

Once again, entrapment defense failed to go down with the jury

By J. S. Bainbridge, Jr.

Entrapment — the defense Tommie Broadwater's three male codefendants used against government charges of illegally dealing in food stamps — is like saying, "He made me do it."

In arguing entrapment, a defendant essentially admits committing the crime but claims he should not be punished because he would not have been bad had it not been for the government.

Occasionally, the arguments work. Most of the time, however, they do not.

Several defendants in the Abscam cases, in which the FBI tempted a number of public officials with money from fictitious Arab sheikhs, used the entrapment defense. Despite the rulings of some judges, government lawyers were successful in all the Abscam cases.

Part of the reason that the defense does not work, according to some legal scholars, is that a defendant has to put his reputation on the line. He has to prove that he is not the kind of person who would have committed crimes without the government's instigation.

Also, they say, most judges and juries recognize that there is a need for the kind of undercover police work that defendants often attack as entrapment.

"Certain kinds of crime are almost impossible

to detect without the use of undercover tactics," one legal scholar wrote last year.

"For example, contraband crimes such as narcotics, weapons and currency violations usually require disguised government involvement or solicitation to gather evidence of criminal activity. This is also true of official corruption, white collar crime and organized crime."

In a 1932 decision, the U.S. Supreme Court gave its approval to the entrapment defense in overturning the conviction of a man who had sold a half-gallon of illicit whiskey to a Prohibition agent for \$5.

The agent had pleaded several times with his target, claiming he was merely a thirsty tourist. After the two swapped war stories (they had been in the same division during World War I), the man gave in and sold the booze.

Though the convicted man had been a suspected rum-runner, he had no criminal record. The Supreme Court said that the agent should not have enticed the man into crime.

Sometimes, what the government does can backfire.

For example, a couple of Colorado game wardens once encouraged two teenage boys to trap beaver illegally. But it was the game wardens, not the youngsters, who eventually were convicted of breaking the game laws.