

# The Burger Court Opinion Writing Database

## *Monitor Patriot Co. v. Roy*

401 U.S. 265 (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 8, 1971

Re: No. 62 - Monitor Patriot Co. v. Roy

Dear Potter:

Please join me in your opinion.

Regards,

*WEB*  
WEB

Mr. Justice Stewart

cc: The Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

FEB 20 1971

I concur in the judgments of the Court in No. 62, No. 109, and No. 118, for the reasons set out in my concurring opinion in *New York Times Co. v. Sullivan*, 376 U. S. 254, 293 (1964), in my concurring and dissenting opinion in *Curtis Publishing Co. v. Butts*, 388 U. S. 130, 170 (1967), and in MR. JUSTICE DOUGLAS' concurring opinion in *Garrison v. Louisiana*, 379 U. S. 64, 80 (1964). However, I dissent from those portions of the opinions in No. 62 and No. 118 which would permit these libel cases to be tried again under a different set of jury instructions. As I have stated before, "[I]t is time for this Court to abandon *New York Times Co. v. Sullivan* and adopt the rule to the effect that the First Amendment was intended to leave the press free from the harassment of libel judgments." *Curtis Publishing Co. v. Butts*, *supra*, at 172 (BLACK, J., concurring and dissenting).

January 30, 1971

Dear Potter:

I heard argument in No. 62 - Monitor Patriot v. Roy, and in No. 118 - Ocala Star-Banner v. Damron. But I did not vote because I am out of one or more other ~~label~~ cases due to the fact that counsel who represent me argued those other cases.

Whether those other cases have any bearing upon the two you have written, I do not know.

So I will just withhold my decision to take part or not to take part until the issues in those other cases are resolved.

In No. 77 - U. S. v. Weller, in which you wrote a Per Curiam, I voted the other way and I am inclined to write a dissent.

W. O. D.

Mr. Justice Stewart

WD

February 18, 1971

Dear Hugo:

Re: No. 62 -- Monitor Patriot v. Roy  
No. 109 -- Time v. Pape  
No. 118 -- Ocala Star-Banner v. Dameron

I sat in these cases but I did not vote because I am disqualified in Metromedia and I thought I would not sit in these three if they were controlled by or substantially influenced by Metromedia. I talked to Bill Brennan and he says they are not so I thought I would in due course cast my vote in these three cases in which Potter Stewart has written.

Before doing so, however, I wondered if you had worked out a formula to state your views either in capsule form or otherwise. If you have, the chances are about a thousand to one that I will be with you and need not write anything myself.

Whether these cases will come down on Monday, I do not know. But I have been told there is no reason why they should not.

William O. Douglas

Mr. Justice Black

WD Adm  
#1487

**February 1, 1971**

**Re: No. 62 - Monitor Patriot v. Roy**

**Dear Potter:**

**I agree with your opinion, and I am  
glad to join.**

**Sincerely,**

**J. M. H.**

**Mr. Justice Stewart**

**CC: The Conference**

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

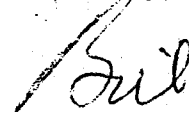
February 2, 1971

RE: No. 62 - Monitor Patriot Co. v. Roy

Dear Potter:

I agree.

Sincerely,

  
W.J.B. Jr.

Mr. Justice Stewart

cc: The Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

2nd DRAFT

From: Stewart, J.

SUPREME COURT OF THE UNITED STATES

Circulated: JAN 23 1971

No. 62.—OCTOBER TERM, 1970

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

Monitor Patriot Co. et al.,  
Petitioners,  
v.  
Roselle A. Roy, Etc. } On Writ of Certiorari to the  
Supreme Court of New  
Hampshire.

[February —, 1971]

MR. JUSTICE STEWART delivered the opinion of the Court.

On September 10, 1960, three days before the New Hampshire Democratic Party's primary election of candidates for the United States Senate, the Monitor-Patriot, a daily newspaper in Concord, New Hampshire, published a syndicated "Washington Merry-Go-Round" column discussing the forthcoming election. The column spoke of political maneuvering in the primary campaign, referred to the criminal records of several of the candidates, and characterized Alphonse Roy, one of the candidates, as a "former small-time bootlegger."<sup>1</sup> Roy was not

<sup>1</sup> The text of the portion of the column concerning the New Hampshire primary was as follows:

"Political Snafu

"Rock-ribbed Republican New Hampshire, whose ex-Gov. Sherman Adams was top kick in the White House for years and whose Sen. Styles Bridges is still top kick on the GOP side of the Senate, is so fouled up in a primary snafu that the state may go Democratic this year. The primary verdict is due next Tuesday.

"Even that able Senate stalwart, Styles Bridges, is restirring himself. He has nothing to worry about from his Republican opponent, but the Democrats have put up a dynamic Dartmouth professor, Herbert Hill, against him. The professor came within



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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

February 3, 1971

Re: No. 62 - Monitor Patriot v. Roy

Dear Potter:

Please join me.

Sincerely,

  
T.M.

Mr. Justice Stewart

cc: The Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

February 2, 1971

Re: No. 62 - Monitor Patriot Co. v. Roy

Dear Potter:

I feel that you have written a good strong opinion  
here and I would like to join it.

Sincerely,

H. A. B.

Mr. Justice Stewart

cc: The Conference