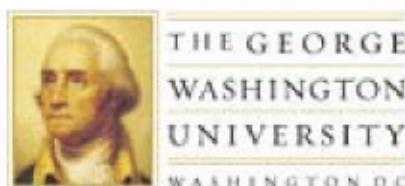


The Burger Court Opinion Writing Database

Cantrell v. Forest City Publishing Co.
419 U.S. 245 (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

December 12, 1974

Re: 73-5520 - Cantrell v. Forest City Publishing Co.

Dear Potter:

Please join me.

Regards,

Mr. Justice Stewart

Copies to the Conference

To : The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Black
Mr. Justice Powell
Mr. Justice Rehnquist

2nd DRAFT

SUPREME COURT OF THE UNITED STATES ^{Sp. J. Douglas; J.}

No. 73-5520

Circulate: 12-6

Recirculate: _____

Margaret Mae Cantrell et al.,
Petitioners,

v.
Forest City Publishing Co.
et al.

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

[December —, 1974]

MR. JUSTICE DOUGLAS, dissenting.

I adhere to the views which I expressed in *Time, Inc. v. Hill*, 385 U. S. 374, 401-402 (1967), and to those of Justice Black in which I concurred, *id.*, at 398-401. Freedom of the press is "abridged" in violation of the First and Fourteenth Amendments by what we do today. This line of cases, which of course includes *New York Times Co. v. Sullivan*, 376 U. S. 254 (1964), seems to me to place First Amendment rights of the press at a midway point similar to what our ill-fated *Betts v. Brady*, 316 U. S. 455 (1942), did to the right to counsel. The press will be "free" in the First Amendment sense when the judge-made qualifications of that freedom are withdrawn and the substance of the First Amendment restored to what I believe was the purpose of its enactment.

An accident with a bridge catapulted the Cantrells into the public eye and their disaster became newsworthy. To make the First Amendment freedom to report the news turn on subtle differences between common-law malice and actual malice is to stand the Amendment on its head. Those who write the current news seldom have the objective, dispassionate point of view—or the time—of scientific analysts. They deal in fast moving events and the need for "spot" reporting. The jury under today's formula sits as a censor with broad

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

December 4, 1974

RE: No. 73-5520 Cantrell v. Forest City Publishing

Dear Potter:

I agree.

Sincerely,



Mr. Justice Stewart

cc: The Conference

To: The Chief Justice
Mr. Justice Brewster
Mr. Justice Duggan
Mr. Justice Lefebvre
Mr. Justice Marshall
Mr. Justice McInerney
Mr. Justice McNeil
Mr. Justice McRuer

1st DRAFT

From: [REDACTED]

SUPREME COURT OF THE UNITED STATES DEC. 4 19 19

No. 73-5520

Recirculated: _____

Margaret Mae Cantrell et al., Petitioners,
n.
Forest City Publishing Co. et al. } On Writ of Certiorari to
the United States Court of Appeals for the Sixth Circuit.

[December —, 1974]

MR. JUSTICE STEWART delivered the opinion of the Court.

Margaret Cantrell and four of her minor children brought this diversity action in a federal district court for invasion of privacy against the Forest City Publishing Company, publisher of a Cleveland newspaper, The Plain Dealer, and against Joseph Eszterhas, a reporter formerly employed by The Plain Dealer, and Richard Conway, a Plain Dealer photographer. The Cantrells alleged that an article published in The Plain Dealer Sunday Magazine unreasonably placed their family in a false light before the public through its many inaccuracies and untruths. The District Judge struck the claims relating to punitive damages as to all the plaintiffs and dismissed the actions of three of the Cantrell children in their entirety, but allowed the case to go to the jury as to Mrs. Cantrell and her oldest son, William. The jury returned a verdict against all three of the respondents for compensatory money damages in favor of these two plaintiffs.

The Court of Appeals for the Sixth Circuit reversed, holding that, in the light of the First and Fourteenth Amendments the District Judge should have granted

12-5-1974

73-5520, Cantrell v. Forest City Publishing Co.

Second Draft changes

Footnote 6 has been deleted. Footnote 7 has therefore been renumbered. (P.8)

Other substantive changes are marked.

Margaret Mae Cantrell et al., Petitioners,
v.
Forest City Publishing Co. et al. } On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

[December —, 1974]

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Pp 6, 9
P.S.

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

2nd DRAFT

From: Stewart,

SUPREME COURT OF THE UNITED STATES

ATES
ated:

Recirculated DEC 5

No. 73-5520

Margaret Mae Cantrell et al., Petitioners,
v.
Forest City Publishing Co. et al. } On Writ of Certiorari to
} the United States Court
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✓
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

December 4, 1974

Re: No. 73-5520 - Cantrell v. Forest City
Publishing 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

December 4, 1974

Re: No. 73-5520 -- Margaret Mae Cantrell et al. v.
Forest City Publishing Co. et al.

Dear Potter:

Please join me.

Sincerely,

T.M.

T.M.

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

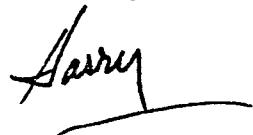
December 5, 1974

Re: No. 73-5520 - Cantrell v. Forest City
Publishing Co.

Dear Potter:

Please join me. The only reservation I have, and I suppose it is no more than a mild reservation, has to do with the photographer. His photographs certainly contributed to the tone and, I assume, the offensiveness to the Cantrells of the publicity. I am not certain that I am ready to conclude that photographs, if accurate, are never actionable in a privacy case. Some can be very cruel. And then there are always the problems of shadings, retouching, and the like. This case, as it was tried and developed before us, has proved to be an insignificant one in the Gertz-Time v. Hill context, and I suspect the holding here will not cause us great difficulty in the future when we are confronted with another case much more crucially positioned on these issues.

Sincerely,



Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

December 4, 1974

No. 73-5520 Cantrell v. Forest City
Publishing Co.

Dear Potter:

Please join me.

Sincerely,

Lewis

Mr. Justice Stewart

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

December 5, 1974

Re: No. 73-5520 - Cantrell v. Forest City

Dear Potter:

Please join me.

Sincerely,

W.
W.

Mr. Justice Stewart

Copies to the Conference