

for possessing pornography in the privacy of the home would raise obvious First Amendment free speech and the Fourth Amendment search and seizure issues. In this case, however, the material was obscenity, unprotected by the First Amendment, and the police had a valid search warrant, obviating Fourth Amendment concerns.⁶⁴¹ Nonetheless, the Court based its decision upon a person's protected right to receive what information and ideas he wishes, which derives from the "right to be free, except in very limited circumstances, from unwanted governmental intrusions into one's privacy,"⁶⁴² and from the failure of the state to either justify protecting an individual from himself or to show empirical proof of such activity harming society.⁶⁴³

The potential significance of *Stanley* was enormous, as any number of illegal personal activities, such as drug use or illegal sex acts, could arguably be practiced in the privacy of one's home with little apparent effect on others. *Stanley*, however, was quickly restricted to the particular facts of the case, namely possession of obscenity in the home.⁶⁴⁴ In *Paris Adult Theatre I v. Slaton*,⁶⁴⁵ which upheld the government's power to prevent the showing of obscene material in an adult theater, the Court recognized that governmental interests in regulating private conduct could include the promotion of individual character and public morality, and improvement of the quality of life and "tone" of society. "It is argued that individual 'free will' must govern, even in activities beyond the protection of the First Amendment and other constitutional guarantees of privacy, and that government cannot legitimately impede an individual's desire to see or acquire obscene plays, movies, and books. We do indeed base our society on certain assumptions that people have the capacity for free choice. Most exercises of individual free choice—those

⁶⁴¹ In fact, the Court passed over a subsidiary Fourth Amendment issue that was available for decision in favor of a broader resolution. 394 U.S. at 569–72. (Stewart, J., concurring).

⁶⁴² 394 U.S. at 564–65.

⁶⁴³ The rights noted by the Court were held superior to the interests Georgia asserted to override them. That is, first, the state was held to have no authority to protect an individual's mind from the effects of obscenity, to promote the moral content of one's thoughts. Second, the state's assertion that exposure to obscenity may lead to deviant sexual behavior was rejected on the basis of a lack of empirical support and, more important, on the basis that less intrusive deterrents were available. Thus, a right to be free of governmental regulation in this area was clearly recognized.

⁶⁴⁴ *United States v. Reidel*, 402 U.S. 351, 354–56 (1971) (no right to distribute obscene material for private use); *United States v. Thirty-seven Photographs*, 402 U.S. 363, 375–76 (1971) (no right to import obscene material for private use); *United States v. 12 200–Ft. Reels of Film*, 413 U.S. 123 (1973) (no right to acquire obscene material for private use); *Osborne v. Ohio*, 495 U.S. 103, 109–111 (1990) (no right to possess child pornography in the home).

⁶⁴⁵ 413 U.S. 49 (1973).