

The Burger Court Opinion Writing Database

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

478 U.S. 1 (1986)

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



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

From: **The Chief Justice**

Circulated: MAY 30 1986

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1560

PRESS-ENTERPRISE COMPANY, ETC., PETITIONER
 v. SUPERIOR COURT OF CALIFORNIA FOR
 THE COUNTY OF RIVERSIDE

ON WRIT OF CERTIORARI TO THE SUPREME COURT
 OF CALIFORNIA

[June —, 1986]

CHIEF JUSTICE. BURGER delivered the opinion of the Court.

We granted certiorari to decide whether petitioner has a First Amendment right of access to transcripts of a preliminary hearing growing out of a criminal prosecution.

I

On December 23, 1981, the State of California filed a complaint in the Riverside County Municipal Court, charging Robert Diaz with twelve counts of murder and seeking the death penalty. The complaint alleged that Diaz, a nurse, murdered twelve patients by administering massive doses of the heart drug lidocaine. The preliminary hearing on the complaint commenced on July 6, 1982. Diaz moved to exclude the public from the proceedings under California Penal Code § 868, which requires such proceedings to be open unless "exclusion of the public is necessary in order to protect the defendant's right to a fair trial."¹ The magistrate

¹Section 868, as amended in 1982, provides in full:
 "The examination shall be open and public. However, upon the request of the defendant and a finding by the magistrate that exclusion of the public is necessary in order to protect the defendant's right to a fair trial, the magistrate shall exclude from the examination every person except the clerk, court reporter and bailiff, the prosecutor and his or her counsel, the Attor-

6/2
Down
JPS
Burger

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

see pages 5, 6, 7, 11

CJ
Rehnquist
me
ML

From: **The Chief Justice**

Circulated: JUN 10 1986

Recirculated: _____

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1560

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

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**ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF CALIFORNIA**

[June —, 1986]

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

STYLISTIC CHANGES THROUGHOUT

all pages 4, 7, 13

From: **The Chief Justice**

Circulated: JUN 29 1986

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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1560

PRESS-ENTERPRISE COMPANY, ETC., PETITIONER
 v. SUPERIOR COURT OF CALIFORNIA FOR
 THE COUNTY OF RIVERSIDE

ON WRIT OF CERTIORARI TO THE SUPREME COURT
 OF CALIFORNIA

[June 30, 1986]

CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted certiorari to decide whether petitioner has a First Amendment right of access to transcripts of a preliminary hearing growing out of a criminal prosecution.

I

On December 23, 1981, the State of California filed a complaint in the Riverside County Municipal Court, charging Robert Diaz with 12 counts of murder and seeking the death penalty. The complaint alleged that Diaz, a nurse, murdered 12 patients by administering massive doses of the heart drug lidocaine. The preliminary hearing on the complaint commenced on July 6, 1982. Diaz moved to exclude the public from the proceedings under California Penal Code Ann. § 868 (West 1985), which requires such proceedings to be open unless "exclusion of the public is necessary in order to protect the defendant's right to a fair and impartial trial."¹

¹Section 868, as amended in 1982, provides in full:

"The examination shall be open and public. However, upon the request of the defendant and a finding by the magistrate that exclusion of the public is necessary in order to protect the defendant's right to a fair and impartial trial, the magistrate shall exclude from the examination every person except the clerk, court reporter and bailiff, the prosecutor and his or her

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

June 4, 1986

Press-Enterprise Co. v. Superior Court

No. 84-1560

Dear Chief,

You have written an exceptionally fine opinion in this case, and I am fully prepared to join it. I wonder, however, if you would consider two small suggestions?

First, although the tests of "experience" and of "logic" are related to one another, our prior cases have not made this clear. Might it not be a good idea to do so in this opinion? It could be done in a sentence. For example, at the beginning of the first full paragraph on page 7, what about adding something like: "These considerations of experience and logic are, of course, related to one another, for historical practice and experience shapes the functioning of governmental processes"?

Second, our prior cases have been somewhat inconsistent in describing the standard for determining whether a governmental interest is sufficient to justify closure, although it seems to me that the same test is actually being applied in all these cases. I am perfectly content with the language you rely on from Press-Enterprise I. However, to make clear that we think this consistent with other cases, might it not be helpful to add cite in the appropriate place? Specifically, would you add a cite to Globe, 457 U.S., at 606-607, after the first cite to Press Enterprise I in Part IV-B at page 11.

Sincerely,



The Chief Justice



CHAMBERS OF
JUSTICE W. J. BRENNAN, JR.

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

June 11, 1986

No. 84-1560

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

Dear Chief,

I agree with your opinion for the
Court in the above.

Sincerely,

The Chief Justice

Copies to the Conference



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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 2, 1986

84-1560 -

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

Dear Chief,

Please join me.

Sincerely yours,

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 24, 1986

Re: No. 84-1560-Press-Enterprise v. Superior Court
of California For The County of
Riverside

Dear Chief:

Please join me.

Sincerely,



T.M.

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 5, 1986

Re: No. 84-1560, Press-Enterprise v.
Superior Court of California

Dear Chief:

Not many have voted in this case and, it may be that I should defer my vote until I have seen what further writing is forthcoming.

Would you let me know, however, if you would consider making the following changes in your opinion:

1. Change the first sentence of the second paragraph on page 6 to read: "Second, we have considered whether public assess to the particular process in question plays a significant positive role in the functioning of government."
2. Substitute the following for the first two full sentences on page 7. "Even when a First Amendment right of access attaches, it is not absolute."
3. On page 11, sixth line from the bottom, after the word "publicity," add the words "that closure would prevent."

I make these suggestions because I feel that the changes would be somewhat truer to the holding in Globe Newspapers and to my position in Globe and Gannett.

If you look favorably upon these suggestions, I would certainly be inclined to give you a joinder although, as indicated above, I am also interested in what others write.

Sincerely,

H.A.B.

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 25, 1986

Re: No. 84-1560, Press-Enterprise v.
Superior Court of California

Dear Chief:

Please join me in your recirculation of June 10.

Sincerely,



The Chief Justice

cc: The Conference

June 6, 1986

84-1560 Press-Enterprise Company v. Superior Court

Dear Chief:

I am circulating a join memo in this case, and write only to you to express the hope that you will include in your opinion - possibly in a footnote - a reference to my concurring opinion in Gannett. There are several portions of my concurrence that seem to me to be fully supportive of your position. See 443 U.S., at 397-399.

I also have no objection to Harry's suggestions.

Sincerely,

The Chief Justice

lfp/ss



CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

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

June 6, 1986

84-1560 Press-Enterprise Company v. Superior Court

Dear Chief:

Please join me in your opinion for the Court.

Sincerely,

Lewis

The Chief Justice

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 24, 1986

Re: No. 84-1560 Press-Enterprise Company v. Superior Court
of California for the County of Riverside

Dear John,

Please join me in part II of your dissent in this case.

Sincerely,



Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 4, 1986

Re: 84-1560 - Press-Enterprise v. Superior
Court of California

Dear Chief:

As I voted the other way at Conference, I shall
prepare a short dissent.

Respectfully,



The Chief Justice

Copies to the Conference

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

From: Justice Stevens

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1560

PRESS-ENTERPRISE COMPANY, ETC., PETITIONER
 v. SUPERIOR COURT OF CALIFORNIA FOR
 THE COUNTY OF RIVERSIDE

ON WRIT OF CERTIORARI TO THE SUPREME COURT
 OF CALIFORNIA

[June —, 1986]

17

JUSTICE STEVENS, dissenting.

The constitutional question presented by this case is whether members of the public have a First Amendment right to insist upon access to the transcript of a preliminary hearing during the period before the public trial, even though the accused, the prosecutor, and the trial judge have all agreed to the sealing of the transcript in order to assure a fair trial.

The preliminary hearing transcript to which petitioner sought access consists of 4,239 pages of testimony by prosecution witnesses heard over 8 weeks. The testimony, contained in 47 volumes, accuses Mr. Robert Diaz, a nurse, of murdering 12 patients in the hospital in which he worked by injecting them with lethal doses of a heart drug. The transcript reveals that the defense put on no witnesses of its own.

Immediately after the magistrate ordered the defendant bound over for trial, defense counsel moved that the transcript of the preliminary hearing be sealed to protect his client's right to a fair trial. The transcript, in the words of the magistrate, revealed "only one side of the story." App. 28a. The transcript also contained the magistrate's characterization of Mr. Diaz as "the most dangerous type of individual there is." App. 27a. The prosecutor did not oppose this

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

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES 1, 9-10, 14

From: Justice Stevens

Circulated: _____

Recirculated: JUN 26 1986

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1560

PRESS-ENTERPRISE COMPANY, ETC., PETITIONER
v. SUPERIOR COURT OF CALIFORNIA FOR
THE COUNTY OF RIVERSIDE

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF CALIFORNIA

[June —, 1986]

JUSTICE STEVENS, with whom JUSTICE REHNQUIST joins
as to Part II, dissenting.

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

June 2, 1986

No. 84-1560 Press-Enterprise Co. v. Superior Court
of California for Co. of Riverside

Dear Chief,

Please join me.

Sincerely,

A handwritten signature in cursive script that reads "Sandra".

The Chief Justice

Copies to the Conference

84-1560