

# The Burger Court Opinion Writing Database

## *Alexander v. Louisiana*

405 U.S. 625 (1972)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



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

CHAMBERS OF  
THE CHIEF JUSTICE

March 30, 1972

Re: No. 70-5026 - Alexander v. Louisiana

Dear Byron:

Please join me.

Regards,

WSB

Mr. Justice White

cc: The Conference

3 / 144

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall ✓  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70-5026

From Douglas, J.  
Circulated: 3/13/72 ✓

Claude Alexander, Petitioner, } On Writ of Certiorari to  
v. } the Supreme Court of  
State of Louisiana. } Louisiana.

[March —, 1972]

MR. JUSTICE DOUGLAS, concurring.

I believe the time has come to reject the dictum in *Strauder v. West Virginia*, 100 U. S. 303, 310, that a State "may confine" jury service "to males." Thus, while I join Part I of the Court's opinion, I would here reach the question we reserved in *Hoyt v. Florida*, 368 U. S. 57, 60, and hold that Art. 402, La. Code Crim. Proc.,<sup>1</sup> as applied to exclude women as a class from Lafayette Parish jury rolls, violated petitioner Alexander's constitutional right to an impartial jury drawn from a group representative of a cross-section of the community.<sup>2</sup>

It is clear that a State which has a grand jury procedure must administer that system consonant with the Federal Constitution. "Once the State chooses to provide grand and petit juries, whether or not constitutionally required to do so, it must hew to federal con-

<sup>1</sup> Article 402, La. Code Crim. Proc.: "A woman shall not be selected for jury service unless she has previously filed with the clerk of court of the parish in which she resides a written declaration of her desire to be subject to jury service."

<sup>2</sup> The fact that Alexander is a male challenging the exclusion of females from the jury rolls is not of significance. See *Peters v. Kiff*, ante, at —, decided this day.

3 / M  
2, 5, 8

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice Thurgood  
Mr. Justice White  
Mr. Justice Black  
Mr. Justice Harlan  
Mr. Justice Marshall ✓  
Mr. Justice Powell  
Mr. Justice Rehnquist

2nd DRAFT

From: Douglas, J.

SUPREME COURT OF THE UNITED STATES

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

Recirculated: 3-15

No. 70-5026

Claude Alexander, Petitioner, } On Writ of Certiorari to  
v. } the Supreme Court of  
State of Louisiana. } Louisiana.

[March —, 1972]

MR. JUSTICE DOUGLAS, concurring.

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Thurmont  
Chas B 1/3

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70-5026

Claude Alexander, Petitioner, } On Writ of Certiorari to  
v. } the Supreme Court of  
State of Louisiana. } Louisiana.

[March —, 1972]

MR. JUSTICE DOUGLAS, concurring.

While I join Part I of the Court's opinion, I am convinced we should also reach the constitutionality of Louisiana's exclusion of women from jury service. The issue is squarely presented, it has been thoroughly briefed and argued, and it is of recurring importance. The Court purports to follow "our usual custom" of avoiding unnecessary constitutional issues. But that cannot be the sole rationale, for here, both questions are of constitutional dimension. We could just as well say that deciding the constitutionality of excluding women from juries renders it unnecessary to reach the question of racial exclusion.

It can be argued that the racial exclusion admits of the "easier" analysis. But this Court does not sit only to decide "easy" questions. And even when faced with "hard" constitutional questions, we have often decided cases on alternate grounds where a decision on only one would have been dispositive. See, *e. g.*, *Dunn v. Blumstein*, *ante*.

Petitioner complains of the exclusion of blacks and women from the grand jury which indicted him. Conceivably, he could have also complained of the exclusion of several other minority groups. Would he then be relegated to suffer repetitive re-indictment and reconviction while this court considered the exclusion of each group in a separate lawsuit?

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice Thurgood Marshall  
Mr. Justice Black  
Mr. Justice Douglas  
Mr. Justice Harlan  
Mr. Justice White  
Mr. Justice Rehnquist

Revised: 3/30/72

B  
— 2 19

To: The Clerk  
Mr. Chief Justice  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Brennan  
Mr. Justice Black  
Mr. Justice Douglas  
Mr. Justice Harlan  
Mr. Justice Burger  
Mr. Justice Goldwater  
Mr. Justice Tamm  
Mr. Justice Clegg  
Mr. Justice Glavin  
Mr. Justice Ladd  
Mr. Justice Nichols  
Mr. Justice Rosen  
Mr. Justice Tracy  
Mr. Justice Harbo  
Mr. Justice Mohr  
Mr. Justice Winterrowd  
Mr. Justice Tele. Room  
Mr. Justice Holmes  
Mr. Justice Nease  
Miss Gandy

5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70-5026

Claude Alexander, Petitioner, } On Writ of Certiorari to  
v. } the Supreme Court of  
State of Louisiana. } Louisiana.

4/1/72 ✓

[April 3, 1972]

MR. JUSTICE DOUGLAS, concurring.

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

CHAMBERS OF  
JUSTICE WILLIAM J. BRENNAN, JR.

March 8, 1972

RE: No. 70-5026 - Alexander v. Louisiana

Dear Byron:

I agree.

Sincerely,

*Bill*

Mr. Justice White

cc: The Conference

14  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE POTTER STEWART

December 17, 1971

No. 70-5026 - Alexander v. Louisiana  
No. 70-5058 - Lynch v. Household Finance Corp.

Dear Chief,

You have assigned the writing of the opinions for the Court in both of the above cases to me.

In the Alexander case the petitioner raises three separate issues, the first involving a claim of systematic exclusion of Negroes from the grand jury under Whitus v. Georgia, the second involving a claimed systematic exclusion of all women from grand jury service, and the third involving a confession purportedly secured in violation of the Miranda case. My Conference notes indicate that a majority were in favor of ruling in favor of the petitioner on both of the first two claims. I, however, am not persuaded, at least as of now, by the Whitus claim. Accordingly, I suggest that I may not be the appropriate person to write the opinion for the Court in this case, and that it should be reassigned to somebody firmly with the majority on both issues.

I shall be glad to try my hand at writing the opinion for the Court in the Lynch case. It should be pointed out, however, that, at least in my view, this cannot possibly be a Per Curiam opinion. The issues in the case seem to me to be extremely difficult and important. They are the subject of a memorandum by John Harlan's former law clerk almost 200 pages in length, that I mentioned at the Conference on Thursday.

Sincerely yours,

P.S.  
✓

The Chief Justice

Copies to the Conference

P.S. - The issues in Lynch are closely related to those in No. 70-27, Mitchum v. Foster, now assigned to Byron White.



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

CHAMBERS OF  
JUSTICE POTTER STEWART

March 8, 1972

No. 70-5026, Alexander v. Louisiana

Dear Byron,

I am glad to join your opinion for the  
Court in this case.

Sincerely yours,

P.S.  
✓

Mr. Justice White

Copies to the Conference

3 —

To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Brennan  
Mr. Justice Stewart  
☒ Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

1st DRAFT

From: White, J.

SUPREME COURT OF THE UNITED STATES

Circulated: 3-7-72

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

No. 70-5026

Claude Alexander, Petitioner, } On Writ of Certiorari to  
v. } the Supreme Court of  
State of Louisiana. } Louisiana.

[March —, 1972]

MR. JUSTICE WHITE delivered the opinion of the Court.

After a jury trial in the District Court for the Fifteenth Judicial District of Lafayette Parish, Louisiana, petitioner, a Negro, was convicted of rape and sentenced to life imprisonment. His conviction was affirmed on appeal by the Louisiana Supreme Court,<sup>1</sup> and this Court granted certiorari.<sup>2</sup> Prior to trial, petitioner had moved to quash the indictment because (1) Negro citizens were included on the grand jury list and venire in only token numbers, and (2) female citizens were systematically excluded from the grand jury list, venire, and empaneled grand jury.<sup>3</sup> Petitioner therefore argued that the indictment against him was invalid because it was returned by a grand jury empaneled from a venire made up contrary to the requirements of the Equal Protection Clause and the Due Process Clause of the Fourteenth Amendment. Petitioner's motions were denied.

<sup>1</sup> 255 La. 941, 233 So. 2d 891 (1970). Petitioner was indicted for aggravated rape, and a 12-member jury unanimously returned a verdict of "Guilty without Capital Punishment."

<sup>2</sup> 401 U. S. 936 (1971).

<sup>3</sup> Petitioner does not here challenge the composition of the petit jury which convicted him. The principles which apply to the systematic exclusion of potential jurors on the grounds of race are essentially the same for grand juries and for petit juries, however. *Pierre v. Louisiana*, 306 U. S. 354, 35S (1939). See generally *Ncal v. Delaware*, 103 U. S. 370 (1881).

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You joined.  
pp 7, 8

To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Brennan  
Mr. Justice Stewart  
✓ Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

2nd DRAFT

From: White, J.

Circulated: \_\_\_\_\_  
Recirculated: 3-29-72

SUPREME COURT OF THE UNITED STATES

No. 70-5026

Claude Alexander, Petitioner, } On Writ of Certiorari to  
v. } the Supreme Court of  
State of Louisiana. } Louisiana.

[March —, 1972]

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8/11 8

To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Brennan  
Mr. Justice Stewart  
✓ Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

3rd DRAFT

From: White, J.

SUPREME COURT OF THE UNITED STATES

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

No. 70-5026

Recirculated: APR 1 1972

Claude Alexander, Petitioner, } On Writ of Certiorari to  
v. } the Supreme Court of  
State of Louisiana. } Louisiana.

[March —, 1972]

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

March 9, 1972

Re: No. 70-5026 - Alexander v. Louisiana

Dear Byron:

Please join me in your fine opinion so I will not have to write a concurring opinion citing my stirring but unsuccessful speech to summarily reverse this case on Whitus when it was up for consideration.

Sincerely,

  
T.M.

Mr. Justice White

cc: The Conference

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

-  
CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

March 10, 1972

Re: No. 70-5026 - Alexander v. Louisiana

Dear Byron:

Please join me, subject to any further  
writings that may be forthcoming.

Sincerely,

H. A. B.

Mr. Justice White

cc: The Conference