

ACCOMPLICE ACCUSATIONS IN THE CRIMINAL PROCESS: THE APPLICATION OF SIXTH AMENDMENT TESTS FOR THE RELIABILITY OF HEARSAY EVIDENCE TO PROBABLE CAUSE DETERMINATIONS

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By the Bill of Rights the founders of this country subordinated police action to legal restraints, not in order to convenience the guilty but to protect the innocent. Nor did they provide that only the innocent may appeal to those safeguards. They knew too well that the successful prosecution of the guilty does not require jeopardy to the innocent. . . . The progress is too easy from police action unscrutinized by judicial authorization to the police state.†

INTRODUCTION

The recent publicity generated by federal undercover investigations has focused primarily upon the propriety of governmental conduct which creates or induces crimes that would not otherwise occur.¹ The role of

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The authors express appreciation for the research assistance of Alan A. Cook, a member of the Georgia Bar.

† *United States v. Rabinowitz*, 339 U.S. 56, 82 (1950) (Frankfurter, J., dissenting).

1. One of the last summations of the heavily publicized federal cocaine distribution case against industrialist John DeLorean, which was based primarily upon the testimony of a co-conspirator and federal undercover agents and resulted in the defendant's acquittal by the jury, is "Taking the Sting Out," *Washington Post*, at 27, Sept. 17, 1984 (nat'l weekly ed.). As revealed in that account, a number of jurors voted for acquittal because they believed that the conduct of the government agents and informant improperly created the drug conspiracy. The jurors were instructed to acquit DeLorean: "1) if the idea for the crime came from the creative acts of government agents or informers; 2) if the agents then induced the defendant into the crime; and 3) if the defendant had not been ready and willing to commit the crime before he was induced to do so." *Id.*

For a more detailed discussion of the entrapment defense, see *United States v. Wolffs*,