

The tide turns against corrupt U.S. prosecutors

by Mel Klenetsky

Until quite recently, U.S. government prosecutors have generally been presented to the public as fearless fighters of crime, righteous knights on a white horse upholding the public honor by going after corruption perpetrated by the high and the mighty. The mere issuance of a criminal indictment, or the mere hint of a grand jury investigation by one of these dime-store heroes, has been taken by the ogling press as proof that the targeted citizen must be guilty as sin—even in cases where there is already overwhelming public evidence to the contrary.

But the erupting scandal around the gross prosecutorial misconduct of former U.S. Attorney Rudolph Giuliani in New York City, where he is running for mayor, is one of many new signs that the tide of public sentiment is rapidly turning. Giuliani is the most notorious of the “new breed” of U.S. prosecutors who have specialized in using the Racketeer Influenced and Corrupt Organizations (RICO) statute and conspiracy laws, coupled with “trial by press” tactics and massive media fanfares, in order to target religious groups, political figures, international trade unions, Wall Street brokers, and U.S. defense industry figures for prosecution, while actual criminals such as drug-money bankers go largely unmolested.

Giuliani pioneered the use of civil RICO against the International Brotherhood of Teamsters, forcing the resignation of several members of the IBT’s executive board. Thanks to him, civil RICO is now being used against the Longshoremen’s Union. The flashy trial of hotel magnate Leona Helmsley, and the unsuccessful prosecution of former Miss America Bess Myerson (longtime ally of one of Giuliani’s electoral opponents, Mayor Ed Koch), were both productions of Giuliani’s office. Giuliani and his office has also focused on doing favors for certain Establishment groupings, by selec-

tively prosecuting targeted financiers for scams.

But now, Mr. Prosecutor Giuliani has suddenly found himself and his prosecutorial methods on public trial. Although the New York City mayoral race is normally a carefully scripted affair that avoids the important issues plaguing this once-great metropolis, the local media are right on the mark, with such dailies as the *New York Post* and the New York edition of *Newsday* blaring, “Auschwitz Survivor Charges . . . Rudy’s Men Acted Like Nazis,” and “Rudy Has a Black-Eye Apology, Criticisms over Handling of Wall Street Insider Case.”

The story of Simon Berger

The most dramatic case is that of Simon Berger, a Long Island locksmith who was accused of bribing housing officials. Berger, a survivor of the Nazi regime’s concentration camp in Auschwitz, Poland, accused Giuliani’s office of using explicitly Nazi Gestapo tactics to pressure him immediately following his 1986 arrest.

According to Berger’s account, he was roused out of his home at 7 a.m., handcuffed in front of his family, and taken to the U.S. Attorney’s office. He was moved to an empty corridor, paralleling the reception area, which had a straight-backed chair facing a blackboard on wheels. Written on the blackboard were the words “Arbeit Macht Frei,” the Nazi motto meaning “Labor Makes You Free,” which appeared above the entrance to the Auschwitz death camp.

Giuliani’s office was conducting an investigation into kickbacks and corruption in the New York City Housing Authority. Berger was subsequently exonerated of the charges against him, but according to his attorney, Barry Slotnick, he was so deeply shocked over his arrest and the sight of the Auschwitz slogan, that he could not even participate in plan-

ning his own defense strategy.

After being obliged to view the Auschwitz motto, Berger, who had also lost a sister and brother at that camp, was interviewed by David Zarnow, Assistant U.S. Attorney, who told him that 44 out of 57 people arrested had already pleaded guilty to reduced charges, and that the other 13 would all be going to jail, since the U.S. Attorney's office had a conviction rate of 100%. All of this occurred before Berger was formally charged or arraigned.

Giuliani has denied having any knowledge that such methods were being applied by members of his office. But Berger, interviewed by the *New York Post*, said that he rejects Giuliani's claim of ignorance. "I believe he knew, I believe he knows, and I believe he always knew," Berger said. "If he didn't know, I don't think he deserves to be mayor." After the incident, a complaint had been filed on Berger's behalf, and would have been the basis of mistrial motion for prosecutorial abuse, had Berger not been exonerated first. There were even pictures taken of the blackboard, but the investigation into who in Giuliani's office wrote those words and used those tactics, has apparently never gone anywhere.

Targeting on Wall Street

In early 1978, Giuliani and company moved in on three prominent Wall Street traders for alleged insider trading. Robert Freeman and Richard Wigton were arrested in their offices and taken out in handcuffs. Timothy Tabor was arrested at home. Tabor's lawyer charged that the arrest had been timed to force him to spend a night in jail before a bail hearing could be held. At the time there was huge media fanfare and a dramatic display of prosecutorial power.

In early August 1989, federal prosecutors dropped their investigation and freed two of the three men from legal limbo. The third target, Robert Freeman, pleaded guilty to a totally unrelated charge. The press, in reviewing the Freeman case, opined that the prosecutor's office had gone on a wild fishing expedition, and finally came up with something, just to save face. Giuliani was forced to publicly apologize for the speed with which he moved to prosecute these individuals. Giuliani's electoral opponents, of course, have had a field day at his expense. Ed Koch had the following to say:

Here's Rudy Giuliani, big prosecutor, who goes in, over a year ago, and handcuffs people, drags them out in chains, destroys their reputation, causes pain to their families, and the indictments don't happen or are dismissed. Doesn't it reduce your admiration for the guy, who touted how terrific he was as a prosecutor, that he destroyed their lives?

Tough on drugs?

Yet another incident which has come to public attention reveals Giuliani's true colors on the question of illegal narcotics. Giuliani likes to present himself as tough on crime

and "crack," two very important issues in drug-infested New York City. Approximately ten years ago, Nicky Barnes was a convicted heroin dealer and killer who was sentenced to life in prison without parole. Barnes decided to testify against others to gain his freedom. Nicky testified "downwards," taking out the people working below him in the hierarchy.

As a reward for providing this information, in October 1987 Rudolph Giuliani, the great warrior against drugs, wrote an 11-page letter to President Ronald Reagan, asking the President to pardon this convicted heroin dealer and killer. Reagan did not pardon Barnes—and to date neither has his successor George Bush—but Giuliani's efforts to pardon a man who has been involved in the execution of no less than a dozen people, are now before the public to judge.

Abolish RICO!

There is also a growing outcry against RICO itself. Jurors in the trial of Ed Meese's friend E. Robert Wallach in the Wedtech scandal, which resulted in Wallach's conviction, told *Legal Times* that they were horrified when they realized that the counts on which they had found Wallach guilty carried draconian penalties.

One juror, who was dismissed during the trial because of illness, told the *Legal Times* that "I could not see them [Wallach and company] conspiring with a bunch of racketeers," and her sentiment was apparently ultimately shared by other jurors, who handed down a confused verdict, convicting Wallach on one racketeering count, even though they thought he had not conspired to commit the crime they convicted him of.

The jurors also expressed concern about the publicity they read after the conclusion of the trial, and they stressed that they did not convict Wallach of accepting payoffs to lobby then-Attorney General Edwin Meese, as was widely reported. When juror Paul Nash read the newspaper accounts of the verdict, he became uneasy: "There was another agenda here. And we were just cogs."

The *Wall Street Journal* devoted a recent editorial to this newly found recognition of prosecutorial abuse that has come to light during Giuliani's mayoral bid. Under the headline "The Brownshirt Image," the *Journal* noted that in addition to its own longstanding opposition to the RICO act, now others, such as the liberal *Los Angeles Times*, have come out foursquare against it, and they are pleased that the tide appears to be turning against these unfettered prosecutors. The *Journal* warned President Bush that Americans are losing faith, because federal prosecutors are losing credibility, and advises Bush that if he is serious about going after the drug criminals, then he must act to dispel any basis for comparisons with Nazi law enforcement that federal prosecutors have been eliciting.

Mel Klenetsky, a member of EIR's editorial board, is a former candidate for mayor of New York City.