

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1991

No. 90-1124

KEITH M. JACOBSON,

Petitioner,

- AGAINST -

UNITED STATES,

Respondent.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

BRIEF FOR PETITIONER

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I. QUESTIONS PRESENTED

I. Whether the petitioner, who was the target of over twenty-six months of Government mailings encouraging him to order sexually explicit depictions of children through the mails, was entrapped, as a matter of law, into ordering such materials.

II. Whether the Government, by launching an investigation of the petitioner despite having no reasonable grounds to believe he had engaged or was intending to engage in criminal conduct, violated the petitioner's Fourth Amendment rights against unreasonable searches.

II. CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The texts of the following constitutional provisions and statutes, relevant to the determination of the present case, are set forth in an appendix: Child Protection Act of 1984 18 U.S.C. 2252(a) (2) (A); The Fourth Amendment to the Constitution of the United States.

III. STATEMENT OF THE CASE

Petitioner Keith M. Jacobson, a fifty-seven year old Nebraska farmer, became the target of a two-and-a-half year Government "sting" operation on May 11, 1984, when agents of the Government found Jacobson's name on the mailing list of a California adult bookstore. Jacobson had, in February of 1984, ordered from the bookstore two magazines entitled Bare Boys I and Bare Boys II. The magazines contained photographs of nude, young boys, although the magazine did not portray the boys engaged in any sexual activity. Evidence brought forth at trial indicated that Jacobson was startled at the contents of the magazine, having expected it to contain photographs of young men eighteen years or older. At the time Jacobson placed his order, receipt of such magazines was lawful under the laws of the United States and the laws of Nebraska.

Nevertheless, Jacobson became the focus of an extended criminal investigation, involving two Government agencies, five Government-created "cover organizations," and even a bogus, Government-supplied "pen pal." Ail of this attention was aimed at convincing Jacobson to receive child pornography through the mails, such receipt having become unlawful under the Child Protection Act of 1984.

Jacobson was contacted first by "The American Hedonist Society," a bogus organization established by the U.S. Postal Service. Jacobson filled out and returned a questionnaire mailed by the "Society." The Government then enrolled Jacobson in the "Society" and began to send him newsletters from the "Society." The newsletters offered sexually explicit material for sale. Jacobson never placed any orders.

Then a second "cover" organization, "Midlands Data Research," contacted Jacobson. "MDR" indicated that it was seeking information from people who "believe in the joys of sex and the complete awareness of those lusty and youthful lads and lasses of the neophite [sic] age." It is not clear to what age group "neophite" was supposed to refer. Although he sent a letter requesting more information, Jacobson never returned the questionnaire.

Then the Government created yet another fictitious organization, the "Heartland Institute for a New Tomorrow" (HINT), and continued its solicitation of Jacobson. HINT, in a letter to Jacobson, claimed to be "founded to protect and promote sexual freedom and freedom of choice" and maintained that "arbitrarily imposed legislative sanctions restricting your sexual freedom should be rescinded through the

legislative process." Jacobson responded to the enclosed questionnaire, and wrote that "Not only sexual expression but freedom of the press is under attack. We must be ever vigilant to counter attack right-wing fundamentalists who are determined to curtail our freedoms."

Having struck a responsive chord with Jacobson, "HINT" continued to write to him, indicating itself to be a lobbying organization working to repeal "all statutes which regulate sexual activities[.]" "HINT" also provided Jacobson with a list of adults (actually products of the Government's imagination) who shared his sexual interests and would engage in correspondence with him. Jacobson never contacted any of the names on the list.

The Government, however, was not convinced of Jacobson's lack of interest in a sexually simpatico "pen pal." A "prohibited mail specialist" in the Postal Service, using the name "Carl Long," began to write to Jacobson. The "prohibited mail specialist" engaged Jacobson in an epistolary discussion of erotica. In one letter, Jacobson indicated that his main interest was in "good looking young guys (in their late teens and early 20's) doing their thing together." Jacobson made no mention of child pornography, and ended the exchange after two letters.

After the end of Jacobson's correspondence with "Carl Long," a bogus Canadian company called "Produit Outaouais" contacted Jacobson. "Produit Outaouais" was a creation of the U.S. Customs Service, which had obtained Jacobson's name from the Postal Service. By this time, Jacobson had received significant amounts of material from the Government, all of it designed to encourage him to order child pornography through the mails. Jacobson placed an order from the brochure of "Produit Outaouais," but the order was never filled.

The Postal Service continued its solicitation of Jacobson, this time posing as the "Far Eastern Trading Company Ltd." Like the "HINT" and "Produit Outaouais" mailings, the letter from "Far Eastern" raised the issues of government censorship and restriction of sexual freedom. Jacobson sent for more information after signing an affirmation that he was "not a law enforcement officer or agent of the U.S. Government acting in an undercover capacity for the purpose of entrapping Far Eastern Trading Company, its agents or customers." A brochure was sent to Jacobson, who placed an order for Boys Who Love Boys, a magazine containing sexually explicit pictures of young boys. The Government arrested Jacobson after a controlled delivery of the magazine. A search of his home revealed only the two Bare Boys magazines Jacobson had

received when such receipt was lawful and the various mailings from the Government. There were no other indications that Jacobson had ever received or possessed any other child pornography or any other materials relating to child pornography.

Jacobson was convicted of receiving child pornography through the mails. The United States Court of Appeals for the Eighth Circuit reversed his conviction. The case was reheard en banc and, over the dissents of Lay, Chief Judge, and Heaney, Senior Circuit Judge, Jacobson's conviction was affirmed.

IV. ARGUMENT

I.

AS A MATTER OF LAW, THE GOVERNMENT'S PERSISTENT SOLICITATION OF JACOBSON CONSTITUTED ENTRAPMENT

This Court and lower U.S. courts have had frequent opportunity to rule on cases involving allegations of government entrapment. A two-prong test to determine whether the Government is guilty of entrapment has been set forth in those cases. The facts of the present case clearly indicate that both prongs of the test have been satisfied. Therefore, the Government is guilty of entrapment in its conduct toward Keith Jacobson.

A. DECISIONS OF THIS COURT HAVE HELD ENTRAPMENT TO REQUIRE TWO DISTINCT FACTORS: (1) GOVERNMENT INDUCEMENT TO A CRIME AND (2) LACK OF A PRIOR DISPOSITION ON THE CITIZEN'S PART TO COMMIT THE INDUCED CRIME.

This court first ruled on the issue of entrapment in Sorrells v. United States, 287 U.S. 435 (1932). Writing for the Court, Chief Justice Hughes held that entrapment occurs when "the criminal design originates with the officials of the Government, and they implant in the mind of an innocent person the disposition to commit the alleged offense and induce its commission in order that they may prosecute." Sorrells, supra, at 442. This Court reaffirmed the holding of Sorrells in Sherman v. United States, 356 U.S. 369 (1958), and more recently in Mathews v. United States, 485 U.S. 58 (1988). Writing for the Court in Mathews, Chief Justice Rehnquist recognized "that a valid entrapment defense has two related

elements: government inducement of the crime, and a lack of predisposition on the part of the defendant to engage in the criminal conduct." Id., at 63. The two-part test for entrapment is a fixed star in the expanse of the criminal law. See United States v. Thoma, 726 F.2d 1191(1984) (lack of predisposition necessary for entrapment); Hampton v. United States, 425 U.S. 484 (1975) (entrapment involves predisposition of defendant); United States v. Luttrell, 889 F.2d 806 (1989) (entrapment involves government manufacture of crime).

1. GOVERNMENT INDUCEMENT TO CRIME IS APPARENT IN THIS CASE.

The evidence before this Court is overwhelming on this point. The Government created five bogus organizations ("The American Hedonist Society," "Midlands Data Research," "Heartland Institute for a New Tomorrow," "Produit Outaouais," and the "Far Eastern Trading Company Ltd.) and even assigned Jacobson his own Government "pen pal," all to encourage Jacobson to order child pornography. The mailings from the Government proceeded in a logical order. First, Jacobson's interest in child pornography was piqued ("the joys of sex ... and the complete awareness of those lusty and youthful lads and lasses of the neophite [sic] age"), and then the Government encouraged disrespect for the laws preventing such "complete awareness" of "youthful lads and lasses" ("HINT" was "founded to protect sexual freedom" from "arbitrarily imposed legislative sanctions"), and then the Government provided Jacobson with an opportunity to act on his Government-sponsored interest in child pornography. This is not a case in which the Government merely provided Jacobson with an opportunity to commit a crime. Instead, the Government motivated Jacobson to commit the crime. It is when the Government crosses this line -- when it provides not only the opportunity but also the motivation to commit a crime -- that the Government has abandoned its true purpose of preventing crime and has instead begun creating crime. Sorrells, supra, at 442; Sherman, supra, at 376. In the words of Mr. Chief Justice Warren, writing for this Court in Sherman, "Law enforcement does not require methods such as this." Id., at 376. The first necessary element of entrapment, Government inducement to criminal activity, is apparent in this case.

2. THE RECORD SHOWS NO EVIDENCE, ABSENT GOVERNMENT INDUCEMENT, OF A PREDISPOSITION ON JACOBSON'S PART TO COMMIT THIS CRIME.

The relevant inquiry for the case at hand is whether reasonable doubt exists in regard to the question of whether Jacobson was predisposed, independent of the efforts of the Government, to commit this crime.

- a. The Government must prove that Jacobson was predisposed to commit the crime of receiving child pornography through the mails before the Government contacted him.

It is the burden of the Government to prove that an entrapped citizen had a disposition to commit the crime prior to being induced by agents of the Government. United States v. Whoie, 925 F.2d 1481 (1991). As Justice (then Judge) Thomas explained in Whoie, "[if the] government persuaded him [defendant] to commit a crime, the government must prove beyond a reasonable doubt that the defendant was ready and willing to do so." *Id.*, at 1485.

- b. There is no evidence that Jacobson was disposed to commit this crime prior to the Government's "sting" operation.

The Government hinges its assertion of predisposition on two facts, neither of which lend substantial support to the Government's contention. First is the fact that Jacobson once ordered two Bare Boys magazines through the mails. But at the time Jacobson ordered those magazines, such conduct was lawful. It is a fallacy to suppose that a citizen who engaged in conduct when that conduct was lawful would be disposed to break the law in order to continue engaging in that conduct. Such a fallacy ignores the fact that most people obey the law, even if that law infringes on their prior conduct. The example of Prohibition is brought to the Court's attention for consideration of this point.

Moreover, the unchallenged evidence at trial shows that Jacobson was startled by the contents of the Bare Boys magazines, and had not intended to receive child pornography through the mails. In light of these considerations, the

evidence that the Government claims "proves" a predisposition vanishes away into nothingness.

The second fact that the Government claims "proves" a predisposition is likewise unpersuasive. The Government would claim that Jacobson's answers to its questionnaires, in which Jacobson indicated something of an interest in "neophite" [sic] sex, lend credence to the thesis that Jacobson was predisposed to commit the crime of receiving child pornography through the mails. In truth, however, the most that the Government could be said to have discovered by its intensive questioning of Jacobson was a certain general sexual inclination. None of the questionnaires or letters which passed between Jacobson and the Government indicated that Jacobson was predisposed to, or even very interested in, receiving sexually explicit depictions of children through the mails. Indeed, in his letters to "Carl Long," in which Jacobson would be most free to hold forth on his sexual tastes, Jacobson identified his main interests to be other than child pornography, and in fact never mentioned child pornography at all. When the Government searched Jacobson's home after his arrest, it found no evidence that Jacobson had requested or received any child pornography from anyone other than the Government. The Government can offer vague inferences from Jacobson's sexual preferences. The Government cannot offer any proof of predisposition.

B. THE RECORD INDICATES THAT JACOBSON'S DISPOSITION TO COMMIT THIS CRIME WAS CREATED BY THE GOVERNMENT.

In February of 1984, Jacobson was startled by the contents of the Bare Boys magazines he had ordered from the Electric Moon Bookstore in California. Those magazines contained nude photographs of boys who were not engaged in sexual conduct. How did Jacobson, who indicated, in various Government questionnaires, an opposition to pedophilia, only a moderate interest in pre-teen sex, and who wrote to "Carl Long" that his main interest was not in young boys, come to order Boys Who Love Boys, which contained photos of "11 year old and 14 year old boys get[ting] it on in every way possible[.]"?

Posing as "The American Hedonist Society" and "Midlands Data Research," the Government sent letters and questionnaires to Jacobson in order to stir his interest in sexually explicit depictions of children. The Government created a "pen pal," the fictitious "Carl Long," whose purpose it was to engage Jacobson in a correspondence about child-centered erotica. Then the Government, under the guise of the "Heartland

Institute for a New Tomorrow," began to persuade Jacobson that the laws concerning such sexually explicit materials were a violation of his freedom. "HINT" claimed to be protecting and promoting "sexual freedom and freedom of choice." Significantly, the last two bogus organizations set up to ensnare Jacobson also stressed the supposed restriction on Jacobson's freedom that the pornography laws caused. "Produit Outaouais," in its letter to Jacobson, criticized the Government censorship that had transformed the perusal of child pornography into "an underground and secretive" undertaking. The mailing from the "Far Eastern Trading Company" derided laws concerning child pornography as "hysterical nonsense" and an example of "international censorship." The "Far Eastern Trading Company" also questioned the wisdom of the child pornography laws: "[W]hy is your government spending millions of dollars to exercise international censorship while tons of drugs, which make yours the world's most crime ridden country are passed through easily." Jacobson ordered the magazine after receiving that letter.

The record shows that the Government first engaged Jacobson in a discussion calculated to intensify Jacobson's interest in sexually explicit depictions of children. The Government then criticized the laws restricting the free movement of such materials as being both nonsensical and an affront to personal freedom. At this point, when the Government had created both a disposition to commit a criminal act and a disdain for the laws forbidding such conduct, the Government provided Jacobson with a series of opportunities to buy Government-supplied child pornography. The Government spent two-and-a-half years motivating Jacobson to commit this crime just so the Government could arrest him for it. The Government's contention, that its persistent solicitation of Jacobson had no effect on Jacobson's disposition to commit this crime -- that Jacobson was as disposed in 1984 as he was in 1987 -- is fatally lacking in plausibility.

C. THE RECORD THEREFORE SHOWS THAT JACOBSON WAS ENTRAPPED AS A MATTER OF LAW.

Since the record shows both that the Government induced Jacobson to the commission of this crime and that the Government created within Jacobson the disposition to commit this crime, the Government's actions constitute entrapment as defined in Sorrells v. United States, 287 U.S. 435 (1932).

D. JACOBSON'S CONVICTION, AS THE RESULT OF GOVERNMENT ENTRAPMENT, CANNOT BE UPHELD.

This Court has long held that criminal convictions obtained as the result of entrapment will not be affirmed. Principles of statutory construction and interests of public policy control this Court's judgment on entrapment cases.

1. CONVICTION CANNOT BE UPHELD AS A STATUTORY PRINCIPLE.

In Sorrells, this Court held that Congressional statutes do not apply to those who are entrapped into violating those statutes.

287 U.S. 435, at 448. Writing for the Court, Mr. Chief Justice Hughes affirmed that

We are unable to conclude that it was the intention of Congress in enacting this statute that its processes of detection and enforcement should be abused by the instigation by government officials of an act on the part of persons otherwise innocent in order to lure them to its commission and to punish them.

[Congressional statutes] should not be construed to demand a proceeding at once inconsistent with that policy and abhorrent to the sense of justice. *Id.*, at 448-449.

The Court's decision in Sorrells has been examined and reaffirmed in subsequent cases. See Sherman v. United States, 356 U.S. 369 (1958); United States v. Russell, 411 U.S. 423 (1973); Mathews v. United States, 485 U.S. 58 (1988). As Mr. Justice Rehnquist observed in Russell, the force of the Court's reasoning in Sorrells was that "Congress could not have intended criminal punishment for a defendant who has committed all the elements of a proscribed offense, but was induced to commit them by the Government." 411 U.S. 423, at 435. In the present case, Jacobson was entrapped into violating the statute in question. Therefore, Jacobson's conduct does not fall within the purview of the statute and his conviction cannot be upheld.

2. CONVICTION SHOULD NOT BE UPHELD AS A MATTER OF PUBLIC POLICY.

The decisions of this Court and of lower courts in entrapment cases all stand for the same principle: that the business of the Government is to prevent crime, not to create crime which it then punishes. As District Judge Hutcheson expressed it in United States v. Echols, 253 F. 862 (1918):

The zeal to detect crime ought not to be so vigorous as to induce officers to originate and procure the commission of the very offenses which they are enjoined to prevent. [Such acts] may, and likely will, subject to persecution and conviction weak and spineless persons who find it hard to resist temptation; and the government. . . may become the means to the ruin of its citizens, instead of their safeguard and protection. *Id.*, at 863.

That the Government ought not to create crime is a first principle of justice. To uphold Jacobson's conviction in this case would be to approve of a gross misuse of governmental power.

II.

JACOBSON'S CONVICTION SHOULD BE REVERSED BECAUSE THE GOVERNMENT DID NOT HAVE A REASONABLE SUSPICION THAT JACOBSON HAD ENGAGED OR PLANNED TO ENGAGE IN CRIMINAL ACTIVITY BEFORE IT BEGAN ITS INVESTIGATION OF JACOBSON AND THEREBY VIOLATED HIS FOURTH AMENDMENT RIGHTS.

This Court had held previously that the Government must meet some standard of suspicion before it is allowed to interfere with the life of a citizen. See Terry v. Ohio, 392 U.S. 1 (1968); Sibron v. New York, 392 U.S. 40 (1968).

A. REASONABLE SUSPICION SHOULD BE REQUIRED BEFORE THE GOVERNMENT BEGINS A "STING" OPERATION AGAINST A CITIZEN.

Court protections against unwarranted intrusion by the Government into the lives of citizens have been established to guard against very minor disruptions of a citizen's life. Similar protections should come into play against Government investigations that have the potential to cause much greater disruptions of a citizen's life.

1. Even minor disruptions by the Government of a citizen's daily affairs must meet a standard of suspicion.

The great principle supporting the Bill of Rights is that a citizen has a presumptive right to be free from unwarranted Government interference in the affairs of human life. As Mr. Justice Brandies wrote, in his now-vindicated dissent in Olmstead v. United States, "[The makers of our Constitution] conferred, as against the government, the right to be let alone -- the most comprehensive of rights and the right most valued by civilized men." 277 U.S. 438 (1928). This "most comprehensive of rights" has been recognized by the Court in a number of decisions condemning unwarranted Government interference with the lives of citizens. See Brown v. Texas, 443 U.S. 47 (1979) (police acted without articulable suspicion); Mapp v. Ohio, 367 U.S. 643 (1961); Berger v. New York, 388 U.S. 41 (1967) (probable cause needed for wire-tapping). The force behind all of these decisions is the conviction that the Government must have some good reason before it disrupts the daily life of a citizen.

2. A Government "sting" operation is at least as disruptive as other forms of Government actions that must meet reasonable suspicion requirements.

If a "Terry" stop, which lasts only a few moments, is a disruption of constitutional proportions in the daily life of a citizen, then surely a Government investigation has the potential to be even more of a disruption. Keith Jacobson's case ably illustrates the level of disruptive effect a Government investigation can have. Jacobson's mailbox became the avenue by which the Government injected thoughts of child pornography into his daily life, by which the Government caused him to spend part of his day responding to questionnaires and letters about his sexual interests, by which the Government created a criminal intent in Keith Jacobson, a man who had never given any indication of an intent to break the law. If the creation of a criminal intent is not an example of the Government's disruption of a citizen's life, then it is difficult to imagine what could qualify as a disruption.

3. Therefore, the Government should be required to have a reasonable suspicion of criminal conduct

before it begins a "sting" operation against a citizen.

Agents of the Government who intend to begin an extensive sting operation against a citizen should be held to at least the same standard as the police officer on the street -- a requirement demanding a reasonable suspicion before an agent of the Government interferes with the life of a citizen. The Court has never ruled directly on this point, and lower courts are divided on the question. The Court should avail itself of this opportunity to rule in the interests of reason and justice, and should require reasonable grounds for suspicion before the Government begins a "sting" operation against a citizen.

B. THE GOVERNMENT, THROUGH ITS INVESTIGATION, DISRUPTED JACOBSON'S LIFE WITHOUT HAVING REASONABLE GROUNDS TO DO SO.

There is no evidence in the record that indicates that the Government could have reasonable grounds to believe Jacobson had engaged or planned to engage in a criminal act. The Government's search of the Electric Moon Bookstore yielded a receipt for Jacobson's purchase of the Bare Boys magazines and a mailing list with Jacobson's name on it. Jacobson's purchase of the magazines was legal under both federal and Nebraska law. No evidence was found that Jacobson had ever had any other involvement with materials of this type. Jacobson's lawful receipt of the magazines could not indicate either that he had engaged in a criminal act or that he was intending to engage in a criminal act.

The Postal Service intended its "sting" operations to be directed only against individuals whose names appeared on at least two lists seized from organizations involved with child pornography. United States v. Jacobson, 916 F.2d 467 (1990). Jacobson's name was found on only one such list. Therefore, Jacobson, even by Government standards, could not be classed among those individuals that the Government believed itself to have reasonable grounds for investigating.

C. THE GOVERNMENT'S UNWARRANTED INVESTIGATION OF JACOBSON VIOLATED HIS FOURTH AMENDMENT RIGHT TO BE FREE OF UNREASONABLE SEARCHES.

The Fourth Amendment protects more than just physical things from unreasonable Government inspection, and the Government's

inspection of Jacobson's mental and psychological self violated the Fourth Amendment.

1. The Fourth Amendment protects all aspects of the 'person' from unreasonable search.

The Fourth Amendment guarantees the security, not only of the physical person, but also of the mental and spiritual aspects of the person. The Amendment holds in part that the "right of the people to be secure in their persons ... against unreasonable searches ... shall not be violated[.]" As Mr. Justice Brandeis recognized in Olmstead v. United States, the Amendment's prohibition reaches beyond the mere physical being of a person and includes as well a citizen's mental, psychological, and spiritual being:

The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness. They recognized the significance of man's spiritual nature, of his feelings and intellect.

They sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations.

[E]very unjustifiable intrusion by government upon the privacy of the individual, whatever the means employed, must be deemed a violation of the Fourth Amendment. *Id.*, at 478-79.

It would be absurd to imagine that the Fourth Amendment requires the Government to stay away from a citizen's body while allowing the Government to roam at will through a citizen's innermost thoughts and leanings, searching for weaknesses it can turn into crimes. Such a reading of the Fourth Amendment would ignore the recognition by this Court of the inviolability of the person. In Union Pacific Railway Co. v. Botsford, 141 U.S. 250 (1891), Mr. Justice Gray wrote that "No right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestioned authority of law."

2. The Government's unreasonable search of Jacobson's inner thoughts and inclinations violated his Fourth Amendment rights.

In Jacobson's case, the Government executed, without reasonable grounds for doing so, an unreasonable search of Jacobson's person. The letters and questionnaires, sent for the purpose of probing Jacobson's inner thoughts and tendencies, constituted a Government intrusion into Jacobson's mental and psychological self -- an intrusion every bit as condemned by the Fourth Amendment as the Government's unwarranted entry into a citizen's home or office.

D. THE REMEDY FOR FOURTH AMENDMENT VIOLATIONS, WHICH MUST BE APPLIED IN THIS CASE, MANDATES THE REVERSAL OF JACOBSON'S CONVICTION.

Apart from certain exceptions not applicable in this case, evidence discovered as a result of a Fourth Amendment violation is not admissible in a U.S. court. Weeks v. United States, 232 U.S. 383 (1914); Mapp v. Ohio, 367 U.S. 643 (1961). All of the evidence against Jacobson in this case exists as the result of an unconstitutional search of Jacobson, and so must be excluded from the consideration of the Court. Even if, at some point, the Government could be said to have gathered its evidence in a constitutional manner, that evidence only came to the Government's attention as the result of the initial, unconstitutional search. Under the "fruit of the poisonous tree" doctrine, such evidence must also be excluded. Silverthorne Lumber Co. v. United States, 251 U.S. 385 (1920); Nardone v. United States, 308 U.S. 338 (1939). Without the excluded evidence, the Government has no evidence in support of Jacobson's conviction to show to the Court. Jacobson's conviction must therefore be reversed.

V. CONCLUSION

For the reasons set forth above, Petitioner respectfully requests that the judgment of the United States Court of Appeals for the Eighth Circuit be reversed.

Respectfully submitted,

(x) signature

Attorney for Petitioner

VI. APPENDIX

Child Protection Act of 1984, 18 U.S.C. 2252:

(a) any person who . . .

(2) knowingly receives, or distributes, any visual depiction that has been transported or shipped in interstate or foreign commerce by any means including by computer or mailed or knowingly reproduces any visual depiction for distribution in interstate or foreign commerce or through the mails, if

(A) the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct

The Fourth Amendment:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.