

ORDERS FROM FEBRUARY 23 THROUGH  
APRIL 18, 1983

FEBRUARY 23, 1983

*Certiorari Granted.* (See No. 81-896, *ante*, p. 44.)

FEBRUARY 28, 1983

*Affirmed on Appeal*

No. 82-952. MARYLAND ET AL. *v.* UNITED STATES ET AL.;

No. 82-953. TANDY CORP. *v.* UNITED STATES ET AL.;

No. 82-992. NORTH AMERICAN TELEPHONE ASSN. *v.*  
UNITED STATES ET AL.; and

No. 82-1001. ILLINOIS *v.* UNITED STATES ET AL. Af-  
firmed on appeals from D. C. D. C. Reported below: 552 F.  
Supp. 131.

JUSTICE REHNQUIST, with whom THE CHIEF JUSTICE and  
JUSTICE WHITE join, dissenting.

These consolidated cases raise questions concerning the  
settlement of a civil antitrust suit brought by the United  
States against American Telephone & Telegraph Co.  
(AT&T). In January 1982, the parties announced a settle-  
ment in the form of a consent decree. The proposed settle-  
ment was filed in the District Court for the District of Colum-  
bia, which ordered the start of procedures provided for in § 2  
of the Antitrust Procedures and Penalties Act, 88 Stat. 1706,  
15 U. S. C. § 16(b) *et seq.* (Act).

The Act provides:

“Before entering any consent judgment proposed by  
the United States under this section, the court shall de-  
termine that the entry of such judgment is in the public  
interest.” 15 U. S. C. § 16(e).

The District Court issued a lengthy opinion discussing the  
proposed decree. 552 F. Supp. 131 (1982). It found that  
most of the decree’s provisions were in the public interest,  
but stated that it would not approve the decree unless the  
parties agreed to several changes. The parties acquiesced,

and the District Court then approved and entered the amended decree and a final judgment dismissing the case.

The District Court allowed appellants to intervene for purposes of appealing the final judgment and certified their appeals for immediate consideration by this Court under the Expediting Act, 15 U. S. C. § 29(b).

In Nos. 82-952 and 82-1001, several States contend that the decree improperly pre-empts state regulation of the telephone industry. They contend their regulation of the industry is "state action" which is exempt from the Sherman Act under *Parker v. Brown*, 317 U. S. 341 (1943). Thus they do not appear to challenge the conclusion that this consent decree is in the public interest; they claim that the District Court lacked the authority to override state law by entering this consent decree.

The District Court reasoned that "[s]ince the conduct which is the subject of these lawsuits is . . . well within the jurisdiction of the federal antitrust laws . . . it would make no sense to hold that, in providing a remedy for anticompetitive conduct, the Court must refrain from interfering with state regulation," and "[t]he same rationale applies to . . . a consent decree." 552 F. Supp., at 158, and n. 111. I am troubled by the notion that a district court, by entering what is in essence a private agreement between parties to a lawsuit, invokes the Supremacy Clause powers of the Federal Government to pre-empt state regulatory laws. The District Court may well be correct, but I am not prepared to create a precedent in this Court by summarily affirming its decision. This is particularly true when it is not at all clear whether the summary affirmance disposes of the merits of the States' contentions.

In No. 82-953, a competitor of AT&T argues that the District Court should not have eliminated a requirement that Western Electric license its patents for a reasonable royalty to anyone who applies. It also contends that AT&T should not have been permitted to sell telephones through its Phone

Center Stores because competitors, especially local telephone companies, will not be able to compete effectively. In No. 82-992, by contrast, an association of telephone manufacturers, does not object to permitting AT&T to sell telephones, but insists that local telephone companies should not be permitted to do so. These appellants *do* challenge the District Court's conclusion that this settlement is in the public interest.

In order to review the determination that a settlement is in the public interest, it is first necessary to know what "the public interest" means. The Act itself is not very helpful. It does state that "the court may *consider*—

"(1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or [*sic*] relief sought, anticipated effects of alternative remedies actually considered, and *any other considerations bearing upon the adequacy of such judgment*;

"(2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial." 88 Stat. 1707, 15 U. S. C. § 16(e) (emphasis supplied).

The legislative history reveals that the sponsors of the Act were concerned that the Department of Justice had settled some civil antitrust cases on what they believed to have been unfavorable terms. Senator Tunney spoke of several "blatantly inequitable and improper antitrust settlements." 119 Cong. Rec. 24598 (1973). The Act appears to have been intended to prevent the Department of Justice from settling civil antitrust cases on terms less favorable than Congress thought it should obtain.

Faced with this paucity of guidance, the District Court undertook to "defin[e] the public interest in accordance with the antitrust laws." 552 F. Supp., at 149. It noted that, be-

cause it was dealing with a settlement, it "is not as free to exercise its discretion in fashioning a remedy as it would be upon a finding of liability." *Id.*, at 151. It thought it should approve the settlement "even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.'" *Ibid.*, quoting *United States v. Gillette Co.*, 406 F. Supp. 713, 716 (Mass. 1975). The District Court summarized the proper standard as follows:

"After giving due weight to the decisions of the parties as expressed in the proposed decree, the Court will attempt to harmonize competitive values with other legitimate public interest factors. If the decree meets the requirements for an antitrust remedy—that is, if it effectively opens the relevant markets to competition and prevents the recurrence of anticompetitive activity, all without imposing undue and unnecessary burdens upon other aspects of the public interest—it will be approved." 552 F. Supp., at 153 (footnote omitted).

It is not clear to me that this standard, or any other standard the District Court could have devised, admits of resolution by a court exercising the judicial power established by Art. III of the Constitution. The Act applies only when a case has been settled. Thus, by definition, there has been no judicial finding of relevant markets, closed or otherwise, to be opened or of anticompetitive activity to be prevented. The District Court seems to have assumed first that there was an antitrust violation and second that it knew the scope and effects of the violation. But the parties have settled the case and thereby avoided the necessity for such findings.

Even if this problem could be put aside, the case remains problematic at best. Representative Hutchinson, who was a member of the House Committee that considered the Act, stated on the House floor that it

"imposes on the courts what is essentially a nonjudicial function. In short, the courts will have to decide whether the Department of Justice has exercised its prosecutorial discretion to settle antitrust cases as well as it should. . . . In my opinion, such a process is foreign to the judicial function." 120 Cong. Rec. 36340 (1974).

In an addendum to the Committee Report, Representative Hutchinson stated that the defect of the Act

"is simply that to require federal courts to determine whether a consent decree is in the public interest is to transfer an 'executive' question to the courts for resolution. The question for the court will be whether the Department of Justice has exercised its prosecutorial discretion well or, perhaps, as well as possible. The question will *not* be whether the Department has violated some legal standard. For none is established by this legislation. Rather, the court is given a plenary and unqualified authority to re-decide an executive decision." H. R. Rep. No. 93-1463, p. 21 (1974) (Additional Views of Mr. Hutchinson) (emphasis in original).

I believe this point is well taken. The question assigned to the district courts by the Act is a classic example of a question committed to the Executive. "The province of the court is, solely, to decide on the rights of individuals, not to inquire how the executive, or executive officers, perform duties in which they have a discretion." *Marbury v. Madison*, 1 Cranch 137, 170 (1803). In *Baker v. Carr*, 369 U. S. 186, 217 (1962), the Court listed six alternative ways of identifying a political question that is beyond the competence of the Judiciary. Three of these apply to these cases: "a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for discovering it; or

the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion." *Ibid.*

The question whether to prosecute a lawsuit is a question of the execution of the laws, which is committed to the Executive by Art. II. There is no standard by which the benefits to the public from a "better" settlement of a lawsuit than the Justice Department has negotiated can be balanced against the risk of an adverse decision, the need for a speedy resolution of the case, the benefits obtained in the settlement, and the availability of the Department's resources for other cases. How is a court to decide whether a better settlement in a case involving one industry is more important to the public than the benefits that might be gained by immediately working on an antitrust problem in another industry? Finally, the decision requires an evaluation of an initial policy decision—whether the benefits that might be obtained in a lawsuit are worth the risks and costs—that is clearly for nonjudicial discretion.

In short, the language of the Court in *Green v. Frazier*, 253 U. S. 233, 240 (1920), seems fully applicable here: "Questions of policy are not submitted to judicial determination, and the courts have no general authority of supervision over the exercise of discretion which under our system is reposed in the people or other branches of government." Even though Congress may by statute impose such a duty on the federal courts, they may not perform it. *Muskrat v. United States*, 219 U. S. 346 (1911).

Because I am concerned about the implications of the Court's decision in Nos. 82-952 and 82-1001, and because it is not clear to me whether the determination sought to be reviewed in Nos. 82-953 and 82-992 is within the judicial power, I would set these appeals for oral argument and postpone the further consideration of the question of jurisdiction to the hearing of the case on the merits.

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*Appeals Dismissed*

No. 82-1175. *BERG v. WISCONSIN ET AL.* Appeal from Ct. App. Wis. dismissed for want of substantial federal question. Reported below: 108 Wis. 2d 785, 324 N. W. 2d 832.

No. 82-1279. *JENSEN v. SATRAN, WARDEN, NORTH DAKOTA STATE PENITENTIARY, ET AL.* Appeal from C. A. 8th Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 688 F. 2d 76.

No. 82-1296. *STROOM v. CARTER.* Appeal from D. C. D. C. dismissed for want of jurisdiction.

*Certiorari Granted—Vacated and Remanded*

No. 82-174. *H. S. CROCKER CO., INC. v. OSTROFE.* C. A. 9th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Associated General Contractors of California, Inc. v. Carpenters*, 459 U. S. 519 (1983). Reported below: 670 F. 2d 1378.

No. 82-178. *MITSUI & CO., LTD., ET AL. v. INDUSTRIAL INVESTMENT DEVELOPMENT CORP. ET AL.* C. A. 5th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Associated General Contractors of California, Inc. v. Carpenters*, 459 U. S. 519 (1983). Reported below: 671 F. 2d 876.

No. 82-999. *CHEMETRON CORP. v. BUSINESS FUNDS, INC., ET AL.* C. A. 5th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Herman & MacLean v. Huddleston*, 459 U. S. 375 (1983). Reported below: 682 F. 2d 1149.

*Miscellaneous Orders*

No. ———. *LOVELESS ET AL. v. EASTERN AIR LINES, INC., ET AL.* Motion of petitioners to direct the Clerk to file the petition for writ of certiorari out of time denied.

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No. D-279. IN RE DISBARMENT OF RESNICK. Disbarment entered. [For earlier order herein, see 458 U. S. 1125.]

No. D-280. IN RE DISBARMENT OF STERN. Disbarment entered. [For earlier order herein, see 458 U. S. 1126.]

No. D-293. IN RE DISBARMENT OF DOYLE. Disbarment entered. [For earlier order herein, see 459 U. S. 939.]

No. D-295. IN RE DISBARMENT OF MOYER. Disbarment entered. [For earlier order herein, see 459 U. S. 939.]

No. D-298. IN RE DISBARMENT OF BURGER. Disbarment entered. [For earlier order herein, see 459 U. S. 940.]

No. D-302. IN RE DISBARMENT OF JOHNSON. Disbarment entered. [For earlier order herein, see 459 U. S. 985.]

No. D-304. IN RE DISBARMENT OF MCCONNELL. Disbarment entered. [For earlier order herein, see 459 U. S. 1083.]

No. D-306. IN RE DISBARMENT OF PHILLIPS. Disbarment entered. [For earlier order herein, see 459 U. S. 1083.]

No. D-314. IN RE DISBARMENT OF MOLOVINSKY. It is ordered that Gale S. Molovinsky, of Potomac, Md., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-317. IN RE DISBARMENT OF MACK. It is ordered that Ollie R. Mack, Jr., of Philadelphia, Pa., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-318. IN RE DISBARMENT OF KOPS. It is ordered that Floyd J. Kops, of New York, N. Y., be suspended from

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the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-319. *IN RE DISBARMENT OF FEDER.* It is ordered that Alan Jerome Feder, of Chicago, Ill., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-320. *IN RE DISBARMENT OF RUBENSTEIN.* It is ordered that J. Mortimer Rubenstein, of Cliffside Park, N. J., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-321. *IN RE DISBARMENT OF FRIEDLAND.* It is ordered that M. Daniel Friedland, of Hartford, Conn., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-322. *IN RE DISBARMENT OF MINN.* It is ordered that Howard W. Minn, of Chicago, Ill., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-323. *IN RE DISBARMENT OF SHERMAN.* It is ordered that Robert Stephen Sherman, of Baltimore, Md., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. 81-430. *ILLINOIS v. GATES ET UX.* Sup. Ct. Ill. [Certiorari granted, 454 U. S. 1140.] Motion of the Solicitor General for leave to file reply brief as *amicus curiae* denied.

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No. 81-2159. SILKWOOD, ADMINISTRATOR OF THE ESTATE OF SILKWOOD *v.* KERR-MCGEE CORP. ET AL. C. A. 10th Cir. [Probable jurisdiction postponed, 459 U. S. 1101.] Motion of the parties to dispense with printing the joint appendix granted.

No. 82-849. UNITED STATES *v.* MENDOZA. C. A. 9th Cir. [Certiorari granted, 459 U. S. 1169.] Motion of the parties to dispense with printing the joint appendix granted.

No. 82-1305. BLACKSTONE CO. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 3d Cir. Motion of petitioner to consolidate this case with No. 82-168, *National Labor Relations Board v. Transportation Management Corp.* [certiorari granted, 459 U. S. 1014], denied.

No. 82-6080. BAREFOOT *v.* ESTELLE, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS. C. A. 5th Cir. [Certiorari granted, 459 U. S. 1169.] Motion of petitioner for leave to proceed *in forma pauperis* granted.

No. 82-6181. IN RE ROSS; and

No. 82-6182. IN RE PATTERSON. Petitions for writs of habeas corpus denied.

No. 82-6033. IN RE REITER. Petition for writ of mandamus denied.

*Probable Jurisdiction Postponed*

No. 82-912. FEDERAL COMMUNICATIONS COMMISSION *v.* LEAGUE OF WOMEN VOTERS OF CALIFORNIA ET AL. Appeal from D. C. C. D. Cal. Further consideration of question of jurisdiction postponed to hearing of case on the merits. Reported below: 547 F. Supp. 379.

*Certiorari Granted*

No. 82-973. IMMIGRATION AND NATURALIZATION SERVICE *v.* STEVIC. C. A. 2d Cir. Certiorari granted. Reported below: 678 F. 2d 401.

No. 82-914. MONSANTO CO. *v.* SPRAY-RITE SERVICE CORP. C. A. 7th Cir. Certiorari granted. JUSTICE

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WHITE took no part in the consideration or decision of this petition. Reported below: 684 F. 2d 1226.

*Certiorari Denied.* (See also No. 82-1279, *supra.*)

No. 81-1389. GOLDENBERG *v.* UNITED STATES (two cases). C. A. 1st Cir. Certiorari denied. Reported below: 663 F. 2d 1120 (first case); 663 F. 2d 1113 (second case).

No. 81-1392. WINTER *v.* UNITED STATES (two cases). C. A. 1st Cir. Certiorari denied. Reported below: 663 F. 2d 1120 (first case); 663 F. 2d 1113 (second case).

No. 81-1394. PRICE *v.* UNITED STATES (two cases). C. A. 1st Cir. Certiorari denied. Reported below: 663 F. 2d 1120 (first case); 663 F. 2d 1113 (second case).

No. 81-6152. CAMPBELL *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 636 P. 2d 352.

No. 81-6593. BURROWS *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 640 P. 2d 533.

No. 82-949. FRICKE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 684 F. 2d 1126.

No. 82-954. KECKEISEN *v.* UNITED STATES; PFEFFER *v.* UNITED STATES; and BUCHANAN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 82-1046. KANE GAS LIGHT & HEATING CO. *v.* INTERNATIONAL BROTHERHOOD OF FIREMEN & OILERS, LOCAL 112. C. A. 3d Cir. Certiorari denied. Reported below: 687 F. 2d 673.

No. 82-1081. ESTATE OF FRIEDERS *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 7th Cir. Certiorari denied. Reported below: 687 F. 2d 224.

No. 82-1086. GROOM *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 692 F. 2d 750.

No. 82-1106. STINE *v.* CROSS. Super. Ct. Pa. Certiorari denied. Reported below: 301 Pa. Super. 645, 447 A. 2d 668.

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No. 82-1107. *PARKS, AN INDIVIDUAL, AND AS NATURAL MOTHER, GUARDIAN, AND NEXT FRIEND OF WILLIAMS v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 685 F. 2d 1387.

No. 82-1111. *HARRELL, BY HER PARENTS, HARRELL ET UX. v. WILSON COUNTY SCHOOLS ET AL.* Ct. App. N. C. Certiorari denied. Reported below: 58 N. C. App. 260, 293 S. E. 2d 687.

No. 82-1112. *KLINE v. CITY OF FAIRFAX, VIRGINIA*. Sup. Ct. Va. Certiorari denied.

No. 82-1114. *ROSE, AS NEXT FRIEND OF ROSE v. NEBRASKA ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 687 F. 2d 1164.

No. 82-1117. *JAMROCH v. FINLEY, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS, ET AL.* App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 104 Ill. App. 3d 1200, 437 N. E. 2d 943.

No. 82-1119. *WILLIS v. MUSE ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 690 F. 2d 903.

No. 82-1124. *TAYLOR ET AL. v. TRACOR MARINE, INC., ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 683 F. 2d 1361.

No. 82-1132. *SALDANA v. GARZA ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 684 F. 2d 1159.

No. 82-1133. *LOWENTHAL ET AL. v. ROME, PERSONAL REPRESENTATIVE OF THE ESTATE OF LOWENTHAL, ET AL.* Ct. App. Md. Certiorari denied. Reported below: 294 Md. 277, 449 A. 2d 411.

No. 82-1138. *VOLVO OF AMERICA CORP. ET AL. v. ROSACK*. Ct. App. Cal., 1st App. Dist. Certiorari denied. Reported below: 131 Cal. App. 3d 741, 182 Cal. Rptr. 800.

No. 82-1142. *SHARON STEEL CORP. ET AL. v. CHASE MANHATTAN BANK, N. A., ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 691 F. 2d 1039.

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No. 82-1149. *MARQUEZ v. UNIVERSITY OF WASHINGTON ET AL.* Ct. App. Wash. Certiorari denied. Reported below: 32 Wash. App. 302, 648 P. 2d 94.

No. 82-1165. *CORDER ET AL. v. KIRKSEY, PROBATE JUDGE OF PICKENS COUNTY, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 639 F. 2d 1191 and 688 F. 2d 991.

No. 82-1168. *MONACO, AN INFANT, BY HIS PARENT AND NATURAL GUARDIAN, MONACO, ET AL. v. FEINER ET AL.* App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 87 App. Div. 2d 740, 450 N. Y. S. 2d 344.

No. 82-1178. *ROOD v. FINNEY ET AL.* Ct. App. La., 4th Cir. Certiorari denied. Reported below: 418 So. 2d 1.

No. 82-1179. *CANNON v. UNIVERSITY OF CHICAGO ET AL.* C. A. 7th Cir. Certiorari denied.

No. 82-1201. *BINTLIFF v. CHEMETRON CORP.* C. A. 5th Cir. Certiorari denied. Reported below: 682 F. 2d 1149.

No. 82-1291. *RENTZ v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 692 F. 2d 766.

No. 82-5249. *TWEETY v. MITCHELL, WARDEN, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 682 F. 2d 461.

No. 82-5560. *HAMANN v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 688 F. 2d 507.

No. 82-5597. *TURNER v. UNITED STATES.* C. A. 10th Cir. Certiorari denied.

No. 82-5719. *CLARKSON v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 681 F. 2d 817.

No. 82-5737. *LIPSCOMB v. KING.* C. A. 7th Cir. Certiorari denied.

No. 82-5771. *ZISSIMOS v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 697 F. 2d 301.

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No. 82-5774. *DAVIS v. UNITED STATES STEEL SUPPLY, DIVISION OF UNITED STATES STEEL CORP.* C. A. 3d Cir. Certiorari denied. Reported below: 688 F. 2d 166.

No. 82-5822. *KINION v. ILLINOIS.* App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 105 Ill. App. 3d 1069, 435 N. E. 2d 533.

No. 82-5830. *TIRADO, AKA DANTE v. COMMISSIONER OF INTERNAL REVENUE.* C. A. 2d Cir. Certiorari denied. Reported below: 689 F. 2d 307.

No. 82-5838. *SMITH v. ILLINOIS.* App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 104 Ill. App. 3d 1212, 437 N. E. 2d 950.

No. 82-5852. *GOTTESMAN v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 685 F. 2d 1387.

No. 82-5873. *EDWARDS v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 692 F. 2d 766.

No. 82-5963. *CARTER v. UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS ET AL.* C. A. 5th Cir. Certiorari denied.

No. 82-6000. *BRANT v. WISCONSIN.* Ct. App. Wis. Certiorari denied. Reported below: 109 Wis. 2d 685, 325 N. W. 2d 737.

No. 82-6004. *MAZUR v. CHEVROLET MOTOR DIVISION, SAGINAW METAL CASTING PLANTS, GENERAL MOTORS CORP.* Ct. App. Mich. Certiorari denied.

No. 82-6006. *MCCRARY v. SMITH, SUPERINTENDENT, ATTICA CORRECTIONAL FACILITY.* C. A. 2d Cir. Certiorari denied. Reported below: 714 F. 2d 115.

No. 82-6007. *PATTASHNICK ET UX. v. TASHOFF.* Ct. Sp. App. Md. Certiorari denied. Reported below: 52 Md. App. 779.

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No. 82-6008. *SEXTON v. MAYNARD, WARDEN*. C. A. 10th Cir. Certiorari denied.

No. 82-6009. *COFFER v. HESS, WARDEN*. C. A. 10th Cir. Certiorari denied.

No. 82-6017. *JAWORSKI v. POWERS*. C. A. 7th Cir. Certiorari denied. Reported below: 684 F. 2d 498.

No. 82-6021. *FRENCH v. DE ROBERTIS*. C. A. 7th Cir. Certiorari denied. Reported below: 692 F. 2d 760.

No. 82-6026. *ADAMS v. CARLSON ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 708 F. 2d 721.

No. 82-6032. *MILLER v. CALIFORNIA*. Sup. Ct. Cal. Certiorari denied.

No. 82-6039. *BROOKS v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 691 F. 2d 510.

No. 82-6049. *HOLMES v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 680 F. 2d 1372.

No. 82-6069. *McFADYEN ET AL. v. SHURE ET AL.* App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 108 Ill. App. 3d 329, 438 N. E. 2d 1362.

No. 82-6082. *DUFFLE v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 705 F. 2d 452.

No. 82-6118. *ADAIR v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 82-6123. *HAYES v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 696 F. 2d 1004.

No. 82-6140. *LEBEDUN v. PETROVSKY, WARDEN, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 692 F. 2d 752.

No. 82-6143. *SLOCUM v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 695 F. 2d 650.

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No. 82-6162. GUILBERT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 692 F. 2d 1340.

No. 82-18. BALKCOM, WARDEN *v.* MASON. C. A. 11th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 669 F. 2d 222.

No. 82-584. JONES, SUPERINTENDENT, GREAT MEADOW CORRECTIONAL FACILITY *v.* RAMIREZ. C. A. 2d Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 683 F. 2d 712.

No. 82-116. GREATER WASHINGTON CENTRAL LABOR COUNCIL *v.* DISTRICT OF COLUMBIA ET AL.; and

No. 82-146. FOOD & ALLIED SERVICES TRADE COUNCIL OF METROPOLITAN WASHINGTON *v.* DISTRICT OF COLUMBIA ET AL. Ct. App. D. C. Motion of Greater Washington Board of Trade for leave to intervene as a party respondent denied. Alternative request to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 442 A. 2d 110 and 445 A. 2d 960.

No. 82-493. BICHAN *v.* CHEMETRON CORP. ET AL. C. A. 7th Cir. Certiorari denied. JUSTICE BLACKMUN would grant certiorari, vacate the judgment, and remand the case for further consideration in light of *Associated General Contractors of California, Inc. v. Carpenters*, 459 U. S. 519 (1983). Reported below: 681 F. 2d 514.

No. 82-877. BONANNO *v.* UNITED STATES. C. A. 9th Cir. Motion of Jack DiFilippi for leave to join in petition for writ of certiorari denied. Certiorari denied. Reported below: 685 F. 2d 447.

No. 82-959. FLORIDA *v.* KILPATRICK ET AL. Dist. Ct. App. Fla., 1st Dist. Motion of respondents for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 403 So. 2d 1104.

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No. 82-1104. GENERAL ATOMIC CO. *v.* UNITED NUCLEAR CORP. Sup. Ct. N. M. Motion of petitioner to substitute GA Technologies, Inc., as party petitioner denied. Certiorari denied. JUSTICE BRENNAN and JUSTICE BLACKMUN would grant certiorari. Reported below: 98 N. M. 633, 651 P. 2d 1277.

No. 82-5977. HILL *v.* FLORIDA. Sup. Ct. Fla.;

No. 82-5987. RICHARDSON *v.* ALABAMA. Ct. Crim. App. Ala.; and

No. 82-5989. STOKES *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: No. 82-5977, 422 So. 2d 816; No. 82-5987, 419 So. 2d 289; No. 82-5989, 638 S. W. 2d 715.

JUSTICE BRENNAN and JUSTICE MARSHALL, dissenting.

Adhering to our views that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, *Gregg v. Georgia*, 428 U. S. 153, 227, 231 (1976), we would grant certiorari and vacate the death sentences in these cases.

No. 82-5995. REED *v.* GEORGIA. Ct. App. Ga. Motion of petitioner to defer consideration of the petition for writ of certiorari denied. Certiorari denied. Reported below: 163 Ga. App. 233, 293 S. E. 2d 469.

#### *Rehearing Denied*

No. 82-894. MASTRO ET AL. *v.* UNITED STATES, 459 U. S. 1108;

No. 82-5444. HARVARD *v.* FLORIDA, 459 U. S. 1128;

No. 82-5805. ENGELKE *v.* SHERING, JUDGE OF JUSTICE COURT, CLARK COUNTY, NEVADA, 459 U. S. 1150; and

No. 82-5878. DISILVESTRO *v.* UNITED STATES, 459 U. S. 1177. Petitions for rehearing denied.

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*Appeals Dismissed*

No. 82-1098. *RODRIGUEZ v. DISTRICT OF COLUMBIA DEPARTMENT OF EMPLOYMENT SERVICES*. Appeal from Ct. App. D. C. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 452 A. 2d 1170.

No. 82-6054. *BECKER v. DORAN, SUPERINTENDENT, CALIFORNIA REHABILITATION CENTER*. Appeal from C. A. 9th Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 698 F. 2d 1228.

*Miscellaneous Orders*

No. A-664. *PALMORE v. SIDOTI*. Application to stay the mandate of the District Court of Appeal of Florida, Second District, addressed to JUSTICE MARSHALL and referred to the Court, denied. JUSTICE STEVENS would grant the application.

No. A-678. *WALKER v. UNITED STATES*. D. C. E. D. Mich. Application for stay, addressed to JUSTICE REHNQUIST and referred to the Court, denied.

No. A-679. *CADLE v. UNITED STATES*. D. C. E. D. Mich. Application for stay, addressed to JUSTICE REHNQUIST and referred to the Court, denied.

No. A-690. *HAYFIELD NORTHERN RAILROAD Co., INC., ET AL. v. CHICAGO, NORTHWESTERN TRANSPORTATION Co.* C. A. 8th Cir. Application for stay, addressed to JUSTICE O'CONNOR and referred to the Court, denied.

No. A-691. *IN RE CARTER ET AL.* Bkrtcy. Ct. N. D. Ga. Application for stay, addressed to JUSTICE MARSHALL and referred to the Court, denied.

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No. A-707. WATSON ET AL. *v.* UNITED STATES ET AL. D. C. S. D. Tex. Application for stay, addressed to JUSTICE MARSHALL and referred to the Court, denied.

No. D-324. IN RE DISBARMENT OF JAVITZ. It is ordered that Marvin R. Javitz, of Brooklyn, N. Y., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-325. IN RE DISBARMENT OF HAMPARES. It is ordered that A. James Hampares, of New York, N. Y., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-326. IN RE DISBARMENT OF GALLOWAY. It is ordered that John Michael Galloway, of Anderson, S. C., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-327. IN RE DISBARMENT OF STEVENS. It is ordered that Harry J. Stevens, Jr., of Allenhurst, N. J., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-328. IN RE DISBARMENT OF JUNCKER. It is ordered that Martin Edward Juncker, of St. Louis, Mo., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

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No. D-329. *IN RE DISBARMENT OF WHITE*. It is ordered that Paul Anthony White, of Gladstone, Mo., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. 93, Orig. *OKLAHOMA v. ARKANSAS ET AL.* Motion of Illinois and Tennessee for leave to file a brief as *amici curiae* granted. Motion for leave to file bill of complaint denied. [For earlier order herein, see 459 U. S. 812.]

No. 82-65. *BROWN ET AL. v. THOMSON, SECRETARY OF STATE OF WYOMING, ET AL.* D. C. Wyo. [Probable jurisdiction noted, 459 U. S. 819.] Motion of appellees James L. Thompson et al. for divided argument denied.

No. 82-118. *CROWN, CORK & SEAL CO., INC. v. PARKER*. C. A. 4th Cir. [Certiorari granted, 459 U. S. 986.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument denied.

No. 82-524. *BALTIMORE GAS & ELECTRIC CO. ET AL. v. NATURAL RESOURCES DEFENSE COUNCIL, INC.*;

No. 82-545. *UNITED STATES NUCLEAR REGULATORY COMMISSION ET AL. v. NATURAL RESOURCES DEFENSE COUNCIL, INC., ET AL.*; and

No. 82-551. *COMMONWEALTH EDISON CO. ET AL. v. NATURAL RESOURCES DEFENSE COUNCIL, INC., ET AL.* C. A. D. C. Cir. [Certiorari granted, 459 U. S. 1034.] Motion of petitioners in No. 82-551 for divided argument denied. JUSTICE POWELL took no part in the consideration or decision of this motion.

No. 82-914. *MONSANTO CO. v. SPRAY-RITE SERVICE CORP.* C. A. 7th Cir. [Certiorari granted, *ante*, p. 1010.] Motion of Washington et al. for leave to file a brief as *amici curiae* out of time denied. JUSTICE WHITE took no part in the consideration or decision of this motion.

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No. 82-6066. *IN RE ROBERTS*. Petition for writ of mandamus denied.

*Probable Jurisdiction Noted*

No. 81-2110. *UNITED BUILDING & CONSTRUCTION TRADES COUNCIL OF CAMDEN COUNTY AND VICINITY v. MAYOR AND COUNCIL OF THE CITY OF CAMDEN ET AL.* Appeal from Sup. Ct. N. J. Probable jurisdiction noted. Reported below: 88 N. J. 317, 443 A. 2d 148.

*Certiorari Granted*

No. 82-945. *SURE-TAN, INC., ET AL. v. NATIONAL LABOR RELATIONS BOARD*. C. A. 7th Cir. Certiorari granted. Reported below: 672 F. 2d 592 and 677 F. 2d 584.

No. 82-1127. *HELICOPTEROS NACIONALES DE COLOMBIA, S.A. v. HALL ET AL.* Sup. Ct. Tex. Certiorari granted. Reported below: 638 S. W. 2d 870.

No. 82-1167. *UNITED STATES v. JACOBSEN ET AL.* C. A. 8th Cir. Certiorari granted. Reported below: 683 F. 2d 296.

No. 82-1200. *DAILY INCOME FUND, INC., ET AL. v. FOX*. C. A. 2d Cir. Certiorari granted. Reported below: 692 F. 2d 250.

No. 82-1031. *JEFFERSON PARISH HOSPITAL DISTRICT NO. 2 ET AL. v. HYDE*. C. A. 5th Cir. Motions of Louisiana Hospital Association and American Hospital Association for leave to file briefs as *amici curiae* granted. Certiorari granted. Reported below: 686 F. 2d 286.

*Certiorari Denied.* (See also Nos. 82-1098 and 82-6054, *supra.*)

No. 81-2355. *UNITED STATES v. IONIAN GLOW MARINE, INC.* C. A. 4th Cir. Certiorari denied. Reported below: 670 F. 2d 462.

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No. 81-6922. *BROCK ET AL. v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 667 F. 2d 1311.

No. 82-86. *INTERSTATE COMMERCE COMMISSION v. AMERICAN TRUCKING ASSNS., INC., ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 659 F. 2d 452, 669 F. 2d 957, and 673 F. 2d 82.

No. 82-594. *INTERSTATE COMMERCE COMMISSION v. RITTER TRANSPORTATION, INC., ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 221 U. S. App. D. C. 312, 684 F. 2d 86.

No. 82-814. *BOFFA v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 688 F. 2d 919.

No. 82-904. *CONSTRUCTORA EL MONTE, S.A., ET AL. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 688 F. 2d 837.

No. 82-931. *DAY v. TEXAS*. Ct. App. Tex., 1st Sup. Jud. Dist. Certiorari denied.

No. 82-962. *THOMAS ET AL. v. UNITED STATES*. Ct. Cl. Certiorari denied. Reported below: 231 Ct. Cl. 984.

No. 82-974. *THOMASSEN ET AL. v. UNITED STATES ET AL.* C. A. 9th Cir. Certiorari denied.

No. 82-1007. *NIESZNER v. ORR, SECRETARY OF THE AIR FORCE*. C. A. 8th Cir. Certiorari denied. Reported below: 684 F. 2d 562.

No. 82-1042. *SUNDHEIMER v. COMMODITY FUTURES TRADING COMMISSION*. C. A. 2d Cir. Certiorari denied. Reported below: 688 F. 2d 150.

No. 82-1152. *HOGGARD v. ARKANSAS*. Sup. Ct. Ark. Certiorari denied. Reported below: 277 Ark. 117, 640 S. W. 2d 102.

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No. 82-1154. *BOROUGH OF SAYREVILLE ET AL. v. MIDDLESEX COUNTY UTILITIES AUTHORITY ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 690 F. 2d 358.

No. 82-1158. *WEST v. WEST.* Ct. App. Okla. Certiorari denied.

No. 82-1161. *TEAMSTERS LOCAL NO. 243, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA v. SEARS, ROEBUCK & Co.* C. A. 6th Cir. Certiorari denied. Reported below: 683 F. 2d 154.

No. 82-1182. *SOUTHERN PACIFIC TRANSPORTATION Co. v. NORMAN.* C. A. 9th Cir. Certiorari denied.

No. 82-1185. *MUIR ET AL. v. ALABAMA EDUCATIONAL TELEVISION COMMISSION ET AL.;* and

No. 82-1196. *BARNSTONE ET AL. v. UNIVERSITY OF HOUSTON, KUHT-TV, ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 688 F. 2d 1033.

No. 82-1189. *UNITED TRANSPORTATION UNION v. SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY ET AL.* Sp. Ct. R. R. R. A. Certiorari denied. Reported below: 555 F. Supp. 1382.

No. 82-1195. *MEYER v. THOMSON & MCKINNON AUCHINCLOSS KOHLMEYER, INC., ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 686 F. 2d 818.

No. 82-1205. *SAWYER ET AL. v. IRANIAN STUDENT ASSN. ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 688 F. 2d 837.

No. 82-1218. *FLOWERS INDUSTRIES, INC., ET AL. v. BROWN ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 688 F. 2d 328.

No. 82-1234. *PARKER, INDIVIDUALLY, AND AS ADMINISTRATOR OF THE ESTATE OF PARKER, ET AL. v. COUNTY OF NASSAU ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 714 F. 2d 116.

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No. 82-5182. *LYONS v. CALIFORNIA*. App. Dept., Superior Ct. Cal., County of Santa Barbara. Certiorari denied.

No. 82-5459. *DEVORCE ET AL. v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 697 F. 2d 299.

No. 82-5716. *CHANDLER v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 703 F. 2d 568.

No. 82-5768. *LAMB v. JERNIGAN, WARDEN*. C. A. 11th Cir. Certiorari denied. Reported below: 683 F. 2d 1332.

No. 82-5847. *KROWN v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 692 F. 2d 663.

No. 82-5887. *MEALER v. NEW YORK*. Ct. App. N. Y. Certiorari denied. Reported below: 57 N. Y. 2d 214, 441 N. E. 2d 1080.

No. 82-6001. *CASAREALE ET AL. v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 714 F. 2d 118.

No. 82-6025. *GILES v. HUNT ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 688 F. 2d 831.

No. 82-6027. *LUCIEN v. FITZSIMMONS ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 698 F. 2d 1227.

No. 82-6036. *FITZGERALD v. PENTHOUSE INTERNATIONAL, LTD., ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 691 F. 2d 666.

No. 82-6041. *SMITH v. WYRICK, WARDEN*. C. A. 8th Cir. Certiorari denied. Reported below: 693 F. 2d 808.

No. 82-6044. *MARTIN v. ESTELLE, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS*. C. A. 5th Cir. Certiorari denied. Reported below: 691 F. 2d 202.

No. 82-6045. *McKINNEY v. OHIO*. Ct. App. Ohio, Warren County. Certiorari denied.

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No. 82-6046. ZIMARDO *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 32 Wash. App. 1008.

No. 82-6047. ENDLER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 688 F. 2d 849.

No. 82-6050. BURT *v.* WAINWRIGHT, DIRECTOR, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 690 F. 2d 906.

No. 82-6051. BAUM ET AL. *v.* ESTATE OF GILLMAN ET AL. C. A. 10th Cir. Certiorari denied.

No. 82-6056. PEPPERS *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 82-6117. BROWN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 691 F. 2d 510.

No. 82-6135. STALLWORTH *v.* DETROIT BOARD OF EDUCATION ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 708 F. 2d 728.

No. 82-6139. READY *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 445 A. 2d 982.

No. 82-6153. WILLIAMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 689 F. 2d 191.

No. 82-6171. MURRAY *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 82-41. INTERSTATE COMMERCE COMMISSION *v.* STEERE TANK LINES, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 666 F. 2d 255.

JUSTICE WHITE, with whom JUSTICE POWELL and JUSTICE REHNQUIST join, dissenting.

The Motor Carrier Act of 1980, 49 U. S. C. § 10101 *et seq.* (1976 ed., Supp. V), authorizes the Interstate Commerce Commission to lift restrictions on motor carriers' existing authority where the removal would, among other things, "rea-

sonably broaden the categories of property authorized by the carriers' certificate or permit." § 10922(h)(1)(B)(i). Pursuant to the statute, the Commission issued guidelines for processing restriction-removal applications. The guidelines invite carriers authorized to haul "one or more named commodities" to apply for a broader authorization, such as authority to transport "commodities in bulk." 49 CFR § 1137.21(b) (1981).

In this case, Maxwell Co. applied to the Commission to broaden the commodity description in one of its existing certificates from "spent silica gel catalyst, in bulk" to "commodities in bulk." After considering submissions from Maxwell, and comments filed by two carriers objecting to the proposed broadening, the Commission's Restriction Removal Board concluded that the application should be granted. The Board found that the proposed broadening "will reduce the consumption of energy resources, will offer potential cost savings and improved efficiency, will enable applicant to provide full service to a broader range of shippers and in rural communities, and will be consistent with the [transportation policies of the Act]." The Commission denied internal appeal.

Steere Tank Lines, one of the objecting carriers, then challenged the Commission's action in the Court of Appeals for the Fifth Circuit, arguing that the Commission's guidelines were not valid under the Act. Relying on its earlier decision in *American Trucking Assns., Inc. v. ICC*, 659 F. 2d 452 (1981), cert. denied, *ante*, p. 1022, the court held that the Commission's action was improper. 666 F. 2d 255 (1982). The Fifth Circuit maintained that the Commission's guidelines fail to account for the Motor Carrier Act's mandate that every carrier be "fit, willing, and able . . . to provide the transportation to be authorized by the certificate." 49 U. S. C. § 10922(a)(1) (1976 ed., Supp. V). Accordingly, the court remanded the decision in this case to the Commission for further proceedings.

The Commission now petitions for a writ of certiorari, claiming that the Court of Appeals has engrafted a requirement on restriction-removal proceedings not required or contemplated by Congress and that will impede the Commission's ability to implement the policies of the Motor Carrier Act of 1980. In ruling upon such restriction-removal applications, the Commission is directed by the Act to consider "the impact of the proposed restriction removal upon the consumption of energy resources, potential cost savings and improved efficiency, and the transportation policy set forth in [the Act]" and to "give special consideration to providing and maintaining service to small and rural communities and small shippers." 49 U. S. C. § 10922(h)(2) (1976 ed., Supp. V). The Act does not apply the "fit, willing, and able" requirement to applications for removal of service restrictions; this requirement is expressly applicable only to carriers seeking a new certificate. § 10922(b)(1)(A). In the Commission's view, the result of the Court of Appeals' decision is to render the restriction-removal process the equivalent of an application for new authority, frustrating Congress' intent that restriction-removal applications be processed in a more simplified and expeditious manner.

I would grant certiorari in this case. Although another Circuit that has considered this issue has reached the same result, see *Ritter Transportation, Inc. v. ICC*, 221 U. S. App. D. C. 312, 684 F. 2d 86 (1982), cert. denied, *ante*, p. 1022, there is considerable force to the Commission's argument that these decisions frustrate the will of Congress. Nor do I agree with respondents that it is too early to determine whether the Courts of Appeals' decisions will substantially impair national transportation goals. The Commission itself is in the best position to speak to this matter. The Commission reports that its Restriction Removal Board, which regularly processed applications for expanded authority, has been closed down due to a lack of applications being filed. The Commission believes this is at least partially attributable to

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the "potential applicant's perception that it is now easier to obtain a *new* certificate under Section 10922(b) than it is to obtain the expansion of an *existing* certificate in a restriction removal proceeding." Reply Brief for Petitioner in *ICC v. Ritter Transportation, Inc.*, O. T. 1982, No. 82-594, p. 2. It seems to me that the Courts of Appeals have sidetracked an entire regulatory program of the Commission and that plenary consideration is warranted at this time so that there may be an early judgment as to whether the Courts of Appeals have correctly read the statute.\*

No. 82-227. *PROVIDENCE JOURNAL CO. v. HOME PLACEMENT SERVICE, INC., ET AL.* C. A. 1st Cir. Motion of American Newspaper Publishers Association for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 682 F. 2d 274.

No. 82-869. *FROUDE ET AL. v. EAGLE-PICHER INDUSTRIES, INC., ET AL.* C. A. 1st Cir. Motions of American Home Assurance Co. et al., Insurance Company of North America, and Aetna Casualty & Surety Co. for leave to file briefs as *amici curiae* granted. Certiorari denied. JUSTICE BRENNAN took no part in the consideration or decision of these motions and this petition. Reported below: 682 F. 2d 12.

No. 82-878. *KALMAR v. UNITED STATES.* C. A. 3d Cir. Motion of petitioner for waiver of time requirement granted. Certiorari denied. Reported below: 688 F. 2d 919.

No. 82-1097. *EAGLE-PICHER INDUSTRIES, INC. v. LIBERTY MUTUAL INSURANCE CO. ET AL.* C. A. 1st Cir. Motion of Insurance Company of North America for leave to file a brief as *amicus curiae* granted. Certiorari denied. JUSTICE BRENNAN took no part in the consideration or decision

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\*If certiorari were granted, I would hold the petitions filed by the Commission in *ICC v. Ritter Transportation, Inc.*, No. 82-594, and *ICC v. American Trucking Assns., Inc.*, No. 82-86, pending consideration of this case.

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of this motion and this petition. Reported below: 682 F. 2d 12.

No. 82-6035. QUINTANA *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied. Reported below: 224 Va. 127, 295 S. E. 2d 643.

JUSTICE BRENNAN and JUSTICE MARSHALL, dissenting.

Adhering to our views that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, *Gregg v. Georgia*, 428 U. S. 153, 227, 231 (1976), we would grant certiorari and vacate the death sentence in this case.

*Rehearing Denied*

No. 82-5794. ANDERSON *v.* SPALDING, SUPERINTENDENT, WASHINGTON STATE PENITENTIARY, ET AL., 459 U. S. 1175. Petition for rehearing denied.

No. 82-5862. BOGGS *v.* UNITED STATES, 459 U. S. 1118. Motion for leave to file petition for rehearing denied.

MARCH 9, 1983

*Dismissal Under Rule 53*

No. 82-6231. BAUMANN *v.* KEOHANE, WARDEN, ET AL. C. A. 9th Cir. Certiorari dismissed under this Court's Rule 53. Reported below: 692 F. 2d 762.

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*Dismissal Under Rule 53*

No. 82-1065. CONROCK CO. ET AL. *v.* TEXAS PARTNERS ET AL. C. A. 9th Cir. Certiorari dismissed under this Court's Rule 53. Reported below: 685 F. 2d 1116.

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*Appeal Dismissed*

No. 82-1192. DIPIERO *v.* GOODMAN ET AL. Appeal from Ct. App. Mass. dismissed for want of jurisdiction. Treating

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the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 14 Mass. App. 929, 436 N. E. 2d 998.

*Certiorari Granted—Vacated and Remanded*

No. 81-1531. MONTANA v. JACKSON. Sup. Ct. Mont. Certiorari granted, judgment vacated, and case remanded to the Supreme Court of Montana to consider whether its judgment is based upon federal or state constitutional grounds, or both, *California v. Krivda*, 409 U. S. 33 (1972), and, if its judgment is not based upon state constitutional grounds, for further consideration in light of *South Dakota v. Neville*, 459 U. S. 553 (1983). Reported below: 195 Mont. 185, 637 P. 2d 1.

JUSTICE STEVENS, dissenting.

In its opinion explaining its holding that the defendant's refusal to submit to a sobriety test is inadmissible, the majority of the Supreme Court of Montana stated, in part:

"We hold that such refusal is testimonial in nature and that to admit evidence of the fact of refusal would violate the defendant's Fifth Amendment privilege as guaranteed by the United States Constitution, and would further violate defendant's privilege as guaranteed by Art. II, §25 of the Montana Constitution." 195 Mont. 185, 185-186, 637 P. 2d 1.

After analyzing the federal constitutional question in the light of this Court's opinion in *Schmerber v. California*, 384 U. S. 757 (1966), the court continued:

"The issue is also controlled by Art. II, §25 of our own constitution, which provides that 'No person shall be compelled to testify against himself in a criminal proceeding.' The issue involves a communication that is testimonial in nature, and we must resolve the issue by applying Art. II, §25. Clearly, to permit evidence of defendant's refusal to take the breathalyzer test would

violate not only the United States Constitution, but also our own constitution.

"In *State v. Finley* (1977), 173 Mont. 162, 566 P. 2d 1119, we held that a defendant's privilege against self-incrimination was not violated by admitting into evidence a videotape recording of his post-arrest words and actions. We decided that the tape had not been introduced for the incriminating content of the words uttered by the defendant, but rather for the purpose of aiding the jury in understanding the testimony of the witnesses who had observed the defendant's unsteady walk and his slurred speech after his arrest. We specifically noted that the videotape did not contain incriminating responses to interrogation by the police. But the same situation does not exist here. It is obvious that defendant's refusal is inherently self-incriminating because it carries a strong inference of guilt—the prosecutor would surely argue that defendant's refusal to take the test was prompted only by his knowledge that the test results would reveal his intoxication, and therefore incriminate him.

"We hold under our own constitution, that if a communication of refusal, whether written, verbal, or otherwise, involves the defendant's consciousness of the facts and the operation of his mind in expressing it, the communication is testimonial in nature. A defendant's silence or negative reply to an officer's request which calls for an immediate reply is clearly an overt communication of the defendant's thoughts in response to the request. *Doyle v. Ohio* (1976), 426 U. S. 610 . . . . It is the act of refusal that is pertinent and suggestive of guilt, rather than the way in which it is communicated. Under our constitution, the privilege against self-incrimination forbids any compulsory communication of an accused person's thoughts, whether by acts or words spoken, and the fact that it does not extend its protection to forbid

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the compulsory exhibition of physical characteristics does not nullify the protection it does provide." 195 Mont., at 191-192, 637 P. 2d, at 4-5.

Consistent with the views I expressed in dissent in *South Dakota v. Neville*, 459 U. S. 553, 566 (1983), I believe the statements I have quoted are sufficient to demonstrate that the judgment of the Montana Supreme Court rests on an adequate and independent state ground and that this Court is therefore without jurisdiction to vacate its judgment. I therefore respectfully dissent.

#### *Miscellaneous Orders*

No. A-704. *BARONE ET AL. v. UNITED STATES*. C. A. 11th Cir. Application for recall and stay of mandate, addressed to JUSTICE MARSHALL and referred to the Court, denied.

No. A-728. *DAILY LOCAL NEWS CO. v. GAWTHROP, JUDGE OF THE COURT OF COMMON PLEAS IN THE FIFTEENTH JUDICIAL DISTRICT OF PENNSYLVANIA, ET AL.*; and

No. A-729. *PHILADELPHIA NEWSPAPERS, INC. v. GAWTHROP, JUDGE OF THE COURT OF COMMON PLEAS IN THE FIFTEENTH JUDICIAL DISTRICT OF PENNSYLVANIA, ET AL.* Sup. Ct. Pa. The orders heretofore entered by JUSTICE BRENNAN on March 3, 1983, are vacated and the applications for stay are denied.

No. A-771. *WATT, SECRETARY OF THE INTERIOR, ET AL. v. COMMUNITY FOR CREATIVE NON-VIOLENCE ET AL.* C. A. D. C. Cir. The order heretofore entered by THE CHIEF JUSTICE on March 17, 1983, is continued pending the timely filing and disposition of a petition for writ of certiorari.

No. D-278. *IN RE DISBARMENT OF PAGLIANITE*. Disbarment entered. [For earlier order herein, see 458 U. S. 1125.]

No. D-303. *IN RE DISBARMENT OF OTIS*. Disbarment entered. [For earlier order herein, see 459 U. S. 1082.]

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No. D-315. IN RE DISBARMENT OF COBURN. Disbarment entered. [For earlier order herein, see 459 U. S. 1141.]

No. D-320. IN RE DISBARMENT OF RUBENSTEIN. J. Mortimer Rubenstein, of Cliffside Park, N. J., having requested to resign as a member of the Bar of this Court, it is ordered that his name be stricken from the roll of attorneys admitted to practice before the Bar of this Court. The rule to show cause, heretofore issued on February 28, 1983 [*ante*, p. 1009], is hereby discharged.

No. 81-984. FIRST NATIONAL CITY BANK *v.* BANCO PARA EL COMERCIO EXTERIOR DE CUBA. C. A. 2d Cir. [Certiorari granted, 459 U. S. 942.] Motion of the Solicitor General to permit Richard G. Wilkins, Esquire, to present oral argument *pro hac vice* on behalf of the United States as *amicus curiae* granted.

No. 81-1271. FALLS CITY INDUSTRIES, INC. *v.* VANCO BEVERAGE, INC. C. A. 7th Cir. [Certiorari granted, 455 U. S. 988.] Motion of respondent for leave to file second supplemental brief after argument denied.

No. 81-2386. DELCOSTELLO *v.* INTERNATIONAL BROTHERHOOD OF TEAMSTERS ET AL. C. A. 4th Cir. [Certiorari granted, 459 U. S. 1034.] Motion of respondent Anchor Motor Freight, Inc., for special permission to divide oral argument denied.

No. 82-242. BURFORD, ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY *v.* SIERRA CLUB ET AL. C. A. D. C. Cir. [Certiorari granted *sub nom.* *Gorsuch v. Sierra Club*, 459 U. S. 942.] Motion of respondent Environmental Defense Fund for reconsideration of order of February 22, 1983 [459 U. S. 1197], denying leave to file motion for divided argument out of time denied.

No. 82-357 (A-759). MICHIGAN *v.* CLIFFORD ET AL. Ct. App. Mich. [Certiorari granted, 459 U. S. 1168.] Motion of Timothy A. Baughman, Esquire, to permit Janice M. Joyce

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Bartee to present oral argument *pro hac vice* on behalf of petitioner granted. Application of petitioner for leave to file a brief in excess of the page limitations, presented to JUSTICE O'CONNOR, and by her referred to the Court, denied.

No. 82-432. LOCAL NO. 82, FURNITURE & PIANO MOVING, FURNITURE STORE DRIVERS, HELPERS, WAREHOUSEMEN & PACKERS, ET AL. *v.* CROWLEY ET AL. C. A. 1st Cir. [Certiorari granted, 459 U. S. 1168.] Motion of respondents to limit questions presented for review and/or to dismiss the writ as improvidently granted denied.

No. 82-486. UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 610, AFL-CIO, ET AL. *v.* SCOTT ET AL. C. A. 5th Cir. [Certiorari granted, 459 U. S. 1034.] Motion of National Right to Work Legal Defense Foundation for leave to file a brief as *amicus curiae* granted.

No. 82-502. PALLAS SHIPPING AGENCY, LTD. *v.* DURIS. C. A. 6th Cir. [Certiorari granted, 459 U. S. 1014.] Motion of Local 1291 et al. for leave to file a brief as *amici curiae* granted.

No. 82-524. BALTIMORE GAS & ELECTRIC CO. ET AL. *v.* NATURAL RESOURCES DEFENSE COUNCIL, INC.;

No. 82-545. UNITED STATES NUCLEAR REGULATORY COMMISSION ET AL. *v.* NATURAL RESOURCES DEFENSE COUNCIL, INC., ET AL.; and

No. 82-551. COMMONWEALTH EDISON CO. ET AL. *v.* NATURAL RESOURCES DEFENSE COUNCIL, INC., ET AL. C. A. D. C. Cir. [Certiorari granted, 459 U. S. 1034.] Motion of Limerick Ecology Action, Inc., et al. for leave to file a brief as *amici curiae* granted. JUSTICE POWELL took no part in the consideration or decision of this motion.

No. 82-647. KIRKPATRICK *v.* CHRISTIAN HOMES OF ABILENE, INC., ET AL. Ct. App. Tex., 11th Sup. Jud. Dist. [Certiorari granted, 459 U. S. 1145.] Motion of petitioner to

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direct the Clerk to schedule oral argument during April 1983 granted.

No. 82-660. UNITED STATES *v.* CRONIC. C. A. 10th Cir. [Certiorari granted, 459 U. S. 1199.] Motion of respondent to discharge counsel appointed by lower court and for leave to proceed *pro se* denied. Motion for appointment of counsel granted, and it is ordered that David W. Duncan, Esquire, of Durango, Colo., be appointed to serve as counsel for respondent in this case.

No. 82-1041. DICKMAN ET AL. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 11th Cir. [Certiorari granted, 459 U. S. 1199.] Motion of the parties to dispense with printing the joint appendix granted.

No. 82-1066. UNITED STATES *v.* PTASYSKI ET AL. D. C. Wyo. [Probable jurisdiction noted, 459 U. S. 1199.] Motion of the Solicitor General to direct the Clerk to schedule oral argument during April 1983 granted.

No. 82-1135. ESTELLE, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS *v.* WIGGINS. C. A. 5th Cir. [Certiorari granted, 459 U. S. 1199.] Motion of respondent for appointment of counsel granted, and it is ordered that Craig Smyser, Esquire, of Houston, Tex., be appointed to serve as counsel for respondent in this case. In all other respects the motion is denied.

No. 82-1156. TELEDYNE MOVIBLE OFFSHORE, INC., ET AL. *v.* THOMPSON. Appeal from Sup. Ct. La.; and

No. 82-1253. SOLEM, WARDEN, SOUTH DAKOTA STATE PENITENTIARY, ET AL. *v.* BARTLETT. C. A. 8th Cir. The Solicitor General is invited to file briefs in these cases expressing the views of the United States.

No. 82-1260. COPPERWELD CORP. ET AL. *v.* INDEPENDENCE TUBE CORP. C. A. 7th Cir. Motion of petitioners to suggest that the Court invite the Solicitor General to present the views of the United States denied. Motions of American

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Iron & Steel Institute, National Association of Manufacturers, and Chamber of Commerce of the United States for leave to file briefs as *amici curiae* granted. The Solicitor General is invited to file a brief in this case expressing the views of the United States. JUSTICE WHITE took no part in the consideration or decision of these motions and this order.

No. 82-6077. *IN RE WILLIAMS*. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until April 11, 1983, within which to pay the docketing fee required by Rule 45(a) and to submit a petition in compliance with Rule 33 of the Rules of this Court.

No. 82-6134. *IN RE MORROW*. Petition for writ of mandamus denied.

No. 82-6060. *IN RE GREEN*. Petition for writ of prohibition and/or mandamus denied.

*Probable Jurisdiction Noted*

No. 82-1050. *HECKLER, SECRETARY OF HEALTH AND HUMAN SERVICES v. MATHEWS ET AL.* Appeal from D. C. N. D. Ala. Probable jurisdiction noted.

*Certiorari Granted*

No. 82-708. *SUMMA CORP. v. CALIFORNIA EX REL. STATE LANDS COMMISSION ET AL.* Sup. Ct. Cal. Certiorari granted. Reported below: 31 Cal. 3d 288, 644 P. 2d 792.

No. 82-1095. *PULLEY, WARDEN v. HARRIS*. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 692 F. 2d 1189.

*Certiorari Denied.* (See also No. 82-1192, *supra*.)

No. 81-1326. *BARONI ET AL. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 662 F. 2d 287.

No. 81-1881. *CHARLES v. WADE ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 665 F. 2d 661.

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No. 81-6404. *TALLEY v. CROSSON ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 663 F. 2d 713.

No. 82-630. *TISCHENDORF, AKA MONTGOMERY v. TISCHENDORF.* Sup. Ct. Minn. Certiorari denied. Reported below: 321 N. W. 2d 405.

No. 82-803. *BIALECKI v. LITTLE ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 696 F. 2d 980.

No. 82-811. *ELROD, SHERIFF OF COOK COUNTY, ILLINOIS, ET AL. v. MASSARELLA; and*

No. 82-844. *UNITED STATES EX REL. MASSARELLA v. ELROD, SHERIFF OF COOK COUNTY, ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 682 F. 2d 688.

No. 82-893. *STOLLER v. MARSH, SECRETARY OF THE ARMY.* C. A. D. C. Cir. Certiorari denied. Reported below: 221 U. S. App. D. C. 22, 682 F. 2d 971.

No. 82-998. *STUART v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 689 F. 2d 759.

No. 82-1017. *MCCLURE v. UNDERSEA INDUSTRIES, INC., DBA SCUBAPRO, ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 671 F. 2d 1287 and 685 F. 2d 1309.

No. 82-1026. *MARINE MIDLAND BANK v. UNITED STATES.* C. A. Fed. Cir. Certiorari denied. Reported below: 231 Ct. Cl. 496, 687 F. 2d 395.

No. 82-1029. *IVERY v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 686 F. 2d 410.

No. 82-1057. *BROTHERHOOD OF RAILWAY & AIRLINE CLERKS, CONSOLIDATED SYSTEM BOARD OF ADJUSTMENT 46, ET AL. v. BURLINGTON NORTHERN INC. ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 696 F. 2d 1000.

No. 82-1078. *BROWN v. KENTUCKY.* Sup. Ct. Ky. Certiorari denied. Reported below: 639 S. W. 2d 758.

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No. 82-1084. ASSOCIATION OF CO-OPERATIVE MEMBERS, INC., ET AL. *v.* FARMLAND INDUSTRIES, INC. C. A. 5th Cir. Certiorari denied. Reported below: 684 F. 2d 1134.

No. 82-1129. NEW ORLEANS STEAMSHIP ASSN. *v.* WILLIAMS ET AL.; and

No. 82-1134. INTERNATIONAL LONGSHOREMEN'S ASSN. ET AL. *v.* WILLIAMS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 673 F. 2d 742 and 688 F. 2d 412.

No. 82-1163. S.E.A. TOWING Co., INC. *v.* GREAT ATLANTIC INSURANCE Co. C. A. 5th Cir. Certiorari denied. Reported below: 688 F. 2d 1000.

No. 82-1164. DOTSON ET AL. *v.* MOUNTAIN MISSION SCHOOL, INC., ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 692 F. 2d 752.

No. 82-1174. INTERSTATE MARINA DEVELOPMENT Co. *v.* WRIGHT ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 688 F. 2d 846.

No. 82-1181. JAMES *v.* DISTRICT OF COLUMBIA COURT OF APPEALS. Ct. App. D. C. Certiorari denied. Reported below: 452 A. 2d 163.

No. 82-1190. STILLWATER CONDOMINIUM ASSN. *v.* AMERICAN HOME ASSURANCE Co. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 688 F. 2d 848.

No. 82-1193. MARASHI *v.* FORBES FURNITURE Co. ET AL. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 415 So. 2d 1389.

No. 82-1202. STEERE TANK LINES, INC. *v.* INTERSTATE COMMERCE COMMISSION ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 687 F. 2d 104.

No. 82-1204. WER-COY FABRICATION Co., INC. *v.* SHEET METAL WORKERS INTERNATIONAL ASSN., LOCAL UNION No. 292, AFL-CIO. C. A. 6th Cir. Certiorari denied. Reported below: 705 F. 2d 458.

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No. 82-1206. REUSSER, ADMINISTRATOR OF THE ESTATE OF REUSSER *v.* AMERICAN BANKERS INSURANCE CO. C. A. 9th Cir. Certiorari denied. Reported below: 688 F. 2d 845.

No. 82-1211. FRY ET AL. *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 639 S. W. 2d 463.

No. 82-1214. LEHNER *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 685 F. 2d 1187.

No. 82-1224. KATV-CHANNEL 7 *v.* THOMAS. C. A. 8th Cir. Certiorari denied. Reported below: 692 F. 2d 548.

No. 82-1227. FORBES *v.* NEWMAN. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 82-1235. LUNA *v.* TEXAS. Ct. App. Tex., 5th Sup. Jud. Dist. Certiorari denied.

No. 82-1236. MORTON ET AL. *v.* ZIDELL EXPLORATIONS, INC. C. A. 9th Cir. Certiorari denied. Reported below: 695 F. 2d 347.

No. 82-1238. MEYERSON ET AL. *v.* ESPANOLA WAY CORP. C. A. 11th Cir. Certiorari denied. Reported below: 690 F. 2d 827.

No. 82-1245. MOWDER ET AL. *v.* ILLINOIS EX REL. ROBERTS, STATE'S ATTORNEY, SANGAMON COUNTY, ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied.

No. 82-1249. OJEDA *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 89 App. Div. 2d 941, 454 N. Y. S. 2d 488.

No. 82-1250. FLORIDA EX REL. SMITH, TRUSTEE *v.* ORANGE COUNTY, FLORIDA, ET AL. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 421 So. 2d 83.

No. 82-1251. ROME *v.* SUPREME COURT OF KANSAS. C. A. 10th Cir. Certiorari denied.

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No. 82-1252. *BECTON v. DETROIT TERMINAL OF CONSOLIDATED FREIGHTWAYS*. C. A. 6th Cir. Certiorari denied. Reported below: 687 F. 2d 140.

No. 82-1254. *LEWIS v. CENTRAL PIEDMONT COMMUNITY COLLEGE*. C. A. 4th Cir. Certiorari denied. Reported below: 689 F. 2d 1207.

No. 82-1265. *ILLINOIS v. GARCIA*. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 109 Ill. App. 3d 142, 440 N. E. 2d 269.

No. 82-1268. *CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION OF OREGON v. EGGER, COMMISSIONER OF THE INTERNAL REVENUE SERVICE, ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 691 F. 2d 878.

No. 82-1284. *KNIGHT ET AL. v. NATIONAL UNION FIRE INSURANCE OF PITTSBURGH, PENNSYLVANIA, ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 685 F. 2d 1387.

No. 82-1288. *AMERICAN BROADCASTING COS., INC. v. CLARK*. C. A. 6th Cir. Certiorari denied. Reported below: 684 F. 2d 1208.

No. 82-1294. *AZTEC STEEL CO. ET AL. v. FLORIDA STEEL CORP.* C. A. 11th Cir. Certiorari denied. Reported below: 691 F. 2d 480.

No. 82-1298. *MCMANUS v. PENNSYLVANIA*. Super. Ct. Pa. Certiorari denied. Reported below: 299 Pa. Super. 621, 445 A. 2d 244.

No. 82-1314. *FOGARTY v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 692 F. 2d 542.

No. 82-1315. *BUNCH v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 708 F. 2d 729.

No. 82-1316. *DILEO v. UNITED STATES*. C. A. 2d Cir. Certiorari denied.

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- No. 82-1323. *MARRALE v. UNITED STATES*; and  
No. 82-1336. *MARRALE v. UNITED STATES*. C. A. 2d  
Cir. Certiorari denied. Reported below: 695 F. 2d 658.
- No. 82-1329. *FISHERMAN v. UNITED STATES*. C. A. 9th  
Cir. Certiorari denied. Reported below: 690 F. 2d 748.
- No. 82-1332. *AVILES v. UNITED STATES*. C. A. 11th  
Cir. Certiorari denied. Reported below: 692 F. 2d 769.
- No. 82-1333. *MARIN RIDGELAND CO. ET AL. v. UNITED  
STATES*. C. A. 9th Cir. Certiorari denied. Reported  
below: 689 F. 2d 1329.
- No. 82-1337. *PECORA v. MARYLAND*. Ct. Sp. App. Md.  
Certiorari denied. Reported below: 52 Md. App. 779.
- No. 82-1340. *COMPANIA DE GAS DE NUEVO LAREDO,  
S.A. v. ENTEX, INC.* C. A. 5th Cir. Certiorari denied.  
Reported below: 686 F. 2d 322.
- No. 82-1343. *HONIGMAN v. UNITED STATES*. C. A. 9th  
Cir. Certiorari denied. Reported below: 685 F. 2d 448.
- No. 82-1357. *BRATTON v. UNITED STATES*. C. A. 6th  
Cir. Certiorari denied. Reported below: 708 F. 2d 729.
- No. 82-1358. *QUENZER v. QUENZER*. Sup. Ct. Wyo.  
Certiorari denied. Reported below: 653 P. 2d 295.
- No. 82-1359. *CIOTTI v. UNITED STATES*. C. A. 3d Cir.  
Certiorari denied. Reported below: 696 F. 2d 986.
- No. 82-1366. *ADAMS v. DEPARTMENT OF THE ARMY,  
CORPS OF ENGINEERS*. C. A. Fed. Cir. Certiorari denied.  
Reported below: 703 F. 2d 584.
- No. 82-1368. *COOPER v. UNITED STATES*. C. A. 2d Cir.  
Certiorari denied. Reported below: 697 F. 2d 298.
- No. 82-1375. *EHLINGER v. UNITED STATES*. C. A. 11th  
Cir. Certiorari denied. Reported below: 689 F. 2d 191.

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No. 82-1392. *STRAIN v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 688 F. 2d 849.

No. 82-5821. *AMES v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: 685 F. 2d 421.

No. 82-5876. *BOYLES v. ALASKA*. Sup. Ct. Alaska. Certiorari denied.

No. 82-5882. *GOMEZ-GOMEZ v. IMMIGRATION AND NATURALIZATION SERVICE*. C. A. 11th Cir. Certiorari denied. Reported below: 681 F. 2d 1347.

No. 82-5890. *PAYNE v. MISSOURI*. Sup. Ct. Mo. Certiorari denied. Reported below: 639 S. W. 2d 597.

No. 82-5895. *MORRIS v. MISSOURI*. Sup. Ct. Mo. Certiorari denied. Reported below: 639 S. W. 2d 589.

No. 82-5921. *RUIZ ET AL. v. ESTELLE ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 679 F. 2d 1115 and 688 F. 2d 266.

No. 82-5939. *BALLESTEROS v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 691 F. 2d 869.

No. 82-6020. *LAGRANGE v. TEXAS*. Ct. App. Tex., 13th Sup. Jud. Dist. Certiorari denied.

No. 82-6055. *HENDERSON v. RAINES*. C. A. 9th Cir. Certiorari denied.

No. 82-6062. *FORNASH v. MARSHALL*. C. A. 6th Cir. Certiorari denied. Reported below: 686 F. 2d 1179.

No. 82-6064. *POOL v. WYRICK, WARDEN, MISSOURI STATE PENITENTIARY*. C. A. 8th Cir. Certiorari denied.

No. 82-6067. *HAMMER v. MEACHUM, DIRECTOR OF OKLAHOMA DEPARTMENT OF CORRECTIONS, ET AL.* C. A. 10th Cir. Certiorari denied. Reported below: 691 F. 2d 958.

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No. 82-6071. *SULIE v. DUCKWORTH, WARDEN, ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 689 F. 2d 128.

No. 82-6074. *CEGIELSKI v. WISCONSIN.* Ct. App. Wis. Certiorari denied. Reported below: 109 Wis. 2d 698, 327 N. W. 2d 724.

No. 82-6076. *OXLEY v. LOUISIANA.* Sup. Ct. La. Certiorari denied. Reported below: 421 So. 2d 925.

No. 82-6078. *RONSON v. COMMISSIONER OF INTERNAL REVENUE.* C. A. D. C. Cir. Certiorari denied.

No. 82-6084. *THRASHER v. MISSOURI STATE HIGHWAY COMMISSION ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 691 F. 2d 504.

No. 82-6085. *ROBERTS v. KING, SECRETARY, LOUISIANA DEPARTMENT OF CORRECTIONS.* C. A. 5th Cir. Certiorari denied.

No. 82-6086. *MURRAY v. MAGGIO, WARDEN, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 692 F. 2d 755.

No. 82-6092. *BACHERT v. PENNSYLVANIA.* Sup. Ct. Pa. Certiorari denied. Reported below: 499 Pa. 398, 453 A. 2d 931.

No. 82-6095. *EVANS v. MALM FIREPLACES, INC., ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 694 F. 2d 723.

No. 82-6097. *JACKSON v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 688 F. 2d 1121.

No. 82-6098. *ANDERSON v. MINTZES.* C. A. 6th Cir. Certiorari denied. Reported below: 705 F. 2d 451.

No. 82-6101. *SAWYER v. FLORIDA BAR.* Sup. Ct. Fla. Certiorari denied. Reported below: 420 So. 2d 302.

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No. 82-6102. *ADAMS v. MATHIS ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 692 F. 2d 769.

No. 82-6105. *DONALDSON v. MAGGIO, WARDEN.* Sup. Ct. La. Certiorari denied. Reported below: 423 So. 2d 1171.

No. 82-6107. *TROLIA v. ILLINOIS.* App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 107 Ill. App. 3d 487, 437 N. E. 2d 804.

No. 82-6112. *MOORE v. SMITH, SUPERINTENDENT, KENTUCKY STATE REFORMATORY.* C. A. 6th Cir. Certiorari denied. Reported below: 694 F. 2d 115.

No. 82-6119. *CARPENTER v. REES, WARDEN, KENTUCKY STATE REFORMATORY, ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 705 F. 2d 452.

No. 82-6124. *DYKES v. ILLINOIS.* Sup. Ct. Ill. Certiorari denied.

No. 82-6125. *HUANG v. FITZPATRICK ET AL.* C. A. 1st Cir. Certiorari denied. Reported below: 692 F. 2d 745.

No. 82-6129. *LEE ET AL. v. NEW YORK.* Ct. App. N. Y. Certiorari denied. Reported below: 58 N. Y. 2d 771, 445 N. E. 2d 214.

No. 82-6130. *RIZZO v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 698 F. 2d 1234.

No. 82-6131. *PARKER v. LOUISIANA.* Sup. Ct. La. Certiorari denied. Reported below: 421 So. 2d 834.

No. 82-6132. *WULFFENSTEIN v. UTAH.* Sup. Ct. Utah. Certiorari denied. Reported below: 657 P. 2d 289.

No. 82-6133. *WHITLEY v. BEACHMAN ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 705 F. 2d 460.

No. 82-6136. *VASQUEZ v. ESTELLE, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS.* C. A. 5th Cir. Certiorari denied.

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No. 82-6138. *BROOKS v. PRESIDENT OF THE UNITED STATES ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 694 F. 2d 716.

No. 82-6147. *BROWN v. MINNEAPOLIS ELECTRIC STEEL CASTINGS CO. ET AL.* Sup. Ct. Minn. Certiorari denied.

No. 82-6150. *FEJERAN, AKA CRUZ v. PEOPLE OF THE TERRITORY OF GUAM.* C. A. 9th Cir. Certiorari denied. Reported below: 687 F. 2d 302.

No. 82-6151. *HAYES v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 698 F. 2d 1233.

No. 82-6155. *SPITLER v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 696 F. 2d 986.

No. 82-6161. *DONOVAN v. HARRIS, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY.* C. A. 2d Cir. Certiorari denied. Reported below: 714 F. 2d 112.

No. 82-6170. *BARRETT v. SOUTH CAROLINA.* Sup. Ct. S. C. Certiorari denied. Reported below: 278 S. C. 414, 297 S. E. 2d 794.

No. 82-6173. *ANGULO-QUINONES v. UNITED STATES; CUESTAS-FUENTES v. UNITED STATES; and CESAR v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 694 F. 2d 725.

No. 82-6177. *SIMMONS v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 698 F. 2d 1234.

No. 82-6179. *REEVES v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 692 F. 2d 766.

No. 82-6183. *OSTRER v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 714 F. 2d 118.

No. 82-6185. *FAIL v. SEARS, ROEBUCK & Co.* C. A. 5th Cir. Certiorari denied. Reported below: 692 F. 2d 756.

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No. 82-6196. *TABARES ET AL. v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 690 F. 2d 906.

No. 82-6207. *ESTRADA v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 688 F. 2d 849.

No. 82-6212. *GIBSON v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 690 F. 2d 697.

No. 82-6215. *WILSON v. ROSE, WARDEN, ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 708 F. 2d 731.

No. 82-6220. *COLLINS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 690 F. 2d 431.

No. 82-6224. *ANTONELLI v. KUNEV ET AL.* C. A. 8th Cir. Certiorari denied.

No. 82-6235. *ROWE v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 696 F. 2d 993.

No. 82-6243. *WILLIAMS v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 698 F. 2d 1234.

No. 82-6251. *RIDDLE v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 681 F. 2d 717 and 694 F. 2d 233.

No. 82-6252. *SHEELEY v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 696 F. 2d 986.

No. 82-6259. *GOLDEN v. GEORGIA*. Sup. Ct. Ga. Certiorari denied. Reported below: 250 Ga. 428, 297 S. E. 2d 479.

No. 82-6261. *WILLIAMS v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 691 F. 2d 498.

No. 82-6271. *KEVAL v. HECKLER, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 224 U. S. App. D. C. 160, 694 F. 2d 280.

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No. 82-925. DALY *v.* SPRAGUE ET AL. C. A. 5th Cir. Certiorari denied. JUSTICE BLACKMUN took no part in the consideration or decision of this petition. Reported below: 675 F. 2d 716.

No. 82-1221. HARRIS *v.* NEW YORK. Ct. App. N. Y. Certiorari denied. JUSTICE BLACKMUN took no part in the consideration or decision of this petition. Reported below: 57 N. Y. 2d 335, 442 N. E. 2d 1205.

No. 82-930. NEW YORK *v.* NELSON. Ct. App. N. Y. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 57 N. Y. 2d 826, 442 N. E. 2d 54.

No. 82-944. BAGNELL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. JUSTICE BRENNAN and JUSTICE MARSHALL would grant the petition for writ of certiorari and vacate the conviction. Reported below: 679 F. 2d 826.

No. 82-1223. MINNESOTA MINING & MANUFACTURING CO. *v.* BLUME ET AL. C. A. 6th Cir. Certiorari denied. THE CHIEF JUSTICE and JUSTICE BLACKMUN took no part in the consideration or decision of this petition. Reported below: 684 F. 2d 1166.

No. 82-1233. O'BANNON, SECRETARY OF PENNSYLVANIA DEPARTMENT OF PUBLIC WELFARE, ET AL. *v.* COLEMAN ET AL. C. A. 3d Cir. Motion of respondent Coleman for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 692 F. 2d 748.

No. 82-5922. SMITH *v.* MISSISSIPPI. Sup. Ct. Miss.;

No. 82-6019. HARRIS *v.* PULLEY, WARDEN, CALIFORNIA STATE PRISON AT SAN QUENTIN. C. A. 9th Cir.; and

No. 82-6089. MORRIS *v.* TENNESSEE. Sup. Ct. Tenn. Certiorari denied. Reported below: No. 82-5922, 419 So. 2d 563; No. 82-6019, 692 F. 2d 1189; No. 82-6089, 641 S. W. 2d 883.

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JUSTICE BRENNAN and JUSTICE MARSHALL, dissenting.

Adhering to our views that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, *Gregg v. Georgia*, 428 U. S. 153, 227, 231 (1976), we would grant certiorari and vacate the death sentences in these cases.

No. 82-6145. *TATUM v. REGENTS OF THE UNIVERSITY OF NEBRASKA-LINCOLN ET AL.* C. A. 8th Cir. Petitioner is directed to file a response to the motion of respondents for damages within 30 days. Certiorari denied.

*Rehearing Denied*

No. 82-764. *WHITE ET AL. v. COMMISSIONER OF INTERNAL REVENUE*, 459 U. S. 1088;

No. 82-5528. *BUTTRUM v. GEORGIA*, 459 U. S. 1156; and

No. 82-5793. *HORTON v. GEORGIA*, 459 U. S. 1188. Petitions for rehearing denied.

No. 82-5497. *CHODOS v. UNITED STATES ET AL.*, 459 U. S. 1111; and

No. 82-5524. *JONES v. ESTELLE, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS*, 459 U. S. 1174. Motions for leave to file petitions for rehearing denied.

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*Affirmed on Appeal*

No. 82-901. *KNIGHT ET AL. v. MINNESOTA COMMUNITY COLLEGE FACULTY ASSN. ET AL.* Affirmed on appeal from D. C. Minn. Reported below: 571 F. Supp. 1.

*Appeal Dismissed*

No. 82-1269. *FINK v. BOARD OF EDUCATION OF WARREN COUNTY SCHOOLS.* Appeal from Pa. Commw. Ct. dismissed for want of substantial federal question. Reported below: 65 Pa. Commw. 320, 442 A. 2d 837.

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*Certiorari Granted—Reversed and Remanded.* (See No. 82-713, *ante*, p. 533.)

*Miscellaneous Orders*

No. A-751 (82-6368). *ROSE v. FLORIDA*. Sup. Ct. Fla. Application for stay, addressed to JUSTICE BLACKMUN and referred to the Court, denied.

No. D-309. *IN RE DISBARMENT OF MCCLELLAN*. Disbarment entered. [For earlier order herein, see 459 U. S. 1140.]

No. D-316. *IN RE DISBARMENT OF HARRIS*. Disbarment entered. [For earlier order herein, see 459 U. S. 1167.]

No. D-330. *IN RE DISBARMENT OF BLUESTEIN*. It is ordered that William Jacob Bluestein, of Los Angeles, Cal., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. 82-185. *BOSTON FIREFIGHTERS UNION, LOCAL 718 v. BOSTON CHAPTER, NAACP, ET AL.*;

No. 82-246. *BOSTON POLICE PATROLMEN'S ASSN., INC. v. CASTRO ET AL.*; and

No. 82-259. *BEECHER ET AL. v. BOSTON CHAPTER, NAACP, ET AL.* C. A. 1st Cir. [Certiorari granted, 459 U. S. 967.] Motion of American Jewish Congress for leave to file a brief as *amicus curiae* denied. JUSTICE MARSHALL took no part in the consideration or decision of this motion.

No. 82-486. *UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 610, AFL-CIO, ET AL. v. SCOTT ET AL.* C. A. 5th Cir. [Certiorari granted, 459 U. S. 1034.] Motions of Associated Builders & Contractors, Inc., and Legal Foundation of America for leave to file briefs as *amici curiae* granted.

No. 82-695. *FRANCHISE TAX BOARD OF CALIFORNIA v. CONSTRUCTION LABORERS VACATION TRUST FOR SOUTH-*

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ERN CALIFORNIA ET AL. C. A. 9th Cir. [Probable jurisdiction postponed, 459 U. S. 1085.] Motion of American Federation of Labor and Congress of Industrial Organizations for leave to file a brief as *amicus curiae* granted.

No. 82-713. THURSTON MOTOR LINES, INC. *v.* JORDAN K. RAND, LTD., *ante*, p. 533. Motion to substitute Blackburn Truck Lines, Inc., as party petitioner in place of Thurston Motor Lines, Inc., denied without prejudice to consideration of the motion by the United States Court of Appeals for the Ninth Circuit on remand.

No. 82-940. HISHON *v.* KING & SPALDING. C. A. 11th Cir. [Certiorari granted, 459 U. S. 1169.] Motion of the parties to unseal the record granted.

No. 82-973. IMMIGRATION AND NATURALIZATION SERVICE *v.* STEVIC. C. A. 2d Cir. [Certiorari granted, *ante*, p. 1010.] Motion of the Solicitor General to dispense with printing the joint appendix granted.

No. 82-6164. IN RE JOHNSON. Petition for writ of mandamus denied.

*Probable Jurisdiction Noted*

No. 82-898. MINNESOTA STATE BOARD FOR COMMUNITY COLLEGES *v.* KNIGHT ET AL.; and

No. 82-977. MINNESOTA COMMUNITY COLLEGE FACULTY ASSN. ET AL. *v.* KNIGHT ET AL. Appeals from D. C. Minn. Probable jurisdiction noted, cases consolidated, and a total of one hour allotted for oral argument. Reported below: 571 F. Supp. 1.

*Certiorari Granted*

No. 82-960. NATIONAL LABOR RELATIONS BOARD *v.* CITY DISPOSAL SYSTEMS, INC. C. A. 6th Cir. Certiorari granted. Reported below: 683 F. 2d 1005.

No. 82-1071. ALUMINUM COMPANY OF AMERICA ET AL. *v.* CENTRAL LINCOLN PEOPLES' UTILITY DISTRICT ET AL.

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C. A. 9th Cir. Certiorari granted. Reported below: 686 F. 2d 708.

*Certiorari Denied*

No. 81-2402. PERFORMANCE PRODUCTS, INC. *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 675 F. 2d 994.

No. 82-739. JUREN ET AL. *v.* UNITED STATES. Temp. Emerg. Ct. App. Certiorari denied. Reported below: 687 F. 2d 493.

No. 82-873. RICE ET AL. *v.* SOUTHERN CALIFORNIA EDISON Co. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 685 F. 2d 354.

No. 82-900. MIDDLETON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 690 F. 2d 820.

No. 82-1008. COUNTY OF VENTURA *v.* TILLET. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 133 Cal. App. 3d 105, 183 Cal. Rptr. 741.

No. 82-1109. KEARNEY & TRECKER CORP. *v.* UNITED STATES. Ct. Cl. Certiorari denied. Reported below: 231 Ct. Cl. 571, 688 F. 2d 780.

No. 82-1137. AMERICAN RADIO ASSN. ET AL. *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 690 F. 2d 334.

No. 82-1171. EVERETT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 692 F. 2d 596.

No. 82-1244. CITYTRUST ET AL. *v.* JOY; and

No. 82-1309. BALDWIN ET AL. *v.* JOY. C. A. 2d Cir. Certiorari denied. Reported below: 692 F. 2d 880.

No. 82-1274. TIMBERLAND MACHINES & ENGINEERING CORP. ET AL. *v.* MAINLAND INDUSTRIES, INC. Ct. App. Ore. Certiorari denied. Reported below: 58 Ore. App. 585, 649 P. 2d 613.

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No. 82-1277. CARSONITE INTERNATIONAL CORP. ET AL. *v.* CARSON MANUFACTURING CO., INC. C. A. 9th Cir. Certiorari denied. Reported below: 686 F. 2d 665 and 688 F. 2d 647.

No. 82-1297. TEXSTAR CORP., TRANSFEREE OF THE ASSETS OF UNITEX INDUSTRIES, INC., ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 688 F. 2d 362.

No. 82-1299. BRYDLE ET UX. *v.* KALASUNAS ET UX. C. A. 6th Cir. Certiorari denied. Reported below: 708 F. 2d 722.

No. 82-1306. COLUMBIA GAS OF WEST VIRGINIA, INC. *v.* PUBLIC SERVICE COMMISSION OF WEST VIRGINIA. Sup. Ct. App. W. Va. Certiorari denied.

No. 82-1308. WILMINGTON MEDICAL CENTER, INC., ET AL. *v.* NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 689 F. 2d 1161 and 693 F. 2d 22.

No. 82-1317. J. KAUFMAN IRON WORKS, INC., ET AL. *v.* SHACKELTON ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 689 F. 2d 334.

No. 82-1318. DEMASI ET AL. *v.* RHODE ISLAND. Sup. Ct. R. I. Certiorari denied. Reported below: — R. I. —, 448 A. 2d 1210; and — R. I. —, 452 A. 2d 1150.

No. 82-1322. UNITED STATES ET AL. *v.* WILLAMETTE INDUSTRIES, INC. C. A. 9th Cir. Certiorari denied. Reported below: 689 F. 2d 865.

No. 82-1328. PFOTZER ET AL. *v.* UNITED STATES. Ct. Cl. Certiorari denied.

No. 82-1351. M. R. YUDOFSKY & ASSOCIATES ET AL. *v.* KENTUCKY DEPARTMENT OF FINANCE. Ct. App. Ky. Certiorari denied.

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No. 82-1370. *KARAPINKA v. UNITED STATES ET AL.* C. A. 3d Cir. Certiorari denied.

No. 82-1400. *YOKUM v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 694 F. 2d 719.

No. 82-5791. *JOHNSTON v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 685 F. 2d 934.

No. 82-5799. *LEWIS v. ILLINOIS.* Sup. Ct. Ill. Certiorari denied. Reported below: 88 Ill. 2d 429, 430 N. E. 2d 994.

No. 82-5992. *KILBANE ET AL. v. MARSHALL ET AL.;*

No. 82-6109. *STEELE v. TAYLOR, SUPERINTENDENT, COLUMBUS CORRECTIONAL FACILITY;* and

No. 82-6169. *KILBANE v. MARSHALL.* C. A. 6th Cir. Certiorari denied. Reported below: 684 F. 2d 1193 and 697 F. 2d 128.

No. 82-6040. *CHIRA v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 692 F. 2d 596.

No. 82-6059. *ALLEN v. BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES GRAND LODGE ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 692 F. 2d 747.

No. 82-6113. *PELLOT v. PENNSYLVANIA.* Super. Ct. Pa. Certiorari denied. Reported below: 302 Pa. Super. 570, 448 A. 2d 1160.

No. 82-6121. *BRASWELL ET AL. v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 692 F. 2d 751.

No. 82-6122. *COCHRAN v. ILLINOIS ET AL.* Sup. Ct. Ill. Certiorari denied.

No. 82-6127. *DORSEY v. ILLINOIS.* App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 109 Ill. App. 3d 218, 440 N. E. 2d 394.

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No. 82-6137. *MA v. FIRST NATIONAL CORPORATION OF APPLETON ET AL.* C. A. 7th Cir. Certiorari denied.

No. 82-6142. *LE BRUN v. CUPP, SUPERINTENDENT, OREGON STATE PENITENTIARY.* C. A. 9th Cir. Certiorari denied. Reported below: 698 F. 2d 1230.

No. 82-6144. *UDELL v. UNIVERSITY OF LOWELL ET AL.* C. A. 1st Cir. Certiorari denied. Reported below: 698 F. 2d 1213.

No. 82-6148. *JOHL ET AL. v. MOUKAWSHER ET AL.* C. A. 2d Cir. Certiorari denied.

No. 82-6152. *BARTO v. PENNSYLVANIA.* Sup. Ct. Pa. Certiorari denied.

No. 82-6157. *ROBERTS v. LOCAL ONE, AMALGAMATED LITHOGRAPHERS OF AMERICA.* C. A. 2d Cir. Certiorari denied.

No. 82-6158. *PRUITT v. ROGERS.* C. A. 8th Cir. Certiorari denied. Reported below: 696 F. 2d 1001.

No. 82-6159. *DESROCHES v. RHODE ISLAND.* Sup. Ct. R. I. Certiorari denied.

No. 82-6166. *MARSHALL v. PENNSYLVANIA.* Sup. Ct. Pa. Certiorari denied. Reported below: 499 Pa. 208, 452 A. 2d 1012.

No. 82-6167. *UNITED STATES EX REL. SPEIGHT v. HARRIS ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 697 F. 2d 297.

No. 82-6174. *WEXLER v. LEES.* C. A. 3d Cir. Certiorari denied. Reported below: 701 F. 2d 161.

No. 82-6175. *WHITEHAWK v. SOLEM, WARDEN, SOUTH DAKOTA STATE PENITENTIARY.* C. A. 8th Cir. Certiorari denied. Reported below: 693 F. 2d 825.

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No. 82-6178. JACKSON *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 82-6195. SULLIVAN *v.* FOGG, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 714 F. 2d 117.

No. 82-6197. BRAYBOY *v.* SCULLY, WARDEN, GREEN HAVEN CORRECTIONAL FACILITY, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 695 F. 2d 62.

No. 82-6219. BONTEMPO *v.* FENTON, WARDEN, RAHWAY STATE PENITENTIARY, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 692 F. 2d 954.

No. 82-6221. EVANS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 694 F. 2d 726.

No. 82-6245. ADAMS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 708 F. 2d 721.

No. 82-6276. WILLIAMS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 698 F. 2d 1214.

No. 82-6278. PROCTOR *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 82-6286. MCKINNEY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 703 F. 2d 578.

No. 82-6290. WHITING *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 696 F. 2d 1006.

No. 82-6293. BADILLO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 714 F. 2d 117.

No. 82-6294. WEAVER *v.* CARRIGLITTO ET AL. C. A. 3d Cir. Certiorari denied.

No. 82-6323. BOGER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

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No. 82-1131. WHEAT *v.* MISSISSIPPI. Sup. Ct. Miss.;  
No. 82-6108. NELSON *v.* ZANT, WARDEN, GEORGIA DI-  
AGNOSTIC AND CLASSIFICATION CENTER. Sup. Ct. Ga.;  
No. 82-6115. HILL *v.* GEORGIA. Sup. Ct. Ga.; and  
No. 82-6154. MARTIN *v.* FLORIDA. Sup. Ct. Fla. Cer-  
tiorari denied. Reported below: No. 82-1131, 420 So. 2d  
229; No. 82-6108, 250 Ga. 152, 296 S. E. 2d 590; No. 82-6115,  
250 Ga. 277, 295 S. E. 2d 518; No. 82-6154, 420 So. 2d 583.

JUSTICE BRENNAN and JUSTICE MARSHALL, dissenting.

Adhering to our views that the death penalty is in all cir-  
cumstances cruel and unusual punishment prohibited by the  
Eighth and Fourteenth Amendments, *Gregg v. Georgia*, 428  
U. S. 153, 227, 231 (1976), we would grant certiorari and va-  
cate the death sentences in these cases.

No. 82-1283. ESTELLE, DIRECTOR, TEXAS DEPARTMENT  
OF CORRECTIONS *v.* CARTER. C. A. 5th Cir. Motion of re-  
spondent for leave to proceed *in forma pauperis* granted.  
Certiorari denied. Reported below: 677 F. 2d 427 and 691 F.  
2d 777.

#### *Rehearing Denied*

No. 82-875. IRISH PEOPLE, INC. *v.* SMITH, ATTORNEY  
GENERAL OF THE UNITED STATES, 459 U. S. 1172;

No. 82-5836. BALLENTINE *v.* HARRIS, SUPERINTEND-  
ENT, GREEN HAVEN CORRECTIONAL FACILITY, 459 U. S.  
1213;

No. 82-5925. MCCOLPIN *v.* UNITED STATES, 459 U. S.  
1216;

No. 82-5932. WATNICK *v.* ELGIN STATE HOSPITAL, 459  
U. S. 1216;

No. 82-6010. LOTT *v.* SCHWEIKER, SECRETARY OF  
HEALTH AND HUMAN SERVICES, 459 U. S. 1220;

No. 82-6042. WADE *v.* UNITED STATES, 459 U. S. 1221;  
and

No. 82-6063. SCHLOMANN *v.* RALSTON, WARDEN, 459  
U. S. 1221. Petitions for rehearing denied.

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*Appeals Dismissed*

No. 82-927. BELLOTTI, ATTORNEY GENERAL OF MASSACHUSETTS *v.* CONNOLLY, SECRETARY OF THE COMMONWEALTH OF MASSACHUSETTS, ET AL.; and

No. 82-936. LANGONE ET AL. *v.* CONNOLLY, SECRETARY OF THE COMMONWEALTH OF MASSACHUSETTS, ET AL. Appeals from Sup. Jud. Ct. Mass. dismissed for want of jurisdiction. Treating the papers whereon the appeals were taken as petitions for writs of certiorari, certiorari denied. Reported below: 388 Mass. 185, 446 N. E. 2d 43.

JUSTICE STEVENS, with whom JUSTICE REHNQUIST and JUSTICE O'CONNOR join, dissenting.

These appeals present substantial, unresolved questions regarding the accommodation of competing First Amendment values: the interests of would-be candidates and voters in eligibility for the ballot, and the interests of party members in political association without undue governmental intrusion. Massachusetts law requires that a person seeking to be placed on the party primary ballot for a statewide office must be an enrolled member of that party and must file certain documents, including nominating papers signed by a specified number of voters. Mass. Gen. Laws Ann., ch. 53, §§ 9, 44, 45, and 48 (West Supp. 1982-1983). The statute itself contains no other express requirements for access to the ballot, but the Massachusetts Supreme Judicial Court has held that these rules are "supplemented by" a rule—the "15% rule"—adopted by the Massachusetts Democratic Party. This rule permits an individual to run in the party primary only if he or she has received 15% of the votes on any ballot at the state party's convention to endorse candidates, which is held before the primary. According to the Massachusetts court, the 15% rule is designed to assure that primary candidates have a "modicum of support from members with substantial affiliation with the party." *Langone v. Secretary*

of *Commonwealth*, 388 Mass. 185, 194, 446 N. E. 2d 43, 47 (1983).

Frederick C. Langone, who wished to be a candidate in the Democratic primary for Lieutenant Governor in 1982, satisfied all of the requirements for ballot eligibility that were expressly set forth in the statute, including the submission of 10,000 certified signatures. Nevertheless, the Secretary of the Commonwealth of Massachusetts excluded him from the primary ballot because he had not obtained at least 15% of the votes cast at the party convention, as the 15% rule required. He filed suit in state court seeking an injunction requiring the Secretary to place his name on the primary ballot. The Attorney General of Massachusetts intervened as a plaintiff and filed a complaint seeking declaratory and injunctive relief. Two questions of law were reserved and reported to the full Supreme Judicial Court of Massachusetts, which rendered its decision in favor of the Secretary's implementation of the statute.

The Massachusetts Supreme Judicial Court construed Chapter 53 to recognize the Democratic Party's 15% rule because it believed that such a construction was required by the United States Constitution in order to avoid an impermissible infringement of the associational rights of party members. It noted that nomination papers may be signed by voters who are not members of the party, and that persons may vote in a party primary even if they have not enrolled in the party until immediately before they vote. Therefore, the court reasoned, additional restrictions serve the political party's "legitimate—indeed, compelling—interest in ensuring that its selection process accurately reflects the collective voice of those who, in *some meaningful sense*, are affiliated with it." *Id.*, at 193, 446 N. E. 2d, at 47. If Chapter 53 were construed to nullify the 15% rule, the Massachusetts court believed that it would "as effectively eliminat[e] that party's control of who its candidates in general elections will be as did the Wisconsin statute held unconstitutional in *Democratic*

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STEVENS, J., dissenting

*Party of U. S. v. Wisconsin* [450 U. S. 107 (1981)].” *Id.*, at 194, 446 N. E. 2d, at 47. That burden would necessitate “strict scrutiny, which it does not survive.” *Id.*, at 191, 446 N. E. 2d, at 46. In essence, the Massachusetts court held that the United States Constitution prevents a State from enforcing a statute that gives a place on the primary ballot to any party member who satisfies the State’s own eligibility requirements.<sup>1</sup>

The Massachusetts court rejected appellants’ contentions that the statute, as construed to recognize the 15% rule, would defeat the legislative purpose in providing for primary elections and would violate the constitutional rights of candidates and voters. It recognized that the First and Fourteenth Amendments of the United States Constitution guarantee the rights of free speech and association of candidates and voters. It further acknowledged that, because the 15% rule was enforced through the State’s supervision of the primary election process, the 15% rule should be treated “as though it were expressly contained in G. L. c. 53.” *Id.*, at 195, 446 N. E. 2d, at 48. But it concluded that the burden on candidacy and voting rights imposed by enforcement of the 15% rule was insufficient to warrant strict scrutiny. Although the rule restricts access to the primary ballot, it allows each person the same opportunity to gather the neces-

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<sup>1</sup>The Massachusetts Supreme Judicial Court made this position explicit in a recent advisory opinion to the Governor. A bill pending before the Governor would have provided: “Notwithstanding the charter, rule or by-law of a political party, any candidate, who is enrolled in such political party, submitting nomination papers subject to the provisions of this chapter shall be a candidate for nomination at the state primary.” The proposed language would have nullified the 15% rule. According to the court’s opinion, the proviso would violate the First and Fourteenth Amendments of the United States Constitution because it would “abridge the constitutional rights of the Democratic party and its members to associate by allowing candidates to be placed on the Democratic State primary ballot in contravention of the party’s charter.” *Opinion of the Justices*, 385 Mass. 1201, 1207–1208, 434 N. E. 2d 960, 964 (1982).

sary signatures and convention support. In addition, a candidate for statewide office may appear on the general election ballot as an independent. To the extent that voters wish to associate and express their ideas as Democrats, the Massachusetts court reasoned, they could be represented by the several candidates who obtained the requisite convention support. Further, the state court found that the rule was rationally related to the furtherance of legitimate state interests—maintaining the integrity and stability of existing political parties, and assuring that party nominees are “truly representative of the party.” *Id.*, at 198, 446 N. E. 2d, at 50.

The appeal in No. 82-927 has been filed by the Attorney General of Massachusetts, seeking to vindicate the State’s interest in regulating the primary election ballot; his jurisdictional statement also asserts that the decision below improperly elevates the associational rights of party regulars over those of other party members. The appeal in No. 82-936 has been filed by would-be candidate Langone and several of his supporters, contending, *inter alia*, that enforcement of the 15% rule infringed their fundamental constitutional rights.

The case is properly before this Court on appeal. The Massachusetts Supreme Judicial Court, the highest court in the Commonwealth, expressly construed Chapter 53 “not to exclude, but rather, to accommodate the 15% rule.”<sup>2</sup> *Id.*, at

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<sup>2</sup> The second question reported by the single Justice to the Supreme Judicial Court asked:

“Whether the decision by the Secretary of the Commonwealth that he will not place upon the Democratic state primary ballots those candidates who failed to obtain at least fifteen percent of the vote on any ballot of the Democratic Convention pursuant to Article Six, Section III of the ‘Charter of the Democratic Party of the Commonwealth’, but otherwise complied with the statutory requirements to have their names placed upon the ballots violated the constitutional or statutory rights of the voters, the candidate, or their supporters?”

On July 6, 1982, the court issued an order answering this question in the negative. It stated: “Upon consideration of the argument and briefs of the

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200, 446 N. E. 2d, at 51. It explained that the statute was to be "augmented" or "supplemented" by the 15% rule and acknowledged that the enforcement of the rule is "State action." "For the purpose of evaluating the plaintiffs' claims that the 15% rule violates rights guaranteed to them by the Federal and State Constitutions," the court wrote, "we treat the rule as though it were expressly contained in G. L. c. 53." *Id.*, at 195, 446 N. E. 2d, at 48. Its opinion then rejected appellants' constitutional challenges to the statute so construed. We therefore have appellate jurisdiction under 28 U. S. C. § 1257(2). See *Perry Education Assn. v. Perry Local Educators' Assn.*, ante, at 43, n. 5; *Abood v. Detroit Board of Education*, 431 U. S. 209, 214-215, and n. 7 (1977) (appellate review of a state-court decision upholding the validity of a state statute authorizing the negotiation of agency shop agreements).

Unquestionably the issues presented by these appeals are substantial. Appellant Bellotti, the Attorney General, asserts the interests of the Commonwealth of Massachusetts in regulating the primary election process. As his jurisdictional statement contends:

"This case deserves plenary consideration because this issue is of substantial importance to every state which has adopted the primary system as the means by which political parties choose their nominees. The challenged decision can permit the virtual nullification of the primary process; if the parties have the absolute right to set minimum ballot access qualifications, then a state may not be able to retain control of the political process to ensure an open and fair selection of primary candidates." Juris. Statement in No. 82-927, pp. 14-15 (footnote omitted).

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parties, we interpret the State statutes in light of the State and Federal constitutions and rule that the Secretary must give effect to the relevant charter provision."

In addition, appellant Langone and his supporters seek to vindicate their First Amendment associational and voting rights. We have recognized that these rights extend to candidates and voters in primary elections as well as general elections. See *Bullock v. Carter*, 405 U. S. 134 (1972); *Kusper v. Pontikes*, 414 U. S. 51 (1973). In this case, Langone satisfied the Commonwealth's express statutory requirements for the primary election ballot. Yet he was excluded by the application of an additional prerequisite imposed by the Democratic Party; his supporters were thereby prevented from associating in support of his candidacy and his ideas in the primary campaign. Of course, our cases also establish that the interests of a would-be candidate and his supporters in ballot access are limited by legitimate state interests. But none of our previous cases has decided whether the interests recognized by the Massachusetts Supreme Judicial Court in this case are sufficient to justify enforcement of the 15% rule to exclude candidates from the ballot.

*Democratic Party of United States v. Wisconsin ex rel. La Follette*, 450 U. S. 107 (1981), does not control this case. There this Court rejected Wisconsin's requirement that delegates to the party's Presidential nominating convention, selected in a primary open to nonparty voters, must cast their convention votes in accordance with the primary election results. In our view, the interests advanced by the State—preserving the overall integrity of the electoral process, providing secrecy of the ballot, increasing voter participation in primaries, and preventing harassment of voters—did not justify its substantial intrusion into the associational freedom of members of the National Party. But Wisconsin's requirement constituted a more significant intrusion on the associational rights of party members than the interpretation of the Massachusetts statute rejected by the Supreme Judicial Court under the perceived compulsion of our *Democratic Party* decision. Wisconsin required convention delegates to cast their votes for candidates who might have drawn their

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support from nonparty members. The results of the party's decisionmaking process might thereby have been distorted. Here, if Chapter 53 nullified the 15% rule, Massachusetts would require only that enrolled party members be given a *chance* to vote for candidates whose nominating papers were signed by some nonparty members and who have drawn less than 15% of the votes at the party convention. If these candidates have only minimal support from the enrolled party members who vote in the primary, they will simply be ignored. Further, Wisconsin's asserted interests were less weighty than those set forth by the Massachusetts Attorney General. Surely the Commonwealth has a significant interest in protecting the First Amendment associational and voting rights of its citizens. Finally, unlike Wisconsin's attempt to control delegates in a nationwide party contest, the Massachusetts rule applies to campaigns for statewide office.<sup>3</sup>

I would note probable jurisdiction in No. 82-936, the appeal by candidate Langone and his supporters, and would hold the appeal in No. 82-927 for resolution in light of our disposition of No. 82-936.<sup>4</sup> After plenary consideration we might decide that the Commonwealth may constitutionally enforce the 15% rule, or we might not; but plainly we should

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<sup>3</sup> Similarly, our decision in *Cousins v. Wigoda*, 419 U. S. 477 (1975), invalidated a state court's determination that, despite a contrary determination by the Credentials Committee, a certain slate of delegates should be seated at the Democratic National Convention in 1972.

<sup>4</sup> Appellants in No. 82-936 assert their own constitutional rights as a candidate and voters. If appellant in No. 82-927, the Attorney General of Massachusetts, is in fact challenging the constitutionality of the statute as construed, he appears to be championing the First and Fourteenth Amendment rights of third parties—candidates and voters—who are capable of presenting their own claims in litigation. His jurisdictional statement may also be read, however, as asserting that the Supreme Judicial Court incorrectly interpreted the constitutional right of freedom of association and as a result unnecessarily required the Commonwealth to enforce the 15% rule. It is not clear that this claim, standing by itself, would be within this Court's appellate jurisdiction, although I believe that it would be sufficiently important to warrant review on certiorari.

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not dismiss these appeals for want of a substantial federal question.

No. 82-1093. ABLE, DBA CRIMINAL DEFENSE CLINIC ET AL. *v.* TEXAS ET AL. Appeal from Ct. App. Tex., 1st Sup. Jud. Dist., dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 82-6238. JONES ET AL. *v.* MITCHELL ET AL. Appeal from C. A. 5th Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 688 F. 2d 837.

No. 82-6239. JONES ET AL. *v.* JEFFERSON PARISH SCHOOL BOARD. Appeal from C. A. 5th Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 688 F. 2d 837.

No. 82-1153. MOTOR CLUB OF AMERICA INSURANCE CO. *v.* NEW JERSEY ET AL. Appeal from Sup. Ct. N. J. dismissed for want of substantial federal question. Reported below: 91 N. J. 542, 453 A. 2d 861.

No. 82-1281. SHELLY & SANDS, INC., ET AL. *v.* PENNSYLVANIA DEPARTMENT OF TRANSPORTATION. Appeal from Sup. Ct. Pa. dismissed for want of substantial federal question. Reported below: 499 Pa. 75, 451 A. 2d 678.

No. 82-6203. WAKEMAN ET AL. *v.* SOUTH DAKOTA. Appeal from Sup. Ct. S. D. dismissed for want of substantial federal question. Reported below: 326 N. W. 2d 220.

*Certiorari Granted—Vacated and Remanded*

No. 81-1278. WILLIAMS *v.* UNITED STATES. C. A. 6th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Florida v. Royer*, ante, p. 491. Reported below: 667 F. 2d 1029.

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No. 82-397. STATE BAR OF TEXAS *v.* HOWELL. C. A. 5th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *District of Columbia Court of Appeals v. Feldman*, ante, p. 462. Reported below: 674 F. 2d 1027.

No. 82-1360. CROSS ET AL. *v.* BAXTER ET AL. C. A. 11th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of § 2 of the Voting Rights Act of 1965, 42 U. S. C. § 1973, as amended in 1982. Reported below: 639 F. 2d 1383 and 688 F. 2d 279.

#### *Miscellaneous Orders*

No. — — —. BOUMA ET UX. *v.* LARRY C. IVERSON, INC. Motion to direct the Clerk to file the petition for writ of certiorari granted.

No. A-725. CAVANAUGH *v.* UNITED STATES. C. A. 10th Cir. Application for stay, addressed to JUSTICE O'CONNOR and referred to the Court, denied.

No. A-758 (82-540). MISSISSIPPI *v.* SMITH, ATTORNEY GENERAL. D. C. D. C. Application for stay of proceedings, addressed to JUSTICE REHNQUIST and referred to the Court, denied.

No. D-311. IN RE DISBARMENT OF MASON. Disbarment entered. [For earlier order herein, see 459 U. S. 1141.]

No. D-312. IN RE DISBARMENT OF ERGAZOS. Disbarment entered. [For earlier order herein, see 459 U. S. 1141.]

No. D-331. IN RE DISBARMENT OF BISHOP. It is ordered that Brian Alan Bishop, of Nevada City, Cal., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

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No. 80-1158. FLORIDA *v.* RODRIQUEZ, 451 U. S. 1022. Respondent is requested to file a response to the petition for rehearing within 30 days.

No. 81-1889. PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK *v.* MID-LOUISIANA GAS CO. ET AL.;

No. 81-1958. ARIZONA ELECTRIC POWER COOPERATIVE, INC. *v.* MID-LOUISIANA GAS CO. ET AL.;

No. 81-2042. MICHIGAN *v.* MID-LOUISIANA GAS CO. ET AL.; and

No. 82-19. FEDERAL ENERGY REGULATORY COMMISSION *v.* MID-LOUISIANA GAS CO. ET AL. C. A. 5th Cir. [Certiorari granted, 459 U. S. 820.] Motion of Public Service Commission of New York for leave to file a supplemental brief after argument granted.

No. 81-2110. UNITED BUILDING & CONSTRUCTION TRADES COUNCIL OF CAMDEN COUNTY AND VICINITY *v.* MAYOR AND COUNCIL OF THE CITY OF CAMDEN ET AL. Sup. Ct. N. J. [Probable jurisdiction noted, *ante*, p. 1021.] Motion of appellant to dispense with printing the joint appendix granted.

No. 81-2147. ARIZONA ET AL. *v.* SAN CARLOS APACHE TRIBE OF ARIZONA ET AL.; ARIZONA ET AL. *v.* NAVAJO TRIBE OF INDIANS ET AL.; and

No. 81-2188. MONTANA ET AL. *v.* NORTHERN CHEYENNE TRIBE OF THE NORTHERN CHEYENNE INDIAN RESERVATION ET AL. C. A. 9th Cir. [Certiorari granted, 459 U. S. 821.] Motion of the Solicitor General for leave to file a supplemental brief after argument granted. Motion of petitioners in No. 81-2147 for leave to file a response to the supplemental brief after argument granted.

No. 82-486. UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 610, AFL-CIO, ET AL. *v.* SCOTT ET AL. C. A. 5th Cir. [Certiorari granted, 459 U. S. 1034.] Motion of American Civil Liberties Union for leave to file a brief as *amicus curiae* granted.

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No. 82-647. KIRKPATRICK *v.* CHRISTIAN HOMES OF ABILENE, INC., ET AL. Ct. App. Tex., 11th Sup. Jud. Dist. [Certiorari granted, 459 U. S. 1145.] Motion of Texas for divided argument denied.

No. 82-1066. UNITED STATES *v.* PTASYSKI ET AL. D. C. Wyo. [Probable jurisdiction noted, 459 U. S. 1199.] Motion of Texas for divided argument and for additional time for oral argument denied.

No. 82-1325. I.A.M. NATIONAL PENSION FUND *v.* ELSER ET AL. C. A. 9th Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 82-6080 (A-773). BAREFOOT *v.* ESTELLE, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS. C. A. 5th Cir. [Certiorari granted, 459 U. S. 1169.] Motion of petitioner for divided argument to permit NAACP Legal Defense & Educational Fund, Inc., to present oral argument as *amicus curiae* granted. Application of counsel for petitioner to stay further proceedings in the United States Court of Appeals for the Fifth Circuit, case No. 82-1680, pending the sending down of the judgment of this Court, presented to JUSTICE WHITE, and by him referred to the Court, granted. Request for stay of further proceedings in the United States District Court for the Western District of Texas denied.

No. 82-6208. GREEN *v.* WHITE, SUPERINTENDENT, MISSOURI TRAINING CENTER FOR MEN. C. A. 8th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until April 25, 1983, within which to pay the docketing fee required by Rule 45(a) and to submit a petition in compliance with Rule 33 of the Rules of this Court.

No. 82-6342. IN RE MAXWELL; and

No. 82-6353. IN RE GRAY. Petitions for writs of habeas corpus denied.

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No. 82-6264. *IN RE PREWITT*. Petition for writ of mandamus denied.

No. 82-1313. *IN RE DOAN*. Petition for writ of mandamus and/or prohibition denied.

*Certiorari Granted*. (See also No. 81-1574, *ante*, at 675.)

No. 82-1273. *MAINE v. THORNTON*. Sup. Jud. Ct. Me. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Case is consolidated with No. 82-15, *Oliver v. United States* [certiorari granted, 459 U. S. 1168], and a total of one hour allotted for oral argument. Reported below: 453 A. 2d 489.

*Certiorari Denied*. (See also Nos. 82-927, 82-936, 82-1093, 82-6238, and 82-6239, *supra*.)

No. 81-1595. *CONNECTICUT ET AL. v. CUISINARTS, INC.* C. A. 2d Cir. Certiorari denied. Reported below: 665 F. 2d 24.

No. 81-2239. *BLACK v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 675 F. 2d 129.

No. 81-5181. *SMITH v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 649 F. 2d 305.

No. 81-6746. *MEDINA-PENA v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 671 F. 2d 1376.

No. 82-587. *MOORE v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 675 F. 2d 802.

No. 82-882. *FALCO v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 697 F. 2d 299.

No. 82-972. *GIBSON ET AL. v. FEDERAL TRADE COMMISSION*; and

No. 82-984. *GIBSON ET UX. v. FEDERAL TRADE COMMISSION*. C. A. 5th Cir. Certiorari denied. Reported below: 682 F. 2d 554.

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No. 82-1052. OLD BEN COAL CO. *v.* BLAIZE ET AL. C. A. 7th Cir. Certiorari denied.

No. 82-1076. LOUISIANA ET AL. *v.* DEPARTMENT OF ENERGY ET AL. Temp. Emerg. Ct. App. Certiorari denied. Reported below: 690 F. 2d 180.

No. 82-1079. DICKINSON *v.* SECURITIES AND EXCHANGE COMMISSION ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 682 F. 2d 355.

No. 82-1155. OTASCO, INC. *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 689 F. 2d 162.

No. 82-1172. BRATTON *v.* UNITED STATES; and

No. 82-1225. GREENLEAF *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 692 F. 2d 182.

No. 82-1173. UNDERWRITERS AT LLOYDS *v.* OPE SHIPPING, LTD., ET AL.; and

No. 82-1356. OPE SHIPPING, LTD., ET AL. *v.* ALLSTATE INSURANCE Co., INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 687 F. 2d 639.

No. 82-1209. BREWTON FASHIONS, INC., A DIVISION OF JUDY BOND *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 11th Cir. Certiorari denied. Reported below: 682 F. 2d 918.

No. 82-1339. TOWN OF HUNTINGTON, NEW YORK, ET AL. *v.* HUNTINGTON BRANCH, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 689 F. 2d 391.

No. 82-1341. DIAMOND M DRILLING Co. ET AL. *v.* WOOD. C. A. 5th Cir. Certiorari denied. Reported below: 691 F. 2d 1165.

No. 82-1342. WILLIAMS ET AL. *v.* MILONAS ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 691 F. 2d 931.

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No. 82-1344. *CELE v. KINNEY ET AL.* Super. Ct. N. J., App. Div. Certiorari denied.

No. 82-1348. *STOVALL v. CONTINENTAL FEDERAL SAVINGS & LOAN ASSN.* Sup. Ct. Okla. Certiorari denied.

No. 82-1353. *WHITE ET AL. v. ROUGHTON ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 689 F. 2d 118.

No. 82-1361. *MAIER v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 691 F. 2d 421.

No. 82-1363. *SILVER, DBA ALLIED BOND & COLLECTION AGENCY v. WOOLF, ACTING BANKING COMMISSIONER OF CONNECTICUT.* C. A. 2d Cir. Certiorari denied. Reported below: 694 F. 2d 8.

No. 82-1364. *AQUATIC TECHNICAL SERVICES, INC. v. COUNTY OF NASSAU ET AL.* Ct. App. N. Y. Certiorari denied. Reported below: 58 N. Y. 2d 689, 444 N. E. 2d 1015.

No. 82-1372. *CULLEN v. BMW OF NORTH AMERICA, INC.* C. A. 2d Cir. Certiorari denied. Reported below: 691 F. 2d 1097.

No. 82-1374. *RIVINIUS ET AL. v. NORTH DAKOTA.* Sup. Ct. N. D. Certiorari denied. Reported below: 328 N. W. 2d 220.

No. 82-1416. *TASSONE v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 705 F. 2d 459.

No. 82-1452. *ERRANTE v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 695 F. 2d 45.

No. 82-1454. *COWARD ET AL. v. COLGATE-PALMOLIVE CO. ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 686 F. 2d 1230.

No. 82-1463. *HUCKABY v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 698 F. 2d 915.

No. 82-1467. *FROST v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 696 F. 2d 1006.

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No. 82-1476. *INNELLA v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 690 F. 2d 834.

No. 82-1485. *REED v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 697 F. 2d 517.

No. 82-5944. *BISHOP v. STEPHENSON, WARDEN, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 688 F. 2d 829.

No. 82-5965. *MALLOY v. PURVIS, SHERIFF, MOBILE COUNTY, ALABAMA, ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 681 F. 2d 736.

No. 82-6011. *LAIRD v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 692 F. 2d 769.

No. 82-6031. *GEDRAITIS ET AL. v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 690 F. 2d 351.

No. 82-6160. *BREKKE v. POWELL*. C. A. 7th Cir. Certiorari denied.

No. 82-6176. *WILLIAMS v. ESTELLE, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS*. C. A. 5th Cir. Certiorari denied. Reported below: 693 F. 2d 132.

No. 82-6191. *STASTNY v. BOARD OF TRUSTEES OF CENTRAL WASHINGTON UNIVERSITY*. Ct. App. Wash. Certiorari denied. Reported below: 32 Wash. App. 239, 647 P. 2d 496.

No. 82-6200. *MARAS v. AMMERMAN*. C. A. D. C. Cir. Certiorari denied. Reported below: 223 U. S. App. D. C. 426, 692 F. 2d 150.

No. 82-6201. *MOTT v. JOHN DEERE DUBUQUE WORKS OF DEERE & Co.* C. A. 8th Cir. Certiorari denied.

No. 82-6202. *MINTZ v. DIRECTOR, DEPARTMENT OF MOTOR VEHICLES OF CALIFORNIA, ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 691 F. 2d 507.

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No. 82-6209. *JONES v. ESTELLE, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS*. C. A. 5th Cir. Certiorari denied. Reported below: 693 F. 2d 547.

No. 82-6211. *UNITED STATES EX REL. BLACKWELL v. FRANZEN, DIRECTOR, ILLINOIS DEPARTMENT OF CORRECTIONS, ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 688 F. 2d 496.

No. 82-6213. *ASH v. CVETKOV ET AL.* C. A. 9th Cir. Certiorari denied.

No. 82-6217. *ASHLEY v. GARRISON ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 692 F. 2d 751.

No. 82-6218. *CUMMINGS v. UNITED STATES ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 708 F. 2d 722.

No. 82-6222. *HARVEY v. ESTELLE, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS, ET AL.* C. A. 5th Cir. Certiorari denied.

No. 82-6225. *HOLSEY v. BAYLOR ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 691 F. 2d 494.

No. 82-6228. *BRIM, AKA MERTZ v. SOLEM, WARDEN, SOUTH DAKOTA STATE PENITENTIARY, ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 693 F. 2d 44.

No. 82-6233. *GRIEF v. PENNSYLVANIA UNEMPLOYMENT COMPENSATION BOARD OF REVIEW*. Sup. Ct. Pa. Certiorari denied.

No. 82-6237. *MILLER v. ATLANTA BOARD OF EDUCATION*. C. A. 11th Cir. Certiorari denied. Reported below: 691 F. 2d 510.

No. 82-6253. *BROADWAY v. BOGAN*. C. A. 11th Cir. Certiorari denied.

No. 82-6275. *EVANS v. ALABAMA*. Ct. Crim. App. Ala. Certiorari denied. Reported below: 422 So. 2d 802.

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No. 82-6279. *MCDONALD v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 692 F. 2d 376.

No. 82-6302. *DANCY v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 696 F. 2d 578.

No. 82-6303. *BROOKS v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 697 F. 2d 517.

No. 82-6311. *LLORENS v. MERIT SYSTEMS PROTECTION BOARD*. C. A. 6th Cir. Certiorari denied. Reported below: 705 F. 2d 455.

No. 82-6315. *MULLINS v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 698 F. 2d 686.

No. 82-6316. *WILSON ET AL. v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 9th Cir. Certiorari denied.

No. 82-6317. *YATES v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 698 F. 2d 828.

No. 82-6320. *MARTIN v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 696 F. 2d 49.

No. 82-6326. *MEAGHER v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 694 F. 2d 726.

No. 82-6340. *TAVOLINO v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 714 F. 2d 118.

No. 82-6341. *RIOLA v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 694 F. 2d 670.

No. 82-6349. *CALABRESE v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 707 F. 2d 1404.

No. 82-6356. *NICKS v. HAZLETT ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 708 F. 2d 726.

No. 82-6357. *MCCORD v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 695 F. 2d 823.

No. 82-6198. *DUVALLON v. FLORIDA*. C. A. 11th Cir. Motion of petitioner to defer consideration of the petition for

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certiorari denied. Certiorari denied. Reported below: 691 F. 2d 483.

*Rehearing Denied*

No. 82-5719. CLARKSON *v.* UNITED STATES, *ante*, p. 1013; and

No. 82-6028. GREISINGER *v.* DAVIS, SECRETARY OF THE COMMONWEALTH OF PENNSYLVANIA, 459 U. S. 1221. Petitions for rehearing denied.

APRIL 6, 1983

*Dismissal Under Rule 53*

No. 82-1228. CARTER-WALLACE, INC. *v.* JOHNSON & JOHNSON. C. A. 2d Cir. Certiorari dismissed under this Court's Rule 53. Reported below: 714 F. 2d 114.

APRIL 8, 1983

*Dismissal Under Rule 53*

No. 82-1388. CONTINENTAL AIR LINES, INC. *v.* GERDOM ET AL. C. A. 9th Cir. Certiorari dismissed under this Court's Rule 53. Reported below: 692 F. 2d 602.

APRIL 9, 1983

*Dismissal Under Rule 53*

No. 82-1457. PARLIAMENT INSURANCE CO. *v.* LEFCOE. C. A. 11th Cir. Certiorari dismissed under this Court's Rule 53. Reported below: 694 F. 2d 725.

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*Vacated and Remanded After Certiorari Granted*

No. 82-647. KIRKPATRICK *v.* CHRISTIAN HOMES OF ABILENE, INC., ET AL. Ct. App. Tex., 11th Sup. Jud. Dist. [Certiorari granted, 459 U. S. 1145.] The Court has considered the memorandum filed by petitioner in response to the representations of the State of Texas in its brief before this

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Court which bring to light a question of state law not passed upon or relied upon below. The resolution of this question may establish that petitioner is entitled to the relief he seeks as a matter of Texas statutory law. If this is so, a decision of the constitutional question on which we granted certiorari would be unnecessary. See *Paschall v. Christie-Stewart, Inc.*, 414 U. S. 100 (1973); *Musser v. Utah*, 333 U. S. 95 (1948). Accordingly, the judgment is vacated and the case is remanded for further proceedings to determine whether, under Texas law, petitioner could have obtained and may still obtain a decree designating him as the father of his child pursuant to the provisions of Tex. Fam. Code Ann. §§ 13.01-13.09 (Supp. 1982-1983). The Clerk is directed to issue the mandate forthwith.

#### *Miscellaneous Order*

No. 82-486. UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 610, AFL-CIO, ET AL. *v.* SCOTT ET AL. C. A. 5th Cir. [Certiorari granted, 459 U. S. 1034.] This case is hereby scheduled for argument on April 26, 1983, in place of No. 82-647, *Kirkpatrick v. Christian Homes of Abilene, Inc., et al.*

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#### *Affirmed on Appeal*

No. 82-6257. FULK ET AL. *v.* MORITZ ET AL. Appeal from D. C. N. D. Ohio. Motion of appellant for leave to proceed *in forma pauperis* granted. Judgment affirmed. JUSTICE STEVENS and JUSTICE O'CONNOR would dismiss the appeal for want of jurisdiction, treat the papers whereon the appeal was taken as a petition for writ of certiorari, and deny certiorari.

#### *Appeals Dismissed*

No. 82-905. SOONER FEDERAL SAVINGS & LOAN ASSN. ET AL. *v.* OKLAHOMA TAX COMMISSION ET AL. Appeal from

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Sup. Ct. Okla. dismissed for want of substantial federal question. Reported below: 662 P. 2d 1366.

No. 82-1382. *TOLUB ET AL. v. EVANS, AS CHIEF ADMINISTRATIVE JUDGE OF THE STATE OF NEW YORK, ET AL.* Appeal from Ct. App. N. Y. dismissed for want of substantial federal question. Reported below: 58 N. Y. 2d 1, 444 N. E. 2d 1.

No. 82-1420. *SANFORD ET AL. v. DUMAS.* Appeal from Dist. Ct. App. Fla., 5th Dist., dismissed for want of substantial federal question. Reported below: 413 So. 2d 58.

No. 82-983. *DUNCAN v. PECK.* Appeal from Ct. App. Ohio, Hamilton County, dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 82-1237. *STELLA v. MERCY HOSPITAL ET AL.* Appeal from C. A. 6th Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 705 F. 2d 458.

No. 82-6249. *VELILLA v. UTC/HAMILTON STANDARD DIVISION ET AL.* Appeal from Sup. Ct. Conn. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 82-1243. *BUNKER v. NATIONAL GYPSUM Co.* Appeal from Sup. Ct. Ind. dismissed for want of substantial federal question. JUSTICE BRENNAN took no part in the consideration or decision of this case. Reported below: 441 N. E. 2d 8.

No. 82-1293. *TEMPLE ET AL. v. ALABAMA PUBLIC SERVICE COMMISSION ET AL.* Appeal from Sup. Ct. Ala. dismissed for want of jurisdiction. Reported below: 425 So. 2d 1366.

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No. 82-1386. *FIELDS v. SUMMIT ENGINEERING*. Appeal from Sup. Ct. Mont. dismissed for want of properly presented federal question. Reported below: — Mont. —, 653 P. 2d 1204.

No. 82-1445. *THE DON'T BANKRUPT WASHINGTON COMMITTEE v. CONTINENTAL ILLINOIS NATIONAL BANK & TRUST COMPANY OF CHICAGO ET AL.* Appeal from C. A. 9th Cir. dismissed for want of jurisdiction it appearing appellant lacks standing to bring this appeal. Reported below: 696 F. 2d 692.

No. 82-1477. *PACIFIC STANDARD LIFE INSURANCE CO. ET AL. v. COMMITTEE TO SAVE NUKOLII ET AL.* Appeal from Sup. Ct. Haw. Motions of National Association of Home Builders et al. and National Association of Realtors for leave to file briefs as *amici curiae* granted. Appeal dismissed for want of substantial federal question. Reported below: 65 Haw. 318, 653 P. 2d 766.

*Certiorari Granted—Vacated and Remanded*

No. 82-1399. *ALESSI ET AL. v. COMMITTEE ON PROFESSIONAL STANDARDS, THIRD JUDICIAL DEPARTMENT*. Ct. App. N. Y. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *In re R. M. J.*, 455 U. S. 191 (1982). Reported below: 58 N. Y. 2d 689, 444 N. E. 2d 1015.

*Vacated and Remanded After Certiorari Granted*

No. 82-25. *JONES, A MINOR CHILD, BY HIS MOTHER AND NEXT FRIEND, JONES, ET AL. v. HECKLER, SECRETARY OF HEALTH AND HUMAN SERVICES*. C. A. 4th Cir. [Certiorari granted, 459 U. S. 965.] Judgment vacated and case remanded for further consideration in light of Miss. Code Ann. §91-1-15 (Supp. 1982), as to the Jones petitioners, and in light of *Adkins v. McEldowney*, — W. Va. —, 280 S. E. 2d 231 (1981), as to the Simms petitioners.

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*Miscellaneous Orders*

No. D-319. IN RE DISBARMENT OF FEDER. Disbarment entered. [For earlier order herein, see *ante*, p. 1009.]

No. D-327. IN RE DISBARMENT OF STEVENS. Harry J. Stevens, Jr., of Short Hills, N. J., having requested to resign as a member of the Bar of this Court, it is ordered that his name be stricken from the roll of attorneys admitted to practice before the Bar of this Court. The rule to show cause, heretofore issued on March 7, 1983 [*ante*, p. 1019], is hereby discharged.

No. D-332. IN RE DISBARMENT OF PARSONS. It is ordered that Edward Parsons, of Chicago, Ill., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. 81-2332. NORFOLK REDEVELOPMENT AND HOUSING AUTHORITY *v.* CHESAPEAKE & POTOMAC TELEPHONE COMPANY OF VIRGINIA ET AL. C. A. 4th Cir. [Certiorari granted, 459 U. S. 1145.] Motions of National Institute of Municipal Law Officers and United States Conference of Mayors et al. for leave to file briefs as *amici curiae* granted. JUSTICE POWELL took no part in the consideration or decision of these motions.

No. 82-91. IMMIGRATION AND NATURALIZATION SERVICE *v.* PHINPATHYA. C. A. 9th Cir. [Certiorari granted, 459 U. S. 965.] Motion of respondent to enlarge record, suggestion of mootness, and motion to stay further proceedings pending administrative action denied.

No. 82-585. ALOHA AIRLINES, INC. *v.* DIRECTOR OF TAXATION OF HAWAII; and

No. 82-586. HAWAIIAN AIRLINES, INC. *v.* DIRECTOR OF TAXATION OF HAWAII. Sup. Ct. Haw. [Probable jurisdic-

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tion noted, 459 U. S. 1101.] Motion of appellee for divided argument denied.

No. 82-862. CONSOLIDATED RAIL CORPORATION *v.* LE-STRANGE. C. A. 3d Cir. [Certiorari granted, 459 U. S. 1199.] Motion to substitute Lee Ann LeStrange Darrone, as Administratrix of Estate of Thomas LeStrange, in place of respondent Thomas LeStrange, deceased, granted.

No. 82-6080. BAREFOOT *v.* ESTELLE, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS. C. A. 5th Cir. [Certiorari granted, 459 U. S. 1169.] Motion of Washington Legal Foundation for leave to file a brief as *amicus curiae* granted. Motion of Florida for leave to participate in oral argument as *amicus curiae* and for additional time for argument denied.

No. 82-6204. TOLBERT *v.* UNITED STATES. C. A. 6th Cir. Motion of petitioner to defer consideration of the petition for writ of certiorari granted.

No. 82-6472. IN RE LIPSCOMB. Petition for writ of habeas corpus denied.

No. 82-6288. IN RE TYLER. Petition for writ of mandamus denied.

No. 82-1378. IN RE COMEAUX; and

No. 82-1385. IN RE INTERNATIONAL HARVESTER CO. ET AL. Petitions for writs of mandamus and/or prohibition denied.

*Probable Jurisdiction Noted or Postponed*

No. 82-1248. SCHALL, COMMISSIONER OF NEW YORK CITY DEPARTMENT OF JUVENILE JUSTICE *v.* MARTIN ET AL.; and

No. 82-1278. ABRAMS, ATTORNEY GENERAL OF NEW YORK *v.* MARTIN ET AL. Appeals from C. A. 2d Cir. Probable jurisdiction noted, cases consolidated, and a total of one hour allotted for oral argument. Reported below: 689 F. 2d 365.

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No. 82-1295. ESCAMBIA COUNTY, FLORIDA, ET AL. *v.* McMILLAN ET AL. Appeal from C. A. 5th Cir. Motion of State Association of County Commissioners of Florida et al. for leave to file a brief as *amici curiae* granted. Probable jurisdiction noted. Reported below: 688 F. 2d 960.

No. 82-1401. CALDER ET AL. *v.* JONES ET AL. Appeal from Ct. App. Cal., 2d App. Dist. Further consideration of question of jurisdiction postponed to hearing of case on the merits. Reported below: 138 Cal. App. 3d 128, 187 Cal. Rptr. 825.

*Certiorari Granted*

No. 82-1256. LYNCH, MAYOR OF PAWTUCKET, ET AL. *v.* DONNELLY ET AL. C. A. 1st Cir. Certiorari granted. Reported below: 691 F. 2d 1029.

No. 82-1448. UNITED STATES *v.* STAUFFER CHEMICAL CO. C. A. 6th Cir. Certiorari granted. Reported below: 684 F. 2d 1174.

No. 82-1150. ELLIS ET AL. *v.* BROTHERHOOD OF RAILWAY, AIRLINE & STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS & STATION EMPLOYES, ET AL. C. A. 9th Cir. Motion of William L. Dickinson for leave to file a brief as *amicus curiae* granted. Certiorari granted. Reported below: 685 F. 2d 1065.

*Certiorari Denied.* (See also Nos. 82-983, 82-1237, and 82-6249, *supra.*)

No. 81-1438. HAMMERMILL PAPER CO. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 3d Cir. Certiorari denied. Reported below: 658 F. 2d 155.

No. 81-2162. PIONEER FINISHING CORP. *v.* NATIONAL LABOR RELATIONS BOARD ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 667 F. 2d 199.

No. 81-2202. WESTINGHOUSE ELECTRIC CORP. *v.* TRIBBLE. C. A. 8th Cir. Certiorari denied. Reported below: 669 F. 2d 1193.

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No. 82-809. *TABELING v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 688 F. 2d 842.

No. 82-929. *BURKS v. ILLINOIS*. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 104 Ill. App. 3d 1203, 437 N. E. 2d 944.

No. 82-964. *DUNNE ET AL. v. HANSEN ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 681 F. 2d 484.

No. 82-978. *TONUBBEE v. LOUISIANA*. Sup. Ct. La. Certiorari denied. Reported below: 420 So. 2d 126.

No. 82-990. *MARVIN v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 687 F. 2d 1221.

No. 82-1016. *SOUTH CENTRAL BELL TELEPHONE CO. v. NATIONAL LABOR RELATIONS BOARD*. C. A. 5th Cir. Certiorari denied. Reported below: 688 F. 2d 345.

No. 82-1024. *BOEING CO. v. UNITED STATES*. Ct. Cl. Certiorari denied. Reported below: 230 Ct. Cl. 663, 680 F. 2d 132.

No. 82-1033. *OHIO v. WILMOTH*. Sup. Ct. Ohio. Certiorari denied. Reported below: 1 Ohio St. 3d 118, 438 N. E. 2d 105.

No. 82-1070. *BENEDETTO v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 697 F. 2d 298.

No. 82-1088. *GUMM, DBA DESERT-AIRE MOBILE HOME STYLING & SALES, INC. ET AL. v. TURNER ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 685 F. 2d 1384.

No. 82-1090. *ASHLAND OIL, INC. v. DELTA OIL PRODUCTS CORP.* C. A. 7th Cir. Certiorari denied. Reported below: 685 F. 2d 175.

No. 82-1092. *CONTINENTAL MANORS, INC. v. HECKLER, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 688 F. 2d 844.

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No. 82-1103. PYRAMID LAKE PAIUTE TRIBE OF INDIANS *v.* FEDERAL ENERGY REGULATORY COMMISSION ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 681 F. 2d 1134.

No. 82-1121. LOUISIANA PUBLIC SERVICE COMMISSION *v.* FEDERAL ENERGY REGULATORY COMMISSION ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 688 F. 2d 357.

No. 82-1148. QUEEN ET AL. *v.* TENNESSEE VALLEY AUTHORITY ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 689 F. 2d 80.

No. 82-1162. GEORGE BANTA CO., INC., BANTA DIVISION *v.* NATIONAL LABOR RELATIONS BOARD ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 222 U. S. App. D. C. 288, 686 F. 2d 10.

No. 82-1169. CPC INTERNATIONAL INC. *v.* DIMMITT AGRI INDUSTRIES, INC.; and

No. 82-1347. DIMMITT AGRI INDUSTRIES, INC. *v.* CPC INTERNATIONAL, INC. C. A. 5th Cir. Certiorari denied. Reported below: 679 F. 2d 516.

No. 82-1184. CICALI *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 691 F. 2d 95.

No. 82-1191. STEPHENS *v.* UNITED STATES;

No. 82-1207. VADINO *v.* UNITED STATES; and

No. 82-1208. NATALE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 680 F. 2d 1329.

No. 82-1198. PLANT ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 682 F. 2d 914.

No. 82-1203. SCALES, AS NEXT FRIEND OF SCALES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 685 F. 2d 970.

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No. 82-1216. *WORLDWIDE CHURCH OF GOD v. SUPERIOR COURT OF CALIFORNIA, ORANGE COUNTY (GIPE, REAL PARTY IN INTEREST)*. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 82-1220. *UNION NATIONAL BANK OF LITTLE ROCK v. PAXTON ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 688 F. 2d 552.

No. 82-1222. *ILLINOIS ET AL. v. INTERSTATE COMMERCE COMMISSION ET AL.* C. A. 7th Cir. Certiorari denied.

No. 82-1230. *MOORE v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 705 F. 2d 459.

No. 82-1261. *STANDARD-COOSA-THATCHER CARPET YARN DIVISION, INC. v. NATIONAL LABOR RELATIONS BOARD ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 691 F. 2d 1133.

No. 82-1267. *ROCK v. COOMBE, SUPERINTENDENT, EASTERN NEW YORK CORRECTIONAL FACILITY*. C. A. 2d Cir. Certiorari denied. Reported below: 694 F. 2d 908.

No. 82-1270. *LOMAS SANTA FE, INC., ET AL. v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 9th Cir. Certiorari denied. Reported below: 693 F. 2d 71.

No. 82-1287. *RANDOLPH ASSOCIATES v. WAKEFERN FOOD CORP. ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 707 F. 2d 1403.

No. 82-1290. *ROTH'S IGA FOODLINER, INC. v. NATIONAL LABOR RELATIONS BOARD ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 694 F. 2d 723.

No. 82-1354. *NEWMAN ET AL. v. ALABAMA ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 683 F. 2d 1312.

No. 82-1362. *GREAT LAKES DREDGE & DOCK CO. v. EBANKS ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 688 F. 2d 716.

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No. 82-1376. *FREEMAN v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 705 F. 2d 459.

No. 82-1379. *JONES v. OKLAHOMA*. Ct. Crim. App. Okla. Certiorari denied.

No. 82-1380. *ROONEY v. COLUMBIA PICTURES INDUSTRIES, INC., ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 714 F. 2d 117.

No. 82-1387. *ZACK v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 6th Cir. Certiorari denied. Reported below: 692 F. 2d 28.

No. 82-1394. *CENTRAL FLORIDA ENTERPRISES, INC. v. FEDERAL COMMUNICATIONS COMMISSION ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 221 U. S. App. D. C. 162, 683 F. 2d 503.

No. 82-1396. *MICHIGAN v. JONES*. Sup. Ct. Mich. Certiorari denied. Reported below: 416 Mich. 354, 331 N. W. 2d 406.

No. 82-1397. *LANIGAN v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 696 F. 2d 986.

No. 82-1398. *M/V POLLUX ET AL. v. GOODPASTURE, INC.* C. A. 5th Cir. Certiorari denied. Reported below: 688 F. 2d 1003.

No. 82-1402. *LOCAL DIVISION 1028, AMALGAMATED TRANSIT UNION v. CITY OF AURORA*. C. A. 7th Cir. Certiorari denied.

No. 82-1405. *CARRIONE v. CONNECTICUT*. Sup. Ct. Conn. Certiorari denied. Reported below: 188 Conn. 681, 453 A. 2d 1137.

No. 82-1406. *LUKOVSKY ET AL. v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 8th Cir. Certiorari denied. Reported below: 692 F. 2d 527.

No. 82-1407. *NIGGLE ET UX. v. OLD KENT BANK & TRUST Co.* Ct. App. Mich. Certiorari denied.

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No. 82-1411. *KONDRAT v. MARTINET*. Ct. App. Ohio, Lake County. Certiorari denied.

No. 82-1412. *MOENCH INVESTMENT CO., LTD., ET AL. v. UNION PACIFIC LAND RESOURCES CORP. ET AL.* C. A. 10th Cir. Certiorari denied. Reported below: 696 F. 2d 88.

No. 82-1415. *EDMUNDSON INVESTMENT CO. ET AL. v. FLORIDA TRECO, INC.* Ct. App. Tex., 14th Sup. Jud. Dist. Certiorari denied. Reported below: 633 S. W. 2d 599.

No. 82-1418. *CHAPMAN INDUSTRIES CORP. v. N.A. SALES CO., INC.* C. A. 2d Cir. Certiorari denied. Reported below: 714 F. 2d 115.

No. 82-1419. *HAYES v. SUPREME COURT JUSTICES OF NEVADA*. C. A. 9th Cir. Certiorari denied. Reported below: 685 F. 2d 442.

No. 82-1422. *ADAMS ET AL. v. GOULD, INC., ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 687 F. 2d 27.

No. 82-1425. *BRAQUET ET AL. v. ADMINISTRATORS OF THE TULANE EDUCATIONAL FUND*. Ct. App. La., 4th Cir. Certiorari denied. Reported below: 419 So. 2d 30.

No. 82-1429. *TROUT v. LEHMAN, SECRETARY OF THE NAVY, ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 223 U. S. App. D. C. 427, 692 F. 2d 151.

No. 82-1430. *ZOSLAW ET UX., DBA MARIN MUSIC CENTRE v. MCA DISTRIBUTING CORP. ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 693 F. 2d 870.

No. 82-1435. *CONTRA COSTA THEATRE, INC. v. CITY OF CONCORD ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 686 F. 2d 798.

No. 82-1440. *TILLEY v. ANDERSON, REGIONAL ADMINISTRATOR OF STATE PRISON OF SOUTHERN MICHIGAN*. C. A. 6th Cir. Certiorari denied. Reported below: 705 F. 2d 458.

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No. 82-1441. *KINNEY ET UX. v. STATE FARM MUTUAL AUTOMOBILE INSURANCE CO. ET AL.* C. A. 10th Cir. Certiorari denied.

No. 82-1459. *BUCKLEY ET AL. v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 689 F. 2d 893.

No. 82-1468. *REMINGA, EXECUTRIX OF THE ESTATE OF REMINGA, ET AL. v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 695 F. 2d 1000.

No. 82-1475. *WYLLIE ET AL. v. DUNN.* C. A. 6th Cir. Certiorari denied. Reported below: 697 F. 2d 121.

No. 82-1494. *SURGENT v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 718 F. 2d 1087.

No. 82-1503. *EVANS v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 697 F. 2d 240.

No. 82-1505. *GRINDROD v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 694 F. 2d 649.

No. 82-1520. *LANDSBERGER v. COMMISSIONER OF REVENUE OF MINNESOTA.* Sup. Ct. Minn. Certiorari denied.

No. 82-1535. *GARLING v. SECRETARY OF DEPARTMENT OF HEALTH AND HUMAN SERVICES.* C. A. D. C. Cir. Certiorari denied. Reported below: 225 U. S. App. D. C. 51, 696 F. 2d 133.

No. 82-1550. *MASON ET AL. v. PANAMA CANAL CO. ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 223 U. S. App. D. C. 426, 692 F. 2d 150.

No. 82-1552. *GRIGSBY v. DEPARTMENT OF ENERGY ET AL.* Temp. Emerg. Ct. App. Certiorari denied. Reported below: 701 F. 2d 147.

No. 82-1553. *LANZIERI v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 714 F. 2d 118.

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No. 82-1567. *SWIATEK v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 698 F. 2d 1226.

No. 82-5649. *PAUL v. MAGGIO, WARDEN, LOUISIANA STATE PENITENTIARY*; and

No. 82-5769. *BARKLEY v. MAGGIO, WARDEN, LOUISIANA STATE PENITENTIARY*. C. A. 5th Cir. Certiorari denied.

No. 82-5864. *ACKER v. ADMINISTRATOR, GENERAL SERVICES ADMINISTRATION, ET AL.* C. A. D. C. Cir. Certiorari denied.

No. 82-5881. *WALKER v. MORRIS, SUPERINTENDENT, MECKLENBURG CORRECTIONAL CENTER*. Sup. Ct. Va. Certiorari denied.

No. 82-5915. *JENNINGS v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 691 F. 2d 511.

No. 82-5926. *FARRELL v. OREGON EX REL. JUVENILE DEPARTMENT OF MULTNOMAH COUNTY*. Ct. App. Ore. Certiorari denied. Reported below: 58 Ore. App. 258, 648 P. 2d 401.

No. 82-5929. *WARREN v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 687 F. 2d 347.

No. 82-5936. *HOLMES v. UNITED STATES*. Ct. App. D. C. Certiorari denied. Reported below: 454 A. 2d 1308.

No. 82-5948. *MORGAN v. FLORIDA*. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 421 So. 2d 520.

No. 82-5961. *RHODES v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 692 F. 2d 766.

No. 82-5968. *CRAFT v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 691 F. 2d 205.

No. 82-5971. *HOWARD v. UNITED STATES*. Ct. App. D. C. Certiorari denied. Reported below: 452 A. 2d 966.

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No. 82-6003. *MCCREE v. LOCKHART, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION*. C. A. 8th Cir. Certiorari denied. Reported below: 689 F. 2d 797.

No. 82-6005. *GAYLE, AKA WAITERS v. NEW YORK*. Ct. App. N. Y. Certiorari denied. Reported below: 58 N. Y. 2d 636, 444 N. E. 2d 1003.

No. 82-6023. *BURTON v. MICHIGAN*. Sup. Ct. Mich. Certiorari denied.

No. 82-6034. *BROWN v. UNITED STATES*. C. A. 7th Cir. Certiorari denied.

No. 82-6103. *GRESHAM v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied. Reported below: 223 U. S. App. D. C. 427, 692 F. 2d 151.

No. 82-6116. *FALTICO v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 687 F. 2d 273.

No. 82-6146. *RIVERS, BY HIS MOTHER AND NATURAL GUARDIAN, RIVERS, ET AL. v. BLUM, COMMISSIONER, NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES, ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 692 F. 2d 871.

No. 82-6156. *STAMPS v. ILLINOIS*. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 103 Ill. App. 3d 1201, 435 N. E. 2d 1385.

No. 82-6184. *MOORE v. UNITED STATES* (four cases). C. A. 3d Cir. Certiorari denied.

No. 82-6189. *SMART v. SOUTH CAROLINA*. Sup. Ct. S. C. Certiorari denied. Reported below: 278 S. C. 515, 299 S. E. 2d 686.

No. 82-6199. *WISE v. ENGLE ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 708 F. 2d 731.

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No. 82-6216. *TIETBOHL v. WOODS ET AL.* C. A. 9th Cir. Certiorari denied.

No. 82-6226. *HARVEY v. ESTELLE, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS.* C. A. 5th Cir. Certiorari denied. Reported below: 695 F. 2d 563.

No. 82-6227. *GARRETT v. OKLAHOMA ET AL.* Ct. App. Okla. Certiorari denied.

No. 82-6229. *HARRIS v. CONNECTICUT.* Sup. Ct. Conn. Certiorari denied. Reported below: 188 Conn. 574, 452 A. 2d 634.

No. 82-6232. *HEREFORD v. BRITTAIN.* Ct. App. D. C. Certiorari denied.

No. 82-6236. *WHITE v. ESTELLE, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS.* C. A. 5th Cir. Certiorari denied.

No. 82-6240. *COLEMAN v. LLOYDS BANK OF CALIFORNIA ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 701 F. 2d 184.

No. 82-6242. *SPROGIS-MASTINS v. NEW YORK.* App. Term, Sup. Ct. N. Y., 9th and 10th Jud. Dists. Certiorari denied.

No. 82-6244. *GRAY v. JAGO ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 708 F. 2d 723.

No. 82-6246. *DINKENS v. WAINWRIGHT ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 693 F. 2d 134.

No. 82-6247. *MURPHY v. STEPHENSON ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 696 F. 2d 990.

No. 82-6248. *YOUNG v. COUNTY OF SAUK, WISCONSIN.* Ct. App. Wis. Certiorari denied. Reported below: 109 Wis. 2d 686, 325 N. W. 2d 738.

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No. 82-6258. *DABON v. MAGGIO, WARDEN*. C. A. 5th Cir. Certiorari denied. Reported below: 694 F. 2d 720.

No. 82-6260. *HARRISON v. OKLAHOMA*. Ct. Crim. App. Okla. Certiorari denied.

No. 82-6265. *SIMMONS v. ROUSE, SUPERINTENDENT, LAKE CORRECTIONAL INSTITUTION*. C. A. 11th Cir. Certiorari denied. Reported below: 693 F. 2d 134.

No. 82-6266. *CLARK v. SOLEM, WARDEN, SOUTH DAKOTA STATE PENITENTIARY, ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 693 F. 2d 59.

No. 82-6268. *JACKSON v. WAINWRIGHT, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL.* C. A. 11th Cir. Certiorari denied.

No. 82-6269. *BARNES v. HENRY*. C. A. 9th Cir. Certiorari denied. Reported below: 691 F. 2d 506.

No. 82-6270. *BRUNGS v. PUBLIC LIBRARY OF COLUMBUS ET AL.* Sup. Ct. Ohio. Certiorari denied.

No. 82-6272. *COVINGTON v. OSBORNE ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 685 F. 2d 429.

No. 82-6273. *BECKER v. ARCADIAN GARDENS*. C. A. 2d Cir. Certiorari denied.

No. 82-6277. *SUBILOSKY v. CALLAHAN, SUPERINTENDENT, MCI-NORFOLK, MASSACHUSETTS*. C. A. 1st Cir. Certiorari denied. Reported below: 689 F. 2d 7.

No. 82-6280. *SWANSON v. DAVIS, WARDEN, ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 708 F. 2d 728.

No. 82-6281. *ZARRILLI v. RANDALL ET AL.* C. A. 1st Cir. Certiorari denied.

No. 82-6282. *SCHUMAN v. DUCKWORTH, WARDEN, ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 698 F. 2d 1227.

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No. 82-6283. THAPER *v.* NEW JERSEY DEPARTMENT OF EDUCATION ET AL. Super. Ct. N. J., App. Div. Certiorari denied.

No. 82-6285. PERRON *v.* PERRON. Sup. Ct. P. R. Certiorari denied. Reported below: — P. R. R. —.

No. 82-6289. REAL *v.* CLARKE ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 696 F. 2d 1000.

No. 82-6292. WALKER *v.* SOLEM, WARDEN, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 687 F. 2d 1235.

No. 82-6295. TANNER *v.* LOCKHART, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTIONS. C. A. 8th Cir. Certiorari denied. Reported below: 696 F. 2d 1000.

No. 82-6298. JOHNSON *v.* GRIFFIN, WARDEN. C. A. 10th Cir. Certiorari denied.

No. 82-6307. GREEN *v.* HECKLER, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 5th Cir. Certiorari denied. Reported below: 694 F. 2d 108.

No. 82-6309. HURNS *v.* CLEVELAND POLICE DEPARTMENT ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 696 F. 2d 994.

No. 82-6310. HAMM *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 82-6312. LYONS *v.* WALTERS, ADMINISTRATOR, VETERANS ADMINISTRATION, ET AL. C. A. D. C. Cir. Certiorari denied.

No. 82-6319. SARTORE *v.* ADAMS ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 695 F. 2d 565.

No. 82-6322. BASTANIPOUR *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 697 F. 2d 170.

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No. 82-6325. HAZRA *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied.

No. 82-6329. BURTON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 701 F. 2d 160.

No. 82-6339. LEVY *v.* FAIRFAX COUNTY GOVERNMENT. C. A. 4th Cir. Certiorari denied. Reported below: 694 F. 2d 717.

No. 82-6346. JOHNSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 701 F. 2d 160.

No. 82-6355. ALFARO-GONZALEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 691 F. 2d 510.

No. 82-6364. UNDERWOOD-NUNEZ *v.* HECKLER, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 9th Cir. Certiorari denied. Reported below: 698 F. 2d 1231.

No. 82-6369. PUCHALA ET AL. *v.* COINTELPRO ET AL. C. A. 7th Cir. Certiorari denied.

No. 82-6374. CONERLY ET AL. *v.* UNITED STATES; and  
No. 82-6376. DICKENS ET AL. *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 695 F. 2d 765.

No. 82-6385. KIMBERLIN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 692 F. 2d 760.

No. 82-6392. PARKER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 82-6393. CAPO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 693 F. 2d 1330.

No. 82-6395. COWHIG *v.* MARSH, SECRETARY OF THE ARMY. C. A. 1st Cir. Certiorari denied. Reported below: 693 F. 2d 234.

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No. 82-6397. *MARQUARDT v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 695 F. 2d 1300.

No. 82-6403. *COTNER v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 82-6404. *LEWIS v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 701 F. 2d 169.

No. 82-6416. *BETHEA v. LEEKE ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 696 F. 2d 988.

No. 82-6418. *PHILLIPS v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 709 F. 2d 1511.

No. 82-6420. *MORRIS v. UNITED STATES DEPARTMENT OF JUSTICE ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 696 F. 2d 994.

No. 82-6421. *BOYD v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 696 F. 2d 63.

No. 82-6422. *CALLAHAN v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 701 F. 2d 186.

No. 82-6427. *BEDOYA v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 714 F. 2d 117.

No. 82-6430. *JOHNSON v. UNITED STATES*. Ct. App. D. C. Certiorari denied.

No. 82-6431. *WHAM v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 696 F. 2d 993.

No. 82-665. *SPALDING ET AL. v. AIKEN*. C. A. 9th Cir. Certiorari denied. *JUSTICE BLACKMUN* would grant certiorari. Reported below: 684 F. 2d 632.

Statement of CHIEF JUSTICE BURGER concerning the denial of certiorari.

The time has come to consider limitations on the availability of the writ of habeas corpus in federal courts, especially

for prisoners pressing stale claims that were fully ventilated in state courts. Others have expressed frustration in coping with stale cases, see, *e. g.*, *Illinois v. Allen*, 397 U. S. 337, 351, 357 (1970) (Douglas, J., concurring); *McMann v. Richardson*, 397 U. S. 759, 773 (1970), and this petition underscores the views of those who have expressed concern as to the misuse and abuse of the writ. Relief on claims presented many years after conviction should be limited to cases in which the petitioner can demonstrate a miscarriage of justice or a colorable claim of innocence. The astonishing facts underlying this petition are illustrative and instructive.

On October 14, 1965, a jury in King County, Wash., found Arthur Aiken and his codefendant guilty of murder in the first degree for the robbery and slayings of three gas station attendants in separate incidents within one month. Each victim was shot several times. The jury imposed the death penalty. On direct appeal, Aiken advanced numerous challenges to his conviction. Following a remand to the trial court, the Washington Supreme Court affirmed the conviction and the sentence, *State v. Aiken*, 72 Wash. 2d 306, 434 P. 2d 10 (1967). On petition for certiorari to this Court, the conviction was vacated and the case remanded for reconsideration in light of *Bruton v. United States*, 391 U. S. 123 (1968). 392 U. S. 652 (1968). After a second petition for certiorari, the conviction was again vacated and remanded for reconsideration in light of *Maxwell v. Bishop*, 398 U. S. 262 (1970), *Boulden v. Holman*, 394 U. S. 478 (1969), and *Witherspoon v. Illinois*, 391 U. S. 510 (1968). 403 U. S. 946 (1971). The state trial court then resentenced Aiken to three consecutive life prison terms.

On July 26, 1979, *fourteen years* after his original conviction and *eight years* after his resentencing, Aiken filed this petition in the United States District Court for the Western District of Washington under 28 U. S. C. § 2254. He raised claims concerning pretrial publicity, the voluntariness of his confession, and the trial court's failure to grant severance—

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all claims that had been raised and decided a decade earlier in his first appeal to the Washington Supreme Court. All but the pretrial publicity issue had been presented in his original petition for review here.

On February 22, 1980, the District Court denied the habeas petition because Aiken had prejudiced the State by waiting more than five years before filing his petition, see Habeas Corpus Rule 9(a).<sup>1</sup> The Court of Appeals for the Ninth Circuit reversed, holding that prejudice may not be presumed. On remand, the State presented evidence that it could locate only 30 of the 87 witnesses who testified at trial and that 136 of the State's 138 exhibits were lost or destroyed. Finding that the evidence demonstrated that it would be difficult to retry Aikens should his petition for relief be granted, the District Court again dismissed the petition, concluding that prejudice as to retrial was also a ground for dismissal under Rule 9(a).<sup>2</sup> The Court of Appeals for the

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<sup>1</sup>That measure provides:

"A petition may be dismissed if it appears that the state of which the respondent is an officer has been prejudiced in its ability to respond to the petition by delay in its filing unless the petitioner shows that it is based on grounds of which he could not have had knowledge by the exercise of reasonable diligence before the circumstances prejudicial to the state occurred."

As originally drafted, Rule 9(a) would have provided that a 5-year delay creates a presumption of prejudice rather than the present standard which requires the state to prove prejudice in every case, see Advisory Committee's Note to Habeas Corpus Rule 9, 28 U. S. C., p. 272. The 5-year presumption was deleted by Congress, 90 Stat. 1335, see H. R. Rep. No. 94-1471, pp. 4-5 (1976), on the grounds that it was "unsound policy to require the defendant to overcome a presumption of prejudice and that the legislation brings Rule 9(a) into conformity with other provisions of law," *id.*, at 5 (footnotes omitted), and "into conformity with case law," *id.*, at 5, n. 9. See also 122 Cong. Rec. 30222-30223 (1976).

<sup>2</sup>In so holding, the court relied on a comment in the Advisory Committee Note to the identical provision (Rule 9(a)) governing 28 U. S. C. § 2255 proceedings. That comment states:

"Subdivision (a) provides a flexible, equitable time limitation based on laches to prevent movants from withholding their claims so as to prejudice

Ninth Circuit again reversed, reasoning that Rule 9(a) allows consideration only of the State's difficulty in "respond[ing] to the [habeas] petition," and not consideration of the difficulty in retrying the petitioner. 684 F. 2d 632, 634 (1982). The District Court was ordered to entertain further proceedings pursuant to § 2254(d).

The privileges of the writ of habeas corpus are not unlimited. Rather the doctrine of laches should apply to habeas actions as it applies to other actions for relief. Alternatively, Rule 9(a) should be changed to bar relief when delay has prejudiced the state's ability to retry the petitioner.

The scope of habeas corpus as an avenue for repeated collateral attacks on criminal convictions has expanded enormously through decisions of this Court in the last three decades, see *Stone v. Powell*, 428 U. S. 465, 474-482 (1976). As the ability to attack criminal convictions collaterally has expanded, so too has the range of costs to the judicial system grown. As we noted last Term, collateral review undermines the interest in repose that underlies the principle of *res judicata*, degrades the importance of the trial, frustrates penological goals and drains the resources of the judicial system, *Engle v. Isaac*, 456 U. S. 107, 124-129 (1982). See also *Stone v. Powell*, *supra*, at 491, n. 31; *Brown v. Allen*, 344 U. S. 443, 532-548 (1953) (Jackson, J., concurring); *Schneekloth v. Bustamonte*, 412 U. S. 218, 259-266 (1973) (POWELL, J., concurring). See Friendly, *Is Innocence Irrelevant?*, 38 U. Chi. L. Rev. 142, 146-148 (1970).

Claims presented by way of habeas corpus petitions many years after conviction impose especially heavy burdens on the prison system, on society, and on the administration of justice. Our willingness to entertain these late claims tells prisoners that they need never reconcile themselves to what has happened: they need never "make peace" with society, learn a new way of life, or attempt to build a realistic future. Our

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the government both in meeting the allegations of the motion *and in any possible retrial.*" (Emphasis added.) 28 U. S. C., p. 286.

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society's constant willingness to reopen cases long closed tells the public that we have no confidence that the laws are administered justly. Because re prosecution becomes increasingly difficult, and sometimes impossible, as time from the original conviction elapses, such relief on the basis of stale claims often results in the permanent release of dangerous individuals without supervision of any sort.

Inmates exploit society's misplaced sentiment. When re-examination of the circumstances surrounding the detention comes late in the day, there is always a danger that process will be abused. A prisoner has an incentive to "store up" technical challenges to his conviction and then press his claims seriatim when reconsideration of his allegations is difficult and when re prosecution is impossible because key witnesses and exhibits have disappeared. Cf. *Del Vecchio v. United States*, 556 F. 2d 106, 109, and n. 6 (CA2 1977).<sup>3</sup>

"One form of abuse said to exist is that of a prisoner, knowing he or she has a valid claim for relief, intentionally forgoing presenting that claim until evidence of guilt has dissipated so that reconviction would be impossible." ABA Standards for Criminal Justice, commentary following Standard 22-2.4 (2d ed. 1980).

I would allow summary dismissal of habeas petitions when the state can prove that the lapse of time has made re prosecution impossible. Exceptions should be limited to

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<sup>3</sup>See also *United States v. Frady*, 456 U. S. 152 (1982) (19-year delay in asserting claim). In *Marshall v. Fowler*, No. 82-876, cert. denied, *post*, p. 1098, a petition presenting a claim of coerced confession was filed eight years after petitioner's original conviction. In May 1974, an Ohio trial court held a 4-day hearing on this claim, hearing 18 witnesses and generating 600 pages of transcript. A divided panel of the Court of Appeals for the Sixth Circuit nevertheless remanded the habeas petition for an evidentiary hearing. The petition raises a purely factual contention. I cannot imagine how the evidence that is received now could possibly be more probative than the evidence received eight years ago, when memories were fresh. Thus, the views expressed herein apply equally to *Marshall v. Fowler*.

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cases where the petitioner can make a colorable claim of innocence, demonstrate that a significant miscarriage of justice has occurred, or show that his claim is based on grounds that, with the exercise of reasonable diligence, could not have been discovered earlier.

No. 82-666. MILLER BREWING CO. *v.* NATIONAL LABOR RELATIONS BOARD ET AL. C. A. D. C. Cir. Certiorari denied. JUSTICE POWELL took no part in the consideration or decision of this petition. Reported below: 222 U. S. App. D. C. 336, 686 F. 2d 962.

No. 82-876. MARSHALL, SUPERINTENDENT, SOUTHERN OHIO CORRECTIONAL FACILITY *v.* FOWLER ET AL. C. A. 6th Cir. Motion of respondents for leave to proceed *in forma pauperis* granted. Certiorari denied. For THE CHIEF JUSTICE's views concerning this case, see *Spalding v. Aiken*, *ante*, p. 1093. Reported below: 683 F. 2d 983.

No. 82-986. MARYLAND *v.* DIEHL. Ct. App. Md. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 294 Md. 466, 451 A. 2d 115.

No. 82-1409. BALKCOM, WARDEN, GEORGIA STATE PRISON *v.* GOODWIN. C. A. 11th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 684 F. 2d 794.

No. 82-1051. BENDETTI *v.* UNITED STATES. C. A. 3d Cir. Motion of petitioner for leave to file supplement to petition for writ of certiorari granted. Certiorari denied. Reported below: 692 F. 2d 750.

No. 82-1157. MEACHUM ET AL. *v.* LONGVAL. C. A. 1st Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 693 F. 2d 236.

JUSTICE REHNQUIST, with whom THE CHIEF JUSTICE and JUSTICE O'CONNOR join, dissenting.

Respondent Norman Longval robbed a drugstore in Swampscott, Mass. Longval, who had a previous record for larcenies and had served time for armed robbery, stole the getaway car and carried a shotgun during the robbery.

One of Longval's codefendants, Richard Ellard, pleaded guilty. Ellard stated that he was drunk at the time and did not carry the gun. The sentencing judge noted that Ellard had not been in serious trouble before, and sentenced him to three years' imprisonment and three years' probation with a special term of probation requiring him to obtain treatment for alcoholism.

Longval stood trial for armed robbery, assault with a deadly weapon, and unlawfully carrying a sawed-off shotgun, and was convicted. The trial judge sentenced Longval to 40-50 years in prison. The state appellate court later reduced this sentence to 30-40 years.

Longval sought a writ of error from the Massachusetts Supreme Judicial Court, claiming that the trial judge had improperly threatened him in an effort to coerce him into pleading guilty. The Supreme Judicial Court appointed a Special Master, who found that during the presentation of the prosecution's case-in-chief, the trial judge told Longval's defense attorney, in substance, that

"the evidence in this case as it is coming in is very serious—robbery of a drug store, taking [*i. e.* theft of] drugs, use of a shot-gun. I am wondering if you and the Commonwealth have had any discussion regarding a plea [of guilty]. I strongly suggest that you ask your client to consider a plea, because, if the jury returns a verdict of guilty, I might be disposed to impose a substantial prison sentence. You know that I am capable of doing that because you know of the sentences in a previous trial." 693 F. 2d 236, 237 (CA1 1982).

The Special Master did not construe this statement as a threat. Rather, he thought the judge made "a statement to a young lawyer of the judge's then general impression of the evidence as it had developed to that point."

The Supreme Judicial Court affirmed Longval's conviction. *Commonwealth v. Longval*, 378 Mass. 246, 390 N. E. 2d 1117 (1979). It found that the judge had merely advised Longval's attorney of the sentences he had imposed in other cases and of the seriousness of the offense described in the evidence that had been presented, and advised him "not to forgo any advantage that might accrue to [him] by means of plea bargaining." *Id.*, at 251-252, 390 N. E. 2d, at 1120.

Longval unsuccessfully petitioned for a writ of habeas corpus in the District Court. On appeal, the Court of Appeals reversed. 651 F. 2d 818 (CA1 1981). We granted a petition for a writ of certiorari, vacated the judgment of the Court of Appeals, and remanded for further consideration in light of *United States v. Goodwin*, 457 U. S. 368 (1982). 458 U. S. 1102 (1982).

On remand, the Court of Appeals adhered to its original view. 693 F. 2d 236 (1982). It held that the trial judge's comments led to "a reasonable apprehension of vindictiveness," *id.*, at 237, that requires resentencing before a different judge. The Court of Appeals thought that a judge may not make "a forceful recommendation to consider pleading [guilty], ending on a note of the judge's power to impose a substantial sentence if [the recommendation is] not complied with." *Id.*, at 238. Thus, the Court of Appeals adopted a *per se* rule that requires resentencing whenever a state trial judge makes any statement that is "susceptible of appearing from the defendant's perspective to be an attempt to coerce him to plead." *Id.*, at 237.

The Court of Appeals relied upon *North Carolina v. Pearce*, 395 U. S. 711 (1969), and *Blackledge v. Perry*, 417 U. S. 21 (1974). The respondents in *Pearce* had obtained reversal of their criminal convictions on federal constitutional grounds. They were retried, convicted, and then given sen-

tences that were up to two and a half times as long as their original sentences. This Court held that the harsher sentences suggested that the States were punishing criminal defendants for exercising their federal constitutional rights. We stated that the sentencing authority could only impose longer sentences if it explained its reasons on the record. *Blackledge* extended *Pearce* to establish a presumption of prosecutorial vindictiveness in cases where prosecutors press more serious charges on defendants who obtain reversals of their convictions.

I think the decision below is quite problematic. First, in this case, unlike *Pearce* and *Blackledge*, there is a fully credible alternative explanation for the trial judge's behavior, one that *was credited* by the state court. The Supreme Judicial Court construed the judge's comments simply to inform Longval of the facts of life in his courtroom. This Court has often stressed the importance of providing criminal defendants with full information. For example, in *Boykin v. Alabama*, 395 U. S. 238 (1969), we reversed a conviction on a guilty plea because we were not certain that the defendant had "a full understanding of what the plea connotes and of its consequence." *Id.*, at 244. Surely defendants should be as well informed of the possible consequences of a not-guilty plea. If this judge routinely handed out long sentences after convictions of serious crimes, it would be in Longval's interest to know that; certainly the prosecutor with whom Longval and his counsel had engaged in plea-bargaining negotiations already knew the judge's sentencing habits. It seems incongruous at best to want defendants to be fully informed and then to adopt a *per se* rule condemning judges who provide them with information.

Second, in *Goodwin, supra*, we held that the *Pearce-Blackledge* presumption does not apply where a prosecutor presses more serious charges in a plea-bargaining situation. The rationale of the decision is that vindictiveness is less likely during pretrial plea bargaining than after a trial and an appeal. The Court of Appeals sought to distinguish *Good-*

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*win* on the ground that this case involves a judge rather than a prosecutor, and judges are expected to be impartial. I believe the *Goodwin* rationale is fully applicable in this case. If anything, the impartial position of the judge suggests that we should be more reluctant to apply a presumption of vindictiveness to judges than to prosecutors.

Guilty pleas result from discussions and negotiations between opposing advocates and require them to predict the probability of conviction and the severity of the sentence that is likely to be imposed. It is at least arguable that this process is made fairer when the accused has complete information concerning the sentence he is likely to receive. Because I doubt whether a *per se* presumption of judicial vindictiveness is warranted in cases such as this, I would grant certiorari.

No. 82-1177. AETNA CASUALTY & SURETY CO. ET AL. *v.* UNITED STATES ET AL. C. A. 4th Cir. Motion of petitioners to defer consideration of the petition for writ of certiorari denied. Certiorari denied. Reported below: 681 F. 2d 186.

No. 82-1426. UNGER *v.* CONSOLIDATED FOODS CORP. C. A. 7th Cir. Certiorari denied. JUSTICE BLACKMUN would grant certiorari. Reported below: 693 F. 2d 703.

No. 82-5950. SPENCER *v.* ISRAEL, WARDEN. C. A. 7th Cir. Certiorari denied.

JUSTICE MARSHALL, with whom JUSTICE BRENNAN joins, dissenting.

A defendant's right to due process is violated when the trial judge, in charging the jury on the issue of criminal intent, "require[s] the jury, if satisfied as to [specified] facts . . . , to find intent *unless* the defendant offer[s] evidence to the contrary." *Sandstrom v. Montana*, 442 U. S. 510, 515 (1979). Such a presumption is inconsistent with the constitutional requirement that the State prove every element of a criminal offense beyond a reasonable doubt. *In re Winship*, 397 U. S. 358 (1970).

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At petitioner's trial on the charge of first-degree murder, the trial judge twice instructed the jury as follows:

"When there are no circumstances to prevent or rebut the presumption, the law presumes that a reasonable person intends all of the natural, probable and usual consequences of his deliberate acts. If one person assaults another violently with a dangerous weapon likely to kill, and the person thus assaulted dies therefrom, then when there are no circumstances to prevent or rebut the presumption, the legal and natural presumption is that death was intended."

For reasons fully elaborated by three federal judges who have considered the constitutionality of an identical instruction, the instruction in this case was impermissible because it described a mandatory presumption of intent. See *Pigee v. Israel*, 670 F. 2d 690, 697-699 (CA7) (Baker, J., dissenting), cert. denied, 459 U. S. 846 (1982); *Austin v. Israel*, 516 F. Supp. 461 (ED Wis. 1981); *Harris v. Israel*, 515 F. Supp. 568 (ED Wis. 1981). The decision below, which denied petitioner's request for the issuance of a certificate of probable cause to appeal, therefore cannot be squared with *Sandstrom*. I would grant certiorari to correct the lower court's clear departure from this Court's precedents.

No. 82-6187. STEWART *v.* FLORIDA. Sup. Ct. Fla.;

No. 82-6194. COPELAND *v.* SOUTH CAROLINA. Sup. Ct. S. C.;

No. 82-6206. TAYLOR *v.* LOUISIANA. Sup. Ct. La.;

No. 82-6210. BURDEN *v.* GEORGIA. Sup. Ct. Ga.;

No. 82-6262. WALLACE *v.* ZANT, WARDEN, GEORGIA DIAGNOSTIC AND CLASSIFICATION CENTER. Super. Ct. Ga., Butts County;

No. 82-6284. BRILEY *v.* MITCHELL, SUPERINTENDENT, VIRGINIA STATE PENITENTIARY. Sup. Ct. Va.; and

No. 82-6306. RAINES *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied. Reported below: No. 82-6187, 420 So. 2d

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862; No. 82-6194, 278 S. C. 572, 300 S. E. 2d 63; No. 82-6206, 422 So. 2d 109; No. 82-6210, 250 Ga. 313, 297 S. E. 2d 242; No. 82-6306, 429 So. 2d 1111.

JUSTICE BRENNAN and JUSTICE MARSHALL, dissenting.

Adhering to our views that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, *Gregg v. Georgia*, 428 U. S. 153, 227, 231 (1976), we would grant certiorari and vacate the death sentences in these cases.

*Rehearing Denied*

No. 82-835. THOMPSON ET AL. *v.* PEOPLES LIBERTY BANK, 459 U. S. 1191;

No. 82-949. FRICKE *v.* UNITED STATES, *ante*, p. 1011;

No. 82-1011. FLEMING *v.* VIRGINIA, 459 U. S. 1206;

No. 82-1075. CPG PRODUCTS CORP. ET AL. *v.* ANTI-MONOPOLY, INC., 459 U. S. 1227;

No. 82-1104. GENERAL ATOMIC CO. *v.* UNITED NUCLEAR CORP., *ante*, p. 1017;

No. 82-1108. SIEGEL *v.* NEW YORK ET AL., 459 U. S. 1209;

No. 82-1296. STROOM *v.* CARTER, *ante*, p. 1007;

No. 82-5417. ANGLE, AKA MCCLURE *v.* BOWEN ET AL., 459 U. S. 1210;

No. 82-5433. CAVANAUGH, DBA TOT COLLEGE *v.* COLORADO DEPARTMENT OF SOCIAL SERVICES, 459 U. S. 1011;

No. 82-5867. PIATKOWSKA *v.* EMPLOYERS INSURANCE OF WAUSAU, 459 U. S. 1213;

No. 82-5883. FENG-MING TUNG *v.* BREWSTER, 459 U. S. 1214;

No. 82-5884. SMITH *v.* GENERAL MOTORS ACCEPTANCE CORP., 459 U. S. 1214;

No. 82-5897. REESE *v.* SISTER SUZANNE MARIE ET AL., 459 U. S. 1215; and

No. 82-5918. ATHERTON *v.* FALCONE, GARY & ROSENFELD, LTD., ET AL., 459 U. S. 1215. Petitions for rehearing denied.

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No. 82-5949. SIMS *v.* MARYLAND, 459 U. S. 1217;  
No. 82-5955. BARKER *v.* MARINE TRANSPORTATION  
LINES, INC., ET AL., 459 U. S. 1217;  
No. 82-5990. JOHL *v.* JOHL ET AL., 459 U. S. 1219;  
No. 82-5994. MORRIS *v.* UNITED STATES, 459 U. S. 1219;  
No. 82-6015. NURSE *v.* DEPARTMENT OF THE AIR  
FORCE, 459 U. S. 1220;  
No. 82-6032. MILLER *v.* CALIFORNIA, *ante*, p. 1015; and  
No. 82-6182. IN RE PATTERSON, *ante*, p. 1010. Petitions  
for rehearing denied.

No. 81-827. JEFFERSON COUNTY PHARMACEUTICAL  
ASSN., INC. *v.* ABBOTT LABORATORIES ET AL., *ante*, p. 150.  
Petition for rehearing denied. JUSTICE O'CONNOR took no  
part in the consideration or decision of this petition.

No. 82-5148. WILLIAMS *v.* UNITED STATES, 459 U. S.  
916;

No. 82-5395. LANGONE *v.* SMITH, SUPERINTENDENT,  
ATTICA CORRECTIONAL FACILITY, 459 U. S. 1110; and

No. 82-5853. FITZGERALD *v.* VIRGINIA, 459 U. S. 1228.  
Motions for leave to file petitions for rehearing denied.

No. 32-5182. *Jefferson County Board of Supervisors v. Abbott Laboratories et al.*, 459 U. S. 1011. Rehearing denied.

No. 32-5183. *Jefferson County Board of Supervisors v. Abbott Laboratories et al.*, 459 U. S. 1011. Rehearing denied.

No. 32-5184. *Jefferson County Board of Supervisors v. Abbott Laboratories et al.*, 459 U. S. 1011. Rehearing denied.

No. 32-5185. *Jefferson County Board of Supervisors v. Abbott Laboratories et al.*, 459 U. S. 1011. Rehearing denied.

No. 32-5186. *Jefferson County Board of Supervisors v. Abbott Laboratories et al.*, 459 U. S. 1011. Rehearing denied.

No. 32-5187. *Jefferson County Board of Supervisors v. Abbott Laboratories et al.*, 459 U. S. 1011. Rehearing denied.

No. 32-5188. *Jefferson County Board of Supervisors v. Abbott Laboratories et al.*, 459 U. S. 1011. Rehearing denied.

No. 32-5189. *Jefferson County Board of Supervisors v. Abbott Laboratories et al.*, 459 U. S. 1011. Rehearing denied.

No. 32-5190. *Jefferson County Board of Supervisors v. Abbott Laboratories et al.*, 459 U. S. 1011. Rehearing denied.

No. 32-5191. *Jefferson County Board of Supervisors v. Abbott Laboratories et al.*, 459 U. S. 1011. Rehearing denied.

No. 32-5192. *Jefferson County Board of Supervisors v. Abbott Laboratories et al.*, 459 U. S. 1011. Rehearing denied.

No. 32-5193. *Jefferson County Board of Supervisors v. Abbott Laboratories et al.*, 459 U. S. 1011. Rehearing denied.

No. 32-5194. *Jefferson County Board of Supervisors v. Abbott Laboratories et al.*, 459 U. S. 1011. Rehearing denied.

No. 32-5195. *Jefferson County Board of Supervisors v. Abbott Laboratories et al.*, 459 U. S. 1011. Rehearing denied.

No. 32-5196. *Jefferson County Board of Supervisors v. Abbott Laboratories et al.*, 459 U. S. 1011. Rehearing denied.

No. 32-5197. *Jefferson County Board of Supervisors v. Abbott Laboratories et al.*, 459 U. S. 1011. Rehearing denied.

No. 32-5198. *Jefferson County Board of Supervisors v. Abbott Laboratories et al.*, 459 U. S. 1011. Rehearing denied.

No. 32-5199. *Jefferson County Board of Supervisors v. Abbott Laboratories et al.*, 459 U. S. 1011. Rehearing denied.

No. 32-5200. *Jefferson County Board of Supervisors v. Abbott Laboratories et al.*, 459 U. S. 1011. Rehearing denied.

No. 32-5201. *Jefferson County Board of Supervisors v. Abbott Laboratories et al.*, 459 U. S. 1011. Rehearing denied.