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## CRIMINAL LAW-A STUDY OF STATUTORY BLACKMAIL AND EXTORTION IN THE SEVERAL STATES

Alice Kramer Griep  
*University of Michigan Law School*

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CRIMINAL LAW—A STUDY OF STATUTORY BLACKMAIL AND EXTORTION IN THE SEVERAL STATES—In attempting to define the crime of extortion or blackmail, it must be pointed out at the outset that there is a technical crime known as extortion, which stems from the common law, and there is another statutory crime which may be called extortion or blackmail, this latter crime being what the lawyer and laymen usually refer to by the term blackmail. Extortion at common law was the unlawful taking by an officer, by color of his office, of any money or thing of value that was not due him, or more than was due, or before it was due.<sup>1</sup> To state the case simply, if any tax official demanded taxes of a citizen before they were due, that official was guilty of extortion. A private citizen could not be guilty of this crime. The scope of that common law offense was enlarged by statute to include any obtaining by any person of property of another with his consent through a wrongful threat to do injury. And so by enlarging the scope of the common law offense a new statutory offense was in fact created. It is with this statutory offense, whether it is called extortion or blackmail, or even if it does not have a name, that this paper deals. There are many variations in the statutes defining this broader statutory offense, which the author will hereinafter refer to as blackmail. If the

† Professor of law, University of Michigan Law School.—*Ed.*

<sup>1</sup> 2 AM. JUR., Extortions and Blackmail, § 2, 234 (1939).

reader were to pick a few states at random and look up the law in those states, he would probably find that no two of them are alike in all their requirements. However, there are certain similarities in various of the state statutes which fit into certain patterns; and upon taking an overall view of all the statutes, modified categorizations may be set forth. It is the purpose of the author to present this overall picture by classifying and comparing the express language of the statutes of all the jurisdictions within the United States, interposing at times comments on the broad, and sometimes ambiguous language used by the legislators. The crime of extortion by a public official is not within the scope of this paper; neither are threats which are punishable even though no property is demanded.

Before an ordinary citizen can be guilty of the crime of blackmail, he must make a threat; either oral, or in writing, or in print. A statute may provide that the threat may be made by any one or by all of these methods. The effectiveness of the threat may also be an element of the crime; the statutes may provide for punishment of an unsuccessful attempt to extort something of value, or they may punish the blackmailer only if he is successful in getting what he wants. It is in comparing these requisites of the statutes that numerous combinations result. They are: (a) successful or unsuccessful oral and written threats with the same punishment for all;<sup>2</sup> (b) successful oral and written threats with the same punishment for both, unsuccessful written threats with the same punishment as successful threats, and unsuccessful oral threats with a lesser punishment for that attempt;<sup>3</sup> (c) successful or unsuccessful written threats for which a greater punishment is provided than for successful or unsuccessful oral threats;<sup>4</sup> (d) only written threats are punishable whether they are successful or unsuccessful;<sup>5</sup> (e) only successful threats are punishable, whether they are oral or written;<sup>6</sup> (f) successful oral or written threats are punished more severely than unsuccessful oral or written threats.<sup>7</sup> Some statutes provide for the crime but do not specify whether the threat need be oral or written;<sup>8</sup> it has been presumed in these instances for the purpose of classification that the threat can be either oral or written.

<sup>2</sup> Ala., Conn., D.C., Fla., Ga., Ind., Iowa, Kan., La., Me., Md., Mass., Mich., Neb., Nev., N.H., N.J., N.M., Ohio, Oregon, Pa., R.I., Tenn., Tex., Vt., Wash. § 2613, Wis., Wyo.

<sup>3</sup> Cal., Idaho, Mo., Mont., N.Y., N.D., Okla., S.D., Utah.

<sup>4</sup> Ky., Minn.

<sup>5</sup> Ark., Colo., Del., Miss., N.C. (except threat to accuse of crime, which may be oral).

<sup>6</sup> Ariz., Va.

<sup>7</sup> Wash. §§ 2610 and 2613; W. Va.

<sup>8</sup> Ariz., La., Vt., Va., W. Va.

In a large majority of the states the threat must be to do injury to the person threatened;<sup>9</sup> in others, to do injury to the person threatened or to members of his family;<sup>10</sup> in others, to do injury to the person threatened or to members of his family or his relatives,<sup>11</sup> and a variation of this, to do injury to the person threatened, his family or those related by blood, marriage or adoption;<sup>12</sup> in only one, to do injury to the person threatened, his family or any other person held dear to him;<sup>13</sup> and only in a few states the threat may be to do injury to the person threatened or to any other person.<sup>14</sup> Because of the ambiguous language of the statutes in a few states,<sup>15</sup> it is difficult to say whether the threat must be to do injury to the person threatened or may be to do an injury to the person threatened or to any other person. The Arkansas statute is a good example of this ambiguity, for it reads: "If any person shall willfully and maliciously send, or deliver, or make, or for the purpose of being delivered or sent shall part with the possession of any letter or writing, with or without a name subscribed thereto, or signed with a fictitious name, or with any letter, mark or designation, threatening therein to accuse *any person* of a crime, or to do any injury to the person or property of *any one*, with a view or intent to extort or gain any money or property of any description belonging to *another*, he shall be deemed guilty of an attempt to rob . . . ."<sup>16</sup>

Threats to inflict personal injury and injury to property are punishable according to all the statutes except that of the District of Columbia. The language of the statute of North Carolina is, "If any person shall knowingly send or deliver any letter or writing demanding of any other person, with menaces and without any reasonable or probable cause, any chattel, money or valuable security; . . . every such offender shall be guilty of a misdemeanor."<sup>17</sup> This language, i.e., "demanding . . . with menaces," probably includes threats to do injury to person and property. In Ohio a threat of any kind to destroy property is punishable by one to ten years' imprisonment,<sup>18</sup> and in Pennsylvania

<sup>9</sup> Ala. (except where personal injury to any member of his family is threatened), Colo., Conn., D.C., Ga., Iowa, Me., Minn., N.H., N.M., N.C., Ohio, Pa. § 4803, R. I., Tenn., Tex., Vt., Wash. (except personal injury may be threatened to any member of his family), Wis., Wyo.

<sup>10</sup> Ind., Idaho, Mich., N.Y. (if successful), W.Va.

<sup>11</sup> Ariz., N.D., Okla., Oregon, Pa. § 4806, S.D., Utah.

<sup>12</sup> Ill.

<sup>13</sup> La.

<sup>14</sup> Del., Fla., Mass., N.Y. (if unsuccessful), Pa. §§ 4804 and 4805.

<sup>15</sup> Ark., Cal., Kan., Ky., Md., Miss., Mo., Mont., Nev., N.J.

<sup>16</sup> Ark. Dig. Stat. (Pope, 1937) § 3038. (Italics are the author's.)

<sup>17</sup> N. C. Gen. Stat. (1943) § 14-118.

<sup>18</sup> Ohio Gen. Code Ann. (1939) § 13387.

a threat to destroy real or personal property is punishable by a fine not to exceed seven thousand dollars or imprisonment not to exceed fifteen years;<sup>19</sup> both are instances in which threats to injure property may be punished more severely than threats to do other injury.

All the statutes, except that of New Mexico, specifically include punishment of a threat to accuse of a crime. In Pennsylvania the terms "any heinous crime"<sup>20</sup> are used. That the blackmailer actually was convinced in his own mind that the victim committed the crime has no bearing on the good faith or intent of the blackmailer in any of the states.<sup>21</sup> In some states under no circumstances is it material to the guilt or innocence of the blackmailer whether the person threatened is or is not guilty of the crime of which he is accused.<sup>22</sup> To illustrate, in New York, if *B* obtains money from *A* under a threat of criminal prosecution against *A* for watering cotton which he sold to *B*, *B* is guilty of blackmail whether *A* actually watered the cotton or not. Likewise, if *B* obtains money from *A* under a threat to accuse *A* of stealing property from *X*, *B* is guilty of blackmail whether or not *A* stole the property. However, some states draw a distinction between the two cases just cited.<sup>23</sup> If *B*, believing that *A* knowingly poisoned *B*'s cattle, threatens to prosecute *A* criminally unless *A* deeds to *B* certain land commensurate in value with the dead cattle, the Ohio courts will, upon the trial of *B* for blackmail, admit evidence bearing upon whether or not *A* poisoned *B*'s cattle and therefore owes *B* money. The theory behind the admission of this evidence is that an honest effort on the part of a creditor to collect a just debt, by accusing or threatening to accuse the debtor of a crime with which the debt is connected, or out of which it arose, does not come within the purview of the blackmail

<sup>19</sup> Pa. Stat. Ann. (Purdon, 1939) tit. 18, § 4806.

<sup>20</sup> Pa. Stat. Ann. (Purdon, 1939) tit. 18, § 4803.

<sup>21</sup> *Commonwealth v. Coolidge*, 128 Mass. 55 (1880), is a case deciding this specific point and is of particular interest since Massachusetts is within the group of states referred to in footnote 23, *infra*. Although practically all the statutes are silent concerning the general subject discussed in this portion of the comment, the author considered the subject important enough to warrant a study of the case law; and the results of the author's findings and general citations of cases are included herein.

<sup>22</sup> *Lee v. State*, 16 Ariz. 291, 145 P. 244 (1914); *People v. Choynski*, 95 Cal. 640, 30 P. 791 (1892); *State v. Debolt*, 104 Iowa 105, 73 N. W. 499 (1897); *People v. Whittemore*, 102 Mich. 519, 61 N. W. 13 (1894); *People v. Wickes*, 112 App. Div. 39, 98 N. Y. S. 163 (1906); *Bianchi v. Leon*, 138 App. Div. 215, 122 N. Y. S. 1004 (1910); *Commonwealth v. Bernstine*, 103 Pa. Super. 518, 157 A. 698 (1931); *In re Sherin*, 27 S.D. 232, 130 N. W. 761 (1911); *State v. Needham*, 20 Thomp. (147 Tenn.) 50, 245 S. W. 527 (1922).

<sup>23</sup> *Mann v. State*, 47 Ohio St. 556, 26 N. E. 226 (1890); *Elliott v. State*, 36 Ohio 318 (1881); *Cohen v. State*, 37 Tex. Crim. Rep. 118, 38 S. W. 1005 (1897); *State v. Burns*, 161 Wash. 362, 297 P. 212 (1931).

statute. The Ohio court states the proposition thus: "The intent to extort may indeed exist, notwithstanding the truth of the accusation, and yet, in the light of surrounding circumstances, the fact that the accusation is true may strongly aid in negating such intent."<sup>24</sup> This is what is meant when the courts in a few states say that the truth of the accusation may be material for the defense in determining the intent or good faith with which the defendant made the accusation. On the other hand, if *B*, believing that *A* has burned his own barn in order to collect the insurance, threatens to accuse *A* of arson unless *A* pays *B* a certain sum of money, in Ohio, the guilt or innocence of *A* is immaterial to the guilt or innocence of *B*. The Washington court goes perhaps a step further in its conditions. In *State v. Burns* it said, "If *A* steals money from *B*, *B* may demand its return, and, if restitution be refused, *B* may threaten criminal prosecution, and, if he limits his demand to the specific amount embezzled, do no violence to the penal code. However, *B* may not demand of *A* more than is due him, and, if *B* by threats and duress obtains more than rightly belongs to him, he violates the statute. Nor may *B*, in his attempt to recover what is due him, by means of threats accuse *A* of the commission of another crime, or threaten to expose him to public ridicule. But so long as *B* limits his demand to the return of the specific article stolen, or to the exact amount of money embezzled, the statute is not violated."<sup>25</sup> Therefore, the Washington court concludes, the guilt or innocence of the victim is material as bearing on the intent of the so-called black-mailer. The Maryland statute provides a lesser punishment for a false accusation or threat to accuse of crime than for a true one.

Roughly half the states include the threat to expose or accuse of a deformity, immoral conduct, etc., which would subject the victim to disgrace or the ridicule of society.<sup>26</sup> A somewhat smaller number punish a threat to expose a secret.<sup>27</sup> And about one-fourth of the statutes provide punishment for a threat to publish or connive at publishing any libel.<sup>28</sup> Threats to injure character,<sup>29</sup> reputation,<sup>30</sup> or business<sup>31</sup> are punishable in a few states.

<sup>24</sup> *Mann v. State*, 47 Ohio St. 556 at 565, 245 S. W. 527 (1922).

<sup>25</sup> *State v. Burns*, 161 Wash. 362 at 367, 297 P. 212 (1931).

<sup>26</sup> Ala., Ariz., Cal., D.C., Ga., Ill., Idaho, Kan., Ky., La., Md., Minn., Mont., Neb., Nev., N.Y., N.D., Ohio, Okla., S.D., Utah, Wash., Wyo.

<sup>27</sup> Ala., Ariz., Cal., Idaho, La., Mont., Neb., Nev., N.Y., N.D., Okla., S.D., Utah, Wash.

<sup>28</sup> Ala., Cal., Ga., Idaho, Ky., Minn., Mo., Mont., Nev., N.Y., N.D., Utah, Wash.

<sup>29</sup> Ala., La., Va., W.Va.

<sup>30</sup> Conn., Pa., Tenn. [absolutely not included in Wisconsin, see *Judevine v. Benzies-Montanye Fuel & Warehouse Co.*, 222 Wis. 512, 269 N.W. 295 (1936)].

<sup>31</sup> Pa., Wis.

In making the threat, the blackmailer may demand from the victim any or several of a great number of things. If he demands money, that is sufficient in all the states. In a large number of the statutes the word "property"<sup>32</sup> is used, whereas in some "chattel"<sup>33</sup> is used. Other terms used are "security,"<sup>34</sup> "pecuniary benefit,"<sup>35</sup> "pecuniary advantage,"<sup>36</sup> "any benefit,"<sup>37</sup> "any advantage whatever,"<sup>38</sup> "anything of value,"<sup>39</sup> "other valuable consideration."<sup>40</sup> And again the threat may be made to induce the victim to do any act against his will;<sup>41</sup> to induce him to do an illegal or wrongful act;<sup>42</sup> to induce him to subscribe, alter, execute or destroy a valuable instrument, security or writing affecting a cause of action or defense or property.<sup>43</sup> Or the threat may be made to gain an acquittance<sup>44</sup> or immunity of any description;<sup>45</sup> to influence actions of officials;<sup>46</sup> or to confer upon or procure for any person any appointment or office of profit or trust.<sup>47</sup> According to the Virginia statute this benefit may come from the person threatened or from any other person. In Nebraska this advantage may be for the benefit of the person who makes the threat or for any other person.

Because the precise language of a statute should be studied to understand the law in a certain state, it is suggested that the Appendix be used by the reader who is interested in investigating this subject further. It will be noted that no sections appear in the Appendix for the state of South Carolina; this is explained by the fact that the author could find no statute on the subject in this state. As a matter of fact, the sections included in many instances were either not indexed or were indexed under such peculiar topics that they were difficult

<sup>32</sup> Ala., Ariz., Ark., Cal., Del., Idaho, Ky., Minn., Miss., Mo., Mont., Nev., N.Y., N.D., Okla., Oregon, Pa., S.D., R.I., Tenn., Tex., Utah, Va., Wash.

<sup>33</sup> Colo., Ga., Ill., Kan., Md., N.D., Ohio, Wyo.

<sup>34</sup> Ala., Del., Ind., Kan., Mo., N.C., Ohio, Pa., Va., W.Va., Wyo.

<sup>35</sup> Iowa, Kan., Mass., Mich., N.H., R.I., Va., W.Va.

<sup>36</sup> Ala., Conn., D.C., Fla., Mich., N.M., Ohio, Oregon, Tenn., Vt., Wis.

<sup>37</sup> Ala.

<sup>38</sup> La., Me., Neb., Nev., Tex.

<sup>39</sup> Colo., Del., D.C., Ga., Ill., La. (this means anything susceptible of ownership), Md., Mo., N.J., Pa., Tex.

<sup>40</sup> Idaho, Neb., N.D.

<sup>41</sup> Ala., Conn., Fla., Ga., Ind., Iowa, Kan., La., Me., Mass., Mich., Neb., N.H., N.M., Ohio, Oregon, R.I., Tenn., Vt., Wash., Wis., Wyo.

<sup>42</sup> Ala., Minn., Mont., N.Y., Pa., Wis.

<sup>43</sup> Ala., Cal., Idaho, Nev., N.D., Okla., S.D., Utah.

<sup>44</sup> La.

<sup>45</sup> La.

<sup>46</sup> Ala., Cal.

<sup>47</sup> Mo.

to find. The Appendix must also be used in connection with the footnotes, since the author thought that repetitious citations of the sections of the statutes in the footnotes were unnecessary and that such a method of presenting the statutes would have made cumbersome reading.

*Alice Kramer Griep\**

## APPENDIX

- Ala. Code Ann. (1940) tit. 14, §§ 49, 50.  
 Ariz. Code Ann. (1939) § 43-1901.  
 Ark. Dig. Stat. (Pope, 1937) § 3038.  
 Cal. Penal Code Ann. (Deering, 1941) §§ 518-520, 522-524, 257.  
 Colo. Stat. Ann. (Michie, 1935) ch. 48, § 190.  
 Conn. Gen. Stat. (1930) § 6069.  
 Del. Rev. Code (1935) § 5291.  
 D. C. Code (1940) § 22-2305.  
 Fla. Stat. Ann. (1941) § 836.05.  
 Ga. Code Ann. (Park, 1936) §§ 26-1801, 26-1802.  
 Idaho Code Ann. (1932) §§ 17-1509, 17-3801—17-3807.  
 Ill. Ann. Stat. (Smith-Hurd, 1941) ch. 38, §§ 240, 241.  
 Ind. Stat. Ann. (Burns, 1933) § 10-3204.  
 Iowa Code (Reichmann, 1939) § 13164.  
 Kan. Gen. Stat. Ann. (Corrick, 1936) §§ 21-529, 21-530, 21-532, 21-2412.  
 Ky. Rev. Stat. (1944) §§ 435.270, 435.280, 435.290.  
 La. Code of Crim. Law and Proc. (Dart, 1943) arts. 740-66.  
 Me. Rev. Stat. (1930) ch. 129, § 22.  
 Md. Ann. Code (Flack, 1939) art. 27, §§ 584-586.  
 Mass. Ann. Laws (Michie, 1932) ch. 265, § 25.  
 Mich. Stat. Ann. (Penal Code, 1937) ch. 286a, § 28.410; Mich. Comp. Laws (Supp. 1940) § 17115-213.  
 Minn. Stat. (1927) §§ 10377, 10381, 10382.  
 Miss. Code Ann. (1942) § 2365.  
 Mo. Rev. Stat. Ann. (1939) §§ 4452, 4455.  
 Mont. Rev. Code (Anderson & McFarland, 1935) §§ 11389-11393, 11397.  
 Neb. Rev. Stat. (1943) §§ 28-441, 28-444, 28-445.  
 Nev. Comp. Laws (Hillyer, 1929) §§ 10423, 10501.  
 N. H. Rev. Laws (1942) ch. 442, § 37.  
 N. J. Rev. Stat. (1937) §§ 2:127-3, 2:127-4.  
 N. M. Stat. Ann. (1941) § 41-4601.  
 N. Y. Penal Law (McKinney, 1944) art. 80, §§ 850-861, 1347.

\* A.B., LL.B., University of Michigan; Research Assistant, University of Michigan Law School.



- N. C. Gen. Stat. (1943) § 14-118.  
N. D. Rev. Code Ann. (1943) §§ 12-2812, 12-3701—12-3707.  
Ohio Gen. Code Ann (1939) §§ 13384, 13387.  
Okla. Stat. Ann (1941) tit. 21, §§ 1481-1487.  
Ore. Comp. Laws Ann. (1940) § 23-441.  
Pa. Stat. Ann. (Purdon, 1939) tit. 18, §§ 4801-4806.  
R. I. Gen. Laws (1938) ch. 606, § 17.  
S. D. Code Ann. (1939) §§ 13-3901—13-3906.  
Tenn. Code Ann. (Michie, 1938) § 10806.  
Tex. Penal Code Ann. (Vernon, 1925) arts. 1268, 1268a.  
Utah Code Ann. (1943) §§ 103-17-1—103-17-8.  
Vt. Pub. Laws (1933) § 8408.  
Va. Code Ann. (Michie, 1942) tit. 40, § 4406.  
Wash. Rev. Stat. Ann. (Remington, Supp. 1940) §§ 2610, 2613.  
W. Va. Code Ann. (Michie, 1943) § 5928.  
Wis. Stat. (1943) § 340.45.  
Wyo. Rev. Stat. Ann. (1931) § 32-226.
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