

‘Top Chef’ Acquittals Not Satisfying But Right, Juror Says

By **Brian Amaral**

Law360, Boston (August 22, 2017, 2:59 PM EDT) -- One of the 12 jurors who acquitted a group of Massachusetts Teamsters of trying to strong-arm the “Top Chef” television production into hiring them for unneeded truck-driving work said prosecutors failed to prove the defendants knew they were trying to do something against federal law.

The juror, who asked not to be named due to the high-profile nature of the case, said that their verdict last week was not a blessing of the Teamsters’ conduct outside a restaurant where “Top Chef” was filming in June 2014 — they allegedly slashed tires, used sexist and racist slurs, and threatened to “bash” celebrity host Padma Lakshmi’s “pretty little face in.”

Instead, she said, it was a reflection of the federal extortion law, which the jurors wrote out on a whiteboard in the jury room as their first order of business.

“Maybe this isn’t as straightforward as I thought,” the juror said she told herself after considering the law carefully during deliberations. “It took a while to get comfortable with that decision. I feel like they were definitely guilty of some crime” — like for slashing tires or assaulting crew members, both local offenses — “but not the crime they were prosecuted for.”

Unions have strong protections under federal criminal law for their behavior, even violent, threatening behavior, while trying to achieve legitimate labor objectives. Prosecutors had to prove that the Teamsters’ objectives were illegitimate, and failed to do so, the juror said.

The law, the Hobbs Act, required prosecutors to prove that the work the union members were seeking from “Top Chef” was “additional” — adding to the “Top Chef” payroll for work the production didn’t need or want. That would not have legal protections.

But if John Fidler, Robert Cafarelli, Michael Ross and Daniel Redmond were merely seeking to replace nonunion truck drivers on the production with union truck drivers, they could not be found guilty of a federal crime, even if their conduct was threatening and violent.

Not a single witness said the Teamsters knew they couldn’t just replace the production assistants who drove the trucks.

“I felt that ‘Top Chef’ definitely felt that way, but it really came down to other jurors pointing out to me that there was no evidence that the Teamsters were ever conveyed that information directly,” the juror said.

Another thing that stuck out to jurors, she said, was that “Top Chef” had scheduled a meeting with Teamsters before the incident at the restaurant. That may have given the Teamsters false hopes that they would be able to score real jobs on the set of the Steel & Rye restaurant in Milton, Massachusetts, she said, and it cut against the idea that they were there for a shakedown.

Even the evidence of violence wasn't a slam dunk, the juror said, not always matching what prosecutors said in opening and closing statements.

The jurors could see with their own eyes that one of the Teamsters used sexist and racist slurs, because it was captured in a cellphone video. But witnesses weren't able to positively identify which Teamster allegedly slashed tires; other evidence was muddled as to which Teamster threatened Lakshmi, and the threat was recounted several different ways.

Lakshmi, the closest to the threat, said that a Teamster leaned into her van and told her something like, "What a pretty face," which she took as a threat of assault. That was a far cry from a threat to "bash your pretty little face in," which prosecutors cited in their closing argument.

Prosecutors have to thread a needle to convict union members of extortion under the Hobbs Act; the very nature of a labor strike involves the use of fear to try to get management to bend to a union's wishes. Inflatable rats are erected at work sites for a reason, and it's not so a company that's being picketed can attract more customers.

A case in the 1970s, *U.S. v. Enmons*, found that union members on strike couldn't be prosecuted for extortion if they had legitimate labor objectives.

Two key words stick out: "legitimate" and "objectives."

On the first one, prosecutors must prove that union members had illegitimate goals when they used threats of violence or economic harm. Illegitimate goals can include trying to get unwanted, unneeded and superfluous work, the crux of the case.

The second one was the key to the acquittals: objectives. That's necessarily a question of the Teamsters' intent.

Intent of wrongdoing, also called *mens rea*, is where prosecutors' troubles began. It's also a foundation of criminal law, said Martin Weinberg, a defense attorney in Boston who watched the case closely.

"The jurors focused properly, consistent with instruction from a very wise and senior judge, that the *mens rea* element was from the perspective of the Teamster, not the perspective of the employer, which so much of the evidence was focused on," Weinberg said.

Weinberg applauded the jury for focusing not on how "Top Chef" viewed the truck driving work but on the Teamsters' intent — in other words, it didn't really matter if "Top Chef" thought the work would have been superfluous, or even if it was superfluous.

Prosecutors argued that the production assistants had to do other work on the set, like fetching coffee, that the Teamsters wouldn't have done. If the Teamsters drove trucks, the production assistants would still have to fetch that coffee. That meant that adding Teamsters would have been "additional," and any threats used to get "Top Chef" to add them was illegal, prosecutors said.

But what mattered is that prosecutors didn't put forth any evidence that the Teamsters knew it.

"By following the law and mapping out the elements as their guides to deliberation, they demanded proof beyond a reasonable doubt, not just of the conduct, but the intent," Weinberg said. "That's really the wisdom of the Founding Fathers in giving us 12 jurors."

The Teamsters case, involving Local 25, is in the middle of a trio of cases involving labor union extortion in Massachusetts. The First Circuit is now considering the convictions of several Teamsters in Local 82 — which was disbanded and folded into 25 — who extorted not just local

businesses but also fellow union members.

And in January, two Boston city officials will go on trial accused of extorting a concert series, Boston Calling, by withholding permits.

Thomas Iovieno, a local criminal defense attorney who represented convicted Local 82 Teamster James "Jimmy the Bull" Deamicis, is among those closely watching Hobbs Act jurisprudence in the First Circuit. Deamicis, part of Local 82's "strike unit," was convicted of extorting Live Nation and a hotel; his appeal hasn't yet been argued.

"It's an unsettled area of law, but it's pretty clear that labor unions, as long as they're actively seeking jobs for their union members, can picket, can be unpleasant, if you will, and can exert economic harm," Iovieno said about the Hobbs Act generally.

If the conduct crosses some sort of line, Iovieno said, that can be handled on the civil side with unfair labor practices allegations against the union, or by local cops. But so long as the unions' objectives are legitimate, it's not Hobbs Act extortion.

"That Enmons case is still good law," Iovieno said. "It still provides an exception for labor activity."

That is a reality that critics of labor unions are trying to change. Much of the criticism about the jury's verdict has focused not on their conclusions but on the fact that because of Enmons, they had little choice.

"This special exception to the law has emboldened union thugs to terrorize those who do not give into to their demands, like those who worked on the Top Chef show in Boston," Mark Mix of the National Right to Work Legal Defense Foundation said in a statement after the verdict.

Mix said Congress should "end the exemption for Big Labor violence," referring to a bill to do away with most of Enmons' protections for unions' violent and threatening conduct unless that violence is minor or incidental. That bill has been introduced but has not moved in Congress.

But in the end, the jury had to deal with the law as it is written now.

"It sounds like the jury is to be commended that they did a very intelligent job, because they really understood what their task was," said Peter Elikann, a defense attorney in Boston and former chair of the Massachusetts Bar Association's Criminal Justice Section. "That job wasn't to be caught up in the emotionalism of the case, but to follow the very narrow legal issue of, did these Teamsters violate the statutes and the law as written? The jury here, from what I understand, didn't say that the Teamsters didn't do anything wrong. Just that they were not guilty of the criminal charge of extortion under the Hobbs Act."

--Editing by Brian Baresch.