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# Constitutional Law - Private Possession of Obscene Materials - Stanley v. Georgia, 89 S. Ct. 1243 (1969)

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# CURRENT DECISIONS

**Constitutional Law—PRIVATE POSSESSION OF OBSCENE MATERIALS.** *Stanley v. Georgia*, 89 S. Ct. 1243 (1969).

Robert E. Stanley's home was searched by federal and state agents pursuant to a valid search warrant issued by a United States Commissioner.[1] The warrant authorized the agents to search for equipment used in bookmaking activities. Though little such evidence was found, the agents did discover three rolls of obscene film in a desk drawer in Stanley's bedroom. After viewing the film, the agents arrested the accused for possession of contraband obscene matter in violation of Georgia law.[2] Following conviction by a jury, Stanley appealed to the Supreme Court of Georgia which upheld the conviction.[3] In reversing the conviction on appeal,[4] the Supreme Court of the United States ruled that "mere private possession of obscene matter cannot constitutionally be made a crime."[5]

Employing the first amendment of the Constitution of the United States[6] as applied to the states by the fourteenth amendment,[7] the Supreme Court established that a state may not interfere with what one reads or views in the privacy of his own home. The holding of the Court in no way conflicts with the mainstream of cases denying first amend-

1. The agents were lawfully present in Stanley's home and empowered to search for the items specified in the warrant; the warrant included no authority to search for or seize obscene matter. Stanley v. Georgia, 89 S. Ct. 1243, 1251 (1969).

2. GA. CODE ANN. § 26-6301 (Supp. 1968) provides in pertinent part that "[a]ny person . . . who shall knowingly have possession of . . . any obscene matter . . . shall be guilty of a felony . . ."

3. Stanley v. State, 224 Ga. 259, 161 S.E.2d 309 (1968).

4. The appeal from the Supreme Court of Georgia to the Supreme Court of the United States was taken in accordance with 28 U.S.C. § 1257(2) (1964) which permits appeal from judgments of the highest court of a state "where [there] is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution . . . of the United States, and the decision is in favor of its validity." Stanley claimed that GA. CODE ANN. § 26-6301 (Supp. 1968) was violative of his first amendment rights, and therefore unconstitutional, in so far as it punished private possession of obscene material.

5. Stanley v. Georgia, 89 S. Ct. at 1245n.3.

6. "Congress shall make no law . . . abridging the freedom of speech, or of the press . . ."

7. "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States . . ."

ment protection to obscenity[8] because of the fact situation presented here[9] and the narrow issue thereby raised for the Court's consideration.[10] The tenor of the opinion is made manifest by the statement that "whatever may be the justifications for other statutes regulating obscenity, we do not think they reach into the privacy of one's own home." [11] Accordingly, the decision provides no basis for attacks upon statutes prohibiting the sale or distribution of obscene matter[12] or the sending of such matter through the mails.[13] Nor does *Stanley* cast doubt upon the validity of laws prohibiting possession of other types of items not covered by the first amendment such as narcotics, firearms, or stolen goods. Where national security is involved, this case has no applicability even to printed, recorded, or filmed materials.[14]

As so frequently has been the case in the recent past, in *Stanley* the Supreme Court has strengthened and sought to preserve the rights of the individual against encroachment by the state. This approach of the majority decision was buttressed by a concurring opinion which would have suppressed the evidence in the first instance as having been seized in violation of the fourth amendment.[15]

This logical, restrained ruling is a finely tempered exercise of judicial

8. Building upon its decision in Chaplinsky v. New Hampshire, 315 U.S. 568 (1942), the Supreme Court ruled in Roth v. United States, 354 U.S. 476, 485 (1957), that "obscenity is not within the area of constitutionally protected speech or press." But the *Roth* case dealt with publication and sale of obscenity as did *Roth's* progeny, with certain variations. *See, e.g.*, Ginsberg v. New York, 390 U.S. 629 (1968) (involving sale of obscene matter to minors).

The question of possession of obscene matter in the privacy of one's own home had not been before the Court for determination prior to the *Stanley* case, although as noted by the Court, 89 S. Ct. at 1245 n.3, the issue was before the Court in Mapp v. Ohio, 367 U.S. 643 (1961), but that case was decided on other grounds.

9. Whether the materials seized from Stanley's bedroom were obscene was not argued. The Court reached its decision under the assumption that they constituted obscenity 89 S.Ct. 1244 n.2. The defendant had been convicted of knowingly possessing obscene material; there were no facts leading to an inference that he was a distributor, that he had mailed obscene material, or that he had circulated it in any other manner. Stanley v. State, 224 Ga. 259, 161 S.E.2d 309 (1968).

10. The issue was whether a state may prohibit an individual's possession of obscene books for his own use in the privacy of his own home.

11. 89 S. Ct. at 1248.

12. 89 S. Ct. at 1249 n.11.

13. *Id.*

14. *Id.*

15. Justices Stewart, Brennan, and White concurred because the agents, having a lawful and valid warrant to search for gambling equipment exceeded their authority by

prudence, for even while reaffirming the privacy and inviolability of an individual's home and his right to read or view what he pleases therein, the Court did nothing which might denigrate the rights of the public or inhibit the police power to enforce other statutory provisions regarding obscenity [16]

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**Labor Law—NATIONAL LABOR RELATIONS BOARD ORDER REQUIRING PAYMENT OF FRINGE BENEFITS.** *NLRB v. Strong*, 393 U.S. 357 (1969).

The respondent was a member of the Roofers Contractors' Association, a multi-employer association through which a contract with the roofer's union was in effect from August 1960, to August 1963.[1] He fulfilled all of his obligations under this contract. A new agreement was then negotiated for 1963-1967 which the respondent refused to acknowledge.[2]

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seizing the obscene films, matter of which no mention had been made in the warrant. This was a clear violation of the fourth amendment provision that no "warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." Citing Marron v. United States, 275 U.S. 192 (1927), emphasis was given to the fact that an officer has no discretion when searching under authority of a warrant describing one item to seize another item. It was further noted that since Stanley was not under arrest at the time, this was not a case of a search and seizure incident to arrest. 89 S. Ct. at 1251.

16. Anticipating that an argument might be raised that statutes prohibiting possession are necessary and complementary to those prohibiting sale and distribution, i.e., without such statutes untold difficulties in proving intent to distribute or of accumulating evidence of distribution would result, the Court recalled that in Smith v. California, 361 U.S. 147, 155 (1959), a similar argument had been held insufficient to justify abuse of individual rights. While unconvinced that such difficulties will result from this decision, the Court said that "even if they did they would [not] justify infringement of the individual's right to read or observe what he pleases." 89 S. Ct. at 1243.

1. The contract was negotiated by the Roofers Local 36, United Slate, Tile, & Composition Roofers, Damp & Waterproof Workers Association and the Roofers Contractors' Association, of which the respondent had been a member since 1949. Joseph T. Strong, 152 N.L.R.B. 9, 10 (1965).

2. *Id.* Strong originally contended that since he had withdrawn from the Association, he was not bound by the contract which it negotiated. So long as appropriately timed, such withdrawal from a multi-employer association has been acknowledged by the Board. *See, e.g.*, Seattle Automotive Wholesalers Ass'n, 140 N.L.R.B. 1393 (1963); Cooks Local 327, 131 N.L.R.B. 198 (1961). However, an attempt to withdraw is not appropriately timed, and is therefore invalid, if made after the negotiation of a contract by the association on the employer's behalf. NLRB v. Jeffries Banknote Co., 281 F.2d 893 (9th Cir. 1960); Evening News Ass'n, 154 N.L.R.B. 1494 (1965); Cooke & Jones, Inc., 146 N.L.R.B. 1664 (1964); Fairbanks Dairy, Inc., 146 N.L.R.B. 893 (1964). In Retail Assoc's., Inc., 120 N.L.R.B. 388, 395 (1958), the Board held that when