

Confidential Investigative & Source Development: Legal Framework & Techniques



Definition of Conspiracy

- A concord between two or more people to commit a crime.
- Must prove the concord.
- Concord = an agreement
- A potent tool to eliminate threats of criminal gangs/ terrorist groups by going after all the conspirators at one time.

“CONSPIRACY”

Elements of the crime:

1. Proof that two or more persons made a concord or agreement to commit a crime or act of terrorism.
2. Proof that a least one overt act was committed to further the conspiracy.

“CONSPIRACY”

- Is a concord or an agreement to commit a crime or act of terrorism.
- In other words the crime or act of terrorism does not have to be committed to constitute prosecution for the crime of conspiracy.
- Conspirators are not accessories to the crime.
- Conspirators are equal partners under the law.
- Some conspiracy laws require and “OVERT ACT”

“OVERT ACT”

- An overt act is anything done by the conspirator or co-conspirators to further the conspiracy.
- The more overt acts uncovered during the investigation the more likely the prosecution will be successful.

“OTHERS”

- Merely associating with conspirators or having knowledge of the existence of a conspiracy does not constitute agreeing to join the conspiracy.
- Only those people who made a specific or an implied agreement to carry out a crime or act of terrorism, as suggested by overt acts, can be charged.

Conspiracy Laws

- Allows the use of evidence gathered against one conspirator to be used against the other conspirators.
- Do not require separate evidence for each conspirator.
- Often allow hearsay evidence because the nature of a conspiracy is secrecy.
- Allow undercover agents, informants, or cooperating defendants can testify about the actions, words and deeds of the conspirators.

Federal Conspiracy Laws

- Are EXTRATERRITORIAL, which means they apply to anyone, anywhere, even outside the territorial boundaries of the United States.
- Allow investigation and prosecution if a connection to the United States can be proven.

Impact of Conspiracy Laws

- Federal statutes, along with statutes in many states, often provide the same punishment whether the crime or act of terrorism was completed or not.
- If a conspiracy ends before the crime or act of terrorism is committed, it does not forgive those involved.
- Remember it's the concord or agreement that counts!

Evidence of Conspiracy

- al-Qaeda produced a training manual detailing how to avoid surveillance, commit sabotage, conduct assassinations, make contact with other members.
- This is powerful evidence against those who possess this manual because it tends to show that they agreed with others to commit a crime or terrorist act.
- The possession of this manual by one of the Lackawanna Six was used in the prosecution of all six.
- Investigators should seek to locate and seize such evidence.

Examples of Overt Acts

- Telephone calls discussing the details of the crime or act of terrorism.
- Traveling to meetings to discuss the details of the crime or act of terrorism.
- The actual act of conducting the meeting(s).
- Seeking financing.
- The theft of supplies to be used in the crime or act of terrorism.
- The renting of storage facilities, cars, boats, or airplanes which can be used to facilitate a crime or act of terrorism.

Withdraw from Conspiracy

- Conspirator must either inform the police or inform all the other known co-conspirators of his or her intention to withdraw.
- Conspirator who wishes to withdraw from a conspiracy must do something which clearly shows his or her intention to withdraw.
- One cannot just merely stay away or avoid his or her co-conspirators.

Conspiracy ends in one of two ways:

1. Crime or act of terrorism is completed.
2. Crime or act of terrorism is not completed.

Is it really over?

- Just because the organizers of a conspiracy are arrested does not mean that the conspiracy is over.
- Many times these individuals will attempt to continue to manage the conspiracy while in custody.
- More often then not, someone else is waiting in the wings to take the helm.

When does accountability end?

- Conspirators can be charged with offenses committed by co-conspirators throughout the life of the conspiracy, provided that:
 - (1) They were in the conspiracy at the time the crime or act of terrorism was committed.
 - (2) The crime or act of terrorism was committed in furtherance of the conspiracy.
 - (3) The crime or act of terrorism was a foreseeable result of the conspiracy.

CELL CONSPIRACIES

- The leader knows all the cell members and the members know the leader, but the members do not know each other. This is a classic example of a cell operation used by terrorists.
- If a cell member is arrested, the cell operation only gives that member the ability to identify one other cell member.
- Some terrorist groups are believed to have sleeper cells located throughout the world and including the United States that are awaiting orders from their leader.

WHEEL CONSPIRACIES

- Differ from cell conspiracies in that each member knows some of the members other than the leader, but usually not all of them.
- This type of conspiracy is also found in terrorist groups where the leader determines the necessity of some of the members knowing each other for operational purposes.

CHAIN CONSPIRACIES

- Members in a chain operation know those members on either side of their link in the chain, but not necessarily those who are a link away.

COMBINATION CONSPIRACIES

- Often times terrorist groups will combine the cell operation and the chain operation when they reach out to obtain financing through fraudulent means.
- This is an attempt to confuse authorities.

Advantages of Conspiracy Investigations

- **Can result in the elimination of entire organizations or cells.**
- **Only need to prove that two or more persons made an agreement to commit a crime or act of terrorism.**
- **Prove that at least one person involved in the conspiracy committed an overt act.**
- **Even if entire organization is not dismantled, the investigation can serve to disrupt and prevent a crime or act of terrorism.**
- **Provides plea bargaining opportunities.**
- **Evidence can be used in multiple trials.**
- **Hearsay can be used.**
- **Can lead to multiple asset seizures.**

Disadvantages of Conspiracy Investigations

- Can be very time consuming.
- Can require extensive manpower.
- Requires verification and corroboration especially in those cases involving informants.

Informants

- Come in all shapes and sizes.
- Not all motivated by the same thing.
- It is important to establish a detached professional relationship with an informant.
- It is important to use other investigative techniques in order to verify informant information.
- Own the informant, don't let he or she own you!

Types of Informants

- Witness/Informant
- Active Informant
- Source of Information
- Jailhouse Informants
- Unwitting Informant
- Agent Provocateur
- Special Employees

Witness/Informant

- Witness/Informants testify to historical events and are usually current or past members of the groups they are testifying against.
- Most often the witness/informant agrees to testify after an arrest or some other defining event and he or she realizes there is no turning back and no opportunity to resume their criminal life.
- Lets make a deal!

Active Informant

- Provides information while remaining a part of, or has an affiliation with a particular individual or group involved in an ongoing criminal enterprise or terrorist operation.
- Allows the investigator to use other investigative techniques to verify information.
- Can help to prevent a crime or act of terrorism.
- Important to keep the active informant's identity secret.

Source of Information

- Sources of information include good citizens, tipsters, business people and people who work in occupations that may cause them to come in contact with criminals or terrorists.
- Some examples might be airline employees, parcel service employees, vehicle rental employees, bank employees and hotel/motel employees.

Jailhouse Informants

- Can be a very useful and productive source of information.
- Jailhouse informants are highly motivated because they want out of jail.
- Investigators should be aware that this type of informant is likely to exaggerate or lie to get out of jail.
- Corroboration is extremely important.

Unwitting Informant

- Usually believes that he or she is speaking with another criminal or terrorist, when in fact they are talking to an undercover police officer or agent.
- Does not intend to cooperate, but is unknowingly cooperating.

Agent Provocateur

- Usually incites crimes that could bring innocent people in the mix.
- This type of informant should not be used by law enforcement because informant often acts without the knowledge of the officer or agent.
- This can bring about a very unwanted surprise that could cause harm to innocent people as well as embarrassment and liability.

Informant Development

- Must know your subject. Get as much background information on the perspective informant as possible.
- What is their motivation?
- What is their level of conscience?
- What are their interests.
- Does the investigator have anything in common with this person?
- What is this person's need concerning structure?
- Has this person previously worked as an informant?
- What is this person's level of access concerning the investigation?

Questions to ask Yourself

- Are you the right person to develop this informant or is there someone better suited?
- Don't let ego get in the way!
- When do I want to approach this person?
- How do I want to approach this person?

Motivation

- Some informants are motivated by impending legal issues and are looking for some type of consideration for their cooperation.
- Some are motivated by revenge.
- Some wish to eliminate the competition.
- Some are motivated by their ego.
- Some are motivated by \$\$\$\$\$\$\$\$\$\$\$\$\$\$.
- Some are finding to find out about acts of the law enforcement agency!!!!!!!!!! (Intelligence gathering).

Trust

- Never completely trust an informant or the information provided.
- Credibility of the informant can become an issue in court especially if a defense attorney can prove that the informant lied or exaggerated.
- A complete criminal background is a must when using an informant. Do not attempt to hide an informants background in court.
- Whenever feasible use the informant to introduce an undercover officer or agent.
- On the other side of the coin, it is important that the informant learn to trust the officer and believe in the officers word, discretion and competence.

Progressive Approach

- Most commonly used by the intelligence community.
- Step 1 – profile the intended informant.
- Step 2 – determine motivation.
- Step 3 – the investigator might consider mail covers, trash pulls, pen registers and surveillance to determine who the potential informant has contact with and what criminal activity the potential informant may be involved in.
- Step 4 – with this knowledge in hand the investigator can then best decide when and how to approach the potential informant.

Informant Dos and Don'ts

- **Do not interview informants without a witness.**
- **Do not bluff or threaten.**
- **Do use visual and or audio aids.**
- **Do not make promises you cannot deliver on.**
- **Do be prepared, know the informants background.**
- **Do not provide the informant with too much information.**
- **Do not forsake your safety.**
- **Do establish control from the outset.**
- **Do not get personally involved with an informant.**
- **Do listen very carefully.**
- **Do buy the informant not the information.**
- **Do build your case around the information not the informant.**
- **Do not rely on the informant to make the case.**
- **Do assume every case will be tried in front of a jury.**
- **Do corroborate informant information.**

Undercover Operations

- Effective means of determining the intentions and or targets of criminals or terrorists.
- A police officer or agent in an undercover capacity can provide evidence location and testimony that cannot be matched by any informant.
- Use the informant, when possible, to make the introduction of an undercover operative.
- A terrorist organization may be looking for someone with specific qualifications, this can present the perfect opportunity for the informant to introduce an undercover operative.

Fixed and Mobile Surveillance

- **Thinking they are always under surveillance leads criminals and terrorists to a state of paranoia.**
- **Therefore they often take evasive action, especially while traveling by vehicle, on foot, or by any other mode of transportation.**
- **It is important to remain patient while following someone. Eventually unless you have been totally made, they will travel to their intended destination giving you the opportunity to identify other conspirators.**
- **Fixed surveillance methods are also very effective. Business fronts, houses, vehicles, campers and stationary mounted equipment can be used for these situations. It is possible to set up monitoring equipment off site that will record the activities at a location of interest.**

Pen Registers

- Pen registers are digit recorders that can be installed for the purpose capturing the telephone numbers dialed from target phones.
- Pen registers are activated when the phone is either taken off the cradle or is turned on.
- Toll records can be obtained from the vendor supplying that service to the target phone.
- A court order is required to install and use pen registers.

Wiretaps

- **Courts have the authority to order a wiretap once probable cause had been established.**
- **As in the case of surveillance, criminals and terrorists believe their conversations are being monitored and therefore will often attempt to use code by substituting words or phrases in order to disguise their intended purpose.**
- **Wiretaps are manpower intensive especially in those cases requiring multiple wiretaps.**
- **Corroboration of conversations is extremely important. This usually requires surveillance teams to be ready and in place.**

Electronic Transmitters

- **Versatile device comes in all shapes and sizes and can be installed in homes, businesses, hotel rooms, vehicles, etc.....**
- **Technicians can pose as telephone or gas company employees for the purpose of installing these devices.**
- **Some agencies have specially trained personnel who can enter a business, home or vehicle, plant the device (s) and leave without a trace.**
- **Electronic transmitters can be worn by an undercover operative or informant for the purposed of recording conversations.**

Mail Covers

- **Provides the investigators with the names and addresses of those sending mail to the target of your investigation.**
- **Does not authorize the investigator to open that mail.**
- **Mail covers provide the investigator an insight into the targets personal, financial and recreational interests of the target.**
- **Mail covers do not require a court order and the local postal inspector in the targets area can supply the investigator with the information on how to begin a mail cover.**

Photo Spreads

- Important tool for identification of co-conspirators or witness identification.
- Must be careful to make the photo spread fair by using photos of people who look similar in nature.
- A six pack of photos is commonly used.

Records

- **The information is out there, you just got to look.**
- **The internet can be a valuable source of information.**
- **Private companies in the information business can be subscribed to.**
- **Public records are there for the taking.**
- **In some cases a court order or an administrative subpoena may be required to obtain records.**

Trash

- An enormous amount of information can be gleaned by examining garbage.
- By placing their garbage out for pickup the target has voluntarily given permission to examine that garbage.
- Can be messy as well as smelly but well worth the displeasure.

Polygraph/Voice Stress

- Often used on perspective and active informants as well as defendants.
- Agency policy should be followed regarding the use of these tools.

Warrants

- Valuable law enforcement tool used to obtain information such as e-mails and computer contents.
- Frequently used in large scale gang and terrorism investigations.
- Evidence of purposed operations, the identities of co-conspirators, as well as financial information often found.

Asset Seizures

- Criminals and terrorists often have large amounts of money and property which serve to finance their illegal activities.
- They often launder their money by purchasing rental property as well as businesses to give the appearance of legality.
- They even go as far as transporting their ill gotten gain out of the country.
- Use of couriers is quite common.

Asset Seizures

- **After the identities of the criminals or terrorists are known, routine financial inquiries should be made as to their business activities.**
- **Investigators should always identify the assets of these criminals or terrorists for the purpose of seizing these assets thereby denying their organizations the availability of these assets for the purpose of carrying out their intended missions.**
- **Seizure warrants can be obtained during the course of the investigation as those assets are identified.**
- **It is important to examine all records available to include those of acquaintances who may be making purchases for their criminal counterparts. These types of purchases are known as straw purchases.**

QUESTIONS



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