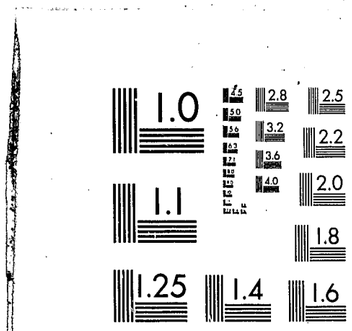

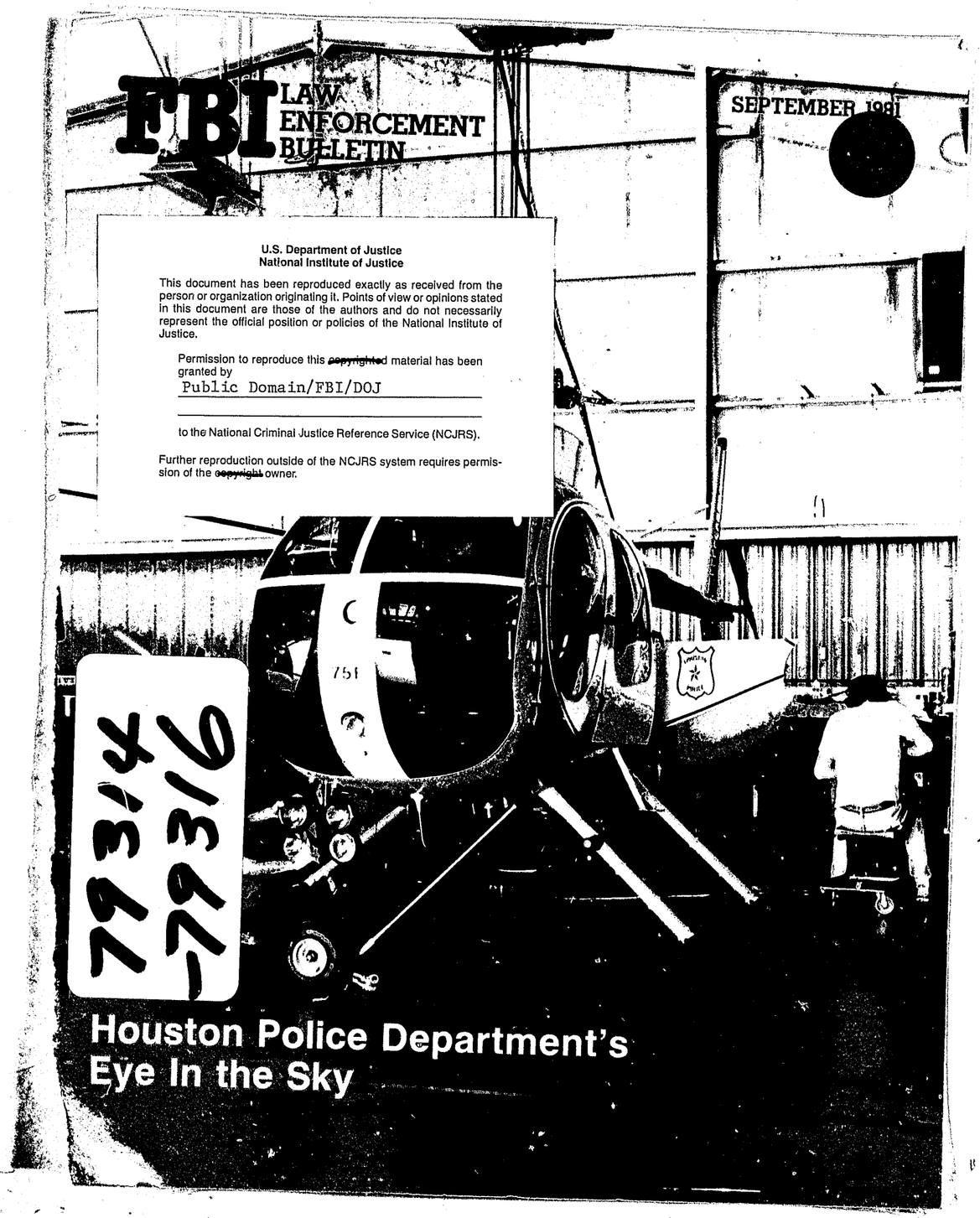

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Helicopters are effective tools of law enforcement. See article on the Houston Police Department's Helicopter Patrol Division on p. 1.

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William H. Webster, Director

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CHAINS, WHEELS, AND THE SINGLE CONSPIRACY
(Conclusion)

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Law enforcement officers of other than Federal jurisdiction who are interested in any legal issue discussed in this article should consult their legal adviser. Some police procedures ruled permissible under Federal constitutional law are of questionable legality under State law or are not permitted at all.

Part I of this article reviewed the historical development of the law of criminal conspiracy and considered some reasons for its pervasive present-day use. Particular attention was given to the single vs. multiple conspiracy problem because it places the prosecutor in a significant constitutional dilemma, for the U.S. Constitution provides guarantees in the 5th, 6th, and 14th amendments that are available to attack and possibly defeat either single or multiple conspiracy prosecutions. The conclusion of the article reviews a number of major cases in which courts have analyzed the "chain" and "wheel" [60] conspiracy configurations and have used them to determine the scope of and membership in one or more conspiracies.

The Party and Object Dimension

One difficulty with analyzing the evidence in conspiracy cases stems from the common law notion that the substance of the offense was the making of an agreement to commit a readily identifiable crime, such as robbery or murder. From this perspective, some courts are inclined to focus on what the individual co-conspirators agreed to. This is known as the "party dimension" [61] or "unilateral" [62] approach and is typified by the case of *United States* v. *Borelli.* [63]

In *Borelli,* numerous defendants participated in narcotics transactions extending over a 9-year period, during the course of which some of the principals and sources of supply had changed. Nevertheless, all the defendants were convicted of participating in a single conspiracy. On appeal, a Federal court reversed, holding that the evidence may have suggested multiple conspiracies rather than the single one charged. The defendants were therefore entitled to an instruction requiring the jury to find what the agreements were as to each defendant. The court recognized that it is much more difficult to infer agreement from a series of drug smuggling operations than from the furnishing of guns to a prospective bank robber. This is especially true, the court noted, with numerous drug coconspirators, where buyers are indifferent to their sources of supply and suppliers are indifferent to the identities of their customers:

> "Although it is usual and often necessary in conspiracy cases for the agreement to be proved by inferences from acts, the gist of the offense remains the agreement, and it is therefore essential to determine what kind of agreement or understanding existed as to each defendant. . . . The view that if the evidence warrants the finding that some defendants were parties to a single agreement to sell contraband for a nine-year period, it necessarily does so as to every defendant who has conspired with them at any time for any purpose, is thus a considerable oversimplification." [64]

Most courts are more sympathetic to the threat posed to society by the kinds of crimes, like narcotics conspiracies, that require complex illegal businesses engaging in prolonged unlawful conduct. This more pragmatic point of view deals with the crime as a group of individuals and thus focuses on their overall operation or objectives rather than the individual acts of agreement. This is known as the "object dimension" [65] or "bilateral" approach.[66]

The U.S. Supreme Court recognized the validity of this perspective many years ago in the leading conspiracy case of *Blumenthal* v. *United States.* [67] Five defendants were successfully convicted of participating in a single conspiracy to sell whiskey illegally. In support of the conviction, the Court summarized the bilateral point of view:

> "For it is most often true, especially in broad schemes calling for the aid of many persons, that after discovery of enough to show clearly the essence of the scheme and the identity of a number participating, the identity and the fact of participation of others remain undiscovered and undiscoverable. Secrecy and concealment are essential features of successful conspiracy. . . . Hence the law rightly gives room for allowing the conviction of those discovered upon showing sufficiently the essential nature of the plan and their connections with it, without requiring evidence of knowledge of all its details or the participation of others." [68]

The Bilateral Perspective

As a result of these divergent views and the possibility of a *Borelli*-like charge to the jury, a successful conspiracy prosecution may depend on the ability of the prosecutor to fashion the proof in such a way as to shift the court and jury's examination of the evidence away from the agreement of each participant and toward the organization formed to commit the crime. Many courts are willing to accept the bilateral approach and charge the jury to recognize the continuance of a single dominant plan, despite changes in personnel, location, victims, or methods of operation.[69] This shift in focus is often accomplished successfully when the evidence is presented in a form that structures the group's activity as either a chain or wheel conspiracy.

Kotteakos v. *United States,*[70] decided in 1946, and *Blumenthal,* decided a year later, are the two Supreme Court cases which are generally recognized for their acceptance of such structural metaphors to distinguish the single from the multiple conspiracy.

Special Agent Campane

"Complex conspiratorial plans do not easily lend themselves to chain or wheel structures and are oftentimes a combination of both."

The Wheel

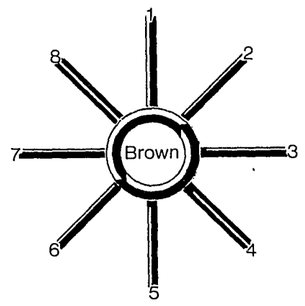
When a number of persons (the spokes) are engaged in a criminal conspiracy with the same individual or group (the hub), a successful single conspiracy prosecution will depend upon whether the spokes can be drawn together (rim around the wheel) into a single agreement.

The hub generally views his dealings with the spokes as part of a single enterprise, but a spoke may be concerned merely with his own actions, unless it can be shown that the existence and cooperation of other spokes were or should have been known to him. Failing such proof, a court will hold that the other spokes remain individual members of multiple conspiracies. Crimes such as bribery,[71] theft,[72] and fraud [73] particularly lend themselves to a wheel analysis.

In *Kotteakos*, the president of a lumber company, one Brown, having experience in obtaining loans under the National Housing Act (NHA), undertook to act as a broker for others who fraudulently applied to various financial institutions for NHA modernization loans. The undisputed proof showed separate and independent unlawful agreements between eight applicants and Brown. The applicants' only connection with each other was their mutual use of the same broker.

Figure 1

The Rimless Wheel
No Single Conspiracy.
(Kotteakos)



The Federal Government claimed the conspiratorial pattern was that of separate spokes meeting at a common center, but the Supreme Court agreed with the Federal appellate court that without the rim of the wheel to enclose the spokes, the proof made out a case of several conspiracies, notwithstanding only one was charged in the indictment.[74] (See fig. 1.)

Kotteakos, therefore, and cases like it suggest that the nature of the crime itself generally precludes a wheel analysis. A year later, explaining its conclusion in *Kotteakos*, the Supreme Court pointed out that no two of the fraudulent loan agreements were tied together as stages in the formation of a larger all-inclusive combination, and no spoke gained from the fact that others were involved. Because each loan was an end in itself, the co-conspirators did not know or need to know of each others existence or involvement:

> "The conspiracies therefore were distinct and disconnected, not parts of a larger general scheme. . . . There was no drawing of all together in a single, overall comprehensive plan." [75]

The Chain

Conspiracies suggested by the chain configuration relate to agreements between sellers, middlemen, wholesalers, retailers, and ultimate purchasers. Whether the purpose of the conspiracy is the sale of such commodities as narcotics,[76] counterfeit money,[77] or liquor,[78] the object is to place the goods into the hands of the paying consumer. No one in the chain profits unless each does his part (connects the links) to supply the buyer.

In *Blumenthal*, two whiskey distributors and three of their salesmen were convicted in a single conspiracy prosecution for selling 2,000 cases of whiskey at prices in excess of the ceiling set by the Federal Office of Price Administration. The two distributors operated the Francisco Company as a front for a hidden owner. The three company salesmen sold the whiskey to tavern owners at a price barely above cost, plus a kickback shared by the salesmen, distributors, and hidden owner. The price for product and kickback combined exceeded the mandated ceiling.

Although evidence at trial proved an unlawful agreement between the hidden owner and distributors, the three salesmen claimed they did not know of the unknown owner's existence or his part in the plan. The government's case, they argued, proved one conspiracy between the owner and distributors and one between the salesmen and distributors. As such, testimony about the conspiracy between the owner and distributors was inadmissible against them as this was evidence of a conspiracy for which they were not charged.

The Court disagreed, however, and upheld the conviction. It was scarcely conceivable, the Court reasoned, for the salesmen to believe the unknown owner of Francisco Company was giving away his whiskey. It was more appropriate to draw the inference that the salesmen knew an owner, unknown to them, contemplated the entire chain of events:

> "All intended to aid the owner, whether Francisco or another, to sell the whiskey unlawfully. . . . All by reason of their knowledge of the plan's general scope, if not its exact limits sought a common end to aid in disposing of the whiskey. True, each salesman aided in selling only his part. But he knew the lot to be sold was larger and thus that he was aiding in a larger plan." [79] (See fig. 2.)

Figure 2

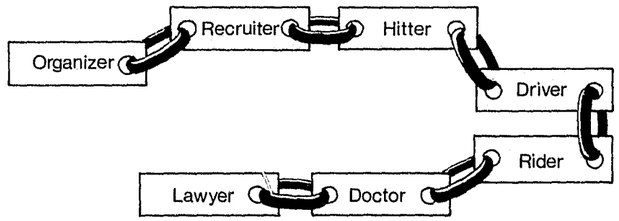
The Classic Chain Conspiracy *(Blumenthal)*

The Chain-Wheel

Complex conspiratorial plans do not easily lend themselves to chain or wheel structures and are oftentimes a combination of both. For example, in *United States* v. *Perez,*[80] a statewide, get-rich-quick scheme involved the staging of fraudulent automobile accidents for the purpose of creating false personal injury claims. Twelve individuals appealed from their convictions in a single mail fraud conspiracy. Each of many phony accidents was organized the same way. "Recruiters" located willing "hitters," who would be liable for a contrived accident with a "target" vehicle. The occupants of the target were "drivers" and "riders" participating in the scheme. The rider would feign injury and be sent to cooperative doctors and lawyers. They, in turn, would contrive to document a bogus medical history in support of a personal injury claim mailed to an insurance company. The rider claimant would then pass the insurance proceeds back through the chain for proportionate disbursement to each cooperating participant. The court held that because each conspirator performed a separate function in a scheme where every participant's cooperation was necessary for the plan to succeed, a classic chain had been drawn.[81] (See fig. 3.)

Figure 3

A Classic Chain *(Perez)*



The defendants conceded this much, but argued against the government's attempt to make spokes of a wheel out of numerous chains, and thus bring all the defendants into a single conspiracy prosecution. Absent, they contended, was a common objective or awareness of the other spokes' existence. But the Federal court took a close look at the nature of the enterprise and believed otherwise.

First, unlike the plan in prolonged narcotics conspiracies, the same exact chain could not continue in existence for more than one accident for fear that the insurance companies would quickly catch on to the identity of the parties. Second, this conspiracy was fundamentally different from the multiple conspiracies found in *Kotteakos* where each scheme to obtain a loan was an

"The nature of the enterprise, its size and volume of business, and the relationship between participants are all key evidentiary factors. . . ."

end in itself from which only separate agreements could be inferred. The nature of the *Perez* agreement contemplated an ongoing scheme that would not persist without the continuing cooperation of numerous conspirators to maintain it. Because various lawyers, doctors, recruiters, and passengers participated in a series of accidents in various combinations, the conspiracy took on the schematic structure of a wheel. At the hub were the organizers, whose contacts with cooperating lawyers and doctors were essential ingredients to make the scheme work. The organizers then sent recruiters out to find the other necessary parties. Third, the court believed that each participant, after cooperating in a second phony accident with a similar modus operandi, rimmed the wheel because each knew or should have known that there had to be someone organizing a larger scheme. And fourth, the court appeared impressed with the identity of certain defendants. It believed the participants in each accident must have known that there had to be a series of additional phony accidents to create rewards high enough to compensate for the risk of loss of professional status for the participating doctors and lawyers.[82]

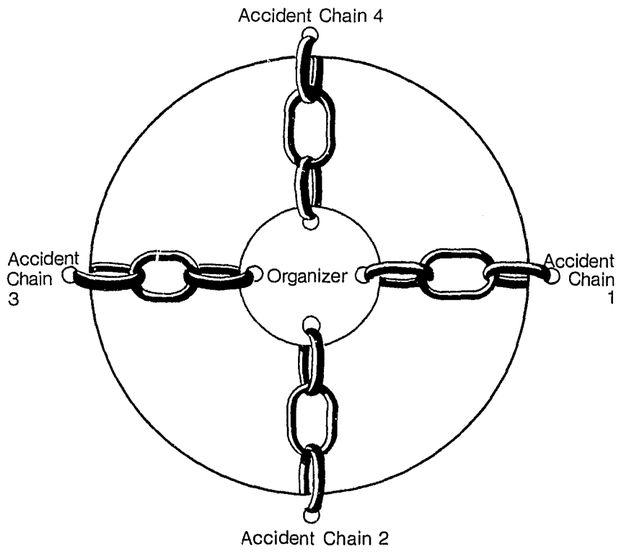
The court therefore concluded that all the defendants were co-conspirators in a single common scheme to use the mails to defraud the insurance companies. (See fig. 4.) It observed:

> "From an operational sense this was not a series of little concoctions to set up a particular collision. . . . It was one big and hopefully profitable enterprise, which looked toward successful frequent but nonetheless discreet repetitions, and in which each participant was neither innocent nor unrewarded." [83]

The *Kotteakos, Blumenthal,* and *Perez* cases not only illustrate how chain and wheel structures are analyzed but also suggest the kinds of evidence an investigator should be looking for to enable a court to solidify a bilateral view of conspiracy. The nature of the enterprise, its size and volume of business, and the relationship between participants are all key evidentiary factors in this regard.

Figure 4

The Chain-Wheel *(Perez)*
The Chains Form the Spokes of a Wheel Conspiracy



Nature of the Enterprise

In *United States* v. *Bruno,* [84] 88 defendants were indicted for a conspiracy to import, sell, and possess narcotics. The smugglers dealt independently with a group of retailers in New York and a group of retailers in Texas and Louisiana. While there was no evidence of cooperation or communication between the diverse groups of retailers, the court held the jury could have found a single large conspiracy:

> "[A]ll the accused were embarked upon a venture in all parts of which each was a participant, and an abettor in the sense that the success of that part with which he was immediately concerned, was dependent upon the success of the whole. . . . [H]e [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 as much parts of a single undertaking or enterprise as two salesmen in the same shop." [85]

The *Bruno* case is recognized for establishing a "stake in the venture" [86] test that has been particularly successful in chain conspiracies where the sale of goods requires the inference that cooperation between producers, distributors, and retailers is necessary for the venture to pay off.[87]

The nature of criminal activity more easily identifiable with the wheel structure can also be used to show mutual dependence among its participants. In the more recent case of *United States* v. *Morado,*[88] eight individuals were convicted in a single conspiracy to violate Texas election laws. The sheriff of Starr County, who was also a physician, directed others to acquire absentee ballots from elderly, illiterate, and infirm voters who were induced to vote a certain way on ballots that were improperly witnessed. A Federal court did not believe that the individual acts of election fraud were separate conspiracies in themselves, but part of a larger plan in which each fraudulent ballot made sense only insofar as it depended upon the others for ultimate success. The court concluded, "Each constituted a mutually beneficial and successive step toward a single common goal—the stealing of an election." [89]

If a legitimate organization is used to cover and coordinate criminal activity, the defendants' association with the organization may be used to draw an inference of a single conspiracy. In *United States* v. *Kenny,*[90] numerous Jersey City and Hudson County, N.J., politicians were convicted of conspiracy to obstruct justice and affect interstate commerce [91] for accepting kickbacks on city and county construction contracts. All were members of J. V. Kenny's political organization, and all but Kenny held official positions in city or county government. The court believed the evidence reflected a pattern of conduct on the part of an "official family" which repeatedly cooperated closely to achieve the common goal of self-enrichment. The court stated:

> "The key to success of all their depravities was their common control over the administration of city and county government under the leadership of J. V. Kenny." [92]

These examples suggest the importance of establishing the nature of the enterprise. An investigator should therefore be prepared to locate witnesses (often immunized co-conspirators) who are willing to testify and are able to explain the complicated or intricate nature of the unlawful activity, and as a consequence, the stake in the venture or mutual dependence each participant has with each other.

Size and Volume of Business

In *United States* v. *Peoni,*[93] a Federal court refused to find a single conspiracy based on evidence of the sale of counterfeit money. Defendant Peoni sold the money to one Regno, who in turn sold it to a third party, Dorsey, who passed it on to innocent persons. The court refused to hold Peoni as a co-conspirator with Dorsey and drew a distinction between knowledge that remote links *must* exist and knowledge that they *may* exist. From Peoni's point of view, the agreement was to sell to Regno. It was of no moment to him what Regno did with the bills. He could have passed them on to innocent purchasers as easily as passing them on to his accomplice Dorsey.

In a later case,[94] the same Federal court, citing *Peoni,* noted that had the prosecution been able to establish more than one sale from Peoni to Regno, the inference that Peoni knew that sales beyond his own would be made and that he thus shared a common purpose with Dorsey, Regno's vendee, might well have been strong enough to warrant submission of the single conspiracy issue to the jury.

The case of *United States* v. *LaVecchia* [95] supports the importance of evidence indicating multiple and voluminous sales. A Federal court upheld a single conspiracy among counterfeiters and distributors because it thought the amount of money printed ($450,000) was so large that the success of the conspiracy must have depended on distribution by others.

"Specialized functions within group activity can also help establish a single conspiracy."

Remote purchasers were also linked to the counterfeiters because the evidence showed: (1) Large ($10,000) purchases suggested a larger operation, (2) the purchasers' negotiations in terms of "points" suggested familiarity with the counterfeit business, and (3) the purchasers' knowledge that additional buys could be made suggested a large-scale operation.[96] In structural form, the counterfeiters should have known they were part of a chain of distribution and the independent remote purchasers should have suspected that additional chains were working with the same distributors. Evidence regarding the volume of sales, however, was the key to pull the rim around these chains and thus create a wheel conspiracy.

In a similar vein, a Federal court upheld the single conspiracy prosecution of eight defendants involved in a large-scale California drug smuggling operation. The court looked at: (1) The size of the smuggling operation, (2) the quantity and frequency of the retailers' purchases, (3) the efficiency of the distribution system to the retailers, and (4) the experience of the retailers in the narcotics sales business. It then concluded that each retailer had reason to know of other retailers' existence even though not aware of each other's identity, numbers, or locations, and that each retailer had reason to believe that his own profits were probably dependent upon the success of the entire venture.[97]

Relationship Between Participants

Specialized functions within group activity can also help establish a single conspiracy. In *United States* v. *Becker*,[98] four defendants were convicted of conspiring to defraud investors by misrepresenting that low-grade ore contained enormous quantities of gold and silver capable of low-cost extraction. The defendants were divided between two groups, one responsible for handling the scientific aspects and another responsible for marketing the contracts and options. The court held:

> "In this case the very structure of the activities supports an inference of an underlying agreement, even if it was unspoken. . . . The division of labor among the various defendants under the supervision of one or two directors supports the existence of a conspiracy." [99]

In *United States* v. *Gleason*,[100] three top officials of the Franklin National Bank were convicted of conspiracy to falsify the bank's operating statement in order to cover up a $7 million loss. The scheme relied on the specific and separate expertise of the defendants to evaluate falsely the value of securities and create fictitious foreign exchange transactions. Although there was apparently no direct evidence that each defendant knew the details of what the others were doing, the Federal court believed each defendant should be held to intend the foreseeable consequences of his actions and that it could infer a common objective to falsify the financial statement.[101]

Proof of mere association among the participants may be a helpful indication of single conspiracy. A single conspiracy conviction to smuggle anticancer drugs was upheld where physical surveillance put all of the defendants together near the automobile used to smuggle the drugs across the Mexican border.[102] Like conclusions were reached where all the defendants worked in close quarters,[103] or were relatives in a family-run marihuana farm.[104] Even informants can be used to bring two otherwise exclusive conspiracies into a mutually dependent wheel conspiracy.[105]

Conclusion

Last month, in Part I of this article, three important conspiracy questions were raised. The answer to the first question identified the constitutional provisions that make it imperative to determine whether the evidence establishes one large conspiracy as opposed to multiple smaller ones. The second question was answered with a suggestion that investigators accurately identify the structure's component parts, and then tie them together. It may mean forging the rim of a wheel, welding the links of a chain, or doing both. The third question, whether jewel thieves, auto thieves, and a fence could be successfully brought to trial for their participation in a single conspiracy, may well depend on whether they can all be enclosed within the rim of a wheel. If the evidence properly presents the nature of the enterprise, its size and volume of business, and the relationship among the parties, a single conspiracy can be proven.

A conspiracy prosecution can be a devastating law enforcement weapon. Rather than an appendage to an indictment charging a substantive offense, conspiracy in many instances can and should be the primary objective of an investigation. However, the structure of a conspiracy can be as illusive and varied as the criminal mind. The investigator thus has the responsibility to produce the necessary evidence to prove a single conspiracy. The evidence must be sufficient to permit a jury to draw the inference that all the parties knew or should have known they were working together in a concert of action to accomplish a common purpose. If the challenge is met, the crime of conspiracy can also become a darling of the investigator's nursery. **FBI**

Footnotes

[60] *Supra* footnote 2.

[61] *United States* v. *Falcone*, 109 F.2d 579, 581 (2d Cir. 1940), *aff'd. on other grounds*, 311 U.S. 205 (1940). In Judge Learned Hand's well-known phrase, each co-conspirator "must in some sense promote their venture himself, make it his own." *Accord, Grunewald* v. *United States*, 353 U.S. 391, 397 (1957). The scope of the agreement must be proved individually; *United States* v. *Lindsey*, *supra* footnote 28 at 767; *United States* v. *Varelli*, supra footnote 22 at 742–43. Also *see* Notes, *Conspiracy: Statutory Reform Since The Model Penal Code*, *supra* footnote 8 at 1158–64; *Developments In The Law—Criminal Conspiracy*, *supra* footnote 23 at 927–29.

[62] *See* Wechsler, Jones, and Korn, *The Treatment Of Inchoate Crimes In The Model Penal Code Of The American Law Institute: Attempt, Solicitation And Conspiracy*, *supra* footnote 23 at 965–67.

[63] *Supra* footnote 43.

[64] *Id.* at 383–84.

[65] *See* Notes, *Conspiracy: Statutory Reform Since The Model Penal Code*, *supra* footnote 8 at 1158–64; *Developments In The Law—Criminal Cohspiracy*, *supra* footnote 23 at 929–33.

[66] *Supra* footnote 62

[67] *Supra* footnote 30.

[68] *Supra* footnote 30 at 556–57.

[69] Even in States with unilateral criminal conspiracy statutes, each participant's agreement may be inferred from chain and wheel configurations. *See United States* v. *Borelli*, *supra* footnote 43 at 383 n.2; *State* v. *McLaughlin*, 44 A.2d 116 (Conn. 1945) (Single conspiracy upheld where profitability of an illegal horse racing wire service depended on numerous subscribers); Wechsler, Jones and Korn, *The Treatment Of Inchoate Crimes In The Model Penal Code Of The American Law Institute: Attempt, Solicitation And Conspiracy*, *supra* footnote 23 at 984–88.

[70] *Supra* footnote 28.

[71] *See, e.g., Williams* v. *United States*, 218 F.2d 276 (4th Cir. 1954) (Police officers part of a single conspiracy to provide protection to bootleggers); *United States* v. *Kenny*, 462 F.2d 1205 (3d Cir. 1972), *cert. denied sub nom. Murphy* v. *United States*, 409 U.S. 914 (1973) (Conspiracy by public officials to obstruct interstate commerce by accepting kickbacks on government construction contracts).

[72] *See, e.g., United States* v. *Morado*, *supra* footnote 56 (Conspiracy to steal an election through misuse of absentee ballots); *United States* v. *Lindsey*, *supra* footnote 28 (auto theft conspiracy).

[73] *See, e.g., United States* v. *Netterville* 553 F.2d 903 (5th Cir. 1977), *cert. denied*, 434 U.S. 861 (1978) (Mail fraud conspiracy to induce purchases of oil products dealerships); *United States* v. *Gleason*, 616 F.2d (2d Cir. 1979), *cert. denied*, 100 S.Ct. 1320 (1980) (Franklin National Bank Fraud and embezzlement conspiracy).

[74] *United States* v. *Kotteakos*, *supra* footnote 28 at 753.

[75] *Blumenthal* v. *United States*, *supra* footnote 30 at 558.

[76] *See, e.g., United States* v. *Bruno*, 105 F.2d 921 (2d Cir. 1939), *rev'd on other grounds*, 308 U.S. 287 (1939).

[77] *See, e.g., United States* v. *Peoni*, 100 F.2d 401 (2d Cir. 1938).

[78] *See, e.g., Blumenthal* v. *United States*, *supra* footnote 30.

[79] *Id.* at 559.

[80] *Supra* footnote 1.

[81] *United States* v. *Perez*, *supra* footnote 1 at 58.

[82] *Id.* at 58–64.

[83] *Id.* at 64; *contra, Bernard* v. *United States*, 342 F.2d 309 (9th Cir. 1965), *cert. denied*, 382 U.S. 946 (1966) (Phony accidents in an insurance fraud scheme held to be multiple conspiracies).

[84] *Supra* footnote 76.

[85] *United States* v. *Bruno*, *supra* footnote 76 at 922–23.

[86] *United States* v. *Falcone*, *supra* footnote 61 at 581; *accord, Direct Sales Co.* v. *United States*, 319 U.S. 703, 710 (1942).

[87] *See, e.g., United States* v. *Agueci*, 310 F.2d 817 (2d Cir. 1962), *cert. denied*, 372 U.S. 959 (1963) (Single narcotics smuggling conspiracy); *United States* v. *Morrow*, 537 F.2d 120 (5th Cir. 1976) (International conspiracy to distribute stolen and counterfeit securities); *United States* v. *Miley*, *supra* footnote 38 (Drug conspiracy).

[88] *Supra* footnote 56.

[89] *United States* v. *Morado*, *supra* footnote 56 at 171; *see, e.g., State* v. *McLaughlin*, *supra* footnote 69 (Nature of horse racing wire service depended upon numerous subscribers); *United States* v. *Anderson*, 101 F.2d 325 (7th Cir. 1939) (Statewide attempt to unionize coal fields depended upon an effective strike at numerous locations); *People* v. *Quintana*, *supra* footnote 6 (Success of each witness's perjury depended upon the similar perjury of others); *United States* v. *Rosenberg*, 195 F.2d 583 (2d Cir. 1952), *cert. denied*, 384 U.S. 838 (1952) (Benefit to Russia depended upon the success of the espionage activities of many agents).

[90] *Supra* footnote 71.

[91] In addition to the conviction on the Hobbs Act conspiracy (Title 18 U.S.C. § 1951) count, defendants were also convicted on a general conspiracy count (Title 18 U.S.C. § 371). On appeal, they raised a double jeopardy claim, arguing a double conviction for the same criminal activity. The court held, at 1215, that since each count required proof of a fact not essential to the other, the defendants could be convicted on both conspiracy counts. *See Blockburger* v. *United States*, 284 U.S. 299, 304 (1932): "The applicable rule is that where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not." *Accord, Albernaz* v. *United States*, 67 L. Ed.2d 275 (1981).

[92] *United States* v. *Kenny*, *supra* footnote 71 at 1216; *see, e.g., Williams* v. *United States*, *supra* footnote 71 (Police department used to coordinate bribes by bootleggers).

[93] *Supra* footnote 77.

[94] *United States* v. *Agueci*, *supra* footnote 87.

[95] 513 F.2d 1210 (2d Cir. 1975).

[96] *Id.* at 1218–19.

[97] *United States* v. *Baxter*, 492 F.2d 150, 160–62 (9th Cir. 1973), *cert. denied*, 416 U.S. 940 (1974). For other decisions where the volume of sales was a key evidentiary factor, *see United States* v. *DeNoia*, 451 F.2d 979 (2d Cir. 1971) (Drug conspiracy); *United States* v. *Sperling*, *supra* footnote 40 (Drug conspiracy); *United States* v. *Perry*, 550 F.2d 524 (9th Cir. 1977), *cert. denied*, 434 U.S. 827 (1977) (Drug conspiracy); *United States* v. *Berman*, 584 F.2d 1354 (4th Cir. 1978), *cert. denied*, 439 U.S. 1118 (1979) (Drug conspiracy); *United States* v. *Nassee*, 432 F.2d 1293 (7th Cir. 1970), *cert. denied sub nom. Tocco* v. *United States*, 401 U.S. 938 (1971) (Auto theft conspiracy).

[98] 569 F.2d 951 (5th Cir. 1978), *cert. denied*, 439 U.S. 865 (1979).

[99] *Id.* at 959.

[100] *Supra* footnote 73.

[101] *United States* v. *Gleason*, footnote 73 at 19; *see, e.g., United States* v. *Netterville*, *supra* footnote 73.

[102] *United States* v. *Westover*, 511 F.2d 1154 (9th Cir. 1975), *cert. denied*, 422 U.S. 1009 (1976).

[103] *United States* v. *O'Connell*, 165 F.2d 697 (2d Cir. 1948), *cert. denied*, 68 S.Ct. 744 (1948).

[104] *United States* v. *Carter*, 613 F.2d 256 (10th Cir. 1979), *cert. denied*, 101 S.Ct. 81 (1980).

[105] *Sigars* v. *United States*, 321 F.2d 843 (5th Cir. 1963).

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