Obstruction of justice

From Wikipedia, the free encyclopedia

The crime of **obstruction of justice** includes crimes committed by judges, prosecutors, attorneys general, and elected officials in general. It is misfeasance, malfeasance or nonfeasance in the conduct of the office. Most commonly it is prosecuted as a crime for perjury by a non governmental official primarily because of prosecutorial discretion. Prosecutors and attorneys general however commit obstruction of justice when they fail to prosecute judges and other government officials for malfeasance, misfeasance or nonfeasance in office.

Modern obstruction of justice, in United States jurisdictions, refers to the crime of offering interference of any sort to the work of police, investigators, regulatory agencies, prosecutors, or other (usually government) officials. Often, no actual investigation or substantiated suspicion of a specific incident need exist to support a charge of obstruction of justice. Common law jurisdictions other than the United States tend to use the wider offense of Perverting the course of justice.

Generally, obstruction charges are laid when it is discovered that a person questioned in an investigation, who is not a suspect, has lied to the investigating officers. However, in most common law jurisdictions, the right to remain silent allows any person who is questioned by police merely to refuse to answer questions posed by an investigator without giving any reason for doing so. (In such a case, the investigators may subpoena the witness to give testimony under oath in court) It is not relevant if the person lied to protect a suspect (such as setting up a false alibi, even if the suspect is in fact innocent) or to hide from an investigation of their own activities (such as to hide their involvement in another crime). Obstruction charges can also be laid if a person alters or destroys physical evidence, even if they were under no compulsion at any time to produce such evidence.

In United States v. Binion, malingering or feigning illness during a competency evaluation was held to be **obstruction of justice** and led to an enhanced sentence.[1]

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Accessory (legal term)

Wikipedia, the free encyclopedia

An **accessory** is a person who assists in the commission of a crime, but who does not actually participate in the commission of the crime as a joint principal. The distinction between an accessory and a principal is a question of fact and degree:

- The principal is the one whose acts or omissions, accompanied by the relevant *mens rea*, are the most immediate cause of the *actus reus* (Latin for "guilty act").
- If two or more people are directly responsible for the *actus reus*, they can be charged as joint principals (see common purpose). The test to distinguish a joint principal from an accessory is whether the defendant independently contributed to causing the *actus reus* rather than merely giving generalised and/or limited help and encouragement.

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In some jurisdictions, an accessory is distinguished from an accomplice, who normally is present at the crime and participates in some way. An accessory must generally have knowledge that a crime is being, or will be committed. A person with such knowledge may become an accessory by helping or encouraging the criminal in some way, or simply by failing to report the crime to proper authority. The assistance to the criminal may be of any type, including emotional or financial assistance as well as physical assistance or concealment.

Relative severity of penalties

The punishment tariff for accessories varies in different jurisdictions, and has varied at different periods of history. In some times and places accessories have been subject to lesser penalties than *principals* (the persons who actually commit the crime). In others accessories are considered the same as principals in theory, although in a particular case an accessory may be treated less severely than a principal. In some times and places accessories before the fact have been treated differently from accessories after the fact. Common law traditionally considers an accessory just as guilty as the principal(s) in a crime, and subject to the same ties. Separate and lesser punishments exist by statute in many jurisdictions.

Conspiracy

In some jurisdictions, a person generally cannot be charged as an accessory to a crime unless the crime has actually taken place, although there are exceptions. In some situations, a charge of conspiracy can be made even if the primary offense is never committed, so long as the plan has been made, and at least one *overt act* ...rds the crime has been committed by at least one of the conspirators. Thus, an accessory before the fact ...ll often, but not always, also be considered a conspirator. A conspirator must have been a party to the planning the crime, rather than merely becoming aware of the plan to commit it and then helping in some way.

A person who incites another to a crime will become a member of a conspiracy if agreement is reached, and may then be considered an accessory or a joint principal if the crime is eventually committed.

In the United States, a person who learns of the crime and gives some form of assistance before the crime is committed is known as an "accessory before the fact". A person who learns of the crime after it is committed and helps the criminal to conceal it, or aids the criminal in escaping, or simply fails to report the crime, is known as an "accessory after the fact". A person who does both is sometimes referred to as an "accessory before and after the fact", but this usage is less common.

Criminal facilitation

In some jurisdictions, criminal "facilitation" laws do not require that the primary crime be actually committed as a prerequisite for criminal liability. These include state statutes making it a crime to "provide" a person with "means or opportunity" to commit a crime, "believing it probable that he is rendering aid to a person who intends to commit a crime."[1]

Knowledge of the crime

To be convicted of an accessory charge, the accused must generally be proved to have had actual knowledge that a crime was going to be, or had been, committed. Furthermore, there must be proof that the accessory knew that his or her action, or inaction, was helping the criminals commit the crime, or evade detection, or escape. A person who unknowingly houses a person who has just committed a crime, for instance, may not be charged with an accessory offense because they did not have knowledge of the crime.

Exceptions

...any jurisdictions a person may not be charged as an accessory to a crime committed by his or her spouse. This is related to the traditional privilege not to testify against an accused spouse, and the older idea that a wife was completely subject to the orders of a husband, whether lawful or illegal.

In most jurisdictions an accessory cannot be tried before the principal is convicted, unless the accessory and principal are tried together, or unless the accessory consents to being tried first.

Usage

The term "accessory" derives from the English common law, and been inherited by those countries with a more or less Anglo-American legal system. The concept of complicity is, of course, common across different legal traditions. The specific terms *accessory-before-the-fact* and *accessory-after-the-fact* were used in England and the United States but are now more common in historical than in current usage.

The spelling **accessory** is occasionally used, but only in this legal sense.

History

The English legal authority William Blackstone, in his famous Commentaries, defined an accessory as "*II. AN accessory is he who is not the chief actor in the offense, nor present at its performance, but is someway concerned therein, either before or after the fact committed.*" (book 4 chapter 3). He goes on to define an *accessory-before-the-fact* in these words: "*As to the second point, who may be an accessory before the fact; Sir Matthew Hale12 defines him to be one, who being absent at the time of the crime committed, does yet procure, counsel, or command another to commit a crime. Herein absence is necessary to make him an accessory; for such procusence is necessary to make him an accessory; for if such procurer, or the like, be present, he is guilty of the crime as principal.*" and an *accessory-after-the-fact* as follows: "*AN accessory after the fact may be, where a person, knowing a felony to have been committed, receives, relieves, comforts, or assists the felon.17 Therefore, to make an accessory ex post facto, it is in the first place requisite that he ...ws of the felony committed.18 In the next place, he must receive, relieve, comfort, or assist him. And, ...rally, any assistance whatever given to a felon, to hinder his being apprehended, tried, or suffering punishment, makes the assistor an accessory. As furnishing him with a horse to escape his pursuers, money or*