

Presser had been cooperating with the FBI when he committed the acts of racketeering cited in the RICO suit. In Presser's own criminal case, still pending at the time of his death, he had used his status as an informant as a defense against the charges against him.

### Will there be a trial?

The government strategy in the RICO suit is based heavily on the assumption that the Teamsters won't—or can't—fight.

Simply reading through the government's pleadings makes this clear, with their amalgam of hearsay and allegations spanning 20-30 years. Add that to the fact that the government has named 42 individual defendants, and you have the potential for a real circus trial.

But, in the other half-dozen or so cases where the Justice Department has brought suit to appoint a trustee or receiver under RICO, most have been settled without a trial, by a consent order.

Why? First, legal sources familiar with such matters say that the Teamsters involved don't want a "bloodbath" in court—where all the dirty laundry is aired in public.

Second, the government's case will probably rely heavily on the "negative inference" drawn from the assertion of the Fifth Amendment privilege against self-incriminating testimony. When someone who is the target of a criminal case or investigation is sued in a civil action, defense lawyers usually will advise the person not to testify, but to assert the Fifth Amendment privilege. Otherwise, testimony elicited in the civil case can be used by the government in the criminal case. It has nothing to do with guilt or innocence: Even the most innocent of remarks can be twisted and misinterpreted by an overzealous prosecutor.

As one of the prosecutors in the IBT case recently acknowledged to this writer, in a criminal case the failure to testify cannot be used against you, but in a civil case, a "negative inference" can be drawn. That is, your failure to answer questions in a civil deposition, or on the witness stand in a civil case, can give rise to the inference that you have something to hide, and that you actually did the wrong that you are accused of doing.

Government prosecutors know that if they bring a civil action against someone whom they have also targeted for criminal prosecution, that person probably cannot defend themselves in the civil case, and the government can win by default. Indeed, the government's briefs in the Teamster case show they are well aware of this tactic.

This will add to the powerful pressures on the Teamsters to enter into some kind of settlement, with the appointment of a mutually agreed-upon trustee (perhaps someone chosen by the AFL-CIO). On the other hand, the widespread political support which the Teamsters have received, and the denial of the preliminary injunction, put the Teamsters in a much better situation to fight than anyone else has had so far.

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## Interview: Donovan McClure

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# 'A threat to all free institutions'

by Nicholas F. Benton

*This interview with Donovan McClure, spokesman for Americans Against Government Control of Unions, on the subject of the Justice Department's action against the International Brotherhood of Teamsters, was conducted July 7, shortly after U.S. District Judge David Edelstein had denied the government's motion for immediate trusteeship of the union. McClure noted that the Justice Department began the operation against the Teamsters a year earlier, when news of a pending action was leaked to the Los Angeles Times.*

**McClure:** When you leak something, your purpose in leaking it is like floating a balloon. You are sending up something for public reaction, to see how the public is going to respond to it before you do it. If people salute it, then it is full speed ahead. If they don't salute it, then you go back to the drawing board to see how you can make the thing palatable. But the incredible thing about this is that since this was leaked in June 1987, there has been nothing but brick-bats. No one has saluted it. You have had letters signed by 264 members of Congress, including all the political spectrum.

**EIR:** In response to the leak?

**McClure:** Yes. Once that story came out, a lot of the congressmen—I think it was Bill Clay of Missouri who instigated it—were outraged. People like Orrin Hatch, Jack Kemp. It went all across the spectrum. There have been newspaper editorials, there have been civil rights activists speaking out. Not one word was in favor, even in the Reagan administration outside of the Justice Department.

So, when they leaked that story, obviously they wanted to see what the reaction would be. It was totally negative. But rather than saying, "We've really hit a nerve here in which the American people are concerned about what this means to constitutional rights for workers and all the rest," they just plunged ahead. When [U.S. Attorney Rudolph] Giuliani filed a civil suit, this came shortly after he took the same case to a jury trial, the Salerno trial, and lost that before a jury. The evidence was not compelling. Now, he's taken the same case into a civil suit. So, they keep plunging ahead on this case in which the American people are saying, not only is this a dumb idea, but it's unconstitutional.

**EIR:** What do you think is the motivation?

**McClure:** Well, whether the Meese resignation is going to take some of the steam out of it, we don't know. There is no way anyone can prove this, but some of the feeling has to be that it was to take some of the heat off Meese. Whether that's the case or not, we don't know.

**EIR:** Do you think there was a more ulterior motive, in terms of union busting, using the "new law" which goes after institutions that the government doesn't like?

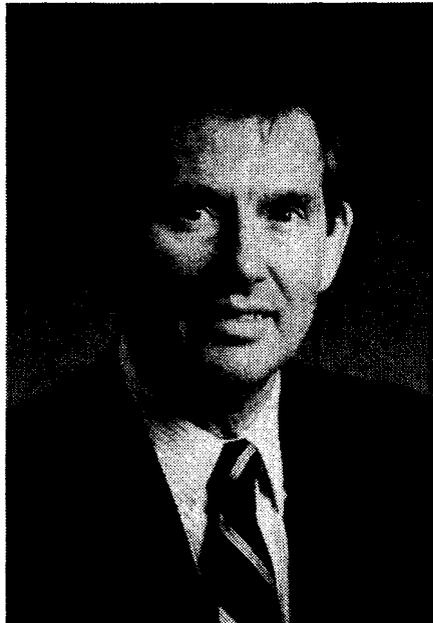
**McClure:** Right. First of all, one of the things you find here is that this the most hostile administration toward labor in our history. There's never been an administration as hostile toward labor as the Reagan administration. They destroyed one labor union, [the air traffic controllers' union] PATCO, and want to put others in trusteeship. If the government actually took over a labor union, they would have to represent workers in bargaining, which is absurd. There is absolutely no way the government has a clue of how these things should take place. Whatever the motives are, this is a great way to break a union.

But the fact is that this is unconstitutional. No administration before would ever dream of doing something like this. The precedent is very dangerous. Labor does get involved in politics, labor does have very active political action committees, they support generally Democratic candidates, although it is interesting that PATCO and the Teamsters both supported the Reagan administration. If you have this kind of a precedent, then if labor is going to be active in political campaigns, as is their right and their duty to their members, and they lose that election, well, the new administration comes in with this kind of a precedent, and says, "Let's take this union that worked really hard for our opposition, and let's put it into trusteeship." The kind of a precedent there is really scary, and that is what we are all concerned about.

**EIR:** What is your view of the use by the Justice Department of the law under the RICO statutes—the new strategy of filing both criminal and civil suits, so that they use testimony given under immunity in one case as evidence in another case, and use that to attack institutions more than individuals?

**McClure:** We have circulated all of the briefing materials of everything that has taken place to a number of lawyers, academics, and so forth. We think it is something which law professors should be taking a look at, and we think there will be more comments coming from that area than has happened so far. Everything about it is such a perversion of justice.

The ad we ran, for example, in the reporter publication, is aimed primarily at the idea that this is not a labor story. Most of them tend to see it as simply a labor story, an attack on the Teamsters. It is an attack on free institutions. For instance, when I saw that Giuliani filed a suit against GAF yesterday, I asked myself, "Why doesn't he put it under a trusteeship? You know, he's talking about a number of in-



*Donovan McClure*

dictments in this one corporation, that it's a pattern, which would mean RICO." Look at this administration. If you want to find a pattern of corruption, then obviously this government should be under a trusteeship.

The whole thing is so crazy. To us, the remarkable thing is from the standpoint of a political phenomenon of leaking something to see what the public reaction is. The public reaction is totally negative. Everyone said, "It's a dumb idea. Forget it." And that came from all across the spectrum of politics in this country.

**EIR:** Do you think these factors entered into Judge Edelman's decision?

**McClure:** I would guess they would. The judge was saying that so much is at stake here we're simply not going to make this kind of decision. I'm sure what the judge is reacting to, is the fact that this is something that goes far beyond what the Justice Department would tell us it is. Any time the Justice Department starts talking about protecting our freedom by taking it away from us, it is a repeat of the old Vietnam syndrome, really, of saying, "We're going to have to save this village; we're going to have to destroy it." Anytime people start talking about how they're going to protect our freedom by taking it away, you've got to be concerned about that. . . .

What we're saying here is that they are taking a cheap shot at one union. But if they succeed in that, they really hurt all unions very, very badly. The case we're making is that it is not just unions. We're talking about whether it is a church, a corporation, a newspaper, or any free institution; it could be treated the same way. I think the public is not aware of that.