

The Burger Court Opinion Writing Database

Briscoe v. LaHue

460 U.S. 325 (1983)

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

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

CHAMBERS OF
THE CHIEF JUSTICE

'82 DEC 22 A10:13

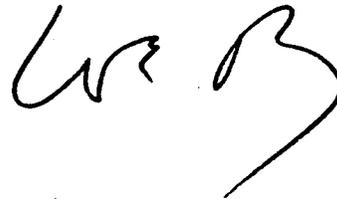
December 21, 1982

Re: No. 81-1404, Briscoe v. Lahue

Dear John:

I join.

Regards,

A handwritten signature in black ink, appearing to be 'W. Stevens', written in a cursive style.

Justice Stevens

Copies to the Conference

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

M

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

November 18, 1982

RE: No. 81-1404 Briscoe v. Lahue

Dear Byron:

You, Thurgood, Harry and I are in dissent in the above.
Would you be willing to undertake the dissent?

Sincerely,

Bill
2

Justice White

Copies to:

Justice Marshall
Justice Blackmun

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

RECEIVED
SUPREME COURT U.S.
JUSTICE MARSHALL

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

December 21, 1982

'82 DEC 22 AIO:13

RE: No. 81-1404 Briscoe v. Lahue

Dear Thurgood and Harry:

We three and Byron were in dissent in the above and Byron initially agreed to try his hand at a dissent, but told us at the time that he might change his vote. He has now changed his vote and joined John. Thurgood, would you be willing to undertake the dissent for the three of us?

Sincerely,



Justice Marshall

Justice Blackmun

Justice White
 Justice Marshall
 Justice Blackmun
 Justice Powell
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

From: **Justice Brennan**

Circulated: FEB 17 1983

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1404

CARLISLE W. BRISCOE, CHRIS P. VICKERS, SR., AND
 JAMES N. BALLARD, PETITIONERS *v.* MARTIN
 LAHUE AND JAMES W. HUNLEY, ETC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
 APPEALS FOR THE SEVENTH CIRCUIT

[February —, 1983]

JUSTICE BRENNAN, dissenting.

JUSTICE MARSHALL'S dissenting opinion, *post*, presents an eloquent argument that Congress, in enacting § 1983, did not intend to create any absolute immunity from civil liability for "government officials involved in the judicial process. . . ." *Post*, at 1. Whatever the correctness of his historical argument, I fear that the Court has already crossed that bridge in *Pierson v. Ray*, 386 U. S. 547 (1967), and *Imbler v. Pachtman*, 424 U. S. 429 (1976).

I entirely agree with JUSTICE MARSHALL, however, that the policies of § 1983 and of common-law witness immunity, as they apply to witnesses who are police officers, do not justify any absolute immunity for perjurious testimony. I therefore dissent for the reasons stated in Part IV of JUSTICE MARSHALL'S opinion.

21

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

November 18, 1982

Re: 81-1404- Briscoe v. Lahue

Dear Bill,

I should be glad to try a dissent in this case although I am frank to say I may change my vote in the process. You may thus prefer another arrangement.

Sincerely yours,

Justice Brennan

cc: ✓ Justice Marshall
Justice Blackmun

cpm

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

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

CHAMBERS OF
JUSTICE BYRON R. WHITE

December 21, 1982 ⁸² DEC 22 AIO:13

Re: 81-1404 -

Briscoe v. Lahue and Hunley

Dear John,

My tentative vote to reverse was founded on a concern about the legislative history of §1983. Your draft dispels my worry and I join.

Sincerely yours,



Justice Stevens

Copies to the Conference

cpm

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 27, 1982

Re: No. 81-1404-Briscoe v. Lahue

Dear John:

In due course I will try my hand at a dissent.

Sincerely,

T.M.

T.M.

Justice Stevens

cc: The Conference

Justice Brennan
 Justice White
 Justice Blackmun
 Justice Powell
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

From: **Justice Marshall**

Circulated: FFB 1 1 1983

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1404

CARLISLE W. BRISCOE, CHRIS P. VICKERS, SR., AND
 JAMES N. BALLARD, PETITIONERS *v.* MARTIN
 LAHUE AND JAMES W. HUNLEY, ETC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
 APPEALS FOR THE SEVENTH CIRCUIT

[February —, 1983]

JUSTICE MARSHALL, dissenting.

I cannot agree that police officers are absolutely immune from civil liability under 42 U. S. C. §1983 for testimony given in criminal proceedings. The extension of absolute immunity conflicts fundamentally with the language and purpose of the statute. I would therefore be reluctant in any case to conclude that §1983 incorporates common-law tort immunities that may have existed when Congress enacted the statute in 1871. But in this case the conclusion is especially questionable. First, absolute immunity for witnesses was by no means a settled legal proposition in 1871. Most notably, in 1845 this Court had cast serious doubt on the existence of absolute immunity for testimony given in judicial proceedings. Second, the origins and history of §1983 strongly suggest that Congress meant to abrogate any absolute immunity for government officials involved in the judicial process, including police officers. Finally, I believe that public policy is ill-served by according officer-witnesses an absolute immunity.

I

The majority opinion correctly states that this case presents a question of statutory construction. *Ante*, at 1. Yet

Justice Brennan
 Justice White
 Justice Blackmun
 Justice Powell
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

From: **Justice Marshall**

Circulated: _____

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pp. 6-7, 9-11, 13, 19
 and stylistic changes
 throughout

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1404

CARLISLE W. BRISCOE, CHRIS P. VICKERS, SR., AND
 JAMES N. BALLARD, PETITIONERS *v.* MARTIN
 LAHUE AND JAMES W. HUNLEY, ETC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
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[February —, 1983]

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I

The majority opinion correctly states that this case pre-

PP. 7, 11, 24

STYLISTIC CHANGES THROUGHOUT.

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

From: **Justice Marshall**

Circulated: _____

MAR 4 1983

Recirculated: _____

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

 No. 81-1404

CARLISLE W. BRISCOE, CHRIS P. VICKERS, SR., AND
 JAMES N. BALLARD, PETITIONERS *v.* MARTIN
 LAHUE AND JAMES W. HUNLEY, ETC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
 APPEALS FOR THE SEVENTH CIRCUIT

[March —, 1983]

JUSTICE MARSHALL, dissenting.

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I

The majority opinion correctly states that this case pre-

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 3, 1983

Re: No. 81-1404 - Briscoe v. Lahue

Dear John:

You have written an able and persuasive opinion. For the moment, however, I shall wait to see what Thurgood has to say in dissent.

Sincerely,



Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 3, 1983

Re: No. 81-1404 - Briscoe v. Lahue

Dear Thurgood:

I am sending a very brief separate dissent to the Composition Room in which I join all of your dissent except Part I. I cannot join Part I because of my position and authorship of Newport v. Fact Concerts, 453 U.S. 247, 258-259. I feel that your writing on the historical aspects is most persuasive.

May I ask that you eliminate the last sentence of Part IV (on page 24 of your opinion), and have Part IV end with the quotation from Marbury v. Madison. I wonder if that sentence is really necessary for your opinion; its basis really ties into Part I which I cannot join. My joinder of your Part IV has to be conditional on the elimination of that sentence.

Sincerely,



Justice Marshall

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

From: Justice Blackmun

Circulated: MAR 3 1983

No. 81-1404 - Briscoe v. LaHue

Recirculated: _____

JUSTICE BLACKMUN, dissenting.

I join all of JUSTICE MARSHALL's dissenting opinion except Part I. I cannot join its Part I, for I adhere to the views I expressed for the Court in City of Newport v. Fact Concerts, Inc., 453 U.S. 247, 258-259 (1981), regarding the role played by history and policy in determining whether §1983 incorporates a particular common law immunity. It is proper to assume -- indeed, the Court in the past has assumed -- "that members of the 42d Congress were familiar with common-law principles ... and that they likely intended these common-law principles to obtain, absent specific provisions to the contrary." Id., at 258. If an immunity was well established in the common law in 1871, careful analysis of the policies supporting it, and those supporting §1983, governs the determination whether that immunity was retained.

In my view, JUSTICE MARSHALL's dissent convincingly demonstrates that the Court finds little support for its decision in the present case either in the language of the statute, the history of the common law, the relevant legislative history, or policy considerations.

I therefore dissent.

TO: The Chief Justice

Justice Brennan
 Justice White
 Justice Marshall
 Justice Powell
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

From: **Justice Blackmun**

Circulated: _____

Recirculated: **MAR 3 1983**

1st Printed DRAFT

SUPREME COURT OF THE UNITED STATES

 No. 81-1404

CARLISLE W. BRISCOE, CHRIS P. VICKERS, SR., AND
 JAMES N. BALLARD, PETITIONERS *v.* MARTIN
 LAHUE AND JAMES W. HUNLEY, ETC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
 APPEALS FOR THE SEVENTH CIRCUIT

[March —, 1983]

JUSTICE BLACKMUN, dissenting.

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In my view, JUSTICE MARSHALL's dissent convincingly demonstrates that the Court finds little support for its decision in the present case either in the language of the statute, the history of the common law, the relevant legislative history, or policy considerations.

I therefore dissent.

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

December 20, 1982

81-1404 Briscoe, et al v. LaHue, et al.

Dear John:

Please join me.

Sincerely,



Justice Stevens

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

December 27, 1982

Re: No. 81-1404 Briscoe v. Lahue

Dear John:

Please join me in your opinion for the Court.

Sincerely,



Justice Stevens

cc: The Conference

Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice O'Connor

From: **Justice Stevens**

Circulated: _____

Recirculated: _____

did not send memo

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1404

**CARLISLE W. BRISCOE, CHRIS P. VICKERS, SR., AND
JAMES N. BALLARD, PETITIONERS v. MARTIN
LAHUE AND JAMES W. HUNLEY, ETC.**

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SEVENTH CIRCUIT**

[December —, 1982]

JUSTICE STEVENS delivered the opinion of the Court.

This case presents a question of statutory construction: whether 42 U. S. C. § 1983 authorizes a convicted person to assert a claim for damages against a police officer for giving perjured testimony at his criminal trial. The Court of Appeals for the Seventh Circuit held that witnesses are absolutely immune from damages liability based on their testimony, and rejected the petitioners' contention that government officials who testify about the performance of their official duties may be held liable under § 1983 even if other witnesses may not. We agree with that conclusion.

The Court of Appeals heard argument in three separate cases raising the absolute immunity issue and decided them in a single opinion. Two of these cases are before us on writs of certiorari. Petitioner Briscoe was convicted in state court of burglarizing a house trailer. He then filed a § 1983 complaint against respondent Lahue, a member of the Bloomington, Indiana police force, alleging that Lahue had violated his constitutional right to due process by committing perjury in the criminal proceedings leading to his conviction.¹ Lahue

¹The Court has held that the prosecutor's knowing use of perjured testimony violates due process, but has not held that the false testimony of a

due
AP
summary may find it
MM

STYLISIC CHANGES THROUGHOUT, footnotes renumbered
 SEE PAGES: 3-4, 5-6, 7-8, 16

Justice Brennan
 Justice White
 Justice Marshall
 Justice Blackmun
 Justice Powell
 Justice Rehnquist
 Justice O'Connor

From: **Justice Stevens**

Circulated: _____

FEB 15 '83

Recirculated: _____

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1404

CARLISLE W. BRISCOE, CHRIS P. VICKERS, SR., AND
 JAMES N. BALLARD, PETITIONERS *v.* MARTIN
 LAHUE AND JAMES W. HUNLEY, ETC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
 APPEALS FOR THE SEVENTH CIRCUIT

[February —, 1983]

JUSTICE STEVENS delivered the opinion of the Court.

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¹The Court has held that the prosecutor's knowing use of perjured testimony violates due process, but has not held that the false testimony of a

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

STYLISTIC CHANGES THROUGHOUT.

SEE PAGES: 4, 8, 12, 15-17

From: Justice Stevens

Circulated: _____

Recirculated: FEB 25 '83

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1404

CARLISLE W. BRISCOE, ET AL., PETITIONERS *v.*
 MARTIN LAHUE ETC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
 APPEALS FOR THE SEVENTH CIRCUIT

[February —, 1983]

JUSTICE STEVENS delivered the opinion of the Court.

This case presents a question of statutory construction: whether 42 U. S. C. § 1983 authorizes a convicted person to assert a claim for damages against a police officer for giving perjured testimony at his criminal trial. The Court of Appeals for the Seventh Circuit held that witnesses are absolutely immune from damages liability based on their testimony, and rejected the petitioners' contention that government officials who testify about the performance of their official duties may be held liable under § 1983 even if other witnesses may not. We agree with that conclusion.

The Court of Appeals heard argument in three separate cases raising the absolute immunity issue and decided them in a single opinion. Two of these cases are before us on writs of certiorari. Petitioner Briscoe was convicted in state court of burglarizing a house trailer. He then filed a § 1983 complaint against respondent LaHue, a member of the Bloomington, Indiana police force, alleging that LaHue had violated his constitutional right to due process by committing perjury in the criminal proceedings leading to his conviction.¹

¹The Court has held that the prosecutor's knowing use of perjured testimony violates due process, but has not held that the false testimony of a police officer in itself violates constitutional rights. See *United States v. Agurs*, 427 U. S. 97, 103, and nn. 8-9 (1976) (citing cases).

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 7, 1983

MEMORANDUM TO THE CONFERENCE

Re: Cases held for Briscoe v. LaHue, No. 81-1404

1) Charles v. Wade, No. 81-1881

This petition presents the question we have decided in No. 81-1404: whether police officers should be accorded absolute immunity from liability for trial testimony given in the course of their official duties. A divided panel of the Fifth Circuit Unit B concluded that absolute immunity was appropriate. It therefore rejected petitioner's contention that the District Court had erred in instructing the jury that it could not find respondent, a police detective, liable in a §1983 action on the basis of false trial testimony. Because I believe that the court of appeals reached the correct result in this case, I will vote to DENY.

2) Talley v. Crosson, No. 81-6404

The Seventh Circuit consolidated this case for argument and decision with the two cases we have decided in No. 81-1404, Briscoe v. LaHue and Vickers and Ballard v. Hunley, because it presents the question whether police officers should be accorded absolute immunity for trial testimony. Our decision in No. 81-1404 affirms the Seventh Circuit's disposition of that question. In addition, petitioner, a prisoner filing pro se, raises a number of other issues arising from his §1983 claims against lay witnesses, the state prosecutor, the state judge, and the court reporter. In my view, none of these issues are certworthy. I will vote to DENY.

Respectfully,



RECEIVED
Supreme Court of the United States SUPREME COURT, U.S.
Washington, D. C. 20543 JUSTICE MARSHALL

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

'82 DEC 22 AIO:12

December 20, 1982

No. 81-1404 Briscoe, Vickers and Ballard v.
Lahue and Hunley, etc.

Dear John,

Please join me.

Sincerely,



Justice Stevens

Copies to the Conference