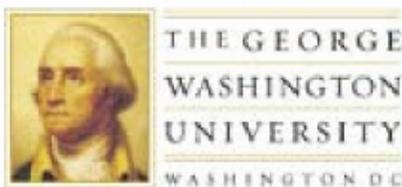


# The Burger Court Opinion Writing Database

## *Patton v. Yount*

467 U.S. 1025 (1984)

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

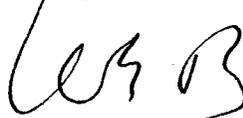
March 12, 1984

MEMORANDUM TO THE CONFERENCE

Re: 83-95 - Patton v. Yount

In light of Lewis' memorandum of March 8, 1984,  
this case now stands reversed and is assigned to Lewis for  
opinion.

Regards,

A handwritten signature in cursive script, appearing to read 'LWB', is written below the typed name 'Lewis'.

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

RECEIVED  
SUPREME COURT, U.S.  
JUSTICE MARSHALL

CHAMBERS OF  
THE CHIEF JUSTICE

May 16, 1984

84 MAY 17 19:28

Re: 83-95 - Patton v. Yount

Dear Lewis:

I join.

Regards,



Justice Powell

Copies to the Conference

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

March 12, 1984

No. 83-95

Patton v. Yount

---

Dear Byron,

In light of recent developments and the assignment of the Court opinion to Lewis, would you be willing to undertake the dissent?

Sincerely,



Justice White

Copy to Justice Stevens

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CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

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JUSTICE MARSHALL

June 19, 1984 74 JUN 19 11:19

No. 83-95

Patton v. Yount

Dear John,

Please join me in your dissent.

Sincerely,



Justice Stevens

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

March 13, 1984

Re: 83-95 - Patton v. Yount

---

Dear Bill,

Unless Lewis convinces me to the  
contrary, I shall undertake a dissent.

Sincerely,



Justice Brennan

cc: Justice Stevens

cpm

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

April 19, 1984

Re: 83-95 - Patton v. Yount

---

Dear Lewis,

Although I would rather not take these fact-bound cases for plenary consideration and voted to affirm at conference, I can go along with your circulating draft and will not dissent.

Sincerely yours,



Justice Powell

Copies to the Conference

cpm

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

April 20, 1984

Re: No. 83-95 - Patton v. Yount

Dear Lewis:

Please join me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Harry", with a horizontal line underneath.

Justice Powell

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

March 8, 1984

83-95 Patton v. Yount

MEMORANDUM TO THE CONFERENCE:

In view of the evenly divided Court, this case was carried forward to be considered further at our next Conference. Although I was unpersuaded by CA3's majority opinion, I voted at Conference to affirm on the grounds announced in Judge Garth's concurring opinion. That vote was tentative, as I stated.

Judge Garth relied on language in Irvin v. Dowd to find that juror Hrin's ambiguous voir dire testimony "raise[d] the presumption of partiality." 366 U.S., at 723. Again relying on Irvin, Judge Garth characterized that determination as a question of law rather than a question of historical fact. Cert. Pet., at 52a. Bearing in mind that this case is here on federal habeas corpus, and after a further review of Irvin, Judge Garth's opinion, and other relevant cases, I now question the soundness of that characterization. Whether Hrin's voir dire testimony evidences "actual bias" is a credibility determination and seems more a question of fact than a mixed question of law and fact. See Smith v. Phillips, 455 U.S. 209, 216-218 (1982) (existence of "actual bias" on part of a juror is a question of historical fact the resolution of which is entitled on federal habeas to a presumption of correctness under §2254(d)); Rushen v. Spain, \_\_\_ U.S. \_\_\_ (1983) (same).

There is language in Irvin that supports Judge Garth's view that federal habeas courts may find a "presumption of partiality" as a matter of law. See 366 U.S., at 723. On further reflection, however, I am inclined to think that Judge Garth's reliance on that language is misplaced. The pertinent language in Irvin suggests that extreme pre-trial publicity may create, as a matter of law, a "presumption of prejudice" with respect to the jury panel. It does not suggest, however, that in habeas corpus proceedings federal courts may rely exclusively on voir dire testimony to repudiate assessments of juror bias made by state trial courts. Thus, I believe that under §2254(d), Judge Garth

was required to presume the correctness of the state courts' assessment of Hrin's "actual bias."

Attached hereto are portions of Hrin's voir dire testimony that in my view support the conclusions reached by three of the four courts that have considered Hrin's eligibility to sit as a juror. As indicated in these pages, after defense counsel recorded his "challenge for cause," the trial court held that Hrin's ambiguous responses did not reflect a "fixed opinion." This prompted defense counsel again to ask Hrin whether he could enter the jury box with an open mind. Hrin responded:

"I think I could enter it [the "jury box"] with a very open mind. I think I could very easily. To say this is a requirement for some of the things you have to do every day."  
J.A. 89a.

Defense counsel asked no further questions relevant to bias. Nor did he renew his prior challenge for cause. This testimony supports the trial court's determination that Hrin was prepared to render an impartial verdict.

If we were to affirm CA3 on the reasoning of Judge Garth, we would invite federal courts on habeas to make factual judgments as to juror bias whenever a federal judge thought an error had been made. Of the many "judgment calls" that trial judges must make, not many depend as much on the judge's discretion as whether a juror is qualified to sit. Jurors vary widely in experience, education, sophistication, and -- under the pressure of examination by opposing counsel -- frequently will give ambiguous answers as to their preconceived opinions. The scope and extent of the voir dire also vary widely, and inform the judge who oversees it. A trial judge, observing the questioning and the demeanor of the prospective jurors, is in a far better position than appellate judges to determine juror fitness.

In sum, I conclude that the "presumption of prejudice" evoked in Irvin v. Dowd is not applicable to the facts of this case, and that the "actual bias" of juror Hrin is a question of historical fact to be resolved by the state court and entitled to a presumption of correctness under §2254(d) -- a presumption that Judge Garth did not engage. I therefore would reverse.

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

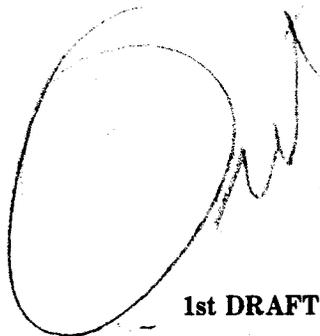
APR 12 1984

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall ✓  
Justice Blackmun  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: **Justice Powell**

Circulated: APR 12 1984

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1st DRAFT

# SUPREME COURT OF THE UNITED STATES

No. 83-95

ERNEST S. PATTON, SUPERINTENDENT, SCI-CAMP  
HILL AND LEROY S. ZIMMERMAN, ATTORNEY GEN-  
ERAL OF PENNSYLVANIA, PETITIONERS *v.*  
JON E. YOUNT

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE THIRD CIRCUIT

[April —, 1984]

JUSTICE POWELL delivered the opinion of the Court.

This case brings before us a claim that pretrial publicity so infected a state criminal trial as to deny the defendant his Sixth Amendment right to an "impartial jury."

## I

On April 28, 1966, the body of Pamela Rimer, an 18-year-old high school student, was found in a wooded area near her home in Luthersburg, Clearfield County, Pennsylvania. There were numerous wounds about her head and cuts on her throat and neck. An autopsy revealed that she died of strangulation when blood from her wounds was drawn into her lungs. The autopsy showed no indication that she had been sexually assaulted.

At about 5:45 a. m. the following morning, respondent Yount appeared at the State Police Substation in nearby Du-Bois. Yount, who had been the victim's high school mathematics teacher, proceeded to give the police oral and written confessions to the murder. The police refused to release the confession to the press, and it was not published until after it was read at Yount's arraignment three days later. Ex. P1-a, P1-d. At his trial in 1966, the confessions were admitted into evidence. Yount took the stand and claimed tempo-

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

June 19, 1984

83-95 Patton v. Yount

MEMORANDUM TO THE CONFERENCE

The only response I propose to make to the dissent in this case is the following addition to footnote 12:

The dissent misreads the Court's opinion in United States v. Reynolds. Post, at 10-11, and n. 7. The Court clearly did not attach the same significance to the phrase "a question of mixed law and fact" that we do today under modern habeas law. It recognized that juror-disqualification questions may raise both a question of law--whether the correct standard was applied--and a question of fact. Whether an opinion expressed by a juror was such as to meet the legal standard for disqualification was viewed as a question of fact as to which deference was due to the trial court's determination. This is apparent both from the language quoted by the dissent, and from the following passage: "[T]he manner of the juror while testifying is oftentimes more indicative of the real character of his opinion than his words. That is seen below, but cannot always be spread upon the record. Care should, therefore, be taken in the reviewing court not to reverse the ruling below upon such a question of fact, except in a clear case." 98 U.S., at 156-157 (emphasis added).

L.F.P.  
L.F.P.

06/19

Stylistic Changes Throughout

Stylistic changes  
and pp. 11-12

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SUPREME COURT, U.S.  
JUSTICE MARSHALL

'84 JUN 20 P2:06

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: Justice Powell

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2nd DRAFT

# SUPREME COURT OF THE UNITED STATES

No. 83-95

ERNEST S. PATTON, SUPERINTENDENT, SCI-CAMP  
HILL AND LEROY S. ZIMMERMAN, ATTORNEY GEN-  
ERAL OF PENNSYLVANIA, PETITIONERS *v.*  
JON E. YOUNT

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE THIRD CIRCUIT

[June —, 1984]

JUSTICE POWELL delivered the opinion of the Court.

This case brings before us a claim that pretrial publicity so infected a state criminal trial as to deny the defendant his Sixth Amendment right to an "impartial jury."

## I

On April 28, 1966, the body of Pamela Rimer, an 18-year-old high school student, was found in a wooded area near her home in Luthersburg, Clearfield County, Pennsylvania. There were numerous wounds about her head and cuts on her throat and neck. An autopsy revealed that she died of strangulation when blood from her wounds was drawn into her lungs. The autopsy showed no indication that she had been sexually assaulted.

At about 5:45 a. m. the following morning, respondent Yount appeared at the State Police Substation in nearby Du-Bois. Yount, who had been the victim's high school mathematics teacher, proceeded to give the police oral and written confessions to the murder. The police refused to release the confession to the press, and it was not published until after it was read at Yount's arraignment three days later. Ex. P1-a, P1-d. At his trial in 1966, the confessions were admitted into evidence. Yount took the stand and claimed tempo-

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Justice Stevens  
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11-12

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84 JUN 21 AM 11:24

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3rd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 83-95

ERNEST S. PATTON, SUPERINTENDENT, SCI-CAMP  
HILL AND LEROY S. ZIMMERMAN, ATTORNEY GEN-  
ERAL OF PENNSYLVANIA, PETITIONERS v.  
JON E. YOUNT

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE THIRD CIRCUIT

[June —, 1984]

JUSTICE POWELL delivered the opinion of the Court.

This case brings before us a claim that pretrial publicity so infected a state criminal trial as to deny the defendant his Sixth Amendment right to an "impartial jury."

### I

On April 28, 1966, the body of Pamela Rimer, an 18-year-old high school student, was found in a wooded area near her home in Luthersburg, Clearfield County, Pennsylvania. There were numerous wounds about her head and cuts on her throat and neck. An autopsy revealed that she died of strangulation when blood from her wounds was drawn into her lungs. The autopsy showed no indication that she had been sexually assaulted.

At about 5:45 a. m. the following morning, respondent Yount appeared at the State Police Substation in nearby Du-Bois. Yount, who had been the victim's high school mathematics teacher, proceeded to give the police oral and written confessions to the murder. The police refused to release the confession to the press, and it was not published until after it was read at Yount's arraignment three days later. Ex. P1-a, P1-d. At his trial in 1966, the confessions were admitted into evidence. Yount took the stand and claimed tempo-

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CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

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JUSTICE MARSHALL

June 23, 1984

84 JUN 25 19 55

83-95 Patton v. Yount

Dear John:

In response to the change in footnote 6, p. 11, in your opinion, I am replacing the final two sentences of my footnote 12 with the following language:

Taken together, these passages plainly show that the "character of [a juror's] opinion" was considered a question of fact. Contrary to the suggestion of the dissent, ante, at 11, n. 6, the factual question was not limited to whether the juror was telling the truth, but included discovering the "real character" of any opinion held. Deference was due to the trial court's conclusions on that question.

I believe we are now "at issue" as to what the Court said in Reynolds in 1879. This case is set to come down on Tuesday.

Sincerely,



Justice Stevens

lfp/ss

cc: The Conference

P. 12

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'84 JUN 25 A9:56

4<sup>TH</sup> DRAFT

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Justice Blackmun  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: Justice Powell

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

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NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

## SUPREME COURT OF THE UNITED STATES

No. 83-95

ERNEST S. PATTON, SUPERINTENDENT, SCI-CAMP HILL AND LEROY S. ZIMMERMAN, ATTORNEY GENERAL OF PENNSYLVANIA, PETITIONERS *v.* JON E. YOUNT

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

[June 26, 1984]

JUSTICE POWELL delivered the opinion of the Court.

This case brings before us a claim that pretrial publicity so infected a state criminal trial as to deny the defendant his Sixth Amendment right to an "impartial jury."

### I

On April 28, 1966, the body of Pamela Rimer, an 18-year-old high school student, was found in a wooded area near her home in Luthersburg, Clearfield County, Pennsylvania. There were numerous wounds about her head and cuts on her throat and neck. An autopsy revealed that she died of strangulation when blood from her wounds was drawn into her lungs. The autopsy showed no indication that she had been sexually assaulted.

At about 5:45 a. m. the following morning, respondent Yount appeared at the State Police Substation in nearby Du-Bois. Yount, who had been the victim's high school mathematics teacher, proceeded to give the police oral and written confessions to the murder. The police refused to release the confession to the press, and it was not published until after it was read at Yount's arraignment three days later. Ex. P1-a, P1-d. At his trial in 1966, the confessions were admitted into evidence. Yount took the stand and claimed tempo-

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

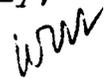
April 17, 1984

Re: No. 83-95 Patton v. Yount

Dear Lewis:

Please join me.

Sincerely,



Justice Powell

cc: The Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

April 19, 1984

Re: 83-95 - Patton v. Yount

Dear Lewis:

Like Byron, I think we are unwise to take these fact-bound cases. Having taken it, however, I remain persuaded that the Third Circuit has the better of the argument and therefore plan to write a brief dissent as soon as I can get to it.

Respectfully,



Justice Powell

Copies to the Conference

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JUSTICE MARSHALL

84 JUN 19 A9 53

To: The Chief Justice  
Justice Brennan  
Justice White  
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Justice Rehnquist  
Justice O'Connor

From: Justice Stevens

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1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 83-95

ERNEST S. PATTON, SUPERINTENDENT, SCI-CAMP  
HILL AND LEROY S. ZIMMERMAN, ATTORNEY GEN-  
ERAL OF PENNSYLVANIA, PETITIONERS *v.*  
JON E. YOUNT

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE THIRD CIRCUIT

[June —, 1984]

JUSTICE STEVENS, dissenting.

On page 1 of its opinion the Court carefully states certain facts that give the reader a strong feeling about how this case should be decided. In 1966, Jon Yount confessed that he was responsible for the brutal killing of an 18-year-old high-school student. At his first trial in 1966 he testified that he had been temporarily insane at the time, but the jury did not believe him. He was found guilty of rape, as well as murder. These facts were not admissible in evidence at his second trial. What impact, if any, did these inadmissible facts have upon 12 jurors, the 2 alternate jurors, and indeed the trial judge, who listened to the evidence at Yount's second trial in 1970? The Court is satisfied that "community sentiment had softened," *ante*, at 7, and that the trial judge "did not commit manifest error in finding that the jury as a whole was impartial," *ante*, at 7, because of the passage of time between 1966 and 1970, and because we all know that "time soothes and erases," *ante*, at 9.

In order to explain why I disagree with the Court's assessment of the case, it is necessary to enlarge upon its summary of the news coverage of the crime and its aftermath, to supplement its discussion of the examination of the jurors, and to

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74 JUN 20 P2:06

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

June 20, 1984

Re: 83-95 - Patton v. Yount

Dear Lewis:

In response to your most recent change, I will be adding the following to the beginning of footnote 6:

The Court attempts to justify its disregard of Reynolds and Irvin by quoting from a passage in Reynolds that begins with: "[T]he manner of the juror while testifying is oftentimes more indicative of the real character of his opinion than his words." Ante, at 11 n. 12 (quoting 98 U.S., at 156-157). That passage refers to a situation involving a juror falsely seeking to excuse himself on the ground that he has formed a disqualifying opinion, when he has no disqualifying opinion. Obviously, that situation is not involved here as Hrin was not falsely seeking to disqualify himself. The fully quoted relevant passage of Reynolds demonstrates this point:

The reading of the evidence leaves the impression that the juror has some hypothetical opinion about the case, but it falls far short of raising a manifest presumption of partiality. In considering such questions in a reviewing court, we ought not to be unmindful of the fact we have so often observed in our experience, that jurors not unfrequently seek to excuse themselves on the ground of having formed an opinion, when on examination, it turns out that no disqualification exists. In such cases the manner of the juror while testifying is oftentimes more indicative of the real character of his opinion than his words. That is seen below, but cannot always be

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84 JUN 22 A9:35

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice O'Connor

From: Justice Stevens

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

JUN 21 1984

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2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 83-95

ERNEST S. PATTON, SUPERINTENDENT, SCI-CAMP  
HILL AND LEROY S. ZIMMERMAN, ATTORNEY GEN-  
ERAL OF PENNSYLVANIA, PETITIONERS *v.*  
JON E. YOUNT

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE THIRD CIRCUIT

[June —, 1984]

JUSTICE STEVENS, with whom JUSTICE BRENNAN joins,  
dissenting.

On page 1 of its opinion the Court carefully states certain facts that give the reader a strong feeling about how this case should be decided. In 1966, Jon Yount confessed that he was responsible for the brutal killing of an 18-year-old high-school student. At his first trial in 1966 he testified that he had been temporarily insane at the time, but the jury did not believe him. He was found guilty of rape, as well as murder. These facts were not admissible in evidence at his second trial. What impact, if any, did these inadmissible facts have upon 12 jurors, the 2 alternate jurors, and indeed the trial judge, who listened to the evidence at Yount's second trial in 1970? The Court is satisfied that "community sentiment had softened," *ante*, at 7, and that the trial judge "did not commit manifest error in finding that the jury as a whole was impartial," *ante*, at 7, because of the passage of time between 1966 and 1970, and because we all know that "time soothes and erases," *ante*, at 9.

In order to explain why I disagree with the Court's assessment of the case, it is necessary to enlarge upon its summary of the news coverage of the crime and its aftermath, to supplement its discussion of the examination of the jurors, and to

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

RECEIVED  
SUPREME COURT  
JUSTICE MARSH

84 JUN 25 A

June 22, 1984

Re: 83-95 - Patton v. Yount

Dear Lewis:

In response to your latest circulation, I have replaced the second and third sentences of my footnote 6 on page 11 with the following:

The excerpt from Reynolds quoted by the Court, ante, at 12, n. 12, dealt with the question whether a juror's testimony was truthful-- specifically whether a prospective juror was falsely seeking to disqualify himself. In this case the question is whether Hrin's testimony, including his acknowledged opinion about Yount's guilt, raised a presumption of partiality. Whether the testimony of a witness is true or false is a question of fact; whether his statement raises a presumption of partiality is a mixed question of law and fact.

Respectfully,



Justice Powell

Copies to the Conference

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

March 2, 1984

No. 83-95, Patton v. Yount

Dear Lewis,

Forgive me for sending you another letter. You have enough to read without this added burden. I write because you are always willing to listen and because it seems most unfortunate to resolve this case by an equally divided Court. You qualified your vote to affirm as being "tentative" and I hope you might be persuaded to consider a reversal.

I take it from your discussion of the case that you were not persuaded to affirm on the basis of Judge Hunter's conclusion that juror bias should be implied from the pre-trial publicity. You spoke instead of Judge Garth's opinion concerning "actual bias" of Juror Hrin. I respect Judge Garth very much. He sat with me recently on the National Moot Court Finals. He is a fine judge, but I believe he is in error in this case.

①  
Comment  
what  
do  
you  
think

The question of juror Hrin's bias was not properly raised for Judge Garth's review, I believe. The habeas petition includes only a vague reference that "two [jurors] stated they would require [respondent] to prove his innocence." App. 302a. In contrast to Judge Garth, I believe this reference was to jurors 2 and 10 (Clair Clapsaddle and Albert Undercoffer), both of whom expressed confusion concerning whether respondent had the burden of proof or not. Possibly, the reference could be to jurors 3 and 12, the two other seated jurors that respondent challenged for cause. The District Court certainly did not believe the issue of juror Hrin's "actual bias" was raised, for it assessed cause challenges to six specific jurors, and did not even mention juror Hrin. The issue of juror Hrin's "actual bias" certainly was not "set forth [as a] specific ground upon which relief [was available]. 28 U.S.C. foll. §§2254 (Rule 2(c) governing habeas petitions).

②  
Second, I do not think Judge Garth properly applied the presumption of correctness required by the habeas statute, 28 U.S.C. §2254(d). Irvin v. Dowd characterized the issue of legally "implied" bias as a "question of mixed law and fact," and deference on that issue is therefore not required. But a question of "actual bias," based solely on the answers given at the voir dire, is a "question of historical fact" for which the presumption of correctness applies. See Smith v. Phillips, 455 U.S. 209, 216-218 (1982); Rushen v. Spain, U.S. \_\_\_\_\_, \_\_\_\_\_ (1983). Judge Garth should have deferred to the trial judge's findings, which certainly find "fair support" in the record.

③ Finally, like you, I have carefully reviewed the entire colloquy between juror Hrin and respondent's trial counsel. In many ways, it was like colloquy I heard when I was a state court judge. Prospective jurors are not lawyers, and they take their temporary roles in the legal system with great seriousness and sincerity. Lawyers sometimes confuse them with hypotheticals, and they answers questions in ways that, looking at a cold record, might seem unusual. They do not watch for the legal nuances of their utterances. But all we are looking for is an open mind, and I believe juror Hrin had that. Juror Hrin openly and honestly admitted that he had read about respondent in the newspaper. He admitted that he had an opinion. But he also insisted, repeatedly, that he would not be inflexible, that he would follow the judge's instructions, and that he would hear the case with an open mind. Juror Hrin was a chemist, a man trained in and proud of scientific objectivity. He promised to judge the case on the facts presented, and that is all the Sixth Amendment requires. It is easy for us, fourteen years later, to pour over that colloquy and detect awkward statements that indicate inflexible bias. But we were not in that courtroom; we have no ability to judge his credibility and veracity. The trial judge, however, was there and could. That judge expressly denied the challenge for cause because he believe what juror Hrin said; he concluded that Hrin "could disregard [his opinion] and be guided by the law and evidence." App. 87a. Indeed, respondent's trial counsel may ultimately have concurred in that assessment, for after further questioning he accepted juror Hrin, did not renew his challenge for cause, and did not challenge juror Hrin on a peremptory basis although he had some peremptory challenges remaining.

*Counsel:  
Did he?*

Actual juror bias is a "question of historical fact" to which the presumption of correctness applies. Perhaps juror Hrin should have been dismissed, and perhaps venue should have been changed. But can we, fourteen years later, be so sure that respondent did not have a trial by an impartial jury when the state trial judge, the state supreme court, and the Federal habeas court all thought he had?

Thank you for taking the time to consider this. Having had to face many such questions on the bench I feel it would be very helpful if we could write an opinion in this case reversing the Court of Appeals.

Sincerely,

*Sandra*

Justice Powell

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

March 8, 1984

No. 83-95 Patton v. Yount

Dear Lewis,

I am absolutely delighted to read your memo in this case. If the other votes remain as before, we should be able to decide it by a useful opinion clarifying the points made in your memo.

Sincerely,

*Sandra*

Justice Powell

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

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JUSTICE

'84 ABR 16 A11:32

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

April 16, 1984

No. 83-95 Patton v. Yount

Dear Lewis,

Please join me.

Sincerely,



Justice Powell

Copies to the Conference