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The New York Times Co. v. Jascalevich

439 U.S. 1317 (1978)

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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

SUPREME COURT OF THE UNITED STATES Mr. Justice White

No. A-111

Circulated: _____

Recirculated: 6-3-76

The New York Times Company }
and Myron Farber }
v. } On Application for Stay.
Mario E. Jascalevich. }

[August 1, 1978]

MR. JUSTICE WHITE, Circuit Justice.

This is an application for a stay of an order of the Supreme Court of New Jersey refusing to stay, except temporarily to permit this application, an order of the Superior Court of New Jersey holding applicants in civil contempt for refusing to obey a subpoena for documents that was issued at the behest of the defendant in the course of an ongoing murder trial and that the Superior Court refused to quash.¹ Applicant Farber, a reporter for *The New York Times*, a newspaper, was committed to jail until he complied with the subpoena by submitting the requested documents for *in camera* inspection by the trial judge; and The New York Times Company, the corporation owning and controlling the newspaper, was ordered to pay \$5,000 for each day of noncompliance with the subpoena. Both applicants were also found guilty of criminal contempt. On appeal to the Superior Court of New Jersey, Appellate Division, that court stayed the convictions for

¹ Judge Arnold informed petitioners that he would not rule on the merits of their motion to quash until he had the opportunity to examine *in camera* the documents. He then ordered the production of the documents for his inspection. Petitioners unsuccessfully appealed through the New Jersey system seeking a stay of Judge Arnold's order. They then took their application to two individual Justices of this Court, both of whom denied relief. *New York Times Co. v. Jascalevich*, 47 U. S. L. W. 3013 (No. A-38, July 25, 1978 (WHITE, J., and MARSHALL, J.)).

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SUPREME COURT OF THE UNITED STATES

No. A-111

The New York Times Company
and Myron Farber
v.
Mario E. Jascalevich.

} On Reapplication for Stay.

[August 4, 1978]

MR. JUSTICE MARSHALL, Circuit Justice.

The New York Times and one of its reporters, Myron Farber, have reapplied to me for a stay of an order issued by the Supreme Court of New Jersey on July 25, 1978, after MR. JUSTICE WHITE denied their initial application on August 1, 1978.

At issue is the New Jersey Supreme Court's denial of a motion for a stay of civil contempt penalties imposed by the Superior Court of Bergen County in order to coerce the applicants to submit for *in camera* inspection materials sought by the defendant in a murder trial now in progress. The New Jersey Supreme Court also denied the applicants' motion for direct certification of their appeals from the contempt orders entered by the Superior Court.

The applicants have requested a stay pending the filing and determination of their petition for certiorari, which would raise the issue

"whether the First and Fourteenth Amendments to the Constitution of the United States permit a State to incarcerate and fine a newsperson or newspaper to force them to disclose to a court, *in camera*, all materials, including confidential sources and unpublished information, called for by a subpoena *duces tecum*, prior to making determinations with respect to the facial invalidity of the subpoenas as well as claims of First Amendment and