

Supreme Court of the United States

OCTOBER TERM 1970

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Supreme Court, U. S.

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In the Matter of:

Docket No. 534

----- X
THE UNITED STATES,

Appellant,

vs.

NORMAN GEORGE REIDEL,

Appellee,
----- X

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Date January 20, 1971

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C O N T E N T S

ARGUMENTS OF:

P A G E

Erwin N. Griswold, Solicitor, General of the
United States.

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Sam Rosenwein, Esq., on behalf of Appellee.

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1971

)
 THE UNITED STATES,)
)
 Appellant)
)
 vs) No. 534
)
 NORMAN GEORGE REIDEL,)
)
 Appellee)
)

The above-entitled matter came on for argument at
 1:15 o'clock p.m., on Wednesday, January 20, 1971.

BEFORE:

WARREN E. BURGER, Chief Justice
 HUGO L. BLACK, Associate Justice
 WILLIAM O. DOUGLAS, Associate Justice
 JOHN M. HARLAN, Associate Justice
 WILLIAM J. BRENNAN, JR., Associate Justice
 POTTER STEWART, Associate Justice
 BYRON R. WHITE, Associate Justice
 THURGOOD MARSHALL, Associate Justice
 HARRY A. BLACKMUN, Associate Justice

APPEARANCES:

ERWIN N. GRISWOLD, SOLICITOR GENERAL
 Of the United States
 Department of Justice
 Washington, D. C.
 On behalf of Appellant

SAM ROSENWEIN, ESQ.
 6922 Hollywood Boulevard
 Hollywood, California 90028
 On behalf of Appellee

P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We will hear arguments next in Number 534: United States against Reidel.

Mr. Solicitor General.

ORAL ARGUMENT BY ERWIN N. GRISWOLD, SOLICITOR
GENERAL OF THE UNITED STATES

ON BEHALF OF APPELLANT

MR. GRISWOLD: May it please the Court:

The issue in --

Q 397 and 205; that doesn't seem to be here.

A 397?

Q Yes and 205. Do you have the name of the case by any chance?

A The name is Gable against Jenkins.

Q G-a-b-l-e?

A G-a-b-l-e. I am told that it's 397 U.S. 592.

Q Thank you.

A I don't know why -- I just looked at it within 15 minutes and thought I had carefully verified the citation.

The legal issue in this case is much like that in the preceding case, except that the question arises under a different statute.

This is a criminal case. It comes here on direct appeal from the single judge District Court from the Central District of California, which dismissed the indictment on the

1 grounds that the statute under which it was brought is un-
2 constitutional. The statutory provision herein involved is
3 Section 1461 of Title XVIII of the United States Code which is
4 set forth on pages 2 and 3 of our brief.

5 This makes guilty of a crime any person who know-
6 ingly uses the mail for sending any nonmailable matter and
7 that term is defined to include every obscene, lewd,
8 lascivious, indecent, filthy or vile article matter, thing,
9 device or substance.

10 The indictment charges a violation of Section 1461
11 on three counts. Although the appendix contains some other
12 material, particularly the text of an affidavit for a search
13 warrant, I believe that the only matters that are before the
14 Court are these three counts of the indictment, very brief
15 paragraphs, and a motion to dismiss. This motion was filed
16 on the ground that Section 1461 is unconstitutional, both on
17 its face and as applied.

18 The Government stipulated that the booklet which
19 was the subject of count three had been ordered by a Postal
20 Inspector who was an adult and that it had no evidence that the
21 other two booklets had not been solicited by adults.

22 The Court then indicated that this stipulation would
23 be regarded as having been made as an amendment to the indict-
24 ment in response to a bill of particulars to which counsel on
25 both sides concurred and we believe that that brings the

1 situation within this Court's Fruehauf decision in 365 U.S.

2 The Court then dismissed the indictment, relying on
3 Stanley against Georgia, which is interpreted as establishing
4 a right to receive obscene material. The Court found it a
5 necessary consequence of Stanley that individuals cannot be
6 restricted from distributing obscene materials commercially
7 through the mails to adults who solicit such material.

8 Despite the express disavowal in Stanley of any
9 intent to impair the holding in Roth against the United States,
10 it sustained a conviction under the very statute involved
11 here. The Court dismissed the indictment as applied to this
12 particular prosecution, and this direct appeal followed under
13 the Criminal Appeals Act as it then stood.

14 This case involves the power of Congress to pro-
15 hibit use of the mails for commercial distribution of obscene
16 matter. Under the constitution Congress is given power to
17 establish post offices and post roads and also to regulate
18 commerce with foreign nations and among the several states.
19 This Court has consistently upheld the power of Congress,
20 acting under these powers, to enact measures designed in the
21 judgment of Congress to promote the public health, morals and
22 welfare.

23 It is nearly 100 years since this Court upheld the
24 validity of the statute which prohibited the sending of lottery
25 tickets through the mail and in doing so, the Court likened

1 that statute to the one then in effect which prohibited the
2 mailing of obscene matter. Only 15 years ago in the Roth
3 case this Court held constitutional the very statute which is
4 challenged here: Section 1461 of Title XVIII.

5 Indeed, the factual situation in the Roth case is
6 extremely close to that involved here, as two of the items
7 in Roth had been mailed in response to an order from a postal
8 inspector. Nothing has happened since the Roth case to warrant
9 the conclusion that this exercise of the postal power by
10 Congress is no longer proper. Indeed, in the Stanley case
11 decided less than two years ago, the Court said: Roth and the
12 cases following that decision are not impaired by today's
13 holdings.

14 Despite this clear statement in Stanley, the Court
15 below held that the result of Stanley was that an exception
16 had been made to Roth so that Section 1461 is unconstitutional
17 as applied to this case. It held that Stanley established a
18 right to receive from which it concluded that there must be
19 a right to send as long as the material was solicited by
20 adults and not directed at children or at an unwilling public.
21 That's in the appendix at page 13 in the District Court's
22 opinion.

23 Our argument on this question is the same as that
24 already submitted in the case of the 37 photographs in which
25 the argument has just been concluded and in our brief and

1 argument as amicus curiae in Byrne against Karalexis, Number
2 83.

3 This case has nothing to do with an invasion of
4 a man's privacy in his own home. The defendant did not have
5 these materials for his own edification. He is not charged
6 with having them; he is charged with mailing them. He had
7 them for a commercial purpose and it is not denied that he
8 deposited them in the mail.

9 Q Does the statute talk in terms of commercial
10 distribution?

11 A No, Mr. Justice. I think it would not make
12 any difference whether it's commercial or private; it is the
13 policy of the Department of Justice not to prosecute in cases
14 where there is truly private transmission of matters which
15 might be regarded as obscene, as in the cases that you decided
16 several years ago where a man took pictures; sent them to the
17 photographic place for development and they were returned and
18 it is the policy not to prosecute in such cases. Whether that
19 policy is required by any constitutional provision, I don't
20 know. It seems to me to be a reasonable construction of the
21 statute.

22 I can imagine situations where, though it is
23 private, it is done on a fairly extensive scale, let us say
24 from one club to another where the position there taken
25 wouldn't apply and where our argument would be that the

1 statute should apply.

2 Stanley, we submit, did not give any special
3 status to obscene material, nor any general protection of such
4 material. The protection there was given to Stanley and in
5 the privacy of his own home. In referring to First Amendment
6 rights the opinion in Stanley was careful to associate those
7 rights with Mr. Stanley. There was no suggestion that any
8 First Amendment protection was given to the material itself;
9 indeed, the specific statement that Roth and the cases follow-
10 ing it are not impaired, can have significance only as
11 recognizing that the materials themselves are not subject to
12 protection.

13 And, as I mentioned in my argument in the 37
14 photographs case, this was recognized as recently as last
15 Thursday in this Court's decision in the Mailbox case where
16 the Court referred to the line which separates obscenity from
17 constitutionally protected expressions.

18 For the purposes of the motion to dismiss in this
19 case it has been conceded that the materials involved here
20 are, indeed, obscene, and thus, under Roth, not entitled to
21 First Amendment protection.

22 Stanley holds that the state cannot inquire into
23 the contents of a man's library, for that inevitably involves
24 supervision of the morality of his own individual thoughts,
25 but this does not require to condone the distribution of

1 materials which it legislatively deems inimical to the public
2 welfare. The latter is a judgment which should be left to
3 Congress, as in the case of the use of the mails to defraud
4 or for the transportation of lottery tickets.

5 My submission is that Stanley protects Mr. Stanley
6 but not materials and not purveyors of materials. Stanley
7 itself affirms that it does not impair Roth and the Roth
8 decision clearly requires reversal of the judgment below.

9 So far I have argued these cases in what might be
10 called the traditional way, but I would like to add a further
11 word. One of the problems in this area is the general lower-
12 ing of standards, the impairment of public taste which has
13 resulted from an inescapable application of a sort of literary
14 aggressions law. To get shots we must go farther and farther.
15 That, of itself, would be a matter to work on, but to say that
16 it is required by the constitution is hard to find in the
17 language of the constitution and still harder to find in the
18 background, history, and common-accepted purpose.

19 I suggest that there is not in reality, an affinity
20 between Tom Paine and Sam Adams and John Adams and Thomas
21 Jefferson and the materials involved in this case. The
22 decisions of the courts do not merely open up the gates; they
23 give an aura of legitimacy to the process. It is commonly
24 understood that "I Am Curious Yellow" was approved by the
25 United States Courts. The materials involved in this case

1 and others like it, are delivered by the United States Post
2 Office by a man in a blue uniform with a Government seal on
3 his shoulder.

4 It is one thing as far as public standards and
5 taste are concerned to have this traffic going on; it is quite
6 another to have it come with the full sanction and imprimatur
7 of the nation's courts.

8 Just last evening I was reading the current issue
9 of the Saturday Review. It has an editorial by Norman Cousins
10 entitled: "See Everything; Do Everything; Feel Nothing."

11 He says one of the busiest thoroughfares in the United States,
12 New York's 42nd Street, the final step beyond total nudity has
13 now been taken. To many it is a travesty that this result has
14 received, in the name of the great principle of the First
15 Amendment.

16 Mr. Cousins goes on to observe that defenders of
17 the new trend argue that questions of morality are relative
18 and that any adult should be allowed to see and do whatever
19 his curiosity or needs demand. And he continues: "It is a
20 serious error to suppose that the depersonalization of sex is
21 unrelated to other things that are happening to the society.
22 What is most damaging of all is that the process itself ob-
23 scures what is happening so that our highest responses are
24 being bruited without our knowing it."

25 The First Amendment is one of the great elements in

1 our constitutional structure. Like other parts of the con-
2 stitution, it is not simple in its construction or operation;
3 like other written texts, other problems in the law, we will
4 probably keep on searching for its essential meaning and will
5 inevitably proceed by pricking out points and by revising
6 those points through the process of trial and error.

7 In recent years we have gone ever far down the road
8 with equating obscenity with freedom of expression in its
9 political and pamphleteering fields with which the founding
10 fathers were concerned. Perhaps the answer in this difficult
11 area may become clear and more intellectually satisfying if
12 we give up the urge for an absolute construction of the First
13 Amendment and look again at its origin and basically political
14 functions.

15 For these reasons we think that the judgment below
16 should be reversed.

17 MR. CHIEF JUSTICE BURGER: Mr. Rosenwein.

18 ORAL ARGUMENT BY SAM ROSENWEIN, ESQ.

19 ON BEHALF OF APPELLEE

20 MR. ROSENWEIN: Mr. Chief Justice and may it please
21 the Court:

22 May I say at the very outset that in the light of
23 the last remarks of the Solicitor General that I, too,
24 perhaps will ask the indulgence of the Court to conclude with
25 a few general remarks that are not exactly related to the

1 record in any specific manner. But I should probably take, as
2 my angle of vision the rights of adult citizens of the United
3 States to choose for themselves what they want to see; what
4 they want to read and how they want to live. And I shall
5 probably also refer to the fact that Mr. Cousins has not yet
6 qualified, either as an expert in constitutional law nor a
7 member of this Court, with respect to the freedoms guaranteed
8 to us by the First Amendment.

9 I would like to say that some of the remarks that
10 Mr. Cousins -- well, I won't say that.

11 To the merits of this proceeding we deal here with
12 a situation involving only an adult citizen who has requested
13 that explicit sexual material be sent to him. That is the
14 only issue here and the question is whether or not Congress has
15 the power to forbid the mailing to such adult citizen of
16 expression such as sexual material that he has requested and
17 that he wants to pay for.

18 Q Would you say, Mr. Rosenwein -- would you make
19 that same argument if he were requesting from a pharmaceutical
20 house forbidden drugs like narcotics on the ground that he was
21 going to use it just for himself; that it wouldn't possibly
22 hurt anybody else --

23 A Well, I think that the difference would be that
24 we are dealing in one case with the First Amendment applica-
25 tion, implication, and the other with something that falls

1 outside the First Amendment --

2 Q Well, I was taking your rather sweeping phrase
3 about people doing what they want to do. I --

4 A In the light of First Amendment protection;
5 let me add that phrase.

6 Now, I --

7 Q May I ask you, Mr. Rosenwein, am I correct in
8 my recollection that the Roth indictment grew out of a
9 similar situation; that is: the postal inspectors writing
10 Roth. Wasn't it the same factual situation --

11 A -- which I think the Solicitor General has --

12 Q So I gather your submission would require
13 overruling Roth; would it not?

14 A It would in one sense, require overruling Roth,
15 but not on the narrow ground that Your Honor is putting it,
16 for this reason: obviously in Roth that issue was not presented
17 to this Court nor any Court. No one focused on the recipient
18 what was involved: simply whether or not the person who had
19 disseminated the material was liable to prosecution.

20 We have since Roth, gone through 14 years of
21 decisions. It seems to me when one seeks the meaning of a
22 decision that one can't look at it statically, as does Roth
23 mean what it did in 1957? No; Roth means something now
24 different in 1971. It has an ingress of 14 years of decisions.
25 Mr. Fleishman has developed that and now we deal with a

1 situation of which Stanley against Georgia brought into focus;
2 what about the right of the citizen? After all, he is the
3 one that we are dealing with.

4 Now, I am not going, again, to repeat all the
5 arguments that were made by Mr. Fleishman. I associate myself
6 with him; I adopt his arguments with respect to the inter-
7 pretation of Stanley. I agree with him that Stanley stands
8 for the proposition that one has the right to receive explicit
9 sexual materials which may, in the opinion of some people,
10 have no ideas at all. In other words, people have the right
11 to have ideas, information, entertainment, which may seem to
12 have no value to anybody. They have the right to receive that
13 in their home; and they have that right under the First
14 Amendment. I interpret Stanley as saying again and again that
15 under the First Amendment one has that right.

16 If one has that right, if obscene material which
17 has that protection, when Mr. Stanley can read it, et cetera,
18 I would assume that the traditional First Amendment principles
19 apply. Under what respects can that right to read be limited?

20 Now, the only justifications that we can see for
21 limitation that right would be if those materials were
22 distributed to juveniles. Another limitation was that they
23 were obtrusively forced upon other persons. But, in all other
24 respects, Mr. Stanley had the right to read it and if that
25 First Amendment right means anything it must mean a right to

1 acquite it.

2 Q Does it mean the right of somebody to use the
3 mails to mail it to him?

4 A Yes. Exactly --

5 Q What did Stanley say to that?

6 A Stanley said --

7 Q What in Stanley said that?

8 A In specific language, obviously nothing is
9 mentioned of that because we are not --

10 Q Under Stanley he could have gone out in the
11 street and bought it; maybe that was all right. Somebody
12 could have brought it to him physically; maybe that was all
13 right. But by no stretch of the imagination would that have
14 anything to do with the right of the United States Government
15 to control and regulate its mail.

16 A That is the point that I --

17 Q And the recipient of this material is not
18 here in this case; right?

19 A Right.

20 Q It's only the right of the mailer and you say
21 because a person has a right to read something in his home,
22 anybody has the right to use the mails to send the material to
23 him; isn't that what you are arguing?

24 A Yes; that's exactly the position we take.

25 Q Well, how do you apply Roth on that?

1 A Well, I'm getting by Roth by that and I'm
2 making my argument built on Roth and all the cases, including
3 Redrup and Stanley thereafter, for this reason, Your Honor:
4 if there is a First Amendment right to possess it, to read it,
5 as was stated in Stanley, there are dozens of cases, some of
6 them were cited in Stanley, which say that one has the right to
7 acquire it; one has the right to send, to communicate to that
8 -- of course, in fact, Your Honor, it was --

9 Q Through the mails?

10 A Yes, to send through the mails because you
11 have said --

12 Q There are other ways of getting it to him
13 without using the mails.

14 A Well, Your Honor, as far as that is concerned,
15 this Court has said on a number of occasions that in today's
16 situation, not to send through the mails, which is a form of
17 communication that is most often used in an organized society
18 today. And of course the Government's position cuts broader
19 than Your Honor's inquiry, because they would say that you
20 can't send mail in any form which it follows --

21 Q Well, there is nothing that follows in
22 Stanley that you can use the mails because right after Stanley
23 we had a case involving a book shop in Atlanta, Georgia, which
24 was selling the same stuff.

25 A Yes.

1 Q So, there was no way you can get out of the
2 Stanley case that he got it through the mails. There is no
3 way.

4 A That is true, Your Honor. Stanley did not
5 specifically deal with a mailing situation, but what I am
6 arguing for in this case, is that if you have that right to
7 possess it, then surely there must be a right to both acquire
8 it, to receive it, and to communicate.

9 Now, as a matter of fact, in Byrne against
10 Karalexis you will find a concession by the Government that
11 of course, if there is a right to receive there is obviously
12 a right to communicate; there is a right to disseminate.
13 That is conceded and as a matter of fact, we have here another
14 concession from the Government: they say that we have a policy
15 that we could use the mails to send obscene materials to Mr.
16 Stanley if we didn't charge him for it.

17 Now, so far as the Federal Government's interest
18 in this -- take that, for example, the attenuating interest in
19 obscenity Justice Harlan has referred to. Here you have a
20 concession from Government: well, of course you can mail
21 pornography and of course he has a right to receive it --

22 Q The case the Solicitor General referred to was
23 a case where a man and wife took pictures of each other and
24 that's all there was. And is this Respondent different from
25 that?

1 A Well, he's only different in the sense that
2 the material is different, but he's sending at the request
3 of somebody who wants it.

4 Q It's not a one-shot deal; is it?

5 A Well, nobody --

6 Q Nobody saw those pictures but the man and his
7 wife.

8 A We have three solicitations here and three
9 adult citizens asked for it and received the material. Now --

10 Q Well, judging from the material I would think
11 that you printed more than three of them.

12 A Well, those were the materials seized; yes.
13 But, Your Honor, this started with an advertisement and an
14 adult answered an advertisement -- three adults answered the
15 advertisement and it was sent to those three adults. Now, what
16 is the right of those citizens? Can anyone be prosecuted for
17 sending that material at an adult's request? What right has
18 Mr. Stanley got under today's situation when you build a wall
19 around him and say: look, Mr. Stanley, you can have that in
20 your library, and by the way, he only got his library through
21 the mail -- I mean, he didn't manufacture that library.

22 Q Who, Stanley?

23 A Yes. My only point is that --

24 Q Why do you say -- it wasn't in his library;
25 it was in the desk drawer of the desk in his bedroom.

1 A But there was a reference to the library in
2 the opinion.

3 Q Oh, I thought you were talking about the
4 case.

5 A But, my only point is and I quote here from
6 Brown against Richard. Mr. Fleishman is handing me the
7 opinion. "The United States may give up the post office when
8 it sees fit, but rather carries on the use of the mails as
9 almost as much a part of free speech as the right to use our
10 tongues."

11 Now --

12 Q Mr. Rosenwein, you were speaking before about
13 something I would like to have you clarify. If I understood
14 you correctly, you suggested that there were limitations on
15 even First Amendment rights in dealing with ideas if the
16 presentation was obstrusive.

17 A Right.

18 Q Now, where do you find a constitutional
19 limitation to exercise your First Amendment rights in a par-
20 ticular way, as distinguished from simply exercising them?

21 A Well, generally speaking, in broad terms,
22 there have been so-called limitations of what we call: time,
23 place and manner. So, for example, while you have the right
24 to speak freely and the right to assemble freely, one could not
25 do that at 5:00 o'clock on Main Street when the traffic is

1 going.

2 Now, in the same fashion in this area we have
3 accepted, for present purposes, the two concurring considera-
4 tions that we think the state possibly might point to in
5 limiting the distribution of obscene materials: one, that it
6 not be distributed to minors; this is under a specific
7 statute and we have now in about 35 to 40 states, specific
8 statutes that deal with distribution to minors. And the
9 other is: obtrusive forcing -- you dealt with that in Rowan
10 to some degree.

11 Now, I myself, confess that as far as obtrusiveness
12 and affront is concerned, there will have to be some further
13 thinking in cases as to what that means, because obviously
14 I'm not talking of the kind of affront that sometimes comes
15 when we have to listen to speeches we don't like. This Court
16 has never held that would justify limitations.

17 But, I think I'm talking about an affront that
18 virtually invades the privacy of someone, that really forces
19 itself upon him; that kind of situation. But, this is a
20 situation in which the adult citizen is merely asking that he
21 can be -- you, when Your Honor wrote in Rowan, you pointed out
22 that Congress has committed citizens to build a wall around
23 their homes so that obtrusive material cannot be forced upon
24 them.

25 Cannot it be now that the Government has a right to

1 put a wall around Mr. Stanley when Mr. Stanley wants to go out
2 and get a book; he wants to get some explicit material for
3 himself? And cannot it be that he cannot write and say to
4 someone who has put an ad in the paper: yes, I would like to
5 have that material? If our country means anything, of the
6 right for people to choose, I would think that this is fun-
7 damental. Certainly this is perhaps some part of my answer
8 to the Solicitor General; it's a little different from con-
9 temporaneous defense in other parts of the world: in
10 Czechoslovakia or Russia. This country lets individuals
11 choose.

12 Would you say to a man who is getting his Social
13 Security at 65: look, here's your money, but don't spend it
14 for this or that? No; we give the money to the individual and
15 we have confidence that he will use it. The Government does
16 not concern itself with what a man chooses to do with his
17 money. Can you say to a man: you can read this or you cannot
18 read this? For his own intellectual nourishment and can it be
19 argued that a political speech, or as was held in Kingsley,
20 the advocacy of adultery as a permissible way of life, which was
21 held to be constitutionally protected, is all right for a
22 citizen to look at; it's 100 percent protected. But the ex-
23 plicit materials which are dealing with the very same subject,
24 a little more in detail, that citizen cannot read.

25 Q But do you agree that the Rowan holding must

1 be read as having placed limits on the use of the mails in a
2 way they have not been read before?

3 A Yes. I think to some degree that's true. And
4 that Congressional decision has been upheld. Now, on the
5 question of Congressional action, I think Congressional action
6 is quite appropriate. We should have Congressional action in
7 this area and the reason we should have Congressional action
8 in this area is this: now, this 100-year, so-called "venerable"
9 statute, which is called the Comstock Act, and I don't believe
10 that Mr. Comstock was venerable, not in my opinion. Then, it
11 would seem to me that in the light of what has happened it is
12 time for Congress to do what it is doing, begins to go over
13 all of these statutes.--

14 But, the point that we are asking this Court is
15 only to perform a judicial function; to declare the statute
16 unconstitutional because it covers consenting adults as well
17 as others. It covers people who really want it. Congress has
18 indicated that it can act, and it has done that. It has done
19 its part; it has now provided that if an adult and his minors
20 included, a rather old minor, but in any event, minors in-
21 cluded, can even -- it doesn't even have to be subjected even
22 to one man -- he can put his name on the list now and get no
23 mailings of sexually-oriented material and Congress has pro-
24 vided both civil and penal sanctions for that.

25 So, we have carefully etched out those upon whom

1 materials are obtrusively forced, or minors. What Congress
2 cannot do under the constitution, we submit, is forbid the
3 mailing of obscene material to an individual, an adult citizen
4 who has requested it.

5 I think that the court below properly concluded that
6 the indictment should be dismissed because of the failure to
7 allege the essential allegations, but again, like Mr.
8 Fleishman, I think that the Court here might properly say
9 that this Comstock Act is too broad and therefore, it cannot
10 stand compatibly with the First Amendment.

11 It is true, as the Solicitor General says, the two
12 or three decisions that have dealt with Stanley have limited
13 -- saying well, it deals only with privacy. But, 17 District
14 Judges, from California, Massachusetts, Oregon, Minnesota --
15 some of the most eminent jurists have read Stanley and have
16 understood in the light of everything that's gone up to the
17 point that so far as a consenting adult is concerned, he should
18 have his freedom, and the man who mails to him should certainly
19 as his steward, as the man who will furnish him this communica-
20 tion, should certainly be protected from criminal prosecution.

21 And I might say that if the Court reads those
22 opinions that we have added to our brief you will find implicit
23 in it a great sigh of relief from all the Justices because we,
24 are clogged and our calendars are clogged with cases that really
25 don't belong there. And some of the Members of this Court may

1 be too young to remember the prohibition days, but the fact
2 of the matter is that we are reaching about the same kind of
3 disrespect for the law in those aspects, the unenforceability
4 of it. I recall myself coming into the Eastern District of
5 New York and the Chief Judge saying: well, this is bargain day.
6 Everybody a \$10 fine. And pharmacists and bootleggers and
7 everybody else is marching up. Shall we return to boot-
8 leggers and of First Amendment material?

9 I think not.

10 Thank you.

11 MR. CHIEF JUSTICE BURGER: Mr. Solicitor General.

12 MR. GRISWOLD: I have nothing further.

13 MR. CHIEF JUSTICE BURGER: Very well. Thank you,
14 gentlemen. The case is submitted.

15 (Whereupon, at 1:55 o'clock p.m. the argument in
16 the above-entitled matter was concluded)