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The Varying Parameters of Obstruction of Justice in American Criminal Law

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TABLE OF CONTENTS

I. INTRODUCTION

A woman is arrested for inserting money into expired parking meters after a police officer ordered her not to do so.[1] A truck driver uses his CB radio to alert other drivers of a police speed trap.[2] A member of a political activist group releases crickets at a public auction.[3] A person swallows illegal contraband as he is being pursued by police.[4] A child shouts obscenities at his public school teacher, shoves her, and leaves the classroom.[5] Two middle-aged women privately state that they believe a recent arson was committed by the local police.[6] Although these activities varied widely, they resulted in similar criminal charges; each person was charged with some form of obstruction of justice.

When many people consider the offense "obstruction of justice," they probably think of conduct such as evidence destruction and tampering with witnesses, jurors, and others involved in the judicial process. While such beliefs would be correct, these conceptions would be incomplete. As the above cases suggest, obstruction statutes have been interpreted to prohibit a broad range of activities. Since the Enron scandal erupted, the federal obstruction of justice laws have been used to prosecute many highly-publicized white collar criminals, such as Martha Stewart.[7] At the state level,

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1. State v. Stayton, 709 N.E.2d 1224, 1226 (Ohio Ct. App. 1998).
2. People v. Case, 365 N.E.2d 872, 873–74 (N.Y. Ct. App. 1977).
3. People v. Spiegel, 693 N.Y.S.2d 393, 395 (N.Y. City Crim. Ct. 1999).
4. People v. Ravizee, 552 N.Y.S.2d 503, 504 (N.Y. City Crim. Ct. 1990); *see also* People v. Smith, 786 N.E.2d 1121, 1123 (Ill. App. Ct. 2003).
5. In re Walter S., 337 N.Y.S.2d 774, 775–76 (N.Y. Fam. Ct. 1972).
6. *See* Becky Sisco, *Stockton Women Guilty of 'Gossiping'*, Telegraph Herald, Oct. 4, 2002, at A3.
7. *See* Constance L. Hays & Jonathan D. Glater, *More Tactics Than Theatrics at the Stewart Trial*, N.Y. Times, Feb. 10, 2004, at A1 (discussing the obstruction of justice charge against Martha Stewart based on her alleged alteration of a telephone log); *see also* Jonathan D. Glater, *Mistrial Shows Risks in Choosing A Path for Prosecution*, N.Y. Times, Oct. 25, 2003, at C1 (describing the mistrial in the case against Frank Quattrone, a former investment banker, who was charged with obstructing justice after he sent an e-mail to his colleagues, encouraging them to "clean up those files" while a grand jury investigation was underway);

obstruction laws have been used increasingly against drug offenders who, in some fashion, attempt to destroy or conceal their drugs when being pursued by police.[8]

This article will illustrate the broad reach of the crime of obstruction at the federal and the state levels through an examination of the statutes and the case law. Part II provides a brief background to obstruction of justice. Part III examines the federal obstruction of justice statutes with particular emphasis on the omnibus clause, the broadest provision of the various strictures. Part IV categorizes and describes the numerous state approaches to prohibiting obstruction. Then, Part V analyzes the state case law interpreting the broadest obstruction statutes. Finally, Part VI contains general observations about the broad federal and state obstruction statutes and suggests ways in which the statutes could be restricted.

II. BACKGROUND

In a broad sense, any offense negatively affecting government functions can be viewed as an obstruction against the administration of justice. For example, treason, sedition, perjury, bribery, escape, contempt, false personation, destruction of government property, and assault of a public official are crimes against the government.[9] Moreover, as the number of governmental functions has increased throughout time, the number of statutory offenses penalizing obstructions of those functions likewise has increased.[10] Many of these crimes have been clearly and distinctly set apart as separate offenses and are beyond the scope of this article. The focus of this article, instead, is the more narrow laws, which either in general

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Associated Press, *Ex-Lawyer for Rite Aid is Found Guilty*, N.Y. Times, Oct. 18, 2003, at C2 (describing the obstruction of justice conviction of Franklin Brown for misleading investigators looking into accounting fraud at Brown's company); Kurt Eichenwald, *Andersen Guilty in Effort to Block Inquiry on Enron*, N.Y. Times, June 16, 2002, at A1 (discussing the obstruction of justice conviction against the accounting firm Arthur Andersen based upon the firm's hindrance of the investigation into Enron's accounting practices). One former federal prosecutor has noted that, in cases of white collar crime, the obstruction of justice laws have become a "dream" for prosecutors, because obstruction is an easier charge to prosecute than tax or securities crimes. Tamara Loomis, *The Challenge of Prosecuting Obstruction-of-Justice Cases*, Texas Lawyer, Jan. 5, 2004, at 1.

8. *See* People v. Brake, 783 N.E.2d 1084, 1086–87 (Ill. App. Ct. 2003) (swallowing drugs); People v. Vargas, 684 N.Y.S.2d 848, 849 (N.Y. City Crim. Ct. 1998) (throwing a marijuana cigarette down a sewer); People v. Simon, 547 N.Y.S.2d 199 (N.Y. City Crim. Ct. 1989) (breaking a glass pipe containing cocaine).

9. *See* Rollin M. Perkins & Ronald N. Boyce, Criminal Law § 5.3 (3d ed. 1982).

10. *Id.* at 498.

terms or specific terms, prohibit what today is popularly called "obstruction of justice."

III. FEDERAL STATUTE AND CASE LAW

Sections 1501 through 1520 of Title 18 in the United States Code reflect the various provisions outlawing obstruction of justice. Specifically, the individual sections reflecting substantial criminal offenses are titled "assault on a process server,"[11] "resistance to extradition agent,"[12] "influencing or injuring officer or juror generally,"[13] "influencing juror by writing,"[14] "obstruction of proceedings before departments, agencies, and committees,"[15] "theft or alteration of records or process; false bail,"[16] "picketing or parading,"[17] "recording, listening to, or observing proceedings of grand or petit juries while deliberating or voting,"[18] "obstruction of court orders,"[19] "obstruction of criminal investigations,"[20] "obstruction of State or local law enforcement,"[21] "tampering with a witness, victim, or an informant,"[22] "retaliating against a witness, victim, or an informant,"[23] "obstruction of Federal audit,"[24] "obstructing examination of financial institution,"[25] "obstruction of criminal investigations of health care offenses,"[26] "destruction, alteration, or falsification of records in Federal investigations and bankruptcy,"[27] and "destruction of corporate audit records."[28] Beyond the above provisions are two other sections, one which reflects a civil action measure[29] and another that sets out basic definitions.[30]

The central provision in this statutory arrangement is section 1503. Inasmuch as the majority of federal prosecutions for

11. 18 U.S.C.A. § 1501 (West 2000 & Supp. 2003).
12. 18 U.S.C. § 1502 (2000).
13. *Id.* § 1503.
14. *Id.* § 1504.
15. *Id.* § 1505.
16. *Id.* § 1506.
17. *Id.* § 1507.
18. *Id.* § 1508.
19. *Id.* § 1509.
20. *Id.* § 1510.
21. 18 U.S.C.A. § 1511 (West 2000 & Supp. 2003).
22. *Id.* § 1512.
23. *Id.* § 1513.
24. *Id.* § 1516.
25. 18 U.S.C. § 1517 (2000).
26. *Id.* § 1518.
27. 18 U.S.C.A. § 1519 (Supp. 2003).
28. *Id.* § 1520.
29. *Id.* § 1514.
30. *Id.* § 1515.

obstruction of justice are based on this section, the discussion that follows will focus on this offense.

A. *The Obstruction of Justice Omnibus Clause*

1. *The Clause Codified*

Section 1503 of Title 18, titled "Influencing or injuring officer or juror generally," provides: "Whoever . . . corruptly or by threats of force, or by any threatening letter or communication, influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede, the due administration of justice, shall be punished."[31] This so-called omnibus clause is the broadest of the various obstruction of justice crimes, serving "as a catchall, prohibiting persons from endeavoring to influence, obstruct, or impede the due administration of justice."[32]

2. *Elements of the Offense*

Most courts agree that there are three elements to a charge of obstruction of justice: (1) there must be a judicial proceeding pending, (2) the defendant must have knowledge of the proceeding, and (3) the defendant must have corruptly endeavored to influence, obstruct, or impede the due administration of justice. These elements will be discussed accordingly.

a. *Pending Judicial Proceeding*

The first element of the obstruction of justice omnibus clause is that there be a pending judicial proceeding that qualifies as an "administration of justice."[33] Courts have often refrained from developing a "rigid rule" to determine at what point a judicial proceeding becomes pending.[34] An investigation by the Federal Bureau of Investigation or a similar government agency clearly is not a pending judicial proceeding because it is not a "judicial arm" of the

31. 18 U.S.C. § 1503 (2000).

32. United States v. Aguilar, 515 U.S. 593, 598, 115 S. Ct. 2357, 2361–62 (1995).

33. United States v. Simmons, 591 F.2d 206, 208 (3d Cir. 1979). *But see* United States v. Novak, 217 F.3d 566, 571–72 (8th Cir. 2000) (questioning whether section 1503 imposes a pending judicial proceeding requirement).

34. *See* United States v. Vesich, 724 F.2d 451, 454 (5th Cir. 1984); United States v. Walasek, 527 F.2d 676, 678 (3d Cir. 1975).

government involved in the administration of justice.[35] Consequently, the issuance of investigative tools used by law enforcement officials, such as search warrants[36] and wiretaps,[37] does not constitute a pending judicial proceeding.[38]

On the other hand, a grand jury investigation does qualify as a pending judicial proceeding.[39] If a grand jury investigation is conducted jointly with another federal agency, such as the United States Attorney, a judicial proceeding is pending.[40] Likewise, a judicial proceeding was found to be pending where investigations by the Internal Revenue Service and a grand jury were "one and the same."[41]

An investigation by a law enforcement agency can ripen into a grand jury investigation, meeting the pending judicial proceeding requirement.[42] In *United States v. Simmons*,[43] the United States Court of Appeals for the Third Circuit held that a judicial proceeding becomes pending when agency officials apply for, and cause to be issued, subpoenas to "secure a presently contemplated presentation of evidence before the grand jury."[44] In that case, a subpoena had been issued upon application of an Assistant United States Attorney for the defendant to appear before a grand jury and to bring various documents with him.[45] The defendant was convicted of obstruction of justice for destroying those documents and for ordering his

35. *Simmons*, 591 F.2d at 208. *See also Aguilar*, 515 U.S. at 599, 115 S. Ct. at 2362 ("[I]t is not enough that there be an intent to influence some ancillary proceeding, such as an investigation independent of the court's or grand jury's authority.").

36. United States v. Brown, 688 F.2d 596, 598 (9th Cir. 1982) (where defendant informed the target of the wiretap order that his associate was "a rat," defendant did not obstruct a pending judicial proceeding).

37. United States v. Davis, 183 F.3d 231, 240 (3d Cir. 1999) (where defendant warned the target of a search warrant in order to prevent discovery and seizure of drugs, defendant did not interfere with a pending judicial proceeding).

38. *But see* United States v. Gonzalez-Mares, 752 F.2d 1485 (9th Cir. 1985) (holding that judicial proceeding was pending where defendant made false statements during an interview with a probation officer for oral pre-sentence report to magistrate, even though complaint not yet filed).

39. United States v. Walasek, 527 F.2d 676, 678 (3d Cir. 1975).

40. United States v. Shoup, 608 F.2d 950, 962 (3d Cir. 1979).

41. United States v. Furkin, 119 F.3d 1276, 1282–83 (7th Cir. 1997).

42. United States v. Simmons, 591 F.2d 206, 210 (3d Cir. 1979) (quoting *Walasek*, 527 F.2d at 678). *See also* United States v. Monus, 128 F.3d 376, 389 (6th Cir. 1998) (holding that a judicial proceeding was pending where a defendant destroyed documents after subpoenas were issued but before the evidence was presented to the grand jury).

43. 591 F.2d at 210.

44. *Id.*

45. *Id.* at 207.

employees to withhold information from the grand jury.[46] On appeal, the defendant argued that the prosecution had not proved that, at the time the subpoenas were issued, the grand jury was investigating the defendant or had any knowledge of the activities related to the subpoena.[47] The court, however, refused to exonerate defendants who are "fortunate" enough to receive the first subpoenas of an investigation before evidence was presented to the grand jury.[48] Such defendants, the court held, will have acted with the same intent to obstruct justice and the same knowledge of a pending grand jury investigation.[49]

Other courts have held that the issuance of subpoenas is not dispositive in determining whether a judicial proceeding is pending. For instance, in *United States v. Vesich*,[50] the defendant was convicted of obstruction of justice when he encouraged a witness to testify falsely before a federal grand jury.[51] At the time, the witness had not been subpoenaed, but instead, he had signed an agreement with an Assistant United States Attorney to testify before the current grand jury.[52] Also, pursuant to the agreement, the witness' state narcotics charges were dropped, and a federal complaint was filed against the witness instead.[53] On the defendant's appeal of his conviction, the United States Court of Appeals for the Fifth Circuit examined the pending judicial proceeding requirement by considering the likelihood that the witness would testify in the future.[54] Although the court noted that "these circumstances are perhaps at the outer edge of the required pendency," the court held that a jury could find that the attorney and the witness mutually expected the witness to testify before the federal grand jury, and thus, a judicial proceeding was pending.[55]

A judicial proceeding remains pending even after the trial is complete and until the court is no longer responsible for post-

46. *Id.*
47. *Id.* at 208.
48. *Id.* at 210.
49. *Id. See also* United States v. Monus, 128 F.3d 376, 389 (6th Cir. 1998) (holding that a judicial proceeding was pending where a defendant destroyed documents after subpoenas were issued but before the evidence was presented to the grand jury).
50. 724 F.2d 451 (5th Cir. 1984).
51. *Id.* at 455.
52. *Id.*
53. *Id.* at 455–56.
54. *Id.* at 456.
55. *Id.*

sentence motions[56] and "until disposition is made of any direct appeal taken by the defendant assigning error that could result in a new trial."[57] Consequently, where the defendant submitted false reports to the United States Probation Office within the one-year period to file a motion to reduce sentence, a judicial proceeding was found to be pending.[58]

b. Knowledge of the Proceeding

It is critical for a charge of obstruction of justice that the defendant has knowledge or notice of the judicial proceedings.[59] Without this knowledge, the defendant necessarily lacks the requisite intent to obstruct the administration of justice.[60] Mere knowledge of an investigation is not enough to satisfy the knowledge requirement.[61] For instance, where a defendant knew that a person was the subject of an FBI investigation, this was insufficient to show the defendant's knowledge of a grand jury proceeding.[62] In that case, the defendant's statements that he expected the FBI agent to return with a subpoena did not show that the defendant knew of a grand jury proceeding underway at the time as opposed to one that could begin in the future.[63] In a different case, a defendant police officer's knowledge of a person's status as an informant was insufficient to show that the defendant knew the informant was involved in a grand jury-based investigation.[64] As the court in that case remarked, "informants and investigations [can] exist without grand juries."[65]

The defendant's knowledge of a pending judicial proceeding can be often inferred from the surrounding facts. For example, a defendant's knowledge of pending proceedings could be inferred from the wide sweep of the grand jury's investigation as well as conversations in which the defendant asked the target of an investigation whether he was "standing tall" and needing "a lawyer or any sort of help."[66] Also, where a defendant, an experienced attorney, stated to a potential witness that "'they was going to have' him 'before the federal grand jury,'" it could be inferred that the

56. United States v. Novak, 217 F.3d 566, 572 (8th Cir. 2000); United States v. Fernandez, 837 F.2d 1031, 1034 (11th Cir. 1988).
57. United States v. Johnson, 605 F.2d 729, 731 (4th Cir. 1979).
58. *Novak*, 217 F.3d at 573.
59. United States v. Aguilar, 515 U.S. 593, 599. 115 S. Ct. 2357, 2362 (1995).
60. *Id.*
61. United States v. Frankhauser, 80 F.3d 641, 651 (1st Cir. 1996).
62. *Id.*
63. *Id.*
64. United States v. Davis, 183 F.3d 231, 242 (3d Cir. 1999).
65. *Id.*
66. United States v. Maloney, 71 F.3d 645, 652 (7th Cir. 1995).

defendant knew that a federal grand jury was always sitting, and thus, had knowledge of a pending judicial proceeding.[67] However, one court has held that the prosecution is not required to prove the defendant knew that the proceedings were federal in nature.[68]

c. Corruptly Endeavoring to Obstruct Justice

i. Corruptly

Because the only mental state described in the omnibus clause is the word "corruptly,"[69] the mens rea required to sustain an obstruction of justice conviction has been the source of much confusion.[70] In an 1893 case, *Pettibone v. United States*,[71] the United States Supreme Court interpreted the predecessor statute to section 1503 as requiring specific intent to obstruct justice.[72] The intent requirement could not be fulfilled by "general malevolence" or "general evil intent."[73]

In the years following *Pettibone*, some courts seemed to abandon the specific intent requirement in favor of a less strict formulation of the mens rea requirement.[74] For example, some courts followed the lead of the Fourth Circuit, which held that the offense required only knowledge or notice that the defendant's "success . . . would have likely resulted in an obstruction of justice," and such notice was provided by the "reasonable foreseeability of the natural and probable consequences of one's acts."[75] In addition, the Eleventh Circuit held that the government was not required to prove specific intent, but rather that "the conduct was prompted, at least in part, by a 'corrupt motive.'"[76] However, in *United States v. Aguilar*,[77] the United States Supreme Court seemed to affirm the *Pettibone* requirement of

67. United States v. Vesich, 724 F.2d 451, 458 (5th Cir. 1984).
68. United States v. Ardito, 782 F.2d 358, 362 (2d Cir. 1986).
69. 18 U.S.C. § 1503 (2000).
70. *See* Joseph V. De Marco, *Note: A Funny Thing Happened on the Way to the Courthouse: Mens Rea, Document Destruction, and the Federal Obstruction of Justice Statute*, 67 N.Y.U.L. Rev. 570, 576–90 (1992).
71. 148 U.S. 197, 13 S. Ct. 542 (1893).
72. *Id.* at 207, 13 S. Ct. at 546–47 ("[T]he specific intent to violate the statute must exist to justify a conviction.").
73. *Id.* at 207–08, 13 S. Ct. at 547.
74. *See* De Marco, *supra* note 70, at 580–90.
75. United States v. Neiswender, 590 F.2d 1269, 1273 (4th Cir. 1979); *see also* United States v. Machi, 811 F.2d 991, 998 (7th Cir. 1987); United States v. Silverman, 745 F.2d 1386, 1393 (11th Cir. 1984).
76. United States v. Thomas, 916 F.2d 647, 651 (11th Cir. 1990); United States v. Saget, 991 F.2d 702, 713 (11th Cir. 1993).
77. 515 U.S. 593, 115 S. Ct. 2357 (1995).

specific intent, when it held that a person convicted under section 1503 must have acted "*with an intent to* influence judicial or grand jury proceedings."[78] Although some courts have continued to follow pre-*Aguilar* formulations of the mens rea requirement,[79] the Court's interpretation seems to require nothing less than specific intent to obstruct justice.

Intent to obstruct justice normally can be inferred from all surrounding facts and circumstances.[80] However, proof of a motive alone is insufficient to infer specific intent.[81] For example, where the defendant, a confidential informant in a series of cases, was angry with his compensation and stated that he would "get amnesia" and that the government would lose its cases without him, a jury could infer that the defendant intended to influence the judicial proceedings in which he was scheduled to testify.[82] Also, where a defendant left a voice mail message threatening to murder the judge who had sentenced him and had recently issued a warrant for his arrest, the defendant's specific intent to thwart his arrest warrant and his pending hearing could be inferred.[83]

Where the defendant's acts took place before subpoenas were issued, this can negate the specific intent to obstruct justice. Therefore, where the defendant had backdated documents before they were subpoenaed and submitted to the grand jury, there was no corrupt intent.[84] Similarly, in *United States v. Ryan*,[85] the United States Court of Appeals for the Ninth Circuit concluded that the defendant's specific intent was not established where the defendant instructed his secretary to delete a certain name from all club membership cards, which were later subpoenaed by a grand jury.[86]

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78. *Id.* at 599, 115 S. Ct. at 2362 (emphasis added). For a discussion of specific intent, see John F. Decker, 1 Illinois Criminal Law § 2.27 (2000).

79. *See, e.g.*, United States v. Brenson, 104 F.3d 1267, 1277 (11th Cir. 1997) ("[A]ll the government has to establish is that the defendant should have reasonably foreseen that the natural and probable consequence of the success of his scheme would achieve precisely that result.").

80. United States v. Moon, 718 F.2d 1210, 1236 (2d Cir. 1983).

81. United States v. Littleton, 76 F.3d 614, 619 (4th Cir. 1996) (where the defendant, who allegedly made false statements while testifying in her son's suppression hearing, understood the purpose and importance of the hearing and desired that the court grant the motion, there was insufficient evidence of intent to obstruct justice).

82. United States v. Russell, 234 F.3d 404, 407 (8th Cir. 2000).

83. United States v. Weber, 320 F.3d 1047, 1051 (9th Cir. 2003).

84. *Moon*, 718 F.2d at 1236 (also holding that a stronger case for obstruction would have been presented if the defendant had affirmatively vouched for the documents' accuracy or submitted the documents knowing that he could have resisted production on self-incrimination grounds).

85. 455 F.2d 728 (9th Cir. 1971).

86. *Id.* at 734.

Furthermore, after the cards were received by the government, the name still appeared on eighteen cards.[87] Therefore, the court concluded that the defendant did not intend to conceal the name from the grand jury.[88]

ii. Endeavoring to Obstruct Justice

A defendant fulfills the actus rea requirement of section 1503 by influencing, obstructing, impeding or endeavoring to influence, obstruct, or impede the due administration of justice.[89] Thus, a defendant's actions need not successfully obstruct justice, since an "endeavor" to obstruct justice is sufficient.[90] An endeavor is often described as "less than an attempt"[91] or "any effort or assay to accomplish the evil purpose the statute was enacted to prevent."[92] The United States Supreme Court, in *Aguilar*, stated that the term "endeavor" is used in the statute to punish conduct "where the defendant acts with an intent to obstruct justice, and in a manner that is likely to obstruct justice, but is foiled in some way."[93] For example, the Court stated, a defendant who intends to lie to a subpoenaed witness who ultimately does not testify has endeavored to obstruct justice.[94] Therefore, where an attorney accepted money from a recently-convicted defendant, who was not his client, to bribe the defendant's judge, the attorney's lack of success did not prevent his conduct from being an endeavor.[95]

To sustain a conviction, any endeavor, even with the requisite intent, must have the "natural and probable effect" of interfering with the due administration of justice.[96] The Supreme Court, in *Aguilar*, termed this the "'nexus' requirement—that the act must have a relationship in time, causation, or logic with the judicial proceedings."[97] In that case, the defendant was charged with obstructing justice by providing false statements to an FBI agent.[98] However, the agent was not acting as an arm of a grand jury investigation, and he had not yet been subpoenaed to appear before the

87. *Id.*
88. *Id.*
89. 18 U.S.C. § 1503 (2000).
90. United States v. Aguilar, 515 U.S. 593, 599, 115 S. Ct. 2357, 2362 (1995).
91. United States v. Buffalano, 727 F.2d 50, 53 (2d Cir. 1984).
92. United States v. Silverman, 745 F.2d 1386, 1393 (11th Cir. 1984).
93. *Aguilar*, 515 U.S. at 601–02, 115 S. Ct. at 2363.
94. *Id.* at 602, 115 S. Ct. at 2363.
95. United States v. Atkin, 107 F.3d 1213, 1219 (6th Cir. 1997).
96. *Aguilar*, 515 U.S. at 599, 115 S. Ct. at 2362.
97. *Id.*
98. *Id.* at 601, 115 S. Ct. at 2363.

grand jury.[99] Therefore, the Court held that the eventual use of such testimony at the time of the interview was "speculative" and did not have the natural and probable effect of interfering with the due administration of justice.[100]

The natural and probable effects of the defendant's acts can be inferred by a jury.[101] For example, where a defendant forged a letter that included false statements and urged leniency in the defendant's upcoming supervised release violation hearing, the government was not required to prove the letter actually obstructed justice.[102] The letter had the natural and probable effect of influencing the sentencing judge, since it was the type the judge normally received and relied upon when imposing sentences.[103]

What constitutes an endeavor to obstruct justice falls roughly into four categories of activities: (1) providing false testimony, (2) destroying or altering documents or other evidence, (3) engaging in fraudulent schemes, and (4) tampering with a witness. These forms of conduct will now be explored.

(1) Providing False Testimony

Section 1503 is often used to prosecute defendants who provide false testimony in a pending judicial proceeding.[104] False testimony alone cannot provide the basis of an obstruction conviction because "the function of trial is to sift the truth from a mass of contradictory evidence, and to do so the fact finding tribunal must hear both truthful and false witnesses."[105] Even if the false testimony amounts to perjury, it cannot be the sole evidence in an obstruction conviction because obstruction requires specific intent to interfere with the due administration of justice.[106] Some early cases held that it must be proven that the false statements had the actual effect of obstructing justice.[107] However, that additional burden has been essentially eliminated, since section 1503 has been interpreted broadly to cover all unsuccessful endeavors to obstruct justice.[108]

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99. *Id.*
100. *Id.*
101. United States v. Furkin, 119 F.3d 1276, 1283 (7th Cir. 1997).
102. United States v. Collis, 128 F.3d 313, 318 (6th Cir. 1997).
103. *Id.*
104. United States v. Griffin, 589 F.2d 200, 204 (5th Cir. 1979) ("The perjurious witness can bring about a miscarriage of justice by imperiling the innocent or delaying the punishment of the guilty.").
105. In re Michael, 326 U.S. 224, 227–28, 66 S. Ct. 78, 80 (1945).
106. United States v. Williams, 874 F.2d 968, 980 (5th Cir. 1989).
107. *See* United States v. Perkins, 748 F.2d 1519, 1528 (11th Cir. 1984); United States v. Griffin, 589 F.2d 200, 204 (5th Cir. 1979).
108. *See* United States v. Thomas, 916 F.2d 647, 651 (11th Cir. 1990); *Williams*, 847 F.2d at 980–81.

The false statement is not required to be presented in court or delivered to a court officer.[109] Providing false statements to a grand jury[110] and falsely denying knowledge of certain events to the grand jury[111] can be an endeavor to obstruct justice. Also, where a confidential informant made false statements to the attorney of the person against whom the informant was to testify, resulting in a dismissed charge against that person, this amounted to an endeavor to obstruct justice.[112] Finally, where a defendant made false statements to a probation officer during an interview and to a magistrate during an oral presentence report, the defendant was found to have obstructed justice by receiving an undeserved lenient sentence.[113]

Where the false statement does not have the natural and probable effect of obstructing justice, an obstruction charge will not stand. For instance, where a defendant made unsworn exculpatory false statements to FBI agents—who were investigating political corruption, did not expect a complete confession, and eventually learned the truth about the matter under investigation—the statements did not have the natural and probable effect of obstructing justice.[114]

Also, where it is not clear that the allegedly false testimony was, in fact, untrue, the statements cannot have the natural and probable effect of impeding justice.[115] For instance, in *United States v. Thomas*,[116] the defendant was asked whether he had known Callahan, the target of an investigation, by another name or had ever introduced Callahan to anyone using another name.[117] The defendant responded that he had not.[118] However, there was evidence that the defendant knew that *others* referred to the target by another name.[119] The United States Court of Appeals for the Eleventh Circuit held that the questions the defendant answered were too vaguely worded to establish that the defendant testified falsely.[120] The court held that more than the "conjecture and innuendo" offered as evidence was required to sustain an obstruction of justice conviction.[121]

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109. United States v. Fields, 838 F.2d 1571, 1575 (11th Cir. 1988).

110. United States v. Russo, 104 F.3d 431, 436 (D.C. Cir. 1997); *Perkins*, 748 F.2d at 1528.

111. United States v. Williams, 874 F.2d 968, 981; *Griffin*, 589 F.2d at 204.

112. United States v. Barfield, 999 F.2d 1520, 1520–22 (11th Cir. 1993).

113. United States v. Gonzalez-Mares, 752 F.2d 1485, 1491–92 (9th Cir. 1984).

114. United States v. Wood, 6 F.3d 692, 696–97 (10th Cir. 1993).

115. United States v. Thomas, 916 F.2d 647, 653 (11th Cir. 1990); United States v. Brand, 775 F.2d 1460, 1467–68 (11th Cir. 1985).

116. 916 F.2d 647.

117. *Id.* at 649.

118. *Id.*

119. *Id.* at 649–50.

120. *Id.* at 654.

121. *Id.* (quoting United States v. Palacios, 556 F.2d 1359, 1365 (5th Cir. 1977)).

(2) Destruction or Alteration of Documents and Other Evidence

A second act that forms the basis of many obstruction of justice convictions is the destruction or alteration of documents and other evidence. For example, where a corporate officer caused records to be destroyed after learning that the company had been served with a subpoena, there was an interference with the due administration of justice.[122] Other similar acts chargeable under section 1503 include the fabrication of meeting minutes[123] and the alteration of airplane flight logs.[124]

A jury can infer that the defendant had possession of the documents at the time of the subpoena.[125] Thus, where a defendant possessed documents when he was aware that he was the subject of a grand jury investigation and those later turned up in his attorney's files, a jury could infer that the defendant had possession of the documents at the time they were subpoenaed.[126]

(3) Fraudulent Schemes

Fraudulent schemes, typically involving bribery, also may be charged under the obstruction of justice omnibus clause. The scheme is not required to be successful because an "endeavor" suffices for purposes of the statute.[127] Moreover, fraudulent schemes, even if unsuccessful, have been held to obstruct justice by having a "lulling effect" on a party involved.[128] For example, where an attorney agreed with a defendant, though not his client, to ensure a lenient sentence from the presiding judge in exchange for money, the attorney was subject to obstruction of justice charges.[129] Although the attorney's attempt was unsuccessful, it could have lulled the defendant into a false sense of security and caused him to take a less active role in his case.[130] In another case, an attorney could have lulled a defendant by encouraging him to drop his pending appeal, which the defendant was entitled to pursue by law.[131]

122. United States v. Walasek, 527 F.2d 676, 681 (3d Cir. 1975).
123. United States v. McComb, 744 F.2d 555, 559 (7th Cir. 1984).
124. United States v. Mullins, 22 F.3d 1365, 1370 (6th Cir. 1994).
125. United States v. Davis, 752 F.2d 963, 971 (5th Cir. 1985).
126. *Id.*
127. United States v. Atkin, 107 F.3d 1213, 1218 (6th Cir. 1997).
128. United States v. Buffalano, 727 F.2d 50, 54–55 (2d Cir. 1984).
129. *Id.*
130. *Id.*
131. United States v. Machi, 811 F.2d 991, 999 (7th Cir. 1987).

(4) Witness Tampering

Since the enactment of the Victim and Witness Protection Act (VWPA) in 1982,[132] which removed all references to "witnesses" from section 1503 and made witness tampering a separate offense, the circuits are divided on whether Congress intended witness tampering to be removed from the scope of section 1503.[133] The Second[134] and Ninth[135] Circuits have held that Congress, by eliminating references to "witnesses" in section 1503, intended witness tampering to be prosecuted only under sections 1512 and 1513. However, the Fourth,[136] Fifth,[137] Seventh,[138] and Eighth[139] Circuits have allowed prosecutions under both section 1503 and a witness tampering section.

In circuits that have upheld witness tampering prosecutions under the omnibus clause, a variety of conduct has been reached. For example, suggesting that a person lie to a grand jury,[140] and attempting to hire someone to kill a grand jury witness,[141] are forms of conduct that have been deemed within the reach of section 1503. Also, where a defendant attempted to bribe a witness and later threatened the life of the witness' mother, the defendant was found to have obstructed justice.[142]

3. Defenses to Section 1503

Various defenses to a charge under section 1503's omnibus clause have been presented and will now be discussed briefly. Constitutional challenges to the statute on grounds of vagueness[143]

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132. Pub. L. No. 97-291, 96 Stat. 1248 (codified as amended at 18 U.S.C. §§ 1512–1514, 3579 (2000)).

133. *See* Tina M. Riley, Note, *Tampering with Witness Tampering: Resolving the Quandary Surrounding 18 U.S.C. §§ 1503, 1512*, 77 Wash. U. L.Q. 249 (1999) (recommending that witness tampering cases be prosecuted only under section 1512).

134. *See* United States v. Hernandez, 730 F.2d 895, 898–99 (2d Cir. 1984).

135. *See* United States v. Aguilar, 21 F.3d 1475, 1484–86 (9th Cir. 1994), *rev'd on other grounds*, 515 U.S. 593, 115 S. Ct. 2357 (1995).

136. United States v. Kenny, 973 F.2d 339, 343 (4th Cir. 1992).

137. United States v. Wesley, 748 F.2d 962, 964 (5th Cir. 1984).

138. United States v. Rovetuso, 768 F.2d 809, 824 (7th Cir. 1985).

139. United States v. Risken, 788 F.2d 1361, 1369 (8th Cir. 1986).

140. United States v. Ladum, 141 F.3d 1328, 1339 (9th Cir. 1998).

141. *Risken*, 788 F.2d at 1369.

142. United States v. Moody, 977 F.2d 1420, 1422 (11th Cir. 1992).

143. *See* United States v. Cueto, 151 F.3d 620, 632 (7th Cir. 1998) (holding that "corruptly" is not unconstitutionally vague as applied); United States v. Brenson, 104 F.3d 1267, 1280–81 (11th Cir. 1997) (holding that "corruptly" is not constitutionally vauge as applied).

and overbreadth[144] have been summarily rejected. Also, challenges to the omnibus clause's application to a defendant's particular conduct on the grounds of ejusdem generis ("of the same kind") have generally failed.[145] One possibly successful defense is a fear of reprisal that negates the "corrupt" mental state required for obstructing justice. In *United States v. Banks*,[146] the Eleventh Circuit held that "within a narrow range of unusual and extreme circumstances," a defendant could be acquitted of a section 1503 charge based on "a realistic and reasonable perception that giving testimony would result in imminent harm to the safety of the witness or members of his family."[147]

B. Other Federal Obstruction of Justice Offenses

In addition to the general obstruction of justice provision of section 1503, Chapter seventy-three also contains seventeen provisions dealing with specific acts which constitute obstruction of justice. These sections can be grouped into five categories: (1) obstruction of persons in the performance of their official duties, (2) obstruction of judicial proceedings, (3) obstruction of government agencies, (4) obstruction of government investigations, and (5) obstruction of law enforcement. These will now be examined briefly.

1. Obstruction of Persons in the Performance of Their Official Duties

a. Assault on a Process Server

The first of the specific provisions dealing with the obstruction of persons in the performance of their official duties is section 1501, titled "assault on process server."[148] This provision makes it an offense to "knowingly and willfully" obstruct, resist or oppose any officer of the United States or other duly authorized person in "serving, or attempting to serve or execute, any legal or judicial writ or process" of any court of the United States, or United States magistrate judge.[149] The section also makes it an offense to assault,

144. United States v. Cintolo, 818 F.2d 980, 996–97 (1st Cir. 1987) (holding that section 1503 is not overbroad).

145. United States v. Howard, 569 F.2d 1331, 1333–34 (5th Cir. 1978) (holding that section 1503's omnibus clause applied to a defendant who attempted to sell grand jury transcripts).

146. 942 F.2d 1576 (11th Cir. 1991).

147. *Id.* at 1579.

148. 18 U.S.C.A. § 1501 (West 2000 & Supp. 2003).

149. *Id.*

beat, or wound an officer or duly authorized person, in serving or executing any writ, rule, order, process, warrant of other legal or judicial writ of process if the person committing the offense knows that the process server is a federal officer or duly authorized person.[150]

Thus, a defendant was found to have obstructed a process server in violation of section 1501 where he refused to allow a United States Marshal bearing a proper search warrant to search his property and threatened to keep the Marshal on the property if the search was conducted.[151] However, where police officers knocked on a defendant's door and requested the presence of someone visiting the defendant, but the defendant refused to permit the officer's entry without a warrant, the defendant was exercising her constitutional right to be free from unreasonable searches and seizures, and thus, her section 1501 conviction was overturned.[152]

b. Resistance to an Extradition Agent

Congress also has created an offense entitled "resistance to extradition agent" that makes it an offense for anyone "knowingly and willfully" to obstruct, resist, or oppose an extradition agent of the United States in the execution of his duties.[153] Although defendants often are charged both under section 1502 and section 1503,[154] there are no judicial decisions interpreting this section standing alone.

2. Obstruction of Judicial Proceedings

The second category of obstruction offenses deals with various acts that obstruct judicial proceedings. The five offenses comprising this category will now be explored.

a. Influencing a Juror by Writing

Section 1504, called "influencing juror by writing," makes it an offense for anyone to attempt to influence the action or decision of a grand or petit juror of any court of the United States on any issue or matter before the juror or the jury of which he or she is a member by writing or by sending the juror any written communication in relation

150. *Id.*
151. United States v. Peifer, 474 F. Supp. 498, 505 (E.D. Pa. 1979), *aff'd*, 615 F.2d 1354 (3d Cir. 1980).
152. Miller v. United States, 230 F.2d 486, 490 (5th Cir. 1956).
153. 18 U.S.C. § 1502 (2000).
154. *See, e.g.*, United States v. Bertoli, 854 F. Supp. 975, 1094 (D.N.J. 1994).

to the issue or matter before the jury.[155] The purpose of this section is to prevent anyone from attempting to put pressure on or intimidate a grand juror by written communication.[156] However, this section does not prohibit the communication of a request to appear before a grand jury.[157]

b. Theft or Alteration of a Record or Process and Causing False Bail to be Entered

Section 1506 covers two separate offenses. First, it makes it a crime for anyone to "feloniously" steal, take away, alter, falsify, or otherwise avoid any record, writ, process or other proceedings, in any court in the United States which results in any judgment being reversed, voided or not taking effect.[158] Second, anyone who "acknowledges or procures to be acknowledged in any such court, any recognizance, bail or judgment, in the name of any other person not privy or consenting to the same" is guilty of an offense.[159] For example, a defendant was convicted under this offense when he caused false bail to be entered and acknowledged and knew that he lacked the authority to cause the bonds to be entered.[160]

c. Picketing or Parading

Congress also has created an offense simply called, "picketing or parading," which prohibits anyone "with the intent of interfering with, obstructing, or impeding the administration of justice, or with the intent of influencing any judge, witness, or court officer in the discharge of his duty" from picketing or parading in or near any building housing a federal court or any residence occupied by or used by a judge, juror or court officer.[161] The section also prohibits the use of sound-trucks or similar devices or the use of any demonstration in or near any court house or residence.[162] This section does not prevent a court from punishing persons for such conduct for contempt.[163]

There have been few prosecutions under this section. However, a court upheld the use of this section in a conviction of a person for demonstrating on the grounds of a United States courthouse during

155. 18 U.S.C. § 1504 (2000).
156. United States v. Smyth, 104 F. Supp. 283, 299 (N.D. Cal. 1952).
157. In re New Haven Grand Jury, 604 F. Supp. 453, 457 (D. Conn. 1985).
158. 18 U.S.C. § 1506 (2000).
159. *Id.*
160. United States v. Kane, 433 F.2d 337, 338–39 (3d Cir. 1970) (per curiam).
161. 18 U.S.C. § 1507 (2000).
162. *Id.*
163. *Id.*

a trial for failure to register for the draft even though the defendant argued that the purpose of the demonstration was to get media attention and not to interfere with the trial.[164]

d. Recording, Listening to, or Observing Jury Proceedings

Title 18 also contains a section called "recording, listening to, or observing the proceedings of a grand or petit jury while deliberating or voting."[165] Specifically, this section makes it an offense for anyone "knowingly and willfully" to use any means or device to record, or attempt to record the proceedings of any grand or petit jury in any court in the United States while the jury is deliberating or voting.[166] It also makes it an offense to listen to, observe, or attempt to listen to or observe the proceedings of any such jury of which the person is not a member which the jury is deliberating or voting.[167] However, this section exempts as an offense a juror's taking notes in connection with a case for the purpose of assisting in carrying out his or her duties as a juror.[168]

e. Obstruction of Court Orders

Finally, section 1509 prohibits "obstruction of court orders" and makes it an offense for anyone "by threats or force" to willfully prevent, obstruct, impede, or interfere with the exercise of rights or the performance of duties under any order, judgment, or decree of a court of the United States.[169] The section also prohibits attempts to do the above-stated conduct.[170] This offense requires proof that actual force was used or threatened and that the defendant acted in a manner than created a fear of death or bodily harm.[171]

Before a person can be convicted under section 1509, he or she must know of the court order.[172] However, a court has upheld a conviction under the section where the defendant stated that he was unfamiliar with the terms of the injunction.[173] In addition, the Tenth Circuit held that necessity could not be raised in a prosecution under section 1509 involving a person who scaled a fence surrounding a

164. United States v. Carter, 717 F.2d 1216, 1218–1220 (8th Cir. 1983).
165. 18 U.S.C. § 1508 (2000).
166. *Id.*
167. *Id.*
168. *Id.*
169. *Id.* § 1509.
170. *Id.*
171. United States v. Cooley, 787 F. Supp. 977, 981 (D. Kan. 1992).
172. United States v. Griffin, 525 F.2d 710, 713 (1st Cir. 1975).
173. *Cooley*, 787 F. Supp. at 989.

women's health clinic, since other alternatives were available for protest.[174]

3. Obstruction of Proceedings Before Government Agencies

The third category of specific obstruction of justice offenses, contained in section 1505, outlaws the "obstruction of proceedings before government departments, agencies and committees."[175] This section contains two separate offenses. First, it is a crime for anyone with the "intent to avoid, evade, prevent, or obstruct compliance" with a civil investigative demand made under the Antitrust Civil Process Act, to willfully withhold, misrepresent, remove, conceal, cover up destroy, mutilate, alter, or falsify any document, interrogatories, or oral testimony, which is the subject of the investigative demand.[176] There are no reported cases dealing with this paragraph.

The second paragraph of section 1505 is much broader and has been the basis of a number of prosecutions. This paragraph makes it an offense for anyone "corruptly or by threats or force, or by any threatening letter or communication" to influence, obstruct, or impede or attempt to influence, obstruct, or impede any proceeding before a federal department or agency or any Congressional committee.[177]

Therefore, the elements of an offense under section 1505 are as follows: (1) There must be proceedings pending before a federal agency or department, (2) the defendant must be aware of the proceedings, and (3) the defendant must have intentionally and corruptly attempted to influence, obstruct or impede the proceedings.

The elements of section 1505 closely mirror those in section 1503, except that the proceeding requirement applies to administrative, rather than judicial, proceedings. This requirement has been interpreted broadly to protect "any actions of an agency which relate to some matter within the scope of the rulemaking or adjudicative power vested in the agency by law."[178] For example, investigations by Congress,[179] the Federal Trade Commission,[180] and the Internal Revenue Service[181] have met the proceeding requirement, whereas an FBI investigation[182] was not such a proceeding.

Also like section 1503, an endeavor to obstruct justice, even if unsuccessful, suffices for purposes of the offense. Thus, where two

174. United States v. Turner, 44 F.3d 900, 903 (10th Cir. 1995).
175. 18 U.S.C. § 1505 (2000).
176. *Id.* (referring to 15 U.S.C. § 1311 (2000)).
177. *Id.*
178. United States v. Higgins, 511 F. Supp. 453, 455 (W.D. Ky. 1981).
179. United States v. Mitchell, 877 F.2d 294, 301 (4th Cir. 1989).
180. United States v. Fruchtman, 421 F.2d 1019, 1021 (6th Cir. 1970).
181. United States v. Price, 951 F.2d 1028, 1031 (9th Cir. 1991).
182. *Higgins*, 511 F. Supp. at 455.

nephews of a Congressional committee chairman accepted $50,000 from the target of an investigation by that committee in exchange for a promise to halt the investigation, the nephews endeavored to obstruct justice, even though they did not take any steps to influence the investigation.[183]

4. Obstruction of Government Investigations

The fourth category of obstruction of justice involves the obstruction of government investigations. This category contains eight separate criminal offenses.

a. Obstruction of Criminal Investigations

Section 1510 contains four offenses related to the "obstruction of criminal investigations."[184] First, section 1510(a) makes it an offense for any person to willfully endeavor to bribe in order to obstruct, delay, or prevent the communication of information to a criminal investigator.[185] Second, section 1510(b)(1) makes it an offense for an officer of a financial institution to notify a person about a subpoena for records of that financial institution or information that has been furnished to a grand jury in response to that subpoena.[186] Third, section 1510(b)(2) makes it an offense for an officer or a financial institution to notify a customer of that financial institution whose records are sought by a grand jury about the subpoena or information that has been furnished to the grand jury in response to the subpoena.[187] Finally, section 1510(d) makes it an offense for anyone who is an officer, director, agent or employee of a person engaged in the insurance business to notify any other person about a subpoena for the records of that person engaged or information that has been furnished to a federal grand jury in response to that subpoena.[188]

While there are no reported decisions involving sections 1510(b) or 1510(d), section 1510(a) has been the focus of various prosecutions. Section 1510(a) requires three crucial elements: that the defendant (1) willfully (2) endeavor to bribe in order to obstruct, delay or prevent the communication of information (3) to a criminal investigator.

Although the statute specifically mentions only bribery, it has been interpreted to prohibit all "threatening efforts designed to

183. *Mitchell*, 877 F.2d at 297.
184. 18 U.S.C. § 1510 (2000).
185. *Id.* § 1510(a)(1).
186. *Id.* § 1510(b)(1).
187. *Id.* § 1510(b)(2).
188. *Id.* §1510 (d).

prevent a person from communicating information about a crime to a federal prosecutor."[189] For instance, a conviction was upheld under this section when a defendant threatened an informant that he would be "blown away" if he testified against the defendant.[190] Section 1510 is not limited to pre-indictment investigations but also can apply after judicial proceedings have commenced.[191] In addition, the interpretation of "criminal investigator" has been interpreted broadly to include FBI agents,[192] IRS agents,[193] and employees of the Securities and Exchange Commission.[194]

b. Tampering with a Witness, Victim, or Informant

In 1982, Congress amended the obstruction of justice omnibus clause in section 1503 and passed the Victim and Witness Protection Act (VWPA) to explicitly protect victims and witnesses in federal proceedings.[195] The VWPA added several new obstruction of justice offenses, the most important of which is section 1512, criminalizing "tampering with a witness, victim, or an informant."[196] This section addresses four forms of conduct, specifically (1) the killing of another person,[197] (2) use of force against another person,[198] (3) intimidation or corrupt persuasion,[199] and (4) harassment of another person.[200] Each of these forms of tampering will now be discussed.

First, section 1512(a) makes it an offense for anyone to kill or attempt to kill another person, with the intent to prevent (1) that person from attending or testifying in an official proceeding, (2) the production of a record, document, or other object, in an official proceeding, or (3) the communication by any person to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a federal offense or a violation of conditions of probation, parole, or release pending judicial proceedings.[201]

The second and third forms of conduct have similar statutory language and will be discussed together. Thus, it is a crime for

189. United States v. Murray 751 F.2d 1528, 1534 (9th Cir. 1985).
190. *Id.* at 1535.
191. United States v. Koehler, 544 F.2d 1326, 1329 (5th Cir. 1977).
192. United States v. Segal, 649 F.2d 599, 603 (8th Cir. 1981).
193. United States v. Zemek, 634 F.2d 1159, 1176–77 (9th Cir. 1980).
194. United States v. Abrams, 543 F. Supp. 1184, 1189 (S.D.N.Y. 1982).
195. Pub. L. No. 97-291, 96 Stat. 1248 (codified as amended at 18 U.S.C.A. §§ 1512–1514, 3579 (West 2000 & Supp. 2003)).
196. 18 U.S.C.A. § 1512 (West 2000 & Supp. 2003).
197. *Id.* § 1512(a)(1).
198. *Id.* § 1512(a)(2).
199. *Id.* § 1512(b).
200. *Id.* § 1512(d).
201. *Id.* § 1512(a)(1).

anyone to use or threaten physical force against any person, knowingly intimidate, threaten, or corruptly persuade another person, or engage in misleading conduct toward another person, with intent to (1) influence, delay, or prevent the testimony of any person in an official proceeding; (2) cause or induce any person to (a) withhold testimony or a record, document, or other object, from an official proceeding, (b) alter, destroy, mutilate, or conceal an object with intent to impair the integrity or availability of the object for use in an official proceeding, (c) evade legal process summoning that person to appear as a witness, or to produce a record, document, or other object, in an official proceeding, or (d) be absent from an official proceeding to which that person has been summoned by legal process; or (3) hinder, delay, or prevent the communication to a federal law enforcement officer or judge of information relating to the commission or possible commission of a federal offense or a violation of conditions of probation, supervised release, parole, or release pending judicial proceedings.[202]

Finally, section 1512(d) makes it a crime for anyone to intentionally harass another person and thereby hinder, delay, prevent, or dissuade the person from (1) attending or testifying in an official proceeding, (2) reporting to a federal law enforcement officer or the commission or possible commission of a federal offense or a violation of conditions of probation, supervised release, parole, or release pending judicial proceedings, (3) arresting or seeking the arrest of another person in connection with a federal offense, or (4) causing a criminal prosecution, or a parole or probation revocation proceeding, to be sought or instituted, or assisting in such prosecution or proceeding.[203]

Section 1512 also outlaws any attempt to do any of the above.[204] However, under this section, it is an affirmative defense that the conduct consisted solely of lawful conduct and that the defendant's sole intention was to cause the other person to testify truthfully.[205]

The majority of witness tampering cases involve section 1512(b), which prohibits intimidation, threats, corrupt persuasion, and misleading conduct. For example, where a defendant gang member was ordered to "terminate" a government witness, and the defendant later taunted and beat the witness, the defendant was found to have violated section 1512(b).[206]

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202. *Id.* § 1512(a)(2)-(b).
203. *Id.* § 1512(d).
204. *Id.* § 1512.
205. *Id.* § 1512(e).
206. United States v. Lara, 181 F.3d 183, 200–01 (1st Cir. 1999).

c. Retaliation Against a Witness, Victim, or Informant

Section 1513, which is called "retaliating against a witness, victim, or an informant," is similar to section 1512, except that it further prohibits retaliation against a person who has already testified or reported information to authorities.[207] This section declares it a crime for anyone to kill or attempt to kill another person with the intent to retaliate against any person for (1) the attendance of a witness or party at an official proceeding, (2) providing any testimony given or any record, document, or other object produced by a witness in an official proceeding, or (3) providing to a law enforcement officer any information relating to the commission or possible commission of a federal offense or a violation of conditions of probation, supervised release, parole, or release pending judicial proceedings.[208] It is also an offense for anyone knowingly to threaten or cause bodily injury to another person or damages the tangible property of another person, with the same intent to retaliate against any person.[209]

Whether a defendant's statements and conduct qualify as "threatening" under this section is a question of fact.[210] For example, in *United States v. Paradis*,[211] a defendant, following his arrest on drug charges, began looking for an informant who provided information to law enforcement officials.[212] The defendant then warned the informant's roommate that the informant was "very well wanted," and along with a co-defendant, barged into the apartment of the informant's ex-girlfriend.[213] In the apartment, the defendant told the ex-girlfriend that "he would not harm her, but he was not sure of the other people, and that he could not speak for her friends."[214] Also while in the apartment, the co-defendant backed a man up against the wall, pressed an object into the man's ribs, and asked about the informant's whereabouts.[215] According to the United States Court of Appeals for the First Circuit, this evidence was sufficient to sustain the defendant's conviction under section 1513.[216]

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207. 18 U.S.C. § 1513 (2000).
208. *Id.*
209. *Id.*
210. United States v. Paradis, 802 F.2d 553, 562 (1st Cir. 1986).
211. 802 F.2d 553 (1st Cir. 1986).
212. *Id.* at 562.
213. *Id.* at 562–63.
214. *Id.* at 563.
215. *Id.*
216. *Id.*

d. Obstruction of a Federal Audit

Section 1516, called "obstruction of a Federal audit," makes it an offense for anyone, with intent to deceive or defraud the United States, to attempt to influence, obstruct, or impede a federal auditor in the performance of official duties relating to a person, entity, or program receiving in excess of $100,000 directly or indirectly from the United States in any one-year period under a contract or subcontract, grant, or cooperative agreement, or relating to any property that is security for a mortgage note that is insured, guaranteed, acquired or held by the Secretary of Housing and Urban Development (HUD) under any enactment administered by HUD, or relating to any property that is security for a loan that is made or guaranteed under Title V of the Housing Act of 1949.[217] The only reported case on this section held that the National Railroad Passenger Corporation (Amtrak) audit did not qualify as one "performed for or on behalf of the United States" within the meaning of the section.[218]

e. Obstructing Examination of a Financial Institution

Section 1517, titled "obstruction of financial institution," prohibits anyone from corruptly obstructing or attempting to obstruct any examination of a financial institution by an agency of the United States with the jurisdiction to examine such a financial institution.[219] There are no reported prosecutions under this section.

f. Obstructing the Criminal Investigation of Health Care Offenses

Section 1518 reflects a stricture called "obstruction criminal investigations of health care offenses."[220] It prohibits anyone from willfully preventing, obstructing, misleading, delaying, or attempting to prevent, obstruct, mislead, or delay the communication of information or records relating to a violation of a federal health care offense to a criminal investigator.[221] There are no reported prosecutions under this section.

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217. 18 U.S.C. § 1516 (2000) (referring to the Housing Act, 42 U.S.C. § 1471).
218. United States v. Plasser American Corp., 57 F. Supp. 2d 140, 142 (E.D. Pa. 1999).
219. 18 U.S.C. § 1517 (2000).
220. *Id.* § 1518.
221. *Id.*

g. Destruction, Alteration, or Falsification of Records of Federal Investigations and Bankruptcy

Section 1519 outlaws the "destruction, alteration, or falsification of records in Federal investigations and bankruptcy."[222] It makes it an offense for anyone knowingly to alter, destroy, mutilate, conceal, cover up, falsify or make a false entry in any record, document or tangible object with the intent to impede, obstruct, or influence the investigation of the proper administration of any bankruptcy matter within the jurisdiction of any department or agency of the federal government.[223] This section was added in July 2002, and there are, as yet, no reported prosecutions under the section.

h. Destruction of Corporate Audit Records

Section 1520 criminalizes the "destruction of corporate audit records."[224] It requires any accountant who conducts an audit of an issuer of securities covered by section 10A(a) of the Securities Exchange Act of 1934 to maintain all audit or review workpapers for a period of five years from the end of the fiscal period in which the audit or review was conducted.[225] The Securities and Exchange Commission (SEC) must make rules and regulations relating to the retention of such work records.[226] Anyone who violates the requirement to retain audit records or the SEC's regulations can be punished.[227] This section was added in July 2002 and there are, as yet, no reported prosecutions under the section.

5. Obstruction of Law Enforcement in Order to Facilitate Illegal Gambling Business

Finally, section 1511 reflects the offense of "obstruction of law enforcement officer in order to facilitate illegal gambling business."[228] It makes it unlawful for two or more persons to conspire to obstruct the enforcement of the criminal laws of a state or any of its political subdivisions, with the intent to facilitate an illegal gambling business if one or more of the persons (1) "does any act to effect the object of the conspiracy;" (2) "is an official or employee, elected, appointed or otherwise, of the state or its political

222. 18 U.S.C.A. § 1519 (West Supp. 2003).
223. *Id.*
224. *Id.* § 1520 (West Supp. 2003).
225. *Id.*
226. *Id.*
227. *Id.*
228. *Id.* § 1511 (West 2000 & Supp. 2003).

subdivisions;" and (3) "conducts, finances, manages, supervises, directs, or owns all or part of an illegal gambling business."[229]

Section 1511 defines the "illegal gambling business" as a gambling business which (1) violates the law of the state or political subdivision where it is conducted; (2) involves five or more people who conduct, finance, manage, supervise, direct or own all or part of the business; and (3) has been or remains in substantially continuous operation for over thirty days or has gross revenue of $2,000 in any day.[230] "Gambling" is defined to include "pool-selling, bookmaking, maintaining slot machines, roulette wheels, or dice tables, and conducting lotteries, policy, bolita or numbers games, or selling chances" on them.[231] This offense cannot be applied to any bingo game, lottery, or similar game of chance conducted by an organization exempt from income tax under section 501(c)(3) of the Internal Revenue Code if none of the gross receipts benefit a private shareholder, member, or employee of the organization, except as compensation for actual expenses of conducting the activity.[232]

This section requires that the prosecution prove the elements of a conspiracy, that the defendant was a member of the conspiracy, and that the object of the conspiracy was to facilitate the illegal gambling business.[233] At least one member of the conspiracy must be a government official, and one member must be involved in the illegal gambling business.[234] Thus, there was a conspiracy under this section where the defendant agreed to become a deputy sheriff in order to provide protection for gambling operations.[235]

IV. STATE LEGISLATION

The fifty states and the District of Columbia have taken a variety of statutory approaches to prohibit the obstruction of justice. This section attempts to categorize and briefly analyze these approaches. As stated above, offenses such as perjury and bribery that have developed into distinct and separate offenses are not included in this study. Further, some statutes do not lend themselves to an easy categorization. While some may disagree with the inclusion or exclusion of a particular statute in a given category, it is important to note that this section is intended as a broad overview of the various types of obstruction of justice statutes. For information about a

229. *Id.*
230. *Id.*
231. *Id.* § 1511(b)(2).
232. *Id.* § 1511(c).
233. United States v. Welch, 656 F.2d 1039, 1055 (5th Cir. 1981).
234. United States v. Crockett, 514 F.2d 64, 74 (5th Cir. 1975).
235. United States v. Panzanella, 416 F. Supp. 68, 71 (W.D. Pa. 1976).

particular offense or category, readers should consult the applicable state criminal code and case law.

This section will first address general statutes that prohibit obstruction of justice in very *broad* terms. Next, obstruction of justice statutes that prohibit obstruction in *specific* terms will be discussed. Then, this article will point out some of the other enactments that specifically outlaw various forms of obstruction. These laws include: (1) tampering with evidence; (2) tampering with public records; (3) tampering with jurors; (4) tampering with witnesses, victims, and informants; (5) obstructing the judicial process; (6) obstructing or refusing to aid law enforcement officials and other personnel; (7) failing to file or filing false reports; and (8) disclosing confidential information.

A. General Statute with Broad Language

Twenty-four states and the District of Columbia have a general obstruction statute with broad language.[236] For instance, the

236. Alabama: Ala. Code § 13A-10-2 (1994) (obstructing governmental operations); Arizona: Ariz. Rev. Stat. § 13-2402 (2001) (obstructing government operations); Arkansas: Ark. Code Ann. § 5-54-102 (Michie 1997 & Supp. 2002) (obstructing governmental operations); Colorado: Colo. Rev. Stat. § 18-8-102 (1999) (obstructing government operations); District of Columbia: D.C. Code Ann. § 22-722(a)(6) (2001 & Supp. 2003) (prohibited acts); Hawaii: Haw. Rev. Stat. § 710–1010 (1999 & Supp. 2002) (obstructing government operations); Kentucky: Ky. Rev. Stat. Ann. § 519.020 (Michie 2003) (obstructing governmental operations); Maine: Me. Rev. Stat. Ann. tit. 17-A, § 451 (West 1983) (obstructing government administration); Maryland: Md. Code Ann., Crim. Law § 9-306 (2002) (obstruction of justice); Michigan: Mich. Comp. Laws § 750.478a (Supp. 2003) (intimidation, hindering, or obstruction of public officer or employee); Mississippi: Miss. Code Ann. § 97-9-55 (2000) (intimidating judge, juror, witness, attorney, etc., or otherwise obstructing justice); Missouri: Mo. Rev. Stat. § 576.030 (1995) (obstructing government operations); Nebraska: Neb. Rev. Stat. Ann. § 28-901 (1995) (obstructing government operations); Nevada: Nev. Rev. Stat. 197.190 (2001) (obstructing public officer); New Hampshire: N.H. Rev. Stat. Ann. § 642:1 (1996) (obstructing government administration); New Jersey: N.J. Stat. Ann. § 2C:29-1 (West 1995) (obstructing administration of law or other governmental function); New York: N.Y. Penal Law § 195.05 (McKinney 1999) (obstructing governmental administration in the second degree); North Dakota: N.D. Cent. Code § 12.1-08-01 (1997) (physical obstruction of government function); Ohio: Ohio Rev. Code Ann. § 2921.31 (Anderson 2002) (obstructing official business); Oregon: Or. Rev. Stat. § 162.235 (1999) (obstructing governmental or judicial administration); Pennsylvania: 18 Pa. Cons. Stat. § 5101 (1983) (obstructing administration of law or other governmental function); Rhode Island: R.I. Gen. Laws § 11-32-3 (2002) (obstruction of the judicial system); Utah: Utah Code Ann. § 76-8-301 (1999) (interference with public servant); Vermont: Vt. Stat. Ann. tit. 13, § 3015 (1998) (obstruction of justice); Virginia: Va. Code Ann. § 18.2-460 (Michie 1996) (obstructing justice); Wyoming: Wyo. Stat. Ann. § 6-5-305 (Michie 2003) (obstructing or impeding justice).

Arkansas code contains a crime called "obstructing governmental operations."[237] This law states, in pertinent part: "(a) A person commits the offense of obstructing governmental operations if the person (1) Knowingly obstructs, impairs, or hinders the performance of any governmental function. . . ."[238] These types of statutes are characterized both by the broad range of prohibited conduct and the expansive range of government activities protected.

First, the prohibited conduct is typically described in very broad language. For example, under these laws, a person commits a crime when he "obstructs, impairs, or hinders,"[239] or in "any way obstructs or impedes"[240] or "obstructs, impairs, or perverts"[241] or "obstructs, impairs, impedes, hinders, prevents, or perverts"[242] justice.

Seventeen statutes qualify this broad language by stating the obstruction must occur by certain "means."[243] A typical example of this is Oregon's statute, which punishes whoever obstructs justice "by means of intimidation, force, physical or economic interference or obstacle."[244] Hawaii's parallel offense similarly prohibits obstructions "by using or threatening to use violence, force, or

237. Ark. Code Ann. § 5-54-102 (Michie 1997 & Supp. 2002).

238. *Id.*

239. Ala. Code § 13A-10-2 (1994) (obstructing governmental operations).

240. D.C. Code Ann. § 22-722(a)(6) (2001 & Supp. 2003) (prohibited acts).

241. N.J. Stat. Ann. § 2C:29-1 (West 1995) (obstructing administration of law or other governmental function).

242. N.D. Cent. Code § 12.1-08-01 (1997) (physical obstruction of government function).

243. Arizona: Ariz. Rev. Stat. § 13-2402 (2001) (obstructing government operations); Colorado: Colo. Rev. Stat. § 18-8-102 (1999) (obstructing government operations); District of Columbia: D.C. Code Ann. § 22-722(a)(6) (2001 & Supp. 2003) (prohibited acts); Hawaii: Haw. Rev. Stat. § 710-1010 (1999 & Supp. 2002) (obstructing government operations); Kentucky: Ky. Rev. Stat. Ann. § 519.020 (Michie 2003) (obstructing governmental operations); Maryland: Md. Code Ann., Crim. Law § 9-306 (2002) (obstruction of justice); Mississippi: Miss. Code Ann. § 97-9-55 (2000) (intimidating judge, juror, witness, attorney, etc., or otherwise obstructing justice); Missouri: Mo. Rev. Stat. § 576.030 (1995) (obstructing government operations); Nebraska: Neb. Rev. Stat. Ann. § 28-901 (1995) (obstructing government operations); Nevada: Nev. Rev. Stat. 197.190 (2001) (obstructing public officer); New Hampshire: N.H. Rev. Stat. Ann. § 642:1 (1996) (obstructing government administration); New Jersey: N.J. Stat. Ann. § 2C:29-1 (West 1995) (obstructing administration of law or other governmental function); New York: N.Y. Penal Law § 195.05 (McKinney 1999) (obstructing governmental administration in the second degree); Oregon: Or. Rev. Stat. § 162.235 (1999) (obstructing governmental or judicial administration); Pennsylvania: 18 Pa. Cons. Stat. § 5101 (1983) (obstructing administration of law or other governmental function); Vermont: Vt. Stat. Ann. tit. 13, § 3015 (1998) (obstruction of justice); Virginia: Va. Code Ann. § 18.2-460 (Michie 1996) (obstructing justice); Wyoming: Wyo. Stat. Ann. § 6-5-305 (Michie 2003) (obstructing or impeding justice).

244. Or. Rev. Stat. § 162.235 (1999) (obstructing governmental or judicial administration).

physical interference or obstacle."[245] The New York statute also contains similar language, but it further prohibits obstruction "by means of interfering . . . with radio, telephone, television or other [government-owned] telecommunications system or by means of releasing a dangerous animal under circumstances evincing the actor's intent that the animal obstruct government administration."[246]

In six other states, the statutes do not require the obstruction to occur by specified means.[247] In two states, the statutes allow for particular means but do not require such proof in every case.[248] For example, Vermont's statute targets "whoever . . . corruptly or by threats or force or by any threatening letter or communication, obstructs or impedes, or endeavors to obstruct or impede the due administration of justice."[249] Thus, a person who obstructs justice "corruptly" need not use threats or force to fulfill the elements of this statute.

Second, these statutes are also broad in that they protect a wide range of government activities. Whereas title 18, section 1503, the broadest of the federal obstruction statutes, applies only to pending *judicial proceedings*, many state laws apply generally to "government operations."[250] For example, twelve states prohibit the obstruction of "government operations" or "government functions."[251] Eight state statutes focus on the obstruction of a

245. Haw. Rev. Stat. § 710-1010 (1999 & Supp. 2002) (obstructing government operations).

246. N.Y. Penal Law § 195.05 (McKinney 1999) (obstructing governmental administration in the second degree).

247. Alabama: Ala. Code § 13A-10-2 (1994) (obstructing governmental operations); Arkansas: Ark. Code Ann. § 5-54-102 (Michie 1997 & Supp. 2002) (obstructing governmental operations); Michigan: Mich. Comp. Laws § 750.478a (Supp. 2003) (intimidation, hindering, or obstruction of public officer or employee); Nevada: Nev. Rev. Stat. 197.190 (2001) (obstructing public officer); North Dakota: N.D. Cent. Code § 12.1-08-01 (1997) (physical obstruction of government function); Ohio: Ohio Rev. Code Ann. § 2921.31 (Anderson 2002) (obstructing official business).

248. Rhode Island: R.I. Gen. Laws § 11-32-3 (2002) (obstruction of the judicial system); Vermont: Vt. Stat. Ann. tit. 13, § 3015 (1998) (obstruction of justice).

249. Vt. Stat. Ann. tit. 13, § 3015 (1998).

250. See *supra* notes 33 to 57 and accompanying text for a discussion of the pending judicial proceeding requirement.

251. Alabama: Ala. Code § 13A-10-2 (1994) (obstructing governmental operations); Arkansas: Ark. Code Ann. § 5-54-102 (Michie 1997 & Supp. 2002) (obstructing governmental operations); Colorado: Colo. Rev. Stat. § 18-8-102 (1999) (obstructing government operations); Hawaii: Haw. Rev. Stat. § 710-1010 (1999 & Supp. 2002) (obstructing government operations); Kentucky: Ky. Rev. Stat. Ann. § 519.020 (Michie 2003) (obstructing governmental operations); Missouri: Mo. Rev. Stat. § 576.030 (1995) (obstructing government operations); Nebraska: Neb. Rev. Stat. Ann. § 28-901 (1995) (obstructing government operations); New Jersey: N.J. Stat. Ann. § 2C:29-1 (West 1995) (obstructing

particular person,[252] typically a "public servant"[253] or a "public officer."[254] For example, Ohio prohibits the obstruction of "the performance by a public official of any authorized act within the public official's official capacity."[255] Six of the broad obstruction laws are limited to court proceedings.[256]

A final note concerns the mens rea, or mental state, requirement for the broadly stated obstruction statutes.[257] Twelve states require that the obstruction occur "purposefully" or "intentionally."[258] Three states require specific intent to obstruct justice.[259] Four states require

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administration of law or other governmental function); New York: N.Y. Penal Law § 195.05 (McKinney 1999) (obstructing governmental administration in the second degree); North Dakota: N.D. Cent. Code § 12.1-08-01 (1997) (physical obstruction of government function); Oregon: Or. Rev. Stat. § 162.235 (1999) (obstructing governmental or judicial administration); Pennsylvania: 18 Pa. Cons. Stat. § 5101 (1983) (obstructing administration of law or other governmental function).

252. Michigan: Mich. Comp. Laws § 750.478a (Supp. 2003) (intimidation, hindering, or obstruction of public officer or employee); Nevada: Nev. Rev. Stat. 197.190 (2001) (obstructing public officer); New Hampshire: N.H. Rev. Stat. Ann. § 642:1 (1996) (obstructing government administration); New Jersey: N.J. Stat. Ann. § 2C:29-1 (West 1995) (obstructing administration of law or other governmental function); New York: N.Y. Penal Law § 195.05 (McKinney 1999) (obstructing governmental administration in the second degree); Ohio: Ohio Rev. Code Ann. § 2921.31 (Anderson 2002) (obstructing official business); Vermont: Vt. Stat. Ann. tit. 13, § 3015 (1998) (obstruction of justice); Virginia: Va. Code Ann. § 18.2-460 (Michie 1996) (obstructing justice).

253. *See e.g.*, N.H. Rev. Stat. Ann. § 642:1 (1996) (obstructing government administration).

254. *See, e.g.*, Nev. Rev. Stat. 197.190 (2001) (obstructing public officer).

255. Ohio Rev. Code Ann. § 2921.31 (Anderson 2002) (obstructing official business).

256. District of Columbia: D.C. Code Ann. § 22-722(a)(6) (2001 & Supp. 2003); Maryland: Md. Code Ann., Crim. Law § 9-306 (2002); Michigan: Mich. Comp. Laws § 750.478a (Supp. 2003); Rhode Island: R.I. Gen. Laws § 11-32-3 (2002); Vermont: Vt. Stat. Ann. tit. 13, § 3015 (1998); Wyoming: Wyo. Stat. Ann. § 6-5-305 (Michie 2003).

257. For a discussion of mens rea generally, see Wayne R. LaFave & Austin W. Scott, Jr., Substantive Criminal Law § 3.4 (2d ed. 1986 & Supp. 2003).

258. Alabama: Ala. Code § 13A-10-2 (1994); Colorado: Colo. Rev. Stat. § 18-8-102 (1999); Hawaii: Haw. Rev. Stat. § 710-1010 (1999 & Supp. 2002); Kentucky: Ky. Rev. Stat. Ann. § 519.020 (Michie 2003); Missouri: Mo. Rev. Stat. § 576.030 (1995); Nebraska: Neb. Rev. Stat. Ann. § 28-901 (1995); New Hampshire: N.H. Rev. Stat. Ann. § 642:1 (1996); New York: N.Y. Penal Law § 195.05 (McKinney 1999); North Dakota: N.D. Cent. Code § 12.1-08-01 (1997); Oregon: Or. Rev. Stat. § 162.235 (1999); Pennsylvania: 18 Pa. Cons. Stat. § 5101 (1983); Utah: Utah Code Ann. §76-8-301 (1999).

259. New Hampshire: N.H. Rev. Stat. Ann. § 642:1 (1996); Ohio: Ohio Rev. Code Ann. § 2921.31 (Anderson 2002); Vermont: Vt. Stat. Ann. tit. 13, § 3015 (1998).

a mental state of knowledge or willfulness.[260] Three states describe the mental state using language such as "corruptly,"[261] "corruptly, maliciously, [or] recklessly,"[262] and "corrupt means."[263] Finally, in three states, the general obstruction offense is couched in terms of an "attempt" to obstruct justice,[264] presumably signaling specific intent.[265]

B. General Obstruction of Justice Statute Targeting Specific Conduct

While about half of the states have codified a broad obstruction of justice law, seven states have general obstruction of justice statutes that prohibit specific forms of conduct.[266] These statutes list a series of specific acts that are generally considered an obstruction of justice. For example, in Illinois, there is a statute entitled "obstructing justice," which prohibits three acts: (1) destroying, altering, concealing, or disguising physical evidence, planting false evidence, or furnishing false information; (2) inducing a witness with material knowledge to leave the state or conceal himself; and (3) leaving the state or concealing one's self while possessing material knowledge.[267]

Similarly, Louisiana's obstruction statute outlaws three specific forms of conduct.[268] Briefly, these forms of conduct are: (1) evidence tampering, (2) using or threatening force with the intent to obstruct by one of five listed means, and (3) retaliating against a witness, victim, juror, judge, party, attorney, or informant.[269]

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260. Arkansas: Ark. Code Ann. § 5-54-102 (Michie 1997 & Supp. 2002); District of Columbia: D.C. Code Ann. § 22-722(a)(6) (2001 & Supp. 2003); Nevada: Nev. Rev. Stat. 197.190 (2001); Virginia: Va.Code Ann. § 18.2-460 (Michie 1996).

261. Vt. Stat. Ann. tit. 13, § 3015 (1998).

262. R.I. Gen. Laws § 11-32-3 (2002).

263. Md. Code Ann., Crim. Law § 9-306 (2002).

264. Michigan: Mich. Comp. Laws § 750.478a (Supp. 2003); Mississippi: Miss. Code Ann. § 97-9-55 (2000); Wyoming: Wyo. Stat. Ann. § 6-5-305 (Michie 2003).

265. Specific intent is generally understood to mean "some intent in addition to the intent to do the physical act that the crime requires." LaFave & Scott, *supra* note 257, § 4.10(a) (2d ed. 1986).

266. Alaska: Alaska Stat. § 11.56.510 (Michie 2002) (interference with official proceedings); District of Columbia: D.C. Code Ann. § 22-722 (2001 & Supp. 2003) (prohibited acts); Illinois: 720 Ill. Comp. Stat. 5/31-4 (2002) (obstruction of justice); Indiana: Ind. Code § 35-44-3-4 (1998) (tampering—obstruction of justice); Iowa: Iowa Code § 719.3 (1993) (preventing apprehension, obstructing prosecution, or obstructing defense); Louisiana: La. R.S. § 14:130.1 (2003) (obstruction of justice); Michigan: Mich. Comp. Laws § 750.483a (Supp. 2003) (production of evidence, withholding or refusal to produce).

267. 720 Ill. Comp. Stat. 5/31-4 (2002).

268. La. R.S. § 14:130.1 (1986).

269. *Id.*

Among the seven states in this category are two jurisdictions—the District of Columbia and Michigan—that have a broad obstruction law in addition to the specific statute. For instance, under the District of Columbia's "obstruction of justice" provision, a person commits obstruction if he "[c]orruptly, or by threats of force, any way obstructs or impedes or endeavors to obstruct or impede the due administration of justice in any official proceeding."[270] Thus, the District of Columbia's criminal code contains a broadly-stated obstruction statute similar to the federal omnibus clause.[271] In addition, the same statute delineates five specific offenses that constitute an obstruction.[272] These offenses are (1) jury tampering;[273] (2) witness tampering;[274] (3) harassment with intent to hinder a person's testimony, report to law enforcement, arrest, or criminal prosecution;[275] (4) retaliation against a witness;[276] and (5) retaliation against a juror.[277]

C. Other "Obstructions"

In a few states, there is a crime called obstructing justice, but that crime departs from the traditional understanding of this offense. First, three states—Montana,[278] Ohio,[279] and Utah[280]—have a crime called obstructing justice that is equivalent to what many states punish through accomplice liability or an offense called "hindering prosecution."[281] For instance, in Ohio, a person obstructs justice, when, intending to hinder the prosecution or apprehension of a person who has committed a crime, he (1) harbors or conceals that person, (2) provides or aids that person with means to avoid discovery or apprehension, (3) warns that person of impending

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270. D.C. Code Ann. § 22-722(a)(6) (2001 & Supp. 2003).
271. *See* 18 U.S.C. § 1503 (2000).
272. D.C. Code Ann. § 22-722 (2001 & Supp. 2003).
273. *Id.* § 22-722(a)(1).
274. *Id.* § 22-722(a)(2).
275. *Id.* § 22-722(a)(3).
276. *Id.* § 22-722(a)(4).
277. *Id.* § 22-722(a)(5).
278. *See* Mont. Code Ann. § 45-7-303 (2001) (obstructing justice).
279. *See* Ohio Rev. Code Ann. § 2921.32 (Anderson 2002) (obstructing justice).
280. *See* Utah Code Ann. § 76-8-306 (1999 & Supp. 2002) (obstruction of justice).
281. *See, e.g.*, Mo. Rev. Stat. § 575.030 (1995) (prohibiting persons, with the purpose of preventing the apprehension, prosecution, conviction, or punishment of another, from (1) harboring or concealing another person, (2) warning a person of impending discovery or apprehension, (3) providing a person with means to aid him in avoiding discovery and apprehension, or (4) preventing a person from performing an act that might aid in the discovery or apprehension of another person).

discovery or apprehension, (4) tampers with evidence that might aid in the discovery or apprehension of that person, (5) provides false information, or (6) obstructs another from performing an act which might aid in the discovery or apprehension of that person.[282] Secondly, Hawaii's crime called "obstruction of justice" refers only to the refusal to testify after being granted immunity.[283] Finally, Wisconsin's statute titled "obstructing justice" prohibits only the giving of false information to a court officer.[284]

D. Specific Offenses Relating to the Obstruction of Justice

Next, this section will explore some of the categories of obstructionist conduct that many states have separately codified. Even states that prohibit the obstruction of justice in broad or specific terms often have a number of these individual statutes. As stated above, offenses such as perjury, bribery, destruction of government property, contempt, and escape are omitted from this discussion.

1. Tampering with Evidence

The first category of specific obstruction offenses contains crimes that involve the tampering with evidence. Thirty-two states have a statute that prohibits, in some form, the concealment, destruction, or tampering with evidence.[285] Alaska's statute, "tampering with

282. Ohio Rev. Code Ann. § 2921.32 (Anderson 2002) (obstructing justice).
283. Haw. Rev. Stat. § 710-1072.5 (1999).
284. Wis. Stat. § 946.65 (1996 & Supp. 2002).
285. Alabama: Ala. Code § 13A-10-129 (1994) (tampering with physical evidence); Alaska: Alaska Stat. § 11.56.610 (2002) (tampering with physical evidence); Arizona: Ariz. Rev. Stat. § 13-2809 (2001) (tampering with physical evidence); Arkansas: Ark. Code Ann. § 5-53-111 (Michie 1997) (tampering with physical evidence); California: Cal. Penal Code § 132 (West 1999) (offering forged, altered, or ante-dated book, document, or record); *id.* § 134 (preparing false documentary evidence); *id.* § 135 (destroying or concealing documentary evidence); *id.* § 135.5 (evidence tampering in disciplinary proceeding against public safety officer); *id.* § 141 (Supp. 2003) (intentional alteration of physical matter with intent to charge person with a crime); Colorado: Colo. Rev. Stat. § 18-8-610 (1999) (tampering with physical evidence); Connecticut: Conn. Gen. Stat. Ann. § 53a-155 (West 2001) (tampering with or fabricating physical evidence); Delaware: Del. Code Ann. tit. 11, § 1269 (2001) (tampering with physical evidence); District of Columbia: D.C. Code Ann. § 22-723 (2001) (tampering with physical evidence); Georgia: Ga. Code Ann. § 16-10-94 (1999 & Supp. 2002) (tampering with evidence); Hawaii: Haw. Rev. Stat. § 710-1076 (1999) (tampering with physical evidence); Idaho: Idaho Code § 18-2601 (Michie 1997) (falsifying evidence); *id.* § 18-2602 (preparing false evidence); *id.* § 18-2603 (destruction, alteration or concealment of evidence); Kentucky: Ky. Rev. Stat. Ann. § 524.100 (Michie 1999) (tampering with physical evidence); *id.* § 524.140 (Michie Supp. 2002) (disposal of evidence that may be subject to DNA testing); Maine: Me. Rev. Stat. Ann. tit.

physical evidence," is illustrative of the various forms of conduct outlawed by these statutes.[286] In that state, a person tampers with evidence when he (1) "destroys, mutilates, alters, suppresses, conceals, or removes" the evidence; (2) "makes, presents, or uses physical evidence, knowing it to be false," to mislead a juror or a public servant; or (3) "prevents the production of physical evidence" in a proceeding or investigation.[287]

The North Carolina code, however, also contains a more pointed provision titled "altering, destroying, or stealing evidence of criminal conduct."[288] A person commits this offense if he "breaks or enters any building, structure, compartment, vehicle, file, cabinet, drawer, or any other enclosure wherein evidence relevant to any criminal offense or court proceeding is kept or stored with the purpose of alerting, destroying or stealing such evidence."[289]

Many of these evidence tampering statutes contain a broad definition of "evidence." For example, in Colorado, "evidence" includes "any article, object, document, record, or other thing of physical substance."[290] Instead of defining the term, many other laws simply refer to "physical evidence"[291] or "any thing."[292]

17, § 455 (West 1983) (falsifying physical evidence); Missouri: Mo. Rev. Stat. § 575.100 (1995) (tampering with physical evidence); Montana: Mont. Code Ann. § 45-7-207 (2001) (tampering with or fabricating physical evidence); Nebraska: Neb. Rev. Stat. § 28-922 (1995) (tampering with physical evidence); Nevada: Nev. Rev. Stat. 199.210 (2001) (offering false evidence); *id.* 199.220 (destroying evidence); New Hampshire: N.H. Rev. Stat. Ann. § 641:6 (1996) (falsifying physical evidence); New Jersey: N.J. Stat. Ann. § 2C:28-6 (West 1995) (tampering with or fabricating physical evidence); New Mexico: N.M. Stat. Ann. § 30-22-5 (Michie 2001) (tampering with evidence); New York: N.Y. Penal Law § 215.40 (McKinney 2001) (tampering with physical evidence); North Carolina: N.C. Gen. Stat. § 14-221.1 (2002) (altering, destroying, or stealing evidence of criminal conduct); North Dakota: N.D. Cent. Code § 12.1-09-03 (1997) (tampering with physical evidence); Ohio: Ohio Rev. Code Ann. § 2921.12 (Anderson 2003) (tampering with evidence); Oklahoma: Okla. Stat. tit. 21, § 451 (2003) (offering false evidence); *id.* § 453 (preparing false evidence); *id.* § 454 (destroying evidence); Oregon: Or. Rev. Stat. § 162.295 (1999) (tampering with physical evidence); Pennsylvania: 18 Pa. Cons. Stat. § 4910 (1983) (tampering with or fabricating physical evidence); South Dakota: S.D. Codified Laws § 22-11-21 (Michie 1998) (offer of forged or fraudulent evidence); *id.* § 22-11-22 (falsification of evidence); Tennessee: Tenn. Code Ann. § 39-16-503 (1997) (tampering with or fabricating evidence); Texas: Tex. Penal Code Ann. § 37.09 (Vernon 2003) (tampering with or fabricating evidence); Washington: Wash. Rev. Code § 9A.72.150 (2000) (tampering with physical evidence).

286. Alaska Stat. § 11.56.610(a)(1) (2002).
287. *Id.*
288. N.C. Gen. Stat. § 14-221.1 (2002).
289. *Id.*
290. Colo. Rev. Stat. § 18-8-610 (1999).
291. Alaska Stat. § 11.56.610 (2002).
292. N.H. Rev. Stat. Ann. § 641:6 (1996).

Tampering with evidence is usually a specific intent crime.[293] In other words, the evidence tampering must occur, as in the New York statute, "with intent that [the evidence] be used or introduced in an official proceeding or a prospective official proceeding" or "intending to prevent such production."[294] Besides the specific intent required, many laws, such as New Hampshire's, further require that the offender "believ[e] that an official proceeding . . . or investigation is pending or about to be instituted."[295]

While most of these states have a single evidence tampering section, some have divided the tampering into several distinct offenses. For instance, Oklahoma's criminal code contains separate offenses for "offering false evidence,"[296] "preparing false evidence,"[297] which are both felonies, and "destroying evidence,"[298] a misdemeanor offense. Also, in California, there are at least five offenses that criminalize some form of evidence tampering.[299] Other states also prohibit tampering with particular types of evidence, such as evidence that may be subject to DNA testing.[300]

2. Tampering with Public Records

A somewhat related category of offenses is tampering with public records, a crime outlawed by thirty-five states.[301] Statutes

293. For more information on specific intent, see *supra* notes 78 and 265.
294. N.Y. Penal Law § 215.40 (McKinney 2001).
295. N.H. Rev. Stat. Ann. § 641:6 (1996).
296. Okla. Stat. tit. 21, § 451 (2003).
297. *Id.* § 453.
298. *Id.* § 454.
299. Cal. Penal Code § 132 (West 1999) (offering forged, altered, or ante-dated book, document, or record); *id.* § 134 (preparing false documentary evidence); *id.* § 135 (destroying or concealing documentary evidence); *id.* § 135.5 (evidence tampering in disciplinary proceeding against public safety officer); *id.* § 141 (Supp. 2003) (intentional alteration of physical matter with intent to charge person with a crime).
300. Ky. Rev. Stat. Ann. § 524.140 (Michie Supp. 2002) (disposal of evidence that may be subject to DNA testing).
301. Alabama: Ala. Code § 13A-10-12 (1994) (tampering with governmental records); Alaska: Alaska Stat. § 11.56.815 (2002) (tampering with public records in the first degree); *id.* § 11.56.820 (tampering with public records in the second degree); Arizona: Ariz. Rev. Stat. § 13-2407 (2001) (tampering with a public record); Arkansas: Ark. Code Ann. § 5-54-121 (Michie 1997 & Supp. 2002) (tampering with a public record); California: Cal. Penal Code § 115 (West 1999) (procuring or offering false or forged instruments for record); *id.* § 115.3 (altered certified copy of official record); *id.* § 115.5 (filing false or forged documents relating to single-family residences); Colorado: Colo. Rev. Stat. § 18-8-114 (1999) (abuse of public records); Connecticut: Conn. Gen. Stat. § 53-153 (2001) (unlawful removal or alteration of records); Florida: Fla. Stat. ch. 839.13 (2000 & Supp. 2003) (falsifying records); Hawaii: Haw. Rev. Stat. § 710-1017 (1999) (tampering with

in this category are similar to those banning evidence tampering except that these protect government documents. For instance, North Dakota's statute, "tampering with public records," makes it a crime if someone "(a) knowingly makes a false entry in or false alteration of a government record; or (b) knowingly, without lawful authority, destroys, conceals, removes, or otherwise impairs the verity or availability of a government record."[302]

Those states that define government records often do so broadly. For example, Hawaii's statute protects "anything belonging to,

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a government record); Idaho: Idaho Code § 18-3201 (1997) (officer stealing, mutilating or falsifying public records); *id.* § 18-3202 (private person stealing, mutilating or falsifying public records); *id.* § 18-3203 (offering false or forged instrument for record); Illinois: 720 Ill. Comp. Stat. 5/32-8 (2002) (tampering with public records); *id.* 5/32-8 (tampering with public notice); Kansas: Kan. Stat. Ann. § 21-3821 (1995) (tampering with a public record); *id.* § 21-3822 (tampering with public notice); Kentucky: Ky. Rev. Stat. Ann. § 519.060 (Michie 1999) (tampering with public records); Louisiana: La. R.S. § 14:132 (2003) (injuring public records); *id.* § 14:133 (filing or maintaining false public records); Maine: Me. Rev. Stat. Ann. tit. 17, § 456 (1983) (tampering with public records or information); Michigan: Mich. Comp. Laws § 750.491 (1991) (removal, mutilation or destruction of public records); Mississippi: Miss. Code Ann. § 97-9-3 (2000) (court records and public papers; stealing, concealing, destroying, etc.); Missouri: Mo. Rev. Stat. § 575.110 (1995) (tampering with a public record); Montana: Mont. Code Ann. § 45-7-208 (2001) (tampering with public records or information); Nebraska: Neb. Rev. Stat. § 28-909 (1995) (falsifying records of a public utility); *id.* § 28-911 (abuse of public records); New Hampshire: N.H. Rev. Stat. Ann. § 641.7 (1996) (tampering with public records or information); New Jersey: N.J. Stat. Ann. § 2C: 28-7 (West 1995) (tampering with public records or information); New Mexico: N.M. Stat. Ann. § 30-26-1 (Michie 2001) (tampering with public records); North Carolina: N.C. Gen. Stat. § 14-241 (2002) (disposing of public documents or refusing to deliver them over to successor); North Dakota: N.D. Cent. Code § 12.1-11-05 (1997) (tampering with public records); Oklahoma: Okla Stat. tit. 21, § 461 (2002) (larceny or destruction of records by clerk or officer); *id.* § 462 (larceny or destruction of records by other persons); *id.* § 463 (offering forged or false instruments for record); *id.* § 531 (destruction or falsification of records); Oregon: Or. Rev. Stat. § 162.305 (1999) (tampering with public records); Pennsylvania: 18 Pa. Cons. Stat. § 4911 (1983) (tampering with public records or information); South Dakota: S.D. Codified Laws § 22-11-23 (Michie 1998) (falsification of public records); *id.* § 22-11-23.1 (offering false instrument for recording); *id.* § 22-11-24 (destruction or impairment of public record); *id.* § 22-11-25 (unlawful retention of public record); Tennessee: Tenn. Code Ann. § 39-16-504 (1997) (destruction of and tampering with governmental records); Texas: Tex. Penal Code Ann. § 37.10 (Vernon 2003) (tampering with governmental record); Utah: Utah Code Ann. § 76-8-511 (1999) (falsification or alteration of government record); *id.* § 76-8-412 (stealing, destroying or mutilating public records by custodian); *id.* § 76-8-413 (stealing, destroying or mutilating public records by one not custodian); *id.* § 76-8-414 (recording false or forged instruments); Virginia: Va. Code Ann. § 18.2-472 (Michie 1996) (false entries or destruction of records by officers); West Virginia: W. Va. Code § 61-5-22 (2000) (alteration, concealment or destruction of public record by officer); Wisconsin: Wis. Stat. § 946.72 (1996 & Supp. 2002) (tampering with public records and notices).

302. N.D. Cent. Code § 12.1-11-05 (1997) (tampering with public records).

received, or kept by the government for information or record, or required by law to be kept for information of the government."[303]

3. Tampering with Jurors

Thus far, the specific obstruction offenses have related to evidence, documents, and other "things." However, the next three categories involve the obstruction of certain people, beginning with jurors.

While jury tampering is sometimes addressed through states' bribery statutes,[304] thirty one states have created laws that prohibit other forms of jury tampering.[305] Some of these laws, such as

303. Haw. Rev. Stat. § 710-1017 (1999) (tampering with a government record).

304. *See, e.g.*, Md. Code Ann., Crim. Law § 9-202 (2002) (prohibiting both accepting bribes by jurors and bribing jurors by others).

305. Alabama: Ala. Code § 13A-10-127 (1994) (intimidating a juror); *id.* § 13A-10-128 (jury tampering); Alaska: Alaska Stat. § 11.56.590 (2002) (jury tampering); Arizona: Ariz. Rev. Stat. § 13-2805 (2001) (influencing a juror); *id.* § 13-2807 (jury tampering); Arkansas: Ark. Code Ann. § 5-53-114 (Michie 1997) (intimidating a juror); *id.* § 5-53-115 (jury tampering); *id.* § 5-53-132 (misconduct in selecting or summoning jurors); *id.* § 5-53-133 (approaching jury commissioners to influence jury selections); California: Cal. Penal Code § 116 (West 1997) (tampering with jury list); *id.* § 116.5 (jury tampering); *id.* § 117 (falsification of jury list). Colorado: Colo. Rev. Stat. § 18-8-608 (1999) (intimidating a juror); *id.* § 18-8-609 (jury-tampering); *id.* § 18-8-706.5 (retaliation against a juror); Connecticut: Conn. Gen. Stat. Ann. § 53a-154 (West 2001) (tampering with a juror); Delaware: Del. Code Ann. tit. 11, § 1266 (2001) (tampering with a juror); Georgia: Ga. Code Ann. § 16-10-97 (1999) (intimidation or injury of grand or petit juror or court officer); Hawaii: Haw. Rev. Stat. § 710-1074 (1999) (intimidating a juror); *id.* § 710-1075 (jury tampering); *id.* § 710-1075.5 (retaliating against a juror); Idaho: Idaho Code § 18-1304 (1997) (attempt to influence jurors and arbitrators); *id.* § 18-4404 (tampering with jury lists); Kentucky: Ky. Rev. Stat. Ann. § 524.090 (Michie 1999 & Supp. 2002) (jury tampering); Louisiana: La. R.S. § 14:129 (2003) (jury tampering); Maryland: Md. Code Ann., Crim. Law § 9-305 (2002) (intimidating or corrupting juror); Massachusetts: Mass. Gen. Laws ch. 268, § 13 (2002) (corrupting or attempting to corrupt masters, auditors, jurors, arbitrators, umpires, or referees); Missouri: Mo. Rev. Stat. § 575.310 (1995) (misconduct in selecting or summoning a juror); Nebraska: Neb. Rev. Stat. § 28-919 (1995) (jury tampering); Nevada: Nev. Rev. Stat. 199.040 (2001) (influencing juror, arbitrator, referee or prospective juror), *id.* 199.050 (juror, arbitrator, or referee promising verdict or decision or receiving communication); *id.* 199.060 (misconduct of officer drawing jury); *id.* 199.080 (misconduct of officer in charge of jury); New Jersey: N.J. Stat. Ann. § 2C:29-8 (West 1995) (corrupting or influencing a jury); New York: N.Y. Penal Law § 215.23 (McKinney 2001) (tampering with a juror in the second degree); *id.* § 215.25 (tampering with a juror in the first degree); North Carolina: N.C. Gen. Stat. § 14-225.2 (2002) (harassment of and communication with jurors); North Dakota: N.D. Cent. Code § 12.1-09-04 (1997 & Supp. 2001) (harassment of and communication with jurors); Oklahoma: Ok. Stat. tit. 21, § 388 (2002) (attempts to influence jurors); *id.* § 389 (drawing jurors fraudulently); South Carolina: S.C. Code Ann. § 16-9-260 (Law. Co-op. 2003) (corrupting jurors, arbitrators, umpires

Nebraska's, can be stated briefly: "A person commits the offense of jury tampering if, with intent to influence a juror's vote, opinion, decision, or other action in a case, attempts directly or indirectly to communicate with a juror other than as a part of the proceedings in the trial of the case."[306] As this statute indicates, jury tampering is generally a specific intent offense, with this offense requiring intent to "influence a juror's vote, opinion, decision, or other action in a case."[307]

Unlike Nebraska, other states address jury tampering through multiple statutes. For example, New York has provisions prohibiting tampering with a juror in the first and second degrees.[308] The first degree tampering statute prohibits unlawful communications with jurors and closely parallels the Nebraska statute cited above.[309] Meanwhile, tampering in the second degree occurs when a person (1) confers, (2) offers or agrees to confer, or (3) accepts or agrees to accept benefits upon a juror in consideration for information in relation to an action in front of a juror.[310]

Some states also contain crimes outlawing more egregious forms of jury tampering, such as intimidation, threats, harassment, and retaliation. For instance, Hawaii's criminal code contains three distinct jury tampering crimes.[311] First, the "jury tampering" statute, like the New York and Nebraska statutes, prohibits communicating with a juror with intent to influence his actions as a juror.[312] A

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or referees); *id.* § 16-9-350 (attempting to influence juror by written or oral communication); South Dakota: S.D. Codified Laws § 22-11-15.3 (Michie 1998) (threatening juror or juror's family); *id.* § 22-11-16 (attempt to influence jurors, arbitrators or referees); *id.* § 22-11-17 (jurors and judicial officers receiving unlawful communications); Tennessee: Tenn. Code Ann. § 39-16-508 (1997) (coercion of juror); *id.* § 39-16-509 (improper influence of juror); Utah: Utah Code Ann. § 76-8-508.5 (1999) (tampering with a juror–retaliation against juror); Virginia: Va. Code Ann. § 18.2-465 (Michie 1996) (officer summoning juror to act impartially); *id.* § 18.2.-466 (corruptly procuring juror to be summoned); *id.* § 18.2-467 (fraud in drawing jurors, etc.); Washington: Wash. Rev. Code § 9.51.010 (2003) (misconduct of officer drawing jury); *id.* § 9A.72.130 (2000) (intimidating a juror); *id.* § 9A.72.140 (jury tampering); West Virginia: W. Va. Code § 61-5-24 (2000) (corrupt summoning of jurors to find biased verdict); *id.* § 61-5-25 (procuring the summoning of biased juror by party other than officer); Wisconsin: Wis. Stat. § 946.64 (1996 & Supp. 2002) (communicating with jurors).

306. Neb. Rev. Stat. § 28-919 (1995) (jury tampering).

307. *Id.*

308. N.Y. Penal Law § 215.23 (McKinney 2001) (tampering with a juror in the second degree); *id.* § 215.25 (tampering with a juror in the first degree).

309. N.Y. Penal Law § 215.25 (McKinney 2001). For the Nebraska statute, see *supra* note 306.

310. N.Y. Penal Law § 215.23 (McKinney 2001).

311. Haw. Rev. Stat. § 710-1074 (1999) (intimidating a juror); *id.* § 710-1075 (jury tampering); *id.* § 710-1075.5 (retaliating against a juror).

312. Haw. Rev. Stat. § 710-1075 (1999).

second offense, called "intimidating a juror," outlaws using force or threats with intent to influence a juror's actions.[313] Finally, Hawaii's crime entitled "retaliating against a juror" prohibits using force or threats against a juror because of that juror's acts in a criminal proceeding.[314]

In addition to jury tampering laws applicable to the general public, many states also have laws that focus on officers involved in the jury selection process. For instance, West Virginia prohibits sheriffs or other officers from summoning a juror "with intent that such juror shall find a verdict for or against any party to an action, or shall be biased in his conduct as juror."[315] A similar, but more detailed offense is Nevada's provision outlawing "misconduct of officer drawing jury."[316] A person is guilty of this offense if he, being charged with preparing a jury list, for example, places a name in a list at the request of another, omits a name that was properly drawn, or certifies a list that was not properly drawn.[317]

It is also interesting to note that a few of these jury tampering statutes provide protection outside of criminal proceedings. For instance, some of these laws protect the juror's family members[318] and prohibit the obstruction of persons such as arbitrators, umpires, and referees.[319]

4. Tampering with Witnesses, Informants, Victims, and Families

Like jury tampering, many states have also outlawed tampering with witnesses, usually in a similar fashion. In fact, nine states address both witness tampering and jury tampering within in a single statute.[320] For example, Massachusetts law penalizes whoever

313. *Id.* § 710-1074 (1999).
314. *Id.* § 710-1075.5 (1999).
315. W. Va. Code § 61-5-24 (2000) (corrupt summoning of jurors to find biased verdict).
316. Nev. Rev. Stat. 199.060 (2001) (misconduct of officer drawing jury)
317. *Id.*
318. *See, e.g.*, S.D. Codified Laws § 22-11-15.3 (Michie 1998) (threatening juror or juror's family).
319. *See, e.g.* Nev. Rev. Stat. 199.040 (2001) (influencing juror, arbitrator, referee or prospective juror), *id.* 199.050 (juror, arbitrator, or referee promising verdict or decision or receiving communication); S.C. Code Ann. § 16-9-260 (Law. Co-op. 2003) (corrupting jurors, arbitrators, umpires or referees); S.D. Codified Laws § 22-11-16 (Michie 1998) (attempt to influence jurors, arbitrators, or referees).
320. Arkansas: Ark. Code Ann. § 5-53-112 (Michie 1997) (retaliation against a witness, informant, or juror); Illinois: 720 Ill. Comp. Stat. 5/32-4 (2002) (communicating with jurors and witnesses); Iowa: Iowa Code § 720.4 (1993) (tampering with witnesses or jurors); Maine: Me. Rev. Stat. Ann. tit. 17-A, § 454

"willfully endeavors . . . to influence, impede, obstruct, delay or otherwise interfere with any witness or juror . . . or with any person furnishing information to a criminal investigator . . . ."[321]

In thirty-six states, however, witness tampering is a distinct offense.[322] Many of these witness tampering offenses protect not

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(West 1983 & Supp. 2002) (tampering with a witness, informant, juror, or victim); Massachusetts: Mass. Gen. Laws ch. 268, § 13B (2002) (intimidation of witnesses, jurors, and persons furnishing information in connection with criminal proceedings); Mississippi: Miss. Code Ann. § 97-9-55 (2001) (intimidating judge, juror, witness, attorney, etc., or otherwise obstructing justice); South Carolina: S.C. Code Ann. § 16-9-340 (Law Co-op. 2003) (intimidation of court officials, jurors, or witnesses); West Virginia: W. Va. Code § 61-5-27 (2000) (intimidation of and retaliation against public officers and employees, jurors, and witnesses); Wyoming: Wyo. Stat. Ann. § 6-5-305 (Michie 2003) (influencing, intimidating, or impeding jurors, witnesses, and officers).

321. Mass. Gen. Laws ch. 268, § 13B (2002) (intimidation of witnesses, jurors, and persons furnishing information in connection with criminal proceedings).

322. Alabama: Ala. Code § 13A-10-123 (1994) (intimidating a witness); *id.* § 13A-10-124 (tampering with a witness); Alaska: Alaska Stat. § 11.56.540 (2002) (tampering with a witness in the first degree); *id.* § 11.56.545 (tampering with a witness in the second degree); Arizona: Ariz. Rev. Stat. § 13-2802 (2001) (influencing a witness); *id.* § 13-2804 (tampering with a witness); Arkansas: Ark. Code Ann. § 5-53-109 (Michie 1997) (intimidating a witness); *id.* § 5-53-110 (tampering); California: Cal. Penal Code § 133 (Deering 1999) (deceiving witness to affect testimony); *id.* § 136.1 (intimidation of witnesses and victims); *id.* § 136.2 (good cause belief of harm to, intimidation of, or dissuasion of victim or witness); *id.* § 136.7 (sexual offender revealing name and address of witness or victim with intent that another prisoner initiate harassing correspondence); *id.* § 139 (threatening to use force or violence upon witnesses or victims, or the immediate families); *id.* § 140 (threatening witnesses, victims, or informants); Colorado: Colo. Rev. Stat. § 18-8-704 (1999) (intimidating a witness or victim); *id.* § 18-8-705 (aggravated intimidation of a witness or victim); *id.* § 18-8-706 (retaliation against a witness or victim); *id.* § 18-8-707 (tampering with a witness or victim); Connecticut: Conn. Gen. Stat. § 53a-151 (1999) (tampering with a witness); *id.* § 53a-151a (intimidating a witness); Delaware: Del. Code Ann. tit. 11, § 1263 (2001) (tampering with a witness); *id.* § 1263A (interfering with child witness); Georgia: Ga. Code Ann. § 16-10-32 (1999) (attempted murder or threatening of witnesses in official proceedings); *id.* § 16-10-93 (influencing witnesses); Hawaii: Haw. Rev. Stat. § 710.1071 (1999) (intimidating a witness); *id.* § 710-1072 (tampering with a witness); *id.* § 710.1072.2 (retaliating against a witness); Illinois: 720 Ill. Comp. Stat. 5/32-4a (2002) (harassment of representatives for the child, jurors, witnesses, and family members of representatives for the child, jurors, and witnesses); Kansas: Kan. Stat. Ann. § 21-3832 (1995) (intimidation of a witness or victim); *id.* § 21-3833 (aggravated intimidation of a witness or victim); Kentucky: Ky. Rev. Stat. Ann. § 524.050 (Michie 1999 & Supp. 2002) (tampering with a witness); Louisiana: La. R.S. § 14:129.1 (2003) (intimidating, impeding, or injuring witnesses); Minnesota: Minn. Stat. § 609.498 (2003) (tampering with a witness); Missouri: Mo. Rev. Stat. § 575.270 (1995 & Supp. 2003) (tampering with a witness—tampering with a victim); Montana: Mont. Code Ann. § 45-7-206 (2001) (tampering with witnesses and informants); Nebraska: Neb. Rev. Stat. § 28-919 (1995) (tampering with witness or informant); Nevada: Nev. Rev. Stat. 199.230 (2001) (preventing or

only witnesses, but also informants and victims. Nebraska's offense, "tampering with witness or informant," is typical of many witness tampering statutes.[323] This offense prohibits attempting to cause a witness or informant to "(a) testify or inform falsely; (b) withhold any testimony, information, document, or thing; (c) elude legal process summoning him or her to testify or supply evidence; or (d) absent himself or herself from any proceeding or investigation to which he or she has been legally summoned."[324] The statute further requires that the offender believe that an official proceeding or investigation is pending or about to be executed.[325]

An example of a statute that also criminalizes tampering with victims is the Rhode Island statute called "intimidation of witnesses and victims of crimes."[326] A person is guilty of this offense if, by

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dissuading person from testifying or producing evidence); *id.* 199.240 (bribing or intimidating witness to influence testimony); *id.* 199.305 (Supp. 2001) (preventing or dissuading victim, person acting on behalf of victim, or witness from reporting crime, commencing prosecution or causing arrest); New Hampshire: N.H. Rev. Stat. Ann. § 641:5 (2001) (tampering with witnesses and informants); New Jersey: N.J. Stat. Ann. § 2C:28-5 (1995) (tampering with witnesses and informants; retaliation against them); New Mexico: N.M. Stat. Ann. § 30-24-3 (Michie 2001 & Supp. 2001) (bribery or intimidation of a witness; retaliation against a witness); New York: N.Y. Penal Law § 215.10 (McKinney 2001) (tampering with a witness in the fourth degree); *id.* § 215.11 (tampering with a witness in the third degree); *id.* § 215.12 (tampering with a witness in the second degree); *id.* § 215.13 (tampering with a witness in the first degree); *id.* § 215.15 (intimidating a victim or witness in the third degree); *id.* § 215.16 (intimidating a victim or witness in the second degree); *id.* § 215.17 (intimidating a victim or witness in the first degree); North Carolina: N.C. Gen. Stat. § 14-226 (2002) (intimidating or interfering with witnesses); North Dakota: N.D. Cent. Code § 12.1-09-01 (1997) (tampering with witnesses and informants in proceedings); *id.* § 12.1-09-02 (tampering with informants in criminal investigations); Ohio: Ohio Rev. Code Ann. § 2921.04 (Anderson 2002) (intimidation of attorney, victim or witness in criminal case); Oklahoma: Okla. Stat. tit. 21, § 452 (2002) (deceiving witness); *id.* § 455 (preventing witness from giving testimony—threatening witness who has given testimony); Oregon: Or. Rev. Stat. § 162.285 (1999) (tampering with a witness); Pennsylvania: 18 Pa. Cons. Stat. § 4952 (1983 & Supp. 2003) (intimidation of witnesses or victims); *id.* § 4953 (retaliation against witness, victim or party); Rhode Island: R.I. Gen. Laws § 11-32-5 (2002) (intimidation of witnesses and victims of crimes); South Dakota: S.D. Codified Laws § 22-11-19 (Michie 1998) (tampering with a witness); Tennessee: Tenn. Code Ann. § 39-16-507 (1997) (coercion of witness); Texas: Tex. Penal Code Ann. § 36.05 (Vernon 2003) (tampering with witness); *id.* § 38.111 (improper contact with victim); Utah: Utah Code Ann. § 76-8-508 (1999 & Supp. 2002) (tampering with witness—retaliation against witness or informant); Washington: Wash. Rev. Code § 9A.72.110 (2000) (intimidating a witness); *id.* § 9A.72.120 (tampering with a witness).

323. Neb. Rev. Stat. § 28-919 (1995) (tampering with witness or informant).

324. *Id.*

325. *Id.*

326. R.I. Gen. Laws § 11-32-5 (2002) (intimidation of witnesses and victims of crimes).

threatening to commit an unlawful act, he "maliciously and knowingly communicates with another person with the specific intent to intimidate a victim of a crime or a witness in any criminal proceeding with respect to that person's participation in any criminal proceeding."[327]

A small number of states also have offenses that target victim tampering alone.[328] In addition, some state laws prohibit tampering with the family members or representatives of witnesses or victims.[329]

As with jury tampering statutes, many witness tampering statutes have special provisions outlawing retaliation, intimidation, and other severe forms of tampering. For example, within Delaware's "tampering with a witness" law, there is a provision that prohibits intentionally causing physical injury or damaging the property of any party or witness "on account of past, present or future attendance at any court proceeding or official proceeding" or "on account of past, present, or future testimony in any action pending therein."[330]

5. Obstructing Law Enforcement or Other Emergency Personnel

Besides jurors and witnesses, many states also protect law enforcement officials and other emergency personnel. The overwhelming majority of states have at least one offense in this category.

First, at least thirty states have created an offense that prohibits a person from obstructing, resisting, or interfering with law enforcement officers.[331] These offenses are generally broadly stated,

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327. *Id.*

328. *See, e.g.*, Cal. Penal Code § 136.7 (Deering 1999) (sexual offender revealing name and address of witness or victim with intent that another prisoner initiate harassing correspondence); Tex. Penal Code Ann. § 38.111 (Vernon 2003) (improper contact with victim).

329. *See, e.g.*, Cal. Penal Code § 139 (Deering 1999) (threatening to use force or violence upon witnesses or victims, or the immediate families); 720 *Ill. Comp. Stat.* 5/32-4a (2002) (harassment of representatives for the child, jurors, witnesses and family members of representatives for the child, jurors, and witnesses); Nev. Rev. Stat. 199.305 (Supp. 2001) (preventing or dissuading victim, person acting on behalf of victim, or witness from reporting crime, commencing prosecution or causing arrest).

330. Del. Code Ann. tit. 11, § 1263 (2001) (tampering with a witness).

331. Arizona: Ariz. Rev. Stat. § 13-2409 (2001) (obstructing criminal investigations or prosecutions); *id.* 13-2410 (obstructing public officer from collecting public money); Arkansas: Ark. Code Ann. § 5-54-104 (Michie 1997) (interference with a law enforcement officer); *id.* § 5-54-132 (Supp. 2002) (projecting a laser light on a law enforcement officer); California: Cal. Penal Code § 148.10 (Supp. 2003) (resisting peace officer resulting in death or serious bodily

as evidenced by North Carolina's crime called "resisting officers."[332] A person commits this crime if he "willfully and unlawfully resist, delay, or obstruct a public officer in discharging or attempting to discharge a duty of his office."[333] Similarly, in Montana, the crime of "obstructing a peace officer or public servant" is committed if a person "knowingly obstructs, impairs, or hinders the enforcement of the criminal law, the preservation of the peace, or the performance of a governmental function, including service of process."[334]

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injury to peace officer); Colorado: Colo. Rev. Stat. § 18-8-104 (1999) (obstructing a peace officer, fire fighter, emergency medical services provider, rescue specialist, or volunteer); Connecticut: Conn. Gen. Stat. Ann. § 53a-167a (West 2001) (interfering with an officer); Florida: Fla. Stat. ch. 843.01 (2000) (resisting officer with violence to his or her person); *id.* ch. 843.02 (resisting officer without violence to his or her person); *id.* ch. 843.025 (depriving officer of means of protection or communication); Georgia: Ga. Code Ann. § 16-10-24 (1999) (obstructing or hindering law enforcement officers); Illinois: 720 Ill. Comp. Stat. 5/31-1 (2002) (resisting or obstructing a peace officer or correctional institution employee); Indiana: Ind. Code § 35-44-3-3 (1998) (resisting law enforcement); Iowa: Iowa Code § 719.1 (1993 & Supp. 2002) (interference with official acts); Louisiana: La. R.S. § 14:108 (2003) (resisting an officer); Massachusetts: Mass. Gen. Laws ch. 268, § 32 (2000) (interference or tampering with police or fire signal systems or motorist highways emergency aid call boxes); Michigan: Mich. Comp. Laws § 750.479 (1991) (resisting, obstructing officer in discharge of duty); Montana: Mont. Code Ann. § 45-7-302 (2001) (obstructing peace officer or other public servant); *id.* § 45-7-304 (failure to aid a peace officer); Nebraska: Neb. Rev. Stat. § 28-906 (1995) (obstructing a peace officer); Nevada: Nev. Rev. Stat. 197.090 (2001) (interfering with public officer); *id.* 197.100 (influencing public officer); *id.* 197.190 (obstructing public officer); *id.* 199.280 (resisting public officer); New Mexico: N.M. Stat. Ann. § 30-22-1 (Michie 2001) (resisting, evading or obstructing an officer); North Carolina: N.C. Gen. Stat. § 14-223 (2002) (resisting officers); North Dakota: N.D. Cent. Code § 12.1-08-02 (1997) (preventing arrest or discharge of other duties); Oklahoma: Okla. Stat. Ann. tit. 21, § 540 (2002) (obstructing officer); *id.* § 540A (eluding police officer); *id.* § 545 (attempt to intimidate officer); Oregon: Or. Rev. Stat. § 162.247 (1999) (interfering with a peace officer); Pennsylvania: 18 Pa. Cons. Stat. § 5104 (1983) (resisting arrest or other law enforcement); Rhode Island: R.I. Gen. Laws § 11-32-1 (2002) (obstructing officer in execution of duty); South Dakota: S.D. Codified Laws § 22-11-2 (Michie 1998) (obstructing officer in charge of personal property); *id.* § 22-11-3 (obstructing public officer); *id.* § 22-11-6 (obstructing law enforcement officer, jailer or firefighter); Tennessee: Tenn. Code Ann. § 39-16-515 (1997) (pointing a laser at a law enforcement officer); Vermont: Vt. Stat. Ann. tit. 13, § 3001 (1998 & Supp. 2002) (impeding public officers); Washington: Wash. Rev. Code § 9A.76.020 (2000 & Supp. 2003) (obstructing a law enforcement officer); West Virginia: W. Va. Code § 61-5-17 (2000 & Supp. 2003) (obstructing officer); Wisconsin: Wis. Stat. § 946.41 (1996 & Supp. 2002) (resisting or obstructing officer); Wyoming: Wyo. Stat. Ann. § 6-5-204 (Michie 2003) (interference with peace officer; disarming peace officer).

332. N.C. Gen. Stat. § 14-223 (2002) (resisting officers).

333. *Id.*

334. Mont. Code Ann. § 45-7-302 (2001).

Unlike the general obstruction provisions, other offenses make it a crime to resist arrest or detention. At least twenty states contain such a specific provision.[335] In Washington, the crime of "resisting arrest" is committed when a person "intentionally prevents or attempts to prevent a peace officer from lawfully arresting him."[336]

While the Washington crime is simply stated, New Hampshire's stricture, called "resisting arrest or detention," is somewhat more elaborate.[337] This crime prohibits a person from "knowingly or purposely physically interfer[ing] with a person recognized to be a law enforcement official . . . seeking to effect an arrest or detention of the person or another."[338] Unlike the Washington crime, then, the New Hampshire offense prohibits obstructing the arrest of another person. In addition, the New Hampshire statute includes a provision stating that such conduct is prohibited "regardless of whether there is a legal basis for the arrest," and that verbal protestations alone do not constitute an offense under that provision.[339]

Besides resisting arrest, about ten states prohibit disarming a police officer.[340] This offense occurs in New Mexico, for instance,

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335. Alaska: Alaska Stat. § 11.56.700 (2002) (resisting or interfering with arrest); Arkansas: Ark. Code Ann. § 5-54-103 (Michie 1997) (resisting arrest); Colorado: Colo. Rev. Stat. § 18-8-103 (1999) (resisting arrest); Massachusetts: Mass. Gen. Laws ch. 268, § 32B (2000) (resisting arrest); Minnesota: Minn. Stat. § 609.50 (2003) (obstructing legal process, arrest or firefighting); Mississippi: Miss. Code Ann. § 97-9-73 (2000) (resisting or obstructing arrest); Missouri: Mo. Rev. Stat. § 575.150 (1995 & Supp. 2003) (resisting or interfering with arrest); Montana: Mont. Code Ann. § 45-7-301 (2001) (resisting arrest); Nebraska: Neb. Rev. Stat. § 28-904 (1995 & Supp. 2002) (resisting arrest); *id.* § 28-905 (operating a motor vehicle or a vessel to avoid arrest); New Hampshire: N.H. Rev. Stat. Ann. § 642:2 (1996) (resisting arrest or detention); New Jersey: N.J. Stat. Ann. § 2C:29-2 (West 1995) (resisting arrest; eluding officer); North Dakota: N.D. Cent. Code § 12.1-08-02 (1997) (preventing arrest or discharge of other duties); Ohio: Ohio Rev. Code Ann. § 2921.33 (Anderson 2002) (resisting arrest); Oregon: Or. Rev. Stat. § 162.315 (1999) (resisting arrest); Pennsylvania: 18 Pa. Cons. Stat. § 5104 (1983) (resisting arrest or other law enforcement); Tennessee: Tenn. Code Ann. § 39-16-602 (1997) (resisting stop, frisk, halt, arrest, or search); Texas: Tex. Penal Code Ann. § 38.03 (Vernon 2003) (resisting arrest, search, or transportation); Utah: *Utah* Code Ann. § 76-8-305 (1999) (interference with arresting officer); Vermont: Vt. Stat. Ann. tit. 13, § 3017 (1998 & Supp. 2002) (resisting arrest); id. § 3018 (hindering arrest); Washington: Wash. Rev. Code § 9A.76.040 (2000 & Supp. 2003) (resisting arrest).

336. Wash. Rev. Code § 9A.76.040 (2000 & Supp. 2003).

337. N.H. Rev. Stat. Ann. § 642:2 (1996).

338. *Id.*

339. *Id.*

340. Colorado: Colo. Rev. Stat. § 18-8-116 (1999) (disarming a peace officer); Florida: Fla. Stat. ch. 843.025 (2000) (depriving officer of means of protection or communication); Illinois: 720 Ill. Comp. Stat. 5/31-1a (2002) (disarming a peace officer); Michigan: Mich. Comp. Laws § 750.479b (Supp. 2003) (taking of firearm or other weapon from peace officer or corrections officers); New Hampshire: N.H.

when a person knowingly "remov[es] a firearm or weapon from the person of a peace officer" or "depriv[es] a peace officer of the use of a firearm or weapon" when the officer is acting within the scope of his duties.[341]

In addition to strictures protecting law enforcement officials, a few jurisdictions have measures banning interference with other personnel. For example, ten state codes contain statutes prohibiting obstructions of firefighters.[342] In addition, at least six states have passed laws banning interfering with emergency medical personnel.[343] Finally, under Colorado law, it is also a crime to obstruct rescue specialists and volunteers.[344]

Rev. Stat. Ann. § 642:3-a (Supp. 2002) (taking a firearm from a law enforcement officer); New Mexico: N.M. Stat. Ann. § 30-22-27 (Michie Supp. 2001) (disarming a peace officer); Texas: Tex. Penal Code Ann. § 38.14 (Vernon 2003) (taking or attempting to take weapon from peace officer, parole officer, or community supervision and corrections department officer);Vermont: Vt. Stat. Ann. tit. 13, § 3019 (Supp. 2002) (disarming a law enforcement officer); Washington: Wash. Rev. Code § 9A.76.023 (2000 & Supp. 2003) (disarming a law enforcement or corrections officer); *id.* § 9A.76.025 (disarming a law enforcement or corrections officer—commission of another crime); Wyoming: Wyo. Stat. Ann. § 6-5-204 (Michie 2003) (interference with peace officer; disarming peace officer).

341. N.M. Stat. Ann. § 30-22-27 (Michie Supp. 2001) (disarming a peace officer).

342. California: Cal. Penal Code § 148.2 (West 1999 & Supp. 2003) (illegal conduct at burning of building); Colorado: Colo. Rev. Stat. § 18-8-104 (1999) (obstructing a peace officer, fire fighter, emergency medical services provider, rescue specialist, or volunteer); Delaware: Del. Code Ann. tit. 11, § 1243 (2001) (obstructing fire-fighting operations); Georgia: Ga. Code Ann. § 16-10-24.1 (1999 & Supp. 2002) (obstructing or hindering firefighters); Massachusetts: Mass. Gen. Laws ch. 268, § 32 (2000) (interference or tampering with police or fire signal systems or motorist highways emergency aid call boxes); *id.* § 32A (interference with fire fighting operations); Minnesota: Minn. Stat. § 609.50 (2003) (obstructing legal process, arrest or firefighting); Nebraska: Neb. Rev. Stat. § 28-908 (1995) (interfering with a fireman on official duty); New York: N.Y. Penal Law § 195.15 (McKinney 2001) (obstructing firefighting operations); Oregon: Or. Rev. Stat. § 162.255 (1999) (refusing to assist in fire-fighting operations); South Dakota: S.D. Codified Laws § 22-11-6 (Michie 1998) (obstructing law enforcement officer, jailer or firefighter).

343. California: Cal. Penal Code § 148 (West 1999 & Supp. 2003) (resisting, delaying or obstructing officer or emergency medical technicians); Colorado: Colo. Rev. Stat. § 18-8-103 (1999) (resisting arrest); *id.* § 18-8-104 (obstructing a peace officer, fire fighter, emergency medical services provider, rescue specialist, or volunteer); Georgia: Ga. Code Ann. § 16-10-24.2 (1999 & Supp. 2002) (obstructing or hindering emergency medical technicians or emergency medical professionals); Indiana: Ind. Code § 35-44-3-8.5 (1998) (obstructing an emergency medical person); Pennsylvania: 18 Pa. Cons. Stat. § 5112 (1983) (obstructing emergency services); South Dakota: S.D. Codified Laws § 22-11-6.1 (Michie 1998) (obstructing ambulance personnel).

344. Colo. Rev. Stat. § 18-8-104 (1999) (obstructing a peace officer, fire fighter, emergency medical services provider, rescue specialist, or volunteer).

Thus far, the offenses examined in this category have addressed the affirmative obstruction of various personnel. However, in about half of the states, there are laws that aim to punish those who fail to assist or obey law enforcement officers, fire fighters, or other emergency personnel.[345] A typical example of this type of law is Utah's provision entitled "failure to aid peace officer," which makes it a crime when a person, "upon command by a peace officer . . . unreasonably fails or refuses to aid the peace officer in effecting an arrest or in preventing the commission of any offense by another person."[346] Other state laws prohibit specifically the failure to obey

345. Alabama: Ala. Code § 13A-10-5 (1994) (refusing to aid peace officer); *id.* § 13A-10-6 (refusing to assist in fire control); Alaska: Alaska Stat. § 11.56.720 (2002) (refusing to assist a peace officer or judicial officer); Arizona: Ariz. Rev. Stat. § 13-2403 (2001) (refusing to aid a peace officer); *id.* § 13-2404 (refusing to assist in fire control); Arkansas: Ark. Code Ann. § 5-54-109 (Michie 1997) (refusing to assist law enforcement officer); California: Cal. Penal Code § 150 (West 1999 & Supp. 2003) (neglect or refusal to join posse comitatus or to aid); Colorado: Colo. Rev. Stat. § 18-8-107 (1999) (refusal to aid a peace officer); Connecticut: Conn. Gen. Stat. Ann. § 53a-167b (West 2001) (failure to assist a peace officer or firefighter); Delaware: Del. Code Ann. tit. 11, § 1241 (2001) (refusing to aid a police officer); Florida: Fla. Stat. ch. 843.04 (2000) (refusing to assist prison officers in arresting escaped convicts); *id.* ch. 843.06 (neglect or refusal to aid peace officers); Hawaii: Haw. Rev. Stat. § 710-1011 (1999 & Supp. 2002) (refusing to aid a law enforcement officer); *id.* § 710-1012 (refusing to assist in fire control); Illinois: 720 Ill. Comp. Stat. 5/31-8 (2002) (refusing to aid an officer); Iowa: Iowa Code § 719.2 (1993 & Supp. 2002) (refusing to assist officer); Massachusetts: Mass. Gen. Laws ch. 268, § 24 (2000) (neglect or refusal to assist officer or watchman); Montana: Mont. Code Ann. § 45-7-304 (2001) (failure to aid a peace officer); Nebraska: Neb. Rev. Stat. § 28-903 (1995) (refusing to aid a peace officer); Nevada: Nev. Rev. Stat. 197.270 (2001) (refusal to make arrest or to aid officer); New Mexico: N.M. Stat. Ann. § 30-22-2 (Michie 2001) (refusing to aid an officer); New York: N.Y. Penal Law § 195.10 (McKinney 2001) (refusing to aid a peace or a police officer); Ohio: Ohio Rev. Code Ann. § 2921.23 (Anderson 2002) (failure to aid a law enforcement officer); Oklahoma: Okla. Stat. Ann. tit. 21, § 537 (2002) (refusing to aid officer); Oregon: Or. Rev. Stat. § 162.245 (1999) (refusing to assist a peace officer); *id.* § 162.255 (refusing to assist in fire-fighting operations); South Dakota: S.D. Codified Laws § 22-11-3.1 (Michie 1998); Utah: Utah Code Ann. § 76-8-307 (1999) (failure to aid peace officer); Virginia: Va. Code Ann. § 18.2-463 (Michie 1996) (refusal to aid officer in execution of his office); West Virginia: W. Va. Code § 61-5-14 (2000) (refusal of person to aid officer); Wisconsin: Wis. Stat. § 946.40 (1996) (refusing to aid officer).

346. Utah Code Ann. § 76-8-307 (1999).

certain instructions,[347] such as an order to stop a vehicle[348] or an order to leave the scene of an emergency.[349]

6. Obstructing the Judicial Process

Whereas there are many laws banning the obstruction of certain people, some states have created offenses that ban obstructions of particular aspects of the judicial process. This category does not include minor offenses such as breaching the peace or disturbing a judicial proceeding.[350] Rather, these laws prohibit conduct that rises to the level of an obstruction of justice.

For instance, at least eighteen states have a law prohibiting the simulation of legal process.[351] A person generally commits this

347. Georgia: Ga. Code Ann. § 16-10-30 (1999 & Supp. 2002) (refusal to obey official request at fire or other emergency); Indiana: Ind. Code § 35-44-4-5 (Supp. 2002) (refusal to leave an emergency incident area by person not a firefighter); *id.* § 35-44-4-6 (refusal to leave an emergency incident area by a firefighter not dispatched); Michigan: Mich. Comp. Laws § 750.749a (1991 & Supp. 2003) (failure to obey directions of police or conservation officer); Ohio: Ohio Rev. Code Ann. § 2921.331 (Anderson 2002 & Supp. 2002) (failure to comply with order or signal of police officer); Texas: Tex. Penal Code Ann. § 38.02 (Vernon 2003) (failure to identify); Wis. Stat. § 946.415 (Supp. 2002) (failure to comply with officer's attempt to take person into custody).

348. Mich. Comp. Laws § 750.749a (1991 & Supp. 2003) (failure to obey directions of police or conservation officer).

349. Ind. Code § 35-44-4-5 (Supp. 2002) (refusal to leave an emergency incident area by person not a firefighter).

350. Presumably, many acts, such as the failure to appear in court, are covered by state contempt statutes. *See, e.g.*, N.D. Cent. Code § 27-10-18 (procedure when person arrested gives undertaking for appearance but fails to appear). However, these matters are beyond the scope of this article.

351. Alabama: Ala. Code § 13A-10-131 (1994) (simulating legal process); Alaska: Alaska Stat. § 11.56.620 (Michie 2002) (simulating legal process); Arizona: Ariz. Rev. Stat. § 13-2814 (2001) (simulating legal process); Arkansas: Ark. Code Ann. § 5-53-116 (Michie 1997) (simulating legal process); California: Cal. Penal Code § 146b (West 1999) (simulating official inquiries); Colorado: Colo. Rev. Stat. § 18-8-611 (1999) (simulating legal process); Illinois: 720 Ill. Comp. Stat. 5/32-7 (2002) (simulating legal process); Kansas: Kan. Stat. Ann. § 21-3820 (1995) (simulating legal process); Kentucky: Ky. Rev. Stat. Ann. § 524.110 (Michie 1999) (simulating legal process); Louisiana: La. R.S. § 14:353 (2003) (documents simulating official court papers for collection purposes, sale or purchase prohibited); Michigan: Mich. Comp. Laws § 750.368 (1991 & Supp. 2003) (preparation, issuance, service, etc. of unauthorized legal process); Minnesota: Minn. Stat. § 609.51 (2003) (simulating legal process); Mississippi: Miss. Code Ann. § 97-9-1 (2000) (printing, selling or distributing simulated legal documents prohibited); Missouri: Mo. Rev. Stat. § 575.130 (1995) (simulating legal process); Nebraska: Neb. Rev. Stat. § 28-923 (1995) (simulating legal process); Ohio: Ohio Rev. Code Ann. § 2921.52 (Anderson 2002) (using sham legal process); Oregon: Or. Rev. Stat. § 162.355 (1999) (simulating legal process); Wisconsin: Wis. Stat. § 946.68 (1996 & Supp. 2002) (simulating legal process).

offense when he has a specific purpose to obtain something of value and "knowingly delivers or causes to be delivered to another a request, demand, or notice that simulates any legal process issued by any court of this state."[352] According to Wisconsin law, "legal process" includes a subpoena, summons, warrant, complaint, notice, and any other document that "directs a person to perform or refrain from performing a specified act" that can be enforced by a court or government agency.[353]

A few states have strictures that prohibit the obstruction of service of process or other court orders.[354] For instance, in Tennessee, it is a crime to "intentionally prevent or obstruct an officer of the state or any other person known to be a civil process server in serving, or attempting to serve or execute, any legal writ or process."[355] Finally, a small number of states also have offenses similar to witness and jury tampering that ban tampering with attorneys, judges, and other judicial officers.[356]

7. Falsifying or Failing to File Reports

Offenses in this category criminalize the falsification of certain reports or the failure to file such reports. Nearly all state criminal codes contain at least one such statute in this section.

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352. Ark. Code Ann. § 5-53-116 (Michie 1997) (simulating legal process).

353. Wis. Stat. § 946.68 (1996 & Supp. 2002) (simulating legal process).

354. Illinois: 720 Ill. Comp. Stat. 5/31-3 (2002) (obstructing service of process); Kansas: Kan. Stat. Ann. § 21-3808 (1995) (obstructing legal process or official duty); Mississippi: Miss. Code Ann. § 97-9-75 (2000) (resisting service of process); South Carolina: S.C. Code Ann. § 16-9-320 (Law Co-op. 2003) (opposing or resisting law enforcement officer serving process); South Dakota: S.D. Codified Laws § 22-11-1 (Michie 1998) (resisting execution or service of process); Tennessee: Tenn. Code Ann. § 39-16-602 (1997) (prevention or obstruction of service of legal writ or process); Texas: Tex. Penal Code Ann. § 38.16 (Vernon 2003) (preventing execution of civil process).

355. Tenn. Code Ann. § 39-16-602 (1997) (prevention or obstruction of service of legal writ or process).

356. Kansas: Kan. Stat. Ann. § 21-3815 (1995) (attempting to influence a judicial officer); Kentucky: Ky. Rev. Stat. Ann. § 524.040 (Michie 1999) (intimidating a participant in the legal process); Pennsylvania: 18 Pa. Cons. Stat. § 4953.1 (Supp. 2003) (retaliation against prosecutor or judicial official); South Dakota: S.D. Codified Laws § 22-11-15 (Michie 1998 & Supp. 2003) (threatening or intimidating judicial or ministerial officers or others); Utah: Utah Code Ann. § 76-8-316 (1999 & Supp. 2002) (influencing, impeding, or retaliating against a judge or member of the Board of Pardons and Parole); Washington: Wash. Rev. Code § 9A.72.160 (2000) (intimidating a judge).

First, at least thirty-five states specifically prohibit the false report of a crime.[357] Many of these statutes contain several provisions to reflect the severity of the false report. For instance, the Wyoming law, titled "false reporting to authorities," divides the offense into four degrees of increasing severity.[358] This law prohibits a person

357. Alabama: Ala. Code § 13A-10-9 (1994) (false reporting to law enforcement authorities); Alaska: Alaska Stat. § 11.56.800 (2002) (false information or report); Arkansas: Ark. Code Ann. § 5-54-122 (Michie 1997) (filing false report with law enforcement agency); California: Cal. Penal Code § 148.3 (West 1999 & Supp. 2003) (false report of emergency); *id.* § 148.5 (West 1999) (false report of criminal offense); Colorado: Colo. Rev. Stat. § 18-8-111 (1999) (false reporting to authorities); Connecticut: Conn. Gen. Stat. Ann. § 53a-180 (West 2001 & Supp. 2003) (falsely reporting an incident in the first degree); Delaware: Del. Code Ann. tit. 11, § 1245 (2001 & Supp. 2003) (falsely reporting an incident); Florida: Fla. Stat. ch. 837.05 (2000) (false reports to law enforcement authorities); Georgia: Ga. Code Ann. § 16-10-26 (1999) (false report of a crime); *id.* § 16-10-24.3 (obstructing or hindering persons making emergency telephone calls); Hawaii: Haw. Rev. Stat. § 710-1015 (1999) (false reporting to law-enforcement authorities); *id.* § 710-1010.5 (Supp. 2002) (interference with reporting an emergency or crime); Indiana: Ind. Code § 35-44-2-2 (1998 & Supp. 2002) (false informing); Kansas: Kan. Stat. Ann. § 21-3818 (1995) (falsely reporting a crime); Kentucky: Ky. Rev. Stat. Ann. § 519.040 (Michie 1999) (falsely reporting an incident); Maine: Me. Rev. Stat. Ann. tit. 17-A, § 758 (West Supp. 2002) (obstructing report of crime or injury); Maryland: Md. Code Ann., Crim. Law § 9-601 (2002) (interference with emergency communication); Massachusetts: Mass. Gen. Laws ch. 268, § 40 (2002) (reports of crimes to law enforcement officials); Minnesota: Minn. Stat. § 609.505 (2003) (falsely reporting crime); *id.* § 609.5051 (criminal alert network; dissemination of false or misleading information); Missouri: Mo. Rev. Stat. § 575.080 (1995 & Supp. 2003) (false reports); Montana: Mont. Code Ann. § 45-7-205 (2001) (false reports to law enforcement authorities); Nebraska: Neb. Rev. Stat. § 28-907 (1995) (false reporting); New Hampshire: N.H. Rev. Stat. Ann. § 641:4 (2001) (false reports to law enforcement); *id.* § 642:10 (obstructing report of crime or injury); New Jersey: N.J. Stat. Ann. § 2C:28-4 (West 1995) (false reports to law enforcement authorities); North Carolina: N.C. Gen. Stat. § 14-225 (2002) (false reports to law enforcement agencies or officers); North Dakota: N.D. Cent. Code § 12.1-11-03 (1997 & Supp. 2001) (false information or report to law enforcement officers or security officials); Oklahoma: Okla. Stat. tit. 21, § 589 (2002) (false reporting of crime); Oregon: Or. Rev. Stat. § 162.375 (1999) (initiating a false report); Pennsylvania: 18 Pa. Cons. Stat. § 4906 (1983 & Supp. 2003) (false reports to law enforcement authorities); Rhode Island: R.I. Gen. Laws § 11-32-2 (2002) (false report of crime); South Dakota: S.D. Codified Laws § 22-11-9 (Michie 1998) (false reporting to authorities); Tennessee: Tenn. Code Ann. § 39-16-502 (1997 & Supp. 2002) (false reports); Texas: Tex. Penal Code Ann. § 37.08 (Vernon 2003) (false report to peace officer or law enforcement employee); Utah: Utah Code Ann. § 76-8-506 (1999) (providing false information to peace officers, government agencies, or specified professionals); Virginia: Va. Code Ann. § 18.2-461 (Michie 1996) (falsely summoning or giving false reports to law-enforcement officials); Washington: Wash. Rev. Code § 9A.76.175 (2000) (making a false or misleading statement to a public servant); Wyoming: Wyo. Stat. Ann. § 6-5-210 (Michie 2003) (false reporting to authorities).

358. Wyo. Stat. Ann. § 6-5-210 (Michie 2003) (false reporting to authorities).

from "knowingly reporting falsely to a law enforcement agency or a fire department" that: (1) a crime has been committed, (2) an emergency exists, (3) an emergency exists, and such false report results in serious bodily harm, or (4) an emergency exists, and such false report results in a death.[359] Under the fourth provision, a person committing such conduct is guilty of manslaughter.[360] Like the Wyoming offense, most false reporting offenses require proof of knowledge.

Besides offenses generally prohibiting false reports of crimes, twenty three states also have offenses that prohibit false reports of specific incidents.[361] Many of these statutes prohibit false reports of fires[362] and bombs.[363] Other state criminal codes contain similar

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359. *Id.*

360. *Id.*

361. Alabama: Ala. Code § 13A-10-8 (1994) (rendering a false alarm); Alaska: Alaska Stat. § 11.56.745 (2002) (interfering with a report of a crime involving domestic violence); California: Cal. Penal Code § 148.1 (West 1999) (false report of secretion of explosive or facsimile bomb); *id.* § 148.6 (West 1999 & Supp. 2003) (false allegations of misconduct against peace officers); Colorado: Colo. Rev. Stat. § 18-8-110 (1999) (false report of explosives, weapons, or harmful substances); Connecticut: Conn. Gen. Stat. Ann. § 53a-180a (West 2001 & Supp. 2003) (falsely reporting an incident resulting in serious physical injury or death); Georgia: Ga. Code Ann. § 16-10-27 (1999) (transmitting false report of fire); *id.* § 16-10-28 (transmitting a false public alarm); *id.* § 16-10-29 (request for ambulance service when not reasonably needed); Hawaii: Haw. Rev. Stat. § 710-1014 (1999) (rendering a false alarm); Louisiana: La. R.S. § 14:403.3 (2003) (reports of missing children; false reports or communications); Maryland: Md. Code Ann., Crim. Law § 9-604 (2002) (false alarm); Massachusetts: Mass. Gen. Laws ch. 268, § 39 (2002) (statements alleging motor vehicle theft); Minnesota: Minn. Stat. § 609.507 (2003) (falsely reporting child abuse); Missouri: Mo. Rev. Stat. § 575.090 (1995 & Supp. 2003) (false bomb report); Montana: Mont. Code Ann. § 45-7-204 (2001) (false alarms to agencies of public safety); Nevada: Nev. Rev. Stat. 197.130 (2001) (false report by public officer); *id.* 197.140 (public officer making false certificate); *id.* 199.325 (filing false or fraudulent complaint or allegation of misconduct against peace officer); New Hampshire: N.H. Rev. Stat. Ann. § 644:3 (Supp. 2002) (false public alarms); New Mexico: N.M. Stat. Ann. § 30-20-16 (Michie 2001) (bomb scares unlawful); North Carolina: N.C. Gen. Stat. § 14-242 (2002) (failing to return process or making false return); Ohio: Ohio Rev. Code Ann. § 2921.14 (Anderson 2002) (making or causing false report of child abuse or neglect); *id.* § 2921.15 (making false allegation of peace officer misconduct); Pennsylvania: 18 Pa. Cons. Stat. § 4905 (1983 & Supp. 2003) (false alarms to agencies of public safety); South Dakota: S.D. Codified Laws § 22-11-9.1 (Michie 1998) (false fire alarm causing injury or death); Texas: Tex. Penal Code Ann. § 37.081 (Vernon 2003) (false report to peace officer or law enforcement employee); West Virginia: W. Va. Code § 61-6-17 (Supp. 2003) (false reports concerning bombs or other explosives); Wisconsin: Wis. Stat. § 946.66 (Supp. 2002) (false complaints of police misconduct).

362. *See, e.g.*, 18 Pa. Cons. Stat. § 4905 (1983 & Supp. 2003) (false alarms to agencies of public safety).

363. N.M. Stat. Ann. § 30-20-16 (Michie 2001) (bomb scares unlawful).

provisions for false reports of child abuse,[364] missing children,[365] and allegations of police misconduct.[366]

Finally, a small number of states also contain specific offenses for giving false personal information to police officers.[367] Depending on the jurisdiction, a person can commit this crime by providing a false name,[368] address,[369] birth date,[370] or Social Security number.[371] In California, however, the offense is stated more generally, and a person is guilty of "false representation of identity to a peace officer" if he "falsely represents or identifies himself . . . as another person."[372]

8. Disclosing Confidential Information

The final category of specific obstruction offenses comprises unlawful disclosures of certain types of judicial information. For instance, at least six state codes contain an offense prohibiting the

364. Ohio Rev. Code Ann. § 2921.14 (Anderson 2002) (making or causing false report of child abuse or neglect).

365. La. R.S. § 14:403.3 (2003) (reports of missing children; false reports or communications); Va. Code Ann. § 37.081 (Michie 1996) (false report regarding missing child).

366. Ohio Rev. Code Ann. § 2921.15 (making false allegation of peace officer misconduct); Wis. Stat. § 946.66 (Supp. 2002) (false complaints of police misconduct).

367. California: Cal. Penal Code § 148.9 (West 1999) (false representation of identity to peace officer); Georgia: Ga. Code Ann. § 16-10-25 (1999) (giving false name, address, or birthdate to law enforcement officer); Louisiana: La. R.S. § 14:133.2 (2003) (misrepresentation during booking); Massachusetts: Mass. Gen. Laws ch. 268, § 34A (2002) (furnishing false name or Social Security number to law enforcement officer or official); Minnesota: Minn. Stat. § 609.506 (2003) (prohibiting giving peace officer false name); Pennsylvania: 18 Pa. Cons. Stat. § 4914 (1983 & Supp. 2003) (false identification to law enforcement authorities); Utah: Utah Code Ann. § 76-8-507 (1999 & Supp. 2002) (false personal information to peace officer).

368. Minnesota: Minn. Stat. § 609.506 (2003) (prohibiting giving peace officer false name).

369. Ga. Code Ann. § 16-10-25 (1999) (giving false name, address, or birthdate to law enforcement officer).

370. *Id.*

371. Mass. Gen. Laws ch. 268, § 34A (2002) (furnishing false name or Social Security number to law enforcement officer or official).

372. California: Cal. Penal Code § 148.9 (West 1999). Note that some state codes contain a somewhat related offense prohibiting false personation of a police officer. *See, e.g.*, 720 Ill. Comp. Stat. 5/32-5.1 (2002) (false personation of a peace officer). However, these laws are not traditionally seen as an obstruction of justice, and are therefore not included in this study.

disclosure of grand jury information.[373] In Idaho, a grand juror is guilty of this crime if he "willfully discloses any evidence adduced before the grand jury, or anything which he himself or any other member of the grand jury may have said, or in what manner he or any other grand juror may have voted on a matter before them."[374] In other states, similar provisions also specifically prohibit the disclosure of a deposition returned by the grand jury.[375]

A handful of states also have laws criminalizing the disclosure of other sorts of confidential information. These include indictments,[376] complaints,[377] depositions,[378] and court orders authorizing wiretaps.[379] One state also prohibits the disclosure of information to the subject of an investigation or possible searches or seizures.[380]

While the above offenses target those who disclose information, a similar offense relates to the seeking out of such information. The primary example of this is an offense in six states that prohibits the recording of jury deliberations.[381] In Louisiana, a person commits

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373. Arizona: Ariz. Rev. Stat. § 13-2812 (2001) (unlawful grand jury disclosure); Delaware: Del. Code Ann. tit. 11, § 1273 (2001) (unlawful grand jury disclosure); Idaho: Idaho Code § 18-4403 (1997) (disclosing proceedings before grand jury); New York: N.Y. Penal Law § 215.70 (McKinney 2001) (unlawful grand jury disclosure); Oklahoma: Okla. Stat. tit. 21, § 572 (2002)(disclosure of deposition returned by grand jury); *id.* § 583 (disclosing proceedings of grand jury); Washington: Wash. Rev. Code § 9.51.50 (2003) (disclosing transaction of grand jury). It should be noted that many states contain a secrecy provision in their grand jury legislation and punish the unlawful disclosure of grand jury information through contempt of court. *See, e.g.*, 725 Ill. Comp. Stat. 5/112-6 (2002) (secrecy of proceedings).

374. Idaho Code § 18-4403 (1997) (disclosing proceedings before grand jury).

375. *See* Wash. Rev. Code § 9.51.60 (2003) (disclosure of deposition returned by grand jury).

376. Arizona: Ariz. Rev. Stat. § 13-2813 (2001) (unlawful disclosure of an indictment); Idaho: Idaho Code § 18-4402 (1997) (disclosing indictment before arrest of defendant); Mississippi: Miss. Code Ann. § 97-9-53 (2000) (penalty for disclosing facts related to indictment); New York: N.Y. Penal Law § 215.75 (McKinney 2001) (unlawful disclosure of an indictment); Oklahoma: Okla. Stat. tit. 21, § 582 (2002) (disclosing indictment).

377. *See* Ariz. Rev. Stat. § 13-2813 (2001) (unlawful disclosure of an indictment).

378. *See* Okla. Stat. tit. 21, § 571 (2002) (disclosure of deposition).

379. Nevada: Nev. Rev. Stat. 199.540 (2001) (notification of interception of wire or oral communication or use of pen register or trap and trace device); Virginia: Va. Code Ann. § 18.2-460.1 (Michie 1996) (unlawful disclosure of existence of order authorizing wire or oral interception of communication).

380. Nev. Rev. Stat. 199.520 (2001) (disclosure of information to subject of investigation); *id.* 199.530 (notification of possible search or seizure).

381. California: Cal. Penal Code § 167 (West 1999) (recording or listening to trial jury); Louisiana: La. R.S. § 14:129.2 (2003) (recording, listening to, or observing proceedings of grand or petit jurors while deliberating or voting); North Dakota: N.D. Cent. Code § 12.1-09-05 (1997) (eavesdropping on jury

this crime by (1) recording any grand or petit jury proceedings while the jury is deliberating or voting, or (2) if the person is not a member of such jury, listening to or observing any grand or petit jury proceedings while the jury is deliberating or voting.[382] This statute also prohibits attempts to conduct such activities.[383]

V. STATE CASE LAW INTERPRETATION OF THE BROAD OBSTRUCTION OF JUSTICE STATUTES

The prohibitions which specifically delineate certain conduct—such as evidence tampering, witness tampering, and resisting law enforcement officers—are straightforward and focused in their scope, and therefore, they require no further explanation in this article. On the other hand, obstruction statutes that carry very broad language—outlawing, for instance, conduct that "in any way obstructs or impedes"[384] justice—may be open to widely divergent interpretation. In order to gain some sense of the scope of these strictures containing such broad language, this section will explore case law that examines and attempts to clarify the actual reach of this type of obstruction of justice measure.

A. Types of Prohibited Conduct

1. Traditional Obstruction Conduct

In some ways, conduct prosecuted under the broadly-defined state obstruction statutes is generally comparable to conduct punished under the various federal obstruction provisions.[385] For instance, tampering with a victim[386] and intimidating a victim[387] have been classified as obstructions. In addition, where a defendant attempted to "fix" a friend's criminal case by falsely informing the judge that

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deliberations); Oklahoma: Okla. Stat. tit. 21, § 588 (2002) (recording of grand or petit jury proceedings); Pennsylvania: 18 Pa. Cons. Stat. § 5103 (1983) (unlawfully listening into deliberations of jury); South Carolina: S.C. Code Ann. § 16-9-360 (Law Co-op. 2003) (unauthorized recording of grand or petit jury proceedings).

382. La. R.S. § 14:129.2 (2003).

383. *Id.*

384. D.C. Code Ann. § 22-722(a)(6) (2001 & Supp. 2003) (prohibited acts).

385. *See supra* notes 31 to 147 and accompanying text.

386. Lee v. State, 501 A.2d 495, 498 (Md. 1985) (finding obstruction where defendant, who was involved in a civil assault action, brandished a gun and demanded that the accuser talk to the gun or be dealt with "like a man").

387. State v. Ashley, 632 A.2d 1368, 1372 (Vt. 1993) (upholding obstruction conviction where defendant, in jail awaiting trial, called and wrote a letter to the victim, stating that his testimony at trial would harm the victim's reputation and that the victim's testimony could result in losing custody of the victim's daughter).

another judge was interested in the case, the defendant obstructed justice.[388] Obstructions of justice also have been found where defendants interfered with criminal investigations.[389] For example, where a defendant police officer was involved in an illegal gambling operation and arranged the arrest of the undercover officer investigating the gambling operation, this amounted to obstruction of justice.[390]

Various types of fraudulent schemes regarding police activities can also be an obstruction of justice.[391] For example, where a defendant bribed a police officer with money in exchange for the officer not enforcing certain zoning ordinances, the defendant was guilty of conspiracy to obstruct the administration of law.[392] Public officials, such as judges and police officers, are even subject to the reach of the broad obstruction laws.[393] For instance, where a defendant, a judge, approached a police chief and asked him to change a speeding ticket and to give special consideration to local drivers, the defendant's conduct amounted to obstruction.[394] In another case, a police chief committed obstruction by arriving at the scene of an undercover drug investigation with several marked vehicles in order to disrupt the investigation.[395] Finally, where the defendant, a sheriff, gave liquor to a prisoner on several occasions and permitted the prisoner to escape, the defendant's conduct amounted to an obstruction.[396]

2. *Broader Interpretations of Obstruction*

a. *Interference with Law Enforcement*

In addition, many state obstruction statutes prohibit a wider range of conduct than their federal counterpart. First, various forms of interference with law enforcement officials can constitute an obstruction of justice. For instance, striking or assaulting a police

388. Commonwealth v. Trolene, 397 A.2d 1200, 1204 (Pa. Super. Ct. 1979).
389. Commonwealth v. Kelly, 369 A.2d 438, 443 (Pa. Super. Ct. 1976).
390. *Id.*
391. *See* State v. Medina, 793 A.2d 68, 82 (N.J. Super. Ct. 2002) (upholding obstruction conviction where defendant police officer concealed entries in gun buyback program's logbook in connection with a scheme to steal the surrendered guns).
392. Commonwealth v. Taraschi, 475 A.2d 744, 750 (Pa. Super. Ct. 1984).
393. *See* Commonwealth v. Booth, 435 A.2d 1220, 1223 (Pa. Super. Ct. 1981) (noting that the obstruction statute "has been interpreted to reach, inter alia, malfeasance of public office").
394. Commonwealth v. Gentile, 640 A.2d 1309, 1312 (Pa. Super. Ct. 1994).
395. People v. Dolan, 576 N.Y.S.2d 901, 905 (N.Y. App. Div. 1991).
396. *Booth*, 435 A.2d at 1223.

officer while the officer is in the lawful performance of his duties has often been deemed an obstruction.[397] Thus, where a defendant kicked a police officer during a pat-down search,[398] or where a defendant struck an officer with his car during the course of a traffic stop,[399] obstruction convictions were upheld. Besides assaulting an officer, a defendant can commit an obstruction by blocking an officer's path and refusing to move while the officer is performing his duties.[400]

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397. *See* A.A.G. v. State, 668 So. 2d 122, 128 (Ala. Crim. App. 1995) (defendant had a "combative attitude" and jumped and screamed and struck an officer, which curtailed the officer's response to the burglar alarm); State v. O'Kelley, 570 P.2d 805, 807-08 (Ariz. 1977) (defendant kicked a university officer who stopped his vehicle); State v. Reim, 549 P.2d 1046, 1051 (Ariz. Ct. App. 1976) (defendant struck an officer with his car during a traffic stop and later struggled with an officer who tried to subdue the defendant); State v. Fimbres, 510 P.2d 64, 65 (Ariz. Ct. App. 1973) (defendant bit a corrections officer in the chest while the officer attempted to remove him from his cell); State v. Wanczyk, 493 A.2d 6, 10–11 (N.J. Super. Ct. App. Div. 1985) (defendant kicked an officer during a *Terry* pat-down); People v. Hodge, 735 N.Y.S.2d 261, 263 (N.Y. App. Div. 2002) (defendant prisoner attempted to flee from open cell, pointed a metal shank at a correction officer and then engaged in a struggle with the officer); People v. Cacsere, 712 N.Y.S.2d 298, 300 (N.Y. App. Term 2000) (defendant grabbed the officer's arm while attempting to prevent the arrest of her husband); In the Matter of Samuel VV, 629 N.Y.S.2d 843, 844 (N.Y. App. Div. 1995) (defendant grabbed an officer who was attempting to break up a crowd and pushed him against a car); Willinger v. City of New Rochelle, 622 N.Y.S.2d 321, 322 (N.Y. App. Div. 1995) (defendant slammed a car door on the officer who stopped him); People v. Hope, 412 N.Y.S.2d 430, 431 (N.Y. App. Div. 1979) (defendant knocked the glasses off a deputy sheriff, grabbed his neck, and backed him against a wall); State v. Collins, 623 N.E.2d 1269,1270-71 (Ohio Ct. App. 1993) (defendant slowly moved car until it struck the officer who stopped him); Piela v. Commonwealth, 2000 WL 343804, 2000 Va. App. LEXIS 260, *5 (Va. Ct. App. 2000) (defendant, a prisoner, resisted the officers' attempt to relocate him from his cell). *But see* State v. Garrison, 554 A.2d 874, 877 (N.J. Super. Ct. App. Div. 1989) (holding that obstructing one's own arrest is not a violating of the broadly-stated obstruction provision).

398. *Wanczyk*, 493 A.2d at 10–11.

399. *Reim*, 549 P.2d at 1051 (defendant struck an officer with his car during a traffic stop and later struggled with an officer who tried to subdue the defendant).

400. State v. Diamond, 785 A.2d 887, 890 (N.H. 2001) (defendant, a protestor, refused to move out of officer's path while the officer was attempting to arrest another protester); State v. Blodgett, 523 A.2d 119, 120 (N.H. 1987) (defendant stepped in front of an officer and pushed him away to prevent the arrest of her son); City of Grand Forks v. Cameron, 435 N.W.2d 700, 703 (N.D. 1989) (defendant stepped in front of an officer who was attempting to break up a party and refused officer's orders to leave); State v. Rott, 380 N.W.2d 325, 327–28 (N.D. 1986) (defendant obstructed a sheriff's order to repossess by blocking sheriff's route, motioning toward a gun, raising his fist and refusing to move); City of Columbus v. Nickles, 504 N.E.2d 1204, 1207 (Ohio Ct. App. 1986) (defendant refused officers' orders to leave the scene of an accident and blocked paramedics who attempted to assist a victim); State v. Pitts, 509 N.E.2d 1284, 1285 (Ohio Mun. Ct. 1986) (defendants blocked officer's entry into building to investigate woman who shouted at the officers and threw a potato chip bag at them); State v. Pembaur, 459

Thus, a defendant was convicted of obstruction when he blocked officers from repossessing a mobile home by placing a tractor and a dump truck in front of the home.[401]

In addition, obstruction charges often have been upheld for interferences with police investigations. For instance, where a defendant was wiretapped to assist police in a bribery investigation, his refusal to turn over the recorded tapes constituted an obstruction.[402]

Finally, a defendant's intimidation of law enforcement officials can provide the basis for an obstruction conviction. Such intimidation has been found, for example, where eleven defendants encircled an officer who was attempting to make an arrest.[403] In another interesting case, police officers attempted to enforce an eviction order against the defendant's family.[404] The family members refused to open the door for the police officers, and, while inside the house, the defendant shouted to her mother, "They're still on our property. Can we shoot them?"[405] The Oregon Court of Appeals upheld the defendant's conviction of obstruction, reasoning that the defendant's statement placed the officers in reasonable fear for their safety.[406]

b. Omissions

However, where a defendant did not commit an overt act but refused to follow the orders of law enforcement, courts are sometimes reluctant to classify such conduct as obstruction.[407] For instance, during a *Terry* stop, a defendant refused an officer's order to sit down and instead, squatted and fled the scene.[408] The Ohio Court of Appeals held that the defendant in that case did not "perform an affirmative act that directly interfered with the patrolman's duty," and thus, did not commit an obstruction.[409] Similarly, where the

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N.E.2d 217, 219 (Ohio 1984) (defendant, operator of a medical clinic, barred the door of his clinic to prevent officers from serving a warrant on clinic's employees).

401. State v. Holloway, 992 S.W.2d 886, 891 (Mo. Ct. App. 1999).

402. State v. Cassatly, 225 A.2d 141, 145–46 (N.J. Super. Ct. App. Div. 1966).

403. People v. Shea, 326 N.Y.S.2d 70, 71 (N.Y. Ct. Sp. Sess. Yonkers 1971).

404. State v. Mattila, 712 P.2d 832, 833 (Or. Ct. App. 1986).

405. *Id.* at 833.

406. *Id.* at 835.

407. *See, e.g.*, City of Hamilton v. Hamm, 514 N.E.2d 942, 943 (Ohio Ct. App. 1986) (holding that defendant's refusal of bailiff's order to either pay a traffic fine or sign an agreement to pay was not an "affirmative action" and thus, the defendant did not obstruct official business).

408. State v. Gillenwater, 1998 WL 150354, 1998 Ohio App. LEXIS 1840, *3 (Ohio Ct. App. 1998).

409. *Id.* at *4, 1998 Ohio App. LEXIS 1840 at *9.

defendant, a security guard, remained in his car and clutched the steering wheel, refusing to follow a police officer's order to exit the car and enter a police cruiser, the court held that the defendant's omission did not amount to an obstruction of official business.[410]

The underlying reasoning behind these cases is a sentiment that law enforcement officials are "expected to tolerate a certain level of uncooperativeness, especially in a free society in which the citizenry is not obliged to be either blindly or silently obeisant to law enforcement."[411] Otherwise, the broad language of some of the obstruction statutes would justify convictions for even the most minor omissions. For instance, in one case, officers had a search warrant authorizing them to search a video store for obscene materials.[412] When asked to cooperate in various ways, the defendants, the store's owners, asked whether they were required to do so and then gave several misleading statements to the officers.[413] An appellate court reversed their obstruction convictions, stating that the defendants were not obligated to cooperate with the officers' execution of the search warrant.[414] In other cases, one defendant refused to display his driver's license to a police officer to permit the officer to verify his address,[415] and another defendant turned off the lights and refused to open the door when an officer arrived in response to a domestic disturbance call.[416] In both of these cases, appellate courts rejected the prosecution's expanding interpretations of the obstruction statutes and reversed the defendants' obstruction convictions.[417]

On the other hand, where the defendant's omission is coupled with affirmative acts, the defendant's conduct can form the basis of an obstruction conviction.[418] For instance, where a defendant refused

410. City of Garfield Heights v. Simpson, 611 N.E.2d 892, 896 (Ohio Ct. App. 1992).

411. State v. Davis, 749 N.E.2d 322, 324 (Ohio Ct. App. 2000) (Gorman, J., dissenting).

412. State v. Corrai, 591 N.E.2d 1325, 1326 (Ohio Ct. App. 1990).

413. *Id.*

414. *Id.* at 1327.

415. State v. McCrone, 580 N.E.2d 468, 470–71 (Ohio Ct. App. 1989).

416. City of Columbus v. Michel, 378 N.E.2d 1077, 1077–78 (Ohio Ct. App. 1978).

417. *McCrone*, 580 N.E.2d at 471; *Michel*, 378 N.E.2d at 1078.

418. *See, e.g.*, State v. Theobald, 645 P.2d 50, 51 (Utah 1982) (where defendant failed to show his driver's license and also made threatening moves at the officer, the defendant was guilty of obstruction); People v. Barrett, 684 N.Y.S.2d 818, 820 (N.Y. City Crim. Ct. 1998) (where defendant refused to walk through a courthouse metal detector and impeded others from going through the metal detector, the defendant's physical interference through physical force constituted an obstruction); State v. Wolf, 677 N.E.2d 371, 374 (Ohio Ct. App. 1996) (where a defendant

officers' orders to leave the scene of his son's arrest and interfered with the arrest by engaging in a prolonged verbal altercation that interfered with the arrest and led the officers to fear for their safety, the defendant's conviction for obstruction was upheld.[419] In another case, police officers responded to an emergency call in which the defendant threatened suicide.[420] While the defendant's initial refusal to allow the officers inside the home was not an obstruction, she also pointed a knife at the officers and repeatedly stated, "no." Thus, the defendant's total conduct in that case amounted to an obstruction.[421] Finally, where a defendant simply refused to be fingerprinted while in police custody, this conduct was not obstruction.[422] However, in a similar case, a different court highlighted the defendant's active resistance to the police officer's attempt to perform a fingerprint sample, and thus, affirmed a conviction for obstruction.[423]

Another instance in which an omission is punishable under obstruction statutes occurs when the omission is an independently unlawful act.[424] For example, New Jersey state law requires motorists to produce identification upon request by law enforcement and to obey police officers when they are enforcing the motor vehicle codes.[425] Hence, where a defendant failed to produce identification and failed to obey an officer's order to stop her car, the defendant's omissions were punishable under the obstruction offense.[426] In addition, where a defendant was required to maintain and produce records for an alcohol inspection team, the defendant's refusal to produce those records was an obstruction of governmental administration.[427] It should also be noted that a defendant's refusal

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protester refused an officer's request to leave the head table at a public board of health meeting, the court held that the defendant's refusal, when coupled with the physical act of sitting at the table, constituted an obstruction).

419. State v. Overholt, 1999 WL 635717, 1999 Ohio App. LEXIS 3788, *8–*9 (Ohio Ct. App. Aug. 18, 1999).

420. State v. Neptune, 2000 WL 502830, 2000 Ohio App. LEXIS 1884, *2 (Ohio Ct. App. Apr. 21, 2000).

421. *Id.* at *6, 2000 Ohio App. LEXIS 1884 at *17.

422. State v. Muldrow, 460 N.E.2d 1177, 1178 (Ohio Mun. Ct. 1983).

423. People v. Santos, 700 N.Y.S.2d 381, 386 (N.Y. City Crim. Ct. 1999).

424. *See* State v. Douglas, 349 N.W.2d 870, 911 (Neb. 1984) (Shanahan, J., Grant, J.,& Moran, D.J., dissenting) (arguing that state attorney general had an official duty to tell the truth during an official investigation and his failure to volunteer information was, therefore, an obstruction of governmental operations).

425. State v. Perlstein, 502 A.2d 81, 84–85 (N.J. Super. Ct. App. Div. 1985).

426. *Id.* at 85.

427. State v. Stumpp, 493 N.Y.S.2d 679, 680 (N.Y. Dist. Ct. 1985); *see also* Penn. State Police, Bureau of Liquor Control Enforcement v. Capek, 657 A.2d 1352, 1355 (Pa. Commonw. Ct. 1995) (where the defendant refused to allow Liquor Control Enforcement agents to search behind his bar because the officers arrived after hours wearing streetclothes, the trial court properly dismissed obstruction

to stop when ordered to do so by police generally is not punishable as obstruction,[428] even when the defendant actively flees the police.[429]

c. Disorderly Conduct

Perhaps the most striking applications of the broad obstruction statutes are those that may be considered simple disorderly conduct. In particular, Ohio's statute, "obstructing official business,"[430] as well as the comparable local ordinances that are interpreted in lockstep with the state statute, have led to a number of unusual prosecutions, sparking a vigorous debate on the appropriate reach of the law. For instance, in *State v. Stayton*,[431] a uniformed police officer was walking down a street, issuing citations for expired parking meter violations, when the defendant, a woman, approached him.[432] The officer asked if she owned the vehicle for which he was currently writing a citation, and she answered, "No."[433] Then, despite the officer's warning, the defendant inserted a coin into the expired meter and said, "You're not the police. You have no authority to write parking citations."[434] The officer warned her that she could be arrested for "repeat metering," but the defendant responded, "You've got to be kidding."[435] Deciding not to ticket the vehicle, the officer moved on to the next expired meter, and again, the defendant

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charges).

428. State v. Ternes, 700 N.E.2d 435, 437 (Ohio Mun. Ct. 1998) (where a defendant, a driver, did not stop until a half mile after the officer activated his siren, the defendant did not commit obstruction). *But see* State v. Davis, 749 N.E.2d 322, 323-24 (Ohio Ct. App. 2000) (where defendant committed a jaywalking violation and kept walking after officers called out for him to stop, the defendant's conduct was an obstruction).

429. People v. Tillman, 706 N.Y.S.2d 819, 821 (N.Y. Auburn City Ct. 2000) (where officer stopped a suspect in a narcotics investigation, the suspect's flight did not constitute an obstruction); State v. Smith, 2000 WL 381612, *4, 2000 Ohio App. LEXIS 1840, *10 (Ohio Ct. App. 2000) (where defendant fled from an investigatory stop, this was not an obstruction); State v. McCullough, 580 N.E.2d 1180, 1182 (Ohio Mun. Ct. 1990) (flight, alone, from a *Terry* stop does not constitute obstruction).

430. Ohio Rev. Code § 2921.31 (Anderson 2002). The statute reads:

> No person, without privilege to do so and with purpose to prevent, obstruct, or delay the performance by a public official of any authorized act within his official capacity, shall do any act which hampers or impedes a public official in the performance of his lawful duties.

Id.

431. 709 N.E.2d 1224 (Ohio Ct. App. 1998).

432. *Id.* at 1226.

433. *Id.*

434. *Id.*

435. *Id.*

disobeyed the officer and inserted money into the meter.[436] The officer then handcuffed and arrested the defendant, who was later convicted of obstructing official business.[437]

On appeal, the Ohio Court of Appeals upheld Stayton's conviction and rejected her argument that her conduct did not prevent the officer from continuing to write the parking tickets.[438] While the court acknowledged a continuum of interference with law enforcement that ranged from "fair protest" to "actual obstruction," the defendant in this case crossed the line between the two areas.[439] After the officer moved to the second car, she "had to be aware that she had stopped him from writing a ticket for the first one."[440] The fact that the officer "may have tolerated her antics" the first time did not justify her continued interference, and the fact that the officer's "patience finally wore out ... was the risk [the defendant] took."[441] Moreover, the statute prohibited "obstructing" official business rather than "preventing" official business.[442] In dissent, one justice argued that the officer could have ignored the defendant's aggravated foolishness and completed writing the ticket.[443] The dissent also noted the prosecutor's inability to name a lesser way in which someone could obstruct a police officer, which suggested that Stayton's minor argument should not have been punishable.[444]

Cases like *Stayton*, which appear to be no more than basic disorderly conduct, appear frequently throughout Ohio's caselaw. For instance, in *City of Sandusky v. DeGidio*,[445] another defendant had an unfortunate encounter with an officer enforcing parking laws.[446] Here, an officer was placing chalk marks on the tires of vehicles to determine violation of a two-hour parking ordinance.[447] The defendant, ignoring the officer's warnings, wiped the mark off the rear tire of his truck.[448] The Ohio Court of Appeals upheld the defendant's obstruction conviction, finding that the defendant's acts

436. *Id.* Stayton's account of the incident differed from the officer's account. *Id.* at 1229. Stayton contended that she never questioned the officer's authority and furthermore, that she deposited money into both meters before the officer warned her. *Id.*

437. *Id.* at 1226. Stayton also was charged with disorderly conduct, but a jury acquitted her of this charge. *Id.*

438. *Id.* at 1227.

439. *Id.* at 1227–28.

440. *Id.* at 1228.

441. *Id.* at 1227.

442. *Id.*

443. *Id.* at 1231 (Painter, J., dissenting).

444. *Id.*

445. 555 N.E.2d 680 (Ohio Ct. App. 680).

446. *Id.* at 680–681.

447. *Id.*

448. *Id.* at 681.

were performed "with the intent and purpose of frustrating the officer's performance of his assigned duty of enforcing the two-hour parking ordinance."[449] The dissent pointed out that the prosecution conceded that removing such marks from tires was not in violation of a parking ordinance, and thus there was no "illegal act which generates the policeman's duty to enforce the law."[450]

One final case illustrates the unusual application of Ohio's obstruction law. In *State v. Davis*,[451] officers observed a defendant jaywalking, and the defendant refused the officer's orders for him to stop.[452] In fact, the defendant "quickened his pace," and as a result, he was arrested and convicted for obstruction.[453] With little discussion, the Ohio Court of Appeals affirmed the conviction.[454] In dissent, one justice stated that the defendant's conduct was at a "level of hindrance which is simply too casual, remote, or indirect to be punishable under the statute."[455] Also, the dissent noted, had the defendant turned and ran from the police, his flight would not have been chargeable under the offense.[456]

The application of the obstruction charge to seemingly minor offenses is by no means limited to Ohio. For instance, in New York, a defendant was charged with second-degree obstruction of governmental administration after he released live crickets at a New York City public auction.[457] The crickets, which had been stored in manila envelopes, spread across the auditorium floor, causing patrons of the auction to scream, jump on chairs, and exit the auditorium.[458] The defendant was a member of "Jiminy Cricket," an organization that opposed the city's sale of vacant lots, and he argued that his actions were a form of constitutionally-protected speech.[459] The court, however, upheld the charge against a motion to dismiss, stating that the defendant's conduct obstructed and impaired the city's auction, which was suspended as a result of his actions.[460]

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449. *Id.*
450. *Id.* at 682–83 (Glasser, J., dissenting).
451. 749 N.E.2d 322 (Ohio Ct. App. 2000).
452. *Id.* at 323.
453. *Id.*
454. *Id.* at 323–24.
455. *Id.* at 324 (Gorman, J., dissenting) (quoting State v. Stayton, 709 N.E.2d 1224, 1227 (Ohio Ct. App. 3d Dist. 1998).
456. *Id.* at 325. The dissent also stated that an officer "is expected to tolerate a certain level of uncooperativeness, especially in a free society in which the citizenry is not obliged to be either blindly or silently obeisant to law enforcement." *Id.* at 324 (quoting *Stayton*, 709 N.E.2d at 1227).
457. People v. Spiegel, 693 N.Y.S.2d 393, 395 (N.Y. City Crim. Ct. 1999).
458. *Id.*
459. *Id.*
460. *Id.* at 396.

Finally, in a North Dakota case, *State v. Purdy*,[461] twenty-six people chained themselves together inside an abortion clinic to protest activities there.[462] One protester said that they locked themselves up to make it more difficult for the officers to carry them out of the building.[463] Subsequently, several of the defendants were charged with physical obstruction of a government function.[464] According to the court, the protester's statement implied that the sole purpose of for their lock-in was to hinder and delay the arrests of themselves and the other protesters.[465] Thus, the court upheld the defendants' convictions.[466]

These cases are important because the demonstrate the broad reach of the obstruction statutes. Even if a person's conduct appears to be a minor form of disorderly conduct, it can be chargeable as an obstruction if it, in fact, hinders the performance of an official function.

d. Speech

Generally, a person's words alone are not an obstruction of justice under the various state statutes. This is primarily due to constitutional concerns of vagueness and overbreadth. For example, in *State v. Smith*,[467] the prosecution alleged a defendant's "loud and boisterous speech" obstructed a police officer's investigation of a street fight.[468] The defendant talked over the officer, who was speaking to someone else, and as the officer's voice became louder, the defendant spoke more loudly as well.[469] Following the defendant's conviction, the Court of Appeals of Ohio looked to the legislative intent and held that the defendant's unsworn, true oral statements were not "acts" as contemplated by the statute.[470] Moreover, the court stated that prohibiting the defendant's conduct would call into question the constitutionality of the statute on overbreadth grounds, since the First Amendment protects "a significant amount of verbal criticisms and challenges directed at

461. 491 N.W.2d 402 (N.D. 1992).
462. *Id.* at 405. The protesters stated that their goals were to "save babies," "give the sidewalk counselors more time to talk to the girls going into the clinic," and to conduct a citizen's arrest of the clinic administrator. *Id.* at 411.
463. *Id.*
464. *Id.*
465. *Id.*
466. *Id.*
467. 671 N.E.2d 594 (Ohio Ct. App. 1996).
468. *Id.* at 596.
469. *Id.*
470. *Id.* at 598.

police officers."[471] In addition, prohibiting such verbal comments would render the statute unconstitutionally vague, since there could be no clear guidelines concerning the requisite volume of speech that would obstruct a public officer.[472]

Besides constitutional considerations, interpretations of individual statutes also guide the validity of speech as an obstruction. For instance, a number of New York cases have considered whether warning of the presence of an undercover police officer constitutes an obstruction.[473] In *People v. Case*,[474] the New York Court of Appeals reversed an obstruction conviction of a defendant who used his CB radio to warn two vehicles of an oncoming police radar speed trap.[475] The court held that "mere words alone" had never been interpreted as physical "force" or physical "interference" as required by the obstruction statute.[476] Also, the court cited statutory commentary, which noted that the offense was intended to fill the gaps between other specifically-defined obstructions but was not intended to be an "overly broad catchall."[477] For these reasons, the court held that the statute did not prohibit the defendant's conduct in this case.[478] As the Court wryly noted, "To say that there is a Smokey takin' pictures up the road does not subject the speaker to a year's imprisonment."[479] Shortly after *Case*, a New York trial court decided *People v. Lopez*,[480] in which a defendant recognized an undercover police officer on a subway platform and shouted a warning for all passengers to refrain from wrongdoing.[481] Although the officer claimed the defendant's warning "blew his cover" as he was observing a youth suspected of a graffiti offense, the court held, for policy reasons, that the defendant's conduct did not amount to an obstruction.[482] The risk of being recognized is "inherent in many other similar situations" and cannot be deemed to have interrupted or shut down governmental operations, as the statute was intended to prohibit.[483]

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471. *Id.*
472. *Id.*
473. For the first in these series of cases, see *People v. Longo*, 336 N.Y.S.2d 85 (N.Y. Onodondaga Co. Ct. 1971) (holding that the object of the officer's investigation had already departed, and thus, there was insufficient evidence to charge the defendant with obstruction).
474. 365 N.E.2d 872 (N.Y. 1977).
475. *Id.* at 873.
476. *Id.* at 874. The court decided that the modifier "physical" referred to both "force" and "interference." *Id.*
477. *Id.*
478. *Id.* at 875.
479. *Id.* at 873.
480. 410 N.Y.S.2d 787 (N.Y. City Crim. Ct. 1978).
481. *Id.* at 788.
482. *Id.*
483. *Id.*

Since these two cases, however, New York courts have signaled a willingness to uphold obstruction charges against a person who reveals the presence of undercover officers. In fact, the court upheld a finding of obstruction in *In re Davan L.*[484] In that case, the juvenile defendant rode his bicycle, circling the area of an undercover drug operation.[485] After the officer warned him to leave the area, the child shouted, "Cops, cops . . . watch out, five-0, police are coming."[486] On the defendant's appeal of a trial court finding of obstruction, the New York Court of Appeals distinguished the facts from those in *Case*.[487] Whereas Case's interference with the police activity was "attenuated by distance, time and technology," Davan, despite being warned, interfered with police activity that was "confined and defined" to a particular location.[488] In addition, the court referred to evidence that Davan's statements caused a "physical reaction and dispersal," which could have risked his safety as well as the officers' safety.[489] Therefore, the court held that Davan's conduct was proscribed by the obstruction of governmental administration statute.[490] The factors contributing to obstruction in *Davan*—confined and defined police activity, a previous warning, and a resulting physical reaction—provide a framework for determining in future cases when mere speech becomes an obstruction in New York.[491]

In addition, most courts have also held that unsworn false statements to law enforcement officials are not punishable under the broad obstruction offenses.[492] For instance, where a defendant told

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484. 689 N.E.2d 909 (N.Y. Ct. App. 1997).
485. *Id.* at 910.
486. *Id.*
487. *Id.* at 910–11.
488. *Id.* at 911.
489. *Id.*
490. *Id.*
491. In *People v. Hinkson*, 708 N.Y.S.2d 546, 547–48 (N.Y. City Crim. Ct. 2000), a trial court dismissed obstruction charges against a defendant who, according to the officer's complaint, "state[d] loudly" that an undercover officer was present. *Id.* at 547. Relying on *Davan*, the court stated that obstruction charges could have been upheld had the complaint alleged (1) interference with a confined and defined operation, (2) that the defendant was warned, (3) that the defendant's statements were "directed toward a known criminal activity and assembly," or (4) that the defendant's actions caused a physical dispersal or dispersal. *Id.* at 548.
492. *See, e.g.*, People v. Gaissert, 348 N.Y.S.2d 82, 84 (N.Y. Co. Ct. 1973) (holding that defendant's giving a false name to an officer was not an obstruction); Commonwealth v. Shelly, 703 A.2d 499, 503-04 (Pa. Super. Ct. 1997) (holding that defendant's giving a false name to an officer during a traffic stop was not an independently unlawful act and therefore was not an obstruction); Commonwealth v. Goodman, 676 A.2d 234, 236 (Pa. 1996) (holding that defendant's giving a false name and address to a police officer did not violate the state's change-of-name statute, and thus, was not an independently unlawful act sufficient to justify an

officers that he did not know the whereabouts of a runaway girl, who was found in the car of the defendant's friend, the statement did not amount to an obstruction.[493] The Ohio Court of Appeals reversed the defendant's conviction, holding that his statement was not an "act" under the obstruction law.[494] Similarly, where a defendant gave false information to a police officer which resulted in his being improperly charged as a juvenile, the statement was not obstruction.[495] There, a New York state trial court held that the defendant had no legal duty to speak to the officer at all.[496] Moreover, as the Ohio court noted, a false statement is not an "act" as contemplated by the obstruction offense.[497]

However, where a defendant's words constitute a threat or a form of intimidation, an obstruction conviction can be supported.[498] An Arizona court has held that speech, when not accompanied by physical force, constitutes an obstruction
only when it is substantially equivalent to force, that is, when it is intended to and does incite an unlawful resistance by another to the discharge of official duty or when the speech itself by its very volume and intensity interferes substantially with the carrying out of an official duty.[499]Thus, an obstruction conviction has been upheld where a defendant approached a meter maid on two successive days and called her various offensive names, frightening her into not patrolling the area.[500]

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obstruction charge); *but see* State v. Cobb, 2003 Ohio 3034 (Ohio Ct. App. 2003) (unreported) (affirming obstruction conviction where defendant failed to provide an officer with a social security number, full name, and a correct birthdate).

493. State v. Huron, 591 N.E.2d 352, 354 (Ohio Ct. App. 1990).

494. *Id.*

495. People v. Ketter, 351 N.Y.S.2d 579, 581 (N.Y. City Crim. Ct. 1974).

496. *Id.*

497. *Id.; see also* Wilbourn v. State, 164 So. 2d 424 (Miss. 1964) (holding that making false statements to a police officer is not in the same general nature as "threats or force, abuse or otherwise").

498. *See* People v. Tarver, 591 N.Y.S.2d 907, 907-08 (N.Y. App. Div. 1992) (where defendant approached an officer in a threatening manner, this was an obstruction, even though there was an officer blocking the defendant); People v. Jiminez, 525 N.Y.S.2d 482, 485 (N.Y. City Crim. Ct. 1988) (where defendants placed themselves between an officer and a person being questioned by the officer, their words constituted an obstruction by intimidation); State v. Mattila, 712 P.2d 832 (Or. Ct. App. 1986) (where officers attempted to enforce an eviction order and defendant shouted to her mother inside the house, "Can we shoot them?" the officers were reasonably placed in fear, and thus, the defendant's acts amounted to an obstruction); *see also* State v. Demers, 576 A.2d 1221, 1225 (R.I. 1990) (where defendant and members of his church made harassing phone calls to a guardian ad litem and the defendant cornered the guardian in her office and threatened her while screaming Bible quotes, the defendant committed an obstruction).

499. State v. Tages, 457 P.2d 289, 292 (Ariz. Ct. App. 1969).

500. Commonwealth v. Mastrongelo, 414 A.2d 54, 60 (Pa. 1980).

B. Activities and People Protected

The broadly stated obstruction laws have been interpreted to prohibit the hindrance of a variety of public officials and functions. Besides police officers on duty,[501] a person can obstruct the duties of undercover agents,[502] fire fighters,[503] alcohol inspection teams,[504] guardians ad litem,[505] truant officers,[506] state environmental officers,[507] and fish and game officers.[508] In one case, bridge operators employed by the city were convicted of obstructing governmental administration when they removed important electrical equipment from the bridge operating system, leaving the bridges in an open position.[509]

In some cases, an obstruction of an official who is not mentioned in the state code has not met the "public officer" requirement.[510] However, where an officer is specially appointed[511] or conducting a joint investigation with state officers,[512] an obstruction of such a person has been found to meet the statutory requirement.

In one interesting Pennsylvania case, a defendant, angry about a parking ticket he had received, shouted at the meter maid and called her obscene names on two successive days.[513] The meter maid, afraid of the defendant, did not patrol the area for the next week, and therefore, the defendant obstructed the meter maid from performing

501. *See, e.g.,* A.A.G. v. State, 668 So. 2d 122, 125 (Ala. Crim. App. 1995).
502. In re Davan L.,689 N.E.2d 909, 911 (N.Y. Ct. App. 1997).
503. City of Columbus v. Nickles, 504 N.E.2d 1204, 1208 (Ohio Ct. App. 1986).
504. People v. Stumpp, 493 N.Y.S.2d 679, 680 (N.Y. Dist. Ct. 1985).
505. State v. Demers, 576 A.2d 1221, 1224 (R.I. 1990).
506. In re Michael C., 695 N.Y.S.2d 423, 424 (N.Y. App. Div. 1999).
507. Scarpone v. Commonwealth, 596 A.2d 892, 896 (Pa. Commonw. Ct. 1991).
508. State v. Briggs, 790 A.2d 792, 795 (N.H. 2002); State v. Sandman, 286 P.2d 1060, 1062 (Utah 1955).
509. People v. Siciliano, 354 N.Y.S.2d 273, 278 (N.Y. City Ct. 1972). The court rejected the claim that the defendants, who were on strike with other municipal employees, were being prosecuted for their union activities. *Id.*
510. Findley v. State, 127 P. 716, 716 (Ariz. 1912) (deputy town marshal); People v. Arvio, 321 N.Y.S.2d 382, 386 (N.Y.J. Ct. 1971) (United States Selective Service Board); People v. Garfield, 312 N.Y.S2d 830, 833 (N.Y. City Court 1970) (federal agent).
511. People v. Lewis, 386 N.Y.S.2d 560, 562 (N.Y. Crim. Ct. 1976) (special patrolman).
512. People v. Smith, 491 N.Y.S.2d 236, 240 (N.Y. Crim. Ct. 1985) (federal officer engaged in a joint federal/state task force).
513. Commonwealth v. Mastrongelo, 414 A.2d 54, 55-56 (Pa. 1980). The defendant called the meter maid, among other things, "a fucking pig," "a nigger lover," and a "cocksucker." *Id.*

a lawful duty.[514] In addition, *In re Walter S.*,[515] a New York case involved an elementary school student who faced juvenile proceedings for obstructing his teacher during class.[516] The student uttered an obscene reply when he was asked to sit down, then shoved the teacher and exited the classroom.[517] Although the family court noted that the obstruction law is used "almost exclusively" in cases involving law enforcement officials, it concluded that public school teachers performed governmental functions and thus, the statute could be stretched to protect them from obstructions.[518]

Although a particular person may be a public official, that person must be performing an official function in order for the obstruction charge to be valid. For instance, where a uniformed officer was simply on patrol, a New York court held that the officer was not performing an official function.[519] The court in that case emphasized that the essence of the obstruction offense is the physical interference with an officer's "lawful duty," and not the nature of the defendant's acts.[520] Also, where an officer's initial arrest[521] or investigatory stop[522] of a defendant is invalid, the officer cannot be performing an official function.

Three related New York cases involving alleged destruction of evidence illustrate the importance of this element of the offense. In *People v. Simon*[523] and *People v. Vargas*,[524] officers approached the respective defendants who then destroyed evidence relating to drug offenses.[525] In *Simon*, the defendant broke a glass pipe containing cocaine by throwing it on the ground,[526] and in *Vargas*, the defendant threw a marijuana cigarette into a sewer.[527] In each case, the defendant's obstruction charge was dismissed because the accusatory instrument did not allege that any official function was obstructed by

514. *Id.* at 56.
515. 337 N.Y.S.2d 774 (N.Y. Fam. Ct. 1972).
516. *Id.* at 775-76.
517. *Id.*
518. *Id.* at 777. However, the court dismissed the defendant's juvenile delinquency petition because the defendant lacked the requisite intent to interfere with the teacher. *Id.* In addition, the court stated that an opposite decision would open the floodgates to force courts to address ordinary disciplinary violations. *Id.* at 778.
519. People v. Joseph, 592 N.Y.S.2d 238, 242 (N.Y. City Crim. Ct. 1992).
520. *Id.* at 239.
521. People v. Ailey, 350 N.Y.S.2d 981, 989 (N.Y. City Ct. 1974).
522. People v. Lupinacci, 595 N.Y.S.2d 76, 77 (N.Y. App. Div. 1993).
523. 547 N.Y.S.2d 199 (N.Y. City Crim. Ct. 1989).
524. 684 N.Y.S.2d 848 (N.Y. City Crim. Ct. 1998).
525. *Simon*, 547 N.Y.S.2d at 200–01; *Vargas*, 684 N.Y.S.2d at 849.
526. *Simon*, 547 N.Y.S.2d at 200–01.
527. *Vargas*, 684 N.Y.S.2d at 849.

the defendant's conduct.[528] However, in *People v. Ravizee*,[529] an officer broke his finger while attempting to prevent the defendant from swallowing a vial containing crack.[530] There, the court held that the officer's attempt to "prevent the imminent disposal or destruction of contraband" was an official function, and thus, the defendant's intentional swallowing of the drug impeded the officer's duty.[531] Although all three defendants in these cases were attempting to destroy drug-related evidence, such conduct was only an obstruction where it impeded an "official function."

Although this element is crucial, as one court noted, the prosecution's burden of proof regarding this element is not "onerous" and can be satisfied by "the barest factual allegation of a police function."[532] Thus, where an officer was attempting to seize and preserve contraband from a defendant[533] or take a defendant's fingerprints,[534] these acts constituted official functions. Even an off-duty police officer who was acting as security at a dance was held to have been conducting an official function.[535]

In states that have modeled its obstruction statute after the federal omnibus clause, courts are divided regarding whether there is a pending judicial proceeding requirement. For instance, in Maryland, a defendant school teacher asked her aides to lie during the course of a police investigation.[536] However, an appellate court determined that the state legislature intended to follow the federal obstruction scheme, which contains a pending judicial proceeding requirement.[537] Because a police investigation is conducted by the executive branch, it could not be a judicial proceeding.[538] A Vermont court, however, reached the opposite conclusion in a case involving police officers who tampered with evidence of a crime.[539] In that case, the Vermont Supreme Court examined the statute's plain meaning and determined the legislative intent to apply the obstruction law to a broader range of conduct than its federal counterpart.[540] In addition, the state legislature created only one obstruction offense—rather than a series

528. *Simon*, 547 N.Y.S.2d at 202; *Vargas*, 684 N.Y.S.2d at 851.
529. 552 N.Y.S.2d 503 (N.Y. City Crim. Ct. 1990).
530. *Id.* at 504.
531. *Id.* at 505.
532. People v. Joseph, 592 N.Y.S.2d 238, 240 (N.Y. City Crim. Ct. 1992).
533. *Ravizee*, 552 N.Y.S.2d at 506.
534. People v. Santos, 700 N.Y.S.2d 381, 385 (N.Y. Crim. Ct. 1999).
535. State v. Kurtz, 278 P.2d 406, 408-09 (Ariz. 1954).
536. State v. Pagano, 655 A.2d 55, 56 (Md. Ct. Spec. App. 1995).
537. *Id.* at 59.
538. *Id.*
539. State v. O'Neill, 682 A.2d 943, 944 (Vt. 1996).
540. *Id.* at 946–47 (pointing out that the Vermont statute prohibits conduct that obstructs justice in matters "already heard, presently being heard, or to be heard before any court of the state").

of targeted offenses like those Congress had written—which implied the legislature's intent to broadly interpret the law.[541]

C. Mens Rea

States that have addressed the mens rea component of obstruction are divided between requirements of specific intent and general intent. For instance, Ohio,[542] New York,[543] and Rhode Island[544] have held that specific intent to obstruct an official's duties is required. For instance, in *State v. Puterbaugh*,[545] the defendant told an officer that the subject of the arrest warrant was not in the defendant's home, but the officer's search revealed that the subject of the search was sleeping in an upstairs bedroom.[546] The Ohio Court of Appeals held that the defendant's specific intent to obstruct the officer's duties could be inferred from these circumstances.[547]

On the other hand, courts in Arizona[548] and Wyoming[549] have held that general intent suffices to satisfy the mental state requirement. For instance, in *State v. Bell*,[550] a defendant tried to re-enter his car during a traffic stop, and the officer and the defendant engaged in a struggle in which the defendant produced three different weapons.[551] The Arizona Supreme Court held that general intent was proven in this case by the commission of the crime and the defendant's knowledge that he was resisting a public officer.[552]

D. Constitutional Concerns

Like the federal courts, state courts have overwhelmingly rejected facial attacks on the obstruction statutes on grounds of vagueness and

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541. *Id.* at 947.
542. *See* State v. Puterbaugh, 755 N.E.2d 359, 360 (Ohio Ct. App. 2001).
543. *See* People v. Vargas, 684 N.Y.S.2d 848, 851 (N.Y. City Crim. Ct. 1998) (finding that a defendant could have tossed a marijuana cigarette into a sewer because he was finished smoking it and thus, the specific intent to obstruct the officer was not proven).
544. *See* State v. Pari, 546 A.2d 175, 182–83 (R.I. 1988) (dismissing an obstruction charge where the defendants did not affirmatively vouch for falsified documents presented to a grand jury, and thus, the "corrupt" intent to impede the grand jury proceeding was not shown).
545. 755 N.E.2d 359 (Ohio Ct. App. 2001).
546. *Id.* at 360.
547. *Id.* at 362.
548. *See* State v. Mikels, 578 P.2d 174, 176 (Ariz. 1978).
549. *See* Smith v. State, 902 P.2d 1271 (Wyo. 1995).
550. 551 P.2d 548 (Ariz. 1976).
551. *Id.* at 549.
552. *Id.* at 550.

overbreadth.[553] However, such constitutional challenges have succeeded as applied to a particular case. For instance, in *State v. McHugh*,[554] the prosecution charged with obstruction several activists who distributed handbills and picketed in front of a judge's residence in order to protest the judge's failure to release a fellow activist on bail.[555] The Vermont Supreme Court held that upholding an obstruction charge in this case would restrict all speech intended to influence judicial decision-making, such as letters, editorials, and demonstrations.[556] A reasonable person would not know what was permissible under such an interpretation of the statute, and therefore, the law was overbroad as applied in the case.[557]

Besides First Amendment concerns, application of obstruction laws to particular cases can also raise Fourth Amendment issues.[558] For example, in *Strange v. City of Tuscaloosa*,[559] the officers' warrantless search of the defendant's home was not justified by any Fourth Amendment exception to the warrant clause and, hence, was unconstitutional.[560] Therefore, the defendant's resistance to the officers' entry and search of her home could not subject her to a charge of obstruction.[561] Likewise, where an officer did not have probable cause to determine whether a woman was injured inside the defendant's home, the defendant's refusal to grant the officer entry into his home was an exercise of the defendant's Fourth Amendment rights.[562] Thus, the defendant could not properly be charged with obstructing the administration of law.[563]

VI. GENERAL OBSERVATIONS

Many lawyers may think of obstruction of justice in its traditional sense as a prohibition on crimes against the court such as destroying evidence and witness tampering. However, even a cursory examination of the state statutes and case law demonstrates that the crime of obstruction is much broader than that traditional view. In

553. *See, e.g.*, Bishop v. Golden, 302 F. Supp. 502, 506 (E.D.N.Y. 1969); State v. Smith, 671 N.E.2d 594, 598 (Ohio Ct. App. 1996).
554. 635 A.2d 1200 (Vt. 1993).
555. *Id.* at 1200–01.
556. *Id.* at 1201.
557. *Id.* at 1202.
558. *See* State v. Robinson, 659 N.E.2d 1292, 1297 (Ohio Ct. App. 1995) (holding that officers' warrantless entry into the defendant's apartment violated the Fourth Amendment).
559. 652 So. 2d 773 (Ala. Crim. App. 1994).
560. *Id.* at 776.
561. *Id.*
562. State v. Berlow, 665 A.2d 404, 405 (N.J. Super. Ct. 1995).
563. *Id.*

some states, the offense refers to a variety of forms of accomplice liability.[564] In other states, it is a crime that outlaws obstructionist conduct in either broad or specific terms.[565] Meanwhile, in many states, "obstruction of justice" consists of a statutory scheme designed to address only specific forms of conduct.[566]

With the variety of jurisdictions, statutes, and case law interpretations of obstruction of justice, it is difficult to derive any sweeping conclusions about these laws. However some general observations are in order.

A. Statutory Considerations

To begin with, not all jurisdictions actively seek convictions under their broad obstruction statutes. At the federal level, the obstruction of justice omnibus clause is a powerful weapon in a prosecutor's arsenal.[567] Even if a defendant is not convicted under the statute, it can show its head as a sentencing factor under the Federal Sentencing Guidelines.[568] In contrast, among the twenty-five states with general obstruction statutes containing broad language, only a few states demonstrate an active use of the statutes. In Ohio, New York, and Pennsylvania, in particular, there are a plethora of reported cases interpreting their respective obstruction laws.[569] In many other states, however, there are no reported appellate court opinions interpreting their obstruction statutes, suggesting that those statutes are rarely the source of prosecutions.[570]

Although only a few states actively prosecute under a broadly-stated obstruction statute, obstructions of justice are not going unnoticed in all the other states. Rather, most states charge obstructions under a variety of individual statutes that target specific forms of conduct, such as

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564. Montana: Mont. Code Ann. § 45-7-303 (2001) (obstructing justice); Ohio: Ohio Rev. Code Ann. § 2921.32 (Anderson 2002) (obstructing justice); Utah: Utah Code Ann. § 76-8-306 (1999 & Supp. 2002) (obstruction of justice). *See supra* notes 278 to 282 and accompanying text.

565. See *supra* notes 236 to 277 and accompanying text for descriptions of the state laws. Also, the federal omnibus clause in 18 U.S.C. § 1503 defines obstruction in broad terms. *See supra* notes 31 to 147 and accompanying text.

566. *See supra* notes 285 to 383 and accompanying text for examples of the types of offenses included in such schemes.

567. *See* De Marco, *supra* note 70, at 607–08.

568. U.S. Sentencing Guidelines Manual § 3C1.1 (1998).

569. In Ohio and New York, many trial court opinions are reported, adding to the wealth of interpretation of the obstruction crimes.

570. These states are: Colorado, Hawaii, Maine, and Nevada. *See* State v. Holloway, 992 S.W.2d 886, 889 (Mo. Ct. App. 1999) ("Neither of the parties has cited any case law that precisely addresses [the scope of the obstruction statute], and our independent research has failed to disclose any Missouri case that interprets either the phrase 'obstructing government operation' or the provisions of [Mo. Rev. Stat. § 576.030 (1995) (obstructing government operations)]).

tampering with witnesses and jurors, resisting officers, destroying evidence, and disclosing confidential information.[571] This leaves the broadly-stated obstruction statutes to fill in the gaps by covering conduct not specifically described in the other statutes. For example, the New York Court of Appeals has cited commentary to that state's general obstruction statute that describes the law as a gap-filler: "The former Penal Law contained a number of provisions which punished specific conduct, the effect of which was to obstruct or hamper governmental functions. There was, however, no comprehensive provision directed at such conduct generally. Section 195.05 [is] designed to fill this gap."[572]

B. The Importance of the Governmental Function

Regarding the broadly-stated obstruction statutes, it is sometimes difficult to predict whether a defendant's conduct will constitute an obstruction. While any act that makes a public officer's job more difficult can be deemed an obstruction, some forms of conduct are clearly outside the realm of criminal liability.

Perhaps the most important consideration in this respect is the nature of the governmental function. In many cases, courts have upheld obstruction convictions by focusing on the governmental function that was affected by the defendant's conduct. For instance, in *In re Davan L.*,[573] the juvenile defendant, while riding his bicycle, alerted the presence of undercover police officers.[574] The New York Court of Appeals stated that the legislature intended the statute to "attach to *minimal* interference set in motion to frustrate police activity."[575] Here, the defendant's acts caused a "physical reaction and dispersal" that risked the officers' safety, and consequently, the defendant committed an obstruction.[576] Thus, in this case, the court emphasized the nature of the governmental function and the effect of the defendant's acts on the governmental function.[577]

Another instance in which the governmental function proved to be the decisive element is *Commonwealth v. Trolene*.[578] In this case,

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571. *See supra* notes 285 to 383 and accompanying text.

572. People v. Case, 365 N.E.2d 872, 874 (N.Y. Ct. App. 1977) (citations omitted) (quoting 39 McKinney's Cons. Laws of N.Y. 395-96). *See also* Model Penal Code § 242.1 (Obstructing Administration of Law or Other Governmental Function) (describing the section as a "general supplement to all other provisions [that prohibit] particular methods of interfering with governmental functions").

573. 689 N.E.2d 909 (N.Y. Ct. App. 1997).

574. *Id.* at 910.

575. *Id.* at 911 (emphasis added).

576. *Id.*

577. *Id.*

578. 397 A.2d 1200 (Pa. Super. Ct. 1979).

the defendant was convicted of obstruction when he falsely told a judge named Benjamin Schwartz that another judge was "interested" in Lam and Casparro, the defendants in a case pending before Judge Schwartz.[579] Although Judge Schwartz testified that he did not give any thought to the conversation with the defendant, the Pennsylvania Superior Court held that the obstruction prohibition was broad enough to cover attempts to obstruct as well as actual obstructions.[580] In support of its assertion, the court noted that

> historically the concern in this area is not only to prevent the due administration of law from being corrupted, but also to insulate that process from all improper attempts to influence or intimidate, both to forestall the risk that a court officer, witness, or juror might be corrupted, and to preserve the public integrity of our system of justice from any appearance of impropriety.[581]

Thus, the key to the court's decision in *Trolene* was the importance of protecting the integrity of the governmental function.

Standing alone, the conduct of the defendants in *Trolene* and *Davan L.* seem fairly insignificant. In *Davan*, the defendant was simply a child riding his bicycle around the block when he announced the officers' presence.[582] In *Trolene*, the defendant's comments to the judge were, at the very least, ineffective.[583] However, in both cases, the courts gave scant consideration to their conduct standing alone. Instead, the courts' decisions focused on the government functions that were affected—in fact or in appearance—and upheld the obstruction charges.

In addition, unlike the federal law, which is limited to pending judicial proceedings, most state statutes prohibit the obstruction of a "governmental function" or a "public officer."[584] For instance, Kentucky's "obstructing governmental operations" statute prohibits obstructions of a "governmental function."[585] State courts also have interpreted these terms broadly to cover nearly all government functions.[586] For instance, as long as a police officer is engaged in some duty other than a routine patrol, he is likely performing a governmental function within the meaning of the obstruction statute.[587]

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579. *Id.* at 1201-02.
580. *Id.* at 1202, 1204.
581. *Id.* at 1204.
582. In re Davan L., 689 N.E.2d 909, 910 (N.Y. Ct. App. 1997).
583. *Trolene*, 397 A.2d at 1202.
584. *See supra* notes 250 to 255 and accompanying text.
585. Ky. Rev. Stat. Ann. § 519.020 (Michie 2003) (obstructing governmental operations).
586. *See supra* notes 501 to 535 and accompanying text.
587. *See* People v. Joseph, 592 N.Y.S.2d 238, 242 (N.Y. City Crim. Ct. 1992) (holding that an officer who is simply in uniform and on duty is not performing an official function).

The combined effect of the emphasis on the government function and the expansive interpretation of that requirement is that most broadly-defined obstruction statutes have a wide reach. This explains the surprising results in *Davan*, where the child alerted to the presence of undercover officers;[588] *Trolene*, where the defendant told the judge another judge was "interested" in a particular case;[589] *Stayton*, where the defendant inserted coins into parking meters against an officer's order;[590] *Davis*, where the defendant quickened his pace when officers attempted to stop him for jaywalking;[591] and *Spiegel*, where the defendant released live crickets at a public auction.[592]

C. Any Boundaries?

Assuming that a court will focus on the government function when deciding whether particular conduct is an obstruction, are there any boundaries to what conceivably might be punished under these statutes? Cases like *Walter S.*, where a juvenile defendant shoved his teacher and shouted an obscene phrase,[593] and *Case*, where the defendant warned drivers of a police speed trap,[594] demonstrate that some law enforcement officials and prosecutors are willing to test those boundaries. Furthermore, cases such as *Stayton*, where the defendant inserted coins into a parking meter after a police officer warned her not to do so,[595] and *Davis*, where the defendant refused an officer's orders to stop for a jaywalking violation, [596] show that some courts are generally willing to extend the boundaries of obstruction to encompass virtually any form of conduct—subject to a few limitations.

First, a court is more likely to find an obstruction where a defendant's conduct is grave or dangerous than where the conduct is rather trivial. For instance, in *City of Garfield Heights v. Simpson*,[597] the defendant did not commit obstruction when he clutched his steering wheel and refused an officer's order to get into a police car.[598] However, courts have consistently found obstructions where

588. In re Davan L., 689 N.E.2d 909, 910 (N.Y. Ct. App. 1997).
589. Commonwealth v. Trolene, 397 A.2d 1200, 1202 (Pa. Super. Ct. 1979).
590. State v. Stayton, 709 N.E.2d 1224, 1226 (Ohio Ct. App. 1998).
591. State v. Davis, 749 N.E.2d 322, 323 (Ohio Ct. App. 2000).
592. People v. Spiegel, 693 N.Y.S.2d 393, 395 (N.Y. City Crim. Ct. 1999).
593. In re Walter S., 337 N.Y.S.2d 774, 775-76 (N.Y. Fam. Ct. 1972).
594. People v. Case, 36 N.E.2d 872, 873 (N.Y. Ct. App. 1977).
595. State v. Stayton, 709 N.E.2d 1224, 1277 (Ohio Ct. App. 1998).
596. State v. Davis, 749 N.E.2d 322, 323–24 (Ohio Ct. App. 2000).
597. 611 N.E.2d 892 (Ohio Ct. App. 1992).
598. *Id.* at 896.

defendants have engaged in physical exchanges with a police officer.[599]

Second, courts generally have reversed obstruction convictions where the conviction would result in a possible infringement of a constitutional right. Fourth Amendment and First Amendment concerns are the most common rights involved.[600] Thus, courts typically refuse to find obstruction where the defendant's words alone are the basis for the charge.[601] For example, where the defendant's spoke in an increasingly loud and boisterous manner while a police officer was investigating a street fight, the defendant did not obstruct official business.[602] Also, a defendant's assertion of a Fourth Amendment right has been protected against obstruction convictions, even where the defendant's conduct in fact obstructs the officer's conduct.[603] For instance, where an officer did not have justification to enter a defendant's home, the defendant did not obstruct the administration of law when he refused to permit the officer to enter.[604]

Third, courts are generally more protective of judicial functions than other governmental functions. The reason for this probably stems from the common law crime of obstruction, which prohibited acts that interfered with the *judicial* process.[605] Under the federal code, this common-law restriction remains an obstruction of justice offense with its requirement of a pending judicial proceeding.[606] At the state level, the increased protection for courts can be seen in cases such as *Trolene*, where the defendant falsely informed a judge that another judge was interested in a particular case.[607] In that case, the Pennsylvania Superior Court upheld the defendant's obstruction conviction and justified its result, in part, with the need to "preserve the public integrity of our system of justice from any appearance of impropriety."[608]

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599. *See supra* notes 397–399 and accompanying text.

600. *See supra* notes 553 to 563 and accompanying text.

601. *See supra* notes 467 to 497 and accompanying text. In many cases, courts do not address the First Amendment argument but instead decide the case according to statutory interpretations. *See* City of Dayton v. Rogers, 398 N.E.2d 781 (Ohio 1979) (discussing intent of legislature), *overruled by* State v. Lazzaro, 667 N.E.2d 384 (Ohio 1996).

602. State v. Smith, 671 N.E.2d 594, 596 (Ohio Ct. App. 1996).

603. *See, e.g.*, Strange v. City of Tuscaloosa, 652 So. 2d 773, 776 (Ala Ct. Crim. App. 1994) (holding that defendant's resistance to officer's warrantless entry did not constitute obstruction).

604. State v. Berlow, 665 A.2d 404, 405 (N.J. Super. Ct. 1995).

605. M. Cherif Bassiouni, Substantive Criminal Law 406 (1978); *see also* Model Penal Code § 242.1, cmt. 1 (1962).

606. 18 U.S.C. § 1503 (2000); *see also supra* notes 33 to 58 and accompanying text.

607. Commonwealth v. Trolene, 397 A.2d 1200, 1201-02 (Pa. Super. Ct. 1979).

608. *Id.* at 1204.

Meanwhile, courts have not afforded police officers the same level of protection from obstructions. In fact, some courts have held that a police officer's duties must *in fact* be hindered in order to sustain an obstruction conviction.[609] For instance, in *People v. Lopez*,[610] a New York City trial court held that the defendant, who announced the presence of an undercover police officer on a subway platform, could not be charged with obstruction.[611] Even though the defendant may have made the officer's investigation more difficult to perform, such a risk was "inherent" in undercover operations.[612] For example, the court stated,

> If the People were engaged in an undercover sale of drugs and it could be shown that the seller refused to go through with the sale by reason of his recognition of or his information that the buyer is an officer, can it seriously be contended that the prospective seller and/or his informant obstructed governmental administration? I think not.[613]

According to the court, the obstruction statute was not designed for situations where the defendant simply "blew [the officer's] cover," and therefore, the obstruction charges were dismissed.[614]

While the *Lopez* court described the inherent risk of interference in undercover operations, some courts have noted that officers are generally expected to tolerate some uncooperativeness.[615] For instance, in *State v. Puterbaugh*,[616] a police officer arrived at the defendant's home and announced that he had an arrest warrant for a woman named Crawford.[617] The defendant stated that Crawford had moved out of the home eight months earlier, and the officer replied that he had spoken with Crawford the previous day at the residence.[618] The defendant agreed that Crawford had been at the home the previous day, but she had returned to her home.[619]

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609. State v. Stephens, 387 N.E.2d 252, 253 (Ohio Ct. App. 1978); City of Dayton v. Peterson, 381 N.E.2d 1154, 1155 (Ohio Mun. Ct. 1978).
610. 410 N.Y.S.2d 787 (N.Y. City Crim. Ct. 1978).
611. *Id.* at 788.
612. *Id.*
613. *Id.*
614. *Id.*
615. *See* City of Dayton v. Peterson, 381 N.E.2d 1154, 1155-56 (Ohio Mun. Ct. 1978) (where the defendant's conduct forced officers to call additional crews to the scene of the incident and transport the defendant to the police station, prepare arrest reports, and testify at the defendant's trial, sustaining the defendant's obstruction charge would mean that every criminal defendant would be guilty of obstruction).
616. 755 N.E.2d 359 (Ohio Ct. App. 2001).
617. *Id.* at 360.
618. *Id.*
619. *Id.*

Nonetheless, the defendant consented to the officer's request to search the home, and the officer found Crawford sleeping in an upstairs bedroom.[620] The defendant was subsequently convicted of obstructing official business.[621]

The Ohio Court of Appeals reversed the defendant's conviction, noting that "a police officer is expected to tolerate a certain level of uncooperativeness, especially in a free society in which the citizenry is not obliged to be either blindly or silently obeisant to law enforcement."[622] In this case, the officer would have needed to go upstairs to apprehend Crawford, even if the defendant had said she was upstairs sleeping.[623] Also, the defendant voluntarily permitted the officer to search her home for Crawford, which "negated any potential interference" with the officer's performance of his duties.[624]

While not explicitly stated, the policy that police officers are expected to tolerate a minimum amount of resistance resonates throughout much of the case law.[625] For instance, a defendant did not obstruct official business when he refused to show his driver's license to a police officer who wanted to verify his identity.[626] In reversing his obstruction conviction, the Ohio Court of Appeals stated that "refusing to cooperate with a law enforcement officer is not punishable conduct."[627] Similarly, where a defendant gave a false name to a police officer and gave contradictory answers to the officer's questions, the defendant did not commit obstruction.[628] Finally, where a defendant's contradictory answers to a police officer's questions simply made the completion of an accident report more difficult, the court reversed the defendant's obstruction conviction.[629] In sum, where a defendant's interference with a police officer is minor and of the type normally expected in the performance of the officer's duties, courts sometimes make a

620. *Id.*
621. *Id.*
622. *Id.* at 364.
623. *Id.*
624. *Id.*
625. *But see* State v. Muldrow, 460 N.E.2d 1177, 1178 (Ohio Mun. Ct. 1983) (holding that defendant created a "substantial stoppage of the officer's progress" when he refused to be fingerprinted, which prevented the officers from ascertaining their true identities for "a matter of hours").
626. State v. McCrone, 580 N.E.2d 468, 470–71 (Ohio Ct. App. 1989).
627. *Id.* at 471 (citing Columbus v. Michel, 378 N.E.2d 1077 (Ohio Ct. App. 1978)).
628. Commonwealth v. Shelly, 703 A.2d 499, 503–04 (Pa. Super. Ct. 1997) (finding that the legislature did not intend to prohibit such conduct through the "catchall" obstruction provision).
629. Ruckman v. Commonwealth, 505 S.E.2d 388, 390 (Va. Ct. App. 1998).

common sense policy judgment that such conduct should not be punishable under the broad obstruction statutes.[630]

D. Restricting the Boundaries

Subject to the general limitations described above, there are few indications of what conduct would not possibly be deemed an obstruction by courts interpreting broadly-worded statutes. Although vagueness challenges to these obstruction laws have not been successful, the statutory language often presents issues in which the defendants could not be deemed to have notice of the illegality of their conduct.[631] For example, many courts have stated that police officers are expected to tolerate *some* resistance from citizens.[632] But the point at which that resistance becomes punishable under the obstruction statutes is unclear.

Courts and legislatures concerned about the reach of these broadly-stated obstruction statutes could limit them in several ways. First, the courts could interpret the statutes to invariably require specific intent to obstruct the governmental function. In many cases, the courts have placed undue emphasis on the government function while ignoring the mens rea element altogether. An examination into the defendant's mental state could eliminate from the reach of obstruction cases such as *Spiegel*, where the defendant may have intended to make a political statement rather than to obstruct the public auction.[633]

Also, some cases in which defendants provide false answers to officers would not be punishable under the broad obstruction provision.[634] In many these cases, defendants are not acting with intent to obstruct justice, but instead, they are attempting to exculpate themselves. Although not all courts have embraced this exculpatory doctrine, application of the doctrine would limit the reach of the broad

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630. However, this does not eliminate the possibility of a charge under a more narrowly-tailored offense, such as resisting an officer. *See, e.g.*, State v. Smith, 2000 WL 381612, *4, 2000 Ohio App. LEXIS 1840, *12 (Ohio Ct. App. 2000) (upholding a charge of using a weapon while intoxicated and dismissing a charge of obstructing official business); Robinson v. State, 484 So.2d 1197, 1199 (Ala. Ct. Crim. App. 1986) (rejecting challenge of conviction for obstructing governmental operations on double jeopardy grounds regarding previous extortion conviction).

631. *See supra* notes 553 to 557 and accompanying text; *see, e.g.*, Bishop v. Golden 302 F. Supp. 502, 506 (E.D.N.Y. 1909); State v. Smith, 671 N.E.2d 594, 598 (Ohio Ct. App. 1996); State v. McHugh, 635 A.2d 1200, 1201-02 (Utah 1993); *see generally*, John F. Decker, *Addressing Vagueness, Ambiguity, and Other Uncertainty in American Criminal Laws*, 80 Den. U. L. Rev. 241 (2002).

632. *See supra* notes 615 to 630 and accompanying text.

633. People v. Spiegel, 693 N.Y.S.2d 393, 395 (N.Y. City Crim. Ct. 1999).

634. *See, e.g.*, State v. Cobb, 2003 Ohio 3034 (Ohio Ct. App. 2003) (unreported) (affirming obstruction conviction where defendant failed to provide an officer with a social security number, full name, and a correct birthdate).

obstruction statutes.[635] Similarly, in cases where defendants have engaged in minor altercations with police officers during an arrest, the defendants may have acted with intent to protect themselves, and thus, would not have acted with intent to obstruct.[636]

A legislature also could narrow the range of obstructionist conduct by limiting the offense to conduct that "substantially" obstructs the public officer. Thus, instances of relatively minor interference with a police officer's duties would not be punishable under the broad statutes. For example, the defendant protester in *Diamond* who stood in the officer's way while the officer attempted to arrest another protester, and was found guilty under a more stringent statute, could have been found to not have substantially obstructed the officer's duty under a broader statute.[637]

Finally, the offenses could be restricted to cases in which a defendant obstructs by certain means. For instance, Hawaii's obstruction statute requires the prosecution to prove that the defendant obstructed governmental operations by "using or threatening to use violence, force, or physical interference or obstacle."[638] A statute also could prohibit obstruction by intimidation, force, or a threat of force.[639] Such limitations certainly would eliminate convictions based solely on the defendant's innocuous speech or the defendant's simple omission.[640]

VII. CONCLUSION

An examination of obstruction of justice laws in the United States reveals significant differences in their definition and scope. First, many statutes are cast in very general terms, which opens the door to their being used to prosecute a broad range of conduct. Meanwhile, other strictures are comparatively focused, which may make them

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635. *See* Brogan v. United States, 522 U.S. 398, 118 S. Ct. 805 (1998) (holding that the "exculpatory no" doctrine is not an exception to the federal crime of making a false statement). For an example of a case upholding the exculpatory doctrine, see *People v. Alvarado*, 704 N.E.2d 937 (1998) (providing false birthdates to police falls under exculpatory doctrine).

636. *See, e.g.*, State v. Davis, 749 N.E.2d 322, 323-24 (Ohio Ct. App. 2000) (affirming conviction where defendant refused an officer's orders to stop for a jaywalking violation); City of Grand Forks v. Cameron, 435 N.W.2d 700, 703 (N.D. 1989) (affirming conviction where defendant stepped in front of an officer who was attempting to break up a party and refused officer's orders to leave).

637. State v. Diamond, 785 A.2d 887, 890–91 (N.H. 2001).

638. Haw. Rev. Stat. § 710-1010 (1999 & Supp. 2002) (obstructing government operations).

639. See *supra* note 243 for a list of states prohibiting obstruction by certain means.

640. *See, e.g.*, State v. Tinghitella, 491 P.2d 834, 835 (Ariz. 1971) (affirming obstruction conviction where defendant refused to place hands on his vehicle to allow the police to conduct a frisk).

useless in addressing certain unforeseen or inventive schemes designed to undercut the effective administration of justice. Next, prosecutorial authorities in some jurisdictions employ their obstruction legislation in a relatively creative manner while others, if the reported decisions are any measure, seem to turn to the anti-obstruction laws only where certain wrongdoing neatly fits within the clear terms of the enactment.

Not surprisingly, then, many academicians, practitioners, and students of criminal law have little understanding of the potential reach, both good and bad, of obstruction prohibitions in their jurisdictions. In this author's albeit most unscientific survey of the Illinois academics, police, prosecutors, criminal defense attorneys, judges, and students of criminal law he encounters with regularity, most are surprised to learn the type of conduct that the Illinois obstruction of justice law has been used to prosecute. The law has reached, for example, swallowing illicit drugs,[641] or what a police officer believes to be illicit drugs[642] upon being apprehended by police authorities; it has also reached giving police a false name and birth date during a traffic stop.[643] That being said, if a drug courier throws his illicit drugs, or what an officer believes is illicit drugs, out of his car window upon police approach, has the drug courier obstructed justice? If a driver, following a traffic stop, falsely claims he did not realize his automobile tail light was burned out, where police can establish that he was given a warning the previous day, does that also constitute obstruction?

Obviously, those in law enforcement may not totally understand what a prosecutorial gold mine may be hidden in obstruction laws.[644] And of course, defense attorneys and civil libertarians may not fully realize the future challenges that may await them if relatively dormant obstruction measures turn out to be the sleeping giant who is no longer sleeping.

If these examples, some supported by Illinois case law and others that for today remain only a hypothetical, are any gauge of the current scope of obstruction of justice in American criminal law and its potential force in the future, participants and observers of our criminal justice system should not overlook the growing importance of the crime of obstruction of justice.

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641. People v. Brake, 783 N.E.2d 1084, 1086-87 (Ill. App. Ct. 2003).

642. People v. Smith, 786 N.E.2d 1121, 1125-26 (Ill. App. Ct. 2003) (holding that, in order to convict for obstructing justice, it is not necessary for the state to prove that the substance the defendant swallowed, which the officer believed was a controlled substance, was in fact a controlled substance).

643. People v. Ellis, 765 N.E.2d 991, 998 (Ill. 2002) (rejecting the "exculpatory no" doctrine).

644. In those jurisdictions with relatively narrow obstruction laws, pro-law enforcement legislators can be expected to urge the passage of more open-ended and far-reaching obstruction statutes.