

# The Burger Court Opinion Writing Database

## *Taylor v. Louisiana*

419 U.S. 522 (1975)

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

January 10, 1975

Re: 73-5744 - Taylor v. Louisiana

Dear Byron:

Please show me as concurring in the result.

Regards,  
WS

Mr. Justice White

Copies to the Conference

2

REPRODUCED FROM THE COLLECTION OF THE MANUSCRIPT DIVISION

SECRET  
U.S. DEPT. OF JUSTICE

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

CHAMBERS OF  
TICE WILLIAM O. DOUGLAS

December 3, 1974


Dear Byron:

Re: 73-5744, Taylor v. Louisiana.

It has become increasingly popular, I gather, to make returns on your opinions in very flowery language--reminiscent of Holmes tongue-in-cheek returns to Hughes. I have refrained, however, from adopting that tradition not because I lack enthusiasm for your product but for two independent reasons:

1. if I am flowery vis-a-vis you, others might be upset if I'm not flowery vis-a vis-them.

2. I myself am always so grateful for the simple words "Please join me", that anything else would be needless.

  
William O. Douglas

Mr. Justice White

cc: The Conference

✓

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

December 3, 1974

RE: No. 73-5744 Taylor v. Louisiana

Dear Byron:

Very good indeed. I agree.

Sincerely,

*Bul*

Mr. Justice White

cc: The Conference

✓

REPRODUCED FROM THE COLLECTION

IN THE MANUSCRIPT DIVISION

U.S. SUPREME COURT ADVISORY

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



CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

December 19, 1974

9

73-5744

RE: Cases Held for Taylor v. Louisiana

Dear Byron:

I agree with your suggested per curiam in Daniel  
v. Louisiana and also your suggested disposition of the  
other cases held for Taylor v. Louisiana.

Sincerely,

Mr. Justice White

cc: The Conference

✓

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

✓

CHAMBERS OF  
JUSTICE POTTER STEWART

December 4, 1974

73-5744 - Taylor v. Louisiana

Dear Byron,

I am glad to join your opinion for the Court in this case. Have you given consideration to the possibility of squarely holding that our decision is not retroactive?

Sincerely yours,

PS

Mr. Justice White

Copies to the Conference

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U.S. SUPREME COURT RECORDS

p. 5, 1/10  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE POTTER STEWART

December 31, 1974

Re: Cases Held for Taylor v. Louisiana, 73-5744

Dear Byron,

I agree with your proposed per curiam in 74-5369, Daniel v. Louisiana, and would deny or dismiss the other held cases, citing Daniel where appropriate.

Sincerely yours,

Mr. Justice White

Copies to the Conference

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.

SUPREME COURT OF THE UNITED STATES 12/2/74

No. 73-5744

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

Billy J. Taylor, Appellant, | On Appeal from the Su-  
| preme Court of Louisi-  
State of Louisiana. | ana.

[December —, 1974]

MR. JUSTICE WHITE delivered the opinion of the Court.

When this case was tried, Art. VII, § 41,<sup>1</sup> of the Louisiana Constitution, and Art. 402 of the Louisiana Code of Criminal Procedure<sup>2</sup> provided that a woman should

<sup>1</sup> La. Const., Art. VII, § 41, read, in pertinent part:

"The Legislature shall provide for the election and drawing of competent and intelligent jurors for the trial of civil and criminal cases, provided, however, that no woman shall be drawn for jury service unless she shall have previously filed with the clerk of the District Court a written declaration of her desire to be subject to such service."

As of January 1, 1975, this provision of the Louisiana Constitution was repealed and replaced by the following provision, La. Const., Art. V, § 53:

(A) Qualifications

"A citizen of the State who has reached the age of majority is eligible to serve as a juror within the parish in which he is domiciled. The legislature may provide additional qualifications.

(B) Exemptions

"The Supreme Court shall provide by rule for exemption of jurors."

<sup>2</sup> La. Code Crim. Proc., Art. 402, provided:

"A woman shall not be selected for jury service unless she has previously filed with the Clerk of the Court of the Parish in which she resides a written declaration of her desire to be subject to jury service."

This provision has now been repealed, effective January 1, 1975. The repeal, however, has no effect on the conviction obtained in this case.

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REPRODUCED FROM THE COLLECTION OF THE MANUSCRIPT DIVISION OF THE U.S. SUPREME COURT

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

No. 73-5744

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

Recirculated: 12-17-74

Billy J. Taylor, Appellant, } On Appeal from the Su-  
v. } preme Court of Louisi-  
State of Louisiana. } ana.

[December —, 1974]

MR. JUSTICE WHITE delivered the opinion of the Court.

When this case was tried, Art. VII, § 41,<sup>1</sup> of the Louisiana Constitution, and Art. 402 of the Louisiana Code of Criminal Procedure<sup>2</sup> provided that a woman should

<sup>1</sup> La. Const., Art. VII, § 41, read, in pertinent part:

"The Legislature shall provide for the election and drawing of competent and intelligent jurors for the trial of civil and criminal cases; provided, however, that no woman shall be drawn for jury service unless she shall have previously filed with the clerk of the District Court a written declaration of her desire to be subject to such service."

As of January 1, 1975, this provision of the Louisiana Constitution was repealed and replaced by the following provision, La. Const., Art. V, § 33:

"(A) Qualifications.

"A citizen of the State who has reached the age of majority is eligible to serve as a juror within the parish in which he is domiciled. The legislature may provide additional qualifications.

"(B) Exemptions.

"The Supreme Court shall provide by rule for exemption of jurors."

<sup>2</sup> La. Code Crim. Proc., Art. 402, provided:

"A woman shall not be selected for jury service unless she has previously filed with the Clerk of the Court of the Parish in which she resides a written declaration of her desire to be subject to jury service."

This provision has been repealed, effective January 1, 1975. *omission*  
The repeal, however, has no effect on the conviction obtained in this case.

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

December 18, 1974

MEMORANDUM TO THE CONFERENCE

Re: Cases held for Taylor v. Louisiana, No. 73-5744

1. Devall v. Louisiana, No. 74-5280; Daniel v. Louisiana, No. 74-5369; Leichman v. Louisiana, No. 73-1398; Davis v. Louisiana, No. 73-6317; Gilbert v. Louisiana, No. 73-5804. In these five cases, three appeals and two petitions for writs of certiorari, the appellants and petitioners raise claims that would be controlled by the opinion in Taylor were that case to be applied retrospectively. In addition to the Taylor claim, the petitioner in Leichman challenges the denial of his motion for a change in venue based on his assertion of prejudice against him in the community in which the crime occurred; this petition is 15 days nonjurisdictionally out of time. The petitioner in Davis also contends that the procedure under which his sentence was corrected (his sentence had originally been imposed prior to the expiration of the three-day period between conviction and sentencing required under state law) violates the Double Jeopardy Clause. Neither of these nonjury issues raised in

January 22, 1975

MEMORANDUM FOR THE CONFERENCE

Re: Cases held for Taylor v. Louisiana,  
No. 73-5744

1. My Memorandum to the Conference of December 18, 1974, covers all of the cases being held for Taylor save one, Normand v. Louisiana, No. 74-675. The sole issue raised in the petition in Normand is precisely the issue raised in Taylor and is therefore controlled by the per curiam in Daniel v. Louisiana, No. 74-5369. All of these cases will be relisted on a Supplemental List for the January 24 Conference.

2. I would hope that the per curiam in Daniel might come down at the Court's session on January 27, 1975, if the Conference is agreeable. If it does not come down then, all of these cases will have to be held over for Daniel. I assume that Bill Douglas' dissent in Daniel will come down as is.

3. The sole remaining case, Edwards v. Healy, No. 73-759, is covered in my Memorandum to the Conference of December 17, 1974. There have been no developments in this case as of yet, so I propose sitting on it until such time as the relevant state statute is officially repealed.

B.R.W.

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

December 3, 1974

Re: No. 73-5744 -- Billy J. Taylor v. State of Louisiana

Dear Byron:

Please join me in your opinion in this case.

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 THURGOOD MARSHALL

December 19, 1974

73-5744  
Re: Cases Held for Taylor v. Louisiana

Dear Byron:

I agree with your memorandum on cases held for  
Taylor v. Louisiana and your recommended disposition  
of the other cases.

Sincerely,

*T.M.*  
T.M.

Mr. Justice White

cc: The Conference

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

✓

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

January 14, 1975

73-5744

Re: Cases Held for Taylor v. Louisiana

Dear Byron:

I have at last come down and will join your  
Per Curiam in Daniel v. Louisiana.

Sincerely,

T.M.

Mr. Justice White

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

December 5, 1974

Re: No. 73-5744 - Taylor v. Louisiana

Dear Byron:

Please join me.

I shall also ask Lewis to join me in his short concurring statement; I do this because I think it highly desirable that our position on retroactivity be made clear at this time.

Sincerely,

*Harry*

Mr. Justice White

cc: The Conference

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AN ILLUSTRATION OF CONGRESS

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

December 5, 1974

Re: No. 73-5744 - Taylor v. Louisiana

Dear Lewis:

I would appreciate your joining me in your concurring  
statement circulated December 4.

Sincerely,

*Harry*

Mr. Justice Powell

cc: The Conference

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SECRETARY OF THE SUPREME COURT



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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

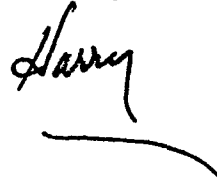
December 12, 1974

Re: No. 73-5744 - Taylor v. Louisiana

Dear Byron:

I have been uncomfortable with my joinder in this case. Bill Rehnquist's dissent made me more uncomfortable. I, therefore, am unhooking from your opinion and also, because of the phraseology of the opening sentence, from Lewis' short concurrence. The enclosed circulation expresses my views, so I am with you as to the result. Having once voted, I dislike to do this, but perhaps you will forgive me this once.

Sincerely,



Mr. Justice White

cc: The Conference

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OFFICE OF THE CLERK OF THE SUPREME COURT  
U.S. DEPARTMENT OF JUSTICE

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

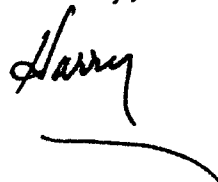
December 12, 1974

Re: No. 73-5744 - Taylor v. Louisiana

Dear Byron:

I have been uncomfortable with my joinder in this case. Bill Rehnquist's dissent made me more uncomfortable. I, therefore, am unhooking from your opinion and also, because of the phraseology of the opening sentence, from Lewis' short concurrence. The enclosed circulation expresses my views, so I am with you as to the result. Having once voted, I dislike to do this, but perhaps you will forgive me this once.

Sincerely,



Mr. Justice White

cc: The Conference

Dear Lewis:

Because you joined Byron's opinion, I must now ask that you withdraw my joinder in your separate concurrence.

H. A. B.

10: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall ✓  
Mr. Justice Powell  
Mr. Justice Rehnquist

2nd DRAFT

From: Blackmun, J.

SUPREME COURT OF THE UNITED STATES

Circulated: 12/12/74

No. 73-5744

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

Billy J. Taylor, Appellant, } On Appeal from the Su-  
v. } preme Court of Louisi-  
State of Louisiana. } ana.

[December —, 1974]

MR. JUSTICE BLACKMUN.

I concur in the result and in the judgment of the Court. As MR. JUSTICE REHNQUIST points out in his dissent, the Court only 13 years ago, in a decision unanimous as to result, upheld the comparable Florida system. *Hoyt v. Florida*, 368 U. S. 57 (1961). I am unable to reconcile the Court's opinion and judgment in *Hoyt* with the Court's opinion and judgment in the present case. There is, apparently, some reluctance to face reality here. We fool no one but ourselves if we intimate that *Hoyt* still survives after the decisions in this case and in *Duncan v Louisiana*, 391 U. S. 145 (1968). Rather than beat around the bush, I would overrule *Hoyt* in so many words and be done with it.

I am in full agreement with MR. JUSTICE POWELL when he states that today's decision must be applied only to trials commencing hereafter.

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

December 18, 1974

MEMORANDUM TO THE CONFERENCE

Re: No. 73-5744 - Taylor v. Louisiana

With the change made in Byron's circulation of December 17, there is no necessity for my separate concurrence. I am therefore withdrawing it and asking Lewis again to join me in his concurrence.

*Harry*

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U.S. SUPREME COURT RECORDS

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

December 19, 1974

Dear Byron:

This is in response to your memorandum of December 18 relating to cases held for No. 73-5744, Taylor v. Louisiana, and, specifically, to paragraph one of that memorandum.

I would join you in the proposed alternative disposition of the five Louisiana cases. Specifically, I would be glad to join the proposed per curiam you have prepared.

Sincerely,



Mr. Justice White

cc: The Conference

Mr. Justice  
Mr. Justice  
Mr. Justice  
Mr. Justice  
Mr. Justice  
Mr. Justice  
Mr. Justice

1st DRAFT

SUPREME COURT OF THE UNITED STATES

From: Powell, J.

Circulated: DEC 4 1974

No. 73-5744

Recirculated:

Billy J. Taylor, Appellant, | On Appeal from the Su-  
v. | preme Court of Louisi-  
State of Louisiana. | ana.

[December —, 1974]

MR. JUSTICE POWELL, concurring.

I concur in the judgment and opinion of the Court, and write only to emphasize my understanding that our decision today will be applied only to trials commencing after the date of this decision. The reasons for nonretroactivity are stated in § VI of the Court's opinion. See *DeStefano v. Woods*, 392 U. S. 631 (1968), in which the Court held that *Duncan v. Louisiana*, 391 U. S. 145 (1968), and *Bloom v. Illinois*, 391 U. S. 194 (1968), were not retroactive.

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U.S. SUPREME COURT

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To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Burger

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-5744

From: J.

Circulated:

Billy J. Taylor, Appellant, On Appeal from the Su-  
v. preme Court of Louis-  
State of Louisiana. ana.

Reinstated: DEC 5 1974

[December —, 1974]

MR. JUSTICE POWELL, with whom MR. JUSTICE BLACK-  
MUN joins, concurring.

I concur in the judgment and opinion of the Court, and write only to emphasize my understanding that our decision today will be applied only to trials commencing after the date of this decision. The reasons for nonretroactivity are stated in § VI of the Court's opinion. See *DeStefano v. Woods*, 392 U. S. 631 (1968), in which the Court held that *Duncan v. Louisiana*, 391 U. S. 145 (1968), and *Bloom v. Illinois*, 391 U. S. 194 (1968), were not retroactive.

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

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

From: Powell, J.

Circulated:

No. 73-5744

Recirculated DEC 13 1974

Billy J. Taylor, Appellant, } On Appeal from the Su-  
v. } preme Court of Louisi-  
State of Louisiana. } ana.

[December —, 1974]

MR. JUSTICE POWELL, concurring.

I concur in the judgment and opinion of the Court, and write only to emphasize my understanding that our decision today will be applied only to trials commencing after the date of this decision. The reasons for nonretroactivity are stated in § VI of the Court's opinion. See *DeStefano v. Woods*, 392 U. S. 631 (1968), in which the Court held that *Duncan v. Louisiana*, 391 U. S. 145 (1968), and *Bloom v. Illinois*, 391 U. S. 194 (1968), were not retroactive.

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U. S. DEPARTMENT OF JUSTICE



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To: The Chief Justice  
Mr. Justice Black  
Mr. Justice Brandeis  
Mr. Justice Burger  
Mr. Justice Douglas  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Rehnquist

4th DRAFT

SUPREME COURT OF THE UNITED STATES

From: Powell, J.

No. 73-5744

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

Billy J. Taylor, Appellant, | On Appeal from the Su-  
v. | preme Court of Louisi-  
State of Louisiana. | ana.

Recirculated: DEC 18 1974

[December —, 1974]

MR. JUSTICE POWELL, with whom MR. JUSTICE BLACK-  
MUN joins, concurring.

I concur in the judgment and opinion of the Court, and write only to emphasize my understanding that our decision today will be applied only to trials commencing after the date of this decision. The reasons for nonretroactivity are stated in § VI of the Court's opinion. See *DeStefano v. Woods*, 392 U. S. 631 (1968), in which the Court held that *Duncan v. Louisiana*, 391 U. S. 145 (1968), and *Bloom v. Illinois*, 391 U. S. 194 (1968), were not retroactive.

74

154-1

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

January 7, 1975

Cases Held for Taylor v. Louisiana, 73-5744

Dear Byron:

I agree with your proposed Per Curiam in 74-5369, Daniel v. Louisiana. If this Per Curiam is adopted by the Court; it will resolve the retroactivity issue addressed in my concurring opinion in Taylor. I will thereupon withdraw the concurrence.

Sincerely,

*Lewis*

Mr. Justice White

CC: The Conference

LFP/gg

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STANDARD ADVANCE

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

January 9, 1975

No. 73-5744 Taylor v. Louisiana

Dear Byron:

In view of the votes you have for the P.C. in Daniel,  
I confirm my withdrawal of my concurring opinion.

Sincerely,

*Lewis*

Mr. Justice White

lfp/ss

cc: The Conference

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U.S. DEPARTMENT OF JUSTICE  
OFFICE OF THE ATTORNEY GENERAL  
DIVISION OF RECORDS AND COMMUNICATIONS

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

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Rehnquist, J.

No. 73-5744

Circulated: 12-9-74

Recirculated:

Billy J. Taylor, Appellant, } On Appeal from the Su-  
v. } preme Court of Louisi-  
State of Louisiana. } ana.

[December —, 1974]

MR. JUSTICE REHNQUIST, dissenting.

The Court's opinion reverses a conviction without a suggestion, much less a showing, that the appellant has been unfairly treated or prejudiced in any way by the manner in which his jury was selected. In so doing, the Court invalidates a jury selection system which it approved by a substantial majority only 12 years ago. I disagree with the Court and would affirm the judgment of the Supreme Court of Louisiana.

The majority opinion canvasses various of our jury trial cases, beginning with *Smith v. Texas*, 311 U. S. 128 (1940). Relying on carefully chosen quotations, it concludes that the "unmistakable import" of our cases is that the fair cross section requirement "is an essential component of the Sixth Amendment right to a jury trial." I disagree. Fairly read, the only "unmistakable import" of those cases is that due process and equal protection prohibit jury selection systems which are likely to result in biased or impartial juries. *Smith v. Texas*, *supra*, concerned the equal protection claim of a Negro who was indicted by a grand jury from which Negroes had been systematically excluded. *Glasser v. United States*, 315 U. S. 60 (1942), dealt with allegations that the only women selected for jury service were members of a private organization which had conducted pro-prosecution classes for prospective jurors. *Brown v. Allen*, 344 U. S. 443 (1953), rejected the equal protection and due process

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

January 14, 1975

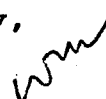
73-5744

Re: Cases Held for Taylor v. Louisiana

Dear Byron:

I agree with your proposed disposition in Daniel v. Louisiana.

Sincerely,



Mr. Justice White

Copies to the Conference