Recent Developments: Jacobson v. United States: Entrapment Defense Prevailed Where Government Failed to Prove Criminal Predisposition Existed before Investigation Induced Defendant to Break the Law

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The dissent, therefore, concluded that it was no longer necessary to enforce sweeping suppression of political speech subject to the protection of the First Amendment.

In addition to overbreadth, the dissent noted that the statute discriminated in its regulation of speech. The dissent asserted that the plurality's opinion represents a departure from the longstanding tradition of allowing a polling facility on election day. How­ ever, because this is only a plurality decision, with a strong dissent, this decision and concluded that Jacobson was neither entrapped as a matter of law. It may not, however, employ its law enforcement capacity may afford an opportunity for the commission of an offense. Jacobson, 112 S. Ct. at 1540. It may not, however, employ its agents to instill in an innocent person's mind the inclination to commit a crime, and then induce a criminal act in order to prosecute. Id. The Court concluded that where Government agents have
“induced an individual to break the law and the defense of entrapment is at issue . . . the prosecution must prove beyond a reasonable doubt that the defendant was disposed to commit the criminal act prior to first being approached by law enforcement agents.” Jacobson, 112 S. Ct. at 1540 (citing United States v. Whoie, 925 F.2d 1481 (D.C. Cir. 1991)).

The Court next explained that in a situation where an individual is merely presented with the opportunity to commit a crime, the immediate willingness to engage in criminal conduct gives a clear indication of a defendant’s criminal predisposition. Id. at 1541. Jacobson’s conviction, however, involved an extended effort on the part of the Government, culminating in an arrest only after twenty-six months of ongoing correspondence with fictitious organizations. Id. Thus, the Court ruled that although Jacobson may have been predisposed to receive mail-order child pornography by the time of his arrest in 1987, the Government did not prove that this inclination developed independently of the investigation directed toward Jacobson since 1985. Id.

The evidence produced by the Government concerning Jacobson’s sexual propensity prior to the law enforcement mail campaign was insufficient to support a finding of his predisposition to commit a criminal act. Id. The Court opined that the receipt of two magazines from a California bookstore, as the sole piece of such pre-investigative evidence, could indeed indicate Jacobson’s desire to view sexually oriented photographs. Id. This inference, however, merely demonstrated a certain preference to act within a broad range of sexual conduct, only some of which was criminal, and thus was not probative of a predisposition to engage in illegal activity. Id. The Court further acknowledged that because most people tend to obey the law even if they disagree with it, evidence of one’s inclination to perform what was once a lawful act does not justify an inference of a tendency to perform that which is now illegal. Id. at 1542.

Similarly, the Court emphasized that evidence produced during the investigation failed to prove Jacobson’s predisposition to receive child pornography through the mail. Id. The Court viewed his responses to the many communications prior to the commission of the actual crime as indicative only of Jacobson’s personal inclinations and interests rather than sufficing as proof of any criminal design on his part. Id. Furthermore, the Government’s tactic in its solicitation to Jacobson that viewing the prohibited sexually oriented materials should be within his constitutional privilege of freedom of choice. Id. The Court concluded that the Government exerted considerable pressure on him to obtain the outlawed materials as a protest against an encroachment on his constitutionally guaranteed individual liberties. Id. Consequently, rational jurors could not determine beyond a reasonable doubt that, absent the protracted investigation by the Government, Jacobson was autonomously predisposed to commit the crime. Id. at 1543.

In a lengthy dissent, Justice O’Connor, joined by Chief Justice Rhenquist, Justice Kennedy, and in part by Justice Scalia, maintained that the majority’s position unnecessarily usurped a reasonable jury inference of predisposition. Id. at 1544. In the dissent’s view, the holding redefined the term “predisposition” and placed a new requirement on law enforcement officials by demanding a determination of a “reasonable suspicion of illegal activity before contacting a suspect.” Id. at 1544. The minority argued that the Government cannot induce a suspect to commit a criminal act through its communications until it actually provides the opportunity to engage in such illegal conduct, because until then, there can be no finding of an implantation of criminal design in the mind of an innocent person. Id. In addition, the dissent lamented that the Government must now show not only that a suspect was predisposed to commit a crime before an opportunity was presented, but also that such person was criminally predisposed before the Government came on the scene. Id. at 1545. Furthermore, Justice O’Connor reasoned that the readiness with which Jacobson responded to the opportunity to commit the crime indicated that he likely would have broken the law if left to his own devices. Id. at 1543-44.

Jacobson v. United States represents an important clarification of the law of entrapment because it places a limitation on the Government’s use of undercover agents to enforce the law. The Supreme Court thus has reaffirmed the individual’s right of freedom from unwarranted government intrusion by recognizing a level of intervention by law enforcement officers at which a finding of criminal predisposition by a jury is unreasonable. Jacobson will effectively prompt the courts to scrutinize more carefully law enforcement sting operations, and will ultimately provide criminal defendants with a heightened opportunity to argue for exoneration if induced to engage in illegal activity by government officials.

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In Williams v. United States, 112 S. Ct. 1112 (1992), the Supreme Court reviewed the Sentencing Reform Act of 1984 (“Sentencing Act”) in an attempt to establish a national consensus on the scope of appellate review when a district court’s sentence varies from the United States Sentencing Commission Guidelines (“Guidelines”). The Court held that when a lower court relies on both valid and invalid factors during sentencing, a reviewing court cannot affirm a sentence solely on its independent assessment that the dis-