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III.

Most of the evidence in this case consisted of testimony of the acts and declarations of the defendants. The petitioners contend that because some of these acts and declarations took place after the conspiracy ended, they were erroneously admitted without being properly limited to the defendant who did the act or made the statement
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testified to. We must, therefore, decide when the conspiracy ended. The petitioners contend it ended when the last of the parties, Leopold Knoll, was admitted to the United States on December 5, 1947. Then and there, they say, the fraud if any was complete, and the conspiracy to violate the statutes was complete. The Government contends that a part of the conspiracy was an agreement among the conspirators to conceal their fraud by any means, and so it was alleged in the indictment.

But there is no statement in the indictment of a single overt act of concealment that was committed after December 5, 1947, and no substantial evidence of any. Such acts as were set forth and proved were acts that revealed and did not conceal the fraud. Therefore, there is no evidence in the record to establish as a part of the conspiracy that the conspirators agreed to conceal the conspiracy by doing what was necessary and expedient to prevent its disclosure. There was a statement of Munio Knoll in the record to one witness Haberman that indicated Munio's purpose to cover up and conceal the conspiracy. This is not evidence that the conspiracy included the further agreement to conceal. It is in the nature of an afterthought by the conspirator for the purpose of covering up. The trial court so understood it, and this statement of Munio Knoll, as testified to by Haberman, was limited by the Court as applicable against Munio Knoll only.

This Court in *Krulewitch* v. *United States,* 336 U.S. 440, rejected the Government's contention that in every conspiracy there is implicit an agreement as a part thereof for the conspirators to collaborate to conceal the conspiracy.

> "The rule contended for by the Government could have far-reaching results. For under this rule plausible arguments could generally be made in conspiracy cases that most out-of-court statements offered in
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> evidence tended to shield co-conspirators. We are not persuaded to adopt the Government's implicit conspiracy theory which in all criminal conspiracy

cases would create automatically a further breach of the general rule against the admission of hearsay evidence." *Id.*, at 444.

While the concealment was alleged in this indictment as a part of the conspiracy, it was not proved. We think on this record that the conspiracy ended December 5, 1947.

It does not necessarily follow that acts and declarations made after the conspiracy ended are not admissible. In this case, the essential fact of the conspiracy was the existence of phony marriage ceremonies entered into for the sole purpose of deceiving the immigration authorities and perpetrating a fraud upon the United States. *Acts* which took place after the conspiracy ended which were relevant to show the spuriousness of the marriages and the intent of the parties in going through the marriage ceremonies were competent – such as the fact that the parties continued to live apart after they came to the United States; that money was paid the so-called marriages; and that suits were started to terminate whatever legal relationship there might have been upon the record.

Declarations stand on a different footing. Declarations of one conspirator may be used against the other conspirator not present on the theory that the declarant is the agent of the other, and the admissions of one are admissible against both under a standard exception to the hearsay rule applicable to the statements of a party. *Clune* v. *United States,* 159 U.S. 590, 593. See *United States* v. *Gooding,* 12 Wheat. 460, 468-470. But such declaration can be used against the co-conspirator only when made in furtherance of the conspiracy. *Fiswick* v. *United States,* 329 U.S. 211, 217; *Logan* v. *United States,* 144 U.S. 263, 308-309. There can be no furtherance of
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a conspiracy that has ended. Therefore, the declarations of a conspirator do not bind the co-conspirator if made after the conspiracy has ended. That is the teaching of *Krulewitch* v. *United States, supra,* and *Fiswick* v. *United States, supra.* Those cases dealt only with declarations of one conspirator after the conspiracy had ended. They had no application to *acts* of a conspirator or others which were relevant to prove the conspiracy. True, there is dictum in *Logan* v. *United States, supra,* at 309, frequently repeated, which would limit the admissibility of both acts and declarations to the person performing them. This statement of the rule overlooks the fact that the objection to the declarations is that they are hearsay. This reason is not applicable to acts which are not intended to be a means of expression. The *acts,* being relevant to prove the conspiracy, were admissible, even though they might have occurred after the conspiracy

ended. *United States* v. *Rubenstein,* 151 F.2d 915, 917-918; see *Fitzpatrick* v. *United States,* 178 U.S. 304, 312-313; *Ferris* v. *United States,* 40 F.2d 837, 839.

Relevant declarations or admissions of a conspirator made in the absence of the co-conspirator, and not in furtherance of the conspiracy, may be admissible in a trial for conspiracy as against the declarant to prove the *declarant's* participation therein. The court must be careful at the time of the admission and by its instructions to make it clear that the evidence is limited as against the declarant only. Therefore, when the trial court admits against all of the conspirators a relevant declaration of one of the conspirators after the conspiracy has ended, without limiting it to the declarant, it violates the rule laid down in *Krulewitch.* Such declaration is inadmissible as to all but the declarant.

In the trial of a criminal case for conspiracy, it is inevitable that there shall be, as there was in this case, evidence as to declarations that is admissible as against
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all of the alleged conspirators; there are also other declarations admissible only as to the declarant and those present who by their silence or other conduct assent to the truth of the declaration. These declarations must be carefully and clearly limited by the court at the time of their admission and the jury instructed as to such declarations and the limitations put upon them. Even then, in most instances of a conspiracy trial of several persons together, the application of the rule places a heavy burden upon the jurors to keep in mind the admission of certain declarations and to whom they have been restricted and in some instances for what specific purpose. While these difficulties have been pointed out in several cases, e. *g., Krulewitch* v. *United States, supra,* at 453 (concurring opinion); *Blumenthal* v. *United States,* 332 U.S. 539, 559-560; *Nash* v. *United States,* 54 F.2d 1006, 1006-1007, the rule has nonetheless been applied. *Blumenthal* v. *United States, supra; Nash* v. *United States, supra; United States* v. *Gottfried,* 165 F.2d 360, 367.

In our search of this record, we have found only one instance where a declaration made after the conspiracy had ended was admitted against all of the alleged conspirators, even though not present when the declaration was made.[fn3] **Was the admission of this one item of hearsay evidence sufficient to reverse this case?**

We think not. In view of the fact that this record fairly shrieks the guilt of the parties, we cannot conceive how this one admission could have possibly influenced

this jury to reach an improper verdict. A defendant is entitled to a fair trial but not a perfect one. This
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is a proper case for the application of Rule 52 (a) of the Federal Rules of Criminal Procedure.[fn4] We hold that the error was harmless.

Finding no reversible error in this record, the judgment is

Affirmed.