

Letters

Defects in Government's Entrapment Standard

To the Editor:

It may be correct, as you argue in an Aug. 18 editorial, that both John DeLorean and Attorney General Smith "misread the lessons of the celebrated case." But it is also correct that you misread the report of the Senate committee that investigated Abscam.

You say the committee "recommended against changing the entrapment standard." In fact, one of the major recommendations of the committee is for legislation that would overcome the problems in the current entrapment standard. The committee also recommends legislation to establish authorization and reporting requirements, thresholds for carrying out an investigation and indemnification for third parties harmed as a result of an undercover operation.

Nearly all observers agree that the present entrapment standard is inadequate and that recourse to due-process principles does not make up for the deficiencies of the entrapment doctrine.

In its "Final Report of the Select Committee to Study Undercover Activities of Components of the Department of Justice," the committee proposes legislation that would create an affirmative defense of entrapment

when a Federal agent or private party under the direction of authorities "... is shown by a preponderance of the evidence to have induced the defendant to commit an offense, using methods that more likely than not would have caused a normally law-abiding citizen to commit a similar offense" (p. 362).

This changes the standard from the subjective predisposition of the defendant to the actual objective behavior of the police. For example, a defense of entrapment would apply if the crime was committed: (1) because of a threat of harm to the defendant, (2) because agents manipulated the defendant's personal, economic or vocational situation to increase the likelihood of the crime occurring, or (3) because agents provided otherwise unobtainable goods and services needed for the commission of a crime.

It is true that DeLorean has no basis for complaint about the current law. But DeLorean is hardly your average citizen, and the issues raised by this case go beyond the strictly legal to questions of social policy.

Even if DeLorean had been found guilty, is the end result really worth the several million dollars in investigation and trial costs that

the case appears to have involved?

It is easy to think of more productive uses of that money, whether in drug treatment and education programs or in investigations of less well-known people with an actual history of drug trafficking. Yet as long as covert law enforcement operates in such a permissive environment and feels compelled to fight for headlines as well as to fight crime, such cases will continue.

Noting that there were lapses in the DeLorean case similar to those in the Abscam case, involving "sloppy management and loose controls over informants," you suggest that "some of Abscam's lessons were quickly forgotten." That is an optimistic assessment.

Another observer might ask whether those lessons were learned to begin with. If they were not adequately learned, why not, and what needs to be done to change the situation? You express the hope that the DeLorean case will cause the Government to weigh the cost of stings against their benefit. A more likely source of change is passage of the legislation proposed by the Senate Select Committee.

GARY T. MARX
Professor of Sociology, M.I.T.
Cambridge, Mass., Aug. 20, 1984