

# The Burger Court Opinion Writing Database

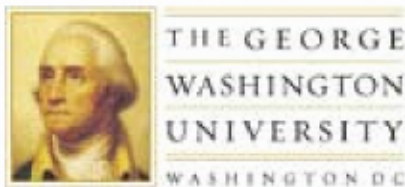
*Simpson v. Union Oil Co. of California*

396 U.S. 13 (1969)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

October 22, 1969

Re: No. 419 - Simpson v. Union Oil  
Co. of California

Dear Bill:

This case gives me some trouble,  
but I join you.

Regards,

W.E.B.

Mr. Justice Douglas

cc: The Conference

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To: The Chief Justice  
Mr. Justice Black ✓  
Mr. Justice Harlan ✓  
Mr. Justice Brennan ✓  
Mr. Justice Stewart ✓  
Mr. Justice White ✓  
Mr. Justice Fortas ✓  
Mr. Justice Marshall ✓

# SUPREME COURT OF THE UNITED STATES

October Term, 1969.

From: Black, J.

SIMPSON v. UNION OIL CO. OF CALIFORNIA

Circulated: \_\_\_\_\_

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

Recirculated: \_\_\_\_\_

No. 419. Decided October —, 1969.

(received - undated -  
10/23/69)

MR. JUSTICE BLACK, concurring in part and dissenting in part.

I wholeheartedly concur with the decision of the Court that both courts below were in error in holding that petitioner was not entitled to any damages in this case. I dissent, however, from the Court's denial of certiorari on the other question that petitioner raises, the effect of which is to leave standing that part of the District Court's judgment setting aside petitioner's jury verdict as excessive and granting respondent a new trial on the issue of damages.

The District Court's grant of a new trial did not rest upon a finding that any of the evidence on the issue of damages was improperly admitted or that the instructions to the jury were erroneous. The judge granted the new trial on the ground that the \$160,000 verdict "is against the weight of the evidence, shocks the conscience, is grossly and monstrously excessive, is the result of either passion and prejudice or of consideration by the jury of factors irrelevant to the litigation, is speculative, conjectural and a miscarriage of justice." Civil No. 37, 344 (D. C. N. D. Calif., filed May 23, 1967).

I do not agree that under the facts of this case the verdict should have shocked the court's conscience. Certainly the \$160,000 award does not shock my conscience, nor does it seem to me monstrous or the result of passion and prejudice on the part of the jury. Petitioner's growing filling station business was destroyed by respondent

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Mr. The Chief Justice  
Mr. Justice Black ✓  
Mr. Justice Harlan  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
~~Mr. Justice Douglas~~  
Mr. Justice Marshall

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SUPREME COURT OF THE UNITED STATES

October Term, 1969.

Douglas

10/18/69

SIMPSON v. UNION OIL CO. OF CALIFORNIA.

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

No. 419. Decided October —, 1969.

PER CURIAM.

This case represents the aftermath of our decision in *Simpson v. Union Oil Co.*, 377 U. S. 13, where we held that a "consignment" agreement for the sale of gasoline, required by Union Oil of lessees of its retail outlets, violated the Sherman Act. The case was remanded for a hearing on other issues and for a determination of damages. The last sentence of the Court's opinion stated:

"We reserve the question whether, when all the facts are known, there may be any equities that would warrant only prospective application in damage suits of the rule governing price fixing by the 'consignment' device which we announce today." *Id.*, at 24-25.

On remand, the District Court interpreted this sentence as an invitation to determine if any "equities" were present which would warrant precluding the imposition of damages on Union Oil. Its finding was that an application of the rule announced by this Court to the damages action would be unfair, on the ground that the decision in *United States v. General Electric Co.*, 272 U. S. 476, gave Union Oil a reasonable basis for believing that its actions were entirely lawful. The Court of Appeals affirmed.

The petition for certiorari presents the question whether in this case the principles we announced in *Simpson v. Union Oil Co.* should be made prospective in the present litigation. We grant the petition on that

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To: The Chief Justice  
Mr. Justice Black ✓  
Mr. Justice Harlan  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Fortas  
Mr. Justice Marshall

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SUPREME COURT OF THE UNITED STATES. J.

October Term, 1969.

SIMPSON v. UNION OIL CO. OF CALIFORNIA.

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

No. 419. Decided October —, 1969.

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The petition for certiorari presents the question whether in this case the principles we announced in *Simpson v. Union Oil Co.* should be made prospective in the present litigation. We grant the petition on that

10/20/69

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SECRET COPY OF DOCUMENT

October 20, 1969

RE: No. 419 - Simpson v. Union Oil Co.  
of California

Dear Bill:

I agree with your Per Curiam in the  
above case.

Sincerely,

W.J.B. Jr.

Mr. Justice Douglas

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE POTTER STEWART

October 20, 1969

No. 419 - Simpson v. Union Oil

Dear Bill,

I should appreciate your adding at the foot of  
the Per Curiam in this case the statement that Mr.  
Justice Stewart would deny the petition for certiorari.

Sincerely yours,

P.S. *OSI*

Mr. Justice Douglas

cc: The Conference

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U.S. SUPREME COURT RECORDS

October 20, 1969

Re: No. 419 - Simpson v. Union Oil  
Co. of California

Dear Bill:

Please join me.

Sincerely,

B.R.W.

Mr. Justice Douglas

cc: The Conference

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SECRETARY OF STATE



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THE OIL FIELD - SIMMONS V. UNITED OIL CO. OF CALIFORNIA

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