

The Burger Court Opinion Writing Database

United States v. Thirty-Seven Photographs

402 U.S. 363 (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

April 2, 1971

Re: No. 133 - U. S. v. Thirty-Seven Photographs

Dear Byron:

Please join me.

Regards,

W B

Mr. Justice White

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

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

MAR 18 1971

Nos. 133 AND 534.—OCTOBER TERM, 1970

Circulated:

Recirculated:

United States, Appellant,
133 v.

Thirty-Seven (37) Photo-
graphs, Milton Luros,
Claimant.

United States, Appellant,
534 v.

Norman George Reidel.

On Appeal From the United
States District Court for
the Central District of
California.

[March —, 1971]

MR. JUSTICE BLACK, dissenting.

I

I dissent from the judgments of the Court for the reasons stated in many of my prior opinions. See, *e. g.*, *Smith v. California*, 361 U. S. 147, 155 (1959) (BLACK, J., concurring); *Ginzburg v. United States*, 383 U. S. 463, 476 (1966) (BLACK, J., dissenting). In my view the First Amendment denies Congress the power to act as censor and determine what books our citizens may read and what pictures they may watch.

I am particularly sorry to see the Court revive the doctrine of *Roth v. United States*, 354 U. S. 476 (1957), that "obscenity" is speech for some reason unprotected by the First Amendment. As the Court's many decisions in this area demonstrate, it is extremely difficult for judges or any other citizens to agree on what is "obscene." Since the distinctions between protected speech and obscenity are so elusive and obscure almost every "obscenity" case involves difficult constitutional issues. After *Roth* our docket and those of other courts have constantly

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

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 133 AND 534.—OCTOBER TERM, 1970

Recirculated

3/23

United States, Appellant,
133 v.

Thirty-Seven (37) Photo-
graphs, Milton Luros,
Claimant.

United States, Appellant,
534 v.

Norman George Reidel.

On Appeal From the United
States District Court for
the Central District of
California.

[March —, 1971]

MR. JUSTICE BLACK, with whom MR. JUSTICE DOUGLAS
joins, dissenting.

I

I dissent from the judgments of the Court for the reasons stated in many of my prior opinions. See, *e. g.*, *Smith v. California*, 361 U. S. 147, 155 (1959) (BLACK, J., concurring); *Ginzburg v. United States*, 383 U. S. 463, 476 (1966) (BLACK, J., dissenting). In my view the First Amendment denies Congress the power to act as censor and determine what books our citizens may read and what pictures they may watch.

I am particularly sorry to see the Court revive the doctrine of *Roth v. United States*, 354 U. S. 476 (1957), that "obscenity" is speech for some reason unprotected by the First Amendment. As the Court's many decisions in this area demonstrate, it is extremely difficult for judges or any other citizens to agree on what is "obscene." Since the distinctions between protected speech and obscenity are so elusive and obscure almost every "obscenity" case involves difficult constitutional issues. After *Roth* our docket and those of other courts have constantly

*Stylistic change throughout
new material pp. 6-7*

4th DRAFT

Mr. Chief Justice
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice
Mr. Justice
Mr. Justice

SUPREME COURT OF THE UNITED STATES

Nos. 133 AND 534.—OCTOBER TERM, 1970

United States, Appellant,
133 v.

Thirty-Seven (37) Photo-
graphs, Milton Luros,
Claimant.

United States, Appellant,
534 v.

Norman George Reidel.

On Appeal From the United
States District Court for
the Central District of
California.

APR 29 1971

[May —, 1971]

MR. JUSTICE BLACK, with whom MR. JUSTICE DOUGLAS
joins, dissenting.

I

I dissent from the judgments of the Court for the reasons stated in many of my prior opinions. See, *e. g.*, *Smith v. California*, 361 U. S. 147, 155 (1959) (BLACK, J., concurring); *Ginzburg v. United States*, 383 U. S. 463, 476 (1966) (BLACK, J., dissenting). In my view the First Amendment denies Congress the power to act as censor and determine what books our citizens may read and what pictures they may watch.

I am particularly sorry to see the Court revive the doctrine of *Roth v. United States*, 354 U. S. 476 (1957), that "obscenity" is speech for some reason unprotected by the First Amendment. As the Court's many decisions in this area demonstrate, it is extremely difficult for judges or any other citizens to agree on what is "obscene." Since the distinctions between protected speech and obscenity are so elusive and obscure almost every "obscenity" case involves difficult constitutional issues. After *Roth* our docket and those of other courts have constantly

March 17, 1971

Dear Byron:

In No. 133 - U.S. v. 37 Photos,
would you add at the foot of your opinion:

Mr. Justice Douglas dissents for
the reason stated in United States v.
Reidel, ante p. _____, believing that the
unconstitutionality of obscenity statutes
obtains whether the action is criminal or
in the nature of forfeiture.

W. O. D.

Mr. Justice White

WD
admin

March 18, 1971

Dear Byron:

I have joined Hugo in his dissent in Nos. 133 and 534. So kindly withdraw what I earlier asked you to put at the foot of your opinion.

W.O.D.

Mr. Justice White

WJD
Adm 1487

B
PWS
224

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

32
2nd DRAFT

SUPREME COURT OF THE UNITED STATES

From: Black, J.

Circulated:

MAR 18 1971

Nos. 133 AND 534.—OCTOBER TERM, 1970

Recirculated:

United States, Appellant,
133 v.

Thirty-Seven (37) Photo-
graphs, Milton Luros,
Claimant.

United States, Appellant,
534 v.

Norman George Reidel.

On Appeal From the United
States District Court for
the Central District of
California.

[March —, 1971]

MR. JUSTICE BLACK, dissenting.

I

I dissent from the judgments of the Court for the reasons stated in many of my prior opinions. See, e. g., *Smith v. California*, 361 U. S. 147, 155 (1959) (BLACK, J., concurring); *Ginzburg v. United States*, 383 U. S. 463, 476 (1966) (BLACK, J., dissenting). In my view the First Amendment denies Congress the power to act as censor and determine what books our citizens may read and what pictures they may watch.

I am particularly sorry to see the Court revive the doctrine of *Roth v. United States*, 354 U. S. 476 (1957), that "obscenity" is speech for some reason unprotected by the First Amendment. As the Court's many decisions in this area demonstrate, it is extremely difficult for judges or any other citizens to agree on what is "obscene." Since the distinctions between protected speech and obscenity are so elusive and obscure almost every "obscenity" case involves difficult constitutional issues. After *Roth* our docket and those of other courts have constantly

with whom
Mr. Justice
Douglas
joins,

See (Bugs)
Lopez
ell

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

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

From: Harlan, J.

No. 133.—OCTOBER TERM, 1970

Circulated: APR 15 1971

Recirculated: _____

United States, Appellant, v. Thirty-Seven (37) Photo- graphs, Milton Lueros, Claimant.	}	On Appeal From the United States District Court for the Central District of California.
--	---	--

[April —, 1971]

MR. JUSTICE HARLAN, concurring in the judgment and in Part I of MR. JUSTICE WHITE's opinion.

I agree, for the reasons set forth in Part I of MR. JUSTICE WHITE's opinion, that this statute may and should be construed as requiring administrative and judicial action within specified time limits that will avoid the constitutional issue that would otherwise be presented by *Freedman v. Maryland*, 380 U. S. 51 (1965). Our decision today in *United States v. Reidel, ante*, forecloses Lueros' claim that the Government may not prohibit the importation of obscene materials for commercial distribution.

Lueros also attacked the statute on its face as overbroad because of its apparent prohibition of importation for private use. A statutory scheme purporting to proscribe only importation for commercial purposes would certainly be sufficiently clear to withstand a facial attack on the statute based on the notion that the line between commercial and private importation is so unclear as to inhibit the alleged right to import for private use. Cf. *Breard v. Alexandria*, 341 U. S. 622 (1951). It is incontestable that 18 U. S. C. § 1461 (1964) is intended to cover at the very least importation of obscene materials for commercial purposes. See n. 1 of MR. JUSTICE WHITE's opinion. Since the parties stipulated that the materials were imported for commercial purposes, Lueros cannot

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

8

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

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

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 133.—OCTOBER TERM, 1970

From: Harlan, J.

Circulated: _____

United States, Appellant,
v.
Thirty-Seven (37) Photo-
graphs, Milton Luros,
Claimant.

On Appeal From the United
States District Court for
the Central District of
California.

Recirculate APR 28 1971

[May —, 1971]

MR. JUSTICE HARLAN, concurring in the judgment and
in Part I of MR. JUSTICE WHITE's opinion.

I agree, for the reasons set forth in Part I of MR. JUSTICE WHITE's opinion, that this statute may and should be construed as requiring administrative and judicial action within specified time limits that will avoid the constitutional issue that would otherwise be presented by *Freedman v. Maryland*, 380 U. S. 51 (1965). Our decision today in *United States v. Reidel*, ante, p. —, forecloses Luros' claim that the Government may not prohibit the importation of obscene materials for commercial distribution.

Luros also attacked the statute on its face as overbroad because of its apparent prohibition of importation for private use. A statutory scheme purporting to proscribe only importation for commercial purposes would certainly be sufficiently clear to withstand a facial attack on the statute based on the notion that the line between commercial and private importation is so unclear as to inhibit the alleged right to import for private use. Cf. *Breard v. Alexandria*, 341 U. S. 622 (1951). It is incontestable that 19 U. S. C. § 1305 (a) (1964) is intended to cover at the very least importation of obscene materials for commercial purposes. See n. 1 of MR. JUSTICE WHITE's opinion. Since the parties stipulated that the materials

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 2, 1971

RE: Nos. 133 & 534 - United States v. Thirty-
seven Photographs & Norman Reidel

Dear Byron:

I think both of these are fine and I'm happy to join. I voted the other way in No. 133 at conference, but your solution fully persuades me. I'm particularly pleased that at page 11 you leave open the question of time limits in non-border seizure contexts.

Sincerely,



W.J.B. Jr.

Mr. Justice White

cc: The Conference

April 1, 1971

RE: No. 133 - United States v. Thirty-seven Photographs

Dear Byron:

I am quite satisfied with your revision of Thirty-seven Photographs except at one place. At page 11, would you consider substituting the following for the sentences starting in the middle of the page, "Of Course, these time limits, etc." and ending three lines from the bottom, "We decide none of these questions today":

"Of course, our conclusion is not necessarily determinative of the time limits which will pass constitutional muster in other contexts. For example, decision as to what the Constitution requires of time limits between a state censor's claim that a film is obscene and his institution of judicial proceedings, or between the commencement and completion of such proceedings, involves considerations different from those presented in the context of a claim of obscenity made by customs officials at the border. We decide none of those questions today."

I'd have difficulty with any film censorship scheme which allowed time limits longer than those here approved.

Sincerely,

WB

Mr. Justice White

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

1st DRAFT

SUPREME COURT OF THE UNITED STATES ^{By} Stewart, J.

No. 133.—OCTOBER TERM, 1970

Circulated: MAR 4 1971

Recirculated: _____

United States, Appellant,	} On Appeal From the United	
v.		States District Court for
Thirty-Seven (37) Photo-		the Central District of
graphs, Milton Luros,		California.
Claimant.		

[March —, 1971]

MR. JUSTICE STEWART, concurring in the judgment.

I agree with the Court that the First Amendment does not prevent the border seizure of obscene materials sought to be imported for commercial dissemination. I also agree that *Freedman v. Maryland*, 380 U. S. 1, requires that there be time limits for the initiation of forfeiture proceedings and for the completion of the judicial determination of obscenity.

But I would not in this case decide, even by way of dicta, that the Government may lawfully seize literary material intended for the purely private use of the importer.¹ The terms of the statute appear to apply to an American tourist who, after exercising his constitutionally protected liberty to travel abroad,² returns home with a single book in his luggage, with no intention of selling it or otherwise using it, except to read it. If the Government can constitutionally take the book away from him as he passes through customs, then I do not understand the meaning of *Stanley v. Georgia*, 394 U. S. 557.

¹ As the opinion of the Court correctly says, even if seizure of material for private use is unconstitutional, the statute can still stand in appropriately narrowed form, and the seizure in this case clearly falls within the valid sweep of such a narrowed statute. *Ante*, at —, n. 2.

² *Aptheker v. Secretary of State*, 378 U. S. 500.

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

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

From: Stewart, J.

Circulated: _____

No. 133.—OCTOBER TERM, 1970

Recirculated: _____

APR 16 1971

United States, Appellant,
v.
Thirty-Seven (37) Photo-
graphs, Milton Luros,
Claimant.

On Appeal From the United
States District Court for
the Central District of
California.

[March —, 1971]

MR. JUSTICE STEWART, concurring in the judgment.

I agree that the First Amendment does not prevent the border seizure of obscene materials sought to be imported for commercial dissemination. I also agree that *Freedman v. Maryland*, 380 U. S. 1, requires that there be time limits for the initiation of forfeiture proceedings and for the completion of the judicial determination of obscenity.

But I would not in this case decide, even by way of dicta, that the Government may lawfully seize literary material intended for the purely private use of the importer.¹ The terms of the statute appear to apply to an American tourist who, after exercising his constitutionally protected liberty to travel abroad,² returns home with a single book in his luggage, with no intention of selling it or otherwise using it, except to read it. If the Government can constitutionally take the book away from him as he passes through customs, then I do not understand the meaning of *Stanley v. Georgia*, 394 U. S. 557.

¹ As the plurality opinion correctly says, even if seizure of material for private use is unconstitutional, the statute can still stand in appropriately narrowed form, and the seizure in this case clearly falls within the valid sweep of such a narrowed statute. *Ante*, at —, n. 2.

² *Aptheker v. Secretary of State*, 378 U. S. 500.

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

Mr. Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

4th DRAFT

SUPREME COURT OF THE UNITED STATES

From: Stewart, J.

Circulated: _____

No. 133.—OCTOBER TERM, 1970

Recirculated: **APR 27 1971**

United States, Appellant,	} On Appeal From the United	
v.		States District Court for
Thirty-Seven (37) Photo-		the Central District of
graphs, Milton Luros,		California.
Claimant.		

[May —, 1971]

MR. JUSTICE STEWART, concurring in the judgment and in Part I of MR. JUSTICE WHITE's opinion.

I agree that the First Amendment does not prevent the border seizure of obscene materials sought to be imported for commercial dissemination. For the reasons expressed in Part I of MR. JUSTICE WHITE's opinion, I also agree that *Freedman v. Maryland*, 380 U. S. 1, requires that there be time limits for the initiation of forfeiture proceedings and for the completion of the judicial determination of obscenity.

But I would not in this case decide, even by way of dicta, that the Government may lawfully seize literary material intended for the purely private use of the importer.¹ The terms of the statute appear to apply to an American tourist who, after exercising his constitutionally protected liberty to travel abroad,² returns home with a single book in his luggage, with no intention of selling it or otherwise using it, except to read it. If the Government can constitutionally take the book away from him as he passes through customs, then I do not understand the meaning of *Stanley v. Georgia*, 394 U. S. 557.

¹ As MR. JUSTICE WHITE's opinion correctly says, even if seizure of material for private use is unconstitutional, the statute can still stand in appropriately narrowed form, and the seizure in this case clearly falls within the valid sweep of such a narrowed statute. *Ante*, at —, n. 2.

² *Aptheker v. Secretary of State*, 378 U. S. 500.

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

1st DRAFT

From: White, J.

SUPREME COURT OF THE UNITED STATES

Recirculated: 3-1-71

No. 133.—OCTOBER TERM, 1970

Recirculated: _____

United States, Appellant,
v.
Thirty-Seven (37) Photographs, Milton Luros,
Claimant.

On Appeal From the United
States District Court for
the Central District of
California.

[March —, 1971]

MR. JUSTICE WHITE delivered the opinion of the Court.

When Milton Luros returned to the United States from Europe on October 24, 1969, he brought with him in his luggage the 37 photographs here involved. United States customs agents, acting pursuant to 19 U. S. C. § 1305 (a),¹

¹ 19 U. S. C. § 1305 (a) provides in pertinent part:

"All persons are prohibited from importing into the United States from any foreign country . . . any obscene book, pamphlet, paper, writing, advertisement, circular, print, picture, drawing, or other representation, figure, or image on or of paper or other material, or any cast, instrument, or other article which is obscene or immoral No such articles whether imported separately or contained in packages with other goods entitled to entry, shall be admitted to entry; and all such articles and, unless it appears to the satisfaction of the collector that the obscene or other prohibited articles contained in the package were inclosed therein without the knowledge or consent of the importer, owner, agent, or consignee, the entire contents of the package in which such articles are contained, shall be subject to seizure and forfeiture as hereinafter provided: . . . *Provided, further,* That the Secretary of the Treasury may, in his discretion, admit the so-called classics or books of recognized and established literary or scientific merit, but may, in his discretion, admit such classics or books only when imported for noncommercial purposes.

"Upon the appearance of any such book or matter at any customs office, the same shall be seized and held by the collector to await the judgment of the district court as hereinafter provided; and no

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


CHAMBERS OF
JUSTICE BYRON R. WHITE

April 13, 1971

MEMORANDUM TO THE CONFERENCE

Re: No. 133 - United States v. Thirty-Seven (37)
Photographs

In the attached version the Freedman issue has become Part I and is disposed of on the statutory construction rather than constitutional basis--this at the suggestion of one or more Brethren.


B.R.W.

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

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

2nd DRAFT

From: White, J.

SUPREME COURT OF THE UNITED STATES

No. 133.—OCTOBER TERM, 1970

Recirculated: _____
Recirculated: 4-13-71

United States, Appellant,	} On Appeal From the United	
v.		States District Court for
Thirty-Seven (37) Photo-		the Central District of
graphs, Milton Luros.		California.
Claimant.		

[April —, 1971]

MR. JUSTICE WHITE delivered the opinion of the Court.

When Milton Luros returned to the United States from Europe on October 24, 1969, he brought with him in his luggage the 37 photographs here involved. United States customs agents, acting pursuant to 19 U. S. C. § 1305 (a),¹

¹ 19 U. S. C. § 1305 (a) provides in pertinent part:

"All persons are prohibited from importing into the United States from any foreign country . . . any obscene book, pamphlet, paper, writing, advertisement, circular, print, picture, drawing, or other representation, figure, or image on or of paper or other material, or any cast, instrument, or other article which is obscene or immoral No such articles whether imported separately or contained in packages with other goods entitled to entry, shall be admitted to entry; and all such articles and, unless it appears to the satisfaction of the collector that the obscene or other prohibited articles contained in the package were inclosed therein without the knowledge or consent of the importer, owner, agent, or consignee, the entire contents of the package in which such articles are contained, shall be subject to seizure and forfeiture as hereinafter provided: . . . *Provided, further,* That the Secretary of the Treasury may, in his discretion, admit the so-called classics or books of recognized and established literary or scientific merit, but may, in his discretion, admit such classics or books only when imported for noncommercial purposes.

"Upon the appearance of any such book or matter at any customs office, the same shall be seized and held by the collector to await the judgment of the district court as hereinafter provided; and no

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: /

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

3rd DRAFT

From: White, J.

SUPREME COURT OF THE UNITED STATES

No. 133.—OCTOBER TERM, 1970

Recirculated: 4-23-71

United States, Appellant,	} On Appeal From the United
v.	
Thirty-Seven (37) Photo-	
graphs, Milton Lueros,	
Claimant.	the Central District of
	California.

[May —, 1971]

MR. JUSTICE WHITE announced the judgment of the Court and an opinion in which THE CHIEF JUSTICE, MR. JUSTICE BRENNAN, and MR. JUSTICE BLACKMUN join.*

When Milton Lueros returned to the United States from Europe on October 24, 1969, he brought with him in his luggage the 37 photographs here involved. United States customs agents, acting pursuant to 19 U. S. C. § 1305 (a),¹

*MR. JUSTICE HARLAN and MR. JUSTICE STEWART also join Part I of the opinion.

¹ 19 U. S. C. § 1305 (a) provides in pertinent part:

"All persons are prohibited from importing into the United States from any foreign country . . . any obscene book, pamphlet, paper, writing, advertisement, circular, print, picture, drawing, or other representation, figure, or image on or of paper or other material, or any cast, instrument, or other article which is obscene or immoral No such articles whether imported separately or contained in packages with other goods entitled to entry, shall be admitted to entry; and all such articles and, unless it appears to the satisfaction of the collector that the obscene or other prohibited articles contained in the package were inclosed therein without the knowledge or consent of the importer, owner, agent, or consignee, the entire contents of the package in which such articles are contained, shall be subject to seizure and forfeiture as hereinafter provided: . . . *Provided, further,* That the Secretary of the Treasury

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

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

1st DRAFT

SUPREME COURT OF THE UNITED STATES

From: Marshall, J.

Nos. 133 AND 534.—OCTOBER TERM, 1970

Circulated: APR 1 - 1971

Recirculated: _____

United States, Appellant,
133 v.

Thirty-Seven (37) Photo-
graphs, Milton Luros,
Claimant.

United States, Appellant,
534 v.

Norman George Reidel.

On Appeal From the United
States District Court for
the Central District of
California.

[April —, 1971]

MR. JUSTICE MARSHALL, dissenting in No. 133 and
concurring in No. 534.

Only two years ago in *Stanley v. Georgia*, 394 U. S. 557 (1969), the Court fully canvassed the range of state interests which might possibly justify regulation of obscenity. That decision refused to legitimize the argument that obscene materials could be outlawed because the materials might somehow encourage antisocial conduct, and unequivocally rejected the outlandish notion that the State may police the thoughts of its citizenry. The Court did, however, approve the validity of regulatory action taken to protect children and unwilling adults from exposure to materials deemed to be obscene. The need for such protection of course arises when obscenity is distributed or displayed publicly; and the Court reaffirmed the principles of *Roth v. United States*, 354 U. S. 486 (1957), *Redrup v. New York*, 386 U. S. 767 (1967), and other decisions which involved the commercial distribution of obscene materials. Thus, *Stanley* turned on an assessment of which state interests may legitimately underpin governmental action, and it is

P. 2

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 133 AND 534.—OCTOBER TERM, 1970

United States, Appellant,
133 v.

Thirty-Seven (37) Photo-
graphs, Milton Luros,
Claimant.

United States, Appellant,
534 v.

Norman George Reidel.

On Appeal From the United
States District Court for
the Central District of
California.

[April —, 1971]

MR. JUSTICE MARSHALL, dissenting in No. 133 and
concurring in No. 534.

Only two years ago in *Stanley v. Georgia*, 394 U. S. 557 (1969), the Court fully canvassed the range of state interests which might possibly justify regulation of obscenity. That decision refused to legitimize the argument that obscene materials could be outlawed because the materials might somehow encourage antisocial conduct, and unequivocally rejected the outlandish notion that the State may police the thoughts of its citizenry. The Court did, however, approve the validity of regulatory action taken to protect children and unwilling adults from exposure to materials deemed to be obscene. The need for such protection of course arises when obscenity is distributed or displayed publicly; and the Court reaffirmed the principles of *Roth v. United States*, 354 U. S. 486 (1957), *Redrup v. New York*, 386 U. S. 767 (1967), and other decisions which involved the commercial distribution of obscene materials. Thus, *Stanley* turned on an assessment of which state interests may legitimately underpin governmental action, and it is

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

From: Marshall, J.

Circulated: _____
Recirculated: APR 23 1971

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

P. 2

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 133 AND 534.—OCTOBER TERM, 1970

Circulated: _____

Recirculated: 4/29/71

United States, Appellant,
 133 v.

Thirty-Seven (37) Photo-
 graphs, Milton Luros,
 Claimant.

United States, Appellant,
 534 v.

Norman George Reidel.

On Appeal From the United
 States District Court for
 the Central District of
 California.

[May —, 1971]

MR. JUSTICE MARSHALL, dissenting in No. 133 and
 concurring in No. 534.

Only two years ago in *Stanley v. Georgia*, 394 U. S. 557 (1969), the Court fully canvassed the range of state interests which might possibly justify regulation of obscenity. That decision refused to legitimize the argument that obscene materials could be outlawed because the materials might somehow encourage antisocial conduct, and unequivocally rejected the outlandish notion that the State may police the thoughts of its citizenry. The Court did, however, approve the validity of regulatory action taken to protect children and unwilling adults from exposure to materials deemed to be obscene. The need for such protection of course arises when obscenity is distributed or displayed publicly; and the Court reaffirmed the principles of *Roth v. United States*, 354 U. S. 486 (1957), *Redrup v. New York*, 386 U. S. 767 (1967), and other decisions which involved the commercial distribution of obscene materials. Thus, *Stanley* turned on an assessment of which state interests may legitimately underpin governmental action, and it is

March 4, 1971

Re: No. 133 - United States v. Thirty-Seven Photographs

Dear Byron:

Please join me in the opinion you have prepared for this case.

My one concern is as to delays caused by the adjudicating court itself. At times counsel can be pretty helpless when a court, for one reason or another, just does not get around to deciding a case. The opinion requires resolution within 60 days. Perhaps a court's dilatoriness in the face of every reasonable effort by counsel presents another case for another time.

Sincerely,

H.A.B.

Mr. Justice White

cc: The Conference

April 14, 1971

Re: No. 133 - U. S. v. 37 Photographs

Dear Byron:

I am with you on your recirculation of

April 13.

Sincerely,

H.A.B.

Mr. Justice White

cc: The Conference