

# The Burger Court Opinion Writing Database

*Patterson v. New York*

432 U.S. 197 (1977)

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

March 4, 1977

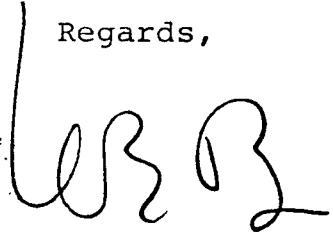
MEMORANDUM TO THE CONFERENCE:

This will confirm that there will be a special conference Wednesday morning, March 9, at 10:30 to discuss the following cases:

75-1861 - Gordon G. Patterson, Jr. v.  
New York

75-6568 - Johnnie B. Hankerson v. North  
Carolina.

Regards,

A handwritten signature consisting of the initials "W.B.R." followed by a stylized surname.

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

CHAMBERS OF  
THE CHIEF JUSTICE

March 9, 1977

Re: ✓ 75-1861 - Patterson v. New York  
75-6568 - Hankerson v. North Carolina

MEMORANDUM TO THE CONFERENCE:

I have concluded to vote to affirm in these two cases although my reasoning may not necessarily be the same as the plurality voting to the same end. The opinions have been assigned today to Byron White.

Regards,

*WB*

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

CHAMBERS OF  
THE CHIEF JUSTICE

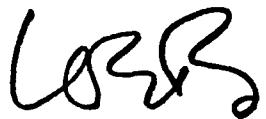
June 13, 1977

Re: 75-1861 - Patterson v. New York

Dear Byron:

I join.

Regards,



Mr. Justice White

Copies to the Conference

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

June 7, 1977

RE: No. 75-1861 Patterson v. New York

Dear Lewis:

Will you please add my name to your fine dissent?

Sincerely,



Mr. Justice Powell

cc: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

April 22, 1977

Re: No. 75-1861, Patterson v. New York

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

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: 4-21-77

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

1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 75-1861

Gordon G. Patterson, Jr.,  
Appellant,  
v.  
State of New York. } On Appeal from the Court of Appeals of New York.

[April —, 1977]

MR. JUSTICE WHITE delivered the opinion of the Court.

The question here is the constitutionality under the Fourteenth Amendment's Due Process Clause of burdening the defendant in a New York State murder trial with proving the affirmative defense of extreme emotional distress as defined by New York law.

### I

After a brief and unstable marriage, the appellant, Gordon Patterson, became estranged from his wife, Roberta. Roberta resumed an association with John Northrup, a neighbor to whom she had been engaged prior to her marriage to appellant. On December 27, 1970, Patterson borrowed a rifle from an acquaintance and went to the residence of his father-in-law. There, he observed his wife through a window in a state of semiundress in the presence of John Northrup. He entered the house and killed Northrup by shooting him twice in the head.

Patterson was charged with second-degree murder. In New York there are two elements of this crime: (1) "intent to cause the death of another person"; and (2) "caus[ing] the death of such person or of a third person." N. Y. Penal Law § 125.25

STYLISTIC CHANGES THROUGHOUT.  
SEE PAGES: 6, 14, 16, 18-19

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: 5-6-77

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

**No. 75-1861**

Gordon G. Patterson, Jr.,  
Appellant,  
v.  
State of New York. } On Appeal from the Court of Appeals of New York.

[April —, 1977]

MR. JUSTICE WHITE delivered the opinion of the Court.

The question here is the constitutionality under the Fourteenth Amendment's Due Process Clause of burdening the defendant in a New York State murder trial with proving the affirmative defense of extreme emotional disturbance as defined by New York law.

**I**

After a brief and unstable marriage, the appellant, Gordon Patterson, became estranged from his wife, Roberta. Roberta resumed an association with John Northrup, a neighbor to whom she had been engaged prior to her marriage to appellant. On December 27, 1970, Patterson borrowed a rifle from an acquaintance and went to the residence of his father-in-law. There, he observed his wife through a window in a state of semiundress in the presence of John Northrop. He entered the house and killed Northrup by shooting him twice in the head.

Patterson was charged with second-degree murder. In New York there are two elements of this crime: (1) "intent to cause the death of another person"; and (2) "caus[ing] the death of such person or of a third person." N. Y. Penal Law § 125.25

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

June 3, 1977

Re: No. 75-1861 — Patterson v. New York  
No. 75-6568 — Hankerson v. North Carolina

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Dear Lewis:

The only change in either of the above opinions other than purely stylistic will be in Patterson where I shall add "including the affirmative defense in this case" at the end of line 2 of footnote 11 on page 12.

If all votes are in perhaps we could decide on Tuesday whether to bring the opinions down on Thursday.

Sincerely,



Mr. Justice Powell

Copies to the Conference

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

3rd DRAFT

From: Mr. Justice White

**SUPREME COURT OF THE UNITED STATES**

Recirculated: 6-6-77  
 No. 75-1861

Gordon G. Patterson, Jr.,  
 Appellant,  
 v.  
 State of New York. } On Appeal from the Court of Ap-  
 peals of New York.

[April —, 1977]

MR. JUSTICE WHITE delivered the opinion of the Court.

The question here is the constitutionality under the Fourteenth Amendment's Due Process Clause of burdening the defendant in a New York State murder trial with proving the affirmative defense of extreme emotional disturbance as defined by New York law.

I

After a brief and unstable marriage, the appellant, Gordon Patterson, became estranged from his wife, Roberta. Roberta resumed an association with John Northrup, a neighbor to whom she had been engaged prior to her marriage to appellant. On December 27, 1970, Patterson borrowed a rifle from an acquaintance and went to the residence of his father-in-law. There, he observed his wife through a window in a state of semiundress in the presence of John Northrop. He entered the house and killed Northrup by shooting him twice in the head.

Patterson was charged with second-degree murder. In New York there are two elements of this crime: (1) "intent to cause the death of another person"; and (2) "caus[ing] the death of such person or of a third person." N. Y. Penal Law § 125.25

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

June 21, 1977

MEMORANDUM TO THE CONFERENCE

Re: Cases held for Patterson v. New York, No. 75-1861, and  
Hankerson v. North Carolina, No. 75-6568.

1. Kampshoff v. New York, No. 76-6063. Petitioner and two cohorts killed petitioner's aunt while they were attempting to rob her. Petitioner was convicted of felony-murder. Under New York law, the defendant may establish an affirmative defense to felony-murder by proving a certain combination of circumstances by a preponderance of the evidence. The trial court refused to instruct the jury on this defense. The Appellate Division affirmed, finding that there was absolutely no foundation in the record to support the defense. Relying on People v. Patterson, court also concluded that the affirmative defense was not unconstitutional under Mullaney since "[t]he affirmative defense to felony murder does not encompass any of the same elements as does the crime of felony murder." Petitioner's attack on this holding is foreclosed by Patterson. I will vote to deny. OK

2. Hood v. South Carolina, No. 76-6254. Petitioner was convicted of involuntary manslaughter. Petitioner raised the issue of self-defense, and he contends that certain jury instructions improperly placed upon him the burden of proving one of the elements of self-defense -- that he had no probable means of escape -- by a preponderance. The burden of proving self-defense is on the defendant in South Carolina, but it appears (1) that petitioner failed to preserve the burden-of-proof issue at trial by failing to object to the instructions and (2) that for that reason the South Carolina Supreme Court declined to rule on the issue. I shall vote to deny. OK

3. Barbour v. North Carolina, No. 75-1745. Petitioner was convicted of second degree murder prior to the decision in Mullaney. He contested a jury instruction that placed upon him the burden of

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

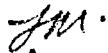
June 8, 1977

Re: No. 75-1861 - Patterson v. New York

Dear Lewis:

Please join me.

Sincerely,



T. M.

Mr. Justice Powell

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20542

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

May 6, 1977

Re: No. 75-1861 - Patterson v. New York

Dear Byron:

This is a valiant effort to circumnavigate Mullaney. I am glad to join your opinion. (Footnote 6, of course, will depend on the ultimate disposition of Hankerson.)

I know a couple of good Maine citizens who would be offended to have their top court (pages 16 and 18 of the opinion) referred to as merely the "Supreme Court." I believe they still follow the Massachusetts precedent. You may wish to check this.

Sincerely,



Mr. Justice White

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

March 3, 1977

No. 75-6568 Hankerson v. North Carolina  
No. 75-1861 Patterson v. New York

MEMORANDUM TO THE CONFERENCE:

In my earlier letter today, I concluded by saying I was "open to more attractive solutions".

Another "solution" has reached me this afternoon in the form of an advance copy of an article that will appear in the Virginia Law Weekly. The article was written by Professors Peter Low and John Jeffries, both of whom clerked here -- John in my Chambers.

The Low/Jeffries article, in none too gentle terms, suggests that I must have had my mind on something else when I wrote Mullaney. I judge that they think no solution short of overruling Mullaney and reinterpreting Winship will solve the problems they perceive. When I invited additional "solutions", I must say I did not have anything quite so drastic in mind.

Nevertheless, I do not brush aside the views of these two fine scholars of the criminal law. Each teaches criminal law at Virginia, and their present concern derives in major part from the fact that they are employed (by the Senate Judiciary Committee, I believe) as consultants on S.1. I judge that they think Mullaney would cast serious doubt on the validity of a number of the provisions of that proposed federal criminal code.

In any event, and with no great enthusiasm, I share with you the views of Professors Low and Jeffries.

lab

L F. P., Jr.  
*L. F. P.*

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

April 22, 1977

No. 75-1861 Patterson v. New York

Dear Byron:

In due time I will circulate a dissent.

Sincerely,

*Lewis*

Mr. Justice White

lfp/ss

cc: The Conference

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

From: Mr. Justice Powell

## 1st DRAFT

Circulated: JUN 1 1977

SUPREME COURT OF THE UNITED STATES

STATES stated: \_\_\_\_\_

No. 75-1861

Gordon G. Patterson, Jr.,  
Appellant,  
v.  
State of New York. } On Appeal from the Court of Ap-  
peals of New York.

[June —, 1977]

MR. JUSTICE POWELL, dissenting.

In the name of preserving legislative flexibility, the Court today drains *In re Winship*, 397 U. S. 358 (1970), of much of its vitality. Legislatures do require broad discretion in the drafting of criminal laws, but the Court surrenders to the Legislative Branch a significant part of its responsibility to protect the presumption of innocence.

I

An understanding of the import of today's decision requires a comparison of the statutes at issue here with the statutes and practices of Maine struck down by a unanimous Court just two years ago in *Mullaney v. Wilbur*, 421 U. S. 684 (1975).

A

Maine's homicide laws embodied the common-law distinctions along with the colorful common-law language. Murder was defined in the statute as the unlawful killing of a human being "with malice aforethought, either express or implied." Manslaughter was a killing "in the heat of passion, on sudden provocation, without express or implied malice aforethought." 421 U. S., at 686, and n. 3. Although "express malice" at one point may have had its own significant independent meaning, see Perkins, A Re-Examination of Malice Aforethought, 43 Yale L. J. 537, 546-552 (1934), in prac-

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

April 22, 1977

Re: 75-1861 - Patterson v. New York

Dear Byron:

Please join me.

Respectfully,



Mr. Justice White

Copies to the Conference