The Burger Court Opinion Writing Database

Heller v. New York

413 U.S. 483 (1973)

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

May 22, 1973

Re: No. 71-1043 - Heller v. New York
No. 71-1134 - Roaden v. Kentucky

MEMORANDUM TO THE CONFERENCE:

These two cases (opinions enclosed) were laid aside until the "Big Five" were firm as they now appear to be.

I had carried in my mind a misconception that these cases afforded an occasion to deal generally with the scope of adversary process essential before a seizure that would be a restraint on distribution, or exhibition. As you will see, a narrow question of seizure for evidentiary purposes only is involved and that in the setting of a contemporaneous arrest. I do not suggest everyone will see these cases as I do but I do believe all will agree that the broad questions of prior restraint are not presented. The cases thus recede, at least on my approach, in importance.

Regards,

WEB

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 71-1043

Saul Heller, Petitioner, v. State of New York. | On Writ of Certiorari to the Court of Appeals of New York.

[May —, 1973]

Memorandum to the Conference from MR. CHIEF JUSTICE BURGER.

We granted the Writ in this case to determine whether a judicial officer authorized to issue warrants, who has viewed a film and finds it to be obscene, can issue a constitutionally valid warrant for its seizure as evidence in prosecution against the exhibitor, without first conducting an adversary hearing on the issue of probable obscenity.

Petitioner was manager of a commercial movie theater in the Greenwich Village area of New York City. On July 29, 1969, a film called "Blue Movie" was exhibited there. The movie primarily depicts a nude couple engaged in ultimate sexual acts. It is patently offensive and the correctness of the judicial determination of probable cause is not in serious dispute.

Two police officers saw part of the movie. Apparently on the basis of their observations, an assistant district attorney of New York County then requested a judge of the New York Criminal Court, who is empowered under state law to issue warrants, to accompany him to a performance. In the company of a police inspector, the judge purchased a ticket and saw the entire film. There were about 100 other persons in the audience.

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

CHAMBERS OF
THE CHIEF JUSTICE

June 7, 1973

Re: No. 71-1043 - Heller v. New York
No. 71-1134 - Roaden v. Kentucky

MEMORANDUM TO THE CONFERENCE:

Enclosed is a slightly altered draft of Heller with essentially typographical and style corrections and a new draft of Roaden. I have concluded that there is no need to remand Roaden since the seizure of the film was incidental to a lawful arrest and the case presents a clear parallel to a police officer seizing pornographic pictures at the school house door -- or in a school. Since the obscenity is conceded by Roaden there is no unresolved substantive issue as there is in Heller where there was no obscenity conceded or judicially determined.

Regards,

WEB

P.S. It is interesting to note that the Second Circuit held in United States v. Cangiano, 464 F.2d 320 (at 328):

> ". . .Moreover, it is clear that allegedly obscene materials, even though First Amendment rights are involved, can be lawfully seized without a warrant, provided that one of the exceptions to warrantless intrustions is applicable. United States v. Wild, 422 F.2d 34, 37-38 (2 Cir. 1969), cert. denied, 402 U.S. 986 (1971); United States v. Marti, supra, 421 F.2d at 1269-70."

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 1, 6, 7, 9-10

To: Mr. Ju...
Mr. J...
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June 4, 1973

2nd DRAFT

From: ...

SUPREME COURT OF THE UNITED STATES

Recirculated: JUN 7 1973

No. 71-1043

Saul Heller, Petitioner, v. State of New York | On Writ of Certiorari to the Court of Appeals of New York.

[May —, 1973]

Memorandum to the Conference from MR. CHIEF JUSTICE BURGER. Assuming *Paris Adult Theatre* (No. 71-1051) and *Miller* (No. 70-73) to be the controlling substantive rules of law when we reach the above case, I propose the disposition that follows:

We granted the Writ in this case to determine whether a judicial officer authorized to issue warrants, who has viewed a film and finds it to be obscene, can issue a constitutionally valid warrant for its seizure as evidence in prosecution against the exhibitor, without first conducting an adversary hearing on the issue of probable obscenity.

Petitioner was manager of a commercial movie theater in the Greenwich Village area of New York City. On July 29, 1969, a film called "Blue Movie" was exhibited there. The movie primarily depicts a nude couple engaged in ultimate sexual acts. It is patently offensive and the correctness of the judicial determination of probable obscenity is not in serious dispute.

Two police officers saw part of the movie. Apparently on the basis of their observations, an assistant district attorney of New York County requested a judge of the New York Criminal Court to see a performance. In the company of a police inspector, the judge purchased a ticket and saw the entire film. There were about 100

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 1, 9

To: Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From: The Chief Justice

Circulated: _____

Recirculated JUN 19 1973

G—June 18, 1973

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 71-1043

Saul Heller, Petitioner, v. State of New York. | On Writ of Certiorari to the Court of Appeals of New York.

[June —, 1973]

MR. CHIEF JUSTICE BURGER delivered the opinion of of the Court.

[OMISSION]

We granted the Writ in this case to determine whether a judicial officer authorized to issue warrants, who has viewed a film and finds it to be obscene, can issue a constitutionally valid warrant for its seizure as evidence in prosecution against the exhibitor, without first conducting an adversary hearing on the issue of probable obscenity.

Petitioner was manager of a commercial movie theater in the Greenwich Village area of New York City. On July 29, 1969, a film called "Blue Movie" was exhibited there. The movie ~~primarily~~ depicts a nude couple engaged in ultimate sexual acts. Two police officers saw part of the movie. Apparently on the basis of their observations, an assistant district attorney of New York County requested a judge of the New York Criminal Court to see a performance. In the company of a police inspector, the judge purchased a ticket and saw the entire film. There were about 100 other persons in the audience. Neither the judge nor the police inspector recalled any signs restricting admission to adults.[1]

[OMISSION]

At the end of the film, the judge, without any discussions with the police inspector, signed a search warrant

[1] The prosecution presented no evidence that juveniles were actually present in the theater.

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

CHAMBERS OF
THE CHIEF JUSTICE

June 21, 1973

Re: No. 71-1043 - Heller v. New York

MEMORANDUM TO THE CONFERENCE:

A small change in footenote 11, page 9, is indicated as desirable to adjust to some of the final utterances in Roaden. It should now read as follows:

> 11/ Failure to permit copying of seized material adversely affects First Amendment interests; prompt copying of seized material should be permitted. If copying is denied, return of the seized material should be required. On the other hand, violations of Fourth Amendment standards would require that the seized material is excluded from evidence. See Roaden v. Kentucky, _____ U. S. _____ (1973), Lee Art Theatre v. Virginia, 392 U. S. 636, 637 (1967). Cf. Mapp v. Ohio 367 U. S. 643 (1961).

Regards,

WEB

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

March 19, 1973

Dear Bill:

Would you add at the end of your per curiam in 71-1043, Heller v. New York:

Mr. Justice Douglas concurs in the result for the reasons set forth in his concurrence in 71-1134, ROADEN v. KENTUCKY, ante p. ___ and his dissent in 70-2, UNITED STATES v. 12 200 FT. REELS, ante p. ___.

William O. Douglas

Mr. Justice Brennan

cc: The Conference

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

1st DRAFT

From: Douglas, J.

Circulated: 6-7

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

Nos. 71–1043 AND 71–1134

Saul Heller, Petitioner, 71–1043 *v.* State of New York. | On Writ of Certiorari to the Court of Appeals of New York.

Harry Roaden, Petitioner, 71–1134 *v.* Commonwealth of Kentucky. | On Writ of Certiorari to the Court of Appeals of Kentucky.

[June —, 1973]

MR. JUSTICE DOUGLAS, dissenting.

I would grant and reverse in each of these cases as, in my view, the underlying obscenity statute violates the First Amendment for the reasons stated in my dissenting opinions in *Miller* v. *California*, *ante*, p. —, and in *United States* v. *12 200 Ft. Reels*, *ante*, p. —.

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

1st DRAFT

From: Brennan, J.

SUPREME COURT OF THE UNITED STATES

Circulated: 3/16/73

No. 71-1043

Recirculated: _____

Saul Heller, Petitioner, v. State of New York. | On Writ of Certiorari to the Court of Appeals of New York.

[March —, 1973]

Memorandum of MR. JUSTICE BRENNAN.

We granted certiorari to consider the holding of the Court of Appeals of New York that the Constitution does not require an adversary hearing on obscenity prior to a judge's issuance of warrants for the seizure of a film and for the arrest of the film's exhibitor. — N. Y. 2d —, — N. E. 2d —, — N. Y. S. — (1971). Our holding today in *Paris Adult Theatre* v. *Slaton*, — U. S. — (1973), makes clear that the statute under which the prosecution was brought* is unconstitutionally overbroad and therefore invalid on its face. Since the judgment of the Court of Appeals must be vacated and the case remanded for further proceedings, *Miller* v. *California*, — U. S. — (1973), we have no occasion to consider whether, assuming that a prosecution could properly be brought, the seizure of the film at issue here was constitutional.

Vacated and remanded.

*N. Y. Penal Law § 235.05:

"A person is guilty of obscenity when, knowing its content and character, he:

"1. Promotes, or possesses with intent to promote, any obscene material; or

"2. Produces, presents or directs an obscene performance or participates in a portion thereof which is obscene or which contributes to its obscenity."

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

2nd DRAFT

From: Brennan, J.

SUPREME COURT OF THE UNITED STATES

Circulated: _____

No. 71-1043

Recirculated: 3/20/73

Saul Heller, Petitioner, *v.* State of New York.	On Writ of Certiorari to the Court of Appeals of New York.

[March —, 1973]

Memorandum of MR. JUSTICE BRENNAN.

We granted certiorari to consider the holding of the Court of Appeals of New York that the Constitution does not require an adversary hearing on obscenity prior to a judge's issuance of warrants for the seizure of a film and for the arrest of the film's exhibitor. — N. Y. 2d —, — N. E. 2d —, — N. Y. S. — (1971). Our holding today in *Paris Adult Theatre* v. *Slaton*, — U. S. — (1973), makes clear that the statute under which the prosecution was brought* is unconstitutionally overbroad and therefore invalid on its face. Since the judgment of the Court of Appeals must be vacated and the case remanded for further proceedings, *Miller* v. *California*, — U. S. — (1973), we have no occasion to consider whether, assuming that a prosecution could properly be brought, the seizure of the film at issue here was constitutional.

Vacated and remanded.

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"2. Produces, presents or directs an obscene performance or participates in a portion thereof which is obscene or which contributes to its obscenity."

WJ

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From: Brennan, J.

Circulated: _____

Recirculated: 6/6/73

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 71-1043

Saul Heller, Petitioner, v. State of New York. | On Writ of Certiorari to the Court of Appeals of New York.

[June —, 1973]

MR. JUSTICE BRENNAN, with whom MR. JUSTICE STEWART and MR. JUSTICE MARSHALL join, dissenting.

We granted certiorari to consider the holding of the Court of Appeals of New York that the Constitution does not require an adversary hearing on obscenity prior to a judge's issuance of warrants for the seizure of a film and for the arrest of the film's exhibitor. — N. Y. 2d —, — N. E. 2d —, — N. Y. S. — (1971). My dissent today in *Paris Adult Theatre* v. *Slaton*, — U. S. — (1973), makes clear that the statute under which the prosecution was brought* is unconstitutionally overbroad and therefore invalid on its face. I would therefore vacate the judgment of the Court of Appeals and remand the case for further proceedings not inconsistent with my dissenting opinion in *Slaton*. In that circumstance, I have no occasion to consider whether, assuming that a prosecution could properly be brought, the seizure of the film at issue here was constitutional.

*N. Y. Penal Law § 235.05:

"A person is guilty of obscenity when, knowing its content and character, he:

"1. Promotes, or possesses with intent to promote, any obscene material; or

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3rd

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

3

2nd DRAFT

From: Brennan, J.

Circulated: _____

Recirculated: 6/21/73

SUPREME COURT OF THE UNITED STATES

No. 71-1043

Saul Heller, Petitioner, v. State of New York. | On Writ of Certiorari to the Court of Appeals of New York

[June —, 1973]

MR. JUSTICE BRENNAN, with whom MR. JUSTICE STEWART and MR. JUSTICE MARSHALL join, dissenting.

We granted certiorari to consider the holding of the Court of Appeals of New York that the Constitution does not require an adversary hearing on obscenity prior to a judge's issuance of warrants for the seizure of a film and for the arrest of the film's exhibitor. — N. Y. 2d —, — N. E. 2d —, — N. Y. S. — (1971). ~~My dissent today in *Paris Adult Theatre v. Slaton*, — U. S. —, — (1973), makes clear that~~ the statute under which the prosecution was brought* is unconstitutionally overbroad and therefore invalid on its face. I would therefore ~~vacate~~ the judgment of the Court of Appeals and remand the case for further proceedings not inconsistent with my dissenting opinion in *Slaton*. In that circumstance, I have no occasion to consider whether, assuming that a prosecution could properly be brought, the seizure of the film at issue here was constitutional.

See my dissent today in Paris Adult Theatre v. Slaton, ante.

Cap. → in my views, reverse

*N. Y. Penal Law § 235.05:

"A person is guilty of obscenity when, knowing its content and character, he:

"1. Promotes, or possesses with intent to promote, any obscene material; or

"2. Produces, presents or directs an obscene performance or participates in a portion thereof which is obscene or which contributes to its obscenity."

CHAMBERS OF
JUSTICE BYRON R. WHITE

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

June 12, 1973

Re: Nos. 71-1043 - Heller v. New York and
71-1134 - Roaden v. Kentucky

Dear Chief:

This is in response to your second draft circulations in these two cases.

First, with respect to Roaden, I have some difficulty squaring your draft with Marcus v. Search Warrant, 367 U.S. 717 (1961). There, an officer was authorized by warrant to search and seize "obscene books." He did so but the seizure was held invalid and the books held inadmissible whether actually obscene or not. Conceding that a legally sustainable warrant to seize "gambling equipment" could be issued on an affidavit that an officer had seen such equipment at a certain location, the Court nevertheless held that a similar warrant to seize "obscene books" was insufficient because of the difficulty of distinguishing the obscene from the non-obscene and the consequent threat to First Amendment values in clothing an officer with such roving authority even though confined to a particular address.

Quantity of Books v. Kansas, 378 U.S. 205 (1964), reaffirmed the holding in Marcus that a warrant could not validly authorize seizure of "obscene books" that a magistrate had not seen or had sufficiently described to him.

Although in Freedman v. Maryland, 380 U.S. 51 (1965), and Teitel Film Corp. v. Cusack, 390 U.S. 139 (1968), some distinctions between motion pictures and books were drawn with respect to the legality of prior restraint, it seems to me that in Lee Art Theatre, Inc. v. Virginia, 392 U.S. 636 (1968), Marcus was applied to the seizure of allegedly obscene movies. In that case, an officer presented an affidavit to the magistrate giving the titles of particular movies and stating he deemed them obscene based on his personal observation. A warrant issued for their seizure, and the films were admitted in evidence in the criminal case against the exhibitor. We reversed, relying squarely on Marcus and holding that whether or not a warrant to seize a movie would be sufficient if based on an affidavit sufficiently describing it, warrant and seizure are invalid where the magistrate has only "the conclusory assertions of the police officer without inquiry by . . . [him] . . . into the factual basis for the officer's conclusions . . . ." Id., at 637. Such a procedure was not "designed to focus searchingly on the question of obscenity," Marcus, supra, at 731-732, and

"therefore fell short of the constitutional requirements demanding necessary sensitivity to freedom of expression." Lee Art, supra, at 637. Under these cases a magistrate may not constitutionally warrant an officer to seize movies on the latter's blanket assertion of their obscenity. To me, it would be strange if the officer nevertheless could seize them without a warrant incident to an unwarranted arrest. It will not suffice to argue that usual Fourth Amendment rules should apply, for this approach is precisely what Marcus rejected.

With respect to Heller, I agree that the seizure was initially valid, the magistrate having seen the film. I would also, in a proper case, agree that a magistrate could issue a valid warrant for seizing a movie on an affidavit or ex parte hearing sufficiently focused on the factual basis for believing the movie to be obscene. It also appears that under the movie licensing cases, Freedman and Teitel, supra, as well as non-movie cases arising in certain other contexts, see United States v. 37 Photographs, 402 U.S. 363 (1971), the Government must either (1) itself move to provide as prompt an adversary hearing and determination of obscenity as is possible consistent with sound practice; or (2) impose no restraint on the distribution or exhibition of the material pending final judgment. If it does the first, it is not required that the film be available for exhibition in the meantime; this much of a prior restraint the Court

appears to have found acceptable in the case of moving pictures and even with respect to certain other materials. But lacking a sufficiently prompt hearing, the materials must be returned and the restraint on circulation lifted pending adversary hearing and determination.

It is otherwise with books and magazines. A book may not be taken completely out of circulation on a mere probable-cause determination by a judge, Quantity of Books, supra, at 210, and not even pending a prompt adversary hearing which also appears required. Blount v. Rizzi, 400 U.S. 410, 420 (1971). But the motion picture cases, as I read them, do not require the State both to determine obscenity as rapidly as possible in an adversary hearing and permit the showing of the film during this relatively short interim period.

On page 9 of your Heller second draft, you say:

> If such a seizure is pursuant to a warrant, issued after a judicial determination of probable cause by a neutral magistrate, and following the seizure an expeditious adversary proceeding leading to a prompt judicial determination of the obscenity issue is available to any interested party, the seizure is constitutionally permissible. In addition, on a showing to the trial court that other copies of the film are not available to the exhibitor, the court should allow the seized film to be copied so that showing can be continued pending a judicial determination of the obscenity issue in an adversary proceeding.

This appears to me to say that adversary hearings must be prompt and the film must be free to be exhibited meanwhile. I favor this approach and would join it. As you suggest in Heller, interim exhibition of the movie might be interrupted for only 24 hours or not at all if other copies of the film are immediately available.

But imposing these requirements does not obviate the pre-seizure procedures that Marcus, Quantity and Lee Art require. There would be little danger of the destruction of evidence if an officer, before making an arrest, presents a proper affidavit, gets a warrant and then executes it. Although in non-First Amendment contexts, arrests and seizures without warrant are the accepted rule, the cases appear to require warrants where obscenity and the First Amendment are implicated. There may be exceptions in various circumstances, but I would adhere to the Lee Art and Marcus rule.

The purpose of securing judicial participation before seizure and charge is twofold: First, it provides a check on the judgment of the officer; in some cases the magistrate may refuse the warrant. Second, seizure and criminal charge may dissuade even the most hardy from risking further liability by continuing exhibition or distribution and from relying merely on the defense of non-obscenity at the trial. Insistence on a judicial warrant verifies that there is at least probable cause for a criminal charge that may cause temporary interruption of the exhibition of a film that may

ultimately be judged non-obscene and protected by the First Amendment.

My question thus is whether you could see your way clear to invalidating the seizure in Roaden for want of a warrant issued by a magistrate and based on a satisfactory affidavit or other sufficient ex parte procedures. At the same time, I do not relish the possibility of casting the determining vote by asserting a ground with which no other Justice agrees.

Sincerely,

Byron

The Chief Justice

3

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 21, 1973

Re: No. 71-1043 - Heller v. New York

Dear Chief:

This is to confirm that I join your opinion in this case.

Sincerely,

Byron

The Chief Justice

Copies to Conference

June 11, 1973

Re: No. 71-1043 - Heller v. New York

Dear Chief:

This refers to your recirculation of June 7.

If you could see your way clear to eliminate the words "It is patently offensive and" that appear in the third sentence of the third paragraph on page 1, I would be able to join. The quoted words sound like a factual finding. I have not seen the film and I would prefer to stay with what you have said in the remainder of that sentence.

I should mention, also, that I entertain some uneasiness about footnote 11, which appears at the bottom of page 9 and runs over to page 10. In No. 71-1134, Roaden v. Kentucky, page 7, you say, almost specifically, that there is no exclusionary rule with respect to what is only a First Amendment violation. I heartily agree with that conclusion. Because I do, I am, as I have said, uneasy about footnote 11 in the Heller case.

Sincerely,

H. A. B

The Chief Justice

B

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 20, 1973

Re: No. 71-1043 - Heller v. New York

Dear Chief:

Please join me in your circulation of June 19.

Sincerely,

H.A.B.

The Chief Justice

Copies to the Conference

May 25, 1973

No. 71-1043 Heller v. New York
No. 71-1134 Roaden v. Kentucky

Dear Chief:

This refers to your memorandum to the Conference of May 22, transmitting memoranda drafts of proposed decisions in the above cases.

I have read these with interest, and agree that apparently they involve the relatively narrow question of seizure for evidentiary purposes of the films in question, and do not involve restraints on distribution or exhibition. I am inclined to go along with your suggested resolution of the cases, but will await circulation of proposed opinions for the Court before voting finally.

Meanwhile, I do have a question as to the final paragraph in Roaden, where you state there is nothing in the record to indicate compliance with Chimel. Footnote 7 of the same opinion summarizes Chimel's requirements (where evidence is seized in a warrantless arrest) as being that (i) the evidence must be in the "immediate control" of the defendant, and (ii) there is a "need to prevent the destruction of evidence of the crime".

I would have thought that, in the absence of evidence in the record to the contrary, we would be entitled to presume that Chimel's standards were complied with. Although I have not checked the record, a reading of your draft memorandum does not suggest petitioner makes any complaint in this respect.

Moreover, as to the possibility of destruction, I note that in your memorandum on Heller (p. 10) the Court takes "judicial notice that such films are compact, readily transportable for exhibition in other jurisdictions, easily destructible, and particularly susceptible to alteration by cutting and splicing critical parts of the film". I would think this is self evident.

In short, I am unconvinced - without further study or enlightenment, that there is any need in Roaden to remand in light of Chimel. No doubt there is more to this than appears on the face of the memoranda.

Sincerely,

The Chief Justice

lfp/gg

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 18, 1973

No. 71-1043 Heller v. New York

Dear Chief:

Although I have indicated earlier an intention to join you in this case, I now write to confirm this.

Sincerely,

Lewis

The Chief Justice

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 6, 1973

Re: No. 71-1043 - Heller v. New York

Dear Chief:

Please join me.

Sincerely,

The Chief Justice

Copies to the Conference