DRAFT

STATEMENT

OF

JOHN C. KEENEY
DEPUTY ASSISTANT ATTORNEY GENERAL
CRIMINAL DIVISION

UNITED STATES
DEPARTMENT OF JUSTICE

BEFORE THE

SUBCOMMITTEE ON CRIMINAL LAW

OF THE

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

ON

AMENDMENT OF THE HOBBS ACT SECTION 1951 OF TITLE 18, UNITED STATES CODE (S. 613)

DECEMBER 10, 1981

DRAFT

Summary

The Deparment of Justice recommends enactment of those portions of S. 613 which would overturn the decision in United States v. Enmons, 410 U.S. 396 (1973), and clarify the position, in the context of both labor disputes and disputes outside the field of labor relations, that the Hobbs Act (18 U.S.C. 1951) proscribes the actual or threatened use of force or violence to obtain property regardless of whether or not the extortionist has an otherwise lawful claim to such property. The Department of Justice supports the increase of maximum penalties which are proposed by S. 613, but recommends against enactment of that portion of the bill which would lower the maximum prison sentence from twenty to ten years in cases where death, bodily injury, or property damage in excess of $100,000 of aggregate value do not result. The Department of Justice recommends against enactment of those provisions of S. 613 which would create new crimes consisting of affecting interstate or foreign commerce by "inflicting, or threatening to inflict, death or serious bodily injury on any person," or by "willfully damaging to the extent of $2,500 or more any property, including real property, used for business purposes."

I am pleased to be here today to present the views of the Department of Justice on S. 613, a bill to amend the federal extortion and robbery statute, commonly referred to as the Hobbs Act, which is found at Section 1951 of Title 18, United States Code. The proposed amendments have considerable importance to the Administration's program to deal with violent crime in our society, a program which the Attorney General has designated as a matter of high priority for the Department of Justice. Because the bill seeks both to strengthen enforcement of the existing statute and to significantly increase federal enforcement responsibilities over conduct which is not currently covered by the Hobbs Act or other federal criminal law, I shall separately discuss each of the bill's proposals.

First, I shall address the Justice Department's reasons for supporting those portions of the bill which would overturn the decision in United States v. Enmons, 410 U.S. 396 (1973), and clarify the position, in the context of both labor disputes and in areas outside the field of labor relations, that the Hobbs Act punishes the actual or threatened use of force or violence to obtain property regardless of whether or not the extortionist could have obtained such property through the use of non-extortionate, legitimate means. Second, I will set forth the reasons why

personal enrichment or tribute rather than some economic benefit for the workers whom he represents; second, where the objective is "wrongful," such as personal tribute for the union official, but the means employed are apparently legitimate, for example, a peaceful strike; and third, where the objective is a legitimate labor goal, such as a wage increase, but violence or the threat of violence is a "wrongful" means of obtaining the goal.

The Enmons decision eliminated the applicability of the Hobbs Act to the last situation which I have described. Because the property which was demanded during the course of a violent, but otherwise lawful strike consisted of only higher wages and employment benefits and was a legitimate objective of collective bargaining, the Supreme Court found that the Hobbs Act's prohibitions on extortion did not apply to the facts in Enmons, even though the acts of violence charged included blowing up one of the employer's transformer substations. The Court stated at one point in its opinion that the word "wrongful" in the definition of extortion "has meaning in the Act only if it limits the statute's coverage to those instances where the obtaining of the property would itself be 'wrongful' because the alleged extortionist has no lawful claim to that property."

The effect of the decision was to leave the punishment of such extortionate conduct, where violence is undertaken in pursuit of a legitimate labor goal, to state and local law enforcement authorities. However, according to the Federal Bureau of Investigation, the Bureau's experience has shown that these authorities often lack either the resources or the will to vigorously investigate and prosecute these crimes. The Justice Department has undertaken to prosecute serious violent conduct in similar cases where other federal criminal statutes have specific application to the facts, as for example, in cases where labor union funds are used to finance the violence or where interstate travel or interstate facilities are used to further the extortionate scheme. However, the Enmons decision precludes the federal government from punishing the underlying activity directly by means of the Hobbs Act 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. Furthermore, although recent prosecutions under the Racketeer Influenced and Corrupt Organizations Act, commonly known as the RICO statute, have demonstrated considerable infiltration of

certain labor unions by organized criminal elements, use of the RICO statute requires proof of a pattern of racketeering activity, whereas the Hobbs Act is aimed at singular criminal acts.

Moreover, where the occurrence of serious violence during the course of a labor dispute is not accompanied by demands for outright tribute payments from an employer, the Enmons decision requires that prosecutorial judgments as to whether to proceed under the Hobbs Act consider fine questions of whether or not the labor goals sought by those persons making economic demands on the employer are otherwise legitimate under federal labor law. 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.

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 a labor-management context. We are aware of four 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. 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. In other words, the appellate courts have sustained the convictions in three of these cases by also finding sufficient evidence to conclude that the defendants did not in fact have lawful claims to the property which they sought to obtain. In one case which involved a defendant who was a public official, the appellate court concluded that the conviction could be sustained under that portion of the extortion statute which does not require the use of force, violence, or fear, namely, the public official's obtaining of property "under color of official right." Nevertheless, 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, labor groups are afforded an exemption from the statute's broad proscription against violence which is not available to any other group in society. We believe that this bill will make clear the position that the Hobbs Act punishes the use of force and violence to obtain any 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.

For the foregoing reasons, the Department of Justice supports the bill's proposed amendment of Subsection (b)(2) of the Act which would carefully distinguish extortion by the "use of actual or threatened force, violence, or fear thereof" and extortion by the "wrongful use of fear not involving force or violence." Fear under the Hobbs Act has been interpreted in a long line of cases to reach extortionate conduct which is predicated solely on fear of economic loss or injury. 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. Therefore, the proposed legislation 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 are 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 employer payments prohibited by Section 302 of the Taft-Hartley Act (29 U.S.C. 186). On the other hand, in both labor-related and non-labor-related situations, the added presence of the actual or threatened use of force or violence by a person making some property demand could give rise to Hobbs Act extortion regardless of whether the claimant was entitled to the property under contract or otherwise.

Similarly, the Justice Department supports the bill's proposed amendment of Subsection (c)(2) of the Act to include a statement of Congressional intent. The effect of the statement would be 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.

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 supports

the argument that Congress did intend to proscribe as a federal crime under the Hobbs Act conduct which it knew was already punishable under state robbery and extortion statutes.

We do recommend that the statement of Congressional intent in the bill be amended to include additional language, however, for the sake of clarity. Because the proposed definition of extortion in the bill 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."

Before, I discuss other provisions of the bill, I want to allay any apprehension that the Department of Justice is interested in prosecuting isolated, low-level violence which might occur during the course of an otherwise lawful and peaceful strike or labor dispute. We believe that the incidental injury which might arise from the single worker who throws a punch on a picket line or from the act of a single striker who deflates the tires on his employer's truck is more appropriately handled by state and local law enforcement authorities. The Department of Justice does not

have the investigative and prosecutorial resources to pursue isolated instances of minor violence.

Moreover, because the focus of the phrase "actual or threatened force, violence or fear threof" is directed at the victim's state of mind and standard of proof is whether a reasonable person under the circumstances would have consented to the extortionist's obtaining of his property, the injury to a single employee as the result of isolated, low-level violence on the picket line is not likely to present a prosecutable case of extortion where such incidental act of violence is not undertaken at the instruction of those persons who alone may be known as the claimants of the employer's property. Those who applaud the Enmons decision as a barrier against the federal government's unwarranted policing of the orderly conduct of every labor strike appear to assume that every spontaneous act of violence that arises during the heat of the strike will fully support a prosecutable case of extortion. But without a demonstrated, purposeful linkage of those who demand the employer's property and the deliberate commission of acts of violence to enforce those demands, the government cannot support its burden of proof for extortion. On the other hand, 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 to be able to effectively deal with those who would violently abuse their right to collectively bargain with their employers, a right which they enjoy as the result of the federal labor laws.

2. The New Predicate Offenses Proposed by S. 613.

The bill would also create new federal crimes, predicated independently of extortion or robbery, where the channels of interstate or foreign commerce are affected by violence constituting actual or threatened infliction of death or serious bodily injury, or actual damage to commerical property to the extent of $2,500 or more. The Department of Justice believes that these provisions would result in an extremely broad expansion of federal criminal enforcement responsibilities which is not justified and which could severely tax the resources of the Department.

The jurisdictional element of a Hobbs Act violation requires proof of either an actual, albeit de minimis, impact on interstate or foreign commerce, or in the absence of proof of an actual impact, a realistic probability of

some potential effect on such commerce. Accordingly, under these new provisions, the mere assault on a cab driver, who as part of his business occasionally makes interstate trips, or the destruction of his cab would become a federal crime. The federal government could be called on the prosecute such crimes which are now more appropriately handled by the local police.

We are aware that the enactment of these broadly worded new crimes would result in some positive benefits to federal law enforcement. However, these benefits are outweighed by the breadth of the new crimes. First, the Department has neither the investigative nor prosecutorial manpower to pursue every alleged violation which could arise under the statutory language. Second, although we do not question Congress' Constitutional authority to enact such crimes under its power to regulate commerce, there are delicate considerations of federalism involved here, so that federal investigation and prosecution of every alleged violation would not be appropriate. Because of these considerations, the Department of Justice has maintained a policy of limiting Hobbs Act robbery prosecutions, for example, to those situations in which organized criminal activity or some wide-ranging scheme is present. These same factors, lack of resources and consideration of federal-state

relations, would undoubtedly restrain the effective enforcement of these broader new federal crimes. Third, enactment of these new crimes is not necessary to remedy the specific problems raised by the Enmons decision.

For the above reasons, the Department of Justice recommends against enactment of the new crimes in subsections (a)(1) and (a)(2) of the bill.

3. New Sentencing Provisions

The Department of Justice supports the sentencing structure created by the bill insofar as it would raise the maximum sentence from the current fine of $10,000 or imprisonment for twenty years, or both, in accordance with statutorily prescribed degrees of actual injury to persons or property. Under the bill as it is presently worded, conviction could result in fine of $250,000 or imprisonment for any term of years or for life in cases where death results. In cases where bodily injury results or where property damage exceeds an aggregate value of $100,000, conviction could result in a fine of $250,000 or imprisonment up to twenty years, or both. We believe that this gradation of punishments is especially appropriate in view of the gradation of injuries which would be covered if

the bill is enacted in its entirety. However, the Justice Department supports this gradation of punishments even if the new crimes contained in the bill, which I have already discussed, are not enacted into law.

In cases where neither death, nor bodily injury, nor property damage exceeding an aggregate value of $100,000 results, the maximum penalty of imprisonment under the bill would be reduced by half to ten years. The Department of Justice recommends against lowering the maximum prison sentence in such cases. We believe that the maximum sentence of imprisonment should continue to be twenty years under these circumstances as in the case of any Hobbs Act violation under current law.

Sentencing schemes give signals to those who would commit crimes. They tell them how seriously society views those crimes. It is an unsound public policy to signal that society views these crimes only half as seriously as it did when the Hobbs Act was originally passed in 1946. Because the sentencing gradations in the bill are addressed to the actual infliction of property damage or bodily injury, examples of the crimes for which the maximum sentence would be reduced by the bill include all extortion by the wrongful use of fear of economic loss, all extortion by the

threatened use of force, violence, or fear thereof, all extortion "under color of official right" and all robberies where no bodily injury or property damage over $100,000 results, and all kidnapings for ransom where no bodily injury results and the jurisdictional elements of the federal kidnaping statute, 18 U.S.C. 1201, are not present.

Moreover, in certain jurisdictions, the Hobbs Act is a necessary supplement to the federal bank theft statute, 18 U.S.C. 2113, because it provides a means of prosecuting certain types of attempted bank extortions which are not prosecutable as bank robberies or bank larcenies. That is, in certain jurisdictions it has been held by the courts that the bank robbery statute, 18 U.S.C. 2113(a), which requires proof of a trespassory taking from the person or presence of another, does not apply to an extortionate plan which requires that a bank employee should deliver money to a specified "drop site" outside the bank and then return to the bank. Because the bank larceny statute, 18 U.S.C. 2113(b), has no provision covering attempts, the extortionist who does not succeed in obtaining the money under these circumstances must be prosecuted under the Hobbs Act in these jurisdictions. Because most bank extortion

cases do not involve bodily injury or actual property damage in excess of $100,000, there would be a wide disparity between the maximum penalty for Hobbs Act-bank extortion (ten years) which the bill contemplates in such cases and the maximum penalty for unarmed bank robbery (twenty years) which would be available in jurisdictions where the bank robbery statute could be used.

For the above reasons, the Department of Justice recommends that the reference to a maximum sentence of ten years found in S. 613 should be changed to retain the present maximum of twenty years, and especially with respect to those offenses presently covered by the Hobbs Act.

Finally, I call the Committee's attention to what we believe may have been a drafting oversight. You will note that the bill provides for a fine or imprisonment, or both a fine and imprisonment where bodily injury or property damage results. Where death results, however, the bill as presently worded provides for a fine or imprisonment in the alternative, but does not expressly provide for both. However, we see no reason why a conviction where death occurs should not also result in the possible imposition of <u>both</u> a fine and imprisonment. The Department of Justice recommends that the bill be amended to permit the imposition of both forms of punishment where death results.

In summary, for the reasons which I have discussed, the Department of Justice recommends that S. 613 be enacted with the changes and amendments which we have suggested. It is the Department's view that the bill and the proposed revisions which we have proposed will have the effect of strengthening the federal government's ability to protect the channels of commerce from significant acts of violence while at the same time maintaining an appropriate balance and division of law enforcement responsibilities between the federal and state governments.

INSIDE LABOR
RELEASE ON RECEIPT/DISPATCHED 11/18/81
BY VICTOR RIESEL

Kennedy Pledges Labor Chiefs He Will
Fight New Bills on Picket Violence

NEW YORK -- When the greatest massing of virtually all the nation's top labor chiefs -- delegates to their national centennial convention -- exploded into a frenzied, standing continuous roar of cheers for Sen. Ed Kennedy, it wasn't because he told them "now that the '80s have come, you and I are the keepers of that dream" of his late brother Jack. They gave him the only mid-speech convention ovation because he pledged to fight alongside them against a congressional bill which would make picket-line violence a federal criminal offense.

He lit the fuse of the emotional bomb which has been on the delegates' tables and in national and local union headquarters everywhere.

Pounding the podium he told the 900 delegates that the federal criminal code shouldn't be used against them. They knew what he meant. He was referring to bills S-613 and H-450.

S-613 would amend the 47-year-old Hobbs anti-extortion law to make any picket-line disturbance or threat of violence a federal crime under which strikers and their officials would be felons if convicted. This would put the federal government into policing strikes.

Kennedy added he would fight any effort to put unions under anti-trust regulations and he "will continue to speak and stand for the rights of trade unionists whatever the issue, whatever the cause, whatever the political risks in the months and years ahead."

"Teddy" is a ranking member of the Senate Judiciary Committee and thus can slow the drive to put labor under the Hobbs Act on which the subcommittee on criminal law will begin hearings Dec. 10. The AFL-CIO and the Teamsters have launched a national campaign against the bill. Thousands of rank-and-filers are being organized to flood the Congress. Though the battle with the bill's sponsors has gone practically unreported, it's (SET ITAL) the (END ITAL) sizzling issue inside labor.

The bill isn't an amendment to the Criminal Code which has taken Congress 15 years to rewrite and is about to be voted on. The picketing-violence bill would get lost among 120 proposed amendments, including the death penalty. So the anti-picket-line-violence forces, which include the National Association of Manufacturers, the National Right to Work Committee and Construction Contractors, are backing the separate S-613.

The Teamsters Brotherhood, fighting it intensely, puts their reasons most tersely:

"The penalty scheme of S-613 is severe: if death results (from picket-line violence -- VR), an automatic fine of $250,000 or up to life imprisonment. If bodily injury results or property damage exceeds $100,000, an automatic fine of $250,000 or up to 20 years of imprisonment or both.

"In all other cases, a fine of $100,000 or up to 10 years imprisonment or both."

The AFL-CIO is fighting S-613 with a hard-hitting propaganda campaign. The drive against the proposed act soon will reach the whirlwind strength of the unions' offensive for what they called "Labor Law Reform" several years ago. They lost that one by one vote. Today the Senate is controlled by their political opponents and the House is loaded with conservative Democrats.

Federalization of laws against picket-line violence, making even melees or blocking of plant gates extortionist felonies, could have catastrophic impact on the nation's 60,000 locals and about 110 national unions.

National Labor Relations Board records are filled with "cease and desist" decisions ordering unions to end blocking of plant entrances, carpeting them with nails, attacking non-striking employees, threatening management executives and terrorizing homes of non-sympathizers.

These NLRB directives have been issued against unions running the political and philosophical spectrum from the most prominent liberal unions to the toughest hardhats. Some violence has been gory. Some has destroyed equipment worth millions of dollars.

Strikes are volatile. And S-613 would make national labor officials responsible for melees, arson or worse. It could reach into the highest national labor headquarters, which call the proposed bills, introduced by Sen. Strom Thurmond and Rep. Kenneth Robinson, "union busting." These are the words Kennedy used to swing the delegates into their cheering spree.

The bills' backers say it's time to end all picket-line violence and only the federal government can do it. Both sides say that the bills might be passed in this 97th Congress. The drive to put labor under the Hobbs Anti-Extortion Act is the top legislative priority of the National Right to Work Committee, which has been battling the union shop for years.

The showdown is due early next year. So both sides are fighting furiously. The Right to Work Committee has documentation of bloody violence. Union campaigners deny such violence frequently is part of strike strategy.

For years labor did come under the anti-extortion act. But the Supreme Court, in the 1973 Enmons case, ruled that violence during legitimate strikes for wages and benefits wasn't a federal offense. In the Enmons case men were accused of shooting high-powered rifles at utility transformers. But the Supreme Court freed them.

Now critics of unions want it all back in the Hobbs Act -- charging that violence never is legitimate.

FIELD NEWSPAPER SYNDICATE gjk/y

THE WHITE HOUSE

WASHINGTON

December 8, 1981

MEMORANDUM FOR: JAMES A. BAKER, III

FROM: ELIZABETH H. DOLE

SUBJECT: Teamsters/Administration Position on Hobbs Act

We have just received a call from the Teamsters to informally warn us that they are issuing a press release blasting us on our Hobbs Act position. (They, too, have seen an advance copy of the Justice Department's testimony.) We requested that they hold off any news releases until tomorrow morning after they have talked to us and they have agreed to do so.

We are also informed that the Building and Construction unions have scheduled an emergency meeting at 5:00 p.m. this evening as a result of our Hobbs Act testimony.

We must act immediately to head off this problem.

United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, D.C. 20510

Re: Hobbs Act

October 8, 1981

Mr. Lloyd McBride, International President
United Steelworkers of America
Five Gateway Center
Pittsburgh, Pennsylvania 15222

Dear Mr. McBride:

I appreciate very much receiving your letter of August 14, 1981, expressing your views on behalf of the United Steelworkers of America concerning Federal legislation I introduced (S. 613) to prohibit any person from using extortion or serious violence to obstruct, delay, or affect commerce or the movement of any article or commodity in commerce. I apologize for the delay in this response, but I thought it important to give your position the personal time and attention it deserved.

Your letter raises a number of issues that deserve a response.

In the first instance, your appeal to me to oppose the bill overlooks our unambiguous disagreement on the appropriate Federal involvement in, and response to, the serious disruption of commerce by violence.

Secondly, your letter is misleading in at least two respects. It implies that the major thrust of the legislation is to reach minor spontaneous "picket line altercations", citing the Enmons case as holding that the Hobbs Act did not apply to "minor acts of violence or threats of violence which occur during legitimate strikes. . .". As you know, the Enmons case involved extremely serious non-picket line violence and enthroned an irrational rule in Federal extortion law that would, for example, permit the kidnapping and execution of a company president to obtain, in the words of your letter, improved wages, fringe benefits, and working conditions during a legitimate strike. If Federal jurisdiction over commerce interrupting extortion by "minor" violence or threats of such violence is objectionable, I would be more than willing to accept--I would offer--an amendment to S. 613 excluding such conduct from the scope of the measure.

Finally, the implication in your letter that the bill is not even-handed is simply not true. It applies to any person who obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery, extortion, or serious violence to person or property. The bill would not cover agents of either

the employer or employee in a minor picket line melee provoked by anger because there is no extortionate intent involved. Moreover, it would cover agents of both the employer and employee who obstruct commerce by serious personal injury or property destruction. If an imbalance occurs under the bill, it is inherent in the nature of labor disputes and the nature of robbery and extortion as property-taking offenses. That is precisely the reason S. 613 contains new provisions to cover non-property-taking serious violence to person and property that disrupts commerce.

I have no desire to discriminate. I would, if it were in my power to do so, put an absolute stop without any compromise to the disruption of commerce in this country by intimidation and violence, whatever its source. If the bill is deficient in meeting employer violence, I welcome suggestions on how to cure any such defect.

Again, let me thank you for providing me with the opportunity to express my views on this extremely important subject. To promote better understanding of this issue, I wonder if it might not be possible for you to publish your letter and my response together in the United Steelworkers newsletter to the membership and I will reciprocate by placing them in the Congressional Record.

With kindest regards and best wishes,

Sincerely,

Strom Thurmond

Strom Thurmond
Chairman

ST:jw

cc: All Senators
All Representatives

United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, D.C. 20510

File to Hobbs Act

October 8, 1981

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United Steelworkers of America
Five Gateway Center
Pittsburgh, Pennsylvania 15222

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With kindest regards and best wishes,

Sincerely,

Strom Thurmond

Strom Thurmond
Chairman

ST:jw

cc: All Senators
All Representatives

THE WHITE HOUSE

WASHINGTON

September 24, 1981

MEMORANDUM FOR ELIZABETH H. DOLE

VIA: Red Cavaney/Jack Burgess

FM: Bob Bonitati

RE: Update on The Hobbs Act, Alaskan Oil Exports and OSHA Revisions

HOBBS ACT

As yet, the Administration has not taken a position on this issue. I have talked with several of our policy people (John McClaughry, Don Moran, Annelise Anderson, Mike Uhlmann) concerning the implications of getting into the issue and believe that a "hold" has been placed on the OMB process for determining a position.

ALASKA OIL EMPORTS

This issue is likely to come before the Cabinet Council on Natural Resources in early October.

OSHA Revisions

The attached clip from today's Wall Street Journal provides the most updated story on the OSHA revisions.

While one can fully understand the rationale for targetting resources, the PR implications of eliminating worker safety inspections needs little explanation.

THE WHITE HOUSE

WASHINGTON

December 7, 1981

MEMORANDUM FOR MIKE UHLMANN

FROM: BOB BONITATI

SUBJECT: President's Comments on the Hobbs Act to AFL-CIO Executive Council

During last Wednesday's meeting with the AFL-CIO Executive Council, Lane Kirkland raised the issue of the proposed amendment to the Hobbs Act.

According to the notes we have, Kirkland stated that the amendment to the Hobbs Act now pending before Congress represented a "direct action on trade unions" and would allow the federal government to interfere in what is now a state and local police matter regarding offenses committed on the picket line by strikers. Kirkland stated that he viewed this amendment as a "desire to intimidate union activities that brought workers the advantages of collective bargaining."

The President responded directly to Kirkland's discussion of the Hobbs Act amendment, stating that while a formal position had not been taken, per se, we have no evidence that these matters shouldn't be handled at the state and local level. He then moved on to discussing other subjects.

cc: E. Dole
F. Fielding
H. Ellingwood
T. Garrett

Status - Labor input
Ray Denison L
Meeting w. Justice & AFL -
Hobbs Act -
Avoid confrontation.
Hearings Nov. 4 -
1 day -
For Rose consumption
& let lie

THE WHITE HOUSE

WASHINGTON

October 5, 1981

MEMORANDUM FOR ELIZABETH H. DOLE

VIA: Red Cavaney / Jack Burgess

FM: Bob Bonitati

RE: The Hobbs Act

The Administration is now in the process of taking a position on S. 613, a bill to amend the Hobbs Act. (I have attached an OMB status report on the bill.)

The effect of S. 613 would be to make violence (or the threat of violence) that might occur during a legitimate strike subject to federal prosecution rather than state or local law as is now the case.

While there does not appear to be any evidence that union violence is a major problem in this country, S. 613 is being vigorously pushed by the National Right to Work Committee. Because the National Right to Work Committee had made enactment of S. 613 such a national cause, the leadership of organized labor feels compelled to defend their turf. Consequently, the issue has become a rather visible and symbolic one.

The Teamsters are strongly opposed to S. 613, the AFL-CIO is opposed, and most unions have been carrying strong editorials attacking this legislation.

Frankly, I don't think enactment of S. 613 will curb union violence (as the RTW Committee hopes) nor will it have the "chilling" effect on collective bargaining claimed by organized labor leaders. Emotion has overtaken reality. Unfortunately, we are now dealing in symbolism.

From the perspective of our relations with organized labor, I would hope that the Administration will seriously consider the political implications of its position on what has now become a "gut labor issue".

Should we endorse S. 613, we would be perceived as linking up with what labor considers the anti-labor forces on the Hill.

THE WHITE HOUSE

WASHINGTON

October 15, 1981

MEMORANDUM FOR: MIKE UHLMANN

FROM: ELIZABETH H. DOLE

SUBJECT: Hobbs Act

As you know, we would like to arrange a White House meeting with some labor people on the Hobbs Act. Hopefully our position will be such that we can avoid a needless confrontation.

Bob Bonitati tells me that you are "lining up the ducks" at Justice and Labor for such a meeting and that he is awaiting your go-ahead.

From the attached memo I get the impression that Justice does not endorse the central portion of the bill which is so objectionable to organized labor.

I'd like to move on this issue and the meeting and will give you a call tomorrow to get an update on its status.

Mike Uhlman

Nov. 4 hearing

10/27

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

September 25, 1981

MEMORANDUM TO: Ed Harper

FROM: James M. Frey

SUBJECT: Your Query on Status of S. 613, Amending the Hobbs Act to Make Violence during a Strike Subject to Federal Prosecution

Because of Frank Fitzsimmons' letter to the President on S. 613, we requested the views of Justice, Labor, NLRB, and Commerce.

Justice's response, in the form of a letter to Chairman Thurmond, while favoring certain portions of the bill, recommends against its central feature, on the grounds that any benefits would be outweighed by the breadth of the new Federal crimes, inadequacy of Justice investigative and prosecutorial manpower, and considerations of Federal-State relations. A copy of the proposed Justice report, which we have not cleared, is attached.

NLRB defers to Justice, but points out that the bill would represent a "major change in the salutary policy of generally permitting local, rather than Federal, authorities to handle such violence in the first instance."

Commerce also defers to Justice. Labor has not yet responded to our views request.

Attachment

Office of the Assistant Attorney General Washington, D.C. 20530

Honorable Strom Thurmond
Chairman, Committee on the Judiciary
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

This is a response to your request for the views of the Department of Justice on S.613, a bill "To amend section 1951 of the United States Code, and for other purposes."

The Department of Justice recommends enactment of those portions of the bill which would nullify the decision in United States v. Enmons, 410 U.S. 396 (1973), and clarify the position, in the context of both labor 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. On the other hand, the Department of Justice recommends against enactment of those provisions of the bill which would create new violations for affecting interstate or foreign commerce by "inflicting or threatening to inflict, death or serious bodily injury on any person," or by "willfully damaging to the extent of $2,500 or more any property, including real property, used for business purposes."

Finally, the Department of Justice supports the increase of maximum penalties envisioned by the bill, but recommends against enactment of that portion of the bill which would lower the maximum prison sentence in certain cases to ten years. The maximum sentence in such cases should be twenty years as in the case of any Hobbs Act violation under current law.

DISCUSSION

In United States v. Enmons, 410 U.S. 396 (1973), the Supreme Court, by a five-to-four vote, held that the Hobbs Act, 18 U.S.C. 1951, which punishes extortionate activities that affect interstate or foreign commerce, does not reach the actual or threatened use of violence directed at the obtaining of "legitimate labor objectives" or economic benefits which can otherwise be lawfully obtained by collective bargaining. The Court reasoned that the word

"wrongful" in the statutory term, "wrongful use of actual or threatened use of force, violence, or fear," had meaning only if it were interpreted to limit the statute's coverage to those instances where the alleged extortionist had no lawful claim to the property which he sought to obtain. In the context of labor-management disputes, the Court specifically noted violent demands on employers for personal payoffs or wages for unnecessary and fictitious services as examples of "wrongful" claims by union officials. However, since the property demanded and sought to be obtained in Enmons--higher wages and employment benefits during the course of violent, but otherwise lawful strike--was a legitimate objective of collective bargaining, the Court found that the Act's prohibitions on extortion did not apply to the facts in Enmons.

Although the Court's holding in Enmons relied heavily on the majority's reading of the legislative history of the Hobbs Act and the labor-management background surrounding its passage in 1946, the decision's central analysis of the term "wrongful use of actual or threatened force, violence or fear" and its purported confinement to situations where the alleged extortionist makes "wrongful" claims upon his victim have given rise to attempts to apply the reasoning of Enmons in Hobbs Act prosecutions outside a labor-management context. To date such attempts have been substantially unsuccessful. 1/ Accordingly, the Enmons decision's

1/ See, e.g., United States v. Warledo, 557 F.2d 721, 729-730 (10th Cir. 1977), which disallowed a "claim of right" defense for extortionate threats by a private group of individuals against on a commercial enterprise for alleged past wrongs; United States v. Cerilli, 603 F.2d 415, 418-420 (3rd Cir. 1979), cert. denied, 444 U.S. 1043 (1980), which declined to apply the Enmons rationale in the context of public officials' extortionate demands for political contributions to which they had no "lawful claim; see also United States v. Clemente, slip. op. 1646-1652 (2d Cir. Feb. 26, 1981), petition for cert. filed, May 22, 1981 (No. 80-1972), where the conviction of a defendant, who was not a union official, but who extorted payments from waterfront employers by use of his power over union officials, was upheld on the ground that he had no lawful claim to such payments. Although the court distinguished "an influence peddler who is lawfully entitled to receive compensation for his legitimate services from persons . . . who exact tribute from their victims in exchange for agreements either to exercise or refrain from exercising the corrupt influence they have acquired," the case was decided in terms of the defendant's influence in labor relations. Slip. op. 1650-51. (footnote cont. on next page)

narrow construction of the Hobbs Act in a labor-management context is arguably at odds with the broader application of the statute in non-labor contexts.

The Federal Bureau of Investigation advises that the Enmons decision has hampered its ability to deal with labor violence and racketeering. Although recent prosecutions under the RICO statute, 18 U.S.C. 1961-1968, have demonstrated considerable infiltration of certain labor unions by organized criminal elements, use of the RICO statute requires proof of a pattern of racketeering activity, whereas the Hobbs Act is aimed at singular criminal acts. When an FBI office must decline to consider a complaint of labor violence and extortion because of Enmons, its alternative is referral of the case to local law enforcement authorities. According to the FBI, these authorities may often lack either the resources or the will to vigorously investigate and prosecute these crimes.

It is believed that the Enmons decision has also had a significant impact on prosecutorial decisions whether to invoke federal criminal sanctions in labor-management disputes even in those situations where the accompanying

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(cont. footnote 1)

But see, United States v. French, 628 F.2d 1069, 1075 (8th Cir.), cert. denied, ___ U.S. ___, 101 S.Ct. 364 (1980), where a public official's receipt of money not due his office was analyzed in terms of a wrongful taking of money to which the extortionist had no rightful claim; see also, United States v. Baudin, 486 F. Supp. 403, 405 (S.D.N.Y. 1980), where a dissatisfied author was alleged to have threatened physical harm to his publisher's place of business in pursuit of a claim for the re-editing and republication of his work under the terms of a publishing contract. Although the court factually distinguished the case from the labor dispute in Enmons, the court gave some credence to the Enmons defense by upholding the indictment on the ground that the defendant had failed to assert a claim of right which was "manifest or beyond dispute."

violence reaches aggravated proportions. 2/ Moreover, as a result of the Enmons decision, the success of Hobbs Act prosecutions in connection with labor disputes may depend on the disparate treatment afforded different industries and economic interests by federal labor law. These differences often have no relationship to whether disputes in these industries may be accompanied by violent injury to persons and property. 3/

2/ See, e.g., United States v. Thordarson, 487 F. Supp. 991 (C.D. Cal. 1980), rev'd, No. 80-1239 (9th Cir. filed May 20, 1981), which involved the federal prosecution of arson and violence in connection with labor organizing activity. Relying on the Enmons decision, the district court in that case extended the reasoning of Enmons outside the Hobbs Act and held that the violence was exempt from any federal prosecution under the statutes invoked in the case, i.e. 18 U.S.C. 844(i) (damage by explosives); 18 U.S.C. 1952 (interstate travel to carry on arson); 18 U.S.C. 1962 (racketeering). The district court's dismissal of the indictment was recently reversed on appeal.

3/ See, United States v. Stofsky, 409 F. Supp. 609, 614-617 (S.D.N.Y. 1973), aff'd on other grounds, 527 F.2d 237 (2nd Cir. 1975), cert. denied, 429 U.S. 819 (1976), where union officials were charged with the wrongful use of fear of physical harm to persons and property in connection with a scheme to close down non-union furrier businesses, which were accepting sub-contract work from union shops, and to thereby deprive the non-union shops of property in the form of their right to solicit business and operate their shops free from wrongful interference. The government argued that such pressure against neutral third parties in a labor dispute was an unfair labor practice under the Taft-Hartley Act and therefore not in pursuit of a legitimate labor goal. However, prosecution ultimately could not be pursued under this theory in light of the district court's observation that as valid as the government's argument might be with respect to any other industry, the Taft-Hartley Act's exemption of the garment industry from its secondary boycott provisions nullified the "wrongful" nature of the alleged claims on the non-union shops. See also, United States v. Jacobs, 543 F.2d 18 (7th Cir. 1976), cert. denied, 431 U.S. 929, noting a distinction between legitimate demands for recognition by a union authorized to represent the required number of employees and similar demands on behalf of a union without the requisite authority and showing of interest among employees for purposes of an investigation under §1951.

DEFINITION OF EXTORTION

The bill would reverse the result of the Enmons decision and also clarify the position, in contexts outside the labor relations field, 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 has endorsed similar proposals in the past in connection with the Federal Criminal Code. 4/ With respect to extortion, S. 613 accomplishes this result in the following two ways.

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

First, the proposed definition of extortion 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. This separate treatment of force and violence is also consistent with similar proposals endorsed by the Department of Justice in the past. 5/ 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, the proposed legislation 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

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4/ See, e.g., S. 1400, 93rd Cong., 1st. Sess., Section 1722 (1973), which eliminated any reference to the "wrongful" use of force in the definition of extortion.

5/ See, e.g., S. 1400, 93rd Cong., 1st Sess., Section 1723 (1973), which defined the crime of "criminal coercion" separately from extortion and predicated the coercive means, in part, on "wrongfully subject[ing] any person to economic loss or injury to his business or profession."

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 employer payments prohibited by Section 302 of the Taft-Hartley Act (29 U.S.C. 186). On the other hand, in both labor-related and non-labor-related situations, the actual or threatened use of force and violence by a person making some property demand could give rise to Hobbs Act extortion regardless of whether the claimant was entitled to the property under contract or otherwise. 6/

Proposed Subsection (c)(2) of the Act

Second, the bill deals with the Enmons issue by adding a statement of Congressional intent 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

6/ See, e.g., United States v. DiGregorio, 605 F.2d 1184 (1st Cir.), cert. denied, 444 U.S. 937 (1979), which upheld a Hobbs Act conviction predicated on the "settlement" of an alleged contract dispute between two businessmen, while the dispute was in litigation, by means of a physical beating, robbery, and death threats directed at one party by the other litigant. The Enmons decision was not an issue in the case.

definition of extortion in the bill 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. 7/

NEW PREDICATE OFFENSES: Proposed Subsections (a)(1) and (2) of the Act

The bill would also create new federal crimes, predicated independently of extortion or robbery, where the channels of interstate or foreign commerce are affected by violence constituting actual or threatened infliction of death or serious bodily injury, or actual damage to commerical property to the extent of $2,500 or more. The Department of Justice believes that this provision would result in an extremely broad expansion of federal criminal enforcement responsibilities which is not justified and which could severely tax the resources of the Department.

The jurisdictional element of a Hobbs Act violation requires proof of either an actual, albeit de minimis, impact on interstate or foreign commerce, or in the absence of proof of an actual impact, a realistic probability of some potential effect on such commerce. 8/ Accordingly, under these new provisions, the mere assault on a cab

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7/ See United States v. Culbert, 435 U.S. 371 (1978), which held that Congress did not intend to limit the use of the robbery and extortion provisions to an undefined category of conduct termed "racketeering."

8/ See e.g., United States v. Glynn, 627 F.2d 39, 41-43 (7th Cir. 1980) and cases cited therein.

driver, who as part of his business occasionally makes interstate trips, or the destruction of his cab would become a federal crime. The federal government could be called on to prosecute such crimes which are now more appropriately handled by the local police.

We are aware that the enactment of these broadly worded new crimes would result in some positive benefits to federal law enforcement. In the context of both labor-management and other commercial disputes, it is sometimes difficult to demonstrate that particular acts of violence, although identified to particular individuals, were in fact undertaken at the instruction of the central directors of the extortionate scheme who alone may be known to the victim as the claimants of his property. Without a demonstrated linkage of these individuals and their respective acts, the government cannot sustain its burden of proof for extortion despite the occurrence of significant violent acts which have a marked effect on the channels of commerce. 9/

Similarly, under the Extortionate Credit Transaction (ECT) statute, 18 U.S.C. 891-896, frequently the victim may be intimidated and refuse to testify. Thus, it may be difficult to prove certain elements such as the financial payments arrangement that was an essential part of the overall extortion scheme. However, eyewitnesses may have seen concrete acts of violence or heard verbal threats, and because they are disinterested parties, may not be intimidated and may be willing to testify. Where a prosecution would be impossible under the ECT statute, a case could be made under the new violation which has more limited concrete elements.

However, these benefits are outweighed by the breadth of the new crimes. First, the Department has neither the investigative nor prosecutorial manpower to pursue every alleged violation which could arise under the statutory language. Second, although we do not question Congress' Constitutional authority to enact such crimes

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9/ See, e.g. United States v. Glasser, 443 F.2d 994, 1009 (2d Cir.), cert. denied, 404 U.S. 854 (1971), and discussion of particular acts of violence, directed at non-union glass installations, which certain lesser members of an extortion conspiracy undertook at their own initiative and which were therefore viewed by the court as having been committed without the requisite extortionate intent.

under its power to regulate commerce, there are delicate considerations of federalism involved here, so that federal investigation and prosecution of every alleged violation would not be appropriate. Because of these considerations, the Department of Justice has maintained a policy of limiting Hobbs Act robbery prosecutions, for example, to those situations in which organized criminal activity or some wide-ranging scheme is present. These same factors, lack of resources and consideration of federal-state relations, would undoubtedly restrain the effective enforcement of these broader new federal crimes. Third, enactment of these new crimes is not necessary to remedy the specific problems raised by the Enmons decision.

For the above reasons, the Department of Justice recommends against enactment of the new crimes in subsections (a)(a)(1) and (a)(a)(2) of the bill.

NEW SENTENCING PROVISIONS:
Proposed Subsection (a) of the Act

The Department of Justice supports the sentencing structure created by the bill insofar as it would raise the maximum sentence from the current fine of $10,000 or imprisonment for twenty years, or both, in accordance with statutorily prescribed degrees of actual injury to persons or property. Under the bill as it is presently worded, conviction could result in a fine of $250,000 or imprisonment for any term of years or for life in cases where death results. In cases where bodily injury results or where property damage exceeds an aggregate value of $100,000, conviction could result in a fine of $250,000 or imprisonment up to twenty years, or both. We believe that the gradation of punishments is appropriate in view of the gradation of injuries which are covered if the bill is enacted in its entirety. However, we see no reason why a conviction where death occurs should not also result in the possible imposition of both a fine and imprisonment. The Department of Justice recommends that the bill be amended to permit the imposition of both forms of punishment where death results.

In cases where neither death, nor bodily injury, nor property damage exceeding an aggregate value of $100,000 results, the maximum penalty of imprisonment under the bill would be reduced by half to ten years. The Department of Justice recommends against lowering the maximum prison sentence in such cases. The maximum sentence of

imprisonment should continue to the twenty years under these circumstances as in the case of any Hobbs Act violation under current law.

Sentencing schemes give signals to those who would commit crimes. They tell them how seriously society views those crimes. It is an unsound public policy to signal that society views these crimes only half as seriously as it did when the Hobbs Act was originally passed in 1946. Among the crimes for which the maximum sentence would be reduced by the bill are all extortions by the wrongful use of fear of economic loss, all extortions by the threatened use of force, violence, or fear thereof, all robberies where no bodily injury or property damage over $100,000 results, and all kidnapings for ransom where no bodily injury results and the jurisdictional elements of the federal kidnaping statute, 18 U.S.C. 1201, are not present.

Moreover, in certain jurisdictions, the Hobbs Act is a necessary supplement to the federal bank theft statute, 18 U.S.C. 2113, because it provides a means of prosecuting certain types of attempted bank extortions which are not prosecutable as bank robberies or bank larcenies. 10/ Because most bank extortions do not involve bodily injury, there would be a wide disparity in these jurisdictions between the maximum penalties for unarmed bank robbery (twenty years) and the Hobbs Act-bank extortion (ten years) which the bill contemplates in cases where no bodily injury results.

10/ See, e.g., United States v. Culbert, 548 F.2d 1355, 1356 (1977), rev'd on other grounds, 435 U.S. 371, on remand, 581 F.2d 799 (1978), where a bank robbery conviction was reversed because the extortionate plan, that a bank employee should deliver money to a specified "drop site" and then return to the bank, did not contemplate a trespassory taking "from the person or presence of" the bank employee for purposes of 18 U.S.C. 2113(a). Contra, United States v. Allessandrello, 637 F.2d 131, 145 (3d Cir. 1980), and cases cited therein.

As Judge Carter noted in his dissenting opinion in Culbert, supra at 548 F.2d 1359, the extortionist who does not succeed in obtaining the money from the remote location cannot be prosecuted under federal law without the Hobbs Act because the bank larceny statute, 18 U.S.C. 2113(b), does not include an attempt provision.

Finally, if the bill is enacted in its entirety, every case which will be a violation of the Hobbs Act, as amended, will involve the potential for serious harm even where no bodily injury or aggravated property damage results. Extortion, robbery, assault, and willful destruction of property are all serious affronts to the mental well-being and personal dignity of the intended victim.

For the above reasons, the Department of Justice recommends that the maximum sentence of ten years found in S. 613 should be changed to retain the present maximum of twenty years, at least with respect to those offenses presently covered by the Hobbs Act.

The Department of Justice recommends enactment of this legislation with the changes and amendments suggested above. The Office of Management and Budget has advised this Department that there is no objection to submission of this report from the standpoint of the Administration's program.

Sincerely,

Robert A. McConnell
Assistant Attorney General
Office of Legislative Affairs

Red - Getting update

THE WHITE HOUSE

WASHINGTON

September 16, 1981

MEMORANDUM FOR ELIZABETH H. DOLE

VIA: Red Cavaney/Jack Burgess

FM: Bob Bonitati

RE: The Hobbs Act

The Administration is now in the process of taking a position on S. 613, a bill to amend the Hobbs Act.

The effect of S. 613 would be to make violence (or the threat of violence) that might occur during a legitimate strike subject to federal prosecution rather than state or local law as is now the case.

While there does not appear to be any evidence that union violence is a major problem in this country, S. 613 is being vigorously pushed by the National Right to Work Committee. Because the National Right to Work Committee had made enactment of S. 613 such a national cause, the leadership of organized labor feels compelled to defend their turf. Consequently, the issue has become a rather visible and symbolic one.

The Teamsters are strongly opposed to S. 613 (see attached), the AFL-CIO is opposed, and most unions have been carrying strong editorials attacking this legislation.

Frankly, I don't think enactment of S. 613 will curb union violence (as the RTW Committee hopes) nor will it have the "chilling" effect on collective bargaining claimed by organized labor leaders. Emotion has overtaken reality. Unfortunately, we are now dealing in symbolism.

From the perspective of our relations with organized labor, I would hope that the Administration will seriously consider the political implications of its position on what has now become a "gut labor issue".

Should we endorse S. 613, we would be perceived as linking up with what labor considers the anti-labor forces on the Hill.

cc: Max Friedersdorf

INTERNATIONAL BROTHERHOOD OF TEAMSTERS
CHAUFFEURS • WAREHOUSEMEN & HELPERS
OF AMERICA
25 LOUISIANA AVENUE, N.W. • WASHINGTON, D.C. 20001

OFFICE OF
• FRANK E. FITZSIMMONS •
GENERAL PRESIDENT

March 20, 1981

The President
The White House
Washington, D.C. 20500

014972

Dear Mr. President:

On March 3, Senators Thurmond, East and Hatch introduced S.613, a bill to paralyze labor-management relations in this country. We urge you to oppose this bill.

In labor-management disputes, hasty action is sometimes taken by both sides. In some instances, these actions constitute criminal activity under state or local law, and they are dealt with under the local statutes.

Under S.613 however, property "willfully" damaged to the extent of $2,500.00 or more would subject an individual to an absolute fine of $100,000 and imprisonment for up to ten years.

Mr. President, the law in this area is well settled. If a truly extortionate demand is made by either a labor or management official - demanding fictitious wages or unwanted help, for example - the federal extortion statute applies. However, if harm comes as a result of seeking legitimate collective bargaining objectives, local statutes apply.

On the other hand, S.613 proposes to make virtually any offense of personal injury or property damage, simply because it occurs during a labor-management dispute, a violation of the federal statute - with penalties far in excess of comparable state laws.

Moreover, this bill appears a complete reversal of your policy to ease the tensions between the federal government and state and local governments.

That is, the proposal advocated by Senators Thurmond, East and Hatch specifically directs the federal government to exclude local considerations when asserting jurisdiction in this area.

Finally, with the massive penalty scheme contemplated by this measure, our members will, in effect, be facing a national no-strike law because they can not and will not exercise their legitimate right to strike if faced with this jeopardy.

Mr. President, we urge you and your Administration to actively oppose S.613 because it will produce instability in labor-management relations; raise serious questions in the federal-state relationship; and subject our members to a national no-strike law.

Thank you for your consideration in this matter.

Sincerely,

Frank E. Fitzsimmons
General President

FEF:bb

THE WHITE HOUSE

WASHINGTON

May 1, 1981

Dear Mr. Fitzsimmons:

Thank you for your letter of March 20, 1981 to President Reagan concerning S. 631, a bill that would amend section 1951 of Title 18 of the United States Code concerning the imposition of criminal penalties for interference with commerce through threats or violence.

I am advised that the Office of Management and Budget has requested the advice of the Departments of Justice and Labor, and other concerned agencies regarding S. 631, and that the bill is under review within the Administration.

You can be assured that your views on S. 631 will be fully considered by the Administration.

Very sincerely,

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nt to

Red - Do we know what Justice + Labor responded? This was May 1

Next page says OMB report Sept 18

Mr. Frank E.
General Pres
Internationa
Teamsters
25 Louisiana
Washington,

THE WHITE HOUSE

WASHINGTON

September 14, 1981

MEMORANDUM FOR ELIZABETH H. DOLE/MAX FRIEDERSDORF

FM: Bob Bonitati

RE: Hobbs Act

Ray Dennison, Legislative Director for the AFL-CIO, has requested a meeting with the two of you to talk about legislative attempts to amend the Hobbs Act.

Amending the Hobbs Act has become a symbolic issue to the labor movement, primarily because it is being pushed by the National Right to Work Committee and several Senators and Congressmen perceived to be anti-labor.

Because of our current state of relations with the AFL-CIO, I would like very much to see that his requested meeting takes place.

I will be in touch ASAP to see when we can get together. It is my understanding that OMB will be making a recommendation on this legislation on or about September 18.

EHD - my view is that it would be better to have a free new Gov's strategy in place before meeting on one issue.

November 23, 1981

The President
The White House
Washington, D.C. 20500

Dear Mr. President

As you know, the Hobbs Act is a federal anti-racketeering law which includes a penalty of up to 20 years imprisonment for extortion. Unfortunately, in 1973, the Supreme Court ruled in the case of U.S. v. Enmons, that the Hobbs Act did not apply to jobsite violence in the course of a "legitimate" labor dispute. Thus, cases of jobsite violence during labor disputes have been continually turned away by the federal courts and left to the state and local governments to handle. Often, local governments are reluctant to get involved in labor disputes and these cases escape prosecution. Without federal involvement in the most serious types of extortion cases, we can only expect this trend to continue.

Efforts to recodify the federal criminal code are gathering momentum and both the Senate and House Judiciary Committees are expected to act on this legislation in the near future. However, we have grave concerns about the extortion provisions which are contained in both the Senate and House bills (S. 613, H.R. 1647, H.R. 4711).

The Senate language codifies the Enmons decision. Even as this decision was being handed down by the Supreme Court, Justice Douglas dissented, commenting that the decision made an organized labor victory possible in the Supreme Court, even though it had failed in Congress.

The House language is more objectionable than the Senate version, in that it attempts to use the Enmons decision to obliterate other statutes under which labor unions may be prosecuted for extortion and related activities.

We heartily endorse all efforts to rectify the language in both the Senate and House bills. We recommend that, at the least, the current language be replaced with S. 613, H.R. 3047, or H.R. 450, or that the word "wrongful" be deleted from the bill language, thereby undoing the Court's bias in its holding with the Enmons decision.

We urge you to analyze the criminal code as it relates to extortion, and to oppose any weakening of the criminal code in this area.

Sincerely,

Air Conditioning Contractors of America
Associated Builders and Contractors
Associated General Contractors of America
National Ready Mix Concrete Association
National Sand and Gravel Association
National Utility Contractors Association
Public Service Research Council