

# Former Justice Department officials warn against tolerating Abscam tactics

by Freyda Greenberg

The latest in an ongoing series of hearings in the House Judiciary Committee's subcommittee on Civil and Constitutional Rights, former U.S. Attorney for the District of New Jersey Robert J. Del Tufo has presented detailed testimony regarding abuses of the judicial process and of the civil and constitutional rights of citizens that resulted from the Justice Department's Abscam investigation.

Abscam was the entrapment operation run by the Justice Department in 1978-82 to convict leading politicians, businessmen, and trade-unionists of accepting bribes from phoney Arab "sheiks"—i.e., FBI agents. The most famous case produced the forced resignation of Sen. Harrison Williams (D-N.J.) after one of these operations was run against him. Those framed up were constituency-based figures opposed to transforming the United States into a "post-industrial" society.

Del Tufo presented his testimony along with his former colleague William W. Robertson, also of the U.S. Attorney's office in New Jersey, on Nov. 23. Del Tufo and Robertson are continuing a campaign they began in 1979 to bring to light abuses being conducted in the name of the Abscam investigation. The story which Del Tufo and Robertson told the subcommittee pointed directly to Abscam Prosecutor Thomas Puccio as well as U.S. Justice Department officials Phillip Heymann and Irvin Nathan in allowing and in many cases instigating the abuses.

Because of the secret nature of such investigations, not only were the victims of the investigation essentially indicted without benefit of public hearing; those few law-enforcement officials who attempted to keep the investigation from ripping up the Constitution were ostracized by Washington and the Brooklyn Strike Force office (i.e. Puccio) and driven out of the investigation. This occurred when the venue of the Abscam cases was moved from New Jersey to Brooklyn, New York due to objections from Assistant U.S. Attorneys in New Jersey Edward J. Plaza and Robert Weir, Jr. to the Justice Department's condoning of outrageous behavior by Mel Weinberg—the FBI con-man used to set up Abscam stings. At that point they became the subject of a slanderous memorandum from Justice Department Organized Crime Strike Force head Irvin Nathan which to this day is used to isolate sections of New Jersey's crime-fighting apparatus.

*Below we reprint excerpts from Mr. Del. Tufo's Nov. 23 testimony.*

Del Tufo began his testimony by explaining the standards required to conduct a fair, honest undercover operation. Prosecutorial responsibility involves: "(a) Ensuring that the investigation properly monitors and controls the informant's activities; (b) Ensuring that there is a trustworthy factual basis for suspicion to believe that a person is in fact criminally predisposed before the apparatus of law enforcement is turned in his or her direction and thus before intrusive evidence-gathering techniques are employed; (c) Ensuring that putative suspects are not lured or induced into the commission of criminal acts by overbearing or devious stratagems. . . ."

"In my opinion, Abscam breached in many significant respects proper standards of professional responsibility as well as fundamental restraints and guidelines which should be abided in undercover operations. Moreover, its litigative history—including the fact that lengthy and expensive post-trial due process hearings were required, that various federal district court and appellate court judges have reacted to it with some scathing language, that a heated debate on various issues was triggered in the press, that these hearings have been deemed necessary, and that similar hearings were deemed necessary by the Senate—lead to the inescapable conclusion that, despite its impressive and unique record of convictions, a serious question exists as to whether Abscam has fostered public confidence in the integrity of the law enforcement system. . . ."

Del Tufo placed much of the blame upon the administrators of the investigation:

"The problems with Abscam arose from the failure of the Department of Justice in Washington to insist upon adherence to recognized and well-established guidelines which govern the conduct of undercover operations and to see that effective control and direction of the investigation was exerted by responsible and experienced supervisory personnel.

"Abscam, by its very nature and composition, posed a marked potential for mischief. It demanded close and continuous common-sense scrutiny and control. Abscam was not,

after all, an undercover inquiry into some actual on-going criminal event or enterprise such as narcotics trafficking or some organized crime endeavor. Indeed, it was not even an inquiry into suspected acts of existing political corruption. Rather, as it finally evolved, it constituted a proactive excursion to ferret out potential corruption by utilizing fictitious proposals conceived by the government itself. . . . The need [for close scrutiny] was heightened in Abscam when the government decided to use Weinberg, a convicted felon and con-man *extraordinaire*, to implement the artifice. The danger which Weinberg posed was magnified significantly by the lack of supervision over him, coupled with the apparent agreement to compensate him simply for succeeding in bringing marks before the camera and to bestow a bounty depending upon the importance of the office held by the target. In this environment, vast opportunities were opened for informant self-dealing and for over reaching, even by tricking or conning third persons into compromising situations, and there is evidence that Weinberg may well have acted in precisely this fashion. It was the Department's responsibility to bring Weinberg under control and to keep him under control. Despite admonitions from New Jersey, it failed to do so.

The Department did not install and maintain normal monitoring machinery. Of importance here was the failure to require prompt preparation and dissemination of transcripts of taped conversations so that supervisory personnel in Washington would have an accurate picture of events and could make sound judgments based upon what was actually happening. (Mr. Puccio, when serving as supervisory field prosecutor, could have made a difference, he recognized the problems and New Jersey prosecutors continued to emphasize them to him. But he refused to insist that corrective action be taken.) This particular failure resulted in judgments being made upon the representations of Weinberg, and those closest to him in the field, as to what had occurred. All too often, however, these representations did not accord with the actual facts when, through transcripts of conversations or other information, they became known months later."

Del Tufo then pointed to the existence of evidence that Weinberg received a substantial portion of the \$100,000 passed to former Camden, New Jersey Mayor Errichetti on March 31, 1979, and that he was the source of fraudulent certificates of deposit for whose "recovery" he was financially rewarded by the Justice Department.

Del Tufo reported New Jersey attorneys' attempts to correct the situation:

"Repeatedly between May and July, we discussed the issue with the Brooklyn prosecutors but there was no improvement. During a meeting in Washington on July 18, 1979, I called the matter to the attention of Mr. Heymann, Mr. Nathana, and other senior officials . . . we had discovered, and communicated, Weinberg's coaching of Senator Williams and our concerns intensified over the viability of future prosecutions and over possible violations of constitutional rights. In response . . . coaching was forbidden and

directions were issued to improve housekeeping details, but the commands were honored by field personnel in Brooklyn in the breach and almost never in the observance. . . .

"In my opinion, the field was simply not interested in controlling Weinberg and in putting the necessary monitoring machinery in place. They gambled that Weinberg's style would produce spectacular results and were not concerned about the means he might employ to achieve them. Washington regrettably was unable or, ultimately, unwilling to interfere and enforce its own decrees."

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*Not only was Abscam executed outrageously, Robert del Tufo testified, but, "Abscam, by its very nature and composition, posed a marked potential for mischief. Abscam was not, after all, an undercover inquiry into some actual ongoing criminal event or enterprise such as narcotics trafficking . . . not even an inquiry into suspected acts of existing political corruption. . . . It constituted a proactive excursion to ferret out potential corruption by utilizing fictitious proposals conceived by the government itself."*

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In conclusion, Del Tufo recommended:

"The Subcommittee should consider recommending to the Department of Justice that clear and effective internal rules and regulations be promulgated to mandate and guarantee that serious allegations of impropriety by Department informants and employees are objectively investigated by an impartial, independent agency. With respect to Abscam, however, such a remedy comes far too late and would be meaningless. In view of the unique circumstance, coupled with the Department's demonstrated lack of resolve and the gravity of the allegations of wrongdoing, I suggest that the Subcommittee propose whatever legislative or other action is necessary to appoint a special Prosecutor to investigate charges of criminal misconduct by Weinberg and others. . . . A proper evaluation of Abscam cannot be achieved absent access to all relevant information. The Department's selective disclosure to date is inadequate. The reluctance to disclose is puzzling and alarming.

"In my view, Abscam was an aberration. But it is one which could occur again."