

# The Burger Court Opinion Writing Database

## *Cox Broadcasting Corp. v. Cohn*

420 U.S. 469 (1975)

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

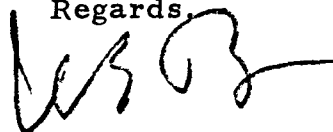
February 17, 1975

Re: 73-938 - Cox Broadcasting Corp. v. Cohn

Dear Byron:

My difficulties with this case rest largely on having jurisdiction rest so much on an evaluation of the merits. I agree with the result, however, and you can show me as concurring in the judgment.

Regards,



Mr. Justice White

Copies to the Conference

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THE MANUSCRIPT DIVISION

U.S. SUPREME COURT RECORDS

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-938

Cox Broadcasting Corporation et al., Appellants,  
v.  
Martin Cohn.

On Appeal from the Supreme Court of Georgia.

[February —, 1975]

MR. JUSTICE DOUGLAS, concurring.

I agree that the state judgment is "final," and I also agree in the reversal of the Georgia court.\* On the merits, the case for me is on all fours with *New Jersey State Lottery Comm'n v. United States*, 491 F. 2d 219 (CA3 1974), remanded, — U. S. — (1975). For the

\*While I join in the narrow result reached by the Court, I write separately to emphasize that I would ground that result upon a far broader proposition, namely, that the First Amendment, made applicable to the States through the Fourteenth, prohibits the use of state law "to impose damages for merely discussing public affairs . . . ." *New York Times Co. v. Sullivan*, 376 U. S. 254, 295 (1964) (Black, J., concurring). See also *Cantrell v. Forest City Publishing Co.*, — U. S. —, — (1974) (DOUGLAS, J., dissenting); *Gertz v. Robert Welch, Inc.*, 418 U. S. 323, 355 (1974) (DOUGLAS, J., dissenting); *Time, Inc. v. Hill*, 385 U. S. 374, 398 (1967) (Black, J., concurring); *id.*, at 401 (DOUGLAS, J., concurring); *Garrison v. Louisiana*, 379 U. S. 64, 80 (1964) (DOUGLAS, J., concurring). In this context, of course, "public affairs" must be broadly construed—indeed, the term may be said to embrace "any matter of sufficient general interest to prompt media coverage . . . ." *Gertz v. Robert Welch, Inc.*, 418 U. S., at 357 n. 6 (DOUGLAS, J. dissenting). By its now-familiar process of balancing and accommodating First Amendment freedoms with state or individual interests, the Court raises a spectre of liability which must inevitably induce self-censorship by the media, thereby inhibiting the rough-and-tumble discourse which the First Amendment so clearly protects.

To : The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Mun  
Mr. Justice  
ist

From:

Circular

Recircul

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-938

Cox Broadcasting Corpora-  
tion et al., Appellants,  
v.  
Martin Cohn. } On Appeal from the Supreme  
Court of Georgia.

[February —, 1975]

MR. JUSTICE DOUGLAS, concurring in the judgment.

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

January 6, 1975

RE: No. 73-938 Cox Broadcasting Corp. v. Cohn

Dear Byron:

I agree.

Sincerely,

*Bill*

Mr. Justice White

cc: The Conference

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IN THE MANUSCRIPT DIVISION

U.S. SUPREME COURT RECORDS

✓

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

CHAMBERS OF  
JUSTICE POTTER STEWART

January 8, 1975

Re: No. 73-938, Cox Broadcasting Corp. v.  
Cohn

Dear Byron,

I am glad to join your opinion for the Court in this  
case.

Sincerely yours,

P.S.  
✓

Mr. Justice White

Copies to the Conference

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THE MANUSCRIPT DIVISION

U.S. SUPREME COURT RECORDS

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

From: White, J.

1st DRAFT

Circulated: 1-3-75

SUPREME COURT OF THE UNITED STATES

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

No. 73-938

Cox Broadcasting Corpora-  
tion et al., Appellants,  
v.  
Martin Cohn.

On Appeal from the Supreme  
Court of Georgia.

[January —, 1975]

MR. JUSTICE WHITE delivered the opinion of the Court.

The issue before us in this case is whether consistently with the First and Fourteenth Amendments a State may extend a cause of action for damages for invasion of privacy caused by the publishing of the name of a deceased rape victim which was publicly revealed in connection with the prosecution of the crime.

I

In August 1971, appellee's 17-year-old daughter was the victim of a rape and did not survive the incident. Six youths were soon after indicted for murder and rape. Although there was substantial press coverage of the crime and of subsequent developments, the identity of the victim was not disclosed pending trial, perhaps because of Ga. Code Ann. § 26-9901<sup>1</sup> which makes it a

<sup>1</sup>"It shall be unlawful for any news media or any other person to print and publish, broadcast, televise, or disseminate through any other medium of public dissemination or cause to be printed and published, broadcast, televised, or disseminated in any newspaper, magazine, radio or television broadcast originating in the State the name or identity of any female who may have been raped or upon

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To: The Chief Justice  
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Mr. Justice Brennan  
Mr. Justice Stewart  
✓ Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

From: White, J.

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1, 13, 14, 19, 23

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 73-938

Cox Broadcasting Corporation et al., Appellants,  
v.  
Martin Cohn.      On Appeal from the Supreme Court of Georgia.

[January —, 1975]

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2, 13-16, 18, 20, 24-26

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

3rd DRAFT

From: White, J.

**SUPREME COURT OF THE UNITED STATES**

Circulated: \_\_\_\_\_

Recirculated: 1-8-75

No. 73-938

Cox Broadcasting Corpora-  
tion et al., Appellants,  
v.  
Martin Cohn. } On Appeal from the Supreme  
Court of Georgia.

[January —, 1975]

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Wm. Douglas  
Oct 71

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

4th DRAFT

Circulated:

Recirculated: 1-10-75

**No. 73-938**

Cox Broadcasting Corporation et al., Appellants,  
v.  
Martin Cohn.

On Appeal from the Supreme  
Court of Georgia.

MR. JUSTICE WHITE delivered the opinion of the Court.

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# AN ILLUSTRATION OF CONCRETE

STYLISTIC CHANGES THROUGHOUT.  
SEE PAGES: 16, 25

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

From: White, J.

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5th DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 73-938

Cox Broadcasting Corpora- tion et al., Appellants, v. Martin Cohn.	} On Appeal from the Supreme Court of Georgia.
---	---

[January —, 1975]

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

From: White, J.

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6th DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 73-938

Cox Broadcasting Corpora- tion et al., Appellants, v. Martin Cohn.	} On Appeal from the Supreme Court of Georgia.
---	---

[February --, 1975]

MR. JUSTICE WHITE delivered the opinion of the Court.

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Wm. Douglas Oct 74

1  
STYLISTIC CHANGES THROUGHOUT.  
SEE PAGE 2

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

From: White, J.

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7th DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 73-938

Cox Broadcasting Corpora-  
tion et al., Appellants,  
v.  
Martin Cohn.

On Appeal from the Supreme  
Court of Georgia.

[March 3, 1975]

MR. JUSTICE WHITE delivered the opinion of the  
Court.

The issue before us in this case is whether consistently with the First and Fourteenth Amendments a State may extend a cause of action for damages for invasion of privacy caused by the publication of the name of a deceased rape victim which was publicly revealed in connection with the prosecution of the crime.

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

January 9, 1975

Re: No. 73-938 -- Cox Broadcasting Corporation et al. v.  
Martin Cohn

Dear Byron:

Please join me.

Sincerely,

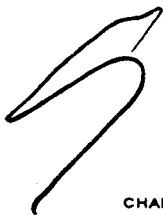
*T.M.*

T. M.

Mr. Justice White

cc: The Conference

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U.S. SUPREME COURT  
IN THE ADVANCE OF THE PRESS



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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

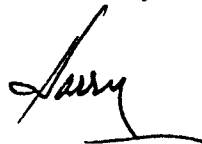
January 17, 1975

Re: No. 73-938 - Cox Broadcasting Corp. v. Cohn

Dear Byron:

Please join me.

Sincerely,



Mr. Justice White

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

January 14, 1975

No. 73-938 Cox v. Cohn

Dear Byron:

Please join me.

I am, however, doing a brief concurring opinion, to record my understanding of the "truth" issue, which differs somewhat from yours.

Sincerely,

*L. F. Powell*

Mr. Justice White

lfp/ss

cc: The Conference

✓  
REPRODUCED FROM THE COLLECTION OF THE MANUSCRIPT DIVISION

REPRODUCED FROM THE COLLECTION OF THE MANUSCRIPT DIVISION

5

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

1st Draft

**SUPREME COURT OF THE UNITED STATES**

No. 73-938

From: Powell, J.

Circulated: **JAN 15 1974**

Cox Broadcasting Corpora-  
tion et al., Appellants,  
v.  
Martin Cohn.

On Appeal from the Supreme  
Court of Georgia.

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

[January —, 1975]

MR. JUSTICE POWELL, concurring.

I join in the Court's opinion, as I agree with the holding and most of its supporting rationale.<sup>1</sup> My understanding of some of our decisions concerning the law of defamation, however, differs from that expressed in today's opinion. Accordingly, I think it appropriate to state separately my views.

I am in entire accord with the Court's determination that the First Amendment proscribes imposition of civil liability in a privacy action predicated on the truthful publication of matters contained in open judicial records. But my impression of the role of truth in defamation actions brought by private citizens differs from the Court's. The Court identifies as an "open" question the issue of "whether the First and Fourteenth Amendments require that truth be recognized as a defense in a defamation action brought by a private person as distinguished from a public official or a public figure." *Ante*, at 20. In my view, our recent decision in *Gertz v. Welch*, 418 U.S. 323 (1974), resolves that issue.

*Gertz* is the most recent of a line of cases in which

<sup>1</sup> At the outset, I note my agreement that *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241 (1974), supports the conclusion that the issue presented in this appeal is final for review. 28 U.S.C. § 1257.

Wm. Dayler  
Oct 74

1, 3, 4

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-938

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: \_\_\_\_\_

Re-circulated: JAN 17 1975

Cox Broadcasting Corpora-  
tion et al., Appellants,  
v.  
Martin Cohn.

On Appeal from the Supreme  
Court of Georgia.

[January —, 1975]

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*Gertz* is the most recent of a line of cases in which this Court has sought to resolve the conflict between the

<sup>1</sup> At the outset, I note my agreement that *Miami Herald Publishing Co. v. Tornillo*, 418 U. S. 241 (1974), supports the conclusion that the issue presented in this appeal is final for review. 28 U. S. C. § 1257.

Wm Doyle  
Or 174

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

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-938

Cox Broadcasting Corporation et al., Appellants,  
v.  
Martin Cohn.

On Appeal from the Supreme Court of Georgia.

[February —, 1975]

MR. JUSTICE REHNQUIST, dissenting.

Because I am of the opinion that the decision which is the subject of this appeal is not a "final" judgment or decree, as that term is used in 28 U. S. C. § 1257, I would dismiss this appeal for want of jurisdiction. Accordingly, I dissent.

*Radio Station WOW, Inc. v. Johnson*, 326 U. S. 120 (1945), established that in a "very few" circumstances review of state court decisions could be had in this Court even though something "further remain[ed] to be determined by a State court." *Id.*, at 124. Over the years, however, and despite vigorous dissents by Mr. Justice Harlan,<sup>1</sup> this Court has steadily discovered new exceptions to the finality requirement, such that they can hardly any longer be described as "very few." Whatever may be the unexpressed reasons for this process of expansion, see, e. g., *Hudson Distributors, Inc. v. Eli Lilly & Co.*, 377 U. S. 386, 401 (1964) (dissenting opinion of Mr. Justice Harlan), it has frequently been the subject of no more formal an express explanation than cursory citations to preceding cases in the line. Especially is this

<sup>1</sup> See *Local No. 438 v. Curry*, 371 U. S. 542, 553 (1963); *Mercantile National Bank v. Langdeau*, 371 U. S. 555, 572 (1963); *Hudson Distributors v. Eli Lilly*, 377 U. S. 386, 395 (1964); *Organization for a Better Austin v. Keefe*, 402 U. S. 415, 420 (1971).

74-200

144-1

STYLISTIC CHANGES THROUGHOUT

See 3/1/12

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.

3rd DRAFT

# SUPREME COURT OF THE UNITED STATES

No. 73-938

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v.  
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On Appeal from the Supreme Court of Georgia.

[February —, 1975]

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<sup>1</sup> See *Local No. 438 v. Curry*, 371 U. S. 542, 553 (1963); *Mercantile National Bank v. Langdeau*, 371 U. S. 555, 572 (1963); *Hudson Distributors v. Eli Lilly*, 377 U. S. 386, 395 (1964); *Organization for a Better Austin v. Keefe*, 402 U. S. 415, 420 (1971).

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U. S. DEPARTMENT OF JUSTICE