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materials pertaining to Brilab and Hauser.

Bob Rawitch of the Times-Mirror Corporation's *Los Angeles Times* subsidiary and two associates at its Dallas subsidiary, the *Dallas Times-Herald*, had been prebriefed by Strike Force personnel on Brilab. This bribery maneuver, however, gave them a cover to break the story safely.

State Rep. John Bryant, one of the opponents of Texas Speaker of the House Billy Clayton in a forthcoming speaker's race, has also admitted that he was informed about Clayton's probable indictment in Brilab by a reporter at the *Dallas Times*. This reporter, who has since left the paper, denies that he was the source. He said that instead the tip-off may have come directly from the White House so that Bryant could declare early for the race against Clayton!

The trial

During pre-trial motions in the Texas Brilab case against Speaker Clayton, U.S. District Judge Robert O'Conor asked Joseph Hauser's co-conspirator, FBI undercover agent Michael Wacks:

> You do understand the due process rights, don't you, to be free from government-induced criminality? . . . The problem that I have is when you have Mr. Hauser continually pushing the money on these people. . . . Did it ever occur to you that perhaps you were violating the Speaker's due process rights by going forward with the con? . . . It appears to me what you did was kind of unleash Joseph Hauser without guidance from the FBI.

This expression of Judge O'Conor's concern at the Justice Department's suspension of Speaker Clayton's constitutionally guaranteed rights dominated the beginning of Clayton's trial. Federal prosecutors were even further shaken when Judge O'Conor, in another effort to assure Speaker Clayton a fair trial, granted limited immunity to labor leader L. G. Moore, who was to be a key witness in Clayton's defense. Moore was slated to testify that he had been bragging in his tape recorded statements to FBI informant Joseph Hauser about his ability to influence the Speaker.

On Sept. 7, in an unprecedented move, federal prosecutors called for an emergency Sunday session of the Appeals Panel in New Orleans to deny Moore limited immunity. The speed with which the writ was signed suggests that pressure was brought upon the three-judge panel from high levels of the Carter administration. Perhaps Tony Canales, whose political future may depend upon Speaker Clayton's conviction on the fraudulent charges he brought against him with the Justice Department, knows the answer. On Sept. 2, Canales told the *Dallas Morning News* that he wants "to drive a stake through Billy Clayton's heart."

Ripping up the U.S. Constitution

by Felice Merritt

If the current round of Abscam and Brilab trials is decided in favor of the Department of Justice, it will be more than just a crippling loss for the trade-union and urban-based political machines which have formed the backbone of American constituency-based politics. Victory for the Abscam-Brilab method means gutting the Constitution itself.

Specifically, it will cancel the First, Fourth, Fifth, Sixth and Fourteenth Amendments to the Constitution, removing the traditional protection of the rights to free association, free expression, due process of law, and freedom from unreasonable search and seizure and from incriminating oneself.

The foundation for this shift in the law of the land was laid in 1970 with the passage of the Organized Crime Control Act. Before the passage of that bill under the joint leadership of Democratic Senators John McClellan of Arkansas and Joseph Tydings of Maryland, federal law, based on constitutional principles, protected citizens from all the practices now commonplace in Abscam and Brilab.

Federal law did not permit federal agents to abet crimes;

it did not permit the U.S. government to finance criminal enterprises;

it did not permit informants to commit crimes without threat of prosecution;

it did not allow the use of evidence obtained in violation of the Fourth Amendment;

it forbade entrapment (except under very limited circumstances);

it limited federal jurisdiction over local crimes;

and it prohibited the creation of a special class of criminal defendant.

Gradually, with the aid of the Supreme Court, Attorney General Edward Levi, the Law Enforcement Assistance Administration (LEAA), and the Eastern Establishment media and federally financed law-enforcement training programs, all of these unconstitutional practices have become widespread. The takeoff point occurred after Jimmy Carter's election. Convic-

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tions and indictments of "organized crime figures" using these techniques rose from an average of 800 per year before 1976, to *more than 4,000* per year from 1976 through 1979.

A special class of people

The fundamental deviation from the Constitution newly codified in the Organized Crime Control Act was the creation of a special class of individuals, identified as "organized crime," to whom a whole series of constitutional protections was to be denied.

"Organized crime" is not even defined in the bill. Moreover, the bill does not aim to stop the criminal *activities* of individuals associated with "organized crime," but justifies stopping legitimate business because it is carried out by individuals labeled as part of "organized crime." Its target is a class of "undesirable" individuals, not illegal activity.

A law review article quoted by the National Association of Attorneys General accurately criticized the bill:

> The federal legislation enacted to deal with organized crime is somewhat of a sham because most of its provisions are not restricted to organized crime and the few that are do not adequately define the term organized crime. That the application of these laws is left to discretion is unfortunate because it is too easily subject to abuse which may be within the literal wording of the statute but not within its purported purposes.

Yet the bill proceeds to condone and recommend the use of special grand jury procedures, wiretaps, informants, and entrapment to rid society of "organized crime"-linked individuals.

By contrast, the Levi guidelines of 1976 *prohibit* federal prosecutors from using any of these measures in pursuing an investigation against groups like the Weathermen, Yippies, or FALN that publicly declare their intention to carry out violence. Even where surveillance, informants, or wiretaps are allowed in these domestic security cases, the FBI is carefully admonished not to interfere with civil rights like confidentiality between an attorney and his client.

Equally remarkable is the contrast between the treatment given to "organized crime" figures and individuals involved in what the LEAA, and increasingly the Justice Department, have labeled "victimless" crime. So-called victimless crimes, as identified by New Jersey Governor Brendan Byrne in 1976, are "gambling, certain drug offenses, and prostitution, just to name a few. . . ." These have been assigned a low priority under the argument that "the criminal code should not be used to enforce moral standards of the community that affect only private persons."

The fact that both avowed terrorism and drug-pushing, in particular, have been allotted protection should raise questions about what the authors of the Organized Crime Act considered crime. While they cite an emergency epidemic of murder, kidnapping, bombings, and gambling as justification for the act, its special provisions as codified and applied allow the federal government to use its augmented powers against anyone it politically targets as a member of "organized crime."

Violating due process

The Organized Crime Act empowers the federal government to violate the constitutional rights to a fair and speedy trial, to confront prosecution witnesses, and generally to enjoy due process of law.

This violation is encouraged by convening special grand juries who are empowered to hear evidence and issue reports on organized crime conditions and the non-criminal conduct of appointed officials "involved in organized criminal activity." But no public official named in such reports or investigations has the opportunity to confront witnesses, or to present evidence. Technically, he is not being accused of any crime. He is being smeared with public reports charging guilt by association.

While many prosecutors have been reluctant to use these unconstitutional methods, such a grand jury was convened this spring in Kansas City. Its results are still being used in the Senate Permanent Investigations Subcommittee, and the Justice Department's "Pendorf" witchhunt against the Teamsters.

No limit to entrapment

The federal government was traditionally restrained in the practice of entrapment by two standards. One was the necessity of demonstrating that the entrapped individual had an intention, or predisposition, to commit the crime. The second was a prohibition against federal informants' participation in criminal acts. Both of these have been weakened to the breaking point over the past decade.

The heart of American criminal law is the requirement to demonstrate criminal intent in the commission of any criminal act. In other words, a citizen is held responsible for acts he demonstrably intends to carry out, or that he could have prevented by deliberate action—not for accidents. The punishment is tailored to fit the mind of the criminal, because in a republic it is recognized that it is the mind and morality of the citizenry that determines its actions. This concept is best understood in the case of distinctions among the various degrees of intent in manslaughter and murder, as well as in the proper use of the insanity plea.

But this standard is irrelevant to the prosecutors of Abscam and other operations targeting politicians or

Photo: New York Public Library

Benjamin Franklin addressing James Madison and George Washington at the Constitutional Convention in 1787.

The Abscam-Brilab method cancels the First, Fourth, Fifth, Sixth and Fourteenth Amendments to the Constitution. Before 1970, federal law protected citizens from all the practices now commonplace. The take-off point occurred after Jimmy Carter's election.

labor leaders labeled "organized crime." Tapes have already been made public, and convictions achieved, in cases where FBI informants vigorously argue the defendant into taking a "contribution" that the defendant is not demanding as a condition for passing legislation, or granting a contract. Such convictions have put into practice the explicit changes contained in the revised criminal code now before Congress which says it is not necessary for an individual to have a predisposition to commit a crime. The burden of proof falls not on the accusers, but on the defendant to show that the entrapment efforts were unreasonable—again a total reversal of the fundamental principle of the assumption of "innocent until proven guilty."

There has also been a shift in government policy on the activities allowed to informants and the character of the informants. The Organized Crime Act provided new regulations on the use of the Fifth Amendment that allowed a sweeping recruitment of hardened criminals enjoying immunity as members of the federal witness protection system.

Under former practice, a witness could waive the Fifth Amendment in return for immunity from prosecution. Now this immunity has been restricted, giving the prosecutor the option to prosecute if he finds independent corroboration, or takes civil action, or merely finds contradictions in sworn testimony.

Federal prosecutors have thus been able to turn thousands of reluctant witnesses into undercover informants who are under intense pressure to produce results the prosecutor can use for indictments. Several prominent examples of the character of these informants are available in the Abscam and Brilab cases already in the public domain. James Fratianno, a key government witness against the Teamsters, is a confessed murderer of 26 people; Joseph Hauser and Mel Weinberg are both confessed swindlers.

But no matter to the government. They have dished out $4 to $6 million a year for witnesses like these, in pursuit of so-called organized crime. Given the nature of the informants, it is not surprising that FBI guidelines have also been reshaped to allow informants and agents themselves to take part in criminal acts.

The RICO statutes

The RICO (Racketeering-Influenced and Corrupt Organization) statutes are part of the same package. These statutes, which have already been interpreted quite broadly, ban the investment of profits derived from organized crime in legitimate business under penalty of civil forfeiture. They also permit the designation of business enterprises as racketeering-"influenced" and subject to sanctions.

RICO defines racketeering as any threat or act

involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, or dealing in narcotics or dangerous drugs. Court decisions, as well as the proposed recodification of criminal law, have both redefined bribery to include such a broad range of activity that no public official can carry out the duties of his office without running the liability of prosecution and hence, designation under the RICO statutes. Business, particularly government contractors, face the same problem.

Extortion has also been redefined. One labor negotiator was found guilty of extortion when he suggested to employees at his firm that they accept a labor contract offered to them—because the press and rumor mills claimed he had a reputation as a mafioso!

Civil provisions of RICO can force an individual to divest himself of any business interest if he is shown to have been involved in a "pattern of racketeering activities." Such a "pattern" is defined as two such acts within a period of 10 years. Anyone found to have engaged in a "pattern of racketeering activities" can also be sued for treble damages by anyone he has done business with.

The reasoning behind the RICO statutes is, in fact, to give the prosecutor the right to shut down any business involved with his prosecution "targets"—legitimate or not—by imputing "racketeering activities" to it. Certain LEAA planners have made the intention even clearer by proposing the statutes be expanded to permit corporations to be charged with racketeering when any officer or manager, with the knowledge of the president and the majority of the board of directors (or in circumstances where they should have known) engages in organized crime, or is connected directly or *indirectly* with criminal societies engaged in organized crime.

John Moore, Special Investigations Division counsel in Oregon, put it this way: "While in most cases criminal statutes are adequate, there are various problems in getting judges to apply them to their full effectiveness. They are not adequate deterrents as used. Administrative rulings have the benefit of putting an organized crime figure *out of business*." (emphasis added—ed.).

If the government could prove that the individual being put out of business was actually guilty of a definable criminal act, this might be an understandable goal. However, it is precisely proof of such criminal intention and guilt that the statutes are designed to get around. Prosecution is completely discretionary and, not surprisingly, largely fits into a few selected categories—political categories. Thus, the *New York Times Magazine* of Sept. 21, 1980 reports that major drug dealers are known to *own* several Miami area banks. Have these individuals been prosecuted under RICO? No. The businesses targeted for RICO prosecutions are simply political targets of a well-controlled prosecutorial network.

Federal takeover

The fact that most of the targets of the campaign against "organized crime," "white collar crime," and the like are successful *local* businessmen, politicians, or labor leaders provides a natural obstacle for the Justice Department. To get the indictments they need, they have to put the cases under federal jurisdiction.

In 1976 the Supreme Court provided the Justice Department with the precedent it needed. It ruled in *U.S. v. Hall* that the federal government could take jurisdiction over a bribery trial on the ground that a bribe could be "extorted" from the person who offered it. Although bribery of anyone other than a federal official is not a federal offense, extortion, insofar as it involves interstate commerce, is a violation of the Hobbs Act and is within federal jurisdiction.

Within months of this case, hundreds of local officials had been indicted for extortion by the federal government, and the courts stretched the definition further and further. We have already cited the case of the labor negotiator who was charged, on the basis of his recommendation of a contract and his reputation as a mafioso, with extorting the employees' vote. One city official was convicted of extortion on the basis that he was offered a bribe to provide material concerning bid specifications—despite the fact that the information was already public. The court found that if the bribers' bid had been accepted, it might have involved interstate commerce.

The Public Integrity Section of the Justice Department was created in 1976 to further this same kind of federal intervention in state and local government. By using all the unconstitutional techniques of entrapment, provocation, and intimidation described above, it has fostered investigations of "public corruption," turning upside down local political machines like the Texas Democratic Party.

There are no new crimes on the scene in the United States that require the bending of the Constitution for their successful prosecution. The methods being imposed by the Department of Justice, methods expected to be codified in the revised federal criminal code, are nothing less than the legislation of dictatorship.

For a decade the law has been shifted so as to make drug-dealing and terrorism legal while outlawing the pursuit of the business of government and productive industry. In summary, two classes of citizens have been created—the criminal with a full complement of rights, and the businessmen or labor leader who has to fear prosecution every time he lets some money change hands.