

# The Burger Court Opinion Writing Database

## *Roberts v. Louisiana*

431 U.S. 633 (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

November 15, 1976

MEMORANDUM TO THE CONFERENCE:

Re: 76-5206 Roberts v. Louisiana

Byron has suggested, and I think correctly, that our grant of cert probably needs limitation. This can be accomplished by an informal communication from the Clerk to Counsel. If any complications arise, we can formalize the limitations by a new order.

Regards,

WSB

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

CHAMBERS OF  
THE CHIEF JUSTICE

November 23, 1976

MEMORANDUM FOR THE CONFERENCE:

Subj: No. 76-5206, Roberts v. Louisiana

Absent dissent, the Monday order list will recite under "Orders in Pending Cases":

76-5206, Roberts v. Louisiana

The petition for a writ of certiorari having been granted on November 8, 1976, the grant is hereby limited to the following question:

Whether the imposition and carrying out of the sentence of death for the crime of first-degree murder of a police officer under the law of Louisiana violates the Eighth and Fourteenth Amendments to the Constitution of the United States.

Regards,

*WRB*

cc: The Clerk

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

From: The Chief Justice

Circulated: MAY 10 1977

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

No. 76-5206 Roberts v. Louisiana

MR. CHIEF JUSTICE BURGER, dissenting:

I would sustain the Louisiana statute and I therefore dissent on the basis of my dissenting statement in Roberts v. Louisiana, 428 U.S. 325, 337, and that of Mr. Justice White in Woodson v. North Carolina, 428 U.S. 280, 306 (1976).

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

From: The Chief Justice

Conculated: \_\_\_\_\_

**MAY 11 1977**

1st DRAFT

culated: \_\_\_\_\_

## SUPREME COURT OF THE UNITED STATES

No. 76-5206

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

[May —, 1977]

MR. CHIEF JUSTICE BURGER, dissenting.

I would sustain the Louisiana statute and I therefore dissent on the basis of my dissenting statement in *Roberts v. Louisiana*, 428 U. S. 325, 337, and that of Mr. Justice WHITE in *Woodson v. North Carolina*, 428 U. S. 280, 306 (1976).

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

April 5, 1977

RE: No. 76-5206 Roberts v. Louisiana

Dear John:

I agree that we add the footnote suggested in your memorandum of today's date in the above.

Sincerely,

*Bill*

Mr. Justice Stevens

cc: Mr. Justice Marshall

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

CHAMBERS OF  
JUSTICE POTTER STEWART

November 18, 1976

Re: No. 76-5206, Roberts v. Louisiana

Dear Byron,

The form of your proposed directive limiting the argument in this case is satisfactory to me. I believe strongly, however, that this should appear on the Order List.

I am aware of no case where we have limited a grant of certiorari in which the Order so limiting it did not appear on the public Order List. Publication of the Order seems particularly desirable in this case, because of the complete misapprehension of the press and presumably of the interested Bar of our original grant of certiorari. Unless the Order is published the interested Bar will be deprived of an opportunity to file the amicus briefs that may reasonably be expected.

In short, I think it is quite important that we not proceed in this case in a manner that could be criticized as a surreptitious effort to conceal from the public and the interested Bar the question that those who voted to grant certiorari are interested in having argued.

Sincerely yours,

P.S.  
/

Mr. Justice White

Copies to the Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

April 5, 1977

Re: No. 76-5206, Roberts v. Louisiana

Dear John,

I agree with the Per Curiam you have  
circulated today.

Sincerely yours,

P.S.  
1.

Mr. Justice Stevens

Copies to the Conference



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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

November 15, 1976

Re: No. 76-5206, Roberts v. Louisiana

Dear Chief:

I suggest that we limit the argument in this case to the following question:

"Whether the imposition and carrying out of the sentence of death for the crime of first-degree murder of a police officer under the law of Louisiana violates the Eighth and Fourteenth Amendments to the Constitution of the United States."

This would exclude questions 2 and 3 stated in the petition and would limit question 1.

Sincerely,



The Chief Justice

Copies to Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

November 18, 1976

Re: No. 76-5206 - Roberts v. Louisiana

Dear Potter:

I had anticipated that there would be an  
order issued in this case limiting the grant.  
It should be a public matter.

Sincerely,



Mr. Justice Stewart

Copies to Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

November 23, 1976

Re: No. 76-5206 - Roberts v. Louisiana

Dear Chief:

On November 15, I circulated a suggested limitation of the certiorari grant in this case. Harry, Bill Rehnquist and others have agreed with the suggestion. My own view is that an order should issue and that it come down as soon as possible.

Sincerely,



The Chief Justice

Copies to Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

May 23, 1977

Re: No. 76-5206 - Roberts v.  
Louisiana

Dear Harry:

I see no reason why you should  
not file your dissent. I'm not yet  
sure whether I shall write.

Sincerely yours,



Mr. Justice Blackmun

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

April 11, 1977

Re: No. 76-5206, Roberts v. Louisiana

Dear John:

I agree with your suggested footnote.

Sincerely,



T. M.

Mr. Justice Stevens

Mr. Justice Brennan

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

November 16, 1976

Re: No. 76-5206 - Roberts v. Louisiana

Dear Byron:

What you suggest in your letter of November 15  
has my approval.

Sincerely,



Mr. Justice White

cc: The Conference

May 23, 1977

Re: No. 76-5206 - Roberts v. Louisiana

Dear Byron:

I came away from Thursday's conference not exactly certain as to whether you are or are not writing in this case. I therefore have put together my own dissenting views, and send you herewith, in advance of printing and for your information, a copy of what I have written. It is now down at the Printer. If you find anything in it out of line with what you propose to do, please let me know.

Sincerely,

HAB

Mr. Justice White

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: MAY 25 1977

2nd DRAFT

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

# SUPREME COURT OF THE UNITED STATES

No. 76-5206

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

[May —, 1977]

MR. JUSTICE BLACKMUN, dissenting.

The Court, feeling itself bound by the plurality opinion in *Stanislaus Roberts v. Louisiana*, 428 U. S. 325 (1976), has painted itself into a corner. I did not join that plurality opinion, and I decline to be so confined. I therefore dissent from the Court's disposition of the present case and from its holding that the mandatory imposition of the death penalty for killing a peace officer, engaged in the performance of his lawful duties, constitutes cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments. I would uphold the State's power to impose such a punishment under La. Rev. Stat. Ann. § 14:30 (2) (1974), and I would reject any statements or intimations to the contrary in the Court's prior cases.

The *per curiam* opinion asserts that "the precise question presented in this case was explicitly answered" in *Stanislaus Roberts*. *Ante*, at 2. It also relies on the summary disposition of *Washington v. Louisiana*, 428 U. S. 906 (1976), where a death sentence that had been imposed under § 14:30 (2) was vacated and where it was stated that the imposition and carrying out of the death penalty constituted cruel and unusual punishment. *Ante*, at 3. Finally, the *per curiam* states that "it is essential that the capital sentencing decision allow for consideration of whatever mitigating circumstances may be relevant to either the particular offender or the particular offense." *Ante*, at 4. Since § 14:30 (2) does not allow for



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

November 15, 1976

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

No. 76-5206 Roberts v. Louisiana

Dear Byron:

Your proposed question, and limiting of grant, is  
satisfactory with me.

Sincerely,

*Lewis*

Mr. Justice White

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

April 5, 1977

No. 76-5206 Roberts v. Louisiana

Dear John:

I agree with your Per Curiam in the above case.

Sincerely,

*Lewis*

Mr. Justice Stevens

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

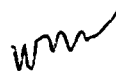
November 16, 1976

Re: No. 76-5206 - Roberts v. Louisiana

Dear Byron:

Your proposed question, and limiting of grant, is  
satisfactory with me.

Sincerely,



Mr. Justice White

Copies to the Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

April 5, 1977

Re: No. 76-5206 Roberts v. State of Louisiana

Dear John:

In the event that none of my seniors in dissent circulate a dissenting opinion in this case, I shall do so.

Sincerely,



Mr. Justice Stevens

Copies to the Conference

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

From: Mr. Justice Rehnquist

Circulated: APR 24 1977

1st DRAFT

# SUPREME COURT OF THE UNITED STATES

No. 76-5206

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

[May —, 1977]

MR. JUSTICE REHNQUIST, dissenting.

The Court today holds that the State of Louisiana is not entitled to vindicate its substantial interests in protecting the foot soldiers of an ordered society by mandatorily sentencing their murderers to death. This is so even though the State has demonstrated to a jury in a fair trial, beyond a reasonable doubt, that a particular defendant was the murderer, and that he committed the act while possessing "a specific intent to kill, or to inflict great bodily harm upon, a fireman or a peace officer who was engaged in the performance of his lawful duties. . . ." La. Rev. Stat. Ann. § 14:30.2 (1970). That holding would have shocked those who drafted the Bill of Rights on which it purports to rest, and would commend itself only to the most imaginative observer as being required by today's "evolving standards of decency."

I am unable to agree that a mandatory death sentence under such circumstances violates the Eighth Amendment's proscription against "cruel and unusual punishment." I am equally unable to see how this limited application of the mandatory death statute violates even the scope of the Eighth Amendment as seen through the eyes of last Term's plurality in *Stanislaus Roberts v. Louisiana*, 428 U. S. 325 (1976). Nor does the brief *per curiam* opinion issued today demonstrate why the application of a mandatory death sentence to the criminal who intentionally murders a peace officer performing his official duties should be considered "cruel and unusual

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

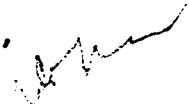
May 26, 1977

Re: No. 76-5206 - Roberts v. Louisiana

Dear Harry:

Please join me in your dissent in this case.

Sincerely,



Mr. Justice Blackmun

Copies to the Conference

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

From: Mr. Justice Rehnquist

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

Revised: JUN 3 1977

2nd DRAFT

# SUPREME COURT OF THE UNITED STATES

No. 76-5206

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

[June —, 1977]

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

The Court today holds that the State of Louisiana is not entitled to vindicate its substantial interests in protecting the foot soldiers of an ordered society by mandatorily sentencing their murderers to death. This is so even though the State has demonstrated to a jury in a fair trial, beyond a reasonable doubt, that a particular defendant was the murderer, and that he committed the act while possessing "a specific intent to kill, or to inflict great bodily harm upon, a fireman or a peace officer who was engaged in the performance of his lawful duties. . . ." La. Rev. Stat. Ann. § 14:30.2 (1970). That holding would have shocked those who drafted the Bill of Rights on which it purports to rest, and would commend itself only to the most imaginative observer as being required by today's "evolving standards of decency."

I am unable to agree that a mandatory death sentence under such circumstances violates the Eighth Amendment's proscription against "cruel and unusual punishment." I am equally unable to see how this limited application of the mandatory death statute violates even the scope of the Eighth Amendment as seen through the eyes of last Term's plurality in *Stanislaus Roberts v. Louisiana*, 428 U. S. 325 (1976). Nor does the brief *per curiam* opinion issued today demonstrate why the application of a mandatory death sentence to the criminal who intentionally murders a peace officer performing his official duties should be considered "cruel and unusual

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

*hle*

March 31, 1977

Re: 76-5206 - Roberts v. Louisiana

Dear Potter and Lewis:

This is the second draft we have discussed.  
It is done rather hastily and, therefore, I hope  
you will make sure I haven't overlooked anything.

Respectfully,

*JP*

Mr. Justice Stewart

Mr. Justice Powell



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: APR 5 1977

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

1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 76-5206

Harry Roberts, Petitioner,	} On Writ of Certiorari to the
<i>v.</i>	
State of Louisiana.	

[April —, 1977]

PER CURIAM.

Petitioner Harry Roberts was indicted, tried, and convicted of the first-degree murder of Police Officer Dennis McInerney, who at the time of his death was engaged in the performance of his lawful duties. As required by Louisiana statute, petitioner was sentenced to death. La. Rev. Stat. Ann. § 14:30 (2) (1974).<sup>1</sup> On appeal, the Supreme Court of Louisiana

<sup>1</sup> That section provides in part:

"La. Rev. Stat. Ann. § 14:30 (1974):

"*First degree murder*

"First degree murder is the killing of a human being:

"(1) When the offender has a specific intent to kill or to inflict great bodily harm and is engaged in the perpetration or attempted perpetration of aggravated kidnapping, aggravated rape or armed robbery; or

"(2) When the offender has a specific intent to kill, or to inflict great bodily harm upon, a fireman or a peace officer who was engaged in the performance of his lawful duties; or

"(3) Where the offender has a specific intent to kill or to inflict great bodily harm and has previously been convicted of an unrelated murder or is serving a life sentence; or

"(4) When the offender has a specific intent to kill or to inflict great bodily harm upon more than one person; [or]

"(5) When the offender has specific intent to commit murder and has been offered or has received anything of value for committing the murder.

"For the purposes of Paragraph (2) hereof the term peace officer shall be defined and include any constable, sheriff, deputy sheriff, local or state policeman, game warden, federal law enforcement officer, jail or prison

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

April 5, 1977

Re: 76-5206 - Roberts v. Louisiana

Dear Bill and Thurgood:

If you are able to join this opinion, I would suggest that we add a footnote toward the end reading as follows:

"In joining this opinion for the Court, MR. JUSTICE BRENNAN and MR. JUSTICE MARSHALL agree that the plurality opinion in Roberts v. Louisiana, supra, controls this case, but adhere to their view that capital punishment is in all circumstances prohibited as cruel and unusual punishment by the Eighth and Fourteenth Amendments."

Respectfully,



Mr. Justice Brennan

Mr. Justice Marshall

pp. 2, 4, 5 ✓

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: APR 13 1977

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 76-5206

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

[April —, 1977]

PER CURIAM.

Petitioner Harry Roberts was indicted, tried, and convicted of the first-degree murder of Police Officer Dennis McInerney, who at the time of his death was engaged in the performance of his lawful duties. As required by Louisiana statute, petitioner was sentenced to death. La. Rev. Stat. Ann. § 14:30 (2) (1974).<sup>1</sup> On appeal, the Supreme Court of Louisiana

<sup>1</sup> That section provides in part:

"La. Rev. Stat. Ann. § 14:30 (1974):

*"First degree murder*

*"First degree murder is the killing of a human being:*

*"(1) When the offender has a specific intent to kill or to inflict great bodily harm and is engaged in the perpetration or attempted perpetration of aggravated kidnapping, aggravated rape or armed robbery; or*

*"(2) When the offender has a specific intent to kill, or to inflict great bodily harm upon, a fireman or a peace officer who was engaged in the performance of his lawful duties; or*

*"(3) Where the offender has a specific intent to kill or to inflict great bodily harm and has previously been convicted of an unrelated murder or is serving a life sentence; or*

*"(4) When the offender has a specific intent to kill or to inflict great bodily harm upon more than one person; [or]*

*"(5) When the offender has specific intent to commit murder and has been offered or has received anything of value for committing the murder.*

*"For the purposes of Paragraph (2) hereof the term peace officer shall be defined and include any constable, sheriff, deputy sheriff, local or state policeman, game warden, federal law enforcement officer, jail or prison*

Supreme Court of the United States

Memorandum

June 8, 1977

76-5206

*File*

Dear Potter and Lewis:

I thought you would be  
interested in the Chicago  
Tribune's reactions to  
Roberts.

Respectfully,

*Jh*

Mr. Justice Stewart  
Mr. Justice Powell

HAL

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

June 13, 1977

MEMORANDUM TO THE CONFERENCE

RE: Case Held for No. 76-5206 - Roberts v. Louisiana

No. 75-6905 - Allen v. South Carolina

The petitioner was convicted of murdering a South Carolina Game Warden while that law enforcement officer was acting in the line of duty. As required by S.C. Code Am. § 16-52, petitioner was sentenced to death. He challenges his sentence as cruel and unusual punishment.

In Roberts, we held that the mandatory imposition of the death penalty for the murder of a law enforcement officer acting in the line of duty violated the Eighth and Fourteenth Amendments' ban on cruel and unusual punishment. The South Carolina statute under which petitioner was sentenced (S.C. Code Am. § 16-52) requires similar mandatory punishment for the killing of a law enforcement officer.

Petitioner also brings to our attention State v. Rumsey, 226 S.E. 2d 894 (1976). In that case, the Supreme Court of South Carolina held that the mandatory nature of its death penalty violated the cruel and unusual punishment clause. I will vote to GRANT, VACATE AND REMAND in light of State v. Rumsey, 226 S.E. 2d 894 (1976) and Roberts v. Louisiana, No. 76-5206 (June 6, 1977).

Respectfully,

