The Burger Court Opinion Writing Database

Press-Enterprise Co. v. Superior Court of California, Riverside County

464 U.S. 501 (1984)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University

pp. 3,6

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

From: **The Chief Justice**

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82–556

PRESS-ENTERPRISE COMPANY, PETITIONER *v.*
SUPERIOR COURT OF CALIFORNIA,
RIVERSIDE COUNTY

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL OF CALIFORNIA, FOURTH APPELLATE DISTRICT

[January ——, 1984]

CHIEF JUSTICE BURGER delivered the opinion of the court.

We granted certiorari to decide whether the guarantees of open public proceedings in criminal trials cover proceedings for the *voir dire* examination of potential jurors.

I

Albert Greenwood Brown, Jr., was tried and convicted of the rape and murder of a teenage girl, and sentenced to death in California Superior Court. Before the *voir dire* examination of prospective jurors began, petitioner, Press-Enterprise Co., moved that the *voir dire* be open to the public and the press. Petitioner contended that the public had an absolute right to attend the trial, and asserted that the trial commenced with the *voir dire* proceedings. The State opposed petitioner's motion, arguing that if the press were present, juror responses would lack the candor necessary to assure a fair trial.

The trial judge agreed and permitted petitioner to attend only the "general voir dire." He stated that counsel would conduct the "individual voir dire with regard to death qualifications and any other special areas that counsel may feel some problem with regard to . . . in private. . . ." App. 93. The *voir dire* consumed *six weeks* and all but approximately three days was closed to the public.

CHANGES THROUGHOUT pp. 7-11

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

From: **The Chief Justice**

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82–556

PRESS-ENTERPRISE COMPANY, PETITIONER *v.*
SUPERIOR COURT OF CALIFORNIA,
RIVERSIDE COUNTY

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL OF CALIFORNIA, FOURTH APPELLATE DISTRICT

[January ——, 1984]

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

CHAMBERS OF
THE CHIEF JUSTICE

January 6, 1984

Re: No. 82-556 Press-Enterprise Company v. Superior Court of California, Riverside County

Dear Bill:

I am always open to good ideas that will improve an opinion or enhance accuracy, and I can readily agree with some of what Thurgood has written. However, it is hardly a novelty for opinions of this Court to comment on state practices that affect the administration of justice.

As to dropping the observation on the absurdity of taking six weeks to pick a jury for a case which should take only a matter of days to try, I am not prepared to omit that observation.

Regards,

WEB

Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

December 20, 1983

No. 82-556

Press-Enterprise Company
v. Superior Court of California,
Riverside County

Dear Chief,

I agree.

Sincerely,

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

January 4, 1984

No. 82-556

Press-Enterprise Company
v. Superior Court of
California, Riverside County

Dear Chief,

I have joined your opinion in the above but would feel more comfortable if you could accommodate Thurgood's concern as expressed in his opinion concurring in the judgment. Can you do so?

Sincerely,

Bill

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

January 6, 1984

No. 82-556

Press-Enterprise Co. v. Superior Court of California, Riverside County

Dear Chief,

Thank you very much for your consideration of my letter. I remain aboard your opinion as revised.

Sincerely,

Bill

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

December 20, 1983

Re: 82-556 - Press-Enterprise Company
v. Superior Court of California,
Riverside County

Dear Chief,

Please join me.

Sincerely,

Byron

The Chief Justice

Copies to the Conference

cpm

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

From: **Justice Marshall**

Circulated: 1/3/84

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-556

PRESS-ENTERPRISE COMPANY, PETITIONER *v.*
SUPERIOR COURT OF CALIFORNIA,
RIVERSIDE COUNTY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEAL OF CALIFORNIA, FOURTH APPELLATE DISTRICT

[January ——, 1984]

JUSTICE MARSHALL, concurring in the judgment.

I agree with the result reached by the Court but write separately to emphasize the importance of precedent inexplicably overlooked by the opinion for the Court, to suggest that the constitutional mandate for open access to criminal trials is even more demanding than the standard implied by the majority, and to express my disagreement with the majority's comments concerning the length and elaborateness of *voir dire* proceedings.

I

Conspicuously absent from the opinion of the Court is any discussion of *Globe Newspaper Co.* v. *Superior Court*, 457 U. S. 596 (1982). Prior to the instant case, *Globe Newspaper* constituted this Court's most recent pronouncement on the contours of the public's First-Amendment right of access to criminal trials. In *Globe Newspaper* we stated that:

> "[T]he circumstances under which the press and public can be barred from a criminal trial are limited; the State's justification in denying access must be a weighty one. Where . . . the State attempts to deny the right of access in order to inhibit the disclosure of sensitive information, it must be shown that the denial is necessitated by a compelling governmental interest, and is narrowly tailored to serve that interest." 457 U. S.,

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

From: **Justice Marshall**

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82–556

PRESS-ENTERPRISE COMPANY, PETITIONER *v.*
SUPERIOR COURT OF CALIFORNIA,
RIVERSIDE COUNTY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEAL OF CALIFORNIA, FOURTH APPELLATE DISTRICT

[January ——, 1984]

JUSTICE MARSHALL, concurring in the judgment.

omission

I agree with the result reached by the Court but write separately to stress that the constitutional rights of the public and press to access to all aspects of criminal trials are not diminished in cases in which "deeply personal matters" are likely to be elicited in *voir dire* proceedings. *Ante*, at 9. Indeed, the policies underlying those rights, see *Richmond Newspapers*, *supra*, 448 U. S.,at 572–573 (plurality opinion), 593–597 (BRENNAN, J., concurring in the judgment), are most severely jeopardized when courts conceal from the public sensitive information that bears upon the ability of jurors impartially to weigh the evidence presented to them. Cf. *Globe Newspaper*, *supra*, 457 U. S., at 606 ("Public scrutiny of a criminal trial enhances the quality and safeguards the integrity of the factfinding process . . ."). Therefore, prior to issuing a closure order, a trial court should be obliged to show that the order in question constitutes *the least restrictive means available* for protecting compelling state interests. In those cases where a closure order is imposed, the constitutionally preferable method for reconciling the First Amendment interests of the public and press with the legitimate privacy interests of jurors and the interests of defendants in fair trials is to redact transcripts in such a way as to preserve the anonymity of jurors while disclosing the substance of their

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 9, 1984

Re: No. 82-556, Press Enterprise Co. v. Superior Court of California, Riverside County

Dear Chief:

Please join me.

Sincerely,

Harry

The Chief Justice

cc: The Conference

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

From: **Justice Blackmun**

Circulated: JAN 9 1984

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-556

PRESS-ENTERPRISE COMPANY, PETITIONER *v.*
SUPERIOR COURT OF CALIFORNIA,
RIVERSIDE COUNTY

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL OF CALIFORNIA, FOURTH APPELLATE DISTRICT

[January ——, 1984]

JUSTICE BLACKMUN, concurring.

I agree that in this case the trial judge erred in closing the *voir dire* proceeding and in refusing to release a transcript of that proceeding without appropriate specific findings that nondisclosure was necessitated by a compelling governmental interest and was narrowly tailored to serve that interest. I write separately to emphasize my understanding that the Court does not decide, nor does this case require it to address, the asserted "right to privacy of the prospective jurors." *Ante*, at 8.

Certainly, a juror has a valid interest in not being required to disclose to all the world highly personal or embarrassing information simply because he is called to do his public duty. We need not decide, however, whether a juror, called upon to answer questions posed to him in court during *voir dire*, has a legitimate expectation, rising to the status of a privacy right, that he will not have to answer those questions. See *Nixon* v. *Administrator of General Services*, 433 U. S. 425, 458 (1977); *Whalen* v. *Roe*, 429 U. S. 589, 599 (1977).[1]

[1] As to most of the information sought during *voir dire*, it is difficult to believe that when a prospective juror receives notice that he is called to serve, he has an expectation, either actual or reasonable, that what he says in court will be kept private. Despite the fact that a juror does not put himself voluntarily into the public eye, a trial is a public event. See *Craig*

December 20, 1983

82-556 Press Enterprise v. Superior Court

Dear Chief:

Subject to the comments below, I will be glad to join your opinion.

1. On p. 8 your opinion states:

"Of course the right of an accused to fundamental fairness and the right of prospective jurors to privacy are compelling interests."

Although I think other portions of your opinion do not equate the two "rights" in such absolute terms, I would find it difficult to agree that "privacy" in the ordinary sense extends to a person who is called to serve on the jury. Such a person's privacy, for example, is not comparable to Fourth Amendment privacy. In this case - as you make clear elsewhere - we are concerned only with the limited privacy a juror may have where it is demonstrable that a truthful answer to voir dire questions would disclose highly private personal information (e.g., rape victim). My guess is that many of the questions that properly may be asked jurors involve some element of embarrassment for a sensitive juror, e.g., "How long have you been unemployed?", and "Have you ever brought a damage suit and lost it?

2. It seems to me that the opinion, particularly the last two paragraphs in Part III (pp. 10,11) do not make clear enough that certainly the greater part of the voir dire transcript in this case should be disclosed to the public. The last sentence in the first of these paragraphs (p. 10) states merely that "some effort" should be made to identify the confidential material. And on p. 11 the draft states there was "a failure to consider alternatives to closure and possible partial releases of the transcript" (p. 11). Should we not order that only clearly confidential voir dire examinations be excised and that the remainder be released?

Sincerely,

The Chief Justice

lfp/ss

January 5, 1984

PERSONAL

82-556 Press Enterprise

Dear Chief:

For the most part, your suggested changes are quite helpful and are fine with me.

On page 9, second paragraph, I suggest a modest change such as the language I have underscored:

> "The jury selection process may, in some circumstances, give rise to a compelling interest of the prospective jurors when interrogation touches on deeply personal matters that a person has legitimate reasons for keeping out of the public domain."

The change would merely give some idea as to the "matters" as to which a person may have a legitimate reason for confidentiality.

On page 10, I suggest that your second change read as follows:

> "A trial judge must explain why the material is entitled to privacy".

As this case illustrates, some judges rule without giving any satisfactory explanation. The language I suggest is a bit stronger than requiring merely that the judge give "some explanation".

I appreciate your giving me the opportunity to comment on your changes that I think do significantly strengthen the opinion. My suggestions are for exmphasis, and to make trial judges toe the line.

Sincerely,

The Chief Justice

lfp/ss

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

January 6, 1984

82-556 Press-Enterprise Co. v. Superior Court

Dear Chief:

Please join me in the 2nd draft of your opinion for the Court.

Sincerely,

Lewis

The Chief Justice

Copies to the Conference

LFP/vde

(3)

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

December 30, 1983

Re: No. 82-556 Press-Enterprise Co. v. Superior Court of California, Riverside County

Dear Chief:

Please join me.

Sincerely,

WHR

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

January 6, 1984

Re: 82-556 - Press-Enterprise v. Superior Court of California

Dear Chief:

Please join me.

Respectfully,

JPS

The Chief Justice

Copies to the Conference

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

From: **Justice Stevens**

Circulated: JAN 12 '84

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82–556

PRESS-ENTERPRISE COMPANY, PETITIONER *v.* SUPERIOR COURT OF CALIFORNIA, RIVERSIDE COUNTY

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL OF CALIFORNIA, FOURTH APPELLATE DISTRICT

[January ——, 1984]

JUSTICE STEVENS, concurring.

The constitutional protection for the right of access that the Court upholds today is found in the First Amendment,[1] rather than the public trial provision of the Sixth.[2] If the defendant had advanced a claim that his Sixth Amendment right to a public trial was violated by the closure of the *voir dire*, it would be important to determine whether the selection of the jury was a part of the "trial" within the meaning of that Amendment. But the distinction between trials and other official proceedings is not necessarily dispositive, or even important, in evaluating the First Amendment issues.

[1] "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." U. S. Const., Amdt. 1.

It is, of course, well settled that the Fourteenth Amendment makes this provision applicable to the abridgment of speech by the States, including state judges. See, *e. g.*, *Nebraska Press Assn.* v. *Stuart*, 427 U. S. 539 (1976).

[2] "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, ..." It was, of course, this Amendment that was construed in *Gannett Co.* v. *DePasquale*, 443 U. S. 368 (1979), a case holding that the defendant's right to a public trial cannot be asserted vicariously by persons who are not parties to the proceeding.

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

December 19, 1983

No. 82-556 Press-Enterprise Company v.
Superior Court of California

Dear Chief,

Please join me.

Sincerely,

Sandra

The Chief Justice

Copies to the Conference