

# The Burger Court Opinion Writing Database

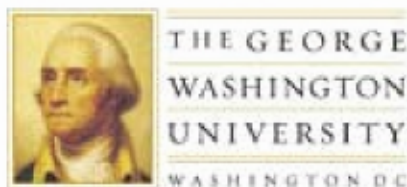
## *Mitchum v. Foster*

407 U.S. 225 (1972)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



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 ✓

1st DRAFT

SUPREME COURT OF THE UNITED STATES

From: Douglas, J.

Circulated: 4/16/71

No. 876.—OCTOBER TERM, 1970

Recirculated: \_\_\_\_\_

Robert Mitchum, dba The Book Mark, Appellant, v. Clinton E. Foster, Prosecuting Attorney of Bay County, Florida, et al.	}	On Appeal From the United States District Court for Northern District of Florida.
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[April —, 1971]

MR. JUSTICE DOUGLAS, dissenting.

This is a most unusual and an exceptionally important case. Appellant, a book merchant, was charged in a civil suit of selling certain obscene publications. A state court of Florida not only enjoined the sale of the offending book but also closed down the business completely on the basis that it was a nuisance under Florida law.\* The three-judge court denied both an injunction and declaratory relief, the federal suit charging prosecutorial harassment.

\*Fla. Stat. c823, § 823.05, provides:

"Whoever shall erect, establish, continue, or maintain, own or lease any building, booth, tent or place which tends to annoy the community or injure the health of the community, or become manifestly injurious to the morals or manners of the people as described in § 823.01, or shall be frequented by the class of persons mentioned in § 856.02, or any house or place of prostitution, assignation, lewdness or place or building where games of chance are engaged in in violation of law or any place where any law of the state is violated, shall be deemed guilty of maintaining a nuisance, and the building, erection, place, tent or booth and the furniture, fixtures and contents are declared a nuisance. All such places or persons shall be abated or enjoined as provided in §§ 60.05 and 60.06."