The Bleeding Edge of Extortion: How Disregarding the Personal Benefit Poses a Danger in Novel Extortion Cases

"[W]e reject the contention that a defendant 'obtain[s] . . . property' within the meaning of the Hobbs Act extortion provision by 'bring[ing] about [its] transfer . . . to another,' . . . only if the defendant receives a personal benefit in consequence. In doing so, we align ourselves with the only other circuits to have resolved that same question."

I. INTRODUCTION

Extortion is one of the oldest crimes that American jurisprudence recognizes. British common law prohibited public officials from utilizing their positions of power to take valuable property from others. American anti-extortion law evolved from these humble common-law origins to meet contemporary societal needs. Naturally, the law experienced growing pains with each new development. The current iteration of American anti-extortion law, the Hobbs Act, is versatile and reaches beyond public corruption. Over the past sixty years, the

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* The opinions expressed in this article are solely the opinions of the author. They do not represent or reflect the opinions of any group or governmental entity.

3. See Scheidler, 537 U.S. at 402 (tracing common-law origins of anti-extortion law); Brian J. Murray, Note, Protestors, Extortion, and Coercion: Preventing RICO from Chilling First Amendment Freedoms, 75 NOTRE DAME L. REV. 691, 705 (1999) (explaining consensus on extortion under English common law). Noted common-law commentators Lord Coke, William Hawkins, and William Blackstone understood extortion to require the extortionist to obtain something tangible that has monetary value while depriving the victim of that same thing. See Murray, supra, at 705-06.
5. See United States v. Loc. 807 of Int’l Brotherhood of Teamsters, 315 U.S. 521, 537-38 (1942) (describing union loophole in Anti-Racketeering Act); Grady, supra note 4, at 38 (noting rapid congressional response to Local 807 decision).

(a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined under this title or imprisoned not more than twenty years, or both.
United States Supreme Court has repeatedly granted certiorari in Hobbs Act cases to more explicitly define what it means to “obtain property” pursuant to its extortion provision. With each new ruling, the federal circuits continue to grapple with the boundaries of the Hobbs Act.

On March 28, 2019, the First Circuit Court of Appeals reached a ruling that reflects this struggle to define the “obtaining property” element of extortion in novel cases, while creating a new source of anxiety for public officials. After the district court dismissed United States v. Brissette, which involved allegations of extortion against two Boston City Hall aides, the government appealed.

(b) As used in this section—

(1) The term “robbery” means the unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the person or property of a relative or member of his family or of anyone in his company at the time of the taking or obtaining.

(2) The term “extortion” means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.

(3) The term “commerce” means commerce within the District of Columbia, or any Territory or Possession of the United States; all commerce between any point in a State, Territory, Possession, or the District of Columbia and any point outside thereof; all commerce between points within the same State through any place outside such State; and all other commerce over which the United States has jurisdiction.

United States v. Green, 350 U.S. 415, 416

18 U.S.C. § 1951(a)-(b). By enacting the Hobbs Act, Congress targeted “racketeering in labor-management disputes,” but the Act is commonly invoked to prosecute other crimes, including public corruption. See Elman, supra, at 214.


8. See Green, 350 U.S. at 420 (noting extortion does not require party obtaining property to directly benefit); Scheidler, 537 U.S. at 402 (defining behavior exceeding undetermined boundaries of Hobbs Act extortion); Sekhar v. United States, 570 U.S. 729, 734 (2013) (applying Scheidler to new fact pattern); Elman, supra note 6, at 215 (noting difference in “obtaining” element after Scheidler decision).


its opinion, the First Circuit held that a party obtains property within the meaning of the Hobbs Act extortion provision when it directs a transfer of property to a third party, even when the actor does not personally benefit. See Brissette, 919 F.3d at 676.

11. See Brissette, 919 F.3d at 685-86 (stating holding). Critics of the decision declared the holding to be "novel." See Olson, supra note 9; Villani, supra note 9 (presenting opinions of local attorneys).

"This verdict runs the risk of criminalizing behavior that many people would agree is kind of the standard fare and not inappropriate for public officials," said Michelle Peirce of Barrett & Singal PC, who said she was disappointed that the government relentlessly pushed what even the First Circuit described as a 'novel theory' under the Hobbs Act.

Villani, supra note 9.

12. Brissette, 919 F.3d at 686 (stating holding); Leibowitz, supra note 10 (reporting Brissette convicted of extortion and both Brissette and Sullivan convicted of conspiracy).


14. See Brissette, 919 F.3d at 679 (explaining other circuits deem directed transfer of property sufficient).

15. See United States v. Gotti, 459 F.3d 296, 324 (2d Cir. 2006) (noting action beyond mere deprivation constitutes "obtaining property" under Scheidler); United States v. Provenzano, 334 F.2d 678, 686 (3d Cir. 1964) (holding direct receipt of property or benefits unnecessary to constitute extortion); United States v. Carlson, 787 F.3d 939, 944 (8th Cir. 2015) (agreeing with Second Circuit's reasoning in Gotti); United States v. Vigil, 523 F.3d 1258, 1264 (10th Cir. 2008) (holding directed transfer of property to third party constitutes "obtaining property").

justice system because ensuring that citizens are aware of prohibited conduct promotes compliance with the law and deters misconduct by law enforcement. Additionally, adequate notice supports a reasonable inference that the alleged criminal actively chose to transgress, making them culpable and thus justifying punishment. In novel or “bleeding edge” extortion cases, an alleged criminal’s culpability hinges on contextual factors, thus establishing the importance of notice of wrongfulness. In these cases, examining whether the defendant received a personal benefit can act as a valuable indicator of notice. While proving a personal benefit may seem tedious, expensive, and unnecessary in many extortion cases, especially given the current widespread public distrust of business and political figures, ignoring the personal benefit in novel extortion cases denies the criminal defendant adequate notice of wrongdoing and prevents juries from considering critical context. A modified version of the proposed jury instruction in United States v. Brissette may appropriately balance the pursuit of justice with fair notice.

This Note explores the history of extortion law in the United States to address the concerns that this trend in circuit court precedent raises. Part II of this Note will briefly summarize the development of English and American common-law extortion, discuss early American legislative efforts to combat extortion, and

requires a court to resolve statutory ambiguity in favor of a criminal defendant, or to strictly construe the statute against the state.” Romantz, supra, at 524.

17. See Samuel W. Buell, Culpability and Modern Crime, 103 GEO. L.J. 547, 587-88 (2015) (providing common explanation of “general requirement of fair notice”). Buell also notes “the prevailing doctrine of the insanity defense in American and English law provides that no one should be punished who lacks the capacity to appreciate the wrongfulness, or at least illegality, of her act.” Id. at 590.

18. See id. at 589 (presenting rationale for notice requirement).

19. See Buell, supra note 17, at 552, 563 (highlighting importance of context in extortion cases); Mitchell N. Berman, Blackmail, in OXFORD HANDBOOK OF PHILOSOPHY OF CRIMINAL LAW 37, 38 (John Deigh & David Dolinko eds., 2011) (acknowledging obstacles of determining impermissible behavior); Buell, supra note 17, at 550-51 (explaining how notice justifies punishment and complications of culpability in “modern crimes”). Berman defines blackmail as “an impermissible conditional threat to do that which is permissible,” and permissibility is inherently contextual. See Berman, supra, at 38. Buell defines extortion as “the crime of coercing another person in order to induce a decision, knowing and intending that the victim be coerced.” Buell, supra note 17, at 551-52. “[U]sing leverage to get someone to make a choice in one’s favor,” is generally accepted and only becomes criminal when it exceeds societal standards of reasonableness. See id. at 552-53. Unlike murder, which does not hinge on the amount of killing committed, determining when permissible coercion becomes criminal extortion depends on “what kinds and amounts of them, in what contexts, count as wrongful.” See id. at 552.

20. See Buell, supra note 17, at 593 (discussing importance of both “category notice” and “within-category notice”); infra Part III (arguing personal benefit requirement indicates notice).


22. See United States v. Brissette, 919 F.3d 670, 674 (1st Cir. 2019) (outlining proposed jury instructions regarding “obtaining” element); Buell, supra note 17, at 595 (proposing “flexible” standard for “within-category notice”).

outline the drafting, enacting, and evolution of the modern Hobbs Act.\textsuperscript{24} Part III discusses why the history of extortion law makes establishing culpability especially difficult, why it requires unusually explicit notice of wrongfulness, and why the trend of finding extortion in nonbeneficial third-party transfers of property is incompatible with these concepts, particularly in bleeding edge extortion cases.\textsuperscript{25} Part IV concludes that a modified version of the proposed jury instruction in \textit{Brissette} can help alleviate these concerns.\textsuperscript{26}

II. \textbf{HISTORY}

A. \textit{Common-Law Extortion}

By the Middle Ages, English society recognized public corruption as a pervasive problem, especially in the "administration of justice."\textsuperscript{27} The Magna Carta reflected this concern, specifically acknowledging that the right to justice should not be sold.\textsuperscript{28} In 1274 and 1275, King Edward I initiated royal inquests into corruption, which generated reports called "The Hundred Rolls."\textsuperscript{29} The term "extortion" originates from the questions that inquisitors asked, called the Articles of Inquest.\textsuperscript{30} The Hundred Rolls revealed that official misconduct was deeply rooted in English society.\textsuperscript{31}

In response to the Hundred Rolls, the English parliament adopted the First Statute of Westminster in 1275.\textsuperscript{32} The statute was broadly defined.\textsuperscript{33} Thanks to its wide reach, extortion law became the English government’s favored weapon

\textsuperscript{24} See infra Part II.  
\textsuperscript{25} See infra Part III.  
\textsuperscript{26} See infra Part IV.  
\textsuperscript{28} See id. (tracing incorporation of guarantee up to Magna Carta). The Magna Carta stated, “To no one will we sell, to no one deny or delay right or justice.” \textit{MAGNA CARTA} cl.40 (G.R.C. Davis trans., British Museum 1963) (1215), https://www.bl.uk/magna-carta/articles/magna-carta-english-translation [https://perma.cc/KXH3-F34F].  
\textsuperscript{29} See Lindgren, supra note 27, at 841 (describing early actions of King Edward I). During these inquests, the Crown enlisted citizens to testify regarding corrupt “sheriffs, bailiffs, escheators, coroners, and other officers of the king.” See id. at 841-42.  
\textsuperscript{30} See id. at 842 (noting etymology). The word “extortion” comes from the Latin “extorquere,” meaning “to twist out.” See id. at 842 n.127.  
\textsuperscript{31} See id. at 843 (providing insight from Helen Cam’s research on inquests). The inquests revealed numerous occasions of public officials neglecting their duties or providing special benefits in exchange for money or property. See id. Many writers on the Hundred Rolls rely on Helen Cam’s research. See id. at 841 n.124.  
\textsuperscript{32} See id. at 844 (describing history of enactment). The First Statute of Westminster was specifically constructed to address the corruption documented in the Hundred Rolls. See id. at 847.  
\textsuperscript{33} See Lindgren, supra note 27, at 844 (referring to work of Helen Cam). According to Cam, the First and Second Statutes of Westminster had the combined effect of prohibiting essentially every type of official abuse that the inquests uncovered. See id. at 844.
against all manners of public corruption, including coercion, bribery, and fraud.\textsuperscript{34} As early as the eighteenth century, the English government had explicitly categorized three chapters of the First Statute of Westminster as extortion statutes in the Statutes at Large, a compilation of governing law.\textsuperscript{35} The most “famous” of the three, chapter twenty-six, stated the common law of extortion.\textsuperscript{36} The majority of chapter twenty-six was still in effect when the United States Congress enacted the Hobbs Act.\textsuperscript{37}

Initially, “[e]xtortion retained its primary common law meaning in America— a public official taking or receiving unwarranted payments.”\textsuperscript{38} Accordingly, several colonies and states enacted “fee statutes,” which established fees that public officials could fairly charge for services.\textsuperscript{39} In some fee statutes, such as North Carolina’s, the preamble specifically stated that they were designed to prevent extortion.\textsuperscript{40}

\section*{B. Prosecuting Extortion Through the Sherman Antitrust Act and Anti-Racketeering Act}

The United States Congress first attempted to combat racketeering and extortion on the federal level by utilizing the Sherman Antitrust Act (Sherman Act), which the Senate enacted “to prevent and punish capitalistic combinations and monopolies.”\textsuperscript{41} In practice, the statutory purpose, together with judicial rulings

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\item See id. at 839 (calling extortion “main offense” in absence of bribery law). The Crown utilized extortion law to prosecute acts that modern society would consider coercion, bribery, and fraud. See id. In one instance, which American law would categorize as the crime of coercion, the Crown utilized extortion law to prosecute a sheriff who imprisoned an entire village for ransom. See id. In another, which American law would categorize as fraud, an official took money from citizens because they failed to follow nonexistent tracks through the town at the bailiffs’ direction. See id. at 840. Finally, in an instance that American law would categorize as bribery, a sheriff accepted payment to release a murder suspect from custody. See id.
\item See id. at 845 (noting identification of extortion statutes); Deanna Barmakian, \textit{United Kingdom Legal Research}, \textit{Harv. L. SCH. LIR.} (Oct. 9, 2020), https://guides.library.harvard.edu/law/UK [https://perma.cc/VQ9W-XQWT] (defining “Statutes at Large”). This list included chapters twenty-six, twenty-seven, and thirty, which prohibited extortion by “King’s Officers,” “Clerks or Officers,” and “Justices Officers,” respectively. See Lindgren, supra note 27, at 845.
\item See Lindgren, supra note 27, at 845. Chapter twenty-six states, “‘no sheriff, or other officer of the King, shall take any reward to do his office, but shall be paid of what he takes of the King; and he that does, shall yield twice as much, and shall be punished at the King’s pleasure.”’ Id. (quoting Statute of Westminster I, 3 Edw., ch. 26 (1275)).
\item See id. at 846 (noting chapter twenty-six primary statute of common-law extortion).
\item Id. at 870 (explaining American common-law extortion).
\item See id. (explaining fee statutes). For example, Maryland, Massachusetts, New York, North Carolina, and Pennsylvania each enacted fee statutes in the seventeenth and eighteenth centuries. See id. at 870 n.338.
\item See Lindgren, supra note 27, at 870 (identifying North Carolina statute). The North Carolina fee statute began, “Whereas all Extortions[,] Exactions & Corruptions are & ought to be odious & prohibited in all well govern[ed] places whatsoever . . . .” Id. (quoting 2 Earliest Printed Laws of North Carolina 1669-1751, ch. 1, 236 (1736)).
that further restricted the Sherman Act’s reach, made it a weak tool for prosecuting extortion.\textsuperscript{42} Additionally, convictions under the Sherman Act imposed inadequate penalties.\textsuperscript{43}

In response to these perceived inadequacies, a subcommittee of the Senate Committee on Interstate Commerce, the Copeland Committee, conducted extensive research into U.S. racketeering.\textsuperscript{44} The Copeland Committee ultimately proposed thirteen bills intended to combat corruption.\textsuperscript{45} The Senate passed one of the bills, S. 2248, without debate, but the bill faced immediate criticism from the American Federation of Labor (Federation) for its broad restrictions.\textsuperscript{46} Most notably, the Federation contested S. 2248 out of fear that it would restrict legitimate organized labor functions.\textsuperscript{47} The Department of Justice ultimately revised S. 2248 to include an exemption for payments from a bona fide employer to their employee and protections for organized labor.\textsuperscript{48} Congress ratified S. 2248, which became known as the Anti-Racketeering Act of 1934, without debate.\textsuperscript{49}
C. United States v. Local 807 of International Brotherhood of Teamsters

In 1942, the Supreme Court considered the matter of *United States v. Local 807 of International Brotherhood of Teamsters*. At the time, most New York City truck drivers were members of the Local 807 International Brotherhood of Teamsters Union (Teamsters). Prior to the alleged racketeering acts, truck drivers from outside of New York would deliver goods to customers in New York and obtain goods for delivery to other states. The Supreme Court noted that “[t]here was sufficient evidence to warrant a finding that the defendants conspired to use and did use violence and threats to obtain . . . the regular union rates for a day’s work of driving and unloading” from the out-of-state truck drivers. Ultimately, the Teamsters compelled many of the out-of-state truck drivers to enter into contracts that required them to pay the Teamsters for the right to deliver goods within the city.

The government charged the Teamsters with multiple counts of conspiracy to violate the Anti-Racketeering Act. The Supreme Court granted certiorari to consider the scope of the exceptions that Congress built into the Anti-Racketeering Act at the request of the Federation. The Court recognized three potential

or protective services, not including, however, the payment of wages by a bona-fide employer to a bona-fide employee; or
(b) Obtains the property of another, with his consent, induced by wrongful use of force or fear, or under color of official right; or
(c) Commits or threatens to commit an act of physical violence or physical injury to a person or property in furtherance of a plan or purpose to violate sections (a) or (b); or
(d) Conspires or acts concertedly with any other person or persons to commit any of the foregoing acts; shall, upon conviction thereof, be guilty of a felony and shall be punished by imprisonment from one to ten years or by a fine of $10,000, or both.

Sec. 3. (a) As used in this Act the term “wrongful” means in violation of the criminal laws of the United States or of any State or Territory.
(b) The terms “property”, “money”, or “valuable considerations” used herein shall not be deemed to include wages paid by a bona-fide employer to a bona-fide employee.

48 Stat. at 979-80.

50. 315 U.S. 521, 524 (1942).
51. See id. at 525 (describing union’s composition).
52. See id. at 526 (explaining common procedure for deliveries from outside of New York).
53. See id. In some instances, the Teamsters forced the out-of-state drivers to surrender their trucks outside of the city, then completed the delivery themselves before returning the truck. See id. In others, the out-of-state truckers paid the Teamsters, but refused to allow them to complete or assist with the work. See id. In still other instances, the Teamsters demanded compensation from the truckers, but either refused to work or neglected to offer to work. See id.
54. See Loc. 807 of Int’l Brotherhood of Teamsters, 315 U.S. at 526 (describing contract for normal union rates).
55. See id. at 524 (summarizing procedural history). The Teamsters were indicted on the first count under section 2(a), the second count under section 2(b), and the third and fourth counts under section 2(c) of the Anti-Racketeering Act. See id. at 527. At trial, the jury convicted the Teamsters on all four counts. See id. On appeal, the circuit court reversed the convictions. See id. at 524.
56. See United States v. Loc. 807 of Int’l Brotherhood of Teamsters, 315 U.S. 521, 527 (1942) (stating issue of case); supra note 48 and accompanying text (discussing revisions).
interpretations of the exception and analyzed the legislative history of the Anti-Racketeering Act to determine which interpretation controlled. The Court concluded that Congress intended the Anti-Racketeering Act to differentiate “militant labor activity” from organized crime, and therefore the bona fide employee exception did not only apply to individuals who were employees at the time they sought to obtain money, but applied to outsiders who attempted to gain employee status as well. As a result, the exception protected individuals like the Teamsters, who threatened or used violence with the goal of obtaining bona fide employee status and the work and wages that came with it. Specifically, the Court held that the bona fide employee exception protected individuals that threatened or committed violence to secure employment if they intended to work for money or honestly offered to complete the work but were rejected; the exception did not protect individuals that did not intend to complete the work or did not offer to complete it. The Supreme Court affirmed the decision to reverse the Teamsters’ convictions because the district court’s jury instruction allowed the jury “to return a verdict of guilty if it found that the motive of the owners in making the payments was to prevent further damage and injury rather than to secure the services of the defendants.”

57. See Loc. 807 of Int’l Brotherhood of Teamsters, 315 U.S. at 527-30 (stating three interpretations and summarizing legislative history of Anti-Racketeering Act). The Court reasoned that the legislative history, which included detailed statements by officials overseeing the drafting process, indicated that Congress designed the Anti-Racketeering Act to prohibit illicit acts by career criminals, not legitimate union behavior. See id. at 530.

58. See id. at 531. The Court reasoned that Congress did not intend to impose this restriction because it would exclude most labor disputes, where potential employment and its conditions are the key issues. See id. The Supreme Court also performed a textual analysis and noted that the language of section 2(a) is conducive to a broader meaning because it “does not except ‘a bona fide employee who obtains or attempts to obtain the payment of wages from a bona-fide employer.’ Rather, it excepts ‘any person who . . . obtains or attempts to obtain . . . the payment of wages from a bona-fide employer to a bona fide employee.’” Id. (quoting Anti-Racketeering Act of 1934, Pub. L. No. 73-376, 48 Stat. 979, amended by Hobbs Act, Pub. L. No. 79-537, 60 Stat. 420 (1946) (codified as amended at 18 U.S.C. § 1951)).

59. See id. at 531 (noting entitlement to immunity in conspiracy cases).

60. See id. at 534-35 (emphasizing importance of defendant’s purpose); see also Grady, supra note 4, at 38 (summarizing holding); Lindgren, supra note 27, at 889 (stating Supreme Court’s ruling in Local 807). “The test must therefore be whether the particular activity was among or is akin to labor union activities with which Congress must be taken to have been familiar when this measure was enacted. Accepting payments even where services are refused is such an activity.” Loc. 807 of Int’l Brotherhood of Teamsters, 315 U.S. at 535.

61. See Loc. 807 of Int’l Brotherhood of Teamsters, 315 U.S. at 537 (providing Supreme Court’s reasoning). The Court noted that the instructions made the Teamsters’ guilt or innocence contingent on a third party’s intentions, not the intentions of the Teamsters themselves. See id. The instructions also neglected to inform the jury that they must find the Teamsters not guilty if “their objective . . . was to obtain by the use or threat of violence the chance to work for the money but to accept the money even if the employers refused to permit them to work.” See id. at 538.
D. Origin of the Hobbs Act

Congress acted quickly to rectify the unintended consequences of the Court’s holding in Local 807. Its chief motivation was to denote criminal conduct more explicitly. To do this, Congress worked to strengthen the Anti-Racketeering Act, not abandon it. Congress considered multiple options, including amendments to the Anti-Racketeering Act, while debate raged regarding the desired effect on labor unions. Drafting the Hobbs Act required a balance between accommodating the labor unions’ wishes and achieving the broad applicability that Congress desired.

The amendment to the Anti-Racketeering Act that Congress ultimately ratified, which became known as the Hobbs Act, was largely based on the New York Penal Code and the Field Code, a nineteenth century model penal code.


63. See Culbert, 435 U.S. at 378 (calling specific prohibitions “paramount”); 91 CONG. REC. 11,904 (remarks of Rep. Hancock) (noting importance of specificity in replacing Anti-Racketeering Act and explaining decision to omit proviso); 91 CONG. REC. 11,911-12 (statements of Rep. Jennings) (explaining importance of “straight line” rule); 91 CONG. REC. 11,912-13 (statements of Rep. Whittington) (stating intention to “strengthen[ ] and clarify[ ]”); Grady, supra note 4, at 37 (noting purpose to “strengthen and clarify”).

64. See Grady, supra note 4, at 37 (observing purpose not to replace act).

65. See Culbert, 435 U.S. at 377 (noting argument of opponents to bill); United States v. Enmons, 410 U.S. 396, 402 (1973) (discussing multiple proposals and limited purpose); Green, 350 U.S. at 419 n.5 (listing proposed amendments to Anti-Racketeering Act); 91 CONG. REC. 11,847-48 (remarks of Rep. Lane) (arguing bill’s discussion of gangsters obscure true purpose of restricting labor unions); 91 CONG. REC. 11,848 (remarks of Rep. Powell) (calling proposed bill unnecessary, “ridiculous threat against democracy”); 91 CONG. REC. 11,901-02 (remarks of Rep. Celler) (advocating leaving “escape clause” provision in bill to avoid broad definition of extortion); 91 CONG. REC. 11,900 (remarks of Rep. Hancock) (declaring bill only intended to clearly correct error of Local 807); 91 CONG. REC. 11,904 (remarks of Rep. Gwynne) (expressing disappointment with labor leaders’ opposition); 91 CONG. REC. 11,912 (remarks of Rep. Hobbs) (explaining racketeering more serious since 1943 and defending specificity of proposed bill); 91 CONG. REC. 11,914 (remarks of Rep. Russell) (summarizing organized labor support for bill). Representative Celler expressed concern that the proposed bill would automatically categorize common labor “scuffles” as federal felony offenses, despite legislative intentions. See 91 CONG. REC. 11,901-02.

66. See Culbert, 435 U.S. at 377 (noting intention to create broad-reaching legislation); 89 CONG. REC. 3206 (1943) (statement of Rep. Fellows) (explaining purpose of amendment); 89 CONG. REC. 3226 (remarks of Rep. Robison) (describing broad purposes of Hobbs Act); Grady, supra note 4, at 38-39 (noting Congress believed broad reach necessary). “[N]one of the comments supports the conclusion that Congress did not intend to make punishable all conduct falling within the reach of the statutory language.” Culbert, 435 U.S. at 377.

Hobbs Act omitted the bona fide employee exception and added new language to outline Congress’s position against robbery and extortion with more specificity. Its proponents in Congress also intended to carve out exemptions for lawful labor protests such as pickets.

E. Interpreting the Hobbs Act

1. Federal Circuit Court Developments

Since Congress ratified the Hobbs Act, the Supreme Court and lower federal courts have repeatedly attempted to interpret the “obtaining of property” language in its extortion provision. The lower court cases created a body of extortion law that dramatically departs from common-law extortion in two key ways. First, the courts abandoned the common-law interpretation of “property” as money or a valuable physical object, instead interpreting it to include both tangible and intangible property, such as individual rights. As a result of these developments, the federal courts began to consider an object or right as “property” within the meaning of the Hobbs Act extortion provision so long as it had an easily identifiable monetary value. Secondly, federal courts departed from the common-law interpretation of the “obtaining” element, which originally required the criminal defendant to actually acquire the benefits of the property. Instead, the courts interpreted the “obtaining” element flexibly, determining that...
a defendant satisfies it when they attempt to deprive the victim of their property or rights.  

2. United States v. Green and Subsequent Developments

This interpretation reached the Supreme Court in United States v. Green, wherein federal prosecutors indicted Mr. Green and a union for violating the Hobbs Act. The Supreme Court determined, with minimal explanation, that a defendant may commit extortion without receiving a personal benefit. Accordingly, the Court held that the defendants’ charged conduct constituted extortion under the Hobbs Act.

Following the Supreme Court’s ruling in Green, federal circuit courts applied the Hobbs Act in ways that further broke from common-law extortion. The Third Circuit’s decision in United States v. Provenzano exemplifies this development. In Provenzano, federal prosecutors secured an indictment alleging that Provenzano, a union agent, violated the Hobbs Act by causing an ongoing labor dispute for the Dorn Company (Dorn) and then utilizing economic fear to procure payments from Dorn to resolve it. After Dorn began making payments, Provenzano provided the name of an attorney that Dorn could place on retainer. Dorn understood this to mean that future payments should be directed to that

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75. See United States v. Frazier, 560 F.2d 884, 887 (8th Cir. 1977) (rejecting defendant’s argument); Grady, supra note 4, at 48 (stating Frazier started this trend). In Frazier, the court stated, “It is well settled that, under the Hobbs Act, it is not necessary to prove that the extortionist himself, either directly or indirectly, received the fruits of his extortion or any benefit therefrom. The gravamen of the offense is loss to the victim.” Frazier, 560 F.2d at 887.

76. See 350 U.S. 415, 416-17 (1956) (describing indictment); Murray, supra note 3, at 716 (explaining allegations and calling Green “seminal case”). The indictment alleged that the defendants sought to obtain the employer’s “money, in the form of wages to be paid for imposed, unwanted, superfluous and fictitious services of laborers.” See Green, 350 U.S. at 417. The jury convicted the defendants on two counts, but the District Court for the Southern District of Illinois granted motions in arrest of judgment for lack of jurisdiction. See id. at 416; FED. R. CRIM. P. 34(a). The district court reasoned that the defendants’ actions did not constitute extortion because they did not attempt to obtain money or property for their own benefit. See Green, 350 U.S. at 418 n.2. The government appealed the decision directly to the Supreme Court. See id. at 416.

77. See Green, 350 U.S. at 420 (stating personal benefit unnecessary for extortion); Elman, supra note 6, at 227 (noting seeking of personal benefit unnecessary to constitute extortion).

78. See Green, 350 U.S. at 421 (setting forth holding); Elman, supra note 6, at 222 (explaining physical possession not required); Kristal S. Stippich, Behind the Words: Interpreting the Hobbs Act Requirement of “Obtaining of Property from Another”, 36 J. MARSHALL L. REV. 295, 315 (2003) (calling Green “seminal case”).

79. See Murray, supra note 3, at 716-17 (describing “second step in evolution of ‘obtaining’”).

80. See 334 F.2d 678, 686 (3d Cir. 1964); Murray, supra note 3, at 716-17 (noting Provenzano signifies “second step”).

81. See Provenzano, 334 F.2d at 680-82 (detailing indictment and explaining events after Dorn moved terminal); Murray, supra note 3, at 716-17 (explaining Provenzano’s scheme). The defendant allegedly obtained $17,100 from Dorn between January 1952 and June 1959. See Provenzano, 334 F.2d at 680.

82. See Provenzano, 334 F.2d at 682-83 (describing Dorn’s initial payments to Provenzano and referral to attorney).
attorney. The jury convicted Provenzano of Hobbs Act extortion. Provenzano argued on appeal that in  

Green, the Supreme Court held that the prosecution must prove at least an indirect benefit to the defendant in order secure a conviction for Hobbs Act extortion. The Third Circuit rejected this contention and affirmed Provenzano’s conviction, holding that the prosecution did not need to prove that the extortionist obtained any kind of benefit and that payment to a third party at the extortionist’s command was sufficient.

The Supreme Court’s reasoning in  

Green, which the Third Circuit reiterated and expanded upon in  

Provenzano, was adopted by other federal circuits. As a result, in those circuits “extortionate ‘obtaining’ now require[d] only that the victim be ‘deprived’ of something. In short, to ‘obtain’ now mean[ed] only to ‘deprive.’” This development signified the ultimate departure from common-law extortion.


Contemporary Supreme Court decisions have attempted to explain the Hobbs Act’s “obtaining property” requirement, placing boundaries on the expanding interpretations of the federal circuits. In  

Scheidler v. National Organization for Women, Inc., the Supreme Court reviewed a civil action between the ProLife Action Network (PLAN), an anti-abortion coalition, and the National Organization for Women (NOW), a proponent of legal abortion which was joined by two medical centers that provided abortion services. NOW filed suit under the Racketeer Influenced and Corrupt Organizations Act (RICO), arguing that PLAN and its associates “were members of a nationwide conspiracy to ‘shut down’ abortion clinics through a pattern of racketeering activity that included acts of extortion.” More specifically, NOW argued that they had a right to

83. See id. at 683 (reiterating Dorn’s testimony); Murray, supra note 3, at 716-17 (noting payments made to attorney, not defendant). Beginning on June 1, 1953, Dorn made monthly payments to that attorney, which eventually totaled seventy-three checks. See  

Provenzano, 334 F.2d at 683.

84. See  

Provenzano, 334 F.2d at 680, 687 (detailing procedural history).

85. See id. at 686. Provenzano argued that in  

Green, the Supreme Court purposefully held that an individual could be convicted of Hobbs Act extortion without proof that they received a direct benefit, meaning that the prosecution must prove at least an indirect benefit. See id.

86. See United States v. Provenzano, 334 F.2d 678, 686 (3d Cir. 1964) (holding directed transfer of property sufficient for Hobbs Act extortion).

87. See Murray, supra note 3, at 719 & n.124 (noting Fourth, Fifth, Seventh, Eighth, and Eleventh Circuits embraced ruling); see also United States v. Carlock, 806 F.2d 535, 553 (5th Cir. 1986) (providing proper jury instructions concerning payments to third parties).

88. Murray, supra note 3, at 720 (discussing consequences of  

Provenzano decision).

89. See id. (stating abandonment of “fundamental nature of extortion”).


91. See Scheidler, 537 U.S. at 397-98 (providing background information).

92. See id. at 398. This case reached the Supreme Court twice: The district court initially dismissed the case and the Seventh Circuit affirmed, but the Supreme Court reversed and remanded to the district court. See
determine how their assets would be used and PLAN committed extortion by preventing NOW from exercising that right.\textsuperscript{93}  

In reaching its decision, the Court held that it was unnecessary to delineate the “outer boundaries of extortion liability,” that is, whether alleged extortionists can acquire intangible property rights within the meaning of the Hobbs Act, because the respondents’ theory exceeded any conceivable definition of “obtaining property.”\textsuperscript{94}  The Court noted that common-law extortion only applied to public officials that utilized their influential positions to acquire “any money or thing of value” that was not due to him under the pretense that he was entitled to such property by virtue of his office.\textsuperscript{95}  The Hobbs Act extended the prohibition of extortion to private individuals, but did not eliminate the “obtaining property” requirement.\textsuperscript{96}  Furthermore, the Court explained that Congress based the Hobbs Act upon New York legislation, and courts in New York historically interpreted the “obtaining of property” element to require “both a deprivation and acquisition of property.”\textsuperscript{97}  

The Supreme Court also interpreted the extortion provision to require both deprivation and acquisition of property.\textsuperscript{98}  Applying this rule, the Court noted that the petitioners violated the respondents’ property rights by preventing the abortion clinics from operating.\textsuperscript{99}  While their actions may have been criminal, PLAN did not commit extortion because interference with a property right does not fulfill the acquisition of property requirement.\textsuperscript{100}  The Court expressed id. at 398-99 (outlining procedural history). On remand, the jury concluded that the petitioners had violated the Hobbs Act and the district court imposed a “permanent nationwide injunction” against PLAN, “prohibiting [them] from obstructing access to the clinics, trespassing on clinic property, damaging clinic property, or using violence or threats of violence against the clinics, their employees, or their patients,” which the Seventh Circuit Court affirmed. See id. at 399; Grady, supra note 4, at 41-42 (describing procedural history of Scheidler). During the course of its second ascent to the Supreme Court, NOW argued one theory of extortion throughout litigation, but abandoned it upon reaching the Supreme Court. See Scheidler, 537 U.S. at 400-01 (explaining NOW’s two arguments). Before reaching the Supreme Court for the second time, NOW argued that PLAN committed extortion under the Hobbs Act “by using or threatening to use force, violence, or fear” to strip the respondents of various property rights, such as the right of clinic employees to perform their duties. See id. The Supreme Court speculated that the respondents abandoned this theory because they understood how difficult it would be to prove. See id. at 401.  

93. See Scheidler, 537 U.S. at 401 (describing new argument); Grady, supra note 4, at 43 (describing PLAN’s new argument).  

94. See Scheidler, 537 U.S. at 402 (holding NOW urged inappropriate interpretation of “obtaining of property”); Grady, supra note 4, at 43 (remarking on “uncertainty” of decision).  

95. See Scheidler, 537 U.S. at 402 (quoting 4 WILLIAM BLACKSTONE, COMMENTARIES *141 (1765)) (explaining common law prohibited officials from claiming right to property).  


97. See id. at 402-03 (referencing textual similarities between Hobbs Act and New York statutory law and case law).  

98. See id. at 405 (stating acquisition not satisfied by deprivation of control).  

99. See id. at 404 (acknowledging lack of dispute over interference, disruption, and deprivation).  

100. See Scheidler, 537 U.S. at 404-05 (noting “obtaining of property” element not satisfied). “Petitioners neither pursued nor received ‘something of value from’ respondents that they could exercise, transfer, or sell.” Id. at 405 (quoting United States v. Nardello, 393 U.S. 286, 290 (1969)).
concern that ruling otherwise would eliminate an important distinction between the crimes of extortion and coercion.\(^{101}\) The Court concluded that Congress intentionally structured the Hobbs Act to prohibit extortion, but not coercion.\(^{102}\) In doing so, the Court resolved longstanding confusion as to the proper interpretation of the Hobbs Act’s acquisition of property requirement.\(^{103}\)

\textit{Scheidler} represents a dramatic development in the history of Hobbs Act extortion.\(^{104}\) Some critics argue that before \textit{Scheidler} the prosecution only needed to prove that the defendant had “inten[ded] to deprive the victim of his property” to secure an extortion conviction, but after \textit{Scheidler} the prosecution also needs to prove that the defendant intended “to acquire that same property right.”\(^{105}\) In \textit{Scheidler}, the Court did not define the “obtaining property” element, however, and specifically noted that its decision does not overturn \textit{United States v. Tropiano}, which held that “property under the Hobbs Act . . . is not limited to physical or tangible property or things . . . but includes . . . any valuable right considered as a source or element of wealth.”\(^{106}\)

4. Sekhar v. United States

In 2013, the Supreme Court again attempted to define what it means to “obtain property” within the Hobbs Act extortion provision.\(^{107}\) In \textit{Sekhar v. United States}, the Court considered a case involving the New York Common Retirement Fund, a pension program for state employees.\(^{108}\) The State Comptroller was responsible for selecting investments and issuing a “Commitment,” which would

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\(^{101}\) See id. at 405-06 (explaining distinction between extortion and coercion); Elman, supra note 6, at 225 (noting importance of “ability to ‘exercise, transfer, or sell’”). Under New York penal law, coercion was defined by statute as a lesser offense distinct from extortion. See \textit{Scheidler}, 537 U.S. at 405. The Court explained that the petitioner’s actions more closely resembled the crime of coercion, which “involves the use of force or threat of force to restrict another’s freedom of action.” See id.


\(^{104}\) See Grady, supra note 4, at 35 (asserting \textit{Scheidler} dramatically changed common-law extortion); Elman, supra note 6, at 215 (explaining difference between extortion law pre- and post-\textit{Scheidler}).

\(^{105}\) See Elman, supra note 6, at 215.

\(^{106}\) See \textit{United States v. Tropiano}, 418 F.2d 1069, 1075 (2d. Cir. 1969) (providing holding); \textit{Scheidler}, 537 U.S. at 402 n.6 (explaining decision does not overrule \textit{Tropiano}); Elman, supra note 6, at 217 (discussing \textit{Scheidler} “conundrum”). But see \textit{Scheidler}, 537 U.S. at 413-15 (Stevens, J., dissenting) (arguing \textit{Tropiano} “directly applicable”). In \textit{Tropiano}, the Second Circuit determined that threatening violence to cause a rival trash removal company to cease seeking out business opportunities constitutes extortion under the Hobbs Act. See \textit{Tropiano}, 418 F.2d at 1072, 1076-77.


\(^{108}\) See id. at 730 (providing background information in \textit{Sekhar}).
then prompt further action before becoming effective. The petitioner, Sekhar, a partner at a technology company that was denied a Commitment, allegedly threatened the Common Retirement Fund’s General Counsel into recommending an investment. The government indicted Sekhar for attempted Hobbs Act extortion and a jury convicted him of attempting to unlawfully obtain “the General Counsel’s recommendation to approve the Commitment.” After granting certiorari, the Supreme Court held that the petitioner’s actions did not constitute attempted extortion under common law, statutory law, or case law. The Court reasoned that pursuant to its holding in Scheidler, which stated that extortion requires both the deprivation and acquisition of property, “[t]he property extorted must therefore be transferable—that is, capable of passing from one person to another.” The Court held that the General Counsel’s ability to make an unbiased recommendation was not obtainable so Sekhar could not obtain that right. Like Scheidler, the Court emphasized the difference between extortion and coercion, explaining that, “[i]t is coercion, not extortion, when a person is forced to do something and when he is forced to do nothing.” Furthermore, the Court in Sekhar noted that the right to make a recommendation or “give his disinterested legal opinion to his client free of improper outside interference” was more abstract than the right to conduct business at issue in Scheidler.

109. See id. at 731 (explaining logistical function of Comptroller and New York’s Common Retirement Fund).
110. See id. The defendant allegedly contacted the General Counsel anonymously through multiple e-mails, threatening to inform the General Counsel’s wife, the government, and the media about his marital infidelity if the general counsel did not issue a recommendation for investment in the defendant’s company. See id.
111. See Sekhar, 570 U.S. at 731-32 (describing jury action on verdict form).
112. See id. at 732 (noting not extortionate behavior under three types of law). The Court noted that there were no English or American cases predating the Hobbs Act in which a court found the type of coercive behavior at issue extortionate. See id. at 733. The Court further held that the language of the Hobbs Act supports the holding that the alleged behavior is not extortion. See id. at 734 (describing textual support). Extortion requires acquiring valuable property from a victim and does not extend to “mere coercion to act, or to refrain from acting.” See id. at 733.
114. See id. at 736-38 (holding even if ability to make recommendation constitutes property, not obtainable).
115. Id. at 736 n.4 (rejecting government’s argument distinguishing Sekhar from Scheidler). In Sekhar, the Court also noted that Congress modeled the Hobbs Act on New York law, implementing New York’s definition of extortion almost verbatim. See id. at 734 (tracing origins of Hobbs Act). The Court reasoned that this was noteworthy because the New York statute that Congress used as a model for the Hobbs Act includes a provision for coercion, a misdemeanor offense distinct from extortion. See id. at 735. In enacting the Hobbs Act, Congress chose not to implement the coercion provision, which defined the offense as “the use of threats ‘to compel another person to do or to abstain from doing an act which such other such person has a legal right to do or to abstain from doing.’” See id. (quoting N.Y. PENAL LAW § 530 (1909)). The Court reasoned that this omission demonstrated that Congress did not intend for the Hobbs Act to criminalize behavior that was more appropriately considered coercion. See id. at 734-35.
116. See id. at 736-38. The Court criticized the Government’s “shifting and imprecise characterization” of the property that Sekhar allegedly sought to obtain, changing from the General Counsel’s recommendation to his right to give his legal opinion without improper interference. See id. at 737-38.
Sekhar did not acquire the ability to make a recommendation for a Commitment or the right to give legal advice, he did not commit Hobbs Act extortion.\(^{117}\)

5. United States v. Brissette

In 2018, the Hobbs Act took a central role in *United States v. Brissette*, wherein the prosecution charged Kenneth Brissette, Boston’s director of tourism, and Timothy Sullivan, chief of intergovernmental affairs, with Hobbs Act extortion and conspiracy.\(^{118}\) The prosecution alleged that the two government employees informed Crash Line Productions (Crash Line) that they would only issue a permit for the Boston Calling music festival if Crash Line agreed to hire union laborers.\(^{119}\) When Crash Line yielded to the requests, the City of Boston granted the necessary permits.\(^{120}\)

After denying two of the defendants’ pretrial motions to dismiss, the U.S. District Court for the District of Massachusetts provided proposed jury instructions regarding the meaning of “obtaining property” within the Hobbs Act.\(^{121}\) The

\(^{117}\) See Sekhar, 570 U.S. at 738 (distinguishing extortion from coercion). The Supreme Court noted that Sekhar’s conduct was closer to coercion than extortion because he did not intend to “acquire the general counsel’s ‘intangible property right to give disinterested legal advice.’” See id. (quoting Brief for the United States at 39, Sekhar, 570 U.S. 729 (No. 12-357)). Instead, Sekhar intended “to force the general counsel to offer advice that accorded with [Sekhar’s] wishes.” Id.


\(^{119}\) See Brissette, 919 F.3d at 672-73 (explaining arrangement between Crash Line and City of Boston); Chris Villani, 1st Circ. Focuses on Extortion Benefit in Boston Aides’ Case, LAW360 (Dec. 4, 2018), https://www.law360.com/articles/1107900/1st-circ-focuses-on-extortion-benefit-in-boston-aides-case/ (https://perma.cc/2KVU-9ZPN) (noting action intended to gain mayor’s favor). Brissette and Sullivan allegedly notified Crash Line that receipt of the permits and licensing agreement extensions was conditioned upon Crash Line employing laborers from the International Alliance of Theatrical Stage Employees Local 11 Union. See Brissette, 919 F.3d at 672-73.

\(^{120}\) See Brissette, 919 F.3d at 673 (detailing facts of case).

\(^{121}\) See Brissette, 2018 U.S. Dist. LEXIS 44426, at *8-9. The instructions stated:

To prove this element, the government must prove beyond a reasonable doubt that Crash Line was deprived of its property, and that the defendants acquired that property. A defendant “obtains” property for these purposes when he either: 1) takes physical possession of some or all of the property; 2) personally acquires the power to exercise, transfer, or sell the property; or 3) directs the victim to transfer the property to an identified third party and personally benefits from the transfer of the property. It is not enough for the government to prove that the defendants controlled the property by directing its transfer to a third party, nor is merely depriving another of property sufficient to show that the defendants “obtained” that property.

Under the third theory of “obtaining,” you must determine, based on all of the evidence before you, whether the defendants personally benefitted from the transfer of the property. Instances in which a defendant personally benefits from the transfer of property could include: when the defendant or an organization of which he is a member receives a thing of value other than the property as a result of
government submitted an emergency motion for reconsideration, arguing that the district court’s proposed instructions were erroneous because the government does not need to prove that an individual benefitted to secure an extortion conviction. The government specifically objected to what it perceived to be a narrow definition of the methods by which an individual may obtain property by transferring it to a third party. The district court subsequently denied the government’s motion, noting that the motion was based upon a misunderstanding of the proposed jury instructions. The court explained that the proposed instructions only required the government to prove that the alleged extortionist received a personal benefit if they directed a transfer of property to a third party; it did not create a blanket requirement that the government prove a personal benefit in every case. The instructions also set out an illustrative list of circumstances that satisfy this requirement. While courts have convicted defendants of Hobbs Act extortion despite a lack of proof that they benefitted from the property they obtained, and in other cases have convicted defendants for directing a transfer of property to a third party, the district court noted that no court has convicted a defendant for directing the transfer of property to a third party without personally benefitting from the transfer. For this and other reasons, the court denied the government’s motion and subsequently granted the defendants’ motion to dismiss because the government failed to meet the “obtaining of property” element of extortion. The government appealed the dismissal.

Upon de novo review, the First Circuit Court of Appeals considered whether an individual who directs a transfer of property to a third party commits Hobbs Act extortion, even if the government does not prove that the transferor personally benefitted from the transfer. The First Circuit noted that the language of

the transfer; when the defendant directs the property to a family member or to an organization of which the defendant is a member; and/or when the defendant directs the property to a person or entity to whom the defendant owes a debt, intending that the transfer of property will satisfy that debt. A defendant does not personally benefit from the transfer of property when he merely hopes to receive some future benefit, or when he receives a speculative, unidentifiable, or purely psychological benefit from it.

Id. at *10-11.

122. See id. at *12-13 (summarizing government’s argument in motion for reconsideration).
123. See id. at *15 (expressing government’s dissatisfaction with exclusivity of jury instruction’s definition).
125. See id. at *13, *15.
126. See id. at *11, *16.
127. See id. at *27-28.
128. See United States v. Brissette, 919 F.3d 670, 675 (1st Cir. 2019) (describing trial court’s resolution); ‘Boston Calling’ Sends Chilling Message to Public Officials, supra note 9 (summarizing procedural history). The district court noted that “the government has never argued that Brissette and Sullivan directed the property at issue here to their friends or acquaintances.” Brissette, 2018 U.S. Dist. LEXIS 44426, at *17.
129. See Brissette, 919 F.3d at 675 (outlining procedural history).
130. See id. at 676 (stating issue).
the Hobbs Act extortion provision does not explicitly require the government to prove any personal benefit. The defendants countered that the word “obtaining” implies that the government must prove a personal benefit when it argues that an alleged extortionist only “‘induce[d]’ the victim’s ‘consent’ to transfer ‘property’ to an identified third party.” In response, the court acknowledged that the Hobbs Act does not define “obtaining” or “obtaining of property” and therefore looked to the common law and Model Penal Code (MPC) for guidance as the Supreme Court did in *Scheidler*. The First Circuit observed that the MPC definition of “obtaining” does not require proof that an individual who directs a transfer of property to a third party received a personal benefit, noting that the omission constitutes convincing evidence that the Hobbs Act does not require a personal benefit either. Furthermore, the court asserted that Supreme Court precedent supports this conclusion; in *United States v. Green*, the Supreme Court held that extortion does not require the extortionist to directly benefit from the property obtained. Finally, the First Circuit determined that the *Sekhar* decision did not require a different conclusion. Concluding that the Hobbs Act extortion provision does not require the government to prove that an individual who directs the transfer of property to a third party received a personal benefit from the transfer, the First Circuit vacated the district court’s dismissal of *Brissette* and remanded the case.

In support of its ruling, the First Circuit noted that all the federal circuit courts that have directly addressed the issue at bar have reached the same conclusion. The First Circuit specifically acknowledged that the Second, Third, Fifth, Eighth, Ninth, and Tenth Circuits have held “that a defendant does acquire the property at issue, within the meaning of the ‘obtaining’ element, by directing its transfer to another of his choosing, irrespective of whether he receives a personal benefit

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131. See id. (detailing first step of textual analysis).
132. See id. at 676-77 (rejecting defendants’ counterargument).
133. See *Brissette*, 919 F.3d at 677 (noting absence of definitions).
134. See *United States v. Brissette*, 919 F.3d 670, 677 (1st Cir. 2019); *Model Penal Code § 223.0(5)* (AM. L. INST. 1985). The MPC defines obtaining property as “bring[ing] about a transfer or purported transfer of a legal interest in the property, whether to the obtainer or another.” See *Model Penal Code § 223.0(5)*.
135. See *Brissette*, 919 F.3d at 678 (stating Hobbs Act precedent casts doubt on need for personal benefit in extortion cases). While the First Circuit acknowledged that *Green*, unlike *Brissette*, involved union representatives that directed a transfer of wages to other members of their union, it also held that the Supreme Court did not demonstrate an intent to limit its ruling to those circumstances. See id.
136. See id. at 678-79 (positing no indication *Sekhar* used different definition from MPC). The court acknowledged that *Sekhar* held the “‘obtaining of property’ element requires proof of ‘the acquisition of property’ – ‘[i]t is,’ proof that ‘the victim part[ed] with his property, and that the extortionist gain[ed] possession of it,’” but held that this ruling does not preclude a finding of guilty where a defendant directs the transfer of property to a third party but does not personally benefit from the transfer. See id. at 678 (quoting *Sekhar v. United States*, 570 U.S. 729, 735 (2013)).
137. See id. at 685-86 (providing holding and disposition).
138. See id. at 679 (addressing consensus between circuits); infra note 169 and accompanying text (setting forth circuit court decisions).
as a result.”139 As this interpretation of the Hobbs Act spreads, its application to cases like *Brissette*, where the alleged extortionate act is significantly different from the common-law idea of a public official acquiring money or valuables, raises concerns about whether the Hobbs Act provides adequate notice.140

**F. The Importance of Notice in Extortion Cases**

The concept of culpability is foundational to criminal law.141 Specifically, courts apply the “void-for-vagueness” doctrine to ensure that the criminal justice system targets culpable offenders.142 This “doctrine requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement.”143 Criminal laws that do not provide adequate notice that an act is prohibited violate the constitutional right to due process.144 For most offenses, the government can satisfy the constitutional

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139. *See Brissette*, 919 F.3d at 679-80 (referencing cases addressing same issue in other circuits); *see also* United States v. Carlson, 787 F.3d 939, 944 (8th Cir. 2015) (agreeing with Gotti court); United States v. Vigil, 523 F.3d 1258, 1264 (10th Cir. 2008) (holding Vigil attempted to obtain money by directing transfer to third party); United States v. Gotti, 459 F.3d 296, 324 n.9 (2d Cir. 2006) (detailing variations of extortion); United States v. Panaro, 266 F.3d 939, 948 (9th Cir. 2001) (holding Hobbs Act satisfied where extortionist or third party receives property); United States v. Hyde, 448 F.2d 815, 843 (5th Cir. 1971) (holding in extortion “gravamen of the offense is loss to the victim”); United States v. Provenzano, 334 F.2d 678, 686 (3d Cir. 1964) (holding directed transfer of property to third party constitutes extortion).

140. *See Scheidler v. Nat’l Org. for Women, Inc.*, 537 U.S. 393, 403 n.8 (2003) (arguing rule of lenity requires traditional definition of “obtain”); *Joint Brief of Defendants-Appellees at 39-40*, United States v. Brissette, 919 F.3d 670 (2019) (No. 18-1254) (addressing leniency problem); *Opening Brief of the United States at 27*, *Brissette*, 919 F.3d 670 (No. 18-1254) (acknowledging unlikelihood of involvement in extortion without personal benefit); *see also* Berman, *supra* note 19, at 38-39 (noting difficulty in determining permissive actions based on relationship to “normative system”); Buell, *supra* note 17, at 549 (determining crime of extortion requires notice); Romanzo, *supra* note 16, at 525 (describing Supreme Court’s inconsistent application of rule of lenity). In their Joint Brief, the Defendants-Appellees argued that it is impossible to reliably determine whether officials have acted appropriately or committed extortion “[i]f the officials themselves do not seek or obtain any of the money at issue.” *See Joint Brief of Defendants-Appellees, supra, at 39-40*. This is especially true in “borderline—that is, disputable or uncertain—applications of modern offenses sharing certain characteristics, [where] punishment is warranted . . . only if the actor decided to proceed in the face of some form of notice that her conduct was normatively wrongful.” Buell, *supra* note 17, at 549.

141. *See* Buell, *supra* note 17, at 585 (acknowledging centrality of culpability). Society’s drive to create clear laws is based on the belief that only evil-minded criminals deserve to be punished. *See id.* at 549. The concept of culpability helps to maintain appropriate “fit” between a particular criminal act and the justification for the corresponding punishment. *See id.* Criminal law imposes “distinctive fault requirements” for crimes to promote culpability and fit. *See id.* at 550.


143. *Id.; see* Jordan v. De George, 341 U.S. 223, 230 (1951) (stating purpose of doctrine to warn potential offenders of consequences for their actions).

notice requirement constructively because courts assume notice of statutory law. Novel extortion cases, on the other hand, present additional challenges.

Establishing culpability in novel extortion cases is complicated for several reasons. First, extortion occurs when there is an impermissible level of coercion, but coercion has no stand-alone meaning. Determining when permissible “leverage” becomes extortion requires a deeper understanding of the social context. Second, extortion often occurs in the process of negotiation, which society generally favors. Third, criminalizing extortion requires determining whether a criminal defendant intended to interfere with another’s mental processes. Finally, society’s conception of extortion changes rapidly compared to other offenses. Because of these unusual characteristics, establishing culpability in novel extortion cases requires proving two distinct types of notice: “category notice,” which refers to the assumption that all citizens understand extortion is criminal, and “within-category notice,” which refers to the understanding that a specific act constitutes extortion.

III. Analysis

Compared to crimes like murder and assault, establishing culpability in extortion cases is particularly difficult. Because of this inherent difficulty, it is
critical to establish legally sufficient notice of wrongfulness.\textsuperscript{155} The personal benefit requirement acts as a useful barometer for notice, particularly in novel or bleeding edge cases.\textsuperscript{156} By ruling that directing a transfer of property to a third party without personally benefitting constitutes “obtaining property” under the Hobbs Act, the majority of federal circuits underestimate the importance of notice in bleeding edge cases.\textsuperscript{157}

Due to the unusual characteristics described above, criminalizing extortion can appear paradoxical.\textsuperscript{158} Taking stereotypical blackmail as an example, an individual can legally disseminate facts that another person would prefer to keep private and legally ask for money from said person, but cannot legally demand money to secure their silence.\textsuperscript{159} In Brissette, the paradox is that the city officials could lawfully require Crash Line to hire union laborers and lawfully deny a permit to hold the Boston Calling Music Festival, but could not lawfully threaten to withhold the permit unless Crash Line hired union laborers.\textsuperscript{160} One of the more satisfactory explanations is that such offers are only wrongful when the context indicates that “the offeror [is] acting in a morally blameworthy manner or for morally blameworthy reasons.”\textsuperscript{161} This formulation may be satisfactory because it imposes a mens rea-like element upon the Hobbs Act extortion provision, which notably lacks one.\textsuperscript{162}

The key is that culpability in extortion cases depends on “the actor’s attitude toward the socially relevant matter: . . . that the type or amount of coercion was excessive and unacceptable” under the circumstances.\textsuperscript{163} Because this determination is both subjective and objective, adequate notice is essential.\textsuperscript{164} Generally, the American criminal justice system assumes that all citizens have notice of

\textsuperscript{155} In these “modern crimes” or “borderline” cases, the statute is arguably stretched to address behaviors that the legislature did not anticipate when it adopted the governing law. See \textit{id.} at 550. Examples include threatening a tender offer, threatening legal action, or requesting a finder’s fee. See \textit{id.} at 565. 155. See \textit{id.} at 550 (explaining how notice justifies punishment). “The existence of notice justifies punishment in borderline cases of modern crime because it resolves uncertainty about whether the actor has sufficient individual culpability to guarantee fit between the particular case and the operative justifications for criminalizing the relevant category of behavior.” \textit{id.}

\textsuperscript{156} See Joint Brief of Defendants-Appellees, supra note 140, at 39-40 (arguing seeking money crucial distinction for actor and prosecutor).

\textsuperscript{157} See infra note 173 and accompanying text (explaining heightened notice particularly necessary in non-traditional extortion cases).

\textsuperscript{158} See Buell, supra note 17, at 564 (describing “blackmail paradox”).

\textsuperscript{159} See \textit{id.}

\textsuperscript{160} See United States v. Brissette, 919 F.3d 670, 672 (1st Cir. 2019) (outlining allegations of case); Berman, supra note 19, at 37 (defining blackmail and calling criminalizing it “devilish puzzle”).

\textsuperscript{161} See Buell, supra note 17, at 564-65.

\textsuperscript{162} See \textit{id.} at 596 (providing proposed extortion statute). The proposed definition may be controversial, since it seems to contradict the presumption that mistake of law is not a defense. \textit{See id.} at 597.

\textsuperscript{163} See \textit{id.} at 587. It is difficult to justify punishment when the actor only knew they were exerting pressure. \textit{See id.}

\textsuperscript{164} See \textit{id.} at 565 (stating threat criminal when objectively wrongful and actor has subjective awareness); \textit{id.} at 581-82 (connecting notice and culpability).
This strategy works well for most crimes, and even for what might be classified as “traditional” extortion cases. As a result, the rule that an individual commits extortion by directing a transfer of property to a third party without personally benefitting is initially appealing, perhaps particularly to the considerable percentage of Americans that do not trust business leaders or elected officials to serve their interests. In short, if society assumes people know extortion is unlawful and that authority figures are untrustworthy, why should courts waste valuable public resources determining how the benefit traces back to them? The apparent advantages and public appeal might help to explain why many federal circuit courts have adopted this rule, notably the United States Court of Appeals for the Second, Third, Fifth, Eighth, and Tenth Circuits.

The widespread acceptance of this rule is logical because it often appears, explicitly or implicitly, in traditional extortion cases, where defendants are accused of committing acts that society as a unit considers unacceptable. Because of this general societal disapproval, courts typically assume notice in these instances. Though one could reasonably infer that the accused extortionists in these cases sought some personal benefit because it is difficult to imagine a

165. See Buell, supra note 17, at 592.
166. See id. at 565, 593 (referring to loan shark example and listing crimes for which notice requirement legislatively satisfied). It may not be necessary to consider whether an alleged extortionist was subjectively culpable when the threat is of a kind that society uniformly understands to be wrong. See id at 565.
167. See RAINIE ET AL., supra note 21, at 6-7 (ranking business leaders and elected officials least likely to act in public’s best interests).
168. See supra notes 165-67 and accompanying text (explaining notice assumption and Pew Research Center study).
169. See United States v. Tropiano, 418 F.2d 1069, 1075-76 (2d Cir. 1969) (stating direct benefit not required); United States v. Gotti, 459 F.3d 296, 324 & n.9 (2d Cir. 2006) (interpreting Supreme Court’s decision in Scheidler); United States v. Provenzano, 334 F.2d 678, 686 (3d Cir. 1964) (holding directed transfer of property satisfies Hobbs Act); United States v. Hyde, 448 F.2d 815, 843 (5th Cir. 1971) (holding personal benefit not required for extortion conviction); United States v. Carlson, 787 F.3d 939, 944 (8th Cir. 2015) (agreeing with reasoning of Second Circuit in Gotti); United States v. Vigil, 523 F.3d 1258, 1264 (10th Cir. 2008). In Tropiano, prosecutors indicted the owners of various garbage collection companies for Hobbs Act extortion and conspiracy to commit extortion, alleging that they utilized “threatened force, violence and fear” to cause a competitor to limit his business. See Tropiano, 418 F.2d at 1071-72. The Second Circuit held that one does not need to receive any direct benefit to “obtain” property. See id. at 1075-76. In affirming and expanding Tropiano, the Gotti court listed various actions that would constitute extortion even if the extortionist did not obtain a personal benefit or acquire property in the traditional sense, such as directing a transfer of property to a third party. See Gotti, 459 F.3d at 324-25.
170. See supra notes 165-66 and accompanying text (describing culpability for traditional crimes); Carlson, 787 F.3d at 942 (detailing threatening letters demanding money and supplies for Dr. Belisle); Gotti, 459 F.3d at 302 (concerning crime family appointing associates for union leader positions); United States v. Carllock, 806 F.2d 535, 542-43 (5th Cir. 1986) (holding evidence supported claim Senior threatened union unrest to secure business); United States v. Mitchell, 463 F.2d 187, 189-90 (8th Cir. 1972) (describing Mitchell’s threatened action); Hyde, 448 F.2d at 820 (explaining how Alabama Attorney General and associates threatened legal and administrative action to secure payments); Tropiano, 418 F.2d at 1072, 1075-76 (holding no personal benefit needed where business owners threatened violence to eliminate business competition).
171. See supra notes 165-66, 169 and accompanying text (describing assumption of notice and circuit court precedent).
different motivation, the obvious criminal nature of their actions obviates the need to pinpoint those benefits.\textsuperscript{172}

Given the complicated nature of extortion law, this strategy of disregarding a personal benefit is deficient when applied to bleeding edge extortion cases, where both “category notice” and “within-category notice” are necessary.\textsuperscript{173} Because the criminal justice system does not currently require “within-category notice,” one solution may be to implement this requirement and apply a flexible standard for what satisfies it.\textsuperscript{174} A suitable standard might be “some evidence that the defendant knew that what she was doing was wrongful.”\textsuperscript{175} If the law applies this type of standard, the personal benefit becomes incredibly valuable: When an individual directs the transfer of property to a third party, society can more comfortably conclude that they were conscious of their wrongdoing if they stood to benefit from it.\textsuperscript{176} By ruling that an extortionist need not personally

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\textsuperscript{172} See Opening Brief of the United States, supra note 140, at 27 (explaining scarcity of controlling precedent); Joint Brief of Defendants-Appellees, supra note 140, at 28-29, 37 (expanding upon government’s statement and noting district court’s treatment of various cases government cited); supra note 166 and accompanying text (describing traditional extortion cases); Provenzano, 334 F.2d at 686 (describing “ample evidence” for jury’s conclusion); Carlson, 787 F.3d at 942 (noting testimony regarding Carlson’s infatuation with Dr. Belisle); Gotti, 459 F.3d at 302 (describing allegations against crime family of using force to fill union leadership positions, direct appointees); Carlock, 806 F.2d at 542-43 (describing Carlock Sr.’s use of threats to obtain business, sexual favors); Mitchell, 463 F.2d at 189-90 (explaining job developer for Congress of Racial Equality used threats to secure employment for employee); Hyde, 448 F.2d at 843 (explaining executive board feared Gantt, who benefitted from arrangement); see also Tropiano, 418 F.2d at 1076 (providing estimated value of right to solicit business). In Carlson, the defendant was indicted for multiple counts of mailing a threatening communication and mailing a threatening communication with intent to extort, not extortion under the Hobbs Act. See Carlson, 787 F.3d at 942. The defendant sent letters to nearby businesses under Dr. Belisle’s name, in which she threatened violence and property damage unless they delivered money or goods to Belisle. See id. at 942-43. While it is difficult to ascertain the defendant’s motive in light of her unhealthy obsession, one could surmise that she intended either to win Dr. Belisle’s favor by directing the transfers or obtain “revenge” by framing Dr. Belisle for criminal behavior. See id. at 942 (describing defendant’s desperation for meeting with Dr. Belisle). The defendant in Mitchell, a job developer for the Congress of Racial Equity, allegedly “threatened to slash the tires of or burn any company trucks found on the streets, ‘burn you out of town, put you out of business,’ and . . . call militant organizations, including the Black Panthers, into the dispute” to secure employment for a person of color. See Mitchell, 463 F.2d at 189-90. See Buell, supra note 17, at 592 (illustrating example of defendant’s counterargument to extortion allegation). “Category notice” refers to the idea that all citizens understand that extortion is criminal, while “within-category notice” refers to notice that a specific act constitutes extortion. See id. at 592-93.

\textsuperscript{173} See id. at 595 (describing third alternative solution for current justice system).

\textsuperscript{174} See id. (defining possible standard). This approach strikes a balance between strict liability, which does not apply to extortion, and decriminalization of novel extortion schemes. See id. at 593-94.

\textsuperscript{175} See Joint Brief of Defendants-Appellees, supra note 140, at 39-40 (explaining how benefit of obtaining money provided crucial notice for defendant and context for prosecutor); United States v. Vigil, 523 F.3d 1258, 1265 (2008) (recognizing economic fear not always wrongful). In Vigil, the defendant “conditioned the award of the contract on the hiring of a specified individual . . . to payoff a personal political debt.” Vigil, 523 F.3d at 1264. The court acknowledged that in certain circumstances, hard bargaining that creates economic fear is not considered extortion. See id. Nevertheless, the court also stated that this does not apply when a party utilizes economic fear “to obtain personal payoffs where, for example, union officials exact payments from employers in return for ‘imposed, unwanted, superfluous and fictitious services of workers.’” See id. (quoting United States v. Enmons, 410 U.S. 396, 400 (1973)).
benefit, the circuits eliminated a crucial piece of context.\textsuperscript{177} The circuits disregarded a useful measure of notice, which minimally affects traditional extortion cases, but has devastating consequences for cases on the bleeding edge.\textsuperscript{178}

Consider \textit{Provenzano}, where union leader Provenzano informed a local business owner that he would resolve a labor dispute in exchange for payment.\textsuperscript{179} The union leader then provided the business owner with the name of an attorney to place on retainer, and the business owner made subsequent payments to that attorney instead.\textsuperscript{180} Notwithstanding his explanation, it is unlikely that a reasonable jury would believe Provenzano did not benefit from the payments to the attorney in some way—his behavior was objectively wrongful.\textsuperscript{181} Expecting the prosecutor to trace precisely how the defendant benefitted would simply waste resources.\textsuperscript{182}

Alternatively, consider a situation like \textit{Brissette}, where two city officials allegedly informed a company that it would not receive a permit unless it hired union laborers.\textsuperscript{183} It is difficult to imagine a jury that would not convict if, in a fictionalized scenario, the officials demanded that the company hire union laborers in order to secure a campaign contribution for their superior, the mayor.\textsuperscript{184} In a second hypothetical scenario, a reasonable jury could potentially convict the city officials if the jury learned that the officials made the demand to gain favor for the staunchly pro-union mayor, though the outcome is less certain.\textsuperscript{185}

Consider a final hypothetical: The jury learns that the officials made the demand because they knew the union planned to stage a disruptive protest if the

\textsuperscript{177} See Buell, supra note 17, at 564 (noting importance of context). “[T]he most persuasive participants in the great debate over the ‘blackmail paradox’ have recognized that the boundaries of criminalization must be set with reference to questions of wrongfulness that are complex and depend on context.” Id.

\textsuperscript{178} See Buell, supra note 17, at 550 (explaining notice as “culpability device); ‘Boston Calling’ Sends Chilling Message to Public Officials, supra note 9 (expressing concern at novel interpretation of Hobbs Act extortion provision). “[A] few weeks ago it seemed like a stretch to characterize Brissette and Sullivan’s actions as conspiracy and extortion. At worst, it felt like a case of old-school political arm-twisting. Now, no one can say with any assurance where the line lies between political haggling and criminal conduct.” ‘Boston Calling’ Sends Chilling Message to Public Officials, supra note 9.

\textsuperscript{179} See supra notes 80-82 and accompanying text (outlining details of Provenzano indictment).

\textsuperscript{180} See United States v. Provenzano, 334 F.2d 678, 682-83 (3d Cir. 1964) (noting Dorn’s testimony about retainer of attorney at Provenzano’s suggestion). Provenzano suggested that Dorn retain the attorney in the second quarter of 1953. See id. at 682. Dorn made monthly payments to the attorney from June 1, 1953 until June 1, 1959, and the district court determined that Dorn experienced only one labor grievance with Local 560 during that period. See id. at 683. In contrast, the district court determined that Dorn and Local 560 became embroiled in eight labor grievances from 1960 through 1962. Id.

\textsuperscript{181} See id. at 686 (explaining sufficient evidence for jury to infer defendant benefitted from transfer); supra note 121 (describing satisfactory types of benefit in proposed jury instructions in \textit{Brissette}). According to the proposed instruction in \textit{Brissette}, a benefit could include directing a transfer of property to an identified third party in satisfaction of a debt. See supra note 121.

\textsuperscript{182} See supra note 166 and accompanying text (explaining notice unnecessary when action objectively wrongful).

\textsuperscript{183} See supra notes 119-20 and accompanying text (outlining allegations in \textit{Brissette}).

\textsuperscript{184} Cf. Provenzano, 334 F.2d at 686 (explaining inferred benefit).

\textsuperscript{185} See United States v. Brissette, 919 F.3d 670, 675 n.4 (1st Cir. 2019) (stating Mayor Walsh’s status with unions).
company did not hire its members.\textsuperscript{186} Even though the officials would benefit from creating a peaceful resolution in their community, one would expect the jury to struggle to convict because this resembles a permissible use of “hard bargaining” for the public good.\textsuperscript{187} In each scenario, the officials committed the same act and received some kind of benefit; the critical question is, at what point do courts decide that the benefit is too attenuated to criminalize?\textsuperscript{188} If courts do not seriously consider who benefits and the nature of the benefit when a criminal defendant is accused of directing the transfer of property to a third party, they risk criminalizing behaviors without sufficient “within-category notice.”\textsuperscript{189}

The goal of the criminal justice system should be to create a body of law that is strict enough to prevent extortion, but flexible enough to avoid also entrapping individuals acting in the interest of others or the public.\textsuperscript{190} To that end, one solution may be to adopt a modified version of the jury instruction that the district court provided in \textit{Brissette}.\textsuperscript{191} The proposed modification would institute a rebuttable presumption that an individual who directs a transfer of property to a

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\item To prove this element, the government must prove beyond a reasonable doubt that [the victim] was deprived of its property, and that the defendants acquired that property. A defendant “obtains” property for these purposes when he either: 1) takes physical possession of some or all of the property; 2) personally acquires the power to exercise, transfer, or sell the property; or 3) directs the victim to transfer the property to an identified third party. [The government does not bear the burden of proving that the defendant personally benefited from transferring the property to an identified third party. If the government proves beyond a reasonable doubt that the transfer occurred at the defendant’s direction, the court will presume that the defendant benefited from it. The burden will then shift to the defendant, who will have an opportunity to demonstrate that they directed the transfer to advance a public interest, because they] hope[d] to receive some future benefit, or [in exchange for] a speculative, unidentifiable, or purely psychological benefit.
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third party received a personal benefit.\textsuperscript{192} This presumption is based on the understanding that one generally would not direct the transfer of property to a third party without receiving a benefit, and that receiving or intending to receive a personal benefit serves as “within-category” notice of wrongfulness under a flexible standard.\textsuperscript{193} This presumption would also afford criminal defendants the chance to present evidence that the transfer was primarily to benefit the public or others or was too attenuated to provide notice of wrongfulness.\textsuperscript{194}

IV. CONCLUSION

American extortion law is remarkably adaptable. Over its history, courts have expanded the Hobbs Act dramatically beyond common-law extortion, allowing them to wield it in unexpected scenarios. As a result of this expansion and the nature of extortion, justifying criminalization is difficult, and “within-category notice” becomes essential in the most progressive cases. By adopting a flexible standard of “within-category notice,” courts can address novel situations without criminalizing behavior that the public recognizes as appropriate. Under this standard, receiving a personal benefit from directing a transfer of property to a third party serves as valuable “within-category notice.” The public outcry that followed the First Circuit’s decision in \textit{Brissette} is an apt demonstration that the public senses the courts dangerously overstretching the Hobbs Act extortion provision.

\textit{Thomas M. Haggerty, Jr.}

\textsuperscript{192} See Buell, \textit{supra} note 17, at 597 (noting possibility of shifting burden to defendant); Opening Brief of the United States, \textit{supra} note 140, at 27 (explaining extortion typically involves personal benefit); \textit{supra} notes 173-78 and accompanying text (describing importance of “within-category notice” and suggesting flexible standard); \textit{supra} note 188 and accompanying text (posing crucial question and noting potential limits on benefit).

\textsuperscript{193} See \textit{supra} notes 173-76 and accompanying text (differentiating types of notice); Opening Brief of the United States, \textit{supra} note 140, at 27 (explaining personal benefit and extortion logically connected).

\textsuperscript{194} See \textit{supra} note 121 and accompanying text (providing proposed jury instruction from \textit{Brissette}); Buell, \textit{supra} note 17, at 597 (presenting idea of burden shifting).