

'Misconduct was by government'

A federal judge has ruled that two Philadelphia Abscam convictions violated due process.

On Nov. 26, U.S. District Judge John P. Fullam reversed the Abscam convictions of Philadelphia city councilmen George X. Schwartz and Harry P. Jannotti on constitutional grounds. Judge Fullam's decision left Deputy Attorney General Charles Renfrew in a "deep state of shock," according to news reports. It represents the first judicial confirmation for those who have opposed the Abscam-Brilab investigations as a "political witchhunt" that the Carter administration is guilty of gross misconduct in pursuing these cases.

The Fullam decision, excerpts of which are reprinted below, attacks the convictions of the two Philadelphia city councilmen on four major grounds.

First, the court throws out the conviction of the two councilmen under the Hobbs Act, the federal extortion statute. Fullam points out that the defendants did not demand money from the FBI men soliciting their participation in bribery, and since the FBI solicited the councilmen's services for a local hotel project, they could not have consciously designed their activities to have affected "interstate commerce." Both these grounds are necessary for a conviction under the federal extortion statute. The government had attempted to counter the clear language of the statute by stating that the "perceptions of the defendants" as opposed to the language of the law was the clear determinant for a conviction and the defendants "must have known" that a hotel scheme of the magnitude proposed would have to affect interstate commerce. Judge Fullam's reversal of the Hobbs Act conviction reintroduces the constitutional standard of "objective," as opposed to "speculative," intent to commit criminal acts into the Abscam cases.

The constitutional importance of the Philadelphia decision turns, however, on the court's finding that the government wilfully entrapped the defendants into the bribery scheme and violated their due process rights. Judge Fullam found that the intent of the Abscam investigation was not to expose corruption, or even to determine who was corrupt. Rather, the entire series of inducements was designed to determine who *could be corrupted* and thus violated every notion of American criminal law. Fullam found that Schwartz and Jannotti were not "predisposed" to commit a crime, but surrendered themselves to what he characterized as "over-

whelming government inducement."

Even if he were not compelled to throw out the convictions on the finding of governmental entrapment, Judge Fullam noted that he would vacate the conviction on another available constitutional ground, the fact that the FBI's entire Abscam scheme in Philadelphia represented such gross governmental misconduct as to have violated Jannotti's and Schwartz's rights to due process of law under the U.S. Constitution. This aspect of gross governmental misconduct is expected to be raised by defense attorneys for Congressmen John Murphy and Frank Thompson in appeal hearings of their New York convictions based on Judge Fullam's decision. Attorneys for Murphy state that the entrapment defense is not available to them because Murphy states he never took the money proffered by the government agents. Entrapment demands that the government successfully induce the defendant into commission of a crime before it can be raised as a defense.

Finally, in a major blow to Justice Department white-collar crime efforts on the municipal and state levels, Judge Fullam found that the Philadelphia Abscam bribery scheme was deliberately designed by the Justice Department to artificially extend federal legal jurisdiction to the local level. In recent political white-collar crime and corruption cases, the Justice Department has been unstinting in its efforts to prosecute where local authorities have found no basis for prosecution under state laws. Judge Fullam attacks this procedure and states that the artificial creation of a scheme of bribery and entrapment designed to confer federal court jurisdiction is enough in itself to throw out the convictions.

Judge Fullam's decision

The following excerpts come from Judge Fullam's decision.

At all pertinent times, the defendant Schwartz was President of the Philadelphia City Council, and the defendant Jannotti was a member of the City Council. The Government's evidence at trial proved that Schwartz accepted \$30,000 from undercover F.B.I. agents who purported to be representatives of wealthy Arab inves-

tors contemplating construction of an elaborate hotel complex in Philadelphia. . . .

There is no contention that the evidence at trial proved that interference with interstate commerce was a conscious object of the alleged conspiracy. And . . . I am now of the opinion that this Court's jurisdiction under the Hobbs Act has not been established. . . .

I am aware of no appellate decision, in any circuit, upholding a Hobbs Act conviction on the basis of a bribe which was neither requested by the official, nor perceived by the payor as either necessary or at least helpful. In contrast, the evidence in the present case clearly establishes that not only did the defendants not request payment, they made it very clear that the payments would not be necessary. . . .

In my judgment, it is impermissible to treat federal jurisdiction thus doubly expansively: first by extending it to passive acceptance of gratuities by public officials, and second by extending it to purely hypothetical situations. . . .

The undercover operation which has come to be known as Abscam was established initially by F.B.I. agents working out of the Happaug, Long Island office of that agency, Melvin Weinberg, whom they had recruited for the task. While details of the ruse varied from time to time, as the result of improvisation by various undercover agents, the broad outlines of the scheme remained fairly constant: The undercover agents represented one or more extremely wealthy Arab sheiks desirous of investing huge cash resources in this country. Arrangements were made with the Chase Manhattan Bank, so that anyone who inquired would receive verification that the Arabs did indeed have more than \$400 million on deposit with that institution. Mr. Weinberg would "spread the word" through his underworld contacts and other shady connections. It was contemplated that persons expressing interest in providing investment opportunities would be carefully screened; if the proposed deal appeared legitimate, no further action would be taken, but if there was reason to suppose it might provide an opportunity for discovering criminality, the matter would be pursued, and the participants videotaped or otherwise electronically recorded. In actual practice, however . . . the distinction was not always carefully observed. . . .

Mr. Weinberg was strongly motivated to produce results for his F.B.I. employers. At the time he was recruited, he faced a substantial prison sentence on charges of mail fraud, covering transactions which had netted him in excess of \$100,000. The F.B.I. interceded with the sentencing judge, and arranged to have Mr. Weinberg placed on probation. It was also agreed that Weinberg would receive substantial compensation . . . during his Abscam employment. He thus had a direct financial stake in the continuation and expansion of the Abscam investigation. Moreover, the aura of wealth . . .

and the probable limited duration of his employment, were not without their own temptations for one who, at other stages of his career, probably represented the archetypical amoral fast-buck artist. . . .

Perhaps the crucial aspect of the undercover operation was its emphasis upon "the Arab mind." . . .

In their initial, videotaped, meeting, undercover agent Wald explained to Criden that the sheik was interested in building a hotel complex in Philadelphia and might also be interested in major long-range projects having to do with the revitalization of Pennsylvania's coal industry and related major improvements along the Philadelphia waterfront, but only if, in accordance with the "the Arab mind" he could be assured of the friendship of important governmental officials. . . .

In my opinion, in their zeal to make sure that the defendants would accept the tendered payments, the government agents offered such attractive inducements as to preclude any reliance upon the defendants' acceptance of the money as proof of predisposition. In the first place, standing alone, the very amounts of the bribes were, to paraphrase the language of the court in *Scriber v. U.S.*, *supra*, "a substantial temptation to a first offense."

In the second place, it was clear that the defendants would not be asked or expected to do anything improper on behalf of the proposed hotel venture; and they agreed to do nothing inconsistent with their obligations as members of the City Council, working for the benefit of their constituents.

Finally, and most importantly, they were led to believe that if they did not accept the money, the project would not come to Philadelphia. In the context of the fiscal crises which beset all large cities these days, and in the context of the problems of urban blight and decay, the governmental inducement in this case was indeed calculated to overwhelm.

Viewed in its entirety, the Philadelphia aspect of the Abscam investigation was plainly designed not to expose municipal corruption, not to determine which officials were corrupt, but merely to ascertain whether, given enough inducement, city officials could be corrupted. And what the Government succeeded in proving was, not that the defendants were corrupt city officials, but that, exposed to strong temptation, they could be rendered corrupt. In short, the evidence establishes entrapment as a matter of law. The evidence was, as a matter of law, insufficient to establish the defendants' predisposition beyond a reasonable doubt. . . .

In my judgment, the circumstances of the present case argue . . . more strongly for dismissal on due process grounds. . . . While municipal bribery may be "fleeting" and "elusive," so that governmental subterfuge and even creative involvement may be necessary to combat it, the techniques employed here went far beyond the necessities of legitimate law enforcement.