The Psychology of Entrapment

VANESSA A. EDKINS AND LAWRENCE S. WRIGHTSMAN

When people think of “entrapment” generally what comes to mind is an undercover police officer posing as a prostitute or a drug dealer in order to catch criminals. The fact of the matter is that claims of entrapment take on many forms, the above being some of them. The police sting operations that lead to the defense of entrapment can also be complicated and intricate schemes involving obscene amounts of money, or a bribe with the undertone of a threat. While the former types of operations can be beneficial in helping to stop so-called “victimless” crimes (“Entrapment: From Sorrells,” 1993), the latter may be an example of law enforcement officials overstepping their boundaries.

TWO ENTRAPMENT CASES WITH DIFFERENT OUTCOMES

KEITH JACOBSON

In February, 1984, Keith Jacobson, a 56-year-old, unmarried Nebraska farmer, ordered two magazines through the mail from an adult bookstore. This seemingly innocent occurrence caught the attention of the United States government and eventually led to a criminal conviction of Jacobson and an appeal to the United States Supreme Court. Within three months after Jacobson had ordered his magazines, Congress, in May 1984, passed a Child
Protection Act, which made criminal the receipt of child pornography through the mail (specifically, the knowing receipt through the mail of a "visual depiction [that] involves the use of a minor engaging in sexually explicit conduct." The magazines (titled "Bare Boys I" and "Bare Boys II") that Jacobson ordered from a California bookstore contained depictions of nude preteen boys. The young men depicted in the magazines were not engaged in sexual activity, and at the time of his order, Jacobson broke no Nebraska or federal law (Nebraska had no such law until 1988). In fact, when questioned about the contents of the magazines, Jacobson reported that he had expected to receive photographs of young men 18 years or older, from what he thought was a "nudist type publication" with many of the photographs in a rural or outdoors setting. He claimed that he didn’t see any sexual connotations in the photos.

However, because of his mail order, Jacobson became the object of an undercover operation by the federal postal authorities. In the very month that the Child Protection Act had been passed, postal inspectors found Jacobson’s name on the mailing list of the bookstore that had mailed him the two magazines. Over the next two years, the government, through the use of five fictitious organizations and a bogus pen pal, aggressively provided a temptation for Jacobson to break the new law and order child pornography—he was sent nine mailings over a period of 26 months.

A Chronology of Contacts

January 1985: Jacobson receives a letter and a membership application from a fictitious organization, the American Hedonist Society. The goals of this organization supposedly included a belief in “the right to seek pleasure without restrictions being placed on us by outdated puritan morality” (Jacobson v. United States, 1992, p. 544). Jacobson enrolled in the organization and returned a sexual attitude questionnaire that asked him to rate on a scale of one to four his enjoyment of various sexual materials. He rated “preteen sex” as a two but indicated that he was opposed to pedophilia.


Later in 1986: A letter was sent from yet another fictitious organization, “Heartland Institute for a New Tomorrow” (HINT), that enclosed another survey of sexual preferences, to which Jacobson replied.

A follow up letter from HINT portrayed itself as a lobbying organization that sought to eliminate any legal definition of the age of consent. The