

## Public Intoxication

Public intoxication in most states requires that the person be intoxicated (or simulating intoxication) in a public place. Although the use of chemical testing to determine intoxication is ideal, it is not always necessary. Note that in some jurisdictions proving “intoxication” is not necessary. The prosecutor need only prove that the defendant “simulated” intoxication.

In the city of Bedrock, it is against the law to appear intoxicated or simulate intoxication in public. Fred was leaving the Water Buffalo Lodge after drinking several martinis. A police officer notices Fred stumbling and asks him if he is okay. Fred’s speech is slurred and the police officer notices the strong odor of alcohol emanating from his breath. Has Fred broken any laws?

## DWI

Driving while intoxicated (DWI) or driving under the influence (DUI) can occur when a person operates a motor vehicle with a blood alcohol content (BAC) at or above the prohibited level of .08. It is important to note that the laws vary from state to state. In some states, the driver must be on a public road, but in others, a person can be cited on private property. Some states require that the driver be operating the motor vehicle; other states require that the driver be in physical control of the vehicle. The key to prosecution is proving the level of intoxication through a BAC of .08 or higher. Typically, this is accomplished through breath or blood tests. If the driver refuses to cooperate, some states have implied consent laws that automatically suspend the driver’s license of individuals who refuse to comply with testing. The constitutionality of implied consent laws has been challenged and the constitutionality has been upheld.

## 13.4 Alcohol as a Defense

### General Intent Crimes

Generally, a crime that requires only a general intent, which is only the intent to do the crime, does not permit an intoxication defense. Courts are reluctant to allow an intoxication defense because of the potential for abuse by defendants. Moreover, it is not uncommon for criminals to drink in order to lower inhibitions or to gain a sort of “Dutch courage.” Drinking stimulates the drinker by “loosening the brakes” not by “stepping on the gas.”

### Specific Intent Crimes

A specific intent crime, such as burglary, requires not only an unlawful entry into a dwelling but the specific intent to commit a felony. This shows how intoxication can be used as a defense. Keep in mind that in order to raise this defense, one would have to be so intoxicated as to “render the defendant incapable of purposeful or knowing conduct.” Therefore, it should not be a surprise to learn that many jurisdictions have done away with the possibility of raising an intoxication defense.

### Involuntary Intoxication

If a defendant can successfully convince the judge or jury with credible evidence that his state of intoxication was involuntary, that is to say without his consent or against his will. In those cases, the Court treats the involuntary intoxication like an insanity defense. In other words, the Court will likely find that the defendant cannot distinguish right from wrong. Clearly, if the defendant cannot distinguish right from wrong, he cannot be said to be guilty of the crime (specific intent or general intent) because the involuntary intoxication negates the *mens rea*.

## Alcoholism as a Defense

The courts have consistently ruled that it is cruel and unusual punishment to convict a chronic alcoholic "a person who is powerless to stop drinking and whose drinking seriously alters his normal living pattern" of the crime of public intoxication. The rationale behind this rule is that an alcoholic suffers from a disease or condition that he is powerless to stop. Similarly, the Supreme Court found that a law that made it a crime to be "addicted to narcotics" was unconstitutional because it too violated the prohibition against cruel and unusual punishment. We do not punish people for their "status." A person's status as a drug addict or alcoholic is not punishable.

## Procedure for Intoxication Defense

At trial, the defendant bears the burden of going forward and therefore he must put on evidence of his intoxication. However, if the defendant is claiming involuntary intoxication, the burden of proof lies with the defendant. However, if the defendant is arguing that his intoxication negates an element of the crime, it is still the prosecutor's job to prove all the elements beyond a reasonable doubt. Therefore, if the defense can raise a reasonable doubt with an intoxication defense, the defendant could be acquitted of the charges against him.

## Summary

Drug and alcohol use and abuse are certainly a hot topic. The law in this area is in a constant state of flux. The United States has experimented with prohibition of alcohol but ultimately concluded that “the cure was worse than the disease.” Scholars have drawn parallels between drug and alcohol prohibition but the war on drugs is still going strong. For the most part, this is a game of cat and mouse. Lawmakers struggle to keep abreast of changes in the manufacture, delivery, and sale of narcotics. In spite of their best efforts, drug use continues to be a problem.

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.” Is it in fact both, so that every sentence should also mandate a health intervention?

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Nicotine and alcohol have as much addiction potential as many other controlled substances. Is our government being hypocritical by treating them differently?

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Who decides, and how does he decide, that a substance has no currently acceptable medical use? That just gives the impression that we need more research. What do you think?

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### Specific Intent Crimes

A specific intent crime is a crime that requires the defendant to have a specific intent to commit the crime.

Do you believe that the American Indian Religious Freedom Act of 1994 discriminates against other religions and even atheists who may want to use peyote for whatever reason?

The American Indian Religious Freedom Act of 1994 (AIRFA) was passed to protect the religious freedom of American Indians. It allows American Indians to use peyote in religious ceremonies. However, it does not allow non-Indians to use peyote for religious purposes. This has led to controversy, as some argue that it discriminates against other religions and even atheists who may want to use peyote for whatever reason. The Supreme Court has ruled in *Lyons v. North Carolina* that the AIRFA does not discriminate against non-Indians who want to use peyote for religious purposes. However, the issue remains controversial.

Do you think that the Supreme Court has been consistent throughout the decisions it has made on the use of drugs in religious ceremonies?

What if the person delivering a substance is unaware of what he is doing? Let's say he is only a bicycle messenger in downtown New York.

It looks like the possession and sale of drug paraphernalia has developed its own technical language so a "roach clip" has a very specific meaning. What forces people to create such languages? Do they hide the truth from law enforcement?

The faithful of some religions consume moderate amounts of wine during certain liturgical ceremonies. How was this dealt with during Prohibition? Or was it the fact that even religious groups were subject to Prohibition's clauses?

Why is it appropriate to do away with the intoxication defense?

How could it happen that intoxication is involuntary? Can you explain?

## Chapter 14

# Crimes Against the Administration of Justice

The smooth administration of justice requires that all players (but especially the police and prosecutors) abide by the rules. Sometimes they do not, and not playing by the rules can be its own separate crime. When we do not believe that the police or prosecutors are playing by the rules, it jeopardizes our trust in the system. If our trust is compromised, we might choose not to participate in the system. We might not cooperate with police or not make ourselves available to the prosecutor to testify against the accused. In Chapter 14, we look at some of the ways people might attempt to frustrate the smooth administration of the criminal justice system.

### 14.1 Bribery

#### Bribery Defined

Bribery can occur when a person gives something of value to another in exchange for a favor. However, it is important to keep in mind that not all “gifts” are bribes. For example, the mayor of your town might receive a cash contribution from a supporter but that is not necessarily a bribe. For the prosecutor to gain a conviction, he must prove that it was offered with corrupt intent. In other words, both parties must agree that the bribe is to influence some action. Sometimes bribery involves public officials or it can involve private employees. The term *quid pro quo* is important because unlike other crimes where the crime isn’t complete until there is an exchange, bribery has no *quid pro quo* requirement.

#### Expanding Federal Liability

Recently, the Congress has expanded the federal government’s influence over bribery offenses by modifying the following statutes:

- ▶ Modifying the so-called bribery statutes to punish both the giver and receiver of a bribe; this way both parties are equally culpable.
- ▶ The Hobbs Act: Prohibits the obstruction of interstate commerce by extortion or robbery and provides the stiffest penalties. A conviction under the Hobbs Act carries up to 20 years in prison and/or a \$10,000 fine.
- ▶ The Travel Act: Prohibits the use of interstate facilities to carry out bribery or extortion and, when compared to the Hobbs Act, carries significantly lower penalties of no more than 5 years in prison and/or \$10,000 fine.

All three of these statutes expand the federal government’s influence in the bribery arena.

What do you think about the “both parties” requirement of bribery? Does it not allow for the person who gives to say that he had no corrupt intent, that “it was just a gift”? Maybe gifts to officials of any kind ought to be absolutely prohibited?

Is it not embarrassing to reject a gift from someone thinking it may be a subtle bribe? Does not polite behavior demand that an official accept it while giving the benefit of the doubt to the giver?

What do you think made the federal government be more severe than some of the states in the assessment of penalties?

Have you ever thought that the justice system was rigged? What do you consider evidence that the justice system is rigged? Can you think of a case in which you were sure it was? What convinced you?

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Why should you have to identify yourself to law enforcement if you are innocent? Is the law requiring it not an invasion of your privacy?

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What do you think is appropriate punishment for permitting/facilitating escape? Would it be appropriate to assess to the person that does it the same punishment as that of the escapee?

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Is it to be in direct contempt of the court if a spouse yells insults to the other spouse while both are at court and in the presence of the judge?

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It seems that plea bargaining works against justice, for many people involved in crimes plea bargain a lesser sentence than merited in order to turn witnesses against someone else. Should we do away with it even if we achieve a smaller number of convictions, but then everyone gets the punishment they merited?

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Is it not natural that friends and family be expected to cover up potential wrongdoing and that they should not be punished for it? What do you think?

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What about encrypting all the files stored in your computer; is that suppressing the evidence? Why or why not?

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Does this idea that a case must be won not corrupt the whole justice system? Should not everyone involved be rather interested in serving justice? What do you think?

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Why do you think that there are “families” inside the Mafia? Can a criminal organization really come to be someone’s family? How?

Do you think that the RICO Act can be used against foreign organizations that make money in the U.S., like the so-called “Drug Cartels”? Explain.

Someone has had a certain identity for 60 years and now he will be provided with a new identity and location. Is that desirable? Does it not become something worse than being in prison because he cannot be himself?

Sometimes, the government cannot win a conviction for the originally charged crime but can gain a conviction for witness tampering. Who gets punished for witness tampering?

Why do profits from criminal activity need to be laundered? Money is money. Can they not just enter the economy and keep it circulating? Why or why not?

Why do so many gangs seem to form inside prisons? What is there about a prison that leads to their formation?

What types of organizations are the most likely to try to achieve their objectives through terrorism?

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In the present world scenario, what states do you believe are most likely to engage in terrorist activities? Explain.

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How do you protect from homegrown terrorists like the one perpetrated in Oklahoma City in 1995 and perpetrated by disgruntled U.S. Army veterans? Explain.

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Do all citizens by the very fact of their citizenship owe allegiance to the State? And how could legitimate dissent be expressed other than through terrorism?

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Why do you think that the Southern Border has been greatly enhanced whereas the Northern Border has not been enhanced to the same degree? What is different about the Southern Border?

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