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Labor Law - Extortion as Defined by the Hobbs Act and Its Relation to Legitimate Labor Objectives

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LABOR LAW—EXTORTION AS DEFINED BY THE HOBBS ACT AND ITS RELATION TO LEGITIMATE LABOR OBJECTIVES—In a 5-4 decision, the Supreme Court of the United States held that extortion as defined by the Hobbs Act does not proscribe violence committed during a lawful strike for the purpose of inducing an employer's agreement to legitimate collective bargaining demands.

United States v. Enmons, 410 U.S. 396 (1973).

FACTS INVOLVED

A one-count indictment was returned in the United States District Court for the Eastern District of Louisiana,[1] charging four defendants with violating the amended Federal Anti-Racketeering Act, popularly known as the Hobbs Act.[2] Three of the defendants were members of the International Brotherhood of Electrical Workers, Local 390, which represented the employees of independent contractors engaged by Gulf States Utilities Company. The fourth defendant was a member of Local 2286 of the same union which represented the employees of Gulf States Utilities Company. Gulf States Utilities Company is an interstate public utility engaged in supplying electric power.

Both unions were on strike for higher wages and improved working conditions when five acts of violence[3] were alleged to have been committed in furtherance of a conspiracy to obstruct interstate commerce by the use of extortion.[4]

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1. United States v. Enmons, 335 F. Supp. 641 (E.D. La. 1971).

2. 18 U.S.C. § 1951 (1970) [hereinafter referred to as the Hobbs Act], *amending* 18 U.S.C. §§ 420(a)-(d) (1940). The Hobbs Act provides in pertinent part:

(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.

(3) The term "commerce" means . . . all commerce between any point in a State . . . and any point outside thereof . . . .

(c) This section shall not be construed to repeal, modify or affect section 17 of Title 15, sections 52, 101-115, 151-166 of Title 29 or sections 151-188 of Title 45.

3. The alleged acts consisted of firing high powered rifles into company transformer stations on three occasions, draining oil from a company transformer, and blowing up a company transformer substation.

4. Count number 9 of the indictment particularly charged as follows:

9. It was a part of said conspiracy that the defendants and the co-conspirators would obtain the property of the Gulf States Utilities Company in the form of wages and

The district court granted the defendants' motion to dismiss the indictment for failure to state a federal offense as defined by the Hobbs Act. The bedrock for the dismissal was the district court's findings: first, the strike itself was legal;[5] second, the objective of the strike was a legitimate labor objective (*i.e.*, to obtain higher wages[6]); and third, the unions had a right to disrupt their employers' business by a lawful strike.[7] The district court concluded that, although the violent acts were undoubtedly punishable under Louisiana state law,[8] they did not constitute extortion as defined by the Hobbs Act, because the acts of violence were in furtherance of a legitimate labor objective in the form of higher wages for needed and desired services.[9] The district court cited *United States v. Kemble*[10] as good authority for its view that "If the wages sought by violent acts are wages to be paid for unneeded or unwanted services, or for no services at all,"[11] then that violence would constitute extortion as proscribed by the Hobbs Act, but that in this case the services were necessary and sought by the employer and as such there was no misappropriation of property as is necessary to constitute extortion.

The Decision

The factual situation involved in *Enmons* was of first impression to the Supreme Court. However, it is apparent from a review of the legislative history of the Hobbs Act, that the manner in which the Supreme Court might react to this particular factual situation was a source of heated disagreement.[12]

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other things of value with the consent of the Gulf States Utilities Company, its officers and agents, such consent to be induced by the wrongful use of actual force, violence and fear of economic injury by said defendants and co-conspirators in that defendants and co-conspirators did commit acts of physical violence and destruction against property owned by the Gulf States Utilities Company in order to force said Company to agree to a contract with Local 2286 of the International Brotherhood of Electrical Workers calling for higher wages and other monetary benefits.

335 F. Supp. at 642.

5. *Id.* at 643.

6. *Id.* at 644.

7. *Id.* at 646.

8. *Id.* Under Louisiana law the acts alleged to have been committed are criminally punishable as aggravated arson, simple arson, aggravated criminal damage to property, simple criminal damage to property, or a criminal conspiracy or an attempt to commit the aforementioned offenses. LA. REV. STAT. §§ 14:26-27, 51-52, 55-56 (1951).

9. 335 F. Supp. at 646. "It is the opinion of this court that neither the wages of bona-fide employees nor the 'right to negotiate employment contracts—without illegal disruption' constitute 'property' as contemplated by the Hobbs Act." *Id.*

10. 198 F.2d 889 (3d Cir. 1952), *cert. denied*, 344 U.S. 893 (1953).

11. 335 F. Supp. at 645.

12. 91 CONG. REC. 11899-922 (1945); 89 CONG. REC. 3200-30 (1943). *See* Comment, *Fed-*

The Hobbs Act came into being because of the construction placed upon the original Federal Anti-Racketeering Act[13] by the Supreme Court in *United States v. Teamsters Local 807*.[14] In that case, the defendants were members of Teamsters Local 807 and were convicted under the Federal Anti-Racketeering Act for conspiring to, and actually using violence to obtain from non-Local 807 truck drivers the payment of a union day's wages for the "services" of Local 807. The Local 807 teamsters would wait at the various entry tunnels to New York City and stop incoming trucks. Three different factual circumstances were then involved: (1) The non-Local 807 truck driver would actually "hire" the Local 807 member and the member would drive the truck into New York City, unload it, and return it to the point of origin of the "hiring"; (2) The non-Local 807 truck driver would refuse to hire a Local 807 member, but would be forced to pay a union day's wages to continue into the city; (3) the non-Local 807 truck driver would agree to "hire" the member, but the member would refuse to work, and the truck driver would still have to pay the required "wage."

Both the union and the individual defendants appealed their convictions to the Supreme Court, where the issue was defined as ascertaining the limits of section 2(a) which excepts from punishment any person who "obtains or attempts to obtain, by the use or attempt to use or threat to use force, violence or coercion . . . the payment of wages by a bona-fide employer to a bona-fide employee."[15]

In a detailed examination of the statute, the Supreme Court held that in the first situation, the immunity clause would protect the actor

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eral Legislation, Labor Law—A New Federal Antiracketeering Law, 35 GEO. L.J. 362 (1947); Note, *The Hobbs Act—An Amendment to the Federal Anti-Racketeering Act*, 25 N.C.L. REV. 58 (1946); Note, *Labor Faces the Amended Anti-Racketeering Act*, 101 U. PA. L. REV. 1030 (1953).

13. 18 U.S.C. §§ 420(a)-(d) (1940), *as amended*, 18 U.S.C. § 1951 (1970). In pertinent part the Federal Anti-Racketeering 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—
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> (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
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> (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) . . . .

Id. § (a)-(c) (emphasis added).

14. 315 U.S. 521 (1942).

15. *Id.* at 527.

from punishment, and in the third situation no immunity would be afforded.[16] The genesis for the Hobbs Act is found in the Supreme Court's holding that in cases of the second instance[17] immunity would be afforded to the actor.[18] The Supreme Court thus interpreted the Federal Anti-Racketeering Act to mean that the guilt or innocence of the actor depended upon his intent, and that this was a question for the fact-finder to determine.[19]

The reaction of Congress to *Teamsters Local 807* was marked by cries that the Supreme Court, by its "mis-construction" of the Federal Anti-Racketeering Act, had freed unions to commit highway robbery with impunity.[20] The Court's emphasis on the objective of the actor in connection with the statutory immunity clause was not well received, and a number of bills were rapidly introduced to "correct" the decision.[21]

The net result of the hearings and debates was the present Hobbs Act which amended the Federal Anti-Racketeering Act in three major ways:

(1) The immunity clause relating to the payment of wages by a bona-fide employer to a bona-fide employee was deleted;[22]
(2) Robbery and extortion, as defined within the Hobbs Act became the basic crimes;[23]
(3) Section 6, which safeguarded the "rights of bona-fide labor organizations in lawfully carrying out the legitimate objects thereof" was replaced by a more specific section.[24]

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16. *Id.* at 534. Thus, there is no conspiracy to violate the act if the purpose of the defendants is actually to perform the services in return for the money, but there is a punishable conspiracy if their plan is to obtain money without doing the work.

17. *Id.* The doubtful case arises where the defendants agree to tender their services in good faith to an employer and to work if he accepts their offer, but agree further that the protection of their trade union interests requires that he should pay an amount equivalent to the prevailing union wage even if he rejects their proffered services. We think that such an agreement is covered by the exception. *Id.*

18. ". . . the jury was bound to acquit the defendants if it found that their objective and purpose 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." *Id.* at 538.

19. *Id.* at 534.

20. 91 CONG. REC. 11899-922 (1945); 89 CONG. REC. 3200-30 (1943).

21. S. 2347, 77th Cong., 2d Sess. (1942); H.R. 32, 79th Cong., 1st Sess. (1945); H.R. 653, 78th Cong., 1st Sess. (1943); H.R. 7067, 77th Cong., 2d Sess. (1942); H.R. 6872, 77th Cong., 2d Sess. (1942).

22. *See* 18 U.S.C. § 1951 (1970).

23. *Compare* note 2 *supra with* note 13 *supra.*

24. *See* 18 U.S.C. § 1951(c) (1970). The references in subsection (c) are to the exemption of labor organizations from the antitrust laws, a restriction on injunctive relief against

In *Enmons* the Supreme Court was called upon to determine the limits of extortion as defined by the Hobbs Act in relation to violence occurring during an admittedly legitimate strike. Under the Hobbs Act it is essential that the government prove both interference with interstate commerce and extortion.[25] In *Enmons* interference with interstate commerce was not controverted, but the presence of extortion was in issue.

Extortion has traditionally been considered a compound felony requiring both a felonious or "corrupt" intent (as in all of the larceny-type offenses) and a wrongful taking of another's property.[26] At common law extortion was a species of misdemeanor crime that was perpetrated by a public official in the corrupt demanding of a fee when none was due, or more than was then due.[27] A corrupt intent was necessary at common law in that there must have been an intention on the part of the actor to take something to which he was not entitled.[28] Although there are some courts that profess that a showing of criminal intent may be made by merely showing the use of wrongful means,[29] in closer analysis these courts tend to follow the weight of the majority of courts that hold that the objective sought itself must be illegitimate to constitute extortion.[30]

The definition of extortion used in the Hobbs Act was taken essentially from the New York Penal Code as well as the common law interpretations.[31] The New York statute requires a felonious intent to misappropriate another's property.[32] In regard to extortion in the con-

labor unions, the Norris-LaGuardia Act, the National Labor Relations Act and the Railway Labor Act, respectively.

Section 6 of the Federal Anti-Racketeering Act was deleted because it was thought to be too vague and, therefore, capable of being misunderstood by the Supreme Court. 91 CONG. REC. 11912 (1945).

In *Teamsters Local 807*, the Court utilized section 6 and stated that although section 6 was obscure, it strengthened the Court in its opinion that Congress did not intend to affect the ordinary activities of labor unions. 315 U.S. at 535.

25. Stirone v. United States, 361 U.S. 212 (1960).

26. LaTour v. Stone, 139 Fla. 681, 693-94, 190 So. 704, 709-10 (1939) (to constitute "extortion," money or other things of value must have been willfully and corruptly demanded and received).

27. R. BURDICK, LAW OF CRIME § 273 (1946).

28. *Id.* § 277.

29. People v. Beggs, 178 Cal. 79, 172 P. 152 (1918); State v. Phillips, 62 Idaho 656, 115 P.2d 418 (1941); State v. Richards, 97 Wash. 587, 167 P. 47 (1917).

30. In *Beggs* the defendant sought forty times the amount due him; in *Phillips* an instruction was allowed which would limit prosecution to circumstances where the actor sought more than the amount due; *Richards* has been restricted by State v. Burns, 161 Wash. 362, 297 P. 212 (1931), which held that no extortion is present if the threat is limited to an amount actually due.

31. 91 CONG. REC. 11842-43, 11900, 11910 (1945); 89 CONG REC. 3226 (1943). The definition of extortion was patterned after section 850 of the New York Penal Code of 1909.

32. In interpreting N.Y. PENAL CODE § 850 (1909), the New York courts have stated,

text of labor activities, the New York courts have ruled that when the object of the activity was the personal enrichment of the actor, rather than the betterment of the worker or the good faith advancement of unionism, then the activities constituted extortion.[33]

In the Supreme Court's analysis of extortion as set forth in the Hobbs Act, the majority placed great emphasis on the word "wrongful" and concluded that "wrongful" was meant to limit ". . . the statute's coverage to those instances where the obtaining of property would itself be 'wrongful' because the alleged extortionist has no lawful claim to that property."[34] The Court considered that if "wrongful" was meant to modify the means used to obtain property, then it would be superfluous and redundant to speak of "wrongful" violence to obtain property. The sponsor was questioned about the word "wrongful" in the congressional debates, and he responded that it was there to "qualify" the entire section.[35] Unfortunately the colloquy was not pursued to determine if the "qualification" related to the means or to the objective. Yet it is apparent from the legislative history that the interpretation placed upon "extortion" by the Court's majority was correct for the proponents of the Hobbs Act repeatedly denied that it would in any manner interfere with any legitimate labor objective or activity.[36] Even the government, in its brief in *Teamsters Local 807*,

"[t]he intent to extort or 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 the '*lucri causa*' which must always characterize the act." People v. Cuddihy, 151 Misc. 318, 324, 271 N.Y.S. 450, 456 (Ct. Gen. Sess. 1934), *aff'd*, 243 App. Div. 694, 277 N.Y.S. 960 (1935). In People v. Sheridan, 186 App. Div. 211, 213, 174 N.Y.S. 327, 329 (1919) the courts considered sections 850-51 and stated, "[t]he unlawfulness lies in the motive. If its purpose be unlawful then the act (which under other conditions might be justified) becomes unlawful." *Id. See* People v. Gassman, 182 Misc. 878, 45 N.Y.S.2d 709 (Ct. Gen. Sess. 1943), *aff'd*, 268 App. Div. 377, 51 N.Y.S.2d 173 (1944), *aff'd*, 295 N.Y. 254, 66 N.E.2d 705 (1946).

33. People v. Dioguardi, 8 N.Y.2d 260, 168 N.E.2d 683, 203 N.Y.S.2d 870 (1960); People v. Barondess, 133 N.Y. 649, 31 N.E. 240, 16 N.Y.S. 436 (1892); People v. Weinseimer, 117 App. Div. 603, 102 N.Y.S. 579 (1907), *aff'd*, 190 N.Y. 537, 83 N.E. 1129 (1908); People v. Adelstein, 9 A.D.2d 907, 195 N.Y.S.2d 27 (1959), *aff'd sub nom.* People v. Squillante, 8 N.Y.2d 998, 169 N.E.2d 425, 205 N.Y.S.2d 332 (1960).

34. 410 U.S. at 400.

35. 91 CONG. REC. 11908 (1945) (remarks of Representative Hobbs).

36. The following colloquy is illustrative:

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: Will the gentleman put a provision in the bill stating so?

MR. HOBBS: We do not have to, because a strike is perfectly lawful and has been so described by the Supreme Court and by the statutes we have passed. This bill takes off from the springboard that the act must be unlawful to come within the purview of this bill.

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?

conceded that while militant labor activities might constitute breaches of the peace, those activities do not constitute extortion when used in pursuit of legitimate labor objectives.[37]

The original Federal Anti-Racketeering Act contained a definition of "wrongful" as being "in violation of the criminal laws of the United States or of any State or Territory"[38] but no cases construed this definition, and it was omitted from the Hobbs Act. A dissent in *United States v. Kemble*[39] by Chief Judge Biggs concluded that "wrongful" was properly construed to necessitate a criminal as opposed to a tortious intent. The majority opinion in *Enmons* follows this train of thought and imposes the traditional requirement of a *mens rea* in prosecutions for extortion under the Hobbs Act.

Judicial support for the majority's holding can be gleaned from prior cases which involved prosecutions for extortion under the Hobbs Act. It is significant that in the prior cases the prosecutions were based upon the "wrongful" use of violence or force as "wrongful" was interpreted in *Enmons*. The "corrupt" objectives are illustrated by personal payoffs,[40] "wage" extractions from employers for "imposed, unwanted, superfluous and fictitious" services of workers,[41] professional "gangsterism,"[42] the elimination of business competition,[43] or the misuse of public office.[44] In each of these cases, the "wrongful" use of force was related to the objective sought and not the means used.

In the area of labor-management relations, it should be noted that

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MR. HOBBS: Certainly.
MR. MARCANTONIO: That then would become an extortion under the gentleman's bill, and that striker . . . could be charged with violation of sections in this bill.
MR. HOBBS: I disagree with that and deny it in toto.
89 CONG. REC. 3213 (1943). Other Congressmen expressed similar views:
MR. MICHENER: . . . [I]n my opinion this bill will not interfere with legitimate strikes. It is not so intended.
91 CONG. REC. 11843 (1945).
MR. SUMNERS: . . . [T]here 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 . . . .
Id. at 11908. *See* 91 CONG. REC. 11841, 11900-01, 11909, 11912, 11917 (1945); 89 CONG. REC. 3201, 3213 (1943).

37. 315 U.S. at 523. "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." *Id.*

38. 18 U.S.C. § 420b(a) (1940).

39. 198 F.2d 889, 900 (3d Cir. 1952).

40. United States v. Iozzi, 420 F.2d 512 (4th Cir. 1970); United States v. Kramer, 355 F.2d 891 (7th Cir. 1966); Bianchi v. United States, 219 F.2d 182 (8th Cir. 1955).

41. United States v. Green, 350 U.S. 415 (1955); United States v. Kemble, 198 F.2d 889 (3d Cir. 1952).

42. Carbo v. United States, 314 F.2d 718 (9th Cir. 1963).

43. United States v. Tropiano, 418 F.2d 1069 (2d Cir. 1969).

44. United States v. De Sapio, 299 F. Supp. 436 (S.D.N.Y. 1969).

when an employer seeks services from wanted employees he is not having his property misappropriated although he may disagree with his employees as to the worth of the services rendered. What each receives is their respective "quid pro quo" of work for wages. The majority opinion dealt with this concept by holding that without a misappropriation of property there can be no unlawful taking of another's property, which would be necessary to constitute extortion.[45]

The legislative history reinforces this conclusion, for the proponents not only specified what would be necessary to constitute an offence,[46] but they also specified that a mere threat does not alone constitute extortion. There must be an unlawful *taking* in addition to the threat.[47] While the threat is undoubtedly a "wrongful" *means;* to constitute extortion, the threat must conjoin with an "unlawful" *taking,* which is a misappropriation of property with a felonious intent. A demand by a recognized union for higher wages does not fit into the concept of misappropriation of another's property, and thus there cannot be extortion without the requisite misappropriation.

The majority opinion thus recognizes the requirement of a "corrupt intent" as set forth in both the common law and the statutory law upon which the Hobbs Act's definition of extortion was based. In its interpretation the majority adheres to the principle that where a criminal statute fails to include the requisite criminal intent traditionally required in both common and statutory law, Congress will be presumed to have intended to have included it absent an express contrary intent.[48]

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45. 410 U.S. at 400.

46. 91 CONG. REC. 11903 (1945) (remarks of Representative Gwynne):
First, they would need to prove that the activity complained of in some way affected interstate commerce; second they would have to prove that there was an actual, not a theoretical, taking of personal property; third, they would have to prove that the taking was by violence, by personal violence, or by actual threats of personal violence; and then, fourth, they would have to prove that the acts done . . . they might be violent, they might take something, but the Government would have to prove in addition that the acts done did not come within the exceptions set out in Title III [*now section (c)*].

47. 91 CONG. REC. 11908 (1945) (remarks of Representatives Walter and Voorhis):
MR. WALTER: Our distinguished colleague from Iowa [Mr. Gwynne] pointed out the elements that it would be necessary to prove in order to make out a crime [*see* note 46 *supra*] and I call the gentleman's attention to the fact that a mere threat does not constitute a crime. There must accompany that threat an unlawful taking.
MR. VOORHIS: I thank the gentleman. And certainly demands for higher wages or attempts to collect union dues are not unlawful acts by any stretch of the imagination.
Id. In response to the statement of Representative Voorhis, Representative Hobbs agreed:
May I add that the gentleman, in my opinion, is exactly correct and takes the proper position in his questions.
Id.

48. Morissette v. United States, 342 U.S. 246 (1952).

THE DISSENT

The minority opinion, authored by Justice Douglas, fails to deal with the constructional problems set forth by the majority. The minority opinion incorrectly deletes the word "wrongful" from its reference to the statutory definition and then reaches the conclusion that the use of violence to obstruct commerce constitutes extortion, and therefore the dismissal of the indictment by the district court was error.[49]

The minority concedes that the violence used in this case occurred during a lawful strike by the recognized unions. The objective of the strike was higher wages, and thus was a legitimate labor objective. The minority however, then proceeds to attempt judicial legislation when they state that "[t]he term 'extortion' means the use of violence to obtain 'property' from another."[50] Continuing from this partial and incorrect statement of the statutory definition, the minority seeks support for their conclusion from the fact that the immunity clause of the Federal Anti-Racketeering Act was deleted in the enactment of the Hobbs Act.[51] The minority concludes ". . . the use of violence to obtain higher wages is plainly a method of obtaining property from another" within the meaning of the Hobbs Act and therefore such violence constitutes extortion.[52]

The minority would uphold the indictment on the theory that it is the use of violent means the Hobbs Act proscribes, regardless of the objective sought. However, the minority severely compromises their theory, for they cite *United States v. Caldes*[53] stating that *Caldes* held that the Hobbs Act is not directed to the "mischievous" or "low-level" violence which accompanies a protracted labor dispute.[54] Albeit, the court of appeals in *Caldes* was presented with a factual situation involving "low-level" violence, the opinion in *Caldes* specifically deals with the issues presented and discussed by the majority in *Enmons*. *Caldes* holds that in a prosecution for extortion under the Hobbs Act, the government must prove that the defendant possessed a requisite felonious intent to obtain property from another.[55] The minority opinion thus seems to be juxtaposed to the express holding of *Caldes*, which they cite in support of their view.

49. 410 U.S. at 417. *See* 18 U.S.C. § 1951 (1970).
50. 410 U.S. at 417.
51. *See* note 23 *supra*.
52. 410 U.S. at 417.
53. 457 F.2d 74 (9th Cir. 1972).
54. 410 U.S. at 418 n.17, *citing* 457 F.2d at 78-79.
55. 457 F.2d at 78.

COMMENT

The construction of the Hobbs Act by the majority is in line with the traditional concepts of extortion. Since extortion has generally been interpreted to require a felonious or corrupt intent, their interpretation of the word "wrongful" seems to be proper, for by placing this interpretation on "wrongful" the Court has prevented the Hobbs Act from becoming a manacle on organized labor. Although the law condemns the defrauding of another of his property, the coercion of an employment relationship is not an end that the law condemns.[56] The interpretation of extortion under the Hobbs Act by the majority does not proscribe the legitimate activities of unions, but it curbs those activities which in no way relate to the furtherance of legitimate labor objectives. The use of violence to obtain property to which the actor has no right is properly condemned under the statute, as interpreted by the majority. This interpretation does not make militant labor activity extortion per se, but looks to the objective sought by the actor. The minority opinion, however, looks only to the means utilized and concludes that if those means are violent, then the violence is properly condemned by the Hobbs Act as extortion. If the word "wrongful" is deleted from the statute, as the minority did, then it is difficult to imagine any coercive activity used by labor which would not fit within this adulterated concept of extortion.

None of the federal courts which have faced the problem of violence affecting commerce have sanctioned the violence. If the case was one in which a prosecution could properly be based on the Hobbs Act, then the prosecution was allowed.[57] If a prosecution under the Hobbs Act was not proper, however, the courts have repeatedly stressed that the criminal processes of the particular states involved can and should be invoked to punish the violence under the appropriate state laws.

The fact that violence has occurred and should be punished should not cause a total loss of perspective in dealing with the violence. Under the minority opinion, extortion would be converted to the simplistic use of force to obtain property from another. If Congress had intended this construction, the Hobbs Act crime of extortion would have been defined as the obstruction of interstate commerce by violence, rather than as it is presently delimited. The minority opinion also slights the

56. United States v. Kemble, 198 F.2d 889, 899 (3rd Cir. 1952) (Staley, J., dissenting). *See* United States v. Teamsters Local 807, 315 U.S. 521, 522 (1942).
57. *See* cases cited notes 40-44 *supra*.

inclusion of section (c),[58] which specifically states that nothing in the Hobbs Act shall be deemed to affect those statutes which are considered the "Magna Carta" of labor. Nothing in those statutes authorizes labor to use violence in its attempts to obtain legitimate labor objectives. The National Labor Relations Act has been interpreted to condemn the destruction of an employer's property as an unfair labor practice.[59] The fact that such acts may be unfair labor practice does not mean that those acts therefore constitute extortion.

Labor has no special right to use violence, even in pursuit of proper objectives, but labor does have the right shared by all to be properly charged and tried for the crimes that are alleged to have been committed. In an offense requiring a felonious intent, the intent is part and parcel of the offense, and cannot be dispensed with regardless of the enormity of the transgression. As the concurring opinion by Justice Blackmun states, if the minority would exempt from punishment "low-level" violence used to obtain legitimate labor objectives, then they have created an unknowable crime which could be arbitrarily and selectively enforced.[60] The courts would then be caught in the quagmire of distinguishing exempt "low-level" violence from non-exempt violence.

If the intent of Congress in enacting the Hobbs Act was as the minority states, then it seems that Congress overshot its mark by using the compound felony of extortion to proscribe such activities. The Court, however, must take the statute as it is set forth by Congress. Should a "correction" be necessary, then Congress, not the Court, should enact the change.

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58. *See* 18 U.S.C. § 1951(c) (1970).
59. New Power Wire & Elec. Corp. v. NLRB, 340 F.2d 71 (2d Cir. 1965).
60. 410 U.S. at 412.