NOTE

"THE INTENT TO INFLUENCE": JURY TAMPERING STATUTES AND THE FIRST AMENDMENT

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United States Court of Appeals for the Second Circuit, affirming the declaration of a mistrial for jury tampering in the case of United States v. Angelo Ruggiero, Gene Gotti, et al.:

> According to Barnes's testimony, Rosenberg said, "[T]here is a case in Queens. It has been going on for quite some time, right, and I know this kid. This kid is a very good friend of mine. I have known him for 42 years." Barnes said he told Rosenberg that he was not on jury duty in Queens but in Brooklyn. Rosenberg continued, "I know this kid for a long time and I just wanted to know how the jury is feeling." Barnes again repeated that he was in Brooklyn and did not know what Rosenberg was talking about. At that point in the conversation, Rosenberg said, "I am just going to give you initials, right, and this case is about drugs. . . . Initial is G.G." Barnes reiterated that he was not on a jury in Queens. Rosenberg said, "Okay, okay, Gene Gotti." Again Barnes said, "I don't know what you are talking about. I am not in Queens." Rosenberg said,
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> > I have known this kid for 42 years. I have known his family. We are good friends. I know his three daughters and everything. I just want to know what the jurors are thinking. I know this guy is probably going to get convicted, going to go to jail. . . . [T]he Government is probably going to try to put this guy away for a long time because of his brother.

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> Rosenberg then mentioned a new BMW and asked him what kind of car he drove. Barnes said that he did not need a car and walked out of the room.[1]

Michigan Court of Appeals, affirming a conviction for jury tampering in the case of People v. Keith Wood*:*

> This matter arose out of [Wood]'s interest in a criminal case involving Andrew Yoder, who had been charged with "a [Department of Environmental Quality] violation" for "illegally draining wetlands." After hearing of the case, defendant decided to attend the pretrial hearing on November 4, 2015, because despite not actually knowing Yoder, the case "piqu[ed] [his] interest." At the pretrial hearing, the court scheduled Yoder's trial for November 24, 2015.
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> Defendant returned to the courthouse on the day set for trial and stood outside the front entrance to pass out pamphlets entitled, "Your Jury Rights: True or False?" that he had obtained from the Fully Informed Jury Association (FIJA) website. The pamphlet explains that jurors may vote according to their conscience. It further advises readers to be aware "when it's your turn to serve" that "[y]ou may, and should, vote your conscience," that "[y]ou cannot be forced to obey a 'juror's oath,'" and that "[y]ou have the right to 'hang' the jury with your vote if you cannot agree with other jurors!"
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> [. . .]
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> Defendant was ultimately arrested and charged with obstruction of justice . . . and jury tampering. Yoder's case, however, never went to trial because the parties reached a plea agreement.[2]

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1 United States v. Ruggiero, 846 F.2d 117, 121 (2d Cir. 1988) (alterations in original).

2 People v. Wood, 928 N.W.2d 267, 273 (Mich. Ct. App. 2018) (internal citations omitted).

INTRODUCTION

One of the fundamental tenets of the jury system is that the jury must decide each case based only on evidence heard in open court and not on the basis of any outside sources.[3] From a court's perspective, there are a number of tools available to control the jury's access to outside information, including attempting to identify prejudiced jurors through voir dire,[4] instructing the jury not to consult any press coverage of the case,[5] and even sequestering the jury for the duration of a trial.[6] In extraordinary cases, a court may empanel a fully anonymous jury to prevent jury interference.[7]

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3 *See, e.g.*, Patterson v. Colorado, 205 U.S. 454, 462 (1907) ("The theory of our system is that the conclusions to be reached in a case will be induced only by evidence and argument in open court, and not by any outside influence, whether of private talk or public print."). The Supreme Court has stressed the importance of an independent jury to ensure against government oppression:

> Those who wrote our constitutions knew from history and experience that it was necessary to protect against unfounded criminal charges brought to eliminate enemies and against judges too responsive to the voice of higher authority. The framers of the constitutions strove to create an independent judiciary but insisted upon further protection against arbitrary action. Providing an accused with the right to be tried by a jury of his peers gave him an inestimable safeguard against the corrupt or overzealous prosecutor and against the compliant, biased, or eccentric judge.

Duncan v. Louisiana, 391 U.S. 145, 155–56 (1968).

4 Voir dire has the obvious limitation of relying on jurors' self-assessment of their own impartiality to determine which jurors have already formed preconceived notions about the case in question. But jurors are notoriously unable to identify their own bias. *See* BRIAN H. BORNSTEIN & EDIE GREENE, THE JURY UNDER FIRE: MYTH, CONTROVERSY, AND REFORM 45–47, 258–59 (2017) (describing jurors' inability to judge their own impartiality, and noting the significant effect of pretrial publicity, in particular, on jurors' judgments).

5 *E.g.*, LEONARD B. SAND ET AL., MODERN FEDERAL JURY INSTRUCTIONS-CRIMINAL ¶ 1.02(1–2) (2020) ("[Y]ou should not try to access any information about the case or do research on any issue that arises in the case from any outside source, including dictionaries, reference books, or anything on the Internet. And in the unlikely event you see anything in the media about this case, please turn away and pay it no heed. Your sworn duty is to decide this case solely and wholly on the evidence presented in this courtroom.").

6 *See, e.g.*, Sheppard v. Maxwell, 384 U.S. 333, 352–53 (1966) (suggesting jury sequestration as an appropriate measure to insulate jury from extensive media coverage of case).

7 *See* Adam Liptak, *Nameless Juries Are on the Rise in Crime Cases*, N.Y. TIMES (Nov. 18, 2002), https://www.nytimes.com/2002/11/18/us/nameless-juries-are-on-the-rise-in-crime-cases.html [https://perma.cc/3ZJ2-MSMU]. The use of anonymous juries, however, raises its own concerns, particularly because jury anonymity suggests to the jury that the defendant is so dangerous that the jury is in need of special protections. *See* Abraham Abramovsky & Jonathan I.

But states also have a more drastic remedy available to limit the provision of outside information to jurors: the imposition of criminal sanctions on individuals who intentionally tamper with a juror's opinion on a case.[8] Organized crime, in particular, has made a habit of attempting to secure acquittals through contacting jurors outside of court and offering incentives for either insider information or a favorable result. The case of Mel Rosenburg's attempted bribery of a juror, excerpted above, is hardly an outlier—on numerous occasions the Gambino crime family was suspected or confirmed to have engaged in juror tampering.[9] What is more, in these cases judicial action has failed to prevent jury tampering. In one case, the Gambino family secured an acquittal via juror bribery despite the fact that the jury was kept anonymous, because the foreman of the jury happened to have connections to organized crime.[10] In another case, the Gambino family evaded an anonymous jury by simply buying out the police officer who guarded the jury during deliberations.[11] In the face of these organized attempts to improperly access and influence jurors, it is no surprise that many jurisdictions have implemented broad jury tampering statutes designed to catch any and all improper jury contact.

These criminal statutes, however, have an obvious vulnerability: in attempting to limit the dissemination of information to jurors, they may run afoul of the First Amendment. Narrow limitations on an individual's ability to attempt to influence a juror may fall under a free speech exception[12] or else survive scrutiny given the compelling state interest in ensuring fair and impartial trials. However, broader applications of jury tampering charges are vulnerable to First Amendment challenges. In particular, a spate of cases in recent years have dealt with the ability of the state to prosecute individuals who distribute gen-

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Edelstein, *Anonymous Juries: In Exigent Circumstances Only*, 13 ST. JOHN'S J. LEGAL COMMENT. 457, 468–72 (1999) (detailing the "eviscerating effect" that jury anonymity has on the defendant's presumption of innocence).

8 *See, e.g.*, 18 U.S.C. § 1503(a), b(3) (2018) (prohibiting certain attempts to "influence, intimidate, or impede any grand or petit juror," punishable by up to ten years' imprisonment).

9 The Gambino family's jury tampering efforts are discussed further *infra* notes 19–22 and accompanying text.

10 *See infra* note 20 and accompanying text.

11 *See* Abramovsky & Edelstein, *supra* note 7, at 466–67.

12 For example, the federal jury tampering statute prohibits, inter alia, attempts to influence "by threats or force." 18 U.S.C. § 1503(a) (2018). "True threat[s]" are a category of speech that falls outside the protection of the First Amendment. *See* Watts v. United States, 394 U.S. 705, 707–08 (1969) (internal quotation marks omitted).

eral information on the jury's powers, rights, and duties, including information on the power of jury nullification.[13] These cases illustrate the tension between two of the United States' most closely-held and cherished rights: the right to a fair and impartial trial by jury and the right to speak freely.

The case of Keith Wood, excerpted above, is one such case. Wood's case, recently decided by the Supreme Court of Michigan,[14] asked that court to determine exactly how far its jury tampering statute can reach before an individual's right to free speech overcomes the state's interest in securing a fair trial through an independent jury. While the Supreme Court of Michigan declined to reach Wood's constitutional arguments in favor of a narrow interpretation of the statute under which he was convicted,[15] this Note proposes an underlying theory for determining where to draw the line in future cases: where an individual's communications with a juror are motivated by the desire to direct a particular outcome in a particular case, then due process concerns overcome the individual's First Amendment rights. But where, as in Wood's case, the individual's juror communications are motivated primarily by the desire to inculcate that juror in a greater debate about the role of the jury or the justice system as a whole, then the individual's First Amendment rights must take precedence. In other words, when jury tampering statutes criminalize communications with the "intent to influence" a juror,[16] that intent to influence must be with respect to some improper *private* goal, not simply *public* participation.

Part I of this Note discusses and categorizes various approaches to the criminalization of jury tampering and identifies a subset of jury tampering statutes whose essential requirement is simply communication with the intent to influence a juror. Part II details several recent First Amendment challenges to these statutes, all involving defendants who engaged

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13 *E.g.*, People v. Iannicelli, 449 P.3d 387, 392, 397 (Colo. 2019) (finding such a prosecution improper, as a reading of the statute broad enough to reach defendants' conduct would implicate serious First Amendment concerns).

14 *See* People v. Wood, No. 159063, 2020 Mich. LEXIS 1239 at *2–3 (Mich. July 28, 2020); *Keith Wood*, FULLY INFORMED JURY ASS'N, https://fija.org/library-and-resources/library/law-and-legal-cases/keith-wood.html [https://perma.cc/D8NR-BRTD] (last visited Nov. 1, 2020) [hereinafter *Keith Wood*].

15 *Wood*, 2020 Mich. LEXIS 1239 at *20–21 ("In sum, under MCL 750.120a(1), an individual summoned for jury duty is not a juror when he or she merely shows up at the courthouse for jury duty. . . . We . . . need not reach defendant's constitutional arguments because we have decided this case on statutory grounds.").

16 *E.g.*, COLO. REV. STAT. § 18-8-609(1) (2020).

in some degree of public participation through their communications with jurors. Part III illustrates how the broad formulation of communication-plus-intent jury tampering statutes implicates First Amendment concerns and suggests that these statutes must be narrowed to exclude public participation in order to pass constitutional muster.

I
JURY TAMPERING STATUTES

From the perspective of a legislative body, the goals of criminalizing improper communications with a juror are clear: to ensure a fair and impartial jury, to guard against mistrials necessitated by tampered-with juries,[17] and to protect individual jurors from harassment, threats, and even outright violence.[18] Organized crime, in particular, has a (not undeserved)

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17 *See, e.g.*, United States v. Ruggiero, 678 F. Supp. 46, 50 (E.D.N.Y.) (finding "manifest necessity" to declare a mistrial where organized crime defendants made attempts to "improperly identify and influence the jury"), *aff'd*, 846 F.2d 117, 121 (2d Cir. 1988).

18 During the recent highly publicized and politicized trial of Roger Stone, noted conspiracy theorist Alex Jones broadcast the name and face of an individual he believed to be a Stone juror, calling the individual "an anti-Trump 'minion'" before "launching a flurry of witness tampering and obstruction of justice allegations." Deanna Paul, *Alex Jones Threatened to Name a Roger Stone Juror. Experts Say That Might Be Jury Tampering.*, WASH. POST (Nov. 7, 2019, 5:33 PM), https://www.washingtonpost.com/politics/2019/11/07/alex-jones-threatened-name-roger-stone-juror-experts-say-that-might-be-jury-tampering/ [https://perma.cc/J8Y9-BX7R]. The individual identified by Jones in this instance was not, in fact, a Stone juror. *See id.* Since Stone's conviction, however, the actual jurors in his case have been subject to extensive personal attacks, including from President Trump. *See* Jeff Mordock, *Conservatives Question if They Get a Fair Shake from Washington Juries*, WASH. TIMES (Nov. 30, 2019), https://www.washingtontimes.com/news/2019/nov/30/conservatives-question-if-they-get-fair-shake-wash/ [https://perma.cc/6NM7-BM6D]; Katelyn Polantz & Dan Berman, *Why the President Is Attacking a Roger Stone Juror, Months After Trial*, CNN (Feb. 21, 2020, 9:30 AM), https://www.cnn.com/2020/02/21/politics/roger-stone-jury-selection/index.html [https://perma.cc/ V97J-C3C8]; Donald Trump (@realDonaldTrump), TWITTER (Feb. 25, 2020, 3:01 PM), https://twitter.com/realDonaldTrump/status/1232395209125707776 [https://perma.cc/9BXT-VAEZ] ("There has rarely been a juror so tainted as the forewoman in the Roger Stone case. Look at her background. She never revealed her hatred of 'Trump' and Stone. She was totally biased, as is the judge. Roger wasn't even working on my campaign. Miscarriage of justice. Sad to watch!"). All twelve of Stone's jurors have since stated that the extensive negative attention has made them feel harassed, afraid, and unsafe, with two jurors (including the forewoman targeted by Trump) stating that they have received threatening mail from strangers. Katelyn Polantz, *Roger Stone Jurors Say They Fear for Their Safety and Plead for Privacy*, CNN (Apr. 16, 2020, 7:44 PM), https://www.cnn.com/2020/04/16/politics/roger-stone-jury-privacy/index.html [https://perma.cc/P3HJ-Y5BG]. "I am frightened that someone could harm my family simply because I was summoned and then chosen to serve on the jury," stated one Stone juror who remains anonymous. *Id.*

reputation for interfering with juries—Gambino family boss John Gotti, for example, earned the nickname "the Teflon Don" following several high-profile acquittals, secured in part by jury tampering.[19] In fact, the foreman of one of the Teflon Don's racketeering trials was eventually indicted and convicted of obstruction of justice after the government discovered that he accepted a $60,000 bribe from the mob in exchange for his vote and his influence over the rest of the jury.[20] Less than a year after this successful bribery, the Gambino family again attempted to buy out a juror in the trial of the Teflon Don's brother, Gene Gotti.[21]

Even where there is no actual or attempted jury tampering, jurors' fears of potential retaliation might still impair their ability to fairly decide a case.[22] In one New Jersey case, *State v.*

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19 *See John Gotti*, FBI, https://www.fbi.gov/history/famous-cases/john-gotti [https://perma.cc/9QWR-Z5UL] (last visited Nov. 8, 2020).

20 *See* Arnold H. Lubasch, *Juror Is Convicted of Selling Vote to Gotti*, N.Y. TIMES (Nov. 7, 1992), https://www.nytimes.com/1992/11/07/nyregion/juror-is-convicted-of-selling-vote-to-gotti.html [https://perma.cc/ULZ4-EH9K]; Robert D. McFadden, *Jury Foreman in 1987 Gotti Trial Is Indicted in Plot to Sell His Vote*, N.Y. TIMES (Feb. 25, 1992), https://www.nytimes.com/1992/02/25/nyregion/jury-foreman-in-1987-gotti-trial-is-indicted-in-plot-to-sell-his-vote.html [https://perma.cc/RMK8-4D2H]. The foreman's preexisting connections to organized crime allowed the Gambino family to orchestrate the bribe despite the fact that the court had made efforts to conceal the identities of the jurors. *See* Leonard Buder, *Gotti Is Aquitted* [sic] *in Conspiracy Case Involving the Mob*, N.Y. TIMES (Mar. 14, 1987), https://www.nytimes.com/1987/03/14/nyregion/gotti-is-aquitted-in-conspiracy-case-involving-the-mob.html [https://perma.cc/BME6-N58R] (describing how the identities of the jurors "had been kept secret to prevent possible tampering").

21 *See Ruggiero*, 678 F. Supp. at 50; *see also supra* note 1 and accompanying text (describing the conversation between the juror and the Gambino family associate, Melvin Rosenberg). Rosenberg was later charged with "conspiracy to obstruct justice and corruptly endeavoring to influence a juror." Associated Press, *Broker Charged with Jury Tampering in Gotti Case*, N.Y. TIMES (Dec. 15, 1988), https://www.nytimes.com/1988/12/15/nyregion/broker-charged-with-jury-tampering-in-gotti-case.html [https://perma.cc/X8MX-NCKJ]. However, he was eventually acquitted at a jury trial. *See Acquittal in Gambino Jury Tampering Trial*, UNITED PRESS INT'L (Feb. 22, 1989), https://www.upi.com/Archives/1989/02/22/Acquittal-in-Gambino-jury-tampering-trial/5893604126800/ [https://perma.cc/F8NW-F9QN].

22 Following the various trials of John and Gene Gotti, John Gotti, Jr., son of the Teflon Don and alleged inheritor to his throne, also faced multiple prosecutions for racketeering. During his most recent trial in 2009, seven jurors made last-minute requests to be dismissed after hearing opening statements. Tom Leonard, *Jurors Plead to Be Spared from Mafia Trial*, TELEGRAPH (Sept. 21, 2009, 7:11 PM), https://www.telegraph.co.uk/news/worldnews/northamerica/usa/6216076/Jurors-plead-to-be-spared-from-mafia-trial.html [https://perma.cc/U5T6-QHZ5]. During voir dire, one potential juror had been dismissed after expressing his fears of retaliation: "Forget it—you'll get a bullet in the head." *Id.* This fourth prosecution attempt eventually ended in a mistrial when jurors remained deadlocked after eleven days of deliberations. Alan Feuer, *For Fourth Time, Mis-*

Gleaton, where the defendant was an alleged drug dealer, the jury spent part of their deliberations discussing the possibility of retaliation after the foreperson related a story about a neighbor whose house was (according to the foreperson) set on fire because she interfered with local drug dealers.[23] This story apparently prompted another juror to ask whether any jurors were afraid of retaliation in the present case.[24] This conversation, among other tensions within the jury, ultimately caused deliberations to devolve to the point that the trial judge stripped the original foreperson of her duties and appointed a new foreperson.[25] Although the jury was able to reach a unanimous guilty verdict under their new leadership, an appellate court found that the judge's actions were impermissibly intrusive upon the jury's role as factfinder and vacated the tainted verdict.[26]

In light of the obvious and significant ill effects of jury tampering, legislatures and courts have crafted multiple approaches to protect impartiality.[27] Interestingly, one way to

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trial in Prosecution of Gotti, N.Y. TIMES (Dec. 1, 2009), https://www.nytimes.com/2009/12/02/nyregion/02gotti.html [https://perma.cc/87CX-AKRM].

23 State v. Gleaton, 143 A.3d 326, 339–40 (N.J. Super. Ct. App. Div. 2016). Another juror related the story to the trial judge as follows:

> So last Friday during lunchtime, we were sitting in the meeting room and we were discussing multiple things, just as we do, nothing about the case. Then Juror Number 1 mentioned that her—we were talking about mold remediation . . . and then she starts talking about how her neighbor's house, in 2007, was set on fire. . . . [A]nd I'm unclear whether it was a police officer or a neighbor said to her, well, this could be retaliation for how you treat the drug dealers on the street and she said . . . this could be based on the fact that she sees drug dealers on the street and she goes and knocks on their window and tells them to move on, move down the street. I thought it . . . was something that should have been raised straightaway. I let it go for a bit but based on comments that are coming out during the [deliberations] right now, it just seems like, based on the facts, that that could be an influence in her decision.

Id. (alterations in original).

24 *Id.* at 340–41.

25 *Id.* at 347 ("Focusing on the 'obvious difficulties' required to remove juror number 1 as foreperson, the trial judge made the following findings: 'In terms of difficulties, when I heard Juror Number 10 at sidebar, he indicated the foreperson was somewhat of an obstructionist in permitting deliberations go forward. She was not leading deliberations as I charged her to do. So for that reason, I am going to appoint someone else . . . .'" (alteration in original)).

26 *See id.* at 349–57 (discussing the judge's attempts to resolve the tension among the jurors and finding the judge's actions impermissibly intrusive and coercive). The appellate court additionally noted, "We agree with defendant that the jury's deliberative process was irreparably tainted by the strife that developed between the foreperson and a group of nine jurors. This discord overwhelmed the deliberative process with extraneous matters and irreparably undermined the reliability of the verdict." *Id.* at 350.

27 *See supra* notes 4–7 and accompanying text.

protect juries from the corrupt influence of a tampered-with juror would be to simply eliminate the jury unanimity requirement. In its merits brief in the recently-decided Supreme Court case *Ramos v. Louisiana*, the state of Louisiana cited its interest in preventing hung juries and mistrials as a justification for allowing nonunanimous criminal jury verdicts.[28] Louisiana further argued that its nonunanimity policy was not motivated by an effort to nullify black jurors in the wake of Reconstruction.[29] Rather, its policy was motivated by legitimate concerns about the impracticality of unanimity and the possibility that a "corrupt or stupid juror may obstinately or willfully hold out, and compel a disagreement, and a consequent failure of justice."[30] In their amicus brief in support of Louisiana, several state governments argued that "[u]nanimity gives tremendous veto power to a single holdout juror,"[31] and that nonunanimity might alleviate the threat of nullification.[32] It is clear that juries that are not bound by a unanimity requirement are free to ignore one or two dissenting jurors;[33] in the event that the dissenter has been tampered with, a nonunanimity rule might stifle that juror's genuinely corrupt influence. In any event, however, the Supreme Court held in *Ramos* that the Sixth Amendment requires a unanimous verdict in all criminal jury trials.[34] Accordingly, states must seek solutions to jury tampering that are more sophisticated than simply allowing juries to ignore a lone dissenter.

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28 *See* Brief of Respondent at 31–32, Ramos v. Louisiana, 140 S. Ct. 1390 (2020) (No. 18-5924) [hereinafter Brief of Respondent].

29 The amicus brief of the NAACP Legal Defense and Educational Fund thoroughly details the racist history of Louisiana's non-unanimity policy. *See* Brief for NAACP Legal Defense & Educational Fund, Inc. as Amicus Curiae Supporting Petitioner at 10–16, Ramos v. Louisiana, 140 S. Ct. 1390(2020) (No. 18-5924) [hereinafter Brief for NAACP].

30 Brief of Respondent, *supra* note 28, at 37 (quoting JOHN PROFFATT, A TREATISE ON TRIAL BY JURY §§ 78–79 (1877)). One might reasonably wonder, however, whether the "corrupt or stupid juror" is little more than a racist dog-whistle. *See* Brief for NAACP, *supra* note 29, at 12, 14–15 (collecting Reconstruction-era descriptions of black jurors as, inter alia, "corrupt," "illiterate," "ignorant," and "susceptible to bribery" (internal quotation marks omitted)).

31 Brief for the States of Utah, Alabama, Alaska, Arkansas, Florida, Georgia, Kansas, Nebraska, Oklahoma, South Dakota, Tennessee, Texas, West Virginia, and the Commonwealth of Puerto Rico as Amici Curiae Supporting Respondent at 27, Ramos v. Louisiana, 140 S. Ct. 1390 (2020) (No. 18-5924).

32 *Id.* at 27–28.

33 *See* BORNSTEIN & GREENE, *supra* note 4, at 77.

34 *See* Ramos v. Louisiana, 140 S. Ct. 1390, 1394–97 (2020).

A. Statutory Language by Jurisdiction

With the goals of promoting impartial juries, guarding against mistrials, and protecting jurors from harassment, the question for legislatures is simple: how should the criminal code be constructed to serve these goals? Several approaches are possible. The simplest option would be for the legislature to determine that cases of jury tampering are adequately covered by other, more broadly applicable criminal statutes, such as bribery,[35] blackmail, and obstruction of justice.[36] While this solution has the advantage of simplicity, there are obvious shortcomings. First, a sufficiently crafty criminal might find a way to influence the jurors in a case without resorting to conduct that falls within the technical legal definitions of bribery, blackmail, and obstruction of justice. This possibility is of particular concern given that the loophole could reward the same sophisticated crime syndicates that are most likely to attempt jury tampering in the first place.[37] Second, existing statutes may provide insufficient penalties to deter jury tampering. A defendant facing fifteen years to life for murder, for example, might prefer to take the chance of bribing a juror where the

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35 For example, the bribery statute in Illinois covers the intent "to influence the performance of any act related to the employment or function of any public officer, public employee, juror or witness." 720 ILL. COMP. STAT. 5/33-1 (2014). While this statute expressly prohibits the bribery of a juror, penalties under this statute are not differentiated by which of the enumerated officials are bribed. *See id.* (setting the sentence for any act of bribery as a "Class 2 felony"). Illinois does not have a separate, dedicated juror bribery statute.

36 Obstruction of justice generally requires three elements: (a) a pending judicial proceeding, (b) the defendant's knowledge of the proceeding, and (c) an endeavor to influence, obstruct, or impede that proceeding. John F. Decker, *The Varying Parameters of Obstruction of Justice in American Criminal Law*, 65 LA. L. REV. 49, 54 (2004). While jury tampering might be a type of obstruction of justice, the offense also covers a broad variety of other obstructive behaviors. For a discussion of the broad reaches of obstruction of justice statutes in various jurisdictions, see generally *id.*

37 A recorded jailhouse conversation between Teflon Don John Gotti and son John Gotti, Jr. reveals the extent of the maneuvering the Gambino crime family engaged in to cover the tracks of their jury tampering. Alison Gendar & Larry McShane, *Intimidating Jurors Was the Gotti Way, Tapes Reveal in Junior Gotti Trial*, N.Y. DAILY NEWS (Oct. 15, 2009, 12:03 AM), https://www.nydailynews.com/news/crime/intimidating-jurors-gotti-tapes-reveal-junior-gotti-trial-article-1.381740 [https://perma.cc/RB7U-32TP]. During a grand jury investigation into potential jury tampering in the 1989 trial of Gene Gotti (not to be confused with his 1987 mistrial), the Don's son-in-law, Carmine Agnello, agreed to testify in exchange for immunity. He then testified that he, and he alone, had been responsible for bribing a juror. Junior described the testimony as "a very ingenious move," and the Don agreed: "maybe the greatest move ever since the history of grand juries or something." *Id.*

jurisdiction's bribery statute carries a maximum sentence of only three years' imprisonment.[38]

Many jurisdictions, therefore, have opted to enact legislation that specifically targets jury tampering. One approach is to criminalize specific conduct with respect to a juror, such as bribery, intimidation, or threats. This approach allows a legislature to target particularly egregious examples of improper juror communication and assign penalties accordingly. In New York, for example, several levels of juror communication are criminalized, including bribing a juror,[39] providing a juror with a gratuity as a reward for jury service,[40] and paying a juror for information on a pending case.[41] Other jurisdictions do not subdivide *types* of jury contact, but nonetheless require certain elements beyond mere communication with intent to influence. In Iowa, for example, jury tampering is limited to bribery, threats, and retaliation (including attempts thereto).[42]

The broadest approach criminalizes any communication with a juror made with the intent to influence the juror, which I have termed the "communication-plus-intent" approach. The jury-tampering statute of the state of Colorado, which is typical of this approach, states: "A person commits jury-tampering if, with intent to influence a juror's vote, opinion, decision, or other action in a case, he attempts directly or indirectly to communicate with a juror other than as a part of the proceed-

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38 This example is drawn from the criminal code of the state of Ohio, which has no specific statutes criminalizing communications with jurors. In Ohio, the crime of murder carries a sentence of fifteen years to life. OHIO REV. CODE ANN. § 2929.02(B)(1) (LexisNexis 2020). Bribery, on the other hand, carries a sentence of nine to thirty-six months. *Id.* § 2921.02(G); 2929.14(A)(3)(b). In 1996, Congress amended the federal jury tampering statute based on the argument that the existing statute created a similar loophole. *See* Act of Oct. 1, 1996, Pub. L. No. 104-214, 110 Stat. 3017; 142 CONG. REC. H4,494 (daily ed. May 7, 1996) (statement of Rep. McCollum) ("[U]nder current law, a defendant facing a Federal criminal sentence of 10 years or more may believe he or she is better off trying to influence the outcome of the trial by intimidating a witness, or tampering with a juror or court officer, because the maximum punishment for such crime is generally 10 years in prison.").

39 N.Y. PENAL LAW § 215.19 (Consol. 2020).

40 *Id.* § 215.22. This measure appears to have been adopted in response to the case of Abraham Hirschfeld, who, after the completion of his trial, offered each of the jurors on his deadlocked jury a $2,500 check in "good will compensation for their time and effort." *See* Erica Summer, Note, *Post-Trial Jury Payoffs: A Jury Tampering Loophole*, 15 ST. JOHN'S J. LEGAL COMMENT. 353, 357–59 (2001).

41 N.Y. PENAL LAW § 215.23 (Consol. 2020). New York also has a broad jury tampering statute of the type discussed below. *See infra* Figure 1.

42 IOWA CODE § 720.4 (2020). The same statute also criminalizes "forcibly or fraudulently detain[ing] or restrain[ing]" a juror. *Id.* Kidnapping is presumptively outside the scope of freedom of speech protections.

ings in the trial of the case."[43] The benefit of this approach is that it will ideally stymie even the most creative would-be obstructionist by criminalizing *any* communication with a juror, so long as that communication was made with the requisite intent. In one Louisiana case, for example, the brother and uncle of a defendant standing trial for murder made multiple attempts to contact the jurors in his case.[44] None of the jurors, however, was willing to interfere, and each juror immediately reported the communication. Louisiana's jury tampering statute defined the offense, in relevant part, as "any verbal or written communication or attempted communication, whether direct or indirect, made to any juror in a civil or criminal cause . . . for the purpose of influencing the juror in respect to his verdict or indictment in any cause pending or about to be brought before him . . . ."[45] Because the statute covered all forms of communication and included both "communication[s]" and "attempted communication[s]," the brother and uncle were both subject to liability under the statute. A more narrowly written statute might not have reached their conduct.[46]

The "communication-plus-intent" approach is the broadest possible construction of the phrase "jury tampering" and also the approach most likely to be vulnerable to First Amendment challenges.[47] Nevertheless, twenty-two states plus the federal government have enacted statutes that follow the communication-plus-intent approach to jury tampering.

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43 COLO. REV. STAT. § 18-8-609(1) (2020).

44 State v. Campbell, 670 So. 2d 1212, 1212–13 (La. 1996).

45 LA. STAT. ANN. § 14:129 (1996).

46 *Campbell*, 670 So. 2d at 1213 (noting that "the offense of jury tampering encompasses the attempt to influence jurors for corrupt purposes, by means of direct or indirect communications or attempted communications"). The jury in the Campbells' case returned verdicts of "attempted jury tampering," which the Louisiana Supreme Court found to be unresponsive to the charged offense. Ultimately, the court determined that "the verdicts returned by the jury did not clearly convict or acquit relators of the charged offenses" and allowed for a retrial. *Id.* at 1214.

47 Indeed, the majority of First Amendment challenges to jury tampering statutes I have identified occurred in "communication-plus-intent" jurisdictions. *See infra* Part II.

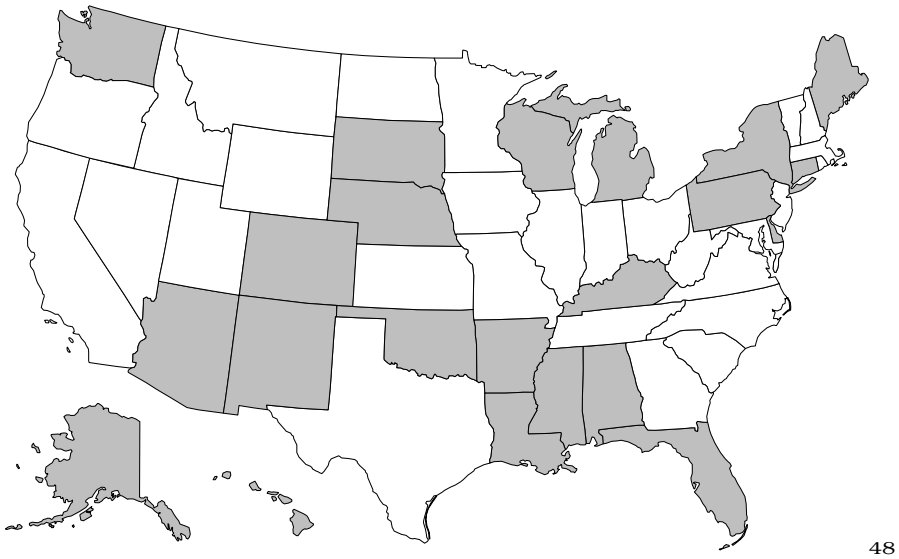

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Figure 1: States with Communication-Plus-Intent Jury Tampering Statutes

The states that have enacted a communication-plus-intent jury tampering statute are Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, Delaware, Florida, Hawaii, Kentucky, Louisiana, Maine, Michigan, Mississippi, Nebraska, New Mexico, New York, Oklahoma, Pennsylvania, South Dakota, Washington, and Wisconsin (pictured above, Figure 1).[49] While exact statutory language varies from jurisdiction to jurisdiction, the core elements common to almost all of these statutes are a) communication with b) a juror, with c) the intent to influence that juror's opinion or decision.[50] Two jurisdictions' statutes identified above, however, include differences worth addressing in greater detail.

First, the jury tampering statute in New Mexico applies, in relevant part, to:

> C. the attempt to threaten, coerce or induce a trial juror to vote for a false verdict or a grand juror to vote for no indictment or for a false indictment; or

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48 Map outline courtesy of SimpleMaps. SIMPLEMAPS, https://simplemaps.com/ [https://perma.cc/9P4B-2M95] (last visited Nov. 8, 2020).

49 The relevant statutory text for each jurisdiction is reproduced in the Appendix, *infra*.

50 *See, e.g.*, COLO. REV. STAT. § 18-8-609(1) (2020), quoted *supra* note 43.

> D. the threatening, coercing or inducing of a trial juror to vote for a false verdict or a grand juror to vote for no indictment or for a false indictment.[51]

Thus, rather than applying to "communication with intent to influence," per se, the New Mexico statute applies to "coercion" and "inducement" to vote in a particular manner. Case law elaborating the definition of these terms is lacking. Other portions of the New Mexico Code, however, suggest that these terms might be construed with a similar breadth to communication-plus-intent statutes. New Mexico's voter coercion statute, for example, defines coercion as "compelling any voter at any election to vote for or to refrain from voting for any candidate, party, proposition, question or constitutional amendment either *against the voter's will* or *in the absence of the voter's ability to understand the purpose and effect of his vote*."[52] If "coercion" has a similarly broad definition as applied to juror communications, therefore, New Mexico falls squarely within the communication-plus-intent approach.

Second, the jury tampering statute in Pennsylvania provides, in relevant part:

> Any person who, having in any manner ascertained the names of persons drawn from the master list of prospective jurors or jury wheel, shall thereafter discuss with any prospective juror the facts or alleged facts of any particular suit or cause then listed for trial in the court for which the prospective juror has been summoned for jury service, with the intent to influence the juror in his service or in the consideration of the evidence in the matter, commits a misdemeanor of the second degree.[53]

Thus, there are two key differences between this statute and the standard communication-plus-intent formula. First, the statute requires that the defendant have somehow ascertained the names of prospective jurors. Second, the statute limits proscribed communications to those relating to the "facts" or "alleged facts" of a given case. Thus, this statute is narrower than the standard communication-plus-intent approach. However, this statute is still *broader* than statutes criminalizing only particular *types* of communications with jurors, such as bribery or threats. Accordingly, I have included Pennsylvania in the category of communication-plus-intent jurisdictions.

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51 N.M. STAT. ANN. § 38-5-5 (2020).
52 *Id.* § 1-20-13.1 (emphasis added).
53 42 PA. CONS. STAT. § 4583 (2020).

II
FIRST AMENDMENT CHALLENGES TO JURY TAMPERING STATUTES

In recent years, prosecutors have brought charges of jury tampering against a series of individuals who communicated with jurors (or prospective jurors) not for *private* gain, but rather the advancement of *public* policy goals.[54] In the typical jury tampering case, a criminal defendant (or a person directly associated with that defendant) contacts a juror seeking to influence that juror's participation in *that specific case* with the goal of benefitting *that specific defendant*.[55] Public participation cases, on the other hand, arise when an individual contacts a juror (or jurors) with the intent of advancing specific public-focused goals with respect to the criminal justice system and the role of jurors within that system. These cases raise unique questions about the application of jury tampering statutes—in particular, the possibility that subjecting these defendants to criminal liability threatens their First Amendment rights. Several of these defendants have raised the First Amendment as a defense to the charges brought against them, with mixed success.

A. *Turney v. State*

In 1994, Frank Turney was charged with jury tampering for a series of communications with jurors in the criminal trial of Merle Hall.[56] At the time he was charged, Turney was apparently a frequent feature outside the State Courthouse in Fairbanks, Alaska: in May of 1994, an administrator in the Alaska Court System delivered to Turney a letter demanding that he cease using the courthouse grounds "as a public forum."[57] Ac-

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54 The ACLU, writing on the case of Eric Brandt and Mark Iannicelli (discussed *infra* subpart II.C), drew the following distinction: "Of course, the state can and should prevent individuals from intentionally tampering with a jury in the hopes of influencing the outcome of a specific case. But far from trying to tamper with any particular case, Brandt and Iannicelli sought to educate all jurors—including potential jurors—about the concept of jury nullification." Naomi Gilens, *It's Perfectly Constitutional to Talk About Jury Nullification*, ACLU (Jan. 22, 2019, 4:30 PM) (emphasis omitted), https://www.aclu.org/blog/free-speech/its-perfectly-constitutional-talk-about-jury-nullification [https://perma.cc/3HZ4-5ZJ5].

55 Examples contemplated by House members during the floor debate on the eventual 1996 amendment to the federal jury tampering statute were largely focused on a criminal defendant tampering with his own jury. *See* 142 CONG. REC. H4,494–500 (daily ed. May 7, 1996).

56 Turney v. State, 936 P.2d 533, 536–38 (Alaska 1997).

57 *Id.* at 535–36.

cording to this letter, Turney's alleged activities on court property included "aggressively accost[ing]" citizens and court staff, "pound[ing] on the building's walls, windows, and doors," and "shout[ing], blow[ing] whistles, and ma[king] animal noises with the intention of attracting or distracting the attention of jurors and other persons in the building."[58]

Turney's indictment for jury tampering, however, stemmed from his activities in relation to a particular case: the criminal trial of Merle Hall for being a felon in possession of a firearm.[59] Turney was apparently interested in Hall's case for three reasons: (1) his personal relationship with Hall, (2) his critical viewpoint on Alaska's felon-in-possession law, and (3) his general "political point of view on the jury system."[60] Turney was charged with jury tampering after contacting three jurors in Hall's case, both before jury selection and during the trial.[61] His communications with all three jurors were essentially the same: he urged each juror to call 1-800-TEL-JURY, a hotline for the Fully Informed Jury Association (FIJA), whose goal is to inform jurors of their "right to refuse to enforce unjust law" through jury nullification.[62] At least one juror called the number Turney provided, and at least two changed their votes to "not guilty" as a result of Turney's communication with them. Ultimately, Hall's jury deadlocked at eight "guilty" votes to four "not guilty" votes, leading the trial judge to dismiss the jury.[63]

Turney later admitted his contact with the jurors to both Hall's defense attorney and prosecutor, and was indicted on three counts of jury tampering.[64] Turney moved to dismiss the charges against him as unconstitutional. At the time (as it does currently), Alaska's jury tampering statute read as follows:

> A person commits the crime of jury tampering if the person directly or indirectly communicates with a juror other than as permitted by the rules governing the official proceeding with intent to

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58 *Id.*

59 *Id.* at 536; *see also* ALASKA STAT. § 11.61.200(a)(1) (1994) (Alaska's felon-in-possession statute, as enacted at the time of Hall's prosecution).

60 *Turney*, 936 P.2d at 536 (internal quotation marks omitted).

61 *Id.* at 536–37. Turney admitted that he knew that the individuals he was speaking to were jurors in Hall's case. *Id.* at 538.

62 *Id.* at 536–37; *About FIJA*, FULLY INFORMED JURY ASS'N, https://fija.org/about-fija/overview.html [https://perma.cc/W6WG-7G3H] (last visited Nov. 9, 2020).

63 *Turney*, 936 P.2d at 537.

64 *Id.* at 538.

(1) influence the juror's vote, opinion, decision, or other action as a juror; or
(2) otherwise affect the outcome of the official proceeding.[65]

The Alaska Supreme Court rejected Turney's argument that the state's jury tampering statute was unconstitutionally overbroad.[66] Rather, the court found that the statute only criminalized communications with a juror where those communications were made with the intent to "influence the juror's vote, opinion, decision, or other action as a juror" and was further limited to communications in connection to a particular case.[67] Citing *Pennekamp v. Florida*,[68] the court noted that "[s]peech aimed at influencing the juror's conduct as a juror, i.e., the juror's execution of the responsibilities imposed by the trial court in a particular case, is not constitutionally protected."[69] Because the statute was narrowly drawn to only reach communications intended to influence a juror's decision in a particular case, the statute only reached unprotected speech, and was permissible under the First Amendment.[70]

Turney was eventually convicted and sentenced to fourteen months' imprisonment with all but sixty days suspended, plus a fine, community service, and six years' probation.[71] His federal habeas suit, premised on the same arguments as his initial challenge, was unsuccessful.[72]

B. *United States v. Heicklen*

In 2010, Julian Heicklen was charged with jury tampering for pamphleteering outside of one of the courthouses for the United States District Court for the Southern District of New York.[73] The government alleged that Heicklen had, on multiple occasions, stood outside the courthouse holding a sign reading "Jury Info" and distributing pamphlets from FIJA.[74] He was eventually arrested after handing one such pamphlet to an undercover FBI agent who identified herself as a juror. Heicklen was charged under 18 U.S.C. § 1504, the federal jury

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65 ALASKA STAT. § 11.56.590(a) (1994).
66 *See Turney*, 936 P.2d at 540–41.
67 *Id.* at 540 (emphasis omitted).
68 328 U.S. 331, 366 (1946) (Frankfurter, J., concurring).
69 *Turney*, 936 P.2d at 541.
70 *Id.*
71 Turney v. Pugh, 400 F.3d 1197, 1199 (9th Cir. 2005).
72 *Id.* at 1205.
73 United States v. Heicklen, 858 F. Supp. 2d 256, 259 (S.D.N.Y. 2012).
74 *Id.* at 260–61.

tampering statute covering written communication. The statute provides:

> Whoever attempts to influence the action or decision of any grand or petit juror of any court of the United States upon any issue or matter pending before such juror, or before the jury of which he is a member, or pertaining to his duties, by writing or sending to him any written communication, in relation to such issue or matter, shall be fined under this title or imprisoned not more than six months, or both.[75]

Heicklen, appearing pro se, moved to dismiss the indictment against him, challenging § 1504 as unconstitutional, both facially and as applied.[76] In order to address Heicklen's challenge, the district court engaged in a detailed analysis of the text and history of § 1504.[77] The court concluded that the statute narrowly proscribed attempts to influence a juror's actions or decisions "only *if* the defendant made that communication in relation to a case or point in dispute before that juror."[78] Therefore, the court determined that the statute criminalized communications intended to influence the outcome of a specific case "but exempt[ed] the broad categories of journalistic, academic, political, and other writings that discuss the roles and responsibilities of jurors in general."[79] Furthermore, the court determined that a broader interpretation of the statute would potentially chill speech about judicial proceedings and therefore implicate First Amendment concerns.[80] Thus, the court held that its narrow reading of the statute was reinforced by the doctrine of constitutional avoidance.[81] The court concluded that, as a matter of law, the indictment against Heicklen did not allege actions sufficient to constitute a violation of § 1504 and dismissed the indictment accordingly.[82]

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75 18 U.S.C. § 1504 (2018). This statute functions as a supplement to 18 U.S.C. § 1503, which prohibits general communication with a juror.

76 *Heicklen*, 858 F. Supp. 2d at 259.

77 *See generally id.* at 264–69 (analyzing the text of the statute using standard canons of statutory interpretation and also considering legislative history of the statute as originally passed in 1872).

78 *Id.* at 266.

79 *Id.*

80 *Id.* at 271. The court went on to consider several First Amendment challenges in the context of obstruction of justice, including *Turney v. Pugh*. *Id.* at 272–74.

81 *Id.* at 275.

82 *Id.* at 275–76.

C. *People v. Iannicelli*

In 2015, Mark Iannicelli and Eric Brandt were charged with jury tampering for pamphleteering outside the Lindsey-Flanigan Courthouse in Denver, Colorado.[83] The state alleged that Iannicelli and Brandt asked people entering the courthouse whether they were jurors or potential jurors. If an individual answered yes, Iannicelli and Brandt would give them a pamphlet containing information on jury nullification.[84] The pamphlets, produced by the Fully Informed Jury Association, stated, inter alia, that "[j]uror nullification is your right to refuse to enforce bad laws and bad prosecutions."[85] A district attorney observed Iannicelli and Brandt distributing these pamphlets and informed the police, who arrested them. They were charged with violating Colorado's jury tampering statute, which, at the time (as it does currently), read in relevant part: "A person commits jury-tampering if, with intent to influence a juror's vote, opinion, decision, or other action in a case, he attempts directly or indirectly to communicate with a juror other than as a part of the proceedings in the trial of the case."[86]

Iannicelli and Brandt moved to dismiss the charges against them as unconstitutional under the First Amendment.[87] The trial court granted their motion, holding that while the statute was not *facially* unconstitutional, it was unconstitutional as applied to Iannicelli and Brandt.[88] The state appealed, and the intermediate appellate court affirmed.[89] Under a theory of constitutional avoidance, the appellate court construed Colorado's jury tampering statute narrowly, in line with the construction applied to Alaska's (materially identical) statute in *Turney*.[90] The court's narrow reading of the statute excluded Iannicelli

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83 People v. Iannicelli, 449 P.3d 387, 389–90 (Colo. 2019); *Mark Iannicelli and Eric Brandt*, FULLY INFORMED JURY ASS'N, https://fija.org/library-and-resources/library/law-and-legal-cases/mark-iannicelli-and-eric-brandt.html [https://perma.cc/4KSV-Y9N4] (last visited Nov. 10, 2020).

84 *Iannicelli*, 449 P.3d at 390.

85 *Id.* (alteration in original). Examples of the pamphlets produced by FIJA and distributed by Iannicelli and Brandt can be found on FIJA's website. *See Brochures and Rack Cards*, FULLY INFORMED JURY ASS'N, https://fija.org/library-and-resources/library/fija-publications/brochures-and-rack-cards.html [https://perma.cc/7C6D-S7XJ] (last visited Nov 10., 2020). Pamphlet titles include "Fresh Air for Justice" and "Your Jury Rights: True or False?" *Id.*

86 COLO. REV. STAT. § 18-8-609(1) (2015).

87 *Iannicelli*, 449 P.3d at 390.

88 The opinion of the trial court is unpublished. The court's holding is briefly discussed by the Colorado Supreme Court. *See id.*

89 People v. Iannicelli, 454 P.3d 314, 315 (Colo. App. 2017).

90 *Id.* at 318–19.

and Turney's conduct, since, as the state conceded, neither defendant was charged with attempting to influence a juror or member of the venire for a particular case.[91]

The Supreme Court of Colorado granted certiorari and affirmed the ruling of the courts below.[92] Like the lower appellate court, the Supreme Court agreed that an overly broad reading of the statute would pose significant constitutional difficulties, and so the court elected to read the statute narrowly under a theory of constitutional avoidance.[93] In response to the state's urging that the statute did not require the existence of a specific case with which defendants hoped to interfere, the court responded:

> [T]he People's construction would likely criminalize a significant amount of speech that appears to be protected, including, for example, a post about jury nullification on a message board about jury duty, an op-ed in a local newspaper expressly encouraging jurors or prospective jurors to refuse to convict a defendant if they felt that the state had crossed the line in a particular case, or an anti-death penalty protest in front of a courthouse while a capital case was proceeding.[94]

Therefore, the court determined that the statute only extended to attempts to communicate with jurors in a specific case. As to who constituted a "juror," the court slightly expanded the definition of the lower court, finding that "a juror is any person who is either a member of a jury or a grand jury or any person who has been drawn or summoned to attend as a prospective juror."[95] Nevertheless, because Iannicelli and Brandt did not distribute pamphlets to jurors and prospective jurors with the intent of influencing *a specific case*, their conduct was not covered by the statute, and the court dismissed the charges against them.

D. *People v. Wood*

In 2015, Keith Wood was charged with jury tampering for distributing pamphlets outside a Michigan courthouse.[96] Like Iannicelli and Brandt, the pamphlets Wood distributed were published by FIJA, and Wood distributed the pamphlets to any

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91 *Id.* at 320.

92 People v. Iannicelli, 449 P.3d 387, 396 (Colo. 2019).

93 *Id.* at 395–96.

94 *Id.* at 396.

95 *Id.* at 397.

96 People v. Wood, 928 N.W.2d 267, 273 (Mich. Ct. App. 2018).

individuals who were entering the courthouse.[97] Unlike Iannicelli and Brandt, however, Wood's actions were motivated by his interest in a particular case that "piqu[ed] [his] interest": the trial of Andrew Yoder, whom Wood did not know personally.[98] Wood was charged with jury tampering for distributing pamphlets to two prospective jurors, although neither woman was selected or sworn as a juror, and Yoder ultimately reached a plea agreement before trial.[99] At the time (as it does now), Michigan's jury tampering statute provided:

> A person who willfully attempts to influence the decision of a juror in any case by argument or persuasion, other than as part of the proceedings in open court in the trial of the case, is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than $1,000.00, or both.[100]

Wood's motion to dismiss the jury tampering charge against him was unsuccessful, and he was tried and convicted on the charge.[101] Wood appealed his conviction, arguing that the statute violated his rights under the First Amendment.[102] The appellate court affirmed his conviction, holding that a) the statute was not overbroad, because it included as a requirement the "intent to influence the decision of a juror in a particular case,"[103] and b) the statute was not unconstitutional as applied to Wood, because under strict scrutiny analysis, "application of the statute to defendant's conduct was a narrowly tailored means of furthering the state's compelling interest in preserving the impartiality and integrity of jurors."[104]

Wood applied for leave to appeal this decision to the Supreme Court of Michigan, which granted his application in Oc-

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97 *Id.* Unlike Iannicelli and Brandt, Wood alleged that he did not ask individuals passing by whether they were prospective jurors, but rather handed a pamphlet to "anybody who would receive one." *Id.* at 274 (internal quotation marks omitted).

98 *Id.* at 273 (alterations in original).

99 *Id.*

100 MICH. COMP. LAWS § 750.120a(1) (2015). Other subsections of Michigan's statute provide for higher penalties for specific types of jury-tampering conduct, including intimidation, threats, and retaliation. *Id.* §§ 750.120a(2), (4).

101 *Wood*, 928 N.W.2d at 274.

102 *Id.* Wood also raised a statutory interpretation objection as to the definition of the word "juror" under the statute, given that the individuals he was convicted of attempting to influence were never seated or sworn as jurors. *Id.* The appellate court rejected this argument. *See id.* at 274–78.

103 *Id.* at 282.

104 *Id.* at 280.

tober 2019.[105] The court decided his appeal in July 2020.[106] The court declined to reach Wood's constitutional argument, instead dismissing his conviction on a narrow interpretation of Michigan's jury tampering statute.[107] Evaluating the term "juror" as it is used in the statute, the Court concluded that "when individuals are merely summoned for jury duty, they are not jurors because they have yet to participate in a case."[108] Therefore, because the two women Wood spoke to had only been summoned for jury duty at the time that he spoke to them, Wood could not be convicted for attempting to influence the decision of "a juror" within the meaning of the statute.[109] In support of this narrow reading of the word "juror," the court noted that the Michigan legislature "could have chosen a narrower definition of 'juror' because of possible First Amendment concerns—such as those raised by defendant here."[110] The court, however, concluded that it need not reach those concerns, having decided the case on statutory grounds.[111]

Two justices, dissenting from the five-justice majority, would have read Michigan's jury tampering statute to reach prospective jurors, and so were obligated to reach Wood's First Amendment argument.[112] The dissenters, citing *Turney v. Pugh*, concluded that Michigan's jury tampering statute, like the Alaska statute under which Turney was convicted, was not facially overbroad.[113] The dissenters likewise concluded that Michigan's statute was sufficiently narrowly tailored to survive Wood's as-applied challenge.[114] The statute, in the dissenters' view, constituted the "least restrictive means available" to ensure the impartiality of jurors, because it applied only to "*knowing* and intentional conduct aimed at a *known* juror in order to influence the *outcome* of an *actual case*."[115] Under this view, Wood's conduct was sufficient to "evince[ ] an intent to

105 People v. Wood, 933 N.W.2d 311, 311 (Mich. 2019).

106 *See* People v. Wood, No. 159063, 2020 Mich. LEXIS 1239 at *2–*3 (Mich. July 28, 2020); *Keith Wood*, *supra* note 14.

107 *Wood*, 2020 Mich. LEXIS 1239 at *20–21.

108 *Id.* at *10.

109 *See id.* at *10–11.

110 *Id.* at *15–16.

111 *Id.* at *20–21.

112 *See id.* at *21–22 (Viviano, J., dissenting). Justice Markman joined Justice Viviano's dissent. *Id.* at *42.

113 *See id.* at *37–40.

114 *See id.* at *40–42.

115 *Id.* at *41 (emphasis in original).

influence known jurors in an actual case" and therefore sufficient to pass constitutional muster.[116]

III
WHEN DOES A JURY TAMPERING CHARGE OFFEND THE FIRST AMENDMENT?

The challenges to jury tampering statutes outlined in Part II share a common pattern: all four cases involve communication-plus-intent statutes, and all four statutes were challenged as unconstitutionally overbroad, both facially and as applied to each of the four defendants. All five defendants, too, shared a common fact pattern: the distribution of information about jury duty, and more specifically about jury nullification, outside of courthouses.[117] But the results in these four cases vary: where Heicklen, Iannicelli, and Brandt were able to successfully dismiss the charges against them, Turney and (so far) Wood were unsuccessful. While it seems clear that some jury tampering statutes are potentially vulnerable to First Amendment freedom-of-speech challenges, several questions remain. First, which statutes are potentially subject to First Amendment challenges? Second, for those vulnerable statutes, what limitations must be implied in order to uphold their constitutionality under the First Amendment? And third, in what cases might a prosecution under a communication-plus-intent jury tampering statute encroach upon the defendant's First Amendment rights?

A. Vulnerable Statutes

In a general sense, all jury tampering statutes at least *implicate* free speech concerns—after all, the nature of such statutes is to criminalize certain contact and communication with jurors. But under the current First Amendment jurisprudence, not all approaches to jury tampering truly implicate protected speech. Rather, many jury interference prohibitions impose a burden only on *unprotected* speech, or else fall under recognized free speech exceptions.

One obvious example of unprotected speech is juror bribery. While bribery typically involves some form of speech (in that the bribe must be communicated in order to be proposed and accepted), the purpose of a bribery statute is not to restrict

116 *Id.* at *41–42.

117 In fact, all five defendants distributed information provided by the same organization, FIJA.

this speech. Rather, it seeks to prevent the conduct at issue, namely the exchange of money or other favors for a particular jury outcome.[118] The burden on speech, therefore, is no more than incidental to the purpose of the statute, which is to prohibit certain conduct that may involve speech.[119] Because it is ultimately the *conduct* that is at issue, the First Amendment is not truly implicated by a bribery prosecution.

Other examples of unprotected juror speech are juror intimidation, retaliation, or other harassment. In these cases, while threats and harassment obviously are forms of speech, they are unprotected forms of speech. Specifically, they fall under the exception for "true threats." The First Amendment exception for "true threats" "encompass[es] those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals."[120] The "true threats" exception does not require that the speaker actually intend to carry out the threat—this exception is intended to protect individuals from the fear of violence itself, rather than simply the possibility that the threatened violence will be carried out.[121] Prohibitions on harassment and retaliation against jurors are designed to protect against this very same fear.

In Iowa, for example, the jury tampering statute provides that any person "who, in retaliation for anything lawfully done by any witness or juror in any case, harasses such witness or juror, commits an aggravated misdemeanor."[122] In *State v. Baker*, the defendant challenged this portion of the statute as unconstitutional.[123] The Iowa Supreme Court rejected this challenge, holding that "harassment" of a juror, as defined by

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118 The aim of Illinois' bribery statute, for example, is to prevent improper influence on the public acts and functions of a number of public officials, including jurors. 720 ILL. COMP. STAT. 5/33-1 (2019). The statute aims to prevent the procurement of "personal advantage" via improper means, a concern that does not offend First Amendment concerns. *See* People v. Brandstetter, 430 N.E.2d 731, 735 (Ill. App. Ct. 1982).

119 *Cf.* Cohen v. Cowles Media Co., 501 U.S. 663, 669 (1991) (discussing the doctrine of incidental burdens on First Amendment rights imposed by generally applicable laws).

120 Virginia v. Black, 538 U.S. 343, 359 (2003).

121 *Id.* at 360.

122 IOWA CODE § 720.4 (2020).

123 State v. Baker, 688 N.W.2d 250, 251–52 (Iowa 2004). Baker was charged with jury tampering after a telephone conversation with a coworker, Debra Krause, who had recently completed jury duty in the case of Greg Schoo, a friend of Baker's. Baker had called Krause because she disagreed with the mandatory minimum sentence of twenty-five years for the robbery statute Schoo was convicted under. During the call, Baker asked Krause "if [she] knew that [she] gave him 25 years." *Id.* (alterations in original). When Krause responded that she did

the Iowa Code, includes only conduct by a defendant who acts "(1) without legitimate purpose, (2) with an intent to intimidate, annoy, or alarm the juror, and (3) in retaliation for the juror's performance of his or her civic duty as a juror on a case."[124] The court held that harassing speech that met these elements was not protected by the First Amendment.[125]

Thus, most jury tampering statutes that identify specific types of impermissible juror contact are likely to easily survive First Amendment scrutiny. In contrast, communication-plus-intent statutes are concerningly broad. It is no coincidence that all four prosecutions discussed in Part II involved communication-plus-intent statutes. Rather, the fact that these statutes do not outline specific prohibited conduct means that they have the potential to directly implicate protected speech, as most courts that have considered these statutes have recognized.[126]

These statutes are, of course, not outright invalid. It is well-established that due process requires a fair and impartial trial "free from outside influences," and that this concern can be properly balanced against the protections of the First Amendment.[127] Accordingly, the First Amendment right to free speech does not create the right to influence judges or juries—"[t]hat is no more freedom of speech than stuffing a ballot box is an exercise of the right to vote."[128] But the due process concerns implicated by juror interference must be balanced against the right to engage in public debate, which is fundamental to the First Amendment.[129] Broadly-drawn communication-plus-intent statutes, therefore, require constitutional examination.

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not know what sentence Schoo had received, Baker stated, "Well, I just thought you should know you gave him 25 years," and hung up. *Id.*

124 *Id.* at 253–54. The court's analysis was based on precedent holding that "harassment" under § 720.4 meant "harassment" as defined by § 708.7(1) of the Code. *Id.* at 253 (citing State v. Reynolds, 670 N.W.2d 405, 410 (Iowa 2003)). That section of the Iowa Code included two elements that the court imputed to § 720.4: the "intent to intimidate, annoy, or alarm another person" and the lack of "legitimate purpose." IOWA CODE § 708.7(1)(a)(1) (2003).

125 *Baker*, 688 N.W.2d at 254.

126 *See, e.g.*, People v. Iannicelli, 449 P.3d 387, 396 (Colo. 2019).

127 Sheppard v. Maxwell, 384 U.S. 333, 362 (1966).

128 Pennekamp v. Florida, 328 U.S. 331, 366 (1946) (Frankfurter, J., concurring).

129 *See* Snyder v. Phelps, 562 U.S. 443, 452 (2011).

B. Constitutional Avoidance

As the Supreme Court of Colorado recognized in *People v. Iannicelli*, a common approach to statutory interpretation holds that "statutory terms should be construed in a manner that avoids constitutional infirmities."[130] The canon of constitutional avoidance, as formulated by the Supreme Court of the United States, provides that "where a statute is susceptible of two constructions, by one of which grave and doubtful constitutional questions arise and by the other of which such questions are avoided, [a court's] duty is to adopt the latter."[131] A court is not required to decide that one interpretation is definitely unconstitutional prior to adopting another, narrower interpretation; rather, the canon instructs that courts should avoid deciding thorny constitutional questions unnecessarily. In the case of criminal statutes, the canon of constitutional avoidance often additionally dovetails with the rule of lenity, under which ambiguity should be resolved in favor of the defendant.[132]

The canon of constitutional avoidance, however, does not come into play unless there are "serious concerns about the statute's constitutionality."[133] Accordingly, the potential constitutional infirmities of communication-plus-intent jury tampering statutes must be addressed. As discussed above, communication-plus-intent statutes are broad, with only three clear required elements: a) communication with b) a juror, with c) the intent to influence that juror's opinion or decision.[134] The "intent to influence" element is perhaps most vulnerable to freedom of speech concerns. After all, as recognized by the court in *Iannicelli*, the primary goal of the First Amendment is to protect "uninhibited, robust, and wide-open" debate on public issues.[135] And the *intent* of any advocacy with respect to public issues is, by definition, to influence the listener's perspective on those issues. Therefore, as recognized by the court in *Iannicelli*, a broad interpretation of the "intent to influence"

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130 People v. Iannicelli, 449 P.3d 387, 392 (Colo. 2019) (quoting People v. Zapotocky, 869 P.2d 1234, 1240 (Colo. 1994)).

131 United States *ex rel.* Attorney Gene. v. Del. & Hudson Co., 213 U.S. 366, 408 (1909).

132 *See* Jones v. United States, 529 U.S. 848, 857–58 (2000) (finding that both the canon of constitutional avoidance and the rule of lenity pointed toward a narrower interpretation of the federal arson statute).

133 Gonzalez v. United States, 553 U.S. 242, 251 (2008) (quoting Harris v. United States, 536 U.S. 545, 555 (2002)).

134 *See supra* note 51 and accompanying text.

135 People v. Iannicelli, 449 P.3d 387, 392 (Colo. 2019) (quoting Snyder v. Phelps, 562 U.S. 443, 452 (2011)).

provision of communication-plus-intent statutes would implicate, for example, "an anti-death penalty protest in front of a courthouse while a capital case was proceeding."[136] There can be no doubt that the possibility of criminalizing politically charged protests in the vicinity of a courthouse would raise "serious concerns" about constitutionality.

Thus, the first necessary limitation on communication-plus-intent statutes is that recognized by both *Turney* and *Iannicelli*: the "intent to influence" a juror must be with respect to that juror's opinion or decision in a particular, identifiable case.[137]

This is not the only limitation on communication-plus-intent statutes that should be implied via constitutional avoidance, however. There is also a serious constitutional concern raised by the "juror" element of these statutes. The infirmity is revealed, albeit indirectly, by the facts of *People v. Wood*. In *Wood*, both prospective jurors testified that Wood was aware that they were present at the courthouse for jury duty.[138] Wood, however, testified that his aim in handing out jury nullification pamphlets was "to educate as many people [as possible]," and that he did not know "who was summoned as a potential juror," but rather just handed the pamphlets "[t]o anybody that would receive one."[139]

Communication-plus-intent statutes, broadly construed, do not require that the defendant *know* that the person he is intending to influence is a juror. But it is hard to imagine that this broader interpretation would withstand constitutional scrutiny. As with the "intent to influence" element, it cannot be doubted that general advocacy on public issues is constitutionally protected, even in the vicinity of a courthouse, where jurors and prospective jurors are, of course, regularly present. If a defendant could be punished for jury tampering for his communications with an individual who *he did not know* was a juror, the effect would be to create a sphere of silence around courthouses, within which *any* discussion about the outcome of any ongoing case would be potentially subject to a jury-tampering prosecution. Thus, the canon of constitutional avoidance also requires implying into communication-plus-intent statutes the *knowledge* that the individual in question is a juror or prospective juror.

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136 *Id.* at 396.
137 *See id.* at 395–96; Turney v. State, 936 P.2d 533, 540 (Alaska 1997).
138 *See* People v. Wood, 928 N.W.2d 267, 273 (Mich. Ct. App. 2018).
139 *Id.* at 274 (alteration in original) (internal quotation marks omitted).

The sum of these requirements, and the underlying thrust of the constitutionality discussions in *Turney*, *Heicklen*, and *Iannicelli*, is that jury tampering prosecutions require that the government allege (and subsequently prove) that the defendant intended to secure some *particular* result in some *identifiable* case by influencing those *specific* jurors. The merit of these requirements is not merely that they narrow the scope of the statute. Rather, it is that they focus on what is actually meant by jury tampering: an attempt to secure *private* gain for oneself or another by influencing the result in a given case. In contrast, many pamphleteers charged with jury tampering are more concerned with the *public* debate surrounding the jury role, specifically the use of jury nullification. Prosecution of these individuals not only does not serve the underlying purposes of a jury tampering statute, but also directly burdens their right to free speech.

C. Problematic Prosecutions

The canon of constitutional avoidance suggests what limitations might be necessary in order to sustain the constitutionality of communication-plus-intent jury tampering statutes. Another way of looking at the constitutionality question, however, is to ask what types of conduct cannot be prosecuted under such a statute without offending the First Amendment.

Prosecutions for jury tampering might be pictured on a spectrum of the regulability of the conduct at issue. On one end of the spectrum is the Gambino crime family paying a juror $60,000 to secure an acquittal for Teflon Don John Gotti.[140] This conduct does not even implicate the First Amendment; to the extent that "speech" is involved in the exchange of a bribe, that speech falls outside the First Amendment's protections. On the opposite end of the spectrum from mafia bribery, we might place Mark Iannicelli and Eric Brandt passing out generally applicable pamphlets to anyone who would take them. Iannicelli and Brandt's conduct is exactly the sort which the First Amendment is intended to *promote*: "uninhibited, robust, and wide-open" debate on public issues.[141] While the protections of the First Amendment are not absolute, in order to overcome the presumption of protection, the government must put forth a compelling government interest and must narrowly tailor the law to achieve that interest.

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140 *See supra* note 20 and accompanying text.

141 People v. Iannicelli, 449 P.3d 387, 392 (Colo. 2019) (quoting Snyder v. Phelps, 562 U.S. 443, 452 (2011)).

Where on this spectrum might we place Keith Wood? Certainly, Wood sits far closer to Iannicelli and Brandt than he does to John Gotti. The primary difference between Wood's conduct and that of Iannicelli and Brandt is that Wood concededly had a particular case in mind when he decided to hand out jury nullification pamphlets outside a courthouse. But is the existence of a specific case enough to sustain Wood's conviction? We might concede that ensuring fair and impartial trials is a sufficiently compelling governmental interest, as the dissenting justices from the Supreme Court of Michigan noted.[142] But is the prosecution of an individual who handed out jury nullification literature to any takers narrowly tailored to that interest?

The two justices to reach this question in Wood's case concluded that the criminalization of "*knowing* and intentional conduct aimed at a *known* juror in order to influence the *outcome* of an *actual case*" was a sufficiently narrowly tailored solution to the problem of juror tampering.[143] Indeed, the dissenters concluded that Michigan's approach was "the least restrictive means available."[144] But the dissenters' formula appears to sweep in a wide range of protected speech, too. While the dissenters stressed that Michigan's jury tampering statute is not broad enough to criminalize "innocent advice, political demonstrations, or the mass dissemination of political ideas,"[145] it is easy to imagine political speech that would nevertheless qualify as knowing conduct aimed at a known juror in order to influence the outcome of an actual case.

In fact, the Wood dissenters' formulation is subject to the very same infirmity recognized by the *Iannicelli* court. For example, "an anti-death penalty protest in front of a courthouse while a capital case was proceeding"[146] would certainly qualify as conduct specifically intended to influence the jurors in that capital case. And while anti-death penalty protestors might be aiming their message at anyone willing to listen (including jurors), the same can be said of Wood, who testified that he handed his pamphlets "[t]o anybody that would receive one."[147]

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142 *See* People v. Wood, No. 159063, 2020 Mich. LEXIS 1239, at *41 (Mich. July 28, 2020) (Viviano, J., dissenting) ("As recognized by a litany of United States Supreme Court cases, the state has a strong interest in protecting the fair administration of justice and the impartiality of jurors.").

143 *Id.*

144 *Id.*

145 *Id.* at *40.

146 People v. Iannicelli, 449 P.3d 387, 396 (Colo. 2019).

147 People v. Wood, 928 N.W.2d 267, 274 (Mich. App. 2018).

The only perceivable difference between Wood's conduct—standing outside Yoder's trial handing out pamphlets on jury nullification to anyone who would take them, including jurors—and the hypothetical protestors' conduct—standing outside a capital trial denouncing the death penalty to anyone willing to listen, including jurors—is the content of the speech. And the state's disapproval of jury nullification advocacy is plainly insufficient to justify the burden placed on Wood's right to free speech. As the Supreme Court has repeatedly stressed, "above all else, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content."[148]

CONCLUSION

The goals of jury tampering statutes are doubtless noble and doubtless within the power of the states to promote. And it is understandably tempting that a state might criminalize any contact with a juror made with the intent to influence that juror's decision. After all, the ideal jury is envisioned as one functioning in full independence of outside influence, deciding the case before them based *only* on what is said in court. But this ideal must be balanced against the right of the general public to participate in the public function of the courts, and the public debate about that function. Charges of jury tampering, therefore, cannot be constitutionally leveled against defendants whose primary aim is public engagement rather than private advantage.

The following table reproduces the relevant substantive text of all "communication-plus-intent" jury tampering statutes identified in Part I of this Note. The subsections reproduced below are limited to those subsections substantively defining jury tampering under a communication-plus-intent approach. Subsections concerning applicable penalties have been removed, as have subsections dealing with more particularized types of juror contact (e.g., retaliation and intimidation).

148 Police Dep't of Chicago v. Mosley, 408 U.S. 92, 95 (1975).

APPENDIX

Jurisdiction	**Statute Section**	**Relevant Text**
Federal	18 U.S.C. § 1503(a) (2018)	Whoever corruptly, or by threats or force, or by any threatening letter or communication, endeavors to influence, intimidate, or impede any grand or petit juror, or officer in or of any court of the United States, or officer who may be serving at any examination or other proceeding before any United States magistrate judge or other committing magistrate, in the discharge of his duty, or injures any such grand or petit juror in his person or property on account of any verdict or indictment assented to by him, or on account of his being or having been such juror, or injures any such officer, magistrate judge, or other committing magistrate in his person or property on account of the performance of his official duties, or corruptly or by threats or 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 as provided in subsection (b). . . .

Jurisdiction	Statute Section	Relevant Text
	18 U.S.C. § 1504 (2018)	Whoever attempts to influence the action or decision of any grand or petit juror of any court of the United States upon any issue or matter pending before such juror, or before the jury of which he is a member, or pertaining to his duties, by writing or sending to him any written communication, in relation to such issue or matter, shall be fined under this title or imprisoned not more than six months, or both. Nothing in this section shall be construed to prohibit the communication of a request to appear before the grand jury.
Alabama	ALA. CODE § 13A-10-128(a) (2020)	A person commits the crime of jury tampering if, with intent to influence a juror's vote, opinion, decision or other action in the case, he attempts directly or indirectly to communicate with a juror other than as part of the proceedings in the trial of the case.
Alaska	ALASKA STAT. § 11.56.590(a) (2020)	A person commits the crime of jury tampering if the person directly or indirectly communicates with a juror other than as permitted by the rules governing the official proceeding with intent to (1) influence the juror's vote, opinion, decision, or other action as a juror; or (2) otherwise affect the outcome of the official proceeding.

Jurisdiction	Statute Section	Relevant Text
Arizona	ARIZ. REV. STAT. ANN. § 13-2807(A) (2020)	A person commits jury tampering if, with intent to influence a juror's vote, opinion, decision or other action in a case, such person directly or indirectly, communicates with a juror other than as part of the normal proceedings of the case.
Arkansas	ARK. CODE ANN. § 5-53-115(a)	A person commits the offense of jury tampering if he or she attempts directly or indirectly to communicate with a juror, other than as a part of the official proceedings in which the juror is participating, with the purpose of influencing the juror's vote, decision, or other action as a juror.
Colorado	COLO. REV. STAT. § 18-8-609(1) (2020)	A person commits jury-tampering if, with intent to influence a juror's vote, opinion, decision, or other action in a case, he attempts directly or indirectly to communicate with a juror other than as a part of the proceedings in the trial of the case.
Connecticut	CONN. GEN. STAT. § 53a-154(a) (2020)	A person is guilty of tampering with a juror if he influences any juror in relation to any official proceeding to or for which such juror has been drawn, summoned or sworn.
Delaware	DEL. CODE ANN. tit 11, § 1266 (2020)	A person is guilty of tampering with a juror when: (1) With intent to influence the outcome of an official proceeding, the person communicates with a juror in the proceeding, except as permitted by the rules of evidence governing the proceeding; [. . . .] For purposes of this section, a juror shall be any person who has received notice of summons to appear for jury service. . . .

Jurisdiction	Statute Section	Relevant Text
Florida	FLA. STAT. § 918.12 (2020)	Any person who influences the judgment or decision of any grand or petit juror on any matter, question, cause, or proceeding which may be pending, or which may by law be brought, before him or her as such juror, with intent to obstruct the administration of justice, shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
Hawaii	HAW. REV. STAT. § 710-1075(1) (2019)	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, the person attempts directly or indirectly to communicate with a juror other than as part of the proceedings in the trial of the case.
Kentucky	KY. REV. STAT. ANN. § 524.090(1) (West 2020)	A person is guilty of jury tampering when, with intent to influence a juror's vote, opinion, decision or other action in a case, he communicates or attempts to communicate, directly or indirectly, with a juror other than as a part of the proceedings in the trial of the case.
Louisiana	LA. STAT. ANN. § 14:129(A) (2020)	Jury tampering is any verbal or written communication or attempted communication, whether direct or indirect, made to any juror in a civil or criminal cause, including both grand and petit jurors, for the purpose of influencing the juror in respect to his verdict or indictment in any cause pending or about to be brought before him, otherwise than in the regular course of proceedings upon the trial or other determination of such cause. To constitute the offense of jury tampering, the influencing

Jurisdiction	Statute Section	Relevant Text
		or attempt to influence the juror must be either: (1) For a corrupt or fraudulent purpose, or (2) By violence or force, by threats whether direct or indirect.
Maine	ME. STAT. tit. 17-A, § 454(1-A) (2019)	A person is guilty of tampering with a juror if the actor: A. Contacts by any means a person who is a juror or any other person that the actor believes is in a position to influence a juror and the actor does so with the intention of influencing the juror in the performance of the juror's duty. . . .
Michigan	MICH. COMP. LAWS § 750.120a(1) (2020)	A person who willfully attempts to influence the decision of a juror in any case by argument or persuasion, other than as part of the proceedings in open court in the trial of the case, is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than $1,000.00, or both.
Mississippi	MISS. CODE ANN. § 97-9-123(1) (2020)	A person commits the crime of jury tampering if, with intent to influence a juror's vote, opinion, decision or other action in the case, he intentionally or knowingly attempts to communicate directly or indirectly with a juror other than as part of the proceedings in the trial of the case.
Nebraska	NEB. REV. STAT. § 28-919(2) (2020)	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, he or she attempts directly or indirectly to communicate with a juror other than as a part of the proceedings in the trial of the case.

Jurisdiction	Statute Section	Relevant Text
New Mexico	N.M. STAT. ANN. § 38-5-5 (2020)	Jury tampering consists of: [. . .] C. the attempt to threaten, coerce or induce a trial juror to vote for a false verdict or a grand juror to vote for no indictment or for a false indictment; or D. the threatening, coercing or inducing of a trial juror to vote for a false verdict or a grand juror to vote for no indictment or for a false indictment.
New York	N.Y. PENAL LAW § 215.25 (2020)	A person is guilty of tampering with a juror in the first degree when, with intent to influence the outcome of an action or proceeding, he communicates with a juror in such action or proceeding, except as authorized by law. Tampering with a juror in the first degree is a class A misdemeanor.
Oklahoma	OKLA. STAT. tit. 21, § 388 (2020)	Every person who attempts to influence a juror, or any person summoned or drawn as a juror, or chosen as arbitrator or appointed a referee, in respect to his or her verdict, or decision of any cause or matter pending, or about to be brought before him or her, either: 1. By means of any communication oral or written had with him or her, except in the regular course of proceedings upon the trial of the cause; 2. By means of any book, paper, or instrument, exhibited otherwise than in the regular course of proceedings, upon the trial of the cause; 3. By means of any threat or intimidation; or 4. By means of any assurance or promise of any pecuniary or

Jurisdiction	Statute Section	Relevant Text
		other advantage, is guilty of a felony punishable by a fine not to exceed Five Thousand Dollars ($5,000.00) or by imprisonment in the State Penitentiary not to exceed ten (10) years, or by both such fine and imprisonment.
Pennsylvania	42 PA. CONS. STAT. § 4583 (2020)	Any person who, having in any manner ascertained the names of persons drawn from the master list of prospective jurors or jury wheel, shall thereafter discuss with any prospective juror the facts or alleged facts of any particular suit or cause then listed for trial in the court for which the prospective juror has been summoned for jury service, with the intent to influence the juror in his service or in the consideration of the evidence in the matter, commits a misdemeanor of the second degree. The penalty provided in this section shall be in addition to the penalties now provided by law for bribery.
South Dakota	S.D. CODIFIED LAWS § 22-12A-12 (2020)	Any person who attempts to influence a juror, or any person summoned or drawn as a juror, or chosen an arbitrator or appointed a referee, in respect to any verdict or decision in any cause or matter pending, or about to be brought before such person: (1) By means of any communication, oral or written, had with such person, except in the regular course of proceedings upon the trial of the cause; (2) By means of any book, paper, or instrument exhibited otherwise than in the regular course of proceedings upon the trial of the cause; or

Jurisdiction	**Statute Section**	**Relevant Text**
		(3) By publishing any statement, argument, or observation relating to the cause; is guilty of a Class 6 felony.
Washington	WASH. REV. CODE § 9A.72.140(1) (2020)	A person is guilty of jury tampering if with intent to influence a juror's vote, opinion, decision, or other official action in a case, he or she attempts to communicate directly or indirectly with a juror other than as part of the proceedings in the trial of the case.
Wisconsin	WIS. STAT. § 946.64 (2019)	Whoever, with intent to influence any person, summoned or serving as a juror, in relation to any matter which is before that person or which may be brought before that person, communicates with him or her otherwise than in the regular course of proceedings in the trial or hearing of that matter is guilty of a Class I felony.