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EFFORTS TO APPLY THE FEDERAL CRIME OF EXTORTION TO LABOR-RELATED VIOLENCE

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INTRODUCTION

One of the more controversial provisions in the revised criminal code proposed in the Ninety-Sixth Congress was the definition of the crime of extortion. Specifically, a difference of opinion arose over whether the federal crime of extortion should include acts occurring during a legitimate labor dispute which are designed to obtain legitimate employment benefits. Present law exempts such acts from prosecution as extortion.

The criminal code revision bills reported to the House of Representatives and the Senate for consideration during the second session of the Ninety-Sixth Congress contained different definitions of the crime of extortion. Senate bill 1722 (S. 1722) included a definition of extortion which would have, in some cases, overruled the Supreme Court's decision in *United States v. Enmons*,[1] that efforts by labor unions to obtain improved terms and conditions of employment cannot constitute extortion as defined in the Hobbs Act,[2] even when accompanied by violence, property damage, or similar coercive conduct. House bill 6915 (H.R. 6915), on the other hand, would have preserved the *Enmons* decision.

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1 410 U.S. 396 (1973).

2 18 U.S.C. § 1951 (1976). In pertinent part the Hobbs Act provides:

(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 not more than $10,000 or imprisoned not more than twenty years, or both.

(b) As used in this Section—

(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.

The Ninety-Sixth Congress adjourned without acting on either the House or Senate bills.

Its opponents in Congress have attempted since 1973 to overrule *Enmons* in every session of Congress which has considered revision of the Federal Criminal Code. The wisdom of the two versions of the crime of extortion as defined in the most recent House and Senate criminal code revision bills can best be considered after the disparate definitions are examined. This examination justifies adoption of a definition of extortion which preserves the *Enmons* interpretation whenever the Congress again considers this issue.

THE HOBBS ACT

In 1934, Congress enacted a statute, commonly known as the Anti-Racketeering Act,[3] which was designed to penalize extortion in connection with trade or commerce. The 1934 Act was modified in 1946 by the Hobbs Act in order to eliminate an exception which permitted the payment of wages by a bona fide employer to a bona fide employee.[4] Subsequently, in 1948, the original Hobbs Act was reenacted without substantial change as 18 U.S.C. § 1951.[5]

The Hobbs Act was Congress' response to the Supreme Court's decision in *United States v. Local 807 International Brotherhood of Teamsters*,[6] which ruled that section 2 of the Anti-Racketeering Act of 1934 did not forbid the exaction of money in the form of a wage demand by threats of violence from an employer for payment to a putative employee who performed no services for the money, but made a good faith tender of the services which he was willing to perform but which the employer rejected.

The Anti-Racketeering Act of 1934 proscribed, in connection with

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[3] 48 Stat. 979. Section 2 of the Act provided:

Any person who, in connection with or in relation to any act in any way or in any degree affecting trade or commerce or any article or commodity moving or about to move in trade or commerce—

(a) Obtains or attempts to obtain, by the use of or attempt to use or threat to use force, violence, or coercion, the payment of money or other valuable considerations, or the purchase or rental of property 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 physicial violence or physical injury to any 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.

[4] 60 Stat. 420, ch. 537.

[5] 62 Stat. 793, ch. 645; *see* note 2 *supra*.

[6] 315 U.S. 521 (1942).

interstate commerce, the exaction of valuable consideration by force, violence or coercion, "not including, however, the payment of wages by a bona fide employer to a bona fide employee."[7] In *Local 807*, the Supreme Court held that this exception covered New York City Teamsters who by violence or threats exacted payments from out-of-town truckers in return for the unwanted and superfluous service of driving out-of-town trucks to and from the city. Teamsters would lie in wait for the out-of-town trucks and then demand payment from the owners and drivers in return for allowing the trucks to proceed into the city. The Teamsters sometimes drove the arriving trucks into the city, but in other instances the out-of-town truckers paid the fees but rejected the Teamsters' services and drove the trucks themselves. There was evidence in several cases that the Teamsters, having exacted their fees, disappeared without offering to perform any services at all. The Court held that the activities of the Teamsters were included within the wage exemption to the Anti-Racketeering Act, even though the work they performed was unneeded, unwanted, and in some cases rejected.

The Court decided *Local 807* in March, 1942. Hearings on three bills addressed in part to the *Local 807* decision were held by a subcommittee of the House Judiciary Committee in April and May, 1942.[8] At the conclusion of the hearings, Representative Hobbs defended his bill, H.R. 6872, but stated that he proposed to substitute a new bill,[9] expressing the theme of the history of the enactment of the Hobbs Act.

> [T]he elements of the crime denounced by this bill are essentially the same as the elements of robbery or extortion. The only added element is interference with interstate commerce. . . . [T]he revised bill should include conspiracy and attempts to commit such a crime, but the essence would be interference with interstate commerce by robbery or extortion.
>
> This bill is grounded upon the bedrock principle that crime is crime, no matter who commits it, and that robbery is robbery and extortion, extortion, whether the perpetrator has a union card in his pocket or not.[10]

Representative Hobbs reiterated this argument in debate on the House floor in 1943 and 1945, stressing that the reach of the bill was limited to robbery and extortion in the conventional senses.[11]

H.R. 32, which became the Hobbs Act, eliminated the wage exception that had been the basis for the *Local 807* decision.[12] But, as fre-

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7 48 Stat. 979; *see* note 3 *supra*.

8 *Hearings Before Subcomm. No. 3 of the Committee on the Judiciary on H.R. 5218, H.R. 6752, and H.R. 6872*, 77th Cong., 2nd Sess. (1942) [hereinafter cited as *Hearings on H.R. 5218, 6752 & 6872*].

9 Representative Hobbs did introduce a new bill, H.R. 7067, 77th Cong., 2d Sess. (1942), *reported in* H. REP. NO. 2176, 77th Cong., 2d Sess. (1942).

10 *Hearings on H.R. 5218, 6752 & 6872*, *supra* note 8, at 426-28.

11 89 CONG. REC. 3217 (1943); 91 CONG. REC. 11900, 11912 (1945).

12 The Hobbs Act also eliminated the proviso in section six of the Anti-Racketeering Act

quently emphasized during the House debates, the limited effect of the bill was to shut off the possibility opened up by the *Local 807* case that union members could use their protected status to exact payments from employers for imposed, unwanted, and superfluous services.[13]

By eliminating the wage exception to the Anti-Racketeering Act, the Hobbs Act did not, however, reach violence during a strike to achieve *legitimate* collective-bargaining objectives. The debates repeatedly emphasized that the bill did not "interfere in any way with any legitimate labor objective or activity,"[14] and that "there is not a thing in it to interfere in the slightest degree with any legitimate activity on the part of labor people or labor unions. . . ."[15] Congressman Jennings, responding to a question concerning the Act's coverage, said the Act "does not have a thing in the world to do with strikes."[16]

Thus, the coerced payment for a rejected stand-by job, where no employment relationship existed and no services were rendered, was the target of the Hobbs Act.[17] Representative Hobbs directed his remarks to this mischief when he stated that, "the sole and simple purpose, the

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of 1934: That no court of the United States shall construe or apply any of the provisions of this Act in such manner as to impair, diminish, or in any manner affect the rights of bona-fide labor organizations in lawfully carrying out the legitimate objects thereof, as such rights are expressed in existing statutes of the United States. § 6, 48 Stat. 979. That provisio was one of the supports for the *Local 807* decision. *See* 315 U.S. at 535. It was eliminated to prevent reliance on that clause as a means of resuscitating the *Local 807* decision. *See* 91 CONG. REC. 11912 (remarks of Rep. Hobbs) (1945).

[13] This bill is designed simply to prevent both union members and nonunion people from making use of robbery and extortion under the guise of obtaining wages in the obstruction of interstate commerce. That is all it does . . . [T]his bill is made necessary by the amazing decision of the Supreme Court in the case of the United States against Teamsters' Union 807, 3 years ago. That decision practically nullified the anti-racketeering bill of 1934. . . . In effect the Supreme Court held that . . . members of the Teamsters' Union . . . were exempt from the provisions of that law when attempting by the use of force or the threat of violence to obtain wages for a job whether they rendered any service or not.

91 CONG. REC. 11900 (1945).

[14] *Id.* at 11841 (remarks by Rep. Walter).

[15] *Id.* at 11908 (remarks of Rep. Sumners). *See also id.* at 11900 (remarks of Rep. Hancock); *id.* at 11904 (remarks of Rep. Gwynne); *id.* at 11909 (remarks of Rep. Vursell).

[16] *Id.* at 11912 (remarks of Congressman Jennings).

[17] Congressman Hobbs forcefully rejected the idea that strike misconduct, as such, is extortionate:

Mr. Marcantonio. All Right. In connection with a strike, if an incident occurs which involves—

Mr. Hobbs. The Gentleman need go no further. This bill does not cover strikes or any question relating to strikes. . . .

Mr. Marcantonio. That does not answer my point. My point is that an incident such as a simple assault which takes place in a strike could happen. Am I correct?

Mr. Hobbs. Certainly.

Mr. Marcantonio. That then could be extortion under the gentleman's bill, and that striker as well as his union officials could be charged with violation of sections of this bill.

Mr. Hobbs. I disagree with that and deny it *in toto*.

89 CONG. REC. 3213 (1943).

single purpose, of this bill is to do the best we can to protect interstate commerce and free the highways and streets of this country of robbers."[18] The rhetoric of various Congressmen was understandably imprecise, but their concern was the exertion of actual or threatened violence to compel an employer to pay for nothing or nearly nothing.

ENFORCEMENT OF THE HOBBS ACT

Proponents of the Hobbs Act defended it as not encroaching on the legitimate activities of labor unions, on the grounds that the new statute incorporated New York's definition of extortion—"the obtaining of property from another . . . with his consent, induced by a wrongful use of force or fear, or under color of official right."[19] Felonious intent to misappropriate another's property is an essential element of extortion under New York's law.[20] The court in *People v. Cuddihy*[21] stated that "[t]he intent to extort for gain must be wrongful and unlawful 'to obtain that which in justice and equity the party is not entitled to receive.' The ultimate object and intent of the party here accused was not *'lucri causa'* which must always characterize the act." In *People v. Sheridan*,[22] the court stated that "[t]he unlawfulness lies in the motive. If its purpose be unlawful, then the act (which under other conditions might be justified) becomes unlawful."

This section of the New York Penal Code was interpreted in *People v. Dioguardi*.[23] The Court of Appeals of New York construed the term "force," used to define extortion in the New York statute, as including coercion, physicial violence, destruction of property, and economic loss other than that induced by a lawful strike. In *Dioguardi*, the defendant received payments from an employer which were, in effect, to buy an end to peaceful organizational picketing. The court stated that the otherwise lawful picketing became criminal when its purpose was to exact payment other than wages from the employer.[24]

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[18] 91 CONG. REC. 11912 (1945).

[19] NEW YORK PENAL LAW § 850 (McKinney 1909). *See* 91 CONG. REC. 11842 (remarks of Rep. Walter); *id.* at 11843 (remarks of Rep. Michener); *id.* at 11900 (remarks of Reps. Hancock and Hobbs); *id.* at 11906 (remarks of Rep. Robsion). *See also* United States v. Caldes, 457 F.2d 74, 77 (9th Cir. 1972); United States v. Provenzano, 334 F.2d 678, 686 (3d Cir. 1964), *cert. denied*, 379 U.S. 947 (1964).

[20] Note, *Labor Faces The Amended Anti-Racketeering Act*, 101 PA. L. REV. 1030, 1037-39 (1953).

[21] People v. Cuddihy, 151 Misc. 318, 324, 271 N.Y.S. 450, 456 (Ct. Gen. Sess. 1934), *aff'd*, 243 A.D. 694, 277 N.Y.S. 960 (1935).

[22] People v. Sheridan, 186 A.D. 211, 213, 174 N.Y.S. 327, 329 (1919). *See also* People v. Weinseimer, 117 A.D. 603, 616, 102 N.Y.S. 579, 588 (1907).

[23] 8 N.Y.2d 260, 168 N.E.2d 683, 203 N.Y.S.2d 870 (1960).

[24] *Id.* at 271, 168 N.E.2d at 690-91; 203 N.Y.S.2d at 880.

> The picketing here . . . may have been perfectly lawful in its inception (assuming it was

Accordingly, under New York law, when the object of the lawful activity is the personal enrichment of the actor rather than the economic betterment of the worker, it is extortion. On the other hand, where the end is attainment of a *legitimate* labor objective, there is no extortion because there is no intent to misappropriate property.[25] Thus, "the collection or attempted collection of union dues," where there "is no claim that the dues were used for personal gain as distinguished from union activities . . . cannot be blackmail or extortion. The felonious intent necessary to sustain a conviction for these crimes is wholly lacking."[26] Extortion does not exist where the proof is insufficient to establish beyond a reasonable doubt that the accused "was actuated by the purpose of obtaining a financial benefit for himself or his codefendants and was not attempting in good faith to advance the cause of unionism. . . ."[27]

This principle was followed by a federal court applying the Hobbs Act in *United States v. Kramer*,[28] where a union leader threatened an employer with labor trouble if he was not paid a sum of money. Similarly, in *United States v. Hyde*,[29] the Attorney General of Alabama and his aide were convicted of a Hobbs Act violation for threatening life insurance and loan companies with state action, which could lead to the closing of their businesses, unless payments were made to them. The court there held that the "wrongful use of an official right may be a basis for extortion."[30]

The federal courts have limited the Hobbs Act to the use of force, violence, or threat of violence to obtain wages or money in the context of a labor dispute. In *United States v. Kemble*,[31] Truck Drivers and Helpers Union Local 676 and one of its business representatives were indicted for violence against a nonunion truck driver who attempted to unload merchandise from his truck. The union business representative forcibly insisted that the truck driver employ a helper referred by Local 676 to

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part of a bona fide organizational effort) and may have remained so—despite its potentially ruinous effect on the employers' businesses—so long as it was employed to accomplish the legitimate labor objectives of organization. Its entire character changed from legality to criminality, however, when it was used as a pressure device to exact the payment of money as a condition of its cessation.

Id.

25 People v. Dioguardi, 8 N.Y.2d 260, 168 N.E.2d 683, 203 N.Y.S.2d 870 (1960), *discussed in* United States v. Caldes, 457 F.2d 74, 77-78 (9th Cir. 1972); People v. Barondess, 133 N.Y. 649, 31 N.E. 240, 16 N.Y.S. 436 (1892); People v. Weinseimer, 117 A.D. 603, 102 N.Y.S. 579 (1907).

26 People v. Gassman, 182 Misc. 878, 885-86, 45 N.Y.S.2d 709, 715 (Ct. Gen. Sess. 1943), *aff'd*, 268 A.D. 377, 51 N.Y.S.2d 173 (1944), *aff'd*, 295 N.Y. 254, 66 N.E.2d 705 (1946).

27 People v. Adelstein, 9 A.D.2d 907, 908, 195 N.Y.S.2d 27, 28 (1959).

28 355 F.2d 891 (7th Cir.), *remanded for sentencing per curiam*, 384 U.S. 100 (1966).

29 448 F.2d 815 (5th Cir. 1971), *cert. denied*, 404 U.S. 1058, (1972).

30 *Id.* at 833.

31 198 F.2d 889 (3d Cir. 1952), *cert. denied*, 344 U.S. 893 (1952).

unload the trucks because the truck driver was not a union member. The court concluded, after analyzing *Local 807* and the legislative history of the Hobbs Act, that Congress intended the Act to include the forced payment of wages in proper cases. Nevertheless, the court hastened to add that proper cases include only those involving forced payment of money for imposed, unwanted, and superfluous services, such as those in the *Kemble* case.

Later, the Supreme Court adopted the same approach in *United States v. Green*.[32] In *Green*, each of the two counts of an indictment for extortion under the Hobbs Act alleged that the extortionate acts consisted of attempts to obtain from an employer "his money, in the form of wages to be paid for imposed, unwanted, superfluous and fictitious services of laborers commonly known as swampers, . . . induced and obtained by the wrongful use, to wit, the use for the purposes aforesaid, of actual and threatened force, violence and fear made to said [employer]. . . ."[33] The Court held that the acts charged were prohibited by the Hobbs Act.[34] Before and after *Green*, a series of cases held that extortion occurs whenever a union member tries to foist himself or another union member on an employer by threats of force or violence in an effort to obtain a payoff for himself.[35] None of these cases, however, involved efforts to achieve legitimate collective bargaining objectives.

Prior to 1969, there was only one prosecution under the Hobbs Act for misconduct which occurred during a legitimate collective bargaining dispute, the Hobbs Act previously having been used only against unscrupulous officials attempting to secure payoffs. On December 9, 1969, the District Court of Arizona returned a two-count indictment against Theodore Caldes and Wellaine M. Lowry for violation of the Hobbs Act. Caldes and Lowry, both labor leaders, were accused of damaging property of the Mission Linen Supply Company by throwing green dye on the company's laundry. The damage, although minor in each instance, occurred in the midst of two years of negotiations for a collective bargaining agreement with the company.[36]

The Ninth Circuit ordered the indictments dismissed in *United States v. Caldes*[37] because it determined that the Hobbs Act was not intended

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[32] 350 U.S. 415 (1956).

[33] *Id.* at 417.

[34] *Id.* at 419.

[35] *See, e.g.*, Stirone v. United States, 361 U.S. 212 (1960); United States v. Kramer, 355 F.2d 891 (7th Cir. 1966); United States v. Varlack, 225 F.2d 665 (2nd Cir. 1966); Callanan v. United States, 223 F.2d 171 (8th Cir.), *cert. denied*, 350 U.S. 862 (1955).

[36] Brief for the AFL-CIO as Amicus Curiae at 2 n.3, United States v. Enmons, 410 U.S. 396.

[37] 457 F.2d 74 (9th Cir. 1972).

to reach low-level violence in connection with bona fide labor disputes.[38] Three other indictments returned under the Hobbs Act in 1970 were based on the same concept of the statute reflected in the *Caldes* indictments. Two of the indictments returned in the District Court for the Southern District of Florida were dismissed without opinion in June, 1979.[39] The third indictment was returned on October 15, 1970, in the Eastern District of Louisiana against Travis Paul Enmons and three other union leaders.

THE *ENMONS* CASE

Each of the individuals indicted in *United States v. Enmons*[40] was an official of one of two local unions affiliated with the International Brotherhood of Electrical Workers, one representing employees of the Gulf States Utilities Company, and the other representing employees of independent contractors engaged by the utility company to perform construction and maintenance work. The defendants were accused of five separate acts of violence in furtherance of a conspiracy to obstruct commerce, and to force the company to agree to a collective bargaining

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[38] The *Caldes* Court stated as follows:

> Labor unions must be able to actively and vigorously pursue the interest of their members at all times, provided their activity is directed toward legitimate ends. The expansive interpretation of "extortion" used in the Hobbs Act as urged by the Government would make criminal the activities of many militant labor organizations. Under the Government's view, a labor union and its members would be guilty of extortion under Section 1951 if they strike for higher wages in violation of their collective bargaining agreement, because an "illegal" or "wrongful" strike to obtain higher wages constitutes a "wrongful" use of force to obtain the property of another. Spontaneous and sporadic fighting on the picket lines could also be condemned as the use of wrongful force and as extortion if this view was allowed to prevail. This type of action, including the use of violence during a strike, was the subject of congressional attention the year following enactment of the Hobbs Act. The Taft-Hartley Act contained specific provisions which condemned this action as unfair labor practices. . . . It is significant that during congressional deliberations of the bill no congressman expressed an opinion that the Hobbs Act of the preceding year covered union violence while a strike was in progress.
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> If the Hobbs Act was construed to cover acts of violence during the negotiations for a legitimate labor goal we see a further danger that it would permit a union member to be found guilty of extortion for mischievous misconduct even though he did not possess the requisite felonious intent to deprive another of his property. It does not appear that Congress intended that acts of violence which are the by-product of frustration engendered by a prolonged, bona-fide collective bargaining negotiation to be "extortion" within the meaning of the Act. Indeed, in *Local 807* the Government admitted in its brief that "Those who use coercion to secure genuine employment are engaged in [a] legitimate labor objective; their activities, although perhaps constituting breaches of the peace do not partake of the nature of extortion."
>
> Finally, it appears to us that acts of vandalism of the type committed by these appellants would be more properly and suitably prosecuted in the state courts and it is doubtful if Congress intended by Section 1951 to elevate this type of conduct to the level of the federal court.

Id. at 78-79 (citations omitted).

[39] United States v. Rutcofsky, No. 70-101-CR-JE (S.D. Fla. June 24, 1970); United States v. Schiffman, No. 70-102-CR-JE (S.D. Fla. June 24, 1970).

[40] *See* United States v. Enmons, 410 U.S. 396.

agreement with one of the local unions which included higher wages and other monetary benefits. The acts of violence included firing high-powered rifles at three company transformers, draining the oil from a company transformer, and blowing up a transformer substation owned by the company.

The government contended that the Hobbs Act covers all attempts by union members and officials, through force or violence, to obtain the property of an employer engaged in interstate commerce. The government also argued that the language of the Hobbs Act nowhere suggests a special immunity for union members and officials who use force and violence to obtain higher wages and better working conditions, simply because these could also be obtained through lawful collective bargaining.

The Supreme Court, in a five-to-four decision with Justice Blackmun concurring, held that the language of the Hobbs Act proscribes interference with interstate commerce by extortion, and that the use of violence to obtain higher wages is not within the statute's definition of extortion.[41] The Court observed that "extortion" is defined in the Hobbs Act as "the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear,"[42] reasoning that the term "wrongful" modifies the entire definition of extortion and not just the proscribed means. The Court's rationale was that it is always wrongful to use force, violence, or fear and, therefore, the use of that term was intended to modify the other phrase in the definition which refers to "obtaining the property of another."[43]

Consequently, the Court refused to accept the government's broad concept of extortion—the wrongful use of force to obtain even legitimate union demands of higher wages.[44] The Court expressed skepticism about limiting the government's concept of extortion, even though the government conceded a possible exception for "the incidental injury to a person or property that not infrequently occurs as a consequence of the charged atmosphere attending a prolonged labor dispute."[45] Justice Blackmun's concurring opinion accepted the majority's rationale, but

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41 *Id.* at 400.

42 *Id.* at 399.

43 *Id.* at 400.

44 Justice Stewart observed:

> The Government's broad concept of extortion—the "wrongful" use of force to obtain even the legitimate union demands of higher wages—is not easily restricted. It would cover all overtly coercive conduct in the course of an economic strike, obstructing, delaying, or affecting commerce. The worker who threw a punch on a picket line, or the striker who deflated the tires on his employer's truck would be subject to a Hobbs Act prosecution and the possibility of 20 years' imprisonment and a $10,000 fine.

Id. at 410 (footnote omitted).

45 *Id.* at 410.

invited Congress to consider whether extreme acts of violence of the kind charged in the *Enmons* case should become federal crimes.[46]

POST-*ENMONS* DECISIONS

Subsequent judicial decisions have consistently recognized that "the effect of *Enmons* was to remove from the reach of federal criminal law the use of coercive tactics to obtain increased wages, but with the *caveat* that the prosecutor's hand would be stayed *only* when the payment is gained in furtherance of legitimate labor objectives."[47] Thus, the *Enmons* decision has not exempted labor officials and union members from all federal prosecution under the Hobbs Act merely by virtue of the juxtaposition of their alleged unlawful activity with a labor dispute.

In *United States v. Daley*,[48] the principal officer of a Teamsters union was convicted of a Hobbs Act violation because he requested and received at no cost six hundred tons of stone for his personal use from an employer then in collective bargaining with the defendant's union. The defendant also arranged to have two members of the local union provide their trucks to load and haul the stone after regular working hours. Neither of the drivers was compensated by defendant for this work. Similarly, in *United States v. Quinn*,[49] a clergyman who was authorized to represent certain employees of a retail store in a labor dispute was convicted of violating the Hobbs Act for receiving payment from the employer in return for removing a picket line around the employer's store.[50] Each of these defendants was convicted of violating the Hobbs Act because he obtained a personal payoff through the use of coercive tactics.[51] Nonetheless, critics of the *Enmons* case are still dissatisfied. Some have argued, for instance, that the Court's subsequent decision in *United States v. Culbert*,[52] drastically narrowed the holding in *Enmons*. There is no basis for this interpretation of *Culbert*.[53]

Moreover, the federal government recently attempted to circumvent *Enmons* by prosecuting union officials for the destruction of two

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46 *Id.* at 412.

47 United States v. Quinn, 514 F.2d 1250, 1257 (5th Cir. 1975), *cert. denied*, 424 U.S. 955 (1976).

48 564 F.2d 645 (2d Cir. 1977), *cert. denied*, 435 U.S. 933 (1978).

49 514 F.2d 1250.

50 *See also* United States v. Nell, 570 F.2d 1251 (5th Cir. 1978).

51 There has also been at least one successful prosecution of a labor official for attempting to impose unwanted or unneeded union services. United States v. McCullough, 427 F. Supp. 246 (E.D. Pa. 1977).

52 435 U.S. 371 (1978).

53 United States v. Culbert simply held that the Hobbs Act is not limited to corrupt labor activities as held earlier in United States v. Beck, 511 F.2d 997 (6th Cir. 1975), *cert. denied*, 423 U.S. 836 (1975); and United States v. Franks, 511 F.2d 25, 31 n.7 (6th Cir. 1975), *cert. denied*, 422 U.S. 1042 (1975).

trucks which belonged to an employer with which the defendants' unions were involved in a labor dispute. The government charged the defendants with violations of the Travel Act[54] instead of the Hobbs Act. In *United States v. Thordarson*,[55] the government argued that, because the Travel Act does not contain the "wrongful taking" requirement in the Hobbs Act, *Enmons* is inapplicable to a Travel Act prosecution of allegedly extortionate activities of labor leaders and members. The court disagreed, applying *Enmons* to the Travel Act by strictly construing the language and legislative history of the latter; the court further observed that the states, not the federal government, should regulate criminal activity during strikes.[56]

These cases and others have narrowly construed the Hobbs Act within the context of legitimate labor activity.[57] There has been no expansion of *Enmons* and the holding in *United States v. Quinn* represents a slight narrowing of *Enmons*. Critics of *Enmons*, despite the courts' consistently narrow interpretation, continue to press for its legislative reversal.

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54 The Travel Act provides in pertinent part that:

(a) Whoever travels in interstate or foreign commerce or uses any facility in interstate or foreign commerce, including the mail, with intent to . . .

(2) commit any crime of violence to further any unlawful activity; or

(3) otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity,

and thereafter performs or attempts to perform any of the acts specified in subparagraphs (1), (2), and (3), shall be fined . . . imprisoned . . . or both.

(b) As used in this section "unlawful activity" means . . . (2) extortion, bribery, or arson in violation of the laws of the State in which committed or of the United States.

18 U.S.C. § 1952 (1976).

55 487 F. Supp. 991 (C.D. Cal. 1980), *appeal docketed*, No. 80-1239 (9th Cir. 1980).

56 *Id.* at 994-95.

The *Enmons* rationale is as appropriate to a § 1952 prosecution as it is to a § 1951 prosecution. Defendants, in the case at bar, are labor officials whose unions participated in a lawful strike. Their alleged acts are ones contemplated as part of a series of coercive tactics to achieve the recognition of a union contract. Although, as in *Enmons*, the statutory proscriptions arguably apply, there is no indication that Congress intended to extend the scope of a statute aimed at combatting organized criminal activity to encompass violence arising out of a lawful strike. Criminal statutes must be strictly construed, and any ambiguity resolved in favor of lenity. . . . Much more explicit statutory language is required "to lead to the conclusion that Congress intended to put the Federal Government in the business of policing the orderly conduct of strikes. . . ."

Acts of violence, such as the ones alleged in the instant case, occurring during a lawful labor dispute and resulting in damage to persons or property are punishable under state law. However, there is nothing in the language or history of § 1952 to "justify the conclusion that Congress intended [§ 1952] to work such an extraordinary change in Federal labor law or such an unprecedented incursion into the criminal jurisdiction of the States. . . ." Therefore, Counts 4 and 5 charging violations of 18 U.S.C. § 1952 are dismissed.

Id. (citations omitted).

57 United States v. Culbert, 435 U.S. at 376-78; United States v. Warledo, 557 F.2d 721 (10th Cir. 1977); United States v. Jacobs, 543 F.2d 18 (7th Cir. 1976), *cert. denied*, 431 U.S. 929 (1977).

A NEW CRIMINAL CODE AND *ENMONS*

Each version of the recodification of the federal crimnal laws which has been reported by the Senate Judiciary Committee has included a definition of the crime of extortion which, to some extent, would have overruled *Enmons*. Although the bill reported to the Senate during the last session was more limited than its predecessors, it was still inconsistent with *Enmons*. The recodification bill reported to the House during the Ninety-Sixth Congress would have preserved the *Enmons* rationale, but barely survived concerted opposition.

Members of the Senate Judiciary Committee have repeatedly struggled with the definition of "extortion," in an effort to achieve a compromise between the competing interests which want to preserve the *Enmons* interpretation and those who wish to abolish the exemption from prosecution for otherwise prohibited activities which are designed to obtain legitimate labor objectives. The respective definitions of "extortion" which appeared in H.R. 6915 and S. 1722 were the latest in the line of definitions of that crime which began when the original recodification bill, S. 1, was reported to the Senate Judiciary Committee by its Subcommittee on Criminal Laws and Procedures during the Ninety-Fourth Congress.[58]

The definition of extortion in S. 1 eliminated the reference in the Hobbs Act to "wrongful use." The purpose of this omission was "to overturn the *Enmons* exception and to prohibit uniformly the use of extortionate means involving actual or threatened violence to obtain property, irrespective of whether the property could legitimately have been acquired in some other way."[59]

The Subcommittee explained in its report that the kind of picket-line violence, to which Justice Stewart referred in *Enmons*,[60] is not within the ambit of the Hobbs Act because such violence is not used to exact payment from the employer.[61] Supporters of the extortion provision in S. 1 argued that the report's language was sufficient to exclude minor

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[58] *See* SUBCOMM. ON CRIMINAL LAWS AND PROCEDURES OF SENATE COMM. ON THE JUDICIARY, 94TH CONG., 2D SESS., REPORT ON THE CRIMINAL JUSTICE REFORM ACT OF 1975 (Comm. Print 1976) [hereinafter REPORT ON REFORM ACT].

[59] *Id.* at 649.

[60] 410 U.S. at 410. *See also* note 44 *supra*.

[61] Apparently in part what motivated the Court in *Enmons* was the desire to avoid Federal Hobbs Act coverage over unlawful picket-line violence—usually the product of short tempers—in which minor but intentional damage is done to the property of the employer. However, in the Committee's view such acts do not fall within the purview of the Hobbs Act (*nor should they be Federally punishable*) since there is no intent thereby to obtain the employer's property through the use of force and the acts do not in fact cause the employer to part with his property; in short, such isolated acts of violence do not partake of the nature of extortion.

REPORT ON REFORM ACT at 624 (emphasis added).

picket-line violence from prosecution. Nevertheless, it certainly would have worked in an "extraordinary change in federal labor law."[62] In fact, the subcommittee report suggested that the criminality of conduct by union leaders and members might turn on the size of the wage increase or other employment benefit sought in collective bargaining negotiations.[63] This proposition runs counter to the premise of the free collective bargaining system. Fortunately, the Senate Judiciary Committee failed to act on S. 1 during the Ninety-Fourth Congress.

Subsequently, during the Ninety-Fifth Congress, the Senate Judiciary Committee reported a new version of S. 1, designated S. 1437, which also included a definition of "extortion" substantially different from that in the Hobbs Act.[64] Again, the purpose of the definition was to overrule the *Enmons* decision by removing the word "wrongful," much like its predecessor in S. 1. In fact, the committee report which accompanied S. 1437 included an explanation for the proposed extortion section that was identical to the explanation in the Committee Report which accompanied S. 1.[65] The report explained that, where violence occurs in connection with collective bargaining, the question would be whether union demands in the bargaining table were "extortionate." The omission of the term "wrongful" from the definition of "extortion" necessarily implied that some wage demands, or other demands made by unions in collective bargaining, might be so inordinately high as to constitute extortion.[66] Thus S.1437 contained the same flaw which the *Enmons* Court found in the federal government's position in that case, that "[t]he Government's broad concept of extortion—the wrongful use of force to obtain even the legitimate union demands of higher wages—is

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62 410 U.S. at 411.

63 The Subcommittee Report stated:

> As a result of the Supreme Court's holding in *Enmons*, the opportunity is created for unions or employers to cloak extortionate demands in the guise of an objective which could be legitimately sought through collective bargaining. For instance, rather than violate the Act (under *Green*) by seeking wages for superfluous services, unions may (under *Enmons*) demand and obtain with impunitiy inordinately high wages for the performance of existing and desired services through fear instilled by violence. Such a situation is, of course, highly undesirable.

REPORT ON REFORM ACT at 624.

64 In pertinent part S. 1437 provided:

> § 1722. Extortion
>
> (a) Offense.—A person is guilty of an offense if he obtains property of another:
>
> (1) by threatening or placing another person in fear that any person will be subjected to bodily injury or kidnapping or that any property will be damaged; or
>
> (2) under color of official right.
>
> (b) Affirmative Defense.—It is an affirmative defense to a prosecution under subsection (a)(1) that the threatened or feared injury or damage was minor and was incidental to peaceful picketing or other concerted activity in the course of a bona fide labor dispute.

65 S. REP. NO. 96-605, 95th Cong., 1st Sess. 624-25 (1977).

66 *Id.*

not easily restricted."[67]

For instance, under the extortion provision in S. 1437, the government would not have been required to show even that union leaders involved in collective bargaining were aware of, or participated in, violent conduct in order to indict them for extortion, as long as there was evidence that otherwise legitimate collective bargaining demands were regarded by the prosecutors and the jury as inordinately high. The suggestion that the criminality of conduct by union leaders or members might turn on the amount of benefits sought in negotiations runs counter to the premise of a system of free collective bargaining.

The affirmative defense in § 1722(b) of S. 1437 did not ameliorate these problems. Each of the three necessary elements of the defense was not only vague, but subject to interpretations which could have rendered the defense meaningless. Moreover, the burden of proving the elements of the affirmative defense would have been on the defendant. As a result, a prosecutor almost always would have been able to get the case to the jury.

Accordingly, organized labor attempted to eliminate the affirmative defense in § 1722(b) of S. 1437, in order to ensure that collective bargaining demands did not become an element of the crime of extortion, and could not be the subject of prosecutorial scrutiny. For this reason, Senator Edward M. Kennedy (D-Mass.) introduced an amendment to the extortion provision which was supposed to narrow its application, so that violence and threats of violence in the context of a labor dispute would not automatically become an element of the crime of extortion.[68]

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[67] 410 U.S. at 410.

[68] 124 CONG. REC. S17 (daily ed. Jan. 19, 1978). This amendment was accompanied by the following colloquy:

> Mr. Kennedy. Mr. President, the only purpose of this particular amendment is to clarify that should there be violence in the course of a labor dispute it will not be considered prima facie evidence of extortion.
>
> The Justice Department agreed to that degree of clarification, and that is the extent of the amendment. That is the sum and substance of it.
>
> Mr. Thurmond. Mr. President, I would like to make a brief statement about the amendment just offered by the Senator from Massachusetts. I do not object to the amendment, but I want to spell out its legal impact on the provisions in section 1722.
>
> This amendment would add a 'proof' subsection designed to prevent a trial judge from holding that, in a case described in the new subsection, mere proof that personal injury or property damage occurred during a labor dispute constitutes a sufficient showing of the causal relationship between the obtaining of property and the threat of fear based on that injury or damage to justify submission of that issue to the jury. It prevents such a holding directly by providing that proof of the coincidence of the labor dispute and the injury or damage in such a case is not 'prima facie evidence' of the causal relationship. It is true, of course, that such a causal relationship sometimes does exist where injury or damage occurs during a labor dispute. This proposed subsection, however, is based on the belief that where there is a cause and effect relationship, or the intent to obtain property by means of a threat or fear resulting from injury or damage, it should be

Eleven days later, near the end of debate on S. 1437, Senator Kennedy made the following statement in an effort to clarify the record as to the meaning of the new § 1722(b):

> The amendment is intended to avoid an implication that if violence occurs incidental to a labor dispute, the violence could be attributed to the union as a tactic for extortion where there was no evidence that that was the purpose of the violent conduct. The amendment means that more than the mere coincidence of a labor dispute and violence is needed to show that violence was intended to be a means of extorting anything from the employer. A case of extortion could not be proved in a labor dispute situation just because fighting or other violence occurs—this is the intent of the amendment.[69]

Despite these statements, substitution of the new proof section in § 1722(b) for the former affirmative defense section did nothing to eliminate the problems created by the proposed extension of the crime of extortion to activities undertaken in order to achieve legitimate labor objectives.

The implication of both Senator Kennedy's and Senator Strom

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possible to prove, in addition to that coincidence, some other circumstance adding to the strength of the inference of causation.

The proposed subsection does not address the question of which particular additional circumstance or circumstances, when proven along with that coincidence, will suffice to justify the submission of the issue to the jury. One which clearly would be sufficient in many cases to avoid a directed verdict is the circumstance that the defendant was, or conspired with, a person negotiating on behalf of the union involved in the labor dispute. The same result might obtain, where the repetitive or systematic nature of property damage, or its exact timing, contributed to an inference, based also on the fact that a labor dispute was pending at the time the damage was done, that the damage was purposeful rather than mindlessly vindictive.

Mr. Allen. Does not the amendment make it harder to obtain convictions in extortion prosecutions?

Mr. Kennedy. No, it would not. It simply clarifies the scope of the section. If there were any examples of obvious violence involved, disorderly conduct or any other kind of violence, those could easily be prosecuted at the local level and there is nothing in this particular amendment that would affect that.

All it says is that if there are instances of violence involved, it would not be considered prima facie evidence of extortion. That presumption may be overcome or rebutted, and in that sense it would require additional evidence.

Id.

[69] *Id.* at S763-64 (daily ed. Jan. 30, 1978).

In fact, the Government would not even attempt to prosecute as extortion most cases of violence associated with a labor dispute. The amendment is a recognition that tempers often flare in labor dispute situations. In a case where there was evidence that there was an agreement among people involved in the labor dispute to use violence against the employer as a means of achieving the goals of the labor union, such as dynamiting a plant, that evidence would establish a prima facie case.

In the absence of such evidence, a defendant would be entitled to dismissal of the case. In fact, in the absence of such evidence, such matters should be left to the States, which are fully capable of dealing with disorderly conduct, assault, property destruction, and other lesser crimes. And that is what these minor offenses are in the absence of a plan or conspiracy to extort.

Id.

Thurmond's (R-S.C.) initial statements was that evidence of labor violence in conjunction with collective bargaining, plus almost any other evidence indicating a causal relationship between the bargaining and the violence would be sufficient to get the case to a jury. Senator Thurmond's statement indicated that, in addition to evidence that a union negotiator was involved in the violent conduct, evidence sufficient to satisfy the causal relationship requirement might include, for example, evidence that property damage was systematic or repetitive, or evidence of suspicious timing, presumably of either the violence or the bargaining demands. Furthermore, Senator Thurmond's analysis, and at least Senator Kennedy's initial analysis, were consistent with the report which accompanied S. 1437 that evidence of inordinately high bargaining demands, in conjunction with evidence of violence, would also be enough to get the case to a jury. Nothing in Senator Kennedy's later statement altered the premise of the analyses of both Senators. The Senate passed S. 1437 on January 30, 1978, by a wide margin. The House of Representatives, however, failed to take action and the bill expired at the close of the 95th Congress.

Subsequently, a new bill to recodify the federal criminal laws was introduced in the Senate on September 7, 1979. S. 1722 was a revised version of S. 1437 and, therefore, initially included an extortion provision identical to the one passed by the Senate the previous year. Senator Patrick Leahy (D-Vt.) introduced an amendment to the extortion section in S. 1722, concidentally again designated § 1722, during the Judiciary Committee's consideration of the bill, which eliminated the proof section, § 1722(b), and replaced the word "wrongfully" in § 1722(a). Senator Leahy's amendment was designed to preserve the language of the Hobbs Act as well as the *Enmons* interpretation of that language.

The Leahy amendment was adopted by the Committee on November 27, 1979. Support for the Leahy amendment was based on two separate concerns. Several members of the Committee supported the amendment because they agreed that federal criminal proscription of the use of force to achieve legitimate collective bargaining demands would upset the delicate balance in labor-management relations which Justice Stewart recognized in *Enmons*. Other members of the Committee were more concerned about the "incursion into the criminal jurisdiction of the States" which the extortion provision in S. 1722 represented. Senator Leahy stated that state criminal authorities were better equipped to handle local labor violence.[70] Senator Cochran (R-Miss.) concurred

[70] *Transcript of Proceedings: Hearing Held Before the Senate Comm. on the Judiciary, Executive Session Mark-Up on the "Criminal Code,"* 96th Cong., 2d Sess. 5-6 (Nov. 27, 1979).

> Mr. Chairman, as I stated earlier, I really think that we are dealing with an area: if we have improper activity on the part of either the employers or the labor unions in a labor

with Senator Leahy by stating that there was no clear need for federal intervention in local labor disputes.[71]

Opponents of the *Enmons* interpretation of the Hobbs Act, believing that the inclusion of the proof section in the extortion provision represented a major concession to supporters of *Enmons*, threatened to block reporting of S. 1722 to the floor of the Senate unless some compromise was agreed upon which at least removed major acts of violence from the protection of *Enmons*. Hence, the compromise version of the extortion provision represented yet another, albeit more limited, attempt to dilute the protection afforded by *Enmons* to legitimate collective bargaining objectives.[72]

Significantly, the committee report which accompanied S. 1722[73] indicated that the Judiciary Committee finally accepted the *Enmons* decision,[74] yet nonetheless, expressed continued rejection of an essential proposition of *Enmons*, which is that the use of violent means to obtain legitimate collective bargaining objectives, no matter how extreme,

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dispute where to achieve an objective it would be a legitimate subject of collective bargaining, I really think that is something that should be left up to the states.

I must admit that I feel that way: partly from my own experience as a prosecutor, but also from prosecutors that I have talked with in other states. What I am saying basically is that the old law made a great deal of sense. Local prosecutors, local courts, local police: they have a pretty good idea of what is going on.

They also tend to be able to keep these things in their proper perspective. And also, they deal directly with each other. There is no question in my mind that when the Federal authorities move in you have very little relationship with the local authorities on it, and it just is not handled the same way.

I really see no need. In fact, I found nothing, in going back through the testimony of anything else that says why we should expand Federal jurisdiction in this way.

Id.

[71] *See id.* at 6.

[72] In pertinent part S. 1722 provided:

§ 1722. Extortion

(a) Offense.—A person is guilty of an offense if he obtains property of another—

(1) by threatening or placing another person in fear that any person will be subjected to bodily injury or kidnapping or that any property will be damaged; or

(2) under color of official right.

(b) Bar to Prosecution.—It is a bar to prosecution under this section that the offense occurred in connection with a labor dispute as defined in 29 U.S.C. 152(9) to achieve legitimate collective bargaining objectives, unless there is clear proof that the conduct which constitutes the threat or placing in fear required under subsection (a)(1) consists of a felony and the conduct was engaged in for the purpose of causing death or severe bodily injury in order to secure such objectives; and the Attorney General, Deputy Attorney General, or Assistant Attorney General for the Criminal Division certifies in writing that—

(A) the facts establish the existence of the additional elements of the offense required under this subsection;

(B) a federal prosecution should be commenced under this section; and

(C) the State is unable or unwilling to proceed with any equivalent prosecution relating to such conduct.

[73] S. REP. NO. 96-553, 96th Cong., 2d Sess. (1980).

[74] *Id.* at 645.

must be exempt from federal prosecution as extortion.[75] Thus, even

[75] The Committee Report which accompanied S. 1722 stated in relevant part:

As indicated earlier, the Committee intends to carry forward in a slightly more narrow fashion the effect of the limiting construction placed upon the Hobbs Act in the *Enmons* decision to the effect that labor officials were not covered for their extortionate activities against employers in the course of a labor dispute, if the objective sought was a permissible goal of collective bargaining. The committee concluded that the best way to perpetuate this major thrust of *Enmons* was to provide for a bar to prosecution in circumstances involving a labor dispute. Accordingly, the Committee has eliminated from the definition of the substantive offense itself the reference in the Hobbs Act to the "wrongful" use of force, violence, or threats, on which the Supreme Court majority predicated its holding, and intends that in situations not covered by section 1722(b) this offense be given an interpretation consistent with its deliberately broad language. The design of this offense is to prohibit the use of truly extortionate means to obtain property, irrespective of whether the property could legitimately have been acquired in some other way.

4. Bar to Prosecution

The bar to prosecution in subsection (b) of section 1722 states the careful balance struck by the Committee between the need to include an effective extortion statute in the new Federal Criminal Code and the need to avoid "working an extraordinary change in federal labor law [and] . . . an unprecedented incursion into the criminal jurisdiction of the States," and to respect Congress' "traditional reluct[ance] to define as a federal crime conduct readily denounced as criminal by the States."

To meet the substantial concerns just noted, the bar to prosecution prohibits application of this provision to labor disputes involving "legitimate collective bargaining objectives" subject to the exception of the bar described below. That phrase as used in subsection (b) encompasses activities to secure noncorrupt labor union objectives even if, as in *Enmons*, those activities would violate other laws and excludes such objectives as efforts to obtain personal payoffs or payments for superfluous services.

The exception to the bar stated in subsection (b) is intended to spell out the exclusive circumstances which may give rise to a Federal extortion prosecution involving unlawful conduct that occurs during a labor dispute to achieve legitimate collective bargaining objectives. In essence this exception adds two elements to the crime. First, the government must prove that the defendant engaged in conduct against the person which, if there were Frederal jurisdiction, would be a felony under the code. This element requires an act and not a mere statement or threat to act. Second, the government must prove that the defendant acted not merely "knowingly" as that term is used in the code but with the preestablished intent to (a) cause death or severe bodily injury and (b) by so doing to force acceptance of the union's demands. "Severe bodily injury" means protracted disabling or disfiguring bodily injury that precludes the individual from gainfully working.

The phrase "clear proof," which has its origin in Section 6 of the Norris-LaGuardia Act (29 U.S.C. Section 106), as used here imposes on the government the obligation to establish by direct evidence that the conduct against the person included in the exception was undertaken for the purpose specified therein. Without such proof, violence, no matter how serious, during a labor dispute is outside the Federal extortion law.

In order to reinforce traditional principles of federalism the bar is not overcome (and the Federal government may not initiate an investigation or prosecution of the illegal conduct) unless the Attorney General, Deputy Attorney General, or Assistant Attorney General for the Criminal Division certifies in writing that (a) the facts establish the existence of the additional elements of the offense required by the exception to the bar; (b) a Federal prosecution should be commenced under this section; and (c) for reasons other than insufficient evidence the State refuses to proceed with a prosecution relating to the conduct against the person specified in the exception to the bar. Such a certification must be based on evidence obtained by or available to the State prior to the Federal government's involvement in the matter; however, once the certification is made, this provision does not limit the Federal government's ability to secure and rely on additional evidence.

Id. at 649-52.

though the extortion provision in S. 1722 was a substantial improvement it suffered from many of the same deficiencies which made previous versions unacceptable. Section 1722 reflected a concerted effort by the Committee to meet the dual justifications for the *Enmons* holding: avoidance of an extraordinary change in federal labor law, and an unprecedented incursion into the criminal jurisdiction of the states. Unfortunately, the draftsmen again missed the mark, and the results could have been exactly what Justice Stewart sought to avoid in *Enmons*.

For instance, the bar to prosecution in § 1722(b) would itself have had a substantial chilling effect on the right of employees to "engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection" provided in § 7 of the National Labor Relations Act.[76] Section 111 of S. 1722 defined a "bar to prosecution" as "a ground for terminating a prosecution in favor of a defendant on a ground unrelated to guilt or innocence." Thus, the bar to prosecution in § 1722(b) could not be raised until a defendant was arrested and indicted for extortion. Consequently, many union leaders and their members would have been discouraged from participation in lawful collective bargaining activities for fear that such activity might subject them at least to arrest and indictment for extortion if violent misconduct occurred during the pendency of the collective bargaining.

This result obtains because § 1722(b) applies to instances involving "a labor dispute as defined in 29 U.S.C. § 152(9) to achieve legitimate collective bargaining objects." Section 2(9) of the Act defines the term "labor dispute" broadly, as including:

> any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.[77]

Section 1722(b) added to this broad definition of a labor dispute the requirement that it must be aimed at achieving "legitimate collective bargaining objectives." Earlier versions of the extortion provision implied that inordinately high wage demands might not be legitimate collective bargaining objectives. Section 1722(b) offered no guidance on this issue. Thus, the same objections raised to the earlier versions of the definition of extortion which appeared in S. 1 and S. 1437 were equally applicable to the recent version in S. 1722.

Section 1722(b) also attempted to avoid an incursion into the criminal jurisdiction of the states by including a requirement that the state in

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[76] 29 U.S.C. § 157.

[77] 29 U.S.C. § 152(9).

which the alleged unlawful activity occurred must be found by the Attorney General of the United States, his Deputy or his Assistant for the Criminal Division, to be unable or unwilling to proceed with "any equivalent prosecution relating to said conduct." There was, however, no definition of what constitutes any equivalent prosecution relating to said conduct. For instance, must the equivalent prosecution be for extortion? Does the measure of equivalency include a comparison of the penalties under state law with those under federal law? Moreover, the standards by which the state's unwillingness or inability to prosecute would be measured by the Attorney General are undetermined. Problems such as these could have rendered § 1722(b) meaningless insofar as it was intended to avoid incursion into the criminal jurisdiction of the states.

These and other defects in the extortion provision of S. 1722 prompted former Secretary of Labor F. Ray Marshall to write to then Attorney General Benjamin R. Civiletti on January 16, 1980, expressing strong opposition to the extortion provision in S. 1722, and supporting retention of the Hobbs Act definition of extortion as interpreted in *Enmons* in the Criminal Code bill then pending before the House Judiciary Committtee. H.R. 6915, as originally drafted by the Subcommittee on Criminal Justice, completely overruled *Enmons* by adopting a definition of extortion which prohibited the use or threat of violence to obtain the property of another, with his consent, whether wrongful or otherwise.

On March 5, 1980, after Labor Secretary Marshall's letter signalled the Carter administration's position on the issue, the Subcommittee voted to amend the extortion provision in H.R. 6915[78] to include the term "wrongfully," thereby preserving the *Enmons* interpretation. Immediately thereafter, however, Representative Sam B. Hall (D-Tex.) proposed an additional amendment to the extortion provision which stated that the fact that the violence committed by the accused party was in furtherance of a legitimate objective or activity would not be a defense to a prosecution for extortion. Consequently, the extortion provision which the Subcommittee sent to the Judiciary Committee on March 11, 1980 was internally inconsistent in that it preserved the *Enmons* interpretation of extortion in the first subsection and then seemingly overruled it in the second.[79]

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78 The extortion provision in H.R. 6915 was designated as section 2522.

79 The extortion provision submitted to the House Judiciary Committee, in relevant part, read as follows:

§ 2522. Extortion

(a) Whoever knowingly threatens or places another person in fear that—

(1) any person will be subjected to bodily injury or kidnapping; or

(2) that any property will be damaged;

Thereafter, Congressman John Sieberling (D-Ohio) introduced an amendment to § 2522 during consideration of the bill by the full Judiciary Committee which completely eliminated the Hall amendment. Congressman Sieberling explained that the purpose of his amendment was to preserve the *Enmons* interpretation of extortion in order to remain consistent with national labor policy and preserve the integrity of the states' criminal jurisdiction. The Committee adopted the Sieberling Amendment. Subsequently, on July 2, 1980, the Judiciary Committee voted by voice vote to recommend H.R. 6915, as amended, to the House of Representatives.[80] No further action was taken on H.R. 6915 during the Ninety-Sixth Congress.

THE CASE FOR PRESERVING THE *ENMONS* INTERPRETATION OF EXTORTION

Many of those who want to revise the definition of "extortion" in the proposed recodification of the federal criminal laws simply cannot justify what appears to be a special exception for union leaders and members from prosecution for extortion when they use "truly extortionate means to obtain property, irrespective of whether the property could legitimately have been acquired in some other way."[81] This concern must be addressed in order to justify continuation of the *Enmons* interpretation of extortion in a future recodification of the federal criminal laws.

The *Enmons* interpretation of extortion does not give *carte blanche* to hooligans and racketeers to threaten, destroy, or injure others under the protective shield of a labor dispute. Those persons should be and are, prosecuted under state and federal law for whatever substantive crimes they commit. The issue is not whether such acts should be punished, but whether the federal crime of extortion should be expanded to include violence committed during a legitimate labor dispute. The *Enmons* decision and an analysis of the various interests involved indicated that such an expansion is unwarranted.

The House Judiciary Committee Report which accompanied H.R. 6915 explained the rationale for preserving the *Enmons* interpretation of the crime of extortion as follows:

By thus limiting the federal definition of extortion, the Committee is not

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and thereby wrongfully obtains property of another, or attempts to do so, commits a class C felony.

(b)(1) It is not a defense to a prosecution for an offense under this section that the conduct constituting the offense was in furtherance of a legitimate objective or activity.

[80] The extortion provision included in H.R. 6915 as reported to the House by the Judiciary Committee was identicial to the extortion provision quoted in relevant part in note 79 *supra*, except subsection (b)(1) was deleted in its entirety.

[81] S. REP. NO. 96-553 at 650.

> condoning the use of violence for any purpose. Rather this limitation embodies the Committee's judgment that the policing, through the criminal process, of such matters as local labor disputes is not an appropriate matter for the Federal Government. Although the Federal Government has expressed a significant interest in ensuring the proper conduct of labor-management relations as they affect interstate commerce, the Government already has a significant arsenal of weapons with which to attack unfair labor practices.[82]

The committee report explained that ample federal law applicable to incidents of violence arising during labor disputes already exists.[83] The considerations which confronted the Supreme Court in *Enmons* are equally relevent today. Violent misconduct in the course of collective bargaining and attempts to coerce an employer are unfair labor practices under the National Labor Relations Act.[84]

Thus, if a union or its agents engage in violent activities or threaten violence, the National Labor Relations Board (NLRB) is authorized to proceed against the labor organization and the individuals involved.[85] Remedies available to the NLRB include the authority to issue orders to cease and desist from the specific unfair labor practices, require the offending union to post copies of a notice of the Board's determination at all union offices and meeting places, and even mail copies to all employees of the company involved,[86] and publish copies of newspapers of general circulation in the locality where the violence occurred.[87] Where the coercive misconduct is especially serious, the Board can even decertify the union as the exclusive bargaining representative for the affected employer's employees.[88]

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82 H.R. REP. NO. 96-1396, 96th Cong., 2d Sess. 299 (1980).

83 *Id.* at 300 n.1.

84 29 U.S.C. § 151 *et seq.* (1976).

85 Such activities have been held to violate § 8(b)(1)(A) of the National Labor Relations Act, 29 U.S.C. § 158(b)(1)(A), which makes it an unfair labor practice for a labor organization to restrain or coerce *employees* in the exercise of their rights guaranteed by § 7 of the Act, 29 U.S.C. § 157, when such actions occur in contexts in which employees are likely to learn of them. *See* NLRB v. Union Nacional de Trabajadores, 540 F.2d 1 (1st Cir. 1976), *cert. denied*, 429 U.S. 1039 (1977); NLRB v. Imparato Stevedoring Corp., 250 F.2d 297 (3d Cir. 1957); NLRB v. Furriers Joint Council, 224 F.2d 78 (2d Cir. 1955); Laura Modes Co., 144 N.L.R.B. 1592 (1963). Moreover, specific intent to restrain or coerce employees is not required. *See* NLRB v. Local 140, United Furniture Workers, 233 F.2d 539 (2d Cir. 1956).

86 NLRB v. Union Nacional de Trabajadores, 540 F.2d at 11; Texas Gulf Sulphur Co. v. NLRB, 463 F.2d 778, 779 (5th Cir. 1972); J.P. Stevens & Co. v. NLRB, 461 F.2d 490, 495 (4th Cir. 1972).

87 NLRB v. Union Nacional de Trabajadores, 540 F.2d at 12; J.P. Stevens & Co. v. NLRB, 417 F.2d 533, 538-40 (5th Cir. 1969); Alexander Stafford Corp., 118 N.L.R.B. 79, 82 (1957), *enf'd sub nom.* International Ass'n of Heat & Frost Insulators v. NLRB, 254 F.2d 955 (D.C. Cir. 1958).

88 NLRB v. Union Nacional de Trabajadores, 540 F.2d at 13. *See also* NLRB v. David Buttrick Co., 361 F.2d 300 (1st Cir. 1966); International Bhd. of Teamsters, Local 671, 199 N.L.R.B. 994 (1972); Hughes Tool Co., 104 N.L.R.B. 318 (1953).

In the interim, the Board has the power, upon issuance of an unfair labor practice complaint against a union or individual members, to seek an injunction against further violent misconduct.[89] The National Labor Relations Act also provides that any finding by the Board of an unfair labor practice involving coercive misconduct is enforceable by the United States courts of appeals.[90] Moreover, the Board can seek civil and criminal contempt sanctions against respondents who refuse to comply with the courts' enforcement orders.[91]

In addition to the remedies provided by federal law, a number of remedies under state law are available to victims of coercive misconduct in the course of a labor dispute. State and local law enforcement agencies can prosecute offenders under the various state and local criminal laws applicable to such misconduct. The House Judiciary Committee Report accompanying H.R. 6915 observed that "no real evidence has been produced to show that states cannot adequately handle incidents of violence arising from labor disputes, nor that the limited resources of the FBI could be used to investigate such incidents more effectively than the resources of local and state law enforcement."[92]

Several civil remedies are also available under state law to victims of violence and coercion during labor unrest. State courts may enjoin violence and threatening activity,[93] as well as award compensatory and punitive damages for the consequences of such actions.[94] In sum, there is no need to provide the federal government with an additional means of prosecuting such activity because of the ample arsenal of weapons already available to deter such misconduct in the course of a labor dispute.

The potential deterrent effect of the application of a federal extortion statute to misconduct in the course of labor disputes is far outweighed by the extraordinary change in federal labor law that would result. Indeed, it would "put the Federal Government in the business of policing the orderly conduct of strikes."[95] Moreover, it could easily lead to governmental abuse.

Revision of the extortion statute to overrule the *Enmons* decision

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89 National Labor Relations Act, § 10(j), 29 U.S.C. § 160(j) (1976).

90 §§ 10(e) & (f), 29 U.S.C. §§ 160(e) & (f) (1976).

91 *See, e.g.*, NLRB v. Teamsters Local 327, 592 F.2d 921 (6th Cir. 1979).

92 H.R. REP. NO. 96-1396, 96th Cong., 2d Sess. 299.

93 United Automobile Workers v. Anderson, 351 U.S. 959 (1956), *aff'g per curiam*, 245 Minn. 274, 72 N.W.2d 81 (1955); Allen-Bradley Local 1111 v. WERB, 315 U.S. 740 (1942).

94 United Automobile Workers v. Russell, 356 U.S. 634 (1958); UMW Dist. 50 Constr. Workers v. Laburnum Constr. Co., 347 U.S. 656 (1954); Solo Cup Co. v. International Bhd. of Pulp, Sulphite & Paper Mill Workers, 237 Md. 611, 205 A.2d 213 (1964), *cert. denied*, 380 U.S. 976 (1965).

95 United States v. Enmons, 410 U.S. at 411.

would substantially disrupt the delicate balance already struck by the Congress in the labor-management relations area. Admittedly, labor disputes inherently involve considerable tension on both sides. Under such circumstances, strike-related misconduct does occur. If *Enmons* is overruled, any violent misconduct during an otherwise legitimate labor dispute could become grounds for a federal indictment for extortion.

Subsection (b) of the extortion provision in S. 1722 failed to cure this problem. Subsection (b) provided that violence during the course of a legitimate labor dispute in and of itself would not constitute prima facie evidence that the property was obtained by such conduct. However, it certainly did not bar a prosecution, and provided no indication of what would constitute a prima facie case. Presumably, evidence linking the defendant to the labor dispute, or testimony by the employer that he acceded to union demands because he was in fear of the defendant, could have been sufficient to support a conviction. Any legislation which creates the possibility that union officials and members may risk a federal indictment for extortion because of picket-line misconduct would have a chilling effect on the exercise of their federally protected rights to strike and to engage in any concerted activity to improve their wages, hours, and working conditions.

These considerations support a decision to refrain from expanding the federal extortion statute to include misconduct in the context of a legitimate labor dispute, and adopt instead the current scope of the Hobbs Act as interpreted in the *Enmons* case. This position was reflected in the extortion provision in H.R. 6915. Preservation of the *Enmons* interpretation is not only consistent with the National Labor Policy, but is also consistent with the underlying principle of the recodification of the federal criminal laws not to expand federal jurisdiction absent a showing of compelling need.[96] Available evidence does not indicate that there is a compelling need to expand the federal extortion statute into violent activities in the course of legitimate labor disputes.

CONCLUSION

The legislative history of the proposed recodification of the federal criminal law indicates that a definition of the crime of extortion which will punish the use of extreme acts of violence as a means of obtaining higher wages and other employment benefits without also including minor incidents and acts of violence inherent in labor disputes is impossible to achieve. The danger of overreaching federal jurisdiction and overextending the intended limits of such a statute greatly outweigh any benefit which might be gained by overruling the *Enmons* decision. In

[96] H.R. REP. NO. 96-1396, 96th Cong., 2d Sess. 300.

light of other federal, state, and local statutes which already prohibit the substantive criminal actions to which the proposed expansion of the federal crime of extortion would be addressed, both policy and practice require recognition of the Supreme Court's decision in *Enmons* that the crime of extortion is inapplicable to violent misconduct in the course of legitimate labor disputes.