PARIS ADULT THEATRE I v. SLATON

SUPREME COURT OF THE UNITED STATES
413 U.S. 49
June 21, 1973
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OPINION: Chief Justice Burger/White/Blackmun/Powell/Rehnquist...Petitioners [own] two Atlanta, Georgia, [adult] movie theaters...[and were charged with]...exhibiting to the public for paid admission two allegedly obscene films, contrary to Georgia Code Ann. §26-2101. The two films... depict sexual conduct characterized by the Georgia Supreme Court as "hard core pornography" leaving "little to the imagination."...

[The theater has a]...conventional, inoffensive theater entrance, without any pictures, but with signs indicating that the theaters exhibit "Atlanta's Finest Mature Feature Films." On the door itself is a sign saying: "Adult Theatre -- You must be 21 and able to prove it. If viewing the nude body offends you, Please Do Not Enter."

The two films were exhibited to the trial court. The only other state evidence was testimony by criminal investigators that they had paid admission to see the films and that nothing on the outside of the theater indicated the full nature of what was shown...There was no evidence presented that minors had ever entered the theaters. Nor was there evidence presented that petitioners had a systematic policy of barring minors, apart from posting signs at the entrance. On April 12, 1971, the trial judge dismissed the State's complaints. He assumed "that obscenity is established," but stated: "It appears to the Court that the display of these films in a commercial theatre, when surrounded by requisite notice to the public of their nature and by reasonable protection against the exposure of these films to minors, is constitutionally permissible."

On appeal, the Georgia Supreme Court unanimously reversed...[reaffirming that] "the sale and delivery of obscene material to **willing adults is not protected** under the first amendment." The Georgia court also held *Stanley v. Georgia* [did not apply] since it did not deal with "the commercial distribution of pornography, but with the right of Stanley to possess, in the privacy of his home, pornographic films."

In *Stanley v Georgia,* the High Court struck down a Georgia statute making it a crime to possess obscene material **in the home** as an unconstitutional "attempt to control a person's private thoughts." Although *Stanley* has been criticized, it has not been overruled. Of course, it does not apply to possession of child pornography.

We categorically disapprove the theory, apparently adopted by the trial judge, that obscene, pornographic films acquire constitutional immunity from state regulation simply because they are exhibited for consenting adults only...[T]here are legitimate state interests at stake in stemming the tide of commercialized obscenity...These include the interest of the public in the quality of life and the total community environment, the tone of commerce in the great city centers, and, possibly, the public safety itself...**As Chief Justice Warren stated, there is a "right of the Nation and of the States to maintain a decent society..." *Jacobellis v. Ohio*.**

...[I]t is unavailing to compare a theater open to the public for a fee, with the private home of *Stanley v. Georgia* and the marital bedroom of *Griswold v. Connecticut.* This Court, has, on numerous occasions, refused to hold that commercial ventures such as a motion-picture house are "private" for the purpose of civil rights litigation and civil rights statutes...

Our prior decisions recognizing a right to privacy guaranteed by the Fourteenth Amendment included only personal rights that can be deemed "fundamental" or "implicit in the concept of ordered liberty." This privacy right encompasses and protects the personal intimacies of the home, the family, marriage, motherhood, procreation, and child rearing. Nothing, however, in this Court's decisions intimates that there is any "fundamental" privacy right "implicit in the concept of ordered liberty" to watch obscene movies in places of public accommodation.

It is also argued that the State has no legitimate interest in "control of the moral content of a person's thoughts," *Stanley v. Georgia*, and we need not quarrel with this. But we reject the claim that the State of Georgia is here attempting to control the minds or thoughts of those who patronize theaters. Preventing unlimited display or distribution of obscene material, which by definition lacks any serious literary, artistic, political, or scientific value as communication is distinct from a control of reason and the intellect...The judgment is vacated and the case remanded to the Georgia Supreme Court for further proceedings not inconsistent with this opinion and *Miller*.

DISSENT: Justice Douglas...**I never read or see the materials coming to the Court under charges of "obscenity" because I have thought the First Amendment made it unconstitutional for me to act as a censor...Our society -- unlike most in the world -- presupposes that freedom**

and liberty are in a frame of reference that makes the individual, not government, the keeper of his tastes, beliefs, and ideas. That is the philosophy of the First Amendment; and it is the article of faith that sets us apart from most nations in the world.

DISSENT: Justice Brennan/Stewart/Marshall...[T]he time has come to make a significant departure from [past precedent that is not working.]

...Any effort to draw a constitutionally acceptable boundary on state power must resort to such indefinite concepts as "prurient interest," "patent offensiveness," "serious literary value," and the like. The meaning of these concepts necessarily varies with the experience, outlook, and even idiosyncrasies of the person defining them. Although we have assumed that obscenity does exist and that we "know it when we see it," we are manifestly unable to describe it in advance except by reference to concepts so elusive that they fail to distinguish clearly between protected and unprotected speech...The resulting level of uncertainty is utterly intolerable, not alone because it makes "bookselling...a hazardous profession," *Ginsberg v. New York*, but as well because it invites arbitrary and erratic enforcement of the law.

...[A] vague statute in this area [also] creates...institutional stress that inevitably results where the line separating protected from unprotected speech is excessively vague...**[O]ne cannot say with certainty that material is obscene until at least five members of this Court...have pronounced it so.** The number of obscenity cases on our docket gives ample testimony to the burden that has been placed upon this Court...**We are [also] tied to the "absurd business of perusing and viewing the miserable stuff that pours into the Court..." While the material may have varying degrees of social importance, it is hardly a source of edification to the members of this Court who are compelled to view it before passing on its obscenity**...

If, as the Court today assumes, "a state legislature may...act on the...assumption that commerce in [obscenity]...[has] a tendency to...[lead] to antisocial behavior," then it is hard to see how state-ordered regimentation of our minds can ever be forestalled. **For if a State, in an effort to maintain or create a particular moral tone, may prescribe what its citizens cannot read or cannot see, then it would seem to follow that in pursuit of that same objective a State could decree that its citizens must read certain books or must view certain films.** However laudable its goal..., the State cannot proceed by means that violate the Constitution...In short, while I cannot say that the interests of the State -- **apart from the question of juveniles and unconsenting adults** -- are trivial or nonexistent, I am compelled to conclude that these interests cannot justify the substantial damage to constitutional rights and to this Nation's judicial machinery that inevitably results from state efforts to bar the distribution even of unprotected material to consenting adults. **I would hold, therefore, that at least in the absence of distribution to juveniles or obtrusive exposure to unconsenting adults, the First and Fourteenth Amendments prohibit the State and Federal Governments from attempting wholly to suppress sexually oriented materials on the basis of their allegedly "obscene" contents. Nothing in this approach precludes those governments from taking action to serve what may be strong and legitimate interests through regulation of the manner of distribution of sexually oriented material...**