

Photo: Hayden Schiff (CC BY 2.0)

Bill Clinton knows a thing or two about how politics works. He famously said that the American people might not always expect you to succeed, but that they will demand that you *get caught trying*. And when it comes to Donald Trump's illegal war against law firms, it's time to get caught trying.

Colloquially, it's easy to explain. What Trump is doing to law firms – first Perkins Coie, then Paul Weiss, then Covington & Burling, then Jenner & Block, and just today Wilmer Hale – carries a legal term: ***extortion.*** He is threatening to kneecap business not because they are doing anything illegal, but rather just the opposite: they are using legal channels to resist him. "Nice law firm you got here: too bad if something we to *happen* to it." It's an extortion racket run out of the Oval Office.

This goes to the very heart of the legal system, which is why it is relevant even for an environmentally-focused blog. If the President can extort lawyers out of representation, what law is there for anyone in any field?

Well, that's all very well and good, you might say: but does it fit the legal definition? Turns out, the answer is yes. Let's look at New York state, where Paul Weiss is headquarters, and thus a central place where the extortion occurred.

In New York state, the crime of what we normally think of as extortion is called "coercion." "Coercion in the third degree," a misdemeanor, occurs when someone

*compels or induces a person to engage in conduct which the latter has a legal right to abstain from engaging in, or to abstain from engaging in conduct in which he or she has a legal right to engage…

*by means of instilling in him or her a fear that, if the demand is not complied with, the actor or another will:

2. Cause damage to property; or

3. Use or abuse his or her position as a public servant by performing some act within or related to his or her official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely; or

4. Perform any other act which would not in itself materially benefit the actor but which is calculated to harm another person materially with respect to his or her health, safety, business, calling, career, financial condition, reputation or personal relationships.

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This is precisely what Trump did to Paul Weiss: he compelled the firm to cease engaging in legal activity that it had a right to engage in (practicing law on behalf of its clients) by threatening damage to Paul Weiss' property — its business — and by threatening to abuse his position — denying the firm security clearances and blocking their access to federal property. Note also that he also demanded that they cease representing their clients – essentially forcing them to violate their professional responsibility commitments.can

Note that this does not mean that Trump himself would get control over Paul Weiss

(although one could argue that he was by demanding a bribe of $40 million from the firm and control over its hiring practices), and the statute says he does not have to.

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Okay. So now we have Coercion in the Third Degree. That is only a misdemeanor. But there is more. Coercion in the First Degree occurs when the defendant does all of these things and then *actually instills in the victim a fear of physical injury or property damage.* (It seems to me that Third Degree is more like an attempt; First Degree is that it actually instilled fear).

For that, we don't need to guess. Paul Weiss chair Brad Karp, in his letter to the firm, stated:

> This existential crisis required the leadership of our law firm to make incredibly difficult decisions under extraordinary time pressure. In making those decisions, we were guided by two fundamental principles. First and foremost, we were guided by our obligation to protect our clients' interests. As I mentioned earlier, we concluded that even a victory in litigation would not be sufficient to do so, because our firm would still be perceived as persona on grata with the Administration. We simply could not practice law in the Paul, Weiss way if we were still subject to the executive order. This resolution was unambiguously in our clients' best interests.

In other words, the firm feared loss of is property — in this case, its business.

Coercion in the First Degree under New York law is a class D felony the maximum sentence is 7 years in prison.

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So the issue now is whether Alvin Bragg should take this criminal case to a New York grand jury. There are obviously two roadblocks to this:

1) USDOJ thinks that the Constitution prohibits an indictment of a sitting President. But *of course* an executive branch agency tries to protect the office of the

President: that's its job. One might argue that a sitting President cannot be tried and convicted — although again there is no precedent on this (Clinton v Jones allows a sitting President to be civilly sued). But that is different from saying that he cannot be indicted. Here is a recent article arguing that a sitting President can be indicted. Then the statute of limitations would be tolled.

2) This could constitute an "official act" under last year's absurd precedent of Trump v United States.

Neither of these factors should matter. We are in a constitutional emergency. Bragg should take this case to a grand jury, and if it indicts, it indicts.

If then Trump argues that he can't be indicted, or that Trump v United States allows him to use the power of the federal government on a vendetta against his political enemies, and the Supreme Court agrees, then at least we will know that the Constitution is a dead letter and democracy has officially perished.

If Alvin Bragg can persuade a grand jury to indict Trump for extortion, and sets out facts concerning this, and then the Supremes declare that The King Can Do No Wrong, then we will get caught trying. But under current circumstances, it seems to me to be a risk worth taking. Donald Trump is abusing power on a massive scale here, and really, everyone knows it. Simply complaining about it, without doing more, begins to look like acquiescence.

"Doing more" could have an important public effect. It is one thing for Democrats to say Trump has committed extortion: it is quite another if a grand jury says it. Even the perpetually both-sides-ing press will not be able to write milquetoast headlines like "Democrats Say Is Abusing Power," if they would even say that. It would be a shorter, and more powerful headline: TRUMP INDICTED.

> And if Trump complains about the "weaponization of justice system" – surely another example of his serial murder of irony – there is a straightforward response: fine. You think that this is unfair? Go to trial. Let the people decide. And that is the one thing he does not want to do.

Get Caught Trying. It is good advice, in whatever political situation. But it is necessary now.