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(b) Making a false report is a class A misdemeanor. (§ 6 ch 166 SLA 1978)

NOTES TO DECISIONS

Statements prohibited. — Defendant's statements concerning his oral accusation that a police officer had taken \$250 from the glove compartment of his truck, which the police officer authorized to be towed without operating lights or current regis-

tration, were prohibited by former AS 11.30.215, which made it a misdemeanor to give a false report of a crime to a peace officer. *Gottschalk v. State*, Sup. Ct. Op. No. 1566 (File No. 2916), 575 P.2d 289 (1978).

**Sec. 11.56.810. Terroristic threatening.** (a) A person commits the crime of terroristic threatening if the person knowingly makes a false report that a circumstance dangerous to human life exists or is about to exist and

- (1) places a person in fear of physical injury to any person;
- (2) causes evacuation of a building; or
- (3) causes serious public inconvenience.

(b) Terroristic threatening is a class C felony. (§ 6 ch 166 SLA 1978)

Collateral references. -- Criminal offense of bomb hoax or making false report as to planting of explosive, 63 ALR2d 304. Possession of bomb, Molotov cocktail, or

similar device as criminal offense, 42 ALP5d 1230. Validity and construction of "terroristic threat" statutes, 58 ALR3d 533.

**Sec. 11.56.820. Tampering with public records.** (a) A person commits the crime of tampering with public records if the person knowingly

- (1) makes a false entry in or falsely alters a public record; or
- (2) destroys, mutilates, suppresses, conceals, removes, or otherwise impairs the verity, legibility, or availability of a public record, knowing that the person lacks the authority to do so.

(b) Tampering with public records is a class A misdemeanor. (§ 6 ch 166 SLA 1978)

NOTES TO DECISIONS

For case construing former AS 11.30.210 — 11.30.260, relating to mishandling of public records, see *Larson v. State*, Sup. Ct. Op. No. 1430 (File No. 2433), 564 P.2d 365 (1977).

**Sec. 11.56.830. Impersonating a public servant.** (a) A person commits the crime of impersonating a public servant if the person pretends to be a public servant and does any act in that capacity

(b) It is not a defense to a prosecution under this section that

- (1) the office the defendant pretended to hold did not in fact exist; or

nt of offense of  
r impeding federal

e to charge of rape,  
sault with intent to  
id 1351.

vated assault, or  
s or deadly weapon.

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s attacked at his  
ess or employment.

ng of or injury to  
uring attempted  
d 620.

to charge of criminal  
§ ALR3d 662.

r operator of theatre  
patron assaulted by  
LR3d 441.

or assault to commit  
y intent to collect or  
88 ALR3d 1309.

gerous or deadly  
ing of assault or  
LR3d 1026.

r or operator of  
r business housed  
patron on premises  
by third party, 93

bility for physical  
v in connection with  
y disordered patient.

de as deadly or dan-  
purposes of statute  
s such as assault,  
100 ALR3d 287.

uction of penal stat-  
abuse, 1 ALR4th 38.

f assault and battery  
ction of females only  
reater penalties for  
es, 5 ALR4th 708.

dangerous weapon for  
aggravating offenses  
robbery, 7 ALR4th

deadly or dangerous  
pose of statutes  
such as assault and  
42.

multiple victims as  
e assaults or homi-

on body, other than  
ngerous weapons for  
aggravating offenses  
robbery, 8 ALR4th

Admissibility of expert or opinion testi-  
mony on battered wife or battered woman  
syndrome, 18 ALR4th 1153.

**Sec. 11.41.200. Assault in the first degree.** (a) A person commits the crime of assault in the first degree if

(1) that person recklessly causes serious physical injury to another by means of a dangerous instrument;

(2) with intent to cause serious physical injury to another, the person causes serious physical injury to any person; or

(3) the person intentionally performs an act that results in serious physical injury to another under circumstances manifesting extreme indifference to the value of human life.

(b) Assault in the first degree is a class A felony. (§ 3 ch 166 SLA 1978; am § 2 ch 143 SLA 1982)

**Effect of amendments.** — The 1982 amendment, in paragraph (1) of subsection (a), substituted "that person recklessly

causes" for "with intent to cause" and deleted "he causes physical injury to any person" following "another person."

#### NOTES TO DECISIONS

- I. General Consideration.
- II. Subsection (a)(1).
- III. Former law.

#### I. GENERAL CONSIDERATION.

**Quoted in** *Smith v. State*, Sup. Ct. Op. No. 2121 (File No. 4228), 614 P.2d 300 (1980); *Blackburn v. State*, Ct. App. Op. No. 243 (File No. 7224), 661 P.2d 1100 (1983).

**Stated in** *State v. Silas*, Sup. Ct. Op. No. 1851 (File No. 4237), 595 P.2d 651 (1979); *Coleman v. State*, Sup. Ct. Op. No. 2190 (File No. 4416), 621 P.2d 869 (1980).

**Cited in** *Handley v. State*, Sup. Ct. Op. No. 2155 (File Nos. 3946, 4935), 615 P.2d 627 (1980); *Folger v. State*, Ct. App. Op. No. 105 (File No. 5585), 648 P.2d 111 (1982).

#### II. SUBSECTION (a)(1).

**Mens rea and result.** — Subsection (a)(1) of this section requires intent to cause serious physical injury as the mens rea, and physical injury as the result. *Wettanen v. State*, Ct. App. Op. No. 200 (File No. 6352), 656 P.2d 1213 (1983).

**Dangerous instrument.** — The requirement of a "dangerous instrument" in subsection (a)(1) of this section serves to

define the surrounding circumstances from which intent is normally inferred. *Wettanen v. State*, Ct. App. Op. No. 200 (File No. 6352), 656 P.2d 1213 (1983).

The requirement of a dangerous instrument in subsection (a)(1) of this section serves to shift the focus of the trier of fact's attention from the result (physical injuries), which in any given case may have been unforseeable to the defendant at the time the assault was committed, to the manner in which the assault was committed. Thus, the defendant is protected against a finding of first-degree assault in which the jury determines guilt solely by finding serious physical injury and then inferring an intent to cause that serious physical injury from the injuries alone. *Wettanen v. State*, Ct. App. Op. No. 200 (File No. 6352), 656 P.2d 1213 (1983).

While feet are not dangerous instruments per se, they may become so, however they are shod, if used in such a way as to be capable of causing death or serious physical injury. *Wettanen v. State*, Ct. App. Op. No. 200 (File No. 6352), 656 P.2d 1213 (1983).

e No. 4383), 616 P.2d 884

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ault while armed, see  
up. Ct. Op. No. 1611 (File  
2d 946 (1978); Sevier v.  
Op. No. 2134 (File No.  
91 (1980).

struing former statute  
ess use of firearms, see  
p. Ct. Op. No. 1625 (File  
2d 14 (1978); Christie v.  
p. No. 1644 (File No.  
110 (1978); Elisovsky v.  
p. No. 1816 (File Nos.  
2d 1221 (1979); Loesche  
Op. No. 2202 (File No.  
16 (1980).

struing former statute  
ult with a dangerous  
v. United States, 147 F.  
Johnston v. United  
145 (9th Cir. 1907);  
States, 12 Alaska 213,  
Cir. 1949; Randall v.  
Alaska 135, 215 F.2d  
Soper v. United States,  
90 F.2d 158 (9th Cir.),  
S. 828, 765 Ct. 58, 100  
Tarke v. United States,  
Cir. 1960; Hobbs v.  
36 46 (File No. 63), 363  
acey v. State, Sup. Ct.  
50, 373), 391 P.2d 732  
v. State, Sup. Ct. Op.  
907), 444 P.2d 171  
late, Sup. Ct. Op. No.  
449 P.2d 674 (1969);  
Ct. Op. No. 629 (File  
1633 (1970); State v.  
Op. No. 686 (File No.  
96 (1971); Nielsen v.  
a 760 (File No. 1503),  
Thomas v. State, Sup.  
e No. 1889), 524 P.2d  
ate, Sup. Ct. Op. No.  
542 P.2d 159 (1975);  
Ct. Op. No. 1256 (File  
373 (1976); Else v.  
No. 1332 (File No.  
0 (1976); Dawson v.  
No. 1346 (File No.  
(1976); Mutschler v.  
No. 1376 (File No.  
7 (1977); State v.  
p. No. 1405 (File No.  
(1977); Nukapigak v.  
No. 1410 (File No.  
7 (1977); "H'd on  
82 (1978); State v.  
No. 1457 (File No.  
7 (1977); Walton v.  
No. 1488 (File No.

2736), 568 P.2d 981 (1977); Larson v.  
State, Sup. Ct. Op. No. 1502 (File No.  
2882), 569 P.2d 783 (1977); White v. State,  
Sup. Ct. Op. No. 1605 (File No. 2952), 577  
P.2d 1056 (1978); Rivett v. State, Sup. Ct.  
Op. No. 1611 (File No. 3097), 578 P.2d 946  
(1978); Menard v. State, Sup. Ct. Op. No.  
1623 (File No. 2865), 578 P.2d 966 (1978);  
State v. Wassilie, Sup. Ct. Op. No. 1630  
(File No. 3691), 578 P.2d 971 (1978);  
Christie v. State, Sup. Ct. Op. No. 1644  
(File No. 2841), 580 P.2d 310 (1978);  
Johnson v. State, Sup. Ct. Op. No. 1656  
(File No. 3424), 580 P.2d 700 (1978);  
Sielak v. State, Sup. Ct. Op. No. 1667 (File  
No. 3954), 581 P.2d 226 (1978); Mill v.  
State, Sup. Ct. Op. No. 1751 (File No.  
2692), 585 P.2d 546 (1978), cert. denied,  
444 U.S. 827, 100 S. Ct. 51, 62 L. Ed. 2d 34  
(1979); Marsden v. State, Sup. Ct. Op. No.  
1784 (File No. 3957), 589 P.2d 863 (1979);  
Ferguson v. State, Sup. Ct. Op. No. 1791  
(File No. 3890), 590 P.2d 43 (1979); Price v.  
State, Sup. Ct. Op. No. 1794 (File No.  
3524), 590 P.2d 419 (1979); Elisovsky v.  
State, Sup. Ct. Op. No. 1816 (File Nos.  
3440, 3467), 592 P.2d 1221 (1979); State v.  
Silas, Sup. Ct. Op. No. 1851 (File No.  
4237), 595 P.2d 651 (1979); Cooper v.  
State, Sup. Ct. Op. No. 1852 (File No.  
3588), 595 P.2d 648 (1979); Gilbert v.  
State, Sup. Ct. Op. No. 1889 (File No.  
3406), 598 P.2d 87 (1979); Creer v. State,  
Sup. Ct. Op. No. 1941 (File No. 4180), 600  
P.2d 1095 (1979); Kraus v. State, Sup. Ct.  
Op. No. 1989 (File No. 4669), 604 P.2d 12  
(1979); Holmes v. State, Sup. Ct. Op. No.  
2000 (File No. 4532), 604 P.2d 248 (1979);  
Lacy v. State, Sup. Ct. Op. No. 2039 (File

No. 3741), 608 P.2d 19 (1980); Cochrane v.  
State, Sup. Ct. Op. No. 2086 (File No.  
4531), 611 P.2d 61 (1980); Sevier v. State,  
Sup. Ct. Op. No. 2134 (File No. 4632), 614  
P.2d 791 (1980); Loesche v. State, Sup. Ct.  
Op. No. 2202 (File No. 4443), 620 P.2d 646  
(1980); Calder v. State, Sup. Ct. Op. No.  
2224 (File No. 4293), 619 P.2d 1026 (1980);  
Grant v. State, Sup. Ct. Op. No. 2261 (File  
No. 3750), 621 P.2d 1338 (1981); Kagak v.  
State, Sup. Ct. Op. No. 2311 (File No.  
5228), 624 P.2d 818 (1981); Neal v. State,  
Sup. Ct. Op. No. 2341 (File No. 4787), 628  
P.2d 19 (1981); Wire v. State, Ct. App. Op.  
No. 2 (File No. 5189), 621 P.2d 18 (1980);  
Schroff v. State, Ct. App. Op. No. 016 (File  
No. 4835), 627 P.2d 653 (1981); State v.  
Ahwinona, Ct. App. Op. No. 037 (File No.  
5373), 635 P.2d 488 (1981); Davidson v.  
State, Ct. App. Op. No. 78 (File No. 4351),  
642 P.2d 1383 (1982); Sheakley v. State,  
Ct. App. Op. No. 87 (File No. 4936), 644  
P.2d 864 (1982); Dyer v. State, Ct. App.  
Op. No. 268 (File No. 6133), P.2d  
(1983).

For cases construing former statute  
relating to assault and assault and  
battery, see Niebia v. United States, 72  
F.2d 1000 (9th Cir. 1934); State v. Spencer,  
Sup. Ct. Op. No. 935 (File No. 1742), 514  
P.2d 14 (1973); Peter v. State, Sup. Ct. Op.  
No. 1543 (File No. 3617), 572 P.2d 1179  
(1978); Rivett v. State, Sup. Ct. Op. No.  
1611 (File No. 3097), 578 P.2d 946 (1978);  
Penn v. State, Sup. Ct. Op. No. 1774 (File  
No. 3873), 588 P.2d 288 (1978); Nix v.  
State, Ct. App. Op. No. 007 (File No. 5060),  
624 P.2d 823 (1981).

**Sec. 11.41.210. Assault in the second degree.** (a) A person  
commits the crime of assault in the second degree if

(1) with intent to cause physical injury to another person, that person  
causes physical injury to another person by means of a dangerous  
instrument; or

(2) that person recklessly causes serious physical injury to another  
person.

(b) Assault in the second degree is a class B felony. (§ 3 ch 166 SLA  
1978; am § 4 ch 102 SLA 1980; am § 3 ch 143 SLA 1982)

**Effect of amendments.** — The 1980  
amendment, in subsection (a),  
redesignated former paragraph (1) as  
paragraph (2), added "or" to the end of that  
paragraph, added present paragraph (1),  
and deleted the previous paragraph (2),  
which read: "he intentionally places an-  
other person in fear of imminent serious

physical injury by means of a dangerous  
instrument; or"

The 1982 amendment, in subsection (a),  
substituted "that person" for "he"  
preceding "causes" and "another person"  
for "any person" preceding "by means of"  
in paragraph (1), added "or" to the end of  
paragraph (1), repealed former paragraph

(2), which read: "with intent to cause physical injury to another person, he causes serious physical injury to any person; or," redesignated former paragraph (3) as paragraph (2), and substituted "that person" for "he" and deleted "by means of a dangerous instrument" from the end.

both in present paragraph (2).

**Legislative history reports.** — For a report on Chapter 102, SLA 1980 (HCS CSSB 511), see 1980 Senate Journal Supplement, No. 44, May 29, 1980, or 1980 House Journal Supplement, No. 79, May 28, 1980.

#### NOTES TO DECISIONS

**Former law.** — See notes to AS 11.41.200 under analysis line III.

**Sentence upheld.** — See *Williams v. State*, Ct. App. Op. No. 139 (File No. 5676), 652 P.2d 478 (1982).

A 10-year total sentence with five years suspended for assault in the second degree was not excessive even though defendant was a first felony offender and the sentence exceeded the presumptive term for a second offender. *Neakok v. State*, Ct. App. Op. No. 163 (File No. 6418), 653 P.2d 658 (1982).

**Applied in** *State v. Silas*, Sup. Ct. Op. No. 1851 (File No. 4237), 595 P.2d 651 (1979); *Kimbrell v. State*, Ct. App. Op. No. 101 (File No. 5944), 647 P.2d 618 (1982).

**Stated in** *Coleman v. State*, Sup. Ct. Op. No. 2190 (File No. 4416), 621 P.2d 869 (1980).

**Cited in** *State v. Ahwinona*, Ct. App. Op. No. 037 (File No. 5373), 635 P.2d 488 (1981); *Larson v. State*, Ct. App. Op. No. 177 (File No. 6179), 656 P.2d 571 (1982).

**Sec. 11.41.220. Assault in the third degree.** (a) A person commits the crime of assault in the third degree if that person recklessly

(1) places another person in fear of imminent serious physical injury by means of a dangerous instrument; or

(2) causes physical injury to another person by means of a dangerous instrument.

(b) Assault in the third degree is a class C felony. (§ 5 ch 102 SLA 1980; am § 4 ch 143 SLA 1982)

**Effect of amendments.** — The 1982 amendment, in subsection (a), added the paragraph (1) designation, substituted "that person" for "he" in the introductory language, added "or" to the end of paragraph (1), and added paragraph (2).

**Legislative history reports.** — For a report on Chapter 102, SLA 1980 (HCS CSSB 511) see 1980 Senate Journal Supplement, No. 44, May 29, 1980, or 1980 House Journal Supplement, No. 79, May 28, 1980.

#### NOTES TO DECISIONS

**"Dangerous instrument" defined.** — Since "dangerous instrument" includes "deadly weapon," and "deadly weapon" includes "any firearm," which in turn is defined to include unloaded rifles, simple substitution yields an unambiguous statute that prohibits the use of an unloaded rifle to place another in fear of imminent serious physical injury. *Siggelkow v. State*, Ct. App. Op. No. 110 (File No. 5532), 648 P.2d 611 (1982).

Former AS 11.41.210(a)(2) (prior to 1980 amendment) and 11.41.900(b)(1) were not so ambiguous as to deprive defendant

of fair warning that placing another in fear by means of an unloaded firearm, from any distance, was prohibited. *Siggelkow v. State*, Ct. App. Op. No. 110 (File No. 5532), 648 P.2d 611 (1982).

**Applied in** *Wolf v. State*, Ct. App. Op. No. 99 (File No. 5882), 647 P.2d 609 (1982); *McManners v. State*, Ct. App. Op. No. 123 (File No. 6055), 650 P.2d 414 (1982); *Bidwell v. State*, Ct. App. Op. No. 199 (File No. 6290), 653 P.2d 592 (1983); *Wright v. State*, Ct. App. Op. No. 204 (File No. 6569), 656 P.2d 1226 (1983).

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Silas, Sup. Ct. Op.  
237), 595 P.2d 651  
te. Ct. App. Op. No.  
47 P.2d 618 (1982).  
State, Sup. Ct. Op.  
416), 321 P.2d 869

winona, Ct. App.  
373), 635 P.2d 488  
Ct. App. Op. No.  
6 P.2d 571 (1982).

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loaded firearm,  
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1, 650 P.2d 414  
Ct. App. Op. No.  
P.2d 592 (1983);  
Op. No. 201 (File  
(1983).

Stated in *Maynard v. State*, Ct. App.  
Op. No. 136 (File No. 5501), 652 P.2d 489  
(1982).

**Sec. 11.41.230. Assault in the fourth degree.** (a) A person commits the crime of assault in the fourth degree if

- (1) that person recklessly causes physical injury to another person;
- (2) with criminal negligence that person causes physical injury to another person by means of a dangerous instrument; or
- (3) by words or other conduct that person recklessly places another person in fear of imminent physical injury.

(b) Assault in the fourth degree is a class A misdemeanor. (§ 3 ch 166 SLA 1978; am § 6 ch 102 SLA 1980; am § 5 ch 143 SLA 1982)

**Effect of amendments.** — The 1980 amendment substituted "fourth" for "third" preceding "degree" in the introductory paragraph in subsection (a), and in subsection (b), and deleted "intentionally or" near the beginning of paragraph (1) in subsection (a).

The 1982 amendment, in subsection (a),

substituted "that person recklessly" for "he intentionally" in paragraph (3).

**Legislative history reports.** — For a report on Chapter P2, SLA 1980 (HCS CSSB 511), see 1980 Senate Journal Supplement, No. 44, May 29, 1980, or 1980 House Journal Supplement, No. 79, May 28, 1980.

NOTES TO DECISIONS

**Applied in** *Bidwell v. State*, Ct. App. Op. No. 199 (File No. 6290), 656 P.2d 592 (1983); *Jackson v. State*, Ct. App. Op. No. 211 (File No. 6664), 657 P.2d 405 (1983).

**Quoted in** *Maynard v. State*, Ct. App. Op. No. 136 (File No. 5501), 652 P.2d 489 (1982).

**Cited in** *Folger v. State*, Ct. App. Op. No. 105 (File No. 5555), 648 P.2d 111 (1982); *Kelly v. State*, Ct. App. Op. No. 143 (File No. 6521), 652 P.2d 112 (1982); *Moxie v. State*, Ct. App. Op. No. 246 (File No. 7192), 662 P.2d 990 (1983).

**Collateral references.** — Standard for judging conduct of minor motorist charged with gross negligence, recklessness, wilful

or wanton misconduct, or the like, under guest statute or similar common-law rule, 97 ALR2d 861.

**Sec. 11.41.250. Reckless endangerment.** (a) A person commits the crime of reckless endangerment if the person recklessly engages in conduct which creates a substantial risk of serious physical injury to another person.

(b) Reckless endangerment is a class A misdemeanor. (§ 3 ch 166 SLA 1978)

Article 3. Kidnapping and Custodial Interference.

**Section**  
300. Kidnapping  
320. Custodial interference in the first degree

**Section**  
330. Custodial interference in the second degree  
370. Definitions

ANNOTATION

VALIDITY AND CONSTRUCTION OF "TERRORISTIC  
THREAT" STATUTES

by

*Jeffrey F. Ghent, J.D.*

Section 211.3 of the American Law Institute's Model Penal Code, Proposed Official Draft (1962), makes it a felony of the third degree to threaten to commit any crime of violence with purpose to terrorize another or to cause evacuation of a building, place of assembly, or facility of public transportation, or otherwise to cause

serious public inconvenience, or to make such threats in reckless disregard of the risk of causing such terror or inconvenience.<sup>1</sup>

This annotation collects the cases in which the courts have construed or passed upon the validity of such statutes<sup>2</sup> expressly making "terroristic

1. The section entitled "Terroristic Threats" is distinguished in an official note from a related provision punishing "Criminal Coercion" (§ 212.5), the Institute explaining that the object of § 211.3 is to prevent serious alarm for personal safety, such as may arise from letters or anonymous telephone calls threatening death, kidnaping, or bombing, and that

in the case of terroristic threats, there is no occasion to exempt from criminal liability on the ground of the actor's possibly benign ultimate purpose, as is appropriate in connection with the offense of coercion.

2. Since the statutes are included only to the extent that they are reflected in the

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- 16 AM JUR 2d, Constitutional Law § 319; 31 AM JUR 2d, Extortion, Blackmail, and Threats §§ 14-17
- 13 AM JUR TRIALS 463, Defending Minor Felony Cases
- ALR DIGESTS, Constitutional Law § 792
- US L ED DIGEST, Constitutional Law § 935.5
- ALR QUICK INDEX, Explosions and Explosives; Freedom of Speech and Press; Threats
- FEDERAL QUICK INDEX, Bombs; Explosions and Explosives; Freedom of Speech and Press; Threats
- L ED INDEX TO ANNOT., Freedom of Speech, Press, Religion, and Assembly; Threats

Consult POCKET PART in this volume for later cases

threats" a separate and distinct criminal offense. Thus, the present annotation does not include cases involving the offenses of extortion, blackmail, or threats generally.<sup>1</sup> Among other offenses involving, or often involving, threats but not designated in terms of "terroristic threats," and therefore beyond the scope of this annotation, are assault,<sup>2</sup> robbery,<sup>3</sup> sedition,<sup>4</sup> "night riding" and "whitecapping,"<sup>5</sup> "bomb hoax,"<sup>6</sup> and the specific federal offenses of racketeering,<sup>7</sup> extortionate credit transactions,<sup>8</sup> riots,<sup>9</sup> intimidating witnesses, jurors, or federal officers,<sup>10</sup> threatening the President,<sup>11</sup> extortion by federal officers or employees,<sup>12</sup> using violations of federal law to blackmail,<sup>13</sup> inducing kickbacks from public works employees,<sup>14</sup> and mailing, or transmitting in interstate commerce, threatening communications.<sup>15</sup>

In the following cases, the validity of "terroristic threat" statutes, as construed by the courts, was upheld.

reported cases within the scope of this annotation, the reader is advised to consult the latest comments in his jurisdiction.

1. See 51 Am Jur 2d, Extortion, Blackmail, and Threats.

2. See generally, 6 Am Jur 2d, Assault and Battery §§ 28-31. As to assault with intent to murder or kill, see 40 Am Jur 2d, Homicide §§ 568-532. As to assault with intent to rob, see 67 Am Jur 2d, Robbery §§ 79-85.

3. See 57 Am Jur 2d, Robbery §§ 22-26.

4. See, generally, 70 Am Jur 2d, Sedition, Subversive Activities, and Treason.

5. See 31 Am Jur 2d, Extortion, Blackmail, and Threats § 16.

6. See the annotation, "Criminal offense of bomb hoax or making false report as to planting of explosive," at 93 ALR2d 304.

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A Georgia statute punishing terroristic threats and acts, and providing that a person commits a terroristic threat when he threatens to commit any crime of violence, or to burn or damage property, with the purpose of terrorizing another, or of causing the evacuation of a building, place of assembly, or facility of public transportation, or otherwise causing serious public inconvenience, or when he makes such threats in reckless disregard of the risk of causing such terror or inconvenience, was held neither violative of the First Amendment right to free speech nor unconstitutionally vague, at least in pertinent part, in *Mason v Slaton* (1970, 10 Ga) 320 F Supp 659, the court granting a defense motion for judgment on the pleadings in an action for injunctive and declaratory relief against enforcement of the statute. As to the contention that the statute proscribed constitutionally protected conduct by

9. See the annotations at 1 ALR Fed 838 and 4 ALR Fed 881. See also 31 Am Jur 2d, Extortion, Blackmail, and Threats §§ 18-20.

10. See the annotation, "Validity, construction, and application of Consumer Protection Act provisions (18 USC §§ 891-896) prohibiting extortionate credit transactions," at 7 ALR Fed 950.

11. See the Federal Anti-Riot Act of 1963 (18 USCS §§ 2101, 2102).

12. See 18 USCS § 1703.

13. See the annotation, "Validity and construction of federal statute (18 USC § 871) punishing threats against the President," at 22 L Ed 2d 988.

14. See 18 USCS § 872.

15. See 18 USCS § 873.

16. See 18 USCS § 874.

17. See 18 USCS §§ 875, 876.

making illegal bare statements without an overt act or attempt to carry out the threat, the court replied that statements alone can be without First Amendment protection; that although the right to free speech entitles an individual to advocate certain ideas regardless of their popularity, it does not extend to the threatening of terror, inciting of riots, or placing another's life or property in danger; and that the indictment against the plaintiff made just such an accusation—that he had threatened in the presence of a third party to burn and damage 11 automobiles owned by another for the purpose of terrorizing the owner. It was further contended that the statute was unconstitutionally vague because it required a man of ordinary intelligence to guess at its meaning, and because some portions of the statute were so ambiguous as to fail to give fair and adequate warning of the conduct proscribed. However, the court pointed out that it was only necessary to consider that portion of the statute under which the plaintiff had been indicted, namely, the provision that a person commits a terroristic threat when he threatens to burn or damage property with the purpose of terrorizing another. Concluding that there was nothing vague or indefinite in this provision, the court stated that no meaningful contention could be made that the provision failed to adequately inform the plaintiff of the conduct prohibited.

A Kansas statute making a terroristic threat a felony, and defining a terroristic threat as any threat to com-

mit violence communicated with intent to terrorize another, or to cause the evacuation of any building, place of assembly, or facility of transportation, or imparted in wanton disregard of the risk of causing such terror or evacuation, was held valid against a contention that it was unconstitutionally vague under both the Kansas Constitution and the Fourteenth Amendment to the United States Constitution, in *State v. Gunzelman* (1972) 210 Kan 481, 502 P2d 705, 38 ALR3d 522, the court reversing on other grounds a conviction for making a terroristic threat to a highway patrol officer. The patrolman had issued a traffic ticket to one of the defendant's truckdrivers, and the alleged terroristic threat, made at the patrolman's home, was apparently intended to prevent further tickets to the drivers.<sup>18</sup> Observing generally that the idea for the new statute, designed to fill a gap in the law, had been drawn from the American Law Institute's Model Penal Code § 211.3, *supra*, the court recognized that a statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties. However, characterizing the "main thrust" of the defendant's constitutional argument as based upon a failure by the legislature to define the words "threat" and "terroristic," the court pointed out that a general definition section of the Kansas Criminal Code defined a threat as "a communicated intent to inflict physical or other harm on any person or on property." The court also

18. Although not ruling on the sufficiency of the evidence to support the conviction, the court did state the language of the alleged threat as follows: "I am warning you for the last time that you are not pulling my drivers over for no

reason and arresting them. . . . You have a wife and family. You had better give some thought to that. You are gone a lot of nights. Where is your bedroom? I will be back."

noted that in a similar case,<sup>19</sup> the word "terrorize" had been defined as "to reduce to terror by violence or threats," and the word "terror" as "an extreme fear or fear that agitates body and mind." Given limiting definitions for the words "threat" and "terrorize," as those terms are understood by men of common intelligence, the court said, the statute proscribing terroristic threats survives any constitutional challenge for vagueness and uncertainty. Finally, the court observed that although the statute might have been directed at campus unrest, fire and bomb threats to public buildings, and acts of mob violence, the main elements of the offense were threats communicated with a specific intent to terrorize another, and that the wording of the statute appeared sufficient to proscribe such threats whether directed generally against one or more persons, and regardless of the purpose which the terrorist had in mind to accomplish.

The following annotations may be of related interest:

Peaceful picketing of private residence. 42 ALR3d 1353.

Possession of bomb, Molotov cocktail, or similar device as criminal offense. 42 ALR3d 1230.

Validity of blasphemy statutes or ordinances. 41 ALR3d 519.

Attacks on judiciary as a whole as indirect contempt. 40 ALR3d 1204.

Participation of student in demonstration on or near campus as warranting imposition of criminal liability for breach of peace, disorderly con-

duct, in mass, unlawful assembly, or similar offense. 32 ALR3d 551.

Criminal offense of bomb hoax or making false report as to planting of explosive. 33 ALR2d 304.

Assaulting, threatening, or intimidating witness by ex parte of court. 52 ALR2d 1297.

Homicide causing one, by means of fright, to leap or fall to his death. 25 ALR2d 1183.

Civil liability for insulting or abusive language not amounting to defamation. 15 ALR2d 108.

Validity of legislation directed against political, social, or industrial propaganda deemed to be of a dangerous tendency. 75 ALR 1494, supplementing 1 ALR 356 and 20 ALR 1535.

Opprobrious words addressed to policeman as breach of peace. 27 ALR 566.

Validity, construction, and application of Civil Obedience Act of 1965 (18 USC §§ 231-233) punishing certain acts in connection with civil disorders. 16 ALR Fed 906.

Validity, construction, and application of Consumer Credit Protection Act provisions (18 USC §§ 891-895) prohibiting extortionate credit transactions. 7 ALR Fed 959.

Elements of offense proscribed by the Hobbs Act (18 USC § 1351) against racketeering in interstate or foreign commerce. 4 ALR Fed 881.

Validity, construction, and effect of 18 USC § 1952, making it a federal offense to use interstate or foreign travel or transportation in aid of racketeering enterprises. 1 ALR Fed 533.

Validity and construction of federal statute proscribing threats done for the purpose of terrorizing or, alternatively, for the purpose of causing, through threats, any citizen to do any unlawful thing.

19. *Armstrong v Ellington* (1970, DC Tenn) 312 F Supp 1119, involved a Tennessee statute which did not, strictly speaking, prohibit "terroristic threats," but rather enjoined various acts when

58 ALR3d CONSTRUCTION OF "FERROAUSTIC THERMIST" STATUTE  
58 ALR2d 533

statute 48 USC § 871) punishing or free speech and press. 21 L. Ed 2d  
threats against the President. 22 L. Ed 2d 976, supplementing 93 L. Ed 1151, 2  
2d 588. L. Ed 2d 1705, 11 L. Ed 2d 1116, 10 L.  
The Supreme Court and the right Ed 2d 1053.

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Consult POCKET PART in this volume for later cases