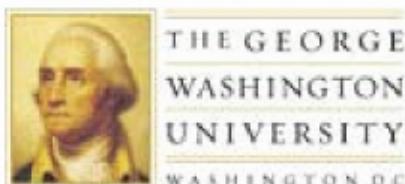


The Burger Court Opinion Writing Database

Saxbe v. Washington Post Co.
417 U.S. 843 (1974)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



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

CHAMBERS OF
THE CHIEF JUSTICE

June 6, 1974

Re: No. 73-1265 - William B. Saxbe, Attorney General
of the U.S. v. Washington Post Co.

Dear Potter:

Please join me.

Regards,

Mr. Justice ~~Swart~~

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 18, 1974

RE: No. 73-1265 Saxbe v. Washington Post

Dear Lewis:

Please join me in your fine dissent
in the above case.

Sincerely,



Mr. Justice POWELL

cc: The Conference

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

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-1265

Circulated: MAY 31 1974

Recirculated: _____

William B. Saxbe, Attorney
 General of the United
 States, et al.,
 Petitioners,
 v.
 The Washington Post Co.
 et al.

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

[June —, 1974]

MR. JUSTICE STEWART delivered the opinion of the
 Court.

The respondents, a major metropolitan newspaper and one of its reporters, initiated this litigation to challenge the constitutionality of paragraph 4(b)(6) of Policy Statement 1220.1A of the Federal Bureau of Prisons.¹ At the time that the case was in the District Court and the Court of Appeals, this regulation prohibited any personal interviews between newsmen and individually designated federal prison inmates. The Solicitor General has informed the Court that the regulation was recently amended "to permit press interviews at federal prison institutions that can be characterized as minimum security."² The general prohibition of press interviews with

¹ "Press representatives will not be permitted to interview individual inmates. This rule shall apply even where the inmate requests or seeks an interview. However, conversation may be permitted with inmates whose identity is not to be made public, if it is limited to the discussion of institutional facilities, programs and activities."

² Letter of April 16, 1974, to Clerk, Supreme Court of the United States, presently on file with the Clerk.

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 3, 1974

Re: No. 73-1265 - Saxbe v. Washington Post Co.

Dear Potter:

Please join me.

Sincerely,



Mr. Justice Stewart

Copies to Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 18, 1974

Re: No. 73-1265 -- Saxbe v. Washington Post

Dear Lewis:

Please join me in your dissent.

Sincerely,

T.M.
T.M.

Mr. Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 18, 1974

Dear Potter:

Re: No. 73-1265 - Saxbe v. Washington Post Company

Please join me.

Sincerely,



Mr. Justice Stewart

Copies to the Conference

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Blackman
Mr. Justice Frankfurter
Mr. Justice Harlan
Mr. Justice Stone
Mr. Justice Brandeis
Mr. Justice Cardozo

~~73-756~~

JUN 27 1974

No. 73-1265 SAXBE v. WASHINGTON POST

circulated:

MR. JUSTICE POWELL, dissenting.

The Court today upholds the authority of the Bureau of Prisons to promulgate and enforce an absolute ban against personal interviews of prison inmates by representatives of the news media.¹ In my view the interview ban impermissibly burdens First Amendment freedoms. My analysis proceeds as follows. In Part I, below, I examine the nature and effect of the Bureau's policy. Part II concerns the constitutional underpinnings of respondents' attack on that policy. Part III considers the Bureau's justifications for an absolute interview ban in light of the appropriate standard of First Amendment review. Finally, Part IV surveys some of the factors that the Bureau may consider in formulating a constitutionally-acceptable interview policy.

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

No. 73-1265, Saxbe v. Washington

Post Co., MR. JUSTICE POWELL, dissenting.

From: Powell, J.

To be added as final paragraph.

Circulated:

Recirculated: JUN 21 1974

V.

The Court's resolution of this case has the virtue of simplicity. Because the Bureau's interview ban does not restrict speech nor prohibit publication nor impose on the press any special disability, it is not susceptible to constitutional attack. This analysis delineates the outer boundaries of First Amendment concerns with unambiguous clarity. It obviates any need to enter the thicket of a particular factual context in order to determine the effect on First Amendment values of a nondiscriminatory restraint on press access to information. As attractive as this approach may appear, I cannot join it. I believe that we must look behind bright-line generalities, however sound they may seem in the abstract, and seek the meaning of First Amendment guarantees in light of the underlying realities of a particular environment. Indeed, if we are to preserve First Amendment values amid the complexities of a changing society, we can do no less.

Stylistic Changes Throughout.

p. 26

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

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

From: Powell, J.

Circulated:

Recirculated: 6/21/74

William B. Saxbe, Attorney
General of the United
States, et al.,
Petitioners,
v.
The Washington Post Co.
et al.

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

[June 24, 1974]

MR. JUSTICE POWELL, with whom MR. JUSTICE BREN-
NAN and MR. JUSTICE MARSHALL join, dissenting.

The Court today upholds the authority of the Bureau of Prisons to promulgate and enforce an absolute ban against personal interviews of prison inmates by representatives of the news media.¹ In my view the interview ban impermissibly burdens First Amendment freedoms. My analysis proceeds as follows. Part I addresses the nature and effect of the Bureau's policy. Part II concerns the constitutional underpinnings of respondents' attack on that policy. Part III considers the Bureau's justifications for an absolute interview ban in light of the appropriate standard of First Amendment review, and Part IV surveys some of the factors that the Bureau may consider in formulating a constitutionally acceptable interview policy. Part V contains some concluding remarks.

¹ Throughout this opinion I use the terms "news media" and "press" to refer generally to both print and broadcast journalism. Of course, the use of television equipment in prisons presents special problems that are not before the Court in this case.

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

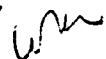
May 31, 1974

Re: No. 73-1265 - Saxbe v. Washington Post

Dear Potter:

Please join me in your opinion for the Court in this case.

Sincerely,



Mr. Justice Stewart

Copies to the Conference