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October 12, 2005

Why George Ryan Won't Get a Fair Trial

The trial of former Illinois governor George Ryan and his co-defendant, businessman Larry Warner, began in September and is expected to continue into January or February.This trial illustrates how prosecutors can use the federal mail fraud and RICO statutes to deny fair trials to defendants. Over the course of this wide-ranging trial, jurors will hear every allegation of criminal and non-criminal misconduct by Ryan and Warner that prosecutors have collected by threatening their former associates (and one former associate's fiancée) with heavy mail fraud sentences of their own. The alleged misconduct will cover a twelve-year period and range from failing to register as a lobbyist, to accepting secret consulting fees from a presidential campaign, to giving low-number license plates to campaign contributors.

At the conclusion of this trial, the jury will not announce which of the allegations of improper conduct have been proven and which have not. It will announce only whether the defendants engaged in *some* scheme or artifice to defraud and *some* conspiracy to conduct the affairs of an enterprise through a pattern of racketeering activity. If the jury decides that the prosecutors' charges weren't entirely a lie and that *some* of the dirt they have thrown at the wall has stuck, the jury is likely to find the defendants guilty of the principal charges against them. It may seem to the jurors, after months of exposure to the smoke in the courtroom, that there must have been a fire somewhere. The press will not care much about the legal niceties. Although the judge will have told the jurors that they need not find all of the prosecutors' allegations true in order to convict the defendants, she probably will treat all of the allegations as proven when she determines the defendants' sentences.

Like many other trials in the Northern District of Illinois (which Judge Frank Easterbrook describes as the mail fraud capital of America), George Ryan's trial reveals why prosecutors call the federal mail fraud statute "our Stradivarius, our Colt 45, our Louisville Slugger, our Cuisinart." Although the Racketeer Influenced and Corrupt Organizations Act (RICO) may rank second to the mail fraud statute on the prosecutors' list of all-time favorites, RICO gives them similar powers.

In later postings, I will discuss (a) the vagueness of the mail fraud statute's protection of an "intangible right to honest services" and how this statutory language enables prosecutors to bootstrap minor state crimes and non-criminal regulatory violations into 20-year federal felonies; (b) how the allegation of a single fraudulent scheme produces unmanageable trials and enables prosecutors to present evidence of every act they can discover that is unlikely to endear the defendants to jurors; and (c) how the RICO statute, like the mail fraud statute, lends itself to wide-ranging trials in which jurors may wind up judging the person rather than the charge.

Posted at 03:00 PM in Friends of Chicago | Permalink

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Good points. But the evidence that George Ryan evaded paying income taxes is pretty clear cut and simple: Took disbursements from campaign war chest (legal) spent them on non-campaign-related goods and services (legal) but did not report them as personal income on his income taxes (not legal).

Posted by: nunzio | October 12, 2005 at 05:07 PM

Pr. Alschuler.

Do you think that part of the problem is that federal criminal law is perhaps a compromise that in many ways pleases no one?

In a post-Linbergh's Baby world, people are nervous about leaving police powers entirely to the states. In addition to solving coordination problems and dealing with crimes that really do span state jurisdictional boundaries, one might think that the trial of high-ranking state officials, who might have a number of friends in their own state legal systems, is a particularly good use for federal criminal law. At the same time, out of some desire to be loyal to an idea of a federal government of limited powers, people might be uncomfortable with a full range of federal criminal laws that mirrored state criminal laws in terms of comprehensiveness, e.g. a federal murder statute, a federal rape statute, a federal robbery statute, et cetera (although I imagine such laws must exist if only to provide for criminal prosecution in exclusively federal territories?). The compromise position then is vague federal criminal laws which satisfy to some extent both constituencies, but are perhaps prone to the sorts of abuses you identify in your post.

This blog was a great idea. I look forward to reading on.

Posted by: Ranjit Hakim | October 14, 2005 at 09:42 AM

Response to Ranjit Hakim: If local corruption is an appropriate federal concern (and I agree that it is), the soundest way to address it would be to make local bribe-taking a federal crime. Congress wouldn't need an "affecting commerce" or a "federal spending" handle. Congress has the authority to guarantee each state a republican form of government, and government by bribery isn't republican.

Posted by: Albert Alschuler | October 17, 2005 at 05:18 PM

He deserves as fair a trial as the six Willis children got!
Yes, it's a misplaced metaphor, but you'll certainly get the thought.

Posted by: jeff | October 20, 2005 at 03:08 PM

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Posted by: jeff | October 20, 2005 at 03:09 PM

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