follows a two-pronged analysis. First, the question is asked whether the offense was induced by a government agent. Second, if the government has induced the defendant to break the law, "the prosecution must prove beyond reasonable doubt that the defendant was disposed to commit the criminal act prior to first being approached by Government agents." [1057] If the defendant can be shown to have been ready and willing to commit the crime whenever the opportunity presented itself, the defense of entrapment is unavailing, no matter the degree of inducement.[1058] On the other hand, "[w]hen the Government's quest for conviction leads to the apprehension of an otherwise law-abiding citizen who, if left to his own devices, likely would never run afoul of the law, the courts should intervene." [1059]

Criminal Identification Process.—In criminal trials, the reliability and weight to be accorded an eyewitness identification ordinarily are for the jury to decide, guided by instructions by the trial judge and subject to judicial prerogatives under the rules of evidence to exclude otherwise relevant evidence whose probative value is substantially outweighed by its prejudicial impact or potential to mislead. At times, however, a defendant alleges an out-of-court identification in the presence of police is so flawed that it is inadmissible as a matter of fundamental justice under due process.[1060] These cases most commonly challenge such police-arranged procedures as lineups, showups, photo-

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available. Sorrells v. United States, 287 U.S. 435, 458–59 (1932) (separate opinion of Justice Roberts); Sherman v. United States, 356 U.S. 369, 383 (1958) (Justice Frankfurter concurring); United States v. Russell, 411 U.S. 423, 441 (1973) (Justice Stewart dissenting); Hampton v. United States, 425 U.S. 484, 496–97 (1976) (Justice Brennan dissenting).

[1057] Jacobson v. United States, 503 U.S. 540, 548–49 (1992). Here the Court held that the government had failed to prove that the defendant was initially predisposed to purchase child pornography, even though he had become so predisposed following solicitation through an undercover "sting" operation. For several years government agents had sent the defendant mailings soliciting his views on pornography and child pornography, and urging him to obtain materials in order to fight censorship and stand up for individual rights.

[1058] Sorrells v. United States, 287 U.S. 435, 451–52 (1932); Sherman v. United States, 356 U.S. 369, 376–78 (1958); Masciale v. United States, 356 U.S. 386, 388 (1958); United States v. Russell, 411 U.S. 423, 432–36 (1973); Hampton v. United States, 425 U.S. 484, 488–489 (1976) (plurality opinion), and id. at 491 (Justices Powell and Blackmun concurring).

[1059] Jacobson v. United States, 503 U.S. 540, 553–54 (1992).

[1060] A hearing by the trial judge on whether an eyewitness identification should be barred from admission is not constitutionally required to be conducted out of the presence of the jury. Watkins v. Sowders, 449 U.S. 341 (1981).