

# Current Criminal Law

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## **United States cartels**

**Sally Ramage**

### **US Prison cartels**

Prison gangs are endemic to prison systems. Tensions among dangerous individuals regularly erupt into deadly conflict and so prison gang membership affords a certain amount of protection against rival groups and offers fertile recruiting ground. A prison gang leader can wield an impressive amount of power and disobedience is punishable by death, regardless of whether a boss is in prison, as he can order the murder of a member who has crossed him. BA's illegal activities mean that the cartel gang members are usually in a cycle- in and out of prison. It was discovered that BA had organizations in every prison in Texas. Former BA member Edward Ruiz testified during the cartel trial that from 2003 to 2007, he acted as a clearinghouse for jailed members' letters and packages, which he then distributed to members on the outside. This tactic ensured that all prison communications would be traceable to just one address, thus not revealing the location of other members. The FBI was able to infiltrate BA with the help of informers. Large amounts of drugs were successfully trafficked across the border to the US through bribing border guards and border town policemen.

A prison drug cartel, called Barrio Azteca (BA), came to light in 2008 in Texas, United States. The criminal enterprise was prosecuted. Group members were charged with drug trafficking and distribution, extortion, money laundering and murder. The six defendants included the organization's three bosses, Benjamin Alvarez, Manuel Cardoza, Carlos Perea Said Francisco Herrera, Eugene Mona; and Arturo Enriquez. The cartel BA operated in El Paso, West Texas, New Mexico and Arizona. Mexico's cartels sell drugs- marijuana, cocaine and heroin- in the United States and BA is not the only prison drug cartel in the United States with ties to Mexico. The prison drug cartel, called Barrio Azteca (BA), came to light in 2008 in Texas, United States.

### **Prosecution of the prison cartel members**

The criminal enterprise was prosecuted. Group members were charged with drug trafficking and distribution, extortion, money laundering and murder. The six defendants included the organization's three bosses, Benjamin Alvarez, Manuel Cardoza, Carlos Perea Said Francisco Herrera, Eugene Mona; and Arturo Enriquez. The cartel BA operated in El Paso, West Texas, New Mexico and Arizona. Mexico's cartels sell drugs- marijuana, cocaine and heroin- in the United States and BA is not the only prison drug cartel in the United States with ties to Mexico. BA operated in a Texas prison since 1986, providing the minions who took orders from the Mexican Juarez drug cartel leaders, including committing many murders on request. They were provided with guns and other weapons, mobile phones and other equipment and contravened the United States Racketeer Influenced and Corrupt Organizations (RICO) Act. BA received discounts on drugs from the Juarez cartel by providing tactical help to its associates.

### **The citric acid cartel**

Citric acid is used primarily as a flavour enhancer and preservative. Acidulants are naturally occurring acids that inhibit the growth of bacteria and can offset product sweetness with their tart flavour. The main uses for citric acid are in soft drinks, processed food, detergents, pharmaceuticals and cosmetics. Acidulants include lactic, fumaric, malic and tartaric acids. Fumaric acid competes against citric acid as a preservative. It is generally cheaper, but has certain chemical characteristics that make it an inferior substitute for many processed foods. Citric acid accounts for about two-thirds of the total acidulant market. A huge part of citric acid production goes to beverage companies, such as Coca Cola and Pepsi and Procter & Gamble is one of the largest US consumers of citric acid. The shallow pan process is more labour intensive and less capital intensive and operates on a smaller scale. Production is concentrated in the US, Europe, and China. By the late 1990s Western Europe, the US and China together had over three quarters of market share of world

capacity, estimated at approximately £1.2 billion in 1994. Prior to the start of the conspiracy in 1990, the US had three players- ADM, Cargill, and Bayer AG. Cargill entered the industry in 1990, as the first producer vertically integrated forward from corn refining into citric acid production. All producers are now vertically integrated. In Europe in the early 1990s there were five producers in the citric acid market; the three largest were Bayer, Hoffmann-La Roche and Jungbunzlauer International AG. These European companies, as well as smaller Chinese importing companies, satisfied most of the U.S. import demand during the 1990s.

Firms in the citric acid industry fixed prices from 1991 to 1995. Although the citric acid cartel did not control world production, it did account for over three-quarters of sales in the US and Western Europe. On discovery of the citric acid cartel, sixteen firms were indicted and convicted in the United States, Canada, and the European Union and there were several resultant law-suits by customers who claimed damages.

### **The Vitamin Cartel**

The vitamins cartel lasted for many years. The sugar and bromine industries often engaged in the collection and dissemination of information which may facilitate collusion. The government may encourage this information dissemination, as the federal government did during the open price policies under the US National Industrial Recovery Act, or as state governments did in the nineteenth century salt industry. However, by accommodating developing country entry into a cartel under their own terms or to engage in an implicit cooperative pricing arrangement gives developing countries' producers access to the world market, even though this would be at a cost to the degree of competition that would otherwise be obtained in that industry.

In several international cartel cases, joint ventures had been established in the years following the forced break-up of the cartel, an attempt to consolidate and restructure the industry in a more direct way, in light of the break-up of the cartel. Developing country entrants and established producers could have other, welfare motives for

establishing such joint ventures, such as sharing technology, local market expertise or capital. Joint ventures in industries have a history of international price-fixing scrutinised by regulatory authorities allowing consumers in both developing and industrialised countries the benefits of enhanced competition.

## **Collusion**

Collusion has worldwide benefits for firms that take part in this generally illegal activity of cartelisation and Western governments have been found susceptible to manipulation by domestic producers, using tariff barriers<sup>1</sup> and anti-dumping duties to protect the home market. The US enforces against cartelisation by being the place where the majority of the world's cartel prosecutions takes place and this is the main way to get restitution for developing countries presently. The cartels that exploit poor countries are known to produce sophisticated manufactured goods and services; their members are largely international corporations based in industrialised countries. Collusion threatens competition and is a conspiracy to defraud. If every company in one particular industry took part, collusion<sup>2</sup> would immediately dissolve into competition. Repeated interaction over time or across markets creates cartels with significant state involvement, such as OPEC. The goals of OPEC are much more complex than goals of private cartels. The maximisation of joint profits is the only goal of private cartels whilst economic stability and international political influence are goals of legitimate cartels like OPEC. Consider the benefits of cheating. If the benefits of cheating are sufficiently low relative to the gains from colluding will not be sustained unless cartel members devise punishment mechanisms to deter cheating. One important factor is industry structure on the buyer's side of the market. If consumption is concentrated in just a few customers, it is more likely that a cartel member would succeed in increasing its market share with just a small cut in price.

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<sup>1</sup>Cartels do this by price fixing. This is done by raising price above marginal cost, creating an incentive for each producer to cheat. Each firm has an incentive to shave its price, increase its output and market share, and thereby increase its profits.

<sup>2</sup> Stigler.G.J, 1964, "A Theory of oligopoly", 72 *Journal of Political Economics*, 44.

See also Levenstein.M and Suslow.S, 2002, "What Determines Cartel Success?" University of Michigan Business School , 02-001 .

This will encourage him to continue to cheat. The ability of the cartel to punish cheaters also affects the benefits of cheating.

Antitrust enforcement makes it difficult for a cartel to punish its members as such punishment would make its existence more obvious to the antitrust enforcement authorities. Economists have focused on the importance of the observability of cheating to collusive stability. When cheating cannot be observed, it is harder to give firms an incentive not to cheat. Collusion will be disrupted either by cheating or by events that are empirically indistinguishable from cheating. For this reason, firms in a cartel invest in information collection in order to support the collusive equilibrium. Cartel members often find that there is no substitute for frequent face-to-face meetings, in order to compare market information and discuss alleged occurrences of cheating.

### **Prosecution and punishment of cartels**

Among the dozens of international cartels indicted and prosecuted by the US Department of Justice and the European Union's European Commission are the well reported citric acid cartel, the graphite electrodes cartel and seamless steel tube cartel. The effects of international cartels are felt worldwide. Where cartels cover only a specific region, they may have significant effects for a period of time. In particular, the international citric acid had worldwide effects supported by public price data. Developing countries' producers cannot afford to expand and take the spaces left by prosecuted cartels, this perhaps being one reason why such poor countries do not bother to legislate or prosecute cartels notwithstanding the fact of barriers to entry and antidumping legislation usually lobbied for by the same international cartels. These barriers are a barrier which stops poor countries from trading on a level par.

## United Kingdom's cybercrime

**Sally Ramage**

UK's economy will suffer 'profound effects' if the growing threat of cyber crime is not tackled, warns one of the UK's most senior police officers.

Janet Williams, Deputy Assistant Commissioner of the Metropolitan police and the Association of Chief Police Officers' lead on cyber crime, said that online fraudsters and hackers will cause a fall in the value of shares, pensions and business investments if they are not stopped.

The government upgraded cyber crime to a tier one threat in October, putting it on the same level as international terrorism or a flu pandemic. It has set aside £650m to combat the threat.

### **£27bn was a conservative estimate of the losses**

Williams told the Guardian that £30 million of the funding will be used to set up regional e-crime units which will more thoroughly police the 'dark side' of the internet. Online retailers and cyber criminals are both groups, which work overtime during the Christmas holiday season when there is a rise in the number of fraudulent orders. Techniques to over-ride tightened security practices are being created by cyber-criminals as fast as retailers install more secure systems, although evidence appears anecdotal.

The cyber-fraud offenders appear to see the busy season and hence larger volumes of transactions as ripe for taking advantage of. Such fraud against online retailers involves stolen credit card numbers rather than breaches of a merchant's online systems. Criminals use the stolen card data to buy goods they can easily resell, or to prove the card data is valid before reselling that data to other criminals. Surveys reveal that approximately one and a half percent of the average retailer's sales turn out to be fraudulent. Online merchants who suffer from illegal purchases repay credit

card companies for the purchase and shopping surveys reveal that millions of Internet users reject online shopping because of security fears. Fraud rates are almost twice the rate for smaller merchants compared to r larger merchants with the main fraud technique being the purchase of gift cards with stolen credit card numbers.

Researchers have found a data mining technique, which assists counter-fraud by using software, which looks for patterns of users who have repeated dealings with one another, and this possibly identifies those likely to commit fraud. The technique resulted from an analysis of one million transactions by 66,000 eBay users, which produced graphs called bipartite cores and these identify users interacting with unusual frequency.

While larger companies can afford blanket protection from computer criminals, and the national infrastructure receives a protection service, Williams warned that smaller businesses, universities and individuals are still dangerously exposed to criminal rings from around the world looking to steal everything from cash and identities to intellectual property.

## **Covert investigation**

### **Sally Ramage**

Covert Investigation is a means to detection. This includes why investigate covertly, the drawbacks, directed and intrusive surveillance, interception of communications, mobile phones, computers, CHIS's and the legal issues including the effect of the Human Rights legislation. The articles are excerpts from a new book from Blackstone's, 'Covert Investigation' 2nd Edition, written by two highly experienced former detectives.

## **Managing Covert Investigation**

At the risk of inducing apoplexy in die-hard detectives, the key to successful covert investigation management is to think like managers, not investigation practitioners. The reflective reader will have discerned from the previous chapters that managing covert investigation is more than just ensuring the quality and accuracy of authorization applications: it involves skilled investigation management but also complex resource management in an environment in which there are frequently many competing priorities for scarce skills and capacity. Securing a covert investigation authority may be easier than securing the resources needed to execute the covert investigation activity.

Investigators planning the use of covert techniques will need to plan for circumstances in which the resources are not available: and if an alternative means of obtaining the intelligence/ evidence is available, that immediately begs questions about the proportionality of the proposed action. Alternatively there may be occasions on which covert investigation methods offer a less resource-intensive means of acquiring information that could also be obtained by non-intrusive means: the issue for managers is whether authorization can be given lawfully in circumstances where desired information could be obtained in a way that engages Article 8 rights at lesser cost than a method that would produce the same information for greater expense but without engaging Article 8 rights.

In the event resources are available, the proportionality test is met, and an authorization is granted, management of the covert investigation does not stop when the specific activity is completed and the authorization cancelled. There then exists the covert investigation product that has to be managed, and the organizational learning from each operation to be captured and, as appropriate, disseminated. Professional management is the first layer of covert investigation governance and accountability: from the outset, empowered organizations have the opportunity to demonstrate that covert investigation has been used only when appropriate and not extravagantly.

# Fraud Strategy in Scotland

## Sally Ramage

Local authorities have core values which guide the way they operate and these values are:

equality; openness and accountability; and honesty and integrity; and all are committed to the elimination of fraud and corruption. Fraud is the intentional distortion of financial statements or other records by persons internal or external to the organisation which is carried out to conceal the misappropriation of assets or otherwise for gain. Corruption is the offering, giving, soliciting or acceptance of an inducement or reward, which may influence the action of any person.

Local Authorities are committed to providing the highest quality of service to all its residents and customers. The following strategy outlines measures that can be taken by all Local Authorities against malpractice through either fraud or corrupt practice. All local authorities are committed to fighting fraud and corruption, whether attempted from inside or outside of the authority, in order to protect public funds. Suppliers, contractors, employees, members and service users are all expected to act with integrity and without intention to commit fraud or corruption against a local authority. Any investigative activity required will be conducted without regard to any person's relationship to the local authority, or to their position or length of service.

Local authorities actively support and foster relationships with the Police and other external agencies in order to combat fraud and corruption. Where criminal activity may have occurred, the Police are always consulted. A fraud strategy covers culture; prevention; detecting and investigating fraud and corruption; training; and fraud response. Members and staff, suppliers and contractors to local government are expected to lead by example in opposing fraud and corruption. Members must adhere to the approach outlined in the National Code of Conduct. Staff must adhere to the approach outlined the Local Employee Code of Conduct.

### **The Public Life (Scotland) Act 2000**

This Act imposes on local authorities in Scotland a duty to help their members to comply with the relevant code. The Standards Commission for Scotland was established by this statute, with duties to deal with alleged breaches of the codes. This Code applies to every member of a local authority in Scotland. Managers must strive to create an environment in which their staffs feel able to approach them with any concerns they may have about suspected irregularities.

### **Public Interest Disclosure Act 1998**

The Chief Executive or Chief Auditor will refer matters to the police as soon as they suspect any criminal activity has been carried out. If employees make allegations in good faith but they are not confirmed by an investigation, no action, (disciplinary or otherwise), will be taken against the employee who raised the concern.

### **The Accounts and Audit Regulations 1996 and 2003**

Members by law are required before accepting office to undertake to meet the requirements of the Councillors' Code of Conduct and employees must follow the Code of Conduct for Employees. A Defalcation Procedure is operated by all local authorities and it is relevant to all employees as it contains provisions for dealing with allegations of fraud and corruption.

Internal Audit as per statute plays an important role in the detection of fraud and corruption. Internal Audit reviews the adequacy, efficiency and effectiveness of internal controls within a local authority by undertaking a comprehensive programme of work targeted at key risks.

## **UK Bribery Act 2010**

Employees should not accept gifts from any customer, service user or supplier other than token items such as pens, diaries, calendars, etc which have a total collective estimated value of no more than £10.00. Gifts of alcohol, food hampers or other articles should generally not be accepted irrespective of their estimated value.

Employees must not accept any gifts whatsoever (no matter the value) from anyone who is seeking decisions on applications for licenses, planning consents, building warrants etc. In no circumstances should gifts or hospitality be solicited. Employees should not use any information obtained in the course of their employment for personal gain or benefit nor should they pass it on to others who might use it in such a way. The Council cannot disclose information about individuals unless the specific information requested is exempt from Data Protection legislation. Orders and contracts must be awarded in accordance with the Council's approved Contract Standing Orders. Employees who are involved in any form of tendering exercises must follow approved procedures and must clearly act in a fair and impartial manner when dealing with contractors, sub-contractors and suppliers.

All known relationships of a business or private nature with external contractors or potential contractors should be made known to the appropriate line manager who will advise and enter the details into the local authority's register of interest Council employees and Members must declare any possible conflicts which they may have in contracts entered into by the Council.

## **Detecting bribery, fraud and corruption**

All employees and members have a role to play in preventing and tackling malpractice at work. Employees are responsible for ensuring that they follow the instructions given to them by management, particularly in relation to the safekeeping of the assets of the authority. Employees are expected always to be aware of the possibility that bribery, fraud, corruption or theft may exist in the workplace and be able to share their concerns with management.

In cases relating to Housing Benefits and Council Tax Fraud, the action taken will follow the local authority's Benefit Fraud Prosecution Policy. The investigation of any other suspected bribery, fraud or corruption is carried out by the Council's Internal Audit Section. Local authorities provide training for their employees who are involved in, or managing, internal control systems. This training includes input from other related public bodies such as the Police.



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