

The Police Foundation

POLICE FOUNDATION LECTURE

1984

THE UNDERCOVER AGENT: SERVING THE ENDS OF JUSTICE

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Federal Bureau of Investigation

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REMARKS

BY

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FEDERAL BUREAU OF INVESTIGATION

BEFORE THE

POLICE FOUNDATION

LONDON, ENGLAND

7/5/84

THE UNDERCOVER AGENT: SERVING THE ENDS OF JUSTICE

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IT IS A GREAT PLEASURE FOR ME TO BE HERE TODAY AND TO HAVE THE HONOR OF DELIVERING THE SECOND ANNUAL ADDRESS TO THE POLICE FOUNDATION. IN THE PAST SEVERAL YEARS I HAVE TWICE BEEN PRIVILEGED TO COME TO ENGLAND AS A MEMBER OF OUR ANGLO-AMERICAN EXCHANGE. ON THE FIRST OCCASION OUR TEAM, HEADED BY OUR CHIEF JUSTICE, STUDIED APPELLATE PRACTICES. LATER IN 1980, WE STUDIED THE CRIMINAL JUSTICE PROCESS. THE ENGLISH TEAMS, HEADED BY LORD DIPLOCK RETURNED OUR VISITS, AND IN THE PROCESS WE TRIED TO LEARN FROM EACH OTHER'S EXPERIENCES. IN SUBTLE BUT IMPORTANT WAYS THESE EXCHANGES HAVE BROUGHT US CLOSER TOGETHER TOWARD OUR COMMON HERITAGE -- THE PURSUIT OF JUSTICE.

JUSTICE ACCORDING TO DANIEL WEBSTER, IS THE GREAT INTEREST OF MAN ON EARTH. SOMETIMES WITHIN OUR CONCEPT OF JUSTICE THERE ARE COMPETING VALUES, EACH OF UNDENIABLE WORTH. THOSE WHO ENFORCE OUR LAWS ARE OFTEN CAUGHT BETWEEN THESE VALUES. IF THE

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LAW ENFORCEMENT OFFICER LISTENS TO ONE SET OF VOICES, HE MAY HEAR THE WORDS "LEAVE US ALONE." IF IN OTHER TIMES HE LISTENS TO ANOTHER SET OF VOICES, HE MAY HEAR THE WORDS "DO SOMETHING ABOUT IT. THE VOICES OF THOSE CONCERNED ABOUT INDIVIDUAL LIBERTIES AND PERSONAL PRIVACY AND THE VOICES OF A SOCIETY COLLECTIVELY DEMANDING TO BE KEPT SAFE AND FREE ADVANCE AND RECEDE AS WITH THE TIDE; YET, BOTH SETS OF VOICES SPEAK OF VALUES DEEPLY TREASURED BY US ALL. THE LAW ENFORCEMENT OFFICER, HOWEVER, MUST CHART HIS COURSE AS BEST HE CAN BY THE NAVIGATIONAL AIDS LAID OUT FOR HIM CASE BY CASE, STATUTE BY STATUTE--BY LAWYERS, JUDGES AND LEGISLATORS. IT IS NOT AN EASY TASK. THE ULTIMATE CHALLENGE FOR THOSE OF US INVOLVED IN THE ADMINISTRATION OF JUSTICE IS TO STRIKE THE BALANCE TRUE.

TODAY I SPEAK TO YOU, NOT FROM THE VANTAGE POINT OF A JUDGE, BUT AS ONE WHOSE AGENCY STANDS AT THE THRESHOLD OF OUR CRIMINAL JUSTICE SYSTEM, AND WHO KNOWS THAT IF WE FAIL IN OUR

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EFFORTS OR VIOLATE THE LAW'S COMMANDS IN THE NAME OF PROTECTING
THE LAW, NO PROSECUTOR AND NO JUDGE CAN RECTIFY OUR ERROR.

AS I SEE IT, OUR GOAL TODAY IN FEDERAL LAW
ENFORCEMENT--IN THE UNITED STATES--IS NOT TO BE CONTENT WITH THE
ARRESTS OF STREET CRIMINALS. BUT INSTEAD, WITH THE LIMITED
RESOURCES AVAILABLE TO US, WE MUST REACH BEYOND THE STREETS AND
INTO THE UPPER ECHELONS OF CRIMINAL ENTERPRISES THAT INFECT OUR
NATION WITH ESPIONAGE, TERRORISM, DRUG TRAFFICKING AND PUBLIC
CORRUPTION. THE DEGREE OF SOPHISTICATION AND INSULATION
ASSOCIATED WITH MODERN CRIMINAL ENTERPRISE HAS SHOWN THE FUTILITY
OF DEPENDING ENTIRELY UPON TRADITIONAL INVESTIGATIVE METHODS; IN
SUCH CASES WE HAVE FOUND IT NECESSARY AND FRUITFUL, TO TURN TO
ARGUABLY, MORE INTRUSIVE, MORE SENSITIVE, BUT LEGALLY SANCTIONED
INVESTIGATIVE TECHNIQUES, INCLUDING THE INFORMANT,
COURT-AUTHORIZED ELECTRONIC SURVEILLANCE, AND THE UNDERCOVER
AGENT.

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ALL LAW ENFORCEMENT IS, TO SOME EXTENT, A MATTER OF INTRUSION. NO INVESTIGATION CAN BE CONDUCTED WITHOUT TALKING TO PEOPLE, LOOKING INTO RECORDS, MAKING TELEPHONE CALLS, EXAMINING FORENSIC EVIDENCE. MOST OF US WILLINGLY ACCEPT SOME DEGREE OF INTRUSION AS BOTH NECESSARY AND PERMISSIBLE. FEW WOULD ARGUE THAT THE SECURITY MEASURES WE UNDERGO AT AIRPORTS SHOULD BE ELIMINATED. THE PROCEDURES ARE INTRUSIVE, BUT THEY PROTECT US IN FLIGHT. OF COURSE, SOME TECHNIQUES USED IN LAW ENFORCEMENT ARE MORE INTRUSIVE THAN OTHERS AND RAISE IMPORTANT ISSUES THAT MUST BE CAREFULLY CONSIDERED. ONE OF THE MORE CONTROVERSIAL TECHNIQUES HAS BEEN THE USE OF OUR OWN AGENTS ACTING UNDERCOVER TO FERRET OUT CRIMINAL ACTIVITY.

THE UNDERCOVER TECHNIQUE HAS BEEN THE SUBJECT OF DEBATE IN BOTH OUR COUNTRIES. THERE ARE VALID ARGUMENTS ON BOTH SIDES OF THE CONTROVERSY--A CONTROVERSY THAT MUST ULTIMATELY BE RESOLVED WITHIN THE CONTEXT OF OUR LEGAL SYSTEMS. MY PURPOSE

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TONIGHT IS TO SHARE SOME OF OUR EXPERIENCES AND THINKING ON THIS SUBJECT, TO GIVE YOU A BETTER UNDERSTANDING OF WHY WE USE THIS TECHNIQUE, WAYS IN WHICH WE USE IT AND HOW WE MANAGE ITS PROPER ROLE IN LAW ENFORCEMENT.

THE USE OF UNDERCOVER AGENTS IN PROPERTY "STING" CASES HAS BEEN A RECOGNIZED TECHNIQUE IN LAW ENFORCEMENT FOR MANY YEARS. LAW ENFORCEMENT OFFICERS POSED AS FENCES, AND THIEVES HOPING TO SELL THEIR LOOT CAME WILLINGLY INTO THE TRAPS THAT HAD BEEN SET FOR THEM. SIMILARLY, POLICE OFFICERS POSED AS LIKELY VICTIMS IN PARKS AND DESERTED STREETS WHILE OTHER OFFICERS WAITED TO ARREST THE MUGGER WHO ATTEMPTED THE ASSAULT.

THE FBI BEGAN ADAPTING THIS TECHNIQUE TO ITS MAJOR FEDERAL PROGRAMS IN THE MID-70'S. STOLEN ART TREASURES FORMED THE BASIS FOR A BURGEONING INDUSTRY ON BOTH SIDES OF THE ATLANTIC AND THE UNDERCOVER AGENT BECAME AN EFFECTIVE WAY OF PENETRATING SOPHISTICATED ENTERPRISES. THE INDIVIDUAL CAR THIEF HAS GIVEN

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WAY TO SOPHISTICATED CAR THEFT RINGS, UTILIZING THIEVES,
COMPUTERIZED MARKETING TECHNIQUES AND CHOP SHOPS TO DISASSEMBLE
AND DISPOSE OF AUTO PARTS WITH GREAT SPEED. COPYRIGHTED FILMS
AND TAPES WERE BEING PIRATED ON A GRAND SCALE. CHARGE CARDS WERE
BEING COUNTERFEITED AND USED FRAUDULENTLY BY RINGS THAT REACHED
ACROSS THE UNITED STATES. IN THESE AND SIMILAR CRIMINAL
ACTIVITIES THE UNDERCOVER AGENT PROVED TO BE A USEFUL AND
GENERALLY ACCEPTABLE TECHNIQUE FOR IDENTIFYING AND TAKING OUT
ENTIRE ENTERPRISES RATHER THAN SETTLING FOR THE BOTTOM MAN ON THE
STREET.

DURING THIS PERIOD THE FBI BEGAN TO FOCUS ITS ATTENTION
AND RESOURCES UPON SOME OF THE MOST INVIDIOUS ACTIVITY EVER TO
INFLECT OUR SOCIETY: THE LA COSA NOSTRA TRADITIONAL ORGANIZED
CRIME FAMILIES, NONTRADITIONAL ORGANIZED GROUPS SUCH AS THE OUTLAW
MOTORCYCLE GANGS; THE ACTIVITIES OF DOMESTIC AND INTERNATIONAL
TERRORISTS; DRUG CARTELS AND TRAFFICKERS OPERATING ON A MAMMOTH

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SCALE, AND SIGNIFICANT WHITE COLLAR CRIME CASES INVOLVING FRAUD AND EMBEZZLEMENT. MANY OF THESE ACTIVITIES INVOLVED CORRUPT PUBLIC OFFICIALS WHOSES COOPERATION WAS ESSENTIAL TO THE SUCCESS OF THE CRIMINAL ENTERPRISE.

TO ATTACK A MAJOR CRIMINAL ENTERPRISE REQUIRES STAYING POWER. WE HAD ALWAYS USED INFORMANTS TO PROVIDE LEADS AND OCCASIONALLY FUNCTION AS COOPERATING WITNESSES ACTING UNDER A PREDESIGNED SCENARIO. WE SOON FOUND THAT THE COOPERATING WITNESS, OFTEN WITH A CRIMINAL BACKGROUND, WAS NOT SUFFICIENTLY DISCIPLINED OR TRUSTWORTHY TO CARRY OUT THE DEMANDING RESPONSIBILITIES -- OFTEN WITH LARGE SOURCES OF MONEY -- THAT SUCH AN INVESTIGATION REQUIRED. INCREASINGLY, WE TURNED TO OUR OWN UNDERCOVER AGENTS TO PURSUE THE INVESTIGATION ONCE THEIR CREDIBILITY HAD BEEN ESTABLISHED BY THE COOPERATING WITNESS.

ALTHOUGH WE CURRENTLY BUDGET LESS THAN ONE PERCENT OF OUR FIELD RESOURCES TO UNDERCOVER WORK, AND USE IT ONLY WHEN MOST

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TRADITIONAL METHODS HAVE BEEN UNSUCCESSFUL, IT HAS BEEN
EXTRORDINARILY COST EFFECTIVE. SINCE OCTOBER 1, 1983,
INVESTIGATIONS USING THE TECHNIQUE HAVE PRODUCED MORE THAN 550
ARRESTS, ALMOST 500 CONVICTIONS, OVER \$52 MILLION IN RECOVERIES
AND FINES OF \$1.1 MILLION.

IT WAS NOT UNTIL OUR UNDERCOVER LEADS TOOK US TO
CORRUPT POLITICAL ACTIVITY THAT THE FULL DIMENSIONS OF THE
CONTROVERSY DEVELOPED. CHARGES OF AGENT PROVOCATEUR, ENTRAPMENT,
AND GOVERNMENT MISCONDUCT BECAME PART OF THE CRIMINAL DEFENSE
ARSENAL AND CONTINUE TO THIS DAY, ALTHOUGH SUCH FORMS OF COUNTER
ATTACK HAVE BEEN SINGULARLY UNSUCCESSFUL IN THE COURTS, REJECTED
IN THE MAIN BY BOTH JURIES AND JUDGES.

ONE OF THE MORE PUBLICIZED APPLICATIONS OF THIS
TECHNIQUE TO THE PROBLEM OF POLITICAL CORRUPTION INVOLVED OUR
INVESTIGATION OF CERTAIN MEMBERS OF CONGRESS IN AN OPERATION
CODENAMED ABSCAM. THIS CASE DEMONSTRATES HOW AN UNDERCOVER

OPERATION CAN PROVIDE A DYNAMIC AND FLEXIBLE APPROACH TO INVESTIGATING CRIME, WHILE ACCOMMODATING A REASONABLE SENSITIVITY TO INDIVIDUAL RIGHTS AND LIBERTIES.

ABSCAM BEGAN EARLY IN 1978 IN NEW YORK STATE AS AN OPERATION TO RECOVER STOLEN ARTWORK AND SECURITIES. OUR AGENTS WERE WORKING WITH A CONVICTED SWINDLER WHO AGREED TO COOPERATE WITH THE GOVERNMENT IN THE HOPE OF RECEIVING A LENIENT SENTENCE. THE SCENARIO WAS SIMPLE. AFTER HEARING STREET TALK THAT FOREIGN MONEY WAS AVAILABLE TO PURCHASE STOLEN ART, WE FORMED A COMPANY, ABDUL ENTERPRISES LIMITED. WE SPREAD THE WORD AROUND THE NETWORK OF CON MEN THAT WEALTHY FOREIGN OPERATORS HAD MONEY AVAILABLE FOR QUESTIONABLE TRANSACTIONS. OUR UNDERCOVER AGENTS POSED AS REPRESENTATIVES OF THESE OPERATORS. IN THIS MANNER, WE RECOVERED ABOUT \$1 MILLION WORTH OF STOLEN ART.

DURING THIS PERIOD OUR AGENTS WERE INTRODUCED TO A NUMBER OF "CON" MEN. SEVERAL MONTHS LATER, A GROUP THAT HAD SOLD

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OUR AGENTS PHONY CERTIFICATES OF DEPOSIT RAISED THE PROSPECT OF INVESTING IN CASINO GAMBLING IN ATLANTIC CITY, NEW JERSEY. THEY TOLD US THAT THE MAYOR OF CAMDEN, NEW JERSEY, WHO ALSO WAS A MEMBER OF THE STATE LEGISLATURE, COULD OBTAIN A CASINO LICENSE--FOR A PRICE. LATER, DURING A MEETING WITH OUR UNDERCOVER OPERATIVES (WHOM HE BELIEVED WERE CRIMINALS), THE MAYOR EXPLAINED THAT ONLY WITH HIS HELP COULD WE ACQUIRE THE LICENSE AND THAT A CASH PAYMENT WOULD BE NECESSARY TO OBTAIN HIS ASSISTANCE. WITH THE CONCURRENCE OF FEDERAL PROSECUTORS, A \$25,000 BRIBE PAYMENT WAS AUTHORIZED. WE DIRECTED OUR AGENTS TO DOCUMENT THIS PAYMENT, AS WELL AS ALL OTHERS IN ABSCAM, ON VIDEO AND AUDIO TAPE.

AFTER RECEIVING THIS INITIAL BRIBE PAYMENT, THE MAYOR INTRODUCED US TO AN OFFICIAL OF THE STATE CASINO CONTROL COMMISSION. LATER, WITH THIS STATE OFFICIAL AT HIS SIDE, THE MAYOR ACCEPTED A \$100,000 BRIBE.

DURING SUBSEQUENT DISCUSSIONS OF THE CASINO TRANSACTION, AN FBI AGENT, POSING AS THE RIGHT-HAND MAN OF SOME ARAB SHEIKS, REMARKED THAT THEY MIGHT HAVE TO FLEE THEIR COUNTRY AND SEEK ASYLUM IN THE UNITED STATES. THE MAYOR AND HIS LAW PARTNER BEGAN TO IDENTIFY CONGRESSMEN WHO, IN RETURN FOR CASH, WOULD TAKE ACTIONS TO GUARANTEE ASYLUM FOR THE FICTITIOUS SHEIKS.

IN THE FOLLOWING MONTHS, THE MAYOR AND HIS ASSOCIATES IDENTIFIED, AND IN SOME CASES BROUGHT TO US, CONGRESSMEN THEY CLAIMED WOULD ASSIST THE FOREIGNERS FOR CASH. DURING THE COURSE OF THE INVESTIGATION WE MADE \$50,000 PAYMENTS TO FIVE CONGRESSMEN AND A \$25,000 PAYMENT TO ANOTHER. AN IMPORTANT POINT IS THAT NOT ONE MEMBER OF CONGRESS WAS EVER SUGGESTED BY ONE OF OUR AGENTS OR INFORMANTS. ALL THE NAMES WERE SUGGESTED BY CORRUPT INFLUENCE PEDDLERS, SUCH AS THE MAYOR, WHO WERE UNAWARE THEY WERE DEALING WITH THE FBI.

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THE OBJECTIVES OF ABSCAM WERE THE SAME AS THOSE OF EVERY CRIMINAL INVESTIGATION. WE PURSUED ALLEGATIONS OF CRIMINALITY AND DEVELOPED EVIDENCE OF CRIMINAL ACTIVITY. ON THE BASIS OF THE EVIDENCE PRESENTED, THE DEPARTMENT OF JUSTICE DECIDED TO PROSECUTE THOSE WHO WERE INDICTED.

THE ABSCAM CASES WERE TRIED BEFORE 10 SEPARATE JURIES WHO RETURNED GUILTY VERDICTS AGAINST ALL 20 DEFENDANTS INCLUDING SIX CONGRESSMEN AND ONE SENATOR. EACH CONVICTION HAS BEEN UPHELD ON APPEAL, INCLUDING SIXTEEN DENIALS OF CERTIORARI BY OUR SUPREME COURT. I BELIEVE OUR EFFORTS TO IDENTIFY AND ROOT OUT PUBLIC CORRUPTION HAS HAD ENORMOUS SUPPORT FROM THE AMERICAN PEOPLE. THE VIDEOTAPED SPECTACLE OF AN UNITED STATES CONGRESSMAN STUFFING HIS POCKETS WITH CURRENCY AND ASKING "DOES IT SHOW," OR OTHERS BOASTING OF THEIR OWN CORRUPTIBILITY DID NOT SIT WELL WITH OUR CITIZENS AND THE MESSAGES WE RECEIVED IN OVERWHELMING NUMBERS WAS

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THE SAME: "WE'RE GLAD THERE IS AN AGENCY IN GOVERNMENT WHICH WILL NOT LOOK THE OTHER WAY; DON'T STOP."

ABSCAM IS BUT ONE OF THE PROGRAMS WHICH INVOLVES POLITICAL CORRUPTION. SOME HAVE RESULTED IN LEGISLATION REFORMS LONG OVERDUE; OTHERS HAVE CAUSED LOCAL LEADERS TO TAKE NEEDED ACTION TO CLEAN THEIR HOUSES. IT HAS BEEN HEALTHY.

AS I INDICATED, THE ABSCAM INVESTIGATION, AND ITS APPLICATION OF THE UNDERCOVER OPERATION TO POLITICAL CORRUPTION, RECEIVED A GREAT DEAL OF PUBLIC ATTENTION. HOWEVER, WE SHOULD NOT LOSE SIGHT OF THE FACT THAT UNDERCOVER OPERATIONS HAVE PROVEN TO BE EXTREMELY USEFUL IN A WIDE VARIETY OF INVESTIGATIVE SITUATIONS. NARCOTICS INVESTIGATIONS SUCH AS THE ONE CONDUCTED IN OPERATION BANCOSHARES, ARE A GOOD EXAMPLE.

IN THAT CASE, OUR UNDERCOVER AGENTS POSED AS BROKERS WILLING TO LAUNDER ILLICIT DRUG MONEY THROUGH A FICTITIOUS CORPORATION. TRANSACTIONS OF OVER \$1 MILLION PER DAY WERE

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VIDEOTAPED. THE PRIMARY SERVICES OFFERED BY THE UNDERCOVER CORPORATION WERE THE CONVERSION OF SMALL BILLS TO LARGE BILLS; THE CONVERSION OF U. S. CURRENCY TO CASHIER'S CHECKS; THE MAINTENANCE OF LARGE QUANTITIES OF U. S. CURRENCY IN BANK ACCOUNTS OF THE UNDERCOVER CORPORATION; AND THE DEPOSITING OF "CLIENTS'" U. S. CURRENCY IN MIAMI AREA BANKS TO PROTECT THEM FROM BEING IDENTIFIED AS THE SOURCE OF FUNDS.

WHEN WE TERMINATED THE COVERT STAGE OF THIS INVESTIGATION IN AUGUST, 1981, OVER 60 ARREST WARRANTS WERE ISSUED, AND OVER 30 SUBJECTS WERE ARRESTED. PROPERTY AND CASH RECOVERED, SEIZED, OR FROZEN AS A RESULT OF THIS OPERATION INCLUDED NUMEROUS AIRPLANES AND VEHICLES, LARGE QUANTITIES OF COCAINE, A 4,600-ACRE RANCH WITH AN ESTIMATED VALUE IN EXCESS OF \$4 MILLION, THREE RESIDENCES AND \$18 MILLION IN CASH AND BANK ACCOUNTS.

WE HAVE ALSO USED THE UNDERCOVER TECHNIQUE TO CONDUCT SUCCESSFUL INVESTIGATIONS OF GROUPS CLASSIFIED AS CRIMINAL ENTERPRISES BY OUR RICO--RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS--STATUTE. RICO OUTLAWS CERTAIN CRIMINAL ENTERPRISES THAT AFFECT COMMERCE. ITS PENALTIES INCLUDE PRISON TERMS OF UP TO 20 YEARS AND THE FORFEITURE OF ALL ASSETS OBTAINED BY VIOLATING THE STATUTE. IT HAS BEEN A FRUITFUL INVESTIGATION TOOL AGAINST THE CRIMINAL ENTERPRISE.

IN OUR UNIRAC CASE WE SOUGHT TO DETERMINE THE EXTENT TO WHICH OUR MARITIME INDUSTRY--INCLUDING UNIONS AND THE SERVICE, SHIPPING AND TRUCKING COMPANIES--WAS INFLUENCED AND CONTROLLED BY ORGANIZED CRIME MEMBERS AND LABOR RACKETEERS. MANY OF THESE PEOPLE HAD ELUDED DETECTION BY THREATENING POTENTIAL WITNESSES WITH VIOLENCE AND ECONOMIC RUIN. OUR INVESTIGATION ULTIMATELY INVOLVED 20 OF OUR 59 FIELD OFFICES AND OVER A HUNDRED SPECIAL

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AGENTS, SOME IN UNDERCOVER ROLES. INFORMANTS AND COURT-AUTHORIZED ELECTRONIC SURVEILLANCE WERE ALSO USED.

THIS INVESTIGATION RESULTED IN OVER 110 CONVICTIONS INCLUDING THAT OF ANTHONY SCOTTO, THE MOST PROMINENT DOCKING LABOR OFFICIAL ON OUR EAST COAST WHO WAS ALSO A CAPO IN THE GAMBINO ORGANIZED CRIME FAMILY. IN THREE YEARS HE HAD ACCEPTED OVER \$300,000 DOLLARS TO ENSURE LABOR PEACE AND CONTROL FRAUDULENT INSURANCE CLAIMS. ALTHOUGH WE HAVE NOT ELIMINATED CRIME ON OUR DOCKS, WE KNOW THIS CASE HAS HAD AN IMPACT ON A PERVASIVE SCHEME OF CORRUPTION ON THE WATERFRONTS FROM NEW YORK TO MIAMI.

WE ALSO HAVE SUCCESSFULLY USED UNDERCOVER OPERATIONS IN TERRORISM INVESTIGATIONS. TERRORISTS ENTERPRISES ARE OFTEN DIFFICULT TO PENETRATE BECAUSE THEY OPERATE IN SMALL, CELLULAR GROUPS. IN THREE SEPARATE UNDERCOVER OPERATIONS, WE IDENTIFIED A NUMBER OF PEOPLE RESPONSIBLE FOR THE ILLEGAL TRANSPORTATION OF

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ARMS AND WEAPONS FROM THE UNITED STATES TO THE IRISH REPUBLICAN ARMY TO SUPPORT TERRORIST ACTIVITIES. OUR EFFORTS LED TO THE DISRUPTION OF THEIR OPERATION AND THE SEIZURE OF AMMUNITION AND MILITARY SUPPLIES. SIX INDIVIDUALS WERE CONVICTED OF VARIOUS FIREARMS AND EXPLOSIVES CHARGES, ONE OF WHICH INVOLVED A CONSPIRACY TO PURCHASE A HEAT-SEEKING MISSILE FOR USE IN NORTHERN IRELAND.

ALL OF THESE CASES WERE, FROM OUR POINT OF VIEW, VERY SUCCESSFUL OPERATIONS. BUT THE SUCCESS OF AN INVESTIGATIVE TECHNIQUE MUST NEVER BE THE SOLE DETERMINANT FOR ITS USE. THE TRADITIONAL ROLE OF LAW ENFORCEMENT IS TO APPREHEND CRIMINALS AND PREVENT CRIME, NOT MANUFACTURE IT. OUR MISSION IS TO UPHOLD THE LAW.

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NONETHELESS THE GOVERNMENT DOES OWE A DUTY TO ITS CITIZENS TO EFFECTIVELY ENFORCE THE CRIMINAL STATUTES. AND WE HAVE FOUND THAT THE SIMPLE TRUTH OF THE MATTER IS THAT THE ONLY PRACTICABLE MEANS OF DETECTING AND PROSECUTING SOME FORMS OF CRIMINAL BEHAVIOR IS THROUGH INFILTRATION AND THE APPEARANCE OF PARTICIPATION IN THE UNLAWFUL ACTIVITIES IN ORDER TO COLLECT EVIDENCE FOR PROSECUTION. IT IS IMPORTANT TO UNDERSTAND, HOWEVER, THAT THIS IS DONE SUBJECT TO JUDICIAL OVERSIGHT. THE COURTS ULTIMATELY DEFINE PERMISSIBLE AND IMPERMISSIBLE POLICE CONDUCT LARGELY BY HOW THEY RULE ON A DEFENDANT'S ASSERTION OF ONE OF TWO DEFENSES: ENTRAPMENT AND DUE PROCESS.

I RECOGNIZE THAT OUR LEGAL SYSTEMS MAY DEAL WITH THESE ISSUES IN DIFFERENT WAYS. IN THE UNITED STATES, ENTRAPMENT IS AN AFFIRMATIVE DEFENSE. IT REQUIRES DISMISSAL OF CRIMINAL CHARGES

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IF THE GOVERNMENT INDUCED OR ENCOURAGED AN INDIVIDUAL TO ENGAGE IN ILLEGAL ACTIVITY THAT HE WOULD NOT BE DISPOSED TO COMMIT. THE DEFENSE DERIVES FROM THE PRINCIPLE THAT OTHERWISE INNOCENT PEOPLE SHOULD NOT BE CONVICTED IF THEY WERE ENTICED BY THE GOVERNMENT INTO VIOLATING THE LAW.

THE TEST FOR ENTRAPMENT IN THE AMERICAN FEDERAL SYSTEM IS A SUBJECTIVE ONE. IF BASED UPON THE FACTS THE JURY DETERMINES THAT THE DEFENDANT HAD A PREEXISTING WILLINGNESS TO VIOLATE THE LAW, THE ENTRAPMENT DEFENSE WILL FAIL. THE RATIONALE FOR THIS APPROACH IS THAT IT IS NOT DESIRABLE FOR THE LAW, IN EFFECT, TO GRANT IMMUNITY FROM PROSECUTION TO A DEFENDANT WHO PLANNED TO COMMIT A CRIME, AND THEN COMMITTED IT, SIMPLY BECAUSE GOVERNMENT UNDERCOVER AGENTS PROVIDED INDUCEMENTS THAT MIGHT HAVE PERSUADED A HYPOTHETICAL INDIVIDUAL NOT SO PREDISPOSED. IT IS IMPORTANT, AS THE SUPREME COURT HAS SAID, THAT "A LINE...BE DRAWN BETWEEN

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THE TRAP FOR THE UNWARY INNOCENT AND THE TRAP FOR THE UNWARY
CRIMINAL."

UNLIKE THE ENTRAPMENT DEFENSE, WHICH EXAMINES THE
DEFENDANT'S STATE OF MIND, THE FOCUS OF THE DUE PROCESS DEFENSE
IS ON THE CONDUCT OF THE GOVERNMENT. IT IS BASED ON
CONSTITUTIONAL PROVISIONS PROHIBITING THE GOVERNMENT FROM
DEPRIVING INDIVIDUALS OF LIFE, LIBERTY OR PROPERTY WITHOUT DUE
PROCESS OF LAW. IN THE CRIMINAL LAW CONTEXT, IT ESSENTIALLY
MEANS FAIRNESS. ALTHOUGH OUR CONSTITUTION AFFORDS OUR GOVERNMENT
WIDE LATITUDE TO ENFORCE THE LAWS, COURTS DO RECOGNIZE THAT
POLICE CONDUCT MAY BE SO OUTRAGEOUS AND OVERREACHING AS TO RENDER
PROSECUTION OF A DEFENDANT FUNDAMENTALLY UNFAIR.

IN RULING ON A DEFENDANT'S DUE PROCESS CLAIM THE COURTS
CONSIDER A VARIETY OF FACTORS. ONE OF THESE IS THE DIFFICULTY OF
DETECTING THE CRIME UNDER INVESTIGATION. THE COURTS MAY ALSO
INQUIRE INTO WHETHER GOVERNMENT AGENTS OR INFORMANTS INSTIGATED

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THE CRIME OR MERELY INFILTRATED AN ONGOING CRIMINAL ENTERPRISE;
WHETHER THE GOVERNMENT DIRECTED OR CONTROLLED THE CRIMINAL
ACTIVITY OR MERELY FOLLOWED THE DEFENDANT'S DIRECTIONS; AND
WHETHER THE GOVERNMENT SUPPLIED THE CRIMINAL ENTERPRISE WITH A
SUBSTANTIAL AMOUNT OF ESSENTIAL RESOURCES AND TECHNICAL EXPERTISE
TO ENABLE THE SUSPECTS TO COMMIT THE OFFENSE.

CLEARLY, GOVERNMENT INFILTRATION MAY BE OUTRAGEOUS IN
SOME CASES BUT ACCEPTABLE IN OTHERS. IT WOULD, FOR EXAMPLE, BE
IMPERMISSIBLE TO INSTIGATE ROBBERIES OR PHYSICAL VIOLENCE TO
GATHER EVIDENCE TO CONVICT MEMBERS OF AN OUTLAW GANG. AND I
THINK WE ALL RECOGNIZE THE DANGERS INHERENT IN ANY INVESTIGATION
THAT THREATENS THE EXERCISE OF BASIC HUMAN RIGHTS SUCH AS FREE
SPEECH OR ASSEMBLY.

IN RESPONSE TO THESE CONCERNS, WE HAVE TAKEN STEPS TO
ENSURE THAT OUR UNDERCOVER OPERATIONS RECEIVE CLOSE SCRUTINY AND
CONSTANT SUPERVISION AT ALL STAGES OF THE INVESTIGATION.

UNDERCOVER PROJECTS THAT ORIGINATE IN OUR FIELD OFFICES ARE DESIGNED TO INVESTIGATE A PARTICULAR CRIME PROBLEM OR GROUPS OF INDIVIDUALS SUSPECTED OF PARTICIPATING IN ILLEGAL ACTIVITY. ONCE A FIELD OFFICE DEVELOPS A CONCEPT FOR AN UNDERCOVER PROJECT, AND BEFORE ITS SUBMISSION TO FBI HEADQUARTERS, THE PROPOSAL IS REVIEWED BY FIELD OFFICE MANAGERS AS WELL AS FBI LAWYERS AND FEDERAL PROSECUTORS. THE REVIEW INCLUDES AN EXAMINATION OF LEGAL AND ETHICAL CONSIDERATIONS INCLUDING AN ASSESSMENT OF WHETHER PLANNED INVESTIGATIVE TACTICS POSE A DANGER OF ENTRAPMENT OR VIOLATIONS OF DUE PROCESS. MANY PROJECTS ARE REJECTED DURING THIS INITIAL REVIEW PROCESS.

IF APPROVED BY THE FIELD OFFICE, THE PROPOSAL IS FORWARDED TO FBI HEADQUARTERS IN WASHINGTON WHERE IT IS FURTHER EVALUATED BY THE CRIMINAL UNDERCOVER OPERATIONS REVIEW COMMITTEE. I ESTABLISHED THIS COMMITTEE IN 1978, AND IT INCLUDES OPERATIONAL PROGRAM MANAGERS AND LAWYERS FROM BOTH THE FBI AND THE DEPARTMENT

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OF JUSTICE WHO EVALUATE PROPOSALS, IDENTIFY POTENTIAL PROBLEMS AND GIVE OPERATIONAL GUIDANCE. IF THE COMMITTEE IS SATISFIED THAT THE PROPOSAL MERITS APPROVAL AFTER CONSIDERING THE LEGAL, ETHICAL AND OPERATIONAL ASPECTS OF THE PLAN, IT WILL MAKE SUCH A RECOMMENDATION TO THE HEAD OF THE CRIMINAL INVESTIGATIVE DIVISION, OR WHERE PARTICULARLY SENSITIVE CIRCUMSTANCES ARE INVOLVED, DIRECTLY TO ME. NO OPERATION IS APPROVED FOR MORE THAN SIX MONTHS AND TIME EXTENTIONS ARE GRANTED ONLY UPON COMMITTEE APPROVAL.

ONCE IN PLACE, UNDERCOVER OPERATIONS ARE MONITORED CLOSELY TO ENSURE COMPLIANCE WITH LEGAL REQUIREMENTS AND GUIDELINES PROMULGATED BY THE ATTORNEY GENERAL. FOR EXAMPLE, ABSCAM WAS REVIEWED ON A DAILY BASIS BY FEDERAL PROSECUTORS IN NEW YORK AND MONITORED IN WASHINGTON BY JUSTICE DEPARTMENT ATTORNEYS WHO MADE RECOMMENDATIONS ON NUMEROUS INVESTIGATIVE STEPS. PROSECUTORS PERSONALLY MONITORED ON CLOSED-CIRCUIT

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TELEVISION MANY OF THE TRANSACTIONS AS THEY TOOK PLACE. ONE PURPOSE FOR THIS ON-LINE MONITORING WAS TO GUARD AGAINST CONDUCT AMOUNTING TO ENTRAPMENT. THE ATTORNEYS COULD PICK UP A TELEPHONE AND CALL INTO THE MEETING ROOM. THE UNDERCOVER AGENT WOULD ANSWER AS IF HE WAS RECEIVING A BUSINESS CALL AND OBTAIN INSTRUCTIONS NECESSARY TO ENSURE THAT ALL LEGAL REQUIREMENTS WERE BEING FOLLOWED.

SUCH SAFEGUARDS AS THESE HELP US MAINTAIN THE DELICATE BALANCE OF COMPETING VALUES AS WE USE MORE SENSITIVE AND INTRUSIVE TECHNIQUES TO COMBAT SOPHISTICATED CRIMINAL ENTERPRISES AND CRIMES NOT EASILY DETECTED BY NORMAL INVESTIGATIVE MEANS.

THE MANAGEMENT OF INVESTIGATIVE TECHNIQUES SUCH AS I HAVE DISCUSSED TODAY IS A SMALL BUT IMPORTANT PART OF THE PURSUIT OF JUSTICE. IT ILLUSTRATES THE ENDLESS BALANCING PROCESS BY WHICH OUR METHODS ARE ACCOMMODATED TO EMERGING STANDARDS OF LAW

AND DECENCY AND YET MAY STILL BE UTILIZED EFFECTIVELY TO DEAL WITH INCREASINGLY SOPHISTICATED CRIMINALITY.

IN YOUR LONG AND OUR MUCH SHORTER HISTORY, OUR GREAT NATIONS HAVE DEVELOPED LEGAL SYSTEMS THAT ARE AT ONCE SENSITIVE TO THE RIGHTS OF THE INDIVIDUAL, THE NEEDS OF SOCIETY AND THE VICTIMS OF CRIME. THIS IS AN ONGOING TASK AND ONE THAT I DARE SAY IS TOO IMPORTANT TO BE LEFT ENTIRELY TO JUDGES, LAWYERS, AND LAW ENFORCEMENT OFFICERS. JUSTICE BELONGS TO ALL OUR CITIZENS. WE MUST WORK AT IT, WORK TO KEEP THE MACHINERY FUNCTIONING, WORK TO KEEP OUR SOCIETAL STANDARDS DECENT AND HIGH, WORK TO INSTILL IN OUR CHILDREN A CLEARER VISION OF JUSTICE--A SYSTEM OF JUSTICE THAT FUNCTIONS BOTH FOR INDIVIDUALS AND FOR SOCIETY BECAUSE IT IS FAIR. WE IN LAW ENFORCEMENT AND INDEED ALL THOSE WHO SERVE AND REVERE THE LAW MUST STRIKE THE BALANCE TRUE, BECAUSE IN OUR ABILITY TO KEEP THE SCALES IN BALANCE LIES THE FUTURE OF THAT

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ORDERED LIBERTY WHICH HAS BEEN OUR RICH HERITAGE AND IS NOW
ENTRUSTED TO OUR CARE.

THERE ARE NO FINER PROFESSIONAL LAW ENFORCEMENT
AGENCIES IN THE WORLD THAN THOSE THAT SERVE THE BRITISH
COMMONWEALTH AND THE UNITED STATES. THE FORENSIC ADVANCES IN THE
PAST DECADE HAVE BEEN WITHOUT PARALLEL. COOPERATION BETWEEN OUR
AGENCIES IS AT AN ALL TIME HIGH. I PLEDGE YOU THE FULL
COOPERATION OF THE FBI AS WE WORK TOGETHER, INCREASE OUR SKILLS
TOGETHER, AND TOGETHER SERVE THE ENDS OF JUSTICE UNDER LAW.

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