The Burger Court Opinion Writing Database

Time, Inc. v. Firestone

424 U.S. 448 (1976)

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

October 21, 1975

MEMORANDUM TO THE CONFERENCE:

Enclosed is the current assignment list.

The votes on 74-944, TIME, Inc. v. Firestone developed no majority for any one disposition. There may be a consensus that could shape around some form of remand. In these circumstances I have requested Justice Rehnquist to develop a memo that may move us toward a solution.

Regards,

WEB

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

CHAMBERS OF
THE CHIEF JUSTICE

January 5, 1976

Re: 74-944 - Time, Inc. v. Firestone

MEMORANDUM TO THE CONFERENCE:

I am more in agreement with Bill Rehnquist's memo than other views expressed.

I have some observations I will pass on to Bill, should his view muster three more votes.

Regards,

WEB

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

CHAMBERS OF
THE CHIEF JUSTICE

February 27, 1976

Re: 74-944 - TIME, Inc. v. Firestone

Dear Bill:

I join your proposed opinion.

Regards,

WEB

Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

December 12, 1975

MEMORANDUM TO THE CONFERENCE

RE: No. 74-944 Time, Inc. v. Firestone

Since Bill Rehnquist has circulated his Memorandum in the above I thought my attached Memorandum might be of interest.

W.J.B.Jr.

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-944

Time, Inc., Petitioner, v. Mary Alice Firestone. } On Writ of Certiorari to the Supreme Court of Florida.

[January —, 1976]

Memorandum of MR. JUSTICE BRENNAN.

In my view, the question presented by this case is the degree of protection commanded by the First Amendment's free expression guarantee where it is sought to hold a publisher liable under state defamation laws for erroneously reporting the results of a public judicial proceeding.

I

In a series of cases beginning with *New York Times Co.* v. *Sullivan*, 376 U. S. 254 (1964), this Court has held that the laws of libel and defamation, no less than other legal modes of restraint on the freedoms of speech and press, are subject to constitutional scrutiny under the First Amendment. The Court has emphasized the central meaning of the free expression guarantee is that the body politic of this Nation shall be entitled to the communications necessary for self-governance, and that to place restraints on the exercise of expression is to deny the instrumental means required in order that the citizenry exercise that ultimate sovereignty reposed in their collective judgment by the Constitution.[1] Accord-

[1] See Kalven, The New York Times Case: A Note on "The Central Meaning of the First Amendment," 1964 Sup. Ct. Rev. 191; Meiklejohn, The First Amendment Is An Absolute, 1961 Sup. Ct.

To: The Chief Justice
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

Circulated: 1/8/76

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-944

Time, Inc., Petitioner,
v.
Mary Alice Firestone.

On Writ of Certiorari to the Supreme Court of Florida.

[January —, 1976]

MR. JUSTICE BRENNAN, dissenting.

In my view, the question presented by this case is the degree of protection commanded by the First Amendment's free expression guarantee where it is sought to hold a publisher liable under state defamation laws for erroneously reporting the results of a public judicial proceeding.

I

In a series of cases beginning with *New York Times Co.* v. *Sullivan*, 376 U. S. 254 (1964), this Court has held that the laws of libel and defamation, no less than other legal modes of restraint on the freedoms of speech and press, are subject to constitutional scrutiny under the First Amendment. The Court has emphasized the central meaning of the free expression guarantee is that the body politic of this Nation shall be entitled to the communications necessary for self-governance, and that to place restraints on the exercise of expression is to deny the instrumental means required in order that the citizenry exercise that ultimate sovereignty reposed in their collective judgment by the Constitution.[1] Accord-

[1] See Kalven, The New York Times Case: A Note on "The Central Meaning of the First Amendment," 1964 Sup. Ct. Rev. 191; Meiklejohn, The First Amendment Is An Absolute, 1961 Sup. Ct. Rev. 245. See also Bloustein, The First Amendment and Privacy: The Supreme Court Justice and the Philosopher, 28 Rut. L. Rev. 41

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

CHAMBERS OF
JUSTICE POTTER STEWART

December 15, 1975

No. 74-944, Time, Inc. v. Firestone

Dear Bill,

I understand that Lewis Powell plans to write separately in this case, reaching the same result as that reached in your memorandum but for somewhat different reasons. I shall await his circulation before finally coming to rest.

Sincerely yours,

P.S.

Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

December 29, 1975

Re: No. 74-944, Time, Inc. v. Firestone

Dear Lewis,

Please add my name to your concurring opinion in this case.

Sincerely yours,

P.S.

Mr. Justice Powell

Copies to the Conference

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

From: Mr. Justice Stewart

Circulated: 3 19/6

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74–944

Time, Inc., Petitioner,
v.
Mary Alice Firestone.

On Writ of Certiorari to the Supreme Court of Florida.

[February 24, 1976]

MR. JUSTICE STEWART, concurring.

In the interest of avoiding total fragmentation of the Court in this case, I have joined MR. JUSTICE POWELL's concurring opinion. But I have done so upon the understanding that this concurring opinion is to be read as reflecting MR. JUSTICE MARSHALL's view that "[u]nless there is some basis for a finding of fault other than that given by the Supreme Court of Florida, . . . there can be no liability."

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

CHAMBERS OF
JUSTICE POTTER STEWART

February 25, 1976

MEMORANDUM TO THE CONFERENCE

Re: 74-944, Time, Inc. v. Firestone

In view of the revisions that Lewis has made in his concurring opinion, I shall withdraw my concurring statement in this case.

P.S.

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

From: Mr. Justice White

Circulated: 12-30-75

Recirculated: _____

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74–944

Time, Inc., Petitioner,
v.
Mary Alice Firestone.

On Writ of Certiorari to the Supreme Court of Florida.

[January —, 1976]

MR. JUSTICE WHITE, dissenting.

I would affirm the judgment of the Florida Supreme Court because First Amendment values will not be furthered in any way by application to this case of the fault standards newly drafted and imposed by *Gertz* v. *Robert Welch, Inc.*, 418 U. S. 323, upon which my Brother REHNQUIST relies, or the fault standards required by *Rosenbloom* v. *Metromedia, Inc.*, 403 U. S. 29, upon which my Brother BRENNAN relies; and because, in any event, any requisite fault was properly found below.

It is conceded that the article published by petitioner Time, Inc., about respondent Firestone was false and defamatory. This Court has held, and no one seriously disputes, that, regardless of fault, "there is no constitutional value in false statements of fact." "They belong to that category of utterances which '. . . are of such slight social value as' " to be worthy of no First Amendment protection. *Gertz* v. *Robert Welch, Inc.*, 418 U. S., at 340, quoting *Chaplinsky* v. *New Hampshire*, 315 U. S. 568, 572. This Court's decisions from *New York Times Co.* v. *Sullivan*, 376 U. S. 354, through *Gertz* v. *Robert Welch, Inc., supra*, holding that the Constitution requires a finding of some degree of fault as a precondition to a defamation award, have done so for one reason and one reason alone: unless innocent falsehood is al-

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

From: Mr. Justice White

Circulated: _____

Recirculated: 2-23-76

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74–944

Time, Inc., Petitioner, v. Mary Alice Firestone. | On Writ of Certiorari to the Supreme Court of Florida.

[February 24, 1976]

MR. JUSTICE WHITE, dissenting.

I would affirm the judgment of the Florida Supreme Court because First Amendment values will not be furthered in any way by application to this case of the fault standards newly drafted and imposed by *Gertz* v. *Robert Welch, Inc.*, 418 U. S. 323, upon which my Brother REHNQUIST relies, or the fault standards required by *Rosenbloom* v. *Metromedia, Inc.*, 403 U. S. 29, upon which my Brother BRENNAN relies; and because, in any event, any requisite fault was properly found below.

The jury found on ample evidence that the article published by petitioner Time, Inc., about respondent Firestone was false and defamatory. This Court has held, and no one seriously disputes, that, regardless of fault, "there is no constitutional value in false statements of fact." "They belong to that category of utterances which '. . . are of such slight social value as' " to be worthy of no First Amendment protection. *Gertz* v. *Robert Welch, Inc.*, 418 U. S., at 340, quoting *Chaplinsky* v. *New Hampshire*, 315 U. S. 568, 572. This Court's decisions from *New York Times Co.* v. *Sullivan*, 376 U. S. 354, through *Gertz* v. *Robert Welch, Inc., supra*, holding that the Constitution requires a finding of some degree of fault as a precondition to a defamation award, have done so for one reason

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-944

Time, Inc., Petitioner, *v.* Mary Alice Firestone. } On Writ of Certiorari to the Supreme Court of Florida.

[February —, 1976]

MR. JUSTICE MARSHALL, dissenting.

The Court agrees with the Supreme Court of Florida that the "actual malice" standard of *New York Times Co.* v. *Sullivan,* 376 U. S. 254 (1964), does not apply to this case. Because I consider the respondent, Mary Alice Firestone, to be a "public figure" within the meaning of our prior decisions, *Gertz* v. *Robert Welch, Inc.,* 418 U. S. 323 (1974); *Curtis Publishing Co.* v. *Butts,* 388 U. S. 130 (1967), I respectfully dissent.

I

Mary Alice Firestone was not a person "first brought to public attention by the defamation that is the subject of the lawsuit." *Rosenbloom* v. *Metromedia, Inc.,* 403 U. S. 29, 78, 86 (1971) (MARSHALL, J., dissenting). On the contrary, she was "prominent among the '400' of Palm Beach Society," and an "active [member] of the sporting set," *Firestone* v. *Time, Inc.,* 271 So. 2d 745, 751 (1972), whose activities predictably attracted the attention of a sizeable portion of the public. Indeed, Mrs. Firestone's appearances in the printed press were evidently frequent enough to warrant her subscribing to a press clipping service.

Mrs. Firestone brought suit for separate maintenance,[1]

[1] The Court is incorrect when it says that Mrs. Firestone "was compelled to go to court to obtain legal release from the bonds of

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

4, 6, 7, 8

From: Mr. Justice Marshall

Circulated: _____

Recirculated: FEB 9 1976

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-944

Time, Inc., Petitioner, v. Mary Alice Firestone. } On Writ of Certiorari to the Supreme Court of Florida.

[February —, 1976]

MR. JUSTICE MARSHALL, dissenting.

The Court agrees with the Supreme Court of Florida that the "actual malice" standard of *New York Times Co.* v. *Sullivan,* 376 U. S. 254 (1964), does not apply to this case. Because I consider the respondent, Mary Alice Firestone, to be a "public figure" within the meaning of our prior decisions, *Gertz* v. *Robert Welch, Inc.,* 418 U. S. 323 (1974); *Curtis Publishing Co.* v. *Butts,* 388 U. S. 130 (1967), I respectfully dissent.

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Mrs. Firestone brought suit for separate maintenance,[1]

[1] The Court is incorrect when it says that Mrs. Firestone "was compelled to go to court to obtain legal release from the bonds of

STYLISTIC CHANGES THROUGHOUT.

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Marshall

Circulated: _____

3rd DRAFT

Recirculated: FEB 18 197

SUPREME COURT OF THE UNITED STATES

No. 74-944

Time, Inc., Petitioner, *v.* Mary Alice Firestone. } On Writ of Certiorari to the Supreme Court of Florida.

[February —, 1976]

MR. JUSTICE MARSHALL, dissenting.

The Court agrees with the Supreme Court of Florida that the "actual malice" standard of *New York Times Co.* v. *Sullivan*, 376 U. S. 254 (1964), does not apply to this case. Because I consider the respondent, Mary Alice Firestone, to be a "public figure" within the meaning of our prior decisions, *Gertz* v. *Robert Welch, Inc.*, 418 U. S. 323 (1974); *Curtis Publishing Co.* v. *Butts*, 388 U. S. 130 (1967), I respectfully dissent.

I

Mary Alice Firestone was not a person "first brought to public attention by the defamation that is the subject of the lawsuit." *Rosenbloom* v. *Metromedia, Inc.*, 403 U. S. 29, 78, 86 (1971) (MARSHALL, J., dissenting). On the contrary, she was "prominent among the '400' of Palm Beach Society," and an "active [member] of the sporting set," *Firestone* v. *Time, Inc.*, 271 So. 2d 745, 751 (1972), whose activities predictably attracted the attention of a sizeable portion of the public. Indeed, Mrs. Firestone's appearances in the printed press were evidently frequent enough to warrant her subscribing to a press clipping service.

Footnote omitted

Mrs. Firestone brought suit for separate maintenance, with reason to know of the likely public interest in the proceedings. As the Supreme Court of Florida noted,

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

December 31, 1975

Re: No. 74-944 - Time, Inc. v. Firestone

Dear Bill:

I am glad to join an opinion based upon the memorandum you have prepared and circulated for this case.

Sincerely,

Harry

Mr. Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

December 13, 1975

No. 74-944 Time, Inc. v. Firestone

Dear Bill:

The Chief Justice asked you to circulate a memorandum in this case because, as he noted, there was no consensus as to how the opinion should be written.

There was at least a majority who thought Gertz should apply, and who agreed that it was not clear that the Florida court had in fact applied the Gertz standard. We differed, however, as to whether the case could be decided here on the basis of the record without a remand. As I viewed the evidence, I was willing to reverse and enter judgment for Time, Inc. But you, Thurgood and Harry (according to my notes) viewed the evidence quite differently.

The disposition of the case, proposed in your memorandum, would remand it for reconsideration in accordance with the fault standard of Gertz. Although this may not be the first choice of some of us, it is consistent with our most recent precedent and accordingly I think I can join you in the interest of having a court.

Your memorandum does "lean" rather strongly in favor of Firestone, with the probable result that the Florida court will conclude on the evidence that Time, Inc. was guilty of fault (negligence). As I would like at least to alert our friends in Florida that some of us here lean the other way on the evidence, I will write a brief concurring opinion.

Sincerely,

Lewis

Mr. Justice Rehnquist

lfp/ss

cc: The Conference

12/23/75

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-944

Time, Inc., Petitioner, v. Mary Alice Firestone. | On Writ of Certiorari to the Supreme Court of Florida.

[January —, 1976]

MR. JUSTICE POWELL, concurring.

I concur in the opinion of the Court, as I understand it to apply the standard announced in *Gertz* v. *Robert Welch, Inc.*, 418 U. S. 323 (1974).

In *Gertz* we held that "so long as they do not impose liability without fault, the States may define for themselves the appropriate standard of liability for a publisher or broadcaster of defamatory falsehood injurious to a private individual." *Id.*, at 347. Thus, while a State may elect to hold a publisher to a lesser duty of care, the Constitution allows recovery upon proof of negligence. The applicability of this standard was expressly limited to circumstances where, as here, "the substance of the defamatory falsehood makes 'substantial danger to reputation apparent.'" *Id.*, at 348, quoting *Curtis Publishing Co.* v. *Butts*, 388 U. S. 130, 155 (1967). By requiring a showing of fault *Gertz* sought to shield the press and broadcast media from a rule of strict liability that could lead to intolerable self-censorship and to recognize the legitimate state interest in compensating private individuals for wrongful injury from defamatory falsehoods.

In one paragraph near the end of its opinion, the Supreme Court of Florida cited *Gertz* in concluding that Time was guilty of "journalistic negligence." But, as the opinion of the Court recognizes, *ante*, at —, it is

Stylistic Changes Throughout.

pp 1, 2

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: DEC 29 1975

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74–944

Time, Inc., Petitioner, v. Mary Alice Firestone. | On Writ of Certiorari to the Supreme Court of Florida.

[January —, 1976]

MR. JUSTICE POWELL, concurring.

I join the opinion of the Court, as I read it to remand the case for the application of the standard announced in *Gertz* v. *Robert Welch, Inc.*, 418 U. S. 323 (1974).

In *Gertz* we held that "so long as they do not impose liability without fault, the States may define for themselves the appropriate standard of liability for a publisher or broadcaster of defamatory falsehood injurious to a private individual." *Id.*, at 347. Thus, while a State may elect to hold a publisher to a lesser duty of care,[1] there is no First Amendment constraint against allowing recovery upon proof of negligence. The applicability of such a fault standard was expressly limited to circumstances where, as here, "the substance of the defamatory falsehood makes 'substantial danger to reputation apparent.'"[2] *Id.*, at 348, quoting *Curtis Publishing Co.* v. *Butts*, 388 U. S. 130, 155 (1967).

[1] A State, if it elected to do so, could require proof of gross negligence before holding a publisher or broadcaster liable for defamation. In *Gertz*, we concluded "that the States should retain substantial latitude in their efforts to enforce a legal remedy for defamatory falsehood injurious to the reputation of a private individual." 418 U. S., at 345–346.

[2] In amplification of this limitation, we referred to the type of "factual misstatement whose content [does] not warn a reasonably prudent editor or broadcaster of its defamatory potential." 418 U. S., at 348.

p. 1

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

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: Mr. Justice Powell

Circulated: _____ From: Powell, J.

Recirculated: JAN 5 1976 Circulated: _____

3rd DRAFT Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 74-944

Time, Inc., Petitioner,
v.
Mary Alice Firestone.

On Writ of Certiorari to the Supreme Court of Florida.

[January —, 1976]

MR. JUSTICE POWELL, with whom MR. JUSTICE STEWART joins, concurring.

I join the opinion of the Court, as I read it to remand the case for the application of the standard announced in *Gertz* v. *Robert Welch, Inc.*, 418 U. S. 323 (1974).

In *Gertz* we held that "so long as they do not impose liability without fault, the States may define for themselves the appropriate standard of liability for a publisher or broadcaster of defamatory falsehood injurious to a private individual." *Id.*, at 347. Thus, while a State may elect to hold a publisher to a lesser duty of care,[1] there is no First Amendment constraint against allowing recovery upon proof of negligence. The applicability of such a fault standard was expressly limited to circumstances where, as here, "the substance of the defamatory falsehood makes 'substantial danger to reputation apparent.'"[2] *Id.*, at 348, quoting *Curtis Publishing Co.* v. *Butts*, 388 U. S. 130, 155 (1967).

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[2] In amplification of this limitation, we referred to the type of "factual misstatement whose content [does] not warn a reasonably prudent editor or broadcaster of its defamatory potential." 418 U. S., at 348.

1, 6, 7

To: The Chief Justice
Mr. [illegible]
Mr. Justice [illegible]
Mr. Justice [illegible]
Mr. Justice [illegible]
Mr. Justice [illegible]
Mr. Justice [illegible]
Mr. Justice [illegible]

From: Mr. Justice Powell

Circulated:

Recirculated: FEB 25 1976

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-944

Time, Inc., Petitioner, v. Mary Alice Firestone. | On Writ of Certiorari to the Supreme Court of Florida.

[March —, 1976]

MR. JUSTICE POWELL, with whom MR. JUSTICE STEWART joins, concurring.

A clear majority of the Court adheres to the principles of *Gertz* v. *Robert Welch, Inc.*, 418 U. S. 323 (1974). But it is evident from the variety of views expressed that perceptions differ as to the proper application of such principles to this bizarre case. In order to avoid the appearance of fragmentation of the Court on the basic principles involved, I join the opinion of the Court. I add this concurrence to state my reaction to the record presented for our review.

In *Gertz* we held that "so long as they do not impose liability without fault, the States may define for themselves the appropriate standard of liability for a publisher or broadcaster of defamatory falsehood injurious to a private individual." *Id.*, at 347. Thus, while a State may elect to hold a publisher to a lesser duty of care,[1] there is no First Amendment constraint against allowing recovery upon proof of negligence. The applicability of such a fault standard was expressly limited to circumstances where, as here, "the substance

[1] A State, if it elected to do so, could require proof of gross negligence before holding a publisher or broadcaster liable for defamation. In *Gertz*, we concluded "that the States should retain substantial latitude in their efforts to enforce a legal remedy for defamatory falsehood injurious to the reputation of a private individual." 418 U. S., at 345–346.

P. 1 & 12

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-944

Time, Inc., Petitioner,
v.
Mary Alice Firestone.

On Writ of Certiorari to the Supreme Court of Florida.

[December —, 1975]

Memorandum of MR. JUSTICE REHNQUIST.

Petitioner is the publisher of Time, a weekly news magazine. The Supreme Court of Florida affirmed a $100,000 libel judgment against petitioner which was based on an item appearing in Time that purported to describe the result of domestic relations litigation between respondent and her husband. We granted certiorari, 421 U. S. 909 (1975), to review petitioner's claim that the judgment violates its rights under the First and Fourteenth Amendments to the United States Constitution.

I

Respondent, Mary Alice Firestone, married Russell Firestone, the scion of one of America's wealthier industrial families, in 1961. In 1964, they separated, and respondent filed a complaint for separate maintenance in the Circuit Court of Palm Beach County, Fla. Her husband counterclaimed for divorce on grounds of extreme cruelty and adultery. After a lengthy trial the Circuit Court issued a judgment granting the divorce requested by respondent's husband. In relevant part the court's final judgment read:

> "This cause came on for final hearing before the court upon the plaintiff wife's second amended com-

P 1415

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

From: Mr. J.

Circulated: 12-11-75

Recirculated: 1-6-76

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-944

Time, Inc., Petitioner,
v.
Mary Alice Firestone.

On Writ of Certiorari to the Supreme Court of Florida.

[January —, 1976]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

Petitioner is the publisher of Time, a weekly news magazine. The Supreme Court of Florida affirmed a $100,000 libel judgment against petitioner which was based on an item appearing in Time that purported to describe the result of domestic relations litigation between respondent and her husband. We granted certiorari, 421 U. S. 909 (1975), to review petitioner's claim that the judgment violates its rights under the First and Fourteenth Amendments to the United States Constitution.

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"This cause came on for final hearing before the court upon the plaintiff wife's second amended com-

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

Circulated: _____

Recirculated: FEB 4 1976

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-944

Time, Inc., Petitioner, v. Mary Alice Firestone. } On Writ of Certiorari to the Supreme Court of Florida.

[January —, 1976]

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> "This cause came on for final hearing before the court upon the plaintiff wife's second amended com-