

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.

13.3.1 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** 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>.

In modern times, every state prohibits perjury, as well as the federal government. 18 U.S.C. § 1621, accessed May 5, 2011, 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, 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.

13.3.2 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, 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, 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 18 U.S.C. § 6065, accessed May 5, 2011, 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, 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.⁴² Pa. Cons. Stat. Ann. § 5901, accessed May 5, 2011, 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)).

13.3.3 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.

13.3.4 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. 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. 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. The Model Penal Code has a similar provision (Model Penal Code § 241.1(2)).

13.3.5 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, 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)).

13.3.6 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, law.onecle.com/alabama/criminal-code/13A-10-107.html. The Model Penal Code has a similar provision (Model Penal Code § 241.1(4)).

13.3.7 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.

13.3.8 Example of Perjury

Review the example in [Section 13](#) 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.

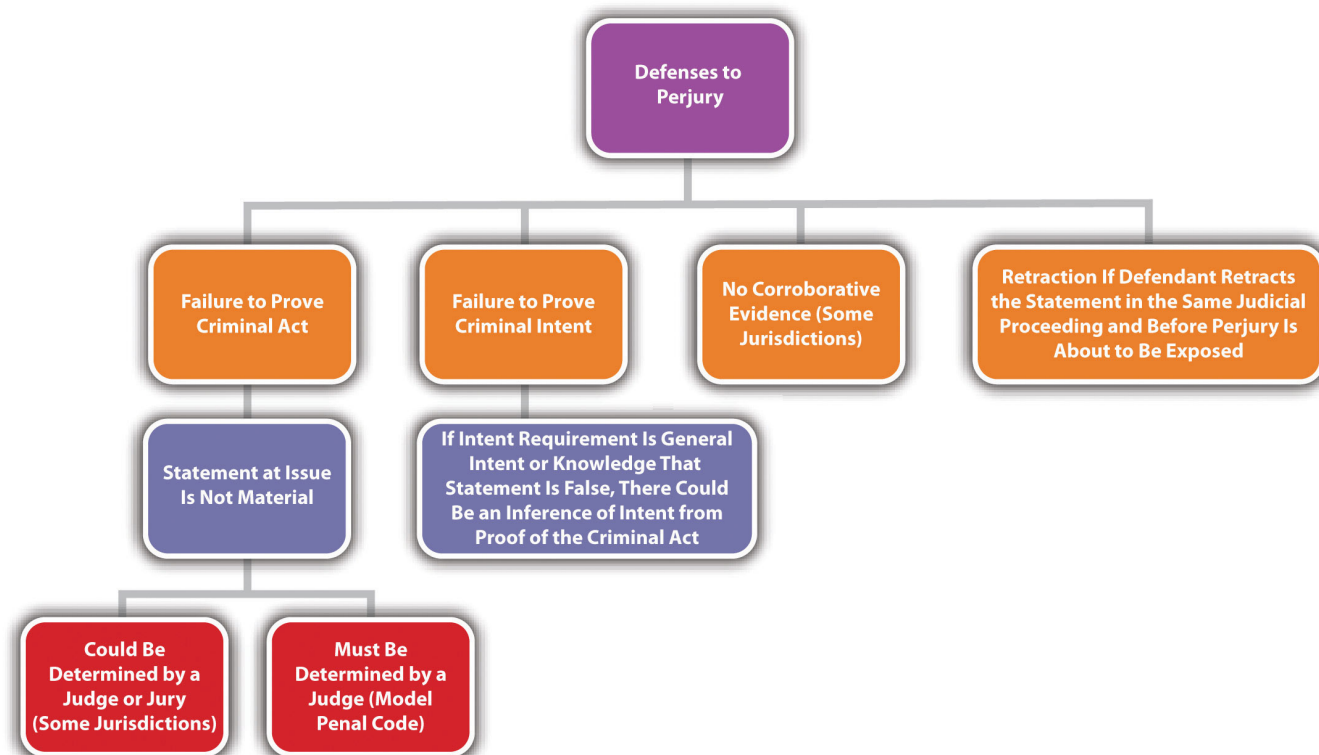


Figure 13.6 Diagram of Defenses to Perjury

13.3.9 Perjury by Inconsistent Statements

Some jurisdictions criminalize **perjury by inconsistent or contradictory statements**, which is slightly different from criminal perjury. Ala. Code § 13A-10-104, accessed May 6, 2011, 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, law.onecle.com/alabama/criminal-code/13A-10-104.html. The Model Penal Code has a similar provision (Model Penal Code § 241.1(5)).

13.3.10 Example of Perjury by Inconsistent Statements

Review the example with Marcus in [Section 13](#). 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 will simplify and expedite the trial and may subject Marcus to conviction of this offense.

13.3.11 Subornation of Perjury

Most jurisdictions criminalize **subornation of perjury**, 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>.

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

Review the example given with Marcus in [Section 13](#). 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.

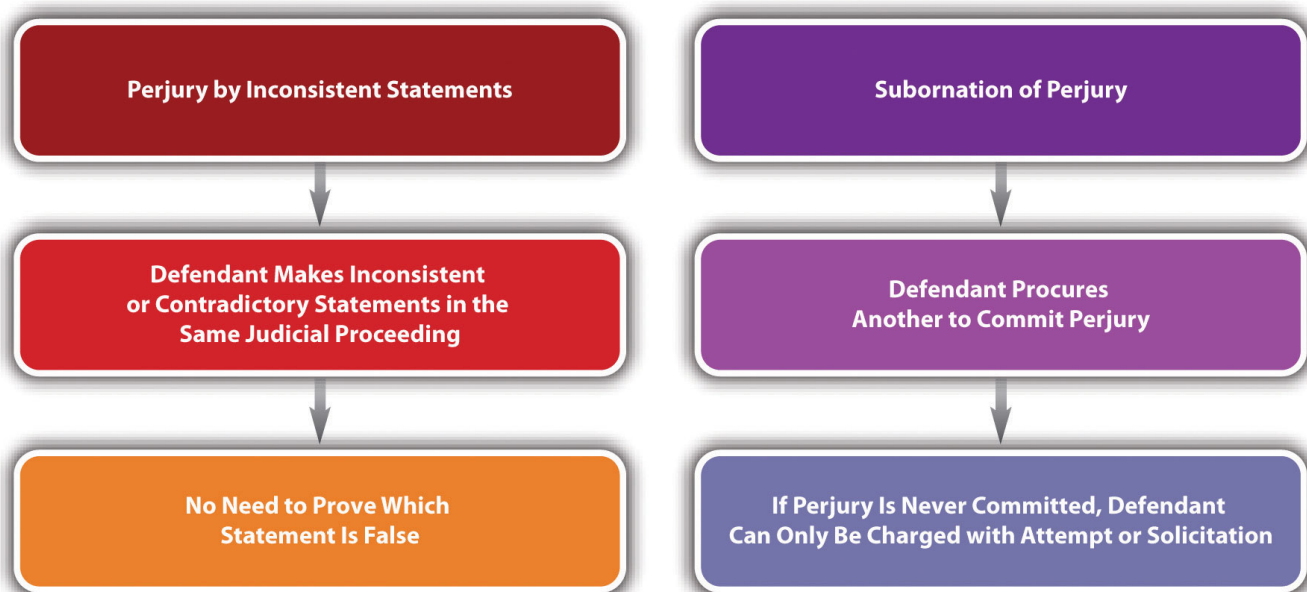


Figure 13.7 Comparison of Perjury by Inconsistent Statements and Subornation of Perjury

13.3.13 Perjury Grading

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, 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.

13.3.14 Bribery Elements

Bribery 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. 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, 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; N.Y. Penal Law § 200.10, 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. This type of bribery is typically called **commercial bribery**. N.Y. Penal Law § 180.00, accessed May 6, 2011, 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>; 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** (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)).

13.3.15 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.

13.3.16 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.

13.3.17 Another Example of Bribery

Review the example with Isabel in [Section 13](#). 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 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.

13.3.18 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.

13.3.19 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, law.onecle.com/alabama/criminal-code/13A-10-61.html.

13.3.20 Example of Bribery When No Authority to Act Is Present

Review the example with Isabel and the judge in [Section 13](#). 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.

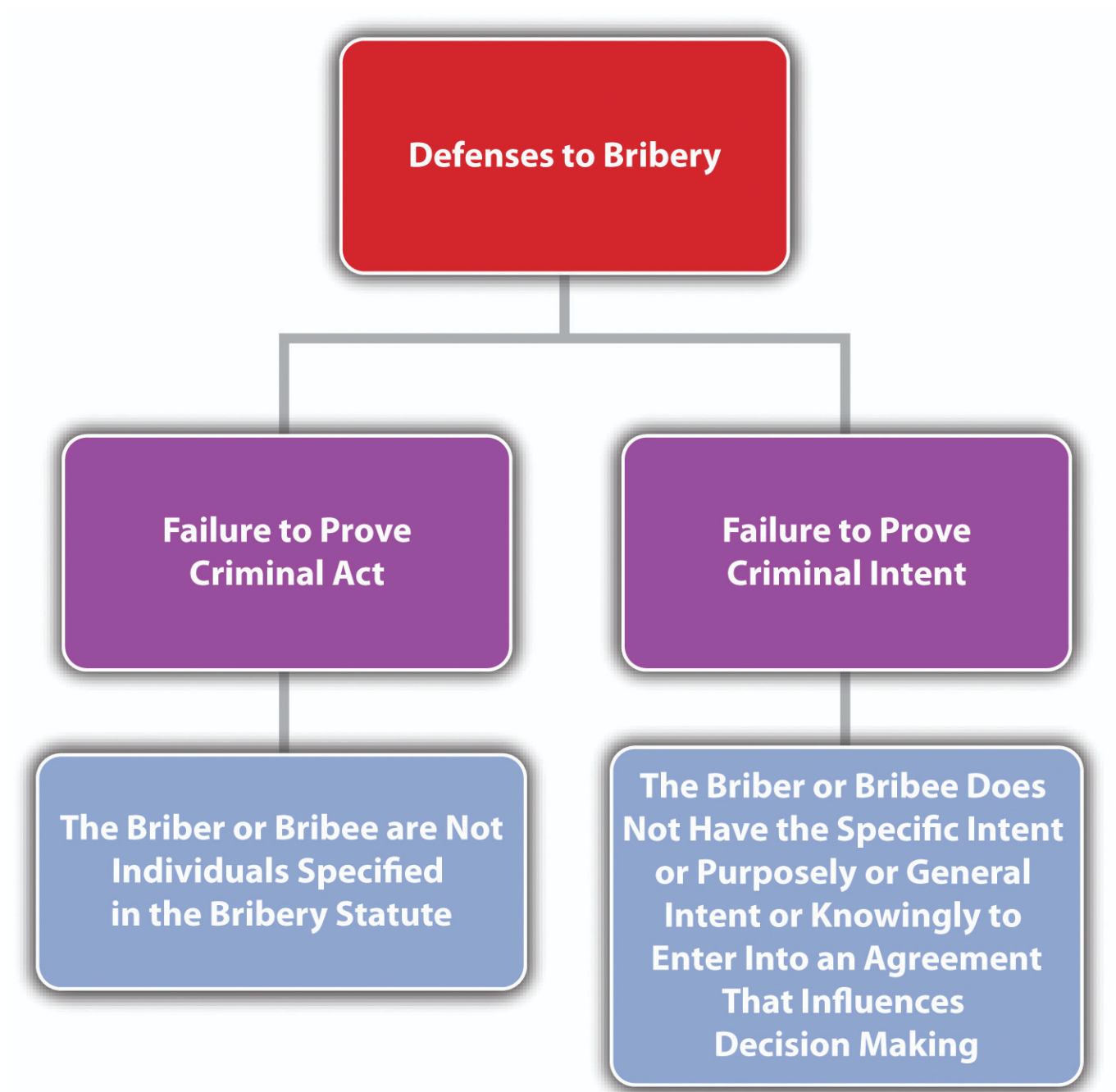


Figure 13.8 Diagram of Defenses to Bribery

13.3.21 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, 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, 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. 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.

13.3.22 Obstruction of Justice

Obstruction of justice 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, 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, 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, [www.law.cornell.edu/uscode/718/uscode/18_00001512---000-.html](http://www.law.cornell.edu/uscode/718/uscode/18/00001512---000-.html), or juror, Ariz. Rev. Stat. § 13-2807, accessed May 7, 2011, 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.

13.3.23 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, 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. 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, 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, 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. 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](#).

13.3.23.1 The Barry Bonds Verdict Video

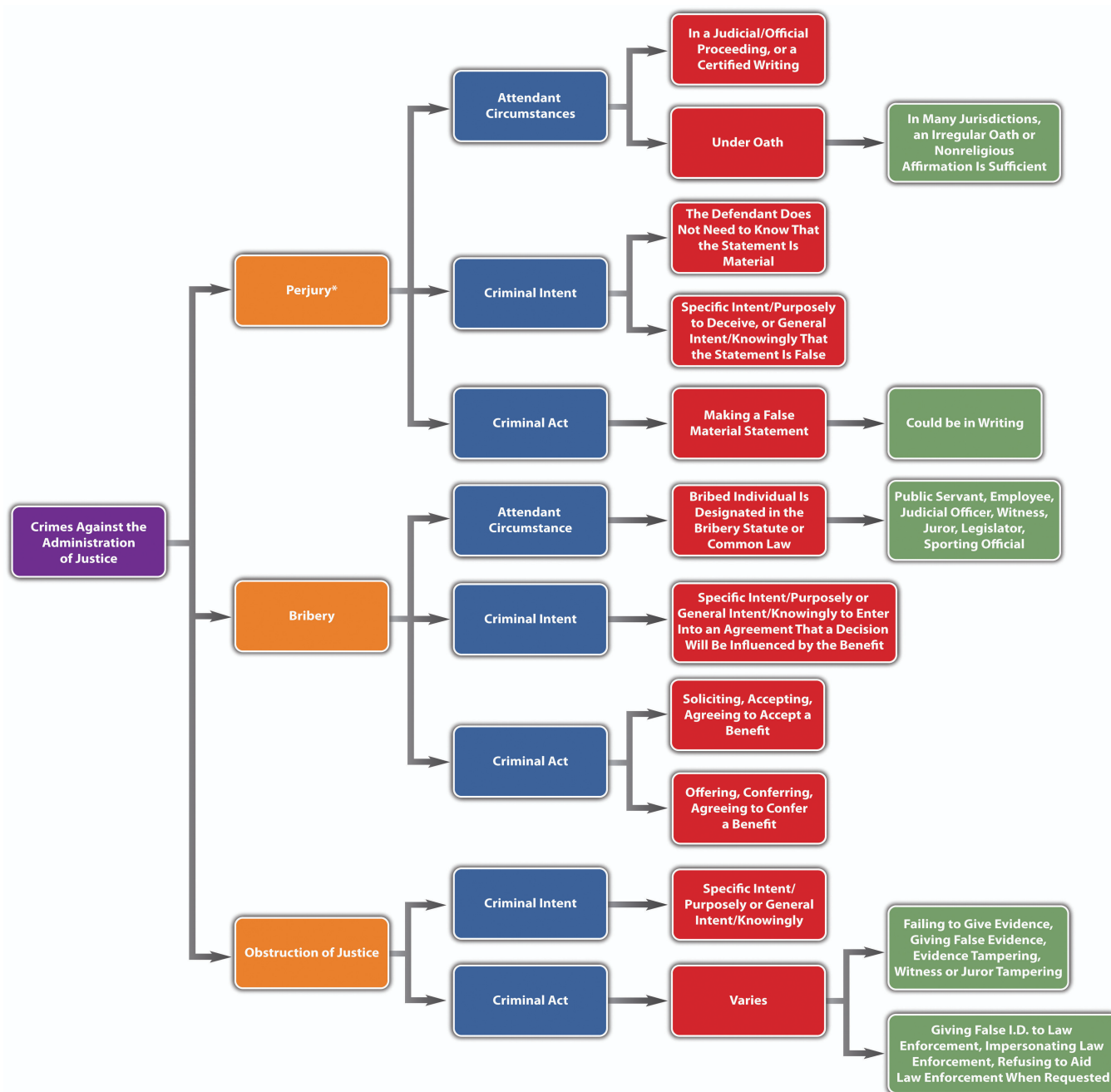
Associated Press: Bonds Guilty of Obstruction, Jury Hung on Others

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

([click to see video](#))

13.3.24 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, law.onecle.com/pennsylvania/crimes-and-offenses/00.051.004.000.html, and **escape**, Tex. Penal Code § 38.06, accessed May 8, 2011, law.onecle.com/texas/penal/38.06.00.html. Review the statutes in the endnotes for common elements and grading of these offenses.



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

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

13.3.25 Exercises

- 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.

13.3.26 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.
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.

13.3.26.1 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.

13.3.26.2 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](#))

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