

# Ronald Reagan Presidential Library Digital Library Collections

---

This is a PDF of a folder from our textual collections.

---

**Collection:** Roberts, John G.: Files  
**Folder Title:** ABSCAM (4 of 4)  
**Box:** 1

---

To see more digitized collections visit:

<https://reaganlibrary.gov/archives/digital-library>

To see all Ronald Reagan Presidential Library inventories visit:

<https://reaganlibrary.gov/document-collection>

Contact a reference archivist at: [reagan.library@nara.gov](mailto:reagan.library@nara.gov)

Citation Guidelines: <https://reaganlibrary.gov/citing>

National Archives Catalogue: <https://catalog.archives.gov/>

It is only by getting close to these that we can reach beyond the streets and get out to the place where the influence and the other illegality is taking place.

Mr. DRINAN. Well, do the middlemen graduate into informers? I'm still confused about the middlemen.

Mr. WEBSTER. No, no. They do not graduate into informants. We occasionally have informants who lead us to middlemen, but the middleman—let's just call him the subject of investigation.

Mr. DRINAN. All right, he's the suspect, and all of a sudden now, he's the one that's leading you away from art theft into alleged political corruption, and you rely upon them, when you say they are not under your control at all?

Mr. WEBSTER. He doesn't know that he's dealing with the FBI or law enforcement agency. He believes he's dealing with somebody he either can ripoff or can take money from in a criminal sense.

Mr. DRINAN. And who decides now on the predisposition, the question earlier that Mr. Rodino asked, that really wasn't answered? The middleman comes to one of your informants or agent, and says, "I think this public official has a predisposition." Someone at the Department of Justice or the FBI has to sit in judgment and say, "Yeah, we believe this middleman and we're going to move on this." Now by what norm is that made?

Mr. WEBSTER. He doesn't ordinarily say somebody has a predisposition. He's probably a little more candid about that. He's apt to represent to us that he is in his pocket or he is in his stable, or that he is known to have done this for some period of time, or he can be had.

There are a variety of ways that these things are expressed in criminal terminology by one criminal dealing with someone that he thinks is equally unsavory. So that we have the information. Then within the time constraints that we have, we can run our own check and see whether there is any reason to believe it's reliable or not reliable. And we do this.

We don't go out in the neighborhood and ask, "What's the general reputation of that person?" But we see whether there is any basis for it.

In the particular case, you in part demonstrate your reliability by producing, and these people produced, and they produced under circumstances that a court can adjudicate in the future, and I don't think we should talk about that.

We try within the guidelines that we have and in the point of time in which someone, some new person, is coming into the conspiracy or coming into the plan or the deal, to make sure before we cause him to commit an act which he would not otherwise commit, such as the acceptance of a bribe, to understand in the clearest of terms what is happening, and to make them elicit the promises in exchange for the office and the influence of the office, before any money passes.

Mr. DRINAN. Well, Mr. Webster, that's not a very satisfactory conclusion, but before my time is up, Prof. Gary Marx of MIT has written a very thoughtful article that the Members have here, where he gives evidence that undercover operations actually increase crime.

He has statistics here where there is a stimulant for theft from the sting operation, and where in one instance the DEA paid up to \$400 over the ongoing price per ounce of cocaine, and that apparently, increased the traffic in cocaine.

Would you like to make any observation on the evidence—and I think it's growing evidence—that actually the undercover operation stimulates crime in certain areas?

Mr. WEBSTER. I'm not privy to that article, or the facts that are set forth in it. Mr. Heymann earlier mentioned that we try not to create a setting which is untied to the alleged criminal or person about to commit a criminal act.

Now, that's one benchmark of protection that we can take. As I look at the undercover operations conducted by the Bureau, I see no basis for saying that these operations contribute to crime.

In the Lobster case, for instance, Operation Lobster in Boston, where we had such enormous hijacking of trucks and operations up in your part of the world, Congressman Drinan, that when we brought the Operation Lobster down, there wasn't another hijacking for what was it, 6 months?

Mr. HEYMANN. It's been about 6 months.

Mr. WEBSTER. It had a very deterring effect on crime.

Mr. HEYMANN. Could I say a word in response to you, Congressman Drinan? On your last question, I would suppose that for a period of time, and we could actually check it; it's rare, but we could probably check this—I would suppose that for a period of time there were fractionally more hijackings in Boston because we were buying goods and they didn't have to take them to New York, and then a very substantial reduction to nothing thereafter.

The total effect would be a substantial reduction in hijacking.

On your question to Judge Webster on who finds predisposition, I think the answer is that though we will try to check before an offer is made to anyone, there is no requirement that we find predisposition in advance of making an offer in any undercover operation. Now we are not talking about political as opposed to something else, and the reason for that is because the only harm that the recipient of the offer is exposed to is the harm of being made an illicit offer.

Now I don't mean to say that's nothing, because it has serious consequences. You don't know how you would react, you don't know whether you would call the police or not. It is difficult, but the harm is not a harm like having your house searched or your phone listened to, or being called to give testimony.

The only harm is that someone makes you an illicit offer, and for that reason, the courts have never required us to find in advance predisposition. And although, as Judge Webster said, we ought to try and we will try, there are situations in which we can't—I think you people would agree we should not—if we are running an undercover liquor operation in Iowa and a crook of unknown reliability, of unreliability, comes up to us and says, "There is a police captain here who wants to sell you protection," I think that we ought to say, "Bring in the police captain."

Now, that doesn't mean to do anything except that if a crook says to us, a crook totally unreliable says, "A police captain wants to sell protection, he regularly sells protection to bars here," I think we ought to say, "Bring him in."

But we ought to make sure then that the transaction is unequivocally clear, and if he tries to sell protection, arrest him.

Mr. EDWARDS. Your time has expired.

The gentleman from Missouri, Mr. Volkmer?

Mr. VOLKMER. Thank you, Mr. Chairman. I'd like to get back to that subject that the gentleman from Wisconsin and I discussed, and I think it is very important to us to make a decision on it eventually, and I believe you mentioned, Director Webster, that without the \$4.8 million for fiscal 1981, you would not be able to continue some of your operations, and they had to be prematurely terminated.

Now I am not going to ask you specifically as to any specific operations, but what I want to know is, is the increase meant to continue only on existing operations, or also to start up new operations as well?

Mr. WEBSTER. We have a number of proposals for new operations that have gone through or have been going through the Undercover Activity Review Committee process. The operations are not static, they do close down, and new ones are started as we go along.

The 15 I mentioned were those that we terminated in order to stay within, as best we could, our financial constraints, and we did exceed the \$3 million by—I think it's \$310,000.

Mr. VOLKMER. Well, this has been approved by the Budget Office; is that correct?

Mr. WEBSTER. By our Budget Office?

Mr. VOLKMER. They have approved this \$4.8 million?

Mr. WEBSTER. \$4.8 million?

Mr. VOLKMER. Yes.

Mr. WEBSTER. Yes; I understand it's approved, all the way up through OMB.

Mr. VOLKMER. So there are a lot of people who agree with us, as I do, that there is a positive use of these funds in combating crime in this country, and I just want to tell you right now that I am in support of the full amount.

The other thing I'd like to ask about is in the charter, you mentioned also that during the process of effecting the guidelines in this area, do you have a timeframe which you feel you will be able to have a final draft on those guidelines?

Mr. WEBSTER. We are coming right along. I would have been happy—I know Mr. Heymann would have been happy—if we could have said to you we already have them. We have been working on a document—

Mr. VOLKMER. Well, we're still working on the charter, so there is no big hurry to get the guidelines.

Mr. WEBSTER. Well, the reason we are in a hurry is because I have been trying to bring the Bureau within the charter in every respect, and when these guidelines are ready, the Attorney General is going to promulgate them, with or without a charter.

We are very pleased with them. We've got about four or five minor areas that didn't take something into account, or did take something into account the wrong way, and we are working it out.

I am very optimistic about it. I am very pleased with the progress.

Mr. VOLKMER. Will I be able to receive a copy of those guidelines?

Mr. WEBSTER. You are saying when we are finished?

Mr. VOLKMER. When you are completed.

Mr. WEBSTER. Yes. I don't think there is anything confidential in these guidelines, any techniques.

Mr. HEYMANN. I think there is no problem there, Mr. Volkmer.

Mr. VOLKMER. Thank you very much. I yield back the balance of my time.

Mr. WEBSTER. I think you are going to have a chance to look at these in your oversight responsibility.

Mr. EDWARDS. Mr. Hyde.

Mr. HYDE. I thank the chairman for yielding. Very briefly, for a few seconds, I want to address a comment to Mr. Heymann. Despite my first question, I want the record crystal clear that I have total confidence in the competence and the willingness of the Justice Department to fully and fairly prosecute public corruption cases. Your actions in the *Diggs* case, in the *Eilberg* case, in the *Flood* case, indicate to me that you will prosecute all of these things without fear or favor.

I genuinely am curious about the one case I mentioned earlier, but I didn't want to leave the wrong implication. I have total confidence in the Justice Department.

Mr. HEYMANN. Thank you, Mr. Hyde.

Mr. EDWARDS. The testimony of both the witnesses was very positive.

From your testimony, Judge Webster and Mr. Heymann, one would think that all of these operations had worked out beautifully, and so why don't you tell us a little bit about an operation or two that has been a disaster?

For instance, Front Load in New York, how much is that going to cost the taxpayers?

Mr. WEBSTER. I think it's a little bit premature to make assessments about Front Load. That was an operation that predated the Undercover Activity Review Committee. There are circumstances about that case that lead me to feel that we don't have too much apologizing to do for it.

It was an insurance case undercover program designed to discover fraud in the insurance field. It has a legitimate objective. We encountered an errant informant, not an undercover agent, but an informant, who went off on his own under circumstances that will be reviewed in the course of litigation, I am sure. If we have not already briefed the committee, we can certainly do so.

I understand that the first phase of litigation resulted in favor to the Government. I am quite optimistic that there will not be a major expense to the Government.

It was unfortunate. It was a good program. It was flawed, and I believe that under our policy, one that I mentioned in my statement this morning, that what went wrong there would not have occurred.

Now, Mr. Chairman, I don't want to represent, and I said we don't have perfection in the investigation—I don't want to represent that we aren't going to make some mistakes. It's a little like the loan business; if we don't make some mistakes, we are really not in business. But the important thing is that we minimize those mistakes, that you be satisfied as our oversight committee with the procedures that we have in place, and that you be satisfied that when we do make mistakes, we do something to see that those mistakes don't recur.

Mr. EDWARDS. Well, I believe that the gentleman from Massachusetts put his finger on the problem I don't think we have resolved yet, and that is the problem of these free-floating purveyors, middlemen, or whatever they might be, often of dubious reputation, sometimes hoodlums who, while not working for the FBI, are certainly

working with the FBI, because they are the ones who bring out the leads. They are the ones who finger people. How do you control them? What devices do you have for auditing their activities? In our private conversations, we made it very clear, the chairman and I, that a number of innocent people have been damaged very severely by these operators, by these middlemen.

Tell us what you are going to do in the future about controlling their activities so that other Americans aren't severely damaged.

Mr. WERSTIN. I guess I would have to put aside the issue of the damage, because that assessment is not in, and I don't want to appear to be agreeing to it, but I do recognize that influence peddlers, those who sometimes really have the capability and sometimes were con men, do a great deal of damage.

They are already doing a great deal of damage, and they are the people who cause or induce public officials to sell their office and breach their public trust, and they are the principal menace in corroboration and collaboration with these who are willing to go along with their act.

We are interested in them as subjects of investigation, and we intend, when we investigate them, to develop evidence for their prosecution, and we do, and we will.

To the extent that they make representations, you might be interested to know that the executive branch is not immune from the same types of representations by middlemen as to the amount of influence they peddle, and we investigate the executive branch just as vigorously as we do legislators whom these people represent are in their stable.

I don't think it's incumbent on us in an undercover operation to demand some type of specific proof of prior illegal activity by those that these people say they have in their stable. I don't see that at all. That would be inconsistent with the scenario of undercover. They don't know that they are dealing with the FBI. They are not under our control, nor do they think they are under our control.

What we do try to do is identify the con men who are misleading us in the attempt to rip off whatever cover our undercover agent is functioning under, and to deal out those operatives, if they are not in fact engaging in illegal activity.

In the Abscam case, again without trying to get into facts, there were influence peddlers—and there was a chain of them, one led to another, there were others who introduced them. They were told consistently not to bring anyone to the undercover agent, unless that person was prepared up front to make promises which would in a legal sense violate their trust.

We don't express it, obviously, to the middlemen in that sense, but unless they were prepared to make these statements and assurances up front, and to take the money personally, so that there could be no opportunity for the middlemen, or at least minimized opportunity for the middlemen to mislead the public official as to the purpose of that visit.

Now, in at least one, and maybe two, cases, that's exactly what happened. But step two, which we instituted to control the operation, was that in our handling of the situation, it was made clear to the individuals that it was a criminal activity, or at least an activity which that person could not in good conscience participate in, and he walked out, and that's exactly what we intended.

So we had two things in place there:

One, don't bring us anybody who isn't prepared to be up front with us; and two, if he comes, then it was our purpose and plan to make sure before any money was passed to that person, that he understood the criminal nature of the situation and that whole process was monitored by U.S. attorneys watching the process and in a position to cut it off if at any time our agent exceeded the bounds we had set for them.

Mr. EDWARDS. Well, we will continue to have a dialogue on this subject of these middlemen. They are of great concern to the subcommittee.

Mr. WEBSTER. Of course, they are.

Mr. EDWARDS. And I am personally not satisfied that some of them at least are not out of control and have been triggered by the FBI to go on capers of their own, with the result that innocent people are injured.

My time is up, and I yield to the gentleman from New Jersey.

Chairman ROBINO. Thank you very much for yielding.

Director, I am intrigued by the last statement you made concerning the so-called middlemen or purveyors. It seems to me that if you review the statement you made, and I seem to recall it very clearly, you talk about the middlemen bringing in someone who they say is prepared to engage in criminal conduct, to accept money.

Now I think you ought to reflect on the cases that you have had before you. If you place that kind of reliance on the statement of the middleman or the purveyor whose conduct in the past has been questioned, and whom you say is already under investigation himself, it seems to me that you are going to a great extent to continue this kind of an operation. You continue to wonder about whether or not there might be a leak and an innocent person has been implicated, when that person is not at all involved.

It seems to me that you have responsible people in the FBI, your agents, who I think are responsible enough and expert enough in undercover activities to be able to review what that informant has or has not said about such-and-such a person may be in his pocket, or words to that effect, as you have said. Do you engage in this kind of further review so that the informant who has made this kind of statement to you, so that what he has had to say is really carefully weighed? Can you recite that in the cases that you have conducted, this is what you have actually done?

Mr. WEBSTER. If I understand the chairman's question, I can certainly say yes, at various levels, the reliability in the sense of whether the statement made has a basis sufficient that we would have an obligation to investigate further is assessed.

Now we have for cross-checking available to us within certain time constraints—depending on how fast the situation is breaking—we do the best we can. We up the level of approval consistent with the individuals involved, and the sensitivities involved.

For example, in a number of these instances in Abscam, by both I and the Assistant Attorney General, we were aware of and approved the proposals based on the information furnished to us. Those of us who live in a world of decency, at least among our friends and associates, sometimes find it hard to assume that anyone who engages in crime can tell the truth. But when he is telling the information to someone who he thinks is in league with him, that is sometimes the way by

which we get our very best information consistently, in all types; not just public corruption cases.

But in other instances, we have some of the most important ones now that are going through the process, organized crime figures dealing with our undercover agents, and telling us things that are true and turn out to be true.

So there has to be some investigative judgment call. What Mr. Heymann pointed out, and what I pointed out, is the nature of the controls that we have on entrapping innocent people. I can't guarantee that in an Operation Lobster, or even a sting operation, some innocent person isn't going to walk in the door thinking that this is for him or have some misapprehension about it.

I give you the ground rules that we apply to try to minimize that. We haven't the interest or the facilities to keep screening out people hanging on the door, because we haven't taken the precaution to keep them away. We can't obviously inform the influence peddler that we are the FBI and we don't want him to bring any innocent people—I don't mean to be facetious about that, but we have to carry out the cover, and the two ground rules are don't bring us anybody that isn't going to be up front with us, and then we take the second ground rule, which is to be sure that that's the case.

Chairman ROBINSON. That's why I would like to be convinced that under your guidelines you are able to say that you now have reasonable grounds to believe, based on the fact that you have actually scrutinized data, not only what the purveyor has said, but what other information you may have—I would like to be convinced that it isn't just the purveyor and some rumors—that the FBI doesn't go forward and then engage in this kind of operation, which when ultimately disclosed and leaked, damages the reputation of innocent persons.

Mr. WEBSTER. No one would like to convince you more than I, Mr. Chairman. In the course of these proceedings, I do want to emphasize that in investigations particularly where we are trying to reach beyond the streets and go out and reach the areas that all of you have been telling us to go in, that we are not sitting as a grand jury. We don't have to have probable cause, but we do have to have a reasonable suspicion and move on it.

I know you don't ask for any more than that, but I hope we will be able to convince you.

Chairman ROBINSON. That's all I'm asking for, and if you can convince me that that's the way you have been conducting these operations, I would like to applaud you.

But I would also like to state that if you have undertaken to go beyond that, that you have acknowledged there is a mistake, because I think that's the only way we are going to be able to proceed, where mistakes are made and acknowledged, and that this thing can be a kind of mutual cooperation, where we understand that you are engaged in doing that which is done responsibly.

Mr. WEBSTER. I heartily concur, Mr. Chairman.

Chairman ROBINSON. Beyond that, I'd like to ask one further question, Director, regarding Operation Front Load. The chairman asked you about the amount of money that might be involved in the event of damage suits being successfully waged against you.

Was it not at some time stated by your department—and I can't say who by—that there was some thinking that it might cost the Government some \$5 million?

MR. WEBSTER. I'm unaware of any such statement. I am informed that one of the five suits have been dismissed. We are very confident about those lawsuits. There are a lot of numbers, you know. It only costs \$25 to file a lawsuit, and you can allege as many million dollars as you want, but we have thus far in our assessment of the damages been accurate to date.

I will be glad to brief the chairman on that.

Chairman ROBINO. Well, thank you very much.

MR. EDWARDS. Because of the shortage of the time, we are going to operate under a brand new rule, a 2-minute rule.

Mr. Hyde.

MR. HYDE. Well, that brings up an analogy. Judge Webster, I think we have all seen football games on television, and wished that the field judge or the referee could have the benefit of the television replay, which we the spectators do, so he could see exactly what happened, not what he thought happened on the field, under the emotional stress of the game.

Isn't it true that in criminal cases, many times you have to rely on informants of dubious reputation, criminals, coconspirators, whose credibility is easily attacked by defense counsel? Oftentimes you have to grant immunity to someone who is involved in the very crime in order to get evidence sufficient to prosecute.

This gives the defense attorney the opportunity to wax poetical about the purchased testimony. All of these obstacles are obviated, are they not, by having the videotape of the transactions, so questions of identity, of what exactly was said in the surrounding circumstances are there for the judge and for the jury? Isn't that true?

MR. WEBSTER. I believe that's correct, yes.

MR. HYDE. Many times in political corruption cases, where the crime is consensual and the activity is consensual, undercover techniques are about the only method available to you, are they not?

MR. WEBSTER. Well, bribery, gambling, prostitution, and other consensual crimes are very much like adultery, rarely performed in the public streets, and we have to take an undercover approach.

MR. HYDE. I'm told that Secretary Stimson some years ago said, "Gentlemen don't read other gentlemen's mail." Do you think that if that were mandated in the FBI Charter that we could cope with public or official corruption today?

MR. WEBSTER. That was in a different time. We now carefully prescribe the circumstances, which are rare indeed, in which mail can be opened. In the foreign counterintelligence field, those Marquis of Queensbury rules really will not permit the type of success that we have.

What I would rather focus on are the due process issues, to be sure that the rule of law does apply, and if the law permits us to use deception as a means to get at someone so buffered and so insulated that he would not otherwise be found out, that we should be allowed to do so, subject to oversight, subject to guidelines, and subject to our internal procedures.

MR. HYDE. I yield.

Mr. EDWARDS. Mr. Kastenmeier?

Mr. KASTENMEIER. Thank you, Mr. Chairman.

The reason I think these hearings are so important is because these techniques for which an increased amount of money is sought, is relatively recent, and it seems by embarking upon them, we need to know in terms of public policy what we are upon.

Mr. WEBSTER. Absolutely.

Mr. KASTENMEIER. As far as Congress being subject to this, there is a difference, of course. Partly that suggested by the gentleman from Ohio. Also the fact that while a number of Members in the last 20 years or so in the House and Senate have been prosecuted for crimes effectively, this is the first time that a Federal investigation has proceeded through the back door involving a large number of Members of Congress. Not even in conspiracy, that is not in relation one to the other, and while, as Mr. Heymann says, he asked rhetorically, is there anything special about public officials, the answer being no, except we really do have to treat them differently, he says. I think correctly, because we have the problem of not necessarily whether this is or is not an abuse in the Abscam case, but in the future might this be an abuse in the hands of another Justice Department, where these decisions have to be made.

I, for example, Mr. Heymann, know that you do have a procedure which I wonder whether is actually followed in each case here. That is to say the U.S. attorney's manual mandates in every sensitive case, a sensitive case involving a public figure, cleared at the top level, the information to be sent to the Attorney General, to your office, and to the deputy, and presumably there is a program for clearance in each case.

Was it actually followed, however, in the Abscam case?

Mr. HEYMANN. I think the answer, Mr. Kastenmeier, is that it was not formally followed, and the reason for that is that although the sensitive case reports, which is what we call those, only are made in five or six or seven copies, I don't think that we would send around in the Department five, six, or seven copies of any undercover investigation.

The Attorney General was aware of the Abscam investigation, but plainly the center of responsibility on the lawyers' side of the Department of Justice was at my level. He was certainly aware of it.

The other people who receive these sensitive case reports are the Associate Attorney General, who handles the civil side. I assume he was not aware of it. The Deputy Attorney General, my immediate boss, he was aware of it.

Mr. KASTENMEIER. Well, I asked that question because it was my information that it was assiduously followed in this case.

Mr. HEYMANN. It is not intended to be a protection in the handling of sensitive cases, Mr. Kastenmeier. If it were, it would raise all the questions that Mr. Hyde commended us earlier for avoiding. Then you would way whenever you have a political case, it goes shooting right up to the political levels of the Department to be analyzed and passed on there. The function of the sensitive case report is to make sure that the people who are doing appointments, for example—and, this has come up in one of these cases, not Abscam, but in Brillab, according to the newspapers—that the people who are doing appoint-

ments of judges and U.S. attorneys know if there is an ongoing investigation in the FBI and the Criminal Division. It is not to be a review for the propriety of the investigative steps or anything like that.

Mr. EDWARDS. Mr. Seiberling?

Mr. SEIBERLING. Thank you.

I hope that we will have a subsequent hearing, and perhaps several sessions, so that we could really explore in depth the nature of the guidelines the FBI has followed or has not followed, in view of the fact that this subcommittee has before it the proposed FBI Charter and must come to some kind of conclusion. I think perhaps it is fortunate that these questions have arisen before we have approved a particular legislative recommendation.

I note that in your interview with Mr. Rowan, Judge Webster, you said this, and this is one of the questions I think we are going to have to get into much more when we have further hearings. Leaving out the parenthetical parts, you said:

When we have information from a corrupt intermediary, who is under investigation, that he has Mr. So-and-So who will help in the illegal project, we have an obligation to follow through that lead, and in the Abscam investigation I can tell you that we followed every lead when we closed it down. There was nothing left in the barrel except what we call semi-representations by intermediaries.

I guess the word who has to be in there—

Who want to produce people whose names were being bandied around, but who had absolutely nothing to do with it, and could not be produced by the intermediaries.

Now, in fact, about half, just taking the Congressmen and basing it on what we have read in the newspaper, about half of the Congressmen and Senators who were contacted by intermediaries turned out not to be leads. They were false leads, they were not correct. They turned down any improper blandishment.

But I think we are going to have to know in very much more detail to what extent this statement of a corrupt intermediary, which is your phrase, is deemed a sufficient basis for an attempt to entice a particular person into committing a corrupt act, and we are going to have to know to what extent you require corroboration and so forth.

I think this applies whether the person is a public official or not. The only difference is that a public official is constantly being approached by people who want help from him, and legitimately so. And what's more, he has his reputation, which is everything. If his reputation is beclouded, he is dead politically, and that's, of course, true of a lot of people who are not public officials. Their reputation is allimportant. So I do think that we have got to know what checks there are on the use of corrupt intermediaries, which is your phrase, to make sure that they do not put a cloud over the reputation of a person who is not in fact going to be predisposed, as you have said.

I have used up my time, I see, but perhaps the chairman will let you respond.

Mr. WEBSTER. We'll be happy to explore that, and Mr. Heymann wants to add a postscript to what I say, but I, too, believe, and I believe that most Members of Congress and most public officials believe with me, that those people are out there, they are hovering around the offices of public trust, and that we do a service when our leads from other sources take us in this direction and we follow it.

I want you to be satisfied with the guidelines that are in place, but I think we both have a common interest in seeing what we can do to get those people away from our institutions.

Mr. SEIBERLING. Well, as we have seen, honest officials do have sensitivity, and when they smell a rat, they are inclined to say, "This is the end. I won't have anything more to do with it." It does bother me, and I think it bothers all of us, that the Government itself would be putting public officials in a position where they have to demonstrate under circumstances where they are not even aware that they are being tricked, they are not even aware that there is some kind of investigation going on, they have to affirmatively demonstrate their bonafides, and I think that raises some questions about the ability of our system to function that are very, very profound, and need to be carefully handled.

This isn't a simple thing. I sympathize with your problem, and I want to see every corrupt instance brought to light and squelched, but at the same time the mass of people and the mass of politicians, I think are honest, and the problem of finding how to find out the crooks and still not prejudice the honest ones is a very difficult one, and we need to pursue it more.

Mr. EDWARDS. Mr. Drinan?

Mr. DRINAN. Thank you, Mr. Chairman.

There has emerged from this conference the shadowy world of middlemen. They are the new characters in Abscam now, and they are corrupt intermediaries, and I have a lot of trouble with their motivation. We learned the ground rule. You say to the middleman, "Don't bring in anybody unless he is prepared to take money," and in 50 percent of the cases, the middlemen are wrong.

Were the middlemen told that they were going to appear on television, that they are going to be a feature in the trials that are forthcoming? It seems to me that you owe a lot to these middlemen.

Furthermore, did they get compensation? Did they get promises of immunity for prosecution? What is their motivation, when you say, "Go out there and get somebody who will come in and commit a crime on television"? Who are these middlemen?

Mr. WEBSTER. I have to take issue with just about everything you said. [Laughter.]

They are subjects of investigation. We did not ask them to go out and bring us in people. We set a situation in which the undercover agent represented that he was interested in buying favors. As far as knowing that they are going to be on television, of course, they don't know they are on television. That is the part of the investigative technique that we are using to build a case against them, and anyone who conspires with them to violate the law.

Mr. DRINAN. Well, sir, will they be immune from prosecution? Suppose now that the name of this corrupt intermediary comes out in the instance of a Congressman who is vindicated, and his reputation has been damaged. Does he have a right to find out who this character was, the influence peddler, this faceless accuser, this corrupt intermediary? Does he have the right to find out who he is and why he brought him into the situation on W Street?

Mr. WEBSTER. That's a prosecutive discretion matter. I am looking for no immunity, but I will turn it over to Mr. Heymann.

Mr. HEYMANN. I think certainly anyone who fits all those adjectives ought to be prosecuted. [Laughter.]

Mr. DRINAN. Then how many are you going to prosecute?

Mr. HEYMANN. The answer, of course, Congressman Drinan, is these people are, as Judge Webster said, just as much subjects of investigation and likely targets of investigation as anyone else.

The fact of the matter is in any investigation, we make deals or arrangements among the possible defendants in order to strengthen our case with witnesses. We are likely in any investigation, political, nonpolitical, anything that involves a number of people, to prosecute some and not prosecute others.

Some of the people you are describing as middlemen—that was originally my term—will undoubtedly be prosecuted. Others will not. It's a standard arrangement.

I would like to take the opportunity to say one thing that goes to, in a very narrow and careful way, the question Chairman Rodino and Mr. Seiberling and maybe you, Father Drinan, have raised.

If we are running Operation Lobster and somebody comes to us and says that somebody is a hijacker and a crook and no good, unreliable in a million ways, and he says, believing that we are crooks and fences, says, "Should I tell John Jones about this? I think he is in the hijacking business."

Our answer, Mr. Seiberling, in particular, is that we ought to say yes, even though the person who said to us, "I think John Jones is in the hijacking business," wasn't certain, and is generally unreliable, but we ought to say to him, "Yeah, tell John Jones about this."

Sure, there is some risk that John Jones will go out and hijack a truck just because he knows about our fencing operation, but that is a very small risk, and that leads me to the following very narrow, but perhaps very important, point:

At the moment we say, "Yes, go out and tell John Jones about it," we don't have much basis for believing that John Jones is indeed a hijacker of trucks. At the moment—and this difference in time is very important—at the moment that John Jones arrives with a truck at the warehouse, we have a very good reason to believe he is a hijacker, and let me explain very precisely why. We have been put onto John Jones by somebody who wants to keep doing business with us, and who obviously has a relationship that he wants to maintain with John Jones.

If we are simply careful enough to say the transaction here is going to be absolutely plain, clear, and incontrovertible, we are going to pay money for a hijacked load of goods, this con man, this nameless informer, this man who has no basis for credibility otherwise, suddenly has high stakes in not bringing in John Jones unless John Jones really is prepared to sell a truckload of goods for cash. He doesn't want to disrupt his relationship with us by bringing in somebody who isn't a hijacker or isn't selling the goods. He doesn't want to embarrass John Jones and disrupt his relationship with John Jones by bringing him into a place where we are going to say, "OK, now, we are going to take the goods, you get the cash." These are stolen goods.

By the time that man pushes the bell on our warehouse door, there is every reason to believe that John Jones is indeed a hijacker. At the time we said, "Sure, go ahead and make the offer to John Jones," the evidence may have been very thin.

Thank you.

Mr. DRINAN. Thank you, Mr. Chairman.

Mr. EDWARDS. Mr. Volkmer?

Mr. VOLKMER. Thank you, Mr. Chairman.

I'd like to continue a little bit and then go to something else I was going to start with, because this is one of the things I wanted to bring up.

I think there is a major misunderstanding by some members of the committee as to how the middleman, as he is called here, actually operates, and that misunderstanding seems to be that they view the middleman as an operative of the FBI which he definitely is not. If we look at it, let's say—correct me if I am wrong—as I understand it, a procedure, take the Lobster case or Abscam or anything else. What we have is a knowledge there is crime—criminal influence peddling or something going on, and then we can know people who are in the business. The FBI then sets up an operation, unknown to those people who are the middlemen as being FBI agents. Is that correct?

Mr. WEBSTER. That's correct.

Mr. VOLKMER. If they ever became known as FBI men, that blows the whole thing, of course.

Mr. WEBSTER. That's correct.

Mr. VOLKMER. It is necessary, then, in the operation, to keep them from becoming suspicious; right?

Mr. WEBSTER. That's correct.

Mr. VOLKMER. So if you started saying to them, "No, don't go see him, we don't want you to see him, because he might be all right," immediately the middleman is going to say, "What's going on here?" Is that correct?

Mr. WEBSTER. That's correct.

Mr. VOLKMER. So, you of necessity, have to tell him, "Well, that's a pretty good idea. Why don't you go ahead?" Because especially if he's already brought in others; correct?

Mr. WEBSTER. That's right.

Mr. VOLKMER. I think we have to understand that. That's a basic imperfection in the system, that's a necessary part of the system. Is that not correct?

Mr. WEBSTER. That's correct.

Mr. VOLKMER. Father Drinan of Massachusetts previously alluded to an article by Gary Marx of MIT. I have taken the time also to read it, and it does point out some imperfections in the system of using undercover, but also I think we must understand—it's interesting reading, by the way—and I don't think it's a profound case against undercover. That's my own viewpoint. It may be the opposite of the gentleman from Massachusetts.

I view the question using undercover or not using undercover on the basis that if we don't use it, there is going to be many, many major criminals, crimes, going undetected and unprosecuted; is that not correct?

Mr. WEBSTER. That's correct.

Mr. VOLKMER. So if we would shut it down, all these things that have been done in the past against crime would no longer be done?

Mr. WEBSTER. That's correct.

Mr. VOLKMER. Let me ask you this. Do you envision actually how you would be able to catch some thieves? Take the Lobster operation.

Do you think the FBI operators could walk into an existing fencing operation and be able to gather evidence against those who are selling to the fence?

Mr. WEBSTER. It would be most improbable.

Mr. VOLKMER. Walk in cold, you've got a suspicion, somebody has told you about it, you've got a reasonable ground to believe it.

I've just been handed a note that my time is up. The gentleman from Massachusetts, I timed him at 6 minutes and 15 seconds, I just concluded 2 minutes.

Thank you, Mr. Director. My time is up.

Mr. WEBSTER. I hope we won't go back to the days, Mr. Chairman, when our agents walked into bars and ordered glasses of milk. [Laughter.]

Mr. EDWARDS. Mr. Director, when I was an agent, that's all we ever drank. [Laughter.]

Mr. Rodino?

Chairman Rodino, I just want to say thank you, but I will be looking forward to scrutinizing those guidelines, your work rules, and I'd like to leave this statement with you in parting.

Mr. Heymann, I think you ought to consider this, because you have been referring all along to Operation Lobster, and some other sting operations. I can't, for the life of me, reconcile the kind of operation where crime already has been committed as against these other operations which were conducted where public officials were involved, where representations were made by middle-men or purveyors, with the kinds of inducements that we have read about, which would suggest that possibly a Member of Congress could be of help to the district because of what someone might be able to invest in that particular district.

I don't understand how you could analogize one with the other, because in one case, crimes have been committed or a crime has been committed, or an overt act has been done, where the person who is then prepared to commit the crime would have to say that he was accepting stolen goods or hijacking.

That, to me, is a lot different, and that seems to really be the crux of what bothers me of how you proceed with one and proceed with the other which should have, I think, even at the beginning, given you lots of pause as to the consequences. It's entirely a different kind of case. It's entirely a different kind of setting, and one that is fraught with so much peril, that I am wondering whether or not it is being given that careful scrutiny, and that's what I am hoping that we are going to be able to resolve as we go on. As I suggested to the chairman—I think it was well stated by the gentleman from Ohio, Mr. Seiberling—at some time in the future, some of these things may have to be aired in executive session.

Mr. EDWARDS. This will conclude today's hearing. As the chairman of the full Judiciary Committee suggests, we will continue the subject at a future date. We still have a number of questions to ask about undercover operations, and as we pointed out earlier, undercover operations are included in the charter that the subcommittee presently has under consideration.

We thank both Judge Webster and Mr. Heymann for their appearance here today.

Mr. WEBSTER. Thank you, Mr. Chairman.

[Whereupon, at 12:30 p.m., the hearing was adjourned.]

## The changing FBI — The road to Abseam

JAMES Q. WILSON

I t is inconceivable that J. Edgar Hoover would ever have investigated members of Congress to gather evidence for possible prosecution. Hoover's FBI learned a great deal about congressmen, and may have gone out of its way to collect more information than it needed, but all this would have been locked discreetly away, or possibly leaked, most privately, to a President or attorney general whose taste for gossip Hoover wished to gratify or whose personal loyalty he wished to assure. The Bureau's shrewd cultivation of congressional and White House opinion, effective for decades, was in time denounced as evidence that the FBI was "out of control," immune from effective oversight.

Today, of course, the Bureau is again being criticized, albeit circumspectly, by various congressmen who complain of the manner (and possibly also the fact) of its investigation of possible legislative bribery. Congressmen wonder whether the FBI is launched on a "vendetta" against its erstwhile allies turned critics. Once again there are angry mutterings that the Bureau is "out of control," this time because it is using its most powerful technique—undercover operations—to discover whether congressmen are corrupt.

It would be tempting to ascribe the changes in the Bureau's relations with Congress to nothing more than personal pique amplified

into organizational vengeance. After years of congressional adulation of Hoover and the FBI, the mood suddenly turned nasty with revelations of how far the Bureau was prepared to go in using its investigative powers to maintain political support. The list of Bureau excesses is long, familiar, and dismaying; the wrath visited upon it by several congressional committees combined a proper outrage at abuse of power with a hint of romance gone sour. For the FBI now to turn on those who had turned on it would be precisely the sort of thing one might suppose a Hoover-style agency might relish.

This is not what has happened. No doubt there are some FBI agents who are enjoying the sight of congressmen scurrying for cover, but that was not the motive for "Operation Abscam." The Bureau has in fact changed, and changed precisely in accordance with the oft-expressed preferences of Congress itself. Congressional and other critics complained that the Bureau in the 1960's was not only violating the rights of citizens, it was wasting its resources and energies on trivial cases and meaningless statistical accomplishments. Beginning with Director Clarence Kelley, the Bureau pledged that it would end the abuses and redirect its energies to more important matters. This is exactly what has happened.

This rather straightforward explanation is hard for official Washington to accept, and understandably so. Bureaucracies are not supposed to change, they are only supposed to claim to have changed. It tests the credulity of a trained congressional cynic to be told that a large, complex, rule bound organization such as the FBI would or could execute an about-face.

But the FBI is not just any bureaucracy, and never has been. Next to the Marine Corps, it is probably the most centrally controlled organization in the federal government. Its agents do not have civil service or union protection, its disciplinary procedures can be swift and draconian, and despite recent efforts to decentralize some decision making, the director himself, or one of his immediate subordinates, personally approves an astonishingly large proportion of all the administrative decisions made in the Bureau. Not long ago, a decision to install sanitary-napkin dispensers in women's laboratories in Bureau headquarters could not be made until Director William Webster endorsed the recommendation. FBI agents have complained for decades about the heavy-handed supervision they received from headquarters; though that has begun to change, the visit of an inspection team to an FBI field office continues to instill apprehension bordering on terror in the hearts of

the local staff. The inspectors sometimes concentrate on the minutiae at the expense of the important, but whatever its defects, nit-picking insures that field offices will conform to explicit headquarters directives pertaining to observable behavior.

But even for the Bureau, the change in investigative strategy that culminated in Operation Abscam was no easy matter. For one thing, much of what the Bureau does is not easily observable and thus not easily controlled by inspection teams and headquarters directives. Law enforcement occurs on the street in low-visibility situations that test the judgment and skill of agents but do not lend themselves to formal review. Many laws the FBI enforces—particularly those pertaining to consensual crimes such as bribery—place heavy reliance on the skill and energy of agents and field supervisors who must find ways of discovering that a crime may have been committed before they can even begin the process of gathering evidence that might lead to a prosecution. Relations between an agent and an informant often lie at the heart of the investigative effort, but these are subtle, complex, and largely unobservable. Finally, what the Bureau chooses to emphasize is not for it alone to decide. The policies of the local United States Attorney, who though nominally an employee of the Justice Department is in reality often quite autonomous, determine what federal cases will be accepted for prosecution and thus what kinds of offenses the local FBI office will emphasize.

### Changing the Bureau

Given these difficulties, the effort to change the investigative priorities of the Bureau was a protracted, controversial, and difficult struggle. Several things had to happen: New policies had to be stated, unconventional investigative techniques had to be authorized, organizational changes had to be made, and new incentives had to be found.

As is always the case, stating the new policies was the easiest thing to do. Attorney General Edward Levi and Director Kelley pledged that the Bureau would reduce its interest in domestic security cases, especially of the sort that led to such abuse: as COINTELPRO, and in the investigation of certain routine crimes (such as auto theft or small thefts from interstate shipments) that had for years generated the impressive statistics that Hoover was fond of reciting. The domestic security cases were constitutionally and politically vulnerable; the criminal cases that produced evi-

dence of big workloads but few significant convictions were unpopular among the street agents. The man Kelley brought in to close down virtually all the domestic security investigations was, ironically, Neil Welch, then in charge of the Bureau's Philadelphia office and later to be in charge of the New York office and of Operation Abseam. In a matter of months, thousands of security cases were simply terminated; hundreds of security informants were let go, domestic security squads in various field offices were disbanded and their agents assigned to other tasks. New attorney-general guidelines clarified and narrowed the circumstances under which such cases could be opened in the future. The number of FBI informants in organizations thought to constitute a security risk became so small that it was kept secret in order, presumably, to avoid encouraging potential subversives with the knowledge that they were, in effect, free to organize without fear of Bureau surveillance.

Kelley also announced a "quality case program" authorizing each office to close out pending investigative matters that had little prosecutive potential and to develop priorities that would direct its resources toward important cases. Almost overnight, official Bureau caseloads dropped precipitously, as field offices stopped pretending that they were investigating (and in some cases, actually stopped investigating) hundreds of cases—of auto thefts, bank robberies, and thefts from interstate commerce and from government buildings—where the office had no leads, the amounts stolen were small, or it was believed (rightly or wrongly) that local police departments could handle the matter.<sup>9</sup>

Headquarters made clear what it regarded as the "priority" cases that the field should emphasize: white-collar crime, organized crime, and foreign counterintelligence. But saying that these were the priorities, and getting them to *be* the priorities, were two different things. Permitting field offices to stop reporting on high-volume, low-value cases did not automatically insure that the resources thereby saved would be devoted to, say, white-collar crime. For that to occur, some important organizational changes had to be made.

The most important of these was to reorganize the field-office squads. Traditionally, a field office grouped its agent personnel into squads based on the volume of reported criminal offenses—there would be a bank robbery squad, an interstate theft squad,

<sup>9</sup> A fuller account of these changes can be found in James Q. Wilson, *The Investigators: Managing FBI and Narcotics Agents* (Basic Books, 1978).

an auto theft squad, and so on. These squads reacted to the incoming flow of reported crimes by assigning an agent to each case. What we now call white-collar crime was typically the province of a single unit—the “accounting squad”—composed, often, of agents with training as accountants, who would handle bank complaints of fraud and embezzlement. Occasionally, more complex cases involving fraud would be developed; many offices had individual agents skilled at detecting and investigating elaborate political, labor, or business conspiracies. But attention to such matters was not routinized because the internal structure of a typical field office was organized around the need to respond to the reports of crimes submitted by victims. Elaborate conspiracies often produced no victims aware of their victimization or enriched the participants in ways that gave no one an incentive to call the FBI. Taxpayers generally suffer when bribes are offered and taken, and innocent investors may be victimized by land frauds, but either the citizen is unaware he is a victim or the “victim” was in fact part of the conspiracy, drawn in by greed and larcenous intent.

Again Neil Welch enters the scene. The Philadelphia office was one of the first to redesign its structure so that most of its squads had the task, not of responding to victim complaints, but of identifying (“targeting”) individuals, groups, and organizations for intensive scrutiny on the grounds that they were suspected of being involved in organized crime, major conspiracies, labor racketeering, or political corruption. Though almost every FBI field office would from time to time make cases against corrupt politicians or businessmen, the cases made in Philadelphia were spectacular for their number and scope. Judges, city council members, school leaders, businessmen, police officers, and others were indicted and convicted. The more indictments were made, the more nervous accomplices, frightened witnesses, or knowledgeable reporters would come forward to volunteer more information that spurred further investigations.

During the period when Welch and the Philadelphia office were making headlines (roughly, 1975 to 1977), the rest of the Bureau was watching and waiting. Experienced FBI officials knew that under the Hoover regime, the only safe rule was “never do anything for the first time.” Taking the initiative could result in rapid promotions but it could also lead to immediate disgrace; innovation was risky. What if the allies of the powerful people being indicted (one was Speaker of the Pennsylvania House of Representatives) complained? Hoover had usually rebuffed such com-

plaints, but you could never be certain. More important, how would Bureau headquarters react to the fact that the number of cases being handled in Philadelphia had dropped owing to the reassignment of agents from the regular high-volume squads to the new "target" squads? In the past, resources—money, manpower—were given to field offices that had high and rising caseloads, not to ones with declining statistics.

Kelley's response was clear—he increased the number of agents assigned to Philadelphia and gave Welch even more important responsibilities (it was at this time that Welch was brought to headquarters to oversee the winding down of the domestic security program). There were still many things to resolve and many apprehensive supervisors to reassure, but the momentum was growing. More and more field offices began to reorganize to give structural effect to the priority-case program, and thus to an aggressive stance regarding white collar crime.

#### Emphasizing priority offenses

The incentives to comply with the emphasis on priority offenses came from within and without the Bureau. Inside, the management information system was revised so that investigations and convictions were now classified by quality as well as number. The criminal offenses for which the FBI had investigative responsibility were grouped into high- and low-priority categories, and individual offenses within these categories were further classified by the degree of seriousness of the behavior under investigation (for example, thefts were classified by the amount stolen). It is far from clear that the statistics generated were used in any systematic way by Bureau headquarters—in the FBI as in many government agencies, such data are often perceived as a "numbers game" to be played and then forgotten—but at the very least these statistics reinforced the message repeated over and over again in the statements of the director, first Kelley and then William H. Webster: Go after white-collar and organized crime.

Outside the Bureau, key congressmen were pressing hard in the same direction. Nowhere was this pressure greater than in the chambers of the Subcommittee on Civil and Constitutional Rights of the House Judiciary Committee, chaired by Congressman Don Edwards of California—who had once been, briefly, a member of the FBI. This Subcommittee had become one of the centers of congressional attacks on the Bureau. Kelley and Webster spent

hours answering questions put by its members, who included in addition to Chairman Edwards, Elizabeth Holtzman of New York and Robert Drinan of Massachusetts. The attack on the FBI's performance began with criticism of the domestic security programs, but came to include criticisms of the Bureau's weaknesses in the area of white-collar crime. This latter concern reflected, in part, the Subcommittee members' genuine conviction that white-collar offenses were serious matters. But it also reflected the Subcommittee members' suspicion that the FBI was "soft" on "establishment" crimes while being excessively preoccupied with subversion, and thus inclined merely to go through the motions when investigating the former and to put its heart and resources into inquiries regarding the latter. Thus, getting the Bureau to emphasize white-collar crimes was not only good in itself, it was a way, the Subcommittee seemed to think, of keeping it out of domestic security work.

In 1977, staff members of the Subcommittee toured various FBI field offices and spoke as well to several U.S. Attorneys. Their report sharply criticized the FBI for continuing to devote manpower to street crimes such as bank robberies and hijacking—all of which, in the opinion of the staff, could better be handled by the local police. In some cases, the staff claimed, the FBI's idea of white-collar crime was welfare cheating and other examples of individual, and presumably small-scale, frauds against the government. The staff lamented the "reluctance on the part of FBI personnel, particularly at the supervisory level, to get involved in more complex investigations that may require significant allocation of manpower for long periods of time." And the report criticized the field offices for not mounting more undercover operations.

Whatever shortcomings the FBI may have, indifference to congressional opinion has never been one of them. The pressure inside the Bureau to develop major white-collar-crime cases mounted. The Bureau had always thoroughly investigated reported violations of federal law whatever the color of the collar worn by the suspects. Businessmen, politicians, and labor leaders had been sent to prison as a result of FBI inquiries. But most of these cases arose out of a complaint to the Bureau by a victim, followed by FBI interviews of suspects and an analysis of documents. Sometimes wiretaps were employed. The number, scope, and success of such investigations depended crucially on the skill and patience of the agents working a case. One legendary FBI agent in Boston was personally re-

his tenacity, his ability to win the confidence of reluctant witnesses and accomplices, and his knowledge of complex financial transactions. But finding or producing large numbers of such agents is difficult at best. Far easier would be the development of investigative techniques that could generate reliable evidence in large amounts without having to depend solely on an agent's ability to "flip" a suspect, who then would have to testify in court against his former collaborators.

#### Undercover operations

One such method was the undercover operation. Narcotics agents in the Drug Enforcement Administration and in local police departments had always relied extensively on undercover agents buying illegal drugs in order to produce evidence. Traditionally, however, the FBI had shied away from these methods. Hoover had resisted any techniques that risked compromising an agent by placing him in situations where he could be exposed to adverse publicity or tempted to accept bribes. Hoover knew that public confidence in FBI agents was the Bureau's principal investigative resource and that confidence should not be jeopardized by having agents appear as anything other than well-groomed, "young executive" individuals with an impeccable reputation for integrity. From time to time, an agent would pose as a purchaser of stolen goods, but these were usually short-lived operations with limited objectives. For most purposes, the FBI relied on informants—persons with knowledge of or connections in the underworld—to provide leads that could then, by conventional investigative techniques, be converted into evidence admissible in court in ways that did not compromise the informant.

The FBI's reliance on informants rather than undercover agents had, of course, its own costs. An informant was not easily controlled, his motives often made him want to use the FBI for personal gain or revenge against rivals, and either he would not testify in court at all or his testimony would be vulnerable to attacks from defense attorneys. Moreover, it is one thing to find informants among bank robbers, jewel thieves, and gamblers with organized crime connections; it is something else again to find informants among high-level politicians, business executives, and labor leaders. An undercover operation came to be seen as a valuable supplement to the informant system: Though created with the aid of an informant, it could be controlled by FBI agents rather than the informant.

fully monitored by recording equipment, used to develop hard physical evidence (such as photographs of cash payoffs), and operated so as to draw in high-level suspects whose world was not easily penetrated by conventional informants.

In 1974 the Law Enforcement Assistance Administration (LEAA) began supplying money to make possible the now-famous "Sting" operations in which stolen property would be purchased from thieves who thought they were selling to criminal fences. LEAA insisted initially that a Sting be a joint federal-local operation, and so the FBI became partners in these early ventures, thereby acquiring substantial experience in how to mount and execute an undercover effort in ways that avoided claims of entrapment. In 1977, the FBI participated in 34 Sting operations. Soon, however, the requirement of federal participation was relaxed and the Sting became almost entirely a state and local venture (albeit often with LEAA money). After all, most of the persons caught in a Sting were thieves who had violated state, but not federal, law.

The experience gained and the success enjoyed by the FBI in the Stings were now put in service of undercover operations directed at the priority crimes—especially white-collar crimes and racketeering. During fiscal year 1978, the Bureau conducted 132 undercover operations, 36 of which were aimed at white-collar crime. They produced impressive (and noncontroversial) results, and led to the indictment of persons operating illegal financial schemes, trying to defraud the government, engaging in union extortion, and participating in political corruption.

Each of these operations was authorized and supervised by FBI headquarters and by the local United States Attorney or by Justice Department attorneys (or both). Among the issues that were reviewed was the need to avoid entrapment. In general, the courts have allowed undercover operations—such as an agent offering to buy illegal narcotics—as a permissible investigative technique. In *Hampton v. United States*, the Supreme Court held in 1976 that the sale to government agents of heroin supplied to the defendant by a government informant did not constitute entrapment. In an earlier case, Justice Potter Stewart tried to formulate a general rule distinguishing a proper from an improper undercover operation: "Government agents may engage in conduct that is likely, when objectively considered, to afford a person ready and willing to commit the crime an opportunity to do so." It is noteworthy that this formulation appeared in a dissenting opinion in which Stewart argued that the case in question *had* involved entrapment; thus, it

probably represents the opinion of many justices who take a reasonable strict view of what constitutes entrapment. As such, it affords ample opportunity for undercover operations, especially those, such as Abscam, in which lawyers can monitor agent activity on almost a continuous basis.

Congress was fully aware that the FBI was expanding its use of undercover operations. The House Appropriations Committee, as well as others, were told about these developments—without, of course, particular cases then in progress being identified. Moreover, Congress by law had to give permission for the Bureau to do certain things necessary for an undercover operation. These prerequisites to FBI undercover operations involve the right to lease buildings or to enter into contracts in ways that do not divulge the fact that the contracting party or the lessee are government agents, and that permit advance payment of funds. Indeed, one statute prohibits a government agency from leasing a building in Washington, D.C., without a specific appropriation for that purpose having first been made by Congress. If that law had been in force, the FBI would not have been able to lease the Washington house in which Operation Abscam was conducted. At the request of the FBI, however, Congress exempted the Bureau from compliance with statutes that might have impeded such operations. The proposed FBI Charter, now before Congress, would specifically authorize undercover operations and would grant a continuing exemption, whenever necessary, from the statutes governing contracts and leases.

Though the FBI learned a great deal about undercover operations by its early participation in Stings, Operation Abscam is not, strictly speaking, a Sting at all. In a Sting, a store is opened and the agents declare their willingness to buy merchandise from one and all. Much of what they buy involves perfectly legitimate sales; some of what they buy is stolen, and when that is established, the ground is laid for an arrest. Operation Abscam followed a quite different route. It resulted from the normal exploitation of an informant who had been useful in locating stolen art works. The informant apparently indicated that he could put agents in touch with politicians who were for sale; the agents accepted, and set up Abscam by having an agent pose as a wealthy Arab interested in buying political favors to assist his (mythical) business enterprises. Several important congressmen, or their representatives, were brought to the house used for Abscam and their negotiations with the agents recorded. The operation is no different in design from those used in many other cases that earned praise for the Bureau.

What is different is that in this case congressmen were apparently involved and the operation was leaked to the press before indictments were issued.

#### Congress, law enforcement, and the Constitution

For congressmen to be in trouble with the law is nothing new. During the 95th Congress alone, 13 members or former members of the House of Representatives were indicted or convicted on criminal charges. Most if not all of these cases resulted from the use of conventional investigative methods—typically, a tip to a law enforcement officer or reporter by a person involved in the offense (bribery, payroll padding, taking kickbacks) who then testified against the official. Law enforcement in such cases is ordinarily reactive and thus crucially dependent on the existence and volubility of a disaffected employee, businessman, or accomplice. Operation Abscam was “proactive”—it created an opportunity for persons to commit a crime who were (presumably) ready and willing to do so.

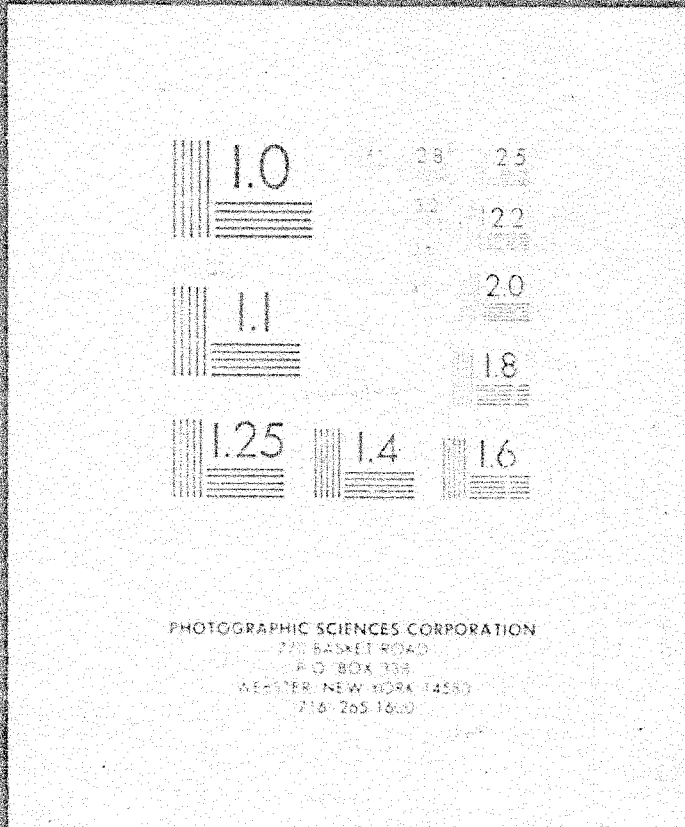
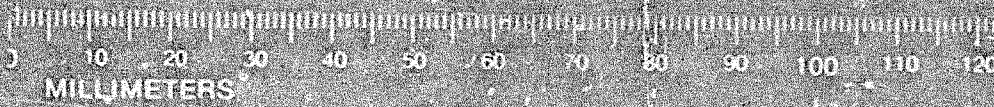
Congress has never complained when such methods were used against others; quite the contrary, it has explicitly or implicitly urged—and authorized—their use against others. There is no small element of hypocrisy in the complaints of some congressmen that they did not mean a vigorous investigation of white-collar crime to include *them*.

But it is not all hypocrisy. It is worth discussing how such investigations should be conducted and under what pattern of accountability. An unscrupulous President with a complaisant FBI director could use undercover operations to discredit political enemies, including congressmen from a rival party. Hoover was a highly political FBI director, but he saw, rightly, that his power would be greater if he avoided investigations of Congress than if he undertook them. Clarence Kelley and William H. Webster have been sternly nonpartisan directors who would never consider allowing the Bureau's powers to be put in service of some rancid political purpose. But new times bring new men, and in the future we may again see partisan efforts to use the Bureau. What safeguards can be installed to prevent schemes to embarrass political enemies by leaked stories is worth some discussion.

But there is a dilemma here: the more extensive the pattern of accountability and control, the greater the probability of a leak. The only sure way to minimize leaks is to minimize the number of

persons who know something worth leaking. In the case of Operation Abscam, scores of persons knew what was going on—in part because such extensive efforts were made to insure that it was a lawful and effective investigation. In addition to the dozens of FBI agents and their supervisors, there were lawyers in the Justice Department and U.S. Attorneys in New York, Newark, Philadelphia, and Washington, D.C., together with their staffs, all of whom were well informed. Any one of them could have leaked. Indeed, given their partisan sponsorship and what is often their background in political activism, U.S. Attorneys are especially likely to be sources of leaks—more so, I should surmise, than FBI agents. If, in order to prevent abuses of the Bureau's investigative powers, we increase the number of supervisors—to include, for example, members of the House or Senate ethics committees—we also increase the chances of leaks (to say nothing of other ways by which such investigations could be compromised).

In the meantime, the debate will not be helped by complaints that the Bureau has launched a "vendetta" against Congress or that it is "out of control." It is nothing of the kind. It is an organization that is following out the logic of changes and procedures adopted to meet the explicit demands of Congress.



# 20=1

Congressional Information Service, Inc.  
Washington, D.C.

