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## Chapter 13

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### Crimes against the Government

Bribery, of course, connotes a voluntary offer to obtain gain, where extortion connotes some form of coercion.

- *U.S. v. Adcock*, cited in Section 13.3.2 "Bribery Elements"



Source: Image courtesy of Tara Storm.

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## 13.1 Crimes Involving National Security

### LEARNING OBJECTIVES

1. Define the elements of treason, and analyze treason's evidentiary requirements and grading.
2. Define the elements of sedition, and analyze sedition grading.
3. Define the elements of various forms of sabotage, and analyze sabotage grading.
4. Define the elements of espionage, and analyze espionage grading.

The government is tasked with keeping the nation safe from domestic and international attacks on the government and citizens. National security is an issue that affects the entire country, so most of the regulation in this area is *federal*, rather than *state*. *Pennsylvania v. Nelson*, accessed May 1, 2011, 350 U.S. 497 (1956), <http://supreme.justia.com/us/350/497/case.html>. Criminal statutes protecting the government can encroach on the individual freedom to protest government action and can also affect privacy interests, which subjects them to enhanced constitutional scrutiny similar to the crimes against the public reviewed in [Chapter 12 "Crimes against the Public"](#). This section explores crimes against the nation, such as treason, sedition, sabotage, and espionage. [Section 13.2 "Crimes Involving Terrorism"](#) examines terrorism and the USA PATRIOT Act. The last section of this chapter discusses other crimes against the government that are primarily *state* regulated, such as perjury, bribery, and obstruction of justice.

### Treason

Article III § 3 of the US Constitution defines **treason**<sup>1</sup> and specifies the evidentiary requirements for any treason trial. The founding fathers wanted to ensure that the government would not charge an individual with treason without significant and reliable proof. Treason was punishable by death in England, so it was a constant threat to anyone who disagreed with the ruling party. Although the treason clause in the Constitution is modeled after the early English law defining treason, it omits a section that criminalized “imagining the death of the King” and also limits Congress’s authority to extend or expand the crime of treason or to lighten the evidentiary requirements.

1. Levying war against the United States or adhering to the enemy by providing the enemy with aid and comfort.

The pertinent section of the Constitution states, “Treason against the United States shall consist only in levying War against them, or, in adhering to their Enemies,

giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.”

### Treason Elements and Grading

The **criminal act** element required for treason is levying war against the United States **or** adhering to the enemy by giving aid and comfort. 18 U.S.C. § 2381, accessed April 29, 2011, [http://www.law.cornell.edu/uscode/718/usc\\_sec\\_18\\_00002381----000-.html](http://www.law.cornell.edu/uscode/718/usc_sec_18_00002381----000-.html). Prosecutions for treason are practically nonexistent, so case law in this area is dated, yet still constitutes viable precedent. In *U.S. v. Burr*, 25 F Cas 55 (1807), a case involving then-vice president Aaron Burr’s prosecution for treason, the US Supreme Court held that levying war means an actual assembling of men, not a **conspiracy** to levy war, nor a mere *enlistment* of men. In *Haupt v. U.S.*, 330 U.S. 631 (1947), the US Supreme Court held that the defendant’s acts of harboring and sheltering his son in his home, helping him to purchase an automobile, and obtain employment constituted providing aid and comfort to the enemy because the defendant’s son was a spy and saboteur. The criminal intent element required for treason is most likely the **general intent** or **knowingly** to commit an act of levying war or the **specific intent** or **purposely** to betray the United States by giving aid and comfort to enemies. *Cramer v. U.S.*, 325 U.S. 1 (1945), <http://supreme.justia.com/us/325/1>. The *Constitution* specifies the evidentiary requirements that two witnesses testify to an overt act of treason or that the defendant confess in open court, although this is not set forth in the federal treason statute. 18 U.S.C. § 2381, accessed April 29, 2011, [http://www.law.cornell.edu/uscode/718/usc\\_sec\\_18\\_00002381----000-.html](http://www.law.cornell.edu/uscode/718/usc_sec_18_00002381----000-.html). As stated in *Cramer v. U.S.*, 325 U.S. 1, 34, 35 (1945), “Every act, movement, deed, and word of the defendant charged to constitute treason must be supported by the testimony of two witnesses,” and it is not enough that the elements of treason can be *inferred* from the witness statements. Treason is **graded** as a felony that can merit the death penalty or prohibit the defendant from ever holding federal office. 18 U.S.C. § 2381, accessed April 29, 2011, [http://www.law.cornell.edu/uscode/718/usc\\_sec\\_18\\_00002381----000-.html](http://www.law.cornell.edu/uscode/718/usc_sec_18_00002381----000-.html).

### Example of a Case Lacking Treason Elements and Evidentiary Requirements

Benedict is identified as a person of interest in a treason case. A government agent posing as an enemy spy invites Benedict to dinner, and they discuss the decline of the United States and whether or not they should “do something about it.” At the conclusion of the dinner, Benedict picks up the tab. Thereafter, Benedict is arrested for treason and refuses to incriminate himself by responding to law enforcement interrogation. It is unlikely that Benedict will be convicted of treason in this case. Benedict paid for the government agent’s dinner, which could constitute providing

**aid** to the enemy. However, Benedict indicated a hesitancy to take further action, which does not satisfy the requirement that he act with the **specific intent** or **purposely** to *betray* the United States. In addition, only the government agent can testify as to Benedict's act of paying for a meal because Benedict is asserting his right to remain silent. Therefore, the constitutional requirement that two witnesses testify about the overt act charged as treason is not satisfied. The intent element and evidentiary requirement for treason are lacking, so Benedict probably will not be subject to prosecution for and conviction of this offense.

Figure 13.1 *Crack the Code*

**Crack the Code**

Compare the following state laws:

**18 U.S.C. § 2381: Treason**  
Whoever, owing allegiance to the United States, levies war against them or adheres to their enemies, giving them aid and comfort within the United States or elsewhere, is guilty of treason and shall suffer death, or shall be imprisoned not less than five years and fined under this title but not less than \$10,000; and shall be incapable of holding any office under the United States.

**720 ILCS 5/30-1: Treason**  
Sec. 30-1. Treason.

(a) A person owing allegiance to this State commits treason when he or she knowingly:

- (1) Levies war against this State; or
- (2) Adheres to the enemies of this State, giving them aid or comfort.

(b) No person may be convicted of treason except on the **testimony of 2 witnesses to the same overt act, or on his confession in open court.**

(c) Sentence. Treason is a Class X felony for which an offender may be sentenced to death under Section 5-5-3 of the Unified Code of Corrections.

The federal treason statute does not include the Constitution's requirement that two witnesses testify and corroborate an overt act of treason unless the defendant confesses in open court; the Illinois treason statute does...

## Sedition

**Sedition**<sup>2</sup> criminalizes the incitement of insurrection or revolution by seditious speech or writings and, as such, is subject to the restrictions set forth in the First Amendment. The first federal law prohibiting sedition was the Sedition Act enacted in 1798 and repealed by Thomas Jefferson after his election as president. The current federal statute criminalizing sedition was originally enacted in 1940 and is codified at **18 U.S.C. § 2385**. Conspiracy to commit sedition is codified at **18 U.S.C. § 2384**. Many states have similar provisions.<sup>51</sup> Pa. Cons. Stat. Ann. § 6018, accessed

2. Incitement of insurrection or revolution by force or violence.

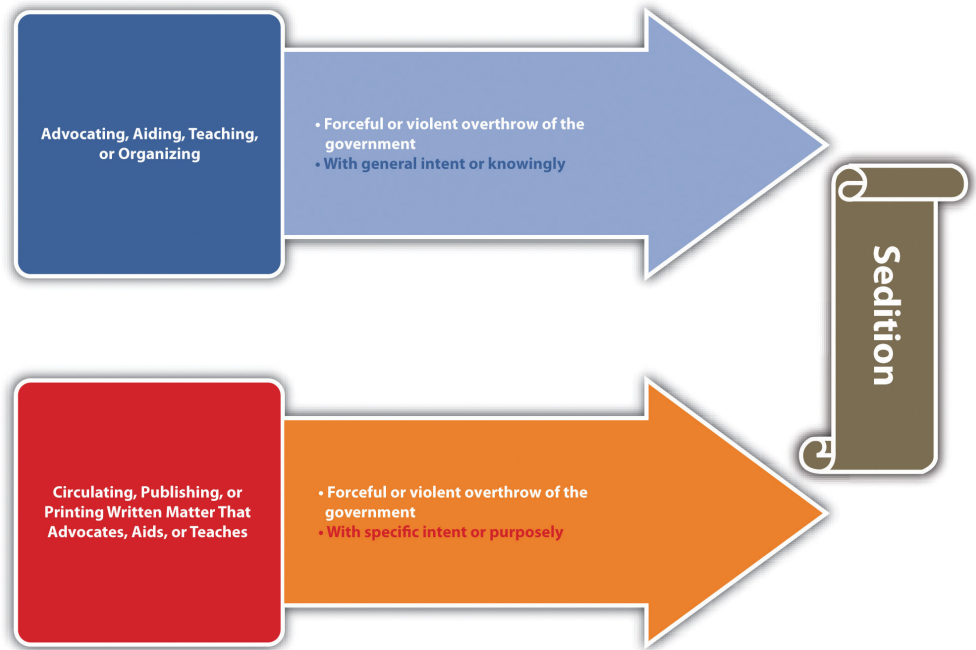
April 30, 2011, <http://law.onecle.com/pennsylvania/military-affairs/00.060.018.000.html>. Like treason, sedition is rarely prosecuted.

The **criminal act** element required for sedition is either advocating, aiding, teaching, organizing or printing, publishing, or circulating written matter that advocates, aids, or teaches the overthrow of the US government or any state, district, or territory thereof by *force* or *violence*. 18 U.S.C. § 2385, accessed April 30, 2011, [http://www.law.cornell.edu/uscode/718/usc\\_sec\\_18\\_00002385----000-.html](http://www.law.cornell.edu/uscode/718/usc_sec_18_00002385----000-.html). The criminal intent element required for sedition is the **general intent** or **knowingly** to advocate, aid, teach, or organize, or the **specific intent** or **purposely** to print, publish, or circulate written matter that advocates, aids, or teaches the violent government overthrow. 18 U.S.C. § 2385, accessed April 30, 2011, [http://www.law.cornell.edu/uscode/718/usc\\_sec\\_18\\_00002385----000-.html](http://www.law.cornell.edu/uscode/718/usc_sec_18_00002385----000-.html). In *Yates v. U.S.*, 354 U.S. 298 (1957), the US Supreme Court held that only advocacy directed at *promoting unlawful action* could be constitutionally prohibited. Advocacy of an “abstract doctrine” was protected by the First Amendment as free speech. *Yates v. U.S.*, 354 U.S. 298, 318 (1957), accessed April 30, 2011, [http://scholar.google.com/scholar\\_case?case=14369441513839511604&q=Yates+v.+U.S.&hl=en&as\\_sdt=2,5](http://scholar.google.com/scholar_case?case=14369441513839511604&q=Yates+v.+U.S.&hl=en&as_sdt=2,5). Sedition is **graded** as a felony that can prohibit the defendant from obtaining employment with the US government for a minimum of five years postconviction. 18 U.S.C. § 2385, accessed April 30, 2011, [http://www.law.cornell.edu/uscode/718/usc\\_sec\\_18\\_00002385----000-.html](http://www.law.cornell.edu/uscode/718/usc_sec_18_00002385----000-.html).

### Example of Sedition

Mo, a disgruntled immigrant who has been denied citizenship, decides he wants to overthrow the US government and supplant it with a new government that will grant the citizenship privileges he desires. Mo prints up leaflets advocating the overthrow of the government by placing a series of bombs in strategic and specifically named places and passes them out every Saturday in front of varied places known for ethnic diversity throughout the city. Mo has most likely committed sedition in this example. Mo **printed written matter** advocating the overthrow of the US government by *unlawful* action, using *force* and *violence*. Mo’s intent was to get rid of the current government so that he could gain citizenship, which is **specific intent** or **purposely**. Thus Mo’s conduct probably constitutes sedition, and he may be subject to prosecution for and conviction of several counts of this offense.

Figure 13.2 Diagram of Sedition



## Sabotage

**Sabotage**<sup>3</sup> is criminalized at 18 U.S.C. § 2151 et seq., which includes several different forms of this offense. Many states have similar provisions. RCW § 9.05.060, accessed May 1, 2011, <http://apps.leg.wa.gov/rcw/default.aspx?cite=9.05.060>. In general, sabotage is destroying, damaging, or defectively producing (**criminal act and harm**) property with the **specific intent** or **purposely, general intent** or **knowingly**, or **negligently** to impede the nation's ability to prepare for or participate in war and national defense and is detailed in the following United States Codes:

- 18 U.S.C. § 2152 focuses on destroying or damaging harbor-defense property.
- 18 U.S.C. § 2153 focuses on destroying or damaging war material, premises, or utilities.
- 18 U.S.C. § 2154 focuses on producing defective war materials, premises, or utilities.
- 18 U.S.C. § 2155 focuses on destroying or damaging national defense material, premises, or utilities.
- 18 U.S.C. § 2156 focuses on producing defective national defense material, premises, or utilities.

3. Destroying or damaging property or producing defective property that impedes the US national defense or ability to participate in or prepare for war.

Both 18 U.S.C. §§ 2153 and 2154 have the **attendant circumstance** that the conduct occur during *war* or a *national emergency*. All the sabotage statutes **grade** sabotage as a felony, with sentences ranging from five to thirty years' incarceration in federal prison.

Sabotage is prosecuted more often than treason and sedition, and there have been some extremely interesting criminal sabotage cases, including sabotage indictments against a corporation manufacturing defective raincoats for the armed forces during wartime, a sabotage trial for the burning of an ROTC building on the Washington University campus after the Kent State University riots, a sabotage trial for defendants who stole copper wire from a railroad track that was used to ship war materials, and the sabotage indictment of Osama bin Laden for **extraterritorial**<sup>4</sup> (outside the United States) activity.

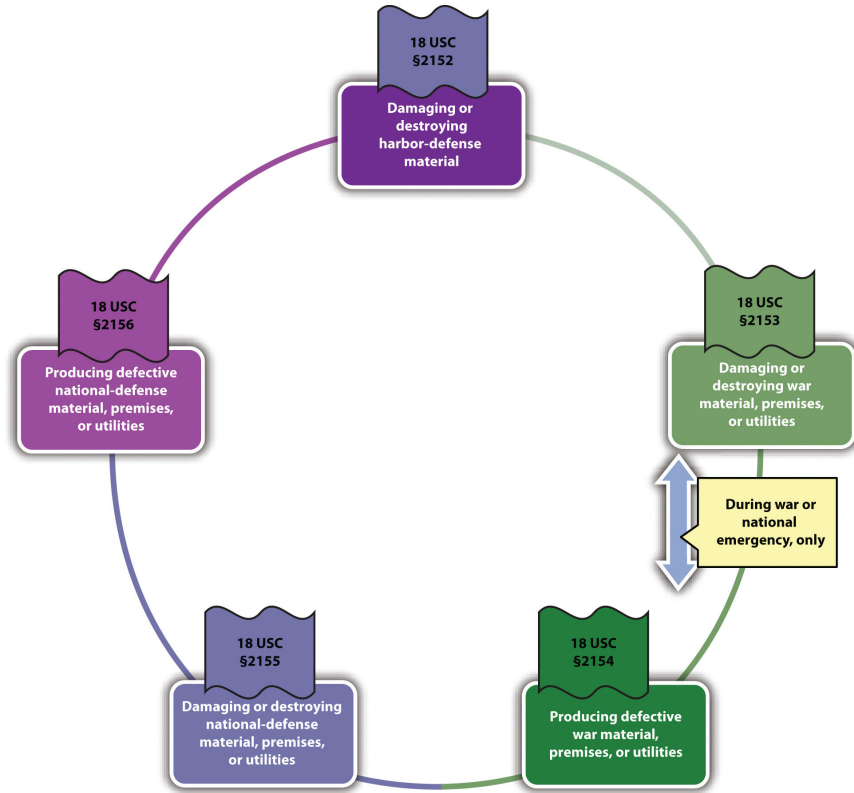
### Example of Sabotage

Review the example in Section 13 "Example of Sedition" with Mo. Add to this example and imagine that Mo gets no response to his fliers and becomes enraged. He decides to get back at the United States for not allowing him to become a US citizen by harming its national security and exposing it to attack by enemy forces. He thereafter hacks into the computer system used by the US Department of Defense and damages it so that it is out of commission for two weeks. Mo has most likely committed the federal crime of **sabotage**. Mo **damaged** national defense material with the **specific intent** or **purposely** to interfere with the nation's security and defense, which is prohibited under 18 U.S.C. § 2155, whether or not it is wartime or during a national emergency. Thus Mo may be subject to prosecution for and conviction of this offense and could face many years of incarceration for his conduct.

4. Outside the United States.



Figure 13.3 Diagram of Sabotage



## Espionage

**Espionage**<sup>5</sup>, also known as “spying,” is criminalized at 18 U.S.C. § 792 et seq. Originally part of one of the early versions of the Sedition Act of 1918, the crime of espionage has a colorful history and many interesting criminal prosecutions similar to criminal sabotage. Federal espionage statutes criminalize various acts, depending on whether the conduct occurs during *peace* or during *war*. During times of peace, it is criminal espionage to gather, transmit, or attempt to gather or transmit defense information (**criminal act**) with **general intent** or **knowingly**, or with the **specific intent** or **purposely** that it will be used to damage the United States or assist any foreign nation. 18 U.S.C. § 793, accessed May 1, 2011, [http://www.law.cornell.edu/uscode/718/usc\\_sec\\_18\\_00000793---000-.html](http://www.law.cornell.edu/uscode/718/usc_sec_18_00000793---000-.html). During times of war, it is criminal espionage to collect, record, publish, or communicate information about military activities or to attempt any of the foregoing (**criminal act**) with the **specific intent** or **purposely** that the information will be transmitted to the enemy. 18 U.S.C. § 794(b), accessed May 1, 2011, [http://www.law.cornell.edu/uscode/718/usc\\_sec\\_18\\_00000794---000-.html](http://www.law.cornell.edu/uscode/718/usc_sec_18_00000794---000-.html). Espionage is graded as a **felony**, with potential sentencing of life in prison or the death penalty. 18 U.S.C. § 792 et seq., accessed May 1, 2011, [http://www.law.cornell.edu/uscode/718/usc\\_sup\\_01\\_18\\_10\\_I\\_20\\_37.html](http://www.law.cornell.edu/uscode/718/usc_sup_01_18_10_I_20_37.html).

5. Spying on the US government during peace or wartime.

Some interesting criminal espionage cases are the Rosenberg case, where a married couple conspired to pass nuclear secrets to the Soviets and were later executed pursuant to the death penalty, the Hanssen case, where an FBI agent sold state secrets to Moscow for \$1.4 million in cash and diamonds, and the Aragoncillo case, where a White House employee stole intelligence documents from White House computers and e-mailed them to the Philippines.

### Example of Espionage

Review the example given in Section 13 "Example of Sabotage" with Mo and his computer hacking. Change the example so that before Mo damages the US Department of Defense computer system, he copies some information from different top-secret sites and sends them to operatives in an enemy nation with this message: "I have stolen this information directly from the US Department of Defense. I have also disabled their computer system, which will probably take some time to repair. Now is an excellent time to attack the United States." He thereafter severely damages the computer system. In this example, Mo has most likely committed both sabotage and espionage. As stated in Section 13 "Example of Sabotage", Mo probably committed sabotage when he **damaged** national defense material with the **specific intent** or **purposely** to interfere with the nation's security and defense. When Mo copied top-secret information and sent it to an enemy nation, along with informing the nation that the US Department of Defense computer system was disabled, he **gathered** and **transmitted** information with the **specific intent** or **purposely** that it be used to injure the United States. Thus Mo has probably committed both sabotage and espionage and may be subject to prosecution for and conviction of these offenses.

### Video of the President Informing the Nation bin Laden Is Dead

*President Obama on the Death of Osama bin Laden*

*President Obama's speech explaining Osama bin Laden's death is shown in this video:*

[\(click to see video\)](#)

Table 13.1 Comparing Treason, Sedition, Sabotage, and Espionage

<b>Crime</b>	<b>Criminal Act or Harm</b>	<b>Criminal Intent</b>	<b>Attendant Circumstance(s)</b>
Treason*	Levy war, or give aid and comfort to enemies	Most likely, general intent or knowingly to levy war, specific intent or purposely to betray the United States with aid and comfort	
Sedition	Advocating or printing matter that advocates the forceful or violent overthrow of the US government	General intent or knowingly to advocate, specific intent or purposely when printing matter that advocates the forceful or violent overthrow of the US government	
Sabotage	Varies: either destroying, damaging, or producing defective property that impedes US defense capabilities	Varies: specific intent or purposely, general intent or knowingly or negligently	Certain conduct must take place during war or a national emergency
Espionage	Spying	Varies: either general intent or knowingly, or specific intent or purposely that information will be transmitted to the enemy	Certain conduct must take place during war
<b>*Includes the evidentiary requirement of the testimony of two witnesses or the defendant's confession in open court</b>			

### KEY TAKEAWAYS

- The criminal act element required for treason is levying war against the United States or adhering to the enemy by giving the enemy aid and comfort. The criminal intent element required for treason is most likely the general intent or knowingly to commit an act of levying war, or the specific intent or purposely to betray the United States by giving aid and comfort to enemies. Treason also has the constitutional evidentiary requirement that two witnesses corroborate the acts of treason or that the defendant confess in open court. Treason is graded as a felony.
- The criminal act element required for sedition is advocating, aiding, teaching, organizing, or printing, publishing, or circulating written matter that advocates, aids, or teaches the overthrow of the US government by force or violence. The criminal intent element required for sedition is the general intent or knowingly to advocate, aid, teach, or organize or the specific intent or purposely to print, publish, or circulate written matter that advocates, aids, or teaches the forceful or violent government overthrow. Sedition is graded as a felony.
- The criminal act and harm elements required for sabotage vary but are generally damaging, destroying, or producing defective property that impedes the US national defense or ability to participate in or prepare for war. The criminal intent element required for sabotage also varies but is either specific intent or purposely, general intent or knowingly, or negligent intent, depending on the criminal act. Some forms of sabotage require the attendant circumstance that the conduct occurs during wartime or a national emergency. Sabotage is graded as a felony.
- Espionage is spying (criminal act) with general intent or knowingly, or the specific intent or purposely to transmit information to another nation. Some forms of espionage require the attendant circumstance that the conduct occurs during wartime. Espionage is graded as a felony.

## EXERCISES

Answer the following questions. Check your answers using the answer key at the end of the chapter.

1. Stephanie stands in front of a mosque and advocates for the overthrow of the US government. Is Stephanie committing **sedition**? Why or why not?
2. Read *U.S. v. Kabat*, 797 Fed.2d 580 (1986). Did the US Court of Appeals for the Eighth Circuit uphold the defendants' convictions for sabotage when, as nuclear protestors, they intentionally damaged US missiles? Why or why not? The case is available at this link:  
[http://scholar.google.com/scholar\\_case?case=5276967647790252481&q=sabotage+%222155%22&hl=en&as\\_sdt=2,5&as\\_ylo=1992](http://scholar.google.com/scholar_case?case=5276967647790252481&q=sabotage+%222155%22&hl=en&as_sdt=2,5&as_ylo=1992).
3. Read *In re Squillacote*, 790 A.2d 514 (2002). Did the District of Columbia Court of Appeals hold that conspiracy to commit espionage and attempted espionage are crimes of **moral turpitude** that could support the defendant's disbarment? The case is available at this link:  
[http://scholar.google.com/scholar\\_case?case=8408409521873710428&q=espionage+%22793%22&hl=en&as\\_sdt=2,5&as\\_ylo=2000](http://scholar.google.com/scholar_case?case=8408409521873710428&q=espionage+%22793%22&hl=en&as_sdt=2,5&as_ylo=2000).

## 13.2 Crimes Involving Terrorism

### LEARNING OBJECTIVES

1. Identify three federal statutory schemes targeting terroristic conduct.
2. Ascertain the function of the Department of Homeland Security.
3. Define international and domestic terrorism.
4. Identify crimes involving terrorism.
5. Identify potential constitutional challenges to the USA PATRIOT Act.

In recent years, crimes involving terrorism have escalated both in the United States and abroad. The federal government's response has been to enact comprehensive criminal statutes with severe penalties targeting terroristic conduct. In this section, federal statutes criminalizing acts of terrorism are reviewed, along with potential constitutional challenges.

### Statutory Schemes Targeting Terrorism

Before the September 11, 2001, terrorist attacks on the United States, the primary federal statutes criminalizing terrorism were the Omnibus Diplomatic Security and Antiterrorism Act of 1986 and the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), which was enacted after the Oklahoma City bombings. After September 11, 2001, Congress enacted the **USA PATRIOT Act**<sup>6</sup>, which stands for Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001.

The USA PATRIOT Act changed and strengthened existing laws targeting terrorism and enhanced US capabilities to prosecute terrorism committed abroad. Specifically, the USA PATRIOT Act increases federal jurisdiction over crimes committed outside the United States, USA PATRIOT Act, Tit. VIII § 804, accessed May 4, 2011, [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107\\_cong\\_public\\_laws&docid=f:publ056.107.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107_cong_public_laws&docid=f:publ056.107.pdf). creates new crimes involving financial support of terrorism or terrorists abroad, USA PATRIOT Act, Tit. VIII § 805, accessed May 4, 2011, [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107\\_cong\\_public\\_laws&docid=f:publ056.107.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107_cong_public_laws&docid=f:publ056.107.pdf). and provides for the civil forfeiture of assets connected to terrorism. USA PATRIOT Act, Tit. VIII § 806, accessed May 4, 2011, [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107\\_cong\\_public\\_laws&docid=f:publ056.107.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107_cong_public_laws&docid=f:publ056.107.pdf). Other fundamental changes incorporated in the USA PATRIOT Act are the expansion of

6. Federal statutory scheme enacted after September 11, 2001, that strengthens existing laws targeting terrorism or terroristic conduct. Stands for Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism.

government surveillance capabilities, including telephone interception and scrutiny of e-mails. USA PATRIOT Act, Tit. II, § 203 et seq., [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107\\_cong\\_public\\_laws&docid=f:publ056.107.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107_cong_public_laws&docid=f:publ056.107.pdf).

In 2002, Congress created the **Department of Homeland Security**<sup>7</sup> (DHS) under the authority of the Homeland Security Act. DHS enforces provisions of federal laws against terrorism and includes the following agencies: the Secret Service, Customs, the Federal Emergency Management Agency, United States Coast Guard, Border Patrol, Transportation Security Administration, and Citizenship and Immigration Services. Department of Homeland Security website, accessed May 4, 2011, <http://www.dhs.gov/index.shtm>.

### Criminal Terroristic Conduct

7. Federal agency tasked with enforcing terrorism laws.
8. Violent acts committed outside the United States that would be criminal if committed in the United States and that appear to be intended to influence a civilian population or government by intimidation or to affect the conduct of government by mass destruction, assassination, or kidnapping.
9. US citizen or individual owing permanent allegiance to the United States.
10. Violent acts committed inside the territorial jurisdiction of the United States that appear to be intended to influence a civilian population or government by intimidation or to affect the conduct of government by mass destruction, assassination, or kidnapping.
11. Any destructive device or weapon designed to cause death or serious bodily injury through the release of chemicals, toxins, or radioactivity.

**International terrorism**<sup>8</sup> is defined as violent acts committed *outside* the United States that would be criminal if committed in the United States, and that appear to be intended to influence a civilian population or government by intimidation, or to affect the conduct of government by mass destruction, assassination, or kidnapping. 18 U.S.C. § 2331(1), accessed May 3, 2011, [http://www.law.cornell.edu/uscode/718/usc\\_sec\\_18\\_00002331----000-.html](http://www.law.cornell.edu/uscode/718/usc_sec_18_00002331----000-.html). Specific crimes such as murder, attempted murder, and conspiracy to commit murder committed against an **American national**<sup>9</sup> (defined as an American citizen or individual who owes permanent allegiance to the United States) 18 U.S.C. § 1101(a) (22), accessed May 3, 2011, [http://www.law.cornell.edu/uscode/html/uscode08/usc\\_sec\\_08\\_00001101---000-.html](http://www.law.cornell.edu/uscode/html/uscode08/usc_sec_08_00001101---000-.html). while *outside* the United States are graded as high-level **felonies** with all ranges of sentencing options available, including the death penalty. 18 U.S.C. § 2332, accessed May 3, 2011, [http://www.law.cornell.edu/uscode/718/usc\\_sec\\_18\\_00002332---000-.html](http://www.law.cornell.edu/uscode/718/usc_sec_18_00002332---000-.html). **Domestic terrorism**<sup>10</sup> is defined exactly the same as international terrorism, except that the violent acts are committed *within* the territorial jurisdiction of the United States. 18 U.S.C. § 2331(5), accessed May 3, 2011, [http://www.law.cornell.edu/uscode/718/usc\\_sec\\_18\\_00002331----000-.html](http://www.law.cornell.edu/uscode/718/usc_sec_18_00002331----000-.html). Prohibited as terrorism are the use of a **weapon of mass destruction**<sup>11</sup>, which is defined as any destructive device or weapon designed to cause death or serious bodily injury through the release of chemicals, toxins, or radioactivity, 18 U.S.C. § 2332A(c) (2), accessed May 4, 2011, [http://www.law.cornell.edu/uscode/718/usc\\_sec\\_18\\_00002332---a000-.html](http://www.law.cornell.edu/uscode/718/usc_sec_18_00002332---a000-.html). bombings of places of public use—including public transportation systems 18 U.S.C. § 2332F, accessed May 4, 2011, [http://www.law.cornell.edu/uscode/718/usc\\_sec\\_18\\_00002332---f000-.html](http://www.law.cornell.edu/uscode/718/usc_sec_18_00002332---f000-.html).—financing of terrorism, 18 U.S.C. § 2339C, accessed May 3, 2011, [http://www.law.cornell.edu/uscode/718/usc\\_sec\\_18\\_00002339---C000-.html](http://www.law.cornell.edu/uscode/718/usc_sec_18_00002339---C000-.html). harboring or concealing terrorists, 18 U.S.C. § 2339, accessed May 3, 2011, [http://www.law.cornell.edu/uscode/718/usc\\_sec\\_18\\_00002339---000-.html](http://www.law.cornell.edu/uscode/718/usc_sec_18_00002339---000-.html). or

attempt or conspiracy to do any of the foregoing. All these crimes are **graded** as serious felonies.

### **Example of Terrorism**

Zacarias Moussaoui, a French citizen, was the *only* defendant prosecuted for the September 11, 2001, terrorist attacks. Although Moussaoui was not onboard any of the planes that crashed into the World Trade Center, Pentagon, and a Pennsylvania field because he was in federal custody, he was **indicted** Zacarias Moussaoui indictment, Justice.gov website, accessed May 4, 2011, <http://www.justice.gov/ag/moussaouiindictment.htm>. for several counts of conspiracy to commit terrorism and aircraft piracy and **pleaded guilty** to all charges. Specifically, Moussaoui pleaded guilty to conspiracy to commit acts of terrorism transcending national boundaries, conspiracy to commit aircraft piracy, conspiracy to destroy aircraft, conspiracy to use weapons of mass destruction, conspiracy to murder US employees, and conspiracy to destroy property of the United States. After the extended trial, during which Moussaoui attempted to represent himself, and the resulting guilty pleas, the jury carefully considered and recommended against the death penalty for Moussaoui, who was thereafter sentenced to life in prison. Jerry Markon, Timothy Dwyer, "Jurors Reject Death Penalty for Moussaoui," *Washington Post* website, accessed May 11, 2011, <http://www.washingtonpost.com/wp-dyn/content/article/2006/05/03/AR2006050300324.html>. Moussaoui later moved to withdraw his guilty pleas, but his motion was rejected by the US District Court for the Eastern District of Virginia, *U.S. v. Moussaoui*, Criminal No. 01-455-A (2003), accessed May 4, 2011, <http://law2.umkc.edu/faculty/projects/ftrials/moussaoui/withdrawguilty.pdf>. whose decision was later affirmed by the US Court of Appeals for the Fourth Circuit. *U.S. v. Moussaoui*, 591 F.3d 263 (2010), accessed May 4, 2011, [http://scholar.google.com/scholar\\_case?case=5511221851556025255&q=U.S.+v.+Moussaoui&hl=en&as\\_sdt=2,5](http://scholar.google.com/scholar_case?case=5511221851556025255&q=U.S.+v.+Moussaoui&hl=en&as_sdt=2,5).



Figure 13.4 *Moussaoui Indictment*

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION

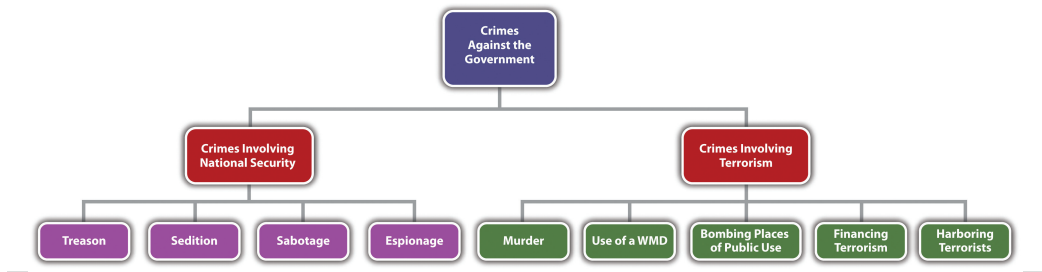
<p>UNITED STATES OF AMERICA</p> <p>-v-</p> <p>ZACARIAS MOUSSAOUI, a/k/a "Shaqil," a/k/a "Abu Khalid al Sahrawi,"</p> <p>Defendant.</p>	<p>CRIMINAL NO:</p> <p>Conspiracy to Commit Acts of Terrorism Transcending National Boundaries (18 U.S.C. §§ 2332b(a)(2) &amp; (c)) (Count One)</p> <p>Conspiracy to Commit Aircraft Piracy (49 U.S.C. §§ 46502(a)(1)(A) and (a)(2)(B)) (Count Two)</p> <p>Conspiracy to Destroy Aircraft (18 U.S.C. §§ 32(a)(7) &amp; 34) (Count Three)</p> <p>Conspiracy to Use Weapons of Mass Destruction (18 U.S.C. § 2332a(a)) (Count Four)</p> <p>Conspiracy to Murder United States Employees (18 U.S.C. §§ 1114 &amp; 1117) (Count Five)</p> <p>Conspiracy to Destroy Property (18 U.S.C. §§ 844(f), (i), (n)) (Count Six)</p>
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DECEMBER 2001 TERM - AT ALEXANDRIA  
INDICTMENT

### Constitutional Challenges to the USA PATRIOT Act

Portions of the USA PATRIOT Act provide for enhanced government surveillance capabilities, which are considered a search, so constitutional implications are present pursuant to the **Fourth Amendment**, which prohibits unreasonable search and seizure. In addition, provisions of the Act that prohibit financing terrorists and terrorism have been attacked as violative of the **First Amendment's** protection of free speech, free association, and freedom of religion. Litigation involving these challenges is ongoing and was filed on behalf of citizens by the American Civil Liberties Union (ACLU). Nancy Kranich, "The Impact of the USA PATRIOT Act: An Update," Fepproject.org website, accessed May 4, 2011, <http://www.fepproject.org/commentaries/patriotactupdate.html>.

Figure 13.5 Diagram of Crimes Involving National Security and Terrorism



### KEY TAKEAWAYS

- Three statutory schemes targeting terroristic conduct are the Omnibus Diplomatic Security and Antiterrorism Act of 1986, the Antiterrorism and Effective Death Penalty Act of 1996, and the USA PATRIOT Act.
- The Department of Homeland Security enforces terrorism laws.
- The definition of international terrorism is violent acts committed outside the United States that would be criminal if committed in the United States and that appear to be intended to influence a civilian population or government by intimidation, or to affect the conduct of government by mass destruction, assassination, or kidnapping. The definition of domestic terrorism is exactly the same, except the criminal acts take place within the territorial jurisdiction of the United States.
- Examples of crimes involving terroristic conduct are murder, use of a weapon of mass destruction, bombing places of public use, financing terrorism, harboring a terrorist, and conspiracy or attempt to commit any of the foregoing.
- The USA PATRIOT Act expands government surveillance capabilities, so it is subject to a Fourth Amendment challenge as an unreasonable search, and also prohibits financing terrorism, so it is subject to a First Amendment challenge as a prohibition on free speech, freedom of religion, and freedom to associate.

## EXERCISES

Answer the following questions. Check your answers using the answer key at the end of the chapter.

1. Joshua shoots and kills Khalid in front of the Pakistani Embassy in Washington, DC. Is this an act of domestic terrorism? Why or why not?
2. Read *Humanitarian Law Project v. Reno*, 205 F.3d 1130 (2000). Did the US Court of Appeals for the Ninth Circuit uphold 18 U.S.C. § 2339, which prohibits providing material support to terrorists? What were the constitutional challenges to this federal statute? The case is available at this link: [http://scholar.google.com/scholar\\_case?case=6926778734800618484&q=convicted+%222339%22&hl=en&as\\_sdt=2,5&as\\_ylo=2000](http://scholar.google.com/scholar_case?case=6926778734800618484&q=convicted+%222339%22&hl=en&as_sdt=2,5&as_ylo=2000).
3. Read *Humanitarian Law Project v. U.S. Department of Justice*, 352 F.3d 382 (2003). In this case, the same federal statute was analyzed (18 U.S.C. § 2339) as in *Humanitarian Law Project v. Reno*, in Exercise 2. Did the US Court of Appeals for the Ninth Circuit uphold the statute in the face of a Fifth Amendment challenge that the statute deprived the defendants of due process of law? Why or why not? The case is available at this link: [http://scholar.google.com/scholar\\_case?case=2048259608876560530&q=convicted+%222339%22&hl=en&as\\_sdt=2,5&as\\_ylo=2000](http://scholar.google.com/scholar_case?case=2048259608876560530&q=convicted+%222339%22&hl=en&as_sdt=2,5&as_ylo=2000).

## 13.3 Perjury, Bribery, and Obstruction of Justice

### LEARNING OBJECTIVES

1. Define the elements of perjury.
2. Identify the issues commonly encountered in a perjury prosecution.
3. Identify a potential defense to perjury.
4. Define perjury by inconsistent statements and subornation of perjury.
5. Analyze perjury and subornation of perjury grading.
6. Define the elements of bribery, identify the primary difficulty in a prosecution for this offense, and analyze bribery grading.
7. Define the elements of various forms of obstruction of justice, and analyze obstruction of justice grading.

Crimes against the administration of justice impede the government's ability to carry out the important functions of prosecuting and convicting criminals, which, in turn, destroys citizens' confidence that the US legal system is effective in ensuring individual safety and security. This section analyzes perjury, bribery, and obstruction of justice, along with the issues commonly encountered when prosecuting these offenses. Additional statutes criminalizing contempt of court, resisting arrest, and escape are also available for review.

### Perjury History and Elements

Witness testimony is important in a variety of settings. Juries depend on witness testimony to reach a fair and impartial verdict in civil and criminal trials, and grand juries depend on witness testimony to indict defendants for criminal conduct. Thus modern laws of **perjury**<sup>12</sup> are calculated to ensure that witnesses testify truthfully so that justice can be done in each individual case.

In the Middle Ages, the witnesses were the jurors, so the criminalization of false witness testimony did not occur until the sixteenth century when the idea of a trial by an impartial jury emerged. The first common-law prohibition against witness perjury criminalized **false** testimony, given under **oath**, in a **judicial proceeding**, about a **material** issue. This definition was also incorporated into early American common law. "Perjury—Perjury at Common Law," Jrank.org website, accessed May 5, 2011, <http://law.jrank.org/pages/1632/Perjury-Perjury-at-common-law.html>.

12. A false material statement made under oath in a judicial or official proceeding or in a certified writing with awareness of the falsity of the statement or the specific intent to deceive.

In modern times, every state prohibits perjury, as well as the federal government.<sup>18</sup> U.S.C. § 1621, accessed May 5, 2011, [http://www.law.cornell.edu/uscode/718/usc\\_sec\\_18\\_00001621----000-.html](http://www.law.cornell.edu/uscode/718/usc_sec_18_00001621----000-.html). Most state statutes or state common law, in states that allow common-law crimes, define perjury as a false material statement (**criminal act**), made with the **specific intent** or **purposely** to deceive, or the **general intent** or **knowingly** that the statement was false, in a judicial or official proceeding (**attendant circumstance**), under oath (**attendant circumstance**). Ga. Code tit. 16 § 16-10-70, accessed May 5, 2011, <http://law.onecle.com/georgia/16/16-10-70.html>. The Model Penal Code defines perjury as a false material statement, that the defendant does not believe to be true, made under oath in any official proceeding (Model Penal Code § 241.1(1)). The biggest issues commonly encountered in any perjury prosecution are proving the validity of the oath, the defendant's criminal intent, the materiality of the false statement, and any requirement of corroborative evidence.

### Necessity of a Valid Oath

The defendant must be under oath when making the statement at issue in any perjury prosecution, and the oath must be administered by someone of *legal authority* or someone *authorized to take evidence under oath*. Connecticut Jury Instructions § 53a-156, accessed May 5, 2011, <http://www.jud.ct.gov/ji/criminal/part4/4.5-9.htm>, including a referee, hearing examiner, commissioner, notary, or other person authorized to take evidence in connection with an official or judicial proceeding. Connecticut Jury Instructions § 53a-156, accessed May 5, 2011, <http://www.jud.ct.gov/ji/criminal/part4/4.5-9.htm>. Federally and in many jurisdictions, the false statement can be **written**, as long as it is *certified*, such as a signature on an income tax return<sup>18</sup> U.S.C. § 6065, accessed May 5, 2011, [http://www.law.cornell.edu/uscode/26/usc\\_sec\\_26\\_00006065----000-.html](http://www.law.cornell.edu/uscode/26/usc_sec_26_00006065----000-.html), or a report. Cal. Penal Code § 129, accessed May 5, 2011, <http://law.onecle.com/california/penal/129.html>. The Model Penal Code also considers a false **written** statement perjury, as long as the document containing the statement is made upon oath or affirmation (Model Penal Code § 241.1(3)). In spite of the **attendant circumstance** requirement that the statement be made under oath, many jurisdictions disallow a defense to a prosecution for perjury based on the assertion that the oath or affirmation was administered or taken in an *irregular* manner. Ala. Code § 13A-10-108, accessed May 5, 2011, <http://law.onecle.com/alabama/criminal-code/13A-10-108.html>. The Model Penal Code has a similar provision (Model Penal Code § 241.1(3)). In addition, many jurisdictions have a provision that witnesses who *refuse* to take an oath shall have the option of making a nonreligious affirmation that has the **same legal effect** as the oath.<sup>42</sup> Pa. Cons. Stat. Ann. § 5901, accessed May 5, 2011, <http://law.onecle.com/pennsylvania/judiciary-and-judicial-procedure/00.059.001.000.html>. The Model Penal Code allows for an “oath or equivalent affirmation” (Model Penal Code § 241.1(1)).

### Perjury Criminal Intent

As stated previously, in many jurisdictions, the defendant must **know** that a statement is false or must make the statement with the **specific intent** or **purposely** to *deceive*. When the intent requirement is general intent or knowledge that the statement is false, proof that the statement is false could give rise to an inference of intent. *State v. Kimber*, 48 Conn. App. 234 (1998), accessed May 5, 2011, [http://scholar.google.com/scholar\\_case?case=17399056576949304157&q=State+v.+Kimber+48&hl=en&as\\_sdt=2,5](http://scholar.google.com/scholar_case?case=17399056576949304157&q=State+v.+Kimber+48&hl=en&as_sdt=2,5).

### Materiality Requirement

Perjury generally requires a false statement that is **material**, which means that it substantially affected or could substantially affect the outcome of the proceeding. Mo. Ann. Stat. § 575.040, accessed May 5, 2011, [http://www1.law.umkc.edu/suni/CrimLaw/calendar/Class\\_4\\_Mo\\_perjury.htm](http://www1.law.umkc.edu/suni/CrimLaw/calendar/Class_4_Mo_perjury.htm). In many jurisdictions and federally, materiality is a question of fact for the trier of fact, which could be a **jury**. *U.S. v. Gaudin*, 515 U.S. 506 (1995), accessed May 5, 2011, [http://scholar.google.com/scholar\\_case?case=12281686524757008977&hl=en&as\\_sdt=2&as\\_vis=1&oi=scholar](http://scholar.google.com/scholar_case?case=12281686524757008977&hl=en&as_sdt=2&as_vis=1&oi=scholar). The Model Penal Code defines materiality as a statement that could have affected the course or outcome of the proceeding and declares that materiality should be a question of law, which means it should be determined by a **judge**, *not a jury* (Model Penal Code § 241.1(2)). Typically, it is *not* a defense to perjury that the defendant did not **know** that the statement was material. Mo. Ann. Stat. § 575.040(3) (1), accessed May 5, 2011, [http://www1.law.umkc.edu/suni/CrimLaw/calendar/Class\\_4\\_Mo\\_perjury.htm](http://www1.law.umkc.edu/suni/CrimLaw/calendar/Class_4_Mo_perjury.htm). The Model Penal Code has a similar provision (Model Penal Code § 241.1(2)).

### Corroborative Evidence Requirement

Some jurisdictions have a requirement of corroborative evidence for perjury, which necessitates the testimony of **two witnesses** to support a conviction, similar to a treason conviction. Tex. Code of Criminal Procedure, § 38.18, accessed May 5, 2011, <http://law.onecle.com/texas/criminal-procedure/38.18.00.html>. The Model Penal Code also has this corroborative evidence requirement (Model Penal Code § 241.1(6)).

### Defense of Retraction

Many jurisdictions provide a defense to perjury if the defendant **retracts** his or her false statement in the course of the same proceeding in which it was made before it becomes manifest that the falsification will be exposed. Ala. Code § 13A-10-107,

accessed May 6, 2011, <http://law.onecle.com/alabama/criminal-code/13A-10-107.html>. The Model Penal Code has a similar provision (Model Penal Code § 241.1(4)).

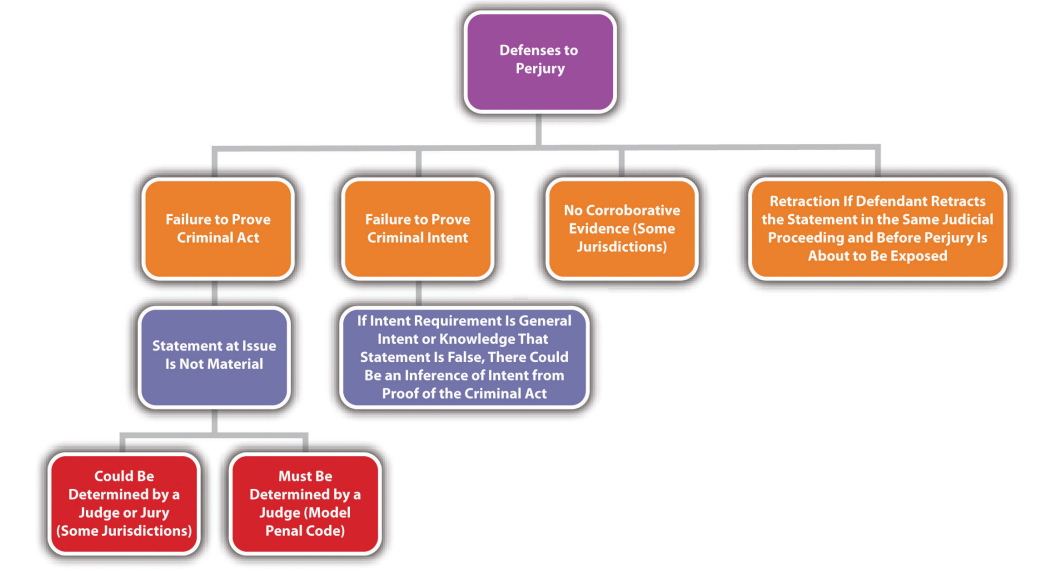
### Example of a Case Lacking an Element of Perjury

Marcus is a witness in a civil suit for damages against Lindsay. Macy's department store is suing Lindsay for the alleged theft of a diamond necklace. Marcus takes an oath sworn by the court commissioner. He thereafter testifies that he saw Lindsay try on the necklace and then walk out of the store without paying for it. When the Macy's attorney asks Marcus what he was doing at Macy's, Marcus responds that he was buying some jewelry as a gift for his wife. In actuality, Marcus was shopping for jewelry as a gift for his *girlfriend*. Marcus has probably not committed perjury in this case. Marcus is testifying as a witness in a *civil* rather than *criminal* trial, but this satisfies the perjury requirement that the testimony be offered during a **judicial** or **official** proceeding. Before testifying, Marcus took an oath that was administered by a court commissioner, also satisfying the perjury requirement that the defendant take an oath administered by someone with the *legal authority* or *authorization* to take evidence under oath. Marcus's statement is *false*, and he made the statement with **knowledge** of its falsity, which satisfies the perjury criminal intent requirement. However, Marcus's statement does not appear to be **material** to this judicial proceeding because the reason for Marcus's presence at Macy's will not affect the outcome of Lindsay's civil theft trial (usually called the tort of conversion). Thus Marcus is probably not subject to prosecution for and conviction of perjury, based on his testimony in this case.

### Example of Perjury

Review the example in Section 13 "Example of a Case Lacking an Element of Perjury" with Marcus. Change this example so that Marcus testifies that he did *not* see Lindsay walk out of the Macy's department store without paying for the necklace because he does not want to admit that he was shopping for jewelry to buy his girlfriend. Anthony, the Macy's civil trial attorney, cross-examines Marcus, and forces him to admit that he saw Lindsay steal the necklace, and that he was *lying* previously. Marcus has most likely committed perjury in this example. Marcus made a **false** statement, under a validly administered **oath**, in a **judicial** proceeding, with **knowledge** of its falsity. Marcus's statement was **material** because, if believed, it would have helped exonerate Lindsay in her civil case. In many jurisdictions, the trier of fact, which could be a judge *or jury*, determines whether or not the statement is material. Marcus's admission that he was lying is not a **retraction** that could serve as a defense because it was not made until the lie was about to be exposed. Thus all the elements of perjury appear to be present, and Marcus may be subject to prosecution for and conviction of this offense.

Figure 13.6 Diagram of Defenses to Perjury



### Perjury by Inconsistent Statements

Some jurisdictions criminalize **perjury by inconsistent or contradictory statements**<sup>13</sup>, which is slightly different from criminal perjury. Ala. Code § 13A-10-104, accessed May 6, 2011, <http://law.onecle.com/alabama/criminal-code/13A-10-104.html>. Perjury by inconsistent statements is easier to prove than traditional perjury because the prosecution can simply offer evidence that the defendant made statements that are inconsistent, in a judicial proceeding, after taking a validly administered oath. Corroborative evidence is not required, and the prosecution does not have the burden of proving that one of the statements is false, just that one or the other was false and not believed by the defendant to be true. Ala. Code § 13A-10-104, accessed May 6, 2011, <http://law.onecle.com/alabama/criminal-code/13A-10-104.html>. The Model Penal Code has a similar provision (Model Penal Code § 241.1(5)).

### Example of Perjury by Inconsistent Statements

Review the example with Marcus in [Section 13 "Example of Perjury"](#). If Marcus’s jurisdiction criminalizes perjury by inconsistent statements, Marcus could most likely be prosecuted for this offense. Marcus made two inconsistent statements while under a validly administered oath in Lindsay’s conversion trial, which is a judicial proceeding. In Marcus’s criminal perjury by inconsistent statements prosecution, the prosecutor need only offer evidence of the inconsistent statements to the trier of fact. The prosecutor does *not* have to provide corroborative evidence and does *not* have the burden of proving that the first statement was **false**, which

13. The defendant makes inconsistent statements under oath in a judicial or official proceeding.



will simplify and expedite the trial and may subject Marcus to conviction of this offense.

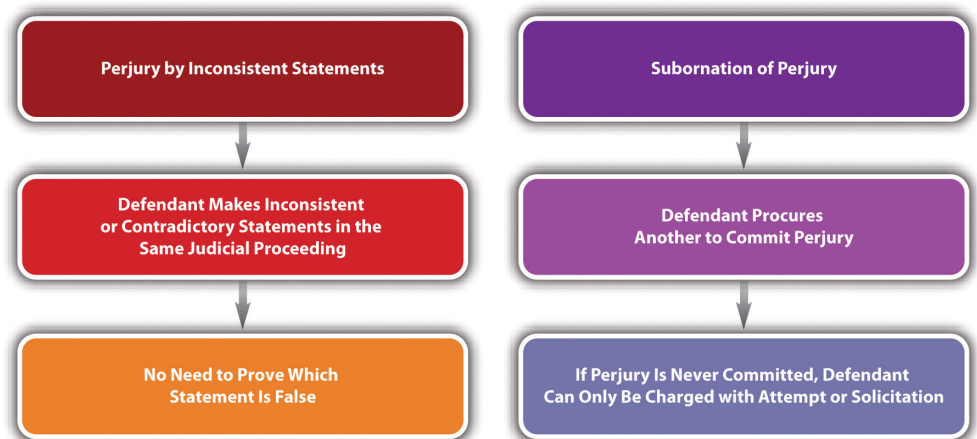
### Subornation of Perjury

Most jurisdictions criminalize **subornation of perjury**<sup>14</sup>, which is typically procuring another to commit perjury (**criminal act**) with **specific intent** or **purposely**, or **general intent** or **knowingly**, and **factually** and **legally causing** the resulting **harm** that perjury is in fact *committed*. N.C. Gen. Stat. § 14-210, accessed May 6, 2011, <http://law.onecle.com/north-carolina/14-criminal-law/14-210.html>.

### Example of a Case Lacking an Element of Subornation of Perjury

Review the example given with Marcus in Section 13 "Example of Perjury". Add to this example and assume that Marcus begs Janelle, another witness in Lindsay’s conversion trial, to say that she did not see him at Macy’s the day Lindsay stole the necklace. Janelle flatly refuses. Marcus has not committed subornation of perjury in this case. Although Marcus *tried* to procure Janelle to commit **perjury**, with **specific intent** or **purposely**, Janelle did not cooperate and did not commit the perjury. Thus the **harm** element of subornation of perjury is *lacking*, and Marcus can be prosecuted only for *attempted* subornation of perjury or *solicitation* to commit perjury, rather than the completed offense.

Figure 13.7 Comparison of Perjury by Inconsistent Statements and Subornation of Perjury



### Perjury Grading

14. Procuring another to commit perjury.

Perjury is generally **graded** as a felony, N.C. Gen. Stat. § 14-209, accessed May 6, 2011, <http://law.onecle.com/north-carolina/14-criminal-law/14-209.html>. with a

potential sentencing enhancement for committing perjury that causes another to be sentenced to prison or the death penalty. Ga. Code tit. 16, § 16-10-70, accessed May 6, 2011, <http://law.onecle.com/georgia/16/16-10-70.html>. The Model Penal Code grades perjury as a felony of the third degree (Model Penal Code § 241.1(1)). Subornation of perjury is also **graded** as a felony. N.C. Gen. Stat. § 14-210, accessed May 6, 2011, <http://law.onecle.com/north-carolina/14-criminal-law/14-210.html>. However, because of the procedural difficulties in successfully convicting a defendant of perjury and subornation of perjury, these crimes are not often prosecuted. Nonetheless, the threat of a felony conviction still serves as a deterrent and helps to ensure that witnesses testify truthfully in judicial and official proceedings and give accurate statements in certified writings.

### Bribery Elements

**Bribery**<sup>15</sup> is often compared to **extortion**, yet extortion is considered a crime of threatened force or violence, while bribery involves financial inducement. *U.S. v. Adcock*, 558 F.2d 397 (1977), accessed May 6, 2011, [http://scholar.google.com/scholar\\_case?case=189694239263939940&hl=en&as\\_sdt=2&as\\_vis=1&oi=scholar](http://scholar.google.com/scholar_case?case=189694239263939940&hl=en&as_sdt=2&as_vis=1&oi=scholar). At early common law, bribery was the receiving or offering any undue reward by or to any person in a public office in order to influence his or her behavior in office and induce him or her to act contrary to the known rules of honesty and integrity. Legal definition of bribery, Duhaime.org website, accessed May 6, 2011, <http://www.duhaime.org/LegalDictionary/B/Bribery.aspx>. In modern times, many criminal statutes define bribery as conferring, offering, agreeing to confer, or soliciting, accepting, or agreeing to accept any *benefit* upon a public official (**criminal act**) with the **specific intent** or **purposely** or the **general intent** or **knowingly** to form an agreement or understanding that the public official's vote, opinion, judgment, action, decision, or exercise of discretion will be *influenced* by the benefit. N.Y. Penal Law § 200.00, accessed May 6, 2011, [http://law.onecle.com/new-york/penal/PEN0200.00\\_200.00.html](http://law.onecle.com/new-york/penal/PEN0200.00_200.00.html); N.Y. Penal Law § 200.10, [http://law.onecle.com/new-york/penal/PEN0200.10\\_200.10.html](http://law.onecle.com/new-york/penal/PEN0200.10_200.10.html). The crime of bribery is often extended to apply to persons other than public officials, such as employees, agents, or fiduciaries for the purpose of influencing the bribed individual's on-the-job conduct. N.Y. Penal Law § 180.00, accessed May 6, 2011, [http://law.onecle.com/new-york/penal/PEN0180.00\\_180.00.html](http://law.onecle.com/new-york/penal/PEN0180.00_180.00.html). This type of bribery is typically called **commercial bribery**<sup>16</sup>. N.Y. Penal Law § 180.00, accessed May 6, 2011, [http://law.onecle.com/new-york/penal/PEN0180.00\\_180.00.html](http://law.onecle.com/new-york/penal/PEN0180.00_180.00.html). Bribery can also cover members of a state legislature, Cal. Penal Code § 85, accessed May 6, 2011, <http://law.onecle.com/california/penal/85.html>; Cal. Penal Code § 86, <http://law.onecle.com/california/penal/86.html>. any judicial officer, juror, referee, umpire, Cal. Penal Code § 92, accessed May 6, 2011, <http://law.onecle.com/california/penal/92.html>; Cal. Penal Code § 93, <http://law.onecle.com/california/penal/93.html>. or witness Or. Rev. Stat. § 162.265, accessed May 6, 2011, <http://law.onecle.com/oregon/162-offenses-against-the-state-and/162.265.html>;

15. Offering, conferring, agreeing to confer, or soliciting, accepting, or agreeing to accept a benefit to or from a designated individual for the purpose of influencing decision making.

16. Bribery of an employee for the purpose of influencing on-the-job conduct.

Or. Rev. Stat. §162.275, accessed May 7, 2011, <http://law.onecle.com/oregon/162-offenses-against-the-state-and/162.275.html>. when a bribe is conferred or offered, asked for, received, or agreed to be received to influence their vote or decision. The Model Penal Code criminalizes as bribery the act of conferring, offering, agreeing to confer, soliciting, accepting, or agreeing to accept any **pecuniary**<sup>17</sup> (which means **monetary**) benefit in exchange for a public servant, party official, voter's decision, opinion, recommendation, vote, or other exercise of discretion (Model Penal Code § 240.1(1)). The Model Penal Code also criminalizes as bribery the act of conferring, offering, agreeing to confer, soliciting, accepting, or agreeing to accept *any* benefit in exchange for a judicial or administrative officer's decision, vote, recommendation, or other exercise of official discretion (Model Penal Code § 240.1(2)).

### Prosecutorial Burden in Bribery Prosecutions

Similar to perjury, bribery is notoriously *difficult to prove*, which is a factor prosecutors must consider when deciding whether or not to charge an individual(s) with this offense. The most difficult bribery element to prove beyond a reasonable doubt is the criminal intent element of **specific intent** or **purposely** or **general intent** or **knowingly** to enter into an agreement that *influences* the bribed individual's decision.

### Example of Bribery

Isabel, a defendant on trial for perjury, notices the judge presiding in her case shopping at Macy's department store. Isabel thereafter buys an expensive watch, has it wrapped, walks up to the judge, and offers it to him as a gift. Isabel has most likely committed bribery in this case. Although the judge did not accept Isabel's "gift," most states criminalize as bribery the **offer** of any benefit, so the act of bribery is complete when Isabel proffers the watch. In addition, based on these facts, Isabel's connection to the judge is only through her perjury prosecution, so her act appears calculated to influence his decision in that case, especially because the watch is expensive and not merely a token. Note that a prosecutor is required to prove *beyond a reasonable doubt* Isabel's **specific intent** or **purposely** or **general intent** or **knowingly** to enter into an agreement with the judge influencing his decision, which is challenging even under the obvious circumstances apparent in this case.

### Another Example of Bribery

Review the example with Isabel in [Section 13 "Example of Bribery"](#). Add to this example and assume that the judge graciously accepts Isabel's gift and thereafter rules in her favor, *acquitting* her of perjury. In this example, *both* the judge and

17. Monetary.

Isabel have likely committed bribery because most states criminalize the conferring, offering, *and* **accepting** and **receiving** a bribe as the criminal act elements. Thus both Isabel and the judge may be subject to prosecution for and conviction of this offense, and the judge's acquittal of Isabel will ease the prosecutor's burden in proving the **specific intent** or **purposely** or **general intent** or **knowingly** to enter into an agreement corruptly influencing the decision making in this case.

### Example of a Case Lacking an Element of Bribery

Isabel notices a gentleman struggling to pay his bill at a local coffee shop. Isabel steps up and charitably offers to pay the gentleman's bill. Later in the day, while watching her son's professional baseball game, Isabel notices that the umpire looks familiar. After pondering it for a few minutes, she realizes that he is the same gentleman who could not pay his bill at the coffee shop. Isabel and the umpire probably have *not* committed bribery in this case. Although Isabel gave the umpire money, and he was the decision maker in her son's baseball game, Isabel did not give the money, nor did the umpire accept it, with the **specific intent** or **purposely** or **general intent** or **knowingly** to enter into an agreement *influencing* the umpire's decisions. Thus the criminal intent element for bribery appears to be lacking, and neither Isabel nor the umpire are subject to prosecution for and conviction of this offense.

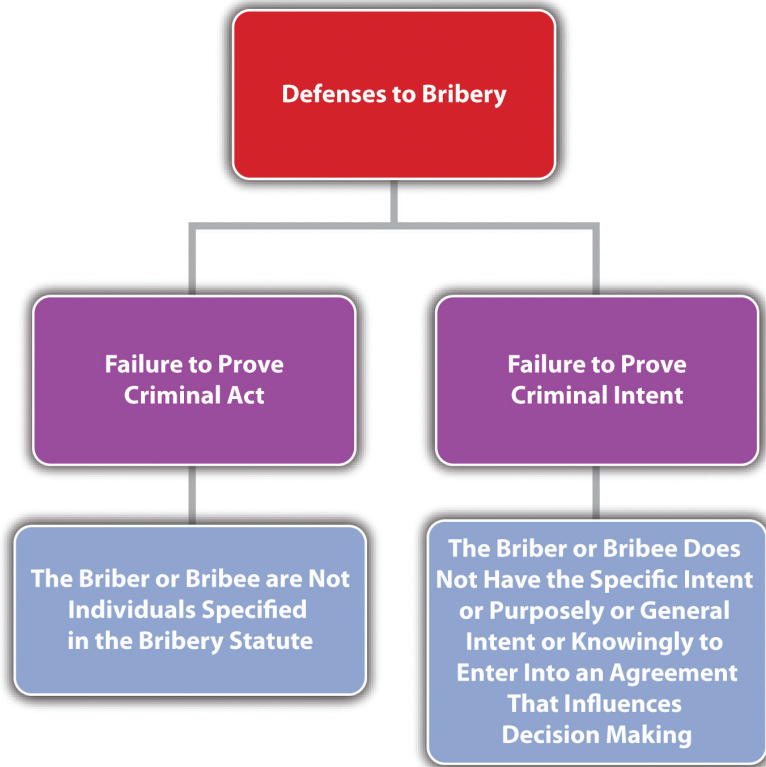
### Bribery When No Authority to Act Is Present

In many states and under the Model Penal Code, it is *no defense* to bribery that the individual bribed does *not* have the **authority** to act or make the decision that is the subject of the bribe (Model Penal Code § 240.1). Ala. Code § 13A-10-61, accessed May 7, 2011, <http://law.onecle.com/alabama/criminal-code/13A-10-61.html>.

### Example of Bribery When No Authority to Act Is Present

Review the example with Isabel and the judge in [Section 13 "Another Example of Bribery"](#). Change this example and assume that the "judge" in question is an imposter who is merely masquerading as a judge to live out a lifelong fantasy. Isabel and the "judge" may still be prosecuted for and convicted of bribery in many jurisdictions and under the Model Penal Code because **lack of authority** is typically *not a defense* to bribery under modern statutes criminalizing this offense.

Figure 13.8 Diagram of Defenses to Bribery



### Bribery Grading

Bribery is typically **graded** as a felony. N.Y. Penal Law § 200.00, accessed May 6, 2011, [http://law.onecle.com/new-york/penal/PEN0200.00\\_200.00.html](http://law.onecle.com/new-york/penal/PEN0200.00_200.00.html). with enhancements for bribery that is carried out with a larger sum of money. N.Y. Penal Law § 200.03, accessed May 6, 2011, [http://law.onecle.com/new-york/penal/PEN0200.03\\_200.03.html](http://law.onecle.com/new-york/penal/PEN0200.03_200.03.html). or bribery that results in someone’s prosecution or incarceration for a felony. N.Y. Penal Law § 200.04, accessed May 6, 2011, [http://law.onecle.com/new-york/penal/PEN0200.04\\_200.04.html](http://law.onecle.com/new-york/penal/PEN0200.04_200.04.html). When a state legislator Cal. Penal Code § 88, accessed May 7, 2011, <http://law.onecle.com/california/penal/88.html>. or a public official Cal. Penal Code § 74, accessed May 7, 2011, <http://law.onecle.com/california/penal/74.html>. commits bribery, it is typical to **disqualify** that individual from his or her office for life, in addition to any other sentence.

18. Interfering with the administration of justice by impeding law enforcement procedure, criminal prosecution, or conviction of criminal defendants.

### Obstruction of Justice

**Obstruction of justice**<sup>18</sup> takes many forms and is a classic example of an offense against the administration of justice. States and the federal government exercise

broad latitude in enacting statutes that criminalize interference with any aspect of law enforcement procedure or the prosecution and conviction of criminal offenders. Some typical examples of obstruction of justice are as follows: giving false identification to a law enforcement officer, 720 ILCS § 5/31-4.5, accessed May 7, 2011, <http://law.onecle.com/illinois/720ilcs5/31-4.5.html>. impersonating a law enforcement officer, Fla. Stat. Ann. § 843.08, accessed May 7, 2011, <http://law.onecle.com/florida/crimes/843.08.html>. refusing to aid a law enforcement officer when requested, N.Y. Penal Law § 195.10, accessed May 7, 2011, [http://law.onecle.com/new-york/penal/PEN0195.10\\_195.10.html](http://law.onecle.com/new-york/penal/PEN0195.10_195.10.html). giving false evidence, 720 ILCS § 5/31-4, accessed May 7, 2011, <http://law.onecle.com/illinois/720ilcs5/31-4.html>. hiding or concealing oneself and refusing to give evidence, 720 ILCS § 5/31-4, accessed May 7, 2011, <http://law.onecle.com/illinois/720ilcs5/31-4.html>. tampering with evidence, Or. Rev. Stat. § 162.295, accessed May 7, 2011, <http://law.onecle.com/oregon/162-offenses-against-the-state-and/162.295.html>. and tampering with a witness 18 U.S.C. § 1512, accessed May 7, 2011, [http://www.law.cornell.edu/uscode/718/usc\\_sec\\_18\\_00001512----000-.html](http://www.law.cornell.edu/uscode/718/usc_sec_18_00001512----000-.html). or juror. Ariz. Rev. Stat. § 13-2807, accessed May 7, 2011, <http://law.onecle.com/arizona/criminal-code/13-2807.html>. All these acts are generally supported by **specific intent** or **purposely** or **general intent** or **knowingly**. The Model Penal Code prohibits threatening unlawful harm to any person or public servant with purpose to influence his decision, opinion, recommendation, vote, or other exercise of discretion (Model Penal Code § 240.2). Obstruction of justice offenses are most often **graded** as a misdemeanor or felony, depending on the offense.

### Example of Obstruction of Justice

Barry Bonds, a baseball player and record-breaking home run hitter for the San Francisco Giants, was found guilty by a federal jury for **obstruction of justice**, based on his refusal to answer a question during a grand jury investigation of his steroid use. Juliet Macur, "Bonds Guilty of Obstruction, but Not of Perjury," *New York Times* website, accessed May 8, 2011, <http://www.nytimes.com/2011/04/14/sports/baseball/14bonds.html?pagewanted=1& r=1>. Bonds was also charged with three counts of **perjury**, but the jury could not agree to convict, resulting in a mistrial on all three counts. Jorge L. Ortiz, "Verdict in: Bonds Found Guilty, but Case Not Closed Yet," USA TODAY website, accessed May 8, 2011, [http://www.usatoday.com/sports/baseball/2011-04-13-verdict-barry-bonds-guilty\\_N.htm](http://www.usatoday.com/sports/baseball/2011-04-13-verdict-barry-bonds-guilty_N.htm). The perjury charges stemmed from Bonds's claim while testifying under oath that he never knowingly used steroids, never knowingly used human growth hormones, and was never injected with a substance by anyone other than his trainer. The obstruction of justice conviction resulted from Bonds's evasive answer to the question of whether his personal trainer had ever injected him with steroids. Juliet Macur, "Bonds Guilty of Obstruction, but Not of Perjury," *New York Times* website, accessed May 8, 2011, <http://www.nytimes.com/2011/04/14/sports/baseball/14bonds.html?pagewanted=1& r=1>. Instead of answering yes or no to this question,

Bonds began reminiscing about his friendship with the trainer, who went to prison four times in five years for also refusing to testify in the investigation. Juliet Macur, "Bonds Guilty of Obstruction, but Not of Perjury," *New York Times* website, accessed May 8, 2011, <http://www.nytimes.com/2011/04/14/sports/baseball/14bonds.html?pagewanted=1&r=1>. The perjury charges support the obstruction of justice charge, so the defense asked for a court dismissal of the obstruction of justice conviction in order to clear the way for an appeal. Jorge L. Ortiz, "Verdict in: Bonds Found Guilty, but Case Not Closed Yet," USA TODAY website, accessed May 8, 2011, [http://www.usatoday.com/sports/baseball/2011-04-13-verdict-barry-bonds-guilty\\_N.htm](http://www.usatoday.com/sports/baseball/2011-04-13-verdict-barry-bonds-guilty_N.htm). Note that Bonds's **obstruction of justice** charge of evading the question and refusing to give evidence appears *easier* to prove than the **perjury** charges, which have a daunting criminal intent requirement, as discussed in Section 13 "Perjury Criminal Intent".

### The Barry Bonds Verdict Video

Associated Press: Bonds Guilty of Obstruction, Jury Hung on Others

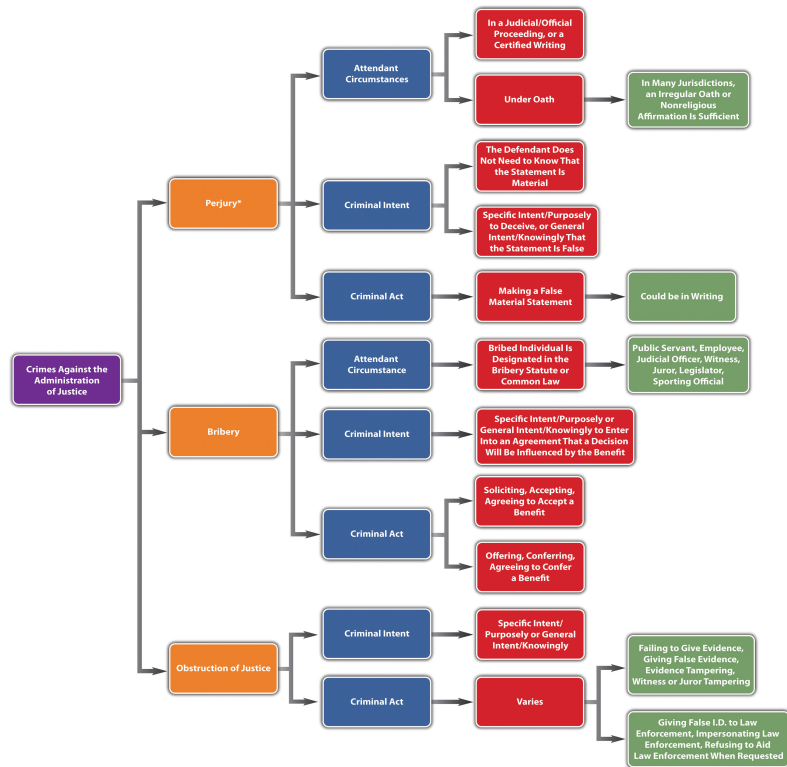
The verdict in the federal Barry Bonds case is explained in this video:

[\(click to see video\)](#)

### Additional Crimes against the Government

Additional crimes against the government that impair the orderly administration of justice are **contempt**, N.C. Gen. Stat. § 5A-11, et seq., accessed May 8, 2011, <http://law.onecle.com/north-carolina/5a-contempt/index.html>. **resisting arrest**, 18 Pa. Cons. Stat. Ann. § 5104, accessed May 8, 2011, <http://law.onecle.com/pennsylvania/crimes-and-offenses/00.051.004.000.html>. and **escape**. Tex. Penal Code § 38.06, accessed May 8, 2011, <http://law.onecle.com/texas/penal/38.06.00.html>. Review the statutes in the endnotes for common elements and grading of these offenses.

Figure 13.9 Diagram of Perjury, Bribery, and Obstruction of Justice



\* Requires testimony of two witnesses as corroborative evidence in some jurisdictions



## KEY TAKEAWAYS

- Most jurisdictions define perjury as a false material statement (criminal act), made with specific intent or purposely to deceive, or the general intent or knowingly that the statement was false, in a judicial or official proceeding, or in a certified writing (attendant circumstance), under oath (attendant circumstance).
- The issues commonly encountered in any perjury prosecution are proving the validity of the oath, the defendant's criminal intent, or the materiality of the false statement, and any requirement of corroborative evidence.
- Many jurisdictions provide a defense to perjury if the defendant retracts his or her false statement in the course of the same proceeding in which it was made before it becomes manifest that the falsification will be exposed.
- Perjury by inconsistent statements is when the defendant makes statements that are inconsistent (criminal act), in a judicial proceeding (attendant circumstance), after taking a validly administered oath (attendant circumstance). The prosecution does not need to prove which statement is false for this offense. Subornation of perjury is procuring another to commit perjury (criminal act), with specific intent or purposely, or general intent or knowingly, and factually and legally causing the resulting harm that perjury is actually committed.
- Perjury is generally graded as a felony, with a potential sentencing enhancement for committing perjury that causes another to be sentenced to prison or the death penalty. Subornation of perjury is also graded as a felony.
- Many criminal statutes define bribery as conferring, offering, agreeing to confer, or soliciting, accepting, or agreeing to accept, any benefit upon a public official (criminal act) with the specific intent or purposely, or the general intent or knowingly to form an agreement or understanding that the public official's decision making will be influenced by the benefit. The crime of bribery is often extended to apply to persons other than public officials, such as employees, agents, or fiduciaries for the purpose of influencing the bribed individual's on-the-job conduct, which is called commercial bribery. Bribery can also cover members of a state legislature, any judicial officer, juror, referee, umpire, or witness. The primary issue in a bribery prosecution is proving the defendant's criminal intent to enter into an agreement that influences the bribed individual's decision making. Bribery is typically graded as a felony, with enhancements for a bribe that is a large sum of money or bribery that results in incarceration for a felony, along with a disqualification from office.

- Some typical examples of obstruction of justice are as follows: giving false identification to a law enforcement officer, impersonating a law enforcement officer, refusing to aid a law enforcement officer when requested, giving false evidence, hiding or concealing oneself and refusing to give evidence, tampering with evidence, and tampering with a witness or juror. All these acts are generally supported by specific intent or purposely, or general intent or knowingly. Obstruction of justice is graded anywhere from a misdemeanor to a felony, depending on the offense.

## EXERCISES

Answer the following questions. Check your answers using the answer key at the end of the chapter.

1. Susannah, a Hollywood movie star, is a witness in a civil personal injury case. Susannah saw a car accident and is subpoenaed to testify that the defendant was at fault. After the court commissioner administers an oath to tell the truth, Susannah takes the witness stand. She knows the case will generate significant publicity, so Susannah shaves ten years off of her age when asked routine background questions by the prosecutor. If Susannah is thereafter caught in this lie and prosecuted for **perjury**, what will be the primary issue in her perjury prosecution? How will this issue be resolved?
2. Read *State v. Carr*, 172 Conn. 458 (1977). In this case, the defendant was convicted of bribery when he paid an undercover detective to refrain from investigating narcotics crimes in the area. The defendant appealed, claiming the jury should have been instructed on the lesser included offense of offering gifts to state police officers. Did the Supreme Court of Connecticut uphold the defendant's bribery conviction? Why or why not? The case is available at this link: [http://scholar.google.com/scholar\\_case?case=14705028387089517508&q=%22State+v.+Carr%22&hl=en&as\\_sdt=2,5](http://scholar.google.com/scholar_case?case=14705028387089517508&q=%22State+v.+Carr%22&hl=en&as_sdt=2,5).
3. Read *People v. Silverberg*, 771 N.Y.S. 2d 274 (2003). In this case, the defendant was convicted of witness tampering for a single telephone call he made to an attorney that implied he would send letters to a grievance committee if the attorney did not drop charges against him. Did the Supreme Court of New York uphold the defendant's conviction? Why or why not? The case is available at this link: [http://scholar.google.com/scholar\\_case?case=3089258849772766127&q=%22witness+tampering%22&hl=en&as\\_sdt=4,33&as\\_ylo=2003](http://scholar.google.com/scholar_case?case=3089258849772766127&q=%22witness+tampering%22&hl=en&as_sdt=4,33&as_ylo=2003).

## LAW AND ETHICS

## Should Former President Clinton Have Been Criminally Prosecuted for Perjury and Obstruction of Justice?

On May 6, 1994, Paula Jones filed a civil lawsuit for sexual harassment against then-president Bill Clinton. The US Supreme Court ruled that the president was not immune to this lawsuit, allowing it to continue. *Clinton v. Jones*, 520 U.S. 681 (1997), accessed May 9, 2011, <http://www.law.cornell.edu/supct/html/95-1853.ZS.html>. An investigation pursuant to the Jones lawsuit revealed that the president was currently having an affair with a White House intern, Monica Lewinsky. “Presidential Impeachment Proceedings,” Historyplace.com website, accessed May 9, 2011, <http://www.historyplace.com/unitedstates/impeachments/clinton.htm>. During a Jones lawsuit deposition, the president stated under oath that he did not have sexual relations with Ms. Lewinsky pursuant to the definition of sexual relations given by the questioning attorneys. Deposition excerpts, Jones v. Clinton deposition, Historyplace.com website, accessed May 9, 2011, <http://www.historyplace.com/unitedstates/impeachments/jones-deposition.htm>. He also stated that he could not recall ever being alone with Lewinsky at the White House. Deposition excerpts, Jones v. Clinton deposition, Historyplace.com website, accessed May 9, 2011, <http://www.historyplace.com/unitedstates/impeachments/jones-deposition.htm>. After the deposition, he was involved in an effort to get Ms. Lewinsky a federal job outside Washington, DC. “Presidential Impeachment Proceedings,” Historyplace.com website, accessed May 9, 2011, <http://www.historyplace.com/unitedstates/impeachments/clinton.htm>. Although the Jones lawsuit was dismissed, the president was evasive when asked questions regarding the Lewinsky affair during a grand jury investigation instigated by Prosecutor and former Solicitor General Kenneth Starr. The evening of the grand jury investigation, the president appeared on national TV and admitted, “Indeed, I did have a relationship with Ms. Lewinsky that was not appropriate. In fact, it was wrong. It constituted a critical lapse in judgment and a personal failure on my part for which I am solely and completely responsible.” “Presidential Impeachment Proceedings,” Historyplace.com website, accessed May 9, 2011, <http://www.historyplace.com/unitedstates/impeachments/clinton.htm>. The House of Representatives later **impeached** Clinton for perjury and obstruction of justice, based on the statements he made at the grand jury investigation and his conduct during the Jones deposition. After a trial in the Senate, he was **acquitted** of both counts and thereafter served out his term as president. “Presidential Impeachment Proceedings,” Historyplace.com

website, accessed May 9, 2011, <http://www.historyplace.com/unitedstates/impeachments/clinton.htm>. He was never *criminally* prosecuted for perjury or obstruction of justice outside the impeachment procedure, although he was later **disbarred** for his behavior. Ann Gearan, “Clinton Disbarred by Supreme Court,” Famguardian.org website, accessed May 9, 2011, <http://famguardian.org/Subjects/LawAndGovt/News/ClintonDisbar-011001.htm>.

1. Is it **ethical** to allow the president to avoid a criminal prosecution for perjury and obstruction of justice **while he is in office**? Why or why not?

Check your answer using the answer key at the end of the chapter.

### Clinton Declaration and Admission Videos

Clinton: “I did not have sexual relations with that woman...”

In this video, President Clinton denies that he had sexual relations with Monica Lewinsky:

[\(click to see video\)](#)

President Clinton Apologizes to the Nation

In this video, President Clinton admits that he had an inappropriate relationship with Monica Lewinsky:

[\(click to see video\)](#)

## **13.4 End-of-Chapter Material**

## Summary

The federal government protects national security by primarily regulating crimes against the United States. One of the only crimes defined in the Constitution, treason, prohibits levying war against the United States, most likely with general intent or knowingly, or providing aid and comfort to the enemy with the specific intent or purposely to betray the United States, and is graded as a serious felony with all sentencing options available, including capital punishment. The Constitution specifies the evidentiary requirement that treason be proven by the testimony of two witnesses or the defendant's confession in open court. Sedition criminalizes the advocating, aiding, organizing, or teaching with general intent or knowingly, or publishing, printing, or circulating writings that advocate, aid, or teach with specific intent or purposely the forceful or violent overthrow of the US government and is graded as a serious felony that can prohibit the defendant from holding federal office for five years postconviction. Sabotage is destroying, damaging, or defectively producing specified property with specific intent or purposely, general intent or knowingly, or negligently to impede national defense and is graded as a serious felony. Espionage is gathering or transmitting defense information with general intent or knowingly or the specific intent or purposely to damage the United States or assist any foreign nation, during peace or war, and is graded as a serious felony with all range of sentencing options available, including capital punishment.

The federal government also primarily regulates terrorism and terroristic acts using the Omnibus Diplomatic Security and Antiterrorism Act of 1986, the Antiterrorism and Effective Death Penalty Act of 1996, and the USA PATRIOT Act. The Department of Homeland Security enforces criminal laws targeting terrorism. Terrorism is violent acts committed inside (domestic) or outside (international) the United States that appear to be intended to influence a civilian population or government by intimidation or to affect the conduct of government by mass destruction, assassination, or kidnapping. Currently prohibited as terrorism or terroristic conduct are murder, use of a weapon of mass destruction, bombing places of public use, financing terrorism, harboring a terrorist, and conspiracy or attempt to commit any of the foregoing. The USA PATRIOT Act expands government surveillance capabilities, so it is subject to a Fourth Amendment challenge as an unreasonable search, and also prohibits financing terrorism, so it is subject to a First Amendment challenge as a prohibition on free speech, freedom of religion, and freedom to associate.

The state and federal government both criminalize conduct that impedes the administration of justice, including perjury, bribery, and obstruction of justice. Perjury is typically defined as a false material oral or written statement made under oath or affirmation with the specific intent or purposely to deceive, or the general intent or knowingly that the statement is false, in a judicial or official proceeding or in a certified writing. The biggest issues encountered in a perjury prosecution are proving the validity of the oath, the defendant's criminal intent, the materiality of the false statement, and any requirement of corroborative evidence. One defense to perjury is retraction of the false material statement during the same judicial or official proceeding before it becomes manifest that the falsity will be exposed. Many jurisdictions also criminalize perjury committed by inconsistent statements made under oath or affirmation in an official or judicial proceeding and subornation of perjury, which is procuring another to commit perjury with specific intent or purposely. Perjury and subornation of

perjury are typically graded as felonies. Bribery is conferring, offering, agreeing to confer, or soliciting, accepting, or agreeing to accept a benefit upon a public official, employee, legislator, participant in a judicial proceeding, or sports official with the specific intent or purposely, or the general intent or knowingly to influence the bribed individual's decision making. The most difficult bribery element to prove is the criminal intent element. Bribery is typically graded as a felony. Obstruction of justice crimes interfere with the orderly administration of justice. Examples of obstruction of justice offenses are giving false identification to a law enforcement officer, impersonating a law enforcement officer, refusing to aid a law enforcement officer when requested, giving false evidence, hiding or concealing oneself and refusing to give evidence, tampering with evidence, and tampering with a witness or juror, with specific intent or purposely, or general intent or knowingly. Obstruction of justice is graded as a misdemeanor or felony, depending on the offense.

## YOU BE THE USA

You are an assistant US attorney starting your first day on the job. You have been presented with four case files and told to review them and recommend criminal prosecutions based on the facts. Read each one and then decide which **crime should be prosecuted**. Check your answers using the answer key at the end of the chapter.

1. The defendant, an army intelligence analyst stationed near Baghdad, Iraq, downloaded thousands of classified Iraq and Afghanistan documents and confidential cables and released them to an ex-computer hacker who thereafter exposed them to the public. **Which crime** should be prosecuted: **treason** or **obstruction of justice**? Read about this case at this link: <http://coto2.wordpress.com/2011/03/02/bradley-manning-charged-with-22-crimes-including-capital-offense-aiding-the-enemy>.
2. The defendant typed up notes while her husband was analyzing sketches of a top-secret bomb's design for the purpose of passing the design on to another nation. **Which crime** should be prosecuted: **conspiracy to commit espionage** or **sabotage**? Read about this case at this link: [http://law2.umkc.edu/faculty/projects/ftrials/rosenb/ROS\\_ACCT.HTM](http://law2.umkc.edu/faculty/projects/ftrials/rosenb/ROS_ACCT.HTM).
3. The defendant, a cosmetic company, paid Chinese officials to obtain direct licensing of its product in China. Which crime should be prosecuted: **harboring terrorists abroad** or **bribery**? Read about this case at this link: <http://fashionablyjust.com/2011/05/avon-bribery-case-in-china-an-embarrassment>.
4. The defendant, a corrections officer, lied to federal law enforcement during an investigation of her role in the assault of an inmate. Which crime should be prosecuted: **perjury** or **obstruction of justice**? Read about this case at this link: [http://www.stltoday.com/news/local/crime-and-courts/article\\_3d7cd11a-8f67-11df-bc07-00127992bc8b.html](http://www.stltoday.com/news/local/crime-and-courts/article_3d7cd11a-8f67-11df-bc07-00127992bc8b.html).



### Cases of Interest

- *Kawakita v. U.S.*, 343 U.S. 717 (1952), discusses a treason conviction based on the treatment of American POWs: [http://scholar.google.com/scholar\\_case?case=14270191881160802490&q=%22treason%22&hl=en&as\\_sdt=2,5](http://scholar.google.com/scholar_case?case=14270191881160802490&q=%22treason%22&hl=en&as_sdt=2,5).
- *U.S. v. Rosen*, 445 F.Supp.2d 602 (2006), discusses prosecution under the Espionage Act: [http://scholar.google.com/scholar\\_case?case=18013989744527722325&q=%2218+U.S.C.+793%22&hl=en&as\\_sdt=2,5](http://scholar.google.com/scholar_case?case=18013989744527722325&q=%2218+U.S.C.+793%22&hl=en&as_sdt=2,5).
- *Schultz v. Sykes*, 638 N.W. 2d 604 (2001), discusses the dismissal of a civil case based on subornation of perjury: [http://scholar.google.com/scholar\\_case?case=3885876526561644390&q=%22subornation+of+perjury%22&hl=en&as\\_sdt=2,5&as\\_ylo=2000](http://scholar.google.com/scholar_case?case=3885876526561644390&q=%22subornation+of+perjury%22&hl=en&as_sdt=2,5&as_ylo=2000).

### Articles of Interest

- Treason prosecutions in modern times: <http://www.nysun.com/editorials/time-of-treason/41533>
- The trial of Faisal Shahzad: <http://www.csmonitor.com/USA/Justice/2010/1005/Life-sentence-for-Faisal-Shahzad-could-join-shoe-bomber-in-Colorado>
- The extension of certain portions of the USA PATRIOT Act: [http://www.washingtonpost.com/politics/patriot-act-extension-signed-into-law-despite-bipartisan-resistance-in-congress/2011/05/27/AGbVlsCH\\_story.html](http://www.washingtonpost.com/politics/patriot-act-extension-signed-into-law-despite-bipartisan-resistance-in-congress/2011/05/27/AGbVlsCH_story.html)
- The famous perjury trial of Alger Hiss: <http://www.history.com/this-day-in-history/alger-hiss-convicted-of-perjury>
- High-profile bribery cases: <http://www.reuters.com/article/2010/04/01/bribery-usa-cases-idUSN0121072820100401>
- The criminal prosecution of a sitting president: [http://www.justice.gov/olc/sitting\\_president.htm](http://www.justice.gov/olc/sitting_president.htm)

### Websites of Interest

- The *U.S. v. Lindh* case: <http://notablecases.vaed.uscourts.gov/1:02-cr-00037/Index.html>
- Information about terrorism: <http://www.fema.gov/hazard/terrorism/index.shtm>
- Information about the USA PATRIOT Act: <http://civilrights.uslegal.com/usa-patriot-act>
- The Department of Homeland Security: <http://www.dhs.gov/index.shtm>

### Statistics of Interest

- Terrorism: <http://www.fbi.gov/stats-services/publications>
- Bribery: [http://www.oecd.org/infobycountry/0,3380,en\\_2649\\_37447\\_1\\_1\\_1\\_1\\_37447,00.html](http://www.oecd.org/infobycountry/0,3380,en_2649_37447_1_1_1_1_37447,00.html)

## Answers to Exercises

From Section 13.1 "Crimes Involving National Security"

1. Stephanie has not committed **sedition** because she did not advocate for the use of *force* or *violence* or the commission of an *unlawful* act. Stephanie's speech is most likely protected because she might be envisioning a peaceful government overthrow by legitimate means.
2. The US Court of Appeals for the Eighth Circuit upheld the defendants' convictions for **sabotage**, stating that the specific intent or purposely to impede the US national defense could be gleaned from the defendants' conduct in deliberately damaging the missiles.
3. The District of Columbia Court of Appeals upheld the defendant's disbarment based on convictions for crimes of moral turpitude, and stated that other than *treason*, no act was more base, vile, or depraved than an intentional act to breach the confidentiality of national defense secrets that have come into the hands of an individual.

## Answers to Exercises

From Section 13.2 "Crimes Involving Terrorism"

1. Whether or not this is an act of terrorism requires more information. Although the killing takes place in front of the Pakistani Embassy within the territory of the United States, this evidence is not enough to prove that Joshua intended his conduct to influence a civilian population or government by intimidation or to affect the government's conduct by assassination. The location of the shooting could be a pure coincidence, and Joshua could have a nonterroristic motive for the killing, such as a *personal* hatred or **malice** toward Khalid.
2. The US Court of Appeals for the Ninth Circuit upheld the statute, which was in place before September 11, 2001, and under AEDPA prohibited domestic material support to terrorists and terroristic organizations. The court held that the statute was not an unconstitutional prohibition on the right of free association or expression under the First Amendment, nor did it violate federal due process under the Fifth Amendment by granting the secretary of state unfettered and unreviewable authority to designate organizations as terroristic. However, the court affirmed the US District Court's decision that portions of the statute defining "personnel" and "training" were **unconstitutionally vague**.
3. The US Court of Appeals for the Ninth Circuit upheld the statute against a Fifth Amendment due process challenge by construing the statute to require proof that the defendant act with the general intent or knowledge of the terrorist organization's designation or of the unlawful activities that caused it to be so designated.

## Answers to Exercises

From Section 13.3 "Perjury, Bribery, and Obstruction of Justice"

1. The primary issue in Susannah's perjury prosecution is the **materiality** of her false statement made under oath in a judicial proceeding. While Susannah was asked her age during routine background questions, her lie might *still* be material if her advanced age affected her vision because Susannah is testifying about an important personal observation. In many jurisdictions, the trier of fact, which could be a **jury**, determines the materiality of this statement.
2. The Supreme Court of Connecticut upheld the defendant's bribery conviction, holding that offering gifts to state police officers is not a lesser included offense of bribery because it requires **specific** intent, and bribery under Connecticut law is *not* a specific intent crime.
3. The New York Supreme Court reversed the defendant's conviction because the defendant did not have a complaint filed against him, so the "witness" was not *about* to testify in a judicial proceeding, which is required under the witness tampering statute.

### Answer to Law and Ethics Question

1. The criminal prosecution of a sitting president would set a good example for the citizens of the United States, but it would pose an immense disruption to the orderly functioning of the government without a leader or commander in chief of the armed forces and would also expose the nation to a **security risk**. The US Supreme Court decision to allow a civil lawsuit against the president forced him to spend time away from office attending depositions that were protracted and inordinately time consuming. If the case had not been dismissed, the president would have expended an additional amount of time and effort in preparing for and defending against the Jones lawsuit. A similar and even more time-consuming disruptive process would ensue if a sitting president were to be *criminally* prosecuted. Not only would the criminal prosecution require a series of procedures from arrest, indictment, and discovery through pretrial motions, hearings, and the trial itself, but if the president were to be **convicted**, the consequences to the nation would be *irreparable*. It might not be **ethical** to spare a sitting president a criminal prosecution when a “normal person” would not be spared, but the ethical concerns are *outweighed* by the important interests at stake, and most countries would protect their leaders from this type of legal action while in office.

### Answers to You Be the USA

1. This conduct aids the enemy, rather than impeding the administration of justice by interfering with law enforcement procedure, criminal prosecution, or conviction, so the proper crime to prosecute is **treason**.
2. Copying a top-secret design and providing it to another nation is spying, rather than destroying, damaging, or producing defective property to impede national defense, so the proper crime to prosecute is **conspiracy to commit espionage**.
3. This payment is made for the purpose of influencing a public official's decision, rather than harboring a terrorist abroad, so the proper crime to prosecute is **bribery**.
4. The defendant was not under oath when she made the false statement. She was giving false evidence and impeding a law enforcement investigation, so the proper crime to prosecute is **obstruction of justice**.