

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

JACOBSON *v.* UNITED STATES

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

No. 90-1124. Argued November 6, 1991—Decided April 6, 1992

At a time when federal law permitted such conduct, petitioner Jacobson ordered and received from a bookstore two Bare Boys magazines containing photographs of nude preteen and teenage boys. Subsequently, the Child Protection Act of 1984 made illegal the receipt through the mails of sexually explicit depictions of children. After finding Jacobson's name on the bookstore mailing list, two Government agencies sent mail to him through five fictitious organizations and a bogus pen pal, to explore his willingness to break the law. Many of those organizations represented that they were founded to protect and promote sexual freedom and freedom of choice and that they promoted lobbying efforts through catalog sales. Some mailings raised the spectre of censorship. Jacobson responded to some of the correspondence. After 2½ years on the Government mailing list, Jacobson was solicited to order child pornography. He answered a letter that described concern about child pornography as hysterical nonsense and decried international censorship, and then received a catalog and ordered a magazine depicting young boys engaged in sexual activities. He was arrested after a controlled delivery of a photocopy of the magazine, but a search of his house revealed no materials other than those sent by the Government and the Bare Boys magazines. At his jury trial, he pleaded entrapment and testified that he had been curious to know the type of sexual actions to which the last letter referred and that he had been shocked by the Bare Boys magazines because he had not expected to receive photographs of minors. He was convicted, and the Court of Appeals affirmed.

Held: The prosecution failed, as a matter of law, to adduce evidence to support the jury verdict that Jacobson was predisposed, independent of the Government's acts and beyond

a reasonable doubt, to violate the law by receiving child pornography through the mails. In their zeal to enforce the law, Government agents may not originate a criminal design, implant in an innocent person's mind the disposition to commit a criminal act, and then induce commission of the crime so that the Government may prosecute. *Sorrells v. United States*, 287 U.S. 435, 442. Jacobson was not simply offered the opportunity to order pornography, after which he promptly availed himself of that opportunity. He was the target of 26 months of repeated Government mailings and communications, and the Government has failed to carry its burden of proving predisposition independent of its attention. The preinvestigation evidence—the Bare Boys magazines—merely indicates a generic inclination to act within a broad range, not all of which is criminal. Furthermore, Jacobson was acting within the law when he received the magazines, and he testified that he did not know that they would depict minors. As for the evidence gathered during the investigation, Jacobson's responses to the many communications prior to the criminal act were at most indicative of certain personal inclinations and would not support the inference that Jacobson was predisposed to violate the Child Protection Act. On the other hand, the strong arguable inference is that, by waving the banner of individual rights and disparaging the legitimacy and constitutionality of efforts to restrict the availability of sexually explicit materials, the Government not only excited Jacobson's interest in material banned by law but also exerted substantial pressure on him to obtain and read such material as part of the fight against censorship and the infringement of individual rights. Thus, rational jurors could not find beyond a reasonable doubt that Jacobson possessed the requisite predisposition before the Government's investigation and that it existed independent of the Government's many and varied approaches to him. Pp.7-12.

JACOBSON v. UNITED STATES

Syllabus

916 F.2d 467, reversed.

WHITE, J., delivered the opinion of the Court, in which BLACKMUN, STEVENS, SOUTER, and THOMAS, JJ., joined. O'CONNOR, J., filed a dissenting opinion, in which REHNQUIST, C. J., and KENNEDY, J., joined, and in which SCALIA, J., joined except as to Part II.