

White Collar Crime - USA

How law-abiding citizens can be ensnared in federal criminal investigations

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Introduction

It was recently revealed that the Federal Bureau of Investigation is conducting a criminal investigation into whether front-office members of the St Louis Cardinals baseball club illegally accessed a computer database owned by the Houston Astros baseball club. While many people in the United States and across the world shrugged off the headline because they do not care about baseball, it tells an important story about US criminal law and how many otherwise law-abiding citizens can get ensnared in criminal investigations in a way that they never imagined.

Cheating in sport

The general manager of the Houston Astros has a reputation for being an excellent evaluator of talent and the Astros are in the process of building a strong team. The Cardinals recognise the formidable skills of the Astros' general manager because he worked in its front office for eight years and was a key part of two St Louis teams that won the World Series. If the Cardinals' front-office employees could understand how their former colleague evaluated players, it would be an important competitive advantage.

Professional sports are highly competitive endeavours in which hyper-intense athletes and aggressive teams are known to pursue every possible advantage. The margin between winning and losing, achieving stardom or suffering ignominy, can be razor thin. In the right circumstances, one good day or even one good moment can define an athlete's legacy for the rest of his or her life. The same is true if a bad or unlucky moment strikes at the wrong time. Hundreds of millions of dollars, if not more, can be at stake.

In this arena, it is often viewed as part of the competitive environment that some rules are bent in the process. "If you're not cheating, you're not trying," is one expression of this mentality. Nearly every sport has prominent examples of cheating, both serious and trivial. Millions of football and basketball fans across the world have reacted in disgust while watching an opposing player dive on non-existent contact and win an unwarranted penalty from an unwitting referee. On the more serious side, illicit drug use – including performance-enhancing drugs – has been a longstanding problem for many professional and Olympic sports worldwide, including professional baseball.

Baseball has a long history of players and managers who have sought advantages that are not consistent with the rules. Pitchers have secretly applied foreign substances to baseballs in the hopes that their pitches will have extra movement and confound hitters. In quiet and secluded clubhouses, hitters have made illegal modifications to bats in the hopes that long fly balls will be transformed into home runs.

And after their careers are over, with a wink and a knowing smile, some retired players have admitted that they broke the rules and that they did it knowingly. They make no apologies for it because they felt that they needed to break the rules in order to compete and survive in their sport against opponents who may have been bigger, faster, smarter or more talented. They view cheating not as a mere venial sin, but as a badge of honour, a sign of resourcefulness and a toughness reflective of someone willing to do whatever it takes to prevail.

In this hothouse environment it can be difficult to see another world – one in which Congress has passed broad criminal statutes because criminal activity can be difficult to define with precision. In this realm of federal law enforcement, prosecutors aggressively pursue violations of the law and do not view athletic success or intense competition as a worthy reason to violate criminal statutes.

However, when viewed through the fog of competition, there can be blurred lines between tough-minded resourcefulness and a federal felony. Baseball teams routinely steal signs from their

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opponents and that is viewed as gamesmanship and not as economic espionage. No reasonable prosecutor is going to charge a scout who glances over the shoulder of a rival scout and surreptitiously learns of an opposing team's evaluation of a player; but if a front-office employee uses the same mindset to guess the password of a rival organisation and gains access to its database, that is a potential federal felony under the Computer Fraud and Abuse Act.

Breadth of US criminal law

The importance of this story is not about professional athletics, the St Louis Cardinals, the Computer Fraud and Abuse Act or even the outcome of this particular investigation. The Cardinals organisation and its employees deserve a presumption that they are innocent of any criminal activity and many criminal investigations close without any charges being brought.

Instead, the important takeaway is for the average citizen to realise how broad US criminal law can be and how it can be applied to him or her. When the average person thinks of what it takes to violate US federal criminal law, it is natural to think of terrorists, drug dealers, bank robbers, mobsters and corporate fraudsters. These seem like major acts that define a person's existence.

However, most people do not contemplate that they can commit a federal felony in a few minutes by:

- entering a former boss's password on a computer to see what he or she thinks;
- signing off on an invoice to pay a third-party agent in a faraway country when it is not clear what the agent is doing and when others insist that this agent can help in some way to close an important deal with a government agency; or
- reaching an agreement with a competitor to set prices for the sale of goods.

Comment

There are many more subtle ways in which a law-abiding citizen can commit a federal felony under US law in a matter of minutes; this can be true even for people not living or working in the United States if their conduct has some connection to the United States. These types of action are not usually intended to be a major event in anyone's life. However, in a different way from world-class athletics, the pressures of life can put people in situations where they take morally questionable actions. If an action is morally questionable, there is a reasonable chance that some federal criminal law prohibits it and imposes criminal penalties on the person responsible – whether he or she is a mobster, a high-profile athlete or an average person just trying to do his or her job. Even for non-baseball fans, that headline should not be ignored.

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