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Federal Prosecution of Local Political Corruption: A New Approach

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dissent was on point when it stated that the court was simply "legislating an exception to the clear and specific provisions of the Code so as to make the Code meaningless."[29] The result of the court's misinterpretation of the Code is that while the Florida Uniform Commercial Code may read like the U.C.C. does in other jurisdictions, it operates quite differently where a security interest in after-acquired property is involved. This new Florida rule frustrates the U.C.C. and renders certain types of loan financing obsolete in Florida. It is urgent that this decision not be followed in the future.

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FEDERAL PROSECUTION OF LOCAL POLITICAL CORRUPTION: A NEW APPROACH

Should the federal government be allowed to prosecute local politicians for extorting money from local businessmen, especially if there is no evidence of force, fear, or threats? Casimir Staszcuk, a Chicago alderman, accepted three payments of $3,000 each from a "zoning consultant" on behalf of his clients in return for Staszcuk's agreement not to oppose their applications for zoning amendments in the alderman's ward. The federal government charged Staszcuk with violation of the Hobbs Act,[1] which contains two alternative definitions of extortion: the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, *or* under color of official right. The United States District Court for the Northern District of Illinois, Eastern Division, relying solely on the "color of official right" definition of extortion, convicted Staszcuk. On appeal, the Court of Appeals for the Ninth Circuit *held,* affirmed: A local official accepting money under color of official right, which activity affects interstate commerce, may be convicted of violating the Hobbs Act. *United States v. Staszcuk*, 502 F.2d 875 (9th Cir. 1974).

Before the significance of the color of official right definition of extortion as contained in the Hobbs Act is discussed, the threshold

29. *Id.* at 39.

1. 18 U.S.C. § 1951 (1970):

(a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined not more than $10,000 or imprisoned not more than twenty years, or both.

(b) As used in this section—

. . . .

(2) The term "extortion" means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.

question of whether this federal statute may properly be used to combat local political corruption must be answered.[2]

The origins of the Hobbs Act can be traced to the original Antiracketeering Act of 1934.[3] That act was designed to bring the federal government's authority to bear on professional criminal activity which affected interstate commerce.[4] According to the chairman of the Senate committee which drafted the bill, its purpose was "to render more difficult the activities of predatory criminal gangs of the Kelly and Dillinger types."[5] At the time the Act was passed there was great concern over the actions of professional gangsters and this accounts for the preceding language. Assuredly, the Act was meant to reach professional gangsters. However, the scope of the Antiracketeering Act was intended to reach beyond this limited group. The Judiciary Committee's report to the Senate stated that the bill was designed to "extend Federal jurisdiction over *all* restraints of any commerce within the scope of the Federal Government's constitutional powers."[6]

The Antiracketeering Act, however, excepted from its proscriptions "the payment of wages by a bona fide employer to a bona fide employee."[7] In 1942 the United States Supreme Court held, in *United States v. Local 807*,[8] that when members of the New York Teamster's Union forced their way onto trucks entering New York from New Jersey, and by beating or threats of beating procured payment to themselves of the equivalent of a day's union wages from the out-of-state drivers, such action was not punishable under the Antiracketeering Act. The court based its dicision on the fact that, in some instances, the New York teamsters assisted or offered to assist in the loading and driving of the trucks after payment was exacted and thus fit into the bona fide employer-employee exception. Congressional disapproval of this decision resulted in the passage of the Hobbs Act[9] which eliminated the wage exception that had been the basis for the *Local 807* decision and thus assured that union activities would fall within the purview of the new Antiracketeering Act.[10] But, in addition, Congressman Hobbs described his bill in these terms:

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2. "Congress has traditionally been reluctant to define as a federal crime conduct readily denounced as criminal by the states." Courts are equally hesitant to overextend limited federal police resources. Unless Congress conveys its purpose clearly, it will not be deemed to have significantly changed the federal-state balance. United States v. Bass, 404 U.S. 336, 349 (1971).

3. Act of June 8, 1934, ch. 569, 48 Stat. 979.

4. S. REP. No. 532, 73d Cong., 2d Sess. (1934).

5. S. REP. No. 1440, 73d Cong., 2d Sess. (1934).

6. S. REP. No. 532, 73d Cong., 2d Sess. 1 (1934) (emphasis added).

7. Act of June 8, 1934, ch. 569, § 2(a), 48 Stat. 979.

8. 315 U.S. 521 (1942) [hereinafter referred to as *Local 807*].

9. "[T]his bill is made necessary by the amazing decision of the Supreme Court in the case of the United States against Teamster's Union 807 . . . ." 91 CONG. REC. 11,900 (1945) (remarks of Congressman Hancock).

10. The Hobbs Act also eliminated the proviso in section 6 of the Antiracketeering Act that no court should apply the Act to impair or diminish the rights of labor organizations. That proviso helped support the *Local 807* holding and was removed to prevent a resuscitation of that decision. *See* 91 CONG. REC. 11,912 (1945) (remarks of Congressman Hobbs).

> This bill is grounded on the bedrock principle that crime is crime, no matter who commits it; and that robbery is robbery and extortion extortion, whether or not the perpetrator has a union card. It covers whoever in any way or degree interferes with interstate or foreign commerce by robbery or extortion.[11]

Thus, both the original Antiracketeering Act and the current Hobbs Act were motivated by immediate and specific goals: professional gangsterism in the former; an unsatisfactory Supreme Court construction in the latter. However, these immediate objectives in no way limit the broad scope of the Acts. This contention is supported explicitly by their language, and impliedly by legislative history.

Support for the proposition that the Hobbs Act may properly be brought against corrupt local politicians can be found in case law as well as legislative history. In cases where the proper scope of the Act was questioned, the Ninth Circuit has recognized that "undeniably the act [*sic*] was particularly aimed at labor racketeering, but by its terms it is not so limited."[12] The District Court for the Western District of Missouri has agreed with the Ninth Circuit.[13] The Eighth Circuit has interpreted the Act even more broadly by holding that section 1951 "proscribes *all* forms of extortion which affect interstate commerce."[14] In addition to these cases where proper application of the Hobbs Act was in issue, there are no less than 12 reported decisions in which local public officials have been convicted under section 1951.[15] Thus the Hobbs Act is properly invoked whenever a local official is guilty of extortion and that extortion affects interstate commerce.[16]

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11. 89 CONG. REC. 3217 (1943).

12. Carbo v. United States, 314 F.2d 718, 732 (9th Cir. 1963), *cert. denied,* 377 U.S. 953 (1964).

13. United States v. Howe, 353 F. Supp. 419, 424 (W.D. Mo. 1973).

14. United States v. Mitchell, 463 F.2d 187, 193 (8th Cir. 1972), *cert. denied,* 410 U.S. 969 (1973) (emphasis added).

15. United States v. Crowley, 504 F.2d 992 (1974); United States v. Irali, 503 F.2d 1295 (1974); United States v. Pacente, 490 F.2d 661 (7th Cir. 1973); United States v. Gill, 490 F.2d 233 (7th Cir. 1973); United States v. DeMet, 486 F.2d 816 (7th Cir. 1973) *cert. denied,* 416 U.S. 969 (1974); United States v. Kenny, 462 F.2d 1205 (3d Cir.), *cert. denied,* 409 U.S. 914 (1972); United States v. Addonizio, 451 F.2d 49 (3d Cir.), *cert. denied,* 405 U.S. 936 (1972); Hyde v. United States, 448 F.2d 815 (5th Cir. 1971), *cert. denied,* 404 U.S. 1058 (1972); United States v. Pranno, 358 F.2d 387 (7th Cir. 1967), *cert. denied,* 390 U.S. 944 (1968); United States v. Sopher, 362 F.2d 523 (7th Cir.), *cert. denied,* 385 U.S. 928 (1966); Ladner v. United States, 168 F.2d 771 (5th Cir.), *cert. denied,* 335 U.S. 827 (1948); United States v. Kubacki, 237 F. Supp. 638 (E.D. Pa. 1965).

16. Although a thorough discussion of the interstate commerce aspect of the Hobbs Act is beyond the scope of this note, it should be pointed out that for purposes of prosecution under section 1951, *any* effect, even *de minimis,* is sufficient. Battaglia v. United States, 383 F.2d 303, 305 (9th Cir. 1967), *cert. denied,* 390 U.S. 907 (1968). Also, commerce may be affected even though the actual movement of goods has ceased. United States v. Howe, 353 F. Supp. 419, 425 (W.D. Mo. 1973). A Hobbs Act prosecution may be premised upon "attempted extortion actually or *potentially* affecting interstate commerce." Hulahan v. United States, 214 F.2d 441, 445 (8th Cir.), *cert. denied,* 348 U.S. 856 (1954) (emphasis added).

In *Staszcuk,* the government unsuccessfully attempted to employ this "potentiality" doctrine to show an interstate commerce effect of a payment offered to re-zone property which was

The federal government, in seeking to eradicate local political corruption, has been faced with two fundamentally related obstacles which have hampered traditional[17] prosecution under the Hobbs Act.[18] First, there exists the possibility that the defendant, attempting to avoid Hobbs Act prosecution for extortion, will claim he was guilty only of bribery. It has been argued,[19] that bribery is mutually exclusive of extortion so that proof of the former will preclude conviction for the latter. This so-called "bribery defense," although not readily accepted by all courts,[20] is still a serious obstacle[21] and has not yet been explicitly disallowed as a defense to a Hobbs Act prosecution.[22] Second, extortion as traditionally[23] defined in Hobbs Act cases, necessarily requires the victim to pay out of "fear."[24] "Proof of the state of

ultimately used in a manner consistent with its original zoning. Greater success might have been had by arguing that by paying out funds to Staszcuk, the victim's assets were depleted and therefore he was unable to use the expended funds in interstate commerce. *Compare,* United States v. DeMet, 486 F.2d 816 (7th Cir. 1973), *cert. denied,* 416 U.S. 969 (1974); United States v. Provenzano, 334 F.2d 678, (3d Cir.), *cert. denied,* 379 U.S. 947 (1964); United States v. Esperti, 406 F.2d 148 (5th Cir.), *cert. denied,* 394 U.S. 1000 (1969).

17. "Traditional" is used to signify prosecution under the "wrongful use of actual or threatened force, violence, or fear" definition of extortion.

18. *See* Stern, *Prosecution of Local Political Corruption Under the Hobbs Act: The Unnecessary Distinction Between Bribery and Extortion,* 3 SETON HALL L. REV. 1 (1971) [hereinafter cited as Stern].

19. The defense is based on an improper holding in United States v. Kubacki, 237 F. Supp. 638 (E.D. Pa. 1965). There the court incorrectly assumed that Congress had adopted, essentially, New York's extortion statute and since under New York law bribery and extortion were mutually exclusive, the federal construction of section 1951 must follow the New York rule. However, the reference to New York law in Congressional debate over the Hobbs Act was merely to assuage pro-labor opponents of the bill by showing that it was *substantially* similar to their own New York law. *See* 91 CONG. REC. 11,900 (1945) (remarks of Congressman Hobbs). Nowhere is there an indication that Congress intended constructions of the New York act to determine federal constructions of the Hobbs Act. In fact, the New York rule concerning mutual exclusivity of bribery and extortion (People v. Feld, 262 App. Div. 909, 28 N.Y.S.2d 796 (1941)) arose *after* the original Hobbs Act language was promulgated in the Antiracketeering Act of 1934, and so no Congressional intent to have that rule obtain in Hobbs Act cases could have existed. Stern, *supra* note 18.

20. See United States v. Gill, 490 F.2d 233 (7th Cir. 1973); United States v. DeMet, 486 F.2d 816 (7th Cir. 1973), *cert. denied,* 416 U.S. 969 (1974); United States v. Kahn, 472 F.2d 272 (2d Cir. 1973), *cert denied,* 411 U.S. 982 (1973); United States v. Addonizio, 451 F.2d 49 (3d Cir. 1972), *cert. denied,* 405 U.S. 936 (1972); United States v. Pranno, 385 F.2d 387, 390 (7th Cir. 1967), *cert. denied,* 390 U.S. 944 (1968).

21. United States v. Kubacki, 237 F. Supp. 638 (E.D. Pa. 1965) (which explicitly recognized the defense); United States v. Critchley, 353 F.2d 358 (3d Cir. 1965) (which implicitly recognized the defense).

22. This is so notwithstanding the Seventh Circuit's observation in United States v. DeMet, 486 F.2d 816, 821 (1973), *cert. denied,* 416 U.S. 969 (1974), which erroneously indicates the Second Circuit has so decided in United States v. Kahn, 472 F.2d 272, 278 (2d Cir. 1973). Actually, the *Kahn* court merely held that, in the absence of Pennsylvania case law, the Second Circuit would find Pennsylvania law, not federal law, to view bribery and extortion as mutually exclusive.

23. See note 17 *supra.*

24. United States v. Critchley, 353 F.2d 358, 361 (3d Cir. 1965). "Fear," however, may include fear of economic loss as well as physical harm. Bianchi v. United States, 219 F.2d 182, 189 (8th Cir.), *cert. denied,* 349 U.S. 915 (1955). Additionally, the prosecutor need not show that the defendant induced the fear, but only that he utilized it to extort money. United States v. Gordon, 449 F.2d 100, 102 (3d Cir. 1971). Nor does he need to show the extortioner received any

mind of the victim is relevant, indeed essential to a prosecution for extortion . . . ."[25] Thus, under facts present in *Staszcuk*, the defendant might have escaped conviction by arguing that he was merely the recipient of a bribe and that the three owners seeking to have their properties' zoning changed were never in "fear" of *losing* anything; merely hopeful of increased profit.

Staszcuk represents the first prosecution under the Hobbs Act to rely solely on the "color of official right" definition of extortion,[26] which is equivalent to the common law definition of the crime.[27] Use of this definition circumvents the above described obstacles. There is no requirement under the "color of official right" definition that the taking involve fear.[28]

> The evidence need only demonstrate that the public official has obtained from the "victim" something of value to which the official is not entitled, in return for something that should have been provided without payment.[29]

Thus, the prosecutor need not prove the subjective state of mind of the "victim" as a necessary element of a Hobbs Act violation. Also, since fear is not an element of the crime under the "color of official right" definition, the bribery defense which distinguishes bribery and extortion based on the presence or absence of fear in the payor is wholly inapplicable.

However, the statement of the elements necessary for a conviction under the "color" definition as set out by Judge Campbell in his concurring opinion quoted above, raises the possibility of a new bribery defense not involving the motivation of the "victim." If his statement of the elements is correct,[30] a public official, who accepts money to assist the payor in obtaining a benefit to which the payor is *not* lawfully entitled would be guilty of bribery and not extortion. However, this distinction between the two crimes doesn't necessarily mean that they are mutually exclusive offenses. A single payment may be made to secure more than one objective, so that where the payor is legally entitled to one objective and not another, the defendant-official may be guilty of bribery *and* extortion for the receipt of the single sum.

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personal benefit from the extortion. United States v. Provenzano, 334 F.2d 678, 686 (3d Cir.), *cert. denied*, 379 U.S. 947 (1964).

25. United States v. Kennedy, 291 F.2d 457, 458 (2d Cir. 1961).

26. One prior case exists, however, in which the defendants were charged with extortion through wrongful use of fear *or alternatively*, under color of official right. United States v. Kenny, 462 F.2d 1205 (3d Cir.), *cert. denied*, 409 U.S. 914 (1972). Also, two subsequent cases have employed the same alternative theories: United States v. Crowley, 504 F.2d 992 (1974); United States v. Irali, 503 F.2d 1295 (1974).

27. The "wrongful use of force, violence, or fear" language was added to the common law definition by early statutes in order to expand the scope of the crime to encompass action by private individuals. *See* 35 C.J.S. *Extortion* § 1 (1960).

28. *See* 31 AM. JUR. *Extortion* § 4 (1967).

29. 502 F.2d at 882-83.

30. There is some authority opposed to Judge Campbell's view. Commonwealth v. Wilson, 30 Pa. Super. 26 (1906). *See* State v. Sweeney, 180 Minn. 450, 454, 231 N.W. 225, 228 (1930).

It should be noted that Judge Campbell's construction of the "under color of official right" language to include only those acts done by an official which he was legally permitted to do, is not the only possible construction.[31] It effectively excludes from the Hobbs Act's reach cases where officials receive money for performing extra-legal acts. For example, a police officer who received money in exchange for not molesting a narcotics operation would not fall within Judge Campbell's definition, since the narcotics dealers were not legally entitled to the "service" performed by the officer. However an overbroad interpretation of the "color of official right" language might lead to an excess burden on federal investigative and prosecutorial resources.[32] What then should be the proper limits of federal prosecution for extortion "under color of official right"?

The courts may properly enjoy some latitude in their view of the meaning of the Act's language.[33] This is particularly true since the legislative history of the Hobbs Act and its predecessors offer no indication that Congress intended any particular construction or use of the "color of official right" language. Rather it seems that Congress adopted the common law offense of extortion and added to it the "wrongful use of actual or threatened force, violence, or fear" language which had been adopted by the legislatures of several states.[34] However, notwithstanding any latitude the courts may have, reference to the wealth of state cases[35] which construe similar language based also on common law extortion would be desirable in determining exactly *what* actions are extortionate. Similarly, determinations of *who* are officers within the "official right" language should be made upon reflection to the various state cases.[36] In this regard it will be interesting to note if prosecutors seek to apply the Hobbs Act to de facto officials and power brokers who hold no office, but nonetheless exert substantial control over officials and the execution of their duties.

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31. State v. Sweeney, 180 Minn. 450, 454, 231 N.W. 225, 228 (1930).

32. *See* United States v. Bass, 404 U.S. 336, 349 (1971).

33. For a discussion of why this might be so, see Stern, *supra* note 18, at 14.

34. *See* 31 AM. JUR. *Extortion* (1967); 35 C.J.S. *Extortion* (1960).

35. *See* 31 AM. JUR. *Extortion* §§ 4,5 (1967); 35 C.J.S. *Extortion* § 5 (1960); Annot., 116 AM. ST. REP. 446 (1906).

36. *See* 31 AM. JUR. *Extortion* § 3 (1967); 35 C.J.S. *Extortion* § 9 (1960); Annot., 116 AM. ST. REP. 446 (1906).