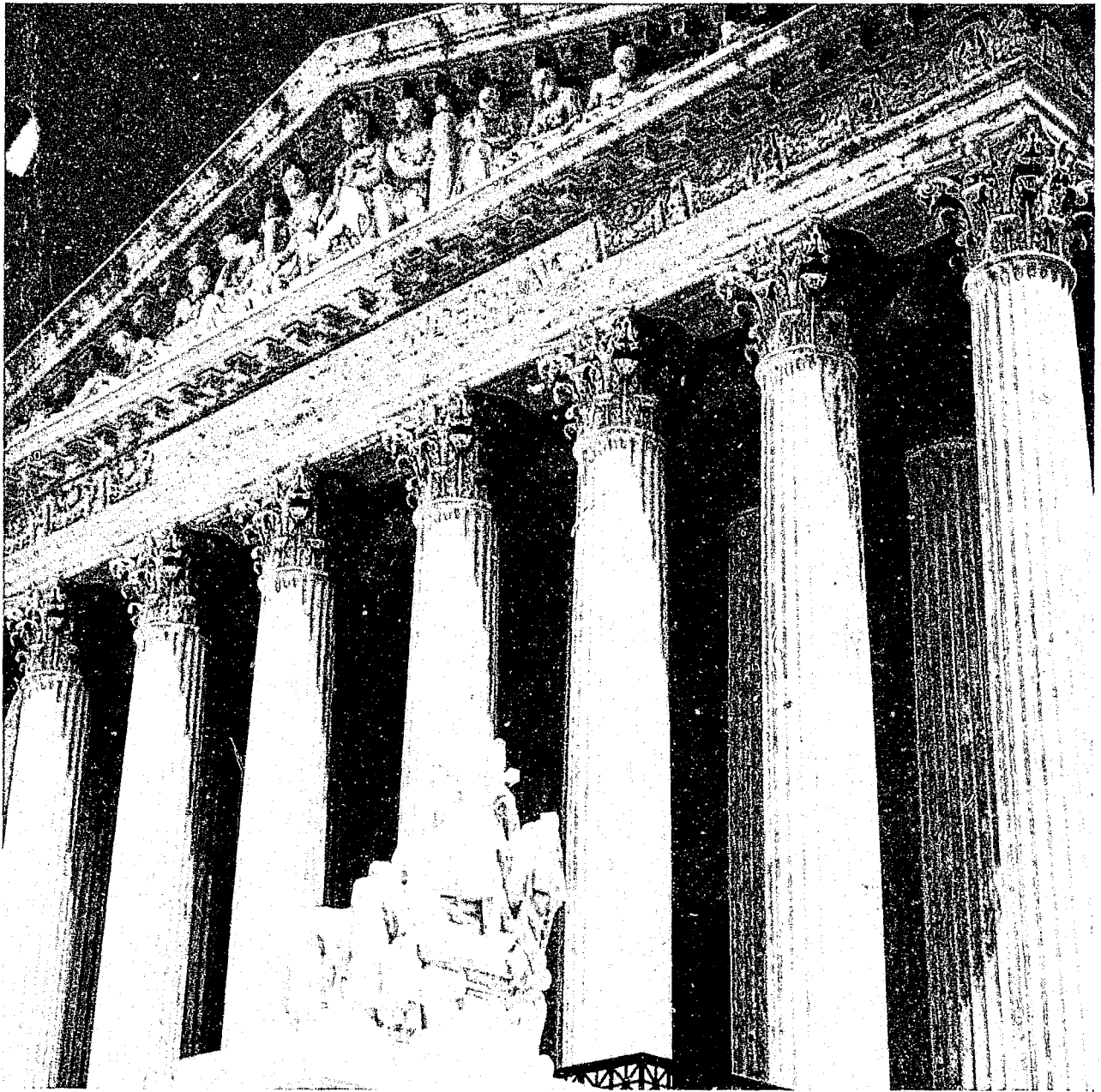




17-137-197



October 1994
Volume 63
Number 10

United States
Department of Justice
Federal Bureau of
Investigation
Washington, DC 20535

Louis J. Freeh
Director

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The Attorney General has determined that the publication of this periodical is necessary in the transaction of the public business required by law. Use of funds for printing this periodical has been approved by the Director of the Office of Management and Budget.

The *FBI Law Enforcement Bulletin* (ISSN-0014-5688) is published monthly by the Federal Bureau of Investigation, 10th and Pennsylvania Avenue, N.W., Washington, D.C. 20535. Second-Class postage paid at Washington, D.C., and additional mailing offices. Postmaster: Send address changes to *FBI Law Enforcement Bulletin*, Federal Bureau of Investigation, FBI Academy, Quantico, VA 22135.

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Drug Conspiracy Cases

By
GREGORY D. LEE, M.P.A.

The message is clear. Government agencies, including those charged with public safety, must learn to do more with less. Police managers face the challenge of stretching already-strained budgets even further. Even drug enforcement units that receive asset forfeiture funds have adopted trimmer budgets. This pattern seems unlikely to change.

Drug conspiracy cases may be just the answer for budget-conscious agencies. These investigations produce the same results as more traditional ones, yet do so more quickly while using fewer resources. This article provides guidance to law enforcement administrators seeking to take advantage of the benefits of drug conspiracy cases.

BACKGROUND

Traditionally, law enforcement agencies attempt to arrest drug offenders for distribution. This often entails cultivating an informant, who introduces an undercover officer to a drug dealer. The officer makes several controlled purchases and then orders a larger amount of drugs, hoping to seize as much contraband as possible. Sometimes, this method proves successful; often, it does not.

Conventional drug cases require an inordinate amount of time, personnel, and above all, money when attempting to secure a conviction for distribution. These cases go



far beyond what is necessary to convict a suspect for the often-overlooked crime of conspiracy, which is simply an *agreement* between two or more people to commit a crime.¹

Drug conspiracy constitutes a separate and distinct offense and does not depend on whether the

subjects accomplished the conspiracy's objective—selling drugs. Accordingly, drug investigations that concentrate on the simple elements of proof for conspiracy can achieve many of the same results as more complex investigations but with less cost and effort.

COORDINATING DRUG CONSPIRACY CASES

Although charging defendants with conspiracy can simplify most cases, some investigations require extraordinary means to achieve the desired results. Yet, even these investigations can be streamlined if the police and the prosecutor come to a mutual understanding before they are undertaken.

Prosecutors need to know that budget cuts are changing the way law enforcement conducts drug investigations. Investigators should call for strategy meetings with prosecutors to determine the scope of the investigation, the evidence available, the means of collection, and anticipated legal ramifications and defense tactics. Together, investigators and prosecutors can formulate a plan of attack.

Because prosecutors know the local legal community, they can determine if judges will be receptive to conspiracy trials that lack drug

evidence and if the district attorney or State prosecutor will present such a case to a grand jury. Law enforcement officers must consider these factors before initiating drug conspiracy investigations.

THE INVESTIGATIVE PROCESS

The investigator's job is to produce witnesses and evidence to support the theory that a conspiracy existed. Evidence may consist of simple documents, such as car rental agreements, hotel receipts, and phone bills. These seemingly innocent transactions take on a different appearance when witnesses testify that the defendant used the hotel room to discuss privately the details of an upcoming drug deal; that phone records revealed the defendant called known drug dealers from this room; that the defendant, using a fictitious name, paid the bill in cash; and that scientific evidence positively identified the

handwriting and fingerprints on the registration card as those of the defendant.

All of these factors further corroborate any informant testimony that may exist. The jury can then decide for itself why an "innocent" person would pay cash to rent a hotel room using a fictitious name and then meet with and call drug dealers from that room. Although much of the evidence by itself has no meaning, the totality of the evidence will help to secure the conviction.

Some States require that an overt act take place before the crime of conspiracy is consummated. An overt act is anything that furthers the goal of the conspiracy—for example, a meeting or a car rental. The act need not be criminal in nature or known by all the participants. Simply stated, the overt act shows sincerity and intent by the members of the conspiracy. The greater the number of overt acts uncovered, the easier it is for the jury to conclude that the defendants actually intended to commit the crime.

Undercover Operatives

Drug investigations frequently employ undercover officers or informants to infiltrate criminal organizations. The same technique applies to drug conspiracy investigations. Undercover officers become expert witnesses who can testify about the events they see or hear.

Informants also can testify about their observations. However, because the courts and the public view them as inherently unreliable, their information should be corroborated. For example, if an informant



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...a defendant's admission to engaging in the drug trade...is sufficient to sustain a conviction for conspiracy....
”

claims to have attended a meeting at a hotel on a certain date, investigators should verify the information through hotel registration records. Hotel employees may corroborate further the informant's testimony and may be able to identify the defendants by viewing a "photo line-up."

Technical Listening Equipment

The questions that the officer or informant asks a defendant during recorded conversations² can reveal the truth about a defendant's intent to commit the crime that was the objective of the conspiracy. A skillful undercover officer can elicit responses to the same questions jurors may have during a trial.

For example, a defendant may admit to the undercover officer to having sold drugs "hundreds" of times or may boast of an ability to obtain "any" drug in "any amount." Then, when the officer expresses doubt, a defendant sometimes will doubt about past drug sales and other crimes.

Such a tape provides evidence that is hard to dispute. In addition, a defendant's admission to engaging in the drug trade with others is sufficient to sustain a conviction for conspiracy,³ even if the co-conspirators are never identified or indicted.⁴ Yet, even if the defendant makes no confession, the recording alone satisfies the elements of proof for conspiracy, because the defendant committed an overt act *simply by meeting with the undercover officer.*

Other Investigative Techniques

Mail covers can accelerate and bolster the investigation by quickly

providing numerous investigative leads. The chief postal inspector in local jurisdictions can provide specific instructions on how to obtain the return addresses of all first-class mail delivered to the suspect(s) for a particular time period. Mail covers do not require a court order; they can be accomplished through a simple letter from the agency head to the chief postal inspector outlining the basic facts of the investigation.

Trash runs provide an easy way of determining long-distance toll carriers, bank affiliations, telephone tolls, and travel itineraries. Evidence of crimes may surface when such items as pay-and-owe sheets, packaging materials, and other drug paraphernalia are found.⁵



"Drug conspiracy constitutes a separate and distinct offense and does not depend on whether the subjects accomplished the conspiracy's objective—selling drugs."

HISTORICAL DRUG CONSPIRACY CASES

Historical drug conspiracy cases are classic "no dope" conspiracy cases that are initiated when an informant—whether motivated by revenge, greed, fear of prosecution, or some other reason—admits to participating in a *past* drug transaction.⁶ As a result, these cases do not require, and seldom provide, the opportunity to seize drug evidence or to use undercover officers. They may, however, result in the arrest of a notorious drug trafficker.

Historical drug conspiracy cases require the same techniques used to investigate any other crime. However, the investigation must prove only that an agreement to violate

the law existed between two or more persons.⁷

Although the probable cause required to obtain search warrants to seize drug evidence probably will not exist in historical drug conspiracy cases, warrants for documents can be readily justified. Drug traffickers usually maintain meticulous records, which chronicle past drug transactions and can identify other members of the conspiracy. If drugs are found during the execution of a document search warrant, so much the better. In fact, historical drug conspiracy cases frequently locate proceeds of drug transactions that are subject to seizure.

BENEFITS OF DRUG CONSPIRACY CASES

Cost Efficiency

Some traditional drug enforcement operations take months to complete. In contrast, investigators can satisfy the elements of proof for drug conspiracy early.

Making controlled purchases from the same defendant eventually can reach the point of diminishing returns. Drug enforcement budgets deplete rapidly when prosecutors, seeking to establish the most compelling case possible to secure a conviction, demand that several buys be made in order to thwart possible entrapment claims by the defendant. Thus, a department's entire "buy money" allocation could be exhausted on just one investigation. Further, the jury may interpret additional buys as agency attempts to penalize the defendant with more prison time.

Simplicity

Prosecutors risk losing cases that are too complicated for the jury to understand. The sheer magnitude of a trial can cause a jury to lose sight of even simple elements. During the course of a long, complicated drug trial, the defense has ample opportunity to portray the defendant as the victim of an intrusive, overzealous government. Conspiracy cases avoid these problems because the jury needs only to realize that the defendants agreed to commit a crime.

“
Conventional drug cases...go far beyond what is necessary to convict a suspect for the often-overlooked crime of conspiracy....
”

Crime Prevention

Drug conspiracy cases also are a form of crime prevention. To identify and arrest defendants *before* they sell drugs in the community is a noble goal, one that appeals to any jury.

In addition, in many jurisdictions, the penalty for conspiracy to commit a crime is the same as the penalty for the substantive crime the defendants conspired to commit. For example, since 1987, Federal law mandates the same punishment in Federal cases.⁸ Drug conspiracy laws, coupled with mandatory minimum sentences, are

powerful crime prevention tools for drug enforcement.

Further, conspiracy cases give prosecutors added leverage during plea bargaining, because all members of a conspiracy can be charged with crimes committed by any one member. However, the crime must have been a foreseeable consequence, and in furtherance, of the conspiracy.⁹

For example, if one subject steals a boat to transport a drug shipment into the country, everyone in the group can be charged with that crime, if they were members at the time of the theft. However, if the subject stops at a liquor store and steals a six-pack of beer on the way home from stealing the boat, the others cannot be charged with that theft; it was not committed in furtherance of the conspiracy. In addition, murders often occur in the course of drug transactions. Therefore, the courts consider them foreseeable consequences of conspiracies, and prosecutors can charge each member of the group with murder.

Exception to the Hearsay Rule of Evidence

An added benefit to conspiracy prosecutions is the exception to the hearsay rule of evidence. Because conspiracies are secretive by nature, the rules of evidence allow a defendant or an informant to testify about the words, deeds, and actions of others, even if they did not actually witness them. In other words, evidence that an informant heard the defendants say they were going to obtain and sell 100 kilograms of cocaine would be admissible in a conspiracy case.

In contrast, if defendants are charged with aiding or abetting, the hearsay rule attaches, and such evidence would not be admissible. Therefore, prosecutors can help their cases by prosecuting defendants for conspiracy.

Asset Forfeiture

Asset forfeiture laws apply to drug conspiracy cases just as they do for any other drug law violation. Many civil seizure laws do not require that defendants be convicted of a substantive drug crime in order to make their property subject to seizure.

Although asset forfeiture funds can supplement lean budgets, law enforcement agencies must resist the temptation to target drug traffickers based solely upon their assets. The suspect who poses the biggest threat to the community may own little property. The focus of any drug investigation should be people, drugs, and assets, in that order. With people as the primary focus of the investigation, drugs and assets invariably will follow.

CONCLUSION

Conspiracy investigations are not designed to take the place of aggressive, long-term, multijurisdictional cases that have the promise of large drug seizures. However, they often can achieve the same results as more traditional drug cases. People, drugs, and assets can be identified and located using fewer departmental resources. In short, conspiracy cases provide an innovative way to extend existing budgets while eliminating entire drug organizations. ♦

Advantages of Drug Conspiracy Cases

- 1) Eliminate the need to purchase drug evidence
- 2) Serve as sources of asset forfeiture funds
- 3) Reduce undercover and surveillance expenses in most cases
- 4) Help to dismantle entire criminal organizations
- 5) Allow for indictment of conspirators for crimes committed by co-conspirators throughout the life of the conspiracy
- 6) Permit evidence against one defendant to be used against all defendants
- 7) Permit more than one trial to be held on the same conspiracy
- 8) Provide an exception to the hearsay rule of evidence
- 9) Enable prosecution and conviction without drug evidence
- 10) Apply the same penalties for conspiracy and the actual crime in many jurisdictions.

Endnotes

¹ The Wharton Rule may preclude a conspiracy charge when there is only *one* buyer and *one* seller agreeing to violate the law. See *Iannelli v. United States*, 420 U.S. 770 (1975).

² Conversations recorded with the consent of at least one involved party do not require a warrant. However, because consensual eavesdropping rules vary, officers should consult with their State's attorney's office before using this technique.

³ *United States v. Figueroa*, 720 F.2d 1239 (1983).

⁴ *United States v. Goodwin*, 492 F.2d 1141 (1974).

⁵ Under Federal law, individuals have no expectation of privacy in trash set at the edge of curtilage for pickup. See *California v. Greenwood*, 108 S.Ct. 1625 (1988). However, officers should check with their local prosecutors to determine the law in their jurisdictions.

⁶ Historical conspiracy cases are subject to statutes of limitations.

⁷ *Supra* note 1.

⁸ U.S. Sentencing Commission, *Guidelines Manual*, Sec. 2D1.4 (a) (Nov. 1991).

⁹ *Pinkerton v. United States*, 328 U.S. 640, 66 S.Ct. 1180, 90 L.Ed. 1489 (1946). See also *United States v. Gutierrez*, 978 F.2d 1463 (7th Cir. 1992).