behalf of the client with the defendant,

evidence that defendant was in a position to make decisions regarding waiver of rent regulations for rehabilitation projects, that friend met with defendant regarding the project, that Department reversed initial position and approved the waivers, and that defendant authorized the use of the Secretary's name in connection with the issuance of the memorandum granting the petition. U.S. v. Dean, C.A.D.C.1995, 55 F.3d 640, 312 U.S.App.D.C. 75, rehearing in banc denied, certiorari denied 116 S.Ct. 1288, 516 U.S. 1184, 134 L.Ed.2d 232. Conspiracy 47(6)

Defendant's conviction for conspiracy based on his role in scheme in which fraudulent loan applications were submitted to federally insured bank was supported by testimony of defendant, customers, bank employees, and others which indicated that defendant, two fellow employees at dealership, and bank loan officer were involved in ongoing series of offenses including bribing bank official and making false statements for purpose of influencing federally insured bank and that offenses were committed routinely in order to obtain loans so that dealership's customers could purchase automobiles with funds obtained from bank. U.S. v. Spears, C.A.6 (Ky.) 1995, 49 F.3d 1136. Conspiracy 47(4)

Conviction of defendant, who was attorney involved in transaction, in which savings bank purchased interest in real estate venture from investors who then used portion of purchase price as down payment on purchase of "real estate owned" (REO) from bank, for conspiracy to defraud United States was not supported by sufficient evidence as there was insufficient evidence that transaction was illegal "cash for trash" scheme; only evidence of value of property owned by real estate venture indicated value of at least $4 million, bank paid $753,000 for 45% interest in venture, and investors' 20% down payment on bank's REO complied with federal regulations requiring that bank provide no more than 80% of financing of purchase price for REO. U.S. v. Beuttenmuller, C.A.5 (Tex.) 1994, 29 F.3d 973. Conspiracy 47(6)

Evidence was sufficient to support jury's determination that defendant conspired to "defraud United States" in violation of statute by passing law enforcement information to coconspirator who avoided detection of illegal book making activity; as law enforcement officer at time of conspiracy, defendant was in unique position of trust and therefore was able to obtain sensitive information regarding criminal investigations, defendant knew that coconspirator was bookmaker who would likely use information to avoid detection, and defendant's act of informing coconspirator about investigation could properly be characterized as a leak of sensitive information thus demonstrating intent to dishonestly obstruct lawful government function. U.S. v. Murphy, C.A.8 (Mo.) 1992, 957 F.2d 550. Conspiracy 47(6)

There was sufficient evidence of existence of conspiracy and of defendant's participation in that conspiracy to support his conviction of conspiring to defraud the United States, where evidence included defendant's admission that he had opened two Swiss bank accounts under assumed names, his signature authority over 20 additional accounts under names of various fictitious persons, his directorship of corporation used to channel money from other businesses, and his failure to report his significant authority over Swiss accounts as required by law. U.S. v. Sturman, C.A.6 (Ohio) 1991, 951 F.2d 1466, rehearing denied, certiorari denied 112 S.Ct. 2964, 504 U.S. 985, 119 L.Ed.2d 586, post-conviction relief denied. Conspiracy 47(6)

Evidence was sufficient to support conviction of real estate developer on charges of conspiracy, misapplication of savings and loans funds and mail fraud, where testimony removed all doubt of his knowing participation in fraud and it could be inferred that developer had intended to defraud and that he had motive to defraud. U.S. v. Grandinetti, C.A.7 (Ill.) 1989, 891 F.2d 1302, certiorari denied 110 S.Ct. 1534, 494 U.S. 1060, 108 L.Ed.2d 773. Conspiracy 47(3.1); Postal Service 49(11)

Evidence was sufficient to sustain defendant's convictions of conspiring to make false statements to Federal Aviation Administration and three substantive counts of making false statements to FAA in connection with defendant's submission of temporary airman's certificate for applicant; witness testified that defendant, who was FAA inspector, prepared applicant's temporary airman's certificate at applicant's home in witness' presence and that

defendant and applicant discussed what aircraft registration number they would use as check flight aircraft in falsified form, defendant admitted in affidavit, voluntarily signed, that he did not give applicant check flights as indicated on certificates submitted to FAA, and there was compelling evidence that test flights in question could not have been given aboard aircraft identified in certificates. U.S. v. Hollifield, C.A.11 (Fla.) 1989, 870 F.2d 574. Conspiracy 47(6); Fraud 69(5)

Evidence established defendant's agreement with others to aid and abet procurement of false birth certificates by aliens, established overt acts carried out by defendant and others in furtherance of illegal purpose, established defendant's knowing procurement or attempt to procure false evidence of citizenship, and, therefore, supported conviction for conspiracy to aid and abet knowing procurement or attempted procurement of false evidence of citizenship. U.S. v. Martinez, C.A.9 (Cal.) 1986, 806 F.2d 945, certiorari denied 107 S.Ct. 2197, 481 U.S. 1056, 95 L.Ed.2d 852. Conspiracy 47(6)

Evidence, which established that defendants' company had fraudulently overstated its expenses misrepresenting how profitable its government contract had become, that the sale of the defendants' company was a sham carried out solely to evade federal income taxes on the contract profits and that the defendants' company falsely certified on each bid document that it was small and thus eligible to bid on contracts set aside for small businesses, was sufficient to support the defendants' convictions on charges arising from a conspiracy to defraud various federal agencies. U.S. v. Barnette, C.A.11 (Fla.) 1986, 800 F.2d 1558, rehearing denied 807 F.2d 999, certiorari denied 107 S.Ct. 1578, 480 U.S. 935, 94 L.Ed.2d 769. Conspiracy 47(6)

Evidence of hospital controller's knowledge of and participation in scheme of hospital administrator to defraud government was sufficient to sustain conviction of conspiracy to defraud government in connection with federally insured multimillion dollar mortgage loan obtained by hospital for remodeling and expansion. U.S. v. Alemany Rivera, C.A.1 (Puerto Rico) 1985, 781 F.2d 229, certiorari denied 106 S.Ct. 1469, 475 U.S. 1086, 89 L.Ed.2d 725. Conspiracy 47(6)

Evidence was sufficient to sustain conviction for conspiracy to defraud the United States and for knowingly making and using false documents to obtain use of United States currency while fraudulently shifting risk of loss to United States arising out of signing by defendant, a president and majority shareholder of bank and majority shareholder of a finance company, of loan guarantee applications, conditional commitments, loan agreements and lenders' agreements which set forth requirement that funds be used for machinery and equipment, inventory and working capital of a company and in reality substantial amount of funds were used to pay off another's preexisting debts. U.S. v. Moore, C.A.7 (Ill.) 1985, 764 F.2d 476. Conspiracy 47(6); Fraud 69(5)

Although there was no direct evidence of agreement between defendants to violate the law by willfully and knowingly using proceeds from rents and other funds derived from federally insured housing project, while mortgage was in default, for purposes other than to meet actual and necessary expenses arising in connection with project, circumstantial evidence sustained conspiracy convictions. U.S. v. Norris, C.A.4 (Va.) 1984, 749 F.2d 1116, certiorari denied 105 S.Ct. 2139, 471 U.S. 1065, 85 L.Ed.2d 496. Conspiracy 47(3.1)

In view of fact that credit customer's application for home improvement loan falsely represented that he was owner of property to be improved and also misstated his existing debts and obligations, and other evidence of record, evidence was sufficient to support convictions for conspiracy to misapply monies belonging to Credit Union of America and of knowingly making false statements on application for home improvement loan. U. S. v. Boothman, C.A.10 (Kan.) 1981, 654 F.2d 700. Conspiracy 47(6); Fraud 69(5)

Although there was no specific evidence in record of explicit agreement that friend would convey defendant's offer to change his report in exchange for city voting machine repair business, substantial circumstantial evidence supported jury's conclusion that defendant, who allegedly set out to breach his promise to United States that he would impartially investigate causes of widespread malfunctioning of voting machines in city general election, and

his friend did enter into agreement with intent to defraud the United States. U. S. v. Shoup, C.A.3 (Pa.) 1979, 608 F.2d 950. Conspiracy 47(6)

Evidence, including evidence that congressman asked postal official to advise former mail hauler what competitive bid to make on contract, that official gave hauler such advice and that congressman schemed with the official and another to have the hauler reoffer his trucks to post office through companies which would only appear to be independent of hauler, supported conviction of conspiracy to defraud the United States. U. S. v. Brasco, C.A.2 (N.Y.) 1975, 516 F.2d 816, certiorari denied 96 S.Ct. 116, 423 U.S. 860, 46 L.Ed.2d 88. Conspiracy 47(6)

In prosecution for conspiracy to defraud United States, evidence that defendant divided stolen Treasury checks for purposes of negotiating them, together with other incriminating circumstances, was sufficient to support jury's finding of conscious agreement to conspire. U. S. v. Goodson, C.A.5 (Tex.) 1974, 502 F.2d 1303. Conspiracy 47(6)

Evidence that defendants, charged with conspiring to defraud the United States of lawful revenue by making destructive devices, i.e., molotov cocktails, without having paid the making tax or having filed required written application, had caused other forbidden destructive devices to be made, without registering or paying the required taxes, and use of them to burn down or blow up other buildings of defendants' competitors or enemies would be evidence of a common scheme or plan and would be relevant and competent to show an absence of mistake or accident. U. S. v. Parker, C.A.10 (Okla.) 1972, 469 F.2d 884. Criminal Law 372(6)

Evidence was sufficient to sustain conviction on three counts charging conspiracy to defraud the United States, travel in interstate commerce to carry on the unlawful activity of arson, mail fraud, aiding and abetting in commission of offense against United States and two substantive counts. Hall v. U. S., C.A.5 (Ga.) 1969, 413 F.2d 45. Conspiracy 47(6)

In prosecution for violation of this section, evidence relating to a reckless disregard of interests of licensee of Small Business Administration, an agency of the United States was sufficient to warrant finding of an intent to injure or defraud. U. S. v. Luxenberg, C.A.6 (Ohio) 1967, 374 F.2d 241. Fraud 69(5)

Evidence in prosecution for conspiracy to violate the Federal Housing Administration Law was sufficient to sustain verdict of guilty. Jacobs v. U. S., C.A.5 (Fla.) 1965, 341 F.2d 890. Conspiracy 47(3.1)

Evidence was sufficient to sustain conviction of conspiring to defraud United States and to commit offenses against United States by causing material false statements and representations to be made in connection with an application to Interstate Commerce Commission to transfer a portion of certificate of further convenience and necessity of a carrier and to accomplish and effectuate control and management in a common interest of two carriers without obtaining approval of the Commission. U. S. v. Polin, C.A.3 (N.J.) 1963, 323 F.2d 549. Conspiracy 47(6)

Evidence was sufficient to support finding of fraudulent conduct by defendants in disposition of transit company's surplus property during conversion from streetcars to buses and that fraudulent conduct was result of single, overall scheme to defraud so that all defendants could be tried en masse with acts of one being admitted against others. Isaacs v. U. S., C.A.8 (Minn.) 1962, 301 F.2d 706, certiorari denied 83 S.Ct. 32, 371 U.S. 818, 9 L.Ed.2d 58, certiorari denied 83 S.Ct. 33, 371 U.S. 818, 9 L.Ed.2d 58. Criminal Law 622.7(1)

In prosecution for conspiracy to defraud the United States with reference to negotiating of contracts for purchase and delivery of fuel oil to air base, evidence was sufficient to justify submission of conspiracy count to jury. Wagner v. U.S., C.A.5 (Fla.) 1959, 263 F.2d 877. Conspiracy 48.1(3)

In prosecution for unlawful sales of government owned wool being made into army jackets, a conspiracy to defraud the government and for making of false statements about disposition of wool serge furnished manufacturer,

evidence was sufficient to sustain conviction as to certain defendants. U. S. v. Fabric Garment Co., C.A.2 (N.Y.) 1958, 262 F.2d 631, certiorari denied 79 S.Ct. 1117, 359 U.S. 989, 3 L.Ed.2d 978. Conspiracy 47(6); Embezzlement 44(1); Fraud 69(5)

In prosecution for unlawful sales of government owned wool being made into army jackets, a conspiracy to defraud the government and for making of false statements about disposition of wool serge furnished manufacturer, evidence was insufficient to sustain conviction, as against the titular president of the manufacturer where there was no direct evidence that he knowingly assisted in the sale of the government wool to another or participated in the proceeds. U. S. v. Fabric Garment Co., C.A.2 (N.Y.) 1958, 262 F.2d 631, certiorari denied 79 S.Ct. 1117, 359 U.S. 989, 3 L.Ed.2d 978. Conspiracy 47(6); Embezzlement 44(1); Fraud 69(5)

In prosecution for unlawful sales of government owned wool being made into army jackets, a conspiracy to defraud the government and for making of false statements about disposition of wool serge furnished manufacturer, where, under the contract, duty to return unused wool remained in force unless "otherwise directed" by the Contracting Officer, evidence was insufficient to sustain burden on defendant to come forward with evidence that the contracting officer had "otherwise directed" but at most the evidence created a factual issue for the jury. U. S. v. Fabric Garment Co., C.A.2 (N.Y.) 1958, 262 F.2d 631, certiorari denied 79 S.Ct. 1117, 359 U.S. 989, 3 L.Ed.2d 978. Conspiracy 47(6); Embezzlement 44(1); Fraud 69(5)

Evidence sustained conviction for conspiring to defraud the United States by impairing, obstructing, and defeating lawful right and function of government in sale and disposal of certain salvage rope by Army Corps of Engineers. Lazarov v. U.S., C.A.6 (Tenn.) 1955, 225 F.2d 319, certiorari denied 76 S.Ct. 140, 350 U.S. 886, 100 L.Ed. 781, rehearing denied 76 S.Ct. 341, 350 U.S. 955, 100 L.Ed. 831. Conspiracy 47(6)

Evidence was insufficient to warrant jury in finding beyond a reasonable doubt that defendant knew or had reason to believe that property, which was the subject matter of sale, belonged to the United States and was therefore insufficient to sustain conviction for conspiracy to defraud the United States. Sapir v. United States, C.A.10 (N.M.) 1954, 216 F.2d 722, affirmed in part, vacated in part on other grounds 75 S.Ct. 422, 348 U.S. 373, 99 L.Ed. 426. Conspiracy 47(6)

In prosecution of United States Marshal, deputy United States Marshal, and friend of Marshal for alleged conspiracy to defraud the United States, on ground that they conspired to obtain money from one convicted of a federal offense by granting him special privileges with respect to his imprisonment, evidence was sufficient to warrant jury in finding existence of a single over-all plan in which all participated, justifying conviction. Carrigan v. U. S., C.A.9 (Cal.) 1952, 197 F.2d 817, certiorari denied 73 S.Ct. 106, 344 U.S. 866, 97 L.Ed. 672. Conspiracy 47(6)

Proof showing a conspiracy to defraud Federal Surplus Commodities Corporation authorized conviction under charge of conspiracy to defraud United States, since such corporation was an agency of the United States and fraud upon such an agency was fraud upon the United States. U.S. v. Samuel Dunkel & Co., C.A.2 (N.Y.) 1950, 184 F.2d 894, certiorari denied 71 S.Ct. 491, 340 U.S. 930, 95 L.Ed. 671. Conspiracy 43(12)

Evidence disclosing that defendant, a nonveteran, was the real purchaser of surplus war materials from the War Assets Administration, that he asked another defendant to file a mail order request for purchase of the property purporting to be for a veteran and that when such was done, all defendants participated in misrepresentations and concealments charged, supported conviction of conspiracy to acquire and for fraudulent acquisition of surplus war materials from the Administration. DeBon v. U.S., C.A.9 (Cal.) 1949, 175 F.2d 439. Conspiracy 47(6); Fraud 69(5)

Evidence authorized conviction of covering up and concealing by trick, scheme and device a material fact within jurisdiction of War Shipping Administration, concerning a shipment of meat, and of conspiracy. Chevillard v.

18 U.S.C.A. § 371

U.S., C.C.A.9 (Cal.) 1946, 155 F.2d 929. Conspiracy 47(6); Fraud 69(5)

Evidence supported conviction of corporate defendant, its president, and three supervisory employees on charge of conspiring to defraud the federal government in its prosecution of the war by defective production of bombs and grenades, by misrepresentations of munitions to government inspectors, by employment of schemes to avoid compliance with specifications, and by presentment of false claims to federal government. U.S. v. Antonelli Fireworks Co., C.C.A.2 (N.Y.) 1946, 155 F.2d 631, certiorari denied 67 S.Ct. 49, 329 U.S. 742, 91 L.Ed. 640, rehearing denied 67 S.Ct. 182, 329 U.S. 826, 91 L.Ed. 701. Conspiracy 47(6)

Evidence was sufficient to take case to jury on question of existence of conspiracy between general sales manager for corporation engaged in fabricating canvas items and administrative officer in employ of Army Air Forces to defraud the United States by using such officer's controlling influence in the letting of government contracts so as to enable bidders who would deal through such sales manager to obtain contracts at exorbitant prices, regardless of the merits of other bids. Winebrenner v. U.S., C.C.A.8 (Mo.) 1945, 147 F.2d 322, certiorari denied 65 S.Ct. 1197, 325 U.S. 863, 89 L.Ed. 1983. Conspiracy 48.1(3)

Evidence was sufficient to take to jury question whether mayor of city participated in conspiracy to defraud United States by using Works Progress Administration laborers to raze brick structures, purchased by assistant city engineer, and remove and clean bricks, and selling them to city with mayor's approval as ex officio member of Board of Public Works. U.S. v. Holt, C.C.A.7 (Ind.) 1939, 108 F.2d 365, certiorari denied 60 S.Ct. 616, 309 U.S. 672, 84 L.Ed. 1018, rehearing denied 60 S.Ct. 806, 309 U.S. 698, 84 L.Ed. 1037. Conspiracy 48.1(3)

Conviction for conspiracy to defraud government by false representations that corporation was entitled to receive surplus goods under contract was sustained by evidence. Falter v. U.S., C.C.A.2 (N.Y.) 1928, 23 F.2d 420, certiorari denied 48 S.Ct. 528, 277 U.S. 590, 72 L.Ed. 1003. Conspiracy 47

Evidence was insufficient to show fraudulent conspiracy to create isolated tracts by procuring other classes of entries. U.S. v. Bighorn Sheep Co., D.C.Wyo.1925, 9 F.2d 192. Public Lands 120(16)

Evidence was sufficient to sustain conviction for conspiracy to defraud United States, by substituting inferior materials in army service hats. Gilson v. U.S., C.C.A.2 (N.Y.) 1919, 258 F. 588, 169 C.C.A. 528, certiorari denied 40 S.Ct. 119, 251 U.S. 555, 64 L.Ed. 412. Conspiracy 47

Evidence was sufficient to support defendants' convictions for conspiring to defraud United States by obstructing government's administration and enforcement of Special Administrative Measures (SAMs) limiting prisoner's communication and prohibiting him from communicating with news media; as prisoner's attorney, defendant signed affirmations saying she and her staff would comply with SAMs, during videotaped visits with prisoner, two defendants surreptitiously read to prisoner letters from third parties, including third defendant, and defendants received and passed on prisoner's dictated letters and conveyed his messages to news media. U.S. v. Sattar, S.D.N.Y.2005, 395 F.Supp.2d 79. Conspiracy 47(6)

Evidence supported corporation's conviction for conspiracy to defraud government and Bureau of Alcohol, Tobacco and Firearms by providing false and fraudulent documents to Bureau to obtain assault rifles for purpose of resale; videotape provided evidence sufficient to support inference that corporation's agent and employees were aware of ban on rifles, understood how seller obtained rifles, and agreed to participate in plan to purchase and resell rifles. U.S. v. McCabe, C.D.Ill.1992, 792 F.Supp. 616. Conspiracy 47(6)

Conviction for conspiracy to defraud United States was supported by evidence that second bribe was paid to defendant in limitations period, that defendant discussed fraudulent examination of coconspirator's tax returns with coconspirator during limitations period, and that tax returns were examined during limitations period; jury was instructed that defendant could not be convicted unless act in furtherance of conspiracy occurred within limitations

period. U.S. v. Kale, E.D.Pa.1987, 661 F.Supp. 724. Conspiracy 47(6)

Conviction of criminal conspiracy to defraud the United States requires finding only that defendants entered into the unlawful agreement and that some overt act, not necessarily in itself harmful to the Government, was committed in furtherance of the conspiracy but such conviction does not require proof that conspiracy was ever effectuated or that Government suffered any actual damages. U. S. v. Kates, E.D.Pa.1976, 419 F.Supp. 846. Conspiracy 24.10

Evidence sustained conviction of conspiracy among a financing corporation, its branch office manager, store owners, and their sales manager to defraud the United States by making false documents for purpose of influencing action of Federal Housing Administration to secure insurance under modernization of homes provisions of National Housing Act, § 1701 et seq. of Title 12. U.S. v. Thomas, E.D.Wash.1943, 52 F.Supp. 571. Conspiracy 47(6)

Where a corporate defendant and others were charged with conspiring to defraud the United States of money appropriated in connection with the National Industrial Recovery Act, Act of June 16, 1933, c. 90, 48 Stat. 195, by favoring a particular building material and closing specifications with respect to it so that other materials of equal efficiency were excluded, but the government had no proof of any agreed design to defraud the government, particular material admittedly had advantages for use in construction work, and indictment had been dismissed as to other defendants, the government did not make a submissible case as against corporate defendant. U.S. v. Haskins, W.D.Mo.1941, 40 F.Supp. 219. Indictment And Information 144.1(1)

Existence of single conspiracy to defraud government through commingling of funds in warehouse bank was supported by evidence that all defendants had reason to believe that their own benefits derived from operation were probably dependent upon success of entire venture. U.S. v. Anderson, C.A.9 (Or.) 2004, 94 Fed.Appx. 487, 2004 WL 604937, Unreported, certiorari denied 125 S.Ct. 192, 543 U.S. 863, 160 L.Ed.2d 105, rehearing denied, rehearing denied 125 S.Ct. 493, 543 U.S. 984, 160 L.Ed.2d 367, certiorari denied 125 S.Ct. 203, 543 U.S. 863, 160 L.Ed.2d 105. Conspiracy 47(6)

736. ---- Alteration of obligations of United States, defrauding United States, sufficiency of evidence

Assuming arguendo, in prosecution for conspiring (a) to defraud the United States government by stealing, forging and negotiating United States treasury checks and (b) to steal state welfare checks from the United States mails, that the evidence was insufficient to establish the two substantive crimes charged as the object of the conspiracy, the evidence was nevertheless amply sufficient to establish both the conspiracy alleged and the numerous overt acts in furtherance of that unlawful agreement. U. S. v. Williams, C.A.5 (Ga.) 1973, 474 F.2d 1047. Conspiracy 47(3.1); Conspiracy 47(6)

In a prosecution for conspiracy falsely to make and alter United States War Savings Certificates and United States War Savings Certificate Stamps and to publish, utter, and sell the altered obligations, evidence that defendant had in his possession altered stamps, and that he had pleaded guilty to an indictment charging him with possessing altered stamps with the intention to pass and sell them, was insufficient to sustain conviction of conspiracy to sell or alter such stamps. Peterson v. U.S., C.C.A.9 (Or.) 1921, 274 F. 929. Conspiracy 47(3.1)

737. ---- False and fraudulent claims, defrauding United States, sufficiency of evidence

In prosecution against corporation and its president for conspiracy to defraud United States and for presentation of false invoices to War Shipping Administration, evidence that president was promoter of a long and persistent scheme to defraud, that making of false invoices was a part of such project, that makers of false invoices were president's subordinates, that his family was chief owner of business, that he was manager of business, that his chief subordinates were his brothers-in-law, and that he had charge of office where invoices were made out, warranted

conviction of president on charge of presentation of false invoices as an aider and abettor, whether or not the substantive offense of presenting false invoices was done pursuant to the conspiracy. Nye & Nissen v. U.S., U.S.Cal.1949, 69 S.Ct. 766, 336 U.S. 613, 93 L.Ed. 919. United States 123

Jury's finding that alleged conspirator who referred at least ten aliens to individual who assisted them in obtaining fraudulent Social Security cards possessed requisite knowledge of and participated in conspiracy to commit identification and Social Security fraud was sufficiently supported by evidence, including evidence that he personally handed aliens' passports and money to this individual, and that six of fraudulent Social Security cards were mailed to his business address. U.S. v. Ndiaye, C.A.11 (Ga.) 2006, 434 F.3d 1270, rehearing and rehearing en banc denied 2006 WL 644011, petition for certiorari filed 2006 WL 1583504. Conspiracy 47(6)

Determination that defendant, who was bank president, knew of purpose of conspiracy to defraud Department of Housing and Urban Development (HUD), and that he willingly and knowingly played key role as participant in it, as required for conviction for conspiring to defraud United States, was supported by evidence that defendant misrepresented that bank had provided coconspirators private financing required to obtain money from HUD, and that private financing had paid for equipment. U.S. v. Gjerde, C.A.8 (Minn.) 1997, 110 F.3d 595, rehearing and suggestion for rehearing en banc denied, certiorari denied 118 S.Ct. 367, 522 U.S. 949, 139 L.Ed.2d 285. Conspiracy 47(6)

Evidence that defendant's corporation was paid for new oxygen concentrators provided to Medicare patients even though corporation's records showed that it had never purchased or delivered new machines, that claims for those machines were personally delivered to codefendant, who was working as Medicare claims processor and who was also employed by corporation to work on Medicare claims, and that codefendant processed claims without control number, and instructed subordinates to pay claims that had been determined to be nonpayable was sufficient to support conviction for conspiracy to defraud United States. U.S. v. Humphrey, C.A.7 (Ill.) 1994, 34 F.3d 551. Conspiracy 47(6)

Evidence that defendant who was employed by health maintenance organization as chief financial officer and executive vice-president entered into scheme in which defendant and coconspirator conspired to obtain for coconspirator's benefit certain Medicare funds, contrary to Government's understanding that coconspirator would have no access or benefit of those funds, was sufficient to support convictions for conspiracy, wire fraud, concealment of material facts and theft involving program receiving federal funds. U.S. v. Fernandez, C.A.11 (Fla.) 1990, 905 F.2d 350. Conspiracy 47(5); Fraud 69(5); Larceny 55; Telecommunications 1018(4)

Evidence that defendant admitted that he agreed with principal to falsify milk and orangeade sales invoices and to lie to the county superintendent to hide the fact that some orangeade was being provided in place of milk in school lunch program and that he knew that the federal government reimbursement of the school lunch program was involved was sufficient to sustain defendant's conviction for conspiracy to defraud the United States. U. S. v. Jordan, C.A.5 (Ala.) 1980, 627 F.2d 683. Conspiracy 47(6)

Testimony that salesman of correspondence school classes solicited enrollment in the courses, that he approached various prospective enrollees with the president of the school, and that he aided and abetted the principal in presenting the Veterans Administration with fraudulent claims was sufficient to sustain his conviction for conspiracy to defraud the Government. U. S. v. Young, C.A.10 (Utah) 1978, 575 F.2d 828. Conspiracy 47(6)

Evidence was sufficient to establish a conspiracy to defraud the United States in respect to submission of a false cost overrun claim on a foreign aid project, notwithstanding contention that fraud, if any, was on foreign government in that claim was paid entirely by that government due to exhaustion of loan funds from United States, where interest of the United States in the manner in which project was being conducted was not only limited to accounting for United States funds invested in project, but extended to seeing that entire project was administered

honestly and efficiently and without corruption and waste. U. S. v. Hay, C.A.10 (Colo.) 1975, 527 F.2d 990, certiorari denied 96 S.Ct. 1666, 425 U.S. 935, 48 L.Ed.2d 176. Conspiracy 47(6)

Evidence in prosecution of various defendants for conspiracy to defraud Department of Housing and Urban Development by rigging estimates and inflating billings in order to destroy competitive bidding on moving contracts for redevelopment authority for costs of moving displaced businesses was insufficient to show that attorney for some of displaced businesses participated in conspiracy or had "unity of purpose" or "common design" with other alleged conspirators or necessary specific intent to defraud Government. U. S. v. Kates, C.A.3 (Pa.) 1975, 508 F.2d 308. Conspiracy 47(6)

Evidence supported conviction of defendant, former vice-president and treasurer of savings and loan association, for conspiracy to misapply and misapplication of $244,250 of association's funds in check kiting scheme under which personal checks of customer of association were exchanged for checks drawn on association. U. S. v. Kaczmarek, C.A.7 (Ill.) 1974, 490 F.2d 1031. Building And Loan Associations 23(8); Conspiracy 47(11)

In prosecution for unlawfully and knowingly making false statements as to material facts to government agency, and for conspiracy, evidence was insufficient to sustain conviction of physician defendant for conspiracy though it was sufficient to sustain conviction of nonphysician defendant, for falsely certifying that physician had supervised rendition of physical therapy services, and for conspiracy. U.S. v. Peterson, C.A.5 (Tex.) 1974, 488 F.2d 645, certiorari denied 95 S.Ct. 49, 419 U.S. 828, 42 L.Ed.2d 53. Conspiracy 47(6)

Evidence sustained conviction for conspiracy to violate § 287 of this title by presenting claims to education and training allowances to the Veterans Administration knowing them to be false and fraudulent. U. S. v. Chicago Professional Schools, Inc., C.A.7 (Ill.) 1961, 290 F.2d 285. Conspiracy 47(6)

Evidence was insufficient to sustain conviction of a corporation, and its president, of conspiracy to present a false and fraudulent statement to the federal government in connection with a claim arising out of termination of government contracts for the convenience of the government. Maxwell v. U.S., C.A.6 (Mich.) 1960, 277 F.2d 481. Conspiracy 47(6)

Evidence sustained convictions for conspiracy, and for willfully making or using false writings or documents in a matter within the jurisdiction of a department of the United States. Ebeling v. U.S., C.A.8 (Mo.) 1957, 248 F.2d 429, certiorari denied 78 S.Ct. 334, 355 U.S. 907, 2 L.Ed.2d 261. Conspiracy 47(6); Fraud 69(5)

In prosecution of two corporate defendants and five individual defendants on charges of conspiracy to defraud United States by delivering under contracts with Federal Surplus Commodities Corporation rejected egg powder and conspiracy to defraud United States by obtaining payment of certain false claims, evidence against one of the individual defendants was sufficient to support his conviction on both charges. U.S. v. Samuel Dunkel & Co., C.A.2 (N.Y.) 1950, 184 F.2d 894, certiorari denied 71 S.Ct. 491, 340 U.S. 930, 95 L.Ed. 671. Conspiracy 47(6)

Evidence sustained verdict finding that defendant had presented false claims against government for stevedoring work and had conspired to commit such offense. U. S. v. Toner, C.A.3 (Pa.) 1949, 173 F.2d 140. United States 123; Conspiracy 47(6)

In prosecution for conspiracy to defraud the United States, for whom employer was building three vessels, by making false claims as to amount of work done, evidence sustained finding that there was one general conspiracy as alleged, and not several separate ones. McGunnigal v. U. S., C.C.A.1 (Mass.) 1945, 151 F.2d 162, certiorari denied 66 S.Ct. 267, 326 U.S. 776, 90 L.Ed. 469. Conspiracy 47(6)

In prosecution for conspiracy to defraud the United States, for whom employer was building three vessels, by

making false claims as to amount of work done, evidence sustained finding that defendants knew that fictitious labor charges would be reflected in higher costs to the United States and that United States would ultimately be the victim of their fraud. McGunnigal v. U. S., C.C.A.1 (Mass.) 1945, 151 F.2d 162, certiorari denied 66 S.Ct. 267, 326 U.S. 776, 90 L.Ed. 469. Conspiracy 47(6)

In prosecution for conspiring to commit an offense against the United States and for presenting false claims concerning the source of gold and time of its production in connection with sale of gold to the mint at San Francisco, evidence sustained conviction. Fuller v. U.S., C.C.A.9 (Cal.) 1940, 110 F.2d 815, certiorari denied 61 S.Ct. 29, 311 U.S. 669, 85 L.Ed. 430. Conspiracy 47(6); United States 34

Evidence was sufficient for jury on question whether corporate officer conspired to defraud the United States by delivering underweight bags of cement to government project and obtaining payment of false and fraudulent claims. Mininsohn v. U.S., C.C.A.3 (N.J.) 1939, 101 F.2d 477. Conspiracy 48.1(3)

Evidence reviewed in the charge to the jury on trial of consolidated indictments and counts severally charging conspiracy to defraud the United States between contractors for public work and the government engineer officer in charge of the same, the presentation of fraudulent claims against, the embezzlement from, the United States. U.S. v. Greene, S.D.Ga.1906, 146 F. 803, affirmed 154 F. 401, 85 C.C.A. 251, certiorari denied 28 S.Ct. 261, 207 U.S. 596, 52 L.Ed. 357. Conspiracy 47(3.1)

Finding that defendant willfully participated in conspiracy to commit mail fraud and to sell prescription drugs without a license was supported by evidence that defendant falsified shipping labels and pedigree sheets to hide source of drugs, which he knowingly received from person who had no distribution license, and that defendant made false sworn statements as part of his application for distribution license. U.S. v. Fortgang, C.A.2 (N.Y.) 2003, 77 Fed.Appx. 37, 2003 WL 22134572, Unreported. Conspiracy 47(5); Conspiracy 47(12)

738. ---- Loans, defrauding United States, sufficiency of evidence

Defendant's conviction for conspiracy based on his role in scheme in which fraudulent loan applications were submitted to federally insured bank was supported by testimony of defendant, customers, bank employees, and others which indicated that defendant, two fellow employees at dealership, and bank loan officer were involved in ongoing series of offenses including bribing bank official and making false statements for purpose of influencing federally insured bank and that offenses were committed routinely in order to obtain loans so that dealership's customers could purchase automobiles with funds obtained from bank. U.S. v. Spears, C.A.6 (Ky.) 1995, 49 F.3d 1136. Conspiracy 47(4)

Evidence supported convictions of real estate agent and mortgage loan officer for conspiring to commit offense against United States and making false, fictitious, or fraudulent statements to agency of United States in connection with applications to obtain Federal Housing Administration (FHA) loans. U.S. v. Chichy, C.A.6 (Ohio) 1993, 1 F.3d 1501, certiorari denied 114 S.Ct. 620, 510 U.S. 1019, 126 L.Ed.2d 584. Conspiracy 47(3.1); Conspiracy 47(6)

Evidence demonstrated a close working relationship between defendant and major shareholder of corporation, and that defendant was more than a knowledgeable bystander to shareholder's activities in falsely representing to the Small Business Administration that the sum of the paid-in capital and paid-in surplus of corporation exceeded $500,000 in order to obtain a larger amount of financial assistance from the Administration, and therefore supported defendant's conviction of conspiracy to defraud or commit an offense against the Administration. U. S. v. Swarek, C.A.8 (Ark.) 1981, 656 F.2d 331, certiorari denied 102 S.Ct. 573, 454 U.S. 1034, 70 L.Ed.2d 478. Conspiracy 47(6)

In prosecution for conspiracy to violate section 1001 of this title by knowingly making or causing to be made false,

fictitious and fraudulent representations in an application to Small Business Administration for the guaranty of a bank loan, evidence was sufficient to support finding that defendant, who was president of lending bank, and borrower's owner conspired to misrepresent purposes for which loan proceeds were to be used, to divert proceeds from purposes for which loan was made and to conceal that fact from the Small Business Administration. U. S. v. Kramer, C.A.10 (Colo.) 1975, 521 F.2d 1073, certiorari denied 96 S.Ct. 1104, 424 U.S. 909, 47 L.Ed.2d 313. Conspiracy 47(6)

Evidence was sufficient to support conviction for conspiring to defraud the United States of its rights to have the official business of the SBA conducted honestly and impartially, to have personnel of the agency free to conduct business without exertion upon them of undue pressure and of the right to the unbiased performance of supervisory loan specialist free from bias and fraud resulting from his personal and pecuniary interest in business sought to be financed with aid of SBA guaranteed loan. U. S. v. Smith, C.A.10 (Okla.) 1974, 496 F.2d 185, certiorari denied 95 S.Ct. 225, 419 U.S. 964, 42 L.Ed.2d 179, rehearing denied 95 S.Ct. 646, 419 U.S. 1060, 42 L.Ed.2d 658. Conspiracy 47(6)

Evidence was sufficient to present questions for jury as to whether a defendant falsely represented earnings of applicant for an FHA mortgage, and as to whether such representation was made as part of a conspiracy to violate § 1010 of this title proscribing making of false statements in an FHA transaction. U. S. v. Dunn, C.A.6 (Ky.) 1962, 299 F.2d 548. Conspiracy 48.1(3); Fraud 69(6)

Proof of an agreement between a realty agent and purported purchaser of realty, that down payment check for $3,500 would be destroyed after an FHA insured loan was approved, and that purchaser would pay only whatever amount he could obtain through an FHA insured loan, would be sufficient to allow conviction of agent for conspiracy and substantive violation of § 1010 of this title proscribing marking of false statements in an FHA transaction. U. S. v. Dunn, C.A.6 (Ky.) 1962, 299 F.2d 548. Conspiracy 47(6); Fraud 69(5)

In prosecution of building contractor's salesman, evidence sustained convictions of conspiracy and of willful false representations to Federal Housing Administration of borrower's credit. U.S. v. Rosenfeld, C.A.7 (Ind.) 1956, 235 F.2d 544, certiorari denied 77 S.Ct. 226, 352 U.S. 928, 1 L.Ed.2d 163. Conspiracy 47(6); Fraud 69(5)

In prosecution for conspiracy involving fraudulent procurement of home loan guaranties by Veterans' Administration, evidence was sufficient to sustain conviction. McClanahan v. U.S., C.A.5 (Tex.) 1956, 230 F.2d 919, certiorari denied 77 S.Ct. 33, 352 U.S. 824, 1 L.Ed.2d 47. Conspiracy 47(6)

Evidence sustained conviction of real estate dealer for conspiracy to make and use a false certificate for purpose of inducing Veterans' Administration to guarantee a mortgage home loan to a veteran, and for causing false certificate to be made and used by lender, knowing that it contained fictitious statements and entries, in a matter within jurisdiction of Veterans' Administration for purpose of inducing the Veterans' Administration to guarantee loan to veteran. U. S. v. Aderman, C.A.7 (Wis.) 1951, 191 F.2d 980, certiorari denied 72 S.Ct. 366, 342 U.S. 927, 96 L.Ed. 691, rehearing denied 72 S.Ct. 552, 342 U.S. 950, 96 L.Ed. 706. Conspiracy 47(6); Fraud 69(5)

Evidence supported convictions under indictment charging violations of this section and § 1010 of this title, making it unlawful knowingly to make or cause to be made false statements to obtain loans intending that they be offered to the Federal Housing Administration for insurance, or for purpose of influencing action of that agency, and also charging a conspiracy to violate said section. Ross v. U. S., C.A.6 (Ohio) 1950, 180 F.2d 160. Conspiracy 47(6); Fraud 69(5)

In prosecution for conspiracy to defraud the United States by inducing the Veterans Administration through fraudulent representations to guarantee a home loan to veteran, evidence was sufficient for the jury and to sustain conviction. Heald v. U. S., C.A.10 (Colo.) 1949, 175 F.2d 878, certiorari denied 70 S.Ct. 101, 338 U.S. 859, 94 L.Ed. 526, certiorari denied 70 S.Ct. 102, 338 U.S. 859, 94 L.Ed. 526. Conspiracy 47(6); Conspiracy

18 U.S.C.A. § 371

48.1(3)

Proof that defendants knew that one who was acting as a broker for them in securing a loan in fraud of National Housing Act, § 1701 et seq. of Title 12, was at the time acting as a broker for a number of other persons who were also obtaining loans in fraud of said sections, and who were making false representations similar to those which defendants made, was not enough to make defendants confederates with the other applicants. United States v. Lekacos, C.C.A.2 (N.Y.) 1945, 151 F.2d 170, certiorari granted 66 S.Ct. 169, 326 U.S. 711, 90 L.Ed. 420, reversed on other grounds 66 S.Ct. 1239, 328 U.S. 750, 90 L.Ed. 1557. Conspiracy 40.1

Evidence authorized conviction of money lender of conspiracy to cause to be made or passed statements, known to be false, for purpose of influencing Federal Housing Administration to insure certain loans. C. I. T. Corp. v. U.S., C.C.A.9 (Wash.) 1945, 150 F.2d 85. Conspiracy 47(6)

Evidence authorized conviction of field manager of household implement and supply dealer of conspiracy with money lender to cause to be made or passed statements which he knew to be false for purpose of influencing action of Federal Housing Administration on applications for F.H.A. insurance on loans for installation of furnaces and hot water heaters. C. I. T. Corp. v. U.S., C.C.A.9 (Wash.) 1945, 150 F.2d 85. Conspiracy 47(6)

Evidence sustained conviction of violation of National Housing Act, § 1731(a) of Title 12, in obtaining loan on a misrepresentation, of concealing a material fact in presenting claim to government and of conspiracy. U.S. v. Uram, C.C.A.2 (N.Y.) 1945, 148 F.2d 187. Conspiracy 47(3.1); False Pretenses 49(1); United States 123

Evidence was sufficient to sustain conviction for conspiracy to make false statements to secure loans for modernization of old houses under National Housing Act, §§ 1703(a, b, g), 1731(a) of Title 12. U.S. v. Groopman, C.C.A.2 (N.Y.) 1945, 147 F.2d 782, certiorari denied 66 S.Ct. 29, 326 U.S. 745, 90 L.Ed. 445. Conspiracy 47(4)

Where applications for home modernization loans under National Housing Act, § 1701 et seq. of Title 12, were made by employees of a defendant for premises which had been deeded to borrowers by one of defendant's companies and which, after application had been made, were deeded back to another company of the defendant, evidence was sufficient to connect defendant with conspiracy to violate said sections. U.S. v. Groopman, C.C.A.2 (N.Y.) 1945, 147 F.2d 782, certiorari denied 66 S.Ct. 29, 326 U.S. 745, 90 L.Ed. 445. Conspiracy 47(3.1)

739. ---- Tax avoidance, defrauding United States, sufficiency of evidence

Evidence of the existence of, and defendant's knowing participation in, a conspiracy was sufficient to support conviction for conspiracy to defraud the Internal Revenue service (IRS) in the function of assessing and collecting taxes, though individuals working in tax consultation business each considered themselves to be independent contractors, as testimony at trial suggested that defendant controlled the business, brought in the funds, allocated how money would be spent, and decided how the business would work, which involved having clients claim personal expenses as business deductions. U.S. v. Fletcher, C.A.8 (Ark.) 2003, 322 F.3d 508. Conspiracy 47(9)

Evidence was sufficient to support defendant's conviction for conspiracy to defraud United States, where defendant failed to file income tax return and reported no legal income during six-year period when he spent more than $300,000, he made concerted efforts to conceal his expenditures by making purchases in other persons' names and structuring currency transactions to avoid filing currency transaction reports. U.S. v. Jackson, C.A.7 (Ill.) 1994, 33 F.3d 866, rehearing denied, certiorari denied 115 S.Ct. 1316, 514 U.S. 1005, 131 L.Ed.2d 197, rehearing denied 115 S.Ct. 1992, 514 U.S. 1123, 131 L.Ed.2d 878. Conspiracy 47(9)

18 U.S.C.A. § 371

Defendant's conviction for conspiracy to defraud the United States in the collection of income taxes was supported by evidence of numerous cash transactions involving defendant and person who allegedly evaded income taxes, evidence that they formed a Bahamian corporation, and evidence of currency transactions in which they engaged. U.S. v. Ayers, C.A.9 (Cal.) 1991, 924 F.2d 1468, rehearing denied. Conspiracy 47(9)

Defendant's convictions for conspiracy to defraud the Government by promoting fraudulent tax shelters and aiding and assisting in the preparation of false tax returns were supported by evidence that he spoke at seminars to generate clients for company offering tax shelters and attended seminars at which licensees of the company were informed of the tax schemes and that he otherwise participated in the creation of the tax scheme, despite his claim that he was merely an attorney providing tax advice. U.S. v. Bryan, C.A.5 (Tex.) 1990, 896 F.2d 68, rehearing denied, certiorari denied 111 S.Ct. 133, 498 U.S. 847, 112 L.Ed.2d 101, certiorari denied 111 S.Ct. 76, 498 U.S. 824, 112 L.Ed.2d 49. Conspiracy 47(9); Internal Revenue 5303

Evidence indicating that defendants and their associates consistently promoted the same tax avoidance plans using the same pyramidal sales system, whatever the name of the particular church, with the new affiliations being viewed and marketed merely as a safer and superior means for participants to avoid taxation and earned income, was sufficient, as against a claim of multiple conspiracies, to establish existence of a single overall conspiracy to defraud the United States by selling ministries in purported tax-exempt churches. U.S. v. Heinemann, C.A.2 (N.Y.) 1986, 801 F.2d 86, certiorari denied 107 S.Ct. 1308, 479 U.S. 1094, 94 L.Ed.2d 163. Conspiracy 47(6)

Finding that defendant, whom jury found guilty of conspiracy and substantive offense, was conspiring on certain date could not be sustained by testimony of several witnesses that they saw defendant prior to such date at race track with codefendant, as to whom court affirmed conviction for aiding in preparation of false-internal revenue form and conspiracy to defraud United States with respect to information required of race tracks concerning gambling winnings. U. S. v. Cantone, C.A.2 (N.Y.) 1970, 426 F.2d 902, certiorari denied 91 S.Ct. 55, 400 U.S. 827, 27 L.Ed.2d 57. Conspiracy 47(9)

Evidence was insufficient to establish that defendants entered into agreement with customers of defendants' employer for purpose of helping customers defraud Internal Revenue Service (IRS) by concealing taxable income, as element of offense of conspiracy to defraud United States; although defendants knew employer operated a rebate program that could be used by customers to evade taxes, rebate program also had other purposes, and there was no direct evidence that defendants discussed tax implications of rebate program with each other or with customers who were alleged co-conspirators. U.S. v. Pappathanasi, D.Mass.2005, 383 F.Supp.2d 289. Conspiracy 47(9)

Evidence, that defendant actively participated in creation of sham trusts and advised at least one client of coconspirator with respect to land patents that were used in scheme to defraud government of tax dollars, was sufficient to show knowing participation in conspiracy to defraud government. U.S. v. DeMott, C.A.9 (Idaho) 2003, 57 Fed.Appx. 743, 2003 WL 193580, Unreported, certiorari denied 123 S.Ct. 2286, 539 U.S. 920, 156 L.Ed.2d 139, post-conviction relief denied 2005 WL 3263901. Conspiracy 47(5)

740. Election offenses, sufficiency of evidence

Savings and loan officers' convictions for conspiracy to commit offense against United States were supported by evidence that officers knew that corporations could not make political contributions and that they devised scheme to disguise corporate contributions as individual contributions, with resulting interference with proper functioning of Federal Election Commission (FEC), Federal Savings and Loan Insurance Corporation (FSLIC), and Federal Home Loan Bank Board (FHLBB). U.S. v. Hopkins, C.A.5 (Tex.) 1990, 916 F.2d 207. Conspiracy 47(3.1)

Evidence that defendant played a central role in soliciting woman's vote in party primary election, that employee of county welfare office responsible for issuing vouchers during pendency of campaign discussed distribution of welfare vouchers with defendant, and that defendant, on several occasions, referred to welfare recipients who were

"all right" because they were voting the right way and should be "helped" by issuing vouchers to them, was sufficient to support finding that defendant had knowingly participated in a conspiracy to buy votes in party primary election through the use of welfare vouchers. U.S. v. Saenz, C.A.5 (Tex.) 1984, 747 F.2d 930, rehearing denied 752 F.2d 646, certiorari denied 105 S.Ct. 3531, 473 U.S. 906, 87 L.Ed.2d 655. Conspiracy 47(3.1)

Evidence of supper meetings at defendant's lake house at which vote-buying plans were made was sufficient evidence of existence of a conspiracy and knowledge was established by fact that part-time employee managed vote-buying plan from defendant's office with latter's tacit approval and defendant's participation was shown by his personally recruiting two workers and telling them it was okay to pay off voters. U. S. v. Carmichael, C.A.4 (S.C.) 1982, 685 F.2d 903, certiorari denied 103 S.Ct. 1187, 459 U.S. 1202, 75 L.Ed.2d 434. Conspiracy 47(3.1)

Evidence supported conviction of individual defendant who was officer of corporate defendant of conspiracy to violate Public Utility Holding Company Act, § 79l of Title 15, prohibiting political contributions by any registered public utility holding company. Egan v. U.S., C.C.A.8 (Mo.) 1943, 137 F.2d 369, certiorari denied 64 S.Ct. 195, 320 U.S. 788, 88 L.Ed. 474. Conspiracy 47(3.1)

Evidence supported conviction of corporate defendant of conspiring to violate the Public Utility Holding Company Act, § 79l of Title 15, prohibiting political contributions by any registered public utility holding company and of substantive offenses in violation of said section, where it appeared that corporate defendant's officers in making political contributions were engaged in business of corporate defendant, employing corporate powers actually authorized for benefit of corporate defendants, while acting, although illegally, within scope of their employment. Egan v. U.S., C.C.A.8 (Mo.) 1943, 137 F.2d 369, certiorari denied 64 S.Ct. 195, 320 U.S. 788, 88 L.Ed. 474. Conspiracy 47(3.1); Elections 329

Evidence was insufficient to support conviction for conspiracy to intimidate voters of right to vote and to have their votes for candidates for federal offices counted as actually cast by them. Kart v. U. S., C.C.A.3 (Pa.) 1936, 104 F.2d 19. Conspiracy 47(3.1)

Evidence relating to false certification of tally books and poll books in certain precinct, conferences prior to election between defendant, who was a Democratic ward boss, and workers representing both Democratic and Republican parties, and to removal of certain Republican judges of election after threats by defendant that they would be beaten up if not removed, was sufficient to justify conviction for conspiring to injure specified citizens in exercise of elective franchise. Ryan v. U.S., C.C.A.8 (Mo.) 1938, 99 F.2d 864, certiorari denied 59 S.Ct. 484, 306 U.S. 635, 83 L.Ed. 1037, rehearing denied 59 S.Ct. 586, 306 U.S. 668, 83 L.Ed. 1063. Conspiracy 47(3.1)

Evidence was sufficient to take to jury question of defendants' guilt under charge of conspiracy to defraud United States by buying surplus army goods under false pretenses. U.S. v. Byers, C.C.A.2 (N.Y.) 1934, 73 F.2d 419. Conspiracy 48.1(2.1)

741. Embezzlement, sufficiency of evidence

Defendant's conviction for conspiracy to embezzle tribal funds was supported by coconspirator's testimony that defendant who was in position of authority in tribe was in charge of embezzlement scheme and decided when and how coconspirator would cash checks drawn from tribe's account and how proceeds would be divided. U.S. v. Stoner, C.A.10 (Okla.) 1996, 98 F.3d 527, adhered to in part on rehearing 139 F.3d 1343, certiorari denied 119 S.Ct. 403, 525 U.S. 961, 142 L.Ed.2d 327. Conspiracy 47(11)

Evidence supported conviction of defendant attorney for conspiracy to embezzle funds belonging to labor union pension plan; there was testimony that defendant had been present at meetings during which there had been discussion of taking certificates of deposit, made available by pension plan for purpose of pledge to secure loan from Louisiana Imports and Exports Trust Authority, and using them to secure loans for other business ventures of

codefendants, and defendant was well enough acquainted with business affairs of codefendants to know their need for money. U.S. v. Williams, C.A.5 (Miss.) 1994, 12 F.3d 452, rehearing denied. Conspiracy 47(11)

Substantial evidence supported jury finding of overall conspiracy to embezzle union funds and that each of defendants knowingly joined such conspiracy and participated in furthering its objectives. Hayes v. U. S., C.A.8 (Mo.) 1964, 329 F.2d 209, certiorari denied 84 S.Ct. 1883, 377 U.S. 980, 12 L.Ed.2d 748. Conspiracy 47(11)

In prosecution for conspiracy to embezzle union funds, evidence that contractor built buildings on land of which he was part owner, that cost of construction was borne by union, that union paid rent for the buildings to contractor, who subsequently sold them for his own benefit, and that unidentified conspirator signed checks by which union funds were transferred to contractor for use in the construction, sustained verdict finding contractor guilty as a conspirator. U.S. v. Speed, D.C.D.C.1948, 78 F.Supp. 366. Conspiracy 47(11)

Evidence was sufficient to support convictions of embezzlement and conspiracy to embezzle, based on defendant's acts as vice president of public housing association which had received grant from Department of Housing and Urban Development (HUD) to help members manage and purchase their own properties; defendant was named as being responsible for using disbursement vouchers, signed by association's president, to make requests for release of funds through HUD line of credit control systems, and there was evidence that defendant and association's president agreed to use, had intent to use, and used grant money to cover personal expenses. U.S. v. Clarke, C.A.9 (Hawai'i) 2003, 81 Fed.Appx. 983, 2003 WL 22854679, Unreported. Conspiracy 47(11); Embezzlement 44(1)

Convictions for embezzlement and conspiracy to embezzle money from insurance company were supported by sufficient evidence, even though credibility of government witness, who had generated fraudulent checks payable to defendant, was damaged by his lies, where such witness presented coherent story of defendant's participation in scheme through cashing checks, and government also presented testimony of another participant, phone records, and evidence that defendant lied when asked what he did with money after cashing check. U.S. v. Drag, C.A.7 (Ill.) 2003, 61 Fed.Appx. 246, 2003 WL 366630, Unreported. Conspiracy 47(11); Embezzlement 44(1)

742. Escape, sufficiency of evidence

Evidence was sufficient to sustain conviction for conspiracy to escape from confinement in county jail while awaiting trial on federal charges, although defendant contended that one could not commit conspiracy with government agent who did not intend to enter into agreement; several witnesses testified that conspiracy began when defendant provided $10,000 to have fellow prisoner released to assist defendant, government witness testified about his efforts to help defendant escape and testified that several individuals provided him with instructions about escape attempts through use of coded messages, false names, and midnight deliveries, and there was evidence that defendant planned escape with nongovernment agent. U.S. v. Valverde, C.A.8 (Ark.) 1988, 846 F.2d 513. Conspiracy 47(3.1)

Evidence that defendant held director of corrections department by collar while final plan to rush door was formulated, that defendant stood in the front line of the inmates at the door holding the director as a shield, that defendant took turns with another inmate beating the director in order to compel him to order the door opened and participated in the general harangue against the director which followed the abortive escape attempt was sufficient to sustain defendant's conviction for participation in conspiracy to escape from jail. U. S. v. Bridgeman, C.A.D.C.1975, 523 F.2d 1099, 173 U.S.App.D.C. 150, certiorari denied 96 S.Ct. 1743, 425 U.S. 961, 48 L.Ed.2d 206, certiorari denied 96 S.Ct. 1744, 425 U.S. 961, 48 L.Ed.2d 206. Conspiracy 47(3.1)

Issue of defendants' guilt under this section governing crime of conspiracy and section 3 of this title governing crime of being an accessory after the fact were resolved by proof that they intended to aid an individual to escape from authorities, and fact that defendants may not have known the jurisdictional or federal nature of individual's

pursuers and his crime was irrelevant to issue. U. S. v. Hobson, C.A.9 (Cal.) 1975, 519 F.2d 765, certiorari denied 96 S.Ct. 283, 423 U.S. 931, 46 L.Ed.2d 261. Conspiracy 34; Compounding Offenses 3.5

743. Espionage, sufficiency of evidence

In prosecution for conspiracy to violate espionage laws, evidence sustained finding that immigration agents who effected defendant's arrest based on information furnished by agents of the F.B.I., who received permission to question defendant prior to his arrest, did not use an administrative arrest warrant they had obtained, merely as a tool for the F.B.I. in building a criminal prosecution against defendant, but that the immigration service in arresting defendant under the warrant was exercising its powers in the lawful discharge of its own responsibilities, and therefore articles seized as a consequence of use of the warrant were not subject to suppression. Abel v. U.S., U.S.N.Y.1960, 80 S.Ct. 683, 362 U.S. 217, 4 L.Ed.2d 668, rehearing denied 80 S.Ct. 1056, 362 U.S. 984, 4 L.Ed.2d 1019. Criminal Law 394.6(4)

Evidence was sufficient to sustain conviction for conspiring to violate espionage laws. U S v. Abel, C.A.2 (N.Y.) 1958, 258 F.2d 485, certiorari granted 79 S.Ct. 59, 358 U.S. 813, 3 L.Ed.2d 56, affirmed 80 S.Ct. 683, 362 U.S. 217, 4 L.Ed.2d 668, rehearing denied 80 S.Ct. 1056, 362 U.S. 984, 4 L.Ed.2d 1019. Conspiracy 47(3.1)

Evidence sustained convictions for conspiracy to violate § 794 of this title. United States v. Rosenberg, C.A.2 (N.Y.) 1952, 195 F.2d 583, certiorari denied 73 S.Ct. 20, 344 U.S. 838, 97 L.Ed. 652, rehearing denied 73 S.Ct. 134, 344 U.S. 889, 97 L.Ed. 687, certiorari denied 73 S.Ct. 21, 344 U.S. 838, 97 L.Ed. 652, rehearing denied 73 S.Ct. 180, 344 U.S. 889, 97 L.Ed. 687, rehearing denied 74 S.Ct. 860, 347 U.S. 1021, 98 L.Ed. 1142, motion denied 78 S.Ct. 91, 355 U.S. 860, 2 L.Ed.2d 67. Conspiracy 47(3.1)

In prosecution for conspiracy to violate § 794 of this title, wherein one of alleged coconspirators contended that there were multiple conspiracies and that he was not proved to be member of conspiracy to ship information to Russia, evidence established that there was but single conspiracy with common end consisting of transmission to Soviet Union of any and all information relating to national defense, and that particular defendant had consented to become member of such conspiracy. United States v. Rosenberg, C.A.2 (N.Y.) 1952, 195 F.2d 583, certiorari denied 73 S.Ct. 20, 344 U.S. 838, 97 L.Ed. 652, rehearing denied 73 S.Ct. 134, 344 U.S. 889, 97 L.Ed. 687, certiorari denied 73 S.Ct. 21, 344 U.S. 838, 97 L.Ed. 652, rehearing denied 73 S.Ct. 180, 344 U.S. 889, 97 L.Ed. 687, rehearing denied 74 S.Ct. 860, 347 U.S. 1021, 98 L.Ed. 1142, motion denied 78 S.Ct. 91, 355 U.S. 860, 2 L.Ed.2d 67. Conspiracy 47(3.1)

In prosecution for conspiring to defraud the United States and attempting to deliver defense information to citizen of a foreign nation evidence of defendant's guilt was sufficient for the jury. United States v. Coplon, C.A.2 (N.Y.) 1950, 185 F.2d 629, certiorari denied 72 S.Ct. 362, 342 U.S. 920, 96 L.Ed. 688. Conspiracy 48.1(3); War And National Emergency 48

744. False personation, sufficiency of evidence

Evidence that persons representing developer who was seeking funds from Department of Housing and Urban Redevelopment met with defendant, who was in a position of authority at the Department, and asked her to look into the status of the project, that she forwarded information to Federal Housing Commissioner, and that funding was thereafter provided to county housing authority in the amount necessary to meet the developer's request was insufficient to show conspiracy by the defendant to defraud the United States by causing the award of funds. U.S. v. Dean, C.A.D.C.1995, 55 F.3d 640, 312 U.S.App.D.C. 75, rehearing in banc denied, certiorari denied 116 S.Ct. 1288, 516 U.S. 1184, 134 L.Ed.2d 232. Conspiracy 47(6)

In prosecution for aiding, abetting, counseling, commanding, inducing and procuring another to falsely assume and

pretend to another to be an agent of internal revenue bureau and to demand money of such other person in such pretended character, and for conspiring to commit such substantive offense, proof of formal agreement was not necessary and it was sufficient to show that minds of accused and alleged principal met in understanding way so as to bring about intelligent and deliberate agreement to do acts charged, although such agreement was not manifested by formal words. Colosacco v. U.S., C.A.10 (Colo.) 1952, 196 F.2d 165. Conspiracy 24(1)

Evidence justified conviction for aiding, abetting, counseling, commanding, inducing and procuring another to falsely assume and pretend to another to be an agent of internal revenue bureau and to demand money of such other person in such pretended character, and for conspiring to commit such substantive offense. Colosacco v. U.S., C.A.10 (Colo.) 1952, 196 F.2d 165. Conspiracy 47(4); False Pretenses 49(1)

Evidence sustained conviction of conspiracy to personate federal immigrant inspectors. Heskett v. U.S., C.C.A.9 (Cal.) 1932, 58 F.2d 897, certiorari denied 53 S.Ct. 89, 287 U.S. 643, 77 L.Ed. 556. Conspiracy 47(4)

Evidence of conspiracy to have substitute receive sentence and serve term for convicted offender was sufficient as to one defendant but insufficient as to others. Donovan v. U S, C.C.A.3 (Pa.) 1931, 54 F.2d 193.

745. Firearms, sufficiency of evidence

Evidence of the existence of an agreement to make a false statement was sufficient to support conviction for conspiracy to make a false statement to acquire a firearm; defendant made repeated visits to a pawn shop, told the owner that he was underage and told an employee that he and his father were gun collectors, and filled out the purchase form which his father signed. U.S. v. Montgomery, C.A.8 (Ark.) 2006, 444 F.3d 1023. Conspiracy 47(3.1)

Finding of agreement element of conspiracy to transfer firearm illegally was supported by evidence that defendant approached undercover police officer and told him about friend who could supply guns, defendant arranged first meeting between officer and seller, persisted in bringing officer to first meeting despite officer's reluctance, asked seller whether seller had brought sawed-off shotgun, remained present throughout first meeting, approached officer about second meeting, arranged second meeting at which shotgun was transferred, and continued to telephone seller after transfer, notwithstanding evidence that he did not attend second meeting and contention that he merely found willing seller for willing buyer. U.S. v. Benevides, C.A.1 (R.I.) 1993, 985 F.2d 629. Conspiracy 47(3.1)

Evidence that defendant was the person with the money, that defendant was the person who did most of the talking and looking, that defendant, after being told he could not purchase guns in Virginia because he was a New Jersey resident, went with two other persons to two more gun stores before successfully purchasing three handguns, that defendant had final say as to which guns were to be purchased, that defendant received change when sale was closed, and that defendant was person who had possession of guns at house after their purchase, established that defendant was the principal in the scheme and, thus, supported conviction for conspiring to deceive a licensed firearms dealer. U.S. v. Reyes, C.A.4 (Va.) 1985, 759 F.2d 351, certiorari denied 106 S.Ct. 164, 474 U.S. 857, 88 L.Ed.2d 136. Conspiracy 47(3.1)

Although there was evidence that defendant was not told that weapons and explosives were being paid for in marijuana and cocaine because he would not participate if he found that drugs were involved, evidence that he personally delivered some 300 pounds of dynamite and was prepared to personally deliver another 1,000 pounds and that he was paid five times as much as the dynamite would have been worth in a legal sale was sufficient to sustain his conviction for firearms conspiracy. U.S. v. Mulherin, C.A.11 (Ga.) 1983, 710 F.2d 731, certiorari denied 104 S.Ct. 402, 464 U.S. 964, 78 L.Ed.2d 343, certiorari denied 104 S.Ct. 1305, 465 U.S. 1034, 79 L.Ed.2d 703. Conspiracy 47(3.1)

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Testimony of accomplice, even though uncorroborated, that defendant supplied weapons for sale and set the price at which accomplice sold each weapon was sufficient to support finding of conspiracy to deal in firearms without a license. U. S. v. Taylor, C.A.8 (Mo.) 1979, 599 F.2d 832. Conspiracy 47(3.1)

Where government's evidence, direct and circumstantial, as to existence of conspiracy was ample, even slight evidence connecting particular defendant to conspiracy could be substantial and therefore sufficient proof of such defendant's involvement in the scheme, and evidence was sufficient to show involvement in conspiracy covering, inter alia, possession of unregistered firearms. U. S. v. Baumgarten, C.A.8 (Mo.) 1975, 517 F.2d 1020, certiorari denied 96 S.Ct. 152, 423 U.S. 878, 46 L.Ed.2d 111. Conspiracy 47(2)

Fact that West German semi-automatic pistols were imported as part of exclusive importer's large order, rather than pursuant to police department's individual purchase order, was irrelevant to charge of willfully and knowingly conspiring with police officers to unlawfully import firearms in that all that was needed was unlawful agreement to import and an overt act to implement agreement. U.S. v. Goodman, M.D.Pa.1986, 639 F.Supp. 802, affirmed 800 F.2d 1140, certiorari denied 107 S.Ct. 887, 479 U.S. 1035, 93 L.Ed.2d 840. Conspiracy 28(3)

746. Foreign agent registration, sufficiency of evidence

In prosecution for conspiracy to violate Foreign Agents Registration Act, § 612 of Title 22, evidence was sufficient to sustain determination that corporate defendant was agent for foreign principal within requirement for registration. U.S. v. German-American Vocational League, C.C.A.3 (N.J.) 1946, 153 F.2d 860, certiorari denied 66 S.Ct. 976, 328 U.S. 833, 90 L.Ed. 1608, certiorari denied 66 S.Ct. 976, 328 U.S. 833, 90 L.Ed. 1609, certiorari denied 66 S.Ct. 977, 328 U.S. 833, 90 L.Ed. 1609, certiorari denied 66 S.Ct. 977, 328 U.S. 834, 90 L.Ed. 1609, certiorari denied 66 S.Ct. 977, 328 U.S. 834, 90 L.Ed. 1610, certiorari denied 66 S.Ct. 978, 328 U.S. 834, 90 L.Ed. 1610. Conspiracy 47(3.1)

Evidence was sufficient to sustain conviction for conspiracy to violate the Foreign Agents Registration Act, § 612 of Title 22. U.S. v. German-American Vocational League, C.C.A.3 (N.J.) 1946, 153 F.2d 860, certiorari denied 66 S.Ct. 976, 328 U.S. 833, 90 L.Ed. 1608, certiorari denied 66 S.Ct. 976, 328 U.S. 833, 90 L.Ed. 1609, certiorari denied 66 S.Ct. 977, 328 U.S. 833, 90 L.Ed. 1609, certiorari denied 66 S.Ct. 977, 328 U.S. 834, 90 L.Ed. 1609, certiorari denied 66 S.Ct. 977, 328 U.S. 834, 90 L.Ed. 1610, certiorari denied 66 S.Ct. 978, 328 U.S. 834, 90 L.Ed. 1610. Conspiracy 47(3.1)

Evidence sustained conviction of conspiracy to violate § 601 of Title 22 which makes it a crime not to register with the Secretary of State if one is acting as an agent of a foreign government. United States v. Heine, C.C.A.2 (N.Y.) 1945, 151 F.2d 813, certiorari denied 66 S.Ct. 975, 328 U.S. 833, 90 L.Ed. 1068. Conspiracy 47(3.1)

Evidence sustained conviction of conspiring to disclose to German agents information, affecting national defense, and defendant's connection with conspiracies to violate § 601 of title 22, forbidding acting as foreign governmental agent without notice to Secretary of State. U.S. v. Ebeling, C.C.A.2 (N.Y.) 1944, 146 F.2d 254. Conspiracy 47(3.1)

Where conspiracies to violate § 601 of Title 22, forbidding acting as foreign governmental agent without notice to Secretary of State, and to violate § 32 of Title 50, forbidding disclosing information affecting national defense to foreign government, were conceded as proved, it was only necessary for prosecution to show that defendant participated therein. U.S. v. Ebeling, C.C.A.2 (N.Y.) 1944, 146 F.2d 254. Conspiracy 44.2

747. Forgery, sufficiency of evidence

Contrary to claim of particular defendant that evidence showed multiple discrete conspiracies and that his trial

should have been severed from those involved in different agreement, evidence established quite clearly a conspiracy extending over a three-year period to forge and pass savings bonds, money orders and other obligations. U. S. v. Calabro, C.A.2 (N.Y.) 1972, 467 F.2d 973, certiorari denied 93 S.Ct. 1357, 410 U.S. 926, 35 L.Ed.2d 587, certiorari denied 93 S.Ct. 1358, 410 U.S. 926, 35 L.Ed.2d 587, rehearing denied 93 S.Ct. 1891, 411 U.S. 941, 36 L.Ed.2d 404, certiorari denied 93 S.Ct. 1386, 410 U.S. 926, 35 L.Ed.2d 587, certiorari denied 93 S.Ct. 1403, 410 U.S. 926, 35 L.Ed.2d 587. Criminal Law 622.7(4)

Evidence sustained finding that defendants whose automobile was overtaken by police and who were told to drive to police headquarters were not under arrest at time that one of defendants dropped forged board of elections card and forged driver's license, in prosecution for forging and uttering United States savings bond and conspiring to do so wherein defendants contended that there had been no probable cause for their arrest and that arrest had occurred prior to dropping forged documents. U. S. v. Smith, C.A.2 (N.Y.) 1969, 405 F.2d 1203. Criminal Law 394.6(4)

Evidence was sufficient to support finding that defendant who had sold to coindictee at least one of two money orders later forged and had sold to other coindictees four blank checks later forged and who had provided coindictees with check protector was member of conspiracy to violate section 2314 of this title, prohibiting unlawful and fraudulent interstate transportation of securities known to be forged. U. S. v. Chamley, C.A.7 (Ill.) 1967, 376 F.2d 57, certiorari denied 88 S.Ct. 221, 389 U.S. 898, 19 L.Ed.2d 220. Conspiracy 47(3.1)

Evidence was sufficient to sustain conviction for unlawful interstate transportation of forged checks and for conspiracy to unlawfully transport such. Downing v. U. S., C.A.5 (Tex.) 1965, 348 F.2d 594, certiorari denied 86 S.Ct. 235, 382 U.S. 901, 15 L.Ed.2d 155. Conspiracy 47(3.1); Receiving Stolen Goods 8(3)

Evidence sustained conviction of conspiracy to transport in interstate commerce falsely made and forged checks. Sabari v. U. S., C.A.9 (Nev.) 1964, 333 F.2d 1019. Conspiracy 47(3.1)

Evidence sustained conviction for forging and uttering and for aiding and abetting and for conspiracy in connection with cashing of United States savings bonds. U. S. v. Mullins, C.A.2 (N.Y.) 1960, 325 F.2d 145. Conspiracy 47(3.1); Forgery 44(.5); Forgery 44(3)

Evidence that defendants conspired to forge assignments on registered Liberty bonds and to utter and possess them was sufficient to go to jury. Meadows v. U.S., C.C.A.9 (Cal.) 1926, 11 F.2d 718, certiorari denied 47 S.Ct. 97, 273 U.S. 702, 71 L.Ed. 848. Conspiracy 48.1(2.1)

The unsupported testimony of an accomplice who contradicted himself and was discredited by his own testimony presented no substantial evidence that defendants conspired with him to violate former § 88 of this title [now this section] by forging a document which should admit the prosecuting witness into the United States Military Academy without taking a mental examination, and motion to direct an acquittal should have been granted. McGinniss v. U.S., C.C.A.2 (N.Y.) 1919, 256 F. 621, 167 C.C.A. 651. Conspiracy 48

748. Gold offenses, sufficiency of evidence

Evidence sustained conviction for conspiracy to violate the Gold Reserve Act, § 440 et seq. of Title 39, and Regulations and to defraud the United States. United States v. Wiesner, C.A.2 (N.Y.) 1954, 216 F.2d 739. Conspiracy 47(3.1)

Evidence was sufficient to sustain conviction for conspiring to possess and export quantities of fine gold. United States v. Parnes, C.A.2 (N.Y.) 1954, 210 F.2d 141. Conspiracy 47(3.1)

Record was not sufficient to sustain conviction of conspiracy to acquire gold without a license. U.S. v. Bates,

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C.C.A.7 (Ill.) 1945, 148 F.2d 907. Conspiracy 47(3.1)

Where corporation's license to deal in gold had been revoked, but associates of corporation induced third party to obtain license and bought gold in reliance thereon, associates were guilty of conspiracy to defraud the United States. U.S. v. 71.41 Ounces Gold Filled Scrap, C.C.A.2 (N.Y.) 1938, 94 F.2d 17. Conspiracy 33(2.1)

Evidence was insufficient to sustain conviction for conspiracy in buying stolen gold ores and amalgam and receiving payment from United States Mint. Tofanelli v. U.S., C.C.A.9 (Cal.) 1928, 28 F.2d 581. Conspiracy 47(6)

749. Grand jury offenses, sufficiency of evidence

Convictions for conspiring to obstruct justice by agreeing that one defendant would provide false testimony to grand jury investigating other was supported by sufficient evidence; defendant's testimony before grand jury was contradicted by himself in conversations with agents of Internal Revenue Service (IRS), by statements of IRS agents, by wife of codefendant and by codefendant, and jury could have inferred there was agreement to conceal taxable income from investigation. U.S. v. Lahey, C.A.7 (Ind.) 1995, 55 F.3d 1289, rehearing denied. Conspiracy 47(13)

Evidence sustained finding that defendant participated in conspiracy to obtain secret grand jury testimony and provide testimony to persons under indictment. U. S. v. Friedman, C.A.9 (Cal.) 1971, 445 F.2d 1076, certiorari denied 92 S.Ct. 326, 404 U.S. 958, 30 L.Ed.2d 275. Conspiracy 47(13)

In prosecution for conspiracy to cause the giving of false testimony before grand jury, evidence was sufficient to show that defendant was a party to the conspiracy. U S v. Brothman, C.A.2 (N.Y.) 1951, 191 F.2d 70. Conspiracy 47(13)

750. Hijacking, sufficiency of evidence

Alleged conspirator's presence at site where truck hijacking was discussed together with his act of leading other conspirators from one place to such location and relaying instructions to them through another conspirator was sufficient to permit conclusion of participation in conspiracy and to permit introduction of coconspirators' hearsay statements against him. U. S. v. Calarco, C.A.2 (N.Y.) 1970, 424 F.2d 657, certiorari denied 91 S.Ct. 46, 400 U.S. 824, 27 L.Ed.2d 53, rehearing denied 91 S.Ct. 1522, 402 U.S. 934, 28 L.Ed.2d 870. Criminal Law 427(5)

751. Immigration offenses, sufficiency of evidence

Defendant's conviction for conspiracy to create and supply false documents for use in making immigration applications was supported by evidence that defendant had coconspirators sign affidavits falsely stating that illegal alien had worked for them on certain farms, that defendant had coconspirators sign blank affidavits, that defendant's wife showed coconspirators pictures of alien applicants so that, if necessary, coconspirators would recognize aliens later, that defendant coached illegal aliens on how to falsely answer questions in Immigration and Naturalization Service (INS) interview, that defendant charged illegal aliens from $300 to $800 to "fix" their immigration status, and that various immigration forms which defendant and his wife prepared for illegal aliens contained false information. U.S. v. Sanchez, C.A.8 (Iowa) 1992, 963 F.2d 152. Conspiracy 47(3.1)

In prosecution for conspiracy to commit immigration fraud, evidence that defendant recently successfully completed citizenship examination requirements was sufficient to permit jury to conclude that defendant had requisite knowledge of English language to comprehend nature and scope of the fraud conspiracy. U.S. v. Bezold, C.A.9 (Hawai'i) 1985, 760 F.2d 999, certiorari denied 106 S.Ct. 811, 474 U.S. 1063, 88 L.Ed.2d 786, denial of post-conviction relief affirmed 952 F.2d 407, certiorari denied 112 S.Ct. 1990, 504 U.S. 928, 118 L.Ed.2d 587.

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In prosecution for transporting illegal aliens to this country and for conspiracy, there was overwhelming evidence that defendant in question shared in object of conspiracy, and proof of his agreement to commit substantive offense was supplied by testimony that he and another defendant jointly controlled movements of both boat and its passengers, and from such evidence jury could reasonably have inferred that the two defendants agreed to transport illegal aliens to the United States. U.S. v. Reme, C.A.11 (Fla.) 1984, 738 F.2d 1156, certiorari denied 105 S.Ct. 2334, 471 U.S. 1104, 85 L.Ed.2d 850. Conspiracy 47(3.1)

Evidence, in prosecution for conspiracy to defraud the Immigration was Naturalization Service and to influence prospective grand jury witness who was to testify concerning marriage scheme, was sufficient to demonstrate defendant's involvement in a conspiracy. U. S. v. Bithoney, C.A.1 (Mass.) 1980, 631 F.2d 1, certiorari denied 101 S.Ct. 869, 449 U.S. 1083, 66 L.Ed.2d 808. Conspiracy 47(6)

Evidence sustained conviction of conspiracy and substantive offense arising out of attempt to smuggle five aliens into United States pursuant to alleged arrangement whereby aliens were transported in automobile driven by defendant to border and then entered United States on foot and hid along roadside until defendant picked them up. U. S. v. Patterson, C.A.9 (Cal.) 1972, 460 F.2d 1282. Aliens 59; Conspiracy 47(3.1)

Evidence sustained conviction for conspiracy to defraud United States of its right to have administration of immigration laws conducted honestly. U. S. v. Pantelopoulos, C.A.2 (N.Y.) 1964, 336 F.2d 421. Conspiracy 47(6)

Government's evidence in prosecution under false statements and conspiracy provisions was insufficient to sustain its burden of proving that marriages of defendant-aliens were void at time of their representations concerning marital status to immigration authorities. U. S. v. Diogo, C.A.2 (N.Y.) 1963, 320 F.2d 898. Conspiracy 47(6); Fraud 69(3)

Evidence that citizen of Greece, who entered United States on temporary visa for purpose of marrying honorably discharged soldier, married her first cousin instead and that such marriage was annulled, was sufficient to support finding of guilty of conspiracy with such man to defraud the United States in the administration of its immigration laws. U. S. v. Georga, C.A.3 (Pa.) 1954, 210 F.2d 45. Conspiracy 47(6)

In prosecution for conspiracy to commit offenses against United States by violating immigration laws and to defraud United States of its governmental functions and its right to administer its immigration laws, by effectuating illegal entry of three aliens into the United States as spouses of veterans of World War II, evidence justified jury in finding that concerted scheme was hatched in summer by two of defendants whereby they would obtain, by means of marriages with three veterans, entry of three relatives into United States, that plan was communicated to and joined by the girls and aliens, that it culminated in entries claimed to be illegal and that there was one over-all common design and purpose. U.S. v. Lutwak, C.A.7 (Ill.) 1952, 195 F.2d 748, certiorari granted 73 S.Ct. 13, 344 U.S. 809, 97 L.Ed. 630, affirmed 73 S.Ct. 481, 344 U.S. 604, 97 L.Ed. 593, rehearing denied 73 S.Ct. 726, 345 U.S. 919, 97 L.Ed. 1352. Conspiracy 47(6)

Evidence supported conviction of United States commissioner for conspiracy to defraud the Government by issuance of passports to persons not entitled thereto. U. S. v. Griffin, C.A.3 (Pa.) 1949, 176 F.2d 727, certiorari denied 70 S.Ct. 478, 338 U.S. 952, 94 L.Ed. 588, rehearing denied 70 S.Ct. 559, 339 U.S. 916, 94 L.Ed. 1341. Conspiracy 47(6)

Evidence sustained conviction of conspiracy to defraud the United States by obtaining the entry of an alien by false representations, by willful concealment of material facts, and by false statements in documents required by the immigration laws. U.S. v. Rubenstein, C.C.A.2 (N.Y.) 1945, 151 F.2d 915, certiorari denied 66 S.Ct. 168, 326

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U.S. 766, 90 L.Ed. 462. Conspiracy 47(6)

Evidence in a prosecution for conspiracy to bring in Chinese persons, contrary to the Chinese Exclusion Act, former § 263 et seq. of Title 8, showing it was the intention of defendants to bring the Chinese to a point outside the territorial jurisdictions of the United States, where they were to be met by another vessel, which would attempt to land them, and that whem the latter vessel failed to meet them the defendants came ashore, warranted the jury in finding that the defendant voluntarily came ashore notwithstanding their claim they were driven into the jurisdiction against their will by stress of weather. Wing v. U.S., C.C.A.5 (Fla.) 1922, 280 F. 112. See, also, Louie Ding v. U.S., Wash.1917, 246 F. 80, 158 C.C.A. 306. Conspiracy 47(3.1)

752. Interstate commerce offenses, sufficiency of evidence

Regardless of whether interstate commerce element of "chop shop" statute was characterized as mens rea element or as jurisdictional in nature, government failed to establish that defendant engaged in conspiracy to operate "chop shop," absent evidence of connection between alleged "chop shop" and interstate commerce or evidence that defendant or any conspirator believed that vehicle parts were to enter interstate commerce. U.S. v. Pinckney, C.A.2 (N.Y.) 1996, 85 F.3d 4. Conspiracy 28(3)

There was insufficient evidence that defendant conspired with unidentified companion to transport stolen backhoe interstate to support defendant's conspiracy conviction, despite evidence that companion traveled interstate with defendant, was present when defendant introduced him to defendant's former roommate, helped unload backhoe at storage facility, and was present when defendant used false driver's license to rent storage space under alias. U.S. v. Mackay, C.A.5 (Tex.) 1994, 33 F.3d 489. Conspiracy 47(11)

Evidence was sufficient to support finding of only one conspiracy, and that defendant shared purposes of all alleged coconspirators at every level of the conspiracy; therefore, there was no "spill-over" of evidence as to other conspiracies in conviction of defendant of one count of conspiracy. U.S. v. Baccollo, C.A.2 (N.Y.) 1983, 725 F.2d 170. Conspiracy 47(3.1)

Evidence in defendant's prosecution for conspiring to steal goods moving in interstate commerce and for stealing goods moving in interstate commerce, including evidence defendant paid $100 each to three of the people who helped transfer and unload stolen goods, was sufficient to support conviction. U.S. v. Bradshaw, C.A.7 (Ill.) 1983, 719 F.2d 907. Conspiracy 47(11); Larceny 55

In prosecution for using interstate wire facilities in carrying out scheme to defraud certain hotel casinos and for conspiracy involving same scheme, there was ample evidence establishing conspiracy involving three defendants and government witness, and government witness' testimony which concerned meetings involving fourth defendant and which was about facts within witness' own knowledge, if believed by jury, was sufficient to show forth defendant's knowing participation in that conspiracy. U. S. v. Scallion, C.A.5 (La.) 1976, 533 F.2d 903, certiorari denied 97 S.Ct. 824, 429 U.S. 1079, 50 L.Ed.2d 799, rehearing denied 97 S.Ct. 1342, 430 U.S. 923, 51 L.Ed.2d 602, on rehearing 548 F.2d 1168, certiorari denied 98 S.Ct. 2843, 436 U.S. 943, 56 L.Ed.2d 784. Conspiracy 47(5)

In prosecution for conspiring to steal goods in excess of $100 from a truck moving in interstate commerce, the evidence produced at trial, including the fact that defendant was employed at ramp which was a transshipment point for goods in interstate commerce, was more than sufficient to establish defendant's knowledge of the interstate nature of the shipment. U. S. v. Houle, C.A.2 (N.Y.) 1973, 490 F.2d 167, certiorari denied 94 S.Ct. 3174, 417 U.S. 970, 41 L.Ed.2d 1141. Conspiracy 47(11)

Evidence, submitted to court on written stipulation, was sufficient to sustain conviction for violation of section 1955 of this title relating to gambling business, aiding and abetting, and conspiracy. U. S. v. Niezek, C.A.5 (Tex.)

1974, 489 F.2d 703, rehearing denied 491 F.2d 1407, certiorari denied 95 S.Ct. 133, 419 U.S. 873, 42 L.Ed.2d 112 . Conspiracy 47(7); Gaming 98(1)

Evidence in criminal prosecution in which defendant was charged with receiving, concealing and selling stolen cattle moving in interstate commerce and with conspiracy relating to such offense and in which codefendant was charged with such conspiracy offense was sufficient to establish intent to steal cattle at time of transportation and delivery and that cattle were moving in interstate commerce at time they were stolen. U. S. v. Wetzel, C.A.8 (Neb.) 1973, 488 F.2d 153. Conspiracy 47(11); Receiving Stolen Goods 8(3)

In prosecution for conspiring to travel in interstate commerce with intent to carry on unlawful activity involving extortion, testimony was sufficiently clear to enable jury to find intention on part of conspirators to travel or cause travel in interstate commerce in furtherance of agreement, and fact that this intention failed because of one conspirator's cooperation with the FBI was immaterial. U. S. v. Fellabaum, C.A.7 (Ill.) 1969, 408 F.2d 220, certiorari denied 90 S.Ct. 125, 396 U.S. 858, 24 L.Ed.2d 109, certiorari denied 90 S.Ct. 55, 396 U.S. 818, 24 L.Ed.2d 69. Conspiracy 31; Conspiracy 47(3.1)

Evidence showed that defendant conspired with others to transport slot machines between indicated points, as an active participant in an illegal operation, and that he had actively participated in venture in which one machine was shipped and it was he who had actually caused the machine to be shipped in interstate commerce. U. S. v. McCormick, C.A.7 (Ill.) 1962, 309 F.2d 367, certiorari denied 83 S.Ct. 724, 372 U.S. 911, 9 L.Ed.2d 719. Conspiracy 47(7)

Evidence sustained convictions for conspiracy to blow up a track used in interstate commerce, and for blowing up such track. Horton v. U. S., C.A.6 (Tenn.) 1958, 256 F.2d 138. Conspiracy 47(3.1); Explosives 5

Evidence was sufficient to sustain conviction for conspiring to transport in interstate commerce lewd and obscene motion picture film. Parr v. U. S., C.A.5 (Tex.) 1958, 255 F.2d 86, certiorari denied 79 S.Ct. 40, 358 U.S. 824, 3 L.Ed.2d 64. Conspiracy 47(3.1)

Evidence sustained conviction of conspiracy by four members of union involved in labor dispute to violate Federal Train Wreck Act, § 1992 of this title, by burning railroad bridge in order to stop train operations. Stanley v. U. S., C.A.6 (Ky.) 1957, 245 F.2d 427, motion denied 249 F.2d 64. Conspiracy 47(3.1)

In prosecution for conspiracy to steal, carry away, and conceal goods while moving in foreign commerce, evidence of two defendants' guilt was insufficient for the jury in view of their lack of knowledge that the goods were stolen while moving in foreign commerce. U.S. v. Sherman, C.A.2 (N.Y.) 1948, 171 F.2d 619, certiorari denied 69 S.Ct. 1484, 337 U.S. 931, 93 L.Ed. 1738. Conspiracy 48.1(2.1)

Evidence sustained conviction of single conspiracy between dining car employees to unlawfully take money from dining cars on trains moving in interstate commerce as against contention that evidence proved six distinct conspiracies each embracing one of waiters together with steward and chef. United States v. O'Connell, C.C.A.2 (N.Y.) 1948, 165 F.2d 697, certiorari denied 68 S.Ct. 744, 333 U.S. 864, 92 L.Ed. 1143. Conspiracy 47(11)

Evidence was sufficient to sustain conviction for violation of § 301 et seq. of Title 49 by employment of unlicensed carriers in interstate commerce. Martin v. U. S., C.C.A.10 (Colo.) 1938, 100 F.2d 490, certiorari denied 59 S.Ct. 590, 306 U.S. 649, 83 L.Ed. 104, certiorari denied 59 S.Ct. 590, 306 U.S. 649, 83 L.Ed. 1047, certiorari denied 59 S.Ct. 590, 306 U.S. 649, 83 L.Ed. 1048, certiorari denied 59 S.Ct. 591, 306 U.S. 649, 83 L.Ed. 1048, certiorari denied 59 S.Ct. 642, 306 U.S. 651, 83 L.Ed. 1050. Automobiles 355(2)

Evidence was sufficient for conspiracy to steal from interstate shipment. Halbert v. U.S., C.C.A.6 (Tenn.) 1923, 290 F. 765.

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In a prosecution for conspiracy to commit a crime against the United States, to wit, the transportation in interstate commerce in passenger trains or cars of nitro-glycerin and dynamite in violation of former §§ 88 [now this section] and 382 of this title, and for transporting, aiding, and abetting in such transportation of nitro-glycerin and dynamite, evidence was sufficient to sustain a conviction of certain of the defendants and insufficient to sustain a conviction of certain others. Ryan v. U.S., C.C.A.7 (Ind.) 1914, 216 F. 13, 132 C.C.A. 257. Conspiracy 47(3.1)

Evidence was sufficient to support convictions for knowing transmission of minors' names in interstate commerce with intent to entice, encourage, and solicit them to engage in sexual activity and conspiracy to commit the same; testimony of co-conspirator and minor victims demonstrated that defendant and co-conspirator arranged for sexual liaisons with minor victims on numerous occasions, defendant's drivers and his secretary corroborated that testimony, and defendant's own statements in more than 100 intercepted telephone conversations further substantiated the testimony. U.S. v. Giordano, D.Conn.2003, 324 F.Supp.2d 349, affirmed 442 F.3d 30, for additional opinion, see 2006 WL 522236. Commerce 82.6; Conspiracy 47(8); Infants 20

Evidence of the various defendants' relationship to gambling enterprise in Pennsylvania to which customers were brought from New Jersey sustained conviction for conspiracy to violate § 1952 of this title prohibiting interstate travel to facilitate gambling activity. U. S. v. Barrow, E.D.Pa.1964, 229 F.Supp. 722, affirmed in part, reversed in part on other grounds 363 F.2d 62, certiorari denied 87 S.Ct. 703, 385 U.S. 1001, 17 L.Ed.2d 541. Conspiracy 47(7)

753. Jury offenses, sufficiency of evidence

In prosecution for conspiracy to influence jurors and for aiding and abetting another in influencing a particular juror, evidence was sufficient for jury. U.S. v. Ritchie, C.C.A.3 (N.J.) 1942, 128 F.2d 798. Conspiracy 48.1(2.1); Criminal Law 45.35

754. Kickbacks, sufficiency of evidence

Evidence supported district court's conclusions that profits received by employee as part of scheme with cocoa dealer to speculate on cocoa futures market and share profits were kickbacks, that employer paid increased prices for cocoa as result of employee's scheme, that employer suffered actual loss amounting to value of profits received by employee, and that employee should make restitution to employer in that amount for conspiracy to commit mail fraud and devising scheme to commit mail fraud. U.S. v. Sleight, C.A.3 (N.J.) 1987, 808 F.2d 1012. Sentencing And Punishment 2188(1)

Evidence, taking view most favorable to government, was sufficient to support conviction of conspiracy in soliciting and receiving kickback from architects on county hospital project under Hill-Burton Act, section 291 et seq. of Title 42, in return for causing architects to be employed on such project. U. S. v. Thompson, C.A.6 (Tenn.) 1966, 366 F.2d 167, certiorari denied 87 S.Ct. 512, 385 U.S. 973, 17 L.Ed.2d 436. Conspiracy 47(6)

Evidence, in prosecution for conspiracy in which airline employee defendants allegedly abused their employment positions with airline for personal profit by affording preferential contract or bargaining status to business controlled by trucking firm defendant, including evidence that airline employees received monetary payments from trucking firm in return for preferential treatment for trucking firm in contract relationship with airline, was sufficient to establish that defendants were guilty to conspiracy beyond reasonable doubt. U. S. v. Pinto, E.D.Pa.1982, 548 F.Supp. 236. Conspiracy 47(3.1)

Evidence established that president of area management broker of Department of Housing and Urban Development conspired with known local contractors to defraud HUD by administering a program of soliciting and receiving

illegal kickbacks from those contractors in return for using his position to unlawfully influence the legitimate function and purpose of competitive bidding system intended to provide for the proper rehabilitation of HUD-owned property. U. S. v. Griffin, S.D.Ind.1975, 401 F.Supp. 1222, affirmed 541 F.2d 284. Conspiracy 47(6)

755. Kidnapping, sufficiency of evidence

Evidence that a number of telephone calls were made from a room registered to the name of one of the conspirators to a telephone number registered in the name of defendant on the two days prior to the kidnapping, that, after the kidnapping, defendant took the victim directly to one of the conspirator's apartment and told that conspirator and another to "watch these two for me and don't let them out of your sight," and that, after the victim escaped from defendant's automobile, defendant called a telephone number registered to one of the other conspirators was sufficient to show an agreement between defendant and his alleged coconspirators to kidnap the victim. U. S. v. Bankston, C.A.5 (Tex.) 1979, 603 F.2d 528. Conspiracy 47(8)

Evidence sustained convictions for conspiracy to kidnap. U.S. v. Bazzell, C.A.7 (Ill.) 1951, 187 F.2d 878, certiorari denied 72 S.Ct. 73, 342 U.S. 849, 96 L.Ed. 641, rehearing denied 72 S.Ct. 171, 342 U.S. 889, 96 L.Ed. 667. Conspiracy 47(8)

756. Labor offenses, sufficiency of evidence

There was sufficient evidence from which jury could find that conspiratorial agreement existed between union local officer and trades council official to embezzle money from local union to reimburse funds that had been granted by international union for safety program that had never been implemented; there was evidence that local official told trades council official that reimbursement of international union was necessary, that trades council official had interest in not paying back money that he had received personally, and that both parties agreed to obtain funds from local union. U.S. v. Long, C.A.8 (Mo.) 1991, 952 F.2d 1520, rehearing denied, certiorari denied 113 S.Ct. 298, 506 U.S. 905, 121 L.Ed.2d 222. Conspiracy 47(11)

Evidence that labor union officer was being investigated by Internal Revenue Service, that information dealing with such investigation was taken from files or Intelligence Division of Service and turned over to such union officer's assistant, who went to Washington on officer's behalf in respect to such investigation, and evidence that papers turned over to assistant by Internal Revenue Service employee were found in union officer's desk made case for jury in prosecution for conspiracy. U. S. v. Gosser, C.A.6 (Ohio) 1964, 339 F.2d 102, certiorari denied 86 S.Ct. 44, 382 U.S. 819, 15 L.Ed.2d 65, rehearing denied 86 S.Ct. 309, 382 U.S. 933, 15 L.Ed.2d 345, certiorari denied 86 S.Ct. 44, 382 U.S. 819, 15 L.Ed.2d 66, rehearing denied 86 S.Ct. 285, 382 U.S. 922, 15 L.Ed.2d 237. Conspiracy 48.2(2)

Evidence sustained convictions for conspiracy to commit offenses in violation of sections of the Labor-Management Reporting and Disclosure Act of 1959, §§ 401 et seq. of Title 29, pertaining to rights of members of labor organizations, and of related substantive offenses. U. S. v. Bertucci, C.A.3 (Pa.) 1964, 333 F.2d 292, certiorari denied 85 S.Ct. 75, 379 U.S. 839, 13 L.Ed.2d 45. Conspiracy 47(3.1); Labor And Employment 3283

In prosecution for conspiring to fraudulently effectuate, on behalf of union, compliance with former subsection (h) of § 159 of Title 29 by means of filing false non-Communist affidavits, evidence as to connection of each defendant with conspiracy was sufficient for the jury in certain cases and insufficient in other cases. Dennis v. U.S., C.A.10 (Colo.) 1962, 302 F.2d 5. Conspiracy 48.1(3)

Evidence, in prosecution of union officials for taking unlawful payments of money from employers of union members, sustained convictions of two officials on conspiracy count and substantive counts, and sustained

conviction of third officials on conspiracy count. U. S. v. Gibas, C.A.7 (Ill.) 1962, 300 F.2d 836, certiorari denied 83 S.Ct. 32, 371 U.S. 817, 9 L.Ed.2d 58. Conspiracy 47(3.1); Labor And Employment 3283

In absence of any deprivation of contractual rights resulting from removal of employees from temporary positions as journeymen, there was no basis on which to premise any conspiracy between employer and union to exclude plaintiffs from becoming journeymen or to deprive them of retirement and fringe benefits due them while performing journeymen duties temporarily. Arnold v. United Ass'n of Journeymen and Apprentices of Plumbing and Pipe Fitting Industry of U. S. and Canada, Local Union No. 449, AFL-CIO, W.D.Pa.1975, 388 F.Supp. 1105, affirmed 529 F.2d 511. Conspiracy 8

757. Larceny, sufficiency of evidence

Evidence was sufficient to support finding that refinery owner participated with codefendant in converting funds belonging to or pledged to Small Business Administration (SBA); owner was certified public accountant (CPA), owned substantial minority interest in company, was substantially involved in day-to-day operations of refinery, and did not quit his job when sales proceeds were deposited into refinery's operating account even though he knew that the funds had to be paid to SBA. U.S. v. Leal, C.A.5 (Tex.) 1994, 30 F.3d 577, certiorari denied 115 S.Ct. 1172, 513 U.S. 1182, 130 L.Ed.2d 1126. Larceny 55

There was sufficient evidence to sustain conviction of defendant for conspiracy to steal and transport in interstate commerce government property in view of testimony as to his repeated activities from which inference could be drawn that he had knowledge of conspiracy of his fellow employees and that he willingly participated therein. U. S. v. Harris, C.A.4 (S.C.) 1969, 409 F.2d 77, certiorari denied 90 S.Ct. 443, 396 U.S. 965, 24 L.Ed.2d 430, certiorari denied 90 S.Ct. 447, 396 U.S. 965, 24 L.Ed.2d 430. Conspiracy 47(11)

In prosecution for conspiracy to commit larceny, evidence showing no mutual understanding or plan between defendants, but merely separate and distinct conspiracies other than that charged, was insufficient to support conviction. Tinsley v. U.S., C.C.A.8 (S.D.) 1930, 43 F.2d 890. Conspiracy 47(11)

758. Liquor offenses, sufficiency of evidence

In prosecution for conspiracy to violate internal revenue liquor laws, evidence that defendant was present when one codefendant bought a truck which was later seized because it contained non-taxpaid liquor, and that on one occasion defendant was observed by investigator peering into a truck, after defendant had driven another truck to location behind which a stash of illegal whiskey was located, was insufficient as a matter of law for submission of the case against defendant to the jury. U. S. v. Jeffords, C.A.5 (Ga.) 1974, 491 F.2d 90. Conspiracy 48.1(4)

In light of testimony of FBI agent who had posed as prospective purchaser of "hot" gin from defendant and of four conspirators who testified for government and of defendant himself, trial court properly determined that testimony and identify of informer who led agent to meeting with defendant was not essential to fair determination of trial on charges of conspiracy to receive and have possession of chattels, moving as part of interstate shipment, known to have been stolen and substantive offense of receiving and having possession of stolen chattels. U. S. v. Jackson, C.A.6 (Ohio) 1970, 422 F.2d 975. Criminal Law 627.10(2.1)

In prosecution of city police officials, liquor dealers and others for conspiring to violate laws of United States by importing intoxicating liquors into dry state of Oklahoma, evidence was insufficient to establish that operator of liquor stores in Missouri, from whom large quantities of liquor were purchased, knew of conspiracy and consented to be party or knowingly did any act to accomplish its purpose. Jones v. U. S., C.A.10 (Okla.) 1958, 251 F.2d 288, certiorari denied 78 S.Ct. 703, 356 U.S. 919, 2 L.Ed.2d 715. Conspiracy 47(10)

In prosecution of police officials, liquor dealers and others for conspiring to violate laws of United States by

importation of intoxicating liquors into dry state of Oklahoma, evidence was insufficient to establish that failure to pay statutory tax for carrying on business of wholesale or resale liquor dealers had anything to do with conspiracy. Jones v. U. S., C.A.10 (Okla.) 1958, 251 F.2d 288, certiorari denied 78 S.Ct. 703, 356 U.S. 919, 2 L.Ed.2d 715. Conspiracy 47(10)

Evidence was sufficient to sustain conviction of one of defendants for transporting stolen whiskey in interstate commerce and conviction of both defendants for conspiring to steal, conceal and have possession of such whiskey. Tripp v. U.S., C.A.8 (Mo.) 1955, 221 F.2d 692. Conspiracy 47(11); Receiving Stolen Goods 8(3)

Testimony of an accomplice, corroborated in part by that of policemen and other witnesses, was sufficient to sustain conviction for possessing and operating an illegal still, and for conspiracy to commit the same offense. United States v. Heitner, C.C.A.2 (N.Y.) 1945, 149 F.2d 105, certiorari denied 66 S.Ct. 33, 326 U.S. 727, 90 L.Ed. 432, rehearing denied 66 S.Ct. 164, 326 U.S. 809, 90 L.Ed. 494. Criminal Law 508(9)

Evidence that defendant furnished materials to make liquor, delivered at the still, and took the whole output of the still at a price, deducting the value of the materials, sustained conspiracy conviction, although it was not shown that defendant participated otherwise in distilling operations. Neely v. U. S., C.C.A.5 (Ala.) 1944, 145 F.2d 828. Conspiracy 47(9)

Evidence including showing that accused arranged to take orders for sugar by telephone under code words, that he delivered sugar furtively at night and generally at a coal yard where sugar was transferred to bootleggers' automobiles, and that accused aided bootleggers to conceal their purchases by failing to make record of sugar sales required by governmental regulations, sustained finding that accused had made himself a party to conspiracy to operate unregistered stills. U S v. Loew, C.C.A.2 (N.Y.) 1944, 145 F.2d 332, certiorari denied 65 S.Ct. 587, 324 U.S. 840, 89 L.Ed. 1403. Conspiracy 47(10)

A grocer who sold large quantities of sugar to bootleggers who operated unregistered stills, and who actively participated in their conspiracy, was properly convicted of conspiracy to operate unregistered stills as against contention that the evidence if sufficient to prove the grocer a party to the conspiracy, proved him guilty of the substantive crimes and not of conspiracy to commit them. U S v. Loew, C.C.A.2 (N.Y.) 1944, 145 F.2d 332, certiorari denied 65 S.Ct. 587, 324 U.S. 840, 89 L.Ed. 1403. Conspiracy 37

Evidence that accused did not keep proper records of sales of liquor, that he knew that purchaser was in whisky business in Oklahoma, and that he was buying whisky at accused's store, was insufficient to establish "conspiracy" between accused and purchaser for purpose of violating former § 223 of Title 27 by importing liquor into Oklahoma. Bacon v. U.S., C.C.A.10 (Okla.) 1942, 127 F.2d 985. Conspiracy 47(9)

Evidence sustained conviction of transporting and importing intoxicating liquor contained more than 4 per cent. of alcohol into Oklahoma in violation of former § 223 of Title 27. Bacon v. U.S., C.C.A.10 (Okla.) 1942, 127 F.2d 985. Intoxicating Liquors 236(20)

Evidence was sufficient to connect six defendants with the illegal importation of alcohol into the United States and with a scheme to import alcohol without the payment of duty thereon, and hence was sufficient to sustain convictions for conspiring to import alcohol unlawfully into the United States and for unlawfully importing alcohol into the United States. U.S. v. Gerke, C.C.A.3 (N.J.) 1942, 125 F.2d 243, certiorari denied 62 S.Ct. 1033, 316 U.S. 667, 86 L.Ed. 1742. Conspiracy 47(10)

A finding that two defendants for profit sold a vessel to persons who they knew intended to and later did use it in an illegal enterprise, was insufficient to support their conviction for conspiring to import alcohol unlawfully into the United States, where there was no evidence that those defendants participated in the conspiracy or knew of its existence. U.S. v. Gerke, C.C.A.3 (N.J.) 1942, 125 F.2d 243, certiorari denied 62 S.Ct. 1033, 316 U.S. 667, 86

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L.Ed. 1742. Conspiracy 47(10)

Evidence that defendant transported liquor from Missouri into Arkansas, that liquor was received and sold in Arkansas by defendant's sister-in-law, and that partnership existed between defendant and sister-in-law justified finding that there was agreement between defendant and sister-in-law to transport liquor from Missouri into Arkansas when manufacture and sale in Arkansas was prohibited and to warrant conviction for conspiracy to violate Act of Congress prohibiting transportation of liquor into a dry state. Barker v. U.S., C.C.A.8 (Ark.) 1936, 86 F.2d 284. Conspiracy 47(10)

In prosecution for conspiracy to import, possess, and sell liquor, evidence was sufficient to take case to jury. McDaniel v. U.S., C.C.A.5 (Fla.) 1928, 24 F.2d 303. Conspiracy 48.1(4)

Evidence was sufficient to convict for conspiracy to violate National Prohibition Act, former § 1 et seq. of Title 27. McDonnell v. U.S., C.C.A.1 (Mass.) 1927, 19 F.2d 801, certiorari denied 48 S.Ct. 114, 275 U.S. 551, 72 L.Ed. 421. See, also, McLaughlin v. U.S., C.C.A.Pa.1928, 26 F.2d 1; Dow v. U.S., C.C.A.Wash.1927, 21 F.2d 816; Dickerson v. U.S., C.C.A.Iowa 1927, 18 F.2d 887; Milner v. U.S., C.C.A.Pa.1926, 13 F.2d 739; Jezewski v. U.S., C.C.A.Mich.1926, 13 F.2d 599; Albury v. U.S., C.C.A.Fla. 1926, 12 F.2d 595; Hilt v. U.S., C.C.A.Fla.1926, 12 F.2d 504; Keith v. U.S., C.C.A.Ky.1926, 11 F.2d 933; Lewis v. U.S., C.C.A.Mich.1926, 11 F.2d 745; Simpson v. U.S., C.C.A.W.Va.1926, 11 F.2d 591, certiorari denied 46 S.Ct. 488, 271 U.S. 674, 70 L.Ed. 1145; Pielow v. U.S., C.C.A.Wash.1925, 8 F.2d 492; Bockol v. U.S., C.C.A.Del.1925, 6 F.2d 795; Lewis v. U.S., C.C.A.Wash.1925, 6 F.2d 222; Hacker v. U.S., C.C.A.Nev.1925, 5 F.2d 132; Becher v. U.S., C.C.A.N.Y.1924, 5 F.2d 45, certiorari denied 45 S.Ct. 462, 267 U.S. 602, 69 L.Ed. 808; Williams v. U.S., C.C.A.Tenn.1925, 3 F.2d 933; Turinetti v. U.S., C.C.A.Neb.1924, 2 F.2d 15; Huth v. U.S., C.C.A.Ky.1924, 295 F. 35; Powers v. U.S., C.C.A.Tex.1923, 294 F. 512; Einziger v. U.S., C.C.A.N.J.1921, 276 F. 905; Alderman v. U.S., C.C.A.Fla.1922, 279 F. 259, certiorari denied 42 S.Ct. 586, 259 U.S. 584, 66 L.Ed. 1075.

Evidence was sufficient as to only part of defendants. Perry v. U.S., C.C.A.8 (Okla.) 1927, 18 F.2d 477. See, also, Lucking v. U.S., C.C.A.Ind.1926, 14 F.2d 881. Intoxicating Liquors 236(19)

Evidence of particular defendant's connection with conspiracy to violate National Prohibition Act, former § 1 et seq. of Title 27, was insufficient to go to jury. Lewis v. U. S., C.C.A.6 (Mich.) 1926, 11 F.2d 745. Conspiracy 48

Evidence was insufficient to go to jury in prosecution for conspiring to violate National Prohibition Act, former § 1 et seq. of Title 27, and for unlawfully possessing and transporting intoxicating liquor. Coleman v. U.S., C.C.A.6 (Ky.) 1926, 11 F.2d 601. Conspiracy 48

The conviction of two out of three defendants, charged in separate counts with conspiracy, with unlawful possession of whisky, with unlawful transportation, and with maintaining a common nuisance, was not supported by any substantial evidence as to either count. Green v. U. S., C.C.A.6 (Ohio) 1925, 8 F.2d 140, 4 Ohio Law Abs. 254.

Evidence on trial for conspiracy was sufficient to raise issue whether accused were interested in manufacture and transportation, in violation of National Prohibition Act, former § 1 et seq. of Title 27, of beer found on premises leased by them and in truck load of beer seized by revenue agents. Kasuba v. U. S., C.C.A.7 (Wis.) 1924, 3 F.2d 270.

Former § 50 of Title 27, making possession of liquor prima facie evidence of unlawful purpose, had no application in a trial for conspiracy under former § 88 of this title [now this section]. Linden v. U.S., C.C.A.3 (N.J.) 1924, 2 F.2d 817. Conspiracy 47

18 U.S.C.A. § 371

In a prosecution for conspiracy to manufacture and sell distilled spirits and for maintenance of a nuisance, evidence that certain of defendants, who were detectives, were present from time to time in the garage in which it was claimed that the defendants manufactured the liquor, with nothing to show that they did anything in the conspiracy or in its furtherance, was insufficient to warrant the conviction of such defendants. Brauer v. U.S., C.C.A.3 (N.J.) 1924, 299 F. 10. Conspiracy 47

Evidence that defendant, charged with conspiracy to steal whisky owned by the government, with others, went with trucks in the night to the warehouse where the whisky was stored, and on being admitted by the watchman paid him a sum on account and started to go to the rooms in which the whisky was stored, carrying gloves, steel cutters to cut the bolts of the locks, and bolts and locks to replace those removed, was sufficient to warrant submission of the case to the jury. Kerner v. U.S., C.C.A.3 (N.J.) 1923, 290 F. 802. Conspiracy 48

In prosecution under former § 88 of this title [now this section] for conspiracy to commit an offense against the United States by having possession of and transporting intoxicating liquor, in violation of National Prohibition Act, former § 12 of Title 27, circumstantial evidence was sufficient to carry the case to the jury. Murry v. U. S., C.C.A.8 (Ark.) 1922, 282 F. 617. Conspiracy 48.1(4)

Evidence that defendants lived at the place where it was alleged the conspiracy to transport intoxicating liquors into the state was formed, and that such place was the headquarters for their illicit liquor business, is sufficient to support an inference that the conspiracy was formed at that place. Grayson v. U.S., C.C.A.6 (Tenn.) 1921, 272 F. 553, certiorari denied 42 S.Ct. 49, 257 U.S. 637, 66 L.Ed. 409. Criminal Law 564(3)

In a prosecution for conspiracy to purchase intoxicating liquors for transportation in interstate commerce, which alleged as one overt act joint purchase by two defendants, evidence that one of the named defendants gave the order for the liquor, and that the other paid therefor partly with money of each defendant, sufficiently shows a joint purchase, since it connects both defendants with the act, and in any event the act of either in pursuance of the conspiracy would have been the act of both. Tacon v. U.S., C.C.A.5 (La.) 1921, 270 F. 88. Conspiracy 47(10)

A conviction for conspiracy to transport liquor into a prohibition state, was sustained by evidence tending to show that defendant, who was a wholesale dealer in Missouri, had made an arrangement with a customer in Omaha, pursuant to which on three occasions he delivered to an agent of such customer an automobile load of whisky, knowing that it was to be transported to Omaha in a prohibition state. Block v. U.S., C.C.A.8 (Neb.) 1920, 267 F. 524. Conspiracy 47(10)

Evidence was sufficient to sustain conviction for conspiracy to ship whisky from one state into another without the packages being labeled to show the consignee, contents, and quantity, in violation of former § 390 of this title. Richards v. U.S., C.C.A.9 (Wash.) 1920, 264 F. 654. Conspiracy 47(10)

Evidence established that one of defendants charged with conspiracy to illegally purchase at wholesale intoxicating liquors for resale at defendant club did not have to nor did he enter into any agreement or conspiracy with any other member of his family concerning how liquor was to be purchased for defendant club, but that he told other members of family what was going to be done. U. S. v. Mirror Lake Golf and Country Club, Inc., W.D.Mo.1964, 232 F.Supp. 167. Conspiracy 47(9)

That one defendant discussed with another person possibility that certain other parties might get together on their own with respect to buying liquor for resale in club did not establish beyond reasonable doubt that such defendant was guilty of conspiring to illegally purchase liquor for resale. U. S. v. Mirror Lake Golf and Country Club, Inc., W.D.Mo.1964, 232 F.Supp. 167. Conspiracy 47(9)

Evidence failed to sustained conviction for conspiracy to illegally purchase distilled spirits at wholesale for resale. U. S. v. Mirror Lake Golf and Country Club, Inc., W.D.Mo.1964, 232 F.Supp. 167. Conspiracy 47(9)

18 U.S.C.A. § 371

Defendants' guilt of conspiracy to violate §§ 2803, 2831, 2833, 2834 of Title 26, transporting distilled spirits without containers having stamps, carrying on a business of distiller, delivering distilled spirits, making and fermenting mash, and depositing and concealing nontax distilled spirits, was properly submitted to the jury. U. S. v. Haynes, W.D.Pa.1948, 81 F.Supp. 63, affirmed 173 F.2d 223. See, also, Orloff v. U.S., C.C.A.Mich.1946, 153 F.2d 292; Hall v. U.S., C.C.A.Ga.1945, 150 F.2d 281, certiorari denied 66 S.Ct. 53, 326 U.S. 741, 90 L.Ed. 442; U.S. v. Maggio, C.C.A.N.J.1942, 126 F.2d 155, certiorari denied 62 S.Ct. 1275, 316 U.S. 686, 86 L.Ed. 1758. Conspiracy 48.2(2); Internal Revenue 5315

759. Loans, sufficiency of evidence

Evidence supported defendants' convictions for conspiracy to defraud, mail fraud and money laundering in connection with fraudulent loan program; defendants did not challenge fact that they were involved in promotion and operation of loan program, and jury could reasonably conclude that acts of mail fraud and money laundering were both in furtherance of conspiracy and reasonably foreseeable. U.S. v. Massey, C.A.10 (Okla.) 1995, 48 F.3d 1560, certiorari denied 115 S.Ct. 2628, 515 U.S. 1167, 132 L.Ed.2d 868, denial of post-conviction relief affirmed 97 F.3d 1465. Conspiracy 47(4); Postal Service 49(11); United States 34

Although he had not signed appraisal for particular parcel of real estate, appraiser's conviction for conspiring to overvalue land to obtain fraudulent real estate loan was supported by evidence that appraiser's employer had ownership in parcel, appraiser had undisclosed profits interest and received one third of profit made on resale of property, and party who prepared appraisal met with appraiser and employer, was told by employer what dollar figure was needed in appraisal, and was supplied by appraiser and employer with backup documents to accompany appraisal report. U.S. v. Faulkner, C.A.5 (Tex.) 1994, 17 F.3d 745, rehearing and rehearing en banc denied 21 F.3d 1110, certiorari denied 115 S.Ct. 193, 513 U.S. 870, 130 L.Ed.2d 125, rehearing dismissed 115 S.Ct. 786, 513 U.S. 1105, 130 L.Ed.2d 679, certiorari denied 115 S.Ct. 663, 513 U.S. 1056, 130 L.Ed.2d 598. Conspiracy 47(4)

760. Lottery offenses, sufficiency of evidence

Evidence sustained conviction of operators of numbers game for conspiracy to evade and defeat payment of federal taxes imposed on lottery operations. Ingram v. U.S., U.S.Ga.1959, 79 S.Ct. 1314, 360 U.S. 672, 3 L.Ed.2d 1503, rehearing denied 80 S.Ct. 42, 361 U.S. 856, 4 L.Ed.2d 96. Conspiracy 47(7)

Evidence, which failed to establish knowledge on part of employees of operators of numbers game that such operators were liable for federal taxes by reason of the gambling operations, was insufficient to sustain conviction of employees for conspiracy to evade and defeat payment of federal taxes imposed on lottery operations. Ingram v. U.S., U.S.Ga.1959, 79 S.Ct. 1314, 360 U.S. 672, 3 L.Ed.2d 1503, rehearing denied 80 S.Ct. 42, 361 U.S. 856, 4 L.Ed.2d 96. Conspiracy 47(7)

Evidence was sufficient to sustain conviction for conspiring to commit an offense against the United States by bringing lottery tickets into the United States from Puerto Rico. U.S. v. De Jesus, C.A.2 (N.Y.) 1961, 289 F.2d 37, certiorari denied 81 S.Ct. 1924, 366 U.S. 963, 6 L.Ed.2d 1254. Conspiracy 47(7)

Evidence, as to all defendants but one, was sufficient to support convictions on all counts, in prosecution for operating and conspiracy to operate lottery, and for possession of lottery tickets, and maintenance of gambling premises. Aikens v. U.S., C.A.D.C.1956, 232 F.2d 66, 98 U.S.App.D.C. 66. Conspiracy 47(7); Gaming 98(5); Lotteries 29

Evidence that search of previously occupied apartment of defendant uncovered numbers slips and notebook, and that defendant was seen entering apartment in company of other defendant, in absence of evidence of possession of lottery tickets by defendant, was insufficient to support conviction of defendant for operation of or conspiracy to

operate lottery, or for maintaining gambling premises. Aikens v. U.S., C.A.D.C.1956, 232 F.2d 66, 98 U.S.App.D.C. 66. Gaming 98(5); Lotteries 29

If accused knew that codefendant, with whom he contracted to conduct contests for benefit of hospital of which accused was the head, was engaged in interstate lottery business and that lottery tickets would be shipped in interstate commerce by someone in codefendant's organization, this was sufficient to sustain conviction of conspiracy to transport lottery tickets in interstate commerce, even if accused did not know and never met employee of codefendant who actually made the shipments of tickets, and even if accused did not personally profit directly from scheme. Deacon v. U. S., C.C.A.1 (Mass.) 1941, 124 F.2d 352. Conspiracy 28(3)

In prosecution against head of a hospital for conspiracy to transport lottery tickets in interstate commerce for benefit of hospital, evidence relating to accused's agreement with codefendant to conduct contests for hospital's benefit and as to his conduct and knowledge after entering into agreement was sufficient to make case for jury. Deacon v. U. S., C.C.A.1 (Mass.) 1941, 124 F.2d 352. Conspiracy 48.1(2.1)

In prosecution for conspiracy to transport lottery tickets in interstate commerce for benefit of hospital of which defendant was the head, evidence authorized finding that defendant had full knowledge from beginning that persons with whom he had agreed and whose ends he was advancing were conducting a lottery, not only in state where hospital was located but also in other states, and that, therefore, he must have known that lottery tickets would be shipped in interstate commerce, and that he was not mere innocent dupe. Deacon v. U. S., C.C.A.1 (Mass.) 1941, 124 F.2d 352. Conspiracy 47(7)

761. Money laundering, sufficiency of evidence

Conviction for conspiracy to launder money was supported by evidence that defendants joined in scheme to falsify financial documents in order to allow drug dealers to purchase automobiles. U.S. v. Long, C.A.8 (Minn.) 1992, 977 F.2d 1264, rehearing denied. Conspiracy 47(3.1)

Evidence was sufficient to support finding that defendant participated in money laundering conspiracy, where evidence included videotape of person making delivery of money (proceeds from illegal activities) to hotel room which jury apparently believed was defendant, jury heard conversation between conspirator and person alleged to be defendant and phone recordings connecting another conspirator to defendant. U.S. v. Dimeck, D.Kan.1993, 815 F.Supp. 1425, reversed 24 F.3d 1239. Conspiracy 47(3.1)

762. Murder, sufficiency of evidence

Sufficient evidence supported finding that murder of state trooper was reasonably foreseeable consequence of drug conspiracy and that defendants' roles in conspiracy were more than "minor," and thus defendants were properly convicted under *Pinkerton* rule of conspirator liability for murder of trooper who was killed by pipe bomb explosion after stopping coconspirator's vehicle, where weapons and violence were frequently used in order to further interests of extensive drug conspiracy, and defendants were either principal leaders in drug operation or played important roles in implementation of conspiracy's unlawful goals. U.S. v. Mothersill, C.A.11 (Fla.) 1996, 87 F.3d 1214, certiorari denied 117 S.Ct. 531, 519 U.S. 1017, 136 L.Ed.2d 416, certiorari denied 117 S.Ct. 1109, 520 U.S. 1105, 137 L.Ed.2d 311, certiorari denied 117 S.Ct. 1328, 520 U.S. 1151, 137 L.Ed.2d 489. Conspiracy 47(8)

Murder-for-hire conspiracy conviction was supported by evidence that defendant knew that associate had been hired to kill victim, supported decision to kill victim, and that defendant assisted person who dealt directly with killer to locate victim's home, where murder was to be committed, despite contention that government witness changed testimony to conform to facts given witness by government. U.S. v. Razo-Leora, C.A.5 (Tex.) 1992, 961 F.2d 1140, rehearing denied. Conspiracy 47(8)

18 U.S.C.A. § 371

Evidence sustained defendants' convictions for conspiracy to deal in unlawful firearms as well as the conviction of one of the defendants for various substantive violations of section 921 et seq. of this title and section 5861 of Title 26. U.S. v. Sorrells, C.A.11 (Fla.) 1983, 714 F.2d 1522. Conspiracy 47(3.1); Internal Revenue 5295

Where government proved that defendant was involved in plan to murder government informant, whether or not defendant knew of all details regarding motive for shooting was irrelevant for purposes of determining sufficiency of evidence to sustain conviction of substantive offenses of obstruction of justice and interstate travel in aid of racketeering. U.S. v. Fernandez-Roque, C.A.5 (La.) 1983, 703 F.2d 808. Commerce 82.10; Obstructing Justice 5

There was sufficient evidence for jury to find that defendant knew of scheme to kill trooper to prevent him from testifying in criminal trial of defendant's boyfriend, and that defendant willingly joined that plan by having money delivered to agent posing as hit man, and thus, evidence supported convictions of conspiracy, attempting to kill officer with intent to prevent his testimony in criminal prosecution, and unlawfully using facility in interstate commerce with intent to commit crime of violence. U.S. v. Saffold, D.Kan.1996, 915 F.Supp. 260. Commerce 82.6; Conspiracy 47(3.1); Homicide 1207; Homicide 1169

763. Narcotics offenses, sufficiency of evidence

Absent an agreement between defendant, a drug supplier, and dealer who was involved in illegal green-card operation to pay for drugs, which operation defendant was aware of, that defendant had an expectation that planned drug deliveries to dealer would be paid for through the green-card business, the fact that defendant was prepared to deliver drugs to dealer without full payment was insufficient to demonstrate that defendant was involved in the green-card operation, as required for conviction for conspiracy to bribe a public official in connection with operation. U.S. v. Ceballos, C.A.2 (N.Y.) 2003, 340 F.3d 115. Conspiracy 47(6)

Evidence did not support conspiracy conviction of passenger in vehicle caught transporting illegal drugs; mere knowledge that drugs were present in vehicle, without additional evidence to support reasonable inference of knowing agreement to distribute them, was insufficient to sustain conviction for conspiracy to distribute. U.S. v. Jones, C.A.10 (Wyo.) 1995, 44 F.3d 860. Conspiracy 47(12)

There was sufficient evidence to support inference that three defendants worked together to distribute narcotics, and that conspiracy among them existed, to support their conspiracy convictions; there was evidence that undercover officer was in direct contact with all three defendants, one defendant told officer that she got her heroin from second defendant and that second defendant's heroin was "the same" as third defendant's, and third defendant knew about four-ounce heroin transaction that officer was negotiating with other two defendants. U.S. v. Gaines, C.A.8 (Minn.) 1992, 969 F.2d 692, rehearing denied. Conspiracy 47(12)

Evidence that defendant believed something illegal was being hauled in at least two cars that he was either driving or riding in and that he knew there were drugs in one of the cars was insufficient to support conspiracy conviction, absent evidence of any specific agreement to do anything with any of the other three alleged coconspirators. U.S. v. Bell, C.A.4 (N.C.) 1992, 954 F.2d 232, denial of post-conviction relief affirmed 986 F.2d 1415, certiorari denied 114 S.Ct. 112, 510 U.S. 835, 126 L.Ed.2d 77. Conspiracy 47(12)

Finding that defendant and codefendant were members of single conspiracy to import over one kilogram of heroin into United States was supported by evidence that both defendant and codefendant were recruited by same woman and both were responsible to individual controlling shipments of heroin to United States, that defendant and codefendant discussed plans to transport heroin into United States during flight out of country to pick up heroin, that defendant and codefendant went together to meet individual controlling shipments of heroin into United States, and that defendant, along with another coconspirator, went to meet codefendant at airport when codefendant arrived in United States with 1.5 kilograms of heroin concealed in his suitcase. U.S. v. Moore, C.A.2 (N.Y.) 1991,

949 F.2d 68, certiorari denied 112 S.Ct. 1678, 503 U.S. 988, 118 L.Ed.2d 396, post-conviction relief denied. Conspiracy 47(12)

There was sufficient evidence that defendant knew of and joined cocaine importation conspiracy and that he actually participated in importation of cocaine to support his convictions of importing cocaine and conspiring to import cocaine, where coconspirators and government agents identified defendant as passenger on flight from Panama that dropped 250 kilogram package of cocaine in waters off the coast of Puerto Rico, Customs inspector testified that defendant, or someone using defendant's name, registered with ground control authorities as pilot of small plane that landed in San Juan around time that cocaine was air-dropped, another agent testified that stamps in defendant's passport indicated he was in Panama before flight, and coconspirators testified that defendant was in vehicle used to transport cocaine bundle to marina for packaging, and was at marina while packaging was taking place. U.S. v. Morrison, C.A.7 (Wis.) 1991, 946 F.2d 484, rehearing denied, on remand 782 F.Supp. 80, certiorari denied 113 S.Ct. 826, 506 U.S. 1039, 121 L.Ed.2d 696, dismissal of habeas corpus affirmed 76 F.3d 378. Conspiracy 47(12); Controlled Substances 86

Conviction for conspiracy to distribute heroin was supported by codefendant's testimony that she had gone to defendant's apartment to obtain heroin on several occasions, that she had observed defendant grind heroin in coffee grinder to prepare it for sale, and that defendant had admitted to her that he regularly supplied heroin. U.S. v. Guerra-Marez, C.A.5 (Tex.) 1991, 928 F.2d 665, rehearing denied, certiorari denied 112 S.Ct. 322, 502 U.S. 917, 116 L.Ed.2d 263, certiorari denied 112 S.Ct. 443, 502 U.S. 969, 116 L.Ed.2d 461. Conspiracy 47(12)

Evidence, including proof that defendant was observed carrying a large box, which gave off a distinct odor of marijuana, into a house at direction of a member of drug conspiracy, he was later seen with another member leaning against a vehicle in front of same house with shotgun between them, and defendant entered another residence and placed shotgun against wall at time when other conspirators and government team were discussing drug transaction, was sufficient evidence of defendant's involvement in the conspiracy, thereby supporting his conspiracy conviction. U.S. v. Alvarez, C.A.11 (Fla.) 1984, 735 F.2d 461. Conspiracy 47(12)

Evidence that defendant was principal bookkeeper for firm which laundered money from illegal drug transactions and that when cash was brought to firm he counted it, broke it down by denomination and credited it to account of appropriate customer and made deposits into an account kept at foreign exchange house, supported conviction of conspiracy to defraud the United States and to commit currency and other offenses against the Government. U.S. v. Orozco-Prada, C.A.2 (N.Y.) 1984, 732 F.2d 1076, certiorari denied 105 S.Ct. 154, 469 U.S. 845, 83 L.Ed.2d 92, certiorari denied 105 S.Ct. 155, 469 U.S. 845, 83 L.Ed.2d 92. Conspiracy 47(6)

Defendant's mere presence at apartment where drugs were kept, even coupled with knowledge that crime was being committed there, was not sufficient to establish guilt; evidence tending to show knowing participation in the conspiracy was also needed. U.S. v. Soto, C.A.2 (N.Y.) 1983, 716 F.2d 989. Conspiracy 40.1; Conspiracy 47(12)

Defendant's testimony that her purchase of narcotics was motivated by a plan conceived by one individual and not by individual who was chief organizer of drug smuggling conspiracy did not entitle her to acquittal since fact was established that in Thailand she had purchased large quantities of heroin which were smuggled back to United States and her participation was established by the evidence and her motives were relevant to conspiracy conviction, since it was established that she did the illegal acts alleged for financial gain, agreeing with the other defendants as to the illegal scheme. U. S. v. Praetorius, C.A.2 (N.Y.) 1979, 622 F.2d 1054, certiorari denied 101 S.Ct. 162, 449 U.S. 860, 66 L.Ed.2d 76. Conspiracy 47(12)

Evidence that defendant was a distributor of marijuana and in four-year period dealt in quantities of up to 800 pounds of the substance and located a storage place for one massive shipment and sold portions of that shipment to others and kept the ring's records was sufficient to support conviction of conspiring to possess and distribute

marijuana and also established that such defendant was not victim of spillover prejudice. U. S. v. McGrath, C.A.2 (N.Y.) 1979, 613 F.2d 361, certiorari denied 100 S.Ct. 2946, 446 U.S. 967, 64 L.Ed.2d 827. Conspiracy 47(12)

Evidence in prosecution for conspiracy and substantive offenses relating to manufacture and distribution of methamphetamine in the Philadelphia area during 1975 was sufficient, based on testimony by informant and state drug control agent, to support finding that single conspiracy charged in indictment existed, and that defendants, albeit at different times, were members of that conspiracy. U. S. v. Boyd, C.A.3 (Pa.) 1978, 595 F.2d 120. Conspiracy 47(12)

Testimony by witness that he went to a particular place to pick up a package of narcotics from two defendants and that the two defendants argued over whether the package should be given to the witness, that one defendant later accused the witness of switching packages, that defendants were present when others charged with participation in the conspiracy discussed drug trafficking, and that one defendant at one point told others in the conspiracy not to worry because they would get the drugs was sufficient to sustain both defendants' convictions for conspiracy. U. S. v. Harris, C.A.7 (Ind.) 1976, 542 F.2d 1283, certiorari denied 97 S.Ct. 1558, 430 U.S. 934, 51 L.Ed.2d 779. Conspiracy 47(12)

While the trial judge was justified in submitting case to the jury on the theory of a single conspiracy, there was insufficient evidence that two of the appellants "entered, participated in, or furthered the conspiracy"; as to the one, proof of whose involvement in the conspiracy was totally absent, a judgment of acquittal would be directed in the interests of justice; as to the other, a review of the record mandated a remand for a new trial. U. S. v. Steinberg, C.A.2 (N.Y.) 1975, 525 F.2d 1126, certiorari denied 96 S.Ct. 2167, 425 U.S. 971, 48 L.Ed.2d 794. Conspiracy 48.1(1); Criminal Law 1189

Conspiracy conviction was supported by evidence that Drug Enforcement Administration agents met defendant at her apartment, that she stated that cocaine deal would be delayed because her man was doing another deal, that deal was discussed at defendant's apartment, with defendant and codefendant, that codefendant distributed cocaine to agents in form of sample, and that codefendant directed agents back to defendant's apartment, where actual distribution took place. U. S. v. Isaacs, C.A.5 (Fla.) 1975, 516 F.2d 409, certiorari denied 96 S.Ct. 295, 423 U.S. 936, 46 L.Ed.2d 269. Conspiracy 47(12)

Evidence which did not, inter alia, show that defendant had any stake in importing drugs from Canada or that defendant had any connection with acquisition, concealment, importation, use and sale of drugs, was insufficient to sustain conviction of conspiracy and importation of methamphetamines, notwithstanding defendant's presence in automobile at time drugs were found, his close association with driver of automobile who plead guilty to importing drugs and a false exculpatory statement made by defendant shortly after arrest. U. S. v. Johnson, C.A.2 (Vt.) 1975, 513 F.2d 819. Conspiracy 47(12); Controlled Substances 86

Evidence concerning defendant's conversations and direct dealings with codefendant, who allegedly purchased cocaine from defendant in Jamaica and imported it into the United States, and defendant's contacts with government agent leading to defendant's entry into the territorial United States to collect balance of purchase price constituted sufficient basis for jury to conclude that defendant knew of and was involved in the importation and sustained conviction of conspiracy to import cocaine and importation of cocaine. U. S. v. Miller, C.A.5 (Fla.) 1975, 513 F.2d 791. Conspiracy 47(12); Controlled Substances 86

Evidence that defendant, a police officer, knew that a federal investigator was working on a case and was seeking information about certain persons recently arrested and certain persons whom defendant had previously arrested for possession of heroin and cocaine, and evidence that defendant had concealed the fact that he and fellow police officers were holding narcotics which they had seized and were offering them for sale was adequate to prove specific intent of defendant to conspire to defraud the United States by obstructing and hindering federal law

enforcement agencies in the investigation and prosecution of violations of federal narcotics laws. U. S. v. Papadakis, C.A.2 (N.Y.) 1975, 510 F.2d 287, certiorari denied 95 S.Ct. 1682, 421 U.S. 950, 44 L.Ed.2d 104. Conspiracy 47(6)

Evidence that defendant had knowledge of conspiracy to import cocaine and agreed to contact drug supplier for government agents who had previously made arrangements to purchase cocaine from coconspirators, in order to ameliorate negotiations between agents and coconspirators was sufficient to sustain determination that there was one continuous conspiracy beginning with government agent's contact with coconspirators and continuing through subsequent meeting between government agents and defendant and that defendant was a participant in that conspiracy. U. S. v. Rodriguez, C.A.5 (Fla.) 1975, 509 F.2d 1342. Conspiracy 47(12)

That codefendant may have possessed heroin and had opportunity to join defendant's conspiracy was not sufficient proof that codefendant did agree to participate in a scheme to import and distribute large quantities of drugs, absent showing of an agreement to advance any common interest. U. S. v. Quintana, C.A.7 (Ill.) 1975, 508 F.2d 867. Conspiracy 47(12)

Evidence of street sales of narcotics involving certain conspirators, together with testimony of unindicted coconspirators, was sufficient to sustain convictions for conspiracy to possess with intent to distribute, and for conspiracy to distribute, heroin. U. S. v. Smith, C.A.5 (La.) 1974, 504 F.2d 560. Conspiracy 47(12)

With respect to defendant who claimed he was merely the bookmaker for the other members of narcotics conspiracy and that he merely associated with criminals, there was sufficient evidence, independent of hearsay statements by coconspirators, to tie him to the narcotics conspiracy. U. S. v. Mallah, C.A.2 (N.Y.) 1974, 503 F.2d 971, certiorari denied 95 S.Ct. 1425, 420 U.S. 995, 43 L.Ed.2d 671. Conspiracy 47(12)

From defendant's act in supplying materials to cut cocaine, coupled with contacts defendant had with coconspirators immediately after they entered the United States with the drugs, and his advice that area was "hot," jury could reasonably conclude beyond a reasonable doubt that defendant knowingly became a participant in conspiracy to distribute cocaine, and no more was required. U. S. v. Yaniz-Cremata, C.A.5 (Fla.) 1974, 503 F.2d 963. Conspiracy 47(12)

Evidence, including evidence of particular defendant's travel and attendance at meetings with narcotics seller and narcotics buyer and his taking delivery of heroin which he smuggled into United States permitted finding that he participated in broad, ongoing, single, large, narcotics conspiracy. U. S. v. Santana, C.A.2 (N.Y.) 1974, 503 F.2d 710, certiorari denied 95 S.Ct. 632, 419 U.S. 1053, 42 L.Ed.2d 649, certiorari denied 95 S.Ct. 1352, 420 U.S. 963, 43 L.Ed.2d 439, certiorari denied 95 S.Ct. 1450, 420 U.S. 1006, 43 L.Ed.2d 764. Conspiracy 47(12)

Where defendant met on at least two occasions with all three members of core group in narcotics conspiracy, took delivery of a kilogram of heroin and, when he and his partner were unable to make payment, redelivered the heroin and was later informed that the core group had resold it elsewhere at a loss, jury was entitled to infer that as a major retailer defendant knew that he was participating in a larger ongoing conspiracy, contrary to contention that the evidence, in variance from the indictment, showed two independent conspiracies in connection with separate transactions. U. S. v. Cirillo, C.A.2 (N.Y.) 1974, 499 F.2d 872, certiorari denied 95 S.Ct. 638, 419 U.S. 1056, 42 L.Ed.2d 653. Conspiracy 43(12)

Where evidence was adequate to sustain conviction of conspiracy to distribute controlled substance, such conviction carried with it implied finding, contrary to one defendant's testimony, that such defendant knew or had reason to know of existence of the charged conspiracy and its object; that defendant may not have known precise identities of the other principals was not relevant to his being charged as a member of the conspiracy. U. S. v. Ellsworth, C.A.9 (Cal.) 1973, 481 F.2d 864, certiorari denied 94 S.Ct. 544, 414 U.S. 1041, 38 L.Ed.2d 332. Conspiracy 40.1

Evidence that alleged coconspirator waited until defendant appeared and signalled to him before he took undercover officer into apartment and made heroin sale, together with evidence of a similar series of events that occurred two weeks later in connection with a second heroin sale, was sufficient to preponderate in favor of a finding of conspiracy by jury. U. S. v. Ruiz, C.A.2 (N.Y.) 1973, 477 F.2d 918, certiorari denied 94 S.Ct. 361, 414 U.S. 1004, 38 L.Ed.2d 240. Conspiracy 47(12)

Where only activity of defendant by which Government sought to link him with conspiracy to violate narcotics laws related to use of an airplane to fly marijuana from Mexico to the United States, and a pilot testified that defendant asked him if he would be interested in making some money by flying marijuana across the border, but no mention was made by pilot that defendant referred to any other persons as being involved, no names were mentioned, and no times or arrangements for any further meetings were made, conviction could not be sustained. U. S. v. Steele, C.A.10 (Utah) 1972, 469 F.2d 165. Conspiracy 47(12)

Evidence showing that three particular defendants were active participants in one continuing scheme to sell and distribute heroin in particular city and each dealt with central conspirators on numerous occasions regarding eventual resale of narcotics was sufficient to sustain their convictions for conspiracy regardless of whether they knew the full extent of conspiracy and all of its activities and actors. U. S. v. Thomas, C.A.10 (Okla.) 1972, 468 F.2d 422, certiorari denied 93 S.Ct. 1389, 410 U.S. 935, 35 L.Ed.2d 599. Conspiracy 47(12)

Evidence established adequate connection with conspiracy to sell LSD tablets on part of all participants for purpose of making their acts and declarations in furtherance of conspiracy admissible in prosecution for conspiracy to sell the tablets. U. S. v. Carrion, C.A.9 (Cal.) 1972, 459 F.2d 1033. Criminal Law 427(5)

Fact that coconspirators named as codefendants in indictment were acquitted of conspiracy to import cocaine did not require acquittal of defendant where defendant was also charged to have conspired with another person, named but not charged as a codefendant, and with unknown persons as well and evidence was sufficient to support conviction based on defendant's dealings with the named but not indicted coconspirator. U. S. v. Cabrera, C.A.5 (Fla.) 1971, 447 F.2d 956. Conspiracy 47(12)

Evidence that phone call to defendant mentioned not only automobile trouble but another person's name and "the stuff," that two calls, 15 minutes apart, were required to get defendant to come to motel, and that defendant came armed and, hailed by police after caller had entered defendant's automobile with the pills, defendant fled, firing shot behind him and tried to clear an impassable ditch in the automobile supported conviction for smuggling benzedrine and dexedrine tablets into the United States and conspiracy to commit that offense. U. S. v. Sullivan, C.A.5 (Tex.) 1971, 443 F.2d 813, certiorari denied 92 S.Ct. 163, 404 U.S. 861, 30 L.Ed.2d 105. Conspiracy 47(12); Controlled Substances 86; Customs Duties 134

Telephone conversation and statements of defendant provided a sufficient showing of his participation in conspiracy to unlawfully import marijuana. U. S. v. Bates, C.A.9 (Nev.) 1970, 429 F.2d 557, certiorari denied 91 S.Ct. 61, 400 U.S. 831, 27 L.Ed.2d 61, certiorari denied 91 S.Ct. 175, 400 U.S. 916, 27 L.Ed.2d 155, rehearing denied 91 S.Ct. 452, 400 U.S. 1002, 27 L.Ed.2d 449.

Evidence that four alleged conspirators met and agreed to raise money for purchase of narcotics and evidence of subsequent activities of conspirators related to purchase and transportation of narcotics and to arrest of one conspirator made case for jury on conspiracy count. U.S. v. Duff, C.A.6 (Mich.) 1964, 332 F.2d 702. Conspiracy 48.1(4)

Evidence in incompetent statement and testimony that defendant several times drove past agent who was surveilling apartment where narcotics were sold and that defendant went into home of codefendant were insufficient to make case for jury on conspiracy count. U.S. v. Duff, C.A.6 (Mich.) 1964, 332 F.2d 702. Conspiracy 48.1(4)

18 U.S.C.A. § 371

Evidence in prosecution for conspiracy to violate narcotic laws was sufficient to prove single, unified, general and continuing conspiracy, of which defendant knew and in which she participated. U. S. v. Pullings, C.A.7 (Ill.) 1963, 321 F.2d 287. Conspiracy 47(12)

Where, aside from evidence relating to an alleged unlawful sale of narcotics, there was sufficient additional evidence of an unlawful conspiracy to sustain defendant's conviction for conspiracy, such conviction could not be set aside on theory that only evidence in support of conspiracy was the same evidence which resulted in his acquittal on charge of unlawful sale. U.S. v. Marcone, C.A.2 (N.Y.) 1960, 275 F.2d 205, certiorari denied 80 S.Ct. 879, 362 U.S. 963, 4 L.Ed.2d 877. Conspiracy 47(12)

In prosecution for conspiring to violate § 212 of this title prohibiting bribery of customs officials and §§ 173, 174 of Title 21 concerning narcotics laws wherein there was a gap in testimony of witnesses for government concerning activities of defendants covering a period of about a year, evidence was sufficient to go to the jury as to existence of a single continuing conspiracy. United States v. Stromberg, C.A.2 (N.Y.) 1959, 268 F.2d 256, certiorari denied 80 S.Ct. 119, 361 U.S. 863, 4 L.Ed.2d 102, certiorari denied 80 S.Ct. 123, 361 U.S. 863, 4 L.Ed.2d 102, certiorari denied 80 S.Ct. 124, 361 U.S. 863, 4 L.Ed.2d 102, certiorari denied 80 S.Ct. 130, 361 U.S. 868, 4 L.Ed.2d 108. Conspiracy 48.1(2.1)

Evidence was sufficient to sustain conviction for conspiring to acquire marihuana without paying transfer tax, to transfer marihuana without written order required by §§ 4741 and 4742 of Title 26, and to receive, conceal, sell and facilitate transportation, concealment and sale of unlawfully imported marihuana. Schnautz v. U.S., C.A.5 (Tex.) 1959, 263 F.2d 525, certiorari denied 79 S.Ct. 1294, 360 U.S. 910, 3 L.Ed.2d 1260. Conspiracy 47(12); Internal Revenue 5295

Where defendant was charged with unlawful concealment, transportation and sale of two ounces of heroin and with conspiracy to conceal, sell, dispense and distribute heroin, it was not necessary for government to prove that arrangement between alleged coconspirators involved the two ounces of heroin to warrant conviction for conspiracy, but where it was not shown that conspiracy involved such heroin, proof that defendant engaged in conspiracy would not warrant conviction of defendant on substantive counts. Evans v. U. S., C.A.9 (Cal.) 1958, 257 F.2d 121, certiorari denied 79 S.Ct. 98, 358 U.S. 866, 3 L.Ed.2d 99, rehearing denied 79 S.Ct. 221, 358 U.S. 901, 3 L.Ed.2d 150. Conspiracy 43(12); Controlled Substances 82

In prosecution for substantive violations of narcotic laws and for conspiracy to violate them, evidence, exclusive of improperly-admitted hearsay testimony of alleged coconspirators, was insufficient to sustain convictions. Panci v. U. S., C.A.5 (La.) 1958, 256 F.2d 308. Conspiracy 47(12); Internal Revenue 5295

Where there was undisputed evidence that co-defendant had been in defendant's employ, that co-defendant had been in possession and had made illegal sales of heroin, that special employee of narcotics bureau had introduced defendant to purchasers, and that when they told defendant that they wanted to buy some heroin he turned them over to his employer by whom the illegal delivery was made, jury was warranted in finding that defendant aided and abetted co-defendant in illegal transaction, that defendant and codefendant were acting in concert in the illegal undertaking, and that possession of heroin by co-defendant was possession by defendant as well. U. S. v. Maroy, C.A.7 (Ill.) 1957, 248 F.2d 663, certiorari denied 78 S.Ct. 412, 355 U.S. 931, 2 L.Ed.2d 414. Internal Revenue 5295

In prosecution for aiding and abetting in unlawful purchase or concealment of drugs, question whether evidence was sufficient to establish guilt beyond a reasonable doubt, or whether it was equally consistent with innocence or guilt, were matters for determination of jury. U. S. v. Maroy, C.A.7 (Ill.) 1957, 248 F.2d 663, certiorari denied 78 S.Ct. 412, 355 U.S. 931, 2 L.Ed.2d 414. Internal Revenue 5319

In prosecution for conspiracy to deal in heroin and for sale of heroin, evidence disclosed narcotics ring operating

on large scale with a highly organized system of avoiding detection and was sufficient to support submission of both the substantive and conspiracy counts to jury. U. S. v. Campisi, C.A.2 (N.Y.) 1957, 248 F.2d 102, certiorari denied 78 S.Ct. 266, 355 U.S. 892, 2 L.Ed.2d 191. Conspiracy 48.3; Internal Revenue 5319

In prosecution for unlawfully carrying heroin from Chicago to St. Louis, for concealing the heroin, and for conspiracy to violate narcotic laws, evidence was sufficient to establish chain of possession of heroin from time it was taken from one of the defendants by government agent until time of trial. Alexander v. U. S., C.A.8 (Mo.) 1957, 241 F.2d 351, certiorari denied 77 S.Ct. 1405, 354 U.S. 940, 1 L.Ed.2d 1539, rehearing denied 78 S.Ct. 78, 355 U.S. 852, 2 L.Ed.2d 61. Conspiracy 47(12); Controlled Substances 79; Internal Revenue 5295

In prosecution for conspiring to bring narcotic drugs into the United States and for the substantive offenses of importation and transportation, evidence was sufficient to submit the issue of conspiracy to the jury. Sandez v. U. S., C.A.9 (Cal.) 1956, 239 F.2d 239, rehearing denied 245 F.2d 712. Conspiracy 48.1(4)

In prosecution for conspiracy to violate narcotic laws, evidence showing defendant made a single delivery of heroin to other defendants while telling them that he would show them how to mix and cut the heroin so he did not have to return together with his statements that could be interpreted that deliveries of heroin would continue in future, even though defendant only made a single delivery of heroin, there was substantial proof to sustain his conviction for conspiracy. Poliafico v. U. S., C.A.6 (Ohio) 1956, 237 F.2d 97, certiorari denied 77 S.Ct. 590, 352 U.S. 1025, 1 L.Ed.2d 597, rehearing denied 77 S.Ct. 718, 353 U.S. 931, 1 L.Ed.2d 725. Conspiracy 47(12)

Evidence sustained convictions for conspiring to illegally sell and transfer unstamped narcotic drugs and for purchasing heroin not in or from original stamped package and for receiving and concealing morphine imported contrary to law. Reed v. U. S., C.A.5 (Tex.) 1956, 230 F.2d 918. Internal Revenue 5295

Evidence was sufficient to sustain the convictions for acquiring marijuana without paying transfer tax, transferring marijuana to federal narcotics agent not in pursuance of written order on form furnished by Secretary of the Treasury, and conspiring to commit offense of making such transfer. Gilmore v. U.S., C.A.5 (Tex.) 1955, 228 F.2d 121. Conspiracy 47(12); Internal Revenue 5295

In prosecution for conspiracy to commit certain offenses against the United States relating to the purchase, sale, receipt, and transportation of narcotics, evidence sustained conviction of defendant concerning whom there was no proof that she engaged directly in the buying or selling of narcotics. U.S. v. Cohen, C.A.3 (N.J.) 1952, 197 F.2d 26 . Conspiracy 47(12)

In prosecution for unlawfully selling, dispensing and distributing heroin not in or from the original stamped package, and for fraudulent concealing and facilitating the concealment of heroin which had been imported into the United States contrary to law, and for conspiracy to commit such offenses and doing acts to effect object of conspiracy, evidence sustained conviction of defendants. Du Verney v. U. S., C.A.9 (Cal.) 1950, 181 F.2d 853. Criminal Law 569; Internal Revenue 5295; Controlled Substances 86; Conspiracy 47(12)

Evidence that defendant was the active instrumentality whereby one a series of illegal opium sales was brought about, and that she acted as the go-between for others in consummating the sale of a quantity of opium involved, supported conviction of conspiring to violate the Harrison Anti-Narcotic Act, §§ 173, 174 of Title 21 and §§ 2553, 2554 of Title 26. U.S. v. Brandenburgh, C.C.A.2 (N.Y.) 1945, 146 F.2d 878. Conspiracy 47(12)

Evidence sustained convictions for conspiracy to violate § 2553 of Title 26 and § 174 of Title 21 as against contention that there was a fatal variance, and that proof showed, instead of one large general conspiracy, several smaller conspiracies. Chadwick v. U. S., C.C.A.5 (Tex.) 1941, 117 F.2d 902, certiorari denied 61 S.Ct. 1109, 313 U.S. 585, 85 L.Ed. 1541. Conspiracy 43(12); Conspiracy 47(12); Internal Revenue 5259; Internal Revenue 5295; Internal Revenue 5285

18 U.S.C.A. § 371

Evidence showing only drug addict's use of fictitious prescriptions issued by physician to purchase drugs for addict's own comfort as an addict was insufficient to support conviction of physician for conspiring to sell drugs in violation of Harrison Anti-Narcotic Act, § 2550 et seq. of Title 26, since addict could not be a party to the conspiracy and physician could not conspire with himself. Nigro v. U. S., C.C.A.8 (Mo.) 1941, 117 F.2d 624. Conspiracy 47(12)

In prosecution for conspiracy to import, sell and possess narcotics, evidence that object of alleged conspiracy was to smuggle narcotics into port of New York and to distribute them to addicts both in New York City and in Texas and Louisiana, thus requiring co-operation of smugglers, middlemen and two groups of retailers, one in New York and one in Texas and Louisiana who supplied the addicts, would warrant finding that all the accused were embarked upon a venture, in all parts of which each was a participant ana an abettor, even though evidence did not disclose any cooperation or communication between smugglers and retailers or between the two groups of retailers. U S v. Bruno, C.C.A.2 (N.Y.) 1939, 105 F.2d 921, certiorari granted 60 S.Ct. 112, 308 U.S. 536, 84 L.Ed. 451, reversed on other grounds 60 S.Ct. 198, 308 U.S. 287, 84 L.Ed. 257. Conspiracy 47(12)

In prosecution for conspiring to commit offenses of purchasing unstamped heroin and of possessing and facilitating transportation of heroin which defendants knew had been unlawfully transported, evidence showed preconcerted scheme between defendants to administer heroin to race horses and to accomplish this purpose by committing offenses alleged. Patterson v. U.S., C.C.A.6 (Mich.) 1935, 82 F.2d 937, certiorari denied 56 S.Ct. 677, 298 U.S. 657, 80 L.Ed. 1383. Conspiracy 47(12)

Evidence not showing defendants were registered or had paid special tax was insufficient to sustain conviction for conspiracy to sell or for selling morphine without registering and paying tax. Butler v. U.S., C.C.A.8 (Okla.) 1927, 20 F.2d 570. Conspiracy 47(10)

Evidence sustained conviction of two defendants, but not of third, for conspiracy to ship smoking opium in interstate commerce, and for importing, concealing, and assisting in transportation thereof. Chin Wah v. U.S., C.C.A.2 (N.Y.) 1926, 13 F.2d 530. Conspiracy 47

Evidence was sufficient to show a sale in a prosecution for conspiracy to violate the Harrison Anti-Narcotic Act, § 2550 et seq. of Title 26, though the government agents, in arranging for defendants' exposure and capture, had determined to take the money back from defendants and use it as evidence against them. Smith v. U.S., C.C.A.8 (Mo.) 1922, 284 F. 673, certiorari denied 43 S.Ct. 362, 261 U.S. 617, 67 L.Ed. 829. Conspiracy 47

In a prosecution for conspiracy to violate the federal laws by the unlawful sale of opium, where the only overt acts proved were that the defendants, who purchased opium under license duly issued by the collector of internal revenue, attempted to, but did not, sell it, and later left it in the hallway adjoining their place of business, and reported to the police that it had been stolen, naming the suspect, these acts were insufficient to sustain a conviction. Wiener v. U S, C.C.A.3 (Pa.) 1922, 282 F. 799.

Evidence was sufficient to support finding of conspiracy to violate narcotics laws, where coconspirator and unnamed conspirator agreed to conduct transaction by transporting, or causing to be transported, large amount of cash (proceeds from illegal activities) from Detroit to California, and revealed a common design to conceal source, nature, or ownership of money being transported. U.S. v. Dimeck, D.Kan.1993, 815 F.Supp. 1425, reversed 24 F.3d 1239. Conspiracy 47(12)

There was sufficient evidence beyond buyer-seller relationship to support defendant's drug conspiracy conviction, in view of evidence showing that defendant located willing drug dealers, and participated in, invested in, and profited directly from street gang's narcotics activities. U.S. v. Boyd, N.D.Ill.1992, 792 F.Supp. 1083. Conspiracy 47(12)

Evidence that physician and drug addicts agreed that physician would write fake narcotic prescriptions for addicts and that addicts would present the fake prescriptions to druggists, obtain sales of drugs and so procure drugs to satisfy their addiction, supported conviction of physician for conspiring to violate Harrison Anti-Narcotic Act, § 2550 et seq. of Title 26, regardless whether druggist knew that prescription was fake. U. S. v. Hipsch, W.D.Mo.1940, 34 F.Supp. 270. Conspiracy 47(12)

Evidence supported conviction for conspiracy to distribute and possess cocaine for distribution, despite defendant's challenges to the credibility of the government's witnesses; defendant did not argue that it was physically impossible for the witnesses to observe that which they claimed they had observed, or that the laws of nature made it impossible for the occurrences to have taken place, but rather, he pointed to evidence undermining the witnesses' credibility, which was not a basis for reversal on appeal. U.S. v. Almonacid, C.A.7 (Ill.) 2003, 70 Fed.Appx. 390, 2003 WL 21699003, Unreported. Conspiracy 47(12)

764. Obstruction of justice, sufficiency of evidence

Sufficient evidence was presented in conspiracy prosecution from which rational trier of fact could conclude that defendant had agreed with others to impede police in their efforts to execute federal search warrants; defendant participated in roadblock, made statements that roadblocks would remain in place, and acted to prevent investigator from entering Indian reservation on which warrants were to be executed. U.S. v. Montour, C.A.2 (N.Y.) 1991, 944 F.2d 1019. Conspiracy 47(13)

Evidence sustained defendants' convictions for conspiracy to obstruct justice. U.S. v. Lester, C.A.9 (Cal.) 1984, 749 F.2d 1288. Conspiracy 47(13)

In prosecution for conspiracy to obstruct justice in regard to criminal investigation into certain banking practices, evidence that defendant bank attorney conspired with others to keep Federal Bureau of Investigation and grand jury from learning who controlled bank account under investigation was sufficient to sustain conviction. U.S. v. Perkins, C.A.11 (Fla.) 1984, 748 F.2d 1519. Conspiracy 47(13)

Evidence in prosecution for conspiracy to obstruct communication of information by informant to federal agent was sufficient to prove a single conspiracy, as alleged in the indictment, despite contention that government proved a series of small independent conspiracies to kill informant, and that defendant was unfairly prejudiced by admission of evidence of independent conspiracies in which he was not a participant. U.S. v. Nelson, C.A.5 (Tex.) 1984, 733 F.2d 364, certiorari denied 105 S.Ct. 341, 469 U.S. 937, 83 L.Ed.2d 276. Conspiracy 47(8)

In prosecution for conspiracy of local union officials and others to obstruct, impede and interfere with Labor Department investigation of affairs of local, jury was justified in finding that defendants and other had conspired to impede, interfere with and obstruct contemplated Department investigation by giving false written and oral representations to effect that various individuals had received substantial payments for picket line services. U. S. v. Sullivan, C.A.8 (Mo.) 1980, 618 F.2d 1290. Labor And Employment 3283

Although defendant denied before grand jury that he had used his influence to intercede on behalf of friend's grandson concerning criminal charge against him, evidence that friend withdrew $1,400 from bank and met with defendant at his place of business, that defendant admitted to grandson's attorney that he had put in "good word" with district attorney, and that grandson received probationary sentence, was sufficient to provide reasonable basis for trial court's finding that there was conspiracy to subvert orderly processes of justice. U. S. v. Doulin, C.A.2 (N.Y.) 1976, 538 F.2d 466, certiorari denied 97 S.Ct. 256, 429 U.S. 895, 50 L.Ed.2d 178. Criminal Law 427(5)

Once jury determined that two defendants were guilty of obstructing justice, evidence that defendants had held a meeting at which they discussed testimony which they would give to grand jury sustained defendants' convictions

for conspiracy. U. S. v. Turcotte, C.A.2 (N.Y.) 1975, 515 F.2d 145, certiorari denied 96 S.Ct. 564, 423 U.S. 1032, 46 L.Ed.2d 406. Conspiracy 47(13)

Evidence was sufficient to support defendant's conviction for conspiracy to obstruct justice notwithstanding that he joined the conspiracy after it had already achieved its first alleged objective, the prevention of a witness' appearance before grand jury. U. S. v. Marionneaux, C.A.5 (La.) 1975, 514 F.2d 1244. Conspiracy 47(13)

Where evidence admitted to show defendant's participation in conspiracy to affect communication of information to a federal investigator was sufficient to demonstrate a conspiracy to obstruct justice, defendant's conviction for conspiracy would be upheld, even though it was not proven that defendant and his coconspirators influenced another person not to give information to federal investigators. U. S. v. Papadakis, C.A.2 (N.Y.) 1975, 510 F.2d 287, certiorari denied 95 S.Ct. 1682, 421 U.S. 950, 44 L.Ed.2d 104. Conspiracy 47(13)

Contrary to defendant's contention, in prosecution for conspiracy to obstruct justice, that he had been party to only a smaller, separate conspiracy, different from that charged, evidence was sufficient to establish that defendant acted with full knowledge of general purpose of single, larger conspiracy to obstruct justice. U. S. v. Brasseaux, C.A.5 (La.) 1975, 509 F.2d 157, rehearing denied 511 F.2d 1192. Conspiracy 47(13)

Evidence sustained conviction for conspiracy to obstruct justice in connection with grand jury and senate committee proceedings. Hucks v. U. S., C.A.D.C.1962, 301 F.2d 548, 112 U.S.App.D.C. 224, certiorari denied 83 S.Ct. 58, 371 U.S. 835, 9 L.Ed.2d 70, rehearing denied 83 S.Ct. 257, 371 U.S. 917, 9 L.Ed.2d 176. Conspiracy 47(13); Perjury 33(1)

Evidence sustained conviction for conspiracy, and for violation of § 1503 of this title penalizing the obstruction of justice. Sizemore v. U. S., C.A.6 (Ky.) 1958, 260 F.2d 349. Conspiracy 47(13); Obstructing Justice 16

Evidence sustained convictions of conspiracy to defraud the United States in exercise of its governmental function of administering Emergency Rent Control Program justly and free from corruption and improper influence. United States v. Schiller, C.A.2 (N.Y.) 1951, 187 F.2d 572. Conspiracy 47(6)

Evidence was sufficient to sustain conviction for conspiracy to endeavor to obstruct and impede due administration of justice in criminal prosecution by improper influence of jurors. Burton v. U. S., C.A.5 (La.) 1949, 175 F.2d 960, rehearing denied 176 F.2d 865, certiorari denied 70 S.Ct. 347, 338 U.S. 909, 94 L.Ed. 560, rehearing denied 70 S.Ct. 565, 339 U.S. 916, 94 L.Ed. 1341. Conspiracy 47(13)

In prosecution for conspiring to endeavor to obstruct or impede due administration of justice by having an operation performed on a defendant and thereby obtaining a mistrial as to him, evidence was sufficient for jury. U.S. v. Minkoff, C.C.A.2 (N.Y.) 1943, 137 F.2d 402. Conspiracy 48.1(2.1)

In prosecution for conspiring corruptly to obstruct justice, evidence sustained conviction. U.S. v. Polakoff, C.C.A.2 (N.Y.) 1941, 121 F.2d 333, certiorari denied 62 S.Ct. 107, 314 U.S. 626, 86 L.Ed. 503. Conspiracy 47(13)

Evidence sustained conviction of Circuit Judge for participating in conspiracy to obstruct the administration of justice and to defraud the United States by entering into an agreement with an acquaintance whereby acquaintance should seek out litigants and parties, known or unknown, who were interested in suits then or thereafter pending, and in effect represent to each of them that judge would accept money in return for corrupt judicial action by him favorable to the interests of those who paid. U.S. v. Manton, C.C.A.2 (N.Y.) 1939, 107 F.2d 834, certiorari denied 60 S.Ct. 590, 309 U.S. 664, 84 L.Ed. 1012. Conspiracy 47(13)

Evidence justified jury's conclusion that a criminal conspiracy existed to influence and obstruct the administration

of justice and defraud the United States of its right to the conscientious action of a Circuit Judge free from corruption, and that judge's codefendant knowingly became a party to the conspiracy and participated in the execution of its purposes in so far as they related to a particular case. U.S. v. Manton, C.C.A.2 (N.Y.) 1939, 107 F.2d 834, certiorari denied 60 S.Ct. 590, 309 U.S. 664, 84 L.Ed. 1012. Conspiracy 47(13)

Evidence, in prosecution for conspiracy to obstruct due administration of justice by procuring dismissal of another prosecution was sufficient for jury. Craig v. U.S., C.C.A.9 (Cal.) 1936, 81 F.2d 816, certiorari dismissed 56 S.Ct. 670, 298 U.S. 637, 80 L.Ed. 1371, certiorari dismissed 56 S.Ct. 671, 298 U.S. 637, 80 L.Ed. 1371, rehearing denied 83 F.2d 450, certiorari denied 56 S.Ct. 959, 298 U.S. 690, 80 L.Ed. 1408, rehearing denied 57 S.Ct. 6, 299 U.S. 620, 81 L.Ed. 457. Conspiracy 48.1(2.1)

Record disclosing that petitioner at time of trial on charge of conspiracy to obstruct due administration of justice was aware of accusations by prosecution's witness before grand jury relating to another offense and that petitioner knew of witness' psychiatric history would not support prisoner's claim that prosecution suppressed evidence by which petitioner might have attacked witness' credibility. U. S. v. Keogh, S.D.N.Y.1967, 271 F.Supp. 1002, affirmed in part 391 F.2d 138, on remand 289 F.Supp. 265. Criminal Law 1618(9)

765. Perjury, sufficiency of evidence

In prosecution for perjury, making false statements to government agencies and conspiracy, weight of evidence demonstrated falsity of statements that there was no arrangement or agreement to reimburse mortgage brokerage company for losses sustained on purchase of delinquent mortgages. U. S. v. Marchisio, C.A.2 (N.Y.) 1965, 344 F.2d 653. Conspiracy 47(13); Fraud 69(5); Perjury 33(8)

In prosecution for conspiracy to commit perjury and obstruct justice by giving false and evasive testimony concerning a gathering which defendants attended, evidence was insufficient to sustain convictions, for lack of sufficient evidence to support a finding that defendants had agreed to lie about the gathering, or that they had had reason to anticipate that any of them would be called to testify under oath about the gathering. U.S. v. Bufalino, C.A.2 (N.Y.) 1960, 285 F.2d 408. Conspiracy 47(13)

In prosecution for conspiracy to impede and obstruct justice by perjury and for conspiracy to defraud United States, evidence against appealing defendant was sufficient for jury. Outlaw v. U.S., C.C.A.5 (Tex.) 1936, 81 F.2d 805, certiorari denied 56 S.Ct. 747, 298 U.S. 665, 80 L.Ed. 1389. Conspiracy 48.1(2.1)

Evidence considered, in a prosecution for conspiracy to defraud the United States of public lands by means of fraudulent homestead entries and to commit an offense against the laws of the United States by suborning entrymen to commit perjury, and was sufficient to justify the submission of the case to the jury. Richards v. U. S., C.C.A.8 (Neb.) 1909, 175 F. 911, 99 C.C.A. 401. Conspiracy 48.1(3)

766. Postal offenses, sufficiency of evidence--Generally

Defendants' convictions of conspiracy to possess stolen mail and to use unauthorized access devices was supported by coconspirator's testimony that members of conspiracy prepared false identifications, obtained and possessed stolen credit cards, and used credit cards and false identifications to obtain money and other things of value. U.S. v. McKnight, C.A.8 (Mo.) 1994, 17 F.3d 1139, rehearing and rehearing en banc denied, rehearing denied, certiorari denied 115 S.Ct. 275, 513 U.S. 907, 130 L.Ed.2d 192. Criminal Law 508(9)

Evidence supported conviction for conspiracy to rob mail custodian; defendant knew of plans of other individuals to rob mail carrier, drove individual to robbery, followed individual in stolen mail truck, transported individual and stolen mail away from scene, and helped to cash checks taken from stolen mail. U.S. v. Pinkney, C.A.9 (Cal.) 1994, 15 F.3d 825. Conspiracy 40.1

Codefendant's testimony that he, defendant and another agreed that the latter would enter post office and that codefendant would wait outside was sufficient evidence of agreement to support conviction of conspiring to break and enter post office with intent to commit larceny as the testimony was not incredible or insubstantial on its face and agreement to burglarize was easily inferable from felonious activities earlier on the evening of the offense. U. S. v. Watson, C.A.8 (Ark.) 1982, 677 F.2d 689. Conspiracy 47(11)

Conspiracy to commit an offense against United States by retaining and converting stolen postal money orders was established by evidence that defendant and his pals came to a mutual understanding to accomplish the unlawful acts, and no formal agreement was required. U. S. v. Robinson, C.A.7 (Wis.) 1972, 470 F.2d 121. Conspiracy 47(11)

Evidence on question of whether appellants intended to participate in conspiracy to transmit obscene matters through mail, in operation of correspondence club appealing to homosexual males, was sufficient to sustain their convictions for conspiracy to use mails for transmission of obscene materials, even though there was no evidence that they sent or received obscene material. U. S. v. Zuideveld, C.A.7 (Ill.) 1963, 316 F.2d 873, certiorari denied 84 S.Ct. 671, 376 U.S. 916, 11 L.Ed.2d 612. Conspiracy 47(3.1)

Evidence was insufficient to sustain charge of conspiracy to mail threatening letters for purpose of extortion. U.S. v. Moloney, C.A.7 (Ill.) 1952, 200 F.2d 344. Conspiracy 47(3.1)

Evidence sustained conviction for conspiring to obstruct movement of mails and to restrain trade in course of attempt to halt railroad transportation in coal mining areas. U.S. v. Anderson, C.C.A.7 (Ill.) 1939, 101 F.2d 325, certiorari denied 59 S.Ct. 822, 307 U.S. 625, 83 L.Ed. 1502, certiorari denied 59 S.Ct. 822, 307 U.S. 625, 83 L.Ed. 1503, certiorari denied 59 S.Ct. 823, 307 U.S. 625, 83 L.Ed. 1503, certiorari denied 59 S.Ct. 823, 307 U.S. 625, 83 L.Ed. 1504, certiorari denied 59 S.Ct. 823, 307 U.S. 625, 83 L.Ed. 1504, 86 L.Ed. 1504, certiorari denied 59 S.Ct. 824, 307 U.S. 625, 83 L.Ed. 1505, certiorari denied 59 S.Ct. 824, 307 U.S. 625, 83 L.Ed. 1506, certiorari denied 59 S.Ct. 825, 307 U.S. 625, 83 L.Ed. 1506, certiorari denied 59 S.Ct. 825, 307 U.S. 625, 83 L.Ed. 1507, certiorari denied 59 S.Ct. 825, 307 U.S. 625, 83 L.Ed. 1508, certiorari denied 59 S.Ct. 826, 307 U.S. 625, 83 L.Ed. 1508, certiorari denied 59 S.Ct. 826, 307 U.S. 625, 83 L.Ed. 1509. Conspiracy 47(3.1); Monopolies 31(2.4)

Evidence was sufficient to sustain conviction for conspiracy to rob mail carrier. Bellande v. U.S., C.C.A.5 (La.) 1928, 25 F.2d 1, certiorari denied 48 S.Ct. 602, 277 U.S. 607, 72 L.Ed. 1012. Conspiracy 47(11)

In a prosecution for conspiracy to submit false evidence to the Post Office Department in support of an application to admit certain publications to second-class rates, evidence was insufficient to show that defendants knowingly submitted false testimony with knowledge that the facts inquired about were regarded by the Post Office Department as material. Myrick v. U.S., C.C.A.1 (Mass.) 1915, 219 F. 1, 134 C.C.A. 619.

Evidence that defendant handled mail as postal worker and agreed with acquaintance to sell three checks that had been mailed but had not reached parties to whom checks were addressed was sufficient to support convictions for conspiracy to sell and willful possession of stolen mail matter. U.S. v. Bevans, E.D.Pa.1990, 728 F.Supp. 340, affirmed 914 F.2d 244. Conspiracy 47(11)

Despite some evidence of defendant's drinking and use of drugs at time of some of acts material to offenses, government sustained burden of proving beyond reasonable doubt each essential element of offenses of cutting open mail pouches and a mail sack with intent to steal mail, of conspiracy to commit such offenses and of conspiracy to seal property used by postal service and to steal mail from an authorized depository. U. S. v. Harding, D.C.Conn.1964, 237 F.Supp. 317. Conspiracy 47(11); Postal Service 49(8.1)

767. ---- Mail fraud, postal offenses, sufficiency of evidence

Evidence was sufficient to support finding of an agreement to engage in criminal activity, as required to sustain defendant's conviction for conspiring to commit mail fraud stemming from defendant's conduct in the operation of a property management business; office staff testified that defendant instructed staff not to record complimentary uses of rental properties in the computer, thereby concealing the activity from the owners, and defendant forwarded complaints from owners to co-conspirator, who would then return the call and offer an excuse for the missing rental activity. U.S. v. Montgomery, C.A.9 (Or.) 2004, 384 F.3d 1050. Conspiracy 47(5)

Defense counsel's failure to investigate and present a voice identification analysis of two tape-recorded conversations did not prejudice defendant, and thus could not amount to ineffective assistance in violation of the Sixth Amendment; even assuming defendant was not the speaker in the tape-recorded conversations, the evidence was still sufficient to establish defendant's guilt on charges of conspiracy to commit mail fraud and making false statements in connection with health care matters, mail fraud, and making false statements in connection with the payment of health care benefits. U.S. v. Birkin, C.A.2 (N.Y.) 2004, 366 F.3d 95. Criminal Law 641.13(6)

Evidence was sufficient to support defendant's conviction for conspiracy to commit mail and wire fraud arising out of defendant's involvement in an illegal kickback scheme between defendant, who was a chiropractor, and a personal injury attorney; evidence demonstrated that attorney gained over $70,000 in kickback payments made to third parties for his personal benefit, that defendant knowingly signed checks payable to third-party recipients, in order to conceal the scheme, equal in total amount to 20 percent of the fees he collected in connection with client referrals from attorney, and testimony of clients indicated that they were unaware of the kickback scheme, demonstrating misuse of fiduciary relationship. U.S. v. Hausmann, C.A.7 (Wis.) 2003, 345 F.3d 952, rehearing and suggestion for rehearing en banc denied, certiorari denied 124 S.Ct. 2412, 541 U.S. 1072, 158 L.Ed.2d 981. Conspiracy 47(5)

Evidence that administrator for solid waste disposal authority, knowing that company for which his wife worked was not recycling company but a mere hauler of waste produced by manufacturers, had conspired with company's principals, in return for kickbacks routed through his wife, to give company a discounted dumping rate available only to recyclers for waste that it dumped at landfill, was sufficient to support mail fraud and conspiracy to commit mail fraud convictions, notwithstanding conspirators' contention that company, in providing manufacturers from which it collected waste with pans to separate the putrescible from non-putrescible waste, had engaged in source separation, an initial step in recycling process; although "source separation" might be preliminary step in recycling process in some cases, reasonable jury could find that company was not, for that reason alone, a recycler. U.S. v. Williamson, C.A.11 (Ala.) 2003, 339 F.3d 1295, rehearing and rehearing en banc denied 85 Fed.Appx. 194, 2003 WL 22417208, certiorari denied 124 S.Ct. 1427, 540 U.S. 1184, 158 L.Ed.2d 88, certiorari denied 124 S.Ct. 1440, 540 U.S. 1184, 158 L.Ed.2d 89. Conspiracy 47(5); Postal Service 49(11)

Defendant's conviction for conspiracy to commit mail fraud was supported by evidence that defendant was employee of correspondence school distributor, that employees of distributor used federal mails to engage in scheme to defraud students whom they signed up for student loans, and that defendant paid students to enroll in program, paid students to sign student loan checks, told students who signed loan checks that they would not incur debt, forged student drivers' license numbers, misstated students' past government loan history and criminal records, and gained financially from his own acts and those of coconspirators. U.S. v. Royal, C.A.1 (Mass.) 1996, 100 F.3d 1019, on remand 7 F.Supp.2d 96. Conspiracy 47(5)

Sufficient evidence that defendant accepted valuable consideration from automobile dealers for awarding dealership franchises and other preferential treatment supported conviction for conspiring to defraud automobile distributor, at which defendant was top field sales manager before retiring; coconspirator testified as to many gifts of money and other items that he shared with defendant, passed along to defendant, or heard about defendant receiving. U.S. v. Josleyn, C.A.1 (N.H.) 1996, 99 F.3d 1182, certiorari denied 117 S.Ct. 959, 519 U.S. 1116, 136 L.Ed.2d 845. Conspiracy 47(4)

Defendant's conviction for conspiracy to commit mail fraud for purpose of avoiding state fuel retail tax was not supported in absence of any evidence that defendant had any knowledge of or participated in retailers' evasion of retail fuel taxes despite evidence that defendant aided fuel suppliers to evade federal excise taxes and delivered fuel to retailers at discounted price. U.S. v. Schramm, C.A.3 (Pa.) 1996, 75 F.3d 156. Conspiracy 47(5)

Evidence in prosecution for conspiring to defraud, committing mail fraud, and aiding and abetting interstate transportation of property taken by fraud established that computer manufacturer was deprived of value when customer switched labels on thermoconductor modules (TCMs) and, for $17,000 each, obtained upgraded TCMs with actual sales price ranging from $50,000 to $140,000. U.S. v. Nelson, C.A.8 (Minn.) 1993, 988 F.2d 798, rehearing denied, certiorari denied 114 S.Ct. 302, 510 U.S. 914, 126 L.Ed.2d 250. Conspiracy 47(4); Postal Service 49(11); Receiving Stolen Goods 8(3)

Evidence was sufficient to sustain conviction for participating in mail, wire and travel fraud, arising out of schemes to defraud would-be independent distributors of home energy conservation devices; in training sessions with distributors, defendant misrepresented successes of other distributors and possibility of profiting from selling products, defendant misrepresented to potential distributor that he had enjoyed great success selling products, and defendant knew distributors were charged retail, rather than wholesale prices for products and had reason to doubt coconspirator's integrity. U.S. v. Wiley, C.A.2 (N.Y.) 1988, 846 F.2d 150. Commerce 82.10; Postal Service 49(11); Telecommunications 1018(4)

In prosecution for conspiracy to defraud the United States and mail fraud, evidence as to submission of contract bids by defendants together with other evidence including evidence that one defendant mailed envelope by certified mail to his brother, other defendant, and that same envelope, containing amended bid and bearing certified mail number was thereafter delivered to procurement office permitted finding of use and reuse of envelope in the mails for illegal purpose could be found to establish guilt of conspiracy beyond reasonable doubt. U.S. v. Fowler, C.A.5 (La.) 1984, 735 F.2d 823, error coram nobis granted 891 F.2d 1165. Conspiracy 47(5)

Evidence that defendant conspired with others to defraud and to unlawfully obtain property and that he unlawfully and willfully caused liquor license application to be sent and delivered by United States Postal Service was sufficient to sustain his conspiracy and substantive mail fraud convictions. U.S. v. Haimowitz, C.A.11 (Fla.) 1984, 725 F.2d 1561, certiorari denied 105 S.Ct. 563, 469 U.S. 1072, 83 L.Ed.2d 504. Conspiracy 47(3.1); Postal Service 49(11)

In prosecution wherein appealing defendants were convicted of mail fraud and conspiracy to commit mail fraud, evidence permitted finding, beyond reasonable doubt, that defendant vice-president in charge of lands division of independent oil company had known that coindictee oil broker obtained geological maps and information by fraud and that such vice-president, such independent oil company and its landsman in Houston had all joined scheme as alleged in indictment. U.S. v. Patrick Petroleum Corp. of Michigan, C.A.5 (Tex.) 1982, 703 F.2d 94. Conspiracy 47(5)

Evidence was sufficient to support conviction of officer and sales manager of Puerto Rican company for conspiracy to commit arson, mail and wire fraud, for allegedly having conspired to insure company, planned successful destruction of company's warehouse by arson, and made separate interstate communications with insurance company as part of scheme. U. S. v. Benmuhar, C.A.1 (Puerto Rico) 1981, 658 F.2d 14, certiorari denied 102 S.Ct. 2927, 457 U.S. 1117, 73 L.Ed.2d 1328, rehearing denied 103 S.Ct. 16, 458 U.S. 1132, 73 L.Ed.2d 1402. Conspiracy 47(3.1); Postal Service 49(11); Telecommunications 1018(4)

Evidence which showed that one particular defendant was deeply involved in most of fraudulent transactions and that he and another defendant continually engaged in reassuring victims as to legitimacy of their operation and that the latter defendant was courier of nonexistent letters of credit and took possession of at least part of advance funds which eventually found their way into joint bank account in Bahamas belonging to both such defendants permitted

jury to find guilt of conspiracy. U. S. v. Kaplan, C.A.9 (Cal.) 1977, 554 F.2d 958, certiorari denied 98 S.Ct. 483, 434 U.S. 956, 54 L.Ed.2d 315, rehearing denied 98 S.Ct. 755, 434 U.S. 1026, 54 L.Ed.2d 774. Conspiracy 47(4)

Evidence supported conviction of defendants of conspiracy, and of interstate or foreign transportation of stolen money in scheme through which they appropriated over one million dollars of client's funds while representing that they were investing funds for client in Canadian real estate. U. S. v. Frank, C.A.2 (N.Y.) 1974, 494 F.2d 145, certiorari denied 95 S.Ct. 48, 419 U.S. 828, 42 L.Ed.2d 52. Conspiracy 47(5); Conspiracy 47(11); Postal Service 49(11); Receiving Stolen Goods 8(3)

In prosecution for mail fraud and conspiracy in operation of alleged nonprofit organization called the United States Merchant Marine, adoption of the title, use of nautical titles for officers, placement of ensign on letterhead and Washington, D.C., address as "Headquarters" permitted jury to find existence of scheme to fraudulently induce registration of boats and motors on payment of fees. U. S. v. Blake, C.A.5 (Ala.) 1973, 488 F.2d 101. Conspiracy 47(5); Postal Service 49(11)

Evidence was sufficient to support conviction of defendant, who along with codefendant set up an office, established phony line of credit, and obtained and resold series of shipments of frozen food while only paying for first order in series of purchases, of conspiracy, mail fraud, fraud by wire and interstate transportation of goods taken by fraud. U. S. v. Payne, C.A.9 (Cal.) 1973, 474 F.2d 603. Conspiracy 47(5); Postal Service 49(11); Receiving Stolen Goods 8(3); Telecommunications 1018(4)

Evidence sustained conviction of conspiracy to misapply funds of federally insured savings and loan association, to conceal material facts from and falsifying statements to the Government, to make false entries in books and reports with intent to deceive the Federal Savings & Loan Insurance Corporation and others, to make false statements for purpose of influencing the FSLIC and to devise scheme to defraud the attempted execution of which involved the use of the United States mails, and of substantive charges of mail fraud concerning the same scheme. U. S. v. Grizaffi, C.A.7 (Ill.) 1972, 471 F.2d 69, certiorari denied 93 S.Ct. 2141, 411 U.S. 964, 36 L.Ed.2d 684, certiorari denied 93 S.Ct. 2142, 411 U.S. 964, 36 L.Ed.2d 684. Conspiracy 47(4); Conspiracy 47(5); Conspiracy 47(6); Postal Service 49(11)

Evidence was sufficient from which jury could find that defendant, charged with mail fraud, was directly involved in the mailing of letter containing dividend checks by corporation to codefendant, that the mailing was done in furtherance of the scheme of conspiracy and that defendant was a coconspirator. U. S. v. Sparrow, C.A.10 (Utah) 1972, 470 F.2d 885, certiorari denied 93 S.Ct. 1913, 411 U.S. 936, 36 L.Ed.2d 397. Postal Service 50

Evidence that defendant made purchases by use of credit card belonging to another party and that credit card sales drafts thereafter entered mails was insufficient to establish use of mails so as to sustain conviction on charge of conspiracy to commit mail fraud. U. S. v. Lynn, C.A.10 (Wyo.) 1972, 461 F.2d 759.

Ample factual basis existed to conclude that defendant convicted of conspiracy was a knowing participant in alleged scheme to defraud and that she should have reasonably foreseen the use of the mails and other interstate facilities. U. S. v. Marino, C.A.2 (N.Y.) 1970, 421 F.2d 640. Conspiracy 47(5)

Evidence in prosecution on multicounts of using mails to defraud and one count of conspiracy was sufficient to sustain convictions of defendants who sold centrally installed vacuum cleaners by means of scheme whereby customers were to earn commissions by referring sellers to other potential customers. Glazerman v. U. S., C.A.10 (Okla.) 1970, 421 F.2d 547, certiorari denied 90 S.Ct. 1817, 398 U.S. 928, 26 L.Ed.2d 90. Conspiracy 47(5); Postal Service 49(11)

Evidence that defendant never went to subdivision site and that no promises were fraudulently made or debt

fraudulently incurred in any part of subdivision promotion in which defendant personally participated did not support conviction for mail fraud and conspiracy to commit mail fraud. Windsor v. U. S., C.A.9 (Idaho) 1967, 384 F.2d 535. Conspiracy 47(5); Postal Service 49(11)

Evidence of arrangement between owner of clothing store and another by which linens damaged by fire were represented to be of greater value than actual value, together with other evidence, supported conviction on charge that owner conspired to commit mail fraud offense set forth in substantive count. Mishan v. U. S., C.A.5 (Fla.) 1965, 345 F.2d 790. Conspiracy 47(5)

Evidence sustained conviction for conspiracy to perpetrate mail fraud in that defendants used mails in furtherance of scheme to defraud investors out of money or property by means of fraudulent representations. Atkinson v. U. S., C.A.8 (Mo.) 1965, 344 F.2d 97, certiorari denied 86 S.Ct. 141, 382 U.S. 867, 15 L.Ed.2d 106. Conspiracy 47(5); Postal Service 49(11)

Evidence was sufficient to warrant submission of case for violations of § 1341 of this title and conspiracy to violate § 1341 of this title as to one defendant but not sufficient as to another. Adjmi v. U. S., C.A.5 (Fla.) 1965, 343 F.2d 164. Conspiracy 48.1(3); Postal Service 50

Substantial evidence supported jury finding that there was an overall conspiracy to defraud and obtain money and property from Foundation and its contributors, that each defendant cooperated with others and each knowingly joined in conspiracy, and that mails were used to defraud in furtherance of the overall objective, and it was immaterial whether there were minor conspiracies or schemes inside overall conspiracy and that some of defendants participated only in some of such smaller schemes. Koolish v. U. S., C.A.8 (Minn.) 1965, 340 F.2d 513, certiorari denied 85 S.Ct. 1805, 381 U.S. 951, 14 L.Ed.2d 724. Conspiracy 47(5); Postal Service 49(11)

Evidence sustained conviction for mail fraud and conspiracy in connection with mail-order merchandising club. U. S. v. Press, C.A.2 (Vt.) 1964, 336 F.2d 1003, certiorari denied 85 S.Ct. 658, 379 U.S. 965, 13 L.Ed.2d 559, certiorari denied 85 S.Ct. 670, 379 U.S. 973, 13 L.Ed.2d 563, rehearing denied 85 S.Ct. 887, 380 U.S. 927, 13 L.Ed.2d 815. Conspiracy 47(5); Postal Service 49(11)

Evidence that salesman and school founder, who was also manager, joined in selling and misrepresenting jet engine courses, using mails for untrue advertising, sustained conviction for conspiracy. Babson v. U. S., C.A.9 (Cal.) 1964, 330 F.2d 662, certiorari denied 84 S.Ct. 1920, 377 U.S. 993, 12 L.Ed.2d 1045. Conspiracy 47(5)

Evidence sustained mail fraud and conspiracy convictions of defendants, who advertised by mail and sold knitting machines which could not be successfully operated by many buyers. U. S. v. Baren, C.A.2 (N.Y.) 1962, 305 F.2d 527. Conspiracy 47(5); Postal Service 49(11)

Evidence was sufficient to sustain convictions for using the mails in furtherance of a scheme to defraud, using instrumentality of communication in interstate commerce to sell or attempt to sell fraudulent securities, and conspiracy. Owens v. U.S., C.A.5 (Fla.) 1955, 221 F.2d 351. Conspiracy 47(5); Postal Service 49(11); Securities Regulation 199

Evidence in support of charge of conspiracy to use mails in furtherance of a scheme to defraud by false representations that defendants had within their control designation of contractors on certain government housing projects and war works was sufficient for jury. Curley v. U.S., App.D.C.1947, 160 F.2d 229, 81 U.S.App.D.C. 389, certiorari denied 67 S.Ct. 1511, 331 U.S. 837, 91 L.Ed. 1850, rehearing denied 67 S.Ct. 1729, 331 U.S. 869, 91 L.Ed. 1872, certiorari denied 67 S.Ct. 1512, 331 U.S. 837, 91 L.Ed. 1850, rehearing denied 67 S.Ct. 1750, 331 U.S. 870, 91 L.Ed. 1873. Conspiracy 48.1(3)

Evidence sustained conviction for conspiring to devise a scheme to defraud and to use the mails in the execution of

the scheme, and for having mailed three letters to effect the object of the conspiracy. Vickers v. U. S., C.C.A.8 (Ark.) 1946, 157 F.2d 285. Conspiracy 47(5)

The use of mails in furtherance of scheme to defraud in connection with sale of allegedly potential oil land was established where defendants selling land ordered warranty deeds from another defendant in Texas by mail, and latter executed and mailed deeds to county clerk in Texas with instructions to forward the deeds after recordation to an investor or to another defendant in California. Mansfield v. U.S., C.C.A.5 (Tex.) 1946, 155 F.2d 952, certiorari denied 67 S.Ct. 364, 329 U.S. 792, 91 L.Ed. 678. Postal Service 35(8)

Evidence warranted conviction for conspiracy to violate § 77q(1) of Title 15 and former § 338 of this title by using mails in furtherance of scheme to defraud in connection with sale of allegedly potential oil lands. Mansfield v. U.S., C.C.A.5 (Tex.) 1946, 155 F.2d 952, certiorari denied 67 S.Ct. 364, 329 U.S. 792, 91 L.Ed. 678. Conspiracy 47(5)

Evidence supported conviction of violating former §§ 88 [now this section] and 338 of this title, based on use of mails in connection with the development, promotion and sale of burial lots in cemetery. Deaver v. U.S., App.D.C.1946, 155 F.2d 740, 81 U.S.App.D.C. 148, certiorari denied 67 S.Ct. 121, 329 U.S. 766, 91 L.Ed. 659. See, also, Blue v. U.S., C.C.A.Ohio 1943, 138 F.2d 351, certiorari denied 64 S.Ct. 1046 (3 cases), 322 U.S. 736, 88 L.Ed. 1570, rehearing denied 64 S.Ct. 1259 (3 cases), 322 U.S. 771, 88 L.Ed. 1596. Conspiracy 47(5); Postal Service 49(11)

Evidence sustained convictions for conspiracy to violate the Mail Fraud Act, former § 338 of the title, and the fraud provisions of the Securities Act of 1933, § 77q(a)(1) of Title 15, by promotion of a membership club with ultimate object of obtaining money and property from club members. U. S. v. Monjar, C.C.A.3 (Del.) 1944, 147 F.2d 916, certiorari denied 65 S.Ct. 1191, 325 U.S. 859, 89 L.Ed. 1979, certiorari denied 65 S.Ct. 1192, 325 U.S. 859, 89 L.Ed. 1979, certiorari denied 65 S.Ct. 1192, 325 U.S. 859, 89 L.Ed. 1980, certiorari denied 65 S.Ct. 1193, 325 U.S. 859, 89 L.Ed. 1980, certiorari denied 65 S.Ct. 1194, 325 U.S. 859, 89 L.Ed. 1981. Conspiracy 47(5)

Where fraudulent scheme contemplated the signing of franchise-holder agreements during an indefinite period of time with various persons answering newspaper advertisements, in prosecution for using mails in furtherance of fraudulent scheme and for conspiracy, evidence indicating performance of acts required by agreements did not negative existence of criminal intent. Marshall v. U.S., C.C.A.9 (Cal.) 1944, 146 F.2d 618. Conspiracy 47(5); Postal Service 49(11); Postal Service 49(9)

Evidence sustained conviction for conspiracy to use mails in furtherance of fraudulent scheme which contemplated signing of franchise-holder agreements for electrical directories for hotel lobbies. Marshall v. U.S., C.C.A.9 (Cal.) 1944, 146 F.2d 618. Conspiracy 47(5)

In prosecution of several defendants for using mails to defraud and for conspiracy to commit the substantive crime where it appeared that there was a general scheme and two local schemes in which the confederates were not the same, defendants could not complain that evidence was so complicated that jury would be confused and lose track of real issues, especially where complaining defendants were the most important confederates. U.S. v. Cohen, C.C.A.2 (N.Y.) 1944, 145 F.2d 82, certiorari denied 65 S.Ct. 553, 323 U.S. 799, 89 L.Ed. 637, certiorari denied 65 S.Ct. 553, 323 U.S. 799, 89 L.Ed. 638, certiorari denied 65 S.Ct. 554, 323 U.S. 800, 89 L.Ed. 638. Criminal Law 1169.1(2.1)

In prosecution of several defendants for using mails to defraud and for conspiracy to commit the substantive crime, proof that one of defendants had settled in a small village in Arkansas before mailing of the "count letter," even if established, would not conclusively prove that such defendant had abandoned the scheme before that date. U.S. v. Cohen, C.C.A.2 (N.Y.) 1944, 145 F.2d 82, certiorari denied 65 S.Ct. 553, 323 U.S. 799, 89 L.Ed. 637, certiorari denied 65 S.Ct. 553, 323 U.S. 799, 89 L.Ed. 638, certiorari denied 65 S.Ct. 554, 323 U.S. 800, 89 L.Ed. 638.

18 U.S.C.A. § 371

Conspiracy 47(5); Postal Service 49(11)

In prosecution for conspiracy to use mails to defraud and for using mails in scheme to defraud, where there was evidence that sale of corporate assets had been made to obtain control of business of another corporation by means of false statements and in disregard of interests of minority shareholders, evidence was sufficient for jury. U.S. v. Feinberg, C.C.A.2 (N.Y.) 1944, 140 F.2d 592, certiorari denied 64 S.Ct. 943, 322 U.S. 726, 88 L.Ed. 1562. Conspiracy 48.1(3); Postal Service 50

Where prosecution of one of individual defendants who was employed by other individual defendant as salesman for conspiracy in use of mails to defraud would have been barred if such defendant had completely severed his connection with conspiracy on or before February 20, 1936, which was three years before date of indictment, evidence authorized jury to infer that such defendant had not withdrawn from conspiracy by February 20, 1936. U.S. v. Bramson, C.C.A.2 (N.Y.) 1943, 139 F.2d 598, certiorari denied 64 S.Ct. 636, 321 U.S. 783, 88 L.Ed. 1075. Criminal Law 565

Evidence supported conviction of individual defendant who was employed as a salesman by other individual defendant of using mails to defraud and of conspiracy in use of the mails to defraud based on sale of trust certificates. U.S. v. Bramson, C.C.A.2 (N.Y.) 1943, 139 F.2d 598, certiorari denied 64 S.Ct. 636, 321 U.S. 783, 88 L.Ed. 1075. Conspiracy 47(5); Postal Service 49(11)

In prosecution for using mails in furtherance of a scheme to defraud by sale of cemetery lots to public for purposes of investment and for criminal conspiracy to commit that offense, evidence warranted verdict that scheme was fraudulent and that defendants were parties to a scheme to defraud. Blue v. U. S., C.C.A.6 (Ohio) 1943, 138 F.2d 351, certiorari denied 64 S.Ct. 1046, 322 U.S. 736, 88 L.Ed. 1570, rehearing denied 64 S.Ct. 1259, 322 U.S. 771, 88 L.Ed. 1596, certiorari denied 64 S.Ct. 1046, 322 U.S. 737, 88 L.Ed. 1570. Conspiracy 47(5); Postal Service 49(11)

In prosecution for using mails in furtherance of a scheme to defraud by sale of cemetery lots to the public for purposes of investment and for criminal conspiracy to commit that offense, evidence was sufficient to sustain verdict that there was use of mails in furtherance of scheme to defraud. Blue v. U. S., C.C.A.6 (Ohio) 1943, 138 F.2d 351, certiorari denied 64 S.Ct. 1046, 322 U.S. 736, 88 L.Ed. 1570, rehearing denied 64 S.Ct. 1259, 322 U.S. 771, 88 L.Ed. 1596, certiorari denied 64 S.Ct. 1046, 322 U.S. 737, 88 L.Ed. 1570. Conspiracy 47(5); Postal Service 49(11)

In prosecution for using mails in furtherance of a scheme to defraud by sale of cemetery lots to the public for purposes of investment and for criminal conspiracy to commit that offense, evidence justified inferences of jury that defendants who were convicted of conspiracy knowingly entered upon a scheme to defraud. Blue v. U. S., C.C.A.6 (Ohio) 1943, 138 F.2d 351, certiorari denied 64 S.Ct. 1046, 322 U.S. 736, 88 L.Ed. 1570, rehearing denied 64 S.Ct. 1259, 322 U.S. 771, 88 L.Ed. 1596, certiorari denied 64 S.Ct. 1046, 322 U.S. 737, 88 L.Ed. 1570. Conspiracy 47(5)

Evidence of a scheme or conspiracy to defraud does not show a "conspiracy to use the mails unlawfully" even though one of the conspirators without the concurrence of the other may use the mail. Ryan v. U. S., C.C.A.5 (Ala.) 1942, 129 F.2d 783. Conspiracy 47(5)

In prosecution for conspiracy to violate the mail fraud statute, former § 338 of this title, mere proof that, after money had been obtained, each of the two defendants while widely separated had apparently spontaneously written a letter attempting to excuse nondelivery to addressee of what was due, was insufficient to sustain conviction. Ryan v. U. S., C.C.A.5 (Ala.) 1942, 129 F.2d 783. Conspiracy 47(5)

In prosecution for using mails to defraud and for conspiracy to use mails to defraud, committed by selling cemetery

lots in exchange for securities by misrepresentations that higher price would certainly be obtained by resale of the lots, evidence sustained convictions of originators of the scheme and of salesmen. U. S. v. Beck, C.C.A.7 (Ill.) 1941, 118 F.2d 178, certiorari denied 61 S.Ct. 1121, 313 U.S. 587, 85 L.Ed. 1542. Conspiracy 47(5); Postal Service 49(11)

In prosecution for conspiracy to use mails in furtherance of a scheme to defraud by inducing purchase of participating oil royalty certificates by means of false representations, evidence was sufficient for jury. Whealton v. U.S., C.C.A.3 (N.J.) 1940, 113 F.2d 710. Conspiracy 48.1(3)

In prosecution for a scheme to defraud and the use of the United States mails in furtherance thereof and for conspiring to use the mails in furtherance of a scheme to defraud, evidence that accused, who was either president or vice president and general manager of the four corporations involved, cooperated with others and used mails to induce persons by misleading and false statements relative to the financial standing and integrity of the corporations to invest in the corporations, which were constantly losing money, was sufficient for jury, and sustained conviction. U.S. v. Hartenfeld, C.C.A.7 (Ind.) 1940, 113 F.2d 359, certiorari denied 61 S.Ct. 30, 311 U.S. 647, 85 L.Ed. 413. Conspiracy 47(5); Conspiracy 48.1(3); Postal Service 49(11); Postal Service 50

A letter written by defendant and other evidence, showing that defendant knew of and assisted in conspiracy, sustained conviction for conspiracy in mail fraud. U.S. v. Buckner, C.C.A.2 (N.Y.) 1940, 108 F.2d 921, certiorari denied 60 S.Ct. 613, 309 U.S. 669, 84 L.Ed. 1016. Postal Service 49(11)

In prosecutions for participating in scheme to defraud, use of mails in furtherance thereof, and conspiracy, involving sale, though corporation organized by two accused, of commercial paper secured by duplicate warehouse receipts for same commodity and receipts misstating quantity of merchandise, evidence, failing to show possible gain or attempted concealment of action by attorney who performed intermittent legal services for corporation and became its manager and receiver for brief periods, did not support attorney's conviction. U.S. v. Wise, C.C.A.7 (Ind.) 1939, 108 F.2d 379. Conspiracy 47(5); Postal Service 49(11)

In prosecutions for participating in scheme to defraud, use of mails in furtherance thereof, and conspiracy, evidence supported convictions of two accused who organized corporation to sell commercial paper secured by duplicate warehouse receipts for same commodity and warehouse receipts misstating quantity of merchandise. U.S. v. Wise, C.C.A.7 (Ind.) 1939, 108 F.2d 379. Conspiracy 47(5); Postal Service 49(11); Postal Service 49(5)

Where conspiracy to use mails in furtherance of scheme to defraud by means of a confidence game was a continuing one, in the absence of affirmative proof that any willful participant therein did withdraw, his continued connection with the business was to be taken for granted. U.S. v. Graham, C.C.A.2 (N.Y.) 1939, 102 F.2d 436, certiorari denied 59 S.Ct. 1041, 307 U.S. 643, 83 L.Ed. 1524, rehearing denied 60 S.Ct. 68, 308 U.S. 632, 84 L.Ed. 526. Conspiracy 44.2

In prosecution for using mails in furtherance of scheme to defraud by means of confidence game and for conspiring to commit such offense, weight of evidence sustained determination that there was one conspiracy rather than a series of independent frauds and conspiracies. U.S. v. Graham, C.C.A.2 (N.Y.) 1939, 102 F.2d 436, certiorari denied 59 S.Ct. 1041, 307 U.S. 643, 83 L.Ed. 1524, rehearing denied 60 S.Ct. 68, 308 U.S. 632, 84 L.Ed. 526. Conspiracy 47(5)

Evidence of false statements made by mortgage company concerning safety and value of mortgage participation certificates, of padding of financial statements, and of operations which weakened the security behind such certificates, authorized conviction of company's president and vice presidents of posting letters in pursuance of a scheme to defraud, and of conspiracy to use mails to defraud. U.S. v. Dilliard, C.C.A.2 (N.Y.) 1938, 101 F.2d 829,

certiorari denied 59 S.Ct. 484, 306 U.S. 635, 83 L.Ed. 1036. Conspiracy 47(5); Postal Service 49(11)

Evidence sustained conviction of conspiracy to use the mails to defraud in connection with purchase, sale and handling of cotton. Whitley v. U.S., C.C.A.5 (Tex.) 1938, 100 F.2d 504. Conspiracy 47(5)

In prosecution against construction company's president and employees for conspiring to defraud government in fraudulently using mails by sending later bid for construction of post office under predated postmark, positive evidence that president, present when other bids were opened, conveyed information thus acquired to employees was unnecessary, evidence of every detail relating to means employed not being required. Johnson v. U.S., C.C.A.6 (Ky.) 1936, 82 F.2d 500, certiorari denied 56 S.Ct. 957, 298 U.S. 688, 80 L.Ed. 1407. Conspiracy 47(6)

Evidence sustained conviction of construction company's president and employees for conspiring to defraud government in using mails to defraud government and low bidder by waiting until bids for construction of post office were opened, and then sending lowest bid under predated postmark. Johnson v. U.S., C.C.A.6 (Ky.) 1936, 82 F.2d 500, certiorari denied 56 S.Ct. 957, 298 U.S. 688, 80 L.Ed. 1407. Conspiracy 47(6); Postal Service 49(11)

In prosecution under indictment charging single conspiracy to use mails in furtherance of scheme to defraud which involved obtaining of merchandise on credit, evidence sustained verdict of guilty as against contention that evidence established several unconnected conspiracies other than conspiracy charged. Lefco v. U S, C.C.A.3 (Pa.) 1934, 74 F.2d 66. Postal Service 49(11)

Evidence, in prosecution for mailing letters pursuant to joint scheme to defraud and for conspiracy, was sufficient as to each defendant as to some counts. Van Riper v. U.S., C.C.A.2 (N.Y.) 1926, 13 F.2d 961, certiorari denied 47 S.Ct. 102, 273 U.S. 702, 71 L.Ed. 848. See, also, Ader v. U.S., C.C.A.Ill.1922, 284 F. 13, certiorari denied 43 S.Ct. 247, 260 U.S. 746, 67 L.Ed. 493. Conspiracy 47; Postal Service 49(11)

Evidence in support of indictment for conspiracy to use mails to defraud did not show overt act within three years. McWhorter v. U.S., C.C.A.8 (Neb.) 1924, 299 F. 780. Conspiracy 47(5)

In the prosecution of the manager, officers, and salesmen of a concern, for conspiring to use the mails in executing a scheme to defraud, in violation of former § 88 of this title [now this section], in which it was claimed that the defendants induced persons by means of fraud to enter into contracts appointing the concern their agent in the purchase of Indian lands, evidence insufficient for submission of case to jury. Van Tress v. U.S., C.C.A.6 (Ohio) 1923, 292 F. 513, 2 Ohio Law Abs. 370. Conspiracy 48.1(3); Postal Service 50

In the prosecution of the manager, officers, and salesmen, of a concern for conspiring to use the mails to defraud, in violation of former § 88 of this title [now this section] in which it was claimed that the defendants induced persons by means of fraud to enter into contracts appointing the concern their agent in the purchase of Indian lands, evidence as to several instances of misrepresentations by salesmen as to the land values was insufficient to sustain conviction; the charge being conspiracy, and the salesmen being guilty, notwithstanding such misrepresentations, only if they participated in the conspiracy. Van Tress v. U.S., C.C.A.6 (Ohio) 1923, 292 F. 513, 2 Ohio Law Abs. 370. Conspiracy 47(5); Postal Service 49(11)

Evidence was sufficient to warrant the inference that defendant, a lawyer and business man, who was a party to a conspiracy to defraud by obtaining money on false representations that it was to be used in buying and selling live stock and would produce large profits, knew before the end, if not at the inception, of the scheme, that the mails would be used and were being used by other parties to the conspiracy and that he acquiesced therein. Burns v. U.S., C.C.A.8 (Okla.) 1922, 279 F. 982. Conspiracy 44.2

Evidence was insufficient to show that defendant devised a scheme to defraud by use of the mails, contrary to former §§ 88 [now this section] and 338 of this title in negotiating an exchange of property between complaining witness and another, or that he entered into any conspiracy to use mails in connection with scheme to defraud. Stubbs v. U.S., C.C.A.9 (Cal.) 1918, 249 F. 571, 161 C.C.A. 497. Postal Service 49(11)

Evidence that conspiracy to defraud was to be executed and that use of the mails was indispensable sufficiently showed intent to use the mails, but evidence was insufficient to show that warnings given agents against making false representations charged were made in good faith and with intent that they should be acted upon. Preeman v. U.S., C.C.A.7 (Ill.) 1917, 244 F. 1, 156 C.C.A. 429, certiorari denied 38 S.Ct. 12, 245 U.S. 654, 62 L.Ed. 533. Postal Service 49(11)

While the mail was used quite extensively by the defendants and in execution of fraud, the record showed that the main reliance of the defendants was upon the "quick tongue and fertility in falsehood" of one of them, and the necessary intent not proven by direct evidence, could not be inferred beyond a reasonable doubt, so that a conviction of conspiracy to violate former § 338 of this title could not be sustained. Schwartzberg v. U.S., C.C.A.2 (N.Y.) 1917, 241 F. 348.

Indictment under this section for conspiracy to commit an offense against the United States by using the mails to defraud, was sustained by evidence of the conspiracy and that defendants procured another to deposit certain letters in the mail. Rose v. U.S., C.C.A.8 (Mo.) 1915, 227 F. 357, 142 C.C.A. 53, certiorari denied 36 S.Ct. 219, 239 U.S. 647, 60 L.Ed. 484. Conspiracy 43(12)

Where defendants were indicted and tried for conspiracy to defraud by using the mails, in violation of former § 338 of this title, and the overt act charged was that the defendants deposited and caused to be deposited a certain letter in the post office, evidence that the defendant procured another person to mail said letter, though he may not have acted with knowledge so as to be guilty himself, supports the indictment. Rose v. U.S., C.C.A.8 (Mo.) 1915, 227 F. 357, 142 C.C.A. 53, certiorari denied 36 S.Ct. 219, 239 U.S. 647, 60 L.Ed. 484.

Where one was tried for conspiring to use the mails to carry out a scheme to defraud, it was sufficient for the government to show that written or printed matter about the scheme charged was mailed to one of the three persons named in the indictment as the persons defendant planned to defraud, and that copies of the same printed matter were sent through the mails to a mailing list throughout the United States. US v. Marrin, E.D.Pa.1908, 159 F. 767, affirmed 167 F. 951, 93 C.C.A. 351, certiorari denied 32 S.Ct. 523, 223 U.S. 719, 56 L.Ed. 629.

Evidence did not support loss figure of over half a million dollars urged by the government at sentencing of defendant for mail fraud convictions, which were based on misrepresentations to workers' compensation insurers based on character of work performed; no actual loss resulted from misrepresentations, no claims were made under the policy, and it was impossible to meaningfully calculate intended loss, as defendant would have paid higher premiums than he should have if he had properly characterized his work. U.S. v. Pimental, D.Mass.2005, 367 F.Supp.2d 143. Sentencing And Punishment 736

Antique firearms dealer's agreement with collector's agent to make misleading statements to induce sale of firearms to collector was sufficient to prove dealer's intent to participate in scheme to defraud collector, and thus was sufficient to support dealer's conviction for conspiracy to commit mail and wire fraud, in light of dealer's sworn deposition testimony that he knew that agent was taking advantage of his agency relationship with collector to sell him firearms at unconscionable markups, and dealer concocted or paid third party to concoct false letters making specific claims that he had buyers who had made concrete offers for guns, and letters in which he offered to purchase guns that he already owned with specific purpose of defrauding collector into paying excessive prices for guns. U.S. v. Zomber, E.D.Pa.2005, 358 F.Supp.2d 442. Conspiracy 47(5)

Evidence did not establish beyond a reasonable doubt that defendants had failed to disclose an attempt to conceal

deliberately true status of ship loans on books of bank so as to be guilty in mail and securities fraud prosecution of conspiring between themselves and with others to defraud bank and its shareholders through a merger and to further defraud shareholders of newly merged bank through a recapitalization program. U. S. v. Jones, D.C.N.J.1974, 380 F.Supp. 343. Conspiracy 47(4)

Evidence was sufficient to find defendant guilty of mail fraud and conspiracy to commit mail fraud; government was not required, in order to establish intent to defraud, to prove that victim lost money or that defendant wanted victim to lose money. U.S. v. Easton, C.A.8 (S.D.) 2002, 54 Fed.Appx. 242, 2002 WL 31814951, Unreported. Conspiracy 47(5); Postal Service 35(5); Postal Service 49(11)

768. ---- Insurance fraud, postal offenses, sufficiency of evidence

Evidence was sufficient to support finding that defendant knew and participated in conspiracy to defraud life insurance companies and investors by trading in fraudulent viaticals, as required to sustain conviction for conspiracy to commit mail fraud; five witnesses testified that they had sold or brokered sales of anywhere from five to 72 fraudulent policies to defendant's viatical settlement company, government expert testified that she found 214 policies she could identify as fraudulent, second government analyst testified that, in over 60 percent of the policies, the viator's HIV diagnosis date preceded date the insurance policy was issued, indicating high likelihood that policy was fraudulently obtained, a viator testified that he spoke with defendant about obtaining fraudulent policies for AIDS-infected sister in order to sell them, and, finally, after learning about federal investigation into fraudulent viatical schemes, defendant ordered his employees to destroy the policy application in each viator's file. U.S. v. Jamieson, C.A.6 (Ohio) 2005, 427 F.3d 394, rehearing and rehearing en banc denied, certiorari denied 2006 WL 1523238. Conspiracy 47(5)

Evidence that defendant entered into scheme to collect health insurance proceeds by participating in series of staged accidents and that they received checks from insurers through the mail was sufficient to support convictions for conspiracy and mail fraud. U.S. v. Duncan, C.A.5 (La.) 1990, 919 F.2d 981, rehearing denied, certiorari denied 111 S.Ct. 2036, 500 U.S. 926, 114 L.Ed.2d 121. Conspiracy 47(3.1); Postal Service 49(11)

In prosecution for conspiracy related to underlying substantive offense of mail fraud, evidence that defendants, president and vice-president of small company, entered into agreement to defraud insurance company through the mails was sufficient to sustain conviction. U.S. v. Peters, C.A.1 (Mass.) 1984, 732 F.2d 1004.

Evidence that defendant devised scheme to enter into partnership with another person, to take out a "key man" policy on other person, to cause the "key man's" death and collect the proceeds, that defendant's father applied for the insurance policies, and that the "key man" was murdered sustained finding that defendant's father, as well as an unknown murderer, were coconspirators in the scheme and thus sustained defendant's conviction for conspiracy. U. S. v. Calvert, C.A.8 (Mo.) 1975, 523 F.2d 895, certiorari denied 96 S.Ct. 1106, 424 U.S. 911, 47 L.Ed.2d 314. Conspiracy 47(8)

Evidence supported findings that defendants charged with conspiracy to violate section 1341 of this title and substantive violations thereof were responsible for fraudulent activities conducted in the name of corporation against Canadian insurer, various agents, and those insured, that, although defendants knew Ontario Insurance Commissioner had restricted insurer from issuing risks outside of Canada after specific date, they sold the insurer's policies in the United States after such date, and that, although defendants knew that insurer was in extreme difficulty with the Commissioner, they continued to write or authorize writing of insurer's policies without revealing such difficulties to the agents with whom they dealt. U. S. v. Wolfson, C.A.3 (Del.) 1972, 454 F.2d 60, certiorari denied 92 S.Ct. 1792, 406 U.S. 924, 32 L.Ed.2d 124. Conspiracy 47(5); Postal Service 49(11)

Evidence in prosecution for mail fraud and conspiracy to violate mail fraud provisions established that all

defendants were active participants in the scheme to defraud insurance companies of proceeds under life insurance policies by false and fraudulent representations. Bannister v. U. S., C.A.5 (Fla.) 1967, 379 F.2d 750, certiorari denied 88 S.Ct. 861, 390 U.S. 927, 19 L.Ed.2d 988. Postal Service 49(11)

In prosecution for mail fraud and conspiracy in staging automobile accidents for purpose of defrauding insurance companies, evidence as regards attorney involved was insufficient to permit reasonable minds to find that it excluded every hypothesis but that of guilt. Barnard v. U. S., C.A.9 (Or.) 1965, 342 F.2d 309, certiorari denied 86 S.Ct. 403, 382 U.S. 948, 15 L.Ed.2d 356, rehearing denied 86 S.Ct. 567, 382 U.S. 1002, 15 L.Ed.2d 491, rehearing denied 86 S.Ct. 567, 382 U.S. 1002, 15 L.Ed.2d 492, certiorari denied 86 S.Ct. 404, 382 U.S. 948, 15 L.Ed.2d 356, rehearing denied 86 S.Ct. 568, 382 U.S. 1002, 15 L.Ed.2d 492. Conspiracy 47(5); Postal Service 49(11)

Evidence established a succession of separate conspiracies, each one about an automobile collision in which particular group of conspirators was to engage to defraud insurance companies, but failed to establish a conspiracy for a succession of fraudulent collisions, and hence none of convictions under count charging an overall conspiracy could stand. Barnard v. U. S., C.A.9 (Or.) 1965, 342 F.2d 309, certiorari denied 86 S.Ct. 403, 382 U.S. 948, 15 L.Ed.2d 356, rehearing denied 86 S.Ct. 567, 382 U.S. 1002, 15 L.Ed.2d 491, rehearing denied 86 S.Ct. 567, 382 U.S. 1002, 15 L.Ed.2d 492, certiorari denied 86 S.Ct. 404, 382 U.S. 948, 15 L.Ed.2d 356, rehearing denied 86 S.Ct. 568, 382 U.S. 1002, 15 L.Ed.2d 492. Conspiracy 47(4)

Evidence including showing of relationship between attorney and persons directly involved in planned automobile collisions for purpose of defrauding insurance companies and advances by attorney of moneys to persons who were no longer clients was sufficient for jury on issue whether attorney was a party to faking of the accidents. Barnard v. U. S., C.A.9 (Or.) 1965, 342 F.2d 309, certiorari denied 86 S.Ct. 403, 382 U.S. 948, 15 L.Ed.2d 356, rehearing denied 86 S.Ct. 567, 382 U.S. 1002, 15 L.Ed.2d 491, rehearing denied 86 S.Ct. 567, 382 U.S. 1002, 15 L.Ed.2d 492, certiorari denied 86 S.Ct. 404, 382 U.S. 948, 15 L.Ed.2d 356, rehearing denied 86 S.Ct. 568, 382 U.S. 1002, 15 L.Ed.2d 492. Conspiracy 48.1(3)

Evidence from which jury could reasonably conclude that each defendant knew what was being done by others in carrying out scheme, that one defendant aided another in falsifying insurance application and that a third participated by backing up falsehoods told by others was sufficient to support indictment for conspiracy. U. S. v. Tenenbaum, C.A.7 (Ill.) 1964, 327 F.2d 210, certiorari denied 84 S.Ct. 1165, 377 U.S. 905, 12 L.Ed.2d 177. Indictment And Information 10.2(10)

Evidence sustained convictions for use of mails in attempt to defraud in the sale of accident and sickness policies, and for conspiracy to commit the same offense. U. S. v. Sylvanus, C.A.7 (Ill.) 1951, 192 F.2d 96, certiorari denied 72 S.Ct. 555, 342 U.S. 943, 96 L.Ed. 701. Conspiracy 47(5); Postal Service 49(11)

In prosecution for use of mails to defraud insurance companies by filing false claims and for conspiracy, evidence supported conviction of defendant physician as against contention that physician was not shown to have been connected with general conspiracy to defraud insurance companies, but only with the specific plan of fraudulently obtaining disability payments for one defendant from single company, and that physician had dropped out of conspiracy after giving disability certificate in one instance. U S v. Weiss, C.C.A.2 (N.Y.) 1939, 103 F.2d 348, certiorari granted 59 S.Ct. 1043, 307 U.S. 621, 83 L.Ed. 1500, reversed on other grounds 60 S.Ct. 269, 308 U.S. 321, 84 L.Ed. 298. Conspiracy 47(5)

Evidence was sufficient to support defendant's convictions for conspiracy to commit mail fraud and wire fraud in furtherance of scheme to defraud workers' compensation carriers; defendant signed draft of workers' compensation insurance application containing gross inaccuracies as to company's number of employees and annual payroll and falsely stating that company had no employee exchange agreements, defendant provided false information to carrier's loss control consultant and to insurance auditor, and he took auditor to see a property in an effort to corroborate false information in insurance application. U.S. v. Colwell, C.A.11 (Ga.) 2005, 140 Fed.Appx. 64,

18 U.S.C.A. § 371

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769. Price control offenses, sufficiency of evidence

Evidence sustained convictions of wholesale meat dealers for violations of Emergency Price Control Act, 50 App. former § 901 et seq., and conspiracy to violate said sections. Stillman v. U.S., C.A.9 (Cal.) 1949, 177 F.2d 607. Conspiracy 47(3.1); War And National Emergency 170

Evidence supported conviction of corporate defendant for conspiracy to violate Emergency Price Control Act of 1942, 50 App. former § 901 et seq., and regulations thereunder in sales of intoxicating liquor, based on acts of defendant's president. Old Monastery Co. v. U.S., C.C.A.4 (S.C.) 1945, 147 F.2d 905, certiorari denied 66 S.Ct. 44, 326 U.S. 734, 90 L.Ed. 437. War And National Emergency 170

770. Racketeering, sufficiency of evidence

Admission of expert testimony matching defendant's DNA to that found at different crime scenes was not abuse of discretion in prosecution for conspiracy to commit robbery and operating a racketeering enterprise, though expert failed to note one faint allele dot in a sample of sweat taken from a baseball cap found in a getaway vehicle, which sample expert matched to defendant; flaws in expert's methodology went to weight and credibility, rather than admissibility. U.S. v. Shea, C.A.1 (N.H.) 2000, 211 F.3d 658, certiorari denied 121 S.Ct. 1101, 531 U.S. 1154, 148 L.Ed.2d 973, rehearing denied 121 S.Ct. 1647, 532 U.S. 990, 149 L.Ed.2d 504, certiorari denied 121 S.Ct. 1102, 531 U.S. 1154, 148 L.Ed.2d 973, habeas corpus denied 2002 WL 31409820, certificate of appealability denied 137 Fed.Appx. 373, 2005 WL 1594548, certiorari denied 126 S.Ct. 506, 163 L.Ed.2d 383, certiorari denied 126 S.Ct. 1386, 164 L.Ed.2d 91. Criminal Law 475.2(3)

Evidence of defendant's involvement in plan to murder government informant was sufficient to sustain conviction as coconspirator and principal in obstruction of a criminal investigation and for use of interstate transportation in aid of racketeering activities. U.S. v. Fernandez-Roque, C.A.5 (La.) 1983, 703 F.2d 808. Conspiracy 47(3.1); Conspiracy 47(13)

Evidence in prosecution for, inter alia, conspiracy to accept payments from employers, conducting union affairs through pattern of racketeering, and accepting payments, was sufficient to establish one conspiracy consisting of continuous course of conduct in which number of fur manufacturers, acting through middleman, engaged in corruption of defendants as key members of fur trade union, rather than number of separate conspiracies. U. S. v. Stofsky, C.A.2 (N.Y.) 1975, 527 F.2d 237, stay denied 96 S.Ct. 1490, 425 U.S. 902, 47 L.Ed.2d 751, certiorari denied 97 S.Ct. 65, 429 U.S. 819, 50 L.Ed.2d 80, certiorari denied 97 S.Ct. 66, 429 U.S. 819, 50 L.Ed.2d 80. Conspiracy 47(3.1)

Evidence in prosecution for conspiracy and related substantive instances of illicit interstate gambling sustained conviction on substantive counts, although each defendant contended that he was not present at times and places set forth in various substantive counts, there being evidence sufficient to establish conspiracy so as to impute defendants' separate wrongdoings to one another. U. S. v. McGowan, C.A.4 (Va.) 1970, 423 F.2d 413. Gaming 98(1)

Examination of minutes of grand jury returning indictment charging defendant with conspiracy to violate sections 1084 and 1952 of this title, and various substantive offenses, showed that, contrary to contention of defendant, there was evidence concerning the specific telephone calls on which counts 2 through 16 were predicated. U. S. v. Covello, C.A.2 (N.Y.) 1969, 410 F.2d 536, certiorari denied 90 S.Ct. 150, 396 U.S. 879, 24 L.Ed.2d 136, rehearing denied 90 S.Ct. 897, 397 U.S. 929, 25 L.Ed.2d 110. Indictment And Information 10.2(10)

That some of the parties who took part in hijacking of cameras and film were also involved in silver hijackings was

insufficient to support a finding of one overall continuous conspiracy, and fact that objects in both hijackings were similar was insufficient to constitute an overall common conspiracy. U. S. v. Varelli, C.A.7 (Ill.) 1969, 407 F.2d 735. Conspiracy 47(11)

Evidence to effect that defendant was manager and promoter of gambling casino and was fully aware of scope of illegal enterprise, including its interstate aspects arising from employees' travel from New Jersey to Pennsylvania, sustained conviction for conspiracy to violate section 1952 of this title. U. S. v. Barrow, C.A.3 (Pa.) 1966, 363 F.2d 62, certiorari denied 87 S.Ct. 703, 385 U.S. 1001, 17 L.Ed.2d 541. Conspiracy 47(7)

771. Rationing offenses, sufficiency of evidence

Evidence sustained conviction of corporate butcher, corporate wholesaler, and the two stockholders who were corporations' sole owners, of buying false ration cheques, of fraudulently obtaining subsidies from the Defense Supplies Corporation, and of conspiracy to commit both such offenses. U.S. v. Center Veal & Beef Co., C.C.A.2 (N.Y.) 1947, 162 F.2d 766. Conspiracy 47(6); War And National Emergency 316

Evidence sustained convictions for conspiracy to defraud the United States of the proper administration of its regulations relating to the rationing of rubber tires as promulgated by the Office of Price Administration under 50 App. former §§ 721, and 1152. Phelps v. U. S., C.C.A.8 (Minn.) 1947, 160 F.2d 858, rehearing denied 161 F.2d 940, certiorari denied 68 S.Ct. 1525, 334 U.S. 860, 92 L.Ed. 1780. See, also, Rose v. U.S., C.C.A.Cal.1945, 149 F.2d 755. Conspiracy 47(6)

Evidence failed to sustain conviction of conspiracy to acquire, use, permit the use of, transfer, possess, and control counterfeited gasoline mileage ration coupons, and to obtain rationed gasoline without presenting prescribed ration coupons therefor. Laurent v. U.S., C.C.A.9 (Cal.) 1945, 149 F.2d 598. Conspiracy 47(3.1)

Conviction of conspiracy to commit an offense against and to defraud the United States in connection with a acquisition and possession of genuine and counterfeit ration coupons would be confirmed where circumstantial evidence left no doubt as to accused's connection with the conspiracy, existence of which was established beyond peradventure. Kushner v. U. S., C.C.A.4 (N.C.) 1945, 146 F.2d 853. Conspiracy 47(3.1)

Evidence was sufficient to sustain conviction for conspiracy to counterfeit and forge gasoline ration coupons and possess them in violation of gasoline rationing regulations. U. S. v. Todaro, C.C.A.2 (Conn.) 1944, 145 F.2d 977. Conspiracy 47(3.1)

Where evidence showed that accused bought gasoline ration books with knowledge that they had been stolen, but without purpose of securing to thieves fruits of their theft and not in furtherance of the scheme to steal and sell them, accused could not be convicted of conspiracy to steal the books and receive them with intent to convert them knowing them to have been stolen. U S v. Zeuli, C.C.A.2 (N.Y.) 1943, 137 F.2d 845. Conspiracy 33(2.1)

Evidence was insufficient to sustain verdict finding defendant seller guilty of conspiracy to violate sugar rationing order. U. S. v. Boyer, E.D.Pa.1949, 84 F.Supp. 905. Conspiracy 47(3.1)

772. Securities offenses, sufficiency of evidence

Rational jury could have found beyond reasonable doubt that defendant willingly and knowingly participated in co-defendant's fraudulent schemes, in defendant's trial on numerous federal conspiracy charges, where defendant substantially assisted co-defendant in day-to-day operations, defendant's representations at meetings with investors played into charitable instincts of investors and reinforced credibility of co-defendant's statements, defendant falsely represented to some investors that she was certified public accountant, and she knew that funding she and

co-defendant received was not being spent on investment projects, but for personal gain. U.S. v. Dowlin, C.A.10 (Wyo.) 2005, 408 F.3d 647. Conspiracy 47(4)

Evidence was sufficient to show that defendants knowingly participated in conspiracy to defraud investors by filing quitclaim deed that conveyed mining claims with knowledge that no mining was in progress, that claims had little value, or by purging investor records. U.S. v. Boone, C.A.9 (Idaho) 1991, 951 F.2d 1526. Conspiracy 47(4)

Evidence of defendants' manipulation of accounting practices, evidence of false statements filed with the Securities Exchange Commission, and evidence of unreported transactions involving labor union officials was sufficient to sustain defendants' convictions for conspiracy to defraud the United States and the Commission. U. S. v. Stirling, C.A.2 (N.Y.) 1978, 571 F.2d 708, certiorari denied 99 S.Ct. 93, 439 U.S. 824, 58 L.Ed.2d 116. Conspiracy 47(6)

Evidence sustained conviction of conspiracy and multiple counts of violating the registration and antifraud provisions of the Securities Act of 1933, section 77a et seq. of Title 15, and Securities Exchange Act of 1934, section 78a et seq. of Title 15. U. S. v. Manning, C.A.9 (Cal.) 1974, 509 F.2d 1230, certiorari denied 96 S.Ct. 37, 423 U.S. 824, 46 L.Ed.2d 40. Conspiracy 47(3.1); Securities Regulation 199

Evidence was sufficient to support defendants' convictions for conspiracy, mail fraud, fraud in the purchase and sale of securities, fraud in the offer of sale of securities, failure to deposit proceeds of an "all or none" offering promptly in an escrow account, and submission of false documents to the Securities and Exchange Commission. U. S. v. Koss, C.A.2 (N.Y.) 1974, 506 F.2d 1103, certiorari denied 95 S.Ct. 1402, 420 U.S. 977, 43 L.Ed.2d 657, certiorari denied 95 S.Ct. 1565, 421 U.S. 911, 43 L.Ed.2d 776. Conspiracy 47(5); Postal Service 49(11); Securities Regulation 199

Evidence with respect to activities of defendants in connection with preparing the prospectuses relating to financial condition of company whose common stock and interest-bearing investment certificates were sold to general public was sufficient to sustain convictions of all defendants on various counts of securities fraud, mail fraud, and conspiracy. U. S. v. Bruce, C.A.5 (Ga.) 1973, 488 F.2d 1224, rehearing denied 491 F.2d 1407, certiorari denied 95 S.Ct. 41, 419 U.S. 825, 42 L.Ed.2d 48. Conspiracy 47(5); Postal Service 49(11); Securities Regulation 199

Evidence, in prosecutions for conspiracy to transport stolen securities in interstate commerce, was sufficient to prove that defendants who met with core conspirators to discuss sales of stolen securities, made sales to core conspirators and knew they were dealing with a conspiracy and whose receipts for such sales represented a percentage of the proceeds realized upon resale of securities by core conspirators were members of overall, single conspiracy. U. S. v. Salerno, C.A.3 (N.J.) 1973, 485 F.2d 260, certiorari denied 94 S.Ct. 1596, 415 U.S. 994, 39 L.Ed.2d 891, rehearing denied 94 S.Ct. 2415, 416 U.S. 1000, 40 L.Ed.2d 778. Conspiracy 47(11)

Evidence sustained conviction for participation in agreement to raise by manipulation price of corporate stock on stock exchange and established that there was single conspiracy rather than three conspiracies. U. S. v. Projansky, C.A.2 (N.Y.) 1972, 465 F.2d 123, certiorari denied 93 S.Ct. 432, 409 U.S. 1006, 34 L.Ed.2d 299, certiorari denied 93 S.Ct. 433, 409 U.S. 1006, 34 L.Ed.2d 299, certiorari denied 93 S.Ct. 443, 409 U.S. 1006, 34 L.Ed.2d 299, certiorari denied 93 S.Ct. 444, 409 U.S. 1006, 34 L.Ed.2d 299. Conspiracy 47(3.1)

Where attorney and president of stockbroker corporation agreed to and entered into transaction with lender whereby the stockbroker corporation pledged customers' stock as collateral for loan, there was sufficient showing of criminal intent which would sustain conviction on the substantive offense and there was sufficient showing of criminal intent to support attorney's conviction for conspiracy to violate antihypothecation statute, section 78h of Title 15. U. S. v. Schwartz, C.A.2 (N.Y.) 1972, 464 F.2d 499, certiorari denied 93 S.Ct. 443, 409 U.S. 1009, 34 L.Ed.2d 302. Conspiracy 47(11); Securities Regulation 199

Government met its burden of proving defendant guilty of interstate transportation, with unlawful and fraudulent intent, of tools and implements of forging, altering or counterfeiting securities, interstate transportation of falsely made and forged securities, and conspiracy beyond a reasonable doubt, notwithstanding certain imperfections in testimony of defendant's codefendants. U. S. v. Twilligear, C.A.10 (Wyo.) 1972, 460 F.2d 79. Conspiracy 47(3.1); Receiving Stolen Goods 8(3)

Regardless of the sufficiency of "direct" evidence to sustain the conviction, there was sufficient circumstantial evidence to sustain defendant's conviction on one conspiracy count and on a number of substantive counts of violation of the Securities Exchange Act of 1934, section 78a et seq. of Title 15, and sections 1341, 1343 of this title. U. S. v. D'Honau, C.A.9 (Cal.) 1972, 459 F.2d 73, certiorari denied 93 S.Ct. 149, 409 U.S. 861, 34 L.Ed.2d 108. Conspiracy 47(5); Postal Service 49(11); Securities Regulation 199; Telecommunications 1018(4)

Direct evidence of acts of concealment of continuing conspiracy in which concealment was not only essential to success of scheme but was very heart and object of it was sufficient to sustain conviction for conspiracy to defraud government and SEC. U. S. v. Colasurdo, C.A.2 (N.Y.) 1971, 453 F.2d 585, certiorari denied 92 S.Ct. 1766, 406 U.S. 917, 32 L.Ed.2d 116. Conspiracy 47(6)

Testimony in prosecution for conspiracy to defraud United States and Securities and Exchange Commission and to have the securities laws administered impartially and according to their terms was sufficient to permit a rational conclusion that there was a working relationship between defendant and employee of Securities and Exchange Commission. U. S. v. Peltz, C.A.2 (N.Y.) 1970, 433 F.2d 48, certiorari denied 91 S.Ct. 974, 401 U.S. 955, 28 L.Ed.2d 238. Conspiracy 47(6)

Evidence was sufficient for jury to find that defendant charged with conspiracy to violate antifraud provisions of Securities Act of 1933, section 77a et seq. of Title 15, and with substantive violations of Securities Act of 1933, section 77a et seq. of Title 15, knew that mails would be used in connection with distribution of codefendant's stock. U. S. v. Kaufman, C.A.2 (N.Y.) 1970, 429 F.2d 240, certiorari denied 91 S.Ct. 185, 400 U.S. 925, 27 L.Ed.2d 184, certiorari denied 91 S.Ct. 190, 400 U.S. 925, 27 L.Ed.2d 184. Conspiracy 48.1(3)

Evidence was sufficient to show scheme by defendant to defraud with respect to oil and gas leases, though some of the flamboyant statements attributed to defendant were not expressly proved false in prosecution for mail fraud, securities fraud, use of mails to sell unregistered securities, delivery of unregistered securities through mails, and conspiracy to effect mail and securities fraud. Buie v. U. S., C.A.5 (Tex.) 1969, 420 F.2d 1207, certiorari denied 90 S.Ct. 1830, 398 U.S. 932, 26 L.Ed.2d 97. Conspiracy 47(5); Postal Service 49(11); Securities Regulation 199; Securities Regulation 199

Evidence in prosecution for conspiracy to violate federal security laws by selling unregistered securities in interstate commerce, by using fraudulent practices in their sale and with use of mails for sales of unregistered stock was sufficient to support finding that two of the defendants had, with respect to conspiracy, knowledge that a third defendant controlled all corporations, an essential element of conspiracy offense. U. S. v. McGuire, C.A.2 (N.Y.) 1967, 381 F.2d 306, certiorari denied 88 S.Ct. 800, 389 U.S. 1053, 19 L.Ed.2d 848, certiorari denied 88 S.Ct. 801, 389 U.S. 1053, 19 L.Ed.2d 848. Conspiracy 47(4)

Evidence warranted convictions of defendants, who owned and controlled oil company, on three substantive registration counts, in prosecution involving conspiracy to defraud public by distribution of oil company stock to public at grossly inflated prices. U. S. v. Kelly, C.A.2 (N.Y.) 1965, 349 F.2d 720, certiorari denied 86 S.Ct. 1467, 384 U.S. 947, 16 L.Ed.2d 544. Licenses 42(4); Securities Regulation 199

Evidence warranted jury finding that defendant, who owned and controlled oil company, and codefendant, company attorney, together with others, were guilty of single, over-all conspiracy, as alleged in indictment, to sell

company's stock to public without disclosure of true condition of company, as required by registration provisions of Securities Act, § 77e of Title 15, and by means of fraud, as prohibited by Securities Act, § 77q of Title 15, and mail [§ 1341 of this title] and wire fraud statutes. U. S. v. Kelly, C.A.2 (N.Y.) 1965, 349 F.2d 720, certiorari denied 86 S.Ct. 1467, 384 U.S. 947, 16 L.Ed.2d 544. Conspiracy 47(4)

Evidence was sufficient to support finding that defendant and another, and perhaps others, conspired in fraudulent scheme to undertake pressure campaign or "boiler room" operation to induce individual investors to buy oil company stock at inflated prices and hold it, in view of jury question on credibility of witness as admitted liar, whether or not there was evidence sufficient to connect defendant with single, over-all conspiracy to defraud public in connection with distribution of oil company stock. U. S. v. Kelly, C.A.2 (N.Y.) 1965, 349 F.2d 720, certiorari denied 86 S.Ct. 1467, 384 U.S. 947, 16 L.Ed.2d 544. Conspiracy 47(4)

Evidence sustained conviction for transporting stolen securities in interstate commerce and conspiring to do the same. U. S. v. Hall, C.A.2 (N.Y.) 1965, 348 F.2d 837, certiorari denied 86 S.Ct. 408, 382 U.S. 947, 15 L.Ed.2d 355. Conspiracy 47(11); Receiving Stolen Goods 8(3)

Evidence sustained convictions for aiding and abetting the interstate transportation of stolen securities and for conspiracy to do so. U. S. v. Brown, C.A.2 (N.Y.) 1964, 335 F.2d 170. Conspiracy 47(11); Receiving Stolen Goods 8(3)

Evidence warranted conviction for conspiring to illegally sell unregistered stock. U.S. v. Dardi, C.A.2 (N.Y.) 1964, 330 F.2d 316, certiorari denied 85 S.Ct. 117, 379 U.S. 869, 13 L.Ed.2d 73, certiorari denied 85 S.Ct. 50, 379 U.S. 845, 13 L.Ed.2d 50, rehearing denied 85 S.Ct. 640, 379 U.S. 986, 13 L.Ed.2d 579, certiorari denied 85 S.Ct. 51, 379 U.S. 845, 13 L.Ed.2d 50. Conspiracy 47(4)

There was ample direct and circumstantial evidence which, together was reasonable inferences to be drawn therefrom, fully established defendants' guilt on counts of indictment charging offenses under Securities Act of 1933, § 77a et seq. of Title 15, and on counts charging conspiracy to violate Securities Act and Mail Fraud Statute, § 1341 of this title, in connection with sale of corporate securities. Dedmore v. U. S., C.A.9 (Wash.) 1963, 322 F.2d 938. Conspiracy 47(5); Licenses 42(4); Securities Regulation 199

Evidence of defendant's participation as officer in affairs of companies which sold securities sustained his conviction for mail fraud, securities fraud and conspiracy. Farrell v. U. S., C.A.9 (Cal.) 1963, 321 F.2d 409, certiorari denied 84 S.Ct. 631, 375 U.S. 992, 11 L.Ed.2d 478. Conspiracy 47(5); Postal Service 49(11); Securities Regulation 199

Evidence sustained conviction for violating anti-fraud provisions of Securities Act, § 77q of Title 15, mail fraud statute, § 1341 of this title, and this section. Peel v. U. S., C.A.5 (Fla.) 1963, 316 F.2d 907, certiorari denied 84 S.Ct. 174, 375 U.S. 896, 11 L.Ed.2d 125. Conspiracy 47(4); Postal Service 49(11); Securities Regulation 199

Evidence sustained conviction of conspiracy to transport stolen securities in interstate commerce. Thogmartin v. U. S., C.A.8 (Iowa) 1963, 313 F.2d 589. Conspiracy 47(11)

Evidence in derivative action by minority stockholders against majority stockholders established conspiracy to use corporate assets to finance purchase of stock of corporation by majority stockholders. Maggiore v. Bradford, C.A.6 (Tenn.) 1962, 310 F.2d 519, certiorari denied 83 S.Ct. 881, 372 U.S. 934, 9 L.Ed.2d 766. Conspiracy 19

Evidence supported convictions for conspiracy to use mails in scheme to defraud and for unlawfully causing transportation in interstate commerce of forged or falsely altered securities. U. S. v. Doran, C.A.7 (Ill.) 1962, 299

F.2d 511, certiorari denied 82 S.Ct. 1563, 370 U.S. 925, 8 L.Ed.2d 504, certiorari denied 82 S.Ct. 1565, 370 U.S. 925, 8 L.Ed.2d 505, rehearing denied 83 S.Ct. 17, 371 U.S. 854, 9 L.Ed.2d 92. Conspiracy 47(5); Receiving Stolen Goods 8(3)

Evidence sustained conviction for conspiracy to use mails to defraud and to use mails in a scheme to defraud in the sale of securities in interstate commerce. Davenport v. U.S., C.A.9 (Or.) 1958, 260 F.2d 591, certiorari denied 79 S.Ct. 585, 359 U.S. 909, 3 L.Ed.2d 573. Conspiracy 47(5)

Evidence sustained conviction of violation of Securities Act, § 77a et seq. of title 15, mail fraud, and conspiracy in sale of debentures of corporation. U. S. v. Tellier, C.A.2 (N.Y.) 1958, 255 F.2d 441, certiorari denied 79 S.Ct. 33, 358 U.S. 821, 3 L.Ed.2d 62. Securities Regulation 199; Licenses 42(4); Conspiracy 47(5)

Evidence sustained conviction for unlawful transportation in interstate commerce of forged, fictitious and falsely made securities, and for conspiracy to transport in interstate commerce such securities in form of completed checks. Moore v. U. S., C.A.5 (Tex.) 1958, 250 F.2d 658, certiorari denied 78 S.Ct. 998, 356 U.S. 956, 2 L.Ed.2d 1071, certiorari denied 80 S.Ct. 1251, 363 U.S. 813, 4 L.Ed.2d 1155, rehearing denied 80 S.Ct. 1622, 363 U.S. 858, 4 L.Ed.2d 1739. Conspiracy 47(3.1); Receiving Stolen Goods 8(3)

Evidence sustained conviction for conspiring to cause to be transported in interstate commerce and for transporting and causing to be transported in interstate commerce falsely made, forged, altered, and counterfeited securities. Fowler v. U.S., C.A.5 (Ga.) 1957, 242 F.2d 860. Conspiracy 47(3.1); Receiving Stolen Goods 8(3)

Evidence sustained conviction for transporting in foreign commerce stolen securities and for conspiring to do so. United States v. Aron, C.A.2 (N.Y.) 1957, 239 F.2d 857. Conspiracy 47(11); Receiving Stolen Goods 8(3)

Evidence supported conviction of both defendants for violating Securities Act of 1933, § 77q(a)(1) of Title 15, and Mail Fraud Act, former § 338 of this title, and conspiring to carry out the substantive offenses. Harper v. U. S., C.C.A.8 (Mo.) 1944, 143 F.2d 795. See, also, U.S. v. Bronson, C.C.A.N.Y.1944, 145 F.2d 939; Holmes v. U.S., C.C.A.Neb.1943, 134 F.2d 125, certiorari denied 63 S.Ct. 1434, 319 U.S. 776, 87 L.Ed. 1722; Kopald-Quinn & Co. v. U.S., C.C.A.Ga.1939, 101 F.2d 628, certiorari denied 59 S.Ct. 835, 307 U.S. 628, 83 L.Ed. 1511. Conspiracy 47(5); Securities Regulation 199; Postal Service 49(11)

Evidence was sufficient to support conviction of two defendants for using the mails in furtherance of a scheme to defraud in sale of mining stock and for a conspiracy to devise a scheme to defraud. Estep v. U.S., C.C.A.10 (Utah) 1943, 140 F.2d 40. Conspiracy 47(5); Postal Service 49(11)

In prosecution for using mails in furtherance of scheme to defraud in sale of mining stock and for conspiracy to defraud, where it was as reasonable to conclude that one of the defendants was victimized by the other defendants as that he was a conscious participator in the fraudulent scheme or conspiracy, verdict of guilty as to such defendant was not supported by that degree of proof essential to a finding of guilty, knowledge and criminal intent, and conviction could not stand. Estep v. U.S., C.C.A.10 (Utah) 1943, 140 F.2d 40. Conspiracy 47(4); Postal Service 49(11)

Evidence including defendant's cooperation in disposing of stolen notes sustained conviction for transporting or causing to be transported in interstate commerce, securities known to have been stolen and in the value of $5,000 or more and for conspiracy to so do. U.S. v. Turley, C.C.A.2 (N.Y.) 1943, 135 F.2d 867, certiorari denied 64 S.Ct. 47, 320 U.S. 745, 88 L.Ed. 442. Conspiracy 47(11); Receiving Stolen Goods 8(3)

Evidence sustained conviction of use of mails to defraud in the sale of oil leases and stock, and of conspiracy so to do. U.S. v. Leathers, C.C.A.2 (N.Y.) 1943, 135 F.2d 507. Conspiracy 47(5); Postal Service 49(11)

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In prosecution for conspiracy to use and for using the mails for the distribution of prospectuses for the sale of stock in a scheme to defraud, evidence was sufficient to go to the jury on the question of the guilt of a public accountant who prepared financial statements for prospectuses. U.S. v. White, C.C.A.2 (N.Y.) 1941, 124 F.2d 181. Conspiracy 48.1(3); Postal Service 50

A letter which was signed by attorney against whom indictment for conspiracy and for using mails to defraud in sale of mining stock was dismissed, and which was written in furtherance of attempt to compromise mining company's indebtedness, and which was not connected in any way with codefendants, did not warrant conviction of codefendants. Ilseng v. U.S., C.C.A.9 (Cal.) 1941, 120 F.2d 823, certiorari denied 62 S.Ct. 125, 314 U.S. 665, 86 L.Ed. 532, certiorari denied 62 S.Ct. 126, 314 U.S. 665, 86 L.Ed. 532. Postal Service 49(9)

Evidence was sufficient to sustain conviction for using the mails in furtherance of a scheme to defraud through the sale of stock and for a conspiracy to use the mails for that purpose. Pietch v. U.S., C.C.A.10 (Okla.) 1940, 110 F.2d 817, certiorari denied 60 S.Ct. 1100, 310 U.S. 648, 84 L.Ed. 1414. See, also, U.S. v. Fradkin, C.C.A.N.Y.1935, 81 F.2d 56, rehearing denied 81 F.2d 609, certiorari denied 56 S.Ct. 598, 297 U.S. 720, 80 L.Ed. 1005. Conspiracy 47(5); Postal Service 49(11)

In prosecution for using and for conspiring to use mails to defraud in sale of stock in gold mines, evidence implicating defendant who was an officer in the company promoting the stock-selling fraud and who admittedly sent letters to stockholders which he knew contained false and misleading statements sustained conviction. U.S. v. Bob, C.C.A.2 (N.Y.) 1939, 106 F.2d 37, certiorari denied 60 S.Ct. 115, 308 U.S. 589, 84 L.Ed. 493. Conspiracy 47(5); Postal Service 49(11)

Evidence was sufficient to sustain conviction for entering into a conspiracy to form a scheme to defraud owners of public investment trust units and to use the mails in furtherance thereof and to engage in business of selling securities in violation of § 77a et seq. of Title 15. Troutman v. U. S., C.C.A.10 (Colo.) 1938, 100 F.2d 628. Conspiracy 47(5)

In action for violation of former § 338 of this title in a fraudulent stock-selling scheme and for conspiring so to do, evidence of defendant's participation in the scheme sustained conviction. U.S. v. Berman, C.C.A.2 (N.Y.) 1938, 98 F.2d 733. See, also, Gernert v. U.S., Or.1917, 240 F. 403, 153 C.C.A. 329. Conspiracy 47(4); Postal Service 49(11)

In prosecution of officers and directors of mortgage guaranty company for conspiracy to use mails to defraud in sale of mortgage participation certificates, evidence of defendants' issuance of condensed financial statements in which bona fide year-end financing transactions with leading bank were reflected in different ways was insufficient to establish fraud, where methods used in dealing with accounting problem involved made no change in net worth or financial responsibility of company. U.S. v. McNamara, C.C.A.2 (N.Y.) 1937, 91 F.2d 986. Conspiracy 47(5)

Evidence sustained coviction of conspiracy to use the mails to defraud by selling watered stock. U.S. v. Rollnick, C.C.A.2 (N.Y.) 1937, 91 F.2d 911. Conspiracy 47

Evidence sustained conviction for conspiracy to use mails to defraud by selling watered stock of person who did not actively participate in actual sale after introducing two of the conspirators but who shared in money fraudulently obtained. U.S. v. Rollnick, C.C.A.2 (N.Y.) 1937, 91 F.2d 911. Postal Service 49(11)

Evidence that defendants devised scheme and entered into conspiracy to sell worthless stock of purported gold mining corporation which they organized, through corporation organized by one of defendants for ostensible purpose of engaging in brokerage business, and that they mailed letters and circulars containing false representations in furtherance of scheme, sustained conviction for conspiracy and use of mails to defraud in sale of

stock. Levine v. U.S., C.C.A.9 (Wash.) 1935, 79 F.2d 364. Conspiracy 47(5); Postal Service 49(11)

In prosecution for conspiracy and use of mails to defraud in sale of stock, all misrepresentations alleged in indictment need not be proved, although some of them must be proved beyond reasonable doubt. Levine v. U.S., C.C.A.9 (Wash.) 1935, 79 F.2d 364. Conspiracy 43(12); Postal Service 48(8)

Evidence was insufficient to sustain conviction of particular defendant for conspiracy and for use of mails to defraud, by manipulations and sales of corporate stock. Ridenour v. U S, C.C.A.3 (Pa.) 1926, 14 F.2d 888. Conspiracy 47; Postal Service 49(11)

In prosecution for fraudulent scheme to sell mortgage company stock by use of mails, evidence was sufficient to sustain conviction as to some of defendants and insufficient as to others. Scheib v. U.S., C.C.A.7 (Ind.) 1926, 14 F.2d 75, certiorari denied 47 S.Ct. 95, 273 U.S. 700, 71 L.Ed. 847, certiorari denied 47 S.Ct. 95, 273 U.S. 701, 71 L.Ed. 847, certiorari denied 47 S.Ct. 95, 273 U.S. 701, 71 L.Ed. 848, certiorari denied 47 S.Ct. 113, 273 U.S. 718, 71 L.Ed. 856. Conspiracy 47(5); Postal Service 49(11)

Evidence sustained count for conspiracy to obtain money under false pretenses though direct proof of conversation between defendants, or knowledge by defendant charged as conspirator, of source of money used to buy stock, was not shown. Kriebel v. U.S., C.C.A.7 (Ill.) 1925, 8 F.2d 692, certiorari denied 46 S.Ct. 119, 269 U.S. 582, 70 L.Ed. 424, certiorari denied 46 S.Ct. 120, 269 U.S. 583, 70 L.Ed. 424.

A conviction of conspiracy to defraud by pretending to deal in what is commonly called "green articles" and "spurious treasury notes," to be accomplished by the use of the mails in violation of former § 338 of this title, was sustained by the evidence. Lehman v. U.S., C.C.A.2 (N.Y.) 1903, 127 F. 41, 61 C.C.A. 577. Conspiracy 47

Evidence that defendant did not come into contact with corporation until September of 1971, evidence that he was not a member of the board nor member of its management, evidence that his sole responsibility was to act as corporation's outside securities counsel, and evidence that his actions in no way contributed to ouster of one chairman of the board and installation of another demonstrated that he did not participate in alleged conspiracy, which allegedly began in January of 1971, to keep the new chairman of the board, who had been president of the corporation, in control of the corporation by violating federal securities laws and mail fraud laws. U. S. v. Koenig, S.D.N.Y.1974, 388 F.Supp. 670. Conspiracy 47(3.1); Conspiracy 47(5)

In prosecution for transporting securities or money obtained by fraud and for conspiracy to commit such offense, the evidence was sufficient to support the jury's verdict of guilty. U. S. v. Rosenberg, E.D.Pa.1958, 157 F.Supp. 654, affirmed 257 F.2d 760, certiorari granted 79 S.Ct. 233, 358 U.S. 904, 3 L.Ed.2d 227, affirmed 79 S.Ct. 1231, 360 U.S. 367, 3 L.Ed.2d 1304. Conspiracy 47(11); Receiving Stolen Goods 8(3)

773. Sedition, sufficiency of evidence

Evidence warranted finding in a trial for seditious conspiracy under former § 6 of this title that the defendant was a participant with another in organizing and forwarding the unlawful enterprise to seize by force certain property of the United States. Phipps v. U.S., C.C.A.4 (Va.) 1918, 251 F. 879, 164 C.C.A. 95. Conspiracy 47(3.1)

774. Shipping offenses, sufficiency of evidence

In a prosecution under former § 88 of this title for a conspiracy to sink a German merchant vessel in the navigable waters of the United States, etc., evidence was sufficient to carry the case to the jury. Wierse v. U.S., C.C.A.4 (S.C.) 1918, 252 F. 435, 164 C.C.A. 359, certiorari denied 39 S.Ct. 10, 248 U.S. 568, 63 L.Ed. 425. Conspiracy 48.1(2.1)

18 U.S.C.A. § 371

Evidence was sufficient to show a conspiracy to sink a German merchant ship interned in the waters of the United States. Wierse v. U.S., C.C.A.4 (S.C.) 1918, 252 F. 435, 164 C.C.A. 359, certiorari denied 39 S.Ct. 10, 248 U.S. 568, 63 L.Ed. 425. Conspiracy 48.1(2.1)

Evidence corroborated confessions in a prosecution for conspiring to aid Germany by destroying ships bearing munitions to the Allies. Daeche v. U.S., C.C.A.2 (N.Y.) 1918, 250 F. 566, 162 C.C.A. 582. Criminal Law 534(1)

Government presented sufficient evidence for reasonable jury to conclude that defendants knew their specific conduct, i.e., shipping goods from the United States to Iran via the United Arab Emirates, was illegal, and that, by virtue of that knowledge of illegality, defendants' cooperative efforts to bring about those shipments constituted an agreement to commit an offense against the United States, as required for conviction for conspiracy and under statute prescribing criminal sanctions for persons who "willfully" violate any license, order, or regulation issued under the International Emergency Economic Powers Act (IEEPA), and the Iranian Transaction Regulations (ITR) promulgated thereunder, which prohibited direct and indirect export of goods, technology, or services to Iran. U.S. v. Quinn, D.D.C.2005, 403 F.Supp.2d 57. Conspiracy 47(3.1)

Evidence was insufficient to support conviction of captain of steamship of foreign registry of conspiring to violate former § 502 of this title, which made it unlawful for any person to tamper with motive power or instrumentalities of navigation of the vessel with intent to injure or endanger the safety of the vessel or of persons on board, where it appeared that captain was citizen of a nation which was at war, and did not plan the acts which were done, but acted under orders of a superior officer in the military service. U.S. v. Saglietto, E.D.Va.1941, 41 F.Supp. 21. Conspiracy 47(3.1)

775. Smuggling, sufficiency of evidence

Evidence supported conviction for conspiring to illegally import baby yellow-naped Amazon parrots from Mexico to United States; babies were always delivered during hatching season of yellow-napes in wild, from which it could be inferred that knowledgeable purchaser should have been suspicious, testimony indicated that defendant was experienced bird breeder and dealer who would have known that babies were sick with disease that was not found in domestically bred birds and that many yellow-napes sold in United States are smuggled, and defendant continued to purchase babies after she had actual knowledge that coconspirator had been charged with smuggling baby yellow-napes. U.S. v. Freeman, C.A.5 (Tex.) 1996, 77 F.3d 812, rehearing and suggestion for rehearing en banc denied 84 F.3d 435. Conspiracy 47(3.1)

Evidence of existence of conspiracy to smuggle illegal aliens, although it did not implicate defendant personally, together with defendant's uncorroborated confession was sufficient to sustain his conviction of conspiring to smuggle aliens. U. S. v. Vega-Limon, C.A.9 (Cal.) 1977, 548 F.2d 1390. Conspiracy 47(3.1)

Evidence that the "brains" of the smuggling operations were two brothers, that they were assisted by two others, and that the operational core continued to be active during the entire four-year period covered by the indictment was sufficient to show the existence of a single conspiracy even though the Government's proof differed with respect to each of three separate time segments within the period covered by the indictment. U. S. v. Armedo-Sarmiento, C.A.2 (N.Y.) 1976, 545 F.2d 785, certiorari denied 97 S.Ct. 1330, 430 U.S. 917, 51 L.Ed.2d 595, certiorari denied 97 S.Ct. 1331, 430 U.S. 917, 51 L.Ed.2d 595. Conspiracy 47(3.1)

In view of testimony from which jury could have found that defendant and an accomplice arranged to hide aliens in automobile trunk compartment and then enlisted their female companions as unwitting accessories to drive automobile across the border, evidence was sufficient to sustain conviction of defendant on two counts of smuggling aliens into the United States and a conspiracy count. U. S. v. Lewis, C.A.9 (Cal.) 1972, 460 F.2d 257. Aliens 59; Conspiracy 47(3.1)

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Evidence, including evidence concerning surveillance of automobile allegedly used to transport amphetamine sulfate tablets and barbiturate capsules into the United States and evidence as to ownership of automobile, was sufficient to show defendant's participation in conspiracy to smuggle goods into the United States, concealment and transportation of amphetamine sulfate tablets and barbiturate capsules and possession of stimulant or depressant drugs. Pederson v. U. S., C.A.9 (Cal.) 1968, 392 F.2d 41. Conspiracy 47(12); Customs Duties 134; Controlled Substances 86

Evidence sustained convictions for smuggling, and for conspiracy to smuggle psittacine birds into the United States. Duke v. U.S., C.A.9 (Cal.) 1958, 255 F.2d 721, certiorari denied 78 S.Ct. 1361, 357 U.S. 920, 2 L.Ed.2d 1365. Conspiracy 47(3.1); Customs Duties 134

Evidence was sufficient to sustain conviction for conspiracy to smuggle, import, conceal, and transport a snowmobile from Canada to United States. U.S. v. McKee, C.A.2 (Vt.) 1955, 220 F.2d 266. Conspiracy 47(11)

Evidence was sufficient to warrant finding that cablegrams constituted overt acts committed in district of prosecution for conspiracy to defraud United States by smuggling liquor into country. Horwitz v. U S, C.C.A.1 (Mass.) 1925, 5 F.2d 129.

776. Stolen property, sufficiency of evidence--Generally

Evidence was sufficient to support finding that defendant knew that items in his home were stolen by his wife from the government, as required to sustain convictions for conspiracy to defraud the United States and receipt of stolen government property; evidence demonstrated that defendant was in charge of the couple's finances, that he understood the way government purchasing worked, that he knew the nature of his wife's work, and that he took several affirmative steps to secure a stolen laptop computer for his son through his wife. U.S. v. Mellen, C.A.D.C.2004, 393 F.3d 175, 364 U.S.App.D.C. 152. Conspiracy 47(6); Receiving Stolen Goods 8(4)

Evidence that alleged conspirators believed electronic equipment to have been stolen and that conspirators conspired to receive such property was sufficient to support conviction of defendants for conspiring to receive stolen property notwithstanding fact that defendants could not have been convicted of substantive offense of receiving stolen property as electronic equipment had not been stolen, but rather had been borrowed by Government with carrier's permission for use in sting operation. U.S. v. Petit, C.A.11 (Fla.) 1988, 841 F.2d 1546, certiorari denied 108 S.Ct. 2906, 487 U.S. 1237, 101 L.Ed.2d 938. Conspiracy 47(11)

Conspiracy between defendant and another individual to receive and possess rifles stolen from foreign and interstate shipment was established by sufficient evidence, including evidence that defendant sold rifles to individual who sold rifles to government agents and that defendant set up and was present at meeting at which rifles were sold to government agents. U.S. v. Indelicato, C.A.9 (Cal.) 1986, 800 F.2d 1482. Conspiracy 47(11)

Defendant's absence from location at which stolen goods from out of state were being appraised for exchange, and lack of direct proof of her specific knowledge about interstate nature of the transaction would not prevent reasonable trier of fact from concluding from the other proof in the case, which included evidence that defendant dealt with known out-of-state resident frequently regarding stolen property during the period in question, that defendant was part of charged conspiracy involving transportation in interstate commerce, and receipt and disposition of stolen property under 18 U.S.C.A. § 371. U.S. v. Lawson, C.A.6 (Ohio) 1985, 780 F.2d 535. Conspiracy 47(11)

Evidence, including testimony that defendant helped plan how stolen toys were to be shipped across state lines and delivered in Nevada, plus testimony indicating that defendant's agreement to purchase the stolen toys induced other

participants in the conspiracy to transport the toys from California to Nevada, was sufficient to support convictions of conspiracy to transport stolen goods in interstate commerce and of aiding and abetting the interstate transportation of stolen goods. U.S. v. McKoy, C.A.9 (Nev.) 1985, 771 F.2d 1207. Conspiracy 47(11); Receiving Stolen Goods 8(3)

Defendant's presence in hotel room, shrug of his shoulders, "uh-huh, uh-hah, aw-haw, yep" conversation, frisk of government agent, search of hotel room, and flight after hearing large bang on hotel room door was insufficient to sustain findings necessary for conspiracy conviction that defendant intended to join and actually participated in conspiracy to transport in interstate commerce two paintings valued at $5,000 or more, knowing paintings to have been stolen. U.S. v. Sarro, C.A.11 (Fla.) 1984, 742 F.2d 1286, rehearing denied 751 F.2d 394. Conspiracy 47(11)

Evidence in defendant's prosecution for conspiracy to transport stolen goods in interstate commerce, including evidence that defendant opened up suitcase containing jewelry and saw jewelry stuffed into sock, and testimony that defendant had stated that he thought jewelry "might be hot," was sufficient to support conviction. U.S. v. Covelli, C.A.7 (Ill.) 1984, 738 F.2d 847, certiorari denied 105 S.Ct. 211, 469 U.S. 867, 83 L.Ed.2d 141. Conspiracy 47(11)

Evidence was insufficient to sustain conviction of conspiracy to transport stolen motor vehicles in interstate commerce with an unknown person, thus warranting reversal of conspiracy conviction since the only individuals other than defendant charged with conspiracy were acquitted, where only evidence to support involvement of unknown persons with defendant in conspiracy was that defendant had told witness that he had friends working at truck line or forklift business who would steal forklifts and bring them to him. U. S. v. Patterson, C.A.9 (Nev.) 1982, 678 F.2d 774, certiorari denied 103 S.Ct. 219, 459 U.S. 911, 74 L.Ed.2d 174. Conspiracy 47(11)

In prosecution for conspiracy to knowingly transport stolen property and for knowingly storing stolen property, district court properly determined that government had proved by preponderance of independent evidence that defendant participated in the conspiracy and that out-of-court declaration by alleged coconspirator had been made in course and in furtherance of the conspiracy. U. S. v. Baykowski, C.A.8 (Mo.) 1980, 615 F.2d 767. Criminal Law 423(1); Criminal Law 427(5)

Evidence, in prosecution for conspiracy to transport in interstate commerce jewelry having a value in excess of $5,000, knowing the jewelry to be stolen, for aiding and abetting others in the conspiracy, and for aiding and abetting another in the unlawful interstate transportation of goods known to be stolen was sufficient to support conviction of defendant who, according to several witnesses, admitted that he knew that the jewelry was stolen. U. S. v. Cheung, C.A.9 (Cal.) 1974, 504 F.2d 362. Conspiracy 47(11); Receiving Stolen Goods 8(3)

Evidence including evidence that particular defendant exercised actual if not constructive possession over engines less than three weeks after they were stolen and that such defendant was directly involved in selling engines for a little over half their retail value and took undisputed part in surreptitious negotiations sustained conviction for receiving, concealing, etc., stolen engines knowing them to have been stolen in violation of section 2315 of this title, and for conspiracy. U. S. v. Smith, C.A.5 (Fla.) 1974, 502 F.2d 1250. Conspiracy 47(11); Receiving Stolen Goods 8(3)

Evidence that defendant had discussed stealing boat with coconspirators, provided truck that was to be used to transport stolen boat and trailer from Texas to Utah, provided rental truck when his own truck broke down in Wyoming, took delivery of stolen boat and trailer in Utah and traded them and truck to another for other items was sufficient to prove defendant's knowing participation in conspiracy to transport stolen goods in interstate commerce. U. S. v. Celcer, C.A.5 (Tex.) 1974, 500 F.2d 345, rehearing denied 505 F.2d 734, certiorari denied 95 S.Ct. 1563, 421 U.S. 911, 43 L.Ed.2d 776. Conspiracy 47(11)

Telephone call from home of defendant to a coconspirator early in the day rifles were stolen, defendant's presence during conversation between alleged coconspirators concerning the guns and defendant's acknowledgment of the significance of that conversation provided sufficient proof for jury to link such defendant with the conspiracy to violate the National Firearms Act, section 5861 of Title 26. U. S. v. Marrapese, C.A.2 (Conn.) 1973, 486 F.2d 918, certiorari denied 94 S.Ct. 1597, 415 U.S. 994, 39 L.Ed.2d 891. Conspiracy 47(9)

Notwithstanding defendant's contention that the property in question, United States Treasury bearer bonds, were properly withheld from the trustee in bankruptcy of two corporations through which defendant had conducted business enterprises, substantial evidence was offered by the prosecution upon which the jury could find beyond a reasonable doubt that defendant committed the offenses charged, namely, interstate transportation of property, the bearer bonds, obtained by fraud, wire fraud, and conspiracy. U. S. v. Engle, C.A.6 (Ohio) 1972, 458 F.2d 1021, certiorari denied 93 S.Ct. 154, 409 U.S. 863, 34 L.Ed.2d 111. Conspiracy 47(11); Receiving Stolen Goods 8(3); Telecommunications 1018(4)

Evidence was sufficient to support conviction for conspiracy to violate section 2314 of this title by causing falsely made and forged securities (money orders) to move in interstate commerce in violation of this section and to support denial of motion for acquittal of defendant who according to witness traveled with others from Arkansas to Mississippi for purpose of cashing money orders after some blank money orders had been stolen in Arkansas and who according to another witness was man using assumed name who cashed one of stolen money orders. U. S. v. Johnson, C.A.5 (Miss.) 1972, 455 F.2d 311. Conspiracy 47(4)

Evidence including testimony that defendant paid witness and his driver each $250 for their efforts connected with transportation and delivery of carpeting contained in semitrailer which had been stolen from rail yard sustained conviction for theft of goods from interstate shipment and for conspiracy, though defendant contended he had been hired to unload the carpeting. U. S. v. Ashton, C.A.9 (Cal.) 1971, 453 F.2d 375. Conspiracy 47(11); Larceny 55

Where record of prosecution for possession of goods stolen from interstate commerce and for conspiracy clearly showed that defendant was well aware that television sets which he agreed to buy and helped to store had been stolen and that defendant showed total disregard for source of sets, his contention that evidence did not show that he was aware of violation of federal law, i.e., that he did not know merchandise had been stolen from interstate shipment, was without merit. U. S. v. McGann, C.A.5 (Tex.) 1970, 431 F.2d 1104, certiorari denied 91 S.Ct. 904, 401 U.S. 919, 27 L.Ed.2d 821. Conspiracy 47(11); Receiving Stolen Goods 8(4)

Defendant's knowledge that he was receiving money stolen from banking institution was sufficient to establish conspiracy to commit offense or to defraud United States, though defendant allegedly did not know that bank robbed was federally insured. Nelson v. U. S., C.A.5 (Tex.) 1969, 415 F.2d 483, certiorari denied 90 S.Ct. 751, 396 U.S. 1060, 24 L.Ed.2d 754. Conspiracy 28(3)

Evidence, in prosecution for transporting and conspiring to transport in interstate commerce stolen goods of a value of more than $5,000, was sufficient to sustain a finding beyond a reasonable doubt both that the conspiracy contemplated interstate transportation of goods worth over $5,000, and that the actual transportation involved goods worth more than $5,000. U. S. v. Marino, C.A.2 (Conn.) 1968, 396 F.2d 780. Conspiracy 47(11); Receiving Stolen Goods 8(3)

Evidence warranted conviction of defendant indicted with two others for interstate transportation of stolen merchandise, and conspiracy to so transport such merchandise. U.S. v. DiFronzo, C.A.7 (Ill.) 1965, 345 F.2d 383, certiorari denied 86 S.Ct. 67, 382 U.S. 829, 15 L.Ed.2d 74, leave to file for rehearing denied 86 S.Ct. 1856, 384 U.S. 982, 16 L.Ed.2d 693. Conspiracy 47(11); Receiving Stolen Goods 8(3)

Convictions for conspiracy to possess whiskey stolen from interstate commerce, knowing such whiskey to have

been stolen from interstate commerce, and for knowingly possessing stolen whiskey were sustained by evidence. U. S. v. Allegretti, C.A.7 (Ill.) 1964, 340 F.2d 254, certiorari denied 85 S.Ct. 1531, 381 U.S. 911, 14 L.Ed.2d 433, rehearing denied 85 S.Ct. 1800, 381 U.S. 956, 14 L.Ed.2d 728, certiorari denied 85 S.Ct. 1532, 381 U.S. 911, 14 L.Ed.2d 433, certiorari denied 88 S.Ct. 830, 390 U.S. 908, 19 L.Ed.2d 876. Conspiracy 47(11); Receiving Stolen Goods 8(3)

Evidence that there was a meeting at codefendant's home the evening after jewelry was stolen and that defendant purchased a watch was insufficient to establish defendant's guilt of conspiring to receive or sell jewelry stolen in interstate commerce. U. S. v. Ford, C.A.7 (Ill.) 1963, 324 F.2d 950. Conspiracy 47(11)

Evidence was insufficient to sustain conviction for receiving and possessing goods stolen from interstate commerce, or for conspiring to sell goods stolen from interstate commerce. Embree v. U. S., C.A.9 (Cal.) 1963, 320 F.2d 666. Conspiracy 47(11); Receiving Stolen Goods 8(3)

Evidence sustained defendants' conviction for transporting stolen goods in interstate commerce and for conspiracy to transport stolen goods in interstate commerce. U. S. v. Cardillo, C.A.2 (N.Y.) 1963, 316 F.2d 606, certiorari denied 84 S.Ct. 123, 375 U.S. 857, 11 L.Ed.2d 84, rehearing denied 84 S.Ct. 203, 375 U.S. 917, 11 L.Ed.2d 158, certiorari denied 84 S.Ct. 60, 375 U.S. 822, 11 L.Ed.2d 55, rehearing denied 84 S.Ct. 263, 375 U.S. 926, 11 L.Ed.2d 169. Conspiracy 47(11); Receiving Stolen Goods 8(3)

Evidence sustained conviction of conspiring with others to steal, unlawfully transport and convert goods to their own use. U. S. v. Lipsky, C.A.3 (N.J.) 1962, 309 F.2d 521, certiorari denied 83 S.Ct. 510, 371 U.S. 953, 9 L.Ed.2d 501. Conspiracy 47(11)

Evidence sustained convictions of violating § 659 of this title condemning buying, receiving or possessing stolen interstate freight shipments and conspiracy to do so. U. S. v. Miller, C.A.6 (Ky.) 1961, 290 F.2d 215. Conspiracy 47(11); Receiving Stolen Goods 8(3)

Evidence sustained conviction for receipt, possession, transportation and exportation of firearms stolen from federal government and for conspiring to do so. U. S. v. Carlucci, C.A.3 (Pa.) 1961, 288 F.2d 691, certiorari denied 81 S.Ct. 1920, 366 U.S. 961, 6 L.Ed.2d 1253. Conspiracy 47(11); Receiving Stolen Goods 8(3)

Evidence, in prosecution for receiving, possessing, transporting, and exporting firearms stolen from federal government and for conspiring to do so, sustained implied finding that driver of truck transporting firearms to airport had knowledge of and participated in conspiracy. U. S. v. Carlucci, C.A.3 (Pa.) 1961, 288 F.2d 691, certiorari denied 81 S.Ct. 1920, 366 U.S. 961, 6 L.Ed.2d 1253. Conspiracy 47(11)

In prosecution of defendant, who, in Texas, purchased maps stolen from Pittsburgh office of oil company, for conspiracy to transport in interstate commerce geophysical maps knowing them to have been stolen, defendant's knowledge that maps were stolen was proved by sufficient evidence. U. S. v. Lester, C.A.3 (Pa.) 1960, 282 F.2d 750, certiorari denied 81 S.Ct. 385, 364 U.S. 937, 5 L.Ed.2d 368. Conspiracy 47(11)

Evidence was sufficient to sustain convictions of two defendants for conspiring to embezzle or steal interstate freight and of one of them for the substantive offense. U.S. v. Page, C.A.2 (N.Y.) 1960, 277 F.2d 3, certiorari denied 81 S.Ct. 83, 364 U.S. 843, 5 L.Ed.2d 67. Conspiracy 47(11); Larceny 55

In prosecution for conspiracy to commit an offense against the United States by transporting in interstate commerce geophysical maps of the value of $5,000 or more, knowing them to have been stolen, evidence was sufficient to establish an intent to transport the maps in interstate commerce. U. S. v. Seagraves, C.A.3 (Pa.) 1959, 265 F.2d 876. Conspiracy 47(11)

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Evidence sustained conviction for conspiracy to take possession of merchandise stolen while moving in interstate commerce. U. S. v. Patrisso, C.A.2 (N.Y.) 1958, 262 F.2d 194. Conspiracy 47(11)

In prosecution for transportation of stolen aluminum across state line and for conspiracy to engage in such transportation, testimony of persons concerned in movement of the aluminum was sufficient to establish identification thereof. United States v. Kessler, C.A.2 (N.Y.) 1958, 253 F.2d 290. Conspiracy 47(11); Receiving Stolen Goods 8(3)

In prosecution for transportation of stolen aluminum across state line and for conspiracy to engage in such transportation, absence of any documents of title in obtaining aluminum from a warehouse, sale thereof at considerably less than market value and defendant's statement to F.B.I. agent that he knew nothing about the aluminum was sufficient evidence to establish knowledge that aluminum was stolen. United States v. Kessler, C.A.2 (N.Y.) 1958, 253 F.2d 290. Conspiracy 47(11); Receiving Stolen Goods 8(4)

Evidence sustained conviction of conspiracy to steal merchandise from a truck moving in interstate commerce and for possessing stolen merchandise with knowledge that it had been stolen. U S v. De Vivo, C.A.2 (N.Y.) 1957, 246 F.2d 773, certiorari denied 78 S.Ct. 126, 355 U.S. 874, 2 L.Ed.2d 79. Conspiracy 47(11); Receiving Stolen Goods 8(3)

Conviction for receiving, concealing and retaining with intent to convert property stolen from United States and having value in excess of $100, and conviction for conspiring (a) to enter building on lands reserved for exclusive use of United States with larcenous intent, (b) to steal, purloin and knowingly convert United States property of value in excess of $100, and (c) to conceal and retain with intent to convert property stolen from United States and having value in excess of $100, were sustained by evidence. Shibley v. U. S., C.A.9 (Cal.) 1956, 237 F.2d 327, certiorari denied 77 S.Ct. 94, 352 U.S. 873, 1 L.Ed.2d 77, rehearing denied 77 S.Ct. 212, 352 U.S. 919, 1 L.Ed.2d 124. Conspiracy 47(11); Receiving Stolen Goods 8(3)

Evidence supported conviction for conspiring to possess stolen sheet steel moving as part of interstate shipment. Singer v. U.S., C.A.6 (Mich.) 1953, 208 F.2d 477. Conspiracy 47(11)

Evidence sustained conviction for conspiracy to steal property of United States, and to unlawfully receive, conceal and retain, with intent to convert, such stolen property knowing that it was stolen. Williams v. U.S., C.A.5 (Fla.) 1953, 208 F.2d 447, certiorari denied 74 S.Ct. 531, 347 U.S. 928, 98 L.Ed. 1081. Conspiracy 47(11)

In prosecution for possessing goods with knowledge that they had been stolen while a part of an interstate shipment of freight, and for conspiring to commit such offense, evidence of defendant was insufficient to sustain burden on defendant of proving that other goods were substituted for those stolen during the time that the stolen goods were in the possession of the thieves from whom defendant allegedly acquired them. U.S. v. Smolin, C.A.2 (N.Y.) 1950, 182 F.2d 782. Receiving Stolen Goods 8(3)

In prosecution for possessing goods with knowledge that they had been stolen while a part of an interstate shipment of freight, and for conspiring to commit such offense, evidence that cartons and bails in which the stolen goods were packed had on them the names and addresses of consignors in North Carolina and consignees in New York was sufficient to permit jury to find that defendant knew that the goods were stolen while in interstate commerce. U.S. v. Smolin, C.A.2 (N.Y.) 1950, 182 F.2d 782. Conspiracy 48.1(2.1)

Evidence sustained conviction of a defendant of causing certain stolen fur coats to be transported in interstate commerce and of conspiracy to cause such transportation. U.S. v. Tannuzzo, C.A.2 (N.Y.) 1949, 174 F.2d 177, certiorari denied 70 S.Ct. 38, 338 U.S. 815, 94 L.Ed. 493, rehearing denied 70 S.Ct. 233, 338 U.S. 896, 94 L.Ed. 551. Conspiracy 47(11); Receiving Stolen Goods 8(3)

Evidence that sellers had labeled bales of goods with names of consignees and their addresses in Africa and had put them on a truck of a party who contracted to carry them to the dock where they were to be delivered to a steamship company and that truck had come near enough to the dock for the driver to go after his receipt, when the truck was seized and driven away and the goods stolen, sustained conviction of two defendants for stealing goods while moving in "foreign commerce" and conspiracy to steal, carry away, and conceal goods, as against contention that because the bales had not come into possession of the carrier they had not entered foreign commerce. U.S. v. Sherman, C.A.2 (N.Y.) 1948, 171 F.2d 619, certiorari denied 69 S.Ct. 1484, 337 U.S. 931, 93 L.Ed. 1738. Conspiracy 47(11); Larceny 55

Evidence that when another came to get receipts showing proper delivery of soap, dock boss told defendant that he had received the money for the soap and that thereupon the defendant made out a forged receipt was sufficient to prove conspiracy to steal goods from a shipment in interstate commerce and to prove at least that the defendant was an accessory after the fact to the embezzlement of property of the United States. U.S. v. McCarthy, C.A.2 (N.Y.) 1948, 170 F.2d 267. Conspiracy 47(11); Embezzlement 44(1)

Evidence, which failed to show unlawful agreement to transport or cause to be transported in interstate commerce stolen money of a value of $5,000 or more or any overt act in connection with alleged conspiracy, was insufficient to support conviction of conspiracy to transport or cause to be transported in interstate commerce such stolen money in violation of former § 418a of this title. Crain v. U.S., C.C.A.5 (Fla.) 1945, 148 F.2d 615. Conspiracy 47(11)

In prosecution for possessing whisky knowing that it had been stolen from an interstate shipment, and for conspiring to receive stolen whisky, evidence of circumstances under which defendants assisted in moving stolen whisky from yard into nearby house in the nighttime without benefit of lights established that defendants knew whisky had been stolen. Thompson v. U.S., C.C.A.5 (Tex.) 1944, 145 F.2d 826, certiorari denied 65 S.Ct. 866, 324 U.S. 861, 89 L.Ed. 1418. Conspiracy 43(10); Receiving Stolen Goods 8(4)

Evidence sustained conviction of receiving stolen goods and of conspiracy to commit offense of stealing and receiving stolen goods. Janow v. U.S., C.C.A.5 (Fla.) 1944, 141 F.2d 1017. Conspiracy 47(11); Receiving Stolen Goods 8(3)

In prosecution for conspiracy to violate former § 409 of this title, evidence warranted finding that cigarettes found in possession of defendants were those stolen from railroad warehouse while still part of interstate shipment. Murphy v. U.S., C.C.A.6 (Tenn.) 1943, 133 F.2d 622.

The fact that stolen goods exceeding the value of $5,000 were in fact transported in interstate commerce pursuant to agreement was evidence that transportation of goods of such value was contemplated by the conspiracy, so that charge of conspiracy to transport goods of such value was sustained though it was allegedly not shown to have been agreed that goods of that value would be dealt with. Andrews v. U.S., C.C.A.4 (W.Va.) 1939, 108 F.2d 511. Conspiracy 47(11)

Conviction for conspiracy to receive, dispose of, and transport stolen merchandise in interstate commerce could not be sustained in absence of evidence that value of merchandise transported equaled $5,000 or more or that agreement was made to transport goods of that value, notwithstanding that dealings allegedly showed a conspiracy which was not limited as to amount of stolen goods to be transported. Andrews v. U.S., C.C.A.4 (W.Va.) 1939, 108 F.2d 511. Conspiracy 43(12)

In prosecution for conspiracy to receive, dispose of, and transport stolen merchandise in interstate commerce, evidence that garage operator and salesman purchased stolen cloth at one-third of its value, or less, paying for it in cash, that cloth was taken from plant after business hours and frequently at night, and that transportation was in interstate commerce established charge of conspiracy against garage operator and salesman. Andrews v. U.S.,

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C.C.A.4 (W.Va.) 1939, 108 F.2d 511. Conspiracy 47(11)

Evidence was insufficient to show that a defendant was guilty of conspiracy to cause certain stolen furs to be transported in interstate commerce. Andrews v. U.S., C.C.A.4 (W.Va.) 1939, 108 F.2d 511.

In an indictment for a conspiracy to steal, and stealing, property, an allegation that it was "the property of and in the possession of the United States of America," is supported by evidence that the property was in the possession of the collector of customs of the United States, having been seized by him as smuggled merchandise. U.S. v. Gardner, C.C.N.D.N.Y.1890, 42 F. 829. Conspiracy 43(12)

Evidence was sufficient to convict defendant of participating in conspiracy relating to interstate transportation and receipt of truckloads of stolen meat products; defendant, as manager of store to which the stolen meat products were delivered, was instrumental in arranging delivery of products and then arranging method of payment to his coconspirators. U.S. v. DeGeratto, N.D.Ind.1990, 727 F.Supp. 1254. Conspiracy 47(11)

A defendant could not have been convicted under former § 101 of this title, making it a crime to receive property of United States theretofore stolen from it, where there was no evidence that the United States was the owner of the property stolen, nor could he have been convicted of conspiring to violate such section, in the absence of such evidence. U. S. v. Crawford, E.D.Pa.1943, 52 F.Supp. 843. Conspiracy 43(12); Receiving Stolen Goods 7(6)

777. ---- Motor vehicles, stolen property, sufficiency of evidence

Evidence was sufficient to convict defendant of conspiring to sell stolen motor vehicles; through testimony of three admitted coconspirators, government established existence of agreement between at least five persons to engage in illegal activity and defendant's active role in conspiracy, and government investigators traced salvage vehicles, whose vehicle identification numbers (VINs) had been retagged onto stolen vehicles, to body shop at which defendant worked. U.S. v. Reeves, C.A.8 (Ark.) 1996, 83 F.3d 203. Conspiracy 47(11)

When question on appeal is sufficiency of evidence to support conviction, Court of Appeals must uphold verdict if, after viewing evidence in light most favorable to prosecution, any rational trier of fact could have found essential elements of crime beyond reasonable doubt. U.S. v. Brown, C.A.7 (Ill.) 1995, 71 F.3d 1352. Criminal Law 1144.13(3); Criminal Law 1159.2(7)

Evidence was sufficient to sustain defendant's conviction of substantive counts of illegal activities involving stolen vehicles, notwithstanding fact that majority of those vehicles were recovered from defendant's brother's possession, given evidence showing that both defendant and his brother had been engaged in criminal activity, and they cooperated with one another in carrying out their activities, working together on continuing basis, such that all illegal activities charged were within scope of charged conspiracy. U.S. v. Patterson, C.A.5 (Miss.) 1992, 962 F.2d 409. Automobiles 355(11); Receiving Stolen Goods 8(3)

Evidence that defendant provided the fraudulent paper work for a vehicle which he knew was stolen was sufficient to support defendant's conviction for conspiracy to transport stolen motor vehicle in interstate commerce; by supplying fraudulent certificates of title and registration papers, defendant not only implicitly agreed to participate in the unlawful act but also exhibited the intent to commit the underlying offense. U.S. v. Kapp, C.A.3 (Pa.) 1986, 781 F.2d 1008, certiorari denied 106 S.Ct. 1220, 475 U.S. 1024, 89 L.Ed.2d 330, certiorari denied 107 S.Ct. 87, 479 U.S. 821, 93 L.Ed.2d 40. Conspiracy 47(11)

Evidence of defendant's knowing and willing participation in conspiracy, existence of which was clearly established through testimony of several of its members, who testified in great detail concerning various stages of criminal enterprise, including stealing cars, changing vehicle identification numbers, acquiring false paperwork,

interstate transportation, and ultimate resale, was sufficient to uphold defendant's conspiracy conviction. U. S. v. Anderson, C.A.5 (Ga.) 1978, 574 F.2d 1347. Conspiracy 47(11)

In prosecution for conspiracy to violate the Dyer Act, section 2313 of this title, involving 24 named defendants, of whom 19 were convicted, and 13 named but unindicted coconspirators, evidence as to, inter alia, a central organization masterminded by certain defendants was sufficient to prove a single conspiracy so that defendants were not denied the right not to be tried en masse for a conglomeration of distinct and separate offenses committed by others. U. S. v. Mayes, C.A.6 (Ky.) 1975, 512 F.2d 637, certiorari denied 95 S.Ct. 2629, 422 U.S. 1008, 45 L.Ed.2d 670, certiorari denied 96 S.Ct. 69, 423 U.S. 840, 46 L.Ed.2d 59. Criminal Law 622.7(4); Criminal Law 622.7(13)

Evidence which included, inter alia, testimony of coordinator of automobile theft operation that each of defendants was involved in interstate transportation of stolen cars and in use of fraudulent title papers was sufficient to establish single conspiracy notwithstanding absence or withdrawal of some of the defendants from some acts of the theft ring. U. S. v. Goble, C.A.6 (Ky.) 1975, 512 F.2d 458, certiorari denied 96 S.Ct. 220, 423 U.S. 914, 46 L.Ed.2d 143, certiorari denied 96 S.Ct. 221, 423 U.S. 914, 46 L.Ed.2d 143. Conspiracy 47(11)

Evidence of alleged interstate automobile theft and sale, involving same parties, was relevant to show intent and pattern in prosecution for interstate theft and conspiracy. U. S. v. Nasse, C.A.7 (Ill.) 1970, 432 F.2d 1293, certiorari denied 91 S.Ct. 927, 401 U.S. 938, 28 L.Ed.2d 217, certiorari denied 91 S.Ct. 928, 401 U.S. 938, 28 L.Ed.2d 217, certiorari denied 91 S.Ct. 1657, 402 U.S. 983, 29 L.Ed.2d 148. Criminal Law 371(1); Criminal Law 371(2); Criminal Law 372(5); Criminal Law 372(6)

Testimony of coconspirator and witness as to stolen automobile registration scheme devised in part by defendant and delivery of stolen automobile by defendant was sufficient to sustain jury's findings of guilt on count charging defendant with conspiring to receive, transport, sell and dispose of stolen vehicles. Sanders v. U. S., C.A.5 (Fla.) 1969, 416 F.2d 194, certiorari denied 90 S.Ct. 978, 397 U.S. 952, 25 L.Ed.2d 135. Conspiracy 47(11)

Evidence was sufficient to sustain conviction for conspiracy to accept and to agree to accept motor vehicles stolen in various place of United States for purposes of transporting vehicles into Arkansas for sale in violation of statute. Meyer v. U. S., C.A.8 (Ark.) 1968, 396 F.2d 279, certiorari denied 89 S.Ct. 621, 393 U.S. 1017, 21 L.Ed.2d 561. Conspiracy 47(11)

Evidence sustained convictions of defendants for conspiring to transport, receive, conceal, store, barter, sell, and dispose of in interstate commerce stolen motor vehicles, knowing them to have been stolen. U. S. v. Vanover, C.A.7 (Ill.) 1965, 339 F.2d 987. Conspiracy 47(11)

Evidence sustained conviction for conspiracy to receive and conceal stolen automobiles moving in interstate commerce. McManaman v. U. S., C.A.10 (Kan.) 1964, 327 F.2d 21, certiorari denied 84 S.Ct. 1351, 377 U.S. 945, 12 L.Ed.2d 307. Conspiracy 47(11)

Evidence was sufficient to sustain defendant's conviction of conspiracy, with others, to transport stolen automobile in interstate commerce, to sell and dispose of vehicle, to conceal vehicle and to aid and abet in the transportation, sale, concealment and disposition of vehicle. U. S. v. Amedeo, C.A.3 (N.J.) 1960, 277 F.2d 375. Conspiracy 47(11)

Evidence sustained conviction for conspiracy to violate and violating Dyer Act, § 2312 of this title, by transporting stolen automobiles in interstate commerce. Williamson v. U.S., C.A.5 (Ga.) 1959, 272 F.2d 495, certiorari denied 80 S.Ct. 672, 362 U.S. 920, 4 L.Ed.2d 740. See, also, U.S. v. Wapnick, C.A.N.Y.1963, 315 F.2d 96, certiorari denied 83 S.Ct. 1868, 1871, 374 U.S. 829, 10 L.Ed.2d 1052, rehearing denied 84 S.Ct. 30, 375 U.S. 871, 872, 11 L.Ed.2d 100, 102; U.S. v. Mercks, C.A.N.C.1962, 304 F.2d 771; Pilgrim v. U.S., C.A.Ga.1959, 266 F.2d 486;

U.S. v. Migliorino, C.A.Pa.1956, 238 F.2d 7; U.S. v. Mura, C.A.N.Y.1951, 191 F.2d 886; Waldeck v. U.S., C.C.A.Ind.1924, 2 F.2d 243, certiorari denied 45 S.Ct. 232, 267 U.S. 595, 69 L.Ed. 805; Nyquist v. U.S., C.C.A.Mich.1924, 2 F.2d 504, certiorari denied 45 S.Ct. 508, 267 U.S. 606, 69 L.Ed. 810. Automobiles 355(12); Conspiracy 47(11)

In prosecution for conspiring to transport stolen motor vehicles in interstate commerce knowing them to have been stolen and to dispose of them, evidence justified finding that defendant and another entered into an unlawful conspiracy and that one or both of the parties subsequently committed overt acts in furtherance of objectives of the conspiracy. Castle v. U. S., C.A.8 (Minn.) 1956, 238 F.2d 131. Conspiracy 47(11)

In prosecution for having conspired to transport stolen motor vehicles in interstate and foreign commerce and to cause them to be so transported, knowing them to have been stolen, evidence established but a single enterprise in which one defendant was one of the original parties and that codefendant joined the conspiracy with knowledge of its illegal purpose and activities. United States v. D'Ercole, C.A.2 (N.Y.) 1955, 225 F.2d 611. Conspiracy 47(11)

Circumstantial evidence warranted conviction for conspiring to transport stolen automobile in foreign commerce with knowledge of its stolen character. Beeler v. U.S., C.A.5 (Tex.) 1953, 205 F.2d 454, certiorari denied 74 S.Ct. 130, 346 U.S. 877, 98 L.Ed. 385. Conspiracy 47(11)

In prosecution for conspiracy to transport motor vehicles in interstate commerce, knowing the same to have been stolen, and for receiving, concealing and disposing of such vehicles in interstate commerce knowing that the vehicles had been previously stolen, evidence warranted the inference that defendant not only had knowledge of conspiracy but that he cooperated in a manner to become essential part of it. Van Huss v. United States, C.A.10 (N.M.) 1952, 197 F.2d 120. Conspiracy 47(11)

Evidence justified submission of case to jury on counts charging conspiracy to transport stolen motor vehicles in interstate commerce and on all but one of counts charging substantive offenses of such transportation with respect to nine automobiles. Metcalf v. U.S., C.A.6 (Ky.) 1952, 195 F.2d 213. Conspiracy 48.1(2.1); Receiving Stolen Goods 9(1)

In prosecution for conspiracy to transport stolen motor vehicles in interstate commerce, and with knowingly aiding and abetting in sale of such vehicles wherein there was evidence of concerted scheme in which defendant and two others each played essential co-ordinated roles, evidence warranted submission to jury of question of existence of conspiracy. U.S. v. Bucur, C.A.7 (Ind.) 1952, 194 F.2d 297. Conspiracy 48.1(2.1)

In prosecution for conspiracy to traffic in stolen automobiles moving in interstate commerce, the charge would have been established by showing the formation of the conspiracy to commit the substantive offense and the commission of one or more overt acts in furtherance of such conspiracy. Doherty v. United States, C.A.10 (Utah) 1951, 193 F.2d 487. Conspiracy 47(11)

In prosecution for conspiracy to violate National Motor Vehicle Theft Act and National Stolen Property Act, former §§ 408 and 415 of this title, evidence was insufficient to sustain conviction. U.S. v. Gardner, C.A.7 (Ind.) 1948, 171 F.2d 753.

Evidence that defendant was aware of divorce decree awarding wife automobile, that, after having failed in attempt to purchase automobile from wife, defendant stated that he intended to get it if he had to steal it, that one unsuccessful effort to obtain it had been made, and that defendant and others later took automobile into another state, justified conviction of transportation of automobile in interstate commerce knowing it had been stolen, of receiving and concealing automobile, and of entering into a conspiracy to transport automobile in interstate commerce. Jeffers v. U.S., C.C.A.5 (Fla.) 1945, 151 F.2d 587. Automobiles 355(12); Conspiracy

47(11); Receiving Stolen Goods 8(4)

Evidence was sufficient for conspiracy to transport motor vehicles with knowledge that they had been stolen. Chapman v. U.S., C.C.A.5 (Tex.) 1925, 10 F.2d 124, certiorari denied 46 S.Ct. 482, 271 U.S. 667, 70 L.Ed. 1141. Conspiracy 47

Conviction for conspiracy to transport and to possess stolen motor vehicles in interstate commerce was supported by sufficient evidence, including evidence establishing that defendant personally delivered several stolen cars to shipping yard and that cars were then sent to port for shipping to West Africa. U.S. v. Boakye, C.A.2 (N.Y.) 2003, 59 Fed.Appx. 370, 2003 WL 562239, Unreported. Conspiracy 47(11)

778. Tax offenses, sufficiency of evidence--Generally

Convictions for conspiracy to violate internal revenue laws were sustained by evidence. Lawn v. U.S., U.S.N.Y.1958, 78 S.Ct. 311, 355 U.S. 339, 2 L.Ed.2d 321, rehearing denied 78 S.Ct. 529, 355 U.S. 967, 2 L.Ed.2d 532, rehearing denied 78 S.Ct. 529, 355 U.S. 967, 2 L.Ed.2d 542. Conspiracy 47(9)

To convict a defendant of a *Klein* conspiracy to defraud the Internal Revenue Service (IRS) in the function of assessing and collecting taxes, the government must show the existence of an agreement to defraud the IRS and an overt act by one of the conspirators in furtherance of the agreement's objectives. U.S. v. Fletcher, C.A.8 (Ark.) 2003, 322 F.3d 508. Conspiracy 33(7)

Convictions for conspiracy to defraud United States were supported by evidence that defendants were associate members of organization created and designed to put Internal Revenue Service (IRS) out of business by having its members falsify documents and refuse to pay taxes, and that, as associate members, defendants were responsible for recruiting new members and assisting them in avoiding paying taxes. U.S. v. Clark, C.A.5 (Tex.) 1998, 139 F.3d 485, certiorari denied 119 S.Ct. 227, 525 U.S. 899, 142 L.Ed.2d 187, rehearing denied 119 S.Ct. 858, 525 U.S. 1095, 142 L.Ed.2d 711. Conspiracy 47(9)

Conviction of owner of fuel retail outlet for conspiracy to evade federal fuel excise taxes was supported by evidence that owner was fully aware that fuel distributor was dummy corporation that had been set up by codefendant for purpose of tax evasion scheme, and that owner participated in scheme by having supplier make invoices to convenience store in name of distributor, making payments to distributor's suppliers and creditors for fuel delivered, and writing checks in distributor's name. U.S. v. Tanios, C.A.5 (Tex.) 1996, 82 F.3d 98, rehearing denied. Conspiracy 47(9)

Evidence established nightclub doorman's knowing participation in tax fraud conspiracy that arose out of nightclub owner's acceptance of credit card payment for prostitution; doorman instituted process of accepting credit cards, was present when procedure was initially explained, accepted payments in cash or credit cards from waitresses and doormen, placed those payments in club's office, rather than cash register, once received portion of proceeds, knew of undercover agent's checks which were made payable to cash and which were given to owner, and asked agent to explain to owner money laundering process to aid in evasion of taxes. U.S. v. Marren, C.A.7 (Ill.) 1989, 890 F.2d 924. Conspiracy 47(9)

Defendant's conviction for conspiracy to defraud the United States was sustained by evidence that he devised tax shelter scheme and knew that various entities taking part in the scheme did not have enough cash to pay advance minimum royalties which gave rise to claimed deductions, that defendant employed a "check cycle" arrangement to generate deductions which lacked economic substance, and that defendant agreed with another to undertake the objectives of the scheme. U.S. v. Crooks, C.A.9 (Cal.) 1986, 804 F.2d 1441, modified on denial of rehearing 826 F.2d 4. Conspiracy 47(6)

18 U.S.C.A. § 371

Conviction of conspiracy to file false tax returns and/or obstruct justice was supported by sufficient evidence, including evidence that several of defendant's subordinates engaged in continuing and agreed-upon course of conduct amounting to conspiracy to file false returns and obstruct justice and proof that defendant exerted close scrutiny over his personal affairs and was aware of information contained in his tax returns. U.S. v. Sun Myung Moon, C.A.2 (N.Y.) 1983, 718 F.2d 1210, certiorari denied 104 S.Ct. 2344, 466 U.S. 971, 80 L.Ed.2d 818. Conspiracy 47(9); Conspiracy 47(13)

In prosecution for conspiracy to use mails in furtherance of a scheme to defraud and conspiracy to defraud the United States by obstructing the Internal Revenue Service, evidence sustained finding of one overall conspiracy as alleged in indictment, rather than a number of minor conspiracies. U. S. v. Fitzgerald, C.A.7 (Ind.) 1978, 579 F.2d 1014, certiorari denied 99 S.Ct. 610, 439 U.S. 1002, 58 L.Ed.2d 677, certiorari denied 99 S.Ct. 611, 439 U.S. 1002, 58 L.Ed.2d 677. Conspiracy 47(5); Conspiracy 47(6)

Where government's evidence, direct and circumstantial, as to existence of conspiracy was ample, even slight evidence connecting particular defendant to conspiracy could be substantial and therefore sufficient proof of such defendant's involvement in the scheme, and evidence was sufficient to show involvement in conspiracy covering, inter alia, making of destructive devices without paying tax required. U. S. v. Baumgarten, C.A.8 (Mo.) 1975, 517 F.2d 1020, certiorari denied 96 S.Ct. 152, 423 U.S. 878, 46 L.Ed.2d 111. Conspiracy 47(2)

Evidence, viewed in light most favorable to prosecution, was sufficient to withstand defendants' motion for their acquittal on five-count indictment charging them with conspiracy, attempted evasion of federal estate taxes, and making false statements to internal revenue agents. U.S. v. DeNiro, C.A.6 (Ohio) 1968, 392 F.2d 753, certiorari denied 89 S.Ct. 89, 393 U.S. 826, 21 L.Ed.2d 97. Conspiracy 48.1(2.1); Fraud 69(5); Internal Revenue 5311.1

Evidence that labor union officer was being investigated by Internal Revenue Service, that information dealing with such investigation was taken from files of Intelligence Division of Service and turned over to such union officer's assistant, who went to Washington on officer's behalf in respect to such investigation, and evidence that papers turned over to assistant by Internal Revenue Service employee were found in union officer's desk made case for jury in prosecution for conspiracy. U. S. v. Gosser, C.A.6 (Ohio) 1964, 339 F.2d 102, certiorari denied 86 S.Ct. 44, 382 U.S. 819, 15 L.Ed.2d 65, rehearing denied 86 S.Ct. 309, 382 U.S. 933, 15 L.Ed.2d 345, certiorari denied 86 S.Ct. 44, 382 U.S. 819, 15 L.Ed.2d 66, rehearing denied 86 S.Ct. 285, 382 U.S. 922, 15 L.Ed.2d 237. Conspiracy 48.2(2)

Evidence sustained conviction for conspiracy to violate various sections of Internal Revenue Laws. McDuffie v. U. S., C.A.5 (Ga.) 1962, 303 F.2d 830. Conspiracy 47(9)

In prosecution for violations of § 7201 of Title 26 and for conspiracy, evidence was sufficient to sustain trial judge's finding on defendants' motion to dismiss at conclusion of government's case that nothing in record suggested any use of illegal clues. U.S. v. Giglio, C.A.2 (N.Y.) 1956, 232 F.2d 589, certiorari granted 77 S.Ct. 91, 352 U.S. 865, 1 L.Ed.2d 74, affirmed 78 S.Ct. 311, 355 U.S. 339, 2 L.Ed.2d 321, rehearing denied 78 S.Ct. 529, 355 U.S. 967, 2 L.Ed.2d 532, rehearing denied 78 S.Ct. 529, 355 U.S. 967, 2 L.Ed.2d 542. Conspiracy 48.1(2.1); Internal Revenue 5311.1

Evidence was sufficient to sustain convictions for violations of § 7201 of Title 26 and for conspiracy. U.S. v. Giglio, C.A.2 (N.Y.) 1956, 232 F.2d 589, certiorari granted 77 S.Ct. 91, 352 U.S. 865, 1 L.Ed.2d 74, affirmed 78 S.Ct. 311, 355 U.S. 339, 2 L.Ed.2d 321, rehearing denied 78 S.Ct. 529, 355 U.S. 967, 2 L.Ed.2d 532, rehearing denied 78 S.Ct. 529, 355 U.S. 967, 2 L.Ed.2d 542. Internal Revenue 5295

Evidence, although circumstantial, was sufficient to sustain conviction for conspiracy to violate and for violation of internal revenue laws. Stiles v. U. S., C.A.6 (Ky.) 1954, 216 F.2d 612. Conspiracy 47(9); Internal Revenue

18 U.S.C.A. § 371

5295

Evidence was sufficient to support conviction of corporation and its president for conspiracy to defraud United States by obstructing proper functions of Internal Revenue Bureau in ascertaining, levying, assessing and collecting taxes and penalties. Benatar v. U.S., C.A.9 (Cal.) 1954, 209 F.2d 734, certiorari denied 74 S.Ct. 786, 347 U.S. 974, 98 L.Ed. 1114. Conspiracy 47(9)

In prosecution of corporation and its president for conspiracy to defraud Government by obstructing proper functions of Internal Revenue Bureau in ascertaining, levying, assessing and collecting taxes and penalties, evidence was sufficient to establish defendants' conspiracy to pay withholding and employment taxes, without payment or addition of accrued penalties and interest, through defendant president's signature of tax abatement claim based on back dated request for extension of time to pay such taxes. Benatar v. U.S., C.A.9 (Cal.) 1954, 209 F.2d 734, certiorari denied 74 S.Ct. 786, 347 U.S. 974, 98 L.Ed. 1114. Conspiracy 47(9)

Evidence sustained conviction of defendants on one count of conspiracy to defraud the United States and on eighteen counts for violations of §§ 145(b) and 2707(c) of Title 26. Kobey v. U.S., C.A.9 (Cal.) 1953, 208 F.2d 583. Conspiracy 47(9); Internal Revenue 5299

Evidence sustained conviction of conspiracy to violate the internal revenue laws, as against contention that the government, although it had charged a general conspiracy, had proved at best several separate ones. Thomas v. U. S., C.C.A.5 (Ala.) 1948, 168 F.2d 707. Conspiracy 47(9)

In prosecution for conspiracy to violate internal revenue laws, evidence was sufficient to connect defendant with conspiracy. White v. U.S., C.C.A.4 (Va.) 1935, 80 F.2d 515. Conspiracy 47(9)

Evidence sustained conviction of conspiracy to violate internal revenue laws. Borgia v. U.S., C.C.A.9 (Cal.) 1935, 78 F.2d 550, certiorari denied 56 S.Ct. 135, 296 U.S. 615, 80 L.Ed. 436. Conspiracy 47(9)

Evidence of multiple conspiracies between defendants' employer and individual customers of employer to defraud United States by concealing customer's taxable income with aid of rebate program operated by employer was insufficient to establish single conspiracy between defendants and multiple customers, as charged in indictment against defendants, absent evidence of interdependence among customers. U.S. v. Pappathanasi, D.Mass.2005, 383 F.Supp.2d 289. Conspiracy 43(12)

In prosecution for conspiracy to file fraudulent tax returns and other offenses, evidence supported finding that "tax parks" whereby limited partnership would purport to "sell" various securities at their current market rate to cooperating brokerage house which, pursuant to prearranged agreement, would hold securities for period of time and sell it back to partnership for the same price plus small administrative fee--were sham transactions intended to defraud Government by allowing partnership to realize loss on securities for income tax purposes while in reality continuing to own them, not bona fide sales or transfers. U.S. v. Regan, S.D.N.Y.1989, 726 F.Supp. 447, affirmed in part, vacated in part on other grounds 937 F.2d 823, amended on other grounds 946 F.2d 188, certiorari denied 112 S.Ct. 2273, 504 U.S. 940, 119 L.Ed.2d 200. Internal Revenue 5303

779. ---- Income tax, tax offenses, sufficiency of evidence

Defendant's guilty plea to offense of conspiracy to defraud the United States by impeding the assessment and collection of income tax was not rendered invalid by fact that Internal Revenue Service (IRS) calculated defendant's actual tax liability using prior version of applicable tax code provision, where conspiracy offense was based on the avoidance of the tax liability that defendant and his coconspirators believed or feared would apply, not on the tax liability that was ultimately assessed. U.S. v. Tucker, C.A.8 (Ark.) 2005, 419 F.3d 719, rehearing and rehearing en banc denied, certiorari denied 126 S.Ct. 1583, 164 L.Ed.2d 301. Criminal Law 273.1(4)

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Defendants' convictions for conspiracy to defraud United States by obstructing collection of income taxes was supported by evidence that defendants participated in scheme in which taxpayers were told to make bankruptcy filings causing Internal Revenue Service (IRS) to release its levy when automatic stay arose, that taxpayers were asked to sign backdated promissory note which established "sham" debt that was large enough so that taxpayers' income would be largely absorbed, and that this indebtedness was shown on bankruptcy forms. U.S. v. Huebner, C.A.9 (Nev.) 1994, 48 F.3d 376, certiorari denied 116 S.Ct. 71, 516 U.S. 816, 133 L.Ed.2d 31. Conspiracy 47(9)

Evidence supported defendant's conviction for conspiring to defraud United States by interfering with functions of Internal Revenue Service (IRS) in collection of income tax, notwithstanding defendant's contention that he was unaware of illegal nature of bingo game allegedly sponsored by church and believed that operation was tax-exempt because of such sponsorship; defendant was paid in cash and paid other employees he hired in cash, and IRS agent's testimony indicated that defendant, rather than functioning as mere employee, may in fact have been responsible for filing tax forms on behalf of employees he hired and providing them with W-2 forms. U.S. v. Cyprian, C.A.7 (Ind.) 1994, 23 F.3d 1189, certiorari denied 115 S.Ct. 211, 513 U.S. 879, 130 L.Ed.2d 139. Conspiracy 47(9)

Substantial evidence supported convictions for conspiracy to defraud government and for aiding and assisting tax fraud; defendant participated in tax preparation organization that would prepare returns claiming sufficient deductions to entitle taxpayer to refund of approximately 75% of tax that had been withheld, even though most of deductions were fraudulent without any supporting documentation. U.S. v. Moore, C.A.5 (Tex.) 1993, 997 F.2d 55, rehearing denied. Conspiracy 47(9); Internal Revenue 5304

Evidence was sufficient to support defendants' convictions for conspiracy to aid and assist in preparation of false tax returns; there was evidence that defendants worked together in forming companies involved in installing energy management systems used in tax shelter program, they travelled together promoting the program and worked together on day to day operations of each company, both were apparently present at meeting in which discussions occurred regarding agreement to take an electrically powered energy management system unit, without consent of investor, convert it to solar power and sell it to solar power investor, a sale which would aid and assist in false preparation of tax returns because it was preformed with expectation that investors would rely on erroneous belief of ownership in filing returns, and there was evidence of numerous overt acts taken in furtherance of agreement. U.S. v. Coveney, C.A.5 (Tex.) 1993, 995 F.2d 578, rehearing denied. Conspiracy 47(9)

Evidence supported conviction for tax fraud, even though defendant claimed he was innocent employee performing only accounting responsibilities who had not knowingly committed fraud; defendant had accompanied chief financial officer and chief executive officer of corporation on several projects in which transactions designed to violate securities law were entered into and in the course of his functions he would know or should have known about these and other transactions. U.S. v. Dale, C.A.D.C.1993, 991 F.2d 819, 301 U.S.App.D.C. 110, rehearing denied, certiorari denied 114 S.Ct. 286, 510 U.S. 906, 126 L.Ed.2d 236, certiorari denied 114 S.Ct. 650, 510 U.S. 1030, 126 L.Ed.2d 607. Internal Revenue 5300

Sufficient evidence supported convictions for conspiracy to defraud United States by impeding functions of Internal Revenue Service (IRS), by laundering codefendant's drug money, thereby conspiring to prevent IRS from collecting income taxes on it; evidence showed that codefendant sent one conspirator money orders which were ultimately deposited in codefendant's business account set up in name of band financed by codefendant, and that codefendant was actual owner of nightclub, but that one conspirator voluntarily participated in scheme and other coconspirator conducted business as nominal owner in attempt to hide codefendant's use of drug proceeds to run club. U.S. v. Hernandez, C.A.11 (Fla.) 1991, 921 F.2d 1569, certiorari denied 111 S.Ct. 2271, 500 U.S. 958, 114 L.Ed.2d 722. Conspiracy 47(6); Conspiracy 47(9)

Determination that defendant conspired to impede IRS in ascertaining third party's taxable income was supported

by sufficient evidence showing that defendant allowed third party to put property he owned in her name, filed false tax return claiming third party's income as her own and used third party's money to purchase car in her name. U.S. v. Beverly, C.A.7 (Ill.) 1990, 913 F.2d 337, certiorari denied 111 S.Ct. 766, 498 U.S. 1052, 112 L.Ed.2d 786, certiorari granted 111 S.Ct. 951, 498 U.S. 1082, 112 L.Ed.2d 1039, affirmed 112 S.Ct. 466, 502 U.S. 46, 116 L.Ed.2d 371, rehearing denied 112 S.Ct. 1253, 502 U.S. 1125, 117 L.Ed.2d 484, dismissal of habeas corpus affirmed 972 F.2d 351, post-conviction relief denied, habeas corpus granted in part. Conspiracy 47(9)

Evidence of inaccurate and false tax returns, indications of tax evasion, and continuous concealment in deceitful way provided sufficient basis for conviction for conspiracy to impede the Internal Revenue Service in the ascertainment, computation and collection of federal income taxes, in prosecution arising out of defendant's failure to include bribe money on federal income tax returns. U.S. v. Vogt, C.A.4 (N.C.) 1990, 910 F.2d 1184, rehearing denied, certiorari denied 111 S.Ct. 955, 498 U.S. 1083, 112 L.Ed.2d 1043, dismissal of habeas corpus affirmed 17 F.3d 1435, certiorari denied 114 S.Ct. 1648, 511 U.S. 1071, 128 L.Ed.2d 367. Conspiracy 47(9)

One defendant's uncorroborated testimony that he had saved up to $75,000 in cash in box in closet from sale of bowling alley did not preclude Government from establishing defendants' guilt of conspiracy to defraud Government in tax evasion based on bank deposits method of proof; defendant ran expanding furniture business and had history of purchasing expensive items such as boats and cars, and building home additions, with cash, and divorce property settlement and prenuptial agreement between defendants prior to marriage did not disclose cash on hand. U.S. v. Ludwig, C.A.7 (Wis.) 1990, 897 F.2d 875. Conspiracy 47(6)

Conviction for conspiring to defraud United States was supported by evidence that defendant's wife and mother-in-law gave him ten bearer bonds rather than including them in his deceased father-in-law's estate, and defendant hid bonds, turned them over to coconspirator for liquidation in manner intended to conceal their connection with himself and with estate. U.S. v. Hooks, C.A.7 (Ill.) 1988, 848 F.2d 785. Conspiracy 47(6)

Evidence that defendant, as organizer and director, participated in undertaking with numerous "volunteers" for purpose of preparing and filing fraudulent tax returns, and that defendant instructed "volunteers" on methodology for defeating requirement that statutorily assessed tax on income be paid, was sufficient to sustain conviction for conspiracy to aid and assist in preparation of false tax returns and refund claims. U.S. v. Martin, C.A.5 (Tex.) 1986, 790 F.2d 1215, certiorari denied 107 S.Ct. 231, 479 U.S. 868, 93 L.Ed.2d 157. Conspiracy 47(9)

Evidence supported conspiracy convictions of codefendants for willfully acting with defendant and with each other to assist defendant in avoiding his tax liability, as there was proof that, as to first codefendant, he coached a witness about dates important to back dated title to automobile and encouraged another acquaintance to lie about defendant's ownership of pleasure boat, while as to second codefendant, there was proof that he made false claims of ownership of automobile to both Internal Revenue Service agent and grand jury and that he followed defendant's instructions and related to grand jury lies that defendant counseled him to tell. U.S. v. Lamp, C.A.5 (Tex.) 1986, 779 F.2d 1088, certiorari denied 106 S.Ct. 2255, 476 U.S. 1144, 90 L.Ed.2d 700, certiorari denied 106 S.Ct. 3283, 477 U.S. 908, 91 L.Ed.2d 572. Conspiracy 47(9)

Evidence was sufficient to sustain conviction for conspiring to defraud the Internal Revenue Service by laundering funds from sale of narcotics based on testimony that defendant advocated that coconspirators pay income taxes only on funds labeled as "consulting fees," a small portion of their drug smuggling proceeds, and testimony that scheme was created to make it as confusing as possible for IRS to unravel scheme. U.S. v. Moran, C.A.9 (Wash.) 1985, 759 F.2d 777, certiorari denied 106 S.Ct. 885, 474 U.S. 1102, 88 L.Ed.2d 920. Conspiracy 47(9)

Evidence was sufficient to support defendant's convictions for conspiring to defraud United States in ascertainment, computation, and collection of income and employment taxes as well as other tax violations. U.S. v. Carrodeguas, C.A.11 (Fla.) 1984, 747 F.2d 1390, certiorari denied 106 S.Ct. 60, 474 U.S. 816, 88 L.Ed.2d 49. Conspiracy 47(9)

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Evidence in prosecution for conspiracy to violate and violation of tax laws of United States, including evidence that defendants inflated purchase price of films and income therefrom in order to maximize depreciation costs and investment credit of limited partnerships of which they were general partners, was sufficient to support conviction. U.S. v. Barshov, C.A.11 (Fla.) 1984, 733 F.2d 842, certiorari denied 105 S.Ct. 904, 469 U.S. 1158, 83 L.Ed.2d 919 . Conspiracy 47(9); Internal Revenue 5303

In prosecution for conspiracy to defraud United States by impairing, obstructing, and defeating Internal Revenue Service, substantial evidence supported finding that defendant knowingly participated in conspiracy with dual, complementary objectives of laundering money to disguise source of illegal income from marijuana importation and, through money laundering scheme, to impair identification of revenue and collection of tax due and owing federal government on such revenue. U.S. v. Browning, C.A.11 (Fla.) 1984, 723 F.2d 1544. Conspiracy 47(9)

Evidence was sufficient to support conviction of traders who arranged transactions in Mexican peso futures contracts for conspiracy to defraud by impairing collection of income taxes, aiding preparation of fraudulent income tax returns and entering into fixed and uncompetitive commodity futures contracts where trades involved in "tax straddle" were prearranged trades. U. S. v. Winograd, C.A.7 (Ill.) 1981, 656 F.2d 279, certiorari denied 102 S.Ct. 1612, 455 U.S. 989, 71 L.Ed.2d 848. Conspiracy 47(4)

Although defendants, indicted for conspiring to defraud the United States by impeding Internal Revenue Service in computation and collection of income taxes, argued that object of complicated money "laundering" scheme whereby proceeds of cocaine sales were taken from United States to a corporation in Grand Cayman Islands and then returned in form of fictitious loans to American corporations, was only to disguise the source of income, evidence revealed that at least one of the objects, if not the only object, was to impede assessment of taxes, especially in view of evidence of different ways of evading taxes and reporting proceeds in the wrong tax year. U. S. v. Enstam, C.A.5 (Tex.) 1980, 622 F.2d 857, certiorari denied 101 S.Ct. 1351, 450 U.S. 912, 67 L.Ed.2d 336, certiorari denied 101 S.Ct. 1974, 451 U.S. 907, 68 L.Ed.2d 294. Conspiracy 47(9)

Evidence sustained conviction for conspiracy to take fraudulent deductions on corporate income tax returns. U.S. v. Haskell, C.A.2 (Conn.) 1964, 327 F.2d 281, certiorari denied 84 S.Ct. 1351, 377 U.S. 945, 12 L.Ed.2d 307. Conspiracy 47(6)

In prosecution for conspiracy to evade income taxes by a corporation of which defendants were majority stockholders, evidence justified a finding that there was one continuing general conspiracy to defraud the government of taxes due from the defendant and the corporation. U.S. v. Keenan, C.A.7 (Ill.) 1959, 267 F.2d 118, certiorari denied 80 S.Ct. 121, 361 U.S. 863, 4 L.Ed.2d 104, rehearing denied 80 S.Ct. 254, 361 U.S. 921, 4 L.Ed.2d 189. Conspiracy 47(9)

Evidence sustained conviction for conspiracy to obstruct Treasury Department in collection of income taxes. U.S. v. Klein, C.A.2 (N.Y.) 1957, 247 F.2d 908, certiorari denied 78 S.Ct. 365, 355 U.S. 924, 2 L.Ed.2d 354. Conspiracy 47(9)

In prosecution for conspiracy to defraud the United States by impeding, impairing, obstructing and defeating the lawful functions of Treasury Department in collection of income taxes, evidence supported broad allegations made in support of the conspiracy count. U.S. v. Klein, C.A.2 (N.Y.) 1957, 247 F.2d 908, certiorari denied 78 S.Ct. 365, 355 U.S. 924, 2 L.Ed.2d 354. Conspiracy 47(9)

Where, in prosecution for conspiring to attempt willfully to evade and defeat income taxes due United States by third parties, evidence tended to disclose conspiracy between defendant and unindicted accountant for the taxpayers, acquittal of codefendant Internal Revenue agent was not inconsistent with defendant's conviction. U.S. v. Gordon, C.A.3 (Pa.) 1957, 242 F.2d 122, certiorari denied 77 S.Ct. 1378, 354 U.S. 921, 1 L.Ed.2d 1436. Conspiracy 24(8)

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Evidence was sufficient to sustain conviction for conspiring to attempt willfully to evade and defeat income taxes due the United States by third parties. U.S. v. Gordon, C.A.3 (Pa.) 1957, 242 F.2d 122, certiorari denied 77 S.Ct. 1378, 354 U.S. 921, 1 L.Ed.2d 1436. Conspiracy 47(9)

Evidence that, through carelessness, corporate records were lost at a time when they were being requested by revenue agents, supported inference that the information contained therein would be harmful to defendants charged with attempting to evade and conspiring to evade income and excess profits taxes in connection with corporation controlled by defendants, which inference, together with other evidence justified submission of case to jury. Yoffe v. U.S., C.C.A.1 (Mass.) 1946, 153 F.2d 570. Conspiracy 48.1(2.1); Criminal Law 318; Internal Revenue 5313

In prosecution for willfully attempting to evade payment of income taxes and for conspiracy to do so, evidence showed that difference between amounts reported as income and much larger amount actually received was taxable income. Maxfield v. U.S., C.C.A.9 (Nev.) 1945, 152 F.2d 593, certiorari denied 66 S.Ct. 821, 327 U.S. 794, 90 L.Ed. 1021. Conspiracy 47(9); Internal Revenue 5302

Evidence sustained conviction of conspiracy to willfully attempt to evade payment of income taxes. Maxfield v. U.S., C.C.A.9 (Nev.) 1945, 152 F.2d 593, certiorari denied 66 S.Ct. 821, 327 U.S. 794, 90 L.Ed. 1021. Conspiracy 47(9)

In prosecution of partners for conspiracy to evade income taxes, evidence that a double set of books was kept, that partners based their individual returns on set showing the least income, that one partner, who was single, owned half the business and that other two partners, who were married, owned one-fourth each, but that returns were made as though each owned a third so that personal exemptions for married partners covered income on which single partner would otherwise have had to pay taxes, authorized conviction. Shinyu Noro v. U.S., C.C.A.5 (Fla.) 1945, 148 F.2d 696, certiorari denied 66 S.Ct. 25, 326 U.S. 720, 90 L.Ed. 426. Conspiracy 47(9)

Evidence that accused derived large revenue from sales of illicit beer and filed false return sustained conviction for conspiracies and attempts to defraud income tax. U.S. v. Wexler, C.C.A.2 (N.Y.) 1935, 79 F.2d 526, certiorari denied 56 S.Ct. 384, 297 U.S. 703, 80 L.Ed. 991. Internal Revenue 5303

Evidence proved that defendant corporate officers filed or caused false income and excess profits tax returns to be filed. Cooper v. U.S., C.C.A.8 (Iowa) 1925, 9 F.2d 216. Conspiracy 47(9)

Evidence proved overt act of subscribing and swearing to false tax returns. Cooper v. U.S., C.C.A.8 (Iowa) 1925, 9 F.2d 216.

Facts warranted inference that defendants had knowledge of contents of false tax returns. Cooper v. U.S., C.C.A.8 (Iowa) 1925, 9 F.2d 216. Conspiracy 47(9)

Fact that taxpayer overpaid his taxes and ultimately received refund did not bar his conviction for conspiracy to defraud Internal Revenue Service (IRS), where taxpayer, to avoid declaring income of partnership, caused $150,000 to be paid to company controlled by co-conspirator for non-existent services, and company then treated money as loan and re-paid it directly to taxpayer free of income tax. U.S. v. Adler, S.D.N.Y.2003, 274 F.Supp.2d 583. Conspiracy 33(7)

In prosecution for conspiracy to defraud United States by impeding, impairing, obstructing and defeating collection of income taxes, evidence was sufficient to take to jury question whether defendants' conduct in designating and reporting certain payments among and by members of liquor importation syndicate constituted a concealment of nature and source of income designed to impede collection of revenue. U.S. v. Klein, S.D.N.Y.1955, 139 F.Supp. 135. Conspiracy 48.1(3)

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Evidence in prosecution for conspiracy to defraud the United States, including numerous rent checks made out to, and endorsed by, defendant, tax returns signed by defendant that did not report the income that had been deposited into his personal accounts, and a loan application signed by defendant that reported the monthly income generated by the corporations in which defendant was a partner to be substantially higher than the amounts reported on the tax returns that he signed for the corporations, was sufficient to sustain conviction. U.S. v. Rhodis, C.A.2 (N.Y.) 2003, 58 Fed.Appx. 855, 2003 WL 151254, Unreported. Conspiracy 47(6)

780. ---- Distilled spirits, tax offenses, sufficiency of evidence

In prosecution for conspiring to deal unlawfully in alcohol, evidence associating defendant with other defendants engaged surreptitiously in illegal selling of unstamped alcohol was sufficient to support conviction of defendant. Delli Paoli v. U.S., U.S.N.Y.1957, 77 S.Ct. 294, 352 U.S. 232, 1 L.Ed.2d 278. Conspiracy 47(10)

Evidence supported conviction of defendant, was had assisted in dismounting overload springs about a month before vehicle was used to carry nontax-paid whiskey and who carried substitute Tennessee plates for that vehicle, which bore Ohio plates, in his own vehicle and paid garage charges for the whiskey carrying vehicle at service station, for conspiring to possess and transport nontax-paid whiskey. U. S. v. Webb, C.A.6 (Ky.) 1966, 359 F.2d 558, certiorari denied 87 S.Ct. 55, 385 U.S. 824, 17 L.Ed.2d 61. Conspiracy 47(9)

Evidence sustained conviction of defendants of conspiracy to operate a business selling nontax-paid whiskey. U. S. v. Anderson, C.A.6 (Tenn.) 1965, 352 F.2d 500, certiorari denied 86 S.Ct. 1576, 384 U.S. 955, 16 L.Ed.2d 550. Conspiracy 47(9)

Evidence did not sustain finding that landlord of building, allegedly used for carrying on business of unlawful distiller of spirits, knew of conspiracy. U. S. v. Nardiello, C.A.3 (N.J.) 1962, 303 F.2d 876. Conspiracy 47(9)

Evidence was sufficient to sustain convictions for conspiracy to violate the alcohol tax laws of the United States, and for substantive violations of such laws. U. S. v. Verra, C.A.2 (N.Y.) 1962, 301 F.2d 381. See, also, U.S. v. Baker, C.A.Va.1960, 284 F.2d 341; Ritter v. U.S., C.A.Okl.1956, 230 F.2d 324. Conspiracy 47(9); Internal Revenue 5307

Evidence was insufficient to sustain conviction for conspiring to violate Internal Revenue Laws dealing with distilled spirits. U. S. v. Barnes, C.A.6 (Tenn.) 1962, 299 F.2d 844. Conspiracy 47(9)

Evidence was ample to show that one defendant was owner of speakeasy selling alcohol on which taxes had not been paid and that other defendant was his chief lieutenant and that they were engaged in single conspiracy to violate §§ 5121, 5205, 5604, 5691 of Title 26 [I.R.C.1954] dealing with taxes on distilled spirits. U. S. v. Brown, C.A.2 (N.Y.) 1962, 297 F.2d 828. Conspiracy 47(9)

Evidence in prosecution for conspiracy to violate liquor tax laws sustained convictions of two defendants, but did not sustain convictions of three other defendants. Knight v. U. S., C.A.5 (Ga.) 1962, 297 F.2d 675, certiorari denied 82 S.Ct. 1565, 370 U.S. 923, 8 L.Ed.2d 503. Conspiracy 47(9)

Evidence in prosecution for conspiracy to violate internal revenue laws relating to distilled spirits would support finding that defendant was properly identified as person involved. U. S. v. Cherry, C.A.4 (N.C.) 1961, 295 F.2d 842. Criminal Law 566

Evidence sustained conviction for conspiracy to violate the internal revenue code relating to whiskey. Tenpenny v. U.S., C.A.6 (Tenn.) 1960, 285 F.2d 213. Conspiracy 47(9)

Evidence was sufficient to sustain convictions for conspiring to defraud United States and to commit certain

offenses against laws of United States by violating certain sections of Internal Revenue Code pertaining to illicit, unlawful and fraudulent manufacture, possession, transportation, distribution, removal and concealment of nontax-paid distilled spirits and in making false, fictitious and fraudulent reports. Ellijay Feed & Supply Co. v. U.S., C.A.5 (Ga.) 1960, 277 F.2d 791. Conspiracy 47(9)

In prosecution for conspiring to violate Title 26 in connection with operation of unlicensed still wherein there was evidence that one of defendants, who was a partner in a produce business dealing primarily in fresh fruits and vegetables and only occasionally in buying sugar, arranged for purchase from wholesale company of large quantities of sugar which was paid for in cash and handled separately from partnership account and picked up in an unmarked truck and delivered to site of still, evidence was sufficient for jury to have found that such defendant was a participant in the conspiracy. United States v. Piampiano, C.A.2 (N.Y.) 1959, 271 F.2d 273. Conspiracy 47(10)

Evidence sustained conviction for conspiracy to carry on business of retail liquor dealers without payment of special tax as required by law. Davis v. U. S., C.A.6 (Ky.) 1958, 253 F.2d 24. Conspiracy 47(10)

Evidence including showing that defendant had agreed with other more active conspirators, that if they would make liquor and haul it he would sell substantial quantities of it, was sufficient to make him a conspirator charged with unlawful engaging in business of distilling spirituous liquors, unlawfully possessing, transporting, consuming and selling distilled nontax-paid spirits and carrying on business of wholesale liquor dealers in spirituous liquors without paying required tax. Dean v. U.S., C.A.5 (Ga.) 1958, 251 F.2d 339. Conspiracy 47(9)

In prosecution of police officers, liquor dealers and others for conspiring to violate laws of United States by importing intoxicating liquors into dry state of Oklahoma, evidence was sufficient to establish existence of a conspiracy to violate federal laws. Jones v. U. S., C.A.10 (Okla.) 1958, 251 F.2d 288, certiorari denied 78 S.Ct. 703, 356 U.S. 919, 2 L.Ed.2d 715. Conspiracy 47(10)

In prosecutions for conspiring to commit various offenses defined in federal liquor laws, evidence was sufficient to withstand defendants' motions for judgments of acquittal. Quirk v. U. S., C.A.1 (Mass.) 1957, 250 F.2d 909, certiorari denied 78 S.Ct. 669, 356 U.S. 913, 2 L.Ed.2d 585. Conspiracy 48.1(4)

In prosecution for conspiracy to violate internal revenue laws by conducting illicit liquor business, wherein defendants contended that five separate and distinct conspiracies were shown by evidence and that there was a fatal variance between the indictment and proof, evidence would sustain finding that there had been a single conspiracy, continuous in operation, and singular in character, and would sustain conviction for offense charged. Dowling v. U. S., C.A.5 (Ga.) 1957, 249 F.2d 746. Conspiracy 47(9)

Where woman, pursuant to agreement with defendant, took telephone orders for whiskey at her residence and transmitted orders to defendant, who had paid required federal tax as retail liquor dealer, at his home, and if defendant determined that orders should be filled he sent whiskey to addresses of customers and collected from customers, business of retail liquor dealer was not carried on at woman's residence, and therefore defendant was not guilty of conspiracy to engage in business as retail liquor dealer without paying tax. Carlson v. U.S., C.A.10 (Okla.) 1957, 249 F.2d 85. Conspiracy 33(7)

Convictions for conspiracy to violate, and for violations of internal revenue laws pertaining to nontaxpaid, distilled spirits, were sustained by evidence. Dryden v. U.S., C.A.5 (Ga.) 1957, 241 F.2d 328. Conspiracy 47(9); Internal Revenue 5307

In prosecution for conspiracy to violate Internal Revenue Code sections proscribing activities connected with distilling of non-taxpaid whiskey, evidence sustained conviction of defendant, a county sheriff, who claimed to have entered into illegal activities merely to enable him to arrest persons behind them. Henderson v. U.S., C.A.5

(Fla.) 1956, 237 F.2d 169. Conspiracy 47(9)

In prosecution for conspiracy to violate the Internal Revenue Laws, evidence sustained conviction as to state enforcement officer furnishing protection, as to the defendant who backed it with money, as to defendant still operator and general factotum, as to the police officer who collected toll in exchange for warning the conspirators of the presence and activities of enforcement officers, and as to the defendant who claimed not to be a member of the conspiracy but to be a mere seller of whiskey without knowledge thereof and not a supplier or aider and abettor thereof. Duke v. U.S., C.A.5 (Ga.) 1956, 233 F.2d 897. Conspiracy 47(9)

In prosecution for conspiracy to violate the Internal Revenue Laws, evidence was insufficient to sustain conviction as to sheriff who engaged in ensnaring persons to commit crimes and as against whom the evidence did not establish that he knew of or was aiding and abetting the conspiracy charged. Duke v. U.S., C.A.5 (Ga.) 1956, 233 F.2d 897. Conspiracy 47(9)

Evidence sustained convictions for conspiracy to sell liquor wholesale and retail at residence of third party without a wholesale or retail liquor dealer's tax stamp. Calderon v. United States, C.A.10 (N.M.) 1952, 196 F.2d 554. Conspiracy 47(9)

Evidence was insufficient to sustain conviction in middle district of Georgia for conspiring unlawfully to possess, transport and sell untaxed whisky in Georgia. Johns v. U.S., C.A.5 (Ga.) 1952, 195 F.2d 77. Conspiracy 47(9)

Evidence sustained conviction of a conspiracy to carry on the business of a wholesale liquor dealer without paying the special taxes required by § 3253 of Title 26. Young v. U. S., C.C.A.10 (Kan.) 1948, 168 F.2d 242. Conspiracy 47(9)

Evidence of plan under which distiller's manager for Florida would assign whiskey to distributor in excess of normal allocation in order that salesman might withdraw excess for delivery to preferred retailers sustained conviction of conspiracy to carry on business of wholesale liquor dealer without payment of tax under § 3253 of Title 26, and related offenses. Johnson v. U.S., C.C.A.5 (Fla.) 1948, 167 F.2d 339. Conspiracy 47(9); Internal Revenue 5307

Evidence authorized conviction of the conspiracy to conceal commodities to defraud the government of the tax thereon. Pinkerton v. U. S., C.C.A.5 (Ala.) 1945, 151 F.2d 499, certiorari granted 66 S.Ct. 702, 327 U.S. 772, 90 L.Ed. 1002, affirmed 66 S.Ct. 1180, 328 U.S. 640, 90 L.Ed. 1489, rehearing denied 67 S.Ct. 26, 329 U.S. 818, 91 L.Ed. 697. Conspiracy 47(9)

Where another had confessed to placing liquor in house without accused's knowledge, evidence that accused was owner of house in a vacant part of which liquor was found, in absence of evidence that liquor was accused's, that he placed it in house, or that it was placed there at his direction or with his knowledge, was insufficient to sustain conviction of a conspiracy to transport, possess, and sell or possess the liquor. Dennert v. U.S., C.C.A.6 (Ky.) 1945, 147 F.2d 286. Conspiracy 47(10)

In prosecution for concealing and for conspiracy to conceal distilled spirits and wine with intent to defraud Government of floor stock tax thereon, evidence sustained conviction. Auerbach v. U.S., C.C.A.6 (Tenn.) 1943, 136 F.2d 882. Conspiracy 47(9); Internal Revenue 5307

Evidence sustained conviction for conspiring to defraud the government of taxes on distilled spirits. U.S. v. Goldstein, C.C.A.2 (N.Y.) 1943, 135 F.2d 359. See, also, U.S. v. Novick, C.C.A.N.Y.1941, 124 F.2d 107, certiorari denied 62 S.Ct. 795, 315 U.S. 813, 86 L.Ed. 1212, rehearing denied 62 S.Ct. 913, 315 U.S. 830, 86 L.Ed. 1224; U.S. v. Gallo, C.C.A.N.Y.1941, 123 F.2d 229. Conspiracy 47(9)

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Evidence disclosing existence of conspiracy to violate internal revenue laws relating to stills and intoxicating liquors, that defendant's telephone number was unpublished, that he received telephone call from another whose number was also unpublished, that defendant was related by family ties to many of the guilty conspirators, that automobiles and trucks belonging to the conspirators were often parked at his home or garage, and that defendant's automobile was frequently observed parked with automobile belonging to a conspirator, sustained defendant's conviction for a conspiracy to violate the internal revenue laws. U.S. v. Valenti, C.C.A.2 (N.Y.) 1943, 134 F.2d 362, certiorari denied 63 S.Ct. 1317, 319 U.S. 761, 87 L.Ed. 1712, rehearing denied 64 S.Ct. 29, 320 U.S. 809, 88 L.Ed. 489. Conspiracy 47(10)

Evidence that accused rented premises adjoining his own to third party who allegedly operated still on the premises, permitted third party to connect electric light wiring to accused's meter, and acted as intermediary for sale of certain land to the third party, was insufficient to sustain conviction for conspiracy to violate internal revenue laws relating to intoxicating liquor. Moss v. U.S., C.C.A.6 (Mich.) 1943, 132 F.2d 875. Conspiracy 47(9)

Evidence was insufficient to sustain conviction of one defendant on charges of illegal possession and operation of a distillery. U. S. v. Tuffanelli, C.C.A.7 (Ill.) 1942, 131 F.2d 890, certiorari denied 63 S.Ct. 769, 318 U.S. 772, 87 L.Ed. 1142. Intoxicating Liquors 236(6.5); Intoxicating Liquors 236(19)

In prosecution for conspiracy to violate federal liquor laws, it was not necessary to establish that the acts of the defendants were pursuant to mutual agreement, but it was enough if the proof showed that two or more persons, in voluntary co-operation, participated in an enterprise which necessarily involved the commission of an indefinite number of substantive offenses. U. S. v. Tuffanelli, C.C.A.7 (Ill.) 1942, 131 F.2d 890, certiorari denied 63 S.Ct. 769, 318 U.S. 772, 87 L.Ed. 1142. Conspiracy 24(1); Conspiracy 24(3)

In prosecution for conspiracy to violate federal liquor laws, it was not necessary to prove that all the defendants in the indictment had conspired together and it was sufficient to prove that complaining defendant and one other defendant had conspired together to commit substantive crimes alleged. U. S. v. Tuffanelli, C.C.A.7 (Ill.) 1942, 131 F.2d 890, certiorari denied 63 S.Ct. 769, 318 U.S. 772, 87 L.Ed. 1142. Conspiracy 43(12)

In prosecution for engaging in conspiracy to violate internal revenue laws relating to intoxicating liquor, if agreement by accused to act in concert with some one to commit substantive crimes charged had been proved, accused's rental of premises where liquor was found would satisfy need for proof of "overt acts" in furtherance of the agreement, but without evidence from which partnership in crime could at least be fairly inferred, accused's acts were required to be treated as hers alone. U S v. Silva, C.C.A.2 (N.Y.) 1942, 131 F.2d 247. Conspiracy 47(10)

Evidence did not sustain conviction of illicit operation of still and conspiracy to violate internal revenue laws. Jehl v. U.S., C.C.A.9 (Cal.) 1942, 127 F.2d 585. Conspiracy 47(9); Internal Revenue 5309

In prosecution for engaging in illegal liquor operations and for conspiring to violate §§ 2803, 2810, 2833, and 2834 of Title 26, defendant who was found operating illicit distillery could not contend, as ground for reversal of conviction as to him, that officer was illegally on premises without a search warrant and that evidence offered against him was obtained as the result of an unlawful search, where barn in which officer found defendant was inclosed by a high wire fence, and officer did not go into inclosure until he had smelled mash, had heard men talking, and had actually seen still in operation. Miller v. U.S., C.C.A.5 (Fla.) 1942, 126 F.2d 771, certiorari denied 62 S.Ct. 1289, 316 U.S. 695, 86 L.Ed. 1765, certiorari denied 62 S.Ct. 1290, 316 U.S. 695, 86 L.Ed. 1765. Criminal Law 394.4(11)

In prosecution for engaging in illegal liquor operations in violation of §§ 2803, 2810, 2833, and 2834 of Title 26 and for conspiring to violate said sections, evidence regarding the connection of two defendants with the offenses, though wholly circumstantial, was sufficient to sustain the verdict against them. Miller v. U.S., C.C.A.5 (Fla.)

1942, 126 F.2d 771, certiorari denied 62 S.Ct. 1289, 316 U.S. 695, 86 L.Ed. 1765, certiorari denied 62 S.Ct. 1290, 316 U.S. 695, 86 L.Ed. 1765. Conspiracy 47(9); Internal Revenue 5307

Evidence did not sustain conviction of secretary of an importing company under counts in indictment charging illegal possession and operation of a distillery, possession and concealment of alcohol on which no tax had been paid, and conspiracy to commit offenses charged. U.S. v. Gallo, C.C.A.2 (N.Y.) 1941, 123 F.2d 229.

Substantial evidence that defendant had engaged in sale of illicit liquors in large quantities permitted jury to infer understanding and concert of action between defendant and distributors or retail sellers of liquors, as basis for conviction of conspiracy to defraud the United States of taxes. Eley v. U. S., C.C.A.6 (Ohio) 1941, 117 F.2d 526. Conspiracy 47(9)

As affecting sufficiency of evidence of conspiracy to defraud the United States of taxes on liquors, it is unimportant whether defendant knew all of his fellow conspirators or extent of the conspiracy, and it is sufficient if evidence shows circumstances from which natural inference arises that overt acts were in furtherance of common design, intent and purpose. Eley v. U. S., C.C.A.6 (Ohio) 1941, 117 F.2d 526. Conspiracy 47(9)

Where government proved conspiracy to carry on business of distillers with intent to defraud the government of taxes, a conspirator convicted of such conspiracy, under evidence which included proof of overt acts by other conspirators in concealing alcohol to defraud government of tax thereon, could not merely on such evidence be convicted of substantive crime of concealing alcohol to defraud the government of tax thereon, since to permit conviction under such evidence would permit government to convict a conspirator of every substantive offense committed by other conspirators even though conspirator had no part in it, which would result in conviction of a conspirator more than once for same conspiracy and thus place him twice in "jeopardy" for same offense. U.S. v. Sall, C.C.A.3 (N.J.) 1940, 116 F.2d 745. Double Jeopardy 151(4)

Evidence that accused was a member of conspiracy to manufacture illicit alcohol, and that in course of conspiracy other conspirators committed crime of concealing alcohol with intent to defraud the government of tax thereon, was sufficient to sustain conviction on conspiracy count, since the gist of such count was the agreement or combination to effect unlawful object of conspiracy, and not the commission of the overt acts which followed. U.S. v. Sall, C.C.A.3 (N.J.) 1940, 116 F.2d 745. Conspiracy 47(10)

Guilt of conspiracy to set up a still did not turn upon defendant's motive of merely getting profits from sales of denatured alcohol to distillers. U S v. Pecoraro, C.C.A.2 (N.Y.) 1940, 115 F.2d 245, certiorari denied 61 S.Ct. 611, 312 U.S. 685, 85 L.Ed. 1123. Conspiracy 33(7)

Evidence did not authorize conviction of conspiracy to set up a still, in view of failure to identify defendant as person selling products to distillers for purposes of distilling alcohol. U S v. Pecoraro, C.C.A.2 (N.Y.) 1940, 115 F.2d 245, certiorari denied 61 S.Ct. 611, 312 U.S. 685, 85 L.Ed. 1123. Conspiracy 47(10)

Evidence connecting accused with transportation of sugar to places of storage near illegally operated still made prima facie case for jury on issue of their participation in conspiracy to commit the substantive crimes of possessing an unregistered still, making and fermenting mash in an illicit distillery, distilling without giving a bond, and possessing distilled spirits in containers without revenue stamps. U.S. v. Pandolfi, C.C.A.2 (N.Y.) 1940, 110 F.2d 736, certiorari denied 60 S.Ct. 1103, 310 U.S. 651, 84 L.Ed. 1416. Conspiracy 48.1(4)

Evidence that defendant sold denatured alcohol to operators of still, and did not report sales and thus took an active hand in distillers' business, authorized conviction of conspiracy to set up a still. U.S. v. Pandolfi, C.C.A.2 (N.Y.) 1940, 110 F.2d 736, certiorari denied 60 S.Ct. 1103, 310 U.S. 651, 84 L.Ed. 1416.

Evidence authorized conviction of conspiracy to set up a still, in view of evidence that defendant was allowed to

take away all alcohol made at the still. U.S. v. Pandolfi, C.C.A.2 (N.Y.) 1940, 110 F.2d 736, certiorari denied 60 S.Ct. 1103, 310 U.S. 651, 84 L.Ed. 1416.

In prosecution of municipal officers and others for conspiracy and for dealing in non-tax paid whiskey, evidence sustained convictions. Hall v. U.S., C.C.A.10 (Okla.) 1940, 109 F.2d 976. Conspiracy 47(9); Internal Revenue 5307

Evidence that an accused who was a justice of the peace, and another accused who was a constable, willfully failed to prevent illicit sale of liquor on which tax was not paid and received tribute for not interfering with such sales, and that a third accused was taken into conspiracy so that he might raid roadhouses, impersonating a federal agent, and justify imposition of fines and costs without interfering with other tribute which the justice of the peace and constable received for not enforcing the law did not authorize a conviction for conspiracy to carry on business of retail liquor dealer without payment of tax. Walker v. U.S., C.C.A.4 (W.Va.) 1939, 104 F.2d 465. Conspiracy 43(12)

Evidence tending to show that accused, who were charged with conspiring to commit offenses against the United States and doing acts in pursuance of the conspiracy, seized liquor on which tax had not been paid and made use of the liquor for personal benefit of accused would justify jury in finding that conduct of accused amounted to removal or concealment of illicit liquor with intent to defraud the United States of tax. Walker v. U.S., C.C.A.4 (W.Va.) 1939, 104 F.2d 465. Conspiracy 43(12)

Evidence was insufficient to sustain conviction of conspiracy to carry on business of distiller with intent to defraud the United States of taxes. Walker v. U.S., C.C.A.4 (W.Va.) 1939, 104 F.2d 465. Conspiracy 47(10)

Evidence was insufficient to justify conviction of county sheriff and former sheriff and deputy sheriff for conspiracy to violate laws of the United States relating to manufacture, possession or sale of intoxicating liquor. Wilder v. U.S., C.C.A.10 (Okla.) 1938, 100 F.2d 177. Conspiracy 47(9)

In prosecution for conspiracy to import alcohol without paying duties, evidence establishing conspiracy of others and that one accused helped unload alcohol and stored it on his property supported conviction of such accused. Marino v. U.S., C.C.A.9 (Cal.) 1937, 91 F.2d 691, certiorari denied 58 S.Ct. 410, 302 U.S. 764, 82 L.Ed. 593. Conspiracy 47(3.1)

In prosecution for conspiracy to import alcohol without paying duties, evidence establishing conspiracy of others and that one accused permitted his premises to be used for storage and recanning of alcohol supported conviction of such accused. Marino v. U.S., C.C.A.9 (Cal.) 1937, 91 F.2d 691, certiorari denied 58 S.Ct. 410, 302 U.S. 764, 82 L.Ed. 593. Conspiracy 47(3.1)

Evidence was sufficient to support conviction of conspiring to fraudulently import merchandise without paying import duties, and to remove and conceal distilled spirits on which revenue taxes were not paid. Snow v. U.S., C.C.A.4 (N.C.) 1928, 28 F.2d 704.

Evidence proved certain defendants parties to conspiracy to defraud the United States of customs duties and internal revenue taxes by fraudulent withdrawal of liquor from bonded warehouse. Becher v. U.S., C.C.A.2 (N.Y.) 1924, 5 F.2d 45. Conspiracy 27

Evidence that employés of the owner of a distillery joined and participated with him in removing from such distillery to a place other than a bonded warehouse spirits on which the internal revenue tax had not been paid, in violation of § 2913 of Title 26, under circumstances from which they must have known the illegal nature of the transactions, was sufficient to sustain an indictment, under former § 88 of this title of both employer and employés, for conspiracy to commit an offense against the United States. U.S. v. Scott, C.C.N.D.Ga.1905, 139 F. 697,

affirmed 165 F. 172, 91 C.C.A. 206. Conspiracy 28(3)

Evidence established that one of defendants charged with conspiracy to illegally purchase at wholesale intoxicating liquors for resale at defendant club did not have to nor did he enter into any agreement or conspiracy with any other member of his family concerning how liquor was to be purchased for defendant club, but that he told other members of family what was going to be done. U. S. v. Mirror Lake Golf and Country Club, Inc., W.D.Mo.1964, 232 F.Supp. 167. Conspiracy 47(9)

That one defendant discussed with another person possibility that certain other parties might get together on their own with respect to buying liquor for resale in club did not establish beyond reasonable doubt that such defendant was guilty of conspiring to illegally purchase liquor for resale. U. S. v. Mirror Lake Golf and Country Club, Inc., W.D.Mo.1964, 232 F.Supp. 167. Conspiracy 47(9)

Evidence failed to sustain conviction for conspiracy to illegally purchase distilled spirits at wholesale for resale. U. S. v. Mirror Lake Golf and Country Club, Inc., W.D.Mo.1964, 232 F.Supp. 167. Conspiracy 47(9)

Evidence sustained conviction for conspiracy to violate provisions of the Internal Revenue Code respecting distilled spirits by a defendant who furnished the sugar for the illegal purpose and knew that the buyers were parties to a conspiracy to operate an illegal still. U. S. v. Kensil, E.D.Pa.1961, 195 F.Supp. 115, affirmed 295 F.2d 489, certiorari denied 82 S.Ct. 439, 368 U.S. 967, 7 L.Ed.2d 396. Conspiracy 47(9)

Evidence authorized conviction for conspiracy to violate the Internal Revenue Laws relating to distilled spirits on ground that defendant not only was a part of the chain of distribution of liquor but that he knew he was a part and was acquainted with a substantial number of the other participants. U. S. v. Kensil, E.D.Pa.1961, 195 F.Supp. 115, affirmed 295 F.2d 489, certiorari denied 82 S.Ct. 439, 368 U.S. 967, 7 L.Ed.2d 396. Conspiracy 47(9)

Evidence was insufficient to justify conviction of one defendant for conspiracy to violate the Internal Revenue Laws respecting distilled spirits on the ground that the evidence would not support a finding that she had knowledge of the conspiracy. U. S. v. Kensil, E.D.Pa.1961, 195 F.Supp. 115, affirmed 295 F.2d 489, certiorari denied 82 S.Ct. 439, 368 U.S. 967, 7 L.Ed.2d 396. Conspiracy 47(9)

Evidence was insufficient to support conviction for conspiracy to violate the Internal Revenue Laws respecting distilled spirits as to two defendants, where proofs failed to show that either had any connection with containers to which the required federal stamps were not affixed or that either defendant had knowledge of the conspiracy. U. S. v. Kensil, E.D.Pa.1961, 195 F.Supp. 115, affirmed 295 F.2d 489, certiorari denied 82 S.Ct. 439, 368 U.S. 967, 7 L.Ed.2d 396. Conspiracy 47(9)

In prosecution for conspiracy to violate Title 26 in conjunction with operation of illicit distillery, as to five of the defendants evidence was sufficient to connect them to conspiracy, as to one defendant evidence was such that an injustice would result from permitting conviction to stand and a new trial would be granted, and as to other defendant evidence was insufficient to sustain conviction and his motion of acquittal would be granted. U. S. v. Markowitz, E.D.Pa.1959, 176 F.Supp. 681. Conspiracy 47(9); Conspiracy 48.2(2); Criminal Law 935(1)

Evidence as to defendant, president and sole owner of realty company selling building to party who used the same for operation of an illegal still, was insufficient to sustain conviction of conspiracy to violate Title 26. U. S. v. Markowitz, E.D.Pa.1959, 176 F.Supp. 681. Conspiracy 47(9)

781. ---- Occupational tax, tax offenses, sufficiency of evidence

Evidence sustained conviction for conspiracy to defraud United States by impeding and obstructing ascertainments,

computations, assessment and collection of tax imposed by Gambling Tax Act, §§ 4401 and 4411 of Title 26, and § § 7201, 7203, 7206(1) and 7262 of Title 26. U.S. v. Sams, C.A.3 (Pa.) 1965, 340 F.2d 1014, certiorari denied 85 S.Ct. 1336, 380 U.S. 974, 14 L.Ed.2d 270, on remand 241 F.Supp. 427. Conspiracy 47(7)

Evidence was sufficient to sustain conviction of one of defendants of conspiracy to violate federal wagering tax laws and four substantive offenses, but was insufficient to sustain conviction of other defendant. U. S. v. Magliano, C.A.4 (Md.) 1964, 336 F.2d 817. Conspiracy 47(7); Internal Revenue 5295

Evidence in prosecution for conspiring to engage in business of accepting wagers without paying the special federal occupational tax failed to establish that defendant, claimed to be a "banker" or to have some other proprietary interest in business of receiving wagers from bettors was liable for the tax. U. S. v. Sette, C.A.2 (Conn.) 1964, 334 F.2d 267. Conspiracy 47(7)

In prosecution for engaging in business of accepting wagers as copartners in syndicate and conspiring and attempting to defeat part of excise tax on wagers, evidence permitted jury to conclude that defendants conspired to utilize registration and monthly tax returns of one defendant as front to mask magnitude of operation with plan of evading substantial taxes due. U.S. v. Shaffer, C.A.7 (Ind.) 1961, 291 F.2d 689, certiorari denied 82 S.Ct. 192, 368 U.S. 915, 7 L.Ed.2d 130, rehearing denied 82 S.Ct. 392, 368 U.S. 962, 7 L.Ed.2d 393, certiorari denied 82 S.Ct. 193, 368 U.S. 914, 7 L.Ed.2d 130. Conspiracy 47(7)

In prosecution for making a false statement of material fact to government agents, willfully attempting to evade a substantial amount of wagering excise taxes due by licensed wagering business in which defendants were partners and for conspiring to commit an offense against the United States, jury could find from all the evidence that two partners having a proprietary interest had the requisite intent although the third defendant alone signed the tax returns and had charge of the books and records. U.S. v. Clancy, C.A.7 (Ill.) 1960, 276 F.2d 617, certiorari granted 80 S.Ct. 1611, 363 U.S. 836, 4 L.Ed.2d 1723, reversed on other grounds 81 S.Ct. 645, 365 U.S. 312, 5 L.Ed.2d 574. Conspiracy 48.1(2.1); Fraud 69(5); Internal Revenue 5299

In prosecution for, among other things, conspiring to commit an offense against the United States, evidence was such that jury could reasonably find that an unlawful conspiracy did exist. U.S. v. Clancy, C.A.7 (Ill.) 1960, 276 F.2d 617, certiorari granted 80 S.Ct. 1611, 363 U.S. 836, 4 L.Ed.2d 1723, reversed on other grounds 81 S.Ct. 645, 365 U.S. 312, 5 L.Ed.2d 574. Conspiracy 48.1(2.1)

Evidence was sufficient to sustain conviction of a defendant for conspiracy to violate gambling tax laws even though defendant was primarily engaged in conducting a dice game not subject to federal tax on premises where a gambling operation subject to federal tax was conducted. U. S. v. Sams, W.D.Pa.1963, 219 F.Supp. 164, affirmed in part, vacated in part 340 F.2d 1014, certiorari denied 85 S.Ct. 1336, 380 U.S. 974, 14 L.Ed.2d 270, on remand 241 F.Supp. 427. Conspiracy 47(7)

782. Tampering with vessels, sufficiency of evidence

Evidence disclosing that defendant conspired with another to remove engines of a vessel of United States in order to use those stolen engines on boat being built by defendant and that boat was stolen, her engines removed and other radar and navigational equipment was also removed and abandoned was sufficient to sustain conviction of conspiracy to violate section 2275 of this title prohibiting the tampering with the mode of power or instrumentalities of navigation of vessel with intent to injure or endanger safety of the vessel or of her cargo or of persons on board, since evidence was sufficient to prove intent charged in indictment. U. S. v. Franicevich, C.A.5 (La.) 1972, 465 F.2d 467. Conspiracy 47(3.1)

783. Travel and transportation, sufficiency of evidence

Evidence was sufficient to prove that defendant, and head of government relations department of life insurance corporation that employed defendant as lobbyist, engaged in conspiracy, in that they knowingly agreed to commit mail fraud, wire fraud, and violations of Travel Act, defendant voluntarily participated in such agreement, and they performed overt acts in furtherance of conspiracy. U.S. v. Sawyer, C.A.1 (Mass.) 1996, 85 F.3d 713. Conspiracy 47(5)

Evidence was sufficient to sustain conviction of conspiring to carry on prostitution and bribery in Kansas, by traveling and causing travel in interstate commerce and by using and causing use of facilities in interstate commerce, including wire communication facilities. U. S. v. Russo, C.A.10 (Kan.) 1975, 527 F.2d 1051, certiorari denied 96 S.Ct. 2226, 426 U.S. 906, 48 L.Ed.2d 831, rehearing denied 96 S.Ct. 3201, 427 U.S. 913, 49 L.Ed.2d 1204. Conspiracy 47(3.1); Conspiracy 47(13)

There was evidence from which jury could have found that there was a conspiracy to violate the laws of the United States, particularly the Mann Act, section 2421 et seq. of this title, and the Travel Act, section 1952 of this title, and that defendant participated in conspiracy as a conspirator. U. S. v. Hiatt, C.A.9 (Wash.) 1975, 527 F.2d 1048. Conspiracy 47(3.1)

Evidence, including showing of defendant's overall participation in operation of house of prostitution in Covington, Kentucky, supported finding that defendant's relationship with coconspirators, who included cab drivers from Cincinnati, was to promote and to aid them in their interstate travel for the purpose of carrying on prostitution in the state of Kentucky. U. S. v. Chambers, C.A.6 (Ohio) 1967, 382 F.2d 910. Conspiracy 47(3.1)

Evidence was sufficient to sustain conviction of one of defendants for violation of § 2421 et seq. of this title and for conspiring to violate said sections and to sustain conviction of other defendant for conspiring to violate said sections. Blumenfield v. U. S., C.A.8 (Minn.) 1960, 284 F.2d 46, certiorari denied 81 S.Ct. 693, 365 U.S. 812, 5 L.Ed.2d 692. Conspiracy 47(3.1)

Evidence was insufficient to sustain conviction of defendants, who were sisters, for conspiracy to violate White Slave Traffic Act, § 2421 et seq. of this title. Harms v. U.S., C.A.4 (Va.) 1959, 272 F.2d 478, certiorari denied 80 S.Ct. 590, 361 U.S. 961, 4 L.Ed.2d 543. Conspiracy 47(3.1)

Evidence sustained conviction of conspiracy to violate the White Slave Traffic Act, § 2421 et seq. of this title. Williams v. U.S., C.A.4 (N.C.) 1959, 271 F.2d 703. Conspiracy 47(3.1)

Substantial evidence supported conviction for conspiracy to induce another to travel by common carrier interstate for the purpose of prostitution. Bell v. U.S., C.A.8 (Minn.) 1958, 251 F.2d 490. Conspiracy 47(3.1)

In prosecution for inducing another to travel by common carrier interstate for the purpose of prostitution, substantial evidence supported finding that the defendant offered the victim profitable employment as a prostitute in Missouri and that the defendant induced the victim to make the trip to such place for such purpose. Bell v. U.S., C.A.8 (Minn.) 1958, 251 F.2d 490. Prostitution 4

Evidence sustained conviction of defendant for conspiring with her husband to transport and for actually transporting prostitutes across state lines for purpose of engaging in prostitution. Wright v. U.S., C.A.5 (Ga.) 1957, 243 F.2d 569, certiorari denied 78 S.Ct. 45, 355 U.S. 831, 2 L.Ed.2d 43. Conspiracy 47(3.1)

In prosecution for conspiring to transport women between several states for purposes of prostitution, evidence sustained conviction as to two of the alleged conspirators but not as to the third. Ege v. U. S., C.A.9 (Cal.) 1957, 242 F.2d 879. Conspiracy 47(3.1)

Evidence was insufficient to take to jury question of guilt of one of three men charged with conspiracy to transport

women in interstate commerce for purpose of prostitution. Dodson v. U. S., C.A.6 (Ky.) 1954, 215 F.2d 196. Conspiracy 48.1(2.1)

Evidence disclosing that female defendant was transported in automobile of male defendant from Illinois to Indiana for purpose of engaging in practice of prostitution but not disclosing that female defendant did anything further than to acquiesce in the transportation for such purpose was insufficient to sustain conviction of female defendant for conspiracy to transport woman in interstate commerce for immoral purposes. U.S. v. Martin, C.A.7 (Ill.) 1951, 191 F.2d 569. Conspiracy 47(3.1)

Evidence that defendant and his companion undertook to remove five children from jurisdiction of juvenile authorities in Wichita, Kan., by transporting them to Oklahoma, that defendant before they crossed state line suggested to companion the necessity for marrying 12-year-old girl to avoid charge under § 2421 of this title, and that companion thereafter attempted to have immoral relations with girl in Oklahoma, sustained conviction of defendant for violation of said section and for conspiracy to violate said section. Long v. U.S., C.C.A.10 (Okla.) 1947, 160 F.2d 706. Conspiracy 47(3.1)

Evidence sustained conviction of conspiracy to violate and the substantive offense of violating the Mann Act, § 2421 of this title, by transporting girls interstate for prostitution. Proctor v. U.S., C.C.A.5 (Tex.) 1944, 146 F.2d 724, certiorari denied 65 S.Ct. 867, 324 U.S. 862, 89 L.Ed. 1419. See, also, U.S. v. Stoecker, C.A.Ill.1954, 216 F.2d 51. Conspiracy 47(3.1); Prostitution 4

Evidence was insufficient to sustain conviction for conspiracy to transport in interstate commerce girls for immoral purposes. Ellis v. U.S., C.C.A.8 (Mo.) 1943, 138 F.2d 612. Prostitution 4

In prosecution for conspiracy to harbor and conceal aliens not entitled to reside in the United States, and to keep and support aliens an prostitutes without registering them, and to transport prostitutes in foreign commerce, the crime need not be proved as laid in the indictment, but proof of conspiracy to commit any single one of the crimes charged would be sufficient. U S v. Mack, C.C.A.2 (N.Y.) 1940, 112 F.2d 290. Conspiracy 43(12)

Evidence was insufficient to sustain conviction for conspiring to transport woman for immoral purposes on ground that defendant did not know of existence of conspiracy or its purpose when he transported woman for immoral purposes. Lee v. U.S., C.C.A.9 (Wash.) 1939, 106 F.2d 906. Conspiracy 47(3.1)

Evidence was insufficient to show that divorced man who had lived with and entirely supported divorced woman for four years, and had furnished money for her interstate transportation conspired with woman to transport such woman in interstate commerce for purpose of debauchery. Mackreth v. U. S., C.C.A.5 (Ala.) 1939, 103 F.2d 495. Conspiracy 47(3.1)

Evidence sustained conviction of causing woman to be transported in interstate commerce for purpose of prostitution and of inducing woman to go into interstate commerce for such purpose and of conspiracy to violate the White Slave Act, § 2421 of this title. U. S. v. Sorrentino, M.D.Pa.1948, 78 F.Supp. 425, affirmed 175 F.2d 721, certiorari denied 70 S.Ct. 143, 338 U.S. 868, 94 L.Ed. 532, rehearing denied 70 S.Ct. 238, 338 U.S. 896, 94 L.Ed. 551. Conspiracy 47(3.1)

784. Wire communication offenses, sufficiency of evidence

Evidence was sufficient to support finding that defendants joined in a conspiracy to commit wire fraud; first defendant applied for a loan to purchase a house for second defendant because he could not obtain a loan and each of the alleged conspirators benefited from this arrangement, with the first defendant receiving $7500 from home builder, and second defendant moving into the house with his family, and home builder liquidated his assets. U.S. v. Johnson, C.A.8 (Mo.) 2006, 450 F.3d 366. Conspiracy 47(5)

18 U.S.C.A. § 371

Sufficient evidence sustained convictions for wire fraud and conspiracy to commit wire fraud, in connection with arson scheme; defendant's alleged coconspirator testified that he and defendant discussed and planned arson on several occasions and that defendant gave him key for that purpose, and that he telephoned defendant to inform him that arson was complete, which was corroborated by telephone records. U.S. v. Ingles, C.A.5 (La.) 2006, 445 F.3d 830. Telecommunications 1018(4)

Evidence was sufficient to support federal convictions for mail and wire fraud and conspiracy arising out of telemarketing scam involving phony insurance contracts, contrary to defendant's contention that evidence established nothing more than that defendant was employee of fraudulent scheme; defendant admitted to police that he was office manager at scheme's headquarters, and there was evidence that defendant himself leased office space, rented mailboxes, received mail, and cashed money orders on behalf of sham companies set up to carry out scheme. U.S. v. Mornan, C.A.3 (Pa.) 2005, 413 F.3d 372. Telecommunications 1018(4)

Conviction for conspiracy to commit wire fraud arising from fraudulent investment scheme was supported by purported coconspirator's testimony that defendant was involved with codefendant in earlier, similar investment scheme and that some of the money from scheme had been diverted to defendant's personal use, and by evidence that investors in scheme underlying conviction deposited or wired money directly to defendant's bank account and that defendant received approximately $2,200,000 from company involved in scheme, that defendant maintained frequent contact with codefendant who was leader of company via telephone and facsimile transmissions, and evidence that defendant presented himself as experienced international investor with special contacts at seminars attended by potential investors. U.S. v. Dazey, C.A.10 (Okla.) 2005, 403 F.3d 1147. Conspiracy 47(5)

Evidence was sufficient to show intent element to sustain conviction of one count of conspiracy to commit wire fraud and four counts of wire fraud; jury could have reasonably inferred both that defendant intended to defraud her investors and that agreement existed among defendant and others to carry out fraudulent scheme. U.S. v. Wonderly, C.A.8 (Neb.) 1995, 70 F.3d 1020, certiorari denied 116 S.Ct. 1443, 517 U.S. 1146, 134 L.Ed.2d 564. Conspiracy 47(5); Telecommunications 1018(4)

Evidence was sufficient to sustain wire fraud and conspiracy convictions in connection with defendant's participation in fraudulent loan scheme; coconspirator testified that defendant was part of scheme in which conspirators collected "advance fees" from potential borrowers by fraudulently promising to arrange preapproved multimillion-dollar loans from foreign lending institution; defendant's intent to defraud potential borrowers could be inferred from fact that he received $1.5 million from such fees, that he was in contact with coconspirator daily, and that of dozens of "clients," not one ever received promised loan. U.S. v. Aggarwal, C.A.5 (Tex.) 1994, 17 F.3d 737, rehearing denied. Conspiracy 47(5); Telecommunications 1018(4)

Evidence established defendant's willing participation in conspiracy to commit wire fraud in planning to recover from police ring stolen during robbery and murders under investigation by wiretap; telephone conversations established defendant's awareness of fraudulent nature of coconspirator's claim of ownership and defendant's willingness to help. U.S. v. Homick, C.A.9 (Nev.) 1992, 964 F.2d 899. Conspiracy 47(5)

Sufficient evidence was presented to jury for it to reasonably conclude that conspiracy to commit wire and mail fraud through operation of business to prepare applications for oil and gas leases on government property was not abandoned until after change in lottery rules occurred within limitations period; while lottery had merely been suspended, defendants continued operation to persuade customers to leave their money with business and that operation was to further main objective of profiting from wire fraud scheme. U.S. v. Lash, C.A.6 (Mich.) 1991, 937 F.2d 1077, rehearing denied, certiorari denied 112 S.Ct. 397, 502 U.S. 949, 116 L.Ed.2d 347, certiorari denied 112 S.Ct. 943, 502 U.S. 1061, 117 L.Ed.2d 113. Criminal Law 565

There was sufficient evidence of defendant's fraudulent intent to support his conspiracy conviction, in relation to investments in production of music video, in view of codefendant's testimony regarding preparation of false

financial statement and guaranty for their investment company and failure of defendant and codefendant to spend invested money on music video despite their prior representations. U.S. v. Gill, C.A.7 (Wis.) 1990, 909 F.2d 274. Conspiracy 47(3.1)

Government's appeal from judgment of acquittal on wire fraud counts was barred by double jeopardy clause, where district court clearly evaluated Government's evidence on such counts under prevailing legal standards for such counts in the ninth circuit and determined that the evidence was legally insufficient to sustain a wire fraud conviction as indicted. U.S. v. Schwartz, C.A.9 (Cal.) 1986, 785 F.2d 673, certiorari denied 107 S.Ct. 290, 479 U.S. 890, 93 L.Ed.2d 264, on remand 679 F.Supp. 972. Double Jeopardy 100.1

In prosecution for conspiracy and wire fraud, evidence, including that "gems" offered by defendant, and accepted by some persons, in exchange for expensive automobiles, were worthless, and tape recordings from which jury could readily infer that defendant intended to defraud the prospective gem purchasers, was sufficient to sustain conviction. U.S. v. Melton, C.A.11 (Ga.) 1984, 739 F.2d 576. Conspiracy 47(5); Telecommunications 1018(4)

Evidence was sufficient to support conviction for conspiracy to use wire facilities in interstate commerce for transmission of wagering information and for use of wire facilities in interstate commerce for transmission of wagering information. U. S. v. Swank, C.A.9 (Cal.) 1971, 441 F.2d 264. Conspiracy 47(7); Gaming 98(1)

Evidence in prosecution for wire fraud, when viewed in most favorable light to government, was sufficient to support jury's finding of guilt on each of four counts and count alleging conspiracy to commit substantive offenses. Henderson v. U. S., C.A.5 (Tex.) 1970, 425 F.2d 134. Conspiracy 47(5); Telecommunications 1018(4)

Evidence sustained conviction for conspiracy to knowingly use wire communication facility while engaged in business of betting and wagering for transmission in interstate commerce. Lichtenstein v. U. S., C.A.5 (Fla.) 1965, 341 F.2d 476, certiorari denied 86 S.Ct. 48, 382 U.S. 821, 15 L.Ed.2d 67, rehearing denied 86 S.Ct. 309, 382 U.S. 933, 15 L.Ed.2d 345. Telecommunications 1018(4)

Evidence sustained convictions for violations of Wire Fraud Statute, § 1343 of this title, and for conspiracy to do so. Huff v. U. S., C.A.5 (Tex.) 1962, 301 F.2d 760, certiorari denied 83 S.Ct. 289, 371 U.S. 922, 9 L.Ed.2d 230. Conspiracy 47(5); Telecommunications 1018(4)

In prosecutions for conspiring to wilfully or maliciously injure or destroy means of communication controlled or operated by United States, evidence was sufficient to establish that many of the circuits destroyed were under full time operation and control of the Government even though the facilities were owned by the telephone company. Abbate v. U.S., C.A.5 (Miss.) 1957, 247 F.2d 410, certiorari granted 78 S.Ct. 330, 355 U.S. 902, 2 L.Ed.2d 258, affirmed 79 S.Ct. 666, 359 U.S. 187, 3 L.Ed.2d 729. Conspiracy 47(3.1)

Evidence that a telephone operator in office of Securities and Exchange Commission connected defendant's office telephone by means of the "conference system" with calls from an employee of commission, who was calling his superior, was sufficient to sustain conviction of conspiracy and of aiding and abetting violation of the wire-tapping provisions of § 605 of Title 47. U.S. v. Gruber, C.C.A.2 (N.Y.) 1941, 123 F.2d 307. Conspiracy 47(3.1); Telecommunications 1453

Evidence was sufficient to support defendant's conviction for conspiracy to commit wire fraud, in connection with his participation in investment scheme; law enforcement agents testified that they witnessed defendant engaging in wire fraud, phone records showed that defendant called co-conspirator 119 times in the two-month period prior to their arrests, fraud victim testified that she wired money to defendant believing that she was paying a fee to receive an inheritance from a relative. U.S. v. Okehi, S.D.N.Y.2003, 2003 WL 21649440, Unreported, affirmed 111

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Fed.Appx. 41, 2004 WL 2165382. Conspiracy 47(5)

785. Miscellaneous offenses, sufficiency of evidence

There was sufficient evidence of single, overarching conspiracy to violate Sherman Act and to commit fraud, as alleged by indictment, in connection scheme to rig bidding on three Egyptian construction contracts financed by USAID; common goal of overarching scheme was to steal from United States by inflating winning bids and to reciprocate on future contracts, those involved in scheme worked in consistent manner on all three contracts, and, although participants were different in each meeting, there was substantial overlap. U.S. v. Anderson, C.A.11 (Ala.) 2003, 326 F.3d 1319, rehearing and rehearing en banc denied 71 Fed.Appx. 824, 2003 WL 21432589, certiorari denied 124 S.Ct. 178, 540 U.S. 825, 157 L.Ed.2d 46. Monopolies 29

Evidence was sufficient to support finding that defendant understood that her use of vacant rental units without paying rent was fraudulent, and that she used the mails to perpetrate the fraudulent activity, as required to sustain defendant's conviction for conspiring to commit mail fraud, stemming from defendant's conduct in the operation of a property management business; on at least two occasions defendant contacted the owner of a unit and paid rent for her stay, but when she occupied other units, while renting out her own residence, defendant did not disclose the use, and defendant directed office staff not to include her uses in the owners' statements. U.S. v. Montgomery, C.A.9 (Or.) 2004, 384 F.3d 1050. Conspiracy 47(5)

Conviction for conspiracy to rob banks was supported by sufficient evidence, including defendant's detailed account of robberies, and evidence that his gun was found with two robbers, that he provided false identification to co-conspirator, and that he made several purchases and bank deposits directly after three of the robberies. U.S. v. Beverly, C.A.6 (Ohio) 2004, 369 F.3d 516, certiorari denied 125 S.Ct. 122, 543 U.S. 910, 160 L.Ed.2d 188, certiorari denied 125 S.Ct. 229, 543 U.S. 910, 160 L.Ed.2d 188, certiorari denied 125 S.Ct. 85, 543 U.S. 910, 160 L.Ed.2d 188. Conspiracy 47(11)

Finding that defendant was involved in conspiracy to commit bank robberies was supported by sufficient evidence, including witnesses' description of his participation in creating disguises used during robbery, photographic evidence of his presence at bank, and bullet recovered from file cabinet at bank matching his gun. U.S. v. Beverly, C.A.6 (Ohio) 2004, 369 F.3d 516, certiorari denied 125 S.Ct. 122, 543 U.S. 910, 160 L.Ed.2d 188, certiorari denied 125 S.Ct. 229, 543 U.S. 910, 160 L.Ed.2d 188, certiorari denied 125 S.Ct. 85, 543 U.S. 910, 160 L.Ed.2d 188. Conspiracy 47(11)

Trial court could find that defendant committed conspiracy to steal from interstate baggage; undercover agent testified that camera he was negotiating to buy from coconspirator was same camera that was taken by defendant, defendant was present during negotiations for camera, and defendant participated in negotiations by stating that he could get higher price than that offered by agent from drug dealers living near him. U.S. v. Brookins, C.A.7 (Ill.) 1995, 52 F.3d 615. Conspiracy 47(11)

Defendant's conviction for conspiracy based on role in credit card fraud scheme was supported by coconspirator's statements to undercover officer that defendant would bring fake credit cards and repeated reference to persons who would participate in fraud as "we" and evidence that defendant engaged in countersurveillance by looking into vehicles and looking at people while coconspirators discussed scheme with undercover officers and that defendant negotiated specifics of intended transaction with undercover officer. U.S. v. Alonso, C.A.9 (Nev.) 1995, 48 F.3d 1536. Conspiracy 47(4)

Evidence was sufficient for jury in prosecution of outside counsel for conspiracy and mail fraud, wire fraud and bank fraud in connection with insurance company's scheme to defraud state regulators and policyholders by inflating its assets. U.S. v. Cavin, C.A.5 (La.) 1994, 39 F.3d 1299. Attorney And Client 33

There was insufficient evidence of conspiracy between defendant and owner of backhoe which was same model and had same identification number as stolen backhoe transported by defendant interstate to support defendant's conspiracy conviction; while defendant's father testified that defendant told him defendant purchased backhoe from contractor, contractor's testimony made no mention of agreement with defendant and explicitly denied selling defendant backhoe. U.S. v. Mackay, C.A.5 (Tex.) 1994, 33 F.3d 489. Conspiracy 47(11)

Evidence was sufficient to support conviction of member of the Hells Angels motorcycle club for conspiracy with another person to blow up the clubhouse of the Outlaws motorcycle club. U.S. v. Barger, C.A.6 (Ky.) 1991, 931 F.2d 359, reconsideration denied. Conspiracy 47(3.1)

Finding that defendant had knowingly participated in conspiracy to produce child pornography was sufficiently supported by evidence, including correspondence between defendant and coconspirators and evidence that defendant had processed and modified photographs that he received of nude child models in order to render them suitable for commercial distribution. U.S. v. Cross, C.A.11 (Fla.) 1991, 928 F.2d 1030, certiorari denied 112 S.Ct. 594, 502 U.S. 985, 116 L.Ed.2d 618, certiorari denied 112 S.Ct. 941, 502 U.S. 1060, 117 L.Ed.2d 112. Conspiracy 47(3.1)

In prosecution for conspiracy to hold persons in involuntary servitude, evidence that defendants entered into agreement with one another to obtain workers under false pretenses and deliver them to labor camp, where they worked long hours for little or no pay against their will, was sufficient to sustain convictions. U.S. v. Warren, C.A.11 (Fla.) 1985, 772 F.2d 827, certiorari denied 106 S.Ct. 1214, 475 U.S. 1022, 89 L.Ed.2d 326. Conspiracy 47(3.1)

Evidence that president of federal land bank association referred potential sellers and purchasers of farmland to defendant, who acted as retained counsel for the association, that the president, a codefendant, persuaded potential sellers and purchasers to deal with defendant, and that defendant and codefendant were both present when relevant transactions were consummated supported conclusion that defendant conspired with codefendant and that defendant knew essential nature of the conspiracy. U.S. v. Payne, C.A.11 (Ala.) 1985, 750 F.2d 844. Conspiracy 47(3.1)

Evidence that one defendant formed corporation primarily for crude oil resale, that the volume of business was large and that the transactions grossed some $7,500,000 in profit, of which only $93,000 represented legitimate profit, that the two defendants signed personal loan guarantees to cover monthly crude oil purchases, and that defendants were aware of the very high profits was sufficient to sustain conspiracy conviction involving miscertification of crude oil. U. S. v. Zang, C.A.10 (Okla.) 1982, 703 F.2d 1186, certiorari denied 104 S.Ct. 103, 464 U.S. 828, 78 L.Ed.2d 107. Conspiracy 47(6)

Evidence showing, inter alia, carefully orchestrated activities with respect to scheme to induce investments of large amounts of money in project to extract gold and silver from low grade ore deposit, division of work among two groups, one responsible for handling scientific aspects of analysis and extraction processes and another responsible for marketing silver options and refining contracts and misrepresentations to investors that ore contained incredible amounts of precious metals that could be extracted through "secret processes" was sufficient to establish a conspiracy to defraud. U.S. v. Becker, C.A.5 (Tex.) 1978, 569 F.2d 951, rehearing denied 576 F.2d 931, certiorari denied 99 S.Ct. 188, 439 U.S. 865, 58 L.Ed.2d 174, certiorari denied 99 S.Ct. 726, 439 U.S. 1048, 58 L.Ed.2d 708 . Conspiracy 47(4)

Evidence that two government agents went to funeral of member of group to which a number of defendants belonged, that one of the agents was assaulted, that second agent drew his gun and was assaulted, that the second agent then identified himself as a federal agent, that, as second agent was driving away, shots were fired at his car, and that one of the persons involved in the incident was an unindicted coconspirator in the instant case was sufficient to connect the assault with the conspiracy. U. S. v. Harris, C.A.7 (Ind.) 1976, 542 F.2d 1283, certiorari

denied 97 S.Ct. 1558, 430 U.S. 934, 51 L.Ed.2d 779. Conspiracy 47(3.1)

Evidence in prosecution of members of organization claiming to be an independent foreign nation composed of citizens descended from slaves and claiming sovereignty over five southern states was sufficient to support conviction for conspiracy to commit assault on federal officers engaged in the performance of their duties. U. S. v. James, C.A.5 (Miss.) 1976, 528 F.2d 999, rehearing denied 532 F.2d 1054, certiorari denied 97 S.Ct. 382, 429 U.S. 959, 50 L.Ed.2d 326, rehearing denied 97 S.Ct. 770, 429 U.S. 1055, 50 L.Ed.2d 772, certiorari denied 97 S.Ct. 383, 429 U.S. 959, 50 L.Ed.2d 326. Conspiracy 47(8); Internal Revenue 5295; Weapons 17(4)

Evidence was sufficient to support convictions for conspiracy to circumvent internal accounting controls, and for the underlying circumvention offenses; each defendant's personal usage of airplanes was reasonably foreseeable to the other. U.S. v. Wittig, D.Kan.2006, 425 F.Supp.2d 1196. Securities Regulation 199

Jury question was presented whether attorney and alleged associate conspired to commit theft from witness voucher program; attorney had signed out 2,047 witness vouchers, allowing for payment of witnesses testifying on behalf of indigent defendants, while average was 61 per attorney, attorney was seen in company of fellow defendant who was defense investigator, and various witnesses testified that investigator gave them vouchers to be cashed when they had not participated in any proceedings. U.S. v. Hoover-Hankerson, D.D.C.2005, 406 F.Supp.2d 76. Conspiracy 48.1(2.1)

Evidence that defendant, while serving as city treasurer, received benefits in return for accepting codefendant's recommendations for the selection of various professionals to provide services to the city for substantial professional fees, failed to make disclosures of the benefits, which he was required by law to disclose, and took discretionary action in favor of the person or entity that conveyed the benefit to him was sufficient to support conviction for honest services fraud. U.S. v. Kemp, E.D.Pa.2005, 379 F.Supp.2d 690. Postal Service 35(10)

Defendant's intended use of gamma hydroxy butyrate (GHB) he manufactured and distributed was sufficient to support jury finding that GHB was a drug, rather than a food supplement used for bodybuilding, and thus to support conviction for conspiracy to distribute and manufacture a misbranded and adulterated drug with the intent to defraud or mislead. U.S. v. Poor, C.A.8 (Neb.) 2000, 230 F.3d 1365, Unreported. Conspiracy 47(12)

XII. DEFENSES

<Subdivision Index>

811. Acquittal or conviction of other offenses, defenses

Illegal conspiracy is complete regardless of whether crime agreed upon is actually consummated, and defendant may be convicted of conspiracy even though he is acquitted of substantive count. U. S. v. Tombrello, C.A.11 (Ala.) 1982, 666 F.2d 485, certiorari denied 102 S.Ct. 2279, 456 U.S. 994, 73 L.Ed.2d 1291.

Fact that two defendants were acquitted on one count did not bar affirmance of their convictions of conspiracy to embezzle union funds since defendants did not have to participate as trustees of union pension funds in every phase of criminal conspiracy to be guilty of conspiracy. U.S. v. Ford, C.A.9 (Cal.) 1980, 632 F.2d 1354, certiorari denied 101 S.Ct. 1399, 450 U.S. 934, 67 L.Ed.2d 369.

Defendant's conviction for aiding and abetting in pension trust embezzlement did not bar his conviction for conspiracy to commit that same crime. U.S. v. Andreen, C.A.9 (Cal.) 1980, 628 F.2d 1236.

Acquittal on a substantive account does not bar conviction for conspiracy unless there is an identity of proof necessary, and since conviction requires proof beyond a reasonable doubt, it follows that acquittal on a substantive count does not bar a preliminary finding of conspiracy, which need only satisfy the lesser "preponderance" standard. U. S. v. Dalzotto, C.A.7 (Ill.) 1979, 603 F.2d 642, certiorari denied 100 S.Ct. 530, 444 U.S. 994, 62 L.Ed.2d 425.

Conspiracy and related substantive offense which is object of conspiracy are separate and distinct crimes, and acquittal on substantive count does not foreclose prosecution and conviction for related conspiracy. U. S. v. Romeros, C.A.5 (Tex.) 1979, 600 F.2d 1104, rehearing denied 605 F.2d 554, certiorari denied 100 S.Ct. 1025, 444 U.S. 1077, 62 L.Ed.2d 759.

Fact that jury acquitted defendant on substantive count of theft of government property and retention of the same knowing that it was stolen was not a ground for setting aside defendant's conviction under count charging conspiracy to commit the former substantive offense. U. S. v. Green, C.A.9 (Cal.) 1979, 594 F.2d 1227, certiorari denied 100 S.Ct. 108, 444 U.S. 853, 62 L.Ed.2d 70.

The principle that an acquittal on substantive offense does not preclude verdict of guilty on count charging conspiracy to commit such substantive offense applies with equal force where alleged conspiracy had as its purpose far more than the commission of single substantive offense of which defendant was acquitted. U. S. v. Elliott, C.A.5 (Ga.) 1978, 571 F.2d 880, rehearing denied 575 F.2d 300, certiorari denied 99 S.Ct. 349, 439 U.S. 953, 58 L.Ed.2d 344.

A conviction for conspiracy and acquittal of the substantive offense may properly arise from the same facts and trial; however, such result engages judicial skepticism and a critical analysis of the facts is required when such a contrariety of results appears. U.S. v. Caro, C.A.5 (Tex.) 1978, 569 F.2d 411.

Acquittal on conspiracy count will bar conviction on substantive count only if it constitutes a determination favorable to defendant of facts essential to conviction of substantive offense which depends on facts adduced at each trial and instructions under which jury arrived at its verdict in first trial. U. S. v. Zane, C.A.2 (N.Y.) 1974, 495 F.2d 683, certiorari denied 95 S.Ct. 174, 419 U.S. 895, 42 L.Ed.2d 139.

Where defendant did not give trial court complete transcript of trial in which he was acquitted on charge of conspiracy to counterfeit, government was not collaterally estopped from prosecuting defendant on charge of aiding and abetting manufacture of counterfeit federal reserve notes. U. S. v. Tierney, C.A.9 (Cal.) 1970, 424 F.2d 643, certiorari denied 91 S.Ct. 53, 400 U.S. 850, 27 L.Ed.2d 87.

The commission of the substantive offense and the conspiracy to commit it are two separate and distinct offenses, and a conviction on the substantive count does not merge the conspiracy count. Baker v. U. S., C.A.9 (Cal.) 1968, 393 F.2d 604, certiorari denied 89 S.Ct. 110, 393 U.S. 836, 21 L.Ed.2d 106.

Acquittal of defendants on counts charging substantive crime of theft or conversion of United States property did not require reversal of judgments of conviction after jury verdict of guilty on count charging conspiracy to commit such substantive offenses even though the counts were supported by the same evidence relating to criminal intent. U. S. v. Vastine, C.A.3 (Pa.) 1966, 363 F.2d 853.

Fact that one is guilty of no substantive offense does not preclude his conviction as coconspirator. U. S. v. Magliano, C.A.4 (Md.) 1964, 336 F.2d 817.

Conviction for conspiracy may be had even though substantive offense is completed, and it is only identity of offenses which is fatal. Carmack v. U. S., C.A.10 (Okla.) 1961, 296 F.2d 893. Conspiracy 28(1)

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Where a defendant was charged in a two-count indictment with an unlawful sale of narcotics on a certain date, and in second count with conspiracy to violate narcotic laws, fact that jury acquitted defendant on the substantive charge did not preclude a verdict of guilty on a conspiracy charge based in part on his alleged participation in the sale. U.S. v. Marcone, C.A.2 (N.Y.) 1960, 275 F.2d 205, certiorari denied 80 S.Ct. 879, 362 U.S. 963, 4 L.Ed.2d 877.

In prosecution for conspiracy to sell liquor at wholesale without federal wholesaler's tax being paid, acquittal of all other defendants charged with defendant did not establish his innocence, particularly where others who were not defendants were alleged to be conspirators. Jenkins v. U.S., C.A.5 (Ga.) 1958, 253 F.2d 710.

While prosecutions for both substantive crimes and conspiracy to commit such crimes are not favored if confiction is accompanied by consecutive sentences, a second prosecution is not absolutely barred. United States v. Miranti, C.A.2 (N.Y.) 1958, 253 F.2d 135.

The doctrine that an acquittal on a charge of conspiracy may be a valid defense to a later prosecution for the substantive offense does not apply to different counts in the same indictment or to consolidated indictments. Ross v. U. S., C.A.6 (Ohio) 1952, 197 F.2d 660, certiorari denied 73 S.Ct. 40, 344 U.S. 832, 97 L.Ed. 648, certiorari denied 73 S.Ct. 46, 344 U.S. 832, 97 L.Ed. 648.

Acquittal or conviction of conspiracy to commit crime is not per se a bar to prosecution for commission of such crime or for aiding and abetting another to commit it. United States v. Sealfon, C.C.A.3 (N.J.) 1947, 161 F.2d 481, certiorari granted 68 S.Ct. 70, 332 U.S. 754, 92 L.Ed. 341, reversed on other grounds 68 S.Ct. 237, 332 U.S. 575, 92 L.Ed. 180.

Acquittal of conspiracy to defraud United States in application for replacement of rationed sugar was, as matter of law, no bar to conviction on substantially the same evidence of aiding and abetting as principal in uttering false and forged invoices for purpose of defrauding United States, and plea of res judicata was properly withdrawn from jury. United States v. Sealfon, C.C.A.3 (N.J.) 1947, 161 F.2d 481, certiorari granted 68 S.Ct. 70, 332 U.S. 754, 92 L.Ed. 341, reversed on other grounds 68 S.Ct. 237, 332 U.S. 575, 92 L.Ed. 180.

Conviction of objective offenses of importation of opium into United States and transportation of opium therein, did not bar conviction for conspiracy to commit such offenses. Kramer v. U. S., C.C.A.9 (Cal.) 1945, 147 F.2d 202 .

In determining whether same offense is charged in two counts of an indictment or in two indictments consolidated for trial, so that acquittal on one offense will bar a conviction on the other, test is whether same evidence will support both counts. Hughes v. U.S., C.C.A.5 (Fla.) 1938, 95 F.2d 538. See, also, Schmeller v. U.S., C.C.A.Ohio 1944, 143 F.2d 544. Double Jeopardy 132.1

If the same offense is charged in two counts of an indictment or in two indictments consolidated for trial, acquittal on one count will bar conviction on the other. Hughes v. U.S., C.C.A.5 (Fla.) 1938, 95 F.2d 538.

Where indictments for conspiracy to violate national liquor laws and for unlawful possession of whisky were consolidated for trial and one defendant was convicted of possession but acquitted of conspiracy, but other persons who engaged in one of the overt acts on which conspiracy charge was founded and which was basis of conviction of possession were not the alleged conspirators, acquittal of conspiracy did not bar conviction for possession. Hughes v. U.S., C.C.A.5 (Fla.) 1938, 95 F.2d 538.

A prisoner was not entitled to be discharged from custody of warden of federal penitentiary on ground that he was convicted and sentenced on substantive offense and on a conspiracy charge and that conspiracy was not of itself a crime, since conspiracy to violate laws is a separate and distinct offense punishable as such. Thompson v.

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Johnston, C.C.A.9 (Cal.) 1938, 94 F.2d 355. Conspiracy 28(2)

Acquittal under indictment charging possession of counterfeited Federal Reserve notes with intent to defraud in violation of former § 265 of this title, did not bar subsequent prosecution under indictment charging conspiracy to commit such offense. Coy v. U.S., C.C.A.9 (Cal.) 1925, 5 F.2d 309.

Where indictment charged conspiracy, under former § 88 of this title [now this section], to violate National Prohibition Act, former § 1 et seq. of Title 27, and in another count charged unlawful possession, conviction on later count was valid, notwithstanding disagreement as to conspiracy count, and conviction in later trial on conspiracy count was valid, there being no jeopardy by reason of disagreement. Linden v. U.S., C.C.A.3 (N.J.) 1924, 2 F.2d 817.

Where on a charge for conspiracy the government elected to prove as a part of the charge the larceny of certain goods which it failed to prove, there could be no subsequent prosecution for a larceny of the same goods. U.S. v. Clavin, E.D.N.Y.1921, 272 F. 985.

An acquittal of conspiracy, in which the alleged overt acts were the taking of certain whisky from a shipment in interstate commerce, is a bar to a subsequent prosecution for the stealing of that whisky. U.S. v. Clavin, E.D.N.Y.1921, 272 F. 985.

In prosecution for conspiracy to break into a United States post office in Connecticut and for conspiracy to convert to defendant's own use property of the Post Office Department knowing it to have been stolen, defendant was not entitled to a dismissal on ground that trial under the instant indictment would place him in double jeopardy because he had already been tried and acquitted in Connecticut where the Connecticut indictment charged the defendant only with substantive offenses. U S v. Kosmol, E.D.N.Y.1959, 173 F.Supp. 280.

In order to determine whether a judgment of acquittal of the substantive offense is a bar to the second trial of the conspiracy count, instructions under which the verdict was rendered must be set in a practical frame, and viewed with an eye to all the circumstances of the proceedings. U S v. Perrone, S.D.N.Y.1958, 161 F.Supp. 252.

A conspiracy to commit a crime is a different offense from the crime which is the object of the conspiracy, and each offense has different elements, and an acquittal or conviction of the substantive crime or of aiding and abetting in the commission thereof, does not with rare exceptions bar prosecution for conspiracy to commit the substantive crime. U S v. Perrone, S.D.N.Y.1958, 161 F.Supp. 252.

An acquittal on charge of substantive crime does not preclude prosecution for conspiracy to commit same substantive crime. U.S. v. Waldin, E.D.Pa.1957, 149 F.Supp. 912, affirmed 253 F.2d 551, rehearing denied, certiorari denied 78 S.Ct. 1136, 356 U.S. 973, 2 L.Ed.2d 1147.

Previous acquittal of accused in prosecution under former § 88 of this title [now this section] on indictment charging conspiracy to violate § 1138 of Title 12 wherein same overt acts were relied upon as were charged by subsequent indictment as constituting substantive offenses in violation of § 1138 of Title 12, did not bar the subsequent prosecution for the substantive offenses on principle of "res judicata" or "estoppel", since verdict of not guilty of conspiracy did not necessarily involve determination by jury that accused did not commit the overt acts, but jury may have been of opinion that accused committed the acts but had not conspired. U.S. v. Halbrook, E.D.Mo.1941, 36 F.Supp. 345.

Conviction under former § 88 of this title [now this section] for conspiring to defraud the United States by the unlawful removal of distilled spirits, without paying taxes, was a bar to a subsequent civil suit to recover the penalty of double the amount of such taxes. U.S. v. McKee, C.C.Mo.1877, 26 F.Cas. 1116, 6 Am. Law Rec. 196, 25 Pitts.L.J. 39, 10 Chi.Leg.N. 18, No. 15688. Internal Revenue 2364

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812. Acquittal of others, defenses

Existence of coconspirator is not only element of conspiracy but also essence of crime and thus in a single trial, if indictment names two people as only coconspirators and one person is acquitted, no crime can have been committed. U. S. v. Pearson, C.A.5 (Ala.) 1982, 667 F.2d 12.

Defendant may be found not guilty of substantive crimes alleged to be object of conspiracy while still being found guilty of conspiracy to commit those crimes. U.S. v. Long, W.D.Mo.1990, 757 F.Supp. 1038, reversed on other grounds 952 F.2d 1520, rehearing denied, certiorari denied 113 S.Ct. 298, 121 L.Ed.2d 222.

Because accused's only other accomplice was acquitted on a charge of conspiracy, defendant could not be convicted of conspiracy, even though defendant had pled guilty rather than being found guilty after trial, and even though it was arguable that the reason that the accomplice was acquitted at his separate trial was that the accused wrongfully refused to testify against the accomplice. U. S. v. Gates, ACMR 1979, 8 M.J. 631. Military Justice 801.1

813. Advice of counsel, defenses

"Advice of counsel" defense was not available to defendant who had pleaded guilty to tax fraud conspiracy count and who then sought to withdraw the guilty plea to assert the defense, where the attorney in question had been integrally involved in the sham operation, shared in the profits of the scheme, had actively promoted the operation, and where there was little, if any, evidence that the attorney was ever asked, or gave, advice in the context of an attorney-client relationship. U.S. v. Carr, C.A.5 (Tex.) 1984, 740 F.2d 339, certiorari denied 105 S.Ct. 1865, 471 U.S. 1004, 85 L.Ed.2d 159.

In order that defendant charged with others in conspiracy to illegally use moneys of federally insured banks and savings associations could be acquitted on theory that he was acting according to advice of his counsel, there would have to be showing that defendant made full disclosure to his attorneys of all facts pertaining to transactions under scrutiny. U. S. v. Kahn, C.A.7 (Ill.) 1967, 381 F.2d 824, certiorari denied 88 S.Ct. 591, 389 U.S. 1015, 19 L.Ed.2d 661, rehearing denied 88 S.Ct. 2272, 392 U.S. 948, 20 L.Ed.2d 1413, certiorari denied 88 S.Ct. 592, 389 U.S. 1015, 19 L.Ed.2d 661, rehearing denied 88 S.Ct. 2272, 392 U.S. 948, 20 L.Ed.2d 1414.

814. Coercion, defenses

Where testimony of defendant and co-defendant that a third defendant held a gun on them and forced them to break into post office was denied by the latter, such testimony was sufficient to overcome coercion defense to charges of breaking and entering a post office with intent to commit larceny and conspiring to commit that offense. U. S. v. Watson, C.A.8 (Ark.) 1982, 677 F.2d 689.

To the extent defendant pressed fanciful claims that he was coerced into committing his crimes conspiring to commit securities and wire fraud, money laundering, and making a false statement to a federal official, those claims, as to which defendant would have had the burden of proof at a trial, even if accepted as true, did not come near to establishing elements of a coercion defense, which required a showing that defendant was confronted by actual threat of force at the time he committed the illegal acts in question, had reasonable fear of immediate death or serious bodily harm, and had no reasonable opportunity to escape other than by performing those acts. Durante v. U.S., S.D.N.Y.2006, 425 F.Supp.2d 537. Criminal Law 38

815. Collateral estoppel, defenses

Dismissal of two conspiracy counts pursuant to plea agreement did constitute determination on merits that would later bar, under doctrine of collateral estoppel, any prosecution for constituent overt acts of those conspiracies,

since conspiracy charges were distinct from substantive charges. U.S. v. Conkins, C.A.9 (Cal.) 1993, 9 F.3d 1377, as amended, dismissal of post-conviction relief affirmed 217 F.3d 845. Judgment 751

Dismissal of two conspiracy counts pursuant to plea agreement did not constitute determination on merits that would later bar, under doctrine of collateral estoppel, any prosecution for constituent overt acts of those conspiracies, since conspiracy charges were distinct from substantive charges. U.S. v. Conkins, C.A.9 (Cal.) 1993, 987 F.2d 564, amended and superseded 9 F.3d 1377, as amended.

Doctrine of collateral estoppel did not apply to situation in which district court, in prosecution for possessing stolen goods, found government witness' testimony incredible as to defendant's presence at witness' home on days for which she was charged with possession, as government was not attempting to relitigate an issue of ultimate fact resolved in a prior proceeding in a separate future lawsuit, rather, instant case merely presented an appeal from district court's judgment. U.S. v. Green, C.A.7 (Ill.) 1984, 735 F.2d 1018.

Collateral estoppel effect of finding of guilt on general conspiracy count is limited to essence of conspiracy when it cannot be determined which means were used to carry out unlawful purpose of the conspiracy. U. S. v. Podell, C.A.2 1978, 572 F.2d 31. Judgment 751

An acquittal in a conspiracy case would not necessarily be based on the jury's belief of the defendant's testimony and hence would not normally be the basis for collateral estoppel in a subsequent perjury trial. U. S. v. Brown, C.A.8 (Ark.) 1977, 547 F.2d 438, certiorari denied 97 S.Ct. 1566, 430 U.S. 937, 51 L.Ed.2d 784.

Acquittal of substantive offenses arising from post office burglaries settled that defendant did not burglarize the post offices and was not responsible for whoever did, where defendant's evidence had denied any participation whatever and evidence made any other explanation of acquittal impossible, and hence admission of evidence of defendant's participation in burglaries in subsequent prosecution for conspiracy and receiving stolen goods, substantially identical with that given in earlier prosecution except as to burglaries themselves, was error under principle of collateral estoppel. U.S. v. Kramer, C.A.2 (N.Y.) 1961, 289 F.2d 909.

Where defendant had been convicted at initial trial on charge of perjury for having made false statement to the grand jury which was investigating alleged illegal firearm sales by defendant, doctrine of collateral estoppel did not preclude defendant from thereafter being charged with conspiracy in connection with the firearms transactions. U. S. v. Panetta, E.D.Pa.1977, 436 F.Supp. 114, affirmed 568 F.2d 771.

Under circumstances presented by federal liquor law violation prosecution on multiple count indictment, wherein government contended that defendant's guilt derived from his control of illegal stills which were operated by others, verdict acquitting defendant on conspiracy count and several substantive counts operated, through collateral estoppel, to bar subsequent prosecution on aiding and abetting theory insofar as acts of named coconspirators were involved, but would not bar prosecution for acts committed by defendant personally or by any person other than named coconspirators. U. S. v. Flowers, E.D.N.C.1966, 255 F.Supp. 485.

816. Compromise, defenses

In act action on a distiller's bond for breach of § 2913 of Title 26, a compromise of prosecutions under § 2833 of Title 26, former § 88 of this title [now this section] for removal of the same liquor was a complete defense. U.S. v. Chouteau, U.S.Mo.1880, 102 U.S. 603, 12 Otto 603, 26 L.Ed. 246.

Where an assessor of internal revenue was indicted upon the provisions of former § 88 of this title [now this section] and § 4047 of Title 26, for having entered into a corrupt arrangement with certain distillers to defraud the government, and before trial proposed terms of compromise to the Commissioner of Internal Revenue, under § 3761 of Title 26, the case did not come within the purview of the latter section. 1872, 14 Op.Atty.Gen. 43.

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817. Consummation of offense, defenses

The fact that conspiracy was not carried through to fruition was not a defense to conspiracy charge. U. S. v. Morello, C.A.2 (N.Y.) 1957, 250 F.2d 631.

818. Double jeopardy, defenses--Generally

The commission of a substantive offense and a conspiracy to commit it are separate and distinct crimes, and a plea of double jeopardy is no defense to a conviction for both. Pereira v. U.S., U.S.Tex.1954, 74 S.Ct. 358, 347 U.S. 1, 98 L.Ed. 435.

The plea of double jeopardy is no defense to a conviction for commission of a substantive offense and of a conspiracy to commit it. Pinkerton v. U. S., U.S.Ala.1946, 66 S.Ct. 1180, 328 U.S. 640, 90 L.Ed. 1489, rehearing denied 67 S.Ct. 26, 329 U.S. 818, 91 L.Ed. 697.

Difference between charge of conspiracy to violate Taft-Hartley Act under statute governing conspiracy to commit offense against or to defraud the United States and charge of agreeing to accept illegal payment under Taft-Hartley Act were sufficient so that both could be charged without violating double jeopardy as each offense requires proof of at least one essential element not required by the other. U.S. v. McGowan, C.A.2 (N.Y.) 1995, 58 F.3d 8. Double Jeopardy 151(4)

While defendant's acquittal in prior perjury trial precluded the use against him in subsequent conspiracy trial of evidence of his alleged conspiratorial conversations with his codefendant, the latter, not having been a party to the perjury trial, was not entitled to the same protection; similarly, that the jury found defendant not guilty in the perjury trial did not implicate the codefendant's double jeopardy rights in the subsequent conspiracy trial. U. S. v. Brown, C.A.8 (Ark.) 1977, 547 F.2d 438, certiorari denied 97 S.Ct. 1566, 430 U.S. 937, 51 L.Ed.2d 784.

Dismissal of count of indictment charging defendant with substantive violations of section 1465 of this title making it unlawful to transport in interstate commerce for purposes of sale and distribution any obscene material did not bar prosecution for conspiracy to violate substantive offense under doctrine of collateral estoppel or double jeopardy. U. S. v. Friedman, C.A.8 (Ark.) 1974, 506 F.2d 511, certiorari denied 95 S.Ct. 2407, 421 U.S. 1004, 44 L.Ed.2d 673, rehearing denied 96 S.Ct. 160, 423 U.S. 885, 46 L.Ed.2d 116.

While the dismissal at close of government's case of the substantive narcotics count against defendant appeared to be inconsistent with subsequent judgment convicting defendant on narcotics conspiracy count, the inconsistency did not deprive defendant of his rights as he was not exposed to jeopardy twice. U. S. v. Mallah, C.A.2 (N.Y.) 1974, 503 F.2d 971, certiorari denied 95 S.Ct. 1425, 420 U.S. 995, 43 L.Ed.2d 671.

Where new indictment was identical to first except that additional overt acts were alleged under conspiracy count, dismissal of first indictment and reindictment, at a time when no jury had been sworn, did not constitute double jeopardy. U. S. v. Mendoza, C.A.5 (Tex.) 1972, 473 F.2d 692.

As the evidence at defendant's 1965 trial, at which he was convicted of the interstate transportation of government bearer bonds obtained by fraud, wire fraud and conspiracy, was materially different from the evidence at 1959 trial, at which he was convicted of concealing government bearer bonds from trustee in bankruptcy, interstate transportation of those bonds and mail fraud, and as the same evidence was not required to sustain both of the interstate transportation charges, a plea of double jeopardy was not available to defendant at his second trial, notwithstanding his claim that the bonds were the same in both cases except for denominational changes. U. S. v. Engle, C.A.6 (Ohio) 1972, 458 F.2d 1021, certiorari denied 93 S.Ct. 154, 409 U.S. 863, 34 L.Ed.2d 111.

Defendant's convictions on both the substantive count of inducing another to import narcotics and the count of

conspiracy to smuggle drugs did not constitute double jeopardy since the offenses were not identical in that the agreement was the essence of the conspiracy and defendant's contribution of funds to facilitate smuggling by another was essence of the substantive crime, even though both the conspiracy and substantive counts were charged under the same statute. U. S. v. Sarno, C.A.1 (Mass.) 1972, 456 F.2d 875.

Crime of conspiracy is separate and distinct offense from substantive one and sanctions of double jeopardy are ordinarily not brought into play by conviction for both. Matthews v. U. S., C.A.5 (Tex.) 1969, 407 F.2d 1371, certiorari denied 90 S.Ct. 2177, 398 U.S. 968, 26 L.Ed.2d 554, certiorari denied 90 S.Ct. 2178, 398 U.S. 968, 26 L.Ed.2d 554, rehearing denied 91 S.Ct. 26, 400 U.S. 857, 27 L.Ed.2d 97.

In prosecution in federal District Court for knowingly transporting a stolen motor vehicle in interstate and foreign commerce and for conspiring to do so, prosecution witness was properly permitted to testify concerning alleged participation by defendant in purchase and registration of another stolen automobile to prove guilty knowledge, over objection that testimony subjected him to double jeopardy because he had previously been acquitted in state court of charge of receiving other stolen automobile, or, alternatively, that federal government was collaterally estopped from presenting testimony, since essential elements of "double jeopardy" and "collateral estoppel" were not present. U. S. v. Feinberg, C.A.2 (N.Y.) 1967, 383 F.2d 60, certiorari denied 88 S.Ct. 788, 389 U.S. 1044, 19 L.Ed.2d 836.

Defendant convicted for violating laws of Allied High Commissioner for conspiring to take bribes while employee of federal agency could not properly be convicted of conspiring to defraud the United States for same conduct and second conviction violated defendant's constitutional right to be free of successive prosecutions for same offense. Harlow v. U. S., C.A.5 (Tex.) 1962, 301 F.2d 361, certiorari denied 83 S.Ct. 25, 371 U.S. 814, 9 L.Ed.2d 56, rehearing denied 83 S.Ct. 204, 371 U.S. 906, 9 L.Ed.2d 167.

Where reason that defendants were tried on substantive charges only and were not tried on conspiracy counts was because they had theretofore been convicted of a conspiracy involving the same allegations, determination in favor of defendants on conspiracy counts did not entitle them to benefit of rule of autrefois acquit. U. S. v. Ward, C.C.A.3 (Pa.) 1948, 168 F.2d 226.

A conspiracy to commit a substantive offense and the substantive offense itself constitute separate offenses, and prosecution and sentence of a defendant both for the conspiracy and the substantive offense do not subject him to double jeopardy or void the indictment. Morrison v. Hunter, C.C.A.10 (Kan.) 1947, 161 F.2d 723.

Even though indictment charging conspiracy to obstruct justice was based on conspiracy which was entered into at a time when there was no proceeding pending in federal district court, where the conspiracy continued into a period when there were proceedings pending in that court, and acts in furtherance of the conspiracy were committed both prior to and after the commencement of such proceedings, the indictment which charged existence of a conspiracy after the inception of the proceeding, could be substained, since the defendants were not misled and were not in any danger of being put twice in jeopardy. U.S. v. Perlstein, C.C.A.3 (N.J.) 1942, 126 F.2d 789, certiorari denied 62 S.Ct. 1106, 316 U.S. 678, 86 L.Ed. 1752.

In prosecution for conspiracy to violate internal revenue laws, plea of former jeopardy was properly overruled where defendant was given opportunity to make the plea good by offering proof that conspiracy charged in indictment was the same as that on which he had been first tried and defendant declined to offer such proof. Johnson v. U.S., C.C.A.5 (Ga.) 1941, 124 F.2d 101.

Acquittal of county treasurer of substantive counts charging making false entries in books and reports of national bank, and aiding, abetting, inciting, counseling, and procuring such offense, was no bar to his conviction under conspiracy count. Curtis v. U.S., C.C.A.10 (Colo.) 1933, 67 F.2d 943.

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Accused acquitted on substantive counts relating to making false entries in national bank's books and false reports, by failing to object to verdict of conviction on count charging conspiracy to commit such offenses, or to entry of judgment thereon in trial court, waived defense of autrefois acquit. Curtis v. U.S., C.C.A.10 (Colo.) 1933, 67 F.2d 943.

Acquittal of defendants under indictment charging substantive offense did not preclude conviction for conspiracy to commit such offense. Enrique Rivera v. U.S., C.C.A.1 (Puerto Rico) 1932, 57 F.2d 816.

Conviction for conspiracy to pass, utter, publish, or sell counterfeited obligations was not inconsistent with acquittal for possession of counterfeit money. Sloan v. U.S., C.C.A.8 (Mo.) 1929, 31 F.2d 902.

Acquittal of substantive offense was no defense to indictment for conspiracy to commit other related offenses. Woodman v. U.S., C.C.A.5 (Tex.) 1929, 30 F.2d 482, certiorari denied 49 S.Ct. 351, 279 U.S. 855, 73 L.Ed. 997.

A prosecution for conspiracy to commit one or less number of offenses charged in former indictment for conspiracy is not authorized. Powe v. U. S., C.C.A.5 (Ala.) 1926, 11 F.2d 598.

There may be a conviction for a conspiracy to commit an offense and a conviction for the consummated offense which was the object of the conspiracy. Lewis v. U.S., C.C.A.9 (Wash.) 1925, 6 F.2d 222.

In an indictment for conspiracy unlawfully to purchase and transport intoxicating liquor "without obtaining a permit so to do, that is to say, upon a false, forged, and fictitious permit," the averment quoted was not required to be proved, and was regarded as surplusage, and a prosecution on such indictment is a bar to a prosecution on a second indictment charging the same conspiracy unlawfully to purchase, transport, possess, and sell the liquor for beverage purposes. U.S. v. Weiss, N.D.Ill.1923, 293 F. 992.

Acquittal of a defendant on an indictment for conspiracy to commit an offense does not, as a matter of law, bar a prosecution against him for aiding and abetting his former co-defendant to commit the same substantive offense. Louie v. U.S., C.C.A.9 (Wash.) 1914, 218 F. 36, 134 C.C.A. 58.

An indictment under former § 88 of this title [now this section], charging a defendant with conspiring to utter as true false naturalization certificates charged an offense different from that under the latter section, and hence an acquittal on the indictment for such conspiracy was not a bar to a subsequent prosecution for the offense of uttering, etc. Berkowitz v. U S, C.C.A.3 (Pa.) 1899, 93 F. 452, 35 C.C.A. 379.

Fact that defendant was acquitted as to substantive crime of obstructing interstate commerce by robbery, did not preclude his conviction of conspiracy to commit the crime. U. S. v. Nedley, W.D.Pa.1957, 153 F.Supp. 887, reversed 255 F.2d 350.

The commission of a substantive offense and a conspiracy to commit it are distinct crimes and a plea of double jeopardy is no defense to a conviction for both. U. S. v. Petite, D.C.Md.1957, 147 F.Supp. 791, affirmed 262 F.2d 788, certiorari granted 79 S.Ct. 1293, 360 U.S. 908, 3 L.Ed.2d 1259, remanded on other grounds 80 S.Ct. 450, 361 U.S. 529, 4 L.Ed.2d 490.

Deposit for collection of falsely made check purportedly drawn upon bank in another state, may constitute three separate federal offenses, i.e., mail fraud, violation of Stolen Property Act and, when done in concert by two or more persons, conspiracy; and since elements of each offense are different prosecution for all does not constitute double jeopardy. U. S. v. Solomon, S.D.Ill.1959, 26 F.R.D. 397.

819. ---- Separate conspiracies, double jeopardy, defenses

When applying *Blockburger* test to determine whether Double Jeopardy Clause bars conviction, under both general federal conspiracy statute and specific conspiracy statute, of defendant who engaged in single overall conspiracy, element that court must consider under general statute is not "any offense against the United States," but rather specific substantive offense that defendant is alleged to have conspired to commit; that substantive offense is designated in count of indictment charging defendant; overruling *United States v. Alerta,* 96 F.3d 1230. U.S. v. Arlt, C.A.9 (Cal.) 2001, 252 F.3d 1032, certiorari denied 122 S.Ct. 841, 534 U.S. 1094, 151 L.Ed.2d 720. Double Jeopardy 151(2)

Indictment charging conspiracy to impede or impair due administration of Internal Revenue Service (IRS) in ascertainment, computation, assessment and collection of taxes, and conspiracy to commit mail fraud charged separate and distinct violations of separate and distinct provisions of conspiracy statute and thus did not violate double jeopardy; former count charged violation of "defraud" provision, while latter count charged violation of "offense" provision of conspiracy statute, and each count required proof of element that the other did not. U.S. v. Ervasti, C.A.8 (Minn.) 2000, 201 F.3d 1029, rehearing denied. Double Jeopardy 151(1)

Double jeopardy clause did not bar prosecution of defendants for conspiracy to defraud Internal Revenue Service (IRS) following their acquittal on charges of conspiracy to distribute marijuana; primary object of tax conspiracy was to defraud United States, but primary object of marijuana conspiracy was to possess and distribute marijuana, and conspiracies were premised on separate statutory provisions. U.S. v. Morris, C.A.1 (Me.) 1996, 99 F.3d 476. Double Jeopardy 151(2)

Double jeopardy did not preclude prosecution of defendant for conspiracy and making false statements to the United States where instant prosecution involved different parties than prior prosecution for similar offenses and, in the prior conspiracy, defendant acted in his position as loan officer to arrange for phony "strawbuyers" to take temporary title to certain property whereas, in the instant prosecution, his role was that if purchaser of the properties. U.S. v. Sasser, C.A.10 (Okla.) 1992, 974 F.2d 1544, certiorari denied 113 S.Ct. 1063, 506 U.S. 1085, 122 L.Ed.2d 368.

Double jeopardy did not bar convictions for both conspiring to defraud United States and conspiring to defraud United States by obtaining payment of false claims, even though convictions arose from single conspiracy; statutes were intended to address two different crimes, since general conspiracy statute required proof of overt act. U.S. v. Lanier, C.A.11 (Ga.) 1991, 920 F.2d 887, rehearing denied 931 F.2d 901, certiorari denied 112 S.Ct. 208, 502 U.S. 872, 116 L.Ed.2d 166. Double Jeopardy 151(2)

There was only one conspiracy, so that Oregon prosecution barred subsequent prosecution in Texas, where there was a significant overlap of four years in the two indictments, the Oregon indictment named defendant and three others, two of whom were joined with defendant and 19 others in the Texas indictment, the same statutes were alleged to have been violated, and both indictments targeted a single conspiracy to sell illegal tax schemes and detailed similar activities. U.S. v. Bryan, C.A.5 (Tex.) 1990, 896 F.2d 68, rehearing denied, certiorari denied 111 S.Ct. 133, 498 U.S. 847, 112 L.Ed.2d 101, certiorari denied 111 S.Ct. 76, 498 U.S. 824, 112 L.Ed.2d 49.

Oklahoma trial on charges of conspiring to violate section 1343 of this title and make false statements to influence action of a federally insured bank under section 1014 of Title 18 would not place defendants in double jeopardy notwithstanding prior Colorado conviction of conspiring to transport stolen or fraudulently obtained securities and making a false statement to a federally insured bank where prior indictment mentioned four banks while instant indictment involved only one bank and although there was a time-period overlap, there was no showing that there was but one conspiracy. U. S. v. Puckett, C.A.10 (Okla.) 1982, 692 F.2d 663, certiorari denied 103 S.Ct. 579, 459 U.S. 1091, 74 L.Ed.2d 939, certiorari denied 103 S.Ct. 1276, 460 U.S. 1024, 75 L.Ed.2d 497.

Prosecution for alleged conspiracy to violate Small Business Investment Act, section 661 et seq. of Title 15, was not barred by former jeopardy doctrine due to conspiracy judgment in prior prosecution where, apart from

possibility that primary conspirators had but a single object, that of getting as much money from Small Business Administration as possible, secondary conspirators, who furnished temporary money, were concerned with only one objective, transactions were not dependent on each other, there was no knowledge of involvement of others by those who provided temporary capital, and government did not act with any bad faith motive in drawing indictments with reference to time of execution of individual conspiracies. U. S. v. McMurray, C.A.10 (Utah) 1980, 656 F.2d 540, on rehearing 680 F.2d 695.

Defendant's acquittal under previous indictment of conspiracy to smuggle amygdalin would not support plea of double jeopardy in absence of evidence that combinations of persons named in the second indictment for conspiracy to smuggle and import merchandise, and persons named in the first indictment, were encompassed by the same agreement. U. S. v. Westover, C.A.9 (Cal.) 1975, 511 F.2d 1154, certiorari denied 95 S.Ct. 2633, 422 U.S. 1009, 45 L.Ed.2d 673.

Jury's determination in prior prosecution that defendants lacked criminal intent with respect to acts alleged in one indictment charging them with conspiracy to misapply and misapplication of federally insured bank funds, arising from transactions involving defendants and securities firm, did not preclude subsequent prosecution under second indictment for conspiracy to misapply and misapplication of federally insured bank funds arising from other transactions involving only defendants where overt acts averred in the two indictments were separate, distinct and unrelated, even though modus operandi in the two cases was practically the same, encompassing use of same bank account, and defendants were the central or core figures in both instances. U. S. v. Sarullo, C.A.6 (Tenn.) 1975, 510 F.2d 1174, certiorari denied 96 S.Ct. 64, 423 U.S. 837, 46 L.Ed.2d 55, rehearing denied 96 S.Ct. 472, 423 U.S. 1026, 46 L.Ed.2d 401, stay denied 96 S.Ct. 765, 423 U.S. 1043, 46 L.Ed.2d 632.

Acquittal of one charge of conspiracy to possess 800-pound shipment of marijuana illegally imported did not, under double jeopardy clause, bar prosecution for conspiracy to possess 2400-pound shipment brought into country at another time where the two shipments involved entirely distinct offenses and two conspiracies involved different parties, though it was contended that there was but one single conspiracy to possess marijuana. U. S. v. Hodges, C.A.5 (Tex.) 1974, 502 F.2d 586.

Where, so far as indictments indicated, the conspiracy with which defendant was charged was separate from and involved different people than conspiracy to which defendant had pled guilty, mere fact that defendant and two other persons were charged with being members of both conspiracies and that both conspiracies involved dealing in stolen credit cards and overlapped in time to some extent failed to establish any claim of double jeopardy by reason of prior plea of guilty. U. S. v. Barzie, C.A.2 (N.Y.) 1970, 433 F.2d 984, certiorari denied 91 S.Ct. 1194, 401 U.S. 975, 28 L.Ed.2d 324.

To convict party severally for being part of two conspiracies, when in reality he is only involved in one overall conspiracy, would be convicting him of same crime twice. U. S. v. Palermo, C.A.7 (Ill.) 1969, 410 F.2d 468.

Where first conspiracy existed from January 11, 1963 to April 1, 1963, and second conspiracy from November 1, 1963 to April 19, 1964, and, except for defendant and one codefendant, no other conspirators were common to both conspiracies, and illegal distilleries in each case were in separate locations, second conspiracy conviction was not barred by double jeopardy, since the two offenses were not the same in fact. Dryden v. U. S., C.A.5 (Ga.) 1968, 403 F.2d 1008.

Although two convictions of defendant were for conspiracy to transport stolen securities in interstate commerce, where one indictment charged conspiracy lasting from June 1961 to January 1962 between certain named persons and subsequent indictment charged conspiracy between other persons lasting from April 1962 to July 1962 to transport stocks stolen from a company other than that from which securities were charged to have been stolen in first indictment, conviction on second indictment was not barred on basis that defendant had been placed in jeopardy twice for the same crime. U. S. v. Edwards, C.A.2 (N.Y.) 1966, 366 F.2d 853, certiorari denied 87 S.Ct.

852, 386 U.S. 908, 17 L.Ed.2d 782, certiorari denied 87 S.Ct. 882, 386 U.S. 919, 17 L.Ed.2d 790.

In one trial there can be a conspiracy with several defendants and in the second trial there can be a different conspiracy with some of the same defendants or co-conspirators or even the same conspiracy with other, different defendants being tried for the first time, all without fatal multiplicity in any case. U. S. v. Armone, C.A.2 (N.Y.) 1966, 363 F.2d 385, certiorari denied 87 S.Ct. 391, 385 U.S. 957, 17 L.Ed.2d 303, certiorari denied 87 S.Ct. 392, 385 U.S. 957, 17 L.Ed.2d 303, certiorari denied 87 S.Ct. 398, 385 U.S. 957, 17 L.Ed.2d 303.

Record revealed that defendant's prior conspiracy conviction was separate in law and fact from conspiracy to violate federal narcotics laws involved in instant prosecution so that instant prosecution did not constitute double jeopardy. U. S. v. Bentvena, C.A.2 (N.Y.) 1963, 319 F.2d 916, certiorari denied 84 S.Ct. 345, 375 U.S. 940, 11 L.Ed.2d 271, rehearing denied 90 S.Ct. 894, 397 U.S. 928, 25 L.Ed.2d 108, rehearing denied 84 S.Ct. 515, 375 U.S. 989, 11 L.Ed.2d 476, certiorari denied 84 S.Ct. 346, 375 U.S. 940, 11 L.Ed.2d 271, rehearing denied 84 S.Ct. 1162, 377 U.S. 913, 12 L.Ed.2d 183, certiorari denied 84 S.Ct. 353, 375 U.S. 940, 11 L.Ed.2d 272, certiorari denied 84 S.Ct. 354, 375 U.S. 940, 11 L.Ed.2d 272, certiorari denied 84 S.Ct. 355, 375 U.S. 940, 11 L.Ed.2d 272, certiorari denied 84 S.Ct. 360, 375 U.S. 940, 11 L.Ed.2d 272.

In prosecution for conspiracy to evade income taxes and conspiracy to obstruct Treasury Department in collection of revenue, wherein trial court entered judgment of acquittal as to count charging conspiracy to evade income taxes, evidence in support of that count was admissible under count alleging conspiracy to obstruct Treasury Department, and prosecution of defendant under such count did not amount to double jeopardy. U.S. v. Klein, C.A.2 (N.Y.) 1957, 247 F.2d 908, certiorari denied 78 S.Ct. 365, 355 U.S. 924, 2 L.Ed.2d 354.

Where indictment charged defendants conspired to violate laws of United States respecting rationing of sugar and control of sugar prices, prior indictment charged a conspiracy by means of a certain scheme to falsify, conceal and cover up material facts within jurisdiction of Office of Price Administration to be effected by false sugar ration deposit slips and false entries of credit in sugar account in bank and evidence warranted conclusion that indictments were based on separate agreements and distinct conspiracies defendants were not twice put in jeopardy for the same offense. Bartlett v. United States, C.C.A.10 (N.M.) 1948, 166 F.2d 928.

In prosecution for conspiracy to violate internal revenue laws, plea of "former jeopardy" was properly overruled where evidence showed that conspiracy with which defendant was charged was an entirely different conspiracy as to persons and events from the one as to which jeopardy had attached. Johnson v. U.S., C.C.A.5 (Ga.) 1941, 124 F.2d 101.

Where the accused and others conspired to further a scheme to defraud through the post office department, each overt act of mailing a letter pursuant to such scheme or withdrawing a letter from the post office warranted a charge of conspiracy to commit such offense, so that an indictment therefor would not shield from a subsequent indictment for another conspiracy of the same person to commit another and additional offense, though of the same kind. Francis v. U S, C.C.A.3 (Pa.) 1907, 152 F. 155, 81 C.C.A. 407, certiorari denied 27 S.Ct. 797, 206 U.S. 565, 51 L.Ed. 1191.

Defendant's convictions for conspiracy to distribute cocaine, and for conspiracy to commit crime against United States, the crime being money laundering or engaging in illegal monetary transactions, did not result in defendant's being convicted twice for same conduct; proof required to convict him of each conspiracy was different. U.S. v. Nesser, W.D.Pa.1996, 939 F.Supp. 417. Double Jeopardy 151(2)

To determine whether one conspiracy is actually the same offense as another, court must consider: time periods covered by the alleged conspiracies; the places where the conspiracies allegedly occurred; persons charged as coconspirators; overt acts alleged to have been committed in furtherance of the conspiracies, as well as other descriptions addressing nature and scope of activities being prosecuted; and substantive statutes alleged to have

been violated. U.S. v. Hawes, E.D.N.C.1991, 774 F.Supp. 965. Conspiracy 24(2)

820. ---- Undiscovered crime, double jeopardy, defenses

Prosecution for conspiracy in connection with efforts to obtain immigration visas could not go forward under the "undiscovered crime" exception to the double jeopardy rule if it were shown that the conspiracy with which defendant was charged was the same conspiracy for which he had previously been prosecuted where the Government knew of the conspiracy at the time that it began the first prosecution, although it may not have been award of the extent of defendant's involvement. U.S. v. Ragins, C.A.4 (S.C.) 1988, 840 F.2d 1184, on remand 702 F.Supp. 1249.

821. ---- Overt acts, double jeopardy, defenses

Allegation of an independent crime as an overt act of a conspiracy does not immunize a defendant, on double jeopardy grounds, from an indictment on that separate offense. U. S. v. Phillips, C.A.5 (Fla.) 1981, 664 F.2d 971, certiorari denied 102 S.Ct. 2965, 457 U.S. 1136, 73 L.Ed.2d 1354, certiorari denied 103 S.Ct. 208, 459 U.S. 906, 74 L.Ed.2d 166.

In prosecution for conspiracy to sell heroin, inclusion of transaction, for which defendant had been convicted and sentenced for substantive crime of sale of heroin in another jurisdiction in indictment as overt act and receiving of evidence thereon, were proper and did not constitute double jeopardy. U. S. v. Campisi, C.A.2 (N.Y.) 1957, 248 F.2d 102, certiorari denied 78 S.Ct. 266, 355 U.S. 892, 2 L.Ed.2d 191.

Where certain defendant was convicted in federal District Court for Southern District of New York for conspiracy to violate and for substantive violations of the narcotics law of the United States, and the overt acts charged in New York indictment were the same as those charged in subsequent indictment under which defendant was prosecuted in federal District Court in New Jersey, such defendant's plea of double jeopardy should have been sustained. U.S. v. Cohen, C.A.3 (N.J.) 1952, 197 F.2d 26.

Conviction under indictment for conspiracy is not a bar to prosecution on an indictment alleging a different overt act. Ferracane v. U. S., C.C.A.7 (Ind.) 1928, 29 F.2d 691.

An acquittal on the charge of committing one of the overt acts alleged in the indictment is not a bar to a prosecution for a conspiracy to commit such act. Moorehead v. U.S., C.C.A.5 (Miss.) 1921, 270 F. 210, petition dismissed 42 S.Ct. 52, 257 U.S. 643, 66 L.Ed. 412.

822. ---- Lesser included offenses, double jeopardy, defenses

Even assuming first count's conspiracy charge, on which the jury deadlocked, was contained in the Pinkerton vicarious liability counts, on which defendant was acquitted, defendant's double jeopardy right would not be violated by retrial of the conspiracy count, since defendant was subjected to only one trial in which the conspiracy and vicarious liability counts were tried simultaneously, and since simultaneous jeopardy for greater and lesser included offenses is clearly proper. U.S. v. Larkin, C.A.5 (Fla.) 1979, 605 F.2d 1360, opinion withdrawn in part on rehearing 611 F.2d 585, certiorari denied 100 S.Ct. 2160, 446 U.S. 939, 64 L.Ed.2d 793.

823. ---- Retrial, double jeopardy, defenses

In view of fact that conviction for drug conspiracy does not require proof of an overt act while conviction for a firearms conspiracy does, the two offenses are separate and defendants who were charged in connection with a drugs-for-weapons scheme and who were acquitted of the drug conspiracy charges, and as to whom jury could not reach a verdict on firearms conspiracy charges, could be retried on the firearms conspiracy charges. U.S. v.

Mulherin, C.A.11 (Ga.) 1983, 710 F.2d 731, certiorari denied 104 S.Ct. 402, 464 U.S. 964, 78 L.Ed.2d 343, certiorari denied 104 S.Ct. 1305, 465 U.S. 1034, 79 L.Ed.2d 703.

Although one of grounds for reversal of convictions of transporting in commerce stolen securities of value of $5,000 or more was improper denial of each defendant's motion for judgment of acquittal filed on ground that there was insufficient showing that the securities were worth $5,000 or more, if government could produce additional relevant evidence of market value of stock and elected to require defendants to stand trial again, that would not place them twice in jeopardy in violation of U.S.C.A. Const. Amend. 5. U. S. v. Nall, C.A.5 (Tex.) 1971, 437 F.2d 1177.

Defendant was not entitled to reversal of conviction of conspiracy to make false bank entries on theory that because his motion for directed verdict of acquittal at first trial, in which jury was unable to reach verdict, was improperly denied, his second trial placed him twice in jeopardy for same offense, in view of sufficient evidence at each trial to warrant submission of issue of defendant's guilt to jury. U. S. v. Harris, C.A.4 (Va.) 1970, 433 F.2d 333. Double Jeopardy 98

Mistrial at defendant's first trial in prosecution for conspiracy to commit an offense against the United States and for receiving stolen government property did not bar second trial upon same indictment where trial court had not abused its discretion by its declaration of mistrial. Grogan v. U. S., C.A.5 (Ga.) 1967, 394 F.2d 287, certiorari denied 89 S.Ct. 97, 393 U.S. 830, 21 L.Ed.2d 100.

824. ---- Court martial, double jeopardy, defenses

Prosecution for conspiring to defraud by depriving government of faithful services of army officer was not barred on ground of double jeopardy by court martial conviction of violation of §§ 1567 and 1568 of Title 10, as to each of which specifications set forth receipt of same payments of money for effecting same transfers of enlisted men that were involved in the conspiracy indictment. U.S. v. Bayer, U.S.N.Y.1947, 67 S.Ct. 1394, 331 U.S. 532, 91 L.Ed. 1654, rehearing denied 68 S.Ct. 29, 332 U.S. 785, 92 L.Ed. 368.

825. ---- Sentence, double jeopardy, defenses

Separate sentences imposed on defendants for arson, conspiracy to commit arson, and using fire to commit this conspiracy violated double jeopardy clause, on theory that once government proved the arson and conspiracy-to-commit arson counts, no further proof was necessary to support defendants' conviction of using fire to commit their conspiracy; there was no suggestion that defendants had used fire other than as overt act supporting conspiracy charge, such as to communicate by smoke signals between themselves. U.S. v. Corona, C.A.5 (La.) 1997, 108 F.3d 565, modified on denial of rehearing. Double Jeopardy 151(4)

Double jeopardy did not preclude imposition of sentences for both violation of general conspiracy statute and the Hobbs Act conspiracy provision; Hobbs Act reaches any person who conspires to obstruct the movement of an article in interstate commerce, which need not be proven under the general conspiracy statute, and general conspiracy statute requires proof of an overt act in furtherance of the conspiracy, which is unnecessary for a Hobbs Act conspiracy conviction. U.S. v. Maldonado-Rivera, C.A.2 (Conn.) 1990, 922 F.2d 934, certiorari denied 111 S.Ct. 2811, 501 U.S. 1211, 115 L.Ed.2d 984, certiorari denied 111 S.Ct. 2858, 501 U.S. 1233, 115 L.Ed.2d 1025, certiorari denied 111 S.Ct. 2858, 501 U.S. 1233, 115 L.Ed.2d 1026.

Sentence imposed upon second defendant convicted of conspiracy and bribery of a Federal Bureau of Investigation employee did not violate the constitutional prohibition against double jeopardy, in that each of the offenses for which defendant was sentenced required proof of at least one element not required for conviction of the other. U.S. v. Lanci, C.A.6 (Ohio) 1982, 669 F.2d 391, certiorari denied 102 S.Ct. 2960, 457 U.S. 1134, 73 L.Ed.2d 1350
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18 U.S.C.A. § 371

Defendants were not subjected to double jeopardy by conviction, with consecutive sentences, for conspiracy and for related substantive offenses with implied accusation of collusion between defendants as aiders and abettors, although evidence identical to that adduced to establish conspiracy was used to convict on substantive counts. U. S. v. McGowan, C.A.4 (Va.) 1970, 423 F.2d 413.

Imposition of consecutive sentences following pleas of guilty to charges of substantive offense of taking money from bank with intent to steal and of conspiracy to commit substantive offense did not constitute double jeopardy. Pegram v. U. S., C.A.8 (Iowa) 1966, 361 F.2d 820.

826. Due process, defenses

Due process defense of outrageous government conduct did not require acquittal on charge of conspiracy to commit murder for hire, even if government engaged in outrageous conduct after scheduled deadline for the killings; defendant had been present and willingly participated in initial discussion between his father and undercover FBI agent regarding planned murder, and his partial payment to agent as killer was overt act. U.S. v. Pardue, C.A.8 (Ark.) 1993, 983 F.2d 835, rehearing denied, certiorari denied 113 S.Ct. 3043, 509 U.S. 925, 125 L.Ed.2d 728.

Actions of Government in investigating and promoting criminal enterprise involving escape plan from federal penitentiary were not so overwhelming that they went beyond boundaries of acceptable governmental activity so as to constitute due process violation, even though two conspirators became government informants during conspiracy, where both conspirators were intricately involved in conspiracy long before they began cooperating with Federal Bureau of Investigation. U.S. v. Sababu, C.A.7 (Ill.) 1989, 891 F.2d 1308.

827. Entrapment, defenses

Government ruse to see if defendant and his father would further conspiracy to fruition of murder for hire was permissible under law of entrapment. U.S. v. Pardue, C.A.8 (Ark.) 1993, 983 F.2d 835, rehearing denied, certiorari denied 113 S.Ct. 3043, 509 U.S. 925, 125 L.Ed.2d 728.

Trial court correctly forced defense counsel to choose, in his arguments to the jury, between the defense that the Government had illegally induced defendant to knowingly participate in an illegal conspiracy, and the defense that there was no conspiracy with persons other than Government agents, in that the defenses were inconsistent and necessarily disproved one another. U.S. v. Smith, C.A.11 (Fla.) 1985, 757 F.2d 1161, rehearing denied 763 F.2d 419.

Conviction of conspiracy to travel in interstate commerce with intent to distribute cocaine was not required to be reversed as result of contingent fee agreement providing informants with motive to coerce defendant to enter into drug deal, as defendant did not allege that Government had targeted him particularly for conviction or that informers specifically were directed to implicate him. U.S. v. Yater, C.A.5 (La.) 1985, 756 F.2d 1058, certiorari denied 106 S.Ct. 225, 474 U.S. 901, 88 L.Ed.2d 226.

Where no agent of government and no one acting on government's behalf ever suggested to defendant that condition for earning commission on casino project was his willingness to participate in bribing of congressmen, and, when defendant's role became known to the government operators, they simply invited him to continue locating willing congressmen, without offering any inducement, other than whatever nominal share of the bribe payments defendant was able to obtain from another individual, entrapment was not available as a defense, nor was there excessive or outrageous government conduct as a defense. U.S. v. Silvestri, C.A.2 (N.Y.) 1983, 719 F.2d 577 .

In prosecution for conspiring to commit offense against United States by transporting stolen goods in interstate

commerce and willfully infringing motion picture copyrights, government proved that one defendant was predisposed to commit crime and, therefore, that defendant was not entrapped. U.S. v. Belmont, C.A.9 (Cal.) 1983, 715 F.2d 459, 222 U.S.P.Q. 463, certiorari denied 104 S.Ct. 1275, 465 U.S. 1022, 79 L.Ed.2d 679, 224 U.S.P.Q. 616, certiorari denied 104 S.Ct. 2657, 467 U.S. 1215, 81 L.Ed.2d 364.

Despite defendant's objections to, inter alia, government agents' use of the informant, their informing him of possible reward for his aid, their financing drinks during meetings, their supplying getaway vehicle and their providing funds for disguises, government activities were not of a character warranting reversal of defendant's convictions of conspiracy to attempt bank robbery and attempted bank robbery. U. S. v. Dearmore, C.A.9 (Or.) 1982, 672 F.2d 738.

Entrapment was not a defense in prosecution for conspiracy arising out of firearms registration, licensing and taxing violations, where government agents, although willing and eager buyers, did not initiate criminal activity of which defendants were convicted. U. S. v. Bradsby, C.A.5 (Tex.) 1980, 628 F.2d 901.

Where government agents were led to defendant by individual shown to be hub of "wheel" conspiracy and defendant sold agents a weapon during their first meeting and thereafter continued to do business with the agents with little encouragement and even proposed further illicit transactions, it could not be said that defendant was entrapped. U. S. v. Grassi, C.A.5 (Fla.) 1980, 616 F.2d 1295, rehearing denied 624 F.2d 1098, certiorari denied 101 S.Ct. 363, 449 U.S. 956, 66 L.Ed.2d 220.

Defense of entrapment is available where defendant denies that he was party to or knew of conspiracy with which he is charged, but admits commission of one of the alleged overt acts. U. S. v. Greenfield, C.A.5 (Ala.) 1977, 554 F.2d 179.

Where the Government's own case in chief injects substantial evidence to support a theory of entrapment, a defendant may argue simultaneously that he was not a member of alleged conspiracy and that he was entrapped to commit overt acts charged in the indictment, but otherwise a defendant may not plead entrapment and nonparticipation in the alternative. U. S. v. Morrow, C.A.5 (Fla.) 1976, 537 F.2d 120, rehearing denied 541 F.2d 282, certiorari denied 97 S.Ct. 1602, 430 U.S. 956, 51 L.Ed.2d 806. Criminal Law 269

Even if prosecution witnesses had been working for government during period of his participation in conspiracy to perpetrate securities fraud, defendant in prosecution for such securities fraud would not have viable entrapment claim where evidence of defendant's predisposition was overwhelming. U. S. v. Koss, C.A.2 (N.Y.) 1974, 506 F.2d 1103, certiorari denied 95 S.Ct. 1402, 420 U.S. 977, 43 L.Ed.2d 657, certiorari denied 95 S.Ct. 1565, 421 U.S. 911, 43 L.Ed.2d 776.

Defendants charged with conspiring to transport stolen shirts in interstate commerce were not entrapped as a matter of law despite involvement of investigators to the extent of suggesting and arranging for transportation, where the arrangement was made by private investigators rather than governmental agents and where, in any event, the conduct of the investigators merely afforded opportunities and facilities for the commission of the offense in a continuing illegal enterprise without initiating the criminal design in the defendants' minds. U. S. v. Maddox, C.A.5 (Ala.) 1974, 492 F.2d 104, certiorari denied 95 S.Ct. 92, 419 U.S. 851, 42 L.Ed.2d 82.

Fact that undercover government agent had supplied means for commission of crimes of conspiracy, obstruction of justice and bribery by furnishing material purportedly related to grand jury investigation and obtained through contact in United States attorney's office to defendant who paid for the material obtained did not preclude conviction of those offenses on theory of entrapment. U. S. v. Rosner, C.A.2 (N.Y.) 1973, 485 F.2d 1213, certiorari denied 94 S.Ct. 3080, 417 U.S. 950, 41 L.Ed.2d 672.

Where no government official implanted in defendant's mind the disposition to commit crime of conspiring to

defraud agency of the United States Government by intentionally selling to agent a non-narcotic substance represented to be heroin, and where factual pattern of sale in question did not indicate impermissibly vigorous government involvement, defendant was not entitled to defense of entrapment. U. S. v. Morales, C.A.5 (Tex.) 1973, 477 F.2d 1309.

Proffered entrapment instructions were not required where evidence did not reveal that any government agent induced defendant to commit offense but rather that informer offered defendant opportunity to avoid participation. U. S. v. Aloisio, C.A.7 (Ill.) 1971, 440 F.2d 705, certiorari denied 92 S.Ct. 49, 404 U.S. 824, 30 L.Ed.2d 51, certiorari denied 92 S.Ct. 69, 404 U.S. 824, 30 L.Ed.2d 51.

Evidence that FBI agents had knowledge of a possible conspiracy to transport stolen trucks in foreign commerce before an informer approached defendant as to possibility of purchasing such trucks did not prove entrapment as a matter of law, nor was it important that government set stage and provided aid, incentive, and opportunity for commission of crime, absent proof that defendant had done that which he would never have done had it not been for encouragement of government agents or informers. U. S. v. Groessel, C.A.5 (Tex.) 1971, 440 F.2d 602, certiorari denied 91 S.Ct. 2263, 403 U.S. 933, 29 L.Ed.2d 713.

In prosecution for offering gratuity to inspector of Internal Revenue service and for conspiracy to bribe, evidence was sufficient to permit finding that defendant possessed propensity to offer bribe and gratuity, and therefore refuted contention that defense of entrapment was established as matter of law. U. S. v. Viviano, C.A.2 (N.Y.) 1971, 437 F.2d 295, certiorari denied 91 S.Ct. 1659, 402 U.S. 983, 29 L.Ed.2d 149.

When the defendant denies both participation in conspiracy and having committed any of the overt criminal acts charged, necessary prerequisite for entrapment instruction is that the government's own evidence establishes entrapment as matter of law. Sendejas v. U. S., C.A.9 (Cal.) 1970, 428 F.2d 1040, certiorari denied 91 S.Ct. 122, 400 U.S. 879, 27 L.Ed.2d 116, certiorari denied 91 S.Ct. 127, 400 U.S. 879, 27 L.Ed.2d 116.

Refusal, in prosecution of internal revenue agent for various counts growing out of alleged bribery of fellow agent, to permit defendant, who raised entrapment defense, to cross-examine person, who had assumed role of dishonest inspector, and whom defendant had allegedly bribed, as to name of "acquaintance" who introduced inspector to defendant co-conspirator, was not error where inquiry was permitted into whether such "acquaintance" was government agent and into inspector's "method of operation" generally, the facts relevant to entrapment defense. U. S. v. Weiser, C.A.2 (N.Y.) 1969, 428 F.2d 932, certiorari denied 91 S.Ct. 1606, 402 U.S. 949, 29 L.Ed.2d 119.

Actions of undercover agents in persistently persuading and encouraging one of the defendants to meet and discuss counterfeit currency, and action when undercover agent allegedly threatened that defendant in order to insure his attendance at meeting of alleged conspirators did not constitute defense of "entrapment" in prosecution for conspiracy to transfer or deliver counterfeit government obligations. U.S. v. Lefner, C.A.9 (Cal.) 1970, 422 F.2d 1021.

In prosecution for conspiring to travel in interstate commerce with intent to carry on unlawful activity involving extortion, there was no evidence in record that would establish defense of entrapment. U. S. v. Fellabaum, C.A.7 (Ill.) 1969, 408 F.2d 220, certiorari denied 90 S.Ct. 125, 396 U.S. 858, 24 L.Ed.2d 109, certiorari denied 90 S.Ct. 55, 396 U.S. 818, 24 L.Ed.2d 69.

Defendant charged with the possession, sale and delivery of counterfeit money and with conspiracy was precluded from raising for the first time on appeal the defense of entrapment, as he failed to make a timely suggestion that entrapment was an issue in the case. U. S. v. Bishop, C.A.2 (N.Y.) 1966, 367 F.2d 806.

Evidence in prosecution for conspiracy involving the failure to pay special tax on retail dealerships in liquor showed that contrary to entrapment claim of defendant, government agent did not put defendant under such

extraordinary temptation or inducement as to entrap him. Brown v. U. S., C.A.5 (Fla.) 1966, 367 F.2d 145, certiorari denied 87 S.Ct. 2082, 387 U.S. 947, 18 L.Ed.2d 1334.

Defense of entrapment asserted by defendants charged with conspiring to violate federal narcotics laws and making unlawful sales of narcotic drugs was not established as a matter of law in government's case. U. S. v. Clarke, C.A.3 (Pa.) 1965, 343 F.2d 90.

Where evidence showing defendants' participation in conspiracy long before government agents knew about it or entered case and showing that government agents merely exposed and proved existing illegal conspiracy was uncontradicted, trial court was justified in refusing to submit defense of entrapment to jury. U. S. v. Gosser, C.A.6 (Ohio) 1964, 339 F.2d 102, certiorari denied 86 S.Ct. 44, 382 U.S. 819, 15 L.Ed.2d 65, rehearing denied 86 S.Ct. 309, 382 U.S. 933, 15 L.Ed.2d 345, certiorari denied 86 S.Ct. 44, 382 U.S. 819, 15 L.Ed.2d 66, rehearing denied 86 S.Ct. 285, 382 U.S. 922, 15 L.Ed.2d 237.

Where defendants and another person were engaged in conspiracy to obtain illegally copies of confidential documents in Intelligence Division of Internal Revenue Service long before government agents knew about it or entered case, and agents merely used such other person to expose and prove illegal conspiracy, there was no entrapment. U. S. v. Gosser, C.A.6 (Ohio) 1964, 339 F.2d 102, certiorari denied 86 S.Ct. 44, 382 U.S. 819, 15 L.Ed.2d 65, rehearing denied 86 S.Ct. 309, 382 U.S. 933, 15 L.Ed.2d 345, certiorari denied 86 S.Ct. 44, 382 U.S. 819, 15 L.Ed.2d 66, rehearing denied 86 S.Ct. 285, 382 U.S. 922, 15 L.Ed.2d 237.

In prosecution for conspiracy to commit an offense against or to defraud the United States and for receipt and concealment of merchandise brought into United States contrary to § 545 of this title, where record disclosed that German seamen, while attempting to make deliveries of contraband whisky to defendant, were seized by customs officials who then allowed a seaman to complete delivery to defendant who, seaman stated had agreed to purchase liquor knowing it was contraband before seamen had any contact with government officials, defense of entrapment presented an issue for the jury. Badon v. U.S., C.A.5 (La.) 1959, 269 F.2d 75, certiorari denied 80 S.Ct. 199, 361 U.S. 894, 4 L.Ed.2d 152.

Defendant in a prosecution for conspiracy concerning the distilling of nontaxpaid whiskey, could admit operating an illicit still, deny being a party to the conspiracy charge, and still claim that such overt acts as he did commit, were done as a result of entrapment. Henderson v. U.S., C.A.5 (Fla.) 1956, 237 F.2d 169.

In prosecution of defendant for conspiracy to violate Internal Revenue Code sections proscribing various activities connected with distilling of non-taxpaid whiskey, defendant was entitled to raise defense of entrapment resulting from his alleged inducement to commit federal offenses by state officer. Henderson v. U.S., C.A.5 (Fla.) 1956, 237 F.2d 169.

That one of the parties to a conspiracy was a government agent participating for purposes of entrapment does not affect the criminality of the others. De Mayo v. U.S., C.C.A.8 (Okla.) 1929, 32 F.2d 472.

If the sole overt act was done by a government officer entering the conspiracy for purpose of entrapment there can be no conviction. De Mayo v. U.S., C.C.A.8 (Okla.) 1929, 32 F.2d 472.

In prosecution for conspiracy to use mails in connection with scheme to defraud, while replies to decoy letters sent by post office inspectors are admissible to how that conspiracy actually existed, conspiracy must have existed independently of decoy letters, and conviction cannot be had where it was induced as result of such letters. Holsman v. U.S., C.C.A.9 (Cal.) 1918, 248 F. 193, 160 C.C.A. 271, certiorari denied 39 S.Ct. 258, 249 U.S. 600, 63 L.Ed. 796.

Where officers of the law incited a person to commit the crime charged, and lured him on in its consummation,

with the purpose of arresting him, the law will not authorize a verdict of guilty. Sam Yick v. U.S., C.C.A.9 (Cal.) 1917, 240 F. 60, 153 C.C.A. 96.

828. Fraud and deceit, defenses

Personal injury attorney convicted of conspiracy to commit mail and wire fraud was not entitled to reduction of value of loss to victims by the amount of valuable free services and fee reductions that the law firm provided to clients, given that the free services and reductions that the firm provided to the victims were services routinely provided to all firm clients, not just those who were defrauded. U.S. v. Hausmann, C.A.7 (Wis.) 2003, 345 F.3d 952, rehearing and suggestion for rehearing en banc denied, certiorari denied 124 S.Ct. 2412, 541 U.S. 1072, 158 L.Ed.2d 981. Sentencing And Punishment 736

That government officer, induced to contract for disposal of surplus goods by false representations, had available evidence of fraud was no defense. Falter v. U.S., C.C.A.2 (N.Y.) 1928, 23 F.2d 420, certiorari denied 48 S.Ct. 528, 277 U.S. 590, 72 L.Ed. 1003.

In prosecution for conspiracy to smuggle liquors, it is not a defense that defendants were deceived and liquor was in fact of domestic origin. Craven v. U.S., C.C.A.1 (Mass.) 1927, 22 F.2d 605, certiorari denied 48 S.Ct. 321, 276 U.S. 627, 72 L.Ed. 739.

829. Immunity, defenses

In prosecution of corporate officer for illegal extension of preference ratings and illegal diversion of textiles so procured and for conspiracy to sell textiles at prices in excess of established maximum, where officer testified under compulsion of Office of Price Administration subpoena and made disclosures which bore directly on subsequent charges of misuse of priorities and goods obtained thereby as well as the charge of conspiracy to violate Price Control Act, 50 App. § 901 et seq., officer was immune from prosecution under Compulsory Testimony Act, § 46 of Title 49, in absence of waiver of officer's privilege against self-incrimination. Smith v. United States, U.S.N.Y.1949, 69 S.Ct. 1000, 337 U.S. 137, 93 L.Ed. 1264.

Government should be held to abide by terms of promise allegedly made to defendant, who was convicted of forgery and conspiracy in another district, and who alleged that he was promised that, in exchange for his cooperation in apprehending and convicting other defendants in that district, he would not be prosecuted elsewhere for any crime arising from stolen checks, and case should be remanded for an evidentiary hearing to determine if such promise was made and, if so, by whom and of what scope. U. S. v. Carter, C.A.4 (Va.) 1972, 454 F.2d 426, appeal decided 490 F.2d 1407, certiorari denied 94 S.Ct. 2646, 417 U.S. 933, 41 L.Ed.2d 237.

In prosecution for conspiracy to sell liquor at wholesale without federal wholesaler's tax being paid, payment in 1955 by defendant of tax for preceding year and succeeding year did not provide immunity from penalties resulting from conduct prior to time of payment. Jenkins v. U.S., C.A.5 (Ga.) 1958, 253 F.2d 710.

United Nations Charter provision granting United Nations officials privileges and immunities necessary for independent exercise of their functions in connection with organization granted only functional immunity and did not clothe United Nations employee with immunity from prosecution for conspiracy to obtain defense information, and to induce a United States citizen to act illegally as a foreign agent and aiding to act illegally as a foreign agent. U. S. v. Melekh, N.D.Ill.1961, 193 F.Supp. 586.

830. Imprisonment, defenses

Imprisonment of defendant does not necessarily show his withdrawal from conspiracy. U. S. v. Borelli, C.A.2

(N.Y.) 1964, 336 F.2d 376, certiorari denied 85 S.Ct. 647, 379 U.S. 960, 13 L.Ed.2d 555.

Where a conspiracy was shown, so that act of each of the conspirators was act of all, fact that one conspirator was in penitentiary at time of commission of overt acts was no defense as to him. Pinkerton v. U. S., C.C.A.5 (Ala.) 1945, 151 F.2d 499, certiorari granted 66 S.Ct. 702, 327 U.S. 772, 90 L.Ed. 1002, affirmed 66 S.Ct. 1180, 328 U.S. 640, 90 L.Ed. 1489, rehearing denied 67 S.Ct. 26, 329 U.S. 818, 91 L.Ed. 697.

831. Incapacity to commit offense, defenses

Defendant may be convicted of conspiracy, even if person defendant and his coconspirators thought would participate in conspiracy was actually agent of Government, so that intended substantive crime could not have occurred. U.S. v. Miranda-Ortiz, C.A.2 (N.Y.) 1991, 926 F.2d 172, certiorari denied 112 S.Ct. 347, 502 U.S. 928, 116 L.Ed.2d 287.

A culpable conspiracy could exist even though, because of misapprehension of conspirators as to certain facts, the substantive crime which was the object of the conspiracy was impossible to commit. U. S. v. Waldron, C.A.1 (Mass.) 1979, 590 F.2d 33, certiorari denied 99 S.Ct. 2056, 441 U.S. 934, 60 L.Ed.2d 662.

Fact that government knew of defendant's attempts to obtain information related to grand jury investigation from United States attorney's office through undercover agent acting in guise of corrupt policeman did not preclude conviction of conspiracy, endeavoring to obstruct justice and bribery on theory that crimes were legally incapable of attainment. U. S. v. Rosner, C.A.2 (N.Y.) 1973, 485 F.2d 1213, certiorari denied 94 S.Ct. 3080, 417 U.S. 950, 41 L.Ed.2d 672.

Personal defenses of other conspirators not amounting to total incapacity to commit crime are not defenses in prosecution for conspiracy. Farnsworth v. Zerbst, C.C.A.5 (Ga.) 1938, 98 F.2d 541.

832. Mental incompetency, defenses

Defendant could not be convicted of conspiracy where sole alleged coconspirator was insane at time she was alleged to have conspired. U. S. v. Phillips, C.A.6 (Ky.) 1980, 630 F.2d 1138.

833. Intent, defenses

Good faith, but erroneous, belief that actions were legal was not defense to making false statements to government and conspiring to file false documents with Internal Revenue Service (IRS) and to impede administration of justice; defendants were not charged with criminal to offenses. U.S. v. Lorenzo, C.A.9 (Hawai'i) 1993, 995 F.2d 1448, certiorari denied 114 S.Ct. 225, 510 U.S. 881, 126 L.Ed.2d 180, rehearing denied 114 S.Ct. 589, 510 U.S. 1006, 126 L.Ed.2d 487, certiorari denied 114 S.Ct. 227, 510 U.S. 882, 126 L.Ed.2d 182.

In conspiracy prosecution, lack of intent was not an affirmative defense under circumstances. Mount v. U.S., C.A.5 (Tex.) 1964, 333 F.2d 39, certiorari denied 85 S.Ct. 188, 379 U.S. 900, 13 L.Ed.2d 175.

As a general rule advice of counsel is no excuse for violation of the law, but where the question is one of intent, as in the case of a conspiracy, the advice and good faith of the defendant is a defense to be considered by the jury. Miller v. U.S., C.C.A.4 (S.C.) 1921, 277 F. 721.

Jury instructions defining elements of mail fraud and explaining consideration of actual harm to victim as evidence of intent to defraud properly explained fraudulent intent, in prosecution for mail fraud and conspiracy to commit mail fraud; financial or economic harm was not necessary to establish intent to defraud, but existence of scheme

could serve as evidence of intent. U.S. v. Easton, C.A.8 (S.D.) 2002, 54 Fed.Appx. 242, 2002 WL 31814951, Unreported. Postal Service 35(5); Postal Service 50

834. Isolated transaction, defenses

Isolated transaction rule, which has been used to exonerate a defendant when there is no independent evidence tending to prove that he had knowledge of broader conspiracy and when single transaction is not one in itself from which such knowledge might be inferred, is not to be applied rigidly and without reason. U. S. v. Bentvena, C.A.2 (N.Y.) 1963, 319 F.2d 916, certiorari denied 84 S.Ct. 345, 375 U.S. 940, 11 L.Ed.2d 271, rehearing denied 90 S.Ct. 894, 397 U.S. 928, 25 L.Ed.2d 108, rehearing denied 84 S.Ct. 515, 375 U.S. 989, 11 L.Ed.2d 476, certiorari denied 84 S.Ct. 346, 375 U.S. 940, 11 L.Ed.2d 271, rehearing denied 84 S.Ct. 1162, 377 U.S. 913, 12 L.Ed.2d 183, certiorari denied 84 S.Ct. 353, 375 U.S. 940, 11 L.Ed.2d 272, certiorari denied 84 S.Ct. 354, 375 U.S. 940, 11 L.Ed.2d 272, certiorari denied 84 S.Ct. 355, 375 U.S. 940, 11 L.Ed.2d 272, certiorari denied 84 S.Ct. 360, 375 U.S. 940, 11 L.Ed.2d 272.

835. Legal impossibility, defenses

Legal impossibility is not a defense to charge of conspiracy. U.S. v. Bosch, C.A.9 (Cal.) 1990, 914 F.2d 1239.

836. Knowledge of conspiracy, defenses

Proof of scienter was not an essential element of conviction of conspiring to steal, receive and to possess goods from a shipment moving in interstate commerce provided the shipment was, in fact, moving in such commerce; jurisdictional fact under governing statute was that the goods were moving in interstate commerce and since theft is clearly wrongful, a conspiracy to commit such act is punishable without proof that defendants knew there was federal jurisdiction. U. S. v. Viruet, C.A.2 (N.Y.) 1976, 539 F.2d 295.

Where defendant waited in automobile while co-defendant presented note to bank teller containing demand for money and co-defendant was not shown to have known contents of note or that he was robbing bank, co-defendant in presenting note was not acting in furtherance of conspiracy and defendant could not be convicted of bank robbery on theory of defendant's membership in conspiracy. Thomas v. U. S., C.A.5 (Fla.) 1967, 398 F.2d 531.

In prosecution under former § 88 of this title [now this section] for conspiring to defraud the United States by obtaining by false manifests clearances for vessels which misstated destinations, it was no defense that defendants had no knowledge of unlawfulness of object of their conspiracy. Hamburg-American Steam Packet Co. v. U.S., C.C.A.2 (N.Y.) 1918, 250 F. 747, 163 C.C.A. 79, certiorari denied 38 S.Ct. 333, 246 U.S. 662, 62 L.Ed. 927.

Where defendants conspired to obtain false clearances for vessels used to coal German war vessels on high seas, they could defeat prosecution because parties who verified manifests were innocent of real plans of conspirators, and supposed that coal and supplies were to be carried to ports named. Hamburg-American Steam Packet Co. v. U.S., C.C.A.2 (N.Y.) 1918, 250 F. 747, 163 C.C.A. 79, certiorari denied 38 S.Ct. 333, 246 U.S. 662, 62 L.Ed. 927.

837. Laches, defenses

Evidence, in prosecution for mail fraud and securities fraud, did not establish that government had been aware of defendants' three years before securing indictment or that defendants were substantially disadvantaged or that proceedings were rendered unfair because of such time lapse. U. S. v. Livengood, C.A.9 (Wash.) 1970, 427 F.2d 420.

Prosecution on conspiracy indictment was not barred by laches of government in failing to obtain indictment for several years after indictment on substantive counts was handed down. U S v.Gelb, S.D.N.Y.1959, 175 F.Supp.

267, affirmed 269 F.2d 675, certiorari denied 80 S.Ct. 66, 361 U.S. 822, 4 L.Ed.2d 66.

838. Limitations, defenses--Generally

The crucial question in determining whether statute of limitations has run against conspiracy indictment is the scope of conspiratorial agreement, for it is that which determines both the duration of conspiracy, and whether the act relied on as an overt act may properly be regarded as in furtherance of the conspiracy. Grunewald v. U.S., U.S.N.Y.1957, 77 S.Ct. 963, 353 U.S. 391, 1 L.Ed.2d 931.

The duration of a conspiracy cannot be indefinitely lengthened merely because conspiracy is kept a secret, and merely because conspirators take steps to bury their traces, in order to avoid detection and punishment after central criminal purpose has been accomplished. Grunewald v. U.S., U.S.N.Y.1957, 77 S.Ct. 963, 353 U.S. 391, 1 L.Ed.2d 931.

In determining whether a conspiracy prosecution is barred by three year statute of limitations, a vital distinction must be made between acts of concealment done in furtherance of main criminal objectives of conspiracy, and acts of concealment done after the central objectives have been attained, for the purpose only of covering up after the crime. Grunewald v. U.S., U.S.N.Y.1957, 77 S.Ct. 963, 353 U.S. 391, 1 L.Ed.2d 931.

A charge of conspiracy to commit a certain substantive offense is not entitled to a longer statute of limitation than the charge of committing the offense itself. Bridges v. U. S., U.S.Cal.1953, 73 S.Ct. 1055, 346 U.S. 209, 97 L.Ed. 1557. Criminal Law 147

To be within § 3748 of Title 26 [I.R.C.1939] providing a six-year period of limitations where object of conspiracy is to attempt to evade any tax or payment thereof, it is not necessary that conspiracy have as its object the commission of an offense in which defrauding or attempting to defraud the United States is an element, but it is enough that conspiracy involves an attempt to evade or defeat the payment of federal taxes. Braverman v. U.S., U.S.Mich.1942, 63 S.Ct. 99, 317 U.S. 49, 87 L.Ed. 23.

Section 3748 of Title 26 [I.R.C.1939] and not former § 582 of this title applied to prosecution for conspiracy involving an attempt to evade or defeat the payment of federal taxes under internal revenue liquor laws. Braverman v. U.S., U.S.Mich.1942, 63 S.Ct. 99, 317 U.S. 49, 87 L.Ed. 23.

Limitation as to "offenses" arising under revenue laws prescribed by former § 585 of this title did not apply to prosecution for conspiracy to defraud the United States in respect of internal revenue. U.S. v. McElvain, U.S.Ill.1926, 47 S.Ct. 219, 272 U.S. 633, 71 L.Ed. 451.

Indictment for conspiracy to defraud the United States in respect of internal revenue was barred after three years under former § 582 of this title. U.S. v. McElvain, U.S.Ill.1926, 47 S.Ct. 219, 272 U.S. 633, 71 L.Ed. 451.

Five year statute of limitations for general conspiracy, rather than three year statute of limitations for offenses arising under Internal Revenue Code, applied to prosecution, under general conspiracy statute, for conspiracy to disclose tax return information. U.S. v. Ely, C.A.5 (Tex.) 1998, 140 F.3d 1089. Internal Revenue 5281

Conspiracy to defraud government by making false statements to Immigration and Naturalization Service (INS) and by obstructing INS proceedings terminated on October 29, 1984 with INS approval of defendant's application for green card which was object of conspiracy, so that prosecution based on May 9, 1990 indictment was barred by 5-year statute of limitations; neither defendant's divorce of woman he married to obtain green card nor his subsequent marriage to another alien could reasonably be viewed as overt acts in furtherance of conspiracy. U.S. v. Roshko, C.A.2 (N.Y.) 1992, 969 F.2d 9.

18 U.S.C.A. § 371

Conspiracy to adjust immigration status by sham marriage to citizen terminated, and five-year statute of limitations commenced, when defendant's application for green card was approved before alien's sham marriage was dissolved and alien married defendant; divorce and marriage to defendant were not "payoffs" of immigration conspiracy. U.S. v. Roshko, C.A.2 (N.Y.) 1992, 969 F.2d 1.

With respect to a charge of conspiring to defraud the United States, a mere cessation of activity is not enough to begin the running of the statute of limitations, but rather, there must also be affirmative action, either the making of a clean breast to the authorities, or a communication of the abandonment in a manner reasonably calculated to reach coconspirators, and the burden of establishing withdrawal lies on defendant. U. S. v. D'Andrea, C.A.7 (Ind.) 1978, 585 F.2d 1351, certiorari denied 99 S.Ct. 1795, 440 U.S. 983, 60 L.Ed.2d 244, rehearing denied 612 F.2d 1386.

Limitations for indictments under this section are those supplied by other provisions of law or where there are none, by section 3282 of this title applicable except as otherwise specified by law. U. S. v. Lowder, C.A.4 (N.C.) 1974, 492 F.2d 953, certiorari denied 95 S.Ct. 685, 419 U.S. 1092, 42 L.Ed.2d 685.

Conspiracy conviction was proper despite lack of proof of any act by defendant within limitation period, where there was ample evidence of defendant's connection with conspiracy less than a month before critical date, and no evidence to show that his connection had ended before overt acts which occurred within statutory period. Green v. U. S., C.A.5 (Fla.) 1964, 332 F.2d 788, certiorari denied 85 S.Ct. 446, 379 U.S. 949, 13 L.Ed.2d 546. Criminal Law 565

Where Supreme Court of the United States had ruled that conspiracy to reorganize the Communist Party as a group of the kind proscribed by Smith Act, § 2385 of this title, was barred by statute of limitations, and same organization, with same evidence of events and their chronology, was relied upon in subsequent prosecution, the subsequent organizing charge was also barred by the statute of limitations and defendants were entitled at least to a new trial in which the portion of indictment concerning organization of Communist Party and all evidence which related exclusively to that charge must be excluded. U. S. v. Kuzma, C.A.3 (Pa.) 1957, 249 F.2d 619.

A conspiracy and overt acts may be charged in the indictment which are not within the three year period of the statute of limitation, but they must be limited to show only the conspiracy and its continuation. Pinkerton v. U. S., C.C.A.5 (Ala.) 1944, 145 F.2d 252. Indictment And Information 87(6)

Where accused was shown to have been active in conspiracy at least as late as December, 1936, and he did not prove that his connection ended before his first confession which was in July, 1937, indictment filed in March, 1940, was seasonable regardless of first indictment which it superseded. U.S. v. Goldstein, C.C.A.2 (N.Y.) 1941, 120 F.2d 485, certiorari granted 62 S.Ct. 89, 314 U.S. 588, 86 L.Ed. 474, affirmed 62 S.Ct. 1000, 316 U.S. 114, 86 L.Ed. 1312.

In prosecution for using and for conspiring to use mails to defraud in sale of stock in gold mines, evidence of sales of stock and other activities of defendants during three-year period prior to date indictment was returned sustained finding that prosecution was not barred by statute of limitations. U.S. v. Bob, C.C.A.2 (N.Y.) 1939, 106 F.2d 37, certiorari denied 60 S.Ct. 115, 308 U.S. 589, 84 L.Ed. 493.

In prosecution for using mails in furtherance of scheme to defraud by means of confidence game and for conspiring to commit such offense, where letters on which three counts in indictment charging the substantive offense were based were all shown to have been delivered within three years next preceding finding of indictment, the prosecution was not barred by limitations. U.S. v. Graham, C.C.A.2 (N.Y.) 1939, 102 F.2d 436, certiorari denied 59 S.Ct. 1041, 307 U.S. 643, 83 L.Ed. 1524, rehearing denied 60 S.Ct. 68, 308 U.S. 632, 84 L.Ed. 526.

Six-year limitation was applicable to conspiracy to defraud United States. Falter v. U.S., C.C.A.2 (N.Y.) 1928, 23

F.2d 420, certiorari denied 48 S.Ct. 528, 277 U.S. 590, 72 L.Ed. 1003.

Former § 582 of this title, was applicable to offenses described in former § 688 of this title. Greene v. U.S., C.C.A.5 (Ga.) 1907, 154 F. 401, 85 C.C.A. 251, certiorari denied 28 S.Ct. 261, 207 U.S. 596, 52 L.Ed. 357. See, also, Brown v. Elliott, Cal.1912, 32 S.Ct. 812, 225 U.S. 392, 56 L.Ed. 1136; Rabinowitz v. U.S., N.Y.1915, 222 F. 846, 139 C.C.A. 272.

Six-year limitations period for offenses involving defrauding the United States applied to charges of unlawfully conspiring to defraud United States by impeding, impairing, obstructing and defeating the lawful efforts of the Internal Revenue Service to ascertain, compute, assess, and collect income taxes, rather than general five-year statute of limitations, although overt acts listed in indictment did not contain words willful, intentional, or their equivalent. U.S. v. Christensen, D.Utah 2004, 344 F.Supp.2d 1294. Internal Revenue 5281

Count of indictment charging defendant with conspiracy to make false statements to banks and to misapply bank funds, which alleged that nine of the 14 overt acts alleged were committed within five years of filing of the indictment, was not barred by section 3282 of this title. U.S. v. Epperson, S.D.Ill.1982, 552 F.Supp. 359.

Count of indictment charging conspiracy to commit obscenity offenses was not barred by five-year statute of limitations. U. S. v. Luros, N.D.Iowa 1965, 243 F.Supp. 160, certiorari denied 86 S.Ct. 433, 382 U.S. 956, 15 L.Ed.2d 361.

Count alleging continuing conspiracy was not time-barred. U. S. v. Hughes, S.D.N.Y.1961, 195 F.Supp. 795.

Indictment charging continuous course of conduct to date of indictment, and specific violations within limitation period, was not time-barred. U. S. v. Hughes, S.D.N.Y.1961, 195 F.Supp. 795.

Statute of limitations for a conspiracy to defraud United States, to obstruct justice, and to commit perjury is indefinitely extended. U S v. Bonanno, S.D.N.Y.1959, 177 F.Supp. 106, on subsequent appeal 285 F.2d 408.

Indictments charging conspiracy to defraud the United States by violating income tax statutes, attempted evasion of income taxes and aiding and abetting such evasion charged separate and not identical offenses. U.S. v. Albanese, S.D.N.Y.1954, 123 F.Supp. 732, affirmed 224 F.2d 879, certiorari denied 76 S.Ct. 87, 350 U.S. 845, 100 L.Ed. 753 . Criminal Law 29(5.5)

Prosecution under indictment charging violation of general conspiracy statute, former § 88 of this title [now this section], in that defendant fraudulently petitioned for and obtained naturalization in a naturalization proceeding was within war statute, former § 590a of this title, providing that prosecution involving defrauding or attempts to defraud United States or any agency thereof should not be barred until three years after hostilities had ended. U.S. v. Bridges, N.D.Cal.1949, 86 F.Supp. 922.

839. ---- Commencement and running of period, limitations, defenses

Where conspiracy indictment was returned on October 25, 1954, it was incumbent on the government to prove that conspiracy, as contemplated in agreement as finally formulated, was still in existence on October 25, 1951, and that at least one overt act in furtherance of conspiracy was performed after that date. Grunewald v. U.S., U.S.N.Y.1957, 77 S.Ct. 963, 353 U.S. 391, 1 L.Ed.2d 931.

If central objective of conspiracy to defraud the United States by operation of a tax fixing ring was to protect taxpayers from tax-evasion prosecutions, on which statute of limitations did not run until 1952, and if the 1948 and 1949 "no prosecution" rulings obtained by conspirators were but an "installment" of what conspirators aimed to accomplish, then statute of limitations on conspiracy did not begin to run until 1952, within three years of the

indictment. Grunewald v. U.S., U.S.N.Y.1957, 77 S.Ct. 963, 353 U.S. 391, 1 L.Ed.2d 931.

An indictment returned on October 25, 1954 charging conspiracy to defraud the United States by operation of a tax fixing ring in obtaining "no prosecution" rulings in 1948 and 1949 could not escape bar of three year statute of limitations, § 3282 of this title, on theory that general aim of conspiracy was to engage in continuing business of fixing any and all tax fraud cases, where no overt act done to further the purpose of engaging in "new" business was charged or proved to have occurred after October 25, 1951. Grunewald v. U.S., U.S.N.Y.1957, 77 S.Ct. 963, 353 U.S. 391, 1 L.Ed.2d 931.

Where particular scam had already effectively rendered partnership profitless, partnership dissolution which relieved partnership from having to file future tax returns would not lead to the concealment of income and thus statute of limitations on tax fraud conspiracy charges did not begin to run on the date of dissolution. U.S. v. Fletcher, C.A.2 (Conn.) 1991, 928 F.2d 495, certiorari denied 112 S.Ct. 67, 502 U.S. 815, 116 L.Ed.2d 41.

Statute of limitations had not run on charge of conspiring to defraud United States even though indictment was unsealed after limitations period, where original indictment was returned by grand jury within limitation period, and indictment was sealed for legitimate purpose. U.S. v. Southland Corp., C.A.2 (N.Y.) 1985, 760 F.2d 1366, certiorari denied 106 S.Ct. 82, 474 U.S. 825, 88 L.Ed.2d 67.

For statute of limitations purposes, conspiracy continued after commission of the substantive underlying offense had been completed, namely, until the conspirator received anticipated economic benefits. U.S. v. Mennuti, C.A.2 (N.Y.) 1982, 679 F.2d 1032. Criminal Law 150

It is proper for jury to infer one conspiracy starting before and ending after statute of limitations period. U.S. v. Ashdown, C.A.5 (Tex.) 1975, 509 F.2d 793, rehearing denied 511 F.2d 1402, certiorari denied 96 S.Ct. 48, 423 U.S. 829, 46 L.Ed.2d 47. Criminal Law 150

Each defendant can be held only for that part of the conspiracy which he understood and assented to, and the statute of limitations will begin to run for him when his own agreement terminates. U.S. v. Borelli, C.A.2 (N.Y.) 1964, 336 F.2d 376, certiorari denied 85 S.Ct. 647, 379 U.S. 960, 13 L.Ed.2d 555. Criminal Law 150

Where internal revenue agent did not affirmatively disassociate himself from conspiracy with other revenue agents and accountant to fix real or purported government claims based on defective income tax returns to defraud the United States, and there was ample evidence to show that other members of conspiracy committed overt acts as part of the conspiracy after date three years before filing of indictment charging that revenue agent with conspiracy to defraud the United States, three year limitations statute, § 3282 of this title and § 3748 of Title 26 [I.R.C.1939], had not run in favor of that revenue agent. U.S. v. Witt, C.A.2 (N.Y.) 1954, 215 F.2d 580, certiorari denied 75 S.Ct. 207, 348 U.S. 887, 99 L.Ed. 697. Criminal Law 150

Acts committed more than three years before indictment was returned charging a conspiracy to obstruct administration of justice could be proved to show the existence and continuance of the conspiracy, though there could be no prosecution for any substantive offense charged as an overt act. U.S. v. Johnson, C.C.A.3 (Pa.) 1947, 165 F.2d 42, certiorari denied 68 S.Ct. 355, 332 U.S. 852, 92 L.Ed. 421, motion granted 68 S.Ct. 357, rehearing denied 68 S.Ct. 457, 333 U.S. 834, 92 L.Ed. 1118, certiorari denied 68 S.Ct. 355, 332 U.S. 852, 92 L.Ed. 422. Conspiracy 46

Limitations did not run against prosecution for conspiracy to defraud the United States in connection with sale of zinc to it until payment of check therefor or giving of credit by the bank of deposit. Meyer v. U.S., C.C.A.9 (Wash.) 1915, 220 F. 800, 135 C.C.A. 564. Criminal Law 150

A conspiracy continues, so far as the statute of limitations is concerned, so long as there is a course of conduct in

violation of law to effect its purpose. Ryan v. U.S., C.C.A.7 (Ind.) 1914, 216 F. 13, 132 C.C.A. 257. See, also, Braverman v. U.S., C.C.A.Mich.1942, 125 F.2d 283, reversed on other grounds 63 S.Ct. 99, 317 U.S. 49, 87 L.Ed. 23.

Co-conspirator's sale of stock warrants, which conspirators had secretly accumulated for purpose of selling at profit, was overt act occurring within five years of indictment for conspiracy to commit securities fraud, and thus prosecution was timely; purpose of conspiracy was not accumulation of warrants, but rather their subsequent sale for profit. U.S. v. Benussi, S.D.N.Y.2002, 216 F.Supp.2d 299, affirmed 352 F.3d 608, post-conviction relief denied 2005 WL 1248824. Criminal Law 150

Defendants' claims that they withdrew from alleged odometer tampering conspiracy more than five years before they were indicted raised question for jury on statute of limitations defense; although defendants claimed that they withdrew from conspiracy when they confessed or cooperated with government, government alleged that the defendants did not do everything within their power to prevent commission of offenses and that their passivity in response to further actions with respect to "clocked" cars negated their attempted withdrawals. U.S. v. Waldrop, M.D.Pa.1991, 786 F.Supp. 1194, affirmed 983 F.2d 1054, certiorari denied 113 S.Ct. 2440, 508 U.S. 950, 124 L.Ed.2d 658. Conspiracy 48.1(3); Criminal Law 739(3)

Six-year limitations period applicable to conspiracy charges based on defendants' alleged conspiracy to evade taxes commenced when defendants last made false statements to Internal Revenue Service agents designed to conceal fraudulent deductions, rather than when deductions were actually taken. U.S. v. Feldman, S.D.N.Y.1990, 731 F.Supp. 1189. Criminal Law 150

Statute of limitations on a conspiracy charge does not begin to run when the scheme is first conceived. U.S. v. Isaacs, N.D.Ill.1972, 347 F.Supp. 743. Criminal Law 150

Where defendant was arrested on March 5, 1954 for his participation in a conspiracy and limitation statute was amended on September 1, 1954 by extending period of limitation from three to five years and new period was made effective not only with respect to offenses committed on or after date of enactment but also as to offenses committed prior to such date, if on such date prosecution therefor was not barred by provisions of law in effect prior to such date, five-year period applied to the conspiracy prosecution against defendant and his subsequent indictment on October 23, 1957 was not barred. U.S. v. Gelb, S.D.N.Y.1959, 175 F.Supp. 267, affirmed 269 F.2d 675, certiorari denied 80 S.Ct. 66, 361 U.S. 822, 4 L.Ed.2d 66. Criminal Law 146

The Wartime Suspension of Limitations Act, § 3287 of this title, providing in part that when United States is at war, the running of any statute of limitations applicable to any offense committed in connection with the disposition of any real or personal property of the United States shall be suspended until three years after termination of hostilities as proclaimed by President, applied to offense of causing veteran employed by corporations of which defendant was president and treasurer to make a false statement in application for certain government surplus property, to effect that property was not to be sold by veteran when, in fact, it was procured for purpose of sale and was sold by veteran to corporations. U.S. v. Epstein, E.D.Pa.1953, 119 F.Supp. 946. Criminal Law 151.1

The crime of conspiracy is a continuing offense and an indictment alleging criminal conspiracy need not limit allegations of conspiracy to the three-year period preceding the return of the indictment. U.S. v. Westbrook, W.D.Ark.1953, 114 F.Supp. 192. Indictment And Information 87(6)

A continuing conspiracy does not toll statute of limitations, where agreement, which can be continuous, and overt act of short duration to effect object of conspiracy are both essential to constitute punishable crime. U.S. v. Schneiderman, S.D.Cal.1952, 106 F.Supp. 892. Criminal Law 150

18 U.S.C.A. § 371

The Wartime Suspension of Limitations Act, § 3287 of this title, applied only to offenses committed prior to Presidential Proclamation of December 31, 1946, and indictment under this section and §§ 287 and 1001 of this title for offense committed after such date, but more than three years prior to return of indictment, was barred by three year statute of limitations. U.S. v. Peoples Sav. Bank in Providence, D.C.R.I.1952, 102 F.Supp. 439. See, also, U.S. v. Riley, D.C.R.I.1952, 102 F.Supp. 440. Criminal Law 151.1

The existence of a conspiracy and conscious participation of defendant therein within three years before filing of indictment were indispensable to maintenance of prosecution for conspiracy to commit an offense against United States. U.S. v. Ames, S.D.N.Y.1941, 39 F.Supp. 885. Criminal Law 147

840. ---- Overt acts committed within period, limitations, defenses

Where substantiation of a conspiracy charge requires proof of an overt act, it must be shown both that conspiracy still subsisted within three years prior to return of indictment, and that at least one overt act in furtherance of conspiratorial agreement was performed within that period. Grunewald v. U.S., U.S.N.Y.1957, 77 S.Ct. 963, 353 U.S. 391, 1 L.Ed.2d 931. Criminal Law 150

Where main objective of conspiracy to defraud the United States by operation of a tax fixing ring was the obtaining in 1948 and 1949 of "no prosecution" rulings by the Bureau of Internal Revenue, prosecution commenced in 1954 was barred by three-year statute of limitations, § 3282 of this title, as against contention that conspiracy also included as a subsidiary element an agreement to conceal the conspiracy to "fix" tax cases to the end that conspirators would escape detection and punishment, since no agreement to conceal conspiracy after its accomplishment was shown or could be implied on the evidence to have been part of conspiratorial agreement. Grunewald v. U.S., U.S.N.Y.1957, 77 S.Ct. 963, 353 U.S. 391, 1 L.Ed.2d 931. Criminal Law 150

Conspiracy to use the mails to defraud, within former § 88 of this title [now this section], which the indictment alleged was designed to be and was in fact continuous, continued so far as limitations were concerned, so long as the overt acts were done by any of the conspirators. Brown v. Elliott, U.S.Cal.1912, 32 S.Ct. 812, 225 U.S. 392, 56 L.Ed. 1136. Criminal Law 150

A conspiracy to acquire fraudulently school lands from the states of California and Oregon, and to corrupt the officers of the General Land Office to facilitate their selection, under Act June 4, 1897 (repealed in part) in exchange for other public lands, continued, so far as limitations were concerned, so long as any overt acts were done in furtherance of the conspiracy. Hyde v. U.S., U.S.Dist.Col.1912, 32 S.Ct. 793, 225 U.S. 347, 56 L.Ed. 1114, Am.Ann.Cas. 1914A,614. Criminal Law 150

Filing of notice of appeal by defendant attorney did not constitute "overt act" in furtherance of conspiracy to obstruct justice, and thus did not bring conspiracy within limitations period, where object of conspiracy was to fabricate and backdate documents for filing in federal court, not generally to obtain favorable verdict for client, and filing of notice of appeal was not reasonably calculated to effect specific object of conspiracy. U.S. v. Craft, C.A.6 (Ky.) 1997, 105 F.3d 1123. Criminal Law 150

Submission, within limitations period, of request to Nuclear Regulatory Commission (NRC) to end suspension of nuclear materials license imposed due to false documents respecting shipment of radioactive material was part of main conspiracy to defraud United States by concealing from NRC violation of its rules governing shipments, rather than mere cover-up under Grunewald rule precluding use of conspiracy cover-up as part of conspiracy for limitations purposes, and, thus, main conspiracy continued through commission of that overt act and prosecution for main conspiracy was not barred by statute of limitations, where it was essential part of conspiracy to continue to mislead NRC, and false documentation was submitted for that purpose. U.S. v. Finlay, C.A.9 (Hawai'i) 1995, 55 F.3d 1410, certiorari denied 116 S.Ct. 193, 516 U.S. 871, 133 L.Ed.2d 129. Criminal Law 150

Execution of promissory note to secure for one conspirator his fair share of profits was an overt act in furtherance of tax fraud conspiracy and could trigger limitations period. U.S. v. Fletcher, C.A.2 (Conn.) 1991, 928 F.2d 495, certiorari denied 112 S.Ct. 67, 502 U.S. 815, 116 L.Ed.2d 41. Criminal Law 150

Objectives of conspiracy to impede the Internal Revenue Service in the ascertainment, computation and collection of federal income taxes were not attained on date allegedly inaccurate returns were filed, or due if they were not filed, but, rather, conspiracy would not be successful unless source of unreported income was concealed until action thereon was barred and evasion of taxes permanently effected; therefore, evidence of overt acts, which were designed to conceal source of unreported income and which occurred within six-year statute of limitations period, was sufficient to defeat timeliness challenge to the conspiracy prosecution. U.S. v. Vogt, C.A.4 (N.C.) 1990, 910 F.2d 1184, rehearing denied, certiorari denied 111 S.Ct. 955, 498 U.S. 1083, 112 L.Ed.2d 1043, dismissal of habeas corpus affirmed 17 F.3d 1435, certiorari denied 114 S.Ct. 1648, 128 L.Ed.2d 367. Criminal Law 150

For limitations purposes, police officer's promotion constituted "overt act" in furtherance of mail fraud conspiracy involving officer's receipt of advance copy of promotion examination even though officer's receipt of salary payments attributable to promotion was not sufficient to forestall running of limitations period. U.S. v. Nazzaro, C.A.1 (Mass.) 1989, 889 F.2d 1158, rehearing denied, denial of post-conviction relief affirmed 993 F.2d 1530. Criminal Law 150

In prosecution for wire fraud, mail fraud, interstate travel in aid of racketeering and conspiracy, if prosecution elected on retrial to proceed on theory of concealment in order to extend conspiracy into period of limitations, it would have to present direct evidence that conspirators originally expressly agreed to conceal conspiracy and show beyond reasonable doubt that certain transfer furthered that purpose; neither circumstantial evidence permitting an inference of agreement to conceal, nor direct evidence that conspirators implicitly agreed to conceal would satisfy prosecution's burden of production, and it could not rely on evidence that conspirators agreed to conceal their doings from a defendant's internal auditors. U.S. v. Steele, C.A.3 (N.J.) 1982, 685 F.2d 793, certiorari denied 103 S.Ct. 213, 459 U.S. 908, 74 L.Ed.2d 170. Criminal Law 565

Despite contention that applicable five-year statute of limitations had run before defendant was indicted for conspiracy, in that two leap years passed during interim, prosecution was timely where, although conspiracy began outside limitation period, conspiracy continued and overt acts were committed within such limitation period. U.S. v. Parker, C.A.5 (Fla.) 1978, 586 F.2d 422, rehearing denied 590 F.2d 333, certiorari denied 99 S.Ct. 2408, 441 U.S. 962, 60 L.Ed.2d 1067. Criminal Law 150

In a conspiracy prosecution for violating this section, the statute of limitations must be computed from the date of the last overt act of which there is appropriate allegation and proof, and it is not sufficient that the government prove an overt act within the limitations period that is not alleged in the indictment. U.S. v. Davis, C.A.5 (Tex.) 1976, 533 F.2d 921. Criminal Law 155

Since indictment charging conspiracy to defraud the United States was filed on October 23, 1973, the Government was only required to show that one overt act in furtherance of the conspiracy occurred after October 23, 1968, in order to avoid being time barred by the five-year limitations period. U.S. v. Brasco, C.A.2 (N.Y.) 1975, 516 F.2d 816, certiorari denied 96 S.Ct. 116, 423 U.S. 860, 46 L.Ed.2d 88. Criminal Law 150

In prosecution under indictment which was returned February 6, 1969 and which charged a broad and continuing conspiracy to misapply funds of a federally insured state-chartered savings and loan association and to make false and fraudulent statements to an agency of the United States, instruction that the government must prove that at least one overt act as set forth in indictment was committed and that one or more of overt acts occurred after February 6, 1964 was a sufficient instruction on statute of limitations defense. U.S. v. Nowak, C.A.7 (Ill.) 1971, 448 F.2d 134, certiorari denied 92 S.Ct. 714, 404 U.S. 1039, 30 L.Ed.2d 731. Criminal Law 772(4)

18 U.S.C.A. § 371

In prosecution for conspiracy to evade income taxes, evidence that the defendant committed overt acts within the six-year period of limitations prior to the return of the indictment established that the prosecution was not barred by limitations. U.S. v. Keenan, C.A.7 (Ill.) 1959, 267 F.2d 118, certiorari denied 80 S.Ct. 121, 361 U.S. 863, 4 L.Ed.2d 104, rehearing denied 80 S.Ct. 254, 361 U.S. 921, 4 L.Ed.2d 189. Criminal Law 565

That evidence admitted would extend conspiracy back to date prior to that laid in indictment was immaterial, where overt acts were within period of statute of limitations. Merrill v. U.S., C.C.A.5 (La.) 1930, 40 F.2d 315. Indictment And Information 176

Conceding that the limitation of one year prescribed in former § 52 of Title 11 was applicable to a conspiracy to commit an offense created by that section, the prosecution was not barred, where there was evidence of overt acts within 12 months before the finding of the indictment. Miller v. U.S., C.C.A.4 (S.C.) 1921, 277 F. 721. Criminal Law 155

Although the mere continuance of the result of a crime does not continue the crime, it is also true that "so long as it may be shown that the conspirators are acting together for the common purpose comprehended by the scheme formed and entered upon with the view to defraud the government, and have, while so acting together, committed some overt act to effectuate the purpose, all within the three years prior to the finding of the indictment, the statute has not run." Meyer v. U.S., C.C.A.9 (Wash.) 1915, 220 F. 800, 135 C.C.A. 564.

Where a conspiracy to defraud the United States was formed more than three years prior to the indictment, and acts in pursuance thereof were done both prior to and within the three years' prosecution therefor under former § 88 of this title [now this section], it was not barred by the limitation imposed by former § 582 of this title. Houston v. U.S., C.C.A.9 (Wash.) 1914, 217 F. 852, 133 C.C.A. 562, certiorari denied 35 S.Ct. 284, 238 U.S. 613, 59 L.Ed. 1490. See, also, Stager v. U.S., N.Y.1916, 233 F. 510, 147 C.C.A. 396. Criminal Law 150

"Any act in execution of the original plan may be regarded as a renewal of the original combination, and may be prosecuted against any one participating, personally or through others, within three years after such act." U.S. v. Reddin, E.D.Wis.1912, 193 F. 798.

A prosecution for a conspiracy and overt act in pursuance thereof committed more than three years before the filing of the indictment is barred by limitations, but subsequent overt acts committed under the old conspiracy within three years will sustain a prosecution for the conspiracy. Ware v. U.S., C.C.A.8 (Neb.) 1907, 154 F. 577, 84 C.C.A. 503, 12 Am.Ann.Cas. 233, certiorari denied 28 S.Ct. 255, 207 U.S. 588, 52 L.Ed. 353. Criminal Law 150

An overt act committed by one of alleged co-conspirators within three years, under a conspiracy between him and the defendant formed and followed by an overt act more than three years before the filing of the indictment, without the defendant's consent or agreement within the three years to the continued existence and execution of the conspiracy, is incompetent to establish its existence and his participation therein within three years. Ware v. U.S., C.C.A.8 (Neb.) 1907, 154 F. 577, 84 C.C.A. 503, 12 Am.Ann.Cas. 233, certiorari denied 28 S.Ct. 255, 207 U.S. 588, 52 L.Ed. 353. Criminal Law 150

Proof of the formation by defendant and others more than three years before the indictment of such a conspiracy as that charged in the indictment and of an overt act thereunder prior to the three years is insufficient to sustain the charge of conspiracy within the three years, but other evidence of the existence of the conspiracy and of defendant's conscious participation in it within three years is competent evidence for the jury. Ware v. U. S., C.C.A.8 (Neb.) 1907, 154 F. 577, 84 C.C.A. 503, 12 Am.Ann.Cas. 233, certiorari denied 28 S.Ct. 255, 207 U.S. 588, 52 L.Ed. 353 . Criminal Law 150

An overt act being necessary to sustain a prosecution for conspiracy to defraud the United States, under former §

88 of this title [now this section], the statute of limitations did not begin to run against such a prosecution until the commission of an overt act, and since every such overt act was a renewal of the conspiracy, a prosecution could have been instituted within three years after the commission of any overt act, although more than that length of time may have elapsed since the conspiracy was first formed or the first of such acts was committed thereunder. U.S. v. Bradford, C.C.E.D.La.1905, 148 F. 413, affirmed 152 F. 616, 81 C.C.A. 606, certiorari denied 27 S.Ct. 795, 206 U.S. 563, 51 L.Ed. 1190.

Where an alleged conspiracy to defraud the United States out of public lands was formed in September, 1902, and the necessary affidavits to consummate the fraud were filed on the 7th and 8th of October, 1902, the filing of such affidavits constituted an overt act, which started limitations against a prosecution for conspiracy, which was barred on October 8, 1905, under former § 582 of this title, limiting prosecutions for federal offenses to three years after the offense shall have been committed. Ex parte Black, E.D.Wis.1906, 147 F. 832, affirmed 160 F. 431, 87 C.C.A. 383. Criminal Law 🔑 150

When an overt act is committed the offense of conspiracy is complete, and the statute of limitations at once begins to run, but it does not follow that all similar acts thereafter may be committed with impunity, if the first act is barred by the statute, since through the repetition of overt acts, the conspiracy is made a continuing offense. Lorenz v. U.S., App.D.C.1904, 24 App.D.C. 337, certiorari denied 25 S.Ct. 796, 196 U.S. 640, 49 L.Ed. 631.

Count charging health care conspiracy was timely brought, notwithstanding commission of some overt acts outside five-year limitations period, where other overt acts, including defendants' receipt of Medicare checks on false claims, occurred within period. U.S. v. Cooper, D.Kan.2003, 283 F.Supp.2d 1215. Criminal Law 🔑 150

Where conspiracy indictment was returned more than five years after date of last overt act in furtherance of conspiracy, as charged in indictment, indictment failed to meet five-year statute of limitations. U.S. v. Treto, S.D.Fla.1995, 904 F.Supp. 1374. Criminal Law 🔑 150

For purposes of period of limitations, section 3282 of this title, overt acts alleged in indictment and approved at trial mark the duration of the conspiracy, and, accordingly, proof of overt acts, occurring within five years prior to indictment but not charged in indictment, were not sufficient to satisfy the period of limitations, section 3282 of this title. U.S. v. Walls, N.D.Ga.1984, 577 F.Supp. 772. Criminal Law 🔑 149

Proof that a conspiracy continued into period of limitations and that an overt act in furtherance of the conspiracy was performed within that period constitutes an element of offense of conspiracy under this section; thus, in order to convict a defendant under this section, government must prove prima facie that period of limitations was satisfied, a burden that will be met if government proves prima facie that an overt act in furtherance of conspiracy was committed within limitations period. U.S. v. Greichunos, N.D.Ill.1983, 572 F.Supp. 220. Criminal Law🔑 330; Criminal Law 🔑 565

In prosecution for criminal conspiracy, an overt act must be alleged and proved which occurred within the three-year statute of limitations. U.S. v. Westbrook, W.D.Ark.1953, 114 F.Supp. 192. Indictment And Information 🔑 166

The doctrine of continuing conspiracy renders evidence of conspirators' agreement and overt acts antedating three year limitation period admissible, not to show accused's guilt when such acts were committed, but to show illegal agreement, accused's participation therein and his knowledge and intent in order to aid jury's determination of issues whether conspiracy existed, whether defendant was party thereto with knowledge and intent charged, and whether overt act was done to effect object of conspiracy, within limitation period. U.S. v. Schneiderman, S.D.Cal.1952, 106 F.Supp. 892. Criminal Law 🔑 422(1)

A continuing conspiracy does not toll statute of limitations, where agreement, which can be continuous, and overt

act of short duration to effect object of conspiracy are both essential to constitute punishable crime. U.S. v. Schneiderman, S.D.Cal.1952, 106 F.Supp. 892. Criminal Law 150

Evidence of criminal conspiracy antedating three year limitation period is not inadmissible, but to convict accused, proof must establish that conspirators agreement, shown to exist before such period, continued in effect and that overt act to effect object of agreement was committed within limitation period. U.S. v. Schneiderman, S.D.Cal.1952, 106 F.Supp. 892. Criminal Law 150

The crime of conspiracy is complete as soon as an act is done to effect object of conspirators' agreement, though agreement may be continuous, and indictment for such offense must be found within three years after such act. U.S. v. Schneiderman, S.D.Cal.1952, 106 F.Supp. 892. Criminal Law 150

841. ---- Last overt act as controlling, limitations, defenses

Final payment of contract with United States and acceptance of that payment were part of bid-rigging conspiracy, and extended five year limitations period for prosecuting charges of conspiracy to violate Sherman Act and to commit fraud. U.S. v. Anderson, C.A.11 (Ala.) 2003, 326 F.3d 1319, rehearing and rehearing en banc denied 71 Fed.Appx. 824, 2003 WL 21432589, certiorari denied 124 S.Ct. 178, 540 U.S. 825, 157 L.Ed.2d 46. Criminal Law 150

Conspiracy on part of American and Chinese defendants to deceive United States into issuing export licenses for aircraft machinery tools that were subject to export controls ended with issuance of export licenses, not on later date when tools were actually exported and delivered, absent any allegation in indictment that American corporation and executive shared their Chinese co-conspirators' separate alleged purpose of diverting machine tools to unauthorized locations upon their arrival in China, and thus indictment of American executive was time-barred when not brought within five years of export. U.S. v. Hitt, C.A.D.C.2001, 249 F.3d 1010, 346 U.S.App.D.C. 16. Criminal Law 150

Although written confirmation from general land office (GLO) was integral to success of scheme to secure from State of Texas the continued right to exploit mineral resources of tract, and was necessary step in the plot, mailing by GLO was not overt act of conspirator and thus could not be considered last act of conspiracy for limitations purposes. U.S. v. Manges, C.A.5 (Tex.) 1997, 110 F.3d 1162, rehearing and suggestion for rehearing en banc denied 116 F.3d 1479, certiorari denied 118 S.Ct. 1675, 523 U.S. 1106, 140 L.Ed.2d 813. Criminal Law 150

Last overt act of conspiracy to defraud United States by bid rigging timber sale by United States Forest Service was not committed when defendant filed false certificate that no bid rigging had taken place in connection with his bid on two timber sales or when award was made to defendant at an artificially deflated price, but rather conspiracy was not complete until defendant had cut last timber, obtained title to it, paid government noncompetitive price for it, resold it at excess profit, and split the excess with his coconspirators; therefore, indictment was not barred where some payoffs of coconspirators occurred well within five-year period. U.S. v. Walker, C.A.9 (Or.) 1981, 653 F.2d 1343, certiorari denied 102 S.Ct. 1253, 455 U.S. 908, 71 L.Ed.2d 446. Criminal Law 150

For limitations purposes, a conspiracy may be deemed terminated when, in a broad sense, its objectives have either been accomplished or abandoned, not when its last overt act was committed. U.S. v. Grammatikos, C.A.2 (N.Y.) 1980, 633 F.2d 1013. Criminal Law 150

Evidence in prosecution for conspiracy to use mails in furtherance of scheme to defraud and conspiracy to defraud United States by obstructing the Internal Revenue Service sustained finding that defendants' acts of concealment which took place within five-year limitations period were done in furtherance of overall conspiracy, and therefore, defendants' prosecution was not time barred. U.S. v. Fitzgerald, C.A.7 (Ind.) 1978, 579 F.2d 1014, certiorari denied 99 S.Ct. 610, 439 U.S. 1002, 58 L.Ed.2d 677, certiorari denied 99 S.Ct. 611, 439 U.S. 1002, 58 L.Ed.2d

18 U.S.C.A. § 371

677. Criminal Law 564(1)

Bank employee's concealment of misapplication of funds through making of false entries in bank's records for many years after bank employees honored defendant's checks even though insufficient funds were on deposit in defendant's account was in furtherance of original conspiracy and period of limitation did not begin to run until last time bank's records were falsified to cover up prior false entries. U.S. v. Portner, C.A.2 (N.Y.) 1972, 462 F.2d 678, certiorari denied 93 S.Ct. 319, 409 U.S. 983, 34 L.Ed.2d 246. Criminal Law 150

In conspiracy cases, statute of limitations starts to run on date of last overt act alleged to have caused complainant injury. Bergschneider v. Denver, C.A.9 (Cal.) 1971, 446 F.2d 569. Limitation Of Actions 55(1)

Conspiracy is a continuing offense so long as any concerted action continues, but even in conspiracy, concert may end and only the result remain, and in that event the limitation runs from end of the concert which may be the last overt act. United States v. Lewis, C.C.A.2 (N.Y.) 1947, 161 F.2d 683. Criminal Law 150

Where the conspiracy contemplates various overt acts and the consequent continuance of the conspiracy beyond the commission of the first act, each overt act thereafter gives a new, separate and distinct effect to the conspiracy, and constitutes another agreement, so that a prosecution is not barred by the statute of limitations until three years after the commission of the last overt act alleged and proved. Pinkerton v. U.S., C.C.A.5 (Ala.) 1944, 145 F.2d 252 . Criminal Law 150

A conspiracy by state and local officers, acting under color of law, to deprive inhabitants of United States of rights and immunities secured and protected by U.S.C.A.Const. Amend. 14 and federal laws by imprisoning and mistreating them for the purpose of extortion, was a "continuing conspiracy", against which the statute of limitations did not commence to run until the last overt act leading to accomplishment of the conspiracy was committed. Culp v. U.S., C.C.A.8 (Ark.) 1942, 131 F.2d 93. Criminal Law 150

Where the last overt act alleged in indictment and proved by government in prosecution for conspiracy by state and local officers acting under color of law to deprive inhabitants of the United States of rights and immunities secured and protected by U.S.C.A.Const. Amend. 14 and federal laws occurred within the period of limitations, fact that prosecution for a substantive offense charged as an overt act was barred by limitations did not preclude proof of the commission of such act in furtherance of the conspiracy or as indicating that conspiracy commenced and continued as alleged in indictment. Culp v. U. S., C.C.A.8 (Ark.) 1942, 131 F.2d 93. Criminal Law 423(1)

Where, in a prosecution for conspiracy to commit a crime against the United States is violation of former §§ 88 [now this section] and 382 of this title, the indictments charged the first overt act as of January 20, 1908, and the last August 27, 1911, and were filed February 6, 26, 1912, the prosecution was not barred by limitations. Ryan v. U.S., C.C.A.7 (Ind.) 1914, 216 F. 13, 132 C.C.A. 257. Criminal Law 150

Where a conspiracy to defraud the United States of public lands contemplated various overt acts, a prosecution begun within three years of the last overt act was not barred by former § 582 of this title. Hedderly v. U.S., C.C.A.9 (Or.) 1912, 193 F. 561, 114 C.C.A. 227.

Where defendants devise a scheme to defraud, consisting of plans for the sale of corporate stock by false representations to be carried out by means of correspondence through the post office, the conspiracy was a continuing offense, and a prosecution therefor was not barred until three years from the last overt act. Wilson v. U.S., C.C.A.2 (N.Y.) 1911, 190 F. 427, 111 C.C.A. 231. Criminal Law 150

While under former § 88 of this title [now this section] the gravamen of the offense was the conspiracy, there also must have been overt act to make the offense complete, and so the period of limitation within which it may have been prosecuted was computed from the date of the overt act rather than the formation of the conspiracy, and

where during the existence of the conspiracy there were successive overt acts, the period of limitation was computed from the date of the last of them of which there was appropriate allegation and proof. U.S. v. Francis, E.D.Pa.1906, 144 F. 520, affirmed as modified on other grounds 152 F. 155, 81 C.C.A. 407, certiorari denied 27 S.Ct. 797, 206 U.S. 565, 51 L.Ed. 1191. See, also, Brown v. Elliott, Cal.1912, 32 S.Ct. 812, 225 U.S. 392, 56 L.Ed. 1136; Jones v. U.S., Or.1910, 179 F. 584, 103 C.C.A. 142; Lonabaugh v. U.S., Wyo.1910, 179 F. 476, 103 C.C.A. 56; U.S. v. Breese, C.C.N.C.1909, 173 F. 402; U.S. v. Raley, D.C.Or.1909, 173 F. 159; Jones v. U.S., Or.1908, 162 F. 417, 89 C.C.A. 303, certiorari denied 29 S.Ct. 685, 212 U.S. 576, 53 L.Ed. 657; Bradford v. U.S., 1907, 152 F. 616, 81 C.C.A. 606, certiorari denied 27 S.Ct. 795, 206 U.S. 563, 51 L.Ed. 1190; U.S. v. Brace, D.C.Cal.1907, 149 F. 874.

Where conspiracy charged in indictment was alleged to have continued for one and one-half years after an incident which was named as an overt act, that the incident took place nearly three years before the indictment was returned did not require dismissal of indictment, despite fact that the incident had provided basis for an earlier arrest of defendant and two previous indictments which were dismissed. U.S. v. Smith, S.D.N.Y.1976, 412 F.Supp. 1. Indictment And Information 7

Where indictment charging conspiratorial and substantive violations of section 610 of this title prohibiting labor unions from making political contributions indicated that last overt act occurred on or about June 10, 1969, indictment was founded well within the five-year period of limitation and was not barred. U.S. v. Boyle, D.C.D.C.1972, 338 F.Supp. 1028. Criminal Law 150

A continuing conspiracy is a continuing danger, and statute of limitations runs from last objective act that indicates that the original agreement, and the danger arising therefrom, is still alive. U.S. v. Bonanno, S.D.N.Y.1959, 177 F.Supp. 106, on subsequent appeal 285 F.2d 408. Criminal Law 150

The statute of limitation begins to run on charge of conspiracy from date of last overt act properly alleged in indictment. U.S. v. Albanese, S.D.N.Y.1954, 123 F.Supp. 732, affirmed 224 F.2d 879, certiorari denied 76 S.Ct. 87, 350 U.S. 845, 100 L.Ed. 753. Criminal Law 150

Where, during existence of conspiracy, there are successive overt acts, three year period of limitations against prosecution for such conspiracy must be computed from date of last act of which there is appropriate allegation and proof, notwithstanding some of the earlier acts may have occurred more than three years before indictment was found. U.S. v. Flynn, S.D.N.Y.1951, 103 F.Supp. 925. Criminal Law 150

The three-year statute of limitations started to run as to conspiracies which under former § 88 of this title [now this section] did not become crimes until an overt act has occurred from the date of the last overt act, each succeeding overt act being considered the consummation of a new or revived conspiracy. U.S. v. McWilliams, D.C.D.C.1944, 54 F.Supp. 791. Criminal Law 150

842. ---- New parties and parties withdrawing, limitations, defenses

Disclosure by a government employe of continuing conspiracy to which he was a party, to defraud the United States out of its public lands, contrary to former § 88 of this title, did not prevent subsequent overt acts of any of his associates from continuing him in the conspiracy so far as the statute of limitations was concerned, if, after the first disclosure, he acquiesced in the later acts. Hyde v. U.S., U.S.Dist.Col.1912, 32 S.Ct. 793, 225 U.S. 347, 56 L.Ed. 1114, Am.Ann.Cas. 1914A,614. Criminal Law 150

Conspirator's actions which represented abandonment of portion of conspiracy designed to defraud taxpayer's employer was not an abandonment of the goals of profit distribution and tax fraud, and thus was an act within the latter conspiracy and could extend the time for running of the statute of limitations on the tax fraud conspiracy charge. U.S. v. Fletcher, C.A.2 (Conn.) 1991, 928 F.2d 495, certiorari denied 112 S.Ct. 67, 502 U.S. 815, 116

18 U.S.C.A. § 371

L.Ed.2d 41. Criminal Law 150

In prosecution for using and for conspiring to use mails to defraud in sale of stock in gold mines, evidence sustained finding that defendant alleged to be the principal figure and directing genius of the scheme to defraud did not withdraw from the scheme prior to three years before indictment was returned and hence prosecution was not barred as to such defendant. U.S. v. Bob, C.C.A.2 (N.Y.) 1939, 106 F.2d 37, certiorari denied 60 S.Ct. 115, 308 U.S. 589, 84 L.Ed. 493. Criminal Law 288

As to a conspirator withdrawing from the scheme, the statute of limitations runs from time of his withdrawal. U.S. v. Raley, D.C.Or.1909, 173 F. 159.

Where an indictment charged that defendant and others did, on the 18th day of April, 1904, unlawfully, etc., conspire together to commit an offense against the United States, and the evidence established that defendant came into the conspiracy in October, 1902, while the indictment was found June 15, 1905, the offense was not barred by the three-years' limitation. U.S. v. Francis, E.D.Pa.1906, 144 F. 520, affirmed as modified on other grounds 152 F. 155, 81 C.C.A. 407, certiorari denied 27 S.Ct. 797, 206 U.S. 565, 51 L.Ed. 1191.

A conspiracy to defraud the United States by making unlawful entries of public lands cannot, for the purpose of avoiding the statute of limitations, be split up into different conspiracies for each section of land entered or for each overt act done, nor is there a new conspiracy by the parties to the original conspiracy, whenever a new party is brought into the scheme, so as to make the statute of limitations begin to run from that time. U.S. v. McCord, W.D.Wis.1895, 72 F. 159. Criminal Law 150

Where at time that alleged coconspirator made alleged pay-offs he was acting as government agent and furthering purposes of the government rather than objectives of the conspiracy, the partnership in crime ceased and, by reason of such facts, government failed to seek timely indictment for conspiracy count. U.S. v. Walls, N.D.Ga.1984, 577 F.Supp. 772. Criminal Law 149

Defendant who was alleged to be co-conspirator or co-schemer in stock manipulation conspiracy had burden of establishing defense of withdrawal, and, where both conspiracy and nonconspiracy counts of indictment were facially proper, question of whether defense of withdrawal was established was singularly inappropriate for pretrial decision on motion to dismiss and would be left for jury. U.S. v. Bloom, E.D.Pa.1977, 78 F.R.D. 591. Criminal Law 330; Indictment And Information 144.2

843. Plea agreement, defenses

Accepting plea agreement calling for sentence of 262 months' imprisonment, which was in excess of five-year maximum term of imprisonment set forth in statute of conviction, was plain error; error was apparent from language of statute, imposition of excessive sentence affected defendant's substantial rights, and acceptance of plea agreement calling for illegal sentence seriously affected fairness, integrity, or public reputation of the judicial proceedings. U.S. v. Gibson, C.A.7 (Ill.) 2004, 356 F.3d 761. Criminal Law 1031(4)

Counts of second superseding indictment charging defendant with drug conspiracy involving cocaine and marijuana violated prior plea agreement implicitly obliging Government not to subsequently reprosecute defendant for same offenses alleged against him in counts of initial indictment, notwithstanding Government's argument that it was not currently prosecuting defendant for same offenses alleged in counts of initial indictment. U.S. v. Hawes, E.D.N.C.1991, 774 F.Supp. 965. Criminal Law 273.1(2)

Conspiracy count in indictment was not subject to dismissal on ground that it was sought in violation of a prior promise of United States attorney that any superseding indictment would not contain a conspiracy count, where there was no evidence that United States attorney made any such commitment, nor citation of authority supporting

proposition that violation of such a promise would require dismissal. U.S. v. Smith, N.D.Ga.1974, 65 F.R.D. 464. Indictment And Information 144.1(1)

844. Provocation, defenses

That acts of violence committed by other parties might have tended to show provocation for retaliatory acts by defendants charged with conspiring to obstruct movement of mails and to restrain trade would not constitute a defense. U.S. v. Anderson, C.C.A.7 (Ill.) 1939, 101 F.2d 325, certiorari denied 59 S.Ct. 822, 307 U.S. 625, 83 L.Ed. 1502, certiorari denied 59 S.Ct. 822, 307 U.S. 625, 83 L.Ed. 1503, certiorari denied 59 S.Ct. 823, 307 U.S. 625, 83 L.Ed. 1503, certiorari denied 59 S.Ct. 823, 307 U.S. 625, 83 L.Ed. 1504, certiorari denied 59 S.Ct. 823, 307 U.S. 625, 83 L.Ed. 1504, 86 L.Ed. 1504, certiorari denied 59 S.Ct. 824, 307 U.S. 625, 83 L.Ed. 1505, certiorari denied 59 S.Ct. 824, 307 U.S. 625, 83 L.Ed. 1506, certiorari denied 59 S.Ct. 825, 307 U.S. 625, 83 L.Ed. 1506, certiorari denied 59 S.Ct. 825, 307 U.S. 625, 83 L.Ed. 1507, certiorari denied 59 S.Ct. 825, 307 U.S. 625, 83 L.Ed. 1508, certiorari denied 59 S.Ct. 826, 307 U.S. 625, 83 L.Ed. 1508, certiorari denied 59 S.Ct. 826, 307 U.S. 625, 83 L.Ed. 1509. Conspiracy 38; Monopolies 29

845. Res judicata, defenses

The commission of a substantive offense and a conspiracy to commit it are separate and distinct offenses, and with some exceptions, one may be prosecuted for both crimes but res judicata may be a defense in a second prosecution. Sealfon v. U. S., U.S.N.J.1948, 68 S.Ct. 237, 332 U.S. 575, 92 L.Ed. 180. Double Jeopardy 151(3.1); Judgment 751

Acquittal of conspiracy solely on ground that there was no proof of concert of action was not res judicata of substantive offenses relied on as overt acts in conspiracy indictment, particularly where transfer of ration coupons was relied on in conspiracy indictment and substantive offense charged was possession with intent to utter such coupons. U.S. v. Zeoli, C.A.3 (Pa.) 1948, 170 F.2d 358. Judgment 751

Acquittal of conspiracy solely on ground that there was no proof of concert of action was not res judicata of substantive offenses relied on as overt acts in conspiracy indictment. U.S. v. Curzio, C.A.3 (Pa.) 1948, 170 F.2d 354. Judgment 751

Acquittal of charge of conspiracy to harbor fugitive from justice was not res judicata in prosecution arising from same transaction for conspiracy to harbor another fugitive from justice, the two conspiracies being distinct offenses. Piquett v. U.S., C.C.A.7 (Ill.) 1936, 81 F.2d 75, certiorari denied 56 S.Ct. 749, 298 U.S. 664, 80 L.Ed. 1388. Judgment 751

Prosecution for conspiracies to illegally sell and transport sacramental wine was not bar to nor res judicata in prosecution for conspiracies to violate bribery and extortion statutes, on theory that only one conspiracy was involved. U.S. v. Owen, D.C.Ill.1927, 21 F.2d 868. Criminal Law 200(6)

Acquittal of conspiracy to defraud United States by issuing withdrawal permits in violation of National Prohibition Act, former § 1 et seq. of Title 27, barred second prosecution for such conspiracy by unlawfully issuing same permits, under doctrine of res judicata. U.S. v. McConnell, D.C.Pa.1926, 10 F.2d 977.

Acquittal on charge of conspiracy to violate National Prohibition Act, former § 1 et seq. of Title 27, was res judicata of libel for seizure of vessel and liquor cargo. U.S. v. 2,180 Cases of Champagne, C.C.A.2 (N.Y.) 1926, 9 F.2d 710. Customs Duties 133(1)

Principle of res judicata was not available to defendants charged with conspiracy following an earlier trial for conspiracy where the conspiracies were distinct and court was not confronted with the same offense. U.S. v. De

Sapio, S.D.N.Y.1969, 299 F.Supp. 436. Judgment 751

In prosecution for receiving and possessing goods stolen while moving in interstate commerce and conspiring to transport such goods in interstate commerce knowing them to have been stolen, where issues before jury on substantive count of transportation or aiding and abetting it, were not identical with issues with respect to conspiracy count and core of the case on substantive count was whether defendant had requisite guilty knowledge before transportation ceased, a verdict of acquittal on substantive count did not under the doctrine of "res judicata" determine in defendants' favor any issue essential to their conviction on the conspiracy count. U.S. v. Perrone, S.D.N.Y.1958, 161 F.Supp. 252. Judgment 751

Indictment charging defendants with selling vending machines through mail by fraud stated offense separate from that charged in instant indictment for conspiracy and for substantive offense of mail fraud in sale of vending machines to different persons through different companies, and acquittal on first indictment did not furnish ground for quashing instant indictment and for discharge of defendants on pleas of autrefois acquit and res judicata. U.S. v. Hanlin, W.D.Mo.1962, 29 F.R.D. 481. Double Jeopardy 151(3.1); Judgment 751

846. Scope of employment, defenses

That defendant's employment required him to engage in criminal conspiracy is no defense. Susnjar v. U.S., C.C.A.6 (Ohio) 1928, 27 F.2d 223. Criminal Law 58

Defendant's participation in a criminal conspiracy is not excused by showing that what he did was in performance of duties of his employment. Hardy v. U.S., C.C.A.5 (Tex.) 1919, 256 F. 284, 167 C.C.A. 456, certiorari denied 40 S.Ct. 9, 250 U.S. 659, 63 L.Ed. 1194. Conspiracy 38

847. Termination of substantive statute, defenses

Prosecution for conspiracy to violate Emergency Price Control Act, 50 App. former § 901 et seq., was not barred because indictment was returned after termination of said sections in view of saving clause in 50 App. former § 901. Quirk v. U.S., C.C.A.8 (Iowa) 1947, 161 F.2d 138. Criminal Law 13.2

Federal District Court did not lose jurisdiction of prosecution for conspiracy to violate former § 123 of Title 27, prohibiting importation of liquor into dry state, where after completion of conspiracy and overt acts in furtherance thereof state prohibition law was repealed. Barker v. U.S., C.C.A.8 (Ark.) 1936, 86 F.2d 284. Criminal Law 15

848. Miscellaneous defenses

It is no defense to a charge of conspiracy based upon an effort to circumvent the law that the statutory scheme sought to be evaded is somehow defective. Dennis v. U. S., U.S.Colo.1966, 86 S.Ct. 1840, 384 U.S. 855, 16 L.Ed.2d 973. Conspiracy 38

Government did not improperly manufacture federal jurisdiction in prosecution for conspiracy to commit bank fraud even though undercover agent gave defendant phony deposit slips from federally insured bank so that agent could satisfy defendant's demand for proof of deposit of stolen checks; all elements of federal conspiracy statute were met, as defendant scrutinized slips for authenticity and was well aware that apparent location of funds was at bank, defendant ordered his "secretary" to call bank in attempt to confirm deposit, and defendant and coconspirators undertook to pressure agent to withdraw money from bank. U.S. v. Wallace, C.A.2 (N.Y.) 1996, 85 F.3d 1063. Criminal Law 36.6

Facts of case did not support claim of outrageous government conduct though undercover informant was paid

$90,000 for his activity, supplied defendants with beer and food and paid for trip and bomb components in plan to bomb a homosexual bar, and though defendants were arrested before the bomb was assembled, where, at time informant first targeted defendants for investigation, both had already expressed interest in blowing up establishments frequented by homosexuals, and informant did not suggest or set up the plan from which the conspiracy evolved. U.S. v. Winslow, C.A.9 (Idaho) 1992, 962 F.2d 845, as amended. Criminal Law 36.6

Even if evidence showed two conspiracies and not one, defendant who was shown to be central figure in each was not prejudiced by indictment or trial as for one conspiracy in absence of claim of surprise and where plea of former conviction would be available on any subsequent prosecution for any matters alleged. Sanders v. U. S., C.A.5 (La.) 1969, 415 F.2d 621, certiorari denied 90 S.Ct. 1096, 397 U.S. 976, 25 L.Ed.2d 271. Criminal Law 1167(1)

Defendant charged with mailing obscene material and conspiracy was not entitled to acquittal on ground that governmental policy, as expressed in memorandum to effect that prosecution for mailing of obscene private correspondence should be an exception confined to cases involving repeated offenders or aggravated circumstances, was violated by prosecution of defendant. Spillman v. U.S., C.A.9 (Ariz.) 1969, 413 F.2d 527, certiorari denied 90 S.Ct. 265, 396 U.S. 930, 24 L.Ed.2d 228. Postal Service 31.1

Where defendant had been convicted of conspiracy to transfer marihuana not pursuant to written order, defendant would not, on appeal from conviction, be heard to complain that payment of tax on marihuana was impossible. Browning v. U. S., C.A.9 (Cal.) 1966, 366 F.2d 420. Criminal Law 1134(8)

Fact that defendants offered to refund the premiums to insured after inspection of accident and sickness insurance policies, would not preclude conviction of defendants for use of mails in attempt to defraud in the sale of accident and sickness policies, and for conspiracy to commit the same offense. U.S. v. Sylvanus, C.A.7 (Ill.) 1951, 192 F.2d 96, certiorari denied 72 S.Ct. 555, 342 U.S. 943, 96 L.Ed. 701. Conspiracy 38; Postal Service 35(.5)

Alleged fact that conduct of defendants in conducting insurance business was approved by State Department of Insurance, did not preclude conviction of defendants for using the mails in attempt to defraud and for conspiracy to commit such offense. U.S. v. Sylvanus, C.A.7 (Ill.) 1951, 192 F.2d 96, certiorari denied 72 S.Ct. 555, 342 U.S. 943, 96 L.Ed. 701. Conspiracy 38; Postal Service 35(.5)

That money lender's area manager intrusted with procuring FHA loan applications did not himself present false applications to Federal Housing Administration is no defense in prosecution of money lender for conspiracy to cause to be made or passed statements known to be false, for purpose of influencing Federal Housing Administration to insure loans, when evidence discloses that such manager knowingly caused to be made such false statements. C. I. T. Corp. v. U.S., C.C.A.9 (Wash.) 1945, 150 F.2d 85. Conspiracy 33(2.1)

Where negotiable notes of corporation in reorganization in federal District Court for Minnesota had been fastened to proofs of claim and had been allowed by court but notes were detached from proofs of claim, stolen from clerk's office and brought to New York and sold for more than $5,000, prosecution for conspiracy to transport in interstate commerce securities of value of $5,000, knowing them to have been stolen, could not be successfully defended on ground that notes were merged in the claims and were valueless when detached. United States v. Bollenbach, C.C.A.2 (N.Y.) 1944, 147 F.2d 199, certiorari granted 65 S.Ct. 915, 324 U.S. 837, 89 L.Ed. 1401, reversed on other grounds 66 S.Ct. 402, 326 U.S. 607, 90 L.Ed. 350. Conspiracy 38

That § 440 et seq. of Title 31, may have unlawfully attempted to delegate legislative power to Secretary of Treasury was no defense to prosecution for conspiring to defraud United States by an agreement to effect sale of gold to United States mint by falsely concealing in required affidavit true origin of gold, since Congress was entitled to protect government against swindlers, regardless of constitutionality of operation being conducted by

government. Hills v. U.S., C.C.A.9 (Cal.) 1938, 97 F.2d 710. Conspiracy 38

At hearing under the Classified Information Procedures Act (CIPA) defendants failed to show validity of their defense that person to whom they allegedly sold zirconium and fuse components was an agent of the United States government, so as to defeat charges of conspiracy with, and aiding and abetting, such person, and thus did not establish predicate for introduction of classified information in support of such defense at trial. U.S. v. Cardoen, S.D.Fla.1995, 898 F.Supp. 1563, affirmed 139 F.3d 1359, rehearing denied, rehearing and suggestion for rehearing en banc denied 149 F.3d 1197, certiorari denied 119 S.Ct. 2365, 527 U.S. 1021, 144 L.Ed.2d 770. Witnesses 216(1)

Helsinki Accords did not bar prosecution of American Indian on conspiracy and weapon charges, despite his contention that Accords made binding on Government a provision of the Treaty of Canandaigua requiring formal complaint to chiefs of the Six Nations before taking unilateral action against protected individuals; Accords were not enforceable as treaty and status of Treaty of Canandaigua was effectively modified or abrogated by criminal statutes in question. U.S. v. Kakwirakeron, N.D.N.Y.1990, 730 F.Supp. 1200. Indians 3(2); Treaties 8

XIII. INSTRUCTIONS

<Subdivision Index>

871. Generally, instructions

District judge has broad discretion in formulating the charge so long as the charge accurately reflects the law and the facts of the case. U.S. v. Allred, C.A.5 (Tex.) 1989, 867 F.2d 856. Criminal Law 769

In prosecution for conspiracy to commit offenses against United States involving two military recruiting center bombings, court's instruction sufficiently warned jury that it could not convict defendant on basis of legal conduct, such as peaceful opposition to Vietnam War, protected by U.S.C.A. Const. Amend. 1. U. S. v. Giese, C.A.9 (Or.) 1979, 597 F.2d 1170, certiorari denied 100 S.Ct. 480, 444 U.S. 979, 62 L.Ed.2d 405. Conspiracy 48.2(2)

In conspiracy prosecution, trial court's instructions fairly presented issue of conspiracy and relationship of conspiracy to substantive counts. U. S. v. Chandler, C.A.5 (Ga.) 1978, 586 F.2d 593, certiorari denied 99 S.Ct.

1262, 440 U.S. 927, 59 L.Ed.2d 483. Conspiracy 48.2(1)

Presumption-of-truthfulness instruction given in joint prosecution for conspiracy and possession of goods stolen from interstate commerce did not constitute plain error requiring reversal in absence of specific objection by defense counsel where presumption-of-truthfulness instruction was delivered as part of court's extensive instruction on factors which would tend to discredit testimony of witnesses, including that of chief prosecution witness. U. S. v. LaRiche, C.A.6 (Ohio) 1977, 549 F.2d 1088, certiorari denied 97 S.Ct. 1687, 430 U.S. 987, 52 L.Ed.2d 383, certiorari denied 98 S.Ct. 506, 434 U.S. 966, 54 L.Ed.2d 452. Criminal Law 1043(2)

Considering instructions given, it was not plain error to fail to charge that jury could find defendants guilty of substantive offenses on basis of membership in conspiracy only if they found beyond reasonable doubt that such offenses were committed in furtherance of the conspiracy. U. S. v. Guidice, C.A.2 (N.Y.) 1970, 425 F.2d 886, certiorari denied 91 S.Ct. 85, 400 U.S. 842, 27 L.Ed.2d 77. Criminal Law 822(6)

It was unnecessary to charge that to find each defendant guilty of substantive offense in which he did not directly participate jury must determine that substantive offense was committed in furtherance of conspiracy of which he was a member, an instruction not requested by any of the defendants who did not object to failure of court to give it, where there was evidence of only one conspiracy. Gradsky v. U.S., C.A.5 (Fla.) 1967, 376 F.2d 993, certiorari denied 88 S.Ct. 224, 389 U.S. 908, 19 L.Ed.2d 224, rehearing denied 88 S.Ct. 488, 389 U.S. 998, 19 L.Ed.2d 505. Criminal Law 814(3)

Where most of trial of multidefendant conspiracy case was occupied with presentation of government's case, trial judge in devoting more time to government's case in summarizing the evidence did not thereby become an advocate or incorrectly marshal evidence and weigh it in favor of prosecution, especially where court admonished jury that its recollection of facts and not court's was controlling, that it must consider all of evidence and not merely that mentioned by court, that jury was sole judge of facts and that jury was to draw no conclusions from court's failure to include something in summation of contentions of parties. U. S. v. Edwards, C.A.2 (N.Y.) 1966, 366 F.2d 853, certiorari denied 87 S.Ct. 852, 386 U.S. 908, 17 L.Ed.2d 782, certiorari denied 87 S.Ct. 882, 386 U.S. 919, 17 L.Ed.2d 790. Criminal Law 777.5; Criminal Law 823(1)

Instruction on constitutional privilege of defendants not to testify in their own behalf, as requested by codefendant, was proper, and not prejudicial to defendants, who also declined to testify, in prosecution for conspiracy to defraud public by distribution of oil company stock at grossly inflated prices. U. S. v. Kelly, C.A.2 (N.Y.) 1965, 349 F.2d 720, certiorari denied 86 S.Ct. 1467, 384 U.S. 947, 16 L.Ed.2d 544. Criminal Law 787(1); Criminal Law 1172.2

The mere charge that acts done in connection with a conspiracy were in violation of statute is not sufficient where facts alleged fail to support such a charge and where such charge amounts to nothing more than the statement of a legal conclusion. U.S. v. Strauss, C.A.5 (Fla.) 1960, 283 F.2d 155. Conspiracy 43(6)

Under indictment charging conspiracy to commit four offenses, jury needed to find conspiracy to commit only one of the offenses in order to convict, but defendant was entitled to insist that in absence of sufficient proof of conspiracy to commit any one of the offenses, jury should be instructed to disregard that offense. U.S. v. Smith, C.C.A.2 (N.Y.) 1940, 112 F.2d 83. Conspiracy 24(2); Conspiracy 48.2(2)

An instruction as to the essential elements of a criminal conspiracy was correct. Welter v. U.S., C.C.A.8 (Neb.) 1925, 4 F.2d 342. Conspiracy 48.2(1)

In prosecutions for conspiracy, extraordinary precaution is required, not only that instructions shall not mislead, but that they shall scrupulously safeguard each defendant individually, as far as possible, from loss of identity in the mass. U. S. v. Bally Mfg. Corp., E.D.La.1972, 345 F.Supp. 410. Conspiracy 48.2(1)

18 U.S.C.A. § 371

In prosecution of attorney for conspiracy to violate § 2385 of this title, court should clearly instruct jury on request, or on his own motion if evidence warrants it, that lawyer representing client with professional propriety is not subject to criticism by reason of professional activity. U.S. v. Frankfeld, D.C.Md.1952, 103 F.Supp. 48. Criminal Law 824(1)

872. Summary of evidence, instructions

In prosecution for conspiracy to produce, and possession of, counterfeit bills, charge that Government's testimony was "undisputed" because defendant had introduced no witnesses of his own was prejudicially erroneous. U. S. v. Hall, C.A.5 (Miss.) 1976, 525 F.2d 1254. Criminal Law 788; Criminal Law 1172.2

Trial judge's characterization of defense's case, in prosecution for crossing state borders to further unlawful activity, conspiracy to do same, and interstate transportation of gambling paraphernalia, as contending that evidence was consistent with innocence was not error where such characterization was accurate and burden of proof was properly charged in another part of instructions. U. S. v. Marquez, C.A.2 (N.Y.) 1970, 424 F.2d 236, certiorari denied 91 S.Ct. 56, 400 U.S. 828, 27 L.Ed.2d 58. Criminal Law 770(3)

Where evidence against defendant differed from and was less substantial than evidence against codefendants on issue involving defendants' participation in single, over-all conspiracy to defraud public by distribution of oil company stock at grossly inflated prices, court improperly failed to marshal proofs in such fashion as to place clearly before jury difference between evidence against codefendants and evidence against defendant on that issue, despite request by counsel for both sides that court not marshal evidence. U. S. v. Kelly, C.A.2 (N.Y.) 1965, 349 F.2d 720, certiorari denied 86 S.Ct. 1467, 384 U.S. 947, 16 L.Ed.2d 544. Criminal Law 777.5

In prosecution for mail fraud, securities fraud and conspiracy, it was not error for court, in lieu of admitting record of prior civil litigation, to make statement to jury summarizing such litigation, where court told jury such statement was to be considered solely in consideration of charges relating to defendants' failure to disclose pendency of such litigation to prospective investors. Farrell v. U. S., C.A.9 (Cal.) 1963, 321 F.2d 409, certiorari denied 84 S.Ct. 631, 375 U.S. 992, 11 L.Ed.2d 478. Criminal Law 656(1)

A federal trial judge need not summarize the evidence at all, but if he undertakes to do so, the summary must be fair and adequate and must not be one-sided. Williams v. U.S., C.C.A.9 (Cal.) 1937, 93 F.2d 685. Criminal Law 756

A charge is subject to complaint where it devotes many pages to a summary of the indictment and many more pages to a summary of the evidence presented by the prosecution while making only meager, hurried, and passing reference to the case made by the defense, and refers extensively to the defense testimony only in one instance and then for the purpose of discrediting the testimony of one defendant. Williams v. U.S., C.C.A.9 (Cal.) 1937, 93 F.2d 685. Criminal Law 756

Charge of trial court was not criticizable as giving less prominence in summing up to defendants' side than to that of government. Russell v. U. S., C.C.A.6 (Ohio) 1926, 12 F.2d 683, 4 Ohio Law Abs. 585, certiorari denied 47 S.Ct. 100, 273 U.S. 708, 71 L.Ed. 851, certiorari denied 47 S.Ct. 100, 273 U.S. 709, 71 L.Ed. 851. Criminal Law 811(1)

873. Reasonable doubt, instructions

Reasonable doubt jury instruction in bank fraud prosecution that defendant should be acquitted if "there is real possibility that he is not guilty" was not plain error, where potentially confusing "real possibility" language was only used in clarifying charge, and original charge based on doubt that would make jurors "hesitate to act" was given twice. U.S. v. Reese, C.A.2 (N.Y.) 1994, 33 F.3d 166, certiorari denied 115 S.Ct. 756, 513 U.S. 1092, 130

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L.Ed.2d 655. Criminal Law 1038.1(5)

Although verbal jury instruction mistakenly required that defendants' guilt be proved beyond all possible doubt, trial court's instructions, when considered as a whole, did not mislead jury as to Government's burden of proving defendants' guilt beyond all reasonable doubt. U.S. v. Carrodeguas, C.A.11 (Fla.) 1984, 747 F.2d 1390, certiorari denied 106 S.Ct. 60, 474 U.S. 816, 88 L.Ed.2d 49. Criminal Law 822(13)

Instruction in conspiracy prosecution was sufficient to inform jury as to guilty knowledge of purpose of conspiracy required to show membership in such conspiracy, and court was not required to cast instruction in terms of "clear and unequivocal" proof of knowledge in view of fact that term "proof beyond a reasonable doubt" was fully explained and guilty knowledge was identified as one of elements required to be proved beyond a reasonable doubt. U. S. v. Fontenot, C.A.5 (Ga.) 1973, 483 F.2d 315. Conspiracy 48.2(1)

In a case where some lack of evidence for government fairly creates a reasonable doubt of guilt, a normally intelligent jury might be expected to perceive that fact after comparison and consideration of all the evidence, and court did not err in prosecution for conspiracy and for endeavoring to influence a witness in refusing to add to its charge that reasonable doubt might arise from lack of evidence in situation where defendants made no attempt to show prejudice and none was revealed by a reading of the trial transcript. Laughlin v. U. S., C.A.D.C.1967, 385 F.2d 287, 128 U.S.App.D.C. 27, certiorari denied 88 S.Ct. 1245, 390 U.S. 1003, 20 L.Ed.2d 103. Criminal Law 789(17)

In conspiracy prosecution, refusal of trial judge, after he had adequately and correctly defined term "reasonable doubt", to add, on request, that it also meant that jury must be convinced to a moral certainty was not error. U.S. v. Latin, C.C.A.2 (N.Y.) 1943, 139 F.2d 569. Criminal Law 829(18)

A charge that government had burden of meeting presumption of innocence and overcoming it by proof to show guilt beyond reasonable doubt, and that accused could not be convicted unless every essential element of crime had been established by evidence that satisfied jury beyond reasonable doubt, and if after full consideration of all the evidence there was reasonable doubt as to guilt, jury should not hesitate to return a verdict of not guilty, was proper. Holmes v. U. S., C.C.A.8 (Neb.) 1940, 115 F.2d 528, vacated on other grounds 62 S.Ct. 357, 314 U.S. 583, 86 L.Ed. 472, conformed to 126 F.2d 431. Criminal Law 789(4)

In prosecution for conspiracy, instruction to find defendant guilty if defendant's evidence "failed to balance or equal" government's evidence, and "there is not that reasonable doubt," was erroneous as requiring defendant to raise a reasonable doubt by his own evidence. Lambert v. U. S., C.C.A.5 (La.) 1939, 101 F.2d 960. Criminal Law 778(5)

In a prosecution against a naturalized citizen of German origin and another, a subject of the German empire, for conspiracy to sink a vessel in navigable waters, etc., the charge sufficiently safeguarded the rights of the naturalized citizen as to the question of reasonable doubt and the treatment he should receive at the hands of the jury, notwithstanding alienage of his conspirator. Wierse v. U.S., C.C.A.4 (S.C.) 1918, 252 F. 435, 164 C.C.A. 359, certiorari denied 39 S.Ct. 10, 248 U.S. 568, 63 L.Ed. 425. Criminal Law 789(2)

874. Indictment not evidence of guilt, instructions

Defendants in prosecution for conspiracy and for endeavoring to influence a witness were not greatly prejudiced by trial court's reading to jury of paragraph of one count of the indictment since jury was properly instructed that the indictment was not evidence and, moreover, when court offered to clarify the significance of the paragraph the defendants declined such offer. Laughlin v. U. S., C.A.D.C.1967, 385 F.2d 287, 128 U.S.App.D.C. 27, certiorari denied 88 S.Ct. 1245, 390 U.S. 1003, 20 L.Ed.2d 103. Criminal Law 1166.20

18 U.S.C.A. § 371

In prosecution for conspiring to violate espionage laws under indictment charging that it was part of conspiracy to engage in acts of sabotage, such allegation as to sabotage was surplusage, but failure to strike such surplusage was insubstantial error when there was no testimony concerning sabotage or a conspiracy to commit sabotage and jury was instructed that indictment was not evidence and was not to be considered as evidence. U S v. Abel, C.A.2 (N.Y.) 1958, 258 F.2d 485, certiorari granted 79 S.Ct. 59, 358 U.S. 813, 3 L.Ed.2d 56, affirmed 80 S.Ct. 683, 362 U.S. 217, 4 L.Ed.2d 668, rehearing denied 80 S.Ct. 1056, 362 U.S. 984, 4 L.Ed.2d 1019. Criminal Law 1167(3); Indictment And Information 119

In prosecution for conspiring to transport in interstate commerce lewd and obscene motion picture film, refusal of requested instruction that indictment was not evidence but was charge which government must establish by proof beyond reasonable doubt, did not constitute reversible error in view of other instructions adequately covering law. Parr v. U. S., C.A.5 (Tex.) 1958, 255 F.2d 86, certiorari denied 79 S.Ct. 40, 358 U.S. 824, 3 L.Ed.2d 64. Criminal Law 829(1)

In prosecution for conspiring to transport in interstate commerce lewd and obscene motion picture film, instruction that indictment is a charge which in itself is not proof of things therein alleged but undertakes to set forth things government charges defendant with having done and which government undertakes to prove, was not objectionable on ground that jury might infer that indictment could be used as evidence if some other evidence was offered to go with it. Parr v. U. S., C.A.5 (Tex.) 1958, 255 F.2d 86, certiorari denied 79 S.Ct. 40, 358 U.S. 824, 3 L.Ed.2d 64. Criminal Law 772(3)

In conspiracy prosecution, trial court did not err in refusing requested instruction that indictment itself was not evidence of guilt of accused persons in view of fact, that considering instructions in their entirety substance of requested instruction was covered in general charge so that jury could understand therefrom that defendants could not be found guilty until government established their guilt beyond a reasonable doubt by evidence produced in the trial, without consideration of indictment itself. Garner v. U.S., C.A.6 (Tenn.) 1957, 244 F.2d 575, certiorari denied 78 S.Ct. 47, 355 U.S. 832, 2 L.Ed.2d 44. Criminal Law 822(11)

Where trial court, in reading indictment to jury and discussing it, had always referred to it as "alleging" or "charging" certain acts, and correctly and clearly charged as to presumption of innocence, failure to instruct that jury should disregard indictment in determining issues was not harmful, in absence of reason to suspect that jury thought that indictment was evidence of facts alleged. United States v. Martin, C.A.2 (N.Y.) 1955, 223 F.2d 666. Criminal Law 1173.2(1)

Refusal to instruct that indictment was not evidence of guilt, and that jurors should not be influenced by return of indictment, was reversible error. Cooper v. U.S., C.C.A.8 (Iowa) 1925, 9 F.2d 216. Criminal Law 778(4)

875. Specific offense charged, instructions

Trial court's reference in conspiracy instruction to a finding that "a" conspiracy existed did not impermissibly allow the jury to convict upon a finding of any conspiracy rather than the one alleged on the indictment where the charge, viewed as a whole, was appropriate and referred to the specific conspiracy. U.S. v. Maldonado-Rivera, C.A.2 (Conn.) 1990, 922 F.2d 934, certiorari denied 111 S.Ct. 2811, 501 U.S. 1211, 115 L.Ed.2d 984, certiorari denied 111 S.Ct. 2858, 501 U.S. 1233, 115 L.Ed.2d 1025, certiorari denied 111 S.Ct. 2858, 501 U.S. 1233, 115 L.Ed.2d 1026. Criminal Law 822(1)

876. Number of conspiracies, instructions

Fact that prostitution was carried on in two massage parlors and apartments did not operate to require an instruction on a "two conspiracy" theory where there was but one conspiracy, involving several different persons, each playing his own role, and involving interstate travel for purpose of promoting and maintaining houses of

prostitution in violation of Kansas law. U. S. v. Russo, C.A.10 (Kan.) 1975, 527 F.2d 1051, certiorari denied 96 S.Ct. 2226, 426 U.S. 906, 48 L.Ed.2d 831, rehearing denied 96 S.Ct. 3201, 427 U.S. 913, 49 L.Ed.2d 1204. Conspiracy 48.2(2)

Failure expressly to charge jury that multiple conspiracies were not within ambit of indictment was not error, where court in its charge twice stressed that government alleged a single conspiracy and added that it must show that each defendant was a knowing part of it, and defendants did not point out how they could have been prejudiced by failure to give such an additional charge in view of evidence before jury. U. S. v. Aiken, C.A.2 (N.Y.) 1967, 373 F.2d 294, certiorari denied 88 S.Ct. 32, 389 U.S. 833, 19 L.Ed.2d 93. Conspiracy 48.2(1)

877. Reference to defendants, instructions

In prosecution for conspiracy, mail fraud, wire fraud, and obstruction of justice, trial court's jury charge on conspiracy count which referred several times to "two or more" conspirators when conspiracy charged involved only two defendants did not prejudice defendants. U. S. v. Coven, C.A.2 (N.Y.) 1981, 662 F.2d 162, certiorari denied 102 S.Ct. 1771, 456 U.S. 916, 72 L.Ed.2d 176. Criminal Law 1172.1(5)

Trial court did not err, in instructing jury which was considering charges of conspiracy, bribery of Federal Housing Administration officials, and submission of false statements to obtain FHA insurance on mortgages, in grouping together defendants associated with mortgagee, other defendants associated with Administration, and other defendants who were connected with the credit reporting aspect of the case. U. S. v. Bernstein, C.A.2 (N.Y.) 1976, 533 F.2d 775, certiorari denied 97 S.Ct. 523, 429 U.S. 998, 50 L.Ed.2d 608. Criminal Law 793

878. Existence of conspiracy, instructions

In prosecution for conspiracy to conduct illegal gambling business, jury instructions were not objectionable on ground that they failed to contain list of specific elements of crime of conspiracy. U. S. v. McCoy, C.A.5 (Ala.) 1976, 539 F.2d 1050, certiorari denied 97 S.Ct. 2185, 431 U.S. 919, 53 L.Ed.2d 230. Conspiracy 48.2(2)

Where jury was properly instructed on reasonable doubt, court was not required to give requested reasonable hypothesis charge relative to circumstantial evidence. U. S. v. Nicholson, C.A.5 (La.) 1976, 525 F.2d 1233, certiorari denied 96 S.Ct. 2170, 425 U.S. 972, 48 L.Ed.2d 795, certiorari denied 97 S.Ct. 105, 429 U.S. 837, 50 L.Ed.2d 103. Criminal Law 829(15)

Even if it was error to refuse to give defendant's requested instructions to the effect that if jury should find codefendant not guilty by reason of insanity then defendant could not be considered a member of the conspiracy until it was shown that defendant had conspired with one who was mentally competent, such refusal was harmless in view of fact that codefendant was found guilty. U. S. v. Thompson, C.A.9 (Cal.) 1974, 493 F.2d 305, certiorari denied 95 S.Ct. 60, 419 U.S. 834, 42 L.Ed.2d 60. Criminal Law 1173.3

Where reference to financial stake in venture was omitted in final instruction to jury on conspiracy, preinstruction on conspiracy which assertedly allowed jury to consider defendant's financial stake in venture as a factor in determining whether conspiracy existed and whether defendant was a member of it was not reversible error on claim that the preinstruction allowed jury to infer guilt from financial interest in a "legitimate" venture. U. S. v. Goodman, C.A.9 (Cal.) 1972, 457 F.2d 68, certiorari denied 92 S.Ct. 2073, 406 U.S. 961, 32 L.Ed.2d 348. Criminal Law 1172.1(3)

Instruction in conspiracy prosecution as to requirement of unanimity in finding that all conspirators agreed on at least one unlawful object was sufficient. U. S. v. Friedman, C.A.9 (Cal.) 1971, 445 F.2d 1076, certiorari denied 92 S.Ct. 326, 404 U.S. 958, 30 L.Ed.2d 275. Criminal Law 798(.5)

18 U.S.C.A. § 371

Failure to give instructions relating to problem of guilt by association and distinction between conspiracy and substantive offense forming the object of conspiracy did not entitle defendant to reversal of conspiracy conviction in absence of request for instruction on guilt by association and in view of fact that instruction given adequately informed jury that defendant could be found guilty only of crime charged, which was conspiracy only. U. S. v. Chamley, C.A.7 (Ill.) 1967, 376 F.2d 57, certiorari denied 88 S.Ct. 221, 389 U.S. 898, 19 L.Ed.2d 220. Criminal Law 824(4); Criminal Law 829(3)

Inasmuch as court instructed that jury had to find conspiracy existed as charged in indictment, that defendants knowingly associated themselves with conspiracy and that each defendant's association with conspiracy had to be determined from evidence as to that defendant's own acts, declarations, and conduct, instruction as to conspiracy was not objectionable on basis that if did not adequately focus attention of jury on question whether evidence established one conspiracy or many and whether one defendant was knowing member. U. S. v. Kahn, C.A.2 (N.Y.) 1966, 366 F.2d 259, certiorari denied 87 S.Ct. 321, 385 U.S. 948, 17 L.Ed.2d 226, certiorari denied 87 S.Ct. 324, 385 U.S. 948, 17 L.Ed.2d 226, rehearing denied 87 S.Ct. 502, 385 U.S. 984, 17 L.Ed.2d 445, rehearing denied 87 S.Ct. 503, 385 U.S. 984, 17 L.Ed.2d 445. Criminal Law 823(4)

Where instruction on conspiracy was not itself erroneous and where competence of certain evidence as to certain defendants depended upon determination that conspiracy existed, it was proper to instruct jury periodically, as against contention that such instruction came too soon and too often. Semler v. U. S., C.A.9 (Ariz.) 1964, 332 F.2d 6, certiorari denied 85 S.Ct. 61, 379 U.S. 831, 13 L.Ed.2d 39. Criminal Law 801; Criminal Law 806(1)

Where it did not appear from record that defendant's counsel, in a prosecution for violating fraud provisions of the Securities Act, § 77q of title 15, and the mail fraud statute, this title, and conspiracy to commit such crimes, requested a limiting instructing at time evidence of acts and declarations of alleged coconspirator were admitted, that jury could not consider such evidence against defendant until and unless they found a conspiracy to exist between defendant and alleged coconspirator, defendant had no basis for complaint, and in any event, such failure to instruct was not prejudicial in view of fact general instructions given at conclusion of trial adequately instructed jury as to limited use against defendant of declarations and acts made by others. Donaldson v. U. S., C.A.9 (Mont.) 1957, 248 F.2d 364, certiorari denied 78 S.Ct. 706, 356 U.S. 922, 2 L.Ed.2d 717. Criminal Law 824(8); Criminal Law 829(13)

Where indictment charged conspiracy and substantive offense and court in overruling objections to evidence stated that the exhibits were received with understanding that they could not apply and could not be used against the various defendants if their connection with the conspiracy was not established, failure to include in general charge instruction which court had assured defendants would be given, to effect that in event conspiracy was not established evidence should be disregarded, was prejudicial error, not waived by failure of defendants to request such a charge after the evidence was concluded. Schmeller v. U. S., C.C.A.6 (Ohio) 1944, 143 F.2d 544. Criminal Law 824(5)

Instruction that jury must find that conspiracy existed to warrant conviction and that no person not party thereto was bound by his or others' words was sufficient to cover subject-matter of refused charge. Feigenbutz v. U.S., C.C.A.8 (Mo.) 1933, 65 F.2d 122. Criminal Law 829(13)

879. Agreement, instructions

Instruction defining conspiracy, which first stated that conspiracy was combination or agreement of two or more persons to accomplish some unlawful purpose, but later explained that it was not necessary for Government to prove that conspiracy members had entered into "any formal type of agreement," was not contradictory, since reasonable juror would interpret instruction to mean that conspiracy required agreement, but not necessarily formal agreement. U.S. v. Valdiosera-Godinez, C.A.5 (Tex.) 1991, 932 F.2d 1093, rehearing denied 946 F.2d 1545,

certiorari denied 113 S.Ct. 2369, 508 U.S. 921, 124 L.Ed.2d 275. Criminal Law 810

In prosecution for, inter alia, conspiracy, trial judge's charge in which he discussed at length the proposition that actions often speak louder than words and that specific, tangible agreement in words is not necessary to establish existence of conspiracy was fair and properly responsive to jury's request and was not prejudicial to defendants. U. S. v. Cassino, C.A.2 (N.Y.) 1972, 467 F.2d 610, certiorari denied 93 S.Ct. 957, 410 U.S. 913, 34 L.Ed.2d 276, certiorari denied 93 S.Ct. 959, 410 U.S. 913, 35 L.Ed.2d 276, certiorari denied 93 S.Ct. 1363, 410 U.S. 928, 35 L.Ed.2d 590, certiorari denied 93 S.Ct. 1363, 410 U.S. 942, 35 L.Ed.2d 608. Conspiracy 48.2(1)

Where evidence is ambiguous as to scope of agreement made by a particular defendant accused of conspiracy and the issue had practical importance, the court must appropriately focus the jury's attention on that issue rather than allow it to decide on an all-or-nothing basis as to all defendants. U. S. v. Borelli, C.A.2 (N.Y.) 1964, 336 F.2d 376, certiorari denied 85 S.Ct. 647, 379 U.S. 960, 13 L.Ed.2d 555. Conspiracy 48.2(1)

Instruction defining conspiracy and stating that evidence need not show formal agreement but must show that members came to mutual understanding to try to accomplish common and unlawful plan was correct and proper. U.S. v. Duff, C.A.6 (Mich.) 1964, 332 F.2d 702. Conspiracy 48.2(1)

880. Defendant's connection with conspiracy, instructions

Defendant was not entitled to instruction on fair use exception to copyright infringement, in prosecution for copyright infringement conspiracy premised on involvement in group dedicated to allowing members to obtain unauthorized copies of copyrighted software over internet, despite defendant's claim that website was noncommercial and educational because members did not pay to download software, learned something from using software, and one of individuals operating site was a professor; members had to contribute valuable services, a barter form of payment, to receive software, and regardless, exception would not be applied to internet piracy. U.S. v. Slater, C.A.7 (Ill.) 2003, 348 F.3d 666, 69 U.S.P.Q.2d 1081. Conspiracy 48.2(2)

In order to promote goal of keeping distinct conspiracies distinct, court should describe explicitly the possibility of several conspiracies and instruct jury that in order to convict a given defendant it must find that he was member of conspiracy charged in indictment and not some other conspiracy. U. S. v. Cambindo Valencia, C.A.2 (N.Y.) 1979, 609 F.2d 603, certiorari denied 100 S.Ct. 2163, 446 U.S. 940, 64 L.Ed.2d 795. Conspiracy 48.2(1)

Instruction which told the jury that each defendant's participation in the alleged conspiracy was required to be established by evidence of the defendant's own words, his own actions, and the general course of his conduct did not improperly suggest that membership in the conspiracy could be determined on the basis of something other than a particular defendant's own words and acts. U. S. v. Haldeman, C.A.D.C.1976, 559 F.2d 31, 181 U.S.App.D.C. 254, certiorari denied 97 S.Ct. 2641, 431 U.S. 933, 53 L.Ed.2d 250, rehearing denied 97 S.Ct. 2992, 433 U.S. 916, 53 L.Ed.2d 1103. Conspiracy 48.2(1)

Once Government establishes existence of conspiracy through independent evidence, only slight evidence is required to connect a defendant with it; requirement of only slight evidence does not eliminate Government's need to introduce that minimal quantum of proof independently establishing that each defendant entered, participated in or furthered the conspiracy. U. S. v. Peterson, C.A.9 (Nev.) 1977, 549 F.2d 654. Conspiracy 47(1)

Instruction which told the jury that mere presence or association with conspirators was not, in and of itself, enough to establish that a person was acting as a member of a conspiracy was a sufficient instruction on the "mere presence doctrine" despite contention that court should have emphasized the mere presence principle to a greater extent. U. S. v. Graham, C.A.8 (Iowa) 1977, 548 F.2d 1302. Conspiracy 48.2(2)

Charge which instructed the jury that the Government was required to prove the existence of only a single

conspiracy and that each defendant's participation in the conspiracy was required to be determined individually by his own actions and declarations was not an improper "all or nothing" charge but rather was adequate on the issue. U. S. v. Armedo-Sarmiento, C.A.2 (N.Y.) 1976, 545 F.2d 785, certiorari denied 97 S.Ct. 1330, 430 U.S. 917, 51 L.Ed.2d 595, certiorari denied 97 S.Ct. 1331, 430 U.S. 917, 51 L.Ed.2d 595. Conspiracy 48.2(2)

"When a conspiracy has been established by competent proof, only slight evidence is necessary to connect a person with a conspiracy," describes the standard a court should use to determine whether the evidence against a particular defendant supports submission of his case to the jury but the quoted language should not be used in the charge to a jury. U. S. v. Hall, C.A.5 (Miss.) 1976, 525 F.2d 1254. Conspiracy 48.1(1); Conspiracy 48.2(1)

In conspiracy prosecution, trial court's instruction cautioning jury when it admitted hearsay evidence of statements made by defendant's coconspirator did not require that trial court charge jury to correct any possible notion engendered by earlier instruction that court had already decided that prosecution had proven defendant's membership in unlawful conspiracy beyond reasonable doubt. U. S. v. Wiley, C.A.2 (N.Y.) 1975, 519 F.2d 1348, certiorari denied 96 S.Ct. 793, 423 U.S. 1058, 46 L.Ed.2d 648. Criminal Law 769

Refusal to instruct jury as to possibility that Government has shown several conspiracies, rather than one overall conspiracy charged in indictment, did not establish that trial court had failed to adequately protect defendant from risk of guilt transference, where evidence clearly indicated that defendant knew that individual being harbored was an escapee, that members of a committee were responsible for escape and subsequent concealment, and that he was aiding in that concealment on orders from committee. U. S. v. Hobson, C.A.9 (Cal.) 1975, 519 F.2d 765, certiorari denied 96 S.Ct. 283, 423 U.S. 931, 46 L.Ed.2d 261. Conspiracy 48.1(2.1)

It is improper in a conspiracy trial to instruct that once the existence of the agreement or common scheme or conspiracy is shown, "slight evidence" is all that is required to connect particular defendant with conspiracy. U. S. v. Marionneaux, C.A.5 (La.) 1975, 514 F.2d 1244. Conspiracy 48.2(1)

Court's instruction that one could become member of conspiracy without full knowledge of all details of conspiracy or without being acquainted with all other conspirators was not erroneous. U. S. v. Musgrave, C.A.5 (Tex.) 1973, 483 F.2d 327, certiorari denied 94 S.Ct. 447, 414 U.S. 1023, 38 L.Ed.2d 315, certiorari denied 94 S.Ct. 450, 414 U.S. 1025, 38 L.Ed.2d 316. Conspiracy 48.2(1)

In prosecution for conspiracy, where entire instruction given by court was otherwise sufficient to properly define elements of offense, court was not required to give requested instruction that "Each defendant must in some sense promote their venture himself, make it his own, have a stake in its outcome." U. S. v. Salcido-Medina, C.A.9 (Cal.) 1973, 483 F.2d 162, certiorari denied 94 S.Ct. 582, 414 U.S. 1070, 38 L.Ed.2d 476. Criminal Law 829(3)

Where defendant was neither mentioned nor referred to in any manner in conversation between Government agent and coconspirator, trial court in conspiracy prosecution was not required to instruct that jury could not consider conversation with respect to defendant. U. S. v. Johnson, C.A.1 (Mass.) 1972, 467 F.2d 804, certiorari denied 93 S.Ct. 963, 410 U.S. 909, 35 L.Ed.2d 270. Criminal Law 779

Where trial court charged that, to convict on conspiracy count, it would be sufficient if jury found agreement between defendants and named, but unindicted, coconspirators, or at least two of the number, so that it was impossible to know whether jury found that defendant conspired with codefendant alone or with others, it would be improper to speculate in that regard when codefendant's conviction was vacated and defendant's conviction must also be vacated. U. S. v. Shuford, C.A.4 (S.C.) 1971, 454 F.2d 772. Criminal Law 1186.1

Instruction that, in order to establish proof that conspiracy existed, evidence had to show beyond a reasonable doubt that defendants "and/or other persons," in some way or manner, or through some contrivance, expressly or tacitly came to a mutual understanding to try to accomplish a common and unlawful plan was not erroneous on

ground that, because of the "and/or," the jury could have found defendants guilty even though other persons, not the defendants, came to a mutual understanding, since defendants did not have to originally form conspiracy in order to later join conspiracy and be convicted for their complicity in it. U. S. v. Fischetti, C.A.5 (Fla.) 1971, 450 F.2d 34, certiorari denied 92 S.Ct. 1290, 405 U.S. 1016, 31 L.Ed.2d 478. Conspiracy 48.2(2)

Erroneous submission to jury of issue of guilt on substantive count, by erroneously instructing that defendant could be found guilty of substantive offense if he at time of offense was party to conspiracy and substantive offense charged was in fact committed in furtherance of it, so tainted conspiracy conviction that reversal of conspiracy conviction as well as conviction on substantive offense was required. U. S. v. Cantone, C.A.2 (N.Y.) 1970, 426 F.2d 902, certiorari denied 91 S.Ct. 55, 400 U.S. 827, 27 L.Ed.2d 57. Criminal Law 1177

Court was not required to give requested charge stating that jury must determine each defendant's membership in conspiracy on evidence independent of acts and statements of other conspirators. U. S. v. Calarco, C.A.2 (N.Y.) 1970, 424 F.2d 657, certiorari denied 91 S.Ct. 46, 400 U.S. 824, 27 L.Ed.2d 53, rehearing denied 91 S.Ct. 1522, 402 U.S. 934, 28 L.Ed.2d 870. Conspiracy 48.2(1)

Defendants in narcotics conspiracy case were not entitled to instruction that, in determining defendant's membership, jury should not consider what others may have said or done but should decide without regard to and independently of statements and declarations of others. U. S. v. Nuccio, C.A.2 (N.Y.) 1967, 373 F.2d 168, certiorari denied 87 S.Ct. 1688, 387 U.S. 906, 18 L.Ed.2d 623, rehearing denied 88 S.Ct. 16, 389 U.S. 889, 19 L.Ed.2d 199. Conspiracy 48.2(2)

Instruction which directed that person might become member of conspiracy either at its inception or afterwards and that what was done or said by a coconspirator thereafter would be admissible against that person but which failed to limit, carefully and clearly, jury's consideration of evidence after date on which conspiracy ended as result of arrest, leaving jury free to rely on acts and declarations of coconspirator following such date in determining guilt or innocence of alleged former coconspirator for his part in conspiracy which had ended on his arrest, was clearly erroneous. U.S. v. Chase, C.A.4 (Va.) 1967, 372 F.2d 453, certiorari denied 87 S.Ct. 1688, 387 U.S. 907, 18 L.Ed.2d 626, certiorari denied 87 S.Ct. 1701, 387 U.S. 913, 18 L.Ed.2d 635. Criminal Law 779

In view of instructions that jury could convict only if conspiracy embraced concept that stolen securities should cross state lines or move to foreign countries, and that each defendant must be found to have knowingly associated himself with conspiracy, charge was not deficient on basis that it failed to state that each participant in conspiracy must have knowledge that conspiracy involved element of interstate or foreign transportation. U. S. v. Edwards, C.A.2 (N.Y.) 1966, 366 F.2d 853, certiorari denied 87 S.Ct. 852, 386 U.S. 908, 17 L.Ed.2d 782, certiorari denied 87 S.Ct. 882, 386 U.S. 919, 17 L.Ed.2d 790. Conspiracy 48.2(2)

Where the issue is material, the court must charge that various defendants' connections with conspiracy must be determined on an individual basis. U. S. v. Borelli, C.A.2 (N.Y.) 1964, 336 F.2d 376, certiorari denied 85 S.Ct. 647, 379 U.S. 960, 13 L.Ed.2d 555. Conspiracy 48.2(1)

Charge in which jury was admonished that membership in conspiracy must be established by evidence of defendant's own conduct, that witness' testimony might be discredited or impeached by proof of conviction for felony and that testimony of accomplice should be considered with care and caution, was predicated upon accurate appraisal of applicable law and was free from prejudicial error. Newman v. U. S., C.A.8 (Ark.) 1964, 331 F.2d 968, certiorari denied 85 S.Ct. 672, 379 U.S. 975, 13 L.Ed.2d 566. Criminal Law 1172.2

Charge in conspiracy prosecution correctly conditioned jury's consideration of acts and declarations of co-conspirators upon establishment of conspiracy and defendant's connection with it. Landers v. U. S., C.A.5 (Ga.) 1962, 304 F.2d 577. Criminal Law 779

Where the court already had instructed jury that it would be proper to consider the interest of defendant in the case, his hopes and his fears, and what he had to gain or lose as a result of the verdict, it was reversible error to refer to defendant's interest again in connection with a comparison of his interest with that of another witness. Williams v. U.S., C.C.A.9 (Cal.) 1937, 93 F.2d 685. Criminal Law 758; Criminal Law 811(5)

The singling out of defendant's testimony in the charge by an instruction to consider his interest is particularly objectionable when such testimony has been elicited on cross-examination by the trial judge himself. Williams v. U.S., C.C.A.9 (Cal.) 1937, 93 F.2d 685. Criminal Law 811(6)

Instruction that the interest of defendant in the result should be considered in weighing his testimony, and in determining how far, or to what extent, if at all, it is worthy of credit, is proper. Schulze v. U.S., C.C.A.9 (Cal.) 1919, 259 F. 189, 170 C.C.A. 257. Criminal Law 786(3)

881. Prior acquittal or conviction, instructions

Court in prosecution for conspiracy and for endeavoring to influence a witness did not err in refusing requested instruction that defendant's explanation of previous conviction and pardon he received be considered in evaluation of his criminal record where such request was tendered long after entire charge had been given and after defendant's counsel had specifically conceded that court's instruction on the effect of the conviction was correct if evidence of the conviction was properly admitted. Laughlin v. U. S., C.A.D.C.1967, 385 F.2d 287, 128 U.S.App.D.C. 27, certiorari denied 88 S.Ct. 1245, 390 U.S. 1003, 20 L.Ed.2d 103. Criminal Law 826

In prosecution for harboring fugitive from justice, refusal to instruct that accused's acquittal in another prosecution for harboring a fugitive could be considered by jury as affecting credibility of witnesses who testified in both cases was not error. Piquett v. U.S., C.C.A.7 (Ill.) 1936, 81 F.2d 75, certiorari denied 56 S.Ct. 749, 298 U.S. 664, 80 L.Ed. 1388. Criminal Law 785(3)

In prosecution for conspiracy to violate and for violations of National Prohibition Act, former § 1 et seq. of Title 27, instruction that jury might consider previous convictions of one defendant to supplement other evidence of guilt was reversible error, there being no question of defendant's credibility as witness. Filiatreau v. U.S., C.C.A.6 (Ky.) 1926, 14 F.2d 659.

882. Acquittal or conviction of others, instructions

In prosecution for conspiracy to embezzle funds belonging to a federally insured savings and loan association, failure of district court, following coconspirator's acquittal, to instruct jury to disregard evidence previously conditionally received covering period of the coconspirator's alleged involvement in the conspiracy did not constitute reversible error where the court carefully and thoroughly instructed jury on requirements which must be met prior to their consideration of acts and declarations of others, counsel failed to object to instructions as given, and evidence strongly supported jury's verdict. U. S. v. Morris, C.A.10 (Colo.) 1980, 623 F.2d 145, certiorari denied 101 S.Ct. 793, 449 U.S. 1065, 66 L.Ed.2d 609. Criminal Law 1173.2(5)

Any error in statement in instructions that jurors were not to concern themselves with disposition of cases against others named in indictment and that what had happened to them "frankly, is none of your business," was cured where court, after objection, stated that jury could consider how cases against others were disposed of only when determining whether they told truth as witnesses and fact that they got probation or that jurors might think that one individual was very reprehensible character and should not have received probation were not matters for jury. Sabari v. U. S., C.A.9 (Nev.) 1964, 333 F.2d 1019. Criminal Law 823(1)

That jury acquitted eight codefendants in prosecution arising from kickback arrangement involving loan by pension fund did not compel conclusion that remaining defendants, who participated on entirely different footing in case,

should have been acquitted. U. S. v. Wenger, S.D.N.Y.1970, 320 F.Supp. 1269. Criminal Law 877

883. Guilty plea of accomplice or co-conspirator, instructions

No undue prejudice attached to defendant because of mentioning of coconspirator's guilty plea, and fact that trial court may not have given a specific instruction as to effect of the guilty plea on both defendants did not amount to reversible error since apparently no such instruction had ever been requested and there were no additional aggravating circumstances that might have forced trial court to give such a specific instruction on its own. U. S. v. Horton, C.A.5 (Tex.) 1981, 646 F.2d 181, rehearing denied 655 F.2d 1131, certiorari denied 102 S.Ct. 516, 454 U.S. 970, 70 L.Ed.2d 388, certiorari denied 102 S.Ct. 1274, 455 U.S. 919, 71 L.Ed.2d 459. Criminal Law 422(2); Criminal Law 824(1)

Although it might have been preferable to tell jury only that case against original codefendants, who had entered pleas of nolo contendere, had been disposed of previously and that they had been eliminated from present trial, it was not error to reveal to jury the pleas of these codefendants, and in any event any prejudice which might have arisen from this information was cured when jury was told not to consider such pleas in any manner as related to remaining defendants and that it was not to be taken as evidence of any guilt of the remaining defendants. U. S. v. Curry, C.A.4 (N.C.) 1975, 512 F.2d 1299, certiorari denied 96 S.Ct. 55, 423 U.S. 832, 46 L.Ed.2d 50. Criminal Law 1169.5(2)

Trial judge's instruction, after prosecutor inquired of witness whether witness was aware that an individual named in the indictment had entered a guilty plea, that jury should disregard question and any answer which might have been given was insufficient; trial court should have instructed that evidence regarding the defendant who plead guilty was no proof whatsoever of guilt of the defendants on trial and that the proffered testimony should be disregarded completely in determining guilt or innocence. U. S. v. Gullo, C.A.3 (N.J.) 1974, 502 F.2d 759. Criminal Law 730(3)

Where trial court referred to guilty plea of coconspirator immediately after he informed jury that law presumed each defendant to be innocent and told jury that coconspirator who pleaded guilty was not involved in the proceeding in any way and trial court reiterated instruction that each defendant had to be taken to begin trial "with a clean slate without any evidence against them," remark as to coconspirator's guilty plea did not affect substantial rights of defendants and though an explicit cautionary instruction would have been preferable, it was not necessary. U. S. v. Johnson, C.A.5 (Miss.) 1972, 455 F.2d 311. Criminal Law 1166.22(2)

Where defendant, as trial tactic, elicited fact that codefendant, a defense witness, had pleaded guilty to one of charges pending against both defendants and prosecution brought out that codefendant had pleaded guilty to conspiracy, such evidence could be considered by jury in any way that it was relevant and probative, and instruction that codefendant's plea should be considered as evidence in case only insofar as it concerned guilt of defendants of conspiracy was not improper. Isaac v. U. S., C.A.9 (Cal.) 1970, 431 F.2d 11. Criminal Law 783(1)

In prosecution for mail fraud and for conspiracy, wherein after three weeks of trial one defendant pleaded guilty, trial court properly advised jury that after ascertaining that the change was voluntary court had accepted such defendant's plea and that such plea should not be considered by jury as evidence of guilt of remaining defendants. Koolish v. U. S., C.A.8 (Minn.) 1965, 340 F.2d 513, certiorari denied 85 S.Ct. 1805, 381 U.S. 951, 14 L.Ed.2d 724 . Criminal Law 301

The entry of guilty pleas by many defendants during trial of prosecution for conspiracy and illegal sale of unregistered stock did not prejudice remaining defendants, where precautionary instructions were given. U.S. v. Dardi, C.A.2 (N.Y.) 1964, 330 F.2d 316, certiorari denied 85 S.Ct. 117, 379 U.S. 869, 13 L.Ed.2d 73, certiorari denied 85 S.Ct. 50, 379 U.S. 845, 13 L.Ed.2d 50, rehearing denied 85 S.Ct. 640, 379 U.S. 986, 13 L.Ed.2d 579,

certiorari denied 85 S.Ct. 51, 379 U.S. 845, 13 L.Ed.2d 50. Criminal Law 1166(3)

In prosecution of commissioner, deputy clerk, and interpreters for conspiracy to defraud the Government by issuance of passports, failure to charge that pleas of guilty by two interpreter defendants could not be considered as evidence against commissioner was not reversible error under given charges warning about use of accomplice's testimony, and stating requirements as to reasonable doubt and presumption of innocence, in absence of failure of commissioner to request such a charge. U. S. v. Griffin, C.A.3 (Pa.) 1949, 176 F.2d 727, certiorari denied 70 S.Ct. 478, 338 U.S. 952, 94 L.Ed. 588, rehearing denied 70 S.Ct. 559, 339 U.S. 916, 94 L.Ed. 1341. Criminal Law 824(5)

Charge was calculated to mislead jury to believe that fact of coindictees having pleaded guilty could be considered against defendants. O'Shaughnessy v. U. S., C.C.A.5 (Ala.) 1927, 17 F.2d 225. Criminal Law 779

884. Credibility, instructions

Defendant in prosecution for conspiracy to evade federal fuel excise taxes failed to establish that prosecution witnesses, who were under state indictment for evasion of state fuel excise taxes, were offered immunity or leniency, or that witnesses were accomplices or informants, as required to warrant instruction to jury regarding assessment of credibility of witnesses who testify to obtain personal gain; traditional instruction on witness credibility was adequate response to defendant's concerns. U.S. v. Tanios, C.A.5 (Tex.) 1996, 82 F.3d 98, rehearing denied. Criminal Law 785(9)

It was plain error not to give special cautionary instruction on uncorroborated testimony from interested witnesses where only witnesses who testified directly as to defendant's part in conspiracy were interested witnesses, and only other testimony that might be considered corroborating was testimony indicating that defendant was of same height and weight as one of robbers. U. S. v. Hill, C.A.10 (Okla.) 1980, 627 F.2d 1052. Criminal Law 1038.2

Instructions given jury in respect to impeaching effect of statements made during trial that were inconsistent with testimony given at trial were not erroneous. U. S. v. Russo, C.A.10 (Kan.) 1975, 527 F.2d 1051, certiorari denied 96 S.Ct. 2226, 426 U.S. 906, 48 L.Ed.2d 831, rehearing denied 96 S.Ct. 3201, 427 U.S. 913, 49 L.Ed.2d 1204. Criminal Law 785(12)

885. Testimony of coconspirators, instructions

Trial court was not required to give requested instruction regarding coconspirator testimony; elements of instruction had been communicated by instructions actually given, requiring jury to take into account defendant's interest or lack of interest in result of suit and that coconspirator testimony is always to be received with caution and weighed with great care. U.S. v. Roberts, C.A.7 (Ind.) 1994, 22 F.3d 744, rehearing and suggestion for rehearing en banc denied, certiorari denied 115 S.Ct. 744, 513 U.S. 1086, 130 L.Ed.2d 645. Criminal Law 829(16)

Where there are multiple reasons justifying jury instruction regarding credibility of accomplice testimony, such as circumstances that accomplice was paid informant, was drug addict, and was not prosecuted in return for agreement to testify, it is better to give jury instruction on credibility of accomplice testimony combining such reasons. U. S. v. Bernard, C.A.9 (Wash.) 1980, 625 F.2d 854. Criminal Law 780(1)

In prosecution for conspiracy, mail fraud, and interstate travel to facilitate an unlawful activity, trial court properly submitted cautionary instruction on the limited use of evidence of coconspirators' statement. U. S. v. Tilton, C.A.5 (Fla.) 1980, 610 F.2d 302. Criminal Law 779

18 U.S.C.A. § 371

Instructions on conspiracy including instruction that testimony of coconspirator had to be received with caution and weighed with great care and that defendant should not be convicted upon unsupported testimony of alleged accomplice unless jury believed such testimony beyond reasonable doubt were in no way improper. Wilkerson v. U. S., C.A.5 (Tex.) 1979, 591 F.2d 1046, rehearing denied 595 F.2d 1221. Criminal Law 779

Trial court's instructions which emphasized the necessity for knowing participation in the conspiracy by any coconspirator whose statements were admitted into evidence against defendant was sufficient. U. S. v. Jacobson, C.A.10 (Colo.) 1978, 578 F.2d 863, certiorari denied 99 S.Ct. 324, 439 U.S. 932, 58 L.Ed.2d 327. Criminal Law 779

Where all witnesses who were granted immunity were accomplices, jury was instructed that testimony of an accomplice was to be received with caution and weighed with great care, and jurors were informed of those witnesses who had been granted immunity and were given a general instruction on credibility of witnesses, failure to give an instruction specifically relating to weight to be accorded testimony of a witness who had been granted immunity was not "plain error" which would command reversal. U. S. v. Curry, C.A.4 (N.C.) 1975, 512 F.2d 1299, certiorari denied 96 S.Ct. 55, 423 U.S. 832, 46 L.Ed.2d 50. Criminal Law 1038.2

Though better course in setting of particular case would have been for trial judge to caution jury to scrutinize testimony of accomplices in terms of their possible motivations rather than simply their records and activities, issue of coconspirators' interest was fairly put to jury, and court's instruction on accomplice and coconspirator testimony was sufficient for such purpose. U. S. v. Santana, C.A.2 (N.Y.) 1974, 503 F.2d 710, certiorari denied 95 S.Ct. 632, 419 U.S. 1053, 42 L.Ed.2d 649, certiorari denied 95 S.Ct. 1352, 420 U.S. 963, 43 L.Ed.2d 439, certiorari denied 95 S.Ct. 1450, 420 U.S. 1006, 43 L.Ed.2d 764. Criminal Law 779; Criminal Law 780(3)

Where trial court charged that testimony of coconspirators should be subjected to close and careful scrutiny and also charged that witness might be impeached by inconsistent statements, trial court's refusal to charge that testimony of admitted perjurer should be considered with caution and weighed with great care was not error. U. S. v. Evanchik, C.A.2 (Conn.) 1969, 413 F.2d 950. Criminal Law 829(16)

Cautionary instruction that jury should keep in mind that testimony of an accomplice is to be received with caution and weighed with great care and that they should not convict the defendant upon unsupported testimony of an accomplice unless they believe such testimony to be true beyond a reasonable doubt is in keeping with better practice. U. S. v. Callis, C.A.6 (Tenn.) 1968, 390 F.2d 606. Criminal Law 780(3)

Charge that accomplice testimony should be "received with caution and weighed with care" sufficiently instructed jury to give greater scrutiny to accomplice testimony than to other testimony. U. S. v. Mattio, C.A.2 (N.Y.) 1968, 388 F.2d 368, certiorari denied 88 S.Ct. 1643, 390 U.S. 1043, 20 L.Ed.2d 305. Criminal Law 780(3)

Where trial court made correct ruling on initial admission of evidence of admissions by alleged coconspirators, trial court, in absence of request for instruction, was not required to instruct that if jury acquitted defendant of conspiracy count evidence of admissions by alleged coconspirators must be disregarded. U.S. v. Vida, C.A.6 (Mich.) 1966, 370 F.2d 759, certiorari denied 87 S.Ct. 1695, 387 U.S. 910, 18 L.Ed.2d 630. Criminal Law 824(8)

Where much of evidence against defendants in stock conspiracy trial involved testimony against them by persons who were jointly charged as codefendants and who had pleaded guilty before trial, as well as by accomplices and coconspirators with criminal records, trial judge had duty accurately to instruct jury on accomplices' guilty pleas, witnesses' criminal records, and credibility. U. S. v. Kelly, C.A.2 (N.Y.) 1965, 349 F.2d 720, certiorari denied 86 S.Ct. 1467, 384 U.S. 947, 16 L.Ed.2d 544. Criminal Law 781(1); Criminal Law 785(10)

A defendant is entitled to a cautionary instruction on accomplice's testimony. Sabari v. U. S., C.A.9 (Nev.) 1964,

18 U.S.C.A. § 371

333 F.2d 1019. Criminal Law 780(1)

Trial judge did not take from jury factual issue of whether government witness was accomplice in conspiracy when he correctly stated witness' testimony that, by his own admission, he was accomplice but further cautioned jury that, in light of this admission, it must scrutinize his testimony with special care. U. S. v. Bentvena, C.A.2 (N.Y.) 1963, 319 F.2d 916, certiorari denied 84 S.Ct. 345, 375 U.S. 940, 11 L.Ed.2d 271, rehearing denied 90 S.Ct. 894, 397 U.S. 928, 25 L.Ed.2d 108, rehearing denied 84 S.Ct. 515, 375 U.S. 989, 11 L.Ed.2d 476, certiorari denied 84 S.Ct. 346, 375 U.S. 940, 11 L.Ed.2d 271, rehearing denied 84 S.Ct. 1162, 377 U.S. 913, 12 L.Ed.2d 183, certiorari denied 84 S.Ct. 353, 375 U.S. 940, 11 L.Ed.2d 272, certiorari denied 84 S.Ct. 354, 375 U.S. 940, 11 L.Ed.2d 272, certiorari denied 84 S.Ct. 355, 375 U.S. 940, 11 L.Ed.2d 272, certiorari denied 84 S.Ct. 360, 375 U.S. 940, 11 L.Ed.2d 272. Criminal Law 757(4)

With evidence supporting government's theory that after debacle, in attempt to obtain leniency for person who was to be sentenced, a conspiracy continued with objective of reducing his sentence through restitution by him of funds, court properly charged that jury must first determine whether conspiracy ended on date of such debacle, that if it so found it must in deciding whether a defendant had been member, exclude all evidence of restitution plan other than his particular admissions, but that, if it found that conspiracy continued beyond date of such debacle, it might consider acts or declarations of all coconspirators during that period in furtherance of conspiracy's objectives. U. S. v. Kahaner, C.A.2 (N.Y.) 1963, 317 F.2d 459, certiorari denied 84 S.Ct. 62, 375 U.S. 835, 11 L.Ed.2d 65, rehearing denied 84 S.Ct. 478, 375 U.S. 982, 11 L.Ed.2d 429, certiorari denied 84 S.Ct. 73, 375 U.S. 836, 11 L.Ed.2d 65, certiorari denied 84 S.Ct. 74, 375 U.S. 836, 11 L.Ed.2d 65, rehearing denied 84 S.Ct. 263, 375 U.S. 926, 11 L.Ed.2d 169. Criminal Law 779

In view of instruction to effect that statements taken after conspiracy ended may be considered as to guilt or innocence of man who made them but may not be considered as to guilt or innocence of other defendants, defendant was not prejudiced by joint trial with other alleged conspirators. Mee v. U. S., C.A.8 (Minn.) 1963, 316 F.2d 467, certiorari denied 84 S.Ct. 1923, 377 U.S. 997, 12 L.Ed.2d 1049, rehearing denied 85 S.Ct. 20, 379 U.S. 873, 13 L.Ed.2d 80. Criminal Law 1166(6)

The failure, in conspiracy case, to instruct jury to scrutinize with special care the testimony of accomplices was not prejudicial, where usual instructions as to bias and interest were given by trial judge, defense counsel, in their summations to jury and in their motion to the court, made repeated references to asserted inconsistencies in testimony of government witnesses and these references were reiterated in judge's instruction, and there was testimony from other individuals introduced in corroboration of that of accomplice. U. S. v. Cianchetti, C.A.2 (Conn.) 1963, 315 F.2d 584. Criminal Law 1173.2(6)

The trial judge in conspiracy cases would be well advised to caution jury as to the scrutiny appropriate in considering testimony of accomplices; but failure to so caution should not be made cause for reversal unless it has resulted in substantial prejudice. U. S. v. Cianchetti, C.A.2 (Conn.) 1963, 315 F.2d 584. Criminal Law 780(1); Criminal Law 1173.2(6)

Instruction that testimony of accomplice should be taken with great caution and should be scrutinized very carefully by jury afforded more than adequate safeguards to insure close examination of accomplice's testimony. U. S. v. Vita, C.A.2 (N.Y.) 1961, 294 F.2d 524, certiorari denied 82 S.Ct. 837, 369 U.S. 823, 7 L.Ed.2d 788, certiorari denied 82 S.Ct. 1032, 369 U.S. 866, 8 L.Ed.2d 85. Criminal Law 780(3)

Where district court instructed relative to testimony of alleged accomplices, and thereafter defendant called to court's attention that only one witness who was alleged to be an accomplice had testified, and court thereupon amended instruction by making it refer to such witness instead of witnesses, court's amendment cured suggested defect. U.S. v. Vanco, C.C.A.7 (Ill.) 1942, 131 F.2d 123. Criminal Law 818

There was no basis for complaint that court charged that rules relating to testimony of accomplices were applicable to testimony of defendant who took stand in his own defense, where court merely said that it was for jury to pass on credibility of accomplices and that same rule applied to defendant's testimony. U.S. v. Ritchie, C.C.A.3 (N.J.) 1942, 128 F.2d 798. Criminal Law 786(2)

In prosecution for conspiracy, court, in admitting evidence as to statements by alleged coconspirators, properly instructed that if jury found a conspiracy existed, any happening occurring in furtherance of conspiracy could be used against a conspirator, whether he was present or not, and if they found conspiracy did not exist so far as accused was concerned, jury should strike the evidence from their minds. Deacon v. U. S., C.C.A.1 (Mass.) 1941, 124 F.2d 352. Criminal Law 779

In prosecution for conspiracy to violate internal revenue laws, refusal of instruction that testimony of an accomplice should be subjected to closest scrutiny and giving of instruction that, in considering testimony of an accomplice, fact that witness is an accomplice should be considered, but which did not advise jury to subject testimony to closest scrutiny, was not reversible error, where testimony of accomplices was so uncontradicted and so thoroughly corroborated as to leave no doubt as to its truth. Hanks v. U.S., C.C.A.4 (S.C.) 1938, 97 F.2d 309. Criminal Law 1172.2

Whether trial judge should caution jury with respect to weight to be given testimony of an accomplice is matter resting in his sound discretion. Hanks v. U.S., C.C.A.4 (S.C.) 1938, 97 F.2d 309. Criminal Law 780(3)

Where testimony of an accomplice is placed in evidence, jury should be told that it is to be received with caution and carefully scrutinized. Hanks v. U.S., C.C.A.4 (S.C.) 1938, 97 F.2d 309. Criminal Law 780(3)

In conspiracy prosecution, complaint that confessions of some of defendants were admitted against all defendants without instruction that confessions were competent against makers only was without merit, where instruction was given that no statements made by defendants after termination of conspiracy could be used as evidence against any other defendant. Patterson v. U.S., C.C.A.6 (Mich.) 1935, 82 F.2d 937, certiorari denied 56 S.Ct. 677, 298 U.S. 657, 80 L.Ed. 1383. Criminal Law 783(1)

In conspiracy prosecution instruction requiring close scrutiny of testimony of accomplices was properly rejected, as abstract and inconsistent with defense. Newman v. U.S., C.C.A.9 (Wash.) 1928, 28 F.2d 681, certiorari denied 49 S.Ct. 253, 279 U.S. 839, 73 L.Ed. 986. Criminal Law 814(15)

Instruction relative to testimony of coconspirators was adequate. McDonnell v. U.S., C.C.A.1 (Mass.) 1927, 19 F.2d 801, certiorari denied 48 S.Ct. 114, 275 U.S. 551, 72 L.Ed. 421.

It is not error to charge the jury that they may convict on the uncorroborated testimony of accomplices, where they are also charged that they should scrutinize such testimony with care. Goldberg v. U.S., C.C.A.5 (Ga.) 1924, 297 F. 98. Criminal Law 780(3)

Instructions on a trial for criminal conspiracy sufficiently cautioned the jury with respect to the testimony of defendants, who pleaded guilty and were witnesses for the government. Orear v. U.S., C.C.A.5 (Tex.) 1919, 261 F. 257. Criminal Law 780(3)

In a prosecution for conspiracy to defraud the United States, where testimony was admitted of the statements or admissions of one defendant, made to a representative of the Department of Justice after the conspiracy had ended in failure, it was prejudicial error to refuse to instruct that such statements, made out of court, were not competent as against the other defendant. Feder v. U.S., C.C.A.2 (N.Y.) 1919, 257 F. 694, 168 C.C.A. 644. Criminal Law 673(4)

18 U.S.C.A. § 371

Instruction that statements by coconspirator made in absence of defendant could not be considered unless conspiracy was found and that the admission of such testimony was subject to its being stricken was proper and did not constitute instruction that, since evidence was not stricken, Government had sustained its burden of proving conspiracy. U. S. v. Vespe, D.C.Del.1975, 389 F.Supp. 1359, affirmed 520 F.2d 1369, certiorari denied 96 S.Ct. 779, 423 U.S. 1051, 46 L.Ed.2d 640. Criminal Law 779

After defense counsel requested trial court to instruct jury on the inadmissibility of statements made by one co-conspirator as evidence against other co-conspirators unless and until the existence of a conspiracy is established, it was not improper for the court, at time evidence was being introduced, to simply instruct jury that they were to accept and be guided by defense counsel's statement of a few moments before. U. S. v. Riccobene, E.D.Pa.1970, 320 F.Supp. 196, affirmed 451 F.2d 586. Criminal Law 833

In conspiracy case, trial judge will instruct jury as to which of several defendants are bound by witnesses' testimony as to coconspirators' acts and declarations. U.S. v. Lang, E.D.N.Y.1941, 40 F.Supp. 414. Criminal Law 779

886. Declarations of coconspirators, instructions

Willful blindness instruction was warranted, in trial for conspiracy to commit theft from Indian tribal organization, by evidence supporting inference that defendants consciously chose to remain ignorant about extent of their criminal behavior, including evidence they told federal agents they could have checked, but did not want to know how much money they had taken through payroll advances. U.S. v. Goings, C.A.8 (S.D.) 2002, 313 F.3d 423. Indians 38(1)

In conspiracy prosecution, trial court did not err in failing to instruct jury that reason that hearsay statements of certain nonattendant coconspirators were admissible was that judge had made preliminary determination, out of jury's presence, that substantial evidence pointed towards existence of conspiracy between defendant and declarants and that statements were made in furtherance of conspiracy, and that, by the close of all the evidence, trial judge was convinced that evidence preponderated in this direction, in view of fact that such an instruction carried profuse potential for conveying to jury understanding that trial court was persuaded of defendant's guilt. U. S. v. Hill, C.A.5 (Ga.) 1980, 622 F.2d 900. Criminal Law 762(5)

It was not error to fail to give requested instruction that jury could consider co-conspirators' declarations made in absence of defendant only if jury found, on independent proof, that conspiracy existed and that absent defendant knowingly participated in conspiracy. Carbo v. U. S., C.A.9 (Cal.) 1963, 314 F.2d 718, certiorari denied 84 S.Ct. 1625, 377 U.S. 953, 12 L.Ed.2d 498, rehearing denied 84 S.Ct. 1902, 377 U.S. 1010, 12 L.Ed.2d 1058, certiorari denied 84 S.Ct. 1626, 377 U.S. 953, 12 L.Ed.2d 498, rehearing denied 84 S.Ct. 1903, 377 U.S. 1010, 12 L.Ed.2d 1058, certiorari denied 84 S.Ct. 1627, 377 U.S. 953, 12 L.Ed.2d 498. Criminal Law 779

Defendants were entitled to nothing more than instruction that jury should disregard testimony of codefendant that one of defendants in conversation with codefendant stated that he had committed offense other than those charged, and were not entitled to mistrial, where testimony of codefendant was drawn from him after counsel for defendants asked that he be more specific with regard to conversation with defendants. U. S. v. Vita, C.A.2 (N.Y.) 1961, 294 F.2d 524, certiorari denied 82 S.Ct. 837, 369 U.S. 823, 7 L.Ed.2d 788, certiorari denied 82 S.Ct. 1032, 369 U.S. 866, 8 L.Ed.2d 85. Criminal Law 783.5; Criminal Law 867

In prosecution against bottling plant owner and ration bank teller for falsifying, concealing and covering up material facts within jurisdiction of Office of Price Administration by means of false sugar ration deposit slips, conspiracy existing between them terminated when teller left the bank, and, therefore, declarations made by the owner to teller's successor were not admissible against the teller and refusal of instruction that owner's declarations to teller's successor could not be considered against teller was error. Bartlett v. United States, C.C.A.10 (N.M.)

1948, 166 F.2d 920. Criminal Law 424(1); Criminal Law 673(4)

Where district judge limited evidential use of statements allegedly made by one jointly charged with defendant after termination of the alleged conspiracy to one making the statements alone, defendant could not complain because district judge failed to restate such limitation in his formal charge to jury, in absence of request therefor. U. S. v. Alfano, C.C.A.3 (Pa.) 1945, 152 F.2d 395. Criminal Law 824(11)

In prosecution for making war material in defective manner, evidence which related to transactions subsequent to date of making of allegedly defective part involved was competent to establish wilfulness but court should have charged that testimony regarding conversations held not in presence of one or more of the various defendants and not binding on them in their official capacity were inadmissible against them unless conspiracy was proved. Schmeller v. U. S., C.C.A.6 (Ohio) 1944, 143 F.2d 544. Criminal Law 371(1); Criminal Law 779

Statements in charge that "acts and declarations of each of the members of the conspiracy are competent and available proof against each other member," and that "they are then partners as in other transactions of life, lawful transactions, each acts for every one, and for all the others," were not misleading as against objection that charge permitted jury to consider declarations of one conspirator, made out of presence of another and after termination of conspiracy, admissible against such other, especially where no such declarations had been made after termination. Johnson v. U.S., C.C.A.4 (W.Va.) 1925, 5 F.2d 471, certiorari denied 46 S.Ct. 101, 269 U.S. 574, 70 L.Ed. 419.

887. Acts of others attributable to all, instructions

Where indictment charged alien defendants with conspiring from 1939 to 1944 to defraud the United States by concealing and misrepresenting their membership in the Nazi party but the last overt act alleged was the filing of a false registration by one defendant on December 23, 1940, such registration was adequate as an overt act in furtherance of conspiracy to make a false return but could not serve as an overt act in furtherance of a conspiracy to conceal from 1940 to 1944 the fact that false returns had been made so as to make admissible against co-defendants separate admissions of defendants in 1943 and 1944, and instruction that admissions of each were admissible against all if there was a conspiracy and all of them were in it, was error. Fiswick v. U.S., U.S.N.J.1946, 67 S.Ct. 224, 329 U.S. 211, 91 L.Ed. 196. Criminal Law 423(9); Criminal Law 779

Pinkerton instruction that conspirator is responsible for offenses committed by fellow conspirators if he was member of conspiracy when offense was committed, and if offense was committed in furtherance of conspiracy, was not adequate to support defendant's convictions on counts of attempted extortion where various aspects of liability were unusual and complex, and instruction was not linked to crime of attempted extortion or its elements; complex indictment, ubiquity of government informant and absence of coconspirators standing trial required that court explain specifically and in detail how jury should apply *Pinkerton* to facts before it. U.S. v. McClain, C.A.7 (Ill.) 1991, 934 F.2d 822. Criminal Law 779

In prosecution for conspiracy to commit offenses against United States involving two military recruiting center bombings, trial court properly instructed jury that it could consider acts and declarations of coconspirators. U. S. v. Giese, C.A.9 (Or.) 1979, 597 F.2d 1170, certiorari denied 100 S.Ct. 480, 444 U.S. 979, 62 L.Ed.2d 405. Criminal Law 779

Instruction that, in a conspiracy case, the guilt of any defendant may be established without proof that he or she personally did every act constituting the offense charged was not improper on theory it allowed jury to "attribute" to defendant the requisite knowledge to convict possibly possessed by other coconspirators. U. S. v. Eaglin, C.A.9 (Or.) 1977, 571 F.2d 1069, certiorari denied 98 S.Ct. 1453, 435 U.S. 906, 55 L.Ed.2d 497. Conspiracy 48.2(1)

In conspiracy prosecution, proposed instruction with respect to vicarious liability of coconspirators was properly refused, where proposed instruction precluded any liability except for acts in which they "knowingly and willingly

participated," and federal rule is that a coconspirator can be held liable for reasonably foreseeable act committed in furtherance of a common illegal objective. U. S. v. Manning, C.A.9 (Cal.) 1974, 509 F.2d 1230, certiorari denied 96 S.Ct. 37, 423 U.S. 824, 46 L.Ed.2d 40. Conspiracy 48.2(1)

Refusal to instruct jury that acts and statements of conspirators must have been in furtherance of conspiracy to be admissible against all coconspirators, if error, was harmless, absent any acts or statements admitted into evidence which were not in furtherance of the conspiracy. U. S. v. Mendoza, C.A.5 (Tex.) 1972, 473 F.2d 692. Criminal Law 1173.2(5)

Where court proceeding count by count through entire indictment named respective defendants charged under each count and carefully defined elements of each offense in terms of defendants so named and instructed that "each offense charged in the indictment and the evidence that is applicable to each defendant should be considered by you separately," the entire charge did not improperly imply that if one defendant was found guilty under one conspiracy count all defendants had to be found guilty under that count. U. S. v. Vicars, C.A.5 (Tex.) 1972, 467 F.2d 452, certiorari denied 93 S.Ct. 1451, 410 U.S. 967, 35 L.Ed.2d 702. Conspiracy 48.2(1)

While declaration of one alleged conspirator in furtherance of conspiracy otherwise banned by hearsay rule is not admissible against another without other proof of latter's membership, if the judge is satisfied that such proof is adequate, he is to leave declaration to jury to use like any other evidence, without instructing them to consider it as proof only after they too have decided a preliminary issue which alone makes it competent. U. S. v. Nuccio, C.A.2 (N.Y.) 1967, 373 F.2d 168, certiorari denied 87 S.Ct. 1688, 387 U.S. 906, 18 L.Ed.2d 623, rehearing denied 88 S.Ct. 16, 389 U.S. 889, 19 L.Ed.2d 199. Criminal Law 736(1); Criminal Law 779

Where attorney, who had acted for defendants, had been named as conspirator in the indictment but had not been indicted, trial judge's instruction pertaining to admissibility of act of one partner in crime against other partners was sufficient to cover trial judge's earlier statement that he would instruct, regarding attorney's testimony, whether or not one was bound by the other. U. S. v. Weinberg, C.A.3 (Pa.) 1955, 226 F.2d 161, certiorari denied 76 S.Ct. 305, 350 U.S. 933, 100 L.Ed. 815. Conspiracy 48.2(1)

In prosecution for use of mails in attempt to defraud in sale of accident and sickness policies and for conspiracy to commit the same offense, court properly ruled that one of defendants was chargeable with acts and declaration of the other defendants prior to the time of his association with them and with acts and declarations of insurer's other agents, since the act of agent is the act of his principal and the act of one conspirator is the act of all. U. S. v. Sylvanus, C.A.7 (Ill.) 1951, 192 F.2d 96, certiorari denied 72 S.Ct. 555, 342 U.S. 943, 96 L.Ed. 701. Conspiracy 41

888. Corroboration, instructions

In prosecution for conspiring to violate § 212 of this title prohibiting bribery of customs officials and §§ 173, 174 of Title 21 concerning narcotics laws, one of defendants was not entitled as of right to a charge that government's evidence against him through testimony of a coconspirator was uncorroborated, a charge explaining uncorroborated testimony, and a charge that uncorroborated testimony of accomplice should be scrutinized with great caution. United States v. Stromberg, C.A.2 (N.Y.) 1959, 268 F.2d 256, certiorari denied 80 S.Ct. 119, 361 U.S. 863, 4 L.Ed.2d 102, certiorari denied 80 S.Ct. 123, 361 U.S. 863, 4 L.Ed.2d 102, certiorari denied 80 S.Ct. 124, 361 U.S. 863, 4 L.Ed.2d 102, certiorari denied 80 S.Ct. 130, 361 U.S. 868, 4 L.Ed.2d 108. Criminal Law 780(1)

Although in a conspiracy prosecution, an instruction that accomplice's testimony should be received with caution is generally desirable, its omission is not necessarily reversible error, since corroboration of an accomplice's testimony is not a prerequisite to conviction. Pittsburgh Plate Glass Co. v. U.S., C.A.4 (Va.) 1958, 260 F.2d 397, certiorari granted 79 S.Ct. 289, 358 U.S. 917, 3 L.Ed.2d 237, certiorari granted 79 S.Ct. 290, 358 U.S. 918, 3

L.Ed.2d 237, affirmed 79 S.Ct. 1237, 360 U.S. 395, 3 L.Ed.2d 1323, rehearing denied 80 S.Ct. 42, 361 U.S. 855, 4 L.Ed.2d 94. Criminal Law 780(1); Criminal Law 1173.2(6)

In a prosecution under former § 88 of this title [now this section] the failure of the court to instruct the jury as to the value of the testimony of an accomplice, and to call its attention to the danger of placing too much reliance upon such testimony, and to their rights to require corroborating testimony before giving credence to such evidence, is not error. Nee v. U S, C.C.A.3 (Pa.) 1920, 267 F. 84.

In a prosecution for conspiring to defraud the United States, where the jury had been charged that the testimony of confederates and accomplices should not be accepted unless corroborated, a further charge that the confessions of such confederates might be considered as corroboration was improper, allowing the confessions of his alleged coconspirators which were not in furtherance of the conspiracy to be used against defendant. Fitter v. U.S., C.C.A.2 (N.Y.) 1919, 258 F. 567, 169 C.C.A. 507. Criminal Law 780(4)

889. Limited admission, instructions

Where relevant declaration or admissions of conspirator made in absence of coconspirator are admitted in trial for conspiracy, the court must clearly instruct that the evidence is limited as against the declarant only. Delli Paoli v. U.S., U.S.N.Y.1957, 77 S.Ct. 294, 352 U.S. 232, 1 L.Ed.2d 278. Criminal Law 673(4)

Where instruction in prosecution for transporting forged check in interstate commerce and for conspiracy to commit such offense, that certain evidence had limited purpose was not proposed, and no objection to its absence was made, failure to give such instruction could not be assigned as error. U. S. v. Solomon, C.A.7 (Ill.) 1970, 422 F.2d 1110, certiorari denied 90 S.Ct. 2201, 399 U.S. 911, 26 L.Ed.2d 565, rehearing denied 91 S.Ct. 26, 400 U.S. 855, 27 L.Ed.2d 93. Criminal Law 824(8)

Codefendants in conspiracy case could not claim prejudice in respect to testimony offered to show defendant's consciousness of guilt, where there was an instruction that the testimony was offered only as to defendant. U.S. v. Dardi, C.A.2 (N.Y.) 1964, 330 F.2d 316, certiorari denied 85 S.Ct. 117, 379 U.S. 869, 13 L.Ed.2d 73, certiorari denied 85 S.Ct. 50, 379 U.S. 845, 13 L.Ed.2d 50, rehearing denied 85 S.Ct. 640, 379 U.S. 986, 13 L.Ed.2d 579, certiorari denied 85 S.Ct. 51, 379 U.S. 845, 13 L.Ed.2d 50. Criminal Law 673(4)

There was no basis for defendant's claim that trial court erroneously refused to direct a verdict in his favor in conspiracy prosecution because certain evidence was excluded as against him and was never afterward reoffered, where such evidence had been admitted as against co-defendant with instruction that it was not to be considered as against defendant unless there was proof connecting him with conspiracy, and, after admission of such proof, court instructed jury that it should consider all of testimony that had been offered. U.S. v. Ritchie, C.C.A.3 (N.J.) 1942, 128 F.2d 798. Criminal Law 673(4)

In trial of several defendants for conspiracy, trial court's failure to limit evidentiary value of one defendant's statement, prejudicial to codefendant, as admission of defendant making it, by instruction to jury, as colloquy between court and counsel in jury's absence disclosed to be trial court's intention, was error, available to defendants on appeal, though they took no exception, in view of court's statement that he would instruct jury in accordance with defendants' requests. U.S. v. Perlstein, C.C.A.3 (N.J.) 1941, 120 F.2d 276. Criminal Law 1056.1(3.1)

Portion of instruction concerning liability of conspirators for declarations and acts of coconspirators was not erroneous as failing to limit declarations or acts for which conspirators were liable to acts and statements made in furtherance of conspiracy, where entire instruction as given properly limited liability of conspirators. Levine v. U.S., C.C.A.9 (Wash.) 1935, 79 F.2d 364. Criminal Law 822(1)

The admission of evidence incompetent against one defendant charged with conspiracy but competent against the

other defendants, is not prejudicial, if jury is also instructed that evidence should only be considered against defendants as to whom the evidence is competent and not against the defendant as to whom the evidence is incompetent. U.S. v. Rose, W.D.Ky.1940, 31 F.Supp. 249. Criminal Law 921

890. Erroneous admission, instructions

Generally, error in the admission of evidence is cured by withdrawing the evidence from jury's consideration and instructing jury to disregard it. Holt v. U.S., C.C.A.10 (Okla.) 1937, 94 F.2d 90. Criminal Law 1169.5(1)

In prosecution for using mails in furtherance of scheme to defraud and for conspiracy to use mails in furtherance of scheme to defraud by representing an imposter to be heir to valuable mineral rights and inducing others to enter into contracts regarding mineral rights, error in the admission of the imposter's purported dying declaration giving complete narrative of what occurred between imposter and his alleged coconspirators from beginning was not cured by court's instruction to jury to disregard statement, where it squarely contradicted defense that defendant did not know the alleged heir was an imposter. Holt v. U.S., C.C.A.10 (Okla.) 1937, 94 F.2d 90. Criminal Law 1169.5(5)

891. Irrelevant evidence, instructions

Conviction of violations of Securities Act, section 77a et seq. of Title 15, mail fraud and conspiracy was not required to be overturned in absence of showing how irrelevant testimony would have prejudiced minds of jurors to such degree that explicit instruction would not have cured error. McMahan v. U. S., C.A.7 (Ill.) 1970, 424 F.2d 1216, certiorari denied 91 S.Ct. 51, 400 U.S. 826, 27 L.Ed.2d 55. Criminal Law 1163(3)

In a prosecution for conspiring to violate §§ 2833 and 3253 of Title 26, error in admitting certain defendants' irrelevant written statements relating solely to a murder committed by one of the defendants is not cured by instructions that the jury are not concerned with such murder nor with the manner in which the victim's body was disposed of, and that the jury should disregard the statements unless they aided the jury in ascertaining the fact of conspiracy, or the members thereof. Smith v. U.S., App.D.C.1937, 91 F.2d 556, 67 App.D.C. 251. Criminal Law 1169.5(2)

892. Character evidence, instructions

Defendants charged with conspiracy to commit wire fraud and to submit false statements as to matters within jurisdiction of federal agency were entitled to requested character instruction, and trial court's failure to give that instruction was prejudicial error; one defendant had testified at length regarding his distinguished 24-year career in Air Force during which he received several commendations and possessed top secret clearance, and the other defendant had testified regarding his work on military projects during which he had "secret" clearances as well as to his extensive involvement in community activities, and defendants' testimony touched on their character as to relevant traits of law-abidingness and honesty. U.S. v. Daily, C.A.10 (Kan.) 1990, 921 F.2d 994, certiorari denied 112 S.Ct. 405, 502 U.S. 952, 116 L.Ed.2d 354. Criminal Law 776(3); Criminal Law 1173.2(5)

Defendant in conspiracy prosecution was not entitled to instruction that character evidence standing alone is sufficient to raise reasonable doubt. U. S. v. Fontenot, C.A.5 (Ga.) 1973, 483 F.2d 315. Criminal Law 776(5)

To have had jury decide question of whether independent evidence was of sufficient quality and quantity to permit it to consider testimony of alleged coconspirator as evidence of a conspiracy would have rendered testimony valueless and would have served only to confirm what jury had already determined, namely, existence of conspiracy charged. U. S. v. Pisciotta, C.A.10 (Colo.) 1972, 469 F.2d 329. Criminal Law 741(5)

Instruction on subject of character proof elicited from some of government witnesses by defendant's counsel as part

of defendant's defense, was properly given as requested by government, in prosecution for conspiracy to defraud public by distribution of oil company stock at grossly inflated prices. U. S. v. Kelly, C.A.2 (N.Y.) 1965, 349 F.2d 720, certiorari denied 86 S.Ct. 1467, 384 U.S. 947, 16 L.Ed.2d 544. Criminal Law 776(1)

Court's charge, in prosecution for conspiracy to take fraudulent deductions on corporate income tax return, regarding character testimony fairly set forth position of character evidence and there was no error in failing to charge in exact language requested by defendants. U.S. v. Haskell, C.A.2 (Conn.) 1964, 327 F.2d 281, certiorari denied 84 S.Ct. 1351, 377 U.S. 945, 12 L.Ed.2d 307. Criminal Law 834(2)

The failure of two defendants to request an instruction on character testimony and the failure of all defendants to except to the instruction given did not preclude the reviewing court from examining the instruction given. Miller v. U. S., C.C.A.10 (Kan.) 1941, 120 F.2d 968. Criminal Law 824(5); Criminal Law 1056.1(3.1)

Refusal to give instruction that character testimony might in itself produce reasonable doubt of defendant's guilt, requiring acquittal, was proper. Scheib v. U.S., C.C.A.7 (Ind.) 1926, 14 F.2d 75, certiorari denied 47 S.Ct. 95, 273 U.S. 700, 71 L.Ed. 847, certiorari denied 47 S.Ct. 95, 273 U.S. 701, 71 L.Ed. 847, certiorari denied 47 S.Ct. 95, 273 U.S. 701, 71 L.Ed. 848, certiorari denied 47 S.Ct. 113, 273 U.S. 718, 71 L.Ed. 856. Criminal Law 776(5)

Refusal of instruction that circumstances might be such that good reputation would alone create reasonable doubt, and court's charge that evidence of good character augmented presumption of innocence, and should be considered with such presumption and other facts, was not error. Linde v. U.S., C.C.A.8 (S.D.) 1926, 13 F.2d 59. Criminal Law 776(5)

893. Circumstantial evidence, instructions

No separate charge to jury is to be made suggesting that circumstantial evidence is on a different and lower plane than other forms of evidence. U.S. v. Valenti, C.C.A.2 (N.Y.) 1943, 134 F.2d 362, certiorari denied 63 S.Ct. 1317, 319 U.S. 761, 87 L.Ed. 1712, rehearing denied 64 S.Ct. 29, 320 U.S. 809, 88 L.Ed. 489. Criminal Law 784(8)

894. Association, instructions

Trial court's instruction cautioning the jury against paying excessive attention to evidence of defendants' association with each other sufficiently instructed jury on the issue of conspiracy as shown by fact that defendants associated with each other. U. S. v. Hathaway, C.A.1 (Mass.) 1976, 534 F.2d 386, certiorari denied 97 S.Ct. 64, 429 U.S. 819, 50 L.Ed.2d 79. Conspiracy 48.2(1)

895. Overt acts, instructions

There was no plain error in trial court's failure to sua sponte include statute of limitations instruction as to charge of conspiracy to defraud United States; case involved 26 alleged overt acts, of which ten were within five-year limitations period immediately preceding date of indictment, and there was ample evidence to prove number of overt acts within statutory period, such that limitations defense would not have been obvious to trial court. U.S. v. Matzkin, C.A.4 (Va.) 1994, 14 F.3d 1014, denial of habeas corpus affirmed 52 F.3d 322, certiorari denied 116 S.Ct. 175, 516 U.S. 863, 133 L.Ed.2d 115. Criminal Law 1038.3

In prosecution for conspiracy to defraud United States, trial court's instructions on conspiracy, read as a whole, did not improperly permit jury to convict defendant of conspiracy for having completed just overt act. U.S. v. Sorrow, C.A.11 (Ga.) 1984, 732 F.2d 176. Criminal Law 822(6)

Violation of state Gaming Commission regulation could not of itself form predicate for state law violation required for federal prosecution under section 1952 of this title, but, under conspiracy count, violation of regulations alone

would be considered as overt acts by defendants committing them which were ingredients of crime of conspiracy. U. S. v. Goldfarb, C.A.6 (Mich.) 1981, 643 F.2d 422, certiorari denied 102 S.Ct. 117, 454 U.S. 827, 70 L.Ed.2d 101, certiorari denied 102 S.Ct. 118, 454 U.S. 827, 70 L.Ed.2d 101. Conspiracy 27; Gaming 66

In prosecution for, inter alia, conspiracy to rob a bank, instruction, not timely objected to, that jury could consider as an overt act in furtherance of the conspiracy a purchase of a pair of men's stockings was not plain error, though there was no showing how the purchase could be in furtherance of the conspiracy, where there were two other acts in furtherance of the conspiracy in which defendant admittedly participated. U. S. v. Robinson, C.A.8 (Minn.) 1976, 539 F.2d 1181, certiorari denied 97 S.Ct. 1124, 429 U.S. 1101, 51 L.Ed.2d 550. Criminal Law 1038.1(7)

Where instructions required active participation by defendant in total scheme to defraud to convict for large scale "check kiting", trial court did not err in failing to instruct jury that guilty knowledge that crime was being committed is insufficient proof defendant aided and abetted crime. U. S. v. Jones, C.A.9 (Cal.) 1970, 425 F.2d 1048, certiorari denied 91 S.Ct. 44, 400 U.S. 823, 27 L.Ed.2d 51. Criminal Law 829(20)

Where trial judge had previously instructed jury as to what an overt act was and his analysis of evidence was not misleading or one-sided, judge's statement that he did not think there was any substantial question in jury's minds that any number of overt acts were committed did not constitute an invasion of jury's province. Glazerman v. U. S., C.A.10 (Okla.) 1970, 421 F.2d 547, certiorari denied 90 S.Ct. 1817, 398 U.S. 928, 26 L.Ed.2d 90. Criminal Law 763(1)

Under charge that, to establish offense of conspiracy, evidence must show that defendant knowingly and wilfully became member of conspiracy and that one of conspirators thereafter knowingly committed at least one of overt acts charged in indictment at or about time and place alleged, if jury believed government's evidence, pertaining to one overt act, that defendant rented motel room on or about certain date, it could find defendant guilty of offense of conspiracy, even if evidence did not substantiate overt act charged, that two other alleged coconspirators had rented motel rooms on or about certain date. Bradford v. U. S., C.A.5 (Miss.) 1969, 413 F.2d 467. Conspiracy 47(3.1)

Instructions in conspiracy prosecution were not improper for failure to require proof beyond reasonable doubt of at least one overt act within court's jurisdiction, nor as shifting burden of proof as to overt act to defendant. Mount v. U.S., C.A.5 (Tex.) 1964, 333 F.2d 39, certiorari denied 85 S.Ct. 188, 379 U.S. 900, 13 L.Ed.2d 175. Conspiracy 48.2(1); Criminal Law 778(5)

In prosecution on various charges including one of conspiring to commit various offenses, instruction stating in part that a conspiracy may be proved by overt acts was not prejudicial or confusing when considered in light of entire charge. Schnautz v. U.S., C.A.5 (Tex.) 1959, 263 F.2d 525, certiorari denied 79 S.Ct. 1294, 360 U.S. 910, 3 L.Ed.2d 1260. Criminal Law 822(13)

In prosecution for conspiracy to sell heroin brought in District Court for Eastern District of New York, wherein proof of a number of overt acts in Eastern District was uncontroverted and of substantial character, omission of trial judge, in his charge to jury concerning necessity of finding that overt act took place, to specifically require a finding of an overt act in Eastern District, was not ground for reversal, where no exception was taken, no request was submitted, and defendant indicated no criticism of charge. U. S. v. Campisi, C.A.2 (N.Y.) 1957, 248 F.2d 102, certiorari denied 78 S.Ct. 266, 355 U.S. 892, 2 L.Ed.2d 191. Criminal Law 1038.3; Criminal Law 1056.1(4)

Where there was no evidence of the single overt act charged in the indictment other than the confession of codefendant, instruction that defendant might be found guilty of the overt act charged was prejudicial error even though there was undisputed proof of an overt act not charged in the indictment. U.S. v. Negro, C.C.A.2 (N.Y.)

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1947, 164 F.2d 168. Criminal Law 814(5); Criminal Law 1172.6

Refusal of instruction that proof of overt acts alone would not warrant conviction for conspiracy was not error. Feigenbutz v. U.S., C.C.A.8 (Mo.) 1933, 65 F.2d 122. Conspiracy 48.2(1)

Requested instructions that unless the overt acts were committed subsequent to the formation of the conspiracy, and not merely during its formation, defendants should be acquitted, were properly refused, since it was not necessary to convict to prove that more than one of the overt acts charged had been committed, and the doing of an act in furtherance of a conspiracy presupposes that it was done after the conspiracy was formed. Wilkes v. U.S., C.C.A.6 (Tenn.) 1923, 291 F. 988, certiorari denied 44 S.Ct. 181, 263 U.S. 719, 68 L.Ed. 523. Conspiracy 48.2(1)

A requested instruction that occurrences after the overt acts were committed could not be considered in determining whether or not a conspiracy was formed was properly refused. Wilkes v. U.S., C.C.A.6 (Tenn.) 1923, 291 F. 988, certiorari denied 44 S.Ct. 181, 263 U.S. 719, 68 L.Ed. 523. Conspiracy 48.2(1)

An instruction to find which of the overt acts charged were committed by the accused is properly refused where the accused admits the commission of the overt acts and the conspiracy is the only issue. Windsor v. U. S., C.C.A.6 (Ohio) 1923, 286 F. 51, 1 Ohio Law Abs. 339, certiorari denied 43 S.Ct. 523, 262 U.S. 748, 67 L.Ed. 1212.

Omission in the charge to specifically point out the necessity of proof of overt acts on a trial for conspiracy to defraud the United States was not ground for reversal where no objection was made or further instruction requested, and where testimony to some of the acts charged was undisputed, and the court had elsewhere fully stated the elements of the offense. Wolf v. U.S., C.C.A.7 (Ill.) 1922, 283 F. 885, certiorari denied 43 S.Ct. 164, 260 U.S. 743, 67 L.Ed. 492. Criminal Law 823(10); Criminal Law 1038.2; Criminal Law 1038.3; Criminal Law 1173.2(2)

Instruction in a conspiracy case that commission of one of the overt acts alleged by one or more of defendants would sustain a conviction, etc., was not erroneous, because authorizing a conviction on an overt act not proven, or committed by a codefendant who had been acquitted, where no further instruction was requested. Gilson v. U.S., C.C.A.2 (N.Y.) 1919, 258 F. 588, 169 C.C.A. 528, certiorari denied 40 S.Ct. 119, 251 U.S. 555, 64 L.Ed. 412. Criminal Law 825(2)

Any error in an instruction in a conspiracy case, claimed to permit jury to consider unproven overt acts, did not authorize a reversal, in absence of an exception, where numerous overt acts were established by evidence. Gilson v. U.S., C.C.A.2 (N.Y.) 1919, 258 F. 588, 169 C.C.A. 528, certiorari denied 40 S.Ct. 119, 251 U.S. 555, 64 L.Ed. 412. Criminal Law 1056(1)

In view of the indictment, an instruction, in a prosecution for conspiracy, was not objectionable as failing to charge that the overt act must have followed the conspiracy in point of time. Shepard v. U.S., C.C.A.9 (Cal.) 1916, 236 F. 73, 149 C.C.A. 283. Conspiracy 48.2(1)

Supplemental jury instruction did not prejudice defendants charged with conspiracy to defraud government, in that instruction correctly stated the law in informing jurors that they were not limited to considering overt acts specifically enumerated in indictment and could consider only overt acts committed within statute of limitations, indictment itself specifically alleged that defendants had committed overt acts in addition to those specifically enumerated, court limited jury's consideration to overt acts substantially similar to those listed in indictment, and evidence presented at trial suggested to defendants that overt acts beyond those enumerated in indictment would be considered by jury. U.S. v. Anderson, C.A.9 (Or.) 2004, 94 Fed.Appx. 487, 2004 WL 604937, Unreported, certiorari denied 125 S.Ct. 192, 543 U.S. 863, 160 L.Ed.2d 105, rehearing denied, rehearing denied 125 S.Ct. 493, 543 U.S. 984, 160 L.Ed.2d 367, certiorari denied 125 S.Ct. 203, 543 U.S. 863, 160 L.Ed.2d 105. Criminal Law

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896. Intent, instructions

Jury instruction on intent required for conspiracy, which used language imposing higher burden on government than law required, did not prejudice defendant. U.S. v. Royal, C.A.1 (Mass.) 1996, 100 F.3d 1019, on remand 7 F.Supp.2d 96. Criminal Law 1172.7

Instruction on elements of conspiracy, in prosecution for conspiring to violate statute prohibiting trustees of employee stock ownership plan (ESOP) from receiving kickbacks, that included words "or either of them," did not improperly allow jury to convict defendant without finding that defendant had requisite intent to be conspirator; charge, taken as whole, would not have permitted jury to improperly convict. U.S. v. McCord, C.A.5 (Tex.) 1994, 33 F.3d 1434, certiorari denied 115 S.Ct. 2558, 515 U.S. 1132, 132 L.Ed.2d 812. Criminal Law 822(7)

In prosecution for conspiracy to unlawfully transport stolen motor vehicles and stolen property in foreign commerce, district court's instructions were adequate to inform jury that it had to find that defendant knew that trucks had been stolen in order to find him guilty of conspiracy. U. S. v. Graves, C.A.5 (Tex.) 1982, 669 F.2d 964. Conspiracy 48.2(2)

In drug prosecution wherein one defendant claimed that he joined conspiracy solely to gather incriminating evidence on coconspirators and eventually to supply such evidence to authorities, district court's instruction to jury that person does not have criminal intent required for conviction if he acts as police informant or in honest, good-faith belief that he is police informant and instruction that person is not guilty of criminal conspiracy unless he joins conspiracy with intent to further its purposes were adequate. U. S. v. Thompson, C.A.4 (N.C.) 1979, 598 F.2d 879. Conspiracy 48.2(2)

Jury in a criminal conspiracy trial must be instructed that Government is required to prove beyond a reasonable doubt necessary elements of knowledge, actual participation and criminal intent. U. S. v. Malatesta, C.A.5 (Fla.) 1979, 590 F.2d 1379, certiorari denied 99 S.Ct. 1508, 440 U.S. 962, 59 L.Ed.2d 777, certiorari denied 100 S.Ct. 91, 444 U.S. 846, 62 L.Ed.2d 59. Conspiracy 48.2(1)

In prosecution for conspiracy to possess with intent to distribute marijuana, trial court properly instructed jury that Government was required to prove beyond all reasonable doubt that conspiracy was knowingly formed and that individual defendants willfully participated in the illegal plan and that each defendant's acts had to be considered in deciding whether such requirement had been satisfied. U. S. v. Herring, C.A.10 (N.M.) 1978, 582 F.2d 535. Conspiracy 48.2(2)

Where trial court indicated to the jury the type of intent required for conspiracy every time the subject came up, fact that trial court's definition of specific intent did not appear in the same place in the instructions as the recital of the elements of the crime of conspiracy was not improper despite contention that the jury could have been confused into believing that only general intent was required to convict on that charge. U. S. v. Haldeman, C.A.D.C.1976, 559 F.2d 31, 181 U.S.App.D.C. 254, certiorari denied 97 S.Ct. 2641, 431 U.S. 933, 53 L.Ed.2d 250, rehearing denied 97 S.Ct. 2992, 433 U.S. 916, 53 L.Ed.2d 1103. Criminal Law 772(5)

In prosecution for conspiracy to obstruct justice and to defraud the United States by impeding a grand jury investigation wherein defendant, a lawyer, contended that he thought he was compelled to act as he did by the ethical obligations of a lawyer and that he was therefore without criminal intent in connection with two alleged conspiratorial episodes, jury was not called on to determine whether legal ethics actually required that defendant act as he did but only whether defendant believed he was thus constrained and, if so, whether defendant, because of his belief, was not acting with specific intent to advance the alleged conspiracy and, therefore, jury instruction which focused on question of intent and accurately stated the law presented question to jury with proper guidance.

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U. S. v. Mardian, C.A.D.C.1976, 546 F.2d 973, 178 U.S.App.D.C. 207. Conspiracy 48.2(2)

In prosecution for conspiracy in which jury was adequately told by other instructions what type of involvement was necessary to find defendants guilty of conspiracy, trial judge's editing of tendered instructions that mere knowledge, approval of, or acquiescence in object or purpose of conspiracy without an intention and agreement to cooperate in crime is insufficient to delete therefrom reference to acquiescence was within the court's discretion, and in light of other instructions did not constitute error. U. S. v. Bastone, C.A.7 (Ill.) 1975, 526 F.2d 971, certiorari denied 96 S.Ct. 2172, 425 U.S. 973, 48 L.Ed.2d 797. Criminal Law 834(3)

Charge on intent in prosecution for violation of section 1343 of this title, inducing interstate travel in execution of a fraud, and interstate transportation of proceeds of a fraud, and conspiracy, and for mail fraud was not erroneous for failure to state that crimes had to be proved beyond reasonable doubt, in view of judge's prior instructions. U. S. v. Crisona, C.A.2 (N.Y.) 1969, 416 F.2d 107, certiorari denied 90 S.Ct. 991, 397 U.S. 961, 25 L.Ed.2d 253, certiorari denied 90 S.Ct. 993, 397 U.S. 961, 25 L.Ed.2d 253. Criminal Law 823(15)

In prosecution for conspiracy with respect to illegal sales of whiskey wherein court fairly and comprehensively defined the issues and, by its instructions, made clear to jury that defendants, to conspire, must have agreed to co-operate to accomplish an illegal purpose, or to violate a law to accomplish a legal purpose, and that before defendants could be convicted, it must be proved that they intended to violate the law, refusal of instruction requested by one of the defendants in reference to his honest belief as to distribution of the whiskey was not error. Samuel v. U.S., C.C.A.9 (Cal.) 1948, 169 F.2d 787. Criminal Law 829(3)

In prosecution for buying false ration cheques, for fraudulently obtaining subsidies from the Defense Supplies Corporation, and for conspiring to commit both such offenses, where court charged that mere signing of cheques was not a crime, and that person signing must have known them to be untrue and have signed them to accomplish some unlawful end, and that intent was always crucial, refusal of request to charge that if defendant had in good faith filed subsidy petitions on the advice of counsel he was guiltless was not improper. U.S. v. Center Veal & Beef Co., C.C.A.2 (N.Y.) 1947, 162 F.2d 766. Criminal Law 829(3)

A charge that fraud or conspiracy charged in indictment charging defendant with violating former §§ 88 [now this section] and 338 of this title, involved an evil mind and a wrongful intent, that the purpose of said former § 338 of this title was to protect against intentional efforts to defraud others, and that if defendant acted in good faith and had honest belief in enterprise in which he was engaged, and in any statements which he made or authorized to be made, or of which he had knowledge, he was not guilty of any crime adequately set forth guide lines for jury's deliberation. Deaver v. U.S., App.D.C.1946, 155 F.2d 740, 81 U.S.App.D.C. 148, certiorari denied 67 S.Ct. 121, 329 U.S. 766, 91 L.Ed. 659. Conspiracy 48.2(2); Postal Service 50

In prosecution for conspiracy, bribery, and evading service in armed forces, where court fully instructed the jury as to every element of such offenses and gave the jury an additional charge that defendant must have had the intention of violating the law, defendant was not entitled to complain, especially where no objection was made to any part of the charge or to refusal to give requested instructions. Claunch v. U.S., C.C.A.5 (Tex.) 1946, 155 F.2d 261. Criminal Law 1038.1(4)

In prosecution for conspiracy to violate the National Housing Act, §§ 1703(a, b, g) and 1731(a) Title 12, instructions regarding necessity of proof of statutory intent and of knowledge of falsity of statements were adequate. U.S. v. Groopman, C.C.A.2 (N.Y.) 1945, 147 F.2d 782, certiorari denied 66 S.Ct. 29, 326 U.S. 745, 90 L.Ed. 445. Conspiracy 48.2(2)

In prosecution for conspiracy to violate the National Housing Act, § 1701 et seq. of Title 12, refusal to give requested instruction based on erroneous assumption that practice of making loans before completion of work was no more than immaterial deviation from regulation requiring borrower and contractor to certify that work had been

fully completed was not error. U.S. v. Groopman, C.C.A.2 (N.Y.) 1945, 147 F.2d 782, certiorari denied 66 S.Ct. 29, 326 U.S. 745, 90 L.Ed. 445. Criminal Law 830

Instruction as to proof of intent was not improper. Brims v. U.S., C.C.A.7 (Ill.) 1927, 21 F.2d 889. Conspiracy 48

Instructions with respect to the intent necessary to be found to warrant a conviction of defendants on a charge of conspiracy to defraud the United States, which charged, in effect, that, if defendants intended the consequences which naturally and in fact resulted from their acts, and such result was to defraud the government, they could not be acquitted because they may not have thought the government would be defrauded, were considered and approved. McGregor v. U.S., C.C.A.4 (Md.) 1904, 134 F. 187, 69 C.C.A. 477. Conspiracy 48.2(2)

Jury instructions defining elements of mail fraud and explaining consideration of actual harm to victim as evidence of intent to defraud properly explained fraudulent intent, in prosecution for mail fraud and conspiracy to commit mail fraud; financial or economic harm was not necessary to establish intent to defraud, but existence of scheme could serve as evidence of intent. U.S. v. Easton, C.A.8 (S.D.) 2002, 54 Fed.Appx. 242, 2002 WL 31814951, Unreported. Postal Service 35(5); Postal Service 50

897. Knowledge, instructions

Ostrich instruction was appropriate against defendant claiming that she lacked guilty knowledge when she participated in conspiratorial activities; her activities in purchasing multiple cashier's checks for expensive purchases made in other persons' names with multiple cashier's checks obtained by other persons allowed jury to infer knowledge. U.S. v. Jackson, C.A.7 (Ill.) 1994, 33 F.3d 866, rehearing denied, certiorari denied 115 S.Ct. 1316, 514 U.S. 1005, 131 L.Ed.2d 197, rehearing denied 115 S.Ct. 1992, 514 U.S. 1123, 131 L.Ed.2d 878. Conspiracy 48.2(2); Criminal Law 772(5)

Court properly gave conscious avoidance instruction in tax fraud prosecution where defendants denied allegations that goal of their undertaking was to defraud the Internal Revenue Service, despite defendants' claim that there was no dispute over any specific aspect of their knowledge except that their conduct would violate the tax laws. U.S. v. Fletcher, C.A.2 (Conn.) 1991, 928 F.2d 495, certiorari denied 112 S.Ct. 67, 502 U.S. 815, 116 L.Ed.2d 41. Criminal Law 772(5); Internal Revenue 5317

In prosecution for conspiracy to commit offenses against the United States involving two military recruiting center bombings, trial court properly instructed jury on issue of knowledge of conspiracy. U. S. v. Giese, C.A.9 (Or.) 1979, 597 F.2d 1170, certiorari denied 100 S.Ct. 480, 444 U.S. 979, 62 L.Ed.2d 405. Conspiracy 48.2(2)

Trial court's instructions to the effect that one must know the existence of the conspiracy and of its purpose and must voluntarily and knowingly join with others before he can be found to be a conspirator and that the mere fact that defendant may know that others have formed a conspiracy or be present when other people are talking about the conspiracy is insufficient to show guilt was sufficient to inform the jury that it could not consider defendants members of the conspiracy unless it found that they affirmatively joined in and promoted its objectives. U. S. v. Guillette, C.A.2 (Conn.) 1976, 547 F.2d 743, certiorari denied 98 S.Ct. 132, 434 U.S. 839, 54 L.Ed.2d 102. Conspiracy 48.2(1)

Trial court did not commit plain error by charging jury to effect that to be a member of a conspiracy one need not have full knowledge of its operations as long as one becomes a member "with full knowledge of its general scope and purposes" inasmuch as that section of charge did not negate earlier instruction that conspiracy must be one to use the mails or instrumentalities of interstate commerce in committing the particular fraud charged. U. S. v. Koss, C.A.2 (N.Y.) 1974, 506 F.2d 1103, certiorari denied 95 S.Ct. 1402, 420 U.S. 977, 43 L.Ed.2d 657, certiorari denied 95 S.Ct. 1565, 421 U.S. 911, 43 L.Ed.2d 776. Criminal Law 1038.1(3.1)

Instruction, in prosecution for conspiracy to violate section 2113 of this title, permitting jury to convict defendant despite lack of knowledge on his part that conspiracy was to rob bank, was fatally defective. U. S. v. Gallishaw, C.A.2 (N.Y.) 1970, 428 F.2d 760. Conspiracy 48.2(2)

Any error in the submission of the conscious avoidance jury instruction was harmless, in prosecution for conspiracy to defraud the United States, and filing false personal and corporate tax returns, in light of overwhelming evidence of defendant's direct participation in tax avoidance scheme, which included diverting corporate rent checks to defendant's personal account and concealing accurate accounting records from corporation's tax preparer. U.S. v. Rhodis, C.A.2 (N.Y.) 2003, 58 Fed.Appx. 527, 2003 WL 151264, Unreported. Criminal Law 1172.1(3)

898. Entrapment, instructions

In prosecution for conducting illegal traffic in food stamps, trial court did not abuse its discretion, when instructing jury on entrapment, in altering proposed instruction that predisposition could be inferred not only from prior acts but from eagerness to take part in proposed scheme so as to add instruction that predisposition could also be inferred from postcrime statements in order to compensate for misstatement of law on entrapment perpetrated by defendant in his closing argument. U.S. v. Andrews, C.A.11 (Ala.) 1985, 765 F.2d 1491, rehearing denied 772 F.2d 918, certiorari denied 106 S.Ct. 815, 474 U.S. 1064, 88 L.Ed.2d 789. Criminal Law 804(9)

In prosecution which resulted in convictions of conspiracy to attempt bank robbery and attempted bank robbery, instructions on entrapment were inadequate, where charge failed to instruct jury that Government must prove beyond reasonable doubt that defendant was ready and willing to commit crimes whenever an opportunity was afforded. U. S. v. Dearmore, C.A.9 (Or.) 1982, 672 F.2d 738. Criminal Law 772(6)

In prosecution for conspiracy, obstruction of justice and bribery arising from defendant's alleged purchase of certain material purportedly related to grand jury investigation and obtained from United States attorney's office, defendant who raised defense of entrapment was not entitled to requested charge that, though grand jury minutes had been obtained several days after other material, separate independent inducement by Government was not required to be shown as to grand jury minutes where there could have been no misapprehension by jury with respect to the matter as evidence showed a single continuous course of dealing and no one suggested that there had been anything but a single continuing inducement. U. S. v. Rosner, C.A.2 (N.Y.) 1973, 485 F.2d 1213, certiorari denied 94 S.Ct. 3080, 417 U.S. 950, 41 L.Ed.2d 672. Criminal Law 772(6)

Evidence, in prosecution of defendant for conspiring to pay illegal kick-backs to agent and counsel of union pension fund and of codefendant for receiving money with intent to be influenced with respect to official duties as to fund, did not warrant instruction on entrapment, where government did not initiate either scheme or the final payoff. U.S. v. Russo, C.A.2 (N.Y.) 1971, 442 F.2d 498, certiorari denied 92 S.Ct. 669, 404 U.S. 1023, 30 L.Ed.2d 673, rehearing denied 92 S.Ct. 930, 405 U.S. 949, 30 L.Ed.2d 819. Criminal Law 772(6)

In prosecution for conspiracy to transfer marihuana illegally, where the first three solicitations by government agent had resulted in defendant's refusal to sell heroin, being refusal to commit more serious offense than offense for which he was on trial, and where solicitations were unaccompanied by emotional appeals and evidence of such previous solicitations was brought out when government witness was being cross-examined, not to show entrapment but in effort to show defendant's claimed noninvolvement in marihuana transfer, evidence did not require court sua sponte to give instruction on entrapment. U. S. v. Bradley, C.A.7 (Ill.) 1970, 426 F.2d 148. Criminal Law 824(4)

Jury charge on law of entrapment in prosecution for violation of this section in solicitation and receipt of kickback from architects on county hospital project under Hill-Burton Act, section 291 et seq. of Title 42, that, inter alia, there was unlawful entrapment where person with no previous intent or purpose to violate law was induced or

persuaded by law enforcement agents to commit a crime and that lawful entrapment occurred where government agents provided what appeared to be favorable opportunity was proper. U. S. v. Thompson, C.A.6 (Tenn.) 1966, 366 F.2d 167, certiorari denied 87 S.Ct. 512, 385 U.S. 973, 17 L.Ed.2d 436. Criminal Law 772(6)

899. Alibi, instructions

Alibi instruction was not required in prosecution for conspiracy, theft from interstate shipment, mail fraud, and wire fraud, despite evidence that defendants were not present when underlying theft of cash from armored car business' vault occurred; presence in vault was not necessary to support conspiracy conviction. U.S. v. Bryser, C.A.2 (N.Y.) 1992, 954 F.2d 79, certiorari denied 112 S.Ct. 2939, 504 U.S. 972, 119 L.Ed.2d 564, post-conviction relief denied 838 F.Supp. 124, affirmed 40 F.3d 1236, dismissal of post-conviction relief affirmed 100 F.3d 942, post-conviction relief denied 10 F.Supp.2d 392. Conspiracy 40.1; Criminal Law 775(2)

900. Individual determination of guilt of conspirators, instructions

Instruction that jury should consider each defendant's case separately in determining his participation in the scheme charged was not the equivalent of cautionary instruction appropriate in cases where related but separate conspiracies are tried together that jury should take care to consider evidence relating to each conspiracy separately from that relating to each other conspiracy charged. Kotteakos v. U.S., U.S.N.Y.1946, 66 S.Ct. 1239, 328 U.S. 750, 90 L.Ed. 1557. Conspiracy 48.2(1)

In prosecutions for conspiracy, as the charges are broadened to include more and more in varying degrees of attachment to the confederation so that possibilities for miscarriage of justice to particular individuals become greater and greater, extraordinary precaution is required, not only that instructions shall not mislead, but that they shall scrupulously safeguard each defendant individually, as far as possible, from loss of identity in the mass. Kotteakos v. U.S., U.S.N.Y.1946, 66 S.Ct. 1239, 328 U.S. 750, 90 L.Ed. 1557. Conspiracy 48.2(1)

Evidence with respect to defendant's dealings in drugs was not so prejudicial to codefendant that he was entitled to a new trial, where jurors were instructed that each defendant was entitled to have his case determined from his own acts and statements and the other evidence in the case which might be applicable to him and were warned that fact that they might find one defendant guilty should not control their verdict as to other defendant. U. S. v. Curry, C.A.4 (N.C.) 1975, 512 F.2d 1299, certiorari denied 96 S.Ct. 55, 423 U.S. 832, 46 L.Ed.2d 50. Criminal Law 921

Trial court's charge to jury in prosecution for conspiracy was not improper on theory that it failed to elaborate on defendant's defense of noninvolvement in charged transaction and to distinguish it from defense of entrapment and withdrawal raised by codefendants, where instructions made plain that jury should consider each count of indictment separately and consider whether Government had proved its case beyond reasonable doubt as to each defendant in each count, defense counsel argued defendant's non-participation defense and trial court referred only to codefendants when discussing defense of entrapment and withdrawal. U. S. v. Badalamente, C.A.2 (N.Y.) 1974, 507 F.2d 12, certiorari denied 95 S.Ct. 1565, 421 U.S. 911, 43 L.Ed.2d 776. Criminal Law 772(6)

Where defendants charged with conspiracy to embezzle union funds were a closely knit group acquainted with each other, and instructions as a whole meticulously defined all elements of conspiracy and instructed jury that guilt of each defendant must be individually determined and that if any of essential elements of conspiracy were not proved beyond reasonable doubt as to particular defendant he should be acquitted, there was no prejudicial error in instruction which predicated conviction on separate conspiracies relating to acts alleged in indictment. Hayes v. U. S., C.A.8 (Mo.) 1964, 329 F.2d 209, certiorari denied 84 S.Ct. 1883, 377 U.S. 980, 12 L.Ed.2d 748. Criminal Law 1172.1(2)

In prosecution for making or using a false writing in a matter within the jurisdiction of a department of the United

States, and for conspiracy, instructions in effect requiring jury to find each defendant individually guilty before they could convict either, but prohibiting the returning of any verdict of conviction, even if one defendant might have been proved guilty unless jury found the other had also been proved to be guilty, afforded defendants an improper benefit, and even if erroneous were not prejudicial on any theory that they required jury to return a joint verdict only of guilt or innocence, depriving them of benefit of separate verdicts. Ebeling v. U.S., C.A.8 (Mo.) 1957, 248 F.2d 429, certiorari denied 78 S.Ct. 334, 355 U.S. 907, 2 L.Ed.2d 261. Criminal Law 1172.7

Failure to instruct jury that defendant's participation in conspiracy had to be established without reference to declarations of alleged coconspirators unless there was proof aliunde of defendant's participation in conspiracy is not plain error where trial court has made independent determination of sufficiency of evidence to justify submitting the issue of existence of conspiracy and defendant's alleged participation therein to jury. U. S. v. Dabney, E.D.Pa.1975, 393 F.Supp. 529. Criminal Law 1038.2

901. Sentence, instructions

Defendant's sentence for multiple-object conspiracy conviction could not be based on offense with which defendant was not substantively charged, where jury was not instructed on elements of that offense. U.S. v. Miller, C.A.11 (Ga.) 1994, 22 F.3d 1075. Conspiracy 51

The practice of permitting a detailed discussion of extent of punishment in argument, and of indulging in discussion in instructions of punishment that may be anticipated, is not to be commended, but where arguments of defendants' counsel raised question of excessive punishment to which defendants might be subjected, instruction that maximum punishment would not be imposed, but that one commensurate with crime would be imposed was rendered appropriate, if not necessary. Ryan v. U.S., C.C.A.8 (Mo.) 1938, 99 F.2d 864, certiorari denied 59 S.Ct. 484, 306 U.S. 635, 83 L.Ed. 1037, rehearing denied 59 S.Ct. 586, 306 U.S. 668, 83 L.Ed. 1063. Criminal Law 796

Where counsel for one of defendants made no statements in argument with reference to penalty as had been made on behalf of other defendants, but did not disclaim benefits of such statements, court's instruction stating, in effect, that maximum punishment would not be imposed, but that a punishment commensurate with crime would be imposed, was proper even as to such defendant, as against contention that instruction constituted bartering with jury for verdict of guilty. Ryan v. U.S., C.C.A.8 (Mo.) 1938, 99 F.2d 864, certiorari denied 59 S.Ct. 484, 306 U.S. 635, 83 L.Ed. 1037, rehearing denied 59 S.Ct. 586, 306 U.S. 668, 83 L.Ed. 1063. Criminal Law 796

902. Advice of counsel, instructions

Where one of defendants in prosecution for conspiracy to defraud the Veterans Administration by preventing its loan guaranty program from being administered in accordance with law did not advise his counsel as to all the circumstances of transaction and defendant signed accommodation agreement before he consulted his attorney, defendant was not entitled to have jury instructed on defense of "advice of counsel". U.S. v. Levinson, C.A.6 (Mich.) 1968, 405 F.2d 971, certiorari denied 89 S.Ct. 1746, 395 U.S. 906, 23 L.Ed.2d 219, certiorari denied 89 S.Ct. 2097, 395 U.S. 958, 23 L.Ed.2d 744, rehearing denied 90 S.Ct. 37, 396 U.S. 869, 24 L.Ed.2d 124, rehearing denied 90 S.Ct. 36, 396 U.S. 869, 24 L.Ed.2d 124. Criminal Law 772(6)

903. Stipulation, instructions

Since defendants stipulated to validity of several of the copyrights involved in prosecution for conspiracy to violate copyrights, that stipulation was binding upon them and trial judge did not err in instructing jury that copyrights were valid as a matter of law and in not submitting that question to jury. U. S. v. Sherman, C.A.10 (Okla.) 1978, 576 F.2d 292, 200 U.S.P.Q. 561, certiorari denied 99 S.Ct. 284, 439 U.S. 913, 58 L.Ed.2d 259. Stipulations 14(10)

18 U.S.C.A. § 371

904. Request, instructions

Where trial court's instructions in defendant's prosecution for conspiracy to violate Trading with the Enemy Act, section 1 et seq. of the Appendix to Title 50, and Cuban Assets Control Regulation were clear and simple and carefully explained specific regulation which formed predicate for violation, and defendant failed to seek instruction concerning additional regulations which related to one of his affirmative defenses, trial court did not commit plain error in failing to apprise jury of additional regulations. U.S. v. Fuentes-Coba, C.A.11 (Fla.) 1984, 738 F.2d 1191, certiorari denied 105 S.Ct. 1186, 469 U.S. 1213, 84 L.Ed.2d 333. Criminal Law 1038.3

Trial court was not required to give defendant's requested instructions on conspiracy and aiding and abetting where trial court's instructions covered applicable legal principles. U. S. v. Wedelstedt, C.A.8 (Iowa) 1978, 589 F.2d 339, certiorari denied 99 S.Ct. 2836, 442 U.S. 916, 61 L.Ed.2d 283. Criminal Law 829(3); Criminal Law 829(20)

In prosecution for conspiracy to use mails in furtherance of scheme to defraud and conspiracy to defraud United States by obstructing Internal Revenue Service, defendants were not prejudiced as result of trial court's modification of its previous position concerning instructions it proposed to give on the statute of limitations, in view of fact that defendants failed to timely file their requested instructions, and defense counsel fully argued the issues relating to statute of limitations and concealment. U. S. v. Fitzgerald, C.A.7 (Ind.) 1978, 579 F.2d 1014, certiorari denied 99 S.Ct. 610, 439 U.S. 1002, 58 L.Ed.2d 677, certiorari denied 99 S.Ct. 611, 439 U.S. 1002, 58 L.Ed.2d 677. Criminal Law 1038.3; Criminal Law 1166.22(1)

Instruction, in prosecution for use of interstate telephone facilities for gambling activities and for conspiring to commit such offenses, regarding defendant's right not to testify was proper, absent request that such instruction not be given or an objection after instruction was given. U. S. v. Fuller, C.A.4 (S.C.) 1971, 441 F.2d 755, certiorari denied 92 S.Ct. 73, 404 U.S. 830, 30 L.Ed.2d 59, certiorari denied 92 S.Ct. 74, 404 U.S. 830, 30 L.Ed.2d 59. Criminal Law 847

In prosecution for conspiracy to commit four offenses, defendant's failure to request instruction that jury disregard one of the offenses because of insufficiency of evidence precluded reversal of conviction on ground of insufficiency of evidence as respects such offense. U.S. v. Smith, C.C.A.2 (N.Y.) 1940, 112 F.2d 83. Criminal Law 824(1)

In prosecution of three defendants, one defendant as to whom testimony was inadmissible had duty to request that testimony which was admissible as to codefendants be limited to them if he so desired. Reavis v. U.S., C.C.A.10 (Okla.) 1939, 106 F.2d 982. Criminal Law 824(8)

Failure of court to instruct on certain point was not error, in absence of request. Green v. U.S., C.C.A.8 (Okla.) 1928, 28 F.2d 965. Criminal Law 824(1)

Requested instruction in conspiracy prosecution was properly refused, where it was likely to mislead jury and given instructions amply covered it. Kuhn v. U.S., C.C.A.9 (Cal.) 1928, 24 F.2d 910, modified on denial of rehearing 26 F.2d 463, certiorari denied 49 S.Ct. 11, 278 U.S. 605, 73 L.Ed. 533. Criminal Law 829(3)

Where the court had quoted the statutory definition of conspiracy, and had sufficiently covered the essential elements in further explanation, there was no error in refusing requests for instructions as to what constituted conspiracy. Violette v. U.S., C.C.A.9 (Mont.) 1922, 278 F. 163, certiorari denied 42 S.Ct. 382, 258 U.S. 626, 66 L.Ed. 798. Criminal Law 829(3)

On trial for conspiring to commit crime, requested instruction as to what would make one defendant party to conspiracy was covered by instructions given. McKelvey v. U.S., C.C.A.9 (Cal.) 1917, 241 F. 801, 154 C.C.A. 503

18 U.S.C.A. § 371

. Criminal Law 829(2)

905. Repetition, instructions

Where trial judge's charge as to conspiracy was accurate but brief, jury requested a re-reading of the charge, and, after repeating his instruction, court inquired of jury whether anything about it was not clear or whether there was anything which they desired to have amplified, but nothing was suggested, the brevity of the charge was not reversible error. U.S. v. Bayer, U.S.N.Y.1947, 67 S.Ct. 1394, 331 U.S. 532, 91 L.Ed. 1654, rehearing denied 68 S.Ct. 29, 332 U.S. 785, 92 L.Ed. 368. Conspiracy 48.2(2)

Where jury during deliberation sent question to trial judge stating that instructions were given so rapidly that jury did not understand whether in conspiracy charge participation in one act made one guilty of all charges and trial court reread instructions as to conspiracy omitting all definitions of terms and made no reference to presumption of innocence and standard of proof required for conviction, conduct of trial fell below standards of clarity required for fair trial by jury. U. S. v. Harris, C.A.7 (Ill.) 1967, 388 F.2d 373. Criminal Law 863(2)

Where trial court sufficiently instructed jury on a particular subject, it did not err in refusing to again cover such subject. Chevillard v. U.S., C.C.A.9 (Cal.) 1946, 155 F.2d 929. Criminal Law 829(1)

906. Advocating overthrow of Government, instructions

In prosecution for conspiring to teach and advocate overthrow of United States government by force and violence, trial court's charge concerning clear and present danger was not prejudicial to defendants, where existence of conspiracy as outlined by court and as prosecution contended throughout was for jury to determine and if they did, court stated that it would be clear and present danger in view of world conditions. U. S. v. Mesarosh, C.A.3 (Pa.) 1955, 223 F.2d 449, certiorari granted 76 S.Ct. 218, 350 U.S. 922, 100 L.Ed. 807, reversed on other grounds 77 S.Ct. 1, 352 U.S. 1, 1 L.Ed.2d 1. Criminal Law 1172.1(2)

In prosecution for conspiracy to violate the Smith Act, § 2385 of this title, making it an offense to advocate forcible overthrow of the government, court's charge did not erroneously fail to require a showing of unlawful intent to be made against each defendant on the basis of his own acts and declarations, before acts and declarations of third parties were admissible against him. United States v. Flynn, C.A.2 (N.Y.) 1954, 216 F.2d 354, certiorari denied 75 S.Ct. 295, 348 U.S. 909, 99 L.Ed. 713, order withheld 75 S.Ct. 285, 99 L.Ed. 1298, rehearing denied 75 S.Ct. 436, 348 U.S. 956, 99 L.Ed. 747. Criminal Law 779

907. Banking offenses, instructions

Assuming that trial court erred by not giving instruction, to jury considering claim that defendants had conspired to defraud federally insured financial institution and had committed specific acts of fraud, that multiple conspiracies might be involved and that if multiple conspiracies did exist jurors must determine whether alleged conspirators directed their efforts toward accomplishment of common goal, error was harmless; even if instruction had been given there was evidence of single scheme, to obtain financing for condominium project by falsely representing existence of down payments that were never made, which was pursued by participants in whatever multiple conspiracies might have been found. U.S. v. Brandon, C.A.1 (R.I.) 1994, 17 F.3d 409, certiorari denied 115 S.Ct. 80, 513 U.S. 820, 130 L.Ed.2d 34, certiorari denied 115 S.Ct. 81, 513 U.S. 820, 130 L.Ed.2d 34. Criminal Law 1173.2(2)

Defendant charged with conspiracy to fraudulently obtain money from banks was not entitled to instruction that for jury to convict her of conspiracy, it had to find that she cashed checks with knowledge that checks were loans that bank would not normally make and that she knew before or at time she caused checks to be cashed that loans

contained false information to induce bank to give checks to borrower; instructions suggested that jury had to believe defendant cashed checks to find her guilty of conspiracy when conspiracy charge was not limited to her cashing checks at her window but in helping other conspirators complete false loan applications or finding friends to masquerade as fictitious borrowers. U.S. v. Moore, C.A.1 (Mass.) 1991, 923 F.2d 910. Criminal Law 814(5)

Allegedly erroneous instructions that reckless disregard of interest of bank was equivalent to intent to injure or defraud and that knowledge of fact could be inferred from willful blindness to existence of fact were harmless in prosecution for conspiring to defraud United States, where entire set of instructions required jury to find willfulness, where willfulness was defined as voluntarily and purposefully committing act with specific intent to disobey or disregard law, and where instructions stated that showing of negligence or mistake was insufficient. U.S. v. Hoffman, C.A.6 (Ky.) 1990, 918 F.2d 44, rehearing denied. Criminal Law 822(7)

Conspiracy instruction in prosecution of high bank officers for conspiring to make false entries in bank records was sufficient, notwithstanding contention that conspiracy involved two distinct transactions, i.e., false evaluation of securities and fictitious foreign exchange transactions, since instructions described general goal and various federal offenses alleged to have been committed, with court selecting one of the alleged objects in interest of simplicity and expounding thereon, and jury was told that to convict they must find a single conspiracy of the type alleged and that acquittal was necessary if jury found two separate, independent conspiracies. U.S. v. Gleason, C.A.2 (N.Y.) 1979, 616 F.2d 2, certiorari denied 100 S.Ct. 1037, 444 U.S. 1082, 62 L.Ed.2d 767, certiorari denied 100 S.Ct. 1320, 445 U.S. 931, 63 L.Ed.2d 764. Conspiracy 48.2(2)

Where, in prosecution of defendant for conspiracy to misapply and misapplication of funds of savings and loan association, court instructed jury that defendant's acts must have been accomplished "wilfully," court did not err in refusing defendant's tendered instructions on "good faith." U. S. v. Kaczmarek, C.A.7 (Ill.) 1974, 490 F.2d 1031. Criminal Law 829(3)

Where trial judge's instruction both before and after coconspirator's testimony was given was amply protective on the fact that testimony was admissible against defendant on conspiracy count but inadmissible on substantive count of armed robbery of federally insured bank, trial judge's failure to reiterate the caution at time of jury charge, in absence of request for him to do so or any objection to his failure to do so, was not error. U. S. v. Walker, C.A.6 (Tenn.) 1968, 390 F.2d 622. Criminal Law 824(8); Criminal Law 847

Evidence was insufficient to support giving of instruction that defendant, charged with others in conspiracy to illegally use moneys of federally insured banks and savings associations, was acting according to advice of his counsel. U. S. v. Kahn, C.A.7 (Ill.) 1967, 381 F.2d 824, certiorari denied 88 S.Ct. 591, 389 U.S. 1015, 19 L.Ed.2d 661, rehearing denied 88 S.Ct. 2272, 392 U.S. 948, 20 L.Ed.2d 1413, certiorari denied 88 S.Ct. 592, 389 U.S. 1015, 19 L.Ed.2d 661, rehearing denied 88 S.Ct. 2272, 392 U.S. 948, 20 L.Ed.2d 1414. Criminal Law 772(6)

In prosecution for robbing and conspiring to rob a bank, court erred in failing, after request, to instruct jury to take seriously into account the admitted perjury of prosecution witness, who in an earlier separate trial had been convicted of the robbery in question, in determining whether such witness' present testimony on the same subject merited belief. U.S. v. Barrasso, C.A.3 (N.J.) 1959, 267 F.2d 908. Criminal Law 785(15)

In prosecution for bank robbery and conspiracy, failure to give defendant's requested instruction directing jury to receive testimony of accomplices with great caution did not constitute reversible error, especially in view of fact that there was substantial corroboration of accomplices' testimony. Stoneking v. U.S., C.A.8 (Mo.) 1956, 232 F.2d 385, certiorari denied 77 S.Ct. 54, 352 U.S. 835, 1 L.Ed.2d 54, certiorari denied 77 S.Ct. 1406, 354 U.S. 941, 1 L.Ed.2d 1540, rehearing denied 78 S.Ct. 78, 355 U.S. 852, 2 L.Ed.2d 61. Criminal Law 1173.2(6)

In prosecution for bank robbery and conspiracy, giving of instruction that, if jury believed certain testimony as to

identification, defendant would be guilty was not error in view of other instructions given. Stoneking v. U.S., C.A.8 (Mo.) 1956, 232 F.2d 385, certiorari denied 77 S.Ct. 54, 352 U.S. 835, 1 L.Ed.2d 54, certiorari denied 77 S.Ct. 1406, 354 U.S. 941, 1 L.Ed.2d 1540, rehearing denied 78 S.Ct. 78, 355 U.S. 852, 2 L.Ed.2d 61. Criminal Law 823(1)

In prosecution for wilful misapplication of bank funds, making false entries in bank records, conspiracy to commit offenses against United States, and violation of mail fraud statute, § 1341 of this title, court's refusal to charge that testimony of admitted accomplice of defendants should be considered in light of hope of possibility of leniency in case was not error requiring reversal, where court had instructed jury that testimony of such accomplice should be received with caution and carefully scrutinized. U. S. v. Scoblick, C.A.3 (Pa.) 1955, 225 F.2d 779. Criminal Law 829(10)

In prosecution for wilful misapplication of bank funds, making false entries in bank records, conspiracy to commit offenses against United States, and violation of mail fraud statute, § 1341 of this title, charge that there must have been specific intent on behalf of any defendant to defraud bank before that defendant could be found guilty was not necessary, where element of criminal intent appeared several times in charge of court. U. S. v. Scoblick, C.A.3 (Pa.) 1955, 225 F.2d 779. Criminal Law 829(3)

Where the district court fully instructed jury on element of intent in prosecution for conspiracy to embezzle funds of a national bank and to make and cause to be made false entries in bank's books with intent to injure it and deceive its officers, it was not prejudicial to decline to repeat the instruction. Wilson v. U.S., C.C.A.6 (Ky.) 1940, 109 F.2d 895. Criminal Law 806(1)

In prosecution of bank employee for conspiracy to commit grand larceny and embezzlement, instructions defining larceny and embezzlement as abstract statements of rule of measure of proof in either case was not error, where other instruction clearly told jury that offenses charged were conspiracies, and that to convict there must be proof of agreement on part of two or more of alleged conspirators plus an overt act. McNeil v. U.S., App.D.C.1936, 85 F.2d 698, 66 App.D.C. 199. Criminal Law 823(4)

In prosecution of bank employee for conspiracy to commit grand larceny and embezzlement, refusal of instruction that to convict jury must believe that all three of alleged conspirators participated in conspiracy, and that government must prove each overt act alleged, was not error, especially where court's instruction given at instance of defendant covered ground. McNeil v. U.S., App.D.C.1936, 85 F.2d 698, 66 App.D.C. 199. Criminal Law 829(3)

In prosecution of bank employee for conspiracy to commit grand larceny and embezzlement, refusal of instruction intended to emphasize rule that defendant was entitled to presumption of innocence at every stage of case was not error, where subject was fully covered in general charge and further instruction thereon would have been confusing. McNeil v. U.S., App.D.C.1936, 85 F.2d 698, 66 App.D.C. 199. Criminal Law 829(9)

On trial for conspiracy to abstract and misapply funds of national bank, instructions as to lack of knowledge that money received was property of the bank were properly refused. Oppenheim v. U.S., C.C.A.2 (N.Y.) 1917, 241 F. 625, 154 C.C.A. 383. Conspiracy 48

908. Bankruptcy offenses, instructions

Giving of "willful blindness" instruction was not error where three defendants, in prosecution for conspiracy to commit mail fraud, mail fraud and conspiring to conceal property of a bankrupt, asserted that they were simply associated with bankrupt and did not realize that they were engaged in fraudulent schemes but under the evidence jury could have thought that the facts indicated a pattern of behavior predicated on knowledge of the conspiracy together with a desire to limit inculpatory evidence of complicity, yet nevertheless participate in the scheme. U. S.

v. Ciampaglia, C.A.1 (Mass.) 1980, 628 F.2d 632, certiorari denied 101 S.Ct. 365, 449 U.S. 956, 66 L.Ed.2d 221, certiorari denied 101 S.Ct. 618, 449 U.S. 1038, 66 L.Ed.2d 501. Criminal Law 772(5)

Where counsel for two defendants charged with conspiracy to defeat Bankruptcy Act, section 1 et seq. of Title 11, and with substantive violations of Bankruptcy Act read portions of voluntary petition in bankruptcy to jury, government counsel's reading omitted paragraph to jury was not unfair in view of instruction to jury that statements in petition should not be treated as true and correct and that it was received in evidence to show beginning of bankruptcy. U. S. v. Harris, C.A.7 (Ill.) 1967, 388 F.2d 373. Criminal Law 673(2)

In prosecution for concealing assets from trustee in bankruptcy and conspiring to transfer assets of one corporation to another in contemplation of bankruptcy, instructions, considered as a whole, were not erroneous as allowing jury to find defendant guilty of conspiracy count if jury believed that he transferred or concealed property involved and failing to instruct jury that it must find that object of conspiracy was the object alleged in indictment, especially where defendant made no objection. U.S. v. Switzer, C.A.2 (N.Y.) 1958, 252 F.2d 139, certiorari denied 78 S.Ct. 1363, 357 U.S. 922, 2 L.Ed.2d 1366, rehearing denied 79 S.Ct. 16, 358 U.S. 859, 3 L.Ed.2d 93. Criminal Law 822(6)

In prosecution for conspiracy with bankrupt to conceal assets from bankruptcy receiver, trial court's refusal to instruct jury on aiding and abetting in response to inquiry by jury as to aiding and abetting was not error where such issue was not in the case. Sultan v. U. S., C.A.5 (Fla.) 1957, 249 F.2d 385. Criminal Law 814(1)

In prosecution for conspiracy with bankrupt to conceal bankruptcy assets, trial court's refusal to allow defendant's counsel to make objection to instructions out of presence of jury did not place defendant in position of challenging judge in jury's presence. Sultan v. U. S., C.A.5 (Fla.) 1957, 249 F.2d 385. Criminal Law 842

In prosecution for conspiracy with bankrupt to conceal assets from bankruptcy receiver, trial court's refusal to instruct jury that defendant should be acquitted if jury found that bankrupt operated under impression and advice of counsel that he had right to set such assets apart as his constitutional homestead exemption was not error where instruction was phrased in terms of defendant being advised by bankrupt that bankrupt has exercised his constitutional homestead exemption and there was complete lack of evidence that bankrupt had ever communicated anything to defendant in respect to bankrupt's rights under state Constitution. Sultan v. U. S., C.A.5 (Fla.) 1957, 249 F.2d 385. Criminal Law 814(8)

In prosecution for conspiracy to defraud the United States by corruptly administering or procuring the corrupt administration of the Frazier Lemke Act, §§ 201 to 203 of Title 11, an instruction that the purpose of said sections was to aid distressed farmers and their creditors and, except for lawful fees fixed for Conciliation Commission's appraisers, that said sections were not to be administered for the personal profit of commissioners or solicitors or appraisers, was not prejudicially erroneous as telling jurors that mere fact that defendant solicitor accepted compensation for services was a violation of law. Joyce v. U. S., C.C.A.8 (N.D.) 1946, 153 F.2d 364, certiorari denied 66 S.Ct. 1349, 328 U.S. 860, 90 L.Ed. 1631. Criminal Law 1172.3

In prosecution for concealing a bankrupt's goods and for conspiracy to commit that offense, refusal to give requested charges, the substance of which the court had charged or which were unimportant, was not error. U.S. v. Aronoff, C.C.A.2 (N.Y.) 1943, 138 F.2d 911, certiorari denied 64 S.Ct. 522, 321 U.S. 765, 88 L.Ed. 1062. Criminal Law 769; Criminal Law 829(1)

Failure to list merchandise and cash in schedules, alleged in indictment for conspiracy to conceal bankrupt's assets, was sufficiently covered in instructions. Gerson v. U.S., C.C.A.8 (Okla.) 1928, 25 F.2d 49. Conspiracy 48.2(2)

On a trial for conspiring with a bankrupt to conceal assets from the trustee, and for aiding and abetting the

concealment, an instruction that the undisputed evidence showed the trustee had knowledge of the funds charged to have been concealed, and that no discharge had been granted, and that under such facts the indictment must fall and the verdict be not guilty, was properly refused as being inapplicable, where the trustee denied knowledge that the bankrupt was the owner of the fund, and there was no evidence to the contrary. Miller v. U.S., C.C.A.4 (S.C.) 1921, 277 F. 721. Bankruptcy 3862; Criminal Law 814(5)

On the trial of a bankrupt's attorney for conspiracy to conceal assets, an instruction that action of the bankrupt on the advice of counsel honestly given would exonerate him and defeat the charge of conspiracy was properly refused, because it did not express the additional requisite that the bankrupt must have honestly taken the advice and acted upon it. Miller v. U.S., C.C.A.4 (S.C.) 1921, 277 F. 721. Bankruptcy 3862; Criminal Law 815(5)

909. Bribery, instructions

Any error in district court's failure to give proposed jury instruction concerning gratuity defense in bribery and conspiracy prosecution was not reversible; defendants had accepted payments that could not be deemed gratuities, and instructions viewed as a whole thoroughly eliminated any possibility that jury might convict defendants of conspiracy and bribery merely because they received unsolicited gifts. U.S. v. Duvall, C.A.5 (Miss.) 1988, 846 F.2d 966. Criminal Law 1173.2(3)

While defendant corporate officer, who was charged with offenses arising out of the alleged bribery of city officials to secure a contract for his corporation, and who raised the defense that he made the payments only to satisfy extortionate demands, alleged that the trial court instruction, by its emphasis on the voluntariness of the payments, implicitly disallowed the extortion defense and permitted only the narrower defense of duress, the instruction could not have prejudiced defendant since he characterized his own conduct in such a way as to absolutely preclude the availability of the extortion defense. U. S. v. McPartlin, C.A.7 (Ill.) 1979, 595 F.2d 1321, certiorari denied 100 S.Ct. 65, 444 U.S. 833, 62 L.Ed.2d 43. Criminal Law 1172.1(4)

Charge to jury, in prosecution for conspiracy to commit bribery, stating, inter alia, that it was not necessary to find that the action or result sought by whoever hypothetically gives a bribe is something that is in fact within the power of the official in question, and that it would not be possible for jury to find bribery if the action sought was so far outside the purview of the official's duties that it would be unreasonable to suppose that the official could have done anything about the particular subject, was not plainly erroneous, over objection of defendant that personal influence is not within the scope of bribery statute since it is inconsistent with the term "official act." U. S. v. Carson, C.A.2 (N.Y.) 1972, 464 F.2d 424, certiorari denied 93 S.Ct. 268, 409 U.S. 949, 34 L.Ed.2d 219. Criminal Law 1043(1)

In prosecution of individuals under indictment charging conspiracy to defraud the United States through violation of former § 203 of this title, prohibiting members of Congress from receiving compensation in matters affecting the government and charging receipt by congressman of compensation for services with respect to matters before the War Department, and charging individuals with aiding and abetting, complicated charge necessitated by complications of the case was not objectionable as confusing and misleading. May v. United States, C.A.D.C.1949, 175 F.2d 994, 84 U.S.App.D.C. 233, certiorari denied 70 S.Ct. 58, 338 U.S. 830, 94 L.Ed. 505, order withheld 70 S.Ct. 81, 338 U.S. 854, motion denied 70 S.Ct. 94, motion denied 70 S.Ct. 95, rehearing denied 70 S.Ct. 154, 338 U.S. 882, 94 L.Ed. 542, rehearing denied 70 S.Ct. 155, 338 U.S. 882, 94 L.Ed. 542, order withheld 70 S.Ct. 80. Conspiracy 48.2(2); United States 52

In a trial for conspiracy to defraud the United States and to bribe government officers or agents, instructions were correct and fully protected defendant's rights. Sears v. U.S., C.C.A.1 (Mass.) 1920, 264 F. 257.

Where charges of conspiracy, obstruction of justice and making a false material declaration to a grand jury, and/or

perjury was not a case charging bribes or payoffs to councilman for awarding garbage contract but, rather involved obstruction of justice for lying about the situation to grand jury, trial court did not err in refusing to give requested charge that councilman and garbage hauler could not be found guilty of perjury unless or until jury first found beyond a reasonable doubt that the garbage hauler, in fact, engaged in bribery or payoffs. U. S. v. Long, W.D.Pa.1976, 421 F.Supp. 1355, affirmed 574 F.2d 761, certiorari denied 99 S.Ct. 577, 439 U.S. 985, 58 L.Ed.2d 657. Obstructing Justice 18; Perjury 37(1)

910. Defrauding United States, instructions--Generally

A charge under the "defraud clause" of statute prohibiting a conspiracy to defraud the United States by impairing the ability of the IRS to ascertain and collect income taxes does not require a "deceit and dishonest means" instruction. U.S. v. Martin, C.A.5 (La.) 2003, 332 F.3d 827, rehearing and rehearing en banc denied 75 Fed.Appx. 982, 2003 WL 21766700. Conspiracy 48.2(2)

Failing to instruct jury on use of deceitful or dishonest means element of conspiracies to defraud the United States or any agency thereof in any manner or for any purpose was constitutional error in prosecution for conspiracy to obstruct Internal Revenue Service (IRS); jury may have found that defendant was guilty of felony for having agreed to obstruct IRS, even if she did not agree to do so dishonestly or deceitfully. U.S. v. Caldwell, C.A.9 (Or.) 1993, 989 F.2d 1056. Conspiracy 48.2(2)

Defendant's requested jury instruction that activities of defendants were not illegal unless activities furthered conspiracy to impede the Internal Revenue Service (IRS) was adequately covered by instruction given that conviction of conspiring to defraud the United States was only possible if Government showed that "means or methods described in the indictment were agreed upon to be used in an effort to * * * accomplish * * * the conspiracy." U.S. v. Sturman, C.A.6 (Ohio) 1991, 951 F.2d 1466, rehearing denied, certiorari denied 112 S.Ct. 2964, 504 U.S. 985, 119 L.Ed.2d 586, post-conviction relief denied. Criminal Law 829(3)

Jury instructions which included a paragraph following general statutory language of conspiracy statute governing criminal conspiracy to commit an offense against or defraud United States and which properly set forth multiple objects of conspiracy, as well as paragraph describing with particularity the generic crimes charged in preceding paragraph and providing essential nature of conspiratorial agreement, were clearly sufficient to inform jury of essential nature of conspiratorial agreement, the meeting of minds, that Government was required to prove beyond a reasonable doubt. U.S. v. Treadwell, C.A.D.C.1985, 760 F.2d 327, 245 U.S.App.D.C. 257, certiorari denied 106 S.Ct. 814, 474 U.S. 1064, 88 L.Ed.2d 788. Conspiracy 48.2(2)

Charge, in prosecution for conspiracy to defraud the United States, was sufficient, even though jury, in order to determine what they had to decide, had to resort to the count. U.S. v. Gillilan, C.A.2 (N.Y.) 1961, 288 F.2d 796, certiorari denied 82 S.Ct. 38, 368 U.S. 821, 7 L.Ed.2d 26. Conspiracy 48.2(2)

In prosecution for conspiring to defraud the United States, giving of instruction that, to convict, crime would have had to have been committed within certain federal judicial district and that jury was being instructed, as matter of law, "that it did happen" in such district and "that the defendants at the bar committed the crime, or crimes, in such manner as would make them guilty under the law heretofore defined and explained to you," did not constitute reversible error in view of other instructions given. Lazarov v. U.S., C.A.6 (Tenn.) 1955, 225 F.2d 319, certiorari denied 76 S.Ct. 140, 350 U.S. 886, 100 L.Ed. 781, rehearing denied 76 S.Ct. 341, 350 U.S. 955, 100 L.Ed. 831. Criminal Law 823(2)

In prosecution of United States Marshal, deputy United States Marshal, and friend of Marshal for alleged conspiracy to defraud the United States, on ground that they conspired to obtain money from one convicted of a federal offense by granting him special privileges with respect to his imprisonment, instructions given correctly stated the law. Carrigan v. U. S., C.A.9 (Cal.) 1952, 197 F.2d 817, certiorari denied 73 S.Ct. 106, 344 U.S. 866,

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97 L.Ed. 672. Conspiracy 48.1(3)

In prosecution of two corporate defendants and five individual defendants under two indictments charging conspiracy to defraud United States by delivering under contracts with Federal Surplus Commodities Corporation rejected egg powder and conspiracy to defraud United States by obtaining payment of certain false claims, indictments charged separate offenses, and a charge that jury might convict on both indictments if they found two conspiracies was proper. U.S. v. Samuel Dunkel & Co., C.A.2 (N.Y.) 1950, 184 F.2d 894, certiorari denied 71 S.Ct. 491, 340 U.S. 930, 95 L.Ed. 671. Conspiracy 48.2(2)

In prosecution for conspiracy to acquire and for fraudulent acquisition of surplus war materials from the War Assets Administration, evidence did not require an instruction on the theory that a co-defendant who participated in the acquisition was introduced to defendant as a veteran dealer. DeBon v. U.S., C.A.9 (Cal.) 1949, 175 F.2d 439. Conspiracy 47(6); Fraud 69(5)

Alien Property Custodian, charged with conspiring to defraud government, could not complain of instruction that he was charged with information in office papers not known to him. Miller v. U.S., C.C.A.2 (N.Y.) 1928, 24 F.2d 353, certiorari denied 48 S.Ct. 421, 276 U.S. 638, 72 L.Ed. 421. Criminal Law 1172.7

Instruction that it was fraud to defeat government's right to fully contract, or to deprive it of its dominion as owner, was not error. Falter v. U.S., C.C.A.2 (N.Y.) 1928, 23 F.2d 420, certiorari denied 48 S.Ct. 528, 277 U.S. 590, 72 L.Ed. 1003. Conspiracy 48

On a trial for conspiracy to defraud the United States by using counterfeits of the stamping devices used by government inspectors in connection with the manufacture of shoes for the government, where defendant, the general manager, denied knowledge of their use, as neither guilty knowledge nor intent were in issue, an instruction that the jury might consider a corrupt transaction with a government inspector under a previous contract as throwing light upon whether defendant was innocent or guilty in his knowledge of the transaction involved in the trial, was in effect an instruction that they might consider it in determining whether he was innocent or guilty of being concerned in the conspiracy charged. MacDonald v. U S, C.C.A.1 (Mass.) 1920, 264 F. 733.

Where defendant, charged with conspiracy to defraud the United States in connection with the manufacture of shoes for the government, excepted, not only to evidence of the bribery of a government inspector under a previous contract, but also to the court's instruction as to the use which the jury might make of such evidence, the instruction, if erroneous, could not be cured, because defendant introduced testimony in explanation of the evidence as to the transaction with the inspector. MacDonald v. U S, C.C.A.1 (Mass.) 1920, 264 F. 733.

In prosecution against financing corporation, its branch office manager, store owners, and their sales manager for conspiracy to defraud the United States by making false documents to secure insurance under modernization of homes provisions of National Housing Act, § 1701 et seq. of Title 12, wherein testimony of conversation with sales manager regarding reliance on advice of counsel was admitted solely for purpose of negativing contention that store owners and sales manager relied upon advice of branch officer manager, instructions during and at conclusion of trial to disregard such testimony insofar as it affected store owners and sales manager were necessary. U.S. v. Thomas, E.D.Wash.1943, 52 F.Supp. 571. Criminal Law 673(4)

911. ---- False and fraudulent claims, defrauding United States, instructions

Given that indictment charging conspiracy to defraud the United States by impairing the ability of the IRS to ascertain and collect income taxes included the "deceit and dishonest means" language, and that the evidence demonstrated a scheme that, at a minimum, involved "trickery", jury instruction that did not include "deceit and dishonest means" language was not so clearly erroneous as to result in the likelihood of a grave miscarriage of justice. U.S. v. Martin, C.A.5 (La.) 2003, 332 F.3d 827, rehearing and rehearing en banc denied 75 Fed.Appx.

982, 2003 WL 21766700. Criminal Law 1038.1(4)

Jury charge on two conspiracy counts, each alleging conspiracy with two objectives, including felony conspiracy to defraud Food and Drug Administration (FDA) and misdemeanor conspiracy to violate specific Food, Drug, and Cosmetics Act provisions, was not plain error, despite defendant's claim that charge was confusing and created possibility that jury would mistakenly convict him under felony prong while only finding evidence sufficient under misdemeanor prong; court specifically and separately discussed elements under both prongs and repeatedly distinguished between them, and specificity of verdict form provided additional assurance that there was no confusion. U.S. v. Ballistrea, C.A.2 (N.Y.) 1996, 101 F.3d 827, certiorari denied 117 S.Ct. 1327, 520 U.S. 1150, 137 L.Ed.2d 488. Criminal Law 823(4)

Where jury in conspiracy prosecution was specifically instructed that indictment alleged that defendant and his coconspirators had agreed to make false statements on loan-guarantee application and that defendant denied having any knowledge before loan was closed that application contained false statements, jury must have found that defendant knew that application which he submitted contained false statements, and there was no failure to require jury, before convicting defendant, to find that he knew of false statements in application before loan was closed. U. S. v. Hutcher, C.A.2 (N.Y.) 1980, 622 F.2d 1083, certiorari denied 101 S.Ct. 218, 449 U.S. 875, 66 L.Ed.2d 96. Conspiracy 48.2(2)

In prosecution for conspiring to defraud the United States by submitting and causing submission of false cost reports for medicare and medicaid payments to nursing home, court's jury charge, while it omitted some traditional formulations of element of specific intent, sufficiently focused jury's attention on requisite state of mind, especially in view of absence of timely submission of defendant's preferred language. U. S. v. Nemes, C.A.2 (N.Y.) 1977, 555 F.2d 51. Conspiracy 48.2(2)

It was not error, in prosecution for conspiracy to defraud the United States and for aiding and abetting the making of false statements to, and the concealment of material facts from, the Immigration and Naturalization Service, to instruct that it would constitute aiding and abetting the concealment of a material fact from an agency of the United States for defendants to have aided and abetted certain aliens in concealing from the Service that the marriages which those aliens had contracted with American citizens were made solely to enable the aliens to obtain immigrant visas not otherwise available and not with intention that parties live together or perform the usual obligations of marriage. U. S. v. Bernard, C.A.2 (N.Y.) 1967, 384 F.2d 915. Fraud 69(7)

In prosecution for unlawful sales of government owned wool being made into army jackets, a conspiracy to defraud the government and for making of false statements about disposition of wool serge furnished manufacturer, instructions properly submitted case to the jury with respect to test used by the government to prove the amount of serge which the manufacturer should have had on hand at the completion of the contract. U. S. v. Fabric Garment Co., C.A.2 (N.Y.) 1958, 262 F.2d 631, certiorari denied 79 S.Ct. 1117, 359 U.S. 989, 3 L.Ed.2d 978. Criminal Law 783(1)

In prosecution for conspiracy to defraud the United States by inducing the Veterans Administration through fraudulent representations to guarantee a home loan to veteran, a charge that cause was between the United States and defendants and not between loan association and defendants, or between veteran and defendants, was proper. Heald v. U. S., C.A.10 (Colo.) 1949, 175 F.2d 878, certiorari denied 70 S.Ct. 101, 338 U.S. 859, 94 L.Ed. 526, certiorari denied 70 S.Ct. 102, 338 U.S. 859, 94 L.Ed. 526. Conspiracy 48.2(2)

In prosecution for presenting false claims against government, charge that fact that co-defendant pleaded guilty was not evidence against defendant but that jury could consider that one of two conspirators did plead guilty and make such use of evidence as they thought fit, was reversible error. U. S. v. Toner, C.A.3 (Pa.) 1949, 173 F.2d 140. Criminal Law 793; Criminal Law 1172.1(2)

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In prosecution for presenting false claims to United States and conspiring to do so, statement by trial judge, in attempted definition of term "reasonable doubt," that it was something to be distinguished from an ordinary doubt, where no exception was taken thereto, was not reversible error on ground that it confused jury. U.S. v. Breen, C.C.A.2 (N.Y.) 1938, 96 F.2d 782, certiorari denied 58 S.Ct. 1061, 304 U.S. 585, 82 L.Ed. 1546. Criminal Law 1038.1(5)

In prosecution of defendants, who organized and operated five trade schools, for conspiring to defraud Government by fraudulently inflating cost basis of tuition rate and by fraudulently increasing cost to be charged to Veterans' Administration, instruction that evidence must be such as to exclude every reasonable hypothesis other than that of guilt, in addition to full and complete charge on reasonable doubt was sufficient. U. S. v. Weinberg, M.D.Pa.1955, 129 F.Supp. 514, affirmed 226 F.2d 161, certiorari denied 76 S.Ct. 305, 350 U.S. 933, 100 L.Ed. 815. Criminal Law 784(4)

Defendants, convicted of conspiracy to defraud the United States by making false documents to secure insurance under modernization of homes provisions of National Housing Act, § 1701 et seq. of Title 12, were not entitled to new trial because of refusal to give requested instructions to effect that receipts and certificates falsified did not mean what they said. U.S. v. Thomas, E.D.Wash.1943, 52 F.Supp. 571. Criminal Law 922(2)

Store owners and their sales manager, who with financing corporation and its branch office manager were convicted of conspiracy to defraud the United States by making false documents to secure insurance under modernization of homes provisions of National Housing Act, § 1701 et seq. of Title 12, were not entitled to new trial because of failure to instruct that jury should consider whether corporation or Federal Housing Administration had right of civil action against store owners for losses sustained. U.S. v. Thomas, E.D.Wash.1943, 52 F.Supp. 571 . Criminal Law 922(2)

912. Immigration offenses, instructions

In prosecution of commissioner, deputy clerk and interpreters for conspiracy to defraud the Government by issuance of passports, court's charge with respect to commissioner was not objectionable as failing properly to define specific crime charged against him. U. S. v. Griffin, C.A.3 (Pa.) 1949, 176 F.2d 727, certiorari denied 70 S.Ct. 478, 338 U.S. 952, 94 L.Ed. 588, rehearing denied 70 S.Ct. 559, 339 U.S. 916, 94 L.Ed. 1341. Criminal Law 772(2)

In prosecution for conspiracy to violate Alien Registration Act of 1940, § 457(c) Title 8, by filing application for registration containing false statements, defendants were entitled to have judge charge that no defendant could be found guilty unless he was a party to an agreement, plan or combination to file an application containing false statements known by him to be false. U.S. v. Ausmeier, C.C.A.2 (N.Y.) 1945, 152 F.2d 349. Conspiracy 48.2(2)

In prosecution for conspiracy to violate Alien Registration Act of 1940, § 457(c) of Title 8, by giving false answers in application for registration, error in failing to give a specific charge as to knowledge of falsity of answers was not cured when court gave usual general charges as to presumption of innocence, burden of proof, and reasonable doubt. U.S. v. Ausmeier, C.C.A.2 (N.Y.) 1945, 152 F.2d 349. Criminal Law 823(4)

In prosecution for conspiracy to violate Alien Registration Act of 1940, § 457(c) of Title 8, by giving of false answers in application for alien registration, withdrawal by defendants of certain requests to charge with respect to knowledge of existence of the conspiracy was not an acquiescence in error of court in failing to make essential charge with respect to defendants' knowledge of falsity of their answers. U.S. v. Ausmeier, C.C.A.2 (N.Y.) 1945, 152 F.2d 349. Criminal Law 1137(1)

913. Interstate commerce offenses, instructions

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Even if knowledge relating to interstate character of forged securities was essential element in prosecution for conspiracy to transport forged securities in interstate commerce, and even if jury should have been so instructed, failure to so instruct could not have led jury into believing that it could convict defendant, in view of importance of use of interstate facilities in scheme participated in by defendant, without deciding that defendant was well aware of necessary use of interstate facilities. U. S. v. Thompson, C.A.7 (Ill.) 1973, 476 F.2d 1196, certiorari denied 94 S.Ct. 214, 414 U.S. 918, 38 L.Ed.2d 154. Conspiracy 48.2(2)

Failure, in prosecution for conspiracy to travel interstate to further unlawful activity, in response to jury's request for clarification of meaning of conspiracy, to include, in rereading of charge, stress on interstate requirement of underlying substantive count was not error. U. S. v. Marquez, C.A.2 (N.Y.) 1970, 424 F.2d 236, certiorari denied 91 S.Ct. 56, 400 U.S. 828, 27 L.Ed.2d 58. Criminal Law 863(2)

Judge's instruction, at trial for conspiring to use facilities of interstate commerce to promote extortion in violation of laws of North Carolina, that gave preponderance of evidence standard was erroneous though court properly defined at length correct burden of proof earlier in the charge and later in charge frequently referred to reasonable doubt requirement. U. S. v. Hughes, C.A.2 (N.Y.) 1968, 389 F.2d 535. Criminal Law 782(9); Criminal Law 823(10)

Instruction that defendant could be convicted on substantive count of transporting stolen securities in interstate commerce if jury found that substantive offense was committed in furtherance of the conspiracy and that, at time of commission of substantive offense, particular defendant was member of the conspiracy was not erroneous for failure to add that substantive offense must not have been merely an unforeseen part of ramifications of plan, where defendant did not request such addition. U. S. v. Edwards, C.A.2 (N.Y.) 1966, 366 F.2d 853, certiorari denied 87 S.Ct. 852, 386 U.S. 908, 17 L.Ed.2d 782, certiorari denied 87 S.Ct. 882, 386 U.S. 919, 17 L.Ed.2d 790. Criminal Law 825(2)

In prosecution for conspiring to transport in interstate commerce lewd and obscene motion picture films, instruction that criminal conspiracy has its origin in atmosphere of secrecy and that it is an informal understanding or undertaking of two or more persons and that conspiracy implies concerted design, was adequate and no error resulted from refusing required instruction on conspiracy. Parr v. U. S., C.A.5 (Tex.) 1958, 255 F.2d 86, certiorari denied 79 S.Ct. 40, 358 U.S. 824, 3 L.Ed.2d 64. Criminal Law 829(3)

In prosecution for conspiracy to violate § 301 et seq. of Title 49 instructions sufficiently advised jury regarding nature of conspiracy and facts which were required to be established in order to warrant a conviction. Martin v. U. S., C.C.A.10 (Colo.) 1938, 100 F.2d 490, certiorari denied 59 S.Ct. 590, 306 U.S. 649, 83 L.Ed. 104, certiorari denied 59 S.Ct. 590, 306 U.S. 649, 83 L.Ed. 1047, certiorari denied 59 S.Ct. 590, 306 U.S. 649, 83 L.Ed. 1048, certiorari denied 59 S.Ct. 591, 306 U.S. 649, 83 L.Ed. 1048, certiorari denied 59 S.Ct. 642, 306 U.S. 651, 83 L.Ed. 1050. Conspiracy 48.2(2)

In prosecution for conspiracy to violate § 301 et seq. of Title 49 by employment of unlicensed carriers of passengers, that court instructed that charge was conspiracy to violate the provision of the said sections, providing that no person shall sell, offer for sale, or arrange for transportation unless he holds a broker's license, was harmless error where entire record indicated that verdict was right. Martin v. U. S., C.C.A.10 (Colo.) 1938, 100 F.2d 490, certiorari denied 59 S.Ct. 590, 306 U.S. 649, 83 L.Ed. 104, certiorari denied 59 S.Ct. 590, 306 U.S. 649, 83 L.Ed. 1047, certiorari denied 59 S.Ct. 590, 306 U.S. 649, 83 L.Ed. 1048, certiorari denied 59 S.Ct. 591, 306 U.S. 649, 83 L.Ed. 1048, certiorari denied 59 S.Ct. 642, 306 U.S. 651, 83 L.Ed. 1050. Criminal Law 1172.3

In prosecution for conspiracy to violate § 1952 of this title prohibiting travel in interstate commerce to facilitate gambling activity, instruction that a lugger traveling in interstate commerce and discharging players facilitated dice game was not plain error, in absence of objection to that part of charge. U. S. v. Barrow, E.D.Pa.1964, 229 F.Supp. 722, affirmed in part, reversed in part on other grounds 363 F.2d 62, certiorari denied 87 S.Ct. 703, 385

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U.S. 1001, 17 L.Ed.2d 541. Criminal Law 922(7)

In prosecution for conspiracy to travel in interstate commerce to facilitate gambling activity and for the substantive offense, instruction stating in effect that co-conspirators might be convicted of the substantive crime was error with respect to the substantive charge as to those defendants who were not involved in interstate travel. U. S. v. Barrow, E.D.Pa.1964, 229 F.Supp. 722, affirmed in part, reversed in part on other grounds 363 F.2d 62, certiorari denied 87 S.Ct. 703, 385 U.S. 1001, 17 L.Ed.2d 541. Criminal Law 793

914. Liquor offenses, instructions

In prosecution for bringing liquor into dry state, and for conspiracy to commit this crime, instructions given were not improper. McDonough v. U.S., C.A.10 (Okla.) 1955, 227 F.2d 402. Conspiracy 48.2(2); Intoxicating Liquors 239(1)

In prosecution for violation of federal liquor laws and for conspiracy to violate federal liquor laws, charge was not prejudicially erroneous. Newman v. U.S., C.A.5 (Ga.) 1955, 220 F.2d 289, certiorari denied 76 S.Ct. 51, 350 U.S. 824, 100 L.Ed. 736, rehearing denied 76 S.Ct. 148, 350 U.S. 897, 100 L.Ed. 789. Criminal Law 1172.1(1)

Where District Court overruled motion to strike testimony concerning illicit liquor transactions between witness and accused which occurred several years before date of alleged conspiracy to violate revenue laws relating to intoxicating liquors, and no motion for mistrial was made, instruction that, in determining accused's guilt, jury should disregard any evidence concerning transactions of accused prior to period covered in indictment, granted to accused only relief to which he would have been entitled if motion had been sustained, and overruling of motion was not prejudicial. Heflin v. U.S., C.C.A.5 (Fla.) 1943, 132 F.2d 907. Criminal Law 1168(4)

Instruction that there was no evidence that defendant possessed whisky in pursuance of conspiracy was properly denied. McDonnell v. U.S., C.C.A.1 (Mass.) 1927, 19 F.2d 801, certiorari denied 48 S.Ct. 114, 275 U.S. 551, 72 L.Ed. 421. Conspiracy 48

Requested instruction that there was no evidence that alcohol, whisky, and intoxicating liquor were imported was properly denied. McDonnell v. U.S., C.C.A.1 (Mass.) 1927, 19 F.2d 801, certiorari denied 48 S.Ct. 114, 275 U.S. 551, 72 L.Ed. 421. Conspiracy 48

Instruction that all conspiring defendants would be guilty of operating still actually operated by their agent, regardless of whether they were present, was proper. Cummings v. U.S., C.C.A.9 (Wash.) 1926, 15 F.2d 168. Conspiracy 41

Instruction in prosecution for possession of liquor and conspiracy, under former § 88 of this title [now this section], to effect that defendant's participation in transportation and sale constituted conspiracy was erroneous, as eliminating element of agreement or understanding. Fisher v. U.S., C.C.A.4 (W.Va.) 1926, 13 F.2d 756. Criminal Law 815(12)

On trial for conspiracy to manufacture and keep intoxicating liquors for sale, instructions given were sufficient. Liberato v. U.S., C.C.A.9 (Wash.) 1926, 13 F.2d 564. Conspiracy 48.2(2)

Charge in prosecution for conspiracy to violate National Prohibition Act, former § 1 et seq. of Title 27, was not erroneous, when considered with another part of charge, to effect that defendants would be guilty if they agreed in Louisiana to possess intoxicating liquor, and in pursuance of that agreement possessed it in Mississippi. Shook v. U.S., C.C.A.5 (Miss.) 1925, 10 F.2d 151, certiorari denied 46 S.Ct. 482, 271 U.S. 666, 70 L.Ed. 1141.

In prosecution under National Prohibition Act, former § 1 et seq. of Title 27, for conspiring unlawfully to transport

and sell whisky for beverage purposes, requested instructions were properly refused as obscure. Langley v. U.S., C.C.A.6 (Ky.) 1925, 8 F.2d 815, certiorari denied 46 S.Ct. 204, 269 U.S. 588, 70 L.Ed. 427. Conspiracy 48

In prosecution of police officer and others for conspiracy to violate National Prohibition Act, former § 1 et seq. of Title 27, where officer was not charged with failure to arrest, denial of instructions defining limitations on his power to arrest was not error. Marron v. U.S., C.C.A.9 (Cal.) 1925, 8 F.2d 251.

In prosecution for conspiracy to violate National Prohibition Act, former § 1 et seq. of Title 27, instruction that, if acts of parties were committed in manner or under circumstances which, by reason of their situation and conditions surrounding them, gave rise to reasonable and just inference that they were result of previous agreement, jury could find existence of conspiracy to do those acts, was error, in view of presumption of innocence of accused until proven guilty. Terry v. U.S., C.C.A.9 (Cal.) 1925, 7 F.2d 28.

In prosecution for conspiracy at certain time and place to violate National Prohibition Act, former § 1 et seq. of Title 27, in absence of testimony tending to show that accused persons, assembled at such place, were parties to conspiracy to transport, possess or sell intoxicating liquor at another place six weeks prior thereto, or had any knowledge of such transaction, instruction permitting evidence of violation of said former sections at such other place to be considered constituted reversible error. Terry v. U.S., C.C.A.9 (Cal.) 1925, 7 F.2d 28.

Where evidence in prosecution for conspiracy to obtain whisky from bond by forged permits and its unlawful sale showed, that, if defendants did acts charged, they could not have believed permits were lawful, refusal to charge that, if any defendant did not know that deliveries were made on forged permits, finding of not guilty would be warranted, was not error. A Guckenheimer & Bros Co v. U S, C.C.A.3 (Pa.) 1925, 3 F.2d 786, certiorari denied 45 S.Ct. 509, 268 U.S. 688, 69 L.Ed. 1157.

Former § 50 of Title 27, making possession of liquor prima facie evidence of unlawful purpose, had no application in a trial for conspiracy under former § 88 of this title [now this section], and an instruction quoting such section, and giving no other charge, as to burden of proof, constituted reversible error. Linden v. U.S., C.C.A.3 (N.J.) 1924, 2 F.2d 817.

It was not error to refuse requested instructions that jointly bringing whisky into the state or causing it to be transported in interstate commerce was not sufficient to convict of the conspiracy unless it was done in pursuance of a preconceived plan or purpose, and that a defendant could not be convicted merely because he knew of a conspiracy by other defendants, where, from the charge as given, the jury could not reasonably have failed so to understand. Wilkes v. U.S., C.C.A.6 (Tenn.) 1923, 291 F. 988, certiorari denied 44 S.Ct. 181, 263 U.S. 719, 68 L.Ed. 523. Criminal Law 829(4)

915. Lottery offenses, instructions

Where indictment charged aiding and abetting commission of conspiracy to transport lottery tickets in interstate commerce, and evidence disclosed accused's participation by reading and approving printer's proofs of tickets and advertisements and in answering inquiries respecting the scheme after he had acquired knowledge of its illegality, the giving of instruction under the aiding and abetting statute, former § 550 of this title, was not erroneous on theory that accused was not indicted as an "aider" and "abettor" since the evidence showed his participation in conspiracy and that he "aided" and "abetted" it, and that he was, therefore, a "principal" within said former section. Deacon v. U. S., C.C.A.1 (Mass.) 1941, 124 F.2d 352. Criminal Law 792(2)

Where, even if accused's original participation in conspiracy to transport lottery tickets in interstate commerce might have been innocent when he made agreement for codefendant to conduct contests for benefit of hospital of which accused was head, accused, after learning criminal nature of scheme, took no steps to sever his connection with scheme and continued to accept benefits thereof, court properly instructed that accused could be found guilty

of conspiracy charged. Deacon v. U. S., C.C.A.1 (Mass.) 1941, 124 F.2d 352. Conspiracy 40.1

916. Narcotics offenses, instructions

Charge in prosecution for conspiracy to violate federal narcotics statutes stating that jury, in determining whether defendants had requisite knowledge, willfulness and intent, should presume that a person intends natural and probable consequences of his acts was erroneous as not complying with requirement that Government must establish a specific intent to violate substantive statute beyond reasonable doubt. U. S. v. Bertolotti, C.A.2 (N.Y.) 1975, 529 F.2d 149. Conspiracy 48.2(2)

Court's accomplice charge to the effect that participant may believe defendant's acquittal will vitiate expected rewards that may have been explicitly or implicitly promised but that the court had made no promises to the accomplice-witness in the instant case was confusing and, combined with passion and prejudice which improper summation by prosecutor likely aroused, raised grave doubts about the fairness of the trial, requiring reversal of convictions for conspiracy and for smuggling cocaine. U. S. v. Gonzalez, C.A.2 (N.Y.) 1973, 488 F.2d 833. Criminal Law 780(3); Criminal Law 1172.3

Trial judge was not required to charge the jury that the testimony of a coconspirator, who testified as a state's witness, might have been given under a promise of immunity, as no evidence of such a promise was introduced at trial and as the witness expressly denied under oath that he had been promised any sort of consideration. U. S. v. Salazar, C.A.2 (N.Y.) 1973, 485 F.2d 1272, certiorari denied 94 S.Ct. 1579, 415 U.S. 985, 39 L.Ed.2d 882. Criminal Law 785(9)

Even if defendants in narcotics conspiracy prosecution were entitled to charge on issue of multiple conspiracies, charge given was not erroneous but complied with requirements that judge instruct jury to consider proof against each defendant individually and explain evidence upon which government relied as to each defendant and that there be instruction that jury could convict some but not all. U. S. v. Calabro, C.A.2 (N.Y.) 1971, 449 F.2d 885, certiorari denied 92 S.Ct. 728, 404 U.S. 1047, 30 L.Ed.2d 735, certiorari denied 92 S.Ct. 978, 405 U.S. 928, 30 L.Ed.2d 801. Conspiracy 48.2(2)

Government was entitled to have charged conspiracy to illegally transport marijuana at anytime within statutory limitation period without regard to any existing indictment for transportation of marijuana. U. S. v. Jasso, C.A.5 (Tex.) 1971, 442 F.2d 1054, certiorari denied 92 S.Ct. 146, 404 U.S. 845, 30 L.Ed.2d 81. Conspiracy 28(3)

Charge on conspiracy, which incorporated statutory definition of the offense, was sufficient in absence of objection that charge failed to make clear that knowledge of illegal importation of narcotics had to be established, and, in any event, error was cured by verdicts finding defendants guilty on counts wherein need of knowledge of illegal importation had been clearly charged. U. S. v. Chow, C.A.2 (N.Y.) 1968, 398 F.2d 596. Criminal Law 847; Criminal Law 1177

Trial judge's erroneous charging of jury as to first count in language of this section, rather than in language of conspiracy portion of section 174 of Title 21 relating to narcotics under which defendants were in fact indicted, did not constitute such "plain error" as to justify reversal of defendants' convictions in the absence of exception below. U. S. v. Baratta, C.A.2 (N.Y.) 1968, 397 F.2d 215, certiorari denied 89 S.Ct. 293, 393 U.S. 939, 21 L.Ed.2d 276, rehearing denied 89 S.Ct. 613, 393 U.S. 1045, 21 L.Ed.2d 597. Criminal Law 1056.1(5)

Trial court's mistaken reference to this section making it unlawful to conspire to commit any offense against the United States did not affect the substance of its charge on crime of conspiracy to violate narcotics laws. Genovese v. U. S., C.A.2 (N.Y.) 1967, 378 F.2d 748. Criminal Law 821(1)

Where trial judge determined that there had been sufficient showing of conspiracy to admit narcotics bureau agent's

testimony recounting statements made by seller of narcotics to agent out of defendant's presence, trial judge in instructing jury that it should only consider such testimony if it first found that prima facie case of conspiracy had been established in effect unnecessarily gave jury an opportunity to second-guess judge's decision, but error favored defendant and provided no basis for reversal of judgment of conviction. U. S. v. Ragland, C.A.2 (Conn.) 1967, 375 F.2d 471, certiorari denied 88 S.Ct. 860, 390 U.S. 925, 19 L.Ed.2d 987. Criminal Law 779; Criminal Law 1172.7

In prosecution for sale of heroin and for a conspiracy to violate the federal narcotics law, charge on entrapment by the federal agents was not required in view of lack of evidence thereof. U. S. v. Gironda, C.A.2 (N.Y.) 1959, 267 F.2d 312, certiorari denied 80 S.Ct. 104, 361 U.S. 848, 4 L.Ed.2d 86. Criminal Law 814(5)

In prosecution for conspiracy to violate narcotic laws and for receiving concealing, transporting and selling heroin, trial court did not err in failing to instruct, without a request, that a defendant could not be found guilty on circumstantial evidence alone, unless the proved circumstances were not only consistent with the hypothesis that the defendant was guilty of the crime, but where irreconcilable with any other rational conclusion, since such instruction should never be given when the evidence is not wholly circumstantial, and the proof in the case was practically all direct. Leyvas v. U. S., C.A.9 (Cal.) 1958, 264 F.2d 272. Criminal Law 814(17)

In prosecution, for conspiracy to traffic in narcotic drugs, in which two defendants were tried together, charge that alleged participation by a defendant cannot be established by acts or declarations of alleged coconspirators in such defendant's absence and that a defendant's connection with conspiracy must be established by independent proof was adequate to safeguard a defendant's rights. U S v. De Fillo, C.A.2 (N.Y.) 1958, 257 F.2d 835, certiorari denied 79 S.Ct. 591, 359 U.S. 915, 3 L.Ed.2d 577. Conspiracy 48.2(2)

In prosecution for unlawful conspiracy to sell narcotic drugs, and for unlawful transfer of 12 marijuana cigarettes, trial court did not err in failing to submit issue of entrapment to the jury in view of fact such issue was not in the case because government's testimony did not tend to show that defendant was induced to sell marijuana, but only that the opportunity to do so was afforded by an offer of a federal agent to buy, and in view of fact there was no written request for such an instruction and no objection to the court's charge was made as required by rule 30 of the Federal Rules of Criminal Procedure, 18 U.S.C.A. Costello v. U.S., C.A.5 (Fla.) 1958, 252 F.2d 750. Criminal Law 814(8); Criminal Law 824(4); Criminal Law 847

In prosecution for conspiracy to import heroin in violation of narcotic laws, §§ 173 and 174 of Title 21, refusal of court to charge expressly that words and deeds of narcotic agents not said or done in defendants' presence could not bind defendants, was not a basis for reversal, where instructions made it reasonably apparent that neither of agents qualified as coconspirators and every juror was aware that agents' acts had not been in furtherance of conspiracy. U. S. v. Morello, C.A.2 (N.Y.) 1957, 250 F.2d 631. Criminal Law 779

Charge concerning "constructive possession" of narcotic drug, even if erroneous, was not ground for reversal, where charge was contained in portion of instructions which dealt with substantive counts not involved in appeal and which did not deal with counts concerning conspiracy from which defendants' appeal was taken. U S v. Carminati, C.A.2 (N.Y.) 1957, 247 F.2d 640, certiorari denied 78 S.Ct. 150, 355 U.S. 883, 2 L.Ed.2d 113. Criminal Law 1172.1(3)

In prosecution for conspiracy to bring narcotic drugs into the United States, instruction that after conspiracy has come to an end either by accomplishment of the common design or by the parties abandoning same, evidence of acts or declarations thereafter by conspirators can be considered only as against the person doing such acts or making such statements was proper. Sandez v. U. S., C.A.9 (Cal.) 1956, 239 F.2d 239, rehearing denied 245 F.2d 712. Criminal Law 779

In prosecution for conspiracy to violate narcotic laws, instruction by court that jury could consider evidence of

good character and reputation and determine its weight together with all the other evidence in case in arriving at their verdict as to defendant's innocence or guilt, was proper. Poliafico v. U. S., C.A.6 (Ohio) 1956, 237 F.2d 97, certiorari denied 77 S.Ct. 590, 352 U.S. 1025, 1 L.Ed.2d 597, rehearing denied 77 S.Ct. 718, 353 U.S. 931, 1 L.Ed.2d 725. Criminal Law 776(4)

In prosecution for conspiracy to violate narcotic laws, on whole, court's charge correctly instructed jury as to law of conspiracy and proof necessary to sustain a conviction of the parties charged. Poliafico v. U. S., C.A.6 (Ohio) 1956, 237 F.2d 97, certiorari denied 77 S.Ct. 590, 352 U.S. 1025, 1 L.Ed.2d 597, rehearing denied 77 S.Ct. 718, 353 U.S. 931, 1 L.Ed.2d 725. Conspiracy 48.2(2)

In prosecution for conspiracy to violate narcotic laws, there was no error in trial court's refusing to give defendants' requested instruction that conversations introduced in evidence were to be considered if the jury found a conspiracy to exist but these conversations could not be applied to any other than the conspiracy count unless conversations were in presence of defendants affected. Poliafico v. U. S., C.A.6 (Ohio) 1956, 237 F.2d 97, certiorari denied 77 S.Ct. 590, 352 U.S. 1025, 1 L.Ed.2d 597, rehearing denied 77 S.Ct. 718, 353 U.S. 931, 1 L.Ed.2d 725. Criminal Law 779

In prosecution for participation in a conspiracy to traffic in narcotic drugs in violation of the laws of the United States, that portion of trial judge's charge to jury to effect that verdict of innocent was required to follow if scales in which jury weighed evidence in case were equally balanced was not reversible error in view of fact that both before and after such statement court emphasized correct and accepted interpretation of reasonable doubt and statement in fact was emphatic statement of prosecution's high burden of proof which was last thing jury heard before retiring. United States v. Markman, C.A.2 (N.Y.) 1952, 193 F.2d 574. Criminal Law 822(13)

In prosecution for selling and conspiring to sell marihuana cigarettes, charge that jury could consider plea of guilty entered by alleged co-conspirator and fact that, in entering it, alleged co-conspirator "may have had in mind all the parties or the unknown conspirators" was reversible error. U.S. v. Hall, C.A.2 (N.Y.) 1950, 178 F.2d 853. Criminal Law 779; Criminal Law 1172.2

In prosecution for conspiring to violate Harrison Anti-Narcotic Act, §§ 696 and 697 of Title 26, instructions as to the definition and description of the conspiracy charged were proper. Smith v. U.S., C.C.A.8 (Mo.) 1922, 284 F. 673, certiorari denied 43 S.Ct. 362, 261 U.S. 617, 67 L.Ed. 829. Conspiracy 48

In prosecution for conspiracy to violate narcotic laws, where no uncontradicted evidence established entrapment of defendant, court was not required to direct acquittal of defendant, but fulfilled its duty by properly instructing jury inrespect to entrapment rule. U. S. v. Yee Ping Jong, W.D.Pa.1939, 26 F.Supp. 69. Criminal Law 753.2(5); Criminal Law 772(6)

917. Perjury, instructions

In prosecution for perjury, and making of false statements to government agencies and for conspiracy, charge to jury was in all respects legally sufficient and correct. U. S. v. Marchisio, C.A.2 (N.Y.) 1965, 344 F.2d 653. Conspiracy 48.2(2); Fraud 69(7); Perjury 37(1)

In prosecution for conspiracy to commit offense of perjury and subornation of perjury, failure to give cautionary instruction with respect to testimony of an accomplice was not error where no such instruction was requested. Hall v. U.S., C.C.A.10 (Okla.) 1935, 78 F.2d 168. Criminal Law 824(7)

The instructions given on the trial of an indictment for conspiracy to induce perjury on the part of persons applying to enter land under the Timber and Stone Act, § 311 et seq. of Title 43, by falsely stating that the lands were not being purchased by them on speculation and that they had not made any agreement by which the titles they might

acquire should inure to the benefit of any other person, were considered, and, as applied to the evidence, were correct, as confining the inquiry to the preliminary statements made at the time of the applications. Nickell v. U.S., C.C.A.9 (Or.) 1909, 167 F. 741, 93 C.C.A. 229, certiorari denied 29 S.Ct. 699, 214 U.S. 517, 53 L.Ed. 1064.

Undue emphasis was not placed on defendants' raffle tickets story, i.e., that money paid by borough garbage hauler to councilman was for raffle tickets rather than for an illegal purpose, by reading a portion of indictment pertaining to alleged fabrication of a "cover story" since such language enabled jury to focus on the exact charges, which included making false material declarations to a grand jury; same could be said with respect to definitions of "payoffs" and "kickbacks," which had to be defined for proper consideration of factual issues, notwithstanding that case was not one charging bribes or payoffs. U. S. v. Long, W.D.Pa.1976, 421 F.Supp. 1355, affirmed 574 F.2d 761, certiorari denied 99 S.Ct. 577, 439 U.S. 985, 58 L.Ed.2d 657. Criminal Law 811(3)

918. Price control offenses, instructions

In prosecution for conspiracy to violate Emergency Price Control Act, 50 App. former § 901 et seq., in purchasing corn in excess of ceiling price, instructions based on evasion order promulgated by Price Administrator were not erroneous for informing jury that such order was the law, where by said sections such order had the force of law. Quirk v. U.S., C.C.A.8 (Iowa) 1947, 161 F.2d 138. Conspiracy 48.2(2)

919. Postal offenses, instructions--Generally

In prosecution for conspiracy to burglarize a contract Post Office, instruction pertaining to testimony of accomplices and to the care and caution with which the jury should consider the testimony of an accomplice was not improper even though it was not specifically directed to the testimony of a specific accomplice since the court's definition of accomplice could have been applied to only two of the government's witnesses, one of whom was the accomplice in question. Cleaver v. U. S., C.A.10 (Colo.) 1956, 238 F.2d 766. Criminal Law 780(3)

920. ---- Mail fraud, postal offenses, instructions

In criminal proceedings for conspiracy to commit mail fraud and money laundering, although the better practice would have been to include a jury instruction requiring that the mail fraud scheme be credible enough to deceive persons of ordinary prudence and comprehension, district court's refusal to instruct the jury on reasonable reliance did not warrant a reversal because the omission, when taken in the context of the entire jury instruction, was not confusing, misleading, or prejudicial; by explaining that the scheme must have had the potential to cause reliance, the trial court substantially covered the purpose of the "prudence and comprehension" requirement. U.S. v. Jamieson, C.A.6 (Ohio) 2005, 427 F.3d 394, rehearing and rehearing en banc denied, certiorari denied 2006 WL 1523238. Criminal Law 822(6)

In prosecution arising out of Louisiana sheriff's alleged conspiracy with purported consultant to defraud sheriff's office, district court's refusal to include purported consultant's requested instructions that sheriff could enter into oral contract and subsequently put contract into writing and that party could fail to fulfill contract expectations without committing fraud was not reversible error; judge adequately charged jury as to elements of both conspiracy and mail fraud and also carefully and fully defined those elements to enable jury to properly assess evidence offered in case. U.S. v. Hatch, C.A.5 (La.) 1991, 926 F.2d 387, certiorari denied 111 S.Ct. 2239, 500 U.S. 943, 114 L.Ed.2d 481, certiorari denied 112 S.Ct. 126, 502 U.S. 839, 116 L.Ed.2d 93. Criminal Law 1173.2(2)

In prosecution on 16 counts of an indictment which included conspiracy, mail fraud and the interstate transportation of securities taken by fraud, charge could not be construed as instructing that a finding of guilty on substantive counts could be based upon a finding of guilt on conspiracy counts but instead constituted a proper submission of substantive counts on an agency theory. U. S. v. Deaton, C.A.5 (Tex.) 1977, 563 F.2d 777, certiorari

denied 98 S.Ct. 1475, 435 U.S. 917, 55 L.Ed.2d 510. Criminal Law 792(3)

In prosecution for conspiracy and mail fraud, court's instructions to jury to consider guilt or innocence of each defendant separately and independently and that jury should acquit if it should find that multiple conspiracies existed, informing jury satisfactorily what jury must determine in order to find existence of one overall conspiracy, adequately protected individual rights of each defendant in view of absence of admissions admissible against some but not all of defendants. U. S. v. Perez, C.A.5 (La.) 1973, 489 F.2d 51, rehearing denied 488 F.2d 552, certiorari denied 94 S.Ct. 3067, 417 U.S. 945, 41 L.Ed.2d 664, certiorari denied 94 S.Ct. 3068, 417 U.S. 945, 41 L.Ed.2d 664. Conspiracy 48.2(1)

Instruction in mail fraud prosecution that testimony of alleged coconspirator could not be considered until it had been corroborated by independent evidence and "you can consider that evidence and give it such weight as you determine it is entitled to in the light of all the evidence that you have heard and will hear in the case" was not erroneous as usurping jury's function of judging weight of testimony and credibility of witnesses, as amounting to a directed verdict of guilty on conspiracy count, nor as intimating to jury that defendant would have to present evidence in his defense, thereby infringing on his right to remain silent. U. S. v. Pisciotta, C.A.10 (Colo.) 1972, 469 F.2d 329. Criminal Law 763(18); Criminal Law 780(3)

Where jury was correctly instructed on what constitutes essential elements of crime of mail fraud and that its verdict had to be unanimous and jury returned verdict of guilty on five counts charging substantive violations of mail fraud statute and guilty on count charging that one object of conspiracy was to commit mail fraud scheme alleged in the other five counts, failure of trial court to instruct jury to return special verdict did not prejudice defendant. U. S. v. Jones, C.A.9 (Cal.) 1970, 425 F.2d 1048, certiorari denied 91 S.Ct. 44, 400 U.S. 823, 27 L.Ed.2d 51. Criminal Law 1173.2(2)

Where trial court gave proper and adequate instruction on reasonable doubt in prosecution for fraudulent sale of securities, fraud in the use of the mails and for conspiracy, instruction on circumstantial evidence was properly refused. Wall v. U. S., C.A.10 (Utah) 1967, 384 F.2d 758. Criminal Law 784(1)

Charge as whole in connection with prosecution for mail fraud, wire fraud, conspiracy to defraud and misbranding protected all of defendants' rights and did not eliminate from jury's consideration presumption of defendants' innocence or requirement that guilt be proved beyond reasonable doubt as asserted by defendants on appeal. U. S. v. Andreadis, C.A.2 (N.Y.) 1966, 366 F.2d 423, certiorari denied 87 S.Ct. 703, 385 U.S. 1001, 17 L.Ed.2d 541. Criminal Law 822(1)

In prosecution for mail fraud, securities fraud and conspiracy, where court instructed jury that defendants were not charged with responsibility for acts occurring after receiver was appointed, it was presumed that jury heeded instruction, and any error in admission of evidence of losses sustained after receiver was appointed was cured by the instruction. Farrell v. U. S., C.A.9 (Cal.) 1963, 321 F.2d 409, certiorari denied 84 S.Ct. 631, 375 U.S. 992, 11 L.Ed.2d 478. Criminal Law 1144.15; Criminal Law 1169.5(2)

In prosecution for use of mails in attempt to defraud in sale of accident and sickness policies and for conspiracy to commit the same offense, court properly requested instruction of one of the defendants that mere fact that he knew codefendant during the period in question was not sufficient to support a charge of conspiracy, since instruction would tend to add emphasis to an evidentiary fact. U. S. v. Sylvanus, C.A.7 (Ill.) 1951, 192 F.2d 96, certiorari denied 72 S.Ct. 555, 342 U.S. 943, 96 L.Ed. 701. Criminal Law 811(2)

Where there was no defendant as to whom only circumstantial evidence was offered, court did not err in refusing defendants' requested instruction that where guilt of any defendant depends entirely on circumstantial evidence, burden rests on government to prove its case not only beyond a reasonable doubt but to exclusion of any reasonable hypothesis of innocence. U. S. v. Sylvanus, C.A.7 (Ill.) 1951, 192 F.2d 96, certiorari denied 72 S.Ct.

555, 342 U.S. 943, 96 L.Ed. 701. Criminal Law 814(17)

In prosecution for use of mails in attempt to defraud in sale of accident and sickness policies and for conspiracy to commit the same offense, court properly refused to give requested instruction of one of the defendants that his relation to the insurance business was merely that of an agent and that so long as he acted in good faith and in reliance on instructions from officers of insurer, he was not guilty, since mere fact that such defendant entered into an agency contract with insurer did not mean that he could not be a conspirator. U. S. v. Sylvanus, C.A.7 (Ill.) 1951, 192 F.2d 96, certiorari denied 72 S.Ct. 555, 342 U.S. 943, 96 L.Ed. 701. Conspiracy 48.2(2); Postal Service 50

In prosecution of several defendants for using mails to defraud and for conspiracy to commit substantive crime, district judge did not err in failing to discuss facts other than to state that evidence was conflicting when charging jury. U.S. v. Cohen, C.C.A.2 (N.Y.) 1944, 145 F.2d 82, certiorari denied 65 S.Ct. 553, 323 U.S. 799, 89 L.Ed. 637, certiorari denied 65 S.Ct. 553, 323 U.S. 799, 89 L.Ed. 638, certiorari denied 65 S.Ct. 554, 323 U.S. 800, 89 L.Ed. 638. Criminal Law 777.5

In prosecution for using mails in furtherance of scheme to defraud in sale of mining stock and for conspiracy to defraud, instruction that to "defraud" a person of his money or property means to deprive him of it without giving any fair consideration, to which no exception was taken, was not so palpably misleading as to require a reversal. Estep v. U.S., C.C.A.10 (Utah) 1943, 140 F.2d 40. Criminal Law 1056.1(3.1)

In prosecution for using mails to defraud and for conspiring to do so, an instruction that it was immaterial what defendants preached or wrote or talked in their classes, and that if defendants honestly and in good faith believed those things, they should be acquitted, otherwise they should be convicted, was erroneous as failing to submit to jury whether representations were true or false. Ballard v. U.S., C.C.A.9 (Cal.) 1943, 138 F.2d 540, certiorari granted 64 S.Ct. 427, 320 U.S. 733, 88 L.Ed. 434, reversed on other grounds 64 S.Ct. 882, 322 U.S. 78, 88 L.Ed. 1148, on remand 152 F.2d 941. Conspiracy 48.2(2); Postal Service 50

In prosecution for using mails to defraud and for conspiracy to use mails to defraud, charge to jury which did not make general intent to defraud a factor in the crime was not improper. U.S. v. Dilliard, C.C.A.2 (N.Y.) 1938, 101 F.2d 829, certiorari denied 59 S.Ct. 484, 306 U.S. 635, 83 L.Ed. 1036. Conspiracy 48.2(2); Postal Service 50

In prosecution for using mails to defraud, violation of § 77a et seq. of Title 45, and conspiracy, failure of court to charge that evidence must negative every reasonable hypothesis except that of guilt to justify conviction was not error, where charge given left no alternative to an acquittal if jury did not believe evidence which, if accepted as true, was actually inconsistent with innocence, lack of guilty knowledge, and fraudulent intent. Beckman v. U. S., C.C.A.5 (La.) 1938, 96 F.2d 15. Criminal Law 829(15)

Considering all parts of charge on conspiracy, on prosecution for conspiracy to use the mails in furtherance of a scheme to defraud, it was not open to the interpretation that defendant would be guilty, if all he did was to assist in the defrauding, or to share in the proceeds. Shea v. U. S., C.C.A.6 (Ohio) 1918, 251 F. 433, 163 C.C.A. 451, certiorari denied 39 S.Ct. 132, 248 U.S. 581, 63 L.Ed. 431. Criminal Law 822(6); Postal Service 50

In prosecution for conspiracy to use mails in connection with scheme to defraud, denial of defendants' requested instruction that decoy letters and replies could only be considered in determining whether defendants had actually entered into conspiracy, and that information elicited by such letters was not sufficient to sustain conviction, was not error, where court charged that government officials could not conspire with another to violate laws for purpose of getting such person convicted. Holsman v. U.S., C.C.A.9 (Cal.) 1918, 248 F. 193, 160 C.C.A. 271, certiorari denied 39 S.Ct. 258, 249 U.S. 600, 63 L.Ed. 796. Criminal Law 829(3)

Instructions considered and approved in a prosecution under former § 88 of this title [now this section] for using the mails to defraud. Mitchell v. U.S., C.C.A.9 (Wash.) 1912, 196 F. 874, 116 C.C.A. 436, certiorari denied 33 S.Ct. 218, 226 U.S. 611, 57 L.Ed. 381. Postal Service 50

Jury instructions defining elements of mail fraud and explaining consideration of actual harm to victim as evidence of intent to defraud properly explained fraudulent intent, in prosecution for mail fraud and conspiracy to commit mail fraud; financial or economic harm was not necessary to establish intent to defraud, but existence of scheme could serve as evidence of intent. U.S. v. Easton, C.A.8 (S.D.) 2002, 54 Fed.Appx. 242, 2002 WL 31814951, Unreported. Postal Service 35(5); Postal Service 50

921. Securities offenses, instructions

In prosecution for conspiracy to transport securities in interstate commerce knowing them to have been stolen, instruction that possession of stolen property in another state than that in which it was stolen shortly after theft, raises presumption the possessor was the thief and transported stolen property in interstate commerce meant that jury was permitted to find defendant guilty of conspiracy to transport stolen securities if he joined in their disposal after transportation had ended, and was erroneous. Bollenbach v. U.S., U.S.N.Y.1946, 66 S.Ct. 402, 326 U.S. 607, 90 L.Ed. 350. Conspiracy 48.1(2.1)

Refusal, in prosecutions for conspiracy to transport stolen securities in interstate commerce, to instruct jury that they should acquit defendants if they found separate conspiracies, rather than a single, overall conspiracy, was not error, where court charged that Government had to show that each defendant was a "knowing part" of conspiracy and that jury in determining whether a particular defendant was a member of alleged conspiracy should consider only his acts and statements for he could not be bound by acts or declarations of other participants until it was established that a conspiracy existed and that he was a participant in it. U. S. v. Salerno, C.A.3 (N.J.) 1973, 485 F.2d 260, certiorari denied 94 S.Ct. 1596, 415 U.S. 994, 39 L.Ed.2d 891, rehearing denied 94 S.Ct. 2415, 416 U.S. 1000, 40 L.Ed.2d 778. Criminal Law 829(2)

Refusal, in prosecution for conspiracy and for receiving and selling securities of value in excess of $5,000 moving in interstate commerce, knowing such securities to have been stolen, to instruct that if jury had reasonable doubt as to truthfulness of alleged coparticipant's implication of defendant, defendant should be acquitted because there was no other evidence other than version offered by defendant or coparticipant was not error in view of charge that jury should consider coparticipant's testimony with scrupulous care. U. S. v. Cataldo, C.A.2 (N.Y.) 1970, 433 F.2d 38, certiorari denied 91 S.Ct. 1200, 401 U.S. 977, 28 L.Ed.2d 326, rehearing denied 91 S.Ct. 1523, 402 U.S. 934, 28 L.Ed.2d 869, certiorari denied 91 S.Ct. 1205, 401 U.S. 977, 28 L.Ed.2d 326. Criminal Law 829(16)

Instruction explanatory of burden of proof, as prepared and given by trial judge on his own, was proper as adequate and accurate, in prosecution for conspiracy to defraud public by distribution of oil company stock at grossly inflated prices. U. S. v. Kelly, C.A.2 (N.Y.) 1965, 349 F.2d 720, certiorari denied 86 S.Ct. 1467, 384 U.S. 947, 16 L.Ed.2d 544. Criminal Law 778(1)

Instruction, effect of which was to require jury to find existence of single, over-all conspiracy to defraud public by distribution of oil company stock at grossly inflated prices, rather than separate, independent conspiracies with separate and distinct groups involved with no over-all central purpose, to warrant conviction of defendant as well as codefendants for conspiracy, was prejudicial, as to defendant against whom evidence of participation in over-all conspiracy was less substantial than was evidence against codefendants. U. S. v. Kelly, C.A.2 (N.Y.) 1965, 349 F.2d 720, certiorari denied 86 S.Ct. 1467, 384 U.S. 947, 16 L.Ed.2d 544. Conspiracy 48.2(2); Criminal Law 1172.1(2)

The charge, when viewed in its entirety, correctly stated the law to be applied in prosecution for conspiracy and for illegal sale of unregistered stock, and adequately informed jury of government's obligation to prove guilty

knowledge. U.S. v. Dardi, C.A.2 (N.Y.) 1964, 330 F.2d 316, certiorari denied 85 S.Ct. 117, 379 U.S. 869, 13 L.Ed.2d 73, certiorari denied 85 S.Ct. 50, 379 U.S. 845, 13 L.Ed.2d 50, rehearing denied 85 S.Ct. 640, 379 U.S. 986, 13 L.Ed.2d 579, certiorari denied 85 S.Ct. 51, 379 U.S. 845, 13 L.Ed.2d 50. Criminal Law 822(6)

Even though one of overt acts alleged in prosecution for conspiring to transport forged securities in interstate commerce was that of person subsequently acquitted, instruction that commission of any one of ten overt acts alleged was sufficient to convict did not warrant reversal of conviction where jury was also instructed that to satsify this section overt act must be committed in furtherance of object of conspiracy and by person who was party to it. Hansen v. U. S., C.A.9 (Wash.) 1963, 326 F.2d 152. Criminal Law 823(4)

In prosecution for conspiracy to violate former § 416 of this title by concealing securities which had been stolen and which became part of interstate commerce when received by accused, instruction that if jury believed securities were stolen and entered into flow of interstate commerce, and there being no evidence of intermediate sale to a purchaser, and securities came into unexplained possession of accused knowing the securities to be stolen property, jury could infer that securities at time of coming into possession were still in interstate commerce was erroneous. Booth v. U.S., C.C.A.9 (Cal.) 1946, 154 F.2d 73. Conspiracy 48.1(2.1)

Charge that defendant might be convicted for transporting or causing to be transported stolen securities in interstate commerce, if they were organized to dispose of stolen securities, were willing to do so, and cared not where the property came from either within or without the state, was not error. U.S. v. Turley, C.C.A.2 (N.Y.) 1943, 135 F.2d 867, certiorari denied 64 S.Ct. 47, 320 U.S. 745, 88 L.Ed. 442. Receiving Stolen Goods 9(2)

In prosecution for conspiracy and use of mails to defraud in sale of stock, instruction that jury should determine whether alleged representation that corporation organized by one of defendants was well established and responsible brokerage house engaged in general brokerage business was made for purpose of trickery or deception, or with honest intent to serve investors, did not place undue emphasis on evidence and was not misleading. Levine v. U.S., C.C.A.9 (Wash.) 1935, 79 F.2d 364. Criminal Law 811(2)

In prosecution for conspiracy and use of mails to defraud in sale of stock, instruction that belief in advance of selling price of stock was insufficient to support good faith when selling price was based upon defendants' studied acts to create fictitious values by misrepresentations, and not upon actual or prospective worth or value, was correct and warranted by evidence. Levine v. U.S., C.C.A.9 (Wash.) 1935, 79 F.2d 364. Conspiracy 48.2(2); Postal Service 50

In prosecution for conspiracy and use of mails to defraud in sale of stock, failure to limit evidence concerning transactions and conversations, out of presence of defendants, with stock salesmen employed by defendants, by instruction to disregard such transactions and conversations unless defendants authorized them or were parties to conspiracy, was not error in view of instructions given. Levine v. U.S., C.C.A.9 (Wash.) 1935, 79 F.2d 364. Criminal Law 823(18)

Instruction that success of scheme to defraud in use of mails to sell securities required men of reputation nullified effects of good character instruction. Sunderland v. U.S., C.C.A.8 (Neb.) 1927, 19 F.2d 202. Criminal Law 810

In conspiracy and oil stock mail fraud case, instruction that good faith was no defense was not error. Nelson v. U. S., C.C.A.8 (Ark.) 1926, 16 F.2d 71. Postal Service 50

Though indictment for conspiracy and oil stock mail fraud alleged intent to appropriate money, charge that use to be made of money was immaterial was proper. Nelson v. U. S., C.C.A.8 (Ark.) 1926, 16 F.2d 71. Postal Service 48(8)

18 U.S.C.A. § 371

Instruction, in prosecution under former §§ 88 [now this section] and 338 of this title, for scheme to defraud in sale of mortgage company stock by use of mails, that if acts were done with innocent motives, or without unlawful intent, defendant should be acquitted, was properly refused, in view of other instructions embodying such proposition. Scheib v. U.S., C.C.A.7 (Ind.) 1926, 14 F.2d 75, certiorari denied 47 S.Ct. 95, 273 U.S. 700, 71 L.Ed. 847, certiorari denied 47 S.Ct. 95, 273 U.S. 701, 71 L.Ed. 847, certiorari denied 47 S.Ct. 95, 273 U.S. 701, 71 L.Ed. 848, certiorari denied 47 S.Ct. 113, 273 U.S. 718, 71 L.Ed. 856. Criminal Law 829(3)

In a prosecution for conspiring to use the mails to defraud in disposing of corporate stock, charge was not erroneous as directing jury what was intent of defendants, but to leave that matter for their determination, nor erroneous, as declaring that, though defendants believed corporation could be made a success, that was no defense to assurances that the stock would prove valuable and dividends would be paid. Menefee v. U.S., C.C.A.9 (Or.) 1916, 236 F. 826, 150 C.C.A. 88. Criminal Law 761(4); Criminal Law 763(10)

In view of instructions given on conspiracy to knowingly transport in interstate commerce, with fraudulent intent, counterfeit securities, trial court did not err in refusing to instruct that, although one could become member of conspiracy without full knowledge of all terms, person who had no knowledge of conspiracy did not become a conspirator by happening to act in way furthering some object or purpose of conspiracy. U. S. v. Natale, D.C.N.J.1966, 250 F.Supp. 381. Criminal Law 829(3)

In prosecution for using mails in furtherance of scheme to defraud in sale of securities, for using mails to sell and to deliver after sale certain unregistered securities and conspiring to violate the mail fraud statute, former § 338 of this title and the Securities Act, § 77a et seq. of Title 15, instruction regarding reasonable doubt did not mislead the jury when taken in connection with the entire charge. U. S. v. Sussman, E.D.Pa.1941, 37 F.Supp. 294. Criminal Law 822(16)

922. Selective service offenses, instructions

Instructions, in a prosecution for conspiracy to defraud the United States by preventing registration of persons for military service, approved. Firth v. U.S., C.C.A.4 (W.Va.) 1918, 253 F. 36, 165 C.C.A. 56. Conspiracy 48.2(2)

In prosecution for conspiracy to violate certain provisions of the Selective Service Act, 50 App. former § 301 et seq., charge that if jury was satisfied beyond a reasonable doubt from all the evidence, including character evidence, that defendant was guilty, evidence of defendant's good character could not be permitted to overcome the conclusion which followed from that view of the case, was not erroneous as unduly minimizing the importance of character evidence. U. S. v. Winter, E.D.Pa.1941, 38 F.Supp. 627. Criminal Law 776(4)

In prosecution for conspiracy to violate certain provisions of the Selective Service Act, 50 App. former § 301 et seq., charge that the testimony of a confessed conspirator should be received with caution and should be carefully scrutinized but that if after consideration jury concluded testimony worthy of belief, it could be the basis of a verdict of guilty, even though some of it was uncorroborated, was proper as against contention that charge did not properly instruct jury how to regard the testimony of a confessed conspirator. U. S. v. Winter, E.D.Pa.1941, 38 F.Supp. 627. Criminal Law 779

923. Smuggling, instructions

In prosecutions for conspiracy to smuggle psittacine birds into United States, for smuggling such birds into United States, and for receiving, concealing and transporting such birds, instruction on entrapment was not required where government agency did not plant any idea in defendants' minds but merely went along with criminal plan and obtained recording of defendants' plans through recording device placed upon an informer. Murray v. U.S., C.A.9 (Cal.) 1957, 250 F.2d 489, certiorari denied 78 S.Ct. 1375, 357 U.S. 932, 2 L.Ed.2d 1373. Criminal Law

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814(8)

Charge in prosecution for conspiracy to smuggle was not subject to claimed objection of authorizing conviction on mere proof of possession by a defendant, and properly required showing of concert or combination to violate law. U.S. v. McKee, C.A.2 (Vt.) 1955, 220 F.2d 266. Conspiracy 48.1(2.1)

In prosecution for illegally conspiring to smuggle cattle into the United States from Mexico, charge respecting the hoof-and-mouth disease quarantine making it illegal to bring live cattle from Mexico was not error because the hoof-and-mouth disease statute or regulation was not cited in the indictment. Babb v. U.S., C.A.5 (Tex.) 1954, 210 F.2d 473. Criminal Law 814(1)

924. Stolen property, instructions

Evidence that defendant received jewelry shipped uninsured from same source in packages that did not name sender, that defendant was only permitted to contact sender by calling his beeper number, that defendant was told to make cash payments, and that defendant accepted without question hundreds of thousands of dollars worth of jewelry from someone he did not know on representation that it came from estate supported district court's willful blindness instruction to jury in prosecution for conspiracy to transport, possess, and sell stolen property in interstate commerce. U.S. v. Richardson, C.A.1 (Me.) 1994, 14 F.3d 666. Conspiracy 48.2(2)

In prosecution for conspiring to transport stolen property in interstate commerce and knowingly concealing and transporting such property in interstate commerce, instruction requested by defendants, which did not deal with distinction between observation of stolen property by officers and recovery of such property, and which authorized acquittal if there was actual and exclusive physical possession of property by officers prior to time property was allegedly transported, improperly assumed that actual exclusive physical possession was equivalent to recovery, and thus, requested instruction was incomplete statement of law. U.S. v. Johnson, C.A.8 (Mo.) 1985, 767 F.2d 1259. Receiving Stolen Goods 9(2)

Although evidence of a single four-link conspiracy in prosecution for conspiring to transport and distribute stolen automobile engine and parts proved in vain when jury acquitted ultimate receivers, where there was evidence on which a finding of a single four-part conspiracy might have been based, it was not error for trial judge to so instruct the jury. U. S. v. Diana, C.A.4 (S.C.) 1979, 605 F.2d 1307, certiorari denied 100 S.Ct. 1067, 444 U.S. 1102, 62 L.Ed.2d 787. Conspiracy 48.2(2)

In prosecution for conspiracy to receive and possess, defendants were not entitled to requested instruction that he could not be convicted if conspiracy was to sell rather than to receive and possess, where instructions repeatedly emphasized principle that defendant must be found guilty of crime as charged. U. S. v. Anderson, C.A.8 (Minn.) 1977, 552 F.2d 1296. Criminal Law 829(3)

Trial court, in prosecution for conspiracy and possession of stolen interstate shipment of beef, gave correct instruction concerning inference which may be drawn from possession of property recently stolen. U. S. v. Verdoorn, C.A.8 (Iowa) 1976, 528 F.2d 103. Larceny 77(1)

Instructions in prosecution for conspiracy to violate the Dyer Act, section 2313 of this title, were not lacking in clarity and precision in, inter alia, making it clear that defendants were on trial for conspiracy and not for any substantive offenses shown to have been committed. U. S. v. Mayes, C.A.6 (Ky.) 1975, 512 F.2d 637, certiorari denied 95 S.Ct. 2629, 422 U.S. 1008, 45 L.Ed.2d 670, certiorari denied 96 S.Ct. 69, 423 U.S. 840, 46 L.Ed.2d 59. Conspiracy 48.2(1)

Where knowledge of the interstate character of the goods was essential element of charge of conspiracy to possess goods stolen from an interstate shipment and trial court gave proper charge on substantive count that knowledge of

the interstate character of the goods was not an essential component of the substantive count, failure to charge that knowledge of the interstate character of the goods was an essential component of the conspiracy charge was plain error, and required reversal of the conspiracy charge. U. S. v. De Marco, C.A.2 (N.Y.) 1973, 488 F.2d 828. Criminal Law 1038.2; Criminal Law 1173.2(2)

Submitting conspiracy charge under erroneous theory that evidence supported conclusion that defendants had entered into an agreement to have stolen Treasury bills transported to Washington, D.C., for payment by the United States and also under correct view that defendants had entered into an agreement to defraud the United States by causing it to redeem the bills from recipient from a thief rather than from the rightful owner, did not require reversal of convictions conspiracy since, even if jury had found the conspiracy on the erroneous view, it would have found every element necessary to support convictions under the properly submitted theory. U. S. v. Jacobs, C.A.2 (N.Y.) 1973, 475 F.2d 270, certiorari denied 94 S.Ct. 116, 414 U.S. 821, 38 L.Ed.2d 53, certiorari denied 94 S.Ct. 131, 414 U.S. 821, 38 L.Ed.2d 53. Criminal Law 1172.1(2)

Notwithstanding claim that instruction on entrapment in prosecution for conspiring to transport stolen trucks in foreign commerce failed to place burden of proof on government, an examination of charge showed clearly how very carefully trial court correctly spelled out to jury principle of entrapment and fact that it had to be disproven beyond a reasonable doubt. U. S. v. Groessel, C.A.5 (Tex.) 1971, 440 F.2d 602, certiorari denied 91 S.Ct. 2263, 403 U.S. 933, 29 L.Ed.2d 713. Criminal Law 772(6)

Choice of words employed in final charge did not rise to the level of plain error, particularly when on three separate occasions the court clearly warned the jury not to consider prior inconsistent statements of witness as probative of facts contained therein, but only to "neutralize" direct testimony of that witness in prosecution for possession of stolen goods and for conspiracy. U. S. v. Grasso, C.A.3 (N.J.) 1970, 437 F.2d 317, certiorari denied 91 S.Ct. 2236, 403 U.S. 920, 29 L.Ed.2d 698. Criminal Law 1038.1(6)

Instruction in automobile theft conspiracy prosecution, that possession of recently stolen property, not satisfactorily explained, will support inference and finding that person in possession knew it had been stolen, and that it was exclusive province of jury to determine whether facts and circumstances in evidence warranted such inference, was proper. U. S. v. Nasse, C.A.7 (Ill.) 1970, 432 F.2d 1293, certiorari denied 91 S.Ct. 927, 401 U.S. 938, 28 L.Ed.2d 217, certiorari denied 91 S.Ct. 928, 401 U.S. 938, 28 L.Ed.2d 217, certiorari denied 91 S.Ct. 1657, 402 U.S. 983, 29 L.Ed.2d 148. Conspiracy 48.2(2)

In prosecution for possession of goods stolen from interstate commerce and for conspiracy, trial court did not err in instructing jury over defendant's objection, as to defendant's right not to testify, though court also instructed that possession of property recently stolen, if not satisfactorily explained, is circumstance from which jury may infer that person knew property had been stolen, and instructions as whole did not violate privileges under U.S.C.A. Const. Amend. 5. U. S. v. McGann, C.A.5 (Tex.) 1970, 431 F.2d 1104, certiorari denied 91 S.Ct. 904, 401 U.S. 919, 27 L.Ed.2d 821. Criminal Law 393(1); Criminal Law 787(1); Receiving Stolen Goods 9(2)

Charge, in prosecution for stealing goods from an interstate shipment, for transporting in interstate commerce goods known to have been stolen, and for conspiring to commit those two crimes, was entirely clear in instructing jury that its task was to determine whether defendants were guilty of crimes charged, and not merely whether the crimes had been committed. U. S. v. Mattio, C.A.2 (N.Y.) 1968, 388 F.2d 368, certiorari denied 88 S.Ct. 1643, 390 U.S. 1043, 20 L.Ed.2d 305. Conspiracy 48.2(2); Receiving Stolen Goods 9(2)

Instruction that if defendants violated section 2314 of this title they could be found guilty of conspiracy did not permit conviction of defendants, indicted only for conspiracy, of offense not charged in view of instruction that it was necessary to first establish unlawful combination. U. S. v. Mattia, C.A.3 (N.J.) 1967, 379 F.2d 725, certiorari denied 88 S.Ct. 100, 389 U.S. 846, 19 L.Ed.2d 113. Conspiracy 48.2(1)

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Charge in prosecution for transporting stolen goods in interstate commerce and for conspiracy, sufficiently distinguished between presumption as mandatory deduction from evidence and inference as permissible deduction. Herman v. U.S., C.A.5 (Fla.) 1961, 289 F.2d 362, certiorari denied 82 S.Ct. 174, 368 U.S. 897, 7 L.Ed.2d 93. Criminal Law 778(2)

In prosecution for conspiracy to possess and sell property stolen from interstate commerce and for possession thereof, knowing such to have been stolen, instruction that sale of goods at price considerably less than market value could be considered as indication of knowledge on part of one associated with sale that transaction was illegal was proper statement of law and was warranted by the evidence. U.S. v. Bletterman, C.A.2 (N.Y.) 1960, 279 F.2d 320. Receiving Stolen Goods 9(2)

In prosecution for transporting stolen motor vehicles beyond borders of state, charge that automobiles that government believed had been identified all crossed border between New York and New Jersey did not amount to directing verdict of guilty against defendant when judge at no time had told jury that defendant had transported automobiles or had caused them to be transported or had conspired with others to such effect and when evidence was conclusive as to crossing referred to in charge. U.S. v. Mura, C.A.2 (N.Y.) 1951, 191 F.2d 886. Criminal Law 763(1)

In prosecution for conspiracy to receive, dispose of, and transport stolen merchandise in interstate commerce, alleged refusal to charge that there could be no conviction of conspiracy to receive and dispose of the merchandise in violation of former § 416 of this title was not reversible error. Andrews v. U.S., C.C.A.4 (W.Va.) 1939, 108 F.2d 511. Criminal Law 1173.2(1)

Court's instruction which was given in connection with charge of conspiracy to possess goods stolen from interstate commerce was proper even though it did not specifically instruct that knowledge by defendant of interstate character of shipment was essential element of offense. U. S. v. Whitfield, E.D.Pa.1974, 378 F.Supp. 184, affirmed 515 F.2d 506, affirmed 515 F.2d 507. Conspiracy 48.2(2)

925. Tax offenses, instructions--Generally

In prosecution for conspiracy to defraud the United States by operation of a tax fixing ring, wherein facts were equivocal in that jury might have concluded that aim of conspiracy had been accomplished in 1949 when conspirators obtained "no prosecution" rulings from Bureau of Internal Revenue, and that overt acts of concealment occurred after that date were done pursuant to alleged conspiracy to hide the conspirators, it was essential for trial judge to charge clearly and unequivocally that on such facts jury could not infer a continuing conspiracy to conceal the conspiracy, whether actual or implied. Grunewald v. U.S., U.S.N.Y.1957, 77 S.Ct. 963, 353 U.S. 391, 1 L.Ed.2d 931. Criminal Law 772(4)

In prosecution under indictment filed on October 25, 1954 for conspiracy to defraud the United States by operation of a tax fixing ring whereby conspirators had in 1948 and 1949 obtained "no prosecution" rulings from Bureau of Internal Revenue, a charge which failed to distinguish between concealment in order to achieve central purpose of conspiracy of immunizing taxpayers from tax-evasion prosecution, and concealment intended solely to cover up an already executed crime, that of obtaining the "no prosecution" rulings, under which charge jury might have concluded that defendants were guilty even though jury found merely that central aim of conspiracy was accomplished in 1949, and that subsequent acts of concealment were motivated exclusively by conspirators' fear of conspiracy prosecution, was fatally erroneous. Grunewald v. U.S., U.S.N.Y.1957, 77 S.Ct. 963, 353 U.S. 391, 1 L.Ed.2d 931. Criminal Law 772(4); Conspiracy 48.2(2)

In prosecution under indictment filed on October 25, 1954 charging conspiracy to defraud the United States by operation of a tax fixing ring whereby conspirators in 1948 and 1949 had obtained "no prosecution" rulings from Bureau of Internal Revenue, it was incumbent on judge to charge that in order to convict the jury would have to

find that central aim of conspiracy was to immunize the taxpayers from tax prosecution, that such objective continued in being through 1951 within three years prior to the indictment and that overt acts of concealment proved at trial were at least partly calculated to further such aim. Grunewald v. U.S., U.S.N.Y.1957, 77 S.Ct. 963, 353 U.S. 391, 1 L.Ed.2d 931. Criminal Law 772(4)

District court's charge adequately instructed jury of possibility of variance between indictment that charged defendants with single conspiracy to avoid payment of gasoline excise taxes and evidence that may have disclosed multiple conspiracies; jury was instructed that it was factual issue whether there was one conspiracy or more than one conspiracy, and jury was instructed to acquit any defendant if he was member of separate conspiracy other than that charged in indictment and if he was not a member of the charged conspiracy. U.S. v. Aracri, C.A.2 (N.Y.) 1992, 968 F.2d 1512. Conspiracy 48.2(2)

In joint trial of uncle and nephew on charge of conspiring to defraud the United States by impeding the Internal Revenue Service in collecting income taxes, uncle could not have been prejudiced by the introduction of nephew's preconspiracy financial statement, which purported to list nephew's outstanding obligations yet made no mention of a loan from uncle, since the jury was repeatedly instructed that statements of any conspirator made before the existence of the conspiracy may only be considered as evidence against the person making it. U. S. v. Diez, C.A.5 (Fla.) 1975, 515 F.2d 892, rehearing denied 521 F.2d 815, certiorari denied 96 S.Ct. 780, 423 U.S. 1052, 46 L.Ed.2d 641. Criminal Law 1169.5(2)

Instructions, tendered in prosecution for engaging as copartners in wagering syndicate and conspiring to evade excise tax on wagers, tendered on theory that acts of concealment were for purpose of concealing prior criminal acts, were not warranted by evidence and were properly refused. U.S. v. Shaffer, C.A.7 (Ind.) 1961, 291 F.2d 689, certiorari denied 82 S.Ct. 192, 368 U.S. 915, 7 L.Ed.2d 130, rehearing denied 82 S.Ct. 392, 368 U.S. 962, 7 L.Ed.2d 393, certiorari denied 82 S.Ct. 193, 368 U.S. 914, 7 L.Ed.2d 130. Internal Revenue 5317

Lesser included offense instructions were properly refused, in prosecution for engaging as copartners in accepting wagers and conspiring to willfully evade and defeat large part of excise tax on wagers, where it was possible to commit greater offense without committing lesser offense of evasion of occupation tax on wagering. U.S. v. Shaffer, C.A.7 (Ind.) 1961, 291 F.2d 689, certiorari denied 82 S.Ct. 192, 368 U.S. 915, 7 L.Ed.2d 130, rehearing denied 82 S.Ct. 392, 368 U.S. 962, 7 L.Ed.2d 393, certiorari denied 82 S.Ct. 193, 368 U.S. 914, 7 L.Ed.2d 130. Internal Revenue 5317

In prosecution for conspiracy to obstruct Treasury Department's collection of revenue, refusal of court to make specific acts of concealment basis of government's case and to instruct jury that prosecution was limited to certain theories was not improper where defendants advanced conflicting theories as to purposes of transaction and defense and not prosecution had command of evidence as to real purpose of transactions. U.S. v. Klein, C.A.2 (N.Y.) 1957, 247 F.2d 908, certiorari denied 78 S.Ct. 365, 355 U.S. 924, 2 L.Ed.2d 354. Conspiracy 48.2(2)

In prosecution for conspiracy to obstruct Treasury Department in collection of revenue, wherein defendants gave conflicting versions of purpose of certain transaction, instruction that government must have proof beyond a reasonable doubt that defendant was knowingly associated in unlawful common enterprise and that he participated in it willfully with intent to further common purpose or design clearly directed that conviction required more than finding of separate conspiracies, and was not improper. U.S. v. Klein, C.A.2 (N.Y.) 1957, 247 F.2d 908, certiorari denied 78 S.Ct. 365, 355 U.S. 924, 2 L.Ed.2d 354. Conspiracy 48.2(2)

In prosecution for conspiracy to obstruct Treasury Department in collection of revenue, wherein versions of transaction as described by defendants were in conflict, and either version would show contribution to scheme for obstructing the government's knowledge and collection of revenue due, prosecution was entitled to alternative submission to the jury. U.S. v. Klein, C.A.2 (N.Y.) 1957, 247 F.2d 908, certiorari denied 78 S.Ct. 365, 355 U.S. 924, 2 L.Ed.2d 354. Criminal Law 770(2)

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In prosecution of corporation and its president for conspiracy to defraud Government by obstructing proper functions of Internal Revenue Bureau in ascertaining, levying, assessing and collecting taxes and penalties, instruction that an extrajudicial statement by defendant president to internal revenue officers after termination of conspiracy could be considered only against him was not error, warranting reversal of conviction, as telling jury that statement was admitted in evidence because alleged conspiracy had been established as to such defendant. Benatar v. U.S., C.A.9 (Cal.) 1954, 209 F.2d 734, certiorari denied 74 S.Ct. 786, 347 U.S. 974, 98 L.Ed. 1114. Criminal Law 1172.2

In prosecution for conspiracy to violate internal revenue laws, charge of the court was ample and fair and the refused requests were either covered substantially in the charge given or contained inaccuracies which made their refusal proper. Chastain v. U.S., C.C.A.5 (Ga.) 1943, 138 F.2d 413. Criminal Law 829(1); Criminal Law 830

In prosecution for conspiracy to violate internal revenue laws, wherein an impersonation of an officer by an accused was set out as one of acts done in pursuance of the conspiracy, giving of a charge that accused was charged with representing himself to be an officer and that if jury should believe that accused violated former § 77 of this title, making it a crime for a person to impersonate a federal officer, jury would be justified in finding verdict of guilty was error and required reversal even though no objection was made to the charge at time of its delivery. Walker v. U.S., C.C.A.4 (W.Va.) 1939, 104 F.2d 465. Conspiracy 48.2(2); Criminal Law 1038.1(7)

926. ---- Income tax, tax offenses, instructions

Defense expert's testimony that charged conduct implicated Internal Revenue Code sections regarding the tax treatment of trusts did not alone require any instructions as to those sections as part of the theory of defendant's case, since the undisputed evidence throughout the prosecution showed that the corporate entity purportedly converted to a trust never changed in its substantive nature, even after filing of dissolution notice, and remained taxable as a corporation for federal tax purposes. U.S. v. Crockett, C.A.10 (Utah) 2006, 435 F.3d 1305. Criminal Law 772(6)

Instruction, in prosecution for conspiracy to take fraudulent deductions on corporate income tax return, did not, when considered in context, amount to instruction that verdict be either against defendant or Government, and where court repeated charge in slightly different form after objection no possibility of misunderstanding existed. U.S. v. Haskell, C.A.2 (Conn.) 1964, 327 F.2d 281, certiorari denied 84 S.Ct. 1351, 377 U.S. 945, 12 L.Ed.2d 307. Criminal Law 809

In prosecution for conspiracy to evade income taxes by a corporation of which defendants were majority stockholders, instruction that disassociation from the corporation was not in itself a sufficient affirmative step to disassociate the defendant from the conspiracy was not error under the evidence. U.S. v. Keenan, C.A.7 (Ill.) 1959, 267 F.2d 118, certiorari denied 80 S.Ct. 121, 361 U.S. 863, 4 L.Ed.2d 104, rehearing denied 80 S.Ct. 254, 361 U.S. 921, 4 L.Ed.2d 189. Conspiracy 48.2(2)

In prosecution under indictment charging defendants (1) with willfully attempting to evade part of federal taxes due from corporation by filing false corporation tax return and (2) with conspiring to willfully attempt to evade same taxes and committing certain overt acts to effect object of conspiracy, trial court's failure to read words of § 7201 of Title 26 proscribing offense charged in first count would not, in view of absence of any request so to do and in view of fact that contents of such section had been clearly before jury, require reversal of conviction under second count of indictment. Giardano v. U.S., C.A.8 (Mo.) 1958, 251 F.2d 109, certiorari denied 78 S.Ct. 1136, 356 U.S. 973, 2 L.Ed.2d 1147, rehearing denied 78 S.Ct. 1382, 357 U.S. 944, 2 L.Ed.2d 1558. Criminal Law 824(1); Criminal Law 1172.1(2)

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Instruction, which repeated words of indictment and which charged conspiracy to commit offense against United States by willfully attempting to evade and defeat large part of income taxes due United States by third parties in violation of designated federal statutory provisions, adequately charged the conspiracy and the substantive offense. U.S. v. Gordon, C.A.3 (Pa.) 1957, 242 F.2d 122, certiorari denied 77 S.Ct. 1378, 354 U.S. 921, 1 L.Ed.2d 1436. Conspiracy 48.2(2); Internal Revenue 5317

In prosecution for evasion of income and excise taxes, and conspiracy to defraud the United States, charge that good motive is never a defense where the act done is a crime, and that if person does intentionally an act which the law denounces as a crime, motive is immaterial, except insofar as it may aid determination of Internal Revenue Laws relating erroneous. Kobey v. U.S., C.A.9 (Cal.) 1953, 208 F.2d 583. Criminal Law 772(6)

Refusal to instruct that defendants, filing tax return pursuant to regulation were not guilty of criminal intent because of later regulation changing rule, was error, in view of defendants' apparent good faith in making return. Cooper v. U.S., C.C.A.8 (Iowa) 1925, 9 F.2d 216. Conspiracy 48.2(2)

Refusal to instruct that corporate officers were not responsible for clerical errors on part of employees in making tax returns was error, in view of evidence. Cooper v. U.S., C.C.A.8 (Iowa) 1925, 9 F.2d 216. Conspiracy 48.2(2)

927. ---- Distilled spirits, tax offenses, instructions

Giving of instruction, which suggested that where testimony of witnesses conflicted in any particular, all testimony of one had to be received and all testimony of other rejected and which related to sensitive area particularly within jury's province, required reversal of defendants' convictions of, inter alia, tax stamp violation and conspiracy. U. S. v. Holland, C.A.5 (Ga.) 1976, 526 F.2d 284, on rehearing 537 F.2d 821, rehearing denied 541 F.2d 281. Criminal Law 782(8); Criminal Law 1172.2

Instruction in prosecution for violation of the issue as to intent, was not to moonshine whiskey was not erroneous for failure to include word "willfully" where requirements of willfulness had been pointed out by court previously. Grissette v. U. S., C.A.5 (Fla.) 1963, 313 F.2d 187. Criminal Law 829(3)

In prosecution of police officials, liquor dealers and others for conspiring to violate laws of United States by importing intoxicating liquors into dry state of Oklahoma, instructions that elements of conspiracy were willful conspiring together of two or more persons to commit offenses against United States and that offense was complete if it appeared from evidence that any one of overt acts alleged in indictment was committed for purpose of effecting objects of conspiracy, were proper. Jones v. U. S., C.A.10 (Okla.) 1958, 251 F.2d 288, certiorari denied 78 S.Ct. 703, 356 U.S. 919, 2 L.Ed.2d 715. Conspiracy 48.2(2)

In prosecution for conspiracy to violate federal statutes by dealing in untaxed liquor, there was no error in refusing to give charge that failure to produce a witness creates a presumption that testimony would have been unfavorable, where persons mentioned as being available but uncalled were, if their testimony was of more than cumulative value, equally available to the prosecution and defense. Papalia v. U.S., C.A.5 (Fla.) 1957, 243 F.2d 437. Criminal Law 788

In prosecution for conspiracy to violate federal statutes by dealing in untaxed liquor, where witnesses although perhaps participants to substantive offense of illegal sale of untaxpaid liquor were in no way connected by the evidence with conspiracy, it was not erroneous to decline a charge on accomplices' testimony. Papalia v. U.S., C.A.5 (Fla.) 1957, 243 F.2d 437. Criminal Law 780(1)

In prosecution for conspiracy to sell liquor wholesale and retail at residence of third person without a wholesale or retail liquor dealer's tax stamp, instruction that third person, who had testified as a witness, might not have fully

understood purport of her testimony that no arrangement between her and the defendants existed, and that jury would not be bound by testimony of third person if jury thought it at variance with other evidence in the case, was not reversibly erroneous, on ground that it unduly influenced jury's consideration of facts and circumstances. Calderon v. United States, C.A.10 (N.M.) 1952, 196 F.2d 554. Criminal Law 1172.2

In prosecution for conspiracy to violate §§ 2803, 2833, 3253, 3321 of Title 26, by aiding in transportation of taxunpaid liquor with intent to defraud the United States, accused's request to instruct jury to disregard testimony regarding accused's commission of similar offenses 15 years before period covered by indictment, required court to charge jury to consider such testimony only upon question of guilty knowledge and intent to defraud, and court's failure to give such instruction constituted prejudicial error. Orloff v. U.S., C.C.A.6 (Mich.) 1946, 153 F.2d 292. Criminal Law 673(5); Criminal Law 1173.2(9)

In prosecution for conspiracy to violate internal revenue laws relating to liquors and for removing and concealing tax-unpaid liquors, a requested charge as to contention of one defendant that he had aided the purchasers of the liquor to buy and not to sell and that in such event he was not guilty of any offense, was properly denied, where evidence was sufficient to convict under the second count. Burt v. U.S., C.C.A.5 (Ala.) 1943, 139 F.2d 73, certiorari denied 64 S.Ct. 936, 321 U.S. 799, 88 L.Ed. 1087. Conspiracy 48.2(2)

Where indictment charged defendants with violation of federal liquor laws and with conspiracy and evidence showed that certain defendants had nothing to do with offenses charged in some counts, whereas other defendants had no connection with charges described in other counts, denial of defendants' motion to instruct jury to find defendants not guilty, on ground that evidence showed a "misjoinder of offenses and defendants", was not prejudicial error where all counts charged closely related offenses based on a series of transactions constituting a preconceived system. U. S. v. Tuffanelli, C.C.A.7 (Ill.) 1942, 131 F.2d 890, certiorari denied 63 S.Ct. 769, 318 U.S. 772, 87 L.Ed. 1142. Criminal Law 1167(2)

In prosecution for conspiracy to import alcohol without paying duties, instruction that, if accused gave use of his premises for landing or storage of alcohol, he assisted in enterprise, and that it seemed to court that it would not be violent inference to infer that he had knowledge of conspiracy, was not error, where court instructed that his comment was "in no sense controlling" on jury. Marino v. U.S., C.C.A.9 (Cal.) 1937, 91 F.2d 691, certiorari denied 58 S.Ct. 410, 302 U.S. 764, 82 L.Ed. 593. Criminal Law 762(3); Criminal Law 759(1)

In prosecution for conspiring to violate federal laws with reference to possession, transportation, manufacture, and sale of tax-unpaid intoxicating liquors, giving of instruction that there was no dispute about the overt act because defendant stood there and watched them carry the liquor across the slough was not error, since if a fact in evidence clearly appears and is undisputed court may so state to jury. Johnson v. U. S., C.C.A.5 (Ala.) 1936, 84 F.2d 114, certiorari denied 57 S.Ct. 37, 299 U.S. 574, 81 L.Ed. 423. Conspiracy 48.2(2)

In prosecution for conspiracy to import intoxicating liquor without permit and without paying customs duties, instructions that offense charged was conspiracy unlawfully to import liquor was not misleading or insufficient, although not specifically mentioning statute imposing customs duties. Moyer v. U.S., C.C.A.9 (Cal.) 1935, 78 F.2d 624. Conspiracy 48.2(2)

Instructions relative to purpose of agreement to cover up illegal sale of liquor were not prejudicial, in prosecution for conspiracy to defraud government. Wallenstein v. U.S., C.C.A.3 (N.J.) 1928, 25 F.2d 708, certiorari denied 49 S.Ct. 13, 278 U.S. 608, 73 L.Ed. 534. Criminal Law 823(5)

In prosecution for conspiracy to violate the Internal Revenue Code respecting distilled spirits and for the substantive offenses, charge when construed in its entirety was sufficient as enabling the jury to fully understand the issues and the legal distinctions between aiding, abetting and conspiring. U. S. v. Kensil, E.D.Pa.1961, 195 F.Supp. 115, affirmed 295 F.2d 489, certiorari denied 82 S.Ct. 439, 368 U.S. 967, 7 L.Ed.2d 396. Criminal Law

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822(6)

928. Travel and transportation, instructions

Instructions on charge of conspiracy to violate the laws of United States, particularly the Mann Act, section 2421 et seq. of this title, and the Travel Act, section 1952 of this title, were neither inadequate, confusing, nor erroneous where defendant could well have been found to have been a major key in transportation of women from Seattle to Anchorage with intent and purpose of having them engage in prostitution. U. S. v. Hiatt, C.A.9 (Wash.) 1975, 527 F.2d 1048. Conspiracy 48.2(2)

929. Wire communication offenses, instructions

District court's error in giving willful blindness instruction during defendant's prosecution for conspiracy to commit wire fraud and wire fraud, absent a factual predicate for the instruction, was harmless; only instance of deliberate ignorance or willful blindness concerned defendant's initial refusal to accept documents from bank officer who wanted confirmation that documents were not forged, defendant was posing as fictional government officer at time and had submitted the phony documents with fictional name, defendant told officer that signatures were hers, and nothing in defendant's actions amounted to attempt to remain ignorant of some fact bearing on criminality of endeavors. U.S. v. Alston-Graves, C.A.D.C.2006, 435 F.3d 331, 369 U.S.App.D.C. 219. Criminal Law 1172.1(3)

In prosecution for conspiring to violate the wire and travel fraud statutes, and substantive violations of those statutes, the trial court's instructions made clear to the jury that even though a conspiracy was established by the evidence admitted, the jury could not find defendant towing company president guilty as a conspirator unless his membership in the conspiracy was established by independent evidence other than the statements of coconspirators; furthermore, there was in any event overwhelming independent evidence sufficient to show the existence of a conspiracy. U. S. v. McPartlin, C.A.7 (Ill.) 1979, 595 F.2d 1321, certiorari denied 100 S.Ct. 65, 444 U.S. 833, 62 L.Ed.2d 43. Conspiracy 47(3.1)

In prosecution for unlawfully devising a scheme or artifice to defraud by the use of wire, radio or television, instruction that after joint scheme had once been established, declarations of one conspirator could be taken as a declaration of every other member of the conspiracy, or the other member in this case, just the same as though the other member made it, was not erroneous on any theory that it opened up for jury's speculation possibility that defendant might also have been guilty of substantive crime of conspiracy. Kumpe v. U. S., C.A.5 (Tex.) 1957, 250 F.2d 125. Criminal Law 779

930. Multiple conspiracy, instructions

Broker who was charged with conspiracy to defraud insurance regulators by inflating insurance company's assets was entitled to multiple conspiracy charge where there was evidence that implicated him in alleged uncharged conspiracy to defraud insurance company by misrepresenting encumbered status of bonds that were reported on insurance company's financial statement; jury could have found that he participated in uncharged conspiracy, but was not responsible for the manner in which company reported transaction and therefore did not participate in charged conspiracy. U.S. v. Cavin, C.A.5 (La.) 1994, 39 F.3d 1299. Conspiracy 48.2(2)

If only one conspiracy has been alleged and proved, defendants are not entitled to a multiple conspiracy charge. U. S. v. Martino, C.A.2 (N.Y.) 1981, 664 F.2d 860, certiorari denied 102 S.Ct. 3493, 458 U.S. 1110, 73 L.Ed.2d 1373 . Conspiracy 48.2(1)

XIV. QUESTIONS FOR JURY

<Subdivision Index>

951. Generally, questions for jury

Stock options trader in prosecution for wire fraud and conspiracy arising from unauthorized options trades was not entitled to submission of issue of "apparent authority" of codefendant, options trader for financial services firm, to trade on defendant's account with broker/dealer, i.e. reasonableness of defendant's belief that broker/dealer was still customer of codefendant's firm; government's fraud theory, that defendant accepted codefendant's trades when they were profitable, and sent unprofitable trades to firm, which was unaware of them, did not depend on whether

broker/dealer was firm's customer. U.S. v. Callipari, C.A.1 (R.I.) 2004, 368 F.3d 22, vacated 125 S.Ct. 985, 543 U.S. 1098, 160 L.Ed.2d 998. Telecommunications 1020

Facts on which court relied to make enhancement under Sentencing Guidelines, based on conduct involving a conscious risk of serious bodily injury, after defendant was convicted of conspiring to violate federal regulations limiting number of hours operators of motor carriers may drive, and to conceal violations by falsifying records, were not required under *Apprendi* to be submitted to jury, and proven beyond a reasonable doubt, where no increase in maximum sentence resulted from enhancement. U.S. v. Johansson, C.A.9 (Cal.) 2001, 249 F.3d 848. Jury 24; Sentencing And Punishment 973

In order to convict a defendant of conspiracy, jury must be warranted in finding beyond a reasonable doubt that a conspiracy existed, that defendant knew of it, and that he voluntarily became part of it. U. S. v. Dominguez, C.A.4 (N.C.) 1979, 604 F.2d 304, certiorari denied 100 S.Ct. 664, 444 U.S. 1014, 62 L.Ed.2d 644.

Evidence in prosecution for conspiracy to defraud, fraudulently submitting false appraisals to federally insured savings and loan association for purpose of obtaining loans and unlawfully sharing and participating in proceeds of loans was sufficient to submit to jury the defense of good faith. U. S. v. Musgrave, C.A.5 (Tex.) 1971, 444 F.2d 755.

Sufficient evidence existed to send issue of defendant's complicity in conspiracy to present false claims to the Government to the jury. U. S. v. Tyminski, C.A.2 (N.Y.) 1969, 418 F.2d 1060, certiorari denied 90 S.Ct. 1523, 397 U.S. 1075, 25 L.Ed.2d 810.

Whether telephone call made by nonconspirator to defendant charged with conspiring to steal government property was made at request of defendant was jury question. Condrey v. U. S., C.A.5 (Fla.) 1965, 351 F.2d 456.

Evidence in prosecution for conspiracy to possess goods which defendants knew were stolen from interstate shipment and for possession of goods stolen in interstate commerce and known to have been stolen presented jury questions. U. S. v. Allegretti, C.A.7 (Ill.) 1964, 340 F.2d 243, on rehearing 340 F.2d 254, certiorari denied 85 S.Ct. 1531, 381 U.S. 911, 14 L.Ed.2d 433, rehearing denied 85 S.Ct. 1800, 381 U.S. 956, 14 L.Ed.2d 728, certiorari denied 85 S.Ct. 1532, 381 U.S. 911, 14 L.Ed.2d 433, certiorari denied 88 S.Ct. 830, 390 U.S. 908, 19 L.Ed.2d 876.

In view of representations by defendants to public in making sales of trust deeds, jury was properly permitted, in prosecution for mail fraud, securities fraud and conspiracy, to find that the deeds were "notes," "evidence of indebtedness" or "investment contracts" even if, under California law, maker of trust deeds had no personal liability. Farrell v. U. S., C.A.9 (Cal.) 1963, 321 F.2d 409, certiorari denied 84 S.Ct. 631, 375 U.S. 992, 11 L.Ed.2d 478.

Whether money withdrawn from safety deposit box and paid to defendants by owner was paid in pursuance of conspiracy on part of defendants to defraud owner by pretending that one defendant was an internal revenue agent who was collecting back taxes, or whether defendants received money as part of a scheme on part of owner to take cash from safety deposit box without knowledge of owner's wife, and whether defendants received part of money as fee for participating in scheme and part of it for safekeeping, were questions for jury under evidence. U. S. v. Poppa, C.A.7 (Ind.) 1951, 190 F.2d 112.

In prosecution for conspiracy, where there is substantial evidence to support every essential ingredient of crime charged, question is for jury. American Tobacco Co. v. U.S., C.C.A.6 (Ky.) 1944, 147 F.2d 93, certiorari granted 65 S.Ct. 864, 324 U.S. 836, 89 L.Ed. 1400, certiorari granted 65 S.Ct. 865, 324 U.S. 836, 89 L.Ed. 1400, rehearing denied 65 S.Ct. 1021, 324 U.S. 891, 89 L.Ed. 1438, affirmed 66 S.Ct. 1125, 328 U.S. 781, 90 L.Ed. 1575.

Upon the trial of a charge of conspiracy, where the prosecution depends upon inferences to be drawn from facts to

prove the conspiracy, great latitude of proof must be allowed, and the jury should have before them, and are entitled to consider, every fact which has a bearing upon and a tendency to prove the ultimate fact in issue. Nee v. U S, C.C.A.3 (Pa.) 1920, 267 F. 84. See, also, U.S. v. Greene, D.C.Ga.1906, 146 F. 803, affirmed 154 F. 401, 85 C.C.A. 251, certiorari denied 28 S.Ct. 261, 207 U.S. 596, 52 L.Ed. 357; U.S. ex rel. Marcus v. Hess, D.C.Pa.1941, 41 F.Supp. 197, reversed on other grounds 127 F.2d 233, rehearing denied 63 S.Ct. 756, 318 U.S. 799, 87 L.Ed. 1163.

On the trial of an indictment for conspiracy, letters shown to be in the handwriting of the defendant, addressed to an alleged co-conspirator and containing self-charging admissions, are admissible in evidence, although it is not proved that they were transmitted to the persons to whom they are addressed, and their interpretation and weight are matters for determination by the jury in the light of all of the evidence in the case. Chadwick v. U. S., C.C.A.6 (Ohio) 1905, 141 F. 225, 72 C.C.A. 343.

In prosecution for conspiracy, jury's duty is to determine whether evidence establishes beyond reasonable doubt that defendants did things charged in indictment in the past, regardless of what kind of people defendants are or what sort of things they would be likely to do if allowed to remain at liberty. U. S. v. Schneiderman, S.D.Cal.1952, 106 F.Supp. 906.

In prosecution for conspiracy, jury must give separate, personal consideration to each individual defendant's case and analyze what evidence shows respecting such defendant without considering any evidence admitted solely against some other defendant or defendants. U. S. v. Schneiderman, S.D.Cal.1952, 106 F.Supp. 906.

In prosecution for conspiracy, jury, finding from evidence that a defendant was member of conspiracy, may consider statements or declarations of other members thereof, including other defendants, as if made by such defendant, if made during existence of conspiracy and in furtherance of an object or purpose thereof as charged in indictment, but otherwise any admission or incriminatory statement made outside court by one defendant may not be considered as evidence against another defendant not present when statement was made. U. S. v. Schneiderman, S.D.Cal.1952, 106 F.Supp. 906.

In prosecution for conspiracy, jury may consider acts done and statements or declarations made by any person found by jury to be member of conspiracy in connection with case of any defendant found to have been member thereof, though such acts and declarations were done or made in absence and without knowledge of such defendant, if they were made and done during continuance of conspiracy and in furtherance of an object or purpose thereof. U. S. v. Schneiderman, S.D.Cal.1952, 106 F.Supp. 906.

In prosecution for conspiracy, fact that certain defendants were subordinates of another defendant was a fact to be considered with other facts in proving such defendant's guilt. U.S. v. Ryan, W.D.Mo.1938, 23 F.Supp. 513.

952. Existence of conspiracy, questions for jury

Defendants, who were arrested near rear doors of closed savings and loan association, were entitled to have question of attempt to enter the institution submitted to the jury with appropriate instructions covering whether their conduct had reached the point where an overt act directly tending to effect the commission of the substantive offense and strongly corroborative of criminal purpose had been committed; however, such test was not required to be phrased in terms of an attempt-preparation dichotomy. U. S. v. Clay, C.A.7 (Ill.) 1974, 495 F.2d 700, certiorari denied 95 S.Ct. 207, 419 U.S. 937, 42 L.Ed.2d 164.

In prosecution for conspiracy to utter forged United States Treasurer's checks, whether there had been an agreement reached between defendant and a group handling checks at some point prior to defendant's decision to defraud members of group was jury question. U. S. v. Brown, C.A.1 (Mass.) 1974, 495 F.2d 593, certiorari denied 95 S.Ct. 226, 419 U.S. 965, 42 L.Ed.2d 179.

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In prosecution for conspiracy to import marihuana into United States contrary to law, knowingly and with intent to defraud United States, evidence permitted jury to conclude beyond reasonable doubt that defendants entered into common scheme to import marihuana into United States contrary to law and that over acts proved were in furtherance of that scheme. U. S. v. Warner, C.A.5 (Tex.) 1971, 441 F.2d 821, certiorari denied 92 S.Ct. 65, 404 U.S. 829, 30 L.Ed.2d 58.

If issue of defendant's alleged guilty involvement with declarant who made statement adverse to defendant in defendant's absence is submitted to jury, it then becomes function of jury, not trial judge, to determine whether evidence was credible and convincing beyond reasonable doubt. U. S. v. Ragland, C.A.2 (Conn.) 1967, 375 F.2d 471, certiorari denied 88 S.Ct. 860, 390 U.S. 925, 19 L.Ed.2d 987.

In passing on question of existence of conspiracy, jury may consider acts of alleged conspirators, their individual or collective interest, and their relations preceding and attending culmination of conspiracy. Rizzo v. U. S., C.A.8 (Mo.) 1962, 304 F.2d 810, certiorari denied 83 S.Ct. 188, 371 U.S. 890, 9 L.Ed.2d 123.

The overt acts performed by parties to effectuate object of an illegal agreement may be considered in determining whether a "conspiracy" existed. Pastrano v. U.S., C.C.A.4 (Md.) 1942, 127 F.2d 43.

Facts and circumstances alleged to constitute conspiracy are for jury. U.S. v. Wilson, D.C.W.Va.1927, 23 F.2d 112 .

On trial of defendant, charged with others with conspiracy to commit an offense against the United States, the question whether the conspiracy existed was one for the jury, to be determined on all the evidence, regardless of admissions of another defendant used as witness by the government. Snitkin v. U.S., C.C.A.7 (Ind.) 1920, 265 F. 489.

The questions whether a conspiracy existed, as charged in an indictment, and whether an act was done by one or more of the defendants to effect the object of the conspiracy, are questions of fact for the jury. Marrash v. U.S., C.C.A.2 (N.Y.) 1909, 168 F. 225, 93 C.C.A. 511.

Existence of single conspiracy is ultimately factual question left to jury's determination. U.S. v. Law Firm of Zimmerman & Schwartz, P.C., D.Colo.1990, 738 F.Supp. 407, reversed 943 F.2d 1246.

953. Number of conspiracies, questions for jury

Whether evidence proved single conspiracy or multiple conspiracies is question of fact to be resolved by jury. U.S. v. Holt, C.A.8 (Minn.) 1992, 969 F.2d 685, rehearing denied.

Whether evidence at trial established single conspiracy or multiple conspiracies was question of fact for jury. U.S. v. Sababu, C.A.7 (Ill.) 1989, 891 F.2d 1308.

Question of whether single or multiple conspiracy exists is for jury, and in deciding issue, jury need not find that every coconspirator knew of every other coconspirator to find one conspiracy; rather it is sufficient that jury finds coconspirators were aware of general nature and scope of conspiracy and knowingly joined in overall scheme. U.S. v. Zimmerman, C.A.8 (Iowa) 1987, 832 F.2d 454.

Evidence in prosecution for conspiracy to possess and distribute large quantities of marijuana in four-year period established a single conspiracy; while operation of the conspiracy may have been casual, its membership shifting and its structure not strictly hierarchical, there was sufficient evidence to warrant treatment of the components as one general business venture and, furthermore, no request to charge or objection to the charge as given was made with respect to the single versus multiple conspiracy matter. U. S. v. McGrath, C.A.2 (N.Y.) 1979, 613 F.2d 361,

certiorari denied 100 S.Ct. 2946, 446 U.S. 967, 64 L.Ed.2d 827.

Whether the evidence has established multiple conspiracies rather than a single conspiracy is ordinarily a question of fact for the jury. U. S. v. Armedo-Sarmiento, C.A.2 (N.Y.) 1976, 545 F.2d 785, certiorari denied 97 S.Ct. 1330, 430 U.S. 917, 51 L.Ed.2d 595, certiorari denied 97 S.Ct. 1331, 430 U.S. 917, 51 L.Ed.2d 595.

Whether a scheme is one conspiracy or several is primarily a jury question, since it is a question of fact as to the nature of the agreement. Koolish v. U. S., C.A.8 (Minn.) 1965, 340 F.2d 513, certiorari denied 85 S.Ct. 1805, 381 U.S. 951, 14 L.Ed.2d 724. See, also, U.S. v. Dardi, C.A.N.Y.1964, 330 F.2d 316, certiorari denied 85 S.Ct. 50, 51, 117, 379 U.S. 845, 869, 13 L.Ed.2d 50, 73, rehearing denied 85 S.Ct. 640, 379 U.S. 986, 13 L.Ed.2d 579; U.S. v. Wilson, 497 F.2d 602, certiorari denied 95 S.Ct. 655, 419 U.S. 1069, 42 L.Ed.2d 664. Conspiracy 48.1(1)

The issue of whether a conspiracy is a single overall conspiracy is usually one of fact. Hayes v. U. S., C.A.8 (Mo.) 1964, 329 F.2d 209, certiorari denied 84 S.Ct. 1883, 377 U.S. 980, 12 L.Ed.2d 748.

In prosecution of six defendants for conspiracy to violate federal statutes by dealing in untaxed liquor, evidence was sufficient to present jury question as to whether defendants were guilty of a single conspiracy lasting over a period of 11 months rather than three separate disconnected enterprises. Papalia v. U.S., C.A.5 (Fla.) 1957, 243 F.2d 437.

In prosecution for conspiring to violate tax laws pertaining to unlawful possession, removal, and concealment of nontax-paid whisky question whether there was any and, if so, more than one, conspiracy was for jury. Jolley v. U.S., C.A.5 (Ga.) 1956, 232 F.2d 83.

In prosecution for conspiracy to violate Emergency Price Control Act, 50 App. former § 904, by conspiring to purchase field corn at excess of ceiling price, accused's guilt was for jury whether case was viewed as involving a single general conspiracy with accused as the hub, or as involving separate conspiracies with accused involved in each. Quirk v. U.S., C.C.A.8 (Iowa) 1947, 161 F.2d 138.

Whether proofs establish conspiracy alleged, or establish several conspiracies not alleged, is question of fact for jury. Lefco v. U S, C.C.A.3 (Pa.) 1934, 74 F.2d 66.

Evidence at trial was clearly sufficient to permit jury to find that defendant was part of single ongoing conspiracy, rather than multiple conspiracies, based upon his significant involvement in street gang's heroin and cocaine business, his status as important contact and intermediary for various drug sources, and his money laundering activities, demonstrating his agreement to join single ongoing conspiracy. U.S. v. Boyd, N.D.Ill.1992, 792 F.Supp. 1083.

Whether evidence establishes single or several conspiracies is question of fact for jury determination. U.S. v. Regan, S.D.N.Y.1989, 726 F.Supp. 447, affirmed in part, vacated in part on other grounds 937 F.2d 823, amended on other grounds 946 F.2d 188, certiorari denied 112 S.Ct. 2273, 504 U.S. 940, 119 L.Ed.2d 200.

Question of whether single or multiple conspiracies existed is a question of fact for the jury. U.S. v. Cole, E.D.Pa.1989, 717 F.Supp. 309.

Issue of a single conspiracy or separate conspiracies is one of fact, and if there be a common, continuing objective of the parties there is a single offense, despite existence of diverse ways and means used to accomplish it. U. S. v. American Honda Motor Co., N.D.Cal.1967, 271 F.Supp. 979.

Whether or not proof in a particular case establishes a single conspiracy charged in an indictment or establishes

several conspiracies which have not been charged is a question of fact for jury. U. S. v. Boyance, E.D.Pa.1963, 215 F.Supp. 390.

954. Participation in conspiracy, questions for jury

Jury must determine that an individual was a member of conspiracy before his out-of-court declarations may be considered as substantive evidence. U. S. v. Bright, C.A.5 (Miss.) 1980, 630 F.2d 804.

Given the existence of a conspiracy, each defendant's participation in the crime must be established by evidence which jury could conclude rules out any reasonable hypothesis of innocence. U. S. v. Butler, C.A.5 (Ga.) 1980, 611 F.2d 1066, rehearing denied 615 F.2d 685, certiorari denied 101 S.Ct. 97, 449 U.S. 830, 66 L.Ed.2d 35.

In conspiracy cases, issue whether a particular defendant culpably participated in conspiracy is question of fact to be determined by trier of fact. U. S. v. Anderson, C.A.5 (Ga.) 1978, 574 F.2d 1347.

Whether defendant was member of charged conspiracy to steal, receive, sell and dispose of aviation equipment belonging to United States, whether he knew of conspiracy and whether he intentionally performed act in furtherance of conspiracy were jury questions. Lopez v. U. S., C.A.5 (Tex.) 1969, 414 F.2d 909.

Whether one defendant participated in conspiracy to pass, utter and publish forged and altered United States postal money orders was question for trier of fact. Bradford v. U. S., C.A.5 (Miss.) 1969, 413 F.2d 467.

Evidence raised jury question as to whether a defendant continued his participation in conspiracy after he was sent to prison. U. S. v. Borelli, C.A.2 (N.Y.) 1964, 336 F.2d 376, certiorari denied 85 S.Ct. 647, 379 U.S. 960, 13 L.Ed.2d 555.

Whether defendant had participated in conspiracy was for jury. U. S. v. Kelly, C.A.3 (N.J.) 1964, 329 F.2d 314. Conspiracy 48.1(1)

Whether defendants violated and conspired to violate mail fraud statute, § 1341 of this title, and violated and conspired to violate wire fraud statute, § 1343 of this title, were jury questions. U.S. v. Johnston, C.A.6 (Mich.) 1963, 318 F.2d 288.

Jury might properly consider particular meeting of persons to determine whether conspiracy was formed, and if so, who were members of it, even though particular meeting could not satisfy requirements of overt act to complete crime of conspiracy. Herman v. U.S., C.A.5 (Fla.) 1961, 289 F.2d 362, certiorari denied 82 S.Ct. 174, 368 U.S. 897, 7 L.Ed.2d 93.

In determining whether conspiracy existed, parties' overt acts may be considered with other evidence and attending circumstances, where there were such as are usually, if not necessarily, done pursuant to previous scheme and plan. U.S. v. Holt, C.C.A.7 (Ind.) 1939, 108 F.2d 365, certiorari denied 60 S.Ct. 616, 309 U.S. 672, 84 L.Ed. 1018, rehearing denied 60 S.Ct. 806, 309 U.S. 698, 84 L.Ed. 1037.

Complicity in conspiracy was for jury, and denial of motion to set aside sentence on plea of guilty not abuse of discretion. Gleckman v. U.S., C.C.A.8 (Minn.) 1926, 16 F.2d 670.

In considering what a person knows and what are his purposes, jury may consider what his position is in the conspiracy and if he is an officer or employee with responsibilities, jury may infer that he has extensive opportunities for knowledge and that he has acquired extensive knowledge, and whether a particular individual does control, know or share purposes of a conspiracy is a question of fact for jury. U. S. v. Palladino, D.C.Mass.1962, 203 F.Supp. 35.

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In prosecution for criminal conspiracy, jury must determine issue of particular defendant's membership in conspiracy from evidence of such defendant's own statements or declarations and acts or conduct independently of other alleged co-conspirators' statements or declarations. U. S. v. Schneiderman, S.D.Cal.1952, 106 F.Supp. 892.

In prosecution for conspiracy, evidence of acts and statements or declarations of any persons found by jury to be members of conspiracy, if jury finds existence thereof and membership of all or any of defendants therein, may be considered in connection with case of any defendant found to be member of conspiracy as if done or made by him, though acts were done and declarations made in such defendant's absence and without his knowledge, if they were done or made during continuance of conspiracy and in furtherance of an object or purpose thereof. U. S. v. Schneiderman, S.D.Cal.1952, 106 F.Supp. 892.

Evidence that alleged conspirators acted together to accomplish something unlawful shows conspiracy, though individual conspirators did acts apart from and unknown to other conspirators in furtherance of common unlawful design. U. S. v. Schneiderman, S.D.Cal.1952, 106 F.Supp. 892.

955. Overt acts, questions for jury

It is error to submit to jury overt act as to which there is total lack of proof, but questions of whether or not proven overt act is in furtherance of conspiracy are ordinarily for jury to decide. U. S. v. Fontenot, C.A.5 (Ga.) 1973, 483 F.2d 315.

Where there was proof from which jury could find that telephone call made by nonconspirator to defendant charged with conspiring to steal government property was made at request of defendant himself and the overt act charged was sufficiently broad to comprehend carrying on of telephone conversation, submission of overt act to jury was not improper merely because telephone call had been made by nonconspirator. Condrey v. U. S., C.A.5 (Fla.) 1965, 351 F.2d 456.

Where overt acts are such as are usually, if not necessarily, done pursuant to a previous scheme and plan, proofs of such acts have a tendency to show such pre-existing conspiracy, and may be considered as evidence of the conspiracy charged, and, if the established facts and inescapable inferences are inconsistent with defendant's professions of innocence, guilt is for jury. U. S. v. Beck, C.C.A.7 (Ill.) 1941, 118 F.2d 178, certiorari denied 61 S.Ct. 1121, 313 U.S. 587, 85 L.Ed. 1542. See, also, U.S. v. Glasser, et al., C.C.A.Ill.1941, 116 F.2d 690, modified on other grounds 62 S.Ct. 457, 315 U.S. 60, 86 L.Ed. 680. Conspiracy 46; Conspiracy 48.1(1)

Where overt acts are such as are usually, if not necessarily, done pursuant to a previous scheme and plan, proofs of such acts have a tendency to show such pre-existing conspiracy, and may be considered as evidence of the conspiracy charged, and, if the established facts and inescapable inferences are inconsistent with defendant's professions of innocence, guilt is for jury. U. S. v. Beck, C.C.A.7 (Ill.) 1941, 118 F.2d 178, certiorari denied 61 S.Ct. 1121, 313 U.S. 587, 85 L.Ed. 1542.

Though conviction of conspiracy cannot be had if evidence is as consistent with innocence as with guilt, overt acts of accused may be considered with all other evidence in determining his guilt. U. S. v. Beck, C.C.A.7 (Ill.) 1941, 118 F.2d 178, certiorari denied 61 S.Ct. 1121, 313 U.S. 587, 85 L.Ed. 1542.

Whether alleged overt act is such is question of fact for jury. U.S. v. Olmstead, D.C.Wash.1925, 5 F.2d 712.

956. Furtherance of conspiracy, questions for jury

Conviction on theory that defendant was party to conspiracy and liable as principal for substantive offenses committed in furtherance of conspiracy requires submission to jury of fact issues whether substantive offense was committed in furtherance of conspiracy and as part of it. Thomas v. U. S., C.A.5 (Fla.) 1967, 398 F.2d 531.

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957. Identification of defendants, questions for jury

Conflict as to identification of defendants as persons committing overt act in conspiracy to rob mail presented jury question. Bellande v. U.S., C.C.A.5 (La.) 1928, 25 F.2d 1, certiorari denied 48 S.Ct. 602, 277 U.S. 607, 72 L.Ed. 1012.

958. Intent, questions for jury

Whether defendant, as president of United States company directly involved in product sales which violated the American-Cuban embargo in place under the Trading with the Enemy Act (TWEA) and the Cuban Assets Control Regulations (CACRs), had willfully blinded himself to fact that such sales were occurring, such that defendant had guilty knowledge required to support his conviction of conspiring to trade with Cuba, was question for jury, given evidence of instruction from defendant to billing department that could be viewed as attempt to ensure that he never again saw direct reference to Cuba on company's books, despite intending for transactions with Cuba to continue, and that defendant either instigated or at least contributed to pervasive corporate culture in which "code" words were used to refer to Cuba and to Cuban sales. U.S. v. Brodie, C.A.3 (Pa.) 2005, 403 F.3d 123. Conspiracy 48.1(2.1)

In prosecution charging defendants with knowingly and willfully submitting false statement to government agency by falsely designating as "vessel supplies" 1,150 cases of bonded scotch whiskey on United States Customs form and with conspiring to accomplish the same, evidence, including inference that 25-man crew on 14-day voyage could not ingest 1,150 cases of scotch, was sufficient for jury on issue of specific intent of defendants, who clearly intended to manipulate and pervert Customs' functioning by means of their falsification and whose falsified forms did in fact carry a capacity to deceive. U. S. v. Lichenstein, C.A.5 (Ga.) 1980, 610 F.2d 1272, certiorari denied 100 S.Ct. 2991, 447 U.S. 907, 64 L.Ed.2d 856.

Question of intent of defendants, charged with possession of goods of value of more than $100 stolen from an interstate shipment and with conspiracy to possess goods stolen from interstate shipment, when defendants rented trucks was question for jury. U. S. v. Francisco, C.A.8 (Minn.) 1969, 410 F.2d 1283.

In prosecution for conspiracy, violation of Ex.Ord. No. 8712, March 15, 1941 and causing false statements to be made in application for export license, documents indicating that accused sought license to export goods to China with knowledge that goods were destined for Japan, made criminal intent a question for jury. Takahashi v. U.S., C.C.A.9 (Wash.) 1944, 143 F.2d 118.

Conflicting evidence as to intent and purpose of conspiracy presents question of fact for jury. McDonald v. U.S., C.C.A.8 (Okla.) 1925, 9 F.2d 506.

It is not necessary that there should have been received any pecuniary or other advantage, but if it should appear from the evidence that any was or might be expected, the circumstance should be considered by the jury was supplying some evidence of motive. U.S. v. Newton, S.D.Iowa 1892, 52 F. 275. See, also, U.S. v. Allen, C.C.N.Y.1868, 7 Int.Rev.Rec. 163, 24 Fed.Cas. No. 14,432.

Government could proceed with prosecution of defense contractor, for conspiracy to defraud government in connection with submission of cost data, even though contractor claimed that it lacked specific intent to defraud, as under applicable regulations many cost assessments were estimates; question of intent would require jury trial to resolve. U.S. v. Frequency Electronics, E.D.N.Y.1994, 862 F.Supp. 834. Indictment And Information 144.1(3)

Question of whether specific criminal intent necessary to conviction of conspiracy exists is for jury. U.S. v. Belisle, W.D.Wash.1951, 107 F.Supp. 283.

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In determining intent of any of defendants charged with conspiracy, jury may consider any meaning or interpretation given to, and any use made of, any exhibit in evidence by such defendant, as shown by evidence, including statements or declarations made by him as to his understanding of meaning of all or any part of language of exhibit, bearing in mind that defendant's, not jurors', understanding of meaning thereof must be considered in arriving at verdict. U. S. v. Schneiderman, S.D.Cal.1952, 106 F.Supp. 906.

Jury instructions defining elements of mail fraud and explaining consideration of actual harm to victim as evidence of intent to defraud properly explained fraudulent intent, in prosecution for mail fraud and conspiracy to commit mail fraud; financial or economic harm was not necessary to establish intent to defraud, but existence of scheme could serve as evidence of intent. U.S. v. Easton, C.A.8 (S.D.) 2002, 54 Fed.Appx. 242, 2002 WL 31814951, Unreported. Postal Service 35(5); Postal Service 50

959. Knowledge, questions for jury

Whether defendant, as president of United States company directly involved in product sales which violated the American-Cuban embargo in place under the Trading with the Enemy Act (TWEA) and the Cuban Assets Control Regulations (CACRs), had actual knowledge of fact that sales were occurring, of kind sufficient to satisfy knowledge requirement of conspiracy charge, was question for jury, given evidence that defendant was not mere figurehead but took active role in company's affairs, that defendant knew, before transaction was brought to his attention by auditors, of one such prohibited sale and had taken steps to conceal it, that defendant had approved the promotion of employee most directly involved in Cuban sales, and that defendant either instigated or at least contributed to pervasive corporate culture in which "code" words were used to refer to Cuba and to Cuban sales. U.S. v. Brodie, C.A.3 (Pa.) 2005, 403 F.3d 123. Conspiracy 48.1(2.1)

In prosecution for conspiracy to transport stolen property in interstate commerce, testimony as to prices paid to certain company for telephones was admissible to show knowledge of defendants, who paid only about one-fourth of such price for stolen telephones, that they were stolen; weight of such evidence, in view of contention that such prices paid were not true prices paid because of intercorporate relationship, was for jury. U. S. v. Nicholson, C.A.5 (La.) 1976, 525 F.2d 1233, certiorari denied 96 S.Ct. 2170, 425 U.S. 972, 48 L.Ed.2d 795, certiorari denied 97 S.Ct. 105, 429 U.S. 837, 50 L.Ed.2d 103.

Instruction in prosecution for possession of stolen goods and for conspiracy, stating that if jury should find as a fact that defendant had possessed the stolen goods, either "actively" or "constructively", they might infer that defendant knew television sets were stolen, which was an essential element of the crime, did not contain plain error such as to cause a miscarriage of justice. U. S. v. Grasso, C.A.3 (N.J.) 1970, 437 F.2d 317, certiorari denied 91 S.Ct. 2236, 403 U.S. 920, 29 L.Ed.2d 698.

Whether defendant general manager of finance company, which purchased fictitious automobile accounts created by another defendant, had full knowledge of facts which caused his representations to investors in finance company that automobile paper secured their loans to be false was jury question in prosecution wherein defendants contended that single conspiracy had not been proved and that testimony as to declarations of one defendant were improperly considered by jury as binding on the other. Gradsky v. U. S., C.A.5 (Fla.) 1965, 342 F.2d 426, certiorari denied 86 S.Ct. 58, 382 U.S. 846, 15 L.Ed.2d 86.

In prosecution for conspiracy to commit an offense against the United States, substance of conspiracy being that an Army sergeant with access to groceries and other property furnished for military service at Army camp would unlawfully convey the groceries to accused and another as operators of a mercantile store, whether accused had guilty knowledge of the unlawful transactions was for jury. Smith v. U.S., C.C.A.10 (Okla.) 1944, 145 F.2d 643, certiorari denied 65 S.Ct. 563, 323 U.S. 803, 89 L.Ed. 641.

Whether accused charged with conspiracy to harbor fugitive from justice had knowledge of fact that man harbored

was a fugitive was for jury. Piquett v. U.S., C.C.A.7 (Ill.) 1936, 81 F.2d 75, certiorari denied 56 S.Ct. 749, 298 U.S. 664, 80 L.Ed. 1388.

960. Entrapment, questions for jury

In prosecution for conspiracy, obstruction of justice and bribery, where undercover agent, in guise of corrupt policeman, had initially approached coindictee on matter not involving defendant, coindictee had first suggested that undercover agent could be helpful in case involving defendant and defendant requested agent to obtain certain materials related to grand jury investigation from contact in United States Attorney's office, question of whether the defendant, who had paid money for the materials obtained by the agent, had been entrapped by the agent was for jury. U. S. v. Rosner, C.A.2 (N.Y.) 1973, 485 F.2d 1213, certiorari denied 94 S.Ct. 3080, 417 U.S. 950, 41 L.Ed.2d 672.

Whether defendants charged with violating this section in soliciting and receiving kickback from architects on county hospital project under Hill-Burton Act, section 291 et seq. of Title 42, were entrapped was question for jury where impetus for conspiracy came from defendants who approached architects requesting kickback and architects thereafter reported matter to Federal Bureau of Investigation. U. S. v. Thompson, C.A.6 (Tenn.) 1966, 366 F.2d 167, certiorari denied 87 S.Ct. 512, 385 U.S. 973, 17 L.Ed.2d 436.

961. Credibility, questions for jury--Generally

In prosecution for bank robbery, placing lives of bank employees in peril, and for conspiracy, weight and credibility of evidence were for jury to determine. U. S. v. Avellino, C.A.3 (Pa.) 1954, 216 F.2d 877.

962. ---- Conspirators, credibility, questions for jury

Once trial court decides that independent evidence would support finding connecting defendant to conspiracy, it is jury's function to determine whether evidence, including coconspirators' declarations, is credible and convincing beyond reasonable doubt. U. S. v. Giese, C.A.9 (Or.) 1979, 597 F.2d 1170, certiorari denied 100 S.Ct. 480, 444 U.S. 979, 62 L.Ed.2d 405.

Credibility of coconspirator's testimony was for jury. U. S. v. Alger, C.A.7 (Ind.) 1963, 325 F.2d 502, certiorari denied 84 S.Ct. 1124, 376 U.S. 963, 11 L.Ed.2d 981.

In prosecution for conspiracy, credibility of accomplice was for jury notwithstanding contradiction between his testimony and previous statements, and proof of his low character. United States v. Reina, C.A.2 (N.Y.) 1957, 242 F.2d 302, certiorari denied 77 S.Ct. 1294, 354 U.S. 913, 1 L.Ed.2d 1427, rehearing denied 78 S.Ct. 9, 355 U.S. 852, 2 L.Ed.2d 61.

In prosecution for bank robbery, for placing lives of bank employees in peril and for conspiracy, wherein alleged accomplice testified for state, his credibility was for jury notwithstanding contention he was untrustworthy and unworthy of belief. U. S. v. Avellino, C.A.3 (Pa.) 1954, 216 F.2d 875.

In prosecution for conspiracy to transport stolen property in interstate commerce, the credibility and weight to be given to the testimony of a codefendant who pleaded guilty to the charge were for the jury. Banning v. U.S., C.C.A.6 (Mich.) 1942, 130 F.2d 330, certiorari denied 63 S.Ct. 434, 317 U.S. 695, 87 L.Ed. 556.

Court may accept testimony of accomplice making inconsistent statements, leaving question of his credibility and weight of evidence to jury. Kuhn v. U.S., C.C.A.9 (Cal.) 1928, 24 F.2d 910, modified on denial of rehearing 26 F.2d 463, certiorari denied 49 S.Ct. 11, 278 U.S. 605, 73 L.Ed. 533.

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963. ---- Witnesses, credibility, questions for jury

The credibility of a witness is a question for the jury. Glasser v. U.S., U.S.Ill.1942, 62 S.Ct. 457, 315 U.S. 60, 86 L.Ed. 680, rehearing denied 62 S.Ct. 629, 315 U.S. 827, 86 L.Ed. 1222, rehearing denied 62 S.Ct. 637, 315 U.S. 827, 86 L.Ed. 1222. See, also, Murray v. U.S., C.C.A.Ill.1926, 10 F.2d 409, certiorari denied 46 S.Ct. 486, 271 U.S. 673, 70 L.Ed. 1144; Fahy v. U.S., C.C.A.Ill.1926, 10 F.2d 409, certiorari denied 46 S.Ct. 486, 271 U.S. 673, 70 L.Ed. 1144; Marin v. U.S., C.C.A.Mich.1926, 10 F.2d 271; Fisher v. U.S., C.C.A.R.I.1925, 8 F.2d 978, certiorari denied 46 S.Ct. 482, 271 U.S. 666, 70 L.Ed. 1140; U.S. v. Rose, D.C.Ky.1940, 31 F.Supp. 249.

Coconspirator's testimony, which established defendants' involvement in conspiracy to defraud United States, did not defy physical evidence or the laws of nature and was not incredible as a matter of law. U. S. v. De Los Santos, C.A.5 (Tex.) 1980, 625 F.2d 62, rehearing denied 633 F.2d 582.

In prosecution for conspiring to manufacture and sell counterfeit United States currency, testimony, which was elicited in attempt to blunt impact of attack against government witness' credibility and which indicated that Government had promised to bring witness' cooperation to the attention of the sentencing judge and that witness would be prosecuted if he testified falsely, did not constitute an impermissible government voucher for the witness' credibility. U. S. v. Araujo, C.A.2 (N.Y.) 1976, 539 F.2d 287, certiorari denied 97 S.Ct. 498, 429 U.S. 983, 50 L.Ed.2d 593.

Notwithstanding the alleged total unreliability of Government's witness, the jury was the proper arbiter of such witness' credibility and there was sufficient evidence to make out a prima facie case of conspiracy. U. S. v. Cravero, C.A.5 (Fla.) 1976, 530 F.2d 666.

Inconsistencies in government agent's testimony in multiple prosecution for conspiracy and possession of stolen interstate shipment of beef presented matter for jury to weigh in crediting testimony of witness, and was not ground for mistrial. U. S. v. Verdoorn, C.A.8 (Iowa) 1976, 528 F.2d 103.

Refusal, in prosecution of defendant for conspiring to pay illegal kickbacks to agent and counsel of union pension fund and of codefendant for receiving money with intent to be influenced with respect to official duties as to fund, to admit testimony of government's principal witness' alleged contact with central intelligence agency to effect that such contact would not believe witness under oath and that witness' reputation for truthfulness was bad was not reversible error where there was ample other testimony before jury to effect that witness was unworthy of belief. U.S. v. Russo, C.A.2 (N.Y.) 1971, 442 F.2d 498, certiorari denied 92 S.Ct. 669, 404 U.S. 1023, 30 L.Ed.2d 673, rehearing denied 92 S.Ct. 930, 405 U.S. 949, 30 L.Ed.2d 819.

Question of credibility of witness as admitted liar was for jury, as against rejected contention that his testimony should have been eliminated in its entirety because he conceded or admitted that he was unworthy of belief, in stock conspiracy trial. U. S. v. Kelly, C.A.2 (N.Y.) 1965, 349 F.2d 720, certiorari denied 86 S.Ct. 1467, 384 U.S. 947, 16 L.Ed.2d 544.

Question of credibility of witness, in prosecution for perjury, for making false statements to government agencies and for conspiracy, was for triers of fact. U. S. v. Marchisio, C.A.2 (N.Y.) 1965, 344 F.2d 653.

Credibility of witnesses and weight to be accorded their testimony were peculiarly within province of trier of facts. Farrell v. U. S., C.A.9 (Cal.) 1963, 321 F.2d 409, certiorari denied 84 S.Ct. 631, 375 U.S. 992, 11 L.Ed.2d 478.

Fact that an extremely important witness in government's case, in a conspiracy prosecution, was a convicted felon turned informer, merely reflected on his credibility which was a matter for the trier of fact, as was the question of the ability of such witness and other witnesses to have seen and heard the actions and statements to which they testified under the circumstances described by them. U. S. v. Vittoria, C.A.7 (Ill.) 1960, 284 F.2d 451.

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In prosecution of defendants for participation in a conspiracy to traffic in narcotic drugs in violation of the laws of the United States, credibility of witness who connected defendants with the illegal affair was a matter for the jury and its verdict was not subject to appellate review on ground of lack thereof, particularly, where there seemed no practical room for an inference of anything but guilt. United States v. Markman, C.A.2 (N.Y.) 1952, 193 F.2d 574.

In prosecution for conspiring to violate the internal revenue laws, credibility of witness was for the jury, which had right to believe his testimony, even if the testimony was without corroboration. Thomas v. U. S., C.C.A.5 (Ala.) 1948, 168 F.2d 707.

A witness' bad reputation for truth went only to his credibility and not his competency, and truth or falsity of his testimony was to be weighed by the jury which saw and heard him. Anderson v. U.S., C.C.A.6 (Tenn.) 1941, 124 F.2d 58, certiorari granted 62 S.Ct. 941, 316 U.S. 651, 86 L.Ed. 1732, reversed on other grounds 63 S.Ct. 599, 318 U.S. 350, 87 L.Ed. 829.

Credibility of government's witnesses in prosecution for violating and conspiring to violate National Prohibition Act, former § 1 et seq. of Title 27, was for jury. McLaughlin v. U S, C.C.A.3 (Pa.) 1928, 26 F.2d 1.

In prosecution for conspiring to commit an offense against United States or to defraud United States by conspiring to have a third party make a false claim against government, credibility of witnesses was a matter for the jury. U. S. v. Strycker, E.D.Wis.1960, 182 F.Supp. 677.

964. Expert witnesses, questions for jury

The probative value of expert testimony, as dependent on the qualifications of the witness, is to be determined by the jury. U S v. Fischer, E.D.Pa.1917, 245 F. 477, affirmed 250 F. 793, 163 C.C.A. 125.

965. Failure of defendant to testify, questions for jury

Defendants' failure to testify, in prosecution for conspiracy and for unlawful possession of sugar intended for use in violation of internal revenue laws, and to explain their acquisition and possession of large quantity of sugar, could be considered by jury. U. S. v. Ragland, C.A.4 (Md.) 1962, 306 F.2d 732, certiorari denied 83 S.Ct. 504, 371 U.S. 949, 9 L.Ed.2d 498.

966. Advocating overthrow of Government, questions for jury

In prosecution for conspiracy to violate the Smith Act, § 2385 of this title, making it an offense to advocate forcible overthrow of the government, declarations of co-conspirators, in furtherance of the conspiracy and within its purview, were matters properly to be considered on the intent of any particular defendant. United States v. Flynn, C.A.2 (N.Y.) 1954, 216 F.2d 354, certiorari denied 75 S.Ct. 295, 348 U.S. 909, 99 L.Ed. 713, order withheld 75 S.Ct. 285, 99 L.Ed. 1298, rehearing denied 75 S.Ct. 436, 348 U.S. 956, 99 L.Ed. 747.

In prosecution for conspiracy to organize Communist Party of United States as a group to teach and advocate overthrow of United States government by force and violence, trial judge properly took from the jury all questions regarding constitutionality of § 2385 of this title, forbidding advocating overthrow of government by force, and properly left to jury the question whether defendants' intent was to overthrow the government as speedily as circumstances would permit the overthrow to be achieved. U.S. v. Dennis, C.A.2 (N.Y.) 1950, 183 F.2d 201, certiorari granted 71 S.Ct. 91, 340 U.S. 863, 95 L.Ed. 630, affirmed 71 S.Ct. 857, 341 U.S. 494, 95 L.Ed. 1137, rehearing denied 72 S.Ct. 20, 342 U.S. 842, 96 L.Ed. 636, rehearing denied 78 S.Ct. 409, 355 U.S. 936, 2 L.Ed.2d 419.

In prosecution for conspiracy to violate Smith Act, § 2385 of this title, by advocating and teaching, and helping to

organize as Communist Party persons teaching and advocating, overthrow of Government by force, jury, in weighing testimony of former members of Communist Party, should consider whether circumstances of their membership in or leaving of party might have given rise to some hostility against Party or defendants or to some self-interest which might affect accuracy or truthfulness of their testimony. U. S. v. Schneiderman, S.D.Cal.1952, 106 F.Supp. 906.

In prosecution for conspiracy to violate Smith Act, § 2385 of this title, by advocating and teaching and helping to organize as Communist Party persons teaching and advocating overthrow of government by force, jury may consider any meaning or interpretation given to, and any use made of, an exhibit in evidence by such Party, as shown by evidence, in determining nature, character, aims and objectives of Party, that is, whether it was a society, group and assembly of persons teaching and advocating overthrow of government by force and violence, as charged in indictment, during period covered thereby. U. S. v. Schneiderman, S.D.Cal.1952, 106 F.Supp. 906.

In prosecution for conspiracy to violate Smith Act, § 2385 of this title, by wilfully advocating and teaching overthrow of government by force and wilfully helping to organize as Communist Party persons teaching and advocating such overthrow, evidence of statements or declarations and teachings of instructors in alleged Communist Party schools and declarations and acts of other alleged Communist Party members after such section became law may be considered by jury in determining whether such Party was group of persons teaching and advocating overthrow of government by force during three year limitation period before finding of indictment. U. S. v. Schneiderman, S.D.Cal.1952, 106 F.Supp. 892.

In prosecution for conspiracy to violate Smith Act, § 2385 of this title, by advocating and teaching overthrow of government by force and helping to organize as Communist Party persons teaching and advocating such overthrow, jury may consider acts done and statements and declarations made by any persons found by jury to be members of conspiracy in connection with case of any defendant found to be member thereof as if done or made by such defendant, if done and made during continuance of conspiracy and in furtherance of an object or purpose thereof. U. S. v. Schneiderman, S.D.Cal.1952, 106 F.Supp. 892.

In prosecution for conspiracy to violate Smith Act, § 2385 of this title, by advocating and teaching and helping to organize as Communist Party persons teaching and advocating overthrow of government by force, jury may consider each book, pamphlet, paper and written or printed document introduced in evidence in its entirety for purpose of understanding, interpreting, construing and knowing the meaning of language used therein and may also consider period of history in which particular book or document was written and background, condition and other circumstance under which it was written or prepared. U. S. v. Schneiderman, S.D.Cal.1952, 106 F.Supp. 892.

967. Banking offenses, questions for jury

Jury could very well have inferred that savings and loan association building was entered with intent to commit a felony, where ladder was found positioned against the building, a window had been jimmied and the front door damaged, a hole had been pounded in concrete wall around the vault, one of the defendants was found hiding in the building, and automobile was discovered suspiciously parked and disposed nearby. U. S. v. Castaldi, C.A.7 (Ill.) 1971, 453 F.2d 506, certiorari denied 92 S.Ct. 1263, 405 U.S. 992, 31 L.Ed.2d 460, certiorari denied 92 S.Ct. 1273, 405 U.S. 992, 31 L.Ed.2d 460.

Whether chairman of board of federally insured savings and loan association, his attorney and borrower caused grossly inflated appraisals of property to be submitted in order to obtain loan from association so that borrower might purchase chairman's interest in the association and whether the collateral was grossly inadequate were questions for the jury in prosecutions for conspiracy to defraud and for defrauding federally insured savings and loan association. U. S. v. Musgrave, C.A.5 (Tex.) 1971, 444 F.2d 755.

In prosecution for conspiracy in connection with embezzlement by bank officer who used bank's funds to pay no

fund checks written by defendants, whether defendants intended for bank officer to embezzle bank's money, and whether they knew that he was doing so rather than using his own personal funds, were questions for jury. U. S. v. Randall, C.C.A.7 (Ind.) 1947, 164 F.2d 284, certiorari denied 68 S.Ct. 729, 333 U.S. 856, 92 L.Ed. 1136, rehearing denied 68 S.Ct. 901, 333 U.S. 878, 92 L.Ed. 1153, certiorari denied 68 S.Ct. 733, 333 U.S. 856, 92 L.Ed. 1136.

Whether president of Dallas Joint Stock Land Bank feloniously abstracted and converted to his own use money belonging to the bank, and conspired to commit such offense, was for jury. Ferguson v. U.S., C.C.A.5 (Tex.) 1941, 119 F.2d 582, certiorari denied 62 S.Ct. 78, 314 U.S. 623, 86 L.Ed. 501, order withheld 62 S.Ct. 118, 314 U.S. 576, rehearing denied 62 S.Ct. 176, 314 U.S. 709, 86 L.Ed. 566.

Evidence of bank employee's guilt of conspiracy to commit grand larceny and embezzlement was for jury. McNeil v. U.S., App.D.C.1936, 85 F.2d 698, 66 App.D.C. 199.

968. Bankruptcy offenses, questions for jury

Even if purported signature of defendant charged with conspiracy to conceal assets in contemplation of bankruptcy had not been made by him, on checks, whether such checks had been endorsed by someone other than defendant with his consent or had been ratified by defendant were questions for trier of fact. Strauss v. U. S., C.A.5 (Fla.) 1966, 363 F.2d 366, certiorari denied 87 S.Ct. 602, 385 U.S. 989, 17 L.Ed.2d 450.

Evidence presented question for jury as to whether defendant was guilty of conspiring to violate Bankruptcy Act, former § 52 of Title 11, by concealing assets from trustee in bankruptcy of bankrupt corporation, by transferring assets of such corporation in contemplation of its bankruptcy and with intent to defeat § 1 et seq. of Title 11, and by concealing, mutilating, and falsifying books and records of corporation. U.S. v. Goodman, C.C.A.2 (N.Y.) 1942, 129 F.2d 1009.

969. Bribery, questions for jury

It was for jury to decide whether tape of conversation between defendant alleged coconspirator and alleged coconspirator working in concert with government proved defendant's innocence or merely revealed that he was on his guard during the meeting and thus avoided any discussion of the bribery. U. S. v. Birnbaum, C.A.2 (N.Y.) 1967, 373 F.2d 250, rehearing denied 375 F.2d 232, certiorari denied 88 S.Ct. 53, 389 U.S. 837, 19 L.Ed.2d 99.

In prosecution of individuals and congressman for conspiracy to defraud the United States through violation of former § 203 of this title, prohibiting members of Congress from receiving compensation in matters affecting the government, whether money received by congressman from individuals was received as compensation for services or for disbursement by congressman on account of individuals or their corporations was for the jury. May v. United States, C.A.D.C.1949, 175 F.2d 994, 84 U.S.App.D.C. 233, certiorari denied 70 S.Ct. 58, 338 U.S. 830, 94 L.Ed. 505, order withheld 70 S.Ct. 81, 338 U.S. 854, motion denied 70 S.Ct. 94, motion denied 70 S.Ct. 95, rehearing denied 70 S.Ct. 154, 338 U.S. 882, 94 L.Ed. 542, rehearing denied 70 S.Ct. 155, 338 U.S. 882, 94 L.Ed. 542, order withheld 70 S.Ct. 80.

Whether acceptance of bribe was part of conspiracy was for jury. Harvey v. U.S., C.C.A.2 (N.Y.) 1928, 23 F.2d 561.

Evidence made jury question as to conspiracy to corruptly influence persons acting for United States. Felder v. U.S., C.C.A.2 (N.Y.) 1925, 9 F.2d 872, certiorari denied 46 S.Ct. 348, 270 U.S. 648, 70 L.Ed. 779.

In prosecution for conspiracy to defraud the United States and to commit the offense of bribery against the United States, evidence required that the defense of entrapment be submitted to the jury. U. S. v. Klosterman,

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E.D.Pa.1957, 147 F.Supp. 843, reversed 248 F.2d 191.

970. Counterfeiting, questions for jury

In prosecution for uttering and passing counterfeit Kingdom of Belgium bonds, with intent to defraud, and for conspiring to negotiate similar bonds, question whether defendant had knowledge that bonds were counterfeit was for jury. U.S. v. Kaye, C.A.2 (N.Y.) 1958, 251 F.2d 87, certiorari denied 78 S.Ct. 702, 356 U.S. 919, 2 L.Ed.2d 714.

Question whether defendant was guilty of conspiracy to pass counterfeit money was for jury. Marson v. U.S., C.A.6 (Mich.) 1953, 203 F.2d 904.

In prosecution for counterfeiting and for conspiracy, whether plates and prints were like genuine plates and prints of United States obligations were questions for jury. Litkofsky v. U.S., C.C.A.2 (N.Y.) 1925, 9 F.2d 877.

971. Customs offenses, questions for jury

In prosecution of customs inspectors for conspiracy to defraud United States of free and incorrupt operation of customs service, question of whether one of the defendants had withdrawn from conspiracy at time of his transfer from docks to airport was properly for jury. U.S. v. Lev, C.A.2 (N.Y.) 1960, 276 F.2d 605, certiorari denied 80 S.Ct. 1248, 363 U.S. 812, 4 L.Ed.2d 1153.

In prosecution for violating §§ 483 and 1593 of Title 19, and for conspiring to violate such sections, where photostatic copies of defendant bank statements showing $15,000 withdrawal was admitted to corroborate testimony of witness that he had received $15,000 from defendant, defendant's failure to explain or to recollect the withdrawal was a circumstance which jury might properly consider in weighing defendant's guilt. U.S. v. Kushner, C.C.A.2 (N.Y.) 1943, 135 F.2d 668, certiorari denied 63 S.Ct. 1449, 320 U.S. 212, 87 L.Ed. 1850, rehearing denied 64 S.Ct. 32, 320 U.S. 808, 88 L.Ed. 488.

Evidence made questions for jury as to whether United States was defrauded of customs duties in connection with imported coal as result of conspiracy between defendants. Smith v. U.S., C.C.A.9 (Cal.) 1916, 231 F. 25, 145 C.C.A. 213, certiorari denied 37 S.Ct. 19, 242 U.S. 636, 61 L.Ed. 539.

972. Embezzlement, questions for jury

In prosecution of union officials for conspiracy to embezzle union funds, whether a single overall conspiracy had occurred was for jury. Hayes v. U. S., C.A.8 (Mo.) 1964, 329 F.2d 209, certiorari denied 84 S.Ct. 1883, 377 U.S. 980, 12 L.Ed.2d 748.

In prosecution of union officials for conspiracy to embezzle union funds, whether funds were actually converted by official under guise of expense money was for jury. U.S. v. Speed, D.C.D.C.1948, 78 F.Supp. 366.

In prosecution of union officials for conspiracy to embezzle funds, where official had signed two union checks which were misapplied by another, whether official had signed the checks in blank without knowing that they would be used for an improper purpose was for the jury. U.S. v. Speed, D.C.D.C.1948, 78 F.Supp. 366.

973. False and fraudulent claims, questions for jury

In prosecution for conspiring to deliver underweight bags of cement to government project and to defraud the United States by obtaining payment of false and fraudulent claims, testimony that any loss sustained was made good by subsequent deliveries was for jury on question of lack of mens rea. Mininsohn v. U.S., C.C.A.3 (N.J.)

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1939, 101 F.2d 477.

In prosecution for submitting false claims to United States Treasury Department and conspiring to do so in connection with contracts for supplying equipment for projects of Works Progress Administration, whether one of defendants, who was an old man, although president of one of companies to which contracts were awarded, knew that vouchers and certificates signed by him were false was for jury. U.S. v. Breen, C.C.A.2 (N.Y.) 1938, 96 F.2d 782, certiorari denied 58 S.Ct. 1061, 304 U.S. 585, 82 L.Ed. 1546.

Where there was substantial evidence in support of verdict of guilty in prosecution for presenting false claims to United States Treasury Department and conspiring to do so in connection with contracts for supplying equipment for projects of Works Progress Administration, case was properly submitted to jury. U.S. v. Breen, C.C.A.2 (N.Y.) 1938, 96 F.2d 782, certiorari denied 58 S.Ct. 1061, 304 U.S. 585, 82 L.Ed. 1546.

Whether acts occurring after allowance of claims constituted overt acts, in conspiracy to defraud United States by allowance and payment of claims, was for jury. Miller v. U.S., C.C.A.2 (N.Y.) 1928, 24 F.2d 353, certiorari denied 48 S.Ct. 421, 276 U.S. 638, 72 L.Ed. 421.

In prosecution against New York financing corporation whose western office operated in eight states with branch office in Yakima, and others, for conspiracy to defraud the United States by passing false documents to secure insurance under modernization of homes provisions of National Housing Act, § 1701 et seq. of Title 12, whether acts were done by governing officer of corporation or with knowledge or consent of any governing officer so as to render corporation criminally liable was for jury. U.S. v. Thomas, E.D.Wash.1943, 52 F.Supp. 571.

974. False prosecution, questions for jury

In prosecution for conspiracy to institute false prosecution against government witness, defendant's good faith in making charge was for jury. Harper v. U. S., C.C.A.8 (Ark.) 1928, 27 F.2d 77.

975. Foreign agents, registration of, questions for jury

In prosecution for conspiracy to violate the Foreign Agents Registration Act, § 612 of Title 22, where defendants contended that a film showed to court and jury was not the same as original film, but there was testimony on behalf of Government that the film was the same as had been shown at meetings of corporate defendant, the problem was properly left to the jury. U.S. v. German-American Vocational League, C.C.A.3 (N.J.) 1946, 153 F.2d 860, certiorari denied 66 S.Ct. 976, 328 U.S. 833, 90 L.Ed. 1608, certiorari denied 66 S.Ct. 976, 328 U.S. 833, 90 L.Ed. 1609, certiorari denied 66 S.Ct. 977, 328 U.S. 833, 90 L.Ed. 1609, certiorari denied 66 S.Ct. 977, 328 U.S. 834, 90 L.Ed. 1609, certiorari denied 66 S.Ct. 977, 328 U.S. 834, 90 L.Ed. 1610, certiorari denied 66 S.Ct. 978, 328 U.S. 834, 90 L.Ed. 1610.

976. Interstate commerce offenses, questions for jury

Whether employees of interstate carrier had conspired to exact more than regular tariff charges for accommodations, and whether an employee had exacted more than regular tariff charges and pocketed the difference, were for jury. Howitt v. U.S., C.C.A.5 (Fla.) 1945, 150 F.2d 82, certiorari granted 66 S.Ct. 92, 326 U.S. 706, 90 L.Ed. 417, affirmed 66 S.Ct. 923, 328 U.S. 189, 90 L.Ed. 1162.

977. Harboring fugitives, questions for jury

Whether proof of agreement to alter man's facial features and finger lines, purpose thereof not being disclosed by evidence, sustained charge of conspiracy to harbor man for purpose of preventing his arrest under federal warrant

was for jury. Piquett v. U.S., C.C.A.7 (Ill.) 1936, 81 F.2d 75, certiorari denied 56 S.Ct. 749, 298 U.S. 664, 80 L.Ed. 1388.

978. Kickbacks, questions for jury

Whether kickback received by defendants who were members of county council was in return for obtaining locally financed school contract or obtaining contract for hospital project under Hill-Burton Act, section 291 et seq. of Title 42, was question for jury in prosecution for violation of general conspiracy statute arising out of alleged kickback on hospital project. U. S. v. Thompson, C.A.6 (Tenn.) 1966, 366 F.2d 167, certiorari denied 87 S.Ct. 512, 385 U.S. 973, 17 L.Ed.2d 436.

979. Liquor offenses, questions for jury

Submission of question whether there was a single moonshine conspiracy embracing all four stills was proper, despite contention that proof showed two separate conspiracies, where there were several distinct threads running through actions of parties in connection with all stills. Green v. U. S., C.A.5 (Fla.) 1964, 332 F.2d 788, certiorari denied 85 S.Ct. 446, 379 U.S. 949, 13 L.Ed.2d 546. Conspiracy 48.2(2)

Whether defendant was guilty of conspiring to violate internal revenue laws in regard to alcohol, of carrying on business of distiller without having given bond, of possession of unregistered still and of making and fermenting mash fit for distillation were jury questions. U. S. v. D'Antonio, C.A.3 (N.J.) 1963, 324 F.2d 667, certiorari denied 84 S.Ct. 662, 376 U.S. 909, 11 L.Ed.2d 607.

In prosecution for conspiracy to violate internal revenue laws pertaining to whiskey, evidence presented a question for the jury as to whether one of the defendants was involved in an illegal moonshining operation, even though a witness who connected such defendant with the operation by using his name, on cross-examination stated that the named person involved was not the defendant sitting in the courtroom. Tenpenny v. U.S., C.A.6 (Tenn.) 1960, 285 F.2d 213.

Evidence raised question for jury whether the defendants were guilty of conspiracy to violate statutory provisions relating to manufacture, sale, possession, transportation, and distribution of non-tax-paid whiskey. Roberson v. U.S., C.A.6 (Tenn.) 1960, 282 F.2d 648, certiorari denied 81 S.Ct. 167, 364 U.S. 879, 5 L.Ed.2d 102.

In prosecution for conspiracy to violate certain federal liquor laws, evidence, including testimony showing defendant's relations with other defendants and showing the manner in which he knew exactly how to fit into the part he was to play in receiving and paying for a load of whiskey on terms which must have been the subject of a prior agreement, was sufficient to present a question for the jury as to defendant's participation in the conspiracy. Parmenter v. U.S., C.A.5 (Fla.) 1960, 279 F.2d 151.

In prosecution for conspiracy charging defendant and several other named and divers other unnamed conspirators with conspiring among other things, to unlawfully engage in business of distilling spirituous liquors, to unlawfully possess, transport, conceal and sell distilled non-tax-paid spirits, and to carry on business of wholesale liquor dealers in spirituous liquors without paying required tax, whether one or two conspiracies existed was a question of fact. Dean v. U.S., C.A.5 (Ga.) 1958, 251 F.2d 339.

In prosecution for conspiring to operate distillery, to manufacture distilled spirits without giving bond, and to transport distilled spirits in nontax-paid containers, weight of invoices and paper which were linked to one defendant and which represented purchase of items which could be used in still and contained name of person indicted as condefendant, as evidence of one defendant's participation in conspiracy, was for jury, and failure of government to show that materials described in invoices were actually used in still went to their weight as evidence. United States v. Giallo, C.A.2 (N.Y.) 1953, 206 F.2d 207, certiorari granted 74 S.Ct. 129, 346 U.S. 871,

98 L.Ed. 380, affirmed 74 S.Ct. 319, 346 U.S. 929, 98 L.Ed. 421.

In prosecution against corporate officers for selling liquor at wholesale in excess of ceiling prices and for conspiracy, officers' guilt was for jury. U.S. v. Hare, C.C.A.7 (Ind.) 1946, 153 F.2d 816, certiorari denied 66 S.Ct. 982, 328 U.S. 836, 90 L.Ed. 1612, certiorari denied 66 S.Ct. 983, 328 U.S. 836, 90 L.Ed. 1612.

Whether codefendants were participants in conspiracy to violate internal revenue liquor laws was for jury. Thaxton v. U.S., C.C.A.5 (Ga.) 1945, 151 F.2d 533. See, also, Hall v. U.S., C.C.A.Okl.1940, 109 F.2d 976. Conspiracy 48.2(2)

In prosecution for concealing commodities to defraud the government of the tax thereon, jury was entitled to consider close blood relationship and business dealings between defendants to determine whether defendants were in fact in a conspiracy to commit substantive offenses charged even if there had been no conspiracy count in indictment. Pinkerton v. U. S., C.C.A.5 (Ala.) 1945, 151 F.2d 499, certiorari granted 66 S.Ct. 702, 327 U.S. 772, 90 L.Ed. 1002, affirmed 66 S.Ct. 1180, 328 U.S. 640, 90 L.Ed. 1489, rehearing denied 67 S.Ct. 26, 329 U.S. 818, 91 L.Ed. 697.

Evidence of whether conspiracy to maintain unlawful distillery and related offenses included particular defendant, made a case for jury. Hall v. U.S., C.C.A.5 (Ga.) 1945, 150 F.2d 280, certiorari denied 66 S.Ct. 140, 326 U.S. 760, 90 L.Ed. 457.

Evidence that defendants voluntarily joined conspiracy to violate §§ 2803(a), 2810, 2814, 2831, 2833 and 2834 of Title 26 relating to stills and distilled liquor and actively aided in carrying it out required submission to jury of question of guilt of conspiracy to violate said sections. U S v. Mule, C.C.A.2 (N.Y.) 1944, 141 F.2d 487.

Evidence presented question for jury as to whether defendant, who was a trooper of New York State Police, was guilty of conspiring to defraud the United States of taxes on distilled spirits, where the three principal conspirators testified that defendant was on their payroll to give them "protection". U.S. v. Quinn, C.C.A.2 (N.Y.) 1941, 124 F.2d 378.

Whether accused were guilty of conspiracy to remove distilled spirits on which tax was not paid to place other than warehouse provided by law, or to conceal or aid in concealment of such spirits and of doing acts in pursuance of conspiracy, was for jury. Walker v. U.S., C.C.A.4 (W.Va.) 1939, 104 F.2d 465.

Whether accused were guilty of conspiracy to remove deposit or conceal spiritous liquors with intent to defraud United States of the tax, and of doing acts in pursuance of the conspiracy, was for jury. Walker v. U.S., C.C.A.4 (W.Va.) 1939, 104 F.2d 465.

Whether accused were guilty of having in their custody or possession spiritous liquors for purpose of selling the liquors without payment of tax imposed by internal revenue laws and of doing acts in pursuance of the conspiracy was for jury. Walker v. U.S., C.C.A.4 (W.Va.) 1939, 104 F.2d 465.

Sufficiency of identification of articles abandoned by fleeing defendants was for jury in trial for conspiracy to possess and transport intoxicating liquor. Rubio v. U.S., C.C.A.9 (Cal.) 1927, 22 F.2d 766, certiorari denied 48 S.Ct. 213, 276 U.S. 619, 72 L.Ed. 734.

Evidence of conspiracy to violate National Prohibition Act, former § 1 et seq. of Title 27, was for jury as to one defendant. Green v. U.S., C.C.A.9 (Wash.) 1927, 19 F.2d 850, certiorari denied 48 S.Ct. 117, 275 U.S. 557, 72 L.Ed. 424, 72 L.Ed. 729, rehearing granted 48 S.Ct. 207, 276 U.S. 609, 72 L.Ed. 729, affirmed 48 S.Ct. 564, 277 U.S. 438, 72 L.Ed. 944. See, also, Olmstead v. U.S., C.C.A.Wash.1927, 19 F.2d 842, 53 A.L.R. 1472, affirmed 48 S.Ct. 564, 277 U.S. 438, 72 L.Ed. 944.

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Evidence in prosecution of conspiracy to violate National Prohibition Act, former § 1 et seq. of Title 27, was for jury. Di Bonaventura v. U.S., C.C.A.4 (W.Va.) 1926, 15 F.2d 494. See, also, Shown v. U.S., C.C.A.Idaho, 1926, 12 F.2d 594; Marron v. U.S., C.C.A.Cal.1925, 8 F.2d 251; Crowley v. U.S., C.C.A.Cal.1925, 8 F.2d 118; Baron v. U.S., C.C.A.Ohio 1923, 286 F. 822, certiorari denied 43 S.Ct. 524, 262 U.S. 749, 67 L.Ed. 1213. Conspiracy 48.1(4)

In prosecution for conspiring to fraudulently import and bring intoxicating liquor into the United States in violation of §§ 493, 496 and 497 of Title 19, and former § 12 of Title 27, question of defendant's guilt was for the jury. Lee v. U S, C.C.A.1 (Mass.) 1926, 14 F.2d 400, certiorari granted 47 S.Ct. 336, 273 U.S. 686, 71 L.Ed. 840, reversed on other grounds 47 S.Ct. 746, 274 U.S. 559, 71 L.Ed. 1202. See, also, McDonnell v. U.S., C.C.A.Mass.1927, 19 F.2d 801.

980. Mail fraud, questions for jury

In prosecution for using and conspiring to use the mails to defraud by means of a so-called "religious movement", the court properly withdrew from the jury the truth of defendants' religious doctrines and beliefs. U.S. v. Ballard, U.S.Cal.1944, 64 S.Ct. 882, 322 U.S. 78, 88 L.Ed. 1148, on remand 152 F.2d 941.

In prosecution for using and conspiring to use the mails to defraud by means of a so-called "religious movement", where defendants consistently contended that the indictment wrongfully invaded their constitutional religious freedom and should be quashed, their acquiescence in the court's withdrawal from the jury of the truth of defendants' religious doctrines and beliefs did not preclude defendants from asserting on appeal that no part on the indictment should have been submitted to the jury. U.S. v. Ballard, U.S.Cal.1944, 64 S.Ct. 882, 322 U.S. 78, 88 L.Ed. 1148, on remand 152 F.2d 941.

Whether defendants were guilty of conspiracy in connection with transactions with applicants for loans was, on record which included evidence that defendants represented that they had practically unlimited access to loan funds and that former business had been success, although knowing that one defendant was bankrupt, for jury. U. S. v. Pichnarcik, C.A.9 (Wash.) 1970, 427 F.2d 1290.

Question of whether defendants were engaged in scheme to defraud or in legitimate but unsuccessful business venture was question of fact for jury determination in prosecution for fraud in the sale of securities, fraud in the use of the mails and for conspiracy. Wall v. U. S., C.A.10 (Utah) 1967, 384 F.2d 758.

If jury, in prosecution for using mails in attempt to defraud, and for conspiracy to commit such offense, was satisfied that a conspiracy had begun more than three years before return of indictment and had continued in its entirety thence forward and that defendants participated therein, it had right to consider everything that occurred which contributed to its genesis or proved its existence. U. S. v. Sylvanus, C.A.7 (Ill.) 1951, 192 F.2d 96, certiorari denied 72 S.Ct. 555, 342 U.S. 943, 96 L.Ed. 701.

In prosecution for using and conspiring to use the mails to defraud gullible individuals by collecting fee for enrolling them as heirs of mythical Baker estate, whether those accused acted in good faith was for the jury. U. S. v. Sprengel, C.C.A.3 (Pa.) 1939, 103 F.2d 876.

In prosecution of physicians and attorneys and "runner" for attorneys for use of mails to defraud insurance companies by filing false claims and for conspiracy, question of defendants' guilt was for jury. U S v. Weiss, C.C.A.2 (N.Y.) 1939, 103 F.2d 348, certiorari granted 59 S.Ct. 1043, 307 U.S. 621, 83 L.Ed. 1500, reversed on other grounds 60 S.Ct. 269, 308 U.S. 321, 84 L.Ed. 298.

In prosecution for using mails in furtherance of scheme to defraud and for conspiring to use mails in furtherance of scheme to defraud by representing an imposter to be lawful heir of valuable mineral rights and by inducing others

to enter into contracts respecting the mineral rights, evidence that defendant knew that the alleged heir was an imposter at time he made the representations to men from whom defendant received money was for jury. Holt v. U.S., C.C.A.10 (Okla.) 1937, 94 F.2d 90.

In prosecution of officers and directors of mortgage guaranty company for conspiracy to use mails to defraud in sale of mortgage participation certificates, question of whether disclosure of arrearages in mortgages in which certificates were sold constituted material misrepresentation on part of defendants would be required to be considered in light of conservative character of company's valuation, which might render negligible impairment of guaranty fund resulting from arrearages. U.S. v. McNamara, C.C.A.2 (N.Y.) 1937, 91 F.2d 986.

Whether defendant had severed his connection with fraudulent scheme to defraud by use of mails before indictment was for jury. Sunderland v. U.S., C.C.A.8 (Neb.) 1927, 19 F.2d 202.

Whether use of the mails to collect the check deposited in betting by the victim of a scheme to defraud by fake betting in sham turf exchanges, was not such a natural and probable consequence of the execution of the scheme that the other participants would naturally have foreseen the likelihood thereof, rendering them liable under former § 338 of this title, for acts of confederates, is a proper jury question. Shea v. U. S., C.C.A.6 (Ohio) 1918, 251 F. 440, 163 C.C.A. 458, certiorari denied 39 S.Ct. 132, 248 U.S. 581, 63 L.Ed. 431.

981. Murder, questions for jury

Evidence created jury questions whether defendant was predisposed to be part of conspiracy to commit murder for hire and was entrapped, even if government engaged in outrageous conduct after deadline for the killings had passed; defendant's father created the scheme, defendant was present during discussion of scheme and paid $250 from his own funds to undercover FBI agent shortly after meeting, that payment was requisite overt act, and nothing indicated coercion or duress against defendant. U.S. v. Pardue, C.A.8 (Ark.) 1993, 983 F.2d 835, rehearing denied, certiorari denied 113 S.Ct. 3043, 509 U.S. 925, 125 L.Ed.2d 728.

Defendant was not prejudiced by leaving for jury determination of whether government could ultimately prove that conspiracy to interfere with witnesses was single conspiracy, where objectives of conspiracy involved murder of individual witnesses or attempts to intimidate or solicit murder of individual witnesses. U.S. v. Johnson, N.D.Iowa 2002, 239 F.Supp.2d 897, reconsideration denied 270 F.Supp.2d 1060. Criminal Law 1168(1)

982. Narcotics offenses, questions for jury

Defendant and codefendant's presence together prior to drug sale, and their several dealings with unindicted coconspirator, were cumulatively sufficient to make existence of a conspiracy more likely than not, and on basis of such a finding the jury could properly consider defendant's hearsay statement that codefendant was his source, and although mere referral may have been insufficient to establish agreement, the jury might have found on basis of defendant's statement that there had been an ongoing relationship in which codefendant sold to defendant who sold to unindicted coconspirator, and thus evidence was sufficient to support conspiracy conviction. U. S. v. Dalzotto, C.A.7 (Ill.) 1979, 603 F.2d 642, certiorari denied 100 S.Ct. 530, 444 U.S. 994, 62 L.Ed.2d 425.

It was for jury in conspiracy and narcotics prosecution to determine facts and Court of Appeals could not substitute its judgment for that of jury. U.S. v. Duff, C.A.6 (Mich.) 1964, 332 F.2d 702.

Recantation by witness at first trial after trial did not make such testimony from first trial totally inadmissible at second conspiracy trial at which her unavailability was established but her extra-judicial recantation was merely impeaching material and it was for jury to decide which, if either, statement was to be believed. U. S. v. Bentvena, C.A.2 (N.Y.) 1963, 319 F.2d 916, certiorari denied 84 S.Ct. 345, 375 U.S. 940, 11 L.Ed.2d 271, rehearing denied 90 S.Ct. 894, 397 U.S. 928, 25 L.Ed.2d 108, rehearing denied 84 S.Ct. 515, 375 U.S. 989, 11 L.Ed.2d 476,

certiorari denied 84 S.Ct. 346, 375 U.S. 940, 11 L.Ed.2d 271, rehearing denied 84 S.Ct. 1162, 377 U.S. 913, 12 L.Ed.2d 183, certiorari denied 84 S.Ct. 353, 375 U.S. 940, 11 L.Ed.2d 272, certiorari denied 84 S.Ct. 354, 375 U.S. 940, 11 L.Ed.2d 272, certiorari denied 84 S.Ct. 355, 375 U.S. 940, 11 L.Ed.2d 272, certiorari denied 84 S.Ct. 360, 375 U.S. 940, 11 L.Ed.2d 272.

Whether defendant supplied narcotic for which narcotics agent paid co-defendant, whether defendant participated in subsequent sale to informer, whether co-defendant was only connection between defendant and ultimate purchaser and whether defendant and co-defendant were actively engaged in conspiracy to sell and facilitate transportation and concealment of narcotics were jury questions. U. S. v. Williams, C.A.7 (Ill.) 1963, 311 F.2d 721, certiorari denied 83 S.Ct. 1703, 374 U.S. 812, 10 L.Ed.2d 1035.

Whether defendant was guilty of unlawful sale of narcotics, of unlawfully receiving, concealing and facilitating transportation and concealment of narcotics after unlawful importation and of conspiracy to violate federal narcotic laws were jury questions. U. S. v. Williams, C.A.7 (Ill.) 1963, 311 F.2d 721, certiorari denied 83 S.Ct. 1703, 374 U.S. 812, 10 L.Ed.2d 1035.

In prosecution for conspiracy to acquire and transfer marihuana in violation of the law, defense of entrapment was properly submitted to the jury. Accardi v. U. S., C.A.5 (La.) 1958, 257 F.2d 168, certiorari denied 79 S.Ct. 124, 358 U.S. 883, 3 L.Ed.2d 112, certiorari denied 79 S.Ct. 226, 358 U.S. 900, 3 L.Ed.2d 150, rehearing denied 79 S.Ct. 324, 358 U.S. 938, 3 L.Ed.2d 311.

In prosecution for violation of narcotic laws and conspiracy where defendant interposed defense of entrapment based on ground that federal agents had contacted defendant for purchase of narcotics, issue of entrapment presented question of fact for jury. U. S. v. Gernie, C.A.2 (N.Y.) 1958, 252 F.2d 664, certiorari denied 78 S.Ct. 1006, 356 U.S. 968, 2 L.Ed.2d 1073, rehearing denied 78 S.Ct. 1383, 357 U.S. 944, 2 L.Ed.2d 1558.

In prosecution for conspiracy to import heroin in violation of narcotic laws, §§ 173 and 174 of Title 21, it was for jury to apply law, as to which they had been correctly instructed, to facts which they should find proved. U. S. v. Morello, C.A.2 (N.Y.) 1957, 250 F.2d 631.

In prosecution for illegal sale of narcotics and for conspiracy to make such a sale, question of whether defendant stood ready without persuasion to make arrangements for illegal sales of narcotics whenever the opportunity afforded, and thus was not entrapped, but was merely afforded an opportunity, was a question for the jury. United States v. Masciale, C.A.2 (N.Y.) 1956, 236 F.2d 601, certiorari granted 77 S.Ct. 568, 352 U.S. 1000, 1 L.Ed.2d 545, affirmed 78 S.Ct. 827, 356 U.S. 386, 2 L.Ed.2d 859, rehearing denied 78 S.Ct. 1367, 357 U.S. 933, 2 L.Ed.2d 1375.

Whether accused was guilty of conspiracy, the object of which was alleged to be the receipt and concealment of smoking opium brought into the United States contrary to law, was for jury. Pastrano v. U.S., C.C.A.4 (Md.) 1942, 127 F.2d 43.

Guilt of conspiracy to unlawfully import narcotic drugs, to unlawfully and fraudulently conceal them with knowledge of their unlawful importation, and to violate statute taxing narcotics was for jury. Vachuda v. U.S., C.C.A.2 (N.Y.) 1927, 21 F.2d 409.

In prosecutions of physicians for having conspired to violate the Harrison Narcotic Act, § 2550 et seq. of Title 26, and having made sales illegally, question whether or not each defendant had conspired with a druggist, a codefendant, to dispense the drug in the guise of prescriptions to patients, but really to addicts for the gratification of their appetite, and not for their cure, was for the jury under the evidence. Melanson v. U. S., C.C.A.5 (Tex.) 1919, 256 F. 783, 168 C.C.A. 129.

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Whether testimony of defendants was sufficient to establish defense of entrapment to charges of conspiracy and selling narcotics without written orders required by § 4705 of Title 26 was question for jury. U. S. v. Clarke, E.D.Pa.1963, 220 F.Supp. 905.

983. Obstruction of justice, questions for jury

Whether defendants were guilty of conspiracy to obstruct justice and suborn perjury was jury question. U. S. v. Kahn, C.A.2 (N.Y.) 1966, 366 F.2d 259, certiorari denied 87 S.Ct. 321, 385 U.S. 948, 17 L.Ed.2d 226, certiorari denied 87 S.Ct. 324, 385 U.S. 948, 17 L.Ed.2d 226, rehearing denied 87 S.Ct. 502, 385 U.S. 984, 17 L.Ed.2d 445, rehearing denied 87 S.Ct. 503, 385 U.S. 984, 17 L.Ed.2d 445.

In prosecution for conspiring corruptly to obstruct justice, the defense of entrapment was for jury. U.S. v. Polakoff, C.C.A.2 (N.Y.) 1941, 121 F.2d 333, certiorari denied 62 S.Ct. 107, 314 U.S. 626, 86 L.Ed. 503.

984. Securities offenses, questions for jury

Inability of government witness to identify defendant from photographs or at trial in prosecution for conspiracy to defraud government and SEC and for substantive violations of securities laws went to weight of testimony that person identifying himself as defendant had met with him in connection with transactions which were subject of prosecution, where jury could find from other circumstances that such person was in fact representative of principal defendant. U. S. v. Colasurdo, C.A.2 (N.Y.) 1971, 453 F.2d 585, certiorari denied 92 S.Ct. 1766, 406 U.S. 917, 32 L.Ed.2d 116.

Conflict in testimony as to whether payment made by alleged coconspirators to defendant charged with conspiring to transport forged securities in interstate commerce was step in effectuating continuing conspiratorial purpose to negotiate bogus money orders or occurred after efforts to negotiate counterfeit money orders had been abandoned was for jury. Hansen v. U. S., C.A.9 (Wash.) 1963, 326 F.2d 152.

Evidence that alleged coconspirator paid defendant $200 was properly submitted as proof of overt act to effect object of conspiracy to transport forged securities in interstate commerce, where there was conflict in evidence as to whether payment was step in effectuating continuing conspiratorial purpose to negotiate bogus money orders or whether it was not related to conspiracy and occurred after efforts to negotiate money orders had been abandoned. Hansen v. U. S., C.A.9 (Wash.) 1963, 326 F.2d 152.

Whether substantial sums were actually paid to nominee of defendants for benefit of defendants charged with violating anti-fraud provisions of Securities Act, § 77q of Title 15, mail fraud statute § 1341 of this title, and this section, was jury question. Peel v. U. S., C.A.5 (Fla.) 1963, 316 F.2d 907, certiorari denied 84 S.Ct. 174, 375 U.S. 896, 11 L.Ed.2d 125.

Whether salesman of corporation, who participated in false representations to some of investors and, for substantial commission, caused to be invested in company substantial sums used thereafter in manner inconsistent with representations, knew nothing about stock he was selling was jury question in prosecution for violation of anti-fraud provisions of Securities Act, § 77q of Title 15, and mail fraud, and conspiracy. Peel v. U. S., C.A.5 (Fla.) 1963, 316 F.2d 907, certiorari denied 84 S.Ct. 174, 375 U.S. 896, 11 L.Ed.2d 125.

In prosecution for violating Securities Act, § 77q of Title 15, for using the mails to defraud and for conspiracy to effect scheme to defraud, existence of scheme to defraud was for jury. Holmes v. U. S., C.C.A.8 (Neb.) 1943, 134 F.2d 125, certiorari denied 63 S.Ct. 1434, 319 U.S. 776, 87 L.Ed. 1722.

In prosecution for violation of former § 333 of this title in a fraudulent stock-selling scheme and for conspiring so to do, whether defendant had directed another to commit perjury at a hearing conducted in connection with an

investigation of a fraudulent stock jobbing operation was for the jury. U.S. v. Berman, C.C.A.2 (N.Y.) 1938, 98 F.2d 733.

985. Stolen property, questions for jury

In prosecution for conspiracy to transport stolen property in interstate commerce under this section, whether conspiracy existed between defendant and two others to transport stolen property in interstate commerce and whether defendant's role was the stealing of boat in Colorado, or alternately, receiving it from some undisclosed party who performed the theft and delivering it in Arizona were jury questions. U. S. v. Scurlock, C.A.9 (Ariz.) 1971, 448 F.2d 721.

Evidence in prosecution for conspiracy to receive goods stolen and moved in interstate commerce was sufficient to present questions for trier of fact as to whether original plan for theft encompassed eventual sale of goods to innocent purchaser and whether particular defendants, who received goods from person who had originally received them from thieves, had requisite knowledge of theft and interstate transportation. U. S. v. Cardillo, C.A.2 (N.Y.) 1963, 316 F.2d 606, certiorari denied 84 S.Ct. 123, 375 U.S. 857, 11 L.Ed.2d 84, rehearing denied 84 S.Ct. 203, 375 U.S. 917, 11 L.Ed.2d 158, certiorari denied 84 S.Ct. 60, 375 U.S. 822, 11 L.Ed.2d 55, rehearing denied 84 S.Ct. 263, 375 U.S. 926, 11 L.Ed.2d 169.

Question whether supplier of burlap bags, used to wrap guns, had knowledge of conspiracy to receive, possess, transport, and export firearms stolen from federal government and was integral part thereof was for jury. U. S. v. Carlucci, C.A.3 (Pa.) 1961, 288 F.2d 691, certiorari denied 81 S.Ct. 1920, 366 U.S. 961, 6 L.Ed.2d 1253.

In prosecution of defendants for conspiracy to convert to their own use property of the United States Navy and for conversion of specific property, evidence presented jury question as to the guilt of the three defendants who were employees of a corporation that was leasing a United States Navy shipyard. O'Malley v. U. S., C.A.1 (Mass.) 1955, 227 F.2d 332, certiorari denied 76 S.Ct. 434, 350 U.S. 966, 100 L.Ed. 838. Conspiracy 48.1(2.1); Embezzlement 47

In prosecution for illegal possession of goods known to have been stolen while in interstate commerce, and for conspiracy to commit the substantive offense, whether goods involved were stolen in interstate commerce and whether accused had knowledge thereof were for jury. U. S. v. Danzo, C.C.A.2 (N.Y.) 1947, 164 F.2d 200.

986. Tax offenses, questions for jury

Whether corporate taxpayer's president, who was also treasurer and general manager and who admittedly was generally responsible for tax returns, knowingly and willfully caused false and fraudulent corporate income tax return to be filed and did so with intention of defrauding government and willfully and intentionally entered into conspiracy to achieve that purpose were jury questions. Blauner v. U.S., C.A.8 (Mo.) 1961, 293 F.2d 723, certiorari denied 82 S.Ct. 368, 368 U.S. 931, 7 L.Ed.2d 193.

Whether expense accounts of president of corporation and his son, who was employee, were heavily loaded with items having nothing whatsoever to do with business of corporation and whether they knowingly and willfully evaded income tax by charging as business deductions purely personal expenses were jury questions. Blauner v. U.S., C.A.8 (Mo.) 1961, 293 F.2d 723, certiorari denied 82 S.Ct. 368, 368 U.S. 931, 7 L.Ed.2d 193.

Whether conduct of corporation's president in charging to corporation expenses having no relation to business of corporation constituted attempt to evade corporation's income taxes was jury question. Blauner v. U.S., C.A.8 (Mo.) 1961, 293 F.2d 723, certiorari denied 82 S.Ct. 368, 368 U.S. 931, 7 L.Ed.2d 193.

In prosecution for making false statements of material fact to internal revenue agents, willfully attempting to evade

a substantial amount of wagering excise taxes due and owing government, and conspiring to commit offense against United States, wherein defendants relied on the "independent bookie" theory and that amounts of bets not reported constituted "lay-off" bets which defendants in good faith thought they did not have to report, questions as to willfulness, knowledge, or intent were for the jury. U.S. v. Clancy, C.A.7 (Ill.) 1960, 276 F.2d 617, certiorari granted 80 S.Ct. 1611, 363 U.S. 836, 4 L.Ed.2d 1723, reversed on other grounds 81 S.Ct. 645, 365 U.S. 312, 5 L.Ed.2d 574.

In prosecution of corporation and its president for conspiracy to defraud United States by obstructing proper functions of Internal Revenue Bureau in ascertaining, levying, assessing and collecting taxes and penalties, president's intent in signing false unemployment tax abatement claim prepared by chief accountant in Internal Revenue Collector's office is for jury to determine after considering all circumstances in evidence. Benatar v. U.S., C.A.9 (Cal.) 1954, 209 F.2d 734, certiorari denied 74 S.Ct. 786, 347 U.S. 974, 98 L.Ed. 1114.

In prosecution for conspiracy and carrying on distillery business with intent to defraud United States of the tax, where evidence against defendant was wholly circumstantial, determination of effect of conflict in evidence was for jury. Carter v. U.S., C.A.5 (Ga.) 1952, 194 F.2d 748.

Whether officers and employees of corporation had knowingly and wilfully understated the corporation's net income with intent to evade a substantial portion of its taxes, and whether they had conspired to attempt to do so, were for jury. Heindel v. U.S., C.C.A.6 (Ohio) 1945, 150 F.2d 493.

Evidence in prosecution for conspiracy to defraud United States created jury question as to tacit or explicit agreement to obstruct and impede lawful functions of Internal Revenue Service (IRS) by failing to report large amounts of personal income generated by illegal gambling business; tax returns did not indicate gambling revenues; some defendants failed to file income tax returns in some years; testimony indicated that employees were paid in cash; and safe deposit box maintained by one defendant contained over $400,000 in cash. U.S. v. Giovanelli, S.D.N.Y.1989, 747 F.Supp. 897.

Evidence presented question for jury as to whether defendant, who was charged with certain violations of the gambling tax laws, had a proprietary interest in establishment at which gambling operations were conducted. U. S. v. Sams, W.D.Pa.1963, 219 F.Supp. 164, affirmed in part, vacated in part 340 F.2d 1014, certiorari denied 85 S.Ct. 1336, 380 U.S. 974, 14 L.Ed.2d 270, on remand 241 F.Supp. 427.

XV. SENTENCE AND PUNISHMENT

<Subdivision Index>

18 U.S.C.A. § 371

1011. Generally, sentence and punishment

In sentencing defendant for conspiracy to violate Sherman Antitrust Act and to commit fraud, district court properly applied fraud guideline, rather than bid rigging guideline; bid-rigging was merely a means to commit fraud. U.S. v. Anderson, C.A.11 (Ala.) 2003, 326 F.3d 1319, rehearing and rehearing en banc denied 71 Fed.Appx. 824, 2003 WL 21432589, certiorari denied 124 S.Ct. 178, 540 U.S. 825, 157 L.Ed.2d 46. Sentencing And Punishment 653(7)

At sentencing for conspiracy and possessing and concealing counterfeit obligations of the United States, enhancement, on basis that part of offense was committed outside the U.S., was warranted even though Congressional directive establishing enhancement had referred to a different statute than that under which defendant was convicted; Sentencing Commission properly exercised its legislative judgment in applying enhancement to convictions under other statutes. U.S. v. Hernandez, C.A.7 (Ill.) 2003, 325 F.3d 811. Sentencing And Punishment 684

Defendants charged with conspiring to convert moneys of United States to their own use and conversion of said moneys to their own use in connection with misrepresentations and irregularities which occurred with Farmers Home Administration loans which one defendant borrowed and which second defendant, as county supervisor of FmHA, authorized and monitored were not entitled to leniency despite assertion that the United States Attorney's Office prosecuted them for actions which Department of Agriculture had instructed would simply constitute disciplinary violation. U.S. v. Barnes, C.A.5 (Tex.) 1985, 761 F.2d 1026. Criminal Law 36.6

In imposing sentences on those convicted of violations of narcotic laws and of conspiracies to violate narcotic laws, court, within limits of its discretion, should exercise meticulous care to impose consistent sentences commensurate with extent of participation by conspirators. U. S. v. Somohano, D.C.Conn.1961, 193 F.Supp. 201.

In prosecution for conspiracy to advocate the overthrow or destruction of the government by force or violence, duty of imposing sentence rested exclusively upon court. U.S. v. Foster, S.D.N.Y.1949, 9 F.R.D. 367.

Downward departure from twelve- to eighteen-month guideline range to five-year probationary term was warranted for defendant, convicted of conspiring to commit bank fraud, on ground of extreme childhood abuse; defendant's history of child abuse included violent abuse as infant, frequent and brutal beatings as child, being burned, forced to eat cat food, and locked outdoors in inclement weather, defendant was induced to commit fraud by individual who deliberately engendered in defendant an interest in a personal relationship with him, taking advantage of her in manner to which her history of abuse rendered her susceptible, and probationary term to which she was sentenced, which included community service and home confinement, in combination with treatment programs, served

punitive, deterrent, and rehabilitative purposes. U.S. v. Brady, E.D.N.Y.2004, 2004 WL 86414, Unreported. Sentencing And Punishment 867

1012. Congressional intent, sentence and punishment

Congress intended, that punishment for conspiracy to knowingly import, receive, conceal, buy, sell or facilitate the transportation, concealment or sale of illegally imported narcotic drugs be greater than that for conspiracy to commit other offenses. U. S. v. McKenney, S.D.N.Y.1959, 181 F.Supp. 143, affirmed 281 F.2d 908, certiorari denied 81 S.Ct. 1916, 366 U.S. 960, 6 L.Ed.2d 1253, rehearing denied 82 S.Ct. 26, 368 U.S. 871, 7 L.Ed.2d 72, certiorari denied 81 S.Ct. 1929, 366 U.S. 967, 6 L.Ed.2d 1257.

1013. Misdemeanors, sentence and punishment

"Misdemeanor" limitation on punishment that can be imposed on party convicted of conspiring "to commit any offense against United States, or to defraud the United States," applies only to convictions arising under the "offense against the United States" part of statute. U.S. v. Tuohey, C.A.9 (Cal.) 1989, 867 F.2d 534. Conspiracy 51

1014. Nolo contendere plea, sentence and punishment

Federal court, after acceptance of plea of nolo contendere in prosecution for conspiracy for using mails to defraud, in violation of former §§ 88 [now this section] and 338 of this title, authorizing punishment by fine or imprisonment, had authority to impose a prison sentence. Hudson v. United States, U.S.Pa.1926, 47 S.Ct. 127, 272 U.S. 451, 71 L.Ed. 347.

District court had jurisdiction to impose sentence to imprisonment for one year and payment of $50 fine following entry of plea of nolo contendere to indictment charging conspiracy to violate § 1461 of this title prescribing punishment for mailing obscene or crime-inciting matter and sentence imposed did not violate Constitution or laws of the United States. U. S. v. DeGregory, E.D.Pa.1963, 220 F.Supp. 249, affirmed 341 F.2d 277, certiorari denied 86 S.Ct. 96, 382 U.S. 850, 15 L.Ed.2d 89, rehearing denied 86 S.Ct. 317, 382 U.S. 933, 15 L.Ed.2d 346.

1015. Pre-sentence investigation, sentence and punishment

Record on appeal from conviction for conspiring to counterfeit obligations of United States did not disclose presence of false or misleading information in presentence report that would constitute a violation of due process. U. S. v. Glover, C.A.4 (Va.) 1973, 475 F.2d 90.

Refusal, in prosecution for conspiracy to make, possess, pass and cause to be made, possessed and passed, certain counterfeit $20 federal reserve notes, to permit defendant to inspect presentence report was not error. U. S. v. Lloyd, C.A.5 (Tex.) 1970, 425 F.2d 711.

In prosecution for use of mails to defraud, and for conspiracy, wherein sentencing court indicated that testimony in nine-day trial about defendants, showing violations extending over seven years, was reason why he thought presentence report was unnecessary, and stated that range of sentences contemplated various degrees of guilt, no abuse of discretion in refusing pre-sentence investigation was shown. U. S. v. Tenenbaum, C.A.7 (Ill.) 1964, 327 F.2d 210, certiorari denied 84 S.Ct. 1165, 377 U.S. 905, 12 L.Ed.2d 177.

Federal district court in prosecution for conspiracy to commit extortion did not violate Sixth Amendment by relying on injury to victim in order to enhance sentence; defendant's statement at sentencing that he had no objections to presentence report (PSR), which contained fact of victim's injury, constituted admission to court of

that fact. U.S. v. Frydman, C.A.6 (Ohio) 2005, 150 Fed.Appx. 482, 2005 WL 2470811, Unreported. Jury 34(1)

Defendant who pleaded guilty to conspiracy to defraud United States by impeding Internal Revenue Service (IRS) from collecting tax revenue was subject to enhanced sentence under applicable version of Sentencing Guidelines on grounds that substantial portion of his income was derived from offense, given uncontradicted assessment in presentence report (PSR) that defendant's legitimate businesses generated negligible income during time period of conspiracy and defendant's testimony that, during scheme, he received at least $300,000 from defrauded taxpayers and had no legitimate income. U.S. v. Cesario, C.A.7 (Ill.) 2003, 70 Fed.Appx. 356, 2003 WL 21489706, Unreported. Sentencing And Punishment 704

1016. Discretion of court, sentence and punishment

Matter of sentencing is within discretion of trial court and is not reviewable by an appellate court so long as sentence is within bounds prescribed by statute; only exception to this rule is where defendant can establish that information presented to court prior to sentencing should not have been considered. U. S. v. Sanchez-Murillo, C.A.9 (Cal.) 1979, 608 F.2d 1314. Criminal Law 1147; Criminal Law 1134(3)

1017. Selection of statutory basis, sentence and punishment

Defendant who pleaded guilty to conspiracy to engage in witness tampering/obstruction of justice was not entitled to downward departure from Sentencing Guidelines range based on duress when defendant admitted that codefendant did not directly threaten her, her family, or her property if she did not assist in obstructing murder investigation, but rather claimed perceived threat of harm based on her knowledge of codefendant's criminal background and her witnessing codefendant committing murder under investigation. U.S. v. Cotto, C.A.2 (Conn.) 2003, 347 F.3d 441. Sentencing And Punishment 858

A simple illegal activity may be punished under two distinct and specific conspiracy statutes, or under general conspiracy statute [18 U.S.C.A. § 371] and a more specific conspiracy statute. Timberlake v. U.S., C.A.10 (Okla.) 1985, 767 F.2d 1479, certiorari denied 106 S.Ct. 882, 474 U.S. 1101, 88 L.Ed.2d 918, certiorari denied 106 S.Ct. 883, 474 U.S. 1101, 88 L.Ed.2d 918. Conspiracy 28(2)

Defendant who was sentenced under section 176a of Title 21 relating to conspiracy to import marijuana, rather than under this section was not denied the possibility of probation where trial judge observed that he would have imposed the same sentence whether the sentence was under either the general or specific conspiracy statute. U. S. v. Bates, C.A.9 (Nev.) 1970, 429 F.2d 557, certiorari denied 91 S.Ct. 61, 400 U.S. 831, 27 L.Ed.2d 61, certiorari denied 91 S.Ct. 175, 400 U.S. 916, 27 L.Ed.2d 155, rehearing denied 91 S.Ct. 452, 400 U.S. 1002, 27 L.Ed.2d 449 . Sentencing And Punishment 1845

Conviction for a general conspiracy to violate any of three combination conspiracy-substantive offense statutes, § 174 of Title 21 and §§ 4704(a) and 4705(a) of Title 26, pertaining to narcotics, ipso facto incurs penalty for conspiracy contemplated by the particular statute found violated. Brown v. U. S., C.A.D.C.1962, 299 F.2d 438, 112 U.S.App.D.C. 57, certiorari denied 82 S.Ct. 1593, 370 U.S. 946, 8 L.Ed.2d 812. Conspiracy 51

Defendant, by pleading guilty to charge of conspiracy to smuggle, waived objection that punishment should have been assessed under statute prescribing penalties for violation of quarantine laws. Murray v. U. S., C.A.9 (Cal.) 1954, 217 F.2d 583. Criminal Law 273.4(1)

If accused were convicted under count of indictment alleging conspiracy under both this section and under section 1962 of this title proscribing certain conduct incident to racketeering activity, sentence could only be imposed

under statute providing least severe punishment. U. S. v. Amato, S.D.N.Y.1973, 367 F.Supp. 547.

1018. Duration or termination of conspiracy, sentence and punishment

Defendants' resignation from savings and loan association in November 1988 did not terminate conspiracy to obtain money from the association by false or fraudulent pretenses, and sentencing under guidelines as amended in November 1989 and November 1990 was proper where defendants continued their participation and ownership in joint ventures, corporations, partnership and property which was obtained with money illegally defrauded from the association. U.S. v. Burger, D.Kan.1991, 770 F.Supp. 598, affirmed 968 F.2d 21, certiorari denied 113 S.Ct. 1382, 507 U.S. 959, 122 L.Ed.2d 758, on remand.

1019. Conviction on several counts, sentence and punishment

The fact that some of overt acts charged in conspiracy count were the same acts charged as offenses in substantive counts, and that each of substantive offenses found was committed pursuant to the conspiracy, did not result in a merger of the substantive counts in the conspiracy count and require that only a single sentence not exceeding the maximum two year penalty provided by former § 88 of this title [now this section] be imposed. Pinkerton v. U. S., U.S.Ala.1946, 66 S.Ct. 1180, 328 U.S. 640, 90 L.Ed. 1489, rehearing denied 67 S.Ct. 26, 329 U.S. 818, 91 L.Ed. 697.

A conviction upon several counts of indictment, each charging conspiracy to violate a different provision of the internal revenue liquor laws, did not sustain a sentence of more than two years' imprisonment, the maximum penalty for a single violation of former § 88 of this title [now this section] where jury's verdict was supported by evidence of but a single conspiracy, and for such a violation only the single penalty prescribed by said former section could have been imposed. Braverman v. U.S., U.S.Mich.1942, 63 S.Ct. 99, 317 U.S. 49, 87 L.Ed. 23.

Felony punishment for conspiracy to defraud United States was not improper, notwithstanding facts that defendant's additional conviction for aiding and abetting a willful failure to file a currency transaction report was stipulated to be a misdemeanor, and conspiracy to defraud statute provided for punishment as misdemeanor if underlying offense was misdemeanor, where conspiracy to defraud count was based on facts which were not limited to failure to file report on $200,000 currency transaction, but also included separate and distinct activities showing defendant's specific intent to aid and abet conspiracy to defraud Internal Revenue Service. U.S. v. Segal, C.A.9 (Cal.) 1988, 852 F.2d 1152.

Convictions on four counts of wire fraud, one count of transportation of proceeds of fraud in interstate commerce and one count of conspiracy in connection with illegal kickback scheme were supported by sufficient evidence, which showed that defendant was intimately involved in setting up various offshore accounts through which defendants channelled money which company paid for shipping, and jury could reasonably infer that defendant set up those accounts because he had foreknowledge that his employer, a freight forwarder, would get bid for shipping housing to Saudi Arabia, and that that venture would generate excessive profits. U.S. v. Lemire, C.A.D.C.1983, 720 F.2d 1327, 232 U.S.App.D.C. 100, certiorari denied 104 S.Ct. 2678, 467 U.S. 1226, 81 L.Ed.2d 874.

Sentences of imprisonment for 53 years, fines of $270,000 and special parole terms of six years; of imprisonment for 64 years, fines of $325,000 and special parole terms totalling eight years; and of imprisonment for 33 years, fines of $100,000, and special parole terms totalling four years imposed upon defendants who were convicted of conspiracy, Racketeer Influenced and Corrupt Organizations Act [sections 1961-1968 of this title] violations, violating the Travel Act [section 1952 of this title], and violating the drug laws with respect to large marijuana importing operation were not excessive. U. S. v. Phillips, C.A.5 (Fla.) 1981, 664 F.2d 971, certiorari denied 102 S.Ct. 2965, 457 U.S. 1136, 73 L.Ed.2d 1354, certiorari denied 103 S.Ct. 208, 459 U.S. 906, 74 L.Ed.2d 166.

As long as one general sentence was imposed, conviction on separate charges of conspiracy to interfere with

commerce by threats or violence and conspiracy to transport stolen property in interstate commerce could stand even though there had, in fact, been only one conspiracy. Natarelli v. U. S., C.A.2 (N.Y.) 1975, 516 F.2d 149.

Even though defendant convicted under three federal conspiracy statutes (this section and sections 846 and 963 of Title 21) was guilty of only one crime for which only a single sentence could be imposed, submission of all three counts was not prejudicial and defendant was not entitled to new trial, but the three separate concurrent sentences would be vacated and cause remanded for sentencing upon any of the three counts the Government might select. U. S. v. Honneus, C.A.1 (Mass.) 1974, 508 F.2d 566, certiorari denied 95 S.Ct. 1677, 421 U.S. 948, 44 L.Ed.2d 101.

Defendant was not entitled to relief from conviction on conspiracy to make, possess, pass and cause to be made, possessed and passed, certain counterfeit $20 federal reserve notes on theory that government charged defendant with single conspiracy while evidence showed two or more conspiracies where "common end" was passing of large quantity of counterfeit bills over period of time. U. S. v. Lloyd, C.A.5 (Tex.) 1970, 425 F.2d 711.

Where count alleging conspiracy to use mails to defraud stood on different ground from multiple counts of using mails to defraud, convictions could be had for conspiracy count and substantive counts. Atkinson v. U. S., C.A.8 (Mo.) 1969, 418 F.2d 1311.

Where indictment charged petitioner with conspiracy to violate § 472 of this title, defining substantive offense of possessing and uttering counterfeit obligations, said section punishing conspiracy to counterfeit was entitled to preference in determining punishment over this section, punishing conspiracy to commit any offense, even though this section was set out in indictment. Masi v. U.S., C.A.5 (Fla.) 1955, 223 F.2d 132, certiorari denied 76 S.Ct. 208, 350 U.S. 919, 100 L.Ed. 805.

Conviction of defendant under first count charging defendant and other with procuring another to pass counterfeit currency with intent to defraud and conviction under second count charging defendant with conspiring to pass counterfeit money did not constitute double jeopardy, though second count averred, as one of the overt acts done pursuant to alleged conspiracy, the passing of the same counterfeit note specified in the first count. Bocock v. U.S., C.A.7 (Ind.) 1954, 216 F.2d 465.

Sentence of individual defendant convicted on two indictments charging conspiracy to defraud United States by delivery under contracts with Federal Surplus Commodities Corporation rejected egg powder and conspiracy to defraud United States of obtaining payment of certain false claims would not be limited to two years imposed under the first indictment on theory of merger, since the two offenses were of equal rank the theory of merger was inapplicable. U.S. v. Samuel Dunkel & Co., C.A.2 (N.Y.) 1950, 184 F.2d 894, certiorari denied 71 S.Ct. 491, 340 U.S. 930, 95 L.Ed. 671.

Sentences for conspiracy to cause stolen goods to be transported in interstate commerce under former § 418a of this title rather than former § 88 of this title [now this section] were immaterial since the offenses denounced by each section were the same, particularly where the sentences of all the defendants except one for conspiracy were concurrent with those of the substantive offense and separate overt acts on his part were proved by uncontradicted testimony. U.S. v. Tannuzzo, C.A.2 (N.Y.) 1949, 174 F.2d 177, certiorari denied 70 S.Ct. 38, 338 U.S. 815, 94 L.Ed. 493, rehearing denied 70 S.Ct. 233, 338 U.S. 896, 94 L.Ed. 551.

Where evidence sustained conviction of counterfeiting, of unlawful possession of counterfeit currency, and of conspiracy to violate former §§ 262 and 265 of this title, and maximum sentence of 15 years was possible for substantive offenses and a maximum sentence of two years could have been imposed for conspiracy, a general sentence of three years was sustained. U.S. v. Karavias, C.A.7 (Ill.) 1948, 170 F.2d 968.

Defendant sentenced both for conspiracy to commit crime and for the substantive offense was not entitled to have

sentence on conspiracy count vacated on ground that it was unfair to prosecute him on both counts, since matter of whether a defendant should be charged for both a substantive offense and a conspiracy is a question for law enforcement authorities. Rutledge v. U. S., C.C.A.8 (Ark.) 1948, 168 F.2d 776.

Where court, before accepting pleas of guilty, stated that charge involved in first count was conspiracy to escape and charge involved in second count was attempt to escape, and explained punishment possible for such offenses, defendant's pleas of guilty and sentences thereon did not amount to twice pleading guilty and twice being sentenced for conspiracy, even if second count was duplicitous as embracing both charge of conspiracy and charge of attempt. Brown v. U. S., C.C.A.8 (Ark.) 1948, 167 F.2d 772.

Where separate counts alleged conspiracy to unlawfully transport women in interstate commerce for purpose of debauchery, and first count covered transportation of two women from Atlanta to Dade county Florida, on same trip, only one conspiracy was alleged for which maximum sentence was two years, and sentence of two years on each count, the sentences to run consecutively, rendered sentence on second count void. Youst v. U.S., C.C.A.5 (Fla.) 1945, 151 F.2d 666.

Where petitioner was sentenced to 15 years on each of two counts for violations of former §§ 264 and 265 of this title, relating to using plates to print government notes without authority and uttering forged government obligation, with the terms to run consecutively and for two years for violation of former § 88 of this title [now this section], relating to conspiring to commit crimes against the government, with the terms to run concurrently with the others, the sentences were proper. Spencer v. Cox, C.C.A.8 (Mo.) 1944, 140 F.2d 73, certiorari denied 64 S.Ct. 943, 322 U.S. 731, 88 L.Ed. 1566.

Sentence on each of counts for conspiracy to import liquor, and to barter, sell, and furnish liquor, was properly imposed. Olmstead v. U.S., C.C.A.9 (Wash.) 1927, 19 F.2d 842, certiorari denied 48 S.Ct. 117, 275 U.S. 557, 72 L.Ed. 424, 72 L.Ed. 729, rehearing granted 48 S.Ct. 207, 276 U.S. 609, 72 L.Ed. 729, affirmed 48 S.Ct. 564, 277 U.S. 438, 72 L.Ed. 944.

In prosecution under former § 88 of this title [now this section] for conspiracy to commit an offense against the United States by having possession of and transporting intoxicating liquor, in violation of the National Prohibition Act, former § 12 of Title 27, the court was authorized in imposing the punishment prescribed for conspiracy to commit an offense against the United States, though such punishment was greater than that prescribed by the said former section for the offenses which the defendants had conspired to commit. Murry v. U. S., C.C.A.8 (Ark.) 1922, 282 F. 617.

In determining sentence for defendant convicted on two of eleven mail fraud counts and acquitted on one count of conspiracy, court would not consider acquitted conduct, especially where facts government sought to have court consider were not facts enhancing crime of conviction, but rather facts comprising different crimes, each in a different count. U.S. v. Pimental, D.Mass.2005, 367 F.Supp.2d 143. Sentencing And Punishment 782

Where defendant was found guilty on four counts charging conspiracy to violate narcotic laws and four counts of substantive violation, form of sentence imposed on defendant, claiming that only the single penalty prescribed by this section could have been imposed, was sufficient to impose a total imprisonment of 11 years on all counts, substantive and conspiratorial. Rush v. U. S., E.D.La.1964, 225 F.Supp. 843.

Where indictment charged that defendants conspired to violate §§ 4701, 4703, 4704(a), 4724(c), 4771(a) of Title 26 and §§ 173 and 174 of Title 21, and then set forth overt acts allegedly done in furtherance of the conspiracy and at the end of the list was a citation to this section, and jury returned a general verdict of "guilty" and evidence proved not only a conspiracy to violate narcotics laws but to violate § 174 of Title 21 as well, verdict was construable as guilty as charged in the indictment and defendants were validly sentenced under § 174 of Title 21 containing the more severe penalty, rather than under this section, the general conspiracy statute. U. S. v.

McKenney, S.D.N.Y.1959, 181 F.Supp. 143, affirmed 281 F.2d 908, certiorari denied 81 S.Ct. 1916, 366 U.S. 960, 6 L.Ed.2d 1253, rehearing denied 82 S.Ct. 26, 368 U.S. 871, 7 L.Ed.2d 72, certiorari denied 81 S.Ct. 1929, 366 U.S. 967, 6 L.Ed.2d 1257.

Where defendant was charged with conspiring to violate the Harrison Act, § 4701 et seq. of Title 26, and § 7237(a) of Title 26 contains a minimum penalty of two years and the general conspiracy provision, this section, does not specify any minimum penalty, punishment for conspiring to dispense narcotics other than from the original stamped package was entitled to preference over provisions of general conspiracy statute, this section, and where jury returned a general verdict of guilty, defendant should be sentenced under § 7237(a) of Title 26. U.S. v. Shackelford, S.D.N.Y.1957, 180 F.Supp. 857.

Where indictment charged defendant with conspiring to violate the Jones-Miller Act, §§ 173 and 174 of Title 21, and the Harrison Act, § 4701 et seq. of Title 26, and the general conspiracy laws of the United States, this section, and court could not ascertain upon which statutes jury based their general verdict of guilty, and evidence supported a conviction under both Jones-Miller Act and Harrison Act, but a sentence under the former, providing a greater penalty, would be prejudicial to defendant despite his failure to object to duplicity before trial, defendant should not be sentenced under Jones-Miller Act. U.S. v. Shackelford, S.D.N.Y.1957, 180 F.Supp. 857.

Conspiracy and substantive charges are entirely separate and distinct crimes, and conviction on a substantive offense does not bar a subsequent conviction for a conspiracy and separate penalties may be imposed for each crime. U S v.Gelb, S.D.N.Y.1959, 175 F.Supp. 267, affirmed 269 F.2d 675, certiorari denied 80 S.Ct. 66, 361 U.S. 822, 4 L.Ed.2d 66.

Where indictment charged conspiracy to conceal goods valued at $80,000, substantive offense of concealment of such goods, a conspiracy to conceal $38,000 in cash, and substantive offense of concealing such cash, general or gross sentence of three years imprisonment was valid, since general sentence did not exceed the aggregate of punishment which could have been imposed upon the several counts. U. S. ex rel. Kutler v. Hill, M.D.Pa.1937, 21 F.Supp. 229.

Where first count of indictment charged that defendant did conspire to conceal merchandise to value of $80,000, second count charged that defendant did conceal property to value of $80,000, third count charged that defendant did agree to conceal cash to amount of $38,000 and upwards, and fourth count charged that defendant did conceal cash to amount of $38,000, four offenses were charged, as regards question whether sentence of three years' imprisonment was void. U. S. ex rel. Kutler v. Hill, M.D.Pa.1937, 21 F.Supp. 229.

When an indictment contains three counts charging defendants with conspiracy to defraud the United States and there is a verdict of guilty on all of the counts, if before judgment the law should be changed eliminating the element of fraud on which one of the counts was based, the verdict would stand and support judgment on the counts based on the elements of fraud not affected by the legislation. In re Calicott, C.C.N.Y.1868, 4 F.Cas. 1051, No. 2311.

Defendant who pled guilty to one count of conspiracy to commit bank fraud and one count of bank fraud would be sentenced to 12 months' imprisonment followed by two years' supervised release, would pay mandatory special assessment of $200, and would be required to make restitution to victim, even though defendant had zero criminal history points and criminal history category of one; offenses were grouped because they involved same harm, base offense level of six was adjusted to 16 in consideration that resulting loss was more than $200,000 but less than $350,00 and that offense involved more than minimal planning, defendant qualified for three-level reduction for acceptance of responsibility resulting in total offense level of 13, and applicable sentencing range was 12 to 18 months' imprisonment. U.S. v. Palaez, S.D.N.Y.2003, 2003 WL 2012407, Unreported. Sentencing And Punishment 725; Sentencing And Punishment 736; Sentencing And Punishment 772

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Defendant who pled guilty to one count of conspiracy to commit wire fraud and one count of wire fraud would be sentenced to 18 months' imprisonment followed by two years' supervised release, even though defendant had zero criminal history points and criminal history category of one; offenses were grouped because they involved same harm, six levels were added to base offense level of six because financial loss of $35,050 was more than $30,000 but less than $70,000, four more levels were added because offense involved misrepresentation that defendant was acting on behalf of government agency and substantial part of scheme took place outside United States, defendant qualified for three-level reduction for acceptance of responsibility, and applicable sentencing range was 12 to 18 months' imprisonment. U.S. v. Uzor, S.D.N.Y.2003, 2003 WL 2012405, Unreported. Sentencing And Punishment 689; Sentencing And Punishment 736; Sentencing And Punishment 772

1020. Multiple penalties, sentence and punishment

Multiple penalties could not be imposed for conspiracy to violate certain federal law merely by reason of corporate succession. U. S. v. Stone, C.A.8 (Mo.) 1971, 452 F.2d 42. Conspiracy 51

1021. Multiple defendants, sentence and punishment

District court's reliance on normal retail price of original copyrighted software to arrive at valuation of infringing items, for purposes of sentencing defendants for conspiracy to commit copyright infringement in connection with their involvement in group dedicated to allowing members to download unauthorized copies of copyrighted material over the internet, was not clearly erroneous, given that there was little or no evidence of value of infringing item, and that infringing item was virtual equivalent of infringed item. U.S. v. Slater, C.A.7 (Ill.) 2003, 348 F.3d 666, 69 U.S.P.Q.2d 1081. Sentencing And Punishment 736

When sentencing defendant for conspiracy to commit bank fraud, district court could rely in part on sentences received by co-defendants in deciding not to depart downward to point that defendant would receive no incarcerative term whatsoever. U.S. v. Bonner, C.A.2 (Conn.) 2002, 313 F.3d 110. Sentencing And Punishment 870

District court's error in sentencing petitioner for marijuana smuggling while sentencing petitioner's codefendants under general conspiracy provision when all three had been charged in a single count indictment for conspiracy to smuggle marijuana, did not establish any "class" from which petitioner was improperly excluded, and there was no denial of equal protection. U. S. v. Leyvas, C.A.9 (Cal.) 1971, 446 F.2d 901. Constitutional Law 250.3(1)

Accused could not complain because his confederate received a more favorable sentence than himself. U.S. v. Mann, C.C.A.7 (Ind.) 1939, 108 F.2d 354. Criminal Law 1177

Defendant who, by his own admission, had an agreement with source of false identification documents for a few months and who used that source "every now and then" to obtain documents which he sold to others would have believed that his coconspirator had the ability to produce multiple counterfeit documents but defendant could not be held accountable at sentencing for conspiracy for the entire 300 documents which the coconspirator held in his bedroom at the time of his arrest. U.S. v. Avila-Medina, N.D.Ill.1994, 844 F.Supp. 427.

1022. Sentence within maximum limits, sentence and punishment

General sentences of fine and imprisonment imposed under substantive counts were still valid after court had held on appeal that certain of the counts were barred by limitations, where each of remaining substantive counts on which jury had returned a verdict of guilty carried a maximum penalty in excess of that imposed by the general sentences. Pinkerton v. U. S., U.S.Ala.1946, 66 S.Ct. 1180, 328 U.S. 640, 90 L.Ed. 1489, rehearing denied 67 S.Ct. 26, 329 U.S. 818, 91 L.Ed. 697.

18 U.S.C.A. § 371

A conspiracy to commit any offense which, by an Act of Congress, is prohibited in the interest of the public policy of the United States, although not of itself made punishable by criminal prosecution, but only by suit for a penalty, was a conspiracy to commit an "offense against the United States," within the meaning of former § 88 of this title, and, provided there was the necessary overt act or acts, was punishable under the terms of said former section. U.S. v. Hutto, U.S.Okla.1921, 41 S.Ct. 541, 256 U.S. 524, 65 L.Ed. 1073. See, also, U.S. v. Hutto, Okl.1921, 41 S.Ct. 543, 256 U.S. 530, 65 L.Ed. 1076; Biskind v. U.S., C.C.A.Ohio 1922, 281 F. 47, certiorari denied 43 S.Ct. 93, 260 U.S. 731, 67 L.Ed. 486.

District court's imposition of 14-level enhancement based on amount of loss in calculating sentence for defendant's guilty plea conviction for mail fraud and conspiracy to commit securities fraud and mail fraud did not violate defendant's rights under the Fifth or Sixth Amendments, even though indictment did not allege a specific amount of loss attributable to defendant's conduct, where those facts did not trigger mandatory minimum sentence or increase penalty beyond prescribed statutory maximum sentence. U.S.C.A. Const.Amend. 5,6; 18 U.S.C.A. §§§§ 371, U.S. v. Sheikh, C.A.2 (N.Y.) 2006, 433 F.3d 905, for additional opinion, see 161 Fed.Appx. 165, 2006 WL 41327. Criminal Law 113

District court's Sixth Amendment *Booker* error in sentencing defendant to enhanced sentence for bank fraud and conspiracy to commit bank fraud based on court-found facts was harmless beyond a reasonable doubt, given that defendant was sentenced to highest possible term in Sentencing Guidelines range, and that, during sentencing, district court lectured defendant on the avarice he showed in committing fraud and involving loved ones in pursuit of material possessions, which indicated that district court, given greater discretion, would not reduce sentence. U.S. v. Waldroop, C.A.10 (Okla.) 2005, 431 F.3d 736. Criminal Law 1166(1)

In prosecution, based on rebate program, for mail and wire fraud and conspiracy to commit mail and wire fraud, sentence did not violate *Apprendi;* sentence did not exceed total statutory maximum. U.S. v. Fredette, C.A.10 (Wyo.) 2003, 315 F.3d 1235, dismissal of habeas corpus affirmed 65 Fed.Appx. 929, 2003 WL 1795858, certiorari denied 123 S.Ct. 2100, 538 U.S. 1045, 155 L.Ed.2d 1084. Jury 34(1)

For purpose of Sentencing Guidelines provision that letter grade of offense determines permissible length of discretionary supervised release term, letter grade of offense for which governing statute carried no letter grade and for which Guidelines provided no guidance regarding classification was determined in reference to statutory maximum term of imprisonment, not in reference to applicable Guidelines range. U.S. v. Cunningham, C.A.2 (Vt.) 2002, 292 F.3d 115. Sentencing And Punishment 1946

Four years imprisonment for conspiracy, which imprisonment was longer than maximum sentence which could have been imposed on any of the six substantive charges, i.e., three years, was not improper, in that conspiracy and completed substantive offenses were separate crimes. U.S. v. Cattle King Packing Co., Inc., C.A.10 (Colo.) 1986, 793 F.2d 232, certiorari denied 107 S.Ct. 573, 479 U.S. 985, 93 L.Ed.2d 577, habeas corpus denied 928 F.2d 1133.

Whether defendant was guilty of conspiring to defraud United States by obstructing Internal Revenue Service in its efforts to collect information and reports of currency transactions larger than $1,000, or wilfully failing to file and cause failure to file of currency transaction reports in connection with currency exchanges totalling in excess of $100,000, defendant was subject to being sentenced to five years in prison, or $1,000 fine, and therefore, sentence within those bounds was not excessive. U.S. v. Sans, C.A.11 (Fla.) 1984, 731 F.2d 1521, rehearing denied 738 F.2d 451, certiorari denied 105 S.Ct. 791, 469 U.S. 1111, 83 L.Ed.2d 785. Conspiracy 51; United States 34

After defendants were convicted of conspiracy to commit mail fraud and mail fraud, sentences of 20 and 12 years respectively were not abuse of discretion in light of massive fraud with over 700 victims and losses approaching one million dollars. U. S. v. Shelton, C.A.7 (Ill.) 1982, 669 F.2d 446, certiorari denied 102 S.Ct. 1989, 456 U.S. 934, 72 L.Ed.2d 454.

18 U.S.C.A. § 371

Fact that defendant's sentence was more severe than that received by codefendants while indictment cast defendant and codefendants in a similar role in narcotics conspiracy did not entitle defendant to have sentence vacated where the sentence was within the statutory limits and no abuse of discretion was demonstrated. U. S. v. Cuesta, C.A.5 (Fla.) 1979, 597 F.2d 903, certiorari denied 100 S.Ct. 451, 444 U.S. 964, 62 L.Ed.2d 377, certiorari denied 100 S.Ct. 452, 444 U.S. 964, 62 L.Ed.2d 377.

Eight-year sentence imposed upon defendant convicted of securities fraud, wire fraud, mail fraud, and conspiracy was not disparate or excessive. U. S. v. Mahler, C.A.2 (N.Y.) 1978, 579 F.2d 730, certiorari denied 99 S.Ct. 205, 439 U.S. 872, 58 L.Ed.2d 184, certiorari denied 99 S.Ct. 592, 439 U.S. 991, 58 L.Ed.2d 666, rehearing denied 99 S.Ct. 885, 439 U.S. 1104, 59 L.Ed.2d 66.

Court of Appeals reviewing defendant's conviction for various charges relating to unlawful copying of copyrighted sound recordings could not disturb sentence imposed upon defendant, even though such sentence was more severe than that given his coconspirator who had pleaded guilty and testified in behalf of prosecution, where sentence was well within applicable statutory limits. U. S. v. Malicoate, C.A.10 (Okla.) 1975, 531 F.2d 439, 189 U.S.P.Q. 691.

Imposition of five-year sentence on defendant upon conviction of conspiracy to transport forged securities in interstate commerce was not shown to have been penalty for exercising right to jury trial, but was warranted by evidence that defendant was principal director of actions taken. U. S. v. Thompson, C.A.7 (Ill.) 1973, 476 F.2d 1196, certiorari denied 94 S.Ct. 214, 414 U.S. 918, 38 L.Ed.2d 154.

Where maximum term of imprisonment which could be imposed under this section for conspiring to manufacture counterfeit Federal Reserve notes was five years, imposition of seven years' imprisonment was erroneous even though trial court made sentence subject to granting of parole at such time as the board of parole might determine. U. S. v. King, C.A.6 (Tenn.) 1972, 467 F.2d 478.

There was no error in sentencing defendant to serve consecutive terms for conspiracy to receive and conceal stolen postal money orders and to forge postal money orders, and for receiving and concealing stolen postal money orders, nor in sentencing defendant to serve longer terms than his codefendants. U. S. v. Singletary, C.A.5 (Fla.) 1971, 441 F.2d 333.

In view of this section providing that if crime, furtherance of which is object of conspiracy, is only a misdemeanor, maximum punishment on conviction of conspiracy may not exceed maximum punishment provided for substantive offense, two-year sentences on conspiracy count charging conspiracy to violate federal wagering tax laws were illegal, though defendants were convicted on more than one substantive count under Title 26, where substantive offenses were misdemeanors only, and maximum sentence which could have been imposed on conviction of any substantive offense was one year imprisonment, and sentences were to run concurrently. U. S. v. Magliano, C.A.4 (Md.) 1964, 336 F.2d 817.

Where sentences imposed on substantive counts were to run concurrently with conspiracy count, and all sentences were within punishment prescribed for conspiracy, decision of Court of Appeals was based upon conspiracy count alone. U. S. v. Tenenbaum, C.A.7 (Ill.) 1964, 327 F.2d 210, certiorari denied 84 S.Ct. 1165, 377 U.S. 905, 12 L.Ed.2d 177.

It was unnecessary, following conviction for transporting stolen securities in interstate commerce and for conspiracy to transport, to consider the sufficiency of the evidence to support the conspiracy count where conviction on the transportation count was supported and where the sentence thereon was not more than the maximum allowable on the conspiracy count. Thogmartin v. U. S., C.A.8 (Iowa) 1963, 313 F.2d 589.

This section providing that if the offense, the commission of which is object of conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor,

was not applicable where the substantive offense against United States was not a misdemeanor but was enforceable only by a suit for a civil penalty, and therefore 18-month sentence which was within limit prescribed in first paragraph of this section was lawful, even though it might appear incongruous to impose a greater penalty for a conspiracy to commit an offense against the United States which is neither a felony nor a misdemeanor than would be the penalty had the offense against the United States been a misdemeanor only. Hunsaker v. U. S., C.A.9 (Or.) 1960, 279 F.2d 111, certiorari denied 81 S.Ct. 52, 364 U.S. 819, 5 L.Ed.2d 49.

Where until 1948, former § 88 of this title [now this section] provided a maximum prison punishment of two years, irrespective of whether the conspiracy was to commit an "offense" or to "defraud" the United States, and was then amended to increase the maximum sentence to five years, with a proviso that where object of conspiracy was to commit a misdemeanor, sentence should not exceed the maximum punishment provided for substantive offense, amendment did not indicate an intent to eliminate non-criminal offenses, so as to preclude a conviction for conspiracy to violate the Gold Reserve Act, § 440 et seq. of Title 31, and Regulations, which carry only civil penalties. United States v. Wiesner, C.A.2 (N.Y.) 1954, 216 F.2d 739.

Defendants were not prejudiced because they were convicted of two conspiracies when allegedly there was only one conspiracy shown, where sentences of imprisonment on conspiracy counts ran concurrently with those imposed on remaining counts, and penalties exacted were within maximum prescribed for a single conspiracy. Maxfield v. U.S., C.C.A.9 (Nev.) 1945, 152 F.2d 593, certiorari denied 66 S.Ct. 821, 327 U.S. 794, 90 L.Ed. 1021.

A defendant convicted of violating Securities Act, § 77q of Title 15, and of using the mails to defraud and of conspiracy to effect scheme to defraud, who was sentenced to imprisonment on 18 counts for 15 years and to pay a fine of $25,000 was not given an "excessive sentence" where sentence was within maximum limits provided by statutes involved. Holmes v. U. S., C.C.A.8 (Neb.) 1943, 134 F.2d 125, certiorari denied 63 S.Ct. 1434, 319 U.S. 776, 87 L.Ed. 1722.

Where proof in prosecution for conspiracy to violate internal revenue laws relating to intoxicating liquor pointed to single continuing agreement though embracing a multiplicity of criminal activities, accused could not be sentenced for a term of more than two years' imprisonment, constituting maximum penalty for single conspiracy. Moss v. U.S., C.C.A.6 (Mich.) 1943, 132 F.2d 875.

Counts for conspiracy charged but one offense, so that punishment in excess of that authorized for one offense was unlawful. Sprague v. Aderholt, D.C.Ga.1930, 45 F.2d 790.

1023. Concurrent sentences, sentence and punishment

Under concurrent-sentence doctrine, it was unnecessary to determine the sufficiency of evidence under substantive count of possession with intent to distribute 546 pounds of marijuana where conviction on conspiracy count was sustained and concurrent sentences had been imposed. U. S. v. Muller, C.A.5 (Tex.) 1977, 550 F.2d 1375, certiorari denied 98 S.Ct. 522, 434 U.S. 971, 54 L.Ed.2d 460.

Where trial court erroneously imposed separate sentences on defendant after conviction on two-count conspiracy indictment where proof showed only single conspiracy, error could not be cured by existence of concurrent sentences, and Court of Appeals could not discern sentencing court's intention with certainty, proper remedy was to remand case for resentencing, even though vacation of sentence on one count would leave defendant with permissible sentence under statute. Natarelli v. U. S., C.A.2 (N.Y.) 1975, 516 F.2d 149.

Any error with respect to sufficiency of evidence to sustain conviction under conspiracy count was harmless under concurrent sentence doctrine where there was no error with respect to conviction on other counts and concurrent sentences were imposed. U.S. v. Ramirez, C.A.5 (Tex.) 1975, 506 F.2d 742.

18 U.S.C.A. § 371

In prosecution for conspiracy to conduct an abetting operation of illegal gambling and conspiracy to obstruct Florida law, defendant's contentions that one of the counts upon which he was convicted was multiplicitous with another and that two of the counts properly carried lesser punishments than he received were foreclosed by concurrent sentence doctrine. U. S. v. Wertis, C.A.5 (Fla.) 1974, 505 F.2d 683, certiorari denied 95 S.Ct. 2662, 422 U.S. 1045, 45 L.Ed.2d 697.

Where four defendants were each convicted and sentenced for conspiracy, and more than one substantive count for violation of the federal Travel Act, section 1952 of this title, where jail terms were concurrent, where separate fines were imposed on each defendant on the conspiracy count and on at least one substantive count, each of these four defendants was affected adversely by the separate convictions, and the concurrent sentence doctrine was not applicable. U. S. v. Polizzi, C.A.9 (Cal.) 1974, 500 F.2d 856, certiorari denied 95 S.Ct. 802, 419 U.S. 1120, 42 L.Ed.2d 820, certiorari denied 95 S.Ct. 803, 419 U.S. 1120, 42 L.Ed.2d 820.

Where, during prosecution of defendants for conspiracy to misapply and misapplication of $244,250 of funds of savings and loan association, codefendants pleaded guilty and each received sentences of $10,000 fine and probation and third defendant, having elected to stand trial, was found guilty, imposition on third defendant of $10,000 fine and concurrent two-year sentence on each count did not show unlawful disparity from sentences received by other defendants. U. S. v. Kaczmarek, C.A.7 (Ill.) 1974, 490 F.2d 1031.

Issues concerning defendant's conviction on one count of conspiracy to defraud the United States were rendered moot where sentence imposed for conviction of that offense was ordered to run concurrently with sentence imposed for valid conviction on another count of same indictment and the alleged errors did not affect the other conviction. U. S. v. Tager, C.A.10 (Kan.) 1973, 479 F.2d 120, certiorari denied 94 S.Ct. 924, 414 U.S. 1162, 39 L.Ed.2d 115, rehearing denied 94 S.Ct. 1962, 416 U.S. 952, 40 L.Ed.2d 302.

Although a number of issues were raised with respect to verdict on conspiracy count in robbery prosecution, Court of Appeals was not compelled to decide them, where 5-year term imposed on conviction on such count was to be served concurrently with 20-year sentence imposed on conviction for substantive charge about which there was no question. U. S. v. Crouch, C.A.9 (Cal.) 1971, 442 F.2d 427, certiorari denied 92 S.Ct. 325, 404 U.S. 959, 30 L.Ed.2d 277.

It was not necessary to decide on appeal whether use of certain testimony was prejudicial to defendant under conspiracy count where defendant received concurrent sentences of five years on each of three counts and this did not exceed maximum permitted on other two counts. U. S. v. Johnson, C.A.5 (Tex.) 1971, 439 F.2d 885, certiorari denied 92 S.Ct. 213, 404 U.S. 880, 30 L.Ed.2d 161.

Where conspiracy convictions were affirmed and sentences on conspiracy counts were to run concurrently with sentences on substantive convictions, it was not necessary to resolve problems raised in connection with substantive convictions. U. S. v. Wechsler, C.A.4 (Va.) 1968, 392 F.2d 344, certiorari denied 88 S.Ct. 2283, 392 U.S. 932, 20 L.Ed.2d 1389, rehearing denied 89 S.Ct. 71, 393 U.S. 902, 21 L.Ed.2d 191, rehearing denied 408 F.2d 1184, certiorari denied 89 S.Ct. 2130, 395 U.S. 978, 23 L.Ed.2d 766, certiorari denied 89 S.Ct. 2131, 395 U.S. 978, 23 L.Ed.2d 766, rehearing denied 90 S.Ct. 40, 396 U.S. 870, 24 L.Ed.2d 126, certiorari denied 89 S.Ct. 2150, 395 U.S. 984, 23 L.Ed.2d 773.

Where conviction on one count of indictment for which 15-year sentence was imposed was sustained, it was unnecessary to consider any infirmity in two conspiracy convictions in which two five-year sentences were imposed to run concurrently with 15-year sentence imposed on substantive count. U. S. v. Nitti, C.A.7 (Ill.) 1967, 374 F.2d 750, certiorari denied 87 S.Ct. 2141, 388 U.S. 920, 18 L.Ed.2d 1366.

Inasmuch as defendant's sentence on substantive count was concurrent and of same length as sentence on conspiracy count and it was concluded that conviction on conspiracy count should be affirmed, court would not

decide whether evidence against defendant on substantive count was sufficient. U. S. v. Kahn, C.A.2 (N.Y.) 1966, 366 F.2d 259, certiorari denied 87 S.Ct. 321, 385 U.S. 948, 17 L.Ed.2d 226, certiorari denied 87 S.Ct. 324, 385 U.S. 948, 17 L.Ed.2d 226, rehearing denied 87 S.Ct. 502, 385 U.S. 984, 17 L.Ed.2d 445, rehearing denied 87 S.Ct. 503, 385 U.S. 984, 17 L.Ed.2d 445.

Where defendant was convicted of having in his possession certain counterfeit bank notes, for selling the same notes on the same day, and of conspiring to do so, court properly imposed concurrent sentences of 15 years on possession count and 10 years on sale count. U.S. v. DiPalermo, C.A.2 (N.Y.) 1965, 340 F.2d 988, certiorari denied 85 S.Ct. 1774, 381 U.S. 940, 14 L.Ed.2d 703.

Even if explanation of law of conspiracy had been inadequate, such inadequacy would not prejudice defendant whose sentence on conspiracy count was to be served concurrently with sentences imposed on substantive counts. U. S. v. Mayo, C.A.2 (N.Y.) 1965, 340 F.2d 943.

Insufficiency of proof on four of five conspiracy counts would perhaps not be reversible error as to concurrent sentences received by two defendants, but would affect consecutive sentences imposed on other defendant. U. S. v. Quong, C.A.6 (Tenn.) 1962, 303 F.2d 499, certiorari denied 83 S.Ct. 119, 371 U.S. 863, 9 L.Ed.2d 100.

Twelve-year sentences for sale of counterfeit money, to run concurrently with five-year sentence for conspiracy, were not void on theory that substantive offenses were merged in the conspiracy. Buono v. U S, S.D.N.Y.1954, 126 F.Supp. 644.

Defendant who pled guilty to conspiring to steal the property of a healthcare benefit program and stealing checks payable to healthcare providers valued at over $800,000 would be sentenced to 46 months on each count, to be served concurrently, to be followed by 3 years' supervised release on each count, to be served concurrently; the offense involved an intended loss of more than $400,000 but less than $1,000,000, and defendant's criminal convictions resulted in 11 criminal history points. U.S. v. Smith, S.D.N.Y.2003, 2003 WL 1701979, Unreported. Conspiracy 51; Larceny 88; Sentencing And Punishment 571

Defendant convicted on a plea of guilty to conspiring to steal the property of a healthcare benefit program and stealing checks payable to healthcare providers would be sentenced to 51 months on each count, to be served concurrently, to be followed by 3 years supervised release on each count, to be served concurrently; the offense involved an intended loss of more than $400,000 but less than $1,000,000, and defendant's criminal convictions resulted in 25 criminal history points. U.S. v. Francis, S.D.N.Y.2003, 2003 WL 1701978, Unreported. Conspiracy 51; Sentencing And Punishment 559(1)

1024. Consecutive sentences, sentence and punishment

Consecutive sentences for conspiracy to commit arson and substantive crimes, based on two separate incidents, both of which were objects of same conspiracy, did not violate prohibition against double jeopardy. U.S. v. Chamlee, C.A.8 (Ark.) 1987, 828 F.2d 451.

Double jeopardy clause of U.S.C.A. Const.Amend. 5 was not violated by imposing consecutive sentences on petitioner following his conviction of conspiracy and of interstate transportation of stolen securities, since both this section and section 2314 of this title mandate proof of different facts; conspiracy requires proof of an agreement or combination to commit an offense, but that element is not germane to a charge of transporting stolen securities in interstate commerce. U.S. v. Santora, C.A.5 (Tex.) 1983, 711 F.2d 41.

Contention that conspiracy sentence was invalid because there could be no consecutive punishment for conspiracy following punishment for substantive offense was without merit. U. S. v. Welty, C.A.3 (Pa.) 1970, 426 F.2d 615, on remand 330 F.Supp. 699.

In determining whether consecutive sentences for substantive offense and conspiracy to commit such offense constitutes double punishment for same crime, test does not turn on identity of evidence actually produced on both counts, but on whether same evidence is required to prove two offenses. Nolan v. U. S., C.A.10 (Okla.) 1969, 423 F.2d 1031, certiorari denied 91 S.Ct. 47, 400 U.S. 848, 27 L.Ed.2d 85.

Where sentences of 5 years and 25 years to run concurrently were imposed pursuant to conviction on charges of conspiracy and armed postal robbery which was ultimately set aside, subsequent imposition of sentences of 5 years and 25 years to run consecutively with 25-year sentence suspended and defendant placed on probation for 5 years did not deprive defendant of due process. Thurman v. U. S., C.A.9 (Cal.) 1970, 423 F.2d 988, certiorari denied 91 S.Ct. 148, 400 U.S. 911, 27 L.Ed.2d 151. Constitutional Law 270(3)

Consecutive sentences may be imposed for violation of criminal statute and for conspiracy to violate it. Sanders v. U. S., C.A.5 (La.) 1969, 415 F.2d 621, certiorari denied 90 S.Ct. 1096, 397 U.S. 976, 25 L.Ed.2d 271.

Defendant convicted on two counts, one charging that defendant conspired with employee of foreign embassy to transmit information relating to national defense to foreign government, and second count charging that defendant and same employee and other persons conspired to obtain national defense information, was properly sentenced to consecutive sentences on each count. Boeckenhaupt v. U. S., C.A.4 (Va.) 1968, 392 F.2d 24, certiorari denied 89 S.Ct. 162, 393 U.S. 896, 21 L.Ed.2d 177.

Sentences aggregating 20 years were validly imposed for transportation of a forged warehouse receipt in interstate commerce and conspiracy to violate section 2314 of this title prohibiting such transportation where sentences, consisting of two consecutive ten-year sentences and one concurrent five-year and one concurrent ten-year sentence, were imposed after compliance with section 4208 of this title providing for commitment pending acquisition of more information as a basis of sentencing, notwithstanding claim that reference to concurrence of sentences made after sentencing suggested that sentences aggregating ten years had been imposed. U. S. v. DeAngelis, C.A.3 (N.J.) 1966, 361 F.2d 788, certiorari denied 87 S.Ct. 77, 385 U.S. 834, 17 L.Ed.2d 69.

Imposition of consecutive sentences for substantive narcotics offenses arising from single transaction was not error and imposition of separate sentence for conspiracy offense was not improper. U. S. v. Accardi, C.A.2 (N.Y.) 1965, 342 F.2d 697, certiorari denied 86 S.Ct. 426, 382 U.S. 954, 15 L.Ed.2d 359.

Court had jurisdiction to impose consecutive sentences for convictions for robbery and conspiracy to rob. Potter v. U. S., C.A.8 (Mo.) 1963, 317 F.2d 661.

Substantive offense is not merged into conspiracy, and defendant may be punished for both by consecutive sentences, unless precluded by particular statute defining substantive offense. Hill v. U. S., C.A.9 (Wash.) 1962, 306 F.2d 245.

It was proper to impose separate consecutive sentences on defendant for crime of conspiracy to transport women in interstate commerce for purpose of prostitution, and for transportation for same women in interstate commerce for purposes of prostitution. Carmack v. U. S., C.A.10 (Okla.) 1961, 296 F.2d 893.

Imposition of consecutive sentences for substantive count involving sale of one-fourth kilo of heroin and conspiracy involving at least kilo was not improper. U. S. v. Campisi, C.A.2 (N.Y.) 1961, 292 F.2d 811, certiorari denied 82 S.Ct. 401, 368 U.S. 958, 7 L.Ed.2d 389.

A defendant may be given consecutive sentences for commission of a substantive offense and for conspiring to commit that offense. Meyers v. U. S., C.A.5 (Tex.) 1958, 260 F.2d 956, certiorari denied 79 S.Ct. 893, 359 U.S. 975, 3 L.Ed.2d 841. See, also, U.S. v. Arce, C.A.5 (Tex.) 1980, 633 F.2d 689, certiorari denied 101 S.Ct. 2051, 451 U.S. 972, 68 L.Ed.2d 351. Sentencing And Punishment 559(3)

One may be given different penalties, to run consecutively, for conspiracy to smuggle and for perjury, although perjury conviction was based upon same facts as one of the overt acts charged in the conspiracy count. Murray v. U. S., C.A.9 (Cal.) 1954, 217 F.2d 583.

Where first conspiracy charged transportation of stolen lithographs in interstate commerce between Aug. 25, and Sept. 1, 1977, while second conspiracy charged transportation of stolen jewelry in interstate commerce between Sept. 1 and Sept. 22, 1977, two conspiracies were separate and distinct and, thus, defendant properly received consecutive sentences after being indicted and convicted in two cases each involving a conspiracy count and the substantive offense count. Kerrigan v. U. S., D.C.Mass.1980, 491 F.Supp. 1355, affirmed 644 F.2d 47.

The district court was without authority to impose two sentences, running consecutively, on accused pleading guilty to count charging that accused conspired to remove, deposit, and conceal commodities with intent to defraud the United States of tax thereon, in violation of § 3321 of Title 26, and to count charging that accused conspired to possess alcohol in containers to which no internal revenue tax stamps were affixed, in violation of § 2803(a) of Title 26, where the persons, times, and places were the same in both counts, and only one act and one conspiracy were involved, since if accused had entered plea of guilty to first count or had been convicted otherwise upon first count, a plea of autrefois convict would have been good as to second count. Ex parte Rose, W.D.Mo.1940, 33 F.Supp. 941.

1025. Cumulative sentences, sentence and punishment

The Blockburger rule, used to determine whether Congress intended that two statutory offenses be punished cumulatively, applies to substantive offenses as well as conspiracies. Albernaz v. U. S., U.S.Fla.1981, 101 S.Ct. 1137, 450 U.S. 333, 67 L.Ed.2d 275.

Cumulative punishment may be imposed for conspiracy and for the substantive offense. U. S. v. Calvert, C.A.8 (Mo.) 1975, 523 F.2d 895, certiorari denied 96 S.Ct. 1106, 424 U.S. 911, 47 L.Ed.2d 314.

Commission of substantive offense and conspiracy to commit it are separate and distinct offenses, and cumulative sentences imposed therefor are not cumulative punishments. Williams v. U. S., C.A.8 (Mo.) 1961, 292 F.2d 157.

Where members of coal miners' union charged with conspiring to obstruct movement of mails and to restrain trade were actually engaged in but one conspiracy which was to stop transportation of coal, although objects thereof became diverse by implication, court improperly imposed cumulative sentences. U.S. v. Anderson, C.C.A.7 (Ill.) 1939, 101 F.2d 325, certiorari denied 59 S.Ct. 822, 307 U.S. 625, 83 L.Ed. 1502, certiorari denied 59 S.Ct. 822, 307 U.S. 625, 83 L.Ed. 1503, certiorari denied 59 S.Ct. 823, 307 U.S. 625, 83 L.Ed. 1503, certiorari denied 59 S.Ct. 823, 307 U.S. 625, 83 L.Ed. 1504, certiorari denied 59 S.Ct. 823, 307 U.S. 625, 83 L.Ed. 1504, 86 L.Ed. 1504, certiorari denied 59 S.Ct. 824, 307 U.S. 625, 83 L.Ed. 1505, certiorari denied 59 S.Ct. 824, 307 U.S. 625, 83 L.Ed. 1506, certiorari denied 59 S.Ct. 825, 307 U.S. 625, 83 L.Ed. 1506, certiorari denied 59 S.Ct. 825, 307 U.S. 625, 83 L.Ed. 1507, certiorari denied 59 S.Ct. 825, 307 U.S. 625, 83 L.Ed. 1508, certiorari denied 59 S.Ct. 826, 307 U.S. 625, 83 L.Ed. 1508, certiorari denied 59 S.Ct. 826, 307 U.S. 625, 83 L.Ed. 1509.

Where defendant is convicted of distinct crimes in different indictments or in different counts of same indictment, valid cumulative terms of imprisonment may be imposed. Asgill v. U.S., C.C.A.4 (Va.) 1932, 60 F.2d 780.

Imposition of cumulative maximum sentences for bribery and conspiracy to bribe was abuse of discretion. Nash v. U.S., C.C.A.2 (N.Y.) 1932, 54 F.2d 1006, certiorari denied 52 S.Ct. 457, 285 U.S. 556, 76 L.Ed. 945.

Cumulative sentences may be imposed, but they must be imposed in that form. U.S. v. Peeke, C.C.A.3 (N.J.) 1907, 153 F. 166, 82 C.C.A. 340.

18 U.S.C.A. § 371

Where petitioner was found guilty on five counts of an indictment under former § 88 of this title [now this section] each charging a separate conspiracy to commit an offense against the United States, and was given a single sentence of confinement in a penitentiary for a term of five years, the judgment was construed as a single sentence for five years, and not as one for cumulative sentences on the five counts, no one exceeding two years, and as so construed it was void as to the excess above two years. Ex parte Peeke, D.C.N.J.1906, 144 F. 1016, affirmed 153 F. 166, 82 C.C.A. 340.

1026. Separate sentences, sentence and punishment

Unlike some crimes that arise in a single transaction, the conspiracy to commit an offense and the subsequent commission of that crime normally do not merge into a single punishable act; in most cases separate sentences can be imposed for the conspiracy to do an act and for the subsequent accomplishment of that end. Iannelli v. U. S., U.S.Pa.1975, 95 S.Ct. 1284, 420 U.S. 770, 43 L.Ed.2d 616.

Congress has the power to enact a statute making a conspiracy to do an act punishable more severely than the doing of the act itself and the power exists to separate the offenses and to affix distinct and independent penalties to each. Clune v. U.S., U.S.Cal.1895, 16 S.Ct. 125, 159 U.S. 590, 40 L.Ed. 269. Conspiracy 51; Constitutional Law 50

Disparate sentences imposed upon two defendants, who had been convicted of conspiracy to steal and possess part of interstate shipment of freight, theft of freight from interstate shipment, and possession of goods stolen from interstate shipment, by trial judge, who apparently viewed one defendant as mastermind of operation and fined such defendant in addition to sentencing him to term twice as long as that imposed upon other defendant, was not abuse of discretion. U. S. v. Trotter, C.A.3 (N.J.) 1976, 529 F.2d 806.

A defendant may properly be convicted of both conspiracy to violate section 1955 of this title and a substantive violation; likewise, there is no bar to separate convictions of "lesser participants," since decision to seek dual convictions is committed to the sound discretion of the prosecutor. U. S. v. Calaway, C.A.9 (Cal.) 1975, 524 F.2d 609, certiorari denied 96 S.Ct. 1462, 424 U.S. 967, 47 L.Ed.2d 733.

Where single general sentence was imposed and none of defendants received sentence in excess of maximum authorized under specified statute, judgment would be upheld if conviction on count under specified statute were sustainable, notwithstanding contention that because the Government's position was that there was a single conspiracy defendants were prejudiced by fact that they were charged with two separate conspiracy counts. U. S. v. Kenny, C.A.3 (N.J.) 1972, 462 F.2d 1205, certiorari denied 93 S.Ct. 233, 409 U.S. 914, 34 L.Ed.2d 176, certiorari denied 93 S.Ct. 234, 409 U.S. 914, 34 L.Ed.2d 176.

Where defendant was charged with conspiracy to import a narcotic drug and, in separate count, with conspiracy to commit an offense against the United States, namely traveling in foreign commerce to promote unlawful activity, namely importation of a narcotic drug, and where the parties, duration and overt acts alleged in both conspiracy counts were the same, there was single agreement which constituted single offense subject to single punishment though the conspiracy charged envisioned the violation of several substantive provisions, and violated this section as well as section 174 of Title 21. U. S. v. Mori, C.A.5 (Fla.) 1971, 444 F.2d 240, certiorari denied 92 S.Ct. 238, 404 U.S. 913, 30 L.Ed.2d 187.

With limited exceptions, separate sentences may be imposed for violating criminal statute and for conspiring to violate it; this may be done even when sole evidence of commission of substantive offense is participation in conspiracy, which makes the defendant an aider or abettor of the substantive crime. U.S. v. Crosby, C.A.2 (N.Y.) 1963, 314 F.2d 654, certiorari denied 83 S.Ct. 1523, 373 U.S. 923, 10 L.Ed.2d 421. Conspiracy 28(1)

Defendant could be subjected to separate and consecutive sentences upon conviction of receiving money known to

have been taken from bank by armed robbery, and for conspiracy to commit that offense. Hill v. U. S., C.A.9 (Wash.) 1962, 306 F.2d 245.

Count of indictment charging accused with aiding, abetting, counseling, commanding, inducing and procuring another to falsely assume and pretend to another to be an agent of internal revenue bureau and to demand money of such other person in such pretended character, and count charging accused and another with conspiring to commit substantive offense charged in first recited count, charged separate and distinct offenses and separate sentences were properly imposed when accused was convicted on both counts. Colosacco v. U.S., C.A.10 (Colo.) 1952, 196 F.2d 165.

Count, charging conspiracy to commit offense denounced by portion of former § 347 of this title charged offense separate from counts charging the commission of other acts denounced therein and accused was properly sentenced separately on the conspiracy count. Harrison v. King, C.C.A.8 (Mo.) 1940, 111 F.2d 420.

Court can impose sentence for the offense of conspiracy, and also sentences for the completed substantive offenses. Humphries v. Biddle, C.C.A.8 (Kan.) 1927, 19 F.2d 193.

Consolidation for trial of indictment for conspiracy with one for the substantive offenses does not prevent conviction and punishment under both. Humphries v. Biddle, C.C.A.8 (Kan.) 1927, 19 F.2d 193.

Where an indictment in one count charged conspiracy to unlawfully possess liquor, in violation of National Prohibition Act, former § 1 et seq. of Title 27, and in other count charged the concealment of smuggled liquor knowing it to have been smuggled, in violation of § 497 of Title 19, the court did not err in assessing separate punishments under each count, though the offenses arose out of one transaction. Powers v. U.S., C.C.A.5 (Tex.) 1923, 294 F. 512.

Separate sentences could be imposed for conspiracy and substantive wire and bank fraud violations, which could have been committed while acting alone, even though indictment alleged that defendants entered into single scheme to commit wire fraud and bank fraud. U.S. v. Jones, S.D.N.Y.1986, 648 F.Supp. 241.

First count of indictment charging conspiracy to transport interstate stolen money of more than $5,000 value and second count charging defendant and others with having transported interstate stolen money of more than $5,000 value charged separate offenses upon which separate sentences could be imposed. U.S. v. Clevenger, E.D.Tenn.1951, 105 F.Supp. 333, appeal dismissed 197 F.2d 521.

Conspiracy to commit a crime is a separate offense from the substantive offenses which are the object of the conspiracy and the conspiracy and the substantive offenses may be separately punished. U.S. v. Sharpe, E.D.Ky.1945, 61 F.Supp. 237, affirmed 164 F.2d 94.

1027. Double punishment, sentence and punishment

Conspiracy to do an act and the completed substantive offense are separate crimes for which separate sentences can be imposed. U. S. v. Batimana, C.A.9 (Cal.) 1980, 623 F.2d 1366, certiorari denied 101 S.Ct. 617, 449 U.S. 1038, 66 L.Ed.2d 500.

Separate sentences for the same overt act charged in both conspiracy and substantive counts does not constitute double punishment; it is only an identity of offenses which is fatal. U. S. v. Toombs, C.A.5 (Fla.) 1974, 497 F.2d 88.

Prosecution for conspiracy, as well as for the commission of substantive offense, is permissible as it offends neither the principles of merger nor double jeopardy. U. S. v. Bobo, C.A.4 (S.C.) 1973, 477 F.2d 974, certiorari denied 95

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S.Ct. 1557, 421 U.S. 909, 43 L.Ed.2d 774.

Defendant who pleaded guilty to conspiracy count in each of two indictments, thus admitting alleged conspiracies to violate securities laws, was not entitled to have consecutive sentences set aside on ground that he had received double punishment for single offense, where, despite similarities in several instances, conspiracies were separate and distinct, extending over different periods of time and involving different predicatory statutory offenses and different devices and schemes, agreeing principals, and overt acts, so that deletion from first count of allegations overlapping second count would leave first count still stating an offense capable of proof by evidence different from that necessary to prove second count. U. S. v. Hall, C.A.5 (Tex.) 1972, 457 F.2d 1324.

Fact that evidence which was relevant in proving existence of conspiracy to obstruct justice was also relevant or vital in proving entirely different fact of motivation in both the substantive count of obstructing justice and conspiracy count did not result in merger or identity of offenses and sentencing to two consecutive terms on conviction of both counts did not impose double punishment for the same offense. Cardarella v. U. S., C.A.8 (Mo.) 1967, 375 F.2d 222, certiorari denied 88 S.Ct. 129, 389 U.S. 882, 19 L.Ed.2d 176.

Transposition of concurrent sentences for a substantive crime and for conspiracy after defendant had commenced to serve the sentences was a violation of constitutional guarantee against double jeopardy, even though such transposition was to carry out original intention of sentencing judge, and under the circumstances, sentence imposed on prisoner of seven years for conspiracy would be reduced to maximum penalty permissible for such crime of five years. U. S. v. Sacco, C.A.2 (N.Y.) 1966, 367 F.2d 368.

When indictment charges both conspiracy to engage in course of criminal conduct and substantive offense committed pursuant to that conspiracy, accused, on conviction, may be punished both for conspiracy and for substantive offense. Pegram v. U. S., C.A.8 (Iowa) 1966, 361 F.2d 820.

Consecutive sentence imposed for obstructing justice and for conspiracy to obstruct justice was not invalid as double punishment for single offense. Cardarella v. U. S., C.A.8 (Mo.) 1965, 351 F.2d 272, certiorari denied 86 S.Ct. 633, 382 U.S. 1017, 15 L.Ed.2d 531.

The prosecution may allege the same charge in different counts but only a single penalty is permitted, and when there are double penalties, only one is reversed but a jury acquittal on one count does not require reversal of conviction on another count, even though there may seem to be a surface inconsistency. U.S. v. Klein, C.A.2 (N.Y.) 1957, 247 F.2d 908, certiorari denied 78 S.Ct. 365, 355 U.S. 924, 2 L.Ed.2d 354.

Conspiracy is a crime separate and distinct from the crime which is the object of the conspiracy and therefore imposition of consecutive sentences on conviction of conspiracy to violate the Dyer Vehicle Theft Act, § 2312 of this title, and of substantive crimes charged as objects of the conspiracy, did not constitute double punishment in violation of U.S.C.A.Const. Amend. 5. Hodge v. U.S., C.A.4 (N.C.) 1956, 235 F.2d 85, certiorari denied 77 S.Ct. 240, 352 U.S. 934, 1 L.Ed.2d 169.

Where a conspiracy charged in an indictment for violation of Dyer Vehicle Theft Act, § 2312 of this title, was not confined to substantive crimes charged as objects of the conspiracy in the indictment, imposition of consecutive sentences on the substantive and conspiracy counts did not constitute double punishment in violation of U.S.C.A.Const. Amend. 5. Hodge v. U.S., C.A.4 (N.C.) 1956, 235 F.2d 85, certiorari denied 77 S.Ct. 240, 352 U.S. 934, 1 L.Ed.2d 169.

Defendant could be convicted of both violation of narcotics laws and conspiring to violate narcotics laws, even though overt act of conspiracy might also have been offense which was object of conspiracy, and conviction on both counts was not double punishment. Toliver v. U. S., C.A.9 (Cal.) 1955, 224 F.2d 742.

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Where indictment charged conspiracies and attempts to defraud income tax, and alleged numerous overt acts, including filing of proposed false return, conviction on conspiracy counts did not cover attempts so as to preclude, on theory of double punishment, imposition of sentence on each count. U.S. v. Wexler, C.C.A.2 (N.Y.) 1935, 79 F.2d 526, certiorari denied 56 S.Ct. 384, 297 U.S. 703, 80 L.Ed. 991. See, also, U.S. v. Wylie, C.A.9 (Cal.) 1980, 625 F.2d 1371, certiorari denied 101 S.Ct. 863, 449 U.S. 1080, 66 L.Ed.2d 804. Sentencing And Punishment 520(3)

Conviction for conspiracy to violate banking laws, based on same overt acts charged as substantive offenses, did not present case of "double punishment." Steigleder v. U.S., C.C.A.8 (Okla.) 1928, 25 F.2d 959.

Counts for conspiracy, possession, and manufacture of liquor were not duplicitous and did not call for double punishment. Perry v. U.S., C.C.A.8 (Okla.) 1927, 18 F.2d 477.

Question of double punishment is not presented under indictments charging conspiracy to violate National Prohibition Act, former § 1 et seq. of Title 27, and offenses against revenue laws applicable to manufacture. Godsey v. U.S., C.C.A.6 (Tenn.) 1927, 17 F.2d 877.

Parties may be punished both for conspiracy to transport stolen automobile in interstate commerce and for such transportation. Hostetter v. U. S., C.C.A.8 (Colo.) 1926, 16 F.2d 921.

Where one count alleged conspiracy to import liquor from Canada across the Detroit river into the United States at Trenton, and second count alleged transportation from river bank to another point some distance away, contention that there was double prosecution and punishment because first count necessarily involved transportation from the boundary line to shore, was untenable. Parmenter v. U. S., C.C.A.6 (Mich.) 1924, 2 F.2d 945, certiorari denied 45 S.Ct. 514, 268 U.S. 697, 69 L.Ed. 1163.

In prosecution for fraudulent use of the mails, with conspiracy counts, conviction under the substantive counts and also under conspiracy counts did not involve a double penalty. Ader v. U.S., C.C.A.7 (Ill.) 1922, 284 F. 13, certiorari denied 43 S.Ct. 247, 260 U.S. 746, 67 L.Ed. 493.

In a similar prosecution, under former § 338 of this title, where conspiracy counts set forth as overt acts mailing of letters not set out in counts under said former section, contention that conviction on conspiracy counts as well as on others is double conviction was untenable. Preeman v. U.S., C.C.A.7 (Ill.) 1917, 244 F. 1, 156 C.C.A. 429, certiorari denied 38 S.Ct. 12, 245 U.S. 654, 62 L.Ed. 533.

Judgment and sentences under separate counts of indictment charging conspiracy to transport stolen motor vehicles in interstate commerce and the substantive offenses of transporting and concealing stolen automobiles did not constitute double jeopardy or double punishment. U.S. v. Sharpe, E.D.Ky.1945, 61 F.Supp. 237, affirmed 164 F.2d 94.

1028. Second offenders, sentence and punishment

Defendant, who had previously been convicted of conspiracy to violate federal narcotic laws, was, on subsequent conviction of possessing heroin, a "second offender" so as to be subject to enhanced punishment in subsequent prosecution, though, at time of prior conviction, conspiracy to violate narcotic laws was an offense punishable only under general omnibus provisions of this section. U. S. v. Buia, C.A.2 (N.Y.) 1956, 236 F.2d 548.

1029. Term of imprisonment, sentence and punishment

Defendant's sentence of 121 months' imprisonment for his conviction of conspiracy, stemming from the theft,

transportation, and fraudulent endorsement of United States Treasury checks was not unreasonable; even though defendant's involvement in the conspiracy began when the 2000 Guidelines, which recommended almost half the sentence suggested by the 2001 Guidelines, were still in effect, the sentence imposed fell at the midpoint of the range recommended by the 2001 Guidelines, which were the applicable guidelines. U.S. v. Vaughn, C.A.7 (Wis.) 2006, 433 F.3d 917. Sentencing And Punishment 664(6)

Sentences ranging from 16 to 30 years imposed upon defendants convicted of perjury, giving false statements to grand jury, obstructing investigation and conspiracy in connection with alleged coverup of police shooting of members of independence movement did not constitute cruel and unusual punishment. U.S. v. Moreno Morales, C.A.1 (Puerto Rico) 1987, 815 F.2d 725, certiorari denied 108 S.Ct. 458, 484 U.S. 966, 98 L.Ed.2d 397, denial of post-conviction relief affirmed 976 F.2d 724, denial of post-conviction relief affirmed 991 F.2d 786.

Although jury failed to bring in special verdict indicating whether accused had violated this section or narcotics statute, § 4705 of Title 26, 15-year sentence imposed was not illegal, where reference in indictment to this section was miscitation and accused failed to show that error in citation had prejudiced him. Tanksley v. U. S., C.A.8 (Minn.) 1963, 321 F.2d 647.

Where indictment was intended to charge conspiracy to cause or attempt to cause escape of federal prisoners, but, because defendant was one of those whose escape was attempted, actually charged conspiracy to commit offense against United States, the offense consisting of escape or attempt to escape, and defendant pleaded guilty, and was erroneously sentenced to three year term under § 752 of this title relating to conspiracy to cause escape, sentence was properly vacated and defendant, having by his guilty plea admitted the facts alleged, was properly resentenced to maximum term of two years under this section relating to conspiracy to commit offense. Kahl v. U.S., C.A.10 (Okla.) 1953, 204 F.2d 864.

Where conspiracy to violate Internal Revenue Laws, §§ 2803, 2810, 2833, 2834, and 3321 of Title 26, prohibiting distillation, possession, purchase, sale, transportation, deposit and concealment of nontax paid distilled spirits, was alleged in indictment, supported by proof and jury's verdict, to be continuous, sentence to five years imprisonment under this section as revised before commission of last eight of thirty overt acts charged, instead of two years provided for by provisions prior to revision, was not erroneous as subjecting defendants to greater penalty for committing crime consummated before revision of this section in 1948 increasing penalty was passed and became effective. Huff v. U.S., C.A.5 (Ga.) 1951, 192 F.2d 911, certiorari denied 72 S.Ct. 560, 342 U.S. 946, 96 L.Ed. 703.

Sentences of imprisonment for three years, imposed upon conviction under indictment charging conspiracy to use mails in furtherance of scheme to defraud, being maximum penalty for substantive offense, were excessive and void. Lefco v. U S, C.C.A.3 (Pa.) 1934, 74 F.2d 66.

Persons convicted under former § 88 of this title [now this section] of conspiracy to violate the National Prohibition Act, former § 1 et seq. of Title 27, could have been punished by sentence of not more than two years in the penitentiary, under former §§ 695 of the 742 of this title. Biddle v. Moreno, C.C.A.8 (Kan.) 1922, 279 F. 566.

When statutes prescribe particular modes of punishment a court cannot inflict another, and hence under former § 88 of this title [now this section], authorizing imprisonment for conspiracy to commit a federal offense, imprisonment "at hard labor" was unauthorized. Ex parte Harlan, C.C.N.D.Fla.1909, 180 F. 119, affirmed 31 S.Ct. 44, 218 U.S. 442, 54 L.Ed. 1101, 21 Am.Ann.Cas. 849.

Where intermediary of Naturalization Examiner was convicted under one count of conspiracy and was given a two year sentence, and was convicted under several counts of soliciting and collecting fees in proceedings relating to naturalization and was given sentences of one year on each, and was convicted on one count as an aider and abetter of Naturalization Examiner in soliciting and collecting such fees and was given a sentence of two years, and

sentences were all to run concurrently, sentences would not be reduced on ground that they were too severe. U. S. v. Scott, S.D.Cal.1954, 124 F.Supp. 335.

Where major part of offenses charged in indictment for violation of this section occurred subsequent to amendment statute which increased maximum sentence from two to five years, trial court was fully justified and warranted in imposing sentence of four years imprisonment. U.S. v. Jackson, E.D.S.C.1951, 94 F.Supp. 912.

When sentencing defendant for conspiracy to defraud the Internal Revenue Service, federal district court was not required to hold oral argument or evidentiary hearing to determine amount of tax loss suffered by the government, which was relevant to calculate base offense level under Sentencing Guidelines, even though defendant's plea agreement had reserved right to litigate that issue, where court noted that, pursuant to *Booker*, Guidelines were merely advisory, and court had reviewed defendant's written objections to pre-sentence report. U.S. v. Suzuki, C.A.9 (Hawai'i) 2006, 2006 WL 1381579, Unreported. Sentencing And Punishment 987

In light of the sentences provided to other defendants who shared similar "Team Leader" roles in "boiler room" operation, defendant, who pled guilty to one count of conspiracy to commit securities, mail and wire fraud, would be sentenced to 15 months in prison, to be followed by three years of supervised release and required to make restitution; although an effort was made to achieve as much as possible uniformity in sentencing the twenty-one defendants who participated in the scheme while considering each defendant's respective role in the operation, it was virtually impossible to justify imprisoning the defendant for up to five times as long as the man who hired, inspired and gravely misled them, and who was sentenced to just 366 days' imprisonment due to great assistance provided in a related case. U.S. v. MacCaull, S.D.N.Y.2002, 2002 WL 31426006, Unreported. Sentencing And Punishment 56; Sentencing And Punishment 752

1030. Place of confinement, sentence and punishment

Where a person was convicted under former § 88 of this title [now this section] and sentenced to imprisonment for a term longer than one year, he might under former § 695 of this title have been imprisoned in a state prison where hard labor was part of the treatment of convicts, though former § 88 of this title [now this section] did not in terms include hard labor as part of the penalty. Ex parte Karstendick, U.S.La.1876, 93 U.S. 396, 3 Otto 396, 23 L.Ed. 889 .

Where accused was sentenced to one year only on one of the counts of an indictment for conspiracy, the court had no power to direct that such sentence be served in a penitentiary. Francis v. U S, C.C.A.3 (Pa.) 1907, 152 F. 155, 81 C.C.A. 407, certiorari denied 27 S.Ct. 797, 206 U.S. 565, 51 L.Ed. 1191.

1031. Fine, sentence and punishment

Concurrent two-year sentence and $10,000 fine were not excessive after defendant's conviction for conspiracy to misapply and misapplication of $244,250 of funds of savings and loan. U. S. v. Kaczmarek, C.A.7 (Ill.) 1974, 490 F.2d 1031.

Imposition of $5,000 fine against defendant, who was convicted of conspiracy, fraud in sale of securities and use of mails to defraud, for conspiracy offense did not constitute imposition of excessive sentence. U. S. v. Fishbein, C.A.9 (Ariz.) 1971, 446 F.2d 1201, certiorari denied 92 S.Ct. 683, 404 U.S. 1019, 30 L.Ed.2d 667.

Where fines imposed against corporation and its president for violating and conspiracy to violate Emergency Price Control Act of 1942, 50 App. former § 901 et seq., were re-allocated on same day that fines were originally imposed, the increased fine against corporation was not void on ground that it was not imposed in presence of corporation's officers, under showing that corporation's president was in custody of the court at the time and that counsel for corporation was in constant communication with him when counsel asked that fines imposed be

reallocated. Acme Poultry Corp. v. U.S., C.C.A.4 (Md.) 1944, 146 F.2d 738, certiorari denied 65 S.Ct. 865, 324 U.S. 860, 89 L.Ed. 1417.

1032. Disbarment or suspension of attorney

Conviction for crimes of conspiracy, theft of government property, and false statements warrants disbarment. Matter of Milton, D.C.1994, 642 A.2d 839. Attorney And Client 58

Conviction for conspiracy to commit wire fraud warrants disbarment. In re Lobar, D.C.App.1993, 632 A.2d 110.

Conviction of offenses involving moral turpitude per se, including conspiracy to defraud the United States, and wire fraud, warrants disbarment. Matter of McGough, D.C.App.1992, 605 A.2d 605.

Conviction of perjury and of conspiracy to defraud the Internal Revenue Service, both offenses involving moral turpitude, warrants disbarment. Matter of Meisnere, D.C.App.1984, 471 A.2d 269.

1033. Discharge of government employee, sentence and punishment

Discharge of border patrol agent for Immigration and Naturalization Service was not inappropriate punishment for misconduct involving mistreatment of aliens. Otherson v. Department of Justice, I.N.S., C.A.D.C.1983, 711 F.2d 267, 228 U.S.App.D.C. 481.

1034. Correction of sentence, sentence and punishment

Although conviction of making false statements in connection with loans was not infirm, judgment of sentence imposed thereon was required to be vacated for resentencing where conspiracy conviction and conviction of willfully misapplying bank funds were reversed, since fact of the latter convictions was properly taken into consideration in imposing sentence on the former. U. S. v. Gallagher, C.A.3 (N.J.) 1978, 576 F.2d 1028.

Fact that district court was under incorrect impression in 1973 that defendant had pleaded guilty to crimes in addition to crime of conspiracy to commit espionage did not operate to undermine validity of defendant's 1965 sentence for crime nor did court's incorrect assessment of defendant's motion for correction or reduction of sentence as being untimely serve to undermine previous validity. Thompson v. U. S., C.A.2 (N.Y.) 1973, 484 F.2d 942.

Defendant who was convicted by United States District Court for the Southern District of Florida of conspiracy to misapply funds of a national bank and of making false entries in bank records with intent to defraud and who, subsequent to his conviction and sentencing in Florida, cooperated in securities theft prosecution in the Southern District of New York and had details of his cooperation communicated by the New York prosecutors to trial judge in Florida was not entitled to reduction of sentence, notwithstanding defendant's statement that he was promised by prosecutors in New York that he would not have to serve any time if he cooperated. U. S. v. Fanning, C.A.5 (Fla.) 1973, 477 F.2d 45, rehearing denied 477 F.2d 596, certiorari denied 94 S.Ct. 365, 414 U.S. 1006, 38 L.Ed.2d 243, rehearing denied 94 S.Ct. 935, 414 U.S. 1172, 39 L.Ed.2d 121.

Counts charging conspiracy to import a narcotic drug and conspiracy to commit an offense against the United States, namely traveling in foreign commerce to promote importation of a narcotic drug, were overlapping rather than inconsistent; thus, where separate sentences were imposed, it was sufficient to remand for resentencing rather than for new trial. U. S. v. Mori, C.A.5 (Fla.) 1971, 444 F.2d 240, certiorari denied 92 S.Ct. 238, 404 U.S. 913, 30 L.Ed.2d 187.

Where written commitment recited that defendant, who had been convicted of conspiracy to make false bank

entries, was convicted of making false entries, case would be remanded to permit commitment to be corrected to conform to judgment. U. S. v. Harris, C.A.4 (Va.) 1970, 433 F.2d 333.

Record on motion to vacate sentence imposed for conviction of conspiracy and for interstate transportation of fraudulent securities supported conclusion of district judge that defendant's waiver of counsel had been valid and that his plea of guilty was voluntary. Campbell v. U. S., C.A.5 (Tex.) 1968, 398 F.2d 828.

Where petitioner was indicted for conspiracy to violate § 472 of this title, defining substantive offense of possessing and uttering counterfeit obligations, and where petitioner was sentenced under said section, punishing conspiracy to counterfeit, even though this section punishing conspiracy to commit any offense and bearing lesser punishment was set out in indictment, such error, if prejudicial, could have been corrected on motion or on appeal from original judgment and sentence, but sentence was not subject to collateral attack on motion attacking sentence. Masi v. U.S., C.A.5 (Fla.) 1955, 223 F.2d 132, certiorari denied 76 S.Ct. 208, 350 U.S. 919, 100 L.Ed. 805.

Where defendant filed petition to modify and correct judgment on ground that his conviction for procuring another to pass counterfeit money with intent to defraud and conviction for conspiring to pass counterfeit money constituted double jeopardy, but convictions did not constitute double jeopardy petition was properly dismissed. Bocock v. U.S., C.A.7 (Ind.) 1954, 216 F.2d 465.

Where defendant was illegally sentenced twice for one conspiracy, the sentences to run consecutively, and was also sentenced for substantive offenses which sentences were to begin on expiration of conspiracy sentences, defendant was entitled to have illegal conspiracy sentence vacated and to have time served applied on valid sentences and to have deductions for good conduct computed accordingly, though he had served a period of time equal to or in excess of sentences imposed on conspiracy charge. Youst v. U.S., C.C.A.5 (Fla.) 1945, 151 F.2d 666.

Where court had sentenced defendant twice for a single conspiracy, court was bound to vacate invalid sentence and to transmit to warden of penitentiary an authenticated record of entry vacating invalid sentence, though term at which sentence was imposed had passed, and it was not necessary that defendant be brought before court for such purpose. Youst v. U.S., C.C.A.5 (Fla.) 1945, 151 F.2d 666.

Excessive sentence for conspiracy is void only as to excess and may be corrected by reviewing court's mandate. Spirou v. U.S., C.C.A.2 (N.Y.) 1928, 24 F.2d 796, certiorari denied 48 S.Ct. 559, 277 U.S. 596, 72 L.Ed. 1006.

On application to the federal Circuit Court for habeas corpus by one convicted therein, the court could correct the sentence if it be excessive or resentence, and hence where persons convicted of conspiring to commit a federal offense under former § 88 of this title [now this section] were sentenced to imprisonment "at hard labor," on habeas corpus proceedings the trial court could amend the sentence nunc pro tunc by striking the quoted words, when not authorized by the statute. Ex parte Harlan, C.C.N.D.Fla.1909, 180 F. 119, affirmed 31 S.Ct. 44, 218 U.S. 442, 54 L.Ed. 1101, 21 Am.Ann.Cas. 849.

Concurrent sentences of five years on each count on convictions on one count of conspiring to make false statements and file false documents required under immigration laws and two counts of knowingly making and using false documents in petitions filed with Immigration and Naturalization Service would not be reduced in view of defendant's knowing participation in scheme in which defendant located United States citizens willing to "marry" aliens seeking permanent residence, organized the "marriages," witnessed them, and signed notarized permanent residence petitions intended to fraudulently secure permanent residence status for illegal aliens for a fee, and in view of defendant's denial of any knowledge of or participation in the scheme, and her failure to present new grounds or circumstances not before sentencing court. U.S. v. Ramos, S.D.N.Y.1985, 605 F.Supp. 277.

1035. Vacation of sentence, sentence and punishment

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Where defendant at time he pled guilty had been advised by his counsel of possible five-year sentence under conspiracy statute but was not informed that he was subject to sentence under Youth Corrections Act, section 5071 of this title, and that this might lead to confinement up to six years, sentence would be vacated and set aside. Matthews v. U. S., S.D.N.Y.1969, 308 F.Supp. 456. Criminal Law 1482

1036. Retrial, sentence and punishment

Where defendant was sentenced to four-year concurrent terms for stealing, uttering and publishing United States Treasury checks and for conspiracy and at second trial, which was held after reversal of first conviction, was sentenced to five-year concurrent terms, and district court failed to give any reasons for more severe five-year sentences, case was remanded for reconsideration of sentence in accordance with United States Supreme Court decision requiring trial judge to state reasons for more severe sentence and requiring that such reasons be based on objective information concerning identifiable conduct on part of defendant occurring after time of original sentencing proceeding. U. S. v. King, C.A.6 (Tenn.) 1969, 415 F.2d 737, certiorari denied 90 S.Ct. 465, 396 U.S. 974, 24 L.Ed.2d 443. Criminal Law 1181.5(8)

XVI. REVIEW

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1061. Scope of review generally

In prosecution for conspiracy to defraud the United States by operation of a tax fixing ring and for influencing witnesses and impeding a grand jury investigation, wherein prosecutor on cross-examination was permitted to ask defendant whether he had invoked his constitutional privilege against self-incrimination before grand jury in response to same or similar questions in response to which he had testified fully on the trial, wherein if jury followed instructions that plea of Fifth Amendment was relevant only to credibility, then weight to be given such evidence was less than negligible, but danger that jury made impermissible use of testimony by implicitly equating the plea with guilt was far from negligible, Supreme Court, weighing such factors, would draw upon its supervisory power over the administration of federal criminal justice in order to rule on the matter. Grunewald v. U.S., U.S.N.Y.1957, 77 S.Ct. 963, 353 U.S. 391, 1 L.Ed.2d 931. Federal Courts 444

In reviewing conviction for conspiracy, question is whether the circumstances, acts and conduct of the parties are of such character that reasonable persons might conclude therefrom that an unlawful agreement existed. U. S. v. Parnell, C.A.10 (Okla.) 1978, 581 F.2d 1374, certiorari denied 99 S.Ct. 852, 439 U.S. 1076, 59 L.Ed.2d 44. Conspiracy 24(1)

In reviewing jury verdict of guilty in prosecution for conspiracy, mail fraud, fraud by wire, and fraudulent inducement of interstate travel, reviewing court was not free to try the case de novo but was limited to determining whether there was sufficient evidence to support the verdict. U. S. v. Wayman, C.A.5 (Ga.) 1975, 510 F.2d 1020, certiorari denied 96 S.Ct. 84, 423 U.S. 846, 46 L.Ed.2d 67. Criminal Law 1159.2(3)

It was not function of Court of Appeals to weigh evidence as to individual defendants found guilty of conspiracy

once it had determined that there was not such an insufficiency of evidence as to require reversal. U. S. v. Donner, C.A.7 (Ind.) 1974, 497 F.2d 184, certiorari denied 95 S.Ct. 619, 419 U.S. 1047, 42 L.Ed.2d 641, certiorari denied 95 S.Ct. 620, 419 U.S. 1047, 42 L.Ed.2d 641. Criminal Law 1159.2(10)

Where defendant was 39-year-old man who had been continuously afoul of law since age of 14 and had already had at least three felony convictions and where conspiracy count grew out of same series of acts as count charging possession of stolen mail and where identical sentences were imposed on each count and were to run concurrently, Court of Appeals after upholding defendant's conviction on possession count would not, in exercise of its discretion, review conviction on conspiracy count. U. S. v. Hamilton, C.A.7 (Ind.) 1970, 420 F.2d 1096. Criminal Law 1177

In appeal from conviction on charge of conspiracy, Court of Appeals looks only to see whether from evidence presented, and viewed in light most favorable to government, jury could reasonably find conspiracy existed and that appellant was member. Nelson v. U. S., C.A.5 (Tex.) 1969, 415 F.2d 483, certiorari denied 90 S.Ct. 751, 396 U.S. 1060, 24 L.Ed.2d 754. Criminal Law 1134(3)

Where Court of Appeals sustained defendant's conviction for conspiracy to violate section 176a of Title 2, prohibiting sale and concealment of marihuana and section 4742 of Title 26, prohibiting transfer of marihuana not pursuant to written order form supplied by Secretary of Treasury and defendant had been given equal and concurrent sentences for that conviction and conviction for concealing of marihuana, it was unnecessary for Court of Appeals to justify conviction on charge of concealing marihuana. Browning v. U. S., C.A.9 (Cal.) 1966, 366 F.2d 420. Criminal Law 1177

Appellate court could not disregard testimony of admitted liar in determining sufficiency of evidence to sustain conviction on conspiracy counts in prosecution involving conspiracy to defraud public by distribution of oil company stock at grossly inflated prices. U. S. v. Kelly, C.A.2 (N.Y.) 1965, 349 F.2d 720, certiorari denied 86 S.Ct. 1467, 384 U.S. 947, 16 L.Ed.2d 544. Criminal Law 1159.4(6)

Where defendant moved for judgment of acquittal both at close of government's case and at close of all the evidence, on appeal question was sufficiency of evidence, as a whole, to sustain verdict of guilty, rather than whether a prima facie case had been made out by government. U.S. v. Haskell, C.A.2 (Conn.) 1964, 327 F.2d 281, certiorari denied 84 S.Ct. 1351, 377 U.S. 945, 12 L.Ed.2d 307. Criminal Law 1134(8)

Where verdicts were against defendants, reviewing court would take evidence most favorable to government in treating contention that defendants should have been acquitted on their motions. U. S. v. Tenenbaum, C.A.7 (Ill.) 1964, 327 F.2d 210, certiorari denied 84 S.Ct. 1165, 377 U.S. 905, 12 L.Ed.2d 177. Criminal Law 1144.13(3)

Trial courts and reviewing courts must be especially cautious in evaluating the evidence as to each defendant in mass conspiracy trials. U.S. v. Bufalino, C.A.2 (N.Y.) 1960, 285 F.2d 408. Conspiracy 47(1)

Where jury found defendants guilty of conspiracy charged in first count of indictment, and failed to agree upon verdict on second count charging substantive offense, and defendants appealed, case was before Court of Appeals as though it had been tried only on conspiracy count. Blackford v. U. S., C.A.10 (Kan.) 1952, 195 F.2d 896, certiorari denied 72 S.Ct. 1041, 343 U.S. 945, 96 L.Ed. 1350. Criminal Law 1134(8)

Courts of review do not weigh evidence or determine credibility of witnesses. U. S. v. Poppa, C.A.7 (Ind.) 1951, 190 F.2d 112. Criminal Law 1159.2(9); Criminal Law 1159.4(1)

In appeal from conviction for conspiracy, Court of Appeals must accept as true additional evidence offered by the government to prove the conspiracy. U.S. v. Nelson, C.A.7 (Ill.) 1950, 185 F.2d 758. Criminal Law 1144.13(8)

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On an appeal from a conspiracy conviction, it is not for the Circuit Court of Appeals to weigh the conflicting facts, circumstances and inferences of the trial proceedings, but only to consider whether the evidence, in its most favorable aspect to the Government, is legally capable of allowing a jury to become persuaded of guilt. Phelps v. U. S., C.C.A.8 (Minn.) 1947, 160 F.2d 858, rehearing denied 161 F.2d 940, certiorari denied 68 S.Ct. 1525, 334 U.S. 860, 92 L.Ed. 1780. Criminal Law 1159.3(6)

On defendants' appeal from judgment on verdict of guilty, Circuit Court of Appeals must accept that view of the evidence which is most favorable to the government. Anderson v. U.S., C.C.A.6 (Tenn.) 1941, 124 F.2d 58, certiorari granted 62 S.Ct. 941, 316 U.S. 651, 86 L.Ed. 1732, reversed on other grounds 63 S.Ct. 599, 318 U.S. 350, 87 L.Ed. 829. See, also, Marx v. U.S., C.C.A.Minn.1936, 86 F.2d 245. Criminal Law 1144.13(3)

Defendant, pleading guilty, is in same position respecting matters reviewable by appeal as though jury had found him guilty. Spirou v. U.S., C.C.A.2 (N.Y.) 1928, 24 F.2d 796, certiorari denied 48 S.Ct. 559, 277 U.S. 596, 72 L.Ed. 1006. Criminal Law 1028

Advice of Judicial Council to use caution in using conspiracy statute, former § 88 of this title [now this section], had no relation as to duty of reviewing court. Knable v. U. S., C.C.A.6 (Ohio) 1925, 9 F.2d 567. Criminal Law 1134(2)

Where the jury acquitted defendants of conspiracy, charged under former § 88 of this title [now this section], but convicted them of using the mails to defraud, contrary to former § 338 of this title, the record must be closely scanned to determine whether evidence admitted to support the conspiracy charge, and inadmissible on the other charge, prejudiced defendants. Hart v. U.S., C.C.A.2 (N.Y.) 1917, 240 F. 911, 153 C.C.A. 597. Criminal Law 1163(3)

Where a defendant is shown by direct and positive evidence to have been a party to a conspiracy, or where the circumstantial evidence as to such defendant, properly applied, meets the required degree of proof, the record can be viewed as a composite whole. U. S. v. Standard Oil Co. (Indiana), W.D.Wis.1938, 23 F.Supp. 937, motion denied 24 F.Supp. 575, reversed 105 F.2d 809, certiorari granted 60 S.Ct. 124, 308 U.S. 540, 84 L.Ed. 455, reversed 60 S.Ct. 811, 310 U.S. 150, 84 L.Ed. 1129, rehearing denied 60 S.Ct. 1091, 310 U.S. 658, 84 L.Ed. 1421. Conspiracy 47(2)

1062. Certiorari, review

Supreme Court granted certiorari to consider admissibility of codefendant's confession which was made after termination of alleged conspiracy and from which references to other defendants were not deleted and as to which the District Court instructed that the confession was to be considered only in determining guilt of confessor. Delli Paoli v. U.S., U.S.N.Y.1957, 77 S.Ct. 294, 352 U.S. 232, 1 L.Ed.2d 278. Federal Courts 452

1063. Interlocutory appeal, review

On interlocutory appeal, Court of Appeals lacked jurisdiction to resolve issue of statutory interpretation concerning whether federal conspiracy statute authorized prosecution of defendant for rejoining conspiracy for which he had already been convicted. U.S. v. Asher, C.A.7 (Ind.) 1996, 96 F.3d 270, certiorari denied 117 S.Ct. 786, 519 U.S. 1100, 136 L.Ed.2d 729. Criminal Law 1134(10)

Order, which granted forma pauperis relief to defendant by directing that minutes of trial wherein he was convicted for conspiracy be transcribed at government expense and which involved an expenditure of appropriately $3,000, was appealable, considering that there was no other way in which government could test direction to disburse a considerable sum of money. U. S. v. Sacco, C.A.2 (N.Y.) 1970, 430 F.2d 1304. Criminal Law 1023(12)

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1064. Record on appeal, review

Record in prosecution for conspiracy to transport stolen merchandise in interstate commerce disclosed that contrary to claim of defendant, court did not limit cross-examination of accomplice witness but rather the court stated it would allow impeachment of witness and counsel abandoned issue. U. S. v. Bastone, C.A.7 (Ill.) 1975, 526 F.2d 971, certiorari denied 96 S.Ct. 2172, 425 U.S. 973, 48 L.Ed.2d 797. Witnesses 278

Record on appeal from conviction for armed bank robbery and conspiracy established there was no concealment or suppression of any part of colloquy that occurred when government's accomplice witness pleaded guilty to reduced charge. U. S. v. Maxey, C.A.2 (N.Y.) 1974, 498 F.2d 474. Criminal Law 700(4)

Record on appeal from conviction for conspiring to defraud the United States reflected no abuse of discretion with respect to order of proof at trial. U. S. v. Smith, C.A.10 (Okla.) 1974, 496 F.2d 185, certiorari denied 95 S.Ct. 225, 419 U.S. 964, 42 L.Ed.2d 179, rehearing denied 95 S.Ct. 646, 419 U.S. 1060, 42 L.Ed.2d 658. Criminal Law 680(1)

In prosecution for conspiratorial and substantive violations of gambling laws, wherein defense moved to discover names, addresses and telephone of all witnesses whom Government intended to call at trial, record was insufficient to pass upon defendants' claim that discovery was reasonable and necessary to prepare for trial and, inasmuch as Government had not had opportunity to make showing for protective order, dismissal with prejudice for failure of Government to comply with discovery order was unwarranted. U. S. v. Richter, C.A.9 (Wash.) 1973, 488 F.2d 170 . Criminal Law 627.8(6); Criminal Law 1115(1)

Record on appeal from conviction for conspiring to counterfeit obligations of United States did not disclose presence of false or misleading information in presentence report that would constitute a violation of due process. U. S. v. Glover, C.A.4 (Va.) 1973, 475 F.2d 90. Constitutional Law 270(2)

Record, in prosecution resulting in defendant's conviction for conspiracy to violate section 2314 of this title relating to interstate transportation of stolen goods, disclosed that defendant was not prejudiced by actions of trial judge with respect to his alleged intervention and interrogation of witnesses, his remarks allegedly bolstering credibility of government witnesses and his alleged disparaging remarks indicating disbelief of defense witnesses. U. S. v. Way, C.A.5 (Fla.) 1972, 462 F.2d 1367, certiorari denied 93 S.Ct. 697, 409 U.S. 1078, 34 L.Ed.2d 667. Criminal Law 1166.22(5)

Record on appeal from conviction for conspiring to bribe and bribery of a public official showed that prosecution was scrupulously fair in affording defendant more than ample access to all evidence to which he was entitled and in fact disclosed appreciably more than was required by law. U. S. v. Caracci, C.A.5 (La.) 1971, 446 F.2d 173, certiorari denied 92 S.Ct. 202, 404 U.S. 881, 30 L.Ed.2d 162. Criminal Law 700(2.1)

Record on appeal from conviction for wilful misapplication of bank's funds, wilful making of false entries in bank records, and conspiracy to misapply bank funds did not support defendant's contention that he had been prejudiced as result of alleged inconsistent factual statements in closing arguments of counsel. U. S. v. Silverthorne, C.A.9 (Cal.) 1970, 430 F.2d 675, certiorari denied 91 S.Ct. 585, 400 U.S. 1022, 27 L.Ed.2d 633. Criminal Law 1171.1(2.1)

Evidence in proceeding to vacate conviction for conspiracy to commit offense against United States did not support petitioner's allegations that he was under influence of drugs at time of entry of guilty plea, that he was led to believe through misrepresentation of counsel that his federal sentence would run concurrently with, rather than consecutively to, prior state sentence, and that he had entered plea to avoid abuse and cruel treatment to which he was being subjected in county jail. Day v. U. S., C.A.8 (Mo.) 1970, 428 F.2d 1193. Criminal Law 1618(5)

Record which did not show that government had list of witnesses did not show that trial court had erred in denying defendant's motion for complete list of witnesses in prosecution for conspiracy. U. S. v. Cudia, C.A.7 (Ill.) 1965, 346 F.2d 227, certiorari denied 86 S.Ct. 428, 382 U.S. 955, 15 L.Ed.2d 359, rehearing denied 86 S.Ct. 612, 382 U.S. 1021, 15 L.Ed.2d 536. Criminal Law 1115(1)

Record on appeal from conspiracy conviction showed that particular defendant had sufficient connection with setting up means by which fraud was perpetrated and acquisition of property which became subject of interstate commerce to warrant submission to jury of issue of his knowledge and participation in the conspiracy. Ivey v. U.S., C.A.5 (Ga.) 1965, 346 F.2d 157, certiorari denied 86 S.Ct. 237, 382 U.S. 903, 15 L.Ed.2d 156. Conspiracy 48.1(3)

Record revealed that defendants suffered no prejudice from assertedly adverse newspaper publicity where there was no showing that any juror came into contact with such matter or that he could not serve in fair and impartial manner but government had taken affirmative action, requesting newspapers to avoid publishing articles related to case and the trial court made continuing efforts to secure fair and impartial jury trial. U. S. v. Bentvena, C.A.2 (N.Y.) 1963, 319 F.2d 916, certiorari denied 84 S.Ct. 345, 375 U.S. 940, 11 L.Ed.2d 271, rehearing denied 90 S.Ct. 894, 397 U.S. 928, 25 L.Ed.2d 108, rehearing denied 84 S.Ct. 515, 375 U.S. 989, 11 L.Ed.2d 476, certiorari denied 84 S.Ct. 346, 375 U.S. 940, 11 L.Ed.2d 271, rehearing denied 84 S.Ct. 1162, 377 U.S. 913, 12 L.Ed.2d 183, certiorari denied 84 S.Ct. 353, 375 U.S. 940, 11 L.Ed.2d 272, certiorari denied 84 S.Ct. 354, 375 U.S. 940, 11 L.Ed.2d 272, certiorari denied 84 S.Ct. 355, 375 U.S. 940, 11 L.Ed.2d 272, certiorari denied 84 S.Ct. 360, 375 U.S. 940, 11 L.Ed.2d 272. Criminal Law 1174(1)

Where defendant, who was convicted of using mails to defraud and of conspiracy to use mails to defraud, did not cause to be transcribed testimony taken at very lengthy trial, and original papers certified by clerk of District Court did not include transcript of such testimony and an oral argument in Court of Appeals defendant's counsel did not press as error any matter which would not require examination of untranscribed testimony, judgment would be affirmed. Gallarelli v. U. S., C.A.1 (Mass.) 1957, 248 F.2d 539. Criminal Law 1114.1(3)

Where speeches of the defense were not taken down in prosecution for using mails to defraud and for conspiracy, reviewing court would not reverse conviction, because of prosecutors' speeches to jury indicating importance of their decision to the public. U.S. v. Dilliard, C.C.A.2 (N.Y.) 1938, 101 F.2d 829, certiorari denied 59 S.Ct. 484, 306 U.S. 635, 83 L.Ed. 1036. Criminal Law 1119(4)

Alleged error, in view of the evidence, in charge that if the evidence established a conspiracy, it was a continuing conspiracy, was not reviewable where evidence was not before reviewing court. U.S. v. Twentieth Century Bus Operators, C.C.A.2 (N.Y.) 1939, 101 F.2d 700, certiorari denied 59 S.Ct. 821, 307 U.S. 624, 83 L.Ed. 1502. Criminal Law 1122(3)

1065. Questions or issues not raised below, review

Where defendant, who was convicted of conspiring to manufacture, import and distribute heroin, did not request a charge on multiple conspiracies and took no exception to the charge as given, he came ill-equipped to the Court of Appeals to assert a claim of a single conspiracy charged and multiple conspiracies proven; moreover, he made no showing of prejudice resulting from the asserted multiplicity. U. S. v. Head, C.A.2 (N.Y.) 1976, 546 F.2d 6, certiorari denied 97 S.Ct. 1551, 430 U.S. 931, 51 L.Ed.2d 775. Criminal Law 1050

Since the appellant's conviction under indictment's conspiracy count had to be affirmed, under the concurrent sentence rule the Court of Appeals did not have to consider his objection to the substantive count. U. S. v. Ingman, C.A.9 (Wash.) 1976, 541 F.2d 1329. Criminal Law 1177

Although oblique references to defendant's federal wagering tax stamp filings were sufficient to entitle defendant to

claim his privilege against self-incrimination, in prosecution for conspiracy to use and actual use of facilities in interstate commerce to carry on an unlawful gambling business, it was incumbent on defendant to make a timely and proper assertion of privilege; accordingly, where privilege was not asserted in trial court, defense counsel being aware that availability of privilege was being actively litigated, privilege was waived and could not be asserted for first time on appeal. Nolan v. U. S., C.A.10 (Okla.) 1969, 423 F.2d 1031, certiorari denied 91 S.Ct. 47, 400 U.S. 848, 27 L.Ed.2d 85. Criminal Law 1036.1(3.1)

In prosecution for violation of the Harison Narcotic Act, §§ 4704, 7237 of Title 26, the Jones-Miller Act, § 174 of Title 21, and conspiracy to violate such Acts, defendant who had made no request that jury be examined on voir dire to determine whether they had read newspaper articles and, if so, whether they had been influenced thereby could not successfully complain that trial judge had abused his discretion in denying new trial motion grounded on newspaper articles relative to expected testimony of a woman that one of defendants had acted as her procurer and had supplied her with narcotics, and that she was afraid to testify. Ferrari v. U. S., C.A.9 (Cal.) 1957, 244 F.2d 132, certiorari denied 78 S.Ct. 124, 355 U.S. 873, 2 L.Ed.2d 78, certiorari denied 78 S.Ct. 125, 355 U.S. 873, 2 L.Ed.2d 78. Criminal Law 1039

Where defendants, each of whom was convicted of substantive offense of operating lottery, and jointly of conspiracy to operate lottery, did not request trial court to compel election of counts on ground that substantive and conspiracy counts were duplicitous, in view of identity of proof under each count, and constituted double jeopardy, defendants did not save question for review on appeal, and Court of Appeals would not consider merits of contention. Aikens v. U.S., C.A.D.C.1956, 232 F.2d 66, 98 U.S.App.D.C. 66. Criminal Law 1032(6)

Where conspiracy count charged 17 overt acts and defendant criticized only four of them and it was impossible to say which overt act jury found to have been committed, no error was presented. Holmes v. U. S., C.C.A.8 (Neb.) 1943, 134 F.2d 125, certiorari denied 63 S.Ct. 1434, 319 U.S. 776, 87 L.Ed. 1722. Criminal Law 1116

Whether it was necessary that testimony of a conspirator against his codefendants in prosecution for conspiracy to transport stolen jewelry in interstate commerce be corroborated was not an issue on appeal where objection to admission of such evidence was made on the ground that it tended to show defendants had committed an offense other than that charged in the indictment. Banning v. U.S., C.C.A.6 (Mich.) 1942, 130 F.2d 330, certiorari denied 63 S.Ct. 434, 317 U.S. 695, 87 L.Ed. 556. Criminal Law 1043(3)

In prosecution for conspiracy to transport stolen jewelry in interstate commerce, error in permitting district attorney on cross-examination of one of the defendants to inquire whether several years previously while being taken to prison he had not taken deputy sheriff's gun and shot him was not prejudicial error in view of fact that defendant replied in the negative and no attempt was made to refute such answer and the matter inquired about was remote and irrelevant. Banning v. U.S., C.C.A.6 (Mich.) 1942, 130 F.2d 330, certiorari denied 63 S.Ct. 434, 317 U.S. 695, 87 L.Ed. 556. Criminal Law 1170.5(5)

In prosecution for conspiracies and attempts to defraud income tax, accused could not successfully complain on appeal as to keeping wife off stand, where every one then supposed that such was the law and defense agreed that it should be done. U.S. v. Wexler, C.C.A.2 (N.Y.) 1935, 79 F.2d 526, certiorari denied 56 S.Ct. 384, 297 U.S. 703, 80 L.Ed. 991. Criminal Law 1137(1)

In a prosecution against a contractor, who manufactured leather jerkins for the United States, and another, for conspiracy to defraud the United States, etc., in violation of former §§ 87 and 88 [now this section] of this title, where the contractor disposed of linings furnished by the United States, title to which did not pass to him, it was unnecessary to inquire whether, at the time he demanded the linings disposed of, he knew that they were in excess of his requirements, where there was no evidence in the record, and nothing was said in the argument concerning it. Borman v. U.S., C.C.A.2 (N.Y.) 1919, 262 F. 26. Criminal Law 1178

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1066. Objections not raised below, review

Where statement by codefendant, who did not testify at joint prosecution for conspiring to defraud an agency of the United States Government by intentionally selling to agent a nonnarcotic substance represented to be heroin, added very little weight to Government's case against defendant who did not object to its admission, introduction of such statement did not constitute sufficiently serious flaw to rise to level of "plain error" so as to permit defendant, under rule 52, Federal Rules of Criminal Procedure, this title, to raise for first time on appeal his right to confrontation of witness under U.S.C.A. Const. Amend. 6. U. S. v. Morales, C.A.5 (Tex.) 1973, 477 F.2d 1309. Criminal Law 1036.1(5)

Where defendants in prosecution for fraudulent sale of securities, fraud in the use of the mails and for conspiracy did not point out before trial court or in appellate court with any particularity why any particular exhibit was objectionable or how defendants were prejudiced by admission of the evidence, Court of Appeals would not consider claim that trial court erroneously denied motion to strike certain exhibits. Wall v. U. S., C.A.10 (Utah) 1967, 384 F.2d 758. Criminal Law 1036.1(6)

In prosecution for conspiracy and smuggling in relation to alleged plot to blow up Statue of Liberty, allegations of error by two defendants with respect to testimony concerning racist organization and Canadian separatist organization to which third defendant belonged could not be sustained when no objection was raised before trial court and, in any event, such evidence was clearly relevant to the conspiracy. U. S. v. Bowe, C.A.2 (N.Y.) 1966, 360 F.2d 1, certiorari denied 87 S.Ct. 401, 385 U.S. 961, 17 L.Ed.2d 306, certiorari denied 87 S.Ct. 779, 385 U.S. 1042, 17 L.Ed.2d 686, rehearing denied 87 S.Ct. 1040, 386 U.S. 969, 18 L.Ed.2d 127. Conspiracy 45; Criminal Law 1036.1(3.1)

Failure to note objection precluded assigning as error on appeal claim that trial court failed to instruct jury that coconspirator's acts and declarations, made in furtherance of conspiracy, may serve as evidence against his codefendants only with respect to conspiracy count. U. S. v. Castellana, C.A.2 (N.Y.) 1965, 349 F.2d 264, certiorari denied 86 S.Ct. 934, 383 U.S. 928, 15 L.Ed.2d 847, certiorari denied 86 S.Ct. 935, 383 U.S. 928, 15 L.Ed.2d 847, rehearing denied 86 S.Ct. 1368, 384 U.S. 923, 16 L.Ed.2d 444. Criminal Law 1038.2

Error in admission of testimony of F.B.I. agent concerning statements made by alleged coconspirator of defendant to agent after alleged conspiracy had been terminated was sufficiently prejudicial to be considered on appeal though error was not called to attention of federal district court. Gay v. U. S., C.A.10 (Utah) 1963, 322 F.2d 208. Criminal Law 1036.1(3.1)

Where exhibits were available for inspection by defendants for three weeks before submission to jury, and defendants found out at least before jury had finished deliberations that objectionable material was attached to exhibits but made no objection until moving for new trial, any error did not warrant reversal. Farrell v. U. S., C.A.9 (Cal.) 1963, 321 F.2d 409, certiorari denied 84 S.Ct. 631, 375 U.S. 992, 11 L.Ed.2d 478. Criminal Law 1036.1(6)

Receipt of inadmissible hearsay evidence as to a purported agreement of a defendant charged with conspiracy was prejudicial error, where it was only evidence sufficient to make a case against him, and notice would be taken thereof on appeal, even though the evidence was received without objection. U. S. v. Dunn, C.A.6 (Ky.) 1962, 299 F.2d 548. Criminal Law 419(1.5); Criminal Law 1036.5; Criminal Law 1169.1(9)

In prosecution for conspiracy to violate statutory provisions relating to manufacture, sale, possession, transportation, and distribution of untax-paid whiskey, wherein appellants had made no objection at trial as to admission of testimony that codefendant, after being arrested, had admitted delivery of whiskey from premises of which one of appellants was a tenant, admission of such testimony was not error. Roberson v. U.S., C.A.6 (Tenn.) 1960, 282 F.2d 648, certiorari denied 81 S.Ct. 167, 364 U.S. 879, 5 L.Ed.2d 102. Criminal Law 1036.1(3.1)

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Where defendants obtained dismissal of counts in indictment charging income tax evasion and conspiracy to evade income taxes, but did not seek mistrial on basis that what was excluded by dismissal was so inextricably mingled with what was retained in remaining count charging conspiracy to obstruct Treasury Department in collection of income taxes, as to make impossible a fair trial based only on admissible evidence, defendants could not complain of fact that emphasis in trial shifted from charges of direct tax evasion to broader charges contained in remaining count. U.S. v. Klein, C.A.2 (N.Y.) 1957, 247 F.2d 908, certiorari denied 78 S.Ct. 365, 355 U.S. 924, 2 L.Ed.2d 354. Criminal Law 1137(2)

Trial court did not err in not sustaining objections to evidence of Government witnesses as to statements made by codefendant of defendants, not in the presence of the defendants, prior to formation and not in pursuance of alleged conspiracy, and prior to production of any evidence to establish conspiracy, where codefendant did not object to such testimony, since such testimony was admissible as to codefendant. Alexander v. U. S., C.A.8 (Mo.) 1957, 241 F.2d 351, certiorari denied 77 S.Ct. 1405, 354 U.S. 940, 1 L.Ed.2d 1539, rehearing denied 78 S.Ct. 78, 355 U.S. 852, 2 L.Ed.2d 61. Criminal Law 422(9)

In prosecution for conspiracy to violate seven liquor law provisions, defendant, failing to call trial court's attention to possible jeopardy of sentence for felony on conviction of violating any of such provisions, though violation of one of them would be only a misdemeanor, for which maximum permissible penalty is 30 days in jail and $1,000 fine, by objection to form of indictment, request for charge to jury, calling for special verdict or verdict indicating degree of offense for which defendant was convicted, objection to court's charge, or otherwise, until after verdict of conviction was recorded and jury discharged, waived any errors in the indictment and trial and could not insist that these made the verdict ambiguous. Williams v. U.S., C.A.5 (Ga.) 1956, 238 F.2d 215, certiorari denied 77 S.Ct. 589, 352 U.S. 1024, 1 L.Ed.2d 596. Criminal Law 1032(5); Criminal Law 1038.1(3.1); Criminal Law 1038.3

Where objection to venue was not raised until the conclusion of government's proof in prosecution for conspiracy to violate narcotic laws, objection was waived. Poliafico v. U. S., C.A.6 (Ohio) 1956, 237 F.2d 97, certiorari denied 77 S.Ct. 590, 352 U.S. 1025, 1 L.Ed.2d 597, rehearing denied 77 S.Ct. 718, 353 U.S. 931, 1 L.Ed.2d 725. Criminal Law 132

In prosecution for conspiracy to violate narcotic laws, where government at first declined, but later turned over to defendants' counsel statements of government witness who had pled guilty to crime with understanding that such witnesses could be called for further cross-examination, and defendants did not avail themselves of this opportunity, they could not contend on appeal that they should have been allowed to show inconsistencies between such statements and witnesses' testimony. Poliafico v. U. S., C.A.6 (Ohio) 1956, 237 F.2d 97, certiorari denied 77 S.Ct. 590, 352 U.S. 1025, 1 L.Ed.2d 597, rehearing denied 77 S.Ct. 718, 353 U.S. 931, 1 L.Ed.2d 725. Criminal Law 1036.2

In prosecution for conspiracy to steal or to receive, possess and dispose of whiskey from an interstate shipment, where evidence as to other crimes and conspiracies was not solicited by prosecution, but was injected by a witness in response to cross-examination questions of counsel for defendants, and there was no immediate objection to such evidence, subsequent refusal to strike such evidence was not reversible error. Clark v. U.S., C.A.5 (Fla.) 1954, 213 F.2d 63. Criminal Law 1168(4)

In prosecution for conspiracy, where no objection was made to alleged improper remarks of prosecuting attorney, such remarks were not subject to review. Clark v. U.S., C.A.5 (Fla.) 1954, 213 F.2d 63. Criminal Law 1037.1(1)

In prosecution for conspiracy to commit, and the commission of, violations of §§ 173 and 174 of Title 21 and § 2591(a) of Title 26, alleged error of trial judge in refusing to read from case report prepared by Narcotics Agent would not be considered in view of defense counsel's acquiescence in judge's conduct. U. S. v. Tramaglino, C.A.2

(N.Y.) 1952, 197 F.2d 928, certiorari denied 73 S.Ct. 105, 344 U.S. 864, 97 L.Ed. 670. Criminal Law 1137(1)

Where court in conspiracy prosecution gave cautionary instructions as to credibility of defendant's personal testimony, and gave no instructions as to scrutiny to be given testimony of an accomplice, but defendant's counsel made no request and entered no objection or exceptions to conclusions in judge's charge, Court of Appeals could, in the public interest, take notice of the error, if any. U.S. v. Levi, C.A.7 (Ind.) 1949, 177 F.2d 827. Criminal Law 1038.3; Criminal Law 1056.1(4)

In prosecution for conspiracy, admission of hearsay statements made to and by co-conspirators out of presence of conspirator, to which he was not a party, if error, was not ground for reversal in absence of exceptions thereto. Briggs v. U.S., C.A.10 (Okla.) 1949, 176 F.2d 317, certiorari denied 70 S.Ct. 102, 338 U.S. 861, 94 L.Ed. 528, rehearing denied 70 S.Ct. 158, 338 U.S. 882, 94 L.Ed. 541, certiorari denied 70 S.Ct. 103, 338 U.S. 861, 94 L.Ed. 528. Criminal Law 1054(1)

Where indictment charged that defendant, codefendant, and divers persons unknown were parties to conspiracy, and confession by codefendant was in evidence, defendant could not object for first time on appeal to instruction that a conspiracy involves two persons and that, if defendant was found not guilty of conspiracy, jury must find codefendant not guilty. U.S. v. Negro, C.C.A.2 (N.Y.) 1947, 164 F.2d 168. Criminal Law 1038.1(4)

Where evidence on issue whether conspiracy included particular defendant made a case for jury and there was no objection to charge, admission of evidence of what other conspirators said during continuance of enterprise about defendant, which was ruled to be dependent on satisfactory establishment otherwise that conspiracy included defendant, was not reversible error. Hall v. U.S., C.C.A.5 (Ga.) 1945, 150 F.2d 280, certiorari denied 66 S.Ct. 140, 326 U.S. 760, 90 L.Ed. 457. Criminal Law 1169.7

In prosecution for conspiracy to defraud Government of floor stock tax on distilled spirits and wine, where court explained effect on one defendant of testimony as to statements made by other defendant in nature of admission, and no further complaint was made of admission of such testimony, such defendant could not complain on appeal of admission of such testimony. Auerbach v. U.S., C.C.A.6 (Tenn.) 1943, 136 F.2d 882. Criminal Law 673(4)

If testimony, though relevant on certain issues, was prejudicial and proved too much, it was duty of accused to suggest to court below that jury be instructed to make only a limited use of the testimony, and it was too late to object to prejudicial effect of testimony for first time on appeal. Deacon v. U. S., C.C.A.1 (Mass.) 1941, 124 F.2d 352. Criminal Law 1038.3

In prosecution of three defendants for conspiracy to have in their possession counterfeit coins and to attempt to pass, utter and sell such coins and for possession of counterfeit coins, contention that testimony of secret service agent that two of defendants stated to him in presence of codefendant that the three of them came to town together and that codefendant did not deny statement was inadmissible and prejudicial to codefendant was not available on appeal where no objection was interposed to testimony at time of its admission and codefendant made no request that it be limited to defendants as against whom it was clearly admissible. Reavis v. U.S., C.C.A.10 (Okla.) 1939, 106 F.2d 982. Criminal Law 1036.1(5); Criminal Law 1036.3

Although defendants made no specific objection to introduction in evidence of testimony procured by government agents' intercepting and divulging intrastate telephone communication between defendants on ground that such admission violated § 151 et seq. of Title 47, appellate court could consider and determine such question to avoid a miscarriage of justice. Sablowsky v. U. S., C.C.A.3 (Pa.) 1938, 101 F.2d 183. Criminal Law 1036.1(4)

In prosecution for use of mails in furtherance of scheme to defraud owners of public investment trust units, for violation of § 77a et seq. of Title 15 and for conspiracy to commit such crimes, court's statement that objection to question propounded witness might be renewed later if the defendants were not connected "with this unlawful

scheme or schemes" was not an error which could be considered on appeal, where objection was not presented to trial court in some manner. Troutman v. U. S., C.C.A.10 (Colo.) 1938, 100 F.2d 628. Criminal Law 1035(9)

An exception to the court's charge respecting the nature of the conspiracy charged in indictment on ground that it did not represent a correct statement of the law if it represented the same theory that the court had advanced during a colloquy with the prosecuting attorney, presented nothing for review. Diehl v. U.S., C.C.A.8 (Mo.) 1938, 98 F.2d 545. Criminal Law 1059(2)

Judgment of conviction for possessing counterfeit United States obligations with intent to pass could not be reversed in absence of valid bill of exceptions. Trant v. U.S., C.C.A.7 (Ill.) 1936, 88 F.2d 475. Criminal Law 1090.1(1)

The fact that an indictment charging conspiracy, on which issue alone the case was submitted, was duplicitous, was immaterial, where motions by defendants to quash were abandoned and not argued. Matthews v. U.S., C.C.A.7 (Ill.) 1924, 300 F. 556. Indictment And Information 196(7)

In prosecution for a conspiracy to commit offense against United States, for aiding and abetting attempted armed robbery of national bank, and for being an accessory after the fact to principal offender in the robbery, questions which were asked state trooper, as to whereabouts at time of trial of other troopers who had contact with defendants after attempted robbery but which were not objected to, were properly admitted in evidence as any error was waived by failure to make objection. U. S. v. Anthony, M.D.Pa.1956, 145 F.Supp. 323. Criminal Law 698(1)

1067. Standing, review

Defendants who were not charged in indictment alleging that their codefendants had willfully and maliciously destroyed dock and vessel within the special admiralty and territorial jurisdiction of United States had no standing to challenge that count of indictment for failing to allege acts falling within the special maritime and territorial jurisdiction of the United States, where offense charged in count affected trial of complaining defendants only insofar as it was one of the several unlawful objects alleged in conspiracy count against all defendants and such count did not affect convictions of complaining defendants on conspiracy counts so long as any one of the objects of conspiracy was unchallenged. U. S. v. Tanner, C.A.7 (Ill.) 1972, 471 F.2d 128, certiorari denied 93 S.Ct. 269, 409 U.S. 949, 34 L.Ed.2d 220. Indictment And Information 144

1068. Presumptions, review

Reviewing court could not presume that trial judge made improper use of evidence as to an asserted coconspirator's admission. United States v. Tutino, C.A.2 (N.Y.) 1959, 269 F.2d 488. Criminal Law 1144.1

In prosecution for using, and conspiracy to use, mails to defraud, procedure followed in admitting evidence which was limited to certain defendants when admitted on understanding that, if it later became admissible as to others, government could move to have it so treated, and then denying motion to have evidence admitted against all defendants except such as had been offered only against particular defendants and instructing jury as to use to be made of such evidence, was not erroneous, since reviewing court could not assume that jury would disregard instructions and make improper use of evidence. U.S. v. Rollnick, C.C.A.2 (N.Y.) 1937, 91 F.2d 911. Criminal Law 1144.15

Where an indictment contained three counts, the first two of which were insufficient, and charged an offense different from that charged in the third count, and the court instructed the jury that they might find the defendants guilty on all or any of the three counts, that they could find a general verdict of guilty and such verdict would be upheld in the way of pleading, if any of the counts in the indictment were good, it cannot be presumed that the

general verdict was based on the third count, which was good, and therefore the conviction must be reversed. Bruno v. U.S., C.C.A.1 (Mass.) 1923, 289 F. 649.

In a prosecution for conspiracy to defraud the United States by adding fictitious names to the pay roll of a railroad which had been under federal control for more than a year, the conviction should not be reversed for absence of affirmative proof (a point not raised on the trial) that the money obtained by means of such fictitious entries was money derived from the operation of the road during federal control, which Federal Control Act, § 12 (temporary) and therefore the property of the U.S., there being a presumption that it was so derived. Morenkow v. U. S., C.C.A.6 (Ohio) 1921, 276 F. 293. Conspiracy 43(10); Indictment And Information 62

Where, in a trial for conspiring to use the mails in carrying out a scheme to defraud, on an indictment charging a scheme to defraud named persons and others whose names were unknown to grand inquest, there was no showing that any other persons than those named were known to the grand inquest, it was presumed on writ of error that the indictment in this regard truthfully stated the fact. US v. Marrin, E.D.Pa.1908, 159 F. 767, affirmed 167 F. 951, 93 C.C.A. 351, certiorari denied 32 S.Ct. 523, 223 U.S. 719, 56 L.Ed. 629.

1069. Assistance of counsel, review

In prosecution for conspiracy to defraud the United States, where the trial court, though advised of the possibility that conflicting interests might arise which would diminish an attorney's usefulness to defendant for whom attorney had entered his appearance as associate counsel, appointed attorney as codefendant's counsel, evidence showed that attorney's representation of defendant was not as effective as it might have been had the appointment not been made, and the court thereby denied defendant his right to have the effective "assistance of counsel" guaranteed by U.S.C.A.Const. Amend.6. Glasser v. U.S., U.S.Ill.1942, 62 S.Ct. 457, 315 U.S. 60, 86 L.Ed. 680, rehearing denied 62 S.Ct. 629, 315 U.S. 827, 86 L.Ed. 1222, rehearing denied 62 S.Ct. 637, 315 U.S. 827, 86 L.Ed. 1222. Criminal Law 641.5(2.1)

In conspiracy cases, where the liberal rules of evidence and the wide latitude accorded the prosecution may and sometimes do operate unfairly against an individual defendant, it is especially important that the defendant be given the benefit of the undivided assistance of his counsel without the court's becoming a party to encumbering that assistance. Glasser v. U.S., U.S.Ill.1942, 62 S.Ct. 457, 315 U.S. 60, 86 L.Ed. 680, rehearing denied 62 S.Ct. 629, 315 U.S. 827, 86 L.Ed. 1222, rehearing denied 62 S.Ct. 637, 315 U.S. 827, 86 L.Ed. 1222. Criminal Law 641.13(1)

Refusal to appoint counsel for petitioner, who had pled guilty to conspiracy, and who was represented by counsel at plea proceeding and at hearing on his motion to vacate sentence, for appeal, which presented primary question involving review of evidence presented at hearing at which motion was denied, was not abuse of discretion. Day v. U. S., C.A.8 (Mo.) 1970, 428 F.2d 1193. Criminal Law 1077.3

Defendant who retained private counsel, who failed to object before or during trial to lack of separate counsel for codefendant, and who was unable to point to any incident indicating lack of effective assistance of counsel was not prejudiced by trial court's failure to inform him of alleged right to separate counsel in conspiracy prosecution. U. S. v. Martinez, C.A.6 (Ohio) 1970, 428 F.2d 86, certiorari denied 91 S.Ct. 125, 400 U.S. 881, 27 L.Ed.2d 119, certiorari denied 91 S.Ct. 1630, 402 U.S. 951, 29 L.Ed.2d 122. Criminal Law 641.5(7)

No ground for reversal was presented by trial court's assigning counsel to represent a defendant after his counsel and co-counsel had claimed illness, but court appointed physicians could find no objective signs of injury or illness. U. S. v. Bentvena, C.A.2 (N.Y.) 1963, 319 F.2d 916, certiorari denied 84 S.Ct. 345, 375 U.S. 940, 11 L.Ed.2d 271, rehearing denied 90 S.Ct. 894, 397 U.S. 928, 25 L.Ed.2d 108, rehearing denied 84 S.Ct. 515, 375 U.S. 989, 11 L.Ed.2d 476, certiorari denied 84 S.Ct. 346, 375 U.S. 940, 11 L.Ed.2d 271, rehearing denied 84 S.Ct. 1162, 377 U.S. 913, 12 L.Ed.2d 183, certiorari denied 84 S.Ct. 353, 375 U.S. 940, 11 L.Ed.2d 272, certiorari

denied 84 S.Ct. 354, 375 U.S. 940, 11 L.Ed.2d 272, certiorari denied 84 S.Ct. 355, 375 U.S. 940, 11 L.Ed.2d 272, certiorari denied 84 S.Ct. 360, 375 U.S. 940, 11 L.Ed.2d 272. Criminal Law 1166.10(1)

No ground for reversal appeared in court's denying request of a defendant to discharge appointed defense counsel and conduct cross-examination of government's principal witness himself where he indicated no dissatisfaction with his counsel and apparently relied solely on right to represent himself. U. S. v. Bentvena, C.A.2 (N.Y.) 1963, 319 F.2d 916, certiorari denied 84 S.Ct. 345, 375 U.S. 940, 11 L.Ed.2d 271, rehearing denied 90 S.Ct. 894, 397 U.S. 928, 25 L.Ed.2d 108, rehearing denied 84 S.Ct. 515, 375 U.S. 989, 11 L.Ed.2d 476, certiorari denied 84 S.Ct. 346, 375 U.S. 940, 11 L.Ed.2d 271, rehearing denied 84 S.Ct. 1162, 377 U.S. 913, 12 L.Ed.2d 183, certiorari denied 84 S.Ct. 353, 375 U.S. 940, 11 L.Ed.2d 272, certiorari denied 84 S.Ct. 354, 375 U.S. 940, 11 L.Ed.2d 272, certiorari denied 84 S.Ct. 355, 375 U.S. 940, 11 L.Ed.2d 272, certiorari denied 84 S.Ct. 360, 375 U.S. 940, 11 L.Ed.2d 272. Criminal Law 1166.10(2)

Test of whether reversal was to be ordered because of denial of continuance sought to permit counsel to prepare was whether asserted lack of effective assistance of counsel was such as to shock conscience of court and to make proceedings a farce and mockery of justice. U. S. v. Bentvena, C.A.2 (N.Y.) 1963, 319 F.2d 916, certiorari denied 84 S.Ct. 345, 375 U.S. 940, 11 L.Ed.2d 271, rehearing denied 90 S.Ct. 894, 397 U.S. 928, 25 L.Ed.2d 108, rehearing denied 84 S.Ct. 515, 375 U.S. 989, 11 L.Ed.2d 476, certiorari denied 84 S.Ct. 346, 375 U.S. 940, 11 L.Ed.2d 271, rehearing denied 84 S.Ct. 1162, 377 U.S. 913, 12 L.Ed.2d 183, certiorari denied 84 S.Ct. 353, 375 U.S. 940, 11 L.Ed.2d 272, certiorari denied 84 S.Ct. 354, 375 U.S. 940, 11 L.Ed.2d 272, certiorari denied 84 S.Ct. 355, 375 U.S. 940, 11 L.Ed.2d 272, certiorari denied 84 S.Ct. 360, 375 U.S. 940, 11 L.Ed.2d 272. Criminal Law 1166(7)

Contention that defense counsel appointed by district court was inadequately equipped, because of a dearth of professional experience, to defend prisoners charged with violation of white slave law, § 2421 of this title, and conspiracy to commit such offense was without support in the record. U.S. v. Stoecker, C.A.7 (Ill.) 1954, 216 F.2d 51. Criminal Law 641.13(4)

Record disclosed no abuse of discretion by district judge in selection and appointment of counsel to defend prisoners charged with violation of white slave law, § 2421 of this title, and conspiracy to commit such offense. U.S. v. Stoecker, C.A.7 (Ill.) 1954, 216 F.2d 51. Criminal Law 641.10(1)

Record on appeal from convictions for violation of white slave law, § 2421 of this title, and conspiracy to commit such offense established that defense counsel appointed by district court provided defendants the representation by counsel guaranteed by U.S.C.A.Const. Amend. 6. U.S. v. Stoecker, C.A.7 (Ill.) 1954, 216 F.2d 51. Criminal Law 641.13(2.1)

In prosecution for using, and conspiracy to use, mails to defraud, those defendants who were represented only by lawyer who was appointed by court to represent them in addition to defendant by whom he had been employed could not complain of trial court's action for first time on appeal after conviction where they had accepted services. U.S. v. Rollnick, C.C.A.2 (N.Y.) 1937, 91 F.2d 911. Criminal Law 1035(7)

In prosecution for using, and conspiracy to use, mails to defraud by selling watered stock, the appointment of attorney for defendant who had acted as promoter, to act for defendants who participated in scheme by their activities on paper which pushed sale of stock, was not erroneous because of the conflict of interest between the defendants for whom attorney was appointed and defendant for whom he was acting. U.S. v. Rollnick, C.C.A.2 (N.Y.) 1937, 91 F.2d 911. Criminal Law 641.5(3)

Defense attorney's failure to interview or call some potential character witnesses prior to defendant's guilty plea in smuggling conspiracy prosecution was not ineffective assistance of counsel; attorney's determination that witnesses would do more harm than good at sentencing stage was objectively reasonable, and there was no

evidence that interviews would have altered attorney's plea recommendation. Silva v. U.S., N.D.Ill.1999, 75 F.Supp.2d 877. Criminal Law 641.13(7)

Even though employee of defendant's attorney was invited by trial judge to sit at counsel table, and did so, there was no abdication of authority by attorney to employee and no denial of effective assistance of counsel. Mengarelli v. U. S., D.C.Nev.1971, 325 F.Supp. 358, affirmed 476 F.2d 617. Criminal Law 641.13(2.1)

1070. Comments of court, review

In prosecution for conspiracy to commit, aiding and abetting in, and commission of substantive crimes of making false statements to Immigration and Naturalization Service, obstruction of justice, and visa fraud, in which there was no evidence of "hierarchical" conspiracy, trial judge committed error in including in his charge prejudicial commentaries on law of conspiracy, such as reference to "gruesome, irremediable, drastic horrifying effects of conspiratorial plans," which may have left jury with impression that defendants were members of vast criminal syndicate that government was beginning to unravel. U.S. v. Assi, C.A.2 (N.Y.) 1984, 748 F.2d 62. Conspiracy 48.2(1)

In prosecution for conspiracy to defraud the United States, trial court's comment that another individual should have been named a conspirator was not reversible error, inasmuch as the comment did not so prejudice the jury as to deprive defendants of a fair trial. U. S. v. Burgin, C.A.5 (Miss.) 1980, 621 F.2d 1352, rehearing denied 627 F.2d 239, certiorari denied 101 S.Ct. 574, 449 U.S. 1015, 66 L.Ed.2d 474. Criminal Law 1166.22(2)

Conviction would not be reversed for trial judge's remarks concerning credibility of witness where judge was not asked to inquire of jury whether they overheard his remarks and was not asked to give jury cautionary instruction. U. S. v. Nicholson, C.A.5 (La.) 1976, 525 F.2d 1233, certiorari denied 96 S.Ct. 2170, 425 U.S. 972, 48 L.Ed.2d 795, certiorari denied 97 S.Ct. 105, 429 U.S. 837, 50 L.Ed.2d 103. Criminal Law 1035(9)

Judge's statement, made out of hearing of jury, to effect that "Beaver 55" was a publication which one of the defendants had worked on with his mother could not be made basis of reversal of conspiracy conviction relating to destruction of draft board records. U. S. v. Donner, C.A.7 (Ind.) 1974, 497 F.2d 184, certiorari denied 95 S.Ct. 619, 419 U.S. 1047, 42 L.Ed.2d 641, certiorari denied 95 S.Ct. 620, 419 U.S. 1047, 42 L.Ed.2d 641. Criminal Law 1166.22(2)

In prosecution for conspiracy and mail fraud, judge's comments connected with his requiring that a defendant sit "around the other side of the table" because he was looking at witness and sitting close to witness and it was making her uncomfortable were not fatally prejudicial. U. S. v. Perez, C.A.5 (La.) 1973, 489 F.2d 51, rehearing denied 488 F.2d 552, certiorari denied 94 S.Ct. 3067, 417 U.S. 945, 41 L.Ed.2d 664, certiorari denied 94 S.Ct. 3068, 417 U.S. 945, 41 L.Ed.2d 664. Criminal Law 1166.22(2)

Comments made by trial judge after testimony of unindicted coconspirator were not premature instructions but merely constituted an explanation to jury as to the circumstances under which the testimony was being tentatively received, in prosecution for bribery conspiracy. U. S. v. Pordum, C.A.2 (N.Y.) 1971, 451 F.2d 1015, certiorari denied 92 S.Ct. 1249, 405 U.S. 998, 31 L.Ed.2d 467, certiorari denied 92 S.Ct. 1269, 405 U.S. 998, 31 L.Ed.2d 467. Criminal Law 656(3)

Jury charge in prosecution for conspiracy to misapply bank funds and of making false entries in bank records with intent to defraud did not overstep bounds of rule relating to trial judge's right to comment on evidence. Gordon v. U. S., C.A.5 (Fla.) 1971, 438 F.2d 858, certiorari denied 92 S.Ct. 139, 404 U.S. 828, 30 L.Ed.2d 56, certiorari denied 92 S.Ct. 140, 404 U.S. 828, 30 L.Ed.2d 56, rehearing denied 92 S.Ct. 312, 404 U.S. 960, 30 L.Ed.2d 279, certiorari denied 92 S.Ct. 142, 404 U.S. 828, 30 L.Ed.2d 56, rehearing denied 92 S.Ct. 313, 404 U.S. 960, 30 L.Ed.2d 279, certiorari denied 92 S.Ct. 143, 404 U.S. 828, 30 L.Ed.2d 56, certiorari denied 92 S.Ct. 63, 404 U.S.

828, 30 L.Ed.2d 56. Criminal Law 755.5

Trial judge's comment made subsequent to return of jury's verdicts did not constitute a basis for challenging validity of the verdicts as such comments could have no effect on verdict and merely characterized judge's view of the offense and culpability of the offender. U. S. v. Winn, C.A.10 (Okla.) 1969, 411 F.2d 415, certiorari denied 90 S.Ct. 245, 396 U.S. 919, 24 L.Ed.2d 198. Criminal Law 656(9)

Record did not support defendants' claims of misconduct by trial judge, in allegedly conducting ex parte proceeding in absence of defendants and their counsel in violation of jury-trial rights secured by U.S.C.A.Const. Amend. 6, in relation to comment by judge on basis for determination of intent and wilful participation, as requested by jurors during deliberations in criminal conspiracy trial. U. S. v. Kelly, C.A.2 (N.Y.) 1965, 349 F.2d 720, certiorari denied 86 S.Ct. 1467, 384 U.S. 947, 16 L.Ed.2d 544. Criminal Law 863(2)

Judge's cautions from time to time that certain evidence admissible as to one defendant would be inadmissible as to other defendant until there was some evidence of conspiracy, something to tie the two together or some connecting proof did not mislead jury as to degree of proof needed to establish conspiracy. U. S. v. Lukasik, C.A.7 (Ill.) 1965, 341 F.2d 325, certiorari denied 85 S.Ct. 1770, 381 U.S. 938, 14 L.Ed.2d 702. Criminal Law 783(1)

Jury's final responsibility in conspiracy case was not diluted by trial court's parenthetical reference early in trial to higher court's looking at record, to explain persistence in requiring a witness to make it clear to jury just which of the persons in the courtroom he was identifying. U. S. v. Lukasik, C.A.7 (Ill.) 1965, 341 F.2d 325, certiorari denied 85 S.Ct. 1770, 381 U.S. 938, 14 L.Ed.2d 702. Criminal Law 656(3)

Court's statement to jury in overruling objections to testimony relating to acts, conversations and statements made by one or more of defendants, out of presence of other defendants, to effect that government had shown connection between each act, conversation and statement and the several defendants had effect of suggesting that court believed that conspiracy existed and improperly invaded province of jury. U. S. v. Allegretti, C.A.7 (Ill.) 1964, 340 F.2d 243, on rehearing 340 F.2d 254, certiorari denied 85 S.Ct. 1531, 381 U.S. 911, 14 L.Ed.2d 433, rehearing denied 85 S.Ct. 1800, 381 U.S. 956, 14 L.Ed.2d 728, certiorari denied 85 S.Ct. 1532, 381 U.S. 911, 14 L.Ed.2d 433, certiorari denied 88 S.Ct. 830, 390 U.S. 908, 19 L.Ed.2d 876. Criminal Law 656(3)

Preliminary remarks by trial judge, in prosecution for conspiracy to take fraudulent deductions on corporate income tax return, regarding seriousness of crime of defeating or evading taxes were not, considering context and purpose, prejudicial to defendant. U.S. v. Haskell, C.A.2 (Conn.) 1964, 327 F.2d 281, certiorari denied 84 S.Ct. 1351, 377 U.S. 945, 12 L.Ed.2d 307. Criminal Law 1166.22(2)

Any prejudice to defendants charged with making knowingly false statements to commodity credit corporation and with conspiracy to defraud the United States, resulting from trial judge's colloquy with defense witness relative to quality of legal advice on which defendant acted was removed by court's immediate instruction that the quality of the advice was irrelevant. Smith v. U.S., C.A.9 (Or.) 1962, 305 F.2d 197, certiorari denied 83 S.Ct. 189, 371 U.S. 890, 9 L.Ed.2d 124, certiorari denied 83 S.Ct. 190, 371 U.S. 890, 9 L.Ed.2d 124. Criminal Law 1166.22(5)

Trial judge's reprimanding defense counsel was not prejudicial to defendant, where judge also reprimanded prosecutor and there was no bias or prejudice in either set of reprimands. Herman v. U.S., C.A.5 (Fla.) 1961, 289 F.2d 362, certiorari denied 82 S.Ct. 174, 368 U.S. 897, 7 L.Ed.2d 93. Criminal Law 1166.22(3)

In conspiracy prosecution, where during the course of trial a codefendant without knowledge of defendant withdrew his plea of not guilty and entered a plea of guilty, and juror inquired whether such plea had something to do with the guilt of defendant, response of court that the fact that codefendant was guilty did not of itself indicate that defendant was guilty, and whatever weight the jury gave to fact that codefendant had pleaded guilty was a matter for jury, and that he might be guilty of conspiring with another conspirator, was reversible error. Trussell v.

18 U.S.C.A. § 371

U.S., C.A.6 (Ky.) 1960, 278 F.2d 478. Criminal Law 655(9); Criminal Law 1166.22(4.1)

In prosecution for conspiracy to violate narcotic laws, where evidence was insufficient to show defendant's participation in conspiracy, statement of trial court in presence of jury that testimony of government witness, if believed, was sufficient to show that all the defendants were a part of conspiracy, was error prejudicial to defendant. Chavez v. U. S., C.A.9 (Cal.) 1960, 275 F.2d 813. Criminal Law 656(9); Criminal Law 1166.22(7)

In prosecution for conspiracy with bankrupt to conceal assets from bankruptcy receiver, record established that various statements made by trial judge from time to time throughout trial were not meant or understood by jury as comments on evidence which might be weighed by jury but that such statements were responses of trial judge as judge and counsel were engaged in advancing, testing, and countering with arguments, pro and con, on objections or rulings on evidence. Sultan v. U. S., C.A.5 (Fla.) 1957, 249 F.2d 385. Criminal Law 656(3)

In prosecution of four defendants for conspiracy, it was not error for trial court to express an opinion on evidence where trial court clearly instructed jury that they were not bound by the judge's opinion but were free to exercise their own judgment. Stanley v. U. S., C.A.6 (Ky.) 1957, 245 F.2d 427, motion denied 249 F.2d 64. Criminal Law 762(3)

In prosecution for violation of the Harrison Narcotic Act, §§ 4704, 7237 of Title, 26 and the Jones-Miller Act, § 174 of Title 21, and for conspiracy to violate those Acts, it was not error for trial judge to respond to jury's post-retirement inquiry, as to whether government's recordings of defendants' conversations could have been played in court if they were available, by stating that the records were unavailable, that they were not in evidence, and that consequently the jury couldn't have them. Ferrari v. U. S., C.A.9 (Cal.) 1957, 244 F.2d 132, certiorari denied 78 S.Ct. 124, 355 U.S. 873, 2 L.Ed.2d 78, certiorari denied 78 S.Ct. 125, 355 U.S. 873, 2 L.Ed.2d 78. Criminal Law 863(2)

In prosecution for conspiracy to violate federal statutes by dealing in untaxpaid liquor, record disclosed no error on ground that trial judge by too great a participation in asking questions and making statements displayed apparent bias in favor of prosecution so that a fair trial could not be had. Papalia v. U.S., C.A.5 (Fla.) 1957, 243 F.2d 437. Criminal Law 655(1); Criminal Law 656(2)

In prosecution for illegal sale of narcotics and for conspiracy to make such a sale, statement by trial judge in denying defendant's motion for a verdict of acquittal, in the presence of the jury, that the defense of entrapment was not borne out by the evidence was not error, and even if error was not prejudicial in view of judge's instruction to the jury that it was for them to say whether defendant was ready and willing to commit the offense charged. United States v. Masciale, C.A.2 (N.Y.) 1956, 236 F.2d 601, certiorari granted 77 S.Ct. 568, 352 U.S. 1000, 1 L.Ed.2d 545, affirmed 78 S.Ct. 827, 356 U.S. 386, 2 L.Ed.2d 859, rehearing denied 78 S.Ct. 1367, 357 U.S. 933, 2 L.Ed.2d 1375. Criminal Law 656(9); Criminal Law 1166.22(7)

Where, in conspiracy prosecution, witness, who had been attorney for defendants, was asked whether defendants had unlawfully conspired with attorney to defraud the United States, trial court's subsequent remark that there had been questions concerning confidential relationships between lawyers and clients, that there were times when the privilege was not present, and that jury would be instructed later on that matter did not allude to the erroneous question, which was excluded, and did not constitute reversible error. U. S. v. Weinberg, C.A.3 (Pa.) 1955, 226 F.2d 161, certiorari denied 76 S.Ct. 305, 350 U.S. 933, 100 L.Ed. 815. Criminal Law 1166.22(6)

In conspiracy prosecution, trial judge's straightforward reading to trial witnesses of requested portions of witness' testimony before grand jury for purpose of refreshing such witness' recollection, did not constitute an abuse of discretion. U. S. v. Weinberg, C.A.3 (Pa.) 1955, 226 F.2d 161, certiorari denied 76 S.Ct. 305, 350 U.S. 933, 100 L.Ed. 815. Witnesses 255(9)

Where, in conspiracy prosecution, counsel had decided views and expressed them as did trial judge, who stated in his charge that there were occasions when he had to stop counsel, naming them, but who stressed necessity of judge to be impartial, and who stated that he did not have any opinion and that that was not his department, trial judge's conduct did not deny defendants a fair trial. U. S. v. Weinberg, C.A.3 (Pa.) 1955, 226 F.2d 161, certiorari denied 76 S.Ct. 305, 350 U.S. 933, 100 L.Ed. 815. Criminal Law 655(1)

In prosecution for wilful misapplication of bank funds, making false entries in bank records, conspiracy to commit offenses against United States, and violation of mail fraud statute, § 1341 of this title, reference to fact that defrauded bank had closed, though irrelevant to issues in case, did not constitute ground for reversal, where, on only occasion when question was asked, designed to produce such information, defendant's counsel immediately objected and objection was sustained. U. S. v. Scoblick, C.A.3 (Pa.) 1955, 225 F.2d 779. Criminal Law 1171.1(3)

Record on appeal from conviction of conspiracy to defraud United States did not support defendant's contentions that trial judge had twisted the evidence or that his remarks had given jury wrong impressions. United States v. Scully, C.A.2 (N.Y.) 1955, 225 F.2d 113, certiorari denied 76 S.Ct. 156, 350 U.S. 897, 100 L.Ed. 788. Criminal Law 655(1); Criminal Law 656(1)

Where trial court, in making statement to jury that defendant's alleged conconspirators, who had testified against defendant, did not appear to have had anything to gain or lose by outcome of trial, made specific reference to defendant's testimony that one alleged coconspirator had stated that government was to drop counts against him if he would testify against defendant, he dispelled any possible impression that jury could not take into account any interest that they might find witnesses had. United States v. Martin, C.A.2 (N.Y.) 1955, 223 F.2d 666. Criminal Law 785(9)

In prosecution for transporting stolen whiskey in interstate commerce and conspiring to steal such whiskey, wherein court sustained objection to statements by one of defendants, while being examined as witness by his counsel, that state officers told them he had nothing to do with highjacking of whiskey and that indictment against him in federal court would be dismissed and they wanted him to testify in another suit, subsequent statement by court, that nobody bargained with the court and it made no promises at any time, was not erroneous or prejudicial to any of defendants. Tripp v. U.S., C.A.8 (Mo.) 1955, 221 F.2d 692. Criminal Law 656(3); Criminal Law 1166.22(4.1)

In conspiracy case, trial judge's remarks to jury, with reference to consideration to be given to certain evidence admissible against one defendant but inadmissible against other defendants, were not confusing or misleading. Metcalf v. U.S., C.A.6 (Ky.) 1952, 195 F.2d 213. Criminal Law 783(1)

In prosecution for transporting and conspiring to transport stolen motor vehicles beyond borders of state, comments by judge on lack of credibility of testimony of accomplice of defendant was not improper, and especially so when made in conjunction with warning that any incriminating testimony of accomplice should be received with careful scrutiny. U.S. v. Mura, C.A.2 (N.Y.) 1951, 191 F.2d 886. Criminal Law 656(5)

In prosecution for transporting and causing to be transported a forged cashier's check drawn on Oklahoma bank from Oklahoma to Louisiana and for transporting forged check from Louisiana to Oklahoma and for conspiring to commit offense against United States by such transportation, record established that comments of court on evidence in charge considered as a whole were impartial and did not interfere with jurors' exercise of their independent judgment on facts. Byford v. U.S., C.A.10 (Okla.) 1950, 185 F.2d 171. Criminal Law 822(4)

Where codefendant indicted for conspiracy to steal government property was brought into court to plead guilty to that charge while defendant charged with tax evasions was on trial before a jury, and court remarked that codefendant's plea might make other defendants change their pleas, and newspapers connected the remark with the

defendant, and court on following day questioned jury with respect to newspaper article in a reproving manner and never explained his comment, defendant was deprived of fair trial in tax evasion case and was entitled to a new trial. U.S. v. Levi, C.A.7 (Ind.) 1949, 177 F.2d 833. Criminal Law 1186.4(3)

In prosecution of individuals and congressman for conspiracy with another to defraud the United States through violation of former § 203 of this title, prohibiting members of Congress from receiving compensation in matters affecting the government, comments of court indirectly referring to one defendant's failure to testify, made during extended colloquies concerning method of proving certain facts, was not reversible error in view of instruction that failure of that defendant to testify should not be construed against him. May v. United States, C.A.D.C.1949, 175 F.2d 994, 84 U.S.App.D.C. 233, certiorari denied 70 S.Ct. 58, 338 U.S. 830, 94 L.Ed. 505, order withheld 70 S.Ct. 81, 338 U.S. 854, motion denied 70 S.Ct. 94, motion denied 70 S.Ct. 95, rehearing denied 70 S.Ct. 154, 338 U.S. 882, 94 L.Ed. 542, rehearing denied 70 S.Ct. 155, 338 U.S. 882, 94 L.Ed. 542, order withheld 70 S.Ct. 80. Criminal Law 1166.22(4.1)

In prosecution of individuals and congressman for conspiracy to defraud the United States through violation of former § 203 of this title, prohibiting members of Congress from receiving compensation in matters affecting the government, record failed to support defendant's claim of unfair trial as result of alleged misconduct of prosecutor and alleged improper comment, hostility and bias of trial judge. May v. United States, C.A.D.C.1949, 175 F.2d 994, 84 U.S.App.D.C. 233, certiorari denied 70 S.Ct. 58, 338 U.S. 830, 94 L.Ed. 505, order withheld 70 S.Ct. 81, 338 U.S. 854, motion denied 70 S.Ct. 94, motion denied 70 S.Ct. 95, rehearing denied 70 S.Ct. 154, 338 U.S. 882, 94 L.Ed. 542, rehearing denied 70 S.Ct. 155, 338 U.S. 882, 94 L.Ed. 542, order withheld 70 S.Ct. 80. Criminal Law 655(1); Criminal Law 713

In prosecution for conspiring to defraud the United States of taxes on distilled spirits, wherein the district court properly refused to permit cross-examination of a witness who had testified that he took accused to a garage at request of another defendant, tending to elicit the witness' opinion that the accused was simply a messenger sent by the other defendant, the trial court's statement "Not at all", in answer to statement of accused's attorney to effect that attorney thought he was entitled to the same latitude of examination as the district attorney, was not prejudicial. U.S. v. Gallo, C.C.A.2 (N.Y.) 1941, 123 F.2d 229. Criminal Law 1166.22(5)

On a trial for mail fraud and conspiracy in the sale of stock, where objection was made to a question asked a defendant by the court concerning an exhibit on the ground that the document spoke for itself, the court's remark that, without some statement from the witness or some other witness, a certain inference was the only fair and reasonable one to be drawn from the exhibit, was entirely out of place, placed counsel in a position of apparently fearing to have the witness express his opinion, and destroyed the effect of the ruling sustaining the objection. Williams v. U.S., C.C.A.9 (Cal.) 1937, 93 F.2d 685. Criminal Law 656(3)

On a trial for mail fraud and conspiracy in connection with the sale of stock of a corporation, where a defendant who had been bookkeeper and assistant secretary of the corporation testified that he had no distinct recollection of a certain matter, the court indulged in unnecessary sarcasm in asking, "Well, you remember that you were the bookkeeper." Williams v. U.S., C.C.A.9 (Cal.) 1937, 93 F.2d 685. Criminal Law 656(2)

Court's statement that it considered certain evidence admissible because in its opinion government had made out prima facie case of conspiracy was not error. Lias v. U. S., C.C.A.4 (W.Va.) 1931, 51 F.2d 215, certiorari granted 52 S.Ct. 32, 284 U.S. 604, 76 L.Ed. 518, affirmed 52 S.Ct. 128, 284 U.S. 584, 76 L.Ed. 505. Criminal Law 656(9)

Court's interruptions of defendants' counsel during opening to jury, and restrictions thereon, were improper. Sunderland v. U.S., C.C.A.8 (Neb.) 1927, 19 F.2d 202. Criminal Law 699

In prosecution for conspiracy to use mails to defraud by sales of securities, court's illustration of legal principles by

hypothetical "gold brick" swindle was prejudicial. Sunderland v. U.S., C.C.A.8 (Neb.) 1927, 19 F.2d 202. Criminal Law 760

In view of absence of evidence and circumstances showing conspiracy expression of opinion by court as to his conviction that delivery of liquor was made pursuant to agreement was prejudicial. La Rosa v. U. S., C.C.A.4 (W.Va.) 1926, 15 F.2d 479. Criminal Law 762(2)

Defendant in prosecution for conspiracy to evade income taxes was not prejudiced by court's preliminary statement, preceding its formal charge to jury, that "there is in the language of the Supreme Court of the United States, no more serious crime than the crime of defeating or evading taxes or a conspiracy to do so" where, after exception was taken to such statement by defendant's counsel, court called jury back before it began to deliberate and requested jury to totally disregard the statement. U. S. v. Haskell, D.C.Conn.1963, 217 F.Supp. 534, affirmed 327 F.2d 281, certiorari denied 84 S.Ct. 1351, 377 U.S. 945, 12 L.Ed.2d 307. Criminal Law 1166.22(2)

1071. Comments of counsel, review

Prosecutor's misstatement of facts in cross-examination, unsubstantiated intimation that statements had been made to him out of court, pretense that witness had said something he had not said and persistent cross-examination on that basis, bullying of witnesses, and intemperate and misleading argument to jury, where evidence against defendant charged with conspiracy to pass counterfeit federal reserve bank notes was weak, was so prejudicial as to require new trial. Berger v. U.S., U.S.N.Y.1935, 55 S.Ct. 629, 295 U.S. 78, 79 L.Ed. 1314. Criminal Law 1171.8(2)

No undue prejudice attached to defendant because of mentioning of coconspirator's guilty plea, and fact that trial court may not have given a specific instruction as to effect of the guilty plea on both defendants did not amount to reversible error since apparently no such instruction had ever been requested and there were no additional aggravating circumstances that might have forced trial court to give such a specific instruction on its own. U. S. v. Horton, C.A.5 (Tex.) 1981, 646 F.2d 181, rehearing denied 655 F.2d 1131, certiorari denied 102 S.Ct. 516, 454 U.S. 970, 70 L.Ed.2d 388, certiorari denied 102 S.Ct. 1274, 455 U.S. 919, 71 L.Ed.2d 459. Criminal Law 422(2); Criminal Law 824(1)

In prosecution for bribery and conspiracy to bribe criminal investigators of Immigration and Naturalization Service, reversal was not warranted by statement made during government's rebuttal characterizing one defendant as "Chinatown's chief corrupter for 20 years," where no objection was made to statement at trial and where evidence overwhelmingly indicated defendant's guilt. U. S. v. Ong, C.A.2 (N.Y.) 1976, 541 F.2d 331, certiorari denied 97 S.Ct. 814, 429 U.S. 1075, 50 L.Ed.2d 793, certiorari denied 97 S.Ct. 1559, 430 U.S. 934, 51 L.Ed.2d 780. Criminal Law 1037.1(2)

In prosecution for conspiracy to steal and possess part of interstate shipment of freight, theft of freight from interstate shipment, and possession of goods stolen from interstate shipment, Government's summation, which contained no mention of one defendant's wife's failure to testify but contained strong implication that her testimony would favor defendant, did not prejudice defendant by allegedly inferring that wife's testimony would have been unfavorable if she had testified. U. S. v. Trotter, C.A.3 (N.J.) 1976, 529 F.2d 806. Criminal Law 721.5(2)

Where defense suggested in summation that inference adverse to Government might be drawn from Government's failure to introduce fur manufacturers as witnesses in prosecution of fur trade union officials for, inter alia, conspiracy to accept payments from fur manufacturers, conducting union affairs through pattern of racketeering, and for accepting such payments, prosecutor's argument to effect that fur manufacturers were available for subpoena by defense to testify at trial was not improper. U. S. v. Stofsky, C.A.2 (N.Y.) 1975, 527 F.2d 237, stay denied 96 S.Ct. 1490, 425 U.S. 902, 47 L.Ed.2d 751, certiorari denied 97 S.Ct. 65, 429 U.S. 819, 50 L.Ed.2d 80,

certiorari denied 97 S.Ct. 66, 429 U.S. 819, 50 L.Ed.2d 80. Criminal Law 726

Prosecutor's statement in closing argument that government agent testified that he saw defendant "at the dock in the rear of the residence in Pompano Beach," whereas agent actually had testified only that defendant had arrived "in front of this residence," not objected to at trial for conspiracy to import and for importing marijuana, could not have so affected defendant's substantial right as to constitute plain error. U. S. v. Goodwin, C.A.5 (Fla.) 1974, 492 F.2d 1141. Criminal Law 1037.1(2)

In prosecution for conspiracy to defraud by means of interstate wire communications and for substantive offenses, prosecutor's arguments "* * * if there is any evidence that there was an account there, it's up to the defendant to produce it" and "* * * I object to this man's testifying to what his client told him as his attorney when the man is here present" were not plain error affecting defendant's substantial rights, could not be said to have influenced verdict, and did not require reversal in absence of objection or request for mistrial or admonition through it was claimed that remarks were prejudicial references to failure to testify. U. S. v. Waldo, C.A.10 (Okla.) 1972, 470 F.2d 1359. Criminal Law 1037.1(2); Criminal Law 1037.2

Final argument of prosecuting attorney in prosecution for conspiracy and substantive charges involving use of interstate facilities to carry on a prostitution enterprise, to the effect that prosecuting attorney had taken an insult from a witness, and that the evidence was cluttered with disgusting and shocking, maybe dirty, disrespectful, dishonest testimony and ideas, did not constitute improper or prejudicial argument. U. S. v. Lyon, C.A.7 (Wis.) 1968, 397 F.2d 505, certiorari denied 89 S.Ct. 131, 393 U.S. 846, 21 L.Ed.2d 117. Criminal Law 720(1)

Under circumstances, defendant charged with conspiracy to embezzle and with embezzlement of union funds was not prejudiced because his counsel was ordered not to comment in his argument to jury upon failure of codefendants to testify. Hayes v. U. S., C.A.8 (Mo.) 1964, 329 F.2d 209, certiorari denied 84 S.Ct. 1883, 377 U.S. 980, 12 L.Ed.2d 748. Criminal Law 1171.5

In prosecution for conspiracy to violate and for substantive offenses of violating, Trading with the Enemy Act, § 1 et seq. of Title 50, Appendix, and regulations thereunder, by dealing in Chinese-type drugs, prosecuting attorney's statement, that person not on trial and not a witness had entered plea of guilty, had no weight with jury, where trial judge immediately ruled statement out and repeated ruling in his charge, and no reversible error resulted. U. S. v. Quong, C.A.6 (Tenn.) 1962, 303 F.2d 499, certiorari denied 83 S.Ct. 119, 371 U.S. 863, 9 L.Ed.2d 100. Criminal Law 730(1)

Receipt of hearsay blueprinting formation of alleged conspiracy and means by which it was to be carried out, emphasized by government both in its opening and closing statements, was prejudicial error. Dennis v. U.S., C.A.10 (Colo.) 1962, 302 F.2d 5. Criminal Law 419(1.5); Criminal Law 1169.1(9)

Trial errors in conspiracy prosecution, including prosecutor's alleged references to matters not in evidence and his leading questions, and court's claimed error, later corrected, in giving instructions, did not require reversal in view of clear case against defendants. Knight v. U. S., C.A.5 (Ga.) 1962, 297 F.2d 675, certiorari denied 82 S.Ct. 1565, 370 U.S. 923, 8 L.Ed.2d 503. Criminal Law 1171.3; Criminal Law 1171.8(1); Criminal Law 1172.1(1)

In prosecution for conspiring to violate § 212 of this title prohibiting bribery of customs officials and §§ 173, 174 of Title 21 concerning narcotics laws, comment by prosecutor in summation as to one of defendants "who had the courage to take the stand" was improper because it indirectly called attention to failure of other defendants to take the stand and was tantamount to saying that certain of defendants lacked courage to take the stand, but it was not so prejudicial as to require a new trial. United States v. Stromberg, C.A.2 (N.Y.) 1959, 268 F.2d 256, certiorari denied 80 S.Ct. 119, 361 U.S. 863, 4 L.Ed.2d 102, certiorari denied 80 S.Ct. 123, 361 U.S. 863, 4 L.Ed.2d 102, certiorari denied 80 S.Ct. 124, 361 U.S. 863, 4 L.Ed.2d 102, certiorari denied 80 S.Ct. 130, 361 U.S. 868, 4

L.Ed.2d 108. Criminal Law 721(3); Criminal Law 1171.5

In prosecution for conspiring to violate § 212 of this title prohibiting bribery of customs officials and §§ 173, 174 of Title 21 concerning narcotics laws, prosecutor's remark, after government witness was asked his address, "don't be afraid to give it to us" was not reversible error when judge immediately reproved prosecutor and admonished jury to disregard remark. United States v. Stromberg, C.A.2 (N.Y.) 1959, 268 F.2d 256, certiorari denied 80 S.Ct. 119, 361 U.S. 863, 4 L.Ed.2d 102, certiorari denied 80 S.Ct. 123, 361 U.S. 863, 4 L.Ed.2d 102, certiorari denied 80 S.Ct. 124, 361 U.S. 863, 4 L.Ed.2d 102, certiorari denied 80 S.Ct. 130, 361 U.S. 868, 4 L.Ed.2d 108. Criminal Law 1171.8(1)

In prosecution for conspiracy, bribery, and making false entries of competitive bids on government purchase orders, improper argument of government's counsel was so extreme and so plainly erroneous as to seriously affect fairness of trial and substantial rights of defendants, and hence judgment of conviction would be reversed and cause remanded for new trial notwithstanding counsel for defendants did not object to the argument. Wagner v. U.S., C.A.5 (Fla.) 1959, 263 F.2d 877. Criminal Law 1037.1(1); Criminal Law 1189

In prosecution for conspiracy to traffic in narcotics, it was improper for prosecutor to infer that a witness was bought by a defendant but, in view of weight of evidence against defendants, reference was not harmful. U S v. De Fillo, C.A.2 (N.Y.) 1958, 257 F.2d 835, certiorari denied 79 S.Ct. 591, 359 U.S. 915, 3 L.Ed.2d 577. Criminal Law 720(5); Criminal Law 1171.3

In prosecutions for conspiracy to blow up a railroad track used in interstate commerce, and for blowing up such track, observations made by district attorney in cross-examination of one of the defendants, that he "would not give a nickel for a dozen of them" in reference to such defendant's offer to take a lie detector test, while not commendable, did not constitute reversible error. Horton v. U. S., C.A.6 (Tenn.) 1958, 256 F.2d 138. Criminal Law 1171.8(2)

In prosecutions for conspiracy to blow up a railroad track used in interstate commerce, and for blowing up such track, district attorney's observations in cross-examination of character witnesses for one of the defendants as to whether they knew of a series of convictions for drunkenness of such defendant did not constitute plain error. Horton v. U. S., C.A.6 (Tenn.) 1958, 256 F.2d 138. Criminal Law 1036.2

Record in prosecution for evasion of income and excise taxes, and for conspiracy to defraud the United States, disclose no prejudicial argument by prosecuting attorney. Kobey v. U.S., C.A.9 (Cal.) 1953, 208 F.2d 583. Criminal Law 1171.1(2.1)

In prosecution of corporation, it president, and three supervisory employees under indictments charging them with making defective war materials and with conspiracy to defraud federal government in its war efforts, reference in prosecuting attorney's argument to letters which had been admitted in evidence, and which tended to show attempts of defendants to overreach in their negotiations with federal government, did not constitute prejudicial error. U.S. v. Antonelli Fireworks Co., C.C.A.2 (N.Y.) 1946, 155 F.2d 631, certiorari denied 67 S.Ct. 49, 329 U.S. 742, 91 L.Ed. 640, rehearing denied 67 S.Ct. 182, 329 U.S. 826, 91 L.Ed. 701. Criminal Law 1171.3

In prosecution for using and conspiring to use the mails to defraud gullible individuals by collecting fees for enrolling them as heirs of mythical Baker estate, where witness, in response to inquiry concerning his knowledge of the Baker estate prosecution testified that he had read of individual, who was member of competing group of conspirators, prosecuting attorney's comment, "Oh, the prosecution where we put them all in jail," was prejudicial, particularly in view of prior attempt to associate competing group with accused. U. S. v. Sprengel, C.C.A.3 (Pa.) 1939, 103 F.2d 876. Criminal Law 720(7.1)

In prosecution for using, and conspiracy to use, mails to defraud by selling watered stock, remark of prosecuting

attorney in summation that one of defendants had told defendant who had pleaded guilty how to sell stock on a certain date was not prejudicial, where defendant who had pleaded guilty had so testified. U.S. v. Rollnick, C.C.A.2 (N.Y.) 1937, 91 F.2d 911. Criminal Law 720(2)

In prosecution for using, and conspiracy to use, mails to defraud by selling watered stock, remark of prosecuting attorney in summation that he believed certain numbers had been assigned to certain salesmen and that one of defendant salesmen had been assigned number 5 was not prejudicial where court instructed jury to disregard statements of counsel as to testimony and whether salesman's number was 5 was immaterial. U.S. v. Rollnick, C.C.A.2 (N.Y.) 1937, 91 F.2d 911. Criminal Law 730(8)

In prosecution for using, and conspiracy to use, mails to defraud, remark of prosecuting attorney in opening address that one of defendants named in indictment had pleaded guilty that morning was not prejudicial where such defendant testified and was cross-examined as to his plea and jury was instructed to disregard remark. U.S. v. Rollnick, C.C.A.2 (N.Y.) 1937, 91 F.2d 911. Criminal Law 730(2)

In prosecution for conspiracy and use of mails to defraud, prosecuting attorney's statement that one of defendants was fugitive from justice was improper. Sunderland v. U.S., C.C.A.8 (Neb.) 1927, 19 F.2d 202. Criminal Law 722.3

Defendant in prosecution for conspiracy to evade income taxes was not prejudiced by manner in which his prior criminal record was presented to jury where United States attorney made inadvertent reference to a prior grand larceny conviction of defendant who actually had been convicted of petit larceny. U. S. v. Haskell, D.C.Conn.1963, 217 F.Supp. 534, affirmed 327 F.2d 281, certiorari denied 84 S.Ct. 1351, 377 U.S. 945, 12 L.Ed.2d 307. Criminal Law 722.5

1072. Indictment, review

Clauses in indictment charging a conspiracy to commit an offense against the United States cannot be resorted to in aid of averments of the clause setting forth the conspiracy. Joplin Mercantile Co. v. U.S., U.S.Mo.1915, 35 S.Ct. 291, 236 U.S. 531, 59 L.Ed. 705. Conspiracy 43(6)

Trying defendants under indictment alleging one conspiracy was not reversible error, even assuming that evidence established and jury found existence of separate conspiracies, since jury did find that all defendants engaged in at least one conspiracy, and evidence was sufficient to support that verdict. U.S. v. Faulkner, C.A.5 (Tex.) 1994, 17 F.3d 745, rehearing and rehearing en banc denied 21 F.3d 1110, certiorari denied 115 S.Ct. 193, 513 U.S. 870, 130 L.Ed.2d 125, rehearing dismissed 115 S.Ct. 786, 513 U.S. 1105, 130 L.Ed.2d 679, certiorari denied 115 S.Ct. 663, 513 U.S. 1056, 130 L.Ed.2d 598. Criminal Law 1167(1)

Defendants who were convicted of being involved in single conspiracy relating to filing of false tax forms with Internal Revenue Service (IRS) were substantially prejudiced by variance between indictment charging single conspiracy and proof presented at trial of existence of multiple conspiracies, requiring reversal of conviction; trial court failed to give multiple conspiracy instruction, record was replete with evidence of inflammatory actions of individuals which, especially in light of length and complexity of trial, jury could easily have applied to group as a whole, there were a large number of defendants and issues involved were complex. U.S. v. Rosnow, C.A.8 (Minn.) 1992, 977 F.2d 399, rehearing denied 981 F.2d 970, certiorari denied 113 S.Ct. 1596, 507 U.S. 990, 123 L.Ed.2d 159, denial of habeas corpus affirmed 16 F.3d 1229. Conspiracy 43(12); Criminal Law 1167(1)

Conclusion that defendant could only have been a member of a smaller conspiracy consisting of himself and the core and having a more limited objective of stealing and delivering particular motor vehicles desired by him did not necessitate reversal under indictment charging one overall conspiracy unless defendant was prejudiced by the erroneous presentation of the case on the overall conspiracy charge. U. S. v. Lindsey, C.A.7 (Ind.) 1979, 602 F.2d

18 U.S.C.A. § 371

785. Criminal Law 1167(1)

In determining whether variance occurred between indictment and Government's proof at trial of conspiracy, court of appeals first had to ascertain if, viewing evidence in light most favorable to Government, substantial evidence supported jury's determination of guilt on single conspiracy charged in indictment. U. S. v. Boyd, C.A.3 (Pa.) 1978, 595 F.2d 120. Criminal Law 1159.2(10)

It was affirmative duty of Court of Appeals to carefully scrutinize indictments under broad language of this section because of possibility, inherent in criminal conspiracy charge, that its wide net might ensnare innocent as well as guilty. U. S. v. Porter, C.A.5 (Fla.) 1979, 591 F.2d 1048. Conspiracy 43(1)

Improper reading of lengthy and involved conspiracy indictment to jury was not prejudicial to defendants under circumstances, in prosecution for conspiracy to defraud public by distribution of oil company stock at grossly inflated prices. U. S. v. Kelly, C.A.2 (N.Y.) 1965, 349 F.2d 720, certiorari denied 86 S.Ct. 1467, 384 U.S. 947, 16 L.Ed.2d 544. Criminal Law 1166.20

Where guilty verdict was general to count of conspiracy to introduce into interstate commerce with intent to defraud and mislead a food product which was adulterated and misbranded, insufficiency of indictment with respect to adulteration charge required reversal regardless of sufficiency with respect to alleged misbranding. Van Liew v. U. S., C.A.5 (Tex.) 1963, 321 F.2d 664. Criminal Law 1167(1)

Indictment charging defendant with conspiracy was not so vague and ambiguous as to make it impossible to determine whether defendants were charged with and found guilty of conspiracy or of substantive offenses where indictment charged conspiracy alone and was expressly limited to that charge throughout the trial and by the court's instructions. Reno v. U. S., C.A.5 (Fla.) 1963, 317 F.2d 499, certiorari denied 84 S.Ct. 72, 375 U.S. 828, 11 L.Ed.2d 60. Indictment And Information 71.4(3)

Where sentences for conspiracy to possess firearm and possession of firearm were concurrent and substantive offense was established free from error, claimed error relating to conspiracy count would not be considered. U. S. v. Decker, C.A.6 (Ky.) 1961, 292 F.2d 89, certiorari denied 82 S.Ct. 58, 368 U.S. 834, 7 L.Ed.2d 36. Criminal Law 1177

Where in prosecution for using mails to defraud some of allegations of overt acts in second indictment charging conspiracy were kept sealed until after all evidence was in, and indictment was submitted to jury with such seals removed, defendants could not claim that they were tried on an indictment which was not the same as returned by the grand jury because such allegations were sealed during trial. Walker v. U.S., C.C.A.9 (Wash.) 1940, 116 F.2d 458. Indictment And Information 171

Use of word "victims" in indictment for use of mails to defraud and conspiracy was not prejudicial to convicted defendants, where they had fair trial within constitutional guaranties, verdict was proper, and court tempered justice with mercy in fixing punishment. Stern v. U.S., C.C.A.7 (Ind.) 1936, 85 F.2d 394, certiorari denied 57 S.Ct. 40, 299 U.S. 576, 81 L.Ed. 424. Criminal Law 1167(1)

Indictment charging defendants with conspiracy to defraud United States by impeding collection of income taxes, and identifying objects of conspiracy as fraudulent creation of purportedly tax deductible losses for oil company client of defendant through fixed and risk-free commodity futures transactions that would guaranty realization by client of certain amount of losses before end of its fiscal year and similar amount of gain during his next fiscal year, and manipulation of contract prices on commodities futures market to achieve premeditated losses and gains, was sufficient to charge offense. U. S. v. Turkish, S.D.N.Y.1978, 458 F.Supp. 874. Conspiracy 43(10)

References to aliases in indictment were proper and would not be stricken where aliases were relevant to case

because participants in gambling operation charged in indictment were repeatedly referred to by aliases in wiretapped conversations. U. S. v. Esposito, S.D.N.Y.1976, 423 F.Supp. 908. Indictment And Information 81(5)

1073. Admissibility of evidence, review--Generally

Bank officer's testimony relating to agreement between her bank and first merchant found by defendant's accomplice, and discussing bank's policies regarding telemarketing accounts and third-party processing, was admissible in prosecution for conspiracy to commit bank fraud and money laundering by virtue of third-party processing of telemarketing accounts; while officer could not document that her bank had disbursed any money to defendants, other testimony indicated that her bank had unwittingly processed charges for both defendants, and events underlying officer's testimony ended only few months before those involving one bank actually mentioned in indictment. U.S. v. Brown, C.A.7 (Ill.) 1994, 31 F.3d 484, rehearing and suggestion for rehearing en banc denied. Conspiracy 45

In context of conspiracy trial, trial court is given great latitude in its determination of relevancy and admissibility of evidence, and review is limited to inquiry whether court abused that broad discretionary power. U. S. v. Baumgarten, C.A.8 (Mo.) 1975, 517 F.2d 1020, certiorari denied 96 S.Ct. 152, 423 U.S. 878, 46 L.Ed.2d 111. Conspiracy 45; Criminal Law 1153(1)

Testimony that during course of telephone conversation to her boyfriend female defendant related that she was with "the man" (a federal agent) at motel room and was talking to him about deal concerning counterfeit government securities, that boyfriend had nothing to worry about and that she didn't see where anything could go wrong, was competent and evidenced a conspiracy to counterfeit United States Treasury notes, in which conspiracy boyfriend was allegedly involved. U. S. v. Aloisio, C.A.7 (Ill.) 1971, 440 F.2d 705, certiorari denied 92 S.Ct. 49, 404 U.S. 824, 30 L.Ed.2d 51, certiorari denied 92 S.Ct. 69, 404 U.S. 824, 30 L.Ed.2d 51. Criminal Law 422(1)

Review of record of approximately five-week trial of ten defendants charged with conspiracy to misapply funds of bank and of making false entries in bank records with intent to defraud established that judge's adherence to issues of case and rules of evidence did not deprive defendants of fair and impartial trial. Gordon v. U. S., C.A.5 (Fla.) 1971, 438 F.2d 858, certiorari denied 92 S.Ct. 139, 404 U.S. 828, 30 L.Ed.2d 56, certiorari denied 92 S.Ct. 140, 404 U.S. 828, 30 L.Ed.2d 56, rehearing denied 92 S.Ct. 312, 404 U.S. 960, 30 L.Ed.2d 279, certiorari denied 92 S.Ct. 142, 404 U.S. 828, 30 L.Ed.2d 56, rehearing denied 92 S.Ct. 313, 404 U.S. 960, 30 L.Ed.2d 279, certiorari denied 92 S.Ct. 143, 404 U.S. 828, 30 L.Ed.2d 56, certiorari denied 92 S.Ct. 63, 404 U.S. 828, 30 L.Ed.2d 56. Criminal Law 655(1)

On appeal in conspiracy case in which hearsay utterances were admitted without explicit determination of existence of conspiracy reviewing court would assume that trial judge was satisfied of existence of conspiracy on basis of nonhearsay evidence, but must determine whether he had reasonable grounds to be so. U. S. v. Geaney, C.A.2 (N.Y.) 1969, 417 F.2d 1116, certiorari denied 90 S.Ct. 1276, 397 U.S. 1028, 25 L.Ed.2d 539. Criminal Law 1134(3); Criminal Law 1144.12; Criminal Law 1144.13(7)

In prosecution for smuggling and conspiracy relative to alleged plot to blow up Statue of Liberty, court's refusal to permit third party to testify that government witness asked him to participate in a plan to blow up Statue of Liberty was not erroneous where defendants failed to lay a proper foundation to support an attack on government witness' credibility based on his alleged request to third party to take part in violent action. U. S. v. Bowe, C.A.2 (N.Y.) 1966, 360 F.2d 1, certiorari denied 87 S.Ct. 401, 385 U.S. 961, 17 L.Ed.2d 306, certiorari denied 87 S.Ct. 779, 385 U.S. 1042, 17 L.Ed.2d 686, rehearing denied 87 S.Ct. 1040, 386 U.S. 969, 18 L.Ed.2d 127. Witnesses 398(2)

In prosecution of superintendent of police of a town for conspiring to deprive Negro inhabitants of rights,

privileges and immunities secured to them by Constitution and laws of United States, and in prosecution of such superintendent and two police officers for subjecting Negro inhabitants to deprivation of rights, privileges, and immunities, under color of law, evidence of what occurred at time of riot, resulting from attempt of Negro to reside in rented premises involved, was properly received in effort to discover whether defendants' superintendent, under color of office, willfully failed to disperse crowd with intent to further charged conspiracy. U. S. v. Konovsky, C.A.7 (Ill.) 1953, 202 F.2d 721. Civil Rights 1809; Conspiracy 45

In prosecution for use of mails in attempt to defraud in sale of accident and sickness insurance policies and for conspiracy to commit the same offense, court did not err in admitting government's evidence as to loss ratios developed on policies sold by defendants. U. S. v. Sylvanus, C.A.7 (Ill.) 1951, 192 F.2d 96, certiorari denied 72 S.Ct. 555, 342 U.S. 943, 96 L.Ed. 701. Conspiracy 45; Postal Service 49(5)

In prosecution under this section and § 1010 of this title making it unlawful knowingly to make or cause to be made false statements to obtain loan intending that it be offered to the Federal Housing Administration for insurance, no reversible error was presented in rulings on admission of evidence. Ross v. U. S., C.A.6 (Ohio) 1950, 180 F.2d 160 . Criminal Law 1169.1(2.1)

In prosecution of corporate defendant for conspiracy to violate, and violation of, Public Utility Holding Company Act, § 79l of Title 15, testimony of corporate defendant's officer, in response to question asked by district attorney, that funds accumulated from rebates and padded expense accounts handled through his office were handled on behalf of corporate defendant, was not objectionable on ground that it called for "conclusion" of witness. Egan v. U.S., C.C.A.8 (Mo.) 1943, 137 F.2d 369, certiorari denied 64 S.Ct. 195, 320 U.S. 788, 88 L.Ed. 474. Criminal Law 448(1)

In prosecution for conspiracy to transport and for transporting girls in interstate commerce for purpose of prostitution and debauchery, erroneous admission of statements of prostitute to federal agent not in furtherance of conspiracy was a technical error and did not affect substantial rights of parties, and hence was not reversible error, where effect upon minds of jurors would have been the same if statements to agent had not been made. Townsend v. U. S., C.C.A.3 (Pa.) 1939, 106 F.2d 273. Criminal Law 1169.1(9)

In prosecution for conspiracy to import, sell and possess narcotics, where government agent who was posing as buyer of narcotics testified that while agent was bargaining with a New York distributor in New York the distributor said that drug was in defendant's possession and then called up defendant, who was also in New York, and talked to him in Italian, error, if any, in admitting record of dictagraph machine which had been interposed in a circuit leading from the telephone used by distributor to corroborate agent did not require reversal where result would not have been different had agent's testimony stood alone. U S v. Bruno, C.C.A.2 (N.Y.) 1939, 105 F.2d 921, certiorari granted 60 S.Ct. 112, 308 U.S. 536, 84 L.Ed. 451, reversed on other grounds 60 S.Ct. 198, 308 U.S. 287, 84 L.Ed. 257. Criminal Law 1169.1(8)

Error, if any, in admission of defendant's bank accounts in prosecution for unlawful possession of stills, making mash, operation of an unbounded distillery and conspiracy did not require reversal, where other undisputed evidence established guilt beyond reasonable doubt. U.S. v. Jackskion, C.C.A.2 (N.Y.) 1939, 102 F.2d 683, certiorari denied 59 S.Ct. 1032, 307 U.S. 635, 83 L.Ed. 1517. Criminal Law 1169.1(2.1)

In prosecution for conspiracy to harbor fugitive from justice, evidence of delivery of money to witness by accused to induce another to "blow," and of conversations to effect that accused requested witness to tell such other to say that money received from fugitive by accused was for legal fees was properly admitted. Piquett v. U.S., C.C.A.7 (Ill.) 1936, 81 F.2d 75, certiorari denied 56 S.Ct. 749, 298 U.S. 664, 80 L.Ed. 1388. Conspiracy 45; Criminal Law 45

Proof contrary to nonessential allegation that agreement took place within district was not reversible, where

defendant was not surprised. Sloan v. U.S., C.C.A.8 (Mo.) 1929, 31 F.2d 902. Criminal Law 1167(1)

Admission of evidence as to other transactions, if error, was cured, where defendant examined and cross-examined in detail about same matters. Sloan v. U.S., C.C.A.8 (Mo.) 1929, 31 F.2d 902. Criminal Law 1169.2(1)

Testimony by revenue agent pursuant to interview with defendants under guise of examining income tax reports was admissible as to such defendants. Green v. U.S., C.C.A.8 (Okla.) 1928, 28 F.2d 965. Criminal Law 422(9)

Testimony that defendant had on day previous to raid purchased groceries and fishing tackle and stated he was going fishing was inadmissible as self-serving. Nielson v. U.S., C.C.A.9 (Wash.) 1928, 24 F.2d 802. Criminal Law 413(1)

In a like prosecution, the court's failure on its own motion to direct admission of evidence as to replevin suit, previously excluded because not shown to be material, was not prejudicial error, especially in view of former § 391 of Title 28. Israel v. U. S., C.C.A.6 (Ohio) 1925, 3 F.2d 743, 3 Ohio Law Abs. 416. Criminal Law 1170(1)

Where an indictment for conspiracy under former § 88 of this title [now this section] sufficiently informed accused of the charge, it was not reversible error to reject evidence that the names of persons with whom the accused conspired, alleged in the indictment to be unknown to the grand jury, were known to that body, in view of former § 391 of Title 28. Leverkuhn v. U.S., C.C.A.5 (Tex.) 1924, 297 F. 590, certiorari denied 45 S.Ct. 91, 266 U.S. 603, 69 L.Ed. 463. See, also, Briggs v. U.S., C.C.A.Tex.1924, 297 F. 593. Conspiracy 43(2)

The failure to exclude or limit effect of a book of account found in home of one conspirator and identified by others who were witnesses in the case which book was admitted after proper foundation was laid under former § 695 of Title 28 did not violate defendant's constitutional right of "confrontation of witnesses", where court instructed jury that book was not to be used as evidence to establish defendant's entanglement in conspiracy, but only as evidence of what occurred among conspirators so found by evidence aliunde. U.S. v. Dewinsky, D.C.N.J.1941, 41 F.Supp. 149. Criminal Law 662.40

1074. ---- Harmless error, admissibility of evidence, review

In conspiracy prosecution, evidence was sufficiently connected with conspiracy to be admissible, or merely cumulative, and its admission harmless. Ford v. U.S., U.S.Cal.1927, 47 S.Ct. 531, 273 U.S. 593, 71 L.Ed. 793. Criminal Law 1169.1(2.1); Criminal Law 1169.2(2)

District court's erroneous admission of evidence of defendant's prior conviction for purse snatching under Pennsylvania law was not "harmless," in his subsequent trial on charges of conspiracy to commit car-jacking, car-jacking, and using and carrying firearm in furtherance of crime of violence; admission of theft conviction may have affected defendant's substantial rights since defendant's credibility was central to case and prior conviction may have led jury to disbelieve defendant's testimony that he did not have weapon and only remained at crime scene because he feared co-defendant. U.S. v. Johnson, C.A.3 (Pa.) 2004, 388 F.3d 96. Criminal Law 1169.11

In criminal proceedings for conspiracy to commit money laundering and wire fraud, district court's erroneous admission of co-conspirators' guilty plea allocutions against defendants in violation of the Confrontation Clause was harmless, given the overwhelming evidence of defendants' guilt, including documentary evidence establishing that defendants set up the fictitious banks together and worked in tandem throughout the duration of the scheme. U.S. v. McClain, C.A.2 (N.Y.) 2004, 377 F.3d 219, supplemented 108 Fed.Appx. 670, 2004 WL 1950415. Criminal Law 1168(2)

18 U.S.C.A. § 371

In prosecution for conspiracy to defraud Internal Revenue Service (IRS) in its function of ascertaining and collecting federal excise taxes on sales of diesel fuel purchased for highway use, *Bruton* error in admission of non-testifying defendant's statement which inculpated co-defendant was not harmless, since statement was only direct evidence against defendants that they knew that they were participating in tax fraud conspiracy. U.S. v. Doherty, C.A.11 (Fla.) 2000, 233 F.3d 1275. Criminal Law 1169.7

Fact that a document that had not been offered into evidence in a prosecution for conspiracy and making false statements was inadvertently sent to jury room with jury did not entitle defendant to a new trial in view of facts that document did not contain a complete summary of Government's case, including a theory never aired at trial, as asserted by defendant, but merely listed items testified to by one government witness, and that trial court responded by immediately retrieving document and instructing jury that it should not be considered by them. U.S. v. Treadwell, C.A.D.C.1985, 760 F.2d 327, 245 U.S.App.D.C. 257, certiorari denied 106 S.Ct. 814, 474 U.S. 1064, 88 L.Ed.2d 788. Criminal Law 1174(6)

In prosecution of defendant for conspiracy to defraud Immigration and Naturalization Service by involvement in sham marriage scheme and subsequent cover-up scheme, injection of government's evidence of defendants' role in six prior notice-waived New Hampshire marriages, all involving aliens and all but one performed by same justice of peace who presided at present ceremony, was properly admitted and jury allowed to consider prior marriages as bearing on defendant's state of mind, that is, whether he participated in present ceremonies with some knowledge of what this was all about and even if evidence was not properly admitted, error was harmless in light of defendant's evidence designed to show that earlier marriages were not arranged solely for immigration purposes. U. S. v. Bithoney, C.A.1 (Mass.) 1980, 631 F.2d 1, certiorari denied 101 S.Ct. 869, 449 U.S. 1083, 66 L.Ed.2d 808. Criminal Law 345; Criminal Law 1169.1(2.1)

In prosecution for conspiracy to steal and possess part of interstate shipment of freight, theft of freight, and possession of goods stolen from interstate shipment, all but inaudible reference to one defendant's other crimes by owner of shop, at which stolen goods were allegedly stored, on redirect examination by Government was "of a brief and passing nature" and, at worst, harmless error. U. S. v. Trotter, C.A.3 (N.J.) 1976, 529 F.2d 806. Criminal Law 1169.11

Where, in prosecution for conspiracy to defraud United States and for forgery and uttering forged endorsements, evidence was sufficiently strong to render remark insignificant in the balance, court did not commit reversible error in admitting into evidence allegedly "inflammatory" statement of witness that he had seen defendant with a "two-inch thick" stack of government checks. U. S. v. Goodson, C.A.5 (Tex.) 1974, 502 F.2d 1303. Criminal Law 1169.1(7)

Where none of the challenged statements referred to defendant nor in any way connected him with the conspiracy, any error in allowing testimony which allegedly related to recitals of past events and not events part of the conspiracy was harmless beyond a reasonable doubt. U. S. v. Payseur, C.A.9 (Cal.) 1974, 501 F.2d 966. Criminal Law 1169.1(1)

Where witness was brought to police station for purpose of identifying woman who had rented automobile and spontaneously recognized defendant at a booking desk as driver of automobile which had brought person who rented automobile to rental firm, there was no "lineup" such as would require the presence of counsel in order to render in-court identification admissible, and in any event, identification of defendant as driver of the automobile was not prejudicial error in view of other evidence implicating defendant in conspiring to transport falsely made and forged securities. U. S. v. Seader, C.A.5 (Fla.) 1971, 440 F.2d 488, certiorari denied 92 S.Ct. 56, 404 U.S. 826, 30 L.Ed.2d 54. Criminal Law 339.8(7); Criminal Law 1169.2(2)

In prosecution for possession of goods stolen from interstate commerce and for conspiracy, where there was ample other evidence to establish particular defendant's connection to conspiracy, and record did not clearly place

particular defendant at apartment on occasion in question, admission of evidence that codefendant had brought allegedly stolen television set to lady's apartment was not ground for reversal. U. S. v. McGann, C.A.5 (Tex.) 1970, 431 F.2d 1104, certiorari denied 91 S.Ct. 904, 401 U.S. 919, 27 L.Ed.2d 821. Criminal Law 1169.1(4)

Government's withdrawal of offer of proof of any statements made to witness by defendant, in prosecution for conspiracy and receiving stolen goods, including statement that defendant got goods from person whose description fitted codefendant (the evidence being inadmissible against codefendant) was not error, particularly since no prejudice was shown and defendant did not himself call witness; this procedure did not shift burden of proof to defendant. U. S. v. Kompinski, C.A.2 (N.Y.) 1967, 373 F.2d 429. Criminal Law 677

In prosecution for conspiracy and smuggling in relation to alleged plot to blow up Statue of Liberty, receipt of testimony concerning one defendant's trip to Cuba and his association with racist group and a Canadian separatist organization was not prejudicial as to other two defendants where trial court repeated several times to jury that the evidence could not be considered with respect to either of them. U. S. v. Bowe, C.A.2 (N.Y.) 1966, 360 F.2d 1, certiorari denied 87 S.Ct. 401, 385 U.S. 961, 17 L.Ed.2d 306, certiorari denied 87 S.Ct. 779, 385 U.S. 1042, 17 L.Ed.2d 686, rehearing denied 87 S.Ct. 1040, 386 U.S. 969, 18 L.Ed.2d 127. Criminal Law 673(4)

Where defendant, who was president of corporation, and four codefendants, who were mere agents or employees of corporation, were charged with mail fraud and conspiracy to violate section 1341 of this title, it was not prejudicial error for District Court to require, that if defendant desired to testify in his own defense, he be first witness for defense. U. S. v. Shipp, C.A.6 (Tenn.) 1966, 359 F.2d 185, certiorari denied 87 S.Ct. 213, 385 U.S. 903, 17 L.Ed.2d 134. Criminal Law 1168(2)

Error, if any, in permitting admission previously made in civil case depositions and bankruptcy examination by one defendant charged with violating and conspiring to violate § 152 of this title to be also used against codefendant was harmless, in view of overwhelming evidence of codefendant's guilt. U. S. v. Castellana, C.A.2 (N.Y.) 1965, 349 F.2d 264, certiorari denied 86 S.Ct. 934, 383 U.S. 928, 15 L.Ed.2d 847, certiorari denied 86 S.Ct. 935, 383 U.S. 928, 15 L.Ed.2d 847, rehearing denied 86 S.Ct. 1368, 384 U.S. 923, 16 L.Ed.2d 444. Criminal Law 1169.12

Admissions previously made in civil case depositions and bankruptcy examinations by defendants charged with violating and conspiring to violate § 152 of this title had no prejudicial spillover effect on defendants other than declarant in view of specific admonitions to jury that such statements could be considered only against particular defendant who made admission. U. S. v. Castellana, C.A.2 (N.Y.) 1965, 349 F.2d 264, certiorari denied 86 S.Ct. 934, 383 U.S. 928, 15 L.Ed.2d 847, certiorari denied 86 S.Ct. 935, 383 U.S. 928, 15 L.Ed.2d 847, rehearing denied 86 S.Ct. 1368, 384 U.S. 923, 16 L.Ed.2d 444. Criminal Law 673(4)

Permitting introduction, in prosecutions for violating and conspiring to violate § 152 of this title of admissions previously made in civil case depositions and bankruptcy examinations by defendant was proper exercise of discretion under limiting instructions advising jury that out of court statements could be considered only against particular defendant who made admission. U. S. v. Castellana, C.A.2 (N.Y.) 1965, 349 F.2d 264, certiorari denied 86 S.Ct. 934, 383 U.S. 928, 15 L.Ed.2d 847, certiorari denied 86 S.Ct. 935, 383 U.S. 928, 15 L.Ed.2d 847, rehearing denied 86 S.Ct. 1368, 384 U.S. 923, 16 L.Ed.2d 444. Criminal Law 673(4)

In prosecution for conspiracy to evade income tax, alleged error in admission of evidence of statement of corporation's president about no women working on corporation's premises even though records showed several feminine names on payroll sheet was harmless in face of other proof. U.S. v. Knox Coal Co., C.A.3 (Pa.) 1965, 347 F.2d 33, certiorari denied 86 S.Ct. 239, 382 U.S. 904, 15 L.Ed.2d 157. Criminal Law 1169.1(9)

In prosecution against corporation and others for conspiracy to evade income tax, admission of statements of corporation's president regarding payment of certain checks to fictitious persons for purpose of deductions was not

prejudicial to individual defendant who did not ask that trial be severed and court reminded jury at time of objection that statements had "no relation at all to the other two defendants" and later instructed jury to the same effect. U.S. v. Knox Coal Co., C.A.3 (Pa.) 1965, 347 F.2d 33, certiorari denied 86 S.Ct. 239, 382 U.S. 904, 15 L.Ed.2d 157. Criminal Law 1169.5(2)

Evidence as to certain conversations was not inadmissible in a conspiracy prosecution on theory they bore no relationship to the conspiracy charged, and, in any event, in view of proof of guilt, admission of the testimony, if error, was not prejudicial. Arnold v. U. S., C.A.9 (Wash.) 1964, 336 F.2d 347, certiorari denied 85 S.Ct. 1348, 380 U.S. 982, 14 L.Ed.2d 275. Criminal Law 338(1); Criminal Law 1169.1(2.1)

Any error in admitting purely narrative declarations as to a defendant charged with conspiring to violate § 173 of Title 21, was harmless in view of overwhelming evidence of his participation. U. S. v. Bentvena, C.A.2 (N.Y.) 1963, 319 F.2d 916, certiorari denied 84 S.Ct. 345, 375 U.S. 940, 11 L.Ed.2d 271, rehearing denied 90 S.Ct. 894, 397 U.S. 928, 25 L.Ed.2d 108, rehearing denied 84 S.Ct. 515, 375 U.S. 989, 11 L.Ed.2d 476, certiorari denied 84 S.Ct. 346, 375 U.S. 940, 11 L.Ed.2d 271, rehearing denied 84 S.Ct. 1162, 377 U.S. 913, 12 L.Ed.2d 183, certiorari denied 84 S.Ct. 353, 375 U.S. 940, 11 L.Ed.2d 272, certiorari denied 84 S.Ct. 354, 375 U.S. 940, 11 L.Ed.2d 272, certiorari denied 84 S.Ct. 355, 375 U.S. 940, 11 L.Ed.2d 272, certiorari denied 84 S.Ct. 360, 375 U.S. 940, 11 L.Ed.2d 272. Criminal Law 1186.4(5)

Reviewing court could not say that trial judge was wrong in concluding that defendants had engaged in pre-arranged attempt to confuse witness called to identify certain defendants or to mislead jury where, after one of such defendants had changed seats and witness correctly identified another defendant though incorrectly identifying color of his necktie, defense counsel who had had their backs to both such defendants asserted that witness had identified wrong defendant, nor could reviewing court state that court's statement that there was no doubt in court's mind who was identified, though it would be for jury to decide was improper. U. S. v. Bentvena, C.A.2 (N.Y.) 1963, 319 F.2d 916, certiorari denied 84 S.Ct. 345, 375 U.S. 940, 11 L.Ed.2d 271, rehearing denied 90 S.Ct. 894, 397 U.S. 928, 25 L.Ed.2d 108, rehearing denied 84 S.Ct. 515, 375 U.S. 989, 11 L.Ed.2d 476, certiorari denied 84 S.Ct. 346, 375 U.S. 940, 11 L.Ed.2d 271, rehearing denied 84 S.Ct. 1162, 377 U.S. 913, 12 L.Ed.2d 183, certiorari denied 84 S.Ct. 353, 375 U.S. 940, 11 L.Ed.2d 272, certiorari denied 84 S.Ct. 354, 375 U.S. 940, 11 L.Ed.2d 272, certiorari denied 84 S.Ct. 355, 375 U.S. 940, 11 L.Ed.2d 272, certiorari denied 84 S.Ct. 360, 375 U.S. 940, 11 L.Ed.2d 272. Criminal Law 655(1)

Record revealed that no prejudice resulted to a defendant in narcotics case by nondisclosure of surveillance reports by parole board and city police department. U. S. v. Bentvena, C.A.2 (N.Y.) 1963, 319 F.2d 916, certiorari denied 84 S.Ct. 345, 375 U.S. 940, 11 L.Ed.2d 271, rehearing denied 90 S.Ct. 894, 397 U.S. 928, 25 L.Ed.2d 108, rehearing denied 84 S.Ct. 515, 375 U.S. 989, 11 L.Ed.2d 476, certiorari denied 84 S.Ct. 346, 375 U.S. 940, 11 L.Ed.2d 271, rehearing denied 84 S.Ct. 1162, 377 U.S. 913, 12 L.Ed.2d 183, certiorari denied 84 S.Ct. 353, 375 U.S. 940, 11 L.Ed.2d 272, certiorari denied 84 S.Ct. 354, 375 U.S. 940, 11 L.Ed.2d 272, certiorari denied 84 S.Ct. 355, 375 U.S. 940, 11 L.Ed.2d 272, certiorari denied 84 S.Ct. 360, 375 U.S. 940, 11 L.Ed.2d 272. Criminal Law 1170(1)

Admission, in prosecution for conspiracy to purloin and steal money from trust company, of testimony referring to certain checks, and of identification of codefendant as person who cashed checks was not error, although references were to checks connected with prior conviction of defendant, the references being incidental and not enlightening to jury. Rizzo v. U. S., C.A.8 (Mo.) 1962, 304 F.2d 810, certiorari denied 83 S.Ct. 188, 371 U.S. 890, 9 L.Ed.2d 123. Criminal Law 369.1

Admission of hearsay of conversations occurring at time when prosecution contended conspiracy continued was not error even though defendant contended that conspiracy had expired at an earlier date, where judge charged that existence of conspiracy must be determined without regard to and independently of statements and declarations of others but, having determined that defendant was member of conspiracy, jury could then consider the declarations

of other coconspirators made during existence of conspiracy. U. S. v. Soblen, C.A.2 (N.Y.) 1962, 301 F.2d 236, certiorari denied 82 S.Ct. 1585, 370 U.S. 944, 8 L.Ed.2d 810. Criminal Law 673(1)

Evidence relating to criminal conduct and political activity of alleged coconspirators during the period before the conspiracies began was properly admitted to show motivation and community of interest on the part of the conspirator where instructions were given making it clear to jury that evidence was to be considered only for such purpose and that defendant was not on trial for his activities prior to conspiracy alleged in indictment. U. S. v. Soblen, C.A.2 (N.Y.) 1962, 301 F.2d 236, certiorari denied 82 S.Ct. 1585, 370 U.S. 944, 8 L.Ed.2d 810. Criminal Law 673(2)

In prosecution for making false statement of material fact to Internal Revenue Agents willfully attempting to evade wagering excise taxes and conspiring to commit offense against United States, admission of Revenue Agents' testimony without cautionary limitation concerning substance of four interviews with defendants was not reversible error when from all the evidence jury could conclude that a conspiracy had been conclusively established. U.S. v. Clancy, C.A.7 (Ill.) 1960, 276 F.2d 617, certiorari granted 80 S.Ct. 1611, 363 U.S. 836, 4 L.Ed.2d 1723, reversed on other grounds 81 S.Ct. 645, 365 U.S. 312, 5 L.Ed.2d 574. Criminal Law 1169.2(2)

Evidence of admissions of coconspirators may be presented prior to conclusive establishment of conspiracy without commission of error so long as the conspiracy is established at some time during course of trial. U.S. v. Clancy, C.A.7 (Ill.) 1960, 276 F.2d 617, certiorari granted 80 S.Ct. 1611, 363 U.S. 836, 4 L.Ed.2d 1723, reversed on other grounds 81 S.Ct. 645, 365 U.S. 312, 5 L.Ed.2d 574. Criminal Law 427(3)

In a conspiracy prosecution, mere fact that the government failed to prove that two codefendants were members of the conspiracy charged did not make it prejudicial error to try defendant with such codefendants, and in view of evidence which linked defendant with conspiracy to traffic in narcotics, introduction of evidence of a projected but unsuccessful swindle by codefendants to sell a government agent flour described as a narcotic could not have constituted serious prejudice to defendant. U.S. v. Marcone, C.A.2 (N.Y.) 1960, 275 F.2d 205, certiorari denied 80 S.Ct. 879, 362 U.S. 963, 4 L.Ed.2d 877. Criminal Law 622.7(4)

In prosecution for income tax evasion and conspiracy to evade income taxes, fact that government attempted to establish its case by specific items of unreported income and the net worth method was not prejudicial to the defendants where no lack of good faith was shown. U.S. v. Keenan, C.A.7 (Ill.) 1959, 267 F.2d 118, certiorari denied 80 S.Ct. 121, 361 U.S. 863, 4 L.Ed.2d 104, rehearing denied 80 S.Ct. 254, 361 U.S. 921, 4 L.Ed.2d 189. Criminal Law 1165(1)

In prosecution for unlawful sales of government owned wool being made into army jackets, a conspiracy to defraud the government and for making of false statements about disposition of wool serge furnished manufacturer, admitting the government's exhibit which was a compilation of the evidence basic to the prosecution's calculations of the amount of serge furnished which was not returned was proper. U. S. v. Fabric Garment Co., C.A.2 (N.Y.) 1958, 262 F.2d 631, certiorari denied 79 S.Ct. 1117, 359 U.S. 989, 3 L.Ed.2d 978. Criminal Law 432

In prosecution of police officials, liquor dealers and others for conspiring to violate laws of United States by importing intoxicating liquors into dry state of Oklahoma, admission of testimony as to activities of some of defendants in relation to prostitution, gambling, graft and corruption resulted in no error when evidence clearly showed that control of prostitution and gambling was part of conspiracy and when trial court carefully advised jury as to what extent such evidence could be considered. Jones v. U. S., C.A.10 (Okla.) 1958, 251 F.2d 288, certiorari denied 78 S.Ct. 703, 356 U.S. 919, 2 L.Ed.2d 715. Criminal Law 369.2(8); Criminal Law 673(5)

In prosecution for conspiracy to import heroin in violation of narcotic laws, §§ 173 and 174 of Title 21, letter of special narcotic agent sent to an alleged coconspirator out of presence of defendants was improperly admitted, but in view of fact that letter contained not one syllable which could have damaged defendants who were not even

mentioned therein, error was harmless. U. S. v. Morello, C.A.2 (N.Y.) 1957, 250 F.2d 631. Criminal Law 1169.1(10)

In prosecution for conspiracy to violate narcotic laws where question arose as to whether or not certain of defendants had been in a certain location, there was no error in permitting hotel registration cards to be introduced in evidence and refusing to admit bail bond applications to be introduced for purpose of comparison of signature, where no contention was made that defendants had signed registration cards. Poliafico v. U. S., C.A.6 (Ohio) 1956, 237 F.2d 97, certiorari denied 77 S.Ct. 590, 352 U.S. 1025, 1 L.Ed.2d 597, rehearing denied 77 S.Ct. 718, 353 U.S. 931, 1 L.Ed.2d 725. Criminal Law 404.85

Where proof of conspiracy to defraud United States by obtaining entry of an alien by false representations required as an element proof of a collusive divorce terminating the unconsummated marriage between alien and a citizen, defendant was not harmed by proof that he procured a witness to swear to false affidavit and to give false testimony. U.S. v. Rubenstein, C.C.A.2 (N.Y.) 1945, 151 F.2d 915, certiorari denied 66 S.Ct. 168, 326 U.S. 766, 90 L.Ed. 462. Criminal Law 1169.1(2.1)

Allegedly irrelevant evidence in prosecution for conspiracy, which either so directly concerned only a single conspirator's participation as not to confuse, or was relevant background material as to a conspirator participating in all transactions, was not prejudicial. U.S. v. Rosenberg, C.C.A.2 (N.Y.) 1945, 150 F.2d 788, certiorari denied 66 S.Ct. 90, 326 U.S. 752, 90 L.Ed. 451, certiorari denied 66 S.Ct. 91, 326 U.S. 752, 90 L.Ed. 451. Criminal Law 1169.1(2.1)

In prosecution for conspiracy to export platinum without license, admission of the platinum was not error in view of convincing evidence of other extensive dealings in platinum, where necessity of weighing evidence as to each accused was brought home to jury by a detailed charge and statement as to each defendant. U.S. v. Rosenberg, C.C.A.2 (N.Y.) 1945, 150 F.2d 788, certiorari denied 66 S.Ct. 90, 326 U.S. 752, 90 L.Ed. 451, certiorari denied 66 S.Ct. 91, 326 U.S. 752, 90 L.Ed. 451. Criminal Law 404.55

Even if a memorandum was used by one of government witnesses to fix a date, the error, if any, in denying request of defendants' counsel to see the memorandum was harmless. Harper v. U. S., C.C.A.8 (Mo.) 1944, 143 F.2d 795. Criminal Law 1170.5(1)

In prosecution for conspiracy to use mails to defraud and for using mails in furtherance of scheme to defraud, error, if any, in admission of books of corporation was not prejudicial where no use was made of them in proving the fraud. U.S. v. Feinberg, C.C.A.2 (N.Y.) 1944, 140 F.2d 592, certiorari denied 64 S.Ct. 943, 322 U.S. 726, 88 L.Ed. 1562. Criminal Law 1169.1(10)

In prosecution for conspiracy to use mails to defraud and for using mails in a scheme to defraud by obtaining control of corporate business by means of false statements and disregard of interest of minority stockholders, where one defendant left company in December, 1940, and other in January, 1940, error, if any, in admitting report of accountants to board of directors for year ending November 30, 1940, did not require reversal. U.S. v. Feinberg, C.C.A.2 (N.Y.) 1944, 140 F.2d 592, certiorari denied 64 S.Ct. 943, 322 U.S. 726, 88 L.Ed. 1562. Criminal Law 1169.1(2.1)

In prosecution for conspiracy to defraud the United States by setting up an unregistered still for manufacture of alcohol to be possessed and sold without payment of stamp taxes, where a defendant testified and denied all participation in conspiracy and he was permitted to introduce evidence as to his reputation for veracity, improper exclusion of evidence regarding his reputation as to moral character was not reversible error. U.S. v. Latin, C.C.A.2 (N.Y.) 1943, 139 F.2d 569. Criminal Law 1170(1)

In prosecution for conspiracy to violate internal revenue laws relating to intoxicating liquors, where evidence of

other instances of recent activities touching illicit liquors in connection with one of the defendants was impressive, any error in admitting evidence of such defendant's similar convictions nine or ten years earlier was not prejudicial. Burt v. U.S., C.C.A.5 (Ala.) 1943, 139 F.2d 73, certiorari denied 64 S.Ct. 936, 321 U.S. 799, 88 L.Ed. 1087. Criminal Law 1169.11

In prosecution for using the mails in furtherance of a scheme to defraud by sale of cemetery lots to the public for purposes of investment and for criminal conspiracy to commit that offense, exclusion of evidence of good faith with regard to statements made by a prosecuting official to certain of the defendants in reference to an investigation was not error, where there was no semblance of proof that any such statements had influenced defendants. Blue v. U. S., C.C.A.6 (Ohio) 1943, 138 F.2d 351, certiorari denied 64 S.Ct. 1046, 322 U.S. 736, 88 L.Ed. 1570, rehearing denied 64 S.Ct. 1259, 322 U.S. 771, 88 L.Ed. 1596, certiorari denied 64 S.Ct. 1046, 322 U.S. 737, 88 L.Ed. 1570. Conspiracy 45; Postal Service 49(5)

In prosecution for using mails in furtherance of a scheme to defraud by sale of cemetery lots to the public for purposes of investment and for criminal conspiracy to commit that offense, admission of evidence of certain communications made to one of the conspirators by one of the accused but not proved to have been sent through the mails was not prejudicial or erroneous. Blue v. U. S., C.C.A.6 (Ohio) 1943, 138 F.2d 351, certiorari denied 64 S.Ct. 1046, 322 U.S. 736, 88 L.Ed. 1570, rehearing denied 64 S.Ct. 1259, 322 U.S. 771, 88 L.Ed. 1596, certiorari denied 64 S.Ct. 1046, 322 U.S. 737, 88 L.Ed. 1570. Criminal Law 422(1); Criminal Law 1169.1(2.1)

In prosecution of individual defendant for conspiracy to violate Public Utility Holding Company Act, § 79l of Title 15, testimony of officer of parent holding company of company for which individual defendant was employed, with reference to defendant's expense account, though immaterial, did not constitute prejudicial error, where inflation of defendant's expense account was not claimed to be for purpose of contributing to fund for political contributions in violation of said section. Egan v. U.S., C.C.A.8 (Mo.) 1943, 137 F.2d 369, certiorari denied 64 S.Ct. 195, 320 U.S. 788, 88 L.Ed. 474. Criminal Law 1169.1(7)

Alleged error in admission of evidence in prosecution for conspiracy to violate internal revenue laws was not prejudicial where evidence complained of could not have deprived defendants of any substantial right. Johnson v. U.S., C.C.A.5 (Ga.) 1941, 124 F.2d 101. Criminal Law 1169.1(2.1)

Where, in prosecution for conspiracy to obstruct due administration of justice, one defendant testified as to character of his business and denied having stated that he was go-between and that his business was fixing permitting introduction of testimony limited to that defendant that he had made such statements was not error. Craig v. U.S., C.C.A.9 (Cal.) 1936, 81 F.2d 816, certiorari dismissed 56 S.Ct. 670, 298 U.S. 637, 80 L.Ed. 1371, certiorari dismissed 56 S.Ct. 671, 298 U.S. 637, 80 L.Ed. 1371, rehearing denied 83 F.2d 450, certiorari denied 56 S.Ct. 959, 298 U.S. 690, 80 L.Ed. 1408, rehearing denied 57 S.Ct. 6, 299 U.S. 620, 81 L.Ed. 457. Criminal Law 673(3); Witnesses 380(2)

In prosecution for conspiracy to harbor fugitive from justice, alleged error in admitting receipt of investigating officer to witness for money received by witness from accused, which receipt contained serial numbers of bills, was not prejudicial. Piquett v. U.S., C.C.A.7 (Ill.) 1936, 81 F.2d 75, certiorari denied 56 S.Ct. 749, 298 U.S. 664, 80 L.Ed. 1388. Criminal Law 1169.1(10)

Defendants in liquor conspiracy case were not prejudiced by admission of evidence that codefendant bought coal for boat seized while unloading liquor. Campanelli v. U.S., C.C.A.9 (Cal.) 1926, 13 F.2d 750. Criminal Law 1169.1(2.1); Criminal Law 1169.7

Defendant was not prejudiced by admission in evidence of unsigned letter addressed to him, found on codefendant, where court directed jury not to consider it. Campanelli v. U.S., C.C.A.9 (Cal.) 1926, 13 F.2d 750. Criminal Law 1169.5(2); Criminal Law 1169.7

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1075. ---- Prejudicial error, admissibility of evidence, review

Two defendants convicted of a conspiracy to defraud the United States could not contend that the admission of certain reports of investigators of the Alcohol Tax Unit was prejudicial to a codefendant and that they were entitled to take advantage of the error, where those reports were admitted against a fourth defendant alone, and the record contained no indication that the jury was ever informed that the reports were evidence against the other defendants. Glasser v. U.S., U.S.Ill.1942, 62 S.Ct. 457, 315 U.S. 60, 86 L.Ed. 680, rehearing denied 62 S.Ct. 629, 315 U.S. 827, 86 L.Ed. 1222, rehearing denied 62 S.Ct. 637, 315 U.S. 827, 86 L.Ed. 1222. Criminal Law 1136

Audio tapes of three phone conversations between coconspirator and undercover FBI informant were erroneously admitted, since government did not challenge in its brief defendants' assertion that no conspiracy existed at time of conversations; however, admission of the evidence did not constitute reversible error since it was "highly probable" that tapes did not contribute to jury's judgment of conviction. U.S. v. Jannotti, C.A.3 (Pa.) 1984, 729 F.2d 213, certiorari denied 105 S.Ct. 243, 469 U.S. 880, 83 L.Ed.2d 182, certiorari denied 105 S.Ct. 244, 469 U.S. 880, 83 L.Ed.2d 182. Criminal Law 1130(6); Criminal Law 1169.7

Even if hearsay was erroneously admitted at defendants' conspiracy trial, such testimony lacked significant prejudicial effect and could not serve as basis for reversing defendants' convictions. U. S. v. De Los Santos, C.A.5 (Tex.) 1980, 625 F.2d 62, rehearing denied 633 F.2d 582. Criminal Law 1169.1(9)

In prosecution for conspiracy to obstruct justice, stemming from shooting of government witness in criminal investigation, it was error to admit evidence concerning prior conspiracy to murder that witness which did not involve defendants, but which did involve same criminal investigation and might have involved one unindicted coconspirator. U. S. v. Truslow, C.A.4 (W.Va.) 1975, 530 F.2d 257. Criminal Law 338(4)

Admission of photographs of defendant's brother-in-law, who entered United States illegally, and of passport of unidentified female, which items were seized on illegal search of defendant's automobile, as well as testimony related to key, which was found on brother-in-law and insertion of which in lock of defendant's automobile commenced the illegal search, when considered with resulting inference that defendant's vehicle was to be used to transport the aliens and receipt of testimony that key fit the automobile, was prejudicial error requiring reversal of conviction of conspiracy and of smuggling and unlawfully transporting aliens. U. S. v. Portillo-Reyes, C.A.9 (Cal.) 1975, 529 F.2d 844, certiorari denied 97 S.Ct. 267, 429 U.S. 899, 50 L.Ed.2d 185. Criminal Law 394.4(12); Criminal Law 1169.1(8)

Testimony of FBI agent that he had taken defendant, charged with conspiracy and with causing, with unlawful and fraudulent intent, a falsely made security to be transported in interstate commerce, into custody for unrelated car theft charge should not have been received; however, receipt of such testimony was not prejudicial error where defense counsel brought the same information to jury's attention in attempting to show that defendant's oral statements to agent were involuntarily given and it was not alleged that such testimony was elicited in order to meet any improper innuendoes flowing from agent's testimony. U. S. v. Acreman, C.A.8 (Ark.) 1970, 434 F.2d 338. Criminal Law 369.1; Criminal Law 1169.3

Admission of particularized statements given by defendants in response to separate interrogations, before conspiracy prosecution in which severance was denied, without adequate instructive limitation as to purpose for which jury could consider each statement, was error vitiating convictions of all defendants on conspiracy and substantive counts. Green v. U. S., C.A.10 (Okla.) 1967, 386 F.2d 953. Criminal Law 673(2)

Record established that accumulation of evidence of wrongdoing by codefendants, and especially admission improperly into evidence of certain post-conspiracy testimony of codefendants before SEC and attorney general and codefendant's letter, and failure to sever as to defendant, were prejudicial to defendant, requiring reversal of conviction, on substantive fraud counts as well as on conspiracy count, in prosecution involving conspiracy to

defraud public by distribution of oil company stock at grossly inflated prices. U. S. v. Kelly, C.A.2 (N.Y.) 1965, 349 F.2d 720, certiorari denied 86 S.Ct. 1467, 384 U.S. 947, 16 L.Ed.2d 544. Criminal Law 1166(6); Criminal Law 1169.1(2.1)

Where suitcase and machine guns were admissible against one of three defendants in prosecution for illegal possession and conspiracy but inadmissible against remaining two defendants charged only with conspiracy because seized in violation of their rights under U.S.C.A.Const. Amend. 4, but where such evidence was introduced early in trial and was referred to, left in view of jury, and handled by witnesses throughout trial, instructions, even though careful and complete, directing jury to disregard evidence as against defendants charged with conspiracy only, did not serve to insure them against prejudice. Castro v. U. S., C.A.5 (Fla.) 1961, 296 F.2d 540. Criminal Law 673(4)

Conviction of participation in single conspiracy which included codefendant was reversed on account of possible prejudice against defendant from improper admission of illegal evidence against codefendant. Daily v. U. S., C.A.9 (Cal.) 1961, 293 F.2d 33. Criminal Law 1186.1

In prosecution for conspiracy to violate Internal Revenue liquor and illicit still laws, admission of testimony of arresting officer as to statements made by alleged coconspirators after their arrest was reversible error, in absence of evidence of any conspiracy which continued after such arrest and after destruction of still. Mosley v. U.S., C.A.5 (Fla.) 1960, 285 F.2d 226. Criminal Law 427(2); Criminal Law 1169.7

In prosecution for conspiracy and using mails to defraud, admission of witness' summaries based on all books and records in evidence to show connection of each of several defendants with fraudulent scheme was prejudicial error in absence of evidence as to which of records was basis for each conclusion contained in summaries, where all books and records were inadmissible against all or any one of several defendants, although each book or record was admissible against some defendant. Wilkes v. U.S., C.C.A.9 (Cal.) 1935, 80 F.2d 285. Criminal Law 400(8); Criminal Law 1169.1(2.1)

On trial for conspiracy to oppose enforcement of the draft by force, admission of evidence of a highly seditious and disloyal speech by a third person, with whom defendant was not shown to have any connection, was reversible error. Enfield v. U.S., C.C.A.8 (Okla.) 1919, 261 F. 141. Criminal Law 338(4)

Evidence of an alleged fraudulent mining-stock scheme had no direct tendency to prove a scheme to defraud through fictitious horse-race bets, and the admission of such evidence was prejudicial error. Shea v. U. S., C.C.A.6 (Ohio) 1916, 236 F. 97, 149 C.C.A. 307.

On a trial for participation in a conspiracy to use the mails to defraud, error in admitting an instrument containing positive averments of facts tending to establish accused's guilt cannot be disregarded as nonprejudicial. Todd v. U.S., C.C.A.8 (Mo.) 1915, 221 F. 205, 136 C.C.A. 615. Criminal Law 1169(1)

Where a contract between codefendants charged with conspiracy to defraud the United States was introduced in evidence by the prosecution as tending to prove such conspiracy, it was error to exclude evidence offered by defendants to show that on learning that such contract might be unlawful it was superseded by another claimed to be legal, especially where evidence was admitted of acts done by the defendants subsequent to the date of the alleged substituted agreement. Perrin v. U.S., C.C.A.9 (Cal.) 1909, 169 F. 17, 94 C.C.A. 385. See, also, Benson v. U.S., Mo.1909, 169 F. 31, 94 C.C.A. 399. Criminal Law 396(1)

1076. ---- Confessions, admissibility of evidence, review

In prosecution of defendant and others for conspiring to deal unlawfully in alcohol, the admitting in evidence of a confession of a codefendant made after termination of alleged conspiracy, and referring to defendant, did not,

under circumstances, constitute reversible error by trial court which repeatedly admonished jury that confession was to be considered only in determining guilt of confessor and not guilt or innocence of other defendants. Delli Paoli v. U.S., U.S.N.Y.1957, 77 S.Ct. 294, 352 U.S. 232, 1 L.Ed.2d 278. Criminal Law 1169.5(5)

In prosecution for conspiracy to transport stolen shirts in interstate commerce, even if trial court mishandled admission of confession of a codefendant which contained a single reference to defendant, by admitting the same in the Government's case in chief before the declarant took the stand, any such error was harmless beyond a reasonable doubt in view of other evidence supporting the verdict of guilty. U. S. v. Maddox, C.A.5 (Ala.) 1974, 492 F.2d 104, certiorari denied 95 S.Ct. 92, 419 U.S. 851, 42 L.Ed.2d 82. Criminal Law 1169.7

Where one Internal Revenue agent was under no police compulsion to meet with another and, once at meeting, was free to say nothing or leave at any time he chose, and was induced to make self-incriminating statements by his eagerness to avail himself of chance to conceal his past derelictions, his statements, which were recorded by other inspectors by arrangement with second mentioned agent, were admissible even if given in response to "interrogation" and even though no Miranda warnings were given. U. S. v. Viviano, C.A.2 (N.Y.) 1971, 437 F.2d 295, certiorari denied 91 S.Ct. 1659, 402 U.S. 983, 29 L.Ed.2d 149. Criminal Law 412.2(3)

In prosecution for conspiracy to violate certain narcotics laws, where a codefendant made a confession which was introduced in evidence against such codefendant only, instruction that jury should consider such confession only as against defendant against whom it was offered would be deemed an adequate instruction as to consideration to be given such confession, in view of fact no objection was made as to alleged insufficiency of instruction and in view of fact record did not disclose whether or not court further instructed in its charge to the jury, or whether defendant made a request for further instructions on the subject. Parente v. U.S., C.A.9 (Cal.) 1957, 249 F.2d 752. Criminal Law 825(4); Criminal Law 847

In reviewing admissibility of confession as evidence, appellate court must consider evidence in relation thereto as a whole, and must act judicially to determine whether or not there are facts, or fair inferences to be drawn therefrom, which, if unanswered, would justify men of ordinary reason and fairness in concluding that confession was involuntary and resulted from improper inducements. Anderson v. U.S., C.C.A.6 (Tenn.) 1941, 124 F.2d 58, certiorari granted 62 S.Ct. 941, 316 U.S. 651, 86 L.Ed. 1732, reversed on other grounds 63 S.Ct. 599, 318 U.S. 350, 87 L.Ed. 829. Criminal Law 1134(2)

In prosecution for conspiracy to violate liquor law, omitting the names of defendants in reading to jury a confession by defendant who had pleaded guilty did not cure error in reading such confession as evidence of the existence of conspiracy. Gambino v. U. S., C.C.A.3 (Pa.) 1939, 108 F.2d 140. Criminal Law 528

In prosecution for conspiracy to violate liquor laws, the reading in evidence of confession of a defendant who had pleaded guilty was error as admitting "hearsay" as against other defendants. Gambino v. U. S., C.C.A.3 (Pa.) 1939, 108 F.2d 140. Criminal Law 528

1077. ---- Declarations of coconspirators, admissibility of evidence, review

No error occurred in admitting coconspirator's statement, even though such statement was made after termination of conspiracy, where defendant "opened the door" to such inquiry by cross-examining witness as to alleged exculpatory statement also made by the witness. U. S. v. Nardi, C.A.1 (N.H.) 1980, 633 F.2d 972. Criminal Law 396(1)

There must be independent evidence of conspiracy and of defendant's participation in it, other than alleged coconspirator statements themselves, to permit admission against defendant of declarations made by coconspirators; the independent evidence need not have established participation of defendant beyond a reasonable doubt but must be sufficient at least to take the question to the jury. U. S. v. Gresko, C.A.4 (W.Va.)

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1980, 632 F.2d 1128. Criminal Law 427(5)

In prosecution for conspiracy to violate section 1001 of this title by knowingly making or causing to be made false, fictitious and fraudulent representations in an application to Small Business Administration for the guaranty of a bank loan, witness' testimony that alleged coconspirator had told him that he had to give defendant specified sum of money to get the loan was hearsay, but was admissible within hearsay rule exception pertaining to statements of a coconspirator made in furtherance of a conspiracy which has been established by competent evidence, and failure of government to question alleged coconspirator concerning truth of his alleged out-of-court declaration was not so prejudicial as to require reversal. U. S. v. Kramer, C.A.10 (Colo.) 1975, 521 F.2d 1073, certiorari denied 96 S.Ct. 1104, 424 U.S. 909, 47 L.Ed.2d 313. Criminal Law 423(1); Criminal Law 1168(2)

Where statements were received on government's offer of proof that declarant would be shown to be a coconspirator and court instructed jury that before it could use statements against anyone but declarant, it had to find that declarant was coconspirator, and there was no indication that jury did not follow such instruction and no motion to strike such declarant's testimony at close of evidence was made, introduction of such statements was not ground for reversal of conviction. U. S. v. John, C.A.8 (Mo.) 1975, 508 F.2d 1134, stay denied 95 S.Ct. 1115, 420 U.S. 917, 43 L.Ed.2d 391, certiorari denied 95 S.Ct. 1948, 421 U.S. 962, 44 L.Ed.2d 448, rehearing denied 95 S.Ct. 1948, 421 U.S. 962, 44 L.Ed.2d 448. Criminal Law 1169.7

Proof that certain person bought amphetamines from defendant, then tried twice to buy again and was refused did not make out prima facie case of charged conspiracy that such person was to find buyers, then get pills from defendant and deliver them to buyers, as affecting admissibility of alleged coconspirator's statements. U. S. v. Spanos, C.A.9 (Cal.) 1972, 462 F.2d 1012. Criminal Law 427(5)

Admission of extrajudicial statements made by dead coconspirator did not violate defendant union official's right to confront witnesses against him. U. S. v. Weber, C.A.3 (N.J.) 1970, 437 F.2d 327, certiorari denied 91 S.Ct. 1524, 402 U.S. 932, 28 L.Ed.2d 867. Criminal Law 662.11

In absence of showing that statement made by conspirator to coconspirator was made during course of alleged conspiracy or that it was made by conspirator in defendant's presence, it was error to admit statement without limiting it to conspirator, and statement would be disregarded when Court of Appeals considered evidence bearing on defendant's involvement in alleged conspiracy to receive or sell jewelry stolen in interstate commerce. U. S. v. Ford, C.A.7 (Ill.) 1963, 324 F.2d 950. Criminal Law 673(2); Criminal Law 1134(2)

Any residual recollections which jury might have held of one defendant's reference to other defendants in extrajudicial admission were without prejudice to other defendants where only cumulative to other evidence which was sufficient to tie them with conspiracy and to warrant finding of guilt in each case. Carter v. U. S., C.A.5 (Fla.) 1962, 304 F.2d 881. Criminal Law 1169.7

In prosecution for alleged conspiracy to violate statutory provisions relating to manufacture, sale, possession, transportation, and distribution of untax-paid whiskey, wherein evidence of guilt of three of defendants was clear, abundant, and strong, any error in admission of a co-defendant's testimony that he told arresting officers that he had been delivering whiskey for one of the three defendants for some three or four years was harmless. Roberson v. U.S., C.A.6 (Tenn.) 1960, 282 F.2d 648, certiorari denied 81 S.Ct. 167, 364 U.S. 879, 5 L.Ed.2d 102. Criminal Law 1169.12

In prosecution for conspiring to offer and give a bribe to a United States internal revenue agent, where evidence was sufficient to warrant jury in drawing inference that defendants conspired and agreed together to commit offense of bribery, trial court did not err in overruling objection of a defendant to admitting into evidence extra-judicial acts and declarations of codefendant nor in not striking them from the record, nor in not instructing the jury to disregard them. Marbs v. U.S., C.A.8 (Mo.) 1957, 250 F.2d 514, certiorari denied 78 S.Ct. 703, 356

U.S. 919, 2 L.Ed.2d 715. Criminal Law 422(1); Criminal Law 696(1); Criminal Law 779

Codefendant's statement in prosecution for conspiracy to violate narcotic laws to effect that while he was in jail with another codefendant, other codefendant had stated that defendant was another individual's narcotic connection did not constitute reversible error as to defendant, where question, which gave rise to statement, was not objected to and statement was stricken, after objection was made. U S v. Carminati, C.A.2 (N.Y.) 1957, 247 F.2d 640, certiorari denied 78 S.Ct. 150, 355 U.S. 883, 2 L.Ed.2d 113. Criminal Law 1169.5(3)

Where a substantive charge of burglary was dismissed as to one defendant, and there was no evidence tending to connect him with a conspiracy prior to the burglary other than statements of a codefendant made after her arrest and thus incompetent as to him, and his admissions showed only that he was accessory after the fact, his conviction for conspiracy was improper. Cleaver v. U. S., C.A.10 (Colo.) 1956, 238 F.2d 766. Conspiracy 47(11)

Where fourteen codefendants had entered pleas of guilty to conspiracy to violate internal revenue laws relating to nontax paid whiskey, testimony of a codefendant erroneously admitted over defendant's objection that after codefendant's arrest another codefendant had said he got all the whiskey from defendant and his brother, was, under the circumstances, so impressive that its prejudicial effect could not be removed from the minds of the jury by its subsequent, but tardy, exclusion, and by an instruction of the court to disregard it. Scarborough v. U. S., C.A.5 (Ala.) 1956, 232 F.2d 412. Criminal Law 1169.5(2)

In prosecution for conspiring to import and sell heroin in United States in contravention of law, permitting a narcotics agent who testified for prosecution to testify as to statements allegedly made to him by another person, which statements connected defendant with alleged traffickers in narcotics, was error where such alleged statements were not made by a conspirator in furtherance of conspiracy charged in indictment, and permitting such testimony required reversal of conviction under circumstances. United States v. Sansone, C.A.2 (N.Y.) 1953, 206 F.2d 86. Criminal Law 423(6); Criminal Law 1169.7

In prosecution for conspiracy to transport stolen motor vehicles in interstate commerce, where timely objection was not taken to reading of statements, made by coconspirators to witness after conspiracy had ended, and such witness was cross-examined by counsel for defendants, trial judge did not err prejudicially in overruling motions, made at close of government's case, to exclude testimony with respect to such statements of coconspirators. Metcalf v. U.S., C.A.6 (Ky.) 1952, 195 F.2d 213. Criminal Law 1168(4)

In prosecution for presenting false claims against government and for conspiracy to commit such offense, admission in evidence of extra-judicial statements made by co-defendant to F.B.I. was error, where co-defendant admitted that he had perjured himself in making one of statements, notwithstanding charge that statements were not to be used as evidence against defendant and limited use for purpose of impeachment of co-defendant as witness. U. S. v. Toner, C.A.3 (Pa.) 1949, 173 F.2d 140. Criminal Law 673(4)

In prosecution for conspiracy court properly admitted statements by a defendant showing that such defendant had not regarded what he claimed at the trial was a loan to a codefendant, and which the prosecution contended was a bribe, as constituting an ordinary commercial transaction. Phelps v. U. S., C.C.A.8 (Minn.) 1947, 160 F.2d 858, rehearing denied 161 F.2d 940, certiorari denied 68 S.Ct. 1525, 334 U.S. 860, 92 L.Ed. 1780. Criminal Law 422(5)

Where defendant testified without personal objection concerning transaction with codefendant with whom he was charged with conspiracy and in view of admitted facts and other testimony in record, it appeared that neither defendant nor codefendant was prejudiced by such testimony, no reversible error resulted. Murphy v. U.S., C.C.A.6 (Tenn.) 1943, 133 F.2d 622. Criminal Law 1169.2(2)

In prosecution for conspiracy to violate certain laws, where most damaging evidence against defendant was

testimony of coconspirator, whose reputation for veracity was not good and whose story was vigorously contradicted, but prosecution introduced a host of witnesses whose fragmentary contributions of proof corroborated and were corroborated by testimony of the coconspirator, so that defendant's guilt was established beyond a reasonable doubt, the conviction was not objectionable on ground that it was based on uncorroborated testimony of a coconspirator. Stewart v. U. S., C.C.A.5 (Ala.) 1942, 131 F.2d 624, certiorari denied 63 S.Ct. 854, 318 U.S. 779, 87 L.Ed. 1147. Criminal Law 511.1(6.1)

Whether it was necessary that testimony of a conspirator against his codefendants in prosecution for conspiracy to transport stolen jewelry in interstate commerce be corroborated was not an issue on appeal where objection to admission of such evidence was made on the ground that it tended to show defendants had committed an offense other than that charged in the indictment. Banning v. U.S., C.C.A.6 (Mich.) 1942, 130 F.2d 330, certiorari denied 63 S.Ct. 434, 317 U.S. 695, 87 L.Ed. 556. Criminal Law 1043(3)

That testimony of codefendant, who pleaded guilty to charge of conspiracy to transport stolen jewelry in interstate commerce, that he and codefendants participated in another jewel robbery was uncorroborated, did not render such testimony inadmissible in the prosecution for conspiracy. Banning v. U.S., C.C.A.6 (Mich.) 1942, 130 F.2d 330, certiorari denied 63 S.Ct. 434, 317 U.S. 695, 87 L.Ed. 556. Criminal Law 428

In prosecution for using mails to defraud and for conspiracy so to use the mails defendant was not deprived of fair and impartial trial, in absence of showing of prejudice, by permitting codefendant with whom he had been in continual conference, without knowledge that codefendant would be called as witness for the government, to testify for the government at codefendant's request. U. S. v. Beck, C.C.A.7 (Ill.) 1941, 118 F.2d 178, certiorari denied 61 S.Ct. 1121, 313 U.S. 587, 85 L.Ed. 1542. Criminal Law 508(3)

In prosecution for possessing with intent to pass and utter counterfeit $10 silver certificates of the United States government, and conspiracy to possess, pass, and utter the counterfeit money, the erroneous admission of conversation between government agent and one of the conspirators, did not require reversal, where the testimony was merely a repetition of the conspirator's direct testimony, and, on motion of government, the testimony was stricken by the court sitting without a jury. U.S. v. Corso, C.C.A.7 (Ill.) 1938, 100 F.2d 604. Criminal Law 1169.7

Conviction for possessing counterfeit United States obligations with intent to pass would not be reversed on ground that witness who testified against accused was an accomplice, or that he, on his own word, was shown to be man of bad character. Trant v. U.S., C.C.A.7 (Ill.) 1936, 88 F.2d 475. Criminal Law 1159.4(6)

Admission of hearsay statements of coconspirator, constituting mere narration of past events, to effect that defendant had given warning of presence of prohibition officer, was error. Clark v. U.S., C.C.A.5 (Ga.) 1932, 61 F.2d 409. Criminal Law 425

Any error in permitting witness to testify accused's codefendant was "dope peddler" was harmless, where codefendant pleaded guilty to charge. Benese v. U.S., C.C.A.5 (La.) 1928, 25 F.2d 231, certiorari denied 49 S.Ct. 17, 278 U.S. 612, 73 L.Ed. 536. Criminal Law 1169.2(2)

Testimony that one alleged conspirator and defendant referred to another alleged conspirator and defendant as the boss was harmless, where first conspirator had made similar reference before conspiracy ended. Vachuda v. U.S., C.C.A.2 (N.Y.) 1927, 21 F.2d 409. Criminal Law 1169.7

In prosecution of defendant for conspiracy to commit offense against United States, for aiding and abetting attempted armed robbery of national bank, and for being an accessory after the fact, denial of defendant wife's request to delete part of defendant husband's statement which tended to show husband's state of mind when bank alarm sounded, his knowledge of time and intended flight was not error where defendant wife's statement and

testimony were substantially to same effect, and jury was instructed that such testimony bound only husband. U. S. v. Anthony, M.D.Pa.1956, 145 F.Supp. 323. Criminal Law 696(3)

In prosecution for criminal conspiracy, evidence of acts and extrajudicial statements or declarations of other alleged conspirators than defendants is admissible to show such third parties' membership in conspiracy. U. S. v. Schneiderman, S.D.Cal.1952, 106 F.Supp. 892. Criminal Law 423(4)

In determining whether alleged conspirators, not named as defendants in indictment for conspiracy, were knowingly and wilfully members of conspiracy during period covered by indictment, so as to authorize consideration of their statements or declarations in connection with case of any defendant found to have been member of conspiracy, only statements or declarations and acts and conduct of persons whose membership in conspiracy is in question and not statements or acts of others may be considered. U. S. v. Schneiderman, S.D.Cal.1952, 106 F.Supp. 892. Criminal Law 423(4)

Where government was entitled to have defendants charged with conspiracy tried jointly, and evidence incompetent against one defendant but competent against the other defendants was offered, and no motion for severance was made, and trial court had no way of knowing in advance that such a situation would arise, admission of evidence with admonition to jury that evidence was to be considered only against defendants as to whom the evidence was competent and not against the defendant as to whom evidence was incompetent, was not prejudicial. U.S. v. Rose, W.D.Ky.1940, 31 F.Supp. 249. Criminal Law 921

1078. ---- Evidence against codefendant, admissibility of evidence, review

In prosecution for conspiracy charging defendant and codefendant with conspiring to defraud Immigration and Naturalization Service, there was sufficient evidence of defendants' participation in alleged conspiracy to support admission of various coconspirator's statements against him. U. S. v. Bithoney, C.A.1 (Mass.) 1980, 631 F.2d 1, certiorari denied 101 S.Ct. 869, 449 U.S. 1083, 66 L.Ed.2d 808. Criminal Law 427(5)

In prosecution for conspiracy to transport stolen telephone equipment in interstate commerce, Government had duty to disclose details of its plea bargaining agreement with coindictee who testified, and testimony produced in making such disclosure, including information about sales of other telephone equipment, was properly received. U. S. v. Nicholson, C.A.5 (La.) 1976, 525 F.2d 1233, certiorari denied 96 S.Ct. 2170, 425 U.S. 972, 48 L.Ed.2d 795, certiorari denied 97 S.Ct. 105, 429 U.S. 837, 50 L.Ed.2d 103. Criminal Law 422(2)

Extrajudicial statements of codefendants are admissible once a conspiracy or joint venture has been shown whether or not it is specifically charged in the indictment. U. S. v. Tanner, C.A.7 (Ill.) 1972, 471 F.2d 128, certiorari denied 93 S.Ct. 269, 409 U.S. 949, 34 L.Ed.2d 220. Criminal Law 422(1)

Evidence of two rifles and several clips of ammunition which were taken from first defendant charged with conspiracy and smuggling at time of his arrest was properly received as to second defendant where latter was fully protected by court's instruction that such evidence was received only with respect to first defendant. U. S. v. Bowe, C.A.2 (N.Y.) 1966, 360 F.2d 1, certiorari denied 87 S.Ct. 401, 385 U.S. 961, 17 L.Ed.2d 306, certiorari denied 87 S.Ct. 779, 385 U.S. 1042, 17 L.Ed.2d 686, rehearing denied 87 S.Ct. 1040, 386 U.S. 969, 18 L.Ed.2d 127. Criminal Law 673(4)

One of defendants was not prejudiced in prosecution for violations of this section and conflicts of interest statute, § 281 of this title, because of evidence admitted against one or more of his codefendants. U. S. v. Johnson, C.A.4 (Md.) 1964, 337 F.2d 180, certiorari granted 85 S.Ct. 703, 379 U.S. 988, 13 L.Ed.2d 609, affirmed 86 S.Ct. 749, 383 U.S. 169, 15 L.Ed.2d 681, certiorari denied 87 S.Ct. 134, 385 U.S. 889, 17 L.Ed.2d 117, certiorari denied 87 S.Ct. 44, 385 U.S. 846, 17 L.Ed.2d 77. Criminal Law 1169.1(2.1)

Error cannot be predicated upon admission in conspiracy case of competent and admissible evidence against one defendant even though such evidence is inadmissible as to remaining defendants, especially where judge correctly instructs jury as to proper use of evidence. Castro v. U. S., C.A.5 (Fla.) 1961, 296 F.2d 540. Criminal Law 673(4)

Even if some of evidence was relevant only to issues other than individual defendant's participation in alleged conspiracy or only in respect of corporate defendant's participation therein, admission of evidence was not prejudicially erroneous as to individual defendant, where individual defendant sought only to exclude such testimony generally and without requesting a limiting instruction. Egan v. U.S., C.C.A.8 (Mo.) 1943, 137 F.2d 369, certiorari denied 64 S.Ct. 195, 320 U.S. 788, 88 L.Ed. 474. Criminal Law 673(4)

Evidence competent as to other defendants than appellant was properly admitted in conspiracy trial; latter's rights being protected by instructions. Haffa v. U.S., C.C.A.7 (Ill.) 1929, 36 F.2d 1, certiorari denied 50 S.Ct. 240, 281 U.S. 727, 74 L.Ed. 1144. Criminal Law 673(4)

Admitting certificates showing that prohibition agents had been dismissed and evidence of acts of one defendant against that defendant only, in prosecution for conspiracy to accept bribes, was not harmful. Harvey v. U.S., C.C.A.2 (N.Y.) 1928, 23 F.2d 561. Criminal Law 1169.7

1079. ---- Overt acts, admissibility of evidence, review

Admission of testimony that defendant, in prosecution for conspiracy and substantive offenses, had frequently visited witness' female neighbor was proper for its probative value in showing that defendant had access to neighbor's telephone through which he received call from alleged coconspirator, despite claimed prejudice arising from fact that defendant was married man. U. S. v. Kompinski, C.A.2 (N.Y.) 1967, 373 F.2d 429. Criminal Law 338(7)

Where the proof was sufficient to implicate defendant in the more general conspiracy with which he was charged, the undisputed overt acts of his co-conspirators were attributable to him. U. S. v. Boyance, C.A.3 (Pa.) 1964, 329 F.2d 372, certiorari denied 84 S.Ct. 1645, 377 U.S. 965, 12 L.Ed.2d 736. Conspiracy 41

There was no error in admitting, subject to later connection, evidence of alleged overt acts before conspiratorial agreement had been established when judge cautioned jury that all evidence on conspiracy charge had been stricken and repeatedly cautioned jury to disregard it. U. S. v. Sahadi, C.A.2 (Conn.) 1961, 292 F.2d 565. Criminal Law 681(3)

In prosecution for conspiracy, although submission of one overt act to jury was improper in that no evidence relating thereto was introduced, such error was harmless in view of fact that occurrence of five remaining overt acts not only was clearly established but was undisputed. U.S. v. Bletterman, C.A.2 (N.Y.) 1960, 279 F.2d 320. Criminal Law 1168(1)

Where it was clear that defendants had committed a large number of overt acts to effect object of their conspiracy, including other overt acts specified in indictment, and it was thus not conceivable that jury had found them guilty of only the overt act allegedly not proved, any lack of direct proof in respect to that overt act could not be deemed to have been prejudicial. Giardano v. U.S., C.A.8 (Mo.) 1958, 251 F.2d 109, certiorari denied 78 S.Ct. 1136, 356 U.S. 973, 2 L.Ed.2d 1147, rehearing denied 78 S.Ct. 1382, 357 U.S. 944, 2 L.Ed.2d 1558. Conspiracy 43(12)

Where there was proof of overt acts in pursuance of alleged conspiracy within period of limitations, submission of evidence to jury as to overt acts which occurred before period of limitations did not authorize a reversal. U.S. v. Cohen, C.C.A.2 (N.Y.) 1944, 145 F.2d 82, certiorari denied 65 S.Ct. 553, 323 U.S. 799, 89 L.Ed. 637, certiorari denied 65 S.Ct. 553, 323 U.S. 799, 89 L.Ed. 638, certiorari denied 65 S.Ct. 554, 323 U.S. 800, 89 L.Ed. 638.

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Criminal Law 1169.11

Overt act may be considered with other evidence in determining whether there was conspiracy, but it must be established that conspiracy was existing when overt act was committed. Dahly v. U.S., C.C.A.8 (Minn.) 1931, 50 F.2d 37. Conspiracy 27

1080. ---- Intent, admissibility of evidence, review

In prosecution for conspiracy to violate federal narcotics laws, even if indictment could properly have charged only one aspect of the conspiracy, evidence of dealings with second supplier would have been admissible to show defendant's intent with respect to prior transactions, since during negotiations defendant did not refer to heroin but rather to "the stuff." U. S. v. Sir Kue Chin, C.A.2 (N.Y.) 1976, 534 F.2d 1032. Criminal Law 371(1)

1081. Sufficiency of evidence, review

When reviewing a claim of insufficient evidence, court examines the admissible evidence to determine whether, when viewed in the light most favorable to the jury verdict and accepting all credibility choices which tend to support that verdict, there was sufficient evidence upon which a reasonable trier of fact could find defendant guilty beyond a reasonable doubt. U.S. v. Allred, C.A.5 (Tex.) 1989, 867 F.2d 856. Criminal Law 1159.2(7)

Standard of review for sufficiency of evidence of single conspiracy is whether any rational trier of fact could have found single conspiracy on evidence presented. U.S. v. Bloch, C.A.9 (Cal.) 1982, 696 F.2d 1213. Conspiracy 47(1)

On challenge to sufficiency of independent evidence to establish existence of conspiracy, evidence must be viewed in light most favorable to government. U. S. v. Young, C.A.8 (Mo.) 1980, 634 F.2d 1136. Criminal Law 1144.13(3)

In analyzing contention that evidence at trial for conspiracy to transport stolen securities in interstate commerce was insufficient to prove that defendants were members of an overall, single conspiracy, Court of Appeals was required to view evidence in light most favorable to the prosecution in order to sustain the conviction. U. S. v. Salerno, C.A.3 (N.J.) 1973, 485 F.2d 260, certiorari denied 94 S.Ct. 1596, 415 U.S. 994, 39 L.Ed.2d 891, rehearing denied 94 S.Ct. 2415, 416 U.S. 1000, 40 L.Ed.2d 778. Criminal Law 1144.13(8)

Where jury, in a prosecution for conspiracy to violate the Sherman Act, § 1-7 of Title 15, found a corporate defendant guilty of participation in the conspiracy, applicable rule in judging sufficiency of the record to sustain the conviction was to consider it in the light most favorable to the prosecution, and to reverse only if Court of Appeals found that there was no substantial evidence, on the record as a whole, to support the verdict. Pittsburgh Plate Glass Co. v. U.S., C.A.4 (Va.) 1958, 260 F.2d 397, certiorari granted 79 S.Ct. 289, 358 U.S. 917, 3 L.Ed.2d 237, certiorari granted 79 S.Ct. 290, 358 U.S. 918, 3 L.Ed.2d 237, affirmed 79 S.Ct. 1237, 360 U.S. 395, 3 L.Ed.2d 1323, rehearing denied 80 S.Ct. 42, 361 U.S. 855, 4 L.Ed.2d 94. Criminal Law 1144.13(8); Criminal Law 1159.2(10)

Where sufficiency of evidence to connect accused with conspiracy was challenged, only question for court on review was whether facts as found by jury operated as substantial proof of guilt. Hall v. U.S., C.C.A.10 (Okla.) 1940, 109 F.2d 976. Criminal Law 1158(1)

The weighing of conflicting evidence in prosecution for violations of bankruptcy law and for conspiracy was exclusively for jury, and was not reviewable. U.S. v. Shapiro, C.C.A.7 (Wis.) 1939, 101 F.2d 375, certiorari denied 59 S.Ct. 774, 306 U.S. 657, 83 L.Ed. 1054. Criminal Law 1159.3(6)

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Appellate court will not review the weight of the evidence on which conviction for conspiracy was had. Westfall v. U. S., C.C.A.6 (Ohio) 1924, 2 F.2d 973, 3 Ohio Law Abs. 481.

1082. Witnesses, review--Generally

In prosecution for violation of internal revenue laws and conspiracy, defendants were entitled to an opportunity to examine and cross-examine witnesses at trial to determine whether government was using against them evidence derived from leads and clues furnished by materials illegally obtained from defendants and used to procure (subsequently dismissed) indictments by prior grand jury; but, on record presented, reviewing court could not hold that such opportunity had been denied defendants. Lawn v. U.S., U.S.N.Y.1958, 78 S.Ct. 311, 355 U.S. 339, 2 L.Ed.2d 321, rehearing denied 78 S.Ct. 529, 355 U.S. 967, 2 L.Ed.2d 532, rehearing denied 78 S.Ct. 529, 355 U.S. 967, 2 L.Ed.2d 542. Criminal Law 394.5(1)

In conspiracy prosecution, the district court did not exceed its authority in asking witness whether there had been a full disclosure of his connection with a certain still when he appeared before a certain judge, even though appearance was simply for the purpose of arraignment and no testimony was offered, where no one attempted to explain to the court the nature of the appearance at the time of the questioning, and it was later brought out on cross-examination that appearance was only an arraignment and that there was no necessity for testimony on that day. Glasser v. U.S., U.S.Ill.1942, 62 S.Ct. 457, 315 U.S. 60, 86 L.Ed. 680, rehearing denied 62 S.Ct. 629, 315 U.S. 827, 86 L.Ed. 1222, rehearing denied 62 S.Ct. 637, 315 U.S. 827, 86 L.Ed. 1222. Criminal Law 656(2)

In prosecution for using interstate wire facilities in carrying out scheme to defraud certain hotel casinos and for conspiracy involving same scheme, testimony of witness, who had been indicted along with defendants but who subsequently pleaded guilty and testified for government, as to planning and execution of alleged conspiracy was admissible where witness was testifying to facts in his own knowledge. U. S. v. Scallion, C.A.5 (La.) 1976, 533 F.2d 903, certiorari denied 97 S.Ct. 824, 429 U.S. 1079, 50 L.Ed.2d 799, rehearing denied 97 S.Ct. 1342, 430 U.S. 923, 51 L.Ed.2d 602, on rehearing 548 F.2d 1168, certiorari denied 98 S.Ct. 2843, 436 U.S. 943, 56 L.Ed.2d 784. Criminal Law 508(3)

Trial court did not err in admitting into evidence government witness' testimony that defendant's $10,000 loan to him was at a highly usurious rate of interest where loan was paid off out of proceeds of securities swindle and existence of loan represented influencing factor in defendant's participation in the conspiracy. U. S. v. Aloi, C.A.2 (N.Y.) 1975, 511 F.2d 585, certiorari denied 96 S.Ct. 447, 423 U.S. 1015, 46 L.Ed.2d 386. Criminal Law 369.2(3.1)

Testimony as to defendant's prior bankruptcy was admissible in prosecution for mail fraud and conspiracy as circumstantial evidence tending to establish defendant's motive, intent, or design in carrying out alleged scheme to defraud applicants for loans, notwithstanding that such testimony tended incidentally to put defendant's character in issue; nor was such testimony inadmissible on ground that possible prejudice outweighed probative value. U. S. v. Pichnarcik, C.A.9 (Wash.) 1970, 427 F.2d 1290. Criminal Law 338(7); Criminal Law 376

In prosecution for smuggling and conspiracy relative to alleged plot to blow up Statue of Liberty, trial judge correctly concluded that confusion and delay which would have resulted from introduction of testimony of third party that government witness had asked him to participate in a plan to blow up Statue of Liberty outweighed its slight probative value. U. S. v. Bowe, C.A.2 (N.Y.) 1966, 360 F.2d 1, certiorari denied 87 S.Ct. 401, 385 U.S. 961, 17 L.Ed.2d 306, certiorari denied 87 S.Ct. 779, 385 U.S. 1042, 17 L.Ed.2d 686, rehearing denied 87 S.Ct. 1040, 386 U.S. 969, 18 L.Ed.2d 127. Criminal Law 417(1)

In view of fact that trial judge was alert to protect defendant while he was testifying and that facts sought by government from FBI agent and from defendant's coconspirator were relevant to defendant's intent to commit

crimes charged and his knowledge of overall fraudulent scheme, defendant was not entitled to reversal on ground of prejudicial misconduct by government counsel in examining two government witnesses and in cross-examination of defendant. U. S. v. Mayo, C.A.2 (N.Y.) 1965, 340 F.2d 943. Criminal Law 1171.8(1)

Where alleged co-conspirator testified that he had been told by government agent that he would be a fool to testify at trial, it was a proper rebuttal for agent to testify to further conversations between agent and alleged co-conspirator respecting his reasons for testifying and to incriminating admissions made in course of such conversations. U. S. v. Allegretti, C.A.7 (Ill.) 1964, 340 F.2d 254, certiorari denied 85 S.Ct. 1531, 381 U.S. 911, 14 L.Ed.2d 433, rehearing denied 85 S.Ct. 1800, 381 U.S. 956, 14 L.Ed.2d 728, certiorari denied 85 S.Ct. 1532, 381 U.S. 911, 14 L.Ed.2d 433, certiorari denied 88 S.Ct. 830, 390 U.S. 908, 19 L.Ed.2d 876. Criminal Law 683(1)

If trial judge erred in originally ruling, after three alibi witnesses had testified for a defendant, that he could call only two more witnesses on subject, error was cured by later ruling allowing him to call as many alibi witnesses as he desired. U. S. v. Bentvena, C.A.2 (N.Y.) 1963, 319 F.2d 916, certiorari denied 84 S.Ct. 345, 375 U.S. 940, 11 L.Ed.2d 271, rehearing denied 90 S.Ct. 894, 397 U.S. 928, 25 L.Ed.2d 108, rehearing denied 84 S.Ct. 515, 375 U.S. 989, 11 L.Ed.2d 476, certiorari denied 84 S.Ct. 346, 375 U.S. 940, 11 L.Ed.2d 271, rehearing denied 84 S.Ct. 1162, 377 U.S. 913, 12 L.Ed.2d 183, certiorari denied 84 S.Ct. 353, 375 U.S. 940, 11 L.Ed.2d 272, certiorari denied 84 S.Ct. 354, 375 U.S. 940, 11 L.Ed.2d 272, certiorari denied 84 S.Ct. 355, 375 U.S. 940, 11 L.Ed.2d 272, certiorari denied 84 S.Ct. 360, 375 U.S. 940, 11 L.Ed.2d 272. Criminal Law 675

Record on appeal in forgery prosecution disclosed that trial judge had not improperly limited cross-examination. Gardner v. U. S., C.A.10 (Colo.) 1960, 283 F.2d 580. Witnesses 268(1)

In prosecution for conspiring to defraud United States and to commit certain offenses against laws of United States by violating sections of Internal Revenue Code pertaining to illicit, unlawful, and fraudulent manufacture, possession, transportation, distribution, removal and concealment of nontax-paid distilled spirits and for making false, fictitious and fraudulent reports, court did not err in permitting a witness to state what was in a bill of lading shown to be in possession of one of defendant. Ellijay Feed & Supply Co. v. U.S., C.A.5 (Ga.) 1960, 277 F.2d 791 . Criminal Law 398(2)

Where trial in prosecution for concealing assets from trustee in bankruptcy and conspiring to transfer assets of one corporation to another in contemplation of bankruptcy lasted 11 days and there were some 1,470 pages of transcript, and the jury had ample opportunity to observe defendant while he was on witness stand who repeatedly was evasive and unresponsive and trial judge was obliged to take an active part to keep proceedings in proper channels and most of judge's questions were directed toward that end and judge cautioned jury that his instructions to defendant has nothing to do with his guilt or innocence, defendant could not claim prejudice on ground that trial court repeatedly rebuked him and his counsel. U.S. v. Switzer, C.A.2 (N.Y.) 1958, 252 F.2d 139, certiorari denied 78 S.Ct. 1363, 357 U.S. 922, 2 L.Ed.2d 1366, rehearing denied 79 S.Ct. 16, 358 U.S. 859, 3 L.Ed.2d 93. Criminal Law 1166.22(3)

In prosecution for concealing assets from trustee in bankruptcy and conspiring to transfer assets of one corporation to another in contemplation of bankruptcy, wherein most of trial judge's some 920 questions were designed to clarify testimony and point out its relation to former testimony, and court uniformly allowed ample time for explanation of any resulting inconsistencies and avoided personalities whenever possible, and court did not address itself to credibility of any witness nor did court remark on weight to be given to any particular piece of evidence, defendant was not prejudiced by such questions. U.S. v. Switzer, C.A.2 (N.Y.) 1958, 252 F.2d 139, certiorari denied 78 S.Ct. 1363, 357 U.S. 922, 2 L.Ed.2d 1366, rehearing denied 79 S.Ct. 16, 358 U.S. 859, 3 L.Ed.2d 93. Criminal Law 1166.22(5)

In prosecution for conspiracy to violate internal revenue laws relating to nontax paid whiskey, if question asked

defendant on cross-examination as to whether he had been convicted of manufacturing moonshine whiskey for which he had paid a fine related to a conviction for a misdemeanor some twenty years before present charge, same question should not be repeated upon another trial. Scarborough v. U. S., C.A.5 (Ala.) 1956, 232 F.2d 412. Criminal Law 369.6

A decision whether coconspirator should take stand as witness was matter for determination of counsel in its conduct of trial, and that such trial strategy was unsuccessful in securing the hoped-for acquittal of conspirator does not render coconspirator's failure to testify a ground which can be urged by conspirator after trial as error. Beeler v. U.S., C.A.5 (Tex.) 1953, 205 F.2d 454, certiorari denied 74 S.Ct. 130, 346 U.S. 877, 98 L.Ed. 385. Criminal Law 1137(2)

In prosecution against 16 defendants for conspiracy to defraud United States of taxes on distilled spirits, the District Court's action in punishing a government witness for contempt for refusal to testify was not prejudicial to accused where no light was thrown on whom the witness was to testify against or what he would say. U.S. v. Novick, C.C.A.2 (N.Y.) 1941, 124 F.2d 107, certiorari denied 62 S.Ct. 795, 315 U.S. 813, 86 L.Ed. 1212, rehearing denied 62 S.Ct. 913, 315 U.S. 830, 86 L.Ed. 1224. Criminal Law 1170.5(1)

In prosecution for conspiracy to defraud United States of taxes on distilled spirits, wherein accused admitted that he played the numbers, in order to explain his association with a codefendant who was a bookmaker, action of district court in permitting city detective in rebuttal to testify that from papers found in accused's possession which were admitted in evidence on cross-examination of accused, detective could determine that accused had been a policy banker rather than mere player, and in holding that there was no unfair surprise or confusion of issues, was not an abuse of discretion. U.S. v. Novick, C.C.A.2 (N.Y.) 1941, 124 F.2d 107, certiorari denied 62 S.Ct. 795, 315 U.S. 813, 86 L.Ed. 1212, rehearing denied 62 S.Ct. 913, 315 U.S. 830, 86 L.Ed. 1224. Criminal Law 369.1; Criminal Law 683(1)

In prosecution for conspiring to obstruct the administration of justice and to defraud the United States, testimony in respect of a certain trial before a particular judge was not improperly received on ground that case was in a District Court, whereas indictment related only to proceedings in the Circuit Court of Appeals, where indictment specifically mentioned that particular case as having been duly brought in the United States District Court for the Southern District of New York and included that court and that case by general words of description as being within the purview of the conspiracy. U.S. v. Manton, C.C.A.2 (N.Y.) 1939, 107 F.2d 834, certiorari denied 60 S.Ct. 590, 309 U.S. 664, 84 L.Ed. 1012. Conspiracy 43(12)

Excluding testimony of wife of one defendant charged with conspiracy tending to show alibi, did not require reversal under evidence. Green v. U.S., C.C.A.9 (Wash.) 1927, 19 F.2d 850, certiorari denied 48 S.Ct. 117, 275 U.S. 557, 72 L.Ed. 424, 72 L.Ed. 729, rehearing granted 48 S.Ct. 207, 276 U.S. 609, 72 L.Ed. 729, affirmed 48 S.Ct. 564, 277 U.S. 438, 72 L.Ed. 944. Criminal Law 1170(1)

Refusal to permit defendants to testify they did not believe their acts unlawful was not erroneous. Ford v. U.S., C.C.A.9 (Cal.) 1926, 10 F.2d 339, certiorari granted 46 S.Ct. 475, 271 U.S. 652, 70 L.Ed. 1133, affirmed 47 S.Ct. 531, 273 U.S. 593, 71 L.Ed. 793. Criminal Law 390; Criminal Law 448(3)

Testimony was material in a prosecution for conspiracy where it would tend to impeach a witness for the government and to show that a defendant was not in the conspiracy. Holmes v. U.S., C.C.A.5 (Tex.) 1920, 269 F. 96. Conspiracy 45

Trial court in prosecution for conspiracy involving possession and use of counterfeit money properly refused defense counsel's request to peruse testimony of witness which had been given before grand jury where defense counsel sought only to see that there might be inconsistencies in testimony of witness and there were numerous other witnesses who corroborated testimony of witness. U. S. v. Boyance, E.D.Pa.1963, 215 F.Supp. 390.

18 U.S.C.A. § 371

Criminal Law 627.9(4)

In prosecution for conspiracy to violate Smith Act, § 2385 of this title, by advocating and teaching and helping to organize as Communist Party persons teaching and advocating overthrow of government by force, witnesses' conclusions that certain persons not named in indictment were members of Communist Party were necessary as practical matter, where no direct indicia of party membership existed, and defendant's remedy was by full cross-examination of witnesses, not by motion to strike their testimony. U. S. v. Schneiderman, S.D.Cal.1952, 106 F.Supp. 892. Criminal Law 451(1); Criminal Law 696(1)

1083. ---- Harmless error, witnesses, review

In conspiracy prosecution, the district court did not commit prejudicial error in reading into the record the fact that witness, who had testified, was indicted in Wisconsin in 1936, and 1938, and that he pleaded guilty to one indictment and that the other was dismissed, where witness had briefly referred to his troubles in Wisconsin in his testimony. Glasser v. U.S., U.S.Ill.1942, 62 S.Ct. 457, 315 U.S. 60, 86 L.Ed. 680, rehearing denied 62 S.Ct. 629, 315 U.S. 827, 86 L.Ed. 1222, rehearing denied 62 S.Ct. 637, 315 U.S. 827, 86 L.Ed. 1222. Criminal Law 1166.22(4.1)

Where record showed convening of court and presence of judges and court officers, indictment contained indorsement stating that it was filed in open court on September 29, 1939, and immediately following indictment in record was motion-slip discharging September grand jury dated September 29, 1939, and containing notation, "The Grand Jury return 4 Indictments in open Court. Added 10/30/39", that informal clarification of clerk's indorsement was not an error requiring reversal of convictions, as against contention that there was no showing that indictment was returned in open court by the grand jury. Glasser v. U.S., U.S.Ill.1942, 62 S.Ct. 457, 315 U.S. 60, 86 L.Ed. 680, rehearing denied 62 S.Ct. 629, 315 U.S. 827, 86 L.Ed. 1222, rehearing denied 62 S.Ct. 637, 315 U.S. 827, 86 L.Ed. 1222. Criminal Law 1167(1)

Witness' brief, hearsay account of comments by one coconspirator about other crimes was not prejudicial to defendant, where trial judge immediately instructed jury to ignore the remark except to the extent that they might be statements of a coconspirator having to do with alleged conspiracy on trial. Brinkley v. U. S., C.A.8 (Ark.) 1974, 498 F.2d 505. Criminal Law 1169.5(5)

Evidence as to certain conversations was not inadmissible in a conspiracy prosecution on theory they bore no relationship to the conspiracy charged, and, in any event, in view of proof of guilt, admission of the testimony, if error, was not prejudicial. Arnold v. U. S., C.A.9 (Wash.) 1964, 336 F.2d 347, certiorari denied 85 S.Ct. 1348, 380 U.S. 982, 14 L.Ed.2d 275. Criminal Law 338(1); Criminal Law 1169.1(2.1)

In prosecution for mail fraud, securities fraud and conspiracy, there was no reversible error in receiving testimony of losses by witnesses, as against contention that government called aged, unemployed, uneducated or widows to testify so as to evoke sympathy and engender antipathy, where it appeared that government presented cross-section of investor witnesses and defendants made no objection at the time. Farrell v. U. S., C.A.9 (Cal.) 1963, 321 F.2d 409, certiorari denied 84 S.Ct. 631, 375 U.S. 992, 11 L.Ed.2d 478. Criminal Law 1171.8(1)

In prosecution for conspiracy in regard to marihuana and for substantive violations of customs and other laws in regard to marihuana, alleged error in declining to grant defendant's motion to produce the notes of customs inspector which he had used to refresh his memory regarding license number of automobile seized was harmless where there was no dispute about the number or identification of seized automobile. Padron v. U.S., C.A.5 (Tex.) 1958, 254 F.2d 574, certiorari denied 79 S.Ct. 22, 358 U.S. 815, 3 L.Ed.2d 57. Criminal Law 1170.5(1)

In prosecution for conspiracy in regard to marihuana and for substantive violations of laws in regard to marihuana, permitting government to inquire of defendant as to other alleged offenses was not prejudicial where matter began

with defendant's own testimony on direct, that he had been convicted of a felony in another federal court, and was concluded with permissible answer which district attorney had been seeking all along, that that conviction was for possession of marihuana, a similar offense to that for which he was on trial. Padron v. U.S., C.A.5 (Tex.) 1958, 254 F.2d 574, certiorari denied 79 S.Ct. 22, 358 U.S. 815, 3 L.Ed.2d 57. Criminal Law 1169.11

In prosecution for selling narcotics and for conspiring to violate federal narcotic laws, government's calling of coconspirator to testify was not error even if government knew that coconspirator would not testify if called as a witness. U. S. v. Romero, C.A.2 (N.Y.) 1957, 249 F.2d 371. Criminal Law 706(7)

In prosecution for conspiracy to violate narcotic laws, it was not improper for trial court to sustain objections to defendant's cross-examination of government witnesses as to whether the testimony of another witness was correct, what witness had said during trial of another unrelated case respecting the veracity of government witnesses, where his wife secured money to buy a new automobile and the reasons why he gave up his job of selling narcotics. Poliafico v. U. S., C.A.6 (Ohio) 1956, 237 F.2d 97, certiorari denied 77 S.Ct. 590, 352 U.S. 1025, 1 L.Ed.2d 597, rehearing denied 77 S.Ct. 718, 353 U.S. 931, 1 L.Ed.2d 725. Witnesses 330(3)

In prosecution for conspiracy to violate narcotic law, no prejudicial error resulted on cross-examination of government witness in excluding question as to location of jail in which witness was confined where location was disclosed on subsequent cross-examination. Poliafico v. U. S., C.A.6 (Ohio) 1956, 237 F.2d 97, certiorari denied 77 S.Ct. 590, 352 U.S. 1025, 1 L.Ed.2d 597, rehearing denied 77 S.Ct. 718, 353 U.S. 931, 1 L.Ed.2d 725. Criminal Law 1170.5(5)

In prosecution for conspiracy to violate narcotic laws, there was no error in permitting government to cross-examine two of their witnesses on contradictory testimony given before grand jury after witnesses had turned hostile taking government by surprise. Poliafico v. U. S., C.A.6 (Ohio) 1956, 237 F.2d 97, certiorari denied 77 S.Ct. 590, 352 U.S. 1025, 1 L.Ed.2d 597, rehearing denied 77 S.Ct. 718, 353 U.S. 931, 1 L.Ed.2d 725. Witnesses 380(5.1)

In prosecution for conspiracy to violate narcotic laws, where one of the decross-examination of government witness as to whether burglary for which witness had been sentenced was first time he had committed a burglary was not prejudicial error, where criminal activities of witness had been previously shown. Poliafico v. U. S., C.A.6 (Ohio) 1956, 237 F.2d 97, certiorari denied 77 S.Ct. 590, 352 U.S. 1025, 1 L.Ed.2d 597, rehearing denied 77 S.Ct. 718, 353 U.S. 931, 1 L.Ed.2d 725. Criminal Law 1170.5(5)

In prosecution for conspiracy to violate narcotic laws, where one of the defendants had remained in courtroom hearing government witness' testimony and then pleaded guilty, and testified thereafter as a government witness, there was no error in refusing to permit such testimony on ground that he had remained in courtroom after a separation of witnesses had been ordered by the court at the outset of trial. Poliafico v. U. S., C.A.6 (Ohio) 1956, 237 F.2d 97, certiorari denied 77 S.Ct. 590, 352 U.S. 1025, 1 L.Ed.2d 597, rehearing denied 77 S.Ct. 718, 353 U.S. 931, 1 L.Ed.2d 725. Criminal Law 665(3)

Where, in prosecution for conspiring to defraud United States by inflating cost basis of tuition rate and increasing cost charged to Veterans Administration for supplies and veterans' training under Servicemen's Readjustment Act of 1944, § 693 et seq. of Title 38, refusal to permit use of witness, who admittedly had not been told all about defendants' independent corporation, as an opinion witness on issue whether one defendant had intended to defraud the United States in regard to such corporation was proper. U. S. v. Weinberg, C.A.3 (Pa.) 1955, 226 F.2d 161, certiorari denied 76 S.Ct. 305, 350 U.S. 933, 100 L.Ed. 815. Criminal Law 449.1

In prosecution for conspiring to defraud United States by inflating cost basis of tuition rate and increasing cost charged to Veterans Administration for supplies in veterans' training under the Servicemen's Readjustment Act of 1944, § 693 of Title 38, refusal to allow witness to show that Veterans Administration functioned by information

other than the cost statements in determining tuition rates was not substantial error. U. S. v. Weinberg, C.A.3 (Pa.) 1955, 226 F.2d 161, certiorari denied 76 S.Ct. 305, 350 U.S. 933, 100 L.Ed. 815. Criminal Law 1170(1)

In prosecution for conspiring to defraud United States by inflating cost basis of tuition rate and increasing cost charged to Veterans Administration for supplies in veterans' training under the Servicemen's Readjustment Act of 1944, § 693 et seq. of Title 38, refusal to permit witness to testify that Veterans Administration had, at one time, withheld payments to defendants' schools because they had purchased tools from company in which school stockholders had an interest but later resumed such payments was not substantial error. U. S. v. Weinberg, C.A.3 (Pa.) 1955, 226 F.2d 161, certiorari denied 76 S.Ct. 305, 350 U.S. 933, 100 L.Ed. 815. Criminal Law 1170(1)

Where defendant's own counsel elicited from an alleged co-conspirator testimony concerning illegal sales of marihuana made by defendant prior to dates of illegal sales charged in indictment, defendant could not claim admission of such testimony as prejudicial error. U. S. v. Tramaglino, C.A.2 (N.Y.) 1952, 197 F.2d 928, certiorari denied 73 S.Ct. 105, 344 U.S. 864, 97 L.Ed. 670. Criminal Law 1137(5)

In prosecution for transporting and conspiring to transport stolen motor vehicles beyond borders of state, wherein one of defendants had testified as to identity of vehicles alleged to have been stolen, allowing jury to refer to alleged forged bills of sale, not as substantive proof, but as bearing on recollection of defendant testifying as to identity, was not error. U.S. v. Mura, C.A.2 (N.Y.) 1951, 191 F.2d 886. Criminal Law 783(1)

In prosecution for conspiracy to organize Communist Party of United States as a group to teach and advocate overthrow of government by force or violence, refusal to permit a defendant to state his understanding of the expression "converting the imperialist war into a civil war" appearing in a Party pamphlet was not harmful to such defendant where such defendant had stated that the Party had never used the expression in any war in which the United States took part and another defendant later explained that the expression had its origin at the time of the seizure of power by the Communists in Russia in 1917. U.S. v. Dennis, C.A.2 (N.Y.) 1950, 183 F.2d 201, certiorari granted 71 S.Ct. 91, 340 U.S. 863, 95 L.Ed. 630, affirmed 71 S.Ct. 857, 341 U.S. 494, 95 L.Ed. 1137, rehearing denied 72 S.Ct. 20, 342 U.S. 842, 96 L.Ed. 636, rehearing denied 78 S.Ct. 409, 355 U.S. 936, 2 L.Ed.2d 419. Criminal Law 1170(1)

In prosecution for conspiracy to violate the Foreign Agents Registration Act, § 612 of Title 22, where Government's witness, an investigator, for national security reasons, was permitted to testify under an assumed name, refusing to permit cross-examination as to part of his background which antedated by several years the period covered by his testimony was not error, where none of data testified to by him was obtained by witness during period which was barred to cross-examination, and defense thoroughly developed the various avenues of cross-examination and anything further would have been cumulative. U.S. v. German-American Vocational League, C.C.A.3 (N.J.) 1946, 153 F.2d 860, certiorari denied 66 S.Ct. 976, 328 U.S. 833, 90 L.Ed. 1608, certiorari denied 66 S.Ct. 976, 328 U.S. 833, 90 L.Ed. 1609, certiorari denied 66 S.Ct. 977, 328 U.S. 833, 90 L.Ed. 1609, certiorari denied 66 S.Ct. 977, 328 U.S. 834, 90 L.Ed. 1609, certiorari denied 66 S.Ct. 977, 328 U.S. 834, 90 L.Ed. 1610, certiorari denied 66 S.Ct. 978, 328 U.S. 834, 90 L.Ed. 1610. Witnesses 270(2); Witnesses 282.5

In prosecution for impersonating an officer of the United States, and for conspiracy to commit such offense, testimony of sheriff that accused for about a year and a half prior to time when offense was committed did not have a job but for part of the time was "supposed to have an antique shop" was so immaterial that its admission was not prejudicial. Westenrider v. U.S., C.C.A.9 (Nev.) 1943, 134 F.2d 772. Criminal Law 1169.1(6)

In prosecution for conspiracy to injure property of Tennessee Valley Corporation by destroying corporation's transmission lines, refusal to permit sheriff to state how many company deputies had been employed to guard premises of company served by such transmission lines, and whether deputies were paid by company, and whether sheriff had instructed deputies to search all cars passing over highways in vicinity of mines of company, was not error, since such testimony was irrelevant. Anderson v. U.S., C.C.A.6 (Tenn.) 1941, 124 F.2d 58, certiorari

granted 62 S.Ct. 941, 316 U.S. 651, 86 L.Ed. 1732, reversed on other grounds 63 S.Ct. 599, 318 U.S. 350, 87 L.Ed. 829. Criminal Law 338(1)

In prosecution for conspiring to defraud the United States of taxes on distilled spirits, wherein witness on direct examination testified that he took the accused to a garage at request of another defendant, refusal to permit cross-examination intended to elicit witness' opinion that the accused was simply a messenger sent by the other defendant was not error. U.S. v. Gallo, C.C.A.2 (N.Y.) 1941, 123 F.2d 229. Criminal Law 448(1)

In prosecution for using mails to execute fraudulent scheme by defrauding investors by sale of units in oil leases and for conspiracy, where indictment contained allegation that a part of the scheme was that in addition to price per acre to be charged investors, defendants would require a payment of $5 per lease unit as an alleged fee for recording the unit whereas defendants intended that only a comparatively small number of leases would be recorded and defendant intended to appropriate the balance of the payments, admission of testimony of government witness that according to his examination of defendants' books they had made a profit of some $38,000 from recording fees was not error where court instructed jury to disregard such allegation of the indictment. Simons v. U.S., C.C.A.9 (Wash.) 1941, 119 F.2d 539, certiorari denied 62 S.Ct. 78, 314 U.S. 616, 86 L.Ed. 496. Criminal Law 1169.5(2)

In prosecution for using mails in execution of scheme to defraud investors by sale of fractional parts of oil leases and for conspiracy, testimony regarding conversation with a defendant who had been indicted but acquitted wherein such defendant made many statements which could have been taken as admissions of his connection with the conspiracy and which contained accusations against the codefendants was not error where court instructed jury that consideration of such testimony was limited to the defendant with whom the conversation was had. Simons v. U.S., C.C.A.9 (Wash.) 1941, 119 F.2d 539, certiorari denied 62 S.Ct. 78, 314 U.S. 616, 86 L.Ed. 496. Criminal Law 1169.5(5)

In prosecution for using mails to defraud and for conspiracy, committed by fraudulent sales of cemetery lots through a corporation, testimony of post office inspector that his analysis of sales records indicated that lots were purchased for specified low price was not prejudicial, though inspector testified on cross-examination that he obtained the price from an invoice, where there was other testimony that lots had been purchased for such price. U. S. v. Beck, C.C.A.7 (Ill.) 1941, 118 F.2d 178, certiorari denied 61 S.Ct. 1121, 313 U.S. 587, 85 L.Ed. 1542. Criminal Law 1169.2(2)

In prosecution for using mails to defraud and for conspiracy, allegedly committed by fraudulent sales of cemetery lots through a corporation, admission of testimony of attorney representing purchaser of the lots, and of such attorney's correspondence with the corporation, showing claim that the purchase had been carried out through misrepresentations and in violation of state law, and corporation's admission that it had been ordered by state authority to desist from further sales within the state, were not reversible error. U. S. v. Beck, C.C.A.7 (Ill.) 1941, 118 F.2d 178, certiorari denied 61 S.Ct. 1121, 313 U.S. 587, 85 L.Ed. 1542. Criminal Law 1169.1(2.1)

In prosecution for conspiracy to harbor fugitive from justice, refusing to strike testimony which was repetition of testimony in prior prosecution for conspiracy to harbor another fugitive which prosecution resulted in acquittal was not error, conspiracies to harbor different individuals being separate offenses. Piquett v. U.S., C.C.A.7 (Ill.) 1936, 81 F.2d 75, certiorari denied 56 S.Ct. 749, 298 U.S. 664, 80 L.Ed. 1388. Double Jeopardy 102

Admission of testimony, identifying defendants in moving pictures of conspirators' rendezvous, was not prejudicial error, in view of previous testimony as to persons there. Feigenbutz v. U.S., C.C.A.8 (Mo.) 1933, 65 F.2d 122. Criminal Law 1169.2(2)

Admission of testimony relative to apportionment among alleged conspirators in accordance with admissions of defendants did not require reversal. Green v. U.S., C.C.A.8 (Okla.) 1928, 28 F.2d 965. Criminal Law

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1186.4(5)

Witness' answer on cross-examination that indictment against him had been dismissed and new one substituted was not prejudicial. Falter v. U.S., C.C.A.2 (N.Y.) 1928, 23 F.2d 420, certiorari denied 48 S.Ct. 528, 277 U.S. 590, 72 L.Ed. 1003. Criminal Law 1169(5)

Admission of testimony of housekeeper for alleged conspirator, tending to connect another defendant with conspiracy, was not error, viewing instruction. McDonnell v. U.S., C.C.A.1 (Mass.) 1927, 19 F.2d 801, certiorari denied 48 S.Ct. 114, 275 U.S. 551, 72 L.Ed. 421. Criminal Law 673(2)

Testimony that alleged conspirator communicated by telephone with another, admitted to contradict the former, was not prejudicial to latter under instruction. McDonnell v. U.S., C.C.A.1 (Mass.) 1927, 19 F.2d 801, certiorari denied 48 S.Ct. 114, 275 U.S. 551, 72 L.Ed. 421. Criminal Law 673(3)

Where prohibition agent's connection with conspiracy to extort money was clearly proved, improper cross-examination as to his relations with certain woman was not prejudicial. Apt v. U.S., C.C.A.8 (Mo.) 1926, 13 F.2d 126. Criminal Law 1170.5(5)

In prosecution of three individuals and corporation for conspiracy to violate Bankruptcy Act, former § 52 of Title 11, by concealing bankrupt corporation's property, admission of testimony that one of individuals had been earlier connected with bankruptcy of another corporation was not prejudicial, where question relating thereto was not objected to, and the only objection then made was request for withdrawal of jurors, which defendants were not entitled to have granted. Kaplan v. U.S., C.C.A.2 (N.Y.) 1925, 7 F.2d 594, certiorari denied 46 S.Ct. 107, 269 U.S. 582, 70 L.Ed. 423.

In prosecution for conspiracy to import liquor and to transport same, any error in excluding testimony of defendant officers as to oral reports of liquor seized made to sheriff was not reversible under former § 391 of Title 28, in view of unsound reason urged for admission and doubtful materiality of offered testimony. Parmenter v. U. S., C.C.A.6 (Mich.) 1924, 2 F.2d 945, certiorari denied 45 S.Ct. 514, 268 U.S. 697, 69 L.Ed. 1163.

Notations on envelopes produced by borough councilman, who testified that he placed money allegedly received from garbage hauler in envelopes and noted thereon the date, time and place of payment, were highly relevant to issues in action charging another councilman and the hauler with, among other things, obstruction of justice and making a false material declaration to a grand jury; councilman's testimony that other councilmen told him the money was from the garbage hauler fell within coconspirator exception to hearsay rule, rule 801 of the Federal Rules of Evidence, Title 28, and, in any event, in light of councilman's testimony any error in admitting the envelopes was harmless. U. S. v. Long, W.D.Pa.1976, 421 F.Supp. 1355, affirmed 574 F.2d 761, certiorari denied 99 S.Ct. 577, 439 U.S. 985, 58 L.Ed.2d 657. Criminal Law 422(1); Criminal Law 1169.2(7); Obstructing Justice 15; Perjury 32(1)

Testimony of treasury agent that defendant's photograph had been shown to an informer during the investigation of alleged conspiracy involving counterfeit money was not prejudicial error as an objectionable reference to "rogues gallery" photographs where there was no indication that photoprach came from files of secret service and reference to photograph was stricken upon objection of defendant's counsel. U. S. v. Boyance, E.D.Pa.1963, 215 F.Supp. 390 . Criminal Law 1169.5(3)

1084. ---- Prejudicial error, witnesses, review

In prosecution for violations of sections 77q and 78ff of Title 15 and for conspiracy under this section, where prejudicial material sent to jury room erroneously was not plainly cumulative to evidence relating to offenses charged, contest as to credibility was not one-sided, and jury deliberated for five days before finding guilt,

erroneous transmission would not be found to be non-prejudicial on ground that evidence of guilt was overwhelming. Dallago v. U. S., C.A.D.C.1969, 427 F.2d 546, 138 U.S.App.D.C. 276. Criminal Law 1174(6)

In prosecution for conspiring to violate § 212 of this title prohibiting bribery of customs officials and §§ 173, 174 of Title 21 concerning narcotics laws, wherein government witness, while being cross-examined as to his failure to mention name of one of defendants in his testimony before grand jury, stated that he was unable to give a direct answer without an explanation and court rules that he might answer and explain, answer by witness that he did not give name of such defendant because at that time he was not dealing with such defendant and that such defendant was in jail was inadmissible and prejudicial but was unforeseeable and was not induced by prosecution and instruction by court to disregard the answer cured the error. United States v. Stromberg, C.A.2 (N.Y.) 1959, 268 F.2d 256, certiorari denied 80 S.Ct. 119, 361 U.S. 863, 4 L.Ed.2d 102, certiorari denied 80 S.Ct. 123, 361 U.S. 863, 4 L.Ed.2d 102, certiorari denied 80 S.Ct. 124, 361 U.S. 863, 4 L.Ed.2d 102, certiorari denied 80 S.Ct. 130, 361 U.S. 868, 4 L.Ed.2d 108. Criminal Law 369.1; Criminal Law 1169.5(3)

In prosecution for conspiracy to violate, and substantive offenses in violation of, Alcohol Tax Laws, it was error to permit Government's principal witness to testify that two of the alleged conspirators had, four days subsequent to "raid" on illicit distillery, instructed the witness not to talk to any federal agents; but, on record presented, such error could not have affected substantial rights of the two defendants who were not present at time of conversation testified to, and, accordingly, it would not require reversal of convictions. United States v. Chieppa, C.A.2 (N.Y.) 1957, 241 F.2d 635, certiorari denied 77 S.Ct. 1057, 353 U.S. 973, 1 L.Ed.2d 1136. Criminal Law 422(6); Criminal Law 1169.7

In prosecution for conspiracy to transport stolen motor vehicles in interstate and foreign commerce against a defendant who had signed a fictitious name to second certificate of doing business, the fact, brought out on cross-examination of government's witness, that defendant had executed prior certificate which was signed with his own name and later withdrawn, related to a collateral matter as to which cross-examiner had no right to impeach the witness. United States v. D'Ercole, C.A.2 (N.Y.) 1955, 225 F.2d 611. Witnesses 330(3)

In prosecution for alleged conspiracy to steal government property, action of prosecutor in asking defendant whether defendant had been convicted previously in tax evasion case although prosecutor knew or should have known that judgment of conviction had not been entered was error. U.S. v. Levi, C.A.7 (Ind.) 1949, 177 F.2d 827. Criminal Law 722.5

Where prosecuting attorney in prosecution for conspiracy to steal government property improperly asked whether defendant was the same person who was previously convicted of tax evasion, and evidence was as consistent with innocence of conspiracy as with guilt, and record indicated unreliability of an alleged accomplice, but court gave no instruction as to close scrutiny to be given to accomplice's testimony, court could not regard error as harmless and would remand case for new trial. U.S. v. Levi, C.A.7 (Ind.) 1949, 177 F.2d 827. Criminal Law 1171.8(1)

In prosecution for conspiracy to defraud the United States and for presenting false claims to a federal agency, by padding pay rolls of subcontractor, ultimately paid by War Shipping Administration when prime contractor on cost plus basis was reimbursed for payments made to subcontractor pursuant to invoices submitted by subcontractor, error in admitting in evidence testimony of witness who prepared a "schedule" as basis for testimony that unsupported invoices had been submitted to prime contractor, which schedule was based only on testimony of employees the witness considered reliable, as determined from a comparison by witness of employee's testimony and statements previously made by employees, was not corrected by cautionary statement of trial judge that jury should determine whether employees told the truth. U. S. v. Ward, C.C.A.3 (Pa.) 1948, 169 F.2d 460. Criminal Law 1169.5(2)

In prosecution for conspiracy to defraud United States, and for presenting false claims to a federal agency by padding pay rolls of subcontractor, ultimately paid by War Shipping Administration when prime contractor on cost

plus basis was reimbursed for payments made to subcontractor pursuant to invoices submitted by subcontractor, testimony of expert, who prepared a "schedule" as basis for his testimony, that unsupported invoices had been submitted to prime contractor, which schedule was based only on testimony of employees the expert considered reliable, as determined by expert from a comparison of employee's testimony and statements previously made by employees, was a prejudicial invasion of the province of jury to determine credibility. U. S. v. Ward, C.C.A.3 (Pa.) 1948, 169 F.2d 460. Criminal Law 486(4)

In trial of two attorneys and others for conspiracy to obstruct administration of justice and operate unregistered still, admission of testimony that certain person said outside attorneys' presence that other defendants were sent out by political leader to get a place to put a still, that such defendants corroborated such statement, and that witness said that such leader wanted them taken care of and that their attorney had just been in leader's office was error prejudicial to such attorney, so as to require reversal of his conviction of obstructing justice, though he was acquitted on count of indictment for conspiracy to operate still. U.S. v. Perlstein, C.C.A.3 (N.J.) 1941, 120 F.2d 276. Criminal Law 1169.1(9)

In prosecution of physician for sale of drugs in violation of Harrison Anti-Narcotic Act, § 2550 et seq. of Title 26, testimony of narcotic agent that defendant's office was a mecca for badly emaciated, very nervous, very fidgety patients was irrelevant and constituted prejudicial error. Nigro v. U. S., C.C.A.8 (Mo.) 1941, 117 F.2d 624. Criminal Law 338(1); Criminal Law 1169.1(6)

In prosecution for conspiracies and attempts to defraud income tax, where government contended that accused derived large profits from sales of illicit beer from brewery under control of accused, who testified that he was merely acting for two others who were real owners, testimony that accused when arrested was asked who murdered such alleged owners and replied that he did not wish to tell and that he took care of those matters in their own way was irrelevant and prejudicial, but not ground for reversal, where conviction was otherwise right and testimony came out without any prompting. U.S. v. Wexler, C.C.A.2 (N.Y.) 1935, 79 F.2d 526, certiorari denied 56 S.Ct. 384, 297 U.S. 703, 80 L.Ed. 991. Criminal Law 1169.1(2.1)

Review of record as a whole, in prosecution for conspiracy and interstate transportation of a stolen security, established that the defendants, whose cross-examination consumed approximately two and one-half days of trial, were not severely and prejudicially limited in the cross-examination of government's primary witness or of any other government witness. U. S. v. Riccobene, E.D.Pa.1970, 320 F.Supp. 196, affirmed 451 F.2d 586. Criminal Law 956(4)

1085. Instructions, review--Generally

Conscious avoidance jury instruction at trial for conspiracy to commit securities and tender offer fraud was justified by evidence that defendant's lack of actual knowledge of unlawful source of his alleged coconspirator's investment advice was due to his conscious effort to avoid confirming an otherwise obvious fact; defendant knew coconspirator was a credit officer for a bank and would thus be privy to confidential financial information, and suspicious timing of his trades suggested high probability that coconspirator's tips were based on inside information. U.S. v. Svoboda, C.A.2 (N.Y.) 2003, 347 F.3d 471, certiorari denied 124 S.Ct. 2196, 541 U.S. 1044, 158 L.Ed.2d 735. Criminal Law 772(5)

In prosecution, based on rebate program, for mail and wire fraud and conspiracy to commit mail and wire fraud, jury instructions adequately defined terms "scheme or artifice to defraud" and "material" representations; instructions specified that materiality was to be considered in reference to what a reasonable person would consider important. U.S. v. Fredette, C.A.10 (Wyo.) 2003, 315 F.3d 1235, dismissal of habeas corpus affirmed 65 Fed.Appx. 929, 2003 WL 1795858, certiorari denied 123 S.Ct. 2100, 538 U.S. 1045, 155 L.Ed.2d 1084. Criminal Law 800(1)

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Possibly improper procedure employed by court which precluded defendants from having opportunity to read instructions as they were given to jury, and thus effectively denied defendants opportunity to be heard prior to court instructing jury so as to preserve alleged error in failure of court to instruct jury on multiple conspiracies, in prosecution of several defendants for conspiracy to smuggle, transport, and harbor illegal aliens, did not result in error requiring reversal in light of instruction which adequately informed jury it could not find defendants guilty of uncharged conspiracy even if proved. U.S. v. Loya, C.A.9 (Idaho) 1987, 807 F.2d 1483. Criminal Law 1172.1(5)

Defendants were not entitled, as a matter of law, to an instruction that coconspirator should be considered a government agent in determining whether there was entrapment, since there was no evidence that coconspirator attempted to induce defendants beyond informing them of availability of offer to purchase political favors. U.S. v. Jannotti, C.A.3 (Pa.) 1984, 729 F.2d 213, certiorari denied 105 S.Ct. 243, 469 U.S. 880, 83 L.Ed.2d 182, certiorari denied 105 S.Ct. 244, 469 U.S. 880, 83 L.Ed.2d 182. Criminal Law 772(6)

Where no request was made at trial for statute of limitations instruction regarding conspiracy charge, nor was objection taken to failure to give such instruction to jury, defendants waived right to raise limitations defense on appeal. U.S. v. Walsh, C.A.2 (N.Y.) 1983, 700 F.2d 846, certiorari denied 104 S.Ct. 96, 464 U.S. 825, 78 L.Ed.2d 102. Criminal Law 1038.2; Criminal Law 1038.3

In prosecution for receiving stolen goods, with value of $5,000 or more, and with conspiring to transport in interstate commerce stolen goods with value of $5,000 or more, it was proper for trial court to instruct jury that, as a matter of law, values of individual items should be aggregated to reach jurisdictional amount. U. S. v. Smith, C.A.10 (Kan.) 1982, 692 F.2d 658, certiorari denied 103 S.Ct. 1183, 459 U.S. 1200, 75 L.Ed.2d 431. Receiving Stolen Goods 9(2)

In view of instruction in prosecution on charge of conspiracy to steal goods from interstate shipment with intent to convert such goods to defendant's own use, taken as a whole, trial court did not abuse its discretion in denying defendant's proposed instruction as to membership in conspiracy. U. S. v. Shigemura, C.A.8 (Mo.) 1982, 682 F.2d 699, certiorari denied 103 S.Ct. 741, 459 U.S. 1111, 74 L.Ed.2d 962. Criminal Law 829(3)

In prosecution for conspiracy to commit mail fraud, mail fraud and tax evasion, failure to submit instruction on "puffing" did not require reversal where jury was instructed on good faith defense to crime and defense counsel failed to submit instruction despite raising issue during closing argument. U. S. v. Shelton, C.A.7 (Ill.) 1982, 669 F.2d 446, certiorari denied 102 S.Ct. 1989, 456 U.S. 934, 72 L.Ed.2d 454. Criminal Law 1173.2(3)

A conviction for conspiracy to violate federal law is valid as long as court's instructions inform jury that defendant's guilt must be based on his agreement to commit at least one of conspiracy's objectives violating federal law. U. S. v. Giese, C.A.9 (Or.) 1979, 597 F.2d 1170, certiorari denied 100 S.Ct. 480, 444 U.S. 979, 62 L.Ed.2d 405. Conspiracy 48.2(1)

In prosecution for conspiracy to manufacture and sell United States currency, cumulative effect of improper instructions and statements made by trial judge to jury did not warrant reversal, in view of overwhelming evidence supporting conviction. U. S. v. Araujo, C.A.2 (N.Y.) 1976, 539 F.2d 287, certiorari denied 97 S.Ct. 498, 429 U.S. 983, 50 L.Ed.2d 593. Criminal Law 1186.1

Instructions which explained essential elements of conspiracy, which focused jury's attention on the importance of determining each individual's involvement vel non in the conspiracy, and which instructed the jury that it must find beyond a reasonable doubt that single conspiracy having two objects, as charged, had been proven was sufficient to inform jury that it must find a single conspiracy and not multiple conspiracies. U. S. v. Bernstein, C.A.2 (N.Y.) 1976, 533 F.2d 775, certiorari denied 97 S.Ct. 523, 429 U.S. 998, 50 L.Ed.2d 608. Conspiracy 48.2(1)

Where Government's theory in prosecution for conspiracy and substantive offenses was that escrow holder was at the very heart of the conspiracy, requested charge that, inter alia, an escrow holder is neither concerned with nor responsible for defects in validity of instruments delivered nor responsible for private understandings which are neither included in the written terms of the escrow or otherwise communicated to him was properly refused. U. S. v. Wayman, C.A.5 (Ga.) 1975, 510 F.2d 1020, certiorari denied 96 S.Ct. 84, 423 U.S. 846, 46 L.Ed.2d 67. Conspiracy 48.2(2)

Trial judge in conspiracy prosecution erred when he instructed jury that once existence of agreement or common scheme or conspiracy is shown, only "slight evidence" is required to connect particular defendant with conspiracy, since such language describes standard to be used by appellate courts in judging whether evidence against particular defendant supports submission of conspiracy prosecution to jury, not standard under which jury should operate in reaching verdict. U. S. v. Brasseaux, C.A.5 (La.) 1975, 509 F.2d 157, rehearing denied 511 F.2d 1192. Conspiracy 48.2(1)

Defendants, who did not request clarifying instruction that conspiracy had terminated before trial, could not complain on appeal that a third defendant's flight from trial was imputed to them by the standard instruction that the acts of one conspirator in furtherance of the conspiracy and during its existence may be considered against coconspirators; in any event, it was doubtful that the jury misunderstood, particularly since in instruction on statements of coconspirators, the judge specifically mentioned that statements after termination of the conspiracy were evidence only against the person making them. U. S. v. DeLeon, C.A.7 (Ill.) 1974, 498 F.2d 1327. Criminal Law 1038.3

In conspiracy case, requested instruction that proof of several and separate conspiracies involving some but not all of the defendants is not proof of the single conspiracy charged, and that if the government, in the jury's opinion, failed to prove existence of a single conspiracy, the jury must find each of the defendants not guilty was properly refused. U. S. v. Estrada, C.A.9 (Cal.) 1971, 441 F.2d 873. Conspiracy 48.2(1)

Where prosecution of defendant charged with large scale check kiting involved long and complicated trial and trial judge fully complied with his obligations in instructing jury, judge's comments on evidence did not show confusion or unfairness and did not constitute partial direction of verdict. U. S. v. Jones, C.A.9 (Cal.) 1970, 425 F.2d 1048, certiorari denied 91 S.Ct. 44, 400 U.S. 823, 27 L.Ed.2d 51. Criminal Law 656(1)

Court properly instructed jury, in prosecution of defendants for, inter alia, conspiring to use the mails with intent of promoting an unlawful business enterprise involving prostitution offenses, that it first had to determine whether the existence of a conspiracy was proved, and then determine from the acts and declarations of each defendant whether he became a participant in that conspiracy; and that, contingent on the jury's finding, beyond a reasonable doubt, that both of such facts were proved, then the acts and declarations of each coconspirator were admitted against all whom the jury found to have joined in the conspiracy. U. S. v. Rizzo, C.A.7 (Ill.) 1969, 418 F.2d 71, certiorari denied 90 S.Ct. 1006, 397 U.S. 967, 25 L.Ed.2d 260. Criminal Law 779

In prosecution for bank robbery and conspiracy, charge given to jury relative to defendant's right to elect not to testify in his own behalf was, if different, more favorable to defense than charge requested, and appeal based upon sole point that refusal of such requested charge was error was frivolous. U. S. v. Geaney, C.A.2 (N.Y.) 1969, 417 F.2d 1116, certiorari denied 90 S.Ct. 1276, 397 U.S. 1028, 25 L.Ed.2d 539. Criminal Law 1173.5

Giving of instruction concerning inferences that might be drawn from unexplained possession of recently stolen goods was not error at defendant's trial for transporting stolen goods in interstate commerce and of conspiring to so transport stolen goods. U. S. v. Russo, C.A.2 (Conn.) 1969, 413 F.2d 432. Receiving Stolen Goods 9(2)

Where defendants in prosecution for fraudulent sale of securities, fraud in the use of the mails and for conspiracy did not request instruction that, under Utah law, every member of corporate board of directors is charged with

constructive knowledge of acts and omissions of other directors, there was no question relating to instructions preserved for appellate review. Wall v. U. S., C.A.10 (Utah) 1967, 384 F.2d 758. Criminal Law 1038.3

Record failed to support claim, on appeal from convictions for violating and conspiring to violate § 152 of this title that jury was not properly instructed on need to prove that each of individual defendants knowingly and fraudulently caused transfer of corporate funds to one of their codefendants. U. S. v. Castellana, C.A.2 (N.Y.) 1965, 349 F.2d 264, certiorari denied 86 S.Ct. 934, 383 U.S. 928, 15 L.Ed.2d 847, certiorari denied 86 S.Ct. 935, 383 U.S. 928, 15 L.Ed.2d 847, rehearing denied 86 S.Ct. 1368, 384 U.S. 923, 16 L.Ed.2d 444. Bankruptcy 3862

Where evidence as to participation of two defendants in conspiracy to stage planned automobile collision for purpose of defrauding insurance companies was direct and adequate, and there was no danger that jury might have been confused by overall conspiracy charge which could not be substantiated, conviction of such defendants would not be disturbed. Barnard v. U. S., C.A.9 (Or.) 1965, 342 F.2d 309, certiorari denied 86 S.Ct. 403, 382 U.S. 948, 15 L.Ed.2d 356, rehearing denied 86 S.Ct. 567, 382 U.S. 1002, 15 L.Ed.2d 491, rehearing denied 86 S.Ct. 567, 382 U.S. 1002, 15 L.Ed.2d 492, certiorari denied 86 S.Ct. 404, 382 U.S. 948, 15 L.Ed.2d 356, rehearing denied 86 S.Ct. 568, 382 U.S. 1002, 15 L.Ed.2d 492. Criminal Law 1165(1)

Even if more detailed instructions as to elements of specific offenses alleged to be subject matter of conspiracy were necessary, they were supplied in connection with other counts, each of which was also separately alleged in conspiracy count as overt act, and where conviction on them as substantive counts was affirmed, it was immaterial that charge as to other substantive counts was defective. Walker v. U. S., C.A.5 (Ga.) 1965, 342 F.2d 22, certiorari denied 86 S.Ct. 117, 382 U.S. 859, 15 L.Ed.2d 97. Criminal Law 1177

In prosecution for conspiracy, where charge stated in detail elements of conspiracy, it was only necessary that charge require proof of conspiracy between two or more alleged conspirators, and commission of at least one of overt acts alleged in indictment. Walker v. U. S., C.A.5 (Ga.) 1965, 342 F.2d 22, certiorari denied 86 S.Ct. 117, 382 U.S. 859, 15 L.Ed.2d 97. Conspiracy 48.2(1)

Evidence in conspiracy prosecution did not warrant requested instructions on affirmative defenses. Mount v. U.S., C.A.5 (Tex.) 1964, 333 F.2d 39, certiorari denied 85 S.Ct. 188, 379 U.S. 900, 13 L.Ed.2d 175. Criminal Law 814(8)

Whether conspiracy instruction forewarned jury against their use of statements as substantive evidence of defendant's guilt unless given when conspiracy was still in existence was unimportant where statements admitted were used only for limited purpose of impeaching credibility of two government witnesses by defense attorney on his cross-examination under Jencks Act, § 3500 of this title, or by government on redirect examination under doctrine of "verbal completeness." Newman v. U. S., C.A.8 (Ark.) 1964, 331 F.2d 968, certiorari denied 85 S.Ct. 672, 379 U.S. 975, 13 L.Ed.2d 566. Criminal Law 779

It was not error to tell the jury that an act done at the direction of the defendants or with their aid would satisfy the requirement that there be proof of overt acts in order to establish conspiracy to commit offense against the United States. Carbo v. U. S., C.A.9 (Cal.) 1963, 314 F.2d 718, certiorari denied 84 S.Ct. 1625, 377 U.S. 953, 12 L.Ed.2d 498, rehearing denied 84 S.Ct. 1902, 377 U.S. 1010, 12 L.Ed.2d 1058, certiorari denied 84 S.Ct. 1626, 377 U.S. 953, 12 L.Ed.2d 498, rehearing denied 84 S.Ct. 1903, 377 U.S. 1010, 12 L.Ed.2d 1058, certiorari denied 84 S.Ct. 1627, 377 U.S. 953, 12 L.Ed.2d 498. Conspiracy 48.2(1)

In prosecution for conspiring to fraudulently effectuate, on behalf of union, compliance with subsection (h) of § 159 of Title 29 by filing of false non-Communist affidavits, court properly declined to single out and explain application of evidence as to each affidavit as such procedure would have been confusing and would have served to disproportionately emphasize particular ingredients of government's case. Dennis v. U.S., C.A.10 (Colo.) 1962,

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302 F.2d 5. Criminal Law 811(2)

Where, at several places in charge, court quoted form of non-Communist affidavit requiring that affiant not, at time of making it, be member or affiliated with Communist party and jury had knowledge that affidavits were required to be periodically filed by same person, and it was abundantly clear that falsity depended upon affiants' membership or affiliation at time of filing, court did not err in refusing to further instruct that falsity depended upon membership or affiliation at time of making affidavit. Dennis v. U.S., C.A.10 (Colo.) 1962, 302 F.2d 5. Criminal Law 829(3)

In prosecution for conspiring to transport in interstate commerce lewd and obscene film, nothing in record required granting of requested instruction that any ruling or other circumstance as to what court might think about case should be disregarded and the verdict should be based entirely upon the evidence. Parr v. U. S., C.A.5 (Tex.) 1958, 255 F.2d 86, certiorari denied 79 S.Ct. 40, 358 U.S. 824, 3 L.Ed.2d 64. Criminal Law 768(1)

In prosecution for conspiracy, mail theft, and uttering and forging a United States Treasury check, evidence that conspirators bought narcotics with proceeds of check and that narcotics were then used by defendant along with the other conspirators was highly probative and the chance of prejudice was slim in view of the court's prompt instructions on another occasion to disregard all references to narcotics. U S v. Johnson, C.A.2 (N.Y.) 1958, 254 F.2d 175, certiorari dismissed 78 S.Ct. 1378, 357 U.S. 933, 2 L.Ed.2d 1369. Criminal Law 673(5)

In prosecution for conspiracy to violate federal statutes by dealing in untaxpaid liquor, record failed to disclose any prejudice or bias on part of any witnesses requiring a special instruction on such subject, where court's general instruction required jury to take into consideration the prejudice or bias of any witness. Papalia v. U.S., C.A.5 (Fla.) 1957, 243 F.2d 437. Criminal Law 785(1)

Where, in prosecution for conspiring to attempt willfully to evade income taxes due United States by third parties, evidence revealed that defendant received $3,000 in regard to third parties' tax account, permitting grand jury notes to be read to show that Internal Revenue agent had "got" the $3,000 which alleged, unindicted conspirator gave defendant after such conspirator had testified that agent "knew" of the $3,000 wrought only an insubstantial factual change, and trial court's failure to instruct on evidentiary value of the notes was not reversible error. U.S. v. Gordon, C.A.3 (Pa.) 1957, 242 F.2d 122, certiorari denied 77 S.Ct. 1378, 354 U.S. 921, 1 L.Ed.2d 1436. Criminal Law 1173.2(8)

Refusal of requested charge, in conspiracy prosecution, on definition of conspiracy, was not error, where definition was covered in charge as given. U.S. v. McKee, C.A.2 (Vt.) 1955, 220 F.2d 266. Criminal Law 829(1)

The district judge's refusal of defendants' requested instruction to jury that existence of conspiracy charged, so far as one of defendants was concerned, and his connection therewith, could not be established by any other alleged co-conspirator's acts and declarations, was not prejudicial to him, if erroneous, where whole record affirmatively showed that verdict of conviction and judgment thereon would not have been different had such instruction been given. Benatar v. U.S., C.A.9 (Cal.) 1954, 209 F.2d 734, certiorari denied 74 S.Ct. 786, 347 U.S. 974, 98 L.Ed. 1114. Criminal Law 1173.2(1)

In prosecution for buying false ration cheques, for fraudulently obtaining subsidies from the Defense Supplies Corporation, and for conspiring to commit both such offenses, charge was not insufficient because judge did not read or explain to the jury the regulation requiring petitions to be supported by statements made to the O.P.A. and by ration cheques, and regulation forbidding the purchase of forged ration cheques. U.S. v. Center Veal & Beef Co., C.C.A.2 (N.Y.) 1947, 162 F.2d 766. Conspiracy 48.2(2); War And National Emergency 315

In prosecution for conspiring to defraud the United States in rationing of rubber tires, instruction that defendants had no title to or right to sell tires disposed of by certain defendants, was not error, where there was no objection

made until appeal that defendants could have acquired the title to the tires by abandonment, and where instruction was given because of testimony of certain defendant that he felt that he had a right to dispose of the tires. Phelps v. U. S., C.C.A.8 (Minn.) 1947, 160 F.2d 858, rehearing denied 161 F.2d 940, certiorari denied 68 S.Ct. 1525, 334 U.S. 860, 92 L.Ed. 1780. Criminal Law 1038.1(3.1)

In prosecution for conspiring to defraud the United States in rationing of rubber tires, defendants' requested instruction that if jury should find from evidence that defendants or two or more of defendants conspired to commit a different or disconnected conspiracy or conspiracy other than that alleged in indictment, it was jury's duty in such case to find defendants not guilty as charged, was properly refused in view of instructions given by the court. Phelps v. U. S., C.C.A.8 (Minn.) 1947, 160 F.2d 858, rehearing denied 161 F.2d 940, certiorari denied 68 S.Ct. 1525, 334 U.S. 860, 92 L.Ed. 1780. Criminal Law 829(3)

In prosecution for conspiring to defraud the United States in rationing of rubber tires, refusal to give defendants requested instructions that there was no regulation that imposed duty on retioning officials of personally examining or releasing any turn-in tires, was not error where no contention was made that those defendants who were officials owed duty of personally examining tires. Phelps v. U. S., C.C.A.8 (Minn.) 1947, 160 F.2d 858, rehearing denied 161 F.2d 940, certiorari denied 68 S.Ct. 1525, 334 U.S. 860, 92 L.Ed. 1780. Criminal Law 814(3)

Where individual defendant was convicted only on conspiracy charge under an indictment charging both conspiracy and substantive offenses, defendant could not complain on appeal of instructions, either given or refused, which related only to counts of indictment charging substantive offenses. Egan v. U.S., C.C.A.8 (Mo.) 1943, 137 F.2d 369, certiorari denied 64 S.Ct. 195, 320 U.S. 788, 88 L.Ed. 474. Criminal Law 1172.8; Criminal Law 1173.3

In prosecution for conspiracy to violate federal law, instruction that jury could consider whether reward influenced testimony of witnesses, the same as jury might consider testimony of accused, "who have as much or more at stake than anybody," was proper. Marino v. U.S., C.C.A.9 (Cal.) 1937, 91 F.2d 691, certiorari denied 58 S.Ct. 410, 302 U.S. 764, 82 L.Ed. 593. Criminal Law 786(3)

In prosecution for conspiracy to violate federal law, evidence of second conspiracy participated in by some of accused, which second conspiracy was not described in indictment, was not prejudicial, under instruction that evidence should not be considered as showing that such accused participated in conspiracy described in indictment. Marino v. U.S., C.C.A.9 (Cal.) 1937, 91 F.2d 691, certiorari denied 58 S.Ct. 410, 302 U.S. 764, 82 L.Ed. 593. Criminal Law 673(5)

Instruction on conspiracy with persons unknown was justified by indictment. McDonald v. U.S., C.C.A.8 (Okla.) 1925, 9 F.2d 506. Conspiracy 48.2(1)

"We think it proper during the progress of a conspiracy trial, and when of necessity items of evidence are being received which, at the time, are competent against only one defendant, to caution the jury as to the lawful effect of such evidence; and to do so frequently enough so that the trial court may be sure the jury understands the distinctions which should be made. Indeed, a direct instruction to the jury on this subject, at an early stage of the trial, may often be advisable; but it does not follow that judgment of conviction should be reversed because the record does not show that the court of its own motion gave such caution." Steers v. U.S., C.C.A.6 (Ky.) 1911, 192 F. 1, 112 C.C.A. 423.

If a conspiracy count charges that the defendants conspired to violate several statutes, some of which are felonies and some of which are misdemeanors defendants on trial for such a charge may suffer prejudice if jury is not properly instructed; indeed, explanatory instructions are necessary in order for court to determine what penalty to impose in event of guilty verdict. U. S. v. Haim, S.D.N.Y.1963, 218 F.Supp. 922. Criminal Law 796

In prosecution for mail fraud and conspiracy to commit mail fraud, evidence was sufficient to find existence of a single conspiracy, and therefore refusal to give multiple conspiracy instruction was not reversible error even though co-defendants had created and operated a nearly identical company. U.S. v. Easton, C.A.8 (S.D.) 2002, 54 Fed.Appx. 242, 2002 WL 31814951, Unreported. Conspiracy 47(5); Criminal Law 1173.2(2)

1086. ---- Harmless error, instructions, review

In prosecution for conspiracy to defraud the United States by impeding, impairing, obstructing and defeating lawful function of Internal Revenue Service and Department of Treasury in collection of tax revenue, district court's failure to expressly rule on admissibility of evidence as to one defendant or to give cautionary instruction regarding evidence relating to early stages of conspiracy did not amount to reversible error since record demonstrated there was sufficient evidence other than coconspirators' statements independently establishing single conspiracy. U.S. v. Little, C.A.9 (Cal.) 1984, 753 F.2d 1420. Criminal Law 1168(2); Criminal Law 1173.2(9)

Where among the 18 overt acts enumerated in the indictment were various illegal importation counts and jury found defendants guilty on all substantive counts, error, if any, in trial court's neglecting to specify that overt act must be one charged in the indictment before it is an element of conspiracy was harmless. U. S. v. Cranston, C.A.1 (Mass.) 1982, 686 F.2d 56. Criminal Law 1173.2(1)

Any error in failing to instruct jury that defendant may be found guilty of substantive crimes committed by coconspirator only with respect to those acts of the coconspirator performed in furtherance of conspiracy was harmless with respect to assault convictions where evidence overwhelmingly established that defendants' escape effort, during which assaults occurred, took place in furtherance of conspiracy of which defendant was convicted. Government of Virgin Islands v. Dowling, C.A.3 (Virgin Islands) 1980, 633 F.2d 660, certiorari denied 101 S.Ct. 374, 449 U.S. 960, 66 L.Ed.2d 228. Criminal Law 1173.2(1)

In view of evidence linking defendant with alleged master mind of money "laundering" scheme error, if any, in admitting, without limiting instruction, corporate minute book which had been given by alleged "mastermind" to codefendant and which listed defendant as a stockholder and which was admitted against codefendant, was harmless. U. S. v. Enstam, C.A.5 (Tex.) 1980, 622 F.2d 857, certiorari denied 101 S.Ct. 1351, 450 U.S. 912, 67 L.Ed.2d 336, certiorari denied 101 S.Ct. 1974, 451 U.S. 907, 68 L.Ed.2d 294. Criminal Law 1169.2(7)

Even if it was error to deny bank president a charge that if jury found a conspiracy to falsify quarterly earnings statement solely by fictitious exchange transactions it should not convict him, error was harmless as jury could have found that conspiracy was not carried out solely by fictitious foreign exchange transactions. U.S. v. Gleason, C.A.2 (N.Y.) 1979, 616 F.2d 2, certiorari denied 100 S.Ct. 1037, 444 U.S. 1082, 62 L.Ed.2d 767, certiorari denied 100 S.Ct. 1320, 445 U.S. 931, 63 L.Ed.2d 764. Criminal Law 1173.2(2)

In prosecution for conspiring to manufacture and sell counterfeit United States currency, error in instructing jury that it could consider evidence of prior acts of conspirators other than defendants in determining whether defendants acted with guilty knowledge or intent did not constitute prejudicial error in view of evidence which was correctly admitted and in view of defendants' failure to take proper exceptions thereto. U. S. v. Araujo, C.A.2 (N.Y.) 1976, 539 F.2d 287, certiorari denied 97 S.Ct. 498, 429 U.S. 983, 50 L.Ed.2d 593. Criminal Law 847; Criminal Law 1172.2

Where defendant was convicted both of perjury and conspiracy, but trial court's failure to instruct jury on defendant's theory of action did not taint perjury conviction, reversal of convictions and sentences under perjury counts was not required. U. S. v. Garner, C.A.6 (Tenn.) 1976, 529 F.2d 962, certiorari denied 96 S.Ct. 2630, 426 U.S. 922, 49 L.Ed.2d 376, certiorari denied 97 S.Ct. 138, 429 U.S. 850, 50 L.Ed.2d 124. Criminal Law 1173.1

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Refusal to give defendant's proffered instruction that neither association with conspirators nor knowledge of illegal activity constitutes proof of participation in a conspiracy was not error where substance of such instruction was adequately contained in instruction given. U. S. v. Johnson, C.A.7 (Ill.) 1974, 504 F.2d 622. Criminal Law 829(12)

Where defendants were charged with conspiracy to transport obscene material in interstate commerce, court's instruction which referred to necessity of proof that defendants knew or could reasonably foresee that interstate facilities would be used was erroneous but did not require reversal in view of evidence showing defendants' knowledge that interstate facilities were used. U. S. v. Cangiano, C.A.2 (N.Y.) 1974, 491 F.2d 906, certiorari denied 95 S.Ct. 188, 419 U.S. 904, 42 L.Ed.2d 149, affirmed 95 S.Ct. 204, 419 U.S. 933, 42 L.Ed.2d 162. Conspiracy 48.2(2); Criminal Law 1172.1(3)

Any jury confusion engendered by trial court's first charging that on commission of crime a participant in conspiracy to commit offense is not automatically guilty of substantive offense, court's subsequent reversal and later reversion to original answer, to which no objection was taken, did not require reversal. U. S. v. Miller, C.A.2 (N.Y.) 1973, 478 F.2d 1315, certiorari denied 94 S.Ct. 144, 414 U.S. 851, 38 L.Ed.2d 100. Criminal Law 1038.1(3.1)

Witnesses should have been referred to in trial court's instructions in prosecution for conspiracy to transport forged securities in interstate commerce as "alleged accomplices" rather than "accomplices" but error was harmless inasmuch as jury could not have failed to discern that purpose of instruction on accomplice testimony was to alert it to need for caution in weighing testimony. U. S. v. Thompson, C.A.7 (Ill.) 1973, 476 F.2d 1196, certiorari denied 94 S.Ct. 214, 414 U.S. 918, 38 L.Ed.2d 154. Criminal Law 780(3); Criminal Law 1172.1(5)

In conspiracy prosecution, instruction last sentence of which was "no person can intentionally avoid knowledge by closing his eyes to facts which prompt him to investigate" was not erroneous because it was not qualified with specific instructions informing jury that guilt cannot be based on negligence, where instructions plainly stated that knowledge could not be "intentionally" avoided and hence did not suggest that negligence was an acceptable basis for finding of guilt. U. S. v. Grizaffi, C.A.7 (Ill.) 1972, 471 F.2d 69, certiorari denied 93 S.Ct. 2141, 411 U.S. 964, 36 L.Ed.2d 684, certiorari denied 93 S.Ct. 2142, 411 U.S. 964, 36 L.Ed.2d 684. Criminal Law 772(6)

Defendants, who were charged, inter alia, with unlawfully using the mails with intent to promote an unlawful business enterprise involving prostitution offenses, could not on appeal object that no instruction was given with respect to madam's right to invoke her U.S.C.A. Const. Amend. 5 privilege; moreover, court's failure to give such a cautionary instruction without request was not plain error. U. S. v. Rizzo, C.A.7 (Ill.) 1969, 418 F.2d 71, certiorari denied 90 S.Ct. 1006, 397 U.S. 967, 25 L.Ed.2d 260. Criminal Law 1038.3

Refusal of trial judge to dismiss jury panel after he admonished defendant for his belated appearance and, in presence of jury, negated claim of defendant's attorney that court had promised not to reprimand defendant in presence of jury for his tardiness was, at most, harmless error beyond reasonable doubt, in view of instruction to jury that court did not intend to say anything that reflected upon character or honesty of defendant's attorney. U. S. v. King, C.A.6 (Tenn.) 1969, 415 F.2d 737, certiorari denied 90 S.Ct. 465, 396 U.S. 974, 24 L.Ed.2d 443. Criminal Law 1166.22(3)

Confusion in charge which in one instance referred to substantive counts of indictment as overt acts under conspiracy count did not rise to level of error. U. S. v. Powell, C.A.5 (Ga.) 1969, 413 F.2d 1030, certiorari denied 90 S.Ct. 177, 396 U.S. 887, 24 L.Ed.2d 162. Conspiracy 48.2(2)

Statement in instruction on credibility of unindicted co-conspirator that such co-conspirator is "an accomplice of the accused in this case" was error in that it was jury's function to determine whether such co-conspirator, an admitted accomplice, was accomplice of accused in crime charged in indictment; however the error did not have

substantial influence on jury and was not reversible error. U. S. v. Fellabaum, C.A.7 (Ill.) 1969, 408 F.2d 220, certiorari denied 90 S.Ct. 125, 396 U.S. 858, 24 L.Ed.2d 109, certiorari denied 90 S.Ct. 55, 396 U.S. 818, 24 L.Ed.2d 69. Criminal Law 761(2); Criminal Law 1172.3

Failure of trial court to charge jury in prosecution for fraudulent sale of securities, fraud in the use of the mails and for conspiracy that, under Utah law, every member of corporate board of directors is charged with constructive knowledge of acts and omissions of other directors did not constitute miscarriage of justice. Wall v. U. S., C.A.10 (Utah) 1967, 384 F.2d 758. Criminal Law 1038.3

Conspiracy prosecution instruction referring to "persons unknown" in language of indictment, while making it clear that only six named defendants were involved under evidence, was not prejudicial error. U. S. v. Lester, C.A.6 (Ky.) 1966, 363 F.2d 68, certiorari denied 87 S.Ct. 705, 385 U.S. 1002, 17 L.Ed.2d 542, rehearing denied 87 S.Ct. 951, 386 U.S. 938, 17 L.Ed.2d 813. Criminal Law 1172.1(2)

Instructions as given on subject of conspiracy count were proper, and no prejudicial error resulted from denial of any of requests submitted by defendants on that subject, in prosecution for conspiracy to defraud public by distribution of defendants' oil company stock at grossly inflated prices. U. S. v. Kelly, C.A.2 (N.Y.) 1965, 349 F.2d 720, certiorari denied 86 S.Ct. 1467, 384 U.S. 947, 16 L.Ed.2d 544. Conspiracy 48.2(2); Criminal Law 1173.2(2)

Demands by defense counsel that trial judge explain his rulings on admissibility of evidence, documentary and otherwise, were properly refused, in stock conspiracy trial. U. S. v. Kelly, C.A.2 (N.Y.) 1965, 349 F.2d 720, certiorari denied 86 S.Ct. 1467, 384 U.S. 947, 16 L.Ed.2d 544. Criminal Law 695.5

That trial judge allegedly "promised" to grant parts of defendants' request for instructions but later changed his mind and that this and other rulings allegedly amounted to refusal to comply with rules and impaired ability of counsel to make proper summation to jury on behalf of defendants in stock conspiracy prosecution, did not under circumstances constitute error. U. S. v. Kelly, C.A.2 (N.Y.) 1965, 349 F.2d 720, certiorari denied 86 S.Ct. 1467, 384 U.S. 947, 16 L.Ed.2d 544. Criminal Law 835

In prosecution for violating and conspiring to violate § 152 of this title instruction that jury might find defendants guilty of substantive counts if they were members of conspiracy at time of withdrawals of corporate funds and that withdrawals were in furtherance of conspiracy was not erroneous. U. S. v. Castellana, C.A.2 (N.Y.) 1965, 349 F.2d 264, certiorari denied 86 S.Ct. 934, 383 U.S. 928, 15 L.Ed.2d 847, certiorari denied 86 S.Ct. 935, 383 U.S. 928, 15 L.Ed.2d 847, rehearing denied 86 S.Ct. 1368, 384 U.S. 923, 16 L.Ed.2d 444. Bankruptcy 3862

In prosecution for possession of recently stolen goods and for conspiracy, giving instruction that government had sustained its burden of connecting testimony of different witnesses, that court overruled all objections that had been theretofore sustained and that testimony relating to acts and conversations and statements by several defendants was admissible against all whether or not each was present when such acts were done, such conversations were had or such statements were made was not prejudicial error. U. S. v. Baxa, C.A.7 (Ill.) 1965, 340 F.2d 259, certiorari granted 85 S.Ct. 1556, 381 U.S. 353, 14 L.Ed.2d 681. Criminal Law 1172.2

Question whether there was error in instruction on conspiracy count of which defendant was convicted need not be considered on appeal where sentence on such count and two other counts were concurrent, and evidence was sufficient to sustain conviction on two other counts. U. S. v. Goldstein, C.A.2 (N.Y.) 1963, 323 F.2d 753, certiorari denied 84 S.Ct. 677, 376 U.S. 920, 11 L.Ed.2d 615. Criminal Law 1177

Lack of further emphasis than that provided in charge on conspiracy to violate § 173 of Title 21, on knowledge of illegal importation was not that "plain error" necessary to warrant reversal in absence of exceptions taken below. U. S. v. Bentvena, C.A.2 (N.Y.) 1963, 319 F.2d 916, certiorari denied 84 S.Ct. 345, 375 U.S. 940, 11 L.Ed.2d 271,

rehearing denied 90 S.Ct. 894, 397 U.S. 928, 25 L.Ed.2d 108, rehearing denied 84 S.Ct. 515, 375 U.S. 989, 11 L.Ed.2d 476, certiorari denied 84 S.Ct. 346, 375 U.S. 940, 11 L.Ed.2d 271, rehearing denied 84 S.Ct. 1162, 377 U.S. 913, 12 L.Ed.2d 183, certiorari denied 84 S.Ct. 353, 375 U.S. 940, 11 L.Ed.2d 272, certiorari denied 84 S.Ct. 354, 375 U.S. 940, 11 L.Ed.2d 272, certiorari denied 84 S.Ct. 355, 375 U.S. 940, 11 L.Ed.2d 272, certiorari denied 84 S.Ct. 360, 375 U.S. 940, 11 L.Ed.2d 272. Criminal Law 1056.1(5)

In prosecution for criminal conspiracy to defraud United States in exercise of its governmental function, trial court would not be deemed to have committed prejudicial error in instructions to jury through an implication that defendants were guilty, where trial judge, after complaint, expressly charged jury that he did not intended to tell them how to decide the case and that jury was not to infer from anything that judge said that judge believed defendants were guilty. Hunsaker v. U. S., C.A.9 (Or.) 1960, 279 F.2d 111, certiorari denied 81 S.Ct. 52, 364 U.S. 819, 5 L.Ed.2d 49. Criminal Law 1172.3

Fact that government's bill of particulars stated that government would not contend at trial for conspiracy that any other persons than defendants were coconspirators with defendants did not render court's instruction, that persons other than defendants could be conspirators, erroneous. Shayne v. U.S., C.A.9 (Cal.) 1958, 255 F.2d 739, certiorari denied 79 S.Ct. 39, 358 U.S. 823, 3 L.Ed.2d 64. Indictment And Information 121.5

In prosecution for conspiring to transport in interstate commerce lewd and obscene motion picture film, no harmful error resulted from giving of instruction that one committing an act constituting an offense or aiding or abetting or inducing commission of such offense is a principal, as a precautionary charge relating to accomplice testimony. Parr v. U. S., C.A.5 (Tex.) 1958, 255 F.2d 86, certiorari denied 79 S.Ct. 40, 358 U.S. 824, 3 L.Ed.2d 64. Criminal Law 1172.2

In prosecution for conspiring to transport in interstate commerce lewd and obscene motion picture film, wherein defendant opened question of plea of a codefendant during cross-examination of codefendant, who was called as witness for prosecution, it was not error to show that codefendant had entered a plea of guilty and it was not error for court to state that codefendant was in contempt. Parr v. U. S., C.A.5 (Tex.) 1958, 255 F.2d 86, certiorari denied 79 S.Ct. 40, 358 U.S. 824, 3 L.Ed.2d 64. Criminal Law 657; Criminal Law 1137(5)

In prosecution for conspiracy, wherein indictment was filed September 17, 1954, and it was alleged that conspiracy began in June, 1946, and court expressly charged that for defendant to be found guilty it must be found that he did not withdraw from conspiracy on or before September 17, 1951, and required jury to answer affirmatively the query whether an overt act in furtherance of conspiracy had been committed after September 17, 1951, there was no error with relation to statute of limitations. U.S. v. Klein, C.A.2 (N.Y.) 1957, 247 F.2d 908, certiorari denied 78 S.Ct. 365, 355 U.S. 924, 2 L.Ed.2d 354. Criminal Law 772(4)

Where, in conspiracy prosecution, court by its charge confined defendants' crime to that of conspiring with each other, giving of further instructions that, even if jury found one defendant guilty as charged, if they found the second defendant was not proven guilty beyond a reasonable doubt, jury would be bound to acquit the guilty one did not constitute reversible error. U. S. v. Weinberg, C.A.3 (Pa.) 1955, 226 F.2d 161, certiorari denied 76 S.Ct. 305, 350 U.S. 933, 100 L.Ed. 815. Criminal Law 822(6)

Where defendants were either guilty of actual fraud or were not guilty at all, refusal of defendants' requested instruction on constructive fraud was not error. U. S. v. Sylvanus, C.A.7 (Ill.) 1951, 192 F.2d 96, certiorari denied 72 S.Ct. 555, 342 U.S. 943, 96 L.Ed. 701. Criminal Law 814(5)

In prosecution for conspiracy to kidnap, wherein court instructed jury as to presumption of innocence and that the government must prove defendants guilty beyond a reasonable doubt, giving of instruction that it was not necessary for the government to show an actual agreement, but that it was necessary that jury believe from all evidence and circumstances that there was a conspiracy between the defendants, was not cause for reversal. U.S. v. Bazzell,

C.A.7 (Ill.) 1951, 187 F.2d 878, certiorari denied 72 S.Ct. 73, 342 U.S. 849, 96 L.Ed. 641, rehearing denied 72 S.Ct. 171, 342 U.S. 889, 96 L.Ed. 667. Criminal Law 823(4)

Refusal to give requested charges relating to conspiracy and sale of products at above ceiling price was harmless in view of general charge favorable to defendants, presenting defenses as favorably as evidence warranted. Johnson v. U.S., C.C.A.5 (Fla.) 1948, 167 F.2d 339. Criminal Law 829(3)

In prosecution for conspiracy to violate internal revenue laws relating to intoxicating liquors, where jury found that defendants committed the overt acts charged in Alabama, failure to give requested charge that jurisdiction to convict rested on finding that such overt act had been committed in Alabama was harmless. Burt v. U.S., C.C.A.5 (Ala.) 1943, 139 F.2d 73, certiorari denied 64 S.Ct. 936, 321 U.S. 799, 88 L.Ed. 1087. Criminal Law 1173.3

Failure to instruct jury that acts of other defendants with respect to conspiracy, outside presence of defendant, were not admissible to establish conspiracy charge against defendant, unless other competent evidence for such purpose had established a prima facie case of conspiracy against him, was not prejudicial to defendant, where all reasonable doubts, if any, as to existence of conspiracy among other defendants were proved beyond a reasonable doubt by evidence other than acts of other defendants. U.S. v. Vanco, C.C.A.7 (Ill.) 1942, 131 F.2d 123. Criminal Law 1173.2(5)

Instruction that jury might consider government witness as an accomplice was improper on ground that it was an instruction upon a question of fact, but error was harmless, where court further instructed that it was jury's duty to disregard any expression of opinion by court upon any question of fact and that it was their duty to determine all questions of fact for themselves. U.S. v. Vanco, C.C.A.7 (Ill.) 1942, 131 F.2d 123. Criminal Law 757(4); Criminal Law 823(12)

In prosecution for conspiracy to transport lottery tickets in interstate commerce, in which there was no dispute at trial concerning definition of lottery or any doubt that scheme included prizes to be distributed by lot or chance, and only issue was whether accused conspired with codefendant to conduct the lottery, district court's failure to define lottery in its instructions was not error. Deacon v. U. S., C.C.A.1 (Mass.) 1941, 124 F.2d 352. Criminal Law 800(1)

Where instruction in toto, concerning "reasonable doubt" was not prejudicial, fact that District Court attempted to explain what was meant by the quoted words by means of examples, such as one's doubt about whether it will rain or whether prices will go up and example of an individual "banking" his judgment and investing his money in buying goods against a price increase because of possibility of war, did not require reversal. U.S. v. Novick, C.C.A.2 (N.Y.) 1941, 124 F.2d 107, certiorari denied 62 S.Ct. 795, 315 U.S. 813, 86 L.Ed. 1212, rehearing denied 62 S.Ct. 913, 315 U.S. 830, 86 L.Ed. 1224. Criminal Law 1172.2

In prosecution for using mails in scheme to defraud and for conspiracy, that trial judge informed jury that codefendant had entered plea of nolo contendere to first count and other counts had been dismissed was not prejudicial error where court made it clear that codefendant's plea could not be considered by stating that jury could consider only defendant's own statements, actions, and conduct, and not codefendant's, unless jury should find from the evidence that codefendant was a party to the scheme. Kelling v. U. S., C.C.A.8 (Minn.) 1941, 121 F.2d 428. Criminal Law 1172.1(2)

In prosecution under indictment charging substantive offenses and conspiracy, alleged error in instruction on conspiracy and in permitting conviction of separate defendants of separate conspiracies would not affect conviction on the substantive counts, notwithstanding that joinder of defendants on the substantive counts might have been improper if there were in fact separate conspiracies. U.S. v. Twentieth Century Bus Operators, C.C.A.2 (N.Y.) 1939, 101 F.2d 700, certiorari denied 59 S.Ct. 821, 307 U.S. 624, 83 L.Ed. 1502. Criminal Law 1172.1(2)

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In prosecution of two corporations and their officers for falsifying documents, bribery and conspiracy, where jury, after agreeing on substantive counts, asked whether defendants could be found guilty of conspiracy if the corporations merely conspired with the same persons, no with each other, court's charge that conviction might be had, showing that question was understood to refer to a continuing conspiracy, was not error in absence of request to charge that defendants could not be convicted for separate conspiracies. U.S. v. Twentieth Century Bus Operators, C.C.A.2 (N.Y.) 1939, 101 F.2d 700, certiorari denied 59 S.Ct. 821, 307 U.S. 624, 83 L.Ed. 1502. Criminal Law 825(2)

In prosecution for conspiracy to violate federal law, wherein court gave instruction regarding weight to be given testimony of accomplices and person convicted of crime, explanatory statement that "person convicted of crime is in somewhat the situation of the accomplice" was not prejudicial. Marino v. U.S., C.C.A.9 (Cal.) 1937, 91 F.2d 691, certiorari denied 58 S.Ct. 410, 302 U.S. 764, 82 L.Ed. 593. Criminal Law 785(12); Criminal Law 1172.2

Under indictment charging defendants in two counts with committing certain offenses and in third count with conspiring to commit such offenses, instruction that it was jury's duty to return verdict of guilty under first two counts as to one of defendants was not prejudicial as influencing guilty verdict on third count, where several of over acts alleged in conspiracy count bore no relation to offenses charged in first and second counts, and evidence showed such overt acts were committed pursuant to alleged conspiracy. Patterson v. U.S., C.C.A.6 (Mich.) 1935, 82 F.2d 937, certiorari denied 56 S.Ct. 677, 298 U.S. 657, 80 L.Ed. 1383. Criminal Law 750

In prosecution for conspiracy and use of mails to defraud in sale of gold mining stock, refusal to instruct jury to disregard statement which government's counsel read in argument that state of Washington afforded no protection against fraudulent mining stock, and his remark that that was reason federal government stepped into case, was not prejudicial error where statement was contained in article in publication which jury had been permitted to take to jury room without objection or restriction. Levine v. U.S., C.C.A.9 (Wash.) 1935, 79 F.2d 364. Criminal Law 1173.2(9)

Charge as to number of defendants required to participate was too favorable to accused. U.S. v. McCann, C.C.A.2 (N.Y.) 1929, 32 F.2d 540, certiorari denied 50 S.Ct. 18, 280 U.S. 559, 74 L.Ed. 614.

Instruction authorizing conviction, though conspiracy was mere continuance or renewal of conspiracy entered into outside district, if erroneous, was favorable, and not prejudicial. Sloan v. U.S., C.C.A.8 (Mo.) 1929, 31 F.2d 902. Criminal Law 1172.7

Instruction authorizing conviction by proof of any of several acts, one of which occurred outside district, though erroneous, was not prejudicial. Sloan v. U.S., C.C.A.8 (Mo.) 1929, 31 F.2d 902. Criminal Law 1172.2

Instruction regarding jury's duty to settle case, given when jury returned asking for further instructions, was not objectionable. Wissel v. U.S., C.C.A.2 (N.Y.) 1927, 22 F.2d 468. Criminal Law 863(2)

Where conspiracy involved 310 illegal transactions, instruction that, even if jury disbelieved testimony of witness whose testimony related to 20 transactions only, there wes sufficient evidence, if believed, to find verdict of guilty, was not error, since main defense consisted in attacking such witness, and not in controverting government's case. A Guckenheimer & Bros Co v. U S, C.C.A.3 (Pa.) 1925, 3 F.2d 786, certiorari denied 45 S.Ct. 509, 268 U.S. 688, 69 L.Ed. 1157.

In a prosecution for conspiracy, where it was shown that a witness for the government had been divorced from a former husband and had married another government witness, there was, at least, no reversible error in refusing instruction requested by defendants regarding the legal sufficiency of the ground for the divorce and the legal right of the two witnesses to marry. Wilkes v. U.S., C.C.A.6 (Tenn.) 1923, 291 F. 988, certiorari denied 44 S.Ct. 181,

263 U.S. 719, 68 L.Ed. 523. Criminal Law 1173.2(9)

Since it was not required that charge specify which witnesses should be considered accomplices, use of word "perhaps" in relation to one particular person, if error, was at worst harmless error in prosecution for conspiracy and mail fraud, where such person was not named in the indictment as a conspirator, and where, while such person knew from prior dealings with defendant that padded bills for physical therapy were to be used to defraud insurance company, he knew nothing of conspiracy to stage fake accident, and it was doubtful that he was a member of conspiracy to stage a fake accident to defraud by use of the mail. U. S. v. Stitt, W.D.Pa.1974, 380 F.Supp. 1172, affirmed 510 F.2d 971, certiorari denied 95 S.Ct. 1949, 421 U.S. 962, 44 L.Ed.2d 448. Criminal Law 1172.1(5)

1087. ---- Prejudicial error, instructions, review

Where indictment charged a single conspiracy and proof established eight or more distinct conspiracies, instruction that indictment charged but one conspiracy and that to convict a defendant jury would have to find that he was a member of that conspiracy was erroneous in application to proof made. Kotteakos v. U.S., U.S.N.Y.1946, 66 S.Ct. 1239, 328 U.S. 750, 90 L.Ed. 1557. Criminal Law 814(3)

Where evidence was insufficient to prove the overall conspiracy charge in the indictment but trial court failed to tender any instructions regarding either multiple conspiracies or the jury's responsibility to disregard evidence introduced by the government relating to conspiracies with which defendant was not involved, such failure constituted plain error. U. S. v. Lindsey, C.A.7 (Ind.) 1979, 602 F.2d 785. Criminal Law 1038.2

Where defendant was charged with conspiring with unknown persons to obtain illegally firearm for purpose of damaging property occupied by foreign officials, where defendant's acquaintance lacked any intention of committing criminal act and was therefore not charged as a coconspirator, where principle dealings occurred between defendant and his acquaintance and most evidence adduced at trial was material only to them, and where unknown persons charged as coconspirators were at best minor players at fringes of major plot, trial court committed reversible error in failing to carefully admonish jurors to exclude from their consideration of conspiracy all evidence of any agreement between defendant and acquaintance, in view of substantial possibility that jury might have convicted defendant for conspiring with acquaintance. U. S. v. Perl, C.A.4 (Md.) 1978, 584 F.2d 1316, certiorari denied 99 S.Ct. 1050, 439 U.S. 1130, 59 L.Ed.2d 92. Criminal Law 673(2); Criminal Law 1173.2(9)

Not only did erroneous instruction as to substantive offense of willful misapplication of bank funds require reversal of conviction of such offense it also required reversal of convictions obtained under count alleging conspiracy to commit such offense and offense of making false statements in connection with a loan since jury was instructed that a finding that a conspiracy to violate either statute existed would support conviction, and verdict on conspiracy count was a general one and it was unclear on what grounds the convictions were based, notwithstanding that instructions on the false statement count were correct. U. S. v. Gallagher, C.A.3 (N.J.) 1978, 576 F.2d 1028. Criminal Law 1186.1

Although trial court in conspiracy prosecution erred in instructing jury that only slight evidence was required to connect particular defendant with conspiracy after existence of agreement of common scheme or conspiracy was shown, such action did not, in context of entire charge and circumstances of case, constitute plain error requiring reversal in absence of objection by defendant at trial. U. S. v. Brasseaux, C.A.5 (La.) 1975, 509 F.2d 157, rehearing denied 511 F.2d 1192. Criminal Law 1038.1(5)

Failure of trial court, in prosecution on one count of conspiracy and one count of stealing goods in excess of $100 from a truck moving in the interstate commerce, to state in its charge to the jury that knowledge that the stolen goods were in interstate commerce was an element of the conspiracy offense constituted plain error which had to

be noticed on appeal regardless of defense counsel's failure to clarify the basis of an objection and to pursue the matter on appeal. U. S. v. Houle, C.A.2 (N.Y.) 1973, 490 F.2d 167, certiorari denied 94 S.Ct. 3174, 417 U.S. 970, 41 L.Ed.2d 1141. Criminal Law 1038.2

In conspiracy prosecution, if it was error to refuse to give instruction concerning weight to be given to testimony of expert witnesses such error fell far short of being prejudicial. U. S. v. Grizaffi, C.A.7 (Ill.) 1972, 471 F.2d 69, certiorari denied 93 S.Ct. 2141, 411 U.S. 964, 36 L.Ed.2d 684, certiorari denied 93 S.Ct. 2142, 411 U.S. 964, 36 L.Ed.2d 684. Criminal Law 1172.1(2)

Challenged instructions to jury, in prosecution for conspiracy to manufacture and dispense methamphetamine, when considered in context with the other instructions concerning defendant's participation in the conspiracy, some of which were more favorable to defendant than the law required, were not prejudicially erroneous. U. S. v. Shockley, C.A.9 (Wash.) 1971, 441 F.2d 1151. Criminal Law 822(1)

That jury found defendant guilty of conspiring to violate federal bank robbery provision, indicating acceptance of testimony by chief government witness, who testified to defendant's knowledge that conspiracy was one to rob bank, did not render harmless erroneous instruction that defendant could be convicted despite lack of knowledge that conspiracy was to rob bank, since jury was not required to accept all of witness's testimony just because it accepted part of it. U. S. v. Gallishaw, C.A.2 (N.Y.) 1970, 428 F.2d 760. Criminal Law 1172.8

Failure of court to clearly charge jury that D.C. Code 1961 Ed. § 22-1301 and this section provided more severe penalty when value of property involved exceeded $100 was not prejudicial error where all defendants were charged with getting or conspiring to get property worth more than $100 and were sentenced on that basis, where government's proof of value was adequate and not contested and where there was no real issue as to value and no request for more specific instruction. Cupo v. U. S., C.A.D.C.1966, 359 F.2d 990, 123 U.S.App.D.C. 324, certiorari denied 87 S.Ct. 723, 385 U.S. 1013, 17 L.Ed.2d 549. Criminal Law 1173.2(4)

Government evidence, in prosecution for conspiracy to violate liquor laws, was sufficient to present question for jury as to whether government agents had induced defendant to commit the crime, and refusal to submit such requested instruction was prejudicial error even though defendant asserted his innocence. Sears v. U. S., C.A.5 (Ga.) 1965, 343 F.2d 139. Criminal Law 772(6); Criminal Law 1173.2(3)

Instruction to jury to disregard testimony that one of defendants had admitted to narcotics agent that prior to unlawful sale of narcotics charged in indictment he had furnished considerable amount of cocaine to certain person did not cure prejudice to defendants whose defense was entrapment, inasmuch as it could not be said with fair assurance that jury's verdicts of guilty were not substantially swayed by the stricken testimony. U. S. v. Clarke, C.A.3 (Pa.) 1965, 343 F.2d 90. Criminal Law 1169.5(2)

In view of length of trial, number of witnesses and difficulties inherent in making separation between count charging conspiracy to possess goods which accused knew were stolen from interstate shipment and count charging possession of such goods reversible error in court's remarks to jury with respect to conspiracy count required reversal of judgments and sentences on other counts. U. S. v. Allegretti, C.A.7 (Ill.) 1964, 340 F.2d 243, on rehearing 340 F.2d 254, certiorari denied 85 S.Ct. 1531, 381 U.S. 911, 14 L.Ed.2d 433, rehearing denied 85 S.Ct. 1800, 381 U.S. 956, 14 L.Ed.2d 728, certiorari denied 85 S.Ct. 1532, 381 U.S. 911, 14 L.Ed.2d 433, certiorari denied 88 S.Ct. 830, 390 U.S. 908, 19 L.Ed.2d 876. Criminal Law 1186.1

Charge in prosecution for conspiracy to import narcotics was prejudicially erroneous in listing elements of crime without charging that knowledge of illegal importation was necessary element, and was not saved by court's earlier recital of this requirement in connection with charge on substantive count against individual defendant. U. S. v. Massiah, C.A.2 (N.Y.) 1962, 307 F.2d 62, certiorari granted 83 S.Ct. 1698, 374 U.S. 805, 10 L.Ed.2d 1030, reversed on other grounds 84 S.Ct. 1199, 377 U.S. 201, 12 L.Ed.2d 246. Conspiracy 48.2(2); Criminal Law

18 U.S.C.A. § 371

823(4); Controlled Substances 98

Failure to instruct what kind of participation had to be proved before jury could find that defendant, a retired officer, conspired to receive compensation for representing a seller in sales to the United States was prejudicial error. U.S. v. Gillilan, C.A.2 (N.Y.) 1961, 288 F.2d 796, certiorari denied 82 S.Ct. 38, 368 U.S. 821, 7 L.Ed.2d 26 . Conspiracy 48.2(2); Criminal Law 1173.2(2)

In prosecution for robbing and conspiring to rob a bank, court's instruction on alibi defense which omitted altogether conception and rule that accused has to do no more than create in minds of jurors a substantial doubt concerning his whereabouts at time in question, and which may well have suggested to jury that accused bore burden of persuasion on alibi defense, was error, and error was not cured by proper general instruction stating in clear language that throughout the case the burden remains on government to convince jury of guilt beyond reasonable doubt. U.S. v. Barrasso, C.A.3 (N.J.) 1959, 267 F.2d 908. Criminal Law 778(8); Criminal Law 823(6)

In prosecution for conspiracy to violate former Emergency Price Control Act, 50 App. former § 901 et seq., by selling whiskey at prices in excess of maximum prices, to engage in business of buying distilled spirits for resale at wholesale without having secured a basic permit, and to carry on a wholesale liquor business without having paid required tax, giving of instruction that furnished an erroneous formula for ascertaining maximum wholesale price for whiskey was reversible error, where jury returned only a general verdict of guilty. Samuel v. U.S., C.C.A.9 (Cal.) 1948, 169 F.2d 787. Conspiracy 48.2(2); Criminal Law 1172.1(2)

Where there was no evidence of the single overt act charged in the indictment other than the confession of codefendant, instruction that defendant might be found guilty of the over act charged was prejudicial error even though there was undisputed proof of an overt act not charged in the indictment. U.S. v. Negro, C.C.A.2 (N.Y.) 1947, 164 F.2d 168. Criminal Law 814(5); Criminal Law 1172.6

In prosecution for attempting to evade corporate taxes and for conspiring to do so, an instruction that, by the filing of an amended return, the defendants had admitted that the original return was false and untrue, was prejudicial error in view of another instruction which assumed existence of conspiracy, though the court in other instructions properly submitted the issue of intent and willfulness, since "false" denotes an intentional, deliberate, and willful untruth, or something beyond mere inaccuracy. Heindel v. U.S., C.C.A.6 (Ohio) 1945, 150 F.2d 493. Criminal Law 823(11)

Instruction in effect that verdict of not guilty was setting at defiance law and reason, when jury gave promise of disagreeing, was erroneous, and deprived defendants of fair and impartial trial. Wissel v. U.S., C.C.A.2 (N.Y.) 1927, 22 F.2d 468. Criminal Law 863(2)

In trial of two of seven persons indicted for conspiracy, instruction that both must, or neither could, be found guilty, was erroneous. Martin v. U.S., C.C.A.2 (N.Y.) 1927, 17 F.2d 82. Conspiracy 48

Instruction offered by defendants in prosecution for conspiracy to commit larceny at a national bank accurately informed jury that proof of an overt act in furtherance of the conspiracy within the five years preceding the indictment was a necessary element of government's burden; thus, where instruction was refused and charge given to jury in no way informed it that such a requirement existed, defendants were entitled to a new trial. U.S. v. Greichunos, N.D.Ill.1983, 572 F.Supp. 220. Criminal Law 772(4); Criminal Law 922(2)

Where at time coconspirator was in fact questioned about his guilty plea to conspiracy charge, inquiry was inappropriate, government had not alerted court or defendant to its intention to offer that evidence, limiting instructions told jury not to consider guilty plea as substantive evidence but failed to give jury guidance as to proper utility of evidence, and limiting instructions were not given until following day, inappropriate admission of

testimony was not cured by court's instructions. U.S. v. Calafati, E.D.Pa.1983, 569 F.Supp. 50. Criminal Law 1169.5(2)

1088. Findings of fact, review

In prosecution alleging violations of this section, sections 922 and 924 of this title and section 2778 of Title 22, district court properly denied defendant's requested instruction on good faith on the ground that there was insufficient evidence to justify it. U.S. v. Wilson, C.A.4 (Va.) 1983, 721 F.2d 967, post-conviction relief denied 901 F.2d 378. Weapons 17(6)

In the Second Circuit, a conspiracy conviction will be allowed to stand if proof exists of defendant's intent to commit offense which survives review. U. S. v. Mowad, C.A.2 (Conn.) 1981, 641 F.2d 1067, certiorari denied 102 S.Ct. 94, 454 U.S. 817, 70 L.Ed.2d 86. Conspiracy 28(1)

In conspiracy prosecution, reviewing court must make independent evaluation of record to determine, first, whether sufficient evidence was presented for jury to conclude beyond reasonable doubt that conspiracy existed and, second, whether there was sufficient nonhearsay evidence by which jury could tie each defendant to conspiracy. U. S. v. Buschman, C.A.7 (Wis.) 1976, 527 F.2d 1082. Criminal Law 1159.5

Where college disciplinary hearing board in its "findings of facts" made only one reference to the existence of conspiracy in its statement as to six named students but addressed document containing such findings to attorneys for all six students, findings of conspiracy as to the six named students were sufficiently clear to permit reviewing court to weigh sufficiency of evidence against each individual student on basis of the conspiracy finding. Jenkins v. Louisiana State Bd. of Ed., C.A.5 (La.) 1975, 506 F.2d 992, rehearing denied 510 F.2d 384. Colleges And Universities 9.30(7)

Finding that consent to airport search of luggage was given by defendant, and that such search was made with probable cause, was not clearly erroneous in prosecution for conspiracy to pass and keep counterfeit notes, of passing counterfeit notes, and of possessing counterfeit notes. U. S. v. Crain, C.A.9 (Wash.) 1973, 485 F.2d 297. Criminal Law 394.6(4)

Allowing jury to find, in prosecution for conspiracy to defraud United States and Securities and Exchange Commission that woman's assignation with employee of the Commission was an overt act in pursuance of general conspiracy charged in the indictment, even though it antedated employee's first knowledge of investigation of corporation, was not erroneous since past favors can constitute consideration for action as much as the promise of future ones. U. S. v. Peltz, C.A.2 (N.Y.) 1970, 433 F.2d 48, certiorari denied 91 S.Ct. 974, 401 U.S. 955, 28 L.Ed.2d 238. Conspiracy 27

Finding that defendant had insufficient assets and was financially unable to pay for a transcript of proceedings of trial wherein he was convicted for conspiracy, thus warranting an order directing that minutes of trial be transcribed at government expense, was not clearly erroneous. U. S. v. Sacco, C.A.2 (N.Y.) 1970, 430 F.2d 1304. Criminal Law 1077.2(3)

Evidence in prosecution for conspiracy to defraud the Veterans Administration by preventing its loan guaranty program from being administered in accordance with section 1801 et seq. of Title 38, and regulations supported trial court's finding that there was single conspiracy rather than multiple conspiracies. U.S. v. Levinson, C.A.6 (Mich.) 1968, 405 F.2d 971, certiorari denied 89 S.Ct. 1746, 395 U.S. 906, 23 L.Ed.2d 219, certiorari denied 89 S.Ct. 2097, 395 U.S. 958, 23 L.Ed.2d 744, rehearing denied 90 S.Ct. 37, 396 U.S. 869, 24 L.Ed.2d 124, rehearing denied 90 S.Ct. 36, 396 U.S. 869, 24 L.Ed.2d 124. Conspiracy 47(6)

In prosecution for conspiring to teach and advocate overthrow of the United States government by force and

violence, action of court in finding clear and present danger without permitting a hearing to give defendants opportunity to produce evidence that no clear and present danger existed was not erroneous, where evidence which defendants would have offered would have been immaterial in view of court's undoubted knowledge of world conditions, coupled with considerations of similar uprisings in other countries and touch and go nature of our relations with countries with whom such ideological doctrines were attuned. U. S. v. Mesarosh, C.A.3 (Pa.) 1955, 223 F.2d 449, certiorari granted 76 S.Ct. 218, 350 U.S. 922, 100 L.Ed. 807, reversed on other grounds 77 S.Ct. 1, 352 U.S. 1, 1 L.Ed.2d 1. Constitutional Law 268(2.1); Criminal Law 304(1)

In prosecution for conspiracy to violate Internal Revenue Laws relating to moonshine liquor, weight of circumstantial evidence was for jury, and where jury, acting within scope of its function and with justification, found accused guilty, its findings would not be disturbed on appeal. Whaley v. U.S., C.C.A.5 (Ga.) 1944, 141 F.2d 1010, certiorari denied 65 S.Ct. 46, 323 U.S. 742, 89 L.Ed. 595. Conspiracy 48.2(2); Criminal Law 1159.6

A finding that conspiracy existed to obstruct passage of mail and to restrain trade or commerce could not be disturbed by reviewing court, where it was supported by substantial evidence. U.S. v. Anderson, C.C.A.7 (Ill.) 1939, 101 F.2d 325, certiorari denied 59 S.Ct. 822, 307 U.S. 625, 83 L.Ed. 1502, certiorari denied 59 S.Ct. 822, 307 U.S. 625, 83 L.Ed. 1503, certiorari denied 59 S.Ct. 823, 307 U.S. 625, 83 L.Ed. 1503, certiorari denied 59 S.Ct. 823, 307 U.S. 625, 83 L.Ed. 1504, certiorari denied 59 S.Ct. 823, 307 U.S. 625, 83 L.Ed. 1504, 86 L.Ed. 1504, certiorari denied 59 S.Ct. 824, 307 U.S. 625, 83 L.Ed. 1505, certiorari denied 59 S.Ct. 824, 307 U.S. 625, 83 L.Ed. 1506, certiorari denied 59 S.Ct. 825, 307 U.S. 625, 83 L.Ed. 1506, certiorari denied 59 S.Ct. 825, 307 U.S. 625, 83 L.Ed. 1507, certiorari denied 59 S.Ct. 825, 307 U.S. 625, 83 L.Ed. 1508, certiorari denied 59 S.Ct. 826, 307 U.S. 625, 83 L.Ed. 1508, certiorari denied 59 S.Ct. 826, 307 U.S. 625, 83 L.Ed. 1509. Criminal Law 1159.2(10)

Facts established provided adequate basis for jury's finding that mailings identified in substantive counts were in furtherance of essential part in execution of fraudulent scheme and were not collateral to the scheme for purposes of prosecution for mail fraud and conspiracy to defraud by use of mails. U. S. v. Iezzi, W.D.Pa.1976, 451 F.Supp. 1027, affirmed 573 F.2d 827, certiorari denied 98 S.Ct. 2248, 436 U.S. 911, 56 L.Ed.2d 411, rehearing denied 98 S.Ct. 3130, 438 U.S. 908, 57 L.Ed.2d 1152, certiorari denied 99 S.Ct. 165, 439 U.S. 854, 58 L.Ed.2d 160. Postal Service 50

1089. Verdict, review

That jury returned general verdict of guilty to conspiracy charging two objects and evidence was insufficient to support one object did not require reversal where evidence was sufficient to support other object. U.S. v. Beverly, C.A.7 (Ill.) 1990, 913 F.2d 337, certiorari denied 111 S.Ct. 766, 498 U.S. 1052, 112 L.Ed.2d 786, certiorari granted 111 S.Ct. 951, 498 U.S. 1082, 112 L.Ed.2d 1039, affirmed 112 S.Ct. 466, 502 U.S. 46, 116 L.Ed.2d 371, rehearing denied 112 S.Ct. 1253, 502 U.S. 1125, 117 L.Ed.2d 484, dismissal of habeas corpus affirmed 972 F.2d 351, post-conviction relief denied, habeas corpus granted in part. Criminal Law 1175

1090. Acquittal or conviction of others, review

Conspiracy conviction did not have to be reversed due to coconspirators' acquittals after judgment of acquittals were reversed. U.S. v. Pardue, C.A.8 (Ark.) 1993, 983 F.2d 850, rehearing denied, certiorari denied 113 S.Ct. 3043, 509 U.S. 925, 125 L.Ed.2d 728. Conspiracy 24(6)

Possible acquittal of codefendants not yet tried, or retried after jury disagreement, does not warrant reversal of conviction for conspiracy. De Camp v. U.S., App.D.C.1926, 10 F.2d 984, 56 App.D.C. 119. Conspiracy 24(6)

18 U.S.C.A. § 371

1091. Multiple defendants, review

Since court of appeals determined that evidence with respect to conspiracy and substantive counts was insufficient as to two of three defendants, court would reverse conviction of third defendant under conspiracy charge where there was no attempt to prove that the third defendant had conspired with anyone other than the first two defendants. U. S. v. Barnes, C.A.6 (Tenn.) 1967, 383 F.2d 287, certiorari denied 88 S.Ct. 780, 389 U.S. 1040, 19 L.Ed.2d 831. Criminal Law 1186.1

Order of Securities and Exchange Commission containing ex parte, hearsay allegations or recitals of serious wrong-doing on part of one of three co-conspirators was inadmissible and prejudicial to named co-conspirator and to second co-conspirator who had been a Commission employee who had intervened improperly with other Commission employees and general guilty verdict as to all three defendants would be reversed in prosecution for conspiracy to defraud United States concerning its right to have business and affairs of Securities and Exchange Commission administered in a proper manner. Abrams v. U. S., C.A.D.C.1964, 327 F.2d 898, 117 U.S.App.D.C. 200. Criminal Law 1169.1(9); Criminal Law 419(12)

Reversal of one defendant's conspiracy conviction required reversal as to the other who otherwise might be the only one ever convicted, absent proof that person not charged conspired with him, under indictment referring to conspiracy embracing persons unknown. Lubin v. U. S., C.A.9 (Cal.) 1963, 313 F.2d 419. Conspiracy 24(6)

It is no ground for setting aside a conviction of certain defendants of conspiracy that the evidence may be equally strong against others who were acquitted. Bryant v. U.S., C.C.A.5 (Tex.) 1919, 257 F. 378, 168 C.C.A. 418, motion denied 40 S.Ct. 117. Criminal Law 877

1092. Multiple object conspiracy, review

Trial court's failure to instruct jury with respect to materiality element of offense of making false entry in record of lending institution required reversal of convictions for conspiracy for which false entry offense was one of several object offenses alleged in indictment, where court was unable to determine on review of general verdict form which object offense jury selected as basis for conspiracy conviction. U.S. v. Pettigrew, C.A.5 (Tex.) 1996, 77 F.3d 1500. Criminal Law 1173.2(2)

A conspiracy conviction must be reversed if the trial court instructed the jury that it need find only one of the multiple objects alleged in order to convict of conspiracy, in a case in which the reviewing court holds any one of the supporting counts legally insufficient. U.S. v. Lopez, C.A.9 (Cal.) 1986, 803 F.2d 969, certiorari denied 107 S.Ct. 1958, 481 U.S. 1030, 95 L.Ed.2d 530, rehearing denied 107 S.Ct. 3246, 483 U.S. 1012, 97 L.Ed.2d 750, certiorari denied 107 S.Ct. 1959, 481 U.S. 1030, 95 L.Ed.2d 530, denial of post-conviction relief affirmed 988 F.2d 124. Conspiracy 48.2(1); Criminal Law 1172.1(3)

In prosecution charging multiple-object conspiracy, trial judge's instruction permitted jury to convict by unanimously finding any one of three objects and since jury could have focused on a legally insufficient object of conspiracy, convictions on conspiracy count would be reversed. U.S. v. DeLuca, C.A.9 (Cal.) 1982, 692 F.2d 1277 . Conspiracy 48.2(2); Criminal Law 1172.1(3)

1093. Multiple counts, review

Erroneous admission of evidence that alleged coconspirator had told government agent that he had turned his numbers work over to defendant would require reversal of conviction under indictment count charging conspiracy to commit lottery offenses; and since it was probable that such evidence had also been considered by jury in connection with related count charging defendant with operation of a lottery, conviction on that count would also be reversed. Taylor v. U.S., C.A.D.C.1958, 260 F.2d 737, 104 U.S.App.D.C. 219. Criminal Law 1169.7

Where conviction was sustained on a count sufficient to support the sentence, it would not be disturbed for alleged errors relating to another count. Deacon v. U. S., C.C.A.1 (Mass.) 1941, 124 F.2d 352. Criminal Law 1167(2)

Where the jury was allowed over objection to consider together defendant's guilt of violation of former § 338 of this title in respect of each of three frauds alleged, each was required to be proved, and where there was insufficient evidence for jury to find that defendant participated in either of two frauds alleged, his conviction was required to be reversed. U.S. v. Groves, C.C.A.2 (N.Y.) 1941, 122 F.2d 87, certiorari denied 62 S.Ct. 135, 314 U.S. 670, 86 L.Ed. 536. Conspiracy 43(12); Criminal Law 1186.1

Where there was a single sentence upon counts sustained by evidence, judgment would not be reversed on the ground that another count was unsupported by evidence. Brand v. U.S., C.C.A.8 (Mo.) 1916, 236 F. 219, 149 C.C.A. 409.

1094. Sentence, review

Defendant's sentence enhancement for having derived more than $1,000,000 in "gross receipts" from his crime of conspiring to commit bank and credit card fraud was proper, although loans that defendant obtained which did not result in loss to lenders were considered in determining gross receipts; defendant obtained loans as result of his offense, and even if loans were improperly included in calculation of gross receipts, defendant's receipts would have totaled more than $ 1,000,000, since he could not subtract 10% fee he paid to have checks cashed. U.S. v. Khedr, C.A.2 (N.Y.) 2003, 343 F.3d 96, on subsequent appeal 87 Fed.Appx. 218, 2004 WL 303921. Sentencing And Punishment 736

Defendant was properly sentenced for convictions of conspiracy to kidnap and conspiracy to exploit minor in sexually explicit film by considering conspiracy to kidnap guidelines, rather than conspiracy to murder guideline, since kidnapping was object of conspiracy and eventual murder of victim was "other offense"; thus, it was proper to consider first-degree murder as specific offense characteristic for alleged plan that would have resulted in filmed murder of young boy, and then to reduce defendant's sentence three levels since crime was not successfully completed. U.S. v. Depew, C.A.4 (Va.) 1991, 932 F.2d 324, certiorari denied 112 S.Ct. 210, 502 U.S. 873, 116 L.Ed.2d 169. Sentencing And Punishment 653(2)

Where conspiracy count and related substantive count of vote buying differed only in the most technical sense, confinement imposed on each was concurrent and defendants were placed on supervised probation, and same fines were imposed on each count, the concurrent-sentence doctrine was applied and appellate court declined to review the conspiracy count on finding that evidence supported conviction on substantive count. U.S. v. Canales, C.A.5 (Tex.) 1984, 744 F.2d 413, rehearing denied 750 F.2d 69. Criminal Law 1177

Defendant, who was convicted of armed robbery and conspiracy to commit armed robbery, was not entitled to relief due to fact that presentence report erroneously indicated that he had been convicted of various crimes, in view of fact that trial court was advised prior to sentencing that such information was erroneous and court indicated that it did not consider that information. U. S. v. Kelly, C.A.8 (Minn.) 1982, 687 F.2d 1217. Criminal Law 1177

Even though only one defendant of three raised issue of failure of government to elect between counts in multiplicious indictment charging three counts of conspiracy, all three defendants who were jointly indicted and received identical sentences were entitled to have their sentences vacated and have matter remanded for resentencing on single conspiracy count. U. S. v. Bradsby, C.A.5 (Tex.) 1980, 628 F.2d 901. Criminal Law 1181.5(8)

Despite trial judge's statement to jury after it had returned its verdict that those defendants who pleaded guilty would not receive as heavy sentence as those who were tried, trial judge did not use improper standard in imposing

heavier penalty upon defendants than upon their co-conspirators who pleaded guilty, in view of fact that sentences imposed upon defendants were based almost totally upon probation report for each defendant. U. S. v. Araujo, C.A.2 (N.Y.) 1976, 539 F.2d 287, certiorari denied 97 S.Ct. 498, 429 U.S. 983, 50 L.Ed.2d 593. Sentencing And Punishment 56

As trial judge who imposed identical total sentences on all four defendants could not have intended that codefendant who entered guilty plea to five counts of bank robbery and one conspiracy count should serve longer sentence than defendants who did not plead guilty and were subsequently convicted of the bank robbery counts and acquitted of the conspiracy count, codefendant's conviction of conspiracy would be vacated along with vacation of all defendants' convictions of all but one of the bank robbery counts. U. S. v. Fleming, C.A.7 (Ill.) 1974, 504 F.2d 1045. Criminal Law 1181.5(1)

Absent anything to suggest that defendant's sentence was imposed as penalty for his standing trial in contrast to pleas of guilty by his codefendants, trial judge did not abuse his discretion in sentencing defendant to two years imprisonment, with six months to be served in jail and probation for balance of sentence, on conviction of conspiracy to receive and have possession of chattels, moving as part of interstate shipment, known to have been stolen and substantive offense of receiving and having possession of such stolen chattels. U. S. v. Jackson, C.A.6 (Ohio) 1970, 422 F.2d 975. Conspiracy 51; Receiving Stolen Goods 10

Even if evidence of conspiracy was insufficient, judgment of conviction would not be reversed where conviction on count charging substantive offense was clearly sufficient and sentences upon counts ran concurrently. Juarez-Flores v. U. S., C.A.5 (Tex.) 1968, 394 F.2d 161, certiorari denied 89 S.Ct. 311, 393 U.S. 942, 21 L.Ed.2d 278. Criminal Law 1177

Since convictions and sentences on the substantive mail fraud counts were valid, Court of Appeals need not consider validity of concurrent sentences imposed on conspiracy count. Bannister v. U. S., C.A.5 (Fla.) 1967, 379 F.2d 750, certiorari denied 88 S.Ct. 861, 390 U.S. 927, 19 L.Ed.2d 988. Criminal Law 1177

Refusal of trial judge to impose sentence on certain defendant, who had pleaded guilty and testified for government in codefendants' stock conspiracy trial, until after conclusion of codefendants' trial, was not prejudicial to codefendants, on theory apparently that if he had been given suspended sentence that would have been proof positive in eyes of jurors that he was perjuring himself to earn his reward. U. S. v. Kelly, C.A.2 (N.Y.) 1965, 349 F.2d 720, certiorari denied 86 S.Ct. 1467, 384 U.S. 947, 16 L.Ed.2d 544. Criminal Law 1177

Any insufficiency of proof to sustain conviction for conspiracy was harmless where sentence predicated upon conspiracy conviction ran concurrently with sentence for substantive offense. U. S. v. Berger, C.A.2 (N.Y.) 1964, 338 F.2d 485, certiorari denied 85 S.Ct. 925, 380 U.S. 923, 13 L.Ed.2d 809. Criminal Law 1168(1)

Court of Appeals would reduce invalid two-year sentence of defendant on conspiracy count by federal District Court to one-year maximum which might have been legally imposed by District Court instead of remanding case to District Court to permit District Court to resentence defendant by imposing consecutive sentences for substantive offenses so that two-year sentence for conspiracy would be valid, where codefendant, who had receive same sentences, had begun serving sentences so that he could not be resentenced to impose consecutive sentences for substantive offenses. U. S. v. Magliano, C.A.4 (Md.) 1964, 336 F.2d 817. Criminal Law 1187

Defendants were entitled to sentence under less severe of several statutes involved, where, under general instruction given, jury might have found defendants guilty only as to conspiracy to commit act wherein maximum penalty could be no more than five years, and might or might not have found defendants guilty of having conspired to violate one or more of three conspiracy statutes involving heavier penalties, and in event government did not consent to such resentence, defendants were entitled to new trial. Brown v. U. S., C.A.D.C.1962, 299 F.2d 438, 112 U.S.App.D.C. 57, certiorari denied 82 S.Ct. 1593, 370 U.S. 946, 8 L.Ed.2d 812. Criminal Law 29(5.5);

18 U.S.C.A. § 371

Criminal Law 1189; Sentencing And Punishment 520(2)

Presumption of law is that court imposed sentence, which was within maximum sentence imposable on good count, on good count only, and not on defective count. Herman v. U.S., C.A.5 (Fla.) 1961, 289 F.2d 362, certiorari denied 82 S.Ct. 174, 368 U.S. 897, 7 L.Ed.2d 93. Criminal Law 1144.17

Defendant suffered no prejudice from his prosecution for two counts of conspiracy under different sections of the narcotics laws for the same activities when the defendant received only concurrent sentences. U S v. Allen, C.A.2 (N.Y.) 1959, 267 F.2d 491. Criminal Law 1177

Where defendant was convicted on count of conspiracy to bribe police officer, and also was convicted on intimately related bribery counts, and sentence under conspiracy count was for longer time than his concurrent sentence for bribery, conspiracy and bribery charges would be affirmed if no reversible error impaired conspiracy conviction. Monroe v. U.S., C.A.D.C.1956, 234 F.2d 49, 98 U.S.App.D.C. 228, certiorari denied 77 S.Ct. 94, 352 U.S. 872, 1 L.Ed.2d 76, certiorari denied 77 S.Ct. 94, 352 U.S. 873, 1 L.Ed.2d 76, rehearing denied 77 S.Ct. 219, 352 U.S. 937, 1 L.Ed.2d 170, rehearing denied 78 S.Ct. 114, 355 U.S. 875, 2 L.Ed.2d 79. Criminal Law 1177

Where defendants were convicted on conspiracy and substantive counts and received concurrent sentences, appeals from convictions must fail if the conviction of each of the defendants could be sustained as to either of the counts on which a verdict of guilty was returned. O'Malley v. U. S., C.A.1 (Mass.) 1955, 227 F.2d 332, certiorari denied 76 S.Ct. 434, 350 U.S. 966, 100 L.Ed. 838. Criminal Law 1177

Court of Appeals need not consider the sufficiency of evidence to support the conviction of accused under counts charging him with substantive offenses against the narcotics law, § 4704 et seq. of Title 26, where the sentences imposed on him on each of such counts and on the conspiracy count, were the same and were ordered to run concurrently. U. S. v. Iacullo, C.A.7 (Ill.) 1955, 226 F.2d 788, certiorari denied 76 S.Ct. 435, 350 U.S. 966, 100 L.Ed. 839. Criminal Law 1134(3)

One pleading guilty to each of three indictments, charging 15 violations of, and conspiracy to violate, §§ 2553(a) and 2554(a) of Title 26, § 174 of Title 21 and this section, for each of which offenses applicable law prescribed maximum penalty of five years imprisonment for first offense, was in no position to complain to Court of Appeals of three concurrent ten year sentences imposed on him by district court, as total number of years for which he was sentenced was less than maximum permitted by said sections. U.S. v. Kapsalis, C.A.7 (Ill.) 1954, 214 F.2d 677, certiorari denied 75 S.Ct. 583, 349 U.S. 906, 99 L.Ed. 1242. Criminal Law 1177

Where evidence was insufficient to sustain convictions on conspiracy count, but sentence imposed on each defendant was a general sentence imposed concurrently on conspiracy count and substantive count with which such defendant was charged, judgment and convictions would be affirmed if there were no other error and if evidence was sufficient to support convictions on substantive counts. Rent v. U.S., C.A.5 (Tex.) 1954, 209 F.2d 893. Criminal Law 1177

Where sentences imposed on defendants for conspiracy to defraud the United States and violations of the income and excise tax laws were within the limits permitted by §§ 145(b) and 2707(c) of Title 26 the asserted severity of the sentences was not reviewable on appeal. Kobey v. U.S., C.A.9 (Cal.) 1953, 208 F.2d 583. Criminal Law 1158(1)

Where defendants were given single sentence on both conspiracy and substantive counts and sentence imposed was less than could have been imposed on substantive count alone, and no complaint was made of insufficiency of evidence to support conviction on substantive count, judgments of conviction would not be reversed for alleged insufficiency of evidence to sustain conviction on conspiracy counts. Thomas v. U. S., C.C.A.5 (Ala.) 1948, 168 F.2d 707. Criminal Law 1168(1)

18 U.S.C.A. § 371

Where defendant was sentenced to serve terms of seven years each on three counts charging defendant with possessing, selling and transferring certain counterfeit federal reserve notes, and to serve two years on a count charging conspiracy to commit offense by unlawfully possessing, transferring and using counterfeit obligations, the sentences to run concurrently, the sentences were within the maximum statutory penalties and would not be disturbed because of seeming severity. U. S. v. Sorcey, C.C.A.7 (Wis.) 1945, 151 F.2d 899, certiorari denied 66 S.Ct. 821, 327 U.S. 794, 90 L.Ed. 1021. Conspiracy 51; Counterfeiting 21

Additional punishment for conspiracy was proper although conspiracy had been so far executed as to accomplish the substantive offenses which were its aim. U.S. v. De Normand, C.C.A.2 (N.Y.) 1945, 149 F.2d 622, certiorari denied 66 S.Ct. 89, 326 U.S. 756, 90 L.Ed. 454, rehearing denied 66 S.Ct. 165, 326 U.S. 808, 90 L.Ed. 493, rehearing denied 66 S.Ct. 331, 326 U.S. 811, 90 L.Ed. 495, rehearing denied 66 S.Ct. 676, 327 U.S. 816, 90 L.Ed. 1039, certiorari denied 67 S.Ct. 769, 330 U.S. 822, 91 L.Ed. 1272, rehearing denied 67 S.Ct. 860, 330 U.S. 854, 91 L.Ed. 1296. Conspiracy 37; Conspiracy 51

Where it was plain from indictment that the substantive offenses of selling heroin illegally, charged in the first two counts, included every element of the offense charged in third count of conspiracy to sell heroin illegally, only one offense was committed and sentence imposed on conspiracy count was set aside. Freeman v. U.S., C.C.A.6 (Mich.) 1945, 146 F.2d 978. Sentencing And Punishment 520(3)

Where identical terms of imprisonment were imposed under both counts of indictment and sentences were to run concurrently, appellate court was not required to consider accused's contentions respecting one count of indictment where it sustained conviction as to other count. Deacon v. U. S., C.C.A.1 (Mass.) 1941, 124 F.2d 352. Criminal Law 1134(3)

Where defendants were convicted upon four counts for transportation of motor vehicle in interstate commerce, knowing the same to have been stolen, for stealing and carrying away, with intent to convert to their own use, bakery products constituting interstate shipments, for conspiracy and for possession of goods stolen from an interstate shipment, knowing the same to have been stolen, and no testimony irrelevant to charge in first count or in any wise prejudicial to defendants in their trial on that count was introduced because of the pendency of the other counts, and there was no error in the conviction and sentence upon first count, and sentence imposed was such as might have been imposed under that count, it was unnecessary to consider the other counts. Carpenter v. U.S., C.C.A.8 (Iowa) 1940, 113 F.2d 692. Criminal Law 1177

Where accused was convicted on counts charging substantive offenses, neither of which was charged as an overt act, as well as on count charging conspiracy, and court imposed same sentence as to each count to run concurrently, it was not necessary to determine whether reversal should be had under conspiracy count. Hall v. U.S., C.C.A.10 (Okla.) 1940, 109 F.2d 976. Criminal Law 1134(3)

On conviction of two defendants on indictment charging in one count conspiracy to have in their possession counterfeit coins and to attempt to pass such coins and charging in second count possession of counterfeit coins, sentence of one defendant on second count to 10 years in penitentiary and to pay fine of $500 with provision that he be placed on probation on first count for period of five years to begin at expiration of sentence on second count or on his release from custody under such sentence, and sentence of other defendant on first count to term of two years with provision that he be placed on probation on second count for term of five years to begin at conclusion of sentence on first count or on his release from custody would not be set aside on appeal as cruel, unusual and excessive. Reavis v. U.S., C.C.A.10 (Okla.) 1939, 106 F.2d 982. Sentencing And Punishment 1487; Sentencing And Punishment 1488

In prosecution for conspiracy to violate § 301 et seq. of Title 49 sentences which were within limits of penalty fixed by former § 88 of this title [now this section] would not be disturbed notwithstanding contention that said former section should not be used to subject one to a more severe penalty than that which may be imposed for the

substantive offense. Martin v. U. S., C.C.A.10 (Colo.) 1938, 100 F.2d 490, certiorari denied 59 S.Ct. 590, 306 U.S. 649, 83 L.Ed. 104, certiorari denied 59 S.Ct. 590, 306 U.S. 649, 83 L.Ed. 1047, certiorari denied 59 S.Ct. 590, 306 U.S. 649, 83 L.Ed. 1048, certiorari denied 59 S.Ct. 591, 306 U.S. 649, 83 L.Ed. 1048, certiorari denied 59 S.Ct. 642, 306 U.S. 651, 83 L.Ed. 1050. Conspiracy 51

One convicted in District of Columbia of conspiracy to deliver information concerning national defense to foreign country was properly sentenced under D.C.Code, § 24-201 et seq., as against contention that such law was applicable only to offenses against the Criminal Code of the District. Farnsworth v. Zerbst, C.C.A.5 (Ga.) 1938, 98 F.2d 541. District Of Columbia 4

Separate counts charging conspiracy to rob and steal mail matter charged same offense entitling defendant to release on service of maximum imprisonment for single offense. Bertsch v. Snook, C.C.A.5 (Ga.) 1929, 36 F.2d 155. Sentencing And Punishment 571

Determining severance in conspiracy cases is discretionary, and not subject to review, except for abuse. Olmstead v. U.S., C.C.A.9 (Wash.) 1927, 19 F.2d 842, certiorari denied 48 S.Ct. 117, 275 U.S. 557, 72 L.Ed. 424, 72 L.Ed. 729, rehearing granted 48 S.Ct. 207, 276 U.S. 609, 72 L.Ed. 729, affirmed 48 S.Ct. 564, 277 U.S. 438, 72 L.Ed. 944. Criminal Law 622.6(3); Criminal Law 1148

Where evidence sustained conviction under conspiracy count, and sentence was less than could have been imposed thereunder, sufficiency of evidence as to substantive offenses was immaterial. Cantrell v. U.S., C.C.A.5 (Tex.) 1926, 15 F.2d 953, certiorari denied 47 S.Ct. 572, 273 U.S. 768, 71 L.Ed. 882. Criminal Law 1134(3)

Where defendant was convicted on two indictments, one charging conspiracy against one person and the other a conspiracy against such person and others, and under the evidence and instructions both verdicts may have been founded on the same conspiracy against the one person only, but a single sentence should have been imposed. Roberts v. U. S., C.C.A.8 (Colo.) 1922, 283 F. 960. Sentencing And Punishment 540

In light of the sentences provided to other defendants who shared similar roles in "boiler room" operation, defendant securities broker, who pled guilty to one count of conspiracy to commit securities fraud, mail fraud and wire fraud, would be sentenced to 41 months in prison, to be followed by three years of supervised release; downward departure was appropriate because case presented aggravating circumstances of a kind, or to a degree, not adequately taken into consideration in formulating Sentencing Guidelines since loss provision did not make sense when up to 250 people were participating, and the loss was difficult, if not impossible, to apportion fairly. U.S. v. Monroig, S.D.N.Y.2003, 2003 WL 1461640, Unreported. Sentencing And Punishment 852; Sentencing And Punishment 870

1095. Fine, review

Court of Appeals had no authority to reduce or strike fine imposed on conviction of substantive count and conspiracy charge, even though conspiracy charge was reversed, where fine was within maximum sentence imposable upon conviction of substantive offense. Herman v. U.S., C.A.5 (Fla.) 1961, 289 F.2d 362, certiorari denied 82 S.Ct. 174, 368 U.S. 897, 7 L.Ed.2d 93. Criminal Law 1183

1096. Substantial evidence, review

There must be "substantial evidence" connecting particular defendant to conspiracy, and, to satisfy such test, it must be shown that particular defendant had deliberate, knowing, specific intent to join conspiracy. U. S. v. Bulman, C.A.11 (Fla.) 1982, 667 F.2d 1374, rehearing denied 673 F.2d 1342, certiorari denied 102 S.Ct. 2305, 456 U.S. 1010, 73 L.Ed.2d 1307. Conspiracy 47(1)

In reviewing sufficiency of the evidence question, court of appeals must view the evidence supporting convictions in the light most favorable to the government and all credibility choices and inferences must be made in support of the jury's verdict; the test is whether reasonable minds could have found the evidence inconsistent with every reasonable hypothesis of defendant's innocence. U. S. v. Burgin, C.A.5 (Miss.) 1980, 621 F.2d 1352, rehearing denied 627 F.2d 239, certiorari denied 101 S.Ct. 574, 449 U.S. 1015, 66 L.Ed.2d 474. Criminal Law 1144.13(3); Criminal Law 1144.13(5); Criminal Law 1159.2(8)

Standard for appellate review of sufficiency of evidence in conspiracy cases requires "substantial evidence" that, beyond a reasonable doubt, the accused knowingly participated in the conspiracy. U. S. v. Harbin, C.A.5 (Fla.) 1979, 601 F.2d 773, certiorari denied 100 S.Ct. 433, 444 U.S. 954, 62 L.Ed.2d 327. Criminal Law 1159.2(10)

When sufficiency of evidence to support any criminal conviction, including conspiracies, is challenged on appeal, correct standard of review is "substantial evidence," it being understood that evidence is to be viewed in light most favorable to Government; accordingly, "slight evidence" rule as used and applied on appeal in conspiracy cases in the Fifth Circuit would be banished as to all appeals hereafter decided. U. S. v. Malatesta, C.A.5 (Fla.) 1979, 590 F.2d 1379, certiorari denied 99 S.Ct. 1508, 440 U.S. 962, 59 L.Ed.2d 777, certiorari denied 100 S.Ct. 91, 444 U.S. 846, 62 L.Ed.2d 59. Criminal Law 1144.13(3); Criminal Law 1159.2(5)

Prosecution must establish by substantial evidence, restricted to proof aliunde, fact that conspiracy existed; once the existence of conspiracy is clearly established, slight evidence may be sufficient to connect a defendant with it. U. S. v. De Cavalcante, C.A.3 (N.J.) 1971, 440 F.2d 1264. Conspiracy 47(1)

In prosecution for conspiring to violate bankruptcy laws, questions of knowledge and participation were jury issues and there was adequate substantial evidence to support jury verdict on both questions. Jacobs v. U. S., C.A.8 (Iowa) 1968, 395 F.2d 469. Conspiracy 47(3.1); Conspiracy 48.1(2.1)

Existence of conspiracy was established by substantial evidence independent of extrajudical statements of defendants. Atkins v. U. S., C.A.9 (Wash.) 1962, 307 F.2d 937. Criminal Law 409(6.1)

Where evidence affords satisfactory proof that conspiracy has been formed but slight evidence connecting defendant therewith may still be substantial and if so, sufficient. Isaacs v. U. S., C.A.8 (Minn.) 1962, 301 F.2d 706, certiorari denied 83 S.Ct. 32, 371 U.S. 818, 9 L.Ed.2d 58, certiorari denied 83 S.Ct. 33, 371 U.S. 818, 9 L.Ed.2d 58. Conspiracy 47(1)

In prosecution for conspiracy to commit bank robbery, for commission of bank robbery or aiding in commission thereof, and for putting life in jeopardy by use of dangerous weapon in committing bank robbery or aiding in commission thereof, there was substantial evidence, aside from confession of robber, to corroborate admissions of each defendant and sustain finding that other defendants had participated. United States v. Caron, C.A.2 (N.Y.) 1959, 266 F.2d 49. Conspiracy 47(11); Robbery 24.20

Where there was substantial evidence in existence for the triers of fact to pass upon the question of conspiracy, the appellate court could not disturb the verdict on appeal. Sandez v. U. S., C.A.9 (Cal.) 1956, 239 F.2d 239, rehearing denied 245 F.2d 712. Criminal Law 1159.2(10)

A reviewing court must sustain verdict of conviction if there is substantial evidence to support it. U.S. v. Gallo, C.C.A.2 (N.Y.) 1941, 123 F.2d 229.

In passing on the sufficiency of the proof to connect an accused with a conspiracy to obstruct justice and to defraud the United States, it was not the province of the Circuit Court of Appeals to weigh the evidence or to determine credibility of witnesses, but that court was required to take that view of the evidence most favorable to the government and sustain the jury's verdict of conviction if there was substantial evidence to support it. U.S. v.

Manton, C.C.A.2 (N.Y.) 1939, 107 F.2d 834, certiorari denied 60 S.Ct. 590, 309 U.S. 664, 84 L.Ed. 1012. Criminal Law 1144.13(3); Criminal Law 1159.2(10); Criminal Law 1159.4(5)

In conspiracy prosecution, any substantial evidence of knowledge and participation in conspiracy will justify verdict of guilty. Beland v. U. S., C.C.A.5 (Tex.) 1938, 100 F.2d 289, certiorari denied 59 S.Ct. 485, 306 U.S. 636, 83 L.Ed. 1037. Conspiracy 47(1)

In prosecution for conspiring to deal in distilled spirits on which no tax had been paid, where defendant, a police officer, testified that he had never taken money from any person at the home of a codefendant, the admission of testimony in rebuttal to the effect that defendant had extorted money from witness under threat of arrest over objection that testimony was not proper rebuttal did not warrant reversal even if testimony was incompetent, where verdict was sustained by competent evidence and trial was in all other respects fair and impartial. Diehl v. U.S., C.C.A.8 (Mo.) 1938, 98 F.2d 545. Criminal Law 1168(2)

1097. Affirmance, review

Conviction under former § 88 of this title [now this section] affirmed except as to one codefendant. Agnello v. U.S., U.S.N.Y.1925, 46 S.Ct. 4, 269 U.S. 20, 70 L.Ed. 145.

Conviction for conspiracy to violate National Prohibition Act, former § 1 et seq. of Title 27, and regulations as to industrial alcohol, affirmed. Selzman v. U.S., U.S.Ohio 1925, 45 S.Ct. 574, 268 U.S. 466, 69 L.Ed. 1054. See, also, Knable v. U.S., C.C.A.Ohio, 1925, 9 F.2d 567; Robinson v. U.S., C.C.A.N.Y.1923, 290 F. 755, certiorari denied 44 S.Ct. 6, 263 U.S. 700, 68 L.Ed. 513.

On appeal, court of appeals must affirm jury's finding of guilt if its review of record discloses at least slight evidence of a particular defendant's knowing participation in a conspiracy which has been established by other independent evidence. U. S. v. Anderson, C.A.5 (Ga.) 1978, 574 F.2d 1347. Criminal Law 1159.2(10)

In conspiracy cases, finding of guilt will be affirmed if review of the record below discloses at least slight evidence linking a particular defendant to a conspiracy that has been established by other independent evidence. U. S. v. Morrow, C.A.5 (Fla.) 1976, 537 F.2d 120, rehearing denied 541 F.2d 282, certiorari denied 97 S.Ct. 1602, 430 U.S. 956, 51 L.Ed.2d 806. Criminal Law 1159.2(10)

In prosecution for scheme and artifice to defraud by mail, fraud by wire communication, interstate transportation of security converted and taken by fraud and for conspiracy, convictions were affirmed notwithstanding contention that trial court allowed indictment to go to jury room without removing from all counts the names of codefendants not on trial and, as to one defendant, permitted hearsay testimony without proper cautionary instruction and allowed conviction on insufficient evidence and that, as to second defendant, government in bad proceeded to trial on 29-count indictment knowing it would not present evidence on 22 of the 29 counts. U. S. v. Mitzkoff, C.A.5 (Fla.) 1975, 524 F.2d 488, certiorari denied 96 S.Ct. 1473, 424 U.S. 972, 47 L.Ed.2d 741. Criminal Law 673(1); Criminal Law 700(1); Criminal Law 858(3)

Under the concurrent sentence doctrine, where defendant was sentenced to five years on a conspiracy count and ten years on a substantive count, to be served concurrently, affirmance of conviction on the latter count, supported sentence regardless of whether defendant had a valid defense to the conspiracy charge. U. S. v. Wilson, C.A.8 (Mo.) 1974, 497 F.2d 602, certiorari denied 95 S.Ct. 655, 419 U.S. 1069, 42 L.Ed.2d 664. Criminal Law 1177

Defendant's conviction for conspiracy to commit mail fraud must be affirmed in view of the additional untried coconspirator named in indictment, notwithstanding acquittal of the only named codefendant. U. S. v. Sparrow, C.A.10 (Utah) 1972, 470 F.2d 885, certiorari denied 93 S.Ct. 1913, 411 U.S. 936, 36 L.Ed.2d 397. Conspiracy 24(6)

18 U.S.C.A. § 371

Defendants were not entitled to relief, on appeal from conviction of use of interstate telephone facilities for gambling activities and for conspiring to commit such offenses, on theory that tape recording, which was apparently made as a record of bets, and which was seized could not have been subject of search warrant because it was mere evidence rather than fruit or instrumentality of crime. U. S. v. Fuller, C.A.4 (S.C.) 1971, 441 F.2d 755, certiorari denied 92 S.Ct. 73, 404 U.S. 830, 30 L.Ed.2d 59, certiorari denied 92 S.Ct. 74, 404 U.S. 830, 30 L.Ed.2d 59. Gaming 60

Where defendants were properly convicted upon conspiracy count of indictment, and sentences imposed on each count were the same and not more than maximum allowable, convictions for conspiracy and interstate transportation of merchandise obtained by fraud were affirmed and it was not necessary for reviewing court to consider evidence as to second count charging interstate transportation of merchandise obtained by fraud. Cave v. U. S., C.A.8 (Iowa) 1968, 390 F.2d 58, certiorari denied 88 S.Ct. 2059, 392 U.S. 906, 20 L.Ed.2d 1365. Criminal Law 1177

With exception of conviction of one defendant on one count, convictions of each defendant of only those substantive offenses committed in furtherance of conspiracy while he was a member thereof were proper and would stand. Gradsky v. U.S., C.A.5 (Fla.) 1967, 376 F.2d 993, certiorari denied 88 S.Ct. 224, 389 U.S. 908, 19 L.Ed.2d 224, rehearing denied 88 S.Ct. 488, 389 U.S. 998, 19 L.Ed.2d 505. Criminal Law 59(1)

Conspiracy conviction will be upheld where circumstances, acts and conduct of parties are sufficient to establish that they entered into agreement to commit crime charged, followed by overt act to carry out agreement. McManaman v. U. S., C.A.10 (Kan.) 1964, 327 F.2d 21, certiorari denied 84 S.Ct. 1351, 377 U.S. 945, 12 L.Ed.2d 307. Conspiracy 47(1)

Convictions, for unlawful transportation of narcotic drugs, unlawful importation of narcotic drugs and conspiracy to defraud the government, were affirmed. White v. U S, C.A.9 (Alaska) 1958, 254 F.2d 137, 17 Alaska 624, certiorari denied 79 S.Ct. 48, 358 U.S. 829, 17 Alaska 498, 3 L.Ed.2d 68. Criminal Law 1182

Record on appeal from conviction for violation of this section disclosed no error and judgment would be affirmed. Hudson v. U.S., C.A.4 (N.C.) 1955, 226 F.2d 221.

Convictions for conspiracy will be upheld if circumstances, acts and conduct of parties are sufficient to establish them. Blackford v. U. S., C.A.10 (Kan.) 1952, 195 F.2d 896, certiorari denied 72 S.Ct. 1041, 343 U.S. 945, 96 L.Ed. 1350. Conspiracy 47(1)

In prosecution for violations of Mail Fraud Act, former § 338 of this title, for violations of fraud provisions of Securities Act of 1933, § 77q(a)(1) of Title 15, and for conspiracy to commit such offenses, where guilt of defendants was clearly proved and no error appeared which substantially prejudiced defendants, convictions were required to be affirmed. U. S. v. Monjar, C.C.A.3 (Del.) 1944, 147 F.2d 916, certiorari denied 65 S.Ct. 1191, 325 U.S. 859, 89 L.Ed. 1979, certiorari denied 65 S.Ct. 1192, 325 U.S. 859, 89 L.Ed. 1979, certiorari denied 65 S.Ct. 1192, 325 U.S. 859, 89 L.Ed. 1980, certiorari denied 65 S.Ct. 1193, 325 U.S. 859, 89 L.Ed. 1980, certiorari denied 65 S.Ct. 1194, 325 U.S. 859, 89 L.Ed. 1981. Criminal Law 1186.4(4)

A conviction of conspiracy is sustained if, on consideration of all the evidence, jury is satisfied beyond reasonable doubt of accused's guilt. American Tobacco Co. v. U.S., C.C.A.6 (Ky.) 1944, 147 F.2d 93, certiorari granted 65 S.Ct. 864, 324 U.S. 836, 89 L.Ed. 1400, certiorari granted 65 S.Ct. 865, 324 U.S. 836, 89 L.Ed. 1400, rehearing denied 65 S.Ct. 1021, 324 U.S. 891, 89 L.Ed. 1438, affirmed 66 S.Ct. 1125, 328 U.S. 781, 90 L.Ed. 1575. Criminal Law 561(2)

Where defendants charged with conspiracy to possess explosives were represented by competent counsel, and no objection was made to any evidence offered, to charge of court, or to argument of counsel, and where sufficiency

of evidence was not questioned in trial court, and there were no exceptional circumstances involving the fairness, integrity, or public reputation of judicial proceedings, conviction should be upheld. Sanderson v. U.S., C.C.A.5 (Tex.) 1944, 145 F.2d 825, certiorari denied 65 S.Ct. 866, 324 U.S. 862, 89 L.Ed. 1418. Criminal Law 1036.1(1); Criminal Law 1036.8; Criminal Law 1037.1(1); Criminal Law 1038.1(1)

Where a general conspiracy to violate former § 88 of this title [now this section] and § 77q of Title 15 by use of mails to sell worthless securities was charged and two separate but closely connected conspiracies were proved, conviction would not be disturbed. Kopald-Quinn & Co. v. U. S., C.C.A.5 (Ga.) 1939, 101 F.2d 628, certiorari denied 59 S.Ct. 835, 307 U.S. 628, 83 L.Ed. 1511, certiorari denied 59 S.Ct. 835, 307 U.S. 628, 83 L.Ed. 1512. Criminal Law 1159.2(10)

Conviction under former § 88 of this title [now this section] affirmed. Liberato v. U.S., C.C.A.9 (Wash.) 1926, 13 F.2d 564. See, also, Thompson v. U.S., C.C.A.Ill.1926, 10 F.2d 781, certiorari denied 46 S.Ct. 352, 270 U.S. 654, 70 L.Ed. 782.

Conviction of conspiracy to use mails to defraud, affirmed. Redmond v. U.S., C.C.A.1 (Mass.) 1925, 8 F.2d 24. See, also, Newingham v. U.S., C.C.A.Pa.1925, 4 F.2d 490, certiorari denied 45 S.Ct. 638, 268 U.S. 703, 69 L.Ed. 1166; Sherwin v. U.S., C.C.A.Tex.1924, 297 F. 704, affirmed 45 S.Ct. 517, 268 U.S. 369, 69 L.Ed. 1001.

Where three persons were charged with conspiracy to embezzle and misapply the funds and credits of a national bank, and the proof was sufficient to convict two of them, but not the third, the charge against him would be treated as surplusage, and the conviction of the others sustained. Breese v. U.S., C.C.A.4 (N.C.) 1913, 203 F. 824, 122 C.C.A. 142. Conspiracy 43(12)

1098. Reversal, review

On the government's concession, which was accepted by the Supreme Court, that petitioner's conviction of conspiracy with unknown Nazi agents to export gold and to commit counterfeiting offenses could not stand because of failure to prove contacts with such agents, conviction was reversed. Bates v. U.S., U.S.Ill.1944, 65 S.Ct. 15, 323 U.S. 15, 89 L.Ed. 13, conformed to 148 F.2d 907. Criminal Law 1186.6

Government's use of subpoenas in securing pretrial interviews of witnesses, the failure to provide defendants with a bill of particulars and the failure to transcribe grand jury testimony, of an FBI agent did not constitute an "abusive prosecution" so as to warrant reversal of defendants' convictions of conspiring to defraud the United States, since indictment adequately informed defendants of charges against them, FBI agent whose grand jury testimony was at issue was not a government witness in its case-in-chief, and Government used subpoena to secure pretrial interview of only one witness who testified at trial and that witness was advised by his counsel that he was not required to appear. U. S. v. D'Andrea, C.A.7 (Ind.) 1978, 585 F.2d 1351, certiorari denied 99 S.Ct. 1795, 440 U.S. 983, 60 L.Ed.2d 244, rehearing denied 612 F.2d 1386. Criminal Law 1166(10.10); Criminal Law 1167(1); Criminal Law 1170.5(1)

Where, there was a failure to agree to informer's request for percentage of money seized and where neither defendant was known to Secret Service before informant came to them with information of alleged conspiracy, reversal of convictions for conspiracy to possess counterfeit money was not required on ground that informer had contingent fee agreement with Secret Service to produce evidence against defendant; agent's statement that reward depended on "final results" was insufficient to require reversal of conviction on such ground. U. S. v. Edwards, C.A.5 (Fla.) 1977, 549 F.2d 362, certiorari denied 98 S.Ct. 107, 434 U.S. 828, 54 L.Ed.2d 87, rehearing denied 98 S.Ct. 494, 434 U.S. 960, 54 L.Ed.2d 321. Criminal Law 1186.1

In view of defendant's testimony at a subsequent trial that he not only participated in a burglary but also participated in a conspiracy to suppress evidence of that burglary involving perjury and destruction of records,

alleged "outrageous conduct" by government officials in seizing and destroying his records and "perjuring themselves before the grand jury" did not require reversal of defendant's convictions of conspiracy, burglary and illegal interception of oral and wire communications, entered upon guilty plea. U. S. v. Hunt, C.A.D.C.1975, 514 F.2d 270, 168 U.S.App.D.C. 374. Criminal Law 1186.1

Where neither appellant joined motion for new trial with motions for judgment of acquittal, appropriate disposition on finding insufficient evidence to sustain conspiracy convictions was to reverse and remand with directions that indictments be dismissed as to the conspiracy counts. U.S. v. Peterson, C.A.5 (Tex.) 1974, 488 F.2d 645, certiorari denied 95 S.Ct. 49, 419 U.S. 828, 42 L.Ed.2d 53. Criminal Law 1181.5(1)

Reversal of conviction on count charging conspiracy to violate offenses named in three substantive counts, one of which was based on unconstitutional statutory provision, would not preclude government from securing new indictment containing no reference to conspiracy to violate the constitutionally invalid provision. U. S. v. Baranski, C.A.7 (Ill.) 1973, 484 F.2d 556. Double Jeopardy 108

Exclusion, in prosecution of former bank officer for misapplying funds of federally insured bank and for conspiring to misapply such funds, of testimony to effect that bank representative, who was prosecution witness, and who, on cross-examination, testified that he had not attempted to suborn perjury, after interviewing witnesses and failing to obtain any incriminating evidence against defendant had suggested that, in return for favorable treatment in connection with witnesses' loan balances, witnesses perjure themselves by stating that defendant demanded money from them before they could obtain loans, and that bank representative had stated that he was out to get defendant was reversible error. U. S. v. Haggett, C.A.2 (N.Y.) 1971, 438 F.2d 396, certiorari denied 91 S.Ct. 1638, 402 U.S. 946, 29 L.Ed.2d 115. Criminal Law 1170.5(1); Witnesses 352

Even though FBI stood by while coconspirator who was also informant participated in conspiracy to extort money to induce official action, and FBI had knowledge that others intended to keep money for their own use, such conduct did not violate due process and did not require exercise of court's supervisory power to reverse defendant's convictions when there was no claim that informant's activity violated any specific of the Bill of Rights or any statute relating to the conduct of investigations. U. S. v. DeSapio, C.A.2 (N.Y.) 1970, 435 F.2d 272, certiorari denied 91 S.Ct. 2170, 402 U.S. 999, 29 L.Ed.2d 166, rehearing denied 91 S.Ct. 2249, 403 U.S. 941, 29 L.Ed.2d 722. Constitutional Law 266(5); Criminal Law 394.1(2)

Although jury was carefully instructed that improperly admitted telephone recording was only to be considered against one of the codefendants being prosecuted for conspiracy, where actual effect of recording was to compensate for questionable credibility of witness, court could not say that there was not a reasonable possibility that evidence complained of might have contributed to both convictions which were reversed. Laughlin v. U. S., C.A.D.C.1965, 344 F.2d 187, 120 U.S.App.D.C. 93. Criminal Law 1186.1

Where there was no direct testimony that passenger in automobile involved in planned collision for purpose of defrauding insurance companies had knowledge of planned accident, and other evidence of his association with his brother, who did not question sufficiency of the evidence on which he was convicted, was not very convincing, passenger might have been prejudiced by efforts of government to involve all defendants in all collisions on its theory that there was an overall conspiracy, and hence conviction as to passenger would be reversed and case remanded for new trial. Barnard v. U. S., C.A.9 (Or.) 1965, 342 F.2d 309, certiorari denied 86 S.Ct. 403, 382 U.S. 948, 15 L.Ed.2d 356, rehearing denied 86 S.Ct. 567, 382 U.S. 1002, 15 L.Ed.2d 491, rehearing denied 86 S.Ct. 567, 382 U.S. 1002, 15 L.Ed.2d 492, certiorari denied 86 S.Ct. 404, 382 U.S. 948, 15 L.Ed.2d 356, rehearing denied 86 S.Ct. 568, 382 U.S. 1002, 15 L.Ed.2d 492. Criminal Law 1189

In conspiracy prosecution, if evidence as to several diverse conspiracies was introduced, such diverse conspiracies radiating from one central figure, as the spokes from the hub of a wheel, such fact would be ground for reversing judgment of conviction for entering into one of the conspiracies. Leyvas v. U. S., C.A.9 (Cal.) 1958, 264 F.2d 272.

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Criminal Law 1169.11

In prosecution for conspiracy to deal in heroin and for sale of heroin, reference to fact that defendant had been arrested when his residence was being searched under warrant authorizing arrest of his son as suspect in robbery, was not basis for reversal, especially where prosecutor requested jury not to take into consideration the fact that defendant's son was wanted by police. U. S. v. Campisi, C.A.2 (N.Y.) 1957, 248 F.2d 102, certiorari denied 78 S.Ct. 266, 355 U.S. 892, 2 L.Ed.2d 191. Criminal Law 1169.5(3)

Where there was evidence, from which jury could reasonably conclude that internal revenue agents and accountant formed a single ring for purpose of fixing real or purported government claims based on defective income tax returns to defraud the United States and that conspiracy had a continuing character, conviction of one of the agents for conspiring to defraud the United States would not be reversed, on ground that proof showed not one conspiracy but a number of separate conspiracies to some of which such agent was not a party. U.S. v. Witt, C.A.2 (N.Y.) 1954, 215 F.2d 580, certiorari denied 75 S.Ct. 207, 348 U.S. 887, 99 L.Ed. 697. Criminal Law 1159.2(10)

Evidence being sufficient to sustain conviction under conspiracy count, and sentence imposed by trial court on all of the counts being less than the maximum amount that could have been imposed on conspiracy count alone, reversal could not be predicated upon lack of evidence to sustain finding of guilty on substantive counts pertaining to counterfeiting. U. S. v. Sferas, C.A.7 (Ill.) 1954, 210 F.2d 69, certiorari denied 74 S.Ct. 630, 347 U.S. 935, 98 L.Ed. 1086. Criminal Law 1177

Where bad faith of accused charged with using and conspiring to use the mails to defraud in connection with mythical estate was amply demonstrated by proper evidence but there was so much error on the record and so many instances of prejudicial matter being placed before jury over objection that accused had not been tried in accordance with substance and form of law, convictions were reversed. U. S. v. Sprengel, C.C.A.3 (Pa.) 1939, 103 F.2d 876. Criminal Law 1166.6

In prosecution for conspiracy to defraud United States by agreement to sell gold to mint by falsely concealing in required affidavit true origin of gold where government witness testified that defendant signed with fictitious names source slips required by California law for use in purchasing gold, exclusion of evidence showing custom permitted by state whereby persons other than actual producers signed source slips, offered to explain defendant's conduct, in signing other people's names to slips, was reversible error, especially where court improperly indicated that custom violated federal law. Hills v. U.S., C.C.A.9 (Cal.) 1938, 97 F.2d 710. Conspiracy 45

In prosecution for conspiracy to violate revenue laws relating to untax-paid distilled spirits, sole defendant, who failed to plead nolo contendere or not guilty to indictment, was not accorded fair trial, requiring reversal of his conviction in view of prejudicial atmosphere arising from proceedings in presence of jury relating to sentencing codefendants, after withdrawal of pleas of not guilty and substitution of pleas of guilty, unfair arguments of prosecuting attorney, and improper admission of evidence. Minker v. U S, C.C.A.3 (Pa.) 1936, 85 F.2d 425. Criminal Law 1186.1

Error, requiring reversal of conviction of one of two conspirators, carries reversal as to the other. Silk v. U. S., C.C.A.8 (Neb.) 1927, 19 F.2d 73. See, also, Morrow v. U.S., C.C.A.Mo.1926, 11 F.2d 256; Williams v. U.S., C.C.A.S.C.1922, 282 F. 481. Criminal Law 1186.1

1099. New trial, review

Where the making of speech by defendant congressman, charged with conspiracy to defraud the United States, was only a part of the conspiracy charged, government should not be precluded from a new trial on the count after all reference to motives and substance of defendant congressman's speech had been eliminated. U. S. v. Johnson, U.S.Md.1966, 86 S.Ct. 749, 383 U.S. 169, 15 L.Ed.2d 681. Criminal Law 1189

18 U.S.C.A. § 371

Where convictions under count charging conspiracy to defraud the United States by operation of a tax fixing ring might have rested on impermissible ground defendants were entitled to a new trial. Grunewald v. U.S., U.S.N.Y.1957, 77 S.Ct. 963, 353 U.S. 391, 1 L.Ed.2d 931. Criminal Law 1165(1)

Where error as to one defendant in a conspiracy prosecution requires that a new trial be granted him, the rights of his codefendants to a new trial depend upon whether that error prejudiced them. Glasser v. U.S., U.S.Ill.1942, 62 S.Ct. 457, 315 U.S. 60, 86 L.Ed. 680, rehearing denied 62 S.Ct. 629, 315 U.S. 827, 86 L.Ed. 1222, rehearing denied 62 S.Ct. 637, 315 U.S. 827, 86 L.Ed. 1222. Criminal Law 1189

In prosecution for conspiracy to defraud the United States, the denial of one defendant's right to have the effective assistance of counsel guaranteed by U.S.C.A.Const. Amend. 6 required that conviction be set aside and a new trial ordered as to that defendant, but that error did not require that convictions of codefendants be set aside and that new trials be ordered as to them in absence of a showing by codefendants that the denial of defendant's constitutional rights prejudiced them in some manner. Glasser v. U.S., U.S.Ill.1942, 62 S.Ct. 457, 315 U.S. 60, 86 L.Ed. 680, rehearing denied 62 S.Ct. 629, 315 U.S. 827, 86 L.Ed. 1222, rehearing denied 62 S.Ct. 637, 315 U.S. 827, 86 L.Ed. 1222. Criminal Law 1166.10(1); Criminal Law 1189

Where one defendant in his affidavit in support of motion for new trial alleging improper constitution of the jury offered to prove allegations contained therein but record was barren of any actual tender of proof on his part, and there was no indication that the court refused to entertain such an offer, if made, another defendant did not even make an offer of proof in his affidavit, and the third defendant did not file an affidavit, defendants' showing was insufficient to entitle them to a new trial. Glasser v. U.S., U.S.Ill.1942, 62 S.Ct. 457, 315 U.S. 60, 86 L.Ed. 680, rehearing denied 62 S.Ct. 629, 315 U.S. 827, 86 L.Ed. 1222, rehearing denied 62 S.Ct. 637, 315 U.S. 827, 86 L.Ed. 1222. Criminal Law 956(10)

New evidence that would have afforded defense counsel additional grounds upon which to impeach prosecution witnesses whose credibility already had been vigorously challenged, or to bolster defendant's own suspect credibility, allegedly discovered after defendant had been convicted of various substantive and conspiratorial crimes relating to his involvement in multi-million dollar Medicare fraud, did not warrant new trial. U.S. v. Canova, C.A.2 (Conn.) 2005, 412 F.3d 331. Criminal Law 942(1)

Defendant convicted of conspiring to illegally import parrots from Mexico was not entitled to new trial based on newly discovered evidence in form of telephone toll records of another person who had been linked to conspiracy, under theory that those records supported defense that smuggled parrots were intended for, and ultimately delivered to, that other person; those records did not contradict testimony that conspirators intended to and did deliver parrots to defendant, or second coconspirator's testimony that defendant continued to purchase baby parrots from him after she became aware that he was smuggling parrots, and, in any event, delivery to other person in question would not have ruled out delivery of birds to defendant. U.S. v. Freeman, C.A.5 (Tex.) 1996, 77 F.3d 812, rehearing and suggestion for rehearing en banc denied 84 F.3d 435. Criminal Law 945(1)

Evidence of irregular accounting methods in defendants' furniture store operation combined with presence and use of large amounts of cash by defendants established that evidence preponderated in favor of guilt rather than innocence on tax evasion in conspiracy to defraud Government charges, and thus, defendants were not entitled to new trial on ground that verdict was against weight of evidence. U.S. v. Ludwig, C.A.7 (Wis.) 1990, 897 F.2d 875. Criminal Law 935(1)

Defendant convicted of conspiracy to defraud United States was not entitled to new trial on basis that instructions on conspiracy count failed to distinguish between substantive felony offenses alleged and substantive misdemeanor offenses alleged where record failed to reveal anything that would have justified jury in finding defendant, who was sentenced in accordance with felony offense, guilty of conspiracy merely to commit misdemeanor. U. S. v. Vincent, C.A.5 (La.) 1981, 648 F.2d 1046. Criminal Law 922(2)

18 U.S.C.A. § 371

District court did not abuse its discretion in denying motion for new trial on basis of newly discovered evidence on charge of conspiring to knowingly and fraudulently transfer and conceal assets in contemplation of bankruptcy proceeding with intent to defeat bankruptcy law where there was sufficient evidence to establish defendants' participation in conspiracy even if prosecution witness recanted testimony regarding meeting where agreement to defraud creditors was allegedly originated. U. S. v. Ward, C.A.8 (Ark.) 1976, 544 F.2d 975. Criminal Law 945(1)

In prosecution for conspiring to manufacture and sell United States currency, improper reference by trial judge to "the tendency of human beings to lie when confronted with an accusation" did not warrant reversal in view of failure of defendants to object to such statement before trial court, even though, by making such statement, trial judge improperly interjected his own personal views of human nature into the charge. U. S. v. Araujo, C.A.2 (N.Y.) 1976, 539 F.2d 287, certiorari denied 97 S.Ct. 498, 429 U.S. 983, 50 L.Ed.2d 593. Criminal Law 1035(8.1)

In prosecution for conspiracy to violate the federal banking laws, letter from bank president to president's attorney, after bank closing, which contained statements in relation to loans which contradicted subsequent testimony of president, did not require new trial on grounds of newly discovered evidence as to first defendant, where it was not conclusively demonstrated that the new evidence would probably produce an acquittal since the letter was corroborative of essential aspect of Government's case, that being that defendant directed the transfer of funds out of escrow account, and where, in relation to second defendant, the material in the letter was only marginally relevant to charges against him. U. S. v. Running, C.A.8 (Iowa) 1974, 506 F.2d 1068. Criminal Law 945(1)

Where government's initial theory was that defendants had induced four women to travel to Saigon to work as dancers in nightclub and had then forced them to engage in prostitution and where government, during trial, changed its theory to one in which defendants merely arranged for the women who were willing to work as prostitutes to go to Saigon, and where defendants presented affidavits which set forth evidence which might have been sufficient to cause jury to accept defendants' version that there was no discussion between them and the women about working as prostitutes and that there was no forced prostitution in Saigon, defendants were entitled to have the evidence considered by trial court on motion for new trial. U. S. v. Zemater, C.A.7 (Ill.) 1974, 501 F.2d 540. Criminal Law 1181.5(3.1)

Where ambiguous testimony and unavailability of a full transcript made it impossible to determine whether independent evidence of a conspiracy existed, new trial was warranted. U. S. v. Rodrigues, C.A.3 (N.J.) 1974, 491 F.2d 663.

Where reversible error committed by trial judge with regard to instruction on counts charging illegal transportation of aliens had no effect on jury's verdict of guilty on the conspiracy count and the sentences received on transportation counts were less than the sentence on the conspiracy count and made to run concurrent with it, neither new trial nor rehearing on sentencing was necessary. U. S. v. Jacobo-Gil, C.A.9 (Cal.) 1973, 474 F.2d 1213 . Criminal Law 1177

Alleged errors in the admission of evidence, in prosecution for conspiracy to violate section 1341 of this title and substantive violations of such section, did not furnish basis for new trial. U. S. v. Wolfson, C.A.3 (Del.) 1972, 454 F.2d 60, certiorari denied 92 S.Ct. 1792, 406 U.S. 924, 32 L.Ed.2d 124. Criminal Law 921

Alleged failure of prosecutor to point out at trial instances in which testimony of accomplices differed from their grand jury statements was not a basis for requiring new trial, where defense counsel was well aware of contents of his own conversation with one of witnesses, and where grand jury testimony of each witness was given to defense counsel who were afforded adequate time for its perusal before engaging in cross-examination and in probing thoroughly all inconsistencies referred to. U. S. v. Hamilton, C.A.8 (Mo.) 1971, 452 F.2d 472, certiorari denied 92 S.Ct. 1796, 406 U.S. 925, 32 L.Ed.2d 126. Criminal Law 1189

Prosecutor's negligent nondisclosure of existence of indictment against major prosecution witness did not entitle defendants convicted of mail fraud and conspiracy to a new trial, where witness' trial testimony dealt only with manner that defendants acquired credit card, and central issue raised by defense was whether defendants used the card in good faith. U. S. v. Bonanno, C.A.2 (N.Y.) 1970, 430 F.2d 1060, certiorari denied 91 S.Ct. 366, 400 U.S. 964, 27 L.Ed.2d 384. Criminal Law 919(1)

Record supported conclusion of trial court that, despite asserted new evidence offered by defendants as basis for new trial, witness had not lied at trial. U. S. v. Tourine, C.A.2 (N.Y.) 1970, 428 F.2d 865, certiorari denied 91 S.Ct. 581, 400 U.S. 1020, 27 L.Ed.2d 631, rehearing denied 91 S.Ct. 968, 401 U.S. 966, 28 L.Ed.2d 249. Criminal Law 942(1)

Newspaper article, which referred to defendant, in prosecution for transporting forged check in interstate commerce and for conspiracy to commit such offense, as "reputed crime syndicate loan shark" and which stated that another person had been named in indictment and that such person was slain in gangland fashion, did not contain remarks of such grave and inherently prejudicial nature, as to raise such doubts as to accuracy of jurors' statements that no prejudice had been instilled by article as to call for new trial. U. S. v. Solomon, C.A.7 (Ill.) 1970, 422 F.2d 1110, certiorari denied 90 S.Ct. 2201, 399 U.S. 911, 26 L.Ed.2d 565, rehearing denied 91 S.Ct. 26, 400 U.S. 855, 27 L.Ed.2d 93. Criminal Law 957(1)

District judge who presided at defendant's trial for conspiring to print counterfeit United States currency and who listened to and observed witnesses who testified, including author of two letters written after conviction the first of which stated that defendant did not print the counterfeit money, as witness had testified during trial, and second of which repudiated first letter, did not abuse his discretion in denying motion for new trial. U. S. v. Hersh, C.A.5 (Tex.) 1969, 415 F.2d 835. Criminal Law 911

Where rights of defendants were prejudiced by all defendants being tried together when two conspiracies were proved instead of the one charged, all defendants were required to be retried since the overwhelming guilt as to some might have unduly influenced the jury as to others who were less involved and it would be prejudicial to the parties to remand the cause for a single trial of multiple conspiracies, but rather on remand there should be two separate trials. U. S. v. Varelli, C.A.7 (Ill.) 1969, 407 F.2d 735. Criminal Law 1189; Criminal Law 1192

Denial of one defendant's motions to reopen his case and for new trial on ground of purported newly discovered evidence, largely showing that defendant could not have been present at places where alleged coconspirator had testified they had met, was not improper, where it was not until three weeks after coconspirator completed testifying that defendant made his claim, defendant in testifying had not stated that it had been geographically impossible for him to have been present where coconspirator had placed him, and there was no satisfactory showing why documentary proof could not have been brought to court's attention during the trial by exercise of due diligence. U. S. v. Edwards, C.A.2 (N.Y.) 1966, 366 F.2d 853, certiorari denied 87 S.Ct. 852, 386 U.S. 908, 17 L.Ed.2d 782, certiorari denied 87 S.Ct. 882, 386 U.S. 919, 17 L.Ed.2d 790. Criminal Law 938(1)

Where claim of termination of association of parties including defendant convicted of conspiracy to conceal assets in contemplation of bankruptcy was made during counsel's opening statements to jury and was sought to be shown on first motion for new trial, it did not warrant consideration on second motion for new trial as newly discovered evidence. Strauss v. U. S., C.A.5 (Fla.) 1966, 363 F.2d 366, certiorari denied 87 S.Ct. 602, 385 U.S. 989, 17 L.Ed.2d 450. Criminal Law 938(2)

Prosecution's reference in summation to availability of unused evidence regarding associates of one of the defendants, who had made self-incriminatory statement to grand jury which had been admitted to evidence against him only with names of the other defendants deleted, constituted reversible error entitling the three other defendants to a new trial on charge of conspiracy and substantive offense of transporting stolen cigarettes in interstate commerce. Kitchell v. U. S., C.A.1 (Mass.) 1966, 354 F.2d 715, certiorari denied 86 S.Ct. 1970, 384

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U.S. 1011, 16 L.Ed.2d 1032. Criminal Law 719(1); Criminal Law 1171.3

In face of overwhelming proof of defendants' guilt of possession and transfers of counterfeit money and conspiracies to do the same no prejudicial error resulted because trial judge did not interview jurors singly regarding newspaper articles relating to a tape recording, and did not justify new trial. U. S. v. Largo, C.A.7 (Ill.) 1965, 346 F.2d 253, certiorari denied 86 S.Ct. 240, 382 U.S. 904, 15 L.Ed.2d 157. Criminal Law 1174(1)

In reversing convictions which were improper under principle of collateral estoppel because of previous acquittal of substantive offenses arising out of post office burglaries, court of appeals would direct judgment of acquittal as to counts charging conspiracy to break and enter where evidence to prove such conspiracy, if believed, would show contrary to former acquittal that defendant was a principal guiding force; but as to counts charging receiving stolen goods and conspiracy to receive, new trial would be ordered, with government prohibited from offering evidence that defendant participated in burglaries directly or as aider or abetter. U.S. v. Kramer, C.A.2 (N.Y.) 1961, 289 F.2d 909. Criminal Law 1187; Criminal Law 1189

In prosecution of defendant, an executor of estate, for willfully attempting to evade part of estate tax due and for submitting false and fraudulent documents to Secretary of State as well as conspiracy to commit substantive crimes, dismissal of conspiracy indictment at close of government's case did not require new trial on substantive charges on ground that testimony introduced with reference to conspiracy allegedly prejudiced the rest of the case, where fact to which testimony related was generally supported by other clearly competent evidence. U.S. v. Alker, C.A.3 (Pa.) 1958, 255 F.2d 851, certiorari denied 79 S.Ct. 27, 358 U.S. 817, 3 L.Ed.2d 59. Criminal Law 913(1)

In prosecution for conspiracy and for violating Alcohol Tax Laws, corporate defendant could not successfully urge as ground for new trial allegedly newly discovered evidence that before events involved its charter had been declared forfeited for nonpayment of state taxes. U S v. Indian Hill Farm, Inc, C.A.2 (N.Y.) 1958, 255 F.2d 282. Criminal Law 938(3)

Where although judgment of acquittal was required to be entered as against two defendants charged with conspiracy to violate the Smith Act, § 2385 of this title, it was not clear that government must fail in effort to cast a prima facie case against remaining defendants charged with same conspiracy, and although such remaining defendants urged that they should be acquitted they also asked alternatively for a new trial, a new trial would be ordered as against such remaining defendants. U. S. v. Kuzma, C.A.3 (Pa.) 1957, 249 F.2d 619. Criminal Law 1189

In prosecution for conspiring to defraud United States, fact that two of jurors had been members of a Republican club in years immediately preceding trial of defendants, who held political office during Democratic Administration, was not a basis for a new trial. Connelly v. U.S., C.A.8 (Mo.) 1957, 249 F.2d 576, certiorari denied 78 S.Ct. 700, 356 U.S. 921, 2 L.Ed.2d 716, rehearing denied 78 S.Ct. 991, 356 U.S. 964, 2 L.Ed.2d 1072, certiorari denied 78 S.Ct. 701, 356 U.S. 921, 2 L.Ed.2d 716. Criminal Law 918(3)

An application to Court of Appeals for order granting new trial of prosecution for conspiracy to export gold bullion on alleged ground of newly discovered evidence directed to testimony of government witness that no promises had been made to witness by anyone connected with government but if witness co-operated and testified against accused a suspended sentence would be recommended as to witness would be denied, in view of government's affidavits. United States v. Brecher, C.A.2 (N.Y.) 1957, 242 F.2d 642. Criminal Law 958(6)

In prosecution for conspiring to teach and advocate overthrow of United States government by force and violence, action of trial court in denying defendants' motion for new trial because of publicity that testimony of one of state's witnesses received in area of trial as to his testimony before Senate Permanent Sub-Committee on Investigations, was not erroneous, where each of jurors was questioned individually and alone by court about his knowledge of

incidents and where after inquiry, during which each juror was put under oath, court concluded that jurors had not been influenced by such publicity. U. S. v. Mesarosh, C.A.3 (Pa.) 1955, 223 F.2d 449, certiorari granted 76 S.Ct. 218, 350 U.S. 922, 100 L.Ed. 807, reversed on other grounds 77 S.Ct. 1, 352 U.S. 1, 1 L.Ed.2d 1. Criminal Law 925.5(1)

In trial of two attorneys and others for conspiracy to obstruct due administration of justice, government counsel's questions, not based on any matter in record, on cross-examination of one of such attorneys for purpose of leaving jury with impression that such defendant was linked to county political leader in vast criminal scheme were improper and ground for new trial after his conviction. U.S. v. Perlstein, C.C.A.3 (N.J.) 1941, 120 F.2d 276. Criminal Law 706(5); Criminal Law 1170.5(5)

On a trial for mail fraud and conspiracy in connection with a sale of stock, the insistent efforts of the trial court to connect defendants with the books and literature of the corporation, its frequent and unnecessary interruptions of both direct and cross-examinations that were being competently conducted, and its lengthy and inquisitorial cross-examination of defendants, including those who appealed, conveying to the jury, though inadvertently, the impression that the court was insisting upon a conviction, require a new trial where there is a substantial conflict in the evidence. Williams v. U.S., C.C.A.9 (Cal.) 1937, 93 F.2d 685. Criminal Law 918(5)

Where, after conviction for selling cocaine and for conspiracy in violation of Harrison Act, § 2550 et seq. of Title 26, one of joint defendants recanted as to testimony tending to connect another with crime, his recantation might be a ground for a new trial of the defendant affected by that testimony. Harrison v. U.S., C.C.A.2 (N.Y.) 1925, 7 F.2d 259.

The granting of the prayer of a petition of defendants in a prosecution under former § 88 of this title [now this section] for the appointment of a commissioner to take newly discovered evidence in support of motion for new trial, was within the discretion of the court, and its refusal to grant such petition did not constitute error where it appeared that the court had not abused its discretion. Nee v. U S, C.C.A.3 (Pa.) 1920, 267 F. 84.

Where only two persons are indicted for conspiracy and the crime is in every sense indivisible, its essence is the mental confederation not of any two of numerous persons, but of the two particular defendants, and if after conviction of both a new trial is granted, to one of them, it must also be granted to the other. Feder v. U.S., C.C.A.2 (N.Y.) 1919, 257 F. 694, 168 C.C.A. 644.

Where a verdict of guilty was rendered in a trial for conspiracy to defraud the United States of duty on imported merchandise against a member of a firm that was implicated in the conspiracy, the verdict was contrary to the evidence, and a new trial should be granted. U.S. v. Cohn, C.C.S.D.N.Y.1904, 128 F. 615, affirmed 145 F. 1, 76 C.C.A. 31, certiorari denied 26 S.Ct. 755, 200 U.S. 618, 50 L.Ed. 623.

Where parties have been indicted for conspiracy, tried together and found guilty the grant of a new trial to one of the accused does not require that a new trial should be granted to any co-conspirator. U.S. v. Cohn, C.C.S.D.N.Y.1904, 128 F. 615, affirmed 145 F. 1, 76 C.C.A. 31, certiorari denied 26 S.Ct. 755, 200 U.S. 618, 50 L.Ed. 623. Conspiracy 49

Jury's question, whether it had to be shown that defendant knew money she had delivered to undercover agent posing as hit man was part of scheme to kill witness in co-conspirator's criminal trial, did not indicate that jury misunderstood instructions, and therefore new trial was not warranted; question could indicate that jury was properly focussed on central issue of defendant's knowledge, and trial court referred jury to relevant conspiracy instructions. U.S. v. Saffold, D.Kan.1996, 915 F.Supp. 260. Criminal Law 928

Gun dealership's convictions for conspiracy to defraud government and mail fraud in connection with dealership's knowing participation in scheme to circumvent Treasury regulation banning importation of assault rifles was not

miscarriage of justice warranting new trial, even though dealership's agent was acquitted; there was evidence that dealership was party to all transactions involving 70 assault rifles, and court would not speculate as to meaning of jury's acquittal of agent so as to support grant of new trial. U.S. v. McCabe, C.D.Ill.1992, 792 F.Supp. 616. Criminal Law 913(1); Criminal Law 933

New trial in prosecution for conspiracy to violate this section and sections 1341 and 2314 of this title, was not required on grounds of prejudicial publicity. U. S. v. Sinclair, D.C.Del.1977, 433 F.Supp. 1180.

Where essence of Government's charge was that movant, as "banker" of policy operation, caused messenger, by means of threats against him and father-in-law, to travel to Puerto Rico to return proceeds of his theft of funds from the operation, movant was not entitled to new trial on ground of newly discovered evidence that messenger and his father-in-law had committed perjury when they said that they had not cheated the operation of the funds, inasmuch as there was no showing that introduction of such testimony at trial would have produced a different verdict. U. S. v. Marquez, S.D.N.Y.1973, 363 F.Supp. 802, affirmed 489 F.2d 753, affirmed 490 F.2d 1383, certiorari denied 95 S.Ct. 44, 419 U.S. 826, 42 L.Ed.2d 50. Criminal Law 938(1)

Documents allegedly showing that there was meeting between defendants between time when government witness testified defendants met and time codefendant alleged first meeting took place did not tend to furnish evidence of defendant's innocence of conspiring to receive kickback and of agreeing to receive improper payment in connection with pension fund loan, were not such as would probably produce acquittal, and thus were not basis for granting new trial. U. S. v. Wenger, S.D.N.Y.1970, 320 F.Supp. 1269. Criminal Law 945(1)

Admittedly incidental and inadvertent remark of one defendant (testifying on his own behalf in a joint trial of defendants charged with conspiracy and counterfeiting), disclosing his acquaintance in prison with one of the other defendants who did not testify, did not, when reviewed against totality of evidence, require that latter defendant be granted a new trial. U. S. v. Beatty, D.C.Md.1968, 282 F.Supp. 202. Criminal Law 921

Defendant charged with conspiracy to knowingly transport in interstate commerce, with fraudulent intent, counterfeit securities was not entitled to new trial on basis that newspaper accounts of trial proceedings prejudicially prevented a fair trial in view of court's interrogation of each jury member as to alleged prejudicial effect of newspaper reportings. U. S. v. Natale, D.C.N.J.1966, 250 F.Supp. 381. Criminal Law 925.5(4)

Trial for conspiracy and illegal sale of narcotics was unfair because of absence of special employee of government, who defendants claimed induced them to make illegal sales to government agents, particularly where sole defense was entrapment, and failure of government to produce former employee at trial or show that reasonable efforts to do so were fruitless entitled defendants to new trial. U. S. v. Clarke, E.D.Pa.1963, 220 F.Supp. 905. Criminal Law 918(2)

Codefendants convicted of conspiracy were not entitled to new trial because of court's refusal to permit them to open up the case as to transactions not involved in indictment, where codefendants joined with other defendants in asking court to limit the government in its proof to transactions stated in indictment. U.S. v. Thomas, E.D.Wash.1943, 52 F.Supp. 571. Criminal Law 921

Defendants, convicted of conspiracy to defraud the United States by making false documents to secure insurance under modernization of homes provisions of National Housing Act, § 1701 et seq. of Title 12, were not entitled to new trial on theory that because some of defendants' salesmen were acquitted statements made on applications filled out as result of salesmen's efforts were accurate, where many statements were false on their face, salesmen were only charged with conspiracy and not with violating substantive provisions of said sections, and a jury need not be consistent in its verdicts. U.S. v. Thomas, E.D.Wash.1943, 52 F.Supp. 571. Criminal Law 933

In appeal of conviction for conspiracy to commit wire fraud and interstate wire fraud, based on a fraudulent loan,

new trial was not warranted where alleged newly discovered evidence did not establish that one witness's trial testimony was perjurious or material to the elements of the offense of conviction; sufficient independent evidence, in form of testimony of a number of witnesses, clearly proved fraudulent transaction, and alleged new evidence related to another transaction over three months later. U.S. v. Bui, C.A.2 (Conn.) 2003, 70 Fed.Appx. 14, 2003 WL 21461916, Unreported. Criminal Law 945(2)

1100. Remand, review

Where case was subject to remand for error in denial of application for production of a transcript of evidence, defendant's objection to three year sentence on conspiracy count would be sustained without discussion. Edwards v. U.S., U.S.Okla.1941, 61 S.Ct. 669, 312 U.S. 473, 85 L.Ed. 957. Conspiracy 51

Remand for resentencing was warranted in prosecution for conspiracy to defraud the Internal Revenue Service (IRS) and aiding and assisting the filing of false or fraudulent tax returns, in light of *Booker* decision affecting use of sentencing guidelines, which guidelines the district court had regarded as mandatory. U.S. v. Crockett, C.A.10 (Utah) 2006, 435 F.3d 1305. Criminal Law 1181.5(8)

Where writs of certiorari were granted limited to issue of whether petitioners had been improperly convicted of substantive offenses committed by members of conspiracy before petitioners had joined conspiracy or after they had withdrawn from it, on remand Court of Appeals' scope of review was narrowed to this issue and the defendants were not entitled to a re-review of alleged errors presented to and decided by Court of Appeals on the appeal or to assert for the first time other errors which were not within purview of mandate of Supreme Court. Gradsky v. U.S., C.A.5 (Fla.) 1967, 376 F.2d 993, certiorari denied 88 S.Ct. 224, 389 U.S. 908, 19 L.Ed.2d 224, rehearing denied 88 S.Ct. 488, 389 U.S. 998, 19 L.Ed.2d 505. Criminal Law 1192

Visa fraud defendant's Sixth Amendment challenge to his sentence, which district court imposed prior to United States Supreme Court decision in *United States v. Booker* and Second Circuit's decision in *United States v. Crosby*, on ground that sentence was based on facts not proved beyond reasonable doubt to jury, warranted remand for further proceedings in conformity with *Crosby*. U.S. v. Konstantakakos, C.A.2 (N.Y.) 2005, 121 Fed.Appx. 902, 2005 WL 348376, Unreported. Criminal Law 1181.5(8)

1101. Habeas corpus, review

The sufficiency of an indictment charging a conspiracy under former § 88 of this title [now this section], "to defraud the United States out of the possession and use of, and the title, to divers large tracts of public lands of the United States," as against objections based on the lack of description of the lands, the uncertainty of the allegations as to the means to be used to carry out the alleged conspiracy, the failure to give the names of the fictitious or disqualified persons through whom the fraud was effected, the indefiniteness and inconsistency of the allegations, and the improper conclusion, would not have been determined on habeas corpus to inquire into a detention to await a warrant for the removal of the accused, under former § 591 of this title, to the federal district, where the trial was to have been had, but such objections were for the trial court to determine. Hyde v. Shine, U.S.Cal.1905, 25 S.Ct. 760, 199 U.S. 62, 50 L.Ed. 90. See, also, Dimond v. Shine, Cal.1905, 25 S.Ct. 766, 199 U.S. 88, 50 L.Ed. 99. Habeas Corpus 474

Where indictment in four counts charged the same bank robbery by force and violence and with use of deadly weapon jeopardizing lives of three separate persons, and also charged conspiracy to commit bank robbery, the first four counts charged but a single offense of bank robbery with deadly weapon endangering human life, and defendant who had served punishment imposed on one of the counts charging the aggravated offense and that imposed for conspiracy was entitled to release on habeas corpus as sentence served covered all of the counts of the indictment. Dimenza v. Johnston, C.C.A.9 (Cal.) 1942, 131 F.2d 47. Habeas Corpus 507

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Petitioner, who sought habeas corpus relief after adverse decision of National Appellate Board with regard to his eligibility for parole, had to bear responsibility, both under criminal law and before board of parole, for actions of his confederates in furtherance of their conspiracy to commit armed robbery by use of dangerous weapon, of which he was convicted. McArthur v. U. S. Bd. of Parole, S.D.Ind.1976, 434 F.Supp. 163, affirmed 559 F.2d 1226. Habeas Corpus 516.1

Record in proceeding on motion to vacate sentence imposed on conviction of aiding and abetting robbery of bank and of conspiracy to rob bank did not support contention that defendant had received ineffective assistance of counsel. Calvert v. U. S., W.D.Ky.1971, 323 F.Supp. 112. Criminal Law 1618(10)

In habeas corpus proceeding for petitioner's release from imprisonment under sentence on his conviction of conspiracy to violate narcotics laws, proceedings in his previous prosecution for unlawfully transferring marihuana and judgment entered and prison sentence imposed on his conviction thereof are presumed to be regular and valid so that petitioner, being lawfully in prison under such sentence, is not entitled to discharge from confinement under subsequent sentence and may not secure judicial determination of validity of previous conviction and sentence. Wilkins v. Kearney, E.D.Tex.1956, 142 F.Supp. 567. Habeas Corpus 229; Habeas Corpus 770

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