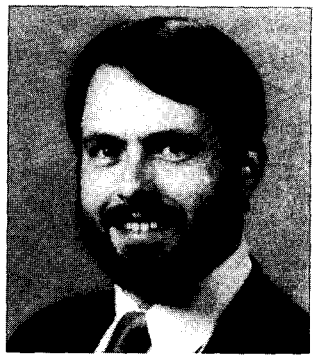

# Killing Enterprise

The Big Apple, as New York City is known, is a bustling, energetic metropolis that nevertheless remains a difficult place for all but the very wealthy to live. It is an especially tough town for the enterprising poor seeking entrepreneurial paths out of poverty.

One problem, as described by Raymond Keating in an August 1996 *Freeman* article, is confiscatory taxation. Another difficulty, reports William (Chip) Mellor, president of the Institute for Justice, is that "In occupation after occupation, obstacles to enterprise often far exceed any legitimate exercise of government's authority to protect public health and safety." His new study, *Is New York City Killing Entrepreneurship?*, paints a depressing picture of a municipality intent more on enriching special-interest groups than encouraging its citizens to prosper. The result is to hinder the kind of economic growth that offers the best hope for the poor.

New York City is not alone, of course, but it is a symbol of what has gone so badly wrong in America. Observes Mellor, "No city is more famous for its history of bootstrap capitalism than New York City, where traditionally waves of immigrants joined the native-born to create vibrant communities whose pillars were the local merchants, vendors, and shop owners." But no longer. "Today, New Yorkers seeking to follow in this tradition of entrepreneurship face a bewildering array of laws and regulations that prevent or stifle honest enterprise."

For some, new opportunities simply don't arise. Other people still succeed, but they must surmount higher barriers. Indeed, many owners of small businesses operate illegally. Unfortunately, evasion is expensive and getting caught is even costlier. Consumers, too, suffer.

The regulations that squash people's entrepreneurial spirit are obviously many, but Mellor focuses on occupational restrictions, which alone fill 73 pages of the city's Official Directory. There is, it seems, little that a person can do without government approval. Writes Mellor: "One needs a license to repair video-cassette recorders, to work as an usher or to sell tickets at wrestling matches, to remove and dump snow and ice, to set up a parking lot or a junk shop." In this way, much work, especially that open to those of modest means, has become essentially a government privilege.

New York City limits economic opportunity in three important ways. It restricts the number of permits for activities (cabs, street vendors, newsstands). The government sets cumbersome requirements for receiving an occupational license (car services, child care, hairdressers). And New York City creates public monopolies (mass transit and trash collection).

The most famous permit ceiling—and certainly the most irritating for a visitor—

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involves taxis. In 1937 the city decided that there should be 13,595 cabs. (The number later decreased through attrition.) Today it costs upwards of $175,000 to buy a taxi medallion. To recoup, drivers naturally focus their attention on the more lucrative sections of the city—lower and mid-Manhattan and the airports. The likelihood of finding a legal cab in Harlem, the Bronx, or most anywhere else is about the same as finding a Martian spaceship. Of course, the lack of a legal supply hasn't eliminated the demand for transportation. Rather, an estimated 30,000 "gypsy cabs" simply operate illegally.

New York has also long been known for its street peddlers. Former Mayor David Dinkins was one, so was the father of Dinkins's predecessor, Edward Koch. But today the city allows only 4,000 food vendors and 1,700 sellers of other goods. (At the same time, the City makes it difficult to apply for permits, even when they are available.) At least three times as many vendors now operate illegally, with their merchandise subject to confiscation. As Mellor puts it, the city seems to treat these sellers as "a liability rather than an opportunity, a problem to be managed or contained rather than a wave to be channeled." Similarly, the municipal government allows only 230 newsstands citywide. It is hard to discern even a plausible justification for such a policy.

At the same time, the city bars home preparation of food. This restriction, in conjunction with the ceiling on street permits, essentially forces anyone interested in selling food to rent kitchen facilities from an established restaurant. Some potential entrepreneurs give up; those who don't must pay more and work often inconvenient hours (usually at night, when a local eatery is closed).

Another means by which entrenched interests protect their privileged positions is occupational licensing. For instance, in New York State, one must take 900 hours of courses to become a hairdresser. (It's even worse in California, where 1,600 hours of instruction are required. Other states, like Massachusetts and North Carolina, fall in between.) And a cosmetology license is necessary just to touch someone else's hair.

This means that hairbraiders, who play an increasingly important role in African-American communities, must learn everything taught to hairdressers, such as how to cut and color hair. The licensing process has nothing to do with public safety—emergency medical technicians, for instance, go through only 116 hours of training. Rather, the requirements, enforced by current practitioners, are designed to restrict competition and thereby enhance earnings. As a result, many hairbraiders must work informally and illegally. Reports Diane Bailey of the International Braiders Network: "This is a cottage industry done in our homes, on our stoops, in our kitchens."

Similar requirements are imposed on day care operators. The problem is not just that New York City's regulations are particularly stringent. It is that they are also utterly irrelevant. For instance, the director of a center must have a master's degree or be enrolled in a master's program. Employees must meet the same certification requirements as teachers. On top of these come the usual intrusive controls—over the kinds and quantities of snacks to be served, for instance. That such regulation is not needed is evident from the success of some 5,000 relatively unregulated providers of "family" day care involving fewer than seven children. Such operations currently exist in the city, without evident harm to New York's children.

About 5,000 vans and minivans are thought to ply New York City's streets, carrying some 20,000 passengers daily, principally through immigrant and minority neighborhoods. Such jitney services operate more cheaply than the government bus monopoly; they are also more convenient, stopping wherever passengers desire. In addition, reports Mellor: "The van services have been the route by which their owners, many of whom now employ numerous drivers, have worked their way up the ladder of economic mobility. Virtually all are Caribbean immigrants, from Barbados, Jamaica, St. Kitts, Guyana and assorted islands, who escaped poverty through this enterprise."

Alas, the city bans any competition with the city bus operation. The power of public offi-

cials and benefits of public-sector employees are considered to be vastly more important than jobs for minority workers and convenience for minority passengers.

New York City similarly maintains a monopoly for residential trash removal. Private haulers compete for the business markets and could serve apartments and individual homes as well. But, again, munificent benefits for government employees, ranging up to $55,000 annually, have generated a powerful lobby for the status quo. The losers are consumers and entrepreneurs alike.

The problems of New York City and other major urban areas are manifold, and there is no panacea. But no reform program will work without deregulation. As Mellor points out: "The revival of a culture of enterprise, one in which thousands of poor but ambitious people routinely pursue their occupations, aids both those in business for themselves and others whom they may inspire or, ultimately, employ. Such a culture of enterprise is an essential and powerful catalyst for community building." Such a culture will be possible only when America is truly free—when governments across the country finally get out of their people's way. □

THE FREEMAN
IDEAS ON LIBERTY

# Law Enforcement by Deceit?: Entrapment and Due Process

by Jennifer Johnson

According to an April 1993 FBI Law Enforcement Bulletin, "Law enforcement officers often employ trickery and deception to catch those involved in criminal activity." What might surprise you is that the Bulletin just quoted was not designed to discourage or reprimand such trickery, but rather to spell out how law enforcement officers can best conduct it so as to avoid "undercover investigations [giving] rise to successful [defense] claims of entrapment."

Contrary to popular belief, executed properly, many dubious investigative tactics are perfectly acceptable under the current parameters of the law. The 1992 Supreme Court ruling in *Jacobson v. United States*—that law enforcement "may not originate a criminal design, implant in an innocent person's mind the disposition to commit a criminal act, and then induce commission of the crime so that the government may prosecute"—establishes only loose and vague constraints on police procedure. The Supreme Court has held that when investigating certain criminal behavior, police may lawfully use a wide array of undercover techniques that, although deceptive, do not legally constitute entrapment.

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The question is: What does? And why does law enforcement seem to have such extraordinary latitude to conduct lawful investigations that most would deem Machiavellian?

Entrapment is defined, in criminal law, as an affirmative defense (one in which the defendant has the burden of proof) which excuses a criminal defendant from liability for crimes proved to have been induced by certain governmental persuasion or deceit. In considering entrapment defenses, courts have deliberated four questions. Their answers to these questions determine in a particular case whether an entrapment defense is relevant and can exonerate the defendant.

The first question is: Does law enforcement need reasonable suspicion before targeting the accused in an undercover investigation?

Surprisingly, the answer is no. Numerous federal courts have held there is no Federal Constitutional requirement for *any* level of suspicion to initiate undercover operations. The courts have ruled there is no constitutional right to be free of investigation and that the fact of an undercover investigation having been initiated without suspicion does not bar the convictions of those who rise to its bait.

So, a defendant cannot be exonerated of a crime on entrapment grounds merely because he or she can prove that police had no reason whatsoever to suspect even the slightest of criminal inclinations. What he must prove is that he was *induced* by police to commit the