

The Sacramento Sting

*A state senator goes on trial in
the first test of the capital corruption probe*

SACRAMENTO—Joseph Montoya was a Los Angeles social worker and a La Puente city councilman earning less than \$14,000 annually when he was elected to the state Legislature in 1972.

By the time FBI agents raided his state Senate office in August 1988 as part of a political corruption probe, Montoya owned property worth nearly \$2 million, while earning just over \$37,000 annually as a state senator. The three-term Democrat also owned several rental properties, lived in a \$300,000 house and drove a \$30,000 Cadillac.

This month Montoya goes on trial in a federal courthouse in Sacramento, charged with soliciting and accepting bribes in exchange for favorable treatment on special-interest legislation. The state attorney general's office reportedly is investigating Montoya over the management and financing of his real estate holdings scattered around the state.

The indictments against Montoya and a former aide, Amiel Jaramillo, a Sacramento lawyer, mark the first use of the federal Racketeer Influenced and Corrupt Organizations (RICO) Act to attack corruption in the state capital. Beyond that, the Sacramento case stands as one of the few actions taken by federal law enforcement officials against elected state politicians.

Between 1985 and 1988, FBI operatives posed as the owners of a small seafood company seeking legislation and offering political contributions in exchange. But U.S. Attorney David F. Levi says Montoya's alleged pattern of illegal behavior extended beyond the FBI's sting. The indictment, for example, accuses the lawmaker of unlawfully solicit-



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ing contributions and speaking fees as the price for his influence on a variety of legitimate legislative measures dealing with sports agents, foreign medical school graduates and other matters. "In that sense, it is quite right to say the investigation expanded out into the real world of citizens and politicians, and not just the undercover world of [FBI] agents pretending to be citizens," says Levi.

Levi, the scholarly 37-year-old son of former U.S. Attorney General Edward Levi, has been telling reporters for months that his office is continuing to look into corruption in Sacramento's corridors of power. Now in its fourth year, the investigation has drawn plenty of criticism from those who see it creating a



Caught in the FBI's net:
State Senator Joseph Montoya

dark cloud of suspicion over legislators whose names have been linked to the probe despite the absence of formal charges. "It may reflect resources, or it may reflect that they want to get a victory," one lawyer close to the case says of the snail's pace of Levi's investigation. "I don't know what motivates them. It's a very unusual prosecution."

For some legislators, Levi's cautious handling of the case has led to both anxiety and relief. Assemblywoman Gwen Moore (D-Los Angeles) insists she did nothing wrong in 1986 and 1988 by agreeing to sponsor legislation aiding the seafood company that turned out to be an FBI front. "I think Mr. Levi is handling all of this in a very low-key, thorough way," says Harland Braun, a Los Angeles attorney representing Moore. "One of the disadvantages is that someone like Gwen who is innocent has to wait until the end to be vindicated." But, he adds,

it's better that Levi pursue his deliberate course rather than "go off half-cocked and indict her."

The deliberate pace of Levi's investigation also has resulted in plenty of head-scratching over its ultimate objectives. When news of the investigation first broke, Sacramento was filled with rumors that Assembly Speaker Willie Brown Jr. (D-San Francisco) was a prime prosecution target. In 1986 Gulf Shrimp, the dummy FBI company, attempted to contribute a \$1,000 cash gift to Brown. One of the speaker's aides returned the gift, however, because cash contributions in excess of \$100 are illegal. Although Brown, along with other legislators, received additional contributions linked to the FBI operation, he has claimed no wrongdoing.

Donald Heller, a Sacramento lawyer representing a key informant in the corruption case, thinks Levi's probe has over time headed off in different directions that have yet to be revealed in the form of additional indictments.

"What I gather is that the scope of this investigation is taking them down other avenues, toward other legislators and other conduct," says Heller. He represents John Shahabian, a long time legislative aide who has received immunity from prosecution in exchange for his cooperation. Shahabian reportedly agreed to assist investigators after FBI agents confronted him with evidence of his role in unlawful bribery activities.

The government's decision to charge Montoya and Jaramillo with criminal racketeering under the RICO statute suggests prosecutors are confident they can prove a pattern of illegal behavior that extends beyond the sting operation.

But defense lawyers are expected to argue that RICO—which has become a favorite prosecutor's tool in attacking a wide range of white-collar crimes—has no place in this trial. "I don't think RICO is being properly used in many different places, and this is one more case of it," says Michael Sands, Montoya's lawyer. Sands has subpoenaed several legislators, including Brown and Senate President Pro Tem David Roberti (D-Los Angeles), and is likely to question them during the trial about legislative and political activities in Sacramento.

Levi defends the use of RICO in attacking alleged corruption in Sacramento. "The statute makes it a crime to use an enterprise—which can be a business, an organization or a public office—to engage in certain kinds of criminal activity," he says. "It is rather clear from

the language of RICO that Congress intended the statute to be used in precisely this way."

Apparently senior Justice Department officials in Washington concur in Levi's view of the racketeering law, since he needed their okay before drawing up RICO indictments against Montoya and Jaramillo. Otherwise, says Levi, department lawyers in Washington have played no role in his continuing Sacramento corruption probe.

Some are questioning the wisdom of making a federal case out of charges of state political corruption. "All too often federal prosecutors structure or manufacture a RICO case to absorb the case into an overcrowded federal system, and there is no reason for that," says Malcolm Segal, a lawyer in the Sacramento branch of Heron, Burchette, Ruckert & Rothwell, a national law and lobbying firm.

Segal, a former federal prosecutor in San Francisco who reportedly represents undisclosed witnesses in the sting investigation, says the case should have been handled by state prosecutors because of limited resources at the federal level.

Steven White, Sacramento County's district attorney, has warm words for Levi's handling of the Montoya case. But he also believes political corruption should command more attention from local prosecutors. "This office has a very special responsibility to attend vigorously to public corruption cases since Sacramento is the seat of government," says White. A former top aide to Attorney General John Van de Kamp, White recently replaced John Dougherty as the state capital's local prosecutor. Dougherty, who resigned last year, had been criticized by some for not acting aggressively on corruption cases.

Not surprisingly, Levi vigorously defends the role of federal prosecutors in uncovering illegal state-level activity. Investigating political corruption is no different, he says, from getting involved in drug cases and other kinds of criminal activity "that can be prosecuted by the state but often are not."

Levi says an assault on state-level corruption might even be easier for a federal prosecutor "who traditionally is not political and generally does not have political ambitions and is not part of the state system." Perhaps Levi has no political office in mind for himself. But federal prosecutors elsewhere—notably New York's Rudolph Giuliani—have attempted to launch political careers based on their prosecuting records.

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