

The Burger Court Opinion Writing Database

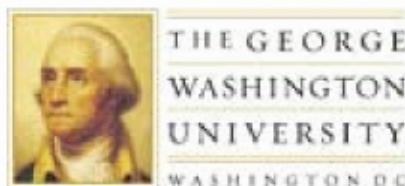
Time, Inc. v. Pape

401 U.S. 279 (1971)

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

February 19, 1971

Re: No. 109 - TIME, Inc. v. Pape

Dear Potter:

Please join me.

Regards,

WBB

Mr. Justice Stewart

cc: The Conference

To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

2nd DRAFT

SUPREME COURT OF THE UNITED STATES Argued Harlan, J.

No. 109.—OCTOBER TERM, 1970

Circulated: FEB 12 1971

Recirculated:

Time, Incorporated,
Petitioner,
v.
Frank Pape. } On Writ of Certiorari to the United
States Court of Appeals for the
Seventh Circuit.

[February —, 1971]

MR. JUSTICE HARLAN, dissenting.

I would affirm the judgment of the Court of Appeals, essentially for the reasons stated in Judge Duffy's opinion for that court. The treatment of this case by our Court, however, prompts me to venture these additional comments.

I fully agree with the rule first enunciated in *New York Times Co. v. Sullivan*, 376 U. S. 254 (1964), that restricts the liability of those who utter defamatory falsehoods regarding public officials. We there recognized that because "erroneous statement is inevitable in free debate," *id.*, at 271, "neither factual error nor defamatory content suffices to remove the constitutional shield from criticism of official conduct." *Id.*, at 273. But these considerations did not persuade us to rule that the Constitution grants absolute immunity to everyone, be it the news media or anyone else, who libels a public official, nor to conclude that the usual processes of law are inadequate for dealing with this kind of litigation. Rather, we decided that the substantial First Amendment interests implicated in any libel suit of this sort would be adequately served by a constitutional rule that subjects such a statement to the sanctions of the common law of libel only where it was uttered "with 'actual malice'—that is, with knowledge that it was false or with reckless disregard of whether it was false or not." *Id.*, at 280.

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

February 10, 1971

RE: No. 109 - Time, Inc. v. Pape

Dear Potter:

Please join me in your fine opinion in
the above.

Sincerely,


W. J. B. Jr.

Mr. Justice Stewart

cc: The Conference

To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

2nd DRAFT

From: Stewart, J.

SUPREME COURT OF THE UNITED STATES

circulated: FEB 9 1971

No. 109.—OCTOBER TERM, 1970 Recirculated:

Time, Incorporated, } On Writ of Certiorari to the United
v. } States Court of Appeals for the
Frank Pape. } Seventh Circuit.

[February —, 1971]

MR. JUSTICE STEWART delivered the opinion of the Court.

In November, 1961, the United States Commission on Civil Rights issued the fifth volume of its Report for that year, a document entitled *Justice*. A part of *Justice* was devoted to a study of "police brutality and related private violence," and contained the following paragraph:

"Search, seizure, and violence: Chicago, 1958.—The Supreme Court of the United States decided the case of *Monroe v. Pape* on February 20, 1961. Although this decision did not finally dispose of the case, it did permit the plaintiff to sue several Chicago police officers for violations of the Federal Civil Rights Acts on the basis of a complaint which alleged that:

"... [O]n October 29, 1958, at 5:45 a. m., thirteen Chicago police officers led by Deputy Chief of Detectives Pape, broke through two doors of the Monroe apartment, woke the Monroe couple with flashlights, and forced them at gunpoint to leave their bed and stand naked in the center of the living room; that Detective Pape struck Mr. Monroe several times with his flashlight, calling him 'nigger' and 'black boy'; that another officer pushed Mrs. Monroe; that other officers hit and kicked several of the chil-

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

February 10, 1971

Re: No. 109 - Time, Inc. v. Pape

Dear Potter:

Please join me.

Sincerely,

Byron

Mr. Justice Stewart

Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 18, 1971

Re: No. 109 - Time, Inc. v. Pape

Dear Potter:

Please join me.

Sincerely,



T.M.

Mr. Justice Stewart

cc: The Conference

February 12, 9171

Re: No. 109 - Time, Inc. v. Pape

Dear Potter:

Please join me in the opinion you have prepared
for this case.

Sincerely,

H.A.B.

Mr. Justice Stewart

cc: The Conference