

The Burger Court Opinion Writing Database

Dyson v. Stein

401 U.S. 200 (1971)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

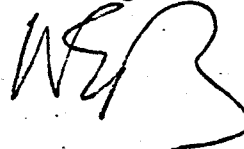
June 18, 1970

Re: No. 565 - Dyson v. Stein

Dear Hugo:

I join your Per Curiam in the above.

Regards,

A handwritten signature in dark ink, appearing to be 'W.E.B.' followed by a stylized flourish.

W.E.B.

Mr. Justice Black

cc: The Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Harlan
✓ Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

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SUPREME COURT OF THE UNITED STATES

From: Black, J.

No. 565.—OCTOBER TERM, 1969

Circulated: JUN 10 1970

Frank Dyson, Chief of Police,
City of Dallas, et al.,
Appellants,
v.
Brent Stein.

On Appeal from the
United States District
Court for the Northern
District of Texas.

Recirculated: _____

[June —, 1970]

PER CURIAM.

The appellee, Stein, published a bi-weekly newspaper, the "Dallas Notes." Stein was charged with two violations of Art. 527, § 1, of the Texas Penal Code, which prohibits, among other things, the possession of obscene material.* While these two cases were pending in state

*Texas Penal Code, Art. 527, provides:

"Section 1. Whoever shall knowingly photograph, act in, pose for, model for, print, sell, offer for sale, give away, exhibit, televise, publish, or offer to publish, or have in his possession or under his control, or otherwise distribute, make, display, or exhibit any obscene book, magazine, story, pamphlet, paper, writing, card, advertisement, circular, print, pictures, photograph, motion picture film, image, cast, slide, figure, instrument, statue, drawing, phonograph record, mechanical recording, or presentation, or other article which is obscene, shall be fined not more than One Thousand Dollars (\$1,000) nor imprisoned more than one (1) year in the county jail or both.

"Section 2. Whoever shall knowingly offer for sale, sell, give away, exhibit, televise, or otherwise distribute, make, display, or exhibit any obscene book, magazine, story, pamphlet, paper, writing, card, advertisement, circular, print, pictures, photograph, motion picture film, image, cast, slide, figure, instrument, statue, drawing, phonograph record, mechanical recording, or presentation, or other article which is obscene, to a minor shall be fined not more than Two Thousand, Five Hundred Dollars (\$2,500.00) nor imprisoned in the county jail more than two (2) years or both.

"Section 3. For purposes of this article the word 'obscene' is defined as whether to the average person, applying contemporary

United States
Washington, D. C. 20543

MEMBERS OF
OFFICE WILLIAM O. DOUGLAS

June fifth
1970

Dear Hugo:

No. 565 - Dyson v. Stein, is the Texas case where I understood the majority was going to remand per curiam on your Younger case.

If you let me have the per curiam, I'll circulate my dissent at once, As I won't be here after June eleventh.

riam


William O. Douglas

Mr. Justice Black

To: The Chief Justice
Mr. Justice Black
Mr. Justice Harlan
Mr. Justice Brennan ✓
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

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SUPREME COURT OF THE UNITED STATES

No. 565.—OCTOBER TERM, 1969

Frank Dyson, Chief of Police, City of Dallas, et al., Appellants, v. Brent Stein.	}	On Appeal from the United States District Court for the Northern District of Texas.
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[June —, 1970]

MR. JUSTICE DOUGLAS, dissenting.

The two raids in this case were search-and-destroy missions in the Vietnamese sense of the phrase. The search warrant authorized a search and seizure of "obscene articles and materials, to-wit: pictures, photographs, drawings and obscene literature" concealed at a given address. The seizures included: a Polaroid camera, a Kodak Brownie, a Flocon camera, a Kodak Lamp, a floating fixture lamp, a three-drawer desk containing printer's supplies, a drafting square, a drafting table, two drawing boards, a mailing tube, two telephones, a stapler, five cardboard boxes containing documents, two electric typewriters, one typewriter desk, two portable typewriters, one photograph enlarger, "numerous obscene photographs," \$5.43 in cash, numerous newspapers, a poster of Mao Tse-Tung, credit cards, costume jewelry, cans of spices, a brown sweater, and a statue of a man and woman in an embrace. Thus the newspaper *Dallas Notes* was effectively put out of business.

It would be difficult to find in our books a more lawless search-and-destroy raid, unless it be *Kremen v. United States*, 353 U. S. 346.

Government certainly has no power to close down newspapers. Even censorship—whether for obscenity,

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SUPREME COURT OF THE UNITED STATES

No. 001-100000-1000, 1969

Frank Dymally, Chief of the
City of Dallas, et al.
Appellants,
v.
Rosa Stein
Respondent.

Appeal from the
United States District
Court for the Northern
District of Texas.

Mr. Justice Douglas.

The two ends in this case are search-and-destroy of the phrase. The missions in the Vietnam War and seizure of "obscene" pictures, photo-scene articles and "obscene literature" concealed at a given address. The search revealed: a Polaroid camera, a Kodak Lamp, a Kodak Brownie, a desk-drawer containing a floating fixture lamp, a square, a drafting table, printer's supplies, a desk, two telephones, a two drawing boards, a desk containing documents, two stapler, five candlestick, a typewriter desk, two portable electric typewriters, a typewriter, "numerous obscene typewriters, one photograph, numerous newspapers, a photographs," 15 1/2 inch cards, costume jewelry, poster of Mao Tse Tung, and a statue of a man cans of spices, a bottle. Thus the newspaper Dallas and woman in an embrace of business.

Notes was effectively in our books a more law-

It would be difficult unless it be *Kremen v.* less search and destroy.

United States, 368 U.S. 294.

Government, whether for obscenity, newspapers.

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

June 10, 1970

Ref No. 165 - Dymally V. Mohr

Dear Eugene:

I agree with your per curiam.

Sincerely,

J. M. H.

Mr. Justice Black

CC: The Conference

SUPREME COURT OF THE UNITED STATES

No. 565.—OCTOBER TERM, 1969

Frank Dyson, Chief of Police, City of Dallas, et al., Appellants, v. Brent Stein.	}	On Appeal From the United States District Court for the Northern District of Texas.
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[June —, 1970]

MR. JUSTICE BRENNAN, concurring.

My Brother DOUGLAS' dissenting opinion describes graphically the police conduct upon which appellee rested his allegations of bad faith and harassment. If proved, these allegations would, I think, justify federal intervention against both the pending and future state prosecutions. The mass seizure of some two tons of the issues of the newspaper without a prior judicial determination of the alleged obscenity of the issues was unconstitutional. *Marcus v. Search Warrant*, 367 U. S. 717 (1961); *A Quantity of Books v. Kansas*, 378 U. S. 205 (1964); *Bantam Books, Inc. v. Sullivan*, 372 U. S. 58 (1963). Similarly, the mass seizure of the tools and equipment required to prepare the newspaper—insofar as it disabled appellee from publishing future issues—infringed the principle of *Near v. Minnesota*, 283 U. S. 697 (1931).

But these questions are not before us. The three-judge court below remanded to a single judge for determination all questions advanced by appellee except the contention that the Texas statute was unconstitutional on its face, and the appellee does not challenge this order of remand here. I, therefore, would reverse the judgment of the District Court, except for paragraph 4, for the reasons stated in my opinion in Nos. 4, 11, and 20.

To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
✓ Mr. Justice Harlan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

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SUPREME COURT OF THE UNITED STATES

From: Brennan, J.

No. 565.—OCTOBER TERM, 1969

Circ. 6-18-70
Re: 6-18-70

Frank Dyson, Chief of Police,
City of Dallas, et al.,
Appellants,
v.
Brent Stein.

On Appeal From the
United States District
Court for the Northern
District of Texas.

[June —, 1970]

MR. JUSTICE BRENNAN, with whom MR. JUSTICE WHITE and MR. JUSTICE MARSHALL join, concurring.

My Brother DOUGLAS' dissenting opinion describes graphically the police conduct upon which appellee rested his allegations of bad faith and harassment. If proved, these allegations would, I think, justify federal intervention. The mass seizure of some two tons of the issues of the newspaper without a prior judicial determination of the alleged obscenity of the issues was unconstitutional. *Marcus v. Search Warrant*, 367 U. S. 717 (1961); *A Quantity of Books v. Kansas*, 378 U. S. 205 (1964); *Bantam Books, Inc. v. Sullivan*, 372 U. S. 58 (1963). Similarly, the mass seizure of the tools and equipment required to prepare the newspaper—insofar as it disabled appellee from publishing future issues—infringed the principle of *Near v. Minnesota*, 283 U. S. 697 (1931).

But these questions are not before us. The three-judge court below remanded to a single judge for determination all questions advanced by appellee except the contention that the Texas statute was unconstitutional on its face, and the appellee does not challenge this order of remand here. I, therefore, would reverse the judgment of the District Court, except for paragraph 4, for the reasons stated in my opinion in Nos. 4, 11, and 20.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

June 10, 1970

No. 565 - Dyson v. Stein

Dear Hugo,

I am glad to join the Per Curiam
you have prepared in this case.

Sincerely yours,

P.S.

Mr. Justice Black

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 18, 1970

Re: No. 565 - Dyson v. Stein

Dear Bill:

Please join me in your concurrence.

Sincerely,


T.M.

Mr. Justice Brennan

cc: The Conference