

The Burger Court Opinion Writing Database

Union Oil Co. of California v. The San Jacinto

409 U.S. 140 (1972)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



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

CHAMBERS OF
THE CHIEF JUSTICE

October 31, 1972

Re: 71-900 - Union Oil Co. of Calif. v. Tugboat San Jacinto

MEMORANDUM TO THE CONFERENCE:

I do not think I can follow Potter's approach in this case and in light of Bill Brennan's memo, the case is reassigned to Bill Rehnquist.

Regards,

WSB

(3) M
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

November 17, 1972

Re: No. 71-900 - Union Oil Co. of Calif. v. Tugboat San Jacinto

Dear Bill:

Please join me.

Regards,

WBQ

Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

October 31, 1972

Dear Potter:

I will be willing to go with you on
proportional damages in No. 71-900 - Union Oil
v. Tugboat San Jacinto.

W. O. D.

Mr. Justice Stewart

cc: Conference

Supreme Court of the United States
Washington 25, D. C.

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

November 1, 1972

Dear Potter:

I wrote you that in 71-900 - Union Oil v. Tugboat San
Jacinto that I would join you in the proportional fault point.

To avoid any misunderstanding I adhere to affirmance on the
"half distance rule".

W.O.D.
William O. Douglas

Mr. Justice Stewart

cc: Conference

*Great
note
needed*
CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

Supreme Court of the United States
Washington 25, D. C.

*60-112
file*
November 8, 1972

Dear Bill,

There is much to be said for the views in your memo in 71-900, Union Oil Company v. Tugboat San Jacinto. But I dislike resolving disputed fact cases here and incline to take the decision of the Court of Appeals on the facts and proceed only to the questions of law.

As I recall the point we were interested in at the time of the grant was the issue of damages.

William O. Douglas

Mr. Justice Rehnquist

cc: Law Clerks

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ON WAR, REVOLUTION AND PEACE
Stanford, California 94301-6000



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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

November 21, 1972

Dear Potter:

I join your dissent in 71-900,

Union Oil Company of California v. The Tug-
boat San Jacinto, et al. recirculated November
12, 1972.

cc: W

William O. Douglas

Mr. Justice Stewart

cc: Conference
Law Clerks

Supreme Court of the United States
Washington, D. C. 20543CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

October 31, 1972

RE: No. 71-900 Union Oil Co. of California v. Tugboat
San Jacinto

Dear Chief:

We granted certiorari in this case to reconsider the equal fault rule. Potter's covering note to his memorandum supporting abandonment of that rule and the adoption of a rule of proportional fault mentions "rumors that other members of the Conference may be having second thoughts about reaffirming the present rule." I am one of the "other members" and had in process a memorandum along the lines of Potter's circulation when that was circulated. I am prepared to join Potter.

Since the Conference vote to confirm the equally divided damages rule was 8 to 1, it may be that there is still a majority for that result. In the circumstances I therefore suggest that the opinion be reassigned. I think this would be appropriate even though the majority on the other issue - the half distance rule - was 7 to 2, including Potter and me.

Sincerely,



The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

November 21, 1972

RE: No. 71-900 - Union Oil v. Tugboat
San Jacinto, et al.

Dear Potter:

Please join me in your dissent in the
above.

Sincerely,



Mr. Justice Stewart

cc: The Conference

Supreme Court of the United States
Washington, D. C. 2054312
CHAMBERS OF
JUSTICE POTTER STEWART

October 30, 1972

Re: No. 71-900 - Union Oil of California v.
The Tugboat San Jacinto

Memorandum to the Conference:

When we discussed this case at the Conference, my notes indicate that I was alone in believing that we should abandon the equally divided damages rule and adopt a rule of proportional fault. I have since heard rumors that other members of the Conference may be having second thoughts about reaffirming the present rule. Accordingly, I attach herewith a memorandum embodying what I had originally prepared as a proposed dissent.

Sincerely yours,



To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From: Stewart, J.

Circulated: OCT 30 1972

Recirculated: _____

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 71-900

Union Oil Company of California, Petitioner,
v.
The Tugboat San Jacinto et al. } On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[November —, 1972]

Memorandum of MR. JUSTICE STEWART.

On a misty Christmas eve the petitioner's oil tanker—the *Santa Maria*—was moving upstream along the Oregon side of the channel of the Columbia River. The vessel was proceeding at half speed with forward visibility of one and a half to two miles. Both visually and by radar, the tanker's pilot sighted the respondent tug, the *San Jacinto*, which was moving downstream along the Washington side of the channel more than a mile ahead. The tug, with a heavily laden barge in tow, disappeared from sight into a patch of fog. The inexperienced crew of the tug became disoriented in the fog and mistakenly thought the tanker had veered to the Washington side of the channel. To avoid what he believed would be a collision, the master of the tug executed a sharp leftward U-turn directly into the path of the oncoming tanker. While the tug successfully completed its turn, the barge swung around and smashed into the tanker, damaging her forward left side and driving her aground.

In a complaint and cross-complaint the owners of both vessels sued, each charging the other with sole blame. The District Court found that the collision was entirely the fault of the tug—in navigating at an unreasonable speed in fog, in failing to maintain a proper lookout, in failing to sound fog signals, in failing to ascertain the

Supreme Court of the United States
Washington, D. C. 20543CHAMBERS OF
JUSTICE POTTER STEWART

November 6, 1972

MEMORANDUM TO THE CONFERENCE

Re: No. 71-900, Union Oil Co. v. Tugboat

If Bill Rehnquist's memorandum becomes the opinion of the Court, I shall file a dissenting opinion. While, as indicated in my original memorandum, I have some doubt as to the applicability of the rule of sight to the circumstances of this case, I would not reject the factual conclusions of the District Court and the Court of Appeals. (Even the District Court found a "technical violation.") And certainly I would not impose the limitations upon the applicability of the rule of sight contained in Bill Rehnquist's memorandum, which I think will only lead to a great increase in litigation.

Accordingly, I must face the question that we granted certiorari in this case to consider -- the divided damages rule. On that issue, I adhere to the views expressed in my earlier memorandum.

P.S.

2-5 new
9/12

3rd DRAFT

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

SUPREME COURT OF THE UNITED STATES

No. 71-900

Circulated: _____

Recirculated: NOV 21 1972

Union Oil Company of California, Petitioner,
v.
The Tugboat San Jacinto et al.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[November —, 1972]

MR. JUSTICE STEWART, dissenting.

On a misty Christmas eve the petitioner's oil tanker—the *Santa Maria*—was moving upstream along the Oregon side of the channel of the Columbia River. The vessel was proceeding at half speed with forward visibility of one and a half to two miles. Both visually and by radar, the tanker's pilot sighted the respondent tug, the *San Jacinto*, which was moving downstream along the Washington side of the channel more than a mile ahead. The tug, with a heavily laden barge in tow, disappeared from sight into a patch of fog. The inexperienced crew of the tug became disoriented in the fog and mistakenly thought the tanker had veered to the Washington side of the channel. To avoid what he believed would be a collision, the master of the tug executed a sharp leftward U-turn directly into the path of the oncoming tanker. While the tug successfully completed its turn, the barge swung around and smashed into the tanker, damaging her forward left side and driving her aground.

In a complaint and cross-complaint the owners of both vessels sued, each charging the other with sole blame. The District Court found that the collision was entirely the fault of the tug—in navigating at an unreasonable speed in fog, in failing to maintain a proper lookout, in failing to sound fog signals, in failing to ascertain the

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

CHAMBERS OF
JUSTICE POTTER STEWART

November 27, 1972

MEMORANDUM TO THE CONFERENCE

Re: Union Oil Co. v. The Tugboat San Jacinto

We granted certiorari in this case "principally to consider petitioner's request that we abandon the divided damages rule." Bill Rehnquist's opinion for the Court, which a majority have joined, does not reach that issue, although it is my understanding that at least five of us would hold that the divided damages rule should be abandoned if the issue were reached.

We have been holding another case for this one: No. 72-322, Flying Foam v. Iron Ore Transport Co., in which the parties brief and argue the question whether the divided damages rule should be abandoned. If the petition in Flying Foam is to be granted and the divided damages question to be decided, I would withdraw Part II of my dissenting opinion in Union Oil, and confine my dissent to the issue of the applicability of the so called rule of sight--the only issue the Court decides. It is not clear to me, however, whether as many as four Justices will vote to grant certiorari in the Flying Foam case. Accordingly I have taken the liberty of asking the Clerk to put that case on our Conference List for Friday, December 1, so that I may know whether to withdraw Part II of my dissenting opinion in Union Oil.

P.S.

32-1,5
JUL 11/12
Your favor recd 11/12

5th DRAFT

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

SUPREME COURT OF THE UNITED STATES

S. Stewart, J.

No. 71-900

Circulated: _____

Recirculated: DEC 1 1972

Union Oil Company of California, Petitioner,
v.
The Tugboat San Jacinto et al. } On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[November —, 1972]

MR. JUSTICE STEWART, with whom MR. JUSTICE DOUGLAS and MR. JUSTICE BRENNAN join, dissenting.

On a misty Christmas eve the petitioner's oil tanker—the *Santa Maria*—was moving upstream along the Oregon side of the channel of the Columbia River. The vessel was proceeding at half speed with forward visibility of one and a half to two miles. Both visually and by radar, the tanker's pilot sighted the respondent tug, the *San Jacinto*, which was moving downstream along the Washington side of the channel more than a mile ahead. The tug, with a heavily laden barge in tow, disappeared from sight into a patch of fog. The inexperienced crew of the tug became disoriented in the fog and mistakenly thought the tanker had veered to the Washington side of the channel. To avoid what he believed would be a collision, the master of the tug executed a sharp leftward U-turn directly into the path of the oncoming tanker. While the tug successfully completed its turn, the barge swung around and smashed into the tanker, damaging her forward left side and driving her aground.

In a complaint and cross-complaint the owners of both vessels sued, each charging the other with sole blame. The District Court found that the collision was entirely the fault of the tug—in navigating at an unreasonable speed in fog, in failing to maintain a proper lookout, in failing to sound fog signals, in failing to ascertain the

B

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

November 13, 1972

Re: No. 71-900 - Union Oil Co. v. The Tugboat
San Jacinto

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Rehnquist

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

November 1, 1972

Re: No. 71-900 - Union Oil v. Tugboat San Jacinto

Dear Potter:

I find myself willing to go along with your memorandum in this case. While I was on the other side I am now persuaded your way. I still have some problem about the "half distance rule."

Sincerely,



T.M.

Mr. Justice Stewart

cc: Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

November 6, 1972

Re: No. 71-900 - Union Oil Co. v. Tugboat San Jacinto

Dear Bill:

I will join your opinion even though
I would support Potter's opinion on damages if
we got to it.

Sincerely,


T.M.

Mr. Justice Rehnquist

cc: Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

November 22, 1972

Re: No. 71-900 - Union Oil v. Tugboat San Jacinto

Dear Bill:

Please join me.

Sincerely,


T.M.

Mr. Justice Rehnquist

cc: Conference

*You found in
part*

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

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

November 16, 1972

Re: No. 71-900 - Union Oil Co. v. The Tugboat
San Jacinto

Dear Bill:

Please join me.

Sincerely,

H. A. B.

Mr. Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

October 31, 1972

No. 71-900 Union Oil Company v. The Tugboat
San Jacinto

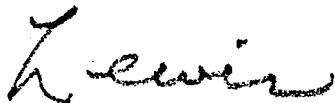
Dear Potter:

Your memorandum of October 30 addresses the two issues in this case.

I will join you on the second issue, namely, in rejecting the rule of equal division of damages and in approving the proportionate allocation of damages.

As to the "half the distance" rule, I am not yet convinced that we should perpetuate it. Although I have not had an opportunity to reexamine the question since our Conference, I am presently inclined to write separately - and briefly - on that point.

Sincerely,



Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

November 7, 1972

Dear Bill:

No. 71-900 Union Oil Co. v. Tugboat
San Jacinto

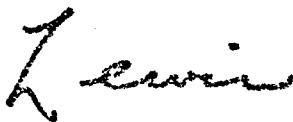
I am in entire accord with the result (reversal) reached in your memorandum. I voted this way at the Conference because the entire fault seemed to lie, as the District Court held, on the Tugboat and because I do not think the "half-distance rule" should be more than a presumptive rule, rebuttable by evidence.

As I would not wish us to sanction (even by implication) a flat rule which seems at variance with the "moderate speed" requirement of Rule 16, I wonder whether - in a footnote or otherwise - you would be willing to make it clear that the Court need not consider the soundness or applicability of the "half-distance rule" in this case. As you conclude there was no negligence at all by the Santa Maria, perhaps your opinion could leave open the status of the arbitrary rule.

If you prefer, however, I could join your opinion with a concurrence and a sentence or two which records my own reservation.

As I have previously advised the Conference, I am entirely in accord with Potter's opinion on damages if we reach that issue.

Sincerely,



Mr. Justice Rehnquist

cc: The Conference

LFP, Jr.:pls

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

November 21, 1972

Re: No. 71-900 Union Oil Co. v. The
Tugboat San Jacinto

Dear Bill:

Supplementing my letter of November 7 and our recent discussion, I write to say that I will join your opinion.

I also warmly agree with Potter's opinion on the damage issue. I am not clear whether it would be appropriate for Potter to include me as joining on that issue, since your opinion does not reach the subject.

Sincerely,

Rehnquist

Mr. Justice Rehnquist

Copies to the Conference

To: The Chief Justice
Mr. Justice Blackmun
Mr. Justice Brennan
Mr. Justice Douglas
Mr. Justice Fortas
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell

Damage

1st DRAFT

From: Rehnquist, J.

Dated: 11/6

Recirculated.

No. 71-900

Union Oil Company of California, Petitioner,
v.
The Tugboat San Jacinto et al.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[November —, 1972]

Memorandum of MR. JUSTICE REHNQUIST.

While proceeding up the Columbia River, the oil tanker SS *Santa Maria*, bareboat chartered by petitioner, was struck by a barge owned by respondent Oliver J. Olson & Co. The barge was being towed by the tugboat *San Jacinto*, owned by respondent Star & Crescent Towboat Co. Both vessels were damaged. Petitioner commenced this admiralty action for damages to the *Santa Maria*, and respondent cross-libeled for damages to the barge. The District Court found the collision resulted solely from negligence on the part of the crew of the *San Jacinto*, and dismissed the cross-libel. 304 F. Supp. 519 (Ore. 1969). The Ninth Circuit affirmed the finding that the *San Jacinto* had been negligent, but determined that the *Santa Maria* was also negligent in violating the "half-distance" rule, 33 U. S. C. § 192 (1970). That court therefore reversed with directions that the District Court determine the amount of damage sustained by the barge and assess damages under the divided damages rule. See *The Schooner Catherine v. Dickinson*, 58 U. S. 170 (1854). We granted certiorari, 405 U. S. 954 (1972), principally to consider petitioner's request that we abandon the divided damages rule. The orderly disposition of the issues

Please file us

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

From: Rehnquist, J.

2nd DRAFT

Circulated:

Recirculated: 11/21

SUPREME COURT OF THE UNITED STATES

No. 71-900

Union Oil Company of California, Petitioner,
v.
The Tugboat San Jacinto et al. } On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[November —, 1972]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

While proceeding up the Columbia River, the oil tanker SS *Santa Maria*, bareboat chartered by petitioner, was struck by a barge owned by respondent Oliver J. Olson & Co. The barge was being towed by the tugboat *San Jacinto*, owned by respondent Star & Crescent Towboat Co. Both vessels were damaged. Petitioner commenced this admiralty action for damages to the *Santa Maria*, and respondent cross-libeled for damages to the barge. The District Court found the collision resulted solely from negligence on the part of the crew of the *San Jacinto*, and dismissed the cross-libel. 304 F. Supp. 519 (Ore. 1969). The Ninth Circuit affirmed the finding that the *San Jacinto* had been negligent, but determined that the *Santa Maria* was also negligent in violating the "half-distance" rule, 33 U. S. C. § 192 (1970). That court therefore reversed with directions that the District Court determine the amount of damage sustained by the barge and assess damages under the divided damages rule. See *The Schooner Catherine v. Dickinson*, 58 U. S. 170 (1854). We granted certiorari, 405 U. S. 954 (1972), principally to consider petitioner's request that we abandon the divided damages rule. The orderly disposition of the issues