

# The Burger Court Opinion Writing Database

*County Court of Ulster County v. Allen*  
442 U.S. 140 (1979)

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

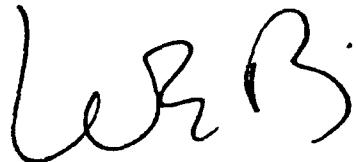
May 26, 1979

Dear John:

Re: 77-1554 County Ct. of Ulster County, New York  
Samuel Allen

I join.

Regards,



Mr. Justice Stevens

cc: The Conference

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

CHAMBERS OF  
THE CHIEF JUSTICE

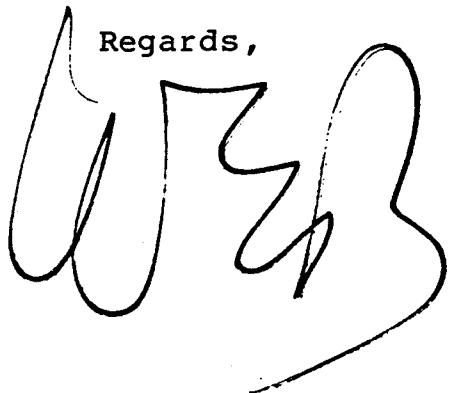
May 30, 1979

Re: 77-1554 - County Court of Ulster County, New York v. Alle

MEMORANDUM TO THE CONFERENCE:

I have concluded to add the enclosed concurrence which John has already seen.

Regards,

A handwritten signature consisting of the letters "WJB" in a stylized, cursive font.

77-1554 - County Court of Ulster County, New York v. Allen

I join fully in the Court's opinion reversing the judgment under review. In the necessarily detailed step-by-step analysis of the legal issues, the central and controlling facts of a case often can become lost. The "underbrush" of finely tuned legal analysis of complex issues tends to bury the facts.

On this record, the jury could readily have reached the same result without benefit of the challenged statutory presumption; here it reached what was rather obviously a compromise verdict. Even without relying on evidence that two people had been seen placing something in the car trunk shortly before respondents occupied it, and that two machine guns and a package of heroin were soon after found in that trunk, the jury apparently decided that it was enough to hold the passengers to

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: \_\_\_\_\_  
Recirculated: MAY 31 1979

PRINTED  
1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 77-1554

County Court of Ulster County, | On Writ of Certiorari to  
New York, et al., Petitioners, | the United States Court of  
v. | Appeals for the Second  
Samuel Allen et al. | Circuit.

[June —, 1979]

MR. CHIEF JUSTICE BURGER, concurring.

I join fully in the Court's opinion reversing the judgment under review. In the necessarily detailed step-by-step analysis of the legal issues, the central and controlling facts of a case often can become lost. The "underbrush" of finely tuned legal analysis of complex issues tends to bury the facts.

On this record, the jury could readily have reached the same result without benefit of the challenged statutory presumption; here it reached what was rather obviously a compromise verdict. Even without relying on evidence that two people had been seen placing something in the car trunk shortly before respondents occupied it, and that two machineguns and a package of heroin were soon after found in that trunk, the jury apparently decided that it was enough to hold the passengers to knowledge of the two pistols which were in such plain view that the officer could see them from outside the car. Reasonable jurors could reasonably find that what the officer could see from outside, the passengers within the car could hardly miss seeing. Courts have long held that in the practical business of deciding cases the factfinders, not unlike negotiators, are permitted the luxury of verdicts reached by compromise.

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

March 5, 1979

RE: No. 77-1554 County Court v. Allen

Dear Lewis:

I am undertaking to apportion the dissents in which I am senior. Thurgood, you and I are apparently in dissent in the above. Would you be willing to undertake the dissent.

Sincerely,



Mr. Justice Powell

cc: Mr. Justice Marshall

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

May 8, 1979

RE: No. 77-1554 County Court of Ulster Co., N.Y. v.  
Allen

Dear Lewis and John:

It occurs to me that there may be some overlap of issues between this case and Sandstrom v. Montana. I am writing Sandstrom but haven't started it as yet. I hope it won't inconvenience you if I hold my vote in this until I've got my opinion completed.

Sincerely,

*Bill*

Mr. Justice Powell  
Mr. Justice Stevens

cc: The Conference

1st Draft

SUPREME COURT OF THE UNITED STATES

No. 77-1554

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

County Court of Ulster County, New York, et. al., Petitioners

v.

Samuel Allen et al.

Recirculated:

9 MAY 1979

[May \_\_\_, 1979]

MR. JUSTICE BRENNAN, concurring in part and dissenting in part.

I agree with the Court that there is no procedural bar to our consideration of the constitutional question at issue in this case. However, as I agree with my brother Powell that the validity of the New York presumption must be measured "in general" and not simply in the context of the facts of a particular case, and that so measured it is not "more likely than not" to be true, I dissent. Given this flaw in the presumption challenged here, I need not consider the question whether if the truth of the presumption were more likely than not, it still might fall because it was not true beyond a reasonable doubt. See Barnes v. United States, 412 U.S. 837, 852 (1973) (Brennan, J., dissenting).

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

CHAMBERS OF  
JUSTICE W. J. BRENNAN, JR.

May 15, 1979

RE: No. 77-1554 County Court of Ulster Co., N.Y.  
v. Allen

Dear Lewis:

Please join me in your revised dissent in the  
above. I am withdrawing my separate dissent.

Sincerely,



Mr. Justice Powell

cc: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

May 9, 1979

Re: No. 77-1554, Ulster County Court  
v. Allen

Dear Lewis,

Please add my name to your separate  
opinion.

Sincerely yours,

P.S.

Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

April 27, 1979

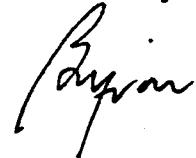
No. 77-1554 - Ulster County Court v. Allen

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Dear John,

I shall await the dissent in this  
case.

Sincerely yours,



Mr. Justice Stevens  
Copies to the Conference  
cmc

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

May 22, 1979

Re: 77-1554 - County Court of Ulster  
County, New York v.  
Samuel Allen

Dear John,

Please join me.

Sincerely yours,



5  
Mr. Justice Stevens  
Copies to the Conference  
cmc

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

April 13, 1979

Re: No. 77-1554 - County Court of Ulster County v.  
Samuel Allen

Dear John:

I await the dissent.

Sincerely,

T.M.

T.M.

Mr. Justice Stevens

cc: The Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

May 16, 1979

Re: 77-1554 - County Court of Ulster County v.  
Samuel Allen

Dear Lewis:

Please join me in your dissent.

Sincerely,

*T.M.*

T.M.

Mr. Justice Powell

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

April 18, 1979

Re: No. 77-1554 - County Court v. Allen

Dear John:

At the moment, I am inclined to join you. I shall withhold my vote, however, until the other writings come in.

Sincerely,



Mr. Justice Stevens

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

May 23, 1979

Re: 77-1554 - County Court of Ulster County, N.Y. v. Allen

Dear John:

Please join me.

Sincerely,

*H. A. B.*

Mr. Justice Stevens  
cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

March 6, 1979

77-1554 County Court v. Allen

Dear Bill:

I'll be glad to draft a dissent in this case

Sincerely,



Mr. Justice Brennan

lfp/ss

cc: Mr. Justice Marshall

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

April 14, 1979

77-1554 County Court of Ulster v. Allen

Dear John:

In accord with my Conference vote, I will circulate a dissent in due time.

It may be a couple of weeks, as I am somewhat behind in my work.

Sincerely,



Mr. Justice Stevens

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

6,9,10

From: Mr. Justice Powell

Circulated: 8 MAY 1979

1st DRAFT

Recirculated:

**SUPREME COURT OF THE UNITED STATES**

No. 77-1554

County Court of Ulster County, | On Writ of Certiorari to  
 New York, et al., Petitioners, | the United States Court of  
 v. | Appeals for the Second  
 Samuel Allen et al. | Circuit.

[May —, 1979]

MR. JUSTICE POWELL, concurring in part and dissenting in part.

I agree with the Court that there is no procedural bar to our considering the underlying constitutional question presented by this case, and I therefore join in Part I of the Court's opinion. I am not in agreement, however, with the Court's conclusion that the presumption as charged to the jury in this case meets the constitutional requirements of due process as set forth in our prior decisions. On the contrary, an individual's mere presence in an automobile where there is a handgun does not make it "more likely than not" that the individual possesses the weapon.

I

In the criminal law presumptions are used to encourage the jury to find certain facts, with respect to which no direct evidence is presented, solely because other facts have been proved.<sup>1</sup> See, e. g., *Barnes v. United States*, 412 U. S. 837, 840 n. 3 (1973); *United States v. Romano*, 382 U. S. 136, 138 (1965). The purpose of such presumptions is plain: Like certain other jury instructions, they provide guidance for jurors' thinking in considering the evidence laid before them. Once in the juryroom, jurors necessarily draw inferences from

<sup>1</sup> Such encouragement can be provided either by statutory presumptions, see, e. g., 18 U. S. C. § 1201 (b), or by presumptions created in the common law. See, e. g., *Barnes v. United States*, 412 U. S. 837 (1973).

May 10, 1979

No. 77-1554 County Court of Ulster Co. v. Allen

Dear Bill:

As you were good enough to ask me to write the dissenting opinion in this case, I am disappointed that I may not have written it in a way that you can join.

It seems to me that the point you make, if I understand it, is not substantially different from what I have said in footnote 2 of my dissent.

If we are as close together as it seems to me, I would be glad to consider any amplification of that footnote that you suggest.

Sincerely,

Mr. Justice Brennan

LFP/lab

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

1-6,9

From: Mr. Justice Powell

2nd DRAFT

Circulated: 15 MAY 1979

Recirculated: 15 MAY 1979

**SUPREME COURT OF THE UNITED STATES**

No. 77-1554

County Court of Ulster County, New York, et al., Petitioners, *v.* Samuel Allen et al. } On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[May —, 1979]

MR. JUSTICE POWELL, with whom MR. JUSTICE STEWART joins, dissenting.

I agree with the Court that there is no procedural bar to our considering the underlying constitutional question presented by this case. I am not in agreement, however, with the Court's conclusion that the presumption as charged to the jury in this case meets the constitutional requirements of due process as set forth in our prior decisions. On the contrary, an individual's mere presence in an automobile where there is a handgun does not even make it "more likely than not" that the individual possesses the weapon.

*omission*

I

In the criminal law presumptions are used to encourage the jury to find certain facts, with respect to which no direct evidence is presented, solely because other facts have been proved.<sup>1</sup> See, *e. g.*, *Barnes v. United States*, 412 U. S. 837, 840 n. 3 (1973); *United States v. Romano*, 382 U. S. 136, 138 (1965). The purpose of such presumptions is plain: Like certain other jury instructions, they provide guidance for

<sup>1</sup> Such encouragement can be provided either by statutory presumptions, see, *e. g.*, 18 U. S. C. § 1201 (b), or by presumptions created in the common law. See, *e. g.*, *Barnes v. United States*, 412 U. S. 837 (1973). Unless otherwise specified, "presumption" will be used herein to refer to "permissible inferences," as well as to "true" presumptions. See F. James, *Civil Procedure* § 7.9 (1965).

1, 9

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

Circulated:

3rd DRAFT

Recirculated:

16 MAY 1979

## SUPREME COURT OF THE UNITED STATES

No. 77-1554

County Court of Ulster County, New York, et al., Petitioners, v. Samuel Allen et al. On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[May —, 1979]

MR. JUSTICE POWELL, with whom MR. JUSTICE BRENNAN, MR. JUSTICE STEWART, and MR. JUSTICE MARSHALL join dissenting.

I agree with the Court that there is no procedural bar to our considering the underlying constitutional question presented by this case. I am not in agreement, however, with the Court's conclusion that the presumption as charged to the jury in this case meets the constitutional requirements of due process as set forth in our prior decisions. On the contrary, an individual's mere presence in an automobile where there is a handgun does not even make it "more likely than not" that the individual possesses the weapon.

### I

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

April 13, 1979

Re: No. 77-1554 County of Ulster County, New York v. Allen

Dear John:

Please join me.

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 Rehnquist

From: Mr. Justice Stevens

Circulated: APR 12 79

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

**1st DRAFT**

**SUPREME COURT OF THE UNITED STATES**

No. 77-1554

County Court of Ulster County, | On Writ of Certiorari to  
New York, et al., Petitioners, | the United States Court of  
v. | Appeals for the Second  
Samuel Allen et al. | Circuit.

[April —, 1979]

MR. JUSTICE STEVENS delivered the opinion of the Court.

A New York statute provides that, with certain exceptions, the presence of a firearm in an automobile is presumptive evidence of its illegal possession by all persons then occupying the vehicle.<sup>1</sup> The United States Court of Appeals for the

<sup>1</sup> New York Penal Law § 265.15 (3):

"The presence in an automobile, other than a stolen one or a public omnibus, of any firearm, defaced firearm, firearm silencer, bomb, bombshell, gravity knife, switchblade knife, dagger, dirk, stiletto, billy, blackjack, metal knuckles, sandbag, sandclub or slungshot is presumptive evidence of its possession by all persons occupying such automobile at the time such weapon, instrument or appliance is found, except under the following circumstance:

"(a) . . . if such weapon, instrument or appliance is found upon the person of one of the occupants therein;

"(b) if such weapon, instrument or appliance is found in an automobile which is being operated for hire by a duly licensed driver in the due, lawful and proper pursuit of his trade, then such presumption shall not apply to the driver; or

"(c) if the weapon so found is a pistol or revolver and one of the occupants, not present under duress, has in his possession a valid license to have and carry concealed the same."

In addition to the three exceptions delineated in §§ 265.15 (3)(a)-(c) above as well as the stolen-vehicle and public-omnibus exception in § 265.15 (3) itself, § 265.20 contains various exceptions that apply when weapons are present in an automobile pursuant to certain military, law enforcement, recreational, and commercial endeavors.

pp. 12-13, 16, 21, 25  
footnotes remembered

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 18 79

2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 77-1554

County Court of Ulster County, New York, et al., Petitioners, v. Samuel Allen et al. } On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[April —, 1979]

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"(a) . . . if such weapon, instrument or appliance is found upon the person of one of the occupants therein;

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*LFP*  
~~Please don't use  
in your dissent~~  
*15-17, 25*

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: \_\_\_\_\_

3rd DRAFT

Recirculated: MAY 15 1979

## SUPREME COURT OF THE UNITED STATES

No. 77-1554

County Court of Ulster County, New York, et al., Petitioners,  
v.  
Samuel Allen et al. On Writ of Certiorari to  
the United States Court of Appeals for the Second Circuit.

[May —, 1979]

MR. JUSTICE STEVENS delivered the opinion of the Court.

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"(a) . . . if such weapon, instrument or appliance is found upon the person of one of the occupants therein;

"(b) if such weapon, instrument or appliance is found in an automobile which is being operated for hire by a duly licensed driver in the due, lawful and proper pursuit of his trade, then such presumption shall not apply to the driver; or

"(c) if the weapon so found is a pistol or revolver and one of the occupants, not present under duress, has in his possession a valid license to have and carry concealed the same."

In addition to the three exceptions delineated in §§ 265.15 (3)(a)-(c) above as well as the stolen-vehicle and public-omnibus exception in § 265.15 (3) itself, § 265.20 contains various exceptions that apply when weapons are present in an automobile pursuant to certain military, law enforcement, recreational, and commercial endeavors.

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

P.15  
From: Mr. Justice Stevens

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

4th DRAFT

Recirculated: MAY 22 79

## SUPREME COURT OF THE UNITED STATES

No. 77-1554

County Court of Ulster County, | On Writ of Certiorari to  
New York, et al., Petitioners, | the United States Court of  
v. | Appeals for the Second  
Samuel Allen et al. | Circuit.

[May —, 1979]

MR. JUSTICE STEVENS delivered the opinion of the Court.

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In addition to the three exceptions delineated in §§ 265.15 (3) (a)-(c) above as well as the stolen-vehicle and public-omnibus exception in § 265.15 (3) itself, § 265.20 contains various exceptions that apply when weapons are present in an automobile pursuant to certain military, law enforcement, recreational, and commercial endeavors.

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

June 4, 1979

MEMORANDUM TO THE CONFERENCE

RE: Case Held for No. 77-1554 - Ulster County v. Allen

No. 78-5996 - Anzaldua v. California

In No. 78-5996, Anzaldua v. California, petitioner was convicted of having obliterated the serial number on a firearm. He was also convicted of having transported heroin for purposes of sale (as enhanced by his having possessed a firearm during the commission of the offense). On the obliteration count, he was apparently sentenced to 5 years imprisonment, and he received 6 years on the heroin/firearm count. The sentences are to run concurrently.

Petitioner only challenges his obliteration conviction. He claims that the statutory presumption in California under which possession of a firearm with obliterated serial number "shall be presumptive evidence that the possessor has . . . altered . . . the same" is unconstitutional. Under California law, the jury is required to find obliteration once possession is proved unless the defendant comes forward with evidence sufficient to create a reasonable doubt on the issue.