

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 82

-----X
THE PEOPLE OF THE STATE OF NEW YORK

-against-

Ind. No. 4957/2009

ROBERT JOEL HALDERMAN

Defendant

-----X

**MEMORANDUM OF LAW IN SUPPORT OF
DEFENDANT ROBERT JOEL HALDERMAN'S
PRETRIAL MOTIONS**

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TABLE OF CONTENTS

TABLE OF CONTENTS.....i

TABLE OF AUTHORITIES.....iii

PRELIMINARY STATEMENT.....1

STATEMENT OF FACTS.....2

ARGUMENT.....7

 A. If the Grand Jury Was Not Properly and Adequately Instructed
 on the Law, the Indictment Should be Dismissed.....7

 1. The Grand Jury Should Have Been Instructed
 That a Threat is only Wrongful When A Defendant
 Has No Claim of Right to the Money Demanded.....9

 2. The Grand Jury Should Have Been Instructed
 That a Threat is Only Wrongful When a Defendant
 is Aware that His Conduct is Unlawful.....14

 B. The Indictment Should be Dismissed Because the Evidence
 Before the Grand Jury was Legally Insufficient.....15

 1. The Evidence Was Legally Insufficient to
 Demonstrate that Halderman Had No Claim of
 Right to the Money Demanded.....16

 2. The Evidence was Legally Insufficient to
 Demonstrate an Awareness of Unlawful Conduct.....18

 C. The Indictment Should be Dismissed if the Grand Jury Indicted
 Only Under PL 155.05(2)(e)(ix), or Failed to State Under Which
 Theory it Did Indict.....20

 D. The Indictment Should be Dismissed Because the New York
 Extortion Statute is Unconstitutionally Vague as Applied and
 Overbroad.....22

 1. The Extortion Statute is Vague as Applied.....22

 2. The Extortion Statute is Overbroad.....26

E. The Court Should Suppress All Items Seized Pursuant to the Search Warrants Issued in this Case.....28

1. The Warrants Are Overbroad Because They Authorize a Search for “Any and All Files” Relating to “Any and All Public Figures.”.....29

2. The Initial Warrant for a Search of Halderman’s Office at CBS May Have Been Executed Before It Was “Subscribed and Sworn To” Before a Judge.....32

F. The Court Should Modify the Order of Protection to Allow Halderman’s Attorneys to Investigate and Prepare His Defense.....33

CONCLUSION.....34

TABLE OF AUTHORITIES

CASES

<u>Andersen v. Maryland</u> , 427 U.S. 463 (1976).....	31
<u>Broadrick v. Oklahoma</u> , 413 U.S. 601 (1973).....	26
<u>Dawkins v. Williams</u> , 511 F. Supp. 2d 248 (N.D.N.Y. 2007).....	10, 11, 14
<u>Grievance Comm. for the S. Dist. of N.Y. v. Simels</u> , 48 F.3d 640 (2d Cir. 1995).....	33
<u>Kovian v. Fulton County Nat’l Bank and Trust Co.</u> , No. 86 Civ. 154, 1990 WL 36809 (N.D.N.Y. March 28, 1990).....	21
<u>Marron v. United States</u> , 275 U.S. 192 (1927).....	31
<u>Masson v. New Yorker Magazine, Inc.</u> , 501 U.S. 496 (1991).....	26
<u>New York Times Co. v. Sullivan</u> , 376 U.S. 254 (1964).....	22
<u>People v. Bright</u> , 71 N.Y.2d 376 (1988).....	23, 24, 25
<u>People v. Bunis</u> , 9 N.Y.2d 1 (1961).....	24
<u>People v. Calbud, Inc.</u> , 49 N.Y.2d 389 (1980).....	8
<u>People v. Chen</u> , 25 Misc. 3d 1219 (N.Y. Crim. Ct. Oct. 28, 2009).....	30
<u>People v. Cirrincione</u> , 207 A.D.2d 1031 (N.Y. App. Div. 4th Dep’t 1994).....	33
<u>People v. Coburn</u> , 85 Misc. 2d 673 (1976).....	33
<u>People v. Crump</u> , 157 Misc. 2d 566 (N.Y. Co. Ct. 1992).....	13, 14, 15
<u>People v. Doe</u> , 178 Misc. 2d 908 (N.Y. Sup. Ct. 1998).....	10, 12
<u>People v. German</u> , 251 A.D.2d 900 (N.Y. App. Div. 3rd Dept. 1998).....	30
<u>People v. Hicks</u> , 38 N.Y.2d 90 (1975).....	28
<u>People v. Hollman</u> , 68 N.Y.2d 202 (1986).....	26
<u>People v. Holmes</u> , 49 A.D.3d 1349 (N.Y. App. Div. 4th Dep’t 2008).....	18
<u>People v. Huntington</u> , 57 A.D.3d 1238 (N.Y. App. Div. 3d Dep’t 2008).....	9

<u>People v. Jennings</u> , 69 N.Y.2d 103 (1986).....	15, 16, 20
<u>People v. Jerreld</u> , 19 Misc. 3d 595 (N.Y. Co. Ct. 2008).....	9, 10, 15
<u>People v. Maldonado</u> , 86 N.Y.2d 631 (1995).....	30
<u>People v. Mateo</u> , 175 Misc.2d 192 (N.Y. Co. Ct. 1997).....	21
<u>People v. Monserrate</u> , 24 Misc. 3d 1229 (N.Y. Sup. Ct. 2009).....	30
<u>People v. Nelson</u> , 69 N.Y.2d 302 (1987).....	23
<u>People v. P.J. Video, Inc.</u> , 68 N.Y.2d 296 (1986).....	31
<u>People v. Quintana</u> , 36 A.D.3d 505 (N.Y. App. Div. 1st Dep’t 2007).....	13
<u>People v. Ramos</u> , 223 A.D.2d 495 (N.Y. App. Div. 1st Dep’t 1996).....	10
<u>People v. Rozenberg</u> , 21 Misc. 3d 235 (Sup. Ct. 2008).....	18, 20
<u>People v. Samuels</u> , 12 A.D.3d 695 (N.Y. App. Div. 2d Dep’t 2004).....	13
<u>People v. Shack</u> , 86 N.Y.2d 529 (1995).....	26
<u>People v. Shirah</u> , 22 Misc. 3d 1101 (N.Y. Co. Ct. Jan. 4, 2008).....	13
<u>People v. Stuart</u> , 100 N.Y.2d 412 (2003).....	22, 23, 24
<u>People v. Valles</u> , 62 N.Y.2d 36 (1984).....	8, 12, 13, 14, 15
<u>Stanford v. Texas</u> , 379 U.S. 476 (1965).....	30
<u>State v. Pauling</u> , 69 P.3d 331 (2003).....	12
<u>United States v. Jackson</u> , 180 F.3d 55 (2d Cir. 1999).....	9, 10, 11, 14, 16, 18
<u>Zurcher v. Stanford Daily</u> , 436 U.S. 547 (1978).....	30, 31

SECONDARY SOURCES

Howard G. Leventhal, 2 Charges to Jury & Requests to Charge in Crim. Case
in N.Y. § 50:8 (2009).....14-15

Lee, Chris, A Tale of Hollywood e-harmony, Los Angeles Times, May 16, 2005.....17

Scovell, Nell, Letterman and Me, Vanity Fair, October 27, 2009.....2, 34

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Preliminary Statement

This memorandum of law is submitted in support of defendant Robert Joel Halderman’s motion for inspection of the grand jury minutes and dismissal of the single-count indictment now pending against him.

The sensationalism surrounding this indictment, fueled by the celebrity of the purported victim and the deference paid to that celebrity by the District Attorney’s Office¹, has swallowed the only pertinent issue now before the Court: Were the facts and legal instructions put before the grand jury sufficient to support the charge of “extortion” within the meaning of Section 155.05 of the New York Penal Law?

We respectfully submit that, for reasons both statutory and constitutional, Halderman’s acts were not criminal, and the indictment should be dismissed.

¹ In the annals of New York County law enforcement, this is perhaps the only case where the purported victim was permitted to announce an arrest before the District Attorney – allowing the celebrity to “spin” the story to his advantage. See Video of Letterman on “Late Show,” October 1, 2009, available at <http://www.youtube.com/watch?v=SriJ3WOZaXU> (“Letterman Video”).

Statement of Facts

The facts of this case are simple and largely undisputed. Until his arrest on October 1, 2009, Halderman had been a producer at the CBS television network for more than 27 years. For the past ten years he was a producer for the television news magazine “48 Hours,” developing and covering feature stories and writing scripts for broadcast publication. He did his job well, accumulating a number of industry awards, including eight Emmy Awards.

The father of two children, aged 11 and 18, Halderman was separated in 2003 and formally divorced in early 2004. Later in 2004, he began dating Stephanie Birkitt, a woman who worked on the CBS “Late Show” starring David Letterman.² To this day, Halderman has never met nor had any direct conversation with Letterman.

In 2005, the Halderman-Birkitt relationship grew more serious and the couple began living together in Halderman’s Connecticut home. In late 2008, however, Halderman discovered that Birkitt had been unfaithful and was carrying on a sexual relationship with Letterman. He also discovered evidence that Letterman had created and fostered an environment of workplace sexual misconduct that, under any definition, amounted to actionable sexual harassment.³

² On information and belief, Birkitt was actually an employee of Worldwide Pants, a private production company owned by Letterman.

³ See United States Equal Employment Opportunity Commission (“EEOC”) “Facts About Sexual Harassment,” available at <http://www.eeoc.gov/eeoc/publications/fs-sex.cfm> (defining sexual harassment within the reach of Title VII of the Civil Rights Act of 1964 as “[u]nwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature ... when submission to or rejection of this conduct explicitly or implicitly affects an individual’s employment, unreasonably interferes with an individual’s work performance or creates an intimidating, hostile or offensive work environment.”).

On the October 1, 2009 edition of the “Late Show,” Letterman twice admitted that his conduct with female employees was “creepy.” See Letterman Video; see also Nell Scovell, Letterman and Me, Vanity Fair, October 27, 2009 (“Was I aware of rumors that Dave was having sexual relationships with female staffers? Yes. ... Did these female staffers have access to information and wield power disproportionate to their job titles? Yes. Did that create a

In December of 2008, Halderman confronted Birkitt with the evidence that he found, but did everything he could to repair their relationship. Birkitt apologized, promised to end any sexual contact with Letterman, and continued to live with Halderman. Peace and domestic tranquility, however, proved elusive. In the summer of 2009, Halderman discovered that despite her assurances to the contrary, Birkitt's relationship with Letterman continued unabated.

Shortly thereafter, Halderman began to write. He knew that the story of his relationship with Birkitt, her relationship with Letterman, and, in general, the behind-the-scenes real-life atmosphere and conduct of the Late Show and its host (an American cultural icon) was a valuable subject for a book, or a movie. From his quarter century in the business, Halderman knew that screenplay options were selling for millions of dollars. Likewise, books about broken relationships, particularly where the subjects are, as here, well known, had enjoyed tremendous commercial success.⁴

On the morning of September 9, 2009, Halderman placed a one-page screenplay treatment that he had written into a manila envelope, along with copies of much of his source material. The treatment itself (titled "Treatment for a Screenplay") contained a synopsis, character sketches of the main players (their names changed), and a list of relevant locations. Halderman delivered the envelope to Letterman's driver.

Letterman read the treatment and called his attorney, James Jackoway, a member of the New York and California bars. Jackoway contacted Halderman, and set up an initial meeting for

hostile work environment? Yes. Did I believe these female staffers were benefiting professionally from their personal relationships? Yes. Did that make me feel demeaned? Completely. Did I say anything at the time? Sadly, no.”)

⁴ See, e.g., Nora Ephron, Heartburn (Alfred A. Knopf, New York 1983); Susan Cheever, Home Before Dark: A Biographical Memoir of John Cheever (Houghton Mifflin, New York 1984); Joyce Maynard, At Home in the World (Picador 1998); see also Motoko Rich, Paramour of Kennedy is Writing a Book, New York Times, May 22, 2009.

September 15, 2009. At the meeting, Halderman requested \$2 million for the full rights to the story idea, an amount that he estimated to be its fair value if he were to offer it for sale on the open market.

Following this meeting, Jackoway contacted the Manhattan District Attorney's Office. Jackoway was asked to set up additional meetings with Halderman, and to pretend to go along with the deal. Those meetings would be videotaped by law enforcement.⁵

On September 23, 2009, Jackoway and Halderman met at the Essex House Hotel in Manhattan. The meeting was recorded by detectives from the District Attorney's Office. At the meeting, Jackoway and Halderman discussed the details of the proposed sale of Halderman's movie treatment. Jackoway stated that he would need a written "purchase agreement" and "confidentiality agreement." (Sept. 23, 2009 Transcript ("tr."), at 2.) He told Halderman that he would also need a "promise" that if Halderman reneged on the confidentiality agreement and released the story himself after the sale, Letterman "would get the money back." (Id.) Halderman agreed to the terms: "I told you when we last met that if you wanted to option this treatment, this screenplay, then you would own it, period." (Id. at 3.)

Jackoway also raised technical issues related to the sale. He noted that there would be "tax issues;" in response, Halderman stated that he would "talk to [his] accountant." (Id. at 2, 3.) Jackoway said that before he could "issue a check," he would need Halderman's "social security number ... or a federal ID." (Id.)

⁵ Interestingly, the District Attorney's Office was so eager to execute a "sting" operation to protect Letterman that it lead Jackoway to engage in conduct that violated Rule 8.4 of the Rules of Professional Conduct, prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. See In re Pautler, 47 P.3d 1175, 1182 (Colo. 2002) (prosecutor suspended for misrepresenting himself as public defender in order to arrange for surrender of violent suspect, because licensed attorneys may not "deceive or lie or misrepresent, regardless of their reasons for doing so.")

They discussed the work that Halderman had already done on the project. Halderman told Jackoway that he would provide “the treatment” that Jackoway already had a copy of, and that Jackoway could also have “the yellow legal note pad notes” where Halderman had “started outlining a book.” (Id.)

Most importantly, Halderman was clear and consistent on his only “threat”: if Letterman chose not to purchase the rights to the story, Halderman would continue writing and would sell the book and screenplay himself. For example, when Jackoway counter-offered with less money for the sale, Halderman refused, saying: “If that’s what you want to do then we’re done. I’ll write the book and I’ll send you the advance copy.” (Id. at 4.) Later, he clearly stated:

I have no plans to do anything other than either sell you this option, this screenplay to you and therefore you own the story, or if you don’t and you’re not interested as I’ve said then that’s fine and I will proceed and I will do what I want to do, which is what I’ve been thinking about doing anyway, which is writing a book. So your option is very simple. (Id.)

All of Halderman’s actions at the meeting were consistent with a pure commercial transaction. He even insisted on receiving copies of the written agreements, stating: “I’ll need a copy of the agreement, obviously ... I’m not going to sign a contract and not have a copy of it, Jim. Would you sign a contract and not have a copy of it?” (Id. at 8, 9 (Halderman: “I understand, but I also want a copy of that agreement. I’m not going to sign an agreement that I don’t have a copy of, would you?”).)

On September 30, 2009, Jackoway and Halderman again met at the Essex House Hotel, and signed the documents attendant to the sale. Again, the meeting was recorded by the District Attorney’s Office. The “Purchase Agreement for Screenplay Treatment and Other Related Material” set forth the property that Letterman was purchasing: the “Treatment for a Screenplay” and all related materials, “any book, portion for a book, outline for a book or draft thereof,” and

“any alleged facts, plots, themes, ideas, dialogue, language, elements, incidents, action, story and characters which form the basis for the Treatment and any book.” In exchange, Letterman would pay “Two Million Dollars (\$2,000,000).” In the “Confidentiality Agreement,” Halderman agreed that as a term of the sale, he would not “disclose, discuss, disseminate, or otherwise exploit in any media” his story idea.

Halderman received signed copies of the documents, and a bank check for \$2 million. The next day, October 1, 2009, Halderman was arrested.⁶

That same day, October 1, before the District Attorney’s Office announced the arrest, David Letterman appeared on the Late Show and gave viewers his version of events. (See Letterman Video.) On national television, Letterman described the “threat” as:

A guy is going to write a screenplay about me ... and he’s going to take all of the terrible stuff that he knows about my life ... and he’s going to put it into a movie, unless I give him some money. ... He wants a large sum of money, or he’s going to produce this screenplay, of all the terrible things that I do. (See id.)

In this motion, we argue that the “threat” at issue did not violate the New York Penal Law. A hard-driven arm’s-length commercial transaction does not constitute extortion.

⁶ Also on October 1, Halderman’s home in Connecticut was searched. On October 2 and 16, 2009, Halderman’s office at CBS was searched. Those searches were conducted pursuant to warrants authorizing the seizure of “any and all files” relating to “any and all Public Figures.”

ARGUMENT

For the reasons set forth in this memorandum, we respectfully submit that Robert Joel Halderman committed no crime, and the indictment should be dismissed in its entirety. We move for dismissal, first, on the ground that the grand jury proceedings were likely defective, because: (A) the grand jury may not have been properly instructed on the law, particularly the legal significance of the term “wrongfully” as it applies to the crime of extortion; (B) the evidence presented to the grand jury was, under any circumstances, insufficient to sustain the indictment; and (C) the grand jury may have failed to indict under a specified, valid theory of extortion.⁷ We also move for dismissal of the indictment because New York’s extortion statute is both unconstitutionally vague as applied and overbroad.⁸

In addition, we move for the suppression of any evidence seized during the search of Halderman’s home and office, and the fruits thereof; those searches were conducted pursuant to an overbroad warrant authorizing a search for “any and all files” relating to “any and all Public Figures.” Finally, we move for a modification of the protective order in this case to allow the defendant’s attorneys a full and fair opportunity to investigate and prepare a defense.

A. If the Grand Jury Was Not Properly and Adequately Instructed on the Law, the Indictment Should be Dismissed

The Court should inspect the grand jury minutes and, we respectfully submit, should dismiss the indictment, if the People’s instructions to the grand jury were improper or inadequate on the charge of extortion. CPL Section 210.30(2)(c) states that “the superior court may, upon

⁷ In addition to the grounds discussed below, the Court should, in inspecting the grand jury minutes, ensure that all other requirements of CPL Sections 190.20, 190.25 and 190.30 were properly met.

⁸ The New York Attorney General’s Office has been served with notice of this motion, as required by New York Executive Law Section 71.

motion of the defendant, dismiss [an] indictment . . . upon the ground that [t]he grand jury proceeding was defective.”

One ground for such dismissal is that the People failed to give the grand jury sufficient guidance on the relevant law. CPL Section 190.25(6) provides that “[w]here necessary or appropriate, the court or the district attorney, or both, must instruct the grand jury concerning the law with respect to its duties or any matter before it.” And, “[a]lthough the Grand Jury need not be charged with the same degree of precision as the petit jury, the District Attorney must give guidance adequate for the Grand Jury to carry out its function.” People v. Valles, 62 N.Y.2d 36, 38 (1984). This means that the People must provide the grand jury “with enough information to enable it intelligently to decide whether a crime has been committed and to determine whether there exists legally sufficient evidence to establish the material elements of the crime.” Id. (quoting People v. Calbud, Inc., 49 N.Y.2d 389, 394-395 (1980)). The Court of Appeals has held “that a failure to furnish adequate or complete instructions may, in a given case, render the Grand Jury proceedings defective, mandating dismissal of the indictment.” Valles, 62 N.Y.2d at 38 (citing Calbud, 49 N.Y.2d at 395).

In this case, such guidance was paramount: New York’s extortion statute contains a term – “wrongfully” – the legal meaning of which is neither simple nor apparent on its face. As applied to the crime of extortion, “wrongfully” is a deeply nuanced term. While it may appear straightforward, it actually has a complex and multifaceted legal meaning that would not be obvious to a grand juror. Therefore, without guidance, the grand jury could not have made an intelligent, informed decision on whether to return an indictment. If the People failed to provide such information, the indictment in this case should be dismissed.

Specifically, the grand jury should have been instructed that under the New York extortion statute, a defendant “wrongfully” obtains property only when: (1) he has no claim of right to the money demanded; and (2) he is aware that his conduct is contrary to law.

1. The Grand Jury Should Have Been Instructed that a Threat is Only Wrongful When A Defendant Has No Claim of Right to the Money Demanded

Under New York’s extortion statute, Penal Law (“PL”) Section 155.05(2)(e), not all threats are wrongful. Indeed, the only threats that are “wrongful” are those where the defendant has no “claim of right to the money demanded.” United States v. Jackson, 180 F.3d 55, 70 (2d Cir. 1999) (vacated on other grounds, 196 F.3d 383 (2d Cir.1999)). A defendant has no “claim of right to the money demanded” only if he could obtain no money from disclosing the “victim’s” secret to a third party; in other words, a defendant has no “claim of right” where the secret has no independent value, apart from the threat itself. Jackson, 180 F.3d at 70-71.

All other threats to reputation – notably those where the threatened disclosure does have some independent value – fall outside the proper ambit of the statute. In this case, the grand jury should have been instructed that a threat to reputation, under New York’s extortion statute, is only “wrongful” under a very limited set of circumstances.

The People have a responsibility to define for the grand jury any element of a statute which has a non-obvious legal meaning. See, e.g., People v. Huntington, 57 A.D.3d 1238, 1239-40 (N.Y. App. Div. 3d Dep’t 2008) (holding that “depraved indifference” does not “have an obvious meaning” and should have been defined to grand jury). An excellent example of this requirement is the decision in People v. Jerreld, 19 Misc. 3d 595, 597 (N.Y. Co. Ct. 2008). In Jerreld, the term at issue was “serious physical injury.” Id. While “serious physical injury” (as

“wrongfully”) might seem a simple term on its face, the court held that “what the Penal Law means by ‘serious physical injury’ would not be obvious to a layman.” See id. The Court held that the statutory definition was actually “very precise” and involved more than the plain meaning of the words themselves “as those terms would be commonly understood in the absence of instruction.” See id. The court therefore held that “[t]he failure of the assistant district attorney to instruct the grand jury on the meaning of ‘serious physical injury’ require[d] dismissal.” See id. In similar cases, courts have ruled that the People are required to define a term for the grand jury where, though it appeared simple, an “operative statutory element [was] not facially self-evident.” See, e.g., People v. Doe, 178 Misc. 2d 908, 911 (N.Y. Sup. Ct. 1998) (phrase: “other than in good faith”); People v. Ramos, 223 A.D.2d 495, 495 (N.Y. App. Div. 1st Dep’t 1996) (term: “residence”).

In this case, the People had a responsibility to instruct the grand jury on the legal meaning of the term “wrongful,” because its complex and nuanced meaning as applied to the New York extortion statute is far from self-evident. Its legal significance – having no “claim of right to the money demanded” – was clearly explained in United States v. Jackson, 180 F.3d 55 (2d Cir. 1999), a case interpreting an “analogous” federal extortion statute. See also Dawkins v. Williams, 511 F. Supp. 2d 248, 258-59 (N.D.N.Y. 2007) (interpreting the New York extortion statute and holding that the only threats proscribed “are wholly gratuitous ones, in that the threatened disclosure would not in and of itself materially benefit the actor.”) (from Report - Recommendation).

In Jackson, the Court of Appeals for the Second Circuit vacated the defendant’s conviction for extortion because the trial court failed to properly instruct the petit jury. 180 F.3d at 58-59. The defendant, Autumn Jackson, was convicted for attempting “to obtain up to \$40

million” from celebrity Bill Cosby, “by threatening to cause tabloid newspapers to publish Jackson’s claim to be Cosby’s daughter out-of-wedlock.” Id. at 59. At trial, the defendant requested that the court instruct the jury as to the meaning of “wrongful” as it relates to a charge of extortion. Id. at 65. The trial court refused, and gave no instruction “mentioning any ingredient of wrongfulness;” the court explained by “stating its view that ‘threatening someone’s reputation for money or a thing of value is inherently wrongful.’” Id.

In reversing, the Court of Appeals disagreed. The court held that, in fact, “plainly not all threats to engage in speech that will have the effect of damaging another person’s reputation, even if a forbearance from speaking is conditioned on the payment of money, are wrongful.” Id. at 67. Rather, the key factor in determining whether a threat was wrongful was “whether the defendant had a claim of right to the money demanded.” Id. at 70.

The court provided, as an example of threats that are inherently wrongful, “threatened disclosures of such matters as sexual indiscretions that have no nexus with any plausible claim of right.” Id. Such threats are wrongful because “it is only the threat that has that potential” to result in the defendant obtaining money, “and actual disclosure would frustrate the prospect of payment.” Id. In other words, if the threatened disclosure was carried out, and the “sexual indiscretions” revealed, the defendant would: (a) receive no money from such public disclosure; and (b) have no further leverage to ensure payment. In such cases, “if a threatener having no claim of right discloses the victim’s secret, regardless of whether her information is correct she normally gets nothing from the target of her threats.” Id. at 71. An alternative example was provided by the court in Dawkins, of an individual who “threatened to contact various news outlets” and report misconduct. 511 F. Supp. 2d at 260-61. Such a threat was “wrongful” under the statute because “to go to the press” and reveal the secret would not provide, to the individual

making the threat, “any inherent material benefit.” See id.; see also, e.g., State v. Pauling, 69 P.3d 331, 337 (2003) (interpreting analogous statute and holding wrongful “the threat to send nude photos to family and friends”).

In this case, the situation was very different from the above examples, and therefore it was necessary for the People to give a detailed instruction to the grand jury. Halderman certainly had a “claim of right” to the money demanded. Even if Letterman had refused his demand, he could have sold his story idea to a third party: he could have authored a book, as he planned to do, or a screenplay, and sold that work to a third party for payment. A threat is wrongful where “the only leverage to force the payment of money resides in the threat, [and] where actual disclosure would be counterproductive.” Id. Here, actual disclosure would be anything but counterproductive – authoring and selling a book or screenplay would result in “the payment of money” just as it would if Halderman’s threat were accepted and he received money from Letterman directly.

In this case, without “any explication of the phrase” at issue, the grand jurors “were at sea as to the substance of the crime they were being asked to consider, that is, the nature of the proscribed conduct.” See Doe, 178 Misc. 2d at 911. “Nor were they given sufficient information to evaluate whether the defendant had engaged in it.” See id.

Further, the People have an obligation to instruct the Grand Jury concerning potential legal defenses. See Valles, 62 N.Y.2d at 38. The grand jury must be instructed on a potential “exculpatory” defense – “one that would, if believed, result in a finding of no criminal liability” – because the grand jury’s very function is “to protect citizens from having to defend against unfounded accusations.” See id. at 38-39. The basic rule set forth by the Court of Appeals is that a defense must be charged when it has “potential for eliminating a needless or unfounded

prosecution.” See id. at 38-39 (“It is the possibility that criminal proceedings need not be undertaken at all which underscores the importance of the Grand Jury’s consideration of such defenses.”). Therefore, “[i]f the District Attorney fails to instruct the grand jury on a defense that would eliminate a needless or unfounded prosecution, the proceeding is defective, mandating dismissal of the indictment.” See People v. Samuels, 12 A.D.3d 695, 698 (N.Y. App. Div. 2d Dep’t 2004).

The need to instruct a grand jury as to a defense is particularly keen for “defenses whose formulation may not be known to a layperson.” See People v. Crump, 157 Misc. 2d 566, 568 (N.Y. Co. Ct. 1992). “The reason for this is clear: if a panel’s legal advisor does not instruct it as to the elements of such a defense, where those elements have arguably been presented, the members of the panel cannot be said to be capable of ‘intelligently’ deciding whether a particular person should be charged with a particular crime.” See id. In such cases, “if the defense [is] made out, there would [be] no crime at all; but the grand jurors [need] to be instructed as to the particulars of the defense in order to understand this.” See id. (citing Valles, 62 N.Y.2d at 38-39). For this reason, “courts have noted the value of instructing grand juries as to entrapment; as to the agency defense for narcotics-sale crimes; and as to the ‘claim-of-right’ defense to larceny prosecutions.” See Crump, 157 Misc. 2d at 568 (internal citations omitted); see also, e.g., People v. Shirah, 22 Misc. 3d 1101(A), 2008 WL 5381483, at *5-6 (N.Y. Co. Ct. Jan. 4, 2008) (dismissing charge due to “the failure of the District Attorney to give the ‘necessary and appropriate’ charge of justification); Samuels, 12 A.D.3d at 698-99 (same, reasoning that because of failure to instruct, “the defendant may have been prejudiced by an unwarranted prosecution”); People v. Quintana, 36 A.D.3d 505, 505 (N.Y. App. Div. 1st Dep’t 2007) (indictment dismissed for failure to instruct grand jury on defense of duress). “In each of these

cases, a rule of law existed under which certain apparently-criminal behavior is deemed to be non-criminal.” See Crump, 157 Misc. 2d at 568.

Here, the People were required to instruct the grand jury on the legal meaning of the term “wrongful,” because it forms the basis for a complete defense to the charge of extortion. See Jackson, 180 F.3d at 70-71. The grand jury should have been instructed that if Halderman had a “plausible claim of right,” see id. at 71, his threat would not be “wrongful,” and there would be no grounds to indict. However, without instruction, the grand jury could have had no idea that such a defense was even available. In fact, had the grand jury been properly instructed, we submit that “no indictment would have been returned and an unwarranted prosecution would have been avoided.” See Valles, 62 N.Y.2d at 39. Therefore, if such instruction was not given, the grand jury procedure was defective, and the indictment should be dismissed. See Jackson, 180 F.3d at 71 (holding that “whether a defendant has a plausible claim of right” was a “question of fact for the factfinder,” who, in turn, must be “properly instructed.”).

2. The Grand Jury Should Have Been Instructed that a Threat is Only Wrongful When A Defendant Is Aware that His Conduct Is Unlawful

The People also should have instructed the grand jury that in order to indict, Halderman must have been aware that his conduct was contrary to law; in the New York extortion statute, a “larcenous intent” is written into the multi-faceted “wrongful” requirement. See Dawkins, 511 F. Supp. 2d at 267 n.40 (citing jury instruction listing “awareness of wrongful conduct as an independent element of grand larceny” by extortion) (emphasis in original). Pursuant to the model charge for larceny, a defendant must have a larcenous intent to fall under the statute: he must have been “aware that such taking, obtaining or withholding” was wrongful, *i.e.*, contrary to law. See Howard G. Leventhal, 2 Charges to Jury & Requests to Charge in Crim. Case in

N.Y. § 50:8 (2009). Such larcenous intent is, in every case, an essential element of a larceny charge. See People v. Jennings, 69 N.Y.2d 103, 118 (1986) (“The intent element of larceny is therefore very different in concept from the ‘taking’ element, which is separately defined in the statute.”). And, again, this requirement would not have been self-evident to a grand juror, and would have constituted a complete defense, if accepted. See Jerreld, 19 Misc. 3d at 597; Crump, 157 Misc. 2d at 568.

In this case, it was necessary for the People to give this instruction to the grand jury, because, as further explained below, the evidence showed that Halderman did not believe his conduct to be unlawful.⁹ He directly stated as much in his recorded conversations with Letterman attorney Jim Jackoway. (See Transcript (“tr.”) dated September 23, 2009, at 5.) He created a substantial and detailed paper trail of his transaction (including a signed and copied “Purchase Agreement for Screenplay Treatment and Other Related Material” and “Confidentiality Agreement”). He even accepted payment by bank check. Had the grand jury received the proper instruction on “wrongful” as it related to “larcenous intent,” it is reasonable to believe that “no indictment would have been returned” and a “needless” and “unfounded prosecution” could have been avoided. See Valles, 62 N.Y.2d at 38-39.

B. The Indictment Should be Dismissed Because the Evidence Before the Grand Jury Was Legally Insufficient

The Court should inspect the grand jury minutes and, we respectfully submit, should dismiss the indictment as legally insufficient. Section 210.30(2) of the New York Criminal Procedure Law (“CPL”) states that on motion by a defendant, the court should examine the minutes of a grand jury proceeding resulting in an indictment “for the purpose of determining

⁹ See infra, Part B(2).

whether the evidence before the grand jury was legally sufficient to support the ... charge contained in such indictment.” Section 210.20(1)(b) states that “the superior court may, upon motion of the defendant, dismiss such indictment ... upon the ground that ... [t]he evidence before the grand jury was not legally sufficient to establish the offense charged.”

As a rule, “[t]he Grand Jury may not indict unless the People present evidence establishing a prima facie case of criminal conduct.” Jennings, 69 N.Y.2d at 114. “The sufficiency of the People’s presentation is properly determined by inquiring whether the evidence viewed in the light most favorable to the People, if unexplained and uncontradicted, would warrant conviction by a petit jury.” Id.

Here, the People’s presentation was legally insufficient to support the indictment, because the evidence: (1) showed that Halderman had a “claim of right to the money demanded”; and (2) was not aware that his conduct was contrary to law.

1. The Evidence Was Legally Insufficient to Demonstrate that Halderman Had No Claim of Right to the Money Demanded

The evidence presented to the grand jury was insufficient to support the indictment, because it failed to show that Halderman had no “claim of right to the money demanded.” See Jackson, 180 F.3d at 70. As stated above¹⁰, a defendant has no “claim of right to the money demanded” only if he could obtain no money from disclosing the “victim’s” secret to a third party; in other words, a defendant has no “claim of right” where the secret has no independent value, apart from the threat itself. See Jackson, 180 F.3d at 70-71. Here, Halderman had a definite claim of right to the money that he could earn by selling a book or screenplay based on what he knew of Letterman. He had the industry experience and the connections to arrange such

¹⁰ See supra, Part A(1).

a sale. And, the amount demanded was perfectly in line with the independent sale value of the information: screenplays, at least, routinely sell for as much or more than the \$2 million he was demanding. See Screenwriter's Salary, available at http://en.wikipedia.org/wiki/Screenwriter%27s_salary (listing 43 screenplays that sold for at least \$2 million); Chris Lee, A tale of Hollywood e-harmony, Los Angeles Times, May 16, 2005 (“In the end, Bruckheimer agreed to pay \$5 million, including bonuses (or \$3 million if ‘Déjà vu’ doesn’t get made), split evenly between Rossio and Marsilii”).

Halderman’s only threat was that if Letterman refused to buy the rights to the story, Halderman himself would write and sell a book and/or screenplay based on it. This was articulated in Halderman’s initial missive to Letterman, and during his subsequent meetings with Letterman attorney Jim Jackoway (all of which were shown, we believe, to the grand jury). (See Sept. 23 tr. at 2) (Jackoway: “But I’ll need a purchase agreement for the thing to buy, you know, the treatment and now you said, you have, you’ve started a book, whatever that material is in, I need to buy that, OK?”). Throughout the course of their dealings, Halderman’s threat never changed. When Jackoway counter-offered with less money, Halderman simply said: “If that’s what you want to do then we’re done. I’ll write the book and I’ll send you the advance copy.” (Id. at 4.) Later, Halderman again stated clearly:

But I have no plans to do anything other than either sell you this option, this screenplay to you and therefore you own the story, or if you don’t and you’re not interested as I’ve said then that’s fine and I will proceed and I will do what I want to do, which is what I’ve been thinking about doing anyway, which is writing a book. So your option is very simple. (Id.)

The documentary evidence supports this mutual understanding. The “Purchase Agreement for Screenplay Treatment and Other Related Material” (dated September 30, 2009), a document presumably shown to the grand jury, states that Halderman was selling, and

Letterman’s production company was buying, a “Treatment for a Screenplay,” the material “used in connection with, or related to, or which inspired the creation of the Treatment,” and “any book, portion of a book, outline for a book, or draft thereof.”

In this case, authoring and selling a book and/or screenplay would result in “the payment of money” just as it would if Halderman’s threat were accepted and he received money from Letterman directly. See Jackson, 180 F.3d at 70-71. Therefore, Halderman had a “claim of right” to the money demanded. See id. As a result, the evidence was insufficient to support the “wrongfulness” element of the extortion charge, and the indictment should be dismissed.

2. The Evidence Was Legally Insufficient to Demonstrate An Awareness of Unlawful Conduct

The evidence presented to the grand jury was insufficient to demonstrate that Halderman intended to engage in “wrongful” – *i.e.*, unlawful – conduct. As discussed above¹¹, the People were required to present legally sufficient evidence of Halderman’s larcenous intent. See People v. Holmes, 49 A.D.3d 1349, 1350 (N.Y. App. Div. 4th Dep’t 2008) (holding that “People failed to present evidence from which the grand jury could infer that [defendant] had that intent” to commit larceny); see generally People v. Rozenberg, 21 Misc. 3d 235, 238 (Sup. Ct. 2008) (after reviewing grand jury presentation, holding “that there was legally insufficient evidence to support the ‘intent to conceal’ element of money laundering.”). To the contrary, Halderman’s words and actions showed that he did not believe his conduct to be unlawful.

In the videotaped meetings between Halderman and Jackoway (shown, we believe, to the grand jury), Halderman consistently stated that, as far as he understood and believed, his conduct was not unlawful. For example, at the September 23, 2009 meeting, Jackoway threatened that if

¹¹ See supra, Part A(2).

Halderman released the story himself, there would be “a criminal prosecution.” (Sept. 23 tr. at 5.) In response, Halderman stated “I don’t agree with your position on that.” (Id.) Halderman’s subjective intent was clear – he did not intend to commit a crime; he flatly believed that offering to sell his story idea to Letterman was not unlawful. And, after a career in television production, where story ideas and screenplay treatments are routinely offered for sale, he would have no reason to believe that his conduct violated New York’s extortion statute. (See id. at 8) (Halderman: “A friend of mine for example wrote a Vanity Fair article a few years ago and Brian Seltzer, I think, optioned that story.”). At the meeting, Halderman clearly stated:

I’m gonna call my accountant tomorrow and I’m gonna tell him that I’m optioning a screenplay. I think that’s how we should define this. ... That’s how we should define this, because that’s what I think this is, OK, at this moment in time. (Id. at 11) (emphasis added).

At the September 23 meeting, Halderman and Jackoway also discussed the manner in which they would memorialize sale, including the drafting of a “confidentiality agreement” and a “purchase agreement,” (Id. at 2), and how they would handle the tax implications of the sale (id. at 3). At one point, Jackoway told Halderman: “Before I issue a check you’ll have to tell me, you know, who I am paying. I would need either a social security number if it’s you or a federal I.D. if it’s not you.” (Id. at 3.) Halderman was willing to sign binding legal documents, and, on the tax issue, told Jackoway that he would even provide his social security number and discuss the issue with his accountant. (Id. at 3, 11 (Halderman: “Well, I’ll call my accountant tomorrow.”).) He even planned to ask for advice on the transaction from his “business manager, [his] tax person.” (Id. at 8.) Halderman’s course of conduct very clearly indicated that he believed his actions were not unlawful.

Subsequently, Halderman did in fact sign a “Purchase Agreement for Screenplay Treatment and Other Related Material” and a “Confidentiality Agreement,” documents

presumably presented to the grand jury. (See Sept. 30 tr. at 2.) And, it also bears noting that Halderman accepted payment from Letterman not in cash, but by check. (Id. at 5.)

Simply put, these were not the actions of an individual who believed that his actions were “wrongful,” *i.e.*, unlawful. Halderman created a substantial, legally binding paper trail of his actions, with multiple copies of each document held by both parties. (Sept. 23 tr. at 8 (Halderman: “I’ll need a copy of the agreement, obviously ... I’m not going to sign a contract and not have a copy of it, Jim. Would you sign a contract and not have a copy of it?”), 9 (Halderman: “I understand, but I also want a copy of that agreement. I’m not going to sign an agreement that I don’t have a copy of, would you?”).)

Given all of the facts above, there was insufficient evidence before the grand jury of any larcenous intent. See Rozenberg, 21 Misc. 3d at 238 (evidence presented to grand jury “negate[d]” element of criminal intent). Because such wrongfulness is an essential element of the extortion statute, the indictment should be dismissed. See Jennings, 69 N.Y.2d at 121 (holding that because evidence did not establish larcenous intent, “People’s proof did not establish a larceny.”).

C. The Indictment Should be Dismissed if the Grand Jury Indicted Only Under PL Section 155.05(2)(e)(ix), or Failed to State Under Which Theory It Did Indict

In this case, the People submitted to the grand jury two different theories of extortion.¹² One of those theories, under PL Section 155.05(2)(e)(ix), is that Halderman “wrongfully” took property from Letterman by instilling a fear that, if the property were not delivered, Halderman would “[p]erform any other act which would not in itself materially benefit [him] but which is

¹² See People’s Letter, dated October 29, 2009. The two theories were based in PL Section 155.05(2)(e)(v) and PL Section 155.05(2)(e)(ix).

calculated to harm [Letterman] materially with respect to his ... reputation or personal relationships.” This theory, based on all of the evidence in the case, is simply insufficient on its face. The grand jury could not have found that Halderman’s threatened act – authoring and selling a book, or a screenplay, based on Letterman – “would not in itself materially benefit the actor.” Clearly, it is incontrovertible that the sale of a book or screenplay would provide at least some material benefit to Halderman. See Kovian v. Fulton County Nat’l Bank and Trust Co., No. 86 Civ. 154, 1990 WL 36809, at *20 (N.D.N.Y. March 28, 1990) (holding that threatened actions “could materially benefit the actor” and therefore “allegations of extortion” were “not encompassed” by New York PL Section 155.05(2)(e)(ix)).

The grand jury returned the indictment without specifying on the face of the indictment under which of the two theories it indicted (by, *e.g.*, indicating the relevant subsection of the extortion statute). If there is evidence in the minutes that the grand jury could have returned the indictment under PL Section 155.05(2)(e)(ix), the indictment should be dismissed as plainly insufficient. Likewise, if the grand jury returned the indictment without stating under which of the two theories it indicted, the indictment must be dismissed, because there is no way for a reviewing court to determine if it indicted under a theory (PL Section 155.05(2)(e)(ix)) which cannot be supported as a matter of law. See, e.g., People v. Mateo, 175 Misc. 2d 192, 219 (N.Y. Co. Ct. 1997) (dismissing indictment because “[w]hether the Grand Jury voted to indict on similar fashion or common scheme or plan is ... not clear from the Grand Jury minutes” and there was “insufficient evidence presented” to support the indictment “under either theory.”) (emphasis in original).

D. The Indictment Should be Dismissed Because the New York Extortion Statute is Unconstitutionally Vague as Applied and Overbroad

The United States Constitution provides no added protection for “celebrities.” In neither the Bill of Rights, nor the later Amendments, did the drafters pen a clause sheltering “any and all Public Figures”¹³ from the basic realities of American commerce. Indeed, in interpreting the Constitution, the Supreme Court has actively minimized the protection afforded to those in the public eye. See New York Times Co. v. Sullivan, 376 U.S. 254 (1964).

Yet, in this case, the protection of “celebrity” was able to trump the exercise of basic legal behavior in a free market system. The reason that this could happen is simple: the New York extortion statute is constitutionally infirm, inviting the improper exercise of prosecutorial discretion. As detailed below, the New York extortion statute, PL Section 155.05(2)(e), is both unconstitutionally vague as applied and overbroad. As a result, the indictment in this case should be dismissed.

1. The Extortion Statute is Vague as Applied

Vagueness is “a constitutional violation” – a “due process infirmity” – based in the principle that “a proscriptive law must provide people with reasonable notice of the conduct it prohibits.” See People v. Stuart, 100 N.Y.2d 412, 418-19 (2003) (also collecting, at 419 n.6, cases where New York courts “have struck down criminal statutes or ordinances on grounds of unconstitutional vagueness.”).

¹³ See Affidavit in Support of Search Warrant, dated October 2, 2009, requesting permission to search for “[a]ny and all files” pertaining to “any and all Public Figures.”

In addressing a vagueness challenge, courts employ a two-part test. Id. at 420. First, the court must determine whether the statute “is sufficiently definite to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute.” Id. (internal quotation marks omitted); People v. Bright, 71 N.Y.2d 376, 382 (1988) (same). Second, the court must determine whether the statute “provides officials with clear standards for enforcement.” Stuart, 100 N.Y.2d at 420. This second prong is “the more important aspect of the vagueness doctrine.” See Bright, 71 N.Y.2d at 383. “If a statute is so vague that a potential offender cannot tell what conduct is against the law, neither can a police officer.” Stuart, 100 N.Y.2d at 420-21. “Put differently, if a criminal statute is impermissibly vague, the police will be guided not by clear language but by whim.” Id. “The absence of objective standards to guide those enforcing the laws permits the police to make arrests based upon their own personal, subjective idea of right and wrong.” Bright, 71 N.Y.2d at 383.

Under the first prong, the test in this case is whether Halderman could “reasonably have failed to realize that his intentional course of conduct” – attempting to sell Letterman his screenplay treatment – “was unlawful under the [extortion] statute.” See Stuart, 100 N.Y.2d at 426-27 (citing People v. Nelson, 69 N.Y.2d 302, 307-08 (1987)).

As discussed above, Halderman had a long and successful career in television production, where the sale of screenplays, treatments and options is the everyday lifeblood of the industry. (See, e.g., Sept. 23 tr. at 8.) And, not only did he have the experience and connections necessary to sell his movie idea to a third-party purchaser, but, under any circumstance he could imagine, he had the complete right to do so. As a result, he could have reasonably failed to realize that under New York’s extortion statute, he could offer to sell his movie idea to anyone in the world – with the single exception of David Letterman. New York’s extortion statute, as applied in this

case, criminalizes the offered sale of a screenplay idea to a single individual – the subject of the underlying story – but not to any other potential purchaser. It is eminently reasonable that Halderman could have failed to realize that this bizarre one-in-6.7-billion exception made his conduct unlawful under New York’s extortion statute.

The fact that the behavior at issue – the offered sale of a screenplay treatment to a third party – is overwhelmingly legal and inherently innocent demonstrates the statute’s infirmity. “[U]nder our State and Federal Constitutions, the Legislature may not criminalize conduct that is inherently innocent merely because such conduct is ‘sometimes attended by improper motives,’ since to do so would not fairly inform the ordinary citizen that an otherwise innocent act is illegal.” Bright, 71 N.Y.2d at 383; People v. Bunis, 9 N.Y.2d 1, 4 (1961) (“The Legislature may not validly make it a crime to do something which is innocent in itself merely because it is sometimes done improperly, sometimes attended by improper motives or done as part of an illegal scheme.”). “Such a generalized law fails to distinguish between conduct calculated to cause harm and conduct that is essentially innocent, thereby failing to give adequate notice of what conduct is prohibited.” Id. at 383-84. In this case, an “otherwise innocent act” (offering a story idea for sale) was, in an anomalous result, made illegal under a statute that must be held vague-as-applied.

That the statute contains the word “wrongfully” – without any additional definition – does not alter this result. As discussed more fully above¹⁴, “wrongfully” is not an “objective term[] easily understood” which “provides objective criteria [and] is not dependent upon the subjective conclusions of a complainant or an arresting officer.” See Stuart, 100 N.Y.2d at 426-27. Neither citizens nor law enforcement (nor, we argue, grand jurors) are offered sufficient

¹⁴ See supra, Part A.

guidance by the statutory use of the term “wrongful,” without more. And, without further guidance, the statute is open to the “subjective conclusions of a complainant or an arresting officer” who is free to decide when an offer to sell a screenplay is “wrongful” and when it is not. The very test is whether police officers are free “to make arrests based upon their own personal, subjective idea of right and wrong.” See Bright, 71 N.Y.2d at 383. The addition of the word “wrongful” to the statute – without further guidance as to the legal meaning of “wrongful” – clearly cannot aid an officer in deciding between “right and wrong;” it simply gives him statutory *carte blanche* to make his own personal, subjective judgment as to when something is “wrongful” and when it is not.

The statute as applied thereby fails the second prong of the vague-as-applied test. “A vague statute confers on police a virtually unrestrained power to arrest and charge persons with a violation, and furnishes a convenient tool for harsh and discriminatory enforcement by local prosecuting officials, against particular groups deemed to merit their displeasure.” Bright, 71 N.Y.2d at 383 (internal quotation marks omitted). Here, the statute as written, and as applied to the facts of this case, provides no limitation on the discretion of police and prosecutors. According to Black’s Law Dictionary, “wrongful” means, very basically, “contrary to law,” or “unlawful.” See Black’s Law. Therefore, on the face of the statute, prosecutors and police officers are deciding – on their own and without guidance – under what circumstances the sale of a screenplay idea is “unlawful.” A statute permitting a prosecutor and a police officer to regulate the free-market sale of ideas based on whether they believe a screenplay sale offer to be “wrongful” (*i.e.*, “unlawful,” see Black’s Law) simply cannot survive constitutional scrutiny.

2. The Extortion Statute is Overbroad

The New York extortion statute is also overbroad as applied, because the present prosecution infringes on Halderman's basic First Amendment right to author and/or sell a book about Letterman. "The First Amendment protects authors and journalists who write about public figures." See Masson v. New Yorker Magazine, Inc., 501 U.S. 496, 499 (1991). Here, that basic freedom was abridged by police and prosecutors.

Further, the statute is overbroad on its face. A defendant can "challenge the constitutionality of a statute on the ground that its application to others could impair their constitutional rights ... in instances where the statute's facial ability to reach protected conduct is so broad that its continued application may chill the lawful exercise of citizens' right to freedom of speech." See People v. Hollman, 68 N.Y.2d 202, 208 (1986); see also Broadrick v. Oklahoma, 413 U.S. 601, 612 (1973) (holding that litigants "are permitted to challenge a statute not because their own rights of free expression are violated, but because of a judicial prediction or assumption that the statute's very existence may cause others not before the court to refrain from constitutionally protected speech or expression.").

Here, the danger that the statute may "chill the exercise of free speech rights by others" is palpable. See People v. Shack, 86 N.Y.2d 529, 537 (1995). This is not a case where there is but a "remote possibility" that a statute may "as applied to an unusual set of facts, reach protected conduct." See Hollman, 68 N.Y.2d at 209. Rather, Halderman's arrest and prosecution in this case shows that the statute can criminalize the most basic free market elements of First Amendment free speech. Likewise, other "circumstances in which the language of [the extortion statute] would impermissibly restrain protected speech" can easily be imagined. See Shack, 86 N.Y.2d at 537 (1995).

One example:

A commercial photographer, as a function of his profession, routinely takes and sells photographs of celebrities. As befits the nature of his business, most of the photographs he takes could be considered “embarrassing” to the celebrities involved; as a general rule, these photos show celebrities acting or appearing in a way that is less flattering than they care to be portrayed. Of course, these are the photos that the defendant takes, because these are the photos that have a (perfectly legal) marketplace demand and a definite and regular value to potential publishers. Based on a career in the industry, the photographer knows that he can sell a photo that he has just taken of “Celebrity X” for \$5,000.

In this example, the photographer, in an attack of conscience, before he offers the photo on the open market, decides to approach the celebrity directly, or his representative. He sets up a meeting with the attorney for “Celebrity X,” and says something like: “I know that “Celebrity X” has a wife, and young children. The photo that I’ve just taken of him could be very embarrassing. It could lead to him getting divorced, to his children being upset, even to him potentially losing his job, or his sponsors, or his potential for future work. I know that I can sell the photo for \$5,000, but, if “Celebrity X” wants, I think it would be right for me to sell the photo – and all of the negatives – to him for the same amount, \$5,000. I won’t do anything until I hear from him, or from you. In fact, here’s a copy of the photo – show it to “Celebrity X,” think about it, and get back to me. I’ll even sign a contract with you, if you draw it up, making it all perfectly legal. I’ll report the money as income, and I’ll sign away my rights to the photo. As a sign of good faith, I’ll even consent to a clause where, if I break our agreement, I’ll return the \$5,000.”

Under New York's extortion statute, the photographer in this example, like Halderman, would fall under the purview of the criminal laws for his attempt at moral and principled behavior. He could be indicted, at the discretion of the District Attorney's Office, and face felony charges.

This has far-reaching implications. As displayed in this case, the Manhattan District Attorney's Office has shown a willingness – indeed, an eagerness – to take any and all steps to protect “Public Figures” from undue distress. But, we submit, in the example above, the photographer's behavior should be actively encouraged under the law (and any concept of moral law enforcement), rather than discouraged through the application of overreaching criminal statutes. See generally People v. Hicks, 38 N.Y.2d 90, 94 (1975) (interpreting scope of law such that “civic-mindedness should be encouraged and applauded.”). The extortion statute criminalizes, essentially, offering a “right of first refusal” on story ideas, sold for fair market value. In such a case, the New York extortion statute is unconstitutionally overbroad, and the indictment should be dismissed.

E. The Court Should Suppress All Items Seized Pursuant to the Search Warrants Issued in this Case

The search warrants issued and executed in this case, directing law enforcement to comb Halderman's property for “any and all files” relating to “any and all Public Figures,” are grossly overbroad. Three search warrants were executed in connection with this investigation. The first warrant was executed on October 1, 2009, at Halderman's residence in Connecticut. (See Affidavit and Application, Search and Seizure Warrant, State of Connecticut Superior Court.) This warrant, issued by a judge of the Superior Court of the State of Connecticut, Norwalk, directed seizure of broad categories of lawful items, most of which were unrelated to the

investigation. The second and third search warrants, issued by a New York State Supreme Court Judge, were executed at Halderman's CBS office in Manhattan on October 2 and October 16, 2009. (See Affidavit in Support of Search Warrant; Warrant, for each search.) All of these warrants were issued based on information provided by James Jackoway.

The warrants authorized the search and seizure of items – including pieces of creative expression, implicating First Amendment concerns – without a sufficient showing of “reasonable cause” to believe that those particular items had been used or possessed in connection with a crime. See CPL § 690.10. And, certainly, there was no showing of “reasonable cause” to believe that a crime had been committed with regard to any “Public Figure” beyond Letterman. Any items seized pursuant to these overbroad warrants must be suppressed.¹⁵

Further, the warrant for the first search of Halderman's office at CBS, on October 2, 2009, was executed before it was “subscribed and sworn to by a public servant.” See CPL § 690.35. This offers a further, independent ground for suppression of the items seized during that search, as well as during the subsequent search of Halderman's office on October 16, 2009 (as fruits of the poisonous tree).

1. The Warrants Are Overbroad Because They Authorize a Search for “Any And All Files” Relating to “Any and All Public Figures”

Both the Federal and New York State Constitutions mandate that warrants shall not issue except “upon probable cause ... particularly describing the place to be searched, and the persons or things to be seized.” U.S. Const. Amend. 4; NY Const. Art I, § 12; see also CPL Section

¹⁵ To date, defense counsel has not been allowed to inspect the items seized pursuant to the search warrants, and has not received the results of forensic examination of the computer media seized. We therefore respectfully request the opportunity to supplement this argument when those materials are made available, if necessary.

690.10 (providing that “personal property is subject to seizure pursuant to search warrant” only with “reasonable cause to believe” that it relates to a crime).¹⁶ Such probable cause “must provide sufficient information to support a reasonable belief that evidence of a crime may be found in a certain place.” People v. Monserrate, 24 Misc. 3d 1229, 2009 WL 2357011, at *8 (N.Y. Sup. Ct. July 28, 2009) (quoting People v. German, 251 A.D.2d 900 (N.Y. App. Div 3rd Dept. 1998)). Further, “[w]here the materials sought to be seized may be protected by the First Amendment, the requirements of the Fourth Amendment must be applied with ‘scrupulous exactitude.’” See Zurcher v. Stanford Daily, 436 U.S. 547, 564 (1978) (citing Stanford v. Texas, 379 U.S. 476, 485).

In this case, there was no probable cause to believe that evidence of crimes against “any and all Public Figures” would be found in the places to be searched. All three warrants were therefore overbroad, and violated Halderman’s constitutional right to be free of unreasonable searches and seizures.

The Connecticut warrant, dated October 1, 2009, demonstrates this constitutional infirmity.¹⁷ The affidavit in support of the warrant application, based on information provided by Jackoway, asserts that Letterman received a package from Halderman containing a “demand letter,” a “treatment for a screenplay,” and supporting documents. It states that Jackoway had three meetings with Halderman, that the final two meetings had been recorded by the District Attorney’s Office, and that Halderman received a \$2 million check at the final meeting.

¹⁶ “In New York, ‘reasonable cause’ is the statutory equivalent of probable cause.” People v. Chen, 25 Misc.3d 1219(A), 2009 WL 3465944, at *4 n.8 (N.Y. Crim. Ct. Oct. 28, 2009) (citing People v. Maldonado, 86 N.Y.2d 631, 635 (1995)).

¹⁷ The New York warrants offered no additional probable cause, and simply referred back to the Connecticut warrant.

Based on this showing, the detectives requested and received authorization to seize ten broad categories of property, reaching far beyond the scope of the probable cause spelled out in the warrant application. Most strikingly, despite the fact that the warrant application referenced specific writings about a specific individual (Letterman), the warrant authorized law enforcement personnel to search Halderman's papers and computer files for "any and all" documents relating to "any and all public figures."

The Supreme Court has directly cautioned that there are "grave dangers inherent in executing a warrant authorizing a search and seizure of a person's papers" and that courts "must take care to assure" that such searches "are conducted in a manner that minimizes unwarranted intrusions upon privacy." See Andersen v. Maryland, 427 U.S. 463, 481, n.11 (1976). "Where presumptively protected materials" such as a journalist's writings about public figures "are sought to be seized, the warrant requirement should be administered to leave as little as possible to the discretion or whim of the officer in the field." See Zurcher, 436 U.S. at 564; Marron v. United States, 275 U.S. 192 (1927) (Fourth Amendment requirement of particularized probable cause "makes general searches ... impossible and prevents the seizure of one thing under a warrant describing another. As to what is to be taken, nothing is left to the discretion of the officer executing the warrant."); see also, People v. P.J. Video, Inc., 68 N.Y.2d 296 (1986) (holding that New York State Constitution provides greater protection than Fourth Amendment, where materials subject to search are presumptively protected by the First Amendment).

In this case, the broadly worded warrants directing seizure of all writings "pertaining to any and all public figures" run afoul of the Supreme Court's mandate. As a practicing journalist for over twenty years (who specialized in reporting on public figures), Halderman had scores of documents in his possession that could have been responsive to the warrants as written. The

