

# 'Big Brother' makes new power grab as Barr targets state legislatures

by Leo F. Scanlon

The Bush administration began its pre-convention political offensive in July with a press conference called by Attorney General William Barr to present the latest federal program to combat violent crime—this time by targeting the defense bar and the judiciary committees of state legislatures for political attack. Barr's premise that violent crime can only be stemmed by ripping up the Bill of Rights at the state level, as the Department of Justice has done in federal courts, was itself exposed as a fraud by a DOJ report issued in June which showed a significant *drop* in the rate of violent crime nationally. This fact has not stemmed the Bush administration's zeal to increase the reach and political power of federal prosecutors.

The Bureau of Justice Statistics reported in June that violent crime dropped 25% in cities, 17% in suburbs, and 10% in rural areas in the decade from 1981 to 1991. The rate of crime (number of crimes reported per person) in urban areas is nearly double what it is in rural areas, while the absolute number of crimes are increasing in many categories. In other words, there is an increasingly violent climate for a slightly smaller class of victims. This is a reflection of the Bush administration's strategy of containing (but never eliminating) the drug traffic, and allowing it to "burn out" the most susceptible populations.

In addition, the Senate had already inked a bill to provide \$23.6 billion to the Justice, State, and Commerce Departments, and given top money—almost \$10 billion—to the DOJ, with \$409 million (\$70 million more than requested) for prison construction. In fiscal 1981, the DOJ appropriation was \$2.45 billion, and it has since grown to the currently authorized \$9.8 billion.

With this background, Barr was at pains to deny that his program is "partisan or political," and to present it as a serious "anti-crime" measure. He then proceeded to target state defense lawyers. "Frankly, in many states, the judiciary committees of the state legislatures are under the influence or in the grip of the organized criminal defense bar," he complained. The miraculous fact that there are still attorneys committed to enforcing criminal laws without destroying the Bill of Rights is the political "problem" being targeted by the

DOJ. Barr continued, "Now, one of the reasons we have not done a better job of reforming our state criminal justice systems in this country is that there has not been a well-organized constituency pressing for reform. . . . This violent crime report helps explain to the average citizen what is wrong and what can be done about it. . . . We hope it will become a catalyst for galvanizing a broad and ultimately irresistible coalition pushing for strengthening the criminal justice system, a coalition of law enforcement community, victims' organizations, and citizens groups."

Such a coalition is being created by the Department of Justice, which is expending millions of dollars to fund "community organizations" and "victims' rights" groups committed to its political agenda: more prisons for the nation with the highest incarceration rate in the world, a federally mandated death penalty for a wide variety of crimes, and no constitutional remedy for corrupt prosecutions and tainted convictions.

## 'Model' programs

The two major programs cited by the attorney general as models for the reforms he intends to impose on reluctant state legislatures are the "Weed and Seed" program and "Project Triggerlock." These programs represent efforts to meet three goals outlined by Barr: "Reform the federal and state criminal justice systems . . . seek the greatest impact possible through cooperative efforts by federal, state, and local law enforcement . . . and integrating law enforcement with social and economic revitalization in targeted inner-city neighborhoods."

The "Weed and Seed" program has been a featured element of the administration's response to the Los Angeles riots and has been widely and justly criticized as a sham. In effect, the administration is trying to cover over decades of neglect of urban infrastructure and the collapse of the job base its policies have caused by funneling pathetic amounts of money through the Justice Department and into "enterprise zones." This money has become the cement for a political alliance between federal politicians and the terrorist gangs themselves.

“Project Triggerlock” is part of a broader effort to “federalize” a wide variety of criminal offenses. In this case, federal firearms laws are aggressively used to prosecute violators who use guns in commission of crimes otherwise under the jurisdiction of the states. According to the DOJ, this means that “stiff penalties, no parole, pretrial detention, available prison space, and speedy trials” in the federal system can replace state criminal courts. The program is often touted as a model for creating de facto federal gun control measures which can be imposed on reluctant state governments.

These political gimmicks are supplemented by the DOJ effort to spread its most potent weapons, the asset forfeiture programs and the totalitarian “informant” apparatus (which is probably the biggest and most highly paid such network in the world) deep into the structure of state and local law enforcement machinery. Fortunately, these programs will soon be subjected to long overdue congressional scrutiny.

### **Congress will investigate**

The Committee on Government Operations of the House of Representatives has scheduled a hearing on the informant apparatus for the first week of September, and will demand an accounting for the \$30 million distributed to criminals in 1991.

The figures released by the committee were obtained from the Department of Justice as part of an ongoing probe into the asset forfeiture program, and represent merely the tip of the iceberg of black money which is being controlled and distributed by federal and local law enforcement agents. The \$30 million reported by the DOJ is only the official cash disbursements made to informants, who are allowed to receive up to 25% of the cash value of assets seized as a result of their efforts. Far more money and property are floating around in the system in the form of drugs which “disappear” so that agents can supply informant networks; in the form of stolen property which is utilized by informants who commit crimes “on contract” from federal and local agencies eager to boost their arrest totals; and in the form of assets seized without warrants, and without due process of any sort, from low-level drug users and distributors who are the prime targets, and virtually the only victims of these draconian measures.

But even the official figures are shocking. According to the DOJ officials, 14 people in 1990 and 1991 received a quarter of a million dollars each—in a single payment; others received payments totaling half a million dollars, and one very valuable informant earned \$780,000—more than President Bush and Vice President Dan Quayle’s salaries combined. These are federal figures, and reflect the tremendous resources poured into high-profile political prosecutions of administration enemies like Gen. Manuel Noriega of Panama. State figures are believed to be just as staggering.

The corruption in the asset forfeiture programs (which provide most of the funds to pay informants) is so widespread

that the Department of Justice is planning to issue a series of guidelines which strongly recommend against seizing assets without a court order—a slap on the wrist to the prosecutors who have become addicted to the political power and easy money which the asset forfeiture statutes have brought within their grasp.

The asset forfeiture statutes were originally developed and justified as a necessary tool to “take the profits out of crime” by allowing prosecutors to seize any monies or properties acquired in the course of certain types of criminal activity—originally, this meant large-scale drug dealing. Since the money (and most of the property) used as currency in the drug economy is fungible, it could easily disappear between the time of indictment and conviction. Pre-conviction seizure of such property is a dangerous infringement on constitutional protections of due process, but statutes which legitimized such actions were sold to legislatures in much the same way that the Vietnam commander explained, “We have to destroy the village in order to save it.”

The DOJ produced manuals instructing local police agencies on how to sell this concept to reluctant state legislatures, emphasizing that there is a great danger that such mechanisms will lead to the “perception of corruption” on the part of law enforcement officials. The sales campaign was successful, and the statutes were not only adopted by state legislatures, but expanded on both the federal and state level to encompass ever broader categories of criminal activity, including, but not limited to, money laundering, bank-related crimes, immigration violations, and prostitution.

The nub of the scheme is that the individual arrested or indicted by the government for allegedly participating in one of the listed offenses forfeits his property and bank account to the government, unless he can prove he has an innocent claim to the goods. The government need prove nothing else. The *Houston Chronicle* reported that about half of the vehicles and real estate seized in such actions are ultimately returned to their owners (after accumulating storage and management costs).

This is small consolation to the victims. As in the celebrated prosecution of Washington power-broker Clark Clifford, the prosecutors virtually own the defendant, and can dictate the amount of money he will be allowed to live on, and even the amount expended for his defense—that is, the prosecutor indirectly threatens the defense itself. All of this occurs *before* a finding of guilt of any kind.

### **A system of corruption**

A New Jersey prosecutor who has been sued by one of his victims represents a typical case. Nicholas L. Bissell, the prosecutor, is alleged to have stripped James Guiffre, a builder, of \$174,000 of property on the basis of a charge of possession of \$700 of cocaine. The forfeiture took place on the day after his arrest without a formal complaint being filed, a lawyer being present, or a judge being consulted. Guiffre

acknowledged that he "illegally and stupidly" used cocaine, but insists that he was never the "middle-level drug dealer" Bissell accused him of being. Nonetheless, Guiffre, a first-time offender with no record, was threatened with the confiscation of his home, prosecution on felony charges that could lead to 10 years in prison, a \$200,000 cash bail, and loss of his professional licenses, unless he agreed to sign over the deeds to his property and stipulate that they were bought with proceeds from drug dealing. When he asked to consult with a lawyer, he says he was told that there would be no deal if an attorney entered the picture.

The two lots were sold several months later with Bissell's approval for a total of \$20,000 to a buyer who later conveyed the property to Bissell's chief detective, the man who struck the deal with Guiffre. According to the *New York Times*, Bissell has about \$300,000 (about half his current forfeiture fund) in a tiny Somerville, N.J. bank that opened last December with total deposits of \$1.8 million. The president of the bank, Robert P. Corcoran, is a long-time business associate of Bissell, and has joint investments with Thomas C. Miller, the county counsel, whose law partner, William Welaj, is a co-owner with Bissell in the office building the partner's firm occupies.

Such petty corruption and contempt for constitutional procedure are endemic among state prosecutors who are eating the poison fruit of asset forfeiture. Bissell's office defends its practices, which are the subject of many complaints, as standard operating procedure. In 1989, Salem County, New Jersey prosecutor Frank Hoerst III was accused of stealing \$40,000 from his forfeiture fund after he was audited by the state attorney general. Hoerst was removed from office, pled guilty to taking a lesser sum, and was given a non-custodial sentence when he paid an \$8,000 settlement.

### War on the Constitution

The mild punishment given to Hoerst is part of what encourages the brazen corruption manifested by Bissell's office. Far more important is the attitude which flows right from the top of the government—expressed by President Bush in his rant at the end of his escapade in the Persian Gulf, the call to bring "Desert Storm" home to the streets of America. Justice Department officials are habituated to use the vocabulary of war to characterize their approach to criminal justice issues, and apparently are intoxicated by their own rhetoric. DOJ spokesman Matt Jeanneret was asked to explain the inequities of the asset forfeiture program and told a reporter that "asset forfeiture is to law enforcement what air power is to modern warfare."

But the administration's war on the Constitution is failing on every count. According to the *Houston Chronicle*, the federal government loses money on up to half of its seizures in Houston and south Texas. Even the Justice Department can't stop the devaluation of real property in George Bush's depression.

## House committee calls for Inslaw prosecutor

On Aug. 12, the House Judiciary Committee, chaired by Rep. Jack Brooks (D-Tex.), announced the completion of its long-awaited investigative report on the Inslaw scandal, in which senior Justice Department officials of the Reagan-Bush administrations are accused of having stolen copyrighted software from the Washington, D.C. computer firm and sold it internationally, following unsuccessful efforts to bankrupt the firm.

As the result of efforts by committee Republicans, the release of the report was delayed until after Congress reconvenes in September. However, in a press release, Brooks announced that the report called for the attorney general to appoint a special prosecutor to review the actions of government officials and their "private sector friends" in the looting of Inslaw. Brooks also called upon the Justice Department to pay reparations to Inslaw owners Bill and Nancy Hamilton, in addition to the back payments owed to the firm for the use of its software.

According to the limited public accounts of the Brooks report, committee investigators were able to confirm that pirated copies of the Inslaw software program, Promis, were located in Israel, in the Bahamas and in the office of a district attorney in Colorado.

Among the documents uncovered in the course of the committee probe were communiqués between Deputy Attorney General Arnold Burns and his boss Edwin Meese, in which Burns stated that the Justice Department would lose any court case brought by Inslaw and that it would be prudent to attempt an out-of-court settlement. Burns would later engage in strongarm tactics to sabotage Inslaw's legal initiatives.

According to one source close to the House Judiciary Committee, the Brooks probe also developed evidence that investigative reporter Dan Casolaro, who was found dead in a West Virginia hotel room in August of last year, was probably murdered. At the time, local police and medical examiners had declared Casolaro's death a suicide, despite evidence that he was in the process of unearthing critical evidence of government criminality in the Inslaw affair. According to a forensic expert interviewed by Jack Anderson on a CNBC documentary aired on Aug. 11, previously secret autopsy evidence revealed that Casolaro had died from over a dozen deep cuts on both of his arms and that he had bruises on the back of his head and on both of his legs, indicating that there had been a struggle just prior to his death.—Jeffrey Steinberg