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THE WHITE HOUSE
WASHINGTON

April 29, 1983

TO: MIKE UHLMANN

Regarding the attached, I recall that you stopped the letter. However, what type of response was ultimately sent?

Thanks.

Jim Cicconi

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

March 23, 1983

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer

Department of Labor

SPECIAL

SUBJECT: Draft Justice letter on the Emmons decision (Hobbs Act)

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

Please provide us with your views no later than 2 P.M., Thursday, MARCH 24. ORAL COMMENTS ACCEPTABLE.

Direct your questions to Gregory Jones (395-3802), of this office.

James C. Murr for
Assistant Director for
Legislative Reference

Enclosures

cc: M. Uhlmann
P. Hanna
B. Martin
K. Wilson
M. Horowitz

U. S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

Honorable John P. East
Chairman, Subcommittee on
Separation of Powers
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This is in reference to your letter to the Attorney General requesting a clarification of the position of the Department of Justice regarding the Supreme Court's interpretation of the Hobbs Act in United States v. Enmons, 410 U.S. 396 (1973).

The Department's position regarding Enmons is best clarified through a discussion of a bill introduced in the 97th Congress, S. 2189, which the Department supports with the amendments outlined below. This bill and the amendments would nullify the effect of Enmons and would clarify the position, in the context of both labor-management disputes and disputes outside the field of labor relations, that the Hobbs Act punishes the actual or threatened use of force or violence to obtain property irrespective of the legitimacy of the extortionist's claim to such property. The Department proposes an amendment of the statement of congressional intent in S. 2189 which would make explicit the position that incidental picket line violence during an otherwise peaceful labor dispute could not be prosecuted as extortion under the Hobbs Act where such violence is of a minor nature and is not intended to extort property.

Discussion

The Court held in Enmons that the Hobbs Act does not proscribe violence committed during a lawful strike for the purpose of achieving legitimate collective-bargaining objectives, such as higher wages for genuine services that the employer seeks. By its focus on the motives and objectives of the property claimant who uses force or violence to achieve his goals, the Enmons decision has had several anomalous results which make legislation overturning it necessary. First, it has deprived the federal government of the ability to punish significant acts of extortionate violence when they do occur in a labor-management context by means of the federal extortion statute which has the broadest jurisdictional application,

namely, any actual or potential effect in any way or degree on the channels of interstate or foreign commerce. Although other federal statutes proscribe the use of specific devices or the use of the channels of commerce in accomplishing the underlying act of extortionate violence, only the Hobbs Act proscribes a localized act of extortionate violence whose economic effect is to disrupt the channels of commerce. Therefore, the Justice Department does not view other federal statutes as adequate vehicles of avoiding the full effect of the Enmons decision. See, e.g., United States v. Thordarson, 646 F.2d 1323 (9th Cir. 1981), cert. denied, 454 U.S. 1055 (1981), holding that the Enmons decision has no application to prosecution for destruction of property used in interstate commerce by explosives (18 U.S.C. 844(i)), travel in interstate commerce to commit arson (18 U.S.C. 1952), conversion of union funds (29 U.S.C. 501(c)), and conspiracy to conduct an enterprise through a pattern of two or more racketeering acts of arson or embezzlement (18 U.S.C. 1962).

As Assistant Attorney General Jonathan Rose stated before the Senate Subcommittee on Criminal Law when he testified on legislation similar to S. 2189 in the 97th Congress, the Department of Justice believes that incidental violence which might occur on a picket line during the course of an otherwise lawful and peaceful labor dispute is not by itself designed for "the obtaining of property from another" and therefore would not violate the amended statute. On the other hand, on those occasions where the pattern and scope of significant acts of violence are shown to be deliberately linked to the demands for property, the federal government ought not to be deprived of a valuable prosecutive tool, especially where the rights and obligations of the parties to collective bargaining in the labor-management context are governed by and are largely creatures of federal law.

Although we support the efforts of State and local law enforcement authorities in their attempt to punish labor-management violence by the means which are available to them, we do think that the federal government has a responsibility to assist State and local authorities in those instances of serious, extortionate violence which disrupt the collective bargaining process just as the federal government is able to provide assistance in other contexts where the underlying acts of violence are also violations of State law. See United States v. Culbert, 435 U.S. 371 (1978) (application of Hobbs Act to bank extortion).

Second, the rationale of the Enmons decision is not consistent with federal labor law. Although Enmons instructs that the "wrongful" use of force, violence, or fear under the Hobbs Act is judged by the standard of "wrongful" goals, the use of force or violence itself, apart from the user's ultimate objectives, is "wrongful" under federal labor law. See, e.g., NLRB v. Drivers Local Union, 362 U.S. 274, 291 (1960), where the Supreme Court,

quoting an earlier decision of the National Labor Relations Board, distinguished the Board's limited authority over peaceful picketing and its ability under section 8(b)(1)(A) of the Taft-Hartley Act (29 U.S.C. 158(b)(1)(A)):

> . . . to insure that strikes and other organizational activities of employees were conducted peaceably by persuasion and propaganda and not by physical force, or threats of force, or economic reprisal. In that Section, Congress was aiming at means, not ends.

(Citation to quoted matter omitted.)

Third, where the occurrence of serious violence during the course of a labor dispute is not accompanied by demands for outright tribute payments, the Enmons decision requires that prosecutorial judgments consider fine questions of whether or not the labor goals sought by those persons making property demands are otherwise legitimate under federal labor law. However, federal labor law affords disparate treatment to different industries and economic interests which may often have no relationship to whether disputes in these industries may be accompanied by violent injury to persons and property. For example, the National Labor Relations Act, as amended, generally outlaws the making of economic demands on neutral employers who are not parties to the primary labor dispute, but exempts the garment and construction industries from those restrictions in certain cases. See, e.g., United States v. Stofsky, 409 F. Supp. 609, 614-617 (S.D.N.Y. 1973), aff'd. on other grounds, 527 F.2d 237 (2d Cir. 1975), cert. denied, 429 U.S. 819 (1976), dismissing a Hobbs Act prosecution in relation to a garment industry dispute.

Finally, the Enmons decision's central analysis of what constitutes a "wrongful" use of force, violence, or fear has given rise to attempts by Hobbs Act defendants to apply the reasoning of Enmons outside the labor-management context. We are aware of five United States Courts of Appeal that have indicated to date, in cases which did not involve labor disputes, that Enmons should be confined to its labor facts and not applied to cases involving the use of force or fear to settle contractual disputes among businessmen, to effect the collection of debts, and to solicit political contributions. United States v. Warledo, 557 F.2d 721, 728-30 (10th Cir. 1977); United States v. Cerilli, 603 F.2d 415, 419-420 (3rd Cir. 1979), cert. denied, 444 U.S. 1043 (1980); United States v. French, 628 F.2d 1069, 1075 (8th Cir. 1980), cert. denied, 449 U.S. 956 (1980); United States v. Porcaro, 648 F.2d 753, 760 (1st Cir. 1981); United States v. Zappola 677 F.2d 264,(2d Cir. 1982), cert. denied, sub nom. Melli v. United States, 103 S. Ct. 145 (1982). None of these cases has clearly laid the so-called "claim of right" defense to rest inasmuch as the courts also found alternative grounds for reaching their decisions in these cases. Neverthe-

less, we believe that the opinions in these cases do represent a definite trend in the federal courts toward the isolation of the Enmons decision to its labor context. As a result of this trend, the parties to labor-management disputes are afforded an exemption from the statute's broad proscription against violence which is not available to any other group in society. Legislation such as S. 2189 would make clear the position that the Hobbs Act punishes the actual or threatened use of force and violence which is calculated to obtain property without regard to whether or not the extortionist has a colorable claim to such property and without regard to his status as a labor representative, businessman, or private citizen.

Proposed Amendment of Subsection (b)(2) of the Act

The proposed definition of extortion in subsection (b)(2) of 18 U.S.C. 1951 clearly distinguishes the "use of actual or threatened force, violence, or fear thereof" from the "wrongful use of fear not involving force or violence" as independent predicates of prosecution. Because "fear" under the Hobbs Act has been interpreted in a long line of cases to reach extortionate conduct predicated solely on fear of economic loss or injury and because economic coercion by labor unions in the form of strikes and work stoppages during the course of otherwise peaceful labor disputes is recognized as an appropriate means of achieving legitimate labor objectives, S. 2189 makes clear that property demands in the form of wages for necessary labor and legitimate employment benefits could never become the subject of a Hobbs Act prosecution when such demands were backed only by peaceful strikes, work stoppages and picketing. Purely economic pressures would continue to be a basis for Hobbs Act extortion only where the alleged extortionist's claim to property was clearly "wrongful," as for example, in the case of demands for personal payoffs, wages for unnecessary labor, and payments prohibited by section 302 of the Taft-Hartley Act, 29 U.S.C. 186.

Proposed Subsection (c)(2) of the Act

S. 2189 also deals with the Enmons issue by adding a statement of Congressional intent in new subsection (c)(2) of 18 U.S.C. 1951 to the effect that prosecution may be undertaken in regard to conduct which takes place in the course of a legitimate business or labor dispute if such conduct involves "force, violence, or fear thereof." Extortionate conduct involving only fear of economic loss in the context of a legitimate business or labor dispute is not included in the statement and therefore would continue to be exempt from prosecution unless the alleged extortionist had a "wrongful" claim to the property demanded. This distinction is fully consistent with the separate treatment of violent and non-violent conduct by the bill's proposed definition of extortion.

Although the phrase "force, violence, or fear thereof" is the same as that used in the bill's proposed definition of extortion, we read the statement as being generally applicable to any violent offense under the Act as amended. For example, although we are unaware of any attempt to impose the reasoning of the Enmons decision on the robbery provision of the Act, we see no reason why any claim of right should be a defense to the use of actual or threatened violence to obtain a victim's personal property by robbery as opposed to extortion. Moreover, because the proposed definition of extortion in S. 2189 and the existing definition of robbery in subsection (b) of the Act would continue to apply the Hobbs Act to both the actual and the threatened use of violent conduct, we recommend that subsection (c)(2) include language which clearly indicates that the statement of intent shall apply to the "actual or threatened use of force, violence, or fear thereof."

The proposed statement of intent also contains language which in effect would permit federal prosecution under the Hobbs Act despite any asserted defense that the alleged conduct is also a violation of State or local law. This language is in accord with existing case law which rejects the argument that Congress did not intend to proscribe as a federal crime under the Hobbs Act conduct which it knew was already punishable under State robbery and extortion statutes. United States v. Culbert, supra.

Proposed Section (c)(3) of the Act

The statement of Congressional intent in proposed subsection (c)(3) of 18 U.S.C. 1951 that the Hobbs Act, as amended, should not be interpreted "to chill legitimate labor activity by authorizing federal prosecution for offenses occurring during a labor dispute which do not involve extortion" is consistent with the view of the Department of Justice that minor, incidental violence which sometimes occurs in the course of a labor dispute among those at a picket line is not ordinarily designed for extortive purposes, i.e., "the obtaining of property from another," but generally arises from the emotional intensity of the participants to the dispute. Without a demonstrated, purposeful linkage of those who demand property and the deliberate commission of acts of violence to enforce those demands, the government cannot support its burden of proof for extortion. See, e.g., United States v. Glasser, 443 F.2d 994, 1008-9 (2d Cir.), cert. denied, 404 U.S. 854 (1971), reversing conviction under the Hobbs Act with respect to particular acts of violence which the government was unable to prove were undertaken at the instruction or direction of the defendant, a union official, as part of his scheme to obtain property, but which may have been undertaken by union members on their own initiative.

Therefore, although it may be redundant as a technical matter to state in legislation such as S. 2189 the position that minor, incidental picket line violence is not subject to

prosecution as extortion, Assistant Attorney General Jonathan Rose has urged the Congress to express this exception to liability in the statute itself in order to allay the concerns of those who may feel that the statute might otherwise be applied to incidents of picket line violence and not just to clear cases of extortion.[1/] Statement of Jonathan C. Rose before the Senate Subcommittee on Criminal Law concerning S. 613, 97th Cong., 1st Sess., Dec. 10, 1981. Accordingly, we would recommend that in any legislation similar to S. 2189 in the present Congress, subsection (c) read as follows:

> "(c) Nothing in this section shall be construed as indicating an intent on the part of the Congress --
>
> "(3) to chill legitimate labor activity by authorizing Federal prosecution for offenses occurring during a labor dispute which do not involve extortion. This would preclude prosecution under this section of conduct which is incidental to peaceful picketing in the course of a legitimate labor dispute, as defined in section 2(9) of the National Labor Relations Act (29 U.S.C. 152(9)), and consists solely of minor bodily injury, or minor damage to property, or a threat of such minor injury or damage, and is not intended to extort property. Such excluded offenses shall continue to be subject to prosecution by State and local authorities having jurisdiction over them.".

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

Robert A. McConnell
Assistant Attorney General
Office of Legislative Affairs

1/ We assume that there would be no intent on the part of the drafters of S. 2189 to apply this exception for incidental picket line violence in factual situations which would support prosecution under the robbery provision of 18 U.S.C. 1951.