

# Harrison Williams's appeal denied; court upholds corrupt tactics of FBI

by Mary Jane Freeman

The U.S. Court of Appeals for the Second Circuit in New York has, by its April 5 denial of the Abscam appeal of former U.S. Senator Harrison Williams, reified precedents only found in the Nazi criminal justice system of the Third Reich. The decision rendered by a three-judge panel, an almost word for word regurgitation of the trial court's decision, is an abdication of the role of constitutionally mandated independent judiciary.

The elimination of an independent judiciary—the constitutional check on the abuse of power by other branches of government—has been the wish of America's British adversaries ever since 1787.

Such abdication by the courts means the FBI will now have a free hand to rampage as a political police force, framing up citizens at will, as was done by the Nazi Gestapo. Only if Americans act to prevent the FBI from perpetrating Abscam-like stings in proverbial "big brother" fashion will Americans regain their constitutional rights.

The Second Circuit opinion, written by Judge Jon Newman, begins by citing the fact that Williams, on the FBI's own videotape, did *not* take a bribe, then denying that this fact would in any way affect the legal issues in his case. The opinion reads, "The evidence against Williams and Feinberg differs in significant respects from that presented in previous Abscam trials, but the major legal issues are similar." Judges Amalya Kearshe and Henry Friendly of the panel concurred in the opinion. (Newman and Kearshe are both Carter appointees to the Second Circuit. Abscam was a creation of the Carter administration designed to "watergate" constituency-based office holders.)

In the lower court, George Pratt, then federal district judge, also ignored the lack of any overt criminal act on the part of Williams. He went so far as to say that forgery of a senator's signature was "merely a technique" which "furthered the overall investigation." Then on Jan. 16, 1982, finding no violation of Williams's due process rights, he sentenced the 23-year veteran of the Senate to three years in prison and a \$50,000 fine.

Once Williams was sentenced, Pratt was rewarded with a promotion to the Second Circuit Court of Appeals. Judge

Newman's rubberstamping of Pratt's ruling was probably not less influenced by his sharing of offices with Pratt when Pratt first came on the Circuit than by the Circuit's desire to "prevent a split in the Circuit" on similar issues of law. To insure that "no split" would occur, the Williams appeal was assigned to *two* judges who had ruled on the other Abscam cases before this Circuit, i.e., Newman and Friendly. This is contrary to proper procedure in the appellate courts, and meant that Williams would have no chance of a fair hearing. Usually, cases are randomly assigned, and if a difference of opinions arises within the circuit an *en banc* hearing of the entire circuit is held, rather than the differences being merely suppressed. Thus Williams was not only subjected to a trial-by-press but also faced a judicial panel which had already prejudged his case and which had a personal and judicial stake in upholding Abscam convictions.

## Predisposition not needed

Undercover investigations are normally set up to intersect *ongoing criminal activity*, such as undercover agents selling or buying drugs from suspected drug traffickers or setting up a used-car lot to catch car thieves. In Abscam, agents and their middlemen established "Abdul Enterprise" to make loans available for legitimate business projects in the United States.

Normal "sting" operations proceed from already established evidence that the person to be investigated or "set up" is predisposed to commit a crime. Not in Abscam, however. A *de facto* presumption operated: any perceived political opponent of the Carter administration would be framed up under the guise of so-called "white collar crime." In the Second Circuit opinion the judges admit that "Normally, predisposition refers to the state of mind of a defendant before government agents make any suggestion that he should commit a crime." But in this case they found, "The time when the crime was first committed virtually coincided with the pertinent time for assessing predisposition."

The FBI pursued Senator Williams for 13 months trying to get him to commit a crime. After he refused to accept thousands of dollars in bribe money, Williams did say he would look into the possibility of one of the "Abdul Arab

shieks" immigrating to the United States—in no way a crime in itself. For this he was called "predisposed" by the irregular standard concocted during the course of the trial. The "pertinent time for assessing predisposition" was after 13 months of harassment.

### Legitimate equals criminal

"The criminal opportunity presented to Senator Williams differs in one important respect. The financial inducement, the \$100 million loan, was initially discussed in connection with *what appeared to be an entirely legitimate business transaction* [emphasis added.] Relying on their previous opinion in the Abscam case of Rep. Ozzie Meyers, case Newman quotes, "At some point deliberate governmental efforts to render ambiguous (i.e., legitimate or illegitimate) events over which agents can exercise considerable control would transgress due process limits of fundamental fairness." (*Meyers II* 692 F2d. at 843) Admitting that such circumstances arose, his opinion says, "The subtle shifting of a legitimate proposal into an unlawful one, as occurred in this case. . . ." Yet he concludes, "On the record we find no unconstitutional conduct that taints the validity of a judgment

of conviction."

Since Newman insists upon mimicking the government script created for Abscam, he had to rule that nothing done by government agents could be outrageous. All evidence to the contrary was summarily discounted. Newman writes, "It is understandable that agents who have heard a suspect make incriminating statements. . . will be anxious to provide an opportunity for the suspect to repeat these statements . . . ." Newman contends that sting-man/conman Mel Weinberg simply "spelled out for the Senator how to commit the crimes . . ." but that Weinberg's " 'coaching' involved neither pressure nor persistent exploitation of personal weakness, as might occur if an agent preys upon an addict's need for narcotics."

In a self-serving manner, Newman flaunts his "no split in the Circuit" predisposition in concluding that the Williams case is not different from other Abscam cases. "We have previously declined to hold that the Abscam operation violated the Due Process Clause . . . and we see no basis for concluding that the activities of the government operatives directed against the defendants in this case exceeded the constitutional limits of fairness."

## Second Circuit appeals court a bastion of organized crime

No one familiar with the background and proclivities of the U.S. Court of Appeals for the Second Circuit in New York expected that Sen. Harrison Williams or any other Abscam victim would stand a chance of having an FBI-orchestrated conviction overturned in that court.

The Second Circuit, like the lower federal district courts and the U.S. Attorney's offices for the Southern and Eastern Districts of New York (Manhattan and Brooklyn), has always been the bastion of the East Coast financial oligarchy: the Morgans, the Harrimans, and so forth. As faithfully as it serves the financial elite, it protects the underside of their financial empire—organized crime. The ties between the East Coast banking and money-laundering establishment and the underworld go back to the 1920s and 1930s, when prosecutors in the Southern District of New York—exemplified by Thomas Dewey—became the focal point for control over the mob. This relationship was cemented during World War II, when the British-spawned U.S. intelligence service, the OSS (led by Wall Street lawyers such as William Donovan and Allen Welsh Dulles) recruited Mafia chieftains Charles "Lucky" Luciano and Meyer Lausky into their employ.

**Murray Gurfein**, Thomas Dewey's chief assistant,

who during the war was a personal go-between between Lansky and the OSS, was later appointed a judge on the Second Circuit. Gurfein was also head of the OSS's Psychological Warfare Division.

**Judge Walter Mansfield** came out of the OSS law firm of Donovan, Leisure, Newton, & Irvine, headed by OSS director William Donovan. Judge Mansfield's wife was the personal secretary to Sir William Stephenson, the representative of Britain's Special Operations Executive who set up the OSS and ran U.S. intelligence, including the FBI and the FBI-influenced Anti-Defamation League (ADL), during World War II.

**Judge J. Edward Lumbard** was at one time an assistant to Donovan.

**Judge Henry Friendly**, who sat on the panel which rejected the Harrison Williams appeal, was trained in Dewey's law firm.

**Judge Wilfred Feinberg** is the brother of Abe Feinberg, a top official of the ADL- and mob-linked American Bank & Trust Co. which was looted of \$40 million in 1975-76 under the protection of U.S. Attorney (and present Manhattan District Attorney) Robert Morgenthau.

Just as Abscam prosecutor Thomas Puccio—with reputed ties to Italian drug-mafia networks—maneuvered the Harrison Williams prosecution into the Eastern District of New York to be sure he could get his conviction at all costs, he could be equally sure that such a conviction would be ratified by the corrupt Second Circuit Court of Appeals.