

The stench of RICO

I assume you plead guilty because you are guilty," crowed Assembly Speaker Willie Brown about the plea taken by his old nemesis, former Assemblyman Pat Nolan of Glendale.

Well, not exactly; sometimes people plead guilty because the prosecutors, holding all the cards, can manipulate evidentiary rules against their targets and bargain with sentencing variations. Anyway, the comment sounds strange coming from Mr. Brown, to whom most Californians would not look for ethical guidance.

But then most politicians are not ethical paragons, hence the impulse to hoot whenever one of them goes down in a corruption scandal. Whatever the validity of Mr. Nolan's guilty plea and his 33-month jail sentence, this case warrants skepticism. Although Mr. Nolan signed a confession of engaging in "a racketeering enterprise" to swap votes for campaign contributions, even the government admitted he didn't personally take any money.

The *Register*, as regular readers will know, comes grudgingly to a position of holding briefs for politicians. But the awesome power of the United States attorneys, in this case, should make all citizens feel less safe. As a state politician, Mr. Nolan deserves to be investigated and tried, if necessary, by state courts. Though it seems to have been vitiated over time, the 10th Amendment to the U.S. Constitution was understood from the beginning to forbid federal actions in state matters.

The specific statute used against Mr. Nolan, the Racketeer Influenced Corrupt Organizations law, itself is of dubious constitutional validity. According to L. Gordon Crovitz, a constitutional law expert, "A basic civil liberty is that the government must define crimes with great precision; a RICO violation is akin to the Soviet crime of hooliganism."

In Mr. Nolan's case, despite a six-

year legal battle and his expenditure of tens of thousands of dollars on legal fees, federal prosecutors didn't even provide the specifics of the grand jury charges against him until a week before his plea. This violated the Sixth Amendment right "to be informed of the nature and cause of the accusation."

Within the U.S. Justice Department, a bold attitude exists of finding ways to avoid constitutional restrictions. In a recent issue of *Asset Forfeiture News*, a bimonthly publication of the department's Asset Forfeiture Office, author Lee Radek commends the "innovative expansion" of federal statutes.

Although Mr. Lee now is in the asset forfeiture section of government — another department of dubious constitutionality — he writes, "In a previous life, I had some responsibility for overseeing federal prosecutions of state and local officials. This was trickier than it sounds, since there is no federal statute that directly prohibits bribery or corruption of such officials. Nevertheless, innova-

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tive prosecutors and agents, bringing cases that cried out for prosecution, managed to expand the federal extortion and mail fraud statutes to cover state and local corruption in the same way that the federal bribery and graft statute governs the conduct of federal officials."

(A longer reprint of this chilling article is available in the newsletter of Forfeiture Endangers American Rights — F.E.A.R. — in Mill Valley.)

What is so disturbing is that this federal "law" enforcement official boasts of how the feds "managed to expand" government powers into the state arena, despite the lack of even a federal statute.

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The Nolan case resembles that of Michael Milken, the financial services entrepreneur. When the feds used RICO to threaten his brother, Mr. Milken copped a plea. In a similar fashion, Mr. Nolan faced from nine to 20 years in prison, missing the critical years of raising his three small children. By pleading guilty, he will miss them for only 33 months.

One irony: Mr. Nolan's sentence was stiffer than that of Damian "Football" Williams for bashing in Reginald Denny's head with a brick.

Another irony: Having pleaded "guilty" to bribery, Mr. Nolan will go to jail with no amassed wealth. He is broke, and the support of his family is in question. If he truly is guilty of looting the lobbyists, why isn't he wealthy?

And another: As Mr. Nolan, who entered politics determined to limit the corrupting nature of state power in our lives, goes to prison, Willie Brown continues to sit atop the legislative heap, tax plunderer extraordinaire, perfectly legal by the lights of the U.S. attorneys. Unsettling, what?

Mr. Nolan's case demonstrates the dangerous expansion of federal power in recent years. Their appetites enflamed by victories against Mr. Nolan and others, the feds will continue their assault on the constitutional liberties, not only of politicians, but of ordinary citizens. Mr. Nolan now is out of the picture. The task of reining in government remains.