

ORDERS FROM JUNE 27 THROUGH
SEPTEMBER 27, 1983

JUNE 27, 1983

Appeals Dismissed

No. 82-1745. PASCOE *v.* KUEHNAST. Appeal from Ct. App. Tex., 10th Sup. Jud. Dist., dismissed for want of jurisdiction. Reported below: 642 S. W. 2d 37.

No. 82-6726. NEAL *v.* ALABAMA. Appeal from D. C. N. D. Ala. dismissed for want of jurisdiction.

Vacated and Remanded on Appeal

No. 82-268. FIRST PENNSYLVANIA BANK, N. A. *v.* LANCASTER COUNTY TAX CLAIM BUREAU ET AL. Appeal from Sup. Ct. Pa. Judgment vacated and case remanded for further consideration in light of *Mennonite Board of Missions v. Adams*, 462 U. S. 791 (1983). Reported below: 498 Pa. 122, 445 A. 2d 97.

Certiorari Granted—Vacated and Remanded

No. 81-307. WEST *v.* UNITED STATES. C. A. 1st Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *United States v. Place*, 462 U. S. 696 (1983). Reported below: 651 F. 2d 71.

No. 81-935. JEFFBOAT, INC. *v.* ROBERTSON, ADMINISTRATOR. C. A. 6th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Jones & Laughlin Steel Corp. v. Pfeifer*, 462 U. S. 523 (1983). Reported below: 651 F. 2d 434.

No. 82-650. PAVLAK *v.* CHURCH, CHIEF OF POLICE FOR THE CITY OF BOISE, ET AL. C. A. 9th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Crown, Cork & Seal Co. v. Parker*, 462 U. S. 345 (1983); and *Chardon v. Fumero Soto*, 462 U. S. 650 (1983). Reported below: 681 F. 2d 617.

June 27, 1983

463 U. S.

No. 82-667. FLORIDA *v.* ZAFRA. Dist. Ct. App. Fla., 3d Dist. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *United States v. Villamonte-Marquez*, 462 U. S. 579 (1983). Reported below: 408 So. 2d 745.

No. 82-674. UNITED STATES *v.* BEALE. C. A. 9th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *United States v. Place*, 462 U. S. 696 (1983). Reported below: 674 F. 2d 1327.

No. 82-853. RUSSELL CREEK LAND CO. ET AL. *v.* CHARJUAN, INC. Cir. Ct. W. Va., Cabell County. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Mennonite Board of Missions v. Adams*, 462 U. S. 791 (1983).

No. 82-948. ILLINOIS *v.* BEAN. App. Ct. Ill., 3d Dist. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *Illinois v. Lafayette*, 462 U. S. 640 (1983). Reported below: 107 Ill. App. 3d 662, 437 N. E. 2d 1295.

No. 82-1006. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION *v.* LOCKHEED MISSILES & SPACE CO., INC. C. A. 9th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Newport News Shipbuilding & Dry Dock Co. v. EEOC*, 462 U. S. 669 (1983). Reported below: 680 F. 2d 1243.

No. 82-1365. CONTINENTAL INSURANCE CO. *v.* MOSELEY, EXECUTRIX OF THE ESTATE OF OLIVER, ET AL. Sup. Ct. Nev. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Mennonite Board of Missions v. Adams*, 462 U. S. 791 (1983). Reported below: 98 Nev. 476, 653 P. 2d 158.

463 U. S.

June 27, 1983

No. 82-1857. WASHINGTON *v.* BARTHOLOMEW. Sup. Ct. Wash. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *Zant v. Stephens*, 462 U. S. 862 (1983). JUSTICE BRENNAN and JUSTICE MARSHALL would deny certiorari. Reported below: 98 Wash. 2d 173, 654 P. 2d 1170.

Miscellaneous Orders

No. — — —. DETENBER ET AL. *v.* TURNAGE, DIRECTOR, SELECTIVE SERVICE SYSTEM, ET AL. Motion to direct the Clerk to file the petition for writ of certiorari out of time denied.

No. A-1000. ABRAYAYA *v.* UNITED STATES. C. A. 11th Cir. Application for stay, presented to JUSTICE STEVENS, and by him referred to the Court, denied.

No. A-1002 (82-2045). COMMITTEE TO PRESERVE AMERICAN COLOR TELEVISION, AKA COMPACT, ET AL. *v.* UNITED STATES. Application to continue the injunction entered by the United States Court of Appeals for the Federal Circuit, presented to JUSTICE BRENNAN, and by him referred to the Court, denied.

No. D-334. IN RE DISBARMENT OF AGLOW. Disbarment entered. [For earlier order herein, see 461 U. S. 902.]

No. D-353. IN RE DISBARMENT OF GREENE. It having been reported to the Court that Raymond T. Greene died November 5, 1982, the rule to show cause, heretofore issued on June 6, 1983 [462 U. S. 1103], is hereby discharged.

No. D-354. IN RE DISBARMENT OF CONNOLLY. Robert John Connolly, of Tacoma, Wash., 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 June 6, 1983 [462 U. S. 1103], is hereby discharged.

June 27, 1983

463 U. S.

No. D-364. *IN RE DISBARMENT OF DOWNES*. It is ordered that John P. Downes, of Oxon Hill, 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. 80, Orig. *COLORADO v. NEW MEXICO ET AL.* Report of the Special Master containing additional factual findings requested by order of Court is received and ordered filed. Exceptions to the Report, with supporting briefs, may be filed by the parties within 45 days. Replies to the Exceptions, with supporting briefs, may be filed within 30 days. [For earlier order herein, see, *e. g.*, 459 U. S. 1229.]

No. 86, Orig. *LOUISIANA v. MISSISSIPPI ET AL.* Report of the Special Master is received and ordered filed. Exceptions to the Report, with supporting briefs, may be filed by the parties within 45 days. Replies to the Exceptions, with supporting briefs, may be filed within 30 days. [For earlier order herein, see, *e. g.*, 454 U. S. 937.]

No. 81-1304. *NATIONAL ASSOCIATION OF GREETING CARD PUBLISHERS v. UNITED STATES POSTAL SERVICE ET AL.*; and

No. 81-1381. *UNITED PARCEL SERVICE OF AMERICA, INC. v. UNITED STATES POSTAL SERVICE ET AL.*, 462 U. S. 810. 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 respondent Brooklyn Union Gas Co. for leave to file a brief as *amicus curiae* granted. JUSTICE POWELL took no part in the consideration or decision of this motion.

463 U. S.

June 27, 1983

No. 82-914. *MONSANTO CO. v. SPRAY-RITE SERVICE CORP.* C. A. 7th Cir. [Certiorari granted, 460 U. S. 1010.] Motion of Associates for Antitrust Analysis for leave to file a brief as *amicus curiae* granted. JUSTICE WHITE took no part in the consideration or decision of this motion.

No. 82-1401. *CALDER ET AL. v. JONES.* Ct. App. Cal., 2d App. Dist. [Probable jurisdiction postponed, 460 U. S. 1080.] Motions of Reporters Committee for Freedom of the Press et al. and Association of American Publishers, Inc., for leave to file briefs as *amici curiae* granted.

No. 82-6675. *GILLIAM v. 2201 BOARDWALK CORP. ET AL.* C. A. 3d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until July 18, 1983, within which to pay the docketing fee required by Rule 45(a) and to submit a petition in compliance with Rule 33 of the Rules of this Court.

No. 82-6702. *GANEY v. SAFRON ET AL.* C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until July 18, 1983, within which to pay the docketing fee required by Rule 45(a) and to submit a petition in compliance with Rule 33 of the Rules of this Court.

No. 82-6827. *PETTEE v. KILPATRICK ET AL.* C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until July 18, 1983, within which to pay the docketing fee required by Rule 45(a) and to submit a petition in compliance with Rule 33 of the Rules of this Court.

No. 82-6858. *IN RE WASSALL.* Petition for writ of habeas corpus denied.

Certiorari Granted

No. 82-963. *MASSACHUSETTS v. SHEPPARD.* Sup. Jud. Ct. Mass. Certiorari granted. Reported below: 387 Mass. 488, 441 N. E. 2d 725.

June 27, 1983

463 U. S.

No. 82-1616. UNITED STATES *v.* WEBER AIRCRAFT CORP. ET AL. C. A. 9th Cir. Certiorari granted. Reported below: 688 F. 2d 638.

No. 82-1771. UNITED STATES *v.* LEON ET AL. C. A. 9th Cir. Certiorari granted. Reported below: 701 F. 2d 187.

No. 82-1772. HECKLER, SECRETARY OF HEALTH AND HUMAN SERVICES *v.* RINGER ET AL. C. A. 9th Cir. Certiorari granted. Reported below: 697 F. 2d 1291.

No. 82-1479. JUSTICES OF BOSTON MUNICIPAL COURT *v.* LYDON. C. A. 1st Cir. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 698 F. 2d 1.

No. 82-1711. COLORADO *v.* QUINTERO. Sup. Ct. Colo. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 657 P. 2d 948.

No. 82-1630. HUDSON *v.* PALMER; and

No. 82-6695. PALMER *v.* HUDSON. C. A. 4th Cir. Motions of Russell Thomas Palmer for leave to proceed *in forma pauperis* granted. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. Reported below: 697 F. 2d 1220.

Certiorari Denied

No. 81-2328. HELLENIC LINES LTD. *v.* FANETTI. C. A. 2d Cir. Certiorari denied. Reported below: 678 F. 2d 424.

No. 82-643. O'LEARY *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied. Reported below: 417 So. 2d 232.

No. 82-1229. LOVELL ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 689 F. 2d 191.

No. 82-1276. DIAMOND M DRILLING CORP. *v.* TARLTON ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 688 F. 2d 973.

463 U. S.

June 27, 1983

No. 82-1507. WASHINGTON STATE DEPARTMENT OF GAME *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 694 F. 2d 188.

No. 82-1510. GOOSE CREEK CONSOLIDATED INDEPENDENT SCHOOL DISTRICT *v.* HORTON, AS NEXT FRIEND OF HORTON ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 690 F. 2d 470 and 693 F. 2d 524.

No. 82-1584. SCHELL *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 707 F. 2d 1397.

No. 82-1679. ALBERDING *v.* DONOVAN, SECRETARY OF LABOR. C. A. 5th Cir. Certiorari denied. Reported below: 695 F. 2d 190.

No. 82-1690. LEE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 703 F. 2d 571.

No. 82-1728. DAVID METZGER TRUST ET AL. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 5th Cir. Certiorari denied. Reported below: 693 F. 2d 459.

No. 82-1737. ELLIS BANKING CORP. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 11th Cir. Certiorari denied. Reported below: 688 F. 2d 1376.

No. 82-1756. BAKER ET AL. *v.* WISCONSIN. C. A. 7th Cir. Certiorari denied. Reported below: 698 F. 2d 1323.

No. 82-1779. HOFFMAN *v.* MINNESOTA LAWYERS PROFESSIONAL RESPONSIBILITY BOARD. Sup. Ct. Minn. Certiorari denied.

No. 82-1780. BURLINGTON NORTHERN INC. *v.* DONOVAN, SECRETARY OF LABOR. C. A. 9th Cir. Certiorari denied. Reported below: 694 F. 2d 1213.

No. 82-1784. TROY STATE UNIVERSITY ET AL. *v.* EQUAL EMPLOYMENT OPPORTUNITY COMMISSION. C. A. 11th Cir. Certiorari denied. Reported below: 693 F. 2d 1353.

June 27, 1983

463 U. S.

No. 82-1789. PRUDENTIAL INSURANCE COMPANY OF AMERICA *v.* GIBRALTAR FINANCIAL CORPORATION OF CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 694 F. 2d 1150.

No. 82-1794. FRITZ *v.* HAGERSTOWN REPRODUCTIVE HEALTH SERVICES ET AL. Ct. App. Md. Certiorari denied. Reported below: 295 Md. 268, 454 A. 2d 846.

No. 82-1797. NORTHERN PUBLISHING CO., INC., DBA ANCHORAGE DAILY NEWS *v.* GREEN. Sup. Ct. Alaska. Certiorari denied. Reported below: 655 P. 2d 736.

No. 82-1798. DRIGGERS ET AL. *v.* SOUTHERN COOPERATIVE DEVELOPMENT FUND ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 696 F. 2d 1347.

No. 82-1802. FIRST NATIONAL BANK OF TEKAMAH, NEBRASKA *v.* HANSEN ET UX. C. A. 8th Cir. Certiorari denied. Reported below: 702 F. 2d 728.

No. 82-1803. AVEDISIAN *v.* RAMSEY ET AL. Ct. App. Md. Certiorari denied. Reported below: 295 Md. 301.

No. 82-1804. MUELLER *v.* SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE (CALIFORNIA, REAL PARTY IN INTEREST). C. A. 9th Cir. Certiorari denied.

No. 82-1810. DILLARD ET UX. *v.* BROYLES ET AL. Ct. App. Tex., 13th Sup. Jud. Dist. Certiorari denied. Reported below: 633 S. W. 2d 636.

No. 82-1830. BROWN ET AL. *v.* JOHNSTON, POLK COUNTY ATTORNEY, ET AL. Sup. Ct. Iowa. Certiorari denied. Reported below: 328 N. W. 2d 510.

No. 82-1837. BURT REALTY CO. ET AL. *v.* DOUGHERTY COUNTY BOARD OF TAX ASSESSORS. Sup. Ct. Ga. Certiorari denied. Reported below: 250 Ga. 467, 298 S. E. 2d 475.

463 U. S.

June 27, 1983

No. 82-1847. STRICKLAND, AS PERSONAL REPRESENTATIVE OF STRICKLAND *v.* ROOSEVELT COUNTY RURAL ELECTRIC COOPERATIVE ET AL. Ct. App. N. M. Certiorari denied. Reported below: 99 N. M. 335, 657 P. 2d 1184.

No. 82-1850. WASHINGTON WILDLIFE PRESERVATION, INC., ET AL. *v.* MINNESOTA DEPARTMENT OF NATURAL RESOURCES ET AL. Sup. Ct. Minn. Certiorari denied. Reported below: 329 N. W. 2d 543.

No. 82-1852. ADAMSONS *v.* AMERICAN AIRLINES. Ct. App. N. Y. Certiorari denied. Reported below: 58 N. Y. 2d 42, 444 N. E. 2d 21.

No. 82-1878. DAVID *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 708 F. 2d 729.

No. 82-1887. SHELTON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 703 F. 2d 578.

No. 82-1891. SAN DIEGO COUNTY ASSOCIATION FOR THE RETARDED *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 9th Cir. Certiorari denied. Reported below: 705 F. 2d 467.

No. 82-1912. BROWN *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 428 So. 2d 250.

No. 82-1924. SENA *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 709 F. 2d 1511.

No. 82-1926. KOPITUK ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 690 F. 2d 1289.

No. 82-1933. DABEIT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 699 F. 2d 1161.

No. 82-1937. RODRIGUEZ-RAMOS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 704 F. 2d 17.

No. 82-1940. I. S. JOSEPH CO., INC., ET AL. *v.* PARTREDERIET LISTA ET AL. Sup. Ct. Minn. Certiorari denied.

June 27, 1983

463 U. S.

No. 82-1941. *GREENE ET AL. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 697 F. 2d 1229.

No. 82-1955. *GAVIN v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 692 F. 2d 1352.

No. 82-1957. *FINAZZO v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 704 F. 2d 300.

No. 82-1958. *PHILPOT v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 704 F. 2d 1250.

No. 82-5491. *WALTZER v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 682 F. 2d 370.

No. 82-6256. *FRANKENBERRY v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 696 F. 2d 986.

No. 82-6297. *BRADSHAW v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 690 F. 2d 704.

No. 82-6301. *FRANKENBERRY v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 696 F. 2d 239.

No. 82-6332. *CATHEY v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 701 F. 2d 169.

No. 82-6377. *SCOTT v. MAGGIO, WARDEN, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 695 F. 2d 916.

No. 82-6426. *STAHL v. ALABAMA*. Sup. Ct. Ala. Certiorari denied. Reported below: 426 So. 2d 917.

No. 82-6455. *NIEB v. MARSHALL*. C. A. 6th Cir. Certiorari denied. Reported below: 695 F. 2d 228.

No. 82-6599. *HANCE v. ZANT, WARDEN*. C. A. 11th Cir. Certiorari denied. Reported below: 696 F. 2d 940.

No. 82-6618. *BOTHWELL v. GEORGIA*. Sup. Ct. Ga. Certiorari denied. Reported below: 250 Ga. 573, 300 S. E. 2d 126.

463 U. S.

June 27, 1983

No. 82-6664. *SHABAZZ v. OKLAHOMA*. Ct. Crim. App. Okla. Certiorari denied.

No. 82-6665. *CARRUTHERS v. ARIZONA*. Ct. App. Ariz. Certiorari denied.

No. 82-6667. *SMITH v. PENNSYLVANIA*. Super. Ct. Pa. Certiorari denied. Reported below: 306 Pa. Super. 599, 452 A. 2d 49.

No. 82-6670. *HINES v. ENOMOTO, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS*. C. A. 9th Cir. Certiorari denied. Reported below: 703 F. 2d 575.

No. 82-6671. *GIBSON v. UNITED STATES PAROLE COMMISSION ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 701 F. 2d 164.

No. 82-6673. *WATKINS v. LAWS ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 701 F. 2d 170.

No. 82-6677. *HOLSTON v. WAINWRIGHT, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS*. C. A. 11th Cir. Certiorari denied.

No. 82-6680. *WALTERS v. GAUL, TREASURER, CUYAHOGA COUNTY, ET AL.* Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 82-6684. *BRADLEY v. DAVIS, WARDEN, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 705 F. 2d 441.

No. 82-6685. *HOLCOMB v. MURPHY, WARDEN, ET AL.* C. A. 10th Cir. Certiorari denied. Reported below: 701 F. 2d 1307.

No. 82-6687. *JOHNSON v. UNITED STATES*. Ct. App. D. C. Certiorari denied.

No. 82-6690. *STUTZMAN v. MARYLAND*. C. A. 4th Cir. Certiorari denied. Reported below: 707 F. 2d 510.

June 27, 1983

463 U. S.

No. 82-6698. *BATCHELOR v. CUPP*, SUPERINTENDENT, OREGON STATE PENITENTIARY, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 693 F. 2d 859.

No. 82-6700. *LANGLEY v. ALLSBROOK ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 707 F. 2d 508.

No. 82-6703. *HOLLOWAY v. LUKHARD*, COMMISSIONER OF THE VIRGINIA DEPARTMENT OF WELFARE. C. A. 4th Cir. Certiorari denied. Reported below: 701 F. 2d 165.

No. 82-6707. *SANCHEZ-SANCHEZ v. UNITED STATES*. C. A. 2d Cir. Certiorari denied.

No. 82-6718. *PLAYER v. UNITED STATES*. Ct. App. D. C. Certiorari denied.

No. 82-6791. *BARTHOLOMEW v. WASHINGTON*. Sup. Ct. Wash. Certiorari denied. Reported below: 98 Wash. 2d 173, 654 P. 2d 1170.

No. 82-6796. *JOHNSON v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 706 F. 2d 143.

No. 82-6799. *WASHINGTON v. UNITED STATES*. Ct. App. D. C. Certiorari denied.

No. 82-6800. *RUIP v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 705 F. 2d 468.

No. 82-6802. *WESCOTT v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 701 F. 2d 136.

No. 82-6805. *COVINGTON v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 709 F. 2d 1510.

No. 82-6806. *JONES v. FARM CREDIT ADMINISTRATION*. C. A. 8th Cir. Certiorari denied. Reported below: 702 F. 2d 160.

No. 82-6812. *MAGHE v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 710 F. 2d 503.

463 U. S.

June 27, 1983

No. 82-6815. *AMICK v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 705 F. 2d 446.

No. 82-6818. *ROSS v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 709 F. 2d 1511.

No. 82-6834. *GOMETZ v. MILLER, WARDEN*. C. A. 7th Cir. Certiorari denied. Reported below: 705 F. 2d 462.

No. 82-6839. *HARRIS v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 705 F. 2d 462.

No. 82-6847. *SCOTT v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 709 F. 2d 1511.

No. 82-6859. *BARTOS v. FLORIDA*. Sup. Ct. Fla. Certiorari denied. Reported below: 427 So. 2d 736.

No. 82-6861. *BYRD v. UNITED STATES*. Ct. App. D. C. Certiorari denied.

No. 82-6863. *JOHNSON v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 709 F. 2d 1510.

No. 82-6875. *MINICOZZI v. UNITED STATES*. Ct. App. D. C. Certiorari denied.

No. 81-1772. *MARTELL ET AL. v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. JUSTICE BLACKMUN would grant certiorari, vacate the judgment, and remand for further consideration in light of *United States v. Place*, 462 U. S. 696 (1983). Reported below: 654 F. 2d 1356.

No. 81-5240. *GATES v. ZANT, SUPERINTENDENT, GEORGIA DIAGNOSTIC AND CLASSIFICATION CENTER*. Super. Ct. Ga., Butts County;

No. 81-5312. *STEPHENS v. GEORGIA*. Sup. Ct. Ga.;

No. 81-5947. *WATERS v. GEORGIA*. Sup. Ct. Ga.;

No. 81-5962. *TAYLOR v. NORTH CAROLINA*. Sup. Ct. N. C.;

No. 81-6827. *REDD v. ZANT, WARDEN*. Sup. Ct. Ga.;

June 27, 1983

463 U. S.

No. 82-5128. *MATHIS v. GEORGIA*. Sup. Ct. Ga.;
No. 82-5260. *MOORE v. LOUISIANA*. Sup. Ct. La.;
No. 82-5868. *WILLIAMS v. MAGGIO, WARDEN, ET AL.*
C. A. 5th Cir.; and

No. 82-6192. *ROBERTS v. SOUTH CAROLINA*. Sup. Ct. S. C. Certiorari denied. Reported below: No. 81-5312, 247 Ga. 698, 278 S. E. 2d 398; No. 81-5947, 248 Ga. 355, 283 S. E. 2d 238; No. 81-5962, 304 N. C. 249, 283 S. E. 2d 761; No. 81-6827, 249 Ga. 211, 290 S. E. 2d 36; No. 82-5128, 249 Ga. 454, 291 S. E. 2d 489; No. 82-5260, 414 So. 2d 340; No. 82-5868, 679 F. 2d 381; No. 82-6192, 278 S. C. 572, 300 S. E. 2d 63.

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. 82-1755. *BRANCHE ET AL. v. FREEMAN*. C. A. 7th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. JUSTICE BRENNAN would grant certiorari. Reported below: 695 F. 2d 485.

No. 82-1777. *HARRIS ET AL. v. UNITED STATES*. C. A. 4th Cir. Motion of petitioner John Lester Harris for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 701 F. 2d 1095.

No. 82-1808. *NEBRASKA EX REL. MERCURIO v. BOARD OF REGENTS OF THE UNIVERSITY OF NEBRASKA*. Sup. Ct. Neb. Certiorari denied. JUSTICE BLACKMUN took no part in the consideration or decision of this petition. Reported below: 213 Neb. 251, 329 N. W. 2d 87.

No. 82-1816. *OHIO v. LIBERATORE*. Sup. Ct. Ohio. Certiorari denied. JUSTICE O'CONNOR would grant certiorari and summarily reverse the judgment of the Supreme Court of Ohio. Reported below: 4 Ohio St. 3d 13, 445 N. E. 2d 1116.

463 U. S.

June 27, 29, July 1, 1983

No. 82-2006. VELIOTIS *v.* UNITED STATES; and

No. 82-2015. DAVIS ET AL. *v.* UNITED STATES. C. A. 2d Cir. Motion of the Solicitor General to expedite consideration of the petitions for writs of certiorari granted. Certiorari denied. Reported below: 702 F. 2d 418.

No. 82-2011. MARC RICH & CO. A.G. *v.* UNITED STATES. C. A. 2d Cir. Motion of the Solicitor General to expedite consideration of the petition for writ of certiorari granted. Certiorari denied. Reported below: 707 F. 2d 663.

Rehearing Denied

No. 81-1536. COMMISSIONER OF INTERNAL REVENUE *v.* TUFTS ET AL., 461 U. S. 300; and

No. 82-6439. REITER *v.* HUFFMAN, SHERIFF, 461 U. S. 934. Petitions for rehearing denied.

No. 81-2124. BOSTON ASSOCIATION OF SCHOOL ADMINISTRATORS & SUPERVISORS, AFL-CIO *v.* MORGAN ET AL., 459 U. S. 827. Motion for leave to file petition for rehearing denied.

No. 81-2306. LOCAL 66, BOSTON TEACHERS UNION, AFT, AFL-CIO *v.* BOSTON SCHOOL COMMITTEE ET AL., 459 U. S. 881 and 1059. Motion for leave to file second petition for rehearing denied.

JUNE 29, 1983

Miscellaneous Order

No. A-1033. SELECTIVE SERVICE SYSTEM ET AL. *v.* DOE ET AL. Application for stay of the order of the United States District Court for the District of Minnesota entered on June 16, 1983, case Nos. 3-82 Civ. 1670 and 3-83 Civ. 100, presented to JUSTICE BLACKMUN, and by him referred to the Court, granted pending the timely docketing and final disposition of the appeal in this Court.

JULY 1, 1983

Miscellaneous Order. (See No. 81-2147, *ante*, at 571-572, n. 22.)

JULY 6, 1983

Affirmed on Appeal

No. 81-2008. PROCESS GAS CONSUMERS GROUP ET AL. *v.* CONSUMER ENERGY COUNCIL OF AMERICA ET AL.;

No. 81-2020. INTERSTATE NATURAL GAS ASSOCIATION OF AMERICA ET AL. *v.* CONSUMER ENERGY COUNCIL OF AMERICA ET AL.;

No. 81-2151. PETROCHEMICAL ENERGY GROUP *v.* CONSUMER ENERGY COUNCIL OF AMERICA ET AL.;

No. 81-2171. AMERICAN GAS ASSN. *v.* CONSUMER ENERGY COUNCIL OF AMERICA ET AL.;

No. 82-177. UNITED STATES SENATE *v.* CONSUMER ENERGY COUNCIL OF AMERICA ET AL.;

No. 82-209. UNITED STATES HOUSE OF REPRESENTATIVES *v.* CONSUMER ENERGY COUNCIL OF AMERICA ET AL.;

No. 82-935. UNITED STATES SENATE *v.* FEDERAL TRADE COMMISSION ET AL.; and

No. 82-1044. UNITED STATES HOUSE OF REPRESENTATIVES *v.* FEDERAL TRADE COMMISSION ET AL. C. A. D. C. Cir. Judgment in Nos. 81-2008, 81-2020, 81-2151, and 81-2171 affirmed. JUSTICE REHNQUIST would note probable jurisdiction and set cases for oral argument. JUSTICE POWELL took no part in the consideration or decision of these appeals. Certiorari in Nos. 82-177 and 82-209 denied. JUSTICE POWELL took no part in the consideration or decision of these petitions. Judgment in Nos. 82-935 and 82-1044 affirmed. JUSTICE REHNQUIST would note probable jurisdiction and set cases for oral argument. Motion of Charles Pashayan, Jr., et al. for leave to file a brief as *amicus curiae* in No. 82-1044 granted. Reported below: Nos. 81-2008, 81-2020, 81-2151, 81-2171, 82-177, and 82-209, 218 U. S. App. D. C. 34, 673 F. 2d 425; Nos. 82-935 and 82-1044, 223 U. S. App. D. C. 386, 691 F. 2d 575.

JUSTICE WHITE, dissenting.

The principal issue in these cases is the constitutionality of the legislative veto as applied to agency rulemaking. Given the Court's recent decision in *INS v. Chadha*, 462 U. S. 919 (1983), the summary affirmance of the Court of Appeals' decisions striking the veto as unconstitutional is hardly surprising. These cases illustrate the constitutional myopia of the *Chadha* reasoning as applied to independent regulatory agencies and cast further light on the destructiveness of the *Chadha* holding.

In *Process Gas Consumers Group v. Consumer Energy Council of America*, 218 U. S. App. D. C. 34, 673 F. 2d 425 (1982), the Court of Appeals invalidated the one-House legislative veto provision of the Natural Gas Policy Act of 1978 (NGPA), contained in §202(c) of the Act, 92 Stat. 3372, 15 U. S. C. §3342(c) (1982 ed.). The NGPA was a response to the need for financial incentives to encourage the production of natural gas for the interstate market. The Act was a compromise, reached only after months of impasse between the two Houses over the optimal means of deregulating natural gas prices while preventing excessive fuel bills for consumers and industry. Congress finally settled on a phased deregulation of natural gas prices, with a system of incremental pricing to ease the transition. Specifically, the compromise agreed to by the Conference Committee provided for an initial experiment with incremental pricing for a small class of industrial users, while authorizing the Federal Energy Regulatory Commission to propose expansion of incremental pricing to other industrial users at a later time. This proposal would be submitted to Congress and would become effective unless disapproved by either House. The veto provision was central to this accommodation, because it allowed the Congress to observe the effects of the initial phase of incremental pricing without committing the Nation to a broader program which, it was feared, would drive industrial gas users to oil,

increasing the demand for imported oil, and raising the cost of gas for residential consumers. The Conference solution allowed the House and Senate to reach agreement and the NGPA was enacted.*

In *United States Senate v. FTC*, 223 U. S. App. D. C. 386, 691 F. 2d 575 (1982), the Court of Appeals struck down §21(a) of the Federal Trade Commission Improvements Act of 1980, 94 Stat. 393, 15 U. S. C. §57a-1 (1982 ed.), which provides that an FTC trade regulation rule shall become effective unless both Houses of Congress disapprove it. The Act authorizes the Commission to issue trade regulation rules which define unfair or deceptive acts or practices in or affecting commerce. 15 U. S. C. §57a(a)(1)(B) (1982 ed.). For three years, Congress debated the breadth of the Commission's rulemaking authority, noting that the FTC could, pursuant to the Act, "regulate virtually every aspect of America's commercial life." 124 Cong. Rec. 5012 (1978) (Rep. Broyhill). The two-House veto provision was settled upon as a means of allowing Congress to study and review the broad and important policy pronouncements of the Commission.

I cannot agree that the legislative vetoes in these cases violate the requirements of Art. I of the Constitution. Where the veto is placed as a check upon the actions of the independent regulatory agencies, the Art. I analysis relied upon in *Chadha* has a particularly hollow ring. In *Buckley v. Valeo*, 424 U. S. 1 (1976), I set forth my belief that the legislative veto as applied to rules promulgated by an independent regulatory agency fully comports with the Constitution.

*These cases also present the important question of whether the legislative veto is severable from the authorization for FERC to issue an expanded interim pricing rule. There is no severability clause in the NGPA, an omission which itself suggests the inseparability of the provision, see *Carter v. Carter Coal Co.*, 298 U. S. 238, 313 (1936), and much of the legislative history suggests that Congress would not have granted the Commission unfettered rulemaking authority. See, e. g., 124 Cong. Rec. 29662-29663 (1978) (comments of Sen. Percy).

463 U. S.

July 6, 1983

"[F]or a regulation to become effective, neither House need approve it, pass it, or take any action at all with respect to it. The regulation becomes effective by non-action. This no more invades the President's powers than does a regulation not required to be laid before Congress. Congressional influence over the substantive content of agency regulation may be enhanced, but I would not view the power of either House to disapprove as equivalent to legislation or to an order, resolution, or vote requiring the concurrence of both Houses." *Id.*, at 284-285.

"Disapproval nullifies the suggested regulation and prevents the occurrence of any change in the law. The regulation is void. Nothing remains on which the veto power could operate. It is as though a bill passed in one House and failed in another." *Id.*, at 285, n. 30.

The Court's opinion in *Chadha* has not convinced me otherwise. Congress, with the President's consent, characteristically empowers the agencies to issue regulations. These regulations have the force of law without the President's concurrence; nor can he veto them if he disagrees with the law that they make. The President's authority to control independent agency lawmaking, which on a day-to-day basis is nonexistent, could not be affected by the existence or exercise of the legislative veto. To invalidate the device, which allows Congress to maintain some control over the lawmaking process, merely guarantees that the independent agencies, once created, for all practical purposes are a fourth branch of the Government not subject to the direct control of either Congress or the Executive Branch. I cannot believe that the Constitution commands such a result. For these reasons and for those expressed in my dissenting opinion in *INS v. Chadha*, I respectfully dissent.

No. 82-1080. SIMON ET AL. *v.* DAVIS, SECRETARY OF COMMONWEALTH OF PENNSYLVANIA, ET AL. Affirmed on appeal from D. C. M. D. Pa. JUSTICE BRENNAN, JUSTICE

July 6, 1983

463 U. S.

MARSHALL, and JUSTICE STEVENS would note probable jurisdiction and set case for oral argument. Reported below: 567 F. Supp. 1507.

No. 82-1085. ARCUDI, CHAIRMAN, BOARD OF COMPENSATION COMMISSIONERS OF CONNECTICUT, ET AL. *v.* STONE & WEBSTER ENGINEERING CORP. ET AL. Affirmed on appeal from C. A. 2d Cir. Reported below: 690 F. 2d 323.

Appeals Dismissed

No. 81-349. CHICAGO BRIDGE & IRON CO. *v.* CATERPILLAR TRACTOR CO. ET AL. Sup. Ct. Ill. [Probable jurisdiction noted, 454 U. S. 1029.*] Appeal dismissed for want of

*[REPORTER'S NOTE: Argued April 19, 1982. *William P. Sutter* argued the cause for appellant. With him on the briefs were *Richard Bromley*, *Charlotte Crane*, and *Sam DeFrank*.

Stuart A. Smith argued the cause for the United States as *amicus curiae* urging reversal. With him on the brief was *Solicitor General Lee*.

Don S. Harnack argued the cause for appellees Caterpillar Tractor Co. et al. With him on the brief were *Lawrence H. Jacobson* and *Richard A. Hanson*. *John D. WhiteNack*, Special Assistant Attorney General of Illinois, argued the cause for appellee State of Illinois. With him on the briefs were *Tyrone C. Fahner*, Attorney General, and *Lloyd B. Foster*.

Briefs of *amici curiae* urging reversal were filed for the Committee on State Taxation of the Council of State Chambers of Commerce by *George S. Koch*, *James H. Peters*, and *Paul H. Frankel*; for Container Corporation of America by *Franklin C. Latcham* and *Prentiss Willson, Jr.*; for Charles A. Legge et al. by *Charles A. Legge* and *Jeffrey G. Balkin, pro se*; and for the Multistate Tax Commission et al. by *William D. Dexter*; *Wilson L. Condon*, Attorney General of Alaska; *J. D. MacFarlane*, Attorney General of Colorado; *Carl R. Ajello*, Attorney General of Connecticut; *Richard S. Gebelein*, Attorney General of Delaware; *David H. Leroy*, Attorney General of Idaho, and *Theodore V. Spangler, Jr.*, Deputy Attorney General; *Tyrone C. Fahner*, Attorney General of Illinois; *Linley E. Pearson*, Attorney General of Indiana; *Robert T. Stephan*, Attorney General of Kansas; *Francis X. Bellotti*, Attorney General of Massachusetts; *Frank J. Kelley*, Attorney General of Michigan; *Warren R. Spannaus*, Attorney General of Minnesota; *John Ashcroft*, Attorney General of Missouri; *Paul L. Douglas*, Attorney General of Nebraska; *Gregory H. Smith*, Attorney General of New Hampshire; *Jeff Bingaman*, Attorney General of New Mexico; *Rufus L. Edmisten*, Attorney General of North Carolina, and

463 U. S.

July 6, 1983

substantial federal question. JUSTICE STEVENS took no part in the consideration or decision of this case.

No. 82-298. ANACONDA CO. *v.* FRANCHISE TAX BOARD OF CALIFORNIA. Appeal from Ct. App. Cal., 1st App. Dist., dismissed for want of substantial federal question. Reported below: 130 Cal. App. 3d 15, 181 Cal. Rptr. 640.

Vacated and Remanded on Appeal

No. 81-1834. BARTOW COUNTY BANK ET AL. *v.* BARTOW COUNTY BOARD OF TAX ASSESSORS ET AL. Appeal from Sup. Ct. Ga. Judgment vacated and case remanded for further consideration in light of *American Bank & Trust Co. v. Dallas County*, ante, p. 855. Reported below: 248 Ga. 703, 285 S. E. 2d 920.

No. 82-299. METROPOLITAN LIFE INSURANCE CO. *v.* MASSACHUSETTS; and

No. 82-300. TRAVELERS INSURANCE CO. *v.* MASSACHUSETTS. Appeals from Sup. Jud. Ct. Mass. Judgment va-

M. C. Banks, Deputy Attorney General; *Robert O. Welfald*, Attorney General of North Dakota, and *Albert R. Hausauer*, Assistant Attorney General; *Dave Forhnmayr*, Attorney General of Oregon; and *David L. Wilkinson*, Attorney General of Utah.

Briefs of *amici curiae* urging affirmance were filed by *George Deukmejian*, Attorney General, and *Neal J. Gobar*, Deputy Attorney General, for the State of California; and by *Edward C. Rustigan* for Continental Illinois Bank & Trust Company of Chicago et al.

Briefs of *amici curiae* were filed by *Marlow W. Cook*, *Lee H. Spence*, and *Robert L. Ash* for Allied Lyons p.l.c. et al.; by *Francis D. Morrissey* and *Peter B. Powles* for the Canadian Imperial Bank of Commerce et al.; by *Joanne M. Garvey* and *Roy E. Crawford* for the Committee on Unitary Tax; by *William H. Allen*, *John B. Jones, Jr.*, and *Mark I. Levy* for the Financial Executives Institute; by *Norman B. Barker* and *John L. Endicott* for Gulf Oil Corp.; by *Anthon S. Cannon, Jr.*, for the International Bankers Association in California et al.; by *John Dwight Evans, Jr.*, for Mobil Oil Corp.; by *Norman B. Barker* and *Dean C. Dunlavey* for Sony Corp. et al.; and by *Joseph H. Guttentag*, *Carolyn E. Agger*, and *Daniel M. Lewis* for Union of Industries of the European Community.

This case was restored to the calendar for reargument, 456 U. S. 958, but was not reargued.]

July 6, 1983

463 U. S.

cated and cases remanded for further consideration in light of *Shaw v. Delta Air Lines, Inc.*, ante, p. 85. Reported below: 385 Mass. 598, 433 N. E. 2d 1223.

Certiorari Granted—Reversed and Remanded. (See No. 82-947, ante, p. 1112; and No. 82-1666, ante, p. 1121.)

Certiorari Granted—Vacated and Remanded

No. 81-1672. PENNZOIL CO. v. PUBLIC SERVICE COMMISSION OF WEST VIRGINIA. Sup. Ct. App. W. Va. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Public Service Comm'n of New York v. Mid-Louisiana Gas Co.*, ante, p. 319.

No. 81-1916. CALIFORNIA v. RIEGLER. Ct. App. Cal., 5th App. Dist. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *Illinois v. Andreas*, ante, p. 765. Reported below: 127 Cal. App. 3d 317, 179 Cal. Rptr. 530.

No. 82-151. INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL NO. 710 PENSION FUND, ET AL. v. JANOWSKI ET AL. C. A. 7th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Hensley v. Eckerhart*, 461 U. S. 424 (1983). Reported below: 673 F. 2d 931.

No. 82-262. CALIFORNIA ET AL. v. RETIRED PUBLIC EMPLOYEES' ASSOCIATION OF CALIFORNIA, CHAPTER 22, ET AL. C. A. 9th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Arizona Governing Committee for Tax Deferred Annuity and Deferred Compensation Plans v. Norris*, ante, p. 1073. Reported below: 677 F. 2d 733.

No. 82-722. LEDBETTER ET AL. v. BENHAM ET AL. C. A. 5th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Jones v. United States*, ante, p. 354. Reported below: 678 F. 2d 511.

463 U. S.

July 6, 1983

No. 82-791. TEACHERS INSURANCE & ANNUITY ASSN. ET AL. *v.* SPIRT ET AL.; and

No. 82-913. LONG ISLAND UNIVERSITY *v.* SPIRT ET AL. C. A. 2d Cir. Certiorari granted, judgment vacated, and cases remanded for further consideration in light of *Arizona Governing Committee for Tax Deferred Annuity and Deferred Compensation Plans v. Norris*, *ante*, p. 1073. Reported below: 691 F. 2d 1054.

No. 82-794. PETERS ET AL. *v.* WAYNE STATE UNIVERSITY ET AL. C. A. 6th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Arizona Governing Committee for Tax Deferred Annuity and Deferred Compensation Plans v. Norris*, *ante*, p. 1073. Reported below: 691 F. 2d 235.

No. 82-840. WAINWRIGHT, SECRETARY, DEPARTMENT OF CORRECTIONS *v.* HENRY. C. A. 5th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Barclay v. Florida*, *ante*, p. 939. JUSTICE BRENNAN and JUSTICE MARSHALL would deny certiorari. Reported below: 686 F. 2d 311.

No. 82-6263. SAWYER *v.* LOUISIANA. Sup. Ct. La. Motion of petitioner for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *Zant v. Stephens*, 462 U. S. 862 (1983). Reported below: 422 So. 2d 95.

No. 82-6370. MARRERO *v.* WAINWRIGHT, SECRETARY, DEPARTMENT OF OFFENDER REHABILITATION OF FLORIDA. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *Solem v. Helm*, *ante*, p. 277. Reported below: 690 F. 2d 906.

Miscellaneous Orders

No. A-1035. REGAN, SECRETARY OF THE TREASURY, ET AL. *v.* WALD ET AL. Application to stay the mandate of the United States Court of Appeals for the First Circuit, presented to JUSTICE BRENNAN, and by him referred to the

July 6, 1983

463 U. S.

Court, is granted pending the timely filing and disposition of a petition for writ of certiorari. JUSTICE BRENNAN and JUSTICE STEVENS would deny the application.

No. D-317. IN RE DISBARMENT OF MACK. Disbarment entered. [For earlier order herein, see 460 U. S. 1008.]

No. D-324. IN RE DISBARMENT OF JAVITZ. Disbarment entered. [For earlier order herein, see 460 U. S. 1019.]

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., 461 U. S. 912. Motion of respondents for reconsideration of the Court's order denying their motion to retax costs denied.

JUSTICE BLACKMUN, dissenting.

In order to facilitate maintenance and cleaning following the 1979 accident at a nuclear reactor at Three Mile Island, petitioner Nuclear Regulatory Commission approved an amendment to the reactor's operating license authorizing the venting of accumulated radioactive gas. Respondents, several individuals who reside near Three Mile Island and an organization opposed to nuclear power, filed an action in the United States Court of Appeals for the District of Columbia Circuit challenging the Commission's determination that it could approve the amendment without a hearing.

Before the Court of Appeals acted on the case, the venting process was completed. The court eventually held that the case was not moot because the situation was capable of repetition yet evading review. On the merits, the court agreed with respondents that the Commission lacked authority under § 189 of the Atomic Energy Act, 42 U. S. C. § 2239, to dispense with a hearing before amending a license. 209 U. S. App. D. C. 59, 651 F. 2d 780 (1980) (*per curiam*). The Commission then proposed to Congress legislation that would authorize similar license amendments without a hearing.

We granted certiorari, 451 U. S. 1016 (1981), and twice postponed oral argument while Congress considered the proposed legislation. 454 U. S. 1050 (1981); 458 U. S. 1128 (1982).

In January of this year, Congress enacted legislation amending the relevant portion of § 189. Act of Jan. 4, 1983, § 12(a), 96 Stat. 2073. Petitioners then suggested that this Court vacate and remand the case to the Court of Appeals with directions to dismiss it as moot. On February 22, we adopted an alternative disposition proposed by respondents, vacating the judgment and remanding for consideration of the issue of mootness and for further consideration in light of the new law. 459 U. S. 1194.

Costs were assessed against respondents in the amount of \$2,226 pursuant to this Court's Rule 50.2, which provides: "In a case of reversal or vacating of any judgment or decree by this Court, costs shall be allowed to appellant or petitioner, unless otherwise ordered by the Court." Respondents moved to retax costs, asserting that under the circumstances it would be unfair to burden them with petitioners' costs as well as their own. The Court, over the dissent of two Justices, denied the motion on May 2, 1983, 461 U. S. 912, and respondents now seek reconsideration of that decision.

In again denying respondents' motion to retax costs, the Court fails to exercise the sound discretion contemplated by Rule 50.2. The rationale of Rule 50.2 is that a petitioner who prevails in this Court should be reimbursed for his costs. In essence, the Rule presumes that the petitioner prevails when the lower court's judgment is vacated or reversed, but enables the Court to alter the operation of that presumption when fairness so dictates. The Court has exercised this authority in prior cases, *e. g.*, *Commissioner v. Standard Life & Accident Ins. Co.*, 434 U. S. 900 (1977); *Wood v. Strickland*, 421 U. S. 997 (1975). In my view, it is even more appropriate in this case to depart from the usual operation of the Rule and to order that each party bear its own costs.

July 6, 1983

463 U. S.

In vacating the Court of Appeals' judgment, this Court expressed no view of the merits. The only judicial decision addressing the propriety of the Commission's actions under the preamendment version of § 189 is that of the Court of Appeals, which resolved the issue in respondents' favor. This Court's judgment in no way suggests that petitioners would have triumphed under the prior statutory scheme; it simply reflects petitioners' success in shifting their energies from the judicial to the legislative arena. Petitioners, in short, lost in the Court of Appeals, persuaded this Court to review that court's decision at substantial cost to all the parties, and, after obtaining an amendment of the relevant statutory provision, sought unsuccessfully to have this Court order the Court of Appeals to vacate its judgment as moot. Yet respondents, who were victorious in the Court of Appeals, and suggested the disposition adopted by the Court in this case following the enactment of the new legislation, now must pay petitioners' costs.

Because this result is unnecessary under the Court's Rules and patently unfair under the circumstances of this case, I dissent. I would grant respondents' motion, and allow no costs to either party.

No. 81-1687. *SONY CORPORATION OF AMERICA ET AL. v. UNIVERSAL CITY STUDIOS, INC., ET AL.* C. A. 9th Cir. [Certiorari granted, 457 U. S. 1116]; and

No. 81-2101. *PENNHURST STATE SCHOOL AND HOSPITAL ET AL. v. HALDERMAN ET AL.* C. A. 3d Cir. [Certiorari granted, 457 U. S. 1131.] Cases restored to calendar for reargument.

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

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

No. 82-259. *BEECHER ET AL. v. BOSTON CHAPTER, NAACP, ET AL.*, 461 U. S. 477. Motion of respondents to

1226

BLACKMUN, J., dissenting

retax costs denied. JUSTICE MARSHALL took no part in the consideration or decision of this motion.

JUSTICE BLACKMUN, dissenting.

In 1981, the city of Boston decided to lay off hundreds of firefighters and police officers. By statute, Massachusetts requires that civil service layoffs occur in the order of reverse seniority. Mass. Gen. Laws Ann., ch. 31, § 39 (West 1979). Many minority members of Boston's Police and Fire Departments had been hired only recently pursuant to consent decrees by which Boston agreed to increase the proportion of minorities in the Departments in order to remedy its past discriminatory hiring practices. As a result, layoffs under the statutory last-hired, first-fired policy would have reduced significantly the minority representation in the two Departments.

Respondents obtained an order from the United States District Court for the District of Massachusetts enjoining Boston from laying off personnel pursuant to the statutory policy to the extent that such layoffs would reduce the percentage of minority police officers and firefighters below the level obtained before the layoffs began. The United States Court of Appeals for the First Circuit affirmed. 679 F. 2d 965 (1982). After the Court of Appeals' decision, Massachusetts enacted legislation providing Boston with new revenues, requiring it to reinstate all police officers and firefighters laid off during the city's fiscal crisis, and securing those persons against future layoffs for fiscal reasons. 1982 Mass. Acts, ch. 190, § 25.

This Court granted certiorari to consider this important affirmative-action issue. 459 U. S. 967 (1982). After hearing oral argument, however, the Court vacated the judgment and remanded for consideration of mootness in light of the new Massachusetts legislation. 461 U. S. 477 (1983). Costs were assessed against respondents under this Court's Rule 50.2, which provides: "In a case of reversal or vacating

July 6, 1983

463 U. S.

of any judgment or decree by this Court, costs shall be allowed to appellant or petitioner, unless otherwise ordered by the Court." Respondents have moved to retax costs.

Here, as in *United States Nuclear Regulatory Comm'n v. Sholly*, ante, p. 1224 (BLACKMUN, J., dissenting from denial of motion), I believe the Court errs in denying respondents' motion. The Court's disposition of this case, which petitioners actively opposed, accorded petitioners none of the relief they sought, and in no way questioned the propriety, at the time it was rendered, of the Court of Appeals' judgment. Under these circumstances, I simply do not understand why respondents must pay petitioners' costs. As in *Sholly*, I would grant respondents' motion, and allow no costs to either party.

Certiorari Granted

No. 81-2149. SOLEM, WARDEN, SOUTH DAKOTA STATE PENITENTIARY *v.* STUMES. C. A. 8th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted limited to Question 3 presented by the petition. Reported below: 671 F. 2d 1150.

Certiorari Denied. (See also Nos. 82-177 and 82-209, *supra.*)

No. 81-432. CIVIL SERVICE COMMISSION OF THE CITY OF NEW YORK ET AL. *v.* GUARDIANS ASSN. ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 633 F. 2d 232.

No. 81-1332. ROBERTS *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied. Reported below: 123 Cal. App. 3d 684, 177 Cal. Rptr. 11.

No. 81-1747. UNITED STATES *v.* DUNCAN ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 229 Ct. Cl. 120, 667 F. 2d 36.

No. 81-2334. WHITE MOUNTAIN APACHE TRIBE *v.* SMITH, ATTORNEY GENERAL, ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 219 U. S. App. D. C. 116, 675 F. 2d 1341.

463 U. S.

July 6, 1983

No. 81-6021. WALLS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 81-6787. BLAKNEY *v.* MONTANA. Sup. Ct. Mont. Certiorari denied. Reported below: 197 Mont. 131, 641 P. 2d 1045.

No. 81-6807. SKINNER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 667 F. 2d 1306.

No. 82-201. READING HOSPITAL & MEDICAL CENTER *v.* CHOWDHURY. C. A. 3d Cir. Certiorari denied. Reported below: 677 F. 2d 317.

No. 82-698. HOWARD ET AL. *v.* TAYLOR ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 686 F. 2d 1346.

No. 82-896. ACQUIN *v.* CONNECTICUT. Sup. Ct. Conn. Certiorari denied. Reported below: 187 Conn. 647, 448 A. 2d 163.

No. 82-5916. HARDEN *v.* MISSOURI. Ct. App. Mo., Eastern Dist. Certiorari denied. Reported below: 639 S. W. 2d 90.

No. 81-2240. ALABAMA ET AL. *v.* MYLAR, AKA MILES. C. A. 11th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 671 F. 2d 1299.

No. 81-5044. MONROE *v.* LOUISIANA. Sup. Ct. La.;
No. 81-5698. SONNIER *v.* LOUISIANA. Sup. Ct. La.;
No. 81-5971. WHITE *v.* FLORIDA. Sup. Ct. Fla.;
No. 81-6454. MATTHESON *v.* LOUISIANA. Sup. Ct. La.;
No. 82-5935. JACKSON *v.* WAINWRIGHT, SECRETARY,
DEPARTMENT OF CORRECTIONS OF FLORIDA. Sup. Ct. Fla.;
No. 82-6110. RAULERSON *v.* FLORIDA. Sup. Ct. Fla.;
No. 82-6425. WOOMER *v.* SOUTH CAROLINA. Sup. Ct.
S. C.; and

July 6, 1983

463 U. S.

No. 82-6663. MIDDLETON *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: No. 81-5044, 397 So. 2d 1258; No. 81-5698, 402 So. 2d 650; No. 81-5971, 403 So. 2d 331; No. 81-6454, 407 So. 2d 1150; No. 82-5935, 421 So. 2d 1385; No. 82-6110, 420 So. 2d 567; No. 82-6425, 278 S. C. 468, 299 S. E. 2d 317; No. 82-6663, 426 So. 2d 548.

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. 82-1. MINNESOTA *v.* BROWN. Sup. Ct. Minn. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 317 N. W. 2d 714.

No. 82-1312. UTAH POWER & LIGHT CO. ET AL. *v.* FEDERAL ENERGY REGULATORY COMMISSION ET AL.;

No. 82-1345. ALABAMA POWER CO. ET AL. *v.* FEDERAL ENERGY REGULATORY COMMISSION ET AL.; and

No. 82-1346. PACIFIC GAS & ELECTRIC CO. ET AL. *v.* FEDERAL ENERGY REGULATORY COMMISSION ET AL. C. A. 11th Cir. Motion of Sacramento Municipal Utility District et al. for leave to file a brief as *amici curiae* granted. Motion of Utah Public Service Commission in No. 82-1312 for leave to file a brief as *amicus curiae* granted. Motions of American Farm Bureau Federation et al. and Public Utilities Commission of California in No. 82-1346 for leave to file briefs as *amici curiae* granted. Certiorari denied. JUSTICE WHITE and JUSTICE BLACKMUN would grant certiorari. JUSTICE POWELL took no part in the consideration or decision of these motions and these petitions. Reported below: 685 F. 2d 1311.

No. 82-6645. MERRELL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 701 F. 2d 53.

1230

WHITE, J., dissenting

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

Between May 11, 1979, and April 19, 1980, the Federal Bureau of Investigation maintained surveillance of certain premises in Detroit that were suspected of being the site of an illegal gambling operation. The surveillance, which entailed videotaping and recording activities and conversations, revealed an illegal dice game. As a result, 13 people were charged with violation of 18 U. S. C. § 1955* and conspiracy under 18 U. S. C. § 371. Eight codefendants, the lessor of the premises, the game operator, three dealers, and three watchmen, pleaded guilty after three days of trial. The remaining five codefendants waived a jury for the rest of the trial. Four of them were acquitted of all charges because they were "mere bettors." The evidence presented by the Government concerning petitioner established that he regularly served coffee to bettors during the gambling sessions; after the sessions he stacked tables and chairs, swept the floor, cleaned ashtrays, and repositioned the tables and chairs. Petitioner was convicted of the substantive offense of conducting an illegal gambling business, but acquitted of conspiracy.

On appeal, petitioner claimed that his activities did not justify his conviction. The Court of Appeals held that the

*Title 18 U. S. C. § 1955 provides, in pertinent part:

"Prohibition of illegal gambling businesses

"(a) Whoever conducts, finances, manages, supervises, directs, or owns all or part of an illegal gambling business shall be fined not more than \$20,000 or imprisoned not more than five years, or both.

"(b) As used in this section—

"(1) 'illegal gambling business' means a gambling business which—

"(i) is a violation of the law of a State or political subdivision in which it is conducted;

"(ii) involves five or more persons who conduct, finance, manage, supervise, direct, or own all or part of such business; and

"(iii) has been or remains in substantially continuous operation for a period in excess of thirty days or has a gross revenue of \$2,000 in any single day."

proper standard to employ in resolving petitioner's claim is whether he performed "any act, duty or function which is necessary or *helpful* in operating the enterprise." 701 F. 2d 53, 55 (1983). That holding conflicts with the decision in *United States v. Boss*, 671 F. 2d 396, 400 (CA10 1982), where it was held that the proper standard is whether the person performs "a function . . . necessary to the illegal gambling business." That court interpreted the term "conduct" to require "some actual involvement in the gambling operation," *ibid.*, and found that neither a waitress, a bartender, nor a band member could be considered "conductors" under § 1955, *id.*, at 402.

There is a significant difference between activities that are "necessary" to the operation of an illegal gambling establishment and those that are only "helpful." The *Boss* case involved the question whether waitresses who served drinks to the bettors in the illegal gambling establishment as well as to customers in the adjacent dance hall were "conductors" within the meaning of § 1955. The Tenth Circuit found they were not because their functions were not necessary, but merely helpful. I do not find that case distinguishable from the present one. The difference between conviction and acquittal should not rest on whether an illegal gambling establishment existed in isolation or was concealed within another, legal, establishment. If a waitress who functions solely as a waitress in an illegal gambling establishment could not be convicted under § 1955, as the Tenth Circuit has held, then a waiter/janitor who functions solely as a waiter/janitor should not be convicted either.

Because a case involving a conflict among the courts of appeals concerning the standard to be applied in determining criminal liability involves either the unjust conviction of an innocent person or the frustration of congressional intent to criminalize specific conduct, it necessarily presents an important question. Certiorari should be granted, and the case should be set for argument. I dissent.

463 U. S.

July 8, August 3, 5, 8, 1983

JULY 8, 1983

Dismissal Under Rule 53

No. 82-1859. CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD CO. ET AL. *v.* OGILVIE, AS TRUSTEE OF THE PROPERTY OF CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD CO., ET AL. C. A. 7th Cir. Certiorari dismissed under this Court's Rule 53. Reported below: 701 F. 2d 604.

AUGUST 3, 1983

Dismissals Under Rule 53

No. 82-1147. INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (AFL-CIO) ET AL. *v.* NATIONAL CONSTRUCTORS ASSN. ET AL. C. A. 4th Cir. Certiorari dismissed under this Court's Rule 53. Reported below: 678 F. 2d 492.

No. 82-5934. GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari dismissed under this Court's Rule 53.

AUGUST 5, 1983

Miscellaneous Order

No. A-66 (81-5698). SONNIER *v.* LOUISIANA, *ante*, p. 1229. Application for suspension of the order of the Court denying the petition for writ of certiorari pending the disposition of the petition for rehearing, presented to JUSTICE WHITE, and by him referred to the Court, denied. JUSTICE BRENNAN and JUSTICE MARSHALL would grant the application. THE CHIEF JUSTICE and JUSTICE O'CONNOR took no part in the consideration or decision of this application.

AUGUST 8, 1983

Dismissal Under Rule 53

No. 83-10. PRESSROOM UNIONS-PRINTERS LEAGUE INCOME SECURITY FUND *v.* CONTINENTAL ASSURANCE CO. ET AL. C. A. 2d Cir. Certiorari dismissed as to respondents

August 8, 16, 17, 23, 1983

463 U. S.

Reserve Life Insurance Co. and American Progressive Life & Health Insurance Company of New York under this Court's Rule 53. Reported below: 700 F. 2d 889.

AUGUST 16, 1983

Dismissal Under Rule 53

No. 82-1146. NATIONAL ELECTRICAL CONTRACTORS ASSN., INC., ET AL. *v.* NATIONAL CONSTRUCTORS ASSN. ET AL. C. A. 4th Cir. Certiorari dismissed under this Court's Rule 53. Reported below: 678 F. 2d 492.

AUGUST 17, 1983

Dismissal Under Rule 53

No. 82-1143. MILLER ELECTRIC CO. ET AL. *v.* NATIONAL CONSTRUCTORS ASSN. ET AL. C. A. 4th Cir. Certiorari dismissed under this Court's Rule 53. Reported below: 678 F. 2d 492.

AUGUST 23, 1983

Miscellaneous Orders

No. A-16. HANLON *v.* UNITED STATES. Application for stay, addressed to JUSTICE REHNQUIST and referred to the Court, denied.

No. 82-485. KEETON *v.* HUSTLER MAGAZINE, INC., ET AL. C. A. 1st Cir. [Certiorari granted, 459 U. S. 1169.] Motions of Motor Vehicle Manufacturers Association of America, Inc., CBS Inc. et al., and Association of American Publishers, Inc., for leave to file briefs as *amici curiae* granted.

No. 82-500. SOUTHLAND CORP. ET AL. *v.* KEATING ET AL. Sup. Ct. Cal. [Probable jurisdiction postponed, 459 U. S. 1101.] Motion of Securities Division of the State of Washington et al. for leave to file a brief as *amici curiae* granted.

463 U. S.

August 23, 1983

No. 82-792. GROVE CITY COLLEGE ET AL. *v.* BELL, SECRETARY OF EDUCATION, ET AL. C. A. 3d Cir. [Certiorari granted, 459 U. S. 1199.] Motion of American Association of University Women et al. for leave to file out-of-time motion for leave to participate in oral argument as *amici curiae* denied.

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

No. 82-977. MINNESOTA COMMUNITY COLLEGE FACULTY ASSN. ET AL. *v.* KNIGHT ET AL. D. C. Minn. [Probable jurisdiction noted, 460 U. S. 1050.] Motion of American Association of University Professors for leave to file a brief as *amicus curiae* granted.

No. 82-1246. BOSE CORP. *v.* CONSUMERS UNION OF UNITED STATES, INC. C. A. 1st Cir. [Certiorari granted, 461 U. S. 904.] Motions of American Civil Liberties Union et al. and The New York Times Co. et al. for leave to file briefs as *amici curiae* granted.

No. 82-1256. LYNCH, MAYOR OF PAWTUCKET, ET AL. *v.* DONNELLY ET AL. C. A. 1st Cir. [Certiorari granted, 460 U. S. 1080.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 82-1401. CALDER ET AL. *v.* JONES ET AL. Ct. App. Cal., 2d App. Dist. [Probable jurisdiction postponed, 460 U. S. 1080.] Motion of Authors League of America, Inc., for leave to file a brief as *amicus curiae* granted.

No. 82-1432. PULLIAM, MAGISTRATE FOR THE COUNTY OF CULPEPER, VIRGINIA *v.* ALLEN ET AL. C. A. 4th Cir. [Certiorari granted, 461 U. S. 904.] Motion of Judge Abraham J. Gafni for leave to participate in oral argument as *amicus curiae* denied.

August 23, 1983

463 U. S.

Rehearing Denied

No. 81-2162. *PIONEER FINISHING CORP. v. NATIONAL LABOR RELATIONS BOARD ET AL.*, 460 U. S. 1080;

No. 82-834. *WALCK v. AMERICAN STOCK EXCHANGE, INC., ET AL.*, 461 U. S. 942;

No. 82-1395. *DRURY v. UNITED STATES*, 461 U. S. 943;

No. 82-1408. *MAGGIO, WARDEN v. FULFORD*, 462 U. S. 111;

No. 82-1496. *CARDWELL ET AL. v. TAYLOR*, 461 U. S. 571;

No. 82-1562. *TIMMONS v. ZONING BOARD OF ADJUSTMENT ET AL.*, 461 U. S. 929;

No. 82-1612. *AHMED v. ENVIRONMENTAL PROTECTION AGENCY*, 461 U. S. 930;

No. 82-1686. *KALARIS, ADMINISTRATIVE APPEALS JUDGE, ET AL. v. DONOVAN, SECRETARY OF LABOR, ET AL.*, 462 U. S. 1119;

No. 82-1834. *SCALISE ET AL. v. ATTORNEY GENERAL OF THE UNITED STATES ET AL.*, 462 U. S. 1121;

No. 82-5527. *RIOS v. HECKLER, SECRETARY OF HEALTH AND HUMAN SERVICES*, 461 U. S. 958;

No. 82-5840. *MILLER v. ILLINOIS*, 461 U. S. 961;

No. 82-6281. *ZARRILLI v. RANDALL ET AL.*, 460 U. S. 1090;

No. 82-6466. *RUIZ v. ILLINOIS*, 462 U. S. 1112;

No. 82-6514. *ZETTLEMOYER v. PENNSYLVANIA*, 461 U. S. 970;

No. 82-6521. *ROTHWELL v. BAILEY ET AL.*, 461 U. S. 946;

No. 82-6534. *DUVALLON v. FLORIDA*, 462 U. S. 1109;

No. 82-6556. *GRETZLER v. ARIZONA*, 461 U. S. 971;

No. 82-6565. *MASTERS v. OHIO*, 461 U. S. 960;

No. 82-6567. *JOHNSON v. UNITED STATES*, 462 U. S. 1121;

No. 82-6590. *RITTER v. RITTER*, 462 U. S. 1121; and

No. 82-6689. *SPELLMAN v. RIDLEY, ADMINISTRATOR, LORTON YOUTH CENTER*, 462 U. S. 1110. Petitions for rehearing denied.

463 U. S.

August 23, September 1, 1983

No. 81-430. ILLINOIS *v.* GATES ET UX., 462 U. S. 213. Petition for rehearing and correction of judgment denied.

No. 81-2095. CLANCY ET AL. *v.* JARTECH, INC., ET AL., 459 U. S. 879 and 1059; and

No. 82-345. COOPER, CITY ATTORNEY OF SANTA ANA, CALIFORNIA *v.* MITCHELL BROTHERS' SANTA ANA THEATER ET AL., 459 U. S. 944 and 1093. Motions for leave to file second petitions for rehearing and all other relief denied.

No. 82-714. SEATH *v.* REGULATIONS AND PERMITS ADMINISTRATION ET AL., 459 U. S. 1146. Motion for leave to file petition for rehearing denied.

No. 82-6662. IN RE KAGELER ET AL., 462 U. S. 1117. Petition for rehearing and all other relief denied.

SEPTEMBER 1, 1983

Certiorari Denied

No. 83-5290 (A-134). GRAY *v.* LUCAS, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied. Application for stay of execution, scheduled for 12:01 a.m. on September 2, 1983, addressed to JUSTICE BRENNAN and referred to the Court, denied. JUSTICE STEVENS would grant the application for stay. Reported below: 710 F. 2d 1048.

THE CHIEF JUSTICE, concurring.

On August 23, 1983, the applicant, Jimmy Lee Gray, filed a third petition for certiorari and an application for a stay of execution addressed to JUSTICE WHITE. JUSTICE WHITE denied petitioner's application for a stay on August 25, 1983, and the following day, the Mississippi Supreme Court set petitioner's execution for September 2, 1983. Now before the Court is petitioner's petition for certiorari and his reapplication for a stay of execution addressed to JUSTICE BRENNAN, and referred to the Court.

The facts and procedural history have not been referred to in the dissent. Since they are critical, they are set forth as

follows: (1) In October 1976, petitioner was indicted for capital murder. At trial, the State proved that on June 25, 1976, petitioner abducted a 3-year-old girl, carried her to a remote area, and after sexually molesting her, suffocated her in a muddy ditch and threw her body into a stream. Petitioner was convicted and sentenced to death. (2) On appeal, the Mississippi Supreme Court reversed the conviction and remanded the case for a new trial. *Gray v. State*, 351 So. 2d 1342 (1977). (3) On retrial in 1978, Gray was again convicted of capital murder and sentenced to death. (4) The Mississippi Supreme Court affirmed both the conviction and the death sentence. *Gray v. State*, 375 So. 2d 994 (1979). (5) We denied petitioner's petitions for certiorari and rehearing. *Gray v. Mississippi*, 446 U. S. 988, rehearing denied, 448 U. S. 912 (1980).

(6) Petitioner filed his first applications for a writ of error *coram nobis* and stay of execution before the Mississippi Supreme Court in July 1980. (7) After the state court's summary denial of the writ, petitioner filed a petition for a writ of habeas corpus in the Federal District Court for the Southern District of Mississippi. The court conducted an evidentiary hearing with respect to several of Gray's 22 claims of constitutional violation and denied relief. (8) The Court of Appeals for the Fifth Circuit affirmed and denied petitioner's motion for rehearing. *Gray v. Lucas*, 677 F. 2d 1086, rehearing denied, 685 F. 2d 139 (1982). (9) A petition for certiorari and rehearing were once again denied by this Court. 461 U. S. 910 (1983); 462 U. S. 1124 (1983). On May 11, 1983, the Mississippi Supreme Court set the execution date for July 6, 1983.

(10) On June 22, 1983 petitioner submitted to the Mississippi Supreme Court a second motion for stay of execution along with a new application for a writ of error *coram nobis*. The petition raised, among others, those claims now before this Court. The Mississippi Supreme Court denied all re-

1237

BURGER, C. J., concurring

quested relief on June 29, 1983. (11) Petitioner thereupon filed his second petition for a writ of habeas corpus in the Federal District Court, reasserting those claims he had submitted to the Mississippi Supreme Court. (12) On July 2, 1983, the Court of Appeals granted petitioner's application for a stay of execution. (13) The District Court dismissed the petition for habeas corpus on July 8, 1983. (14) The Court of Appeals affirmed, *Gray v. Lucas*, 710 F. 2d 1048 (1983), and denied petitioner's petition for rehearing. The stay was dissolved on August 26, 1983.

This case has been in state and federal courts for seven years. It has been tried twice in the state court and reviewed by the Mississippi Supreme Court four times. Seventeen different federal judges have reviewed petitioner's case, and this Court has previously acted on this case four times prior to JUSTICE WHITE's denial of petitioner's application for a stay last week. Over the past seven years, judicial action reviewing this case has been taken 82 times by 26 different state and federal judges.

Petitioner's latest claims have been reviewed by several courts in both the state and federal systems. Petitioner's principal claim, which JUSTICE MARSHALL addresses in his dissent, is that the lethal gas method of execution constitutes cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments. In my view, no evidentiary hearing on the effects of lethal gas is required. A number of affidavits describing such effects were filed with and considered by the Court of Appeals, and the contents of several of these have been set forth in the dissent today of JUSTICE MARSHALL. For purposes of my vote in this case, I accept the truth of the affidavits submitted by the petitioner, but nevertheless conclude—as did the Court of Appeals—that they do not as a matter of law establish an Eighth Amendment violation. I agree with the Court of Appeals that the showing made by petitioner does not justify a court holding that, “as a

matter of law or fact, the pain and terror resulting from death by cyanide is so different in degree or nature from that resulting from other traditional modes of execution as to implicate the eighth amendment right." *Gray v. Lucas*, 710 F. 2d, at 1061.

This case illustrates a recent pattern of calculated efforts to frustrate valid judgments after painstaking judicial review over a number of years; at some point there must be finality. I join the Court's action denying the petition for certiorari and denying a stay of execution.

JUSTICE MARSHALL, with whom JUSTICE BRENNAN joins, dissenting.

In this application for a stay, petitioner asks simply that we postpone his execution long enough to allow us to consider and dispose of his pending petition for certiorari in which he challenges the decision of the United States Court of Appeals for the Fifth Circuit affirming the denial of his request for a writ of habeas corpus. *Gray v. Lucas*, 710 F. 2d 1048 (1983). I would grant the application.¹

Petitioner argues that the method by which the State of Mississippi plans to execute him—exposure to cyanide gas—constitutes cruel and unusual punishment. In support of that claim, he submitted to the United States District Court for the Southern District of Mississippi numerous affidavits that described in graphic and horrifying detail the manner in which death is induced through this procedure.² *Gray v.*

¹ Even if his petition for certiorari did not present the substantial constitutional claim discussed below, I would nevertheless grant petitioner's application for a stay, grant certiorari, and vacate petitioner's death sentence in accordance with my view that the death penalty is unconstitutional in all circumstances. *Gregg v. Georgia*, 428 U. S. 153, 231 (1976) (MARSHALL, J., dissenting).

² The District Court never assessed the relevance of these affidavits because it disposed of the claim on procedural grounds. The court determined that petitioner had neglected to present this Eighth Amendment

1237

MARSHALL, J., dissenting

Lucas, No. S83-0546(C) (July 8, 1983). For example, Dr. Richard Traystman, Director of the Anesthesiology and Critical Care Medicine Research Laboratories at Johns Hopkins Medical School, described the process as follows:

“Very simply, cyanide gas blocks the utilization of the oxygen in the body’s cells. * * * Gradually, depending on the rate and volume of inspiration, and on the concentration of the cyanide that is inhaled, the person exposed to cyanide gas will become anoxic. This is a condition defined by no oxygen. Death will follow through asphyxiation, when the heart and brain cease to receive oxygen.

“The hypoxic state can continue for several minutes after the cyanide gas is released in the execution chamber. The person exposed to this gas remains conscious for a period of time, in some cases for several minutes, again depending on the rate and volume of the gas that is inhaled. During this time, the person is unquestionably experiencing pain and extreme anxiety. The pain begins immediately, and is felt in the arms, shoulders, back, and chest. The sensation is similar to the pain felt by a person during a heart attack, where essentially, the heart is being deprived of oxygen. The severity of the pain varies directly with the diminishing oxygen reaching the tissues.

“The agitation and anxiety a person experiences in the hypoxic state will stimulate the autonomic nervous system. . . . [The person] . . . may begin to drool, urinate, defecate, or vomit. There will be a muscular con-

claim in state-court proceedings and therefore had forfeited his right to raise the issue in federal court. *Wainwright v. Sykes*, 433 U. S. 72 (1977). The District Court also reasoned that, since petitioner’s original counsel did not include this claim in a previous federal habeas corpus petition, petitioner had waived the claim, and it would be an abuse of the writ for him to try to raise it in his current habeas petition. See *Sanders v. United States*, 373 U. S. 1, 17-19 (1963); 28 U. S. C. § 2254 Rule 9(b).

tractio[n]. These responses can occur both while the person is conscious, or when he becomes unconscious.

“When the anoxia sets in, the brain remains alive for from two to five minutes. The heart will continue to beat for a period of time after that, perhaps five to seven minutes, or longer, though at a very low cardiac output. Death can occur ten to twelve minutes after the gas is released in the chamber.” *Gray v. Lucas*, 710 F. 2d, at 1060.

Dr. Traystman further testified that the lethal-gas method is sufficiently painful that it is disfavored in the scientific community as a way of putting animals to sleep. “We would not use asphyxiation, by cyanide gas or by any other substance, in our laboratory to kill animals that have been used in experiments—nor would most medical research laboratories in this country use it.” *Ibid.*

Other affiants described in less clinical language the effects of the procedure when used to execute people:

“When the cyanide gas reached [the prisoner], he gasped, and convulsed strenuously. He stiffened. His head lurched back. His eyes widened, and he strained as much as the straps that held him to the chair would allow. He unquestionably appeared to be in pain.

“Periodically now, perhaps at thirty second intervals, he would convulse, alternately straining and relaxing in the chair. I noticed he had urinated. The convulsions continued for approximately ten more minutes, and you could see his chest expand, and then contract, trying to take in fresh air. These movements became weaker as the minutes ticked away. You could not tell when [he] finally lost consciousness.

“According to prison officials, [he] died . . . approximately 12 minutes after the cyanide pellets had dropped in the chamber. Death was pronounced after the shade

1237

MARSHALL, J., dissenting

on our observation window had been drawn, though there was still some slight movement in the body.

“The pellets of cyanide were released by mechanical controls, and dropped into an acid jar beneath the chair. The gas rose, and seemed to hit him immediately. Within the first minute [he] slumped down. I thought to myself how quickly cyanide really worked.

“Within 30 seconds he lifted his head upwards again. He raised his entire body, arching, tugging at his straps. Saliva was oozing from his mouth. His eyes open, he turned his head to the right. He gazed through my window. His fingers were tightly gripping his thumbs. His chest was visibly heaving in sickening agony. Then he tilted his head higher, and rolled his eyes upward. Then he slumped forward. Still his heart was beating. It continued for another several minutes.

“He was pronounced dead, twelve minutes after the pellets were released, by the doctor who could hear his heart through the stethoscope, die.” *Id.*, at 1058–1059.

The Court of Appeals accepted³ petitioner’s “proffered facts as proven.” *Id.*, at 1061. Specifically, the court adopted petitioner’s description of the method of execution

³The Court of Appeals did not share the District Court’s view that federal court review of this claim was procedurally barred. See n. 2, *supra*. The Circuit rejected the District Court’s finding of forfeiture and ruled that, in reaching petitioner’s claim on the merits, “the Mississippi Supreme Court itself removed any procedural bar which might otherwise impede a federal court’s hearing on the merits.” 710 F. 2d, at 1052, n. 2. The Circuit did not explicitly consider the District Court’s “abuse of writ” ground for dismissal, but by electing to reach the merits of the claim, the court implicitly held that petitioner had offered adequate explanation of why the issue had not been raised in his first habeas corpus petition. In his brief to the Court of Appeals, petitioner explained that his original counsel had been unaware of the excruciating side effects of execution by lethal gas and that the current trend against the use of lethal gas was not yet evident

as that of "death by cyanide gas, causing asphyxiation at the cost of protracted pain over a period that may exceed seven minutes." *Ibid.* The court refused, nevertheless, to reverse the District Court's decision denying petitioner an evidentiary hearing, reasoning that, "under present jurisprudential standards," petitioner's allegations were insufficient "to implicate the eighth amendment right." *Ibid.*

In my view, if the lethal-gas method operates in the manner described by petitioner, the Court of Appeals clearly erred in ruling that the method is not "cruel" under "present jurisprudential standards." The Eighth Amendment proscribes "punishments which are incompatible with 'the evolving standards of decency that mark the progress of a maturing society.'" *Estelle v. Gamble*, 429 U. S. 97, 102 (1976) (quoting *Trop v. Dulles*, 356 U. S. 86, 101 (1958)). Identification of those standards is sometimes difficult, but two principles have long been beyond dispute. First, "[p]unishments are cruel when they involve torture or a lingering death." *In re Kemmler*, 136 U. S. 436, 447 (1890). Second, punishments are cruel when they "involve the unnecessary and wanton infliction of pain." *Gregg v. Georgia*, 428 U. S. 153, 173 (1976). A corollary of the second principle is that "no court would approve any method of implementation of the

when petitioner filed his first federal habeas corpus petition. See *infra*, at 1246, and nn. 6 and 7. Alternatively, the Court of Appeals may quite correctly have concluded that, given the equitable nature of habeas relief, the District Court should not have denied petitioner an opportunity to challenge the means by which he will die simply because his attorney neglected to append the claim to an earlier petition. See *Fay v. Noia*, 372 U. S. 391, 438-440 (1963); *Sanders v. United States*, 373 U. S., at 17-18.

Relying on this Court's recent opinion in *Barefoot v. Estelle*, *ante*, p. 880, respondents suggest that second and successive habeas corpus petitions in death penalty cases should receive heightened scrutiny. I disagree. The majority in *Barefoot* explicitly endorsed the *Sanders* standard for reviewing second and successive petitions in death penalty cases. *Ante*, at 895. Since petitioner established that his failure to bring this claim in his previous petition was not an abuse of the writ under *Sanders*, the courts below were obliged to consider the claim on the merits.

1237

MARSHALL, J., dissenting

death sentence found to involve unnecessary cruelty in light of presently available alternatives." *Furman v. Georgia*, 408 U. S. 238, 430 (1972) (POWELL, J., joined by BURGER, C. J., and BLACKMUN and REHNQUIST, JJ., dissenting); see also *id.*, at 279 (BRENNAN, J., concurring).

The Court of Appeals failed to apply either of the foregoing principles to the case before it. Instead, the court attempted to assess the "pain and terror" associated with "traditional modes of execution" (such as hanging) and concluded that the difference between the trauma associated with the use of lethal gas and the trauma associated with those traditional methods was not so great as to render the former constitutionally infirm. *Gray v. Lucas*, 710 F. 2d., at 1061. Had the court made an effort to apply the proper legal standards, it seems highly likely that it would have found the lethal-gas method to be unconstitutional. A death that, as the court recognized, involves extreme pain over a span of 10 to 12 minutes surely must be characterized as "lingering," see *In re Kemmler*, *supra*. And petitioner directed the court's attention to at least one readily available alternative method of administering the death penalty that, though equally barbaric in its effects, involves far less physical pain than the use of cyanide gas;⁴ it seems indisputable, therefore, that the lethal-gas method is "unnecessarily cruel."

That execution through the administration of lethal gas violates the Eighth Amendment is confirmed by examination of the treatment accorded the method in recent years by the state legislatures. This Court has often indicated that assessment of the constitutional status of a given punishment "should be informed by objective factors to the maximum

⁴That method is the lethal-injection procedure, which involves intravenous injection of a fast-acting barbiturate combined with a paralytic agent. See Royal Commission on Capital Punishment, 1949-1953 Report, Cmd. No. 8932, p. 257 (1980); Gardner, Executions and Indignities—An Eighth Amendment Assessment of Methods of Inflicting Capital Punishment, 39 Ohio St. L. J. 96, 128-129 (1978).

possible extent.’” *Enmund v. Florida*, 458 U. S. 782, 788 (1982) (quoting *Coker v. Georgia*, 433 U. S. 584, 592 (1977) (plurality opinion)). Among the most important of those factors is the direction in which contemporary “legislative judgments” are moving. *Enmund v. Florida*, *supra*. Between 1921 and 1973, several States by statute adopted the lethal-gas method. In most instances, the abandonment of the scaffold or electric chair in favor of the gas chamber was prompted by humanitarian motives; asphyxiation was regarded as a less painful and more dignified way of administering the death penalty than hanging or electrocution.⁵ However, as awareness of the trauma associated with the lethal-gas method grew and as the lethal-injection method became better known, the trend was reversed. In the past decade, no State has adopted the lethal-gas method. By contrast, three States that formerly employed the gas chamber exclusively have altered their laws to require or permit use of the injection procedure.⁶ At least two other States that never had used the gas chamber considered adopting the method but rejected it in favor of the injection system.⁷ At present, only 7 of the 39 jurisdictions that retain the death penalty require use of the gas chamber.⁸ This evolving con-

⁵ See L. Berkson, *The Concept of Cruel and Unusual Punishment* 29–31 (1975).

⁶ See 1983 Nev. Stats., ch. 601, § 1 (amending Nev. Rev. Stat. § 176.355 (1979)); N. M. Stat. Ann. § 31–14–11 (Supp. 1983); 1983 N. C. Sess. Laws, ch. 678 (amending N. C. Gen. Stat. § 15–187 (1978)).

⁷ See 1977 Okla. Sess. Law, ch. 41, § 1; 1977 Tex. Gen. Laws, ch. 138, § 1.

⁸ The seven States are Arizona (Ariz. Rev. Stat. Ann. § 13–704 (Supp. 1982–1983)); California (Cal. Penal Code Ann. § 3604 (West 1982)); Colorado (Colo. Rev. Stat. § 16–11–401 (1978)); Maryland (Md. Ann. Code, Art. 27, § 71 (1982)); Mississippi (Miss. Code Ann. § 99–19–51 (1972)); Missouri (Mo. Rev. Stat. § 546.720 (1978)); and Wyoming (Wyo. Stat. § 7–13–904 (1977)).

A similar situation was presented in *Enmund v. Florida*, 458 U. S. 782 (1982). In that case, the Court relied significantly upon the fact that “only a small minority of jurisdictions—eight—allow the death penalty to be imposed solely because the defendant somehow participated in a robbery in the course of which a murder was committed” in holding unconstitutional the use of capital punishment under such circumstances. *Id.*, at 792.

463 U. S.

September 1, 6, 8, 1983

sensus against compulsory use of the lethal-gas method buttresses the conclusion that the procedure must now be considered "cruel."

Under these circumstances, the majority's decision to deny the stay, thereby authorizing the execution of petitioner before we can even consider his petition for certiorari, seems to me unconscionable. Petitioner has presented a substantial challenge to the constitutionality of Mississippi's method of execution. The Court of Appeals has denied petitioner a hearing to develop his claim. *Townsend v. Sain*, 372 U. S. 293 (1963). Yet a majority of this Court declines to delay petitioner's execution a few more weeks until we can consider through our traditional means of deliberation whether this case raises issues of sufficient import to grant a writ of certiorari.

I dissent from the denial of the stay.

SEPTEMBER 6, 1983

Dismissal Under Rule 53

No. 82-2164. AUSTIN *v.* UNARCO INDUSTRIES, INC., ET AL. C. A. 1st Cir. Certiorari dismissed under this Court's Rule 53. Reported below: 705 F. 2d 1.

SEPTEMBER 8, 1983

Miscellaneous Orders

No. A-57. BURLINGTON NORTHERN RAILROAD CO. *v.* UNITED STATES ET AL. C. A. D. C. Cir. Application for stay, presented to JUSTICE WHITE, and by him referred to the Court, denied.

No. 82-432. LOCAL NO. 82, FURNITURE & PIANO MOVING, FURNITURE STORE DRIVERS, HELPERS, WAREHOUSEMEN & PACKERS, ET AL. *v.* CROWLEY ET AL. C. A. 1st Cir. [Certiorari granted, 459 U. S. 1168.] Motion of Association for Union Democracy for leave to file a brief as *amicus curiae* granted.

September 8, 1983

463 U. S.

No. 82-629. THREE AFFILIATED TRIBES OF THE FORT BERTHOLD RESERVATION *v.* WOLD ENGINEERING, P.C., ET AL. Sup. Ct. N. D. [Certiorari granted, 461 U. S. 904.] Motions of Standing Rock Sioux Tribe of North and South Dakota et al. and Turtle Mountain Band of Chippewa Indians for leave to file briefs as *amici curiae* granted. Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 82-708. SUMMA CORP. *v.* CALIFORNIA EX REL. STATE LANDS COMMISSION ET AL. Sup. Ct. Cal. [Certiorari granted, 460 U. S. 1036.] Motion of Amigos de Bolsa Chica for leave to file a brief as *amicus curiae* granted.

No. 82-945. SURE-TAN, INC., ET AL. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 7th Cir. [Certiorari granted, 460 U. S. 1021.] Motions of California Agricultural Labor Relations Board and United Farm Workers of America, AFL-CIO, for leave to file briefs as *amici curiae* granted.

No. 82-1071. ALUMINUM COMPANY OF AMERICA ET AL. *v.* CENTRAL LINCOLN PEOPLES' UTILITY DISTRICT ET AL. C. A. 9th Cir. [Certiorari granted, 460 U. S. 1050.] Motion of the Solicitor General for divided argument granted.

No. 82-1095. PULLEY, WARDEN *v.* HARRIS. C. A. 9th Cir. [Certiorari granted, 460 U. S. 1036.] Motion of National Council on Crime and Delinquency for leave to file a brief as *amicus curiae* 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, 461 U. S. 925.] Motion of Western Oil & Gas

463 U. S.

September 8, 1983

Association et al. for divided argument granted. Request for additional time for oral argument denied. Motion of Humboldt County et al. for divided argument granted. Request for additional time for oral argument denied.

Rehearing Denied

No. 81-5044. *MONROE v. LOUISIANA*, *ante*, p. 1229;

No. 81-5240. *GATES v. ZANT, SUPERINTENDENT, GEORGIA DIAGNOSTIC AND CLASSIFICATION CENTER*, *ante*, p. 1213;

No. 81-5698. *SONNIER v. LOUISIANA*, *ante*, p. 1229;

No. 81-5947. *WATERS v. GEORGIA*, *ante*, p. 1213;

No. 81-5962. *TAYLOR v. NORTH CAROLINA*, *ante*, p. 1213;

No. 81-6454. *MATTHESON v. LOUISIANA*, *ante*, p. 1229;

No. 82-698. *HOWARD ET AL. v. TAYLOR ET AL.*, *ante*, p. 1229;

No. 82-1080. *SIMON ET AL. v. DAVIS, SECRETARY OF COMMONWEALTH OF PENNSYLVANIA, ET AL.*, *ante*, p. 1219;

No. 82-1679. *ALBERDING v. DONOVAN, SECRETARY OF LABOR*, *ante*, p. 1207;

No. 82-1804. *MUELLER v. SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE (CALIFORNIA, REAL PARTY IN INTEREST)*, *ante*, p. 1208;

No. 82-1902. *DOLENZ v. ALL SAINTS EPISCOPAL HOSPITAL*, 462 U. S. 1134;

No. 82-5128. *MATHIS v. GEORGIA*, *ante*, p. 1214;

No. 82-5260. *MOORE v. LOUISIANA*, *ante*, p. 1214;

No. 82-5868. *WILLIAMS v. MAGGIO, WARDEN, ET AL.*, *ante*, p. 1214;

No. 82-6110. *RAULERSON v. FLORIDA*, *ante*, p. 1229;

No. 82-6192. *ROBERTS v. SOUTH CAROLINA*, *ante*, p. 1214;

No. 82-6618. *BOTHWELL v. GEORGIA*, *ante*, p. 1210;

No. 82-6640. *IN RE DAMIANO*, 462 U. S. 1130; and

No. 82-6705. *BETKA v. SMITH ET AL.*, 462 U. S. 1125.

Petitions for rehearing denied.

September 8, 12, 21, 22, 27, 1983

463 U. S.

No. 81-1717. AMERICAN BANK & TRUST CO. ET AL. *v.* DALLAS COUNTY ET AL.; BANK OF TEXAS ET AL. *v.* CHILDS ET AL.; and WYNNEWOOD BANK & TRUST ET AL. *v.* CHILDS ET AL., *ante*, p. 855. Petition of Dallas County et al. for rehearing denied. Petition of City of Dallas et al. for rehearing denied. JUSTICE O'CONNOR took no part in the consideration or decision of these petitions.

No. 81-2008. PROCESS GAS CONSUMERS GROUP ET AL. *v.* CONSUMER ENERGY COUNCIL OF AMERICA ET AL., *ante*, p. 1216. Petition for rehearing denied. JUSTICE POWELL took no part in the consideration or decision of this petition.

SEPTEMBER 12, 1983

Dismissal Under Rule 53

No. 82-1916. EMPRESA ECUATORIANA DE AVIACION, S. A. *v.* DISTRICT LODGE NO. 100, INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS, ET AL. C. A. 11th Cir. Certiorari dismissed under this Court's Rule 53. Reported below: 690 F. 2d 838.

SEPTEMBER 21, 1983

Dismissal Under Rule 53

No. 83-270. MOORE *v.* MOORE. Ct. App. Okla. Certiorari dismissed under this Court's Rule 53.

SEPTEMBER 22, 1983

Dismissal Under Rule 53

No. 82-5935. JACKSON *v.* WAINWRIGHT, SECRETARY, DEPARTMENT OF CORRECTIONS OF FLORIDA, *ante*, p. 1229. Petition for rehearing dismissed under this Court's Rule 53.

SEPTEMBER 27, 1983

Dismissal Under Rule 53

No. 83-5419. STACY *v.* WAINWRIGHT. Dist. Ct. App. Fla., 1st Dist. Certiorari dismissed under this Court's Rule 53. Reported below: 434 So. 2d 893.

463 U. S.

September 27, 1983

Miscellaneous Orders

No. 81-2101. PENNHURST STATE SCHOOL AND HOSPITAL ET AL. *v.* HALDERMAN ET AL. C. A. 3d Cir. [Certiorari granted, 457 U. S. 1131.] Motion of respondents to dismiss the writ of certiorari as improvidently granted is denied.

No. A-188 (83-5432). BALDWIN *v.* MAGGIO, WARDEN, LOUISIANA STATE PENITENTIARY, ET AL. C. A. 5th Cir. Application for stay of execution of the sentence of death scheduled for October 6, 1983, presented to JUSTICE WHITE, and by him referred to the Court, is granted pending this Court's final action on the petition for writ of certiorari.

