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March 23, 1970

## CAIN ET AL. v. KENTUCKY

APPEAL FROM THE COURT OF APPEALS OF KENTUCKY

No. 347. Decided March 23, 1970

437 S. W. 2d 769, reversed.

*Edmund C. Grainger, Jr.*, and *James E. Thornberry* for appellants.

*John B. Breckinridge*, Attorney General of Kentucky, and *John B. Browning*, Assistant Attorney General, for appellee.

PER CURIAM.

The judgment is reversed. *Redrup v. New York*, 386 U. S. 767.

MR. CHIEF JUSTICE BURGER, dissenting.

In my view we should not inflexibly deny to each of the States the power to adopt and enforce its own standards as to obscenity and pornographic materials; States ought to be free to deal with varying conditions and problems in this area. I am unwilling to say that Kentucky is without power to bar public showing of this film; therefore, I would affirm the judgment from which the appeal is taken.

MR. JUSTICE HARLAN, dissenting.

If this case involved obscenity regulation by the Federal Government, I would unhesitatingly reverse the conviction, for the reasons stated in my separate opinion in *Roth v. United States*, 354 U. S. 476, 496 (1957). Even in light of the much greater flexibility that I have always thought should be accorded to the States in this field, see, e. g., my dissenting opinion in *Jacobellis v. Ohio*, 378 U. S. 184, 203 (1964), suppression of this

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particular film presents a borderline question. However, laying aside my own personal estimate of the film, I cannot say that Kentucky has exceeded the constitutional speed limit in banning public showing of the film within its borders, and accordingly I vote to affirm the judgment below.

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SANCHEZ *v.* UNITED STATES

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 943, Misc. Decided March 23, 1970

412 F. 2d 1177; certiorari granted, judgment vacated and case remanded to the United States District Court for the Southern District of Florida with respect to Count 3 of the indictment; certiorari otherwise denied.

*Alfred M. Carvajal* for petitioner.

*Solicitor General Griswold* for the United States.

PER CURIAM.

The motion for leave to proceed *in forma pauperis* is granted. Upon consideration of the suggestion of the Solicitor General and upon examination of the entire record, the petition for a writ of certiorari is granted insofar as it seeks review of the judgment of the United States Court of Appeals for the Fifth Circuit affirming petitioner's conviction on Count 3 of the indictment charging a violation of 26 U. S. C. § 4704. The judgment of the Court of Appeals with respect to Count 3 is vacated and the case is remanded to the United States District Court for the Southern District of Florida with directions to dismiss Count 3 of the indictment. The petition for a writ of certiorari is otherwise denied.