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As these cases show, the proximity approach does not consider the dangerousness of the defendant but only how close he came to completing the particular crime. A person carrying a bomb into a public building with the intent to set it off is plainly very dangerous to the community even if by chance he is apprehended before lighting the fuse. The confidence trickster whose scheme is detected before the victim is ready to hand over the money is probably a professional thief. A doctrine that leads to the acquittal of such persons is justifiable only if one views the criminal law to be dominated by the goals of retribution and deterrence. The community's desire for punishment is weaker when the potential criminal does not succeed, or nearly succeed, in completing his crime and inflicting harm upon an identifiable victim. Punishment for attempts is also relatively unimportant in deterring crime, because the would-be criminal ordinarily expects to succeed and is deterred, if at all, by the punishment for success.

Although retribution and deterrence are by no means irrelevant to modern criminal law, today we tend to emphasize the restraint or rehabilitation of dangerous individuals. We see the primary task of law enforcement as the identification and isolation or supervision of those persons who are likely to offend repeatedly unless rehabilitated or at least safely locked away. With this change in emphasis have come discretionary and indeterminate sentences, probation and parole systems, rehabilitative prison programs and a wider law of attempts.[92] The law is conservative enough not to discard the old rules everywhere, but modern statutory reform proposals such as the Model Penal Code have increasingly taken the view that the crucial issue is the clarity and strength of the defendant's criminal purpose rather than the proximity of his actions to the completed crime.

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defended on the theory of voluntary abandonment of an attempt which would otherwise be punishable. Because the case was submitted to the trial judge on the transcript of the preliminary examination, together with testimony by the defendant, the record did not explicitly establish that the scheme was thwarted by the wife's intervention, although it did show that the victim left the bank with his wife and the assistant manager to find the defendant had vanished. The appellate court thought it possible that the defendant had left for some reason other than suspicion that his scheme had been discovered. California, however, probably does not recognize a defense of voluntary abandonment of an attempt that has gone beyond mere preparation. *See* People v. Staples, 6 Cal. App. 3d 61, 85 Cal. Rptr. 589 (1970); *cf.* W. LaFave & A. Scott, Criminal Law § 60, at 450 n.114 (1972).

92. So long as the law was purely deterrent or retributive in its aim, this circumscription of the offense of attempt [by the proximity doctrine] was perhaps justified. At the present day, when courts have wide powers of probation, there is much to be said for a broader measure of responsibility. . . . The rational course would be to catch intending offenders as soon as possible, and set about curing them of their evil tendencies: not leave them alone on the ground that their acts are mere preparation.

G. Williams, Criminal Law: The General Part § 203, at 632 (2d ed. 1961).

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Pursued to its logical conclusion, the modern approach would permit the conviction of anyone shown to have had a firm intention to commit a crime, whether or not he had taken any steps towards its commission. The limiting factor, however, is our reluctance to put so much trust in either the omniscience or the benevolence of those who administer the law. It is difficult to determine what someone intends to do before he does it, or at least prepares to do it. Even when an individual has plainly said what he intends to do, there remains the question of how serious or definite his intent is. Many of us at some time contemplate or even talk about committing a crime without ever doing anything to carry out the design. But if we refrain from criminal conduct (including conduct that encourages others to commit crime), we are not dangerous, and the deterrent purposes of the criminal law are fully satisfied.

For this reason the modern codes retain the requirement that a defendant go beyond merely planning or contemplating a crime before he can be convicted of an attempt.[93] He must engage in conduct that is a sufficiently substantial step towards completion of the crime to indicate his firm criminal intent, and to identify him as a dangerous individual who would probably have gone on to complete the crime if his design had not been frustrated. Thus, although the modern formulations of attempt law retain conduct as an element of attempt, they relegate it to a lesser, evidentiary role: the defendant's actions must confirm his intent to commit a criminal act. For instance, the Model Penal Code imposes liability for attempt on anyone who, acting with the culpability required by the definition of a particular crime, purposely commits a "substantial step in a course of conduct planned to culminate in his commission of the crime."[94] The crucial term "substantial step" is defined only negatively: a step is not substantial "unless it is strongly corroborative of the actor's criminal purpose."[95] The

93. *See* MODEL PENAL CODE § 5.01, Comment at 26, 47-49 (Tent. Draft No. 10, 1960).

94. A person is guilty of an attempt to commit a crime if, acting with the kind of culpability otherwise required for commission of the crime, he:

(a) purposely engages in conduct which would constitute the crime if the attendant circumstances were as he believes them to be; or

(b) when causing a particular result is an element of the crime, does or omits to do anything with the purpose of causing or the belief that it will cause such result without further conduct on his part; or

(c) purposely does or omits to do anything which, under the circumstances as he believes them to be, is an act or omission constituting *a substantial step in a course of conduct planned to culminate in his commission of the crime.*

MODEL PENAL CODE § 5.01(1) (Proposed Official Draft, 1962) (emphasis added).

95. Conduct shall not be held to constitute a substantial step under Subsection (1)(c) of this Section unless it is strongly corroborative of the actor's criminal purpose. Without negativing the sufficiency of other conduct, the following, if strongly corroborative of the actor's criminal purpose, shall not

Code also provides a list of recurring types of preparatory conduct that the trier of fact may find to be a substantial step "if strongly corrobative of the actor's criminal purpose." These include lying in wait for the contemplated victim, reconnoitering the place contemplated for commission of the crime, possession of materials designed for use in the crime, and soliciting an innocent agent to commit the crime.[95] Although the Code does not make the point explicitly, one is led to the conclusion that any form of preparatory conduct is a "substantial step" if it adequately confirms the existence of the actor's criminal purpose. Proximity to success is no longer the crucial issue. The possibility that the actor might change his mind and not complete the crime is dealt with in an affirmative defense of renunciation.[97]

Against the background of a law of attempt dominated by the proximity approach, an independent inchoate crime of conspiracy made sense. Although the defendants in the New York and California cases described previously could not be convicted under traditional attempt law, they could each have been convicted of conspiracy because they

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be held insufficient as a matter of law:

(a) lying in wait, searching for or following the contemplated victim of the crime;

(b) enticing or seeking to entice the contemplated victim of the crime to go to the place contemplated for its commission;

(c) reconnoitering the place contemplated for the commission of the crime;

(d) unlawful entry of a structure, vehicle or enclosure in which it is contemplated that the crime will be committed;

(e) possession of materials to be employed in the commission of the crime, which are specially designed for such unlawful use or which can serve no lawful purpose of the actor under the circumstances;

(f) possession, collection or fabrication of materials to be employed in the commission of the crime, at or near the place contemplated for its commission, where such possession, collection or fabrication serves no lawful purpose of the actor under the circumstances;

(g) soliciting an innocent agent to engage in conduct constituting an element of the crime.

MODEL PENAL CODE § 5.01(2) (Proposed Official Draft, 1962).

96. *Id.*

97. When the actor's conduct would otherwise constitute an attempt under Subsection (1)(b) or (1)(c) of this Section, it is an affirmative defense that he abandoned his effort to commit the crime or otherwise prevented its commission, under circumstances manifesting a complete and voluntary renunciation of his criminal purpose. The establishment of such defense does not, however, affect the liability of an accomplice who did not join in such abandonment or prevention.

Within the meaning of this Article, renunciation of criminal purpose is not voluntary if it is motivated, in whole or in part, by circumstances, not present or apparent at the inception of the actor's course of conduct, which increase the probability of detection or apprehension or which make more difficult the accomplishment of the criminal purpose. Renunciation is not complete if it is motivated by a decision to postpone the criminal conduct until a more advantageous time or to transfer the criminal effort to another but similar objective or victim.

MODEL PENAL CODE § 5.01(4) (Proposed Official Draft, 1962).

worked with confederates and performed an "overt act" in furtherance of the criminal design.[98] Each of these defendants, however, could also be convicted of attempt under the Model Penal Code or proposed Federal Criminal Code attempt sections. These sections are also adequate to reach the leader of organized crime who hires a professional killer to murder the government's chief witness in an upcoming trial, the example given in the *Working Papers* of the National Commission on Reform of Federal Criminal Laws to justify the need for an independent inchoate crime of conspiracy.[99] If any doubt remains, a provision could simply be added which includes agreement with another person to commit a crime among the enumerated types of conduct which the trier of fact may find to be a substantial step if strongly corroborative of the actor's criminal purpose.[100]

Under the conspiracy sections of the Model Penal Code and proposed Federal Criminal Code, however, the act of agreement *is* the forbidden conduct whether or not it strongly corroborates the existence of a criminal purpose. In justifying this per se rule, the Model Penal Code commentary relied heavily on the argument, quoted previously, that the act of agreeing is so decisive and concrete a step towards the commission of a crime that it ought always to be regarded as a "substantial step."[101] Whether this point is sense or nonsense depends upon how restrictively one defines the term "agreement." Hiring a professional killer to commit murder is an agreement, and surely few would doubt that it is a substantial step toward accomplishing the killing. But the language of the conspiracy sections of both the Model Penal Code and proposed Federal Criminal Code is broad enough to reach conduct far less dangerous or deserving of punishment than letting a contract for murder. As the Model Penal Code commentary concedes, one may be liable for agreeing with another that *he* should commit a particular crime, although this agreement might be insuffi-

98. *See* notes 90 & 91 *supra* and accompanying text. The defendant in *Rex v. Robinson* acted alone and so could not have been convicted of conspiracy. [1915] 2 K.B. at 342-43.

99. For example, suppose that the FBI learned from confidential informants or through some other lawful sources that a "contract" had been let by an organized crime "family" to "hit" a particular person, perhaps the government's chief witness in a trial. Would it really be wise to allow the conspiracy to move forward to the point of an attempt? In this sort of situation, obviously, immediate action must be taken.

1 WORKING PAPERS, *supra* note 1, at 397.

100. The Model Penal Code also defines "solicitation" as a separate crime distinct from attempt, although solicitation of an "innocent agent" (e.g., an idiot or insane person) is an attempt. *See* MODEL PENAL CODE §§ 5.01(2)(g), 5.02 (Proposed Official Draft, 1962); MODEL PENAL CODE § 5.02, Comment at 82-89 (Tent. Draft No. 10, 1960). Although this distinction is analytically defensible, it seems to be unnecessary.

101. *See* text accompanying note 80 *supra*.

cient to establish complicity in the completed offense.[102] Furthermore, neither code would change the well-established rule that the agreement may be tacit or implied as well as express, and that it may be proved by circumstantial evidence.[103] In short, the term "agreement" may connote anything from firm commitment to engage in criminal activity oneself to reluctant approval of a criminal plot to be carried out entirely by others. To be sure, the Model Penal Code also requires that one enter into the agreement with the purpose of promoting or facilitating the crime,[104] but the existence of that purpose need not be substantiated by any conduct beyond the express or implied agreement and performance in some cases of a single overt act by any party to it.[105] This point is of particular importance in conspiracy cases involving political activity or agitation. Members of radical societies may be likely to discuss or even to begin to plan criminal activities that they have no serious intention of carrying through.[106]

In summary, insofar as conspiracy adds anything to the attempt provisions of the reform codes under discussion, it adds only overly broad criminal liability. Like its use in every other area of the substantive criminal law, the use of an independent crime of conspiracy to punish inchoate crimes turns out to be unnecessary. Yet the effect of conspiracy is not limited to the substantive law. Conspiracy is unique among criminal offenses in that conspiracy law incorporates a number of procedural rules that are of great consequence. What remains to be considered is whether these rules are in themselves desirable, and if so, how they might be reformulated if a legislature decided to abolish the substantive law of conspiracy.

II.

THE PROCEDURAL LAW OF CONSPIRACY

Conspiracy doctrines have important procedural consequences in four areas: joinder, venue, the statute of limitations, and the admission of hearsay evidence. Because the Model Penal Code and the proposed

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102. *See* text accompanying note 80 *supra*.

103. *See* FINAL REPORT, *supra* note 7, at § 1004 & Comment at 71-73; MODEL PENAL CODE § 5.03, Comment at 116-17 (Tent. Draft No. 10, 1960).

104. *See* note 46 *supra*.

105. "No person may be convicted of conspiracy to commit a crime, *other than a felony of the first or second degree*, unless an overt act in pursuance of such conspiracy is alleged and proved to have been done by him or by a person with whom he conspired." MODEL PENAL CODE § 5.03(5) (Proposed Official Draft, 1962) (emphasis added).

106. For instance, the seven antiwar defendants in the Harrisburg conspiracy case were charged with conspiring to kidnap Henry Kissinger on the basis of evidence that they had discussed such a plan among themselves without committing any overt acts which indicated a firm intent to carry it out. *See* N.Y. Times, Apr. 6, 1972, at 1, col. 2.

Federal Criminal Code are substantive codes, they do not deal systematically with the procedural side of conspiracy. On the other hand, the drafters of both codes acknowledged that the procedural doctrines are extremely important, and that they are directly related to the substantive definition of conspiracy.[107] Accordingly, both codes contain carefully drafted subsections governing the scope and duration of conspiratorial relationships. The proposed Federal Criminal Code, for example, provides:

> If a person knows or could reasonably expect that one with whom he agrees to enter into . . . [a conspiratorial relationship] has agreed or will agree with one or more other persons to enter into a relationship having as its objective or objectives engaging in or causing the performance of such conduct or other reasonably related conduct, he shall be deemed to have entered into the same relationship with such person or persons.[108]

In other words, one may join a large conspiracy without meeting or knowing more than one of its members and be deemed to share the objectives of the entire group. Another subsection states that a conspiracy continues until its objectives are "accomplished, frustrated, or abandoned."[109]

From the viewpoint of the substantive law, the duration and scope of a conspiratorial relationship are not of great significance. It is, of course, true that under existing federal law and under the most current version of the proposed Federal Criminal Code, each member of a conspiracy is liable for the foreseeable crimes committed by every other member of the conspiracy in furtherance of the common purpose,[110] so that enlarging the scope or duration of the conspiracy theoretically enlarges the extent of liability. But only a very unimaginative judge would actually fix the length of a prison term upon so abstract a basis, and in any case, these subsections were originally drafted by a com-

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107. *See* MODEL PENAL CODE § 5.03, Comment at 98 (Tent. Draft No. 10, 1960); 1 WORKING PAPERS, *supra* note 1, at 381-82, 395-400.

108. COMMITTEE PRINT, *supra* note 7, at § 1-2A5(e). *Compare* MODEL PENAL CODE § 5.03(2) (Proposed Official Draft, 1962):

> If a person guilty of conspiracy . . . knows that a person with whom he conspires to commit a crime has conspired with another person or persons to commit the same crime, he is guilty of conspiring with such other person or persons, whether or not he knows their identity, to commit such crime.

109. COMMITTEE PRINT, *supra* note 7, at § 1-2A5(f). The *Committee Print* omits from this subsection a sentence proposed by the Commission which defined the "objectives" of a conspiracy as including "escape from the scene of the crime, distribution of booty, and measures, other than silence, for concealing the crime or obstructing justice in relation to it." FINAL DRAFT, *supra* note 7, at § 1004(3). The Model Penal Code provides that a conspiracy terminates "when the crime or crimes which are its object are committed or the agreement that they be committed is abandoned." MODEL PENAL CODE § 5.03(7) (Proposed Official Draft, 1962).

110. *See* notes 34 & 37 *supra* and accompanying text.

mission which proposed to abolish the conspiracy-complicity rule.[111] Issues of scope and duration are of practical significance only as they affect the resolution of procedural questions. The importance of a preliminary finding that several defendants are members of the same conspiracy rather than different ones is that it enables the prosecution to join them for trial and to use the statements of each against all the others.

In including provisions regarding scope and duration, and in drafting them with such careful attention, the drafters of both the Model Penal Code and the proposed Federal Criminal Code evidently assumed that the substantive definition of conspiracy would continue to govern the procedural issues. This assumption is regrettable, because conspiracy concepts have had as unfortunate an effect upon procedure as upon substance, and for essentially the same reason. Reference to conspiracy tends to lead courts to decide the propriety of joinder and venue, the application of the statute of limitations, and the admissibility of hearsay evidence by invoking a single abstract concept rather than by considering the separate interests and policies involved in each question.

A. Conspiracy and Joinder

Possibly the most important procedural issue affected by conspiracy doctrine is the joinder of defendants for trial. Although some states grant defendants a right to separate trials upon demand,[112] most states and the federal government do not.[113] Rule 8 of the Federal Rules of Criminal Procedure contains the federal standards for joinder of offenses and offenders. Rule 8(a), governing joinder of offenses, provides that two or more offenses charged against a single defendant may be tried together if they are "of the same or similar character" *or* if they are "based on the same act or transaction or on two or more acts or transactions connected together or constituting parts of a common scheme or plan." Rule 8(b) allows two or more defendants to be joined for trial when they are charged with participating in "the same act or transaction or in the same series of acts or transactions constituting an offense or offenses." Even when joinder is proper under Rule 8, however, the trial court may order a severance under Rule 14[114] if it concludes that justice so requires.

111. *See* note 36 *supra* and accompanying text.

112. *See* Note, *Joint and Simple Trials Under Rules 8 and 14 of the Federal Rules of Criminal Procedure*, 74 YALE L.J. 553, 563 n.50 (1965).

113. *See* AMERICAN BAR ASSOCIATION PROJECT ON MINIMUM STANDARDS FOR CRIMINAL JUSTICE, STANDARDS RELATING TO JOINDER AND SEVERANCE 13-14 (1968) [hereinafter cited as ABA STANDARDS].

114. If it appears that a defendant or the government is prejudiced by a joinder of offenses or of defendants in an indictment or information, or by such

The language of Rule 8 seems to raise more questions than it answers, and the note of the Advisory Committee which drafted it contributes very little to its understanding.[115] Subsequent case law has made clear, as the Advisory Committee did not, that the two subdivisions are mutually exclusive. Subdivision (a) controls only joinder of two or more charges against a single defendant; the permissibility of joining one or more charges against multiple defendants is governed only by subdivision (b).[116] The importance of this distinction is that charges involving separate defendants may not be joined simply because they are "of the same or similar character" for purposes of subdivision (a).[117] If *A* commits one robbery with *B* and also a separate robbery with *C*, *B* and *C* may not be tried together merely because both offenses are of the same character and involve a common defendant. On the other hand, despite differences in language the courts have generally held that the two subdivisions are otherwise parallel. The prosecution may join defendants charged with different criminal acts or transactions if those acts were parts of a common scheme or plan. In other words, separate crimes are "in the same series of acts or transactions" under subdivision (b) if all were committed in furtherance of a common scheme. In the example given in the preceding paragraph, *A*, *B* and *C* may be tried together if both robberies were committed in furtherance of a scheme common to all three defendants.[118]

Because the existence of a common scheme is also the basis of a charge of conspiracy, the law of joinder of defendants is, to a large extent, the law of conspiracy.[119] The prosecution can usually join defend-

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joinder for trial together, the court may order an election or separate trial of counts, grant a severance of defendants or provide whatever other relief justice requires.

F.R. CRIM. P. 14.

115. The note says only that Rule 8 is substantially a restatement of existing law. The note is reprinted in Moore's *Federal Practice* with the comment that "[t]he terse note of the Advisory Committee has not contributed much to clarifying the Rule." 8 J. MOORE & R. CIPES, FEDERAL PRACTICE ¶ 8.02, at 8-2 (2d ed. 1972).

116. *See* 1 C. WRIGHT, FEDERAL PRACTICE AND PROCEDURE § 144 (1969).

117. *Id.*

118. One possibility would be to read "series" in Rule 8(b) as if it meant the kind of relation more specifically described in Rule 8(a). Thus if acts were part of a common scheme or plan, or connected together, they could be regarded as a series. Such a result would not be inconsistent with the results reached in the cases: Thus joinder is permitted of a conspiracy count and substantive counts arising out of the conspiracy, since the claim of conspiracy provides a common link, and demonstrates the existence of a common scheme or plan. A claim of conspiracy is not essential to joinder, however, if the acts involved are otherwise connected together.

Id. at 322-23 (footnotes omitted).

119. A leading treatise introduces its discussion of joinder of defendants with the observation that "[i]f the ensuing discussion of joinder of defendants sounds like an

ants for trial only when it charges or could have charged a common conspiracy. The formation of the conspiracy is itself a "single transaction" within the meaning of Rule 8(b), and subsequent crimes committed to further it are within "the same series of acts or transactions constituting a crime." The *Standards Relating to Joinder and Severance* proposed by the American Bar Association Project on Minimum Standards for Criminal Justice[120] would make the connection between joinder and conspiracy more explicit. Under the *Standards*, two or more defendants may be joined "when each of the defendants is charged with conspiracy and some of the defendants are also charged with one or more offenses alleged to be in furtherance of the conspiracy."[121] The attached commentary observes that this provision restates existing federal law.[122]

The *Standards* also provide, consistent with existing case law, that the prosecutor need not prove the conspiracy alleged as the basis for joinder. If he fails to produce any evidence of a common plan, the conspiracy charge must of course be dismissed, but the defendants are not entitled to separate trials on the remaining counts unless the court decides that their guilt or innocence cannot otherwise be fairly determined.[123] The purpose of this rule is to promote efficiency, because granting severances after the close of the prosecution's case would require that the entire case be retried. This rule, however, may also encourage a prosecutor to assert the most farfetched or even unfounded theories of conspiracy, comforted by the knowledge that the burden for any misjudgment will probably fall upon the defendants. There is even authority to the effect that, if a retrial becomes necessary on the substantive counts after the conspiracy charge has failed, the defendants can be subjected to a joint retrial even though the original basis for joinder has evaporated.[124]

Most cases in which joinder by conspiracy is disputed reflect a variation or combination of two familiar models, the "wheel" and the "chain." In a wheel conspiracy, various defendants accused of individual criminal transactions are linked together by the fact that one defendant or one group of defendants participated in every transaction. For graphic purposes, the defendant or defendants implicated in every charge are described as the hub of the wheel and those charged

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analysis of the conspiracy offense, this is necessarily so." 8 J. Moore & R. Cipes, Federal Practice ¶ 8.06, at 8-31 (2d ed. 1972).

120. *See* note 113 *supra*.

121. ABA Standards, *supra* note 113, § 1.2(b), at 13.

122. *Id.* § 1.2(b), Comment at 15.

123. *Id.* § 2.4, at 43, & Comment at 44-46, adopting the rule of Schaffer v. United States, 362 U.S. 511 (1960).

124. Application of Gottesman, 332 F.2d 975 (2d Cir. 1964); *cf.* United States v. Granello, 365 F.2d 990, 994-95 (2d Cir. 1966), *cert. denied*, 386 U.S. 1019 (1967).

with individual crimes as the spokes. The United States Supreme Court discovered such a wheel in unusually pure form in *Kotteakos v. United States*.[125] There, a number of persons were convicted of conspiring together to obtain loans from the Federal Housing Authority by means of applications that fraudulently misrepresented the uses to which the borrowed money would be put. The evidence showed eight distinct loan transactions, each involving defendants who had no connection with the other loans. The only connecting element was that all the loans were obtained through the services of a single broker, Simon B. Brown, who pleaded guilty and testified against all the others. Although the trial court thought that the participation of Brown in every transaction established a single conspiracy among all the defendants, the Government conceded in the Supreme Court that this fact alone could not convert separate conspiracies to obtain particular loans into a general conspiracy to obtain all the loans.[126] It argued only that the defendants were not prejudiced by being tried and convicted on the wrong charge, since the evidence so plainly proved that they were guilty of conspiracy to obtain their own individual loans.

The Supreme Court held that the charge of a single conspiracy prejudiced the defendants because it forced them into a joint trial and because at that trial the jury was instructed that it could consider the entire mass of evidence against every defendant, as it properly could have if there actually had been a single conspiracy.[127] The Court did not say what evidence the prosecution would have had to produce to provide a "rim" to bind the spokes of the wheel together into a single conspiracy, although it indicated that mere knowledge that the hub defendant was doing similar criminal business with others was not sufficient.[128] Subsequently, in *Blumenthal v. United States*,[129] the Court

125. 328 U.S. 750 (1946).

126. *Id.* at 755-56.

127. Although the Court found that the misjoinder caused by the unfounded conspiracy charge was not harmless error on the facts before it, it did not hold that such misjoinder is always harmful. *See id.* at 771-76. The leading treatises argue that misjoinder under Rule 8 (as distinguished from failure to order a discretionary severance where joinder is initially proper) should result in automatic reversal of any ensuing convictions. 1 C. WRIGHT, FEDERAL PRACTICE AND PROCEDURE § 144, at 328-29 (1969); 8 J. MOORE & R. CIPES, FEDERAL PRACTICE ¶ 8.06(4) (2d ed. 1972). *But see* United States v. Granello, 365 F.2d 990, 995 (2d Cir. 1966) (Friendly, J.):

> We see no reason why the undoubted truth that an appeal claiming misjoinder under Rule 8(b) raises a question of law in the strict sense, whereas an appeal from denial of severance under Rule 14 normally raises only one of abuse of discretion, should carry exemption from the harmless error rule, . . . F.R.Cr.P. 52(a), as a corollary.

128. The Court quoted with approval the statement of the court of appeals that "[t]hieves who dispose of their loot to a single receiver—a single 'fence'—do not by that fact alone become confederates: they may, but it takes more than knowledge that he is a 'fence' to make them such." 328 U.S. at 755.

129. 332 U.S. 539 (1947). Mr. Justice Rutledge was the author of the majority

found a single conspiracy to sell whiskey at unlawful prices in a case involving two salesmen, the distributing company that supplied them, and an unknown person who supplied the whiskey to the distributor. The unifying factor, or the rim of the wheel, was the single lot of whiskey that all aided in distributing. Although each salesman "aided in selling only his part," he "knew the lot to be sold was larger and thus that he was aiding in a larger plan."[130] The Court distinguished *Kotteakos* because in that case "each loan was an end in itself," and, except for the hub defendant Brown, "none aided in any way, by agreement or otherwise, in procuring another's loan."[131] The distinction is unconvincing, because neither of the salesmen in *Blumenthal* assisted, by agreement or otherwise, in selling more than his own part. There was no evidence that the sales by one salesman in any way facilitated or encouraged the sales of the other.

Perhaps the result in *Blumenthal* can best be explained by classifying the case as an example of the other principal model of an extended conspiracy, the "chain." As the name indicates, a chain conspiracy involves the chain of distribution of some commodity, such as narcotics, from the initial manufacture or smuggling to the ultimate consumer. A chain conspiracy is similar to a wheel conspiracy in that the participants at opposite ends of the chain may not know o have any dealings with each other, but the two are different in that the participants in a chain conspiracy all deal with the same goods. A chain may, and frequently does, incorporate one or more subsidiary wheels.[132] Thus in *United States v. Bruno*,[133] the most famous chain case, the conspiracy consisted of smugglers who brought narcotics into New York, middlemen who purchased from the smugglers and resold to retailers, and two groups of retailers, one operating in New York

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opinions in both *Blumenthal* and *Kotteakos*.

130. *Id.* at 559.

131. *Id.* at 558.

132. The distinction between "chain" and "wheel" or "spoke" conspiracies is to some degree artificial.

> As applied to the long term operation of an illegal business, the common pictorial distinction between "chain" and "spoke" conspiracies can obscure as much as it clarifies. The chain metaphor is indeed apt in that the links of a narcotics conspiracy are inextricably related to one another, from grower, through exporter and importer, to wholesaler, middleman, and retailer, each depending for his own success on the performance of all the others. But this simple picture tends to obscure [the fact] that the links at either end are likely to consist of a number of persons who may have no reason to know that others are performing a role similar to theirs—in other words the extreme links of a chain conspiracy may have elements of the spoke conspiracy.

United States v. Borelli, 336 F.2d 376, 383 (2d Cir. 1964) (Friendly, J.), *cert. denied*, 379 U.S. 960 (1965).

133. 105 F.2d 921 (2d Cir. 1939) (per curiam), *rev'd on other grounds*, 308 U.S. 287 (1939).

and the other in Texas and Louisiana. Neither group of retailers dealt with the smugglers at the other end of the chain, or with the other group of retailers. Although the opinion of the court does not mention it, there seem also to have been two independent groups of smugglers, so that there was a two-spoke wheel at each end of the chain. The per curiam opinion in *Bruno* is not very authoritative as a precedent,[134] but subsequent cases have cited it as establishing that a chain of distribution of a single commodity constitutes a single conspiracy because each member of the chain, however limited his own purposes, contributes to the profitability of the entire venture.[135]

Further discussion of the varieties of chains and wheels and the means of distinguishing one from the other is unnecessary because the weakness of these cases lies not in their details but in their starting point. It is wrong to refer questions of joinder to the law of conspiracy because doing so leads to both bad substantive law and bad procedural law. The implied substantive consequences of cases such as *Kotteakos* and *Bruno* are plainly absurd. Finding eight conspiracies rather than one in *Kotteakos* meant, in theory, that the hub defendant was guilty of conspiring eight times rather than once, although the decision turned entirely upon the prejudice of a mass trial and not on the appropriate penalty for that defendant. One result of allowing joinder in *Bruno* was that each defendant became liable for all the crimes of his codefendants which furthered the distribution of the commodity. Even if these theoretical absurdities may not significantly affect the sentencing process, they indicate the desirability of separating the resolution of procedural questions from the determination of the scope of criminal liability.

A more important objection is that conspiracy theory has led to bad joinder law. Federal Rule 8(b) does not mention conspiracy at all; it permits joinder, subject to severance under Rule 14 for prejudice, when the defendants are accused of participating in "the same act or transaction or in the same series of acts or transactions constituting an offense or offenses."[136] This language leaves considerable latitude for judicial construction, and in interpreting Rule 8 it would be better for the courts to look to the policies and interests that underlie joinder rather than to the substantive law of conspiracy. One might begin by asking why joinder is allowed in the first place, and then proceed to develop rules that carry out the purposes thus uncovered.

The primary purpose for allowing joinder is to promote efficiency in the trial process. It is obviously convenient for the prosecutor, for

134. The decision was reversed by the Supreme Court on other grounds. Bruno v. United States, 308 U.S. 287 (1939).

135. *See, e.g.*, United States v. Borelli, 336 F.2d 376, 383 n.2 (2d Cir. 1962).

136. FED. R. CRIM. P. 14.

the courts, and for witnesses if evidence need be presented at only one trial rather than at several separate trials. The savings are not only in time and money. A criminal trial can be an ordeal for witnesses as well as defendants, and the prosecutor's ability to obtain their cooperation may depend in part upon the number of ordeals involved, particularly if the witnesses are in any degree intimidated by the defendants. Separate trials increase the likelihood of inconsistent verdicts, because different juries may take different views of the same evidence or the same issues, and also because subsequently tried defendants have the advantage of a preview of the prosecutor's case. At times the burden of separate trials may be so great that the choice is between a joint trial and no trial, at least with respect to defendants of lesser culpability. On the other hand, the potential efficiency of a joint trial is not always realized in practice. Some observers have noted a tendency for prosecutors to overtry a case involving many defendants, particularly when conspiracy is charged.[137] It is quite possible for a single joint trial to be as long and drawn out as several separate trials if each defendant separately exercises his right to cross-examine and to put on a defense, or if a large amount of evidence is introduced against some defendants which could not be used against others if they were tried separately.

Joint trials exist to serve the convenience of the prosecutor and the court, and not the convenience of the defendant. This is reason enough for many defendants to resist them, for defendants in general have little to gain by making the process of conviction cheap and efficient for the prosecution. Any obstacle to conviction, or to prompt and easy conviction, may improve a defendant's position in plea bargaining. The defendant at a joint trial may also have to sit with his lawyer through a substantial amount of testimony immaterial to his own case. A trial lasting several weeks can be an enormous burden, financially and otherwise, upon a defendant who may be a comparatively minor participant in an elaborate scheme involving many. In addition, the jury may convict all the joint defendants as a group without considering the evidence against each separately. It is difficult to say how often this happens, just as it is difficult to say how often the jury deals leniently with minor participants in a criminal enterprise because their guilt seems negligible in comparison with that of their co-defendants. In any event, a joint trial often results in the admission against some defendants of evidence which is inadmissible against others, with the probable consequence that the jury will consider it against everyone despite whatever cautionary instructions the court may give.

137. *See, e.g.*, 8 J. MOORE & R. CIPES, FEDERAL PRACTICE ¶ 14.04[1], at 14-14 n.3 (2d ed. 1972).

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The normal difficulties of a joint trial for the defense are exacerbated when the defendants or their counsel do not agree on a common strategy. When the best defense for each individual is not the best defense for the group, the defendants may face the choice of either hanging together or hanging separately. The most spectacular examples occur when some defendants attempt to cast the entire blame on others and thereby make the participation of the prosecutor almost superfluous. Even less drastic disharmonies may create major tactical problems. One attorney may direct his cross-examination at bringing out facts that another would prefer to deemphasize, and the other's argument may present a theory that is utterly incompatible with the approach taken by the first. A common contemporary form of this classic dilemma arises in prosecutions of political dissidents. One defendant may choose, for political reasons, to ignore traditional defenses and attack "the system" while another prefers to rest his defense on a less inflammatory point of fact or law.[138] The credibility of each is likely to suffer from proximity to the other.

Federal joinder law generally favors the interests of the prosecution and the courts in obtaining joinder over the interests of defendants in avoiding it. Hence, where joinder is initially correct under Rule 8, a defendant is not entitled to a severance under Rule 14 because other defendants will assert defenses antagonistic to his, or because a substantial amount of evidence inadmissible against him will be introduced against others, or because enduring a protracted trial will put him to considerable expense and inconvenience, or because he may be disadvantaged by being put on trial with others who are far more culpable.[139] A trial court may grant a severance for these reasons, but it need not. The trial court must grant a severance only when the prosecution intends to introduce the confession of one defendant which incriminates other defendants but is inadmissible against them because it is hearsay.[140]

One might well question a judicial policy which apparently favors the convenience of prosecutors and courts over that of defendants, but a more modest criticism can also be made. When the courts resort to the law of conspiracy to determine a question of joinder, they often force defendants to endure the disadvantages of a joint trial without any significant compensating gain in efficiency. Joint trials promote efficiency only when the evidence against two or more defendants substantially overlaps. When the evidence against each defendant is dis-

138. *Cf.* J. MITFORD, THE TRIAL OF DR. SPOCK 82-85 (1969).

139. *See* 1 C. WRIGHT, FEDERAL PRACTICE AND PROCEDURE § 223 (1969); 8 J. MOORE & R. CIPES, FEDERAL PRACTICE ¶ 14.04 [1], at 14-14 (2d ed. 1972).

140. Bruton v. United States, 391 U.S. 123 (1968) (overruling Delli Paoli v. United States, 352 U.S. 232 (1957)).

tinct, trying several defendants together does not save any significant amount of time or money, or further any of the other policies underlying joinder law, regardless of any connection between the defendants' criminal activity.[141]

If the offense of conspiracy were abolished, and if questions of joinder were decided in light of the purposes of joinder rather than by reference to the concept of conspiracy, joinder probably would not be permitted in cases such as *Bruno* and *Blumenthal*, where the basis of the conspiracy charge was that all the defendants participated in selling or distributing the same unlawful commodity. Manufacturers, smugglers, distributors and sellers of such commodities as narcotics each commit their own individual crimes. It is rarely necessary to prove at the trial of a narcotics pusher that the narcotics he sold were brought into the country by a particular smuggler, and the guilt of the pusher is likewise immaterial at the trial of the smuggler. It is quite true that the smuggling would not occur if someone were not willing to distribute the smuggled narcotics to the consumer, and that the retail sales could not be made if some one were not engaged in smuggling. In that sense, each link in the chain of distribution makes a contribution to the profitability of the entire chain. This consideration, however, should have nothing to do with joinder, which is not a question of business economics but rather one of trial fairness and efficiency. If the evidence against the smugglers is substantially distinct from the evidence against the retail sellers, then separate trials for each group imposes no considerable burden upon the administration of justice. Likewise, if the sellers are accused of making separate sales at different times and places, trying them together is unlikely to promote efficiency even if they obtained their narcotics from a single source.

Even in cases in which a substantial part of the evidence against the various defendants is the same, joinder may not promote efficiency. In *Kotteakos*, for example, the indictment disclosed a number of independent criminal transactions, each of which had to be proved independently. Separate trials would have required some repetition, because Brown, the one person involved in every transaction, testified against all the others. Questions regarding his credibility as a witness and his general method of operation would be material at each trial. Any gain in efficiency from allowing Brown to testify to all the transactions at one trial would probably be more than offset, however, by the additional difficulties of a complex trial. It would take time and

141. A view similar to that stated in the text was taken in King v. United States, 355 F.2d 700, 704 (1st Cir. 1966): "Where, however, there are no presumptive benefits from joint proof of facts relevant to all the acts or transaction, there is no 'series,' Rule 8(b) comes to an end, and joinder is impermissible."

effort to insure that the jury did not become confused as it heard evidence of many distinct transactions involving many different defendants.

In some situations the reasoning urged here would allow joinder when it would not be permissible under conspiracy theory. For example, in *United States v. Granello*[142] the two defendants were charged with failing to file tax returns although they had realized substantial income from the sale of jointly owned shares of stock. Conspiracy charges against them were dismissed because there was no evidence that they agreed to conceal the income, although they unquestionably combined to earn it. Hence the court of appeals held the joinder improper, although it also found the misjoinder to be harmless error.[143] Yet the facts of *Granello* present a persuasive case for allowing a joint trial. The crucial issue as to each defendant was whether and how he earned the income, because the failure to file tax returns was a matter of public record. Had there been two separate trials, virtually identical evidence would have been presented at each. Hence separate trials would have been needlessly inconvenient for the Government and a joint trial would not have been unduly prejudicial to either defendant.

This is not to suggest that joinder of defendants should always be permitted when the evidence at separate trials would substantially overlap. However much joinder might promote efficiency in a particular case, a court still should grant a severance if it seems likely that a joint trial will place a particular defendant at a serious disadvantage. The point of the preceding discussion is rather that a court should never force a defendant to go to trial with others over his objection unless the efficiency of the trial process is thereby increased. Frequently joinder should be allowed where several defendants commit various criminal acts pursuant to a common scheme, because proof of the common scheme itself may constitute a substantial part of the evidence against each participant. It is important not to overlook, however, that it is not the existence of a common plan itself that justifies joinder, but the overlap in the evidence that results from its existence.

B. Conspiracy and Venue

Federal conspiracy defendants may be tried either in the district in

142. 365 F.2d 990 (2d Cir. 1966).

143. The Government had argued that joinder was proper even without a conspiracy to conceal the income. Rejecting this argument, the court noted that Rule 8(b) permits joinder only of defendants accused of engaging in the same act or transaction or series of acts or transactions "constituting an offense or offenses." The court reasoned that the defendants participated jointly in a series of acts to obtain the income but that this series of acts did not constitute an offense. *Id.* at 993-94. Although this construction of Rule 8(b) is reasonable, it does not concern itself with the basic issue of ensuring fairness to defendants while minimizing the inconvenience of the trial to everyone concerned.

which the unlawful agreement was made, or in any district in which any conspirator committed any overt act in furtherance of the common objective. This broad venue rule originated sixty years ago in the five-to-four decision of the Supreme Court in *Hyde v. United States*.[144] Although the sixth amendment grants defendants a right to trial "by an impartial jury of the State and district wherein the crime shall have been committed," a federal statute has long provided that a crime begun in one district and completed in another "shall be deemed to have been committed in either."[145] The majority in the *Hyde* case reasoned that because an overt act is an essential element in the federal crime of conspiracy, the crime of conspiring is renewed or completed whenever and wherever such an act is committed.[146] *Hyde* invoked specific provisions of federal law in support of its holding, but in fact its venue rule is the same as that applied at common law, and in states which still follow the common law rule that the conspiratorial agreement itself fulfills the overt act requirement.[147]

Within the framework of the existing substantive law of conspiracy, substantial policy arguments can be advanced in support of the *Hyde* doctrine. In a multidistrict conspiracy case, it may be very difficult for the Government to specify the place of the agreement, if only because the agreement in a conspiracy case is more an abstract concept than a distinct event. Even where the Government is able to prove that the conspirators met together at a particular time and place to form the criminal agreement, much of its evidence may concern conduct in furtherance of that agreement which occurred somewhere else. The district in which the agreement was formed may not be the most convenient place of trial for the Government, the witnesses, or even the defendants.

The *Hyde* doctrine permits federal prosecutors enormous discretion in choosing where to file criminal charges, particularly in cases in which individual conspirators have performed unimportant acts in furtherance of the common purpose in far-flung places. The effect of the doctrine is easily exaggerated, however. While conspiracy theory frequently has been invoked to justify a holding that venue in a particular district was proper, venue in the same place could often have been justified using other legal principles, frequently better and simpler ones. *Hyde v. United States* itself presents a classic illustration. The defendants Hyde, Benson, Dimond and Schneider were convicted in the District of Columbia of conspiring to defraud the United

144. 225 U.S. 347 (1912).

145. 18 U.S.C. § 3237 (1970). This section is based on Act of Mar. 3, 1911, ch. 231, § 42, 36 Stat. 1100.

146. Hyde v. United States, 225 U.S. 347, 359-63 (1912).

147. *See Developments*, *supra* note 5, at 975-78.

States by unlawfully purchasing certain federal lands in Oregon and California. The indictment alleged and the prosecution proved numerous overt acts committed by Dimond and Benson in Washington, D.C., including the filing of fraudulent applications and the payment of bribes to employees of the Federal General Land Office. Hyde himself lived in California and never appeared in the District of Columbia in connection with any business of the conspiracy. When he appealed on grounds of improper venue, the Government conceded that the conspiracy was formed in California and that venue could only be predicated upon the performance of overt acts in the District of Columbia; hence the Court's broad ruling that venue is proper wherever overt acts are performed.[148] Had the Government charged the defendants simply with committing or aiding and abetting specific acts of bribery and fraud, venue in the district in which the bribery and fraud took place would have been far easier to justify. Although early at common law accessories to a crime could be prosecuted only where the accessorial acts took place, modern statutes also permit prosecution in the district in which the principal offense was committed.[149] It is likely that most of the witnesses and evidence will be located in the district in which the ultimate criminal activity took place. Absent conspiracy, the Court in *Hyde* could have found venue in the District of Columbia to be proper without implying that the Government could have brought the prosecution in Iowa if some minor overt act connected with the common scheme had been committed in that state.

In fact, federal venue provisions, independent of any conspiracy doctrine, tend to give the prosecutor enormous discretion in choosing the place of trial. The most important federal venue statute provides that an offense "begun in one district and completed in another, or committed in more than one district" may be prosecuted "in any district in which such offense was begun, continued, or completed."[150] The statute further defines as a "continuing offense" any crime involving the use of the mails or transportation in interstate or foreign commerce, and permits prosecution of such offenses in "any district from, through, or into which such commerce or mail matter moves."[151] Because so many federal offenses involve use of the mails or transportation in interstate commerce, this section frequently gives the federal prosecutor an enormous range of choice that is easily subject to abuse. For example, without any reference to conspiracy doctrines, the Government has convicted pornographers based in southern California on

148. Hyde v. United States, 225 U.S. 347, 357 (1912).

149. *See* Abrams, *Conspiracy and Multi-Venue in Federal Criminal Prosecutions: The Crime Committed Formula*, 9 U.C.L.A. L. REV. 751, 811-15 (1962).

150. 18 U.S.C. § 3237(a) (1970).

151. *Id.*

obscenity charges in midwestern federal courts on the theory that they caused obscene literature to be transported into the forum districts.[152]

On the other hand, strict adherence today to the "place of the crime" formula of the sixth amendment may not provide the most convenient place of trial for either the defendant, the Government, or the witnesses. Undoubtedly the framers of the sixth amendment expected that "the district wherein the crime shall have been committed" would also ordinarily be the district wherein the defendant and the witnesses resided. They could hardly have anticipated a society in which individuals move and communicate so freely that a single criminal transaction may routinely involve several districts, and in which the imaginations of criminals and legislators have created innumerable opportunities to offend against the federal criminal law.[153]

Two leading Supreme Court decisions illustrate the defects in a literal interpretation of the sixth amendment's venue clause. In *Travis v. United States*,[154] the Court held that a defendant union officer, charged with filing a false "noncommunist" affidavit with the National Labor Relations Board, could be prosecuted only in the District of Columbia, where the affidavit was filed. His conviction in the federal district court in Colorado was reversed, even though he resided in Colorado and executed and mail d the false affidavit in that state. In *Johnston v. United States*,[155] the Court held that conscientious objectors charged with failing to report for alternative service in hospitals as required by their draft boards could be prosecuted only in the districts in which the hospitals were located. Under this ruling the Government could not bring charges in the district where the defendants resided and where their draft boards were located. The holding in *Johnston* is particularly ironic because the nature of the charge itself assumed that the defendants had *not* committed the relevant acts in the proper place for trial. Both cases illustrate that the place "wherein the crime shall have been committed" depends upon technicalities in the drafting of the substantive offense rather than any realistic considerations of fairness to anyone. For example, if Congress had defined the offense involved in the *Travis* case as mailing a false noncommunist affidavit, venue would have been proper in Colorado.

The interests of the defendant in resisting venue in an inconven-

152. *See* United States v. West Coast News Co., 357 F.2d 855, 861-62 (6th Cir. 1966), *rev'd on other grounds sub nom.* Aday v. United States, 388 U.S. 447 (1967); Reed Enterprises v. Clark, 278 F. Supp. 372 (D.D.C. 1967), *aff'd*, 390 U.S. 457 (1968).

153. For a complete review of the difficulties involved in deciding modern venue issues under the "crime committed" formula, see Abrams, *supra* note 149.

154. 364 U.S. 631 (1961).

155. 351 U.S. 215 (1956).

ient or hostile district are protected not by the "place of the crime" formula of the sixth amendment and Federal Rule of Criminal Procedure 18,[150] but by Rule 21, governing motions for change of venue. Rule 21 allows the district court to order a transfer to another district if the transfer is necessary to obtain a fair and impartial trial because of prejudice against the defendant in the transferor district or if transfer is necessary or desirable "for the convenience of parties and witnesses, and in the interest of justice."[157] Such discretionary authority is probably the only practical method of protecting the defendant's interests, given the unsatisfactory results that may flow from the "place of the crime" formula. On the other hand, treating venue as a discretionary matter tends to leave defendants (and everyone else involved in the case) at the mercy of the district judges.

Eliminating the *crime* of conspiracy would not require elimination of the conspiracy venue doctrine; venue questions could still be decided by reference to conspiracy theory. If Congress went further and specifically repudiated the consyiracy venue rule of the *Hyde* case, one of the sources of broad prosecutorial discretion in selecting the forum in which to bring the charge would disappear, but much discretion would remain. Even so, one should not belittle this accomplishment, because in some multidefendant cases the conspiracy rule allows the prosecutor to choose among the overt acts of all defendants as a basis for venue, an advantage which he can obtain only by alleging conspiracy. Of greater significance, however, is the effect that abandoning the conspiracy *joinder* doctrine would have on venue issues.

The primary importance of the conspiracy venue rule to prosecutors is not the discretion it gives them to select an inconvenient or hostile forum in which to try defendants, although at times they may abuse the rule in this manner. Primarily, wide venue choice is important to prosecutors because it permits them to achieve joinder. It is of no value to a prosecutor to have the right to join several defendants and offenses for trial unless he can achieve venue for all of them in the same forum. Conspiracy theory provides at one and the same time both the justification for joinder and a venue rule that makes such joinder practical. Moreover, courts tend to look with distavor upon applications for transfer under Rule 21 if granting the transfer would defeat joinder and require two or more trials instead of one.[158]

156. FED. R. CRIM. P. 18: "Except as otherwise permitted by statute or by these rules, the prosecution shall be had in a district in which the offense was committed. The court shall fix the place of trial within the district with due regard to the convenience of the defendant and the witnesses."

157. FED. R. CRIM. P. 21:

158. "The question of severance . . . is closely tied to a determination of 'the interest of justice.' Thus, transfer has been denied because of the 'inconvenience and

As previously explained, elimination of the conspiracy joinder doctrine would discourage joinder of defendants charged with separate substantive offenses unless those offenses were so closely related as to create a substantial overlap in proof.[158] Defendants could no longer be joined for trial merely because their individual offenses occurred at differing points in the chain of distribution of some forbidden commodity, or because their separate crimes involved some arguably common motive or purpose. Insofar as the occasions for joint or mass trials would thereby be reduced, the need for subordinating defendants' venue interests to those of the prosecution would also be reduced. District judges would no longer feel the need to deny transfers to preserve a joinder that in itself may be questionable. The problems of venue would by no means be solved; but the occasions for abuse would be reduced, and judges could exercise their discretion under Rule 21 without being unduly restrained by dubious policies favoring joinder.

C. *Statute of Limitations*

Of all the procedural doctrines associated with conspiracy, the rule governing the application of the statute of limitations most directly concerns conspiracy as a distinct crime. The period of limitations in a prosecution for conspiracy does not begin to run until the conspiracy is either abandoned or successfully accomplishes its objectives.[160] If conspirators agree to commit a number of crimes over a period of time, prosecution for the overall conspiracy is permitted even if prosecution for some of the earlier substantive crimes is barred by the statute of limitations.[161] Despite the statutory bar, the prosecution may prove these early crimes on the theory that they are overt acts in furtherance of the conspiracy. If Congress were to abolish conspiracy, except in its role as a particular method of committing an attempt, the Government could necessarily prosecute defendants only for the specific crimes in which they participated, and the ordinary rule of limitations would apply.

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duplication of effort in conducting two trials in widely separate jurisdictions.'" 8 J. MOORE & R. CIPES, FEDERAL PRACTICE ¶ 21.04, at 21-22 (2d ed. 1972) (citations omitted).

159. *See* text accompanying notes 141-43 *supra*.

160. Fiswick v. United States, 329 U.S. 211 (1946); United States v. Kissel, 218 U.S. 601 (1910). The statute also begins to run in favor of an individual conspirator when he withdraws from the conspiracy. *See* Hyde v. United States, 225 U.S. 347, 369-70 (1912); MODEL PENAL CODE § 5.03(7) (Proposed Official Draft, 1962); MODEL PENAL CODE § 5.03, Comment at 153-55 (Tent. Draft No. 10, 1960).

161. United States v. Johnson, 165 F.2d 42 (3d Cir. 1947), *cert. denied*, 332 U.S. 852 (1948); Ware v. United States, 154 F. 577 (8th Cir. 1907), *cert. denied*, 207 U.S. 588 (1907). The Government, however, must prove that at least one act occurred during the statutory period. Grunewald v. United States, 353 U.S. 391, 396-97 (1957).

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Under existing law, the use of a conspiracy theory may lengthen the limitations period in certain cases. Frequently the prosecution has argued that any conspiracy to commit a crime includes a subsidiary conspiracy to conceal the crime committed, so that the criminal combination remains alive during the period of concealment after the attainment of the criminal objective. This argument may be used to justify the admission of hearsay statements made by coconspirators after the conspiracy attains all its objectives[162] or to justify a claim that the period of limitations does not begin to run until the termination of the subsidiary conspiracy to conceal. The United States Supreme Court has consistently refused to infer the existence of such a subsidiary conspiracy merely from the fact that the conspirators took steps to conceal their guilt, because such concealment is a feature of most crimes.[163] Where the underlying agreement necessarily contemplated acts of concealment as one of its basic objectives, however, the prosecution's theory has prevailed and the statute of limitations has been found no bar to a delayed prosecution.[164]

The leading case of *Grunewald v. United States*[165] illustrates the hairsplitting approach that such a distinction requires. There the defendants were charged with conspiring to defraud the United States by using improper influence to obtain "no prosecution" rulings from the Bureau of Internal Revenue. The rulings were obtained in 1948 and 1949; the prosecution was brought in 1954. When the defendants urged the three-year statute of limitations as a bar to prosecution, the Government asserted the existence of an implied subsidiary conspiracy to conceal the improper conduct, which had continued to exist for several years after 1949. The Supreme Court held that the mere fact that some of the conspirators had taken active steps after 1949 to conceal their guilt did not establish the existence of such an implied subsidiary conspiracy, because "every conspiracy will inevitably be followed by actions taken to cover the conspirators' traces," and therefore "[s]anctioning the Government's theory would for all practical purposes wipe out the statute of limitations in conspiracy cases."[166] The Court's opinion suggested, on the other hand, that the Government could have prevailed if it had charged and proved that the prime object of the conspiracy was not merely to obtain the "no prosecution" rulings in 1948 and 1949, but to obtain final immunity for the taxpayers from criminal tax prosecution. This larger objective could not have

162. *See* text accompanying notes 169-87 *infra*.

163. Grunewald v. United States, 353 U.S. 391 (1957); Lutwak v. United States, 344 U.S. 604 (1953); Krulewitch v. United States, 336 U.S. 440 (1949).

164. Forman v. United States, 361 U.S. 416, 423-24 (1960).

165. 353 U.S. 391 (1957).

166. *Id.* at 402.

been attained until 1952, when the six-year period of limitations applicable in tax proceedings finally expired.[167] Because the precise object of a particular conspiracy is frequently proved by circumstantial evidence, the same acts of concealment that failed to establish a subsidiary conspiracy to conceal could have been used to establish the enlarged scope of the prime conspiracy and thus to circumvent the bar of the statute of limitations by a slightly different route. The distinction seems to go to the manner in which the indictment was drafted rather than to any substantial rights.

In justification of a rule extending the life of a conspiracy through the concealment phase, one might argue that in certain cases a strict application of the statute of limitations permits organized criminals to escape punishment by concealing their misdeeds for the necessary length of time. Crimes which involve fraud or other concealment arguably should not be subject to the same period of limitations as crimes which occur more openly and can be discovered with due official diligence. This argument, however, really has nothing to do with conspiracy: it reflects a consideration that ought to be taken into account in drafting the statute of limitations itself. The proposed Federal Criminal Code, for example, provides special extensions of the period of limitations for offenses involving fraud, breach of fiduciary duty, or official misconduct.[168]

Exceptions to the normal operation of the statute of limitations should be made in that statute itself, and they ought to be directed to relatively specific situations in which delayed prosecution is likely to be necessary to protect some legitimate public interest. Treating the problem with conspiracy law gives rise to exceptions that are at once too broad and too unreliable. In addition, extending the life of a conspiracy to avoid the statute of limitations automatically extends the period during which the coconspirator hearsay exception operates. It may also lead to increased substantive criminal liability for conspirators whose own activity ceased long before the acts of concealment at

167. *Id.* at 408.

168. COMMITTEE PRINT, *supra* note 7, at § 1-3B1(d):

> Extensions—If the period prescribed in subsection (c) has expired, a prosecution may nonetheless be commenced for:
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> (1) an offense a material element of which is either fraud or a breach of fiduciary obligation within one year after discovery of the offense by an aggrieved person or by a person who has a legal duty to represent an aggrieved person and who is himself not an accomplice in the offense, but in no case shall this provision extend the period of limitation otherwise applicable by more than three years; . . .
>
> (2) an offense based on official conduct in office by a public servant at any time when the defendant is a public servant or within two years after he ceases to be such public servant, but in no case shall this provision extend the period of limitation otherwise applicable by more than three years. . . .

issue. Each of these questions should be determined separately, on its own merits.

D. *Conspiracy and Hearsay*

Perhaps the most famous and controversial of all the procedural doctrines associated with conspiracy is the coconspirator hearsay exception. A hearsay statement of a defendant's alleged coconspirator is admissible against the defendant if the statement was made during the pendency of the conspiracy and in furtherance of its objectives.[169] This exception to the hearsay rule is a particular application of the more general principle that statements of an agent concerning matters within the scope of the agency relationship and made during the existence of that relationship are admissible against the principal.[170]

The justification for admitting these "vicarious admissions" is not altogether easy to grasp. Some authorities have found the analogy to the substantive liability of the principal for his agent's acts compelling. Because the employer is liable for the torts of his servant committed within the scope of the employment, and the conspirator for the crimes of his coconspirator committed in furtherance of the common objective, these authorities have reasoned that the principal should bear the risk of what his agents say as well as the risk of what they do.[171] It

169. Krulewitch v. United States, 336 U.S. 440, 443 (1949); C. McCORMICK, EVIDENCE 645 (2d ed. E. Cleary ed. 1972) [hereinafter cited as McCORMICK]; RULES OF EVIDENCE FOR UNITED STATES COURTS AND MAGISTRATES rule 801(d)(2)(v) [hereinafter cited as PROPOSED FEDERAL RULES OF EVIDENCE]. (The Rules of Evidence were approved by the Supreme Court and transmitted to Congress on November 20, 1972. Due to congressional opposition, however, the Rules will not take effect as scheduled on July 1, 1973. Pub. L. No. 92-12 (March 30, 1973).)

The laws of some states, the Model Code of Evidence, and the Uniform Rules of Evidence do not require that the statement be made in furtherance of the conspiracy. *See* White v. State, 451 S.W.2d 497 (Tex. Crim. App. 1969); MODEL CODE OF EVIDENCE rule 508(b) (1942); UNIFORM RULE OF EVIDENCE 63(9)(b). Even in the federal courts, the requirement of furtherance often has been neglected. *See* Salazar v. United States, 405 F.2d 74 (9th Cir. 1968); United States v. Annunziato, 293 F.2d 373 (2d Cir. 1968).

The significance of the "pendency" requirement is enormously reduced in those jurisdictions which take the position, rejected in *Krulewitch*, that the conspiracy continues as long as its members conceal their guilt. *See* Dutton v. Evans, 400 U.S. 74, 83 (1970). *See generally* Levie, *Hearsay and Conspiracy: A Re-examination of the Co-Conspirators' Exception to the Hearsay Rule*, 52 MICH. L. REV. 1159 (1954); Comment, *The Hearsay Exception for Co-Conspirators' Declarations*, 25 U. CHI. L. REV. 530 (1958).

170. PROPOSED FEDERAL RULES OF EVIDENCE, *supra* note 169, rule 801(d)(2); McCORMICK, *supra* note 169, at 639-46.

171. He who sets another person to do an act in his stead as *agent* is chargeable in substantive law by such acts as are done under that authority; so too, properly enough, admissions made by the agent in the course of exercising that authority have the same testimonial value to discredit the party's present claim as if stated by the party himself.

4 J. WIGMORE, EVIDENCE § 1078 (3d ed. 1940). Judge Learned Hand observed that

situation hearsay exceptions must meet the standards of the sixth amendment, which grants an accused "the right . . . to be confronted with the witnesses against him." Although it is generally conceded that some hearsay exceptions do not violate the confrontation clause, despite the fact that the declarant is not confronted or cross-examined in court, the importance which the clause assigns to cross-examination arguably implies that only those hearsay exceptions which are based upon the trustworthiness of the evidence in question should be permitted.[177] Second, in cases of group crime the existence of the agency relationship is precisely what the prosecution has to prove. When a trucking company is sued over a highway accident, hearsay statements of its driver are not used to prove that he was employed by the company but that he was responsible for the collision.[178] In criminal conspiracy cases the existence of a criminal agency relationship is likely to be the main point at issue, but the coconspirator statements are admissible only on the premise that this relationship exists. To be sure, there is a requirement that the prosecution produce independent evidence of the existence and membership of the conspiracy in order to obtain the admission of the hearsay testimony, but it need not make this showing beyond a reasonable doubt.[179] The result is that hearsay evidence is often used to prove the validity of the premise upon which it was admitted in the first place.

Despite these weighty objections, the coconspirator exception survives. Doubts as to its constitutionality were seemingly laid to rest by the Supreme Court in *Dutton v. Evans*,[180] and in fact the Supreme

177. This argument was applied to the coconspirator exception in a recent, well-reasoned article. Davenport, *The Confrontation Clause and the Co-conspirator Exception in Criminal Prosecutions: A Functional Analysis*, 85 HARV. L. REV. 1378, 1384-91 (1972). Mr. Davenport "reformulates" the coconspirator exception so that it would apply only where the statement was admissible as a declaration against penal interest or as nonhearsay. As he recognizes, this "reformulation" amounts to abolition. *Id.* at 1405-06.

178. "Evidence of the purported agent's past declarations asserting the agency are inadmissible hearsay when offered to show the relation. If this preliminary fact of the declarant's agency is disputed, the question is one of 'conditional relevancy.'" MCCORMICK, *supra* note 169, at 642. *See also* Murphy Auto Parts v. Ball, 249 F.2d 508 (D.C. Cir. 1957).

179. For learned discussions of the quantum of proof that *is* required see United States v. Geaney, 417 F.2d 1116 (2d Cir. 1969) (Friendly, J.); United States v. Ragland, 375 F.2d 471 (2d Cir. 1967) (Waterman, J.).

180. 400 U.S. 74 (1970). *Dutton* held that the admission in a state prosecution of a statement made more than a year after the commission of a crime, at a time when the declarant was already under arrest, did not violate the confrontation clause. It thus approved the coconspirator exception in one of its broadest formulations. On the other hand, the Court embraced this holding with little enthusiasm. Mr. Justice Stewart, writing for the plurality, evidently felt it necessary to add that the statement in question was spontaneous and against the declarant's penal interest, two very dubious makeweights at best. *Id.* at 89. Two justices who concurred in the

Court recently approved the exception as formulated in the proposed Rules of Evidence for United States Courts and Magistrates.[181] The exception's survival is probably due in part to tradition,[182] and in part to the leeway it gives the prosecution in overcoming the formidable difficulties involved in convicting organized criminals.[183] It must also be conceded that if the case for the coconspirator exception is at best dubious, the general hearsay rule to which it is an exception is not itself beyond challenge. Although the coconspirator exception is applicable whether or not the declarant is available to testify in person, in fact the declarant's testimony is usually unavailable because he exercises his privilege against self-incrimination;[184] frequently he is a codefendant at a joint or mass trial.[185] Applying the hearsay rule in

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plurality opinion believed that the testimony about the hearsay declaration was so incredible that the jury must have disbelieved it anyway. *Id.* at 90-93 (Blackmun, J., concurring). Mr. Justice Harlan concurred in the result on the ground that the confrontation clause does not govern the constitutionality of hearsay exceptions and that exclusion of the hearsay in question was not "essential to a fair trial" under the due process clause. *Id.* at 93-100 (Harlan, J., concurring).

181. "A statement is not hearsay if . . . the statement is offered against a party and is . . . (E) a statement by a co-conspirator of a party during the course and in furtherance of the conspiracy." PROPOSED FEDERAL RULES OF EVIDENCE, *supra* note 169, rule 801(d).

182. There are many logical and practical reasons that could be advanced against a special evidentiary rule that permits out-of-court statements of one conspirator to be used against another. But however cogent these reasons, it is firmly established that where made in furtherance of the objectives of a going conspiracy, such statements are admissible as exceptions to the hearsay rule.

Krulewitch v. United States, 336 U.S. 440, 443 (1949).

183. The reason [for retention and expansion of the coconspirator exceptions] is simple: there is great probative need for such testimony. Conspiracy is a hard thing to prove. The substantive law of conspiracy has vastly expanded. This created a tension solved by relaxation in the law of evidence. Conspirators' declarations are admitted out of necessity.

Levie, *Hearsay and Conspiracy: A Reexamination of the Co-Conspirators' Exception to the Hearsay Rule*, 52 MICH. L. REV. 1159, 1166 (1954). The problems of proof, however, are not created by the technical requirements of conspiracy law but by the secrecy that normally accompanies a criminal plot. Hence the exception applies whether or not the prosecution charges conspiracy in the indictment. *See* note 187 *infra* and accompanying text.

184. If the declarant is unavailable solely because he asserts the privilege against self-incrimination, the prosecution can obtain his testimony by granting him use immunity. Kastigar v. United States, 406 U.S. 441 (1972). Theoretically, it still can prosecute the immunized witness, but it will bear the "heavy burden" of proving "that the evidence it proposes to use is derived from a legitimate source wholly independent of the compelled testimony." *Id.* at 460-61. Thus, in many cases, the actual effect of the coconspirator exception is to relieve the prosecution of the burden of agreeing to a severance and granting immunity.

185. A number of provisions of federal law are designed to encourage joint trials in conspiracy cases. *See* text accompanying notes 112-24, 139-40 & 158 *supra*. One effect of the coconspirators' hearsay exception is to make it much easier to conduct a joint trial of coconspirators when several of them have made out-of-court admissions. Because each defendant's admissions may be used against all the others

this situation would prevent the jury from hearing relevant evidence of some probative value because of the possibility that it may be untrustworthy. It is possible that justice would be better served by allowing the jury to hear relevant hearsay and then trusting it to make proper allowance in its deliberations for the fact that the evidence could not be effectively tested by cross-examination.[186]

In any event, what one thinks of the coconspirator hearsay exception depends upon what one thinks of the hearsay rule and its relation to the confrontation clause, not on what one thinks of the crime of conspiracy. The exception is a rule of evidence that applies with equal force whether or not the defendant is charged with conspiracy,[187] and there is no reason to suppose that abolishing the crime of conspiracy would change it in any way. On the other hand, if one were to decide that the criminal code should retain a crime of conspiracy, that decision would not weaken the case for reconsidering the hearsay exception. If the exception results in the admission of unreliable evi-

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(assuming that the requirements of pendency and furtherance are satisfied), there is no need for the trial judge to give elaborate limiting instructions. The jury need not be told to consider *A*'s admission only against *A*, and to ignore them when considering the liability of *B*, and so on. More important, *B* cannot demand a severance on the ground that separate trials are necessary because the jury cannot be expected to follow such instructions once it has heard the damaging hearsay. Without the coconspirator exception to the hearsay rule, such a severance would probably be mandatory under the rule of Bruton v. United States, 391 U.S. 123 (1968), because *A*'s admission would be admissible only against *A*. *See* note 140 *supra* and accompanying text.

186. As Wigmore put it (in defending the hearsay exception for vicarious admissions): "[T]he hearsay rule stands in dire need, not of stopping its violation, but of a vast deal of (let us say) elastic relaxation." 4 J. WIGMORE, EVIDENCE § 1080*a*, at 144 (3d ed. 1940). The plurality opinion in *Dutton v. Evans*, quoted with apparent approval the following language from Note, *Confrontation and the Hearsay Rule*, 75 YALE L.J. 1434, 1436 (1966):

> Despite the superficial similarity between the evidentiary rule and the constitutional clause, the Court should not be eager to equate them. Present hearsay law does not merit a permanent niche in the Constitution; indeed, its ripeness for reform is a unifying theme of evidence literature. From Bentham to the authors of the Uniform Rules of Evidence, authorities have agreed that present hearsay law keeps reliable evidence from the courtroom. If *Pointer* [Pointer v. Texas, 380 U.S. 400 (1965)] has read into the Constitution a hearsay rule of unknown proportions, reformers must grapple not only with centuries of inertia but with a constitutional prohibition as well.

400 U.S. at 86-87 n.17.

187. Kelley v. United States, 364 F.2d 911, 913 (10th Cir. 1966); People v. Brawley, 1 Cal. 3d 277, 461 P.2d 361, 82 Cal. Rptr. 161 (1969); People v. Niemoth, 409 Ill. 111, 98 N.E.2d 733 (1951); People v. Luciano, 277 N.Y. 348, 14 N.E.2d 433, 1 N.Y.S.2d —, *cert. denied*, 305 U.S. 620 (1938); MCCORMICK, *supra* note 169, at 646. *But see* United States v. Harrell, 436 F.2d 606 (5th Cir. 1970) (no discussion or citation of authority). In *Dutton v. Evans*, the Supreme Court upheld the application of Georgia's broad version of the coconspirator exception, noting in passing that at the time of the trial in that case Georgia did not recognize conspiracy as a separate, substantive criminal offense. 400 U.S. at 83.

dence which cannot be tested by cross-examination and which may therefore lead to the conviction of innocent persons, then it ought to be challenged whether or not agreement to commit a crime is a crime in itself.

CONCLUSION

Conspiracy gives the courts a means of deciding difficult questions without thinking about them. The basic objection to the doctrine is not simply that many of its specific rules are bad, but rather that all of them are ill-considered. The first step towards improving a rule of law is to consider the policies it serves. The specific rules of conspiracy, however, are derived more from the logic of an abstract concept than from any realtistic assessment of the needs of law enforcement or the legitimate interests of criminal defendants. We need to reconsider the problem of group crime without being distracted by the abstractions that the concept of conspiracy always seems to introduce.

The current revision of the Federal Criminal Code should have resulted in a reassessment of the usefulness of conspiracy as an independent crime, but it has not. The *Working Papers* of the National Commission on Reform of Federal Criminal Laws suggest that the authors of the initial drafts of the proposed Federal Criminal Code wanted to retain conspiracy only as a inchoate offense similar to attempt,[188] but none of the subsequently published drafts of the Code reflect such a limitation. In any case, given the tendency of conspiracy doctrine to expand into new areas of the law, it is doubtful whether any attempt to retain the doctrine in only a limited role can succeed for very long.

Abolition of conspiracy is not an idea whose time has come, because law enforcement interests erroneously regard the doctrine as a vital weapon against organized crime and because critics of conspiracy have attacked it piecemeal rather than in its entirety. This Article is therefore addressed more to the law reformers of the future than to those of the present, and its aim is not so much to settle an argument as to start one.

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188. *See* 1 WORKING PAPERS, *supra* note 1, at 381.

SB 27 (Rodey) and

HB 30 (Donley) identical measures, relating to the crime of conspiracy

The APOA strongly endorses the concept that a person who plans the commission of a crime by another person is also criminally liable for such actions. Although the bill is limited to conspiracy related to the crimes of prostitution, and the delivery of a controlled substance, the APOA also suggests that someone who plans, perhaps even pays, for another to commit arson or murder should be as guilty of conspiring to commit the act as the person who conspires with another to commit the crimes of prostitution or the delivery of a controlled substance.

We also endorse the concept of an affirmative defense being offered to a conspirator who renounces his criminal intent, provides timely warning to authorities, and does what he can to prevent the crime because these provisions will serve as an inducement for some to help prevent the commission of a crime.

Of the fifty states and the federal government, Alaska alone does not have a state statute making conspiracy a crime. Since at least 1970, the law enforcement community has supported the concept of conspiracy being a criminal act. APOA is, however, heartened by the introduction of a limited conspiracy statute, particularly as relates to controlled substances, and strongly supports the bill.

Anchorage · *Star of the North*
Chamber of Commerce

April 22, 1987

The Honorable John Sund
Alaska State Legislature
P.O. Box V (MS 3100)
Juneau, Alaska 99811

Dear Representative Sund:

The Anchorage Chamber, with over 1100 members, strongly supports the concepts contained in HB30 - Conspiracy, scheduled this week for hearings in your House Judiciary Committee.

The discussion of conspiracy targets a sector of the business community, but a criminal sector that besmirches our state and increases the cost of doing business for the honest business owner. During the 1984-85 session, we supported conspiracy bills HB178 and SB139. We consider a broad-based conspiracy law necessary to protect the citizens of the state and certainly necessary to improve our standards of law. Under today's state law, the master minds and planners are not being prosecuted.

We realize the difficulty and delays inherent in obtaining broad-based conspiracy protection. Our 1987 Legislative Priorities, a copy of which was sent by separate mail, addressed the need for a conspiracy law related to drug trafficking. Therefore, HB30 in addressing controlled substances and prostitution has our complete support. We point out also, that the cost of crime to your constituents is many many times the somewhat arbitrary attached fiscal note. We strongly recommend the earliest movement to a House vote of support.

Sincerely,

Wayne Beckwith

Wayne K. Beckwith
Executive Director

WKB/jas

415 F Street, Anchorage, Alaska 99501-2254 (907) 272-2401

Anchorage Chamber of Commerce

Crime Commission

April 20, 1987

Representative John Sund
Chairman, House Judiciary Committee
Alaska House of Representatives
Pouch V
Juneau, Alaska 99811

RE: HB 30
An Act Relating to the Crime of Conspiracy

Dear Representative Sund:

The Anchorage Crime Commission endorsed the referenced legislation and also identified it as one of its priority legislative items.

Although Alaska presently has an aiding and abetting statute, the passage of a conspiracy statute would provide an additional tool to law enforcement. The requirements under the conspiracy statute are not as stringent as those of the aiding and abetting statute. Prosecution results on the federal level indicate that the use of a conspiracy statute is more efficient as well as cost effective inasmuch as separate trials as required by the aiding and abetting statute are eliminated, therefore, defendants may be charged and tried as a group.

Therefore, since this bill is currently being retained for review by the Judiciary committee which you chair, your prompt reevaluation of this matter and presentation for committee and House review would not only provide the State with an element of the judicial system aligned with other

A Committee of the
Anchorage Chamber
of Commerce

415 F Street
Anchorage AK 99501
(907) 272-2401

states and federal laws, but also with a very cost conscious procedure benefitting the citizens of the State of Alaska.

Sincerely,

Harold C. Heinze

Harold C. Heinze
Chairman

c: Representative Dave Donley
House Judiciary Committee Members

BILL NO: HB 30 DATE: 1/23/87

TITLE: "An Act relating to the crime of conspiracy." CONTACT: Major Walter J. Gilmour
Acting Director

DEPARTMENT OF PUBLIC SAFETY

This legislation adds Sec. 11.31.120 & 125 and amends Sec. 11.31.140 to include the crime of conspiracy in cases involving narcotics and prostitution.

Passage of this bill will provide the criminal justice system with an effective tool in combating criminal enterprises in cases involving controlled substances and prostitution. Under existing statutes, law enforcement agencies are often unable to pursue the financial backers and organizers of these types of criminal activity because such individuals and organizations generally do not get directly involved in the sale of drugs or prostitutes' services. Conspiracy legislation will enable prosecution of these individuals who had previously been able to insulate themselves by using intermediaries to take risks for them.

The Division of Alaska State Troopers is neutral on this legislation.

William R. Nix
Acting Commissioner

5-0198N
Levy
4/24/87

Original sponsor: Donley

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 30 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the crime of conspiracy to deliver certain controlled substances or to promote prostitution; and establishing a class C misdemeanor."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 11.31 is amended by adding new sections to read:

Sec. 11.31.120. CONSPIRACY. (a) An offender commits the crime of conspiracy if, with the intent to promote or facilitate an offense relating to the delivery of a controlled substance under AS 11.71.010 - 11.71.040, an offense relating to promotion of prostitution under AS 11.66.110 - 11.66.120, or an offense having similar elements under a municipal ordinance, the offender agrees with one or more persons to engage in or cause the performance of that offense and the offender or one of the persons does an overt act in furtherance of the conspiracy.

(b) If an offender commits the crime of conspiracy and knows that a person with whom the offender conspires to commit a crime has conspired or will conspire with another person or persons to commit the same crime, the offender is guilty of conspiring with that other person or persons to commit that crime, whether or not the offender knows their identities.

(c) In a prosecution under this section, it is not a defense

(1) that the defendant belongs to a class of persons who by definition are legally incapable in an individual capacity of

committing a crime that is an object of the conspiracy; or

(2) that a person with whom the defendant conspires could not be guilty of a crime that is an object of the conspiracy because of

(A) lack of criminal responsibility or other legal incapacity or exemption;

(B) unawareness of the criminal nature of the conduct in question or of the criminal purpose of the defendant; or

(C) any other factor precluding the culpable mental state required for the commission of the crime.

(d) In a prosecution under this section, it is a defense that, if the criminal objective were achieved, the defendant would not be legally accountable under AS 11.16.120(b) for the conduct of the person with whom the defendant conspired.

(e) In a prosecution under this section it is an affirmative defense that the defendant, under circumstances manifesting a voluntary and complete renunciation of the defendant's criminal intent, gave timely warning to law enforcement authorities or otherwise made proper effort to prevent the commission of the crime that was the object of the conspiracy. Renunciation by one conspirator does not affect the liability of another conspirator who does not join in the renunciation.

(f) The liability of a conspirator for offenses committed in furtherance of the conspiracy, including a crime that is an object of the conspiracy, shall be determined under AS 11.16.

(g) A person may not be convicted under this section solely on the basis of the uncorroborated testimony of a person with whom the defendant conspired.

(h) Conspiracy is a

(1) class A felony if the object of the conspiracy is a crime punishable as an unclassified felony;

(2) class B felony if the object of the conspiracy is a crime punishable as a class A felony;

(3) class C felony if the object of the conspiracy is a crime punishable as a class B felony;

(4) class A misdemeanor if the object of the conspiracy is a crime punishable as a class C felony;

(5) class B misdemeanor if the object of the conspiracy is a crime punishable as a class A misdemeanor;

(6) class C misdemeanor if the object of the conspiracy is a violation of a municipal ordinance.

Sec. 11.31.125. DURATION OF CONSPIRACY FOR PURPOSES OF LIMITATIONS OF ACTIONS. For purposes of applying AS 12.10 governing limitations of actions, in a prosecution under AS 11.31.120, conspiracy is a continuing course of conduct that terminates

(1) when all the crimes related to controlled subst nces or promotion of prostitution that are its object are completed;

(2) when the agreement is abandoned by the defendant and by the person with whom the defendant agreed; or

(3) as to an individual defendant, when the defendant abandons the agreement by advising the person with whom the defendant agreed of the defendant's abandonment or the defendant informs law enforcement authorities of the existence of the conspiracy and of the defendant's participation in it.

* Sec. 2. AS 11.31.140 is amended to read:

Sec. 11.31.140. MULTIPLE CONVICTIONS BARRED. (a) It is not a defense to a prosecution under <u>AS 11.31.100 - 11.31.120</u> [AS 11.31.100 OR AS 11.31.110] that the crime that is the object of the attempt,

conspiracy, or solicitation was actually committed pursuant to the attempt, conspiracy, or solicitation.

(b) A person may not be convicted of more than one crime defined by AS 11.31.100 - 11.31.120 [AS 11.31.100 OR AS 11.31.110] for conduct designed to commit or culminate in commission of the same crime.

(c) A person may not be convicted on the basis of the same course of conduct of both (1) a crime defined by AS 11.31.100 - 11.31.120 [AS 11.31.100 OR AS 11.31.110]; and (2) a crime that is an object of the attempt, conspiracy, or solicitation.

(d) This section does not bar inclusion of multiple counts in a single indictment or information charging commission of a crime defined by AS 11.31.100 - 11.31.120 [AS 11.31.100 OR AS 11.31.110] and commission of the crime that is the object of the attempt, conspiracy, or solicitation.

* Sec. 3. AS 11.31.140 is amended by adding a new subsection to read:

(e) If a person conspires to commit more than one crime under AS 11.31.120, the person commits only one crime of conspiracy if the multiple crimes are the object of the same agreement.

* Sec. 4. AS 12.55.035(b) is amended to read:

(b) Upon conviction of an offense, a defendant who is not an organization may be sentenced to pay, unless otherwise specified in the provision of law defining the offense, a fine of no more than

(1) $75,000 for murder in the first or second degree, sexual assault in the first degree, kidnapping, or misconduct involving a controlled substance in the first degree;

(2) $50,000 for a class A, B, or C felony;

(3) $5,000 for a class A misdemeanor;

(4) $1,000 for a class B misdemeanor;

(5) $500 for a class C misdemeanor;

5-0198N
Levy
4/28/87

Original sponsor: Donley

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 30 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the crime of conspiracy to commit a felony involving delivery of certain controlled substances or promotion of prostitution."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 11.31 is amended by adding new sections to read:

Sec. 11.31.120. CONSPIRACY. (a) An offender commits the crime of conspiracy if, with the intent to promote or facilitate a felony offense relating to the delivery of a controlled substance under AS 11.71.010 - 11.71.040 or a felony offense relating to promotion of prostitution under AS 11.66.110 - 11.66.120, the offender agrees with one or more persons to engage in or cause the performance of that offense and the offender or one of the persons does an overt act in furtherance of the conspiracy.

(b) If an offender commits the crime of conspiracy and knows that a person with whom the offender conspires to commit a crime has conspired or will conspire with another person or persons to commit the same crime, the offender is guilty of conspiring with that other person or persons to commit that crime, whether or not the offender knows their identities.

(c) In a prosecution under this section, it is not a defense

(1) that the defendant belongs to a class of persons who by definition are legally incapable in an individual capacity of committing a crime that is an object of the conspiracy; or

(2) that a person with whom the defendant conspires could

not be guilty of a crime that is an object of the conspiracy because of

(A) lack of criminal responsibility or other legal incapacity or exemption;

(B) unawareness of the criminal nature of the conduct in question or of the criminal purpose of the defendant; or

(C) any other factor precluding the culpable mental state required for the commission of the crime.

(d) In a prosecution under this section, it is a defense that, if the criminal objective were achieved, the defendant would not be legally accountable under AS 11.16.120(b) for the conduct of the person with whom the defendant conspired.

(e) In a prosecution under this section it is an affirmative defense that the defendant, under circumstances manifesting a voluntary and complete renunciation of the defendant's criminal intent, gave timely warning to law enforcement authorities or otherwise made proper effort to prevent the commission of the crime that was the object of the conspiracy. Renunciation by one conspirator does not affect the liability of another conspirator who does not join in the renunciation.

(f) The liability of a conspirator for offenses committed in furtherance of the conspiracy, including a crime that is an object of the conspiracy, shall be determined under AS 11.16.

(g) A person may not be convicted under this section solely on the basis of the uncorroborated testimony of a person with whom the defendant conspired.

(h) Conspiracy is a

(1) class A felony if the object of the conspiracy is a crime punishable as an unclassified felony;

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(3) class C felony if the object of the conspiracy is a crime punishable as a class B felony;

(4) class A misdemeanor if the object of the conspiracy is a crime punishable as a class C felony.

Sec. 11.31.125. DURATION OF CONSPIRACY FOR PURPOSES OF LIMITATIONS OF ACTIONS. For purposes of applying AS 12.10 governing limitations of actions, in a prosecution under AS 11.31.120, conspiracy is a continuing course of conduct that terminates

(1) when all the crimes related to delivery of controlled substances or promotion of prostitution that are its object are completed;

(2) when the agreement is abandoned by the defendant and by the person with whom the defendant agreed; or

(3) as to an individual defendant, when the defendant abandons the agreement by advising the person with whom the defendant agreed of the defendant's abandonment or the defendant informs law enforcement authorities of the existence of the conspiracy and of the defendant's participation in it.

* Sec. 2. AS 11.31.140 is amended to read:

Sec. 11.31.140. MULTIPLE CONVICTIONS BARRED. (a) It is not a defense to a prosecution under <u>AS 11.31.100 - 11.31.120</u> [AS 11.31.100 OR AS 11.31.110] that the crime that is the object of the attempt, <u>conspiracy,</u> or solicitation was actually committed pursuant to the attempt<u>, conspiracy,</u> or solicitation.

(b) A person may not be convicted of more than one crime defined by <u>AS 11.31.100 - 11.31.120</u> [AS 11.31.100 OR AS 11.31.110] for conduct designed to commit or culminate in commission of the same crime.

(c) A person may not be convicted on the basis of the same course of conduct of both (1) a crime defined by AS 11.31.100 - 11.31.120 [AS 11.31.100 OR AS 11.31.110]; and (2) a crime that is an object of the attempt, conspiracy, or solicitation.

(d) This section does not bar inclusion of multiple counts in a single indictment or information charging commission of a crime defined by AS 11.31.100 - 11.31.120 [AS 11.31.100 OR AS 11.31.110] and commission of the crime that is the object of the attempt, conspiracy, or solicitation.

* Sec. 3. AS 11.31.140 is amended by adding a new subsection to read:

(e) If a person conspires to commit more than one crime under AS 11.31.120, the person commits only one crime of conspiracy if the multiple crimes are the object of the same agreement.

? ?

what does this mean

REPRESENTATIVE DAVE DONLEY

ALASKA STATE LEGISLATURE
DISTRICT ELEVEN • SPENARD

P.O. BOX V, JUNEAU 99811
(907) 465-3892

CHAIRMAN
LABOR AND COMMERCE
COMMITTEE

MEMBER
STATE AFFAIRS COMMITTEE
HEALTH, EDUCATIONAL
AND SOCIAL SERVICES COMMITTEE
INTERNATIONAL TRADE
SUB-COMMITTEE

TO: All Members, House Judiciary Committee

FROM: Representative Dave Donley DD

RE: HB 30 - Conspiracy

DATE: April 24, 1987

In response to the growing number of drug and prostitution related crimes in the municipality of Anchorage, I have introduced HB 30 which creates the crime of conspiracy in the state of Alaska.

Alaska is the only state without a conspiracy statute on the books. This legislation will give law enforcement officers an important tool to fight crime by allowing the prosecution of persons who mastermind and finance criminal activity but are presently insulated from prosecution.

This legislation is strongly endorsed by law enforcement officials across the state and by community groups and individual Alaskans concerned with crime. These include: Alaska Police Chiefs Association, Alaska Police Officers Association, Municipality of Anchorage, Anchorage Crime Commission, Fairbanks Police Department, Anchorage Police Department, Valdez Police Department, Soldotna Police Department, Anchorage Chamber of Commerce, Spenard Action Committee and Victims For Justice.

INTERIM IN ANCHORAGE
1024 WEST SIXTH AVENUE • ANCHORAGE, ALASKA 99501 • (907) 561-8234

Prepared by Gruenburg 4/29/87

SECTIONAL ANALYSIS
CSHB 30

Section 1

AS 11.31.120 Creates the crime of conspiracy to commit the crimes of delivery of a controlled substance or promotion of prostitution which are at least class C felonies.

AS 11.31.120(b) Provides that a person may commit the crime of conspiracy with any of his or her intended co-conspirators regardless of whether the person knows the co-conspirators identity.

AS 11.31.120(c) Provides that it is not a defense to the crime of conspiracy that defendant was not legally capable of, or that his co-conspirator lacked the required mental state to commit the underlying crime.

11.31.120(d) Provides that it is a defense to a charge of conspiracy that the defendant was a victim of the underlying crime or that a conspiracy is an inevitable element of the underlying crime.

11.31.120(e) Provides that a person who renounces his intent to commit the underlying crime and makes a timely effort to prevent the crime is not guilty of a conspiracy.

11.31.120(c) Provides that a conspirator's liability for a crime committed in furtherance of a conspiracy shall be governed by existing law controlling accomplice liability.

11.31.120(g) Provides that a person may not be convicted of conspiracy if the only evidence of that person's guilt is the testimony of an alleged co-conspirator.

11.31.120(h) Provides that the crime of conspiracy shall be classified and punishable at one level below the classification of the underlying offense.

AS 11.31.25 Provides that the statute of limitations does not begin to run for an alleged conspiracy until all the underlying crimes have been completed or there have been acts of abandonment.

Section 2

AS 31.140 Provides that a person may be convicted of either conspiracy, solicitation, attempt or the underlying crime but that a person may not be convicted of more than one of these offenses for a single course of conduct intended to result the commission of the same crime.

Section 3

AS 11.31.140(e) Provides that a person may be convicted of only one count of conspiracy for a single agreement to commit multiple crimes.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

LEGISLATIVE REFERENCE LIBRARY

May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

H. JUD.	4-24-87	1:30p.m.
H. JUD.	4-29-87	1:30p.m.

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: HB 30
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: January 21, 1988
Title: "An Act relating to the crime of conspiracy."
Sponsor: Representative Donley
Requestor: House Judiciary

Agency Affected: Department of Law
BRU: Prosecution
Components: Third Judicial District

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES		148.3	152.7	157.3	162.0	166.9
TRAVEL		10.8	11.1	11.4	11.7	12.1
CONTRACTUAL		17.4	17.9	18.4	19.0	19.6
SUPPLIES		11.4	11.7	12.1	12.5	12.9
EQUIPMENT		9.5	-0-	-0-	-0-	-0-
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		197.4	193.4	199.2	205.2	211.4
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		197.4	193.4	199.2	205.2	211.4
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME		3.0	3.0	3.0	3.0	3.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Please see attached analysis.

Richard I. Pegues

Prepared by: Richard I. Pegues, Director
Phone: 465-3672
Division: Administrative Services
Date: January 21, 1988

Richard I. Pegues /EDR/

Approved by Commissioner: Grace Berg Schaible, Atty. Gen.
Date: January 21, 1988
Agency: Department of Law

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB30

This bill makes it a crime for two or more persons to "conspire" together to violate state or municipal laws regarding drugs and prostitution. Enactment of this bill will permit state attorneys to prosecute conspirators even though the crime that was the object of a conspiracy may not have been completed.

With the limits set by the bill, the major focus of enforcement attention will be upon the major narcotics rings which have appeared in the state during the last few years.

Investigation and prosecution of large-scale drug trafficking cases is extremely time-consuming and labor intensive. Major narcotics rings are carefully planned and organized, and it requires the same degree of planning and organization to detect, investigate, infiltrate, and ultimately break the rings. A good example is the single big drug case that the state was able to pursue in FY 85 -- the "Black Gold" heroin ring in Anchorage. The case involved 29 separate individuals (most charged with selling heroin), almost all of whom were granted separate trials, thus creating 29 cases out of a single operation. So far there have been no acquittals, although a few defendants have fled the state and are now fugitives.

The "Black Gold" investigation required the "full-time" (12 hours a day, 6 or 7 days a week) direction and legal assistance of two experienced prosecutors for over two months. In addition to obtaining over 25 search warrants, the prosecutors consulted on a daily, sometimes hourly, basis with and guided the efforts of three teams of officers: a "surveillance" team varying from 10-20 officers to keep track of the members of the ring; a "buy" team of 4-8 officers working closely with informants to purchase narcotics; and an "investigation" team of 2-6 officers who compile telephone records and other evidence in order to discover links between individuals and organizations.

Under a conspiracy law, the scope of enforcement authority would be expanded to include more persons involved in the ring, leading to larger and more complicated investigations and prosecutions, but leading to more effective enforcement of our drug laws. Effective enforcement of these laws, especially at this point in Alaska's history, is critical. With the opening of the new international wing at the Anchorage airport, there has been an increase in the number of international flights with passengers "off-loading" in Anchorage. With new routes of access to Alaska, and new types to drugs to deal in, traffickers will have a field day. We must try to prevent the infiltration into the state of new organizations intended to fill the void left by the prosecution of the Resek-Marin family (FY 84), the Black Gold ring (FY 85) and, most recently, the Azzarella-Serra organizations (FY 86).

Considering the increase in sophisticated narcotics trafficking, and the efforts necessary to adequately meet this threat,

the Department of Law believes that it will need the dedicated services of at least two full-time attorneys, a paralegal, and a secretary in Anchorage. The U.S. Department of Justice recently awarded $823,000 in federal grant monies to the state under the Anti-Drug Abuse Act of 1986. Most of these monies will be subgranted to the Department of Public Safety; however up to $170,000 will be retained by the Department of Law to fund two attorney positions. One of these positions must be dedicated to handling forfeitures of contraband, vehicles and weapons seized from drug dealers. Consequently, only one grant funded attorney, without support personnel, will be available for the investigation and prosecution of major drug traffickers. The department is therefore requesting fiscal note funds to pay for one additional drug prosecutor, one paralegal assistant, and one legal secretary. It is anticipated that federal grant monies, to pay for the other drug prosecutor, and the forfeitures attorney, will be available at least through FY 90.

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB30

Fiscal Summary - HB30

	Atty IV	P/A II	Leg. Sec. I	Total
71000	72.3	43.9	32.1	148.3
72000	5.4	5.4	-0-	10.8
73000	6.6	6.6	4.2	17.4
74000	4.2	4.2	3.0	11.4
75000	1.5	1.5	6.5	9.5
Total	90.0	61.6	45.8	197.4

Costs beyond FY 89 include a 3% annual inflation factor, less one-time equipment costs.

Position Title	No. of Positions	Range/Step	Barg. Unit
Attorney IV	1	24A	PX

Time Status	Staff Months	Location	Election District
PFT	12	EBA - Anchorage	8

Type of Expenditure		Amount
1	2	3
Salary	56,244	
Benefits	16,028	
Premium Pay		
Other		
Total Personal Services		72,272
Travel		5,400
Contractual		6,600
Commodities		4,200
Equipment		1,500
Other		
Total Cost		89,972

Funding Source for Total Cost		
Federal Receipts	1002	
G. F. Match	1003	
General Fund	1004	89,972
GF Program Receipts	1005	
Other		

Justification

This is the first of three positions that will be needed to provide prosecution services of defendants who conspire to violate state and municipal laws regarding drugs and prostitution. Investigation and prosecution of large-scale drug trafficking cases and prostitution rings is extremely time consuming and labor intensive and will require a minimum of two attorneys. Allocation to the full-working level of Attorney IV for this position is recommended because of the seriousness of the crimes being prosecuted.

Request For New Position

Agency: Department of Law

BRU: Prosecution

Component: Third Judicial District

Revised Date 1/21/88

FY 89

Position Title	No. of Positions	Range/Step	Barg. Unit
Paralegal Assistant II	1	16A	GGU

Time Status	Staff Months	Location	Election District
PFT	12	EBA - Anchorage	8

Type of Expenditure		Amount
1	2	3
Salary	32,424	
Benefits	11,847	
Premium Pay		
Other		
Total Personal Services		43,911
Travel		5,400
Contractual		6,600
Commodities		4,200
Equipment		1,500
Other		
Total Cost		61,611

Funding Source for Total Cost	
Federal Receipts 1002	
G. F. Match 1003	
General Fund 1004	61,611
GF Program Receipts 1005	
Other	

Justification

This is the second of three positions that will be needed to provide prosecution services of defendants who conspire to violate state and municipal laws regarding drugs and prostitution. Investigation and prosecution of large-scale drug trafficking cases and prostitution rings is extremely time consuming and labor intensive and will require the services of a skilled paraprofessional in the preparation of evidence. Allocation to the paralegal assistant II, full working level is recommended.

Request For New Position

Agency: Department of Law

BRU: Prosecution

Component: Third Judicial District

FY 89

Position Title	No. of Positions	Range/Step	Barg. Unit
Legal Secretary I	1	10B	GGU

Time Status	Staff Months	Location	Election District
PFT	12	EBA - Anchorage	8

Type of Expenditure		Amount
1	2	3
Salary	22,716	
Benefits	9,334	
Premium Pay		
Other		
Total Personal Services		32,050
Travel		-0-
Contractual		4,200
Commodities		3,000
Equipment		6,500
Other		
Total Cost		45,750

Funding Source for Total Cost		
Federal Receipts	1002	
G. F. Match	1003	
General Fund	1004	45,750
GF Program Receipts	1005	
Other		

Justification

This is the third of three positions that will be needed to provide prosecution services of defendants who conspire to violate state and municipal laws regarding drugs and prostitution. Investigation and prosecution of large-scale drug trafficking cases and prostitution rings is extremely time consuming and labor intensive and generates substantial legal documentation, including: search warrants, subpoenas, motions, affadavits, and legal memoranda. Consequently, full-time secretarial services will be required. Allocation to the legal secretary I level is recommended in view of the heavy documentation load.

Request For New Position

Agency: Department of Law

BRU: Prosecution

Component: Third Judicial District

Revised Date 1/21/88

FY 89

REPRESENTATIVE DAVE DONLEY

ALASKA STATE LEGISLATURE
DISTRICT ELEVEN • SPENARD

P.O. BOX V, JUNEAU 99811
(907) 465-3892

CHAIRMAN
LABOR AND COMMERCE COMMITTEE

MEMBER
STATE AFFAIRS COMMITTEE
HEALTH, EDUCATIONAL AND SOCIAL SERVICES COMMITTEE
INTERNATIONAL TRADE SUB-COMMITTEE

Rep John Sund
Attn. J Hartle

TESTIMONY FOR HB 30 - CONSPIRACY

House Judiciary Committee April 29, 1987

Del Smith
Anchorage Deputy Police Chief
Anchorage Police Department
4501 S. Bragaw St.
Anchorage, AK 99507-1599

PHONE # 786-8552

Pat Shely
Alaska Association of Police Chiefs
625 C Street
Anchorage, AK 99501

PHONE # 835-4560 ext. 252

Marge Hall
Alaska Juvenile Crime Commission
PO Box 92850
Anchorage, AK 99509

PHONE # 279-7401

Janice Lienhart
Victims For Justice
3100 Mt. View Drive
Anchorage, AK 99501

PHONE # " "

Duane Udland
Soldotna Chief of Police
Box 2499
Soldotna, AK 99669

SOLDOTNA LIO
PHONE # 262-9364

Rick Ross
Kenai Chief of Police

PHONE # " "

Richard Cummings
Fairbanks Chief of Police
656 7th Ave
Fairbanks, AK 99701

PHONE # 452-1527 ext. 213

Barbara Hurley
Anchorage Crime Commission
PO Box 100360
Anchorage, AK 99510-0360

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V Ct. Sterns 269-5620

INTERIM IN ANCHORAGE
1024 WEST SIXTH AVENUE • ANCHORAGE, ALASKA 99501 • (907) 561-8234

POLICE DEPARTMENT
CITY OF FAIRBANKS
656 7TH AVENUE
FAIRBANKS, ALASKA 99701
907-452-1527

CHIEF OF POLICE

April 22, 1987

The Honorable Dave Donley
Alaska State Legislature
P.O. Box V (MS 3100)
Juneau, Alaska 99811

Ref: HB 30

Dear Representative Donley:

I am in total agreement with the Alaska Association of Chiefs of Police and the Alaska Peace Officers Association in their support of House Bill No. 30, relating to the crime of conspiracy. I am certain that I can speak for all commissioned members of the Fairbanks Police Department, who strongly endorse the concept that a person who plans the commission of a crime by another person is also criminally liable for such actions. Even though this bill is limited to crimes related to controlled substances, prostitution, and promotion of prostitution, I believe that it can be amended in future legislative sessions to include all felony statutes.

On behalf of the Fairbanks Police Department and the citizens we serve, I send my support and appreciation for passage of this Bill.

Sincerely,

RICHARD D. CUMMINGS
Chief of Police

RLC:lnh

ANCHORAGE POLICE DEPARTMENT

4501 SOUTH BRAGAW STREET • ANCHORAGE, ALASKA 99507-1599
TELEPHONE (907) 786-8500

TONY KNOWLES
MAYOR

RONALD L. OTTE
CHIEF

April 23, 1987

Representative Dave Donley
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

RE: CS HB 28 Prostitution Penalties
HB 30 Conspiracy

Dear Representative Donley,

It is my understanding that CS HB 28 and HB 30 will be discussed in hearings on April 24, 1987.

I continue to support these bills, as I did during the Alaska Association Chiefs of Police teleconference in January.

If I can be of any further assistance please do not hesitate to contact me.

Sincerely,

Ronald L. Otte

Ronald L. Otte
Chief of Police

RLO:dl

FEB 9 1987

Alaska Association Chiefs of Police

625 C Street • Anchorage, Alaska 99501

February 4, 1987

Representative Dave Donley
Alaska House of Representatives
P.O. Box V
Juneau, AK 99811

Dear Representative Donley,

I wish to thank you for allowing members of the Chiefs Association to address legislative issues via teleconference on January 30, 1987.

I believe your teleconference with the membership is a first. We look forward to providing input based on a professional law enforcement perspective as issues arise.

As was apparent from the testimony by AACOP members we wholeheartedly support HB28 and HB30.

If I or any of the membership can be of assistance in the future please don't hesitate to call.

Again, thank you for allowing us to participate in the legislative process.

Sincerely,

Patrick M. Shely, President
Chief, Valdez Police Department

Del Smith

By: Del Smith, Vice President
Deputy Chief, Anchorage Police Department

Alaska Association Chiefs of Police

625 C Street • Anchorage, Alaska 99501

April 23, 1987

Representative Dave Donley
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

RE: CS HB 28 Prostitution Penalties
HB 30 Conspiracy

Dear Representative Donley,

During the January 1987 meeting of the Alaska Association Chiefs of Police, the Association expressed support for CS HB 28. I wanted you to know that we continue to support the bill as I understand it has been scheduled for a hearing on April 24, 1987.

At the January meeting we also identified four legislative priorities for this session. The number two priority for the Association was and continues to be HB 30, the Conspiracy Bill. I understand that it too is scheduled for a hearing in the near future and I wanted to assure you of our continued support.

Sincerely,

Del Smith

By: Del Smith, Vice President
Deputy Chief, Anchorage Police Department

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: HB 30
PUBLISH DATE: 1/19/87

FISCAL NOTE

REQUEST:

Revision Date: 1/21/88
Title: "An Act relating to the crime of conspiracy."
Sponsor: Donley
Requestor: Judiciary, Finance

Agency Affected: Administration
BRU: Office of Public Advocacy
Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES	0	103.7	107.8	112.1	116.6	121.3
TRAVEL		5.0	5.2	5.4	5.6	5.8
CONTRACTUAL		85.0	88.4	91.9	95.6	99.4
SUPPLIES		2.5	2.6	2.7	2.8	2.9
EQUIPMENT		6.0	0	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	202.2	204.0	212.1	220.6	229.4
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	202.2	204.0	212.1	220.6	229.4
FEDERAL FUNDS						
OTHER						
TOTAL		202.2	204.0	212.1	220.6	229.4

POSITIONS:

FULL-TIME	0	2.0	2.0	2.0	2.0	2.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Brant McGee
Division: Office of Public Advocacy
Phone: 274-1684
Date:

Approved by Commissioner: John Andrews
Agency: Department of Administration
Date: 2/1/88

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

Fiscal Note Analysis
Prepared by Office of Public Advocacy
Department of Administration
February 18, 1987
HB 30

This bill is intended to assist Alaskan state law enforcement authorities in combatting the criminal efforts of groups organized for illegal purposes. Senate Bill 27 apparently limits its prescriptions to criminals in drug distribution and prostitution schemes. It must be assumed that numerous prosecutions will be pursued under this statute because of the current frequency of arrests for the substantive offenses involved.

The Public Defender Agency and the Office of Public Advocacy must assume that it will be appointed in the great majority of such prosecutions just as it is currently appointed in the great majority of drug and prostitution prosecutions.

Cases filed under conspiracy statutes on the federal level and in other states routinely involve substantial attorney time, particularly for preparation of pre-trial motions. This new statute will undoubtedly be the subject of constitutional litigation from the outset. Because the statute is aimed at the arrest of several individuals in each prosecution, it must be assumed that Office of Public Advocacy will be appointed. Due to the fact that the Department of Law's investigation activity will probably focus on urban areas, the Office of Public Advocacy is requesting one experienced attorney and one clerk typist to handle representation of clients charged under this bill.

Enactment of this statute is intended to allow the prosecution of multiple co-defendants. The Office of Public Advocacy is responsible by statute for providing legal representation to all indigent defendants with whom the Public Defender Agency has a conflict of interest. While staff attorneys can represent one co-defendant, in a given case the Office of Public Advocacy must contract with private counsel for the representation of all other co-defendants determine to be indigent by the court. It is anticipated that the complexity of this litigation will dictate high contract costs which are estimated at $15,000 per defendant. The Department of Law has not estimated the number of prosecutions it will initiate during FY86. The projected $75,000 in contract costs is thus based on the assumption the Office of Public Advocacy will be responsible for only five defendants for which it cannot provide staff coverage.

HB 30 FISCAL ANALYSIS

Personal Services:	Attorney IV	74.4	
	Clerk/Typist III	29.3	
			$103.7
Travel:	Expert Witnesses, Investigation, etc.		5.0
Contractual:	Contract Attorneys	75.0	
	Expert Witnesses, Space, Etc.	10.0	
			85.0
Supplies:	Office, Law Library, ets.		2.5
Equipment:	(One time) Furniture, Office Machines, Etc.		6.0
		TOTAL	$202.2

Position Title	No. of Positions	Range/Step	Barg. Unit
Attorney IV	1	24/A	X

Time Status	Staff Months	Location	Election District
PFS	12	EBA-Anchorage	8

Type of Expenditure		Amount
1	2	3
Salary	56,244	
Benefits	18,132	
Premium Pay		
Other		
Total Personal Services		74,376
Travel		
Contractual		
Commodities		
Equipment		
Other		
Total Cost		74,376

Funding Source for Total Cost		
Federal Receipts	1002	
G. F. Match	1003	
General Fund	1004	74,376
GF Program Receipts	1005	
Other		

Justification

The Anchorage OPA office presently has 3 attorney positions devoted to criminal defense. These attorneys are also handling several major cases outside the Anchorage area as staff coverage and travel is more cost effective than contracting major cases to private attorneys in rural areas. Current caseloads indicate that these three attorneys cannot absorb the additional cases which would result from this legislation. It is necessary that an additional attorney be added to the Anchorage staff to cover the resultant increased caseload.

Request For New Position

Agency: Administration

BRU: Office of Public Advocacy

Component:

Revised Date

FY 89

Position Title	No. of Positions	Range/Step	Barg. Unit
Clerk Typist III	1	8/A	G

Time Status	Staff Months	Location	Election District
PFT	12	EBA-Anchorage	8

Type of Expenditure		Amount
1	2	3
Salary	19,572	
Benefits	9,747	
Premium Pay		
Other		
Total Personal Services		29,319
Travel		
Contractual		
Commodities		
Equipment		
Other		
Total Cost		29,319

Funding Source for Total Cost		
Federal Receipts	1002	
G. F. Match	1003	
General Fund	1004	29,319
GF Program Receipts	1005	
Other		

Justification

The Anchorage OPA office presently has 3 legal secretary positions providing clerical support to 12 professional positions, 2 vista volunteers, and the VGAL program. The addition of an attorney with a full caseload necessitates the addition of another typist. The clerical workload generated by an additional attorney position cannot be absorbed by the current secretarial staff.

Request For New Position

Agency: Administration

BRU: Office of Public Advocacy

Component:

Revised Date

FY 89

REPRESENTATIVE DAVE DONLEY
ALASKA STATE LEGISLATURE
DISTRICT ELEVEN - SPENARD

P.O. BOX V, JUNEAU 99811
(907) 465-3892

JAN 19 88

CHAIRMAN
LABOR AND COMMERCE COMMITTEE

MEMBER
STATE AFFAIRS COMMITTEE
HEALTH, EDUCATIONAL AND SOCIAL SERVICES COMMITTEE
INTERNATIONAL TRADE SUB-COMMITTEE

MEMO:

DATE: January 18, 1988

TO: All House members

FROM: Representative Dave Donley DD

SUBJECT: HB30 - letter of support

Dear Colleagues,

Please find attached the Alaska Chiefs of Police Association, Alaska Peace Officers Association and the FBI National Academy Associates position statement recommending HB30 as its number one priority during this legislative session.

This support joins the many other agencies across the state, such as Municipality of Anchorage, Fairbanks Police Department, Soldotna Police Department, Valdez Police Department and Victims for Justice who strongly support the passage of HB30.

If you have any questions regarding this bill please give my office or me a call at 465-3892.

Attachment

DD/mb

INTERIM IN ANCHORAGE
1024 WEST SIXTH AVENUE • ANCHORAGE, ALASKA 99501 • (907) 561-8234

SB 27 (Rodey) and

HB 30 (Donley) identical measures, relating to the crime of conspiracy

We strongly endorse the concept that persons who join together to plan the commission of a crime should be criminally liable for such action. In the present version, the bills apply only to conspiracy related to the crimes of prostitution and delivery of a controlled substauce. We believe that all crimes, but particularly murder and arson, should be the focus of any conspiracy bill to be considered. Of all crimes, homicide is the most serious that can be committed. The crime of arson almost always results in substantial monetary impact and may present significant danger to innocent victims. Both are appropriate targets for a conspiracy law.

A conspiracy statute will provide law enforcement agencies with a major tool to deal with these very serious offenses. It will allow law enforcement to intervene at an early stage of the evolving plan to commit a crime, and will allow persons to be charged prior to the commission of an illegal act.

Although there also is an argument for the inclusion of drugs and/or prostitution related offenses in a conspiracy statute, we believe the first priority should be legislation addressing murder and arson. It is our intention to work with legislators to attempt to amend Senate Bill 27 or House Bill 30 accordingly.

We fully endorse the concept of an affirmative defense being offered to a conspirator who renounces his criminal intent, provides timely warning to authorities, and does what he can to prevent the crime, because these provisions will serve as an inducement for some to help prevent the commission of a crime. Both bills contain such provisions.

Of the fifty states and the federal government, Alaska alone does not have a state statute making conspiracy a crime. Since at least 19 0, the law enforcement community has supported the concept of conspiracy being a criminal act.

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

M E M O R A N D U M April 28, 1987

SUBJECT: CSHB 30(Judiciary) -- conspiracy

TO: Representative Donley

FROM: Keith B. Levy KBL
Legislative Counsel

Your staff has requested an explanation of the two versions of the draft CSHB 30 (Judiciary) prepared for Representative Gruenberg's office. Representative Gruenberg's staff has given me permission to discuss those drafts.

The chief difference between the original version of HB 30 and the committee substitutes prepared for Representative Gruenberg is that the committee substitutes limit the offense of conspiracy to conspiracy to commit certain felonies. The original HB 30 applied to misdemeanors as well as felonies.

The first version of the committee substitute limits the offense to conspiracy to commit a felony relating to delivery of a controlled substance under AS 11.71.010 - 11.71.040. The second version is identical to the first except that it also applies to conspiracy to commit a felony related to promoting prostitution under AS 11.66.110 - 11.66.120. Neither version applies to simple prostitution under AS 11.66.100 or a violation of a municipal ordinance.

If I may be of further assistance, please advise.

KBL:mkr
m11/089

POSITION PAPER

HB 30

This bill will make criminal certain types of conduct related to efforts to promote prostitution or distribute illegal drugs.

The Alaska Public Defender Agency and the Office of Public Advocacy are not law enforcement agencies and therefore are in no position to evaluate the need for this legislation. The fiscal impact of this bill will be determined by the types and frequency of prosecutions initiated by the Department of Law.

The Alaska Public Defender Agency and the Office of Public Advocacy have adopted a neutral position with respect to this legislation.

Brant McGee, Public Advocate
Office of Public Advocacy

2/22/87
Date

Commissioner Garrey Peska
Department of Administration

3/2/87
Date

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: Bill Version: HB 30
Publish Date: 01/19/87

Revision Date:
Title: "An Act relating to the crime of conspiracy..."
Sponsor: Donley
Requestor: House Judicial

Agency Affected: Administration
BRU: Office of Public Advocacy
Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES		103.1	107.2	111.5	116.0	120.6
TRAVEL		5.0	5.2	5.4	5.6	5.8
CONTRACTUAL		85.0	88.4	91.9	95.6	99.4
SUPPLIES		2.5	2.6	2.7	2.8	2.9
EQUIPMENT		6.0	0	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	201.6	203.4	211.5	222.0	228.7
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	201.6	203.4	211.5	222.0	228.7
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	201.6	203.4	211.5	222.0	228.7

POSITIONS:

FULL-TIME	-0-	2.0	2.0	2.0	2.0	2.0
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

See Attached

Prepared by: Brant McGee, Public Advocate Phone: 274-;684
Division: Office of Public Advocacy Date: 2/22/87

Approved by Commissioner: Garrey Peska Date: 3/2/87
Agency: Department of Administration

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)
Senate Secretary

Fiscal Note Analysis
Prepared by Office of Public Advocacy
Department of Administration
February 18, 1987
HB 30

This bill is intended to assist Alaskan state law enforcement authorities in combatting the criminal efforts of groups organized for illegal purposes. Senate Bill 27 apparently limits its prescriptions to criminals in drug distribution and prostitution schemes. It must be assumed that numerous prosecutions will be pursued under this statute because of the current frequency of arrests for the substantive offenses involved.

The Public Defender Agency and the Office of Public Advocacy must assume that it will be appointed in the great majority of such prosecutions just as it is currently appointed in the great majority of drug and prostitution prosecutions.

Cases filed under conspiracy statutes on the federal level and in other states routinely involve substantial attorney time, particularly for preparation of pre-trial motions. This new statute will undoubtedly be the subject of constitutional litigation from the outset. Because the statute is aimed at the arrest of several individuals in each prosecution, it must be assumed that Office of Public Advocacy will be appointed. Due to the fact that the Department of Law's investigation activity will probably focus on urban areas, the Office of Public Advocacy is requesting one experienced attorney and one clerk typist to handle representation of clients charged under this bill.

Enactment of this statute is intended to allow the prosecution of multiple co-defendants. The Office of Public Advocacy is responsible by statute for providing legal representation to all indigent defendants with whom the Public Defender Agency has a conflict of interest. While staff attorneys can represent one co-defendant, in a given case the Office of Public Advocacy must contract with private counsel for the representation of all other co-defendants determine to be indigent by the court. It is anticipated that the complexity of this litigation will dictate high contract costs which are estimated at $15,000 per defendant. The Department of Law has not estimated the number of prosecutions it will initiate during FY86. The projected $75,000 in contract costs is thus based on the assumption the Office of Public Advocacy will be responsible for only five defendants for which it cannot provide staff coverage.

HB 30 FISCAL ANALYSIS

Personal Services:	Attorney IV	74.8	
	Clerk/Typist III	28.3	
			103.1
Travel:	Expert Witnesses, Investigation, etc.		5.0
Contractual:	Contract Attorneys	75.0	
	Expert Witnesses, Space, Etc.	10.0	
			85.0
Supplies:	Office, Law Library, ets.		2.5
Equipment:	(One time) Furniture, Office Machines, Etc.		6.0
		TOTAL	201.6

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST

Bill Version: HB30
Publish Date:

Revision Date:
Title: An Act Relating to the Crime of Conspiracy
Sponsor: Senator Rodey
Requestor: Judiciary and Finance

Agency Affected: Department of Administration
BRU: Public Defender Agency
Components: Third Judicial District

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES	0	147.9	153.8	160.0	166.4	173.1
TRAVEL	0	5.0	5.2	5.4	5.6	5.8
CONTRACTUAL	0	10.0	10.4	10.8	11.2	11.7
SUPPLIES	0	2.5	2.5	2.7	2.8	2.9
EQUIPMENT	0	6.0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	171.4	172.0	178.9	186.0	193.5
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	171.4	172.0	178.9	186.0	193.5
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	171.4	172.0	178.9	186.0	293.5
POSITIONS:	0	0	0	0	0	0
FULL-TIME	0	3.0	3.0	3.0	3.0	3.0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: Attach a separate page if necessary

See attached.

Prepared By: Dana Fabe, Public Defender
Phone: 279-7541
Division: Public Defender Agency
Date: January 30, 1987

Approved by Commissioner: Garrey Peska
Date: 2/2/87
Agency: Department of Administration

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)
Senate Secretary

Rev. 9/16/86
7/17K1/0227/87

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB30

PREPARED BY THE PUBLIC DEFENDER AGENCY

This bill is intended to assist Alaskan state law enforcement authorities in combatting the criminal efforts of groups organized for illegal purposes. Senate Bill 27 apparently limits its prescriptions to criminals in drug distribution and prostitution schemes. It must be assumed that numerous prosecutions will be pursued under this statute because of the current frequency of arrests for the substantive offenses involved.

The Public Defender Agency must assume that it will be appointed in a large number of such prosecutions just as it is currently appointed with great frequency in drug and prostitution cases.

Cases filed under conspiracy statutes on the federal level and in other states routinely involve substantial attorney time, particularly for preparation of pre-trial motions. Due to the fact that the Department of Law's investigation activity will probably focus on urban areas, the Public Defender is requesting one experienced attorney, a paralegal and a clerk typist to handle representation of clients charged under this bill.

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB30

PREPARED BY THE PUBLIC DEFENDER AGENCY

FISCAL ANALYSIS

Personal Services:	Attorney IV	74.8	
	Paralegal II	44.8	
	Clerk/Typist III	28.3	
			$147.9
Travel: Expert Witness, Investigation, etc.			5.0
Contractual: Expert Witnesses, Space, etc.			10.0
Supplies: Office, Law Library, etc.			2.5
Equipment: (One time) Furniture, Office Machines, etc.			6.0
	TOTAL		$171.4

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST:

Bill Version : HB30
Publish Date :

Revision Date:
Title : "An Act relating to the crime of conspiracy."
Sponsor : Repr. Donley
Requester : House Judiciary Committee

Agency Affected : Department of Law
BRU : Prosecution

Components : Third Judicial District

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES		207.2	213.4	219.8	226.4	233.2
TRAVEL		16.2	16.7	17.2	17.7	18.2
CONTRACTUAL		24.2	24.9	25.6	26.4	27.2
SUPPLIES		15.6	11.1	11.4	11.7	12.1
EQUIPMENT		11.0	-0-	-0-	-0-	-0-
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		274.0	266.1	274.0	282.2	290.7
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		274.0	266.1	274.0	282.2	290.7
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME		4.0	4.0	4.0	4.0	4.0
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Please see attached analysis.

Richard L. Pegues

Prepared by : Richard I. Pegues, Director
Phone : 465-3672
Division : Administrative Services
Date : 1/27/87

Ronald W. Lorensen
Approved by Commissioner : Acting Attorney General
Date : 1/27/87
Agency : Department of Law

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)
Senate Secretary

This bill makes it a crime for two or more persons to "conspire" together to violate state or municipal laws regarding drugs and prostitution. Enactment of this bill will permit state attorneys to prosecute conspirators even though the crime that was the object of a conspiracy may not have been completed.

With the limits set by the bill, the major focus of enforcement attention will be upon the major narcotics rings which have appeared in the state during the last few years.

Investigation and prosecution of large-scale drug trafficking cases is extremely time-consuming and labor intensive. Major narcotics rings are carefully planned and organized, and it requires the same degree of planning and organization to detect, investigate, infiltrate, and ultimately break the rings. A good example is the single big drug case that the state was able to pursue in FY 85 -- the "Black Gold" heroin ring in Anchorage. The case involved 29 separate individuals (most charged with selling heroin), almost all of whom were granted separate trials, thus creating 29 cases out of a single operation. So far there have been no acquittals, although a few defendants have fled the state and are now fugitives.

The "Black Gold" investigation required the "full-time" (12 hours a day, 6 or 7 days a week) direction and legal assistance of two experienced prosecutors for over two months. In addition to obtaining over 25 search warrants, the prosecutors consulted on a daily, sometimes hourly, basis with and guided the efforts of three teams of officers: a "surveillance" team varying from 10-20 officers to keep track of the members of the ring; a "buy" team of 4-8 officers working closely with informants to purchase narcotics; and an "investigation" team of 2-6 officers who compile telephone records and other evidence in order to discover links between individuals and organizations.

Under a conspiracy law, the scope of enforcement authority would be expanded to include more persons involved in the ring, leading to larger and more complicated investigations and prosecutions, but leading to more effective enforcement of our drug laws. Effective enforcement of these laws, especially at this point in Alaska's history, is critical. With the opening of the new international wing at the Anchorage airport, there has been an increase in the number of international flights with passengers "off-loading" in Anchorage. With new routes of access to Alaska, and new types to drugs to deal in, traffickers will have a field day. We must try to prevent the infiltration into the state of new organizations intended to fill the void left by the prosecution of the Resek-Marin family (FY 84), the Black Gold ring (FY 85) and, most recently, the Azzarella-Serra organizations (FY 86).

Considering the increase in sophisticated narcotics trafficking, and the efforts necessary to adequately meet this threat,

the Department of Law believes that it will need the dedicated services of at least two full-time attorneys, a paralegal, and a secretary in Anchorage. Previous fiscal notes on conspiracy legislation have been premised upon the existence of a sufficient capability within the Anchorage District Attorney's Office to adequately handle large scale narcotics prosecutions. However, in recent years, budget cutbacks have resulted in narcotics positions being unfunded and proposed budget cuts for FY 88 will make prosecution of these time-consuming cases impossible. Thus, in order to permit the division to prosecute narcotics conspiracy cases, funding must be restored so that a functioning narcotics unit exists.

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB30

Fiscal Summary - HB30

	Atty IV	Atty III	P/A II	Leg. Sec. I	Total
71000	70.6	62.4	42.5	31.7	207.2
72000	5.4	5.4	5.4	-0-	16.2
73000	6.6	6.6	6.6	4.2	24.0
74000	4.2	4.2	4.2	3.0	15.6
75000	1.5	1.5	1.5	6.5	11.0
Total	88.3	80.1	60.2	45.4	274.0

Costs beyond FY 88 include a 3% annual inflation factor, less one-time equipment costs.

Position Title	No. of Positions	Range/Step	Barg. Unit
Attorney IV	1	24A	PX

Time Status	Staff Months	Location	Election District
PFT	12	EBA - Anchorage	8

Type of Expenditure		Amount
1	2	3
Salary	56,244	
Benefits	14,310	
Premium Pay		
Other		
Total Personal Services		70,554
Travel		5,400
Contractual		6,600
Commodities		4,200
Equipment		1,500
Other		
Total Cost		88,254

Funding Source for Total Cost		
Federal Receipts	1002	
G. F. Match	1003	
General Fund	1004	88,254
I-A Receipts	1006	
CIP Receipts	1061	
Other		

Justification

This is the first of four positions that will be needed to provide prosecution services of defendants who conspire to violate state and municipal laws regarding drugs and prostitution. Investigation and prosecution of large-scale drug trafficking cases and prostitution rings is extremely time consuming and labor intensive and will require a minimum of two attorneys. Allocation to the full-working level of Attorney IV for this position is recommended because of the seriousness of the crimes being prosecuted.

Request For New Position

Agency: Department of Law

BRU: Prosecution

Component: Third Judicial District

Revised Date

FY 88

Position Title	No. of Positions	Range/Step	Barg. Unit
Attorney III	1	22A	PX

Time Status	Staff Months	Location	Election District
PFT	12	EBA - Anchorage	8

Type of Expenditure		Amount
1	2	3
Salary	49,140	
Benefits	13,264	
Premium Pay		
Other		
Total Personal Services		62,404
Travel		5,400
Contractual		6,600
Commodities		4,200
Equipment		1,500
Other		
Total Cost		80,104

Funding Source for Total Cost		
Federal Receipts	1002	
G. F. Match	1003	
General Fund	1004	80,104
I-A Receipts	1006	
CIP Receipts	1061	
Other		

Justification

This is the second of four positions that will be needed to provide prosecution services of defendants who conspire to violate state and municipal laws regarding drugs and prostitution. Investigation and prosecution of large-scale drug trafficking cases and prostitution rings is extremely time consuming and labor intensive and will require a minimum of two attorneys. Allocation to the Attorney III level is recommended because this position will assist the Attorney IV in the prosecution of serious crimes.

Request For New Position

Agency Department of Law

BRU Prosecution

Component Third Judicial District

FY 88

Position Title	No. of Positions	Range/Step	Barg. Unit
Paralegal Assistant II	1	16A	[illegible]U

Time Status	Staff Months	Location	Election District
PFT	12	EBA - Anchorage	8

Type of Expenditure		Amount
1	2	3
Salary	32,424	
Benefits	10,095	
Premium Pay		
Other		
Total Personal Services		42,519
Travel		5,400
Contractual		6,600
Commodities		4,200
Equipment		1,500
Other		
Total Cost		60,219

Funding Source for Total Cost		
Federal Receipts	1002	
G. F. Match	1003	
General Fund	1004	60,219
I-A Receipts	1006	
CIP Receipts	1061	
Other		

Justification

This is the third of four positions that will be needed to provide prosecution services of defendants who conspire to violate state and municipal laws regarding drugs and prostitution. Investigation and prosecution of large-scale drug trafficking cases and prostitution rings is extremely time consuming and labor intensive and will require the services of a skilled para-professional in the preparation of evidence. Allocation to the paralegal assistant II, full working level is recommended.

Request For New Position

Agency: Department of Law
BRU: Prosecution
Component: Third Judicial District

FY 88

Position Title	No. of Positions	Range/Step	Barg. Unit
Legal Secretary I	1	10B	GGU

Time Status	Staff Months	Location	Election District
PFT	12	EBA - Anchorage	8

Type of Expenditure		Amount
1	2	3
Salary	23,460	
Benefits	8,192	
Premium Pay		
Other		
Total Personal Services		31,652
Travel		-0-
Contractual		4,200
Commodities		3,000
Equipment		6,500
Other		
Total Cost		45,352

Funding Source for Total Cost		
Federal Receipts	1002	
G. F. Match	1003	
General Fund	1004	45,352
I-A Receipts	1006	
CIP Receipts	1061	
Other		

Justification

This is the fourth of four positions that will be needed to provide prosecution services of defendants who conspire to violate state and municipal laws regarding drugs and prostitution. Investigation and prosecution of large-scale drug trafficking cases and prostitution rings is extremely time consuming and labor intensive and generates substantial legal documentation, including: search warrants, subpoenas, motions, affadavits, and legal memoranda. Consequently, full-time secretarial services will be required. Allocation to the legal secretary I level is recommended in view of the heavy documentation load.

Request For New Position

Agency: Department of Law

BRU: Prosecution

Component: Third Judicial District

Revised Date

FY 88

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version: HB 30
Publish Date:

REQUEST
Revision Date:
Agency Affected: Public Safety
Title: "An Act relating to the crime of conspiracy."
BRU: Alaska State Troopers
Sponsor: Rep. Donley
Components: Detachments & C.I.B. Narcotics
Requestor: House Judiciary

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
OPERATING						
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUNDS	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact is anticipated.

Prepared by: Francis C. Allan F.C.A. Phone: 269-5691
Division: Alaska State Troopers Date: 1/16/87

Approved by Commissioner: Date: 1/22/87
Agency: Public Safety

Distribution (by preparer):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- Senate Secretary