

University of Nevada, Reno

**Statutory Response to Court Security Concerns**

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requirements for the degree of Doctor of Philosophy in  
Judicial Studies

by

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THE GRADUATE SCHOOL

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prepared under our supervision by

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## **Abstract**

This paper proposes that legislation should be used to reduce the occurrence of courthouse violence. It begins with a review of what is known about the nature and costs of court targeted and non-targeted violence, drawing on published materials of the U.S. Marshals Service, the U.S. Secret Service, the Center for Judicial and Executive Security, and others. Previously unpublished materials are also reported. Court security efforts made in response to the violence are described. In the absence of empirical studies of the effectiveness of court security laws, the paper suggests that theories of criminology be used as guides for assessing the effectiveness of existing legislation and formulating new legislation. Criminological theories, including classical theory, rational choice theory, strain theory, and routine activity theory are discussed as models appropriate for use in evaluating court security legislation. Existing state and federal laws on paper terrorism, including false liens and U.C.C. filings; address confidentiality programs; and enhanced punishments for crimes against those involved in the judicial process are described, catalogued, and analyzed.

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## **Statutory Response to Court Security Concerns**

### **Introduction**

Violence targeted at courts is increasing in the United States. Due to the importance of the judicial system to American democracy and society a great effort has been made to confront this violence. National standards have been developed for courthouse protection. Costly weapon detection technologies, surveillance systems, changes in building design, and thousands of court security officers have been employed to enhance safety. Nonetheless, the amount of violence continues to climb. (Fautsko, Berson, & Swensen, 2012). A courthouse in America is the crime scene for a shooting, bombing or arson attack on an average of once a month. Less extreme, but nonetheless alarming, violent assaults and knifings occur at courthouses on an average of more than once a week. Additional efforts to curb the violence are necessary.

Ironically, little consideration has been given to the power of law to protect the judicial branch of government which is charged with the responsibility to enforce the law. Several jurisdictions have no statutes designed to deter the violence. Many state statutory schemes are outdated and do not adequately confront existing court security issues. Experts recognize that aspects of the law and contemporary court security research are out of sync. (Calhoun & Weston, 2009, p. 106). “[T]he disconnect between the law and its interpreters and the research on intended violence [against the judicial system] remains a wide and thus far unbridgeable chasm.” (Calhoun & Weston, 2009, p. 121). It is the purpose of this paper to address that chasm by exploring how violence reducing strategies can be included within legislation.

## **Methodology**

The premise of this paper is that the law is an underutilized tool that should be applied to greater effect to address courthouse violence. It is proposed that existing research on court related violence can be viewed in relation to accepted criminological theories to form a basis from which to assess the usefulness of existing laws and to fashion effective new laws.

Part One will describe the facts and insights about court targeted violence that are revealed in expert and academic literature, including: the varieties of violence; its historical rate of occurrence; its characteristics; the profile of its victims; the profile and motivations of its perpetrators; the present response of courts, law enforcement, organizations, and legislatures; the relationship between threats and attacks; and the financial and psychological costs of the violence. This part is intended to be useful to court executives, legislators, and others not already familiar with courthouse violence and the literature on the subject

Part Two will review aspects of several well regarded criminological theories and discusses their implications for preventing court targeted violence. This analysis will show how legislation can be used to restrict access to instrumentalities necessary for the commission of the violence, to interrupt recognized paths to court targeted violence, and to impose consequences sufficiently severe to deter reasonable persons from offending.

Part Three will survey federal statutes and statutes developed in what Justice Brandeis famously called “the laboratory of the states” which do, purport to, or might be

used to enhance the security of the judicial process.<sup>1</sup> Existing laws affecting paper terrorism, crimes targeted against the judiciary, and providing privacy for the personal information of judges and others will be described in detail, and set forth in appendices, in order to afford those interested in drafting legislation with a convenient source to examine all existing statutory formulations. Statutes will be analyzed in relation to existing research on court targeted violence and criminological theories. Among other things, this part will assess whether present laws impose criminal punishments for all of the behaviors recognized to constitute courthouse violence. Punishments imposed for interference with other protected processes or groups will be compared to determine if punishments for courthouse violence are commensurate. Laws will be evaluated to determine if they lessen the likelihood of violation by decreasing the benefits to be realized by the perpetrator by, for example, making it easier for a judge to avoid a false lien or other encumbrance filed against personal or real property. Laws will be examined to assess whether they reduce the opportunity to commit crime by, for example, making it more difficult to obtain the residential addresses of judges. Protections afforded to judges will be compared to similar protections afforded to other at-risk groups so that the comparative levels of protection can be considered. Specific questions to be addressed include:

- Do states enhance penalties for crimes against some categories of victims? Are penalties enhanced if judges are crime victims? For what crimes against

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<sup>1</sup> It is impractical to catalogue all laws on given subjects because, with 50 state jurisdictions, changes occur so frequently that any list will soon be out of date. Moreover, because of differences among statutory schemes, it would be impossible to be certain that every law on a given subject has been identified without resorting to an experienced practitioner in every jurisdiction.

participants in the judicial process are penalties increased? Is the assassination of a judge, or another person involved in the judicial process, an aggravating factor warranting imposition of the death penalty?

- What civil and criminal laws exist to combat the use of false liens and other fictitious documents used to harass and harm participants in the judicial process?
- Do existing laws grant any category of persons the ability to restrict access to personal information, including residence addresses? Is this privilege afforded to participants in the judicial process?
- Is it a crime to disseminate on the Internet, or otherwise, the home address or other personal information of any category of persons with the intent of inciting violence against such persons? Is this protection afforded to participants in the judicial process?
- Are any other legal protections or privileges extended to judges, lawyers, jurors, witnesses, court staff or other participants in the judicial process? How about family members?

Innovative legislation will also be proposed. It will be suggested, for example, that address confidentiality programs that restrict access to the residential addresses to those threatened with domestic violence can be modified to provide the same protection to judges at little or no cost to taxpayers. We begin with an examination of what is known about judicial violence.

## **Part One: What is Known about Violence against the Judiciary and Judicial Officials?**

### **What are the Types of Violence against the Judiciary and Judicial Officials?**

Scholars agree that more than one variety of courthouse violence exists. Security experts Neil Alan Weiner and Don Hardenbergh (2001, p. 23) suggest that “targeted” and “non-targeted” violence are useful descriptors. They define targeted violence as a premeditated effort to injure specific individuals, groups, or property associated with the judicial process (see also Borum, 1999; McGovern, 2013). Examples include the planned murder of a judge, lawyer, witness, or litigant; the recordation of a false lien in order to harass a court official; and the publication of a judge’s home address with the intent to incite violence against the judge or the judge’s family. Because such attacks are planned, circumvention of any existing security precautions is a common aspect of targeted attacks. Targeted attacks can be addressed with judicial education, home intrusion alarms, threat assessment investigations, and law enforcement response.

Non-targeted violence is a typically unplanned, spontaneous response to a courtroom situation. Examples include family on family violence in the gallery or a prisoner turning over a table or kicking a chair in response to a sentencing decision. Non-targeted violence is subject to control by security measures such as weapons screening, prisoner restraints, the presence of court security officers, and courthouse design that separates prisoners from the judiciary and the public.

The National Institute of Justice uses the term “targeted violence” to refer to “situations in which an identifiable (or potentially identifiable) perpetrator poses (or may

pose) a threat of violence to a particular individual or group” (Fein, Vossekuil, & Holden, 1995).

The Center for Judicial and Executive Security defines a “Court-Targeted Act of Violence” (C-TAV) as “a specific act(s) of violence committed in courthouses, judicial centers, or other facilities that hold judicial proceedings and/or satellite court operations; including the adjacent exterior and site plan (e.g., court plazas, parking areas..); and/or the on-site or off-site targeting of judges, court officials, prosecutors, court staff and employees as a result of their position and/or performance of court-related duties and responsibilities.” Three categories of C-TAVs are delineated: 1) Targeted violence involves a threat source targeting a specific individual for who they are, for what they have done, or for what they didn’t do; 2) Indiscriminate violence is a random act of violence not specifically related to a victim; and, 3) Vocational violence describes a violent act against an individual because of the role he/she holds in the judicial process.

Other terms are suggested by J. Reid Meloy (2011), a psychologist, who describes “predatory” and “affective” violence. Predatory attacks are those which are planned, purposeful and emotionless. Affective attacks are those which are impulsive, emotional and often reactive to an immediately preceding provocation. Law enforcement professionals Frederick S. Calhoun and Stephen W. Weston (2009, p. 4) propose a distinction between “intended” and “impromptu” violence. They describe intended violence as premeditated and planned. Impromptu violence is unplanned and spontaneous. All of these formulations are similar and recognize that some courthouse violence is a spontaneous reaction to a courtroom occurrence and some is a premeditated, planned attack on a particular individual or structure.

## What are the Characteristics of Court Targeted Violence?

The most comprehensive, publically available statistics on court targeted violence are produced by Steven K. Swensen, former U.S. Marshal and, presently, Director of the Center for Judicial and Executive Security (CJES). CJES conducted a study (Swensen, 2010) of Court Targeted Acts of Violence (C-TAVs) that documented 146 shootings, 34 bombings and 2 arson attacks between 1970 and 2009. The distribution of these 185 attacks over time shows that the number of attacks is continuing to increase. Since publication of the C-TAV study CJES has continued its research. This has resulted in the documentation of an additional 70 shootings, bombings and arson attacks during the four decade study period, bringing the total number of such acts of violence to 225. *See* Table 1 (S. K. Swensen, personal communication, September 17, 2013).

Table 1

*Court Targeted Shootings, Bombings, and Arson Attacks, by Decade*

| Decade    | Incidents |
|-----------|-----------|
| 1970-1979 | 32        |
| 1980-1989 | 49        |
| 1990-1999 | 70        |
| 2000-2009 | 104       |

*Note.* From “Court-Targeted Acts of Violence: A Study and Chronological Listing of Incidents of Courthouse / Judicial Shootings, Bombings, and Arson Attacks,” by S.K. Swensen, 2010, Saint Paul, MN: Center for Judicial and Executive Security. Adapted with permission.

CJES has identified a further 15 C-TAV incidents occurring during 2010, 15 during 2011, and 13 during 2012. These additionally documented incidents are consistent with the C-TAV study’s previously identified trends and characteristics,

hereinafter described, relating to court targeted violence (S. K. Swensen, personal communication, September 17, 2013). These statistics show that a courthouse shooting, bombing or arson attack occurs, on average, more than once a month in the United States.

Swensen, also, has documented court related incidents of assaults, knifings, murder-for-hire, suicides, bomb-plots, and types of violence other than shooting, bombing and arson attacks (Swensen, 2012; S. K. Swensen, personal communication, September 17, 2013). His study, as shown in Table 2, shows the frequency of these incidents is increasing.

Table 2

*Court Targeted Assaults, Knifings, Murders-For-Hire, Suicides, and Bomb Plots, 2005-2011*

| Year | Incidents |
|------|-----------|
| 2005 | 10        |
| 2006 | 10        |
| 2007 | 16        |
| 2008 | 24        |
| 2009 | 32        |
| 2010 | 50        |
| 2011 | 67        |

*Note.* From “Incidents of Disorder in Court: A General Listing of Court and Judicial Violence: Assaults, Knifings, Murder-For-Hire, Suicides, Bomb-Plots, etc.” by S.K. Swensen, 2012, Saint Paul, MN: Center for Judicial and Executive Security. Adapted with permission.

Such incidents are now occurring on an average of more than once per week in American courthouses.

Another source of information on the current state of attacks on the judicial process is the U.S. Marshals Service, a law enforcement agency dedicated to protecting the federal judicial branch of government. During the first two-hundred years of the existence of a federal judiciary (1789-1989) four federal judges were killed. The first

was murdered in 1867. The remaining three were assassinated during a single decade between 1979 and 1989. This surge of lethal violence attracted appropriate attention (Calhoun, 1998, p. xi). During the 1980s funding to the U.S. Marshals Service was dramatically increased. All federal courthouses in the United States “were transformed into armed fortresses” with thousands of specially deputized guards, locks, controlled entrances and exits, alarms, panic buttons and surveillance cameras (Calhoun, 1998, p. 27).

The U.S. Marshals Service investigates “inappropriate communications”<sup>2</sup> or approaches to approximately 2,200 federal judges and 10,000 U.S. Attorneys, Assistant U.S. Attorneys and judicial branch employees. Table 3 shows the annual totals of such investigations.

Table 3

*U.S. Marshals Service Investigations of  
Inappropriate Communications, FY 2000 - FY  
2012*

| Fiscal Year | Investigations |
|-------------|----------------|
| 2000        | 683            |
| 2001        | 639            |
| 2002        | 565            |
| 2003        | 592            |
| 2004        | 665            |
| 2005        | 953            |
| 2006        | 1,111          |
| 2007        | 1,145          |
| 2008        | 1,278          |
| 2009        | 1,390          |
| 2010        | 1,394          |
| 2011        | 1,258          |
| 2012        | 1,373          |

<sup>2</sup> An inappropriate communication is “any communication directed to a USMS protectee that warrants further investigation.” (U.S. Department of Justice, 2007a).

Calhoun (1998, pp. 23-25) attributes the increase in violence against the federal judiciary to a change in the nature of federalism. He argues that the federal government, including the courts, has become more involved in the lives of individual citizens. During the 18<sup>th</sup> and 19<sup>th</sup> centuries federal courts were concerned with the regulation of states and other constitutional issues. Few cases involving the day-to-day lives of individual citizens came before federal courts. Crimes, contracts and torts were matters to be addressed by state courts. Beginning in the 20<sup>th</sup> century, the federal government began to directly regulate the behavior of individuals with laws on civil rights and taxation.

Swensen (2010) shows that the 185 court targeted shootings, bombings, and arsons he documented as occurring between 1970 and 2009 took place in 39 states and the District of Columbia. Ninety-one percent of these attacks occurred at a courthouse. The courtroom was the location of 18% of the courthouse attacks; another 2% occurred in a judge's chambers; 33% occurred elsewhere within the court building, and 47% occurred in the area around the courthouse. Seventy-two percent of courthouse attacks were at county courthouses, 12% at federal courthouses, 10% at municipal courthouses, and 6% at state courthouses. Eight percent of court related attacks occurred at the residences of judges. Swensen believes that a recent increase in courthouse arson is the result of greater protections at courthouse entrances which deny armed perpetrators access to court personnel (Fautsko et al., 2012).

The location where a criminal decides to commit an offense can be influenced by his perception of where he is most likely to be successful in his effort. It may be

significant that 91% of all documented, recent judicial attacks occurred at courthouses, most of which are state or local institutions, while the last three assassinations of federal judges occurred at their homes. The location of these crimes may have been chosen because of the perceived impregnability of federal courthouses and the perceived vulnerability of state and local courthouses.

Swensen's C-TAV study of 185 incidents counted that 7 involved edged weapons; 39 involved explosives (26 Improvised Explosive Devices, 10 incendiary devices, and 3 mail bombs); and, 139 involved firearms (5 shotguns, 14 rifles, and 120 handguns). Fifteen of the handguns were taken from law enforcement. Etter and Swymeler (2010) found that in 77% of the shooting incidents they studied, a firearm was carried into the courthouse by the shooter. In another 19% of courthouse shootings, the perpetrator was able to gain control of the firearm of a law enforcement officer and, in 3% of cases, a third party smuggled a weapon into the courthouse for the shooter.

Calhoun (1998, pp. 42-43; 2001, pp. 58-60) proposes that threats and attacks on judges are different from threats and attacks on other non-court related individuals in several ways, many of which are discussed in greater detail later in this paper. Judicial threats are directed against the system of justice as much as they are against any individual. More than 50 percent of such threats are targeted against more than one person. Perpetrators are motivated by the court's power to enter enforceable, unwelcome orders concerning their freedom, money, or children. Unlike 90 % of attackers of other public figures who suffer from mental disorder, few judicial attackers are mentally unbalanced. They are angry or fearful about a specific case, but not irrational. The perpetrator of judicial violence and the judge usually know each other, having met in the

courtroom. Judges and many of the other participants in the judicial process live in the same community as those who come before the court. Judges often make consequential decisions alone, and not as part of a decision making body like a legislature. These factors make judges more visible, susceptible and vulnerable than other public figures.

### **Who are the Victims?**

The 185 incidents of court targeted violence studied by Swensen (2010) that occurred between 1970 and 2009 resulted in 147 deaths and 109 non-lethal injuries. The identities of the persons harmed are shown in Table 4.

Table 4

*Victims of Court Targeted Violence, 1970 - 2009*

| Person Harmed                   | Killed | Wounded | Total |
|---------------------------------|--------|---------|-------|
| Perpetrator                     | 58     | 13      | 71    |
| Law Enforcement                 | 13     | 50      | 63    |
| Perpetrator's Family or ex-wife | 27     | 15      | 42    |
| General Public                  | 13     | 13      | 26    |
| Judge                           | 17     | 7       | 25    |
| Attorneys                       | 5      | 9       | 14    |
| Court Staff                     | 0      | 8       | 8     |
| Judge's Family                  | 4      | 0       | 4     |
| Defendants                      | 0      | 4       | 4     |
| Gang Member                     | 0      | 3       | 3     |
| Other                           | 9      | 0       | 9     |

*Note.* From "Court-Targeted Acts of Violence: A Study and Chronological Listing of Incidents of Courthouse / Judicial Shootings, Bombings, and Arson Attacks," by S.K. Swensen, 2010, Saint Paul, MN: Center for Judicial and Executive Security. Adapted with permission.

This tally shows the perpetrator to be the person most likely to be killed in courthouse violence. Law enforcement officers are injured almost as often as perpetrators, but are much less likely to be killed. Ex-wives and family members of the perpetrators make up the largest group of unarmed victims of courthouse violence,

followed by members of the general public. Seventy-two percent of judges and their family members who are the subject of shootings are killed.

A different study of courthouse shootings between 1907 and 2007 identified 182 victims in 114 incidents. The study determined 8% of the victims were judges; 33% were law enforcement officers; and 59% were litigants, lawyers, witnesses, or others (Etter & Swymeler, 2010). The most recent National Survey of Prosecutors reports that during 2007 three percent of the nation's 2,300 state prosecutors' offices had one or more employees who were victims of a battery or assault (U.S. Department of Justice, 2011).

The Administrative Office of Pennsylvania Courts (Harris, Kirschner, Rozek, & Weiner, 2001) surveyed that state's 1,112 judges in an effort to quantify the various types of threats and acts of violence against the bench, both inside and outside the courthouse, during a single year, as a result of the discharge of official duties. Some judges were also interviewed to identify shared judicial conceptions. The study showed that almost one percent of the judges had been physically assaulted during the preceding year. The study calculated that a district judge had a 31 percent probability of being assaulted at least once during a 20-year career. Judges expressed a collective belief that violence is an inevitable part of the judicial process. They recognized that angry and potentially violent reactions are routine in litigation, and that court employees have direct contact with irate litigants and are the targets of such behavior. Judges shared their fears that their family members might be injured because of their proximity to, or relationship with, a judge. Disturbingly, judges feared that becoming a victim of violence might cast a shadow over their perceived capacity as a jurist, reducing their willingness to report incidents that might identify dangerous persons.

## **Who are the Perpetrators?**

Some information about the characteristics of perpetrators of court targeted violence can be extrapolated from a study conducted by the United States Secret Service of all 83 apprehended perpetrators in the United States who, between 1949 and 1996, assassinated, attacked, or approached 74 public persons, including prominent political, business, sports, or media individuals, with lethal weapons (Fein & Vossekuil, 1999). This study, known as the Exceptional Case Study Project (ECSP), focused on the demographic and background characteristics of the attackers and near-attackers, and their thinking and behavior during the time preceding their assault or near lethal approach. The Secret Service collected and considered all available written material concerning the perpetrators, including media reporting, law enforcement investigative materials, records of correctional institutions, trial transcripts, mental health records, and accounts by third parties. Additionally, 20 of the perpetrators gave in-depth interviews that explored their ideas, motives, behaviors and activities prior to their offenses. The ECSP was not specifically directed to attacks against judges. In fact, only five percent of the victims considered by the study were federal judges and none were state judges. The findings of the ECSP, however, have been used by the U.S. Secret Service to inform the development of protective intelligence, threat assessment, and investigation programs for the protection of dignitaries. The same findings have been used by the U.S. Marshals Service to develop similar programs for the protection of the federal judiciary.

The ECSP's descriptions of the characteristics of actual and would-be assassins are shown in Table 5.

Table 5

*Characteristics of Actual and Would-Be Assassins*


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|  |
|--|
| They ranged in age from 16 to 73.  |
| 77 percent were Caucasian.   |
| 51 percent were never married.   |
| 23 percent had not completed high school.                                      |
| 31 percent had high school graduation as their highest educational attainment. |
| 25 percent had some college education.   |
| 17 percent were college graduates.   |
| 25 percent were full time employed.  |
| 13 percent were disabled, retired or students.                                 |
| 34 percent had never been arrested.  |
| 20 percent had a violent arrest record.  |
| 71 percent had previously used a weapon.                                       |
| 39 percent had a history of substance abuse.                                   |
| 41 percent had a history of suicide threats.                                   |
| 86 percent were male.  |
| 61 percent had no children.  |
| 52 percent were unemployed.  |
| 58 percent had no military service.  |
| 56 percent had a non-violent arrest record.                                    |
| 66 percent had never been incarcerated.  |
| 19 percent had formal weapons training.  |
| 75 percent were not delusional.  |
| 40 percent had an interest in assassination.                                   |

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Additionally, the ECSP found that 54 percent of perpetrators had a history of harassing other people. Most had previously displayed explosive and angry behavior, but only half had a past history of violence. Sixty-three percent had a history of nonviolent action against a target, such as letter writing or visiting an office. About two-thirds were social isolates, and about one third were not. Almost all attacks followed a period of downward spiral in the perpetrator's life; however, the kinds of problems that most perpetrators had were neither extreme nor unusual.

Based upon this research, Secret Service professionals Robert A. Fein and Bryan Vossekuil (1998, p. 12) concluded that attackers of public figures cannot be profiled because they “do not fit any one descriptive or demographic profile (or even several descriptive or demographic profiles).”

Fein and Vossekuil (1998, p. 13) exposed as a myth the commonly believed notion that assassination of public officials is the product of mental illness or derangement. They found, instead, that “mental illness only rarely plays a key role in assassination behaviors.” Calhoun (1998) reports that mental illness is a factor that distinguishes attacks against the judiciary from attacks on other public figures. “Whereas fully 90 percent or more of those who pestered public figures suffered from some mental disorder, fewer than 20 percent of those who threatened federal judicial officials seemed driven by irrational impulses or fixations. Those who would harm judicial officials were driven by a specific reason usually related to a case before the court” (Calhoun, 1998, p. 43). Nothing in the literature states or implies that perpetrators of court targeted violence act under the influence of a mental illness or an “irresistible impulse.” They have not lost their free will or their ability to control their emotions.

Another key finding of the ECSP is that “assassinations and attacks on public officials and figures are the products of understandable and often discernable processes of thinking and behavior” (Fein & Vossekuil, 1998, p. 15). Perpetrators display attack related behaviors that include: “blaming a target for a grievance, developing an unusual interest in the target, planning and discussing plans, preparatory behaviors, following a target, approaching and attempting to breach security” (Borum, Fein, Vossekuil, & Berglund, 1999, p. 332). Even the small minority of perpetrators of violence who act

under a mental illness display logical thinking by deciding to attack, acquiring the necessary equipment, selecting a place and a time, circumventing security, and by launching the attack. “Passage of enforceable laws that define and prohibit behaviors that could presage violent attacks is one important step in preventing such attacks” (Fein, Vossekul & Holden, 1995).

A classic work on courthouse violence, Hunters and Howlers: Threats and Violence Against Federal Judicial Officials in the United States, 1789-1993, (Calhoun, 1998) was based on an analysis of 3,096 inappropriate communications to, and assaults against, federal judicial officials reported to the U.S. Marshals Service between October 1, 1980 and September 30, 1993. The book provided context for much of the scholarly work on court security that has followed. Calhoun’s analysis (1998, pp. 42-43; 2001, pp. 58-60) shows that most attacks on the judiciary are interpersonal, that is, they are attacks by a person offended by a particular judicial ruling against the person thought to be responsible for that ruling. Perpetrators seek justice, as they conceptualize it. They are convinced that they have been treated unfairly. They perceive themselves as under attack. Their violence is motivated by a specific sense of insult, revenge, frustration, fear, or futility. Swensen (2010) agrees that most courthouse violence is related to specific criminal or civil litigation before the court. His study, as shown in Table 6, attributes specific motivations to the violent incidents he documented.

Table 6

*Motivations of Perpetrators of Court Targeted Violence*

| Motivation         | Percent of Incidents |
|--------------------|----------------------|
| Case Related       | 52%                  |
| Unknown Motivation | 23%                  |
| Mental Health      | 8%                   |
| Terrorism          | 5%                   |
| Domestic           | 4%                   |
| Other              | 4%                   |
| Gang Related       | 2%                   |
| None               | 2%                   |

*Note.* From “Court-Targeted Acts of Violence: A Study and Chronological Listing of Incidents of Courthouse / Judicial Shootings, Bombings, and Arson Attacks,” by S.K. Swensen, 2010, Saint Paul, MN: Center for Judicial and Executive Security. Adapted with permission.

Swensen (2010) found, as shown in Table 7, that those acts of violence that are case related are most commonly associated with family law matters, although other types of cases may also occasion violence.

Table 7

*Types of Court Cases Associated with Court Targeted Violence*

| Type of Case  | Violent Acts |
|---|--------------|
| Family Law Cases, Including: Divorce, Alimony, Child Custody, Child Support, and Restraining Orders | 42%          |
| Prisoner Escape   | 23%          |
| Unspecified Court Ruling  | 9%           |
| Arrest/Charges  | 9%           |
| Conviction/Sentencing   | 9%           |
| Other   | 5%           |
| Evidence Destruction  | 3%           |

*Note.* From “Court-Targeted Acts of Violence: A Study and Chronological Listing of Incidents of Courthouse / Judicial Shootings, Bombings, and Arson Attacks,” by S.K. Swensen, 2010, Saint Paul, MN: Center for Judicial and Executive Security. Adapted with permission.

Swensen notes that these findings are influenced by the fact that law enforcement typically has heightened security measures in place for “traditional” threat sources (e.g. prison/gang members, terrorists, murderers, etc.). It is likely that this focus by law enforcement has reduced the amount of violence resulting from such threat sources (S. K. Swensen, personal communication, September 17, 2013).

In 2009, the U.S. Marshals Service asserted, “The greatest threat source is a family member going through a divorce, contesting child custody, or a child/sexual abuse related case” (U.S. Department of Justice, 2008). Except in the District of Columbia, family law cases are not within the jurisdiction of federal courts; they are state court matters. Ninety percent of the perpetrators of courthouse violence in family law cases are male (Swensen, 2010, p. XIV). It is reasonable to infer that a significant portion of courthouse violence is, in fact, a variety of domestic violence in which perpetrator’s intended victim is a present or past female intimate partner or a person of any gender who is perceived by the perpetrator as interfering with his control of that partner.

Weiner and Hardenbergh (2001, p. 27) identify two motivations for attacks on judges. Some attacks are intended to disrupt, influence or otherwise adversely reflect on the judiciary. Other attacks are intended to retaliate for past judicial actions. Similarly, McGovern (2013) found that 67% of attacks on members of the judicial community were motivated by a desire to take revenge against an official. Another 30% were prompted by an intent to delay or derail legal proceedings.

Swensen (2010) found that in 5% of court related attacks, the perpetrator’s intent is suicide, 11% are seeking to escape, 19% seek to damage the courthouse, and 54% intend to kill. The intent of the remaining perpetrators is unidentified.

Eighty-one percent of those who have perpetrated court targeted violence acted alone (U.S. Department of Justice, 2008). Calhoun (1998, p. 100) found that only 6.4% of the 3,096 cases he studied contained evidence of additional suspects or potential accomplices.

### **Threats of Violence**

Many judges and lawyers live and work under the influence of threats of physical violence. A 2001 study by the Administrative Office of Pennsylvania Courts (Harris et al., 2001) reported that almost half of the state's judges were subjected to a threatening communication or approach during the previous 12 months. The U.S. Department of Justice (2007b) surveyed all 2,141 federal judges about threats received. There was a 32 percent response. More than 68 percent of those responding reported that they had been threatened at some time during their judicial career. Just under half reported that they had been threatened during a single calendar year, 2005. The number of inappropriate communications and threats directed at federal judicial personnel and reported to the U.S. Marshals Service sextupled from 201 in FY 1996 to 1,370 in FY 2012.

Similarly, the most recent National Survey of Prosecutors reported that in 2007, 47% of the nation's 2,300 state prosecutors' offices received one or more threatening communication (U.S. Department of Justice, 2011). In March 2008, the National Association of Assistant United States Attorneys began a security survey of the approximately 5,400 Assistant United States Attorneys (AUSA). Twenty-three percent responded. Almost half (45.4%) reported that they or a member of their immediate family had been threatened or assaulted because of their job as an AUSA. Eighty-one percent

reported that they worked in an office in which another AUSA had been threatened or assaulted because of their job. A survey of United States Attorneys and Assistant United States Attorneys (U.S. Department of Justice, 2009) indicated that 45% believed gang cases posed the greatest risk of generating threats. Another 26% believed drug cases would result in the most threats. Sixteen percent reported that they or an immediate family member had received a threat resulting from their employment with the United States Attorney's office. Eighty-four percent of these threats related to specific cases.

Much is known about why people make threats. “[T]he threat, independent of any deed, stands alone unto itself. In the threatener's mind, the threat may well be sufficient, separate and distinct from any effort or even intent to carry it out. By the very act of making the threat, the threatener satisfies some primal need. It expresses his outrage; it is his plea for attention. The threat alone satiates his craving to have someone important pay him heed” (Calhoun, 1998, p. 36). Most people who make threats against public persons achieve release and satisfy their outrage by that act. Most who threaten do not attempt any physical approach or assault against the object of their anger.<sup>3</sup>

Dietz & Matthews (January, 1991) sampled 143,000 threatening or otherwise inappropriate letters to Hollywood celebrities that were archived by Gavin de Becker, Inc., a Los Angeles based security consultation agency. In a six year study they sought to identify features within such letters that would indicate a greater or lesser risk that the writer would attempt to physically approach the celebrity. They concluded there is no

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<sup>3</sup> This discussion of the relationship between threats and attacks relates to specific groups of victims: public officials and celebrities. The relationship between threats and attacks may be different for other groups, including victims of domestic violence.

association between threatening and approaching. The same researchers conducted a similar study, using as a data base the archives of the U.S. Capitol Police, to identify threatening letters and visits from letter writers to members of the United States Congress (Dietz & Matthews, Sep. 1991). The congressional study found a strong negative correlation between threatening and approaching. The study concluded, “Subjects who sent threats to a member of Congress were significantly *less* likely [than people who do not threaten] to pursue a face-to-face encounter with him or her.”(emphasis in the original).

The Exceptional Case Study Project (Fein & Vossekuil, 1999) found that less than ten percent of studied perpetrators made a direct threat to their target in advance. However, almost two-thirds of studied perpetrators confided their hostile intentions to members of their own family, friends, co-workers, or a written journal, letter, or note prior to their physical approach to the intended victim.

In his book, The Gift of Fear, Gavin de Becker, said, “It is a tenacious myth that those who threaten public figures are the ones most likely to harm them. In fact, those who make direct threats to public figures are far less likely to harm them than those who communicate in other inappropriate ways...Direct threats are not a reliable pre-incident indicator for assassination in America, as demonstrated by the fact that *not one successful public-figure attacker in the history of the media age directly threatened his victim first*” (emphasis in the original) (de Becker, 1997, p. 139).

Fein and Vossekuil also labeled as a “myth” the common notion that the persons most likely to carry out attacks against public figures are those who make direct threats. They found, instead, that “persons who *pose* an actual threat often do not *make*

threats, especially direct threats” (Fein & Vossekuil, 1998, p. 14). “No assassin or attacker communicated a direct threat about their target to the target or to a law enforcement agency before their attack or near lethal-approach” (Fein & Vossekuil, 1999, p. 330).

Calhoun (1998) found a sharp difference between people who threaten (howlers) and people who attack (hunters). “They are extremes: one an actor, one a talker; one a doer, one a writer. Between them is a huge chasm, a clear distinction. The hunters hunt and rarely howl; the howlers howl and only rarely hunt” (Calhoun, 1998, p. xix). Calhoun studied 2,996 threats reported to the United States Marshals Service between October 1, 1980 and September 30, 1993. Ninety-two percent resulted in no additional hostile act by the person making the threat (Calhoun, 1998, p. 51).

Similar results have been identified in other western countries. A study of 14 non-terrorist attackers on public figures in Germany between 1968 and 2004 identified only one case in which the attacker made a direct threat to the target (Hoffman, Meloy, Guldemann, & Ermer, 2011). A study of all (24) non-terrorist attacks on elected politicians in Western Europe between 1990 and 2004 found no evidence that any attack was preceded by a direct threat to kill (James, Mullen, Meloy, Pathe, Farnham, Preston & Darnley, 2007).

From the beginning of FY 2003 through the end of FY 2008, the U.S. Marshals Service recorded 5,744 inappropriate communications made to approximately 2,200 federal judges, and 5,250 U.S. Attorneys and Assistant U.S. Attorneys (U.S. Department of Justice, 2009). During this period, three documented attacks and ten attempts were made against these officials (McGovern, 2013, p. 7).

Section 401 of the federal Court Security Improvement Act of 2007, Public Law 110-177, required the U.S. Attorney General to report to Congress on threats against federal prosecutors and related support personnel. The report, transmitted to Congress on October 8, 2008, described “death threats, threats of harm, physical assaults, threatening letters, threats of damage to property and trespass, threats from violent organizations, racial threats by white supremacists, and Anti-Semitic remarks.” During 2005, 210 threats were made with no resulting assaults. During 2006 there were 162 threats and no resulting assaults. During 2007, 201 threats occurred with one resulting assault. From January through July 2008, 195 threats were recorded, with two assaults, one attempted assault, and one pipe bomb detonated near a federal courthouse (K. B. Nelson, letter to Congressional and Senate leadership, October 8, 2008, transmitting “Department of Justice Report on the Security of Federal Prosecutors”).

Why would a person who genuinely desires to succeed in an attack make a threat before mounting an attack? One young man who approached a public figure with a gun with an intent to kill explained to authorities, “If I had sent a letter the police would have come and arrested me. I didn’t want to be stopped then” (Fein & Vossekuil, 1999, p. 330). “The most likely tactical reason for a subject who stalks and attacks a public figure to not directly communicate a threat to the target is, of course, to enhance his probability of success” (Meloy, 2001).

These studies and observations do not establish that people who threaten can be safely ignored. A small percentage (about 8%) of those who made threats against the federal judiciary did attempt to attack (Calhoun, 1998, p. 51). “People make threats for a variety of reasons: to intimidate, to coerce, to express anger, to bring attention to

themselves, to get help, to force a change in their circumstances, to warn before they act, to be stopped” (Fein & Vossekuil, 1999, p. 330). If the intent of the person making the threat cannot be discerned and the content of the threat dismissed as mere bluster, then the possibility that the threatened violence may occur must be seriously considered.

Even threats that do not lead to violence often have a corrosive effect on the person threatened and the judicial process. Threats are upsetting to their recipients, the people who live and work near the recipients, and the people who care about the recipients. Threats cause people to fear. Threats disrupt the normal flow of life and work, and cause changes in behavior. Forty-eight percent of the Pennsylvania judges who were threatened changed their professional conduct because of the threat (Harris et al., 2001). Magnetic resonance imaging shows that the receipt of a threat triggers reflexive brain responses that interfere with the ability to perform intended tasks (Pichon, Gelder & Grezes, 2011). This latter study shows that the brain involuntarily disengages from volitional behavior in order to allocate resources to cope with perceived threats.

More predictive of an imminent attack than a verbal threat, however, is a symbolic action that occurs in close physical proximity to the intended victim that reveals the hunter is near. Slashed tires, an automobile broken into, a bullet left in the victim’s bed, a newspaper advertisement for an auction at the victim’s home, are all examples of suspicious activity that immediately preceded actual attacks (Calhoun, 1998, p. 76).

Laws outlawing threats are a recent phenomenon. Some researchers believe that such laws are a mistake. Dietz & Matthews (January, 1991) commented on laws prohibiting threats as follows:

With respect to inappropriate communications to entertainment celebrities, the presence or absence of a threat in communications is no indication whatsoever of whether a subject is going to pursue an encounter. Those who rely on the presence or absence of threats in making judgments about what to do are making a serious mistake. Unfortunately, this error is codified in the criminal law, which recognizes various types of verbal threats as unlawful but does not accord equal recognition to harassment without threats, even though the latter often poses an equal or greater danger of harm to persons or property.

In their study of threats to members of Congress, Dietz & Matthews (September, 1991) made similar observations:

Unfortunately, criminal law, which recognizes various types of verbal threats as unlawful, does not accord equal recognition to harassment without threats, even though the latter are more closely associated with pursuit by the mentally disordered, at least for members of Congress and Hollywood celebrities.

Calhoun and Weston (2009, pp. 113-114) assert that laws making threats criminal offer a false sense of security. Congress has enacted laws that impose criminal sanctions against those who threaten federal judges. By doing so, they have,

“drifted far away from what the research on intended violence was finding out about threats and attack-related behaviors...For example, federal law makes it a crime to threaten a federal judge. Yet, in over

3,000 threatening communications directed toward federal jurists between 1980 and 1993, no individual who threatened a federal judge ever actually attacked that judge. The pattern continued over the next 14 years...[I]f Congress passed the law criminalizing threats as a way for law enforcement to enhance security for federal jurists, it missed its mark.

In summary, laws making threats against public officials criminal are unlikely to reduce the number of physical attacks. Threats are not a typical part of a path to violence against public officials. Such laws may, however, be effective in reducing the number of threats, in accordance with criminology's classical theory, as hereinafter described.

### **What are the Costs of Courthouse Violence?**

“The lack of adequate funding is one of the primary reasons many courts have no formal court security” (American Judges Association, 1999). “The biggest challenge to effective courthouse security is the cost of providing it” (Constantine, 2007). These are commonly voiced complaints. In 2007, Edward A. Feiner noted that “Over the past ten years, the average cost of ‘security enhancements’ for public buildings has increased from about \$8.50 per square foot to over \$25 per square foot.” Technological and personnel intensive court security measures are expensive.

There is a cost associated with failure to provide appropriate court security. That cost is a state, county, and local responsibility. Following the 2005 shooting deaths of Fulton County, Georgia Superior Court Judge Rowland Barnes, his court reporter, and two others by an escaped prisoner in Atlanta, the Fulton County Commission approved

spending \$4.5 million for long-sought security upgrades at the courthouse. Additionally, the county settled a suit brought by the judge's widow for \$5.2 million and a suit brought by the daughter of the court reporter for \$5 million. Fulton County's insurance, capped at \$5 million per incident, was exhausted by the first settlement. In addition, the taxpayers of Georgia paid more than \$1.8 million for the state-funded defense of the indigent murderer.

The need for the legislative branch to fund the requirements of court security is addressed in *Citizens Have a Right to Safety in the Courthouse* (Constantine, 2007). The article describes the events of Thursday March 2, 1995 at the King County courthouse in Seattle, Washington. That morning no weapons detection devices were present at the courthouse entrance because of the county's financial situation and delay caused by a gun-rights advocate on the county council. A husband arrived at court for closing arguments in his divorce case. He approached his pregnant wife and two female friends sitting on a bench outside the courtroom. He took a 9 mm semiautomatic handgun from his briefcase and shot all three women to death. Within a few days the appalled county council approved an emergency allocation of \$412,000 for x-ray machines, metal detectors, and staff. The families of two of the murdered women sued the county alleging that the inadequate court security caused the deaths. The actions were settled upon the county's payment of \$1.6 million.

Courthouse violence, also, has a psychological cost. On May 5, 1992, during a divorce proceeding at the Clayton Courthouse near St. Louis, Missouri, the husband went on a shooting rampage. In less than ten minutes, he killed his wife; shot his own lawyer and his wife's lawyer; shot at, but missed the judge; and wounded three other

people who happened to be in the vicinity of the courtroom. A three-year longitudinal study was conducted of the reactions of courthouse staff, law enforcement personnel, attorneys, and others who were present during the violence (Johnson, North, & Smith, 2002). Six to eight weeks after the incident, 71 percent were suffering a wide range of psychiatric symptoms including anxiety, difficulty concentrating, and substance abuse. Five percent were diagnosed with post-traumatic stress disorder (PTSD). As is common with PTSD, some met criteria for a PTSD diagnosis at one year and three years after the violence. An assault on a single court official has a ripple effect that menaces other court employees (Calhoun, 1998, p. 53).

Following the sniper style shooting of one state district court judge, nine uninjured judicial colleagues were interviewed by researchers (Miller, Flores, & Pitcher, 2010) employing a constructivist self-development theoretical (CSDT) framework. CSDT postulates that trauma will cause individuals to experience distortions in their psychological needs for safety, esteem, intimacy, trust, and control. The theory had previously been used to examine reactions of various groups to trauma, but never before to assess stress in judges. The theory suggests that judges experiencing a heightened sense of vulnerability might be impacted in ways that could adversely affect the judicial process. The study found that all of the judges had responses to the shooting that could interfere with judicial functioning. Almost half of the judges expressed recognition that their fear of violence might affect their decision making (Chamberlain & Miller, 2009).

Exposure to an actual act of court house violence can cause continuing effects including debilitating PTSD and alcohol abuse (Johnson et al., 2002). Stress can lower

one's memory capacity, interrupt decision making, and increase stereotyping in decision makers (Chamberlain & Miller, 2009).

### **What has been the Response to Courthouse Violence?**

In response to courthouse attacks and urgent requests from state courts, the National Center for State Courts (NCSC), the Conference of Chief Justices (CCJ), and the Conference of State Court Administrators (COSCA) formed a Joint Committee on Security and Emergency Preparedness. Part of the mandate of the Joint Committee was a review of existing safety practices and needs. In 2003 the Joint Committee conducted a national survey to determine each state's concerns and recommendations. On March 16, 2005, the NCSC issued its survey-supported *Essential Ten Elements for Effective Courtroom Safety and Security Planning*. Those ten elements form the basis of a CCJ/COSCA Court Security Handbook published in June 2010 and revised in September 2012. The ten essential elements for court security and emergency preparedness are: (1) Operational Security: Standard Operating Procedures, (2) Facility Security Planning: The Self-Audit Survey of Court Facilities, (3) Emergency Preparedness and Response: Continuity of Operations, (4) Disaster Recovery: Essential Elements of the Plan, (5) Threat Assessment, (6) Incident Reporting, (7) Funding, (8) Security Equipment and Costs, (9) Resources and Partnerships, and (10) New Courthouse Design.

On April 21, 2005 the NCSC and the National Sheriff's Association jointly convened a National Summit on Court Safety and Security. More than 125 people from all branches of federal, state and local jurisdictions participated. A subsequent summit was held on November 17, 2005. The strategies developed at these summits are the

subject of a report, *A National Strategic Plan for Judicial Branch Security* (Casey, 2006).

The seven recommended strategies are:

1. Promote an active, visible and collaborative leadership role at all levels of the court system to ensure the safety and security of the nation's courts. For the state courts, this effort to make emergency preparedness an integral part of court operations at all levels of the court system should be led by the Conference of Chief Justices and the Conference of State Court Administrators.

2. Establish a national coalition on court security to identify effective practices, share practical tools, provide advocacy, and discuss policy issues. The coalition should build on the initial work of the Security Summit and include representatives from across the three branches of government and relevant private organizations.

3. Build and maintain an interactive resource center for information on court security and safety. The resource center will capture and catalog existing information on court security and will provide a dissemination vehicle for the work of the coalition.

4. Develop a national court security incident-reporting database; and explore alternatives for a threat assessment and response system at the local, state, and national level.

5. Systematically address the education and training needs of all parties involved in court security and safety efforts.

6. Provide technical assistance to support state and local jurisdictions' efforts to enhance court security.

7. Develop a methodology to determine court security needs.

The Conference of Chief Justices and the Conference of State Court Administrators, through their Joint Security and Emergency Preparedness Committee adopted Resolution 17 on August 3, 2005, in support of the importance of court security. In part, the resolution expressed the conferences' agreement "to take those actions necessary to raise the visibility of the vital importance of court security needs with the public, the court community and our intergovernmental partners."

Another response to court security concerns involves the introduction or enhancement of physical changes at courthouses. A representative study of such changes, conducted by the New Mexico Administrative Office of the Courts, discusses law enforcement officer presence, lighting, restricted access systems, movement and handling of prisoners, weapon-screening equipment, duress and intrusion alarms, and court appearances by video (Greacen & Klein, 2001). Other well considered measures include screening of in-coming mail; courthouse surveillance systems; single points of entry; separate circulation systems within the courthouse for judges, the public, and prisoners; building setbacks; bollards, and the use of ballistic glass.

Following the March 2005 murder of the mother and husband of Joan Lefkow, a U. S. District Court Judge for the Northern District of Illinois, at her home by an unhappy litigant, the Office of Inspector General surveyed federal judges and determined that only 16% felt very secure at their homes. The Administrative Office of the U.S. Courts asked the judges if they wanted such systems installed at their homes. More than 1,600 responded that they did. Congress appropriated monies for the installation of intrusion alarm systems at the homes of each of the approximately 2,200

federal judges. The systems have been installed, and they are continuously monitored (U.S. Department of Justice, 2007b, pp. ii, vii, 68).

Historically, most law enforcement response to courthouse violence has been reactive. Traditional police work involves the investigation of a committed crime, the identification and arrest of the perpetrator(s), and the collection and presentation of evidence necessary for a conviction in court. In response to incidents of terrorism in the United States, there has been an increase in preventive law enforcement practices that include threat assessment and early intervention.

Threat assessment is a protective intelligence capacity developed by the Secret Service and currently in use by the United States Marshals Service to protect the federal judiciary. The process includes: (1) identifying individuals or groups who appear to have an unusual or inappropriate interest in a potential target, (2) investigating to determine if the person or group poses a risk and, (3) developing and implementing a plan to manage the risk. In addition to properly addressing each arising threat in the appropriate manner, a by-product of this process is a database with predictive abilities (Jenkins, 2001).

Threat assessment insights and methods are consciously informed by environmental, rational choice, and situational crime prevention theories of criminology. The focus is on the decision making processes of the perpetrator which allows law enforcement “to design interventions that alter one or more aspects of the behavioral, social, and physical settings that are critical to the completion of the violent act” (Weiner & Hardenbergh, 2001, pp. 29-33).

Several studies describe the effectiveness of the process in detail and the appropriateness of its use for protection of the judiciary (Jenkins, 2001; Fein &

Vossekuil, 1998; Weiner & Hardenbergh, 2001). The U.S. Marshals Service is presently seeking to train at least one law enforcement officer in each state in the threat assessment process. Because of the number of state judicial officers (over 30,000), the temporary nature of state judicial tenures, and the costs of implementation, threat assessment is a currently unavailable security measure for most of America's judges.

### **Are Court Security Solutions Amenable to Universal Application?**

The National Center for State Courts, the Conference of Chief Judges, the Conference of State Court Administrators, and the National Sheriff's Association have made court security recommendations applicable to all judicial systems within the United States. The studies, surveys and statements cited in this paper describe court security considerations in terms that are applicable to every jurisdiction. Some describe the universality of the problem and its solution directly. "[F]unding formula and recommended ratios for staffing...need to be addressed on a national level to assist our courts in their local and state funding efforts" (Pines, 2007). "Every American courtroom, courthouse, and judicial facility, no matter how big or how small, has the identical threat potential, and the governmental entity has the identical corresponding task of threat reduction, liability insurance, and public accountability" (Zaruba, 2007).

### **What Limitation Exists on Knowledge about Court Targeted Violence?**

Every consideration of court security concerns is hampered by a lack of basic data. "Often there is a complete lack of compiled data regarding actual security risks. While the U.S. Marshals Service keeps detailed records of security incidents in the federal courts, there is no national database of such types of incidents maintained for state court systems. At the local level, record keeping is often limited to police reports that

only record arrests and ignore those courthouse incidents that required intervention but did not result in an arrest. Because of the lack of hard data, security planners may be forced to base their decisions on anecdotal reports of risk” (Geiger, 2001). As a result “there is no systematic research that adequately conceptualizes, let alone explains, the variety and extent of violence against the judiciary and judicial officials” (Weiner & Hardenbergh, 2001, pp. 23-37). “[W]hat is most needed for effective prevention of attacks against judges and their courts is empirical research on incidents of targeted judicial violence” (Vossekuil, Borum, Fein, & Reddy, 2001).

A survey of inappropriate communications during FY 2007 and FY 2008 showed that about 25% of threats received by federal judges, U.S. Attorneys, and Assistant U.S. Attorneys were not reported to the U.S. Marshals Office. The primary reason for lack of reporting was the threat recipient’s belief that the threat was not serious. Threat assessment professionals recognize that lack of reporting reduces their ability to provide appropriate protection, and made it difficult to identify patterns of escalating behavior that lead to violent attacks (U.S. Department of Justice, 2009, pp. 14-15).

Studies about intended attacks on the judges and the judicial system are few, and the studies that do exist are limited because, outside of the federal courts, very little information about such attacks is collected. The federal Court Security Improvement Act of 2007 proposed a partial solution to the dearth of data about court violence. Section 303 of the Act authorized the U.S. Attorney General to make grants to the highest State courts for the purpose of establishing and maintaining threat assessment databases. The grant authorization has not been funded.

## **Part Two: Criminological Theories and Their Implications for Reducing Court Targeted Violence**

Optimally, new legislation should be formulated in response to empirical studies that demonstrate that it will be effective in achieving the result intended by the legislature. In many areas of legislative interest, including court targeted violence, such studies don't exist. In this circumstance, criminological theories may be the most useful available guide for formulating worthwhile laws.

Criminological theories aim to explain why crime occurs. In so doing, they also suggest interventions that might be used to prevent crime. In effect, all theories of crime are theories of crime prevention. Because no single theory explains every motivation or circumstance that leads to crime, criminologists recommend that those who are interested in preventing crime should consider multiple criminological approaches (Cornish & Clarke, 1986, p. vii). This part reviews aspects of several well regarded criminological theories and discusses their implications for preventing court targeted violence.

### **Classical Theory**

#### **Overview of classical theory.**

Every organized society has a criminal justice system that punishes offenders and attempts to influence the behavior of potential offenders (Robinson & Darley, 2003). The use of criminal law and punishment to deter crime is known to criminology as classical theory. Cesare Beccaria (1738-1794) in Italy and Jeremy Bentham (1748-1832) in England, are frequently credited as its originators.

Beccaria's influential book, On Crimes and Punishments (1764), proposes people are rational and will, accordingly, make choices to maximize their pleasure and

minimize their pain. In pursuit of pleasure, men will be attracted to crime unless they are deterred by the threat of punishment. Beccaria advanced the following arguments on law and punishment:

- Individuals and society have a mutually beneficial contractual relationship. In consideration of the protection against chaos that the state affords, individuals surrender some liberty and give to the state the power to create law and punish those who violate the law.
- Individuals rationally choose all behavior based upon a calculation of the benefits and detriments they will experience.
- Law should make criminal only those acts which are injurious to society. Individual freedoms should be restricted by law no more than is necessary to avoid such injuries. Legal restrictions that are imposed which are unnecessary to this purpose will increase, rather than decrease, crime.
- Punishment should be imposed to deter or prevent crime. Punishments are “obstacles” that restrain men from committing crimes.
- Punishment should be imposed to prevent the criminal from further offense and to educate the members of society so that they will not offend.
- The amount and duration of punishment should be based upon the crime committed, not the characteristics of the perpetrator.
- The severity of punishment for crime should be determined in proportion to the harm done to society, not in relation to the status of the victim.

Jeremy Bentham, an 18<sup>th</sup> Century English philosopher, jurist, and social reformer, who influenced the U.S. Constitution and Bill of Rights, recorded similar ideas.

He conceptualized all human behavior to be the result of a “hedonistic calculus,” that is, a rational balancing of pain and pleasure (Bentham, 1780, pp. 11, 38-41). Bentham proposed that the general object of all criminal laws and the imposition of all criminal penalties is to prevent mischief (Bentham, 1780, p. 158). The role of government is to promote the happiness of the society, by punishing and rewarding. The severity of punishment to be exacted for criminal offenses should be determined “in proportion as an act tends to disturb that [society’s] happiness” (Bentham, 1780, p. 74).

Over centuries, classical theory’s influence on public policy has waxed and waned. Currently, it is generally well regarded. A modern proponent of classical deterrence theory, Elio Monachesi, wrote that “The essential end of punishment is...to prevent offenders from doing other harm to society and to prevent others from committing crimes” (Monachesi, 1955). Emphasizing the general deterrence value of legal punishment for crime, he went on to say, “Punishment is thus looked upon as an educative process and the types of punishment selected and how they are imposed should always be done so as to make the greatest impact and the most enduring impression upon all members of society, while inflicting the least pain on the body of the offender” (Monachesi, 1955).

Classical theory offers an easily understood explanation and solution for crime: crime occurs when the benefits of an offense outweigh its costs; crime will be deterred by increasing its costs. Classical theory’s concepts are a central aspect of America’s present criminal law, as evidenced by the Model Penal Code’s statement that a general purpose of its criminal sentencing provisions is to prevent the commission of offenses (American Law Institute, 2013).

Classical theory argues that compliance with criminal law is caused by the threatened punishment for violation. The expected punishment has two aspects: the probability of punishment and the severity of punishment. It is important for policy makers to know which of these aspects is more determinative of the would-be criminal's decision to avoid offense so that the most effective enforcement strategies can be implemented and scarce public resources can be optimally allocated. A seminal work in this area was written by an economist, Gary Becker. Becker (1968) proposed that the restraining power of punishment will be more or less effective depending upon the individual's attitude toward risk. Those who enjoy risk are more deterred by the increases in the probability of detection than they are by increases in the severity of punishment. Those who abhor risk are more responsive to the severity of punishment.

The consensus of empirical criminological literature supports the concept that increases in the probability of punishment have a more significant deterrent effect than do increases in the severity of punishment (Friesen, 2012). Classical theory is not, however, universally well respected. A meta-analysis (Pratt & Cullen, 2005) of 214 empirical studies sought to assess the comparative empirical validity of major theories of crime. Across all studies, on a macro-level, strain theory and routine activity theory were found to have moderate impact on crime. Deterrence and rational choice theories were found to have a weak influence on behavior.

There is no currently reported empirical study testing the application of classical theory to court targeted violence. However, potentially analogous studies examine the rise of violent attacks on abortion clinics and abortion professionals in the early 1990s. In response to the violence, several states enacted statutes imposing criminal

penalties for such attacks. Contrary to theoretical predictions, one study found such laws had no deterrent effect on crime (Pridemore & Freilich, 2007). It may be, however that violent acts motivated by radical ideologies, including anti-abortion or anti-government zealotry, may be different from common crime and may not be deterred by policies designed to prevent common crime. Individuals acting on behalf of a cause may not be responsive to statutes promising punishment. “Not only are they unlikely to be deterred, but they may respond to these statutes with increased violence and harassment because they perceive they are losing a battle that to them is about life and death itself” (Gruenewald & Pridemore, 2012).

**Implications of classical theory for reducing court targeted violence.**

1. *Attacks against the judicial process can be deterred by imposing civil or criminal punishments for such attacks.*

Research indicates that few perpetrators of courthouse violence suffer any mental illness (Calhoun, 1998). Accordingly, most such perpetrators are rational decision makers who can be expected to balance anticipated costs and benefits while contemplating criminality. Classical theory’s premise that crime can be deterred by imposing punishments for unwanted behaviors, if correct, indicates that penal and sanctioning civil statutes will exert a positive influence on those disposed to commit courthouse violence.

2. *Participants in the judicial process warrant no special treatment in law.*

Many states have laws that enhance penalties for particular crimes against judges, most often assaults and batteries. Beccaria instructs that penalties should be determined by a crime’s consequences to society, not by the importance of the person

offended. Judges, as individuals, warrant no special treatment in law. A crime against a judge or another involved in the judicial process warrants punishment in excess of the punishment afforded for the same crime committed against any individual only if the crime was perpetrated because of the victim's role in the judicial process.

*3. All attacks against the judicial system which are determined by a legislature to be impermissible should be punished.*

Laws that enhance criminal penalties for assaults against judges are too narrowly focused in relation to the behavior proscribed and the persons protected. Crimes that might interfere with the operation of the judicial process include assault, rape, murder, bombing, arson, filing false liens, etc. Research shows that the victims of courthouse violence are judges, law enforcement officers, attorneys, court staff, family members, and bystanders (Swensen, 2010). It is the legislature's province to determine which acts shall be considered as crimes. Crimes of any nature perpetrated against any person, which are attacks against the judicial process, should be punished.

*4. Statutes should increase the costs and reduce the benefits of attacks against the judicial process.*

Statutes which simplify the removal from the public record of false liens, harassing law suits and other abusive filings against participants in the judicial process will reduce the benefits of such attacks to their perpetrators. Statutes imposing civil and criminal penalties for such attacks will increase the costs to their perpetrators. Classical theory suggests that either type of statute will reduce the occurrence of such attacks.

5. *Attacks on the judicial process warrant punishment in addition to any punishment that is warranted for injury to any person or property.*

Beccaria instructs that the penalty imposed for crime should be determined in relation to the harm done to society, not the harm experienced by the victim. It follows that an attack on the judicial process should be viewed as more than merely an attack on an individual. It is, in addition, an assault on the operation of the judicial branch of government. A punishment for injury to society is warranted, in addition to any penalty that might be imposed for harm experienced by any individual victim.

6. *Statutes that describe a specific intent necessary for criminal treatment of an attack on the judicial process should describe each of the intents identified by research as motivating such attacks.*

Many state statutes describe narrowly the intent necessary to make criminal an attack on a judge. Punishment should be dependent upon the perpetrator acting with any of the motivations for courthouse violence that have been identified by the research, including an intent to disrupt, influence or otherwise adversely affect the judicial process or an intent to retaliate for past judicial actions (Weiner & Hardenbergh, 2001. p.27; McGovern, 2013, pp. 3, 10-11).

## **Rational Choice Theory**

### **Overview of rational choice theory.**

Rational choice theory shares classical theory's basic premise that most crime is not abnormal, irrational, or unpredictable behavior but is, instead, like most human conduct, the result of a rational balancing of perceived costs and benefits (Cornish & Clarke, 1986, p. v; Clarke & Cornish, 2001, p. 24). The most prominent proponents of

rational choice theory, Derek Cornish and Ronald Clarke, built upon this foundation and proposed “situational” crime prevention. They argued that offenders are responsive to changes in the environment which reduce the opportunity for crime, increase the effort necessary to commit crime, and increase the risks associated with committing an offense (Clarke & Felson, 1993, p. 4). No matter how much a would-be perpetrator is inclined to offend, if crime can be made more difficult and less beneficial, it will become a less likely rational choice. Rational choice theory was consciously constructed to be policy relevant. It is intended to identify crime preventing interventions (Cornish & Clarke, 1986, pp. 1, 218).

Rational choice theory deemphasizes the “background factors” such as upbringing, class, gender, intelligence and temperament that determine the values, attitudes, and personality traits that dispose an individual to crime. The focus of the rational choice theory is on the decisions and judgments that lead to a specific criminal event, such as the selection of a particular victim, of the type of crime to be committed, of the location of the crime, and of the means necessary to avoid detection and arrest. This methodology allows consideration of a narrow sequence of choices that may be subject to management by the use of choice-structuring rewards and punishments (Cornish & Clarke, 1986, pp. 3-4). Court security experts, Neil Alan Weiner and Don Hardenbergh (2001, pp. 29-33), acknowledge the suitability of this approach by noting that it is consistent with the threat investigation, assessment, and management strategies used by the U.S. Secret Service and the U.S. Marshals Service.

The rational choice perspective permits law enforcement and legislators to identify “fruitful points for intervention” (Weiner & Hardenbergh, 2001, pp. 29-33) and

to devise manipulations that will increase the costs and decrease the benefits of decisions critical to the completion of an intended crime. Victims can be made less vulnerable. Access to information and instruments necessary to committing crime can be restricted. Locations can be made safer.

Presently, no empirical study of targeted court violence using rational choice theory has been reported. Somewhat analogous studies have been conducted in relation to airline hijacking (Dugan, LaFree, & Piquero, 2005). This study examined 1,101 aerial hijackings which occurred between 1931 and 2003. As with targeted court violence, most of the hijackings were planned in advance. Some were perpetrated by common criminals; others by zealots. The study concluded, as predicted by rational choice theory, that non-terrorist hijacking attempts were reduced in frequency by measures taken to increase the certainty of apprehension and punishment, such as the use of metal detectors and the presence of law enforcement officers at passenger checkpoints. Legislation imposing severe criminal penalties had a significant deterrent on non-terroristic hijacking but no effect on terroristic hijackings. Other measures of which the public was less likely to be aware, like tighter baggage and customer screening, had no significant effect on the rate of hijacking. The study also found that successful hijackings were contagious, that is, hijacking rates significantly increased after a series of hijackings loosely clustered in time, but only when those hijacking attempts succeeded. Each of these findings are suggestive of an understanding of courthouse violence.

**Implications of rational choice theory for reducing court targeted violence.**

1. *Court targeted violence will be reduced if its costs to the offender are increased.*

That costs of crime are increased if it is made more difficult (Torgler & Frey, 2013). The amount of protection provided to a participant in the judicial process will increase the cost of attacking that individual and will, as a result, decrease the likelihood of attack (Torgler & Frey, 2013). Bailiffs, security conscious building design, and alarm systems are elements of protection that increase the cost of crime. Limiting access to the residential addresses of judges makes crime at judicial residences more difficult.

2. *Court related violence will be reduced if the benefits to the offender are reduced.*

The benefits of crime can be reduced by dissuading litigants from forming a belief that seeking revenge against the court is justified. If litigants perceive they have been treated fairly, they have no motivation to harm the judge to obtain justice. Judicial education that instructs judges how to convey to litigants that they are being treated fairly and with respect will reduce crime against judges.

3. *Behaviors recognized as presaging violence are fruitful points for intervention to prevent crime.*

In other areas of law, pre-violence behaviors are subject to civil and criminal interventions. For example, in the context of domestic violence, harassment and stalking warrant the issuance of protection orders or the imposition of criminal penalties. Civil involuntary mental health commitments are, in certain circumstances, available to reduce

the risk of harm to self or others. Similar remedies should be examined to determine their usefulness in court related situations

4. *Rational choice theory has greater implications for targeted, court violence than for non-targeted violence.*

Targeted violence requires planning and sustained efforts, as opposed to spontaneous, non-targeted violence. “This is true both because persons who can plan are also likely to be able to calculate self-interest, and because the longer the planning stage the greater the opportunity for self-interest to intervene and override impulsiveness or other forces toward irrationality” (Robinson & Darley, 2003, p. 1000).

5. *Decisions issued by panels of judges or by juries are less likely to provoke targeted court violence than decisions made by a single judge.*

The primary motivations for attacks against judges are to influence judicial proceedings or to obtain revenge for past judicial action (Weiner & Hardenbergh, 2001, p. 27; McGovern, 2013, pp. 3, 10-11). Rational choice theory suggests that when decision making is shared among several persons, the marginal benefit of killing anyone of them is reduced because future decision making will not necessarily be changed by a single murder (Torgler & Frey, 2013, pp. 362-363, 380-381). It follows that the benefit of such attacks and, thereby, their occurrence, should be lessened in cases in which decision making authority resides not in a single judge, but by a panel of judges or a jury.

## **Strain Theory**

### **Overview of strain theory.**

Strain theory, one of the leading contemporary approaches to understanding crime, derives from the writings of R. K. Merton, a sociologist (Merton, 1938). Merton

observed that societies define goals to which its members aspire. In America, for example, the accumulation of wealth is a culturally defined goal. Societies also define acceptable means of achieving cultural goals. In America, conventional paths to wealth lead through educational, occupational, or entrepreneurial accomplishment. Success is viewed as obtaining acceptable goals via acceptable means. Some individuals are handicapped in their pursuit of success by such factors as lack of education, few economic resources, and discrimination. Society's demands on such persons are incompatible. They are acculturated to desire economic affluence while they are largely denied effective opportunities to realize such affluence. This social order leads to frustration or "strain." For some, this strain is intolerable. One of several options for escape from this intolerable situation is to pursue the inaccessible goal of affluence through crime.

As originally conceived, Merton's strain approach was intended to explain ordinary property and personal crime among the disadvantaged and poor. Robert Agnew's general strain theory expanded the concept of strain to include all "relationships in which others are not treating the individual as he or she would like to be treated" (Agnew, 1992, p. 48) and broadened its application to include other crimes committed by members of any social class (Agnew, 1992, 2010). Agnew recognized that there are hundreds of types of strain people commonly experience, ranging from the barely consequential hassles of daily life to chronic, stressful, life-altering events (Agnew, 2001, p. 320). Strain can be personally or vicariously experienced or anticipated (Agnew, 2006, pp. 10-12). Not everyone's emotional response to a given strain is the same. Strain increases the likelihood of negative emotions like anger, frustration, depression, and fear

(Agnew, 2006, pp. 31-36). Negative emotions create pressure for corrective action (Agnew, 2006, p. 29). People respond to, or cope with strain in a variety of ways. Most often, people adjust to the strain by cognitive processes that minimize its adversity (Agnew, 2001, p. 326). They file complaints, meditate, exercise, or focus on another aspect of their lives. Some people, however, are less able to cope legally with strain. Some people seek to avoid strain by abusing substances or theft. Others who are disposed to crime, if the costs of crime are low, may respond to strain in a violent manner (Agnew, 2006, pp. 17-18). Of particular significance to court related stresses, some attempt to escape from lawful incarceration and, some pursue revenge by threatening or attacking the judge perceived to be responsible for their strain.

Agnew identified four characteristics of strain which are likely to lead to a criminal response:

1. The first characteristic of strain that is most likely to lead to crime is that it is perceived by its sufferer to be of high magnitude (Agnew, 2001, pp. 332-335).

The magnitude of a strain refers to its severity, the extent to which it is disliked and negatively affects the sufferer's life. The greater the magnitude of a strain, the more likely it will lead to crime (Agnew, 2006, p. 58). Factors that affect a person's subjective perception of the severity of the strain include its anticipated duration, frequency, recency, and the extent to which the strain threatens the person's core goals, needs, values and activities (Agnew, 2006, pp. 59-61). Strains that occur in court are often of high magnitude, involving an individual's freedom, assets and most intimate family relationships for extended periods of time and, often, for life. Because the passage

of time works to lessen the amount of perceived strain, recent strains usually have a greater impact on judgment than older strains (Agnew, 2001, p. 334).

2. The second characteristic of a strain likely to cause crime is its association with low social control (Agnew, 2006, pp. 65-68, 100).

This means that the likelihood of criminal response to strain is increased if the person experiencing the strain has weak attachments to conventional institutions, like school or employment, or to other people who exhibit conventional behaviors (Agnew, 2006, p. 65-68). Those without bonds to non-criminal society will disappoint no one and have little of value to lose if they commit crime.

3. The third characteristic of strain most likely to cause crime is that the strain creates some pressure or incentive to engage in criminal coping (Agnew, 2006, 68-70, 100-102).

Some strains cannot be resolved by legal means, such as appeal to a higher court. Some strains are associated with exposure to others who encourage criminal response, like the radical environmental groups in the 1960s or, more recently, anti-government militias that declaim the legitimacy of the courts and urge criminal interference (Agnew, 2006, pp. 68-70, 100-102).

4. The fourth characteristic of strain that makes it likely to lead to crime is that it is perceived by its sufferer as unjust (Agnew, 2001, pp. 327-332).

Research shows there is a strong link between perceived unjust treatment and anger (Agnew 2001, p. 327). Anger increases the likelihood of crime, including violent crime, through several mechanisms: a) it creates a strong need to correct a perceived injustice; b) it disrupts thought processes and, thereby, impedes noncriminal coping; c) it

lessens concerns about the costs of crime; and, d) it creates a desire for revenge (Agnew, 2001, pp. 327-328; 2006, p. 33).

Agnew (2001, pp. 329-331) describes that the likelihood an individual will perceive that he has been treated unjustly will increase if:

- a. He believes the strain was caused by the voluntary and intentional behavior of another and not by his own behavior or the operation of impersonal forces like the law.
- b. He believes his strain was undeserved.
- c. The strain involved treatment he perceives as disrespectful, inconsiderate, or aggressive.
- d. He believes he suffered procedural injustice in any of the following manners:
  1. He had no voice in the decision making that resulted in his strain.
  2. He does not respect those who inflict his strain.
  3. He does not trust those who inflict his strain--believing them to be biased or dishonest.
  4. He believes those who inflicted his strain relied upon inaccurate or incomplete information.
  5. He believes that his treatment is different from what he experienced in past, similar circumstances, or is different from the treatment afforded to others.
  6. He believes he was treated without politeness and respect.

7. He believes the decision-making process he experienced was incompatible with fundamental moral and ethical values.
8. No rationale was given for the decision that was made.
9. There are no mechanisms available to correct bad decisions.

In summary, Agnew proposes that four characteristics are necessary for any strain to lead to crime: (1) the magnitude of the strain, (2) the litigant's low social controls, (3) the pressure to engage in criminal coping and (4) the litigant's perception of injustice. Agnew argues that the absence of any one of these characteristics renders strain unlikely to lead to crime (Agnew, 2001, p. 70).

The nature of the judicial system insures that the magnitude of the strains it creates will often be high. Making decisions to take a person's wealth, liberty, or children are the what courts often do. Courts do not have significant power to alter a litigant's social controls or association with groups that foster criminal behavior. Courts do have the power to influence every litigant's perception of justice or injustice in the decision making process.

Findings similar to Agnew's about the importance of focusing on the litigant's perception of justice as a mechanism to reduce courthouse violence have been advanced by other criminologists. John Braithwaite observes that criminal punishments can be applied in either a "reintegrative" or a "stigmatizing" manner. Reintegrative punishment focuses on the shame of the act being punished. Lower future crime rates result from reintegrative punishment because the offender is not excluded from the society but is alerted to the certainty for future disapproval of similar acts. Stigmatizing punishment focuses shame on the perpetrator of the criminal act. Stigmatizing punishment "creates

outcasts with no stake in conformity, no chance of self-esteem within the terms of conventional society.” Stigmatizing punishment makes attractive subcultures that reject authority, offer negative role models, and provide access to information on the techniques for engaging in criminal behavior. Higher crime rates result (Braithwaite, 1989).

Criminologist Lawrence W. Sherman (1993, pp. 460-461) suggests that individuals find imposed sanctions to be unfair if the sanctioning authority acts with disrespect or if the sanction imposed is arbitrary, excessive, or otherwise unjust. Sherman finds that unfair treatment causes individuals and groups to become angry and react defiantly, and perhaps violently, against the sanctioning authority. Court security experts Weiner and Hardenbergh (2001, p. 29) make almost identical observations, “Basically, when judicial officers are disrespectful, in fact or in perception, and, more galling yet, mete out justice tainted by unfairness, also in fact or in perception, violence is a likely consequence, especially given the high stakes involved, again in fact or in appearance.”

Authorities gain the cooperation of the public in one of two ways: either through the threat of punishment or by the public’s recognition of an authority’s legitimacy (Tyler, 2006, p. 393). People view judges as legitimate if they believe their actions are consistent with fair procedures (Tyler, 2006, p. 382). “A process in which litigants feel that they have the opportunity to express their point of view fully and in which the decision maker is perceived as having listened to and considered their side’s arguments will promote a sense of fair treatment and thus a sense of satisfaction with the court experience” (Casper, Tyler, & Fisher, 1988, p. 486).

Several non-criminologist writers concerned with the role of the courts in society have found it useful to discuss six criteria of procedural fairness: 1) representation, 2) consistency, 3) impartiality, 4) accuracy, 5) correctability, and 6) ethicality. Representation is the opportunity to present, and to have the decision maker consider, one's arguments. Consistency refers to similarity of treatment among similarly situated persons. Impartiality refers to decision making without the influence of any bias about a party in relation to the outcome of the matter before the court. Accuracy involves a public consideration of the matter at issue in reliance on reliable and valid information. Correctability is a mechanism for appeal of decisions thought to be unfair or incorrect. Ethicality refers to the treatment of people with respect, dignity, and politeness (Leventhal, 1980; Tyler, 1990, pp. 118-119; Paternoster, Brame, Bachman, & Sherman, 1997).

Research demonstrates that procedural justice suppresses subsequent violence and recidivism. "When police acted in a procedurally fair manner when arresting assault suspects, the rate of subsequent domestic violence was significantly lower than when they did not" (Paternoster et al., 1997). A dominant predictor of peoples' willingness to comply with the law and cooperate with the police is whether the police are perceived as exercising their authority fairly, with respect, and in an unbiased fashion (Sunshine & Riley, 2003, pp. 534-536). Unfairness in decision making leads to alienation, defiance, and noncooperation (Sunshine & Riley, 2003, p. 514).

Research shows that criminal justice officials causing strain will not be considered to be unjust if they (1) are consistent, (2) impose punishment contingent on negative behavior, (3) are not excessive in relation to the infraction, (4) are not overly

strict and, (5) are not verbally or physically abusive. Strain is unlikely to result in a criminal response if it is perceived to be deserved, administered fairly by a legitimate authority, and not in an aggressive or disrespectful manner (Sunshine & Riley, 2003, p. 340). Unless strain is perceived to be unjust, it is unlikely to lead to a criminal response (Agnew, 2006, pp. 61-62).

**Implications of strain theory for reducing court targeted violence.**

*1. Courts should be conscious, in every case, of the factors known to cause parties to believe the decision making process is fair or unfair.*

The applicability of strain theory to court proceedings has been recognized (see Paternoster et al., 1993, 193-194). Research indicates that most attacks against the judicial process are related to specific litigation (Calhoun, 1998; Swensen, 2010). Strain theory shows that eliminating the participant's perception of injustice in a decision making process will substantially reduce the likelihood of a criminal response. Reducing the perception of injustice in court proceedings will reduce the amount of court related violence. There is room for substantial improvement. A survey conducted by the National Center for State Courts during the spring of 2000 reported that 57% of the general public believe that court procedures are "always" or "usually" fair. Disturbingly, among people who had been litigants within the previous year, the percentage fell to 43% (Warren, 2000).

*2. Mediation, restorative justice conferences and other non-adversarial techniques of dispute resolution lessen court targeted violence.*

A litigant's perception of procedural injustice can be moderated, in some cases, by using alternatives to traditional, confrontational litigation practices. Mediation;

restorative justice conferences; and other non-adversarial, dispute resolution techniques give litigants a greater opportunity to participate, to be heard, and to observe that an authority figure is hearing and responding to their concerns (Burke & Leben, 2007). Such processes are viewed by litigants as procedurally fairer than trials and, as a result, they lead to greater decision acceptance (Tyler, 2006, p. 380).

*3. Judicial education, appointment of counsel, law libraries, self-help centers, efficient appeal procedures, and court ordered anger management counseling can reduce court targeted violence.*

Court practices that will likely be perceived as unjust can be tempered or eliminated by judicial education that includes instruction on how to instill the perception of procedural fairness in the courtroom and in written decisions (Burke & Leben, 2007).

A litigant's belief that he is being treated unjustly and that he is unable to achieve his litigation goals can be addressed by providing the litigant with assistance in navigating the judicial process. Such assistance might include access to a law library, the operation of a self-help center for self-represented litigants, the availability of instructive materials and forms, or the appointment of counsel. In order to have the greatest impact on courthouse violence, services should be focused on those participating in the types of litigation that result in the greatest level of violence. Research shows that the highest level of court targeted violence occurs in family law cases, including divorce, alimony, child custody, child support, and domestic violence (Swensen, 2010). The second highest level of court targeted violence occurs in cases involving an in-custody prisoner (Swensen, 2010).

A party's belief that he is unable to achieve his desired outcome can be assuaged by providing a simplified, faster appeal procedure for those types of cases that account for the greatest amount of courthouse violence.

Mandatory participation in anger management should serve to increase the likelihood that a disgruntled litigant will select a non-violent means of adapting to disappointment (Agnew, 2006, pp. 187-188).

### **Routine Activity Theory**

#### **Overview of routine activity theory.**

In a seminal work, Lawrence E. Cohen and Marcus Felson (1979) proposed a routine activity theory of crime that is one of the most widely known and influential of contemporary criminological theories. Routine activity theory differs from many other theories of crime in that it discounts the idea that crime is explained by either the motivations or characteristics of the criminal or the pathological conditions of the society. Instead, routine activity theory focuses on the nature of criminal events and the prerequisites for their occurrence. Cohen and Felson argue that for crime to occur, three elements must co-exist in time and space: 1) an "offender" with both criminal inclinations and the ability to carry out those inclinations, 2) a person or object providing a "suitable target" for the offender, and 3) the "absence of guardians" capable of preventing a criminal act. If any one of these components is lacking, they contend, crime cannot occur. Cohen and Felson observe that the convergence of these elements is not unusual. Such convergence routinely occurs during normal human activity, hence the theory's name.

A motivated offender is a person who possesses both criminal inclinations and the ability to commit the crime. Cohen and Felson do not analyze why individuals are inclined criminally. They assume the existence of inclined offenders.

A suitable target is any person or thing likely to be attacked by the offender. The offender determines if the target is suitable by considering such factors as the physical capacity of the target or the guardian to resist with whatever skills, weapons and protective measures (locks, alarms, dogs, etc.) they employ. Suitable targets increase the benefits of crime (Cullen & Agnew, 2006, p. 428).

A capable guardian can be a law enforcement officer or, more commonly, a neighbor, friend, relative, bystander, or other person who, by mere presence, dissuades the occurrence of a crime (Clarke & Felson, 1993). A guardian may be someone present to supervise the offender, the target, or both (Cohen & Felson, 1979, p. 590). Capable guardians increase the costs of crime (Cullen & Agnew, 2006, p. 428).

As originally conceived, routine activity theory applied to “direct-contact predatory offenses” in which an offender “definitely and intentionally takes or damages the person or property of another” (Cohen & Felson, 1979, p. 589). Research has subsequently confirmed the applicability of the theory to a wider range of crimes (Cullen & Agnew, 2006, p. 428).

Various criminologists following routine activity models suggest approaches to combating crime by changing the elements of criminal “opportunity.” Ronald V. Clarke (1992, 1995) proposes that the opportunities for crime can be reduced by: (1) increasing the effort required to commit crime; (2) increasing the risks of committing crime; and (3) reducing the rewards of crime. Similarly, Marcus Felson suggests practical

strategies for reducing the opportunity for crime. He describes using (1) natural strategies, such as incorporating safety features into building design; (2) organized strategies, such as the use of guards; and (3) mechanical strategies, such as surveillance cameras, security lighting and alarm systems. These are standard features of modern courthouse design.

Another proposer of situational crime prevention techniques based upon routine activity theory is John Eck. Eck (2005) described a “crime triangle” made up of the three elements: (1) an offender, (2) a target, and (3) a place. Each of these elements must converge for crime to occur. Potential offenders are subject to the control of “handlers.” These are often family members or friends involved in positive social relationships with the potential offender. Potential offenders sometimes avoid committing crime so as not to damage these relationships. Parole officers or devices such as GPS trackers may also serve as handlers. Targets are protected by “guardians.” These may be trained law enforcement officers or anyone whose mere presence may dissuade an offender from attack. Firearms and dogs are examples of non-human guardians that might protect a target from attack. Places have “managers” who by training or presence discourage the occurrence of crime. Alarm systems and security cameras may also serve as managers. Eck proposes that the presence of any of the three varieties of controllers diminishes the opportunity for crime. This conceptualization allows crime prevention interventions to be developed.

Routine activity theory posits that it is unnecessary to change the motivations of the offender to eliminate crime. Accordingly, social reform and rehabilitation are not relevant. In order to avoid crime it is necessary only to avoid the opportunity for crime.

Routine activity theory has many characteristics that make it attractive for use in preventing courthouse violence. It is broad in scope and describes complex behavior simply. It suggests straightforward, pragmatic approaches to combatting crime: crime can be reduced by reducing the opportunity for its occurrence. It is similar to law enforcement's century's old focus for the investigation of crime: means, opportunity, and motive. By avoiding discussion of the causes of crime, it is not the subject of ideological disputes between liberals and conservatives. Because it is largely unconcerned with the offender's motivation, it proposes approaches to lessening the opportunity to commit crime that do not involve determining how to make difficult changes in the psyches of criminals. Installing an alarm system or buying a dog is easier than changing a criminal's habitual behavior patterns.

**Implications of routine activity theory for reducing court targeted violence.**

1. *The courthouse is the most likely place for court targeted violence to occur.*

Routine activity theory suggests that when choosing a place to commit a crime, offenders are naturally inclined to reduce effort and select the familiar. Crimes tend to occur in places known to the criminal (Brantingham & Brantingham, 1993). Routine activity theory suggests that litigation related violence, unless it is displaced, is most likely to occur at the courthouse. This is consistent with state court experience in which 91% of court related attacks occur at the courthouse (Swensen, 2010). Federal courts have had a different experience with the last three assassinations of federal jurists occurring at their homes. The higher level of security existing at federal courthouses, as

opposed to state courthouses, may have caused attackers to change the location of their offenses.

2. *Standard security measures are effective in reducing court targeted violence.*

Cohen and Felson (1979) propose that crime can be prevented by eliminating one of three elements: a motivated offender, a suitable target, and the absence of a guardian. The suitability of targets and the presence of guardians can be manipulated in relatively straightforward ways with the use of bailiffs, metal detectors, door locks, alarms systems, judicial training in security precautions, firearms training, and restricted access to home addresses of participants in the judicial process.

3. *Reducing access to the home addresses of judges and others will make them safer from court targeted violence.*

Unlike most public officials, judges and prosecutors live in the same communities as those whose lives they effect (Calhoun, 2001, p. 60). Routine activity theory indicates that the opportunities for crime can be reduced by increasing the effort necessary to commit an offense. Making the home addresses of participants in the judicial process less accessible would be consistent with this observation.

4. *Allowing in-custody criminal defendants to appear in court by audio-video technology will reduce court targeted violence.*

Eck proposes that for some types of crime to occur an offender and a target must co-exist in the same place and time. Many courts use this common-sense observation to reduce the opportunity for crime by allowing audio-video appearances by

criminal defendants in circumstances where all due process rights can be properly protected.

### **Displacement**

Some theorists have considered whether efforts to reduce the occurrence of crime result, not in prevention, but in offenses different from the crimes originally intended. Displacement theory suggests that crime prevention measures may result in a change of the circumstances of a contemplated crime from one place to another, from one time to another, from one victim to another, from one means to another or, even, from one type of crime to another. Speculation about possible displacement raises the concern that reducing the opportunity for a specific crime merely displaces the crime with no reduction in the amount of crime (Clarke & Felson, 1993). Experience with street crime tells a different story. Increases in the risks and efforts necessary to commit crime arguably result in some displacement but in some, perhaps most, cases result in crime prevention (Clarke & Felson, 1993; Weisburd, Wyckoff, Ready, Eck, Hinkle & Gajewski, 2006; Guerette & Bowers, 2009).

A displacement effect does not render crime fighting futile. The perpetrator is burdened by being thwarted in his efforts to find a different criminal opportunity and by the requirement that he identify an alternative opportunity. Rational choice theory suggests that any increase in the cost of crime lowers its likelihood. Because many would-be perpetrators share the common, disabling attributes of laziness and fear, crime deterrence often equates to crime prevention (Clarke & Cornish, 1986, p. vii).

### **Part Three: Survey of Laws**

In a time before the appearance of empirical studies demonstrating what types of laws are most effective in combating court targeted violence, criminological theories offer a useful, available standard against which existing and proposed legislation can be addressed. This Part reviews existing and possible legislation related to paper terrorism, the enhancement of penalties for court targeted violence, and restrictions on access to the personal information of judges and others. Such legislation is analyzed in consideration to the implications of applicable criminological theories.

#### **Reducing the Benefits of Crime: Paper Terrorism**

##### **History of the problem.**

During the 1990's, radical, "sovereign citizens" and members of other anti-government groups began filing liens and other encumbrances without any legitimate basis against the real and personal property of individuals with whom they were in conflict. The victims were often judges and other public officials. Many of these filings were purportedly validated by the rulings of "common law courts" established by self-described patriots as self-styled alternatives to existing federal, state, and local governance. Others claimed no pretense of legitimacy and were filed solely to harass or cause injury. Pamphlets, web sites and seminars explaining and encouraging the false filing process proliferated. The liens or other encumbrances appeared on public records, title searches and credit reports. They interfered with a property owner's right to transfer or pledge the property as security. They damaged peoples' credit and were time-consuming and costly to remove. Texas Attorney General Dan Morales named these tactics "paper terrorism" (Leader, 1998).

The problem has not gone away; it has mutated and spread. The FBI (September 2011) reports “The sovereign-citizen threat likely will grow as the nationwide movement is fueled by the Internet, the economic downturn, and seminars held across the country that spread their ideology and show people how they can tap into funds and eliminate debt through fraudulent methods...The FBI considers sovereign-citizen extremists as comprising a domestic terrorist movement.”

Sovereign citizens are imaginative and respond adaptively to efforts to combat abusive practices. Some have violently demanded that county recorders remove IRS liens against their property, eliminate birth records (to nullify their citizenship), and file papers to create their own townships (Barton, 1997). Some profess that the present government of the United States is illegal and corrupt. They find basis for their positions in the Declaration of Independence and other writings of the founders, the Magna Carte, and the Bible. They believe these sources allow them to create a parallel, legitimate governing and judicial system that includes common law courts, common law banks, and common law trusts. Every man is sovereign and owes allegiance to no authority except voluntarily. They believe they can revoke their social security numbers and birth certificates, and drive without a driver’s license or license plates. They are tax protestors who believe the 16<sup>th</sup> Amendment was never properly ratified. Payment of taxes is voluntary. They argue that American flags fringed in gold denote admiralty law and that no courtroom displaying such a flag can enforce any law other than admiralty law. They believe that family courts are biased against men (Pitcavage, 1997). The monetary system is corrupt because it is no longer backed by silver and gold. Some may believe these things. Others may merely be opportunists. Regardless of the basis upon which they

justify the filings of false liens, the abusive documents they record can create havoc for the judge or other person victimized by their paper terrorism.

Today's perpetrators are more likely to be prisoners than constitutionalists. There are over 2 million people incarcerated for criminal activity in the United States today. A prison culture exists with its own mores and customs. Ideological extremists often break the laws imposed by the wider society and are imprisoned. Sovereign citizens tend to think that they have been locked up for their political beliefs rather than for criminal behavior. Some unrepentantly continue to record false liens and spread their beliefs within the prison population and in the out-side world (Anti-Defamation League, 2002).

The sovereign citizen movement is widely dispersed and loosely organized; it is present in all 50 states (Anti-Defamation League, 2010). The research director of the Southern Poverty Law Center has observed that anti-government extremists become more active "with the elections of people who are perceived to be left-wing to high office" (Taylor, 2011). In response to a 1997 survey of 2,996 state and local judges with a disappointing 14% response rate, 55% of the respondents reported they had been challenged in the courtroom by constitutionalists during the past year. Of those who had been challenged, 40% reported they were subsequently sued in common-law courts, 30% reported they were sued in established courts, 13% reported they were subjected to bogus liens, 13% reported they received threats of physical violence and 4 were subjected to assault (Weinberg, Francis, & Lloyd, 1999).

In most states, liens against real property are recorded with a county recorder and liens against personal property, commonly known as Uniform Commercial Code

(U.C.C.) financing statements, are filed with the secretary of state. Historically, these offices have been required to record or file any properly formatted document with no discretion to reject even obviously problematic documents.

Many false liens are not difficult to identify. The F.B.I. (2011) has noted that false liens and financing statements recorded or filed by sovereign citizens often “contain peculiar or out-of-place language...references to the Bible, The Constitution of the United States, US. Supreme Court decisions, or treaties with foreign governments, personal names spelled in all capital letters or interspersed with colons (e.g., JOHN SMITH or Smith: John), signatures followed by the words ‘under duress,’ ‘Sovereign Living Soul’ (SLS), or a copyright symbol (©), personal seals, stamps, or thumb prints in red ink, and the words ‘accepted for value.’”

As a general rule, financing statements expire five years from the date of filing. One exception to this general rule is filing statements that indicate the debtor is a transmitting utility. Transmitting utilities are usually operators of railroads or buses; or providers of electricity, gas, water or sewer services. Financing statements filed by transmitting utilities remain active indefinitely. U.C.C. § 9-515(f). “Nearly all” bogus U.C.C. financing statements filed by sovereign citizens identify the filer as a transmitting utility (American Bar Association, 2009).

Another common variety of bogus financing statements involves “strawman” filings. Sovereign citizens profess to believe that the federal government has a strawman account representing the value of each citizen. Sovereigns believe that they can access these accounts with U.C.C. filing statements. Strawman filings are often identifiable by the manner in which they are made. The name of the debtor and the secured party are

usually the same. The name of the debtor is typically set forth in uppercase letters. The last name of the secured party is separated from the first and middle names by a comma or semicolon (National Association of Secretaries of State, 2013).

Early legislative response to the filing of false liens was not always effective. “[I]n almost every case, the states have been reactive in nature, responding sluggishly to the tactics of the common law court movement. In contrast, the common law movement itself has so far proven itself extremely creative in discovering new strategies and tactics.... [I]t is important that the government--federal, state and local—enforce the laws and put pressure on the bogus courts, for a key strategy must be to separate the committed leaders and members of the movement from the large body of the primarily curious, and other less committed followers and supporters, who might thereby be deterred from engaging in illegal activity. Enforcement resources must be concentrated on the comparatively small number of high-risk members who pose the greatest threat” (Pitcavage, 1997).

During 2004, the National Association of Secretaries of State (NASS) and the International Association of Commercial Administrators (IACA) issued recommendations for uniform, nationwide response to the filing of false U.C.C. documents. As the problem grew and changed, these recommendations were updated in 2006. The “Final Report and Recommendations on the subject of ‘Bogus’ U.C.C. Documents” identified as a principle that guided its effort that it should “provide a simple, expedited process for review of the alleged ‘bogus’ filing, preferably without requiring legal representation, with a step-by-step process for both the parties and the finder of fact, and a standard result.” The task force recommended that states adopt

legislation creating a simplified judicial process for victims, including the adjudication based upon ex parte filings, and providing forms to be used in the judicial process. Also, it called for legislation authorizing civil remedies, including injunctive relief, and criminal penalties for perpetrators.

In January 2008, 18 U.S.C. § 1521 was enacted, a part of the Court Security Improvement Act. The law provides:

Whoever files, attempts to file, or conspires to file, in any public record or in any private record which is generally available to the public, any false lien or encumbrance against the real or personal property of an individual described in section 1114, on account of the performance of official duties by that individual, knowing or having reason to know that such lien or encumbrance is false or contains any materially false, fictitious, or fraudulent statement or representation, shall be fined under this title or imprisoned for not more than 10 years, or both.

On March 11, 2008, U. S. District Court Judge Edmund A. Sargus, Jr., on behalf of the Judicial Security Committee and the Criminal Law Committee of the Judicial Conference of the United States, sent a statement to the United States Sentencing Commission commenting on the structuring of sentencing guidelines for new crimes established under 18 U.S.C. 1521. The statement noted that the filing of such liens had been a problem for federal judges for almost two decades. It observed that such liens rarely resulted in actual economic harm because they could be removed by civil

litigation. Judge Sargus offered the following explanations for the inadequacy of state statutes for the protection of federal judges and the need for a federal criminal statute:

- The filing of false liens indicates that the perpetrator is a threat to the legal process and to a particular jurist.
- The home address of the judge is usually identified on the filing, which might intimidate the judge.
- Few states, at that time, had criminal statutes addressing such conduct.
- State civil statutes, while ultimately effective in removing the liens, had not stopped the practice.
- The Criminal Law Committee expressed hope that criminal sanctions might act as a deterrent against false filings.
- The filing of false liens against judges represents an attack upon the integrity of the judicial system.
- In the case of an incarcerated filer, the filing of false liens indicates that rehabilitation has not occurred.
- “The gravity of the offense is not confined to the potential financial harm or inconvenience to a judge. The offense involves conduct which reveals a deep antagonism against the legal system and demonstrates that the perpetrator will not be restrained from unlawful conduct.”

In 2013 the National Association of Secretaries of State and the International Association of Commercial Administrators issued revised recommendations for addressing false U.C.C. documents. They noted that their earlier recommendations had proven inadequate to the growing problem of bogus U.C.C. filings and recommended that

filing offices be given additional authority to combat the problem. The report concluded, “A remedy that allows state filing offices to subvert a bogus filing and/or allows for its quick removal from the record, in conjunction with strong criminal and civil penalties, will likely be the most effective way for states to alleviate the burdens on bogus filing victims” (p. 11).

**Review of existing laws.**

*Pre-filing remedies.*

Slightly less than half the states have statutes that authorize county recorders, secretaries of state or other filing offices to refuse to accept for filing or recordation documents that appear to be false, in some circumstances (Appendix B).

Alabama permits a filing office to refuse to file a U.C.C. record if the record appears fraudulent on its face<sup>4</sup> or if the record identifies the debtor and secured party as the same person.<sup>5</sup> Michigan allows the filing office to refuse a filing if the filer is an individual debtor who claims to be a transmitting utility.<sup>6</sup>

California law authorizes its Secretary of State to refuse to accept a U.C.C. filing based upon a reasonable belief that filing is being requested for an unlawful, false, or fraudulent purpose; to promote or conduct an illegitimate object or purpose; or is being requested in bad faith or for the purpose of harassing or defrauding a person or entity.<sup>7</sup> Other states allow a filing to be refused if “the record appears fraudulent on its face,”<sup>8</sup> or

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<sup>4</sup> (Alabama) Ala. Admin. Code § 820-4-3-.02(3)

<sup>5</sup> (Alabama) Ala. Admin. Code § 820-4-3-.02(3); (Idaho) I.C. § 28-9-516A; (Michigan) M.C.L.A. § 440-9520(5); (North Dakota) NDCC § 72-01-02-06; (South Carolina) SC Code § 36-9-56(b)(8) and (9);

<sup>6</sup> (Michigan) M.C.L.A. § 440-9520(5);

<sup>7</sup> Cal. Gov. Code § 12181.

<sup>8</sup> (Alabama) Ala. Admin. Code § 820-4-3-.02(3);

the filing office has reason to believe the record is materially false or fraudulent.<sup>9</sup> Texas and West Virginia statutes require a filing office which believes a false record has been offered or recorded to give notice to the adversely affected persons.<sup>10</sup> Texas law specifically authorizes the filing office to request the assistance of the attorney general.<sup>11</sup>

A common statutory formulation requires that a nonconsensual lien not be filed unless accompanied by an order or judgment from a court of competent jurisdiction authorizing the filing of the lien.<sup>12</sup> Some statutes allow false filings to be refused only if they are made against public officials or employees.<sup>13</sup> Most statutes allow filing offices to refuse filings without regard to the identity of the person against whom the false filing was made (Appendix B).

***Post-filing, filing office remedies.***

A few states authorize filing offices to take action after a false lien has been made part of the public record by filing or recordation (Appendix D). An Alabama statute permits a recording officer to nullify or expunge from the official record a false lien upon the recording officer's own initiative or upon the petition of an adversely affected person.<sup>14</sup>

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<sup>9</sup> (Colorado) C.R.S.A. § 38-35-201(1); (Michigan) M.C.L.A. § 440-9520(5); (Montana) MCA § 30-9A-420(1); (North Carolina) NCGSA § 14-118.6(b); (Ohio) R.C. § 11.24(A), 2701.20; (South Carolina) SC ST § 30-9-30(B)(1); (South Dakota) SDCL § 7-9-19; (Texas) V.T.C.A. Government Code § 51.901.

<sup>10</sup> (Texas) V.T.C.A. Government Code § 51.901; (West Virginia) W. Va. § 38-16-401

<sup>11</sup> V.T.C.A. Government Code § 51.901 and § 405.022.

<sup>12</sup> (Arizona) A.R.S. § 33-421 and § 47-9528; (Colorado) C.R.S.A. § 38-35-202(3); (Hawaii) HRS § 507D-5(c); (Idaho) I.C. § 45-1-1702(2); (New Mexico) N.M.S.A. § 48-1A-7(B); (Oregon) O.R.S. § 205.455(2); (Washington) RCWA § 60.70.030(2); (West Virginia) W. Va. § 38-16-303(b).

<sup>13</sup> (Colorado) C.R.S.A. § 38-35-202(3); (Idaho) I.C. § 45-1702(2); (Michigan) M.C.L.A. § 440.9520(5)(d); (New Mexico) N.M.S.A. § 48-1A-7(B); (Oregon) O.R.S. § 205.455(2); (South Carolina) SC Code § 30-9-35(A); (Washington) RCWA § 60.70.030(2); (West Virginia) W. Va. § 38-16-303(b), § 61-5-27(g)(1); (Wisconsin) W.S.A. § 706.15).

<sup>14</sup> Ala. Code § 13A-9-12(e).

Idaho authorizes the secretary of state to petition the district court for an order to show cause why a false filing should not be deleted.<sup>15</sup> Montana and South Carolina allow the filing office to remove a false document from official records after notice to claimant.<sup>16</sup> In Maine, the filing officer may refer the matter to the attorney general for civil or criminal action.<sup>17</sup> Michigan law requires the secretary of state to terminate a financing statement upon a purported debtor filing an affidavit stating it is fraudulent. Nebraska and North Carolina laws allow, but do not require, the filing office to take such action in response to an affidavit.<sup>18</sup> Thereafter, the claimant may file a court action to reinstate the financing statement.<sup>19</sup> South Dakota and Texas require a filing officer who reasonably believes a false document has been filed to give written notice to adversely affected persons.<sup>20</sup>

***Filings void as a matter of law.***

At least 13 states have laws that describe filings that are void as a matter of law (Appendix C). Several of these laws provide that liens against the property of public officials or employees are invalid unless they arise from a specific order of a court of competent jurisdiction or from a specific statutory authorization.<sup>21</sup> At least three states provide that nonconsensual common law liens claimed against personal property shall not be recognized or be enforceable if, at the time the lien is claimed, the claimant fails to

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<sup>15</sup> I.C. § 28-9-516A.

<sup>16</sup> (Montana) MCA § 30-9A-420(1); (South Carolina) SC Code § 30-9-30(B)(2).

<sup>17</sup> 5 M.R.S.A. § 90-E(4)(D).

<sup>18</sup> (Nebraska) Neb. St. U.C.C. § 9-513A; (North Carolina) N.C.G.S.A. § 25-9-518.

<sup>19</sup> M.C.L.A. § 440.9501a.

<sup>20</sup> (South Dakota) SDCL § 7-9-22; (Texas) V.T.C.A. Government Code § 51.901.

<sup>21</sup> (Idaho) I.C. § 45-1704(1); (Nevada) NRS § 281.405; (New Mexico) N.M.S.A. § 48-1A-6; (Oregon) O.R.S. § 205.455(3); (Washington) RCWA § 60.70.070; (West Virginia) W.Va. § 38-16-303(a); (Wyoming) W.S. § 29-1-601(a).

retain actual lawfully acquired possession or exclusive control of the property.<sup>22</sup> At least two states provide for automatic invalidity if the record indicates that the debtor is a transmitting utility but the debtor does not meet the definition of a transmitting utility.<sup>23</sup> At least two other states provide for automatic invalidity if the same person is listed on a U.C.C. filing as both the debtor and the secured party.<sup>24</sup> West Virginia makes a direct attack on filings derived from common law courts by providing that liens issued by an alleged court, other than a court established by West Virginia or the United States, are nullities and of no effect.<sup>25</sup>

Some statutes require filers to take actions within specific periods to maintain the validity of a lien. In Colorado, a spurious lien is of no effect unless within 35 days from filing, a court action is commenced to enforce the lien.<sup>26</sup> A similar Indiana statute requires a common law lienholder to initiate a law suit within 180 days after recordation.<sup>27</sup>

At least two states create statutory presumptions intended to combat false liens. In Arizona, a document purporting to create an interest in real property that is not authorized by statute, judgment, or other specific legal authority is presumed to be groundless and invalid.<sup>28</sup> The law of Texas creates a presumption that a document is fraudulent if, among other reasons, it is filed by or on behalf of an inmate.<sup>29</sup>

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<sup>22</sup> (New Mexico) N.M.S.A. § 48-1A-5; (Washington) RCWA § 60.70.020; (West Virginia) W.Va. § 38-16-202(b).

<sup>23</sup> (Illinois) 810 ILCS § 5/9-516; (West Virginia) W.Va. Code § 46-9-516(E).

<sup>24</sup> (Nebraska) NE ST U.C.C. § 9-516(b)(8); (Oregon) O.R.S. § 79.0516(2)(h).

<sup>25</sup> W.Va. § 38-16-306(b).

<sup>26</sup> C.R.S.A § 38-35-203.

<sup>27</sup> IC § 32-28-13-4.

<sup>28</sup> A.R.S. § 33-420(D).

<sup>29</sup> V.T.C.A., Government Code § 51.901(c).

***Expedited removal procedures.***

Slightly more than half of the states have enacted statutes that provide those victimized by false liens with an expedited hearing to contest and remove such liens.<sup>30</sup> All of the states which adopted such legislation during the 1990s created a streamlined judicial procedure to the remove false filings. A typical statute allows the court to schedule a hearing within 6-30 days following an ex parte request.<sup>31</sup> Kansas has a particularly aggressive statute which allows the court to remove a lien or claim “solely on a review of the documentation or instrument attached to the motion and without hearing any testimonial evidence.”<sup>32</sup>

All but one of the seven states enacting laws since 2008 has created an administrative procedure whereby the filing office can make the initial determination of whether a filing constitutes a false lien to be removed from official records.<sup>33</sup> Oregon allows a lien to be removed without judicial action upon the recording of a notice.

Most statutes allow expedited procedures to be utilized by any person adversely affected by a false filing. A few provide a procedure available only to public

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<sup>30</sup> Appendix E.

<sup>31</sup> (Alaska) AS § 09.45.164; (California) CalC.C.P. § 765.010-030; (Idaho) I.C. § 45-1703; (Missouri) V.A.M.S. § 428.120-125; (Nevada) NRS § 108.2275; (New Mexico) N.M.S.A. § 48-1A-8; (North Dakota) NDCC § 35-35-05; (Oregon) O.R.S. § 205.460; (Utah) U.C.A. § 38-9-7; (Washington) RCWA § 60.70.060; (Wyoming) W.S. § 29-1-601.

<sup>32</sup> K.S.A. § 58-4301.

<sup>33</sup> (Alabama) Ala. Code § 13A-9-12(e); (Hawaii) HRS § 507D-4(b); (Illinois) 810 ILCS § 5/9-501.1(d) and (e); (Michigan) M.C.L.A. § 440.9501a; (Nebraska) Neb.St. U.C.C. § 9-513A; (North Carolina) N.C.G.S.A. § 25-9-518; (Pennsylvania) 13 Pa.C.S.A. § 9518).

officers or employees.<sup>34</sup> Several states include in statute the forms necessary for an aggrieved party to remove a false lien from public records.<sup>35</sup>

***Civil actions.***

At least twenty-nine states make available civil remedies to address the filing of false liens or financing statements (Appendix F). At least nine state statutes specifically state that injunctive relief is available.<sup>36</sup> The broadest language describing available injunctive relief is contained in a Florida statute that provides, “The court may also, permanently or for a period of time, enjoin the defendant who filed the instrument or who directed the filer to file the instrument from filing or directing a person to file an instrument in the official record without prior review and approval for filing by a circuit or county court judge.”

At least nine state statutes specifically state that punitive or exemplary damages are available.<sup>37</sup> At least three states specifically provide that the government may provide counsel for public officers or employees who are the victims of false liens or financing statements.<sup>38</sup> Many statutes call for an award of a civil penalty<sup>39</sup> or actual damages, whichever is greater. Some statutes authorize an award of triple actual

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<sup>34</sup> (California) Cal.C.C.P. §§765.010-030, 060; (West Virginia) W.Va. § 61-5-27; (Wyoming) W.S. § 29-1-601(d).

<sup>35</sup> (Kansas) K.S.A § 58-4301; (Maine) 5 MRSA § 90-E; (Minnesota) M.S.A. § 545.05; (Oregon) O.R.S. § 205.460; (Texas) V.T.C.A. Government Code § 51.901 *et seq.*

<sup>36</sup> (Florida) § F.S.A. 817.535; (Hawaii) § HRS 507D-4(a) and § 507D-7; (Kansas) K.S.A. § 58-4302; (Maine) 5 MRSA § 90-E; (Minnesota) M.S.A. § 604.17; (North Dakota) NDCC § 41-10-04; (Texas) V.T.C.A., Civil Practice & Remedies Code § 12.003; (Utah) § 38-9a-101 *et seq.*; and (West Virginia) W.Va. § 38-16-502.

<sup>37</sup> (Alaska) AS § 09.45.167; (Arkansas) A.C.A. § 5-37-226; (Florida) F.S.A. § 817.535; (Maine) 5 MRSA § 90-E; (Minnesota) M.S.A. §604.17; (North Dakota) NDCC § 41-10-03; (South Carolina) SC Code § 30-9-35); (Texas) V.T.C.A., Civil Practice & Remedies Code § 12.002; and (West Virginia) W.Va. Code § 38-16-§ 501 and § 46-9-516a.

<sup>38</sup> (California) Cal. Code of Civ. Pro. § 765.060; (Florida) F.S.A. § 817.535; and (Hawaii) § HRS 507D-7.

<sup>39</sup> Most commonly \$5,000 or \$10,000.

damages.<sup>40</sup> The most generous damages formulation is a Maine statute, enacted during 2013, that provides for damages in an amount “equal to the amount of the recordable instrument.”<sup>41</sup>

### *Criminal actions.*

More than half of the states have enacted criminal statutes to address the filing and recording of false liens and financing statements (Appendix G). State criminal statutes vary in who they protected from false filings. Illinois specifically outlaws the filing of false liens or encumbrances against judges.<sup>42</sup> Louisiana makes criminal such filings against law enforcement officers or court officers.<sup>43</sup> Minnesota’s statute extends protection to judicial officers, prosecutors and defense attorneys.<sup>44</sup> Ohio protects public servants, party official and witnesses.<sup>45</sup> Several states impose criminal penalties for false filings against any public officer or public employee.<sup>46</sup> North Carolina extends protection to the immediate family members of public officers and employees.<sup>47</sup> The most common formulation found in state statutes is that the filing of a false lien or encumbrance is a crime without regard to the identity of the victim (Appendix G).

A minority of state statutes treat the filing of a false lien as a misdemeanor. Most treat the offense as a felony. Tennessee enacted its statute criminalizing the filing of a false lien as a misdemeanor during 2012. During 2013 it amended the law to change

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<sup>40</sup> (Arizona) § A.R.S. 33-420; (Arkansas) § A.C.A. 5-37-226; and (Montana) § MCA 30-9a-420.

<sup>41</sup> 14 MRSA § 8601. Many instruments are in amounts of millions of dollars.

<sup>42</sup> 720 ILCS § 5/32-4f.

<sup>43</sup> LSA-R.S. § 14:133.6.

<sup>44</sup> M.S.A. § 609.7475.

<sup>45</sup> R.C. § 2921.03.

<sup>46</sup> (Alabama) AL ST § 13A-9-12(c); (Arizona) § A.R.S. 13-2921(B) and (C); (Georgia) Ga. Code § 16-10-20.1; (Hawaii) HRS § 507D-7(c); and (Wyoming) W.S. § 29-1-601.

<sup>47</sup> N.C.G.S.A. § 14-118.6(a).

the offense to a felony.<sup>48</sup> North Carolina, also, amended its law in 2012 to change treatment of the filing of a false lien from a misdemeanor to a felony.<sup>49</sup>

Many states enhance penalties based upon the existence of specifically described circumstances. Florida increases the possible punishment if the victim is a public officer or employee or if the filer committed the offense while incarcerated.<sup>50</sup> Several states enhance the penalty for second and subsequent offenses.<sup>51</sup>

Some statutes authorize criminal prosecution only if a perpetrator acts with a specific intent. An Alabama statute requires an “intent to defraud, intimidate, or harass the public servant, or to impede the public servant in the performance of his or her duties.”<sup>52</sup> Several state statutes identify retaliation against a public official as an intent warranting prosecution.<sup>53</sup> Maine includes an intent to intimidate.<sup>54</sup> Minnesota enhances the crime from a gross misdemeanor to a felony if it was committed with the intent to influence or otherwise tamper with a juror or a judicial proceeding or to retaliate against a judicial officer, prosecutor, or defense attorney.<sup>55</sup> Nebraska includes intent to obstruct a government operation or judicial proceeding.<sup>56</sup> North Carolina includes as a required intent that a “record be filed for an improper purpose, such as to hinder, harass, or

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<sup>48</sup> T.C.A. § 39-17-117.

<sup>49</sup> NCGSA § 14-118.6(a).

<sup>50</sup> (Florida) F.S.A. § 817.535; see also, (Arkansas) A.C.A. § 5-37-215.

<sup>51</sup> (Arkansas) A.C.A. § 5-37-215; (Illinois) 720 ICLS § 5/32-4f, 810 ICLS § 5/9-501.1; (North Dakota) NDCC § 41-10-02; (South Dakota) SDCL § 22-11-31; and (West Virginia) W.Va. Code § 46-9-516a and § 61-5-27.

<sup>52</sup> (Alabama) Al St § 13A-9-12(c); see also, (Alaska) AS § 11-46-550; (Arizona) A.R.S. § 13-2921; (Arkansas) A.C.A. § 5-37-215; (Florida) F.S.A. § 817.535; and (Wyoming) W.S. § 29-1-601.

<sup>53</sup> (Illinois) 720 ICLS § 5/32-4f; (Louisiana) LSA-R.S. § 14:133.6; (Rhode Island) RI ST § 11-42-5; and (West Virginia) W. Va. Code § 61-5-27.

<sup>54</sup> 17-A MRSA § 706-A.

<sup>55</sup> M.S.A. § 609.7475.

<sup>56</sup> NE ST § 28-101.

otherwise wrongfully interfere with any person.”<sup>57</sup> Most state statutes do not require that a false filing be made with a specific intent in order to constitute a crime; they require only that the filing be false.<sup>58</sup>

State statutes are not uniform in relation to which false filings are treated as crimes. Some statutes make criminal only the recording of false liens against real property. Some make criminal only the filing of false financing statements against personal property. Some address both. Other statutes are more inclusive. Maine, for example, makes criminal the filing of a false “will, deed, mortgage, security instrument or other writing.”<sup>59</sup> California makes criminal “any false...instrument...filed, registered, or recorded in any public office.”<sup>60</sup>

#### *Other statutes.*

In response to the filing of false liens, states that were the sites of the initial impulse of fraudulent filings enacted legislation that offered protection to government officials and employees. As time passed the filing of false liens has become a more widespread practice and many legislatures have recognized that such filings threaten not only government officials and employees, but also witnesses, jurors, citizens expressing themselves at community meetings, and the general public. Arizona, for example, adopted legislation during 1997 that provided an expedited process for removing false

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<sup>57</sup> N.C.G.S.A. § 14-401.19.

<sup>58</sup> (Arizona) A.R.S. § 33-420(E); (California) Cal. Penal Code § 115; (Georgia) Ga. Code § 16-10-20; (Kentucky) KRS § 434.155; (Michigan) M.C.L.A. § 440.9501(b)(6); (North Carolina) N.C.G.S.A. § 14-118.6(a); (Oklahoma) 21 Okl. St. Ann. § 463; (Texas) V.T.C.A., Penal Code § 37.101; (Utah) U.C.A. § 76-6-503.5; (Virginia) VA Code § 18.2-213.2; and (Wisconsin) W.S.A. § 943.60.

<sup>59</sup> 17-A MRSA § 706-A.

<sup>60</sup> Cal. Penal Code § 115.

liens filed against the property of government officials and employees. During 2000 the law was amended to make the procedure available to all persons.<sup>61</sup>

Texas and West Virginia require that “A clerk...shall post a sign, in letters at least one inch in height, that is clearly visible to the general public in or near the clerk’s office stating that it is a crime to intentionally or knowingly file a fraudulent court record or fraudulent instrument with the clerk.”<sup>62</sup>

### **Analysis.**

The use of false liens and similar abusive processes by sovereign citizens and others is a serious offense that threatens not only the person targeted by such documents, but also the integrity of the public records on which commerce depends. The efforts of the National Association of Secretaries of State and the International Association of Commercial Administrators to propose a uniform, nationwide response to fraudulent U.C.C. filings are laudable, both in terms of the content of their proposals, and also in relation to the focus they draw to the wider problem. U.C.C. filings are not the only records used abusively; so are judgments, arrest warrants, mortgages, contracts, wills, and other documents of legal consequence. Because the perpetrators of these frauds employ a variety of instruments, statutes that are inclusive of a wide variety of documents should be considered.

No nationwide collection of false filing incidents is available. Nor is there any study that assesses the effectiveness of any of the array of measures employed to

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<sup>61</sup> A.R.S. § 33-421; see also, Va. Code Ann. § 18.2-213.2. (2013).

<sup>62</sup> V.T.C.A., Government Code § 51.904; and W.Va. § 38-16-405.

combat this fraud, including pre-filing remedies, post-filing remedies, expedited judicial review procedures, civil actions and criminal actions.

The movement toward transferring initial adjudicatory decisions from the courts to filing offices is an understandable reaction to the severity of the problem. Such offices are familiar with the types of records they administer and are often able to identify false documents easily. Authorizing filing offices to make determinations concerning the validity of documents promises faster, less costly elimination of fraudulent records while reducing negative consequences for the intended victim. On the other hand, transferring the initial or ultimate adjudicatory function from a court to a non-judicial agency increases the likelihood of inconsistent decision making and of denial of due process. As with most matters involving the legislative process, the correct balance between competing interests must be determined. It is hoped that the review of existing statutes contained in this paper will facilitate those charged with deciding that balance.

Classical theory, which proposes that behavior can be deterred by imposing penalties upon those who offend, indicates that the filing of false liens should be a crime in every jurisdiction. Additionally, civil sanctions should be imposed in order to deter the occurrence of such filings. If any specific intent is to be required for such offenses to constitute a crime, the intents to affect the judicial process or to retaliate for past judicial actions should be included (Weiner & Hardenbergh, 2001, p. 27; McGovern, 2013).

Rational choice theory supports legislation that increases the costs of offense to the offender by authorizing criminal or civil sanctions. The theory also justifies laws that decrease the benefit of such filings to the offender by simplifying the removal of such liens from public records.

## **Raising the Costs of Crime: Enhanced Punishments**

### **Death penalty.**

Eighteen states and the District of Columbia have no death penalty.<sup>63</sup> In the remaining 32 states, it is commonly believed that the death penalty is reserved for the most serious of offenses. This is not necessarily so. When asked to rank the seriousness of sixty criminal offenses, a survey of 105 five police chiefs throughout the United States identified the assassination of a public official as the most serious of all crimes (Pontell, Granite, Keenan, & Geis, 1985). The death penalty is, however, available for the assassination of a judge in only slightly more than half of the death penalty states.

Imposition of the death penalty is constitutionally permissible only upon proof beyond a reasonable doubt of the existence of an “aggravating circumstance.”<sup>64</sup> States define aggravating circumstances by statute. Aggravating circumstances relating to the operation of the judicial process are described in Table 8.

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<sup>63</sup>Alaska, Connecticut, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Jersey, New Mexico, New York, North Dakota, Rhode Island, Vermont, West Virginia and Wisconsin.

<sup>64</sup>*Zant v. Stephens*, 462 U.S. 862, 103 S.Ct. 2733, (1983).

Table 8

*Aggravating Circumstances Warranting the Death Penalty*

| Aggravating Circumstance   | Number of States |
|--|------------------|
| Murder of a law enforcement officer. (Appendix J)  | 27               |
| Murder of a judge. (Appendix H)  | 19               |
| Murder of a witness. (Appendix I)  | 16               |
| Murder of a prosecutor. (Appendix K)   | 15               |
| Murder of a juror. (Appendix I)  | 6                |
| Murder committed to disrupt if hinder the lawful exercise of government function. (Appendix L) | 7                |
| Murder committed to interfere with the judicial process. (Appendix L)                          | 5                |
| Murder of a public official. (Appendix H)  | 4                |
| Murder of court staff. (Appendix I)  | 3                |
| Murder of defense counsel. (Appendix K)  | 2                |
| Murder of an attorney. (Appendix K)  | 2                |
| Murder of a judicial officer's or law enforcement officer's family member.                     | 1                |

Most statutes that make the murder of a judge an aggravating circumstance require that the murder occur during, or because of, the victim's exercise of judicial duties. California and New Hampshire specifically address murders committed in retaliation for the judge's actions in the line of duty.<sup>65</sup> The majority of statutes that apply to judges apply to former judges as well. South Carolina is unique in that it extends protection to family members.<sup>66</sup> There is no apparent justification for omitting assassination of a judge or other person involved in the judicial process as an aggravating circumstance warranting the death penalty.

<sup>65</sup> Ca. Penal Code § 90.2(a)(12); N.H. Rev. Stat. § 630:1(I)(a) and II-a).

<sup>66</sup> "The murder of a family member of [a judicial officers, a former judicial officer or a federal, state or local law enforcement officer or former federal, state, or local law enforcement officer] with the intent to impede or retaliate against the official. 'Family member' means a spouse, parent, brother, sister, child, or person to whom the official stands in the place of a parent or a person living in the official's household and related to him by blood or marriage." Code section § 16-3-20(C)(a)(8).

### **Enhancement of non-capital punishments.**

Most states do not enhance non-capital criminal penalties for crimes committed against persons involved in the judicial process. A few states enhance criminal penalties for assault,<sup>67</sup> battery,<sup>68</sup> or attempted murder<sup>69</sup> committed against a judge. Some explanation for the narrow scope of these statutes may be found in their age. State legislatures, motivated by a desire to protect the judiciary, undoubtedly considered these statutes to be adequate for that purpose at the time of enactment. Statutes that enhance penalties only for assault and battery are dated.<sup>70</sup> They are from a time before racial and gender diversity and a more violent society made the bench subject to a variety of crimes that had not been previously considered.

Florida's law is more inclusive. It increases the penalties for punishment of persons convicted of a violent offense against any law enforcement or correctional officer, state attorney, assistant state attorney, justice or judge, which offense arises out of or in the scope of the individual's duty. Penalty enhancements exist for murder, attempted murder, manslaughter, kidnapping, battery, and assault. The law increases the certainty of punishment by requiring that adjudication of guilt and the imposition of sentence shall not be suspended, deferred, or withheld.<sup>71</sup>

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<sup>67</sup> (California) § 217.1; (Colorado) C.R.S.A. § 18-3-202; (Florida) F.S.A. § 775.0823; (Idaho) I.C. § 18-915; (Massachusetts) M.G.L.A. 265 § 13D; (Michigan) § 750.479; (Mississippi) Miss. Code Ann. § 97-3-7; (Nevada) NRS § 200.471; (New Jersey) § 2C:12-1; (Oklahoma) 21 Okl. St. Ann. § 650.6; (Pennsylvania) 18 Pa.C.S.A. § 2702; (Rhode Island) § 11-5-5; and (Virginia) Va. Code Ann. § 18.2-57.

<sup>68</sup> (Florida) F.S.A. § 775.0823; (Idaho) I.C. § 18-915; (Illinois) 720 ILCS § 5/12-4; (Massachusetts) M.G.L.A. § 13D; (Michigan) § 750.479; (Mississippi) Miss. Code Ann. § 97-3-7; (Nevada) NRS § 200.481; (Oklahoma) 21 Okl. St. Ann. § 650.6; (Rhode Island) § 11-5-5; (Virginia) Va. Code Ann. § 18.2-57; and (Wisconsin) W.S.A. § 940.203.

<sup>69</sup> (California) § 217.1 and (Florida) F.S.A. § 775.0823.

<sup>70</sup> California (1983), Colorado (1990), Idaho (1979), Illinois (1983), Massachusetts (1990), Mississippi (2001), Nevada (1971), Oklahoma (1993), Pennsylvania (1995), Virginia (2006).

<sup>71</sup> F.S.A. § 775.0823.

The most comprehensive statute is New Hampshire's that makes it a felony to commit any crime against a sitting member of the general court, an executive councilor, a past or present governor, member of the judiciary, marital master, or member of their immediate family, for the purpose of influencing such official's action or in retaliation for action taken as a part of an official's government duties.<sup>72</sup>

The federal government has increased punishments for crimes against participants in the judicial system in an effort to deter such conduct. The 21<sup>st</sup> Century Department of Justice Appropriations Act,<sup>73</sup> Title III-Safeguarding the Integrity of the Criminal Justice System, increases the penalty for using physical force to tamper with witnesses, victims or informants.<sup>74</sup> That same Act incorporates the Federal Judiciary Protection Act of 2002<sup>75</sup> that increases the penalty for assaulting or intimidating a past employee of the United States while engaged in or on account of the performance of official duties from 3 to 8 years of imprisonment.<sup>76</sup> The possible penalty for the same crime with the use of a deadly weapon or which results in bodily injury was increased from 10 to 20 years.<sup>77</sup> The same Act increases the penalty for influencing or retaliating against a Federal official by threatening or injuring a family member from 5 to 10 years.<sup>78</sup>

A second round of Federal enhancement of penalties for crimes against the judiciary is included in the Court Security Improvement Act of 2007. The maximum

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<sup>72</sup> N.H. Re. Stat. § 631:4-a.

<sup>73</sup> P.L. 107-273, November 2, 2002.

<sup>74</sup> § 3001.

<sup>75</sup> § 11008.

<sup>76</sup> 18 U.S.C. § 111(a).

<sup>77</sup> 18 U.S.C. § 111(b).

<sup>78</sup> 18 U.S.C. § 115(b)(4).

possible sentence for tampering<sup>79</sup> with, or retaliating<sup>80</sup> against a witness or victim by threat was increased from 10 to 20 years and, if the offense was committed with the use or attempted use of physical force, from 20 to 30 years.

**Analysis.**

Classical criminological theory suggests that all attacks against the judicial system which are determined by a legislature to be impermissible should be punished in order to deter crime. The theory also suggests that attacks on the judicial process warrant a punishment in addition to any punishment that is warranted for injury to any person or property. Empirical studies on the effectiveness of enhanced punishment on crime rates are inconsistent. Get tough on crime campaigns are sometimes in vogue and sometimes not.

Statutory schemes that punish those who injure some public officials more severely than those who injure judges or other public officials may suggest a ranking of the relative importance of public offices that is likely unintended and inappropriate. Statutes that extend protection to all those involved in the judicial process, and their immediate families, should be considered

Laws that punish assault and battery against a judge more severely than more violent offenses are outdated and incorporate a logical inconsistency that should be considered by legislatures.

Studies identify those who have been the victims of court targeted violence: law enforcement officers, present or former family members of the perpetrator, the

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<sup>79</sup> 18 U.S.C. § 1512.

<sup>80</sup> 18 U.S.C. § 1513.

general public, judges, attorneys, court staff, and judge's family members. (Swensen, 2010). Criminal statutes that protect some, but not all, of these categories of victims fail to reflect what is known about courthouse violence.

Attacks on the judiciary are typically committed with two primary motivations: to disrupt, influence, or otherwise adversely reflect on judicial proceedings; or, to retaliate against judicial officials for real, alleged, or anticipated judicial actions (see Weiner & Hardenbergh, 2001, p. 27; McGovern, 2013). Statutes that require a specific intent to make criminal an attack on the judicial process are deficient unless each of these motivations is included. Statutes, like New Hampshire's, that enhance the criminal penalty for any crime committed with an intent of influencing judicial action or in retaliation for judicial action recognize the nature of judicial violence and are consistent with criminological theory.<sup>81</sup>

### **Reducing the Opportunity for Crime**

#### **Restrictions on access to identifying information: address confidentiality.**

*Testimony of Joan Humphrey Lefkow, United States District Judge, Northern District of Illinois, Before the Judiciary Committee of the United States Senate, May 18, 2005.*

I urge your support for legislation that prohibits the posting of personal information about judges and other public officials on the Internet without written consent. I believe that the Internet is a brave new world in the matter of judicial security. During the late fall of 2003 I

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<sup>81</sup> N.H. Re. Stat. § 631:4-a.

became aware that I was being vilified on the Internet by a white supremacist organization that had a trademark case before me. (As some of you are aware, the circumstances resulted in the prosecution and conviction of the principal of that group.) Not only was I labeled as “a probable Jew” with “mixed race grandchildren,” as if those were shameful things, but eventually my home address and other personal information were posted by this fringe group. The information, true and false, that was posted about me was readily available free of charge on the Internet. As a matter of fact, our home address was posted by the State board of elections in connection with my husband’s candidacy for a local judgeship. A small fee of \$20 will give anyone who wants it access to social security numbers, loans, land transactions, the names of neighbors, and so forth. Although it may never be stopped entirely, limits on commercial trafficking in such information is, I believe, feasible and essential.

As discussed in Part Two of this paper, routine activity theory suggests that reducing access to the home addresses of judges and others will make them safer from court related violence. Frederick S. Calhoun’s *Violence Toward Judicial Figures* (2001) identifies as one of the elements that distinguishes judicial violence from violence against other public figures, the fact that the jurist openly lives in the same community as those who come before the court. Judges, prosecutors and attorneys work where they live, among the many people whose lives they impact and among the few people who want to

hurt them. A Pennsylvania study shows that the level of judicial anxiety could be lessened by restricting access to judges' home addresses (Harris et al., 2001).

A few states have enacted legislation that allow judges, law enforcement officers, and others a limited amount of privacy in relation to their identifying information. These statutes require a state's department of motor vehicles, tax assessor, registrar of voters, or other agencies to remove from the public record the residence address and other information about protected individuals.<sup>82</sup> The effectiveness of this type of legislation is subject to several limitations. Non-governmental organizations and private individuals are not subject to the nondisclosure requirements of many such laws. Many statutes require each identified agency to implement the regulation independently. As a result, costs, opportunities for inconsistencies and errors are multiplied by the number of agencies included.

The federal government has attempted to enlist the deterrent effect of threatened punishment by making a felony of disclosing a judge's identifying information in certain circumstances. Section Three of the federal Court Security Improvement Act of 2007 makes it a crime for any person to make public the social security number, home or e-mail addresses, or telephone numbers of a protected individuals with (1) the intent to threaten, intimidate, or incite violence against that official or official's family; or (2) the intent and knowledge that the information will be used to threaten or facilitate violence against or intimidate that official or the official's family.<sup>83</sup>

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<sup>82</sup> Appendix M.

<sup>83</sup> 18 USC § 119.

An alternative means of protecting the confidentiality of the home addresses of large numbers of vulnerable people has been operated by the states for more than a decade. Thirty-five states presently operate *address confidentiality programs* to protect the home addresses of victims of domestic violence.<sup>84</sup> These procedures are increasingly popular among the states.<sup>85</sup> Typically, such a program allows interested victims of domestic violence to apply to the secretary of state for permission to use a fictitious address supplied by the secretary of state as a mailing address for all legal purposes. Mail received at that address is then forwarded by the secretary of state to the actual address of the protected person. This allows the protected person to keep his/her physical location confidential on all government and private records when the protected person deems it appropriate. Such a program could be extended to allow participation by judges and other participants in the judicial process who believe they need greater security.

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<sup>84</sup> (Arizona) A.R.S. § 41-163 *et seq.*; (California) Cal. Gov. Code § 620 *et seq.*; (Colorado) C.R.S.A. § 24-21-210 *et seq.*; (Connecticut) C.G.S.A. § 54-240 *et seq.*; (Delaware) (Florida) F.S.A. § 741.401 *et seq.* and § 741.465; (Idaho) I.C. § 19-5701 *et seq.*; (Illinois) 750 ILCS § 61/11 *et seq.*; (Indiana) IC § 5-26.5-1-1 *et seq.*; (Kansas) K.S.A. § 75-451 *et seq.*; (Kentucky) § KRS 14.300, *et seq.*; (Louisiana) (LSA-R.S. § 44:51 *et seq.*); (Maine) 5 M.R.S.A. § 90-B *et seq.*; (Maryland) MD Code, Family Law, § 4-519 *et seq.*; (Massachusetts) M.G.L.A. 9A § 1 *et seq.*; (Minnesota) M.S.A. § 5B.01 *et seq.*; (Mississippi) Miss. Code § 99-47-1; (Missouri) V.A.M.S. § 589.660 *et seq.*; (Montana) MCA § 40-15-115 *et seq.*; (Nebraska) Neb. Rev. St. § 42-1201 *et seq.*; (Nevada) N.R.S. § 217.462 *et seq.*; (New Hampshire) N.H. Rev. Stat. § 7.41 *et seq.*; (New Jersey) N.J.S.A. § 47:4-1 *et seq.*; (New Mexico) N.M.S.A. § 40-13-11; (New York) (North Carolina) N.C.G.S.A. § 15C-1 *et seq.*; (Oklahoma) 22 Okl. St. Ann. § 60.14; (Oregon) O.R.S. § 192.820 *et seq.*; (Pennsylvania) 23 Pa. C.S.A. § 6701 *et seq.*; (Texas) Vernon's Ann. Texas C.C.P. Art. 56.81 *et seq.*; (Vermont) 15 V.S.A. § 1150 *et seq.*; (Virginia) VA Code Ann. § 2.2-515.2; (Washington) RCW § 40.24.010 *et seq.*; and (West Virginia) W.Va. Code § 48-28A-101 *et seq.*

<sup>85</sup> Two were enacted in 1997 (Nevada and New Jersey); three were enacted in 1998 (California, Florida and Washington); one was enacted in 1999 (Rhode Island); four were enacted in 2000 (Illinois, Massachusetts, New Hampshire and Vermont); two in 2001 (Indiana and Maine); two in 2002 (North Carolina and Oklahoma); two in 2003 (Connecticut and Nebraska); one in 2004 (Pennsylvania); two in 2005 (Montana and Oregon); four in 2006 (Kansas, Louisiana, Maryland and Minnesota); six in 2007 (Colorado, Missouri, New Mexico, Texas, Virginia and West Virginia); two in 2008 (Idaho and Mississippi) two in 2011 (Arizona and Delaware); one in 2012 (New York); and, one in 2013 (Kentucky).

Minnesota's address confidentiality program is open to participation by more persons with a legitimate need to limit access to personal information than any similar program. A 2013 amendment makes statutory protection available not only to victims of domestic violence, but also to any resident of the state who fears for his or her safety or the safety of another person residing in their household.<sup>86</sup> The statute opens the address confidentiality program to law enforcement officers, prosecutors, judges and others who have concerns for their safety based upon their professional positions. The statute is also unique because the amendment requires not only governmental agencies, but also nongovernmental persons, to accept the participant's confidential address and not to disclose the participant's actual address or other identifying information.<sup>87</sup>

Several state address confidentiality programs require other government agencies to withhold from public disclosure identifying information of the participant.<sup>88</sup> Arizona, Colorado and Oklahoma require all state and local government entities avoid disclosure of the participant's actual address or telephone number.<sup>89</sup> California's program requires confidentiality of voter registration and driver's license information.<sup>90</sup> Connecticut includes marriage records.<sup>91</sup> Nevada exempts participants from jury duty.<sup>92</sup>

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<sup>86</sup> MN ST § 5B.02

<sup>87</sup> MN ST § 5B.05.

<sup>88</sup> (Idaho): - voter registration - I.C. § 19-5701 *et seq.*; (Indiana): voter registration - IC § 3-11-4-5 *et seq.*, driver's license - IC § 9-24-11-5; (Maine): voter registration - 21-A M.R.S.A. § 22; (New Hampshire): - voter registration - N.H. Rev. Stat. § 7:41 *et seq.*; (Washington): - voter registration and marriage license records - RCWA § 40.24.01 *et seq.*

<sup>89</sup> A.R.S. § 41-163 *et seq.*; C.S.A. § 24-30-2103 *et seq.*; and 22 Okl. St. Ann. § 60.14(G).

<sup>90</sup> Cal. Gov't Code § 6205 *et seq.*

<sup>91</sup> C.G.S.A. § 54-240 *et seq.*, also includes voter registration records.

<sup>92</sup> NRS § 217.462., also includes voter registration.

Oklahoma requires public schools to accept the confidential address as a valid residential address.<sup>93</sup>

California makes it a crime to post a participant's home address, telephone number, or personal identifying information with the intent that another person imminently use that information to commit a violent crime, or threaten violence, against the victim or the victim's family.<sup>94</sup>

Some states without address confidentiality programs provide domestic violence victims with confidentiality within the public records of certain state or local agencies.<sup>95</sup>

Perhaps the most comprehensive privacy protection afforded to judicial officers by any state is Illinois' "Michael Lefkow and Donna Humphrey Judicial Privacy Improvement Act of 2012."<sup>96</sup> The Illinois statute states its purpose is "to improve the safety and security of Illinois judicial officers to ensure they are able to administer justice fairly without fear of personal reprisal from individuals affected by the decisions they make in the course of carrying out their public function." Under the law, "personal information" is defined to include judges' home addresses, telephone numbers, personal e-mail addresses, social security numbers, federal tax identification numbers, checking and savings account numbers, credit card numbers, marital status, and the identification of children under the age of 18. Judges are able to submit requests to private individuals, entities, and governmental agencies that require the removal of their, and their immediate

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<sup>93</sup> 22 Okl. St. Ann § 60.14.

<sup>94</sup> Cal. Gov't Code § 6208.2.

<sup>95</sup> (Arkansas): driver's license - A.R.S. § 27-16-811; (Iowa): filing petitions and obtaining utilities - I.C. § 236.10; (Rhode Island): voter registration - RI ST § 17-28-1 *et seq.*

<sup>96</sup> 705 ILCS § 90/1-1 *et seq.*

family members' personal information from public documents and websites. Individuals and entities must delete the information within three days of receipt of such requests. Government agencies must comply within five days. Compliance is required until the judge grants permission to make public the information or the judge's death. Judges may list their office addresses as their residence addresses on driver's licenses and state issued identification cards. Judges may seek injunctive or declaratory relief in order to enforce compliance. In some circumstances, the award of attorney fees and costs is mandatory. Anyone who unlawfully publishes such personal information may be charged with a felony if the publication leads to the death or bodily harm of the judge or an immediate family member.

Some states afford address confidentiality to other groups. In 1972, Florida enacted legislation making it a crime to publish the residence address or telephone number of a law enforcement officer with the intent to intimidate, hinder or interrupt the legal performance of his or her duties.<sup>97</sup> Colorado law has, since 2002, made it a crime to make available on the Internet personal information about a law enforcement official if the person posting the information knows dissemination poses an imminent and serious threat to official's safety.<sup>98</sup> In 2009, the statute was amended to protect the immediate family members of law enforcement officials.

In 2009, an individual, with the support of the American Civil Liberties Union, challenged the constitutionality Florida's law enforcement privacy statute. In 2010, a United States district court judge found the statute violated the First Amendment

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<sup>97</sup> F.S.A. 843.17.

<sup>98</sup> C.R.S.A. 18-9-313

because it proscribes protected speech without being narrowly tailored to serve a compelling government interest.<sup>99</sup> The court ruled that a “narrowly tailored” statute would “require there be a credible threat of danger to the officer.” One could argue that a credible threat of danger to the officer could be established not personally, but statistically by showing that law enforcement officers (or judges) have a greater likelihood of becoming victims of criminal violence than do other members of society. The decision was not appealed, and hasn’t been cited in any published court decision outside the state of Florida.

Undeterred by this Florida decision, California enacted a statute, which became effective in 2011, that imposes civil and criminal liability on any person who, knowing or intending that imminent great bodily harm will result, posts on the Internet the personal information of any federal, state and local elected or appointed official, including, judges, prosecutors, public defenders, law enforcement officers, and legislators.<sup>100</sup> Similarly, Idaho statutorily created an address confidentiality program for law enforcement officers which also became effective in 2011.<sup>101</sup> Idaho allows law enforcement officers to require public agencies to use an alternative address, rather than the officer’s actual residence address, on all applications, identification cards, licenses, certificates permits, and other similar documents issued to the officer or the officer’s household members. The law also prohibits every public agency from disclosing the actual residence address to any person in most circumstances. California has also created

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<sup>99</sup> *Brayshaw v. City of Tallahassee*, 709 F.Supp.2d 1244 (2010).

<sup>100</sup> Cal. Gov. Code 6254.21-24.

<sup>101</sup> I.C. 19-5803, et seq.

an address confidentiality program for reproductive health care service providers, employees, volunteers and patients.<sup>102</sup>

The Colorado, California, and Idaho statutes have not been subjected to constitutional challenge. Except for the Florida district court case, there no existing judicial precedent indicating whether such statutes might be found to be valid or invalid. A similar address confidentiality program for law enforcement officers is in use in Winnipeg, Canada.<sup>103</sup> An organization has been created to encourage the enactment of legislation to remove the personal information of law enforcement officers and their families from websites and information databases that sell or publically post such information. “Privacy For Cops” can be contacted at <http://privacyforcops.org/>.

### **Analysis.**

The *Inferno*, Dante Alighieri’s epic 14<sup>th</sup> century poem, says that a sign at the entrance to Hell declares, “Abandon all hope, ye who enter here.” Computers and the Internet are causing major societal transformations, perhaps as significant as earlier transformations occasioned by the printing press or Columbus’ discovery of the New World. But entry into the Internet age isn’t as frightful as arrival at the gates of Hell. Even though the worldwide web makes information easier to access, it remains reasonable to impose restrictions on access to home addresses and other personal information that might be used by criminals to facilitate a violent offense. It isn’t necessary to abandon all hope.

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<sup>102</sup> Cal. Gov’t Code § 6215 *et seq.*

<sup>103</sup> Address-free licenses issued to certain police, *Winnipeg Free Press*, July 5, 2012.

Address confidentiality programs intended to protect victims of domestic violence, law enforcement officers, abortion clinic workers, and others have been created by statute in most American jurisdictions in recent years. Although no longitudinal study examining the effectiveness of such programs has been identified, the collective wisdom of the nation's elected representatives warrants some respect. Moreover, the imposition of criminal penalties for the publication of a judge's personal information with the intent to incite violence is consistent with the deterrent effects of classical criminological theory. Providing a judge with civil remedies against the perpetrator of such behavior increases the costs of such behavior and is likely to have deterrent effect. Classical theory argues that both criminal penalties and civil remedies will reduce the occurrence of proscribed conduct.

Routine activity theory suggests that the opportunity for committing crimes against judges will be reduced if judges are permitted to limit access to their identifying information. Many criminals are opportunistic. Some are not adept at using computers. Some are lazy. If the commission of crime is made more difficult, some group of potential criminals will be unwilling or unable to expend the necessary effort and will be dissuaded from offense.

States should consider opening existing domestic violence address confidentiality programs to judges and others with roles in the judicial process. Many of these programs have existed for decades and, accordingly, have become familiar and efficient. Minnesota's example shows that minor statutory changes can expand such programs to offer protection to judges and others with legitimate concerns for personal safety. More ambitiously, states should consider creating programs specifically geared to

the needs of judges or other public officials as has been done by California and Illinois. The Illinois statute has the broadest scope in terms of the types of records and avenues of publication which are subject to regulation. The California statute provides protection to a wider range of persons who might have security concerns because of their positions as elected or appointed officials. A combination of the best aspects of these statutes would address the express fears of the judiciary and would likely make judges safer.

### **Conclusion**

If the goal of existing court security measures is to protect judges and other court participants from violence, they aren't working well enough. The number of violent attacks continues to rise.

The problem is generally more menacing for state and local judges than for federal judges. The Federal Courts have become much more secure in recent years in large part because its approximately 2,500 lifetime tenured judges are protected by a law enforcement agency dedicated to judicial protection: the U.S. Marshals Service. Federal courthouses have been made into very secure fortresses. Every federal judge who wants a home intrusion alarm system has had one installed. Comparatively, the approximately 30,000 state and local judges are less safe. Their number and their less-than-lifetime terms make the cost of providing them with security comparable with that provided to their federal counterparts unlikely. Most are dependent for security on the all-purpose, local law enforcement agency where they sit. Few are provided with any protection outside the courthouse and many have no protection inside the courthouse.

Much has been studied and written about judicial security. This paper attempts to review in Part One the facts about court targeted violence that are described

in the relevant literature. National standards have been developed for such security measures as building design, lighting, prisoner transport, etc. Despite these efforts, the amount of violence continues to increase. Every untried or underutilized approach to this problem should receive further consideration. One underutilized approach involves the power of law to modify the behavior of individuals.

The process of formulating meaningful legislation to combat courthouse violence for nationwide adoption should be guided by empirical studies assessing the effectiveness of policies that have already been incorporated into the statutes of individual states. Unfortunately, such studies do not exist. The exigencies of the situation make it imprudent to await the development of such scholarship. Time tested criminological theories exist that suggest the route to effective legislation. This paper makes an attempt to consider what is known about courthouse violence in relation to those theories. State laws on paper terrorism, enhanced criminal penalties for crimes against the judiciary, and restrictions on access to the addresses and other personal information of judges have been explored in some detail. Hopefully, this consideration will be of assistance to courts and legislators interested in drafting legislation that promise to be effective in making the courts safer. It cannot be expected that legislation will provide a panacea for the problem of courthouse violence. No other attempted defense has. It is, however, another weapon that should be added to the arsenal.

Additional research is needed. Existing legislation from all states should be compiled and analyzed in relation to other topics that may be useful in combatting court targeted violence, including: harassment, stalking, mental health commitment, mental

health professionals' duty to warn, procedural justice, and centralization of security responsibility.

Numerous authors have made the observation that the task of protecting judges and others involved in the judicial process is hampered by a lack of information (Geiger, 2001; Weiner & Hardenbergh, 2001; Vosseuil, Borum, Fein, & Reddy, 2001; U. S. Department of Justice, 2009) However, few state court systems systematically gather information on courthouse violence. The federal Court Security Improvement Act of 2007 recognized the importance of data collection by legislating that each state court system receive federal funding for that purpose. Unfortunately, this mandate of the Act was not funded.

Collection of data about court security incidents is essential to meaningful threat assessment by law enforcement and to studies of the violence. If more effective court security is to be achieved, its development must be informed by an accurate understanding of the nature and scope of the problem. The gathering and reporting of information about violent incidents should be viewed by the courts as a necessary act of self-preservation.

An organization with a nationwide interest in court security must step forward to advance the necessary data collection. Uniformity in data collection is important. A number of states, including Pennsylvania, have created templates for security incident reporting. Surveys should be made of the existing state security resources, perceived needs, and incidents to allow the efficiency of security measures to be assessed. Surveys of the attitudes and concerns of judges and court administration should be conducted.

Another fertile area for research is likely to exist in the study of already existing data. The ECSP studied the characteristics, motivations, and behaviors of 83 persons known to have attacked, or approached to attack, prominent public figures. It should be recalled that only four of the perpetrators studied, less than five percent, targeted judges and, those were all federal judges. Ninety-five percent of the cases studied involved non-judicial victims, including four times more attacks on movie, sports, and media celebrities than judicial attacks. It is not obvious that differences between attacks on judges and other public figures have been adequately explored. However, because no more clearly applicable study exists, the ECSP is relied upon by the U.S. Marshals Service and scholars studying courthouse violence. An ECSP-like study focused on attacks against those involved in the judicial process would likely provide new insight into courthouse violence.

## Appendix A

### Anti-Defamation League Model “Common Law Courts” Statute

A. Any person who deliberately impersonates or falsely acts as a public officer or tribunal, public employee or utility employee, including but not limited to marshals, judges, prosecutors, sheriffs, deputies, court personnel, or any law enforcement authority in connection with or relating to any legal process affecting person(s) and property, or otherwise takes any action under color of law against person(s) or property; or

(2) Any person who simulates legal process including, but not limited to, actions affecting title to real estate or personal property, indictments, subpoenas, warrants, injunctions, liens, orders, judgments, or any legal documents or proceedings; knowing or having reason to know that the contents of any such documents or proceedings or the basis for any action to be fraudulent; or

(3) Any person who falsely under color of law attempts in any way to influence, intimidate, or hinder a public official or law enforcement officer in the discharge of his or her official duties by means of, but not limited to, threats of or actual physical abuse, harassment, or through the use of simulated legal process--

Shall be guilty of \_\_\_\_\_ and fined not more than \$\_\_\_\_\_ or imprisoned not more than \_\_\_\_\_ years, or both.

B. (1) Nothing in this section shall make unlawful any act of any law enforcement officer or legal tribunal which is performed under lawful authority; and

(2) Nothing in this section shall prohibit individuals from assembling freely to express opinions or designate group affiliation or association; and

(3) Nothing in this section shall prohibit or in any way limit a person's lawful and legitimate access to the courts or prevent a person's from instituting or responding to legitimate and lawful legal process.

C. As used in this section:

(1) The term "legal process" means a document or order issued by a court or filed or recorded for the purpose of exercising jurisdiction or representing a claim against a person or property, or for the purpose of directing a person to appear before a court or tribunal, or to perform or refrain from performing a specified act. "Legal process" includes, but is not limited to, a summons, lien, complaint, warrant, injunction, writ, notice, pleading, subpoena, or order.

(2) The term "person" means an individual, public or private group incorporated or otherwise, legitimate or illegitimate legal tribunal or entity, informal organization, official or unofficial agency or body, or any assemblage of individuals.

The Anti-Defamation League announced its model “Common Law Courts” statute by press release of April 23, 1996, available at:  
[http://archive.adl.org/presrele/Militi\\_71/2719\\_71.asp](http://archive.adl.org/presrele/Militi_71/2719_71.asp). Accessed September 1, 2013.

## Appendix B

## Pre-Filing, Filing Office Remedies.

- Alabama            “[T]he filing officer shall refuse a UCC record if...[t]he record appears fraudulent on its face...[or]...[t]he record identifies the debtor and secured party as the same person.” Ala. Admin. Code § 820-4-3-.02(3). (effective March 14, 2002, current through June 30, 2013).
- Arizona            “A nonconsensual lien...shall not be recorded unless the lien is accompanied by an order or judgment from a court of competent jurisdiction authorizing the filing of the lien...The county recorder shall not record any [such] lien.” A.R.S. § 33-421. (1997/2007).
- “A nonconsensual lien...shall not be recorded unless the lien is accompanied by an order or judgment from a court of competent jurisdiction authorizing the filing of the lien...The county recorder shall not record any [such] lien.” A.R.S. § 47-9528. (1999).
- California            “The Secretary of State’s office may refuse to perform a service or refuse a filing based upon a reasonable belief that the service or filing is being requested for an unlawful, false, or fraudulent purpose, to promote or conduct an illegitimate object or purpose, or is being requested or submitted in bad faith or for the purpose of harassing or defrauding a person or entity.” Cal.Gov.Code § 12181, (2011).
- Colorado            “Any state or local official or employee, including the clerk and recorder of any county or city and county and the Colorado secretary of state may accept or reject any document that the state or local official reasonably believes in good faith may be a spurious lien or spurious document.” C.R.S.A. § 38-35-202(1). (1997).
- “No state or local official or employee, including the clerk and recorder of any county or city and county and the Colorado secretary of state, shall be obligated to accept for recording or filing any lien or claim of lien against a federal official or employee or a state or local official or employee based upon the performance or nonperformance of that official’s or employee’s duties unless such lien or claim of lien is accompanied by a specific order issued by a state court or federal court authorizing the recording or filing of such lien or claim of lien.” C.R.S.A. § 38-35-202(3). (1997).

- Hawaii “The registrar shall not accept for filing a claim for nonconsensual common law lien unless the claim is accompanied by a certified state or federal court order authorizing the filing of the lien.” HRS § 507D-5(c).
- Idaho “No person has a duty to accept for filing or recording any claim of nonconsensual common law lien unless the lien is authorized by contract, lease, statute or imposed by a court having jurisdiction over property affected by the lien.” I.C. § 45-1702(1). (1996).
- “No person shall be obligated to accept for filing any claim of nonconsensual common law lien against a federal, state, or local official or employee based on the performance or nonperformance of that official’s or employee’s duties unless accompanied by a specific order for a court of competent jurisdiction authorizing the filing of such lien.” I.C. § 45-1702(2). (1996).
- “The filing officer shall not file an initial financing statement or financing statement amendment...[w]hich contains an assumed business name for either an individual or a business entity...and the true name of the person using the assumed business name is not included[;and,]... [w]hen an individual debtor and an individual secured party would, as a result of the filing, appear to be the same individual on the financing statement. The filing officer may require, prior to filing, reasonable proof from the secured party that an individual debtor is in fact a “transmitting utility”...if a filing indicates that the debtor is a transmitting utility.” I.C. § 28-9-516A. (2001).
- Michigan A filing office shall refuse to accept a [U.C.C.] record for filing if: “The record is not required or authorized to be filed...The secretary of state has reasonable cause to believe the record is materially false or fraudulent...The record asserts a claim against a current or former employee or officer of a federal, state, county, or other local government unit that relate to the performance of the officer’s or employee’s public duties, and for which the filer does not hold a properly executed security agreement or judgment from a court of competent jurisdiction...[or]...The record indicates that the debtor and the secured party are substantially the same or that an individual debtor is a transmitting utility.” M.C.L.A. § 440.9520(5). (2008).
- Missouri “Any filing officer may reject for filing or recording any nonconsensual common law lien.” V.A.M.S. § 428.110(1). (1996).

- Montana “If a filing officer receives a complaint or has reason to believe that a [U.C.C.] lien submitted or filed with the filing officer’s office is improper or fraudulent, the filing officer may reject the submission or remove the filing from existing records after giving notice and an opportunity to respond to the secured party and the debtor.” MCA § 30-9A-420(1). (1999).
- Nebraska “The Secretary of State, county clerk, register of deeds, or clerk of any court shall refuse to accept for filing any nonconsensual common-law lien.” Neb.Rev.St. § 52-1903. (2003).
- New Mexico “A filing officer does not have a duty to accept for filing or recording a claim of lien, unless the lien is authorized by statute or imposed by a court of competent jurisdiction having jurisdiction over property affected by the lien.” N.M.S.A. § 48-1A-7(A). (1999).
- “A filing officer does not have a duty to accept for filing or recording a claim of lien against a state or local official or employee of a federal official or employee based on the performance or nonperformance of that official’s or employee’s duties shall be invalid, unless accompanied by a specific order from a court of competent jurisdiction... authorizing the filing of the lien.” N.M.S.A. § 48-1A-7(B). (1999).
- North Carolina “In the case of a lien or encumbrance presented to the register of deeds for filing, if the register of deeds has reasonable suspicion that the lien or encumbrance is false, the register of deeds may refuse to file the lien or encumbrance.” NCGSA § 14-118.6(b). (2012).
- “Filing does not occur with respect to a [U.C.C.] record that the filing office refuses to accept because...the record...is...intended for an improper purpose, such as to hinder, harass, or otherwise wrongfully interfere with any person.” NCGSA § 25-9-516(b)(8). (2012).
- North Dakota “Any filing officer may reject for filing or recording any nonconsensual common-law lien.” NDCC § 35-35-03(1). (1999).
- “Any financing statement submitted for filing with any filing officer must be rejected if it list the same individual as both debtor and secured party.” NDAC § 72-01-02-06.

- Ohio
- “Notwithstanding any other provision of the Revised Code, if a person presents a document to the secretary of state for filing or recording, the secretary of state may refuse to accept the document for filing or recording if the document is not required or authorized to be filed or recorded with the secretary of state or the secretary of state has reasonable cause to believe the document is materially false or fraudulent.” R.C. § 11.24(A). (1996).
- “Notwithstanding any other provision of the Revised Code, if a person presents a document to the clerk of a court for filing or for docketing and indexing, the clerk may refuse to accept the document for filing or refuse to docket and index the document if the document is not required or authorized to be filed or to be docketed and indexed with the clerk or the clerk has reasonable cause to believe the document is materially false or fraudulent.” R.C. § 2701.20. (1996).
- Oregon
- “A [U.C.C.] filing office shall refuse to record for filing” an improper filing. O.R.S. § 79.0520. (2001).
- No person shall accept for filing an invalid claim of encumbrance.” O.R.S. § 205.455(1). (1997).
- “No person or county shall accept the property of a federal official or employee or a state or local official or employee based on the performance or nonperformance of the official duties of the official or employee that is not accompanied by an order from a court or competent jurisdiction authorizing the filing of the encumbrance.” O.R.S. § 205.455(2). (1997).
- South Carolina
- “If a person presents a conveyance, mortgage, judgment, lien, contract, or other document to the clerk of court or the register of deeds for filing or recording, the clerk of court or the register of deeds may refuse to accept the document for filing if he reasonably believes that the document is materially false or fraudulent or is a sham legal process.” SC ST § 30-9-30(B)(1). (1998).
- “A clerk of court or register of deeds may not accept for filing a judgment or other lien against a present or former federal, state, or local official or employee unless the judgment or other lien is issued by a court of competent jurisdiction or appropriate governmental entity, or the judgment or other lien is otherwise authorized by statute.” SC Code § 30-9-35(A). (1998).

- “Filing does not occur with respect to a [U.C.C.] record that the filing office refuses to accept because...the record...is intended for an improper purpose, such as to defraud, hinder, harass or otherwise wrongfully interfere with a person; or...the same person or entity is listed as both debtor and secured party...” SC Code § 36-9-56(b)(8) and (9). (2005).
- South Dakota “A register of deeds may refuse to record any document...the register has reasonable cause to believe is a counterfeit lien.” SDCL § 7-9-19. (1997).
- Texas If a clerk [of a court, district, county or municipality] has a reasonable basis to believe in good faith that a document or instrument previously filed or recorded or offered or submitted for filing or for filing and recording is fraudulent, the clerk shall [within two business days]...provide written notice of the filing” to adversely affected persons. V.T.C.A., Government Code § 51.901.
- “If a county clerk believes in good faith that a document filed with the county clerk to create a lien is fraudulent, the clerk shall...request the assistance of the county or district attorney to determine whether the document is fraudulent before filing or recording the document.” V.T.C.A., Government Code § 51.901(d). (2007).
- “A clerk...shall post a sign, in letters at least one inch in height, that is clearly visible to the general public in or near the clerk’s office stating that it is a crime to intentionally or knowingly file a fraudulent court record or fraudulent instrument with the clerk.” V.T.C.A., Government Code § 51.904. (1997).
- “If the secretary of state believes that a document filed with the secretary of state to create a lien is fraudulent, the secretary of state shall...request the assistance of the attorney general to determine whether the document is fraudulent before filing or recording the document.” V.T.C.A., Government Code § 405.022. (2005).
- Utah “A county recorder may reject recording of a lien if the county recorder determines the lien is a wrongful lien as defined in section 38-9-1.” U.C.A. § 38-9-3(1)(a). (1997).
- Washington “No person has a duty to accept for filing or recording any claim of lien unless the lien is authorized by statute or imposed by a court having jurisdiction over property affected by the lien.” RCWA § 60.70.030(1). (1986).

“No person shall be obligated to accept for filing any claim of lien against a federal, state, or local official or employee based on the performance or nonperformance of that official’s or employee’s duties unless accompanied by a specific order from a court of competent jurisdiction authorizing the filing of such lien.” RCWA § 60.70.030(2). (1986).

West Virginia

“A clerk of a county commission or other person has no duty to accept for filing or recording any purported claim of a common law lien, because a common law lien is neither authorized by statute nor imposed by a court of competent jurisdiction.” W.Va. § 38-16-302. (1999).

“A person is not obligated to accept for filing any purported claim of lien against a federal official or employee or a state or local official or employee that is based on the performance or nonperformance of that official’s or employee’s duties unless the claim is accompanied by a specific order from a court of competent jurisdiction authorizing the filing of such lien or unless a specific statute authorizes the filing of such lien.” W.Va. § 38-16-303(b). (1999).

“If a clerk of the county commission has a reasonable basis to believe in good faith that a document or instrument purporting to evidence an invalid nonconsensual common law lien has been filed or recorded or offered for filing or recording, the clerk shall [within two business days] provide written notice...” to the person adversely affected by the lien. W.Va. § 38-16-401. (1999).

“A clerk of the county commission shall post a sign, in letters at least one inch in height, that is clearly visible to the general public in or near the clerk’s office stating that it is a crime to intentionally or knowingly file a fraudulent court record or fraudulent instrument with the clerk.” W.Va. § 38-16-405. (1999).

“A recorder may refuse to record a clearly fraudulent lien or other legal process against a public official or employee or his or her property.” W. Va. Code § 61-5-27(g)(1). (1999).

Wisconsin

“No lien may be filed entered or recorded against the real or personal property of any official or employee of the state or any political subdivision of the state, relating to an alleged breach of duty by the official or employee, except after notice and a hearing before a court of record and a finding by the court that probable

cause exists that there was a breach of duty.” W.S.A. § 706.15.  
(1979).

## Appendix C

## False Filing that are of no Effect as a Matter of Law.

|          |  |
|----------|--|
| Colorado | “No spurious lien or spurious document shall hold or affect any real or personal property longer than thirty-five days after the lien or document has been recorded or filed...unless within the thirty-five days...[a]n action has been commenced to enforce such lien or document in the ...district court.” C.R.S.A. § 38-35-203. (1997).   |
| Hawaii   | “Any claim of nonconsensual common law lien against a private party in interest shall be invalid unless accompanied by a certified order from a state or federal court of competent jurisdiction authorizing the filing of nonconsensual common law lien.” HRS § 507D-5(b).  |
| Idaho    | “Any claim of lien against a federal, state, or local official or employee based on the performance or nonperformance of that official’s or employee’s duties shall be invalid unless accompanied by a specific order from a court of competent jurisdiction authorizing the filing of such lien or unless a specific statute authorizes the filing of such lien” I.C. § 45-1704(1).   |
| Illinois | “Filing does not occur with respect to a record that a filing officer refuses to accept because...the record indicates that the debtor is a transmitting utility [but] the debtor does not meet the definition of a transmitting utility...the record indicates that the transaction relating to the record is a manufactured-home transaction [but] the transaction does not meet the definition of a manufactured-home transaction...or...the record indicates that the transaction relating to the record is a public-finance transaction [but] the transaction does not meet the definition of a public-finance transaction...” 810 ILCS § 5/9-516. (1995/1997). |
| Indiana  | “[A] common law lien is void if the common law lienholder fails to commence a suit on the common law lien within one hundred eighty (180) days after the date the common law lien is recorded.” IC § 32-28-13-4. (2009).   |
| Nebraska | “Filing does not occur with respect to a record that a [U.C.C.] filing office refuses to accept because...the same person or entity is listed as both debtor and secured party.” NE ST U.C.C. § 9-516(b)(8). (2003).   |

“A nonconsensual common-law lien is not binding or enforceable at law or in equity. Any nonconsensual common-law lien that is recorded is void and unenforceable.” NE ST § 52-1901. (2013).

“Failure [of the lien claimant] to serve a copy of the recorded lien upon the owner or failure to file judicial proceeding to enforce the lien [within ten days] shall cause the lien to lapse and be of no effect.” NE ST § 52-1901. (2013).

Nevada

“Any lien which is filed or otherwise claimed against a public officer or employee which is based on the performance of or failure to perform a duty relating to the office or employment of the officer or employee is invalid unless the filing of the lien is authorized by a specific statute or by an order of a court of competent jurisdiction.” NRS § 281.405. (1997).

New Mexico

“Nonconsensual common law liens against real property shall not be recognized or be enforceable. Nonconsensual common law liens claimed against personal property shall not be recognized or be enforceable if, at the time the lien is claimed, the claimant fails to retain actual lawfully acquired possession or exclusive control of the property.” N.M.S.A. § 48-1A-5. (1999).

“A claim of lien against a state or local official or employee of a federal official or employee based on the performance or nonperformance of that official’s or employee’s duties shall be invalid, unless accompanied by a specific order from a court of competent jurisdiction authorizing the filing of the lien, or unless a specific statute authorizes the filing of the lien.” N.M.S.A. § 48-1A-6. (1999).

North Carolina

“Refusal to accept record; filing does not occur. -- Filing does not occur with respect to a record that a [U.C.C.] filing office refuses to accept because...the Secretary of State determines that the record...is otherwise intended for an improper purpose, such as to hinder, harass, or otherwise wrongfully interfere with any person.” N.C.G.S.A. § 25-9-516(b)(8). (2001).

Oregon

“Filing does not occur with respect to a record that a [U.C.C.] filing office refuses to accept because...the record on its face reveals, based on factors such as whether the debtor and the secured party are the same person...that the record is being filed for a purpose other than a “ O.R.S. § 79.0516(2)(h). (2003).

“A claim of encumbrance against the property of a federal official or employee or a state or local official or employee based on the performance or nonperformance of the official duties of the official or employee that is not accompanied by an order from a court or competent jurisdiction is an invalid claim of encumbrance and has no legal effect.” O.R.S. § 205.455(3); see, also, O.R.S. § 205.465. (1997).

#### Washington

“Nonconsensual common law liens against real property shall not be recognized or be enforceable. Nonconsensual common law liens claimed against personal property shall not be recognized or be enforceable if, at the time the lien is claimed, the claimant fails to retain actual lawfully acquired possession or exclusive control of the property.” RCWA § 60.70.020. (1986).

“A claim of lien against a federal, state, or local official or employee based on the performance or nonperformance of that official’s or employee’s duties shall be invalid unless accompanied by a specific order from a court of competent jurisdiction authorizing the filing of the lien or unless a specific statute authorizes the filing of the lien.” RCWA § 60.70.070. (1995).

#### West Virginia

“A common law lien against real property is invalid and is not recognized or enforceable in this state.” W.Va. Code § 38-16-202(a). (1999).

“A common law lien claimed against personal property is invalid and is not recognized or enforceable if, at the time the lien is claimed, the claimant does not have...actual possession...or...exclusive control, lawfully acquired, of specific property against which the lien is claimed.” W.Va. Code § 38-16-202(b). (1999).

“A nonconsensual common-law lien is invalid and does not constitute a charge against property or create an interest in property. The filing or recording of a document that purports to evidence a nonconsensual common law lien is a nullity and is of no force or effect.” W.Va. Code § 38-16-301. (1999).

“A claim of lien against a federal official or employee or a state or local official or employee that is based on the performance or nonperformance of that official’s or employee’s duties is invalid unless it arises from a specific order of a court of competent jurisdiction authorizing the filing of the lien or unless a specific

statute authorizes the filing of the lien.” W.Va. § 38-16-303(a). (1999).

“A purported judgment lien or document establishing or purporting to establish a judgment lien against property in this state, that is issued or purportedly issued by a court or a purported court other than a court established under the laws of this state or the United States, is a nullity and has no effect in the determination of any title or right to property.” W.Va. § 38-16-306(b). (1999).

“Filing does not occur with respect to a [U.C.C.] record that a filing office refuses to accept because...the record indicates that the debtor is a transmitting utility [but] the debtor does not meet the definition of a transmitting utility...” W.Va. Code § 46-9-516(E).

#### Wyoming

A claim of lien against a federal, state or local official or employee based on the performance or nonperformance of that official’s or employee’s duties shall be invalid unless accompanied by a specific order from a court of competent jurisdiction authorizing the filing of the lien or unless a specific statute authorizes the filing of the lien.” W.S. § 29-1-601(a). (2010).

## Appendix D

## Post-Filing, Filing Office Remedies.

|                |  |
|----------------|--|
| Alabama        | “A recording official may nullify or expunge from an official record a false or fraudulent lien or instrument.” Such an action may be taken upon the recording official’s own initiative or upon the petition of the person whose rights are affected by the filing of the lien of other instrument.” Ala. Code § 13A-9-12(e). (2012).   |
| Hawaii         | “A debtor who believes the filing of a financing statement was unauthorized, may file a request with the registrar to determine the validity of the filing.” HRS § 507D-4(b). (1996).  |
| Idaho          | “The secretary of state may petition the district court in Ada county for an order to show cause why [a noncompliant filing] should not be deleted from the files and records of the secretary of state. I.C. § 28-9-516A. (2001).   |
| Maine          | “A filing officer may refer a matter to the Attorney General for filing the” civil and criminal actions available for the filing of an unauthorized financing statement. 5 M.R.S.A. § 90-E(4)(D). (2007).  |
| Michigan       | “A person identified as a debtor in a financing statement...may file an affidavit...stating that the financing statement is fraudulent...On receipt of an affidavit...the secretary of state shall terminate the financing statement...[and] send notice of the termination...the filer may file an action to reinstate the financing statement. M.C.L.A. § 440.9501a. (2008).     |
| Montana        | “If a filing officer receives a complaint or has reason to believe that a [U.C.C.] lien submitted of filed with the filing officer’s office is improper or fraudulent, the filing officer may reject the submission or remove the filing from existing records after giving notice and an opportunity to respond to the secured party and the debtor.” MCA § 30-9A-420(1). (1999). |
| Nebraska       | A person identified as a debtor in a financing statement may file an affidavit with the filing office alleging that the statement was filed by a person not entitled to do so. In response, the filing office may file a termination statement. Neb.St. § U.C.C. 9-513A. (2013).   |
| North Carolina | “A person may file in the [U.C.C.] filing office and information statement with respect to a record indexed there under the person’s name if the person believes the record is inaccurate or was   |

wrongfully filed...the Secretary of State shall, without undue delay, determine whether the contested record was wrongfully filed and should have been rejected...If the Secretary of State finds that the record was wrongfully filed and should have been rejected...the Secretary of State shall cancel the record and it shall be void and of no effect.” N.C.G.S.A. § 25-9-518. (2012).

South Carolina

“If the clerk of court or the register of deeds reasonably believes that a conveyance, mortgage, judgment, lien, contract, or other document is materially false or fraudulent, or is a sham legal process, the clerk of court or the register of deeds may remove the document from the public records after giving thirty days’ written notice to the person on whose behalf the document was filed at the return address provided in the document.” SC Code § 30-9-30(B)(2).

South Dakota

“If the register of deeds has reason to believe that a document or instrument previously recorded is counterfeit...the register of deeds shall provide written notice of the recording...the obligor or debtor and to any person who owns any interest in the real property...” SDCL § 7-9-22. (1998).

Texas

If a clerk [of a court, district, county or municipality] has a reasonable basis to believe in good faith that a document or instrument previously filed or recorded or offered or submitted for filing or for filing and recording is fraudulent, the clerk shall [within two business days]...provide written notice of the filing” to adversely affected persons. V.T.C.A., Government Code § 51.901.

## Appendix E

## Statutes Authorizing Expedited Procedures for Removing False Liens or Financing Statements

- Alabama “A person or entity whose rights are affected by the filing of a lien or other instrument may petition a recording official to nullify or expunge the filing. . . Within 14 days of the filing of such petition, the recording official shall give written notice of the filing of the petition to the person or entity who filed the lien or instrument. . . [requiring] additional proof of the validity of the lien or instrument shall be filed with the recording official within 14 days.” The recording official must rule on the petition within 28 days. Aggrieved party may appeal to court. Ala. Code § 13A-9-12(e). (2012).
- Alaska “A person whose real or personal property is subject to a claim of nonconsensual common law lien that has been recorded or filed may submit to a court of competent jurisdiction a request that the court order the release of the claim of the nonconsensual common law lien.” The court may rule on the request ex parte and may order a hearing within 20 days of service of the order on the lien claimant. AS § 09.45.164. (1998).
- California “A public officer or employee whose property is subject to a [false] lien or other encumbrance. . . may petition the superior court. . . for an order, which may be granted ex parte, directing the. . . claimant to appear at a hearing. . . and show cause why the lien or other encumbrance should not be stricken.” The hearing may be scheduled as early as 14 days following the date of the order. An award of attorney fees and costs is discretionary. Cal.C.C.P. §§765.010-765.030. (1998).
- “The state of local agency that employs the public officer or employee may provide counsel for the public officer or employee.” Cal.C.C.P. § 765.060. (1998).
- Colorado “Any person whose real or personal property is affected by a recorded or filed lien that the person believes is a spurious lien or spurious document may petition the district court. . . for an order to show cause why the lien or document should not be declared invalid. . . The order to show cause may be granted ex parte.” A hearing must be held within 14-21 days after service of the order to show cause on the lien claimant. If the claimant fails to appear, the

lien may be declared invalid. An award of attorney fees and costs is mandatory. C.R.S.A. § 38-35-204. (1997).

- Hawaii “Any party in interest in real or personal property which is subject to a claim of nonconsensual common law lien, who believes the claim of lien is invalid, may file a petition in the appropriate circuit court to contest the validity of that purported lien and to enjoin the lien claimant from making further filings with the registrar.” HRS § 507D-4(a). (1996).
- “A debtor who believes the filing of a financing statement was unauthorized, may file a request with the registrar to determine the validity of the filing.” HRS § 507D-4(b). (2002).
- Idaho “Any person whose real or personal property is subject to a recorded claim of nonconsensual common law lien who believes the lien is invalid, may petition the district court...for an order that may be granted ex parte.” A hearing must be held within 6-21 days after service of the order on the lien claimant. If the claimant fails to appear, the lien may be declared invalid. An award of attorney fees and costs is mandatory. I.C. § 45-1703. (1996).
- Illinois “A person identified as debtor in a filed record the person believes to be [a false record]...may...file with the Secretary of State an affidavit to that effect...the Secretary of State shall communicate to the secured party...and to the person that communicated the record...a request for additional information...The Department...shall review all such documentation received within 30 days...The Secretary of State may terminate the record...The Secretary of State may give heightened scrutiny to a record that indicates that the debtor is a transmitting utility or that indicates that the transaction to which the record relates is a manufactured home transaction or a public-finance transaction.” 810 ILCS § 5/9-501.1(d) and (e). (2012).
- Indiana “A property owner may sent to the lienholder a notice requiring the lienholder to commence suit on the common law lien...If the lienholder fails to commence suit within thirty (30) days after receiving notice to commence suit, the common law lien is void.” IC § 32-28-13-6. (2002).
- Kansas “Any person who owns real or personal property or an interest in real or personal property or who is the purported debtor or obligor ad who has reason to believe that any document or instrument

purporting to create a lien or claim...previously filed or submitted for filing is subject to a lien or claim that has been filed or submitted for filing...may...file...a motion for judicial review.” Forms are provided in the statute. The court may rule “solely on a review of the documentation or instrument attached to the motion and without hearing any testimonial evidence” set aside the lien. K.S.A § 58-4301. (1998).

- Maine “Any individual who asserts that the filing of a financing statement record that provides that individual’s name as debtor is not an authorized filing may file, at any time, a motion for a judicial declaration that the financing statement is not an authorized filing...” Forms are provided in the statute. The claimant must be given at least 20 days to oppose the motion. Thereafter, the court may rule without hearing. 5 MRSA § 90-E. (2007).
- Michigan “A person identified as a debtor in a financing statement...may file an affidavit...stating that the financing statement is fraudulent...On receipt of an affidavit...the secretary of state shall terminate the financing statement...[and] send notice of the termination...the filer may file an action to reinstate the financing statement. M.C.L.A. § 440.9501a. (2008).
- Minnesota “An obligor, person named as a debtor, or owner of collateral described or indicated in a financing statement...who has reason to believe the financing statement or other record is fraudulent or otherwise improper may complete and file at any time a motion for judicial review. The claimant has 20 days to request a hearing or the matter will be adjudicated solely on a review of the documentation attached to the motion. Forms are provided in the statute. M.S.A. § 545.05. (2006).
- Missouri “Any person whose real or personal property or an interest therein, which is subject to a recorded nonconsensual common law lien, who believes the lien is invalid, may petition the circuit court...for an order, which may be granted ex parte.” A hearing must be held within ten business days after service of the order on the lien claimant. If the claimant fails to appear, the lien may be declared void ab initio. An award of attorney fees and costs is mandatory. V.A.M.S. § 428.120-125. (1996).
- Montana “If a nonconsensual common-law lien is filed against the real or personal property of an individual or organization, the individual

or organization may petition the district court...to remove the nonconsensual common-law lien.” MCA § 27-1-1505(3)(a). (1996).

- Nebraska A person identified as a debtor in a financing statement may file an affidavit with the filing office alleging that the statement was filed by a person not entitled to do so. In response, the filing office may file a termination statement. Neb.St. U.C.C. § 9-513A. (2013).
- Nevada “The debtor of the lien claimant or a party in interest in the property subject to the notice of lien who believes the notice of lien is frivolous and as made without reasonable cause... may apply by motion to the district court...for an order directing the lien claimant to appear before the court to show cause why the relief requested should not be granted.” An order may be granted ex parte. A hearing must be held within 15-30 days of the issuance of the order. If the claimant fails to appear, the lien may be released. An award of attorney fees, costs and damages is mandatory NRS § 108.2275. (1995).
- New Mexico “A person whose real or personal property is subject to a recorded claim of nonconsensual common law lien who believes the claim of lien is invalid may petition the district court...for an order, which may be granted ex parte.” A hearing must be held within 6-21 days after service of the order on the lien claimant. If the claimant fails to appear, the lien may be declared void ab initio. An award of attorney fees, costs and damages is mandatory. N.M.S.A. § 48-1A-8. (1999).
- North Carolina “A person may file in the [U.C.C.] filing office and information statement with respect to a record indexed there under the person’s name if the person believes the record is inaccurate or was wrongfully filed...the Secretary of State shall, without undue delay, determine whether the contested record was wrongfully filed and should have been rejected...If the Secretary of State finds that the record was wrongfully filed and should have been rejected...the Secretary of State shall cancel the record and it shall be void and of no effect.” N.C.G.S.A. § 25-9-518. (2012).
- North Dakota “Any person who has real or personal property or an interest therein, which is subject to a filed or recorded nonconsensual common-law lien may petition the district court...for an order directing the lien claimant to appear before the court to show cause why the lien should not be declared void.”, which may be granted

ex parte.” The order may be granted ex parte. If the claimant fails to appear, the lien may be declared void ab initio. An award of damages in the amount of \$1,000 or actual damages, whichever is greater, plus attorney fees and costs is mandatory. NDCC § 35-35-05. (1999).

Oregon

“A person whose property is subject to an invalid claim of encumbrance may petition the circuit court...which may be granted ex parte, directing the encumbrance claimant to appear at a hearing before the court and how cause why the claim of encumbrance should not be stricken and other relief provided by this section should not be granted.” Forms are provided in the statute. A hearing may be scheduled within seven day of an order. If the claimant fails to appear, the claim of encumbrance may be stricken. An award of attorney fees and costs is discretionary. O.R.S. § 205.460. (1997).

Pennsylvania

“The Department of State may conduct an administrative hearing to determine if an initial financing statement was fraudulently filed...if it determines that no rational basis exists...entitling the person to file the initial financing statement and it appears that the person filed the initial financing statement with intent to annoy, harass or harm the debtor...the department shall file an information statement...An information statement filed by the department...creates a rebuttable presumption that the initial financing statement found to be fraudulently filed is ineffective...the department ...shall refer the matter for criminal prosecution...” 13 Pa.C.S.A. § 9518. (2001/2013).

South Carolina

“If the clerk of court or the register of deeds reasonably believes that a conveyance, mortgage, judgment, lien, contract, or other document is materially false or fraudulent, or is a sham legal process, the clerk of court or the register of deeds may remove the document from the public records after giving thirty days’ written notice to the person on whose behalf the document was filed at the return address provided in the document.” SC ST § 30-9-30 (B)(2). (1998).

“If [an invalid] judgment or other lien is accepted for filing against an individual...the clerk of court or register of deeds shall accept for filing a notice of invalid judgment or lien...The filing of a notice of invalid judgment or lien voids the judgment or lien retroactively to the date it was filed.” SC Code § 30-9-35. (1998).

“If a person files in the filing office... a false or fraudulent financing statement or a financing statement filed for the purpose of hindering, harassing, or wrongfully interfering with another person or entity, a debtor named in the financing statement may file an action against the person that filed the financing statement seeking appropriate equitable relief or damages...” SC Code § 36-9-501(d).

#### Texas

Any person who owns an interest in real or personal property subject to a fraudulent lien may request the claimant to release the lien. Failure to execute the release within 21 days of demand is a misdemeanor. V.T.C.A., Penal Code § 32.49. (1997).

If a court clerk or district, county or municipal clerk “has a reasonable basis to believe in good faith that a document or instrument previously filed or recorded or offered or submitted for filing or for filing and recording is fraudulent, the clerk is required to give notice to the person against whom the claim is made. That person may file a motion for judicial review. Forms are provided in the statute. The court may make an ex parte adjudication. V.T.C.A. Government Code § 51.901 *et seq.* (1997).

“A person against whom a purported judgment was rendered who has reason to believe that a document previously filed or recorded or submitted for filing or for filing and recording is fraudulent may complete and file with the district clerk a motion.” Forms are provided in the statute. “The court’s findings may be made solely on a review of the documentation...without hearing any testimonial evidence...without delay or notice of any kind.” V.T.C.A. Government Code 51.902. (1997). An almost identical statute exists for fraudulent liens against real or personal property. V.T.C.A. Government Code § 51.903. (1997).

#### Utah

“Any record interest holder of real property against which a wrongful lien ...has been recorded may petition the district court...for summary to nullify the lien... If the court finds the petition is sufficient, the court shall schedule a hearing within 10 days to determine whether the document is a wrongful lien.” An award of attorney fees and costs is mandatory. U.C.A. § 38-9-7. (1997).

“Any person who believes that he or she is the victim of a wrongful lien may file a verified written petition for a civil lien injunction.” An issued injunction can order that the lien be

nullified and enjoin the respondent from making, uttering, recording, or filing any further liens without specific permission of the court. U.C.A. § 38-9a-101 *et seq.* (2005).

Washington

“Any person whose real or personal property is subject to a recorded claim of common law lien, who believes the lien is invalid, may petition the superior court...for an order, which may be granted *ex parte*, directing the lien claimant to appear before the court to...show cause, if any, why the claim of lien should not be stricken and other relief provided by this section should not be granted.” A hearing must be held within 6-21 days after service of the order on the lien claimant. If the claimant fails to appear, the claim of lien shall be stricken and released. An award of attorney fees and costs is mandatory. RCWA § 60.70.060. (1995).

West Virginia

“If a clerk of the county commission has a reasonable basis to believe in good faith that a document or instrument purporting to evidence an invalid nonconsensual common law lien has been filed or recorded or offered for filing or recording is fraudulent, the clerk shall provide written notice” to the person against whom the claim is made. That person may file a motion for judicial review. Forms are provided in the statute. The court may make an *ex parte* adjudication. *Ex parte* procedure and forms at W.Va. §§ 38-16-401- 38-16-403. (1999).

A public official or employee subjected to a fraudulent lien may send a request to release the lien to the claimant. Failure to release the lien within 21 days of such demand is misdemeanor. W.Va. § 61-5-27. (1999).

“A person against who a purported judgment was rendered and who has reason to believe that a document previously filed or recorded or submitted for filing or for filing and recording is fraudulent may complete and file with the clerk of the circuit court a motion” for expedited review. W.Va. § 38-16-402. (1999).

“A person who is the purported debtor or obligor or who owns real or personal property or an interest in real or personal property, and who has reason to believe that the document purporting to create a lien or a claim against the real or personal property or an interest in the real or personal property previously filed or submitted for filing or for filing and recording is fraudulent, may complete and file with the clerk of the circuit court a verified motion” for expedited review. W.Va. § 38-16-403. (1999).

## Wyoming

“Any person whose real or personal property is subject to a recorded claim of lien who believes the lien is invalid...may petition the court...for the relief provided in this subsection...The court may enter its order, which may be granted ex parte, directing the lien claimant to appear before the court to...show cause, if any, why the claim of lien should not be stricken and other relief provided by this section should not be granted.” A hearing must be held within 6-15 days after service of the order on the lien claimant. If the claimant fails to appear, the claim of lien shall be stricken and released. An award of damages of \$1,000 or actual damages, whichever is greater, plus attorney fees and costs is mandatory. W.S. § 29-1-601. (2010).

Government officials and employees subjected to invalid liens may give notice the claimant to remove the lien. The claimant has 20 days to file an action in the district court to enforce the lien. If no such action is filed, the lien becomes null and void. W.S. § 29-1-601(d). (2013).

## Appendix F

## Civil Causes of Action Created by Statute.

|            |   |
|------------|---|
| Alaska     | Statute authorizes award of actual and punitive damages, costs and attorney fees. AS § 09.45.167. (1998).   |
| Arizona    | The statute authorizes an award of not less than five thousand dollars, or treble damages, whichever is greater, plus attorney fees and costs. A.R.S. § 33-420.   |
| Arkansas   | Statute authorizes civil damages of three time actual damages, punitive damages, costs, and attorney fees. A.C.A. § 5-37-226. (1995).   |
| California | The statute authorizes an award to property owners who are public officers and employees a “civil penalty of up to \$5,000” Cal.C.C.P. § 765.040, Cal.Gov.Code § 6223. (1998).  |
| Colorado   | The statute authorizes an award of actual damages or one thousand dollars, whichever is greater, together with attorney fees. C.R.S.A. § 38-35-109(3). (1980).  |
| Florida    | Statute authorizes civil remedy of actual and punitive damages, plus a civil penalty of \$2,500 for each false instrument, attorney fees and costs. “The court may also, permanently or for a period of time, enjoin the defendant who filed the instrument or who directed the filer to file the instrument from filing or directing a person to file an instrument in the official record without prior review and approval for filing by a circuit or county court judge.” “A government agency may provide legal representation to a public officer or employee if the instrument at issue appears to have been filed to defraud or harass the public officer or employee in his or her official capacity.” F.S.A. § 817.535. (2013). |
| Hawaii     | Statute authorizes civil action for actual damages or \$5,000, whichever is greater, plus attorney fees and costs. “[T]he court may also issue appropriate injunctive relief against the lien claimant to preclude further filings of any kind with the registrar for a period of five years, unless that person obtains leave of court to file another instrument with the registrar.” The statute envisions that government counsel may represent a government officer or employee affected by the purported lien. HRS § 507D-7(b). (1996).   |

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|-----------|---|
| Idaho     | Statute authorizes civil action for actual damages or \$5,000, whichever is greater, plus attorney fees. I.C. § 45-1705. (1996).  |
| Illinois  | A person who communicates a false U.C.C. filing to the filing office is civilly liable for up to \$10,000 or actual damages, whichever is greater, together with exemplary damages, attorney fees, and costs. 810 ILCS § 5/9-501.1(c).  |
| Indiana   | Statute authorizes a civil action for actual damages, attorney fees and costs. IC § 32-28-13-9. (1995).   |
| Kansas    | Statute authorizes civil action for actual damages or \$10,000, whichever is greater, plus attorney fees. The court may “enjoin the defendant from filing any future liens or claims, or future liens or claims against persons specified by the court, with any filing officer without approval of the court that enters the order.” K.S.A. § 58-4302(e)(2). (2010).   |
| Maine     | For filing an unauthorized financing statement, a person may be civilly liable for actual damages or \$10,000, whichever is greater, plus punitive damages, attorney fees and costs. Injunctive relief is available. 5 MRSA § 90-E. (2007).<br><br>“Any person who unlawfully files, attempts to file or causes to be filed a recordable instrument against the real or personal property of a public employee or knowing or believing that the instrument is false or without legal authority is civilly liable to the public employee for...[d]amages equal to the amount of the recordable instrument” plus costs. 14 MRSA § 8601. (2013). |
| Michigan  | “If a person files a false or fraudulent financing statement...a debtor named in that financing statement may file an action against the person that filed the financing statement seeking appropriate equitable relief or damage, including, but not limited to, an order declaring the financing statement ineffective and ordering the office of the secretary of state to terminate the financing statement, and reasonable attorney fees.” M.C.L.A. § 440.9501(b)(7). (2004).  |
| Minnesota | Statute authorizes civil action, based on fraudulent financing statement, for actual damages or \$10,000, whichever is greater, plus exemplary damages, attorney fees and costs. Injunctive relief is available. Civil action can be brought by person damaged or by government attorney. M.S.A. § 604.17. (2006).  |

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|----------------|--|
| Missouri       | Statute authorizes civil action for actual damages or \$5,000, whichever is greater, plus attorney fees and costs. V.A.M.S. § 428.135. (1996).   |
| Montana        | Statute authorizes civil action for actual damages, attorney fees and costs. MCA § 27-1-1505(4). (1996).<br><br>“A person adversely affected by a lien that is determined to be improper or fraudulent by the filing officer may recover treble damages from the person responsible for submitting the lien.” MCA § 30-9a-420(2). (1993).  |
| Nebraska       | Statute authorizes civil action for actual damages, attorney fees and costs. Neb.Rev.St. § 52-1902.(2003).   |
| New Hampshire  | Statute provides that a person who intentionally and knowingly files a false financing statement is liable for the greater of \$5,000 or actual damages plus costs and attorney fees. N.H. Rev. Stat. § 382-A:9-529. (2001).   |
| New Mexico     | Statute authorizes civil action for actual damages or \$5,000, whichever is greater, plus attorney fees and costs. N.M.S.A. § 48-1A-9. (1999).   |
| North Dakota   | Statute authorizes civil action false lien for actual damages or \$1,000, whichever is greater, plus attorney fees and costs. NDCC § 35-35-06. (1999).<br><br>Statute authorizes civil action for false financing statement for actual damages or \$10,000, whichever is greater, plus exemplary damages, attorney fees and costs. NDCC § 41-10-03.<br><br>Injunctive relief may be pursued by the any person harmed by a false financing statement or by the attorney general, a state’s attorney or a municipal attorney. NDCC § 41-10-04. (2007). |
| Ohio           | Statute authorizes civil action for damages, attorney fees and costs. R.C. § 2921.03(C). (1996).   |
| Oregon         | Statute authorizes civil action for actual damages or \$5,000, whichever is greater, plus attorney fees and costs. O.R.S. § 205.470. (1997).   |
| South Carolina | The statute authorizes civil remedies including actual damages, punitive damages, costs, and attorney fees. SC Code § 30-9-35(D). (1998).  |

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|---------------|---|
| South Dakota  | The statute authorizes a civil action for damages, costs, attorney fees, and an additional penalty of one hundred dollars. SDCL § 44-2-9. (1939).   |
| Texas         | Statute authorizes civil action for filing of fraudulent financing statement. Award may include the greater or \$5,000 or actual damages, costs and attorney fees. V.T.C.A., Bus. & C. § 9.5185. (1999).  |
|               | Statute authorizes civil action for actual damages or \$10,000, whichever is greater, plus exemplary damages, attorney fees, and costs. V.T.C.A., Civil Practice & Remedies Code § 12.002. (1997).  |
|               | Injunctive relief may be pursued by the person injured or the state, county or municipal prosecutor. V.T.C.A., Civil Practice & Remedies Code § 12.003. (1997).   |
| Utah          | Statute authorizes civil action for treble actual damages or \$10,000, whichever is greater, plus attorney fees and costs. U.C.A. 38-9-4. (1997). (Amount of damages increased from \$3,000 to \$10,000 by 2008 amendment). Injunctive relief available. U.C.A. § 38-9a-101 <i>et seq.</i> (2005).  |
| West Virginia | Statute authorizes civil action for actual damages or \$10,000, whichever is greater, plus exemplary damages, attorney fees, and costs. W.Va. § 38-16-501. (1999). Injunctive relief is available. W.Va. § 38-16-502. (1999). Public officers and employees, jurors and witnesses have another authorization for a civil action under W.Va. § 61-5-27(f) and (g). (1999). |
|               | Statute authorizes civil damages for a false record filed with the U.C.C. filing office, to include the greater of actual damages or \$10,000, punitive damages, attorney fees, and costs. W.Va. Code § 46-9-516a. (2013).  |
| Wyoming       | Statute authorizes civil action for actual damages or \$1,000, whichever is greater, plus attorney fees and costs. W.S. § 29-1-601. (2010/2013).  |

## Appendix G

## Criminal Statutes Relating to False Liens and Financing Statements.

- Alabama                    “A person commits the crime of offering a false instrument for recording if, knowing that a written instrument relating to...real or personal property...contains a material false statement or material false information, and with intent to defraud, he presents...to a public office...with the knowledge that it will be registered, filed or recorded...” Such an offense is a misdemeanor. AL ST § 13A-9-12(a) and (b). (1997).
- “A person commits the crime of offering a false instrument for recording against a public servant if the person offers, for recording, a written instrument which relates to or affects the real or personal property , or an interest therein, or a contractual relationship of a public servant, knowing that the written instrument contains a materially false statement or materially false information, with the intent to defraud, intimidate, or harass the public servant, or to impede the public servant in the performance of his or her duties.” Such an offense is a felony. AL ST § 13A-9-12(c). (2012).
- Alaska                      A person commits the crime of offering a false instrument for recording in the first degree if, knowing that a written instrument relating to or affecting property or directly affecting a contractual relationship contains a false statement or false information, and with intent to defraud, the person presents or offers it to a public office or a public servant intending that it be registered, filed, or recorded or become a part of the records of that public office or public servant. Such an offense is a felony. AS §§ 11-46-550 — 11-46-560. (1978/1998).
- Arizona                    “A person commits harassment against a public officer or employee if the person, with intent to harass, files a nonconsensual lien against any public officer or employee that is not accompanied by an order of a judgment from a court of competent jurisdiction authorizing the filing of the lien...” Such an offense is a felony. A.R.S. § 13-2921(B) and (C). (1997).
- “A person purporting to claim an interest in, or lien or encumbrance against, real property, who causes a document asserting such claim to be recorded in the office of the county recorder, knowing or having reason to know that he document is

forged, groundless, contains a material misstatement or false claim or is otherwise invalid is guilty of a class 1 misdemeanor.” A.R. S. § 33-420(E). (1985).

Arkansas

A person commits the offense of fraudulently commercial filing a Uniform Commercial Code financing statement if, with the purpose to defraud or harass an alleged debtor or any other person, the person knowingly presents or conspires with another person to present a financing statement under the Uniform Commercial Code...“ A first offense is a misdemeanor. A subsequent offense is a felony. A.C.A. § 5-37-215. (2009).

“It is unlawful for a person with knowledge of the instrument’s lack of authenticity or genuineness to have place of record in the office of the county recorder or the office of the Secretary of State any instrument...adversely affecting...[t]he title ...of the true owner...of real property...[w]ith the purpose of...adversely affecting...the title...in the real property. Such an offense is a misdemeanor. Subsequent violations are felonies. A.C.A. § 5-37-226. (1995). If the offense was committed because of the performance of the official duties of the victim and the victim is a judge, prosecuting attorney, law enforcement officer, elected official, or other identified public official or employee, the offense is a felony. A.C.A. § 5-37-215. (2011).

California

Criminal action. ”Every person who knowingly procures or offers any false...instrument to be filed, registered, or recorded in any public office within this state, which instrument, if genuine, might be registered, or recorded under any law of this state or of the United States, is guilty of a felony.” Cal.Penal Code § 115.

Florida

“A person who files or directs a filer to file, with the intent to defraud or harass another, any instrument containing a materially false, fictitious, or fraudulent statement or representation that purports to affect an owner’s interest in the property described in the instrument commits a felony.” The penalty is enhanced if the victim is a public officer or employee or if the filer committed the offense while incarcerated. Upon conviction, the court “may enjoin the person from filing any instrument in an official record absent prior review and approval for filing by a circuit or county court judge.” F.S.A. § 817.535. (2013).

Georgia

“A person who...uses any false writing or document...in any manner within the jurisdiction of any department or agency of state

government or the government of any county, city, or other political subdivision of this state” commits a felony. Ga. Code § 16-10-20.

Any person who knowingly files “a false lien or encumbrance in a public record or private record that is generally available to the public against the real or personal property of a public officer or employee on account of the performance of such public officer or public employee’s official duties” is guilty of a felony. Ga. Code § 16-10-20.1. (2012).

Hawaii

“Any person who knowingly submits an invalid court order in support of a nonconsensual common law lien against a federal, state, or county officer or employee, shall be guilty of tampering with a government record” a misdemeanor. HRS § 507D-7(c). (2000).

Illinois

“A person who files or causes to be filed, in any public record or any private record generally available to the public, any false lien or encumbrance against the real or personal property of a Supreme, Appellate, Circuit, or Associate Judge of the State of Illinois with knowledge that such lien or encumbrance is false or contains any materially false, fictitious or fraudulent statement or representation, and with the intention of retaliating against that Judge for the performance or non-performance of any official judicial duty, is guilty of a...misdemeanor...and a felony for a second or subsequent offense.” 720 ILCS § 5/32-4f. (2009).

“No person shall cause to be communicated to the filing office for filing a false [U.C.C.] record.” First offense is a misdemeanor. Subsequent offenses are felonies. 810 ILCS § 5/9-501.1. (2012).

Kentucky

“A person is guilty of filing an illegal lien when he files a document or lien that he knows or should have known was forged, groundless, contained a material misstatement, or was a false claim.” Offenses are felonies. KRS § 434.155. (1998).

Louisiana

“The crime of filing a false lien or encumbrance against a law enforcement officer or court officer is committed when a person knowingly files, attempts to file, or conspires to file, in any public records or in any private records that is generally available to the public, any false lien or encumbrance against the real or personal property of a law enforcement officer or court officer, as retaliation

against the officer for the performance of his official duties...”  
Violation is a felony. LSA-R.S. § 14:133.6. (2012).

- Maine “A person is guilty of falsely filing a recordable instrument if, with intent to defraud, harass or intimidate, the person files or causes to be filed a will, deed, mortgage, security instrument or other writing for which the law provides public recording, knowing or believing the writing to be false or without legal authority.” Violation is a felony. 17-A MRSA § 706-A. (2007).
- Michigan “A person shall not knowingly or intentionally file a false or fraudulent financing statement...In addition to any other penalty provided by law, a violation of this subsection is a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$2,500, or both.” M.C.L.A. § 440.9501(b)(6). (2004).
- Minnesota A person who knowingly causes to be presented for filing a fraudulent [U.C.C.] record is guilty of a gross misdemeanor. If the intent of presenting the record was to influence or otherwise tamper with a juror or a judicial proceeding or with the intent to retaliate against a judicial officer, prosecutor, defense attorney, the crime is a felony. M.S.A. § 609.7475. (2006).
- Nebraska “A person commits the offense of fraudulently filing a financing statement, lien, or document if the person directly, or through an intermediary submits for filing or recording in the public record...any document purporting to create a nonconsensual common-law lien,...” a fraudulent financing statement or...”any document filed in an attempt to harass an entity, individual, or public official to obstruct a government operation or judicial proceeding, knowing or having reason to know such document contained false information.” Violation is a felony. NE ST § 28-101. (2013).
- North Carolina “It shall be unlawful for any person to present for filing in a public record or a private record generally available to the public a false lien or encumbrance against the real or personal property of a public officer, a public employee, or an immediate family member of the public officer or public employee on account of the performance of the public officer or public employee’s official duties, knowing or having reason to know that the lien or encumbrance is false or contains a materially false, fictitious or

fraudulent statement or representation.” Violation is a felony. N.C.G.S.A. § 14-118.6(a). (2012).

“It shall be unlawful for any person...to present a [U.C.C.] record for filing...with knowledge that the record is not related to a valid security agreement or with the intention that the record be filed for an improper purpose, such as to hinder, harass, or otherwise wrongfully interfere with any person.” Violation is a felony. N.C.G.S.A. § 14-401.19. (2001).

North Dakota

“Any person who submits for filing or recording a nonconsensual common-law lien...is guilty of a class B misdemeanor.” NDCC § 35-35-02. (1999).

“A person commit an offense if the person knowingly causes to be presented for filing in the [U.C.C.] filing office...a financing statement that the person knows...was filed or presented for filing with the intent that...the financing statement record be used to harass or hinder...or...be used to defraud any person.” Third and subsequent offenses are felonies. NDCC § 41-10-02. (2007).

Ohio

“No person, knowingly and...by filing, recording, or otherwise using a materially false or fraudulent writing with malicious purpose, in bad faith, or in a wanton or reckless manner, shall attempt to influence, intimidate, or hinder a public servant, party official, or witness in the discharge of the person’s duty.” Violation is a felony. R.C. § 2921.03. (1996).

“No person shall knowingly make a false statement...in a document or instrument in writing that purports to be a judgment, lien, or claim of indebtedness and is file or recorded with the secretary of state, a county recorder, or the clerk of a court of record.” Violation is a misdemeanor. R.C. § 2921.13(A)(13). (1996).

Oklahoma

“Any person who knowingly procures or offers any false or forged instrument to be filed, registered, or recorded in any public office within this state. Which instrument, if genuine, might be filed or registered or recorded under any law of this state or the United States, shall be guilty of a felony.” 21 Okl.St. Ann. § 463. (1910).

Pennsylvania

“A person commits an offense if he...makes, presents or uses any record document or thing knowing it to be false, with the intent that it be taken as a genuine part of the information or records [of the government]. 18 Pa.C.S.A. § 4911. (1939/1972).

- Rhode Island “No person, corporation, association, agent or employee shall in any manner coerce, intimidate, threaten, retaliate against or attempt to coerce or intimidate or threaten any public official...by the issuance, utterance or delivery of any matter [including liens and U.C.C. filings].” Violation is a felony. RI ST § 11-42-5. (2005).
- South Carolina “A person acting or purporting to act in an official capacity...commits a misdemeanor if, knowing that his conduct is illegal, he...subjects another to...lien, or other infringement of personal or property rights.” SC Code § 16-17-735(A). (1998).
- “It is unlawful for a person falsely to assert authority of law, in an attempt to intimidate or hinder a state or local official or employee or law enforcement officer in the discharge of official duties, by means of threats, harassment, physical abuse, or use of sham legal process.” Violation is a felony. SC Code § 16-17-735(D). (1998).
- “A person may not knowingly or intentionally file with the filing office...a false or fraudulent financing statement or a financing statement file for the purpose of hindering, harassing, or wrongfully interfering with another person or entity.” SC Code § 36-9-50(c).
- South Dakota “Any person who harasses another person...and that threatens the other person ...with the imposition of a counterfeit lien on the real or personal property of the other person is guilty of a Class 1 misdemeanor.” Subsequent offenses are felonies. SDCL § 22-11-31. (1997).
- Tennessee “It is an offense for any person to knowingly prepare, sign, or file any lien or other document with the intent to encumber any real or personal property when such person has no reasonable basis or any legal cause to place such lien or encumbrance on such real or personal property.” T.C.A. § 39-17-117, enacted as misdemeanor in 2012 and amended to felony in 2013.
- Texas “A person commits an offense if, with intent to defraud or harm another, the person...not later than the 21<sup>st</sup> day after receipt of actual or written notice...requesting the execution of a release of the fraudulent lien or claim, refuses to execute the release...” Violation is a misdemeanor. V.T.C.A., Penal code § 32.49. (1997).
- “A person commits an offense if the person makes, presents, or uses any document or other record with knowledge that the

document or other record is not a record of a court created under or established by the constitution or laws of this state or of the United States; and the intent that the document or other record be given the same legal effect as a record of a court...” An offense is a misdemeanor. V.T.C.A., Penal Code § 37.13. (1997).

“A person commits an offense if the person knowingly presents for filing or causes to be presented for filing a financing statement that the person knows...contains a material false statement; or...is groundless.” An offense is a felony. V.T.C.A., Penal Code §37.101. (1997).

Utah

“A person is guilty of the crime of wrongful lien if that person knowingly makes, utters, records, or files a [wrongful] lien.” U.C.A. § 76-6-503.5. (2005).

Virginia

“Any person who maliciously files a lien or encumbrance in a public record against the real or personal property of another knowing that such lien or encumbrance is false is guilty of a Class 5 felony.” VA Code § 18.2-213.2. (2013).

West Virginia

“No person may cause to be communicated to the [U.C.C.] filing office for filing a false record the person knows or reasonably should know...[i]s not authorized...and...[i]s filed with the intent to harass or defraud...” A first offense is a misdemeanor. A subsequent offense is a felony. W.Va. Code § 46-9-516a. (2013).

It is unlawful for a person to seek to intimidate, harass, or retaliate against a public official or employee by lien or other legal process. A first offense is a misdemeanor. Subsequent offenses are felonies. W. Va. Code § 61-5-27. (1999).

Wisconsin

“Any person who submits for filing, entering or recording any lien, claim of lien, lis pendens, writ of attachment, financing statement or any other document relating to a security interest in or title to real or personal property, and who knows or should know that the contents of any part of the contents of the instrument are false, a sham or frivolous is guilty of a Class H felony.” W.S.A. § 943.60. (1979).

Wyoming

“Any person who offers to have recorded or filed a forged or groundless lien...with the intent to threaten, harass or intimidate a public official or employee in the performance or nonperformance of his official duties is guilty of a misdemeanor...” W.S. § 29-1-601. (2010).

## Appendix H

## Laws Establishing the Murder of a Judge or Public Official as an Aggravating Circumstance Warranting the Death Penalty.

**Judges**

- California: “The victim was a judge or former judge of any court of record in the local, state, or federal system in this or any other state, and the murder was intentionally carried out in retaliation for, or to prevent the performance of, the victim’s official duties.” Ca. Penal Code § 90.2(a)(12).
- Delaware: “The murder was committed against a judicial officer, a former judicial officer...during, or because of, the exercise of an official duty.” 11 Del.C. § 4209(e)(1)(d).
- Georgia: “The murder of a judicial officer, former judicial officer...was committed during or because of the exercise of his or her official duties.” Ga. Code Ann. § 17-10-30(b)(5).
- Idaho: “The murder was committed against a former or present...officer of a court, judicial officer because of the exercise of official duty or because of the victim’s former or present official status.” I.C. § 19-2515(9)(j).
- Indiana: “The victim of the murder was a...probation officer...judge or law enforcement officer, and either: (A) the victim was acting in the course of duty; or (B) the murder was motivated by an act the victim performed while acting in the course of duty.” IC § 35-50-2-9(b)(6).
- Louisiana: “The victim was a ...peace officer engaged in his lawful duties...the term ‘peace officer’ is defined to include any...judge...” L.S.A-C.Cr.P. § Art. 905.4(A)(2) and (B).
- Missouri: “The murder in the first degree was committed against a judicial officer, former judicial officer...during or because of the exercise of his official duty.” V.A.M.S. § 565.032(2)(5).
- New Hampshire: “A...judicial officer acting in the line of duty or when the death is caused as a consequence of or in retaliation for such person’s actions in the line of duty...a ‘judicial officer’ is a judge of a district, probate, superior or supreme court...” N.H. Rev. Stat. § 630:1(I)(a) and (II-a).

- North Carolina: “The capital felony was committed against a...judge or justice, former judge or justice...while engaged in the performance of his official duties or because of the exercise of his official duties.” N.C.G.S.A. § 15A-2000(e)(8).
- Oregon: “The victim was one of the following and the murder was related to the performance of the victim’s official duties in the justice system...A...judicial officer...” O.R.S. § 163.095(2)(a).
- Pennsylvania: “The victim was a...judge of any court in the unified judicial system...who was killed in the performance of his duties or as a result of his official position.” 42 Pa.C.S.A. § 9711(d)(1).
- South Carolina: “The murder of a judicial officer, former judicial officer...during or because of the exercise of his official duty.” SC Code §16-3-20(C)(a)(5).
- South Dakota: “The defendant committed the offense on a judicial officer, former judicial officer...judicial officer, or former judicial officer was engaged in the performance of such person’s official duties or where a major part of the motivation for the offense came from the official actions of such judicial officer, former judicial officer...” SDCL § 23A-1(4).
- Tennessee: “The murder was committed against any present or former judge...due to or because of the exercise of the victim’s official duty or status and the defendant knew that the victim occupied such office.” T.C.A. § 39-13-204(i)(10).
- Texas: “the person murders another person in retaliation for or on account of the service or status of the person as a judge or justice of the supreme court, the court of criminal appeals, a court of appeals, a district court, a criminal district court, a constitutional county court, a statutory county court, a justice court, or a municipal court.” V.T.C.A., Penal Code § 19.03(a)(9).
- Utah: “the victim is or has been a...judge...and the victim is either on duty or the homicide is based on, is caused by, or is related to that official position, and the actor knew, or reasonably should have known, that the victim holds or has held that official position.” U.C.A. § 76-5-202(1)(m).
- Virginia: “The willful, deliberate, and premeditated killing of a justice of the Supreme Court, a judge of the Court of Appeals, a judge of a circuit court or district court, a retired judge sitting by designation

or under temporary recall, or a substitute judge...when the killing is for the purpose of interfering with his official duties as a judge.” Va. Code Ann. § 18.2-31(14).

Washington: “The victim was...A judge...and the murder was related to the exercise of the official duties performed or to be performed by the victim.” RCWA § 10.95.020(8).

Wyoming: “The murder of a judicial officer, former judicial officer...during or because of the exercise of his official duty or because of the victim’s former or present official status.” W.S. § 6-2-102(h)(viii).

### **Officials**

Florida: “The victim of the capital felony was an elected or appointed official engaged in the performance of his or her official duties if the motive for the capital felony was related, in whole or in part, to the victim’s official capacity.” F.S.A. § 921.141(5)(k).

Kentucky: “The offender’s act of killing was intentional and the victim was a state or local public official...engaged at the time of the act in the lawful performance of his duties.” KRS § 532.025(2)(a)(7).

Missouri: “The murder in the first degree was committed against a...elected official or former elected official during or because of the exercise of his official duty.” V.A.M.S. § 565.032(2)(5).

Utah: “the victim is or has been a local, state, or federal public official, or a candidate for public office and the homicide is based on, is caused by, or is related to that official position, act, capacity, or candidacy.” U.C.A. § 76-5-202(1)(l).

## Appendix I

### Laws Establishing the Murder of Court Staff, Jurors, and Witnesses as an Aggravating Circumstance Warranting the Death Penalty.

#### Court Staff

- Oregon: “The victim was one of the following and the murder was related to the performance of the victim’s official duties in the justice system...employee of a court of justice.” O.R.S. § 163.095(2)(a).
- Utah: “the victim is or has been a...court official...and the victim is either on duty or the homicide is based on, is caused by, or is related to that official position, and the actor knew, or reasonably should have known, that the victim holds or has held that official position.” U.C.A. § 76-5-202(1)(m).
- Virginia: “The willful, deliberate, and premeditated killing of...the clerk...when the killing is for the purpose of interfering with the person’s duties in such case.” Va. Code Ann. § 18.2-31(15).

#### Jurors

- California: “The victim was a juror in any court of record in the local, state, or federal system in this or any other state, and the murder was intentionally carried out in retaliation for, or to prevent the performance of, the victim’s official duties. Ca. Penal Code § 90.2(a)(20).
- North Carolina: “The capital felony was committed against a...juror or former juror...while engaged in the performance of his official duties or because of the exercise of his official duties.” N.C.G.S.A. § 15A-2000(e)(8).
- Oregon: “The victim was one of the following and the murder was related to the performance of the victim’s official duties in the justice system...A...juror...in a criminal proceeding” O.R.S. § 163.095(2)(a).
- Utah: “the victim is or has been a...juror...and the victim is either on duty or the homicide is based on, is caused by, or is related to that official position, and the actor knew, or reasonably should have known, that the victim holds or has held that official position.” U.C.A. § 76-5-202(1)(m).

Washington: “The victim was...A...juror...and the murder was related to the exercise of the official duties performed or to be performed by the victim.” RCWA § 10.95.020(8).

Wyoming: “The murder of a...juror...during or because of the exercise of his official duty or because of the victim’s former or present official status.” W.S. § 6-2-102(h)(viii).

### **Witnesses**

Arizona: “The defendant committed the offense to prevent a person’s...testimony in a court proceeding...or in retaliation for a person’s testimony in a court proceeding.” A.R.S. § 13-751(F)(12).

California: “The victim was a witness to a crime who was intentionally killed the purpose of preventing his or her testimony in any criminal or juvenile proceeding, and the killing was not committed during the commission or attempted commission, of the crime to which or she was a witness; or the victim was a witness to a crime and was intentionally killed in retaliation for his or her testimony in any criminal or juvenile proceeding.” Ca. Penal Code § 90.2(a)(10).

Delaware: “The murder was committed against a person who was a witness to a crime and who was killed for the purpose of preventing the witness’s appearance or testimony in any grand jury, criminal or civil proceeding involving such crime, in retaliation for the witness’s appearance or testimony in any grand jury, criminal or civil proceeding involving such crime.” 11 Del.C. § 4209(e)(1)(g).

Idaho: “The murder was committed against a witness or potential witness in a criminal or civil legal proceeding because of such proceeding.” I.C. § 19-2515(9)(k).

Indiana: “The victim of the murder was listed by the state or known by the defendant to be a witness against the defendant and the defendant committed the murder with the intent to prevent the person from testifying.” IC § 35-50-2-9-(b)(14).

Kansas: “The victim was killed while engaging in, or because of the victim’s performance or prospective performance of the victim’s duties as a witness in a criminal proceeding.” K.S.A. § 21-6624(h).

Missouri: “The murdered individual was a witness or potential witness in any past or pending...prosecution, and was killed as a result of his

status as a witness or potential witness.” V.A.M.S. § 565.032(2)(12).

“The murder was committed for the purpose of causing or attempting to cause a person to refrain from initiating or aiding in the prosecution of a felony.” V.A.M.S. § 565.032(2)(16).

- North Carolina: “The capital felony was committed against a...witness or former witness against the defendant, while engaged in the performance of his official duties or because of the exercise of his official duties.” N.C.G.S.A. § 15A-2000(e)(8).
- Ohio: “The victim of the aggravated murder was a witness to an offense who was purposely killed to prevent the victim’s testimony in any criminal proceeding...or the victim of the aggravated murder was a witness to an offense and was purposely killed in retaliation for the victim’s testimony in any criminal proceeding.” R.C. § 2929.04(a)(8).
- Oregon: “The victim was one of the following and the murder was related to the performance of the victim’s official duties in the justice system...A...witness in a criminal proceeding...employee of a court of justice.” O.R.S. § 163.095(2)(a).
- “The victim was one of the following and the murder was related to the performance of the victim’s official duties in the justice system...A police officer...probation officer...judicial officer...juror ...employee of a court of justice.” O.R.S. § 163.095(2)(a).
- Pennsylvania: “The victim was a prosecution witness to a murder or other felony committed by the defendant and was killed for the purpose of preventing his testimony against the defendant in any grand jury or criminal proceeding involving such offenses.” 42 Pa.C.S.A. § 9711(d)(5).
- South Carolina: “The murder of a witness or potential witness committed at any time during the criminal process for the purpose of impeding or deterring prosecution of any crime..” Code § 16-3-20(C)(a)(11).
- Utah: “the homicide was committed for the purpose of: (i) preventing a witness from testifying; (ii) preventing a person from providing evidence... (iii) retaliating against a person for testifying, providing evidence...” U.C.A. § 76-5-202(1)(k).

- Virginia: “The willful, deliberate, and premeditated killing of any witness in a criminal case after a subpoena has been issued for such witness by the court...when the killing is for the purpose of interfering with the person’s duties in such case.” Va. Code Ann. § 18.2-31(15).
- Washington: “The victim was...A...prospective, current, or former witness in an adjudicative proceeding...and the murder was related to the exercise of the official duties performed or to be performed by the victim.” RCWA § 10.95.020(8).
- Wyoming: “The murder of a...witness, during or because of the exercise of his official duty or because of the victim’s former or present official status.” W.S. § 6-2-102(h)(viii).

## Appendix J

## Laws Establishing the Murder of a Law Enforcement Officer or Probation Officer as an Aggravating Circumstance Warranting the Death Penalty.

**Law Enforcement Officers**

- Arizona: “The murdered person was an on duty peace officer who was killed in the course of performing the officer’s official duties and the defendant knew, or should have known, that the murdered person was a peace officer.” A.R.S. § 13-751(F)(10).
- California: “The victim was a peace officer...who, while engaged in the course of the performance of his or her duties, was intentionally killed, and the defendant knew, or reasonably should have known, that the victim was a peace officer engaged in the performance of his or her duties; or the victim was a peace officer...or a former peace officer ...and was intentionally killed in retaliation for the performance of his or her official duties.” Ca. Penal Code § 90.2(a)(7).
- The victim was a federal law enforcement officer or agent who, while engaged in the course of the performance of his or her duties, was intentionally killed, and the defendant knew, or reasonably should have known, that the victim was a federal law enforcement officer or agent engaged in the performance of his or her duties; or the victim was a federal law enforcement officer or agent, and was intentionally killed in retaliation for the performance of his or her official duties. Ca. Penal Code § 90.2(a)(8).
- Colorado: “the victim is a peace officer...engaged in the performance of his or her duties.”
- Delaware: “The murder was committed against any law-enforcement officer...while such victim was engaged in the performance of official duties.” 11 Del.C. § 4209(e)(1)(c).
- Florida: “The victim of the capital felony was a law enforcement officer engaged in the performance of his or her official duties.” F.S.A. § 921.141(5)(j).
- Georgia: “The offense of murder was committed against any peace officer...while engaged in the performance of his official duties.” Ga. Code Ann. § 17-10-30(b)(8).

- Idaho: “The murder was committed against a former or present peace officer...because of the exercise of official duty or because of the victim’s former or present official status.” I.C. § 19-2515(9)(j).
- Indiana: “The victim of the murder was a...law enforcement officer, and either: (A) the victim was acting in the course of duty; or (B) the murder was motivated by an act the victim performed while acting in the course of duty.” IC § 35-50-2-9(b)(6).
- Kentucky: “The offender’s act of killing was intentional and the victim was a state or local public official or police officer, sheriff, or deputy sheriff engaged at the time of the act in the lawful performance of his duties.” KRS § 532.025(2)(a)(7).
- Louisiana: “The victim was a ...peace officer engaged in his lawful duties...” L.S.A-Cr.P. Art. 905.4(A)(2) and (B).
- Missouri: “The murder in the first degree was committed against a...peace officer of former peace officer...during or because of the exercise of his official duty.” V.A.M.S. § 565.032(2)(5).
- Montana: “The offense was deliberate homicide...and the victim was a peace officer killed while performing the officer’s duty.” MCA § 46-18-303(1)(b).
- Nebraska: “The victim was a law enforcement officer engaged in the lawful performance of his or her official duties as a law enforcement officer and the offender knew or reasonably should have known that the victim was a law enforcement officer.” Neb. Rev. St. § 29-2523(1)(i).
- Nevada: “The murder was committed upon a peace officer...who was killed while engaged in the performance of his official duty or because of an act performed in his official capacity, and the defendant knew or reasonably should have known that the victim was a peace officer.” N.R.S. § 200.033(7).
- New Hampshire: “A law enforcement officer...acting in the line of duty or when the death is caused as a consequence of or in retaliation for such person’s actions in the line of duty...” N.H. Rev. Stat. § 630:1(I)(a) and (II-a).
- North Carolina: “The capital felony was committed against a law-enforcement officer...while engaged in the performance of his official duties or

because of the exercise of his official duties.” N.C.G.S.A. § 15A-2000(e)(8).

- Ohio: “The victim of the offense was a law enforcement officer...whom the offender had reasonable cause to know or knew to be a law enforcement officer...and either the victim, at the time of the commission of the offense, was engaged in the victim’s duties, or it was the offender’s specific purpose to kill a law enforcement officer.” R.C. § 2929.04(A)(6).
- Oklahoma: “intentionally causes the death of a law enforcement officer...while the officer is in the performance of his duties.” 21 Okl.St.Ann. § 701.7(E).
- Oregon: “The victim was one of the following and the murder was related to the performance of the victim’s official duties in the justice system...A police officer...probation officer...” O.R.S. § 163.095(2)(a).
- Pennsylvania: “The victim was a...peace officer...who was killed in the performance of his duties or as a result of his official position.” 42 Pa.C.S.A. § 9711(d)(1).
- South Carolina: “The murder of a federal, state or local law enforcement officer or former federal, state, or local law enforcement officer...during or because of the performance of his official duties.” SC Code § 16-3-20(C)(a)(7).
- South Dakota: “The offense was committed against a law enforcement officer...while engaged in the performance of such person’s official duties.” SDCL § 23A-1(7).
- Tennessee: “The murder was committed against any law enforcement officer...who was engaged in the performance of official duties, and the defendant knew or reasonably should have known that the victim was a law enforcement officer.” T.C.A. § 39-13-204(i)(9).
- Texas: “the person murders a peace officer...who is acting in the lawful discharge of an official duty and who the person knows is a peace officer.” V.T.C.A., Penal Code § 19.03(a)(1).
- Utah: “the victim is or has been a peace officer...probation officer...and the victim is either on duty or the homicide is based on, is caused by, or is related to that official position, and the actor knew, or

reasonably should have known, that the victim holds or has held that official position.” U.C.A. § 76-5-202(1)(m).

Virginia: “The willful, deliberate, and premeditated killing of a law-enforcement officer...or any law-enforcement officer of another state of the United States...when such killing is for the purpose of interfering with the performance of his official duties.” Va. Code Ann. § 18.2-31(6).

Wyoming: “The murder of a...peace officer...during or because of the exercise of his official duty or because of the victim’s former or present official status.” W.S. § 6-2-102(h)(viii).

### **Probation Officers**

Washington: “The victim was...A judge; juror or former juror, prospective, current, or former witness in an adjudicative proceeding; prosecuting attorney; deputy prosecuting attorney; defense attorney...or a probation...officer; and the murder was related to the exercise of the official duties performed or to be performed by the victim.” RCWA § 10.95.020(8).

## Appendix K

### Laws Establishing the Murder of an Attorney, Defense Counsel, or Prosecutor as an Aggravating Circumstance Warranting the Death Penalty.

#### Attorneys

- South Carolina: “The murder of a . . . solicitor, former solicitor, or other officer of the court during or because of the exercise of his official duty.” Code § 16-3-20(C)(a)(5).
- Virginia: “The willful, deliberate, and premeditated killing of . . . an attorney, when the killing is for the purpose of interfering with the person’s duties in such case.” Va. Code Ann. § 18.2-31(15).

#### Defense Counsel

- Washington: “The victim was . . . A . . . defense attorney . . . and the murder was related to the exercise of the official duties performed or to be performed by the victim.” RCWA § 10.95.020(8).
- Wyoming: “The murder of a . . . defending attorney . . . during or because of the exercise of his official duty or because of the victim’s former or present official status.” W.S. § 6-2-102(h)(viii).

#### Prosecutors

- California: “The victim was a prosecutor or assistant prosecutor or a former prosecutor or assistant prosecutor of any local or state prosecutor’s office in this or any other state, or of a federal prosecutor’s office, and the murder was intentionally carried out in retaliation for, or to prevent the performance or, the victim’s official duties.” Ca. Penal Code § 90.2(a)(11).
- Delaware: “The murder was committed against a . . . Attorney General, Assistant or Deputy Attorney General or former Assistant or Deputy Assistant or Deputy Attorney General . . . during, or because of, the exercise of an official duty.” 11 Del.C. § 4209(e)(1)(d).
- Georgia: “The murder of a . . . district attorney or solicitor-general, or former district attorney, solicitor, or solicitor-general was committed during or because of the exercise of his or her official duties.” Ga. Code Ann. § 17-10-30(b)(5).

- Idaho: “The murder was committed against a former or present...prosecuting attorney because of the exercise of official duty or because of the victim’s former or present official status.” I.C. § 19-2515(9)(j).
- Louisiana: “The victim was a ...peace officer engaged in his lawful ...the term ‘peace officer’ is defined to include any...attorney general, assistant attorney general, attorney general’s investigator, district attorney, assistant district attorney, or district attorney’s investigator.” L.S.A-Cr.P. Art. 905.4(A)(2) and (B).
- Missouri: “The murder in the first degree was committed against a...prosecuting attorney or former prosecuting attorney, circuit attorney or former circuit attorney, assistant prosecuting attorney or former assistant prosecuting attorney, assistant circuit attorney or former assistant circuit attorney...during or because of the exercise of his official duty.” V.A.M.S. § 565.032(2)(5).
- New Hampshire: “A...judicial officer acting in the line of duty or when the death is caused as a consequence of or in retaliation for such person’s actions in the line of duty...a ‘judicial officer’ is...an attorney employed by the department of justice or a municipal prosecutor’s office; or a county attorney; or attorney employed by the county attorney.” N.H. Rev. Stat. § 630:1(I)(a) and (II-a).
- North Carolina: “The capital felony was committed against a...prosecutor or former prosecutor...while engaged in the performance of his official duties or because of the exercise of his official duties.” N.C.G.S.A. § 15A-2000(e)(8).
- Ohio: “The victim of the offense was a law enforcement officer...whom the offender had reasonable cause to know or knew to be a law enforcement officer...and either the victim, at the time of the commission of the offense, was engaged in the victim’s duties, or it was the offender’s specific purpose to kill a law enforcement officer.” R.C. § 2929.04(A)(6). The definition of “Law enforcement officer” includes “a prosecuting attorney, assistant prosecuting attorney...or municipal prosecutor.” R.C. § 2901.01(A)(11)(h).
- Pennsylvania: “The victim was...the Attorney General of Pennsylvania, a deputy attorney general, district attorney, assistant district attorney...who was killed in the performance of his duties or as a result of his official position.” 42 Pa.C.S.A. § 9711(d)(1).

- South Dakota: “The defendant committed the offense on a . . .prosecutor, or former prosecutor while such prosecutor, former prosecutor . . .was engaged in the performance of such person’s official duties or where a major part of the motivation for the offense came from the official actions of such . . .prosecutor, or former prosecutor.” SDCL § 23A-1(4).
- Tennessee: “The murder was committed against any present or former . . .district attorney general or state attorney general, assistant district attorney general or assistant state attorney general, due to or because of the exercise of the victim’s official duty or status and the defendant knew that the victim occupied such office.” T.C.A. § 39-13-204(i)(10).
- Utah: “the victim is or has been a . . .prosecuting officer . . .and the victim is either on duty or the homicide is based on, is caused by, or is related to that official position, and the actor knew, or reasonably should have known, that the victim holds or has held that official position.” U.C.A. § 76-5-202(1)(m).
- Washington: “The victim was . . .A . . .prosecuting attorney; deputy prosecuting attorney . . .and the murder was related to the exercise of the official duties performed or to be performed by the victim.” RCWA § 10.95.020(8).
- Wyoming: “The murder of a . . .district attorney, former district attorney . . .during or because of the exercise of his official duty or because of the victim’s former or present official status.” W.S. § 6-2-102(h)(viii).

## Appendix L

Laws Establishing as an Aggravating Circumstance Warranting the Death Penalty  
a Murder Committed with the Intent to Interfere with the Judicial Process or to Disrupt  
Governmental Functioning.

**Judicial Process**

- Missouri: The murder in the first degree was committed against a judicial officer, former judicial officer, prosecuting attorney or former prosecuting attorney, circuit attorney or former circuit attorney, assistant prosecuting attorney or former assistant prosecuting attorney, assistant circuit attorney or former assistant circuit attorney, peace officer or former peace officer, elected official or former elected official during or because of the exercise of his official duty. V.A.M.S. § 565.032(2)(5).
- North Carolina: “The capital felony was committed against a law-enforcement officer...judge or justice, former judge or justice, prosecutor or former prosecutor, juror or former juror, or witness or former witness against the defendant, while engaged in the performance of his official duties or because of the exercise of his official duties.” N.C.G.S.A. § 15A-2000(e)(8).
- Utah: “the homicide was committed for the purpose of... (ii) preventing a person from... participating in any legal proceedings... (iii) retaliating against a person for ... participating in any legal proceedings... U.C.A. § 76-5-202(1)(k).
- Washington: “The victim was... A judge; juror or former juror, prospective, current, or former witness in an adjudicative proceeding; prosecuting attorney; deputy prosecuting attorney; defense attorney... or a probation... officer; and the murder was related to the exercise of the official duties performed or to be performed by the victim.” RCWA § 10.95.020(8).
- Wyoming: “The murder of a judicial officer, former judicial officer, district attorney, former district attorney, defending attorney, peace officer, juror or witness, during or because of the exercise of his official duty or because of the victim’s former or present official status.” W.S. § 6-2-102(h)(viii).

**Disrupt Governmental Functioning**

- Alabama: “The capital offense was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws.” Ala. Code § 13A-5-49(7).
- Arkansas: “The capital murder was committed for the purpose of disrupting or hindering the lawful exercise of any governmental or political function.” A.C.A. § 5-4-604(7).
- Florida: “The capital felony was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws.” F.S.A. § 921.141(5)(g).
- Mississippi: “The capital offense was committed to disrupt or hinder the lawful exercise of any governmental functions or the enforcement of laws.” Miss. Code Ann. § 99-19-101(5)(g).
- Nebraska: “The murder was committed knowingly to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws.” Neb. Rev. St. § 29-2523(1)(h).
- North Carolina: “The capital felony was committed to disrupt or hinder the lawful exercise or any governmental function or the enforcement of laws.” N.C.G.S.A. § 15A-2000(e)(7).
- Utah: “the homicide was committed for the purpose of...(iv) disrupting or hindering any lawful governmental function or enforcement of laws.” U.C.A. § 76-5-202(1)(k).

## Appendix M

## State Confidentiality Statutes

|            |   |
|------------|---|
| Arizona:   | Allows justices, judges, public defenders, prosecutors, code enforcement officers and others to request that the general public be denied access to that person's residential address and telephone number otherwise available in records maintained by the county recorder, assessor or treasurer. (A.R.S. §§11-483 - 484). (1996) and voter registration (A.R.S. § 16-153). This same confidentiality is extended by the same statutes to victims of domestic violence. |
| Arkansas:  | Allows nondisclosure of home address on driver's license (A.C.A. § 27-16-811).  |
| California | Permits the Attorney General, the State public defender, judges, court commissioners, court employees, district attorneys, public defenders, attorneys, social workers and others, and their spouse or child, to request that their home address be kept confidential by the department of motor vehicles. (Cal. Vehicle Code section 1808.4).  |
| Delaware   | Allows any person to request confidentiality of their address, phone number and social security number on motor vehicle records (21 Del.C. § 305) and their address on voting records (15 Del.C. § 1303).   |
| Hawaii     | Allows any person in life threatening circumstances to apply to keep confidential their residence address and telephone number contained in voter records (HRS § 11-14.5).  |
| Iowa:      | Petitions for orders against domestic abuse (I.C.A. § 236.10).  |
| Tennessee: | Records of Utility service providers [T.C.A. § 10-7-504(a)(15)] and "identifying information compiled and maintained by a governmental entity" [T.C.A. §10-7-504a)(16)].  |
| Wisconsin: | Voter registration (W.S.A. 6.47).   |

## References

- Agnew, R. (1992). Foundation for a general strain theory of crime and delinquency. *Criminology*, 30(1), 47-87.
- Agnew, R. (2001). Building on the foundation of strain theory: Specifying the types of strain most likely to lead to crime and delinquency. *Journal of Research in Crime and Delinquency*, 38(4), 319-361.
- Agnew, R. (2006). *Pressured into crime: An overview of general strain theory*, Los Angeles: Roxbury Publishing.
- Agnew, R. (2010). A general strain theory of terrorism. *Theoretical Criminology*, 1(2), 131-153.
- American Bar Association Section on Business Law, Joint Task Force on Filing Office Operations & Search Logic, “States Ring in the New Year by Amending UCC Article 9,” (2009), <http://apps.americanbar.org/buslaw/committees/CL190000pub/newsletter/200901/subcommittees/filingoffice.pdf>.
- American Law Institute, Model Penal Code § 1.02 (2013).
- American Judges Association, (1999). *Court security survey report*. Retrieved from <http://aja.ncsc.dni.us/Old%20Website/Ctsecurity.html>.
- Anti-Defamation League (2002). *Dangerous convictions: An introduction to extremist activities in prisons*.
- Anti-Defamation League (2004). *The quiet retooling of the militia movement*.

- Anti-Defamation League, *Anti-government "Sovereign Citizen" movement exploits economic climate, engages in scams and criminal acts*, Press Release, August 12, 2010, [http://www.adl.org/press-center/press-releases/extremism/adl-anti-government.html#.UiFq6r7n\\_IU](http://www.adl.org/press-center/press-releases/extremism/adl-anti-government.html#.UiFq6r7n_IU)., accessed August 30, 2013.
- Barton, Mary Ann, Militia group allegedly harassed, beat California county clerk/recorder, National Association of Counties, *County News* (1997), <http://www.naco.org/cnews/1997/97-02-03/militia.htm>.
- Beccaria, C. (1764). On crimes and punishments.
- Becker, G. S. (1968). Crime and punishment: An economic approach. *Journal of Political Economy* 76:169-217.
- Bentham, J. (1780). An introduction to the principles of morals and legislation. In J. H. Burns & H. L. A. Hart (Eds.) (1970) *Collected works of Jeremy Bentham*. London: Athlone Press.
- Borum, R., Fein, R., Vossekuil, B. & Berglund, J. (1999). Threat assessment: Defining an approach for evaluating risk of targeted violence. *Behavioral Sciences and the Law*, 17(3).
- Braithwaite, J. (1989). *Crime, shame and reintegration*. Cambridge UK: Cambridge University Press.
- Brantingham, P. L. & Brantingham, P. J. (1993). Environment, routine, and situation: Toward a pattern theory of crime. In R. V. Clarke and M. Felson (Eds.), *Routine activity and rational choice* (Advances in Criminological Theory, Volume 5, pp.259-294). New Brunswick: Transaction Publishing.

- Burke, K. & Leben, S. (2007, September 26). Procedural fairness: A key ingredient in public satisfaction. *American Judges Association*, 16.
- Calhoun, F. S. (1998). *Hunters and howlers: Threats and violence against federal judicial officials in the United States, 1789-1993*. Arlington, Virginia: United States Marshals Service.
- Calhoun, F. S. (2001). Violence toward judicial officials. *The Annals of the Academy of Political and Social Science*. 576, 54-68.
- Calhoun, F. S. & Weston, S. W. (2009). *Threat assessment and management strategies: Identifying the howlers and hunters*. Boca Raton, Florida, Taylor & Francis Group.
- Casey, P. (2006). *A national strategic plan for judicial branch security*. National Center for State Courts and National Sheriff's Association.
- Casper, J. D., Tyler, T. & Fisher, B. (1988). Procedural justice in felony cases. *Law & Society Review*, 22(3), 483-507.
- Chamberlain, J. & Miller, M. (2009). Evidence of secondary traumatic stress, safety concerns, and burnout among a homogenous group of judges in a single jurisdiction. *Journal of the American Academy of Psychiatry and the Law*, 2009, 37(2), 214-224.
- Clarke, R. V. (1992). Introduction. In R. V. Clarke (Ed.), *Situational crime prevention: Successful case studies*, (pp. 3-36). New York: Harrow & Heston.
- Clarke, R. V. (1995). *Situational Crime Prevention*. In M. Tonry & D. P. Farrington (Eds.), *Building a safer society: Strategic approaches to crime prevention* (pp. 91-150). New York: Cambridge University Press.

- Clarke, R. V. & Cornish, D. B. (2001). Rational choice. In R. Paternoster & R. Bachman (Eds.), *Explaining criminals and crime* (pp. 23-42). Los Angeles: Roxbury Publishing.
- Clarke, R. V. & Felson, M. (1993). Introduction: Routine activity and rational choice. In R. V. Clarke & M. Felson (Eds.), *Routine activity and rational choice* (Advances in Criminological Theory, Volume 5, 1-14). New Brunswick, NJ: Transaction Publishers.
- Cohen, L. E. & Felson, M. (1979). Social change and crime rate trends: A routine activity approach. *American Sociological Review*, 44, 505-551.
- Conference of Chief Justices & Conference of State Court Administrators, (August 3, 2005). *Resolution 17*.
- Constantine, D. (2007). Citizens have a right to safety in the courthouse. *Justice System Journal*. 28, 36-39.
- Cornish, D. B. & Clarke, R. V. (Eds.). (1986). *The reasoning criminal: Rational choice perspectives on offending*. New York: Springer-Verlag.
- Cullen, F. T. & Agnew, R. (Eds). (2006). *Criminological theory: Past to present*. Los Angeles: Roxbury Publishing.
- de Becker, G. (1997). *The gift of fear*, New York: Dell.
- Dietz, P. E., Matthews, D. B., Martell, D. A., Stewart, T. M., Hrouda, D. R. & Warren, J. (September 1991). Threatening and otherwise inappropriate letters to members of the United States Congress, *Journal of Forensic Sciences*, 36, 1445-1468.

- Dietz, P. E., Matthews, D. B., Van Duyne, C., Martell, D. A., Parry, C. D. H. & Stewart, M. A. (January 1991). Threatening and otherwise inappropriate letters to Hollywood celebrities. *Journal of Forensic Sciences* 36, 185-209.
- Dugan, L., Gary LaFree, G., & Alex R. Piquero, A.R. (2005). Testing a rational choice model of airline hijacking. *Criminology*, 43(4) 1031-1065.
- Eck, J., (2005). Police problems: The complexity of problem theory, research and evaluation. In J. Knutsson (Ed.), Problem-oriented policing: From innovation to mainstream (Crime Prevention Studies, Volume 15, pp. 79-113). Monsey, NJ: Criminal Justice Press.
- Etter, G. W. & Swymeler, W. G., (2010). Courthouse shootings 1907-2007, *Homicide Studies*, 14, 90-100.
- F.B.I. Counter Terrorism Analysis Section, (September 2011). Sovereign citizens: A growing threat to law enforcement, <http://www.fbi.gov/stats-services/publications/law-enforcement-bulletin/september-2011/sovereign-citizens>
- Fautsko, T., Berson, S. & Swensen, S. Courthouse security incidents trending upward: The challenges facing state courts today. In *Future Trends in State Courts 2012* (pp. 102-106), National Center for State Courts.
- Fein, R. A. & Vossekuil, B. (1998). *Protective intelligence & threat assessment investigations: A guide for state and local law enforcement officials*. U. S. Department of Justice, Office of Justice Programs, National Institute of Justice.
- Fein, R. A. & Vossekuil, B. (1999). Assassination in the United States: An operational study of recent assassinations, attackers, and near-lethal approachers. *Journal of Forensic Sciences*. 44, 321-333.

- Fein, R. A., Vossekuil, B. & Holden, G. A. (1995). Threat assessment: An approach to prevent targeted violence. *Research in Action*. National Institute of Justice.
- Feiner, E. A. (2007). Securing our future. *Justice System Journal*. 28, 54-58.
- Friesen, L. (2012). Certainty of punishment versus severity of punishment: An experimental investigation. *Southern Economic Journal*. 79(2), 399-421.
- Geiger, F. A. (2001). Courthouse violence: The view from the bench. *The Annals of the Academy of Political and Social Science*. 576, 102-108.
- Greacen, J. M. & Klein, R. J. (2001) Statewide planning for court security, *The Annals of the Academy of Political and Social Science*, 576, 118-131.
- Gruenewald, J. & Pridemore, W. A. (2012) A comparison of ideologically-motivated homicides from the new extremist crime database and homicides from the supplementary homicide reports using multiple imputation by chained equations to handle missing values, *Journal of Quantitative Criminology*. 28(1), 141-162.
- Guerette, R. T. & Bowers, K. J. (2009). Assessing the extent of crime displacement and diffusion of benefits: A review of situational crime prevention evaluations,” *Criminology*, 47(4), 1331-1368.
- Harris, D. J., Kirschner, C. L., Rozek, K. K. & Weiner, N. L. (2001). Violence in the judicial workplace: One state's experience. *The Annals of the Academy of Political and Social Science*, 576, 38-53.
- Hoffman, J., Meloy, J. R., Guldemann, A. & Ermer, A. (2011). Figures, attacks on German public, 1968-2004: Warning behaviors, potentially lethal and non-lethal acts, psychiatric status, and motivations. *Behavioral Sciences and the Law*, 29, 155-179.

- James, D. V., Mullen, P. E., Meloy, J. R., Pathe, M. T., Farnham, F. R., Preston, L. & Darnley, B. (2007). The role of mental disorder in attacks on European politicians 1990-2004. *Acta Psychiatrica Scandinavica*, 116, 334-344.
- Jenkins, D. M. (2001). The U.S. Marshals Service's threat analysis program for the protection of the federal judiciary. *The Annals of the Academy of Political and Social Science*. 576, 69-77.
- Johnson, S. D., North, C. S., & Smith, E. M. (2002). Psychiatric disorders among victims of a courthouse shooting spree: A three-year follow-up study. *Community Mental Health Journal*, 38(3), 181-194.
- Leader, S. H. (1998). Financial weapons of choice. *Security Management*. 42(4).
- Leventhal, G. S. (1980). What should be done with equity theory? In K. J. Gergen, M.S. Greenberg & R. H. Weiss (Eds.) *Social exchange: Advances in theory and research*, (pp. 27-55). New York: Plenum.
- McGovern, G. (2013). *Murdered justice: An exploratory study of targeted attacks on the justice community*. Williamsburg: National Center for State Courts.
- Meloy, J. R. (2001). Communicated threats and violence toward public and private targets: Discerning differences among those who stalk and attack. *Journal of Forensic Sciences*, 46(5), 1211-1213.
- Meloy, J. R. (2011). Approaching and attacking public figures: A contemporary analysis of communications and behavior. In National Research Council, *Threatening communications and behavior: Perspectives on the pursuit of public figures* (pp. 75-106). Washington, D.C: The National Academies Press.

- Merton, R. K., (1938). Social structure and anomie. *American Sociological Review*, 3, 672-682.
- Miller, M. K., Flores, D. M. & Pitcher, B. J. (2010). Using constructivist self-development theory to understand judges' reactions to a courthouse shooting: An exploratory study. *Psychiatry, Psychology and Law*, 17(1), 121-138.
- Monachesi, E. D., (1955). Cesar Beccaria. *Journal of Criminal Law Criminology and Political Science*, 46, 439-49.
- National Association of Assistant United States Attorneys, (March, 2008). Security Survey.
- National Association of Secretaries of State/International Association of Commercial Administrators Joint Task Force on Bogus UCC Documents (2004). Reports and Recommendations.  
[http://nass.org/index2.php?option=com\\_docman&task=doc\\_view&gid=35&Itemid=99999999](http://nass.org/index2.php?option=com_docman&task=doc_view&gid=35&Itemid=99999999).
- National Association of Secretaries of State, (April, 2013). "State Strategies to Subvert Fraudulent Uniform Commercial Code (UCC) Filings: A Report for State Business Filing Agencies."
- National Center for State Courts. (March 16, 2005). *Essential Ten Elements for Effective Courtroom Safety and Security Planning*. Williamsburg, VA.
- Nelson, K. B. (2008, October 8). (letter to various members of Congressional and Senate leadership, transmitting "Department of Justice Report on the Security of Federal Prosecutors."

- Paternoster, R., Brame, R., Bachman, R., & Sherman, L. W. (1997). Do fair procedures matter? The effect of procedural justice on spouse assault. *Law & Society Review*, 31(1), 167-169.
- Pichon, S., de Gelder, B. & Grezes, J. (2011, June 10). Threat prompts defensive brain responses independently of attentional control. *Cerebral Cortex*.
- Pines, Z. (2007). Prudent risk management: A court administrator's view. *Justice System Journal*. 28, 58-61.
- Pitcavage, M. (1997). Common law and uncommon courts: An overview of the common law court movement. *The Militia Watchdog*, Anti-Defamation League.
- Travis C. Pratt, T. C. & Cullen F. T. (2005) Assessing macro-level predictors and theories of crime: A meta-analysis. *Crime and Justice*, 32, 373-450.
- Pridemore, W. A. & Freilich, J. D. (2007). The impact of state laws protecting abortion clinics and reproductive rights on crimes against abortion providers: Deterrence, backlash, or nether? *Law and Human Behavior*. 31, 611-627.
- Robinson, P. H. & Darley, J. M. (2003). The role of deterrence in the formulation of criminal law rules: At its worst when doing its best. *Georgetown Law Journal*, 949-1002.
- Sherman, L. W. (1993). Defiance, deterrence, and irrelevance: A theory of the criminal sanction. *Journal of Research in Crime and Delinquency*, 30(4), 445-473.
- Sunshine, J. & Riley, T. R. (2003). The role of procedural justice and legitimacy in shaping public support for policing. *Law & Society Review*, 37(3), 513-548.

- Swensen, S. K. (2010). *Court-targeted acts of violence: a study and chronological listing of incidents of courthouse/judicial shootings, bombings, and arson attacks*. Saint Paul: Center for Judicial and Executive Security.
- Swensen, S. K. (2012). *Incidents of disorder in the court: A general listing of court and judicial violence: assaults, knifings, murder-for-hire, suicides, bomb-plots, etc.* Saint Paul: Center for Judicial and Executive Security.
- Taylor, C. (2011, August 8). Counties on the alert for 'Sovereign Citizens,' National Association of Counties, *County News*, 43(15).
- Torgler, B. & Frey, B. (2013). Politicians: Be killed or survive. *Public Choice*, 156, 357-386.
- Tyler, T. R. (1990). *Why people obey law*. New Haven: Yale University Press.
- Tyler, T. R. (2006). Psychological perspectives on legitimacy and legitimation. *Annual Review of Psychology*, 57, 375-400.
- U.S. Department of Justice, (2007a). *Protective Investigations*, USMS Directive 10.3.G.12.
- U.S. Department of Justice, Office of the Inspector General, Evaluation and Inspections Division. (2007b). *The United States Marshals Service judicial security process* (Report Number I-2007-010).
- U.S. Department of Justice, U.S. Marshals Service, District of Minnesota. (2008). *Courthouse/judiciary Shootings and Bombings: Incident Statistical Summary Analysis*.
- U.S. Department of Justice, Office of the Inspector General, Evaluation and Inspections Division. (December, 2009). *Review of the Protection of the Judiciary and United States Attorneys* (Report Number I-2010-002-R).

- U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics.  
(December, 2011). *Prosecutor in State Courts, 2007-Statistical Tables* (NCJ 234211).
- Vossekuil, B., Borum, R., Fein, R., & Reddy, M. (2001). Preventing targeted violence against judicial officials and courts. *The Annals of the Academy of Political and Social Science*, 576, 78-90.
- Warren, R. K., (2000). Public trust and procedural justice. *Court Review*, 12-16.
- Weinberg, L. B., Francis, E., & Lloyd, R. D. (1999). Courts under threat. *Terrorism and Political Violence*, 11(2).
- Weiner, N. A., & Hardenbergh, D. (2001). Understanding and controlling violence against the judiciary and judicial officials. *The Annals of the Academy of Political and Social Science*, 576, 23-37.
- Weisburd, D., Wyckoff, L. A., Ready, J., Eck, J. E., Hinkle, Joshua C., & Gajewski, F. (2006). Does crime just move around the corner? A controlled study of spatial displacement and diffusion of crime control benefits. *Criminology*, 44(3), 549-591.
- Zaruba, J. E. (2007). Courthouse security: A direction or a destination? *Justice System Journal*, 28, 46-49.