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I. INTRODUCTION

The Hobbs Act amendments[1] to the Anti-Racketeering Act of 1934[2] extended the scope of the Anti-Racketeering Act by prohibiting violence in labor-management relations.[3] Since its enactment in 1946, the Hobbs Act has been misinterpreted, ignored and discounted by the federal courts. This article deals with the Hobbs Act and the reasons why it is overlooked by the Department of Justice and the federal courts in cases involving labor violence.

Violence involving human beings has been a primary concern of man since the dawn of civilization and is generally abhorred irrespective of the level of society on which it occurs. Most criminal laws are designed by legislatures and enforced by law enforcement agencies to prevent or discourage human violence, and the Hobbs Act unquestionably falls into this category. The Act specifically proscribes violent conduct in the area of labor relations pursuant to Congressional mandate that labor violence should be treated no differently than violence in any other federally protected area.

Yet despite this mandate, the two entities responsible for enforcing the provisions of the Act have failed to do so. The

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1. 60 Stat. 420 (1946).

2. 48 Stat. 979-80 (1934) (current version at 18 U.S.C. §§ 1951-54 (1970)).

3. Although this law's effect within the labor-management relations area is the sole concern here, it should be recognized that the Hobbs Act's prohibitions have been applied in areas foreign to labor-management relations. *See* United States v. Tropiano, 418 F.2d 1069 (2d Cir. 1969) (business owners' competition for rubbish business); United States v. Pranno, 385 F.2d 387 (7th Cir. 1967), *cert. denied*, 390 U.S. 944 (1968) (city alderman's extortion of owner and contractor); United States v. DeSisto, 329 F.2d 929 (2d Cir. 1964), *cert. denied*, 377 U.S. 979 (1964) (interstate hijacking); Carbo v. United States, 314 F.2d 718 (9th Cir. 1963), *cert. denied*, 377 U.S. 953 (1964), *reh'g denied*, 377 U.S. 1010 (1964) (professional boxing). There are surprisingly few legal periodical articles dealing with the Hobbs Act. Stern, *Prosecutions of Local Political Corruption Under the Hobbs Act: The Unnecessary Distinction Between Bribery and Extortion*, 3 SETON HALL L. REV. 1 (1971); Note, *Extortion—Federal Criminal Liability for Strike Violence Under the Hobbs Act*, 14 B.C. IND. & COMM. L. REV. 1291 (1975); Comment, *Labor Faces the Amended Anti-Racketeering Act*, 101 U. PA. L. REV. 1030 (1953).

United States Justice Department has refused to vigorously prosecute those individuals involved in labor violence, while the federal courts have failed to give effect to the purpose to the Act as envisioned by Congress. The cases will appear in this article[4] illustrate the infrequent attempts which the Justice Department has made to enforce the Act, and, even when an action has been brought, the reluctance of the courts to apply the Act to labor violence situations. Several arguments are advanced to explain why the Act is not enforced and why the judiciary is reluctant to find Hobbs Act violations. Among these contentions are that powerful labor union forces have lobbied against the Act's enforcement and that the federal courts traditionally have been timid about becoming involved in labor-management relations.

Despite the existence of a viable and potentially effective federal law proscribing labor violence, the Hobbs Act remains obscure and infrequently used. As a result, labor violence continues and is ineffectively checked by state laws. Given the extent to which the federal government regulates all other aspects of labor-managment relations under a myriad of labor laws,[5] it is anomalous that the federal government is virtually inactive in labor violence situations, where strict and effective control is required.

II. CONGRESSIONAL INTENT UNDERLYING THE STATUTE

A. *Congress' Vehement Response to* United States v. Teamsters Local 807[6]

Violence seems to expand most rapidly during periods of economic hardship. In response to the increased violence which

4. The case decisions cited in this article comprise virtually all of the officially reported cases which have arisen in a labor context since the Hobbs Act was enacted in 1946. For an idea of the extensiveness of labor violence since 1946, see Stevenson, *Labor Violence —A National Scandal*, READER'S DIGEST, July 1973, at 153; Stevenson, *The Construction Unions Declare War*, READER'S DIGEST, July 1973, at 79; Stevenson, *The Tyranny of Terrorism in the Building Trades*, READER'S DIGEST, June 1973, at 89; Stevenson, *Yes, Construction-Union Terrorism Is Real*, READER'S DIGEST, Dec. 1973, at 85; The Atlanta Constitution, Aug. 23, 1973, § A, at 31, col. 1; The Atlanta Constitution, Feb. 28, 1973, § A, at 9, col. 1.

5. The major federal laws include: The Labor Management Relations Act, 29 U.S.C. §§ 141-86 (1970), *as amended*, 29 U.S.C. §§ 141-86 (Supp. II, 1972); The Fair Labor Standards Act, 29 U.S.C. §§ 201-19 (1970), *as amended*, 29 U.S.C. §§ 201-19 (Supp. II, 1972); Title VII of the Civil Rights Act of 1964, §§ 2000e-1 to -15 (1970), *as amended*, 42 U.S.C. §§ 2000e-1 to -16 (Supp. II, 1972); The Occupational Health and Safety Act, 29 U.S.C. §§ 651-78 (1970), *as amended*, 29 U.S.C. §§ 651-78 (Supp. II, 1972).

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

occurred during and after the Great Depression, Congress specifically sought to curb the growth of criminal extortion by passing the Anti-Racketeering Act in 1934.[7]

The Anti-Racketeering Act broadly prohibited extortion

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7. The Anti-Racketeering Act, ch. 569, §§ 1-6, 48 Stat. 979 (1934) (current version in 18 U.S.C. § 1951 (1970)):

> Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the term "trade or commerce", as used herein, is defined to mean trade or commerce between any States, with foreign nations, in the District of Columbia, in any Territory of the United States, between any such Territory or the District of Columbia and any State or other Territory, and all other trade or commerce over which the United States has constitutional jurisdiction.
>
> *Sec. 2.* Any person who, in connection with or in relations 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 physical violence or physical injury to a person or property in furtherance of a plan or purpose to violate sections (a) or (b); or
>
> (d) Conspires or acts concertedly with any other person or persons to commit any of the foregoing acts; shall, upon conviction thereof, be guilty of a felony and shall be punished by imprisonment from one to ten years or by a fine of $10,000, or both.
>
> *Sec. 3.* (a) As used in this Act the term "wrongful" means in violation of the criminal laws of the United States or of any State or Territory.
>
> (b) The terms "property", "money", or "valuable considerations" used herein shall not be deemed to include wages paid by a bona-fide employer to a bona-fide employee.
>
> *Sec. 4.* Prosecutions under this Act shall be commenced only upon the express direction of the Attorney General of the United States.
>
> *Sec. 5.* If any provisions of this Act or the application thereof to any person or circumstance is held invalid, the remainder of the Act, and the application of such provision to other person or circumstances, shall not be affected thereby.
>
> *Sec. 6.* Any person charged with violating this Act may be prosecuted in any district in which any part of the offense has been committed by him or by his actual associates participating with him in the offense or by his fellow conspirators: *Provided,* 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.

Id. (emphasis in original).

To provide a point of reference in the history of labor relations legislation, it is noted that the Anti-Racketeering Act preceded by a year the Wagner Act—the first major federal labor statute.

through the use or threatened use of violence. Yet the Act was inapplicable to violent conduct in an employment relationship, and Congress was careful to direct the federal courts not to "impair or diminish, or in any manner affect the rights of bona fide labor organizations in carrying out the legitimate objectives"[8] of such organizations. The effect of this exclusion was to protect labor unions from federal criminal prosecution during the period of intense industrial strife which followed the Depression. But the full extent of the protection accorded unions by the exceptions of the Anti-Racketeering Act was not fully realized until 1942 when the union abuses not prohibited by the Act were clearly illustrated by the Supreme Court's decision in *United States v. Teamster Local 807*.[9]

In *Local 807* a New York federal district court convicted the defendants of conspiracy to violate the Anti-Racketeering Act of 1934.[10] Specifically, the Local was found guilty of coercing money from out-of-state truck drivers who did not belong to Teamsters Local 807. When nonunion drivers attempted to enter New York City, Local 807 members intercepted the drivers and, through use or threats of violence, exacted money payments as a prerequisite to entering the city.[11] On appeal, the Second Circuit reversed the convictions and both parties petitioned the Supreme Court for certiorari. Upon hearing the case, the Supreme Court stated that "[t]he question in the case concerns that portion of § 2(a) which exempts from punishment any person who 'obtains or attempts to obtain, by the use of or attempt to use or threat to use force, violence, or coercion, * * * the payment of wages by a bonafide employer to a bonafide employee' "; and whether the activities of Local 807 in this situation were entitled to that exclusion.[12]

Examining the legislative history in order to resolve this issue, the Court found that, following passage of Senate Bill 2248 (which later became the Anti-Racketeering Act of 1934), the American Federation of Labor (AFL) vigorously lobbied against application of the bill to labor. As a result of AFL lobbying ef-

8. The Anti-Racketeering Act of 1934, ch. 569, § 6, 49 Stat. 979 (1934).

9. 315 U.S. 521 (1942).

10. *Id.* at 524-25.

11. The Court recognized that "these amounts were the regular union rates for a day's work of driving and unloading . . . and in several cases the jury could have found that these defendants either failed to offer to work, or refused to work for the money when asked to do so."

12. *Id.* at 527.

forts, two amendments were added: the exception relating to the payment of wages by a bona fide employer to a bona fide employee, and the protective proviso in section 6 of the Act preserving the "legitimate" rights of bona fide labor organizations. The Court noted that the amended bill was passed by both the House and the Senate without debate after it was disclosed that the bill, as amended, had the full approval and support of organized labor.[13]

In further recognition that Congress did not intend for the Anti-Racketeering Act to apply to labor, the Court held that the bona fide employer/employee exemption was not to be restricted to a defendant who already had the status of bona fide employee. The exemption extended to a person outside of the traditional employment relationship, but who was seeking to enter such a relationship, even though such person might fail in this attempt.[14] Although an attempt to enter into a "bona fide" employment relationship might be accompanied by violence, such a situation, though unfortunate, was not prohibited by the Anti-Racketeering Act.

The Government argued that for purposes of evaluating the required elements of intent and motive necessary for conviction, it was necessary to look toward the truck drivers/owners. But the Court disagreed, stating that it was the *defendants'* intent, motive, and purpose that needed to be analyzed to determine whether the objective of the defendants fell within the labor immunity exception of § 2(a).[15] The Court's holding virtually elimi-

13. *Id.* at 530. In the opinion of the Court's majority, these amendments effectively carved out labor's "legitimate objectives" exemption from the Anti-Racketeering Act:

> [The legislative proceedings] contain clear declarations by the head of the Department which drafted the section and by the sponsor of the bill in Congress, first, that the elimination of terroristic activities by professional gangsters was the aim of the statute, and second, that no interference with traditional labor union activities was intended.

Id.

14. *Id.* at 531.

15. The Court examined the jury instructions as delivered by the trial judge and determined that they generally followed the Government's contentions, which the Court had concluded were unsupported by the Act. The jury had been instructed to examine the defendants' guilt on the basis of the motive or intent of the truck drivers/owners. The Court stated that these instructions were not correct because they created a situation where a determination of "[w]hether or not the defendants were guilty of conspiracy . . . became contingent upon the purposes of others and not upon their own aims and objectives." *Id.* at 537. Under the standard found by the Court to be proper

> the jury was bound to acquit the defendants if it found that their objective and purpose was to obtain by the use of threat of violence the chance to work for

nated any argument that labor unions were subject to the proscriptions of the Anti-Racketeering Act.[16] The decision thus ended any hope the Act could be used to check the proliferation of union racketeering and violence.

The Court further determined that no conspiracy existed when the defendant's purpose was to perform services for the money demanded of the non-union drivers. The Court did note, though, that criminal conspiracy would have been committed in violation of the Act had the defendant intended to obtain money through the use of violence without performing any work. Despite evidence that work in fact was not tendered for the payments demanded,[17] the Court concluded that the defendants were protected by the § 2(a) exception insomuch as they offered their services in good faith for the payments, although the services offered were rejected. The Court ultimately based their holding on the legislative history underlying the Act, noting that the Congress had not intended to prohibit or affect the ordinary activities of labor unions. Moreover, the Court pointed out that although federal law was inapplicable to the conduct of the union, state law proscribed the violent conduct of the sort engaged in by the defendants.[18]

Reaction to the *Local 807* decision was immediate and vehement. Congress was outraged by the opinion of the Court,[19] as was the public at large. Soon thereafter Congress undertook to correct the precedent created by the Court.

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the money, but to accept the money even if the employers refused to permit them to work.

Id. at 538. Using this standard, the Court affirmed the Second Circuit.

16. Dissenting, Chief Justice Stone stated that this Act's labor exemption was to be construed narrowly, rather than broadly, as determined by the majority. The dissent agreed with the approach of the Government, accepting the argument that the jury should determine intention, motive, purpose, and objective from the truck drivers/owners' perspective, and should not, as the majority found, use the defendants' "willingness to work [as] the test of guilt, regardless of the intended natural effect of the violence on the victims in compelling them to pay the money, not as wages but in order to secure immunity from assault." Id. at 543.

17. *See* note 11 *supra.*

18. This judicial deference to state laws has provided a convenient rationalization for not applying federal labor statutes (in this case the Anti-Racketeering Act) to a given situation.

19. There are numerous accounts of angry reactions by congressmen to the *Local 807* decision. *See, e.g.*, 89 CONG. REC. 3210-11 (1943) (remarks of Representative Hancock); *Id.* at 3212 (remarks of Representative Springer).

B. The Hobbs Act Amendment to the Anti-Racketeering Act of 1934 and Congressional Exclusion of Violence as a "Legitimate Labor Activity"

After detailed review and study by the House Committee on the Judiciary,[20] the House of Representatives focused its attention in 1943 upon an amendment to the 1934 Anti-Racketeering Act offered by Representative Hobbs. It was clear at the outset of the House debates that there was less than unanimous acceptance of Hobbs' proposed amendment, as reported out by the Judiciary Committee. The opposition to the reported amendment is exemplified by an alternative amendment offered by Representative Celler of New York and the debates between Hobbs and Celler concerning their respective amendments. One such exchange regarding Celler's proposal illustrates the difference of opinion over the proper form of the amendment:

> Mr. CELLER. . . . The difference between my amendment and the committee amendment is this: The committee amendment simply states that the so-called Hobbs bill in its entirety shall not modify or repeal the so-called Railway Labor Act, the Clayton Act, the Norris-LaGuardia Act, or the National Labor Relations Act. You might well just say that the Hobbs bill does not affect or repeal the National Tariff Act, or it does not affect or repeal the White Slave Act or the Income Tax Act.
>
> My amendment embraces within the purview of the Hobbs bill all lawful acts and activities and conduct of trade-unions that have been made lawful under these four enumerated acts. It would preserve all legitimate labor activities. It would not place any approval upon racketeering or robbery or extortion or any conduct that the local teamsters' union was guilty of in New York City.
>
> . . . .
>
> Mr. HOBBS. Mr. Chairman, I rise in opposition to the amendment.
>
> Mr. Chairman, almost any crime may be committed while the perpetrator is engaged in otherwise lawful acts, conduct or activities.
>
> . . . .
>
> Therein is the trick or joker in the Celler Amendment.
>
> Honestly and peaceably seeking employment is not only lawful, but commendable. However, it is equally lawful for the one from who employment is sought to refuse it. Does any sane

20. H. R. REP. No. 653, 79th Cong., 1st Sess. (1945).

> and reasonable man contend that the lawful right honestly and peaceably to seek employment gives the seeker the right to force employment or to beat the refuser.
>
> The Celler amendment says "No acts, conduct, or activities which are lawful under" the four major labor relations laws—Clayton Antitrust Act, Norris-LaGuardia Act, Railway Labor Act, and National Labor Relations Act—"shall constitute a violation of this Act." It wholly omits to require, as do these acts to which it refers, that the "acts, conduct or activities which are lawful" must be done lawfully and peacefully, and that no crime be committed while doing otherwise lawful acts.
>
> The committee amendment refers to the same four major labor relations laws and guarantees, as does the bill without the amendment, every right granted in them; but it does not grant the right to do a lawful act in an unlawful way, nor the right to commit crime under color of legality.
>
> . . . .
>
> Why does labor now seek to make itself above the law that applies to all others? Is there any reason why labor should be granted immunity from the penalties of the criminal law? Unless crime be committed, no one can be hurt by any criminal law. "The guilty flee when no man pursueth." If labor is innocent, how can this bill hurt them? If guilty, why should they be the only class seeking immunity?
>
> . . . .
>
> I submit that for these reasons the Celler amendment is dangerous, especially in view of the decision in the Local 807 case, which held that no matter how much violence might accompany a request for employment it was all right and you are perfectly innocent under the antiracketeering law. The same thing is true here. No matter what may be said about the Celler amendment, it still does not require, as do the acts to which it points, that lawful acts, conduct, or activities must be done in a lawful and peaceful way. Without that or something like that the amendment should be defeated.[21]

The foregoing statements by these two Congressmen clearly define the battle lines that were drawn in the House debates in 1943. Representative Celler was the main spokesman for organized labor in the House during these debates. It is quite evident in reviewing the *Congressional Record* that the debates were both

21. 89 CONG. REC. 3220-21 (1943).

extended and vigorous, and that feelings for and against these amendments ran high.[22]

Making little attempt to disguise their disgust with the Supreme Court's *Local 807* decision, every Congressman, whether

22. Speaking on behalf of organized labor against the Hobbs amendments as reported from the Judiciary Committee, Representative Sadowski of Michigan launched the following attack:

> The trouble with the Hobbs bill is that it can be construed by the courts to prohibit and punish most of the legitimate activities of organized labor. . . . Whatever the proponents of the proposed measure may say, the language of the Hobbs bill is so broad that it constitutes a serious menace to all that organized labor has struggled for, bled for, and even died for through many decades.
>
> . . . .
>
> The Hobbs bill is a bad bill. It is a vicious bill. If passed, it would pave the way for the destruction of organized American labor. Let us not fool ourselves. Success of bills like the Hobbs measure will pave the way for facism in America in exactly the same way Hitler fastened the bloody tentacles of facism upon the unhappy people of Europe.

Id. at 3207-08.

Representative Baldwin of New York opposed the bill in the belief that it would restrict production necessary to meet wartime needs:

> This bill, whether amended or not, does only one thing. It unjustly points the finger of congressional suspicion at American organized labor, a group in our country which has within itself corrected the evils complained of, and which in my opinion has contributed as much as any other group in the community to the successful prosecution of the war. I earnestly hope this bill will be defeated.

Id. at 3219.

Another congressman considered the Celler amendment a complete emasculation of the Hobbs Act. Representative Baldwin of Maryland explained:

> For the information of some of you gentleman [*sic*] who were not present awhile back I will make the statement that the Maryland delegation had a meeting with the Maryland C.I.O. leaders, about 200 of them, 2 or 3 weeks ago. This Hobbs bill came up for discussion. They were opposed to it unless the Celler amendment was accepted and when asked directly why they would accept it with the Celler amendment, they very frankly said because it nullified the [Hobbs] bill and the bill with that amendment meant nothing. They probably had very good legal advice on that question.

Id. at 3224. Representative Hancock of New York, one of the strongest proponents for the passage of the Hobbs Act, with the Committee's amendment recognizing the existing labor laws' protection for legitimate labor activities, presented a concise and excellent characterization of the Celler amendment.

> . . .[T]he Celler amendment is adroit and tricky. There is more to it than meets the eye. It provides that no act which is lawful under the various labor statutes which are specified shall constitute a violation of this act. Everyone concedes it is lawful to seek jobs. Under the Byrnes decision [*Teamsters Local 807, supra*] it is lawful to use any amount of violence necessary to obtain employment, and by using force to obtain employment a man may establish a bona fide relationship of employer and employee. If the Celler amendment is adopted, it can be argued that Congress intends to exempt the very offenses we all know this amendment is designed to reach.

89 CONG. REC. 3210 (1943).

speaking for or against the Celler or Committee amendments, demanded that the *Local 807* decision be reversed by legislative action. Furthermore, it is evident from these House debates that the direct thrust was toward abolishing labor violence by making it a federal crime.

During the floor debates, the Congress addressed vitally important issues which still plague the courts interpreting the Hobbs Act. In fact, the courts often ignore the legislative history of the Act when interpreting the statute, even in cases where such history would aid in the disposition of questions confronting the courts. This is particularly evinced by the courts' reluctant application of the federal act to labor violence situations. Rather than applying federal law to these situations, it has been believed that state law is available to deal with labor violence. The courts accordingly have elected to defer to state courts in these matters. Yet clearly Congress specifically debated the federal/state dichotomy issue and proper analysis would dictate that the courts turn to the legislative history in deciding whether state or federal law applied to labor violence. Had the courts done so, they would have discovered that the legislative history provided a rather conclusive answer to just this question.[23] This issue is only one example of judicial refusal to recognize clear legislative intent. To understand the impetus behind the legislation, the Congressional history must be more closely examined.

During debate, Representative Hobbs recognized that the several states had laws which condemn and punish robbery, extortion and the use of violence in accomplishing unlawful objectives. Yet Hobbs further noted that Congress would neglect its constitutional duty "to protect interstate and foreign commerce from unlawful interference"[24] if it chose to "pass the buck" by deferring to state law in the area of labor-management relations. Hobbs expressly concluded that "the States' rights argument is just another smoke screen"[25] and contended that the federal law under consideration should apply to situations involving labor violence. Representatives Gwynne of Iowa and Nichols of Oklahoma supported Hobbs' stand on this issue by recognizing the ineffective enforcement of state criminal laws in areas of labor

23. *Id.* at 3217-18 (remarks of Representative Hobbs).
24. *Id.* at 3218 (remarks of Representative Hobbs).
25. *Id.*

activity.[26] They cited the *Local 807* case to support their argument, noting that the truck drivers/owners in the *Local 807* case had futilely tried to solicit the protection of the New York police:

> Mr. GWYNNE. They told us in the hearings before the subcommittee that they had complained and complained to the local authorities, but that nothing was done and that was why they went to the Federal law.[27]
>
> . . . .
>
> Mr. NICHOLS. . . . But they have a police department and policemen in the great State of New York where the highjacking complained of took place that caused this bill to be brought to the floor, but they did not do anything about it.
>
> Who is the man who would say that simply because there is a State law there should not be a Federal law against the same thing to protect men and goods that move in interstate commerce? That is no argument; no.[28]

After exhaustive consideration of the Hobbs bill and the Committee and Celler amendments, the House overwhelmingly passed the Act, as amended by the Committee amendment.[29] The passage of the Act was a crushing defeat for those members of the Congress who were proponents of the interests of labor. But more importantly, the enactment of the statute indicated that the intent of Congress was to allow the federal anti-racketeering law to apply broadly in the area of labor relations. It is clear that the

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26. Today two factors have an even greater impact on this point: the federal preemption doctrine and the organized labor lobby. The boundaries of the preemption doctrine and its concomitant effect on state law is an unsettled matter. There is little predictability as to the jurisdiction which state courts may exercise over labor related suits. In fact, state courts or other labor law enforcement agencies are often confused as to the extent of their jurisdiction in light of the preemption doctrine.

Moreover, the labor lobby has an apparent effect on the enforcement of state labor laws. The laxity in enforcement of state law varies directly in proportion to the effectiveness of lobbying activities by organized labor. In 1943 fear of this influence was manifested in Congress. There was concern that the varying effect of the lobby in different states might cause nonuniform enforcement of even the federal law. Representative LaFollette of Indiana attempted to avoid this potential conflict by introducing an amendment which would have required United States attorneys to obtain the approval of the United States Attorney General before initiating prosecutions under the Hobbs Act. *See id.* at 3227. Today, a central federal authority, the United States Department of Justice, Management and Labor Division, reviews possible Hobbs Act violations, often upon referral by United States attorneys. *See* Tannin, *Tannin Discusses Need for Control of Unions*, VA. L. WEEKLY, Dec. 14, 1973.

27. 89 CONG. REC. 3219 (1943) (remarks of Representative Gwynne).

28. *Id.* at 3224 (remarks of Representative Nichols).

29. *See id.* at 3229-30.

intent of Congress was to proscribe labor activities involving violence and other criminally unlawful labor tactics, whether or not they occurred in the pursuit of "legitimate objectives" allowed under the federal labor relations laws.[30]

For some reason, unexplained in the *Congressional Record,* no further action was taken by Congress on the Hobbs Bill following its passage by the House of Representatives in 1943.[31] It was next brought before the House of Representatives in 1945 as House Resolution 32. Review of this latter, and less significant portion of the Act's legislative history[32] confirms that from the standpoint of the House, there had been no change in legislative attitude and that the legislative intent manifested by the 1943 bill was no different than the intention behind the final enactment of the bill in 1945.[33]

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30. Representative Jennings of Tennessee concisely summarized the congressional intent by stating:

> I can tell you how every citizen, every man, woman, and child in this country, can avoid the penalties of this act and that is to refrain from interference with interstate commerce through acts of violence and illegal conduct such as are denounced by this bill. This measure will not suspend, impair, or destroy any of the protection thrown around labor by the laws passed by Congress. It so provides in no uncertain terms.

Id. at 3211.

31. Representative Bradley of Michigan expressed his concern over this inaction in the following remarks:

> [I]t seems to me that anyone, be he a member of a union or the president of a union, who would disapprove of the enactment of this legislation automatically places himself on record as condoning racketeering, coercion, and violence to personal property. I do not. And it has been shown, Mr. Speaker, twice before since I have been a Member of this body that the vast majority of this House does not condone it, either, because we in this House have passed this same bill on two separate occasions at least. Why it has been permitted to die in the Senate is beyond reasonable comprehension.

91 CONG. REC. 11845 (1945). *See also id.* at 11906 (remarks of Representative Robinson).

32. For this second phase of the Act's legislative history, see *id.* at 11839-48, 11899-922.

33. Representative Walter of Pennsylvania remarked during consideration of the bill that Congress was vitally concerned with the legislation. He stated:

> [I] am firmly convinced that if the workers of this Nation knew what the problem was, to a man they would be for this legislation.
>
> Now let us look to the need for it. I do not know whether any committee ever held any more extensive hearings than our committee [of the Judiciary] held on this measure. The hearings consist of 429 pages. Of course, we did not hold any this year. This is not unusual because the problem is the same as it was when the legislation was first introduced.

Id. at 11841. It was further noted that the 1945 Congress differed in membership from the 1943 Congress. To an extent, different considerations were dealt with by each Congress. *Id.* at 11846 (remarks of Rep. Sabath). As will be later developed, one of the problems

Once again, in 1945, the House of Representatives resolved itself into the Committee of the Whole for consideration of H.R. 32.[34] Immediately following this House resolution, Representative Celler of New York again loudly derided the Hobbs Act and its contemplated effects on organized labor and organized labor's activities. For a second time, he argued vigorously that passage of the Hobbs Act would greatly curtail legitimate labor activities.[35] One of the most pertinent exchanges in the debates relating to the issue of the Act's scope clearly illustrates the intent of Congress to broadly apply the Act's provisions and provides a basis for Representative Celler's objections. The exchange in question was between Representatives Doyle and Hancock:

> Mr. DOYLE. I call the gentleman's attention to section 6 of the committee's report, the proviso. I understand the committee claims that this bill will only apply to the illegitimate or lawbreaking activities of any person, including labor unions. If that be true, why did the committee strike out the proviso in the present law and leave it out? May I have an answer to that question? Why was it striken out?

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with judicial interpretation of the intent behind the Act is the failure to clearly recognize the interrelationship of two histories. *States v. Enmons*, 410 U.S. 396 (1973), was almost entirely based on the 1945 legislative history. *Id.* at 404, n. 14. While it is most frequently argued that the 1945 history alters 1943 considerations, this is probably not true. The bill was eventually passed in 1945 without any amendments, other than those approved in 1943. Furthermore, the Act's passage occurred after the availability of the Judiciary Committee's hearing materials and it can be asserted that the Congress in 1945 acted after considering the same facts and issues which prompted unqualified passage of the bill in 1943.

34. 91 CONG. REC. 11899 (1945).

35. Representative Celler warned against the Act's applicability to labor violence:

> Attorneys familiar with the decisions of the courts on charge of "violence" in labor relations can tell of the implications to labor in a statute worded as is the instant bill. There are courts which, in injunction cases have held name-calling or use of such terms as "scab" to constitute "force" or "violence". Whatever may be your views as to whether such name-calling should properly be considered disorderly conduct under local ordinances or statutes, it should be kept in mind that the pending bill is defining conduct which would become a felony, punishable by imprisonment up to 20 years, or by a fine of up to $10,000 or both.
>
> [A]nd truly criminal conduct which may occur in the course of these altercations and scuffles is of course punishable by local disorderly conduct statutes or ordinances or other local laws. Under the Hobbs bill every such altercation is automatically raised to the level of a Federal offense — a Federal felony the punishment for which may be as high as 20 years in jail or a $10,000 in fine.

Id. at 11901. Even with these clear warnings, the Act was overwhelmingly passed. Therefore it is reasonable to conclude that the Act would apply to a wide range of labor disorder, even at the cost of usurping the jurisdiction of the states to deal with the same conduct.

> Mr. HANCOCK. What proviso is that, may I ask the gentleman?
>
> Mr. DOYLE. The proviso, which reads:
>
> 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.
>
> Mr. HANCOCK. We thought it would better safeguard the statutes which the various labor people are interested in, namely, the Clayton Act, Norris-LaGuardia Act, the Railway Labor Act, and the Fair Labor Practices Act. We are explicit. That language is too general, and we thought it better to make this bill explicit, and leave nothing to the imagination of the court.[36]

In the closing pages of the Act's legislative history, shortly before House passage of the Hobbs Bill for a second time, there was yet another flurry of proposed amendment activity. The amendments were offered by Representative Celler on behalf of organized labor.[37] The House membership rejected all of these proposed amendments and the Hobbs Act eventually was passed exactly as it had been initially reported to and amended by the House in 1943.[38] On June 18, 1946 the Senate Judiciary Committee reported to the Senate[39] a favorable recommendation of "do

36. *Id.* at 11904. The labor laws referred to by Representative Hancock afforded little protection against labor violence, as was specifically pointed out by several House members throughout the Act's legislative history. *See id.* at 11918 (remarks of Representative Baldwin); *id.* at 11912 (remarks of Representative Hobbs); 89 CONG. REC. at 3201-02 (remarks of Representative Gwynne).

37. For the text of these amendments, see 91 CONG. REC. 11913-14 (1945) (remarks of Representative Celler).

38. Since the Act was not amended by the Senate, it was reported by the House in its final form. This is the same form in which the Act appears today. *See* 18 U.S.C. § 1951 (1970).

39. The bill was moved expeditiously through the Senate, which was probably aware of the House members' expectations. These expectations were indicated by Representative Rivers' remarks:

> This is the third trip this bill is making to the body at the other end of the Capitol. I hope that on this occasion, when we pass this bill with a resounding majority, our colleagues on the other side will sense the righteous cause with which the framers of this Nation are armed, and say to racketeers everywhere "that no longer will they intimidate and coerce the weak; no longer will they obstruct and retard, or attempt to obstruct or retard, the orderly transportation of persons and property in interstate or foreign commerce; we, too, are deter-

pass" on H.R. 32.[40] The Senate easily passed H.R. 32[41] and President Truman approved the law on July 3, 1946.[42]

III. JUDICIAL CONSTRUCTION OF THE HOBBS ACT

A. *Foreward*

Once President Truman's signature was affixed to the Hobbs Act, the legislative process ended. After passage of the Act, it became the responsibility of the judiciary to interpret and refine the effect of the legislation. It soon became evident that these judicial interpretations would emasculate at least some of the congressional intent underlying the Act. The case analysis[43] which comprises the following portion of this article illustrates the manner in which the courts have historically refused to subject violence in the labor relations context to the strictures of the Hobbs Act.

B. *Problems in Effectuating Congressional Intent*

An early Hobbs Act case, *United States v. Kemble*,[44] is an interesting study of the problems the courts had in interpreting the Hobbs Act to give effect to congressional intent, in light of the attitude in the judiciary not to prohibit labor violence through enforcement of federal law. In *Kemble*, the defendant union member was convicted under the Hobbs Act for threatening a nonunion truck driver in an attempt to force the driver to hire a union member to perform unnecessary work. The Third Circuit affirmed the conviction by stating that it was "inescapable that Congress intended that the language used in the 1946 statute be broad enough to include, in proper cases, the forced payment of

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mined to be on the side of law and order.
91 CONG. REC. 11917 (1945).

40. S. REP. NO. 1516, 79th Cong., 2d Sess., 1 (1946).

41. ___ CONG REC. ___.

42. In his message to Congress upon approval of the Hobbs Act, President Truman acknowledge that he had been advised by the Attorney General that as long as the activities of labor were "legitimate and peaceful" then the Act would not be applied to such activities. *Id.* at 8299.

43. Rather than chronologically trace the entire case law which has developed since 1946, only the cases most significant to the arguments presented in this article are examined in detail.

44. 198 F.2d 889 (3d Cir. 1952), *cert. denied*, 344 U.S. 893 (1952). Two significant pre-Hobbs Act cases which are most often cited in post-Hobbs Act cases are United States v. Compagna, 146 F.2d 524 (2d Cir. 1944) and Nick v. United States, 122 F.2d 660 (8th Cir. 1941).

wages."[45] However, the court intended to limit the effect of the decision. Instead of holding that an attempt to obtain money for unnecessary, unwanted and superfluous services through the use of violence was an obstruction of commerce,[46] the majority declined to extend thelr "inescapable conclusion" beyond Kemble's specific conduct at issue in the case.

Notwithstanding the majority's reluctance to broadly proscribe conduct obviously in violation of the Act, the dissenting opinions of Judges McLaughlin and Staley even more lucidly illustrate judicial refusal to give effect to the intended scope of the statute. Judge McLaughlin expressly asserted that the conduct in the *Kemble* case was not in violation of the statute. He stated:

> We are dealing with a problem peculiar to labor. . . . It arose from a reputable union's genuine attempt to organize a trucking corporation. The sole purpose of the defendants was to procure work for capable union men . . . . The Hobbs Act as it stands is obviously a general federal criminal statute directed to a certain class of crimes known as racketeering. . . . Its purpose is clear. . . . It does not include the bona fide seeking of employment on behalf of a union despite possible violence in connection therewith.[47]

Judge Staley discounted the contention that the intent of Congress was to deal with labor violence through the Hobbs Act by explaining that the Act's impact on labor violence was a minor consideration. He then went on to state that such violence then was not within the Act's proscriptions, thus rendering the Act inapplicable to the case:

> The fact that physical violence was threatened should not be allowed to confuse the picture. If Congress had enacted legisla-

45. 198 F.2d at 891.

46. Eventually such conduct was held by the Supreme Court to be an obstruction of commerce in United States v. Green, 350 U.S. 415 (1956). See notes 54-59 and accompanying text *infra*.

47. 198 F.2d at 895-96. Judge McLaughlin objected to the majority opinion as being broader than his own:

> The majority opinion flatly states that because there was evidence of violence and threats and because the 1946 law does not contain the exception that appeared in the 1934 Act regarding payment of wages by a bona fide employer to a bona fide employee, Kemble is guilty under the Hobbs Act indictment against him. The sole reason for this holding is the legislative history of the Act.

Id. at 894.

> tion making the obstruction of commerce by violence or threats of violence a crime, these defendants would properly stand convicted. But no such offenses were even made into law; and this court should not judicially legislate these offenses.[48]

In a concurrring opinion, Chief Judge Biggs most accurately interpreted the Act in light of its legislative history, by recognizing that

> [t]he 1946 Act was intended by Congress to apply to every individual whether he was acting on behalf of a labor union or not if commerce was obstructed by his use of violence or threats of violence. . . .[49]

In his dissenting opinion, Judge Staley expressed the fear that the majority opinion and the precedent it established, would be used to curb labor violence throughout a wide range of labor activities.[50] Unfortunately, Staley's fears were not realized. Instead the courts in subsequent decisions only narrowly applied the precedent of the *Kemble* case.

C. Reluctant Judicial Application of the Hobbs Act Proscriptions

A survey of the cases decided since enactment of the Hobbs Act in 1946 presents two clearly distinctive types of situations

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48. *Id.* at 899. Staley clearly ignores the legislative history of the Act by stating:

> When we cast aside this second requisite [of felonious intent], as does the majority, we, in effect, amend the statute before us from one designed to punish extortion and robbery affecting commerce to one punishing violence or threats of violence affecting commerce. This task is obviously for Congress — not the courts.

Id.

49. *Id.* at 902.

50. Judge Staley forecast:

> The construction here adopted by the majority will have far-reaching effects on the rights of organized labor. A strike designed to force an employer to pay higher wages or employ additional workers is obviously designed to obtain money from the employer, even though the underlying intent can hardly be considered corrupt. Any sporadic outbreak of violence or threats of violence in connection with such strike might now be considered a violation of the Hobbs Act so long as interstate commerce is affected. A trifling assault thus becomes a serious felony punishable by imprisonment up to twenty years.

Id. at 899.

Judge Staley lightly treated labor violence, by characterinzing it as a "trifling assault." This characterization is indicative of the attitude toward labor violence presently within the entire judiciary. There exists no plausible explanation for this approach in the face of traditional criminal statutes prohibiting violence in all other sectors.

which arguably present Hobbs Act questions. The first of these distinctive situations are the archetypal Hobbs Act violations—the "money extortion" incidents. These cases usually present clear evidence of extortion, or attempted extortion, of money or other value from an employer for the benefit of a union member (usually the union business agent). Because these situations are so closely similar to criminal conduct, they are easily recognized and presented, and therefore constitute the bulk of all Hobbs Act cases.

The other category of cases, termed "labor extortion" cases, are more difficult to recognize and prove. These cases involved situations where the union forces or attempts to force an employer to hire employees which are unneeded and unwanted. Ironically, although fewer of these cases have confronted the courts as Hobbs Act violations, as a practical matter these sorts of situations more commonly arise.

The next two subsections of this article illustrate the judicial handling of situations in the two aforementioned categories. The last section of the article deals with the final requisite to a Hobbs Act violation—employer fear of labor violence.

(1.) *Monetary Extortion*

Several cases involving the extortion of nonwage money have occurred in the construction industry.[51] An illustrative case is *United States v. Iozzi.*[52] In the *Iozzi* case, the defendant was presi-

51. One can only speculate about the ratio of monetary extortion cases in the construction as opposed to the non-construction environment. For examples of non-construction cases which present the classic monetary extortion elements, see, United States v. Tolub, 309 F.2d 286 (2d Cir. 1962) (clothing shops) and United States v. Postma, 242 F.2d 488 (2d Cir. 1957) (trucking). An interesting point in the *Postma* case is worth mentioning. In this case a member of the management of the business which was damaged was convicted of criminal conspiracy to violate the Act. This defendant functioned as the middleman between the extorted truckers and the extortionist union negotiator. It must be assumed that the court determined that the extortion of $10,000 from the truckers alone was the key element in sustaining these Hobbs Act convictions. It is also noteworthy that these violations arose in the context of a lawful strike to aid and enforce bargaining demands by the union. *See also* United States v. Provenzano, 334 F.2d 678 (3d Cir. 1964) (trucking).

52. 420 F.2d 512 (4th Cir. 1970). Other significant construction cases include: United States v. Stubbs, 476 F.2d 626 (6th Cir. 1973); United States v. Kramer, 355 F.2d 891 (7th Cir. 1966), *rev'd on other grounds,* 384 U.S. 100 (1966); United States v. Stirone, 311 F.2d 277 (3d Cir. 1962); United States v. Palmiotti, 254 F.2d 491 (2d Cir. 1958); Bianchi v. United States, 219 F.2d 182 (8th Cir. 1955); Hulahan v. United States, 214 F.2d 441 (8th Cir. 1954).

dent of the Baltimore Building and Construction Trade Council. It was alleged that the defendant used his position in violation of the Hobbs Act to extort about $10,000 in cash from one construction company and demanded, but never received, $20,000 from another. The defendant stated that the work stoppages and picketing he had ordered on these contractors' jobs, and which occured coincidentally with the demands, had "nothing to do with his demands for the money, but, on the contrary, were designed to persuade the contractors to sign a new building trades' agreement."[53] The court noted that this "nice distinction" was never disclosed to these contractors, and the contractors naturally believed that their labor difficulties, the defendant's cash demands, and his insistence upon the contractor's acceptance of the new labor agreement were inseparable. Iozzi was also accused of using a local business manager of an electrical workers union to negotiate and make the demands for payment from another contractor.

The scope of coverage over commerce and the proper standards of appellate review were established in the *Hulahan* decision. In response to Hulahan's objection to federal jurisdiction over his conduct, the court replied:

> We have no doubt that Congress has the power to deal with extortion or attempted extortion actually or potentially affecting interstate commerce, just as it has power to deal with unfair labor practices so affecting interstate commerce.

214 F.2d at 445. It is interesting to note the court's approval of Congress' exercise of the federal police power upon those activities "potentially" affecting commerce:

> It seems apparent from the language of the statute that it was the intent of Congress to protect interstate commerce against extortion or attempted extortion which in any way or in any degree reasonably could be regarded as affecting such commerce. The exaction of tribute from contractors engaged in local construction work who are dependent upon interstate commerce for materials, equipment and supplies, or who are engaged in constructing facilities to serve such commerce, is, in our opinion, proscribed by the statute in suit.

Id. This court's statement of "affecting commerce" reconfirmed that the federal government's commerce power is virtually unlimited and that currently there are few things sufficiently local in nature to escape federal jurisdiction.

The standard of review of Hobbs Act convictions was established early in the *Hulahan* opinion. The court stated:

> It is elementary that in reviewing the question of the adequacy of the evidentiary basis for a verdict of guilty, this Court must take that view of the evidence which is most favorable to the Government and give to the Government the benefit of all inferences which reasonably can be drawn from such evidence . . . . This is saying no more than that a jury verdict, whether factually right or wrong, is conclusive upon this Court if sustained by substantial evidence or by permissible inference drawn therefrom . . . . With the credibility of witnesses or weight of evidence this Court can have no concern . . . . A lawful conviction under a single count of the indictment in this case will sustain the judgment appealed from.

Id. at 442-43.

53. United States v. Iozzi, 420 F.2d 512, 514 (4th Cir. 1970).

That contractor had testified that the business manager "represented that he was acting for Iozzi, and that unless payment was received, the Mafia, with whom he said Iozzi was linked, would sabotage the job."[54] On the basis of these facts the court found that the defendant's "conduct [had] transgressed the bounds of legitimate labor tactics . . . ."[55] In addition, the court went on to hold that "obtaining money through the fear of economic injury induced by threats of violence or force constitutes extortion under the Act."[56] The court accordingly affirmed the district court's conviction of Iozzi for Hobbs Act violations.

The *Iozzi* case is typical of "monetary extortion" cases. It demonstrates that the essential elements of monetary extortion are relatively easy to prove. "Labor extortion" situations, which occur more subtly, are not so easily proved as the monetary extortion violations.

(2.) *Labor Extortion*

The case claimed to be the most important in the labor extortion category is *United States v. Green.*[57] The defendants in *Green* were indicted for attempting to extort, from a construction contractor, "wages to be paid for imposed, unwanted, superfluous and fictitious services of laborers."[58] The defendants challenged the indictment, contending that the court lacked jurisdiction over the case because the activity charged in the indictment was not within the purview of the Hobbs Act. The Supreme Court rejected this argument by recognizing that the Hobbs Act amendments to the Anti-Racketeering Act brought conduct within the employer-employee relationship under the proscriptions of the federal law. Furthermore, the Court noted that the defendant's violent activity[59] was not legitimate labor activity protected by

54. *Id.*

55. *Id.*

56. *Id.* at 515.

57. 350 U.S. 415 (1956).

58. *Id.* at 417.

59. The Court recounted the facts of the case which were pertinent to determination of the jurisdictional issue:

> The extortions alleged consisted of attempts to obtain from the particular employer "his money, in the form of wages to be paid for imposed, unwanted, superfluous and fictitious services of laborers commonly known as swampers, in connection with the operation of machinery and equipment then being used and operated by said [employer] in the execution of his said contract for maintenance work on said levee, the attempted obtaining of said property from said

any of the four labor laws and thus was not exempted by the Hobbs Act exceptions.[60] On remand, the District Court for the Southern District of Illinois held that actual violence was not a necessary element of a Hobbs Act crime.[61] In fact, the district court noted that the communication of a threat, without more, was sufficient to violate the Hobbs Act proscriptions.[62]

The decision in *Green* was clearly consistent with the congressional intent underlying the Act which broadly proscribed violence, even in the area of labor relations. But the powerful precedent established by the *Green* case was not extensively applied in subsequent cases to labor violence situations. In fact, it

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[employer] as aforesaid being then intended to be accomplished and accomplished with the consent of said [employer], 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], and his employees and agents then and there being; in violation of Section 1951 of Title 18, United States Code."

Id. at 417.

60. The Court rendered its most accurate statement on the Hobbs Act ban on labor violence, by stating:

> Title II of the Hobbs Act provides that the provisions of the Act shall not affect the Clayton Act, §§ 6 and 20 . . . ; the Norris-LaGuardia Act . . . ; the Railway Labor Act . . . ; or the National Labor Relations Act . . . . There is nothing in any of those Acts, however, that indicates any protection for unions or their officials in attempts to get personal property through threats of force or violence. Those are not legitimate means for improving labor conditions. If the trial court intended by its references to the Norris-LaGuardia and Wagner Acts to indicate any such labor exception, which we doubt, it was in error. Apparently what the Court meant is more clearly expressed by its statement, . . . that the charged acts would be criminal only if they were used to obtain property for the personal benefit of the union or its agent, in this case Green. This latter holding is also erroneous. The city truckers in the *Local 807* case similarly were trying by force to get jobs and pay from the out-of-state truckers by threats and violence. The Hobbs Act was meant to stop just such conduct.

Id. at 419-20.

61. United States v. Green, 143 F. Supp. 442 (S.D. Ill. 1956).

62. The lower court reviewed the record and found the following support for the convictions:

> The defendants did attempt by extortion to obtain from Mr. Terry the employment of superfluous labor on his machine. When Mr. Terry wanted to proceed with his contract in March, 1953 and asked "What are you going to do then?" Mr. Green replied according to his own testimony "Never you mind, I will stop you." This in itself was a threat in violation of the Anti-Racketerring Act . . . . Mr. Green's threat coupled with the display of at least 150 men on the scene of the project when Mr. Terry's machine was stopped clinched the proof of the Government on this issue. As defendants' counsel argues there was no actual violence, but actual violence was not a necessary element of the crime.

Id. at 445; *see* United States v. Roth, 73 Lab. Cas. ¶ 14,394 (W.D.Pa. 1972), *aff'd*, 73 Lab. Cas. ¶ 14,395 (3d Cir. 1973), *cert. denied*, ___ U.S. ___, 73 Lab. Cas. ¶ 14,456 (1974).

was all but ignored by those courts deciding cases of labor violence after *Green,* even though the conduct involved in some of these cases was strikingly similar to that involved in *Green.*

The Sixth Circuit, in *United States v. Billingsley*[63] was confronted with a Hobbs Act case not unlike the situation in *Green.* In *Billingsley* the defendant was convicted "for forcing the hiring of unwanted and superfluous workers by threatening a work stoppage."[64] Specifically, five unnecessary union ironworkers were hired but they performed no work for the company and otherwise acted in a manner inconsistent with their employment, e.g. by drinking before reporting to the job site.[65] The defendant argued on appeal that the charge to the jury was in error because it did not explain that the Hobbs Act prohibits only labor demands which are solely motivated by an intent to commit extortion.[66] The court reviewed the trial court's charge[67] and

63. 474 F.2d 63 (6th Cir. 1973), *cert. denied,* 414 U.S. 819 (1973).

64. There is a similar parallel between *Local 807, supra* note 90, and a recent case heard before the NLRB. In Truck Drivers, Local 705, 210 N.L.R.B. 210 (1974), the NLRB General Counsel presented evidence that the Truck Drivers, Local 705 in Chicago had extorted money from a metropolitan Chicago service station. Administrative Law Judge (ALJ) Ohlbaum declared that the Local's "exclusive bargaining representation, recognition, membership and collection of dues" were a mere sham arrangement. The activities were described by the judge as follows: "In a word, Respondent's activities here constitutted sheer racketeering." *Id.* at 274. ALJ Ohlbaum imposed an unusually severe remedial order on the Union by requiring the return to the station owners the money extorted, with interest. The judge was so appalled at the testimony presented at the hearing that he stated:

> The flagrant, egregious, widespread, and corrupting nature of the pattern of practices here provided mandates that they be referred to the attorney general of the United States for appropriate action.

Id. at 277. *See also,* United States v. Jacobs, ___ F.2d ___, 93 L.R.R.M. 2513 (7th Cir. 1976).

It is significant to note that the only remedies granted for the outrageous union conduct in the *Teamsters Local 705* decision were of a civil nature.

65. 474 F.2d at 64. The company's testimony of the facts was that the defendant, the local union business agent, had demanded that the company hire five of the 12 ironworkers he had brought with him that morning in addition to those already on the job, or he would create a labor dispute which would shut the job down.

The defendant testified that five of the journeymen ironworkers should have been hired because, with their greater experience, they would have provided greater safety to the men working around the high tension electrical wires near the jobsite.

66. *Id.* at 65.

67. The charge given at trial stated:

> [T]he principal issue before you is the intent with which the defendant threatened to call a work stoppage. The government claims that it was done with the intent and purpose of requiring the Mechem Company to put on and use unwanted and superfluous employees. The defendant claims that is what was done for the purpose of achieving safety in the work operation. As I have already

found it eminently fair since it satisfactorily considered the concerns of both parties. The court explained:

> Although the Appellant's requested instructions stated that legitimate labor activities are not prohibited by the Hobbs Act, it failed to state that the ramifications of legitimate labor activities could become unlawful. See *U.S. v. Green*, 246 F.2d 155, 160 (7th Cir. 1957), in which the Court refused to approve a similar instruction that stated only that legitimate labor disputes were not prohibited by the Hobbs Act. Our review of the record of this case and the relevant authorities satisfies us that the Appellant was not prejudiced by the court's refusal to give this instruction.[68]

The last case of labor violence which is considered is *United States v. Sweeney*.[69] The *Sweeney* case is reminescent of the judicial attitude exhibited in *Teamsters Local 807*.[70] In *Sweeney* the defendant, a union steward in Pittsburgh, demanded of a trucking company representative that "union 'city men'" be used to unload company trucks entering Pittsburgh. The defendant on several occasions threatened the representative with personal injury if the union demands were not met. Other evidence was presented to show that Sweeney communicated his demands, accompanied by threats, to company executives. Sweeney insisted that the company agree to let Sweeney select the men who would do the unloading, while also requiring a change in his compensation and "instead of paying him at the rate of $17.80 *a day* as agreed . . . he was to be paid $17.80 *for every truck* wholly or partially unloaded."[71]

The court in *Sweeney* found the foregoing evidence sufficient to constitute extortion under the Act.[72] However, notwithstanding

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indicated, the burden is upon the government to prove their claim, or theory, beyond a reasonable doubt.

Id.

68. *Id.*

69. 262 F.2d 272 (3d Cir.1959). *See also* United States v. Glasser, 443 F.2d 994 (2d Cir. 1971); United States v. Kennedy, 291 F.2d 457 (2d Cir. 1961). These last two cases provide evidence that flagrant criminal conduct continued in a labor context even after the public insisted that Congress discontinue it subsequent to the *Teamsters Local 807* decision.

70. 315 U.S. 521 (1942).

71. 262 F.2d at 275.

72. The court stated that exacting "payment solely by wrongful use of fear of economic loss is sufficient [to establish a violation] under the statute." *Id.* The cases of Bianchi v. United States, 219 F.2d 182 (8th Cir. 1955) and United States v. Stirone, 262 F.2d 521 (3d Cir. 1958) were also cited for this proposition. For further discussions of the

Sweeney's obvious affiliation with the union, especially his actions in the capacity as a union representative, the court refused to find that Sweeney was engaged in illegal union activity. Since the agreement which Sweeney attempted to force upon the company was not one authorized or sanctioned by the union, the court held that there was no exempted union activity.[73]

D. The "Fear Trilogy"

An essential element of a Hobbs Act violation is that the person toward whom violence, or threats of violence, are directed must be put in fear. Three cases establish the requisite principles necessary to establish this element.

The leading case in this area is *Bianchi v. United States.*[74] The three defendants in *Bianchi* were labor representatives of the different unions in the St. Louis area. These defendants confronted the Trojan Construction Co. and expressed concern over Trojan's plans to move its business into their area. The company replied that the national agreements between the company and the unions represented by the defendants, coupled with the company's use of union labor in the St. Louis area, was all that was necessary for Trojan to do business there. The defendants replied that these national agreements had no meaning to them. A week later the work project was shutdown by a work stoppage. These three defendants then met with company officials and stated that the work stoppage would cease if Trojan paid to the defendants three cents for every foot of pipe produced by the company. The company acceded to this demand, and the defendants devised a scheme whereby the payments "would be made in the form of rental for fictitious equipment which would be neither furnished nor used."[75]

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aforementioned point see note 74 and accompanying text *infra*. The court also noted that in this case fear of personal injury was evidenced in addition to fear of economic loss. Furthermore, the court concluded that under the statute extortion is committed even if the extortionor did not receive the money or other value demanded. For a discussion of this precedent see United States v. Green, 310 U.S. 415, 418-20 (1956) and United States v. Kemble, 198 F.2d 889, 890 (3d Cir. 1952).

73. The Government presented three witnesses who testified that Sweeney committed violence against them. There was also evidence, however, that none of the three witnesses were employed by, or related to, the extorted company. On this technicality the court reversed and remanded Sweeney's case for a new trial on the ground that consideration of this collateral evidence by the district court was prejudicial error. 262 F.2d at 277.

74. 219 F.2d 182 (8th Cir. 1955), *cert. denied*, 349 U.S. 915 (1955).

75. *Id.* at 187. The scheme was carried out by organizing a company in which the defendants were allowed to function as company officers. The court found evidence that this company existed only for the purpose of funneling payments to the defendants.

Upon their conviction by the district court, the defendants sought a reversal from the Eighth Circuit, contending that the element of fear necessary to prove extortion was that of immediate "fear of physical violence or property damage,"[76] and that such fear did not exist in this case. They further argued that the same requirement of fear under the robbery section of the Act should also be applied in the extortion section of the Act. The court rejected the defendants' arguments, concluding that extortion and the requisite proof of fear accompanying it were to carry their ordinary meanings and that fear of economic loss was a sufficient basis for a charge of extortion under the Act.[77]

The court went on to expand its interpretation of the fear question. Citing a pre-Hobbs Act case, *United States v. Compagna*,[78] the court noted that "[t]he victims' fear [in *Compagna* had] originated from acquaintance with the general disorders and violence which had accompanied other strikes."[79] Thus, the court appeared to indicate that the extortionee's fear can be grounded upon his knowledge of, and association with, past labor strife.

The court thereafter determined from the record that the jury could have inferred that the defendants and the work stoppage at the construction site were inexorably linked because of the evidence that labor problems ceased at the job site following the payoff agreement. Although there had been no proof of any actual violence to person or property, or of threats of such violence having been made to company officials, the question of

76. 219 F.2d at 188 (as opposed to the fear of financial loss present in this case).

77. The judges characterized robbery and extortion as distinct offenses. They further stated that fear and its proof under the robbery section was stricter than under the extortion offense. The court laid this point to rest by the following language: "We conclude that 'fear' as defined in the extortion section of the Anti-Racketeering Act should be given its ordinary meaning, and consequently 'fear' would include fear of economic loss." *Id.* at 189; *accord,* United States v. Dale, 223 F.2d 181 (7th Cir. 1955).

78. 146 F.2d 524 (2d Cir. 1944), *cert. denied,* 324 U.S. 867, *reh'g denied,* 325 U.S. 892 (1945).

79. 219 F.2d at 190. The *Bianchi* case presented another significant point. The court recognized that the Hobbs Act does not hinder legitimate labor activities and does not conflict with the Taft-Hartley Act, which prohibits noncompensatory payments to employee representatives. The Hobbs Act is broader and speaks in terms of money or property demanded by threat or force.

Additionally, it has been held that once "fear" is created in the victim, it is continuing in nature, and it may be proved that the fear created by the defendant continues beyond the threats of force or use of actual force. But the fear, when instilled and if it allegedly continues, must at all times be reasonable fear. United States v. Provenzano, 334 F.2d 678, 681 (3d Cir. 1964).

whether fear was present was nonetheless properly submitted to the jury. The court ruled that it was sufficient that "the basis upon which the government claims the fear is created is defendants' wrongful use of industrial strife and its threatened continuation unless pay-off is made."[80]

In *United States v. Callanan*,[81] the court set forth an even easier method for the finding of fear. The court stated:

> It appears to us that the offense of extortion under the Hobbs Act has been committed if the defendants have illegally created fear in their victim, which fear has induced the victim to part with his money or property. If the fear is created in the victim for the purpose of extorting money or property, the offense is present whether the defendants are responsible for any past difficulties in the way of prior illegal strikes or unfair labor practices which may have created the fear, or whether the fear may have been created by what might have happened to others in similar cases.[82]

The *Callanan* decision allows a satisfactory finding of fear for a Hobbs Act violation in the absence of direct threat or when the only basis for fear is apprehension stemming from previous labor problems in which the defendants were involved. [83]

Finally, the Second Circuit in *United States v. Palmiotti*[84] laid to rest the doubts over what constitutes "fear" in the Hobbs Act context when, recognizing the practicalities, it determined the requisite fear was in fact the most easily satisfied element of a Hobbs Act offense:

> As to the sufficiency of the evidence, appellant's argument is merely a variant of contentions we hear so often in extortion cases to the effect that, unless the threat which induces fear in the victim is spelled out in words of one syllable and in plain terms of a threat, there is no case for the jury. But common

80. 219 F.2d at 195. The *Bianchi* case has been one of the most often cited cases during the evolution of the Hobbs Act. It has generally been cited for its discussion of the government's responsibility to prove fear in the extortionee as part of proof of the charge asserted. The case establishes a firm foundation for subsequent cases on the government's burden of proof in regard to the element of fear. It clearly demonstrates that this fear of the extortionee may be based on a general knowledge of labor strife.

81. 223 F.2d 171 (8th Cir. 1955), *cert. denied*, 350 U.S. 862, *reh'g denied*, 353 U.S. 926 (1955).

82. *Id.* at 175.

83. *Id.* at 177-78.

84. 254 F.2d 491 (2d Cir. 1958).

> sense must be used in this class of cases as well as others. If the jury believed Smykla's testimony of what appellant said to him, it was certainly within their province to infer that appellant intended to give Smykla the impression that he was faced with the practical certainty that appellant would picket the job site and cause a work stoppage if Symkla did not accede to his demands. When appellant said 'there would be no trouble' on the job if Smykla paid up, the jury had a right to infer that, if Smykla did not pay up, there would be 'trouble,' and the 'trouble' would be a shutting down of work on the job and financial losses far in excess of the amounts demanded by appellant. Indeed, it is not unlikely that *the sort of language used by appellant in this case is more or less typical of that used in the common garden variety of labor shakedown that is now so frequently disclosed* in the criminal cases in the Southern District of New York. Not only do we find the evidence sufficient to support the charge, but we also are of the opinion that the inference of a shutdown or strike unless Smykla submitted to appellant's demands was all but compelling, provided the jury believed Smykla. It is quite immaterial whether or not appellant actually had the power to picket the job and close it down.[85]

It seemed, through these opinions, that the courts finally recognized that violence or fear of violence aroused by organized labor was, in far more cases than not, the fuel for labor discord. The cases at last finally seemed to flow again in the congressionally intended direction so that violence in a labor relations con-

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85. *Id.* at 495-96 (emphasis added). Furthermore, the courts have held that evidence of a defendant's "bad reputation" is admissible to aid the jury in evaluating whether the defendant created reasonable fear in the victim. In *United States v. Billingsley* the court, adhering to precedent, determined:

> We have considered the appellant's contentions, and the decisions of the Second, Eighth and Ninth Circuits and we find that the reasoning of these decisions is the more persuasive. These deicisons rest upon the fact that extortion is an essential element of the Hobbs Act and to prove extortion, it is essential to show that there was a generation of fear in the victim. The reasonableness of actual or anticipated fear is a vital element in these cases, and the reputation of the defendant therefore becomes relevant since such a reputation frequently conveys a tacit threat of violence. Accordingly, the reputation of the defendant is admissible not to show that he was a bad man and likely to commit crime, but to indicate that the threats of the defendant were not idle. We agree with the other circuits which have considered this question and hold that the evidence of the bad reputation of the defendant is admissible for the limited purpose of showing the fear and its reasonableness caused by the threats of the defendant.

474 F.2d at 66; *accord,* United States v. Stubbs, 476 F.2d 626 (6th Cir. 1973); United States v. Dale, 223 F.2d 181 (7th Cir. 1955).

text would be halted. However, no sooner did this flow begin when it was diverted by the decisions of *United States v. Caldes*[86] and *United States v. Enmons*.[87]

IV. JUDICIAL REFUSAL TO OUTLAW LABOR VIOLENCE: AN ANALYSIS OF *Caldes* AND *Enmons*

To the despair of a public which abhors criminal violence and to the despair of the 78th and 79th Congresses, whose legislative intent is clear from the records, the judiciary has been determined to thwart public and legislative directions by ignoring the Hobbs Act's mandate to halt labor violence. This public frustration is caused by the courts' insistence upon distinguishing between the *Green* case's "unwanted" employees and "wanted" employees as originally qualified in *Green,* particularly where labor and management may be negotiating a collective bargaining agreement. The *Caldes* and *Enmons* cases illustrate this judicial refusal to apply the Act.

A. United States v. Caldes

The defendants in this case were Caldes, an AFL-CIO representative, and Lowery, president of Local 369, Laundry and Drycleaning International Union. The union and the Mission Linen Supply Company were involved in contract negotiations at the time of the violent incidents which subsequently became the basis of the indictments and lower court convictions of Caldes and Lowery. The two incidents of violence/property destruction occurred when Lowery and Caldes damaged some of the company's linen with green dye. The central issue faced by the appellate court was whether the Hobbs Act prohibited violence to property as a part of a union's plan to extort a collective bargaining agreement covering *wanted* employees. The Ninth Circuit answered in the negative, and reversed the lower court decision on

> the ground that the Act was not intended to reach low level violence committed in connection with bona fide labor disputes between employers and employees. In this, we try to carefully distinguish this case from one in which acts of extortion were committed to compel an employer to take on unwanted workers

86. 457 F.2d 74 (9th Cir. 1972).
87. 410 U.S. 396 (1972).

> (featherbedding) or to pay for work which the worker has no intention of performing.[88]

In an attempt to justify this reversal, the court examined the *Local 807*[89] case and the legislative history of the Hobbs Act. Ignoring the intent behind the Hobbs Act, the court erroneously determined that it was not Congress' intention in eliminating § 2(a) of the Anti-Racketeering Act by the Hobbs Act, to prohibit militant labor activity in seeking "legitimate labor objectives." In addition, the court examined the *Kemble* case[90] as a significant judicial interpretation of what the Congress had in mind in the Hobbs Act but considered that the *Kemble* decision should be narrowly applied to the situation involved in the case before the court.[91] The court framed the question in a most self-serving manner:

> We turn to the question — did Congress intend to impose a felony conviction with severe penalties upon the union member caught in such byplay while trying to gain larger wages or better working hours and conditions for wanted employees? Certainly this conduct would constitute an offense against the state and would properly be described as a unfair labor practice.[92]

In concluding such was not intended by Congress, the court relied on *People v. Dioguardi*[93] to establish the state appellate court's own construction of its state penal code, from which the Hobbs Act's definition of "extortion" was originally taken. However, on its face, the *Dioguardi* decision does not support the *Kemble* court but instead is unequivocally opposed to the *Kemble* court position. Dioguardi had extorted money from a company to end a peaceful organizational picketing situation. The New York court's opinion plainly states that the lawful,

88. 457 F.2d at 75-76. The court noted: "Our research has not led to the discovery of another federal appellate court that has addressed itself to this issue, but a recent district court case seems not inconsistent with our conclusions." *Id.* at 76 *citing* United States v. Enmons, 335 F. Supp. 641 (E.D. La. 1971).

89. 315 U.S. 521 (1942).

90. 198 F.2d 889 (3d Cir. 1952).

91. The *Green, Callanan,* and *Sweeney* cases were all distinguished in the *Caldes* case. The court distinguished *Green* from the instant case because in *Green* there was sought, by means of extortion, "unwanted and superfluous [employees] or ficticious services." The *Callanan* and *Sweeney* cases were distinguished on the grounds that in those cases "extortion occurred when a union member tried to foist himself, or another union member, on an employer by threats of force and violence." 457 F.2d at 77.

92. *Id.*

93. 8 N.Y.2d 260, 168 N.E.2d 683, 203 N.Y.S.2d 870 (1960).

peaceful character of the picketings was abruptly "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."[94] The principle founded in *Dioguardi* is that labor activity initially recognized as lawful under the NLRA and other labor laws *becomes unlawful* when it is attempted to be, or is forced upon an employer through violence, whether picketing, striking or other means are used to bring unlawful pressure upon the employer. Congress also intended to establish this principle in the Hobbs Act.

The *Caldes* court, in further attempting to justify its reversal, took still another indefensible position when it concluded:

> 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 conduct even though he did not possess the requisite felonious intent to deprive another of his property.[95]

What the court conveniently overlooked is the fact that when such a union member resorts to violence, he then becomes possessed with the "requisite felonious intent" sufficient to constitute a violation of the Hobbs Act.

The court obviously concluded that the Act was not intended to constitute such a weapon against labor. This conclusion illustrates the judiciary's refusal to enforce the Act, in part due to labor's powerful influence on the enforcement of the laws in this country. The *Caldes* court, as so many courts before it, including the Supreme Court in its *Enmons* decision, apparently did not see, or would not accept, that the true intent of Congress was to curtail labor violence.[96] The *Caldes* court expressed the further concern that the Hobbs Act could be unwarrantedly expanded to proscribe mere minor acts of violence, thus creating an extraordinate number of prosecutions. This concern is unfounded. The "beyond a reasonable doubt" standard of proof placed on the

94. *Id.* at 271, 168 N.E.2d at 690-91, 203 N.Y.S.2d at 880.

95. 457 F.2d at 78.

96. The legislative history of the Act demonstrates conclusively that Congress, in passing the Hobbs Act, demanded what the *Caldes* court rejected with the following statement: "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." 457 F.2d at 78.

government would dissuade the prosecution of insignificant instances of violence. Furthermore, it was hoped that the local and state authorities would become more responsive to their own laws and prosecute these minor incidents themselves.[97] Only federal enforcement of the Hobbs Act, as ordered by its statutory terms and legislative history, will curtail the use of violence and fear by labor unions to achieve their "legitimate labor objectives."

B. United States v. Enmons

Inasmuch as the arguments levied against the *Caldes* decision parallel many of the issues discussed by the Supreme Court in their *Enmons* opinion, *Enmons* will not be put to the same detailed scrutiny as previously given those arguments. Instead, the following analysis of *Enmons* will focus upon those points treated by the Court which highlight the majority's error and which seem purposefully to ignore the Act's legislative history.

In order that the issues which reached the Supreme Court will be framed in context, the lower court's treatment of the case must initially be examined. Briefly stated, the Hobbs Act indictment against these defendants involved labor violence much more severe than that in the *Caldes* case.[98] The alleged unlawful conduct occurred during a strike which stemmed from a contract dispute between the International Brotherhood of Electrical Workers and the Gulf States Utilities Corporation.

Recognizing the precedent presented by *Green*, the district court admitted throughout that had these acts of violence occurred in conjunction with a union attempting to force unwanted

97. The *Caldes* court itself recognized that state and local laws were ineffectively enforced. Yet the court's approach in the case does not make sense. The court first established that it seemed "that acts of vandalism of the type committed by these appellants would be more properly and suitably prosecuted in the state courts. . . ." *Id.* at 79. Yet the court had just previously recounted that the defendants "were labor leaders who were seen on two instances committing acts of vandalism against Mission's property of the type that could logically be inferred as getting a message' to the company that if it did not settle, the level of violence might escalate. . . .

. . . A malicious mischief report was filed with local police but no charges were instituted in state court." *Id.* at 75.

98. The conduct allegedly in violation of the Act was described in the brief filed in the case:

> It was also alleged that, in furtherance of the conspiracy, appellees, or persons acting at their direction, committed five acts of violence against the property of Gulf States Uitilities including the shooting and sabotage of transformers and the blowing up of a transformer substation.

Brief for Appellant at 4, United States v. Enmons, 410 U.S. 396 (1972).

or superfluous services upon an employer, they would have clearly constituted a violation of the Hobbs Act. The court refused, however, to accept the Government's contention that the definition of "property" under the Hobbs Act includes either "higher wages sought by collective bargaining, [or], the Company's 'right to negotiate' the wage questions without unlawful interference."[99] As a further basis of its opinion, the court recognized that there was no question that the strike itself was legal or that the efforts of the union to secure higher wages from the employer were lawful.

In the legislative history of the Hobbs Act there is language sufficiently broad to encompass the Government's contentions in this case. However, the district court found only the judicial precedent in *Green* on record, which restricted the Hobbs Act terms of "extortion" and "property" to those efforts by unions to force unwanted services upon employers. The district court accordingly took the easy way out and did not accept the Government's broad definition of property.[100] Confronted directly with these critical

99. 335 F. Supp. 641, 643 (E.D. La. 1971). The district court found no judicial precedent to support the Government's contention. Thecourt held:

> It is the opinion of this Court that neither the wages of bonafide employees nor the "right to negotiate employment contracts—without illegal disruption" constitute "property" as contemplated by the Hobbs Act. The union had a right to disrupt the business of the employer by lawfully striking for higher wages. Acts of violence occurring during a lawful strike and resulting in damage to persons or property are undoubtedly punishable under State law. To punish persons for such acts of violence was not the purpose of the Hobbs Act. . . . But these acts simply did not constitute the 'obtaining of property from another' that is contemplated by the Hobbs Act.

Id. at 646. The district court also recognized, however, that there exists inferences in the legislative history to support the Government's contentions.

100. The Government's argument puts the lower court's inadequate reasoning in perspective:

> Yet [after recognizing under the Hobbs Act that violent conduct is present when a union tries to obtain wages for unwanted services the lower court] then held that the very same conduct—or worse—cannot be reached under the Hobbs Act so long as such violence during a *bona fide* labor dispute is directed simply at securing higher wages for existing employees holding down necessary jobs. This distinction between services that are wanted and those that are unwanted finds no support in the language of the statute or its legislative background. It is, moreover, at odds with the essential thrust of this Court's decision in *U.S. v. Green*, 350 U.S. 415. Congress did not intend that extortion to achieve higher wages be treated differently from extortion to achieve featherbedding; the statute was designed to outlaw both.

Brief for the Appellants at 6, United States v. Enmons, 410 U.S. 396 (1973).

Additional arguments by the Government in its brief to the Court were that whether the higher wages are for services unwanted or wanted makes no distinguishable difference.

issues, a rare opportunity was thus presented to the Supreme Court to fulfill the Congressional mandates enunciated 30 years ago.[101] Unfortunately, the Court chose to ignore those mandates.

Since the beginning of time, under all laws, common and civil, the taking of another's property by force, with or without his consent, has been termed and dealt with as a crime. Yet for purposes of the Hobbs Act, the Court has restricted the criminal definition of "wrongful use of actual or threatened force, violence or fear"[102] to "those instances where the obtaining of the property would itself be 'wrongful' because the alleged extortionist has no lawful claims to that property,"[103] and not where unlawful violence has been used to gain legitimate union objectives, such as services or higher wages.

In both cases the employer is subjected to unlawful violent acts and fear to accede to the union's demands. Moreover, the Government compared the lawful collective bargaining process with the unlawful attempts to accomplish the same lawful collective bargaining ends through violence and threats. In this comparison the Government used the legislative history to accurately demonstrate that in the Congress' refusal to limit the terms of the Hobbs Act, the protection originally afforded to labor was totally eliminated. Therefore, the wrongful use of force to achieve illegitimate ends was proscribed, as well as the unlawful use of force and threats to achieve legitimate ends. In summary, the Government contended that the extortion by acts of violence, as a means of obtaining higher wages and other monetary benefits, as occurred in the case at hand, was prohibited by the Hobbs Act. It was further argued that this type of violence was just as criminal under the Hobbs Act when committed in the context of a labor dispute as when committed in any other context. The Government concluded their brief by stating that "[t]he facts pleaded in this indictment reflect the precise evil which the intentionally broad language of the statute intended to proscribe." Brief for Appellant at 21, United States v. Enmons, *supra.*

The Government's Brief also argued that the Congressional response to the Court's decision in the *Local 807* case was a broad rather than restrictive definition of prohibited conduct. The Government astutely pointed out that the Court in the *Local 807* case looked solely to the objective (the payment of "wages") that the union sought to achieve, rather than focus on the unlawful means (the use of force and violence) used to attain the otherwise lawful objective. The Government submitted that the definition of extortion covers all unlawful attempts to gain property, whether that property be a lawful or unlawful objective: "But when the union 'demands' are accompanied by the 'wrongful use of force, violence, or fear', those demands cease to be legitimate labor activity and become extortionate conduct within the meaning of the statute." Appellant's Reply Brief at 5, United States v. Enmons, *supra.*

101. The Court recognized that conduct arguably proscribed by the Act was infrequently prosecuted by the federal authorities. Two particular arguments may be advanced to explain these infrequent prosecutions. First, it may be argued that powerful labor lobbies have thwarted and discouraged prosecutions or secondly, the reluctance of the courts to convict offenders under the Hobbs Act may be argued to have discouraged the bringing of charges under the Act. *See* United States v. DeLaurentis, 491 F.2d 208, 212 (2d Cir. 1974).

102. 42 U.S.C. § 1951(b)(2) (1970).

103. 410 U.S. at 400.

> In . . . [a] case [where legitimate union objectives are sought], there [would be] no 'wrongful' taking of the employer's property; he [would have] paid for the services he bargained for, and the workers [would have received] the wages to which they [would be] entitled in compensation for their services.[104]

Reduced to simple terms, the Court simply chose to ignore the elementary and fundamental distinction between a situation where one parts with his property by being illegally forced to do so by violence against his person or property and where one parts with his property because of lawful pressures upon him to do so.

With this initial determination made, although contradicted by age-old criminal law precedent, the Court laboriously ferretted out what few comments in the Hobbs Act's legislative history it could upon which to base its disregard for the Congressional mandate.[105] If the Court's interpretation of the Hobbs Act's legislative history is accepted, then the Hobbs Act does nothing more than limitedly apply the Anti-Racketeering Act to the *Local 807* situation.[106]

Having now grappled with the Act's legislative history, the Court turned in further disregard for the Act's effect to the two leading case precedents which were unfavorable to the Court's position here, *Green*[107] and *Kemble*.[108] The Court seized upon the limiting language of these cases (as is typical of the large majority of sensitive Supreme Court and Circuit decisions) to dismiss those cases out-of-hand, along with the Government's legisla-

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104. *Id.*

105. The *Enmons* court was clear on this point, although the conclusions were reached by unreasonable disregard for the legislative intent:

> The legislative framework of the Hobbs Act dispels any ambiguity in the wording of the statute and makes it clear that the Act does not apply to the use of force to achieve legitimate labor ends. . . .

Id. at 401.

106. *See generally id.* at 402-08. The Court totally misconstrued the legislative history. The fear was raised that an expanded application of the Act would result in federal prosecutions of insignificant violent conduct. The court referred to an exchange in the legislative debates between Representatives Marcantonio and Hobbs. In that exchange, Representative Marcantonio asked whether a simple assault during a strike could violate the Hobbs Act. Hobbs denied that such an incident would violate the Act so as to subject the assaultor and his union to liability under the Act. The Court in *Enmons* expanded this response to support their conclusion that *any* violence in an attempt to achieve lawful objectives is without the Act's proscriptions. *See id.* at 405.

107. United States v. Green, 350 U.S. 415 (1956).

108. United States v. Kemble, 198 F.2d 889 (3d Cir. 1952).

tively supported challenges to the Court's head-long rush to affirm the lower *Enmons* court.[109] The majority's conclusion is concise:

> [I]t would require statutory language much more explicit than that before us here to lead to the conclusion that Congress intended to put the Federal Government in the business of policing the orderly conduct of strikes. Neither the language of the Hobbs Act nor its legislative history can justify the conclusion that Congress intended to work such an extraordinary change in federal labor law or such an unprecedented incursion into the criminal jurisdiction of the States.[110]

But as argued in this article, such a conclusion is unsupported by the Act's legislative history and those few cases where the jurists have faced the clear mandates of Congress and the statute itself.

Justice Douglas registered a scathing dissent but did not take full advantage of the legislative history of the Act as enunciated by the 78th Congress. Douglas drew his support from less strong statements of the 79th Congress. Nevertheless, he did not avoid or ignore his judicial responsibility and, at last, though unfortunately in dissent, addressed himself to the heart of the matter:

> Seeking higher wages is certainly not unlawful. But using violence to obtain them seems plainly within the scope of "extortion" as used in the Act, just as is the use of violence to exact payment for no work or the use of violence to get a sham substitution for no work. The regime of violence, whatever its precise objective, is a common device of extortion and is condemned by the Act.
>
> . . . .
>
> Whatever may be thought of the policy which the Court today embroiders into the Act, it was the minority view in the House and clearly did not represent the consensus of the House. No light is thrown on the matter by the Senate, for it summarily approved the House version of the bill.
>
> It is easy in these insulated chambers to put an attractive gloss on an Act of Congress if five votes can be obtained. At

109. The Court, it should be noted, cited *Caldes* as supporting precedent.

110. 410 U.S. at 411. Justice Blackmun, in his concurring opinion, explained how the majority expected this violence to be controlled:

> This type of violence, as the Court points out, is subject to state criminal prosecution. That is where it must remain until the Congress acts otherwise in a manner far more clear than the language of the Hobbs Act.

Id. at 412.

> times, the legislative history of a measure is so clouded or obscure that we must perforce give some meaning to vague words. But where, as here, the consensus of the House is so clear, we should carry out its purpose no matter how distasteful or undesirable that policy may be to us, unless of course the Act oversteps constitutional boundaries. But none has been so hardy as even to suggest that.
>
> While we said in *Kirschbaum Co. v. Walling*, 316 U.S. 517, 522, that it is "retrospective expansion of meaning which properly deserves the stigma of judicial legislation," the same is true of retrospective contraction of meaning.
>
> I would reverse.[111]

V. CONCLUSION

As is self-evident throughout this article, I too join Justices Douglas, Burger, Powell and Rehnquist in urging reversal not only of the Supreme Court's decision in *Enmons*, but of all of these cases in which the judiciary has neglected the unmistakable directives of Congress. Reduced to its essential form, with few exceptions, this case law, which is the only form through which the courts speak, refuses to prohibit violence via the Congressionally enacted tool for such purpose—the Hobbs Act. The *Enmons* decision affirms this judicial disregard of the Act.

Notwithstanding the efforts of the courts to reduce the Act's instructions (as defined by the legislative history) to outlaw labor violence to meaningless verbiage, they still remain on the face of the *Congressional Record*, although tarnished considerably by this onslaught of judicial misconstruction over some thirty years. In view of *Enmons*, any flow now toward judicial recognition of the basic thrust of the Act seems most unlikely.

As has traditionally been the result where one branch of our three branch system of governmental democracy has erred, one of the other branches reacts to correct such error generally in accord with the expressions of the public. Whether Congress will once again act in reaction to a Supreme Court decision revolving around labor dispute violence, now *Enmons*, yesterday *Teamsters Local 807*, is the significant question awaiting resolution today.[112]

From this point of view, there is no basis in the Act's statu-

111. *Id.* at 418-19.

112. Representative Anderson of Illinois, responding to *Enmons*, has proposed to amend the Hobbs Act to more broadly prohibit labor violence. *See* 83 L.R.R.M. 161.

tory terms or legislative history to support or explain the evolution of its meaning through case law developments over the last 30 years. The courts continue to permit labor violence to continue unabated. And so, following the careful and detailed analysis of all of the pertinent factors as aforesaid, one is left with only the inexorable conclusion that the judiciary has ignored the true purpose of the Hobbs Act. "Est autem vis legem sinulans."[113]

113. Violence may also put on the mask of law.