



# HUNTERS



# and HOWLERS



Threats and Violence  
Against Federal  
Judicial Officials in the  
United States,  
1789-1993



## Hunters and Howlers

**Hunters and Howlers:  
Threats and Violence Against Federal Judicial Officials  
in the United States, 1789-1993**

**Frederick S. Calhoun**

## AUTHOR'S NOTE

This book, good or bad, is my own. Although published by the United States Marshals Service, the themes pursued herein and the interpretations placed on events and data do not represent the views of the Department of Justice or even the Marshals Service. For well or ill, I have enjoyed complete editorial and interpretive control over the work. Fortunately, I have had wise counsel from many sources both within and without the government. What is good in the book reflects that counsel; that which is still bad shows simply my native southern stubbornness.

*F.S.C.*

United States Marshals Service  
Arlington, Virginia  
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*Dedicated to Highness*

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This book was born of death. The issue of risk to federal judicial officials became of pressing moment to the United States Marshals Service in December 1989 when Walter Leroy Moody assassinated Judge Robert Vance of the Eleventh Circuit Court of Appeals. Overnight, the Marshals Service established protective details on each of the surviving judges in that district, and I began to ask why it was that only one federal judge had been killed between 1789 and 1979, while assassins had killed three from 1979 to 1989. Why the apparent increased risk? Had American society changed that radically, or had the courts? How did the experience of the federal courts compare to their state and local counterparts? Was the risk to judicial officials greater or lesser than the risk other potential target groups faced? What kind of research had been done, and what experts were active in whatever field this was?

U.S. Marshals Service Deputy Director John J. Twomey, now retired, enthusiastically supported my pursuit of the answers to these and other questions, many of which he posed to me in numerous discussions about the project. Similarly, then Assistant Director for Operations G. Wayne Smith, now our Assistant Director for Training, saw great benefit in the research and gave me free rein to conduct it, occasionally even helping me with safe-conduct passes through the bureaucratic minefields. When Smith took over our training academy, Eugene Coon, Assistant Director for Judicial Security, gave me great support and encouragement (as well as a little protection). I am deeply grateful to all three men for their early and continued support. We have been friends a long time.

When Twomey retired, G. Ray Havens took his place as my boss, despite some initial chagrin

at having to figure out what to do with a historian. But Havens soon enough found some value in the situation. He immediately recognized the benefits then beginning to emerge from this study. Through his support and insight, we were able to start implementing a number of practical applications that had developed as offshoots of the original project. Along the way, he and I also became friends.

I am also indebted to Bill Griffin, chief of the Office of District Affairs, who has given me considerable support and advice on a range of issues, including his experiences with judicial security.

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Sergeant Steve Weston, head of the Special Investigations Unit of the California Highway Patrol, patiently and considerately lets me impose upon him with frequent telephone calls, visits, and even more frequent requests for advice, training, and help. He and the others in his unit have gone out of their way to support me and the Marshals Service.

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Gavin de Becker not only opened the doors of his company, Gavin de Becker, Inc., to me; he went many extra miles traveling from Los Angeles to Washington to brief and train and work with the Marshals Service, always with a smile and a joke, and vast knowledge and experience in a field he was instrumental in creating.

Each of these experts made enormous contributions to my own education in threat management; each has also helped the Marshals

Service refine and improve its protection of the federal judiciary.

David Turk, exercising the patience of Job, entered more than three thousand threat cases into a computer database, thus giving me a way to study inappropriate communications to federal judicial officials and, ultimately, providing the Marshals Service with a way to analyze the new communications its protectees may receive. He and the other analysts in the Service's Analytical Support Unit—Janira Goedmakers, Julie Hill, David Murray, and the irrepressible Carlyle Turner—have continued my education in the risk to federal judicial officials by challenging many of my assumptions, questioning my logic, and showing me new ideas and ways to think about the problems.

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For several years, I used to wander down to Tony Perez's office toward the end of the day, and he, Don Ward, and I would shoot the breeze, swap gossip, and debate the issues of the day. Perez first proposed the idea of the Marshals Service taking over from the FBI the investigations of threats to our protectees, and Ward and I worked hard to effect it. Career opportunities

now separate us, but our mutual respect remains. General Counsel Deborah Westbrook and several of her colleagues, Gerald Auerbach, Lisa Dickinson, and Harvey Smith, guided me past more than my share of legal issues, while Joe Lazar and Kevin O'Hare helped me find multitudes of legal references.

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Larry Mogavero, with his customary efficiency and good humor, arranged for the publication of this book under a short deadline. As always, he is a pleasure to work with. Michelle Truman took care of the cover design and made sure all the pages pleased the eye. The reader will be as happy with her work as I am.

Dr. Jay Mendell of Florida Atlantic University transferred all the data to a sophisticated computer program that allowed me to do the various analyses. Further, too, he pointed the way for many of the cross-tabulations and comparisons, and helped design a system for making the whole thing operational.

As they always have, Ken and Holly Hargreaves provided me great friendship and help as I struggled to make sense of all the information I had gathered. Ken guided me through some early statistical analysis, patiently explaining what to him must have seemed like first-grade math. For that patience—and, even more, for his lasting friendship—I am forever grateful.

My children, Austin, Emily, and Amy, may not be growing up in a world where violence is an archaic concept, a hope I expressed in an earlier book, but I take comfort at least in the fact that many people in many different agencies and professions are understanding it better. Such understanding is the first step in its eradication.

Above all, I am especially indebted to Debra Jenkins, chief and creator of the Analytical Support Unit (ASU). She read and commented on

drafts of the manuscript and, like her analysts, challenged and debated many of my conclusions, thus forcing me to rethink my assertions. More importantly, in the course of this study, I developed a few notions—some but half-baked—on how the Marshals Service could improve its analyses of inappropriate communications sent to our protectees. Debra took those ideas, added dozens more of her own, and created a unit that intelligently, rationally, and consistently analyzes every inappropriate communication reported to Marshals Service headquarters. Through her efforts, ASU brings a calm deliberation to very stressful situations. It has been one of the great pleasures of my life to witness the implementation of a new approach, indeed, a whole new way of thinking about a two-hundred-plus-year-old responsibility. It has truly been a revolution; Debra ensured its success. In the process, she became a dear friend.

Eduardo Gonzalez, the Director of the Marshals Service, supported Debra's revolution by incorporating it into a larger revolution of his own. He brought to the Service a refreshing enthusiasm for improving the organization and displayed an even more rejuvenating thirst for new ideas and methods. By allowing his subordinates the freedom to try and fail and try again, Gonzalez infused his leadership of the Service with an inspiring willingness to gamble on ideas and, more importantly, on the people who have them. Serving the Marshals Service under him has been an exciting adventure made all the more fun by his humor and friendship. His legacy will be a redefinition of the Service's *glory days*.

I remember some years ago talking with de Becker about some of the frustrations one encounters when promoting radical new ideas within an organization. When he consoled me, I replied, "But Gavin, if I do this right, I'll be able to say that I wrote *the* book on the subject." That ambitious goal held me steady to the task, only to discover upon its completion how wrong I was.

Gavin beat me to it—and in a far better, more comprehensive book that I could have ever written. When it comes to threat management, he rules from on high.

## FOREWORD

*Eduardo Gonzalez*  
*Director, United States Marshals Service*

The United States Marshals Service has many and varied duties—more than any other federal law enforcement agency. None can be more important than the protection of the federal judiciary. It is a matter of saving lives and securing justice, of making sure that the judicial process proceeds, unhampered by disturbance and insulated from disruption. To warrant that Justice remains blind, those of us charged with her security must maintain a heightened state of alert. Since taking over the Marshals Service in 1993, I have embraced that awesome responsibility and worked hard to enhance the Service's protection of the judiciary. This book is part of that much larger effort.

In modern times, the Marshals Service has secured dozens of highly publicized, high-risk trials. We protected the proceedings concerning Panamanian dictator Manuel Noriega, scores of drug kingpins and other organized crime figures, the foreign terrorists who bombed the World Trade Center, the homegrown terrorists who blew up the Oklahoma City federal building, and numerous other less notorious—but no less dangerous—cases. In 1997, we managed nearly six hundred threatening or untoward communications received by our protectees by analyzing all of them, investigating several hundred, and establishing 24-hour protective details in scores of them.

The research that went into this book helped me understand why federal justice seemingly has become far more imperiled at the end of the twentieth century than it ever was at the beginning. In the course of my lifetime, stretching over the last half of the century, the federal government consummated a revolutionary change in its

relationship with its citizenry. While the nineteenth-century federal government tended to distance itself from its citizens, the twentieth-century government interacts with them routinely. As a former local law enforcement practitioner, I am not surprised that this dramatic change has resulted in an increase in the potential risk to judicial officials and their proceedings. What the federal courts are facing now, the state and local courts have confronted from their inception.

I am proud of the Marshals Service's achievements in this area, not only during my tenure, but throughout its years of existence. Since the creation of the federal judiciary, four federal judges have been killed. None were killed while under the protection of the Marshals or at any courthouse we secure. Since Judge Robert Vance's brutal assassination in 1989, the Marshals Service has taken additional steps to help the judiciary become more alert to potential security problems and more sensitive to the importance of reporting to us any suspicions or discomfort they might have about individuals approaching them.

This book has also helped me understand, and I hope will help other readers understand, how absolutely crucial it is to report inappropriate communications. Only by reporting them will our experts be able to analyze—deliberately and intelligently—their character, tone, and content. By comparing new communications to all we know about previous, similar communications, we are much better able to understand each situation and to devise the best strategies to defuse any risk. As this book so clearly shows, the past provides the only illumination of the diverging paths that lie ahead.

## PREFACE

Jack Gary McKnight was a hunter. For years, McKnight and his father-in-law prowled the fields and woods around Topeka, Kansas, hunting fowl and other prey, enjoying the outdoors and the feel of the shotguns, the smell of cordite, and the thrill of the kill. A former Marine, McKnight had a steady, good-paying job with the Sante Fe Railroad and his own home on a small farm. He had lived with his wife, Cindy, for more than a dozen years.

McKnight also had a problem. A recovering alcoholic, he had switched addictions in the early 1980s and had become a pothead, smoking up to half a dozen joints a day. In 1985, he spent nearly \$5,000 on grass and decided to begin growing his own. For the next several years, he cultivated marijuana plants, turning his addiction into a hobby. Occasionally, he sold or gave his produce to friends, but there was never any evidence that McKnight was anything more than a user—certainly not a pusher.

In August 1992, the local sheriff's department and the Kansas Bureau of Investigation staked out McKnight's marijuana field and arrested him when he came, unarmed, to tend the plants. The police counted 104 cultivated plants, enough to take McKnight into custody on intent-to-sell charges. They also arrested Cindy McKnight and, after a search of their small house that uncovered several pistols, they added use of weapons in the commission of a felony to the charges.

The state offered a deal, reducing the charges to the point that McKnight was looking at a short jail term and then probation. His first lawyer, later disbarred for general incompetence, refused the deal, probably without ever telling the McKnights about it. The county prosecutor simply shrugged his shoulders at criminal stupidity and

offered the case to the federal prosecutors. An assistant U.S. attorney for the District of Kansas eagerly took the case and prosecuted it according to the nationwide Triggerlock criteria aimed at armed drug dealers. Under federal law, McKnight was looking at a minimum ten-year mandatory sentence with no parole or probation. At the same time, the State of Kansas instituted proceedings to seize the McKnights' home and farm. Ironically, since McKnight had never purchased a drug tax stamp for growing his illicit marijuana, he owed a considerable amount in back taxes.

The government offered Cindy McKnight a reduced sentence if she would testify against her husband. With his rather reluctant approval, she agreed. McKnight then agreed to plead guilty and accept the mandatory jail sentence in the hope that between his pleading and his scheduled sentencing, he could find some way to offer the government "substantial assistance" in catching others breaking the drug laws. After pleading guilty in the spring of 1993, McKnight spent the summer desperately trying to find something that amounted to substantial assistance. He never did.

But McKnight also decided that he would never go to prison. In conversations with his attorney, he never discussed the future, never inquired about prison life or after. In meetings with the probation officer assigned to complete McKnight's pre-sentencing report, McKnight never asked about life behind bars or even to which prison he would be assigned. He never asked about what to expect or anything else that most defendants facing jail time ask. McKnight did not care. He knew he was not going.

Sometime in June he mentioned to a friend in passing that what he ought to do is "kill all those bastards." That seed germinated, and for the next

two months, McKnight made his plans and began manufacturing two dozen pipe bombs, some filled with gunpowder and some with gasoline. His deadline was August 5, the day of his scheduled sentencing.

On the evening of August 4, McKnight went into a local gun store and purchased three pistols, two 9-millimeter semi-automatics and one .357 magnum revolver. He paid for them with a credit card and left with the weapons. He also rented a tow bar and attached it to the bumper of his pickup truck. That night, while Cindy slept under the effects of a sleeping pill, McKnight made a videotape addressed to his father-in-law. The government had ruined his life, he explained, taking from him everything he owned, everything he loved. "They got it all," he repeated several times.

"But tomorrow," he told the camera, "there's only one rule in a gun fight. Bring a gun. I got mine. Let's see if they got theirs."

Early on the morning of August 5, his sentencing not scheduled till 2:30 that afternoon, McKnight killed his two dogs, threw them in the back of his truck, and hitched his car to the tow bar. He then drove to the office of the sheriff who had originally arrested him. After unhitching his car a block or so away, McKnight parked the truck directly in front of the sheriff's office at about 8:30 a.m. No one was in the office. McKnight set fire to the truck, leaving several explosives to ignite. Then he got in his car and drove 30 miles to Topeka.

McKnight reached Topeka at about 9:30 a.m. He parked his car at the federal building in the unrestricted lot open to all visitors. As he left his car, carrying a briefcase loaded with bombs, he set the vehicle on fire, having left several bombs in it. He walked into the ground-floor level of the federal building and took the elevator to the fourth floor, where all the courtrooms, judges, magnetometers, and court security officers were located. He stepped out of the elevator with gun in hand, turned to his right, and immediately shot the lone court security officer manning the magnetometer. The first shot caught the guard in the head; the guard was killed instantly.

A visitor, dressed similarly to the guard, had just passed through the magnetometer. McKnight fired twice at him, wounding both his arms and creasing his stomach. The man quickly lay down and played dead. McKnight passed through the magnetometer and, glancing to his right, saw a uniformed Leavenworth prison guard coming out of the restroom. McKnight fired at the guard, but missed. The guard dashed to the marshal's office.

Turning to his left, McKnight walked down the hall toward the clerk's office. He fired his pistol and threw several bombs, one of which did not explode. The others did, making much noise and peppering the floor, walls, and ceiling with shrapnel.

As he approached the clerk's office, McKnight fired several shots through the glass window, shattering it. Two of the shots ricocheted into a woman who had come to pick up some papers, catching her just below the right eye and also in the wrist. The court clerks, eleven people in all, dove under their desks or raced to the sanctuary of the supply closet.

McKnight strolled, unhurried but purposefully, into the clerk's office, sporadically tossing bombs and shooting his pistol. He fired more than eighty rounds, but none of them were aimed at any of the clerks who were cowering as best they could. Walking to the back of the room, McKnight glanced out the only window to the outside. By this time the police were arriving, storming about in the courtyard four floors below. Glancing down, McKnight saw a clerk hiding under her desk.

"Are you armed?" he asked her. "No," she told him, not looking at him, not looking any higher than his knees.

"Don't worry," he replied. "You're not who I'm looking for."

As he turned to leave, he fired two shots through the window down toward the police officers scurrying about the courtyard. McKnight then went back to the front of the office. He took up a position at a desk from which he could see to the corridors and elevators. From his place in the clerk's office, McKnight occupied the best defensive position on the fourth floor.

For the next thirty minutes, McKnight waited. He ignited a road flare, placing it on the carpet by the wall. He shot his pistols and began wiring one of his pipe bombs to a large battery. No police came up to the fourth floor. No one brought themselves or their guns to his gunfight. McKnight was essentially left alone. Only the ringing of the telephones disturbed his peace.

At around 10:10, some forty minutes after he had shot his way into the Topeka federal courthouse, Jack Gary McKnight stuck the barrel of his .357 magnum into his mouth and pulled the trigger. His body fell on one of the pipe bombs, exploding it. The explosion nearly tore his left leg off, flipping him several feet to land on his stomach, his right hand curled underneath his lifeless body. Debris and ceiling tiles fell down to cover his body and the pistol.

McKnight was a hunter.

R. F., a federal prisoner confined to the Bureau of Prison's Springfield, Missouri, medical facility, is a howler. He spends most of his days composing lengthy letters to federal judges all across the country. He mails the letters—all of them filled with threats and recriminations and angry, irrational ramblings—to any judge he can think of or for whom he can get an address. Most of the judges have never met R. F.; R. F. does not know them or what their case loads are, or even what their decisions have been. He just threatens them because they are judges. As R. F. explained to his doctors, he would not know what to do with himself all day if he did not have his letters to write.

R. F. is a howler with plenty of people to hear his howls.

Between the two—McKnight the hunter and R. F. the howler—lies a world of difference. They are extremes: one an actor, one a talker; one a doer, one a writer. Between them is a huge chasm, a clear distinction. The hunters hunt and rarely howl; the howlers howl and only rarely hunt.

This is a study of both those who hunt federal

judicial officials and those who howl at them. It attempts to explain why they focus their attentions and their wrath on the federal judiciary—each in their distinctive ways. The study examines the issues historically by tracing the evolving definition of federalism and the federal government's role through an array of contempt-of-court cases. It examines the hunters and the howlers contemporaneously as well, through a minutely detailed statistical analysis of 3,096 inappropriate communications and assaults on federal judicial officials reported to the headquarters of the United States Marshals Service from fiscal year 1980 through fiscal year 1993.

An inappropriate communication is defined as any contact or approach to a federal judicial official—written, telephonic, verbal, through an informant, or by some activity—that is unwarranted, ominous, threatening, weird, bizarre, or untoward. These types of communications are not simple objections or expressions of opinion. Rather, they are intended to unsettle or unnerve, to direct justice from its path, to frighten, or to pretend some special relationship exists with the judicial official. Table P.1 presents the current definition used by the U.S. Marshals Service.

The emphasis on inappropriateness rather than on explicit threats is vital. As Gavin de Becker explains in his best-selling book, *The Gift of Fear*:

It is a tenacious myth that those who threaten public figures are the ones most likely to harm them. In fact, those who make direct threats to public figures are far less likely to harm them than those who communicate in other inappropriate ways (lovesickness, exaggerated adoration, themes of rejection, the belief that a relationship is meant to be," plans to travel or meet, the belief that the media figure owes them something, etc.). Direct threats are not a reliable pre-incident indicator for assassination in America, as demonstrated by the fact that *not one successful public-figure attacker in the history of the media age directly threatened his victim first.*

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**Table P.1. United States Marshals Service: Inappropriate Communications—Defined**

Communications containing any single one of the following references should be immediately reported to the local office of the United States Marshal, which will report it to the Judicial Security Division Duty Desk.

**THREATS**—Report all threats of harm to the judicial official or any other person received in writing, by telephone, through an informant, or verbally. Threats are not always direct or specific, but can be veiled (“You’ll get yours”) or conditional (“You better do . . . or I will . . .”). Also report any suspicious activity around a judicial official or any assault or attempted assault on a judicial official.

**INAPPROPRIATE COMMUNICATIONS**—Many communications do not make explicit threats, but are nonetheless cause for concern. Report any communication that meets any single one of the following tests:

1. A particular complaint or sense of outrage over the handling of a court case.
2. Pseudo-legal court filings.
3. References to a special history or special destiny shared with the judicial official.
4. Evidence of suspicious behavior, stalking behavior, or research on the personal affairs of the judicial official.
5. Religious and historical themes involving the judicial official (including admonishments for the judicial official to change lifestyles or personal behaviors).
6. References to death, suicide, weapons, violence, assassinations, acts of terrorism, or war.
7. Extreme or obsessive admiration or affection.
8. Obsessive desire to contact the judicial official (including plans for meetings, interest in home address or other personal information, surveillance, or following).
9. Belief that a debt is owed the person by the judicial official (not necessarily money, but any kind of debt).
10. Perception of the judicial official as someone other than himself/herself (an imposter, a historical figure, the suspect’s relative, God, or the devil).
11. References to public figures who have been attacked (Lincoln, Lennon, Sadat, Kennedy, Judge Vance, etc.).
12. References to individuals (or their acts) who have attacked public figures or committed notorious acts of violence or terrorism (Timothy McVeigh, Oswald, Hinckley, Sirhan Sirhan, et al.).
13. References or claims of mental illness, such as psychiatric care, anti-psychotic medication, etc.).
14. References to bodyguards, security, safety, danger, etc.

Beyond these general categories, please include anything that is disjointed in content, sinister, or otherwise questionable. This includes bizarre or unreasonable solicitations. The Marshals Service will return anything that is not of protective interest.

Source: United States Marshals Service handout, undated.

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The pertinence of de Becker's cogent observation to the communications received by federal judicial officials is seen throughout the course of this study.<sup>1</sup>

From the study emerges the bold, if rather obvious, conclusion that since hunters hunt and howlers howl, they can be identified by their distinctive habits and markings. It is possible, in

other words, to assess and identify with confidence those who inappropriately contact federal judicial officials as either hunters or howlers. Once so identified, the best protective measures can be determined. It is, in the end, all in how one thinks about such communications that makes the most difference in how one can assess them. This study offers one approach to such thinking.

## INTRODUCTION

Courts are contentious places. They provide the neutral arena for the resolution of disputes. Contenders bring their quarrels before the bar, seeking that most elusive of all promises: justice. Over the centuries, courts have evolved an enforced decorum and a complex set of rules to ensure, if not quite justice, at least due process. In the United States, a disinterested arbiter and a dozen peers pass judgment on the arguments of opposing advocates. Rules of procedure are strictly enforced, from the ritualistic "Oyez, oyez" that opens each session to the bang of the gavel that signals its close; from the introduction of evidence to the examination of witnesses; from the deliberations of the jury to the processes of appeal. Issues of contention—petty or momentous—are approached alike. Justice is enlivened as much by its means as by its end.

To the participants, the issues take on supreme import. Their standing before the bar may literally involve their life or death—or it may simply seem that way to them. Whether the accused murderer or the bankrupt debtor, the injured party or the self-righteous complainant, the innocent or the damned, each in his or her own way looks to the court for a decision. For the most part, those who come before the bar accept its procedures and its outcomes without question or protest. Like Albert Camus's condemned *Stranger*, most calmly reconcile themselves to the court's determination of their fate. As Camus described it, they resign themselves "to the benign indifference of the universe."<sup>1</sup>

The individual participant may not understand justice in its practical operation. He or she may not fully recognize or accept the law's intent or purpose, its sublime procedures and grand traditions. Indeed, most who approach quake before the bar. To the uninitiated and the uninformed, judicial procedures are mysterious and the myster-

ies unnerving. Like Joseph K. in Franz Kafka's *The Trial*, the lone litigant may tremble before the majesty of the law without ever understanding the issues at stake, without ever protesting the sentence that condemned him:

"Where was the Judge whom he had never seen?" K. silently asked as his executioners carried out their gruesome task. "Where was the High Court, to which he had never penetrated?" He raised his hands and spread out all his fingers.

But significantly, he did not resist.<sup>2</sup>

Yet, whether in ignorance or enlightenment, each litigant comes to the court with his or her own expectations of what is just and fair. The expectation may be—and very often is—entirely self-centered and irrelevant of any objective standard of common law, tradition, or rational jurisprudence. The participant, whether a criminal in chains or a common citizen with a simple complaint, holds a particular expectation of how he or she will be treated, of what is just *for him or her*. Each wants freedom, each wants his or her claim sustained, each wants to be released or upheld.

Some are outraged when the courts deny them their expectation, their own narcissistic assessment of what is right. At that moment, propelled by disappointment, fear, or revenge, the outraged litigant lashes out. He—the 93 percent who do this are males—threatens the judge or the prosecutor, the witness against him, or the juror who judged him. He strikes violently against the system that has seemingly disappointed him, even incarcerated him or stripped him of his possessions, or denied him his own sense—however twisted or perverse—of justice and righteousness.

Each year, the United States Marshals Service

receives reports on several hundred inappropriate communications or actual assaults directed against officials within the federal judiciary. In fiscal year 1997, for example, 593 such communications were reported from across the country. They come by mail and telephone, by informant and in person. The assaults are made against the judicial official, his or her family, or his or her property.

But by whatever method or direction, inappropriate communications to the federal judiciary are characterized by two salient features: anger and personal involvement. Federal courts in the United States have escaped the random, irrational attack that courts in other lands have suffered. Federal courts in the United States have not been victims of ideological assault or revolutionary violence. They have not been prey to unprovoked attack by organized crime. In the majority of cases, federal judicial officials who have been threatened or assaulted know—or would know, were the threats not made anonymously—their assailant and know—or would know—why they were attacking. Threats and assaults directed against the federal judiciary result from specific litigation and a profound sense of insult at its process. They result from justice turned on its head.

An elementary existential absurdity runs throughout these inappropriate communications to the judiciary. They are intensely personal and thus subject entirely to the twisted perversity of the individual. Many people who come before the court demand vindication, not justice. They expect the courts to accept their side; they willfully ignore objective or legal standards. When the courts pass sentence, when they hand down orders or issue decrees that somehow violate an individualized definition of justice, the individual strikes back. The danger comes when the courts step across an invisible line that only the threatener may perceive as injurious.

In the spring of 1979, the Chagra family of drug smugglers hired an assassin to take out federal Judge John Wood of the Western District of Texas. The Chagras well knew they were guilty of violating any number of drug laws. They simply feared that their case would be scheduled

before the man whose harsh sentences had earned him the nickname "Maximum John." By literally taking the law into their own hands, the members of the Chagra family who contracted the murder tried to effect their own selfish sense of justice: They tried to mitigate the severity of their potential conviction by murdering the harshest judge.

Just shy of a decade later, Charles Koster went daily to the courtroom of Judge Richard Daronco of the Southern District of New York to express his support for his daughter, who had filed a sex discrimination suit against one of the largest and most powerful New York banks. Koster clearly believed his daughter's claim of discrimination; he was just as clearly appalled and outraged when Judge Daronco ruled against her and dismissed the suit. On Saturday afternoon, May 21, 1988, Koster looked up Daronco's home address in the White Plains, New York, phone book and paid the judge a visit.<sup>3</sup>

Koster found Daronco working in his yard. Without hesitating or wasting a moment in angry recriminations, Koster burst through the border hedges and began firing his revolver. He chased the judge into the house, firing and mortally wounding him with all but his last bullet. That Koster saved for himself.

In his demented way, Koster tried to exonerate his daughter's honor by murdering the judge who had denied her lawsuit. He clearly went to the court with a strong conviction of what was just; he just as clearly came away disappointed. He expressed his rage by attacking the judge.

In December 1989, Walter Leroy Moody mailed four bombs to separate addresses across the South. The immediate issue prompting Moody was his anger at the Eleventh Circuit Court of Appeals for its refusal to purge his record of an earlier criminal conviction. Moody believed himself unjustly treated. His own twisted sense of justice, which was further perverted by a demented racism, convinced him that he had been wronged by the appellate court. In effect, he disguised his attack on the court with a broader attack on Blacks.<sup>4</sup>

One of Moody's bombs killed Circuit Court Judge Robert S. Vance, who had sat on the panel

that denied Moody's appeal. Two days later, a second bomb was intercepted at the Eleventh Circuit courthouse in Atlanta, Georgia. The third bomb killed a Black civil rights attorney in Savannah, Georgia. The fourth bomb was discovered upon its delivery to the offices of the National Association for the Advancement of Colored People (NAACP) in Jacksonville, Florida.

The Chagras, Koster, and Moody were hunters. They expressed their selfish outrage at the federal courts by assaulting and murdering federal judges. In none of these incidents, nor in Jack Gary McKnight's 1993 attack on the Topeka courthouse, did any of these hunters first explicitly threaten or forewarn. Instead, they launched surprise attacks.

For hunters and howlers alike, an uncommonly keen sense of personal injury makes threats and violence against the courts distinct from attacks against other public figures such as presidents or Hollywood celebrities. Many of the people who pose a threat to the judiciary do so for entirely personal reasons. They feel betrayed by the system and fear its judgment. From the Mafia don to the Colombian drug runner, from the bankrupt to the misbegotten, those who strike out at justice do so for two primary reasons: either anger or fear over what is happening to them.

They are not driven by ideals, though like Moody they may embrace a particular and altogether skewed set of beliefs. Their assaults are not random acts of violence; rather they are specific reactions to what has been done or is about to be done to them. They reject the commonly accepted precepts of justice in favor of a personalized, selfish, and highly individual sense of what is fair and just *for them*.

Threats received from organized crime figures—mafiosi, for example—illustrate the point. The conventional wisdom within the federal judiciary holds that members of the American Mafia accept their prison sentences as the cost of doing business in the United States. Hence, the judiciary rarely must concern itself with fear of retribution

from organized crime; the rules are straightforward and accepted by both sides. The risk skyrockets, however, when a mafioso feels wronged.

In 1988, an assistant U.S. attorney (AUSA) in the Southern District of New York was threatened by one of the highest-ranking dons of the Colombo organized crime family. The AUSA had prosecuted the don and obtained his conviction, but the threat came not for that. Instead, the don wanted the AUSA taken out because he had openly speculated on whether the don's wife's fur coat could be seized as an illicit asset. From the don's twisted point of view, the AUSA had stepped beyond the permissible bounds of the game. By insulting the don's wife, the AUSA had broken some unwritten rule. He would have to be punished.<sup>5</sup>

What makes the threatener especially dangerous to the judiciary is the direct personal stake he has against the system. He does not strike out for some grand ideal; he does not fight to change the course of history or save mankind. Rather, he acts out of his personal sense of harm or injustice, his selfish fear of being locked away, his perverse sense of private injury. The threatener's sense of injury and his reaction to it may stretch beyond the bounds of logic. The inappropriate communication may not make sense to anyone but the individual who utters it. Because of the intensely personal nature of threats to the judiciary, predicting who poses the greatest risk is especially difficult; some would say it's virtually impossible.

Neither revolutionaries nor lunatics, idealists nor nihilists, have attacked the U.S. federal courts. It has been neither gangs of criminals nor Mafia dons, drug dealers nor terrorists. It has been the wronged. Stated more precisely, it has been those who believed themselves injured or threatened by the courts. They were not acting, but *reacting*—out of either anger or fear—to some action by the judiciary. This compelling anger and outrage was the single most distinguishing characteristic of those who would threaten or harm the judiciary.

## Scope of the Study

This study examines inappropriate communications to and assaults against the federal judiciary from several perspectives: historical, scholarly, international, judicial, and analytical. Part I offers a historical context for understanding contempt of court. This context also suggests that the fundamental twentieth-century change in the definition of federalism exposed the federal courts to more individuals and, hence, to more of their problems. In the nineteenth century, the federal government showed little interest in the personal lives of its citizens. The twentieth-century brand of federalism readily involved itself in those lives. This, in turn, invited an increase in the rate of threats and assaults. During the nineteenth century, federal courts largely remained above the fray. During the twentieth century, however, federalism came to embrace the individual citizen in ways unthought of before. With that embrace, the federal courts enthusiastically joined the fray.

Given that change, the problem of inappropriate communications to and assaults against the courts cannot be understood fully without comparing them to similar contacts with other distinct groups, such as U.S. presidents, politicians, and celebrities. The dissimilarities between inappropriate communications to the judiciary and inappropriate communications to other groups are revealing. A comparison is also made to the risks confronting judicial officials in other countries and at the state and local level. Finally, the views of a select number of federal judges are presented.

Consequently, Part I provides a context for understanding the problems facing today's federal judiciary. Part II analyzes that problem in some detail. The analysis is based on a statistical study of 3,096 inappropriate communications to federal judicial officials reported to the headquarters

of the United States Marshals Service from fiscal year 1980 through fiscal year 1993. Various discrete characteristics and specific features of the communications were categorized. Each of the 3,096 inappropriate communications was then entered into the computer according to what was known about them. Various tests were run on the database to identify statistically significant relationships between the individual characteristics and combinations of characteristics, and what was known of the outcome of the specific inappropriate communication or assault.

As a result of the analysis, the inappropriate communications and assaults are described by their nature, character, method, motive, victims, and suspects. Each also was analyzed by the outcome—by whether the person making the inappropriate communication did nothing to implement it, tried to carry it out, or actually inflicted some violence or harm. The analysis provides a way to think about inappropriate communications by describing their salient features and identifying their characteristics.

Finally, the study concludes with a modest suggestion for assessing inappropriate communications rationally and intelligently, free of emotion or fear. The purpose is not to develop various formulae for predicting the potential outcomes of inappropriate communications. As Macbeth learned too well, "Come what come may, Time and the hour runs through the roughest day." Predicting human behavior is the province of angels and fools. Rather, the study has a far simpler goal. It is intended to shed some insight on what makes individuals threaten federal judicial officials. By understanding their motives and complaints, their angers and fears, perhaps we can deal with their anger intelligently and purposefully.<sup>6</sup>

**Part I**

**Contempts of Court in Historical Context**

## 1. CONTEMPTS OF COURT

Courts control through respect only. They are entirely dependent on a generally recognized and widely accepted practice of obedience. Theoretically, they can merely impel; on their own, they cannot compel. The powers of the courts derive from the deference with which their orders are received. If the litigants disregard them or other branches of government are unwilling to enforce them, the judiciary has little recourse and no appeal.

Jurists have long been fond of observing that courts have neither the power of the purse nor of the sword, but merely of the pen. Writing in 1824, Judge Dade remarked in *Commonwealth v. Dandridge* that the judiciary "is confessedly the weakest branch of all governments, wielding neither wealth, force nor patronage." Courts themselves have no way to implement their orders and decisions. For all their power to decree, they must defer to other authorities to execute. "As has been more than once said in this court," Supreme Court Justice Samuel Miller observed in 1889 in *In re Neagle*:

[I]n the division of the powers of government between the three great departments, executive, legislative, and judicial, the judicial is the weakest for the purposes of self-protection and for the enforcement of the powers which it exercises.

Without force, wealth, or favor to support them, the courts depend on persuasion through a reasoned interpretation of the law. It is their only club.<sup>1</sup>

For most of the history of the federal courts, the same, too, was true of their protection. They have always depended on the executive branch, particularly its U.S. marshals, to protect them

from physical attack or harm. Although federal law has protected federal lawmen from assault while performing their duties as early as 1790, federal judges were not protected by statute until 1948. Indeed, in the landmark case *In re Neagle*, the Supreme Court confirmed Deputy U.S. Marshal David Neagle's violent protection of Supreme Court Justice Stephen Field by developing a new theory of the implied powers of the Constitution, in particular in this instance, the president's obligation to see the laws faithfully executed.<sup>2</sup>

Yet, despite their coy claims, judges have never been entirely defenseless. Like the demure young maiden whose shyness disguises a steely will, judges have managed their own protection quite well. For centuries English and, later, American jurists have maintained that their position carried with it its own authority to punish transgressions against them. Through this inherent power to punish contempts of court, the federal judiciary has defended itself and its authority adequately.<sup>3</sup>

Courts have always taken threats against them and their officers with utter seriousness. According to William Blackstone, who defined English law in the eighteenth century:

Not only such as are guilty of an actual violence, but of threatening or reproachful words to any judge setting [*sic*] in the courts, are guilty of a high misprision, and have been punished with large fines, imprisonment, and corporal punishment.

Such protections were also extended to all those "immediately under the protection of a court of justice." Included were all the court officers—attorneys, jurors, and jailors.<sup>4</sup>

Originally, English courts sat in the presence

of the king, and disruptions were considered direct insults to the monarch. As the courts evolved, judges sat for the liege. They inherited the regal personification of the realm. Insults to the courts continued to be seen as offenses to the state and were dealt with every bit as harshly as if they were blows directly to the monarchy. John C. Fox documented eighty-two cases of contempt between 1253 and 1680. Even that figure was low since he included only those cases "committed by strangers out of court, or not in the actual view of the court, and tried by a jury, or by confession." Nonetheless, the list included an intriguing array of offenses, all of which involved anger at some action of the court or a sense of injury or wrong. They were contempt of court precisely because the reaction to the court was scorn and disdain.<sup>5</sup>

In 1293, two men insulted Judge William de Bereford "with words of contumely, in contempt of the King." Both were imprisoned at the king's will. When justices of the king visited the city of Bristol in 1315, they were mobbed. The monarch fined the city as punishment. A knight and his esquire tried to rescue one man from an attachment of the court in 1348. During the subsequent scuffle, the esquire drew his sword against the judge. Both were disinherited and imprisoned for life; the hands of the esquire were cut off. Once guilt was established, each case was punished harshly with fines, imprisonment, or corporal punishment.<sup>6</sup>

Capital punishment, too, lay within the power of these early courts. At the Salisbury assizes in the summer of 1631, a prisoner objected to the sentence handed down against him. In a fit of anger he most surely regretted immediately, the prisoner threw a brickbat at the judge. It missed. The judge responded with alacrity to this grievous contempt. He ordered the prisoner's right hand cut off and impaled on a gibbet. Unsatisfied that this punishment adequately restored the dignity of the court, the judge then ordered the prisoner hanged.<sup>7</sup>

By Blackstone's day, capital punishment was no longer the immediate reaction to contempt.

Contempts against the king's *palaces* or *courts of justice* have always been looked upon as

high misprisions; and by the antient law, before the conquest, fighting in the king's palace, or before the king's judges, was punished with death.

But times had changed. "Our modern law," Blackstone wrote, "retains so much of the antient severity, as only to exchange the loss of life for the loss of the offending limb." In his day, assaulting a judge or striking a blow in court, or even simply drawing a weapon, was punished "with the loss of the right hand, imprisonment for life, and forfeiture of goods and chattels, and of the profit of his lands during life." Threatening a judge was also considered a "high misprision" and was punished with large fines, imprisonment, or corporal punishment.<sup>8</sup>

Perhaps because the courts considered themselves so weak and fragile—so entirely dependent on esteem—they relied resolutely on their broad powers to punish contempts. Anything less would have been a sign of weakness no court could afford. In Blackstone's view, this awesome power inhered in the nature of the law and the demands of its enforcement:

For laws, without a competent authority to secure their administration from disobedience and contempt, would be vain and nugatory. A power therefore in the supreme courts of justice to suppress such contempts, by an immediate attachment of the offender, results from the first principles of judicial establishments, and must be an inseparably attendant upon every superior tribunal. Accordingly we find it actually exercised as early as the annals of our law extend . . . it is a part of the *law of the land*; and, as such, is *confirmed* by the statute of *magna carta*.

Upon these fundamental principles, generations of courts have erected an elaborate, remorseless defense of their authority and their dignity. Justice has been swiftest when it has itself been challenged or insulted.<sup>9</sup>

But where did the challenge come from? Why the insult? When courts are held in contempt, it is because their acts and decisions are scorned. The contemtor rejects the lawful mode of resolving disputes in favor of the highly personalized act of contempt. Whether by throwing a brickbat, drawing a sword, or howling threats and contumely, the reaction is a clear rejection of a civilized resolution of disputes. It is a challenge not solely to the courts and their jurists, but to society itself.

### American Practices of Contempt

The United States, as it has done with so much of its law, held true to English practices of contempt. The Judiciary Act of 1789, which structured the federal courts and established the system of lower courts, expressly granted the power "to punish by fine or imprisonment, at the discretion of said courts, all contempts of authority in any cause or hearing before the same." Less than a year later, Congress made it a criminal offense, punishable by twelve months in jail or a \$300 fine, to:

obstruct, resist or oppose any officer of the United States, in serving or attempting to serve or execute any mense process or warrant, or any rule or order of any of the courts of the United States, or any other legal or judicial writ or process whatsoever, or . . . assault, beat or wound any officer, or other person duly authorized, in serving or executing any writ, rule, order, process or warrant.

Clearly, Congress intended the courts to enjoy the same respect as their English predecessors.<sup>10</sup>

The federal courts themselves showed no hesitation in punishing any challenge to their authority, no matter how petty the incident. The District of Columbia Circuit Court was venue for two of the earliest contempt proceedings. In December 1803, the grand jury foreman complained that a witness not only was refusing to answer questions, but also was behaving in an

insolent manner. The judge fined the recalcitrant witness five dollars. When later that same month a petit jury, unable to agree on a verdict, escaped its duty by crawling through a window, Circuit Judge William Cranch promptly punished all twelve for contempt.<sup>11</sup>

Echoing Blackstone, the federal courts assumed upon themselves the mantle of national sovereignty. It was a heavy burden constantly in need of protection. In 1808, Morrow and John Lowry of Pennsylvania violently threatened a deputy marshal who was serving writs on their land. Circuit Judge Bushrod Washington eloquently decreed:

Guarded as she is by all the power of this nation, justice sits securely in her seat, and issues her lawful mandates, which no force can successfully resist, but such as is strong enough to overthrow the whole fabric of the constitution. From the nature of our government, it must be so. The courts of justice are the sanctuaries of the law; and it is through the law that our government speaks and acts. Impair, by any means, the power of these tribunals in the lawful exercise of their functions, and you attack the majesty of the law and sap, most essentially, the foundations of the republic. The government, in a degraded state, may survive the shock, but it ceases to be a government of laws; and liberty expires when force, the only remaining alternative, becomes necessary to coerce obedience to the will of the nation.

Judge Washington, claiming sympathy for the ignorance of the defendants, punished each of the Lowry brothers with a three-month jail sentence, a hundred-dollar fine, and the costs of the prosecution. The justice also required each to post a thousand-dollar bond for their good behavior over the next year. Neither sympathy nor ignorance could abate the judiciary's need for protection.<sup>12</sup>

In *U.S. v. Hudson and Goodwin* (1812), Justice William Johnson admitted that the courts had no common-law jurisdiction to punish a crime in the absence of congressional legislation. "The

legislative authority of the Union must first make an act a crime, affix a punishment to it, and declare the Court that shall have jurisdiction of the offence," Johnson explained, then hastened to except the court's inherent power to protect its own authority. Johnson wrote:

Certain implied powers must necessarily result to our Courts of justice from the nature of their institution. But jurisdiction of crimes against the state is not among those powers. To fine for contempt—imprison for contumacy—enforce the observance of order, &c. are powers which cannot be dispensed with in a Court, because they are necessary to the exercise of all others.

Even as the courts disclaimed any jurisdiction not explicitly outlawed by Congress, they retained for themselves the power to punish contempts of their own authority.<sup>13</sup>

The U.S. Supreme Court affirmed that federal courts had the power to punish contempts. As Justice Johnson wrote in 1821 for the majority in *Anderson v. Dunn*:

Courts of justice are universally acknowledged to be vested, by their very creation, with power to impose silence, respect, and decorum, in their presence, and submission to their lawful mandates, and, as a corollary to this proposition, to preserve themselves and their officers from the approach and insults of pollution.

Even if Congress should legislate on the contempt power, Johnson warned, it would be only a legislative declaration, "an instance of abundant caution" to demark clearly the acknowledged limits of the power. Since the authority inhered in the court, it did not derive from statute.<sup>14</sup>

Despite the general recognition that the courts had the authority to punish contempts, it still remained open to question just how far that authority extended. The most pressing issue was the extent of the judge's authority when court was not in session. Although the problem has pestered

the courts down to the present time, two early Virginia cases helped delimit the boundaries.

In November 1822, a Virginia judge dismissed his court for the day and repaired to the local tavern where he had let a room. While the judge slept, John Stuart and his friends threw a party in the bar. They got drunk, made a lot of noise, and—as drunks can tend to do—began fighting and otherwise enjoying themselves. Someone rode a horse into the house to the encouraging whoops of the others. The revelry lasted late into the night, thus permitting the exhausted judge little sleep.

The next morning, the judge cited Stuart and his fellow revelers for contempt. The appeals court, however, determined that the judge had exceeded even the broad sweep of the contempt power. Keeping a judge awake—or perhaps not inviting him to the party—was not contemptuous of the court and could not be punished by that power. Contempts had to stand in some relationship to a court in session, not to a judge sleeping fitfully.<sup>15</sup>

Nearly two years later, on a sunny June morning in 1824, a judge of the Superior Court in James City climbed the steps of the courthouse on his way to open court for the day. He passed by Dandridge, who had previously had a suit pending before the court.

"Good morning, Mr. Dandridge," the judge cheerfully exclaimed.

"I do not speak to any one who acted so corruptly," Dandridge angrily snapped back, "and in so cowardly a manner, as to attack my character, when I was absent, and so entirely defenceless."

On assuming the bench, the judge immediately wrote out the facts of the incident, took statements from witnesses, and issued a rule to Dandridge to show cause why he should not be held for contempt of court. On appeal, the Virginia high court upheld the judge's action.

Unlike the judge whose slumbers were so rudely interrupted, a judge insulted and attacked for his previous decisions acted well within his

authority to exercise the contempt power in his own protection. Writing for the court, Judge Dade firmly proclaimed:

We cannot prostrate the Courts of the country at the feet of every disappointed suitor, who may happen to lose his cause, or whose conduct may necessarily elicit from a Judge, observations unpleasant to his feelings, without producing the most fatal consequences. No! destroy the protection which the Law now gives to your Courts, unloose the hands and tongues of such persons, expose your Magistrates to their abuse, contumely, and vituperation, for their *Judicial* conduct, without any *immediate* and efficacious means of restraint, and instead of that happy, dignified and peaceable state of society which we now enjoy, we shall soon find that we have neither Laws nor Magistrates.

Judge R. E. Parker, concurring in *Commonwealth v. Dandridge* (1824), explained the crucial importance of that protection by pointing out:

It is of the highest consequence to the people, that all persons concerned in the administration of justice, and especially the Judges, should be left free to exercise their functions according to the dictates of their understandings, uninfluenced by fear, or favour.

Threatening or insulting a judge to influence the administration of the law made the offender "obnoxious to punishment, in every principle of justice and expediency."<sup>16</sup>

*Commonwealth v. Dandridge* became the landmark case cited by both federal and state courts in determining not only the extent of the contempt powers of judges out of court, but also for designing the form of attachment to use in exercising that authority. It was, in its way, as important as *King v. Almon* to British jurisprudence.

The courts did not restrict their protection to judges alone. When in 1829 Louisa Carter, under indictment for larceny, threatened two of the

witnesses against her, she was fined one dollar and ordered to post a hundred-dollar bond for good behavior. Since the threat took place in the piazza adjoining the court and therefore was "within the possibility of the hearing of the court," the judge used his contempt powers to impose the punishment summarily.<sup>17</sup>

Ultimately, the early federal courts proved overzealous in their efforts to punish the barest insult. Published criticisms of judicial decisions or proceedings were frequently held contemptible. The punishments imposed on the hapless editors and reporters were often so severe that abuse of the practice finally forced Congress to act. In 1831, the House of Representatives impeached Judge James H. Peck of Missouri for abusing the contempt power against a local newspaper. The Senate, though, failed to convict.<sup>18</sup>

Thus thwarted in that route, Congress passed a new law restricting the contempt power. Despite earlier judicial protestations that the power was insulated from congressional tampering, the courts admitted the new restraints. Thenceforth, the power of contempt

shall not be construed to extend to any cases except the misbehavior of any person or persons in the presence of the said courts, or so near thereto as to obstruct the administration of justice.

Determining the exact proximity of the obstruction occupied the courts in most of their contempt cases over the next century.<sup>19</sup>

Yet, despite the new restrictions, Congress also specifically extended to the judiciary protection from opposition to its rulings and orders. The second section of the act provided that:

If any person or persons shall, corruptly, or by threats or force, endeavour to influence, intimidate, or impede any juror, witness, or officer . . . [that person or persons shall] be punished by fine not exceeding five hundred dollars, or by imprisonment, not exceeding three months, or both.

In an early interpretation of the law, Circuit Court Judge Baldwin emphasized that any effort to influence or intimidate a court participant was not punishable "unless it is done corruptly, by force or threats."<sup>20</sup>

Yet the courts, while accepting the 1831 Congressional restriction, continued to shield themselves in the presumed innate powers to punish contempts. That same year, for example, Hiram Emerson called Childs a "liar" and a "damned liar" while the District of Columbia Circuit Court was in session. Both the crier and the bailiff overheard him. Shortly afterward, Emerson and Childs left the courtroom and began to fight in the hallway. Emerson struck Childs several times with a whip before the bout ended. The judge decided that although the men had left the courtroom, they remained near enough to it to obstruct the administration of justice. He held both men in contempt.<sup>21</sup>

Thirty-five years later, in *U.S. v. Smith*, the circuit court in the Eastern District of Arkansas explained that in any conspiracy to resist an officer in the performance of his duty, it was not necessary to prove that actual violence had occurred.

Threats and acts intended to terrify, or calculated by their nature to terrify a prudent and reasonable officer, are sufficient, even though he be not prevented thereby from executing his process.

Thus, for example, Samuel Haupton was convicted of assault in a North Carolina case for merely clenching his fist, and not even drawing it back, in a confrontation on the courthouse steps with the attorney prosecuting him.<sup>22</sup>

Justice Stephen Field, no stranger to the court's contempt power, declared in 1873 that

the power to punish for contempts is inherent in all courts; its existence is essential to the preservation of order in judicial proceedings, and to the enforcement of the judgments, orders, and writs of the courts, and consequently to the due administration of justice.

Field, as a fledgling attorney, had been disbarred twice for contempt only to be reinstated on appeal. He knew well that the contempt power was "often abused for the purpose of gratifying personal dislikes." Consequently, Field admitted in another opinion, Congress had restricted the judiciary's power. Courts in the United States could use the contempt power only "to insure order and decorum in their presence; faithfulness on the part of their officers in their official transactions; and obedience to their lawful orders, judgments, and process." Beyond that, they were powerless.<sup>23</sup>

By 1882, enough had been determined about the contempt power to allow Judge Brown of the Southern District of New York to define its American applications. In a lengthy note to his decision in *In re Carey*, Brown summarized the judicial interpretations of the contempt power. He defined contempt of court as:

a wilful disregard, disturbance of, or disobedience to, the rules or orders of a judicial or legislative body; and it may be committed either in the presence of the court or body, or in its absence. If committed in its presence, it is a direct contempt; and if committed by officers of the court elsewhere than directly in its presence, it may be considered done in the presence of the court; but if done by others than officers of the court and beyond its actual presence, it is a constructive contempt.

The difference between direct and constructive contempts lay "in the mode of redress." Direct contempts were punished summarily, by fines or imprisonment. With constructive contempts, the courts first had to offer the accused a hearing to determine the facts. Only then could it punish by fines or imprisonment.<sup>24</sup>

Two cases from Memphis, Tennessee, showed the judiciary's determination to defend itself from distraught litigants and unruly bystanders. When an attorney attended a deposition in October 1884, he repeatedly interrupted the examiner to direct the witness's answers, then responded to the examiner's objections with "violent and abusive

language." On learning of the lawyer's rude behavior, the court held him in contempt. Although the incident took place out of the courtroom, Judge Hammond decreed:

The privilege of protection to all engaged in and about the business of the court from all manner of obstruction to that business, from violence, insult, threats, and disturbance of every character, is a very high one.<sup>25</sup>

This protection extended to attorneys still in the courtroom, even after the court had recessed. Patterson, outraged by comments Newman Erb had made about his father that appeared in the morning newspaper, caught up with the attorney just as court was ending and within moments of the judge's departure from the bench. Rather than wait, Patterson strode purposefully into the emptying courtroom and struck Erb flush in the face. Bystanders immediately grabbed Patterson, thus preventing further violence. Dismissing Patterson's argument that the scuffle was entirely personal and thus of no reflection on the court, the judge held him in contempt.

It is a rude discourtesy to a court, and a grave attack upon the dignity of the authority to which the court belongs, to use its courtroom as fighting ground," Judge Hammond ruled.<sup>26</sup>

Attorneys, though given some latitude for a vigorous presentation of their case, were nevertheless expected to behave appropriately. In a New York case in 1888, an attorney was held in contempt for writing the judge a nasty letter threatening to publicize the injustice of his decision. In a *per curiam* opinion, the court warned that "the attorney must not pollute the atmosphere of the court with billingsgate, or give vent to his wrath within the sacred halls of justice." Instead, the court advised counsel to repair to the nearest tavern and "purge himself of [his wrath] in a manner suited to his temper and the surroundings."<sup>27</sup>

Other cases, both federal and state, reaching

into the twentieth century confirmed the judiciary's compelling commitment to protect itself from threats and challenges to its authority. Twentieth-century case law kept well within Judge Brown's definition of contempt. Assaults and physical threats have consistently been held as contemptuous of the courts. When in 1911 two litigants assaulted the plaintiff's attorney, they were held in contempt. A half-century later, Hogden pulled a pistol in front of a U.S. commissioner because he disagreed with a decision the commissioner had reached. Hogden, too, was punished for contempt. At the conclusion of the trial of a military draft resistor in 1970, a number of spectators launched a demonstration. When a deputy marshal tried to clear the courtroom, he was assaulted. The court held the man who attacked the deputy in contempt.<sup>28</sup>

Contempt citations have been handed down for intimidating witnesses, chancery court clerks, prosecutors, and judges. The threats have ranged from verbal warnings in court to clenched fists, from hand gestures in the shape of a pointed gun to death threats. In what the court considered "flagrant contempt," Jenkinson wrote a letter to the clerk of the New Jersey Chancery Court in 1922 stating, "I would have knocked your head off your shoulders if you had been within reach." In 1933, one defendant, nodding toward the bench, said to the tipstaff, "Pray for me, I'm going to get that crowd yet." He was sentenced to one year in jail for contempt.<sup>29</sup>

When Larry Cochran, the attorney for the defendant in a 1969 Georgia trial, clenched his fist and stepped toward a witness in a menacing manner, he was held in contempt and sentenced to three days in jail and fined fifty dollars. Harris, a spectator in one trial, shook his fist at a witness and said in open court, "You better not." The judge held him in contempt for obstructing justice. In another case, the defendant tried to compel the silence of one witness by threatening to tell the witness's wife about the witness's girlfriend. He, too, was found in contempt of court.<sup>30</sup>

In all, the courts showed no patience with any effort to intimidate or coerce justice from its path. As one judge noted about a prosecutor who had

been threatened, "His obligation to the state is to proceed fearlessly. He is not required or expected to engage in brawls, and he is not to be menaced or threatened." Protecting that prosecutor and any other individual who came before the bar—or sat upon it—fell clearly within the power and interest of the courts.<sup>31</sup>

Contempts needed not be physical. Threats alone were sufficient to arouse the righteous anger of the judiciary. When Carr formed his fingers into the shape of a gun and pointed at a witness, he was punished for contempt. When Huff wrote the presiding judge in his case an abusive letter that implied he would injure the judge if the case did not go in Huff's favor, the court found him in contempt. Similarly, in *Cooke v. U.S.* (1924), the Supreme Court held that an attorney who wrote the judge a "personal" letter containing "severe language personally derogatory to the judge" was guilty of contempt. Attorneys who argue too strongly with the judge, in the heat of pressing their case, risk punishment for contempt. Likewise, those who behave improperly can also be found in contempt of court.<sup>32</sup>

What runs as a constant through these and dozens of other federal contempt-of-court cases is the clear intent to protect the judge as the personification of justice. The effort harks back to Blackstone's contention that the English judge sat for the king. Yet, sometimes judges have exceeded their role; rather than personifying justice, they have personalized it. At the conclusion of the famous Chicago Seven trial in 1971, Judge Julius Hoffman handed down several hundred contempt-of-court citations against the defendants and their

attorneys. Throughout the trial, the defendants, self-proclaimed political prisoners, had done everything they could to disrupt the proceedings and exhaust the patience of the judge. Judge Hoffman exacerbated the problem by exhibiting no patience whatsoever with their antics. At one point, he ordered his marshals to wrestle Bobby Seale to the ground and forcibly restrain him in his chair. Seale spent the rest of the trial bound and gagged.

The appeals court later overturned many of the contempt citations, but it upheld many of them as well. Hoffman had clearly stretched beyond the limits of his judicial authority and played into the hands of the defendants. He became part of the problem unsettling the trial. Yet, though abused, his command of the courtroom had also to be upheld. As Circuit Judge Cummings concluded, judges "must have the authority necessary to ensure the orderly and expeditious progress of the proceedings." Otherwise, chaos would overcome the courts.<sup>33</sup>

Consequently, despite an occasional overly enthusiastic use of the contempt power, federal courts in the United States have armed themselves with ample protection against harm or disrespect. For most of their history, this protection has served them well. Despite considerable violence and upheaval about them, the courts have survived intact and largely unmolested. The next chapter offers a historical interpretation of why the federal courts have been able to remain above the fray of America's violent past. It also suggests that the court's previous judicial isolation has eroded significantly.

## 2. STANDING BEFORE THE BAR

For most of the history of the federal courts, the individual American had little standing before the federal bar. That resulted from the changing nature of federalism, that is, the three-way relationship among the national government, the states, and the individual citizen. The original definition and practice of federalism has insulated the national courts from the rough and tumble, the sullen criminal and the outraged litigant, the hunter and the howler. Well protected by their power to punish the slightest contempt, United States courts have for two centuries now retained their independence. Only sporadically have they been prey to violent resistance or revenge. These problems have increased rather dramatically in recent times as the federal government has become more involved with the trials, tribulations, anger, and outrage of the individual citizen.

The federal judiciary has not been threatened by ideological attack or besieged by combinations of criminals. Its judges have escaped the bloody massacres that have decimated the Colombian judiciary, and they have not been victims of knee cappings or kidnappings like their counterparts in Italy. Fascist storm troopers have not goose-stepped through the hallowed halls of justice; proletariat armies have not stormed its bastions. Criminal goons have not pocked its styled facade with machine gun bullets; outraged mobs have not rampaged through its chambers. For two hundred years, United States courts have deliberated largely in peace, their proceedings rarely disturbed by violent disruption or assault.

The courts have not suffered terrorist assault. For a brief period in the late 1960s and early 1970s, radical groups such as the United Freedom Front (UFF) introduced the tactic of indiscriminate attack, but with very limited success and rarely against any court. Over an eight-year

period, the UFF managed to set off eighteen bombs, including one that exploded on the steps of the Suffolk County, Massachusetts, courthouse. Their other targets included banks, corporations, and military installations in Massachusetts and New York. A total of twenty-two people were injured; no one was killed. Yet, the bombs went off better than the UFF's cause. Ultimately, neither had much lasting effect.<sup>1</sup>

Between 1983 and 1985, members of the Armed Resistance Unit (who also styled themselves the Revolutionary Fighting Group and the Red Guerilla Resistance Unit) managed to plant bombs at several sites in Washington and New York. Their choice of targets was intriguing, if only because they revealed nothing of the group's intent. On November 7, 1983, the first bomb blew a hole in the wall just outside the U.S. Senate chambers. Five paintings were damaged, and the door to the Senate majority leader's offices was blown off its hinges. Subsequent bombs exploded outside the National War College at Fort McNair, the Washington Navy Yard Computer Center, and its Officer's Club. The group's last bomb went off outside the New York Patrolmen's Benevolent Association on February 23, 1985.<sup>2</sup>

Whatever the cause, one must question the point of attacking officer's clubs and police benevolent associations. What was most damning about the Armed Resistance Unit—or whatever it called itself at any point in time—as well as the UFF—was not that its members occasionally succeeded in planting a bomb, but that in doing so they seemed so fundamentally un-American.

During the 1980s, according to information released by the Federal Bureau of Investigation, terrorist activity steadily declined in the United States. During the decade 1982 to 1992, the FBI counted 162 terrorist incidents, defined by the

bureau as "a violent act . . . against persons or property to intimidate or coerce a government, the civilian populations or any segment thereof, in furtherance of political or social objectives." In 1982, the FBI counted fifty-one incidents; by 1992, it counted only two. In February 1993, a terrorist group from the Middle East exploded a bomb beneath the World Trade Center, killing 5 innocent people, injuring more than 1,000 others, and causing hundreds of millions of dollars worth of damage. Yet, what was most startling about the World Trade Center bombing was not just the boldness of the act, but its very exceptionalism. It was the worst such incident in seventeen years.<sup>3</sup>

Two years later, Timothy McVeigh topped that bombing when he blew up the Alfred R. Murrah Federal Building in Oklahoma City, Oklahoma. What made that terrorism so terrifying was the absurdity of it. Neither the selection of the target nor the alleged motive—revenge for the government's mishandling of the 1993 siege of the Branch Davidian compound in Waco, Texas—made much sense to most people.

Significantly, the Murrah Building stood across the street from the federal courthouse. Throughout American history, the federal courts have escaped the violence that has been so endemic to American history. All around the courts, society has suffered violence, resistance, rebellion, even civil war. Whiskey rebels, secessionists, and moonshiners; union men, tax protestors, and socialists; segregationists, yippies, the radical left, and the radical right have each in their time violently challenged federal authority. "Violence," H. Rap Brown noted a quarter century ago, "is as American as cherry pie." Yet, with rare exceptions, the federal courts have not tasted their slice. While all about them the world may have been aflame, the courts seemed well protected from passion's combustion.<sup>4</sup>

On occasion, though, opposition to the judicial process has sparked to flame. Shay's Rebellion in 1786, which prompted the Constitutional Convention, began as an attack on the local Massachusetts court that had been issuing process to seize the farmers' property. The rebels, however, soon enough turned their attention to the local armory.

It seemed a fortuitous precedent; rarely since then have the courts been assaulted.

In February 1877, for example, U.S. Commissioner W. G. B. Morris opened a session of his court at the Blue House in Henderson County, North Carolina. J. W. Newman appeared before him indicted for moonshining. As Newman heard the charges pressed against him, U.S. Attorney Vernon S. Lusk later reported, a band of Newman's confederates "seemed to rise up simultaneously from concealment in the woods, and rushed upon the house with violent demonstrations." Taken by surprise, Commissioner Morris and the two deputy marshals in attendance on the court dashed to escape. The attackers overtook one of the deputies, a man named Harkins. According to Lusk, the deputy was "several times shot, dangerously stabbed in the back, in addition to being violently beaten with clubs." Harkins managed to shoot one of his assailants, seriously wounding him. The wounded man was arrested, but the rest of the band escaped with the defendant.<sup>5</sup>

Forty years later, a somewhat different demonstration of violence disrupted the closing moments of the 1918 Hindu espionage conspiracy case in San Francisco, California. The case involved numerous defendants who had plotted with German spies to violate American neutrality by planning and equipping a rebellion in distant, British-controlled India. At the end of the closing arguments, Ram Singh, one of the defendants, suddenly pulled a revolver and fired twice at Ram Chandra, a co-conspirator who—presumably—had enticed Singh into the conspiracy. With Chandra dead, Singh frantically turned his weapon about the crowded courtroom and began firing indiscriminately. U.S. Marshal James B. Holohan drew his pistol and fired through the astounded crowd of defendants, attorneys, and spectators. As the prosecutor dryly reported, Marshal Holohan "used his revolver very effectively and killed Ram Singh." Order was restored and the case went to the jury that same afternoon.<sup>6</sup>

In October 1983, Curtis E. Hoston was arrested in the District of Columbia and brought before Superior Court Judge Burke. Apparently

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under the influence of the drug PCP, Hoston went berserk inside the courtroom and managed to grab a deputy marshal's pistol. He fired one shot, which hit the wall just above the judge's hastily ducked head, before other deputy marshals wrestled the druggie to the floor, then outside the courtroom to the prisoner's elevator. Hoston continued to resist, flailing and striking out as the deputies roughly tried to subdue him. The officers managed to drag him forcefully into the elevator, which descended to the cellblock one floor below.

The fighting continued. In their effort to control Hoston, the deputies—all large men—threw themselves upon him, pinning him with their combined weight to the floor of the elevator car. Once the elevator reached the cellblock, they dragged him to a cell and called for a nurse's assistance. The nurse found Hoston dead. His chest had been crushed.

Hoston's family sued the federal government, charging wrongful death from the injuries Hoston sustained in his fight with the deputy marshals. The District Court for the District of Columbia disagreed. The deputies acted well within their authority to use all force necessary to subdue an unruly, out-of-control prisoner, the court concluded. Indeed, the deputies had a "mandate" to prevent the prisoner from escaping or threatening the security of the courtroom.<sup>7</sup>

Although bloodied and disrupted, each of these federal courts, separated in time and circumstance, continued to sentence the guilty, exonerate the innocent, and uphold the law. Similar incidents, for all their drama, were all the more remarkable for their rarity. What is astounding about the 1877 attack on the Blue House court was not the violent effort of the moonshiners to rescue their compatriot. Rather, what is most significant is how exceptional the attack was and how well the federal courts were insulated from the violence of the moonshine wars. During the same period, as many as two dozen deputy marshals, and probably at least as many revenueurs, were killed in moonshine-related attacks. Lawmen were ambushed throughout the hills and hollows, but still the law reigned. That reign is no less enduring today.<sup>8</sup>

Federal courts have survived the Whiskey Rebellion, westward expansion, Southern Reconstruction, moonshine wars, labor strife, prohibition, school desegregation, antiwar demonstrations, school busing, and abortion protests. Each was a volatile issue in its time. All entailed violence against federal authority, yet seldom against the federal courts. Attacks on the federal judiciary—when they did occur—generally came from the outraged individual, whether prisoner or idealist. However wronged or aggrieved and whatever his ideals or purpose, the renegade acting alone or in small groups has most imperiled the federal judiciary.

Curiously, what insulated the federal courts was the initial definition of federalism; what may imperil them is its contemporary meaning. For fully half its history, federal law showed little concern with the lot of the individual. The federal government, by definition, had slender relationship to the private citizen—save certain commercial and economic responsibilities—except through its regulation of state action. "The theory of our Government is this," Attorney General Amos T. Akerman explained in 1872, "the State as a general rule shall be charged with the redress of personal wrongs." Whether in anger or in pain, nineteenth-century Americans turned to their states to soothe their sorrows or vent their wrath. They ignored the federal government because it essentially ignored them.<sup>9</sup>

According to the nineteenth-century understanding of federalism, the federal government policed the states. It had no interest in the crimes or complaints of the individual citizen unless the charges were against the state. "Certainly," Chief Justice Morrison R. Waite averred in 1875, "it will not be claimed that the United States have the power or are required to do mere police duty in the States." Not even the Fourteenth Amendment, the cornerstone of the twentieth-century definition of federalism, originally changed the relations among the federal government, its constituent states, and their citizens. The federal government

could protect the citizen from his state; it could not protect him from his fellow citizens. According to Waite and a majority of the Supreme Court:

The equality of the rights of citizens is a principle of republicanism. Every republican government is in duty bound to protect all its citizens in the enjoyment of this principle, if within its power. That duty was originally assumed by the States; and it still remains there. The only obligation resting upon the United States is to see that the States do not deny the right. . . . The power of the national government is limited to the enforcement of this guaranty.

The court stated this principle of federalism with even greater simplicity in the 1883 *Civil Rights Cases*. "Individual invasion of individual rights," the court concluded, "is not the subject-matter of the [Fourteenth] amendment." Throughout the nineteenth century, the individual occupied a slender place in American Constitutional law.<sup>10</sup>

Federal law addressed the individual—when it addressed him at all—as a citizen of his particular state, and only then to demark clean, straightforward boundaries between state and federal authorities. Even the Bill of Rights chartered American freedoms primarily with negative restrictions on government action, not with positive commands. Freedom of speech, religion, press, and those other fundamental rights did not exist per se, but only because federal and state governments were expressly prohibited from infringing on them. They emerged, as it were, from the void.

At the federal level, nineteenth-century criminal law fretted most about the mutinous sailor, mail robber, counterfeiter, or timber trespasser. It deferred to the states to try crimes of passion and deliberate violence. Even in the territories, federal authority—eager, one assumes, to wash its hands of the unwashed masses—hustled in local self-government as quickly as possible. The federal government safely hovered well above the hurly burly.

Those issues pressed before the nineteenth-century federal courts focused on defining the

spheres of federal authority among the three great branches of government, on delineating the relationship of the federal government to its constituent states, and on issues of trade, commerce, expansion, and economics. Questions of contract, commerce, and constitutional theory aroused the passions of federal jurists—if few others—throughout the 1800s. *Marbury v. Madison*, *McCulloch v. Maryland*, and *Dartmouth College v. Woodward*, to name but a few of the landmark nineteenth-century cases, sparked little emotion in the individual American of the day. When Steven Vincent Benet had Daniel Webster defend a man's soul, he did not put him before the federal bar, but the devil's.

Even the Civil War was ultimately fought, not on the rights of the slave to freedom, but on the more esoteric issue of the right of each state to secede. The Confederates, after all, were damned as secessionists, not slavers. Emancipation was at first a by-product of the War Between the States, a political maneuver by Lincoln to bolster his faltering military. Had it helped, he would have emancipated none, or only half, instead of the few slaves he actually reached with the Emancipation Proclamation.

The federal courts of the nineteenth century deliberated in peace and solitude largely because they aroused no one's wrath. They had little effect and even less harm on the day-to-day life of the individual. There were precious few decisions to stir the individual's anger or prompt him to violent acts of negation. Federal jurists alone could find passion in contracts, bank charters, and interstate commerce.

When nineteenth-century travelers crossed the Charles River, did they care that the Warren Bridge breached the Charles River Bridge Company's contract with the state? Chief Justice Roger Taney certainly cared. He found the broken contract of vital moment. "The questions involved in this case are of the gravest character," he declared for a majority of his colleagues in 1837, "and the court has given to them the most anxious and deliberate consideration." By upholding the sanctity of the contract, the court affirmed one of the fundamental principles of American capital-

ism, yet its greatest impact on the weary traveler was to deny him the free passage over the Warren Bridge and to compel him to pay the toll charged by the Charles River Bridge Company.<sup>11</sup>

Historically, state and local courts dealt with a far greater number of people whose very presence in the courts attested to their disrespect for the law; they showed no greater respect for the court. From the establishment of the Union, state and local courts entertained before the bar the murderers, thieves, and other criminals of violent bent.

In his brilliant *History of American Law*, Lawrence Friedman traced the evolution of state and local statutes and court decisions. He concluded that "by any measure, the number of acts defined as criminal grew steadily from 1776 to 1850." With the widening embrace of the criminal law came increased exposure to violent attempts, but they were generally directed at state and local courts—certainly far more frequently than at the federal courts.<sup>12</sup>

Until fairly modern times, federal courts tried far fewer outright criminals. Indeed, at first the federal courts had very little business. Between March 1790 and March 1801, the district court in Kentucky heard only 870 cases. Of these, 694 were suits at common law, 133 were chancery, and just 43 were criminal cases. Deputy Marshal John C. Barrett, posted to Norfolk, Virginia, in November 1802, complained that "business in our line in this place, is unusually dull." Other marshals in other districts shared his complaint. For thirty-four years, John Marshall sat as chief justice of the Supreme Court, writing most of its opinions and riding the circuit. Despite this work and travel, he still found enough spare time to write a multivolume biography of George Washington.<sup>13</sup>

In general, federal crimes focused on protecting the government's revenues and currency, its lands and assets, and the mails. State and local laws addressed man's inhumanity to man. Using criminal charges as just one barometer of the potential threat or risk of violence to the courts shows the relative safety of the federal judiciary throughout most of the 1800s. An 1846 survey of

prisoners held in the custody of the U.S. Marshals showed that, of sixteen districts reporting, forty-six prisoners were in the legal custody of the United States. They were physically confined in state and local jails—including one sorry mail robber confined to ten years in the Milwaukee County log jail.<sup>14</sup>

Even more than the dearth of prisoners, the crimes indicated the relative insulation of the federal courts from violent defendants. Thirteen of the prisoners had been convicted of robbing the mails. Another seven had been convicted of the similar crime of robbing a post office. Although mail robbery could be violent—Jesse James proved that well enough—the evidence indicates that the mail robbers of the 1840s were often simply errant mail clerks or postmasters who embezzled from the mails by pilfering the occasional letter. Of the six prisoners convicted of robbing a post office in western New York, half were mail clerks.

Eight of the prisoners were counterfeiters. Three had committed assault on the high seas; three had gone beyond assault and were convicted of manslaughter. Another three had mutinied. Three had been caught trafficking in the African slave trade. One was convicted of larceny; one endeavored to create a revolt, probably against a foreign country (so-called filibustering expeditions were popular at the time); one was a forger; and one stole supplies from a U.S. naval hospital. Another had committed perjury, and yet another had committed the more specialized crime of perjury under the bankruptcy laws.<sup>15</sup>

This is not to say that these felons were not, in their way, individually dangerous men. Mutinous sailors were hardly known for their gentility. In 1821, U.S. Attorney William Crawford of Alabama was sorely wounded by "a person who had been indicted for stealing from the mail, in an attempt made by that person to assassinate him." Yet, the assault on Crawford was the exception to prove the rule. His cohorts before and after him worked in peace and safety. In the first half of the nineteenth century, federal felons were astoundingly few in number; their crimes were relatively tame compared to those brought before the state

and local courts—and to those ensnared in the federal system today. The parade of criminal defendants before the federal bar was short and compliant. It gave little cause for concern.<sup>16</sup>

The civil cases brought before the federal courts failed to arouse the violent passions of men. Nineteenth-century Americans rarely felt wronged by the federal government; it gave them little cause. With few exceptions, federal law and its interpretation by the courts had little to do with the individual. The law neither regulated nor encroached; when it taxed, it usually levied on things—carriages, imported goods, documents. Only occasionally (and then to its regret) did the federal government tax the citizen's protected possessions—his house, his whiskey, his income. These taxes were the flash points of passion.

Yet, even opposition to federal taxes most often was expressed against the lawmen who enforced them, not against the courts and jurists who interpreted the laws. The 1794 Whiskey Rebellion sparked to violence when U.S. Marshal David Lenox went to western Pennsylvania to summon delinquent taxpayers into court. The judge and his court remained safe in distant Philadelphia. Similarly, four years later, U.S. Marshal William Nichols was violently confronted by Jacob Fries and other Pennsylvania opponents of the federal house tax. Again, the marshal, though on court business, was well away from the courtroom when he was mobbed.<sup>17</sup>

It is not to deny the importance of federal deliberations to make the point that they were not the stuff of heady passion or violent reaction. The Supreme Court of the nineteenth century cleared the path for the American capitalist and entrepreneur. Its legacy lay in freedoms of trade and commerce, the sanctity of the contract, and the right to do business across state lines. But for all their crucial importance to the modern standard of living and the American lifestyle, these decisions went around the individual; their passions were intellectual, not emotional. There may have been cause for heated debate, but hardly for fiery reaction.

After the passage of the Fugitive Slave Act of 1850, outraged abolitionists throughout the North

rose up in opposition. "As for the Fugitive Slave Law, we execrate it, we spit upon it, we trample it under our feet," boldly declared the American Anti-Slavery Society. William Lloyd Garrison openly justified every fugitive slave "in taking the life of every marshal, commissioner, or other person who attempts to reduce him to bondage." The violent reactions of the abolitionists occasionally spilled into the courts.<sup>18</sup>

Fugitive slaves were rescued in Massachusetts, New York, Ohio, Pennsylvania, and Wisconsin. In February 1851, for example, Boston abolitionists mobbed the courtroom of U.S. Commissioner George T. Curtis. Pinning the deputy marshals to the wall, the abolitionists quickly hustled the former slave Shadrach down Court Street to freedom in Canada. Wisconsin's supreme court openly defied the orders of the federal Supreme Court in a case that plagued federal officials for several years at the close of the decade.

What is most intriguing about abolitionists' opposition to the Fugitive Slave Act, however, was not their open desecration of one hated law, but the concentrated expression of their unlawful resistance. They did not attack federal authority in general; they rescued individual slaves, but they did not disrupt the courts except to free particular fugitives bound again for slavery. For all their angry rhetoric, their opposition was focused on specific individuals faced with a return to bondage.<sup>19</sup>

Only sporadically, and only in response to specific wrongs, did anyone rise up to challenge the nineteenth-century federal government. Those occasions were noteworthy precisely because of their rarity. For the most part, and excepting the occasional case involving a fugitive slave, federal jurists sat well above the problems and complaints of individual Americans. Toll bridges and contracts, constitutional mechanics, and limited federal authority fascinated federal jurists even as it dulled the finely honed sensitivities of the individual.<sup>20</sup>

Significantly, when federal courts did reach out and bruise the individual, they found themselves with problems. Despite nineteenth-century federal law's disregard for the individual, the federal

judiciary nonetheless occasionally found itself with problem individuals. These incidents again confirmed the importance of the individual to American acts of rebellion against the federal courts. They were angry men caught up in the system of justice. Exasperated by its process, they lashed out in frustration, only to suffer the force of judicial wrath. The courts generally handled these outraged individuals with its contempt power, harshly doling out punishment for the slightest signs of disrespect.

Perhaps no other nineteenth-century case gained such notoriety or ended so tragically as the troubled court careers of David Terry and his beautiful, crazed wife Sarah. Their problems exemplified the outrage and anguish of the lone renegade caught up in the heat of a lawsuit. Their case, a simple contract suit, involved no criminal complaint; yet both Terrys spent time in jail for it. It hardly seemed a matter of life or death, yet David Terry died for it and his wife spent the remainder of her life in an insane asylum as a result of it. Still, perhaps the issue was the most volatile of them all—it involved a point of honor, a woman's honor.

Sarah Althea Hill of California claimed she was the lawful wife of U.S. Senator William Sharon of Nevada. As proof, she produced a civil contract dated August 25, 1880, binding the two in marriage. At that time, such agreements were acceptable under California law as valid licence. She also claimed to have numerous letters from Sharon addressing her as "Dear Wife." The senator disputed the marriage, admitting only that she had been his paid mistress and thus a woman of no repute. Because of their diversity of citizenship, Sharon sued Hill in federal court to have the contract declared a forgery. Hill, under the name Sharon, filed for divorce in California Superior Court, claiming adultery and desertion. Both cases proceeded simultaneously to trial.

Throughout the dual proceedings, Sarah Hill continually showed a persistent contempt for the federal courts, perhaps because she was convinced that Senator Sharon, a federal senator, somehow controlled or influenced them. (Since Sharon regularly sought the advice of his good friend Su-

preme Court Justice Stephen Field, before whom the issue would be brought on circuit, Hill's suspicions may not have been entirely groundless.) When asked to produce the contract and letters in federal court, Hill at first refused. Judge Lorenzo Sawyer held her in contempt and put her in jail for a day before she relented.<sup>21</sup>

Upon her release, Hill remained unimpressed by the federal judicial process. On August 3, 1885, she attended a deposition. While one witness was being examined, she began reading the sworn testimony of other witnesses, constantly interrupting the questioning with acerbic comments and complaints. The examiner repeatedly asked for her silence, but she remained unrestrained. Then, to the astonishment of everyone present, Hill calmly reached into her satchel and withdrew a pistol, holding it loosely in her hand and pointing it directly at one of the lawyers.

"I am not going to shoot you just now, unless you would like to be shot, and think you deserve it," she politely informed the discomfited attorney.

"No," he replied, "I would rather not be."

The examiner stopped the deposition and repaired to the court, where he duly reported her misbehavior. Both Justice Field, then riding the Tenth Circuit, and Judge Sawyer held the action in contempt, but they imposed no punishment on Hill. Instead, they simply ordered the marshal thenceforth to disarm Hill whenever she appeared in court. Hearing of the incident, the state court quickly followed suit.<sup>22</sup>

After an array of handwriting experts had finally examined the contract and letters, the federal court determined the contract "a false, fabricated, forged and counterfeit instrument." The state court accepted the contract as legitimate and granted the divorce. To further complicate the confusion, Senator Sharon died. His state-widow/federal-mistress married her attorney, the well-known lawyer David S. Terry. Terry's fame grew not merely from his skills as a jurist—he had served with Field on the state supreme court—but also for the violence of his temper—he had killed one man with a bowie knife and another with a dueling pistol.<sup>23</sup>

Senator Sharon's death abated the federal decision. His heirs, fearing that they might have to share his considerable fortune with the state-widow, brought a bill of revivor in federal court and appealed the divorce decision to the state supreme court. The state again upheld the authenticity of the contract. The newlyweds then focused their efforts on restoring the bride's honor in the federal system.

Sarah Terry's opinion of the federal court had not changed. On August 14, 1888, she and her husband boarded the Southern Pacific train from Los Angeles to San Francisco. Judge Sawyer was also on board. Sarah could not resist. Marching up and down the coach aisle, she loudly cursed the judge and threatened him. When he refused to respond to her taunts, she reached out and grabbed his gray hair, furiously shaking his head back and forth. Her husband cheered her on, laughing at her attack and encouraging her profanity. "Well," Sarah bragged, "I gave that old bastard a good wooling."<sup>24</sup>

Three weeks later, Judge Sawyer again met the Terrys. This time, though, he controlled the situation. On September 3, 1888, the federal circuit court convened at the Appraiser's Building in San Francisco. Justice Stephen Field began reading the court's decision on the bill of revivor.

As Field droned on, it became quite apparent that the federal court was again ruling the contract a forgery. Sarah Terry could not contain herself. From her seat, she began jeering Field with accusations of taking bribes and other dishonorable acts. She fidgeted with her satchel, her curses and taunts growing louder and more disruptive. Finally, Field ordered United States Marshal John C. Franks to escort her from the courtroom.

Sarah resisted the marshal's escort and began pounding her fists against his chest. David Terry leapt from his seat to protect his wife. With a great roundhouse punch, he struck Franks, knocking out a tooth. After a brief scuffle, two deputy marshals grabbed Terry from behind, pushing him down into his seat. Another pair of deputies hustled Sarah from the room.

As soon as he could, Terry followed, still furious. Out in the hall, he heard his wife cry out for

help. Drawing his bowie knife, he went to her aid. Again, several deputies restrained him, letting him go only after he surrendered the blade.

Field finished reading the decision and recessed the court. In chambers, he and his two colleagues on the bench hastily conferred. They decided they needed no hearing to find both Terrys in contempt since the scuffle had originated in their presence. They reconvened court and sentenced Sarah to thirty days in jail and David to six months. Both were taken across the bay to Oakland to the Alameda County jail. From their cells, they began writing letters, later collected and published as a pamphlet, telling the world of the injustice done them. David Terry promised to get satisfaction from Field, perhaps by bullwhipping him.<sup>25</sup>

Yet, up to that point, the system had worked. The court had been exonerated, the insults done it had been satisfied by the Terrys incarceration. Neither fits of temper nor violence would be accepted in a federal courtroom. The court would retain its dignity even before the most outraged, unruly litigants.

And when Field next rode the circuit, he would be protected by a deputy marshal.

On August 13, 1889, Field and U.S. Deputy Marshal David Neagle boarded the Southern Pacific train in Los Angeles for the overnight trip to San Francisco. By coincidence, while they slept, the Terrys boarded the train when it stopped farther down the line. The next morning, Field and Deputy Neagle got off the train at its breakfast stop in Lathrop, just outside Stockton.

There the Terrys saw them. While Sarah hurried back to the train to retrieve her pistol, David Terry approached Field from behind. When he reached him, Terry immediately slapped the justice twice. Deputy Neagle leapt to his feet and, hailing a warning, pulled his pistol when Terry gestured toward his inside coat pocket. Neagle fired twice in rapid succession. The first shot went to Terry's heart, the second clipped his ear as he fell to the ground.

Neagle's subsequent arrest on state murder charges led to the famous Supreme Court decision in *In re Neagle*, which suggested that the Constitution granted the federal government certain

implied powers, namely the protection of its judiciary. Yet, for all the importance of *In re Neagle* to the expansion of Constitutional authority, the shooting of David Terry essentially confirmed the determination of the courts to uphold their own authority. It was of a piece with contempt-of-court cases dating back to the Middle Ages.

Terry's demeanor, his irrepressible anger and irresponsible attacks, also symbolized the possible risk to the federal courts posed by outraged individuals. He was a man alone, angered and incensed at his personal treatment at the hands of the court. He was defending his own wife's honor, not all womanhood. He may have seen himself as her white knight, but he rode alone and errant.

### Twentieth-Century Federalism and the Individual

Twentieth-century federal law and its application by the federal courts finally embraced the individual. It no longer saw the states as some sort of buffer between national authority and the private citizen. Rather, twentieth-century law and twentieth-century jurists—with the latter sometimes well ahead of the former—dealt directly with the individual. They taxed his income and ensured him a minimum wage. They regulated his morals and tried to prohibit him alcoholic beverages, then drugs. They monitored the preparation of his food and medicine and advised him on what to eat, what to drink, and not to smoke. They protected his civil rights, offered the vote to women, Blacks, and eighteen-year-olds, and ensured that each vote weighed the same. They determined where his children would go to class and with whom, even if it meant busing them to distant schools. They drafted him into military service, with no hope to hire a substitute, then forced him to fight a series of foreign wars.

Far more than any state government had ever dared, the newly invigorated federal government demanded much of its citizenry. It was a new concept of federalism, wholly foreign to eight-

eenth-century design and nineteenth-century development. The federal government was now largely active, whereas before it had been relatively passive. And its activism impinged directly on the lives, ideals, and interests of its citizens.

The intrusion of the federal government into private lives began most spectacularly during the late nineteenth century with the great labor strikes that paralyzed the railroads. The 1894 Pullman strike in particular injected the federal courts and, in support of the court's injunction, the entire federal government into a bitter labor-management dispute. By taking management's side, the government put itself in the position of compelling the striking workers to return to work or, at the least, to cease their interference with the operation of the trains. "We have been brought to the ragged edge of anarchy," Attorney General Richard Olney, himself a former railroad lawyer, declared ominously on Independence Day 1894, "and it is time to see whether the law is sufficiently strong to prevent this condition of affairs."<sup>26</sup>

Suddenly, federal marshals, armed with a federal court injunction and backed by U.S. Army troops, were confronting mobs of thousands of outraged workers. The railroad owners immediately stepped out of the fray, quite happy to note publicly that

so far as the railroads are concerned with this fight, they are out of it. It has become a fight between the United States Government and the American Railway Union, and we shall leave them to fight it out.

The government effectively broke the strike with the arrest of Eugene V. Debs, the president of the American Railway Union, thus prompting his conversion to socialism and launching him into a life-long political activism.<sup>27</sup>

The Pullman strike set the pattern for the government's response to subsequent labor problems. The courts clearly showed they had no sympathy with the American worker, whatever his complaint. Management reigned supreme, according to repeated decisions of the federal judiciary; the rights of property clearly out-

weighed the individual's claim to any say in working conditions. For the next forty years, federal courts consistently intervened in labor strikes by using their injunctive powers to break labor's unity. In doing so, however, the courts directly challenged the individual worker, thus arousing his ire.<sup>28</sup>

Other issues also brought the courts face to face with angry, individual citizens. The passage of the Sixteenth Amendment allowed the federal government to tax the income of its citizens, thus sparking any number of tax protestors, tax embezzlers, tax revolters, and other antigovernment activists that eventually came before the courts. Nothing could have brought the government more directly into the personal life of the individual than the personal income tax. It essentially gave the government direct access to the most private secrets of its citizens—how they lived and how they supported themselves; how, in effect, they spent their money.

It takes little more than a glance at the origins of federal law enforcement agencies to confirm that the intrusion of the federal government into the lives and activities of individual citizens is a twentieth-century phenomenon. Of the seventy-one agencies trained at the Federal Law Enforcement Training Center, fifty-three (or 75 percent) are twentieth-century creatures. The FBI, which trains itself, was not established until 1908. By 1937, the Department of Justice consisted of six divisions, all but one of which were established during the twentieth century: claims by and against the United States (1870), trade and commerce (1903), customs (1909), public lands (1910), internal revenue (1919), and crimes (1919). Each division was headed by an assistant attorney general, and each tracked the activities of individual citizens.<sup>29</sup>

Then, in 1954, the Supreme Court exceeded itself. The court held that the Constitution required equal treatment under the law, and that meant, in practice, that all citizens, regardless of color, would be treated the same—whether in school, at the polling place, or in public activities. Suddenly the courts were telling the American people not simply what they could not do; they

were poking their judicial noses into where—and with whom—they educated their children, how they voted, whom they ate with. Opponents howled about states' rights and individual rights—about any rights but the right of minorities to equal treatment.

This new federal intrusiveness gave the outraged individual and his cohorts a multitude of causes from which to choose; there were injuries and insults wherever he might turn. Tax protestors and segregationists, drunkards and druggies, sexists and antiwarriors, civil libertarians and religious zealots all howled now alike. Their complaint was against federal action, federal interference, federal encroachment, federal restrictions, federal activism.

Even more, this new concept of federalism gave the individual hope that the system would solve his problems. Not only was the federal government attacked for doing what it did, it was also attacked for not doing enough. Individuals complained of federal interference, but they also looked for federal solutions. If the nineteenth-century federal government hovered well above the hurly burly, its twentieth-century successor wallowed deep in the muck. The federal government was now both problem and solution, cause and effect, too big and too little.

The courts became the centerpiece of the new federalism. Judges now personified federal law and federal activism. That personification transformed them into targets, too, for the wrath of the renegade. In the nineteenth century, federal judges had ruled, if not quite in anonymity, then certainly in shadows and smoke. But in the twentieth century, there was talk of the Warren Court and the Burger Court, descriptive terms that implied a particular judicial philosophy. In a way no nineteenth-century judge experienced or could possibly fathom, federal judges came to symbolize—positively and negatively—the new federal government. Suddenly, court decisions were identified solely with the judge who issued them, not with the law or authority that impelled them.

Since the judges now personified the law—indeed, they personified the very authority of the

federal government itself—they became targets for the renegades' wrath. Judge Isaac Parker of the Western District of Arkansas sentenced 170 violent criminals to death during his quarter century on the federal bench stretching across the closing decades of the nineteenth century. Seventy-six of them actually hanged from the Fort Smith gallows. Known as the "Hanging Judge," Parker strolled to work unprotected every day through the streets of Fort Smith—never molested, never harmed. Once on the bench, deputy marshals brought before his court some of the most depraved criminals ever arraigned in any court in the United States.<sup>30</sup>

Why did the criminals, men who would kill to steal a gold watch or a fancy saddle, leave Parker alone? Perhaps it was simply that federal judges of the time were seen merely as instruments of the law, interpreters with little room to maneuver their interpretations. Their power was understood to be limited; they were not expected to have much discretion. If Judge Parker sentenced criminals to hang, it was because the law compelled him to impose the sentence. Killing Parker would have made little difference; his replacement would have been bound by the same laws and lack of discretion.

But twentieth-century jurists are understood to have much more leverage, far greater discretion, and considerably more power. Judge John Wood was also known as a "hanging judge" for the stiff penalties he dispensed in the Western District of Texas. Unlike Parker, though, that reputation cost Wood his life.

It is significant, if not surprising, that opposition to federal actions is now expressed through demonstrations at federal courthouses. When President George Bush deployed a half million troops to Saudi Arabia in 1991, opponents of the Persian Gulf War assembled at federal courthouses in San Francisco, Seattle, New York, and other cities across the country. Like embassies in foreign lands, federal courts *have become* the federal government. Opposition to government actions is expressed as rallies, sometimes riots, on courthouse lawns.

Increasingly, American citizens bring to the

federal courts their problems. They lay before the federal bench their troubles and foibles, problems and grievances. These are, after all, the same courts that protected Clarence Gideon and Ernesto Miranda. They are the same courts that admitted James Meredith to college, that changed the color of America's schools by busing its pupils. Why, then, can't these same courts solve *my* problems, make *my* life easier and less frightful, impose on the nation what *I* believe, what *I* hold sacred?

In consequence, the judiciary and its officials now suffer frequent threats, occasional disruptions, and even violent assaults. The following chapters present a detailed statistical analysis of a specific collection of threats and assaults to the federal judiciary, including the assassination of two federal judges.

Yet, like a brightly colored thread interwoven across a dull cloth, what runs consistently across these inappropriate communications and assaults is the singular, exceptional role of the individual, acting largely alone and unsupported by group or polity. When the federal courts finally reached out to the individual, they found that some individuals bite back. To whatever degree the lone individual may believe in radical solutions, detest taxes and federal authority, oppose abortions or resist war, and however entwined he may be in organized crime and drug cartels, he tends to leave the federal courts alone until the courts threaten him.

Then, in anger or fear, he lashes back, usually by howling, but sometimes by hunting.

### U.S. Marshals Service's Court Security Program

Throughout the 1960s, the federal courts became the subject of considerable controversy. The courts ordered the desegregation of the South and heard cases on antiwar demonstrations. They handed down decisions on a score of controversial, emotional issues about which society itself seemed inflamed. Riots and assassinations were the news of the day.

Then, on August 7, 1970, several confederates of California prisoners James D. McClain and

William A. Christmas burst into the courtroom of Superior Court Judge Harold J. Haley armed with pistols and shotguns. They took the judge hostage and taped a shotgun to his neck so that the barrel pointed to his head. The escapees made it as far as their car waiting outside before the police assaulted. In the ensuing gunfight, Judge Haley was killed by the shotgun.

The judge's death revolted the nation, not simply because of its inordinate brutality, but also because it defied the sanctity of the courts. Federal officials took a clear lesson from the incident. Already uncomfortable with the trials and tribulations of the 1960s, the murder of Judge Haley showed them how easily the courts themselves could become the scene of violence. On September 18, 1970, barely a month after the tragedy, Chief Justice Warren Burger requested \$29.1 million to enhance the security of federal courthouses. The original request specified the General Services Administration (GSA) as the recipient of the funds. As the government's landlord, it seemed to make sense that GSA would provide the guards and electronics to protect the buildings. Burger's request also asked for enough funds to pay for hiring bodyguards for the judges.<sup>31</sup>

Officials in the Office of Management and Budget (OMB) recognized the need for greater security, but they were not convinced that GSA was the best choice of agency to provide it. "There are significant organizational issues involved in this," Associate OMB Director Arnold Weber warned. "Should this law enforcement service be incorporated in GSA or should the guards be U.S. Marshals within the framework of the judicial system?" Weber's concern was with the proper balance between dividing law enforcement functions by agency, or, he asked, "Should we try to build up and enhance a central law enforcement capability?" Weber opted for the latter course, a central agency to handle security needs. In that view, GSA was hardly the best choice.<sup>32</sup>

Rather, Weber looked to the federal marshals, though his first glance hardly gave him much encouragement. Although the marshals had done well during the 1960s carrying out the court-

ordered desegregation of the South and fending off demonstrators at the Pentagon, it was still an archaic organization with little central authority. Even by the late 1960s, its headquarters consisted of only about a dozen people. District marshals still resembled the overweight bailiffs they had degenerated into during the 1930s. They were hardly the stuff to make Burger feel secure. Yet, Weber saw something there. "If the quality of the marshals at this point is not acceptable," he advised, "we should make the appropriate efforts to strengthen that force rather than developing parallel organizations, particularly in GSA."<sup>33</sup>

Consequently, Weber began pushing to improve the quality of the marshals by upgrading their pay and enhancing their duties, thereby attracting a better-quality officer. His reasoning was simple. While GSA might appropriately guard the buildings, Weber explained to OMB Director George Schultz:

the protection of the courtroom and judicial chambers takes on an entirely different aspect. It involves personal security more appropriately provided by an officer of the court in civilian dress who has arrest authority and an appreciation for courtroom procedures not to be expected from a building guard. . . . There is great merit in enhancing both the resources and quality of the U.S. Marshals Services to provide an all-purpose security capability not only for the judiciary but for the sky marshal program or for other situations as the need arises. This type of capability would provide a flexible response which could be deployed rapidly on an as needed basis. The quality of the marshals at this point is marginal. However, we should make the appropriate efforts to strengthen that force rather than develop parallel organizations, particularly GSA.

Schultz readily approved the idea, though the judges were not so easily convinced. In discussions with several judges, Assistant OMB Director Richard Nathan hammered on the idea of using the marshals as a "general purpose law enforcement unit which can be used in other

emergencies." It was not clear, Nathan pointed out:

that the threat to the courts will be a long-run one or, on the other hand, be as pressing as other threats of violence or disorder. An adequately trained Marshals Service can be used in a flexible response to changing circumstances.<sup>34</sup>

OMB remained firm in its determination to enhance the marshals. On November 27, 1970, just three months after the brutal killing of Judge Haley, Deputy OMB Director Caspar Weinburger approved a policy of providing funds to GSA to hire building guards, to the Postal Service to hire guards in those of its buildings that also housed courtrooms, and to the Marshals Service "to assure security in any federal courtroom where judicial proceedings are being held." Weinburger clearly hoped that the building guards would be needed only for a year or so. Just as clearly, he and his colleagues in OMB intended to place upon the marshals the primary responsibility of providing security to the courts and their jurists.<sup>35</sup>

Consequently, the Marshals Service began organizing a Court Security Division to formalize what had been its previously sporadic and occasional efforts to protect federal judicial officials. The Neagle case clearly showed that the marshals had the authority to protect the judiciary. In 1970, they simply received the funding and budget authorizations necessary to establish a full-fledged program to ensure that protection.

Reis Kash joined the Marshals Service in 1970. Since his career with the Army had involved extensive security work, Kash took the job of writing the policies and procedures manual that the Marshals Service began to follow. He also brought Jesse Greider, a deputy of considerable experience, to Washington from Kentucky to set up the Court Security Division at the rapidly expanding headquarters.<sup>36</sup>

Together, Kash and Greider began surveying federal courthouses across the country. When President Richard Nixon, responding to a spate of skyjackings, ordered the airports protected and

skymarshals put on airplanes, members of the Marshals Service began installing magnetometers and X-ray machines at airports. This experience lapped over into the court security area. During much of the 1970s, the marshals focused their efforts on installing cameras and electronic door locks to protect the judges' chambers, and bullet-proof shields on the judges' benches. Greider also set up a system of evaluating threats, and the marshals began routinely to protect judges who were the targets of potential hazards.

Burger remained dissatisfied. The job, he feared, was becoming too dangerous, the controversies too heated, and the judiciary too exposed. The assassination of Judge Wood in 1979 confirmed his fears. Consequently, Burger stepped up his campaign to get the judiciary more protection. In 1981, in cooperation with Attorney General William French Smith, the Department of Justice and the judiciary established a joint task force to address judicial security. A year later, the task force issued its report recommending that the Marshals Service, using funds provided by the Administrative Office of the United States Courts, establish a court security system composed of specially trained armed guards and electronic security equipment. The report called on the Marshals Service to hire court security officers for each courthouse to operate magnetometers and X-ray machines, make patrols, and respond to incidents and emergencies.

Throughout the 1980s, the Marshals Service physically secured every courthouse in the United States. Every person entering a courthouse would be screened for weapons and contraband. Doors were locked and entrances and exits controlled. Alarms, panic buttons, magnetic door locks, and surveillance cameras were updated. Thousands of specially deputized guards, most of them retired policemen, were hired and posted throughout the courthouses. The courthouses themselves were transformed into armed fortresses. Justice's sword was now held in defense.

In July 1996, Marshals Service Director Eduardo Gonzalez embarked on a new initiative requiring the district deputy marshals to conduct protective investigations into inappropriate communica-

tions sent to federal judicial officials. These investigations differed from criminal investigations because they inquired into areas where no law was violated, but the person making the communication appeared to pose a threat. The purpose of the investigation also differed significantly from criminal investigations. In a protective investigation, the point was to render the

threatener harmless by any lawful means available.

Arrests were just one of several tactics that could be employed. By combining an energetic program of investigations with the strong defenses and protections erected around the courthouses, the Marshals Service significantly enhanced the security of federal justice.

### 3. THREATS AND ASSAULTS ON OTHER GROUPS

By their very nature, threats to the judiciary—federal, state, or local—are unique. They differ in significant, substantive ways from threats to presidents, politicians, or other public figures. Threats to judicial officials are not driven by unrequited love for an actress, as was John Hinckley's crazed assault on President Ronald Reagan. They are not spurred by martyrizing devotion to the lost cause of Southern secession, as was John Wilkes Booth's assassination of President Abraham Lincoln. Neither disappointed office seekers (Charles Guiteau's murder of President James Garfield) nor lone anarchists (Leon Czolgosz's assassination of President William McKinley) threaten the courts.

Threats to the judiciary differ, too, from the shadowy stalker captivated by the persona of a Hollywood starlet. Judicial officials are not plagued by idolatry. They do not become figments of twisted imaginations; they are not objects of obsessional love. Insane fans do not gun them down in front of their apartment buildings, as Mark Chapman did to John Lennon.

Nor is there much similarity to the threats that members of Congress suffer. Frustrated constituents do not harass the judiciary. Unknown supporters, convinced the victim owes them something for their vote, do not trouble judicial officials as they trouble legislators and other politicians. As apparently happened to Senator Huey Long, their bodyguards do not inadvertently (or not) shoot them.

Considered as an international problem, threats and assaults against federal judicial officials in the United States are part of a much larger, and in many countries more dangerous, phenomenon. In some areas of the world—Colom-

bia, Italy, and Peru, for instance—justice itself seems endangered. Closer to home, the problems disrupting state and local courts are far more serious and of more frequent occurrence than anything the federal courts face.

Each of these individual pieces of the puzzle—that is, threats to other groups, threats internationally, and threats locally—must be put together in order to compose a complete understanding of the problem currently confronting the federal judiciary. The disparate views of judicial officials must also be accounted for to form a fully coherent picture of the current state of security (or insecurity). These topics are considered in this chapter.

Considerable attention—some of it scholarly, though most of it amateurish and sensational—has been paid to presidential assassinations. Through the work of Park Dietz and his colleagues, and, more importantly, through the path-breaking work of Gavin de Becker and his associates, we now know a considerable amount about threats to Hollywood celebrities, members of Congress, and other public figures. Bryan Vossekuil and Robert Fein of the Secret Service have released a pioneering study of assassins. There is also a growing body of research, much of it conducted under the auspices of the United Nations, on the international aspects of threats to the judiciary. Information is also readily available on the problems haunting state and local courts. Finally, a dozen or so federal officials were interviewed during the course of the research for this study.

By collecting information from all these sources, the nature of the risk to federal judicial officials can be better illuminated. Through that illumination, they can be better protected.

## Nature of American Assassinations

Shortly after the assassination of Robert F. Kennedy in 1968, President Lyndon Johnson commissioned a panel of scholars and experts to study the causes and prevention of violence. Eight volumes later, the commission concluded that "violence to achieve political goals is a thread which runs throughout the history of the United States." One of the volumes focused on *Assassination and Political Violence* in American history. The commission broadly defined assassinations as "all deadly attacks upon public officeholders in the United States by any person for any reason." It identified eighty-one murders or attempted murders that met this definition.<sup>1</sup>

From its analysis of these eighty-one violent events, the commission reached two fascinating conclusions:

First, the more powerful and prestigious the office, the greater the likelihood of assassination. Second, there is much greater likelihood that the occupant of or aspirant to an elected public office will be the victim of an assassination than will the occupant of an appointed position, even though the position may be a powerful one, such as Secretary of State, Justice of the Supreme Court, or Attorney General.

Twenty years and three assassinated federal judges later, it is doubtful that the commission would change its conclusions.<sup>2</sup>

Not surprisingly, the commission found that the office of president attracted assassination attempts much more frequently than any other public office. One in four presidents had been victims of assassination attempts—half at that time successful—compared to 1 out of every 166 governors, 1 of every 142 senators, and 1 of every 1,000 members of Congress. Interestingly, of the six presidents who have served since the commission completed its report (Richard Nixon, Gerald Ford, Jimmy Carter, Ronald Reagan, George Bush, and Bill Clinton), four (Nixon, Ford, Reagan, and Clinton) were victims of

unsuccessful assassination attempts. The pattern, it would seem, holds.<sup>3</sup>

Yet, the commission noted no discernible link among presidential assassination attempts. Party affiliation, public policies, term of office, and political strength all seemed unrelated to the assassinations of such diverse presidents as Abraham Lincoln, James Garfield, William McKinley, and John F. Kennedy. No pattern emerged among those presidents who survived an assassination attempt—Andrew Jackson, Theodore Roosevelt, Franklin D. Roosevelt, Harry S. Truman, and—to bring the commission's work up to date—Richard Nixon, Gerald Ford, Ronald Reagan, and Bill Clinton. The only common thread the commission could ascertain was the level of civil discord. "The greater such strife," the commission concluded, "the more likely the President in office will be attacked." Beyond that, presidential assassinations seemed more related to the state of mind—presumably disturbed—of the assassin than to any act, policy, or characteristic of the president.<sup>4</sup>

The commission identified only one governor murdered by an assassin; another five governors were victims of attempts. Two U.S. senators fell before an assassin, four others (two of whom after they left office) suffered attempts. Three members of the House of Representatives were killed by assassins; another seven were victims of attempts. Mayors had the opposite luck. Of the ten who were attacked, seven were killed and only three survived. A dozen state legislators were victims of assassination attempts; ten were killed and two survived. Again, there seemed no common or generalized pattern to link the events.<sup>5</sup>

This was not necessarily the case with judges. "The facts that surround the murders of ten state judges provide more evidence about sordid forces that precipitate violence against officeholders than does the information collected about other categories of assassination victims," the commission stated. A San Francisco judge was shot by his mistress in 1870; another jurist was shot as a result of mistaken identity. Three judges between 1867 and 1875 were killed for political reasons, including John P. Slough, the presidentially appointed chief justice of the New Mexico Terri-

tory. Another three judges were killed in Reconstruction Louisiana, victims of widespread turbulence that also left scores of freedmen dead. One of the judges was killed by an escaped murderer the judge had tried; one was killed because of his support of the Union; and one was killed by "unknown assailants." Judge W. L. Pierce of the Superior Court in San Diego was killed in 1889 by a man whose case he had heard and decided against. Finally, the famed former judge David Terry was killed while himself assaulting Supreme Court Justice Stephen Field.<sup>6</sup>

The commission clumped the remaining ten victims into a miscellaneous category that included U.S. attorney H. P. Farrow of Georgia. Farrow was severely beaten by unknown assailants after he obtained an indictment against white citizens who had rioted over the 1872 election of a Republican governor. In 1870, a U.S. attorney in New Orleans was suspected of being the victim of an assassin.<sup>7</sup>

The commission's list was far from complete—it counted only one sheriff, one revenue collector, one customs inspector, and one tax collector, for example, but none of the more than three hundred deputy marshals killed over the past two hundred years. Nonetheless, it provides a starting point for any discussion of political assassination in the United States. In general, the commission concluded, more than two thirds of the assassinations occurred in the South; one third occurred during Reconstruction, 1865-77. "Outside of the Reconstruction period," the commission noted, "there seems to be no other distinctive period in American history marked by political violence. The South, both before and after the Civil War, has had more incidents of political violence than any other region, but there is no particular time pattern attached to it."<sup>8</sup>

Analyzed by motive of the assassin, the commission found that twenty assassinations (25 percent), including all of the presidents, were committed in the name of a public issue. Another nineteen (23 percent) fell into a miscellaneous category that included mental derangement of the assassin, matters of honor, and events that occurred prior to the incumbent taking office, but

for which the incumbent was the target. Twelve victims (15 percent) were assassinated because they were viewed as illegitimate officeholders. Eleven (14 percent) were victims of organized crime. Ten (12 percent) of the assassinations had no reasons offered or observed. Six (7 percent) of the victims fell to a disgruntled office seeker. Three (4 percent) were victims of accident.<sup>9</sup>

"The pattern," the commission noted, "suggests that the higher the office, the more impersonal and more political the motive for assassination." Conversely, "the lower the office, the more personal the motive." Even when the assassin was mentally disturbed, as in presidential assassinations, "the object of the violence was selected and focused by political issues." Unfortunately, the assassin's mental derangement skewed his politics. Consequently,

assassination seems to be a function of how a particular officeholder is perceived by an assailant who is by and large outside the main social and political stream of the society, and who is responding to cues that others are not likely to recognize.

The simple fact of the assassin's irrationality convinced the commission that predicting assassination attempts was virtually impossible.<sup>10</sup>

As the commission's conclusions typified, the conventional wisdom about American assassinations focuses on the mental derangement of the assassin. The Commission on the Causes and Prevention of Violence flatly concluded:

All those who have assassinated or attempted to assassinate Presidents of the United States (with the possible exception of the Puerto Rican nationalist attempt upon President Truman) have been mentally disturbed persons who did not kill to advance any rational political plan.

Donald Hastings, a psychiatrist, agreed that all but the Puerto Rican nationalists who attacked Truman suffered from "schizophrenia, in most instances a paranoid type." Conrad Hassel des-

cribed presidential assassins as "mentally ill to the point of severe psychosis."<sup>11</sup>

Richard Restak described presidential assassins as loners and drifters who suffered from a sense of grandiosity. "In every case of assassination or attempted assassination but one (the politically motivated attempt on the life of President Harry S. Truman by supporters of the Puerto Rican nationalist movement in 1950)," Restak asserted, "the evidence suggests the conclusion that the perpetrator was at least temporarily deranged." Suzanne Steinmetz studied the family backgrounds and personal characteristics of individuals who had assassinated or attempted to assassinate thirteen prominent political figures. She found most were born to immigrant or first-generation parents. Their fathers were semi-skilled or unskilled laborers. The parents were described as strict disciplinarians who relied on physical punishment, sometimes to excess. The families, too, tended to be broken by death, divorce, or desertion. According to Steinmetz:

The assassins showed an inability to form close, stable, heterosexual relationships; were marginally or poorly integrated into their community; and held blue collar jobs with very unstable employment records. In addition, the goals expressed by the assassins were totally unrealistic in relation to their education and previous employment record.<sup>12</sup>

Sidney Slomich and Robert Kantor, though sticking to the theory of mental derangement of the assassin, added to it a "temper of the times" spin. "Our primary hypothesis is that the emergence of charismatic public figures, at cross points in the history of a constitutional democracy such as the United States, tends to generate assassination attempts by marginal, anomic men from estranged strata of society," they explained. Unfortunately, the authors did not explain how to recognize those historic cross points, much less the "anomic" assassin.<sup>13</sup>

In what essentially has become a longitudinal analysis of psychotic visitors to the White House, first Jay Hoffman in 1943, then David Shore and

others in 1985, 1989, and 1990, studied those patients sent to St. Elizabeths Hospital in Washington, D.C., by the Secret Service. "These patients are, in general, a pitiful lot," Hoffman wrote in 1943, and Shore—in more professional terms—would no doubt echo, "They are frequently of foreign birth or extraction, without friends or family, well along in years, wanderers, unemployed, and completely unaware of the abnormality of their ideas and behavior." Shore and his colleagues found the White House cases to be paranoid schizophrenics. Those with a prior violent-crime arrest before hospitalization were more likely to be arrested for a violent crime after hospitalization. Overall, the White House cases also tended to be more violent, as measured by arrest rates for violent crimes, than the general population.<sup>14</sup>

Without doubt, insanity is the nature of the assassin. It is an entirely plausible and rational argument to assert that those who would kill a president—or a judge, for that matter—are, in fact, mentally deranged. Crazy, their behavior is by definition unpredictable, irrational, erratic, and, hence, unstoppable by any means other than the complete physical protection of the victim.

Yet, focusing on the mental derangement of the assassin is the intellectual's way of shrugging one's shoulders at the hopelessness of it all. Violence, however endemic to society, is considered an aberration of civilized behavior. To chalk up assassinations as the acts of madmen may be descriptively true, but it consoles only the professional psychologists among us. As Conrad Hassel observed:

A great challenge is posed to the law enforcement community by the lone assassin. The determined gunman, overwhelmed by his failures and seeking revenge for his insignificance by destroying what to his mind is the symbol of all that is oppressive to him, is a formidable threat.

Recognizing Lee Harvey Oswald or Charles Guiteau, Squeaky Fromme or John Hinckley, not to mention the Chagras, Charles Koster, and

Walter Leroy Moody, as potential assassins before they become actual assassins is indeed a feat of imposing dimension.<sup>15</sup>

### Typology of American Assassinations

The problem need not be so clear or hopeless as the psychiatrists would have us believe. Although we may type the assassin as insane, psychotic, schizophrenic, or any of a dozen other psychiatric diagnoses, we must still deal with his behavior in real-world terms. Consequently, the best approach to confronting assassins and threateners is to identify the rational cause of their irrational behavior. James Clarke, a political scientist at the University of Arizona, pioneered this approach in his 1981 study of American assassins.<sup>16</sup>

Clarke recognized early on that "terms such as psychopathology, paranoia, and schizophrenia are used so indiscriminately that they have lost much of whatever conceptual clarity they might have had." He added that "the substance of the labelling remains the same; that is, these persons are sick and their acts are, in tautological fashion, evidence of that sickness." Because the act of assassination seems so foreign—so crazed—it has long been assumed that, *ipso facto*, he who would commit a crazy act must be crazy, too.<sup>17</sup>

Clarke rejected the circularity of this view, that is, that sick acts are committed by sick people with sick motives. Instead, Clarke developed a different view of assassins. With the exception of James Earl Ray's mercenary-style murder of Martin Luther King, the assassins Clarke studied acted out of a sense of "frustration." For many of the assassins, their intent, however horrible or offensive, was understandable in rational terms. In short, though their action—political murder—may be irrational, their motive may well be rational and, hence, comprehensible.<sup>18</sup>

Clarke developed four categories to define assassins. *Psychotic* assassins were characterized by severe emotional and cognitive distortion. They suffered hallucinations of persecution or grandeur, and sometimes both. They also had no

contact with reality and could not fully grasp the significance of their actions. These assassins, simply put, were clearly insane.<sup>19</sup>

But they were also few in number. In this category, Clarke listed Richard Lawrence, who, believing himself to be King Richard III, felt compelled in 1835 to try to kill Andrew Jackson, whom he viewed as his usurper. Also psychotic were Charles Guiteau, who credited himself with the election of James Garfield, whom he then killed because the president had not rewarded him with a prestigious political appointment. Finally, Clarke added John Schrank to the list of psychotics because Schrank dreamed that the assassinated William McKinley ordered him to kill Theodore Roosevelt.<sup>20</sup>

*Nihilist* assassins, according to Clarke, believe that "the condition of their lives is so intolerably meaningless and without purpose that destruction of society and themselves is desirable for its own sake." They have no real political motive beyond making an outrageous statement through the very act of murder. Consequently, they pick their targets by the importance or prominence of the victim's position, not for any policy or act he might have done. They are not insane in either a legal or medical sense. "A nihilist is not someone who has lost his reason," Clarke explained, "rather he is someone who has lost everything *but* his reason." Nihilist assassins understand their own actions and even recognize them as legally wrong, which is precisely why they do what they do. It is how they show their contempt for society.<sup>21</sup>

Only two assassins fit this category. Giuseppe Zangara tried to kill Franklin Roosevelt in 1933, but ended up assassinating Mayor Anton Cermak of Chicago, who had the bad fortune to be sitting next to the president-elect. Arthur Bremmer planned to kill Richard Nixon, but found it too difficult to get near enough to the president. Consequently, he settled on the more accessible George Wallace.<sup>22</sup>

*Neurotic* assassins need acceptance, recognition, and status. They seek it by projecting their personal motives onto public objects, then rationalize their acts in terms of a larger public interest.

They blame their low self-esteem and all the problems in their lives on someone else, someone of great prominence and power. By disposing of that person, neurotics believe, they will solve both their own problems and those of the world. "The neurotic assassin," Clarke observed:

is an anxious, emotional, and ultimately depressed person who is primarily concerned with his or her personal problems and frustrations and only secondarily with political causes or ideals.<sup>23</sup>

Lee Harvey Oswald, Samuel Byck, Lynette Fromme, and Sara Jane Moore fell into this category of assassin. Each had specifically personal motives, which they rationalized in terms of some larger political purpose or ideal. Byck, for example, was—like his father—a failure at business and at love. Unfortunately, his failures coincided with the unraveling of the Watergate scandal. On February 22, 1974, Byck tried to hijack a plane, killing an airport security guard and the plane's co-pilot, and wounding the pilot. Thus frustrated in his plan to crash the airplane into the White House, Byck finally killed himself. On a tape-recorded message he asked that his epitaph read: "He didn't like what he saw and decided to do something about it."<sup>24</sup>

*Zealots* willingly sacrifice themselves in pursuit of political ideals. Unlike neurotics, the zealot's motive is not personal. He is reaching for the greater good and accepts capture, even death, as but a small price to pay in exchange for the political goals he seeks. "Unlike psychotics, nihilists, and neurotics," Clarke concluded, a zealot's "extremism is rational, selfless, principled and without perversity." Zealots intend to change the world by assassination.<sup>25</sup>

Clarke found that five assassins fit the zealot category. John Wilkes Booth, Leon Czolgosz (who killed McKinley), Oscar Collazo and his partner Griselio Torresola (who attacked Truman), and Sirhan Sirhan (who killed Robert F. Kennedy) each acted out of zealotry. In each case, Clarke found, the victims "stood for political views that were dramatically opposed by their

assassins." Booth was a diehard Confederate; Czolgosz a self-appointed champion of the working man. Collazo and Torresola were Puerto Rican nationalists; Sirhan Sirhan was a champion of the Palestinian cause. Each fully understood the nature and importance of his act; each accepted his own possible execution as a small price for the larger goal. "McKinley was going around the country shouting prosperity when there was no prosperity for the poor man," Czolgosz finally explained. "I am not afraid to die. We all have to die sometime."<sup>26</sup>

### Rationalizing the Irrational

Originally, Clarke showed the historian's commendable aversion to making predictions. In a later essay, however, he developed a "situational approach to predicting political dangerousness." This approach involved recognizing specific attributes generally shared by American assassins. According to Clarke, the dozen factors listed in Table 3.1 were predictive of assassination attempts. Of these, suspicious behavior (odd dress, frequent appearances, or strange behavior patterns), weapons possession, ideological intensity (defined as some cause, whether emotional or political), interest in the victim, occupational instability, transience, and family estrangement seemed to be the most commonly shared traits among American assassins and would-be assassins.<sup>27</sup>

Obviously, identifying these behavior patterns prior to an assassination attempt is a difficult task. But what Clarke suggested was to move away from heavy reliance on psychological indicators, themselves nearly impossible to recognize in time, and instead focus the protection of the victim on factors that derive from the situation of an assassination itself. Stalking, attention-getting behaviors, suspicious behaviors, overt threats, and weapons possession are the most readily noticeable.

Clarke's greatest contribution to assassination theory is the suggestion that irrational acts need not be driven by irrational motives. Booth may

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**Table 3.1. Ciarke's Factors Related to Assassins**

- Suspicious behavior
- Weapons possession
- Threats
- Ideological intensity
- Stalking
- Interest in victim
- Interest in other assassins
- Occupational instability
- Transience
- Family estrangement
- Attention seeking
- Suicidal

Source: James W. Clarke, "Identifying Potential Assassins: Some Situational Correlates of Dangerousness," in Ted Robert Gurr, ed., *Violence in America: The History of Crime*, vol. 1 (Newbury Park, N.J.: Sage Publications, 1989), 186.

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well have been a crazed actor, his assassination of Lincoln an irrational, ultimately pointless act, but his support of the Confederacy and his decision to take some bold action to express that support was little more than what thousands of other young white Southern males had themselves sacrificed on Civil War battlefields during the four years before Good Friday 1865. Understanding Booth, or any other assassin, does not entail accepting or agreeing with his motives, only in *comprehending* them. Through that comprehension lies the best protection.

Of Clarke's four categories, all but the psychotic assassins are understandable in simple, layman's terms. The importance of this approach is that it allows greater empathy with the assassin, with his or her impelling motives, with his or her ambitions and goals. Through that empathy lies greater understanding, which, in turn, promises the best way to thwart the assassin's plan. It is not necessary to agree with the assassin or to approve his purpose or goal. It is, however, to accept his reasoning or point of view, quite essential to understand what moves him to the bloody act.

### Threats to Hollywood Celebrities and Members of Congress

Park Dietz and his colleagues studied threats to Hollywood celebrities and members of Congress. From a total population of 1,559 individuals who had written threatening or inappropriate letters to 22 Hollywood celebrities, the Dietz study randomly selected 107 who had written and then approached the celebrity and another 107 who had written but had not approached the object of their fixation.<sup>28</sup>

The most startling finding that Dietz and his colleagues developed in their two studies was that threats had little bearing—or even an opposite bearing—on the actual behavior of the person uttering the threat. For Hollywood celebrities, Dietz found that "there was no association between threatening and approaching." This lack of statistical significance between making a threat and approaching the celebrity—a seemingly necessary precondition to implementing the threat—led Dietz to conclude that "the presence or absence of a threat in the communications is no indication whatsoever of whether a subject is going to pursue an encounter."<sup>29</sup>

Even more telling, in a similar study of threats and inappropriate letters to members of Congress, "Subjects who sent threats to a member of Congress were significantly *less* likely to pursue a face-to-face encounter with him or her." Indeed, Dietz was able to state quite categorically:

The finding regarding threats was particularly robust. Each of the following aspects of threats, taken alone, was significantly associated with not approaching: threatening any kind of harm toward any public figure; threatening to kill any public figure or those around a public figure; indicating that a threat would be executed by the subject or his agent; indicating that a threat would be executed by someone other than the subject or his agent; making any direct threat; making any veiled threat; making any conditional threat; and making any implausible threat.

Based on the findings from each study, Dietz concluded:

Those who require the presence of a threat before calling the authorities, before opening an investigative file, or before taking measures to prevent dangerous encounters are seriously in error.

Instead, Dietz called for a change in the criminal law to encompass harassment without threat.<sup>30</sup>

These findings, startling though they may be, suggest that the threat, independent of any deed, stands alone unto itself. In the threatener's mind, the threat may well be sufficient, separate and distinct from any effort or even intent to carry it out. By the very act of making the threat, the threatener satisfies some primal need. It expresses his outrage; it is his plea for attention. The threat alone satiates his craving to have someone important pay him heed. The threatener, then, merely howls to the moon, the wail chilling and mournful. But the disturbance to the night is acoustic only; there is no act to consummate it.

After an intense analysis covering such variables as type of writing instrument, size and style of paper, wording of salutation, postmarks, envelopes, enclosures, and a number of other characteristics, Dietz identified a number of factors that he considered risk enhancing and risk reducing in terms of approaching the celebrity. For example, he concluded that those subjects who wrote between ten and fourteen letters were the most likely to approach the celebrity. Table 3.2 outlines those factors that were "risk enhancing" and "risk reducing" in terms of approach.<sup>31</sup>

In their separate, similar study of threatening and inappropriate letters to members of Congress, Dietz and his colleagues identified another selection of factors that were risk enhancing and risk reducing. Table 3.3 lists those factors.<sup>32</sup>

In both studies, Dietz's subjects were mentally unstable or, to use his term of art, "mentally disordered." Like the majority of students of American assassinations, Dietz emphasized the psychoses of the threateners. He focused exclusively on the type of people who fall in love with Jodie

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**Table 3.2. Dietz's Risk-Enhancing and Risk-Reducing Factors for Hollywood Celebrities**

**Risk-Enhancing Factors**

- Writing ten to fourteen letters to the celebrity
- Corresponding for one year or longer
- Expressing a desire to meet the celebrity face-to-face
- Specifying a time that something would happen to the celebrity
- Mentioning repeatedly entertainment products
- Making telephone calls as well as writing letters
- Mailing letters from two or more geographically different locations

**Risk-Reducing Factors**

- Using tablet-like paper
- Providing a complete return address
- Declaring a desire to marry, have sex with, or have children with the celebrity
- Repeatedly mentioning other public figures
- Mentioning any sexual activity

Source: Park Dietz, et al., "Threatening and Otherwise Inappropriate Letters to Hollywood Celebrities," *Journal of Forensic Science* (January 1991):208.

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Foster, then shoot the president as some wayward proof of their affections. These people undoubtedly exist, but their obsessive behavior is representative only of those of kindred spirit. They tell us little of those who would threaten the federal judiciary.<sup>33</sup>

**Secret Service Exceptional Cases Study**

Taking the reality-based concepts first proposed by Clarke several steps farther along, Bryan Vossekuil and Robert Fein of the Secret Service conducted an in-depth study of all eighty-three individuals known to have attacked or tried to attack a prominent public official or public figure in the United States in the last fifty years. In-

**Table 3.3. Dietz's Risk-Enhancing and Risk-Reducing Factors for Members of Congress**

**Risk-Enhancing Factors**

- Writing letters repeatedly
- Providing any identifying information
- Telephoning and writing
- Closing letters appropriately
- Being polite in the letters
- Assuming a role as a special constituent
- Putting the member in the role of special benefactor, such as rescuer
- Mentioning repeatedly love, marriage, or romance
- Expressing a desire for personal contact
- Expressing a desire to be rescued or helped or to receive valuables or recognition

**Risk-Reducing Factors**

- Writing in cursive
- Casting the member in the role of enemy
- Trying to instill fear in the member
- Trying to upset the member
- Trying to worry the member
- Making any threat

Source: Park Dietz, et al., "Threatening and Otherwise Inappropriate Letters to Members of the United States Congress," *Journal of Forensic Science* 36 (September 1991):1463.

cluded in this group were twenty-five who attacked or nearly attacked presidents, but also five who went after members of Congress, four who targeted federal judges, and fourteen who pursued media celebrities. In addition to studying each incident, Vossekuil and Fein actually interviewed almost two dozen of the subjects. As a result, they were able to dispel numerous myths that have grown up about American assassins, and they changed the direction of how the Secret Service itself approaches threats to the president.

First, they concluded that so-called "profiles" of assassins were spurious. Not age, education,

background, mental health history, criminal history, gender, or much of anything else characterized their study population. The age, for example, ranged from sixteen to seventy-three. Half had gone to college, while two thirds of the population were "social isolates." Few had histories of arrest for violent crimes or for crimes involving weapons. Many had indicated to someone else an interest in taking some violent measures against a public figure. Almost all of them harbored some grievance or sense of resentment.<sup>34</sup>

Like Clarke, Vossekuil and Fein question the importance of mental illness in prompting an assassination. "Mental illness only rarely plays a key role in assassination behaviors," they concluded. Even among those attackers who were diagnosed mentally ill, "symptoms of mental illness generally did not prevent the subject from engaging in attack-related activities such as rationally planning an attack." In severe cases of mental illness, the illness itself renders the subjects incapable of carrying out any plans. "Labeling an attacker or near-lethal approacher as mentally ill, whether accurate or not, does not explain or help predict assassination behavior," they determined. "It also contributes little to enhancing our ability to investigate potential attackers."<sup>35</sup>

Among the several myths their study dispelled, perhaps the most important was their finding that explicit threats held little relation to carrying out an attack. Vossekuil and Fein found that "persons who *pose* threats most often do not *make* threats, especially explicit threats." None of the forty-three individuals in their study who actually attacked ever made an explicit threat to the target. Fewer than one tenth of the eighty-three attackers and near-attackers communicated a threat. This is not to suggest, they point out, that threats should be ignored, but it does strongly indicate that threateners should not be the sole or primary focus of those charged with protecting public figures.<sup>36</sup>

The most important findings of the study are as yet still unraveling. Encouragingly, Vossekuil and Fein assert that "assassination is the end result of a discernible and understandable process of

thinking and behavior." The assassin first had to come up with the idea, make his plans and preparations, collect the necessary supplies, survey the target area, circumvent security, and launch the attack. At several points in the process, then, the assassin engages in what they call attack-related behavior. Assassination is not a spontaneous act, and it is precisely because it is planned and prepared that law enforcement has a chance to identify the behaviors and intervene.<sup>37</sup>

The Exceptional Cases Study promises a wealth of practical steps for those charged with ensuring the safety of public figures. As this research is evaluated and digested, much more realistic tactics and approaches to the problem will emerge. In treating assassination as a manageable problem, rather than as some winsome act of capriciousness, Vossekuil and Fein have gone a long and important way toward arming law enforcement with the tools it needs.

#### Gavin de Becker, Inc.

More than any scholar or student of threats, assaults, and assassinations, Gavin de Becker has pioneered the most practical approach to assessing and managing threatening and inappropriate communications to public figures. His Los Angeles-based company, Gavin de Becker, Inc., provides a systematic, rational approach to threat assessments. De Becker does not predict dangerousness, which he believes is too dependent on any particular situation. "Given sufficient provocation," he argues, "at a time of insufficient inhibitors, any of us might act violently. *Dangerousness is circumstantial*; it is the result of a combination of factors." Consequently, labeling someone as dangerous is useless: "It does not move one toward the safety goal."<sup>38</sup>

Instead, de Becker has developed a cogent system to identify those individuals most likely to make an approach on a public figure. By thwarting or avoiding that approach, de Becker removes any chance of the situation degenerating to violence or danger.

"With any threat," de Becker has written, "we

judge the speaker for his sincerity, his inclination and ability to deliver on his word, in short, his credibility. In assessment, we call this measurement the *value* of the threat." At the same time, de Becker assesses the characteristics of the intended victim—the level of security around him, the predictability of the victim's movements, and so forth—that potentially expose the victim (or Principal, in de Becker's terms) to the nefarious plans of the Profile, de Becker's term for anyone who threatens or inappropriately communicates with the Principal. "We call that measurement the *tolerance*," de Becker explains. "The tolerance judgment is influenced by factors related to the Principal's vulnerability, in effect his *tolerance* to the Profile's pursuit."<sup>39</sup>

Somewhere between the value and the tolerance lies the clearest assessment of how best to avoid any situation that would give the Profile opportunity to effect his purpose. Based now on nearly two decades of assessing inappropriate communications to public figures and after analyzing something on the order of 150,000 such communications, de Becker has developed a simple, standardized approach to screening such communications. By asking about each letter, telephone call, or delivered message two dozen questions covering some ninety-one variables, de Becker's system provides a systematic way of comparing inappropriate communications to the known universe of such communications, thus allowing some identification of those characteristics known to be associated with people who follow up their message with an approach.

The beauty of the system is that it is focused on an intensely practical assessment that correlates known characteristics with known behavior patterns. Those who seek out encounters with public figures can best be identified by first screening their communications with a couple of dozen simple questions. But the questions are merely the first step in the analytical filtering process. The crucial aspect of de Becker's system—his philosophy of assessment is discussed in the final chapter—is that he consistently asks intelligent questions.

The beauty of de Becker's questions is their

availability to anyone. In his recently released book, *The Gift of Fear*, de Becker challenges people to listen to their instincts, their own danger signals when confronting a discomfiting situation. Too often, he believes, people tend to scoff off the anxiety and uneasiness they feel, despite evolution's gift to the human body of implanting that anxiety and unease. "Like every creature," he contends, "you can know when you are in the presence of danger. You have the gift of a brilliant internal guardian that stands ready to warn you of hazards and guide you through risky situations." That gift is intuition.<sup>40</sup>

In de Becker's terms, intuition goes beyond some mystic extra-sensory perception. Rather, he means by it the mind's ability to immediately and unconsciously grab clues from the environment at any moment in time. Those clues can be positive or negative; still, the brain assimilates them and sends signals to the body on the proper reaction. The presence of food stimulates hunger; the presence of danger prompts nervousness and fear. One ignores those signals at one's peril.

### Nature of International Assassinations

Students of international assassinations, unlike those who study only assassinations in the United States, do not assume universally that political murders are wrong or evil. In a book-length study of assassinations from Julius Caesar to John Kennedy, Edward Hyams refuses to condemn them categorically. Hyams's dedication to the book amply summarizes his view. He inscribed the volume "to the memory of the twenty million war dead who, since the author's birth, have sacrificed their lives for the score of leaders who might, at the cost of their own, have saved them."<sup>41</sup>

At first blush, the idea of endorsing any assassination seems morally repugnant. Particularly in modern times, when so many causes call for so much violence, it is difficult to justify one assassination—say, of Saddam Hussein—for fear that it will somehow excuse other assassinations. Several authorities have speculated that President

John F. Kennedy's willful acquiescence in the assassination of South Vietnamese President Ngo Dinh Diem on November 1, 1963, contributed to Oswald's decision to murder Kennedy three weeks later.<sup>42</sup>

Yet, one need look no farther than the attempted assassination of Adolph Hitler in 1944 as proof enough that sometimes the murder of a national leader is amply justified. Indeed, European history is replete with headless princes whose vicious tyranny fully warranted their beheading.

The problem, of course, is differentiating the just from the unjust, the deserving from the undeserving. One might, as Hyams does, applaud the 1801 assassination of the bloody Russian tyrant Tsar Paul I. Assassination of leaders of his ilk "relieves misery, emancipates the enslaved, decreases the sum of injustices in the world, [and] advances a cause generally conceded to be good in the world." Yet, who's to tell? "I killed the President because he was the enemy of the good people—the good working people. I am not sorry for my crime," Czolgosz stated moments before his execution for killing McKinley. John Wilkes Booth's belief that "*sic semper tyrannus*" is enough proof that one man's tyrant can become a nation's fallen martyr.<sup>43</sup>

Even if we could set aside this moral quandary, another aspect of the nature of the international threatener bears directly on threats and assaults to the federal courts in the United States. Quite clearly, violence for political goals is increasing worldwide. In Cojutepque, El Salvador, during the 1980s, to cite one extreme, forty-two mayors in succession were forced to resign under threat of assassination. During the decade ending in 1989, more than 14,000 people were killed in Peru as a result of terrorist activities. In 1991, murder became the leading cause of death in Colombia, outpacing cancer and heart disease.<sup>44</sup>

With that increase has come a commensurate enhancement to the risk faced by judicial officials. Over the same time period that three individual federal judges were killed in the United States, Colombian drug cartels launched a widespread, successful attack on the Colombian judiciary. As if that were not enough, the Colombian judiciary

also suffered an assault from political terrorists. On November 6, 1985, a guerilla movement known as M-19 seized the Colombian supreme court and took more than one hundred hostages, including eleven of the twenty-four justices. The government's violent response to the attack resulted in the massacre of almost all of the hostages, including the justices.<sup>45</sup>

Italian judges were the victims of kneecappings, kidnappings, and assassinations, both from the unbridled ideologues of the Red Army and the base criminals of the Mafia. During the year between August 1991 and July 1992, three Italian judges were killed by Mafia assassins. On August 10, 1991, Antonio Scopelliti was shot while on holiday in Calabria. The following spring, Giovanni Talsone, a special magistrate appointed to bring charges against the Mafia, was killed by a bomb on the highway near Palermo. His wife and four others died with him. On July 19, 1992, Judge Paolo Borsellino and four police officers were killed by a car bomb in Palermo.<sup>46</sup>

A 1990 report, *Attacks on Justice*, published by the Centre for the Independence of Judges and Lawyers of the International Commission of Jurists found "a significant increase in the number of attacks on judges and lawyers" over the previous year. According to an October 1991 report to the United Nations by the same commission, fifty-five judges and lawyers were assassinated in one year, most of them in South America, with thirty-seven in Colombia alone.<sup>47</sup>

The worldwide attacks on justice continue unabated. Between May and December 1993, six judges in Algeria were killed. On December 6, Rouaz Lakhdar, chief judge in the city of Oran, was killed by three assassins who shot him as he left his home. Most of the attacks were blamed on Islamic militants.<sup>48</sup>

The troubles facing the United States are of a piece with the international scope of violence for political ends. Indeed, overall, the United States is slightly ahead of other nations in respect to this type of violence. "The number of assassinations and acts of general political violence in the United States is high, compared with other nations, particularly when with more politically stable and

economically developed countries," President Johnson's National Commission on the Causes and Prevention of Violence concluded in 1970. Nothing in the almost three decades since would have given the commissioners cause to revise their original pessimism.<sup>49</sup>

In a cross-national ranking of eighty-four nations in terms of the frequency of assassinations between 1948 and 1967, the United States ranked fifth with sixteen. Thomas Snitch studied 721 assassination attempts worldwide during the period 1968-80. Of those attempts, eighteen (2.5 percent) were directed at national judges. When Snitch examined only the 454 successful assassinations, 15 of them (3.3 percent) were of national judges. Since attacks on political leaders had led to a greater emphasis on protecting them, Snitch concluded that the risks to judges and others had, domino-like, increased. "National legislators and, increasingly, prominent members of the judiciary should not be neglected in terms of physical protection," he warned. "Their chances of being kidnapped or assassinated will rise as other targets become more difficult to attack successfully."<sup>50</sup>

A 1991 study conducted by the United Nations Commission on Human Rights found that "physical pressure remains the chief obstacle to independence and protection" of the judiciary in scores of countries around the world. Between January 1988 and June 1989, the commission reported thirty-four summary or arbitrary executions of judges and lawyers. Between July 1989 and June 1990, however, sixty-four summary or arbitrary executions of judges and lawyers were reported, almost a two-fold increase in about a third less time.<sup>51</sup>

Indeed, the commission catalogued a distressing number of assaults, assassinations, and kidnappings of jurists around the world. It reported three hundred judicial officials murdered in Colombia since 1980. In the Philippines, murders of judges and lawyers increased, while in Sri Lanka the national security forces were implicated in some assassinations. Police officers in Turkey beat three lawyers in April 1990 and another four in August and September. And, of course, in the United States between May 1988 and December

1989, two federal judges were killed.<sup>52</sup>

Ian Geldard compiled a chronology of terrorism for 1989 and found that "in both Asia and the Americas, political and diplomatic targets suffered twice as many attacks than the military and police." His chronology for 1990 found that the trend held true, but the frequency increased rapidly. The 1991 update reported a total of 11,055 terroristic murders, more than twice the totals of 4,681 for 1990 and 3,691 for 1989. For 1991, as in previous years, civilians were the main targets; indiscriminate bombing was the principal tactic.<sup>53</sup>

These diverse events, despite their volume, do not represent an organized, worldwide conspiracy. Although there have been numerous reports of Colombian hit teams headed to the United States, they have never seemed to arrive. Indeed, as will be shown subsequently, the American threatener works largely alone, without help or support. More to the point, the problem is that assassinations, like some Parisian fashion or British rock music, have become faddishly popular—worldwide. There is no superior intelligence plotting them or any particular organization linking them. It is simply that violence has its own appeal. Disparate people around the world turn to it for disparate reasons.

### Threats to State and Local Judiciaries

Violence in the United States has played an integral part in the history of state and local courts. Since colonial times in America—and long before that in England—state and local judges, prosecutors, jurors, and attorneys have suffered physical assault and murder. The motives have ranged from politics to domestic disputes, from prisoner escapes to simple revenge. Although no one has yet prepared a detailed study of violence against the local judiciary, few would dispute that its level and rate have been phenomenally higher than anything yet experienced at the federal level.

On September 8, 1875, Judge Thomas Crawford and District Attorney A. H. Harris were brutally murdered in Louisiana. Both were

Republicans; both supported aggressive Reconstruction policies; and both had brought to trial numerous former Confederates for civil rights violations. In January 1893, Judge Fuqua of Pima County, Arizona, was murdered at his ranch. A month later, with the murderers still free, the *Arizona Republican* complained that "the subsequent apathy displayed by persons in [Pima County] is astonishing and explains why murder is so frequently committed or attempted with impunity." Californians, apparently, were not so apathetic. When, in 1895, Judge I. L. Baker of Fresno was murdered, his assassin was promptly lynched.<sup>54</sup>

Other examples of assaults on state jurists, far too numerous to recount here, abound. Perhaps the most famous assault of modern times, however, was the foiled prison escape of James D. McClain and William A. Christmas, which led to the brutally gruesome murder of California Superior Court Judge Harold J. Haley on August 7, 1970, in San Rafael. As noted in chapter 2, shock and revulsion at seeing a judge with a shotgun barrel taped and pointed to his head led directly to the establishment of a formal court security division within the Marshals Service and began the process of confronting security issues at federal courthouses around the country.<sup>55</sup>

On May 22, 1975, a courthouse janitor in Orangeburg, South Carolina, stumbled upon a fifty-pound bomb in the basement of the courthouse. The fuze had burned down to within inches of an explosion. At the time, the courthouse was venue to a civil rights trial. On July 28, 1987, a circuit court judge, an attorney, and the attorney's client were killed during a divorce hearing in Port St. Joe, Florida.<sup>56</sup>

On May 5, 1992, three separate shootings occurred at courthouses in Clayton, Missouri; Grand Forks, North Dakota; and Colbert County, Alabama. The Missouri shooting involved a divorce proceeding and left the ex-wife dead, and the two lawyers, a bailiff, and the gunman injured. The North Dakota shooting occurred at a child-support hearing. The judge was critically injured. The Alabama shooting took place during an argument with a woman and her brother-in-law. The in-law

was wounded in the shoulder.<sup>57</sup>

Two months later, George Lott calmly walked into the Tarrant County, Texas, courthouse in Fort Worth and went to the spectators gallery. After watching the proceedings for a few minutes, Lott pulled out a 9-millimeter semi-automatic handgun and began firing indiscriminately. Two attorneys were killed; two judges and another attorney were wounded. Distraught by the outcome of his divorce proceedings, Lott turned to violence. "I basically went in the courtroom and sat for a while and then got up and shot apparently five people," Lott confessed. "I was shooting at the court, essentially, but other people got in the way or did things. You have to do a horrible, horrible thing to catch people's attention." Lott's particular grievance was the refusal of the appeals court to grant him another divorce trial. It was the fourth gun-related incident at the courthouse in eight years.<sup>58</sup>

In January 1991, the National Sheriff's Association published the results of a survey of security incidents occurring in state and local courts. The results confirmed that most of the violence directed at the state and local courts results from individual causes. The survey found that 56 percent of the 224 reported incidents involved criminal proceedings. Divorce cases followed a far distant second with 11 percent. Most of the incidents—41 percent—occurred in the courtroom, with the court lobby second at 18 percent. Assaults composed 56 percent of the violations, with disturbing the peace second at 23 percent. Someone was killed in 6 percent of the incidents. Revenge and escape tied with 39 percent of the reported reasons for the violence. Other motives included intimidation (14 percent), attempting to influence the court (7 percent), and unspecified political motive (1 percent).<sup>59</sup>

Most of the perpetrators acted alone. They tended to be forty years old or younger. The majority were male, and three fourths of them were defendants appearing in a criminal case. Half were Black, half were white. In a quarter of the incidents there was no victim, since the perpetrator was either fleeing or disturbing the peace. When someone was a victim, almost a third of the

time (31 percent) it was the bailiff. Judges were the victims in 24 percent of the incidents. In most cases (54 percent), no one was hurt, though in 4 percent someone was killed and in 22 percent someone required medical attention. When the incidents occurred, half the courts had a security person stationed in the courtroom. Half did not.<sup>60</sup>

Violence at the state and local level—as at the federal—generally involved some individual caught up in a judicial proceeding that somehow, rationally or not, violated his sense of fairness or his selfish desire for freedom or relief from punishment. The courts needed not fear the dedicated terrorist or the crazed fanatic, but rather the lone, angry, frightened man caught up in the judicial process and feeling wronged. Like George Lott in Texas, it was the disgruntled and the dispossessed who attacked the court—the system that had caught them up. It just happened that sometimes people got in their way.

#### **Inappropriate Communications to the Federal Judiciary Compared to Inappropriate Communications to Other Populations**

Several readily identifiable attributes distinguish the nature of inappropriate communications to and assaults against federal judicial officials from those against other distinct groups. The risks are different in kind from those that other, nonjudicial populations incur. And they differ, too, in degree from those problems endured by jurists both internationally and locally. Each of these distinguishing attributes is examined in considerable detail, but they deserve a summary mention here to underscore the unique nature of inappropriate communications to the federal judiciary.

Three principal attributes have distinguished threats to the judiciary from threats to other populations. First, as frequently as not, they involved more than one victim, indicating that threats to the judiciary were as much attacks on the *system* of justice as they were on the individuals who compose it. Second, threats to the judi-

ciary were very specific acts of anger or fear generated for a very specific reason. Those who would harm federal judicial officials were not necessarily mentally unbalanced or ill. Whereas fully 90 percent or more of those who pestered public figures suffered some mental disorder, fewer than 20 percent of those who threatened federal judicial officials seemed driven by irrational impulses or fixations. Those who would harm judicial officials were driven by a specific reason usually related to a case before a court. Third, threats to the judiciary involved an interpersonal relationship entirely absent in threats to other populations: Victim and assailant frequently knew each other. They knew, too, the dispute between them.

By their nature, threats to the courts menaced a system composed of many officials. This type of threatener is different from those who would harm presidents, politicians, or public figures. With those other groups, the threatener focused on a specific individual; their threat was exclusive to that person. Though the threatener frequently threatened others, he did so individually and not all in the same communication.

The judicial threatener, conversely, struck out at the courts in what he may have perceived as self-defense. He believed he was protecting his liberty, his possessions, even his criminal enterprise. He may have felt himself a victim of injustice or persecution. Thus, he attacked out of anger and frustration. But his strike was against a judicial system, not necessarily any single individual within that system. In half the threats analyzed—50.3 percent—the threatener explicitly threatened not only the person receiving the threat, but other victims as well.

A criminal defendant might have sent an inappropriate communication to the judge about to sentence him, but nearly half the time he also lashed out at the prosecutor who tried him or the cop who arrested him or the witness who testified against him or the jurors who condemned him. A civil litigant, outraged at the dismissal of his case, threatened the judge but attacked the clerk who had handed him his rejected motion. On appeal to the circuit courts, the threatener snapped at each

member of the panel of three judges who had somehow offended him. For whatever reason or by whatever method, those who threaten judicial officials, unlike their cohorts who would harm other types of victims, were actually attacking a system. People, as George Lott explained, simply got in their way.

The second distinguishing feature that separated inappropriate communications to the judiciary from inappropriate communications to other groups relates to motive. The majority of communications to and assaults on the judiciary resulted from specific acts of anger or revenge for very particular reasons. They were personal more than political, selfish more than general, individualized more than generic. They may have been irrational; violence frequently is. They may have been ideological; a person's beliefs can be a strong motivator to violence. They may have involved a conspiracy of organized criminals, whether drug cartels or old-fashioned mafiosi. But more than any other attribute, inappropriate communications and assaults to the judiciary have resulted from some specific sense of insult, revenge, or fear.

However irrational, ideological, or conspiratorial, by far the most startling and clear-cut attribute that distinguished the nature of inappropriate communications to the judiciary, at whatever governmental level, was the fact that the majority were generally related to a specific litigation or trial. Of the threats studied, 2,535 had discernable motives. Of those, 1,563—almost two thirds—were clearly case related. The threatener felt mistreated; his own highly stylized perception of fairness was rudely violated. He believed himself threatened by a long jail sentence, loss of his possessions, or unsatiated or not exonerated by a judicial action he initiated. His communication was induced by a very real sense of grievance, however perversely or selfishly defined.

The final distinction separating judicial threats from others was the interpersonal nature of the judicial threat. In judicial threats, the victim usually knew—or would know, if the threat were not anonymous—who was making the threat and why. Indeed, slightly more inappropriate com-

munications to the judiciary, as compared to those to celebrities and members of Congress, tended to be anonymous or disguised precisely because the victim knew who the threatener was. Dietz and his colleagues found that 95 percent of the correspondents with Hollywood celebrities identified themselves through their letters. Yet, there was no evidence or suggestion that any of the celebrities had any personal knowledge of who these fixated fans were. In the similar study of threatening or inappropriate letters to members of Congress, Dietz found that 81 percent signed their names to their letters, but again there was no evidence that the members had any reason to know that particular constituent. Moreover, neither celebrities nor members of Congress knew why they were being harassed, other than for the simple reason that they were celebrities. Indeed, their problems frequently resulted from what they *seemed* to be and not what they truly *were*.<sup>61</sup>

Presidential victims of assassination have not known their assailants either, save perhaps James Garfield, whom Guiteau had pestered repeatedly for a job. Andrew Jackson had met briefly with Richard Lawrence the night before Lawrence's failed assassination attempt, but it is not clear that Jackson paid him much mind. None of the other presidential victims of assassinations knew their assassin, and none of the presidents would have known why they were being targeted. Indeed, the motive in several assassinations remains a point of controversy to this day.

Almost a quarter of the inappropriate communications to the federal judiciary were made anonymously. Even among those with an identified suspect, many were deduced by the evidence of the communication and not because the threatener willingly provided his name. The victim determined who the suspect was because he knew him. The victim had seen his enemy before, in court. He recognized what cause had driven the suspect to such anger and desperate action.

The familiarity of the judicial victim with the judicial threatener was further illustrated by examining what Dietz and his colleagues called approach behavior. For members of Congress and celebrities, Dietz developed a specific definition

of "approach positive" behavior. According to his study of inappropriate communications to members of Congress, those who sent such communications were classified as "approach positive" if they had:

- (1) visited a location believed to be the home of the member of Congress;
- (2) visited any agency or office believed to represent the member of Congress;
- (3) visited a location believed to be the home or business address of any acquaintance, friend, relative, or intimate of the member;
- (4) approached within 5 miles (8 km) of any of the above locations with the expressed intent of seeing, visiting, or confronting any of the above parties;
- (5) traveled more than 300 miles (480 km) to see the member or any of the above parties, even in a public appearance; or
- (6) behaved in any manner out of the ordinary at any public appearance of the member.

A similar definition was postulated for those who approached Hollywood celebrities.<sup>62</sup>

Such approach behavior was readily apparent for members of Congress and Hollywood celebrities: An approach was unusual, hence distinguishable. A Hollywood crooner stands high upon a stage, ringed by guards, and physically distanced from a cheering crowd. Attempts to mount the stage or enter through a backstage door are immediately noticeable. The star, though close to his adoring fans, nevertheless remains distant and remote. He sings in safety.

Unfortunately for the judiciary, the threatener frequently needed to approach no more than a few feet to assault his victim. They were, after all, in the courtroom together, barely separated by bench or bar. In a very real sense, the judiciary embraced, often physically, the persons most dangerous to it. As is evident throughout this study and, indeed, as common sense readily verifies, the judiciary has already reached out and ensnared those who have the most reason—however just or unjust—to do it violence. Whether voluntarily or under arrest, those who threatened members of the judiciary frequently stood before them; their

threats were delivered at the precise moment they "approached" those whom they would harm.

Of the four federal judges killed over the last two centuries, each knew—or, had he survived, would have known—who assaulted him and why he was being attacked. In 1867, William Slough, the presidentially appointed chief justice of the New Mexico Supreme Court, was killed in a bar-room shoot-out. Slough knew his assailant, a man named William Rynerson, and he knew why Rynerson shot him. Rynerson had introduced a resolution to impeach Slough in the territorial legislature. In fact, Slough had searched about the town for him, finally settling down to wait at the bar. When Rynerson passed through, Slough challenged him. It was Slough's misfortune to be a bit slower on the draw.<sup>63</sup>

More than a century later, Judge John Wood of the Western District of Texas was fatally shot in the back as he leaned into his car. The assassin had been hired by the Chagra family, of whom Wood well knew and fully expected to see before his court charged with multiple counts of organized criminal activities and drug smuggling. Had he survived the shooting, Wood would have known and understood why he had been attacked.

So, too, would have Judge Richard Daronco of the Southern District of New York. When he saw Charles Koster burst through his hedges that May Saturday in 1988, Daronco recognized him immediately and knew why he had come. Koster had attended court every day over his daughter's lawsuit. Daronco immediately tried to reach the safety of his house, but Koster pursued him, mortally wounding him with several shots.

Judge Robert Vance of the Eleventh Circuit Court of Appeals may not have recalled Walter Moody, but only because of the volume of appeals cases that came before his court. However, Vance had sat on the panel that rejected Moody's appeal and thus incurred Moody's violent wrath. Vance, of course, was one of three judges on the appeals panel. It is not clear exactly why Moody had selected him over the other two judges, but it is certain that Vance was selected because of his participation in rejecting the appeal.

Thus, in comparison with his cohorts who

would harm a president, public official, or celebrity, the judicial threatener may have acted irrationally, but with a rational reason. He may have felt driven by a specific, personal injury. His victims, too, frequently knew who the threatener was, even if they did not always recognize his evil intent. Unlike his cohorts, he had no sense of saving the world or changing history. He did not want to impress Jodie Foster; dead presidents did not haunt his dreams. Instead, the American threatener attacked the courts because he felt the courts had injured him. He was, in a very real sense, acting from perceived self-defense or revenge. Although he may have been wrong, he was not deluded. The courts, in fact, had put him in jail or seized his property. The courts had, in fact, judged him and, with that judgment, incurred his wrath.

Threats to the U.S. federal judiciary have differed from threats to jurists in other countries—and at the state and local level—only as a matter of degree. American judges have not been victimized by terrorists or organized groups as have Italian and Colombian judges. In only 16.9 percent of the threats to federal judges was there any evidence of an affiliation with some organized group. Only 6.4 percent of the threats contained evidence of more than one suspect. Although one cannot state with certainty that most threateners acted alone, the low percentage of group affiliation and additional help seem to point that way.

Threats to the federal judiciary also have differed slightly from threats to state and local judges by the nature of the threatener's involvement with the court. Although the majority of problems at the local level revolved around criminal trials, this was not the case at the federal level. Of the 1,563 threats related to specific cases before the courts, 36.1 percent were criminal, and 28.2 percent were civil. The remainder divided into other categories such as bankruptcies, organized crime trials, ideological, or unknown.

Worldwide, judicial officials face risk and danger precisely because of their judicial activities and the power their position gives them over the individual. Presidents and dictators are killed, on the other hand, for being presidents and dictators

and the power their positions give them over the masses. The leaders' photos, too, are regularly and prominently displayed, thus confirming their power and their place in history. Assassinating them is a ticket to that history, a guarantee of infamous immortality. Judges, prosecutors, and other judicial officials are attacked not just for being a judge or prosecutor, but for actions they have taken in their official roles and because those actions had a direct, personal effect on the threatener. The difference is as subtle as it is profound.

### Some Judicial Views on the Nature of the Threat

There is a growing sense among federal judges that their job has grown increasingly dangerous. "I think it is getting more dangerous than it used to be," Chief Judge Charles Brieant of the Southern District of New York told reporters for the *ABA Journal*. "I think that we are getting more cases involving people who are not in the mainstream, who don't respect the system of justice." Brieant spoke from bitter experience. On February 13, 1987, his wife received a package of chocolates and a Valentine's Day card. She ate four pieces of the candy, all of them poisoned, and was rushed to the hospital.<sup>64</sup>

Other judges agreed with Brieant. Judge Lawrence King of Miami believed that "in the Southern District of Florida, judges have been at serious risk for more than a decade." He attributed the increased risk to a dramatic change in the character of the criminal appearing before the federal courts. In the old days, when only bank robbers and organized crime figures stood before the federal bar, they had the attitude "that they didn't kill a police officer. They didn't kill a prosecutor. They didn't kill a defense counsel. And they certainly didn't kill a judge." But drug dealers, particularly those from Colombia, have no sense of that tradition, no respect for judicial process.<sup>65</sup>

It has become a generally accepted view. "Life just isn't worth as much as it used to be," Chief Judge Gerald Tjoflat of the Eleventh Circuit Court

of Appeals observed. Chief Judge William D. Browning of the District of Arizona, who chaired the Judicial Conference Committee on Court Security, believed that "people, more and more, feel that they have rights and entitlements, and when they don't get them, I think they transfer their anger to whoever it is who denied them that. In the case of a court proceeding, it's almost always the judge." Judge Edward Devitte, who presided over Moody's murder trial and who later accepted his own impending death by cancer with supreme serenity, concurred that the threats to judges had increased since he first assumed the bench in 1954. Devitte, however, found the troubles homegrown, not imported. He explained:

We've been trying more controversial types of lawsuits, criminal cases particularly. I think particularly in this area of the country, we have an awful lot of . . . well-organized tax protestors. We have quite a few of those cases. I rather think that they present more of a . . . potential risk to judicial officers than the typical professional criminal does. They're worked-up civilians.

In part, at least, former Judge Lawrence Irving of the Southern District of California resigned from the bench because of the seemingly near-constant threat to his physical safety. Whether substantiated or not, a growing number of federal judges have perceived a growing threat to their lives from "worked-up civilians," criminals, and foreign elements.<sup>66</sup>

Of all the federal judges, the one most vocal about these concerns was Judge Dudley Bowen of the Southern District of Georgia. In letters to his colleagues and in his work on the judicial security committee, Bowen made amply clear his view that the risk to the federal judiciary had increased at the same time that the level of their protection had decreased. Bowen campaigned energetically to have deputy marshals permanently assigned to federal courtrooms, regardless of the nature of the proceedings; to have the government install security alarm systems at the private residences of judges; and to allow judges to carry firearms

across state lines. Bowen believed all these measures necessary because judicial lives were constantly at risk.

Bowen blames the increased risks on what he perceives as the ongoing transformation of American society. As he explained:

We have a society that is changing on a daily basis. You might say it's not just changing, it's fulminating. We have a population and a demography that is changing on an annual basis.

In the year 2030, the people who are descended from the earlier English-speaking immigrants will be a minority in this country. They will be a minority to what are called Hispanics and African American elements of our population.

Like it or not, and whether or not it offends someone's sensibilities, the tradition of violent manifestation of disagreement toward government or court operations is far more prevalent in the Spanish-speaking world than it ever was in the English-speaking world. You don't have to go very far to figure that out. You can just look at Spain and you can come all the way to the twentieth century, the latter part, and look at Colombia, and see what has happened there.

It is a fact that other cultures have different ways of responding and venting their disagreement. I'd like to come up with a better word. They are not as law-abiding, not as respectful of the law or the rule of law as the English-speaking people have been through the years.

About the "security risk," Bowen added:

I don't like to use the word threat, like the Marshals Service does—the security risk is from all elements of society, of course, but

particularly from this ongoing change that we've got in our American world right now.<sup>67</sup>

The solution for Bowen was for the Marshals Service to surrender its growing interest in other aspects of federal law enforcement and, in his view, return to its original and most important mission of protecting the federal judiciary. Bowen was convinced that the marshals had wandered away from their primary function in pursuit of more exciting tasks and more glamorous adventures. He insisted that they needed to devote full time to ensuring the security of the courts and to providing a peaceful setting within the courtroom.

Some judges recognize that the judiciary itself may carry some responsibility for the risks it faces. Judge King—the trial judge in Walter Leroy Moody's original case—speculated that a judge's demeanor on the bench might be a contributing factor to threats and assaults against him or her. Judges who lecture the threatener or who "read them the riot act" or become "righteously indignant" at their crimes incur a greater risk of arousing the threatener's wrath against them. They are no longer perceived as simply doing their jobs, but of taking sides, of injecting the proceedings with personal views. At that point, the threatener would get mad at the judge as a person.<sup>68</sup>

As a practical matter, Judge King may well be right. Judges, he advised, should strive to avoid getting "deeply and personally involved in a confrontation with lawyers. We simply rule." The problem, though, in blaming the judge's strict behavior is rather like saying that a woman who makes herself physically attractive invites rape. The punishment is way out of proportion.<sup>69</sup>

Perceptions, of course, need not be true so long as they are believed. It is clearly the growing perception of federal jurists that their lives are at risk and that the nature of their positions has changed. They sense an increasing lack of respect, an isolation both within society and within the very government they support. They blame it on the changing nature of society and the constitution of the threatener. In a sense, they are right.

**Part II**

**The Analysis**

#### 4. NATURE OF THREATS TO THE FEDERAL JUDICIARY

Failure inheres in the nature of threats to the federal judiciary. More than any other feature, regardless of how the threat was delivered, to whom it was directed, or what reason prompted it, threats to federal judicial officials have rarely been realized and seldom implemented. Moreover, the assistance of groups—terrorists or criminal organizations—or additional suspects does not significantly enhance the risk of a threat being carried out. Of the 3,096 inappropriate communications and assaults reported to the Marshals Service from 1980 through 1993, 2,996 contained enough information in the files to assess an outcome. Of these, 91.9 percent contained no evidence of any attempt to implement the promised harm; a threat or ominous statement was made, but the threatener was never heard from again. Like curses, they were more annoying and outrageous than dangerous.

Unfortunately, failure is not enough. Within the same time frame, two federal judges were brutally assassinated. In 118 cases (3.9 percent), court officials were assaulted or were involved in cases in which others were assaulted. These officials suffered personal injury, property damage, or affront. In another 124 cases (4.1 percent), judicial officials risked injury or harm when the threatener actually tried to implement his threat, enhancing his words with distressing, if ultimately fruitless, actions. Although these officials remained unharmed, the experience was doubtless unnerving for them. Despite the relatively low percentage of enhanced and violent threats, by any measure they were unacceptable rates of human suffering and indignity.

Consequently, though failure was the most common attribute of inappropriate communications to the federal judiciary, it is not common enough. The following analysis delves deeply into

the nature, character, methods, motives, victims, and suspects of those 3,096 communications and assaults. It examines each feature individually and in combination. The point is not merely to describe inappropriate communications in intimate, excruciating detail, though they *are* described that way, but to identify those features or combinations of features that distinguish enhanced and violent threats from those more common ones that remain forever unrealized.

##### The Database

From October 1, 1980, through September 30, 1993, a total of 3,096 inappropriate communications to and assaults against federal judicial officials were reported to the headquarters of the United States Marshals Service. This collection of inappropriate communications and assaults composed the database for the statistical analysis presented in the following chapters. It is not a complete database, of course, in the sense that it represents 100 percent of all threats and assaults to federal judicial officials, or even 90 percent, or, perhaps, even a clear majority of them. But one cannot measure or analyze the unknown or the unreported.

We now know a quite a bit about this particular set of 3,096 inappropriate communications. But we do not know with any certainty beyond common sense that these particular inappropriate communications and assaults are representative of all the inappropriate communications to and assaults against officials within the federal judiciary. We do know that during the time period covered by the database, one district court judge and one circuit court judge were assassinated. We also know, fortunately, that no other federal

judicial official was killed as a result of his or her judicial duties during that time. We know, too, that as the risk of a threat increases, the likelihood of it coming to the attention of the headquarters of the Marshals Service—that is, the likelihood that it would be reported—also increases, if only because its headquarters must pay for protective details that last longer than 72 hours. Consequently, there is reason to believe that if there is any *underreporting* in the database, it would be of specious threats, especially those that no one ever takes seriously.

Each of the reported inappropriate communications and assaults was catalogued on computer by identifying upwards of thirty variables. These included the date the communication was received, how it was delivered (whether by mail, telephone, suspicious activities, informant, or verbally), who received it, the title and location of the victim, the identity or anonymity of the suspect, the motive behind the inappropriate communication or assault, and whether other victims were included or assaulted. When possible, demographic information was collected on both the victim and the suspect. Evidence, too, was collected on the suspect's membership in a group or organization. When it was known that the suspect was in jail or prison at the time the threat or assault was made, that, too, was noted and factored into the calculations. Anecdotal information describing the specifics of each threat or assault was also included.

Certain specific criteria and assumptions were made in putting the database together. The database is composed primarily of threats, defined as an explicitly menacing warning of some harm. Assaults, too, are included.

Strange, weird, or otherwise wacky communications that contained no evidence of harm or menace were not included. In 1989, for example, a dozen or more letters were sent to circuit court judges in the South from an anonymous writer who accused the editor of a particular militaristic magazine of brutally murdering and grotesquely mutilating women. A picture of a supposed victim, obviously faked, was enclosed. No threat or

warning was made in the letter. Rather, the tone of the letter was simply to report a crime. Although strange, offbeat, and certainly violent, these letters were not included in the database because they contained no hint or suggestion that the judicial officials to whom they were directed would suffer.

Because of considerable progress in this field, the Marshals Service currently compiles information on strange, weird, and inappropriate communications. These very much are a problem and are cause for considerable concern when received. Since this was only lately realized, this data is not the subject of analysis here because not enough information was collected on them in years past. Future analyses will study them.

In addition, bomb threats were not included if they did not target a specific victim. Federal courts nationwide routinely receive bomb threats during which some anonymous voice announces over the telephone, "There is a bomb in the courthouse." These incidents were not counted in the database because the motives and the targets of the threats were too generic to assess. Federal courthouses have become akin to embassies in foreign lands. Bomb threats and demonstrations frequently result from some generalized anger or opposition to federal policies that are entirely unrelated to the judiciary. Although they are no less worrisome because of that, such generic threats are substantially different from threats and assaults on individuals, particularly on officials within the judiciary.

If the caller specified a particular victim—for example, if he stated, "I'm going to blow up Judge John Doe and everybody in the courthouse"—then the case was treated as a telephone threat to a judge with unknown additional victims. In sum, the following study examines those cases reported to the headquarters of the United States Marshals Service entailing a specific threat or menace of harm to a specific individual within the federal judiciary. The purpose of the analysis is to describe that threat or menace in order to understand it and through that understanding to deal with future, similar such incidents.

## Why Combine Inappropriate Communications and Assaults

In reviewing the judicial security files collected by the headquarters of the Marshals Service from 1980 through 1993, it became apparent that, though there is a distinct difference between inappropriate communications to judicial officials and assaults on them, it was necessary to combine them into one group despite the apparent logical inconsistency of doing so. The reason grew out of the very nature of inappropriate communications to the judiciary. Since the majority of inappropriate communications were against the system of justice itself, the threatener had more than one target. Judges, magistrates, attorneys, witnesses, jurors, clerks, probation officers, lawmen, and others were all subject to the threatener's wrath. Consequently, an assault on any single official had a ripple effect that menaced other officials. An attack on one judicial official can signal future attacks on other officials.

The bomb that killed Judge Robert Vance in December 1989 raised an alert of a potential threat against the entire Eleventh Circuit. The surviving judges were put under the protection of deputy United States marshals, and security measures at courthouses across the country were tightened. Two days after Vance's assassination, a second bomb was intercepted at the Eleventh Circuit courthouse in Atlanta. A third bomb exploded and killed a civil rights attorney in Savannah, while a fourth bomb was intercepted at the offices of the NAACP in Jacksonville. It is highly likely that had the bomb that killed Vance not been delivered earlier than the others, the second bomb would have passed into the courthouse and exploded. Consequently, though Vance himself was never threatened prior to receiving the deadly package, his death alerted his colleagues to the potential risks they faced.

In the fall of 1978, Assistant U.S. Attorney James Kerr of the Western District of Texas was deeply enmeshed in his preparations to prosecute the El Paso-based Chagra family of drug dealers. As did most of Kerr's cases, this case would eventually go before the court of Judge John Wood.

The Chagra organization, clearly threatened by Kerr's investigation and fearful of the potential sentences its members faced from Judge Wood, went on the attack.

On the morning of November 21, Kerr left for work at his usual early hour. As he backed his car into the street and then shifted into drive, one of his gloves toppled from the front seat to the floor. He unbuckled his seat belt and retrieved the glove. Forgetting to buckle up, he drove the car down the block and pulled to a stop at the corner stop sign.

A van was waiting to turn right as Kerr slowed down. Pulling up behind the van, Kerr glanced at its rear window just as a rifle barrel slid out and pointed directly at him. Reacting quickly—and unencumbered by his seat belt—Kerr dove to the floor of the car and curled up under the dashboard just as his front windshield erupted from a spray of bullets. Glass rained down on the seat and bounced on top of him, cutting him slightly on the finger and forehead.<sup>1</sup>

Clearly the attack was an assault in and of itself, but its failure also raised the specter of a continuing threat to Kerr and, possibly, to Judge Wood. Both were put under the protection of deputy U.S. marshals. Kerr was soon transferred out of San Antonio and put into hiding. After a few months, Judge Wood grew tired of the protective detail and insisted on its removal. As he left for work on the morning of May 29, 1979—just six months after the attack on Kerr—Charles Harrelson, a hired assassin, waited for him.<sup>2</sup>

Sometimes, too, one assault can portend future attacks against the same victim. A judge on the Superior Court in Washington, D.C., suffered repeated indignities from an irate neighbor. On one occasion, the judge was playing catch with his son when the neighbor drove up and spit on the judge's baseball glove. Several months later, the fire hydrant in front of the judge's house was opened and the wrench was tossed through the judge's living room window. On another occasion, the neighbor kicked the judge's dog.

Then on June 21, 1992, the judge's van was set afire, causing considerable damage to both the

van and the judge's garage. A day later, the neighbor again attacked the judge's dog and was promptly arrested by the deputy marshals who had been assigned to protect the judge. The neighbor was later charged with arson.

Since none of the assaults on the judge seemed to satisfy the neighbor's wrath, each assault threatened future assaults. Whatever this particular renegade's complaint—and it seemed a personal rather than a judicial problem—the repeated attacks illustrated the ripple effect of assaults on the judiciary. This effect is particularly important in terms of making the decision whether or not to protect the victim.

In addition, a number of assaults analyzed in this study had nothing to do with the judicial position of the victim. They were mugged or their houses were robbed. Yet, the private nature of the assault was not understood until after it was investigated. Sometimes, too, the suspect discovered he had robbed a judge or mugged a U.S. attorney or snatched the purse of some other judicial official. At that point, what was private became decidedly official. The danger to the victim was substantially escalated precisely because the suspect now knew his victim's position within the judiciary.

In 1983, a magistrate's house was burglarized. The next day, she received a call at work from an unknown male who stated, "I know who you are now." That evening, a van with two males was seen parked outside the magistrate's house. The van quickly sped away when the police approached. The magistrate was put under protection for two days until deputy marshals managed to arrest the suspects. Although the initial burglary seemed unrelated to the magistrate's position with the federal judiciary, the telephone call the next day *was* related to her job and perhaps was related to the burglary. The appearance of the suspicious van that evening may also have been related to one or both events. Consequently, what began as a personal case of burglary quickly evolved into a threat on a federal magistrate. Distinguishing between the personal and the official was impossible.<sup>3</sup>

Since the database captures a dynamic set of

events, it would be fruitless and perhaps counter-productive to be too strict in drawing the line between threats and assaults, and between those problems that are job related and those that are not. As in the case of the magistrate who was robbed, harassed, and then put under surveillance by unknown parties, the distinction between when she was threatened and when she was assaulted is murky. Although there were straightforward cases of threats and straightforward cases of assaults, there were enough nebulous cases to warrant combining the two.

For these reasons, this study has retained the practice of counting assaults among threats despite the semantical problem of distinguishing between the two. In describing the nature of threats, one can say with some confidence, as does Park Dietz, that it is unnatural for threats to portend assaults. But one can say with equal assurance that it is in the nature of assaults on the judiciary to threaten. The profound difference between threats and assaults merely underscores the frustrating similarity between them. Simply if disconcertingly put, a threat cannot be a synonym for an assault, but an assault can be synonymous with a threat.

### Rating Inappropriate Communications and Assaults

In analyzing the 3,096 inappropriate communications and assaults reported to the Marshals Service headquarters, the most important characteristic to determine was the ultimate outcome of the case. The files for 2,996 of the communications (96.7 percent) contained enough information to make such a determination. In one hundred cases, the files were incomplete and the inappropriate communication unassessable. They were retained in the database because they contained some information—say, for example, who the victim was or how the communication was delivered—but they included little detail beyond that.

Three distinct categories were defined to describe the possible outcomes. The categories were labeled *specious*, *enhanced*, and *violent*.

## Specious Threats

Specious threats were defined as those that had the ring of truth or plausibility, but that were ultimately proven fallacious because no evidence was found of an effort to carry out the threat. Simple statements, however delivered, such as "I'll kill you" or "You're a dead man" or any of a dozen variations, were rated specious if there was no evidence to indicate that the threatener went beyond the statement to action.

## Enhanced Threats

If there was evidence—and this was generously defined—of an effort to implement the threat, that particular inappropriate communication was identified as enhanced. Such evidence ranged from the suspect visiting the courthouse to a strange car prowling about the victim's neighborhood to a package of beer and a knife left in one judge's courtroom. In some instances, the evidence may have been mere coincidence entirely unrelated to the inappropriate communication. The strange car prowling about the neighborhood could have been lost tourists or friends visiting the neighbors. The suspect's visit to the courthouse may have been entirely innocent or legitimate. However, coincidence had to be proven before they were ruled out; they were never assumed.

Consequently, enhanced threats were not synonymous with life-threatening assaults. They were escalations in the risk, based on some evidence or reasonable belief that the suspect took a step beyond the initial contact. A telephone threat, for example, became enhanced when the suspect suddenly appeared at the courthouse. The suspect was still far away from the victim and the victim was still safe, but the suspect had enhanced his threat by the visit, however innocent that visit ultimately may have proven to be. The victim needed no protection at that point, but surely the suspect bore watching while he was at the courthouse.

## Violent Threats

If violence was involved in the implementation—again, this was generously defined to include physical injury and property damage—those threats were marked as violent. The violence was not always, or even usually, directed against the victim. Violent threats ranged from the assassination of two judges to a victim's neighbor's house being firebombed. Angry crowds on occasion gathered outside a judge's chambers to protest a decision. Cars were vandalized. In one case, a man on his way to a judge's chambers was caught at the courthouse entrance carrying a machete stuffed down his pant leg. Violent threats and assaults also included muggings and burglaries that in the end were proven unrelated to the victim's duties. Nonetheless, they occurred, the victim suffered, and the occurrences were tabulated.

## Summary of Specious, Enhanced, and Violent Threats

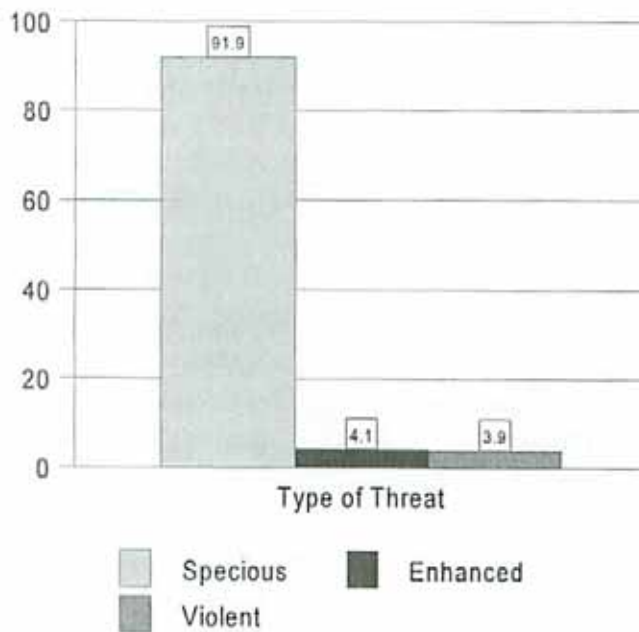
Table 4.1 summarizes the specious, enhanced, and violent threats and assaults reported during fiscal years 1980 through 1993. The vast majority of threats—nine out of ten—were characterized as specious. A threat was reported, but there was never any evidence that anything beyond the threat ever happened. Like the sword of Damocles, the threat dangled in the air, unnerving and discomfiting, but hanging still. Sometimes, unfortunately, the sword fell. Violence appeared in 3.9 percent of the reported threats and assaults, sometimes in the form of injury to the victim and sometimes as property damage. Enhanced threats without violence accounted for 4.1 percent of the total threats. Figure 4.1 graphically illustrates the proportion of specious, enhanced, and violent threats over the reporting period.

Although the overwhelming majority of threats to the federal judiciary were specious, whatever comfort one can find in that statistic was immediately obviated by the fact that during that same period, as noted above, 2 federal judges

**Table 4.1. Specious, Enhanced, and Violent Threats and Assaults, Fiscal Years 1980-93**

Threat Type	Number	Percentage
Specious	2754	91.9
Enhanced	124	4.1
Violent	118	3.9
Not assessed*	100	0.1
<b>Total</b>	<b>3096</b>	<b>100.0</b>

\*Cases not assessed due to insufficient data.



**Figure 4.1. Seriousness Ratings of Assessed Threats (percentages)**

were killed and 116 of their colleagues were victims or potential targets of violent assaults. Consequently, it is not enough to gamble on any threat, even with nine-to-one odds. What is needed is a plausible, reliable method for assessing threats and assaults to identify those individual characteristics closely identified with enhanced or violent threats, and those characteristics associated with specious threats. Finding such signatures will help us assess future threats, thus improving the odds even more.

## Regional Differences in Types of Threat

Table 4.2 compares the assessed outcome of threats to the region of the country where the victim resided. It analyzes only those 2,534 threats delivered at the district court level and not the circuit court level or the U.S. Supreme Court.

Although judicial officials in the South received the most inappropriate communications—more than twice as many as received by jurors in any other region of the country—it also received the highest percentage of specious ones. Indeed, the percentage of threats in the South that were either enhanced or violent was slightly less than the percentage of such threats in other regions. Although inappropriate communications were more frequent in the South, they had a slightly higher tendency to be specious. Consequently, at most all that can be said about the South is that inappropriate communications there were cheap.

Enhanced and violent threats in other regions were slightly dearer in terms of risk, but in no region was the rate of either enhanced or violent threats significantly different from the total proportion of those types of threats. Consequently, regional characteristics alone tell us little about the type of threat or degree and chance of risk.

## Inappropriate Communications and Assaults Assessed by Descriptive Characteristics

Certain descriptive interpretations were made for each threat or assault based on four pairs of characteristics. Each pair was either-or; that is, a determination was made for each threat such that it fell into one or the other category, but never both, of each pair. In the same way that threats were specious, enhanced, or violent, threats were also either *potent* or *impotent*, *physical* or *intangible*, *direct* or *veiled*, and *immediate* or *deferred*. Due to a lack of specific information on the wording of the threat in 196 of the files, only 2,900 cases could be characterized according to these paired characteristics.

Table 4.2. Assessed Threats to District Court Judicial Officials by Geographical Region

Threat Type	Geographical Region									
	Northeast		Midwest		South		West		Nationwide	
	#	%	#	%	#	%	#	%	#	%
Specious	456	91.4	424	91.4	1073	93.5	387	91.3	2340	92.3
Enhanced	25	5.0	19	4.1	34	3.0	19	4.5	97	3.8
Violent	18	3.6	21	4.5	40	3.5	18	4.2	97	3.8
Total	499	100.0	464	100.0	1147	100.0	424	100.0	2534	99.9
% of nation-wide threats		19.7		18.3		45.3		16.7		100.0

# = number of threats

% = percentage of threats

Chi-square = 6.14

Degrees of freedom = 6

Confidence level = 59.23

Significance 1-side = 40.77

Note: Percentages may not total 100 percent due to rounding.

### Potent or Impotent Threats

Inappropriate communications and assaults were characterized as potent if they contained no evidence of an *inability* to carry out the threat or assault, regardless of the suspect's willingness or true intent to do so. In other words, threats and assaults were presumed to be potent or capable of being carried out unless there was some obvious or explicit evidence of an apparent inability to implement the threat. The burden of proof was to show the threat impotent. The simple statement, "I'll kill you," was characterized as potent because there was no evidence to dissuade an assessment of the victim's inability to effect such a simple thing as murder.

In general, inappropriate communications from prisoners were assessed as impotent. The fact of the suspect's incarceration was deemed sufficient evidence of an apparent inability to implement the threat. Obviously, a prisoner intent on carrying out the threat would first have to escape prison, enlist outside help, or manufacture some type of mail bomb. This is not to say that

impotent threats could not be serious. A number were, either because the prisoner did receive outside help or because the prisoner did manage to send some type of homemade bomb or incendiary device through the mail. Consequently, impotent threats should not be considered synonymous with specious threats, though a significantly higher proportion were. Rather, an impotent inappropriate communication simply contains ready evidence of the suspect's apparent inability to carry out any threat.

On one occasion, a suspect's threat to harm a judicial official was rated impotent because the suspect explained that he was an invalid confined to bed. Despite this handicap, he was so angry he promised to hire an ambulance to take him to the courthouse so that he could kill the victim. It seemed a fair bet to hope that the ambulance attendants would refuse their cooperation in the scheme and thus render the suspect incapable of carrying out his nefarious plan.<sup>4</sup>

Table 4.3 summarizes the distribution of potent and impotent inappropriate communications. Almost two thirds of all threats—some 62.5 per-

**Table 4.3. Potent and Impotent Threats and Assaults by Type of Threat**

Threat Type	Potent		Impotent		Total	
	#	%	#	%	#	%
Specious	1608	87.8	1051	98.3	2659	91.7
Enhanced	117	6.4	6	0.6	123	4.2
Violent	106	5.8	12	1.1	118	4.1
Total	1831	100.0	1069	100.0	2900	100.0
% of total threats		62.5		36.9		100.0

# = number of threats

% = percentage of threats

Chi-square = 98.30

Degrees of freedom = 2

Confidence level = 100.00

Significance 1-side = 0.00

Note: 196 cases were not characterized due to insufficient information.

*cent*—were rated potent.

Indeed, it makes little sense to make a threat that is obviously incapable of being carried out. "I'd kill you if only I could, but I can't," is hardly as effective as simply stating "I'll kill you," and leaving it to the victim to ascertain if the threatener can actually carry out the threat. Indeed, it was only because of the large number of prisoner threats to members of the federal judiciary that impotent threats constituted such a high percentage—35.6 percent—of all threats.

Among potent threats, 87.8 percent were specious. Not surprisingly, a considerably higher percentage—98.3 percent—of the impotent threats were specious, again a reflection of the ease with which prisoners can make threats and the difficulty they encounter effecting them. Enhanced threats accounted for almost 6.4 percent of the potent threats and fewer than 1 percent of the impotent threats. Violence was associated with 5.8 percent of the potent threats and slightly more than 1 percent of the impotent threats.

Calculated as a percentage of the total number of enhanced or violent threats, 95.1 percent of the enhanced and 89.8 percent of the violent threats were rated potent, primarily because virtually by

definition, a threat carried out is a potent threat. Again, only because a scattered few prisoner threats were carried into effect were there any impotent enhanced and impotent violent threats. Since, on their face, prisoner threats appeared incapable of being carried out, they were rated impotent, thus proving that things were not always as they seemed.

### Physical or Intangible Threats

Inappropriate communications were characterized as physical if the threat contained an explicit intent to cause some physical harm, such as, "I'll kill you" or "I'll burn your house down" or "I'll kidnap your mother." Physical harm could also be implied if the statement, say "I'll get you," clearly carried some sense of physical harm to the victim, his family or associates, or his property.

Those inappropriate communications that did not contain some explicit intent to cause physical harm were characterized as intangible. In 1986, one district judge was warned by a threatener that "Jehovah brings revenge on you in ten days." In 1989, one district judge's daughter was warned by

a suspect that the suspect intended to meet up with the judge and that the daughter would read about it. Intangible threats lacked explicit or implicit specificity of physical harm. They were vague and shrouded in mystery, yet frequently all the more chilling for that.<sup>5</sup>

Table 4.4 summarizes those inappropriate communications rated physical and those rated intangible. The majority of threateners preferred to specify the physical harm they intended to inflict on the victim. Physical threats composed more than 75 percent of all threats and 91.7 percent of all specious threats. The injuries were frequently described in gory detail, ranging from simple statements like "Judge [\_\_\_\_\_] is dead," to "You will watch the loves of your life beheaded around you." One threatener promised a judge that "I am going to be 62 years of age when I get out, life will be over so why not kill a judge, would be so easy for me to kill because it would be business not pleasure." The threatener then explained that he intended to kill the judge

with either a shotgun or a hand grenade, after which he would kill his ex-wife and another unnamed person before heading to South America. Apparently, these rather gory daydreams help pass the time in prison.<sup>6</sup>

Interestingly, though enhanced threats accounted for 3.4 percent of the physical threats, they composed 6.8 percent of the intangible threats. Calculated as a percentage of the enhanced threats, more than a third were intangible compared to slightly more than a fifth of the specious threats and fewer than a tenth of violent threats. Enhanced intangible threats tended to be visits by the suspects to the courthouse or the victim's residence without any clear statement of what the suspect intended to do. One prosecutor, for example, was approached by the suspect at the courthouse. The suspect talked vaguely about going "possum hunting." A few days later, a suspicious car made several passes at the prosecutor's residence. In another case, a juror received a note stating, "Do the right thing and we will

**Table 4.4. Physical and Intangible Threats and Assaults by Type of Threat**

Threat Type	Physical		Intangible		Total	
	#	%	#	%	#	%
Specious	2030	91.7	629	91.6	2659	91.7
Enhanced	76	3.4	47	6.8	123	4.2
Violent	107	4.8	11	1.6	118	4.1
Total	2213	99.9	687	100.0	2900	100.0
% of total threats		76.3		23.7		100.0

# = number of threats

% = percentage of threats per region

Chi-square = 27.82

Degrees of freedom = 2

Confidence level = 100.00

Significance 1-side = 0.00

Note: 196 cases were not characterized due to insufficient information.

Percentages may not total 100 percent due to rounding.

take care of you. They can't punish you for a not guilty verdict but a guilty verdict may cause you some trouble." These intangible warnings seemed all the more chilling because in each instance the threatener clearly knew how to find the victim, thus giving the threatener considerable power, particularly over the victim's imagination.<sup>7</sup>

The same pattern did not hold for violent threats and assaults, which accounted for 4.8 percent of the physical, but just under 2 percent of the intangible threats. Since violence is almost by definition physical, such a discrepancy was hardly surprising. The intangible violent threats were notable precisely because of their unusual outcome. In 1991, for example, an AUSA was prosecuting two defendants for firearms violations. One evening as she left her house, she left her door unlocked because she was expecting her parents to visit. When her husband returned home first, he found a .22 caliber bullet placed on their bed. Although it was never established who put the bullet there, someone clearly broke into the house and left the bullet on the bed. It was never entirely clear just what it meant. Was it some dark message or a mistake, a coincidence, or a warning? For purposes of assessment, coincidence was ruled out, and the inappropriate communication was categorized as violent because of the presumed surreptitious entry into the house. All that anyone knew for certain was that someone had ready access to the AUSA's house and had paid her a visit.<sup>8</sup>

### Direct or Veiled Threats

Inappropriate communications and assaults were also defined as either direct or veiled. Inappropriate communications were characterized as direct if both the victim and the suspect were reasonably well identified in the threat. "I'll kill you" was a direct threat because the threatener clearly stated that he would kill the victim. When an informant reported that John Doe intended to kill a particular judge, the informant reported a direct threat. Similarly, when a member of an organized criminal enterprise let a contract to kill

a U.S. attorney, the prosecutor was the victim of a direct threat.

Veiled communications, on the other hand, could be vague in one of two ways. Either it was not clear who was the specific victim, or it was not clear who would carry out the threat. "Someone will pay for this outrage!" was a veiled-victim communication because it was not clear who was the victim. "I'll get even" was also a veiled-victim communication because the suspect did not identify any particular victim. Although the suspect clearly indicated that he intended to do something against someone, he did not reveal—by explication or implication—just who would be his target.

Veiled-suspect communications were the exact reverse. "Someone should kill that prosecutor" was veiled because it was not clear who would do the killing. "The judge will die tonight" was also a veiled-suspect threat because it was unclear who or even what would cause the victim's death. Veiled-suspect threats were generally expressed passively. The suspect deferred the death wish to some other, unnamed and unknown, person to do his dirty work.

Table 4.5 summarizes the number of direct and veiled inappropriate communications and assaults received. The majority were direct, with both the victim and the suspect clearly identified, if not always specifically named. However, in just under a fourth of the cases, the suspect was not clearly identified. In other words, the inappropriate communication was expressed in a passive or wishful sense, such as "Someone should kill that judge," or "That AUSA is going to die tonight." Significantly, of the 683 veiled-suspect threats, 677—99.1 percent—were specious, 5—only 0.7 percent—were enhanced, and only 1 such threat was ever violent.

The same pattern did not hold true for veiled-victim cases, which constituted 13.6 percent of the enhanced threats. These were instances of angry litigants outraged at the outcome of their case. They did not know precisely whom to attack; they only knew they were angry enough to lash out at someone. In 1989, one litigant put a horse's head on the steps of a federal courthouse.

**Table 4.5. Direct and Veiled Threats and Assaults by Type of Threat**

Threat Type	Direct		Veiled Suspect		Veiled Victim		Total	
	#	%	#	%	#	%	#	%
Specious	1623	89.1	677	99.1	359	90.9	2659	91.7
Enhanced	95	5.2	5	0.7	23	5.8	123	4.2
Violent	104	5.7	1	0.1	13	3.3	118	4.1
Total	1822	100.0	683	99.9	395	100.0	2900	100.0
% of total threats		62.8		23.6		13.6		100.0

# = number of threats

% = percentage of threats

Chi-square = 70.17

Degrees of freedom = 4

Confidence level = 100.00

Significance 1-side = 0.00

Note: 196 cases were not characterized due to insufficient information.

Percentages may not total 100 percent due to rounding.

When he was interviewed, the man stated he did not mean to threaten anyone in particular; he was just upset that his ex-wife had filed suit against him in federal court. In another case, a convicted felon arranged for his wife to buy a weapon after a federal judge dismissed their civil suit. Although no particular victim was identified, the purchase of the weapon boded ill for someone.<sup>9</sup>

The disproportionately high number of veiled-victim enhanced threats again underscored the fact that inappropriate communications to and assaults against judicial officials were made more to the system of justice than to any individual within that system. When Jack Gary McKnight attacked the Topeka courthouse on August 5, 1993, he had no particular target or individual in mind. He just wanted a gunfight. Again, George Lott offered the best explanation for a veiled-victim threat. "I was shooting at the court, essentially," Lott confessed after shooting five people and killing two at the Tarrant County, Texas, courthouse, "but other people got in the way or did things. You have to do a horrible, horrible thing to catch people's attention."<sup>10</sup>

Both McKnight and Lott both lashed out at a system of justice that had severely disappointed

their own highly personalized standards of justice. They believed themselves to be victims of injustice. So, too, with that 13.6 percent of those who threatened the federal courts. Somehow, the courts had violated their own sense of what was just to them. They struck back, often at the first hapless official who happened to cross their path. Their target was the court in general; it hardly mattered to them who their specific victim was.

### Immediate or Deferred Threats

Finally, inappropriate communications were characterized as immediate or deferred. Immediate communications (and all assaults) were those in which the threatener clearly meant that harm would come within some reasonably immediate period of time: today, tomorrow, soon. "I'll kill you" was an immediate threat because it lacked any explicit mention of a deferral. Deferred threats were those for which the threatener imposed some delay on the threat, either by time or condition. "I'll kill you in ten years" was deferred by time. "I'll kill you if you find me guilty" was deferred by condition.

Table 4.6 summarizes the data on immediate and deferred inappropriate communications. The large majority of communications, more than 80 percent of them, were immediate, with whatever injury promised intended to be effected right away. Deferred communications, particularly those deferred by time, accounted for a minuscule proportion, well under 1 percent, of either the enhanced or violent threats and assaults. Deferred-condition threats occurred slightly more frequently, but 322 out of 338 of them—95.3 percent—were specious. Only 14 of the 338—4.1 percent—were enhanced, and only 2—0.6 percent—were ever violent.

### Summary of Paired Characteristics

Consequently, examining inappropriate communications by each of these paired characteristics showed that 63.1 percent of all threats were potent; 76.3 percent were physical; 62.8 percent were direct; and 80.7 percent were immediate. At the same time, each characteristic was, like the

inappropriate communications themselves, overwhelmingly specious. All but potent and direct communications had a rate of speciousness of 90 percent or better. Thus, there was little in these individual characteristics to help identify an enhanced or a violent threat. The characteristics showed no particular combination significantly related to enhanced or violent threats. Their proportions were descriptive, not predictive.

What the data indicated was that a simple declaration of intent to harm, "I'll kill you," for example, was not particularly indicative of any actual intent to carry out the threat.

Although none of these characteristics was clearly related to enhanced or violent threats, several of the characteristics were significantly related to speciousness. Veiled-suspect communications were specious 99.1 percent of the time. Deferred-time communications were specious 99.1 percent of the time. Impotent threats were specious 98.3 percent of the time. Consequently, we may be asking the wrong question in trying to identify aspects of a threat that can be correlated to enhanced or violent outcomes. No such aspects

**Table 4.6. Immediate and Deferred Threats and Assaults by Type of Threat**

Threat Type	Immediate		Deferred Condition		Deferred Time		Total	
	#	%	#	%	#	%	#	%
Specious	2116	90.5	322	95.3	221	99.1	2659	91.7
Enhanced	108	4.6	14	4.1	1	0.4	123	4.2
Violent	115	4.9	2	0.1	1	0.4	118	4.1
Total	2339	100.0	338	99.8	223	99.9	2900	100.0
% of total threats		80.7		11.7		7.7		100.0

# = number of threats

% = percentage of threats

Chi-square = 31.90

Degrees of freedom = 4

Confidence level = 100.00

Significance 1-side = 0.00

Note: 196 cases were not characterized due to insufficient information.

Percentages may not equal 100 percent due to rounding.

at least none analyzed here, existed in any useful fashion. But there were characteristics that identified specious threats.

By isolating these, we can better focus our resources—protective and investigatory—on the remaining group of cases that we cannot accu-

rately assess as specious. Although nothing is certain in this world, there are certainly good bets and lousy bets. Surely rates of speciousness of 98 percent and better can be considered good bets. Subsequent chapters explain in greater detail how this can work.

## 5. METHOD OF THREATS AND ASSAULTS

Assessing inappropriate communications and assaults by their outcomes allows a fair measure of the importance of any single variable or combination of variables in determining the degree of seriousness of the case. Variables closely related to enhanced or violent outcomes, obviously, significantly increase the risk of the threat. Just as obviously—and every bit as importantly—characteristics closely related to specious outcomes significantly decrease the risk of any threat. Isolating these variables helps inform any assessment of any new threat. Knowing that threats of a certain stripe tended to behave in a certain way *in the past* does not in any way predict the future outcome of any new threat. It does, however, light the way.

### Inappropriate Communications and Assaults Assessed by Method of Delivery

In analyzing the communications and assaults, five specific methods of delivery were defined. Written threats, obviously, were delivered in writing, usually through the U.S. mail (including mail bombs), but also as graffiti or pseudo-legal documents. Telephone threats were delivered over the telephone. Informant threats were passed on by some third party, usually an associate of the threatener, but also including his attorney or psychologist. Verbal threats were spoken by the threatener to some court official or directly to the victim. Finally, suspicious activities involved some ominous or uneasy event about the victim that aroused the victim's concerns.

Table 5.1 shows a cross-tabulation among the various methods of delivering an inappropriate communication and the known outcomes of the

threats. Overall, assessed inappropriate communications and assaults were violent 3.9 percent of the time. Threats communicated in writing, by telephone, and by informant were violent less than 1 percent of the time per category. Similarly, inappropriate communications and assaults in general were enhanced 4.1 percent of the time, but written and telephone communications were enhanced 2.6 percent and 2.4 percent, respectively. Informant threats were enhanced at an even lower rate, just below 1 percent. A chi-square analysis showed that these relationships were statistically related, that is, it was not the result of coincidence or chance.

More than half of the suspicious activities (58.1 percent) were either violent or enhanced. The majority of these activities, in fact, were violent. Although verbal threats were violent or enhanced in just under one fifth of the cases, that proportion was still considerably higher than the other three methods of delivery. Figure 5.1 graphically displays the pronounced differences among the various methods of delivery.

These findings are easily explained. Method of delivery was the one variable over which threateners—hunter or howler—had full control. The threateners themselves chose to write or to call, to act suspiciously or to speak. To a lesser, though no less important, extent, those threateners who did so chose to spout off to the informants, though obviously they had less control over the informants passing on the information. Consequently, the method of the threat's delivery gave the best insight into the threatener's true purpose. Alone among all the variables analyzed, the method by which the threatener communicated his threat best gauged the ultimate outcome of the threat. More than any other variable or combina-

**Table 5.1. Method of Delivery of Assessed Threats**

Threat Type	Method of Delivery											
	Written		Telephone		Informant		Suspicious Activity		Verbal		Total	
	#	%	#	%	#	%	#	%	#	%	#	%
Specious	1267	96.6	646	96.7	605	98.4	95	41.9	141	80.6	2754	91.9
Enhanced	34	2.6	16	2.4	5	0.8	40	17.6	29	16.6	124	4.1
Violent	10	0.8	6	0.9	5	0.8	92	40.5	5	2.9	118	3.9
Total	1311	100.0	668	100.0	615	100.0	227	100.0	175	100.1	2996	99.9
% of total threats		43.8		22.3		20.5		7.6		5.8		100.0

# = number of threats

% = percentage of threats

Chi-square = 1102.61

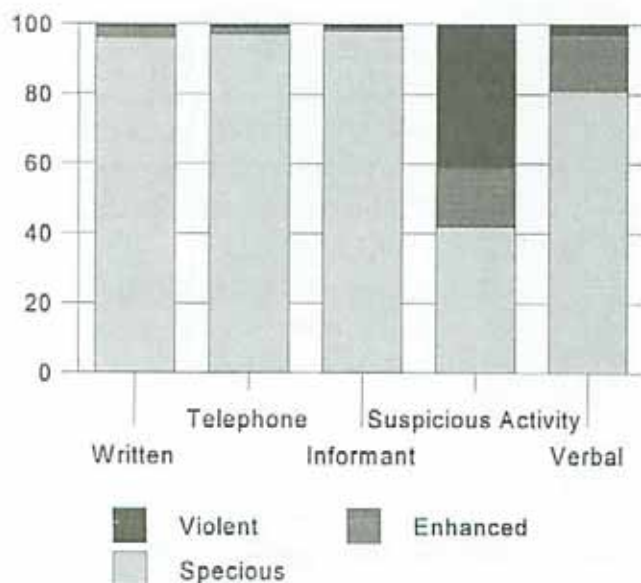
Degrees of freedom = 8

Confidence level = 100.00

Significance 1-side = 0.00

Note: 100 cases were not characterized due to insufficient information.

Percentages may not total 100 percent due to rounding.



**Figure 5.1. Seriousness Ratings by Method of Delivery (percentages)**

ion of variables, the method of delivery had the strongest correlation with the assessment of the threat as specious, enhanced, or violent.

The method of delivery was, in effect, the threatener's signature. It most reflected his style and personality, his drive and motive, his intent and purpose. Those who wrote or called interposed some physical distance between themselves and their victim. They were howlers, baying out their outrage from atop the canyon walls, well protected from any response of the victim. Those who spoke their threats to some court official or, worse, those who assaulted or attempted to assault their victim went beyond mere howling to hunt. As the method of delivery strongly showed across 3,096 threats, the howlers rarely hunted; the hunters rarely howled.

## Inappropriate Communications Made by Informants

Informant threats both exemplify the point and add their own twisted logic. The overwhelming majority of informant threats, 98.4 percent, were specious. Figure 5.2 graphically illustrates the phenomenally high rate of speciousness among informant threats.

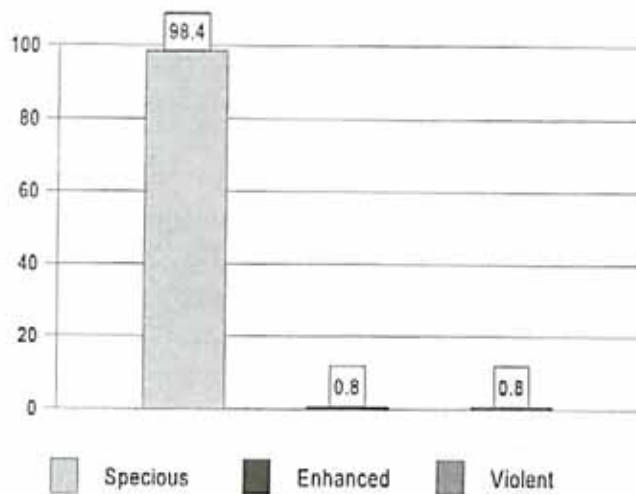


Figure 5.2. Seriousness Ratings of Informant Threats (percentages)

Over the thirteen-year reporting period, 615 threats reported to the headquarters of the U.S. Marshals Service originated through informants. They constituted just 20.5 percent of all the recorded threats. The informants themselves constituted something of a motley group. As one would expect, the majority were either confidential informants developed by law enforcement authorities or inmate informants (that is, prisoners who reported on the threats, plots, and grumblings of their cellmates and fellow prisoners). Together, the more traditionally defined informants reported significantly more than two thirds of the informant threats. The remainder ranged from psychiatrists, psychologists, or counselors, to defense attorneys, spouses, news reporters, the occasional girlfriend, or, in one instance, a local librarian who overheard a menacing conversation. In sum, an informant was defined as any third party who passed on information about the threatening activities or statements of someone else with whom they had some kind of personal relationship, whether

professional, fleeting, or intimate.

The overwhelming majority of informant threats were specious, made by male suspects, and directed to white victims. They were expressed in immediate terms, with no conditions or deferrals. A large majority of informant threats were physical and direct, made by known suspects. Their victims were male. A majority of the threats were related to a specific case (of which, in turn, most were criminal cases). The suspects tended to have no known group affiliation or any known accomplices. The suspects tended to be incarcerated, and their threats, therefore, were impotent. They threatened white victims who tended to be district-level judges. A majority of the threats also encompassed additional victims. In sum, a majority of the informant threats were prisoners bragging to their cellmates just what they would do to the judge, prosecutors, witnesses, and anybody else who tried and convicted them. Their anger and desire for vengeance were undoubtedly real and powerful; their ability to effect their plans were considerably less so.

Not surprisingly, informant threats were considerably more likely than all other threats to be related to a specific court case. The motive in more than two thirds of the informant threats was case-related, just less than half of other types of threats. Among the case-related informant threats, the threat was much more likely to concern a criminal case or an organized crime figure. Combined, criminal and organized crime cases accounted for more than three fourths of the case-related informant threats. Informant threats, too, were three times more likely than other types of threats to point to the prosecutor as the potential victim. Prosecutors composed 32.8 percent of the informant threats, but only 10.4 percent of other threats.

Analyzed by threat characteristics, informant threats were pronouncedly more detailed than other types of threats. That is to say, the information about the threat tended to be expressed clearly and pointedly, with no question of the nature of the physical injury, who would suffer it, who would cause it, and when it would occur. Despite their specificity, informant threats were

notoriously specious. The threatener clearly made more of his plans than he truly intended or was capable of achieving. Spouting off in the shadow of the jail bars, it was remarkably easy to describe in fascinating detail what he would like to do to a wide assortment of victims. But these were nothing more than daydreams to pass the time. In the end, the dreams were no more realistic or credible than the boys' locker room talk they so closely resembled.

In addition, the informants also tended to make more of the threat than the circumstances warranted. It was almost as if the informant had to overcome some *prima facie* doubt cast upon his or her information by exaggerating the threat and its details. Since, by their very definition, informant threats entailed the interposition of a third party, their accuracy and credibility came immediately into question. Did the informant get his facts straight, his quotes correct? How much did the informant embellish or exaggerate? How much did he interpret and twist about?

In a 1993 case from one of the U.S. territories, for example, an informant claimed to have overheard one side of a telephone conversation, during which he heard a known member of an organized criminal enterprise say, "We'll have to take Danny out." The informant assumed the Danny in question was an assistant U.S. attorney. This information, based in the end on no evidence other than what the informant concluded, drove the investigation.<sup>1</sup>

Informant threats probably revealed less about the threatener than they did about the informant. In most cases, the threatener may not even have known that his plans and complaints had been passed on to the authorities. The threatener had chosen to confide in someone, however misplaced the confidence. That choice revealed something of the threatener's plans and intent. It offered, in other words, an insight into what de Becker defines as the value of the threat.

Another vantage point for examining informant threats is to look at just those threats that were assessed as either enhanced or violent. This analysis, too, affirmed how overwhelmingly innocuous informant threats were. Of the 3,096 inappropriate

communications, a total of 10 informant threats were assessed as either enhanced (5) or violent (5). In none of those reported threats was any federal judicial official injured or put at some pressing or immediate risk. Among the five violent threats, for example, what swayed the assessment in three of the cases was some act of violence toward someone other than a federal judicial official—a witness, associate of the criminal, and a neighbor. The fourth case involved a minor act of vandalism (a rock thrown through a window) against the victim's house that may have been coincidence.

In a case from the South, a prosecutor was threatened by a known member of the notoriously violent Jamaican Posse. Money exchanged hands between the threatener's associates and a contract killer. While the victim was under the protection of deputy marshals, a strange pickup truck pulled into the prosecutor's driveway, then sped off when the deputies approached. Several days later, as the deputies drove the prosecutor to work, a similar-model truck pulled up behind the deputies' car and gave it a light tap, then drove quickly away. That traffic accident, which was never tied to the threat or even the victim, earned the case a violent rating, though the suspect remained safe and well protected.

Yet, despite the suspicious activities related to the pickup truck (or trucks), in the end there was never any evidence to indicate that the alleged hit man ever did anything beyond accept an undetermined amount of money from the threatener. Perhaps the deputy marshals protecting the victim kept him safe from harm by thwarting the hit man's plans; perhaps he never had any plans beyond keeping whatever money he had received. Perhaps, finally, the informant's information was wrong or incredible.<sup>2</sup>

Among the five enhanced threats, the victims remained well out of harm's way in each case. The threats were escalated by the occurrence of some foreboding or ominous act, not by any specific or impending escalation in the risk. After an informant warned that the jurors in a major drug trial would be harassed, one juror received a telephone threat, but he was quickly replaced.

After another informant warned that a drug dealer intended to take care of the AUSA prosecuting him, a strange car appeared in the AUSA's driveway. The driver matched the description of one of the defendants. Nonetheless, the car left without causing any problem. "Certain elements" of the Medellin drug cartel, as an FBI informant described them, were supposed to be planning some act of violence against a U.S. attorney. When the suspects were arrested, they had in their possession electronic devices used to set off explosives from a distance, thus adding credence to the informant's claims. The victim remained safe.<sup>3</sup>

In another case, a judge received word from a psychiatrist that a patient would kill the judge. When the suspect was arrested, he was, indeed, armed, but the arrest rendered him harmless. Finally, another psychiatrist reported the departure of a patient from a clinic in Connecticut who soon turned up in Minneapolis where his presumed target lived. The patient was quickly located and institutionalized in Minneapolis.<sup>4</sup>

Even those informant threats that carried a rating beyond specious were, in the end, rather tame. The targets of the threats were never exposed to any pressing danger. It may simply be, of course, that the prompt response of law enforcement obviated the risk posed by the informant's information. When the FBI arrested those "certain elements" of the Medellin cartel, after all, they had in their possession explosives equipment. On its face, this fact seemed to confirm, or at least lend considerable credence, to the informant. At the same time, there was no evidence beyond the informant to indicate what those "certain elements" planned to do with the equipment. However fortuitous their arrest, it was not sufficient to support any conclusion that the U.S. attorney identified by the informant was in fact the target. Even if he was, and even assuming that all the informant threats that gained some level of credibility or confirmation were accurate, those credible cases still totaled only 10 of 615, a minuscule proportion by any measure.

Based on these results, informant threats, on their face and standing alone without collaborating evidence, need not be cause for immediate fright or

action. Like any rumor or piece of second-hand information, informant threats needed to be confirmed by other, credible evidence. Fortunately, nothing over the reporting period of thirteen years and across 615 cases occurred to indicate that there was insufficient time in which to confirm or disprove the informant's tale. The fact that there was an informant who contacted law enforcement officials clearly lessened the risk to the victim. Perhaps it was because the informant's information was incredible; perhaps law enforcement's intercession thwarted the threatener's best-laid plans. In the end what mattered most was that informant threats earned an amazingly high rate of speciousness. Surely there was comfort in that.

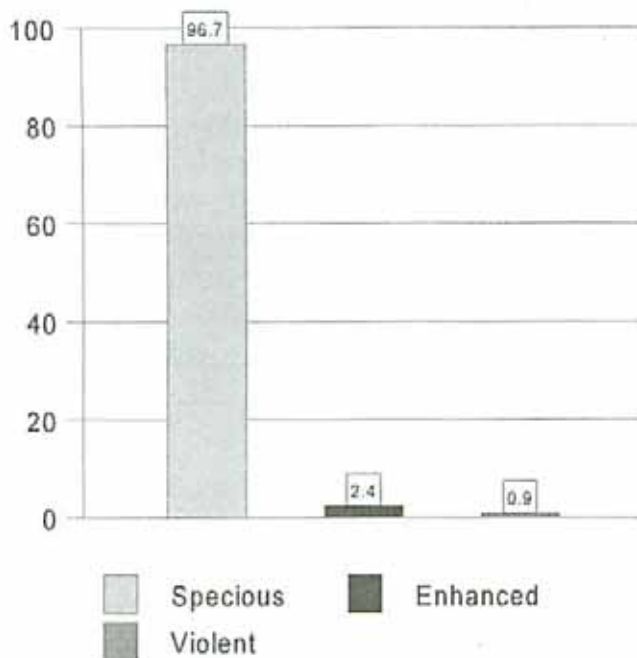
### **Inappropriate Communications Made by Telephone**

Telephones are useful instruments, but their utility hardly extends to murder. Of the 3,096 inappropriate communications reported to the headquarters of the Marshals Service during the fiscal years 1980 to 1993, 687 (23 percent) were communicated by telephone. The overwhelming majority were specious. Indeed, compared to other methods of delivery, the rate of speciousness for telephone threats was significantly higher—96.7 percent compared to 90.6 percent. The telephone, it would seem, was better suited to the howler than the hunter.

Figure 5.3 graphically illustrates the seriousness ratings of all the reported telephone calls.

The telephone emphasized the loneliness of the howler, if only because less was known about him. Much of what was known about telephone communications was what was *not* known. The overwhelming majority of those who phoned, particularly compared to informant threats, gave no hint that they were supported by accomplices or criminal organizations. They were not known to be imprisoned, which increased the threat considerably, to about 97 percent. Information as simple as the actual motive of the call was clear in barely more than half the cases. In 29 percent of

the telephone communications, there was too little information to determine a motive. Among all other types of delivery, the proportion was startlingly lower—11 percent.



**Figure 5.3. Seriousness Ratings of Telephone Threats (percentages)**

Half of the telephone threateners remained anonymous, compared to just 16.6 percent among all other types of threats. A large majority of the threats were made against white male victims by male suspects who intended to carry out the threat immediately. A simple majority of the threats warned of direct physical harm to a district-level judge with no additional victims. The suspect was identified as white. A bare majority of the threats were related to a specific case.

Since 1980, among 668 telephone calls for which the outcome was known, 16 were rated enhanced and 6 were rated violent. Unlike informant threats, violent and enhanced telephone threats tended to be more ominous. Although no federal judicial official targeted by a telephone threat was injured or killed, several of the threateners nonetheless made some effort to implement their threats.

In one case in New Orleans, for example, a woman called a district judge's chambers to com-

plain that the judge had dismissed her case. She told the law clerk who answered the phone that her only choice was "to come down there and put a gun to your heads." When deputy marshals visited the woman's residence, she fired one shot at the deputies before barricading herself in her bedroom. A New Orleans SWAT team eventually talked her out of the apartment.<sup>5</sup>

Among the other violent telephone threats, one involved an attack and injury to a witness, after which the judicial victim was followed. In 1983, as noted above, a magistrate's house was burglarized. The next day, the victim received a call at work stating, "I know who you are now." That evening, the magistrate saw a van with two males in it parked outside her house. In another case, fires were set near a Pennsylvania courthouse after a caller to the bankruptcy court clerk's office had warned that "Girls in Reading will burn in hell." One caller stated if his Equal Employment Opportunity case was not settled to his satisfaction, "there would be no courthouse on Friday." On Friday morning, he called again and said, "I'm on my way." However, the threatener went to the county courthouse with a .30/.30 rifle. He fired ten rounds before he was wounded and taken into custody.<sup>6</sup>

Similarly, in a sensitive trial of a small band of Croatian terrorists in New York City, a man claiming to be a member of the group called United Press International and warned that the group would soon explode a bomb, though he refused to say where. A bomb did in fact explode in front of the New York State Supreme Court, which was next to the federal courthouse, prompting the belief that the group had bombed the wrong courthouse.<sup>7</sup>

Among enhanced telephone threats, nearly half—seven of the sixteen—involved a threatening telephone call followed by a visit by the threatener to the courthouse. In three cases, the threatener visited the victim's house. The other cases entailed some sort of suspicious activity that occurred after the telephone warning, such as the threatener arrested carrying a weapon or making a threatening gesture at another litigant. In one

case, for example, a bomb threat was made to a federal courthouse after a state court was bombed.<sup>8</sup>

Among the twenty-two enhanced and violent cases, the suspect remained anonymous in exactly half the cases. More than three fourths of the threats resulted from a specific case; four contained too little information to determine a motive, and the last related to a personal problem of the victim. Among the case-related threats, five were bankruptcies, five were civil cases, two were criminal cases, one was ideological, two grew out of an organized crime trial, and the remaining two were generated by publicity over a case before the courts.

As with informant threats, the victims remained unharmed, but the overall risk seemed greater and more ominous, as if luck alone had forestalled any injury. Fortunately, of course, these instances were few in number and far between in time. Unfortunately, they were too few and far between to draw any strong correlations among them.

About all that one could say with any confidence about enhanced and violent telephone threats was that the instrument of their delivery, that is, the telephone, always served as an early warning of something yet to come. Distinguishing the minuscule number of real warnings, however, from the overwhelming number of empty ones was impossible. Indeed, the number of enhanced and violent outcomes among telephone threats was so small as to be essentially negligible.

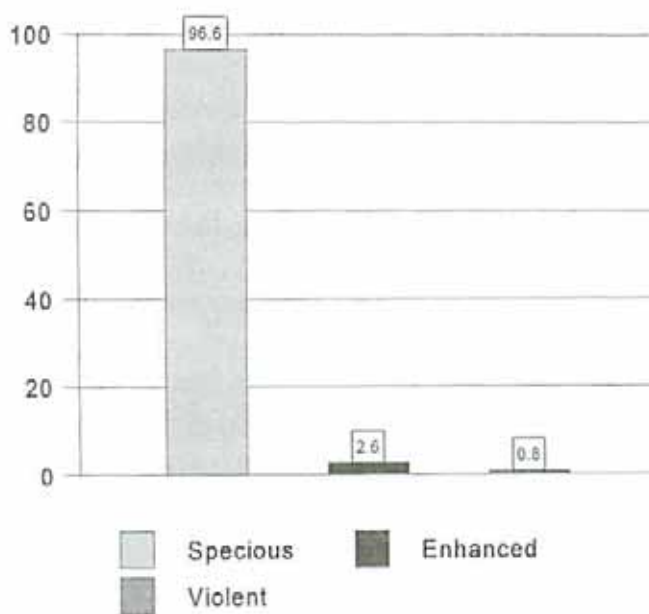
This is not to say that telephone threats—or any threat to a judicial official—should be discounted out of hand. It does suggest, however, that telephone calls need not prompt immediate action beyond greater vigilance. If nothing else, the howler's choice of the telephone to deliver his threat gave some confidence that he preferred the protection of distance and the anonymity of the instrument when he chose to harass his victim. No one has yet found a way to kill or injure anyone over the telephone lines. By consciously choosing that method, the howler belies his own words, his own threats.

## Inappropriate Communications Made in Writing

Unlike telephone calls, written communications carried the means of creating their own physical injury or harm. In December 1989, Eleventh Circuit Court Judge Robert Vance of Alabama was killed when he opened a mail bomb that he thought was a Christmas package from a colleague. Within the broad definitions of this study, Vance was killed by a written threat delivered through the mail. Other written threats, though still few in number, also carried the seeds of their own violence. They were not, like informant and telephone threats, dependent on some additional action to enhance their danger or prompt their escalated rating. Graffiti scrawled on a judge's house was proof enough of an enhanced threat, because it showed how closely the threatener could get to his victim.<sup>9</sup>

Written communications constituted the single largest category of inappropriate communications, accounting for 43.1 percent of all the reported cases. Like informant and telephone threats, written threats were overwhelmingly specious. Of the 1,311 cases for which the outcome of a written threat was rated, 1,267 (96.6 percent) of the cases were specious. This characteristic reflected again the threatener's choice of medium for delivering his inappropriate communication. Most written threats were letters sent through the mails, harmless in themselves. Letters absent a bomb seemed better suited to the particular needs of the howler, not the hunter.

Figure 5.4 graphically illustrates the ratings of the reported written cases. The overwhelming majority of written communications came from male suspects with no known accomplices and who targeted white victims. A large majority of the written cases were physically explicit and directed to male victims. The suspect's identity was known or suspected, generally because he signed his name to the letter. He was not known to have any group affiliation. The majority of these inappropriate communications were made by whites against district-level judges. Additional victims were usually included. The communica-



**Figure 5.4. Seriousness Ratings of Written Threats (percentages)**

tions were generally direct and immediate, but impotent, primarily because a small majority of the threateners who used this method were imprisoned.

Compared to other types of inappropriate communications, written communications showed distinct, statistically significant differences. They were more likely to be specious—96.6 percent compared to 88.2 percent. The threatener was also much less likely to complain about a specific court case. While 64.7 percent of all other inappropriate communications were directly related to a specific case, only 39.8 percent of written cases were case specific. On the other hand, written communications were much more likely than other methods to be habitual, that is, made by people who regularly, repeatedly, and speciously made threats.

Although district-level judges composed the majority of victims, circuit court judges received written inappropriate communications almost three times more frequently than by any other means. Prosecutors, conversely, were three times less likely to receive inappropriate communications in writing.

In sum, written communications offer yet another way for the howler to rant and rave against the victim while keeping himself at a safe distance. In part, the high rate of speciousness was influenced by the significantly higher proportion of

prisoners who made written threats. Yet, even after screening out prisoner threats, written communications by nonprisoners maintained an overwhelmingly high rate of speciousness. Of 609 written threats by nonprisoners for which the outcome was known, 571 were assessed as specious (93.8 percent), 32 as enhanced (5.3 percent), and 6 as violent (1.0 percent). By choosing to write out his communication, the threatener clearly marked himself a howler, not a hunter.

The outcomes of the thirty-four enhanced and ten violent written communications confirmed that, unlike informant or telephone cases, written threats needed no additional step for consummation. They carried, in packages and mail bombs, the method of their own implementation. They were not dependent on some unscheduled appearance of the threatener or some ominous act in the vicinity of the victim. When Judge Vance opened the package, the violence was immediate and irrevocable. Of the ten cases assessed as violent, six involved a mail bomb, incendiary device, or, in one case, a box of poisoned candy, sent to the victim through the mail. In another case, the victim received several threatening letters from a terrorist group. Shortly afterward, a series of terrorist bombings occurred that were not targeted at the victim.<sup>10</sup>

The remaining two cases involved unwanted visits to the victim's home. In one case, a district-level judge received a threatening letter warning that he "would pay." Shortly afterward, a window in his house was broken. In the last violent written case, someone scrawled on a circuit court judge's garage door the words, "The judge killers were here."<sup>11</sup>

Among the thirty-four enhanced threats, half were to colleagues of Judge Vance. Most of them received a letter from the fictional "Americans for a Competent Judiciary," addressed to the "late" Judge So-and-so. Among the remaining seventeen cases, thirteen involved a threatening letter followed by an unscheduled or unwanted visit by the threatener to the courthouse, the victim's home, or, in one case, the lobby of the hotel where the victim was staying. In 1987, a district-level judge was threatened about a specific case. The threat-

ener had claimed responsibility for the bombing eight months earlier of a building owned by the defendant. In another case, a tax protestor held in contempt for not producing his tax returns sent an envelope full of ashes to the clerk of the court with the suggestion that, if they needed help reading the returns, the clerks could enlist the aid of a superior being, which, according to the threatener, the judge claimed to be. Finally, on two occasions within days of each other, a district judge found the sign giving his street address pulled out of the ground and tossed onto his porch. On his cellar door was written "Stop [illegible] We mean it." Although nothing subsequently happened, and the message may have been anything from a prank to workmen warning of work on underground pipes, the fact that someone left unexplained messages escalated the threat to enhanced.<sup>12</sup>

A few variables were related to an escalated risk among written threats. Surprisingly, motive provided a poor screen for filtering the specious from the enhanced and violent outcomes. The title of the victim showed a stronger relationship, but that resulted primarily from Moody's assault on the Eleventh Circuit. Interestingly, any diminishment in the potency, direction, or immediacy of the inappropriate communication increased—though only slightly—the chance that the communication was specious. Thus, evidence that the communication was impotent or veiled as to suspect or deferred increased the chance that the outcome would be specious.

Stated in another, more brutal way, if the victim opened the letter or package and it did not explode, the threat was very likely to remain specious. Screening judicial mail—official and personal—effectively thwarts the potential risk of receiving an exploding device.

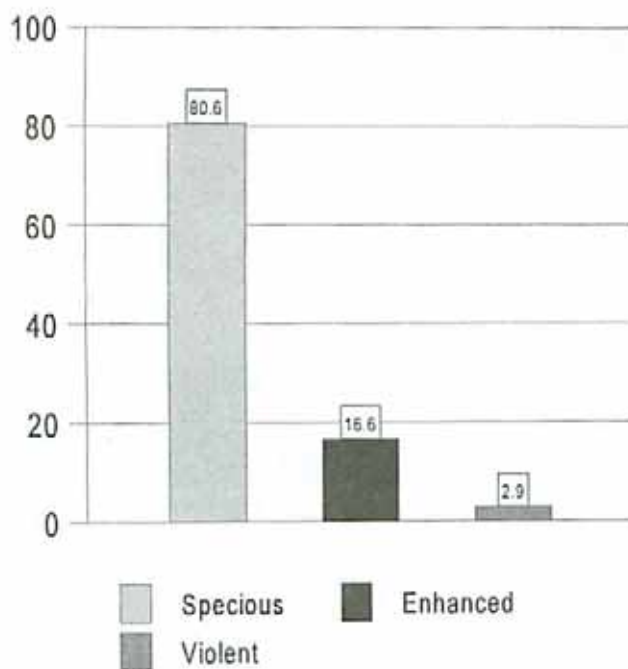
More profoundly, the identity of the suspect, the suspect's incarceration, and the suspect's membership in a group dramatically segregated the specious threats from the enhanced and violent ones. Those suspects who kept their identities hidden, who showed no evidence of being incarcerated, and who belonged to a group made threats with a combined rate of speciousness of about 60.4 percent, a rather striking drop from the 92 percent

rate of speciousness among inappropriate communications in general. Examined individually, each of these variables significantly escalated the risk of the threat. Consequently, among written communications—unlike informant and telephone cases—there were telltale factors to raise an alarm.

### Verbal Inappropriate Communications

Verbal communications, by implication and situation, enhanced the risk that the threat would be carried out. The threatener, however much he may have intended only to howl, was present in the courthouse, often near his victim. Translating his outraged objections into action was a simple matter, as simple as the small jump from talk to action. Even when the targeted victim was safely out of the way, the threatener was still near enough to act. Ultimately, of course, it was always through *action* that the hunter distinguished himself from the howler.

Figure 5.5 graphically illustrates the enhanced ratings of verbal threats. Although a large majority of verbal communications remained specious, the rate of speciousness—just under 81 percent—was significantly and disturbingly lower than the rates for informant, telephone, or written inappropriate communications, and much lower, too, than the 92 percent rate of speciousness for inappropriate communications overall. In addition, what was startling about verbal communications was their homogeneity. The overwhelming majority of verbal cases were made by known suspects with no known accomplices or group affiliation. The victims were white and the suspects were male. In a large majority of the cases, the communication was related to a specific case. The threats, too, tended to be potent, with the suspects not incarcerated. Most of the victims were male; the threats against them were physical and immediate. A majority of the inappropriate communications targeted district-level judges directly with no additional victims included. A majority of the suspects were white.



**Figure 5.5. Seriousness Ratings of Verbal Threats (percentages)**

Compared to other cases, verbal communications were five times more likely to be enhanced. They were much more likely to concern a specific court case, usually a civil case. This was one of the most striking attributes of verbal threats: 85.2 percent of them were related to a specific case, compared to 51.7 percent among other types of inappropriate communications. Interestingly, a higher proportion of verbal threats were potent, but there were no other particular differences between verbal and other types of inappropriate communications in terms of physical injury, direction, or immediacy. The fact that a threatener delivered his communication verbally had no strong effect on the character of the threat, either to make it more specific or more vague.

More intriguingly, verbal cases were overwhelmingly more likely to be made by known suspects. Indeed, 96.6 percent of all verbal communications were made by known suspects. Most were also not prisoners and most had come to court over a civil case, which would indicate that verbal threateners came voluntarily before the bar—probably with their own expectations of justice. The verbal threatener was in the court-

house, free and unfettered by chains, perfectly capable of formulating and implementing his threats.

The outcomes of the enhanced and violent threats confirmed that what escalated the risk of verbal threats was the presence of the threatener in the courthouse. Indeed, the major distinction between specious and enhanced verbal threats was the close physical proximity of threatener and victim. Of the twenty-nine reported verbal threats assessed to be enhanced, 62.1 percent of them occurred in the courthouse. Fifteen were either received by the victim or by one of his office employees, such as a law clerk. The remainder were received by other court officials. Among five violent verbal threats, three also occurred at the courthouse. In effect, there was nothing to stop the threatener—not distance, delay, or chains—from allowing his outrage to carry him to action. These threateners were not howling over the telephone or expressing their rage in stubby pencil marks on a torn piece of paper. The verbal threatener was there, physically near his victim, often right in his face. For this reason practically alone, verbal threats easily escalated into enhanced threats.

Consequently, verbal threats required no second step, no subsequent visit to the courthouse or the victim's residence. Indeed, one of the distinctions between specious verbal and enhanced verbal threats was the fact that specious verbal threats were less likely to be spoken directly to the victim. Of the 141 verbal threats that turned out to be specious, 63.1 percent were received by someone other than the victim. In addition, specious verbal threats were much more likely to be veiled as to suspect; enhanced and violent verbal threats were considerably more likely to be veiled as to victim. Similarly, when verbal threats were deferred, specious threats were deferred in time. Enhanced and violent threats were deferred by condition.

Fortunately, although verbal threats were enhanced by close physical proximity between suspect and victim, they seldom went beyond that to violence. At the courthouse, the suspect made some effort to find and confront the victim, but

confined himself to words screamed aloud, harsh and brittle and distressing, but not physically injurious.

### Inappropriate Communications by Suspicious Activities

Over the reporting period of this study, 227 of the 3,096 inappropriate communications and assaults originated with a suspicious activity. By their nature, if not quite by definition, suspicious activities were ominously threatening. Rather than words spoken, written, or passed through an informant, suspicious activities were deeds and gestures. If, as has been postulated here, the only difference between the howler and the hunter is action, this type of threat blurred that distinction more than half the time. Unlike any other type of threat, suspicious activities were almost as likely to be violent as they were to be specious.

Figure 5.6 graphically illustrates the pronounced violence of suspicious activity threats. Unlike verbal threats, suspicious activities showed no strong homogeneity. The overwhelming majority were potent threats made by male suspects who intended to carry out their threats immediately. The large majority of the threats were directed against white male victims. The suspects had no known accomplices. In a majority of the cases, the

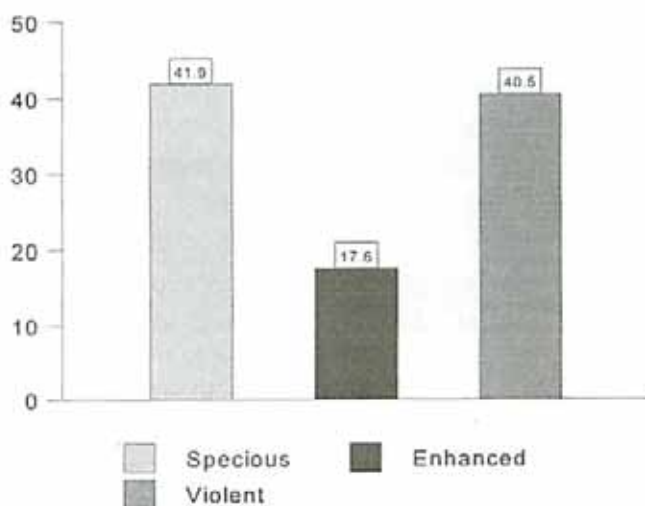


Figure 5.6. Seriousness Ratings of Suspicious-Activity Threats (percentages)

suspect had no known group affiliation. The threats were aimed at a single victim, most often a district-level judge, and a bare majority involved a specific court case. In most of the cases, the suspect was known and he was white. His threat was direct and physical.

Suspicious activities were more than five times more likely than other types of threats to be enhanced and more than *forty* times more likely to contain some element of violence. Unfortunately, there was little to distinguish suspicious activities from other threats. They were more likely to involve only one victim and much more likely to be potent and immediate, but more than twice as likely to be intangible. Indeed, suspicious-activity threats were intangible almost as often as they were physical—46.5 percent compared to 53.5 percent. In one case, a stethoscope was found lying in a prosecutor's driveway during a case he was prosecuting in which a doctor was a defendant. In another case involving a prosecution on gun charges (noted above), the prosecutor found a bullet on her bedroom pillow. This characteristic went to the very nature of the suspicious activity, evidencing the tendency of the hunter to leave his mark somewhere near his prey. That mark, some symbolic gesture, was usually a vague demonstration that left unclear just what the hunter truly intended. It signaled, in effect, the ease with which the hunter approached his target, but it left unexplained just what harm the hunter truly intended.

Suspicious activities were much more likely than other inappropriate communications to be committed by an unknown suspect. Most of the suspects were not imprisoned. They were also more likely to claim membership in an organization.

In sum, suspicious-activity threats, except the muggings and other problems personal to the victim, posed far greater danger to the victim than other inappropriate communications. They were distinguished by the action, suspicious and foreboding, that went beyond writing or telephoning or spouting off to a mate. Outraged at some cause before the courts, the hunter went on the prowl. He did not announce himself by howling.

And just as interesting, in prowling, the hunter was almost as likely to leave his mark as he was actually to attack. Barely more than half the cases involved a physical threat; 40.5 percent were intangible. A bullet was found on a bed, a stethoscope was left in a driveway, a car tire was flattened. The suspect communicated his threat, but not in writing or by telephone or through an informant. Rather, he chose some symbolic action, a physical act close to (but not physically threatening) the victim that let the victim know the hunter was near.

The outcome of suspicious activity threats underscored their greater danger. The enhanced suspicious activities, of which there were forty, were a collection of unscheduled visits to the courthouse or inappropriate approaches to the victim's home. Victims were followed, filmed, and surveilled. During trials of motorcycle gangs, motorcyclists were seen in the victim's neighborhood. In all the incidents, the suspicious activity aroused the concern that the suspect or his colleagues were near or about the victim, poised and ready to strike.

In ninety-two cases, the suspect struck. A district-level judge was assassinated. The federal courthouse in Topeka, Kansas, was attacked. Other victims were assaulted, injured, or suffered some vandalism to their homes or chambers. Their cars were broken into, their tires were slashed, and they were shot at. In thirty-six cases—some 39.1 percent—the judicial official was the victim of a mugging or of a private dispute essentially unrelated to his or her judicial duties. But in fifty-six of the cases—57.5 percent—the judicial official was targeted precisely because of his or her position within the federal judiciary.

Several characteristics helped distinguish violent and enhanced suspicious activities from specious ones. For example, ideological threats unrelated to a specific case tended to be specious. Those cases lacking sufficient evidence to determine a motive had a greater proportion of enhanced and violent outcomes. Similarly, suspicious activities against a single victim escalated the chance of enhanced and violent outcomes, while the majority of specious threats included more than

one victim. Although group membership showed only a slight difference, the presence of additional suspects helped escalate the outcome. Finally, too, suspicious activities in the Midwest carried a greater chance of violence. Suspicious activities in the Northeast seemed more likely to be enhanced, and suspicious activities in the South tended to be specious more often.

### Method of Delivery

How the threatener communicated his threat offered the best insight into his real purpose. The method of delivery was the single most important clue to assess de Becker's value of the threat, that is, the threatener's sincerity, inclination, and ability to do what he claimed he wanted to do. More than any other single variable—more, too, than any combination or permutation of variables—the method of delivery provided about the only glimpse into the threatener's true intent. It was the only hard evidence readily at hand to assess the threatener's resolve and determination. As such, it was at once the most revealing and the most relieving aspect of any inappropriate communication.

With the single, relatively minor exception of informant threats, the method of delivery was the one angle on threats to federal judicial officials that we know with absolute certainty the threatener established of his own volition. Everything else—the victim, motive, place, and time—may well have been decided for him or imposed upon him. But the suspect himself decided to write rather than call, to call rather than confront the victim in person, to attack rather than talk.

From the threatener's point of view, he may have been leaving well enough alone until the courts sought him out. He may have been arrested. He may have been hauled before the bench on some civil action. Even if he filed his own suit, he did not pick the judge who judged him or the prosecutor who prosecuted him. The jurors were strangers to him. He had no choice as to which clerk would file his papers, which probation officer would probe into his life. All of these

things were decided for him by a system of justice that he might not have understood or accepted. In the end, the courts may have disappointed him or frustrated his sense of justice.

The threatener felt himself the victim of some imposing, impersonal process beyond his control or even comprehension. "Someone must have traduced Joseph K., for without having done anything wrong he was arrested one fine morning," Franz Kafka began his harrowing tale of a man accused, arrested, tried, convicted, and executed without ever knowing why, without ever knowing what he was supposed to have done. Joseph K. was guilty: A court of law found him so. It was just that no one ever explained to him exactly what he was guilty of. He was indeed defamed.

So, too, was he who threatened the federal courts. The threatener felt traduced. At that point, common standards of justice or fairness no longer mattered. Neither centuries of common law practices nor standard procedures of right and fairness had any effect so long as the howler and the hunter felt themselves defamed. Then they lashed back. At that point, it was entirely the suspect's choice—*his conscious act of will*—just how he would respond, how he would communicate his threat.

That retaliatory choice was first and best expressed in how the threatener delivered his threat: by writing, calling, or visiting. In that delivery lay the single most important key to assessing the threatener's motive, purpose, and intent—the three key ingredients in determining the true value of the threat.

Of the five types of inappropriate communications, three implied some physical distance or separation between threatener and victim. Written, telephone, and informant threats did not entail direct, physical confrontation between the two parties. The threatener made his statements at some presumably safe distance from his target. Verbal threats and suspicious activities, conversely, implied at least the potential for immediate, direct, physical contact between the threatener and some official of the courts. Sometimes it was the victim, sometimes the victim's family, and sometimes another court official, but whoever it was, verbal threats and suspicious activities dramatically

reduced—frequently to the barest minimum—the physical distance between the threatener and his target.

A man, outraged by some perceived slight or injustice, expressed his rage against the court. He could write or call or simply spout off to a friend, thus imposing between himself and the target of his rage some buffer to protect himself, even as it unnerved his victim. He could have howled out his anger and innocence, shrieked aloud his violent intent, all without physically exposing himself as threatener to any immediate risk or danger.

By choosing to write or call, or by choosing to confide in a friend or stranger (who would later inform on him), the threatener engaged in a kind of psychological warfare, discomfiting his victim and relieving the stress of his own anger without actually engaging in any physical act of harm. "I'll kill you, you bastard," wrote the threatener, then sealed the envelope and let the postman do his dirty work. "I'll kill you, you bastard," he whispered menacingly into the telephone before abruptly hanging up, thus breaking any connection between himself and his victim. "I'll kill that bastard," he told a colleague without ever knowing that the colleague passed on the threat to the police. With none of these types of inappropriate communications did the threatener personally confront his victim; rather, he stood well—and safely—to the side.

Or a man, outraged by some perceived slight or injustice, expressed his rage against the court by searching out the victim's home address and going there, armed and intent. He caught his victim out doing yard work and, bursting through the hedges, immediately began firing, chasing his target across the yard and into the house, shooting all the while until, with one final bullet, he turned the gun upon himself.

The difference lay entirely in the method of delivery. Most threateners howled. A very few hunted. The hunters rarely howled. Like the mournful call of the coyote haunting the night, the howlers were unnerving and disturbing, but they remained hidden in the darkness. The hunters, though, were there, nearby and on the prowl,

searching out the defenses, seeking out the weaknesses, awaiting the best opportunity to strike. The howler and the hunter were distinct from the other, so much so that the method of delivery was the best gauge of the threat's value. That distinction almost alone provided the best insight to assess what the threatener truly intended.

We now know that most threats in the thirteen-year study were specious. With some relief, we also know that the rate of speciousness escalated among certain types of threats. Over the thirteen years, informant, telephone, and written threats each were specious at a rate of 96 percent or better, well above the average rate of speciousness among all threats. Together, these three types of threats accounted for 86.6 percent of the reported threats. If the overwhelming majority of threats in general were specious, the large majority of specific, recognizable types of threats were specious considerably more often.

Although these rates of speciousness should not cause any threat to be discounted immediately, regardless of method of delivery, surely the higher rates of speciousness create enough doubt of the threat's value to require some subsequent, more pressing proof before one leaps to action. To go a step beyond the numbers and rates of speciousness, this chapter suggests that the relationship—the rate itself—was indicative of the actual intent of the threatener. That is, the method of delivery was not a coincidence, but a reflection of a conscious act of will: a choice. By consciously choosing the method by which he expressed his threat, the threatener signaled his intent by proclaiming himself as a howler or as a hunter.

This is not to say that the threatener who used the telephone to deliver his threat *never* acted to consummate it. It is simply to say that evidence collected over the term of the study indicated strongly that it *rarely* happened. It was rare enough, indeed, to suggest that by threatening by telephone, the threatener was actually choosing to howl and not to hunt.

Although certainly one should not relax one's guard simply because an inappropriate communication is delivered through an informant or in writing or by telephone, just as surely it is not necessary to leap immediately to some action—protection or investigation—when these types of threats are made. There is no need to chase after echoes; instead, one should be alert to shadows and what may be lurking there. Every inappropriate communication to a federal judicial official bears assessing, but not every inappropriate communication requires the physical protection of the victim. Moreover, it is not necessary for every inappropriate communication to be investigated beyond the initial assessment.

Consequently, we can say with considerable confidence that method of delivery has a strong correlation with outcome. Indeed, as the comparisons repeatedly confirm, that relationship was the strongest found for any single variable assessed in the database. Unfortunately, we need to temper our confidence by realizing that the correlation is of little practical value in predicting or assessing the probability that a threat will be either enhanced or violent. To say that suspicious activities are closely related to an increased risk among threats is, in fact, to state the obvious. It is a tautology.

Suspicious activities almost by definition were synonymous with enhanced or violent. Judge Daronco's May 1988 assassination, for example, was described in the database as a suspicious activity. If a prosecutor involved in a drug trial noticed that an associate of the defendant followed him home one evening, the method of the threat was marked as a suspicious activity, but the threat itself was assessed as enhanced since the suspect was actually taking some action beyond mere warning. Thus, though subsequent chapters return to this relationship between method of delivery and assessed outcome, it is sufficient here to state that although the relationship is strong, it has limited practical application.

## 6. MOTIVE OF THREATS AND ASSAULTS

Fully half of those who communicated inappropriately with a federal judicial official first approached the bench—whether voluntarily or in chains—over a specific accusation or litigation. Consequently, their anger was driven by outrage at the course of the proceedings. Of the 2,996 cases in which motive could reasonably be determined (100 cases had too little information to permit ascertaining a motive), slightly more than half were related to a specific case before the court. A small number of other motives were isolated among the cases, but all of them accounted for less than a fifth of the cases each.

Table 6.1 summarizes the distribution of the 2,996 known threats by motive. They are ranked in descending order by number received and cross-tabulated by outcome to show the proportion of specious, enhanced, and violent inappropriate communications for which they accounted. The majority of those who would harm a federal judicial official did so for very specific, selfish reasons. That their threats grew out of their individual case seems but a natural outgrowth of the judiciary's work. Of the four federal judges assassinated over the past two hundred years, all were killed because they were judges. The three killed since 1979 were each killed because of their involvement in a specific court case. One case was a potential criminal case (Judge Wood), one a civil case (Judge Daronco), and one a civil case growing out of a criminal conviction (Judge Vance).

Four cases, of course, are far too few to support any statistical conclusions. But common sense affirms that judges are most frequently threatened because they are judges. As judges, they sit in judgment over issues of great moment to those who appear before them. In the end, the problem is entirely independent of any objective

standard of justice. Those who would threaten or harm a federal judicial official bring to the courthouse their own warped standard of justice and fairness. Only by examining their motives can that standard be glimpsed and the intensity of their purpose be measured. Judicial officials are pestered not by the crazed but by the crossed, by those whose narcissistic sense of justice has somehow been violated.

### Case-Related Threats

Case-related inappropriate communications and assaults were defined as those that had a direct relationship to some issue before the federal judiciary. Most of the time it was the threatener's own criminal, civil, or bankruptcy case that prompted his outrage and led him to make his communication or carry out his assault. Of the 1,563 case-related inappropriate communications, 94.7 percent were related to a specific case in which the threatener had direct, personal involvement. In only seventy-seven cases was a communication made about a specific case where there was evidence the threatener had no direct interest in the proceedings. These instances were prompted by publicity about some case or issue that did not seem ideologically motivated, such as a judge who issued a stay of execution sparing some controversial murderer or made some other controversial ruling that aroused the ire of segments of the public.<sup>1</sup>

Figure 6.1 graphically illustrates the outcomes of case-related inappropriate communications. The overwhelming majority—more than 90 percent—of case-related inappropriate communications were directed toward white victims by male suspects making specious communications. A

**Table 6.1. Threats and Assaults by Motive and Outcome**

Motive	Outcome							
	Specious		Enhanced		Violent		Total	
	#	%	#	%	#	%	#	%
Case related	1434	52.1	77	62.1	52	44.1	1563	52.2
Insufficient evidence	430	15.6	12	9.7	19	16.1	461	15.4
Habitual	390	14.2	0	-	3	2.5	393	13.1
Irrational	147	5.3	6	4.8	3	2.5	156	5.2
Ideological	115	4.2	18	14.5	1	0.9	134	4.5
Private, victim	40	1.5	4	3.2	37	31.4	81	2.7
Private, confidential informant	69	2.5	0	-	0	-	69	2.3
Private, prisoner	54	2.0	0	-	0	-	54	1.8
Organized crime	35	1.3	1	0.8	0	-	36	1.2
Private, suspect	40	1.5	6	4.8	3	2.5	49	1.6
Total threats/ outcome	2754	100.0	124	100.0	118	100.0	2996	100.0
% of total threats		92.0		4.1		3.9		100.0

# = number of threats

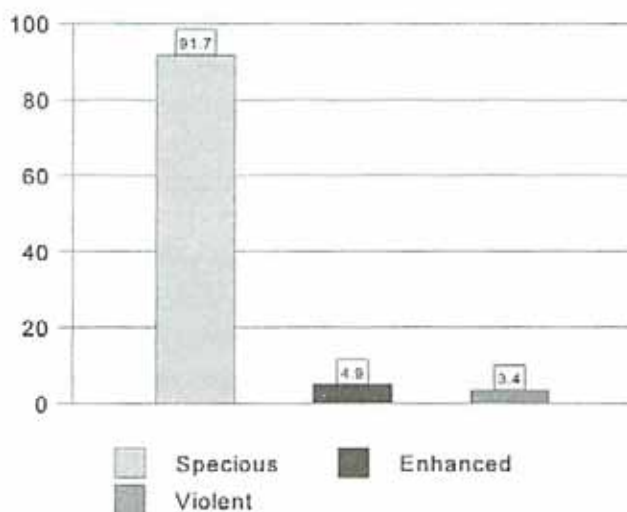
% = percentage of threats

Chi-square = 464.73

Degrees of freedom = 20

p = 0.00

Note: 100 cases were not characterized due to insufficient information.



**Figure 6.1. Case-Related Threats by Outcome (percentages)**

large majority of the suspects had no known accomplices or group affiliations. The suspects were known, their victims were male, their threats immediate. A majority of the threats were expressed physically. The threat was potent; the suspect was not incarcerated. The suspect, too, was usually white. He targeted district-level judges with direct threats; a bare majority of the threats encompassed additional victims.

Compared to all other motives, case-related inappropriate communications showed no particular difference in the proportion that were specious, enhanced, or violent. They were less likely than other cases to be written, more likely to be communicated through an informant, and slightly more likely to be delivered verbally. None of the other variables showed any strong distinction separating case-related inappropriate communications from other motives.

The overwhelming majority of the specious case-related inappropriate communications were delivered in writing, by telephone, or through an informant. Each of those methods of delivery had a rate of speciousness greater than 95 percent. Conversely, verbal case-related threats were specious in 81.3 percent of the cases; suspicious activity threats were specious in fewer than half (48.3 percent) of the cases. As usual, then, method of delivery had the strongest correlation with outcome.

Surprisingly, the type of case showed no strong correlation to outcome. Those threateners involved in a civil or criminal case were just as likely to make enhanced or violent threats. The title of the victim had little connection with the outcome, with the exception that prosecutors received a slightly higher proportion of enhanced and violent case-related threats. Almost two thirds of the enhanced threats and slightly more than half of the violent threats targeted a single victim. Conversely, more than half the specious inappropriate communications included additional victims. Enhanced communications were considerably more likely to be intangible.

In addition, enhanced and violent threats were more likely than specious threats to be made by unknown suspects and by individuals not known to be incarcerated. Suspects known to be associated with an organization or group were more likely to commit an enhanced or violent threat. Black suspects, too, were considerably more likely to engage in a violent case-related threat. White suspects were more likely to make specious rather than violent threats. Specious threats were more likely to be veiled as to suspect.

Viewed in broader terms, it would seem much easier to discount specious case-related inappropriate communications than to single out those more likely to be enhanced or violent. Those threats that came from informants or included more than one victim, or those made by a suspect known to be incarcerated, all had comfortably high rates of speciousness. Inappropriate communications by unknown suspects or those that did not include additional suspects could not be so readily discounted. Yet, whatever the individual variable, simply knowing that a threat was related to a particular case was not enough to ascertain with any assurance what the probable outcome might be. Case-related threats told more of the threatener's intensity than his true intent.

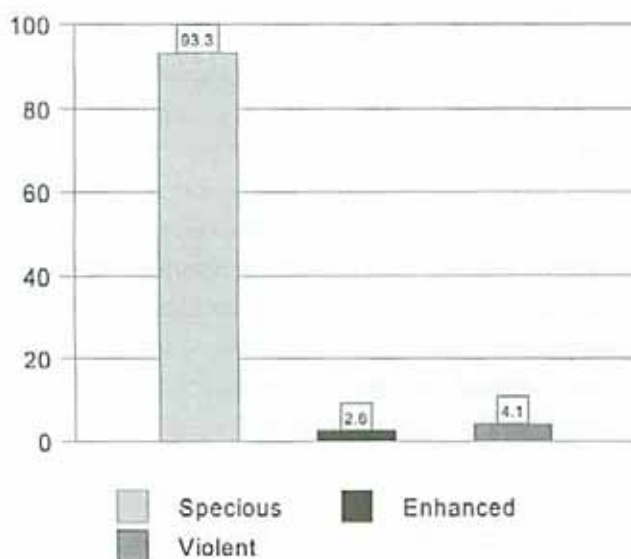
### **Insufficient-Evidence Threats**

About 15 percent of all the inappropriate communications (461 cases) included too little in-

formation from the threatener (as opposed to some omission in the files) to determine what prompted the threats. The telephone rang, a voice whispered "I'll kill you," and the line disconnected. A threat was made, but there was no way to know why it was made or what relation the victim had to the threatener. Indeed, these types of threats, though usually bluntly stated, still remained shrouded in mystery with little known of the threatener—except that the overwhelming majority of them were howlers; very few were ever hunters.

Figure 6.2 graphically illustrates the outcome of insufficient-evidence threats. The overwhelming majority of the insufficient evidence inappropriate communications were made by males acting alone who had neither known accomplices nor any group affiliation. A large majority of the cases involved white male victims. The communications were largely immediate and physical, and most of the suspects were not incarcerated. The communications, then, were largely potent. A majority of the communications targeted district-level judges with no other victims. The threats tended to be direct. A majority of the threateners were unknown.

Compared to other inappropriate communications, insufficient evidence cases were more likely to be made over the telephone. Like most inappropriate communications, slightly more than two



**Figure 6.2. Insufficient-Evidence Threats by Outcome (percentages)**

thirds targeted district-level judges. Unlike most inappropriate communications, insufficient evidence communications were considerably more likely to target a single victim. For whatever reason they howled, these threateners preferred to howl at only one person.

The inappropriate communications, too, tended to be more specific than communications in general, with victim, suspect, and injury clearly spelled out. The threateners were almost three times more likely than other threateners to remain anonymous. They were also much more likely to be identified as Black or Hispanic, despite their anonymity. They were not known to be in jail or to have any group affiliation.

In sum, what seemed most noteworthy about insufficient-evidence inappropriate communications was—obviously—the general insufficiency of the information about them. The victims and the character of the threats were known, but little else could be determined beyond speculation about the suspect and his purpose. Fortunately, these cases ran a very high rate of speciousness. If nothing else could be known, it was at least clear these were howlers, not hunters.

The proportions of specious, enhanced, and violent insufficient-evidence inappropriate communications showed no distinctions by victim title, sex of victim, presence of additional victims, sex and race of suspect, association with a group, evidence of additional suspects, or region of the country. Method of delivery, as usual, showed some pronounced differences. Specious insufficient-evidence inappropriate communications were much more likely to be written or communicated by telephone and much less likely to be a suspicious activity. Nearly two thirds of the enhanced and violent threats involved suspicious activities; just 1.6 percent of the specious ones did. Enhanced and violent threats were more likely to be direct and immediate, and were also more likely to be made by unknown suspects who were not known to be incarcerated. Enhanced inappropriate communications were more likely to be intangible rather than physical.

Thus, though there were some pronounced differences among enhanced and violent insuffi-

cient-evidence inappropriate communications compared to their specious counterparts, the differences seemed more telling in identifying those with a high likelihood of being specious. Written, telephone, and impotent communications, and

those made by incarcerated and known suspects were definitely associated with a high probability of speciousness. Such variables as anonymity and intangible character were related to enhanced and violent outcomes. In some ways, the greater the mystery, the greater the potential risk of escalating the threat. Threateners who did not reveal themselves, their purpose, or their motive—and who then chose to deliver their communication through some suspicious activity—were much more troublesome than those who identified themselves, their objective, and their motive via mail or telephone.

### Habitual Threateners

Some howlers simply liked the sound of their own howls. They repeated them as often as they could, to as many victims as they could find. They were lone wolves who habitually serenaded the night with their haunting calls. These howlers detailed their threats in blunt, explicit terms, leaving little doubt of who would do what to whom. Yet, for all their specificity, the threats came to nothing. The habitual howlers were not hunters. They bayed to the moon, pleased and satisfied by the echoes of their threats, with hardly ever an effort to set foot on the hunt. Of 393 known threats from habitual threateners reported to the headquarters of the Marshals Service, only 1 involved evidence of an effort to implement the threat. The victim remained unharmed.<sup>2</sup>

Figure 6.3 graphically illustrates the overwhelming proportion of specious outcomes among habitual threats.

When the habitual threateners tired of one victim, they moved on to the next, often mailing out their threats in multiple packets, their victims scattered across the country with no connection

among themselves other than some position within the judiciary and no familiarity with who was threatening them. Although a specific court case may have prompted the original threat long ago, making threats soon became the sole object of the habitual threatener; howling *gratis* howling. There was no logic to the threats and no purpose beyond satiating the habitual threatener's craving to howl.

Habitual threats followed some typical patterns, if typical can be defined as those characteristics that occurred in more than 90 percent of the cases.

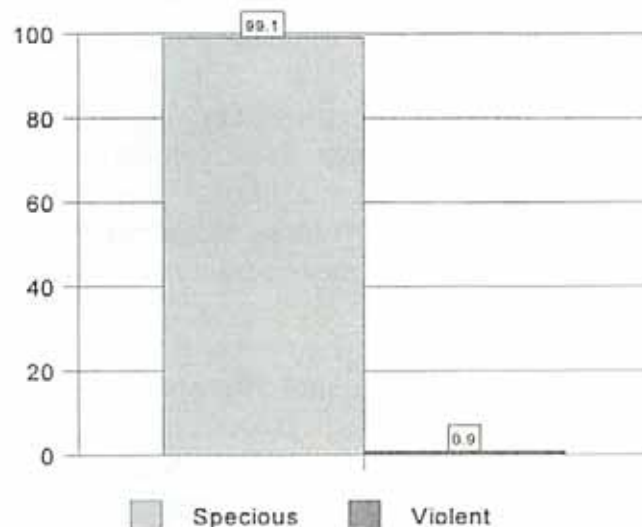


Figure 6.3. Habitual Threats by Outcome (percentages)

To a person, all of the habitual theaters were known. Most of the threateners were male, and most of their threats were written. Most, too, promised some explicit physical harm or death. The threateners acted alone, with no credible claim to additional suspects or group support. Most were white; most, too, were imprisoned, often in mental institutions. Their threats were direct, and they targeted district-level judges. A majority of the threats included additional victims.

Habitual threateners belied the brutal explicitness of their threats with an astoundingly high rate of speciousness—nearly 100 percent. Unlike those who made insufficient-evidence threats, habitual threateners did not conceal themselves or their threats. They were empty men making empty threats. Simply knowing that someone was a habitual threatener helped discount the threat.

The one habitual threat rated violent seemed less exceptional than just unusual. In November 1986, a habitual threatener who had generally focused his threats on one particular judge threatened the judge again. At about the time she received this latest threat, the judge discovered a bullet hole in the front window of her residence. Although there was never any evidence that the habitual threatener had done the damage, the coincidence in time between his threat and the suspicious activity earned him a violent rating.<sup>3</sup>

Consequently, this unusual case simply proved a more general rule. Habitual threateners threatened; they did not assault. They were howlers, happy in their howling, and almost always incapable of going on to hunt. What seemed most characteristic about habitual threats was their speciousness. Clearly, habitual threateners intended far more harm than they in fact could ever cause.

### Irrational Threats

By any rational measure, those who communicate inappropriately with federal judicial officials were by definition irrational or, in simple layman's terms, crazy. Yet, to scoff at such communications as the work of madmen or fools ignores the fact that more than half the communications were generated by a specific reason growing out of some issue before the courts, either a particular court case or litigation or an ideological principle. However crazy it may have been to attack a federal judicial official, the motive that prompted the assault was often perfectly understandable. There was, in other words, a cause that prompted an effect. By understanding just what the causes were, it may be possible to identify, and perhaps even avert, any deleterious effect.

Consequently, in this study, irrational communications were defined strictly as those unrelated to a specific case and that contained some specific evidence that the threatener was under psychological treatment or had recently been under such treatment. Many of the communications reviewed for this study were clearly the rambling irrationalities of the mentally disturbed.

Nonetheless, lacking specific evidence of diagnosis or treatment of mental illness, the threats were not included in the category of irrational communications. Even ramblings and rantings, however illogically expressed, were frequently prompted by a specific case or issue before the courts. Habitual threateners, too, clearly suffered some mental instability; yet, despite their clear irrationality, they composed a large enough group to warrant a separate category. As a result, the number of cases counted as irrational in this study was rather small—some 156 cases, just 5 percent of the total received.

Figure 6.4 graphically illustrates the proportion of irrational communications rated specious, enhanced, and violent. Like habitual threateners, the overwhelming majority of those irrational communicators were known and known to be working alone without additional suspects or group affiliation. Their communications, too, were overwhelmingly specious, though not quite at the high rate habitual threateners maintained.

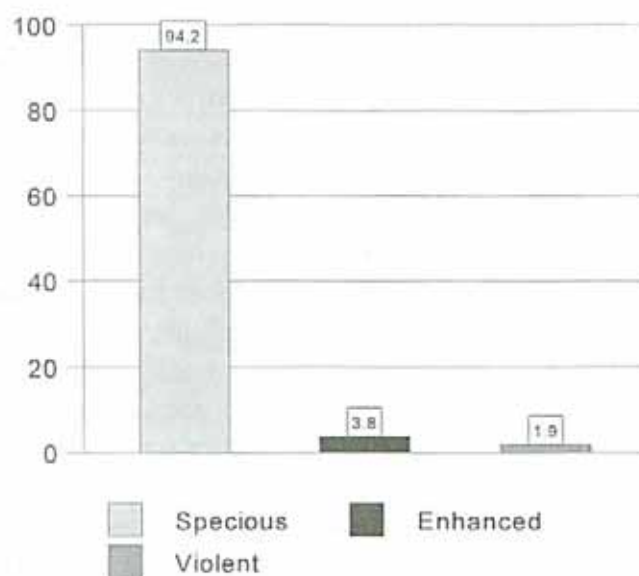


Figure 6.4. Irrational Threats by Outcome (percentages)

Victims and suspects were males; the overwhelming majority of the victims were white. The large majority of irrational communications tended to be immediate and physical. Unlike habitual threateners, who were almost all imprisoned, considerably more than three fourths of the irratio-

nal threateners were not incarcerated. Their communications, then, were potent; they were free to howl or hunt. A majority wrote out their complaints, usually sending them to district-level judges. The threats were direct. A bare majority included additional victims, the majority of whom were other judges.

Irrational communications were three times less likely to target a prosecutor. Beyond that, neither victim characteristics nor threat characteristics distinguished irrational cases from other types. The threateners were much more likely to be known than other types of threateners. Irrational communications were also made by a greater proportion of females. These threateners were considerably less likely to be in prison and three times less likely to be associated with a group.

In sum, irrational inappropriate communications differed little from other motives, except that the threateners were more likely to be free and working alone. Their interest focused on judges and others, not usually on prosecutors.

During the reporting period, only six of the irrational threats (3.8 percent) turned out to be enhanced, and three contained some evidence of a violent implementation (1.9 percent). The six enhanced threats tended to be enhanced by the threatener visiting the courthouse or office of the victim. One irrational threatener wrote a number of letters to various government officials warning that "a few government officials may have to be killed" and complaining that a magistrate had sent him away from his hometown. Shortly after his release from two terms at a psychiatric treatment center for federal prisoners, the threatener suddenly appeared at the magistrate's office. He was escorted out by deputy marshals. In another incident, which occurred before the installation of magnetometers at courthouse entrances, an irrational threatener left a gift box in the courtroom of a district judge containing a knife and some beer. That he had gotten so close to the victim with the knife warranted the enhanced rating.<sup>4</sup>

In three of the other enhanced irrational threats, the threatener wrote the victim a threaten-

ing note or letter, then followed up with a visit to the courthouse. In another case, the threatener repeatedly told his psychiatrist in New Haven, Connecticut, of his intent to kill a district judge in Minnesota. In January 1984, the psychiatrist reported that the threatener had left the hospital. He was found back in Minnesota and quickly institutionalized there. His return to the victim's area escalated the nature of his threat.<sup>5</sup>

What was significant about these cases, of course, was that the victims remained safe and unharmed. The escalation of the threat from specious to enhanced depended on the effort of the threatener to get near his intended target. In none of the enhanced cases did the threatener get anywhere near enough.

In two of the three violent cases, however, the threateners attempted to break into the victims' homes. In both instances, the threatener wanted something from the victim (both were district judges) because of the victim's position within the judiciary; in both instances, the threatener translated that official relationship into something of a personal love affair. In one case, the threatener, who wanted the judge's help in obtaining a gun permit, declared he had fallen in love with the judge's wife. Shortly after the threatener visited the judge's home, deputy marshals noticed that some of the windows at the house had been tampered with. In the second violent case, a woman was arrested trying to break into the judge's home. She was screaming the judge's name.<sup>6</sup>

In the final, most dramatic case, a crazed probationer went to his probation officer in Baltimore, Maryland, armed with a .22 caliber pistol. "I'm arresting you and taking you over to the courthouse," he informed the officer, as he put him in a choke hold with the weapon pressed to his temple. Thus locked together, the two men walked to the top of the steps of the federal courthouse, drawing a crowd as they went. To anyone who would listen, the threatener claimed that the probation officer was a drug thief who had advance knowledge of John Hinckley's attempted assassination of President Ronald Reagan. After a brief effort to negotiate the release of the probation officer, the district's chief deputy marshal over-

powered the threatener and quickly disarmed him.<sup>7</sup>

What was both distinctive and instructive about these cases of irrational inappropriate communications was that the suspect was clearly crazy and known to be crazy by the federal officials he harassed. When the suspect left New Haven, Connecticut, his psychologist knew enough about his fixation to alert officials in Minnesota about the situation. In other cases, the suspect fell prey to some irrational obsession, an irresistible impulse that was as obvious as it was powerful. The records in all these cases offer no evidence that the threatener somehow one day went over the edge without warning. Rather, it seemed clear in all the cases that all the suspects warranted careful watching simply because they were mentally unbalanced and irrational. Obviously, irrational people commit irrational acts—and one of the most irrational acts of all was to assault a federal judicial official.

### Ideologically Motivated Threats

Cases brought before the federal courts frequently reached beyond personal disputes to involve issues of belief and ideology. Often, of course, ideologically motivated inappropriate communications grew out of specific cases, say a tax protestor hauled before the court for failure to pay income tax or an anti-abortion protestor arrested for trespassing on the grounds of an abortion clinic. These types of threats were included in the analysis of case-related threats and described as ideologically motivated. They accounted for 143 of the case-related threats—about 11 percent.

Another 134 threats—4.3 percent—were ideologically motivated, but the individuals who made the communications appeared to have no personal involvement in a specific case or issue before the court. Sometimes white supremacists, or at least threateners who claimed membership in the Aryan Brotherhood or some other extremist group, communicated a threat to a court official for no clear reason except that the court official had

somehow aroused the threatener's ire by violating his beliefs. Clearly, the individuals making the communications had no personal involvement in the case; just as clearly, the decision violated some deeply held ideological belief.

Figure 6.5 graphically illustrates the outcome of ideological communications.

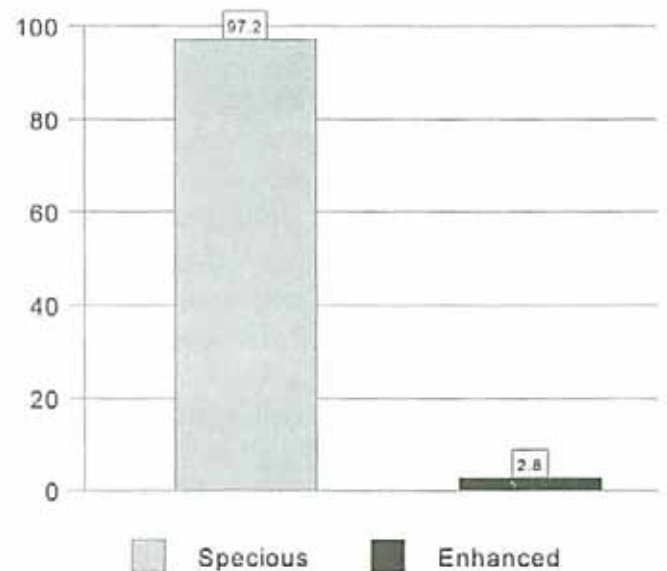


Figure 6.5. Ideological Threats by Outcome (percentages)

Ideology can be a powerful, even dangerous motivator. Unlike the motives prompting threats to federal judicial officials analyzed above, all of which had rates of speciousness at or above the 92 percent average for all inappropriate communications, ideological communications had a rate of speciousness of 86 percent, a significant difference. Walter Leroy Moody's threats to the Eleventh Circuit Court of Appeals judges accounted for most of the enhanced ideological cases. Moody's assassination of Judge Robert Vance, who had sat on the panel that heard Moody's appeal, was assessed as a case-related assault, but Moody's more generalized threats to Vance's colleagues on the Eleventh Circuit were assessed as ideologically motivated. Almost all of the Eleventh Circuit judges—all save Vance, essentially—received letters addressed to the "late" judge and signed "Americans for a Competent Judiciary." According to Judge Edward Devitte, who tried Moody for Judge Vance's assassination, Moody's ideology, however

skewed, was a definite factor in his assault on the circuit. This ideological cast on the threats compelled the ideological assessment.<sup>8</sup>

As a consequence, Moody's specific threats to the circuit judges (seventeen in all) were assessed as enhanced, and his generalized threats to the district-level judges of Florida, Alabama, and Georgia were assessed as specious. In all, Moody's efforts accounted for 30 of the 134 ideological threats—almost a quarter of them.

Consequently, had Moody's threats not been counted as ideological, the rate of speciousness for these type threats would have been significantly higher. But Moody did, in fact, assassinate one circuit court judge and threatened every other circuit court judge in the Eleventh Circuit. His threats were considerably more than specious, and he cast them in an ideological framework. As much as one might breathe a sigh of relief that Moody is now safely behind bars, one must also remember that what can happen once can happen again.

In general, the overwhelming majority of ideological threateners were males who worked without known accomplices. Their inappropriate communications were immediate, without condition or deferral, an indication perhaps that one does not postpone one's beliefs. A large majority were not imprisoned at the time they made their inappropriate communications, which made those cases potent. Interestingly, more than three fourths of the ideological inappropriate communications were directed at more than a single victim. Most of the victims were white males. In a majority of the cases, the victims were district-level judges. The inappropriate communications, too, were physical, though not at as great a proportion as some of the other types of motivated cases. The majority of ideological communications, again unlike other cases, were made by unknown suspects. In addition, most of these inappropriate communications were written, but not as great a proportion as in other motives. In fact, suspicious activities accounted for 16 percent of the communications, the same proportion as telephone calls and more than informant threats.

Ideological inappropriate communications

included a greater proportion of veiled-suspect threats than threats in general, despite Moody's direct threats to the Eleventh Circuit. In effect, though ideological threateners were clearly capable of carrying out their threats, they were not so clear about who would do the harm or who would be the victim.

This type of threatener was twice as likely to be unknown, which also increased the proportion that were not known to be imprisoned. Two thirds of the ideological threateners also claimed some association with a group, compared to just 14.8 percent among other threateners. This dramatic, significant difference indicated, perhaps, that when claiming to represent some belief, it was important at the same time to claim oneself as representative of others who held the same beliefs. That Moody was apparently the sole member of Americans for a Competent Judiciary was ultimately less important than the fact that he felt obliged to front himself at the head of the group.

These threateners believed themselves fighting for a belief, a way of life, an ideology; almost by definition, they had to claim that others agreed with them. For this reason, too, the inappropriate communications were proportionately more likely to veil the suspect who would carry out the injury. Because others believed as they did, others would implement the harm. It simply stood to reason. The Brotherhood will take care of you, these threats claimed, leaving to the victim's imagination just what the Brotherhood was and who were its members. In the end, it was the ideology that drove and defined these inappropriate communications.

Since Moody's assault on the Eleventh Circuit accounted for seventeen of the nineteen enhanced and violent threats, it would be of little use to compare enhanced and violent threats to specious threats beyond describing his method. Moody's threats were written, potent, physical, direct, and immediate; they targeted circuit court judges and others. He claimed membership in a group, though there were no known additional suspects helping him. He kept his identity hidden. Eventually, of course, the Bureau of Alcohol, Tobacco, and Firearms was able to identify Moody through his signature method of constructing the bombs, which

allowed the FBI to prove at trial that Moody had sent the bombs.

Two enhanced ideological threats were unrelated to Moody. One involved a suspicious activity in Puerto Rico. The son of a district judge was followed while driving home one night. The judge believed the Macheteros, a terrorist gang, were responsible. In the second case, which dated back to 1985, a known suspect connected with the Black Muslims appeared at a chief judge's chambers to complain about the judicial system in general. The man believed he had been prevented from filing a civil suit, but the focus of his complaint and anger grew out of his belief in the discriminatory nature of federal justice. Upon his departure, he announced that he would have to hold a .357 magnum to the head of the judge to compel him to change his mind. The threat earned its enhanced rating because of the effort the threatener made to reach the judge's chambers to deliver his threat—and complaint—verbally.<sup>9</sup>

Although ideological threats carried a higher risk than other types of threats, they composed a fairly small proportion—4.3 percent—of all threats received. This fact suggested, of course, that though ideological beliefs were both strongly held and powerful motivators, they were not widely held motivators. The evidence also suggested that, as easy as it may have been to claim group membership, it was harder still to gain support of allies and kindred believers. Ideological threateners believed, maybe even hoped, they represented the views of others, but those others rarely rallied behind them.

### Organized Crime

Organized crime accounted for 120 inappropriate communications directly related to a specific case concerning, for instance, a Mafia don or a drug cartel on trial. Arrests were made, members of the group were hauled into court, and 120 inappropriate communications—just under 10 percent of the total number of case-related threats—resulted. Conversely, organized-crime inappropriate communications unrelated to a

specific case before the courts accounted for a mere 1.1 percent of all threats. Many of them grew out of the periodic rumors of Colombian hit teams headed for American shores. As few as these threats were, they nonetheless maintained a remarkable rate of speciousness, right at 97 percent. Of the thirty-six reported cases, only one was ever enhanced; none was ever violent.

Figure 6.6 graphically illustrates the outcome of the organized-crime threats. What most distinguished these communications from others was the fact that they came from—or at least were about—some known organized criminal enterprise. What made them so fearsome was this very connection. "The Colombians are coming," one heard periodically. Nonetheless, what seemed clear was that absent some specific case against the organization, this type of communication was astoundingly empty. Once they arrived, in other words, the Colombians did nothing.

During the term of the study, only one threat related to an organized criminal enterprise was ever enhanced; none were rated violent. Even the lone enhanced threat barely earned the rating. In November 1988, based on information from a confidential informant, the FBI warned that "certain elements" of the Medellin drug cartel were planning acts of violence in the United States. Three of the cartel members were arrested for carrying electronic devices used to ignite explosives from a distance. Neither their purpose nor their target was ever explained.<sup>10</sup>

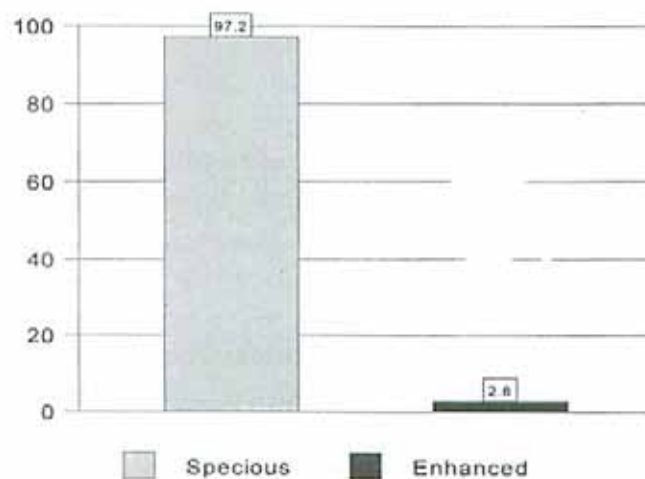


Figure 6.6. Organized-Crime Threats by Outcome (percentages)

## Privately Motivated Threats

The remaining collection of motives, less than a handful, were distinct enough to warrant their own categories, yet too few to justify and too erratic to warrant too detailed a study. The motives had some private element. Either the individual making or reporting the inappropriate communication was prompted to do so for reasons unrelated to the judiciary, or the victim suffered the threat or assault for reasons other than his or her judicial position. In two of the categories, personal-to-the-confidential informant and personal-to-the-prisoner, the inappropriate communications were consistently and wholly specious *by definition*. In fifty-four cases, a state or local prisoner willfully threatened a federal judicial official in the clear hope of being tried, convicted, and sentenced in the federal system. These prisoners believed that federal time was easier or more comfortable than state or local time. Their threats were quite explicit, and they routinely wanted their identities known. Most, too, claimed no group membership or support from additional suspects.

In sixty-nine cases, a confidential informant literally made up his information on a threat in order to gain some advantage or improvement in his own situation, usually in hopes of a reduction in sentence or some easier time in prison. This type of threat, too, was unusually explicit, physical, direct, and immediate, with both victim and suspect clearly identified by name. Such specificity, of course, lent credence to the informant's fabrication. In many of the instances, the informant's tale was discounted only by a polygraph examination, showing again the tendency of officials to believe informants despite overwhelming evidence that informants were notoriously unreliable.

In forty-nine cases, a suspect made a threat without reference to the function of the judiciary. The suspects were neither caught up in a court case nor angered by some ideological violation by the courts. Rather, they were employees of the courts—clerks and secretaries and janitors—who were dismissed or troubled, and who made their

threats for that reason alone. This type of threat was not consistently explicit; two involved suspicious activity, and three involved an element of violence. Yet, rather than threats prompted by some judicial activity, they were personnel or employee disputes.

Finally, eighty-one of the cases had nothing to do with the victim's work in the federal judiciary. The majority were simple muggings in which the victim suffered the same risks of crime as any American citizen. Some were related to a personal problem, such as a dispute with a neighbor or relative. In one tragic case, for example, a judge's son killed his girlfriend. The judge was later harassed and threatened by irate members of the public, not because he was a judge, but because he was a father.

## Summary

Although motive was not as clearly helpful in assessing inappropriate communications as the method of delivery proved to be, the reason prompting the communication helped gauge the threatener's purpose. It provided the only measure of the howler's complaint or the hunter's grievance. As such, discerning the motive that prompted the threat helped clarify de Becker's value of the threat. It was a measure of the suspect's intent because it permitted insight into the level of the suspect's self-perceived injury or objection. Isolating and understanding the suspect's purpose helped inform the analysis as to the ultimate credibility of the threat. It measured, in effect, what the suspect hoped to gain by what he risked.

Motive, too, helped decipher the howler's howls. The majority of the motives were direct outgrowths of a specific court case. Indeed, each judge killed since 1979 was assassinated for some reason related to a particular case: the prosecution of an organized-crime family, the dismissal of a civil rights suit, and the refusal to purge a criminal record. Since case-related inappropriate communications were different in kind and degree from other types of communications, isolating it as a motive helped focus the investigation on particular suspects, victims, and outcomes.

Similarly, inappropriate communications with insufficient evidence to determine a motive had certain identifiable characteristics and outcomes. Other motives, too, to varying degrees, effected the course and outcome of the threat. Certain motives had comfortably high rates of speciousness. Habitual and organized-crime communications each enjoyed a rate of speciousness well above the average rate, indeed high enough to warrant dismissing these cases as practically synonymous with speciousness. Certain motives, personal to the prisoner and personal to the informant, were by definition synonymous with speciousness. Combined, these four motives accounted for 552 (18.4 percent) of the inappropriate communications where motive was

known. Screening them out would have helped focus investigatory and protective resources on the remaining 81.6 percent.

Even among the motives with distressingly low rates of speciousness, certain variables emerged in close association with speciousness. Among case-related inappropriate communications, *for example*, informant and veiled-suspect communications could be confidently discounted. Mention of more than one victim or identifying the suspect also de-escalated the threat, though not quite so confidently. Isolating those variables associated with speciousness—or enhanced or violent outcomes—helped focus the way one thinks about inappropriate communications, and thinking is the first, most crucial step in assessing them.

## 7. VICTIMS AND SUSPECTS OF THREATS AND ASSAULTS

As a general rule, for any given threat or assault, most details were known about how the communication was delivered, what prompted it, and who was the intended victim. In all but a small proportion of cases, the victim was expressly identified, either by name or title. Even among those threats in which the victim's identity was veiled, it was evident that someone working at a specific courthouse was now at risk.

That information gave the Marshals Service a profound, life-saving advantage in protecting the victims. Because we knew who the victims were, we knew where they worked and where they lived, with whom they lived, the routes they used to commute, their habits and routines, their schedules, and their potential enemies. In 13.3 percent of the cases, the Marshals Service provided some level of protection, anything from driving the victim back and forth to work, to full 24-hour protective details by teams of deputy marshals. The protection lasted anywhere from one day to ten years, although the majority of the details lasted a week or less.

We knew far less about the suspect. The threatener essentially chose how much to reveal about himself, either by signing his name or referring to his court case. Similarly, the suspect also chose how much to tell about his nefarious plans. Sometimes the suspect's intent was spelled out in fine detail. He intended not simply to kill, but to shoot the victim with a pistol or to blow up his car or do any of an infinite number of acts by which humans kill other humans. Conversely, there was much that the suspects in many of the cases chose not to reveal. Many suspects did not sign their names or explain their cause or detail their plans.

Nevertheless, a considerable amount was known—or *known not to be known*—about any

individual suspect. These characteristics can best be described in a series of either-or statements. For any threat, the suspect's identity was known or not known. The suspect was either known to be incarcerated or it was not known if the suspect was incarcerated. The suspect was either known to belong to a group or it was not known if the suspect belonged to a group. The suspect was either known to have had the support of additional suspects or it was not known if the suspect had accomplices. Either the suspect talked about a contract killing or there was no evidence of such talk. When race was known, the suspects were either Black, white, Hispanic, or other. When gender was known, obviously the suspect was either male or female.

The suspect controlled both the expression and the implementation of the threat. By exercising that control, he revealed himself. Shrouding his intentions and identity in mystery revealed something about one threatener, just as—conversely—boldly identifying himself and his plan revealed something about another threatener. These revelations help determine the suspect's intent and determination, two of the more important ingredients in any threat assessment.

This chapter, the last of the numbing numbers crunching, analyzes the reported threats and assaults by what was known or not known about the victims and the suspects.

### Effect of Victim Title

The victims ranged from justices of the Supreme Court to bankruptcy clerks, from circuit court of appeals judges to district court magistrates, from U.S. attorneys to assistant U.S. attorneys. District court judges accounted for the

majority of the victims of the threats. Assistant U.S. attorneys followed at a distant second. Circuit court judges accounted for the third largest group. Since the remainder of the victim categories rapidly degenerated into small proportions of the total, for purposes of analysis the victims were grouped into four main categories. Table 7.1 reports the results of this grouping.

**Table 7.1. Reported Threats and Assaults by Victim Title**

Victim Title	Reported Threats	Percentage
District judge	2028	65.5
Prosecutor	464	15.0
Circuit court judge	203	6.6
Other	401	13.0
Total	3096	100.0

The category of district-level judge consisted of senior, chief, and district court judges; bankruptcy judges; and magistrates—that is, any district-level judge who heard cases of initial origin. Prosecutors consisted of U.S. and assistant U.S. attorneys and bankruptcy trustees. Circuit court judges were exclusively circuit court judges. The *other* category was essentially everyone else, from Supreme Court justices to jurors, court clerks to probation officers. Although the *other* category was a rather cumbersome mixture, its primary use was to create a grouping sufficiently large to allow comparisons with the three primary categories. By itself, the *other* group made no particular organizational sense.

Of all the victims, district-level judges dealt the most directly and personally with those who came before the bar. Not surprisingly, then, they were the targets of threats and assaults at a much greater rate than any other category of victim. A total of 2,028 threats and assaults were reported against district-level judges. Despite this “in-the-

trenches” involvement, however, only about half of the threats and assaults directed against district-level judges were known to be case specific. Just under 16 percent of the reported cases had insufficient evidence to discern a motive; another 18.6 percent were either irrational or habitual. The remaining 16 percent were divided among small proportions of ideological, organized crime, and private motives.

District-level judges were not, however, the target of the worst threats, either enhanced or violent. Circuit court judges received a greater proportion of enhanced threats, again thanks to the Moody bubble, and the *other* category of victims suffered a greater proportion of violent threats. As Table 7.2 shows, that distribution was statistically significant.

These threats and assaults also included common muggings and other incidents unrelated to the victim’s judicial duties. Table 7.3 shows only those threats and assaults that had some direct relationship to the victim’s position within the judiciary. Screening out the personal-to-victim threats and assaults had a profound effect on the *other* category; the proportion of violent threats dropped from 7.7 percent to 5.1 percent. Violent threats and assaults against circuit court judges also decreased more than a point, from 4.1 percent to 2.7 percent. Violent threats and assaults against prosecutors dropped from 6.0 percent to 5.0 percent. Finally, violent threats and assaults against district-level judges dropped the least, from 2.7 percent to 1.8 percent. Once again, the relationship between the victim’s title and the rating of the threat was statistically significant.

Consequently, although threats and assaults against district-level judges have a significantly higher rate of speciousness, right around 94 percent, the threats and assaults were much more likely to have a direct relationship to the victim’s judicial position and not result from the more generalized risks of being the victim of some common crime or unrelated incident. Supreme Court justices, despite their categorization here, were much less likely than any other group to suffer an enhanced or violent threat or assault

**Table 7.2. Threats and Assaults by Victim's Title (Personal-to-the-Victim Threats Included)**

Victim's Title	Category							
	Specious		Enhanced		Violent		Total	
	#	%	#	%	#	%	#	%
District judge	1830	93.4	76	3.9	53	2.7	1959	65.4
Circuit court judge	167	85.6	20	10.3	8	4.1	195	6.5
Prosecutor	408	90.7	15	3.3	27	6.0	450	15.0
Other	349	89.0	13	3.3	30	7.7	392	13.1
Total	2754		124		118		2996	
Percentage of total threats		91.9		4.1		3.9		100.0

# = number of threats  
 % = percentage of threats  
 Chi-square = 49.78  
 Degrees of freedom = 6  
 p-value = 0.000

**Table 7.3. Threats and Assaults by Victim's Title (Not Including Personal-to-Victim Threats and Assaults)**

Victim's Title	Category							
	Specious		Enhanced		Violent		Total	
	#	%	#	%	#	%	#	%
District judge	1806	94.4	72	3.8	35	1.8	1913	65.6
Circuit court judge	164	86.8	20	10.6	5	2.7	189	6.5
Prosecutor	402	91.6	15	3.4	22	5.0	439	15.1
Other	342	91.4	13	3.5	19	5.1	374	12.8
Total threats	2714		120		81		2915	
Percentage of total threats		93.1		4.1		2.8		100.0

# = number of threats  
 % = percentage of threats  
 Chi-square = 44.48  
 Degrees of freedom = 6  
 p-value = 0.000

unrelated to their official position. Indeed, they were much less likely than *any* group to suffer *any* kind of enhanced or violent threat or assault. Period.

What is most intriguing about threats and assaults to district-level judges is how indistinguishable they were from threats to other types of victims. The differences were rarely more than slight, that is, always within 5 to 10 percentage points. Although district-level judges were the victims of nearly two thirds of all threats and assaults, nothing about the threats—save, perhaps, their high rate of speciousness—stood out in comparison to threats against other victims. Knowing that a victim was a district-level judge offered little insight into the assessment of the threat.

Enhanced and violent threats to district-level judges tended to be potent, physical, and immediate, delivered through some suspicious activity or verbal statement, and targeted to one victim by a lone suspect. Threats by telephone, in writing, or passed on through an informant were considerably more likely to be specious. Combined, these three types of threats accounted for 91.1 percent of the specious threats, but only 34.9 percent of the enhanced and 16.0 percent of the violent threats.

Further screening by motive and characteristic made the differences even more pronounced. Threats unrelated to a specific case and including more than one victim, for example, had a 98.5 percent chance of being specious if delivered by telephone, in writing, or through an informant. If the threat was clearly impotent, threats with those characteristics (and there were 231 such cases) were always specious.

Yet, nothing in these outcomes indicated that district-level judges as victims had any strong or important effect on the denouement. Written, telephone, and informant threats carried comfortably high rates of speciousness regardless of the victim. Case-related threats had a slight escalation in the potential risk of the threat no matter who was the victim. Knowing that a victim was a district-level judge was a piece of the puzzle, but it was like finding the last piece after the puzzle had long since been revealed.

Like threats and assaults against district-level

judges, those directed against prosecutors were not precisely defined. Although the differences among prosecutor threats compared to threats to other victims appeared more pronounced in some areas, overall, knowing a victim was a prosecutor provided but a slim insight into the threat. Little about prosecutor threats could help gauge the outcome or style of the threat. Targeting additional victims, knowing the suspect's name, or receiving a written, telephone, informant, or verbal threat were all associated with specious outcomes. These variables (except verbal threats) held that association, regardless of who was the victim. Prosecutors did suffer an increase in the proportion of case-related criminal and organized crime threats. The risks posed by those threats escalated when the prosecutor was the sole target and the suspect remained anonymous.

What seemed to distinguish threats to circuit court judges from threats to any other judicial officials was the considerably greater proportion of such threats that included more than one victim. Circuit judges also suffered a disproportionate number of threats related to civil cases, primarily because on appeal, cases of criminal origin frequently become *habeas corpus* or civil rights cases. These variables, of course, went straight to the heart of what circuit court judges do as federal judicial officials. As with threats against their colleagues at the district level and against prosecutors, threats against circuit court judges were clearly related to their judicial function, even prompted by it, but the threats were just as clearly not defined or characterized by it.

White suspects composed a surprisingly great proportion of the threats to circuit court judges, rather out of proportion to their already high percentage of threat-making in general. In a curious way, threats to judicial officials were also expressions of faith in the judicial system and its power to influence one's situation and condition. For this reason, threats in general were disproportionately more likely to be made by white suspects. These suspects believed in the system. Consequently, having appealed to the circuit courts for help and subsequently perceiv-

ing themselves denied, white threateners became more likely to threaten circuit court judges precisely because of the intensity of their belief in the system.

Moody's assault on the Eleventh Circuit profoundly affected the statistical profile of enhanced and violent threats to circuit court judges. The effect was so pronounced that it distorted any comparison with specious threats to circuit court judges. Although it happened and it must be accounted for, a one-time event should not be allowed to completely color our perceptions. The most important lesson to take from Moody is that acts of utter depravity can come as easily through the mails as they can from the lurking shadow. Moody also illustrated that circuit court judges, much more than district judges or prosecutors, tended to be threatened in groups and not as individuals.

### **Race and Gender of Victim**

Over the reporting period, in circumstances in which the victim's race was known, 116 were Black; 2,282 were white; and 91 were Hispanic. In addition, 2,507 of the victims were male and 413 were female. Curiously, neither the gender nor the race of the victim showed any strong correlation to any of the variables analyzed in this study. Black victims were just as likely as whites or Hispanics to receive specious, enhanced, or violent threats. They were more likely to receive written threats, but the relationship was not a strong one. Hispanic victims received a very slightly higher proportion of telephone threats, but again the difference was not strong. White victims were exposed to some suspicious activity slightly less often than blacks or Hispanics, and they were victims at a considerably higher rate of case-related threats than other victims, but neither of the correlations was strong.

The gender of the victim was not an effective indicator for the kind, type, or character of the threat. Victim gender had no impact on the rate of speciousness, type of threat, motive, or judicial position of the victim. In fact, none of the variables analyzed showed a statistical correlation to

gender of the victim.

In effect, the federal courts were not harassed by racists or sexists. Their troubles did not come from those who hated African Americans or Hispanics or whites, and the courts were not bothered by anyone who opposed women or men in any particular judicial role. Female judges were not singled out by the threateners any more than male jurists were.

However, in reviewing the communications, it was also obvious that the gender and the race of the victim influenced the expression of the threat and the language used. Threats to female victims tended to be expressed in more sexually explicit terms, with threats of rape almost as frequent as threats of death. Although male victims suffered their share of profane taunts, sexual allusions did not seem quite so prevalent as those against female victims. In other words, threats to males were expressed in ways most likely to disturb or frighten males; threats to females were expressed in ways most likely to disturb or frighten females. The threats themselves, however expressed, were just as likely to be empty and meaningless, regardless of the target to whom they were directed.

### **Presence or Absence of Additional Victims**

In addition to the position of the victims within the federal judiciary, a distinguishing feature of threats and assaults to federal judicial officials was the presence or absence of additional victims within the threat. During the thirteen-year study, a total of 1,537 threats and assaults against federal judicial officials targeted a single victim, while 1,559 targeted multiple victims. The threats were almost evenly divided, with slightly more than half the threats made against multiple victims and slightly fewer than half made against one victim. Consequently, the presence or absence of additional victims served as a distinguishing feature for analyzing the threats.

Unfortunately, the fact of whether the threat targeted a single victim or several victims had

little relationship to the motive or character of the threat. The differences tended to be slight. For example, it seemed easier in writing to threaten multiple victims, easier by telephone to threaten a single victim—presumably the official who answered the phone. But that effect may be related to the choice of the medium and not driven by whatever anger or irrationality prompted the threat. Similarly, no other variable showed any startling distinction between single- and multiple-victim threats.

Overall, multiple-victim threats seemed to exhibit more of the characteristics generally associated with specious threats. A greater proportion were made in writing, more came from prisoners, and more came from known suspects. The effect was to give multiple-victim threats a greater rate of speciousness than single-victim threats. The rate was great enough to suggest that if more than one victim was explicitly threatened, the chances the threat would be empty were greater.

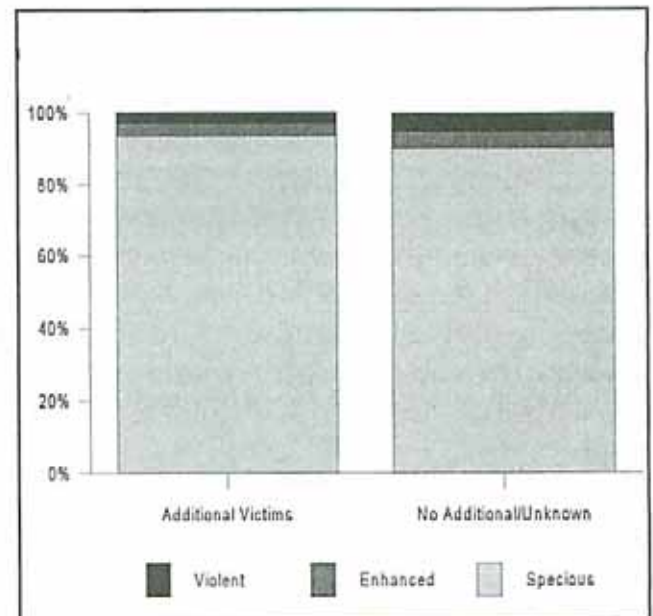
Among the 1,559 multiple-victim threats, 1,454 were rated by outcome. Of these, 1,444 were specious (93.6 percent), 54 were enhanced (3.7 percent), and 44 entailed some element of violence (2.9 percent).

Single victim threats showed a different pattern of outcomes. Of the 1,537 single-victim threats, 1,454 could be assessed by outcome. Of these, 1,310 were specious (90.1 percent), 70 were enhanced (4.8 percent), and 74 were violent (5.1 percent). Figure 7.1 graphically illustrates this breakdown.

The presence or absence of additional victims in any particular threat showed some important trends. Additional-victim threats gained a high seriousness rating if they entailed some suspicious activity, were related to an ideology, or targeted circuit court judges, and in addition could be described as potent, direct, and immediate. The chance of the rating going up was also related to unknown suspects who were not imprisoned.

Single-victim threateners increased the seriousness of their threats by engaging in suspicious activities or verbal threats, particularly if they were related to a specific case and targeted a district-level judge or prosecutor. The seriousness

rating went up, too, if the threat was potent and direct. It also increased if the threatener remained unknown. It decreased if the threatener was known to be imprisoned.



**Figure 7.1. Effect of Additional Victims on Seriousness of Outcomes**

Yet, most of these relationships could have been accounted for by other variables. What was far more important about the number of victims threatened was that, within the even split between them, multiple-victim threats tended to carry a higher rate of speciousness than single-victim threats. A shadow of a doubt, then, was cast upon those threats with more than one target. That shadow grew as other variables with even higher rates of speciousness emerged. Single-victim threats, to continue the analogy, started in the full light of day, which meant that the shadows of the high-rated specious variables had farther to reach. The only exception, thanks to the Moody bubble, was threats to circuit court judges.

### Known and Unknown Suspects

The identity of the suspect was known in three fourths of the reported cases and anonymous a quarter of the time. The characteristics of

known and unknown suspects showed some fascinating differences. In general, the overwhelming majority of threats by known suspects were specious. They were also made predominantly by white suspects. A large majority of known-suspect threateners acted alone, without additional suspects or claim to group membership. They directed their threats at male victims and promised immediate, physical harm. A majority of the known-suspect threats were made by whites against district-level judges. The threats were direct and potent. The suspect was not known to be in prison, but the threat was prompted by a specific court case. Additional victims were included in the threat.

Unknown-suspect threats, in comparison to known-suspect threats, were less frequently specious, less frequently made by males, and less frequently made by suspects known or claiming to belong to a group. Their victims were less frequently white, and the threats were less frequently physical. Unknown suspects, however, were more frequently associated with additional suspects. Their threats were more often intended immediately.

Unknown-suspect threats, too, were less frequently made by white suspects and less frequently targeted district-level judges. The threats were less frequently direct and less likely to be case related. The suspects were less frequently known to be in prison, and their threats were overwhelmingly potent.

In effect, threats and assaults by unknown suspects were less coherent than threats from known suspects. They had fewer common characteristics, fewer attributes that stood them apart. Unknown suspects shielded themselves in mystery; they preferred the anonymity of the telephone and chose not to explain what prompted their threats. Almost half of the unknown suspects who expressed concern over a specific case seemed motivated by ideology or publicity over a trial. This finding suggested that the unknown threatener may not have been personally involved in the case, but was nevertheless emotionally and ideologically caught up in it.

Many of the characteristics displayed by unknown suspects were closely associated with

enhanced and violent threats. Unknown suspects tended to target single victims. Since the overwhelming majority of unknown suspects were not in prison, their threats were overwhelmingly potent. Proportionately more of the unknown suspects were Black; proportionately more belonged to a group. Each of these variables helped escalate the risk beyond that of unknown suspect threats and dropped the rate of speciousness to uncomfortable levels.

Known suspects, in comparison, tended to show more of the variables related to specious threats. Their threats were written or came from informants. They targeted multiple victims. More of the known suspects were known to be in prison, and proportionately fewer belonged to a group. These characteristics helped account for the higher rate of speciousness among known suspects.

Known suspects who were not in jail; who were motivated by a specific court case, whether civil or criminal; who made their threats through some suspicious activity or verbally against a single victim; and who expressed their threats physically, directly, and immediately were much more likely to make an enhanced or violent threat than a specious one. Known suspects motivated by something other than a specific case; who made their threats in writing, by telephone, or through an informant; who threatened more than one victim; who were in jail; or who imposed some condition or deferral on their threat were more likely to engage in a specious threat than an enhanced or violent threat.

Threats by unknown suspects showed some curious differences when rated by method, motive, victim, and characteristic. A threat by an unknown suspect who had some group affiliation that was made in writing (as in the Moody threats), verbally, or through some suspicious activity had a greater probability of being enhanced or violent than threats in general. Indeed, threats with those very characteristics—unknown suspect; group affiliation; written, verbal, or suspicious activity—though few in number (ninety-seven cases over thirteen years)—had a much lower rate of speciousness than threats in

general. While threats in general had a 92 percent speciousness rate, threats matching the above description had a speciousness rate of 58.7 percent—a significant difference. Although Moody accounted for about twenty of these cases, there were enough enhanced and violent threats from other unknown group suspects to make this type of threat considerable cause for concern.

Consequently, simply or solely knowing whether a threat was credited or anonymous had a distinguishable effect on the potential outcome of the threat. Threats by known suspects had a rate of speciousness of 94.1 percent, just above the overall rate of speciousness. Threats by unknown suspects had a rate of speciousness of 84.9 percent, well below the average. If nothing else was known but whether or not the suspect could be identified, then anonymous threats were cause for concern.

Fortunately, of course, much more was always known. Other factors—method of delivery, victim title, presence of additional victims, and so forth—helped discount or increase the degree of risk. Consequently, knowing the identity of the victim stood second only to method of delivery as the most significant element of any threat.

### Incarcerated Suspects

For the term of the study, 1,102 of the suspects who would harm a judicial official were known to be incarcerated (35.6 percent), and 1,994 were not known to be in prison (64.4 percent). More than any other category of suspect, we knew most about those in prison. They were, after all, in our custody. We knew their names, where they were, what they looked like, how old they were, what their histories were. We knew, too, that as long as they were in our custody, there was little they could do to implement their threats. The prisoners were impotent—reduced to writing or spouting off to their cellmates or pleading with their relatives, friends, or former business associates—to carry out their gruesome threats. They could do little on their own.

Prisoner threats exhibited certain characteristics that distinguished them from threats made by other

types of suspects. All prisoner threats, by definition, were impotent. They were also overwhelmingly specious. The suspects were almost always known, and most, too, were males threatening white victims. The large majority of the threats were physical and direct. The victims were males. The suspects acted largely alone, without known group affiliation or additional suspects to help them.

A majority of prisoner threats were immediate, made by white suspects against district-level judges. Although most of the threats were unrelated to a specific case, a majority of case-specific threats were related to a particular criminal case—presumably, it is fair to say, the threatener's own. The communications, too, tended to be made in writing (informant threats constituted all but 4 percent of the balance), since the threatener had little choice other than writing. A majority of the threats also included additional victims. Finally, a bare majority of the victims worked in the South.

Compared to threats by other types of suspects, those who were incarcerated were quite distinctive, undoubtedly as a result of their imprisonment. Prisoner threats were more likely to be specious. Only nineteen cases ever achieved a rating of enhanced (six cases) or violent (thirteen cases). With a rate of speciousness at 98.3 percent, it seems fair to say that prisoners found it insurmountably difficult to overcome the fact of their incarceration and carry out their threats. They were more than confined; they were impotent.

Of the six enhanced and thirteen violent threats made by prisoners, six were crude incendiary devices sent through the mails; five were passed on by informants, then followed by some suspicious activity; seven involved some suspicious activity at about the time that prisoners with known group or additional suspect affiliation had made their threat. One was a verbal threat followed by an attempted courtroom assault on a prosecutor. Sixteen threats were case related. One contained too little evidence to determine a motive; one was personal to the suspect; and the last was personal to the victim.

Of the fourteen case-related threats, six involved criminal cases, one a civil case, and two an ideological issue; five were organized crime cases. Nine of the victims were district-level judges, eight were prosecutors, and two were other victims. Most of the enhanced and violent threats—14 of them—involved no additional victims. The majority, too, were physical (thirteen cases), direct (sixteen cases), and immediate (seventeen cases).

All threats but one were made by a known suspect. Eight of the suspects had some group affiliation; eleven did not. The majority, fifteen of the suspects, had no known associates; two claimed to arrange a contract killing. Eleven of the victims lived in the South, five in the Northeast, two in the Midwest, and one in the West. Six of the suspects were Black, five were white, and one was Hispanic.

In none of the cases was a judicial official injured or physically harmed as a direct result of the threat. Of the thirteen violent cases, one assistant U.S. attorney was physically assaulted by a defendant. After his conviction for that assault, while deputy marshals were hauling him to jail, the defendant then made his threat to kill the prosecutor. In a separate case, a suspect lunged at the prosecutor in court, but was subdued before he could inflict any injury or even reach the attorney. In five of the cases, the victim suffered some property damage to his or her home or to the courthouse or office. Four of the victims were mailed homemade bombs. In one case a witness was murdered after an organized crime suspect made a threat. In another case, a prosecutor's car was involved in a minor hit-and-run, a traffic accident for which there was never any evidence that linked the accident to the threat.<sup>1</sup>

Among the enhanced prisoner threats, two victims believed they had been followed home, and four others reported some suspicious activity after they had received a threat.

Consequently, though these few prisoners overcame their impotence to carry out their threats, it took considerable ingenuity or help—so much effort, in fact, that the vast majority of prisoners could not muster the necessary resources to carry out their nefarious plans. Instead, they spent their

time in jail plotting their plots, writing their letters, or spouting off to their cellmates, all the while frustrated and impotent.

### Group-Affiliated Suspects

During the time period covered by the study, 522 of those suspects who threatened a federal judicial official were known to belong to a group or claimed such affiliation (16.9 percent); 2,574 of the suspects neither claimed nor were known to have any group affiliation (83.1 percent). The groups ranged from recognized criminal organizations, such as the Mafia or various drug cartels, to street gangs and outlaw bands. They also included ideologically oriented groups, such as Aryan Nation or Patriot Army. The importance of the group was that it united under some coherent banner—criminal or ideological—a number of people who, by making the threat, seemed to have an interest or intent in harming a federal judicial official. The danger in these threats lay in the numbers of potential confederates, in the threatener's representation of himself as more than a lone voice.

The overwhelming majority of group-affiliated suspects were male, but that was the only feature about them that represented more than 90 percent of the cases. The large majority of their threats were specious, yet they were described in immediate, physical terms against male victims. Despite their group affiliations, these suspects tended to have no known accomplices to help them. A majority of the threats were made by white suspects whose identities were known and who were not known to be in jail. Consequently, their threats were potent. They targeted district-level judges, but included additional victims. The threats were direct and case related.

Group membership's most profound effect on threats was their relationship with organized crime and ideological trials. That is, group members made their threats when they perceived that their group was threatened: when its leaders were jailed or its beliefs challenged. The group did not strike out unprompted or unthreatened.

Just as interesting, group-affiliated threats contained some variables generally associated with specious threats—for example, higher proportions of informant threats and multiple victims. Group affiliation itself, however, carried a disturbingly lower rate of speciousness compared to threats in general. Screening out the informant and multiple-victim threats escalated the potential risk of group-affiliated threats even more. Of those group threats not conveyed by an informant and that targeted a single victim, the rate of speciousness dropped to 76.6 percent (of 107 cases).

Over the term of the study, group-affiliated suspects engaged in 459 specious threats, 40 enhanced threats, and 22 violent threats. Group membership alone was not strong enough to escalate specious variables, such as informant threats, to greater risk. Informants and prisoners accounted for large numbers of the specious threats made by group-affiliated suspects. Most importantly, perhaps, group membership seemed of no advantage to prisoners who threatened federal judicial officials; they remained impotent to implement their threats. What drove group membership to a lower rate of speciousness was the greater proportion of those variables that increased the risk of *any* type of threat: case related, unknown suspects, and higher proportions of suspects who were not incarcerated. Enhanced and violent group threats, as distinct from specious group threats, were written (i.e., by Moody) or, even more likely, entailed some suspicious activity. They were also more likely to be direct, though not necessarily physical or immediate.

### Additional Suspects

A small number of threats, 198 of the reported 3,096 cases (6.4 percent), contained evidence of additional suspects or potential accomplices available to help the principal suspect who made the threat. Although few in number, this type of threat had a distinctly lower rate of speciousness (about

86 percent), indicating that these threats compelled close attention.

The overwhelming majority of additional-suspect threats were made by male suspects against white victims. A large majority of the threats were specious, but not nearly at as high a rate as other threats. The threats, too, promised direct, physical injuries with the clear intent to carry them out immediately. A large majority of the suspects were known; their victims were males.

The suspects were usually white. Although the suspects had friends to help them, they tended to have no known group affiliation. Apparently having accomplices was independent of belonging to a group or a criminal organization. Additional-suspect threats targeted district-level judges more than other victims, though other victims were included in the threats by a greater proportion than threats with no additional suspects. Surprisingly, a bare majority of the suspects were in prison, which made an equally bare majority of their threats impotent, despite their lower rate of speciousness.

Although additional-suspect threats carried a lower rate of speciousness than threats in general, they still tended to have disproportionately greater numbers of variables generally associated with specious threats. More additional-suspect threateners were in prison, more of their threats were reported by informants, more were habitual threateners, more threatened multiple victims, and more were known by name.

Alone, the additional-suspect variable had little predictive effect on the outcome. The result was to exacerbate the problem. Unknown suspects who were not in jail and who threatened single victims with suspicious activities were always a problem. When they included more than one victim, they became even more of a problem. Incarcerated suspects making habitual, written threats to multiple victims were rarely a problem. Enlisting the help of accomplices did not make them any more of one.

## Contract Killing

Over the study, 192 cases included evidence of arrangements for a contract killing. Although Judge John Wood had been killed by a professional assassin in 1979, the contracts let after his death were astoundingly ineffective. No federal official since Wood has been killed by contract, and there have only been three cases rated as enhanced and only one rated as violent. Since 1980, mention of a contract killing has been practically a guarantee of safety for the victim.

The overwhelming majority of threats that relied on contract killing were specious. They were also expressed in physical and immediate terms; the contracts were let by male suspects; and they targeted white victims. A large majority were direct threats against a male victim by a known suspect. Information about the contract came from informants. A majority of the threats that mentioned a contract killing involved suspects with no group affiliation. The suspect, who was in prison and thus impotent to carry out the threat himself, was motivated by a criminal case before the courts. Most of the suspects were white, but represented a smaller proportion than other groups of suspects. These suspects also tended to target district-level judges, but, again, at not quite as great a proportion. The threats also included additional victims—a kind of double contract, perhaps—and they favored victims in the South.

Regardless of the explicitness of the contract threats, the great proportion of suspects incarcerated, combined with the high percentage of informants passing on word of the contract, mitigated the risk associated with contract killings. Unfortunately, despite the comfortably high rate of speciousness, that a district-level judge was once killed by a professional assassin is undeniable proof that statistical assessments are, in the end, nothing more than informed gambles—and gamblers sometimes lose. In defense of the statistics, of course, one need merely point out, life itself is little more than a gamble. The odds in contract killings are a lot better than most of us get.

## Race of the Suspect

In 1,399 of the cases (45.2 percent), the race of the suspect was known. Of these, 68.2 percent were white, 19.6 percent were Black, 10.6 percent were Hispanic, and 1.6 percent were "other," such as Asian. Consequently, there were enough cases to support an analysis of threats and assaults made by whites, Blacks, and Hispanics.

However, at least two factors skew the effect of race. First, of those cases in which the race of the suspects was known, 46.5 percent were incarcerated, a greater proportion than the 35.6 percent of all threateners who were known to be in jail. Curiously, the proportion of each race known to be imprisoned was fairly consistent. Where race was known, whites accounted for 70.5 percent of the incarcerated suspects and 68.2 percent of those not known to be incarcerated. Blacks composed 17.1 percent of the incarcerated and 19.6 percent of those not imprisoned. Hispanics accounted for 10.8 percent of those in prison and 10.6 percent of those not in prison. Although these proportions are not reflective of the general population, their consistency may mitigate the general effect of the greater proportion known to be in jail.

Of more concern was the finding that a much greater proportion of suspects known by race were also known by identity. In the general population of threateners, three fourths were known and one fourth were anonymous. Among those threateners for whom race was known, 88 percent were identified and 12 percent were anonymous. Obviously, knowing the suspect equated reasonably well to knowing the race of the suspect. Yet, that suggestion alone indicated that knowing the race of the suspect may not be representative of the general population of threateners. Thus, although the suspects are analyzed by race, the results offered here are very much suggestive only. Much more research—much more information—is needed before any conclusions can be supported.

## White Suspects

When race was known, the majority of the suspects, 954 of them, were white. The overwhelming majority of white suspects were males whose identities were known. They made specious threats to white victims. The large majority of white suspects acted without accomplices or group affiliations. Their threats tended to be immediate and physical.

The majority of threats by white suspects were direct to district-level judges and included additional victims. They were written, and, because a bare majority of the suspects were not incarcerated, an equally bare majority of their threats were potent.

What accounted for the high rate of speciousness of threats by white suspects was the tendency among whites to write out their threats, to make them habitually, and to make them from prison. Little else among their threats distinguished whites from other races among those threats for which race was known.

Of the 954 threats known to have been made by white suspects, all were rated. Of these, 870 were specious (91.2 percent), 57 were enhanced (6.0 percent), and 22 were violent (2.3 percent). Knowing that a suspect who threatened a federal judicial official was white helped de-escalate the potential risks of the threat. Overall, white suspects were more likely to engage in specious or enhanced threats, rather than violent ones. Certain variables tended to escalate the potential risk of threats made by whites. Knowing that the threat was related to a specific case, or that it entailed some suspicious activity, or that it targeted a circuit court judge, or that it was made by a suspect who was not in jail or who was known to be affiliated with a group, all of these factors individually (and not in some combination of increasing increments) were associated with enhanced and violent outcomes among white suspects.

White hunters, like all those who hunted the federal judiciary, tended to shun written and telephone communications in favor of action. They were angry over a specific case, though the type of case seemed to have little effect. Compared to the

howlers, the hunters hunted the prosecutors and others, such as jurors or witnesses or court clerks. Nevertheless, half the enhanced and just less than a third of the violent threats by white suspects targeted district-level judges. Their threats, too, tended to be explicitly physical and immediate. White hunters also seemed to prefer to keep their identities hidden, though their involvement with a specific case probably made that impossible in a practical sense. White hunters were not confined to prison. They also tended to belong to a group or at least, like Moody, to claim such membership. In all of these attributes, they were distinctly different from white howlers.

## Black Suspects

Suspects were identified as Black in 274 of the cases, about 8.8 percent of the total number of threats. Among the 1,399 cases in which the suspect's race was known, 19.6 percent were Black, a more representative proportion reflecting their composition in the general population. It was not clear, however, if this figure reflected the percentage of Blacks who appeared before the federal courts.

Thus, the following analysis is presented with considerable trepidation, simply because the numbers were there to support an analysis and because race was an identifiable factor among a portion of the suspects. Without many more cases to study, this analysis cannot be considered anything more than suggestive and tentative. Having so cautioned, the analysis nonetheless produced some interesting findings. The overwhelming majority of threats and assaults by Black suspects were made by males against white victims. A large majority of these threats involved known suspects with no known group affiliation or accomplices. Their victims were male; their threats were immediate. And, at a lower rate than either threats in general or other threats where race was known, the large majority of threats by Black suspects were specious.

A majority of threats by Black suspects were

both physical and direct, targeted district-level judges, and were prompted by specific cases before the courts. The threats, too, were potent and made by suspects not imprisoned. A majority of the victims lived in the South, and a bare majority of the threats did not include additional victims.

Threats by black suspects tended to have disproportionately lower representation among several of the variables known to be associated with specious threats. Fewer Blacks wrote out their threats, and fewer were passed on by informants. Fewer Blacks were in prison. They were also less likely to threaten additional victims. Rather, Black threateners tended to be free men upset about a specific case. Their threats tended to focus on a single victim, usually the district-level judge. Perhaps more importantly, Black suspects seemed more prone than suspects of other races to remain anonymous (though a large majority of them were nonetheless identified). These variables all lent themselves to enhanced or violent outcomes.

Among the 274 cases, 273 were rated. Of these, 230 were specious (84.2 percent), 21 were enhanced (7.7 percent), and 22 were violent (8.1 percent). Given these low numbers, the results of the following analysis, once again, are suggestive only. Black suspects were more likely to engage in high-risk threats if the issue involved a specific case, if the target was a prosecutor or other victim, if the suspect's identity was unknown, and if no other victims were involved. These findings suggest, with far from conclusive evidence, some faith in the system held by Black suspects. The relatively great proportion (41 percent) of civil cases motivating Black suspects to make threats, combined with the similarly high proportion (16.0 percent) of Black suspects who deferred their threat by some condition ("If you don't find in my favor...", "If I lose this suit...", etc.) and the two-thirds majority who threatened district-level judges suggest that those Blacks who would harm a federal official were disappointed suitors who brought their problems before the bar only to be disillusioned. In the end, the issue may not be that they were Black, but that they believed.

## Hispanic Suspects

An even smaller number of Hispanic suspects were identified among those suspects whose race was known. In all, 148 cases involved Hispanic suspects. Hence, with even greater caution than offered for the study of Black suspects, the following analysis is proffered.

The overwhelming majority of threats by Hispanic suspects were specious and made by male suspects. A large majority of threats targeted male victims. The threats promised physical harm immediately. There was no evidence of additional suspects and the identity of the suspect was usually known. A majority of threats by Hispanic suspects were directed to white victims (but at a dramatically lower proportion than those victims whom other threateners threatened). District-level judges were the target, though additional victims were generally included. The threats were direct. The suspects had no known group affiliation. A bare majority of the threats were potent because a bare majority of the suspects were not incarcerated.

Hispanic threateners were more likely to spout off their threats to an informant than to communicate directly to the victim. They also relied on contract killings. Although they tended to belong to groups, they seemed incapable of enlisting accomplices. Although a majority threatened district-level judges, a disproportionate number focused on prosecutors. Most interesting of all, they showed a distinct preference for threatening fellow Hispanics, a finding probably attributable to the disproportionate representation of Puerto Ricans among both victims and suspects.

Of the few cases known to involve a Hispanic suspect, only ten ever resulted in an enhanced or violent threat, far too few to support any comparisons. Of the ten threats, three were enhanced and seven entailed some element of violence. Among the three enhanced cases, an AUSA was followed after a court proceeding involving Hispanic defendants. In the second case, suspicious cars were observed driving past a district judge's home. When the police arrested one of

the drivers, he was found to possess a firearm. In the last enhanced case, the suspect rode in the elevator with a prosecutor, then called a local television station to tell them how easy it would have been to kill him. He promised that next time he would.<sup>2</sup>

Among the violent cases, four involved muggings or other assaults unrelated to the victim's judicial position. Among the three remaining violent threats or assaults, one judge's house was broken into while he was in church. The Hispanic men who broke in asked for the judge, but left when they found him gone. In another case, shots were fired at a judge while he was out jogging. An investigation indicated that the attack resulted from adverse publicity the judge had received. Finally, a judge's car was rammed at a gas station. Witnesses claimed it looked like the crash was done purposefully.

What is probably most evident and important about Hispanic threats is the small number of cases that escalated to some potential risk. The overwhelming majority of threats from Hispanics were specious. Despite fears of Colombian hit teams and the Medellin drug cartel, despite the overwhelming violence these drug traders wreak in Colombia and other South American countries, in the United States they have remained rather passive. The judiciary may be troubled by threats, but it has stayed out of harm's way from Hispanics.

### Female Suspects

Since male suspects composed nearly 93 percent of the suspect population, the character and nature of their threats would be no different from threats in general. Female suspects, however, composed a small proportion of the suspect population, about 7 percent. Although the number of cases was small, the gender of the suspect was known in 85.9 percent of all the reported threats, large enough to assure that the small proportion of females accurately reflected reality.

The overwhelming majority of threats by female suspects were specious. They targeted a

white victim and were made by suspects who had neither a group affiliation nor any accomplices. A large majority of the female suspects were known. They were not incarcerated, hence their threats were potent. The threats were also immediate and physical, and made against male victims. The majority of the threats were made by white females against district-level judges with no additional victims. The threats were related to a specific case and tended to be direct.

On the few occasions when a female threatened a federal judicial official, her threat seemed surprisingly similar to those from other women. Unlike other characteristics, female suspects seemed much more homogeneous, their threats containing a good deal more in the large majority category than in the simple majority. Whatever females did, they seemed to do it in patterns. Women suspects were worried about particular cases and less likely to threaten the courts for the intrinsic pleasure of the threat. Females, too, were less likely to be prisoners, but they were more likely simply to wish someone else would implement the threat. This passivity on their part probably accounted for the high percentage of their threats that were specious.

Only nine female suspect threats were rated enhanced, and only three were rated violent. These were obviously far too few to support any comparisons. Of the nine enhanced threats, four entailed unscheduled visits to the courthouse, and one involved a prosecutor finding dried blood (à la a voodoo ceremony) on his porch. Three cases involved two different women trying to visit Supreme Court justices with whom they were obsessed. The last case involved a female suspect being arrested armed with a pistol after threatening a judge.<sup>3</sup>

Of the three violent threats, one involved a woman resisting arrest after threatening a judge, one involved a woman attempting to break into a judge's house, and one involved a woman who first assaulted a prosecutor and, after being convicted for the assault, vowing to the deputy marshals taking her to prison that she would kill the prosecutor.<sup>4</sup>

## Summary

Analyzed by victim and suspect, the fact that the victim was an official clearly attracted the threat. But there the importance of the victim, his or her title, his or her race or gender, just as clearly ended. With some variations and a few exceptions, no single judicial position seemed at any greater or lesser risk than any other judicial position. District-level judges received more specious threats, and circuit court judges received proportionately more enhanced threats. The difference, however, was entirely accounted for by one suspect who first hunted one victim before howling at other victims. Absent Moody, threats to circuit court judges carried a rate of speciousness of 93.8 percent, four tenths of a percent higher than the rate for district-level judges. Although it would be absurd to discount Moody's threats entirely, at the same time they should not be given too much emphasis, simply because by targeting the small population of circuit court judges, his block of threats carried a disproportionate weight.

Among the variables associated with the suspects, certain distinct patterns emerged that tied the threat's outcome to either specious, enhanced, or violent ratings. Using as a baseline the 92 percent rate of speciousness for the database overall, if the suspect was not known to be incarcerated, the rate of speciousness dropped to 88 percent. If the suspect evinced some evidence of group membership, the rate of speciousness dropped to 88 percent. If the suspect had the support of accomplices, the rate of speciousness dropped to 86 percent. If the suspect kept his identity hidden, the rate of speciousness dropped to 85 percent.

If the suspect was unknown and expressed his threat with suspicious activity, the rate of speciousness dropped precipitously to 36 percent. If the suspect was unknown but motivated by an ideological cause unrelated to a specific case, the rate of speciousness dropped to 75 percent. If the suspect was unknown and threatened a prosecutor, the rate

of speciousness dropped to 84 percent. (Because of Moody's actions, the rate of speciousness for circuit court judges was 51 percent. Without Moody, the rate would have been higher, but with only 31 cases to assess, still far too few in which to have any confidence.)

These ratings were based on independent assessments of each suspect characteristic. Combined, the characteristics resulted in different ratings. Unknown suspects known to belong to a group and motivated by ideological causes unrelated to a specific case dropped the rate of speciousness to 68 percent. If those same suspects, regardless of motive, threatened a prosecutor, the rate of speciousness dropped to 79 percent. Unknown suspects who were not incarcerated and whose threats were prompted by a specific court case had rates of speciousness of 87 percent. Unknown suspects who were not incarcerated and who belonged to some group made threats with a rate of speciousness of 75 percent. If those suspects were motivated by some ideological cause, their rate of speciousness dropped to 68 percent.

With every drop in the rate of speciousness below the 92 percent average for all threats, the potential risk to the victim steadily escalated. This is not to say the victim was pressed into any danger. An 85 percent rate of speciousness, after all, meant that a large majority of the victims remained safe and unharmed. It meant simply that the odds were no longer as good, that for every one hundred victims over the thirteen years, fifteen were at risk, not eight. Consequently, screening the threats by specific suspect characteristics—indeed, by the specific threat characteristics detailed in this and previous chapters—helped determine precisely what the odds were for any threat. In that determination lay the best method to begin—and I emphasize the beginning—an analysis of threats and assaults on federal judicial officials.

## 8. ASSESSING INAPPROPRIATE COMMUNICATIONS TO AND ASSAULTS AGAINST FEDERAL JUDICIAL OFFICIALS

If but one conclusion were to emerge from this study, it would be that because the federal judiciary must exert its authority into the personal lives and concerns of the citizenry, the judiciary will continue to be haunted by the outraged wail of the howler and stalked by the angry determination of the hunter. Whether voluntarily or in chains, as long as men and women bring their troubles before the federal bar with their own sense of justice and their own definition of what is fair and right, some of them will always be disappointed and angered by the decisions handed down. That disappointment and anger can easily ferment into danger.

In a way that no one imagined two centuries ago, the federal government has become an intimate part of the daily life of every citizen. Federalism has gone beyond the national defense, the regulation of the separate states, and the commerce among those states. Federal power taxes our incomes, assigns our children their schools, dispatches our soldiers throughout the world, tests our food and drugs, regulates our purchase of weapons, conserves our resources, seizes personal assets, feeds our poor, tends our sick and aged, and sentences more people to prison than most other nations in the world. Amid it all, the courts interpret and apply those laws, thus directing upon itself, as a matter of course, opposition and outrage.

The consequences will inevitably persist. In a way that no one imagined even a generation ago, citizens now appeal to the federal courts to uphold their own sense of fairness. They seek not just exoneration, but an illusive righteousness that they alone define. They stand before the bar in full expectation that the courts will understand their pleas, that the courts will uphold them.

And the courts are now imperiled in a way that no one imagined even two decades ago. In the last 20 years, more federal judges have been brutally assassinated than in the 175 years before. In that first century and three quarters, only one federal judge had ever been killed as a result of his official duties—and that judge's principal problem was that he was just a bit slower on the draw. Not a day has passed for at least a decade that some federal judicial official somewhere in the United States is not under the 24-hour protection of deputy United States marshals.

The federal judiciary is not simply imperiled; it is besieged. Courthouses throughout the country have been fortified. Their entrances are now blocked; all who enter are screened with sophisticated electronic equipment operated by armed guards. The benches behind which judges sit are now armored and equipped with panic buttons to summon help. Their chambers are bolted shut, and the entries are surveilled by cameras.

Those who besiege the judiciary are the beseechers, both the innocent and the damned. They are drawn to the courts in great expectation of exoneration and affirmation. They do not seek justice, but agreement. When Charles Koster carried his daughter's suit to the Southern District of New York, he expected Judge Richard Daronco to sustain her. When Walter Leroy Moody appealed to the Eleventh Circuit, he expected Judge Robert Vance to affirm his pleadings. When the courts rejected the suits, both men lashed back violently.

When Jack Gary McKnight pled guilty to cultivating marijuana in Kansas, he never intended to go to prison. He simply surrendered himself to the overwhelming power of the state. Incapable of admitting that he was responsible for the crimes

he had committed, McKnight convinced himself that the courts had taken his freedom, his wife, his house, and his job. McKnight wrongly believed that all he had left was his dignity. He determined to resist, but not with any expectation that he could win his freedom in some romantic gunfight. Quite the contrary, McKnight fully expected to die. He simply intended to take as many lawmen as he could with him.

On August 5, 1993, dressed in his Sunday best and armed with three pistols and two dozen pipe bombs, McKnight launched his assault on the Topeka courthouse and terrorized the court clerk's office before abruptly killing himself. During the attack, McKnight forsook the last of his dignity.

Still, we must not take our bearings solely from the dark side of the moon. These incidents, distressing as they are, must be kept in perspective. Inappropriate communications and assaults against federal judicial officials are a problem, but not in their frequency or number. Compared to the entire population of federal judges, prosecutors, clerks, and jurors over the thirteen years of this study, the 3,096 who reported to the Marshals Service that they had been victimized by threats or assaults were only a small portion of the whole. Even if that number were under reported, the total still would not rise to a major proportion of the total population of federal judicial officials.

It is a simple fact that most officials in the federal judiciary spend most of their careers unperturbed by howlers and free of hunters.

Even among those officials who were pestered, the proportion who were physically imperiled was even smaller. Of the 2,996 reported inappropriate communications and assaults that could be rated by outcome, 242 of them posed some enhanced risk to the victim. In other words, some 91.9 percent of the rated cases were specious, the communications empty and ultimately harmless. Of the 242 problem cases, 118—fewer than half—contained some element of violence. Stripping away those assaults unrelated to the victim's official duties left 81 cases of a federal official immediately threatened with physical injury or harm. Even among those who suffered some

violent threat, the attack itself was often directed at a witness or at some property, not at an official of the court.

In the end, of 3,000 reported cases, two judges were murdered and a bare handful of other officials were physically endangered by direct violence against them as a result of their station within the federal judiciary.

Of course, even one casualty is way too many. The problem here is not so much the frequency or number of threats, but that *any* threat or assault against *any* jurist is an assault on the very structure of justice. It cannot be allowed, because it threatens us all. The point is not to take comfort that the odds are better than nine to one that any threat to a judicial official will be specious. Rather, we must do something to improve those odds even more. The objective is to ensure the safety of *all* federal judicial officials. By warranting their safety, we ensure justice itself.

Achieving the objective depends on an intelligent, cogent method to assess and manage inappropriate communications.

## The Findings

In a detailed, mind-numbing analysis of almost three dozen variables related to inappropriate communications and assaults on federal judicial officials, some straightforward findings emerged with startling clarity. The communications were analyzed by their method of delivery, their motive, their victim, and their suspects. Within each of these broad categories, a number of characteristics were compared. Trends were isolated and explored. The result was an exhausting—if not exhaustive—analysis of what could be known about a particular set of 3,096 inappropriate communications and assaults reported to the headquarters of the Marshals Service between 1980 and 1993.

Of all the factors studied, the method of delivery had the strongest relationship to the outcome of the incident. It was the one aspect of the situation completely in the control of anyone who intended to harm a federal official. During the

term of the study, those who spouted off to informants, those who telephoned, and those who wrote maintained a rate of speciousness of greater than 96 percent. Even the majority of those who took some additional step generally did not put the victim in any pressing or immediate danger.

The only major exception as a handful of bombs or crude incendiary devices sent through the mails. Although infrequent and then usually thwarted, such a device did kill Judge Robert Vance at his home. The solution to this problem, of course, is simple and convenient. Judicial officials need merely have their mail redirected to the courthouse for screening and x-ray, thus assuring that any suspicious or deadly package can be intercepted and neutralized. If that be done, then the risk of receiving a bomb or incendiary device would be neutralized effectively.

The more troublesome threats were the suspicious activities related to the victim and the threats delivered verbally. These cases indicated some initiative on the part of the suspect to implement the assault, either by an outright attack, such as the one that killed Judge Daronco, or through some symbolic message left in the victim's path. These were the threateners who went beyond howling to action. They took up the hunt, frequently without forewarning, and launched their assaults while their victims were unsuspecting. Though very few in number, the hunters caused the most physical and psychological injury.

Consequently, the method of delivery the suspect chose to use in delivering his communication was the single most important measure of the suspect's true intent. Those who wrote or telephoned or spouted off to an informant signaled that they preferred to maintain physical distance between themselves and their victim. In that distance lay the victim's safety—and the howler's. Those few who truly intended harm took action, most often without warning.

The analysis also found, though not with the same clarity, that the motive propelling the inappropriate communication revealed the threatener's purpose and rationale. In that revelation lay the best measure of the strength of the threatener's resolve. The method of delivery told us something

of the suspect's intent, whether to howl or to hunt. What he revealed about his motive told us something of the strength of that intent: how resonant would be the howl, how resolute the hunt.

Inappropriate communications inspired by certain motives—habitual, organized crime (unrelated to a specific case), personal to the confidential informant, and personal to the prisoner—maintained comfortably high rates of speciousness. Other motives—ideological (unrelated to a specific case) and personal to the victim—averaged distressingly low rates of speciousness. Finally, case-related, irrational, and insufficient-evidence motives by themselves maintained an indistinguishable rate of speciousness. In combination with certain other variables, however, their rates of speciousness escalated or de-escalated to comfortable highs and disturbing lows.

Despite the fact that we knew most about the victims, victim characteristics had but weak relationships to outcomes. Obviously, the one aspect of a threat situation that can be controlled with considerable confidence is the victim's behavior, thus ensuring that in those situations of the greatest potential danger, the victim can be protected, even hidden or isolated. But what we know about the victim offered little advantage in assessing the potential outcome.

Conversely, what little we knew of the suspect dramatically enlightened the assessment. The vast majority of the incarcerated suspects, for example, could not overcome their institutionalized impotence to implement their threats. Howlers who promised to let a contract to kill the victim also maintained very high rates of speciousness. Conversely, those suspects who hid their identity, who were known to have some affiliation with an organization or group, or who were known to have accomplices averaged disturbingly low rates of speciousness. Although the race and gender of the suspects indicated some trends in terms of threat outcomes, there were too few cases, and the cases were too skewed by other characteristics, to gain any confidence in the tendencies.

After slogging through all the tables and comparisons and chi-square correlations, what was

perhaps most important about the analysis of these cases was the realization that assessments run in two directions. It should be just as important to identify those inappropriate communications with a comfortably high likelihood of speciousness as it is to isolate those with a distressingly high likelihood of being either enhanced or violent. Indeed, given the overwhelming preponderance of speciousness among the vast majority of the cases, it is easier to describe communications in terms of their rates of speciousness, not their rates of enhancements or their rates of violence.

As a result of this study, we know that over a thirteen-year period, 92 percent of the reported inappropriate communications and assaults on federal judicial officials were specious. Consequently, we begin any assessment with the odds stacked well in our favor. The assessment, then, should focus on improving those odds by segregating out those variables associated with higher rates of speciousness from those correlated with lower rates. If nothing else, this study promises a more cogent approach to assessing inappropriate communications and assaults on federal judicial officials by tying them to what we know happened in the past, not what we fear might happen in the future.

### **The de Becker Approach**

In an effort to assess threats (and assaults can only be assessed as they threaten future assaults), the first necessity is to think. Gavin de Becker pioneered this approach by structuring a process for analyzing inappropriate communications. Through his studies, his consultations with behavioral experts, and the massive data he has accumulated, de Becker relies on the past to inform his assessments. He evaluates inappropriate communications to public figures by screening out those that clearly resemble previous cases that ultimately proved harmless. This allows him to focus on those communications that most resemble cases that posed some escalated risk. De Becker's system is now expressed in a computerized format called MOSAIC.

De Becker believes in screening all inappropriate communications, whether they express an explicit threat or not. He screens both direct threats and irrational ramblings of the mentally distressed, angry letters and incoherent telephone messages, everything from the ominous to the offbeat. Over the past decade—and with a client list considerably smaller than the population of judicial officials protected by the Marshals Service—de Becker has screened more than 150,000 such communications, a veritable Ripley's catalogue of the woebegone and the misbegotten.

Although one can fairly assume that those who pester public figures are more prolific and more obsessed than those who demonstrate interest in the federal courts, nonetheless de Becker has clearly accumulated more communications because he has cast his net far wider. In doing so, he has gained more information about the threateners in all their varieties. As de Becker well knows, in making assessments, information is the coin of the realm.

De Becker asks about each inappropriate communication questions that cover nearly a hundred variables. The questions are always the same, thus ensuring that each communication is screened exactly like every other communication. The questions are integrated into a computer program that weighs and measures each potential answer and assigns a scale of values that, when totaled, produces the rating. Because all the inappropriate communications are screened identically, the ultimate ratings are comparable and can be categorized on an ascending scale of potential risk.

In addition, the computer calculates how much information it had available on which to base the rating. That is, it provides an intelligence quotient based on the number of answers selected. The more questions that can be answered, obviously, the more intelligent the computer can be in determining the rating. Thus, ratings based on high IQs are considerably more credible than ratings calculated with low IQs.

Of all the aspects of de Becker's approach, the breadth and scope of the questions he asks about

each inappropriate communication infuse intelligence into his system. For every communication, regardless of how it is delivered, de Becker's system assesses the content, the threatener, and the threatener's perception of the victim. It addresses the expression of the inappropriate message, the threatener's presentation of himself, how he perceives the victim, and any other available information.

In de Becker's approach, the reality presented by the threatener is accepted. Within the assessment, everything is believed, no matter how incredible or outrageous. What matters is not just what is real and true, but what the person believes to be real and true. That is his motive; that is what drives him.

If the threatener brags that he has a gun, he is believed. If he brags that he has traveled 500 miles to see the victim, he is believed. If he is angry or sad, distraught or distressed, he is believed. If he believes he is an alien life form, if he believes the victim is an alien, if he believes *everyone* is an alien, that is the reality upon which the assessment is made. If the threatener believes the victim is an alien and all aliens must die, then that must be accounted for in the assessment. If the threatener believes he is some savior come to spare the victim some harm, then that must be integrated into the assessment. By embracing the threatener's perception of reality, de Becker's system informs each assessment with a hearty measure of purpose and intent.

MOSAIC also measures objective reality by addressing any information available on the disposition and behavior of the threatener. By postmark or other evidence, is there an indication that the person traveled far to be close to the victim? Is there any relevant information of employment history or relationships with family members or neighbors? Does the person have a police record or history of mental disorders? Does he have a steady job, a stable family, a permanent residence? Is he unemployed, alone and adrift, with nothing to lose? Addressing these questions further informs the assessment with information about the suspect, his means and measure.

Once the initial assessment is calculated, de

Becker implements procedures to manage the situation appropriately. The rating determines how best to allocate resources, whether to investigate further, to establish a protective shield around the victim, and so forth. At the very least, a profile is begun on the threatener to enable better pursuit of any future communications he might make.

Most importantly, the victim is advised of any steps he or she can take to lessen the risk, regardless of how low the rating. As de Becker well understands, the one aspect of the situation the victim entirely controls is his or her own response. A simple exercise of reasonable caution goes a long way to frustrating even the most determined threatener.

By drawing as complete a mosaic of the threatener and each of his inappropriate communications as possible, de Becker's system identifies those situations requiring a defensive reaction or a proactive response. The problem is thus managed to the best and least intrusive protection of the victim. The whole approach is informed by an intelligent, comprehensive process of thinking. De Becker's assessments are the best because he asks the most comprehensive questions, and he consistently asks them of every communication. To do less risks more.

### The Secret Service Approach

In their Exceptional Cases Study, Vossekul and Fein concluded that assassinations, whether realized or not, were not acts of spontaneity, but carefully planned and thought out. The hunter does not simply go on the hunt without preparations, plans, fallbacks, and goals. Rather, the hunter identifies his target, plots his approach, prepares himself, and then carefully embarks on the hunt. They call this process the path to assassination.

It is a common path upon which all true assassins must converge. The hunters may start from different directions, different motives, and different goals, but to get where they want to go they have to go down the path to assassination. It

is a simple concept, but all the more elegant for that simplicity. To achieve the hunt, the hunter must do what all other hunters do. He must first come up with the idea of hunting, make a plan, secure his preparations, obtain his supplies, surveil the landscape, figure out how to bypass any security, then begin the hunt. These are, in Vossekuil and Fein's terms, attack-related behaviors. Most importantly, they can be readily identified once the hunter comes to the Secret Service's attention. Intriguingly, an individual hunter can be assessed by where he is on the path. Once assessed, the Service can develop the best strategy for blocking that path.

The tricky part, of course, is to identify the hunter before he gets too far down that path. Although difficult, it is not impossible. The hunter may hunt alone, but he cannot make his preparations, he cannot develop his plan, and he cannot surveil the target area without coming into contact with other people, frequently even law enforcement. Consequently, the Secret Service encourages a heightened awareness of these attack-related behaviors among its agents, other law enforcement agencies, and private citizens with whom it comes into contact. By sharpening their watch, the Service better enables itself to see through the hunter's camouflage.

### Four-Way Street

Each of these approaches, de Becker's and the Secret Service's, offers much in the way of improving the protection and safety of the federal judiciary. As in de Becker's operation, every inappropriate communication should be analyzed using a standardized assessment. As in the Secret Service's, every member of the judicial family must be made more aware of the various sign posts marking the path to assassination. Courthouse employees should be trained in what to look for and to whom to report. Once the communication is reported, then the Marshals Service can make its assessment.

Assessing inappropriate communications depends on checking information from four different

directions—left and right, forward and backward. Any analysis of an inappropriate communication to a federal judicial official has to look at the rate of speciousness. It has to consider the risk of an enhanced or violent outcome. It has to incorporate the individual situation of the victim and the victim's relationship to the suspect. Finally, the analysis has to account for everything known about the suspect. At any point in any direction, any indication of a potential escalation in the risk would compel an immediate response best designed to protect the victim. When crossing four-way intersections, danger lurks at every corner.

To do less than this increases the risk that a managed response will come too late or not at all. Inappropriate communications cannot be professionally assessed if they are not reported. Once reported, there is hardly any point in assessing them if the assessment is not done immediately. There is also little point in assessing inappropriate communications if the assessments are not well informed by past experience. Finally, there is no point at all in assessing inappropriate communications if the assessment is not thoughtful, consistent, and comparable to other assessments.

The four-way process outlined below ensures that each direction of the analysis is integrated into the assessment.

### Looking East

The recipient of the communication makes the most important assessment. In any situation involving an inappropriate communication, whoever receives the message makes the initial determination of whether or not to take the communication seriously, whether or not to report it to the proper authorities, and whether or not to take defensive measures to thwart the threatener's plans. Ignoring or not reporting the communication is, in effect, to assess it as harmless and meaningless. To report it is to assess it as worthy of consideration, both for its potential risk and for any insights that can be gleaned from it for future assessments.

Threat management begins with the person

who first receives the inappropriate communication. In the majority of cases involving judicial officials, the victim receives the message. Hence, the initial, most important assessment is most often made by the person most affected and most personally involved. That person is just as frequently the least able to make an objective assessment or to implement an effective management strategy. The recipient is simply too personally involved.

The point is as simple as it is crucial. Whoever receives an inappropriate communication to a federal judicial official—whether it be information about a suspicious activity or an oddball letter opened by a judge's secretary—must report that communication *immediately* to the local marshals office to give those trained in making objective, rational assessments the chance to do their job and to put their training to its best use. It is not an issue of individual bravery or bravado. Threats to judicial officials are threats to the system of justice as much as they are threats to any individual within it. A threat may not be directly aimed at the person who receives it; others might die and others might be put at grave risk.

At the same time, because of the unique nature of inappropriate communications to federal judicial officials, the victims must be made part of the assessment. In most instances, the victim knows valuable information about the suspect: The victim understands why the suspect is making the threat and what his motive is. In addition, the victim also has some insight into the suspect's ability and determination. The victim can make an appraisal of how viable the risk may be simply because he or she has overseen the investigation of the suspect or has dealt with the suspect in court. This personal knowledge and experience is invaluable information to the marshals who assess the situation.

### Looking South

Once an inappropriate communication is reported to the local offices of the United States Marshals Service, each assessment of every

communication requires two pressing decisions: (1) Does the victim need immediate protection? and (2) Does the communication require detailed investigation?

Occasionally, of course, the answer to both questions is obvious. Victims who have been fired upon, assaulted, or otherwise physically exposed to immediate danger generally require protection, at least until it can be firmly determined that the moment of danger has passed. Outright threats from known terrorist groups known to be loose in an area and known to be violent undoubtedly demand immediate protection of the victim and an immediate investigation of the situation. Neither of these types of cases takes any more sophisticated analytical skills than common sense to reach that conclusion.

Fortunately for the victim, such situations are rare. In most instances when an inappropriate communication is received, nothing more is known about it than what is contained or implied in the message itself. In these situations—the vast majority of those reported to the Marshals Service—the individual marshal's experience and professionalism are brought to the assessment, and the determination to protect or to investigate is made. Precisely at this point, the full experience of the U.S. Marshals Service is brought to bear.

When a district judge receives a midnight phone call and hears someone whisper menacingly, "I'll kill you," it obviously creates a distressing situation for the judge. There is too much unknown, too much that can happen, too much that can be imagined. The victim is left to his or her own imaginings, which may be precisely what the suspect wants. Where is the threatener, just outside the house or miles away? Why did he choose to call rather than send his threat in writing or, worst of all, pay a visit? What is his complaint? Why is he so mad at the victim that he threatens to kill?

None of this can be known from the evidence at hand. At first blush, all that is really known is the threatener's expressed intent to kill the victim, the threatener's choice of medium for delivering the threat—that is, in this hypothetical case, the

telephone—and the evidence that the threatener knows the victim's telephone number, which is to assume the threatener knows where the victim is. Given the proclivity of some members of the judiciary to publish their names, addresses, and phone numbers in public telephone books, even that may not be as ominous as it sounds. But then again, it might be.

What else is left to investigate? Local calls cannot be traced after the fact. If the judge did not recognize the suspect's voice, establishing the threatener's identity is nearly impossible. Is it an outraged litigant, an irate neighbor, a prankster, or simply a wrong number? Why call? Why not just do the deed and escape? By calling does the threatener declare some kind of psychological warfare to unnerve the victim without actually harming anyone, or does he truly intend what he avows—and, if so, does he have the will, capability, and opportunity to carry out his intent?

Fortunately, the Marshals Service now knows a great deal beyond the meager specifics of this particular threat on this particular night. Based on the information about threats collected at its headquarters from 1980 through 1993, the Marshals Service knows quite a bit about threats to the federal judiciary in general. With this knowledge, we can begin to assess this particular threat by comparing individual threats to similar threats at other times in other places to other victims. Unlike a specific threatening telephone call about which so little is known, we know considerably more about past telephone threats in general. We know their patterns and their common characteristics, their motives and victims and the types of people who make them. Most importantly, we know their outcomes.

The comparison of current to previous threats is based on the fundamental assumption that what has gone before is a reasonable gauge to determine what may come. That is to say, for purposes of analysis, we must assume that the future looks essentially like the past, that behaviors fall into patterns and that the patterns hold true from one individual to the next and across time. The analysis assumes, for example, that people who make threats in certain ways—by telephone or mail, for

example—or use certain expressions—"I'll kill you" or "That judge should be shot"—will ultimately behave in ways similar to those who *in the past* made threats in the same way or with the same expressions.

Beyond the past, there are few alternatives to manage threats short of immediately establishing a protective detail on each victim for each threat while simultaneously launching a full-scale investigation. But does our victim awakened by the midnight phone call really need protection? And what, if anything, is there to investigate? Protective details are expensive, time consuming, and extremely intrusive on the victim and the victim's family. Investigations, too, are expensive and time consuming. With little or no evidence to track, such investigations frequently are fruitless. The quickest assessment, and frequently the only way to make a rational analysis, is to compare a particular threat to the universe of similar events—previous threats.

Statistical information is based on what has happened in the past. It cannot predict the specifics of any future threat beyond simply confirming that in the past, with threats of similar character, certain patterns held true. This is the known. The current threat is the great unknown. Past events give no assurance about the deadly exception and hold no guarantee against a radical departure from the past.

Consequently, as any statistician will aver, statistics are not predictions. At best, they are probabilities based on past behaviors and events. They can be as fickle as the weather, as uncertain as a horse race, as random as the lottery. Yet, for all that, they are as immutable as gravity, as dependable as the seasons, as unchanging as time passing, precisely because they measure what occurred over time. People who drive cars challenge the high rate of accidents, each hoping that individual skill and luck will bely the odds. But the odds exist. Any police department in any major city can state with certainty just how many accidents will occur on any given night. The accidents are not predictable, only probable. Either way, they happen.

So, too, with threats and assaults on federal

judicial officials. They happen. In recent years they have happened often enough to be able to recognize patterns and establish probabilities. With these probabilities we can now assess individual threats with considerably greater confidence than we have ever had.

For any threatening communication, there are at least a dozen variables to analyze. Each can be compared to what is known about previous communications collected over a thirteen-year period. Armed with these dozen variables, we can now determine past probabilities to inform decisions intelligently about protecting the victim or launching an investigation. These probabilities offer an important resource that the marshals have added to their own personal experience, intuition, and skill.

The dozen variables either exist or can be properly deduced for any inappropriate communication sent to any federal judicial official. The variables are inherent in any message; they cannot be disguised or deleted. In their existence lies the quickest, simplest way to compose a probability determination to inform that immediate need to decide whether the victim needs protection or not.

Take again the example of the midnight phone call and the whispered, "I'll kill you." We know from that all we need to know to make an initial determination based on a comparison with the past performance of such communications. We know the threat was by telephone to a district judge, and no additional victims were mentioned. The message contained insufficient evidence to assign a motive. The threat was potent, physical, direct, and immediate. The suspect was unknown, with no information suggesting that the threatener was incarcerated, a member of a group, or aided by additional suspects.

During the thirteen-year study, of a total of 3,096 threats received by federal judicial officials, 28 cases exactly matched the variables inherent in this telephone call. None were ever rated anything but specious. That is to say, the rate of speciousness of such telephone calls to such victims by such suspects was 100 percent.

It is not necessary to match each case variable

to variable. With experience and practice, one can assess the variables in subsets and logical groupings. We know, for example, that telephone threats have a rate of speciousness of 96.7 percent. Is there anything in the specifics of this threat to lower or raise that rate? Assessed by themselves, insufficient-evidence threats were specious 93.3 percent of the time, though insufficient evidence threats by telephone had a speciousness rate of 98.0 percent. Threats to district-level judges in general were specious 93.4 percent of the time. Made by telephone, they were specious 96.7 percent of the time. Threats that targeted a single victim were specious 93.6 percent of the time; by telephone, they were specious 98.3 percent of the time. Similarly, threats by unknown suspects in general were specious 84.9 percent of the time; when made by telephone, threats by unknown suspects had a rate of speciousness of 96.7 percent.

And so, too, with the other variables. Nothing about this particular threat on this particular night gives any probable cause that the threat itself is any more dangerous than similar threats received by other district-level judges over the thirteen-year reporting period. The probability, then, is quite high that the recipient of the threat is at low risk. This is not to say that the judge should so relax that he or she does not need to report the threat, any more than to leave his or her doors unlocked or ignore or forget other simple, nonintrusive security measures (such as taking a different route to work each day or changing phone numbers). It is simply to say that once the threat is assessed, the judge can confidently return to his or her slumbers. He or she need not spend the night prowling the windows armed with rifle, pistol, and cutlass.

The Marshals Service now possesses a computer-based system that performs precisely this type of probability determination for any threatening communication. The system is simple and easy to use. It allows trained analysts to search the database of reported threats to calculate various rates of speciousness as they are affected by the inclusion of each separate variable. In this way, an analyst can determine rates of speciousness and

can compare previous, similar cases to the case at hand.

Using the computer takes no more than fifteen minutes to select the appropriate variables and run the analysis. The system is designed specifically to assist in assessing those inappropriate communications for which there is no other evidence than that which is contained inherently in all communications. Its purpose is to contribute—speedily and universally—some rational, coherent information during those first few moments when a threat is received and a vital decision must be made, and there is nothing but the past to assess.

Obviously, the more that is known or learned about the threat, the more the threat can be assessed on its own, with less need to compare it to the universe of previously reported threats. Should our awakened judge recognize his caller's voice as that of Mad Dog Roy Earle, and should that judge also know that Mad Dog has just that day escaped prison, vowing revenge on the judge who sent him there, and should that judge then glance out his bedroom window and see Mad Dog lurking about, obviously there would be no need for a probability determination—no need, indeed, even to turn the computer on.

### Looking West

Once the initial assessment is made by the recipient and the communication is compared to the known universe of previous threatening messages by the local marshals office, an inappropriate communication still wants a more detailed analysis. Regardless of whether or not the victim has been put under protection or a full-scale investigation has been launched, the communication should still be looked at in detail. The point is to glean as much information and evidence as possible from the message and its medium to shed additional light on the threatener's purpose and intent. It is also important to add each communication to our store of knowledge about these situations and their outcomes. Each inappropriate communication, then, should be

analyzed, catalogued, and incorporated into the data already collected about such messages.

On most occasions, the victim will need neither extraordinary protection nor a full-scale investigation of the threat. Resources—money and manpower—are too limited to expend them on needless protective details or unnecessary investigations. Consequently, most inappropriate communications will still require assessment to reach a sounder conclusion about the potential risk. The most efficient way to conduct a comprehensive appraisal is to use a variant of de Becker's computer-based assessment system. Specially customized to assess inappropriate communications to federal judicial officials, the Marshals Service's version of de Becker's system has been in use since 1995.

The difference between the two computer-based assessment systems lies entirely in the details selected from the inappropriate communication. In the Marshals Service's statistical version, the comparison with previous inappropriate communications is made at a relatively high level of generalization; it is not specific in its questions or particular in its examinations. De Becker's system, however, generates a detailed, individualized analysis of each communication. Though both systems are informed by past experience with such communications and their communicants, the Marshals Service's statistical version relies solely on the past, while de Becker's system uses the past as just one measure of the whole. While the Marshals Service's statistical system assumes that little is known of the communication beyond what is inherent in all communications, de Becker's system extracts as much detail from the message, the threatener, and the threatener's perception of the victim as possible.

De Becker's original system, which his company and several government agencies use to screen inappropriate communications to media and public figures, did not seem to fit well with evaluating such communications to judicial officials. The research conducted by the Marshals Service revealed too many differences between the problems judicial officials confront and those faced by the public figures with whom de Becker

works. The marshals readily embraced de Becker's philosophy of managing threatening situations to the best protection of the target, but the system needed considerable modification. For almost a year, security specialists and researchers with the Marshals Service worked with de Becker and his experts to customize his system to fit the particular needs of judicial protection. The result is called MOSAIC 3 (M-3).

M-3 is a computer-based assessment system that screens inappropriate communications according to the findings of the Marshals Service's research integrated into the expert opinions of security specialists, criminologists, and behavioral scientists. For example, and to illustrate how de Becker's original system differed from what the judiciary needed, several of the questions address what is known about the threatener's personal relationships and ties. These are factors such as long-term, steady employment; stable family relationships; and home ownership. For those who communicate inappropriately with public figures, the stronger such ties, the less chance the threatener will attempt an approach on the target. These factors serve, in de Becker's view, as "inhibitors."

Court decisions, however, may actually disinhibit the threatener by taking away his house, his job, his family, even his freedom. Consequently, though the researchers agreed with de Becker that individuals with such inhibitors were less likely to act, the Marshals Service had to address what happened when the courts themselves were perceived as responsible for disinhibiting those individuals, thus increasing the risk that the threatener would do something to create a dangerous or ominous situation. M-3 thus escalates the rating whenever there is evidence that a court decision may have stripped the threatener of his home, his job, his family, or his freedom. The rating goes even higher if there is evidence that the threatener believes that this was done unjustly.

The computer rating can help determine how to manage the situation. Communications with a low rating are catalogued for quick reference in the event more communications are received. They are incorporated into the Marshals Service's

database to keep it current with changing trends among such communications. Those messages that gain a higher rating are fully investigated and necessary precautions, such as intervening personally with the suspect or implementing a 24-hour protective detail on the targeted victim, are recommended.

Every inappropriate communication can now be rated against what is known about previous communications and their outcomes, combined with the experience of the experts. The rating helps us to make *informed* decisions on how best to allocate resources, whether simply to track the communication, launch a full-fledged investigation, or establish a protective detail. Every communication is managed in the same way, screened through the computer and then dealt with appropriately.

Of course, the Marshals Service has no concern with appropriate communications, legitimately communicated complaints or court filings, or even angry threats to have a judge impeached or publicly exposed. These are respected rights enjoyed by all American citizens. The Marshals Service is concerned only with an inappropriate communication to a judge, prosecutor, witness, or other participant in the judicial system. These communications include explicit threats of harm, but go beyond that to include the bizarre and unusual, the crazy and the inappropriate. Those who perceive a federal judge as an agent of the devil or who claim to be acting on the direct orders of some superior being or alien life form, those who write the judge to extort a favorable decision or warn off a prosecutor or intimidate a juror, these threateners also come under scrutiny and are managed to the best protection of the victim.

### Looking North

Computers are no replacement for experienced, highly trained people and the creative assessments they make. Neither of the computer-based assessment systems described above can work independently of a trained, professional in-

investigator. The computers can only rank and ravel. Once their results pop onto the screen, the machines can do no more than quietly hum and await the next entry of data, the next touch on their keys. On their own, they cannot investigate the threatener or protect the victim.

Every inappropriate communication is assessed by analysts using the best computer-based systems and deputy marshals trained in the art and science of protective investigations. Not every communication need be investigated, only assessed. The results of the analysis can then determine the best course of action. It is crucial, however, that the assessment be made by analysts and deputies independently. In this way, each backs the other up. If their conclusions agree, a response can be formulated. If their assessments disagree, the case needs a closer look.

At any point, the deputy can overrule the computer and escalate the rating of the communication to effect the protection of the victim. It is inconceivable that a deputy might dismiss a high rating from either computer system, since doing so would be indefensible. But it is entirely conceivable that a deputy might ignore a low computer rating because something about this particular communication on this particular day just "doesn't feel right." In other words, at any point in either of the two computer-based assessments, a deputy can trip an alarm generating a response, but at no point in either computer-based assessment can the deputy silence an alarm.

Finally, the marshals investigate every threat that seems to warrant a closer look. It is the only way to gain an accurate measure of the suspect's intent, ability, and determination. Without mea-

suring those factors, no threat can be accurately—or even adequately—assessed.

The greatest risk in this method is that a greater number of false positives (defined as threats mistakenly rated high) will result. That is an entirely acceptable and laudable effect, certainly better than too many false negatives (defined as threats mistakenly rated low). It is far better to be too cautious than not cautious enough. It is far better to regret having established a protective detail than to regret *not* having establishing one.

### Encompassing Assessments

Thus, standing at the four-way intersection of risk assessment requires one to look at all points of the compass—east, south, west, and north. Any sense of any danger from any direction can generate an immediate response.

Sadly, we now know considerably more than any of us should ever want to know about inappropriate communications to and assaults against federal judicial officials. We know the fear they generate, the discomfit of the victim and the victim's family. We know the bereavement they can cause, the sad toll of the mourning bell.

But we also now know their feel and taste, their trend and pattern. We know better than we knew before which to fear, which to attend and which to account. Most of all, experience has taught us how best to manage our responses so that neither the wail of the howler nor the stalk of the hunter can haunt or hound us.

## NOTES

### Preface

1. Gavin de Becker, *The Gift of Fear: Survival Signals that Protect Us from Violence* (New York: Little, Brown, 1997), 117.

### Introduction

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### Chapter 1. Contempts of Court in Historical Context

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3. 62 Stat. 756.
4. William Blackstone, *Commentaries on the Laws of England: A Facsimile of the First Edition of 1765-1769*, vol. 4 (Chicago: University of Chicago Press), 126.
5. John C. Fox, *History of Contempt of Court: The Form of Trial and the Mode of Punishment* (Oxford: Clarendon Press, 1927), 227.
6. Fox, *History of Contempt of Court*, 227-42.
7. Dan B. Dobbs, "Contempt of Court: Abusing," *Cornell Law Review* (January 1971) 56:187n.9.
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10. "An Act to establish the Judicial Courts of the United States," September 24, 1789, 1 Stat. 71, Section 17; "Act for Punishment of certain Crimes," April 30, 1790, 1 Stat. 112.

11. *U.S. v. Caton*, 25 F.Cas. 350 (C.C.D.C. 1803) (No. 14,758); *Offutt v. Parrott*, 18 F.Cas. 606 (C.C.D.C. 1803) (No. 10,453).

12. *U.S. v. Lowry*, 26 F.Cas. 1008 (C.C.D.Pa. 1808) (No. 15,636).

13. *U.S. v. Hudson*, 7 Cranch 32; see also *In re Bergen*, 3 F.Cas. 261 (C.C.D.N.C. 1870) (No. 1,338).

14. *Anderson v. Dunn*, 19 U.S. 204 (1821).

15. *Commonwealth v. John Stuart and others*, 2 Virginia Cases 320.

16. *Commonwealth v. Dandridge*, 2 Virginia Cases 408; Fox, *History of Contempt of Court*, 4-15.

17. Parker, concurring, *Commonwealth v. Dandridge*, 2 Va. 408; *U.S. v. Carter*, 25 F.Cas. 313 (C.C.D.C. 1829) (No. 14,740).

18. Kermit L. Hall, *The Politics of Justice: Lower Federal Judicial Selection and the Second Party System, 1829-61* (Lincoln: University of Nebraska Press, 1979), 14-15.

19. "An Act declaratory of the law concerning contempts of court," March 2, 1831, 4 Stat. 487-88.

20. "An Act declaratory of the law concerning contempts of court," March 2, 1831, 4 Stat. 487-88; *Ex parte Poulson*, 19 F.Cas. 1205 (C.C.E.D.Pa. 1835) (No. 11,350).

21. *U.S. v. Emerson*, 4 Cranch 188.

22. *U.S. v. Smith*, Federal Cases 16,333; *State v. Haupton*, 63 N.C. 13 (1868).

23. *Ex parte Robinson*, 86 U.S. 505 (1873); *Ex parte Wall*, 107 U.S. 265 (1883). For Field's personal troubles with contempt of court, see *People v. Turner*, 1 Cal. 152 (1850); *Ex parte Field*, 1 Cal. 187 (1850); *People v. Turner*, 1 Cal. 188 (1850); *People v. Turner*, 1 Cal. 190 (1850).

24. "Note," *In re Carey*, 10 F. 622 (S.D.N.Y. 1882).

In comparison with federal courts, state courts have embraced a much more powerful interpretation of the contempt power. Fighting in the yard of the courthouse was deemed contempt of court in North Carolina in 1844 (*State v. Woodfin*, 5 Ired. 199). In

Arkansas, publishing an article claiming the court had been bribed was considered contempt in 1855 (*State v. Morrell*, 16 Ark. 384 [1855]), as was an attorney's "unwarrantable, unprovoked and infamous personal attack" on a judge in 1860 (*Beene v. State*, 22 Ark. 149 [1860]). Conversely, tacking a note on the judge's door saying the judge is "a dam'd base and corrupt man" was not contempt in 1849 (*Neel v. State*, 4 Eng. 263). In Vermont, Jesse Cooper praised a justice of the peace for being "wiser than the supreme court" and found himself held in contempt (*In re Jesse Cooper*, 32 Vt. 253). Writing for the Vermont court in that case, Judge Aldis described the power to punish contempt in dramatic, broad sweeps:

The power to punish for contempt is inherent in the nature and constitution of a court. It is a power not derived from any statute, but arising from necessity; implied, because it is necessary to the exercise of all other powers. It is indispensable to the proper transaction of business. It represses disorder, violence and excitement, and preserves the gravity, tranquility, decorum and courtesy that are necessary to the impartial investigations of controversies. It secures respect for the law by requiring respect and obedience to those who represent its authority. Its exercise is not merely personal to the court and its dignity, it is due to the authority of law and administration of justice.

In Illinois in 1872, a newspaper article critical of a case before the court was held as contemptuous because "publications scandalizing the court, and intended to unduly influence and overawe its deliberations in causes pending, are contempts which the court is authorized to punish by attachments" (*People v. Wilson*, 64 Ill. 195).

Attorneys seem to suffer most from the contempt powers of the state courts. When an attorney assaulted the judge during a court recess, he was held in contempt in Louisiana in 1873 (*State v. Garland*, 25 La. Ann. 532). It was just as contemptuous in Massachusetts for an attorney appointed a receiver to embezzle funds (*Cartwright's Case*, 114 Mass. 230). Written petitions or arguments, when signed by the attorney, were adjudged as contempt in Kentucky in 1875 when they incorporated "into such arguments contemptuous, scandalous, or insulting matter" (*In re R. W. Woolley*, 11 Bush 95). An attorney in Kansas was held in contempt after he wrote the judge a letter

in 1877 describing the judge's decision as "contrary to every principle of law" and "everybody knows it" (18 *Kansas* 73). In New York, an attorney was found in contempt for writing the judge to accuse him of being "unjust." The court there proclaimed that "every insult offered a judge in the exercise of the duties of his office, is a contempt" (*In re Griffin*, 1 N.Y.S. 7). When Hoskins, an attorney, cross-examined Mrs. Pace, he easily made her out to be a liar. This so enraged her husband that he "assaulted and severely beat" the attorney and was thus held in contempt (*Pace v. State*, 177 Ark. 512 [1928]). Another attorney in Illinois pretended to represent a witness and filed a *habeas corpus* to release the witness from protective custody. When the court found the attorney actually represented the defense, it held the lawyer in contempt. "It is axiomatic that law and order should not only prevail" the appeals court announced, "but be enforced in courts of justice" (*People v. Rongette*, 250 Ill. App. 428).

When the plaintiff in a suit attacked the defendant's attorney during court, he was held in contempt in Connecticut in 1876 (*Middlebrook v. State*, 43 Conn. 257 [1876]). When Baker, a party to a suit in Georgia, complained about it to the judge, in front of the jurors, five minutes before court began, he was held in contempt (*Baker v. State*, 82 Ga. 776 [1889]). Another Georgia litigant assaulted a witness in open court in 1889 and was held in contempt (*Swafford v. Berrong*, 84 Ga. 65 [1889]). A luckless California litigant was held in contempt for writing a judge about a case that was still pending (*State v. Waugh*, 53 Kan. 688 [1894]). North Carolina held it contemptible to assault a judge at his boardinghouse (*Ex parte McCowen*, 139 N.C. 95 [1905]). So, too, was assaulting a judge on holiday in Arbordale Springs, Arkansas (*Weldon v. State*, 150 Ark. 407 [1921]). In Florida in 1908, a party who "needlessly and persistently aggravates and exasperates the judge beyond endurance" was found in contempt (*Stewart v. Beggs*, 56 Fla. 565 [1908]). However, once court has adjourned and the judge left the room, a person who "used highly disrespectful and contemptuous language" about the court may well be in contempt, but he cannot be held summarily so. A hearing is required since the judge was not witness to the offense (*Ex parte Wisdom*, 223 Miss. 865 [1955]).

When a defendant beat up the complainant in the hallway outside the court, it was contempt in Illinois in 1924 (*People v. McDonald*, 314 Ill. 548 [1924]). A similar assault took place two years later

with similar results (*People v. Clancy*, 239 Ill. App. 369). In Oklahoma in 1954, two parties to a suit tried to settle it with fisticuffs in the hallway outside the court. Both were held in contempt for disrupting the court (*Young v. State*, 275 P.2d 358 [Okla. Cr. 1954]). Turquette went one better. Rather than assault his accusers, he hit the judge when he ran into him on the street. The court there held that "all acts which impede or obstruct a court of justice, or which tend to produce such effect, whether done in or out of court, are to be considered as done in the presence of the court, and are punishable as contempt" (*Turquette v. State*, 174 Ark. 875 [1927]). In Iowa, accosting a judge at the YMCA, including "shaking him and calling him vile and profane names," is also contempt (*Besignano v. Municipal Court of Des Moines*, 237 Iowa 895 [1946]). So, too, is visiting the judge in his chambers "for the purpose of forcing the judge, by physical force or violence, to apologize" (*City of Macon v. Massey*, 214 Ga. 589 [1958]). Curiously, it is not contempt to attack a judge at a gas station in Texas since the attack was "not reasonably calculated to impede, embarrass, or obstruct the court in the discharge of its duties" (*Ex parte Soape*, 347 S.W. 2d 621 [Tex. Cr. App. 1961]).

Throwing a book at a judge is contemptible (*Commonwealth v. Mayberry*, 435 Pa. 290 [1969]). So, too, is calling the judge prejudicial and then trying to force one's way out of the courtroom (*State v. Jones*, 105 N.Y.S. 493). Outbursts during a trial are subject to contempt, including vocal demonstrations, refusing to stand upon the judge's entry, spitting at the judge, or loudly criticizing the court (*In re Katz*, 309 N.Y.S. 2d 76 [N.Y. Sup. 1970]; *In re Katz v. Martagh*, 28 N.Y. 2d 234 [1971]; *Knox v. Municipal Court of City of Des Moines*, 185 N.W. 2d 705 [Iowa 1971]; *Green v. Harrison*, 185 N.W. 2d 722 [Iowa 1971]; *Knox v. Harrison*, 185 N.W. 2d 718 [Iowa 1971]; *De Patten v. Harrison*, 185 N.W. 2d 720 [Iowa 1971]; *People v. Wilson*, 35 Ill. App. 3d 86 [1975]; *Nestel v. Moran*, 513 A.2d 27 [R.I. 1986]).

In a case that may well have overturned *Commonwealth v. Stuart* and others, a judge in Iowa was awakened one night by a loud ruckus outside his house. When he went to investigate, he found four young men acting like four young men. He warned them he was a judge and they attacked him. Each was held in contempt because in Iowa judges are constitutionally considered "conservators of the peace." Hence, the judge, though dressed in his bathrobe, was nonetheless acting as a judge (*Newby v. District Court*

*of Woodbury County*, 259 Iowa 1330 [1967]).

In Indiana, beating up a grand juror was contempt (*Dossett v. State*, 226 Ind. 142 [1948]). The same offense was also found to be contempt in Georgia (*Clark v. State*, 90 Ga. App. 330 [1954]). Punching the assistant state attorney in the nose is contempt in Illinois (*People v. Carr*, 3 Ill. App. 3d 227 [1971]), as is slapping a policeman for testifying against you (*People v. Rodriguez*, 91 Ill. App. 3d 626 [1980]).

When Lynn, on trial for killing former Deputy Marshal Bill Tilghman, one of the famed Three Guardsmen of Oklahoma, came to court and dropped a pistol from his pocket, the judge found him in contempt (*Lynn v. State*, 260 P. 1069 [Okla. Cr. 1927]). When Deskins testified against Cowles in another Oklahoma case, Cowles pronounced him "a God dam liar." Deskins promptly threw the judge's gavel at Cowles, then came off the witness chair to fight him. Both men had to be restrained; both were held in contempt and put in jail for ninety days. On appeal, the court held that the judge erred in holding both parties equally guilty (*Deskins v. State*, 62 Okla. Cr. 314 [1937]). News photographers who take pictures in court are subject to contempt in New York (*In re Seid*, 251 N.Y.S. 615).

In all, these cases point to a much broader application of the contempt power, particularly for acts beyond the courtroom, than the federal courts have tried to apply, at least since 1831.

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26. *U.S. v. Patterson*, 26 Fed. Rptr. 509 (W/TN).

27. *In re Griffin*, 1 N.Y.S. 7 (N.Y. City Ct., 1888).

28. *U.S. v. Barrett*, 187 F. 378 (C.C.S.D.Ga. 1911); *Hogden v. U.S.*, 365 F.2d 679 (8th Cir. 1966); *U.S. v. Ulan*, 421 F.2d 787 (2d Cir. 1970).

29. *State v. Keyser*, 25 N.M. 245 (1919); *State v. Cooper*, 64 N.M. 18 (1958); *State v. Goff*, 228 S.C. 17 (1955); *Commonwealth v. Ferrer*, 283 Pa. Super. 21 (1980); *In re Carr*, 436 F.Supp 493 (N.D. Ohio 1977); *State v. Poindexter*, 125 Kansas 425; *In re Jenkinson*, 93 N.J. Eq. 545 (N.J.Ch. 1922); *In re McDonald*, 110 Pa. Super. 352 (1933).

30. *Cohran v. Sosebee*, 120 Ga. App. 115 (1969); *U.S. v. Harris*, 558 F.2d 366 (7th Cir. 1977); *People v. Coleman*, 350 Mich. 268 (1957).

31. *Estes v. State*, 192 Miss. 400 (1942).

32. *In re Carr*, 436 F.Supp 493 (N.D. Ohio 1977); *U.S. v. Huff*, 206 F. 700 (S.D.Ga. 1913); *Cooke v. U.S.*, 267 U.S. 517 (1925); *U.S. v. Landes*, 97 F.2d 378 (1938); *Sacker v. U.S.*, 343 U.S. 931 (1952).

33. *U.S. v. Seale*, 461 F.2d 345 (7th Cir. 1972); *In re Dellinger*, 461 F.2d 389 (7th Cir. 1972); *U.S. v. Dellinger*, 472 F.2d 340 (7th Cir. 1972).

## Chapter 2. Standing Before the Bar

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2. *Washington Post*, 5 March 1993.

3. *Washington Post*, 5 March 1993.

4. Quoted in Ted Robert Gurr, ed., "Overview," *Violence in America: Protest, Rebellion, Reform* (London: Sage Publications, 1989), 12.

5. U.S. Attorney Vernon S. Lusk to Attorney General Charles Devens, March 1, 1878, Record Group 60, Records of the Department of Justice: Source-Chronological: North Carolina, National Archives, Washington, D.C.

6. U.S. Attorney Preston to the Attorney General, April 23, 1918, Record Group 118, Records of U.S. Attorneys and Marshals, Neutrality Case Files, 1913-1920, Box 3, Folder 7, National Archives, Sierra Pacific Region, San Bruno, Calif.

7. *Hoston v. U.S.*, 566 F. Supp. 1125 (D.D.C. 1983).

8. For information on the moonshine wars, see Wilbur R. Miller, *Revenuers and Moonshiners: Enforcing Federal Liquor Law in the Mountain South, 1865-1900* (Chapel Hill: University of North Carolina Press, 1991), and Frederick S. Calhoun, *The Lawmen: United States Marshals and Their Deputies, 1789-1989* (Washington, D.C.: Smithsonian Institution Press, 1990), 130-35.

9. Letter, Attorney General Amos T. Akerman to David A. Newsom, January 8, 1872, Record Group 60, Records of the Department of Justice, Attorney General Letterbook, Volume I: Miscellaneous, National Archives, Washington, D.C.

10. *U.S. v. Cruikshank*, 92 U.S. 555, 556; *Civil Rights Cases* 109 U.S. 3.

11. *The Proprietors of the Charles River Bridge v. The Proprietors of the Warren Bridge, et al.*, 11 Peters 420.

12. Lawrence Friedman, *History of American Law*, 2d ed. (New York: Simon and Schuster, 1985), 292-93.

13. Letter, Judge Henry Innes to Secretary of State James Madison, January 18, 1802, Record Group 59, Miscellaneous Letters; Letter, Deputy John C. Barrett to Marshal Joseph Scott, June 13, 1801, Brock Collection, Joseph Scott Papers, Huntington

Library, San Marino, Calif.

14. Calhoun, *The Lawmen*, 57-58.

15. Letter, Secretary of the Treasury R.J. Walker to All Marshals, February 23, 1846, Record Group 56, Treasury Circular Letters; from Record Group 56, Treasury Judiciary Letters Received: Marshal Thomas Fletcher to Walker, March 9, 1846; Marshal Robert I. Chester to Walker, April 7, 1846; Marshal James Points to Walker, February 28, 1846; Marshal Sam Hays to Walker, April 6, 1846; Marshal John S. Rockwell to Walker, March 18, 1846; Marshal D.A. Robertson to Walker, March 13, 1846; Marshal S.H. Anderson to Walker, May 8, 1846; Marshal Thomas D. Condy to Walker, March 10, 1846; Marshal A. E. Wirig to Walker, March 26, 1846; Marshal Burrington Anthony to Walker, February 28, 1846; Marshal Isaac Barnes to Walker, March 2, 1846; Marshal Moreau Forrest to Walker, March 18, 1846; Marshal H. Willingham to Walker, March 10, 1846; Marshal George M. Kern to Walker, March 3, 1846; Marshal Ely Moore to Walker, March 3, 1846; Marshal Jacob Gould to Walker, March 3, 1846.

16. Letter, Henry Hitchcock to Solicitor of the Treasury Joseph Anderson, March 22, 1821, Record Group 206, Records of the Solicitor of the Treasury: Letters Received from U.S. Attorneys, U.S. Marshals, and Court Clerks, National Archives.

17. Calhoun, *The Lawmen*, 26-34.

18. Calhoun, *The Lawmen*, 86.

19. Calhoun, *The Lawmen*, 82-93.

20. *Charles River Bridge Co. v. Warren Bridge Co.*, 11 Pet. 420.

21. Milton S. Gould, *A Cast of Hawks: A Rowdy Tale of Greed, Violence, Scandal, and Corruption in the Early Days of San Francisco* (La Jolla, Calif.: Copley Books, 1985), 264.

22. *Sharon v. Hill*, 24 Fed. Rptr. 726; Gould, *Cast of Hawks*, 266-67.

23. Gould, *Cast of Hawks*, 278.

24. Gould, *Cast of Hawks*, 278-9; A.E. Wagstaff, *The Life of David S. Terry* (New York: Augustus M. Kelly, 1892), 401.

25. *Ex parte Terry*, 128 U.S. Rptrs. 289; Gould, *Cast of Hawks*, 282-87; Wagstaff, *Life of Terry*, 323-33.

26. Almont Lindsey, *The Pullman Strike* (Chicago: University of Chicago Press, 1967), 150.

27. Lindsey, *Pullman Strike*, 144.

28. Calhoun, *The Lawmen*, 201-15.

29. Calhoun, *The Lawmen*, 231.

30. Calhoun, *The Lawmen*, 158-63.

31. Earl A. Armbrust to Caspar Weinburger, September 18, 1970, Record Group 51, Records of the Bureau of the Budget, Series 69.1, File E6-8, Judges, National Archives, Washington, D.C. (Record Group 51, hereinafter cited as RG 51).

32. Arnold Weber to Dwight Ink, September 21, 1970, RG 51, Bureau of the Budget, Series 69.1, File F5-23; Weber to Ink, September 28, 1970, RG 51, Bureau of the Budget, Series 69.1, File E6-8, "Judges."

33. Arnold Weber to Dwight Ink, September 21, 1970, RG 51, Bureau of the Budget, Series 69.1, File F5-23; Weber to Ink, September 28, 1970, RG 51, Bureau of the Budget, Series 69.1, File E6-8, "Judges."

34. Arnold R. Weber to George Schultz, October 9, 1970, RG 51, Bureau of the Budget, Series 69.1, File E-6, "Judges"; Richard P. Nathan to Schultz, October 16, 1970, RG 51, Bureau of the Budget, Series 69.1, File E-6, "Judges."

35. Caspar Weinburger to Richard Nathan, November 27, 1970, RG 51, Bureau of the Budget, Series 69.1, File F5-23, "Administration of Property Management in General." The hope of retiring the building guards in a year proved forlorn. In October 1971, GSA Administrator Robert Kunzig advised Schultz that "the security of both federal personnel and property continues to be of serious concern." The number of bomb threats to the buildings had increased, and there was also a rise in the number of dissident organizations. See Robert Kunzig to George Schultz, October 15, 1971, RG 51, Bureau of the Budget, Series 69.1, File F5-23, "Administration of Property Management in General."

36. U.S. Marshals Service oral history interview with Reis Kash, January 31, 1991; U.S. Marshals Service oral history interview with Jesse Greider, September 20, 1991.

### Chapter 3. Threats and Assaults on Other Groups

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4. Kirkham, et al., *Assassination*, 28-29.
5. Kirkham, et al., *Assassination*, 29-47.
6. Kirkham, et al., *Assassination*, 48-50.
7. Kirkham, et al., *Assassination*, 50-52.

8. Kirkham, et al., *Assassination*, 53, 56.

9. Kirkham, et al., *Assassination*, 57.

10. Kirkham, et al., *Assassination*, 57.

11. Kirkham, et al., *Assassination*, 78; Donald W. Hastings, "The Psychiatry of Presidential Assassinations," *The Journal-Lancet* (July 1965):300; Conrad V. Hassel, "The Political Assassin," *Journal of Police Science and Administration* (December 1974):401. In addition, Hassell curiously pointed out, with the exception of Booth who was of average height, the rest were—literally—"small men." (p. 400)

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13. Sidney J. Slomich and Robert E. Kantor, "Social Psychopathology of Political Assassination," *Bulletin of the Atomic Scientists* (March 1969):9.

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18. Clarke, "American Assassins," 90.

19. Clarke, "American Assassins," 90. See also Clarke, *American Assassins*, 194-222.

20. Clarke, "American Assassins," 92-94.

21. Clarke, "American Assassins," 91. See also *American Assassins*, 166-93.

22. Clarke, "American Assassins," 95-96. In a subsequent article, Clarke added John Hinckley to this category. See James W. Clarke, "Identifying Potential

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23. Clarke, "American Assassins," 91. See also Clarke, *American Assassins*, 105-65.

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26. Clarke, "American Assassins," 99-101.

27. Clarke, "Identifying Potential Assassins," 184-88.

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68. King interview, 16-23.

69. King interview, 21.

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2. U.S. Marshals Service oral history interview with Ray Muzquiz, December 1990.

3. U.S. Marshals Service case number 83-T656.

4. U.S. Marshals Service case number 8705139.

5. U.S. Marshals Service case numbers T8610002 and T8905213.

6. U.S. Marshals Service case numbers 81-1155, 81-1315, and 88-0000.30.

7. U.S. Marshals Service case numbers 81-1300 and 91-005.18.

8. U.S. Marshals Service case number 91-00235.

9. U.S. Marshals Service case numbers T8908295 and T9002208.

10. *Washington Post*, 2 July 1992.

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2. U.S. Marshals Service case number 93-822.

3. U.S. Marshals Service case numbers T8909323, 92-145, and T8911031.

4. U.S. Marshals Service case numbers T8611043 and T8401039.

5. U.S. Marshals Service case number 91-00011.

6. U.S. Marshals Service case numbers T8911036, 83-T656, and 82-905.

7. U.S. Marshals Service case number 81-817.

8. U.S. Marshals Service case numbers 92-156, 92-113, 81-817.1, 91-00036, 88-0000.9, T8909313, T8909314, T9002212, T9009483, T8701055, T8504113, T8505141, 93-640, 93-663, 93-1204, and 93-0804.

9. U.S. Marshals Service case number T8711039.

10. U.S. Marshals Service case numbers T9012071, T9002194, T9008457, T8702073, T8608188, 82-1302, and 91-1.2.

11. U.S. Marshals Service case numbers 82-775 and T8707189.

12. U.S. Marshals Service case numbers T9012075, T9012076, T9012077, T9012079, T9012080, T9012081, T9012082, T9012083, T9012084, T9012085, T9012086, T9012087, T9012088, T9012089, T9012090, T9012091, T9012092, 91-00056, T8903120, T9008444, T8804109, T8709219, T8408142, T8310004, 81-722, 81-308, 92-85, 91-313, T8709211, T8501074, and 93-733.

#### **Chapter 6. Motive of Threats and Assaults**

1. If the case involved some well-known ideological issue, such as abortion or school busing, threateners not personally involved in the case were counted in the ideological category of motives. If they were personally involved, they were counted in a case-related ideological case. Among the case-related threats, it could not be determined what the threat-

ener's relationship to the case was in 104 of the cases (6.7 percent) because of lack of data in the files.

2. U.S. Marshals Service case number T8711039.

3. U.S. Marshals Service case numbers 81-308 and 80-1311.2.

4. U.S. Marshals Service case numbers 81-722, T8709219, T8903120, and T8401039.

5. U.S. Marshals Service case numbers T9005329 and T8908287.

6. U.S. Marshals Service case number T8906237.

7. U.S. Marshals Service oral history interview with Judge Edward Devitte, August 1990.

8. U.S. Marshals Service case numbers T8905221 and T8505156.

9. U.S. Marshals Service case number T8911031.

## **7. Victims and Suspects of Threats and Assaults Chapter**

1. U.S. Marshals Service case numbers 91-00237, 91-00022, 91-1.2, T880719, T9008457, T8704125, T8707190, 83-1330.3, 82-1119, 82-775, 93-699, 93-0508, and 93-822.

2. U.S. Marshals Service case numbers 92-186, 92-99, 86-0700, 91-00082, T9003243, T9009489, T8701055, T8504136, 82-340, and 82-76.

3. U.S. Marshals Service case numbers 92-156, T8903120, T8902091, T8910006, T9001144, T8505141, 93-666, 93-0217, and 93-774.

4. U.S. Marshals Service case numbers 91-00011, T8908287, and T8704125.

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