

# Defending Attorneys Against Extortion Charges Presents Unique Challenges

By Bradley A. Marcus

Although the criminal prosecution of lawyer misconduct is nothing new, the recent indictment of a plaintiffs' lawyer in Maryland and sentencing of two plaintiffs' lawyers in Virginia illustrate the particular danger to attorneys who arguably cross the line during negotiations with potential litigation counterparties. They also vividly illustrate the hurdles unique to defending lawyers accused of attempting to extort counterparties for their own financial gain.

## FEDERAL EXTORTION STATUTES

The crime of extortion — forcing payment in response to a specific threat — is normally associated in popular culture with Tony Soprano-like figures. In those cases, the U.S. government typically uses acts of extortion as predicate offenses in an organized crime prosecution under the Racketeer Influenced and Corrupt Organizations Act (RICO).

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But the government has additional tools to prosecute extortion beyond RICO, most notably 18 U.S.C. §1951 (the Hobbs Act), which prohibits obstructing commerce by means of extortion or attempting to do so, and 18 U.S.C. §875, which prohibits the transmission in interstate or foreign commerce, with intent to extort, of a threat to injure the property or reputation of any person.

Section 875 does not define “intent to extort,” but in cases charged under that statute, courts have used the definition of extortion under the Hobbs Act to define it as the “intent to get the property of another with his consent, induced by wrongful use of actual or threatened force, violence or fear.” *See, United States v. Cohen*, 738 F.2d 287, 289-90 (8th Cir. 1984) (<https://bit.ly/3lGcRWS>).

Both the Hobbs Act and Section 875 have featured prominently in recent prosecutions of three plaintiffs' lawyers that follow the theory established by the Justice Department in the prosecution of celebrity lawyer Michael Avenatti. Avenatti, best known for his representation of adult film star Stormy Daniels in her lawsuit against President Donald Trump, was convicted in the Southern District of New York in February 2020 of attempting to extort more than \$20 million from Nike under both the Hobbs Act and Section 875.

## PLAINTIFFS' ATTORNEYS ADD CRIMINAL DEFENDANT? TO THEIR RESUMES

In October, a federal grand jury in Baltimore indicted a prominent medical malpractice attorney for attempted extortion under the Hobbs Act. According to the indictment, Stephen Snyder allegedly threatened to launch a damaging public relations campaign against the University of Maryland Medical System (UMMS) and its organ transplant program if UMMS did not pay him \$25 million. The threats were allegedly made in connection with Snyder's representation of the surviving spouse of an individual who claimed to be injured during a kidney transplant surgery at UMMS. The indictment alleged that Snyder demanded the \$25 million, personally, in addition to anything agreed upon to settle his client's case.

Specifically, Snyder allegedly threatened to say that UMMS and its doctors transplanted “diseased organs into unsophisticated patients without informing them of the quality of the organs.” Snyder has not yet entered a plea to the charges.

The indictment further alleged that Snyder demanded that UMMS pay the fee under a sham consulting arrangement between UMMS and Snyder. Snyder purportedly told UMMS that he could be a “janitor” to earn his fee, and

later allegedly told UMMS that he did not care if he did anything under the agreement at all. Rather, the Indictment alleged that Snyder suggested payment pursuant to a consulting agreement in order to conflict out Snyder from future representations against UMMS while ensuring he did not commence the public relations campaign.

The supposed demands by Snyder led counsel for UMMS to contact law enforcement, according to an August Bar Grievance against Snyder filed in the Court of Appeals of Maryland (*see*, <https://bit.ly/3kE3Z2F>). Several recorded phone calls and meetings later, and prosecutors charged Snyder. Subsequent to the indictment, the Court of Appeals temporarily suspended Snyder from practicing law and stayed the grievance proceedings pending resolution of the criminal charges.

In a remarkably similar case, two personal injury lawyers in Virginia pleaded guilty in June 2020 to transmitting interstate communications with the intent to extort (Section 875) (*see*, <https://bit.ly/35ErFj1>) and were sentenced to prison in September after demanding payment of \$200 million in consulting fees from a global chemical manufacturer (*see*, <https://bit.ly/3f7TJhP>).

In their guilty pleas, attorneys Daniel Kincheloe (who received a sentence of one year in prison) and attorney Timothy Litzenburg (two years in prison) admitted to threatening the company with damaging public statements and costly litigation. According to the Statement of Facts entered with their guilty pleas, the attorneys made these statements in connection with their representation of a client who alleged that the company was responsible for several chemical compounds used in the weed-killer Roundup, and that those compounds caused cancer. The plaintiffs' lawyers told the company it would face "thousands of future

plaintiffs" and an "existential threat" without a deal.

As with Snyder, the consulting fee was not going to be paid to the attorneys' clients, but instead to the attorneys personally. Litzenburg and Kincheloe admitted that they demanded the payment be disguised further, and sent to a company owned by the pair. And as with the alleged demands by Snyder, the company that received the demands almost immediately reached out to the federal government to investigate.

### DEFENSE HURDLES IN THESE CASES

Mounting a successful defense in cases like this is no easy task. Lawyer-defendants accused of working against their clients' interests in pursuit of their own are portrayed by the government as greedy and self-interested, ignoring their ethical requirements. This is a powerful theme that resonates with juries, and Acting Assistant Attorney General Brian C. Rabbitt of the DOJ's Criminal Division seized upon it in announcing the Virginia attorneys' sentences: "These two attorneys flagrantly violated their ethical duties to their own clients as they sought to extort a company out of \$200 million" (*see*, <https://bit.ly/3f7TJhP>).

Unlike Kincheloe and Litzenburg, all indications are that Snyder intends to fight the charges against him. He asserts that he has done nothing wrong (*see*, <https://bit.ly/2UBHWyU>). His defense's main challenge will be trying to humanize him to the ultimate factfinder and make him a sympathetic figure in the face of accusations that he breached his ethical duties to line his own pockets.

Snyder's defense also may be hindered by the fact that he has already given sworn testimony in connection with the bar complaint. His version of events is essentially locked in, and if he chooses to testify at trial, his testimony

will be held up against his prior testimony for impeachment purposes.

From an evidentiary point of view, the FBI also recorded many apparently damaging conversations and voice recordings that may prove to be powerful evidence for the jury to hear. As a result, his defense team likely will look for grounds to move to suppress those recordings. Snyder's defense also presumably will try to portray him as merely representing his clients in a zealous manner, as he is required to do as their lawyer, and suggest that the consulting agreement was not a sham but rather appropriate under the circumstances.

### CONCLUSION

Representing lawyer-defendants in a criminal case against accusations of working against their client's interests to enrich themselves presents numerous difficulties. Snyder's case will be worth following to see if his legal team can construct a defense strategy to overcome these challenges and convince the ultimate factfinder that his hardball negotiation tactics were proper advocacy and not tantamount to attempted extortion. But as with the jury verdict in Avenatti's case and the guilty pleas in Litzenburg's and Kincheloe's case show, doing so will be an uphill climb.

