

isola Vs. U.S.

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Court : US Supreme Court

Decided On : 1974

Appeal No. : 419 U.S. 933

Appellant : isola

Respondent : U.S.

Judgement :

ISOLA v. U.S. - 419 U.S. 933 (1974)

U.S. Supreme Court ISOLA v. U.S. , 419 U.S. 933 (1974)

419 U.S. 933

Elana Marie ISOLA

v.

UNITED STATES.

No. 73-6472.

Supreme Court of the United States

October 21, 1974

On petition for writ of certiorari to the United States Court of Appeals for the Second Circuit.

The petition for a writ of certiorari is denied.

Mr. Justice BRENNAN, with whom Mr. Justice STEWART and Mr. Justice MARSHALL join, dissenting.

Petitioner was convicted in the United States District Court for the Eastern District of New York of transporting allegedly obscene materials in interstate commerce for the purpose of sale in violation of 18 U.S.C. 1465, which provides in pertinent part as follows:

'Whoever knowingly transports in interstate or foreign commerce for the purpose of sale or distribution any obscene, lewd, lascivious, or filthy book, pamphlet, picture, film, paper, letter, writing, print, silhouette, drawing, figure, image, cast, phonograph recording, electrical transcription or other article capable of producing sound or any other matter of indecent or immoral character, shall be fined not more than \$5,000 or imprisoned not more than five years or both.'

The Court of Appeals for the Second Circuit affirmed, *United States v. Cangiano*, [491 F.2d 906](#) (1974).

I adhere to my dissent in *United States v. Orito*, [413 U.S. 139, 147](#) , in which speaking of 18 U.S.C. 1462, which is similar in scope to 1465, I expressed the view that '[w]hatever the extent of the Federal Government's power to bar the distribution of allegedly obscene

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material to juveniles or the offensive exposure of such material to unconsenting adults, the statute before us is clearly overbroad and unconstitutional on its face.' *Id.*, at 147-148. For the reasons stated in my dissent in *Miller v. California*, [413 U.S. 15, 47](#) (1973), I would therefore grant certiorari, and, since the judgment of the Court of Appeals for the Second Circuit was rendered after *Orito*, reverse.* In that circumstance, I have no occasion to consider whether the other questions presented merit plenary review. See *Heller v. New York*, [413 U.S. 483, 494](#) (

1973) (Brennan, J., dissenting).

Mr. Justice DOUGLAS, being of the view that any state or federal ban on, or regulation of obscenity is prohibited by the Constitution, *Miller v. California*, [413 U.S. 15](#) , 43-48; *Paris Adult Theatre I v. Slaton*, [413 U.S. 49](#) , 70-73, would grant certiorari in this case and summarily reverse.

Finally, it does not appear from the petition and response that the obscenity of the disputed materials was adjudged by applying local community standards. Based on my dissent in *Hamling v. United States*, [418 U.S. 87](#) (1974), I believe that, consistent with the Due Process Clause, petitioner must be given an opportunity to have his case decided on, and introduce evidence relevant to, the legal standard upon which his conviction has ultimately come to depend. Thus, even on its own terms, the Court should vacate the judgment below and remand for a determination whether petitioner should be afforded a new trial under local community standards. Footnotes

[[Footnote *](#)] Although four of us would grant and reverse, the Justices who join this opinion do not insist that the case be decided on the merits.

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