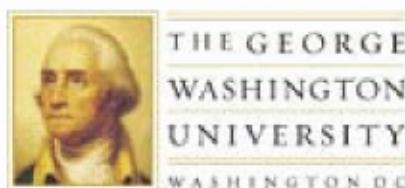


# The Burger Court Opinion Writing Database

*The New York Times Co. v. Jascalevich*  
439 U.S. 1301 (1978)

Paul J. Wahlbeck, George Washington University  
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1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. A-38

The New York Times Company et al., Petitioners,  
*v.* Mario E. Jascalevich. } On Application for Stay.

[July 11, 1978]

MR. JUSTICE WHITE.

MR. JUSTICE BRENNAN having disqualified himself in this matter, I have before me an Application for Stay of an order of the Supreme Court of New Jersey of July 6, 1978, which refused to stay and denied leave to appeal from an order of a state trial court refusing to quash a subpoena issued in the course of an ongoing criminal trial for murder. The order of the trial court, issued June 30, ordered the New York Times Company and Myron Farber, a reporter for the New York Times, to produce certain documents covered by a subpoena served upon them in New York pursuant to the Uniform Act to Secure the Attendance of Witnesses from Without a State in Criminal Proceedings, N. J. Stat. Ann. §§ 2A: 81-18-2-A: 81-23 (West 1976). The subpoena was issued at the behest of the defendant in the New Jersey murder trial; and the documents, which were sought for the purpose of cross-examining prosecution witnesses, included statements, pictures, recordings, and notes of interviews with respect to witnesses for the defense or prosecution. The subpoena was challenged by applicants on the grounds that it was overbroad and sought irrelevant material and hence was illegal under state law; that it violated the state reporter's Shield Law; and that it invaded rights of the reporter and the press protected by the First Amendment to the U. S. Constitution.

In denying the motion to quash and in ordering *in camera* inspection, the trial judge, having already certified that the

# SUPREME COURT OF THE UNITED STATES

No. A-38

The New York Times Company  
et al., Petitioners,  
v.  
Mario E. Jascalevich. } On Re-Application for Stay.

[July 12, 1978]

MR. JUSTICE MARSHALL.

The New York Times and one of its journalists have applied to me for a stay of an order of the Supreme Court of New Jersey, issued July 6, 1978, pending the filing and disposition of applicants' petition for certiorari. MR. JUSTICE WHITE yesterday denied the application, and the pertinent facts are stated in his opinion. *Ante*, p. —. The principal issue that applicants intend to raise in their petition for certiorari is whether,

"when a motion to quash a subpoena *duces tecum* issued to the news media is made, the court before which such motion is returnable shall be required to make threshold determinations with respect to the facial invalidity of the subpoena, as well as preliminary rulings on materiality and privilege, *prior to* compelling the production of all subpoenaed materials." Application 10 (emphasis in original).

The standards for issuance of a stay pending disposition of a petition for certiorari are well-established. Applicants bear the burden of persuasion on two questions: whether there is "a balance of hardships in their favor"; and whether four Justices of this Court would likely vote to grant a writ of certiorari. *Beame v. Friends of the Earth*, 434 U. S. 1310, 1312-1314 (1977) (MARSHALL, J., in chambers). Their "burden is particularly heavy when, as here, a stay has been