

The Burger Court Opinion Writing Database

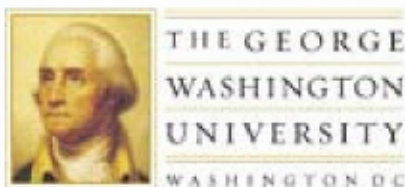
Radich v. New York

401 U.S. 531 (1971)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



October 10, 1970

Dear Chief:

Although No. 159 -- Radich v.

New York has gone over at the suggestion of Justice Harlan, I should in due course be noted as taking no part in the decision. This was an oversight and I should have brought the matter to the attention of the Conference when the case was up for initial consideration.

William O. Douglas

The Chief Justice

CC: Mr. Justice Black
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

Mr. Burger
Mr. Chief

October 9, 1970

Re: No. 169 - Radich v. New York

Dear Chief:

I request that this case, presently scheduled to come down on Monday next, should not come down, and that the case be relisted for further consideration at next Friday's Conference. The reason for this request is that I am at a loss to understand how this appeal can be dismissed for lack of jurisdiction.

Sincerely,

J. M. H.

The Chief Justice

CC: The Conference

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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

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From: Harlan, J.

SUPREME COURT OF THE UNITED STATES

Circulated: 10/15/70

October Term, 1970

Re-circulated:

RADICH v. NEW YORK

ON APPEAL FROM THE COURT OF APPEALS OF NEW YORK

No. 169. Decided October —, 1970

MR. JUSTICE HARLAN, dissenting.

I am at loss to understand the Court's refusal to review this case.

Appellant is the proprietor of an art gallery in midtown Manhattan. He asks us to review his conviction for displaying in this gallery on December 27 and 28, 1966, some 13 "sculptures" created by an artist named Marc Morrel. Each object utilized, as part of its textual design, an American flag, displayed in a variety of lewd, vulgar or disrespectful ways.¹ The evident theme of this one-man show was that of an anti-war protest.

After a trial before a three-judge panel of the Criminal Court of the City of New York, New York County, appellant was found guilty, over one dissent, of violating § 1425 (16) (d) of the Penal Law of the State of New

¹The complaint issued against appellant describes in some detail the nature of the offending objects. "... the defendant did have on public display and for public viewing, the flag of the United States of America, in the following manner: 1—in the form of a male sexual organ, protruding from the body of form, in the anterior portion of the body of the form and depicting the erected male penis, protruding from a form of a cross. 2—the flag of the United States of America, wrapped in a chained bundle. 3—the standard of the United States on the form of an alleged elephant. 4—the Union of the flag of the United States of America, depicted in the form of an octopus [*sic*]. 5—the American flag attached to a gas meter. 6—the American flag wrapped around a bundle attached to a two-wheeled vehicle. 7—the American flag in the form of a body, hanging from a yellow noose."