

**2802 CONSPIRACY: PROOF OF MEMBERSHIP**

Before you may find that a defendant, or any other person, was a member of a conspiracy, you must be satisfied that the conspiracy was knowingly formed, and that the defendant, or other person who is claimed to have been a member, knowingly participated in the unlawful plan with the intent to advance or further some object or purpose of the conspiracy.

"To act or participate knowingly" means to act or participate voluntarily and intentionally and not because of mistake, accident, or other innocent reason. So, if a defendant, or any other person, with understanding of the unlawful character of a plan, intentionally encourages, advises, or assists, for the purpose of furthering the plan, he or she thereby becomes a knowing participant – a conspirator.

An unlawful conspiracy may exist even though all of the conspirators do not meet or agree simultaneously. Unlawful conspiracies may be formed without such simultaneous action or agreement on the part of the conspirators.

One may become a member of a conspiracy without full knowledge of all the details of the conspiracy. It is not necessary that each member of the conspiracy knows exactly what part other members are playing. It is not necessary that each of the conspirators knows the identity or role of the other participants in the conspiracy.

One who knowingly joins an existing conspiracy is charged with the same responsibility as if he or she had been one of the originators or instigators of the conspiracy. Such a person is deemed to have adopted and assumed responsibility for everything done and said up to that time.

So, too, one who acquiesces, submits or tacitly assents to an illegal scheme is as much a conspirator as one who creates or promotes it. Even the fact that it may have been forced upon a person does not excuse such acquiescence.

In determining whether a defendant was a member of a conspiracy, you should not consider what others may have said or done. That is to say, the membership of a defendant in a conspiracy must be established by evidence in the case as to the person's own conduct, by what the person knowingly said or did.

[Burden of Proof, Wis JI-Civil 205]

#### COMMENT

This instruction was approved by the Committee in 1980 and revised in 1991. This instruction was revised in 2002 to conform the language regarding the burden of proof to the Committee's 2002 revisions to Wis. JI-Civil 200 and 205, the instructions on the civil burdens of proof. See Wis. JI-Civil 200, Comment.

American Tobacco Co. v. United States, 328 U.S. 781 (1946); United States v. National City Lines, 186 F.2d 562 (7th Cir. 1951), cert. denied, 341 U.S. 916 (1951); 3 Devitt and Blackman, Federal Jury Practice and Instructions, 3d § 90.12 at 160.61; United States v. Wise, 329 F.2d 829 (9th Cir. 1964).

Joining an conspiracy after its formation: Lincoln v. Claflin, 74 U.S. (7 Wall.) 132 (1868); Hernandez v. United States, 300 F.2d 114, 122 (9th Cir. 1962); United States v. Bausch & Lomb Optical Co., 34 F. Supp. 267, 268 (S.D. N.Y. 1940); Van Riper v. United States, 13 F.2d 961, 1967 (2d Cir. 1926); United States v. Sanno, 456 F.2d 875, 878 (1st Cir. 1972).

Acquiescence in illegal scheme: United States v. Paramount Pictures, Inc., 334 U.S. 131 (1948).