

FAIR PLAY OR TRAP? DELOREAN CASE REVIVES ABSCAM QUERY

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Author: STEVE TWOMEY Knight-Ridder Newspapers

LOS ANGELES -- Something very familiar was going on: Inside Room 501 of the Sheraton Plaza Hotel, beneath the screaming jets landing at nearby Los Angeles International Airport, four men sat in the early afternoon of Oct. 19, seemingly friends all.

The concealed cameras were turning, the hidden microphones on, the goods packed, the scam intact.

Three of the men worked for the U.S. government. The fourth did not know that. Nor did he know about the cameras and the microphones -- and certainly not about the scam.

The fourth, the government says, thought they were all partners in a budding \$60 million drug deal. The fourth, the government says, was about to plunge into a crime in which he was the only possible criminal; all else, everyone else, in Room 501 was fiction.

SURPRISE, John Z . DeLorean . You've been stung by your government.

To some who have examined details of the case, there is an eerie similarity about the undercover caper that has turned one of the world's most famous entrepreneurs into one of its most fascinating criminal suspects.

Substitute the names and the places, substitute piles of bribe money for packages of cocaine, and the similarity becomes clear: It was an Abscam reprise, another prominent name caught cold in a government plot he mistook for something else.

In the month since **DeLorean** 's arrest , as the legal community has sifted through the documents detailing how the boy wonder of the automotive world was ensnared, the same unsettling questions that arose with Abscam nearly three years ago have arisen again, questions about how far the government can go in unearthing crime, questions about entrapment and undercover agents.

BUT THE MERE FACT that the federal government could stage such an elaborate sting again, the mere fact that those troubling questions are still unanswered, shows that, in a legal sense anyway, not much has changed in the wake of Abscam, despite all the outcry and anguish back then about the tactics of the FBI.

A former top federal prosecutor in Los Angeles, referring to the convictions of 12 major federal and local officials involved in Abscam, said , "New guidelines for undercover operations have not been forthcoming from the courts, because they (the government's tactics) are being upheld."

To be sure, none of the Abscam cases has yet been heard by the U.S. Supreme Court. Therefore, new limits on sting operations might yet be forthcoming.

But barring that, and based on the Abscam record to date and on what information federal agents have released about **DeLorean**'s case, the odds of his escaping conviction seem rather long.

"Lots of luck," said Charles Whitebread, a University of Southern California law professor, when asked the likelihood of successfully defending a case like **DeLorean**'s.

WHEN ABSCAM first became public in February 1980, many attorneys and politicians argued that, with so much other crime to investigate, it was improper for the FBI to encourage potentially criminal schemes.

Government agents were, in effect, putting citizens to a test of integrity by promising financial reward in return for political favors.

Similar sting operations had been used for years before Abscam, largely because prosecutors believe such undercover operations are virtually the only way to uncover certain crimes.

For example, catching a drug dealer in the act of selling is extremely difficult -- unless he or she is selling to an undercover agent. The same is true of bribes to politicians, prosecutors contend

IN THESE CASES, the government contends that it merely creates the framework or opportunity for crime. Those who partake of this chance are hardly innocent victims, it says. A politician who knowingly accepts an envelope stuffed with cash from a businessman is well aware of what is expected in return.

The U.S. Supreme Court, in its four major rulings in this field, has raised only two tests to be applied in determining the validity of a sting operation. The first focuses on the defendant, the second on the government.

According to the court, if a defendant was not pre-disposed to commit a crime, but instead was overwhelmed by the pressure and inducements of government agents, then the defendant was entrapped.

Determining pre-disposition in some cases is easy, particularly if the defendant is the one who seeks out an undercover agent with a plan for illegal activity.

In other cases, more subjective tests must be used. For example, if it is the government's agents who suggest the crime, how quickly and avidly does the defendant go along?

THE SUPREME COURT'S second guideline turns on whether government involvement and conduct was so outrageous that even though a defendant was pre-disposed to commit a crime, the sting operation exceeds the bounds of fair play.

But determining what is outrageous conduct is difficult. The Supreme Court has never given examples; it has only said that it was theoretically possible.

Exactly what defense tactic **DeLorean** 's attorneys will pursue is not yet known.

Based on what government investigators have said about the case, it would seem difficult for **DeLorean** to present an entrapment defense. They contend that it was **DeLorean** who sought out a friend -- actually a government informant -- and suggested that he wanted to make a major drug deal to help save his foundering car company. That would seem to indicate he was pre-disposed, the investigators said.

After a court proceeding in Los Angeles recently, **DeLorean** 's principal attorney, Seth Hufstedler, indicated that he would use the "outrageous conduct" defense. He did not elaborate on exactly how he thought the government had exceeded the bounds of fair play.

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Caption: SketchC DICK MAYER

Memo: perspective

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