

The Burger Court Opinion Writing Database

FCC v. Pacifica Foundation

438 U.S. 726 (1978)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



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

CHAMBERS OF
THE CHIEF JUSTICE

June 16, 1978

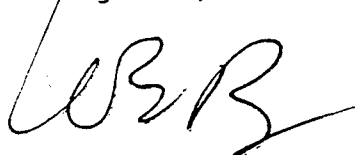
Re: 77-528 - FCC v. Pacifica Foundation

Dear John:

I join.

I suggest for your consideration a cite to
United Church of Christ v. FCC, 359 F.2d 994 (CA DC),
which I believe Skelly Wright relied on in Anti-
Defamation League (your opinion p. 10).

Regards,



Mr. Justice Stevens

Copies to the Conference

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

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 19, 1978

RE: No. 77-528 F.C.C. v. Pacifica Foundation

Dear John:

I'll probably join Potter but I'll also be writing something on the constitutional question.

Sincerely,



Mr. Justice Stevens

cc: The Conference

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

From: Mr. Justice Brennan
24 JUN 1978

Circulated: _____

Recirculated: _____

1st Draft

SUPREME COURT OF THE UNITED STATES

No. 77-528

Federal Communications Commission, Petitioner)
v.) On Writ of Certiorari to
Pacifica Foundation) the United States Court
of Appeals for the
District of Columbia
Circuit

[June __, 1978]

MR. JUSTICE BRENNAN, dissenting.

I agree with MR. JUSTICE STEWART that, under Hamling v. United States, 418 U.S. 87 (1974), and United States v. 12 200-ft. Reels of Film, 413 U.S. 123 (1973), the word "indecent" in 18 U.S.C. § 1464 must be construed to prohibit only obscene speech. I would, therefore, normally refrain from expressing my views on any constitutional issues implicated in this case. However, I find the Court's misapplication of fundamental First Amendment principles so patent, and its attempt to impose

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

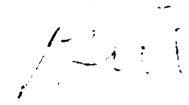
June 26, 1978

RE: No. 77-528 F.C.C. v. Pacifica Foundation

Dear Potter:

Please join me in your dissent. My own was
circulated on Saturday.

Sincerely,



Mr. Justice Stewart

cc: The Conference

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

From: Mr. Justice Brennan

PRINTED
1st DRAFT

Circulated: _____

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 77-528

Federal Communications Com- mission, Petitioner, v. Pacifica Foundation.	} On Writ of Certiorari to the United States Court of Ap- peals for the District of Columbia Circuit.
---	--

[June —, 1978]

MR. JUSTICE BRENNAN, dissenting.

I agree with MR. JUSTICE STEWART that, under *Hamling v. United States*, 418 U. S. 87 (1974), and *United States v. 12 200-ft. Reels of Film*, 413 U. S. 123 (1973), the word "indecent" in 18 U. S. C. § 1464 must be construed to prohibit only obscene speech. I would, therefore, normally refrain from expressing my views on any constitutional issues implicated in this case. However, I find the Court's misapplication of fundamental First Amendment principles so patent, and its attempt to impose its sadly myopic notions of propriety on the whole of the American people so misguided, that I am unable to remain silent.

I

For the second time in two years, see *Young v. American Mini Theatres*, 427 U. S. 50 (1976), the Court refuses to embrace the notion, completely antithetical to basic First Amendment values, that the degree of protection the First Amendment affords protected speech varies with the social value ascribed to that speech by five Members of this Court. See opinion of MR. JUSTICE POWELL, *ante*, at —. Moreover, as do all parties, all Members of the Court agree that the Carlin monologue aired by Station WBAI does not fall within one of the categories of speech, such as "fighting words," *Chaplinsky v. New Hampshire*, 315 U. S. 568 (1942), or obscenity, *Roth v. United States*, 354 U. S. 476 (1957), that

Pp. 1, 2, 3, 4, 6, 7, 8, 10, 11, 15

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

2nd DRAFT

From: Mr. Justice Brennan

SUPREME COURT OF THE UNITED STATES

No. 77-528

Federal Communications Com-	}	On Writ of Certiorari to the United States Court of Ap- peals for the District of Columbia Circuit.
mission, Petitioner.		
v.		
Pacifica Foundation.		

[June —, 1978]

MR. JUSTICE BRENNAN, with whom MR. JUSTICE MARSHALL joins, dissenting.

I agree with MR. JUSTICE STEWART that, under *Hamling v. United States*, 418 U. S. 87 (1974), and *United States v. 12 200-ft. Reels of Film*, 413 U. S. 123 (1973), the word "indecent" in 18 U. S. C. § 1464 must be construed to prohibit only obscene speech. I would, therefore, normally refrain from expressing my views on any constitutional issues implicated in this case. However, I find the Court's misapplication of fundamental First Amendment principles so patent, and its attempt to impose *its* notions of propriety on the whole of the American people so misguided, that I am unable to remain silent.

I

For the second time in two years, see *Young v. American Mini Theatres*, 427 U. S. 50 (1976), the Court refuses to embrace the notion, completely antithetical to basic First Amendment values, that the degree of protection the First Amendment affords protected speech varies with the social value ascribed to that speech by five Members of this Court. See opinion of MR. JUSTICE POWELL, *ante*, at 6-7. Moreover, as do all parties, all Members of the Court agree that the Carlin monologue aired by Station WBAI does not fall within one of the categories of speech, such as "fighting words," *Chaplinsky v. New Hampshire*, 315 U. S. 568 (1942), or obscenity, *Roth v. United States*, 354 U. S. 476 (1957), that

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

CHAMBERS OF
JUSTICE POTTER STEWART

June 15, 1978

Re: 77-528, FCC v. Pacifica

Dear John,

I shall in due course circulate a
dissenting opinion in this case.

Sincerely yours,

P.S.
/

Mr. Justice Stevens

Copies to the Conference

V —
PS
[Handwritten signature]

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

FCC v. PACIFICA, No. 77-528

From: Mr. Justice Stewart

Circulated: 16 JUN 1978

Recirculated: _____

MR. JUSTICE STEWART, dissenting.

The Court today recognizes the wise admonition that we should "avoid the unnecessary decision of [constitutional] issues." Ante, at _____. But it disregards one important application of this salutary principle -- the need to construe an Act of Congress so as to avoid, if possible, passing upon its constitutionality.^{1/} It is apparent that the constitutional questions raised by the order of the Commission in this case are substantial.^{2/} Before deciding them, we should be certain that it is necessary to do so.

The statute pursuant to which the Commission acted, 18 U.S.C. § 1464,^{3/} makes it a federal offense to utter "any obscene, indecent, or profane language by means of

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

From: Mr. Justice Stewart

Circulated: _____

Recirculated: 28 JUN 1978

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-528

Federal Communications Com-	}	On Writ of Certiorari to the	
mission, Petitioner,			United States Court of Ap-
v.			peals for the District of
Pacifica Foundation			Columbia Circuit.

[June —, 1978]

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

The Court today recognizes the wise admonition that we should "avoid the unnecessary decision of [constitutional] issues." *Ante*, at —. But it disregards one important application of this salutary principle—the need to construe an Act of Congress so as to avoid, if possible, passing upon its constitutionality.¹ It is apparent that the constitutional questions raised by the order of the Commission in this case are substantial.² Before deciding them, we should be certain that it is necessary to do so.

The statute pursuant to which the Commission acted, 18

¹ See, e. g., *Johnson v. Robison*, 415 U. S. 361, 366–367; *United States v. Thirty-Seven Photographs*, 402 U. S. 363, 369; *Rescue Army v. Municipal Court*, 331 U. S. 549, 569; *Ashwander v. TVA*, 297 U. S. 288, 348 (Brandeis, J., concurring); *Crowell v. Benson*, 285 U. S. 22, 62.

² The practice of construing a statute to avoid a constitutional confrontation is followed whenever there is "a serious doubt" as to the statute's constitutionality. E. g., *United States v. Rumely*, 345 U. S. 41, 45; *Blodgett v. Holden*, 275 U. S. 142, 148 (opinion of Mr. Justice Holmes). Thus, the Court has construed a statute to avoid raising a doubt as to its constitutionality even though the Court later in effect held that the statute, otherwise construed, would have been constitutionally valid. Compare *General Motors v. District of Columbia*, 380 U. S. 553, with *Moorman Mfg. Co. v. Bair*, *ante*.

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 15, 1978

Re: 77-528 - Federal Communications
Commission v. Pacifica

Dear John,

I shall await the dissent.

Sincerely yours,



Mr. Justice Stevens

Copies to the Conference

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

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 26, 1978

Re: 77-528 - FCC v. Pacifica Foundation

Dear Potter,

Please join me in your dissenting
opinion in this case.

Sincerely yours,



Mr. Justice Stewart

Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 16, 1978

Re: No. 77-528 - FCC v. Pacifica

Dear John:

I await the dissent.

Sincerely,

TM.

T.M.

Mr. Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 26, 1978

Re: No. 77-528 - FCC v. Pacifica

Dear Bill:

Please join me.

Sincerely,


T.M.

Mr. Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

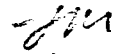
June 26, 1978

Re: No. 77-528 - FCC v. Pacifica

Dear Potter:

Please join me.

Sincerely,



T.M.

Mr. Justice Stewart

cc: The Conference

June 20, 1978

Re: No. 77-528 - FCC v. Pacifica Foundation

Dear Lewis:

I appreciate your letting me climb aboard in this case. I am in no position to bargain, but the two minor suggestions I have are:

1. That on page 4 of the typed draft, 12th line, the word "judicious" be eliminated. I suspect adults have a choice whether it is or is not judicious.

2. That the citation to Carey appearing on the first three lines of page 5 be omitted. You do have the solid quotation from Ginsberg there. And, as you know, I was on the other side in Carey.

Sincerely,

HAB

Mr. Justice Powell

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

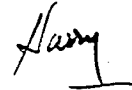
June 20, 1978

Re: No. 77-528 - FCC v. Pacifica Foundation

Dear Lewis:

Please join me in your concurring opinion.

Sincerely,



Mr. Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 26, 1978



Re: No. 77-528 - FCC v. Pacifica Foundation

Dear Lewis:

Writings of late, particularly in the dissent, demonstrate once again that we are at the end of a term. I am convinced that things would not be so strident if the present circulations were making their rounds in October or November.

This is just to advise you that your proposed changes have my approval and I therefore remain "constant."

Sincerely,

✓
lfp/ss 6/19/78

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

From: Mr. Justice Powell

Circulated: 19 JUN 1978

Recirculated: _____

No. 77-528, FCC v. Pacifica Foundation

MR. JUSTICE POWELL, concurring.

I join parts I, II, and III of MR. JUSTICE STEVENS' opinion without reservation. The Court today reviews only the Commission's holding that Carlin's monologue was indecent "as broadcast" at two o'clock in the afternoon, and not the broad sweep of the Commission's opinion. Ante, at 7, 16-18. In addition to being consistent with our settled practice of not deciding constitutional issues unnecessarily, see ante, at 7; Ashwander v. Tennessee Valley Authority, 297 U.S. 288, 345-348 (1936) (Brandeis, J., concurring), this narrow focus also is conducive to the orderly development of this relatively new and difficult area of law, in the first instance by the Commission, and then by the reviewing courts. See Pacifica Foundation v. FCC, ___ U.S. App. D.C. ___, ___-___, 556 F.2d 9, 35-37 (1977) (Leventhal, J., dissenting).

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

June 20, 1978

No. 77-528 FCC v. Pacifica Foundation

Dear Harry:

I am glad to join you in my concurring opinion, and to make the changes you suggest.

In view of the situation in the print shop, I will not recirculate for this purpose. The changes will be made in the first printed draft.

Sincerely,

Mr. Justice Blackmun

lfp/ss

lfp/ss 6/19/78

2d Draft

FILE COPY
PLEASE RETURN
TO FILE

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

From: Mr. Justice Powell

Circulated: ~~1-8-84-1978~~

Recirculated: 21 June 1978

(with whom MR. JUSTICE BLACKMUN joins,

No. 77-528, FCC v. Pacifica Foundation

MR. JUSTICE POWELL, concurring. (and IV(c))

I join parts I, II, and III of MR. JUSTICE STEVENS' opinion. ~~without reservation~~ The Court today reviews only the Commission's holding that Carlin's monologue was indecent "as broadcast" at two o'clock in the afternoon, and not the broad sweep of the Commission's opinion. Ante, at ⁽⁶⁾ 16-18. In addition to being consistent with our settled practice of not deciding constitutional issues unnecessarily, see ante, at ⁽⁶⁾ 7; Ashwander v. Tennessee Valley Authority, 297 U.S. 288, 345-348 (1936) (Brandeis, J., concurring), this narrow focus also is conducive to the orderly development of this relatively new and difficult area of law, in the first instance by the Commission, and then by the reviewing courts. See Pacifica Foundation v. FCC, ___ U.S. App. D.C. ___, ___, 556 F.2d 9, 35-37 (1977) (Leventhal, J., dissenting).

June 26, 1978

No. 77-528 FCC v. Pacifica Foundation

Dear Harry:

No doubt you have read Bill Brennan's dissent in which he pays his "respects" to my dissent as well as the Court's opinion.

Perhaps you will not wish to be associated with an opinion said to display "acute ethnocentric myopia," "a sad insensitivity", and "a naive innocence of reality".

Assuming, however, your constancy, I enclose a marked up copy of a second draft of my opinion. In addition to the two changes you suggested, and the addition of note 4 (that you have seen), I have made a few minor editing changes. If these meet with your approval, I will run a second draft.

Sincerely,

Mr. Justice Blackmun

lfp/ss

Pp. 3, 5, 8, &
text of n. 4.

3d draft

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

From: Mr. Justice Powell

Circulated: _____

Recirculated: 26 JUN 1978

No. 77-528, FCC v. Pacifica Foundation

MR. JUSTICE POWELL, with whom MR. JUSTICE BLACKMUN
joins, concurring.

I join parts I, II, III and IV(c) of MR. JUSTICE
STEVENS' opinion. The Court today reviews only the
Commission's holding that Carlin's monologue was indecent
"as broadcast" at two o'clock in the afternoon, and not the
broad sweep of the Commission's opinion. Ante, at 6. In
addition to being consistent with our settled practice of
not deciding constitutional issues unnecessarily, see ante,
at 6; Ashwander v. Tennessee Valley Authority, 297 U.S.
288, 345-348 (1936) (Brandeis, J., concurring), this narrow
focus also is conducive to the orderly development of this
relatively new and difficult area of law, in the first
instance by the Commission, and then by the reviewing
courts. See Pacifica Foundation v. FCC, ___ U.S. App.
D.C. ___, ___-___, 556 F.2d 9, 35-37 (1977) (Leventhal,
J., dissenting).

No changes from
3d Wang draft

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

From: Mr. Justice Powell

Circulated: _____

Recirculated: ~~28 JUN 1977~~

1st PRINTED DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-528

Federal Communications Com- mission, Petitioner, v. Pacifica Foundation,	}	On Writ of Certiorari to the United States Court of Ap- peals for the District of Columbia Circuit.
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[June —, 1978]

MR. JUSTICE POWELL, with whom MR. JUSTICE BLACKMUN joins, concurring.

I join Parts I, II, III, and IV(C) of MR. JUSTICE STEVENS' opinion. The Court today reviews only the Commission's holding that Carlin's monologue was indecent "as broadcast" at two o'clock in the afternoon, and not the broad sweep of the Commission's opinion. *Ante*, at 6. In addition to being consistent with our settled practice of not deciding constitutional issues unnecessarily, see *ante*, at 6; *Ashwander v. Tennessee Valley Authority*, 297 U. S. 288, 345-348 (1936) (Brandeis, J., concurring), this narrow focus also is conducive to the orderly development of this relatively new and difficult area of law, in the first instance by the Commission, and then by the reviewing courts. See *Pacifica Foundation v. FCC*, — U. S. App. D. C. —, — — —, 556 F. 2d 9, 35-37 (1977) (Leventhal, J., dissenting).

I also agree with much that is said in Part IV of MR. JUSTICE STEVENS' opinion, and with its conclusion that the Commission's holding in this case does not violate the First Amendment. Because I do not subscribe to all that is said in Part IV, however, I state my views separately.

I

It is conceded that the monologue at issue here is not obscene in the constitutional sense. See 56 F. C. C. 2d 94,

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

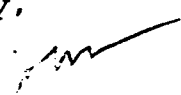
CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 16, 1978

Re: No. 77-528 - FCC v. Pacifica

Dear John:

Please join me.

Sincerely,


Mr. Justice Stevens

Copies to the Conference

Recirculated:

77-528 - Federal Communications Commission

v. Pacifica Foundation

MR. JUSTICE STEVENS delivered the opinion of the Court.

This case requires that we decide whether the Federal Communications Commission has any power to regulate the broadcast of recorded material that is indecent but not obscene.

A satiric humorist named George Carlin recorded a 12-minute monologue entitled "Filthy Words" before a live audience in a California theater. He began by referring to his thoughts about "the words you couldn't say on the public, ah, airwaves, um, the ones you definitely wouldn't say, ever." He proceeded to list those words and repeat them over and over again in a variety of colloquialisms. The transcript of the recording, which is appended to this opinion, indicates frequent laughter from the audience.

At about 2 o'clock in the afternoon on Tuesday, October 30, 1973, a New York radio station owned by respondent, Pacifica Foundation, broadcast the "Filthy Words" monologue. A few weeks later a man, who stated that he had heard the broadcast while driving with his young son, wrote a letter complaining to the Commission. He stated that, while he could perhaps understand the "record's being sold for private use, I certainly cannot understand the broadcast of same over the air that, supposedly, you control."

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

PERSONAL

Received
5.50 PM
on 6/20

June 20, 1978

Re: 77-528 - FCC v. Pacifica Foundation

Dear Lewis:

Because you indicated that you might be able to join portions of Part IV, I have broken it into three subsections. I think everything with which you took issue is in subpart B (which includes pages 18 thru 22 of the typed draft).

To a certain extent the review of overbreadth analysis in subpart A rests on the premise that this speech is not very important and therefore your problems with subpart B may carry over to subpart A as well. Nevertheless, I would hope that you would at least think about joining subpart A because it is an important part of the picture. I believe, also, that it is consistent with the analysis in Harry's opinion in Bates.

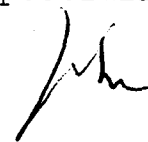
Some of my changes are the product of further thinking prompted by your concurrence, but I do not mean to take issue with anything you have said and will welcome any suggestions you care to make notwithstanding our rather narrow area of disagreement.

Thank goodness we are at last on the home stretch.

Respectfully,

Mr. Justice Powell

cc: Mr. Justice Blackmun



✓
STYLISTIC CHANGES THROUGHOUT

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

Printed
1st DRAFT

From: Mr. Justice Stevens

SUPREME COURT OF THE UNITED STATES

No. 77-528

Recirculated: JUN 20 1978

Federal Communications Commission, Petitioner,
v.
Pacifica Foundation. } On Writ of Certiorari to the
United States Court of Appeals for the District of Columbia Circuit.

[June —, 1978]

MR. JUSTICE STEVENS delivered the opinion of the Court.

This case requires that we decide whether the Federal Communications Commission has any power to regulate a radio broadcast that is indecent but not obscene.

A satiric humorist named George Carlin recorded a 12-minute monologue entitled "Filthy Words" before a live audience in a California theater. He began by referring to his thoughts about "the words you couldn't say on the public, ah, airwaves, um, the ones you definitely wouldn't say, ever." He proceeded to list those words and repeat them over and over again in a variety of colloquialisms. The transcript of the recording, which is appended to this opinion, indicates frequent laughter from the audience.

At about 2 o'clock in the afternoon on Tuesday, October 30, 1973, a New York radio station owned by respondent, Pacifica Foundation, broadcast the "Filthy Words" monologue. A few weeks later a man, who stated that he had heard the broadcast while driving with his young son, wrote a letter complaining to the Commission. He stated that, although he could perhaps understand the "record's being sold for private use, I certainly cannot understand the broadcast of same over the air that, supposedly, you control."

The complaint was forwarded to the station for comment. In its response, Pacifica explained that the monologue had

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pp. 14, 15, 18

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

From: Mr. Justice Stevens

Circulated: _____

Recirculated: JUN 27 '78

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-528

Federal Communications Com-	} On Writ of Certiorari to the	
mission, Petitioner,		United States Court of Ap-
v.		peals for the District of
Pacifica Foundation.	} Columbia Circuit.	

[June —, 1978]

MR. JUSTICE STEVENS delivered the opinion of the Court

This case requires that we decide whether the Federal Communications Commission has any power to regulate a radio broadcast that is indecent but not obscene.

A satiric humorist named George Carlin recorded a 12-minute monologue entitled "Filthy Words" before a live audience in a California theater. He began by referring to his thoughts about "the words you couldn't say on the public, ah, airwaves, um, the ones you definitely wouldn't say, ever." He proceeded to list those words and repeat them over and over again in a variety of colloquialisms. The transcript of the recording, which is appended to this opinion, indicates frequent laughter from the audience.

At about 2 o'clock in the afternoon on Tuesday, October 30, 1973, a New York radio station owned by respondent, Pacifica Foundation, broadcast the "Filthy Words" monologue. A few weeks later a man, who stated that he had heard the broadcast while driving with his young son, wrote a letter complaining to the Commission. He stated that, although he could perhaps understand the "record's being sold for private use, I certainly cannot understand the broadcast of same over the air that, supposedly, you control."

The complaint was forwarded to the station for comment. In its response, Pacifica explained that the monologue had

(Parts I, II, III, and IV-C) and opinion in which the CHIEF JUSTICE and MR. JUSTICE REHNQUIST joined (Parts IV-A and IV-B).