The Burger Court Opinion Writing Database

Hankerson v. North Carolina

432 U.S. 233 (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

June 13, 1977

Re: 75-6568 - Hankerson v. North Carolina

Dear Byron:

I join.

Regards,

WEB

Mr. Justice White

Copies to the Conference

By this memo I also ask Harry to join me in his concurrence, which seems helpful to me.

WEB

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 5, 1977

RE: No. 75-6568, Hankerson v. North Carolina

Dear Byron:

Your memo in the above comports with my views, and I will be glad to join it, hoping it becomes a Court opinion.

Sincerely,

Bill

Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

May 25, 1977

Re: 75-6568, Hankerson v. No. Carolina

Dear Byron,

I agree with your memorandum.

Sincerely yours,

P.S.

Mr. Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 22, 1977

MEMORANDUM TO THE CONFERENCE

Re: No. 75-6568 - Hankerson v. North Carolina

As I understand it, the vote of the Conference in this case was to affirm--that is, to hold the North Carolina court wrong in deeming Mullaney v. Wilbur not retroactive, wrong in holding that Mullaney prevents North Carolina from requiring the defendant to prove self-defense, but right in sustaining the judgment of conviction. I, too, voted that way.

I remain of the view that Mullaney is retroactive but now believe that the self-defense issue is not properly before us for decision. This is because retroactivity was the sole issue presented in the petition, because the State did not cross-petition, and because the State in its brief on the merits did not really seek to sustain the judgment on the ground that the burden of proving self-defense may properly be cast on the defendant. Rather, the State's argument in brief is that the criminal defendant does not actually bear this burden under a proper construction of North Carolina law but must merely raise a reasonable doubt about the issue. The broader self-defense question was mooted somewhat in oral argument, but as I see it, neither side has had opportunity to give it adequate attention. Actually, the State was somewhat taken aback by the suggestion that this issue might be open for decision. See Tr. of Oral Argument at 22.

I might add that in view of the structure of the North Carolina murder law and of the North Carolina court's construction of its own statute--at least in this case--I have some doubt that if we reach the issue we would disagree with the North Carolina Supreme Court that Mullaney does indeed control the self-defense question.

My views are expressed in the attached memorandum. I realize, of course, that the case should perhaps be reassigned.

B.R.W.

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: 4-22-77

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-6568

Johnnie B. Hankerson, Petitioner, *v.* State of North Carolina. } On Writ of Certiorari to the Supreme Court of North Carolina.

[April —, 1977]

Memorandum of MR. JUSTICE WHITE.

The issue in this case is whether the North Carolina Supreme Court correctly declined to give retroactive application to this Court's decision in *Mullaney* v. *Wilbur*, 421 U. S. 684 (1975).

I

Petitioner Hankerson was convicted after a jury trial of second-degree murder and sentenced to 20–25 years in prison. It was conceded at his trial that he killed a man named Gregory Ashe by shooting him through the heart with a pistol at 11 at night on September 29, 1974. The issue at trial was whether petitioner acted in self-defense. The relevant evidence is described below.

Ashe and two friends, Dancy and Whitley, were, according to the testimony of the latter two, driving around in Ashe's car on the evening of September 29. They went to a pool hall shortly before 11 p. m. and, on discovering that the pool hall was closed, returned to Ashe's car. The car would not start. Ashe asked his companions for a light for his cigarette, but neither had one. Whitley began walking to his home, which was one block away. Ashe and Dancy followed him. Then Ashe decided to return to his car to try to "crank" it. Dancy, according to his and Whitley's testimony, ran after Whitley. Both testified that they then heard a gunshot, heard Ashe yell

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 6, 1977

Re: No. 75-6568 - Hankerson v. North Carolina

Dear Harry:

Your suggestion that the North Carolina court may want to reconsider its self-defense decision in light of Patterson was much on my mind in drafting Hankerson. As presently drafted, the memorandum would reverse the judgment because it rests on the mistaken view of the retroactivity in Mullaney, the only issue brought here by petitioners. I would not think our reversal on this ground would preclude the North Carolina court from reopening the self-defense issue if it is otherwise open under North Carolina law; if it is not, I doubt that we can, or should, order them to reopen it. As I recall, even if a state case is "reversed" rather than "vacated," our mandate normally would also remand the case to the state court for further proceedings not inconsistent with the opinion. I would make sure that it did if the circulating memorandum becomes the opinion of the Court.

Sincerely,

Mr. Justice Blackmun

Copies to Conference

P.S. Also, without fail, the Patterson opinion will not misdescribe the highest court in the great State of Maine.

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 1, 6, 7, 9-11

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: _____

2nd DRAFT

Recirculated: 5-26-77

SUPREME COURT OF THE UNITED STATES

No. 75-6568

Johnnie B. Hankerson, Petitioner, v. State of North Carolina. } On Writ of Certiorari to the Supreme Court of North Carolina.

[April —, 1977]

MR. JUSTICE WHITE delivered the opinion of the Court.

The issue in this case is whether the North Carolina Supreme Court correctly declined to give retroactive application to this Court's decision in *Mullaney* v. *Wilbur*, 421 U. S. 684 (1975).

I

Petitioner Hankerson was convicted after a jury trial of second-degree murder and sentenced to 20–25 years in prison. It was conceded at his trial that petitioner killed a man named Gregory Ashe by shooting him through the heart with a pistol at 11 at night on September 29, 1974. The issue at trial was whether petitioner acted in self-defense. The relevant evidence is described below.

Ashe and two friends, Dancy and Whitley, were, according to the testimony of the latter two, driving around in Ashe's car on the evening of September 29. They went to a pool hall shortly before 11 p. m. and, on discovering that the pool hall was closed, returned to Ashe's car. The car would not start. Ashe asked his companions for a light for his cigarette, but neither had one. Whitley began walking to his home, which was one block away. Ashe and Dancy followed him. Then Ashe decided to return to his car to try to "crank" it. Dancy, according to his and Whitley's testimony, ran after Whitley. Both testified that they then heard a gunshot, heard Ashe yell

— ✓

B.11

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

Circulated: _____

Recirculated: 6-6-77

SUPREME COURT OF THE UNITED STATES

No. 75-6568

Johnnie B. Hankerson, Petitioner, *v.* State of North Carolina. } On Writ of Certiorari to the Supreme Court of North Carolina.

[April —, 1977]

MR. JUSTICE WHITE delivered the opinion of the Court.

The issue in this case is whether the North Carolina Supreme Court correctly declined to give retroactive application to this Court's decision in *Mullaney* v. *Wilbur*, 421 U. S. 684 (1975).

I

Petitioner Hankerson was convicted after a jury trial of second-degree murder and sentenced to 20–25 years in prison. It was conceded at his trial that petitioner killed a man named Gregory Ashe by shooting him through the heart with a pistol at 11 at night on September 29, 1974. The issue at trial was whether petitioner acted in self-defense. The relevant evidence is described below.

Ashe and two friends, Dancy and Whitley, were, according to the testimony of the latter two, driving around in Ashe's car on the evening of September 29. They went to a pool hall shortly before 11 p. m. and, on discovering that the pool hall was closed, returned to Ashe's car. The car would not start. Ashe asked his companions for a light for his cigarette, but neither had one. Whitley began walking to his home, which was one block away. Ashe and Dancy followed him. Then Ashe decided to return to his car to try to "crank" it. Dancy, according to his and Whitley's testimony, ran after Whitley. Both testified that they then heard a gunshot, heard Ashe yell

JUN 8 1977

No. 75-6568, Hankerson v. North Carolina

MR. JUSTICE MARSHALL, concurring in the judgment.

In Williams v. United States, 401 U.S. 646, 665 (1971), I expressed the view that "a decision of this Court construing the Constitution should be applied retroactively to all cases involving criminal convictions not yet final at the time our decision is rendered." For reasons persuasively stated at that time by Mr. Justice Harlan, Mackey v. United States, 401 U.S. 667, 675 (1971), I concluded that "cases still on direct review should receive full benefit of our supervening constitutional decisions." Williams v. United States, supra. The Court's more recent struggles with the problem of retroactivity, see, e.g., Adams v. Illinois, 405 U.S. 278 (1972); Michigan v. Payne, 412 U.S. 47 (1973), have done little to diminish "the inevitable costs and anomalies of the Court's current approach." Williams, supra, 401 U.S., at 666. See Adams v. Illinois, 405 U.S., at 286 (Douglas, J., dissenting); Michigan v. Payne, 412 U.S., at 59 (Marshall, J., dissenting).

JUN 10 1977

1st PRINTED DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75–6568

Johnnie B. Hankerson, Petitioner, *v.* State of North Carolina. | On Writ of Certiorari to the Supreme Court of North Carolina.

[June —, 1977]

MR. JUSTICE MARSHALL, concurring in the judgment.

In *Williams* v. *United States,* 401 U. S. 646, 665 (1971), I expressed the view that "a decision of this Court construing the Constitution should be applied retroactively to all cases involving criminal convictions not yet final at the time our decision is rendered." For reasons persuasively stated at that time by Mr. Justice Harlan, *Mackey* v. *United States,* 401 U. S. 667, 675 (1971), I concluded that "cases still on direct review should receive full benefit of our supervening constitutional decisions." *Williams* v. *United States, supra.* The Court's more recent struggles with the problem of retroactivity, see, *e. g., Adams* v. *Illinois,* 405 U. S. 278 (1972); *Michigan* v. *Payne,* 412 U. S. 47 (1973), have done little to diminish "the inevitable costs and anomalies of the Court's current approach." *Williams* v. *United States, supra,* 401 U. S., at 666. See *Adams* v. *Illinois,* 405 U. S., at 286 (Douglas, J., dissenting); *Michigan* v. *Payne,* 412 U. S., at 59 (MARSHALL, J., dissenting). I remain committed to the approach outlined in my opinion in Williams.* Since this case is here on direct appeal, I concur in the Court's holding that the rule announced in *Mullaney* v. *Wilbur,* 421 U. S. 684 (1975), must be applied.

*As I noted in *Williams,* I think there are persuasive reasons to use the Court's traditional retroactivity analysis to decide that issue in cases arising on habeas corpus or other collateral review proceedings. 401 U. S., at 666.

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 6, 1977

Re: No. 75-6568 - Hankerson v. North Carolina

Dear Byron:

I think I could go along with your memorandum if there proves to be a Court for it.

There is, however, another possibility. You point out, appropriately, in the footnote on page 7 and again in the concluding paragraph of the memorandum, that neither party raised the issue whether, under North Carolina law, due process required the prosecution to disprove self-defense beyond a reasonable doubt. It is possible that the State did not raise this point because after Mullaney it assumed that no such point could be raised. I suspect that it is within this Court's discretion to vacate the North Carolina judgment and to remand this case for reconsideration in the light of Patterson, since Patterson surely makes inroads on the Mullaney rule. The North Carolina Supreme Court could then take another look at the State's self-defense system. It may well be that the system is bad under the new view of Mullaney, but if the North Carolina Court upholds the defense and this Court wants to look at the issue in fully briefed form, it could be done at that time.

On balance, I favor this alternative approach. It may not appeal to you, but I submit it for your consideration.

Sincerely,

H. A. B.

Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 27, 1977

Re: No. 75-6568 - Hankerson v. North Carolina

Dear Byron:

I am still with you in the opinion form circulated May 26. I am sending to the Printer the separate concurrence, a copy of which is attached.

I would feel mildly better if, at the very end of your opinion, just before you recuse Bill Rehnquist, you added one word, such as reversed or affirmed or vacated or modified -- you name it.

Sincerely,

H.A.B.

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

No. 75-6568 - Hankerson v. North Carolina

From: Mr. Justice Blackmun

Circulated: MAY 27 1977

Recirculated: _____

MR. JUSTICE BLACKMUN, concurring.

I join the opinion of the Court. I wish to emphasize, however, that our decision not to consider the correctness of the North Carolina Supreme Court's ruling on the self-defense charge, see ante, pp. ____ n. 6, and ____, does not in any way preclude that court from reexamining its holding in petitioner's case on remand, in light of today's decision in Patterson v. New York, ante, p. ____.

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: _____

Recirculated: MAY 27 1977

1st ~~DRAFT~~

SUPREME COURT OF THE UNITED STATES

No. 75-6568

Johnnie B. Hankerson, Petitioner, *v.* State of North Carolina. } On Writ of Certiorari to the Supreme Court of North Carolina.

[June —, 1977]

MR. JUSTICE BLACKMUN, concurring.

I join the opinion of the Court. I wish to emphasize, however, that our decision not to consider the correctness of the North Carolina Supreme Court's ruling on the self-defense charge, see *ante*, pp. —— n. 6, and ——, does not in any way preclude that court from re-examining its holding in petitioner's case on remand, in light of today's decision in *Patterson v. New York*, *ante*, p. ——.

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:

Here is a memorandum prepared by my clerk, Dave Martin, in which he explores "options" with respect to the application of Winship/Mullaney in the above cases and for the future.

Dave would be the first to acknowledge that none of the options he discusses is free from both analytical and practical difficulties. I suppose the truth is that no one (at least no authority we have found) has identified a rationale that affords a satisfactory answer to the wide range of cases that are implicated. Until Winship and Mullaney, the states had been making these decisions in accordance with their own perceptions of the best solutions. Even within a state, consistency in principle was not always evident. For example, Maine shifted the burden to the defendant with respect to "heat of passion" but left the entire burden of persuasion on the prosecution with respect to self defense.

Since Davis, it appears - although there seem to be relatively few decisions - that the federal courts have treated all traditional affirmative defenses as merely shifting the burden of production to the defendant, leaving the overall burden of persuasion on the state.

Perhaps we acted unwisely in Winship and Mullaney, in extending rather broadly the Due Process Clause to the allocation of these burdens. Yet, I have no doubt that I would have joined Winship, and my "track record" in Mullaney is now painfully evident. This is not to say that I think

Mullaney was wrongly decided on its precise issue. It is certainly true, however, that I did not look down the "track" with enough perception to foresee the pitfalls and problems that now disturb us.

My own tentative preference is to adhere to the Winship/ Mullaney basic principle, redefining it along the lines of what Dave Martin calls a "functional approach". There are some obvious difficulties in this approach, but I believe it would be generally consistent with the practice in most states and in the federal courts. It also would allow some necessary flexibility with respect to legislatively created crimes and defenses.

Such an approach would, however, cast doubt - if applied retroactively - on countless convictions in many if not most states. I continue to believe, as I stated at Conference, that we should not apply Mullaney retroactively. We have never applied the "three part" retroactivity test in an inflexible manner. We have properly accorded greater weight to the first part, but the test has been a balancing one. This approach necessarily implies that at least under some circumstances the other two parts may "outweigh" the first part.

The views expressed above do not necessarily reflect my final thinking about these cases. No entirely satisfactory resolution of the issues presented has yet occured to me or been suggested by others. I remain open to more attractive solutions.

Lewis

L.F.P., Jr.

ss

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.

dm/ss 3/3/77

MEMORANDUM

TO: Mr. Justice Powell DATE: March 3, 1977

FROM: Dave Martin

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

In essence these cases ask the Court to determine the limits to Winship and Mullaney. I see three major options the Court could adopt in order to draw the line.

I. No affirmative defenses*

The line easiest to draw is essentially no line at all. The Court could hold that under Winship the state must prove any fact that makes a difference in punishment.

Obviously there are severe drawbacks to this approach. Affirmative defenses, as Chief Judge Breitel indicated in Patterson, do not invariably "unhinge the procedural presumption of innocence." Such defenses are especially useful as a legislative solution to problems encountered in crafting substantive criminal law, particularly as a device for ameliorating the operation of certain punishment categories. For example, New York subjects an armed robber to lesser punishment if he proves that the gun he used was unloaded or

*I shall use the term "affirmative defense" to refer to factors (e.g., malice, self defense) as to which the defendant bears the burden of persuasion.

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

April 22, 1977

No. 75-6568 Hankerson v. North Carolina

Dear Byron:

This is in response to your memorandum of April 22, to the Conference.

If your memorandum becomes an opinion of the Court, I am considering writing a brief concurrence expressing agreement with John Harlan's views on retroactivity. Desist v. United States, 394 U.S. 244, 256, and Mackey v. United States, 401 U.S. 667, 675. If I conclude to do this, I would join in the judgment of the Court as to retroactivity in this case.

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

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 75-6568

Johnnie B. Hankerson, Petitioner, *v.* State of North Carolina. } On Writ of Certiorari to the Supreme Court of North Carolina.

[June —, 1977]

MR. JUSTICE POWELL, concurring in the judgment.

Twelve years ago this Court decided *Linkletter* v. *Walker*, 381 U. S. 618 (1965). In the intervening years, we have struggled with the question of retroactivity when new constitutional rules affecting the administration of the criminal law have been adopted. See Beytagh, Ten Years of Non-Retroactivity: A Critique and a Proposal, 61 Va. L. Rev. 1557, 1558–1596 (1975). The doctrine that has emerged is far from satisfactory. Although on several occasions I have joined in its application, I am now persuaded that it would be wiser to adopt the view urged by Mr. Justice Harlan in *Mackey* v. *United States*, 401 U. S. 667, 675–702 (1971) (separate opinion). See also *Desist* v. *United States*, 394 U. S. 244, 256–269 (1969) (Harlan, J., dissenting); *Williams* v. *United States*, 401 U. S. 646, 665–666 (1971) (MARSHALL, J., concurring in part and dissenting in part).

One need not endorse the Blackstonian fiction (that a new legal ruling merely announces what the law has always been, prior cases to the contrary simply being failures to discover the "true" law) to feel uneasy about a decision holding a new constitutional rule to be nonretroactive. In such an instance the chance beneficiary—the lucky individual whose case was chosen as the occasion for announcing the new principle—enjoys retroactive application, while others similarly situated have their claims adjudicated under the old doctrine. This

p.1

Stylistic Changes Throughout.

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

2nd DRAFT

From: Mr. Justice Powell

SUPREME COURT OF THE UNITED STATES

No. 75-6368

Circulated: _____

Recirculated: JUN 6 1977

Johnnie B. Hankerson, Petitioner, *v.* State of North Carolina. } On Writ of Certiorari to the Supreme Court of North Carolina.

[June —, 1977]

MR. JUSTICE POWELL, concurring in the judgment.

Twelve years ago this Court decided *Linkletter* v. *Walker,* 381 U. S. 618 (1965). In the intervening years, we have struggled with the question of retroactivity when new constitutional rules affecting the administration of the criminal law have been adopted. See Beytagh, Ten Years of Non-Retroactivity: A Critique and a Proposal, 61 Va. L. Rev. 1557, 1558–1596 (1975). The doctrine that has emerged is far from satisfactory. Although on several occasions I have joined in its application, I am now persuaded that it would be wiser to adopt the view urged by Mr. Justice Harlan in *Mackey* v. *United States,* 401 U. S. 667, 675–702 (1971) (separate opinion). See also *Desist* v. *United States,* 394 U. S. 244, 256–269 (1969) (Harlan, J., dissenting); *Williams* v. *United States,* 401 U. S. 646, 665–666 (1971) (MARSHALL, J., concurring in part and dissenting in part).

When the Court declines to hold a new constitutional rule retroactive, one chance beneficiary—the lucky individual whose case was chosen as the occasion for announcing the new principle—enjoys retroactive application, while others similarly situated have their claims adjudicated under the old doctrine. This hardly comports with the ideal of "administration of justice with an even hand." *Desist* v. *United States, supra,* at 255 (Douglas, J., dissenting).[1]

[1] In addition, as Mr. Justice Harlan noted, the typical nonretroactivity

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

April 25, 1977

Re: 75-6568 - Hankerson v. North Carolina

Dear Byron:

Your memorandum expresses my views about this case.

Respectfully,

Mr. Justice White

Copies to the Conference