

PODIUM

Ignorance Was Not Bliss for Would-Be Cosby Kin

By Harvey A. Silverglate SPECIAL TO THE NATIONAL LAW JOURNAL

A COMPLAINT HEARD frequently is that certain areas of federal criminal law have become traps for the unwary rather than legitimate law enforcement tools. One trap somehow manages to remain on the books despite case after case in which it is put to a use that raises serious questions of fairness. This is the federal law of extortion.

The recent prosecution in U.S. district court in Manhattan of Autumn Jackson, who claims to be the illegitimate daughter of comedian Bill Cosby, demonstrates how troubling such prosecutions can be.

Ms. Jackson, as anyone learned who read the newspapers or watched television during her trial this past July, teamed up with two cohorts and threatened that, unless Mr. Cosby paid her \$40 million, she would reveal to the tabloids that she was the product of an adulterous liaison between Mr. Cosby and her mother nearly a quarter century earlier. Mr. Cosby, who denied paternity but nonetheless had sent modest amounts of money to the girl and her mother for

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many years, had consistently refused to take a paternity test, and to this day the issue of the truth of Ms. Jackson's assertion remains unresolved.

It Needn't Have Been Like This

When Ms. Jackson's demands became greater and more insistent, and when Mr. Cosby's lawyer's efforts to warn her off failed, Mr. Cosby and his lawyer reported the matter to the FBI and then engaged in a negotiation with the young woman, aimed at producing evidence for a prosecution under the Hobbs Act and related federal statutes that make it a crime to engage in extortion in interstate commerce or by the use of interstate communications facilities. Under these statutes, the term "extortion" is defined as "the obtaining of property from another, with his consent, induced by wrongful use of...fear." Further, 18 U.S.C. 875 makes it a crime to transmit through interstate commerce "any communication containing any threat to injure the...reputation of the addressee" with "the intent to extort any money or other thing of value."

What makes extortion such a dangerous crime for the unwary innocent is that it is a criminal act even if the extortionist

is seeking money or property that she, in good faith, believes that she is entitled to. When the crux of the extortion plot is a threat to disclose information reasonably believed to be truthful—such as Ms. Jackson's claim that Mr. Cosby was her father—such a good-faith belief, and indeed even the objective truthfulness of the information, is not a defense.

The problem is cast into bold relief when one considers how Ms. Jackson, were she more sophisticated (as sophisticated, for example, as Mr. Cosby's lawyer), could have accomplished precisely the same goal without exposing herself to the slightest legal danger. Had she hired a lawyer, and had the lawyer contacted Mr. Cosby or his lawyer and demanded a multimillion-dollar support or paternity settlement, all would have been on the up-and-up. Indeed, had Ms. Jackson's lawyer threatened to file a paternity suit against Mr. Cosby, Mr. Cosby might have been motivated to settle the claim without litigation, precisely to avoid media attention.

This, alas, Ms. Jackson did not do, and for lack of the perspicacity to retain a lawyer, she now faces 12 years in prison under the federal sentencing guidelines.

Nobody questions the wisdom of ex-

torcion laws that apply, for example, to ransom demands for the return of a kidnapped child. After all, the kidnapers have no right to possession of the child and hence no right to possession of the payment for return of the child. Nor is there any question that it should be a crime to threaten to break people's legs unless they pay protection money.

But surely the Autumn Jackson case presents a scenario very much at the other end of the spectrum of reasonableness. From one point of view, all Ms. Jackson was doing was offering Mr. Cosby a rather ordinary commercial transaction—he could buy her story rather than have her sell it to a newspaper.

Lawyers have never been disbarred for threatening to bring publicly filed paternity suits. That, it seems, is because the form of the demand made by the lawyer has been deemed legally acceptable. Does this elevate form over substance? Has the interpretation of extortion in federal criminal law become more of a trap for the unwary than a legitimate tool to combat a social evil? Is sound public policy served by formulating a crime that can easily be evaded by those who can afford lawyers to do their negotiating for them? ■