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# Don’t Go to Prison for Extortion: Lessons from Michael Avenatti

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Last month, former attorney Michael Avenatti was sentenced to four years in prison for stealing about $300,000 from his client, Stormy Daniels. But Mr. Avenatti was *already* serving a thirty-month prison sentence for attempting to extort a “settlement” from Nike.

Settlement demands are made every day. *“Pay $X or we will sue.” “Do Y and we will dismiss the lawsuit.”* Settlement negotiations are favored by courts in every jurisdiction. Courts routinely enforce oral and written settlement agreements—even in instances where all of the settlement agreement’s terms are not agreed upon. So how does a settlement discussion turn into a felony? Mr. Avenatti’s settlement tactics crossed the line into extortion in at least three ways.

Here are the facts: Mr. Avenatti told Nike representatives that his client, a high school basketball coach, accused Nike of making secret payments to the families of high school athletes in violation of NCAA rules for athlete recruitment. He threatened to use his considerable media profile to publicize Nike’s alleged violations unless Nike agreed to pay a substantial “settlement” to Mr. Avenatti’s client and to Mr. Avenatti’s firm.

If settlements are encouraged, then why is Michael Avenatti in prison? The answer lies in the federal extortion statute: 18 U.S.C. § 875(d). The statute prohibits the interstate transmission of communications “containing any threat to injure the property or reputation of the addressee or of another or the reputation of a deceased person or any threat to accuse the addressee or any other person of a crime…” The statute prohibits the use of “threats to reputation” to obtain money “if the defendant has no plausible claim of right to the money demanded or if there is no nexus between the threat and the defendant’s claim.” *See United States v. Jackson*, 196 F.3d 383, 387 (2d Cir. 1999).

So let’s look at Mr. Avenatti’s alleged conduct through the lens of the statute.

First, Mr. Avenatti threatened to use his personal celebrity to inflame a media frenzy surrounding Nike’s alleged violation well beyond the scope of litigation. According to the Complaint filed against him, Mr. Avenatti threatened to publicly announce his lawsuit against Nike at a press conference “on the eve of Nike’s quarterly earnings call and the start of the annual [NCAA] tournament.” In a

recorded conversation, Mr. Avenatti reportedly stated that his press conference would “take ten billion dollars off [Nike]’s market cap.” Again, according to the criminal complaint, Mr. Avenatti told Nike: “as soon as this becomes public, I am going to receive calls from all over the country from parents and coaches and friends and all kinds of people … and every time we got [sic] more information, that’s going to be in the *Washington Post*, the *New York Times*, a press conference, and the company will die—not die—but they are going to incur cut after cut after cut after cut…”

Second, the amount of Mr. Avenatti’s demand bore no discernible relation to the actual claims of his client. Mr. Avenatti demanded that Nike pay over $16 million dollars to settle his client’s claim—an amount that bore no discernible nexus to his client’s alleged damages.

Finally, Mr. Avenatti used the “settlement negotiation” primarily to enrich himself, rather than remedy a harm to his client. Mr. Avenatti demanded $1.5 million of the settlement go to his client. But that’s not all. Mr. Avenatti demanded that Nike retain his firm to perform an internal investigation that *guaranteed* Mr. Avenatti between $15 million and $25 million dollars in legal fees,” or about 10 to 16.6 times the payment to his client. Mr. Avenatti allegedly acknowledged this discrepancy by telling Nike “that he did not think it made sense for Nike to pay [his client] an exorbitant sum of money in light of his role in this.” In other words, Mr. Avenatti’s demand for a payment to himself did not bear any relation to his client’s claims.

In short, Mr. Avenatti’s threats and demands outstripped his case. The “nexus” between Mr. Avenatti’s threats and his client’s claims was too attenuated. This is why Mr. Avenatti found himself the subject of a criminal complaint alleging violation of the federal extortion statute. Incidentally, New Jersey courts take a similar nexus-based approach when interpreting New Jersey’s extortion law, N.J.S.A. 2C:20-5. In drawing the line between legitimate “protected” legal threats and “theft by extortion,” New Jersey courts determine whether there is a legitimate “economic or commercial nexus … between the actor who utters these ‘protected’ threats and the underlying transaction.” *State v. Roth*, 289 N.J. Super. 152, 161 (App. Div. 1996).

Mr. Avenatti’s conviction is cautionary tale to lawyers. When an attorney places their personal interests above those of the client, or uses settlement negotiation as a pretext to extract hush money from a defendant, the lawyer acts at their own peril.



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