



Program Title \_\_\_\_\_

Date Presented \_\_\_\_\_ Inn Year \_\_\_\_\_

Presenting Inn \_\_\_\_\_ Inn Number \_\_\_\_\_

Inn City \_\_\_\_\_ Inn State \_\_\_\_\_

Contact Person \_\_\_\_\_ Phone \_\_\_\_\_

E-mail Address \_\_\_\_\_

Please consider this program for the Program Awards: ☐ Yes ☐ No This program is being submitted for Achieving Excellence: ☐ Yes ☐ No  
(Submit within 60 days of presentation.)

### Program Summary:

Be concise and detailed in summarizing the content, structure, and legal focus of your program. Please attach additional sheets if necessary.

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### Program Materials:

The following materials checklist is intended to insure that all the materials that are required to restage the program are included in the materials submitted to the Foundation office. **Please check all that apply and include a copy of any of the existing materials with your program submission:**

☐ Script ☐ Articles ☐ Citations of Law ☐ Legal Documents ☐ Fact Pattern ☐ List of Questions ☐ Handouts  
☐ PowerPoint Presentation ☐ CD ☐ DVD ☐ Other Media (Please specify) \_\_\_\_\_

### Specific Information Regarding the Program:

Number of participants required for the program \_\_\_\_\_ Has this program been approved for CLE? ☐ Yes ☐ No  
Which state's CLE? \_\_\_\_\_ How many hours? \_\_\_\_\_ ☐ Pending ☐ Approved

### Recommended Physical Setup and Special Equipment:

i.e., DVD and TV, black board with chalk, easel for diagrams, etc.

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### Comments:

Clarify the procedure, suggest additional ways of performing the same demonstration, or comment on Inn members' response regarding the demonstration.

The crowd enjoyed the exaggerated costumes and the references to places in Long Beach

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## Program Submission Form

### Roles:

List the exact roles used in the demonstration and indicate their membership category; *i.e.*, Pupil, Associate, Barrister or Master of the Bench.

Role	Membership Category

Alison S. Flowers as moderator and research clerk

Associate

### Agenda of Program:

List the segments and scenes of the demonstration and the approximate time each item took; *i.e.*, "Introduction by judge (10 minutes)."

Item	Time

**Program Awards:** *Please complete this section **only** if the program is being submitted for consideration in the Program Awards.*

**Describe how your program fits the Program Awards Criteria:**

**Relevance:** How did the program promote or incorporate elements of our mission? *(To Foster Excellence in Professionalism, Ethics, Civility, and Legal Skills)*

while providing alternative ways to approach the issue without overstepping those bounds.

**Entertaining:** How was the program captivating or fun? The program allowed participants to use an always exciting maxim ("sex, drugs, and rock 'n' roll")

**Creative and Innovative:** How did the program present legal issues in a unique way? The program presented one story line with two similar prongs that

**Educational:** How was the program interesting and challenging to all members? Because the demand letters were so similar, yet had differing outcomes in

**Easily Replicated:** Can the program be replicated easily by another Inn? ☐ Yes ☐ No

This program is: ☐ Original ☐ Replicated

### Questions:

Please contact program library staff at (703) 684-3590 or by e-mail at [programlibrary@innsofcourt.org](mailto:programlibrary@innsofcourt.org).

**Please include ALL program materials. The committee will not evaluate incomplete program submissions.**

**The Joseph A. Ball/Clarence S. Hunt Inn of Court  
Long Beach, California**

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***“SEX, DRUGS AND ROCK ‘N’ ROLL: DEMAND LETTERS AS EXTORTION”***

American Inns of Court Program Submission – Program Materials

April 14, 2015

## **“SEX, DRUGS AND ROCK ‘N’ ROLL: DEMAND LETTERS AS EXTORTION”**

### Program Summary Continued:

At the beginning of the program, a collage of rock stars (with photos of the rock stars in their heyday and now) scrolls across the projector screen to a rock ‘n’ roll song. Each scene is transitioned by a short bit of the collage.

The moderator begins the program with a brief introduction to the topic and leads into the first scene between Anita Role and Ida Rather. Anita and Ida then run into each other at Crow’s, a well-established and slightly questionable bar in Long Beach, walking through the crowd and greeting people until they reach the podium. Anita and Ida then recognize each other and catch up on what has happened in their lives since high school. Anita, Ida, and Will Rocksby graduated from Poly High School in the class of 1969.

Anita had toured with Will Rocksby when he first became a rock star, but could not handle the lifestyle. She married a doctor and had children, but the doctor later left her for a nurse. She is currently a barista. Ida dated Will Rocksby and went to Mexico with him when she was a teenager, at which point Anita believes she and Will were married before a notario. Anita has since gone through a slew of failed marriages. They discuss Will Rocksby’s fame and money, and the fact that he is performing in Long Beach the following two nights. Because they cannot afford tickets, they decide to visit Will Rocksby backstage at his tour bus. This scene takes place at the podium on the side of the stage with two martini glasses.

The second scene takes place on the stage at the Law Offices of Saul Goodmoney, Anita’s attorney. Saul Goodmoney is an over-the-top, exaggerated attorney with dubious practices, and Anita found him because of his billboard. Saul and Anita discuss Anita’s lawsuit for date rape, whether she may be married to him, and whether she reported the incident to the police. Saul flips through different types of form demand letters on his desk, selecting the appropriate one for this situation.

The third scene takes place on the stage at the Law Offices of Adam Straightarrow, Ida’s attorney. Adam and Ida discuss Ida’s lawsuit for date rape, and Will Rocksby’s financial situation, referencing places in Long Beach (i.e., he’s a member of the Virginia Country Club). Adam recommends starting with a demand letter, and Ida wants Adam to threaten going to the police if he doesn’t pay. Adam prepares a draft complaint to send with the demand letter, which references now well-known people in Long Beach, but leaves the names blank at this point.

The moderator then begins a discussion of the two demand letters. The demand letter prepared by Saul Goodmoney emulates the letter in the *Flatley v. Mauro* case, while the demand letter prepared by Adam Straightarrow emulates the letter in the *Malin v. Singer* case. Copies of the demand letters were placed on each table in different colored paper, along with a memorandum of the law (referenced later in the skit). The demand letters are also played on the projector screen with another rock ‘n’ roll song playing. After the members have had time to review the letters, their ethical, civil, and criminal implications are discussed.

The fourth scene opens with Will Rocksby's attorney, Mickey Sanger, seated on the stage. Will Rocksby comes through the doors yelling "Rock 'n' Roll!" and greeting the members of the audience as he walks by. Will goes through his history and his marriage to Bo Toxin, then goes through what he remembers from the nights in question. Song titles are worked into this scene. Will and Mickey decide to file a lawsuit, rather than pay the demands, to send a message. Will, thus, files a lawsuit for extortion and intentional infliction of emotional distress against both the attorneys and the clients, Ida and Anita.

The fifth scene begins with an in-chambers discussion between the judge assigned to the two lawsuits for extortion and his research clerk. Ida and Anita, and their attorneys, filed anti-SLAPP motions. The chambers conference provides a brief overview of anti-SLAPP motions in general and their use in connection with extortion suits. The judge references a memo prepared by the research clerk and suggests distributing it to the Inn of Court. The memorandum provides an overview of the relevant case law on extortion in the context of demand letters.

The scene then turns to oral argument on the anti-SLAPP motions. Saul Goodmoney is flamboyant and vehement about the First Amendment rights and how great the United States of America is. His demand letter, however, is clearly extortion and so the focus is not on his letter. Adam Straightarrow and Mickey Sanger argue Straightarrow's letter, which is a much closer call. The judge allows argument by the additional "counsel" that has been brought by each attorney, and opens up the discussion to the members of the audience.

The judge then takes the matters under submission and has a final in-chambers conference with his research clerk. After some discussion, it is decided that the anti-SLAPP motion filed by Saul Goodmoney will be denied, and the case allowed to proceed. The anti-SLAPP filed by Adam Straightarrow will be granted, and the case against him and Ida dismissed.

The skit ends with the judge asking the research clerk whether Ida and Anita have filed lawsuits. The research clerk confirms that they have, but states that, luckily, those suits are in front of another (local) judge.

## **“SEX, DRUGS AND ROCK ‘N’ ROLL: DEMAND LETTERS AS EXTORTION”**

### **MODERATOR INTRODUCTION:**

- Our presentation tonight is on extortion in the context of demand letters.
- A prelitigation demand letter directing someone to “pay or else” is fully consistent with the lawyer’s duty to zealously and ethically advocate for the client.
- As held by one court, demand letters “airing grievances and threatening litigation if they are not resolved are commonplace.” Demand letters can, however, implicate ethical rules and expose a lawyer to both civil and criminal liability for extortion.
- Ask the audience for definition of extortion
- Under Penal Code section 518, extortion is defined as “the obtaining of property from another, with his consent . . . induced by a wrongful use of force or fear . . . .”
- Thus, in the contentious and aggressive world of litigation, attorneys must be aware of the types of threats that may put one at risk of crossing the line from zealous advocacy to potential liability.
- Let’s see how this plays out, as we turn to our attention to Crow’s, a venerable establishment on 2<sup>nd</sup> Street, and our two aging groupies....

### **SCENE 1: CROW’S BAR – IDA RATHER AND ANITA ROLE**

Anita and Ida meet in the bar and establish that they knew each other in high school and what their lives have been like since high school. Ida Rather was Will Rocksby’s high school girlfriend and toured with him when he first became a rock star. She could not, though, handle the lifestyle, the dirty tour bus, the partying, and the groupies. Ida, thus, stopped touring with Will Rocksby when she became sick from the tour bus. She married the doctor that treated her and had three children, but he later left her for a nurse. She now works as a barista, but struggles for money.

Anita Role is an aspiring actress who briefly dated Will Rocksby in high school. They took a trip together to Baja California and were married before a “notario,” which Will Rocksby said was a civil marriage, because Anita Role would not sleep with him otherwise. Anita has had four failed marriages and struggles for money.

Ida Rather, Anita Role, and Will Rocksby went to Poly High School and graduated in the class of 1969. Will Rocksby went on to become a famous rock star and had been a lifelong bachelor, but recently married Bo Toxen.

Will Rocksby is going to be at the Long Beach Arena, and Ida and Anita decide to go to the stage door because neither of them can afford to buy tickets.

## **SCENE 2: SAUL GOODMONEY'S OFFICE – ANITA ROLE AND SAUL GOODMONEY**

Saul Goodmoney is over the top. Saul and Anita talk about her lawsuit for date rape and end up with Anita saying that she thinks she is still married to him from the marriage in Mexico (with the implication that she didn't really think it was a valid marriage then, but why not go for it?) Goodmoney says that we will sue him for everything and leave it to him.

Saul: Why are you here?

Anita: I was drugged and raped by Will Rocksby on April 1, 2015. The really crazy thing is that of course I would have had sex with him, but he didn't even ask! He just drugged me and I woke up with a drug hangover and when I got up, I felt, you know sore, so I knew he must have drugged me and raped me.

Saul: Did you report it to the police?

Anita: No, I was ashamed.

Saul: Well, that is a horrendous thing for Will Rocksby to do. We can get you damages for pain and suffering, medical costs, lost wages and punitive damages. Oh, do you have any medical costs, pain and suffering or lost wages? Well, you will. I have a letter I can adapt for this purpose. I will not charge you anything now, but I will take 40% of all money that is paid to you. I will have you sign a retainer and lien agreement. Mr. Rocksby is going to rue the day he heard my name! (Saul flips through boilerplate demand letters, looking for the most salacious.)

Anita: Oh, by the way, Will and I were married in Baja California in 1968, and we never got divorced. Can I get community property from him?

Saul: We'll get you everything you are entitled to.

## **SCENE 3: ADAM STRAIGHTARROW'S OFFICE – IDA RATHER AND ADAM STRAIGHARROW**

Setting: Law Offices of Adam Straightarrow, Ida Rather is waiting for attorney. Adam enters.

Adam: Good morning, Ida. Rather, I presume. I am Adam Straightarrow. It is a pleasure to meet you. So, what brings you to my office?

Ida: D'ya mean –how the heck did I get your name?

Adam: Sure, for starters. What's your problem?

Ida: Lots of things. But here's the deal for you maybe. (Ida goes into how she went to the tour bus, blacked out, found herself wandering the streets of Long Beach.)

Adam: Did you know him before? Was anyone else in the tour bus when you were in it? Who did you first see when you woke up? Tell me a little bit about Will's financial situation, at least as you know it?

Ida: He's rich, is that what you mean?

Adam: How do you know that?

Ida: Well, everyone knows...he has a house in Naples, a house in Palm Springs, besides that amazing house on wheels. He belongs to the Yacht Club, even Virginia Country Club ....probably the only rock star they have ever had as a member. Usually you gotta be Vern Schooley or someone important attorney like that. Unless you just fell off the turnip truck, you gotta know what it means in this town to belong to those places!!

You ask too many questions. Are you going to take my case or not? I have been messed up my whole life because of this guy, and now he messes with me this way.

Can't you just write him a letter, the way lawyers do, and threaten him that we are going to go the police and the press if he doesn't deliver a million dollars to us in 7 days? Can't you do that? I don't want to wait around for a lawsuit and all that court stuff. My divorce from that doctor took 2 ½ years. Look at me, I don't have 2 ½ years to wait around. I need money now.

Adam: Well, Ms. Rather, I do think you have been mistreated by Mr. Rocksby, if what you say can be proven. And you are right that lawsuits can take a long time to conclude. We can start with a demand letter, but I am not going to get involved unless you are willing to proceed with a lawsuit if the claim does not settle. But we can start with a demand letter

Ida: Whatever, whatever.....I can agree to file a lawsuit if you want. But will you first just tell him that we are going to the police if he doesn't pay us? I happen to know he is really really afraid of police, and the idea he might go to jail will drive him bonkers.

Adam: No, Ms. Rather, I do not recommend we threaten that.

Ida: Well then tell him I am going to cooperate with the police when they start asking about the girls he was with when he was just starting out.....

Adam: No, Ms. Rather. I will write a letter and lay out the basic facts, as you have told them. I will also draft a complaint and send it with the letter. Maybe I will leave blank some of the names of the people that you have mentioned he was with in the past, but I will lay out enough for him to know where we are going and who all is likely to be involved if our case proceeds. And I will ask for \$1million as you request. But you understand that if he wants to settle the matter out of court, he likely will not offer that amount?

Ida: This sucks. He gets away with messing with me, and I have to be all polite. I don't like your wussy approach. But you are my last hope at this point.



I take that as a yes. I will draw up the retainer agreement on a contingency basis. And get right to work on the letter and sample complaint.

Adam: Thank you, Ms. Rather.

#### **MODERATOR DISCUSSION:**

- There are copies of the two demand letters on your tables. Please review and discuss briefly
- What issues are there, if any, with the demand letters?
- Is this just forceful advocacy?
- Do either letter cross the line into unethical or criminal conduct?
- Are the letters protected by the litigation privilege (Civ. Code § 47)?
- How should Will Rocksby respond? Let's see what he decides...

#### **SCENE 4: MICKEY SANGER'S OFFICE - WILL ROCKSBY AND MICKEY SANGER**

Mickey: Well hello Mr. Rocksby it is a pleasure and honor to meet you. Please come in and sit down.

Will: Alrighty. Thank you.

Mickey: I have to admit I've been a big fan of yours since I saw you at the arena back in what '74-75?

Will: Oh yeah '75. It doesn't look like you are a rock and roll fan but I guess we've all grown up and become more respectable. Well most of us at least. Let's see now that was my third or fourth concert at the arena, IDK maybe 5<sup>th</sup>. You wanna know something: a little known fact is that one of our opening acts that night was a bunch of unknown kids at the time called Van Halen. A couple of years later Gene Simmons of Kiss heard Van Halen and produced their first record. Sheez I wish I had thought of that.

Mickey: Oh I know Gene. He is a client of mine. I also consulted with David Lee Roth back in the mid 80's when he was forced out of the band Eddie Van Halen. Any way I see that things are going pretty well for you after all these years. Not many rock and rollers passed the test of time and turn into rock icons like you and a few others. What can I do for you?

Will: Oh man, yeah things were going so well for me, I was one of the lucky ones to survive all that "sex drug and rock and roll" crap, and actually still make a pretty good living playing rock

and roll. I married my longtime girlfriend, Bo Toxin, I'm making a ton of money on re-union tours, all of us aging rockers like the term re-union tour rather than senior tour, we have a bunch of new songs we want to record hell the LB city council even passed a resolution to rename the arena after me and to erect a statue in my likeness if you can image that. Yeah I was on the top of the world and "feeling kind of groovy" until I got these letters from attorney accusing me of some type of outrageous conduct.

Mickey: Let me see the letters. (pretend to read letters) Oh boy I see. A familiar ploy. There are two women, Ida Rather and Anita Role, who are accusing you of well in lay man's terms date rape. Do you know either of these women?

Will: Well yeah Ida Rather was my High School sweet heart and she actually went on tour with me for a while but we broke up just before I hit it big time. The other girl I don't really remember although, although I don't remember much about the 60's and 70's if you understand what I mean man. Nor 80's for that matter. I recently saw her and she said we fooled around while we were in high school. I think she was sort of offended when I said I didn't remember her.

Mickey: When did you recently see her and have you also recently seen Ida Rather.

Will: Well, yeah man. I was totally surprised and freaked out when after my concert Ida showed up at my totally cool and decked out tour bus. I mean I hadn't seen that chick for over 30 year's man. Any way I invited her in and we had one bourbon, one scotch and one beer, and smoked a little. I was tired man and I guess I feel asleep because when I woke up the next morning she was gone.

Mickey: What about Anita, when did you see her?

Will: Well originally she came with Ida but when I told her I didn't remember her she freaked out and split. I told to chill and that Big Girls Don't Cry" Anyway she showed up at my bus the next night. I guess she forgave me for not remembering her because she said she'd give me something to remember her by or something along those lines. You know it was the last night in Long Beach and we were headed up to the Frisco bay and we were leaving in like an hour or so so I told her thanks but no thanks we had to leave. She stayed for some Jack Daniels and we smoked a little but she obviously left because when I woke up the next morning we were in "the City by the Bay".

Mickey: What else do remember about recently seeing them?

Will: I don't know man like I said I was tired, you know staying up late playing rock and roll and partying all night isn't as easy as it was "When I was Young." I mean we had a few drinks and I fell asleep. Passed out is probably more like.

Mickey: Ok how do you want to handle this? Obviously they are hoping we want to handle this discreetly, hoping that you have too much to lose and want to pay them off and buy their silence. I mean it does sound like you have a lot to lose if this goes public.

Or we can be more aggressive have “the Eye of the Tiger” and get out in front of this and try to control the message to the media and of course get on the right side of the court of public opinion.

Will: You know I’ve thought a lot about this. At first “I was afraid, I was petrified” of being disgraced and losing everything, my reputation, my money, my ability to earn, the naming of the arena after me, my wife, and I wanted it kept quiet. I wanted it to just go away but even though I’m doing pretty well it is still a lot of money. Any way my wife Bo Toxin is pretty smart and she knew something was wrong so I told her what was happening. I told her there was no truth to these allegations but if the press and the public believed otherwise my career would be over and we could lose everything. And you know what she said man.

Mickey: No, what did she say?

Will: She said you won’t lose everything because I love you and I’ll stay with you no matter what. You know nothing is more important than that. “Money can’t buy you love”. So I want to fight this thing and hopefully come out smelling like a rose, and hopefully not like Axl Rose. That being said, what do you recommend?

Mickey: But you were fearful very fearful that about these criminal accusations, about being disgraced about losing everything you have worked your entire life for. OK here is what I recommend. We can file actions against both these women and their lawyers for extortion and intentional infliction of emotional distress for starters. CA recognizes a private cause of action for civil extortion based upon penal code section 518 and lawyers are not exempt from the law of extortion. We’ll send a message loud and clear to the press and the public that you vehemently deny these bogus allegations and that they are simply trying to extort money from you. We’ll send a strong message to these women and to their lawyers, and any others that are looking to exploit you for easy money, “You don’t tug on Superman’s cape, you don’t spit into the wind, you don’t pull the mask off an old lone ranger and you don’t around with him”, no, no you don’t mess around with you Will.

## **SCENE 5: HEARING ON ANTI-SLAPP MOTIONS**

### **5(A): CHAMBERS DISCUSSION BETWEEN JUDGE AND RESEARCH CLERK**

- Going through calendar

Clerk:

- Will Rocksby filed lawsuit for extortion and IIED against Anita and Ida and their attorneys
- Allegations of complaint
- In response, Saul and Adam have filed anti-SLAPP motions
  - Anti-SLAPP motion contends the demand letter was protected by the First Amendment and the litigation privilege (Civil Code § 47)

Judge:

- Judge asks what an anti-SLAPP motion is

Clerk:

- SLAPP stands for Strategic Lawsuit against Public Participation. The statute was created to stop big corporations from silencing the exercise of the right of freedom of speech of grassroots activists exercising, and the motion under the statute is called an anti-SLAPP motion

Discussion:

- Defendant has initial burden of showing Plaintiff is suing based on the rights protected under the anti-SLAPP statute, primarily the constitutional right to petition the government for redress of grievances and the right to free speech
- If Defendant meets the initial burden, burden shifts to the plaintiff, who is now obligated to present admissible evidence showing a probability of prevailing.
- Doesn't require court to weigh evidence – the plaintiff only needs to present admissible evidence which, if accepted, would be sufficient to prevail
- Demand letters can also be a violation of the CRPC Rule 5-100(A), which prohibits an attorney from threatening to present criminal, administrative, or disciplinary charges to obtain an advantage in a civil dispute

Judge:

- Didn't you prepare detailed memo? Let's distribute to Inn of Court
- So comes down to whether Rocksby can show claim has merit...

Clerk:

- Actually, threshold issue comes down to whether defendants can show the challenged conduct arises from protected activity – only then must Rocksby show claim has merit
- Keep in mind illegal activity is not protected by the anti-SLAPP statute

### **5(B): ORAL ARGUMENT**

Judge:

- Takes the bench and calls the cases
- Have read briefs, oral argument

Saul:

- (Overexaggerated and flamboyant) Protected by the First Amendment rights of free speech and to petition the government, zealous and ethically advocating for client, simply attempting to settle a potential lawsuit without resorting to the courts

Mickey:

- Counters with *Flatley v. Mauro*: Threat to file suit was among many statements made in demand letter and merely incidental to attorney's attempt to extort money by threatening to publicize the alleged rape

Saul:

- *Leverett v. Dean Witter Organization, Inc*: Access to courts is not an end in itself, but only one means to achieve satisfaction for a client. If this can be obtained without resorting to the courts, it is incumbent upon the attorney to pursue such a course of action first.
- *Sussman v. Bank of Israel*: Demand letters airing grievances and threatening litigation if they aren't resolved are commonplace

Adam:

- Protected by the First Amendment rights of free speech and to petition the government by legitimately threatening to file a civil action, but doesn't commit any of the illegal and unethical behavior of Saul Goodman's demand letter
- *Flatley v. Mauro*: Flatley found that the threats to directly and personally publicize Flatley's alleged rape to the "worldwide" media, to publicize unrelated criminal activity, and to pursue criminal charges were extortion
- *Malin v. Singer*: Did not overtly threaten to disclose wrongdoings to a prosecuting agency or the public at large – threatening to expose a secret is not extortion when secret will be exposed to court where complaint is filed
  - Also, draft complaint and demand letter had at least some relation to the underlying dispute

Mickey:

- Extortion claims not subject to dismissal as SLAPP suits because they're based on communications that constitute criminal extortion
- Attorneys not negotiating in good faith, using Rocksby's fame as leverage
- *Grewal v. Jammu*: Misuse of anti-SLAPP motions, which exploded after the Flatley case
- *Stenehjem v. Sarren*; *Mendoza v. Hamzeh*: Demand letters constitute extortion when they threaten to file a criminal complaint or report to governmental authorities, even if threat is veiled
  - Reference to "prominent people" in the community is an implied threat to expose to authorities in Long Beach
- *Malin v. Singer*: Trial court held that the letter was "best read as extortion as a matter of law" since it threatened to reveal names of sexual partners and enclosed a photo of one of the alleged sexual partners

Adam:

- Countered with appellate court's ruling: Appellate court reversed, holding that critical distinction was that the demand letter made no overt threat to report to prosecuting agencies or the IRS and no threats unrelated to the underlying dispute

Mickey:

- A threat to reveal “salacious details” about a party’s private life should suffice to establish extortion

Adam:

- Counter with *Stark v. Withrow*: A demand letter is not extortion where the means by which such supposedly salacious details would be publicized is through the judicial process - a demand letter’s threat of legitimate litigation and the promise of concomitant publicity fall far short of extortionate threats in *Flatley*

### **5(C): JUDGE AS MODERATOR:**

- Counsel brought a lot of attorneys (audience), let’s hear what they have to say
- Discussion of what the outcome of the anti-SLAPP motions should be
- Judge V to take under submission

### **5(D): CHAMBERS DISCUSSION BETWEEN JUDGE AND RESEARCH CLERK:**

- Ruling for *Goodmoney’s* motion is to deny and allow complaint to proceed
- Demand letter constituted extortion, which is illegal as a matter of law and not a constitutionally protected form of free speech
- The threat in a demand letter in and of itself may be legal, but the coupling of the threat of action outside the confines of the lawsuit with the demand for money constitutes the illegality
- And even if no specific crime is included in the letter, a demand letter can still be extortion because vague and general accusations magnify the fears of the victim of extortion
- Thus, not protected by the First Amendment or anti-SLAPP statute
- Next time, avoid threatening to report to a prosecuting agency or expose to the public
- May have also subjected yourself to discipline for violation of California Rule of Professional Conduct 5-100 – send minute order to State Bar
  
- Ruling for *Straightarrow’s* motion is to grant motion and dismiss complaint - while demand letter contained a threat to file suit with explicit allegations, which would ultimately expose a potentially embarrassing secret, that threat alone does not constitute extortion
- The most important distinction is that Straightarrow did not overtly threaten to disclose Rocksby’s alleged wrongdoings to prosecuting authorities
- Straightarrow also did not threaten to expose a secret to the public at large
- Instead, Straightarrow only threatened to file a complaint that would have had exposed secrets, which is not extortion when the secret will only be exposed to the court where the complaint is filed
- It is not improper to send a settlement demand letter threatening to file a civil action if the client’s demands are not met

- Warning that pushing the line and may not be the same ruling next time – liberal pleading standard, no need to add names to lawsuit

Judge:

- Aren't these lawsuits for sexual assault still going forward?

Clerk:

- Yes, those cases are before Judge Klein

**SAUL GOODMONEY**  
123 City Highrise, Ste. 1000  
Los Angeles, CA  
(213) 555-1212

April 3, 2015

Mr. Will Rocksby, individually  
Rocksby Entertainment

Re: LAWSUIT AGAINST WILL ROCKSBY, INDIVIDUALLY, AND ROCKSBY  
ENTERTAINMENT

Dear Mr. Rocksby:

We have been retained by ANITA ROLE in connection with a forcible sexual assault upon her by you on April 1, 2015 at Long Beach, California. Ms. Role has not yet reported this to the police. Additionally, Ms. Role also informs me that she was married to you in 1967 in Rosarita, Mexico, which marriage has never been dissolved. This makes your current marriage to BO TOXIN bigamous. Ms. Role will be seeking to dissolve your marriage and for half of your earnings as community property. Please consider this the *first* and *only* attempt to amicably resolve this claim against all Defendants named in the attached complaint.

You will note that the Complaint contains allegations supporting PUNITIVE DAMAGES. In order to ascertain the AMOUNT of PUNITIVE DAMAGES which will be awarded by a jury against Will Rocksby and Rocksby Entertainment we will be able to discover all of your financial assets from which they may be paid. ALL OF THIS INFORMATION WILL BECOME A MATTER OF PUBLIC RECORD as it will be the basis of our expert's testimony as to the amount of PUNITIVE DAMAGES you should pay. Any and all information, including Immigration, Social Security, IRS, State taxing authorities, etc. WILL BE DISCLOSED. We are sure that the world wide media will enjoy what they find.

In addition, Ms. Role is seeking medical damages, lost wages, pain and suffering and damages for mental suffering, for in excess of \$1 mil. For settlement purposes, she is willing to consider a settlement north of \$1.5 mil.

Once again, **please remember that all pertinent information and documentation, if in violation of any U.S. Federal, Immigration, IRS, SS Admin., U.S. State, Local, or Commonwealth shall be immediately turned over to any and all appropriate authorities.**

You have until April 15, 2015 to respond to this letter or we will file the enclosed lawsuit and announce it to the media via the enclosed press releases. This will include all major television, radio, print, and online news outlets. THIS IS YOUR ONLY CHANCE TO SETTLE BEFORE SUIT IS FILED. I look forward to hearing from you soon.

Very truly yours,

SAUL GOODMONEY, ESQ.



Offices of Adam Straightarrow  
99 Pine Ave.  
Long Beach, CA 90802

April 14, 2015

**CONFIDENTIAL SETTLEMENT COMMUNICATION**

Will Rocksby  
0000 Naples Canal  
Long Beach, CA 90803

Dear Mr. Rocksby:

I am litigation counsel to Ida Rather. I am writing to you with reference to your outrageous, malicious, wrongful and tortious conduct. As a result of your assault and battery on Ms. Rather on the night of April 1 in your tour bus, you have damaged Ms. Rather in amounts exceeding \$1million. She has suffered bodily injury, as well as extreme emotional distress and lost earnings. Her medical bills are mounting and there is no end in sight.

As a result, my client intends to file the enclosed lawsuit against you and Bo Toxen. As alleged in the complaint, the events of that night are part of a practice that began more than 40 years ago. Ms. Rather then witnessed your comparable treatment of other young women who were young fans of you when your career was just beginning. For now, we have left the names of those persons blank, but when the complaint is filed, the names will be inserted. There will be no blanks. As you are well aware, many of these people are prominent people in this community at this time. I have enclosed copies of their yearbook pictures from the LB Poly High yearbook from 1969. (Of course, they were only freshmen at the time, but I expect you recall them.)

My client will file this complaint against you in Los Angeles Superior Court unless this matter is resolved to my client's satisfaction within 5 business days from your receipt of this letter.

Yours truly,

Adam Straightarrow

Enclosures: pictures, draft complaint

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**MEMORANDUM**

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**TO:** HON. MICHAEL P. VICENCIA  
**FROM:** ALISON S. FLOWERS  
**SUBJECT:** SEX, DRUGS AND ROCK 'N' ROLL: DEMAND LETTERS AS EXTORTION  
**DATE:** APRIL 14, 2015

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**I. RELEVANT CITATIONS**

**A. Statutes:**

California Rule of Professional Conduct 5-100  
Civil Code section 47  
Code of Civil Procedure section 425.16  
Penal Code section 518  
Penal Code section 519  
Penal Code section 523

**B. Cases:**

*Aronson v. Kinsella* (1997) 58 Cal.App.4<sup>th</sup> 254  
*Blanchard v. DirecTV, Inc.* (2004) 123 Cal.App.4<sup>th</sup> 903  
*Cabral v. Martins* (2009) 177 Cal.App.4<sup>th</sup> 471  
*City of Cotati v. Cashman* (2002) 29 Cal. 4<sup>th</sup> 69  
*Cohen v. Brown* (2009) 173 Cal.App.4<sup>th</sup> 302  
*Contemporary Servs. Corp. v. Staff Pro Inc.* (2007) 152 Cal.App.4<sup>th</sup> 1043  
*Fremont Reorganizing Corp. v. Faigin* (2011) 198 Cal.App.4<sup>th</sup> 1153  
*Flatley v. Mauro* (2006) 39 Cal. 4<sup>th</sup> 299  
*Fuhrman v. Cal. Satellite Systems* (1986) 179 Cal.App.3d 408  
*Libarian v. State Bar* (1952) 38 Cal. 2d 328  
*Lerette v. Dean Witter Organization, Inc.* (1976) 60 Cal.App.3d 573  
*Malin v. Singer* (2013) 217 Cal.App.4<sup>th</sup> 1283  
*Mendoza v. Hamzeh* (2013) 215 Cal.App.4<sup>th</sup> 799  
*Silberg v. Anderson* (1990) 50 Cal. 3d 205  
*Sosa v. DirecTV, Inc.* (9<sup>th</sup> Cir. 2006) 437 F.3d 923  
*Stark v. Withrow* (2009) WL 3957538 (nonpub. opn.)  
*Stenebjem v. Sareen* (2014) 226 Cal.App.4<sup>th</sup> 1405  
*Varian Med. Sys., Inc. v. Delfino* (2005) 35 Cal. 4<sup>th</sup> 180

**II. RELEVANT HOLDINGS**

The attorney's conduct constituted extortion and, as such, was "illegal as a matter of law." For that reason, the conduct was not protected by the First Amendment or the anti-SLAPP statute. *Flatley v. Mauro* (2006) 39 Cal. 4<sup>th</sup> 299.

"The law does not contemplate the use of criminal process as a means of collecting a debt." *Flatley v. Mauro* (2006) 39 Cal. 4<sup>th</sup> 299.

“The accusations need only be such as to put the intended victim of the extortion in fear of being accused of some crime. The more vague and general the terms of the accusation the better it would subserve the purpose of the accuser in magnifying the fears of his victim . . .” *Flatley v. Mauro* (2006) 39 Cal. 4<sup>th</sup> 299.

Courts have interpreted the term “illegal” to mean “criminal” and have prohibited application of the *Flatley* exception to conduct that violates only noncriminal laws. (See *Fremont Reorganizing Corp. v. Faigin* (2011) 198 Cal.App.4<sup>th</sup> 1153.

Threats by the owner to report the manager of a business to the various authorities listed, as well as the threat to tell the manager’s customers and vendors about his alleged fraud, did indeed constitute extortion. Not only did the attorney lose his anti-SLAPP motion in the trial court, he also lost his appeal- and had to pay the manager’s attorneys’ fees. *Mendoza v. Hamzeh* (2013) 215 Cal.App.4<sup>th</sup> 799.

Threats in a demand letter need not be “particularly extreme or egregious” to constitute criminal extortion. *Mendoza v. Hamzeh* (2013) 215 Cal.App.4<sup>th</sup> 799.

The attorney did not overtly threaten to disclose the owners’ alleged wrongdoings to a prosecuting agency or the public at large. Threatening to expose a “secret” usually constitutes extortion in the context of a demand letter, but not if the secret will only be exposed to the court where the complaint is filed. *Malin v. Singer* (2013) 217 Cal.App.4<sup>th</sup> 1283.

The draft complaint and the demand letter had at least some relation to the underlying dispute. *Malin v. Singer* (2013) 217 Cal.App.4<sup>th</sup> 1283.

The demand letter did not threaten overtly to turn someone in to prosecuting authorities or the IRS; thus the demand letter was not extortion. *Malin v. Singer* (2013) 217 Cal.App.4<sup>th</sup> 1283.

When a person receives a threat to harm a third party, if the threat is to inflict harm to a third person, any third person can qualify to make the threat extortion: but if the threat is embarrassment at revealing a secret, the affected third party must be a relative of the recipient of the threat. *Malin v. Singer* (2013) 217 Cal.App.4<sup>th</sup> 1283.

The prelitigation demand letter “is a ‘well established legal practice to communicate promptly with a potential adversary, setting out the claims made upon him, urging settlement, and warning of the alternative of judicial action.’” *Lerette v. Dean Witter Organization, Inc.* (1976) 60 Cal.App.3d 573.

If a lawyer believes in good faith that an adversary’s conduct constitutes a criminal, administrative, or disciplinary violation, the lawyer may report the adversary to the appropriate authority. However, the lawyer may not first use the threat of making the report to support the client’s demands. *Libarian v. State Bar* (1952) 38 Cal. 2d 328.

California courts have applied the litigation privilege to prelitigation demand letters. *Blanchard v. DirecTV, Inc.* (2004) 123 Cal.App.4<sup>th</sup> 903; *Aronson v. Kinsella* (1997) 58 Cal.App.4<sup>th</sup> 254.

For the privilege to apply, the challenged statement must be “connected with, or have some logical relation to, the action,” and not be “extraneous to the action.” *Silberg v. Anderson* (1990) 50 Cal. 3d 205.