

ORDERS FROM APRIL 25 THROUGH
JUNE 3, 1983

APRIL 25, 1983

Appeal Dismissed

No. 82-6444. RAY *v.* DEPARTMENT OF THE NAVY ET AL. 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.

*Miscellaneous Orders**

No. — — ——. SAMPSON *v.* COMMITTEE ON PROBATION. Motion to direct the Clerk to file the petition for writ of certiorari out of time denied.

No. — — ——. BOLAND & CORNELIUS, INC., ET AL. *v.* CHESAPEAKE & OHIO RAILWAY CO. ET AL. Motion to direct the Clerk to file the petition for writ of certiorari out of time denied.

No. A-843. MARCELLO ET AL. *v.* UNITED STATES. Application to recall and stay the mandate of the United States Court of Appeals for the Fifth Circuit, addressed to JUSTICE BRENNAN and referred to the Court, denied.

No. D-288. IN RE DISBARMENT OF LIEBERMAN. Disbarment entered. [For earlier order herein, see 458 U. S. 1127.]

No. D-296. IN RE DISBARMENT OF COLEMAN. Disbarment entered. [For earlier order herein, see 459 U. S. 939.]

No. D-301. IN RE DISBARMENT OF BONNIN. Disbarment entered. [For earlier order herein, see 459 U. S. 985.]

*For the Court's order prescribing Bankruptcy Rules, see *post*, p. 975.

April 25, 1983

461 U. S.

No. D-308. IN RE DISBARMENT OF ODENDAHL. Disbarment entered. [For earlier order herein, see 459 U. S. 1140.]

No. D-313. IN RE DISBARMENT OF GRIMES. Disbarment entered. [For earlier order herein, see 459 U. S. 1141.]

No. D-322. IN RE DISBARMENT OF MINN. Howard W. Minn, of Chicago, Ill., 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 [460 U. S. 1009], is hereby discharged.

No. D-333. IN RE DISBARMENT OF BAXTER. It is ordered that Herbert Russell Baxter, of Mentor, Ohio, 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-334. IN RE DISBARMENT OF AGLOW. It is ordered that Lawrence M. Aglow, of West Chester, 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-335. IN RE DISBARMENT OF HUBER. It is ordered that Donald G. Huber, of Okemos, Mich., 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-336. IN RE DISBARMENT OF MCLEAN. It is ordered that Lee Marshall McLean, of Washington, D. C., be suspended from the practice of law in this Court and that a

461 U. S.

April 25, 1983

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-337. *IN RE DISBARMENT OF VANDOREN*. It is ordered that Edward B. Vandoren, 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. 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 respondents for leave to file reply to supplemental memorandum filed after argument 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 petitioners in No. 81-2188 for leave to file a response to the memorandum of the United States filed after argument granted. Motion of respondent Navajo Nation in No. 81-2147 for leave to file a brief after argument granted.

No. 82-599. *COMMISSIONER OF INTERNAL REVENUE v. ENGLE ET UX.* C. A. 7th Cir.; and

No. 82-774. *FARMAR ET AL. v. UNITED STATES.* C. A. Fed. Cir. [Certiorari granted, 459 U. S. 1102.] Motion of

April 25, 1983

461 U. S.

respondents in No. 82-599 and petitioners in No. 82-774 for divided argument granted.

No. 82-6489. *IN RE SHABAZZ*. C. A. 9th Cir. Petition for writ of common-law certiorari denied.

Certiorari Granted

No. 82-629. *THREE AFFILIATED TRIBES OF THE FORT BERTHOLD RESERVATION v. WOLD ENGINEERING, P.C., ET AL.* Sup. Ct. N. D. Certiorari granted. Reported below: 321 N. W. 2d 510.

No. 82-1246. *BOSE CORP. v. CONSUMERS UNION OF UNITED STATES, INC.* C. A. 1st Cir. Certiorari granted. Reported below: 692 F. 2d 189.

No. 82-1271. *IMMIGRATION AND NATURALIZATION SERVICE ET AL. v. DELGADO ET AL.* C. A. 9th Cir. Certiorari granted. Reported below: 681 F. 2d 624.

No. 82-1367. *ROADWAY EXPRESS, INC. v. WARREN*. Ct. App. Ga. Certiorari granted. Reported below: 163 Ga. App. 759, 295 S. E. 2d 743.

No. 82-1371. *SECRETARY OF HEALTH AND HUMAN SERVICES v. DAY ET AL.* C. A. 2d Cir. Motion of respondents for leave to proceed *in forma pauperis* denied. Certiorari granted. Reported below: 685 F. 2d 19.

No. 82-1432. *PULLIAM, MAGISTRATE FOR THE COUNTY OF CULPEPER, VIRGINIA v. ALLEN ET AL.* C. A. 4th Cir. Motion of respondents for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 690 F. 2d 376.

Certiorari Denied. (See also Nos. 82-6444 and 82-6489, *supra.*)

No. 82-1060. *GOUVEIA v. NAPILI-KAI, LTD., DBA NAPILI KAI BEACH CLUB*. Sup. Ct. Haw. Certiorari denied. Reported below: 65 Haw. 189, 649 P. 2d 1119.

461 U. S.

April 25, 1983

No. 82-1089. CITY OF MARIETTA, GEORGIA, ET AL. *v.* DILLS, DBA MID-GEORGIA SUPPLY, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 674 F. 2d 1377.

No. 82-1128. PAVKOVIC, DIRECTOR, ILLINOIS DEPARTMENT OF MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES *v.* TIDWELL ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 677 F. 2d 560.

No. 82-1219. SQUIRES *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 6th Cir. Certiorari denied. Reported below: 689 F. 2d 1276.

No. 82-1262. JAMES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 708 F. 2d 729.

No. 82-1264. LOUISIANA *v.* FEDERAL ENERGY REGULATORY COMMISSION ET AL.; and

No. 82-1272. UNITED GAS PIPE LINE CO. *v.* FEDERAL ENERGY REGULATORY COMMISSION ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 224 U. S. App. D. C. 162 and 212, 694 F. 2d 728 and 778.

No. 82-1275. TERRY *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 108 Ill. App. 3d 1222, 446 N. E. 2d 324.

No. 82-1280. SPAWR OPTICAL RESEARCH, INC., ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 685 F. 2d 1076.

No. 82-1286. BORDERS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 693 F. 2d 1318.

No. 82-1310. HUMPHRIES *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied.

No. 82-1417. WALKER DIE CASTING, INC. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 6th Cir. Certiorari denied. Reported below: 682 F. 2d 592.

No. 82-1439. BORKOWSKI *v.* BORKOWSKI. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 108 Ill. App. 3d 1204, 446 N. E. 2d 314.

April 25, 1983

461 U. S.

No. 82-1456. *AMERICAN GERI-CARE INC. v. NATIONAL LABOR RELATIONS BOARD*. C. A. 2d Cir. Certiorari denied. Reported below: 697 F. 2d 56.

No. 82-1462. *HERBST v. WISCONSIN*. Ct. App. Wis. Certiorari denied. Reported below: 109 Wis. 2d 692, 326 N. W. 2d 782.

No. 82-1469. *LOCASCIO ET AL. v. TELETYPE CORP.* C. A. 7th Cir. Certiorari denied. Reported below: 694 F. 2d 497.

No. 82-1470. *POWERS v. INDIANA*. Sup. Ct. Ind. Certiorari denied. Reported below: 440 N. E. 2d 1096.

No. 82-1478. *WALSH ET AL. v. PRINCE GEORGE DEPARTMENT OF SOCIAL SERVICES*. Sup. Ct. Va. Certiorari denied.

No. 82-1480. *KLINE v. LOUISIANA*. Sup. Ct. La. Certiorari denied. Reported below: 422 So. 2d 1164.

No. 82-1483. *ANDRE v. MERRILL LYNCH READY ASSETS TRUST ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 694 F. 2d 923.

No. 82-1484. *CORDIS CORP. v. CARDIAC PACEMAKERS, INC.* C. A. 8th Cir. Certiorari denied. Reported below: 690 F. 2d 665.

No. 82-1487. *HERZOG, RECEIVER OF D. H. OVERMYER CO., INC. (OHIO), ET AL. v. FIRST NATIONAL BANK OF BOSTON*. C. A. 1st Cir. Certiorari denied. Reported below: 698 F. 2d 1214.

No. 82-1514. *MILLER v. UNITED STATES*; and

No. 82-6451. *WALTERS v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: No. 82-1514, 708 F. 2d 729; No. 82-6451, 708 F. 2d 730.

No. 82-1529. *WINDWARD PARTNERS ET AL. v. ARIYOSHI ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 693 F. 2d 928.

461 U. S.

April 25, 1983

No. 82-1569. *MARINO v. UNITED STATES*; and
No. 82-6390. *PROVOST v. UNITED STATES*. C. A. 2d
Cir. Certiorari denied. Reported below: 694 F. 2d 898.

No. 82-1570. *ALVAREZ v. UNITED STATES*. C. A. 11th
Cir. Certiorari denied. Reported below: 696 F. 2d 1307.

No. 82-1580. *DEMICHAEL v. UNITED STATES*. C. A.
7th Cir. Certiorari denied. Reported below: 692 F. 2d
1059.

No. 82-1587. *CHRISTIAN v. MASSACHUSETTS ET AL.*
C. A. 1st Cir. Certiorari denied.

No. 82-1589. *CARPER v. UNITED STATES*. C. A. 6th
Cir. Certiorari denied. Reported below: 708 F. 2d 729.

No. 82-1596. *GAULTNEY v. UNITED STATES*. C. A. 11th
Cir. Certiorari denied. Reported below: 694 F. 2d 725.

No. 82-5911. *SNYDER ET AL. v. UNITED STATES*. Ct.
App. D. C. Certiorari denied. Reported below: 447 A. 2d
776.

No. 82-6030. *STUBBS v. BORDENKIRCHER, WARDEN,
WEST VIRGINIA STATE PENITENTIARY*. C. A. 4th Cir.
Certiorari denied. Reported below: 689 F. 2d 1205.

No. 82-6180. *MCPHEETERS v. SPALDING ET AL.* C. A.
9th Cir. Certiorari denied. Reported below: 694 F. 2d 723.

No. 82-6304. *SMITH v. FAIRMAN, WARDEN, ET AL.*
C. A. 7th Cir. Certiorari denied. Reported below: 678 F.
2d 52.

No. 82-6313. *REDDING v. COUNTY COURT, ORANGE
COUNTY, FLORIDA*. C. A. 11th Cir. Certiorari denied.
Reported below: 694 F. 2d 725.

No. 82-6314. *THOMPSON v. WOODS ET AL.* C. A. 6th
Cir. Certiorari denied. Reported below: 709 F. 2d 1509.

No. 82-6318. *PITTSER v. OKLAHOMA*. Ct. Crim. App.
Okla. Certiorari denied.

April 25, 1983

461 U. S.

No. 82-6324. *CYNTJE v. GOVERNMENT OF THE VIRGIN ISLANDS ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 707 F. 2d 1389.

No. 82-6328. *KINSLOW ET AL. v. COMMISSIONER OF INTERNAL REVENUE.* C. A. 11th Cir. Certiorari denied. Reported below: 693 F. 2d 134.

No. 82-6330. *BRADEN v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 709 F. 2d 1510.

No. 82-6331. *LEWIS v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 694 F. 2d 28.

No. 82-6333. *BREWER v. WEGMANN ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 691 F. 2d 216.

No. 82-6336. *PERRY v. SOUTH CAROLINA.* Sup. Ct. S. C. Certiorari denied. Reported below: 278 S. C. 490, 299 S. E. 2d 324.

No. 82-6338. *AARON v. VILLALOBOS.* C. A. 9th Cir. Certiorari denied.

No. 82-6343. *SMITH v. BORDENKIRCHER, WARDEN, WEST VIRGINIA STATE PENITENTIARY.* Sup. Ct. App. W. Va. Certiorari denied.

No. 82-6345. *BYRD v. STEPHENSON ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 696 F. 2d 988.

No. 82-6347. *BROWN v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 707 F. 2d 1396.

No. 82-6348. *BROWN v. ST. LOUIS POLICE DEPARTMENT ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 691 F. 2d 393.

No. 82-6351. *DONALDSON v. TEXAS.* Ct. Crim. App. Tex. Certiorari denied. Reported below: 642 S. W. 2d 816.

No. 82-6358. *SWEEZY v. GARRISON, WARDEN.* C. A. 4th Cir. Certiorari denied. Reported below: 694 F. 2d 331.

461 U. S.

April 25, 1983

No. 82-6359. *RING v. OKLAHOMA*. Ct. Crim. App. Okla. Certiorari denied. Reported below: 654 P. 2d 1085.

No. 82-6368. *ROSE v. FLORIDA*. Sup. Ct. Fla. Certiorari denied. Reported below: 425 So. 2d 521.

No. 82-6381. *MOSES v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 695 F. 2d 765.

No. 82-6394. *ARNOLD v. DUVAL COUNTY SCHOOL BOARD*. C. A. 11th Cir. Certiorari denied. Reported below: 693 F. 2d 1051.

No. 82-6438. *WADE v. UNITED STATES*. C. A. 5th Cir. Certiorari denied.

No. 82-6441. *BARRETT v. UNITED STATES*; and

No. 82-6470. *MOBLEY v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 699 F. 2d 172.

No. 82-6447. *EDWARDS ET AL. v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 696 F. 2d 1277.

No. 82-6453. *NANEZ v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 694 F. 2d 405.

No. 82-6456. *WRIGHT v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 701 F. 2d 169.

No. 82-6459. *GUTIERREZ v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 696 F. 2d 753.

No. 82-6463. *SEIDERS v. UNITED STATES PAROLE COMMISSION ET AL.* C. A. 10th Cir. Certiorari denied.

No. 82-6464. *WUJS v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 707 F. 2d 1397.

No. 82-6465. *WUJS v. UNITED STATES*. C. A. 3d Cir. Certiorari denied.

April 25, 1983

461 U. S.

No. 82-6467. *GUTIERREZ v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 696 F. 2d 753.

No. 82-6471. *POKORNEY v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 708 F. 2d 730.

No. 82-6475. *NORTON v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 700 F. 2d 1072.

No. 82-6480. *YEARY v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 701 F. 2d 169.

No. 82-6482. *METCALFE v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 698 F. 2d 877.

No. 82-6484. *BENNETT ET AL. v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 722 F. 2d 728.

No. 82-6486. *CATANIO v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 701 F. 2d 186.

No. 82-6488. *LUMPKINS v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 703 F. 2d 571.

No. 82-1438. *WRIGHT v. INTERNATIONAL BUSINESS MACHINES CORP., INC.* C. A. 9th Cir. Certiorari denied. JUSTICE BLACKMUN took no part in the consideration or decision of this petition. Reported below: 692 F. 2d 767.

No. 82-6172. *GRAY v. LUCAS, WARDEN, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 677 F. 2d 1086 and 685 F. 2d 139.

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.

461 U. S.

April 25, 27, 28, May 2, 1983

Rehearing Denied

No. 81-1180. DICKERSON, DIRECTOR, BUREAU OF ALCOHOL, TOBACCO AND FIREARMS *v.* NEW BANNER INSTITUTE, INC., 460 U. S. 103;

No. 82-974. THOMASSEN ET AL. *v.* UNITED STATES ET AL., 460 U. S. 1022;

No. 82-1077. KEYSTONE CABLE-VISION CORP. ET AL. *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL., 459 U. S. 1208;

No. 82-1152. HOGGARD *v.* ARKANSAS, 460 U. S. 1022; and

No. 82-5900. SMITH *v.* LANE, DIRECTOR, ILLINOIS DEPARTMENT OF CORRECTIONS, 459 U. S. 1215. Petitions for rehearing denied.

APRIL 27, 1983

Dismissal Under Rule 53

No. 82-5276. SIMMONS *v.* HECKLER, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 3d Cir. Certiorari dismissed under this Court's Rule 53. Reported below: 676 F. 2d 925.

APRIL 28, 1983

Miscellaneous Orders. (For the Court's orders prescribing amendments to the Federal Rules of Civil Procedure, see *post*, p. 1097, and amendments to the Federal Rules of Criminal Procedure, see *post*, p. 1119.)

MAY 2, 1983

Affirmed on Appeal

No. 82-1141. COMMON CAUSE ET AL. *v.* BOLGER, POSTMASTER GENERAL, ET AL. Affirmed on appeal from D. C. D. C. JUSTICE BRENNAN, JUSTICE MARSHALL, and JUSTICE STEVENS would note probable jurisdiction and set case for oral argument. Reported below: 574 F. Supp. 672.

May 2, 1983

461 U. S.

No. 82-1555. PENNSYLVANIA PUBLIC UTILITY COMMISSION ET AL. *v.* CONSOLIDATED RAIL CORPORATION. Affirmed on appeal from C. A. 3d Cir. Reported below: 696 F. 2d 981.

Appeals Dismissed

No. 82-540. MISSISSIPPI *v.* SMITH, ATTORNEY GENERAL. Appeal from D. C. D. C. dismissed for want of jurisdiction. Reported below: 541 F. Supp. 1329.

No. 82-1513. ESCAMBIA RIVER ELECTRIC COOPERATIVE, INC. *v.* FLORIDA PUBLIC SERVICE COMMISSION ET AL. Appeal from Sup. Ct. Fla. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 421 So. 2d 1384.

No. 82-6419. LACHER *v.* CITY OF BEMIDJI. Appeal from Sup. Ct. Minn. dismissed for want of substantial federal question.

Certiorari Granted—Vacated and Remanded

No. 81-1063. UNITED STATES ET AL. *v.* MEEKS. C. A. 5th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *United States v. Rylander*, 460 U. S. 752 (1983). Reported below: 642 F. 2d 733.

Miscellaneous Orders

No. — — ——. IN RE STERN. Application for reinstatement as a member of the Bar of this Court denied.

No. 80-1640. UNITED STATES NUCLEAR REGULATORY COMMISSION ET AL. *v.* SHOLLY ET AL.; and

No. 80-1656. METROPOLITAN EDISON CO. ET AL. *v.* PEOPLE AGAINST NUCLEAR ENERGY ET AL., 459 U. S. 1194. Motion of respondents to retax costs denied. JUSTICE WHITE and JUSTICE BLACKMUN would grant this motion.

No. 82-6354. IN RE BROADWAY. Petition for writ of mandamus denied.

461 U. S.

May 2, 1983

No. 81-2245. NEVADA *v.* UNITED STATES ET AL.;

No. 81-2276. TRUCKEE-CARSON IRRIGATION DISTRICT *v.* UNITED STATES ET AL.; and

No. 82-38. PYRAMID LAKE PAIUTE TRIBE OF INDIANS *v.* TRUCKEE-CARSON IRRIGATION DISTRICT ET AL. C. A. 9th Cir. [Certiorari granted, 459 U. S. 904.] Motion of Pyramid Lake Paiute Tribe of Indians for leave to file a reply brief out of time granted.

Certiorari Granted. (See also No. 82-132, *ante*, at 280.)

No. 82-786. UNITED STATES *v.* DOE. C. A. 3d Cir. Certiorari granted. Reported below: 680 F. 2d 327.

Certiorari Denied. (See also No. 82-1513, *supra*.)

No. 81-1357. GREGER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 657 F. 2d 1109.

No. 81-2082. BOWSHER, COMPTROLLER GENERAL OF THE UNITED STATES, ET AL. *v.* SMITHKLINE CORP.; and

No. 81-2268. SMITHKLINE CORP. *v.* BOWSHER, COMPTROLLER GENERAL OF THE UNITED STATES, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 668 F. 2d 201.

No. 82-648. HARTIGAN, ATTORNEY GENERAL OF ILLINOIS, ET AL. *v.* GENERAL ELECTRIC CO. ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 683 F. 2d 206.

No. 82-841. DON'T WASTE WASHINGTON LEGAL DEFENSE FOUNDATION *v.* WASHINGTON ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 684 F. 2d 627.

No. 82-1126. MARGIOTTA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 688 F. 2d 108.

No. 82-1160. ARUTUNOFF ET AL. *v.* OKLAHOMA STATE ELECTION BOARD ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 687 F. 2d 1375.

No. 82-1241. PINCKARD ET AL. *v.* PINCKARD. Ct. App. Tex., 14th Sup. Jud. Dist. Certiorari denied.

May 2, 1983

461 U. S.

No. 82-1257. RANDALL DIVISION OF TEXTRON, INC. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 8th Cir. Certiorari denied. Reported below: 687 F. 2d 1240.

No. 82-1263. KENDRICK *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 692 F. 2d 1262.

No. 82-1304. MONTGOMERY WARD & Co., INC. *v.* NATIONAL LABOR RELATIONS BOARD ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 692 F. 2d 1115.

No. 82-1320. FIDELITY SAVINGS & LOAN ASSN. *v.* FEDERAL HOME LOAN BANK BOARD ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 689 F. 2d 803.

No. 82-1334. CEDAR POINT INVESTMENT CORP. ET AL. *v.* CEDAR POINT APARTMENTS, LTD., ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 693 F. 2d 748.

No. 82-1338. HUNTER ET AL. *v.* MAXIE. Sup. Ct. Alaska. Certiorari denied. Reported below: 651 P. 2d 1170.

No. 82-1410. MILLIKEN RESEARCH CORP. ET AL. *v.* BURLINGTON INDUSTRIES, INC., ET AL.; and

No. 82-1421. MILLIKEN & Co. *v.* BURLINGTON INDUSTRIES, INC. C. A. 4th Cir. Certiorari denied. Reported below: 690 F. 2d 380.

No. 82-1451. PRESTON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 691 F. 2d 725.

No. 82-1488. NEWTON *v.* FEDERAL BARGE LINES, INC. C. A. 7th Cir. Certiorari denied. Reported below: 692 F. 2d 760.

No. 82-1492. HERITAGE PRODUCTS, INC., ET AL. *v.* EDLEE, INC., ET AL. Ct. App. Ky. Certiorari denied.

No. 82-1495. KING *v.* MONTGOMERY COUNTY, MARYLAND. Ct. App. Md. Certiorari denied. Reported below: 295 Md. 165, 453 A. 2d 828.

461 U. S.

May 2, 1983

No. 82-1498. *REICH v. LARSON*, COUNTY CLERK OF THE COUNTY OF FRESNO, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 695 F. 2d 1147.

No. 82-1500. *COLOKATHIS v. WENTWORTH-DOUGLASS HOSPITAL ET AL.* C. A. 1st Cir. Certiorari denied. Reported below: 693 F. 2d 7.

No. 82-1502. *CRUMPLER v. MISSISSIPPI STATE HIGHWAY COMMISSION.* Sup. Ct. Miss. Certiorari denied. Reported below: 421 So. 2d 1233.

No. 82-1518. *LEWIS v. INDIANA.* Sup. Ct. Ind. Certiorari denied. Reported below: 440 N. E. 2d 1125.

No. 82-1519. *ANDREWS v. LAWSON ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 694 F. 2d 716.

No. 82-1522. *TYLER v. HARTFORD FIRE INSURANCE CO. ET AL.* C. A. 10th Cir. Certiorari denied.

No. 82-1534. *NEUFELD v. BAMBROUGH ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 688 F. 2d 823.

No. 82-1537. *VINCE v. DEJOHN.* Ct. App. La., 1st Cir. Certiorari denied.

No. 82-1544. *FIRST COLONIAL CORPORATION OF AMERICA v. AMERICAN BENEFIT LIFE INSURANCE CO.* C. A. 5th Cir. Certiorari denied. Reported below: 693 F. 2d 447.

No. 82-1546. *BUTLER v. PEABODY INSTITUTE OF THE CITY OF BALTIMORE.* Ct. Sp. App. Md. Certiorari denied. Reported below: 52 Md. App. 766.

No. 82-1560. *DiROSE v. PK MANAGEMENT CORP. ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 691 F. 2d 628.

No. 82-1563. *HALLEY v. CONSOLIDATED RAIL CORPORATION.* C. A. 2d Cir. Certiorari denied. Reported below: 714 F. 2d 113.

May 2, 1983

461 U. S.

No. 82-1625. *BOUMA ET UX. v. LARRY C. IVERSON, INC.* Sup. Ct. Mont. Certiorari denied.

No. 82-5974. *HUDSON v. RUSHEN, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS.* C. A. 9th Cir. Certiorari denied. Reported below: 686 F. 2d 826.

No. 82-6068. *BOYD ET AL. v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 691 F. 2d 508.

No. 82-6111. *SCRUGGS v. JOHNSON, WARDEN, POWHATAN CORRECTIONAL CENTER* (two cases). Sup. Ct. Va. Certiorari denied.

No. 82-6114. *JOHNSON v. CALIFORNIA.* Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 82-6120. *EVANKO v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 705 F. 2d 459.

No. 82-6165. *NORWOOD v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 718 F. 2d 1087.

No. 82-6205. *RICHARDS ET AL. v. SOLEM, WARDEN, SOUTH DAKOTA STATE PENITENTIARY, ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 693 F. 2d 760.

No. 82-6291. *MILLER v. UNITED STATES POSTAL SERVICE.* C. A. 5th Cir. Certiorari denied. Reported below: 685 F. 2d 148.

No. 82-6305. *MERRITT v. UNITED STATES.* C. A. 10th Cir. Certiorari denied. Reported below: 695 F. 2d 1263.

No. 82-6334. *HALL v. MARSHALL.* C. A. 6th Cir. Certiorari denied. Reported below: 708 F. 2d 724.

No. 82-6335. *HASLIP ET AL. v. STATE PUBLIC DEFENDER COMMISSION ET AL.* Sup. Ct. Mo. Certiorari denied.

No. 82-6360. *WILLIAMS v. SOWDERS.* C. A. 6th Cir. Certiorari denied. Reported below: 696 F. 2d 464.

461 U. S.

May 2, 1983

No. 82-6361. *CLEVELAND v. WARDEN, MARYLAND PENITENTIARY*. C. A. 4th Cir. Certiorari denied. Reported below: 696 F. 2d 988.

No. 82-6363. *THOMPSON v. MEDICAL OFFICER AT HAMILTON COUNTY JAIL*. C. A. 6th Cir. Certiorari denied. Reported below: 709 F. 2d 1509.

No. 82-6365. *LACY v. LOCKHART, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION*. C. A. 8th Cir. Certiorari denied. Reported below: 697 F. 2d 271.

No. 82-6366. *DAVIS v. DAVIS*. Ct. App. N. Y. Certiorari denied.

No. 82-6367. *MCADOO v. GEORGIA*. Sup. Ct. Ga. Certiorari denied.

No. 82-6371. *VIENS v. ILLINOIS*. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 109 Ill. App. 3d 1017, 441 N. E. 2d 660.

No. 82-6373. *SMITH v. ROSE, WARDEN*. C. A. 6th Cir. Certiorari denied. Reported below: 708 F. 2d 728.

No. 82-6378. *HOLLOWAY v. MICHIGAN*. Sup. Ct. Mich. Certiorari denied. Reported below: 416 Mich. 288, 330 N. W. 2d 405.

No. 82-6379. *JACKSON v. FIELDS, ACTING WARDEN, ET AL.* C. A. 10th Cir. Certiorari denied.

No. 82-6383. *MINOR v. RUSHEN ET AL.* C. A. 9th Cir. Certiorari denied.

No. 82-6384. *SAWVELL v. CALIFORNIA*. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 82-6386. *MARTIN v. BARNES, JUDGE, CIRCUIT COURT OF COOPER COUNTY, BOONEVILLE, MISSOURI*. Sup. Ct. Mo. Certiorari denied.

No. 82-6387. *WILLIAMS v. MAGGIO, WARDEN, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 695 F. 2d 119.

May 2, 1983

461 U. S.

No. 82-6388. *COTNER v. GARDNER ET AL.* C. A. 10th Cir. Certiorari denied.

No. 82-6389. *BOWLING v. STRICKLAND ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 692 F. 2d 769.

No. 82-6391. *SMITH v. JAGO.* C. A. 6th Cir. Certiorari denied. Reported below: 708 F. 2d 728.

No. 82-6401. *VALLE v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 697 F. 2d 152.

No. 82-6409. *COTNER v. UNITED STATES.* C. A. 10th Cir. Certiorari denied.

No. 82-6414. *MELKONIAN v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 698 F. 2d 1234.

No. 82-1118. *NEW YORK STATE TEAMSTERS CONFERENCE PENSION AND RETIREMENT FUND ET AL. v. DUCHOW, INDIVIDUALLY, AND AS ADMINISTRATRIX OF THE ESTATE OF DUCHOW.* C. A. 2d Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. JUSTICE O'CONNOR would grant certiorari. Reported below: 691 F. 2d 74.

No. 82-1130. *SIVIGLIA v. UNITED STATES.* C. A. 10th Cir. Certiorari denied. THE CHIEF JUSTICE, JUSTICE BLACKMUN, and JUSTICE O'CONNOR would grant certiorari and summarily reverse the judgment of the United States Court of Appeals for the Tenth Circuit. Reported below: 686 F. 2d 832.

No. 82-1491. *BRILEY v. DIRECTOR OF THE DEPARTMENT OF CORRECTIONS.* Sup. Ct. Va.; and

No. 82-6412. *FELDE v. LOUISIANA.* Sup. Ct. La. Certiorari denied. Reported below: No. 82-6412, 422 So. 2d 370.

461 U. S.

May 2, 1983

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. 82-1512. AAA LIQUORS, INC., ET AL. *v.* JOSEPH E. SEAGRAM & SONS, INC., DBA CALVERT DISTILLERS CO. ET AL. C. A. 10th Cir. Certiorari denied. JUSTICE WHITE and JUSTICE MARSHALL would grant certiorari. Reported below: 705 F. 2d 1203.

No. 82-1523. KELLER *v.* MCDANIEL ET AL. C. A. 7th Cir. Certiorari denied. JUSTICE BRENNAN took no part in the consideration or decision of this petition.

No. 82-6106. KING *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 421 So. 2d 1009.

JUSTICE BRENNAN, dissenting.

Adhering to my view 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 (1976), I would grant certiorari and vacate the death sentence in this case.

JUSTICE MARSHALL, dissenting.

Adhering to my view that the death penalty is under all circumstances cruel and unusual punishment forbidden by the Eighth and Fourteenth Amendments, I would grant certiorari and vacate petitioner's death sentence on this basis alone. However, even under the prevailing view that the death penalty may constitutionally be imposed under certain conditions, I would grant certiorari to decide the constitutionality of instructing a jury that it *must* sentence the defendant to death if it finds that the prosecution has proved aggravating circumstances that outweigh any mitigating cir-

May 2, 12, 13, 1983

461 U. S.

cumstances. There is a substantial question whether such an instruction impermissibly prevents the jury from basing its sentence on "factors which may call for a less severe penalty," *Lockett v. Ohio*, 438 U. S. 586, 605 (1978) (plurality opinion), even though they do not outweigh the aggravating circumstances proved by the prosecution. Cf. *Woodson v. North Carolina*, 428 U. S. 280 (1976).

Rehearing Denied

No. 82-6060. *IN RE GREEN*, 460 U. S. 1036;

No. 82-6084. *THRASHER v. MISSOURI STATE HIGHWAY COMMISSION ET AL.*, 460 U. S. 1043; and

No. 82-6144. *UDELL v. UNIVERSITY OF LOWELL ET AL.*, 460 U. S. 1054. Petitions for rehearing denied.

Assignment Order

An order of THE CHIEF JUSTICE designating and assigning Justice Stewart (retired) to perform judicial duties in the United States Court of Appeals for the Ninth Circuit on May 11, 1983, and for such further time as may be required to complete unfinished business, pursuant to 28 U. S. C. § 294(a), is ordered entered on the minutes of this Court, pursuant to 28 U. S. C. § 295.

MAY 12, 1983

Dismissal Under Rule 53

No. 82-1506. *MARKEY ET AL. v. COSTA*. C. A. 1st Cir. Certiorari dismissed under this Court's Rule 53. Reported below: 694 F. 2d 876.

MAY 13, 1983

Dismissal Under Rule 53

No. 82-1650. *SERAVALLI ET AL. v. CONNECTICUT*. Sup. Ct. Conn. Certiorari dismissed under this Court's Rule 53. Reported below: 189 Conn. 201, 455 A. 2d 852.

461 U. S.

MAY 16, 1983

Appeals Dismissed

No. 82-1436. CITY OF TORRANCE *v.* WORKERS' COMPENSATION APPEALS BOARD OF CALIFORNIA ET AL. Appeal from Sup. Ct. Cal. Motion of California Workers' Compensation Institute for leave to file a brief as *amicus curiae* granted. Appeal dismissed for want of substantial federal question. Reported below: 32 Cal. 3d 371, 650 P. 2d 1162.

No. 82-1558. GAGNON ET AL. *v.* MASSACHUSETTS. Appeal from Sup. Jud. Ct. Mass. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 387 Mass. 768, 443 N. E. 2d 407.

Vacated and Remanded on Appeal

No. 82-233. BROOKS ET AL. *v.* WINTER, GOVERNOR OF MISSISSIPPI, ET AL.; and

No. 82-413. WINTER, GOVERNOR OF MISSISSIPPI, ET AL. *v.* BROOKS ET AL. Appeals from D. C. N. D. Miss. The judgment and order are vacated and the cases are 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: 541 F. Supp. 1135.

Miscellaneous Orders

No. — — —. MULLEN *v.* UNITED STATES. Motion to direct the Clerk to file the petition for writ of certiorari out of time denied.

No. A-824. BOYD *v.* UNITED STATES. C. A. 9th Cir. Application for stay, addressed to JUSTICE STEVENS and referred to the Court, denied.

No. A-869. BILLUPS *v.* UNITED STATES. C. A. 4th Cir. Application for stay and/or bond, addressed to JUSTICE POWELL and referred to the Court, denied.

May 16, 1983

461 U. S.

No. A-882. *HOLLANDER, ADMINISTRATRIX OF THE ESTATE OF HOLLANDER v. UNIVERSITY OF ROCHESTER ET AL.* Ct. App. N. Y. Application for leave to dispense with printing the petition for writ of certiorari, presented to JUSTICE MARSHALL, and by him referred to the Court, denied.

No. D-310. *IN RE DISBARMENT OF TILYOU.* Disbarment entered. [For earlier order herein, see 459 U. S. 1141.]

No. D-314. *IN RE DISBARMENT OF MOLOVINSKY.* Disbarment entered. [For earlier order herein, see 460 U. S. 1008.]

No. D-325. *IN RE DISBARMENT OF HAMPARES.* Disbarment entered. [For earlier order herein, see 460 U. S. 1019.]

No. D-326. *IN RE DISBARMENT OF GALLOWAY.* Disbarment entered. [For earlier order herein, see 460 U. S. 1019.]

No. D-329. *IN RE DISBARMENT OF WHITE.* Disbarment entered. [For earlier order herein, see 460 U. S. 1020.]

No. D-338. *IN RE DISBARMENT OF COLLINS.* It is ordered that John Sellers Collins, of Glen Burnie, 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-339. *IN RE DISBARMENT OF LEIBOWITZ.* It is ordered that Carl Leibowitz, of South Bend, Ind., 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-340. *IN RE DISBARMENT OF LONG.* It is ordered that John D. Long III, of Union, 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.

461 U. S.

May 16, 1983

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.] Motions of National Women's Health Network and New Jersey Department of Public Advocate for leave to file briefs as *amici curiae* granted.

No. 81-2245. NEVADA *v.* UNITED STATES ET AL.;

No. 81-2276. TRUCKEE-CARSON IRRIGATION DISTRICT *v.* UNITED STATES ET AL.; and

No. 82-38. PYRAMID LAKE PAIUTE TRIBE OF INDIANS *v.* TRUCKEE-CARSON IRRIGATION DISTRICT ET AL. C. A. 9th Cir. [Certiorari granted, 459 U. S. 904.] Motion of the Solicitor General for leave to file a supplemental brief after argument granted.

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.] Motion of Mountain State Telephone & Telegraph Co. 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. 82-485. KEETON *v.* HUSTLER MAGAZINE, INC., ET AL. C. A. 1st Cir. [Certiorari granted, 459 U. S. 1169.] Motion of respondents for divided argument and for additional time for oral argument denied.

No. 82-556. PRESS-ENTERPRISE Co. *v.* SUPERIOR COURT OF CALIFORNIA, RIVERSIDE COUNTY. Ct. App. Cal., 4th App. Dist. [Certiorari granted, 459 U. S. 1169.] Motion of respondent for divided argument and for additional time for oral argument denied.

No. 82-799. BUREAU OF ALCOHOL, TOBACCO AND FIREARMS *v.* FEDERAL LABOR RELATIONS AUTHORITY ET AL. C. A. 9th Cir. [Certiorari granted, 459 U. S. 1145.] Motion of respondent National Treasury Employees Union for divided argument denied.

May 16, 1983

461 U. S.

No. 82-827. MINNESOTA *v.* MURPHY. Sup. Ct. Minn. [Certiorari granted, 459 U. S. 1145.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 82-1167. UNITED STATES *v.* JACOBSEN ET AL. C. A. 8th Cir. [Certiorari granted, 460 U. S. 1021.] Motion of Americans for Effective Law Enforcement, Inc., et al. for leave to file a brief as *amici curiae* granted.

No. 82-1200. DAILY INCOME FUND, INC., ET AL. *v.* FOX. C. A. 2d Cir. [Certiorari granted, 460 U. S. 1021.] Motion of Investment Company Institute for leave to file a brief as *amicus curiae* granted.

No. 82-1273. MAINE *v.* THORNTON. Sup. Jud. Ct. Me. [Certiorari granted, 460 U. S. 1068.] Motion for appointment of counsel granted, and it is ordered that Donna L. Zeegers, of Augusta, Me., be appointed to serve as counsel for respondent in this case.

No. 82-1398. M/V POLLUX ET AL. *v.* GOODPASTURE, INC., 460 U. S. 1084. Motion of petitioners to require Advisory Committee on Civil Rules to make available to petitioners proposed amendments to Rules C and E of the Supplemental Rules for Certain Admiralty and Maritime Claims denied.

No. 82-1448. UNITED STATES *v.* STAUFFER CHEMICAL Co. C. A. 6th Cir. [Certiorari granted, 460 U. S. 1080.] Motion of the Solicitor General to dispense with printing the joint appendix granted.

No. 82-1564. LONEWOLF *v.* LONEWOLF. Sup. Ct. N. M.;

No. 82-1577. MICHIGAN CANNERS & FREEZERS ASSN., INC., ET AL. *v.* AGRICULTURAL MARKETING AND BARGAINING BOARD ET AL. Sup. Ct. Mich.; and

No. 82-1579. HAYFIELD NORTHERN RAILROAD Co., INC., ET AL. *v.* CHICAGO & NORTH WESTERN TRANSPORTATION Co. C. A. 8th Cir. The Solicitor General is invited to file briefs in these cases expressing the views of the United States.

461 U. S.

May 16, 1983

No. 82-1600. GIBBONS, TRUSTEE OF THE PROPERTY OF CHICAGO, ROCK ISLAND & PACIFIC RAILROAD Co. *v.* NATIONAL STEEL SERVICE CENTER, INC. C. A. 8th Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 82-6537. IN RE ROBINSON; and

No. 82-6552. IN RE CORRADO ET AL. Petitions for writs of habeas corpus denied.

No. 82-6399. IN RE JOHNSON; and

No. 82-6436. IN RE BEHRENS ET AL. Petitions for writs of mandamus denied.

Certiorari Granted

No. 82-1326. WATT, SECRETARY OF THE INTERIOR, ET AL. *v.* CALIFORNIA ET AL.;

No. 82-1327. WESTERN OIL & GAS ASSN. ET AL. *v.* CALIFORNIA ET AL.; and

No. 82-1511. CALIFORNIA ET AL. *v.* WATT, SECRETARY OF THE INTERIOR, ET AL. C. A. 9th Cir. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. Reported below: 683 F. 2d 1253.

No. 82-1349. UNITED STATES *v.* S.A. EMPRESA DE VIACAO AEREA RIO GRANDENSE (VARIG AIRLINES) ET AL.; and

No. 82-1350. UNITED STATES *v.* UNITED SCOTTISH INSURANCE Co. ET AL. C. A. 9th Cir. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. Reported below: No. 82-1349, 692 F. 2d 1205; No. 82-1350, 692 F. 2d 1209.

No. 82-1453. BADARACCO ET AL. *v.* COMMISSIONER OF INTERNAL REVENUE; and

No. 82-1509. DELEET MERCHANDISING CORP. *v.* UNITED STATES. C. A. 3d Cir. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. Reported below: 693 F. 2d 298.

May 16, 1983

461 U. S.

No. 82-1474. HOOVER ET AL. *v.* RONWIN ET AL. C. A. 9th Cir. Motion of National Conference of Bar Examiners for leave to file a brief as *amicus curiae* granted. Certiorari granted. JUSTICE O'CONNOR took no part in the consideration or decision of this motion and this petition. Reported below: 686 F. 2d 692.

Certiorari Denied. (See also No. 82-1558, *supra.*)

No. 81-1946. CLARK, DBA RICHARD CLARK CONSTRUCTION, ET AL. *v.* PADDACK ET AL., TRUSTEES. C. A. 9th Cir. Certiorari denied. Reported below: 673 F. 2d 1339.

No. 81-2209. McDOWELL ET UX., DBA McDOWELL'S, ET AL. *v.* WESTERN WASHINGTON LABORERS-EMPLOYERS HEALTH & SECURITY TRUST FUND ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 673 F. 2d 1341.

No. 82-889. OVERHEAD DOOR COMPANY OF METROPOLITAN WASHINGTON *v.* WASHINGTON AREA CARPENTERS' WELFARE FUND ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 220 U. S. App. D. C. 273, 681 F. 2d 1.

No. 82-967. ISENBERG *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 714 F. 2d 118.

No. 82-1039. DUNN *v.* TEXAS. Ct. App. Tex., 1st Sup. Jud. Dist. Certiorari denied.

No. 82-1144. AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO, LOCAL 1968 *v.* FEDERAL LABOR RELATIONS AUTHORITY. C. A. D. C. Cir. Certiorari denied. Reported below: 223 U. S. App. D. C. 376, 691 F. 2d 565.

No. 82-1180. DORANZO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 696 F. 2d 986.

No. 82-1194. DUNN *v.* TEXAS. Ct. App. Tex., 14th Sup. Jud. Dist. Certiorari denied. Reported below: 647 S. W. 2d 3.

461 U. S.

May 16, 1983

No. 82-1215. PAUL ET AL. *v.* UNITED STATES. Ct. Cl. Certiorari denied. Reported below: 231 Ct. Cl. 445, 687 F. 2d 364.

No. 82-1226. LAIRD *v.* INTERSTATE COMMERCE COMMISSION ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 691 F. 2d 147.

No. 82-1258. BRAEMOOR ASSOCIATES ET AL. *v.* FEDERAL DEPOSIT INSURANCE CORPORATION. C. A. 7th Cir. Certiorari denied. Reported below: 686 F. 2d 550.

No. 82-1266. EISENBERG *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 683 F. 2d 894.

No. 82-1292. SPRINGDALE SCHOOL DISTRICT NO. 50 OF WASHINGTON COUNTY *v.* GRACE, A MINOR, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 693 F. 2d 41.

No. 82-1302. SEA-LAND SERVICE, INC. *v.* AKERMANIS. C. A. 2d Cir. Certiorari denied. Reported below: 688 F. 2d 898.

No. 82-1303. BUTTREY ET AL. *v.* UNITED STATES ET AL. (two cases). C. A. 5th Cir. Certiorari denied. Reported below: 690 F. 2d 1170 (first case); 690 F. 2d 1186 (second case).

No. 82-1355. YELLOWFISH ET AL. *v.* CITY OF STILLWATER, OKLAHOMA, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 691 F. 2d 926.

No. 82-1393. KAUFMAN *v.* DEPARTMENTAL DISCIPLINARY COMMITTEE FOR THE FIRST JUDICIAL DEPARTMENT. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 87 App. Div. 2d 547.

No. 82-1404. NIGRO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 705 F. 2d 1224.

No. 82-1424. CHAMBERS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 698 F. 2d 1233.

May 16, 1983

461 U. S.

No. 82-1433. *RICHARDSON v. DONOVAN, SECRETARY OF LABOR, ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 689 F. 2d 632.

No. 82-1444. *STOUTT v. OREGON EX REL. ADULT AND FAMILY SERVICES DIVISION.* Ct. App. Ore. Certiorari denied. Reported below: 57 Ore. App. 303, 644 P. 2d 1132.

No. 82-1447. *AFSHAR v. COMMISSIONER OF INTERNAL REVENUE.* C. A. 4th Cir. Certiorari denied. Reported below: 692 F. 2d 751.

No. 82-1460. *AVCOLLIE v. CONNECTICUT.* Sup. Ct. Conn. Certiorari denied. Reported below: 188 Conn. 626, 453 A. 2d 418.

No. 82-1473. *DIXIE FINANCE CO., INC., ET AL. v. FEDERAL TRADE COMMISSION.* C. A. 5th Cir. Certiorari denied. Reported below: 695 F. 2d 926.

No. 82-1497. *BRIGGS ET AL. v. COMMISSIONER OF INTERNAL REVENUE.* C. A. 9th Cir. Certiorari denied. Reported below: 694 F. 2d 614.

No. 82-1501. *MUSICO v. MUSICO, INDIVIDUALLY, AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF MUSICO.* Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 422 So. 2d 31.

No. 82-1516. *SEA PINES CO. v. FEDERAL DEPOSIT INSURANCE CORPORATION.* C. A. 4th Cir. Certiorari denied. Reported below: 692 F. 2d 973.

No. 82-1521. *TAMARA FOODS, INC. v. NATIONAL LABOR RELATIONS BOARD.* C. A. 8th Cir. Certiorari denied. Reported below: 692 F. 2d 1171.

No. 82-1530. *TURNER v. UNITED STATES; and*

No. 82-1533. *WILLIAMS ET AL. v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 690 F. 2d 1289.

461 U. S.

May 16, 1983

No. 82-1540. WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY ET AL. *v.* QASIM ET AL. Ct. App. D. C. Certiorari denied. Reported below: 455 A. 2d 904.

No. 82-1542. HEWITT ET AL. *v.* STRICKLAND, REVENUE COMMISSIONER OF GEORGIA, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 689 F. 2d 191.

No. 82-1543. REEDMAN *v.* RUSSO. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 89 App. Div. 2d 623, 452 N. Y. S. 2d 860.

No. 82-1548. EPPS *v.* BAER. C. A. 4th Cir. Certiorari denied. Reported below: 696 F. 2d 989.

No. 82-1551. BRYANT ELECTRIC CO. ET AL. *v.* KISER, INDIVIDUALLY, AND AS ANCILLIARY ADMINISTRATRIX OF THE ESTATE OF KISER, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 695 F. 2d 207.

No. 82-1556. DUFFY, SHERIFF OF SAN DIEGO COUNTY, CALIFORNIA *v.* BARONA GROUP OF THE CAPITAN GRANDE BAND OF MISSION INDIANS, SAN DIEGO COUNTY, CALIFORNIA. C. A. 9th Cir. Certiorari denied. Reported below: 694 F. 2d 1185.

No. 82-1557. I/S NOREXIM ET AL. *v.* GULF TRADING & TRANSPORTATION CO. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 694 F. 2d 1191.

No. 82-1559. KONDRAT *v.* CITY OF WILLOUGHBY HILLS. Ct. App. Ohio, Lake County. Certiorari denied.

No. 82-1561. COUSINO *v.* STAIR, PERSONAL REPRESENTATIVE OF THE ESTATE OF STAIR, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 708 F. 2d 722.

No. 82-1562. TIMMONS *v.* ZONING BOARD OF ADJUSTMENT ET AL. Sup. Ct. S. C. Certiorari denied.

No. 82-1566. BARANAN *v.* FULTON COUNTY. Sup. Ct. Ga. Certiorari denied. Reported below: 250 Ga. 531, 299 S. E. 2d 722.

May 16, 1983

461 U. S.

No. 82-1568. *BROWNE ET AL. v. McDONNELL DOUGLAS CORP.* C. A. 9th Cir. Certiorari denied. Reported below: 698 F. 2d 370.

No. 82-1572. *NEELY v. PENNSYLVANIA.* Super. Ct. Pa. Certiorari denied. Reported below: 296 Pa. Super. 553, 438 A. 2d 628.

No. 82-1574. *NEW YORK v. COHEN.* Ct. App. N. Y. Certiorari denied. Reported below: 58 N. Y. 2d 844, 446 N. E. 2d 774.

No. 82-1575. *WARE v. KING, SECRETARY, DEPARTMENT OF CORRECTION, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 694 F. 2d 89.

No. 82-1576. *AMERICAN COLLEGE OF OTORHINOLARYNGOLOGISTS, FORMERLY KNOWN AS AMERICAN BOARD OF OTORHINOLARYNGOLOGY v. AMERICAN BOARD OF OTOLARYNGOLOGY.* C. A. 2d Cir. Certiorari denied. Reported below: 714 F. 2d 111.

No. 82-1583. *S/S COVE RANGER ET AL. v. ST. GEORGE PACKING CO., INC.* C. A. 11th Cir. Certiorari denied. Reported below: 692 F. 2d 769.

No. 82-1599. *CITY OF ST. LOUIS ET AL. v. FIREFIGHTERS INSTITUTE FOR RACIAL EQUALITY ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 696 F. 2d 1001.

No. 82-1609. *LONG v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 699 F. 2d 1164.

No. 82-1611. *NEW ORLEANS STEAMBOAT CO. ET AL. v. M/T EXXON BALTIMORE ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 696 F. 2d 994.

No. 82-1612. *AHMED v. ENVIRONMENTAL PROTECTION AGENCY.* C. A. D. C. Cir. Certiorari denied. Reported below: 224 U. S. App. D. C. 160, 694 F. 2d 280.

461 U. S.

May 16, 1983

No. 82-1620. *LOCHNER v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 698 F. 2d 1230.

No. 82-1626. *FARESE v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 693 F. 2d 1343.

No. 82-1634. *POST-NEWSWEEK STATIONS, FLORIDA, INC., ET AL. v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 695 F. 2d 1278.

No. 82-1638. *BRADLEY v. SEGAL ET AL.* Sup. Ct. Va. Certiorari denied.

No. 82-1641. *WILSON ET AL. v. CRAWFORD ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 693 F. 2d 606.

No. 82-1647. *COUNCIL 13, AMERICAN FEDERATION OF STATE, COUNTY & MUNICIPAL EMPLOYEES, AFL-CIO, BY MCENTEE, TRUSTEE AD LITEM, ET AL. v. PENNSYLVANIA DEPARTMENT OF JUSTICE, BOARD OF CORRECTIONS*. Sup. Ct. Pa. Certiorari denied. Reported below: 499 Pa. 268, 452 A. 2d 1348.

No. 82-1664. *CHAPPELL v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 698 F. 2d 308.

No. 82-1688. *WILLIAMS v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 722 F. 2d 729.

No. 82-1689. *WILLIAMS v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 702 F. 2d 299.

No. 82-1693. *SHEERAN v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 699 F. 2d 112.

No. 82-1695. *ALFARANO ET AL. v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 706 F. 2d 739.

No. 82-1715. *BIFIELD v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 702 F. 2d 342.

May 16, 1983

461 U. S.

No. 82-6043. *MUNOZ v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 693 F. 2d 134.

No. 82-6081. *SMITH v. WAINWRIGHT, SECRETARY, DEPARTMENT OF OFFENDER REHABILITATION OF FLORIDA*. C. A. 11th Cir. Certiorari denied. Reported below: 688 F. 2d 851.

No. 82-6090. *SMITH v. WYRICK, WARDEN*. Sup. Ct. Mo. Certiorari denied.

No. 82-6091. *CARTER v. MISSOURI*. Sup. Ct. Mo. Certiorari denied. Reported below: 641 S. W. 2d 54.

No. 82-6126. *BRYANT v. WAINWRIGHT, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS*. C. A. 11th Cir. Certiorari denied. Reported below: 686 F. 2d 1373.

No. 82-6128. *CUSINO v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 694 F. 2d 185.

No. 82-6141. *ADAMS v. OKLAHOMA*. Ct. Crim. App. Okla. Certiorari denied.

No. 82-6149. *AL MUDARRIS v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 695 F. 2d 1182.

No. 82-6168. *ENOCH ET AL. v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 694 F. 2d 465.

No. 82-6190. *WHITE v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 695 F. 2d 563.

No. 82-6223. *GORDON v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 708 F. 2d 729.

No. 82-6287. *PETTWAY ET AL. v. HECKLER, SECRETARY OF HEALTH AND HUMAN SERVICES*. C. A. 11th Cir. Certiorari denied. Reported below: 685 F. 2d 1387.

No. 82-6350. *JOHNSON v. COURTS OF OHIO*. Sup. Ct. Ohio. Certiorari denied.

461 U. S.

May 16, 1983

No. 82-6352. *GASQUE v. UNIDENTIFIED, WRECKED, AND ABANDONED SAILING VESSEL ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 691 F. 2d 510.

No. 82-6362. *LONDON v. REES.* C. A. 9th Cir. Certiorari denied. Reported below: 701 F. 2d 185.

No. 82-6380. *MARTIN v. CONNECTICUT.* Sup. Ct. Conn. Certiorari denied. Reported below: 189 Conn. 1, 454 A. 2d 256.

No. 82-6382. *BAILEY v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 691 F. 2d 1009.

No. 82-6398. *DARR v. VIRGINIA.* Sup. Ct. Va. Certiorari denied.

No. 82-6400. *HARRIS v. QUINLAN, WARDEN.* C. A. 2d Cir. Certiorari denied. Reported below: 714 F. 2d 113.

No. 82-6402. *BAILEY v. OLIVER ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 695 F. 2d 1323.

No. 82-6406. *ERBY v. ILLINOIS.* App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 108 Ill. App. 3d 1209, 446 N. E. 2d 317.

No. 82-6407. *MINNEMAN v. INDIANA.* Sup. Ct. Ind. Certiorari denied. Reported below: 441 N. E. 2d 673.

No. 82-6410. *CHOTE v. BANK OF AMERICA NATIONAL TRUST & SAVINGS ASSN. ET AL.* Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 82-6415. *JOHNSON v. TEXAS.* Ct. App. Tex., 3d Sup. Jud. Dist. Certiorari denied.

No. 82-6417. *ADAMS v. EMPLOYMENT DEVELOPMENT DEPARTMENT, UNEMPLOYMENT INSURANCE APPEALS BOARD, ET AL.* Ct. App. Cal., 4th App. Dist. Certiorari denied.

May 16, 1983

461 U. S.

No. 82-6429. *HARVEY v. BREEDING ET AL.* C. A. 5th Cir. Certiorari denied.

No. 82-6432. *JOOST v. UNITED STATES PAROLE COMMISSION.* C. A. D. C. Cir. Certiorari denied.

No. 82-6434. *YOUNGBLOOD v. MAGGIO, WARDEN.* C. A. 5th Cir. Certiorari denied. Reported below: 696 F. 2d 407.

No. 82-6435. *HARVEY v. ESTELLE, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS, ET AL.* C. A. 5th Cir. Certiorari denied.

No. 82-6437. *WARD v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 696 F. 2d 1315.

No. 82-6439. *REITER v. HUFFMAN, SHERIFF.* Sup. Ct. Tex. Certiorari denied.

No. 82-6440. *BROADWAY v. STAFFORD.* C. A. 11th Cir. Certiorari denied.

No. 82-6442. *HERNANDEZ v. IMMIGRATION AND NATURALIZATION SERVICE.* C. A. 9th Cir. Certiorari denied. Reported below: 698 F. 2d 1230.

No. 82-6443. *MITCHELL v. IDAHO.* Sup. Ct. Idaho. Certiorari denied. Reported below: 104 Idaho 493, 660 P. 2d 1336.

No. 82-6445. *SOPIN v. PENNSYLVANIA.* Super. Ct. Pa. Certiorari denied. Reported below: 304 Pa. Super. 620, 450 A. 2d 1053.

No. 82-6446. *MCDONALD v. METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY ET AL.* Sup. Ct. Tenn. Certiorari denied.

No. 82-6454. *UNITED STATES EX REL. MCINERY v. SHELLY, SHERIFF OF WILL COUNTY, ILLINOIS.* C. A. 7th Cir. Certiorari denied. Reported below: 702 F. 2d 101.

461 U. S.

May 16, 1983

No. 82-6457. *SMITH v. TEXAS*. Ct. App. Tex., 14th Sup. Jud. Dist. Certiorari denied. Reported below: 650 S. W. 2d 446.

No. 82-6458. *WILLIAMS v. DALLAS COUNTY SHERIFF*. C. A. 5th Cir. Certiorari denied.

No. 82-6460. *ALSTON v. TARD ET AL.* C. A. 3d Cir. Certiorari denied.

No. 82-6461. *LAWRENCE v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 699 F. 2d 697.

No. 82-6462. *JACKSON v. ESTELLE, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS*. C. A. 5th Cir. Certiorari denied. Reported below: 696 F. 2d 994.

No. 82-6468. *LEVENTHAL v. UNITED STATES DEPARTMENT OF LABOR ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 692 F. 2d 763.

No. 82-6469. *RODZIEWICZ v. NEW JERSEY*. Sup. Ct. N. J. Certiorari denied.

No. 82-6473. *HENDERSON v. DUCKWORTH, WARDEN*. C. A. 7th Cir. Certiorari denied. Reported below: 692 F. 2d 760.

No. 82-6476. *PLYLER v. LEEKE, COMMISSIONER, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 692 F. 2d 753.

No. 82-6477. *SAULSBURY v. GREER, WARDEN, MENARD CORRECTIONAL CENTER, ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 702 F. 2d 651.

No. 82-6478. *FOSTER v. BLACK, DIRECTOR, MISSOURI DEPARTMENT OF CORRECTIONS, ET AL.* Sup. Ct. Mo. Certiorari denied.

No. 82-6503. *CASTANEDA v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 695 F. 2d 563.

May 16, 1983

461 U. S.

No. 82-6504. *SESSO v. CUYLER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION, ET AL.* C. A. 3d Cir. Certiorari denied.

No. 82-6507. *HAYDEN v. UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF INDIAN AFFAIRS.* C. A. 10th Cir. Certiorari denied.

No. 82-6508. *HUNTER v. UNITED STATES.* Ct. App. D. C. Certiorari denied.

No. 82-6511. *GIBBS v. UNITED STATES.* Ct. App. D. C. Certiorari denied.

No. 82-6512. *CAVANAUGH v. UNITED STATES.* C. A. 10th Cir. Certiorari denied.

No. 82-6516. *TAYLOR v. UNITED STATES.* Ct. App. D. C. Certiorari denied. Reported below: 451 A. 2d 859.

No. 82-6519. *GARZA v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 696 F. 2d 994.

No. 82-6522. *PARISI v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 709 F. 2d 1511.

No. 82-6524. *SOCKWELL v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 699 F. 2d 213.

No. 82-6526. *STEWART v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 705 F. 2d 446.

No. 82-6532. *BURNETTE v. UNITED STATES;* and

No. 82-6533. *BURNETTE v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 698 F. 2d 1038.

No. 82-6540. *ALFORD v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 701 F. 2d 186.

No. 82-6545. *FRANKUM v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 703 F. 2d 581.

No. 82-6566. *EVERETT v. UNITED STATES.* C. A. 10th Cir. Certiorari denied.

461 U. S.

May 16, 1983

No. 82-6547. ARANA-ARGUELLO *v.* UNITED STATES; and
No. 82-6578. VELIZ-VALLARDES *v.* UNITED STATES.
C. A. 5th Cir. Certiorari denied. Reported below: 698 F.
2d 227.

No. 82-6548. HUFF ET AL. *v.* UNITED STATES. C. A.
10th Cir. Certiorari denied. Reported below: 699 F. 2d
1027.

No. 82-6572. OLIVER ET AL. *v.* HUNTINGDON COUNTY
COMMISSIONERS ET AL. C. A. 3d Cir. Certiorari denied.

No. 82-1259. ILLINOIS *v.* SMITH. Sup. Ct. Ill. Motion
of respondent for leave to proceed *in forma pauperis*
granted. Certiorari denied. Reported below: 93 Ill. 2d 179,
442 N. E. 2d 1325.

No. 82-1285. ESTELLE, DIRECTOR, TEXAS DEPARTMENT
OF CORRECTIONS *v.* FRENCH. C. A. 5th Cir. Motion of re-
spondent for leave to proceed *in forma pauperis* granted.
Certiorari denied. Reported below: 692 F. 2d 1021 and 696
F. 2d 318.

No. 82-1578. ALABAMA *v.* JOHNSON. Ct. Crim. App.
Ala. Motion of respondent for leave to proceed *in forma*
pauperis granted. Certiorari denied. Reported below: 425
So. 2d 515.

No. 82-1311. JEWELL PRODUCTIONS, INC., AKA EROS,
ET AL. *v.* CALIFORNIA. App. Dept., Super. Ct. Cal., County
of Los Angeles. Certiorari denied. JUSTICE BRENNAN and
JUSTICE MARSHALL would grant the petition for writ of cer-
tiorari and vacate the conviction.

No. 82-1324. NATIONAL FARMERS' ORGANIZATION, INC.
v. ASSOCIATED MILK PRODUCERS, INC., ET AL. C. A. 8th
Cir. Motion of Cooperative League of the United States of
America for leave to file a brief as *amicus curiae* granted.
Certiorari denied. JUSTICE BRENNAN and JUSTICE WHITE

May 16, 1983

461 U. S.

would grant certiorari. JUSTICE STEVENS took no part in the consideration or decision of this motion and this petition. Reported below: 687 F. 2d 1173.

No. 82-1331. LOUISIANA PUBLIC SERVICE COMMISSION *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL.; and

No. 82-1352. NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS ET AL. *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL. C. A. D. C. Cir. Motions of Maryland Office of People's Counsel, Washington Utilities and Transportation Commission, Florida Public Service Commission, South Carolina Department of Consumer Affairs, and Utah Public Service Commission for leave to file briefs as *amici curiae* granted. Motion of Arkansas et al. for leave to file a brief as *amici curiae* in No. 82-1331 granted. Certiorari denied. JUSTICE BLACKMUN and JUSTICE POWELL took no part in the consideration or decision of these motions and these petitions. Reported below: 224 U. S. App. D. C. 83, 693 F. 2d 198.

No. 82-1571. FIRST ALABAMA BANK OF MONTGOMERY, N.A. *v.* MARTIN ET AL. Sup. Ct. Ala. Motion of American Bankers Association for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 425 So. 2d 415.

No. 82-1573. RONWIN *v.* HOOVER ET AL. C. A. 9th Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 686 F. 2d 692.

No. 82-1582. CENTRAL MILK PRODUCERS COOPERATIVE *v.* NATIONAL FARMERS' ORGANIZATION, INC., ET AL. C. A. 8th Cir. Certiorari denied. JUSTICE STEVENS took no part in the consideration or decision of this petition. Reported below: 687 F. 2d 1173.

No. 82-1585. ASSOCIATED MILK PRODUCERS, INC. *v.* NATIONAL FARMERS' ORGANIZATION, INC., ET AL.; and

461 U. S.

May 16, 1983

No. 82-1586. MID-AMERICA DAIRYMEN, INC. *v.* NATIONAL FARMERS' ORGANIZATION, INC., ET AL. C. A. 8th Cir. Motion of National Milk Producers Federation for leave to file a brief as *amicus curiae* granted. Certiorari denied. JUSTICE STEVENS took no part in the consideration or decision of this motion and these petitions. Reported below: 687 F. 2d 1173.

No. 82-1606. BLUME ET AL. *v.* MINNESOTA MINING & MANUFACTURING CO. 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. 82-6104. FOLSTON *v.* ALLSBROOK ET AL. C. A. 4th Cir. Certiorari denied. JUSTICE BLACKMUN took no part in the consideration or decision of this petition. Reported below: 691 F. 2d 184.

No. 82-6267. EVANS *v.* MISSISSIPPI. Sup. Ct. Miss.;
No. 82-6423. BOLANDER *v.* FLORIDA. Sup. Ct. Fla.;
No. 82-6433. ALDRIDGE *v.* FLORIDA. Sup. Ct. Fla.; and
No. 82-6555. MCCRAE *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: No. 82-6267, 422 So. 2d 737; No. 82-6423, 422 So. 2d 833; No. 82-6433, 425 So. 2d 1132; No. 82-6555, 422 So. 2d 824.

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. D-309. IN RE DISBARMENT OF MCCLELLAN, 460 U. S. 1049. Motion for leave to file petition for rehearing denied.

May 16, 23, 1983

461 U. S.

No. 82-5992. KILBANE ET AL. v. MARSHALL ET AL., 460 U. S. 1053;

No. 82-6035. QUINTANA v. VIRGINIA, 460 U. S. 1029;

No. 82-6062. FORNASH v. MARSHALL, 460 U. S. 1042;

No. 82-6078. RONSON v. COMMISSIONER OF INTERNAL REVENUE, 460 U. S. 1043;

No. 82-6148. JOHL ET AL. v. MOUKAWSHER ET AL., 460 U. S. 1054;

No. 82-6200. MARAS v. AMMERMAN, 460 U. S. 1071; and

No. 82-6221. EVANS v. UNITED STATES, 460 U. S. 1055. Petitions for rehearing denied.

No. 82-6135. STALLWORTH v. DETROIT BOARD OF EDUCATION ET AL., 460 U. S. 1025. Motion for leave to file petition for rehearing denied.

MAY 23, 1983

Certiorari Granted—Reversed and Remanded. (See No. 82-1496, *ante*, p. 571.)

Certiorari Granted—Vacated and Remanded

No. 80-1158. FLORIDA v. RODRIGUEZ. Dist. Ct. App. Fla., 3d Dist. Petition for rehearing granted. The order entered May 26, 1981 [451 U. S. 1022], denying the petition for writ of certiorari is vacated. Certiorari is granted, the judgment is vacated, and the case is remanded for further consideration in light of *Florida v. Royer*, 460 U. S. 491 (1983). JUSTICE BRENNAN would deny the petition.

No. 82-328. BORDEN, INC. v. FEDERAL TRADE COMMISSION. C. A. 6th Cir. Certiorari granted, judgment vacated, and case remanded to the Court of Appeals with directions that it remand the case to the Federal Trade Commission for entry of the cease-and-desist order to which the parties have agreed. Reported below: 674 F. 2d 498.

Miscellaneous Orders

No. D-341. IN RE DISBARMENT OF SCACCHETTI. It is ordered that Carl R. Scacchetti, Jr., of Rochester, N. Y., be

461 U. S.

May 23, 1983

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-342. *IN RE DISBARMENT OF BAKER*. It is ordered that John David Baker, of Rochester, 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-343. *IN RE DISBARMENT OF MCGRATH*. It is ordered that Thomas Francis McGrath, Jr., of Seattle, Wash., 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-344. *IN RE DISBARMENT OF STROH*. It is ordered that Hugh William Stroh, of Bellevue, Wash., 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.⁴

No. D-345. *IN RE DISBARMENT OF WALGREN*. It is ordered that Gordon Lee Walgren, of Bremerton, Wash., 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. 81-1044. *UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS v. AIKENS*, 460 U. S. 711. Motion of respondent to retax costs denied. JUSTICE BLACKMUN would grant this motion.

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

May 23, 1983

461 U. S.

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 respondents San Carlos Apache Tribe of Arizona et al. for leave to file a supplemental brief after argument granted.

No. 82-357. MICHIGAN *v.* CLIFFORD ET AL. Ct. App. Mich. [Certiorari granted, 459 U. S. 1168.] Further consideration of respondents' motion partially to vacate the writ of certiorari as improvidently granted is deferred to the hearing of the case on the merits.

No. 82-945. SURE-TAN, INC., ET AL. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 7th Cir. [Certiorari granted, 460 U. S. 1021.] Motion of petitioners to proceed further herein *in forma pauperis* denied. Motion of petitioners to dispense with printing the joint appendix granted.

No. 82-1414. PRATT-FARNSWORTH, INC., ET AL. *v.* CARPENTERS LOCAL UNION NO. 1846 OF THE UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, AFL-CIO, ET AL. C. A. 5th Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 82-1761. IN RE HANSON. Petition for writ of habeas corpus denied.

No. 82-1746. IN RE KARAPINKA. Petition for writ of mandamus denied.

Certiorari Granted

No. 82-1213. NEW YORK *v.* QUARLES. Ct. App. N. Y. Certiorari granted. Reported below: 58 N. Y. 2d 664, 444 N. E. 2d 984.

Certiorari Denied

No. 82-834. WALCK *v.* AMERICAN STOCK EXCHANGE, INC., ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 687 F. 2d 778.

461 U. S.

May 23, 1983

No. 82-1023. *CALLAHAN ET AL. v. MISSISSIPPI*. Sup. Ct. Miss. Certiorari denied. Reported below: 426 So. 2d 801.

No. 82-1373. *MILLER v. PITTSTON STEVEDORING CORP. ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 696 F. 2d 983.

No. 82-1384. *ALCAN SALES, DIVISION OF ALCAN ALUMINUM CORP. v. UNITED STATES*. C. A. Fed. Cir. Certiorari denied. Reported below: 693 F. 2d 1089.

No. 82-1395. *DRURY v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 687 F. 2d 63.

No. 82-1403. *INTERNATIONAL FASHIONS v. BUCHANAN ET AL.* C. A. Fed. Cir. Certiorari denied. Reported below: 703 F. 2d 584.

No. 82-1437. *HOMEWOOD CITY BOARD OF EDUCATION ET AL. v. AVERY*. C. A. 11th Cir. Certiorari denied. Reported below: 674 F. 2d 337.

No. 82-1515. *BUCKS COUNTY WATER AND SEWER AUTHORITY v. DELAWARE RIVER BASIN COMMISSION ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 707 F. 2d 1389.

No. 82-1532. *ALYESKA PIPELINE SERVICE CO. ET AL. v. UNITED STATES*. C. A. Fed. Cir. Certiorari denied. Reported below: 231 Ct. Cl. 540, 688 F. 2d 765.

No. 82-1545. *KAISER v. CONSOLIDATED RAIL CORPORATION ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 705 F. 2d 454.

No. 82-1590. *STITH v. VIRGINIA*. Sup. Ct. Va. Certiorari denied.

No. 82-1598. *VAUGHAN v. NORTH CAROLINA*. Ct. App. N. C. Certiorari denied. Reported below: 59 N. C. App. 318, 296 S. E. 2d 516.

May 23, 1983

461 U. S.

No. 82-1601. *GILMORE v. KOEHLER, WARDEN*. C. A. 6th Cir. Certiorari denied. Reported below: 709 F. 2d 1502.

No. 82-1603. *TOYBOX CORP. v. ILLFELDER TOY CO., INC., ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 714 F. 2d 117.

No. 82-1604. *DEWEY v. UNIVERSITY OF NEW HAMPSHIRE ET AL.* C. A. 1st Cir. Certiorari denied. Reported below: 694 F. 2d 1.

No. 82-1605. *MCGINNIS v. LANGHORNE MANOR BOROUGH*. Pa. Commw. Ct. Certiorari denied. Reported below: 68 Pa. Commw. 57, 448 A. 2d 108.

No. 82-1613. *HELMERICH & PAYNE, INC. v. ROCK ISLAND IMPROVEMENT CO. ET AL.* C. A. 10th Cir. Certiorari denied. Reported below: 698 F. 2d 1075.

No. 82-1617. *NITZ v. IOWA*. Sup. Ct. Iowa. Certiorari denied. Reported below: 332 N. W. 2d 107.

No. 82-1618. *BENSON v. SCHWARTZ ET AL.* Sup. Ct. Va. Certiorari denied.

No. 82-1619. *ILLINOIS v. TILLER*. Sup. Ct. Ill. Certiorari denied. Reported below: 94 Ill. 2d 303, 447 N. E. 2d 174.

No. 82-1622. *BARUCH v. SHERIFF OF COOK COUNTY*. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 105 Ill. App. 3d 1200, 439 N. E. 2d 1113.

No. 82-1623. *AMERICAN AIRLINES, INC. v. BRANIFF AIRWAYS, INC., ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 700 F. 2d 214.

No. 82-1637. *STENDEBACH v. CPC INTERNATIONAL, INC.* C. A. 5th Cir. Certiorari denied. Reported below: 691 F. 2d 735.

461 U. S.

May 23, 1983

No. 82-1640. *WILLIAMS v. PASMA*. Sup. Ct. Mont. Certiorari denied. Reported below: — Mont. —, 656 P. 2d 212.

No. 82-1642. *DRURY ET AL. v. WESTBOROUGH MALL, INC., ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 693 F. 2d 733.

No. 82-1659. *ROBINSON ET AL. v. CUMBERLAND CAPITAL CORP. ET AL.* Ct. App. Tenn. Certiorari denied.

No. 82-1707. *ORLOSKI v. MELLENBERG, JUDGE, COURT OF COMMON PLEAS*. Super. Ct. Pa. Certiorari denied. Reported below: 305 Pa. Super. 75, 451 A. 2d 249.

No. 82-1741. *ROJAS v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 703 F. 2d 578.

No. 82-6214. *LOCKLEAR v. GARRISON, WARDEN, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 696 F. 2d 990.

No. 82-6234. *PARKS v. UNITED STATES*. Ct. App. D. C. Certiorari denied. Reported below: 451 A. 2d 591.

No. 82-6299. *WADDELL v. UNITED STATES*; and

No. 82-6300. *MURPHY v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 696 F. 2d 282.

No. 82-6327. *MUMIT v. HENDERSON*. C. A. 2d Cir. Certiorari denied. Reported below: 714 F. 2d 115.

No. 82-6408. *BARLOW v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 693 F. 2d 954.

No. 82-6449. *MAZZEI v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 700 F. 2d 85.

No. 82-6479. *NAVARRE v. LOUISIANA*. 15th Jud. Dist. Ct. La., Vermilion Parish. Certiorari denied.

May 23, 1983

461 U. S.

No. 82-6481. *SMITH v. FAIRMAN ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 690 F. 2d 122.

No. 82-6487. *GADOMSKI v. UNITED STATES STEEL CORP.* C. A. 3d Cir. Certiorari denied. Reported below: 707 F. 2d 1390.

No. 82-6490. *HADDIX v. ST. ELIZABETH MEDICAL CENTER.* Sup. Ct. Ohio. Certiorari denied.

No. 82-6491. *JOHNSON v. FIELDS ET AL.* C. A. 10th Cir. Certiorari denied.

No. 82-6492. *MCDONALD v. HUMPHRIES ET AL.* C. A. 6th Cir. Certiorari denied.

No. 82-6493. *ARMSTRONG v. WISCONSIN.* Sup. Ct. Wis. Certiorari denied. Reported below: 110 Wis. 555, 329 N. W. 2d 386.

No. 82-6494. *COOK v. NEW YORK.* Ct. App. N. Y. Certiorari denied. Reported below: 58 N. Y. 2d 691, 444 N. E. 2d 1017.

No. 82-6501. *RIVERA v. SMITH, SUPERINTENDENT, ATTICA CORRECTIONAL FACILITY.* C. A. 2d Cir. Certiorari denied.

No. 82-6505. *KINCAID v. DUCKWORTH, WARDEN, INDIANA STATE PRISON.* C. A. 7th Cir. Certiorari denied. Reported below: 689 F. 2d 702.

No. 82-6506. *BRIDGEFORTH v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 701 F. 2d 168.

No. 82-6517. *MELIA v. FISCHER & PORTER CO., INC.* C. A. 3d Cir. Certiorari denied. Reported below: 707 F. 2d 1393.

No. 82-6521. *ROTHWELL v. BAILEY ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 696 F. 2d 991.

461 U. S.

May 23, 1983

No. 82-6528. *LADEN v. MICHIGAN DEPARTMENT OF CORRECTIONS ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 708 F. 2d 725.

No. 82-6529. *HUFF v. UNITED STATES.* C. A. 10th Cir. Certiorari denied. Reported below: 699 F. 2d 1027.

No. 82-6530. *LEWIS v. UNITED STATES.* C. A. 10th Cir. Certiorari denied. Reported below: 700 F. 2d 1328.

No. 82-6574. *HOLLOWAY v. LYNCH.* C. A. 4th Cir. Certiorari denied. Reported below: 701 F. 2d 165.

No. 82-6575. *JONES v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 703 F. 2d 578.

No. 82-6585. *DREYFUS-DE CAMPOS v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 698 F. 2d 227.

No. 82-6593. *BUTTS v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 707 F. 2d 1404.

No. 82-6603. *BIVINS v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 701 F. 2d 171.

No. 82-6608. *GRAHAM ET AL. v. UNITED STATES.* C. A. 1st Cir. Certiorari denied. Reported below: 700 F. 2d 427.

No. 82-6623. *WELTY v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 709 F. 2d 1496.

No. 82-6624. *WILLIAMS v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 703 F. 2d 579.

No. 82-6630. *SCHLACKS v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 700 F. 2d 408.

No. 82-6639. *GRAINGER v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 701 F. 2d 308.

May 23, 1983

461 U. S.

No. 82-1319. WAINWRIGHT, SECRETARY, DEPARTMENT OF CORRECTIONS *v.* GRIZZELL. C. A. 11th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 692 F. 2d 722.

No. 82-1321. HIGA, JUDGE OF THE SECOND CIRCUIT OF HAWAII *v.* MAYO. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 692 F. 2d 595.

No. 82-6483. TALIAFERRO *v.* MARYLAND. Ct. App. Md. Certiorari denied. Reported below: 295 Md. 376, 456 A. 2d 29.

JUSTICE WHITE, with whom JUSTICE BRENNAN and JUSTICE BLACKMUN join, dissenting.

Maryland requires criminal defendants, upon request, to provide the State with the name and address of each alibi witness they wish to call at trial. Md. Rule Proc. 741. As a sanction for failure to abide by this Rule, the trial court has the discretion to prohibit the defendant from introducing the testimony of an undisclosed alibi witness. *Ibid.* This case presents the question whether the exclusion of a witness merely for failure to abide by a discovery rule such as Rule 741 impermissibly infringes upon a defendant's Sixth Amendment right to offer witnesses on his behalf. See *Chambers v. Mississippi*, 410 U. S. 284, 302 (1973); *Washington v. Texas*, 388 U. S. 14, 19 (1967).

On the second day of trial in the present case, petitioner sought to call Edward Rich as an alibi witness, even though Rich had not been named in response to the State's Rule 741 request. The State indicated that it would have no objection to Rich's testifying if the case were continued for a few days, so that an investigation of Rich could be conducted. The trial court declined to order a continuance; instead, it ordered that Rich not be permitted to testify. The court did not find

that petitioner's violation of Rule 741 was deliberate; rather, it found that petitioner had not been "diligent" and "hadn't made any real effort, except yesterday, to locate this witness." App. to Pet. for Cert. A-90—A-91. The court's ruling severely prejudiced petitioner, since alibi was his only defense, and Rich was his only alibi witness. Petitioner was convicted, and the Maryland Court of Appeals affirmed by a 4-3 vote. 295 Md. 376, 456 A. 2d 29 (1983). The dissent vigorously protested that where, as here, the sanction of exclusion deprives a defendant of his only alibi witness, the violation of the discovery rule is not deliberate, and any prejudice to the prosecution can be cured by a short continuance, the exclusionary sanction violates the defendant's Sixth and Fourteenth Amendment rights. *Id.*, at 398, 456 A. 2d, at 41 (Eldridge, J., dissenting).

This Court has twice expressly reserved judgment on this Sixth Amendment question. *Wardius v. Oregon*, 412 U. S. 470, 472, n. 4 (1973); *Williams v. Florida*, 399 U. S. 78, 83, n. 14 (1970). Respondent concedes that the question is significant. Brief in Opposition 1. At least one Federal Court of Appeals has flatly held "that the compulsory process clause of the sixth amendment forbids the exclusion of otherwise admissible evidence solely as a sanction to enforce discovery rules or orders against criminal defendants." *United States v. Davis*, 639 F. 2d 239, 243 (CA5 1981). Accord, *Hackett v. Mulcahy*, 493 F. Supp. 1329 (NJ 1980). See also *Ronson v. Commissioner of Correction*, 604 F. 2d 176 (CA2 1979). The American Bar Association and several scholarly writers have also found arguable constitutional infirmity in the exclusionary sanction. See ABA Standards for Criminal Justice 11-4.7(a), and accompanying commentary (2d ed. 1980); Clinton, The Right to Present a Defense: An Emergent Constitutional Guarantee in Criminal Trials, 9 Ind. L. Rev. 711, 838-839 (1976); Westen, The Compulsory Process Clause, 73 Mich. L. Rev. 71, 137-139 (1974); Note, 81 Yale L. J. 1342 (1972).

May 23, 31, 1983

461 U. S.

By the count of the Court of Appeals majority, 35 States and the District of Columbia have provisions similar to Rule 741 that allow the exclusion of evidence as a penalty for non-compliance with discovery rules. See 295 Md., at 387, 456 A. 2d, at 35. Rule 12.1 of the Federal Rules of Criminal Procedure also allows such a sanction to be assessed. One State apparently even *requires* the exclusionary sanction to be applied when a defendant fails to disclose his witness. See Mich. Comp. Laws Ann. §§ 768.20, 768.21 (1982). In light of the sharp disagreement in the legal community as to the constitutionality of this penalty, I would grant certiorari and resolve this recurring issue.

Rehearing Granted. (See No. 80-1158, *supra*.)

Rehearing Denied

No. 81-6746. MEDINA-PENA *v.* UNITED STATES, 460 U. S. 1068;

No. 82-1328. PFOTZER ET AL. *v.* UNITED STATES, 460 U. S. 1052;

No. 82-1445. THE DON'T BANKRUPT WASHINGTON COMMITTEE *v.* CONTINENTAL ILLINOIS NATIONAL BANK & TRUST COMPANY OF CHICAGO ET AL., 460 U. S. 1077;

No. 82-6238. JONES ET AL. *v.* MITCHELL ET AL., 460 U. S. 1064;

No. 82-6239. JONES ET AL. *v.* JEFFERSON PARISH SCHOOL BOARD, 460 U. S. 1064; and

No. 82-6260. HARRISON *v.* OKLAHOMA, 460 U. S. 1090. Petitions for rehearing denied.

MAY 31, 1983

Appeals Dismissed. (See also No. 82-1401, *infra*.)

No. 82-1307. GRAHAM *v.* LOUISIANA. Appeal from Sup. Ct. La. dismissed for want of substantial federal question. Reported below: 422 So. 2d 123.

No. 82-1663. FLEISCHMANN, TRUSTEE *v.* WETHERSFIELD PLANNING AND ZONING COMMISSION ET AL. Appeal from App. Sess., Super. Ct. Conn., Hartford-New Britain

461 U. S.

May 31, 1983

Jud. Dist., dismissed for want of substantial federal question. Reported below: 38 Conn. Supp. 590, 456 A. 2d 791.

No. 82-1588. LEE M. SCARBOROUGH & Co. *v.* FOX, SPECIAL DEPUTY COMMISSIONER OF INSURANCE OF WISCONSIN FOR THE LIQUIDATION OF ALL-STAR INSURANCE CORP., ET AL.; and

No. 82-1628. APS INSURANCE AGENCY, INC. *v.* FOX, SPECIAL DEPUTY COMMISSIONER OF INSURANCE OF WISCONSIN FOR THE LIQUIDATION OF ALL-STAR INSURANCE CORP., ET AL. Appeals from Sup. Ct. Wis. dismissed for want of substantial federal question. JUSTICE WHITE and JUSTICE POWELL would note probable jurisdiction and set cases for oral argument. Reported below: 110 Wis. 2d 72, 327 N. W. 2d 648.

No. 82-6075. SCHLANG *v.* HEARD, SHERIFF. 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: 691 F. 2d 796.

No. 82-6274. JONES *v.* ORLEANS 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 342.

No. 82-6496. COUNSELL *v.* MUNRO-BURNS GENERAL CONTRACTORS. Appeal from Int. Ct. App. Haw. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 3 Haw. App. 681.

Certiorari Granted—Vacated and Remanded

No. 81-1399. CITY OF LOS ANGELES, DEPARTMENT OF WATER AND POWER, ET AL. *v.* MANHART ET AL. C. A. 9th Cir. Certiorari granted, judgment vacated, and case re-

May 31, 1983

461 U. S.

manded for further consideration in light of *Hensley v. Eckerhart*, ante, p. 424. Reported below: 652 F. 2d 904.

No. 81-1830. *EARL B. MILLER & CO. v. HUGHES*. C. A. 6th Cir. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *Hensley v. Eckerhart*, ante, p. 424. JUSTICE STEVENS dissents and would deny certiorari. Reported below: 698 F. 2d 1220.

No. 82-156. *CITY OF RIVERSIDE ET AL. v. RIVERA ET AL.* C. A. 9th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Hensley v. Eckerhart*, ante, p. 424. Reported below: 679 F. 2d 795.

No. 82-192. *DELTA AIR LINES, INC. v. THORNBERRY ET AL.* C. A. 9th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Hensley v. Eckerhart*, ante, p. 424. Reported below: 676 F. 2d 1240.

No. 82-747. *BOND ET AL. v. BURKS ET AL.* C. A. 8th Cir. Motion of respondents for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *Hensley v. Eckerhart*, ante, p. 424. JUSTICE BLACKMUN and JUSTICE STEVENS dissent and would deny certiorari. Reported below: 691 F. 2d 503.

No. 82-816. *HECKLER, SECRETARY OF HEALTH AND HUMAN SERVICES v. BROZ ET AL.* C. A. 11th Cir. Motion of respondents for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *Heckler v. Campbell*, ante, at 464, n. 8. Reported below: 677 F. 2d 1351.

No. 82-1335. *RHODES ET AL. v. STEWART*. C. A. 6th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Hensley v. Eckerhart*, ante, p. 424. Reported below: 703 F. 2d 566.

461 U. S.

May 31, 1983

Miscellaneous Orders

No. — — ——. KOPITUK ET AL. *v.* UNITED STATES. Motion of petitioners for leave to file an appendix to the petition for writ of certiorari that does not comply with the Rules of this Court granted.

No. A-872. DABEIT *v.* UNITED STATES. C. A. 5th Cir. Application for stay, addressed to JUSTICE O'CONNOR and referred to the Court, denied.

No. A-933. WEECH ET AL. *v.* UNITED STATES. C. A. 11th Cir. Application to recall and stay the mandate, addressed to JUSTICE MARSHALL and referred to the Court, denied.

No. D-328. IN RE DISBARMENT OF JUNCKER. Disbarment entered. [For earlier order herein, see 460 U. S. 1019.]

No. D-330. IN RE DISBARMENT OF BLUESTEIN. Disbarment entered. [For earlier order herein, see 460 U. S. 1049.]

No. D-346. IN RE DISBARMENT OF HOLLINGSWORTH. It is ordered that Frederick E. Hollingsworth, of Boca Raton, Fla., 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-347. IN RE DISBARMENT OF ROCAP. It is ordered that Read Rocap, Jr., of Media, 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-348. IN RE DISBARMENT OF DAVIS. It is ordered that Gary A. Davis, of Columbia, 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.

May 31, 1983

461 U. S.

No. D-349. *IN RE DISBARMENT OF BUTLER*. It is ordered that Paul A. Butler, of South Natick, Mass., 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-350. *IN RE DISBARMENT OF BUCCI*. It is ordered that Andrew A. Bucci, of North Providence, R. I., 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. 81-2159. *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 Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 81-2169. *HARING, LIEUTENANT, ARLINGTON COUNTY POLICE DEPARTMENT, ET AL. v. PROSISE*. C. A. 4th Cir. [Certiorari granted, 459 U. S. 904.] Motion of respondent for leave to file a supplemental brief after argument granted.

No. 81-2245. *NEVADA v. UNITED STATES ET AL.*;

No. 81-2276. *TRUCKEE-CARSON IRRIGATION DISTRICT v. UNITED STATES ET AL.*; and

No. 82-38. *PYRAMID LAKE PAIUTE TRIBE OF INDIANS v. TRUCKEE-CARSON IRRIGATION DISTRICT ET AL.* C. A. 9th Cir. [Certiorari granted, 459 U. S. 904.] Motion of petitioners in Nos. 81-2245 and 81-2276 for leave to file a supplemental brief after argument granted.

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.

461 U. S.

May 31, 1983

[Certiorari granted, 459 U. S. 1168.] Motion of the Solicitor General for divided argument granted.

No. 82-818. NATIONAL LABOR RELATIONS BOARD *v.* BILDISCO & BILDISCO, DEBTOR-IN-POSSESSION, ET AL.; and

No. 82-852. LOCAL 408, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA *v.* NATIONAL LABOR RELATIONS BOARD ET AL. C. A. 3d Cir. [Certiorari granted, 459 U. S. 1145.] Motions of United Mine Workers of America, International Union, and International Brotherhood of Teamsters for leave to file briefs as *amici curiae* granted.

No. 82-874. HECKLER, SECRETARY OF HEALTH AND HUMAN SERVICES *v.* EDWARDS. C. A. 9th Cir. [Certiorari granted *sub nom.* *Schweiker v. Edwards*, 459 U. S. 1200.] Motion of the Solicitor General to dispense with printing the joint appendix granted.

No. 82-940. HISHON *v.* KING & SPALDING. C. A. 11th Cir. [Certiorari granted, 459 U. S. 1169.] Motion of Robert Abrams et al. for leave to file a brief as *amici curiae* granted.

No. 82-1041. DICKMAN ET AL. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 11th Cir. [Certiorari granted, 459 U. S. 1199.] Motion of D'Ancona & Pflaum for leave to participate in oral argument as *amicus curiae* denied.

No. 82-1127. HELICOPTEROS NACIONALES DE COLOMBIA, S.A. *v.* HALL ET AL. Sup. Ct. Tex. [Certiorari granted, 460 U. S. 1021.] Motion of Motor Vehicle Manufacturers Association of the United States, Inc., for leave to file a brief as *amicus curiae* granted.

No. 82-1401. CALDER ET AL. *v.* JONES ET AL. Ct. App. Cal., 2d App. Dist. [Probable jurisdiction postponed, 460 U. S. 1080.] Appeal as to appellee Ingels dismissed. Motion of appellants to vacate the judgment of the Court of Appeal of California, Second Appellate District, as to Ingels denied.

May 31, 1983

461 U. S.

Certiorari Granted

No. 81-1374. BLUM, COMMISSIONER, NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES *v.* STENSON. C. A. 2d Cir. Certiorari granted. Reported below: 671 F. 2d 493.

No. 82-1253. SOLEM, WARDEN, SOUTH DAKOTA STATE PENITENTIARY, ET AL. *v.* BARTLETT. C. A. 8th Cir. Certiorari granted. Reported below: 691 F. 2d 420.

No. 82-1005. CHEVRON U.S.A. INC. *v.* NATURAL RESOURCES DEFENSE COUNCIL, INC., ET AL.;

No. 82-1247. AMERICAN IRON & STEEL INSTITUTE ET AL. *v.* NATURAL RESOURCES DEFENSE COUNCIL, INC., ET AL.; and

No. 82-1591. RUCKELSHAUS, ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY *v.* NATURAL RESOURCES DEFENSE COUNCIL, INC., ET AL. C. A. D. C. Cir. Motion of Mid-America Legal Foundation for leave to file a brief as *amicus curiae* granted. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. Reported below: 222 U. S. App. D. C. 268, 685 F. 2d 718.

No. 82-1330. THIGPEN, COMMISSIONER, MISSISSIPPI DEPARTMENT OF CORRECTIONS, ET AL. *v.* ROBERTS. C. A. 5th Cir. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 693 F. 2d 132.

No. 82-1651. NIX, WARDEN OF THE IOWA STATE PENITENTIARY *v.* WILLIAMS. C. A. 8th Cir. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 700 F. 2d 1164.

Certiorari Denied. (See also Nos. 82-6075, 82-6274, and 82-6496, *supra*.)

No. 81-2135. UNIROYAL, INC. *v.* CHRAPLIWY ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 670 F. 2d 760.

461 U. S.

May 31, 1983

No. 81-6754. *KIRK v. HECKLER, SECRETARY OF HEALTH AND HUMAN SERVICES*. C. A. 6th Cir. Certiorari denied. Reported below: 667 F. 2d 524.

No. 82-1383. *CINTOLO v. UNITED STATES ET AL.* C. A. 1st Cir. Certiorari denied.

No. 82-1466. *PATTERSON v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 693 F. 2d 134.

No. 82-1504. *L. G. EVERIST, INC. v. UNITED STATES*. C. A. Fed. Cir. Certiorari denied. Reported below: 231 Ct. Cl. 1013.

No. 82-1539. *DRUKER ET UX. v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 2d Cir. Certiorari denied. Reported below: 697 F. 2d 46.

No. 82-1547. *DABNEY v. MONTGOMERY WARD & Co., INC.* C. A. 8th Cir. Certiorari denied. Reported below: 692 F. 2d 49.

No. 82-1581. *QUENNEVILLE, EXECUTRIX OF THE ESTATE OF QUENNEVILLE v. DELMARK CO., INC., ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 708 F. 2d 727.

No. 82-1594. *MILO v. OHIO*. Ct. App. Ohio, Franklin County. Certiorari denied. Reported below: 6 Ohio App. 3d 19, 451 N. E. 2d 1253.

No. 82-1624. *R. R. GABLE, INC. v. BURROWS ET UX*. Ct. App. Wash. Certiorari denied. Reported below: 32 Wash. App. 749, 649 P. 2d 177.

No. 82-1627. *GREAT SOUTHWEST FIRE INSURANCE CO. v. ISON ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 698 F. 2d 294.

No. 82-1629. *BRITO ENTERPRISES, INC., T/A BRITO'S BOATYARD v. WESTBERRY*. C. A. 11th Cir. Certiorari denied. Reported below: 694 F. 2d 725.

May 31, 1983

461 U. S.

No. 82-1632. *BARGER v. PETROLEUM HELICOPTERS, INC.* C. A. 5th Cir. Certiorari denied. Reported below: 692 F. 2d 337.

No. 82-1648. *HORTON v. MARTIN, WARDEN, CENTRAL CORRECTIONAL INSTITUTE, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 701 F. 2d 165.

No. 82-1665. *ILLINOIS TOOL WORKS, INC. v. GRIP-PAK, INC.* C. A. 7th Cir. Certiorari denied. Reported below: 694 F. 2d 466.

No. 82-1717. *KROENING v. ARCHDIOCESE OF MILWAUKEE ET AL.* Ct. App. Wis. Certiorari denied. Reported below: 109 Wis. 2d 698, 327 N. W. 2d 723.

No. 82-1736. *SABOUNI ET AL. v. LEAVER ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 696 F. 2d 1003.

No. 82-1748. *CARLIN v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 698 F. 2d 1133.

No. 82-1774. *CUTI v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 722 F. 2d 729.

No. 82-1782. *HENSEL v. UNITED STATES.* C. A. 1st Cir. Certiorari denied. Reported below: 699 F. 2d 18.

No. 82-1783. *HILLARD v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 701 F. 2d 1052.

No. 82-1786. *TRAINELLO v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 718 F. 2d 1087.

No. 82-1790. *PHILLIPS v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 701 F. 2d 169.

No. 82-5527. *RIOS v. HECKLER, SECRETARY OF HEALTH AND HUMAN SERVICES.* C. A. 3d Cir. Certiorari denied. Reported below: 688 F. 2d 824.

No. 82-5539. *PICARD v. SECRETARY OF HEALTH AND HUMAN SERVICES; and SHERWIN v. SECRETARY OF HEALTH*

461 U. S.

May 31, 1983

AND HUMAN SERVICES. C. A. 1st Cir. Certiorari denied. Reported below: 685 F. 2d 1 (second case).

No. 82-6254. ELAIRE *v.* BLACKBURN, WARDEN. Sup. Ct. La. Certiorari denied. Reported below: 424 So. 2d 246.

No. 82-6344. GRANTT ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 82-6411. BENNETT *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 82-6495. LANGFORD *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 688 F. 2d 1088.

No. 82-6497. AKBAR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 698 F. 2d 378.

No. 82-6509. BRESSLER, DBA MARIE'S ORIGINALS *v.* UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied.

No. 82-6510. SHAO FEN CHIN, INDIVIDUALLY, AND AS ADMINISTRATOR OF THE ESTATE OF KE-SIEN CHIN *v.* ST. LUKE'S HOSPITAL CENTER ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 714 F. 2d 117.

No. 82-6513. BRADFORD *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied.

No. 82-6515. PEPPERS *v.* TARD ET AL. C. A. 3d Cir. Certiorari denied.

No. 82-6518. ADAMS *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 423 So. 2d 439.

No. 82-6520. PEARSON *v.* CONKLIN. C. A. 8th Cir. Certiorari denied.

No. 82-6523. WEBB *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 661 P. 2d 904.

May 31, 1983

461 U. S.

No. 82-6527. *BIGG v. UNITED STATES ARMY*. C. A. 2d Cir. Certiorari denied. Reported below: 722 F. 2d 727.

No. 82-6531. *GOODRICH v. NEW YORK*. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 80 App. Div. 2d 562, 435 N. Y. S. 2d 758.

No. 82-6550. *MULLEN v. STARR ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 696 F. 2d 1000.

No. 82-6565. *MASTERS v. OHIO*. Ct. App. Ohio, Mahoning County. Certiorari denied.

No. 82-6569. *LEONE v. DORAN ET AL.* Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 388 Mass. 1102, 445 N. E. 2d 156.

No. 82-6580. *ANDERSON v. ZIMMERMAN ET AL.* C. A. 3d Cir. Certiorari denied.

No. 82-6596. *MCGAVRAN v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 705 F. 2d 446.

No. 82-6602. *MURRELL v. BENNETT, COMMISSIONER OF ALABAMA BOARD OF CORRECTIONS, ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 697 F. 2d 1093.

No. 82-6643. *MARTIN v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 709 F. 2d 1510.

No. 82-6651. *CHRISTOPHER ET AL. v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 700 F. 2d 1253.

No. 82-6652. *HAWKINS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 698 F. 2d 1215.

No. 82-6654. *GREEN v. WARDEN, U. S. PENITENTIARY*. C. A. 7th Cir. Certiorari denied. Reported below: 699 F. 2d 364.

No. 82-6660. *CLEMONS v. SMITH, ATTORNEY GENERAL, ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 709 F. 2d 1491.

No. 82-6666. *TRIGNANI v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 709 F. 2d 1496.

461 U. S.

May 31, 1983

No. 82-6668. *DUNCAN v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 693 F. 2d 971.

No. 82-6669. *GASTELUM-ALMEIDA v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 703 F. 2d 578.

No. 82-1183. *LEDERER v. UNITED STATES*;

No. 82-1187. *MURPHY v. UNITED STATES*;

No. 82-1199. *THOMPSON v. UNITED STATES*;

No. 82-1240. *CRIDEN v. UNITED STATES*; and

No. 82-1255. *MYERS ET AL. v. UNITED STATES*. C. A. 2d Cir. Motion of American Civil Liberties Union Foundation in No. 82-1199 for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 692 F. 2d 823.

No. 82-1289. *CHICAGO HOUSING AUTHORITY v. GAUTREAUX ET AL.* C. A. 7th Cir. Certiorari denied. JUSTICE STEVENS took no part in the consideration or decision of this petition. Reported below: 690 F. 2d 601.

No. 82-1381. *MCCRAY v. NEW YORK*. Ct. App. N. Y.;

No. 82-5840. *MILLER v. ILLINOIS*. App. Ct. Ill., 1st Dist.; and

No. 82-5910. *PERRY v. LOUISIANA*. Sup. Ct. La. Certiorari denied. Reported below: No. 82-1381, 57 N. Y. 2d 542, 443 N. E. 2d 915; No. 82-5840, 104 Ill. App. 3d 1205, 437 N. E. 2d 945; No. 82-5910, 420 So. 2d 139.

Opinion of JUSTICE STEVENS, with whom JUSTICE BLACKMUN and JUSTICE POWELL join, respecting the denial of the petitions for writs of certiorari.

My vote to deny certiorari in these cases does not reflect disagreement with JUSTICE MARSHALL's appraisal of the importance of the underlying issue—whether the Constitution prohibits the use of peremptory challenges to exclude members of a particular group from the jury, based on the pros-

ecutor's assumption that they will be biased in favor of other members of the same group. I believe that further consideration of the substantive and procedural ramifications of the problem by other courts will enable us to deal with the issue more wisely at a later date. There is presently no conflict of decision within the federal system. During the past five years, two State Supreme Courts have held that a criminal defendant's rights under state constitutional provisions are violated in some circumstances by the prosecutor's use of peremptory challenges to exclude members of particular racial, ethnic, religious, or other groups from the jury. *People v. Wheeler*, 22 Cal. 3d 258, 583 P. 2d 748 (1978); *Commonwealth v. Soares*, 377 Mass. 461, 387 N. E. 2d 499, cert. denied, 444 U. S. 881 (1979).^{*} That premise, understandably, has given rise to litigation addressing both procedural and substantive problems associated with judicial review of peremptory challenges, which had traditionally been final and unreviewable. See, e. g., *People v. Allen*, 23 Cal. 3d 286, 292, 590 P. 2d 30, 33 (1979); *People v. Fuller*, 136 Cal. App. 3d

^{*}Although these cases present only the question of peremptory challenges on racial grounds, the same constitutional claims may also apply to the exclusion of other identifiable groups. The California Supreme Court has held that the State may not use peremptory challenges solely on the basis of religious, ethnic, or similar group affiliations. See *People v. Wheeler*, 22 Cal. 3d, at 272, 583 P. 2d, at 758 (relying on both the Sixth Amendment to the United States Constitution and Art. I, § 16, of the California Constitution). Similarly, the Massachusetts Supreme Judicial Court has condemned peremptory challenges based on "sex, race, color, creed or national origin." *Commonwealth v. Soares*, 377 Mass., at 487-489, and nn. 29, 33, 387 N. E. 2d, at 515-516, and nn. 29, 33 (relying on Art. 12 of the Massachusetts Declaration of Rights). Cf. *State v. Crespin*, 94 N. M. 486, 612 P. 2d 716 (App. 1980) (declaring constitutional right, apparently on state grounds, but not specifying whether groups other than racial groups are protected).

Furthermore, although these cases involve peremptory challenges by the prosecutor, the Massachusetts court in *Soares* held that the Commonwealth as well as the defense could challenge the improper exercise of such challenges. 377 Mass., at 489-490, n. 35, 387 N. E. 2d, at 517, n. 35; see *Commonwealth v. Reid*, 384 Mass. 247, 424 N. E. 2d 495 (1981).

961

MARSHALL, J., dissenting

403, 186 Cal. Rptr. 283 (1982); *People v. Rousseau*, 129 Cal. App. 3d 526, 536, 179 Cal. Rptr. 892, 897 (1982); *Commonwealth v. Walker*, 379 Mass. 297, 397 N. E. 2d 1105 (1979); *Commonwealth v. Kelly*, 10 Mass. App. 847, 406 N. E. 2d 1327 (1980); *Commonwealth v. Brown*, 11 Mass. App. 283, 416 N. E. 2d 218 (1981). In my judgment it is a sound exercise of discretion for the Court to allow the various States to serve as laboratories in which the issue receives further study before it is addressed by this Court.

JUSTICE MARSHALL, with whom JUSTICE BRENNAN joins, dissenting.

These cases present a significant and recurring question of constitutional law: whether the State's use of peremptory challenges to exclude all potential Negro jurors because of their race violates a criminal defendant's right to an impartial jury drawn from a fair cross section of the community.

In No. 82-1381, after a first trial had resulted in a hung jury, an all-white jury convicted a Negro of first- and second-degree robbery of a white victim. The prosecutor exercised his peremptory challenges to exclude all seven Negroes and one Hispanic who had been drawn as prospective trial jurors. Asserting that the prosecutor's actions violated the Constitution, petitioner moved for a mistrial, or alternatively, for a hearing to examine the prosecutor's motives in exercising the challenges. These motions were denied. The New York Court of Appeals subsequently affirmed the conviction by a vote of four to three. 57 N. Y. 2d 542, 443 N. E. 2d 915 (1982). Both the trial court and the Court of Appeals relied heavily on *Swain v. Alabama*, 380 U. S. 202 (1965), in rejecting petitioner's constitutional argument.

In No. 82-5840 and in No. 82-5910, all-white juries convicted Negro defendants of murdering white victims. In No. 82-5840, the prosecutor employed his peremptory challenges to exclude all 14 potential Negro jurors. In No. 82-5910, following the removal of three Negroes for cause,

the prosecutor used his peremptory challenges to exclude every remaining Negro venireman. In both cases, counsel for petitioners unsuccessfully objected to the State's use of peremptory challenges to exclude all Negroes from the jury. The state appellate courts concluded that petitioners had merely shown that Negroes were excluded from the juries in their cases, not that the State had systematically excluded Negroes over a period of time. And in each case, respondents rely heavily upon *Swain v. Alabama*, *supra*, to defend the judgments below.

In *Swain*, a closely divided Court held that the prosecutor's use of peremptory challenges to strike Negroes from the jury panel in one particular case did not deny the defendant the equal protection of the laws. The majority reasoned: "The presumption in any particular case must be that the prosecutor is using the State's challenges to obtain a fair and impartial jury to try the case before the court. The presumption is not overcome and the prosecutor therefore subjected to examination by allegations that in the case at hand all Negroes were removed from the jury or that they were removed because they were Negroes." *Id.*, at 222. The majority conceded that circumstances might arise where "the purposes of the peremptory challenge are being perverted." *Id.*, at 224. But the majority stated that an equal protection claim would assume "added significance" only where "the prosecutor in a county, in case after case, whatever the circumstances, whatever the crime and whoever the defendant or the victim may be, is responsible for the removal of Negroes" *Id.*, at 223.

In the nearly two decades since it was decided, *Swain* has been the subject of almost universal and often scathing criticism.¹ Since *every* defendant is entitled to equal protection

¹ See, e. g., Martin, The Fifth Circuit and Jury Selection Cases: The Negro Defendant and His Peerless Jury, 4 Hous. L. Rev. 448 (1966); Note, The Supreme Court, 1964 Term, 79 Harv. L. Rev. 56, 135-139 (1965); Comment, *Swain v. Alabama*: A Constitutional Blueprint for the Perpetu-

of the laws and should therefore be free from the invidious discrimination of state officials, it is difficult to understand why several must suffer discrimination because of the prosecutor's use of peremptory challenges before any defendant can object.² Moreover, *Swain* is inconsistent with the rule established in other jury selection cases that a prima facie violation is established by showing that an all-white jury was selected and that the selection process incorporated a mechanism susceptible to discriminatory application, irrespective of when in the selection process that opportunity arose.³ Finally, the standard of proof for discrimination in *Swain* imposes a nearly insurmountable burden on defendants.⁴ For

ation of the All-White Jury, 52 Va. L. Rev. 1157 (1966); Note, Fair Jury Selection Procedures, 75 Yale L. J. 322 (1965); Note, Peremptory Challenge—Systematic Exclusion of Prospective Jurors on the Basis of Race, 39 Miss. L. J. 157 (1967); Note, The Jury: A Reflection of the Prejudices of the Community, 20 Hastings L. J. 1417 (1969); Comment, A Case Study of the Peremptory Challenge: A Subtle Strike at Equal Protection and Due Process, 18 St. Louis U. L. J. 662 (1974); Comment, The Prosecutor's Exercise of the Peremptory Challenge to Exclude Nonwhite Jurors: A Valued Common Law Privilege in Conflict with the Equal Protection Clause, 46 U. Cin. L. Rev. 554 (1977); Recent Development, Racial Discrimination in Jury Selection, 41 Albany L. Rev. 623 (1977); Note, Limiting the Peremptory Challenge: Representation of Groups on Petit Juries, 86 Yale L. J. 1715 (1977).

² As one state court justice has written: "Is justice to sit supinely by and be flaunted in case after case before a remedy is available? Is justice only obtainable after repeated injustices are demonstrated? Is there any justification within the traditions of the Anglo-Saxon legal philosophy that permits the use of a presumption to hide the existence of an obvious fact?" *Commonwealth v. Martin*, 461 Pa. 289, 299, 336 A. 2d 290, 295 (1975) (Nix, J., dissenting).

³ See, e. g., *Alexander v. Louisiana*, 405 U. S. 625 (1972) (grand jury); *Whitus v. Georgia*, 385 U. S. 545 (1967) (petit jury); *Avery v. Georgia*, 345 U. S. 559 (1953) (petit jury).

⁴ It is doubtful that many jurisdictions maintain comprehensive records of peremptory challenges, let alone information regarding the race of those individuals challenged. Defendants attempting to demonstrate the kind of systematic exclusion required by *Swain* have virtually always failed, see J. Van Dyke, *Jury Selection Procedures: Our Uncertain Commitment to*

these reasons, some leading state courts have declined to follow *Swain* in interpreting state constitutional provisions. See *State v. Crespin*, 94 N. M. 486, 612 P. 2d 716 (App. 1980); *Commonwealth v. Soares*, 377 Mass. 461, 387 N. E. 2d 499, cert. denied, 444 U. S. 881 (1979); *People v. Wheeler*, 22 Cal. 3d 258, 583 P. 2d 748 (1978). Cf. *People v. Payne*, 106 Ill. App. 3d 1034, 436 N. E. 2d 1046 (1982).

I would grant certiorari to reexamine the standard set forth in *Swain*. In contrast to the defendant in *Swain*, petitioners have not relied upon the Equal Protection Clause in their challenge to the exclusion of potential Negro jurors. They rely instead on their Sixth Amendment right to be tried

Representative Panels 156, and nn. 83-98 (1977) (listing more than 50 cases); Annot., 79 A. L. R. 3d 14, 56-73 (1977) (collecting federal and state cases), despite proof that unmistakably creates an inference of racial discrimination. See, e. g., *United States v. Carter*, 528 F. 2d 844, 848, and n. 3 (CA8 1975) (evidence showing that prosecutors used peremptory challenges to exclude 81% of Negroes available to serve on petit jurors in 15 criminal cases tried during 1974, and that in 7 of the trials the prosecutor excluded all available Negroes, held insufficient to establish claim under *Swain*), cert. denied, 425 U. S. 961 (1976); *United States v. Nelson*, 529 F. 2d 40, 43 (CA8 1976) (faced once again with prosecutor utilizing peremptory challenges to remove all Negroes in case involving Negro defendant, court expresses "concern" but merely warns that in future district judges will take "appropriate action" in exercise of their supervisory powers); *United States v. Pearson*, 448 F. 2d 1207, 1213-1218 (CA5 1971) (prosecutor's notes showing race of defendants, number of Negroes on the jury panel, and number of Negroes challenged during one week of trials supported "reasonable conclusion" that Government challenged as many Negroes as possible when the defendant was a Negro, but did not suffice under *Swain*); *United States v. Robinson*, 421 F. Supp. 467 (Conn. 1976), vacated *sub nom. United States v. Newman*, 549 F. 2d 240 (CA2 1977); *State v. Simpson*, 326 So. 2d 54 (Fla. App. 1976) (reversing trial court's conclusion of systematic exclusion); *Ridley v. State*, 475 S. W. 2d 769 (Tex. Crim. App. 1972) (holding that *Swain* standard was not satisfied by evidence that prosecutor had used seven peremptory challenges to remove Negroes from the panel, by testimony from local attorneys as to prosecutor's systematic use of peremptory challenges in cases involving Negro defendants and white victims, and by an assistant district attorney's admission that it was his practice to do so).

by an impartial jury drawn from a fair cross section of the community. *Swain* was decided before this Court held that the Sixth Amendment applies to the States through the Fourteenth Amendment, *Duncan v. Louisiana*, 391 U. S. 145 (1968), and well before this Court identified the contours of that right in *Taylor v. Louisiana*, 419 U. S. 522 (1975). It should be reconsidered in light of Sixth Amendment principles established by our recent cases.

In *Taylor v. Louisiana*, this Court explained that “[t]he purpose of a jury is to guard against the exercise of arbitrary power—to make available the commonsense judgment of the community.” *Id.*, at 530. We noted that the effect of excluding “any large and identifiable segment of the community . . . is to remove from the jury room qualities of human nature and varieties of human experience, the range of which is unknown and perhaps unknowable.” *Id.*, at 532, n. 12, quoting *Peters v. Kiff*, 407 U. S. 493, 503 (1972) (opinion of MARSHALL, J.). Accordingly, we accepted the “fair-cross-section requirement as fundamental to the jury trial guaranteed by the Sixth Amendment,” 419 U. S., at 530, and we specifically stated that “the exclusion of Negroes from jury service because of their race ‘contravenes the very idea of a jury—“a body truly representative of the community”’” *Id.*, at 528 (quoting *Carter v. Jury Comm’n*, 396 U. S. 320, 330 (1970)).

The right to a jury drawn from a fair cross section of the community is rendered meaningless if the State is permitted to utilize several peremptory challenges to exclude all Negroes from the jury. This Court has consistently struck down methods of jury selection that produce racially biased jury venires.⁵ The very purpose of refusing to tolerate ra-

⁵ See *Peters v. Kiff*, 407 U. S. 493 (1972); *Sims v. Georgia*, 389 U. S. 404 (1967); *Jones v. Georgia*, 389 U. S. 24 (1967); *Whitus v. Georgia*, *supra*; *Coleman v. Alabama*, 377 U. S. 129 (1964); *Avery v. Georgia*, *supra*; *Patton v. Mississippi*, 332 U. S. 463 (1947); *Hale v. Kentucky*, 303 U. S. 613 (1938); *Hollins v. Oklahoma*, 295 U. S. 394 (1935); *Norris v. Alabama*, 294

cial discrimination in the composition of the venire is to prevent the State's systematic exclusion of any racial group from juries. The desired interaction of a cross section of the community does not take place within the venire; it is only effectuated by the jury that is selected and sworn to try the issues. The systematic exclusion of prospective jurors because of their race is therefore unconstitutional at any stage of the jury selection process. There is no point in taking elaborate steps to ensure that Negroes are included on venires simply so they can then be struck because of their race by a prosecutor's use of peremptory challenges. Yet, given the normal allowance of such challenges,⁶ a prosecutor who wishes to exclude all Negroes can normally do so. The effect of excluding minorities goes beyond the individual defendant, for such exclusion produces "injury to the jury system, to the law as an institution, to the community at large, and to the democratic ideal reflected in the processes of our courts." *Ballard v. United States*, 329 U. S. 187, 195 (1946).⁷

The right to be tried by a jury representative of a cross section of the community does not mean that each jury must

U. S. 587 (1935); *Martin v. Texas*, 200 U. S. 316 (1906); *Neal v. Delaware*, 103 U. S. 370 (1881); *Strauder v. West Virginia*, 100 U. S. 303 (1880).

⁶For example, in the federal system the prosecutor is entitled to 20 peremptory challenges in capital cases, 6 peremptory challenges if the offense is punishable by imprisonment for more than one year, and 3 if the offense is punishable by imprisonment of not more than one year or by fine or both. Fed. Rule Crim. Proc. 24(b).

⁷Of course, the State has an interest in exercising its peremptory challenges as it wishes. But while the peremptory challenge may be an important right of an accused, *Pointer v. United States*, 151 U. S. 396, 408 (1894), there is nothing in the Constitution that requires peremptory challenges for either the accused or the State, *Stilson v. United States*, 250 U. S. 583, 586 (1919). When the representative cross-section requirement—"an essential component of the Sixth Amendment right to a jury trial," *Taylor v. Louisiana*, 419 U. S. 522, 528 (1975)—conflicts with what is at most a statutory right to exercise peremptory challenges, the latter must give way.

include constituents of every group in the population. The impracticality of such a formulation is obvious. But there is a serious question whether the right to an impartial jury permits the State to exclude members of a racial minority solely because of their race. When a prosecutor uses several peremptory challenges to exclude every potential Negro juror, there is strong circumstantial evidence that the exclusions are racially motivated and therefore in violation of the defendant's Sixth Amendment right. At the very least, a defendant should be able to state a cognizable claim without proof of absolute exclusion of every Negro in every case for several years, as required by *Swain*.

In California, for example, a defendant must make a timely objection and show from all the circumstances a strong likelihood that the prosecution is exercising its peremptory challenges because of race alone. If the trial judge finds a reasonable inference of exclusion based on race, the statutory provision that no reason need be given for a peremptory challenge gives way to the constitutional imperative and the prosecution must show some nonracial basis for the exercise of its challenges. The trial court then makes the ultimate determination as to whether the defendant has successfully demonstrated that the prosecution is using its peremptory challenges in a constitutionally impermissible manner. See *People v. Wheeler, supra*. Such a procedure is merely illustrative, but it appears to be quite workable. The California courts have indicated no difficulty in applying it. See, e. g., *People v. Johnson*, 22 Cal. 3d 296, 583 P. 2d 774 (1978); *People v. Allen*, 23 Cal. 3d 286, 590 P. 2d 30 (1979) (trial court errs in failing to require prosecution to demonstrate non-racial basis for exclusion); *People v. Rousseau*, 129 Cal. App. 3d 526, 179 Cal. Rptr. 892 (1982) (trial court correctly concluded that defendant failed to establish prima facie case); *People v. Fuller*, 136 Cal. App. 3d 403, 186 Cal. Rptr. 283 (1982).

Accordingly, I would grant certiorari to consider whether petitioners' Sixth Amendment rights, as applied to the States

May 31, 1983

461 U. S.

through the Fourteenth Amendment, were violated by the prosecutors' use of peremptory challenges to exclude all Negroes from the juries in these three cases.⁸ Sixth Amendment principles have evolved significantly since *Swain* was decided, and it is time to reexamine whether the rule announced in *Swain* under the Equal Protection Clause can be reconciled with the Sixth Amendment right of every defendant.⁹

No. 82-1646. *ROLLS-ROYCE LTD. v. NALLS, ADMINISTRATOR FOR THE ESTATE OF ABRAHAM, ET AL.* C. A. D. C. Cir. Certiorari denied. JUSTICE BLACKMUN would grant certiorari. Reported below: 226 U. S. App. D. C. 276, 702 F. 2d 255.

JUSTICE POWELL, dissenting.

I dissent from the denial of the petition for writ of certiorari for reasons similar to those stated by Judge Wilkey in his Statement as to Reasons for Voting for En Banc Consideration in the Court of Appeals. 226 U. S. App. D. C. 276, 702 F. 2d 255 (1983).

No. 82-6514. *ZETTLEMOYER v. PENNSYLVANIA.* Sup. Ct. Pa.; and

⁸ Because I continue to believe that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, I would in any event grant certiorari in No. 82-5910. In light of the special emphasis we have placed on providing an impartial jury in capital cases, see *Adams v. Texas*, 448 U. S. 38 (1980); *Witherspoon v. Illinois*, 391 U. S. 510 (1968), review of the use of peremptory challenges in capital cases is particularly appropriate.

⁹ As respondent in No. 82-1381, the State of New York has also requested that this Court grant the petition for writ of certiorari. The State concedes that the Court of Appeals' decision raises a significant and recurring question of law concerning race discrimination in the jury selection process. Brief for Respondent in Support of Petition 6-9. The State also notes the conflict among state-court decisions and contends that the conflict is likely to grow as a result of widespread litigation of this issue in numerous state courts. *Id.*, at 9-11.

461 U. S.

May 31, June 3, 1983

No. 82-6556. *GRETZLER v. ARIZONA*. Sup. Ct. Ariz. Certiorari denied. Reported below: No. 82-6514, 500 Pa. 16, 454 A. 2d 937; No. 82-6556, 135 Ariz. 42, 659 P. 2d 1.

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. 82-1061. *BEGASSAT v. COSMOPOLITAN NATIONAL BANK OF CHICAGO, AS TRUSTEE UNDER TRUST NO. 13199, ET AL.*, 459 U. S. 1207;

No. 82-5950. *SPENCER v. ISRAEL, WARDEN*, 460 U. S. 1102;

No. 82-6273. *BECKER v. ARCADIAN GARDENS*, 460 U. S. 1090; and

No. 82-6369. *PUCHALA ET AL. v. COINTELPRO ET AL.*, 460 U. S. 1092. Petitions for rehearing denied.

No. 82-701. *NEW CASTLE AREA TRANSIT AUTHORITY v. KRAMER ET AL.*, 459 U. S. 1146. Motion for leave to file petition for rehearing and for other relief denied.

JUNE 3, 1983

Dismissal Under Rule 53

No. 82-6658. *WILLIAMS v. UNITED STATES*. C. A. 9th Cir. Certiorari dismissed under this Court's Rule 53. Reported below: 703 F. 2d 579.

