

# The Burger Court Opinion Writing Database

*Roberts v. Louisiana*

428 U.S. 325 (1976)

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



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

From: Mr. Justice Brennan

Circulated: 6/30/76

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

No. 75-5844 Robert v. Louisiana

MR. JUSTICE BRENNAN, concurring in the judgment.

For the reasons stated in my dissenting opinion in Gregg

v. Georgia, \_\_\_ U.S. \_\_\_, \_\_\_ (1976), I concur in the judgment

that sets aside the death sentence imposed under the Louisiana

death sentence statute as violative of the Eighth and Fourteenth

Amendments.

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

From: Mr. Justice Bryan

Circulated: 6/30/76

Recirculated:

**1st DRAFT**

**SUPREME COURT OF THE UNITED STATES**

No. 75-5844

Stanislaus Roberts,  
Petitioner,  
v.  
State of Louisiana. } On Writ of Certiorari to the Su-  
preme Court of Louisiana.

[June —, 1976]

MR. JUSTICE BRENNAN, concurring in the judgment.

For the reasons stated in my dissenting opinion in *Gregg v. Georgia*, — U. S. —, — (1976), I concur in the judgment that sets aside the death sentence imposed under the ~~North Carolina~~ death sentence statute as violative of the Eighth and Fourteenth Amendments.

Louisiana

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

From: Mr. Justice Stevens

Circulated:

Recirculated: 6/8/72

No. 75-5844 - Roberts v. Louisiana

MR. JUSTICE STEWART, MR. JUSTICE POWELL, and MR. JUSTICE STEVENS.

The question in this case is whether the imposition of the sentence of death for the crime of first degree murder under the law of Louisiana violates the Eighth and Fourteenth Amendments.

I

On August 18, 1973, in the early hours of the morning, Richard G. Lowe was found dead in the office of the gas station at which he worked. He had been shot four times in the head. The police found four spent bullets from a .38 caliber revolver at the scene.

About six months later, the police recovered a gun, subsequently identified as the murder weapon, from a cafe and beer parlor operator. The gun was traced back to the petitioner. Four men--petitioner, Huey Cormier, Everett Walls, and Calvin Arcenaux--were subsequently arrested for complicity in the murder.

At trial, Cormier, Walls, and Arcenaux testified against petitioner. Their testimony established that just before midnight on August 17, petitioner had discussed with Walls and Cormier the subject of "ripping off that old man at the station." Petitioner indicated that Arcenaux was to accompany him. Cormier and Walls, however, declined to participate.

STYLISTIC CHANGES THROUGHOUT

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Black  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

1st DRAFT

From: Mr. Justice Stewart

SUPREME COURT OF THE UNITED STATES

No. 75-5844

Argued: \_\_\_\_\_  
Decided: **JUN 30 1976**

Stanislaus Roberts,  
Petitioner, } On Writ of Certiorari to the Su-  
v. } preme Court of Louisiana.  
State of Louisiana.

[June —, 1976]

Opinion of MR. JUSTICE STEWART, MR. JUSTICE POWELL, and MR. JUSTICE STEVENS announcing the judgment of the Court, delivered by MR. JUSTICE STEVENS.

The question in this case is whether the imposition of the sentence of death for the crime of first-degree murder under the law of Louisiana violates the Eighth and Fourteenth Amendments.

I

On August 18, 1973, in the early hours of the morning, Richard G. Lowe was found dead in the office of the Lake Charles, La., gas station at which he worked. He had been shot four times in the head. Four men—the petitioner, Huey Cormier, Everett Walls, and Calvin Arcenaux—were arrested for complicity in the murder. The petitioner was subsequently indicted by a grand jury on a presentment that he “[d]id unlawfully with the specific intent to kill or to inflict great bodily harm, while engaged in the armed robbery of Richard G. Lowe commit first degree murder by killing one Richard G. Lowe, in violation of Section One (1) of L. S. A.-R. S. 14:30.”

At the petitioner's trial, Cormier, Walls, and Arcenaux testified for the prosecution. Their testimony estab-

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

From: Mr. Justice White

Circulated: 6/15/76

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

**1st DRAFT**

**SUPREME COURT OF THE UNITED STATES**

No. 75-5844

Stanislaus Roberts,  
Petitioner,  
v.  
State of Louisiana. } On Writ of Certiorari to the Supreme Court of Louisiana.

[May —, 1976]

MR. JUSTICE WHITE, dissenting.

Under the Louisiana statutes in effect prior to 1973, there were three grades of criminal homicide—murder, manslaughter, and negligent homicide. La. Rev. Stat. § 14:29 (1951). Murder was punishable by death, La. Rev. Stat. § 14:30 (1951); but a jury finding a defendant guilty of murder was empowered to foreclose the death penalty by returning a verdict of "guilty without capital punishment." La. Rev. Stat. § 14:409 (1951). Following *Furman v. Georgia*, 408 U. S. 238 (1972), which the Louisiana courts held effectively to have invalidated the Louisiana death penalty,<sup>1</sup> the statutes were

<sup>1</sup> "Sinclair v. Louisiana, 408 U. S. 939, on remand sub nom. State v. Sinclair, 263 La. 377, 268 So. 2d 514 (1972); *Poland v. Louisiana*, 408 U. S. 936, on remand sub nom. State v. Poland, 263 La. 269, 268 So. 2d 221 (1972); *Johnson v. Louisiana*, 408 U. S. 932, on remand sub nom. State v. Singleton, 263 La. 267, 268 So. 2d 220 (1972); *Williams v. Louisiana*, 408 U. S. 934, on remand sub nom. State v. Williams, 263 La. 284, 268 So. 2d 227 (1972); *Square v. Louisiana*, 408 U. S. 938, on remand sub nom. State v. Square, 263 La. 291, 268 So. 2d 229 (1972); *Douglas v. Louisiana*, 408 U. S. 937, on remand sub nom. State v. Douglas, 263 La. 294, 268 So. 2d 231 (1972); *McAllister v. Louisiana*, 408 U. S. 934, on remand sub nom. State v. McAllister, 263 La. 296, 268 So. 2d 231 (1972); *Strong v. Louisiana*, 408 U. S. 937, on remand sub nom. State v.

## STYLISTIC CHANGES THROUGHOUT.

SEE PAGES:

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dd. 23, 25, 26, 27

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
~~Mr.~~ Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice White

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

Recirculated: 6/22/67

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-5844

Stanislaus Roberts,  
Petitioner,  
v.  
State of Louisiana. } On Writ of Certiorari to the Su-  
preme Court of Louisiana.

[May —, 1976]

MR. JUSTICE WHITE, with whom MR. JUSTICE REHNQUIST joins, dissenting.

Under the Louisiana statutes in effect prior to 1973, there were three grades of criminal homicide—murder, manslaughter, and negligent homicide. La. Rev. Stat. § 14:29 (1951). Murder was punishable by death, La. Rev. Stat. § 14:30 (1951); but a jury finding a defendant guilty of murder was empowered to foreclose the death penalty by returning a verdict of “guilty without capital punishment.” La. Rev. Stat. § 14:409 (1951). Following *Furman v. Georgia*, 408 U. S. 238 (1972), which the Louisiana courts held effectively to have invalidated the Louisiana death penalty,<sup>1</sup> the statutes were

<sup>1</sup> *Sinclair v. Louisiana*, 408 U. S. 939, on remand sub nom. *State v. Sinclair*, 263 La. 377, 268 So. 2d 514 (1972); *Poland v. Louisiana*, 408 U. S. 936, on remand sub nom. *State v. Poland*, 263 La. 269, 268 So. 2d 221 (1972); *Johnson v. Louisiana*, 408 U. S. 932, on remand sub nom. *State v. Singleton*, 263 La. 267, 268 So. 2d 220 (1972); *Williams v. Louisiana*, 408 U. S. 934, on remand sub nom. *State v. Williams*, 263 La. 284, 268 So. 2d 227 (1972); *Square v. Louisiana*, 408 U. S. 938, on remand sub nom. *State v. Square*, 263 La. 291, 268 So. 2d 229 (1972); *Douglas v. Louisiana*, 408 U. S. 937, on remand sub nom. *State v. Douglas*, 263 La. 294, 268 So. 2d 231 (1972); *McAllister v. Louisiana*, 408 U. S. 934, on remand sub nom. *State v. McAllister*, 263 La. 296, 268 So. 2d 231 (1972); *Strong v. Louisiana*, 408 U. S. 937, on remand sub nom. *State v.*

STYLISTIC CHANGES THROUGHOUT  
SEE PAGES: 17 27

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

From: Mr. Justice White

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

Recirculated: 6-25-76

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-5844

Stanislaus Roberts,  
Petitioner, } On Writ of Certiorari to the Su-  
v. } preme Court of Louisiana.  
State of Louisiana.

[May —, 1976]

MR. JUSTICE WHITE, with whom MR. JUSTICE REHNQUIST joins, dissenting.

Under the Louisiana statutes in effect prior to 1973, there were three grades of criminal homicide—murder, manslaughter, and negligent homicide. La. Rev. Stat. § 14:29 (1951). Murder was punishable by death, La. Rev. Stat. § 14:30 (1951); but a jury finding a defendant guilty of murder was empowered to foreclose the death penalty by returning a verdict of "guilty without capital punishment." La. Rev. Stat. § 14:409 (1951). Following *Furman v. Georgia*, 408 U. S. 238 (1972), which the Louisiana courts held effectively to have invalidated the Louisiana death penalty,<sup>1</sup> the statutes were

<sup>1</sup> *Sinclair v. Louisiana*, 408 U. S. 939, *on remand sub nom. State v. Sinclair*, 263 La. 377, 268 So. 2d 514 (1972); *Poland v. Louisiana*, 408 U. S. 936, *on remand sub nom. State v. Poland*, 263 La. 269, 268 So. 2d 221 (1972); *Johnson v. Louisiana*, 408 U. S. 932, *on remand sub nom. State v. Singleton*, 263 La. 267, 268 So. 2d 220 (1972); *Williams v. Louisiana*, 408 U. S. 934, *on remand sub nom. State v. Williams*, 263 La. 284, 268 So. 2d 227 (1972); *Square v. Louisiana*, 408 U. S. 938, *on remand sub nom. State v. Square*, 263 La. 291, 268 So. 2d 229 (1972); *Douglas v. Louisiana*, 408 U. S. 937, *on remand sub nom. State v. Douglas*, 263 La. 294, 268 So. 2d 231 (1972); *McAllister v. Louisiana*, 408 U. S. 934, *on remand sub nom. State v. McAllister*, 263 La. 296, 268 So. 2d 231 (1972); *Strong v. Louisiana*, 408 U. S. 937, *on remand sub nom. State v.*

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To: The Chief Justice,  
Mr. Justice Brennan  
Mr. Justice Stewart  
~~Mr. Justice Marshall~~  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice White

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

4th DRAFT

Recirculated: 6/28/76

## SUPREME COURT OF THE UNITED STATES

No. 75-5844

Stanislaus Roberts,  
Petitioner, } On Writ of Certiorari to the Su-  
v. } preme Court of Louisiana.  
State of Louisiana.

[May —, 1976]

MR. JUSTICE WHITE, with whom MR. JUSTICE REHNQUIST joins, dissenting.

Under the Louisiana statutes in effect prior to 1973, there were three grades of criminal homicide—murder, manslaughter, and negligent homicide. La. Rev. Stat. § 14:29 (1951). Murder was punishable by death, La. Rev. Stat. § 14:30 (1951); but a jury finding a defendant guilty of murder was empowered to foreclose the death penalty by returning a verdict of “guilty without capital punishment.” La. Rev. Stat. § 14:409 (1951). Following *Furman v. Georgia*, 408 U. S. 238 (1972), which the Louisiana courts held effectively to have invalidated the Louisiana death penalty,<sup>1</sup> the statutes were

<sup>1</sup> *Sinclair v. Louisiana*, 408 U. S. 939, on remand sub nom. *State v. Sinclair*, 263 La. 377, 268 So. 2d 514 (1972); *Poland v. Louisiana*, 408 U. S. 936, on remand sub nom. *State v. Poland*, 263 La. 269, 268 So. 2d 221 (1972); *Johnson v. Louisiana*, 408 U. S. 932, on remand sub nom. *State v. Singleton*, 263 La. 267, 268 So. 2d 220 (1972); *Williams v. Louisiana*, 408 U. S. 934, on remand sub nom. *State v. Williams*, 263 La. 284, 268 So. 2d 227 (1972); *Square v. Louisiana*, 408 U. S. 938, on remand sub nom. *State v. Square*, 263 La. 291, 268 So. 2d 229 (1972); *Douglas v. Louisiana*, 408 U. S. 937, on remand sub nom. *State v. Douglas*, 263 La. 294, 268 So. 2d 231 (1972); *McAllister v. Louisiana*, 408 U. S. 934, on remand sub nom. *State v. McAllister*, 263 La. 296, 268 So. 2d 231 (1972); *Strong v. Louisiana*, 408 U. S. 937, on remand sub nom. *State v.*

JUN 29 1976

No. 75-5844, Roberts v. Louisiana

MR. JUSTICE MARSHALL, concurring in the judgment.

For the reasons stated in my dissenting opinion in Gregg v. Georgia, \_\_\_ U.S. \_\_\_, \_\_\_ (1976), I am of the view that the death penalty is a cruel and unusual punishment forbidden by the Eighth and Fourteenth Amendments. I therefore concur in the Court's judgment.

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

From: Mr. Justice Marshall

Circulated: JUN 30 1976

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

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 75-5844

Stanislaus Roberts,  
Petitioner, } On Writ of Certiorari to the Su-  
v. } preme Court of Louisiana.  
State of Louisiana.

[June —, 1976]

MR. JUSTICE MARSHALL, concurring in the judgment.  
For the reasons stated in my dissenting opinion in *Gregg v. Georgia*, — U. S. —, — (1976), I am of the view that the death penalty is a cruel and unusual punishment forbidden by the Eighth and Fourteenth Amendments. I therefore concur in the Court's judgment.

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

From: Mr. Justice Blackmun

Circulated: 6/29/76

No. 75-5844 - Roberts v. Louisiana

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

MR. JUSTICE BLACKMUN, dissenting.

I dissent for the reasons set forth in my dissent in Furman v. Georgia, 408 U.S. 238, 405-414 (1972), and in the other dissenting opinions I joined in that case. Id., at 375, 414 and 465.

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

June 29, 1976

Re: No. 75-5844 - Roberts v. Louisiana

Dear Byron:

I would appreciate your adding my name to your dissenting opinion in this case.

Sincerely,



Mr. Justice White

cc: The Conference

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

From: Mr. Justice Blackmun

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**1st DRAFT**

**SUPREME COURT OF THE UNITED STATES**

**No. 75-5844**

Stanislaus Roberts,  
Petitioner, } On Writ of Certiorari to the Su-  
v. } preme Court of Louisiana.  
State of Louisiana.

[June —, 1976]

MR. JUSTICE BLACKMUN, dissenting.

I dissent for the reasons set forth in my dissent in *Furman v. Georgia*, 408 U. S. 238, 405-414 (1972), and in the other dissenting opinions I joined in that case. *Id.*, at 375, 414, and 465.

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

July 29, 1976

SUBJECT: Roberts v. Louisiana, A-56 (75-5844)  
Roberts v. Louisiana, A-55  
Selman v. Louisiana, (74-6065) ) A-58  
Watts v. Louisiana (75-6067) ) PLEASE RETURN  
Washington v. Louisiana (75-6123)) TO FILE  
Selman v. Louisiana )  
Watts v. Louisiana ) A-57  
Washington v. Louisiana )

TO: The Conference  
FROM: LFP, Jr.

I circulate this memorandum to advise you of action taken by me, as Circuit Justice, on applications filed in the above capital cases from Louisiana.

Roberts was the case argued and decided by the Court. The other three cases, controlled by Roberts, were here on petitions for certiorari that were granted, vacated and remanded on Roberts.

Louisiana sought a stay of mandate in each of these cases, assigning no more substantial ground than speculative fear that the Supreme Court of Louisiana "may actually change the petitioners' sentence to life imprisonment" before we have had an opportunity to consider petitions for rehearing. As the grounds assigned seem frivolous to me, I denied the requested stays on July 26th.

I did grant extensions of time for the filing of petitions for rehearing until September 1st.

LFP, Jr.

L.F.P.

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

June 17, 1976

Re: No. 75-5844 - Roberts v. Louisiana

Dear Byron:

Please join me in your dissenting opinion.

Sincerely,

*WW*

Mr. Justice White

Copies to the Conference