

The Burger Court Opinion Writing Database

Anderson v. Liberty Lobby, Inc.

477 U.S. 242 (1986)

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

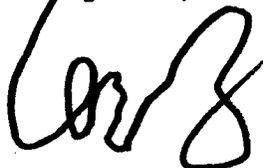
December 20, 1985

RE: No. 84-1602 - Anderson v. Liberty Lobby

Dear Bill:

Would you be willing to take on a dissent in this case?

Regards,

A handwritten signature in black ink, appearing to be 'W. Brennan', written over the typed word 'Regards,'.

Justice Brennan

Copy to Justice Rehnquist

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

CHAMBERS OF
THE CHIEF JUSTICE

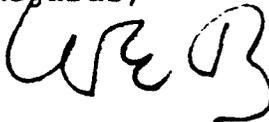
March 26, 1986

84-1602 - Jack Anderson, et. al. v. Liberty Lobby, Inc.
and Willis A. Carto

Dear Bill:

I join.

Regards,



Justice William Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE W. J. BRENNAN, JR.

December 23, 1985

No. 84-1602

Anderson v. Liberty Lobby

Dear Chief,

After the Conference vote, I had concluded that I probably would not dissent in this case. I'll be more certain of my ground after Byron circulates his proposed opinion for the Court, but the probabilities are that I would join it.

Sincerely,

Bill

The Chief Justice

Copy to Justice Rehnquist

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

February 26, 1986

No. 84-1602

Anderson, et al. v. Liberty Lobby,
Inc., etc.

Dear Byron,

I am attracted to your opinion in the above but, since I voted the other way at Conference, I will await further writing before making up my mind.

Sincerely,



Justice White

Copies to the Conference

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

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

From: Justice Brennan

Circulated: JUN 23 1986

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WJB
Please see me in your demand
[Handwritten signature]

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1602

JACK ANDERSON, ET AL., PETITIONERS *v.* LIBERTY
LOBBY, INC. AND WILLIS A. CARTO

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

[June —, 1986]

JUSTICE BRENNAN, dissenting.

The Court today holds that “whether a given factual dispute requires submission to a jury must be guided by the substantive evidentiary standards that apply to the case,” *ante*, at 12.¹ In my view, the Court’s analysis is deeply flawed,

¹The Court’s holding today is not, of course, confined in its application to First Amendment cases. Although this case arises in the context of litigation involving libel and the press, the Court’s holding is that “in ruling on a motion for summary judgment, the judge must view the evidence presented through the prism of the substantive evidentiary burden.” *Ante*, at 11-12. Accordingly, I simply do not understand why JUSTICE REHNQUIST, dissenting, feels it appropriate to cite *Calder v. Jones*, 465 U. S. 783 (1984), and to remind the Court that we have consistently refused to extend special procedural protections to defendants in libel and defamation suits. The Court today does nothing of the kind. It changes summary judgment procedure for *all* litigants, regardless of the substantive nature of the underlying litigation.

Moreover, the Court’s holding is not limited to those cases in which the evidentiary standard is “heightened,” *i. e.*, those in which a plaintiff must prove his case by more than a mere preponderance of the evidence. Presumably, if a district court ruling on a motion for summary judgment in a libel case is to consider the “quantum and quality” of proof necessary to support liability under *New York Times*, *ante*, at 11, and then ask whether the evidence presented is of “sufficient caliber or quantity” to support that quantum and quality, the court must ask the same questions in a garden variety action where the plaintiff need prevail only by a mere preponderance of the evidence. In other words, today’s decision by its terms applies

FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

From: **Justice White**

Circulated: SEP 25 1986

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1602

JACK ANDERSON, ET AL., PETITIONERS *v.* LIBERTY
LOBBY, INC. AND WILLIS A. CARTO

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

[March —, 1986]

JUSTICE WHITE delivered the opinion of the Court.

In *New York Times v. Sullivan*, 376 U. S. 254, 279-280 (1964), we held that, in a libel suit brought by a public official, the First Amendment requires the plaintiff to show that in publishing the defamatory statement the defendant acted with actual malice—"with knowledge that it was false or with reckless disregard of whether it was false or not." We held further that such actual malice must be shown with "convincing clarity." 376 U. S., at 285-286. See also *Gertz v. Robert Welch, Inc.*, 418 U. S. 323, 342 (1974). These *New York Times* requirements we have since extended to libel suits brought by public figures as well. See, *e. g.*, *Curtis Publishing Co. v. Butts*, 388 U. S. 130 (1967).

This case presents the question whether the clear and convincing evidence requirement must be considered by a court ruling on a motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure in a case to which *New York Times* applies. The United States Court of Appeals for the District of Columbia Circuit held that that requirement need not be considered at the summary judgment stage. We granted certiorari, — U. S. — (1985), because that holding was in conflict with decisions of several other Circuit Courts of Appeals, which had held that the *New York Times* requirement of clear and convincing evidence

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Justice Brennan
Justice Marshall
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Justice Stevens
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From: **Justice White**

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7

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1602

**JACK ANDERSON, ET AL., PETITIONERS v. LIBERTY
LOBBY, INC. AND WILLIS A. CARTO**

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

[March —, 1986]

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COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

From: **Justice White**

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MAR 12 1986

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1602

JACK ANDERSON, ET AL., PETITIONERS v. LIBERTY
LOBBY, INC. AND WILLIS A. CARTO

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

[March —, 1986]

JUSTICE WHITE delivered the opinion of the Court.

In *New York Times Co. v. Sullivan*, 376 U. S. 254, 279-280 (1964), we held that, in a libel suit brought by a public official, the First Amendment requires the plaintiff to show that in publishing the defamatory statement the defendant acted with actual malice—"with knowledge that it was false or with reckless disregard of whether it was false or not." We held further that such actual malice must be shown with "convincing clarity." *Id.*, at 285-286. See also *Gertz v. Robert Welch, Inc.*, 418 U. S. 323, 342 (1974). These *New York Times* requirements we have since extended to libel suits brought by public figures as well. See, e. g., *Curtis Publishing Co. v. Butts*, 388 U. S. 130 (1967).

This case presents the question whether the clear-and-convincing-evidence requirement must be considered by a court ruling on a motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure in a case to which *New York Times* applies. The United States Court of Appeals for the District of Columbia Circuit held that that requirement need not be considered at the summary judgment stage. 241 U. S. App. D. C. 246, 746 F. 2d 1563 (1984). We granted certiorari, 471 U. S. — (1985), because that holding was in conflict with decisions of several other Courts of Appeals, which had held that the *New York Times* require-

CONNECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 23, 1986

MEMORANDUM TO THE CONFERENCE

Re: 84-1602 - Jack Anderson, et al v.
Liberty Lobby, Inc., and Willis A. Carto

I shall not be responding to the dissent
in this case. It will be ready for announce-
ment on Wednesday.

B.R.W

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 24, 1986

MEMORANDUM TO THE CONFERENCE

Re: Case held for Anderson v. Liberty Lobby, No. 84-1602
Synanon Church v. Reader's Digest, No. 84-1304

Petitioners in this case are the Synanon Church and its founder Charles Dederich. They filed a libel suit in California state court alleging that they were defamed in an article published by respondent Reader's Digest in 1981. The article, entitled The Little Paper That Dared, described how the publishers of the small newspaper the Point Reyes Light received the Pulitzer Prize for a series of reports critical of Synanon. The article described the history of Synanon from its founding in 1958 as a drug-rehabilitation program through its transformation into an organization claiming to be a church. The article charged that Synanon had adopted a policy of intimidating dissident members and that Synanon officials had in one case been convicted of placing a rattlesnake in the mailbox of an attorney who had filed several suits against the organization. Among these charges included in the article, the passage cited by the petitioners as defamatory was the following:

"Synanon was founded in 1958 by Charles Dederich, a reformed alcoholic, to rehabilitate drug addicts. Though his spectacular claims of success were never proved, Dederich and Synanon attracted publicity and enough cash donations to start a string of addition centers. ... Since 1968, minimal drug rehabilitation work had been attempted; funds, however, were still solicited on that basis." App. to petn at 4a-5a.

In their complaint, the petitioners alleged that this passage indicated that they were not successfully rehabilitating drug addicts and that their representations that they were served fraudulent purposes.

Respondents moved for summary judgment, claiming that the petitioners were public figures and that the standards of New York Times v. Sullivan, 376 U.S. 254 (1964), therefore applied.

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 20, 1986

Re: No. 84-1602-Anderson v. Liberty Lobby

Dear Byron:

Please join me.

Sincerely,



T.M.

Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 7, 1986

Re: No. 84-1602, Anderson v. Liberty Lobby, Inc.

Dear Byron:

Please join me.

Sincerely,

Harry

Justice White

cc: The Conference

82 10-1 8111

FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS



CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

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

March 4, 1986

84-1602 Anderson v. Liberty Lobby, Inc.

Dear Byron:

Please join me.

Sincerely,

Lewis

Justice White

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

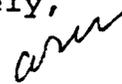
February 27, 1986

Re: No. 84-1602 Anderson v. Liberty Lobby

Dear Byron,

In due course I will circulate a dissent in this case.

Sincerely,



Justice White

cc: The Conference

FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

From: **Justice Rehnquist**

Circulated: MAR 20 1986

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1602

**JACK ANDERSON, ET AL., PETITIONERS v. LIBERTY
LOBBY, INC. AND WILLIS A. CARTO**

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

[March —, 1986]

JUSTICE REHNQUIST, dissenting.

The Court, apparently moved by concerns for intellectual tidiness, mistakenly decides that the "clear and convincing evidence" standard governing finders of fact in libel cases must be applied by trial courts in deciding a motion for summary judgment in such a case. The Court refers to this as a "substantive standard," but I think it is actually a procedural requirement engrafted onto Rule 56, contrary to our statement in *Calder v. Jones*, 465 U. S. 783 (1984), that

"[w]e have already declined in other contexts to grant special procedural protections to defendants in libel and defamation actions in addition to the constitutional protections embodied in the substantive laws." *Id.*, at 790-791.

The Court, I believe, makes an even greater mistake in failing to apply its newly announced rule to the facts of this case. Instead of thus illustrating how the rule works, it contented itself with abstractions and paraphrases of abstractions, so that its opinion sounds much like a treatise about cooking by someone who has never cooked before and has no intention of starting now.

There is a large class of cases in which the higher standard imposed by the Court today would seem to have no effect at all. Suppose, for example, on motion for summary judgment

FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

STYLISTIC CHANGES THROUGHOUT

From: Justice Rehnquist

Circulated: _____

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1602

JACK ANDERSON, ET AL., PETITIONERS *v.* LIBERTY
LOBBY, INC. AND WILLIS A. CARTO

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

[March —, 1986]

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FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

JUN 24 1986

SUPREME COURT OF THE UNITED STATES

No. 84-1602

JACK ANDERSON, ET AL., PETITIONERS *v.* LIBERTY
LOBBY, INC. AND WILLIS A. CARTO

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

[June 25, 1986]

JUSTICE REHNQUIST, with whom THE CHIEF JUSTICE
joins, dissenting.

The Court, apparently moved by concerns for intellectual tidiness, mistakenly decides that the "clear and convincing evidence" standard governing finders of fact in libel cases must be applied by trial courts in deciding a motion for summary judgment in such a case. The Court refers to this as a "substantive standard," but I think is actually a procedural requirement engrafted onto Rule 56, contrary to our statement in *Calder v. Jones*, 465 U. S. 783 (1984), that

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There is a large class of cases in which the higher standard imposed by the Court today would seem to have no effect at

NOT THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

February 25, 1986

Re: 84-1602 - Anderson v. Liberty Lobby
Inc. and Willis A. Carto

Dear Byron:

Please join me.

On page 7 you state: "There is no requirement that the trial judge make findings of fact." That is entirely correct, but I wonder if it might be useful to add a footnote to that sentence reading something like this:

"In many cases, however, findings are extremely helpful to a reviewing court."

This is just a suggestion, but I would hate to have your opinion read by trial judges as suggesting that they should generally omit findings.

Respectfully,



Justice White

Copies to the Conference

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4
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

February 25, 1986

No. 84-1602 Anderson v. Liberty Lobby

Dear Byron,

Please join me.

Sincerely,



Justice White

Copies to the Conference

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