

# The Burger Court Opinion Writing Database

## *Globe Newspaper Co. v. Superior Court, County of Norfolk*

456 U.S. 596 (1982)

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

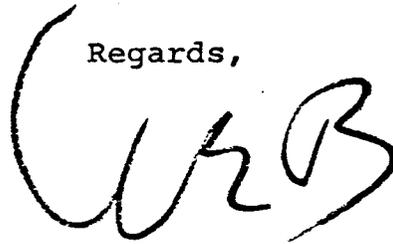
May 24, 1982

RE: 81-611 - Globe Newspaper Co. v. Superior Court for  
the County of Norfolk

MEMORANDUM TO THE CONFERENCE:

In due course I will circulate a dissent.

Regards,



To: Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: The Chief Justice

Circulated: JUN 9 1982

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

Globe Newspaper Company v. Superior Court for the County of Norfolk, No. 81-611.

CHIEF JUSTICE BURGER, dissenting.

Historically our Society has gone to great lengths to protect minors charged with crime, particularly by prohibiting the release of the names of offenders, barring the press and public from juvenile proceedings, and sealing the records of those proceedings. Yet today the Court holds unconstitutional a state statute designed to protect not the accused, but the minor victims of sex crimes. In doing so, it establishes a disturbing paradox. Although states are permitted, for example, to mandate the closure of all proceedings in order to protect a 17-year-old charged with rape, they cannot require the closing of any part of criminal proceedings in order to protect an innocent child who has been raped or otherwise sexually abused.

The Court has tried to make its holding a narrow one by not disturbing the authority of state legislatures to enact more

To: Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: **The Chief Justice**

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

Recirculated: JUN 10 1982

1st PRINTED DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 81-611

GLOBE NEWSPAPER COMPANY, APPELLANT *v.* SUPERIOR COURT FOR THE COUNTY OF NORFOLK

APPEAL FROM THE SUPREME JUDICIAL COURT OF MASSACHUSETTS

[June —, 1982]

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The Court has tried to make its holding a narrow one by not disturbing the authority of state legislatures to enact more narrowly drawn statutes giving trial judges the discretion to exclude the public and the press from the courtroom during the minor victim's testimony. *Ante*, at 14 n.28. I also do not read the Court's opinion as foreclosing a state statute which mandates closure except in cases where the victim agrees to testify in open court.<sup>1</sup> But the Court's deci-

<sup>1</sup>It certainly cannot be said that the victims in this case consented to

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STYLISTIC CHANGES

2, 3, 4, 6, 7, 8

To: Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: **The Chief Justice**

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

**JUN 15 1982**

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

2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 81-611

GLOBE NEWSPAPER COMPANY, APPELLANT *v.* SUPERIOR COURT FOR THE COUNTY OF NORFOLK

APPEAL FROM THE SUPREME JUDICIAL COURT OF MASSACHUSETTS

[June —, 1982]

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1, 2, 6, 9

To: Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: The Chief Justice

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

Recirculated: JUN 17 1982

3rd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 81-611

GLOBE NEWSPAPER COMPANY, APPELLANT *v.* SUPERIOR COURT FOR THE COUNTY OF NORFOLK

APPEAL FROM THE SUPREME JUDICIAL COURT OF MASSACHUSETTS

[June —, 1982]

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

CHAMBERS OF  
THE CHIEF JUSTICE

June 18, 1982

Re: No. 81-611 - Globe Newspaper Co. v. Superior Court

MEMORANDUM TO THE CONFERENCE:

In view of some changes I have made in my opinion, it is unlikely that this case can come down on Monday, but it should be ready for later in the week.

Regards,

WRB

5-6,9

*[Handwritten signature]*

To: Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: **The Chief Justice**

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

Recirculated: JUN 21 1982

4th DRAFT

# SUPREME COURT OF THE UNITED STATES

No. 81-611

GLOBE NEWSPAPER COMPANY, APPELLANT *v.* SUPERIOR COURT FOR THE COUNTY OF NORFOLK

ON APPEAL FROM THE SUPREME JUDICIAL COURT OF MASSACHUSETTS

[June —, 1982]

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To: The Chief Justice  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: **Justice Brennan**

Circulated: 5/24/82

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

*WE*  
*me*  
*Don't*  
*MA*

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 81-611

**GLOBE NEWSPAPER COMPANY, APPELLANT v. SUPERIOR COURT FOR THE COUNTY OF NORFOLK**

**APPEAL FROM THE SUPREME JUDICIAL COURT OF MASSACHUSETTS**

[May —, 1982]

JUSTICE BRENNAN delivered the opinion of the Court.

Section 16A of Chapter 278 of Massachusetts General Laws,<sup>1</sup> as construed by the Massachusetts Supreme Judicial Court, requires trial judges, at trials for specified sexual offenses involving a victim under the age of 18, to exclude the press and general public from the courtroom during the testimony of that victim. The question presented is whether the statute thus construed violates the First Amendment as applied to the States through the Fourteenth Amendment.

I

The case began when appellant, Globe Newspaper Co. (Globe), unsuccessfully attempted to gain access to a rape trial conducted in the Superior Court for the County of Norfolk, Commonwealth of Massachusetts. The criminal defendant in that trial had been charged with the forcible rape

<sup>1</sup>Mass. Gen. Laws, ch. 278, § 16A (West), which provides in pertinent part:

“At the trial of a complaint or indictment for rape, incest, carnal abuse or other crime involving sex, where a minor under eighteen years of age is the person upon, with or against whom the crime is alleged to have been committed, . . . the presiding justice shall exclude the general public from the court room, admitting only such persons as may have a direct interest in the case.”

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

June 10, 1982

MEMORANDUM TO THE CONFERENCE

RE: No.81-611 Globe Newspaper Co. v. Superior Court of  
the County of Norfolk

In response to the dissent of the Chief Justice, I am adding to footnote 18 the following:

THE CHIEF JUSTICE, in dissent, suggests that the First Amendment should be read to permit the exclusion of the press and general public from a criminal trial when such exclusion "is rationally related to [a] legitimate state interest." Post, at 11. See also post, at 6, 7. This suggestion, which we reject, is surely at odds with the view expressed by THE CHIEF JUSTICE in Richmond Newspapers: "Absent an overriding interest articulated in findings, the trial of a criminal case must be open to the public." 448 U.S., at 581 (plurality opinion) (emphasis added).

W.J.B. Jr.

7, 10  
fns. from 13 on renumbered

To: The Chief Justice  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: **Justice Brennan**

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Recirculated: **JUN 17 1982** \_\_\_\_\_

2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 81-611

GLOBE NEWSPAPER COMPANY, APPELLANT *v.* SUPERIOR COURT FOR THE COUNTY OF NORFOLK

APPEAL FROM THE SUPREME JUDICIAL COURT OF MASSACHUSETTS

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pp 9-11

To: The Chief Justice  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: Justice Brennan

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

Recirculated: JUN 31 1982

3rd  
~~4th~~-DRAFT

# SUPREME COURT OF THE UNITED STATES

No. 81-611

GLOBE NEWSPAPER COMPANY, APPELLANT *v.* SUPERIOR COURT FOR THE COUNTY OF NORFOLK

ON APPEAL FROM THE SUPREME JUDICIAL COURT OF MASSACHUSETTS

[June —, 1982]

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

June 23, 1982

MEMORANDUM TO THE CONFERENCE

Re: Cases Held for No. 81-611, Globe Newspaper Co. v. The Superior Court for the County of Norfolk

1. No. 81-5783, Frazier v. Connecticut.

Petitioner was tried and convicted in state court on 13 criminal counts: 4 counts of rape, 3 counts of deviate sexual intercourse, 4 counts of unlawful restraint, 1 count of burglary, and 1 count of larceny. The charges arose from events that occurred on November 17, 1974. On that day, petitioner apparently entered a home in Westport, Conn., while the family residing there was away. Upon returning, the family was met by petitioner, who was holding a rifle. Petitioner committed repeated sexual assaults on the mother after imposing physical restraints on the other members of the family. Taking various items of the family's personal property with him, petitioner fled the premises. In the course of flight, the local police apprehended him.

Upon arrest, a police officer read petitioner his Miranda rights. According to the court below, petitioner responded that "he was aware of his rights and had heard them before." App. to Pet. for Cert. 10A. The officer then brought petitioner into the station. Once there, another officer again informed petitioner of his Miranda rights, and petitioner "responded that he understood his rights and had been advised of them before." Ibid. Petitioner was then placed in a room in which a tape recorder had been placed. He was permitted to make a telephone call home, following which two officer proceeded to question him. After being asked to recount the events of the day, petitioner stated "I ain't signing no statements." Id., at 11A. Petitioner was then asked to sign a form waiving his Miranda rights. Because petitioner indicated he could not read, one of the officers read aloud the form. As each of the paragraphs was read, petitioner initialed it. But when the officer read the paragraph that restated the portion of the Miranda warning providing that anything said could be used against him, petitioner stated, "I'm not saying that ... not that is I talked to any police officer." Pet. for Cert. 15. Petitioner initialed the paragraph, however, after the

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

10:19 AM '82

May 25, 1982

Re: 81-611 - Globe Newspaper Co. v.  
Superior Court for the County of Norfolk

Dear Bill,

I am satisfied with your opinion and join it except for the words "or are implicit in the very structure of self-government established by the Constitution" in the middle of page 7 and except for note 13 on the same page. Perhaps these items are not critical to your opinion. If they are, I shall indicate my disagreement.

Sincerely yours,



Justice Brennan

Copies to the Conference

cpm

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

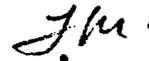
May 24, 1982

Re: No. 81-611 - Globe Newspaper Co. v. Superior  
Court for the County of Norfolk

Dear Bill:

Please join me.

Sincerely,



T.M.

Justice Brennan

cc: The Conference

June 17, 1982

Dear Bill and John:

The Chief Justice has No. 81-611, Globe Newspaper Company v. Superior Court for the County of Norfolk, tentatively scheduled for decision on Monday. This is all right with me, but, in line with my usual "policing" tactics, I note that John cites New York v. Ferber, No. 81-55, on page 2 of his dissent. Ferber will not be down by Monday.

Sincerely,

HAB

Justice Brennan and Justice Stevens

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

June 17, 1982

JUN 23 11 41 AM '82

Re: No. 81-611 - Globe Newspaper Co. v. Superior Court

Dear Bill:

Please join me. I hope you will be able to give sympathetic consideration to the points Byron raises in his note of May 25. I agree with him that footnote 13 is perhaps not critical to the opinion.

Sincerely,



Justice Brennan

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

May 25, 1982

81-611 Globe Newspaper Company v. Superior Court

Dear Bill:

Please join me.

Sincerely,

*Lewis*

Justice Brennan

lfp/ss

cc: The Conference

85 MAY 22 10:10

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

June 10, 1982

Re: No. 81-611 Globe Newspaper Company v. Superior  
Court for the County of Norfolk

Dear Chief:

Please join me.

Sincerely,



The Chief Justice

cc: The Conference

.95 7/10 81NE

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice O'Connor

From: **Justice Stevens**

Circulated: JUN 8 '82

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

1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 81-611

GLOBE NEWSPAPER COMPANY, APPELLANT *v.* SUPERIOR COURT FOR THE COUNTY OF NORFOLK

APPEAL FROM THE SUPREME JUDICIAL COURT OF MASSACHUSETTS

[June —, 1982]

JUSTICE STEVENS, dissenting.

The duration of a criminal trial generally is shorter than the time it takes for this Court's jurisdiction to be invoked and our judgment on the merits to be announced. As a result, our power to review pretrial or midtrial orders implicating the freedom of the press has rested on the exception to the mootness doctrine for orders "capable of repetition, yet evading review." See *Richmond Newspapers, Inc. v. Virginia*, 448 U. S. 555, 563; *Gannett Co. v. DePasquale*, 443 U. S. 368, 377-378; *Nebraska Press Assn. v. Stuart*, 427 U. S. 539, 546-547.

Today the Court expands that exception in order to pass on the constitutionality of a statute that, as presently construed, has never been applied in a live controversy. In this case, unlike the three cases cited above, the governing state law was materially changed after the trial court's order had expired by its own terms. There consequently is no possibility "that the same complaining party will be subject to the same action again." *Gannett Co. v. DePasquale, supra*, at 377 (quoting *Weinstein v. Bradford*, 423 U. S. 147, 149).

The fact that the Massachusetts Supreme Judicial Court narrowly construed—and then upheld in the abstract—the state statute that the trial court had read to mandate the closure of the entire trial bears on our review function in other

To: The Chief Justice  
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Justice White  
Justice Marshall  
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Justice Powell  
Justice Rehnquist  
Justice O'Connor

From: Justice Stevens

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

Recirculated: \_\_\_\_\_ JUN 18 '82

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 81-611

**GLOBE NEWSPAPER COMPANY, APPELLANT v. SUPERIOR COURT FOR THE COUNTY OF NORFOLK**

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Justice Stevens

From: Justice O'Connor

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

1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 81-611

GLOBE NEWSPAPER COMPANY, APPELLANT *v.* SUPERIOR COURT FOR THE COUNTY OF NORFOLK

APPEAL FROM THE SUPREME JUDICIAL COURT OF MASSACHUSETTS

[June —, 1982]

JUSTICE O'CONNOR, concurring in the judgment.

In *Richmond Newspapers, Inc. v. Virginia*, 448 U. S. 555 (1980), the Court held that the First Amendment protects the right of press and public to attend criminal trials. I do not interpret that decision to shelter every right that is "necessary to the enjoyment of other First Amendment rights or . . . implicit in the very structure of self-government established by the Constitution." *Ante*, at 7. Instead, *Richmond Newspapers* rests upon our long history of open criminal trials and the special value, for both public and accused, of that openness. As the plurality opinion in *Richmond Newspapers* stresses, "it would be difficult to single out any aspect of government of higher concern and importance to the people than the manner in which criminal trials are conducted." 448 U. S., at 575. Thus, I interpret neither *Richmond Newspapers* nor the Court's decision today to carry any implications outside the context of criminal trials.

This case, however, does involve a criminal trial. Moreover, it involves a statute mandating automatic exclusion of the public from certain testimony. As the Court explains, Massachusetts has demonstrated no interest weighty enough to justify application of its automatic bar to all cases, even those in which the victim, defendant, and prosecutor have no objection to an open trial. Accordingly, I concur in the judgment.

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

From: Justice O'Connor

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

Recirculated: JUN 18 1982

2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 81-611

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[June —, 1982]

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*File*

OFFICE OF THE CLERK  
SUPREME COURT OF THE UNITED STATES  
WASHINGTON, D. C., 20543

May 4, 1982

Memorandum to the Court

Re: Globe Newspaper Company v. Superior  
Court for the County of Norfolk,  
No. 81-611

In the above case which was argued before you on March 29, 1982, I received the attached recent opinion of the Supreme Judicial Court of Massachusetts.

Counsel has requested that this be forwarded for your use.

Respectfully submitted,

Alexander L. Stevas  
Clerk

Attachment

82 MAY -5 A9:53

RECEIVED  
SUPREME COURT, U.S.  
JUSTICE MARSHALL

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

## COMMONWEALTH vs. JACKIE J. HOBBS.

Suffolk. January 5, 1982. - April 28, 1982.

Present: Hennessey, C.J., Abrams, Nolan, Lynch, & O'Connor, JJ.

Constitutional Law, Public trial. Practice, Criminal, Variance, Instructions to jury, Examination of jurors. Burglary. Due Process of Law, Examination of jurors. Assault.

Indictments found and returned in the Superior Court Department on August 18, 1980.

The cases were tried before Prince, J.

After review was sought in the Appeals Court, the Supreme Judicial Court ordered direct appellate review on its own initiative.

Milly Whatley for the defendant.

Michael J. Traft, Assistant District Attorney (Eugene M. Russell, Legal Assistant to the District Attorney, with him) for the Commonwealth.

HENNESSEY, C.J. The defendant was convicted of several charges arising from an attack upon two children in their home. His principal argument on appeal is that he was denied a public trial. He also claims that the judge erred in refusing several requests concerning jury instructions, and in declining to question prospective jurors individually on the issue of racial bias. We find no error, and affirm the judgments of conviction.

The two victims, whom we shall refer to as Susan and Gary, are sister and brother. Susan, who was thirteen years old at the