created new opportunities in the forgery arena. One area that has not received much attention is the forgery of real estate deeds. A real estate deed is drafted and recorded in much the same way that it was 100 years ago. Today, scammers can forge a deed, record it, and turn around and sell the property to an unwitting purchaser. All this takes place before the true owner is aware of the forgery. Previously, this kind of quick transaction would have drawn the attention of outsiders. However, in the era of real estate speculation and house-flipping forgers can work with impunity.

Uttering

A person who merely has a forged writing in his possession is not guilty of forgery until he "utters" it, or attempts to pass it off. Uttering occurs when a person presents the writing and attempts to use it.

Worthless Checks

Millions of times a day people write checks for goods and services all over the U.S. Unfortunately, many of those checks do not have the funds to cover the check or are drafted on closed accounts. Bad checks are commonly referred to as "bounced checks." Most of the bad checks can be attributed to carelessness or negligence on the part of the writer. Each jurisdiction is different but most allot the writer a certain number of days to pay the retailer the amount of the check. Fortunately, most bounced checks are paid prior to the time that a criminal charge is pursued against the writer. If the check is not paid, a retailer or business can pursue the matter with the help of the police. In cases where the amount of the check is high, jail is a possibility. In most cases, restitution to the retailer is of paramount concern.

Check Kiting

Check kiting is a deceptive practice where a false bank balance is created and then the funds are depleted. Typically, a check kiter can build up a big balance using a number of bank accounts at different banks and then simply withdraw all the money before the checks clear. Obviously, the scam will be discovered quickly; however, this doesn't change the fact that a check kiter can steal thousands of dollars in a short period of time. Increasingly, process times of checks have been radically shortened and in some instances they happen immediately. As the banking technology advances and processing times are continually shortened, this form of theft by misrepresentation will likely diminish or be eliminated altogether.

Identity Theft

In 2004, nearly 28 million people were victims of identity theft. Identity theft occurs when somebody uses your name and other personal information for fraudulent purposes. Currently, identity theft tops the list of consumer complaints. To commit the crime the thief needs the name, date of birth, social security number, and an estimate of annual income of their victim. The thief can use the information to obtain credit cards, bank accounts, loans, utility services, social security cards, driver's license, and government benefits; or to secure employment. Obviously, this can have a devastating impact on victims but what is worse is that it is very difficult for victims to regain their identity after this sort of violation occurs.

Obtaining Credit Cards

According to the Federal Trade Commission, 42% of identity theft is committed in an effort to obtain credit cards. The relative ease of obtaining credit in the U.S. has made it easy for perpetrators of identity-theft scams to obtain credit cards faster and in greater frequency. Unlike other frauds that are quickly discovered, it might take years before a victim discovers that she is the victim of identity fraud. This is due in part to the way credit is granted in the U.S. Credit bureaus are central repositories of credit information for millions of consumers. Retailers typically grant credit based on the information found in a person's credit file. If a perpetrator of identity theft can change the mailing address on the credit file, they can successfully elude detection until the victim applies for credit or obtains a copy of their credit report. In some cases, this can take years to detect.

Cyber Crimes

A cyber crime occurs when someone uses a computer to steal money, information, data, or services. The FBI has identified three types of cyber criminals who break into a computer for the following reasons: out of curiosity; to destroy, disrupt, alter, or interrupt; and for financial gain. Congress has attempted to curtail the sending of unsolicited e-mail by passing the CAN-SPAM Act of 2003 (Controlling the Assault of Non-Solicited Pornography and Marketing Act), which establishes requirements for those who send commercial e-mail, spells out penalties for spammers and companies whose products are advertised in spam if they violate the law, and gives consumers the right to ask e-mailers to stop spamming them. This might seem harmless, but it costs Internet Service Providers millions of dollars and slows down consumer e-mail connections.

Summary

There are many different ways a person can take property that does not belong to him. As soon as the law develops a method of combating one form of theft, criminals re-tool and start anew with another method of taking property. Today, crimes like identity theft, credit-card fraud, and shoplifting costs business millions of dollars a year. Moreover, contracting fraud, program fraud, and corrupt public officials cost the U.S. millions of dollars more. When someone takes property that does not belong to them, they are violating the trust that our society affords everyone. If that trust is violated, everyone loses because institutions will likely curtail the trust they afford customers and taxpayers. For example, retailers might make their return policy more restrictive; or grocery stores might refuse to accept checks, or the federal government might require that all small businesses receive certification before they are afforded any contracting opportunities. All of these reforms make it harder for honest people to transact business.

Why do you have to distinguish between two types of property; is not property just property?

A person is carrying a heavy travel bag and walking down the street when it begins to rain. He places the bag on the hood of a car in order to open it to get his raincoat. Is this an unauthorized use of the car? Ridiculous as it sounds, is it joyriding?

What do you think makes the elderly especially vulnerable to the pretenses of a confidence man?

Do you think that online auction houses should have a procedure for verifying that the goods being sold through them are not stolen? If so, what could that procedure be?

What does the word "presence" mean? Would presence through the phone or the Internet qualify as real presence when someone is accused of extortion?

What do you think is the difference between bribery and a bona fide political contribution to a candidate? Is it the case that the difference is only in the name?

Imagine an overoptimistic entrepreneur who believes that a certain investment scheme will succeed and sells it to a bunch of people and then it fails and everyone loses his money. Given his overoptimism, did he distort the truth?

Restitution is great, but the retailer has gone through some expenses in order to get it. Should the person who wrote the worthless check also be responsible for the retailer's restitution expenses?

Identity theft has become an international enterprise, with people from all over the world hacking into American retailers, health systems, and the government in order to get the identity of people that they then sell to third parties. What kind of legal remedies do you think should be put in place to protect us?

Do you think that U.S. credit bureaus should have the obligation to notify you immediately whenever someone accesses or uses your credit to do something? It just does not seem congruent with the time that your bank can call you and e-mail you whenever someone uses the wrong password to get into your account, but it may take you years to detect that you have become a victim of identity theft. What do you think?

Chapter 11

White-Collar Crime

Until recently, legislators were primarily concerned with crime in the streets. Today, after Enron and Martha Stewart, legislators are starting to pay attention to crime in the suites—corporate suites. White-collar crime was defined by Edwin Sutherland as " . . . a crime committed by a person of respectability and high social status in the course of his occupation." Securities fraud, insider trading, mail and wire fraud, and tax evasion are a few of the crimes most often committed by white-collar crime but that list is certainly not exhaustive. In Chapter 11, we explore the most common offenses and the likely defenses to those charges.

11.1 Financial Crimes

The American Economy

Consumer confidence in the stock market is a vital part of the U.S. economy. It is estimated that nearly half of American households own stock in a company. If investors are leery of investing in the markets it will have a harmful effect on American business because investors will likely leave the markets for more stable investments. Lawmakers, aware that some investors might try to manipulate the system in their favor, have developed a complex list of measures designed to deter securities manipulation. The Securities and Exchange Commission (SEC) along with the Department of Justice investigate and prosecute wrongdoers.

Securities Fraud

Securities are stocks, bonds, notes, and any other document that represents a share in a company or debt of the company. The purchase and sale of securities is among the most regulated industries in the U.S. The SEC oversees securities transaction and investigates any potential wrongdoing. Knowingly committing any of the following activities is prohibited:

- Use of any device, scheme, or artifice to defraud
- The making of untrue statements of facts material to the buying and selling of securities
- The omission of information that would result in a misleading statement

Insider Trading

Insider trading occurs when an insider buys or sells his shares based on insider information. It is not a crime for insiders to buy or sell their stock. What is prohibited is buying and selling of stock based on insider information. The rationale for the rule is fairly obvious. Directors and officers are privy to all sorts of insider information before it is made public, and if they were to trade on that information, it would be unfair to the

Scheme to Defraud

Of all the elements of mail fraud, this one has resulted in the most litigation because the federal statute neither defines what constitutes a "scheme" nor states what types of schemes fall within the purview of the statute. Thus, courts are given a wide discretion in shaping this element. Any fraudulent scheme can be prosecuted. It is not a defense to argue that the scheme failed to defraud anyone or failed to deprive anyone of property. There is no burden on the prosecution to prove economic loss.

Intent to Defraud

Like most frauds, mail fraud is a specific-intent crime. Therefore, the defendant must have specifically intended to defraud. However, courts have allowed juries to infer that the existence of persons injured by the scheme can provide evidence of the intent to injure. Proof that someone was actually victimized by the fraud is good evidence of the schemer's intent. This kind of logic can cut both ways. For example, if no victims come forward, a jury can use that fact as evidence that the defendant lacked the specific intent necessary to find him guilty.

Use of Mail or Other Carrier

Originally, the U.S. mail had to be used in order to sustain a conviction of the mail fraud statutes. Today, the use of the mails or any common carrier, such as FedEx or UPS, is enough because Congress has the power to regulate anything that moves in interstate commerce. Additionally, the defendant need not place the items in the mail himself. If he can reasonably foresee that the mail would be used, that is sufficient to sustain a conviction.

Wire Fraud

The elements of wire fraud are the same as mail fraud except that wire fraud requires the making of false, fraudulent pretenses, representation, or promises by means of wire, radio, or television communication. Interestingly, the courts have ruled that you do not need wired communication to sustain a conviction. For example, a cell phone that operates using microwave transmission still falls under the wire-fraud statute. Also, the Internet is considered a wired transaction for purposes of the wire-fraud statute.

Defenses

The good-faith defense is often cited as a defense to the crime of mail fraud. Essentially, the defense holds that the defendant lacked "bad motive." However, this is probably best characterized as an issue of intent because the defendant is arguing that he did not intend to defraud. The defense of "puffing" has also been raised. Again, immaterial misstatements are not actionable. Only reckless indifference to the truth can meet the mail-fraud standard.

Summary

White-collar crime can include a variety of different offenses. Although the definition of white-collar crime might be debated, one thing is certain: Politicians and the media are spending more time on white-collar crime issues. Securities fraud, tax evasion, false advertising, mail and wire fraud are the most common types of white-collar crimes but by no means is this list exhaustive.

So, just what is wrong with insider trading? Is it the fact that it creates an uneven playing field while the market is supposed to be an even playing field, that is all buyers and sellers have exactly the same information? What would happen to the market if insider trading is a daily occurrence? Would common people continue to invest in it? What happens to an economy with no markets? Is it even possible?

A wealthy guy creates a holding company for all of his diverse assets and registers it in some small Caribbean island in order not to pay U.S. taxes. Is that not tax evasion? Why or why not?

Why would you think that tax shelters are not fair?

How can the U.S. Government protect you when you buy online from a country in the Far East? Can the arm of U.S. Justice reach all the way there and put on trial someone who is alleged to circumvent consumer protection clauses?

So, can a person try to create a monopoly by buying out the competition, or underselling the competition and driving it out of the market? After all, if the market is working the less efficient producers are driven out of the market.

What if a university advertises itself as the best in the region and it is the only one. What would make it be false advertising?

What if someone buys an illegal drug on the street and it was adulterated in a foreign country and transported into the state where the purchase occurred? Should the buyer in this case be protected even if the drug is illegal?

Some well-reputed food corporation adds a well-known logo to the container of all its products. And a foreign corporation imports to the U.S. some competing food products and puts on their container a logo that reminds the consumer of the well-reputed corporation. Is that misbranding? Remember the way you buy, you walk down the aisle, recognize what you need, and put it in your cart. You do it this way because you have become familiar with the product and feel no need to check it over every time you buy.

A plastic surgeon advertises his "lipos" as the best and safest in San Antonio. Is that puffery, or is the "safest" claim worth researching to see if it is more than puffery? Why?

What does the word "scheme" mean to you? And what schemes would you consider criminal?

Does "reckless indifference to the truth" simply mean that the person knew that the statement was unprovable or false?

Chapter 12

Crimes Against the Public

For the past few years, on May 1 people have taken to the street to march in favor of immigration reform. Irrespective of your opinion on immigration, few could argue with the right of people to petition their government for change. However, sometimes these demonstrations can lead to violent or bloody altercations. The need to maintain public order and the right of citizenry to be free from government intrusion can be a difficult balancing act. In a nation that prides itself on liberty and the pursuit of happiness, is there a limit to what a citizen can do? It is said that we have the liberty to do what we like unless it interferes with someone else's pursuit of happiness. In Chapter 12, we discuss the rights of citizens and the need for public order. Obviously, nobody likes to be told what to do, but sometimes the government needs to intervene to stop a practice that harms someone else directly or indirectly. Throughout this chapter, think about whose rights are being curtailed and think about whether or not the proper balance has been struck. Would you change certain laws? Have they outlived their usefulness?

12.1 Public Disturbance Offenses

Disorderly Conduct

In most jurisdictions, disorderly conduct occurs when someone acts in an indecent, profane, and vulgar manner. It can be spoken or it can be a gesture, but most importantly it must tend to incite lawlessness. Obviously, this kind of statute is a kind of catch-all provision that criminalizes lewd behavior in a public venue. Disorderly conduct includes fights, arguments, making threats, or creating unreasonable noise. Basically, any behavior that tends to "breach the peace" can be prosecuted under a disorderly conduct statute.

Public Intoxication

Closely related to the disorderly conduct statute is public intoxication. Public intoxication, in most states, requires that someone be drunk or appears drunk in public. Although the use of chemical testing to determine intoxication is ideal, it is not always necessary. For example, imagine that a person leaves a bar and attempts to walk home but stumbles and falls. In the opinion of the police officer, the person is intoxicated and thereby presents a risk to himself and others; therefore, he could charge him with public intoxication. Again, keep in mind that in some jurisdictions proving "intoxication" is not necessary. The prosecutor need only prove that the defendant "simulated" intoxication.

Vagrancy

Vagrancy occurs when someone drifts from place to place without any visible means of support and by living off the charity of others. Most vagrancy laws have been rewritten or have been struck from law books

Summary

Balancing the needs of citizens to be free from government interference and the need for public order is difficult. What is offensive or inappropriate to one group might be perfectly acceptable to another. Lawmakers attempt to balance the two competing interests and draft legislation to keep pace with society's changing customs and standards. It is important to keep in mind that the law is in a constant state of flux. Just because something is legal now does not mean it will be legal in the future.

You are waiting for a traffic light to change to green when a car drives up next to yours. The guy driving it has a boom system on so loud that the low frequencies stimulate your inner ear and your chest reverberates. You actually begin to feel nausea. Can this guy be accused of disorderly conduct? Why?

Suppose that the police of a certain city want to detain someone but cannot quite find the reason for it, so the guy is detained under the pretext that "He simulated to be intoxicated." Is something like that possible? What do you think about the "simulated" clause? Don't you think it gives the police too much discretion?

Despite the argument that anti-loitering statutes are an "... attempt to prevent Latinos from moving into certain areas ..." Don't you think it is good to keep them because they force Latinos to complete their high school education and become trained to do better jobs?

Are there situations in which the public peace needs to be disturbed because it actually is a peace based on the denial of rights to certain segments of the population, as it used to be here in Texas when African Americans could not enroll in such places as Texas A&M at College Station but only at Prairie View A&M?

Suppose you hate the statue of a guy who made his money from buying and selling slaves in the Old South. Could videotaping you urinating on the statute, at night and unseen by anyone, be considered as speech? Can any meaningful human expression be considered as speech?

How about a person who washes your car's windshield at a red light and then stretches his had to see if you give him something? Would you accuse him of aggressive panhandling?

Do we really need two categories of traffic violations, moving and non-moving? Why?

Breathalyzers, like any other diagnostic instrument, have a rate of false positives. This means that the Breathalyzer can return a positive result on someone who is not DUI/DWI. Given that, should they continue to be used?

What if an exhibitionist event occurs at a rock concert and it is part of the performance as in Miley Cyrus Bangerz Tour? Is that not an offense? What do you think?

Some have argued that prostitution should not be outlawed because it does serve a social purpose, it brings relief from sexual tensions to those who avail themselves of it. What do you think?

Can you figure out how adultery and sodomy are harmful to society? What is the harm and how do they bring it about?

What can be the reasons that will lead all states to decriminalize gambling? Can you explain?

Chapter 13

Drug and Alcohol Related Crimes

It is nearly unavoidable. For many people in the United States, the issue of drug and alcohol abuse can take on a moral and even spiritual tone. Others argue that drug and alcohol abuse is a medical problem that should be dealt with primarily by health-care professionals. The focus of Chapter 13 is on the law. The U.S. has experimented with prohibition with little success. Conversely, states and cities have experimented with decriminalization with varying degrees of success. Throughout this chapter ask yourself, is this working? Should the laws be more restrictive or less?

13.1 Drug Laws

Early Drug Legislation

The so-called war on drugs is not new. Legislation began as early as 1875 with the San Francisco Opium Ban, which banned the use of opium in opium dens. However, the Harrison Narcotics Act of 1914 marked the beginning of the federal war on drugs. The act prohibited distribution of cocaine and opiates without a prescription. Other important pieces of legislation, such as the Jones-Miller Act of 1922 that established the Federal Narcotics Control Board and the Boggs Act of 1951 that set mandatory minimums for drug offenses both marked a turn in drug policy where the problem was treated as a criminal problem instead of a health problem.

Modern Legislation: The 1970s

In 1968, Richard Nixon was the first to use the phrase "war on drugs." In 1969, Congress passed the Dangerous Substances Act that sought to classify all drugs, except nicotine and alcohol, by their medical use and addictive potential. The purpose of this legislation was to provide a clear message to police and others on the properties of each controlled substance. This was followed by the Comprehensive Drug Abuse and Control Act of 1970, which completely replaced and updated all previous laws concerning narcotics and other dangerous substances.

Controlled Substances Act of 1970

The Controlled Substances Act of 1970 created the different "schedules" of substances for illegal drugs;

- Schedule 1 includes substances such as peyote, marijuana, codeine, and ecstasy because they have a high potential for abuse, have no currently acceptable medical use, and are not safe to use even under medical supervision.
- Schedule 2 includes substances such as opium and cocaine because they have a high potential for abuse but do have an acceptable medical use.