Supreme Court Rules Against Rights Of Out-of-State Lawyers in Flynt Case

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A divided Supreme Court yesterday removed a barrier to the revival of prosecution of Larry Flynt and his Hustler magazine by ruling that a lawyer doesn't have a constitutional right to represent a client in a state in which he is not licensed to practice.

Most states let out-of-state lawyers practice in their courts. Five justices said in an unsigned opinion, "perhaps this is a practice to be encouraged. But it is not a right granted either by statute or the Constitution."

In the dissenting opinon, Justice John Paul Stevens protested that without hearing argument, the majority had disposed of "a question of great importance to the administration of justice." Joined by Justices William J. Brennan Jr. and Thurgood Marshall, Stevens remarked tartly, "Summary reversal is the order of the day." Justice Byron H. White also wanted to hear argument.

Flynt is convalescing in a Los Angeles hospital. He suffered partial paralysis last March after an unidentified gunman tried to kill him on a street in Lawrenceville, Ga.

The ruling arose from an indictment accusing Flynt and the publishing corporation of having disseminated material harmful to minors. A pamphlet entilted "War, the Real Obscenity," showed "in lurid detail the violent physical torture, dismemberment, destruction or death of a human being."

The indictment was returned by a grand jury in Hamilton County, Ohio. In 1976, when the pamphlet was distributed, Flynt was facing trial in the same county on charges of pandering and obscenity in connection with sales of Hustler. He was convicted, drew a sentence of 7 to 25 years, and is appealing.

At arraignment in February 1977, Flynt's local attorney listed as cocounsel Herald Fahringer and Paul Cambria of Buffalo, N.Y. A month later, however, county Judge William Morrisey, who was presiding over the pandering and obscenity case, barred participation by the out-of-state lawyers.

Afterward, Fahringer and Cambria sought to disqualify Morrisey for bias and asked to be reinstated. The state's highest tribunal, while finding no bias, removed Morrisey to avoid the appearance of impropriety, but declined to order reinstatement.

In U.S. District Court, the two lawyers sought to halt prosecution of the pamphlet case until the replacement trial judge held a hearing on their applications to represent Flynt and Hustler.

The court ruled that the 14th Amendment gave them a right to represent the defendants that could be taken away only if "a meaningful hearing" was held first. The 6th U.S. Circuit Court of Appeals affirmed but was reversed.

In the dissenting opinion, Justice Stevens wrote that the "notion that a state trial judge has arbitrary and unlimited power" to bar a nonresident lawyer from his courtroom "is nothing but a remnant of a bygone era."

He also pointed out that some of the nation's most celebrated cases were litigated by nonresident lawyers, including Alexander Hamilton, Daniel Webster, Charles Evans Hughes, William Jennings Bryan and Thurgood Marshall.

School Desegregation

Nearly 23 years ago, a suit was filed to desegregate the dual school system —typical of southern states—in the East Baton Rouge Parish School District of Louisiana.

Under a plan adopted in 1970, busing began for 36,000 of 70,000 students (65 percent of them white), and faculty, staff and facilities were desegregated.

Of 113 schools, two are all white, 20 are all black, more than half are at least 90 percent black or white, and more than half of the blacks attend substantially all-black schools. Such patterns are attributable to residential housing patterns and a neighborhood-school policy, the school board contended.

Agreeing with the school board, U.S. District Judge E. Gordon West declared the school system to be unitary and ended his jurisdiction over it in August 1975.

Last April, however, the 5th U.S. Circuit Court of Appeals sent the case back to West because he hadn't made "explicit and specific findings" to show "whether the school board has met its burden": proving that its assignments of students to schools that are all or predominantly of one race are "genuinely nondiscriminatory," rather than the result of "present or past discriminatory action . . . ."

The Supreme Court let the ruling stand.