

# The Burger Court Opinion Writing Database

*Kaplan v. California*

413 U.S. 115 (1973)

Paul J. Wahlbeck, George Washington University

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*ny*

To: Mr. Justice Douglas  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall (2)  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

1st DRAFT

From: The Chief Justice

SUPREME COURT OF THE UNITED STATES

Circulated: JAN 18 1973

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

No. 71-1422

Murray Kaplan, Petitioner, } On Writ of Certiorari to the  
v. } Appellate Department of  
State of California. } the Superior Court of  
} California for the County  
} of Los Angeles.

[January —, 1973]

Memorandum from MR. CHIEF JUSTICE BURGER.

We granted certiorari to the Appellate Department of the Superior Court of California for the County of Los Angeles to review the petitioner's conviction for violation of California statutes regarding obscenity.

Petitioner was the proprietor of one of the approximately 250 "adult" bookstores in the City of Los Angeles, California.<sup>1</sup> On May 14, 1969, an undercover police officer entered the store and began to peruse several books and magazines. Petitioner advised the officer that "the Peek-A-Boo Bookstore is not a library." The officer then asked petitioner if he had "any sexy books." Petitioner replied that "all of our books are sexy" and exhibited a lewd photograph. At petitioner's recommendation, and after petitioner had read a sample paragraph, the officer purchased the book *Suite 69*. On the

<sup>1</sup> These stores purport to bar minors from the premises. In this case there is no evidence that petitioner sold materials to juveniles or evidence that he thrust it on the general public. Cf. *Miller v. California*, No. 70-73.

STYLISTIC CHANGES THROUGHOUT.  
SEE PAGES: 7

To: Mr. Justice \_\_\_\_\_  
Mr. Justice \_\_\_\_\_

C—April 7, 1973

From: The Supreme Court Justice

**2nd DRAFT**

Circulated: \_\_\_\_\_

**SUPREME COURT OF THE UNITED STATES**

Recirculated: APR 9 1973

No. 71-1422

Murray Kaplan, Petitioner, v. State of California. } On Writ of Certiorari to the Appellate Department of the Superior Court of California for the County of Los Angeles.

[January —, 1973]

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

We granted certiorari to the Appellate Department of the Superior Court of California for the County of Los Angeles to review the petitioner's conviction for violation of California statutes regarding obscenity.

Petitioner was the proprietor of one of the approximately 250 "adult" bookstores in the City of Los Angeles, California.<sup>1</sup> On May 14, 1969, an undercover police officer entered the store and began to peruse several books and magazines. Petitioner advised the officer that "the Peek-A-Boo Bookstore is not a library." The officer then asked petitioner if he had "any sexy books." Petitioner replied that "all of our books are sexy" and exhibited a lewd photograph. At petitioner's recommendation, and after petitioner had read a sample paragraph, the officer purchased the book *Suite 69*. On the

<sup>1</sup> These stores purport to bar minors from the premises. In this case there is no evidence that petitioner sold materials to juveniles. Cf. *Miller v. California*, — U. S. — (opinion of BURGER, C. J., pp. 1-3), No. 70-73.

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STYLISTIC CHANGES THROUGHOUT.

SEE PAGES: 7

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

C—May 7, 1973

3rd DRAFT

From: The CHIEF JUSTICE

Circulated:

Recirculated: MAY 8 1973

## SUPREME COURT OF THE UNITED STATES

No. 71-1422

Murray Kaplan, Petitioner, v. State of California. } On Writ of Certiorari to the Appellate Department of the Superior Court of California for the County of Los Angeles.

[May —, 1973]

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

We granted certiorari to the Appellate Department of the Superior Court of California for the County of Los Angeles to review the petitioner's conviction for violation of California statutes regarding obscenity.

Petitioner was the proprietor of the Peek-A-Boo Bookstore, one of the approximately 250 "adult" bookstores in the City of Los Angeles, California.<sup>1</sup> On May 14, 1969, an undercover police officer entered the store and began to peruse several books and magazines. Petitioner advised the officer that the store "was not a library." The officer then asked petitioner if he had "any good sexy books." Petitioner replied that "all of our books are sexy" and exhibited a lewd photograph. At petitioner's recommendation, and after petitioner had read a sample

<sup>1</sup> The number of these stores was so estimated by both parties at oral argument. These stores purport to bar minors from the premises. In this case there is no evidence that petitioner sold materials to juveniles. Cf. *Miller v. California*, — U. S. — (opinion of BURGER, C. J., pp. 1-3), No. 70-73.

STYLISTIC CHANGES THROUGHOUT.  
SEE PAGES: 7, 8

C—June 14, 1973

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

4th DRAFT

From: The Chief Justice

**SUPREME COURT OF THE UNITED STATES**

Circulated: \_\_\_\_\_

No. 71-1422

Recirculated: **JUN 19 1973**

Murray Kaplan, Petitioner, } On Writ of Certiorari to the  
v. } Appellate Department of  
State of California. } the Superior Court of  
} California for the County  
} of Los Angeles.

[May —, 1973]

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

We granted certiorari to the Appellate Department of the Superior Court of California for the County of Los Angeles to review the petitioner's conviction for violation of California statutes regarding obscenity.

Petitioner was the proprietor of the Peek-A-Boo Bookstore, one of the approximately 250 "adult" bookstores in the City of Los Angeles, California.<sup>1</sup> On May 14, 1969, in response to citizen complaints, an undercover police officer entered the store and began to pursue several books and magazines. Petitioner advised the officer that the store "was not a library." The officer then asked petitioner if he had "any good sexy books." Petitioner replied that "all of our books are sexy" and exhibited a lewd photograph. At petitioner's recommendation, and

<sup>1</sup> The number of these stores was so estimated by both parties at oral argument. These stores purport to bar minors from the premises. In this case there is no evidence that petitioner sold materials to juveniles. Cf. *Miller v. California*, — U. S. — (pp. 1-3) (1973).

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

CHAMBERS OF  
JUSTICE WILLIAM O. DOUGLAS

March 20, 1973

Dear Bill:

In 71-1422, Kaplan v. California  
would you kindly add at the end of your memo:

Mr. Justice Douglas would vacate and  
remand for dismissal of the criminal complaint  
under which petitioner was found guilty because  
"obscenity" as defined by the California Courts  
and by this Court is too vague to satisfy the  
requirements of Due Process. See Miller v.  
California, ante \_\_\_ (dissenting opinion).

W.W.  
William O. Douglas

Mr. Justice Brennan

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM O. DOUGLAS

June 7, 1973

Dear Chief:

In 71-1422, Kaplan v. California  
would you kindly add at the end of your memo:  
"Mr. Justice Douglas would vacate  
and remand for dismissal of the criminal  
complaint under which petitioner was found  
guilty because "obscenity" as defined by the  
California Courts and by this Court is too  
vague to satisfy the requirements of Due  
Process. See Miller v. California, ante  
— (dissenting opinion).

*cc: (l)*  
William O. Douglas

The Chief Justice

cc: The Conference

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: 3/16/73

Reircirculated: \_\_\_\_\_

1st DRAFT

SUPREME COURT OF THE UNITED STATES

\_\_\_\_\_  
No. 71-1422  
\_\_\_\_\_

Murray Kaplan, Petitioner,  
v.  
State of California. } On Writ of Certiorari to the  
Appellate Department of  
the Superior Court of  
California for the County  
of Los Angeles.

[March —, 1973]

Memorandum of MR. JUSTICE BRENNAN.

The judgment of the Appellate Department of the Superior Court of California is vacated and the case is remanded for further proceedings. See *Miller v. California*, — U. S. — (1973).

*Vacated and remanded.*

*CP*  
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

3rd DRAFT

From: Brennan, J.

**SUPREME COURT OF THE UNITED STATES**

Circulated:

No. 71-1422

Recirculated: 3/23/73

Murray Kaplan, Petitioner, | On Writ of Certiorari to the  
v. | Appellate Department of  
State of California. | the Superior Court of  
| California for the County  
| of Los Angeles.

[March —, 1973]

Memorandum of MR. JUSTICE BRENNAN.

The judgment of the Appellate Department of the Superior Court of California is vacated and the case is remanded for further proceedings. See *Miller v. California*, — U. S. — (1973).

*Vacated and remanded.*

MR. JUSTICE DOUGLAS would vacate and remand for dismissal of the criminal complaint under which petitioner was found guilty because "obscenity" as defined by the California courts and by this Court is too vague to satisfy the requirements of due process. See my opinion in *Miller v. California, ante*, —.

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

**SUPREME COURT OF THE UNITED STATES**

From: Brennan, J.

No. 71-1422

Circulated: \_\_\_\_\_

Recirculated: 6/6/73

Murray Kaplan, Petitioner.  
v.  
State of California.

On Writ of Certiorari to the  
Appellate Department of  
the Superior Court of  
California for the County  
of Los Angeles.

[June —, 1973]

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

I would vacate the judgment of the Appellate Department of the Superior Court of California and remand the case for further proceedings not inconsistent with my dissenting opinion in *Paris Adult Theatre v. Slaton*, — U. S. — (1973). See my dissent in *Miller v. California*, — U. S. — (1973).