On the evening of June 23, Amir and Fadil bring the fuel to the safe house, and the operational group briefly meets to review the plan. After returning from prayers at a mosque, they begin mixing the fuel and fertilizer for the bombs, while also watching a video shot by Ali earlier in the day of the tunnels they plan to destroy.

Meanwhile, in Yonkers, the F.B.I. arrests Saleh. He denies selling the fuel, but says that Salem demanded it twice. He later calls an employee from prison and instructs him to tell Balhabri to burn the receipts. At 2:00 a.m., the F.B.I. raids the safe house, arrests the group, and seizes the fuel, fertilizer, and Ali’s cardboard diagram illustrating the plan. Rahman is arrested shortly thereafter.

1. Relying only upon your own intuitions of justice, what liability and punishment, if any, does Sheik Rahman deserve?

2. What liability, if any, under the then-existing statutes?

3. What liability, if any, under the Model Penal Code?

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**THE LAW**

**United States Code**

*Title 18 (1993)*

**Part I. Crimes**

**Chapter 115. Treason, Sedition, and Subversive Activities**

**Section 2384. Seditious Conspiracy**

If two or more persons in any State or Territory, or in any place subject to the jurisdiction of the United States, conspire to overthrow, put down, or to destroy by force the Government of the United States, or to levy war against them, or to oppose by force the authority thereof, or by force to prevent, hinder, or delay the execution of any law of the United States, or by force to seize, take, or possess any property of the United States contrary to the authority thereof, they shall each be fined not more than $20,000 or imprisoned not more than twenty years, or both.
Section 2385. Advocating Overthrow of Government

Whoever knowingly or willfully advocates, abets, advises, or teaches the duty, necessity, desirability, or propriety of overthrowing or destroying the government of the United States or the government of any State, Territory, District or Possession thereof, or the government of any political subdivision therein, by force or violence, or by the assassination of any officer of any such government; or

Whoever, with intent to cause the overthrow or destruction of any such government, prints, publishes, edits, issues, circulates, sells, distributes, or publicly displays any written or printed matter advocating, advising, or teaching the duty, necessity, desirability, or propriety of overthrowing or destroying any government in the United States by force or violence, or attempts to do so; or

Whoever organizes or helps or attempts to organize any society, group, or assembly of persons who teach, advocate, or encourage the overthrow or destruction of any such government by force or violence; or becomes or is a member of, or affiliates with, any such society, group, or assembly of persons, knowing the purposes thereof—

Shall be fined not more than $20,000 or imprisoned not more than twenty years, or both, and shall be ineligible for employment by the United States or any department or agency thereof, for the five years next following his conviction.

If two or more persons conspire to commit any offense named in this section, each shall be fined not more than $20,000 or imprisoned not more than twenty years, or both, and shall be ineligible for employment by the United States or any department or agency thereof, for the five years next following his conviction.

As used in this section, the terms “organizes” and “organize”, with respect to any society, group, or assembly of persons, include the recruiting of new members, the forming of new units, and the regrouping or expansion of existing clubs, classes, and other units of such society, group, or assembly of persons.

Section 2389. Recruiting for Service Against United States

Whoever recruits soldiers or sailors within the United States, or in any place subject to the jurisdiction thereof, to engage in armed hostility against the same; or

Whoever opens within the United States, or in any place subject to the jurisdiction thereof, a recruiting station for the enlistment of such soldiers or sailors to serve in any manner in armed hostility against the United States—

Shall be fined not more than $1,000 or imprisoned not more than five years, or both.

Section 2390. Enlistment to Serve Against United States

Whoever enlists or is engaged within the United States or in any place subject to the jurisdiction thereof, with intent to serve in armed hostility against the United States, shall be fined $100 or imprisoned not more than three years, or both.
Chapter 19. Conspiracy

Section 371. Conspiracy to Commit Offense or to Defraud United States

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years, or both.

If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.

Section 373. Solicitation to Commit a Crime of Violence

(a) Whoever, with intent that another person engage in conduct constituting a felony that has as an element the use, attempted use, or threatened use of physical force against property or against the person of another in violation of the laws of the United States, and under circumstances strongly corroborative of that intent, solicits, commands, induces, or otherwise endeavors to persuade such other person to engage in such conduct, shall be imprisoned not more than one-half the maximum term of imprisonment or fined not more than one-half of the maximum fine prescribed for the punishment of the crime solicited, or both; or if the crime solicited is punishable by death, shall be imprisoned for not more than twenty years.

(b) It is an affirmative defense to a prosecution under this section that, under circumstances manifesting a voluntary and complete renunciation of his criminal intent, the defendant prevented the commission of the crime solicited. A renunciation is not “voluntary and complete” if it is motivated in whole or in part by a decision to postpone the commission of the crime until another time or to substitute another victim or another but similar objective. If the defendant raises the affirmative defense at trial, the defendant has the burden of proving the defense by a preponderance of the evidence.

(c) It is not a defense to a prosecution under this section that the person solicited could not be convicted of the crime because he lacked the state of mind required for its commission, because he was incompetent or irresponsible, or because he is immune from prosecution or is not subject to prosecution.

Chapter 40. Importation, Manufacture, Distribution and Storage of Explosive Materials

Section 842. Unlawful Acts

(a) It shall be unlawful for any person —
   (1) to engage in the business of importing, manufacturing, or dealing in explosive materials without a license issued under this chapter;
   (2) knowingly to withhold information or to make any false or fictitious oral or written statement or to furnish or exhibit any false, fictitious, or
misrepresented identification, intended or likely to deceive for the purpose of obtaining explosive materials, or a license, permit, exemption, or relief from disability under the provisions of this chapter; and

(3) other than a licensee or permittee knowingly —

(A) to transport, ship, cause to be transported, or receive in interstate or foreign commerce any explosive materials, except that a person who lawfully purchases explosive materials from a licensee in a State contiguous to the State in which the purchaser resides may ship, transport, or cause to be transported such explosive materials to the State in which he resides and may receive such explosive materials in the State in which he resides, if such transportation, shipment, or receipt is permitted by the law of the State in which he resides; or

(B) to distribute explosive materials to any person (other than a licensee or permittee) who the distributor knows or has reasonable cause to believe does not reside in the State in which the distributor resides.

(b) It shall be unlawful for any licensee knowingly to distribute any explosive materials to any person except —

(1) a licensee;

(2) a permittee; or

(3) a resident of the State where distribution is made and in which the licensee is licensed to do business or a State contiguous thereto if permitted by the law of the State of the purchaser’s residence.

(c) It shall be unlawful for any licensee to distribute explosive materials to any person who the licensee has reason to believe intends to transport such explosive materials into a State where the purchase, possession, or use of explosive materials is prohibited or which does not permit its residents to transport or ship explosive materials into it or to receive explosive materials in it.

(d) It shall be unlawful for any licensee knowingly to distribute explosive materials to any individual who:

(1) is under twenty-one years of age;

(2) has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year;

(3) is under indictment for a crime punishable by imprisonment for a term exceeding one year;

(4) is a fugitive from justice;

(5) is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)); or

(6) has been adjudicated a mental defective.

(e) It shall be unlawful for any licensee knowingly to distribute any explosive materials to any person in any State where the purchase, possession, or use by such person of such explosive materials would be in violation of any State law or any published ordinance applicable at the place of distribution.

(f) It shall be unlawful for any licensee or permittee willfully to manufacture, import, purchase, distribute, or receive explosive materials without making such records as the Secretary may by regulation require, including, but not limited to, a statement of intended use, the name, date, place of birth, social security number or
taxpayer identification number, and place of residence of any natural person to whom explosive materials are distributed. If explosive materials are distributed to a corporation or other business entity, such records shall include the identity and principal and local places of business and the name, date, place of birth, and place of residence of the natural person acting as agent of the corporation or other business entity in arranging the distribution.

(g) It shall be unlawful for any licensee or permittee knowingly to make any false entry in any record which he is required to keep pursuant to this section or regulations promulgated under section 847 of this title [18 U.S.C.S. §847].

(h) It shall be unlawful for any person to receive, conceal, transport, ship, store, barter, sell, or dispose of any explosive materials knowing or having reasonable cause to believe that such explosive materials were stolen.

(i) It shall be unlawful for any person —

1) who is under indictment for, or who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

2) who is a fugitive from justice;

3) who is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)); or

4) who has been adjudicated as a mental defective or who has been committed to a mental institution;

to ship or transport any explosive in interstate or foreign commerce or to receive any explosive which has been shipped or transported in interstate or foreign commerce.

(j) It shall be unlawful for any person to store any explosive material in a manner not in conformity with regulations promulgated by the Secretary. In promulgating such regulations, the Secretary shall take into consideration the class, type, and quantity of explosive materials to be stored, as well as the standards of safety and security recognized in the explosives industry.

(k) It shall be unlawful for any person who has knowledge of the theft or loss of any explosive materials from his stock, to fail to report such theft or loss within twenty-four hours of discovery thereof, to the Secretary and to appropriate local authorities.

Section 844. Penalties

(a) Any person who violates subsections (a) through (i) of section 842 of this chapter [18 U.S.C.S. §842(a) through (i)] shall be fined not more than $ 10,000 or imprisoned not more than ten years, or both.

(b) Any person who violates any other provision of section 842 of this chapter [18 U.S.C.S. §842] shall be fined not more than $ 1,000 or imprisoned not more than one year, or both.

(c) Any explosive materials involved or used or intended to be used in any violation of the provisions of this chapter or any other rule or regulation promulgated thereunder or any violation of any criminal law of the United States shall be subject to seizure and forfeiture, and all provisions of the Internal Revenue Code of 1954 [26 U.S.C.S. §§1 et seq.] relating to the seizure, forfeiture, and
disposition of firearms, as defined in section 5845(a) of that Code [26 U.S.C.S. §5845(a)], shall, so far as applicable, extend to seizures and forfeitures under the provisions of this chapter [18 U.S.C.S. §§841 et seq.].

(d) Whoever transports or receives, or attempts to transport or receive, in interstate or foreign commerce any explosive with the knowledge or intent that it will be used to kill, injure, or intimidate any individual or unlawfully to damage or destroy any building, vehicle, or other real or personal property, shall be imprisoned for not more than ten years, or fined not more than $10,000, or both; and if personal injury results to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this subsection, shall be imprisoned for not more than twenty years or fined not more than $20,000, or both; and if death results to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this subsection, shall be subject to imprisonment for any term of years, or to the death penalty or to life imprisonment as provided in section 34 of this title [18 U.S.C.S. §34].

(e) Whoever, through the use of the mail, telephone, telegraph, or other instrument of commerce, willfully makes any threat, or maliciously conveys false information knowing the same to be false, concerning an attempt or alleged attempt being made, or to be made, to kill, injure, or intimidate any individual or unlawfully to damage or destroy any building, vehicle, or other real or personal property by means of fire or an explosive shall be imprisoned for not more than five years or fined not more than $5,000, or both.

(f) Whoever maliciously damages, or destroys, or attempts to damage or destroy, by means of fire or an explosive, any building, vehicle, or other personal or real property in whole or in part owned, possessed, or used by, or leased to, the United States, any department or agency thereof, or any institution or organization receiving Federal financial assistance shall be imprisoned for not more than ten years, or fined not more than $10,000, or both; and if personal injury results to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this subsection, shall be imprisoned for not more than twenty years, or fined not more than $20,000, or both; and if death results to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this subsection, shall be subject to imprisonment for any term of years, or to the death penalty or to life imprisonment as provided in section 34 of this title [18 U.S.C.S. §34].

(g)(1) Except as provided in paragraph (2), whoever possesses an explosive in an airport that is subject to the regulatory authority of the Federal Aviation Administration, or in any building in whole or in part owned, possessed, or used by, or leased to, the United States or any department or agency thereof, or any institution or organization receiving Federal financial assistance shall be imprisoned for not more than five years, or fined under this title, or both.

(2) The provisions of this subsection shall not be applicable to—

(A) the possession of ammunition (as that term is defined in regulations issued pursuant to this chapter [18 U.S.C.S. §§841 et seq.]) in
an airport that is subject to the regulatory authority of the Federal Aviation Administration if such ammunition is either in checked baggage or in a closed container; or

(B) the possession of an explosive in an airport if the packaging and transportation of such explosive is exempt from, or subject to and in accordance with, regulations of the Research and Special Projects Administration for the handling of hazardous materials pursuant to the Hazardous Materials Transportation Act (49 App. U.S.C. 1801, et seq.).

(h) Whoever —

(1) uses fire or an explosive to commit any felony which may be prosecuted in a court of the United States, or

(2) carries an explosive during the commission of any felony which may be prosecuted in a court of the United States, including a felony which provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device shall, in addition to the punishment provided for such felony, be sentenced to imprisonment for five years. In the case of a second or subsequent conviction under this subsection, such person shall be sentenced to imprisonment for ten years. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person convicted of a violation of this subsection, nor shall the term of imprisonment imposed under this subsection run concurrently with any other term of imprisonment including that imposed for the felony in which the explosive was used or carried.

(i) Whoever maliciously damages or destroys, or attempts to damage or destroy, by means of fire or an explosive, any building, vehicle, or other real or personal property used in interstate or foreign commerce or in any activity affecting interstate or foreign commerce shall be imprisoned for not more than ten years or fined not more than $10,000, or both; and if personal injury results to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this subsection, shall be imprisoned for not more than twenty years or fined not more than $20,000, or both; and if death results to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this subsection, shall also be subject to imprisonment for any term of years, or to the death penalty or to life imprisonment as provided in section 34 of this title [18 U.S.C.S. §34].

(j) For the purposes of subsections (d), (e), (f), (g), (h), and (i) of this section, the term “explosive” means gunpowders, powders used for blasting, all forms of high explosives, blasting materials, fuzes (other than electric circuit breakers), detonators, and other detonating agents, smokeless powders, other explosive or incendiary devices within the meaning of paragraph (5) of section 232 of this title [18 U.S.C.S. §232(5)], and any chemical compounds, mechanical mixture, or device that contains any oxidizing and combustible units, or other ingredients, in such proportions, quantities, or packing that ignition by fire, by friction, by concussion, by percussion, or by detonation of the compound, mixture, or device or any part thereof may cause an explosion.
Chapter 51. Homicide

Section 1111. Murder

(a) Murder is the unlawful killing of a human being with malice aforethought. Every murder perpetrated by poison, lying in wait, or any other kind of willful, deliberate, malicious, and premeditated killing; or committed in the perpetration of, or attempt to perpetrate, any arson, escape, murder, kidnaping, treason, espionage, sabotage, aggravated sexual abuse or sexual abuse burglary, or robbery; or perpetrated from a premeditated design unlawfully and maliciously to effect the death of any human being other than him who is killed, is murder in the first degree. Any other murder is murder in the second degree.

(b) Within the special maritime and territorial jurisdiction of the United States, Whoever is guilty of murder in the first degree, shall suffer death unless the jury qualifies its verdict by adding thereto “without capital punishment”, in which event he shall be sentenced to imprisonment for life; Whoever is guilty of murder in the second degree, shall be imprisoned for any term of years or for life.

Section 1112. Manslaughter

(a) Manslaughter is the unlawful killing of a human being without malice. It is of two kinds:
   Voluntary — Upon a sudden quarrel or heat of passion.
   Involuntary — In the commission of an unlawful act not amounting to a felony, or in the commission in an unlawful manner, or without due caution and circumspection, of a lawful act which might produce death.

(b) Within the special maritime and territorial jurisdiction of the United States,
   Whoever is guilty of voluntary manslaughter, shall be imprisoned not more than ten years;
   Whoever is guilty of involuntary manslaughter, shall be fined not more than $ 1,000 or imprisoned not more than three years, or both.

Section 1113. Attempt to Commit Murder or Manslaughter

Except as provided in section 113 of this title, whoever, within the special maritime and territorial jurisdiction of the United States, attempts to commit murder or manslaughter, shall, for an attempt to commit murder be imprisoned not more than twenty years or fined under this title, or both, and for an attempt to commit manslaughter be imprisoned not more than three years or fined under this title, or both.

Section 1116. Murder or Manslaughter of Foreign Officials, Official Guests, or Internationally Protected Persons

(a) Whoever kills or attempts to kill a foreign official, official guest, or internationally protected person shall be punished as provided under sections 1111,
1112, and 1113 of this title [18 U.S.C.S. §§1111-1113], except that any such person who is found guilty of murder in the first degree shall be sentenced to imprisonment for life, and any such person who is found guilty of attempted murder shall be imprisoned for not more than twenty years.

(b) For the purposes of this section:

(1) “Family” includes: (a) a spouse, parent, brother or sister, child, or person to whom the foreign official or internationally protected person stands in loco parentis, or (b) any other person living in his household and related to the foreign official or internationally protected person by blood or marriage.

(2) “Foreign government” means the government of a foreign country, irrespective of recognition by the United States.

(3) “Foreign official” means—

(A) a Chief of State or the political equivalent, President, Vice President, Prime Minister, Ambassador, Foreign Minister, or other officer of Cabinet rank or above of a foreign government or the chief executive officer of an international organization, or any person who has previously served in such capacity, and any member of his family, while in the United States; and

(B) any person of a foreign nationality who is duly notified to the United States as an officer or employee of a foreign government or international organization, and who is in the United States on official business, and any member of his family whose presence in the United States is in connection with the presence of such officer or employee.

(4) “Internationally protected person” means—

(A) a Chief of State or the political equivalent, head of government, or Foreign Minister whenever such person is in a country other than his own and any member of his family accompanying him; or

(B) any other representative, officer, employee, or agent of the United States Government, a foreign government, or international organization who at the time and place concerned is entitled pursuant to international law to special protection against attack upon his person, freedom, or dignity, and any member of his family then forming part of his household.

(5) “International organization” means a public international organization designated as such pursuant to section 1 of the International Organizations Immunities Act (22 U.S.C. 288) [22 U.S.C.S. §288] or a public organization created pursuant to treaty or other agreement under international law as an instrument through or by which two or more foreign governments engage in some aspect of their conduct of international affairs.

(6) “Official guest” means a citizen or national of a foreign country present in the United States as an official guest of the Government of the United States pursuant to designation as such by the Secretary of State.

(c) If the victim of an offense under subsection (a) is an internationally protected person, the United States may exercise jurisdiction over the offense if the alleged offender is present within the United States, irrespective of the place where the offense was committed or the nationality of the victim or the alleged offender. As used in this subsection, the United States includes all areas under the

(d) In the course of enforcement of this section and any other sections prohibiting a conspiracy or attempt to violate this section, the Attorney General may request assistance from any Federal, State, or local agency, including the Army, Navy, and Air Force, any statute, rule, or regulation to the contrary notwithstanding.

Section 1117. Conspiracy to Murder

If two or more persons conspire to violate section 1111, 1114, or 1116 of this title [18 U.S.C.S. §1111, 1114, or 1116], and one or more of such persons do any overt act to effect the object of the conspiracy, each shall be punished by imprisonment for any term of years or for life.

Yates v. United States
354 U.S. 298, 1 L. Ed. 2d 1356, 77 S. Ct. 1064 (1957)

The Smith Act [18 U.S.C.S. §2385] is aimed at the advocacy and teaching of concrete action for the forcible overthrow of the government, and not of principles divorced from action. In determining whether the advocacy of the forcible overthrow of government was directed to action to that end and hence punishable under Smith Act or was merely advocacy of abstract doctrines and hence not punishable under the Act, the essential distinction is that those to whom the advocacy is addressed must be urged to do something, now or in future, rather than merely to believe in something.

Scales v. United States
260 F.2d 21 (4th Cir. 1958)

In a prosecution under “membership clause” of 18 U.S.C. §2385, the trial judge must determine not only the relevancy and sufficiency of evidence as a whole, as in the ordinary case, but must also determine whether the facts proved constituted such a clear and present danger to the state as to overcome the prohibitions of constitutional amendments and to justify conviction under 18 U.S.C. §2385.

United States v. Sinclair

“In this turbulent time of unrest, it is often difficult for the established and contented members of our society to tolerate, much less try to understand, the contemporary challenges to our existing form of government. If democracy as we know it, and as our forefathers established it, is to stand, then ‘attempts of
domestic organizations to attack and subvert the existing structure of the Government (see affidavit of Attorney General), cannot be, in and of themselves, a crime. Such attempts become criminal only where it can be shown that the activity was/is carried on through unlawful means, such as the invasion of the rights of others by use of force or violence.”

Pinkerton v. United States
328 U.S. 640, 66 S. Ct. 1180, 90 L. Ed. 1489 (1946)

While the defendant was in jail, he was indicted for conspiring with his brother to evade taxes and for specific tax evasions. The jury was instructed that the defendant could be convicted of the substantive offenses if they found he had been engaged in a conspiracy and the specific offenses were in furtherance of the conspiracy. The Supreme Court affirmed, essentially holding that direct participation in the substantive offenses was not necessary for substantive liability, and that being a co-conspirator was sufficient for liability for a substantive offense in furtherance of the conspiracy.

United States v. Falcone
311 U.S. 205, 210, 61 S. Ct. 204, 207; 85 L. Ed. 128, 132 (1940)

The defendants sold sugar, yeast, and cans, with the knowledge that the materials would be used in illicit distilling operations, but without the knowledge that the buyers were parties to a conspiracy. The Court held that they could not be convicted as participants to the conspiracy, and that “[t]he gist of the offense of conspiracy as defined by [the federal statute] is agreement among the conspirators to commit an offense attended by an act of one or more of the conspirators to effect the object of the conspiracy.” Here, the defendants were suppliers to an illicit distiller, and furthered the goal of the conspiracy, but they had not entered into an agreement. Thus, while they knew of the illicit use at the time they aided, that in itself was not enough to make them members of the conspiracy.

United States v. Feola
420 U.S. 671, 687, 95 S. Ct. 1255, 1265 43 L. Ed. 2d 541, 554 (1975)

Defendants were convicted for having assaulted federal officers in the performance of their official duties, and for conspiring to commit that offense. The defendants appealed, arguing that, unlike the requirements of the substantive crime, a conspiracy charge required the government to prove their actual knowledge of the victim’s official identity. The Court rejected this argument, and held that “[a] natural reading of these words would be that since one can violate a criminal statute simply by engaging in the forbidden conduct, a conspiracy to commit that offense is nothing more than an agreement to engage in the prohibited conduct. Then where, as here, the substantive statute does not require that an assailant know the official status of his victim, there is nothing on the face of the
conspiracy statute that would seem to require that those agreeing to the assault have a greater degree of knowledge.”

**Model Penal Code**  
*(Official Draft 1962)*

**Section 5.03. Criminal Conspiracy**

(1) **Definition of Conspiracy.** A person is guilty of conspiracy with another person or persons to commit a crime if with the purpose of promoting or facilitating its commission he:

(a) agrees with such other person or persons that they or one or more of them will engage in conduct which constitutes such crime or an attempt or solicitation to commit such crime; or

(b) agrees to aid such other person or persons in the planning or commission of such crime or of an attempt or solicitation to commit such crime.

(2) **Scope of Conspiratorial Relationship.** If a person guilty of conspiracy, as defined by Subsection (1) of this Section, 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.

(3) **Conspiracy With Multiple Criminal Objectives.** If a person conspires to commit a number of crimes, he is guilty of only one conspiracy so long as such multiple crimes are the object of the same agreement or continuous conspiratorial relationship.

(4) **Joinder and Venue in Conspiracy Prosecutions**

(a) Subject to the provisions of paragraph (b) of this Subsection, two or more persons charged with criminal conspiracy may be prosecuted jointly if:

(i) they are charged with conspiring with one another; or

(ii) the conspiracies alleged, whether they have the same or different parties, are so related that they constitute different aspects of a scheme of organized criminal conduct.

(b) In any joint prosecution under paragraph (a) of this Subsection:

(i) no defendant shall be charged with a conspiracy in any county [parish, or district] other than one in which he entered into such conspiracy or in which an overt act pursuant to such conspiracy was done by him or by a person with whom he conspired; and

(ii) neither the liability of any defendant nor the admissibility against him of evidence of acts or declarations of another shall be enlarged by such joinder; and

(iii) the Court shall order a severance or take a special verdict as to any defendant who so requests, if it deems it necessary or appropriate to promote the fair determination of his guilt or innocence, and shall take any other proper measures to protect the fairness of the trial.

(5) **Overt Act.** 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.