The Burger Court Opinion Writing Database

Rosenbloom v. Metromedia, Inc.

403 U.S. 29 (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

March 25, 1971

No. 66 -- Rosenbloom v. Metro-Media

Dear Bill:

I have considerable trouble with the proposed opinion in the above case.

My view is that given any law of libel -- state or federal -- (assuming there is any state law of libel remaining) the challenged statements are not defamatory. The reports accurately recited a fact, i.e., that Rosenbloom was raided, was arrested and that "1900 allegedly obscene books" were confiscated.

I agree with the general proposition that participation in any activity that is affected with important public interest draws the participants somewhere in the "target zone" the Court has given public officials and public figures. In this sense every publisher or distributor of books is about as much "fair game" as a "public figure!"

It may be that other writing will clarify the problem but these are my "interim reactions."

Regards,

WEB

Mr. Justice Brennan

cc: The Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

April 19, 1971

No. 66 - Rosenbloom v. Metromedia

Dear Bill:

Please join me in the above.

Regards,

WEB

Mr. Justice Brennan

cc: The Conference

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

April 27, 1971

CHAMBERS OF
THE CHIEF JUSTICE

No. 66 -- Rosenbloom v. Metromedia

MEMORANDUM TO THE CONFERENCE:

I have concluded to add the brief comment attached as a concurrence in the above case.

Regards,

WEB

To: Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan ✓
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

2nd DRAFT

From: The Chief Justice

Circulated: APR 27 1971

Recirculated:

SUPREME COURT OF THE UNITED STATES

No. 66.—October Term, 1970

George A. Rosenbloom, Petitioner, v. Metromedia, Inc. | On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

[May —, 1971]

Mr. Chief Justice Burger, concurring.

I concur in the judgment and opinion of the Court but add a brief comment.

Such reservations—perhaps more accurately "questions"—as I have in this area of the law relate to the need of every man to protect his own reputation. A man's standing, his good name, is no small asset; because it is a considerable property it is as much entitled to protection as his skull or his eyes and hands. With a majority of the Court I would, on a proper showing, allow recovery for knowingly false or reckless assaults on reputation, for "[o]f what value is free speech to a man to whom others have ceased to listen because of a malicious blackening of his name?"*

*Carr, Those Wise Restraints Which Make Men Free, in The Constitution of the United States, Jones, ed. (1962), 39, 44.

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

CHAMBERS OF
THE CHIEF JUSTICE

May 25, 1971

Re: No. 66 - Rosenbloom v. Metromedia

MEMORANDUM TO THE CONFERENCE:

I have decided to withdraw my concurrence and now join the opinion proposed by Justice Brennan.

Regards,

WEB

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

1st DRAFT

From: Black, J.

Circulated: 3/23

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 66.—October Term, 1970

George A. Rosenbloom, Petitioner, v. Metromedia, Inc. } On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

[March —, 1971]

Mr. Justice Black, concurring.

I concur in the judgment of the Court for the reasons stated in my concurring opinion in *New York Times* 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). I agree of course that First Amendment protection extends to "all discussion and communication involving matters of legitimate public concern, without regard to whether the persons involved are famous or anonymous." *Ante*, at —. However, in my view, the First Amendment does not permit the recovery of libel judgments against the news media even when statements are broadcast with knowledge they are false. As I stated in *Curtis Publishing Co.* v. *Butts*, *supra*, "[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." *Id.*, at 172.

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

February 17, 1971

Dear Bill:

In No. 66 - Rosenbloom v. Metromedia, would you please note that I took no part in the consideration or decision of the case?

W. O. D.

Mr. Justice Brennan

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

CHAMBERS OF
JUSTICE JOHN M. HARLAN

May 11, 1971

Re: No. 66 - Rosenbloom v. Metromedia

Dear Thurgood:

After reflecting on your proposed dissent in this case, of which you were kind enough to give me a preview, I have come out with somewhat different conclusions than those reached in your dissent. I enclose a draft dissent reflecting my thinking, a copy of which I am also sending to Potter, and which meanwhile I am not circulating to the Conference.

The basic thing in which I depart from you relates to the subject of punitive damages. I do not think that the States should be foreclosed from awarding any punitive damages, and believe that the most satisfactory accommodation with First Amendment concerns would be to apply the New York Times rule to that aspect of state libel law. This, of course, is different from what I had indicated in the conversation which you, Potter and I had some time ago. Perhaps I should add that as to compensatory damages, I have also tried to work out in this draft some control over the amount of such damages.

I have no idea of what you and Potter may think of my approach, and will of course be delighted to have a further discussion with both of you if you think that desirable. If, however, my approach does not commend itself to you, I suggest that we then each circulate our dissents. Pending word from you and Potter, I am not, as indicated above, circulating.

Sincerely,

J.M.H.

Mr. Justice Marshall

Mr. Justice Stewart

TM

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 66.—October Term, 1970

George A. Rosenbloom, Petitioner, *v.* Metromedia, Inc. | On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

[May —, 1971]

Mr. Justice Harlan, dissenting.

The very facts of this case demonstrate that uncritical acceptance of the Pennsylvania libel law here involved would be inconsistent with those important First and Fourteenth Amendment values we first treated with in such a context in *New York Times* v. *Sullivan*, 376 U. S. 254 (1964). However, it is also implicitly demonstrated by the Court's opinion that only an undiscriminating assessment of those values would lead us to extend the *New York Times* rule in full force to all purely private libels. The Court would resolve the dilemma by distinguishing those private libels that arise out of events found to be of "legitimate public concern" from those that do not, and subjecting the former to full-scale application of the *New York Times* rule.

For the reasons set forth in Part I of my Brother Marshall's dissent, I cannot agree to such a solution. As he so well demonstrates, the principal failing of the Court's opinion is its inadequate appreciation of the limitations imposed by the legal process in accommodating the tension between state libel laws and the federal constitutional protection given to freedom of speech and press.

Once the evident need to balance the values underlying each is perceived, it might seem, purely as an abstract

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

From: Harlan, J.

Circulated: MAY 19 1971

No. 66.—October Term, 1970

Recirculated: _____

George A. Rosenbloom, Petitioner, *v.* Metromedia, Inc. | On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

[May —, 1971]

Mr. Justice Harlan, dissenting.

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For the reasons set forth in Part I of my Brother Marshall's dissent, I cannot agree to such a solution. As he so well demonstrates, the principal failing of the Court's opinion is its inadequate appreciation of the limitations imposed by the legal process in accommodating the tension between state libel laws and the federal constitutional protection given to freedom of speech and press.

Once the evident need to balance the values underlying each is perceived, it might seem, purely as an abstract

Stylistic changes -- esp. "Court" & "plurality".
+p.10

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

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

Mr. Justice Harlan, J.

Circulated:

No. 66.—October Term, 1970

Recirculated: MAY 26 1971

George A. Rosenbloom, Petitioner, *v.* Metromedia, Inc.	On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

[June —, 1971]

Mr. Justice Harlan, dissenting.

The very facts of this case demonstrate that uncritical acceptance of the Pennsylvania libel law here involved would be inconsistent with those important First and Fourteenth Amendment values we first treated with in an analogous context in *New York Times* v. *Sullivan*, 376 U. S. 254 (1964). However, as the plurality opinion implicitly recognizes, only an undiscriminating assessment of those values would lead us to extend the *New York Times* rule in full force to all purely private libels. My Brother Brennan's opinion would resolve the dilemma by distinguishing those private libels that arise out of events found to be of "legitimate public concern" from those that do not, and subjecting the former to full-scale application of the *New York Times* rule.

For the reasons set forth in Part I of my Brother Marshall's dissent, I cannot agree to such a solution. As he so well demonstrates, the principal failing of the plurality opinion is its inadequate appreciation of the limitations imposed by the legal process in accommodating the tension between state libel laws and the federal constitutional protection given to freedom of speech and press.

Once the evident need to balance the values underlying each is perceived, it might seem, purely as an abstract

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

Justic changes
+ pp. 10, 14-16

4th DRAFT

From: Harlan, J.

SUPREME COURT OF THE UNITED STATES

No. 66.—OCTOBER TERM, 1970

Circulated: _____

Recirculated: JUN 11 1971

George A. Rosenbloom, Petitioner, *v.* Metromedia, Inc. | On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

[June —, 1971]

MR. JUSTICE HARLAN, dissenting.

The very facts of this case demonstrate that uncritical acceptance of the Pennsylvania libel law here involved would be inconsistent with those important First and Fourteenth Amendment values we first treated with in an analogous context in *New York Times* v. *Sullivan*, 376 U. S. 254 (1964). However, as the plurality opinion implicitly recognizes, only an undiscriminating assessment of those values would lead us to extend the *New York Times* rule in full force to all purely private libels. My Brother BRENNAN's opinion would resolve the dilemma by distinguishing those private libels that arise out of events found to be of "public or general concern" ~~from those that do not, and subjecting the former~~ to full-scale application of the *New York Times* rule.

For the reasons set forth in Part I of my Brother MARSHALL's dissent, I cannot agree to such a solution. As he so well demonstrates, the principal failing of the plurality opinion is its inadequate appreciation of the limitations imposed by the legal process in accommodating the tension between state libel laws and the federal constitutional protection given to freedom of speech and press.

Once the evident need to balance the values underlying each is perceived, it might seem, purely as an abstract

Not Circulated

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 66.—October Term, 1970

George A. Rosenbloom, Petitioner, *v.* Metromedia, Inc. | On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

[February —, 1971]

Mr. Justice Brennan delivered the opinion of the Court.

In a series of cases beginning with *New York Times* v. *Sullivan*, 376 U. S. 254 (1966), the Court has considered the limitations upon state civil libel actions imposed by the constitutional guarantees of freedom of speech and of the press. *New York Times* held that in a civil libel action by a public official against a newspaper those guarantees required proof that the defamatory falsehood was uttered with "knowledge that it was false or with reckless disregard of whether it was false or not." *Id.*, 279–280. The same requirement was later held to apply to plaintiffs who were "public figures." The several cases since considered involved actions of "public officials" or "public figures," usually, but not always, against newspapers or magazines.[1] Common to all the cases was a

[1] See, *e. g.*, *Associated Press* v. *Walker*, 388 U. S. 130 (1967) (retired Army general against a wire service); *Curtis Pub. Co.* v. *Butts*, 388 U. S. 130 (1967) (former football coach against publisher of magazine); *Beckley Newspaper Corp.* v. *Hanks*, 389 U. S. 81 (1967) (court clerk against newspaper); *Greenbelt Pub. Assn.* v. *Bresler*, 398 U. S. 6 (1970) (state representative and real estate developer against publisher of newspaper); *Ocala Star-Banner Company* v. *Damron*, — U. S. — (1971) (defeated candidate for tax

Circulated
2-17-71

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 66.—October Term, 1970

George A. Rosenbloom, Petitioner, *v.* Metromedia, Inc. } On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

[February —, 1971]

Mr. Justice Brennan delivered the opinion of the Court.

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March 23, 1971

RE: No. 66 - Rosenbloom v. Metromedia, Inc.

Dear Harry:

I very much appreciate your helpful note. I had begun to feel completely isolated.

Of course, I'll drop the first seven lines of the second paragraph at page 11 and start the paragraph with the word "Self-governments, etc." that follows.

At page 21, what would you think of my changing the sentence that troubles you to read as follows:

"We thus hold that a libel action, as here, by a private individual against a licensed radio station for a defamatory falsehood in a newscast relating to his involvement, etc."

Sincerely,

WB

Mr. Justice Blackmun

Circulated
3-25-71

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 66.—OCTOBER TERM, 1970

George A. Rosenbloom, Petitioner, *v.* Metromedia, Inc.	On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

[March —, 1971]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

In a series of cases beginning with *New York Times* v. *Sullivan*, 376 U. S. 254 (1964), the Court has considered the limitations upon state libel laws imposed by the constitutional guarantees of freedom of speech and of the press. *New York Times* held that in a civil libel action by a public official against a newspaper those guarantees required clear and convincing proof that a ~~defamatory falsehood~~ alleged as libel was uttered with "knowledge that it was false or with reckless disregard of whether it was false or not." *Id.*, 279–280. The same requirement was later held to apply to "public figures" who sued in libel on the basis of alleged defamatory falsehoods. The several cases considered since *New York Times* involved actions of "public officials" or "public figures," usually, but not always, against newspapers or magazines.[1] Common to all the cases was a

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 29, 1971

RE: No. 66 - Rosenbloom v. Metromedia

Dear Chief:

Thank you for your note of March 25 in the above. I had considered the possibility of treating the challenged statements as not defamatory as you suggest. However, petitioner's complaint is focused narrowly on two items: the failure of two newscasts to include the word "allegedly" as a qualification of "obscene books" as well as the labeling of petitioner as a "smut-peddler." This seems to me to foreclose that avenue of approach.

If I am right about that, we must reach the broader issue. The third paragraph of your note states concisely the precise proposition that I was seeking to embody in my draft opinion. If you feel that the opinion is not clear enough in embracing the "general proposition" you agree with, I would welcome any suggestions you might have.

Sincerely,

WJB

The Chief Justice

cc: The Conference

2, 8, 9, 10, 11, 13, 14, 15, 18, 19, 22, 23-25.

Circulated 5-27-71

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 66.—OCTOBER TERM, 1970

George A. Rosenbloom, Petitioner, *v.* Metromedia, Inc. | On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

[June —, 1971]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

In a series of cases beginning with *New York Times* v. *Sullivan*, 376 U. S. 254 (1964), the Court has considered the limitations upon state libel laws imposed by the constitutional guarantees of freedom of speech and of the press. *New York Times* held that in a civil libel action by a public official against a newspaper those guarantees required clear and convincing proof that a defamatory falsehood alleged as libel was uttered with "~~knowledge that it was false or with reckless disregard~~ of whether it was false or not." *Id.*, 279–280. The same requirement was later held to apply to "public figures" who sued in libel on the basis of alleged defamatory falsehoods. The several cases considered since *New York Times* involved actions of "public officials" or "public figures," usually, but not always, against newspapers or magazines.[1] Common to all the cases was a

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Circulated
6-2-71

5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 66.—October Term, 1970

George A. Rosenbloom, Petitioner, *v.* Metromedia, Inc.	On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

[June —, 1971]

Mr. Justice Brennan announced the judgment of the Court and an opinion in which The Chief Justice and Mr. Justice Blackmun join.

In a series of cases beginning with *New York Times* v. *Sullivan*, 376 U. S. 254 (1964), the Court has considered the limitations upon state libel laws imposed by the constitutional guarantees of freedom of speech and of the press. *New York Times* held that in a civil libel action by a public official against a newspaper those guarantees required clear and convincing proof that a defamatory falsehood alleged as libel was uttered with "knowledge that it was false or with reckless disregard of whether it was false or not." *Id.*, 279–280. The same requirement was later held to apply to "public figures" who sued in libel on the basis of alleged defamatory falsehoods. The several cases considered since *New York Times* involved actions of "public officials" or "public figures," usually, but not always, against newspapers or magazines.[1] Common to all the cases was a

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NOTE: Where it is deemed desirable, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Lumber Co.*, 200 U.S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

ROSENBLOOM *v.* METROMEDIA, INC.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 66. Argued December 7–8, 1970—Decided June 7, 1971

Respondent's radio station, which broadcast news reports every half hour, broadcast news stories of petitioner's arrest for possession of obscene literature and the police seizure of "obscene books," and stories concerning petitioner's lawsuit against certain officials alleging that the magazines he distributed were not obscene and seeking injunctive relief from police interference with his business. These latter stories did not mention petitioner's name, but used the terms "smut literature racket" and "girlie-book peddlers." Following petitioner's acquittal of criminal obscenity charges, he filed this diversity action in District Court seeking damages under Pennsylvania's libel law. The jury found for petitioner and awarded $25,000 in general damages; and $725,000 in punitive damages, which was reduced by the court on remittitur to $250,000. The Court of Appeals reversed, holding that the *New York Times Co.* v. *Sullivan*, 376 U. S. 254, standard applied, and "the fact that plaintiff was not a public figure cannot be accorded decisive significance." *Held:* The judgment is affirmed. Pp. 11––.

415 F. 2d 892, affirmed.

MR. JUSTICE BRENNAN, joined by THE CHIEF JUSTICE and MR. JUSTICE BLACKMUN, concluded that the *New York Times* standard of knowing or reckless falsity applies in a state civil libel action brought by a private individual for a defamatory falsehood uttered in a radio news broadcast about the individual's involvement in an event of public or general interest. Pp. 11–27.

MR. JUSTICE BLACK in a separate opinion concluded that the First Amendment protects the news media from libel judgments even when statements are made with knowledge that they are false. P. 1.

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

CHAMBERS OF
JUSTICE POTTER STEWART

March 11, 1971

MEMORANDUM TO THE CONFERENCE

No. 66 - Rosenbloom v. Metromedia

I expect in due course to write a dissenting opinion in this case.

P.S.
P.S.

CHAMBERS OF
JUSTICE POTTER STEWART

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

May 17, 1971

Re: No. 66 - Rosenbloom v. Metromedia

Dear Thurgood,

I think your proposed dissenting opinion in this case is fine, and am glad to join it.

Sincerely yours,

P.S.

Mr. Justice Marshall

Copy to Mr. Justice Harlan

TM

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

1st DRAFT

From: White, J.

Circulated: 5-24-71

Recirculated:

SUPREME COURT OF THE UNITED STATES

No. 66.—October Term, 1970

George A. Rosenbloom, Petitioner, *v.* Metromedia, Inc. } On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

[June —, 1971]

Mr. Justice White, concurring in the judgment.

I

Under existing law the First Amendment is deemed to permit recoveries for damaging falsehoods published about public officials or public figures only if the defamation is knowingly or recklessly false. But until today the First Amendment has not been thought to prevent citizens who are neither public officials nor public figures from recovering damages for defamation upon proving publication of a false statement injurious to their reputation. There has been no necessity to show deliberate falsehood, recklessness, or even negligence.

The Court has now decided that the First Amendment requires further restrictions on state defamation laws. Mr. Justice Brennan and two other members of the Court would require proof of knowing or reckless misrepresentation of the facts whenever the publication concerns a subject of legitimate public interest, even though the target is a "private" citizen. Only residual areas would remain in which a lower degree of proof would obtain.

Three other members of the Court also agree that private reputation has enjoyed too much protection and the media too little. But in the interest of protecting reputation, they would not roll back state laws so far.

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

pp 4, 5

2nd DRAFT

From: White, J.

SUPREME COURT OF THE UNITED STATES

Circulated: _____

No. 66.—October Term, 1970

Recirculated: 6-3-71

George A. Rosenbloom, Petitioner, *v.* Metromedia, Inc. | On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

[June —, 1971]

Mr. Justice White, concurring in the judgment.

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TM

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 66.—October Term, 1970

George A. Rosenbloom, Petitioner, *v.* Metromedia, Inc.	On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

[May —, 1971]

Mr. Justice Marshall, dissenting.

Here, unlike the other cases involving the *New York Times*[1] doctrine, we are dealing with an individual who held no public office, who had not taken part in any public controversy, and who lived an obscure private life.[2] George Rosenbloom, before the events and reports of the events involved here, was just one of the millions of Americans who live their lives in obscurity.

The protection of the reputation of such anonymous persons "from unjustified invasion and wrongful hurt reflects no more than our basic concept of the essential dignity and worth of every human being—a concept at the root of any decent system of ordered liberty." *Rosenblatt* v. *Baer*, 383 U. S. 75, 92 (1966) (Stewart, J., concurring). But the concept of a citizenry informed by a free and unfettered press is also basic to our system of ordered liberty. Here these two essential and fundamental values conflict.

I

The Court has attempted to resolve the conflict by creating a conditional constitutional privilege for defamation published in connection with an event that is found

[1] *New York Times* v. *Sullivan*, 376 U. S. 254 (1964).

[2] See, *e. g.*, *Associated Press* v. *Walker*, 388 U. S. 130 (1967); *Curtis Pub. Co.* v. *Butts*, 388 U. S. 130 (1967); *Beckley Newspaper Corp.* v. *Hanks*, 389 U. S. 81 (1967); *Greenbelt Publ. Assn.* v. *Bresler*, 398 U. S. 6 (1970); *Rosenblatt* v. *Baer*, 383 U. S. 75 (1966).

5/17/71

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 66.—October Term, 1970

George A. Rosenbloom, Petitioner, *v.* Metromedia, Inc. | On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

[May —, 1971]

Mr. Justice Marshall, dissenting.

Here, unlike the other cases involving the *New York Times*[1] doctrine, we are dealing with an individual who held no public office, who had not taken part in any public controversy, and who lived an obscure private life.[2] George Rosenbloom, before the events and reports of the events involved here, was just one of the millions of Americans who live their lives in obscurity.

The protection of the reputation of such anonymous persons "from unjustified invasion and wrongful hurt reflects no more than our basic concept of the essential dignity and worth of every human being—a concept at the root of any decent system of ordered liberty." *Rosenblatt* v. *Baer*, 383 U. S. 75, 92 (1966) (Stewart, J., concurring). But the concept of a citizenry informed by a free and unfettered press is also basic to our system of ordered liberty. Here these two essential and fundamental values conflict.

I

The Court has attempted to resolve the conflict by creating a conditional constitutional privilege for defamation published in connection with an event that is found

[1] *New York Times* v. *Sullivan*, 376 U. S. 254 (1964).

[2] See, *e. g.*, *Associated Press* v. *Walker*, 388 U. S. 130 (1967); *Curtis Pub. Co.* v. *Butts*, 388 U. S. 130 (1967); *Beckley Newspaper Corp.* v. *Hanks*, 389 U. S. 81 (1967); *Greenbelt Publ. Assn.* v. *Bresler*, 398 U. S. 6 (1970); *Rosenblatt* v. *Baer*, 383 U. S. 75 (1966).

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

4th DRAFT

From: Marshall, J.

Circulated: MAY 19 1971

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 66.—OCTOBER TERM, 1970

George A. Rosenbloom, Petitioner, v. Metromedia, Inc. | On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

[May —, 1971]

MR. JUSTICE MARSHALL, with whom MR. JUSTICE STEWART joins, dissenting.

Here, unlike the other cases involving the *New York Times*[1] doctrine, we are dealing with an individual who held no public office, who had not taken part in any public controversy, and who lived an obscure private life.[2] George Rosenbloom, before the events and reports of the events involved here, was just one of the millions of Americans who live their lives in obscurity.

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

5th DRAFT

From: Marshall, J.

Circulated: _____

Recirculated: MAY 26

SUPREME COURT OF THE UNITED STATES

No. 66.—October Term, 1970

George A. Rosenbloom, Petitioner, v. Metromedia, Inc. } On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

[June —, 1971]

Mr. Justice Marshall, with whom Mr. Justice Stewart joins, dissenting.

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2, 9 STYLISTIC CHANGES THROUGHOUT.

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

6th DRAFT

SUPREME COURT OF THE UNITED STATES

From: Marshall, J.

Circulated:

Recirculated: JUN 1 1971

No. 66.—October Term, 1970

George A. Rosenbloom, Petitioner, v. Metromedia, Inc. } On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

[June —, 1971]

Mr. Justice Marshall, with whom Mr. Justice Stewart joins, dissenting.

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p. 2

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

7th DRAFT

From: Marshall, J.

Circulated:

Recirculated: JUN 1 1971

SUPREME COURT OF THE UNITED STATES

No. 66.—OCTOBER TERM, 1970

George A. Rosenbloom, Petitioner, *v.* Metromedia, Inc. | On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

[June —, 1971]

MR. JUSTICE MARSHALL, with whom MR. JUSTICE STEWART joins, dissenting.

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 22, 1971

Re: No. 66 - Rosenbloom v. Metromedia, Inc.

Dear Bill:

I fully understand your concern about not having had a response from anyone since the circulation of February 17 other than Mr. Justice Stewart's note that he intends to write a dissenting opinion.

I am about ready to join you, but have the mild reservations about the opinion mentioned below. I thought for a time of using Mr. Justice Black's device of agreeing "with substantially all that is said in the opinion," but have concluded that it is better to point out the areas which trouble me. They are:

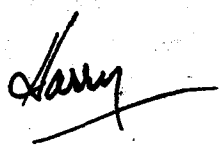
1. On page 11, I am not sure that I could join the first seven lines of the second paragraph. I suspect I am not an absolutist so far as the First Amendment is concerned, and I am not sure that the First Amendment is the cornerstone of our government. It is important, but there are others. If those seven lines could be omitted, I would be happier.

2. On page 21, the second sentence of the paragraph beginning on that page bothers me somewhat. This, of course, is the heart of your opinion. The sentence as written is unlimited so far as the identity of a defendant is concerned. If it could be confined to an action "against a defendant which qualifies as a genuine segment of the communications media" or some language to this general effect, I believe I would be satisfied. I am disinclined to have the central sentence of the opinion left completely wide open at

this point, for I feel there is still some room for the operation of state libel laws against private individuals or non-genuine segments of the media. At least I feel we need not go so far in the present context.

My vote, of course, is subject to what will be forthcoming in the dissent. I suspect, however, that I am fairly firm for affirmance.

Sincerely,



Mr. Justice Brennan

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 23, 1971

Re: No. 66 - Rosenbloom v. Metromedia, Inc.

Dear Bill:

I have your note of March 23. With those changes, I am ready to go along. This is subject, of course, to the usual reservation about what any dissent may have to offer.

Sincerely,

H.A.B.

Mr. Justice Brennan

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 29, 1971

Re: No. 66 - Rosenbloom v. Metromedia, Inc.

Dear Bill:

Please join me in your recirculation of March 25. This concurrence is necessarily subject to the usual reservation about what the forthcoming dissent contains.

Sincerely,

Harry

Mr. Justice Brennan

cc: The Conference