

# The Harrison Williams brief

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*Mary Jane Freeman reviews the legal arguments submitted in the senator's Abscam case by a distinguished jurist, E. N. Griswold.*

Justice Department tactics in the Abscam sting operation of U.S. Sen. Harrison Williams come "very close to the police state," charges Erwin Nathaniel Griswold, former dean of Harvard Law School and a former U.S. Solicitor General. Griswold's accusation, made in a post-hearing memorandum in support of the senator's motion to dismiss the Abscam indictment against him, is one of the few such characterizations of the Abscam operation outside of *EIR*.

Senator Williams was convicted May 1 of "influence peddling" in a Justice Department initiated suit that involved FBI agents posing as Arab sheikhs offering him a bribe. The senator never accepted, as proven by FBI videotapes, and he says the entire operation is a frame-up designed to eliminate prolabor Democrats from the Congress.

Williams, who has served as New Jersey's senator since 1958, could lose his seat if the full Senate backs up an Ethics Committee decision recommending expulsion. Professor Griswold, who served as dean of Harvard Law School for 20 years, described the Williams frameup this way in his post-hearing memorandum:

"Suppose it had not been a United States Senator. Suppose it had been you or me. If the action involved in this case is condoned by this court, and that action is upheld on appeal, then such conduct becomes standard practice. Is that the kind of country this country should be? It is surely very close to the police state, which we have always shunned."

The two key legal concepts Griswold raises in his brief are the entrapment defense and the right to due process of law.

## **No predisposition to crime**

One of the primary ingredients necessary for an entrapment defense is predisposition. That is, if the prosecution can prove beyond a reasonable doubt that a defendant had a predisposition to commit a crime then there is no basis for the defendant to claim

entrapment. But in the Williams case the government lacked any such evidence against the senator.

In fact, as Griswold states in his brief, the FBI agent in charge of the overall Abscam investigations, John Good, testified at the due process hearing that with respect to Harrison Williams the FBI was "starting with a clean slate."

In the most common of entrapment cases, i.e. narcotics, a person is identified as actively involved in a criminal activity—smuggling, for instance. At that point, police or government agents set up the circumstances by which this known criminal can be apprehended.

The frameup nature of the Williams case is addressed by Griswold in the following way:

"They [the FBI] had no reason to proceed against him. This is not a case where government officers knew about an evil plan on the part of Senator Williams, and moved into *his* plan for the purpose of detecting it, preventing crime, and bringing about prosecution. On the contrary, this is a case where there is no evidence . . . beyond a reasonable doubt that the Senator was predisposed [emphasis in original]."

## **Weinberg, the FBI con man**

Griswold uses the FBI's own transcripts of audio and video tapes to show how the government agents, in particular Mel Weinberg, the lifelong con man hired by the FBI for Abscam, instigated the crime. In taped meetings, Weinberg "by hook or crook" attempted to take a legitimate business effort of the senator's friends—a titanium mine—and turn it into a criminal venture.

After citing many examples, Griswold writes: "It is clearly a case where the 'processes of detection and enforcement' were 'abused by the instigation by government officials of an act on the part of persons otherwise innocent in order to lure them to its commission and to punish them.'"

“What would be the consequence,” he asks, “of an approved system of executive infiltration, deception and spying on the legislative branch, without any probable cause or rational reason to suspect—or on the judicial branch?”

This same question could have been asked in Germany during the 1930s. It was through similar frameups of government officials who stood in the way of the Nazi “reforms” that the Nazis could finally gain their totalitarian control.

### Police state methods

“What sort of a society will we have,” asks Griswold, “if citizens in high office, with long-continued fine records, can be tested to see if, by deception, fabulous lures, and pressures they can be pushed into doing things they would never dream of doing without extraordinary and intentionally venal government pressure?”

Professor Griswold answers his own question by returning to the Constitution: “Indeed, there are clearly questions of separation of powers involved, how far the executive branch can properly go in attacking the legislative branch of the Government. This relationship requires vigilance.”

The second critical issue raised by the former dean was due process, “written into the Fifth Amendment in 1791 and . . . the keystone of our basic law today.” The Harvard scholar describes the method of seizure of so-called evidence in the Williams case as “unique and unprecedented.” He gives the following circumstances as examples: “(1) hundreds of conversations recorded, (2) over an extended period of time, (3) by video and audio surveillance, (4) all without any specific predicate.”

### Puccio’s bias

Another blatant judicial violation raised by Professor Griswold is the denial of Williams’s right to a “disinterested prosecutor.” He states; “The defendant in a criminal case is entitled to have a disinterested *prosecutor*, in the sense that the prosecutor’s own conduct is not in question.” He then cites a Supreme Court ruling, *Berger v. United States*, 295 U.S. 78, 88 (1935):

“The United States Attorney is the representative not of an ordinary party to the controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest therefore, in a criminal prosecution is not that it shall win a case, but that justice will be done.”

In this case there was an obvious and “sensitive” issue as to whether the prosecution should be brought, and as to how that issue should be

handled at the trial, in questioning witnesses, in making disclosures to the defendant, and in arguments made to the court. On all such questions, due process required that the prosecuting officer be in a position to make his judgments on these crucial questions without personal involvement. But that was not the situation here. Mr. Puccio was deeply involved. He was the Chief Task Force officer in the Eastern District. He has even supplanted the United States Attorney in this case. He joined in planning the various extraordinary events which occurred, and supervised the conduct of the enterprise. If there was a serious error in prosecutorial conduct in this—and we contend that there was—Mr. Puccio joined in this error. He was obviously directly and personally interested in the question, and he was in no position to make his prosecutorial decisions independent of his own conduct.

### Fomenting crime

“[T]he preservation of fairness in the administration of justice is the essence of due process,” Griswold comments. “More importantly, there was no evidence of prior crime by Senator Williams, and no reason to expect any particular criminal conduct to appear at the time his surveillances started. On the contrary, the meetings which were recorded were held for the purpose of fomenting crime, for the purpose of creating situations which it was hoped would then pressure Senator Williams into improper conduct.”

The actual improper conduct could have been tested if the FBI and the Justice Department’s Brooklyn strike force had been required to go before a magistrate to get a search warrant as it is normally done. In the Williams case the FBI would have been hard-pressed to show probable cause.

At issue here, are fundamental constitutional protections—the right to privacy, security and due process. He states:

The dragnet electronic surveillance in the present case should be placed within [a] special category. While the limited use of electronic surveillance in crime detection is well-established, the Government would be hard-pressed to justify the extensive use of such surveillance where no prior or ongoing criminal conduct exists. *In contrast, such extensive surveillance impinges seriously upon personal privacy and security, and this becomes more clear when it is recognized that sustaining what was done here will open the door to virtually unlimited surveillance of all citizens anywhere whenever a policeman or government officer, or, indeed, a private detective, chooses to do so* [emphasis added].