HOBBS ACT MAY PROHIBIT A CONSPIRACY BY CANDIDATES FOR PUBLIC OFFICE

United States v. Meyers, 529 F.2d 1033 (7th Cir. 1976)

In *United States v. Meyers*,[1] the Court of Appeals for the Seventh Circuit expanded the scope of the Hobbs Act[2] to include a conspiracy by candidates for office to extort money under color of official right. While nonincumbent candidates for office, defendants allegedly agreed, in return for monetary consideration, that after their election they would award contracts to the payors.[3] Defendants were subsequently elected, assumed office, and were indicted for conspiracy "to affect commerce by obtaining property of another, with his consent, induced under color of official right,"[4] in violation of the Hobbs Act. The district court dismissed the indictment, concluding that a candidate for public office cannot obtain property under color of official right.[5] The court of appeals reversed, remanded with directions to reinstate the indictment, and *held*: It is a violation of the Hobbs Act for a nonincumbent candidate to conspire to affect commerce by extortion induced under color of official right when the conspiracy begins before the election but continues after the candidate has obtained public office, if the payor could have reasonably believed that the defendant would be elected and the defendant exploited that belief.[6]

Congress enacted the Hobbs Act[7] "to prevent interference with interstate commerce by robbery or extortion."[8] To achieve this objective,

---

1. 529 F.2d 1033 (7th Cir.), *cert. denied*, 429 U.S. 894 (1976).

2. 18 U.S.C. § 1951 (1970).

3. United States v. Meyers, 529 F.2d 1033, 1034-35 (7th Cir.), *cert. denied*, 429 U.S. 894 (1976).

4. *Id.* at 1035.

5. United States v. Meyers, 395 F. Supp. 1067, 1070 (E.D. Ill. 1975), *rev'd*, 529 F.2d 1033 (7th Cir.), *cert. denied*, 429 U.S. 894 (1976). The district court reasoned that defendants did not have the official privileges and duties usually considered requisite elements of extortion and thus could not be considered public officials as required for common law and some statutory extortion.

The Seventh Circuit criticized the district court's formulation of the issue in terms of the substantive offense of extortion and restated the issue as one of conspiracy.

6. United States v. Meyers, 529 F.2d 1033, 1036, 1038 (7th Cir.), *cert. denied*, 429 U.S. 894 (1976).

7. 18 U.S.C. § 1951 (1970).

8. H.R. REP. No. 238, 79th Cong., 1st Sess. 1 (1945), *reprinted in* [1946] U.S.

the Act prohibits obstructing, delaying, or affecting commerce by robbery or extortion, or attempting or conspiring to do so.[9] Because the legislative history and language of the Hobbs Act manifest an intent by Congress to utilize all its power under the commerce clause "to punish interference with interstate commerce,"[10] courts have broadly interpreted the Act's prohibitions.[11]

The Act incorporates the common law meaning of extortion[12] and

---

CODE CONG. & AD. NEWS 1360. *See also* Note, *Extortion 'Under Color of Official Right': Federal Prosecution of Official Corruption Under the Hobbs Act*, 5 LOY. CHI. L.J. 513 (1974).

9. The text of subsection (a) reads:

> Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires to do so, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined not more than $10,000 or imprisoned not more than twenty years, or both.

Subsection (b)(2) provides: "The term 'extortion' means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right."

10. Stirone v. United States, 361 U.S. 212, 215 (1960).

11. *E.g.*, the Seventh Circuit, in United States v. Staszcuk, 517 F.2d 53 (7th Cir.), *cert. denied*, 423 U.S. 837 (1975), held that the interference with commerce need only be potential: "[A] realistic probability that an extortionate transaction will have some effect on interstate commerce" satisfies the jurisdictional requirement. *Id.* at 60. In United States v. Kenny, 462 F.2d 1205, 1229 (3d Cir.), *cert. denied*, 409 U.S. 914 (1972), the Third Circuit determined that the "under color of official right" language of subsection (b)(2) of the Act is in the disjunctive; thus, a public official may violate the Act by using either force, violence, fear *or* the color of office to obtain property from another. *Accord*, United States v. Mazzei, 521 F.2d 639, 645 (3d Cir.), *cert. denied*, 423 U.S. 1014 (1975). In addition, both the Seventh and Eighth Circuits have found that merely creating a fear of economic harm will suffice to sustain a conviction of a private individual under the Act. United States v. Crowley, 504 F.2d 992, 996 (7th Cir. 1974); Bianchi v. United States, 219 F.2d 182, 189 (8th Cir.), *cert. denied*, 349 U.S. 915 (1955). *See also* United States v. Auguello, 451 F.2d 1167 (2d Cir. 1971), *cert. denied*, 405 U.S. 1070 (1972); United States v. Pranno, 385 F.2d 387 (7th Cir. 1967), *cert. denied*, 390 U.S. 944 (1968); Hulahan v. United States, 214 F.2d 441 (8th Cir.), *cert. denied*, 348 U.S. 856 (1954); Note, *supra* note 8; 28 VAND. L. REV. 1348 (1975).

12. *See, e.g.*, United States v. Mazzei, 521 F.2d 639, 645 (3d Cir.), *cert. denied*, 423 U.S. 1014 (1975); United States v. Crowley, 504 F.2d 992, 994 (7th Cir. 1974); United States v. Kenny, 462 F.2d 1205, 1229 (3d Cir.), *cert. denied*, 409 U.S. 914 (1972); Brief for Appellant at 7 n.5, United States v. Meyers, 529 F.2d 1033 (7th Cir.), *cert. denied*, 429 U.S. 894 (1976).

Common law extortion is the corrupt taking of an unlawful payment by an official under color of office. R. PERKINS, CRIMINAL LAW 367 (2d ed. 1969). *See also* 4 W. BLACKSTONE, COMMENTARIES *141 (Extortion is "an abuse of public justice, which consists in any officer's unlawfully taking, by color of his office, from any man, any money or thing of value that is not due to him, or more than is due, or before it is due.").

defines it as "the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right."[13] Thus, extortion under the Hobbs Act may be committed by a private person or a public official using force, violence, or fear, *or* by an official acting "under color of official right."[14] When an official is charged with a Hobbs Act violation under the latter prohibition, the crucial determination is whether the official acted "under color of official right."[15]

There is little interpretation of "under color of official right" as used in the Hobbs Act.[16] Although at common law extortion could

13. 18 U.S.C. § 1951(b)(2) (1970).

14. *See, e.g.*, cases cited note 12 *supra.*

15. *See, e.g.*, cases cited note 12 *supra.* For a discussion of the requirement at common law, see United States v. Nardello, 393 U.S. 286, 289 (1969); cases cited note 12 *supra*; Kirby v. State, 57 N.J.L. 320, 321, 31 A. 213, 213 (Sup. Ct. 1894); R. PERKINS, *supra* note 12, at 369.

16. *See generally* Note, *supra* note 8.

Although the interpretation of "under color of official right" is scant, a consideration of an analogous statute may shed some light on what Congress intended by the language in the statute under consideration. The Civil Rights Act of 1968, § 103(b), 18 U.S.C. § 242 (1970) provides:

> Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than $1,000 or imprisoned not more than one year, or both; and if death results shall be subject to imprisonment for any term of years or for life.

The Supreme Court in United States v. Price, 383 U.S. 787 (1966), held that officials or "[p]rivate persons, jointly engaged with state officials in the prohibited action," may commit the substantive offense and affirmed that private persons conspiring with public officials may commit conspiracy to violate the section. *Id.* at 794. In United States v. Lester, 363 F.2d 68 (6th Cir. 1966), *cert. denied,* 385 U.S. 1002 (1967), the Court upheld a conviction of private persons who conspired with police officers even though the police were acquitted and defendants as private citizens could not have committed the substantive offense without the aid of state officials.

One must use caution in applying interpretations of language in one statute to a different statute. However, the position that a private person unable to commit the substantive offense of extortion "under color of official right" may, in some instances, be convicted of conspiracy to commit the offense is bolstered by these interpretations of deprivation of civil rights "under color of law." They suggest that actions "under color of law" are not rigidly restricted to actions of *de jure* public officials. The aura of officialdom is expansive enough to engulf those who acquire officiality by association. In the instant case, it may be argued that a candidate for elective office acquires officiality by proximity to the office itself.

only be committed by a public official,[17] at least one case has held that the official need not hold *legal title* to the office to act "under color of official right."[18] The Third Circuit adopted this position in *United States v. Mazzei*,[19] a Hobbs Act prosecution, holding that the office used to obtain the payments need not confer *de jure* power on the official to perform the promised act; it was sufficient that the victim had a reasonable belief in the official's *de facto* power to perform.[20] In *United States v. Braasch*,[21] the Seventh Circuit held that "the use of office to obtain payments is the crux of the statutory requirement" of extortion "under color of official right"[22] and that it may encompass classic bribery.[23]

The Hobbs Act explicitly prohibits conspiring to interfere with commerce by extortion as well as the substantive offense.[24] Because the statute does not define conspiracy, courts usually apply the common law definition:[25] "a combination for an unlawful purpose."[26] This defini-

17. *See* note 15 *supra.*

18. Commonwealth v. Saulsbury, 152 Pa. 554, 25 A. 610 (1893). A *de jure* official or one who has *de jure* power has legal or statutory title and authorization to exercise the powers of the office; a *de facto* official is one who does in fact exercise the powers of an office but does not have legal title to do so. *See, e.g.*, United States v. Mazzei, 521 F.2d 639 (3d Cir.), *cert. denicd*, 423 U.S. 1014 (1975); United States v. Price, 507 F.2d 1349 (4th Cir. 1974); Kirby v. State, 57 N.J.L. 320, 31 A. 213 (Sup. Ct. 1894); R. PERKINS, *supra* note 12, at 369; 62 VA. L. REV. 439, 441 & n.10 (1976).

19. 521 F.2d 639 (3d Cir.), *cert. denied*, 423 U.S. 1014 (1975).

20. *Id.* (although *de jure* power to approve leases belonged to an executive agency, Mazzei, a state senator who procured certain state leases for the victim in exchange for a kickback, was convicted of violating the Hobbs Act); *accord*, United States v. Price, 507 F.2d 1349 (4th Cir. 1974); United States v. Emalfarb, 484 F.2d 787 (7th Cir.), *cert. denied*, 414 U.S. 1064 (1973). *See also* United States v. Trotta, 525 F.2d 1096 (2d Cir. 1975), *cert. denied*, 425 U.S. 971 (1976) (Commissioner of Public Works who demanded political contributions to local Republican committee from engineering firm under contract to provide services to town convicted of extortion "under color of official right").

21. 505 F.2d 139 (7th Cir. 1974), *cert. denied*, 421 U.S. 910 (1975).

22. *Id.*

23. *Id. See also* United States v. Staszcuk, 502 F.2d 875, 878 (7th Cir. 1974), *aff'd in pertinent part*, 517 F.2d 53 (7th Cir.) (en banc), *cert. denied*, 423 U.S. 837 (1975) (payments to alderman to cause him to refrain from opposing zoning law changes constitutes extortion "under color of official right"); Stern, *Prosecutions of Local Political Corruption Under the Hobbs Act: The Unnecessary Distinction Between Bribery and Extortion*, 3 SETON HALL L. REV. 1 (1971). *But see* United States v. Addonizio, 451 F.2d 49 (3d Cir. 1971), *cert. denied*, 405 U.S. 936 (1972); United States v. Kubacki, 237 F. Supp. 638 (E.D. Pa. 1965).

24. 18 U.S.C. § 1951(a) (1970).

25. *See* Boone v. United States, 235 F.2d 939, 940 (4th Cir. 1956); Hite v. United States, 168 F.2d 973, 974 (10th Cir. 1948); R. PERKINS, *supra* note 12, at 26.

26. R. PERKINS, *supra* note 12, at 614; *cf.* 1 WHARTON'S CRIMINAL LAW AND PRO-

tion focuses on the intent or purpose of the defendants.[27] Under the Act, therefore, a conspiracy exists when an agreement with an unlawful purpose is entered into and an overt act to accomplish that goal is performed.[28] The conspiracy generally endures until its goal is reached,[29] the actual duration depending upon the scope of the agreement.[30] In addition, in cases brought pursuant to statutes prohibiting the obstruction of justice and loan sharking, courts have held that a conspiracy whose purpose was noncriminal at its inception, but which became criminal during the life of the agreement, violated the statutes.[31]

CEDURE § 82 (R. Anderson ed. 1957) [hereinafter cited as WHARTON] ("Any combination of two or more persons constitutes a criminal conspiracy when directed to the accomplishment either of an illegal object, or of a lawful object by illegal means.").

27. *See, e.g.*, State v. Moretti, 52 N.J. 182, 244 A.2d 499, *cert. denied*, 393 U.S. 952 (1968); 15 WASH. & LEE L. REV. 122 (1958). *See generally* W. LAFAVE & A. SCOTT, HANDBOOK ON CRIMINAL LAW 464-66 (1972); R. PERKINS, *supra* note 12, at 629; WHARTON, *supra* note 26, § 85; *Developments in the Law—Criminal Conspiracy*, 72 HARV. L. REV. 920 (1959).

28. *E.g.*, United States v. Rosner, 485 F.2d 1213, 1229 (2d Cir. 1973), *cert. denied*, 417 U.S. 950 (1974); United States v. Jacobs, 451 F.2d 530, 539 (5th Cir. 1971), *cert. denied*, 405 U.S. 955 (1972); United States v. Armone, 363 F.2d 385, 400 (2d Cir.), *cert. denied*, 385 U.S. 957 (1966).

Although the crime of conspiracy is committed when these two elements are satisfied, the conspiracy may continue after it has reached the threshold of criminality. *See, e.g.*, Hyde v. United States, 225 U.S. 347 (1912); United States v. Kissel, 218 U.S. 601 (1910); United States v. James, 494 F.2d 1007 (D.C. Cir.), *cert. denied*, 419 U.S. 1020 (1974); United States v. Jacobs, 451 F.2d 530 (5th Cir. 1971), *cert. denied*, 405 U.S. 955 (1972); United States v. Hickey, 360 F.2d 127 (7th Cir.), *cert. denied*, 385 U.S. 928 (1966); text accompanying notes 29-31 *infra*. It may continue because conspiracy is a combination of the parties to effect the result agreed upon and not simply a meeting of the minds. *See, e.g.*, R. PERKINS, *supra* note 12, at 614-15; WHARTON, *supra* note 26, § 83; *Developments in the Law—Criminal Conspiracy*, *supra* note 27.

29. *E.g.*, United States v. James, 494 F.2d 1007, 1026 (D.C. Cir.), *cert. denied*, 419 U.S. 1020 (1974); United States v. Hickey, 360 F.2d 127, 140 (7th Cir.), *cert. denied*, 385 U.S. 928 (1966); United States v. Strycker, 182 F. Supp. 677, 679 (E.D. Wis. 1960).

30. United States v. Nowak, 448 F.2d 134, 139 (7th Cir. 1971), *cert. denied*, 404 U.S. 1039 (1972); United States v. Hickey, 360 F.2d 127, 141 (7th Cir.), *cert. denied*, 385 U.S. 928 (1966). *See also* Grunewald v. United States, 353 U.S. 391 (1957) (subsidiary agreement to conceal may extend the life of the conspiracy beyond the commission of the substantive offense, but only if there is direct evidence that a coverup was expressly agreed to).

31. *See* United States v. Smith, 464 F.2d 1129, 1133 (2d Cir.), *cert. denied*, 409 U.S. 1076 (1972) (conviction for conspiracy to collect a loan by extortion in violation of Federal Loan Sharking Statute upheld although agreement and threats were made before effective date of statute when payments were collected after effective date); United

Conspiracy, which focuses upon the defendant's intent or purpose, is a crime although its object is never reached or is impossible to attain.[32] Therefore, most courts do not permit defendants to raise the defense of impossibility of committing the substantive crime in response to a conspiracy charge.[33] Some commentators and courts, however, accept the impossibility defense when it negates the intent necessary to commit the crime.[34]

States v. Perlstein, 126 F.2d 789 (3d Cir.), *cert. denied*, 316 U.S. 678 (1942) (conviction for conspiracy to obstruct the administration of justice permissible although no court proceedings were pending at the time the conspiracy was formed when proceedings were begun subsequently). *See also* United States v. Hood, 343 U.S. 148 (1952). United States v. Meyers is a case of first impression under the Hobbs Act.

32. *See, e.g.*, United States v. Rabinowich, 238 U.S. 78, 85-86 (1915) (conspiracy to conceal assets of estate in bankruptcy from trustee punishable although limitations period had run for a substantive violation of the Bankruptcy Act); Williamson v. United States, 207 U.S. 425, 446-47 (1908) (indictment charging conspiracy to commit subornation of perjury valid although attempt to procure another to commit perjury may not be punishable under the statute); United States v. Cioffi, 487 F.2d 492, 498 (2d Cir. 1973), *cert. denied*, 416 U.S. 995 (1974) (acquittal on substantive charge of possession with attempt to use and sell forged and counterfeited postage stamps does not bar conviction for conspiracy to do the same); United States v. Rosner, 485 F.2d 1213, 1229 (2d Cir. 1973), *cert. denied*, 417 U.S. 950 (1974) (conviction for bribery sustainable even though object was not attainable because the government was monitoring the entire scheme through an undercover policeman); United States v. Jacobs, 451 F.2d 530, 540 (5th Cir. 1971), *cert. denied*, 405 U.S. 955 (1972) (conviction for conspiracy to extort money in violation of the Hobbs Act sustainable although no money was paid and FBI intervention rendered accomplishment of the extortion impossible); Beddow v. United States, 70 F.2d 674, 676 (8th Cir. 1934) (conspiracy conviction sustainable although Treasury Bonds were not witnessed by authorized person and therefore transfer would not be recognized by Treasury Department); United States v. Thomas, 13 C.M.A. 278, 32 C.M.R. 278 (1962) (defendants convicted of conspiracy to commit rape although the woman was dead); State v. Moretti, 52 N.J. 182, 244 A.2d 499, *cert. denied*, 393 U.S. 952 (1968) (woman was not pregnant but conspiracy to commit unlawful abortion sustained). *See generally Developments in the Law—Criminal Conspiracy, supra* note 27.

33. *See, e.g.*, W. LAFAVE & A. SCOTT, *supra* note 27, at 475. *See generally* Annot., 37 A.L.R.3d 375 (1971).

34. The majority rule is that impossibility is not a defense to conspiracy. *See* note 33 *supra* and accompanying text. Some courts, however, have applied the law of impossibility developed in attempt cases to conspiracy cases. *See, e.g.*, Ventimiglia v. United States, 242 F.2d 620 (4th Cir. 1957) (no conviction for conspiracy to violate statute forbidding an employer to pay any representative of his employees when the payee did not represent defendant's employees and no one thought he did; the substantive crime was inherently impossible of consummation); O'Kelley v. United States, 116 F.2d 966 (8th Cir. 1941) (no conviction for conspiracy to remove goods from interstate commerce when the goods had ceased to be in interstate commerce); Woo Wai v. United States, 223 F. 412 (9th Cir. 1915) (conviction for conspiracy to unlawfully import women not sustainable when informed law enforcement authorities were planning to return the women as soon as they crossed the border); United States v. Thomas, 13

In *United States v. Meyers*,[35] the Court of Appeals for the Seventh Circuit held that a candidate for public office, who was subsequently elected, could conspire to affect commerce by extortion induced under color of official right in violation of the Hobbs Act.[36] Noting initially that the charge against defendants was conspiracy,[37] the court rejected the defendants' contention that only an extortion conspiracy entered into by a public official could violate the Hobbs Act.[38] Applying traditional rules of statutory construction, the court concluded that "under

---

C.M.A. 278, 32 C.M.R. 278 (1962) (victim was dead but conviction for conspiracy to rape sustained); W. LAFAVE & A. SCOTT, *supra* note 27, at 474-76; Annot., *supra* note 33, and cases cited therein.

Although the doctrine of impossibility in attempt cases is confused and often contradictory, frequently there is an acknowledged distinction between factual and legal impossibility. Thus, if the result intended by a defendant is criminal, but due to some fact or circumstance unknown to the defendant the desired result is unattainable, a factual impossibility exists but does not constitute a defense. If, however, what is intended by defendant is not a crime, notwithstanding defendant's belief as to the criminality of the intended result, there is a valid defense of legal impossibility to an attempt charge. *See, e.g.*, United States v. Thomas, 13 C.M.A. 278, 32 C.M.R. 278 (1962) and cases cited therein; State v. Moretti, 52 N.J. 182, 244 A.2d 499, *cert. denied*, 393 U.S. 952 (1968); W. LAFAVE & A. SCOTT, *supra* note 27, at 438-46; R. PERKINS, *supra* note 12, at 566-72; Annot., *supra* note 33, and cases cited therein.

Wholesale application of the law of impossibility in attempt cases to conspiracy cases has been criticized by commentators and courts because the essence of conspiracy relates to intent whereas attempt focuses on acts leading up to the commission of a substantive crime. *See* State v. Moretti, 52 N.J. 182, 244 A.2d 499, *cert. denied*, 393 U.S. 952 (1968) (inappropriate to graft the standards for impossibility in attempt cases onto conspiracy cases because the two crimes are of a different nature).

> It seems that such an evaluation could not be sustained, however, because, as discussed above, a conspiracy charge focuses primarily on the *intent* of the defendants, while in an attempt case the primary inquiry centers on the defendants' *conduct* tending toward the commission of the substantive crime. The crime of conspiracy is complete once the conspirators, having formed the intent to commit a crime, take any step in preparation; mere preparation, however, is an inadequate basis for an attempt conviction regardless of the intent. [citation omitted] Thus, the impossibility that the defendants' conduct will result in the consummation of the contemplated crime is not as pertinent in a conspiracy case as it might be in an attempt prosecution.

Id. at 187, 244 A.2d at 502 (emphasis original). *See also* United States v. Thomas, 13 C.M.A. 278, 301, 32 C.M.R. 278, 301 (1962) (Ferguson, J., concurring in part & dissenting in part); W. LAFAVE & A. SCOTT, *supra* note 27, at 476; 15 WASH. & LEE L. REV. 122 (1958); Annot., *supra* note 33. Such commentators feel that the doctrine of impossbility should constitute a defense in conspiracy cases only when it negates the intent to commit a crime. *E.g.*, 15 WASH. & LEE L. REV. 122 (1958). *See also* W. LAFAVE & A. SCOTT, *supra* note 27, at 476.

35. 529 F.2d 1033 (7th Cir.), *cert. denied*, 429 U.S. 894 (1976).

36. *Id.* at 1036.

37. *Id.* at 1035; *see* text accompanying note 4 *supra*.

38. *Id.* at 1036.

color of official right" modified "obtaining property of another" rather than "conspiracy."[39] Thus, only the obtaining of property, not the conspiracy, need be effected under color of official right to constitute a Hobbs Act violation.

The court found the crucial consideration to be that a conspiracy endures until its goal is reached.[40] The goal of the *Meyers* conspiracy was the suspension of defendants' independent judgment in awarding contracts after they took office.[41] Although defendants entered into the agreement as candidates who had no power to award contracts, the conspiracy continued after they took office and the unlawful goal was accomplished. This constituted a conspiracy in violation of the Hobbs Act.[42]

The court rejected the defendants' implicit defense of impossibility, noting that the defense relates to whether defendants are capable of committing the substantive crime; therefore, courts rarely allow an impossibility defense to a conspiracy charge.[43] Because conspiracy relates to the defendant's intent, the court found the more relevant inquiry to be whether the other parties to the conspiracy could have reasonably believed that the defendants would be elected to office and thus attain the power to accomplish the agreement's unlawful purpose.[44] Relying on the *United States v. Mazzei*[45] holding that a defendant having no *de jure* power to effect the conspiracy's goal violates the Hobbs Act if the victim reasonably believed the defendant had the *de facto* power to carry out the agreement and the defendant exploited that reasonable belief, the *Meyers* court concluded that the defendants simply exploited their victims' reasonable belief *before* they were elected rather than after.[46] "It is no less a crime under the Hobbs Act," the court concluded, "to sell one's public trust before, rather than after, one is installed in public office."[47]

The *Meyers* decision is in accord with the law of conspiracy. The defendants entered into an agreement with an unlawful purpose—the

39. *Id.*
40. *Id.*
41. *Id.*
42. *Id.*
43. *Id.* at 1037.
44. *Id.*
45. 521 F.2d 639 (3d Cir.), *cert. denied*, 423 U.S. 1014 (1975).
46. 529 F.2d at 1038.
47. *Id.*

preferential awarding of public contracts to specific persons—and performed the overt act of accepting a money payment in furtherance of that goal.[48] Although the conspiracy entered into by defendants as candidates was not criminal at its inception,[49] it became criminal when defendants retained the money subsequent to their election.[50] Defendants were, therefore, correctly indicted for conspiracy to violate the Hobbs Act.

In addition, the result in *Meyers* gives effect to the will of Congress. The Hobbs Act was enacted to combat interference with interstate commerce[51] and corrupt use of official power insofar as such corruption affects commerce. Courts have given effect to congressional intent that the Act's "affecting commerce" requirement be read broadly.[52] Thus, the *Meyers* court did not even consider the jurisdictional question. It was uncontested that a pre-election agreement to award contracts to specific parties that continues into the post-election period prohibits competitive bidding in the marketplace and therefore affects commerce.[53] Furthermore, a contrary holding would have substantially limited the statute's effectiveness in combatting political corruption. The court would not, therefore, presume that Congress intended that the Act be avoided by so simple a device as a pre-election agreement.

Although the *Meyers* result is desirable in view of the facts presented, the court fails to state clearly whether its holding also encompasses losing candidates and whether it is limited to viable candidates for public office. Indeed, the court's oddly bifurcated opinion lends itself to three possible interpretations: First, *any subsequently elected* candidate for public office who accepts money and agrees to carry out an unlawful purpose once in office, is guilty of conspiracy to extort "under color of official right" in violation of the Hobbs Act. Secondly,

48. *See* note 28 *supra* and accompanying text.

49. *See* notes 14-15 *supra* and accompanying text. *But see* notes 19-23 *supra* and accompanying text.

50. *See* notes 28-31 *supra* and accompanying text.

51. *See* note 8 *supra* and accompanying text.

52. *See* notes 10-11 *supra* and accompanying text.

53. *See* Brief for Appellee and Brief for Appellant. The jurisdictional question was probably not raised because the parties recognized that a minimal interstate connection satisfies the requirement. *See, e.g.*, United States v. Staszcuk, 517 F.2d 53 (7th Cir.), *cert. denied*, 423 U.S. 837 (1975); United States v. Auguello, 451 F.2d 1167 (2d Cir. 1971), *cert. denied*, 405 U.S. 1070 (1972); United States v. Pranno, 385 F.2d 387 (7th Cir. 1967), *cert. denied*, 390 U.S. 944 (1968); Hulahan v. United States, 214 F.2d 441 (8th Cir.), *cert. denied*, 348 U.S. 856 (1954); 28 VAND. L. REV. 1348 (1975).

any candidate for public office, *even if not subsequently elected*, who enters into such a pre-election agreement with another party violates the Hobbs Act if that other party *reasonably believed* that the candidate would be elected and the candidate exploited that belief. Thirdly, any *subsequently elected* candidate who enters into such an agreement violates the Act *if* the other party *reasonably believed* that the candidate would be elected and the candidate exploited that belief.

Although any of these alternative holdings is arguably correct, the third interpretation makes an otherwise bifurcated opinion whole and establishes a rational extension of the Hobbs Act. The lengthy discussion of impossibility and reasonable belief[54] would be mere dictum if the first alternative were the court's intended holding.[55] The second possible holding, although consistent with the reasonable belief discussion,[56] is inconsistent with the court's initial conclusion that a continuing extortion conspiracy "under color of official right" constitutes a violation of the Hobbs Act.[57] The third interpretation, on the other hand, results in a logical and internally consistent opinion. Thus, a subsequently elected candidate violates the Hobbs Act if the candidate agrees, in return for a money payment, to perform unlawful acts once elected. The defense of impossibility is available to a subsequently elected candidate *only* if the other party to the agreement unreasonably believed the defendant would prevail.[58]

If it is reasonable to believe that defendants will be elected, their intent to perform the act prohibited by the statute can be inferred.[59]

---

54. United States v. Meyers, 521 F.2d at 1036-37.

55. The fact that the conspiracy continued until the candidate became a public official would suffice to make out a violation of the Hobbs Act, thereby rendering any discussion of reasonable belief and impossibility unnecessary. *See* notes 40-42 *supra* and accompanying text.

56. *See* notes 44-47 *supra* and accompanying text.

57. *See* notes 40-42 *supra* and accompanying text.

58. The defense would be appropriate here because if the other party's belief were unreasonable, it can be argued that the requisite intent was lacking. *See* notes 33-34 *supra* and accompanying text.

59. *Cf.* Direct Sales Co. v. United States, 319 U.S. 703 (1943) (drug wholesaler convicted of conspiracy to violate narcotics laws on inference of intent based on unusually large quantity of drugs supplied); People v. Lauria, 251 Cal. App. 2d 471, 59 Cal. Rptr. 628 (Ct. App. 1967) (inference of intent of supplier of goods and services to participate in criminal conspiracy permissible in certain circumstances). *But cf.* United States v. Falcone, 311 U.S. 205 (1940) (supplier's knowledge that customer would use goods for illicit purpose not sufficient to infer that supplier knew of conspiracy). *See generally* United States v. Feola, 420 U.S. 671 (1975); W. LAFAVE & A.

If defendants are not in a viable position to be elected, the criminal intent is more difficult to discern. Under these circumstances, defendants might successfully argue that no agreement was made that anyone believed would be performed. Unfortunately, the court left unanswered the critical question of how to determine viability and reasonable belief. When confronted with this problem, therefore, courts should consider the political climate in which the agreement was made and its proximity to the election in determining whether a candidate was sufficiently viable to render the other party's belief reasonable.

The *Meyers* court correctly held that federal prosecution of candidates who extort contributions in return for promises of official action is within the scope of the Hobbs Act. This result conforms to the law of conspiracy and gives effect to the will of Congress. The court's reasoning, however, is unclear and its precedential value is consequently limited. In addition, *Meyers* may have the undesirable consequence of subjecting public officials who accept bona fide campaign contributions to harrassment when their official acts appear to benefit the contributors. Courts should carefully distinguish, on a case-by-case basis, the criminal campaign contribution "with strings" from the beneficent contribution indicating the donor's general approval of the candidate's policies.

SCOTT, *supra* note 27, at 464-68; *Developments in the Law—Criminal Conspiracy, supra* note 27.