ORDERS FROM OCTOBER 3, 1983, THROUGH JANUARY 16, 1984

OCTOBER 3, 1983

Affirmed on Appeal

No. 82–1840. KIRKSEY ET AL. *v.* MISSISSIPPI ET AL. Affirmed on appeal from D. C. D. C. JUSTICE MARSHALL would note probable jurisdiction and set case for oral argument.

Appeals Dismissed

No. 82–370. CARPENTER *v.* HAMMOND, GOVERNOR OF ALASKA. Appeal from Sup. Ct. Alaska dismissed for want of substantial federal question.

No. 82–1710. FOX RIDGE ASSOCIATES & CO. *v.* BOARD OF ASSESSORS OF MARSHFIELD. Appeal from Sup. Jud. Ct. Mass. dismissed for want of substantial federal question. Reported below: 387 Mass. 1002, 441 N. E. 2d 258.

No. 82–1821. EXXON CORP. ET AL. *v.* EAGERTON, COMMISSIONER OF REVENUE OF ALABAMA, ET AL.; and

No. 82–1835. UNION OIL COMPANY OF CALIFORNIA ET AL. *v.* EAGERTON, COMMISSIONER OF REVENUE OF ALABAMA. Appeals from Sup. Ct. Ala. dismissed for want of substantial federal question. Reported below: 426 So. 2d 814.

No. 82–1946. OYSTER *v.* OYSTER. Appeal from Sup. Ct. Va. dismissed for want of substantial federal question.

No. 82–2016. SOLYOM *v.* MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION. Appeal from Ct. Sp. App. Md. dismissed for want of substantial federal question. Reported below: 53 Md. App. 280, 452 A. 2d 1283.

No. 82–2059. BARTLETT ET AL. *v.* WILLIAMS ET AL. Appeal from Sup. Ct. Conn. dismissed for want of substantial federal question. Reported below: 189 Conn. 471, 457 A. 2d 290.

No. 82–2116. DALGETY FOODS, INC. *v.* AVINA. Appeal from Ct. App. Cal., 1st App. Dist., dismissed for want of substantial federal question.

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No. 82–2124. ARCHER ET AL. *v.* METROPOLITAN TRANSIT AUTHORITY ET AL. Appeal from Ct. App. Tex., 3d Sup. Jud. Dist., dismissed for want of substantial federal question. Reported below: 636 S. W. 2d 484.

No. 82–2125. METROPOLITAN PACKAGE STORE ASSN., INC., ET AL. *v.* KOCH, MAYOR OF THE CITY OF NEW YORK, ET AL. Appeal from App. Div., Sup. Ct. N. Y., 3d Jud. Dept., dismissed for want of substantial federal question. Reported below: 89 App. Div. 2d 317, 457 N. Y. S. 2d 481.

No. 82–6732. FELIX *v.* NEW YORK. Appeal from Ct. App. N. Y. dismissed for want of substantial federal question. Reported below: 58 N. Y. 2d 156, 446 N. E. 2d 757.

No. 82–7019. SECREST *v.* SOUTH DAKOTA. Appeal from Sup. Ct. S. D. dismissed for want of substantial federal question. Reported below: 331 N. W. 2d 580.

No. 83–43. CLEVELAND ELECTRIC ILLUMINATING CO. *v.* PUBLIC UTILITIES COMMISSION OF OHIO ET AL. Appeal from Sup. Ct. Ohio dismissed for want of substantial federal question. Reported below: 4 Ohio St. 3d 107, 447 N. E. 2d 746.

No. 83–48. DUNLAP ET AL. *v.* ILLINOIS. Appeal from App. Ct. Ill., 5th Dist., dismissed for want of substantial federal question. Reported below: 110 Ill. App. 3d 738, 442 N. E. 2d 1379.

No. 83–174. ANGEL ET AL. *v.* MIDLAM ET AL. Appeal from Ct. App. Cal., 4th App. Dist., dismissed for want of substantial federal question.

No. 82–1156. TELEDYNE MOVIBLE OFFSHORE, INC., ET AL. *v.* THOMPSON. Appeal from Sup. Ct. La. dismissed for want of substantial federal question. JUSTICE POWELL, JUSTICE REHNQUIST, and JUSTICE O'CONNOR would note probable jurisdiction and set case for oral argument. Reported below: 419 So. 2d 822.

No. 82–1499. MARQUEZ *v.* TEXAS. Appeal from Ct. Crim. App. Tex. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 639 S. W. 2d 321.

No. 82–1856. ANDERSON *v.* FISHER 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. Reported below: 703 F. 2d 573.

No. 82–1947. KOKER ET UX. *v.* BETTS ET AL. Appeal from Sup. Ct. Wash. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 98 Wash. 2d 1003.

No. 82–2049. JOJOLA *v.* NEW MEXICO EX REL. HUMAN SERVICES DEPARTMENT. Appeal from Sup. Ct. N. M. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 99 N. M. 500, 660 P. 2d 590.

No. 82–2054. FALKENHAN *v.* PENNSYLVANIA. Appeal from Super. Ct. Pa. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 306 Pa. Super. 330, 452 A. 2d 750.

No. 82–2096. MOORE *v.* KHOURIE 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. Reported below: 703 F. 2d 576.

No. 82–2099. GIULIANI *v.* CHUCK. 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.

No. 82–2115. FIRST NATIONAL BANK & TRUST COMPANY OF EVANSTON, TRUSTEE *v.* ROSEWELL, COUNTY TREASURER OF COOK COUNTY, ET AL. Appeal from Sup. Ct. Ill. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 93 Ill. 2d 388, 444 N. E. 2d 126.

No. 82–2132. LEWELLEN ET AL. *v.* COMMISSIONER OF INTERNAL REVENUE. Appeal from C. A. 1st Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 705 F. 2d 440.

No. 82–6720. OGROD *v.* TOMLINSON COURT APARTMENTS. Appeal from C. A. 3d 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: 707 F. 2d 1395.

No. 82–6721. OGROD ET AL. *v.* SCHOOL DISTRICT OF PHILADELPHIA. Appeal from C. A. 3d 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: 707 F. 2d 1394.

No. 82–6783. SPENCE *v.* RODGERS ET AL. Appeal from C. A. 4th 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 497.

No. 82–6850. OGROD *v.* WEISS ET AL. (two cases). Appeals from C. A. 3d Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeals were taken as petitions for writs of certiorari, certiorari denied.

No. 82–6989. LINDEN *v.* NEW YORK. Appeal from C. A. 2d Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 83–19. CRANE ET UX. *v.* MICHIGAN ET AL. Appeal from Ct. App. Mich. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 83–5072. WEIGANG *v.* SILVERMAN ET AL. Appeal from Sup. Jud. Ct. Me. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 83–5199. OGROD *v.* WEISS ET AL. Appeal from D. C. E. D. Pa. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 82–1868. ARNOLD TRANSIT CO., INC., ET AL. *v.* CITY OF MACKINAC ISLAND. Appeal from Sup. Ct. Mich. dismissed for want of substantial federal question. JUSTICE STEVENS would note probable jurisdiction and set case for oral argument. Reported below: 415 Mich. 362, 329 N. W. 2d 712.

No. 82–2005. WATKINS *v.* ROCHE. Appeal from Sup. Ct. Ga. dismissed for want of jurisdiction. Reported below: 250 Ga. XXIX, 301 S. E. 2d 287.

No. 82–2070. INTERNATIONAL SOCIETY FOR KRISHNA CONSCIOUSNESS *v.* MARSLAND, PROSECUTING ATTORNEY, CITY AND COUNTY OF HONOLULU. Appeal from Sup. Ct. Haw. dismissed for want of substantial federal question. JUSTICE BRENNAN and JUSTICE MARSHALL would note probable jurisdiction and set case for oral argument. Reported below: 66 Haw. 119, 657 P. 2d 1035.

No. 82–6950. SANTIAGO *v.* PENNSYLVANIA. Appeal from Sup. Ct. Pa. dismissed for want of substantial federal question. JUSTICE BRENNAN and JUSTICE MARSHALL would note probable jurisdiction and set case for oral argument. Reported below: 500 Pa. 530, 458 A. 2d 939.

No. 83–6. BESADNY, SECRETARY, WISCONSIN DEPARTMENT OF NATURAL RESOURCES, ET AL. *v.* LAC COURTE OREILLES BAND OF LAKE SUPERIOR CHIPPEWA INDIANS ET AL. Appeal from C. A. 7th Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. JUSTICE BRENNAN, JUSTICE MARSHALL, and JUSTICE STEVENS would affirm the judgment. Reported below: 700 F. 2d 341.

No. 83–91. APTOS SEASCAPE CORP. *v.* COUNTY OF SANTA CRUZ ET AL. Appeal from Ct. App. Cal., 1st App. Dist., dismissed for want of a final judgment. Reported below: 138 Cal. App. 3d 484, 188 Cal. Rptr. 191.

Vacated and Remanded on Appeal

No. 82–6583. DANIEL *v.* COLLIER. Appeal from Ct. App. Mich. Motion of appellant for leave to proceed *in forma pauperis* granted. Judgment vacated and case remanded for further consideration in light of *Pickett* v. *Brown*, 462 U. S. 1 (1983). Reported below: 113 Mich. App. 74, 317 N. W. 2d 293.

Certiorari Granted—Vacated and Remanded

No. 82–1705. NATIONAL LABOR RELATIONS BOARD *v.* NEW YORK UNIVERSITY MEDICAL CENTER ET AL. C. A. 2d Cir. Certiorari granted, judgment vacated, and case remanded for fur-

ther consideration in light of *NLRB* v. *Transportation Management Corp.*, 462 U. S. 393 (1983). Reported below: 702 F. 2d 284.

No. 82–1828. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY *v.* NORTHERN PLAINS RESOURCE COUNCIL ET AL. C. A. 9th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Ruckelshaus* v. *Sierra Club*, 463 U. S. 680 (1983). Reported below: 670 F. 2d 847.

No. 82–1944. UNITED STATES *v.* GONSALVES. C. A. 9th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *United States* v. *Hasting*, 461 U. S. 499 (1983). Reported below: 691 F. 2d 1310.

No. 82–1975. DISTRICT 1199, NATIONAL UNION OF HOSPITAL & HEALTH CARE EMPLOYEES, A DIVISION OF RETAIL, WHOLESALE & DEPARTMENT STORE UNION, AFL–CIO *v.* ASSAD ET AL. C. A. 2d Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *DelCostello* v. *Teamsters*, 462 U. S. 151 (1983). Reported below: 703 F. 2d 36.

Certiorari Dismissed

No. 82–1870. MIANECKI ET AL. *v.* SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA ET AL. Sup. Ct. Nev. Certiorari dismissed for want of a final judgment. Reported below: 99 Nev. 93, 658 P. 2d 422.

Miscellaneous Orders

No. ——. IN RE FREEMAN. Motion to direct the Clerk to file the petition for writ of mandamus denied.

No. ——. HEFLIN ET AL. *v.* KENTUCKY STATE RACING COMMISSION ET AL. Motion to direct the Clerk to file the petition for writ of certiorari out of time denied.

No. ——. SMITH, PERSONAL REPRESENTATIVE OF THE ESTATE OF OLSON *v.* UNITED STATES. Motion to direct the Clerk to file the petition for writ of certiorari out of time denied.

No. A–108. HENRY S. BRANSCOME, INC., ET AL. *v.* UNITED STATES. Application for stay of the mandate of the United States Court of Appeals for the Fourth Circuit, presented to JUSTICE BRENNAN, and by him referred to the Court, denied. The order, heretofore entered by JUSTICE BRENNAN, is vacated.

No. A–115. NOBLE *v.* UNITED STATES. C. A. 7th Cir. Application for stay of mandate, addressed to JUSTICE REHNQUIST and referred to the Court, denied.

No. A–162. CLARKSDALE BAPTIST CHURCH *v.* GREEN ET AL. D. C. D. C. Application for stay pending appeal, addressed to JUSTICE POWELL and referred to the Court, denied.

No. A–182 (83–334). BOARD OF SCHOOL COMMISSIONERS OF MOBILE COUNTY, ALABAMA, ET AL. *v.* BROWN ET AL. C. A. 11th Cir. Application for stay of enforcement of judgment, addressed to JUSTICE STEVENS and referred to the Court, denied.

No. A–186. KEMP, SUPERINTENDENT, GEORGIA DIAGNOSTIC AND CLASSIFICATION CENTER *v.* SMITH. Application to vacate the stay of execution of sentence of death, addressed to THE CHIEF JUSTICE and referred to the Court, denied.

No. D–216. IN RE MEHTA, 451 U. S. 903. Application for readmission to the Bar of this Court denied.

No. D–280. IN RE STERN, 460 U. S. 1008. Application for admission to the Bar of this Court, presented to JUSTICE MARSHALL, and by him referred to the Court, denied. JUSTICE MARSHALL and JUSTICE STEVENS would grant the application.

No. D–339. IN RE DISBARMENT OF LEIBOWITZ. Disbarment entered. [For earlier order herein, see 461 U. S. 922.]

No. D–343. IN RE DISBARMENT OF MCGRATH. Disbarment entered. [For earlier order herein, see 461 U. S. 941.]

No. D–350. IN RE DISBARMENT OF BUCCI. Disbarment entered. [For earlier order herein, see 461 U. S. 954.]

No. D–356. IN RE DISBARMENT OF GORDON. Disbarment entered. [For earlier order herein, see 462 U. S. 1103.]

No. D–362. IN RE DISBARMENT OF CRANE. Disbarment entered. [For earlier order herein, see 462 U. S. 1114.]

No. 94, Orig. SOUTH CAROLINA *v.* REGAN, SECRETARY OF THE TREASURY. Motion of the defendant for leave to file a supplemental memorandum granted. Motion of the plaintiff for leave to file a supplemental memorandum granted. Motion of plaintiff and Texas for divided argument granted. Motion of National Association of Counties et al. for leave to file a brief as *amici curiae* granted. [For earlier order herein, see 462 U. S. 1114.]

No. 81–1335. DISTRICT OF COLUMBIA COURT OF APPEALS ET AL. *v.* FELDMAN ET AL., 460 U. S. 462. Motion of respondents to retax costs denied.

No. 81–2149. SOLEM, WARDEN, SOUTH DAKOTA STATE PENITENTIARY *v.* STUMES. C. A. 8th Cir. [Certiorari granted, 463 U. S. 1228.] Motion for appointment of counsel granted, and it is ordered that Timothy J. McGreevy, Esquire, of Sioux Falls, S. D., be appointed to serve as counsel for respondent in this case.

No. 82–52. ARIZONA GOVERNING COMMITTEE FOR TAX DEFERRED ANNUITY AND DEFERRED COMPENSATION PLANS ET AL. *v.* NORRIS, 463 U. S. 1073. Motion of respondent to retax costs denied.

No. 82–206. FIREFIGHTERS LOCAL UNION NO. 1784 *v.* STOTTS ET AL.; and

No. 82–229. MEMPHIS FIRE DEPARTMENT ET AL. *v.* STOTTS ET AL. C. A. 6th Cir. [Certiorari granted, 462 U. S. 1105.] Motion of petitioners for divided argument denied. Motion of respondents for divided argument and for additional time for oral argument denied. Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted, and 10 minutes of petitioners' time for oral argument is allotted for that purpose.

No. 82–282. MCCAIN ET AL. *v.* LYBRAND ET AL. D. C. S. C. [Probable jurisdiction noted, 462 U. S. 1130.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

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. to reconsider order denying motion for leave to participate in oral argument as *amici curiae* [463 U. S. 1235] denied.

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 Asian American Legal Defense and Education Fund et al. for leave to file a brief as *amici curiae* granted.

No. 82–1031. JEFFERSON PARISH HOSPITAL DISTRICT NO. 2 ET AL. *v.* HYDE. C. A. 5th Cir. [Certiorari granted, 460 U. S.

1021.] Motion of American Society of Anesthesiologists, Inc., for leave to file out-of-time motion for leave to participate in oral argument as *amicus curiae* and for divided argument denied.

No. 82–1074. AMERICAN CAST IRON PIPE CO. *v.* PETTWAY ET AL. C. A. 11th Cir. Motion of the parties to defer consideration of the petition for writ of certiorari granted.

No. 82–1135. ESTELLE, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS *v.* WIGGINS. C. A. 5th Cir. [Certiorari granted, 459 U. S. 1199.] Motion of respondent *pro se* for leave to file supplemental brief on the merits granted.

No. 82–1150. ELLIS ET AL. *v.* BROTHERHOOD OF RAILWAY, AIRLINE & STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS & STATION EMPLOYES ET AL. C. A. 9th Cir. [Certiorari granted, 460 U. S. 1080.] Motion of State Bar of California for leave to file a brief as *amicus curiae* granted.

No. 82–1186. TRANS WORLD AIRLINES, INC. *v.* FRANKLIN MINT CORP. ET AL.; and

No. 82–1465. FRANKLIN MINT CORP. ET AL. *v.* TRANS WORLD AIRLINES, INC. C. A. 2d Cir. [Certiorari granted, 462 U. S. 1118.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 82–1213. NEW YORK *v.* QUARLES. Ct. App. N. Y. [Certiorari granted, 461 U. S. 942.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 82–1253. SOLEM, WARDEN, SOUTH DAKOTA STATE PENITENTIARY, ET AL. *v.* BARTLETT. C. A. 8th Cir. [Certiorari granted, 461 U. S. 956.] Motion of Dewey County, South Dakota, et al. for leave to participate in oral argument as *amici curiae* and for divided argument granted. Request for additional time for oral argument denied.

No. 82–1260. COPPERWELD CORP. ET AL. *v.* INDEPENDENCE TUBE CORP. C. A. 7th Cir. [Certiorari granted, 462 U. S. 1131.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted, and 10 minutes of petitioners' time for oral argument is allotted for that purpose. JUSTICE WHITE took no part in the consideration or decision of this motion.

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, 461 U. S. 925.] Motion of respondents for divided argument denied.

No. 82–1474. HOOVER ET AL. *v.* RONWIN ET AL. C. A. 9th Cir. [Certiorari granted, 461 U. S. 926.] Motions of National Conference of Bar Examiners and State Bar of California for leave to file briefs as *amici curiae* granted. JUSTICE O'CONNOR took no part in the consideration or decision of these motions.

No. 82–1554. STRICKLAND, SUPERINTENDENT, FLORIDA STATE PRISON, ET AL. *v.* WASHINGTON. C. A. 11th Cir. [Certiorari granted, 462 U. S. 1105.] Motion of Washington Legal Foundation for leave to file a brief as *amicus curiae* granted.

No. 82–1591. RUCKELSHAUS, ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY *v.* NATURAL RESOURCES DEFENSE COUNCIL, INC., ET AL. C. A. D. C. Cir. [Certiorari granted, 461 U. S. 956.] Motion of American Gas Association for leave to file a brief as *amicus curiae* granted.

No. 82–1651. NIX, WARDEN OF THE IOWA STATE PENITENTIARY *v.* WILLIAMS. C. A. 8th Cir. [Certiorari granted, 461 U. S. 956.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 82–1711. COLORADO *v.* QUINTERO. Sup. Ct. Colo. [Certiorari granted, 463 U. S. 1206.] Motion of Appellate Committee of the California District Attorneys Association et al. for leave to file a brief as *amici curiae* granted.

No. 82–1770. NATIONAL ENQUIRER, INC. *v.* SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES (JONES ET AL., REAL PARTIES IN INTEREST), 462 U. S. 1144. Respondent Jones is requested to file a response to the petition for rehearing within 30 days.

No. 82–2157. CENTRAL STATES, SOUTHEAST & SOUTHWEST AREAS PENSION FUND, ET AL. *v.* CENTRAL TRANSPORT, INC., ET AL. C. A. 6th Cir. Motions of Arthur Young & Co., Bricklayers Fringe Benefit Funds-Metropolitan Area et al., and National Coordinating Committee for Multiemployer Plans for leave to file

briefs as *amici curiae* granted. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 82–1876. FOREMOST PRO COLOR, INC. *v.* EASTMAN KODAK CO. C. A. 9th Cir.;

No. 82–1888. VOLKSWAGENWERK A. G. *v.* FALZON ET AL., INDIVIDUALLY AND AS NEXT FRIENDS OF FALZON ET AL. Sup. Ct. Mich.;

No. 82–1899. TRANS WORLD AIRLINES, INC. *v.* NEW YORK STATE HUMAN RIGHTS APPEAL BOARD ET AL. Ct. App. N. Y.;

No. 82–1938. CALIFORNIA ET AL. *v.* STANDARD OIL COMPANY OF CALIFORNIA ET AL. C. A. 9th Cir.; and

No. 82–2128. AMERICAN TELEPHONE & TELEGRAPH CO. ET AL. *v.* LITTON SYSTEMS, INC., ET AL. C. A. 2d Cir. The Solicitor General is invited to file briefs in these cases expressing the views of the United States.

No. 82–6502. IN RE RUSH, 462 U. S. 1117. Motion of petitioner to reconsider order denying leave to proceed *in forma pauperis* denied.

No. 82–6702. GANEY *v.* SAFRON ET AL., 463 U. S. 1205. Motion of petitioner to reconsider order denying leave to proceed *in forma pauperis* denied.

No. 82–6854. IN RE NAKAGAWA. C. A. 10th Cir. Petition for writ of common-law certiorari denied.

No. 82–6883. IN RE SMITH;

No. 82–6900. IN RE TIMSON;

No. 82–6901. IN RE PAVILONIS;

No. 82–6983. IN RE COURTNEY; and

No. 83–5094. IN RE GIBSON. Petitions for writs of mandamus denied.

No. 82–6816. IN RE MCDONALD; and

No. 82–6857. IN RE SIMS. Petitions for writs of mandamus and/or prohibition denied.

No. 83–89. IN RE THOMASSEN. Motion of petitioner to expedite consideration of the petition for writ of mandamus denied. Petition for writ of mandamus denied.

No. 82–6887. IN RE HALLSTROM; and

No. 82–6999. IN RE DEARING. Petitions for writs of prohibition denied.

Probable Jurisdiction Noted

No. 82–1579. HAYFIELD NORTHERN RAILROAD CO., INC., ET AL. *v.* CHICAGO & NORTH WESTERN TRANSPORTATION CO. Appeal from C. A. 8th Cir. Probable jurisdiction noted. Reported below: 693 F. 2d 819.

No. 82–1913. GARCIA *v.* SAN ANTONIO METROPOLITAN TRANSIT AUTHORITY ET AL.; and

No. 82–1951. DONOVAN, SECRETARY OF LABOR *v.* SAN ANTONIO METROPOLITAN TRANSIT AUTHORITY ET AL. Appeals from D. C. W. D. Tex. Probable jurisdiction noted, cases consolidated, and a total of one hour allotted for oral argument. Reported below: 557 F. Supp. 445.

Certiorari Granted

No. 82–1721. SEATTLE TIMES CO., DBA THE SEATTLE TIMES, ET AL. *v.* RHINEHART ET AL. Sup. Ct. Wash. Certiorari granted. Reported below: 98 Wash. 2d 226, 654 P. 2d 673.

No. 82–1724. NEW YORK *v.* UPLINGER ET AL. Ct. App. N. Y. Certiorari granted. Reported below: 58 N. Y. 2d 936, 447 N. E. 2d 62.

No. 82–1766. SECURITIES INDUSTRY ASSN. ET AL. *v.* BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM ET AL. C. A. D. C. Cir. Certiorari granted. Reported below: 224 U. S. App. D. C. 21, 693 F. 2d 136.

No. 82–1845. COLORADO *v.* NUNEZ. Sup. Ct. Colo. Certiorari granted. Reported below: 658 P. 2d 879.

No. 82–1925. UNITED STATES DEPARTMENT OF STATE ET AL. *v.* WASHINGTON POST CO. C. A. D. C. Cir. Certiorari granted. Reported below: 222 U. S. App. D. C. 248, 685 F. 2d 698.

No. 82–1998. WATT, SECRETARY OF THE INTERIOR, ET AL. *v.* COMMUNITY FOR CREATIVE NON-VIOLENCE ET AL. C. A. D. C. Cir. Certiorari granted. Reported below: 227 U. S. App. D. C. 19, 703 F. 2d 586.

No. 83–56. HECKLER, SECRETARY OF HEALTH AND HUMAN SERVICES *v.* COMMUNITY HEALTH SERVICES OF CRAWFORD

COUNTY, INC., ET AL. C. A. 3d Cir. Certiorari granted. Reported below: 698 F. 2d 615.

No. 83–87. BOARD OF EDUCATION OF PARIS UNION SCHOOL DISTRICT NO. 95 ET AL. *v.* VAIL. C. A. 7th Cir. Certiorari granted. Reported below: 706 F. 2d 1435.

No. 83–96. LIMBACH, TAX COMMISSIONER OF OHIO *v.* HOOVEN & ALLISON CO. Sup. Ct. Ohio. Certiorari granted. Reported below: 4 Ohio St. 3d 169, 447 N. E. 2d 1295.

No. 83–219. MCDONALD *v.* CITY OF WEST BRANCH, MICHIGAN, ET AL. C. A. 6th Cir. Certiorari granted. Reported below: 709 F. 2d 1505.

No. 82–1795. CAPITAL CITIES CABLE, INC., ET AL. *v.* CRISP, DIRECTOR, OKLAHOMA ALCOHOLIC BEVERAGE CONTROL BOARD. C. A. 10th Cir. Certiorari granted. In addition to the questions presented by the petitioners, the parties are directed to brief and argue the following question: Whether the State's regulation of liquor advertising, as applied to out-of-state broadcast signals, is valid in light of existing federal regulation of cable broadcasting. Reported below: 699 F. 2d 490.

No. 82–1860. SCHNEIDER MOVING & STORAGE CO. *v.* ROBBINS ET AL.; and

No. 82–1862. PROSSER'S MOVING & STORAGE CO. *v.* ROBBINS ET AL. C. A. 8th Cir. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. Reported below: 700 F. 2d 433.

No. 82–1988. TOWER, PUBLIC DEFENDER OF DOUGLAS COUNTY, OREGON, ET AL. *v.* GLOVER. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 700 F. 2d 556.

Certiorari Denied. (See also Nos. 82–1499, 82–1856, 82–1947, 82–2049, 82–2054, 82–2096, 82–2099, 82–2115, 82–2132, 82–6720, 82–6721, 82–6783, 82–6850, 82–6989, 83–19, 83–5072, 83–5199, 83–6, and 82–6854, *supra.*)

No. 82–1325. I.A.M. NATIONAL PENSION FUND *v.* ELSER ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 684 F. 2d 648.

No. 82–1450. IN RE SCHULMAN. C. A. 6th Cir. Certiorari denied. Reported below: 708 F. 2d 727.

No. 82–1486. CHEVRON CHEMICAL CO. *v.* GILMORE, JUDGE, UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN. C. A. 6th Cir. Certiorari denied.

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. Certiorari denied. Reported below: 693 F. 2d 817.

No. 82–1607. BUNKFELDT BROADCASTING CORP. *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 226 U. S. App. D. C. 210, 701 F. 2d 221.

No. 82–1635. LANIGAN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 707 F. 2d 1396.

No. 82–1636. BARNETT ET UX. *v.* FALVEY ET AL. Sup. Ct. Miss. Certiorari denied. Reported below: 423 So. 2d 132.

No. 82–1644. SWAIN *v.* LEHMAN, SECRETARY OF THE NAVY. C. A. D. C. Cir. Certiorari denied. Reported below: 226 U. S. App. D. C. 211, 701 F. 2d 222.

No. 82–1645. JULIUS GOLDMAN'S EGG CITY *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 697 F. 2d 1051.

No. 82–1667. LEACH *v.* UNITED STATES POSTAL SERVICE ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 698 F. 2d 250.

No. 82–1670. CHITIMACHA TRIBE OF LOUISIANA ET AL. *v.* HARRY L. LAWS CO., INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 690 F. 2d 1157.

No. 82–1676. SOVEREIGN NEWS CO. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 690 F. 2d 569.

No. 82–1685. MULTISTATE LEGAL STUDIES, INC. *v.* LADD, REGISTER OF COPYRIGHTS, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 692 F. 2d 478.

No. 82–1687. WUAGNEUX *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 683 F. 2d 1343.

No. 82–1692. ARGENTO ET AL. *v.* LENARD. C. A. 7th Cir. Certiorari denied. Reported below: 699 F. 2d 874.

No. 82–1698. NEVIN ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 696 F. 2d 1229.

No. 82–1713. FRAME ET AL. *v.* SOUTH BEND COMMUNITY SCHOOL CORP. ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 696 F. 2d 998.

No. 82–1725. MASSACHUSETTS *v.* GAGNON ET AL. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 387 Mass. 768, 443 N. E. 2d 407.

No. 82–1731. HERZFELD ET AL. *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO ET AL.;

No. 82–1732. BROWN ET AL. *v.* PARKER ET AL.; and

No. 82–1815. EKEN ET AL. *v.* INTERNATIONAL MINING EXCHANGE, INC., ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 699 F. 2d 503.

No. 82–1754. MARITIME INTERNATIONAL NOMINEES ESTABLISHMENT *v.* REPUBLIC OF GUINEA ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 224 U. S. App. D. C. 119, 693 F. 2d 1094.

No. 82–1760. HEALTH CARE PLAN OF NEW JERSEY, INC. *v.* HECKLER, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 707 F. 2d 1391.

No. 82–1767. HATTERAS, INC. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 698 F. 2d 1215.

No. 82–1768. COMMONWEALTH EDISON CO. *v.* GETTO. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 109 Ill. App. 3d 498, 440 N. E. 2d 934.

No. 82–1769. LAKEWOOD, OHIO, CONGREGATION OF JEHOVAH'S WITNESSES, INC. *v.* CITY OF LAKEWOOD, OHIO. C. A. 6th Cir. Certiorari denied. Reported below: 699 F. 2d 303.

No. 82–1781. WEBSTER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 709 F. 2d 1511.

No. 82–1785. CITADEL CORP. *v.* PUERTO RICO HIGHWAY AUTHORITY ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 695 F. 2d 31.

No. 82–1788. ALABAMA POWER CO. *v.* NUCLEAR REGULATORY COMMISSION ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 692 F. 2d 1362.

No. 82–1799. BURKE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 700 F. 2d 70.

No. 82–1805. JOHNSON COUNTY MEMORIAL HOSPITAL ET AL. *v.* HECKLER, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 7th Cir. Certiorari denied. Reported below: 698 F. 2d 1347.

No. 82–1806. HAWAIIAN INDEPENDENT REFINERY, INC. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 697 F. 2d 1063.

No. 82–1807. SHIELDS *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 698 F. 2d 987.

No. 82–1811. DESERT PALACE, INC. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 9th Cir. Certiorari denied. Reported below: 698 F. 2d 1229.

No. 82–1812. FORTNER *v.* NEBRASKA. Sup. Ct. Neb. Certiorari denied. Reported below: 213 Neb. xix.

No. 82–1814. CITY OF FORT LAUDERDALE, FLORIDA *v.* FARMER. Sup. Ct. Fla. Certiorari denied. Reported below: 427 So. 2d 187.

No. 82–1817. HARLAUX ET AL. *v.* HARLAUX. Sup. Ct. La. Certiorari denied. Reported below: 426 So. 2d 602.

No. 82–1820. DUERR *v.* OHIO; and

No. 82–6699. DUERR *v.* OHIO. Ct. App. Ohio, Hamilton County. Certiorari denied. Reported below: No. 82–1820, 8 Ohio App. 3d 396, 457 N. E. 2d 834; No. 82–6699, 8 Ohio App. 3d 404, 457 N. E. 2d 843.

No. 82–1823. WEST COAST MEDIA, INC. *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 224 U. S. App. D. C. 423, 695 F. 2d 617.

No. 82–1824. HIRSCHFELD ET AL. *v.* DREYER ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 692 F. 2d 763.

No. 82–1825. FLORIDA TILE CO., A DIVISION OF SIKES CORP. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 6th Cir. Certiorari denied. Reported below: 692 F. 2d 34.

No. 82–1826. BOND ET AL. *v.* GENERAL MOTORS CORP. ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 709 F. 2d 1499.

No. 82–1833. SANTIAGO *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 92 App. Div. 2d 618, 459 N. Y. S. 2d 953.

No. 82–1842. WRIGHT *v.* DEFENSE LOGISTICS AGENCY. C. A. 3d Cir. Certiorari denied. Reported below: 707 F. 2d 1398.

No. 82–1843. MERENA *v.* SATO, BUILDING INSPECTOR FOR THE CITY AND COUNTY OF HONOLULU, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 701 F. 2d 185.

No. 82–1844. CENTRAL NATIONAL BANK OF POTEAU, OKLAHOMA *v.* COAL WASHER RENTAL CORP. C. A. 10th Cir. Certiorari denied.

No. 82–1846. ANDREWS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 709 F. 2d 1495.

No. 82–1849. LEONARD B. HEBERT, JR. & CO., INC., ET AL. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 5th Cir. Certiorari denied. Reported below: 696 F. 2d 1120.

No. 82–1851. PENDLETON ET AL. *v.* UNITED PARCEL SERVICE ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 709 F. 2d 1506.

No. 82–1854. AVITZUR *v.* AVITZUR. Ct. App. N. Y. Certiorari denied. Reported below: 58 N. Y. 2d 108, 446 N. E. 2d 136.

No. 82–1855. INTERLOX PUNCH & DIE CORP. ET AL. *v.* INSILCO CORP. ET AL. Super. Ct. N. J., App. Div. Certiorari denied.

No. 82–1858. PALMER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 704 F. 2d 723.

No. 82–1864. 131.68 ACRES OF LAND, MORE OR LESS SITUATED IN ST. JAMES PARISH, LOUISIANA, ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 695 F. 2d 872.

No. 82–1867. BEN KOZLOFF, INC. *v.* WELLS FARGO BUSINESS CREDIT. C. A. 5th Cir. Certiorari denied. Reported below: 695 F. 2d 940.

No. 82–1869. LEWY ET AL. *v.* WEINBERGER ET AL.; and
No. 82–2098. COYNE ET AL. *v.* WEINBERGER ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 698 F. 2d 61.

No. 82–1871. TEXAS *v.* PLATORO LTD., INC. C. A. 5th Cir. Certiorari denied. Reported below: 695 F. 2d 893.

No. 82–1872. MESSNER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 694 F. 2d 726.

No. 82–1874. DEAKYNE *v.* DEPARTMENT OF THE ARMY CORPS OF ENGINEERS OF THE UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 701 F. 2d 271.

No. 82–1875. CARPET SEAMING TAPE LICENSING CORP. *v.* BEST SEAM, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 694 F. 2d 570.

No. 82–1880. NORRIS INDUSTRIES, INC. *v.* INTERNATIONAL TELEPHONE & TELEGRAPH CORP. ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 696 F. 2d 918.

No. 82–1881. DOE *v.* EXECUTIVE SECURITIES CORP., BY MACRAE, AS TRUSTEE. C. A. 2d Cir. Certiorari denied. Reported below: 702 F. 2d 406.

No. 82–1883. FEHLHABER, AS PERSONAL REPRESENTATIVE OF FEHLHABER *v.* FEHLHABER. C. A. 11th Cir. Certiorari denied. Reported below: 681 F. 2d 1015 and 702 F. 2d 81.

No. 82–1884. MORALES *v.* NEW YORK UNIVERSITY ET AL. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 91 App. Div. 2d 873, 458 N. Y. S. 2d 432.

No. 82–1886. BERRY *v.* BERGER. C. A. D. C. Cir. Certiorari denied.

No. 82–1892. HAYES OILFIELD CONSTRUCTION CO., INC. *v.* UNITED STATES FIDELITY & GUARANTY CO. C. A. 5th Cir. Certiorari denied. Reported below: 693 F. 2d 489.

No. 82–1893. CLARK, A MINOR, BY CLARK, ET AL. *v.* ARIZONA INTERSCHOLASTIC ASSN. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 695 F. 2d 1126.

No. 82–1894. ALDRICH *v.* KANSAS. Sup. Ct. Kan. Certiorari denied. Reported below: 232 Kan. 783, 658 P. 2d 1027.

No. 82–1897. FIRST CATHOLIC SLOVAK LADIES ASSN. *v.* EQUAL EMPLOYMENT OPPORTUNITY COMMISSION. C. A. 6th Cir. Certiorari denied. Reported below: 694 F. 2d 1068.

No. 82–1898. KONDRAT *v.* SCHAEFER ET AL. Ct. App. Ohio, Lake County. Certiorari denied.

No. 82–1900. SIANO *v.* JUSTICES OF MASSACHUSETTS ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 698 F. 2d 52.

No. 82–1901. SIANO *v.* UNITED STATES FIDELITY & GUARANTY CO. ET AL. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 388 Mass. 1102, 445 N. E. 2d 156.

No. 82–1903. O'BRIEN *v.* WILCOX & SCHLOSSER CO., L.P.A. Ct. App. Ohio, Franklin County. Certiorari denied.

No. 82–1904. WATSON ET AL. *v.* BARTLETT ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 701 F. 2d 171.

No. 82–1905. SUN CHEMICAL CORP., SUCCESSOR IN INTEREST BY MERGER TO KOLLSMAN INSTRUMENT CORP. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 698 F. 2d 1203.

No. 82–1906. LACLEDE GAS CO. *v.* OFFICE OF PUBLIC COUNSEL OF MISSOURI ET AL. Ct. App. Mo., Western Dist. Certiorari denied. Reported below: 645 S. W. 2d 39.

No. 82–1907. MISSISSIPPI POWER CO. *v.* MISSISSIPPI PUBLIC SERVICE COMMISSION ET AL. Sup. Ct. Miss. Certiorari denied. Reported below: 429 So. 2d 883.

No. 82–1908. CARDOSA ET AL. *v.* MORALES. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 82–1910. ANCHOR MOTOR FREIGHT, INC. *v.* INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, LOCAL UNION NO. 377, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 700 F. 2d 1067.

No. 82–1914. FALKOWSKI *v.* PERRY ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 691 F. 2d 510.

No. 82–1915. CALIFORNIA *v.* HARVIER ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 700 F. 2d 1217.

No. 82–1917. GARY AIRCRAFT CORP. *v.* UNITED STATES ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 698 F. 2d 775.

No. 82–1918. NORMAN ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 701 F. 2d 295.

No. 82–1919. ROWAN COS., INC., ET AL. *v.* MARATHON PIPELINE CO. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 699 F. 2d 240.

No. 82–1920. ALABAMA *v.* GORDON, JUDGE, CIRCUIT COURT OF MONTGOMERY (ELEY, REAL PARTY IN INTEREST). Ct. Crim. App. Ala. Certiorari denied.

No. 82–1921. KAUSHIVA *v.* HUTTER. Ct. App. D. C. Certiorari denied. Reported below: 454 A. 2d 1373.

No. 82–1923. CALIFORNIA *v.* CARROLL. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 140 Cal. App. 3d 135, 189 Cal. Rptr. 327.

No. 82–1927. FLORIDA *v.* GRAGG. Sup. Ct. Fla. Certiorari denied. Reported below: 429 So. 2d 1204.

No. 82–1929. EISENBEISS *v.* JARRELL ET AL. Ct. Sp. App. Md. Certiorari denied. Reported below: 52 Md. App. 677, 451 A. 2d 940.

No. 82–1931. MESIROW ET AL. *v.* PEPPERIDGE FARM, INC. C. A. 9th Cir. Certiorari denied. Reported below: 703 F. 2d 339.

No. 82–1932. BILLUPS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 692 F. 2d 320.

No. 82–1935. DEMYAN'S HOFBRAU, INC. *v.* INA UNDERWRITERS INSURANCE CO. C. A. 2d Cir. Certiorari denied. Reported below: 718 F. 2d 1085.

No. 82–1936. RODRIGUEZ *v.* FLOTA MERCANTE GRANCOLOMBIANA, S.A., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 703 F. 2d 1069.

No. 82–1939. DIXON *v.* DIXON. Sup. Ct. Ga. Certiorari denied.

No. 82–1942. HOFFMAN *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied.

No. 82–1943. JOSEPH GANN, INC. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 1st Cir. Certiorari denied. Reported below: 701 F. 2d 3.

No. 82–1945. OCEANIC CONTRACTORS, INC., ET AL. *v.* CORMIER. C. A. 5th Cir. Certiorari denied. Reported below: 696 F. 2d 1112.

No. 82–1948. CANTRELL *v.* ROSA, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF ROSA, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 705 F. 2d 1208.

No. 82–1949. SHAFF *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 695 F. 2d 1138.

No. 82–1950. CHURCH OF CHRIST OF COLLINSVILLE, OKLAHOMA, ET AL. *v.* GRAHAM, JUDGE OF THE FOURTEENTH JUDICIAL DISTRICT OF OKLAHOMA, ET AL. Sup. Ct. Okla. Certiorari denied.

No. 82–1952. BALK *v.* UNITED STATES INFORMATION AGENCY. C. A. D. C. Cir. Certiorari denied. Reported below: 227 U. S. App. D. C. 164, 704 F. 2d 1293.

No. 82–1953. PRIDE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 705 F. 2d 448.

No. 82–1954. ABADI *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 706 F. 2d 178.

No. 82–1956. MORNINGSTAR *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 428 So. 2d 220.

No. 82–1960. BRENNAN ET AL. *v.* CITY OF LOS ANGELES. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 138 Cal. App. 3d 114, 187 Cal. Rptr. 667.

No. 82–1962. STEELE *v.* LAMAR. C. A. 5th Cir. Certiorari denied. Reported below: 693 F. 2d 559 and 698 F. 2d 1286.

No. 82–1963. HERBERT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 698 F. 2d 981.

No. 82–1964. CONIGLIO *v.* WARDEN, CLINTON CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 729 F. 2d 1441.

No. 82–1965. WYNSHAW *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 697 F. 2d 85.

No. 82–1966. SIMUTIS, INDIVIDUALLY, AND AS CONSUL GENERAL OF REPUBLIC OF LITHUANIA AT NEW YORK, NEW YORK *v.* DANIUNAS ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 729 F. 2d 1443.

No. 82–1967. ZIRPOLO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 704 F. 2d 23.

No. 82–1968. ARKLA, INC., FORMERLY ARKANSAS LOUISIANA GAS CO. *v.* HALL ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 691 F. 2d 1184 and 700 F. 2d 218.

No. 82–1969. KLAMATH-LAKE PHARMACEUTICAL ASSN. *v.* KLAMATH MEDICAL SERVICE BUREAU ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 701 F. 2d 1276.

No. 82–1972. HOCHANADEL *v.* DETCO TRAILER, INC., ET AL. Ct. App. Kan. Certiorari denied. Reported below: 8 Kan. App. 2d xv, 656 P. 2d 801.

No. 82–1973. BRISTER ET AL. *v.* PARISH OF JEFFERSON, LOUISIANA, ET AL. Ct. App. La., 5th Cir. Certiorari denied. Reported below: 424 So. 2d 440.

No. 82–1978. SIMPSON *v.* PENNSYLVANIA ET AL. Pa. Commw. Ct. Certiorari denied. Reported below: 69 Pa. Commw. 120, 450 A. 2d 305.

No. 82–1979. WOODSIDE *v.* POSTMASTER GENERAL OF THE UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 709 F. 2d 1497.

No. 82–1980. SMITH *v.* HARMSEN ET AL.; and

No. 82–1982. SHANNON ET AL. *v.* HARMSEN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 693 F. 2d 932.

No. 82–1981. MONTEMAYOR ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 703 F. 2d 109.

No. 82–1985. COSOFF ET AL. *v.* RODMAN, AS TRUSTEE OF W. T. GRANT CO., BANKRUPT, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 699 F. 2d 599.

No. 82–1987. FERRIS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 700 F. 2d 1.

No. 82–1989. BRUMMER, PUBLIC DEFENDER OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA, ET AL. *v.* FLORIDA EX REL. SMITH, ATTORNEY GENERAL OF FLORIDA, ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 426 So. 2d 532.

No. 82–1991. SCHWARZ *v.* COASTAL RESOURCES MANAGEMENT ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 705 F. 2d 439.

No. 82–1992. ARTIC INTERNATIONAL, INC. *v.* MIDWAY MANUFACTURING CO. C. A. 7th Cir. Certiorari denied. Reported below: 704 F. 2d 1009.

No. 82–1995. NEMBHARD ET AL. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 709 F. 2d 1512.

No. 82–1996. CHASE FOUNDRY & MANUFACTURING CO. *v.* OHIO. Ct. App. Ohio, Franklin County. Certiorari denied. Reported below: 8 Ohio App. 3d 96, 456 N. E. 2d 528.

No. 82–1999. CHAVEZ *v.* SMITH, ATTORNEY GENERAL OF FLORIDA. C. A. 11th Cir. Certiorari denied. Reported below: 695 F. 2d 565.

No. 82–2000. GREEN *v.* GREEN ET AL. Super. Ct. N. J., App. Div. Certiorari denied.

No. 82–2001. VANDER JAGT ET AL. *v.* O'NEILL ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 226 U. S. App. D. C. 14, 699 F. 2d 1166.

No. 82–2002. H. J. JUSTIN & SONS, INC., DBA JUSTIN BOOT CO. *v.* DEUKMEJIAN, GOVERNOR OF CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 702 F. 2d 758.

No. 82–2004. NIBUNGCO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 707 F. 2d 1396.

No. 82–2009. DILL *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 699 F. 2d 18.

No. 82–2010. KUELLMAR ET UX. *v.* VILLAGE OF BROOKFIELD. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 110 Ill. App. 3d 1201, 454 N. E. 2d 1209.

No. 82–2012. EHLERS *v.* CITY OF DECATUR, GEORGIA. C. A. 11th Cir. Certiorari denied. Reported below: 696 F. 2d 1006.

No. 82–2014. SOUTH PARK INDEPENDENT SCHOOL DISTRICT *v.* UNITED STATES ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 699 F. 2d 1291.

No. 82–2018. MERRILL LYNCH, PIERCE, FENNER & SMITH INC. *v.* MALANDRIS. C. A. 10th Cir. Certiorari denied. Reported below: 703 F. 2d 1152.

No. 82–2020. HOVSEPIAN, AKA HUGHES *v.* NEFF, INDEPENDENT EXECUTOR OF THE ESTATE OF LUMMIS, ET AL. Ct. App. Tex., 14th Sup. Jud. Dist. Certiorari denied.

No. 82–2021. MARSH *v.* CITY OF OAKLAND. C. A. 9th Cir. Certiorari denied. Reported below: 705 F. 2d 467.

No. 82–2022. BEIL *v.* ILLINOIS. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 110 Ill. App. 3d 291, 442 N. E. 2d 291.

No. 82–2023. ASHE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 707 F. 2d 519.

No. 82–2024. EARLY ET AL. *v.* EASTERN TRANSFER ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 699 F. 2d 552.

No. 82–2025. TEAL *v.* MORRISON-KNUDSEN CO., INC. C. A. D. C. Cir. Certiorari denied. Reported below: 224 U. S. App. D. C. 161, 694 F. 2d 281.

No. 82–2026. WESTON *v.* BACHMAN ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 705 F. 2d 465.

No. 82–2027. SCHMIDT *v.* IOWA ET AL. C. A. 8th Cir. Certiorari denied.

No. 82–2029. FAKIER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 701 F. 2d 188.

No. 82–2031. CASE ET AL. *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 699 F. 2d 18.

No. 82–2032. NEDECZKY *v.* OHIO. Ct. App. Ohio, Greene County. Certiorari denied.

No. 82–2033. ASSOCIATED BUILDERS & CONTRACTORS, NORTHERN CALIFORNIA CHAPTER, ET AL. *v.* CARPENTERS VACATION & HOLIDAY TRUST FUND FOR NORTHERN CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 700 F. 2d 1269.

No. 82–2035. JACKSON *v.* HANDLEY ET AL. Sup. Jud. Ct. Me. Certiorari denied. Reported below: 456 A. 2d 852.

No. 82–2036. BERGMAN *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 706 F. 2d 319.

No. 82–2037. CASTANO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 696 F. 2d 1006.

No. 82–2038. SALSBURY, AS PARENT, NATURAL GUARDIAN, AND ADMINISTRATOR OF THE ESTATE OF SALSBURY *v.* ERIE COUNTY ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 707 F. 2d 1403.

No. 82–2039. O'NEILL *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 729 F. 2d 1440.

No. 82–2041. JOHNSON *v.* PEREZ, DIRECTOR, SOCIAL SERVICES AGENCY, ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 82–2043. WALSH *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 700 F. 2d 846.

No. 82–2044. WESTERN FOOD EQUIPMENT CO. *v.* FOSS AMERICA, INC. C. A. 9th Cir. Certiorari denied. Reported below: 696 F. 2d 1002.

No. 82–2045. COMMITTEE TO PRESERVE AMERICAN COLOR TELEVISION, AKA COMPACT, ET AL. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 706 F. 2d 1574.

No. 82–2046. UNITED TRANSPORTATION UNION *v.* SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY ET AL. Sp. Ct. R. R. R. A. Certiorari denied.

No. 82–2047. LATIN BELLY, LTD., ET AL. *v.* UNITED STATES ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 718 F. 2d 1084.

No. 82–2048. MEEKER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 701 F. 2d 685.

No. 82–2050. BOARD OF REGENTS OF THE UNIVERSITY SYSTEM OF GEORGIA *v.* LINCOLN. C. A. 11th Cir. Certiorari denied. Reported below: 697 F. 2d 928.

No. 82–2052. DEFEX *v.* PAN AMERICAN WORLD AIRWAYS, INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 729 F. 2d 1442.

No. 82–2055. BLANTON *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied. Reported below: 278 S. C. 597, 300 S. E. 2d 286.

No. 82–2057. LESIAK *v.* FERGUSON, AUDITOR OF THE STATE OF OHIO. Ct. App. Ohio, Cuyahoga County. Certiorari denied. Reported below: 4 Ohio App. 3d 244, 448 N. E. 2d 168.

No. 82–2060. FIDELITY CONSTRUCTION CO. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 700 F. 2d 1379.

No. 82–2062. CHICK KAM CHOO, INDIVIDUALLY, AND AS ADMINISTRATRIX OF THE ESTATE OF LEONG CHONG, ET AL. *v.* ESSO OIL CO. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 699 F. 2d 693.

No. 82–2063. AHMED ET AL. *v.* AMERICAN STEAMSHIP OWNERS MUTUAL PROTECTION & INDEMNITY ASSN., INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 701 F. 2d 824.

No. 82–2064. QUALITY FORD, INC., ET AL. *v.* FORD MOTOR CO. ET AL. C. A. 10th Cir. Certiorari denied.

No. 82–2065. RUST *v.* RUVOLO ET AL. Ct. App. Ohio, Lucas County. Certiorari denied.

No. 82–2066. SOUTHTRUST BANK OF ALABAMA, BIRMINGHAM *v.* VISA, U.S.A., INC. C. A. Fed. Cir. Certiorari denied. Reported below: 696 F. 2d 1371.

No. 82–2067. GALANTY *v.* CHRYSLER CORP. ET AL. Super. Ct. N. J., App. Div. Certiorari denied.

No. 82–2068. SUTTON *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 227 U. S. App. D. C. 18, 702 F. 2d 1206.

No. 82–2069. COX *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 696 F. 2d 1294.

No. 82–2071. DREY ET UX. *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 705 F. 2d 965.

No. 82–2073. DEMOS *v.* COMMERCIAL UNION INSURANCE CO., INC. C. A. 7th Cir. Certiorari denied. Reported below: 705 F. 2d 461.

No. 82–2074. CHARAPATA ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 701 F. 2d 186.

No. 82–2076. TOWNER ET AL. *v.* VANDERBILT UNIVERSITY ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 708 F. 2d 728.

No. 82–2078. HACKFORD ET AL. *v.* FIRST SECURITY BANK OF UTAH, N.A. C. A. 10th Cir. Certiorari denied.

No. 82–2080. HESS *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied. Reported below: 279 S. C. 14, 301 S. E. 2d 547.

No. 82–2081. OCEAN SANDS HOLDING CORP. ET AL. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 4th Cir. Certiorari denied. Reported below: 701 F. 2d 167.

No. 82–2084. PHILLIPPI ET UX. *v.* BECHTEL ASSOCIATES PROFESSIONAL CORP., D.C., ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 227 U. S. App. D. C. 18, 702 F. 2d 1206.

No. 82–2085. JOINT COUNCIL OF TEAMSTERS NO. 42 ET AL. *v.* NATIONAL LABOR RELATIONS BOARD ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 702 F. 2d 168.

No. 82–2086. DIRECTOR OF THE CALIFORNIA STATE DEPARTMENT OF SOCIAL SERVICES *v.* ZAPATA ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 137 Cal. App. 3d 858, 187 Cal. Rptr. 351.

No. 82–2087. BROWN *v.* CITY OF ATLANTA. Ct. App. Ga. Certiorari denied. Reported below: 165 Ga. App. 310, 299 S. E. 2d 101.

No. 82–2089. BEAUSANG ET AL. *v.* MULLEN. C. A. 8th Cir. Certiorari denied. Reported below: 705 F. 2d 971.

No. 82–2090. BISSETTE *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied. Reported below: 279 S. C. 98, 302 S. E. 2d 344.

No. 82–2093. BUDDE *v.* KENTRON HAWAII, LTD., ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 703 F. 2d 456.

No. 82–2097. LUIGI MARRE LAND & CATTLE CO. *v.* PACIFIC GAS & ELECTRIC CO. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 701 F. 2d 185.

No. 82–2101. CAMER ET AL. *v.* EIKENBERRY, ATTORNEY GENERAL OF WASHINGTON, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 703 F. 2d 574.

No. 82–2102. QUALITY PACKAGING SUPPLY CORP. ET AL. *v.* CITY OF ROCHESTER ET AL. Ct. App. N. Y. Certiorari denied. Reported below: 58 N. Y. 2d 316, 448 N. E. 2d 98.

No. 82–2103. UNIVERSAL RESTAURANTS, INC. *v.* FELLOWS. C. A. 5th Cir. Certiorari denied. Reported below: 701 F. 2d 447.

No. 82–2104. GRACE *v.* WESTERN CONTRACTING CORP. Ct. App. Mich. Certiorari denied.

No. 82–2106. LAMPKIN *v.* NORTH AMERICAN FINANCE CO. Sup. Ct. Miss. Certiorari denied. Reported below: 427 So. 2d 972.

No. 82–2108. PORTER *v.* UNITED STATES; and
No. 82–2121. ZANG *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 703 F. 2d 1186.

No. 82–2109. PB *v.* UNITED STATES ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 709 F. 2d 1494.

No. 82–2110. BEST *v.* EAGERTON ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 696 F. 2d 1282.

No. 82–2111. SHAPIRO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 699 F. 2d 1164.

No. 82–2112. RUIZ *v.* CRISTO REY COMMUNITY CENTER ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 709 F. 2d 1507.

No. 82–2114. FRANS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 697 F. 2d 188.

No. 82–2118. LASK ET AL. *v.* UNITED STATES ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 703 F. 2d 293.

No. 82–2119. FADELL *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 696 F. 2d 997.

No. 82–2122. THOMPSON ET AL. *v.* NELSON ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 709 F. 2d 1509.

No. 82–2123. PLACHTER ET AL. *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 709 F. 2d 1496.

No. 82–2126. MARRIOTT IN-FLITE SERVICES, A DIVISION OF MARRIOTT CORP. *v.* NATIONAL LABOR RELATIONS BOARD ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 729 F. 2d 1441.

No. 82–2127. MERTSCHING *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 704 F. 2d 505.

No. 82–2131. MILES ET AL. *v.* NEW YORK STATE TEAMSTERS CONFERENCE PENSION AND RETIREMENT FUND EMPLOYEE PENSION BENEFIT PLAN. C. A. 2d Cir. Certiorari denied. Reported below: 698 F. 2d 593.

No. 82–2133. MINCH *v.* CITY OF FARGO. Sup. Ct. N. D. Certiorari denied. Reported below: 332 N. W. 2d 71.

No. 82–2135. WAGNER *v.* COLORADO. Ct. App. Colo. Certiorari denied.

No. 82–2136. FREZZO BROTHERS, INC., ET AL. *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 703 F. 2d 62.

No. 82–2137. JBL ENTERPRISES, INC., ET AL. *v.* JHIRMACK ENTERPRISES, INC. C. A. 9th Cir. Certiorari denied. Reported below: 698 F. 2d 1011.

No. 82–2138. WOLFGRAM, NEXT FRIEND OF WOLFGRAM, ET AL. *v.* BOMBARDIER LTD. C. A. 6th Cir. Certiorari denied. Reported below: 705 F. 2d 460.

No. 82–2141. CHEREN *v.* BECHTEL INC. ET AL. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 90 App. Div. 2d 710, 455 N. Y. S. 2d 1015.

No. 82–2142. YEE *v.* YEE ET AL. Sup. Ct. Haw. Certiorari denied.

No. 82–2143. BURLINGTON NORTHERN INC., SUCCESSOR BY MERGER TO ST. LOUIS-SAN FRANCISCO RAILWAY CO. *v.* BAIR. Sup. Ct. Mo. Certiorari denied. Reported below: 647 S. W. 2d 507.

No. 82–2144. WOODRUFF ET UX. *v.* ANGUS, NEXT FRIEND OF ANGUS, ET AL. Ct. App. Ore. Certiorari denied. Reported below: 60 Ore. App. 546, 655 P. 2d 208.

No. 82–2145. HOLTON, CHIEF INVESTIGATOR, SELECT COMMITTEE ON AGING, U. S. HOUSE OF REPRESENTATIVES, ET AL. *v.* BENFORD. C. A. 4th Cir. Certiorari denied. Reported below: 707 F. 2d 504.

No. 82–2150. PLATT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 706 F. 2d 1498.

No. 82–2152. ST. JAMES HOSPITAL *v.* HECKLER, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 7th Cir. Certiorari denied. Reported below: 698 F. 2d 1337.

No. 82–2153. NATIONAL FOUNDATION FOR CANCER RESEARCH, INC. *v.* COUNCIL OF BETTER BUSINESS BUREAUS, INC. C. A. 4th Cir. Certiorari denied. Reported below: 705 F. 2d 98.

No. 82–2154. MONTGOMERY MALL LIMITED PARTNERSHIP *v.* GENERAL ELECTRIC CREDIT CORP. C. A. 10th Cir. Certiorari denied. Reported below: 704 F. 2d 1173.

No. 82–2155. ESCAMBIA COUNTY, FLORIDA, ET AL. *v.* MCMILLAN ET AL. C. A. 11th Cir. Certiorari before judgment denied.

No. 82–2158. WARREN *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 7th Cir. Certiorari denied. Reported below: 705 F. 2d 462.

No. 82–2159. B. D. INTERNATIONAL DISCOUNT CORP. *v.* CHASE MANHATTAN BANK, N.A. C. A. 2d Cir. Certiorari denied. Reported below: 701 F. 2d 1071.

No. 82–2160. SPARANO *v.* SECRETARY OF THE ARMY ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 709 F. 2d 1495.

No. 82–2161. HICKS *v.* APEX MARINE CORP. C. A. 4th Cir. Certiorari denied. Reported below: 705 F. 2d 443.

No. 82–2162. SAFECARD SERVICES, INC. *v.* DOW JONES & CO., INC., ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 705 F. 2d 445.

No. 82–2165. LEVINE ET AL. *v.* SILSDORF. Ct. App. N. Y. Certiorari denied. Reported below: 59 N. Y. 2d 8, 449 N. E. 2d 716.

No. 82–6186. DOBSON *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 449 A. 2d 1082.

No. 82–6255. SMITH, AKA EL-AMIN *v.* GOVERNMENT OF THE VIRGIN ISLANDS. C. A. 3d Cir. Certiorari denied. Reported below: 707 F. 2d 1395.

No. 82–6296. MOSCHIANO *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 695 F. 2d 236.

No. 82–6405. MCMANNIS *v.* MOHN, ACTING SUPERINTENDENT, WEST VIRGINIA PENITENTIARY. Sup. Ct. App. W. Va. Certiorari denied.

No. 82–6413. JULIAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 685 F. 2d 448.

No. 82–6428. FRANKLIN *v.* KROGER CO. C. A. 6th Cir. Certiorari denied. Reported below: 708 F. 2d 723.

No. 82–6450. HARRIS *v.* QUINLAN, WARDEN. C. A. 2d Cir. Certiorari denied. Reported below: 722 F. 2d 727.

No. 82–6485. BONDS *v.* WASHINGTON. Sup. Ct. Wash. Certiorari denied. Reported below: 98 Wash. 2d 1, 653 P. 2d 1024.

No. 82–6500. MINICK *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 455 A. 2d 874.

No. 82–6538. WRIGHT *v.* GRIFFIN, WARDEN. C. A. 10th Cir. Certiorari denied.

No. 82–6542. HAMPTON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 701 F. 2d 186.

No. 82–6562. LOPEZ *v.* NEW MEXICO. Ct. App. N. M. Certiorari denied. Reported below: 99 N. M. 385, 658 P. 2d 460.

No. 82–6564. SMITH *v.* MAGGIO, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 696 F. 2d 365.

No. 82–6570. KNIGHT *v.* JOHNSON ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 699 F. 2d 162.

No. 82–6589. COOK *v.* UNITED STATES DEPARTMENT OF LABOR. C. A. 9th Cir. Certiorari denied. Reported below: 688 F. 2d 669.

No. 82–6592. SMITH *v.* LOCKHART, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTIONS. C. A. 8th Cir. Certiorari denied. Reported below: 697 F. 2d 267.

No. 82–6600. MOLLOHAN *v.* WEST VIRGINIA. Sup. Ct. App. W. Va. Certiorari denied.

No. 82–6601. MATTESON *v.* OREGON STATE PENITENTIARY, CORRECTIONS DIVISION. Ct. App. Ore. Certiorari denied. Reported below: 60 Ore. App. 329, 653 P. 2d 1023.

No. 82–6604. DORSEY *v.* MAGGIO, WARDEN, LOUISIANA STATE PENITENTIARY. C. A. 5th Cir. Certiorari denied.

No. 82–6610. COLEMAN *v.* MCCARTHY, SUPERINTENDENT OF THE CALIFORNIA MEN'S COLONY. C. A. 9th Cir. Certiorari denied.

No. 82–6619. DAVID *v.* ATTORNEY GENERAL OF THE UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 699 F. 2d 411.

No. 82–6621. DEAVERS *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 109 Ill. App. 3d 1221, 451 N. E. 2d 1045.

No. 82–6636. POWELL *v.* U. S. BUREAU OF PRISONS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 695 F. 2d 868.

No. 82–6637. BLYDEN *v.* GOVERNMENT OF THE VIRGIN ISLANDS; and

No. 82–6790. GEORGE *v.* GOVERNMENT OF THE VIRGIN ISLANDS. C. A. 3d Cir. Certiorari denied. Reported below: 699 F. 2d 121.

No. 82–6655. FORD *v.* ISRAEL ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 701 F. 2d 689.

No. 82–6672. VANCE *v.* BORDENKIRCHER, WARDEN, WEST VIRGINIA STATE PENITENTIARY. C. A. 4th Cir. Certiorari denied. Reported below: 692 F. 2d 978.

No. 82–6676. HANNAN *v.* SECRETARY OF THE ARMY ET AL. C. A. 10th Cir. Certiorari denied.

No. 82–6678. EVERETT *v.* BEARD. C. A. 10th Cir. Certiorari denied.

No. 82–6682. HUDSON *v.* BRIERTON, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 699 F. 2d 917.

No. 82–6683. GREGORY *v.* IOWA. Sup. Ct. Iowa. Certiorari denied. Reported below: 327 N. W. 2d 218 and 331 N. W. 2d 140.

No. 82–6692. BORSARI *v.* FEDERAL AVIATION ADMINISTRATION. C. A. 2d Cir. Certiorari denied. Reported below: 699 F. 2d 106.

No. 82–6701. CLEMENTI *v.* SCULLY, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 722 F. 2d 727.

No. 82–6709. BORRELLI *v.* CICCITTO ET AL. C. A. 3d Cir. Certiorari denied.

No. 82–6712. HOWARD *v.* PAXSON ET AL. C. A. 5th Cir. Certiorari denied.

No. 82–6714. ARANGO *v.* NEW YORK. Ct. App. N. Y. Certiorari denied. Reported below: 58 N. Y. 2d 1116, 449 N. E. 2d 758.

No. 82–6716. ADAMSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 700 F. 2d 953.

No. 82–6723. LATCHIS *v.* COMMISSIONER OF INTERNAL REVENUE ET AL. C. A. 9th Cir. Certiorari denied.

No. 82–6727. VAN DYKE *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 110 Wis. 2d 741, 330 N. W. 2d 247.

No. 82–6730. CURTIS *v.* HECKEL, WARDEN, VANDALIA CORRECTIONAL CENTER. C. A. 7th Cir. Certiorari denied. Reported below: 705 F. 2d 462.

No. 82–6731. HOLLEMAN *v.* DUCKWORTH ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 700 F. 2d 391.

No. 82–6734. MILLER *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 82–6735. OWENS *v.* WAINWRIGHT, SECRETARY, DEPARTMENT OF OFFENDER REHABILITATION OF FLORIDA. C. A. 11th Cir. Certiorari denied. Reported below: 698 F. 2d 1111.

No. 82–6736. WRIGHT *v.* ASSOCIATES FINANCIAL SERVICES COMPANY OF OREGON, INC. Ct. App. Ore. Certiorari denied. Reported below: 59 Ore. App. 688, 651 P. 2d 1368.

No. 82–6737. KNAPP *v.* WISCONSIN. Sup. Ct. Wis. Certiorari denied. Reported below: 111 Wis. 2d 704, 333 N. W. 2d 729.

No. 82–6738. LUERA *v.* ESTELLE, DIRECTOR, TEXAS DEPARTMENT OF CORRECTION. Ct. Crim. App. Tex. Certiorari denied.

No. 82–6739. ARELLANES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 701 F. 2d 184.

No. 82–6742. ADKINS *v.* HOPPER, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 82–6744. PRASAD *v.* WASSAIC DEVELOPMENTAL CENTER ET AL. C. A. 2d Cir. Certiorari denied.

No. 82–6747. GIL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 694 F. 2d 670.

No. 82–6748. HARDING *v.* GARRISON, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 705 F. 2d 443.

No. 82–6751. SPINNEY *v.* MASSACHUSETTS. C. A. 1st Cir. Certiorari denied.

No. 82–6754. SUMLIN *v.* ENGLE ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 709 F. 2d 1508.

No. 82–6755. PALMER *v.* MINTZES, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 709 F. 2d 1506.

No. 82–6756. O'DILLON *v.* ZANT, WARDEN. Super. Ct. Ga., Butts County. Certiorari denied.

No. 82–6757. FRIEDMAN *v.* OHIO DEPARTMENT OF HEALTH. Sup. Ct. Ohio. Certiorari denied.

No. 82–6759. SALINAS ET AL. *v.* BRIER, POLICE CHIEF OF THE CITY OF MILWAUKEE. C. A. 7th Cir. Certiorari denied. Reported below: 695 F. 2d 1073.

No. 82–6760. RUDOLPH *v.* LOCKE ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 703 F. 2d 580.

No. 82–6761. LEE *v.* DEPARTMENT OF PERSONNEL OF THE CITY OF NEW YORK ET AL. Ct. App. N. Y. Certiorari denied. Reported below: 58 N. Y. 2d 604, 445 N. E. 2d 654.

No. 82–6766. PAUL *v.* HENDERSON, SUPERINTENDENT OF AUBURN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 698 F. 2d 589.

No. 82–6767. CHRISTENSON *v.* HEADLEY, SUPERINTENDENT OF BEDFORD HILLS CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 722 F. 2d 727.

No. 82–6770. BROWN *v.* MARSHALL. C. A. 6th Cir. Certiorari denied. Reported below: 704 F. 2d 333.

No. 82–6772. GUY *v.* UNITED STATES POSTAL SERVICE ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 709 F. 2d 1502.

No. 82–6774. BRODNEX *v.* ESTELLE, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS. C. A. 5th Cir. Certiorari denied.

No. 82–6776. WEAVER *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 305 Pa. Super. 632, 450 A. 2d 1069.

No. 82–6779. HENRY *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 278 Ark. 478, 647 S. W. 2d 419.

No. 82–6781. SIMMONS *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 226 U. S. App. D. C. 98, 699 F. 2d 1250.

No. 82–6782. VUKSTA *v.* BETHLEHEM STEEL CORP. ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 707 F. 2d 1405.

No. 82–6784. STOKES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 698 F. 2d 1236.

No. 82–6785. RONAN *v.* BRIGGS ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 691 F. 2d 510.

No. 82–6786. PITTMAN *v.* LOUISIANA. Ct. App. La., 1st Cir. Certiorari denied. Reported below: 428 So. 2d 979.

No. 82–6787. GANT *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 649 S. W. 2d 30.

No. 82–6792. GANCI *v.* SCULLY, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY, ET AL. C. A. 2d Cir. Certiorari denied.

No. 82–6793. HALL *v.* CUYLER ET AL. C. A. 3d Cir. Certiorari denied.

No. 82–6801. PARKER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 699 F. 2d 177.

No. 82–6803. ROBINSON *v.* JOHNSON ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 701 F. 2d 167.

No. 82–6804. WINTREY *v.* BREED, T/A BREED & ASSOCIATES, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 696 F. 2d 987.

No. 82–6807. JACKSON *v.* MARYLAND. Ct. App. Md. Certiorari denied. Reported below: 295 Md. 530.

No. 82–6809. ROSE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 695 F. 2d 1356.

No. 82–6813. BROWN *v.* BALILES ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 707 F. 2d 505.

No. 82–6814. DOMINIQUE *v.* GREER, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 703 F. 2d 572.

No. 82–6817. MOTTOLA *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 92 App. Div. 2d 876, 459 N. Y. S. 2d 953.

No. 82–6819. NELL *v.* DUNHAM, SUPERINTENDENT, ARTHUR KILL CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 722 F. 2d 728.

No. 82–6820. STOKES *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 703 F. 2d 572.

No. 82–6822. V. J. S. *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 107 Ill. App. 3d 1171, 441 N. E. 2d 187.

No. 82–6824. AILLON *v.* CONNECTICUT. Sup. Ct. Conn. Certiorari denied. Reported below: 189 Conn. 416, 456 A. 2d 279.

No. 82–6826. FORBES *v.* WADDINGTON ET AL. Sup. Ct. Cal. Certiorari denied.

No. 82–6828. MCCARTHY *v.* MCCARTHY, SUPERINTENDENT, CALIFORNIA MEN'S COLONY. Sup. Ct. Cal. Certiorari denied.

No. 82–6829. WILLIAMS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 709 F. 2d 1512.

No. 82–6831. MARTINEZ *v.* WINANS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied.

No. 82–6833. LITTLETON *v.* WOLFF, WARDEN, NEVADA STATE PRISON, ET AL. C. A. 9th Cir. Certiorari denied.

No. 82–6835. LETENDRE *v.* FUGATE, JUDGE, LEE COUNTY GENERAL DISTRICT COURT, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 701 F. 2d 1093.

No. 82–6836. BICE-BEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 701 F. 2d 1086.

No. 82–6837. LACOUR ET AL. *v.* WEST ET AL. Ct. App. La., 3d Cir. Certiorari denied. Reported below: 412 So. 2d 135.

No. 82–6838. HALE *v.* OHIO. Ct. App. Ohio, Hamilton County. Certiorari denied.

No. 82–6841. HARGER *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 665 P. 2d 827.

No. 82–6842. HUANG *v.* BERNSTEIN ET AL. Ct. App. D. C. Certiorari denied.

No. 82–6843. KING *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 703 F. 2d 119.

No. 82–6844. MARATTY *v.* SOWDERS, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 709 F. 2d 1505.

No. 82–6845. VARELLA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 692 F. 2d 1352.

No. 82–6846. SCHULZ *v.* CALIFORNIA. App. Dept., Super. Ct. Cal., County of San Diego. Certiorari denied.

No. 82–6849. REESE *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 456 So. 2d 341.

No. 82–6851. BOWLES *v.* FARRIS ET AL. C. A. 10th Cir. Certiorari denied.

No. 82–6853. PRESLEY *v.* WAINWRIGHT, SECRETARY, DEPARTMENT OF OFFENDER REHABILITATION OF FLORIDA. C. A. 11th Cir. Certiorari denied. Reported below: 701 F. 2d 188.

No. 82–6855. BEDORTHA *v.* CUPP, SUPERINTENDENT, OREGON STATE PENITENTIARY. Sup. Ct. Ore. Certiorari denied. Reported below: 294 Ore. 491, 660 P. 2d 681.

No. 82–6856. DONALDSON *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 451 A. 2d 51.

No. 82–6860. BOYD *v.* SHAWNEE MISSION PUBLIC SCHOOLS, UNIFIED SCHOOL DISTRICT NO. 512, JOHNSON COUNTY, KANSAS. C. A. 10th Cir. Certiorari denied.

No. 82–6864. O'KELLEY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 701 F. 2d 758.

No. 82–6866. TONEMAN *v.* BURKHART. C. A. 4th Cir. Certiorari denied. Reported below: 707 F. 2d 510.

No. 82–6867. TRAPNELL *v.* O'BRIEN, WARDEN. C. A. 10th Cir. Certiorari denied.

No. 82–6868. JOHNSON *v.* PARKS, WARDEN, KENTUCKY STATE PENITENTIARY, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 709 F. 2d 1504.

No. 82–6869. BLACK *v.* BARANY ET AL. Sup. Ct. Ohio. Certiorari denied.

No. 82–6871. ANDERSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 704 F. 2d 117.

No. 82–6872. BRIDGES *v.* TEXAS. Ct. App. Tex., 12th Sup. Jud. Dist. Certiorari denied. Reported below: 656 S. W. 2d 505.

No. 82–6873. LEE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 695 F. 2d 515.

No. 82–6874. HARSHMAN ET AL. *v.* PETROLITE CORP. C. A. 5th Cir. Certiorari denied. Reported below: 701 F. 2d 946.

No. 82–6877. FEROLA *v.* MORAN. C. A. 1st Cir. Certiorari denied.

No. 82–6879. JOHNSON *v.* HECKLER, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 11th Cir. Certiorari denied.

No. 82–6880. KING *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 703 F. 2d 578.

No. 82–6882. THOMAS *v.* UNITED STEELWORKERS OF AMERICA, LOCAL 3754, AFL–CIO. C. A. 1st Cir. Certiorari denied.

No. 82–6884. LONG *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 82–6885. FREED *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 703 F. 2d 394.

No. 82–6886. ILLSLEY *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 705 F. 2d 440.

No. 82–6888. KAPLAN *v.* OFFICE OF THE U. S. ATTORNEY FOR THE DISTRICT OF NEW JERSEY ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 696 F. 2d 983.

No. 82–6891. HOWARD *v.* TAYLOR ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 705 F. 2d 443.

No. 82–6892. VETETO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 701 F. 2d 136.

No. 82–6893. REED *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 452 A. 2d 1173.

No. 82–6894. JAMES *v.* MARTIN, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 707 F. 2d 507.

No. 82–6895. GOODMAN, BY GOODMAN, HER FATHER AND NEXT FRIEND *v.* HECKLER, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 2d Cir. Certiorari denied.

No. 82–6896. LYMON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 709 F. 2d 1510.

No. 82–6897. HOLCOMB *v.* CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 698 F. 2d 1230.

No. 82–6898. WILLIAMS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 709 F. 2d 1513.

No. 82–6899. ROBINSON *v.* DAWSON, JUDGE, U. S. TAX COURT. C. A. 10th Cir. Certiorari denied.

No. 82–6904. JOHNSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 701 F. 2d 752.

No. 82–6905. HAMB *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 109 Ill. App. 3d 1211, 451 N. E. 2d 1039.

No. 82–6908. CALLAHAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 702 F. 2d 964.

No. 82–6911. LOGARUSIC *v.* UNITED STATES;
No. 82–6925. BAGARIC *v.* UNITED STATES; and
No. 82–6941. SUDAR *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 706 F. 2d 42.

No. 82–6914. HARVEY *v.* ANDERSON ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 707 F. 2d 513.

No. 82–6917. HAWKINS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 82–6918. WISE *v.* SMYSER, UNITED STATES MAGISTRATE. C. A. 3d Cir. Certiorari denied.

No. 82–6921. MASCHI *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 729 F. 2d 1440.

No. 82–6924. INGRAHAM *v.* MCCARTHY ET AL. C. A. 1st Cir. Certiorari denied.

No. 82–6926. DOWDY *v.* OHIO. Sup. Ct. Ohio. Certiorari denied.

No. 82–6927. GARCIA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 729 F. 2d 1440.

No. 82–6928. DODSON *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied.

No. 82–6929. FEARS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 82–6930. RANDALL *v.* POSNER ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 701 F. 2d 185.

No. 82–6931. MCCLURE *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 648 S. W. 2d 667.

No. 82–6932. MEADOR *v.* OHIO. Ct. App. Ohio, Summit County. Certiorari denied.

No. 82–6934. RAMON-PEREZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 703 F. 2d 1231.

No. 82–6936. VANDA *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 111 Ill. App. 3d 551, 444 N. E. 2d 609.

No. 82–6938. SPOTVILLE *v.* MAGGIO, WARDEN, LOUISIANA STATE PENITENTIARY. C. A. 5th Cir. Certiorari denied.

No. 82–6940. WHALEN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 707 F. 2d 521.

No. 82–6943. ENGEL *v.* NEW YORK STATE HUMAN RIGHTS APPEAL BOARD ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 722 F. 2d 727.

No. 82–6944. ENGEL *v.* NEW YORK STATE HUMAN RIGHTS APPEAL BOARD ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 742 F. 2d 1434.

No. 82–6947. BOTHMAN *v.* ENGLE. C. A. 6th Cir. Certiorari denied. Reported below: 709 F. 2d 1499.

No. 82–6948. ESTRADA-RAMIREZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 707 F. 2d 519.

No. 82–6949. VICCARONE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 705 F. 2d 460.

No. 82–6951. O'CONNELL *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 91 App. Div. 2d 1209, 458 N. Y. S. 2d 967.

No. 82–6952. SANDERS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 709 F. 2d 1511.

No. 82–6953. SPARKS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 716 F. 2d 906.

No. 82–6954. BILLINGS *v.* PANNUCCI, CIRCUIT JUDGE, MUSKEGON COUNTY, MICHIGAN, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 709 F. 2d 1499.

No. 82–6955. JONES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 711 F. 2d 1060.

No. 82–6958. RANDALL *v.* BAILEY ET AL. C. A. 9th Cir. Certiorari denied.

No. 82–6959. WALKER *v.* MAGGIO, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 703 F. 2d 555.

No. 82–6961. MCMINN *v.* MARSHALL; and MCMINN *v.* SEITER. Sup. Ct. Ohio. Certiorari denied.

No. 82–6962. BATCH *v.* BETTIS, JUDGE, ET AL. C. A. 6th Cir. Certiorari denied.

No. 82–6963. HICKS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 700 F. 2d 181.

No. 82–6964. STARLING *v.* ESTELLE, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS. C. A. 5th Cir. Certiorari denied. Reported below: 707 F. 2d 513.

No. 82–6965. MUHAMMAD *v.* UNITED STATES ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 709 F. 2d 1493.

No. 82–6966. WONG *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 703 F. 2d 65.

No. 82–6967. THOMAS *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 82–6968. MCLAUGHLIN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 701 F. 2d 169.

No. 82–6970. VAN BENS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 707 F. 2d 511.

No. 82–6971. HARTFORD *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 133 Ariz. 328, 651 P. 2d 856.

No. 82–6972. BARTLEY *v.* NEW JERSEY. Sup. Ct. N. J. Certiorari denied. Reported below: 93 N. J. 295, 460 A. 2d 691.

No. 82–6974. WHITESIDE *v.* PARKE, WARDEN, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 705 F. 2d 869.

No. 82–6976. FLUELLEN *v.* JAGO. C. A. 6th Cir. Certiorari denied. Reported below: 709 F. 2d 1502.

No. 82–6977. GAMEZ-RUBIO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 705 F. 2d 449.

No. 82–6980. LEWIS ET AL. *v.* DAVIS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 701 F. 2d 165.

No. 82–6984. BELL *v.* THIGPEN, COMMISSIONER, MISSISSIPPI DEPARTMENT OF CORRECTIONS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 692 F. 2d 999.

No. 82–6985. DEANDREA *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 416 So. 2d 522.

No. 82–6987. BAIRD *v.* WASHINGTON STATE DEPARTMENT OF SOCIAL AND HEALTH SERVICES. Ct. App. Wash. Certiorari denied. Reported below: 33 Wash. App. 1059.

No. 82–6988. LOVE *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 82–6993. MILLER *v.* CALIFORNIA. App. Dept., Super. Ct. Cal., County of Los Angeles. Certiorari denied.

No. 82–6994. FAULKNER *v.* KELLY, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied.

No. 82–6995. REID *v.* DEPARTMENT OF HEALTH AND MENTAL HYGIENE. Ct. Sp. App. Md. Certiorari denied. Reported below: 53 Md. App. 756.

No. 82–6996. MCCRARY-EL *v.* WYRICK. C. A. 8th Cir. Certiorari denied.

No. 82–6998. LASKI *v.* LASKI. Sup. Ct. N. J. Certiorari denied. Reported below: 93 N. J. 318, 460 A. 2d 708.

No. 82–7000. HARBIN *v.* GEORGIA. Ct. App. Ga. Certiorari denied. Reported below: 165 Ga. App. 631, 302 S. E. 2d 386.

No. 82–7001. JILES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 709 F. 2d 1496.

No. 82–7007. PAWLYSHYN *v.* SMITH, SUPERINTENDENT, ATTICA CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 729 F. 2d 1440.

No. 82–7008. HARRIS ET AL. *v.* KASTAMA ET AL. Sup. Ct. Wash. Certiorari denied. Reported below: 98 Wash. 2d 765, 657 P. 2d 1388.

No. 82–7009. SOTO-DURAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 709 F. 2d 1519.

No. 82–7010. HERNANDEZ *v.* ESTELLE, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS. C. A. 5th Cir. Certiorari denied. Reported below: 703 F. 2d 555.

No. 82–7011. DANIELS *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 82–7012. SANCHEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 82–7016. RYAN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 711 F. 2d 1060.

No. 82–7017. FORBES ET AL. *v.* MUNICIPAL COURT OF LOS ANGELES JUDICIAL DISTRICT ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 82–7018. MURPH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 707 F. 2d 895.

No. 82–7020. BAKER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 711 F. 2d 1059.

No. 82–7021. MCKIBBINS *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 96 Ill. 2d 176, 449 N. E. 2d 821.

No. 82–7022. MULVILLE *v.* IOWA. Sup. Ct. Iowa. Certiorari denied. Reported below: 335 N. W. 2d 903.

No. 82–7023. TOKAR ET AL. *v.* HEARNE ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 699 F. 2d 753.

No. 82–7024. TINNEN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 703 F. 2d 578.

No. 82–7025. PRIVETT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 706 F. 2d 317.

No. 82–7026. DOBBS ET UX. *v.* COBB E.N.T. ASSOCIATES, P.C., ET AL. Sup. Ct. Ga. Certiorari denied.

No. 82–7028. FRANKLIN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 704 F. 2d 1183.

No. 82–7031. ROBERTS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 722 F. 2d 729.

No. 82–7032. NEWTOP *v.* LEE. Super. Ct. Cal., City and County of San Francisco. Certiorari denied.

No. 82–7033. PANTER ET AL. *v.* MILLER ET AL. Ct. App. Ga. Certiorari denied. Reported below: 165 Ga. App. 266, 299 S. E. 2d 185.

No. 82–7034. EDWARDS *v.* PARKE, WARDEN, KENTUCKY STATE PENITENTIARY. C. A. 6th Cir. Certiorari denied. Reported below: 709 F. 2d 1501.

No. 82–7035. CARAN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 722 F. 2d 729.

No. 83–2. LEVENTHAL *v.* REISER ET AL. C. A. 1st Cir. Certiorari denied.

No. 83–5. POLSKIE LINIE LOTNICZE (LOT POLISH AIRLINES) *v.* ROBLES ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 705 F. 2d 85.

No. 83–7. KING ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 703 F. 2d 119.

No. 83–8. LEE *v.* NATIONAL CAN CORP. C. A. 7th Cir. Certiorari denied. Reported below: 699 F. 2d 932.

No. 83–10. PRESSROOM UNIONS-PRINTERS LEAGUE INCOME SECURITY FUND *v.* CONTINENTAL ASSURANCE CO. ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 700 F. 2d 889.

No. 83–11. JIMENA *v.* BOARD OF REVIEW OF THE UTAH INDUSTRIAL COMMISSION ET AL. Sup. Ct. Utah. Certiorari denied.

No. 83–12. BERGEN *v.* EDENFIELD, JUDGE, UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF GEORGIA. C. A. 11th Cir. Certiorari denied. Reported below: 701 F. 2d 906.

No. 83–13. FLEURY ET AL. *v.* HARPER & ROW, PUBLISHERS, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 698 F. 2d 1022.

No. 83–14. STATE BOARD OF EQUALIZATION *v.* TRAILER TRAIN CO. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 697 F. 2d 860.

No. 83–15. SALSBURY, AS PARENT, NATURAL GUARDIAN, AND ADMINISTRATOR OF THE ESTATE OF SALSBURY *v.* SAINT VINCENT HOSPITAL ET AL. C. A. 3d Cir. Certiorari denied.

No. 83–16. COPENHAVER *v.* HARRIS ENTERPRISES, INC. C. A. 9th Cir. Certiorari denied. Reported below: 698 F. 2d 1229.

No. 83–17. RAJA ET VIR *v.* MICHAEL REESE HOSPITAL ET AL. Sup. Ct. Ill. Certiorari denied. Reported below: 95 Ill. 2d 193, 447 N. E. 2d 385.

No. 83–20. POWELL *v.* NIGRO ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 229 U. S. App. D. C. 142, 711 F. 2d 420.

No. 83–23. IREDELL MEMORIAL HOSPITAL, INC. *v.* HECKLER, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 4th Cir. Certiorari denied. Reported below: 699 F. 2d 196.

No. 83–25. COODY ET AL. *v.* LOUISIANA. Ct. App. La., 2d Cir. Certiorari denied.

No. 83–26. LAVENTHALL *v.* GENERAL DYNAMICS CORP. C. A. 8th Cir. Certiorari denied. Reported below: 704 F. 2d 407.

No. 83–31. FAIR GROUNDS CORP. *v.* PARI-MUTUEL CLERKS UNION OF LOUISIANA, LOCAL 328, AFFILIATED WITH THE SERVICE EMPLOYEES INTERNATIONAL UNION, AFL–CIO. C. A. 5th Cir. Certiorari denied. Reported below: 703 F. 2d 913.

No. 83–33. SCHWANECKE ET AL. *v.* HARRIS COUNTY HOSPITAL DISTRICT ET AL. Ct. App. Tex., 10th Sup. Jud. Dist. Certiorari denied.

No. 83–34. STOUFFER CORP. *v.* PRUDENTIAL INSURANCE COMPANY OF AMERICA ET AL. C. A. 6th Cir. Certiorari denied.

No. 83–36. VANN ET AL. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 709 F. 2d 1510.

No. 83–37. DAMICO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 714 F. 2d 125.

No. 83–38. SANTA CLARA VALLEY WATER DISTRICT ET AL. *v.* MARTINO ET UX. C. A. 9th Cir. Certiorari denied. Reported below: 703 F. 2d 1141.

No. 83–39. T.N.T. MARINE SERVICE, INC. *v.* WEAVER SHIPYARDS & DRYDOCKS, INC. C. A. 5th Cir. Certiorari denied. Reported below: 702 F. 2d 585.

No. 83–40. HEDLEY ET AL. *v.* TRANS WORLD AIRLINES, INC. C. A. 9th Cir. Certiorari denied. Reported below: 709 F. 2d 1516.

No. 83–41. LOCAL UNION NO. 141, SHEET METAL WORKERS INTERNATIONAL ASSN., ET AL. *v.* SANDMAN ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 705 F. 2d 865.

No. 83–42. HAGERSTOWN KITCHENS, INC. *v.* BOARD OF COUNTY COMMISSIONERS OF WASHINGTON COUNTY ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 707 F. 2d 506.

No. 83–44. SOLON BAPTIST TEMPLE, INC. *v.* CITY OF SOLON ET AL. Ct. App. Ohio, Cuyahoga County. Certiorari denied. Reported below: 8 Ohio App. 3d 347, 457 N. E. 2d 858.

No. 83–45. CARNICLE *v.* FOX, SHERIFF OF MORRIS COUNTY. C. A. 3d Cir. Certiorari denied. Reported below: 714 F. 2d 121.

No. 83–46. KIZZIER CHEVROLET CO., INC., OF SCOTTSBLUFF, NEBRASKA, ET AL. *v.* GENERAL MOTORS CORP., OLDSMOBILE DIVISION. C. A. 8th Cir. Certiorari denied. Reported below: 705 F. 2d 322.

No. 83–47. DICARLO *v.* A & W PRODUCTS CO., INC., ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 714 F. 2d 121.

No. 83–49. FRANK *v.* DAVIS, COMMISSIONER OF PARKS AND RECREATION OF NEW YORK CITY, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 718 F. 2d 1085.

No. 83–51. BONDED ELEVATOR, INC., ET AL. *v.* FIRST AMERICAN NATIONAL BANK OF NASHVILLE. C. A. 6th Cir. Certiorari denied. Reported below: 709 F. 2d 1502.

No. 83–52. TAYLOR ET UX. *v.* LAWSON MILK CO. ET AL. Ct. App. Ohio, Franklin County. Certiorari denied. Reported below: 8 Ohio App. 3d 161, 456 N. E. 2d 558.

No. 83–53. CHESAPEAKE & OHIO RAILWAY CO. *v.* SCHAAF. Ct. App. Mich. Certiorari denied. Reported below: 113 Mich. App. 544, 317 N. W. 2d 679.

No. 83–57. DAVIS *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 311 Pa. Super. 585, 458 A. 2d 258.

No. 83–58. PHILADELPHIA LIFT TRUCK CORP. *v.* TAYLOR MACHINE WORKS, INC. C. A. 3d Cir. Certiorari denied. Reported below: 709 F. 2d 1495.

No. 83–60. SMITH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 709 F. 2d 1511.

No. 83–62. JENKINS *v.* JENKINS. C. A. 10th Cir. Certiorari denied.

No. 83–68. WHITE *v.* WHITE. C. A. 9th Cir. Certiorari denied. Reported below: 707 F. 2d 521.

No. 83–69. UPJOHN CO. *v.* MAULDIN. C. A. 5th Cir. Certiorari denied. Reported below: 697 F. 2d 644.

No. 83–72. BRUNTY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 701 F. 2d 1375.

No. 83–74. TABONE *v.* POSNER ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 700 F. 2d 1243.

No. 83–76. CHILDREN *v.* BURTON ET AL. Sup. Ct. Iowa. Certiorari denied. Reported below: 331 N. W. 2d 673.

No. 83–77. ATLANTIC PURCHASERS, INC., ET AL. *v.* AIRCRAFT SALES, INC., ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 705 F. 2d 712.

No. 83–80. SMITH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 706 F. 2d 314.

No. 83–81. MAIORANO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 714 F. 2d 125.

No. 83–82. GOLDBERG *v.* WOODCREST NURSING HOME ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 706 F. 2d 70.

No. 83–83. ALVAREZ *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 649 S. W. 2d 613.

No. 83–85. EASTERN FOODS, INC. *v.* R. C. MCENTIRE & CO. C. A. 4th Cir. Certiorari denied. Reported below: 702 F. 2d 471.

No. 83–88. MCDONNELL DOUGLAS CORP. *v.* NORTHROP CORP. C. A. 9th Cir. Certiorari denied. Reported below: 705 F. 2d 1030.

No. 83–92. LARSEN *v.* KIRKHAM ET AL. C. A. 10th Cir. Certiorari denied.

No. 83–93. GEE *v.* FUNG ET AL. C. A. 9th Cir. Certiorari denied.

No. 83–94. S.S. NANCY LYKES ET AL. *v.* GENERAL ELECTRIC CO., INTERNATIONAL SALES DIVISION. C. A. 2d Cir. Certiorari denied. Reported below: 706 F. 2d 80.

No. 83–98. HUMPHREY *v.* CITY OF SHREVEPORT ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 705 F. 2d 448.

No. 83–99. VARKONYI, INDIVIDUALLY, AND DBA METAL RECYCLING CO. *v.* DONOVAN, SECRETARY OF LABOR. C. A. 5th Cir. Certiorari denied. Reported below: 703 F. 2d 555.

No. 83–100. CIANCAGLINI ET AL. *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 709 F. 2d 214.

No. 83–102. GRENADA BANK, DBA COAHOMA BANK *v.* WILLEY ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 705 F. 2d 176.

No. 83–104. TANGO *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 83–105. WAGMAN *v.* LEE. Ct. App. D. C. Certiorari denied. Reported below: 457 A. 2d 401.

No. 83–110. WILLIAMS ET AL. *v.* LADNER ET AL. Sup. Jud. Ct. Me. Certiorari denied. Reported below: 434 A. 2d 37.

No. 83–111. DROUILLARD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 711 F. 2d 1060.

No. 83–112. HOLWAY *v.* THORNTON ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 705 F. 2d 443.

No. 83–115. BRIECE *v.* BRIECE ET UX. C. A. 8th Cir. Certiorari denied. Reported below: 703 F. 2d 1045.

No. 83–117. KANSAS CITY SOUTHERN RAILWAY CO. *v.* FAULKENBERRY. Sup. Ct. Okla. Certiorari denied. Reported below: 661 P. 2d 510.

No. 83–121. HECK *v.* HECK. Sup. Ct. App. W. Va. Certiorari denied. Reported below: —— W. Va. ——, 301 S. E. 2d 158.

No. 83–126. MALACHOWSKI *v.* SILVERBERG, MARVIN & SWAIM, P.C., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 729 F. 2d 1444.

No. 83–130. MEADOWS ET AL. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 711 F. 2d 1060.

No. 83–133. WOO CHIN TONG *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 83–135. GIVENS *v.* CASTILLO ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 704 F. 2d 181.

No. 83–142. DIXON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 716 F. 2d 892.

No. 83–143. SULLIVAN, DBA COLUMBIA POLY PACK CO. *v.* TOWN OF VERNON, CONNECTICUT. Super. Ct. Conn., Tolland Jud. Dist. Certiorari denied.

No. 83–145. AMERICAN FAMILY LIFE ASSURANCE CO. *v.* HIAM, COMMISSIONER OF INSURANCE. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 388 Mass. 468, 446 N. E. 2d 1061.

No. 83–146. S & S MACHINERY CO. *v.* MASINEXPORTIMPORT ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 706 F. 2d 411.

No. 83–148. JOHNSON *v.* DISTRICT SCHOOL BOARD OF HERNANDO COUNTY, FLORIDA. C. A. 11th Cir. Certiorari denied. Reported below: 701 F. 2d 188.

No. 83–149. ROBINSON *v.* NEW MEXICO. Sup. Ct. N. M. Certiorari denied. Reported below: 99 N. M. 674, 662 P. 2d 1341.

No. 83–150. O'CONNOR, DIRECTOR OF INSURANCE OF ILLINOIS *v.* ORGAN & CO., INC. Ct. App. La., 5th Cir. Certiorari denied. Reported below: 428 So. 2d 1187.

No. 83–155. VEENKANT *v.* GURN ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 709 F. 2d 1512.

No. 83–157. VEENKANT *v.* WESLER ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 709 F. 2d 1512.

No. 83–158. MEMBERS OF THE JAMESTOWN SCHOOL COMMITTEE ET AL. *v.* SCHMIDT, COMMISSIONER OF EDUCATION OF RHODE ISLAND, ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 699 F. 2d 1.

No. 83–160. KRALL *v.* BETHEL PARK SCHOOL DISTRICT. Pa. Commw. Ct. Certiorari denied. Reported below: 67 Pa. Commw. 143, 445 A. 2d 1377.

No. 83–161. JOHNSON *v.* ARKANSAS. Ct. App. Ark. Certiorari denied. Reported below: 8 Ark. App. xvi.

No. 83–164. AMERICAN MOTORISTS INSURANCE CO. *v.* ZAITCHICK ET UX. C. A. 2d Cir. Certiorari denied. Reported below: 742 F. 2d 1441.

No. 83–168. CONSTRUCTION & GENERAL LABORERS UNION LOCAL 304 ET AL. *v.* PAUL E. IACONO STRUCTURAL ENGINEER, INC. C. A. 9th Cir. Certiorari denied. Reported below: 722 F. 2d 435.

No. 83–170. SPAULDING *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 434 So. 2d 419.

No. 83–182. SMITTY BAKER COAL CO., INC., ET AL. *v.* FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 226 U. S. App. D. C. 240, 701 F. 2d 976.

No. 83–183. LTV FEDERAL CREDIT UNION *v.* UMIC GOVERNMENT SECURITIES, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 704 F. 2d 199.

No. 83–187. TSANOS ET AL. *v.* DIVISION OF ADMINISTRATION, FLORIDA DEPARTMENT OF TRANSPORTATION. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 429 So. 2d 17.

No. 83–191. KUBIAK *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 704 F. 2d 1545.

No. 83–192. BOUCLIN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 703 F. 2d 577.

No. 83–194. BURTON *v.* PACIFIC FAR EAST LINES, INC. C. A. 9th Cir. Certiorari denied. Reported below: 703 F. 2d 574.

No. 83–197. KOCIAN *v.* GETTY REFINING & MARKETING CO. C. A. 3d Cir. Certiorari denied. Reported below: 707 F. 2d 748.

No. 83–199. KAPPAS, ADMINISTRATRIX OF THE ESTATE OF KAPPAS *v.* CHESTNUT LODGE, INC., ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 709 F. 2d 878.

No. 83–235. DMR CORP. ET AL. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 5th Cir. Certiorari denied. Reported below: 699 F. 2d 788.

No. 83–238. LOPERA-OCHOA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 707 F. 2d 520.

No. 83–242. PADUA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 707 F. 2d 513.

No. 83–266. FITTERER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 710 F. 2d 1328.

No. 83–275. ISAACS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 708 F. 2d 1365.

No. 83–287. FERNANDEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 704 F. 2d 592.

No. 83–298. FIGUEROA *v.* UNITED STATES; and
No. 83–5298. CANEL *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 708 F. 2d 894.

No. 83–5002. DILLON *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 433 So. 2d 533.

No. 83–5003. THOMPKINS *v.* MARSHALL. C. A. 6th Cir. Certiorari denied. Reported below: 709 F. 2d 1509.

No. 83–5004. NEWMAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 709 F. 2d 1519.

No. 83–5006. LAING *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 703 F. 2d 581.

No. 83–5007. TAYLOR *v.* QUICK. C. A. 2d Cir. Certiorari denied. Reported below: 729 F. 2d 1441.

No. 83–5008. ROBERTS *v.* MOORE ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 707 F. 2d 509.

No. 83–5009. RONDON-LIMONTA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 706 F. 2d 316.

No. 83–5010. GELB *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 700 F. 2d 875.

No. 83–5011. FOBES *v.* SUPERIOR COURT OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 83–5012. FRANEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 706 F. 2d 313.

No. 83–5013. CHILDRESS *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 4 Ohio St. 3d 217, 448 N. E. 2d 155.

No. 83–5015. WATERHOUSE *v.* OREGON. Ct. App. Ore. Certiorari denied. Reported below: 62 Ore. App. 12, 659 P. 2d 1013.

No. 83–5018. ARAMBULA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 709 F. 2d 1518.

No. 83–5020. CAVANAUGH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 707 F. 2d 511.

No. 83–5024. TRUSSELL *v.* ESTELLE, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS. C. A. 5th Cir. Certiorari denied. Reported below: 699 F. 2d 256.

No. 83–5031. LIPSCOMB *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 709 F. 2d 1504.

No. 83–5033. HUNTER *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 83–5034. RANKIN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 711 F. 2d 1060.

No. 83–5036. HOOVER *v.* LEE, SUPERINTENDENT, BRONX HOUSE OF DETENTION. C. A. 2d Cir. Certiorari denied. Reported below: 729 F. 2d 1440.

No. 83–5038. BRUCE *v.* UPPER EAST TENNESSEE HUMAN DEVELOPMENT AGENCY, INC., ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 709 F. 2d 1499.

No. 83–5041. DOCK *v.* SMITH ET AL. C. A. 10th Cir. Certiorari denied.

No. 83–5042. CARLSEN *v.* MORRIS, WARDEN, UTAH STATE PRISON. C. A. 10th Cir. Certiorari denied.

No. 83–5044. FLYGARE *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 32 Wash. App. 1019.

No. 83–5045. DAVENPORT *v.* ZIMMERMAN ET AL. C. A. 3d Cir. Certiorari denied.

No. 83–5046. GASTON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 705 F. 2d 449.

No. 83–5047. RICHARDSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 701 F. 2d 946.

No. 83–5048. PEPPER *v.* KAZUBOWSKI, COUNTY CLERK FOR THE COUNTY OF SANTA CLARA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 83–5050. KINNELL *v.* STEPHAN, ATTORNEY GENERAL OF KANSAS. C. A. 10th Cir. Certiorari denied.

No. 83–5052. COLEMAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 707 F. 2d 374.

No. 83–5055. LEVY *v.* DEPARTMENT OF REHABILITATIVE SERVICES OF VIRGINIA. C. A. 4th Cir. Certiorari denied. Reported below: 711 F. 2d 1050.

No. 83–5056. CHIAGO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 699 F. 2d 1012.

No. 83–5057. ALSTON *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 92 App. Div. 2d 752, 460 N. Y. S. 2d 970.

No. 83–5059. WOOD *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 83–5065. SAINTIL ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 705 F. 2d 415.

No. 83–5066. RYAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 711 F. 2d 1067.

No. 83–5068. COXWELL *v.* FORTNER, SUPERINTENDENT, AVON PARK CORRECTIONAL INSTITUTION, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 707 F. 2d 522.

No. 83–5069. OAKIE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 709 F. 2d 506.

No. 83–5070. LEVY *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 83–5071. PHIFER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 711 F. 2d 1060.

No. 83–5073. GONZALES *v.* NEW MEXICO. Ct. App. N. M. Certiorari denied. Reported below: 99 N. M. 734, 663 P. 2d 710.

No. 83–5074. BELL *v.* ESTELLE, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS. C. A. 5th Cir. Certiorari denied.

No. 83–5075. HARRIS *v.* LASTER ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 707 F. 2d 517.

No. 83–5076. JOHNSON *v.* LOUISIANA ET AL. C. A. 10th Cir. Certiorari denied.

No. 83–5078. MOREJON-ORTEGA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 708 F. 2d 857.

No. 83–5081. DAVIS *v.* MCKENZIE, WAKE COUNTY REGISTER OF DEEDS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 705 F. 2d 442.

No. 83–5082. TUTT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 704 F. 2d 1567.

No. 83–5084. MARQUEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 711 F. 2d 1066.

No. 83–5085. PIATKOWSKA *v.* VONS FOODMARKETS. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 83–5086. CASTANEDA-REYES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 703 F. 2d 522.

No. 83–5089. KAPPER *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 5 Ohio St. 3d 36, 448 N. E. 2d 823.

No. 83–5090. CAGNINA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 697 F. 2d 915.

No. 83–5091. JONES *v.* MISSISSIPPI RIVER GRAIN ELEVATOR CO. C. A. 5th Cir. Certiorari denied. Reported below: 703 F. 2d 108.

No. 83–5093. CHESSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 711 F. 2d 1051.

No. 83–5096. BUSTAMANTE *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 706 F. 2d 13.

No. 83–5097. NATION *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 701 F. 2d 31.

No. 83–5098. SCOTT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 701 F. 2d 1340.

No. 83–5099. BLACK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 711 F. 2d 1051.

No. 83–5101. LANDES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 704 F. 2d 152.

No. 83–5103. VALENZUELA *v.* OFFICE OF PERSONNEL MANAGEMENT. C. A. Fed. Cir. Certiorari denied. Reported below: 231 Ct. Cl. 907.

No. 83–5104. TORPY *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 706 F. 2d 319.

No. 83–5107. BROWN *v.* LUTHERAN HOSPITAL SOCIETY OF SOUTHERN CALIFORNIA, DBA SANTA MONICA HOSPITAL MEDICAL CENTER. C. A. 9th Cir. Certiorari denied.

No. 83–5110. LIPSCOMB *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 718 F. 2d 1106.

No. 83–5112. SOMMER *v.* DIXON ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 709 F. 2d 173.

No. 83–5113. WATTS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 679 F. 2d 903.

No. 83–5114. STEVENSON *v.* CONRAD. C. A. 8th Cir. Certiorari denied.

No. 83–5115. TYLER *v.* MAGGIO, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 705 F. 2d 448.

No. 83–5118. DODD *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 664 P. 2d 1047.

No. 83–5119. ROSARIO *v.* UNITED STATES; and
No. 83–5219. SHARPE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 714 F. 2d 146.

No. 83–5120. WOODSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 709 F. 2d 1519.

No. 83–5121. SAMUEL *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 705 F. 2d 463.

No. 83–5125. HELTON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 709 F. 2d 715.

No. 83–5126. LEWIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 703 F. 2d 119.

No. 83–5128. LEONARD *v.* ZIMMERMAN ET AL. C. A. 3d Cir. Certiorari denied.

No. 83–5129. SALMAN *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 9th Cir. Certiorari denied.

No. 83–5130. CROOKER *v.* INTERNAL REVENUE SERVICE. C. A. 1st Cir. Certiorari denied.

No. 83–5131. BURTON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 711 F. 2d 1060.

No. 83–5132. LOZANO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 709 F. 2d 1519.

No. 83–5133. DOYLE *v.* DELAWARE ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 707 F. 2d 1400.

No. 83–5134. KLAYER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 707 F. 2d 892.

No. 83–5135. MENICHINO *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 709 F. 2d 1510.

No. 83–5136. MCMURTREY *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 136 Ariz. 93, 664 P. 2d 637.

No. 83–5137. SMITH *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 83–5138. MENKES *v.* CITY OF NEW YORK ET AL. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 91 App. Div. 2d 654, 457 N. Y. S. 2d 99.

No. 83–5139. RUNTE *v.* HUNTER, U. S. DISTRICT JUDGE. C. A. 5th Cir. Certiorari denied.

No. 83–5142. FISHER *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 83–5143. HOLLAND *v.* GUEST QUARTERS. C. A. 4th Cir. Certiorari denied. Reported below: 707 F. 2d 507.

No. 83–5144. AARON *v.* NEW MEXICO. Sup. Ct. N. M. Certiorari denied.

No. 83–5150. DEAL *v.* WAINWRIGHT, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 83–5152. WILLIAMS ET AL. *v.* AIR TRANSPORT UNION LOCAL NO. 504 ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 729 F. 2d 1442.

No. 83–5155. GORDON *v.* ESTELLE, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS, ET AL. C. A. 5th Cir. Certiorari denied.

No. 83–5157. EDWARDS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 709 F. 2d 1496.

No. 83–5158. PIERCE *v.* VOLKSWAGEN OF AMERICA, INC. Sup. Ct. Ind. Certiorari denied.

No. 83–5159. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 707 F. 2d 511.

No. 83–5161. MARTIN *v.* MEACHUM, DIRECTOR, OKLAHOMA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 10th Cir. Certiorari denied.

No. 83–5164. ROBINSON *v.* BOYD. C. A. 4th Cir. Certiorari denied. Reported below: 707 F. 2d 510.

No. 83–5166. MOORE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 706 F. 2d 538.

No. 83–5167. HALL *v.* ALABAMA. C. A. 11th Cir. Certiorari denied. Reported below: 700 F. 2d 1333.

No. 83–5172. MYERS *v.* SPALDING, SUPERINTENDENT, WASHINGTON STATE PENITENTIARY, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 709 F. 2d 1517.

No. 83–5174. WEDDELL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 716 F. 2d 908.

No. 83–5175. ZERMAN *v.* JACOBS ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 729 F. 2d 1443.

No. 83–5180. JONES *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 707 F. 2d 1169.

No. 83–5182. FLEMING *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 665 P. 2d 1225.

No. 83–5185. POPPOS *v.* MCCAFFREY. Cir. Ct. Montgomery County, Md. Certiorari denied.

No. 83–5186. SMITH *v.* CLARK, CHIEF JUDGE, UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI. C. A. 8th Cir. Certiorari denied.

No. 83–5187. NEIL *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 83–5190. ESTLACK *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 711 F. 2d 1066.

No. 83–5191. INGRAHAM *v.* MAINE. Sup. Jud. Ct. Me. Certiorari denied. Reported below: 461 A. 2d 1054.

No. 83–5194. EVANS *v.* WAINWRIGHT, SECRETARY, DEPARTMENT OF OFFENDERS REHABILITATIVE SERVICE, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 711 F. 2d 1063.

No. 83–5196. MCNAIR *v.* ILLINOIS. App. Ct. Ill., 5th Dist. Certiorari denied. Reported below: 113 Ill. App. 3d 8, 446 N. E. 2d 577.

No. 83–5197. SELTZER *v.* PEACH ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 716 F. 2d 906.

No. 83–5200. WHAM *v.* UNITED STATES POSTAL SERVICE. C. A. 4th Cir. Certiorari denied. Reported below: 618 F. 2d 107.

No. 83–5201. GEIGER *v.* LEHMAN, SECRETARY OF THE NAVY. C. A. 4th Cir. Certiorari denied. Reported below: 707 F. 2d 506.

No. 83–5202. WHITE *v.* UNITED PARCEL SERVICE, INC. C. A. 11th Cir. Certiorari denied.

No. 83–5203. SAMMONS *v.* ROTROFF. Ct. App. Tenn. Certiorari denied. Reported below: 653 S. W. 2d 740.

No. 83–5205. BISHOP *v.* GANDY, DISTRICT MANAGER, SOCIAL SECURITY ADMINISTRATION. Sup. Ct. Ala. Certiorari denied. Reported below: 436 So. 2d 28.

No. 83–5207. MULLIGAN *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied.

No. 83–5208. CINELLI *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 389 Mass. 197, 449 N. E. 2d 1207.

No. 83–5210. EDWARDS *v.* DAVIS ET AL. C. A. 2d Cir. Certiorari denied.

No. 83–5211. NEACE *v.* KENTUCKY. Ct. App. Ky. Certiorari denied.

No. 83–5217. LOPEZ ET AL. *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 709 F. 2d 742.

No. 83–5218. WARE *v.* OWENS-ILLINOIS, INC. C. A. 11th Cir. Certiorari denied. Reported below: 703 F. 2d 581.

No. 83–5220. SIVRIGHT *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 714 F. 2d 143.

No. 83–5223. ALLEN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 83–5225. CLARK *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 83–5228. ALEXANDER *v.* ZEANAH ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 707 F. 2d 522.

No. 83–5230. MATTHEWS *v.* UNITED STATES; and
No. 83–5232. HOFFMAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 711 F. 2d 1066.

No. 83–5233. JAY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 716 F. 2d 893.

No. 83–5234. TILLMAN *v.* VAN NESS ET AL. Super. Ct. N. J., App. Div. Certiorari denied.

No. 83–5235. YEAGER *v.* WILKINSON, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 707 F. 2d 943.

No. 83–5236. ZERILLI *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 706 F. 2d 877.

No. 83–5239. PRICE *v.* MAGGIO, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 711 F. 2d 1053.

No. 83–5242. MCQUEEN *v.* BARBER ET AL. C. A. 11th Cir. Certiorari denied.

No. 83–5246. WARD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 701 F. 2d 946.

No. 83–5247. FARMER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 83–5248. WHEELING *v.* COMMISSIONER OF INTERNAL REVENUE SERVICE. C. A. 6th Cir. Certiorari denied. Reported below: 709 F. 2d 1512.

No. 83–5250. WHITEMAN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 716 F. 2d 893.

No. 83–5254. WRIGHT *v.* NEW YORK LIFE INSURANCE CO. C. A. 7th Cir. Certiorari denied.

No. 83–5255. PETTEE *v.* PURVIS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 714 F. 2d 132.

No. 83–5256. LAGNAS *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 229 Ct. Cl. 584.

No. 83–5257. WARNER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 705 F. 2d 463.

No. 83–5258. MCCORD *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied.

No. 83–5261. HOBSON *v.* U. S. PAROLE COMMISSION ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 714 F. 2d 146.

No. 83–5263. DRINKWINE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 714 F. 2d 143.

No. 83–5264. SANTIAGO-GONZALEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 711 F. 2d 1067.

No. 83–5269. OSTRER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 729 F. 2d 1441.

No. 83–5270. WARD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 707 F. 2d 520.

No. 83–5272. THERIAULT *v.* FEDERAL BUREAU OF PRISONS ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 714 F. 2d 145.

No. 83–5276. MOORE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 710 F. 2d 157.

No. 83–5297. HOLDEN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 714 F. 2d 134.

No. 83–5305. HUMPHEREY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 83–5307. BEEMBLOSSOM *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 714 F. 2d 147.

No. 82–1653. NEWMAN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE POWELL would grant certiorari. Reported below: 722 F. 2d 729.

No. 82–1682. JABARA *v.* WEBSTER, DIRECTOR OF THE FEDERAL BUREAU OF INVESTIGATION, ET AL. C. A. 6th Cir. Certiorari denied. JUSTICE BRENNAN would grant certiorari. Reported below: 691 F. 2d 272.

No. 82–1723. PYRAMID LAKE PAIUTE TRIBE OF INDIANS *v.* TRUCKEE-CARSON IRRIGATION DISTRICT ET AL. C. A. 9th Cir. Motion to intervene in order to file a petition for writ of certiorari granted. Certiorari denied. JUSTICE BRENNAN, JUSTICE MARSHALL, and JUSTICE BLACKMUN would grant certiorari. Reported below: 697 F. 2d 851.

No. 82–1793. ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD ET AL. *v.* LEWIS-WESTCO CO. Ct. App. Cal., 1st App. Dist. Motion of Wine & Spirits Wholesalers of California for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 136 Cal. App. 3d 829, 186 Cal. Rptr. 552.

No. 82–1822. QUILICI *v.* VILLAGE OF MORTON GROVE ET AL.;
No. 82–1930. REICHERT ET AL. *v.* VILLAGE OF MORTON GROVE ET AL.; and
No. 82–1934. STENGL ET AL. *v.* VILLAGE OF MORTON GROVE ET AL. C. A. 7th Cir. Motion of Handgun Control, Inc., for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 695 F. 2d 261.

No. 82–1829. CALLAHAN *v.* YOUNG. C. A. 1st Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 700 F. 2d 32.

No. 82–1896. TEXAS *v.* GARZA. Ct. Crim. App. Tex. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 658 S. W. 2d 152.

No. 82–1986. WASHINGTON COUNTY HOSPITAL ASSN., INC. *v.* MORRISON, ADMINISTRATRIX OF THE ESTATE OF MORRISON. C. A. 11th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 700 F. 2d 678.

No. 82–2156. HENDERSON, SUPERINTENDENT, AUBURN CORRECTIONAL FACILITY *v.* SILVERSTEIN. C. A. 2d Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 706 F. 2d 361.

No. 83–175. CATHOLIC HOME BUREAU *v.* DOE. C. A. 2d Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 709 F. 2d 782.

No. 82–1836. KEENE CORP. *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE BRENNAN took no part in the consideration or decision of this petition. Reported below: 700 F. 2d 836.

No. 82–1890. CINCINNATI CITY SCHOOL DISTRICT BOARD OF EDUCATION ET AL. *v.* RONCKER, ON BEHALF OF RONCKER. C. A. 6th Cir. Motion of National School Boards Association for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 700 F. 2d 1058.

No. 82–2034. ASTILLEROS ESPANOLES, S.A. *v.* STANDARD OIL CO. (INDIANA) ET AL. C. A. 7th Cir. Certiorari denied. JUSTICE WHITE and JUSTICE STEVENS took no part in the consideration or decision of this petition. Reported below: 699 F. 2d 909.

No. 82–2051. GIDDINGS & LEWIS MACHINE TOOL CO. *v.* POLLAK, JUDGE, UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA, ET AL. C. A. 3d Cir. Motion of respondents John and Patricia Trapanese for damages denied. Certiorari denied.

No. 82–2053. SINGLETON *v.* VIRGINIA ELECTRIC & POWER CO. C. A. 4th Cir. Certiorari denied. JUSTICE POWELL took no part in the consideration or decision of this petition. Reported below: 701 F. 2d 168.

No. 82–2105. McDOUGALL *v.* NORTH CAROLINA. Sup. Ct. N. C.;

No. 82–6697. SIMMONS *v.* ARKANSAS. Sup. Ct. Ark.;

No. 82–6733. MAGILL *v.* FLORIDA. Sup. Ct. Fla.;

No. 82–6741. HAYES *v.* ARKANSAS. Sup. Ct. Ark.;

No. 82–6771. FLAMER *v.* DELAWARE. Sup. Ct. Del.;

No. 82–6852. WILSON *v.* GEORGIA. Sup. Ct. Ga.;

No. 82–6865. MUHAMMAD *v.* FLORIDA. Sup. Ct. Fla.;

No. 82–6870. JEFFERS *v.* ARIZONA. Sup. Ct. Ariz.;

No. 82–6876. KUBAT *v.* ILLINOIS. Sup. Ct. Ill.;

No. 82–6881. FREE *v.* ILLINOIS. Sup. Ct. Ill.;

No. 82–6915. BASS *v.* ESTELLE, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS. C. A. 5th Cir.;

No. 82–6916. BUSH *v.* ALABAMA. Sup. Ct. Ala.;

No. 82–6922. DE LA ROSA *v.* TEXAS. Ct. Crim. App. Tex.;

No. 82–6923. FORD *v.* STRICKLAND, WARDEN, FLORIDA STATE PRISON, ET AL. C. A. 11th Cir.;

No. 82–6933. PRUETT *v.* MISSISSIPPI. Sup. Ct. Miss.;

No. 82–6937. PORTER *v.* FLORIDA. Sup. Ct. Fla.;

No. 82–6982. NARCISSE *v.* LOUISIANA. Sup. Ct. La.;

No. 82–6990. PETERSON *v.* VIRGINIA. Sup. Ct. Va.;

No. 83–5051. WILLIAMS *v.* NORTH CAROLINA. Sup. Ct. N. C.;

No. 83–5095. CONNER *v.* GEORGIA. Sup. Ct. Ga.;

No. 83–5145. ARMSTRONG *v.* FLORIDA. Sup. Ct. Fla.;

No. 83–5183. DAVIS *v.* OKLAHOMA. Ct. Crim. App. Okla.; and

No. 83–5227. ADAMSON *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: No. 82–2105, 308 N. C. 1, 301 S. E. 2d 308; No. 82–6697, 278 Ark. 305, 645 S. W. 2d 680; No. 82–6733, 428 So. 2d 649; No. 82–6741, 278 Ark. 211, 645 S. W. 2d 662; No. 82–6771, 490 A. 2d 104; No. 82–6852, 250 Ga. 630, 300 S. E. 2d 640; No. 82–6865, 426 So. 2d 533; No. 82–6870, 135 Ariz. 404, 661 P. 2d 1105; No. 82–6876, 94 Ill. 2d 437, 447 N. E. 2d 247; No. 82–6881, 94 Ill. 2d 378, 447 N. E. 2d 218; No. 82–6915, 696 F. 2d 1154 and 705 F. 2d 121; No. 82–6916, 431 So. 2d 563; No. 82–6922, 658 S. W. 2d 162; No. 82–6923, 696 F. 2d 804; No. 82–6933, 431 So. 2d 1101; No. 82–6937, 429 So. 2d 293; No. 82–6982, 426 So. 2d 118; No. 82–6990, 225 Va. 289, 302 S. E. 2d 520; No. 83–5051,

308 N. C. 47, 301 S. E. 2d 335; No. 83–5095, 251 Ga. 113, 303 S. E. 2d 266; No. 83–5145, 429 So. 2d 287; No. 83–5183, 665 P. 2d 1186; No. 83–5227, 136 Ariz. 250, 665 P. 2d 972.

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. 82–2058. NELSON, DBA NELSON HOUSE *v.* TUSCARORA INTERMEDIATE UNIT NO. 11. Sup. Ct. Pa. Motion of Pennsylvania for leave to intervene as a party respondent granted. Certiorari denied. Reported below: 500 Pa. 458, 457 A. 2d 1260.

No. 82–2075. ARIZONA *v.* YOUNG. Ct. App. Ariz. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this motion and this petition. Reported below: 135 Ariz. 437, 661 P. 2d 1138.

No. 82–2077. OLSEN ET AL. *v.* PROGRESSIVE MUSIC SUPPLY, INC., ET AL. C. A. 10th Cir. Motion of petitioners to consolidate case with No. 83–188, *Olsen* v. *CBS Musical Instruments*, denied. Motion of respondent Peavey Electronics Corp. for damages denied. Certiorari denied. Reported below: 703 F. 2d 432.

No. 82–2129. HAIDER, AS ADMINISTRATOR OF THE ESTATE OF HAIDER *v.* MCDONNELL DOUGLAS CORP. ET AL.; and

No. 82–2149. KAHL, SPECIAL ADMINISTRATOR OF THE ESTATE OF KAHL, ET AL. *v.* MCDONNELL DOUGLAS CORP. ET AL. C. A. 7th Cir. Certiorari denied. JUSTICE STEVENS took no part in the consideration or decision of these petitions. Reported below: 701 F. 2d 1189.

No. 82–2134. ALSIDE, INC., ET AL. *v.* WEINER, UNITED STATES DISTRICT JUDGE. C. A. 8th Cir. Certiorari denied. JUSTICE BLACKMUN took no part in the consideration or decision of this petition. Reported below: 705 F. 2d 980.

No. 82–2146. MASHPEE TRIBE *v.* NEW SEABURY CORP. ET AL. C. A. 1st Cir. Motion of petitioner to defer consideration of petition for writ of certiorari denied. Certiorari denied.

No. 82–6558. BAILEY *v.* DELAWARE. Sup. Ct. Del. Certiorari denied. JUSTICE BRENNAN and JUSTICE MARSHALL would grant certiorari. Reported below: 490 A. 2d 158.

No. 82–6591. WILSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. JUSTICE BRENNAN and JUSTICE MARSHALL would grant certiorari. Reported below: 690 F. 2d 1267.

No. 82–6642. NOVACK *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. JUSTICE BRENNAN and JUSTICE MARSHALL would grant certiorari. Reported below: 111 Wis. 2d 701, 332 N. W. 2d 312.

No. 82–6649. NUNLEY *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. JUSTICE BRENNAN and JUSTICE MARSHALL would grant certiorari. Reported below: 660 P. 2d 1052.

No. 82–6821. MCCLINNAHAN *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. JUSTICE BRENNAN and JUSTICE MARSHALL would grant certiorari. Reported below: 454 A. 2d 1340.

No. 82–6981. TEAGUE *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. JUSTICE BRENNAN and JUSTICE MARSHALL would grant certiorari. Reported below: 108 Ill. App. 3d 891, 439 N. E. 2d 1066.

No. 82–6775. GILLIARD *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 428 So. 2d 576.

JUSTICE MARSHALL, with whom JUSTICE BRENNAN joins, 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 vacate the judgment of the Supreme Court of Mississippi insofar as it left undisturbed the death sentence imposed in this case. *Gregg* v. *Georgia*, 428 U. S. 153, 231 (1976) (MARSHALL, J., dissenting). However, even if I believed that the death penalty could constitutionally be imposed under certain circumstances, I would grant certiorari and vacate the death sentence imposed here.

For the third time this year, this Court has refused to review a case in which an all-white jury has sentenced a Negro defendant to death after the prosecution used peremptory challenges to remove all Negroes from the jury. See *Miller* v. *Illinois* and *Perry*

v. *Louisiana* decided together with *McCray* v. *New York*, 461 U. S. 961 (1983) (MARSHALL, J., dissenting from denial of certiorari). The facts of each case follow a now-familiar pattern: For-cause challenges by both defense counsel and the prosecution leave an integrated jury panel. The prosecution then resorts to peremptory challenges to remove Negro members of the panel. Despite defense counsel efforts to show that the prosecution has excluded jurors on the basis of race, the trial court rules that defendant has failed to establish systematic exclusion in the manner required by this Court in *Swain* v. *Alabama*, 380 U. S. 202 (1965). The all-white jury proceeds to hear the case and sentence the Negro defendant to death.

The present case does not deviate from this pattern in any material respect. Petitioner, who is a Negro, pleaded guilty to killing Grady Chance during an armed robbery of Mr. Chance's store. In accordance with Miss. Code Ann. § 99–19–101 (Supp. 1983), a sentencing trial was then held. After for-cause challenges, the prosecution was presented a jury panel including seven Negroes. The prosecution peremptorily challenged the seven Negroes. After defense counsel exercised its peremptory challenges, the panel contained one Negro. The prosecution then used an additional peremptory challenge to remove the Negro. During a hearing held to consider petitioner's motion to quash the jury, the prosecutor took the stand, and offered reasons for three of his peremptory challenges but could not remember why he exercised the other five. Although the prosecutor had used peremptory challenges to remove all the Negro jurors and only the Negro jurors,[1] the trial court nevertheless denied petitioner's motion, and the Mississippi Supreme Court affirmed, relying on *Swain* v. *Alabama*, *supra*, and two of its own precedents that, in turn, had relied on *Swain*: *Gaines* v. *State*, 404 So. 2d 557, 560 (1981); *Coleman* v. *State*, 378 So. 2d 640, 645 (1979). An all-white jury then heard the evidence and sentenced petitioner to death.

Last Term, when the Court denied petitions for certiorari in the three cases mentioned above, I outlined my objections to the

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[1] The State contends that the prosecution did not peremptorily challenge all Negro jurors in the venire. According to the State, one Negro served as an alternate. The State, however, does not suggest that this juror ever actually served on the jury or participated in its decision to sentence petitioner to death.

Court's holding in *Swain* v. *Alabama*, and expressed my opinion that, regardless of *Swain*'s interpretation of the Equal Protection Clause, the use of peremptory challenges to exclude racial minorities violates a criminal defendant's Sixth and Fourteenth Amendment rights to be tried by a jury selected from a fair cross-section of the community. *McCray* v. *New York*, *supra*, at 966–970 (MARSHALL, J., dissenting); see *Taylor* v. *Louisiana*, 419 U. S. 522 (1975); *Duncan* v. *Louisiana*, 391 U. S. 145 (1968). I continue to hold these views and need not repeat them here.

I write today to address those of my colleagues who agree with me that the use of peremptory challenges in these cases presents important constitutional questions, but believe that this Court should postpone consideration of the issue until more State Supreme Courts and federal circuits have experimented with substantive and procedural solutions to the problem. Although I appreciate my colleagues' inclination to delay until a consensus emerges on how best to deal with misuse of peremptory challenges, I believe that for the Court to indulge that inclination on this occasion is inappropriate and ill-advised.

When Justice Brandeis originally analogized the States to laboratories in need of freedom to experiment, he was dissenting from a decision by the Court applying a now-discredited interpretation of the Due Process Clause to strike down an Oklahoma statute regulating the sale and distribution of ice. See *New State Ice Co.* v. *Liebmann*, 285 U. S. 262, 310–311 (1932). As Justice Brandeis recognized, an overly protective view of substantive due process unnecessarily stifles public welfare legislation at the state level. Since then, however, the power of the States-as-laboratories metaphor has propelled Justice Brandeis' concept far beyond the sphere of social and economic regulation. Now we find the metaphor employed to justify this Court's abstention from reaching an important issue involving the rights of individual defendants under the Federal Constitution.

When a majority of this Court suspects that such rights are being regularly abridged, the Court shrinks from its constitutional duty by awaiting developments in state or other federal courts. Because abuse of peremptory challenges appears to be most prevalent in capital cases, the need for immediate review in this Court is all the more urgent. If we postpone consideration of the issue much longer, petitioners in this and similar cases will be put to death before their constitutional rights can be vindicated. Under

the circumstances, I do not understand how in good conscience we can await further developments, regardless of how helpful those developments might be to our own deliberations.

Moreover, I have serious misgivings about my colleagues' assumption that many States will, in the foreseeable future, engage in meaningful reconsideration of the discriminatory use of peremptory challenges. In the area of individual rights, state courts traditionally have looked to the federal judiciary for leadership. When decisions of this Court have expanded personal liberties in an area, state judiciaries have followed and, upon occasion, interpreted state constitutional liberties to exceed those guaranteed by the Federal Constitution. But, conversely, when this Court has announced a clearly defined, but limited, federal constitutional protection for a particular right, the State Supreme Courts have been less willing to develop more generous doctrines under their own State Constitutions.

Constitutional limitations on prosecutorial use of peremptory challenges are a clear example of how a limiting precedent in this Court inhibits doctrinal development in the States. In 1965 in *Swain* v. *Alabama*, a majority of this Court held that the prosecution is free to use peremptory challenges to remove Negroes from the jury in any given case so long as the prosecution does not remove Negroes from juries "in case after case, whatever the circumstances, whatever the crime and whoever the defendant or victim." 380 U. S., at 223. Even though *Swain* v. *Alabama* has been roundly and regularly criticized by commentators, see sources cited in *McCray* v. *New York*, *supra*, at 964–965, n. 1 (MARSHALL, J., dissenting), in the 18 years since *Swain* was decided only two State Supreme Courts have interpreted their State Constitutions to provide criminal defendants greater protection against discriminatory use of peremptory challenges. *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).

Contrary to my colleagues' assumptions, these two recent decisions by the California and Massachusetts high courts have not inspired other State Supreme Courts to deviate from the rule of *Swain* and experiment with new remedies for peremptory challenge misuse. To my knowledge, in the five years since *Wheeler* and *Soares*, not a single State Supreme Court has imposed state

constitutional limits on peremptory challenges.[2] In fact, over the same period, at least 19 jurisdictions have considered the issue and, following *Swain*, reaffirmed their view that the exclusion of Negroes by peremptory challenges is constitutional in the absence of evidence of systematic exclusion.[3]

Mississippi is typical. Since 1979, the Mississippi Supreme Court has discussed peremptory challenges in four cases.[4] In all of the cases, the court's analysis of the issue is so cursory that it is possible to reproduce its discussions unabridged. In *Coleman* v. *State*, 378 So. 2d 640 (1979), the court wrote:

> "The appellant makes general allegations that the jury, composed of 11 whites and 1 black, was not a jury of his peers. His contention seems to be that the district attorney's action, in exercising 11 of his peremptory challenges against potential black jurors, was discriminatory.
>
> "The record is devoid of any evidence of any discriminatory pattern in the selection of the special venire, the regular ve-

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[2] The only state court that has even intimated that the issue is up for reconsideration was an appellate court in New Mexico. See *State* v. *Crespin*, 94 N. M. 486, 612 P. 2d 716 (App. 1981).

[3] See *Flowers* v. *State*, 402 So. 2d 1088, 1093 (Ala. Crim. App. 1981); *Beed* v. *State*, 271 Ark. 526, 530, 609 S. W. 2d 898, 903 (1980); *Doepel* v. *United States*, 434 A. 2d 449, 457–459 (D. C.), cert. denied, 454 U. S. 1037 (1981); *Neil* v. *State*, 433 So. 2d 51 (Fla. App. 1983) (question certified to Florida Supreme Court); *Blackwell* v. *State*, 248 Ga. 138, 281 S. E. 2d 599, 599–600 (1981); *People* v. *Williams*, 97 Ill. 2d 252, 454 N. E. 2d 220 (1983); *State* v. *Stewart*, 225 Kan. 410, 415–417, 591 P. 2d 166, 170–172 (1979); *State* v. *Jones*, 408 So. 2d 1285, 1290 (La. 1982); *Lawrence* v. *State*, 51 Md. App. 575, 444 A. 2d 478 (1982); *Gaines* v. *State*, 404 So. 2d 557, 560 (Miss. 1981); *State* v. *Johnson*, 616 S. W. 2d 846, 849 (Mo. App. 1981); *People* v. *McCray*, 57 N. Y. 2d 542, 549, 443 N. E. 2d 915, 919 (1982), cert. denied, 461 U. S. 961 (1983); *State* v. *Lynch*, 300 N. C. 534, 546–547, 268 S. E. 2d 161, 168 (1980); *Lee* v. *State*, 637 P. 2d 879, 881–882 (Okla. Crim. App. 1981); *Commonwealth* v. *Henderson*, 497 Pa. 23, 26–34, 438 A. 2d 951, 952–956 (1981); *State* v. *Ucero*, 450 A. 2d 809, 812–813 (R. I. 1982) (exclusion based on gender); *State* v. *Thompson*, 276 S. C. 616, 624, 281 S. E. 2d 216, 220 (1981); *Drew* v. *State*, 588 S. W. 2d 562 (Tenn. Crim. App. 1979); *State* v. *Grady*, 93 Wis. 2d 1, 10–11, 286 N. W. 2d 607, 611 (App. 1979). (The trend in recent state-court decisions was called to my attention by another recently filed petition. See Pet. for Cert. in *Teague* v. *Illinois*, O. T. 1983, No. 82–6981 (filed June 20, 1983), cert. denied, *ante*, p. 867.)

[4] In three of these cases, an all-white or predominantly white jury sentenced a Negro defendant to death.

nire, the excusing of jurors by the court, or the peremptory challenges exercised by the district attorney. This Court upheld a murder conviction where the State exercised its peremptory challenges to exclude all Negroes from the jury panel. *Irving* v. *State*, 228 So. 2d 266 (Miss. 1969), vacated as to death penalty, 408 U. S. 935 . . . (1972)."[5] *Id.*, at 645.

Next, in *Gaines* v. *State*, 404 So. 2d 557 (1981), the court wrote:

"Appellant claims that his Sixth and Fourteenth Amendment rights were violated when the prosecution exercised its peremptory challenges on only the black members of the jury venire. Furthermore, the defendant argues that, in the wake of such action, the trial court erred in not quashing the petit jury.

"The United States Supreme Court dealt with this issue in *Swain* v. *Alabama*, [380 U. S. 202 (1965)]. [Quotation omitted.]

"For the reasons stated in *Swain*, the motion to quash the jury was properly denied." *Id.*, at 560.

Then in *Hughes* v. *State*, 420 So. 2d 1060 (1982), the Mississippi Supreme Court said:

"[The victims] are white. The defendants are all black. They allege that the trial judge erred in permitting the state to exercise peremptory challenges so that no blacks sat on the jury. There is no claimed error as to the selection of the venire, or as to any challenge by the state for cause. There is no merit to this assignment. *Gaines* v. *State*, 404 So. 2d 557 (Miss. 1981)." *Id.*, at 1062.

Finally, the Mississippi Supreme Court discussed the problem in disposing of petitioner's appeal in this case:

"After completion of the panel, the appellant requested that the record reflect all persons peremptorily excused by the

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[5] In *Irving*, the Mississippi Supreme Court merely paraphrased an earlier opinion and said: "[T]he State is not required to accept jurors simply because they belong to the same ethnic group as the defendant. Swain v. Alabama, 380 U. S. 202 . . . (1965); Brown v. Allen, 344 U. S. 443 . . . (1953)." *Irving* v. *State*, 228 So. 2d, at 270 (paraphrasing *Shinall* v. *State*, 199 So. 2d 251 (Miss.), cert. denied, 389 U. S. 1014 (1967)). In both *Irving* and *Shinall*, all-white juries sentenced Negro defendants to death.

State were Negroes. Later, after selection of the alternate juror, and sequestration of the jury for the night, appellant filed a motion to quash the panel on that ground. The lower court overruled the motion and the appellant now asserts it was obvious those persons were excused from the jury solely on the basis of race in violation of the Sixth and Fourteenth Amendments in allowing systematic exclusion of Negroes from the jury.

"In the capital murder case of *Gaines* v. *State*, 404 So. 2d 557 (Miss. 1981), the same question was presented to this Court. Relying upon *Swain* v. *Alabama*, [380 U. S. 202 (1965)], the Court held that exercise of such challenges did not constitute error. *See also Coleman* v. *State*, 378 So. 2d 640 (Miss. 1979)." 428 So. 2d 576, 579 (1983).

Although the issue has arisen repeatedly over the past four years, the Mississippi Supreme Court has not reexamined its peremptory challenges under the State Constitution. On the contrary, the court has simply looked to the Federal Constitution, determined that *Swain* v. *Alabama* is still good law, and rejected all claims that the use of peremptory challenges to exclude members of a particular race from the jury is unconstitutional.

While this Court attends the Brandeisian experiments in a handful of state courts, criminal defendants in Mississippi and numerous other States have no legal remedy for what a majority of this Court agrees may well be a constitutional defect in the jury selection process. Under the circumstances, I cannot abide by further delay. I would grant the petition.[6]

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[6] The State argues that we should deny the petition because petitioner claims that the trial court denied him a hearing on the prosecutor's use of peremptory challenges, when in fact the trial court held a hearing on precisely this question. While the State is correct that this petition makes ambiguous references to the denial of a hearing, I interpret petitioner's basic claim to be that the prosecutor's actions in this case established a prima facie case of selective exclusion of jurors on the basis of race in violation of the Sixth and Fourteenth Amendments. Petitioner argues, and I agree, that once a defendant has made out such a prima facie case, the burden shifts to the prosecution to show that its peremptory challenges were not impermissibly motivated. This claim was made at trial, and preserved on appeal. See *McCray* v. *New York*, 461 U. S. 961, 969 (1983) (MARSHALL, J., dissenting).

No. 82–6960. CLARK *v.* MARSTON ET AL. Dist. Ct. App. Fla., 1st Dist. Motion of respondents for damages denied. Certiorari denied.

No. 83–27. ELIASEN *v.* GREEN BAY & WESTERN RAILROAD CO. ET AL. C. A. 7th Cir. Motion of respondents for damages denied. Certiorari denied. Reported below: 705 F. 2d 461.

No. 83–156. VEENKANT *v.* BLAKE ET AL.; and VEENKANT *v.* CORSIGLIA ET AL. C. A. 6th Cir. Motion of respondents Blake and Farrell for award of costs and damages denied. Certiorari denied. Reported below: 711 F. 2d 1061.

No. 83–163. SYRIA, DIRECTOR, DIVISION OF SOCIAL SERVICES, NORTH CAROLINA DEPARTMENT OF HUMAN RESOURCES, ET AL. *v.* ALEXANDER ET AL. C. A. 4th Cir. Motion of respondents for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 707 F. 2d 780.

No. 83–167. PFISTER *v.* AMERICAN AIRLINES, INC., ET AL. C. A. 9th Cir. Motion of petitioner to strike brief in opposition denied. Certiorari denied. Reported below: 698 F. 2d 1231.

No. 83–5304. NICKOL *v.* ZIMMERMAN ET AL. C. A. 3d Cir. Certiorari denied. JUSTICE BLACKMUN would grant certiorari.

Rehearing Denied

No. 81–6908. BARCLAY *v.* FLORIDA, 463 U. S. 939;

No. 82–401. RICE, DIRECTOR, DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL OF CALIFORNIA *v.* REHNER, 463 U. S. 713;

No. 82–1696. RASKY *v.* CITY OF CHICAGO ET AL., 462 U. S. 1119; and

No. 82–6080. BAREFOOT *v.* ESTELLE, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS, 463 U. S. 880. Petitions for rehearing denied.

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., 463 U. S. 545. Petitions of Fort McDowell Mohave-Apache Indian Community et al. and San Carlos Apache Tribe et al. for rehearing denied.

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., 463 U. S. 110. Petition of Pyramid Lake Paiute Tribe of Indians for rehearing denied.

No. 82–486. UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 610, AFL–CIO, ET AL. *v.* SCOTT ET AL., 463 U. S. 825. Motion for leave to file petition for rehearing denied. JUSTICE POWELL would grant this motion.

No. 82–6633. MCCLAIN *v.* ORR ET AL., 462 U. S. 1136. Motion for leave to file petition for rehearing denied.

OCTOBER 11, 1983

Appeals Dismissed

No. 82–2151. FRESH POND SHOPPING CENTER, INC. *v.* CALLAHAN ET AL. Appeal from Sup. Jud. Ct. Mass. dismissed for want of substantial federal question. Reported below: 388 Mass. 1051, 446 N. E. 2d 1060.

JUSTICE REHNQUIST, dissenting.

Appellant, Fresh Pond Shopping Center, Inc., signed a purchase agreement in June 1979 whereby it would acquire a six-unit apartment building located adjacent to some property it already owned. Appellant planned to demolish the building and pave over the lot to provide parking to a commercial tenant of the shopping center. Because the apartment units were rent-controlled rental housing, under the terms of Cambridge City Ordinance 926 (1979) appellant first had to obtain permission from the Cambridge Rent Control Board to remove the property from the rental housing market. Although at the time the removal permit was sought only one of the six units was occupied, the Board denied the permit.

The Superior Court for Middlesex County held that under the decision of the Massachusetts Supreme Judicial Court in *Flynn* v. *City of Cambridge*, 383 Mass. 152, 418 N. E. 2d 335 (1981), the restrictions on removing the apartments from the rental market in Cambridge imposed by Ordinance 926 were constitutional. The

decision of the Superior Court was affirmed by an equally divided Massachusetts Supreme Judicial Court. *Fresh Pond Shopping Center, Inc.* v. *Rent Control Board of Cambridge*, 388 Mass. 1051, 446 N. E. 2d 1060 (1983). I would note probable jurisdiction in this case because I believe the case presents important and difficult questions concerning the application of the Takings Clause of the Fifth Amendment, as made applicable to the States by the Fourteenth Amendment of the Constitution, which have not been decided before by this Court. They might be postponed or avoided if the case were here on certiorari, but the case is an appeal; we act on the merits whatever we do.

The primary feature of the Cambridge rent control statute, 1976 Mass. Acts, ch. 36, is to place virtually all residential rental property in Cambridge under control of the Cambridge Rent Control Board, whose members are appellees here. Owners of rent-controlled property are also prohibited from evicting tenants without first obtaining a certificate of eviction from the Rent Control Board. The statute limits issuance of eviction certificates to circumstances where tenants have committed certain improper acts. It preserves the landlord's right to obtain a certificate of eviction to recover possession of the property only for occupancy by the owner or certain of his family members, or if the property is to be removed from the housing market through demolition or otherwise.

Although the state enabling statute preserves in limited fashion a landlord's traditional right to evict a tenant in order to occupy a rental unit personally, Cambridge City Ordinance 926 eliminated the landlord's right to evict a tenant save when the Rent Control Board first issues a "removal" permit. Ordinance 926 delegates virtually unfettered discretion to the Board to determine whether to grant a removal permit. The Board may consider the benefits of denying removal to the tenants protected by rent control, the hardship upon existing tenants of the units sought to be removed, and the effect of removal on the proclaimed housing shortage in Cambridge. Nowhere does the ordinance suggest that these considerations be balanced against the landlord's right to put his property to other uses. In short, Ordinance 926 permits denying a "removal" permit in any situation.

The combined effect of the limitations imposed by the state enabling statute and Ordinance 926 is to deny appellant use of his property. Appellant, as a corporate entity, simply cannot occupy the remaining apartment for personal use. In effect, then, the

Rent Control Board has determined that until the remaining tenant decides to leave, appellant will be unable to vacate and demolish the building. In my view this deprives appellant of the use of its property in a manner closely analogous to a permanent physical invasion, like that involved in *Loretto* v. *Teleprompter Manhattan CATV Corp.*, 458 U. S. 419 (1982). In *Teleprompter* we were presented with the question whether a New York law that authorized a cable television company to install cable facilities on other persons' property without permission or effective compensation constituted a taking in violation of the Fifth and Fourteenth Amendments. Though the physical invasion was minor, we "conclude[d] that a permanent physical occupation authorized by government is a taking without regard to the public interests that it may serve." *Id.*, at 426. We called a permanent physical occupation of another's property "the most serious form of invasion of an owner's property interest." *Id.*, at 435.

As the Cambridge ordinance operates in this case, I fail to see how it works anything but a physical occupation of appellant's property. First, appellant's right to evict the tenant was limited by state law to two circumstances: occupation of the rental unit by the owner or certain members of his family, or demolition. The first of these rights is not available to appellant. The second, demolition, is controlled by Cambridge Ordinance 926, and under the administration of that ordinance by the Cambridge Rent Control Board, appellant has been denied the right to remove the unit from the housing market by demolition. It is not certain whether the Rent Control Board would, if the tenant decided to leave, determine that a demolition permit should issue, but it is clear that until the tenant decides to leave of his own volition, appellant is unable to possess the property.

There is little to distinguish this case from the situation confronting the Court in *Teleprompter*. As in *Teleprompter*, the power to end or terminate the physical invasion is under the control of a private party. As in New York, the Massachusetts Legislature can alter the rent control statute to provide appellant with some other means of restoring control of his property. But neither of these factors moved the Court away from its holding in *Teleprompter* that the physical invasion amounted to a taking. I must conclude, as the Court did in *Teleprompter*, that Ordinance 926 has effected a permanent physical invasion of appellant's property.

It might also be argued that the rent control provisions are justified by the emergency housing shortage in Cambridge, but the very fact that there is no foreseeable end to the emergency takes this case outside the Court's holding in *Block* v. *Hirsh*, 256 U. S. 135 (1921). At issue in *Block* was the constitutionality of a rent control statute enacted by Congress to regulate rents and rental practices in the District of Columbia. Like the rent control practices employed in Cambridge, the regulations disputed in *Block* fixed rents and denied the landlord the right to evict a tenant except to allow the owner or a member of his family to occupy the unit. We held the rent control statute constitutional because it was enacted to deal with a wartime emergency housing shortage. We noted that "[a] limit in time, to tide over a passing trouble, may well justify a law that could not be upheld as a permanent change." *Id.*, at 157. Thus, although we upheld a regulatory scheme in *Block* that is remarkably similar to that presently in force in the city of Cambridge, we reserved judgment as to whether such a regulatory scheme would be constitutional if it were made part of a permanent scheme. The Cambridge rent control ordinance presents the question thus reserved.

The provision in the Massachusetts statute ensuring a fair net operating income to the landlord does not change the result that should attend this case. In previous decisions we have recognized that property ownership carries with it a bundle of rights, including the right "'to possess, use and dispose of it.'" *Teleprompter*, *supra*, at 435 (quoting *United States* v. *General Motors Corp.*, 323 U. S. 373, 378 (1945)). Though no issue is raised here that the rent paid by the tenant is insufficient, that fact does not end the inquiry. What has taken place is a transfer of control over the reversionary interest retained by appellant. This power to exclude is "one of the most treasured strands in an owner's bundle of property rights [,because] even though the owner may retain the bare legal right to dispose of the occupied space by transfer or sale, the permanent occupation of that space by a stranger would ordinarily empty the right of any value, since the purchaser will also be unable to make any use of the property." *Teleprompter*, *supra*, at 435–436. Cf. *Bowles* v. *Willingham*, 321 U. S. 503, 517 (1944) (constitutional wartime rent control did not require owner to offer accommodations for rent). Nothing in the rent control provisions requires the Board to compensate appellant for the loss of control over the use of its property.

No. 83–101. IOWANS FOR TAX RELIEF ET AL. *v.* CAMPAIGN FINANCE DISCLOSURE COMMISSION ET AL. Appeal from Sup. Ct. Iowa dismissed for want of substantial federal question. Reported below: 331 N. W. 2d 862.

No. 83–303. MANIATES *v.* CITY OF LYNCHBURG ET AL. Appeal from Sup. Ct. Va. dismissed for want of substantial federal question.

No. 83–5253. OSTROWSKI *v.* CITY OF JOLIET, ILLINOIS. Appeal from Sup. Ct. Ill. dismissed for want of substantial federal question.

Certiorari Granted—Vacated and Remanded

No. 82–1739. FUNDACION EDUCATIVA ANA G. MENDEZ ET AL. *v.* SUAREZ ET AL. Sup. Ct. P. R. Motion of respondents Berta Gallego et al. for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *Operating Engineers* v. *Jones*, 460 U. S. 669 (1983). Reported below: —— P. R. R. ——.

Miscellaneous Orders

No. ——. P STONE, INC. *v.* KOPPERS CO., INC., ET AL. Motion to direct the Clerk to file the petition for writ of certiorari out of time denied.

No. A–145. HECKLER, SECRETARY OF HEALTH AND HUMAN SERVICES *v.* LOPEZ ET AL. D. C. C. D. Cal. Motion of respondents to vacate the stay entered by JUSTICE REHNQUIST on September 9, 1983 [463 U. S. 1328], denied.

JUSTICE STEVENS, with whom JUSTICE BLACKMUN joins, dissenting in part.

The Secretary of Health and Human Services (Secretary) has taken the position that she may, at any time, terminate the payment of disability benefits to persons who have previously been found to be disabled and entitled to benefits under Titles II and XVI of the Social Security Act notwithstanding the complete absence of evidence that the recipient's medical condition has improved. In maintaining this position, the Secretary refused to follow the settled law in the Ninth Circuit, which requires her to adduce some evidence of medical improvement before terminating disability benefits. See *Patti* v. *Schweiker*, 669 F. 2d 582 (1982); *Finnegan* v. *Matthews*, 641 F. 2d 1340 (1981). Nevertheless, for

the purposes of the stay application under review, the Secretary assumes that the Ninth Circuit's interpretation of the law is correct. Her stay application was predicated entirely on procedural grounds. A review of the procedural history of the case is therefore necessary.

Respondents filed a class action in the United States District Court for the Central District of California challenging the Secretary's policy. On June 16, 1983, the District Court entered an injunction requiring the Secretary to comply with the law of the Ninth Circuit with respect to recipients of disability benefits who reside in that Circuit. The only portion of the District Court's injunction presently at issue in this Court is ¶4(c), which applies to all persons whose disability benefits have been terminated since August 30, 1981 (or August 25, 1980, in the case of recipients who were "grandfathered" into the federal program from state disability programs). Paragraph 4(c) enjoins the Secretary to notify all such persons that they may reapply for benefits, and upon reapplication, to reinstate their benefits pending a termination hearing at which the Secretary must produce some evidence of medical improvement.[1] It is this portion of the District Court's injunction which JUSTICE REHNQUIST, acting as Circuit Justice, stayed pending the Secretary's appeal to the Ninth Circuit. 463 U. S. 1328 (1983).

Today the Court declines to vacate the stay entered by JUSTICE REHNQUIST. Of course, in considering a motion of this kind, substantial deference must be paid to the judgment of the Circuit Justice. See *Rosenberg* v. *United States*, 346 U. S. 273, 286–287 (1953). The Circuit Justice's decision should not be disturbed simply because the other Members of the Court would have declined to grant the stay as an original matter. Nonetheless, there are cases in which reexamination is proper, see *id.*, at 287–288; I am persuaded that this is such a case.

In JUSTICE REHNQUIST's view, the District Court's injunction extended to persons over whom the District Court had no jurisdiction. That conclusion does not, however, justify a stay of the injunction to the extent that it granted relief to persons over whom the District Court does have jurisdiction. Moreover, the extent of the overbreadth is less than JUSTICE REHNQUIST assumed when he was persuaded to enter his stay.

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[1] Once the Secretary meets her burden of production, the burden of proof is on the recipient to prove he or she remains disabled.

The jurisdiction of the District Court over this action was based on 49 Stat. 624, as amended, 42 U. S. C. § 405(g) (1976 ed., Supp. V), which provides in pertinent part:

> "Any individual, after any final decision of the Secretary made after a hearing to which he was a party, irrespective of the amount in controversy, may obtain a review of such decision by a civil action commenced within sixty days after the mailing to him of notice of such decision or within such further time as the Secretary may allow."

Under the statute, persons whose benefits have been terminated must seek judicial review of their termination within 60 days of a "final decision" of the Secretary. It is my understanding that this class action was filed on February 4, 1983, and that the class certified by the District Court includes persons who were entitled to seek judicial review of an adverse final decision by the Secretary more than 60 days before February 4, 1983 (December 6, 1982), but who failed to do so. As I understand ¶ 4(c) of the injunction entered by the District Court, it grants relief to class members over whom the District Court had no jurisdiction—specifically, to class members who had received "final decisions" from the Secretary more than 60 days prior to February 4, 1983, and who had not timely sought judicial review. To the extent that the stay entered by JUSTICE REHNQUIST applies to such persons, I agree that it was properly entered. These persons' right to seek administrative or judicial review of their termination decisions had expired, and they could obtain benefits only by requesting that the Secretary reopen their cases. However, the District Court had no jurisdiction to review the Secretary's refusal to reopen these cases. *Califano* v. *Sanders*, 430 U. S. 99 (1977). Hence, the District Court had no jurisdiction over these persons and should not have granted them relief, see *Califano* v. *Yamasaki*, 442 U. S. 682, 701, 704 (1979); *Mathews* v. *Diaz*, 426 U. S. 67, 71, n. 3 (1976).

I believe, however, that the motion to vacate the stay should be granted insofar as it applies to persons who sought judicial review of a termination of their benefits ordered by the Secretary on or after December 6, 1982, and persons whose right to administrative review of that termination had not expired before December 6, 1982. As to these persons, I believe both the waivable and nonwaivable elements of 42 U. S. C. § 405(g) (1976 ed., Supp. V) were satisfied; hence the District Court had jurisdiction to enter injunctive relief.

The nonwaivable exhaustion requirement is simply the requirement that the Secretary have made some sort of decision on a claim for benefits. "The nonwaivable element is the requirement that a claim for benefits shall have been presented to the Secretary. Absent such a claim there can be no 'decision' of any type. And some decision by the Secretary is clearly required by the statute." *Mathews* v. *Eldridge*, 424 U. S. 319, 328 (1976). As I understand the submissions of the parties, every class member had returned a questionnaire distributed by the Secretary and had thereby indicated in writing that he or she was still disabled and desired benefits. Thus, all of them had made adequate claims to continued benefits. Their benefits were terminated on the basis of a regulation that is assumed for the purpose of this proceeding to be invalid. In terminating benefits after receiving these questionnaires, it cannot be doubted that the Secretary knew these individuals claimed an entitlement to continue to receive disability benefits or that she then, by terminating their benefits, made a "decision" on the merits of their claims. That is all the nonwaivable element of the statute requires. As the Court expressly held in *Eldridge*, "§ 405(g) requires *only* that there be a 'final decision' by the Secretary with respect to the claim of entitlement to benefits." *Id.*, at 329 (emphasis supplied). In fact, the questionnaires returned by these respondents made the same claim and received the same decision that was held sufficient to satisfy the statute in *Mathews* v. *Eldridge*.[2]

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[2] With respect to the nonwaivable requirement, the *Eldridge* Court wrote: "Eldridge has fulfilled this crucial prerequisite. Through his answers to the state agency questionnaire, and his letter in response to the tentative determination that his disability had ceased, he specifically presented the claim that his benefits should not be terminated because he was still disabled. This claim was denied by the state agency and its decision was accepted by the [Secretary]." 424 U. S., at 329.

All the members of the respondent class answered a questionnaire substantially identical to the one Eldridge answered, indicating that they believed they were still disabled and entitled to benefits. Thus, each class member specifically presented a "claim." The only difference between this case and Eldridge's is that in response to the letter informing Eldridge that he would be terminated and requesting any additional evidence Eldridge might choose to submit, Eldridge wrote a letter. Some unidentified percentage of the respondent class presumably also wrote letters similar to this one, and in any event the Secretary does not rely on the absence of a letter to distinguish this case from *Eldridge*. Moreover, Eldridge's letter hardly added to the "claim" he had already presented. In fact the letter did little more than state that

Mathews v. *Eldridge* also makes it clear that the waivable element of the statute has been satisfied. As was true in that case, further administrative review might have enabled a claimant to recover retroactive benefits but could not have vindicated the right to have correct procedures followed *before* the request for continued benefits was denied. As I understand respondents' position on the merits, they assert that a recipient need not respond at all to a claim that he or she is no longer disabled unless the Secretary first comes forward with some evidence that his or her condition has improved. There is no way that right can be vindicated in the administrative process—the Secretary has already taken a firm position on the issue which the administrative judges are not free to ignore.[3] Even if the recipient is ultimately determined to be eligible for benefits for some other reason, the administrative process cannot vindicate the right asserted in this litigation, and hence further exhaustion of administrative remedies as to the claim made in this case is unnecessary. *Eldridge*, *supra*, at 330–332. When exhaustion is futile, this element may be deemed waived even over the Secretary's objection. *Mathews* v. *Diaz*, *supra*, at 75–77; see also *Eldridge*, *supra*, at 328, 330. I agree with JUSTICE REHNQUIST that respondents' contention that their claim is a "constitutional" one should be disregarded, but it should make no difference whether plaintiffs' claim is based on the statute or the Constitution. Even as to a statutory claim which could not be sustained on administrative review, "further exhaustion would not merely be futile for the applicant, but would also be a commitment of administrative resources unsupported by any administrative or judicial interest." *Weinberger* v. *Salfi*, 422 U. S. 749, 765–766 (1975). Congress could not have intended such a result.[4]

Eldridge believed the Secretary already had enough evidence to decide the case. See *id.*, at 324; App. in *Mathews* v. *Eldridge*, O. T. 1974, No. 74–204, pp. 13–14. This letter was hardly a new "claim"; Eldridge's "claim" which satisfied the nonwaivable element of the statute had already been made.

[3] "It is unrealistic to expect that the Secretary would consider substantial changes in the current administrative review system at the behest of a single aid recipient . . . in an adjudicatory context." 424 U. S., at 330.

[4] It is not clear that the Secretary disagrees with my view. In her memorandum opposing respondents' application to vacate the stay, she accepts the propriety of the District Court's injunction as to persons that have exhausted their administrative remedies within 60 days of the filing of this action, and argues, correctly in my view, that the stay was proper as to persons whose

In reaching this conclusion, I express no opinion on the merits of the underlying controversy because the Secretary has assumed, for the purpose of our consideration of the stay application, that the Ninth Circuit's requirement that the Secretary produce some evidence of medical improvement is sound.

Of course, in considering the motion to vacate the stay, it is also essential to balance the equities. However, as JUSTICE REHNQUIST recognized, the equities in this case strongly favor respondents, who are elderly, sick, or disabled persons to whom disability benefits may be crucial. Moreover, as JUSTICE REHNQUIST also recognized, this is a stay pending appeal to the Court of Appeals rather than a stay pending disposition of a petition for certiorari to this Court, and in such a case the granting of a stay by a Circuit Justice should be extremely rare and great deference should be shown to the judgment of the Court of Appeals. When these factors are also considered, I am compelled to conclude that the stay entered by JUSTICE REHNQUIST should be modified.

In summary, I would grant the motion to vacate the stay insofar as it relates to those class members (a) whose benefits were terminated on or after December 6, 1982, as well as (b) those whose right to seek administrative review of the termination of their benefits had not expired as of December 6, 1982. To the extent that the Court declines to modify the stay in this fashion, I respectfully dissent.

JUSTICE BRENNAN, with whom JUSTICE MARSHALL joins, dissenting.

Before the Court is an emergency motion to vacate a stay granted by JUSTICE REHNQUIST pending appeal to the United States Court of Appeals for the Ninth Circuit. 463 U. S. 1328 (1983). In my view, the merits of the underlying jurisdictional issues are far from certain, while the equities clearly favor the class

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right to review had expired more than 60 days before the filing of the suit. She goes on to argue only that the injunction should not apply to persons who are still pursuing their administrative remedies at this time. She does not explicitly quarrel with my conclusion that the District Court's injunction was proper as to all other persons whose right to seek administrative review had not expired as of December 6, 1982. Therefore, it appears that my only difference with the Secretary is that I would not require persons currently seeking administrative review to exhaust what is a futile remedy.

of recipients whose disability benefits have been terminated. I would therefore vacate the stay.

The stay is specifically directed at ¶4(c) of a preliminary injunction issued by the District Court, which would have required that the Secretary reinstate the disability benefits of any applicant who requests such reinstatement in response to a notice already distributed by the Secretary. The stayed portions of the injunction also would have allowed the Secretary to terminate these benefits, after subsequent hearings, but only if the Secretary properly applied prior decisions of the Court of Appeals for the Ninth Circuit when conducting those hearings. See *Patti* v. *Schweiker*, 669 F. 2d 582 (1982), and *Finnegan* v. *Matthews*, 641 F. 2d 1340 (1981) (in hearings to terminate disability benefits on the ground that the recipient is no longer disabled, the Secretary has burden of producing evidence of an improvement in medical condition). Thus, the question presented by the motion to vacate JUSTICE REHNQUIST's stay is whether the payment of interim benefits to approximately 30,000 disabled individuals whose Social Security benefits have been terminated by the Secretary should be continued pending final decision on the merits by the Court of Appeals.

The standard traditionally applied by a Circuit Justice when considering a stay application is whether there is a reasonable probability that four Justices would vote to grant certiorari, whether there is a fair prospect that a majority of the Court would conclude that the decision below was erroneous, and whether a balancing of the equities suggests that a stay should or should not be granted. See *Gregory-Portland Independent School District* v. *United States*, 448 U. S. 1342 (1980) (REHNQUIST, J., in chambers); *Rostker* v. *Goldberg*, 448 U. S. 1306, 1308 (1980) (BRENNAN, J., in chambers). Included within this last criterion, of course, is consideration of whether the applicant has demonstrated that irreparable harm is likely to result from the denial of the stay. Moreover, given the respect that is accorded interlocutory decisions of the lower federal courts, a stay application to a Circuit Justice on a matter still pending before a court of appeals, and on which the lower courts have already denied an interim stay, should be granted only in the most extraordinary cases. See *O'Rourke* v. *Levine*, 80 S. Ct. 623, 624, 4 L. Ed. 2d 615, 616 (1960) (Harlan, J., in chambers).

JUSTICE REHNQUIST accepted the conclusion of the lower court that the "balance of hardships tips sharply toward the [recipients]." He nonetheless granted the stay because he was of the view that the likelihood that the Secretary would prevail on the various jurisdictional issues raised negates giving controlling consideration to the irreparable harm caused by the stay. I am not as optimistic, however, about the prospects for success on the merits of the Secretary's claims, and therefore I find the overwhelming hardships imposed on the recipients to be determinative.

For purposes of the present motion, I accept JUSTICE REHNQUIST's conclusion that there is a reasonable probability that issues relating to the proper scope of the injunction issued by the District Court would garner enough votes for plenary consideration by the Court. I do not agree, however, that there is a fair prospect of success on the merits of these claims such that the Court ultimately would vacate or substantially amend the injunction issued by the District Court. When refusing to issue a stay pending appeal, the Court of Appeals filed a lengthy opinion clearly explaining why the beneficiaries in this case satisfied the jurisdictional requirements of 42 U. S. C. §§ 405(g), 405(h) (1976 ed. and Supp. V). 713 F. 2d 1432 (1983). Specifically, the court concluded (1) that termination of benefits by the Secretary satisfies the nonwaivable requirement that recipients first present a claim to the Secretary, see, *e. g.*, *Mathews* v. *Eldridge*, 424 U. S. 319, 328–330 (1976); *Wilson* v. *Edelman*, 542 F. 2d 1260, 1270–1271 (CA7 1976); (2) that the waivable requirement of a final decision by the Secretary has been met because regulations made exhaustion of administrative remedies futile or, alternatively, because exhaustion of the recipients' constitutional claim is not required, see, *e. g.*, *Mathews* v. *Diaz*, 426 U. S. 67, 75–77 (1976); and (3) that the requirement that appeals be filed within 60 days of the Secretary's decision has been waived by the Secretary due to her failure to raise the issue before the District Court. Although after plenary consideration I might agree with much of JUSTICE STEVENS' analysis, I do not believe it is necessary at this time to provide further support for the conclusions reached by the Court of Appeals. Suffice it to say that, largely for the reasons stated by that court's opinion, and for the reasons specified by the large body of case law to which that opinion referred, I am

far from convinced that the injunction issued by the District Court was jurisdictionally barred. See also *Kuehner* v. *Schweiker*, No. 82–1514 (CA3 Sept. 19, 1983). Indeed, even if, as JUSTICE STEVENS suggests, one or more of these holdings eventually proves erroneous and thereby eliminates jurisdiction over some members of the class, it is indisputable that many remaining recipients have properly presented their claims to the District Court. Accordingly, the probability of success on the merits is clearly not as certain as JUSTICE REHNQUIST has suggested.

Nor does the alleged judicial interference in the administrative process, which JUSTICE REHNQUIST's opinion emphasized, add to the likely success of the Secretary's appeal. In the situation presented by this motion, it is clear to me that it is the Secretary who has not paid due respect to a coordinate branch of Government by expressly refusing to implement the binding decisions of the Ninth Circuit. This is, indeed, the essence of the recipients' constitutional allegation of nonacquiescence on the part of the Secretary.

At most, therefore, the likelihood of success on the merits is very much in doubt. Therefore, when considering whether or not to grant a stay pending appeal, this factor cannot by itself dictate the result. Rather, it becomes necessary to balance the equities; and, in my view, the overwhelming evidence of irreparable harm that accompanies any termination of disability benefits should be the determinative factor in this emergency application.

As noted, on this consideration JUSTICE REHNQUIST accepted the lower courts' assessment of the comparative harms. I agree. Indeed, as the courts below correctly concluded, termination of the benefits in this case has caused "deprivation of life's necessities, further illness, or even death from the very disabilities that the Secretary deemed [the class members] not to have." Any financial or administrative inconvenience suffered by the Secretary cannot outweigh, or even approach, the human suffering that has been imposed on those disabled recipients of Social Security benefits who have been wrongfully terminated. And as the courts below noted, the potential payment of retroactive benefits after final decision in this case will do little to compensate the recipients for their current deprivations.

In sum, there is little question in my mind that the extraordinary circumstances necessary to stay the decision of the lower

court cannot be found in this case. Accordingly, I would grant the emergency motion to vacate the stay, and allow the ordinary appeals process to proceed.

No. A–207. BRIMM *v.* UNITED STATES. C. A. 11th Cir. Application for stay, addressed to JUSTICE O'CONNOR and referred to the Court, denied.

No. 8, Orig. ARIZONA *v.* CALIFORNIA ET AL. Motion for comments on the proposed decrees submitted by the State parties and the Solicitor General is granted, and the parties are allowed until November 10, 1983, within which to file comments. JUSTICE MARSHALL took no part in the consideration or decision of this order. [For earlier order herein, see, *e. g.*, 462 U. S. 1146.]

No. 86, Orig. LOUISIANA *v.* MISSISSIPPI ET AL. Exceptions to the Report of the Special Master are set for oral argument in due course. [For earlier order herein, see, *e. g.*, 463 U. S. 1204.]

No. 94, Orig. SOUTH CAROLINA *v.* REGAN, SECRETARY OF THE TREASURY. Motion of the City of Baltimore et al. for leave to file a brief as *amici curiae* granted. [For earlier order herein, see, *e. g.*, *ante*, p. 807.]

No. 81–757. ALLEN *v.* WRIGHT ET AL.; and
No. 81–970. REGAN, SECRETARY OF THE TREASURY, ET AL. *v.* WRIGHT ET AL. C. A. D. C. Cir. [Certiorari granted, 462 U. S. 1130.] Motion of the Solicitor General for divided argument granted.

No. 82–687. UNITED STATES *v.* ARTHUR YOUNG & CO. ET AL. C. A. 2d Cir. [Certiorari granted, 459 U. S. 1199.] Motion of Arthur Andersen & Co. et al. for leave to participate in oral argument as *amici curiae*, for divided argument, and for additional time for oral argument denied. Motion of respondents 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 National Audubon Society et al. for leave to file a brief as *amici curiae* granted.

No. 82–963. MASSACHUSETTS *v.* SHEPPARD. Sup. Jud. Ct. Mass. [Certiorari granted, 463 U. S. 1205.] Motion of Florida

for leave to participate in oral argument as *amicus curiae*, for divided argument, and for additional time for oral argument 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 appellants in No. 82–977 to strike appellees' brief denied.

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 United Farm Workers of America, AFL–CIO, for leave to file a supplemental brief as *amicus curiae* denied. Motions of American Federation of Labor and Congress of Industrial Organizations and California Rural Legal Assistance Foundation for leave to file briefs as *amici curiae* granted.

No. 82–1047. UNITED STATES *v.* ONE ASSORTMENT OF 89 FIREARMS. C. A. 4th Cir. [Certiorari granted, 459 U. S. 1199.] Motion of Jerome N. Frank Legal Services Organization for leave to participate in oral argument as *amicus curiae* and for divided argument denied.

No. 82–1186. TRANS WORLD AIRLINES, INC. *v.* FRANKLIN MINT CORP. ET AL.; and

No. 82–1465. FRANKLIN MINT CORP. ET AL. *v.* TRANS WORLD AIRLINES, INC. C. A. 2d Cir. [Certiorari granted, 462 U. S. 1118.] Motion of Mark Hammerschlag and Ellen Van Fleet for leave to participate in oral argument as *amici curiae* and for divided argument denied.

No. 82–1771. UNITED STATES *v.* LEON ET AL. C. A. 9th Cir. [Certiorari granted, 463 U. S. 1206.] Motion of respondents for divided argument granted. Motion of respondents for additional time for oral argument denied.

No. 83–380. IN RE WATERS. Petition for writ of habeas corpus denied.

No. 83–5251. IN RE BANKS ET AL. Petition for writ of mandamus and/or prohibition denied.

Probable Jurisdiction Noted

No. 83–196. RUCKELSHAUS, ADMINISTRATOR, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY *v.* MONSANTO CO. Appeal from D. C. E. D. Mo. Probable jurisdiction noted. JUSTICE WHITE took no part in the consideration or decision of this case. Reported below: 564 F. Supp. 552.

Certiorari Granted

No. 82–2113. RICHARDSON *v.* UNITED STATES. C. A. D. C. Cir. Certiorari granted. Reported below: 226 U. S. App. D. C. 342, 702 F. 2d 1079.

No. 82–1608. SOUTH-CENTRAL TIMBER DEVELOPMENT, INC. *v.* LERESCHE, COMMISSIONER, DEPARTMENT OF NATURAL RESOURCES OF ALASKA, ET AL. C. A. 9th Cir. Motion of Pacific Rim Trade Association et al. for leave to file a brief as *amici curiae* granted. Certiorari granted. Reported below: 693 F. 2d 890.

No. 83–1. KOEHLER, WARDEN *v.* ENGLE. C. A. 6th Cir. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 707 F. 2d 241.

Certiorari Denied

No. 82–1762. TRUSTEES OF REX HOSPITAL ET AL. *v.* HOSPITAL BUILDING CO. C. A. 4th Cir. Certiorari denied. Reported below: 691 F. 2d 678.

No. 82–1879. ROUSSEAU *v.* NIX. C. A. 10th Cir. Certiorari denied.

No. 82–1895. KREBS *v.* KREBS. Ct. App. Ohio, Franklin County. Certiorari denied.

No. 82–1961. SCHIAVONI, AKA FOMAGE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 709 F. 2d 1496.

No. 82–1984. SMITH *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 278 Ark. 462, 648 S. W. 2d 792.

No. 82–2040. THOMAS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 705 F. 2d 709.

No. 82–2072. IN RE HISS. C. A. 2d Cir. Certiorari denied. Reported below: 722 F. 2d 727.

No. 82–6710. KEENAN *v.* WAINWRIGHT, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 82–6722. DRAPER *v.* DEPARTMENT OF CORRECTIONS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 707 F. 2d 506.

No. 82–6749. HOLLOWAY *v.* ESTELLE, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS. Ct. Crim. App. Tex. Certiorari denied.

No. 82–6763. BROWN *v.* REPUBLIC STEEL CORP. C. A. 11th Cir. Certiorari denied. Reported below: 698 F. 2d 1236.

No. 82–6764. WILFORD *v.* JAGO. C. A. 6th Cir. Certiorari denied. Reported below: 708 F. 2d 731.

No. 82–6823. MCDANIEL *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 82–6832. JONES *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 429 So. 2d 396.

No. 82–6909. BASHLOR *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 696 F. 2d 277.

No. 82–6969. VETETO *v.* WARDEN, UNITED STATES PENITENTIARY. C. A. 6th Cir. Certiorari denied. Reported below: 709 F. 2d 1512.

No. 83–21. AMERICAN TELEPHONE & TELEGRAPH CO. *v.* MCI COMMUNICATIONS CORP. ET AL.;

No. 83–32. MCI COMMUNICATIONS CORP. ET AL. *v.* AMERICAN TELEPHONE & TELEGRAPH CO.; and

No. 83–217. AMERICAN TELEPHONE & TELEGRAPH CO. *v.* MCI COMMUNICATIONS CORP. ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 708 F. 2d 1081.

No. 83–30. BAGBY ET AL. *v.* VANCE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 705 F. 2d 466.

No. 83–50. GROLIER INC. ET AL. *v.* FEDERAL TRADE COMMISSION. C. A. 9th Cir. Certiorari denied. Reported below: 699 F. 2d 983.

No. 83–55. ARMILIO *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 705 F. 2d 939.

No. 83–59. AMERICAN INTERNATIONAL COAL CO., INC. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 3d Cir. Certiorari denied. Reported below: 709 F. 2d 1490.

No. 83–66. COLOMA COMMUNITY SCHOOL DISTRICT *v.* BERRY ET AL.; and

No. 83–254. FELLNER ET AL. *v.* BERRY ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 698 F. 2d 813.

No. 83–75. SAAVEDRA, INDIVIDUALLY, AND DBA SAAGAN MOVING & STORAGE CO. *v.* DONOVAN, SECRETARY OF LABOR. C. A. 9th Cir. Certiorari denied. Reported below: 700 F. 2d 496.

No. 83–84. BALK *v.* UNITED STATES INTERNATIONAL COMMUNICATION AGENCY ET AL. C. A. D. C. Cir. Certiorari denied.

No. 83–107. COMMITTEE FOR AN INDEPENDENT P–I ET AL. *v.* SMITH, ATTORNEY GENERAL OF THE UNITED STATES, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 704 F. 2d 467.

No. 83–109. FIRST ARABIAN CORP., S.A. *v.* PHARAON. C. A. 6th Cir. Certiorari denied. Reported below: 711 F. 2d 1058.

No. 83–116. SHAHEED *v.* ADAM METAL & SUPPLY CO. ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 714 F. 2d 124.

No. 83–125. PENNTECH PAPERS, INC., ET AL. *v.* NATIONAL LABOR RELATIONS BOARD ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 706 F. 2d 18.

No. 83–127. HAMMERHEAD ENTERPRISES, INC., ET AL. *v.* BREZENOFF ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 707 F. 2d 33.

No. 83–152. KARAPINKA *v.* UNION CARBIDE CORP. ET AL. C. A. 3d Cir. Certiorari denied.

No. 83–178. WESTERN COMPANY OF NORTH AMERICA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 699 F. 2d 264.

No. 83–188. OLSEN ET AL. *v.* CBS MUSICAL INSTRUMENTS, A DIVISION OF COLUMBIA BROADCASTING SYSTEMS, INC. C. A. 10th Cir. Certiorari denied.

No. 83–202. CITY OF COLUMBIA, MISSOURI *v.* PAUL N. HOWARD CO. ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 707 F. 2d 338.

No. 83–210. IVEY ET AL. *v.* FISHER. Super. Ct. Ga., Cherokee County. Certiorari denied.

No. 83–211. LOWRY ET AL. *v.* BALTIMORE & OHIO RAILROAD CO. ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 707 F. 2d 721.

No. 83–212. WYNN OIL CO. *v.* SOUTHERN UNION EXPLORATION COMPANY OF TEXAS. Ct. App. N. M. Certiorari denied.

No. 83–214. ONE PARCEL OF LAND IN MONTGOMERY COUNTY, MARYLAND, ET AL. *v.* WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY. C. A. 4th Cir. Certiorari denied. Reported below: 706 F. 2d 1312.

No. 83–215. BRIDGES *v.* CAPE PUBLICATIONS, INC., ET AL. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 423 So. 2d 426.

No. 83–220. NATIONS ET UX. *v.* SUN OIL CO. (DELAWARE) ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 695 F. 2d 933 and 705 F. 2d 742.

No. 83–221. MESTRE, PERSONAL REPRESENTATIVE OF THE ESTATE OF MESTRE *v.* PITNEY BOWES, INC. C. A. 11th Cir. Certiorari denied. Reported below: 701 F. 2d 1365.

No. 83–223. DUGGAN *v.* BERDIN. C. A. 11th Cir. Certiorari denied. Reported below: 701 F. 2d 909.

No. 83–224. ADAMS CENTRAL SCHOOL DISTRICT NO. 090 ET AL. *v.* DEIST ET AL. Sup. Ct. Neb. Certiorari denied. Reported below: 214 Neb. 307, 334 N. W. 2d 775.

No. 83–230. GUARD ET AL. *v.* KILBURN. Sup. Ct. Ohio. Certiorari denied. Reported below: 5 Ohio St. 3d 21, 448 N. E. 2d 1153.

No. 83–231. BURRELL ET AL. *v.* COUNTY OF SACRAMENTO, CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 709 F. 2d 1514.

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No. 83–232. GEORGIA STATE BOARD OF NATUROPATHIC EXAMINERS ET AL. *v.* BOWERS, ATTORNEY GENERAL OF GEORGIA, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 708 F. 2d 732.

No. 83–237. M. W. ZACK METAL CO., INC. *v.* LONDON STEAMSHIP MUTUAL INSURANCE ASSN., LTD., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 729 F. 2d 1444.

No. 83–239. CRAWFORD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 714 F. 2d 143.

No. 83–241. OLSON MOTOR CO. ET AL. *v.* GENERAL MOTORS CORP. ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 703 F. 2d 284.

No. 83–246. MACKEY *v.* GRAHAM, STATE AUDITOR OF WASHINGTON, ET AL. Sup. Ct. Wash. Certiorari denied. Reported below: 99 Wash. 2d 572, 663 P. 2d 490.

No. 83–248. NEW ENGLAND TOYOTA DISTRIBUTOR, INC. *v.* JAY EDWARDS, INC. C. A. 1st Cir. Certiorari denied. Reported below: 708 F. 2d 814.

No. 83–249. EVERITT ET AL. *v.* CITY OF MARSHALL, TEXAS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 703 F. 2d 207.

No. 83–250. GIBSON *v.* UTAH. Sup. Ct. Utah. Certiorari denied. Reported below: 665 P. 2d 1302.

No. 83–261. GABLE ET AL. *v.* SAMES ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 716 F. 2d 892.

No. 83–262. CHEECHAKO LEASING CO. *v.* WORKERS' COMPENSATION APPEALS BOARD ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 83–267. BROWNFIELD *v.* CITY OF LAGUNA BEACH ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 705 F. 2d 466.

No. 83–268. MICHELIN TIRE CORP., COMMERCIAL DIVISION *v.* BOSTICK OIL CO., INC. C. A. 4th Cir. Certiorari denied. Reported below: 702 F. 2d 1207.

No. 83–269. SEGREST *v.* SEGREST. Sup. Ct. Tex. Certiorari denied. Reported below: 649 S. W. 2d 610.

No. 83–274. ADAMS *v.* CITY OF SHEPHERDSVILLE ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 711 F. 2d 1055.

No. 83–281. THOMPSON *v.* THOMPSON. Sup. Ct. Ill. Certiorari denied. Reported below: 96 Ill. 2d 67, 449 N. E. 2d 88.

No. 83–304. LANDY *v.* FEDERAL AVIATION ADMINISTRATION ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 705 F. 2d 624.

No. 83–309. DUNCAN *v.* HUNTINGTON PARK REDEVELOPMENT AGENCY. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 142 Cal. App. 3d 17, 190 Cal. Rptr. 744.

No. 83–312. CORRICELLI *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 720 F. 2d 657.

No. 83–313. LITTLE *v.* KENTUCKY. Ct. App. Ky. Certiorari denied.

No. 83–316. LEONE ET AL. *v.* COSMOPOLITAN SHIPPING CO., S.A. C. A. 2d Cir. Certiorari denied. Reported below: 729 F. 2d 1444.

No. 83–318. LAMAINA ET AL. *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 714 F. 2d 125.

No. 83–326. RESNICK *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 716 F. 2d 893.

No. 83–327. HALSELL *v.* LOCAL UNION NO. 5, BRICKLAYERS & ALLIED CRAFTSMEN, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 706 F. 2d 313.

No. 83–335. AMERICAN JEWISH CONGRESS *v.* UNITED STATES DEPARTMENT OF THE TREASURY. C. A. D. C. Cir. Certiorari denied. Reported below: 230 U. S. App. D. C. 70, 713 F. 2d 864.

No. 83–350. INTERNATIONAL STUDIO APARTMENT ASSN., INC., ET AL. *v.* LOCKWOOD, CLERK OF THE CIRCUIT COURT, SEVENTEENTH JUDICIAL CIRCUIT OF FLORIDA, ET AL. Dist. Ct. App. Flà., 4th Dist. Certiorari denied. Reported below: 421 So. 2d 1119.

No. 83–360. JOHNSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 709 F. 2d 1519.

No. 83–364. HARDIN ET AL. *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied.

No. 83–369. UDOFOT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 711 F. 2d 831.

No. 83–370. DUFFELL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 714 F. 2d 155.

No. 83–375. ZINMAN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 723 F. 2d 899.

No. 83–393. CASORIA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 742 F. 2d 1442.

No. 83–404. SIMMERSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 714 F. 2d 134.

No. 83–5039. DAVIS *v.* WELDON ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 703 F. 2d 580.

No. 83–5147. GRAHAM *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 90 App. Div. 2d 198, 457 N. Y. S. 2d 962.

No. 83–5221. PLAIN *v.* CITY OF BATON ROUGE. 19th Jud. Dist. Ct. La., East Baton Rouge Parish. Certiorari denied.

No. 83–5222. LAING *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 708 F. 2d 1568.

No. 83–5226. HOLGUIN *v.* RAINES, SUPERINTENDENT, ARIZONA STATE PRISON. C. A. 9th Cir. Certiorari denied. Reported below: 695 F. 2d 372.

No. 83–5229. MCKINON *v.* WAINWRIGHT, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 705 F. 2d 419.

No. 83–5237. BACHNER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 706 F. 2d 1121.

No. 83–5238. HARRIS *v.* HAYES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 709 F. 2d 1515.

No. 83–5240. FAISON *v.* THORNTON ET AL. C. A. 11th Cir. Certiorari denied.

No. 83–5241. GUYTON *v.* RICKETTS, DIRECTOR, COLORADO DEPARTMENT OF CORRECTIONS. C. A. 10th Cir. Certiorari denied.

No. 83–5243. THOMPSON *v.* STEELE ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 709 F. 2d 381.

No. 83–5244. TUCKER *v.* LONDON GOLD EXCHANGE. C. A. 3d Cir. Certiorari denied.

No. 83–5245. ADAMS *v.* BARNES ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 712 F. 2d 1417.

No. 83–5249. FLOYD *v.* ALLEN, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 83–5262. COATS *v.* ALLSBROOK, SUPERINTENDENT, ODOM COMPLEX, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 707 F. 2d 505.

No. 83–5265. BRADY *v.* MINTZES, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 716 F. 2d 902.

No. 83–5268. HOLDER *v.* STEPHENSON, SUPERINTENDENT, NORTH CAROLINA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 707 F. 2d 507.

No. 83–5271. PAREZ *v.* CITY AND COUNTY OF SAN DIEGO ET AL. C. A. 9th Cir. Certiorari denied.

No. 83–5275. SPRIGGS *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 652 S. W. 2d 405.

No. 83–5277. FEARS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 707 F. 2d 522.

No. 83–5279. ATTWELL ET AL. *v.* METROPOLITAN ATLANTA RAPID TRANSIT AUTHORITY ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 704 F. 2d 1252.

No. 83–5281. KNIGHTEN *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 5th Cir. Certiorari denied. Reported below: 702 F. 2d 59 and 705 F. 2d 777.

No. 83–5284. CAULEY *v.* HENDERSON, SUPERINTENDENT, AUBURN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 742 F. 2d 1439.

No. 83–5285. HARRIS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 714 F. 2d 155.

No. 83–5288. BILLUPS *v.* MASSACHUSETTS. Ct. App. Mass. Certiorari denied. Reported below: 13 Mass. App. 963, 432 N. E. 2d 105.

No. 83–5292. WILLIAMS *v.* PEPSI-COLA BOTTLING CO. C. A. 8th Cir. Certiorari denied.

No. 83–5294. FIELDS *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied.

No. 83–5295. BILLIOT ET AL. *v.* DUNCAN CREW BOAT RENTALS, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 705 F. 2d 448.

No. 83–5299. FLORES ET AL. *v.* ARANGUREN. Dist. Ct. Union County, N. J. Certiorari denied.

No. 83–5301. DUGAR *v.* ABRAMS ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 742 F. 2d 1436.

No. 83–5315. BROWN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 708 F. 2d 606.

No. 83–5318. EHNES *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 83–5321. MAXCY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 710 F. 2d 838.

No. 83–5323. CROUCH *v.* HECKLER, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 6th Cir. Certiorari denied. Reported below: 714 F. 2d 139.

No. 83–5325. BAXTER *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 83–5327. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 711 F. 2d 1052.

No. 83–5328. FRANKEL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 714 F. 2d 155.

No. 83–5331. CASCANTE-BERNITTA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 711 F. 2d 36.

No. 83–5333. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 714 F. 2d 134.

No. 83–5337. MUHAMMAD *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 716 F. 2d 893.

No. 83–5345. SHACKELFORD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 709 F. 2d 911.

No. 83–5353. PATEL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 716 F. 2d 905.

No. 83–5355. MINYE *v.* UNIVERSITY OF MICHIGAN ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 709 F. 2d 1505.

No. 83–5356. MOORE *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 83–5359. D'ALLEMAN, AKA MURCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 712 F. 2d 100.

No. 83–5372. MALLOY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 83–5373. MARTIN ET AL. *v.* CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied.

No. 83–5380. SMITH *v.* LUCAS, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied.

No. 83–5381. VAN ALMEN *v.* MARSHALL, SUPERINTENDENT, SOUTHERN OHIO CORRECTIONAL FACILITY. C. A. 6th Cir. Certiorari denied. Reported below: 714 F. 2d 143.

No. 83–5407. DEVINCENT *v.* VERDEYEN, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 714 F. 2d 129.

No. 83–5412. CULVER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 710 F. 2d 1035.

No. 83–5414. JOHNSON *v.* NORMAN ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 701 F. 2d 946.

No. 83–5416. JOHNSON *v.* ZIMMERMAN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON. C. A. 3d Cir. Certiorari denied.

No. 83–5417. WARREN *v.* TAMPA, FLORIDA, POLICE DEPARTMENT ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 709 F. 2d 1512.

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No. 82–1390. ASHLEY ET AL. *v.* CITY OF JACKSON, MISSISSIPPI, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 687 F. 2d 66.

JUSTICE REHNQUIST, with whom JUSTICE BRENNAN joins, dissenting.

This case presents the question whether a victim of alleged discrimination may have his right to sue totally extinguished by a prior suit to which he was not a party and in which a consent decree was entered before his cause of action even accrued. Because I think the Court of Appeals for the Fifth Circuit erred in holding that a district court cannot entertain a suit challenging practices allegedly mandated or permitted by a prior consent decree, I dissent from the denial of certiorari.

In March 1974, consent decrees were entered in two suits alleging race discrimination in the city of Jackson's hiring and promoting practices in its Police Department. *United States* v. *City of Jackson*, Civil Action No. J–74–66(N) (SD Miss.); *Corley* v. *Jackson Police Dept.*, Civil Action No. 73J–4(C) (SD Miss.). As described by the District Court in this case:

> "The consent decree entered in *United States of America* v. *City of Jackson* required, *inter alia*, that the City of Jackson adopt and seek to achieve a goal for hiring blacks for one-half of all vacancies in all job classifications, subject to the availability of qualified applicants, until such time as the proportion of blacks to whites in each such classification equalled the proportion of blacks to whites in the working age population of the City of Jackson. The *Corley* v. *Jackson Police Department* consent decree incorporated by reference the *United States of America* v. *City of Jackson* decree and further provided that the Jackson Police Department establish separate promotion eligibility lists for white and black employees and that it make future promotions, subject to the availability of qualified black candidates, alternately from each such list in a one-to-one ratio until the proportion of black persons in supervisory positions and in the ranks above patrolman substantially equalled the proportion of blacks to whites in the working age population of the City of Jackson." App. to Pet. for Cert. 13A.

In 1976 and 1978, petitioners, who are white, filed two suits against the city of Jackson alleging that the city had discrimi-

nated against them in the Police Department by hiring or promoting less qualified blacks solely on the basis of their race. In substance, the complaints alleged that the "goals" established in the prior consent decrees were being treated as strict quotas by the city, and that blacks were being hired and promoted over whites without regard to relative qualifications. See First Amended and Supplemental Complaint in Civil Action No. J76–70(R) (SD Miss.), pp. 36–38; Complaint in Civil Action No. J78–0218(C) (SD Miss.), pp. 20–22. Petitioners contended that the challenged practices were not required by the consent decrees or, in the alternative, that the consent decrees were themselves illegal. As a third option, assuming respondents' practices under the consent decrees were necessary to remedy the effects of the city's past racial discrimination, petitioners claimed that they themselves were now victims of that prior discrimination and, as such, were entitled to compensation.

Both suits were brought only after timely charges of discrimination had been filed with the Equal Employment Opportunity Commission (EEOC), and statutory notices of the right to sue had been received. Jurisdiction of the District Court was invoked under the Fifth and Fourteenth Amendments to the Constitution, under Title VII of the Civil Rights Act of 1964, 42 U. S. C. § 2000e–5, and under various other provisions of federal law. The court consolidated the two actions.

Petitioners also filed motions for leave to intervene in the consent decree suits in order to challenge those decrees on their face. The United States opposed the motions on the grounds, among others, that they were untimely and asserted interests already adequately represented by the defendant city. The motions to intervene were denied. No appeal was taken.

Following a hearing, the District Court dismissed the consolidated suits for lack of subject-matter jurisdiction. The court determined that "[t]he practices complained of are the result of consent decrees which were entered" in the prior cases, App. to Pet. for Cert. 12a, and, thus, that the suits constitute an impermissible collateral attack on the consent decrees over which a different court has continuing jurisdiction. The dismissal was affirmed on the same grounds by the Fifth Circuit, and this petition followed.

I find myself at a loss to understand the origins of the doctrine of "collateral attack" employed by the lower courts in this case to preclude a suit brought by parties who had no connection with the

prior litigation. Their cause of action did not even accrue until at least a year after the entry of the consent decrees. And their attempt to intervene in those suits, more than three years after entry of the consent decrees, was denied as untimely.

It is a fundamental premise of preclusion law that nonparties to a prior action are not bound by the judgment. *Sea-Land Services, Inc.* v. *Gaudet*, 414 U. S. 573, 593 (1974); *Zenith Radio Corp.* v. *Hazeltine Research, Inc.*, 395 U. S. 100, 110 (1969). This rule can be traced to an opinion of Chief Justice Marshall in *Davis* v. *Wood*, 1 Wheat. 6, 8–9 (1816); it is part of our "deep-rooted historic tradition that everyone should have his own day in court." 18 C. Wright, A. Miller, & E. Cooper, Federal Practice and Procedure § 4449, p. 417 (1981). Only a few Terms ago, we had occasion to stress that "[i]t is a violation of due process for a judgment to be binding on a litigant who was not a party nor a privy and therefore has never had an opportunity to be heard." *Parklane Hosiery Co.* v. *Shore*, 439 U. S. 322, 327, n. 7 (1979).

This principle should apply with all the more force to a consent decree, which is little more than a contract between the parties, formalized by the signature of a judge. The central feature of any consent decree is that it is not an adjudication on the merits. The decree may be scrutinized by the judge for fairness prior to his approval, but there is no contest or decision on the merits of the issues underlying the lawsuit. Such a decree binds the signatories, but cannot be used as a shield against all future suits by nonparties seeking to challenge conduct that may or may not be governed by the decree.

Nonparties have an independent right to an adjudication of their claim that a defendant's conduct is unlawful. Suppose, for example, that the Government sues a private corporation for alleged violations of the antitrust laws and then enters into a consent decree. Surely, the existence of that decree does not preclude a future suit by another corporation alleging that the defendant company's conduct, even if authorized by the decree, constitutes an antitrust violation. The nonparty has an independent right to bring his own private antitrust action for treble damages or injunctive relief. See 2 P. Areeda & D. Turner, Antitrust Law ¶ 330, p. 143 (1978). Similarly, if an action alleging unconstitutional prison conditions results in a consent decree, a prisoner subsequently harmed by prison conditions is not precluded from bringing suit on the mere plea that the conditions are in accord-

ance with the consent decree. Such compliance might be relevant to a defense of good-faith immunity, see Pet. for Cert. in *Bennett* v. *Williams*, O. T. 1982, No. 82–1704, but it would not suffice to block the suit altogether.

In litigation under Title VII of the Civil Rights Act of 1964 we have constantly stressed the importance of individual enforcement actions, and have shown great reluctance to find such actions precluded. Thus, in *Alexander* v. *Gardner-Denver Co.*, 415 U. S. 36 (1974), we held that an individual does not forfeit his private cause of action if he first pursues his grievance under the nondiscrimination clause of a collective-bargaining agreement.

> "Title VII . . . specifies with precision the jurisdictional prerequisites that an individual must satisfy before he is entitled to institute a lawsuit. In the present case, these prerequisites were met when petitioner (1) filed timely a charge of employment discrimination with the Commission, and (2) received and acted upon the Commission's statutory notice of the right to sue . . . . There is no suggestion in the statutory scheme that a prior arbitral decision either forecloses an individual's right to sue or divests federal courts of jurisdiction." *Id.*, at 47.

In this case, petitioners have satisfied the same prerequisites, and "[t]here is no suggestion in the statutory scheme that a prior [consent decree to which petitioners were not parties] either forecloses an individual's right to sue or divests federal courts of jurisdiction." *Ibid.*

In *General Telephone Co.* v. *EEOC*, 446 U. S. 318, 332 (1980), we held that the EEOC may seek classwide relief under Title VII without being certified as the class representative under Rule 23 of the Federal Rules of Civil Procedure, even though we recognized that a judgment so obtained would not "be binding upon all individuals with similar grievances in the class or subclasses that might be certified."

> "In light of the 'general intent to accord parallel or overlapping remedies against discrimination,' . . . we are unconvinced that it would be consistent with the remedial purpose of the statutes to bind all 'class' members with discrimination grievances against an employer by the relief obtained under an EEOC judgment or settlement against the employer. This is especially true given the possible differences between the

public and private interests involved." *Id.*, at 333 (citing *Alexander*, *supra*, at 47).

We did acknowledge in that case that "where the EEOC has prevailed in its action, the court may reasonably require any individual *who claims under its judgment* to relinquish his right to bring a separate private action." 446 U. S., at 333 (emphasis added). But we were unwilling to bind a class member to a prior judgment when that class member decides to forgo the available class relief because he thinks he can obtain better relief in a private action. It certainly seems to follow that we would not preclude someone who was not a party to the prior action from bringing a private enforcement suit.

Finally, just last Term, in *W. R. Grace & Co.* v. *Rubber Workers*, 461 U. S. 757 (1983), we held that a union, which declined to participate in conciliation between the EEOC and a private corporation, could subsequently challenge layoffs made pursuant to the conciliation agreement as in violation of the seniority provisions of its collective-bargaining agreement with the corporation. The unanimous Court was unmoved by the Company's claim that such suits would subject it to conflicting obligations. "The dilemma," we stressed, "was of the Company's own making." *Id.*, at 767. The Company was attempting, by hiding behind the conciliation agreement, "to shift the loss to its male employees, who shared no responsibility for the sex discrimination." *Id.*, at 770.

In sum, I see no justification, either in general principles of preclusion or the particular policies implicated in Title VII suits, for the District Court's refusal to take jurisdiction over this case. Accordingly, I would grant certiorari to review the judgment of the Court of Appeals for the Fifth Circuit.

No. 82–1633. HOSPITAL BUILDING CO. *v.* TRUSTEES OF REX HOSPITAL ET AL. C. A. 4th Cir. Motion of Federation of American Hospitals for leave to file a brief as *amicus curiae* granted. Certiorari denied. JUSTICE BRENNAN and JUSTICE WHITE would grant certiorari. Reported below: 691 F. 2d 678.

No. 82–6498. BANKS *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 643 S. W. 2d 129.

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 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 vacate the judgment of the Texas Court of Criminal Appeals insofar as it left undisturbed the death sentence imposed in this case. *Gregg* v. *Georgia*, 428 U. S. 153, 231 (1976) (MARSHALL, J., dissenting). However, even if I believed that the death penalty could be imposed under certain circumstances, I would grant certiorari and vacate the death sentence imposed here because the holding below is inconsistent with this Court's decision in *Witherspoon* v. *Illinois*, 391 U. S. 510 (1968).

In *Witherspoon* v. *Illinois*, this Court held that in a case in which the State seeks the death penalty, members of the venire cannot be excluded for cause simply because they voice general objections to the death penalty or express moral or religious scruples against its infliction. The *only* members of the venire who can properly be excluded for cause based upon their attitude toward the death penalty are those who make "unmistakably clear (1) that they would *automatically* vote against the imposition of capital punishment without regard to any evidence that might be developed at the trial of the case before them, or (2) that their attitude toward the death penalty would prevent them from making an impartial decision as to the defendant's *guilt*." *Id.*, at 522, n. 21 (emphasis in original). This Court has noted that the logic of *Witherspoon* would invalidate the exclusion for cause of members of a venire who indicate that there are some kinds of cases in which they would refuse to recommend capital punishment. *Ibid.* This Court has also noted that the logic of *Witherspoon* would invalidate the exclusion for cause of prospective jurors in the penalty phase of a capital trial simply because such jurors aver frankly that while they will honestly find facts and answer interrogatories based on their findings, the prospect of the death penalty may affect their honest judgment of the facts or what they may deem to be a reasonable doubt. *Adams* v. *Texas*, 448 U. S. 38, 50 (1980).

At petitioner's trial, the judge excluded several members of the venire on the ground that their opposition to the death penalty

was so irrevocable, automatic, and unbending that they could properly be excused under the *Witherspoon* standard. The record indicates, however, that the trial court and the Texas Court of Criminal Appeals, which affirmed the trial court's imposition of the death penalty, committed clear error in the application of the *Witherspoon* standard.

The Texas Court of Criminal Appeals justified the exclusion of one prospective juror by reference to a single exchange between this juror and the prosecuting attorney:

> "'Q. Is this feeling on your part so firm that you would automatically vote against the death penalty, regardless of what the facts of the case might be?
>
> "'A. Yes, sir.'" *Banks* v. *State*, 643 S. W. 2d 129, 133 (1982).

This one exchange, however, is part of a complicated colloquy the ambiguous character of which is hidden by the Texas court's selective quotation. Certain responses of the potential juror in question indicate that she was apprehensive about the prospect of serving on a jury in a capital case and was, in general, strongly opposed to capital punishment. Other responses indicate, however, that this juror was not so unalterably opposed to the death penalty that she would either automatically vote against the imposition of capital punishment without regard to the evidence developed at trial or allow her general attitude toward the death penalty to prevent her from making an impartial decision as to the defendant's guilt.* For example, the excluded member of the

*Under Texas law, upon a finding that a defendant is guilty of a capital offense, the court conducts a separate sentencing procedure to determine whether the defendant shall be sentenced to death or to life imprisonment. At this proceeding, the State and the defendant are permitted to present evidence in support of arguments for and against a sentence of death. At the conclusion of these presentations, the court submits to the jury three questions: (1) whether the conduct of the defendant that caused the death of the deceased was committed deliberately and with the reasonable expectation that the death of the deceased or another would result; (2) whether there is a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society; and (3) if raised by the evidence, whether the conduct of the defendant in killing the deceased was unreasonable in response to the provocation, if any, by the deceased. If the jury finds that the State has proved beyond a reasonable doubt that the answer to each of

venire stated the following in a colloquy with the petitioner's attorney:

> "Q. [L]et me ask you if selected as a juror, would you follow the court's instructions and answer the questions from the evidence that you heard?
>
> "A. I sure would, to the best of my ability.
>
> "Q. All right, and then you would let the law take its course. Then the Judge and his job come into play after you answer questions. Would you do that.
>
> "A. Right; I sure would.
>
> "Q. All right, and regardless of the death penalty or life sentence, you would answer—you would follow the Judge's instructions to you, would you not?
>
> "A. Well, I would feel like I had to, you know.
>
> "Q. All right, and you would answer any questions asked of you from the evidence that you heard in this trial. Would you do that?
>
> "A. Yes, sir.
>
> "Q. I submit, Your Honor, she is qualified." Pet. for Cert. 4–5.

Indeed, the question and answer sequence immediately prior to this potential juror's exclusion by the trial judge shows that she expressed a positive conviction that she was willing to set aside her personal antipathy toward capital punishment and find facts solely on the basis of evidence presented at trial.

> "'Q. Mrs. Rogers, being a conscientious citizen of our county, you would, if chosen as a juror in this case or any case follow the judge's instructions, and you would answer any questions that the judge gives you from the evidence that you heard in the courtroom, wouldn't you?
>
> "'A. I certainly would.'" 643 S. W. 2d, at 135.

These statements clearly indicate that the trial court plainly erred in excluding this potential juror. If a member of the venire is mistakenly excluded, any subsequently imposed death sentence

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the three questions is "yes," the court imposes the death sentence. If the jury finds that the answer to any question is "no," the court imposes a sentence of life imprisonment. See Tex. Code Crim. Proc. Ann., Art. 37.071 (Vernon 1981 and Supp. 1982–1983).

cannot be allowed to stand. See, *e. g.*, *Davis* v. *Georgia* 429 U. S. 122 (1976) *(per curiam)*. This Court should review this case in order to enforce the standards established by *Witherspoon* and *Adams*. I therefore dissent from the denial of certiorari.

No. 82–6973. LINDSEY *v.* LOUISIANA. Sup. Ct. La.;
No. 82–6979. LARETTE *v.* MISSOURI. Sup. Ct. Mo.;
No. 83–5077. SMITH *v.* MISSOURI. Sup. Ct. Mo.;
No. 83–5124. HOPKINSON *v.* WYOMING. Sup. Ct. Wyo.;
No. 83–5146. CRAIG ET AL. *v.* NORTH CAROLINA. Sup. Ct. N. C.; and
No. 83–5366. JAMES *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: No. 82–6973, 428 So. 2d 420; No. 82–6979, 648 S. W. 2d 96; No. 83–5077, 649 S. W. 2d 417; No. 83–5124, 664 P. 2d 43; No. 83–5146, 308 N. C. 446, 302 S. E. 2d 740; No. 83–5366, 431 So. 2d 399.

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. 82–7013. SMITH *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. JUSTICE BRENNAN and JUSTICE MARSHALL would grant certiorari. Reported below: 714 F. 2d 145.

No. 83–222. BORMAN'S INC. *v.* ALLIED SUPERMARKETS, INC. C. A. 6th Cir. Motion of Creditors' Committee of Allied Supermarkets, Inc., for leave to intervene as a party respondent denied. Alternative request to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 706 F. 2d 187.

No. 83–308. KELLY *v.* UNITED STATES. C. A. D. C. Cir. Motion of petitioner to defer consideration of the petition for writ of certiorari denied. Certiorari denied. Reported below: 228 U. S. App. D. C. 55, 707 F. 2d 1460.

No. 83–5231. DUCKETT *v.* RAINES, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 709 F. 2d 1515.

Rehearing Denied

No. 82–1398. M/V POLLUX ET AL. *v.* GOODPASTURE, INC., 460 U. S. 1084. Petition for rehearing denied.

No. 81–523. CONTAINER CORPORATION OF AMERICA *v.* FRANCHISE TAX BOARD, 463 U. S. 159. Petition for rehearing denied. JUSTICE STEVENS took no part in the consideration or decision of this petition.

OCTOBER 13, 1983

Dismissal Under Rule 53

No. 82–1959. ARNOLD INDUSTRIES, INC., ET AL. *v.* STICKLER. C. A. 10th Cir. Certiorari dismissed under this Court's Rule 53.

OCTOBER 17, 1983

Dismissal Under Rule 53

No. 83–468. BURLINGTON NORTHERN RAILROAD CO. *v.* UNITED STATES ET AL. C. A. D. C. Cir. Certiorari dismissed under this Court's Rule 53. Reported below: 227 U. S. App. D. C. 164, 704 F. 2d 1293.

Affirmed on Appeal

No. 82–1493. HEALY ET AL. *v.* UNITED STATES BREWERS ASSN., INC., ET AL. Affirmed on appeal from C. A. 2d Cir. JUSTICE WHITE, JUSTICE REHNQUIST, and JUSTICE O'CONNOR would note probable jurisdiction and set case for oral argument. JUSTICE POWELL took no part in the consideration or decision of this case. Reported below: 692 F. 2d 275.

Appeals Dismissed

No. 82–6798. AUCLAIR *v.* WYOMING. Appeal from Sup. Ct. Wyo. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 660 P. 2d 1156.

No. 83–292. CLOONEY *v.* TOWN OF HARRISVILLE. Appeal from C. A. 1st Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 83–302. AVEDISIAN *v.* MAY ET AL. Appeal from C. A. 4th 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: 707 F. 2d 504.

No. 83–341. PEARSON *v.* OHIO. Appeal from Ct. App. Ohio, Cuyahoga County, dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 83–374. LOGAN *v.* SUPREME COURT OF IOWA ET AL. Appeal from Sup. Ct. Iowa dismissed for want of substantial federal question.

No. 83–5320. FULLMER *v.* UTAH. Appeal from Sup. Ct. Utah dismissed for want of substantial federal question. Reported below: 665 P. 2d 1280.

Miscellaneous Orders

No. D–332. IN RE DISBARMENT OF PARSONS. Disbarment entered. [For earlier order herein, see 460 U. S. 1078.]

No. D–333. IN RE DISBARMENT OF BAXTER. Disbarment entered. [For earlier order herein, see 461 U. S. 902.]

No. D–335. IN RE DISBARMENT OF HUBER. Disbarment entered. [For earlier order herein, see 461 U. S. 902.]

No. D–336. IN RE DISBARMENT OF MCLEAN. Disbarment entered. [For earlier order herein, see 461 U. S. 902.]

No. D–337. IN RE DISBARMENT OF VANDOREN. Disbarment entered. [For earlier order herein, see 461 U. S. 903.]

No. D–338. IN RE DISBARMENT OF COLLINS. Disbarment entered. [For earlier order herein, see 461 U. S. 922.]

No. D–340. IN RE DISBARMENT OF LONG. Disbarment entered. [For earlier order herein, see 461 U. S. 922.]

No. D–341. IN RE DISBARMENT OF SCACCHETTI. Disbarment entered. [For earlier order herein, see 461 U. S. 940.]

No. D–342. IN RE DISBARMENT OF BAKER. Disbarment entered. [For earlier order herein, see 461 U. S. 941.]

No. D–344. IN RE DISBARMENT OF STROH. Disbarment entered. [For earlier order herein, see 461 U. S. 941.]

No. D–346. IN RE DISBARMENT OF HOLLINGSWORTH. Disbarment entered. [For earlier order herein, see 461 U. S. 953.]

No. D–347. IN RE DISBARMENT OF ROCAP. Disbarment entered. [For earlier order herein, see 461 U. S. 953.]

No. D–365. IN RE DISBARMENT OF RAYBURN. It is ordered that Harry Newton Rayburn, Jr., of Jackson, Miss., 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–366. IN RE DISBARMENT OF MCMURRAY. It is ordered that Joseph C. McMurray, of Juneau, Alaska, 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–367. IN RE DISBARMENT OF TREUBER. It is ordered that William F. Treuber, of Smithtown, 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–368. IN RE DISBARMENT OF GLASSCHROEDER. It is ordered that Allan F. Glasschroeder, of Milwaukee, Wis., 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–369. IN RE DISBARMENT OF CANTAGALLO. It is ordered that Phillip John Cantagallo, of Ashtabula, 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–370. IN RE DISBARMENT OF GOLDFARB. It is ordered that Carl Goldfarb, of Charlotte, N. C., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–371. IN RE DISBARMENT OF JONES. It is ordered that Harold B. Jones, of Midland, Tex., 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–372. IN RE DISBARMENT OF CHAGRA. It is ordered that Joseph Salim Chagra, of El Paso, Tex., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. 82–818. 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.] Motion of American Federation of Labor and Congress of Industrial Organizations for leave to file a supplemental brief as *amicus curiae* denied.

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 Mexican American Legal Defense and Educational Fund, Inc., et al. for leave to file a brief as *amici curiae* granted.

No. 83–507. CARPENTERS PENSION TRUST FOR SOUTHERN CALIFORNIA *v.* SHELTER FRAMING CORP. ET AL. C. A. 9th Cir. Motion of petitioner to defer consideration in Nos. 83–245 and 83–291, *infra*, or in the alternative, to expedite consideration of the petition for writ of certiorari in No. 83–507 denied.

Probable Jurisdiction Noted

No. 82–1577. MICHIGAN CANNERS & FREEZERS ASSN., INC., ET AL. *v.* AGRICULTURAL MARKETING AND BARGAINING BOARD ET AL. Appeal from Sup. Ct. Mich. Probable jurisdiction noted. Reported below: 416 Mich. 706, 332 N. W. 2d 134.

No. 83–245. PENSION BENEFIT GUARANTY CORPORATION *v.* R. A. GRAY & CO.; and

No. 83–291. OREGON-WASHINGTON CARPENTERS-EMPLOYERS PENSION TRUST FUND *v.* R. A. GRAY & CO. Appeals from C. A. 9th Cir. Motion of G & R Roofing Co. for leave to file a brief as *amicus curiae* in No. 83–245 granted. Probable jurisdiction noted, cases consolidated, and a total of one hour allotted for oral argument. Reported below: 705 F. 2d 1502.

Certiorari Granted

No. 82–1734. PALMORE *v.* SIDOTI. Dist. Ct. App. Fla., 2d Dist. Certiorari granted. Reported below: 426 So. 2d 34.

No. 82–1994. KIRBY FOREST INDUSTRIES, INC. *v.* UNITED STATES. C. A. 5th Cir. Certiorari granted. Reported below: 696 F. 2d 351.

No. 82–2042. WESTINGHOUSE ELECTRIC CORP. *v.* VAUGHN ET AL. C. A. 8th Cir. Certiorari granted. Reported below: 702 F. 2d 137.

No. 82–2056. ESCONDIDO MUTUAL WATER CO. ET AL. *v.* LA JOLLA BAND OF MISSION INDIANS ET AL. C. A. 9th Cir. Certiorari granted. Reported below: 692 F. 2d 1223 and 701 F. 2d 826.

No. 83–271. NATIONAL COLLEGIATE ATHLETIC ASSN. *v.* BOARD OF REGENTS OF THE UNIVERSITY OF OKLAHOMA ET AL. C. A. 10th Cir. Certiorari granted. Reported below: 707 F. 2d 1147.

No. 83–95. PATTON ET AL. *v.* YOUNT. C. A. 3d Cir. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 710 F. 2d 956.

No. 83–128. UNITED STATES *v.* GOUVEIA ET AL. C. A. 9th Cir. Motions of respondents Robert Ramirez, Philip Segura, Robert E. Mills, and Raymond Pierce for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 704 F. 2d 1116.

No. 82–6840. JAMES *v.* KENTUCKY. Sup. Ct. Ky. Motion of petitioner for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 647 S. W. 2d 794.

Certiorari Denied. (See also Nos. 82–6798, 83–292, 83–302, and 83–341, *supra.*)

No. 82–1678. FULTON ET AL. *v.* PLUMBERS & STEAMFITTERS, LOCAL 598, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 695 F. 2d 402.

No. 82–1911. GIBSON *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied.

No. 82–1976. ALABAMA *v.* MCCRARY. Ct. Crim. App. Ala. Certiorari denied. Reported below: 429 So. 2d 1121.

No. 82–2019. WEECH ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 701 F. 2d 188.

No. 82–2100. BEHREND ET AL. *v.* GOVERNMENT NATIONAL MORTGAGE ASSN. ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 707 F. 2d 1399.

No. 82–6789. JONES *v.* JAGO, SUPERINTENDENT, LONDON CORRECTIONAL INSTITUTE. C. A. 6th Cir. Certiorari denied. Reported below: 701 F. 2d 45.

No. 82–6797. BLOCH *v.* AMBACH, COMMISSIONER OF EDUCATION OF NEW YORK. C. A. 2d Cir. Certiorari denied. Reported below: 729 F. 2d 1443.

No. 82–6811. PIROLLI *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 427 So. 2d 755.

No. 82–6903. LATNER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 702 F. 2d 947.

No. 82–6919. WAYNE *v.* RAINES, ADMINISTRATOR, ARIZONA CORRECTIONAL TRAINING CENTER-TUCSON, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 690 F. 2d 685.

No. 82–6920. SNEAD *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 82–6975. RODRIGUEZ *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 111 Wis. 2d 701, 332 N. W. 2d 312.

No. 83–86. S. E. NICHOLS OF OHIO, INC. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 6th Cir. Certiorari denied. Reported below: 704 F. 2d 921.

No. 83–114. GALVAN ET AL. *v.* UNITED STATES; and
No. 83–123. JAMARDO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 702 F. 2d 1315.

No. 83–120. NEW YORK RACING ASSN., INC. *v.* NATIONAL LABOR RELATIONS BOARD ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 708 F. 2d 46.

No. 83–129. HOLLOWAY ET AL. *v.* VALLEY ET AL.; and
No. 83–289. RAPIDES PARISH SCHOOL BOARD ET AL. *v.* VALLEY ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 702 F. 2d 1221.

No. 82–2017. MARTIN *v.* MITCHELL, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 707 F. 2d 508.

No. 83–132. STRUTHERS PATENT CORP. ET AL. *v.* NESTLE CO., INC. C. A. 3d Cir. Certiorari denied. Reported below: 709 F. 2d 1495.

No. 83–136. LAKE ERIE ALLIANCE FOR THE PROTECTION OF THE COASTAL CORRIDOR, INC., ET AL. *v.* UNITED STATES ARMY CORPS OF ENGINEERS ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 707 F. 2d 1392.

No. 83–137. BERLITZ SCHOOLS OF LANGUAGES OF AMERICA, INC. *v.* BARTELT ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 698 F. 2d 1003.

No. 83–195. DELTA FARMS RECLAMATION DISTRICT NO. 2028 *v.* SUPERIOR COURT OF THE COUNTY OF SAN JOAQUIN (FERNANDEZ ET AL., REAL PARTIES IN INTEREST). Sup. Ct. Cal. Certiorari denied. Reported below: 33 Cal. 3d 699, 660 P. 2d 1168.

No. 83–201. WEISS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 714 F. 2d 126.

No. 83–213. NEW YORK STATE ASSOCIATION FOR RETARDED CHILDREN, INC., ET AL. *v.* CAREY, GOVERNOR OF NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 706 F. 2d 956.

No. 83–225. VAN EMMERIK *v.* MONTANA DAKOTA UTILITIES CO. ET AL. Sup. Ct. S. D. Certiorari denied. Reported below: 332 N. W. 2d 279.

No. 83–255. BENSON ET AL. *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 389 Mass. 473, 451 N. E. 2d 118.

No. 83–259. EASTERN AIR LINES, INC. *v.* ATLANTIC RICHFIELD CO. Temp. Emerg. Ct. App. Certiorari denied. Reported below: 712 F. 2d 1402.

No. 83–265. CHAFFEE *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 83–273. GALARDO, DBA TERM CON ELECTRONICS, ET AL. *v.* AMP INC. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 709 F. 2d 1515.

No. 83–285. KELLY *v.* UNITED STATES; and
No. 83–5296. KELLY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 708 F. 2d 121.

No. 83–288. BLANCK *v.* MCKEEN ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 707 F. 2d 817.

No. 83–290. IVY *v.* NATCHITOCHES PARISH SCHOOL BOARD ET AL. Ct. App. La., 3d Cir. Certiorari denied. Reported below: 428 So. 2d 1332.

No. 83–294. LINDSEY *v.* KELLY, SUPERINTENDENT OF THE CHICAGO PARK DISTRICT, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 714 F. 2d 149.

No. 83–301. ALASKA LUMBER & PULP CO., INC. *v.* REID BROTHERS LOGGING CO.; and
No. 83–307. KETCHIKAN PULP CO. *v.* REID BROTHERS LOGGING CO. C. A. 9th Cir. Certiorari denied. Reported below: 699 F. 2d 1292.

No. 83–339. PROVODA *v.* BELEN BOARD OF EDUCATION, DBA BELEN CONSOLIDATED SCHOOLS, ET AL. C. A. 10th Cir. Certiorari denied.

No. 83–363. CONNECTICUT *v.* UBALDI. Sup. Ct. Conn. Certiorari denied. Reported below: 190 Conn. 559, 462 A. 2d 1001.

No. 83–376. YALKOWSKY ET AL. *v.* SHEDLER ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 742 F. 2d 1441.

No. 83–433. YALKOWSKY *v.* NEALE ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 742 F. 2d 1441.

No. 83–470. RADUE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 707 F. 2d 493.

No. 83–471. CRUZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 709 F. 2d 713.

No. 83–481. THOMPSON *v.* HEDRICK ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 711 F. 2d 1059.

No. 83–5026. JACKSON *v.* BUTTERWORTH, SHERIFF OF BROWARD COUNTY, FLORIDA. C. A. 11th Cir. Certiorari denied.

No. 83–5028. LEYCOCK *v.* GOVERNMENT OF THE VIRGIN ISLANDS. C. A. 3d Cir. Certiorari denied. Reported below: 709 F. 2d 1491.

No. 83–5054. MAXCY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 710 F. 2d 838.

No. 83–5060. ABBOTT *v.* ADAN, INDIVIDUALLY, AND AS ADMINISTRATRIX OF THE ESTATE OF ADAN. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 93 App. Div. 2d 1007, 462 N. Y. S. 2d 734.

No. 83–5062. JOHNSON *v.* HUBBARD ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 698 F. 2d 286.

No. 83–5079. HENRY *v.* OHIO. Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 83–5149. HAGLER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 709 F. 2d 578.

No. 83–5160. ZBOINSKI *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 111 Ill. App. 3d 1162, 455 N. E. 2d 574.

No. 83–5163. WEEKS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 702 F. 2d 1341.

No. 83–5169. ATENCIA *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 113 Ill. App. 3d 247, 446 N. E. 2d 1243.

No. 83–5170. APRIL *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 112 Ill. App. 3d 1158, 456 N. E. 2d 370.

No. 83–5173. TEJEDA-GALLEGOS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 711 F. 2d 1067.

No. 83–5181. BOOKER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 706 F. 2d 860.

No. 83–5206. LJUBAS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 706 F. 2d 42.

No. 83–5300. PARISIE *v.* GREER, WARDEN, MENARD CORRECTIONAL CENTER. C. A. 7th Cir. Certiorari denied. Reported below: 705 F. 2d 882.

No. 83–5303. HARVEY *v.* PINCUS ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 716 F. 2d 890.

No. 83–5314. THOMAS *v.* COX, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 708 F. 2d 132.

No. 83–5319. EGGER *v.* PHILLIPS. C. A. 7th Cir. Certiorari denied. Reported below: 710 F. 2d 292.

No. 83–5346. KODADEK *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 720 F. 2d 668.

No. 83–5350. SMITH *v.* NORTH CAROLINA. C. A. 4th Cir. Certiorari denied. Reported below: 711 F. 2d 1051.

No. 83–5362. BONNER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 712 F. 2d 1418.

No. 83–5378. WALKER *v.* DUGGER, SUPERINTENDENT, FLORIDA STATE PRISON, ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 436 So. 2d 101.

No. 83–5391. HEISE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 709 F. 2d 449.

No. 83–5398. FLEMMINGS *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 83–5421. FOWLER *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied. Reported below: 436 So. 2d 28.

No. 83–5423. GREER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 83–5427. BERICK *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 710 F. 2d 1035.

No. 83–5435. HERNANDEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 697 F. 2d 1093.

No. 83–5462. HARDIN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 710 F. 2d 1231.

No. 82–1718. RANDALL BOOK CORP. *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 53 Md. App. 30, 452 A. 2d 187.

JUSTICE BRENNAN, with whom JUSTICE MARSHALL joins, dissenting.

Petitioner was charged with violating Md. Ann. Code, Art. 27, § 416D (1982), which makes a person or firm guilty of a misdemeanor "if it knowingly displays for advertising purposes any picture, photograph, drawing, sculpture or other visual representation or image of a person or portion of the human body that depicts sadomasochistic abuse, sexual conduct or sexual excitement, or any verbal description or narrative account of these activities or items." The Circuit Court for Baltimore County dismissed the charges, concluding that the statute was unconstitutionally vague and overbroad.

On the State's appeal, the Maryland Court of Special Appeals reversed. 53 Md. App. 30, 452 A. 2d 187 (1982). The court, relying on *Smiley* v. *State*, 294 Md. 461, 450 A. 2d 909 (1982), concluded that the statute is constitutional and remanded to the trial court for further proceedings. In *Smiley*, the Maryland Court of Appeals construed the statute to prohibit only "obscene material," which this Court has held is unprotected by the First Amendment. See *Miller* v. *California*, 413 U. S. 15, 23 (1973).

In my view, the statute is unconstitutional on its face, notwithstanding the state court's limiting construction. I continue to believe that "at least in the absence of distribution to juveniles or obtrusive exposure to unconsenting adults, the First and Fourteenth Amendments prohibit the State and Federal Governments from attempting wholly to suppress sexually oriented materials on the basis of their allegedly 'obscene' contents." *Paris Adult Theatre I* v. *Slaton*, 413 U. S. 49, 113 (1973) (BRENNAN, J., dissenting). See also *New York* v. *Ferber*, 458 U. S. 747, 775–777 (1982) (BRENNAN, J., concurring in judgment).

Since a criminal trial of petitioner under this statute will in my view violate the Constitution of the United States, it is clear that "identifiable . . . constitutional polic[y]" will be "undermined by the continuation of the litigation in the state courts." See *Flynt* v. *Ohio*, 451 U. S. 619, 623 (1981) (Stewart, J., dissenting); *id.*, at 623–624 (STEVENS, J., dissenting). Accordingly, the decision below is final within the meaning of 28 U. S. C. § 1257, and we

have jurisdiction to review it. *Cox Broadcasting Corp.* v. *Cohn*, 420 U. S. 469, 483 (1975).

I would therefore grant certiorari, vacate the judgment of the Court of Special Appeals, and reinstate the dismissal of the indictment.

No. 82–2091. MOODY *v.* MEYERS ET AL. C. A. 5th Cir. Motions of Washington Legal Foundation, American Conservative Union et al., and Citizens Economic Foundation for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 693 F. 2d 1196.

No. 82–6913. JONES *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 94 Ill. 2d 275, 447 N. E. 2d 161.

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 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 vacate the judgment of the Supreme Court of Illinois insofar as it left undisturbed the death sentence imposed in this case. *Gregg* v. *Georgia*, 428 U. S. 153, 231 (1976) (MARSHALL, J., dissenting). However, even if I believed that the death penalty could be imposed constitutionally under certain circumstances, I would grant certiorari and vacate the death sentence imposed here.

Given the wording of the Illinois death penalty statute and the trial court's instructions in this case, I am not convinced that petitioner's sentencing jury balanced mitigating factors and aggravating circumstances in the manner required by this Court in *Lockett* v. *Ohio*, 438 U. S. 586 (1978), and *Eddings* v. *Oklahoma*, 455 U. S. 104 (1982). Under the Illinois statute, once a sentencing jury finds a statutorily defined aggravating factor to exist, the jury proceeds to consider aggravating and mitigating factors. "If the jury determines unanimously that there are no mitigating factors sufficient to preclude the imposition of the death sentence, the court shall sentence the defendant to death." Ill. Rev. Stat.,

ch. 38, ¶ 9–1(g) (Supp. 1982). At the sentencing trial in this case, the trial judge instructed the jury on how to evaluate mitigating evidence: "'[Y]ou go out and determine whether or not this evidence has taken away the [aggravating] factors, mitigated the factors so that you might say no, we don't want to vote for the death penalty.'" See *People* v. *Jones*, 94 Ill. 2d 275, 302, 447 N. E. 2d 161, 174 (1982) (Simon, J., concurring in part and dissenting in part). Notwithstanding other portions of the trial court's instructions, this instruction coupled with the Illinois statute's ambiguous reference to "preclud[ing] the imposition of the death sentence" may well have led the sentencing jury to conduct its deliberation under the assumption that petitioner had the burden of proving that the death penalty was inappropriate in his particular case. Since I do not understand this Court's precedents to permit the placing of such a burden on a defendant, I would grant the petition.

No. 83–284. MOON ET AL. *v.* HYOSUNG AMERICA, INC. C. A. 9th Cir. Motion of respondent for damages denied. Certiorari denied.

No. 83–5053. PETRELLA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 707 F. 2d 64.

JUSTICE WHITE, with whom JUSTICE BLACKMUN joins, dissenting.

Petitioner was admitted to the United States in 1978 and obtained a 1-year trainee visa. Upon expiration of his visa, he failed to depart voluntarily and, after protracted deportation proceedings, was deported to Italy. Approximately one month later, petitioner attempted to cross the border at Highgate Springs, Vt. He was arrested and charged with violating 8 U. S. C. § 1326, which proscribes unauthorized entry or attempted entry into this country by one who "has been arrested and deported or excluded and deported."

Prior to trial, petitioner moved to dismiss the indictment on the ground that the earlier deportation proceedings had denied him due process. The District Court refused to review the earlier proceedings and denied the motion. Petitioner was found guilty by a jury and sentenced to a term of imprisonment of one year, all but 30 days of which was suspended. On appeal, the Court of Appeals for the Second Circuit affirmed petitioner's conviction,

holding that Congress did not intend to allow collateral attacks on deportation orders in § 1326 prosecutions. 707 F. 2d 64 (1983).

The question presented in this petition is unresolved. In *United States* v. *Spector*, 343 U. S. 169 (1952), the Court expressly reserved decision on this precise issue because it had not been raised in the proceedings below. Moreover, as the Court of Appeals in this case noted, the Courts of Appeals that have addressed the question of the permissibility of collateral attack are divided. 707 F. 2d., at 65. Arguably supporting petitioner's position that collateral attack is permitted are: *United States* v. *Rangel-Gonzales*, 617 F. 2d 529, 530 (CA9 1980) ("deportations are subject to collateral attack"); *United States* v. *Bowles*, 331 F. 2d 742, 750 (CA3 1964) (deportation order may be attacked on ground that there is "no basis in fact for the Board's conclusion in respect to deportability" or there is "no warrant in law" for issuance of order). Arguably supporting the Government's position that collateral attack is not permitted are: *United States* v. *De La Cruz-Sepulveda*, 656 F. 2d 1129, 1131 (CA5 1981) ("a defendant cannot collaterally attack the original deportation order"); *Arriaga-Ramirez* v. *United States*, 325 F. 2d 857, 859 (CA10 1963) ("a deportation cannot be collaterally attacked in a prosecution under 8 U. S. C. § 1326"). As a further reflection of the uncertainty in this area, both parties to this proceeding rely on *United States* v. *Rosal-Aguilar*, 652 F. 2d 721, 723 (CA7 1981) (agrees that collateral attacks are barred, but accepts the proposition that the Government must prove the underlying deportation to have been "based on a valid legal predicate and obtained according to law").

The issue presented in this case is one of considerable importance to the consistent enforcement of this Nation's immigration laws. Accordingly, I would grant the petition to resolve the issue left open in *United States* v. *Spector*.

No. 83–5209. BOOKER *v.* WAINWRIGHT, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir.; and

No. 83–5267. SULLIVAN *v.* WAINWRIGHT, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: No. 83–5209, 703 F. 2d 1251; No. 83–5267, 695 F. 2d 1306.

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.

OCTOBER 31, 1983

Appeals Dismissed

No. 82–6768. FINNEY *v.* MICHIGAN DEPARTMENT OF SOCIAL SERVICES. Appeal from Sup. Ct. Mich. dismissed for want of substantial federal question. Reported below: 415 Mich. 512, 330 N. W. 2d 33.

No. 83–140. PITTSBURG & MIDWAY COAL MINING CO. *v.* REVENUE DIVISION, TAXATION AND REVENUE DEPARTMENT OF NEW MEXICO. Appeal from Ct. App. N. M. dismissed for want of substantial federal question. Reported below: 99 N. M. 545, 660 P. 2d 1027.

No. 83–366. PENOBSCOT NATION *v.* STILPHEN, COMMISSIONER, DEPARTMENT OF PUBLIC SAFETY OF MAINE, ET AL. Appeal from Sup. Jud. Ct. Me. dismissed for want of substantial federal question. Reported below: 461 A. 2d 478.

No. 83–333. C.P. CHEMICAL CO., INC. *v.* COMMISSIONER OF PUBLIC HEALTH OF MASSACHUSETTS. Appeal from Sup. Jud. Ct. Mass. Motion of appellant to dispense with printing partial appendix granted. Appeal dismissed for want of substantial federal question. Reported below: 388 Mass. 707, 448 N. E. 2d 367.

No. 83–518. JACQUES ET UX. *v.* UNITED STATES 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.

No. 83–5322. ELLIOTT *v.* ELLIOTT. Appeal from Sup. Ct. N. M. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 83–5375. CHAPMAN *v.* BANK OF THE COMMONWEALTH ET AL. Appeal from C. A. 6th Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 711 F. 2d 1055.

No. 83–5431. COJANIS *v.* COJANIS 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.

Certiorari Granted—Vacated in Part and Remanded

No. 82–6830. SMITH *v.* OKLAHOMA. Ct. Crim. App. Okla. Motion of petitioner for leave to proceed *in forma pauperis* and certiorari granted. The judgment is vacated insofar as it leaves undisturbed the death penalty imposed and the case is remanded for further consideration in light of the position presently asserted by the Attorney General of Oklahoma in his memorandum filed September 14, 1983. Reported below: 659 P. 2d 330.

JUSTICE BLACKMUN, with whom JUSTICE BRENNAN and JUSTICE MARSHALL join, concurring in part and dissenting in part.

I concur in the remand of this case to the Court of Criminal Appeals of Oklahoma, but I am neither comfortable nor content with this Court's vacation of only the death penalty. I would vacate petitioner's conviction as well as his sentence and thereby permit the Court of Criminal Appeals to review the case afresh. That court is free, of course, after appropriate consideration and if the circumstances warrant, to reinstate the conviction. I, however, would have the Oklahoma tribunal make that move affirmatively, rather than be tempted (it would be error, in my view) not to act at all because it misperceives an implication in this Court's vacation limited to the death penalty.

I reach this conclusion because the Attorney General of Oklahoma, in his response to the petition for a writ of certiorari, says only:

> "The transcript reveals that the sole evidence which linked the Petitioner to the death of the victim is contained in a statement given by the Petitioner to Sheriff Ingram. The crucial part of this statement appears on pages 137–140 of the trial transcript. According to Sheriff Ingram, the Petitioner advised him that, when he started walking away from the victim's pickup, he observed his co-defendant Goforth, place 'some paper or something' under the front seat of the pickup (Tr. 139). Nowhere is it stated that the Petitioner observed his co-defendant set fire to the pickup.

> "In view of the foregoing, the State concedes that it cannot be said that the Petitioner 'contemplated that life would be taken.' *Enmund* v. *Florida*, [458] U. S. [782, 801] (. . . 1982)."

As I read that concession by the State, it means that there was no intent on petitioner's part to kill and, hence, that he could not be guilty of murder, let alone incur the death penalty.

But if the State's concession is indecisive and its language less than clear—as, evidently, a majority of the Members of this Court feels it to be—it seems to me that we should vacate the judgment entirely anyway, and let the Attorney General then clarify his concession to the Oklahoma Court of Criminal Appeals in language that is plainly understood so that that court may act and proceed accordingly. Surely, it is not for this Court to interpret, in the first instance, the extent of the State's concession and measure its reach so begrudgingly as it does today.

Miscellaneous Orders

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

No. A–187. GLEASON *v.* UNITED STATES. Application for bail, addressed to JUSTICE BRENNAN and referred to the Court, denied.

No. A–242. AUTRY *v.* ESTELLE, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS. Motion to vacate the stay of execution of sentence of death, entered by JUSTICE WHITE on October 5, 1983 [*post*, p. 1301], denied.

No. A–295. COULTER *v.* ALABAMA. Application for stay of execution of sentence of death, presented to JUSTICE POWELL, and by him referred to the Court, is granted pending the timely filing and disposition of a petition for writ of certiorari.

No. A–298. EVANS *v.* TEXAS. Application to continue the stay of issuance of the mandate of the Court of Criminal Appeals of Texas, presented to JUSTICE WHITE, and by him referred to the Court, is granted pending the timely filing and disposition of a petition for writ of certiorari.

No. D–348. IN RE DISBARMENT OF DAVIS. Disbarment entered. [For earlier order herein, see 461 U. S. 953.]

No. D–349. IN RE DISBARMENT OF BUTLER. Disbarment entered. [For earlier order herein, see 461 U. S. 954.]

No. D–351. IN RE DISBARMENT OF HOFF. Disbarment entered. [For earlier order herein, see 462 U. S. 1102.]

No. D–352. IN RE DISBARMENT OF ROSENBERG. Disbarment entered. [For earlier order herein, see 462 U. S. 1102.]

No. D–373. IN RE DISBARMENT OF PERRI. It is ordered that Daniel Christopher Perri, of Pensacola, 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–374. IN RE DISBARMENT OF MCGHEE. It is ordered that Milton Lorenzo McGhee, of Sacramento, 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. D–375. IN RE DISBARMENT OF ITALIANO. It is ordered that Thomas J. Italiano, of Parma, 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–376. IN RE DISBARMENT OF GOLDSTEIN. It is ordered that George Edward Goldstein, of Pottstown, 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–377. IN RE DISBARMENT OF MANDEL. It is ordered that David J. Mandel, of New York, N. Y., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–378. IN RE DISBARMENT OF LORENZO. It is ordered that Samuel Lorenzo, of Sussex, N. J., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–379. IN RE DISBARMENT OF GROSSMAN. It is ordered that Neal L. Grossman, of Columbus, 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–380. IN RE DISBARMENT OF DESMOND. It is ordered that Francis Patrick Desmond, of Thornton, 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. 9, Orig. UNITED STATES *v.* LOUISIANA ET AL. Motion of the Special Master for additional partial payment by Mississippi for services granted, and the Court approves payment of $12,500.00. JUSTICE MARSHALL took no part in the consideration or decision of this motion. [For earlier order herein, see, *e. g.*, 459 U. S. 963.]

No. 80, Orig. COLORADO *v.* NEW MEXICO ET AL. Motion of New Mexico for leave to file a reply brief granted. Exceptions of New Mexico to the Additional Factual Findings of the Special Master are set for oral argument in due course. [For earlier order herein, see, *e. g.*, 463 U. S. 1204.]

No. 80–1577. CITY OF MESQUITE *v.* ALADDIN'S CASTLE, INC., 455 U. S. 283. Motion of appellant to recall the judgment of this Court denied.

No. 82–958. MCDONOUGH POWER EQUIPMENT, INC. *v.* GREENWOOD ET AL. C. A. 10th Cir. [Certiorari granted, 462 U. S. 1130.] Motion of Sheila Brewer for leave to file a brief as *amicus curiae* out of time denied.

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. [Certiorari granted, 461 U. S. 956.] Motion of United Steelworkers of America, AFL–CIO–CLC, 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.] Motion of Marie Shibuya-Snell, Director of the California Department of Consumer Affairs, for leave to file a brief as *amicus curiae* out of time denied.

No. 82–6758. TURNER *v.* COUNTY OF SISKIYOU ET AL. Ct. App. Cal., 3d App. Dist. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until November 21, 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. JUSTICE BRENNAN, JUSTICE MARSHALL, JUSTICE BLACKMUN, and JUSTICE STEVENS would grant the motion for leave to proceed *in forma pauperis* and would deny the petition for writ of certiorari.

No. 82–6765. UNTERTHINER *v.* DESERT HOSPITAL DISTRICT OF PALM SPRINGS. Sup. Ct. Cal. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until November 21, 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. 82–6778. BROWN *v.* HERALD CO., INC., DBA GLOBE DEMOCRAT PUBLISHING CO. C. A. 8th Cir.;

No. 82–6907. ALEXANDER *v.* TEXAS ET AL. Ct. Crim. App. Tex.;

No. 82–6956. CROSS *v.* SECRETARY OF STATE. Appeal from Ct. App. Cal., 3d App. Dist.;

No. 83–5040. ENO ET AL. *v.* UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT ET AL. C. A. 1st Cir.;

No. 83–5100. LINFIELD *v.* BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK. C. A. 2d Cir.; and

No. 83–5349. MILLER *v.* PIERCE, SECRETARY OF HOUSING AND URBAN DEVELOPMENT, ET AL. C. A. 9th Cir. Motions of petitioners and appellant for leave to proceed *in forma pauperis* denied. Petitioners and appellant are allowed until November 21, 1983, within which to pay the docketing fee required by Rule 45(a) and to submit petitions and a jurisdictional statement in compliance with Rule 33 of the Rules of this Court.

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

In each of these cases, the Court has denied petitioner's or appellant's motion to proceed *in forma pauperis* without initially addressing the issue whether the questions presented in the petition for certiorari or jurisdictional statement merit our plenary review—and the Court is apparently announcing today that this will

be our practice in the future.[1] At a time when at least some of us proclaim that we are sorely pressed for adequate time to do our work, this treatment is both unfair and wasteful, and I respectfully dissent.

Ordinarily, a $200 filing fee must be paid before a petition for certiorari or a jurisdictional statement, properly conforming to the requirements of this Court's Rule 33, may be filed. This Court's Rule 45. However, 28 U. S. C. § 1915(a) provides that "[a]ny court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees and costs or security therefor, by a person who makes affidavit that he is unable to pay such costs or give security therefor." This Court's Rule 46.1, which implements this statute, provides that "[a] party desiring to proceed in this Court *in forma pauperis* shall file a motion for leave to so proceed, together with his affidavit in the form prescribed in Fed. Rules App. Proc., Form 4 . . . setting forth with particularity facts showing that he comes within the statutory requirements."[2] If the motion is granted, no filing fee is charged, and a single typewritten petition or jurisdictional statement may be filed.

Each year, roughly 1,000 motions supported by affidavit are made for leave to proceed *in forma pauperis*.[3] These motions usually accompany a petition for a writ of certiorari or a jurisdictional statement, and our practice heretofore has almost always been not to pass on the *in forma pauperis* motion but to proceed directly to grant or deny the petition based on the merits of the questions presented in the petition or statement. Yet in the instant cases, each of which presents questions so lacking in merit as to have virtually no chance of receiving a plenary hearing, the Court has chosen instead to focus initially on the affidavits supporting the *in forma pauperis* motions and to deny the motions.

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[1] This new procedure emerged last Term, when in several instances the Court denied parties' motions to proceed *in forma pauperis* because the parties were deemed either not to be sufficiently poor or to have failed to file adequate affidavits.

[2] Rule 46.1 further provides that "if the district court or the court of appeals has appointed counsel under the Criminal Justice Act of 1964, as amended, the party need not file an affidavit."

[3] Approximately 1,000 additional motions are filed in which Rule 46 does not require an affidavit.

This practice simply postpones the determination of the merits of the questions presented until after deficiencies in the *in forma pauperis* motion are corrected or the filing fee is paid. That approach multiplies our work to no purpose.

I cannot concur in this treatment. Not only does the Court fail to provide the parties with any guidance as to how their affidavits may be considered in the future, it also prescribes no standards by which litigants and those screening the motions may determine when an individual is sufficiently poor to warrant a grant of *in forma pauperis* status. The only statement the Court has ever made on this subject is that an affiant must show he is unable to "'pay or give security for the costs . . . and still be able to provide' himself and dependents 'with the necessities of life.'" *Adkins* v. *E. I. DuPont de Nemours & Co.*, 335 U. S. 331, 339 (1948). This is hardly a meaningful standard; it indeed suggests that a wide array of factors must be considered before ruling on a motion.[4]

But, even with an articulated set of standards against which to make decisions, under today's procedure we lose, not gain. Certainly that should be clear to those of us who perceive that we engage in a never-ending struggle to find time needed for important work. The likely result of disposing of cases as the Court does today will be to encourage parties bringing these motions to resubmit their petitions or appeals with a new affidavit they hope will strike a more sympathetic chord—thus increasing the time we must spend to dispose of frivolous cases. Where it is clear that the merits involved are almost certainly insufficient to demand full review (as has been our experience in all but a handful of *in forma pauperis* cases each year) no purpose is served by indulging in that waste. It is important that we try to avoid the waste of the parties' time, but perhaps even more important that this Court's

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[4] I note in passing that Form 4 of the Federal Rules of Appellate Procedure does not even call for a description of the debts of the affiant; nor does it call for the affiant's age; nor does it call for an indication of the cost of living in the affiant's place of residence. Hence, I doubt that the Court could successfully develop standards based on the information currently available.

Furthermore, it is no answer that there is a wide range of motions, such as motions for extensions of time, that the Court decides without the aid of explicit standards. Motions to proceed *in forma pauperis* are a special case since they will determine whether an individual gains access to this Court.

time not be used in this unnecessary exercise. As JUSTICE STEVENS has stated in a similar context, "given the volume of frivolous, illegible, and sometimes unintelligible petitions that are filed in this Court, our work is facilitated by the practice of simply denying certiorari once a determination is made that there is no merit to the petitioner's claim." *Davis* v. *Jacobs*, 454 U. S. 911, 914 (1981) (opinion respecting denial of certiorari). What possible justification can support the scrutiny of 1,000 affidavits in support of *in forma pauperis* motions each year? Except, perhaps, in cases of extreme abuse,[5] where a petition or appeal wholly lacks merit, we surely benefit all concerned by relying on that reason for disposing finally of the case. Our time certainly can be spent in more productive effort than the determination of whether a petitioner or appellant is able to pay $200 plus the cost of printing and still provide himself and his dependents with the necessities of life.

JUSTICE STEVENS, dissenting.

Although I agree with JUSTICE BRENNAN that we should simply deny unmeritorious certiorari petitions without scrutinizing the petitioner's right to proceed *in forma pauperis*, I would not *grant* any such petition without making sure that the petitioner is unable to pay the required costs. If such examination disclosed the kind of disrespect for our rules that has motivated the Court's unusual action in these cases, I would deny the petition even if it would otherwise have merited review. That would remove any incentive a petitioner might otherwise have to seek *in forma pauperis* status although ineligible for such status, without requiring the Court to assume the burden of examining every motion for leave to proceed *in forma pauperis*. In borderline cases the petitioner should, of course, be given an opportunity to pay the required costs before final action is taken on his application. I see no purpose, however, in insisting that these petitioners—none of whom is represented by counsel who could advise them that their petitions stand no chance of being granted—pay a fee for the privilege of having their petitions denied.

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[5] See, *e. g.*, *Unterthiner* v. *Desert Hospital District Of Palm Springs*, No. 82–6765 (approximately $1,000,000 net assets, $2,500 salary per month, and four dependents), *ante*, p. 928.

Probable Jurisdiction Noted

No. 83–141. HAWAII HOUSING AUTHORITY ET AL. *v.* MIDKIFF ET AL.;

No. 83–236. PORTLOCK COMMUNITY ASSN. (MAUNALUA BEACH) ET AL. *v.* MIDKIFF ET AL.; and

No. 83–283. KAHALA COMMUNITY ASSN., INC., ET AL. *v.* MIDKIFF ET AL. Appeals from C. A. 9th Cir. Probable jurisdiction noted, cases consolidated, and a total of one hour allotted for oral argument. JUSTICE MARSHALL took no part in the consideration or decision of these cases. Reported below: 702 F. 2d 788.

Certiorari Granted

No. 82–2120. SMITH ET AL. *v.* ROBINSON, RHODE ISLAND ASSOCIATE COMMISSIONER OF EDUCATION, ET AL. C. A. 1st Cir. Certiorari granted. Reported below: 703 F. 2d 4.

No. 83–173. WASMAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari granted. Reported below: 700 F. 2d 663.

No. 83–371. FEDERAL COMMUNICATIONS COMMISSION ET AL. *v.* ITT WORLD COMMUNICATIONS, INC., ET AL. C. A. D. C. Cir. Certiorari granted. Reported below: 226 U. S. App. D. C. 67, 699 F. 2d 1219.

No. 83–185. COOPER ET AL. *v.* FEDERAL RESERVE BANK OF RICHMOND. C. A. 4th Cir. Certiorari granted limited to Question 1 presented by the petition. Reported below: 698 F. 2d 633.

Certiorari Denied. (See also Nos. 83–518, 83–5322, 83–5375, and 83–5431, *supra.*)

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. Certiorari denied. Reported below: 690 F. 2d 489.

No. 82–1704. BENNETT ET AL. *v.* WILLIAMS. C. A. 11th Cir. Certiorari denied. Reported below: 689 F. 2d 1370.

No. 82–1839. MANN, ADMINISTRATOR OF THE ESTATE OF MANN *v.* GOLD ET AL.; and MANN, ADMINISTRATOR OF THE ESTATE OF MANN *v.* CANTER ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 698 F. 2d 1231.

No. 82–1882. CHURCH OF SCIENTOLOGY OF PORTLAND ET AL. *v.* RUDIE ET AL. Ct. App. Ore. Certiorari denied. Reported below: 59 Ore. App. 409, 650 P. 2d 191.

No. 82–1997. ROLLINS ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 699 F. 2d 530.

No. 82–2003. LICENSED BEVERAGE DISTRIBUTORS ASSN. *v.* UNITED STATES; and
No. 82–2013. TEXAS ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 695 F. 2d 136.

No. 82–2007. ANDREW *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 705 F. 2d 468.

No. 82–2088. EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES *v.* BURNS ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 696 F. 2d 21.

No. 82–2092. PETTI ET AL. *v.* UNITED STATES; and
No. 83–252. BARTOLATTA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 707 F. 2d 520.

No. 82–2095. GARDNER ET AL. *v.* PAN AMERICAN WORLD AIRWAYS, INC. C. A. 11th Cir. Certiorari denied. Reported below: 700 F. 2d 695.

No. 82–2139. ARMSTRONG *v.* ARMSTRONG. C. A. 9th Cir. Certiorari denied. Reported below: 696 F. 2d 1237.

No. 82–2163. GARBIN *v.* Ffllorida. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 429 So. 2d 15.

No. 82–6204. TOLBERT *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 692 F. 2d 1041.

No. 82–6746. REED *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 657 P. 2d 662.

No. 82–6794. DAVIS *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 82–6808. LOCKS *v.* SUMNER, WARDEN OF SAN QUENTIN PRISON. C. A. 9th Cir. Certiorari denied. Reported below: 703 F. 2d 403.

No. 82–6862. ALLARD *v.* NEW HAMPSHIRE. Sup. Ct. N. H. Certiorari denied. Reported below: 123 N. H. 209, 459 A. 2d 259.

No. 82–6878. IVY *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 82–6889. AUDIA *v.* WEST VIRGINIA. Sup. Ct. App. W. Va. Certiorari denied. Reported below: —— W. Va. ——, 301 S. E. 2d 199.

No. 82–6890. DYSART *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 705 F. 2d 1247.

No. 82–6902. HALL *v.* IOWA ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 705 F. 2d 283.

No. 82–6910. FRAZIER ET AL. *v.* MANSON, COMMISSIONER OF CORRECTIONS, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 703 F. 2d 30.

No. 82–6912. GUKEISEN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 702 F. 2d 704.

No. 82–6939. UNGER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 700 F. 2d 445.

No. 82–6942. ROBERSON *v.* ESTELLE, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS. C. A. 5th Cir. Certiorari denied. Reported below: 699 F. 2d 1161.

No. 82–6978. NEWSOME *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 110 Ill. App. 3d 1043, 443 N. E. 2d 634.

No. 82–7002. WALLACE *v.* LOCKHART, DIRECTOR OF ARKANSAS DEPARTMENT OF CORRECTIONS. C. A. 8th Cir. Certiorari denied. Reported below: 701 F. 2d 719.

No. 82–7004. ADAMS *v.* DAYAN. C. A. 11th Cir. Certiorari denied. Reported below: 704 F. 2d 1252.

No. 82–7005. BOWRING *v.* WARDEN, POWHATAN CORRECTIONAL CENTER. Sup. Ct. Va. Certiorari denied.

No. 82–7006. CRAIG *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 703 F. 2d 581.

No. 82–7015. BANKS ET AL. *v.* BLOCK, SECRETARY OF AGRICULTURE, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 700 F. 2d 292.

No. 82–7029. HOWARD *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 706 F. 2d 267.

No. 83–29. ROEMER *v.* UNITED STATES; and
No. 83–169. MARCELLO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 703 F. 2d 805.

No. 83–35. MALLETTE BROS. CONSTRUCTION CO., INC., ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 695 F. 2d 145.

No. 83–54. LOPEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 704 F. 2d 1382.

No. 83–78. VERRUSSIO *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 83–119. IN RE EDWARDS. Sup. Ct. S. C. Certiorari denied. Reported below: 279 S. C. 89, 302 S. E. 2d 339.

No. 83–134. NESGLO, INC., ET AL. *v.* CHASE MANHATTAN BANK, N.A., ET AL. (two cases). C. A. 1st Cir. Certiorari denied.

No. 83–172. COURT HOUSE PLAZA CO. *v.* CITY OF PALO ALTO ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 709 F. 2d 1515.

No. 83–193. RANIER & ASSOCIATES ET AL. *v.* WALDSCHMIDT, TRUSTEE; and
No. 83–342. WALDSCHMIDT, TRUSTEE *v.* RANIER & ASSOCIATES ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 706 F. 2d 171.

No. 83–198. BANK OF AMERICA NATIONAL TRUST & SAVINGS ASSN. *v.* FEDERAL DEPOSIT INSURANCE CORPORATION. C. A. 9th Cir. Certiorari denied. Reported below: 701 F. 2d 831.

No. 83–206. MILLER *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 714 F. 2d 160.

No. 83–228. S & VEE CARTAGE CO., INC., ET AL. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 704 F. 2d 914.

No. 83–247. GOULD ET AL. *v.* CONTROL LASER CORP. ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 705 F. 2d 1340.

No. 83–251. PRC HARRIS, INC. *v.* BOEING CO. C. A. 2d Cir. Certiorari denied. Reported below: 700 F. 2d 894.

No. 83–306. PARROTT *v.* WILSON ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 707 F. 2d 1262.

No. 83–311. STRASSNER *v.* STRASSNER. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 92 App. Div. 2d 757, 459 N. Y. S. 2d 343.

No. 83–314. OSTRIC *v.* CORPORATION OF ST. MARY'S COLLEGE, NOTRE DAME, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 705 F. 2d 461.

No. 83–315. DEVRY INC. *v.* MCCLANDON. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 112 Ill. App. 3d 367, 445 N. E. 2d 362.

No. 83–319. STILLMAN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 714 F. 2d 238.

No. 83–323. CLEMMONS *v.* JOHNSON BROTHERS WHOLESALE LIQUOR CO. Sup. Ct. Kan. Certiorari denied. Reported below: 233 Kan. 405, 661 P. 2d 1242.

No. 83–330. WOLD *v.* BULL VALLEY MANAGEMENT CO., INC. Sup. Ct. Ill. Certiorari denied. Reported below: 96 Ill. 2d 110, 449 N. E. 2d 112.

No. 83–337. DEW *v.* CITY OF FLORENCE. Sup. Ct. S. C. Certiorari denied. Reported below: 279 S. C. 155, 303 S. E. 2d 664.

No. 83–343. ROUSE SI SHOPPING CENTER, INC. *v.* MORSE/DIESEL, INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 742 F. 2d 1440.

No. 83–344. FORMALDEHYDE INSTITUTE, INC., ET AL. *v.* FRECHETTE, COMMISSIONER OF PUBLIC HEALTH OF MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 388 Mass. 707, 448 N. E. 2d 367.

No. 83–345. MCCARTHY ET AL. *v.* CHARLES D. BONANNO LINEN SERVICE, INC., ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 708 F. 2d 1.

No. 83–348. STORRS *v.* STATE MEDICAL BOARD; and ROSI *v.* STATE MEDICAL BOARD. Sup. Ct. Alaska. Certiorari denied. Reported below: 664 P. 2d 547 (first case); 665 P. 2d 28 (second case).

No. 83–349. LANG *v.* GEORGIA. Ct. App. Ga. Certiorari denied. Reported below: 165 Ga. App. 576, 302 S. E. 2d 683.

No. 83–351. PUERTO RICO ELECTRIC POWER AUTHORITY *v.* GENERAL ELECTRIC CO. Sup. Ct. P. R. Certiorari denied. Reported below: —— P. R. R. ——.

No. 83–352. TRANS-WORLD SEWING MACHINE CO., INC. *v.* STANDARD SEWING EQUIPMENT CORP. Ct. App. Kan. Certiorari denied. Reported below: 8 Kan. App. 2d xxi, 661 P. 2d 409.

No. 83–354. LOCAL UNION NO. 3, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL–CIO *v.* INGRAM ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 709 F. 2d 807.

No. 83–355. HOLTER ET AL. *v.* MOORE & CO. ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 702 F. 2d 854.

No. 83–362. BERES ET AL. *v.* HOPE HOMES, INC., ET AL. Ct. App. Ohio, Summit County. Certiorari denied. Reported below: 6 Ohio App. 3d 71, 453 N. E. 2d 1119.

No. 83–367. HARDEN *v.* E. I. DU PONT DE NEMOURS & CO. C. A. 3d Cir. Certiorari denied. Reported below: 714 F. 2d 122.

No. 83–377. OFFICENTERS INTERNATIONAL CORP. OF ATLANTA *v.* INTERSTATE NORTH ASSOCIATES. Ct. App. Ga. Certiorari denied. Reported below: 166 Ga. App. 93, 303 S. E. 2d 292.

No. 83–381. METROPOLITAN ERECTING CO., INC. *v.* INRYCO, INC., ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 708 F. 2d 1225.

No. 83–384. HUDENBURG *v.* NEFF, EXECUTOR OF THE ESTATE OF LUMMIS, ET AL. Ct. App. Tex., 14th Sup. Jud. Dist. Certiorari denied. Reported below: 643 S. W. 2d 517.

No. 83–386. MASSARSKY *v.* GENERAL MOTORS CORP. C. A. 3d Cir. Certiorari denied. Reported below: 706 F. 2d 111.

No. 83–387. PUTNEY *v.* CONSOLIDATED RAIL CORPORATION. C. A. 4th Cir. Certiorari denied. Reported below: 707 F. 2d 509.

No. 83–390. CITY OF AUSTIN, TEXAS, ET AL. *v.* DECKER COAL CO. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 701 F. 2d 420.

No. 83–391. CALIFORNIA GLAZED PRODUCTS, INC. *v.* BURNS & RUSSELL COMPANY OF BALTIMORE CITY. C. A. 9th Cir. Certiorari denied. Reported below: 708 F. 2d 1423.

No. 83–392. RUIZ *v.* CUPP, SUPERINTENDENT, OREGON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied. Reported below: 714 F. 2d 154.

No. 83–394. MCKENZIE ET AL. *v.* GENERAL MOTORS CORP. ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 716 F. 2d 909.

No. 83–402. SKAGGS COS., INC. *v.* WHATLEY. C. A. 10th Cir. Certiorari denied. Reported below: 707 F. 2d 1129.

No. 83–406. GRANT ET AL. *v.* ERIE INSURANCE EXCHANGE ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 716 F. 2d 890.

No. 83–407. VICKROY *v.* CITY OF SPRINGFIELD, MISSOURI. C. A. 8th Cir. Certiorari denied. Reported below: 706 F. 2d 853.

No. 83–409. COASTAL STEEL CORP. *v.* WHEELABRATOR-FRYE, INC., ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 709 F. 2d 190.

No. 83–417. VU ET UX. *v.* SINGER CO. C. A. 9th Cir. Certiorari denied. Reported below: 706 F. 2d 1027.

No. 83–420. A.D.M. CORP. ET AL. *v.* THOMSON ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 707 F. 2d 25.

No. 83–423. FILLMORE *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 428 So. 2d 1375.

No. 83–428. BARWICK *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied. Reported below: 280 S. C. 45, 310 S. E. 2d 428.

No. 83–429. DAVIS *v.* CONNECTICUT. Sup. Ct. Conn. Certiorari denied. Reported below: 190 Conn. 327, 461 A. 2d 947.

No. 83–441. YALKOWSKY *v.* MOLLEN, PRESIDING JUSTICE OF APPELLATE DIVISION OF THE SUPREME COURT OF NEW YORK, SECOND JUDICIAL DEPARTMENT, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 742 F. 2d 1441.

No. 83–443. U.S.S. POLYPROPYLENE DIVISION, A DIVISION OF UNITED STATES STEEL CORP. *v.* STUDIENGESELLSCHAFT KOHLE M.B.H. C. A. 2d Cir. Certiorari denied. Reported below: 704 F. 2d 48.

No. 83–444. BALLIVIERO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 708 F. 2d 934.

No. 83–445. OAKLAND RAIDERS *v.* CITY OF BERKELEY. Ct. App. Cal., 1st App. Dist. Certiorari denied. Reported below: 143 Cal. App. 3d 636, 192 Cal. Rptr. 66.

No. 83–452. DIXON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 720 F. 2d 668.

No. 83–456. MILLER ET AL. *v.* UNITED STATES. ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 710 F. 2d 656.

No. 83–480. DUCOMMUN ET AL. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 10th Cir. Certiorari denied. Reported below: 732 F. 2d 752.

No. 83–482. NATHANSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 702 F. 2d 162.

No. 83–487. MANGALICK ENTERPRISES, INC. *v.* FREEDMAN ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 720 F. 2d 662.

No. 83–509. FELDMAN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 711 F. 2d 758.

No. 83–519. NATIONAL CASH REGISTER CORP. *v.* ROSE. C. A. 6th Cir. Certiorari denied. Reported below: 703 F. 2d 225.

No. 83–532. COHEN ET UX. *v.* SMITH, ATTORNEY GENERAL, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 705 F. 2d 467.

No. 83–5014. HELMICH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 704 F. 2d 547.

No. 83–5016. ADAMS *v.* FLORIDA PAROLE AND PROBATION COMMISSION. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 422 So. 2d 953.

No. 83–5017. WILLIAMS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 709 F. 2d 1519.

No. 83–5035. WARD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 83–5037. ROBBINS *v.* MARSHALL, SUPERINTENDENT, SOUTHERN OHIO CORRECTIONAL FACILITY. C. A. 6th Cir. Certiorari denied. Reported below: 711 F. 2d 1058.

No. 83–5067. EDGINGTON ET AL. *v.* NEW MEXICO. Ct. App. N. M. Certiorari denied. Reported below: 99 N. M. 715, 663 P. 2d 374.

No. 83–5087. KOENIG *v.* SOUTH DAKOTA. Sup. Ct. S. D. Certiorari denied. Reported below: 333 N. W. 2d 800.

No. 83–5109. LITT *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 711 F. 2d 1060.

No. 83–5117. HILL *v.* ZIMMERMAN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTE AT HUNTINGDON, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 709 F. 2d 232.

No. 83–5122. PERSINGER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 709 F. 2d 1496.

No. 83–5162. GUTIERREZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 708 F. 2d 732.

No. 83–5168. GRAHAM *v.* HOUSEMAN, ACTING DISTRICT DIRECTOR OF THE PORTLAND OFFICE OF THE UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE, ET AL. C. A. 9th Cir. Certiorari denied.

No. 83–5171. BROWN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 709 F. 2d 1514.

No. 83–5189. DAMPIER *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 111 Ill. App. 3d 1159, 455 N. E. 2d 572.

No. 83–5213. BARNETT *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 714 F. 2d 125.

No. 83–5280. CONNOR *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 679 F. 2d 889.

No. 83–5334. ATTWELL *v.* HECKLER, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 11th Cir. Certiorari denied. Reported below: 707 F. 2d 522.

No. 83–5340. BURNETTE *v.* PONTE, SUPERINTENDENT, MASSACHUSETTS CORRECTIONAL INSTITUTE. C. A. 1st Cir. Certiorari denied. Reported below: 714 F. 2d 110.

No. 83–5342. MCADOO *v.* FEDERAL BUREAU OF INVESTIGATION. C. A. D. C. Cir. Certiorari denied.

No. 83–5343. HIGGS *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied.

No. 83–5344. WACHTER *v.* GREEN ET AL. C. A. 11th Cir. Certiorari denied.

No. 83–5347. FAIR *v.* DEPARTMENT OF SOCIAL SERVICES. Cir. Ct. Mich., Ingham County. Certiorari denied.

No. 83–5348. SIROONIAN *v.* NEW YORK FOUNDLING HOSPITAL ET AL. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 92 App. Div. 2d 826, 460 N. Y. S. 2d 735.

No. 83–5358. KENT *v.* NEW YORK CITY DEPARTMENT OF SANITATION. C. A. 2d Cir. Certiorari denied. Reported below: 722 F. 2d 728.

No. 83–5360. APPLEBY *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 389 Mass. 359, 450 N. E. 2d 1070.

No. 83–5363. CAUBLE *v.* UNITED STATES;
No. 83–5382. WILLIAMS *v.* UNITED STATES; and
No. 83–5383. GUION *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 714 F. 2d 134.

No. 83–5369. DONNELL *v.* FREEMAN ET AL. Sup. Ct. Mo. Certiorari denied.

No. 83–5379. RONSON *v.* WALTERS, COMMISSIONER OF CORRECTIONS OF NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied.

No. 83–5392. SERVIDIO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 716 F. 2d 893.

No. 83–5395. HARREN *v.* GARRISON, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 716 F. 2d 895.

No. 83–5401. MARSHALL *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 83–5409. GROCE *v.* WASHINGTON STATE DEPARTMENT OF CORRECTIONS ET AL. C. A. 9th Cir. Certiorari denied.

No. 83–5418. JOHNSON *v.* FOLTZ, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 714 F. 2d 140.

No. 83–5422. EDWARDS *v.* DENTON ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 714 F. 2d 139.

No. 83–5433. JAMESON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 707 F. 2d 978.

No. 83–5479. LAU TUNG LAM *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 714 F. 2d 209.

No. 83–5482. JOHNSON, AKA LATIF *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 714 F. 2d 134.

No. 83–5492. GALLOP *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 714 F. 2d 155.

No. 83–5496. SIMPSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 709 F. 2d 903.

No. 83–5506. CLARK *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 82–1861. MCCARREN ET AL. *v.* TOWN OF SPRINGFIELD, VERMONT, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 722 F. 2d 728.

JUSTICE REHNQUIST, dissenting.

The town of Springfield, Vermont, wishes to construct and operate a hydroelectric generating facility on the neighboring Black

River, and in June 1978, applied to the Federal Energy Regulatory Commission for a license to do so. FERC has never ruled on this application. In January 1980, the town of Cavendish, Vermont, petitioned the Vermont Public Service Board for a declaratory judgment that Springfield's proposed project was subject to the provisions of Vt. Stat. Ann., Tit. 30, § 248 (Supp. 1983), which states that "[n]o company as defined [herein] . . . may begin site preparation for or construction of an electric generating facility within the state . . . unless the . . . board . . . [issues a certificate of public good]." App. to Pet. for Cert. 58a–59a.

Springfield appeared before the Public Service Board and contended that FERC's licensing jurisdiction pre-empted the authority of the Board, but after briefing and argument the Board ruled that it had jurisdiction under § 248 and prohibited Springfield from commencing site preparation until Springfield obtained a certificate of public good.

Although Vermont law afforded Springfield a right of appeal from the Board's decision to the Supreme Court of Vermont, Springfield did not avail itself of this right. Instead, it collaterally attacked the Board's ruling by an action filed in the United States District Court for the District of Vermont, seeking a declaratory judgment that the Board's ruling was null and void on pre-emptive grounds. The District Court, in a thorough and well-reasoned opinion, canvassed the related issues raised by petitioners as a defense to its proceeding with the respondent's suit: res judicata, abstention, and the principles of *Younger* v. *Harris*, 401 U. S. 37 (1971). 549 F. Supp. 1134 (1982). Rejecting all of them, it ruled in favor of respondents on the merits of the pre-emption claim, and the Court of Appeals affirmed substantially for the reasons set forth in the opinion of the District Court. 722 F. 2d 728 (1983). I would grant certiorari to review the District Court's refusal to accord any res judicata weight to the determination of the Vermont Public Service Board.

The District Court held that res judicata did not apply, because "the policy against permitting [the Board] to act beyond its jurisdiction outweighs the policy underlying the doctrine of *res judicata*." 549 F. Supp., at 1148. The District Court, relying on our decisions in *Durfee* v. *Duke*, 375 U. S. 106 (1963), and *Kalb* v. *Feuerstein*, 308 U. S. 433 (1940), in effect held that where the merits of the issue tendered by the federal plaintiff could result in

a conclusion that the federal regulatory scheme ousted the state regulatory scheme, res judicata does not apply. I think this misreads the decisions upon which the District Court relied, and slights our recent decision in *Insurance Corporation of Ireland, Ltd.* v. *Compagnie des Bauxites de Guinee*, 456 U. S. 694, 702, n. 9 (1982), where the Court said:

> "A party that has had an opportunity to litigate the question of subject-matter jurisdiction may not, however, reopen that question in a collateral attack upon an adverse judgment. It has long been the rule that principles of res judicata apply to jurisdictional determinations—both subject matter and personal. See *Chicot County Drainage Dist.* v. *Baxter State Bank*, 308 U. S. 371 (1940); *Stoll* v. *Gottlieb*, 305 U. S. 165 (1938)."

Kalb v. *Feuerstein* was a case in which Congress had confided exclusive jurisdiction for settlement of claims to the federal bankruptcy courts, and thereby ousted the state courts of jurisdiction to adjudicate such claims. 308 U. S., at 440. But here, although the federal courts may have reached an entirely correct conclusion on the merits of the federal pre-emption issue, there is not the remotest suggestion that Congress by enactment of legislation authorizing federal licensing of hydroelectric projects intended to deprive the Vermont Public Service Board of authority to hear any claim relating to such projects that would otherwise be within the jurisdiction of the Board.

Although the fact that the adjudicating agency in this case was a state agency, rather than a state court, may make some difference as to the extent to which res judicata principles apply, it is by no means dispositive of the issue.* "Occasionally courts have used language to the effect that *res judicata* principles do not apply to administrative proceedings, but such language is certainly too broad." *United States* v. *Utah Construction & Mining Co.*, 384 U. S. 394, 421–422 (1966) (footnotes omitted).

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*This case may also present a question left open in *Gibson* v. *Berryhill*, 411 U. S. 564, 575–577 (1973): whether respondents were required by the line of cases beginning with *Younger* v. *Harris*, 401 U. S. 37 (1971), to pursue their avenues of appeal from the administrative ruling within the state court system. As this Court observed in *Huffman* v. *Pursue, Ltd.*, 420 U. S. 592, 608 (1975), "[v]irtually all of the evils at which *Younger* is directed . . . inhere in federal intervention prior to completion of state appellate proceedings."

At a time when judges and observers are increasingly concerned with the workload of the federal courts, the application of principles of res judicata to disputes such as this might both conserve the time of the federal courts and make for a more orderly resolution of this and similar disputes.

No. 82–1971. SCHAEFER *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 3d Cir. Certiorari denied. Reported below: 697 F. 2d 558 and 702 F. 2d 57.

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

I would grant certiorari in this case to clarify the application of the National Labor Relations Board's policy of deferral to private resolutions of labor disputes. The Board applies this formal policy to both arbitral and nonarbitral settlements of labor disputes, including settlements of unfair labor practice charges. See *Central Cartage Co.*, 206 N. L. R. B. 337, 338 (1973). In this case, petitioner made apparent concessions in collective-bargaining negotiations to get the employees' union to withdraw its unfair labor practice charges. See 246 N. L. R. B. 181, 187, 190 (1979). Petitioner also paid cash settlements to four employees in exchange for waivers of any backpay they might be entitled to receive. 261 N. L. R. B. 272, 273 (1982). The Board refused, however, to defer to the union's waiver because the parties had not resolved the legal merits of the charges and because petitioner had not provided substantial remedies for his unfair labor practice. 246 N. L. R. B., at 190. The Board also determined that the four employees could not settle their backpay claims without Board approval and ordered petitioner to make full restitution. 261 N. L. R. B., at 273. The Court of Appeals for the Third Circuit affirmed. 697 F. 2d 558 (1983).

I

The Board's application of its deferral policy in this case is inexplicable. For example, the Board asserts that the settlement negotiations did not address and resolve the unfair labor practice claims. Brief in Opposition 7–8. The record clearly indicates, however, and, ironically, the Board's General Counsel found objectionable, see 246 N. L. R. B., at 190, that petitioner and the union engaged in extensive discussions concerning withdrawal of

the charges. *Id.*, at 187. The Board has regularly held that its decision to defer does not depend on whether it agrees with the parties' actual resolution of the dispute. See, *e. g.*, *Howard Electric Co.*, 166 N. L. R. B. 338, 341 (1967) (deference to arbitral settlement); *Terminal Transport Co.*, 185 N. L. R. B. 672, 673 (1970) (same). Rather, it requires the parties to discuss the charges to assure that the employees have made a clear and knowing waiver of their statutory right to process complaints before the Board. See *Coca-Cola Bottling Co.*, 243 N. L. R. B. 501, 502 (1979) (deference to nonarbitral settlement). It is beyond peradventure that the union and the four employees who accepted cash settlements made such a waiver here.

Similarly, the record contradicts the Board's contention that petitioner did not remedy the unfair labor practice. Brief in Opposition 8–9. Surely at least some of petitioner's bargaining concessions were attributable to the union's agreement to withdraw the unfair labor practice charges. Any concessions the union made, including waiver of the charges, would be binding upon the employees, absent evidence that the union acted in bad faith. See *Hines* v. *Anchor Motor Freight, Inc.*, 424 U. S. 554, 564–567 (1976). Even if the union's waiver was not determinative, the cash settlements the four employees accepted would be. No one who understands the economic logic of the old hunter's adage that "a bird in the hand is worth two in the bush" could dispute the substantiality of the remedy provided. Certainly the Board cannot do so, as it has approved settlements which contained *no* backpay awards. See, *e. g.*, *Krause Honda, Ltd.*, 8 AMR ¶18,221 (1981) (nonarbitral settlement); *Beloit Corp., Jones Division*, 6 AMR ¶14,177 (1979) (same).

Moreover, the Board's assertion that settlements reached *after* its decisions have issued are not substantial remedies is contrary to its previous rulings. See, *e. g.*, *Krause Honda, Ltd.*, *supra* (ruling that the timing of settlements does not affect Board's deferral policy). Issuance of an adverse Board decision should make employers more willing to settle on more generous terms. Thus, settlements reached after Board decisions should be more, not less, likely to afford substantial redress for violations of the Act than are settlements reached before that time. The Board has not articulated a substantial reason for treating such a settlement less deferentially in this case.

Finally, the Board's assertion that formal determinations of backpay claims are preferable to private resolutions of such claims, 261 N. L. R. B., at 273; 697 F. 2d, at 562, is antithetical both to the national labor policy of encouraging private dispute resolutions and to the Board's own statements that nonarbitral settlements deserve as much respect as formal resolutions of backpay claims. See *Krause Honda, Ltd., supra; Coca-Cola Bottling Co., supra.* Again, the Board has offered no reason for departing from its longstanding policy in this case.

II

Were this simply an isolated instance of law being erroneously applied to the facts of this case I would not suggest that the Court expend its time and resources reviewing it, but the opinions of the Courts of Appeals strongly suggest that there is marked disagreement on the circumstances under which the policy of Board deferral must be exercised. See, *e. g., Roadway Express, Inc.* v. *NLRB*, 647 F. 2d 415, 422–423, and n. 15 (CA4 1981) (noting four opinions of Board and criticizing inconsistent application of deferral policy to nonarbitral settlements); *NLRB* v. *Pincus Brothers, Inc.-Maxwell*, 620 F. 2d 367 (CA3 1980) (three opinions on application of deferral policy to arbitral settlement); *Douglas Aircraft Co.* v. *NLRB*, 609 F. 2d 352 (CA9 1979) (Board must defer to arbitral settlement unless it is "palpably wrong"). In my opinion, this intercircuit confusion makes this case appropriate for certiorari review.

Moreover, I believe that an essential aspect of our national labor policy is at stake in this case. A commitment to private dispute resolution undergirds our entire national labor policy, which recognizes that the societal rewards of private negotiations outweigh any need for uniformity of result or adjudicative resolution of every labor dispute. Parties accept the risk that private settlements will differ from possible Board dispositions when they elect to proceed by negotiation, and the Board recognizes such possibilities when it adopts a policy of deference. The Board's deferral policy is deeply rooted in our national commitment to private dispute resolution and, until openly and expressly changed, must be applied uniformly and strictly. Private dispute resolution processes become unworkable if their finality is cast into doubt by the prospect of unprincipled Board interference. When there is confusion about the circumstances in which deference will

be exercised, employers and employees cannot be fully committed to private dispute resolution as a means of achieving industrial stability. I would therefore grant certiorari to clarify the application of this important national labor policy.

No. 82–2028. ARNOTT *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 704 F. 2d 322.

JUSTICE WHITE, dissenting.

The petition for certiorari raises several issues, all but one of which do not warrant this Court's review.

Petitioner Paul Arnott was convicted of a variety of drug-related offenses following a jury trial in which a number of hearsay statements made by his alleged co-conspirators were admitted. Before the trial commenced, the District Court ruled that such statements would be admitted conditionally subject to a later demonstration of their admissibility by a preponderance of the evidence under the procedure approved by the Sixth Circuit in *United States* v. *Vinson*, 606 F. 2d 149, 153 (1979), cert. denied, 444 U. S. 1074 and 445 U. S. 904 (1980). At the close of the Government's case, petitioner moved to strike the co-conspirators' statements that had been admitted over his continuing objection. In his view, the Government had failed to demonstrate that (1) a conspiracy existed, (2) petitioner was a member of the conspiracy, and (3) the hearsay statements were made in the course and in furtherance of the conspiracy. See 606 F. 2d, at 152. The District Court denied petitioner's motion.

On appeal, petitioner contended that the District Court had abused its discretion in considering the statements themselves in determining whether the Government had satisfied the prerequisites to admission of those statements. Without commenting on the sufficiency of the Government's independent evidence, the Court of Appeals simply reaffirmed its previous holdings that Federal Rule of Evidence 104(a) had modified prior law to the contrary so as to authorize the consideration of challenged hearsay statements in deciding the preliminary question of admissibility, see, *e. g.*, *United States* v. *Cassity*, 631 F. 2d 461, 464 (1980); *United States* v. *Vinson*, *supra*, at 153, and rejected petitioner's contention. 704 F. 2d 322, 325 (1983).

The rule adopted by the Sixth Circuit and applied in this case conflicts with the one enunciated by every other Court of Appeals that has addressed the issue. Those courts have, almost without

exception, admitted statements of co-conspirators only upon a showing by a preponderance of independent evidence that a conspiracy existed in which the declarant and the defendant were both members and that the challenged statements were made in furtherance of the conspiracy. See *United States* v. *Nardi*, 633 F. 2d 972, 974 (CA1 1980); *United States* v. *Alvarez-Porras*, 643 F. 2d 54, 56–57 (CA2), cert. denied, 454 U. S. 839 (1981); *Government of Virgin Islands* v. *Dowling*, 633 F. 2d 660, 665 (CA3), cert. denied, 449 U. S. 960 (1980); *United States* v. *Gresko*, 632 F. 2d 1128, 1131–1132 (CA4 1980); *United States* v. *James*, 590 F. 2d 575, 580–581 (CA5) (en banc), cert. denied, 442 U. S. 917 (1979); *United States* v. *Regilio*, 669 F. 2d 1169, 1174 (CA7 1981), cert. denied, 457 U. S. 1133 (1982); *United States* v. *Bell*, 573 F. 2d 1040, 1043–1044 (CA8 1978); *United States* v. *Andrews*, 585 F. 2d 961, 964–967 (CA10 1978); *United States* v. *Monaco*, 702 F. 2d 860, 876–880 (CA11 1983) (stating standard in terms of both substantial evidence and preponderance of the evidence); *United States* v. *Jackson*, 201 U. S. App. D. C. 212, 227–234, 627 F. 2d 1198, 1213–1220 (1980). The Ninth Circuit requires independent evidence sufficient to establish a prima facie case that a conspiracy existed and that the defendant was part of it. See *United States* v. *Miranda-Uriarte*, 649 F. 2d 1345, 1349–1350 (1981). See also *United States* v. *Nixon*, 418 U. S. 683, 701, and n. 14 (1974) (dicta).

In opposing the petition, the Government argues that it introduced sufficient independent evidence of the existence of a conspiracy and of the membership of petitioner and the declarants to render the hearsay statements admissible under the test adopted by most Courts of Appeals. Although a close examination of the record might support this claim, the Court of Appeals made no finding concerning the weight of the independent evidence and did not purport to hold that the prerequisites to admission of co-conspirator statements established by Federal Rule of Evidence 801(d)(2)(E) would have been satisfied had the District Court not considered the statements themselves. Similarly, the Court of Appeals' conclusion that one co-conspirator's statements "were few and cumulative to the overwhelming evidence against Arnott," 704 F. 2d, at 325, does not establish that all of the admitted statements, considered together, did not prejudice petitioner. This Court need not scour the record to find alternative justifications—not relied on below—for a decision resting on

a legal principle that consistently has been repudiated in other Circuits.

Accordingly, I would grant the petition for certiorari and set the case for oral argument.

No. 82–2107. ALABAMA *v.* TAYLOR. Ct. Crim. App. Ala. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 429 So. 2d 1172.

No. 83–340. GREER, WARDEN, MENARD CORRECTIONAL CENTER *v.* PARISIE. C. A. 7th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 705 F. 2d 882.

No. 83–63. INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION NO. 323, AFL–CIO *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 11th Cir. Certiorari denied. Reported below: 703 F. 2d 501.

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

After determining that one of its members was working in a supervisory capacity for a nonunion employer, Local No. 323 of the International Brotherhood of Electrical Workers (IBEW) charged the employee with violating the IBEW constitution. That document provides that a member may be penalized for "[w]orking in the interest of any organization or cause which is detrimental to, or opposed to, the I. B. E. W." The employee was fined and ultimately expelled from the union.

The National Labor Relations Board charged the Local with an unfair labor practice for violating § 8(b)(1)(B) of the National Labor Relations Act, 49 Stat. 452, as amended, 29 U. S. C. § 158(b)(1)(B), which provides in pertinent part that "[i]t shall be an unfair labor practice for a labor organization or its agents—(1) to restrain or coerce . . . (B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances." After a hearing, the Administrative Law Judge found that the discipline was imposed for "working for a nonunion contractor," which in his view constituted unlawful coercion. On review, the Board adopted the Administrative Law Judge's findings and conclusions. It issued a cease-and-desist order and ordered various affirmative relief. 255 N. L. R. B. 1395 (1981).

The Board then successfully petitioned the Court of Appeals for the Eleventh Circuit for enforcement of its order. The court noted that in *NLRB* v. *International Brotherhood of Electrical Workers, Local 73 (Chewelah Contractors, Inc.)*, 621 F. 2d 1035 (1980), the Court of Appeals for the Ninth Circuit had held that a union does not violate § 8(b)(1)(B) by disciplining a member-supervisor for his employment with a nonunion company if the union neither represents the company's employees nor displays a representational interest in them. The Eleventh Circuit declined to adopt the Ninth Circuit's interpretation of the statute, stating that it found the *Chewelah* limitation inconsistent with the statute's central aim. 703 F. 2d 501, 507 (1983). It held that regardless of whether the union displays a representational interest in the company's employees, an attempt to force a member supervisor to cease working for a nonunion company infringes the employer's right to select that person as its representative.

The conflict between the Ninth Circuit and the Eleventh Circuit is clear. Identical action by a union will constitute an unfair labor practice in the Eleventh Circuit but not in the Ninth. Implementation of the national labor policy is hampered by such conflicting rules. Accordingly, I would grant the petition to settle the conflict.

No. 83–151. MARSHALL, SUPERINTENDENT, SOUTHERN OHIO CORRECTIONAL FACILITY *v.* WALKER. C. A. 6th Cir. Certiorari denied. Reported below: 703 F. 2d 959.

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

Respondent Walker was indicted in Stark County, Ohio, for murdering an off-duty policeman during a grocery store robbery in July 1972. Two accomplices, the wife of the victim, and a disinterested eyewitness identified respondent as the perpetrator of the murder. Respondent's defense was alibi; the records of the jail in Cuyahoga County, Ohio, showed on their face that Walker was incarcerated there between April 14 and August 1, 1972. If these records were accurate, Walker could not have been in the grocery store on July 22, 1972, when the murder took place. The accuracy of these records was hotly contested at trial.

After a jury trial respondent was convicted of first-degree murder. His conviction was affirmed by the Ohio Court of Appeals and by the Supreme Court of Ohio, *State* v. *Walker*, 55 Ohio St.

2d 208, 378 N. E. 2d 1049 (1978), cert. denied, 441 U. S. 924 (1979). Respondent then sought federal habeas relief in the United States District Court for the Northern District of Ohio, which granted the writ on the ground that six evidentiary rulings of the Ohio trial court concerning the scope of prosecutorial cross-examination and rebuttal testimony denied respondent a fair trial as guaranteed by the Fourteenth Amendment. The Court of Appeals for the Sixth Circuit affirmed the judgment on the same grounds. *Walker* v. *Engle*, 703 F. 2d 959 (1983). I would grant certiorari to review this novel holding that trial rulings on the scope of prosecutorial cross-examination and rebuttal testimony are cognizable on federal habeas. No case from this Court has ever held that they are, and several of our cases strongly suggest that they are not. See *Davis* v. *Alaska*, 415 U. S. 308, 317 (1974); *Lisenba* v. *California*, 314 U. S. 219, 227 (1941); see also *Donnelly* v. *DeChristoforo*, 416 U. S. 637 (1974) (prosecutorial misconduct); *Cupp* v. *Naughten*, 414 U. S. 141 (1973) (erroneous jury instruction).

Respondent has contended throughout that irrelevant and prejudicial evidence was allowed before the jury. The Supreme Court of Ohio rejected his contention with this language:

> "Upon a review of the contested testimony, we find that it was relevant, in that it tended to disprove the accuracy of the jail records, which was a question in dispute in the instant cause. The contested evidence went to the credibility of the various jail records by demonstrating the overall inefficiency of the persons and the system in which they were maintained and the general lack of inmate supervision.
>
> "Moreover, upon an examination of the record, we find that the admission of certain of this testimony occurred without an objection and that a great proportion of this testimony occurred during cross-examination. The trial judge is posited with broad discretion in controlling cross-examination, and the appellant has the burden to show a patent abuse of discretion. We find, in the instant cause, that the admission of this testimony was relevant to the credibility of the jail records which support appellant's alibi and was neither an abuse of discretion nor a resultant prejudicial harm to appellant." *State* v. *Walker*, *supra*, at 214, 378 N. E. 2d, at 1052–1053 (footnote and citations omitted).

The District Court and the Court of Appeals, without suggesting that there was anything peculiar about the Ohio rules regarding relevancy or the trial court's discretion to control the examination of witnesses, picked out six isolated instances in which those courts thought that prosecutorial cross-examination or rebuttal examination had been too broad, thereby infecting respondent's entire trial with some sort of federal constitutional error:

(1) Defense witnesses were asked about the conviction of "Major" Payne, a former Warden of the jail, for theft of property from the jail. Payne had not been Warden at the time respondent was allegedly incarcerated, however, and Payne's conviction occurred after respondent's recorded period of detention. Disagreeing with the Supreme Court of Ohio, the Court of Appeals held that testimony relating to Payne's conviction for stealing evidence had "no apparent connection to the issue whether a *prisoner* could leave the jail *and return* undetected." *Walker* v. *Engle*, 703 F. 2d, at 963 (emphasis in original).

(2) Jail commissary records were introduced to show that Walker made numerous transactions during his confinement, including one on the day of the crime. The prosecutor tried to undermine this circumstantial evidence with testimony from jail deputies that other inmates could have made purchases on Walker's commissary account.

The State also called Frank Lancianese, an examiner for the Office of the State Auditor. He testified that (1) an audit of the commissary account between 1969 and 1975 revealed a $66,000 shortage; (2) the Sheriff's Department obstructed access to the commissary records; and (3) an audit of jail vending machine profits showed $9,000 unaccounted for by the Sheriff's Department. The Court of Appeals determined that this rebuttal testimony was not relevant to impeaching the accuracy of commissary records used by respondent to support his alibi, saying that "the alleged thefts did not affect the *record of commissary transactions* relied on by Walker, but showed merely that *commissary* funds may have at some time been misappropriated by Sheriff's Department personnel." *Id.*, at 964 (emphasis in original).

(3) In the words of the Court of Appeals, "[t]he prosecution was permitted, without any basis in the record, to insinuate [on cross-examination] that several defense witnesses from the Sheriff's Department were being monitored and coached by Tom Booth in fur-

therance of a Sheriff's Department coverup of improprieties." *Ibid.*

(4) Respondent was first located in Chicago, Illinois, and a prosecution rebuttal witness was permitted to testify that Cuyahoga County authorities impeded respondent's return to Stark County. The Court of Appeals rejected the State's claim of relevancy, describing the testimony as "highly irrelevant and prejudicial conjecture." *Ibid.*

(5) The State called as one of its witnesses John Appling, a prisoner who had served as a "range boss" for the cellblock to which Walker was assigned. Appling took the stand, identified himself, and refused to testify on the basis that his testimony might incriminate him. The State then questioned other witnesses concerning Appling, seeking, in the words of the Ohio Supreme Court, "to test the recollection and credibility of the witnesses . . . ." *State* v. *Walker*, 55 Ohio St. 2d, at 218, 378 N. E. 2d, at 1054. The District Court, in sharp contrast, thought that this testimony "suggest[ed] to the jury that Appling's testimony would have been helpful to the prosecution had he testified . . . ." *Walker* v. *Engle*, C79–2132 (ND Ohio, Jan. 28, 1981), App. to Pet. for Cert. A41. The Court of Appeals agreed.

(6) The Court of Appeals also found objectionable the State's use, over objection, of newspaper clippings to refresh the recollection of defense witnesses during cross-examination regarding the conditions at the Cuyahoga County jail. The clippings referred to problems within the jail, and the Court of Appeals thought the use of these clippings had an "inflammatory and prejudicial effect upon the jury." *Walker* v. *Engle*, *supra*, at 968.

The lower courts agreed that the evidence could sustain respondent's conviction for the murder with which he was charged. What the Court of Appeals did, in effect, was to select from this massive evidence three examples of trial rulings respecting the examination of defense witnesses, one ruling respecting a witness who refused to testify, and two instances of the scope of rebuttal testimony, and to conclude that their combined effect was to deny respondent a "fair trial." In so doing, I think the Court of Appeals went far beyond the permissible scope of federal habeas review of a state conviction.

Whether we as trial judges in this case would have limited cross-examination or rebuttal testimony more stringently than did the judge who presided over the trial is scarcely material to the inquiry on federal habeas corpus. The prosecution was trying to

impeach documentary evidence which gave a criminal defendant, placed at the scene of the crime by several witnesses, an apparently airtight alibi—that he was confined in jail in another county when the crime occurred. The manner in which these records might be impeached, whether by showing potential inaccuracies in the methods by which they were kept, or by showing other deficiencies in the office that was responsible for keeping the records, must under our system be left to the discretion of the trial judge. In *Lisenba* v. *California*, 314 U. S., at 227–228, this Court said:

> "The Fourteenth Amendment leaves California free to adopt a rule of relevance which the court below holds was applied here in accordance with the state's law."

This Court has even gone so far as to overturn a trial judge's ruling *limiting* cross-examination, stating that under the Confrontation Clause of the United States Constitution,

> "[s]ubject always to the broad discretion of a trial judge to preclude repetitive and unduly harassing interrogation, the cross-examiner is not only permitted to delve into the witness' story to test the witness' perceptions and memory, but the cross-examiner has traditionally been allowed to impeach, *i. e.*, discredit, the witness." *Davis* v. *Alaska*, 415 U. S., at 316.

By failing to heed the rulings in *Lisenba* and *Davis*, the Court of Appeals impermissibly intruded federal habeas review into essentially discretionary rulings of a state trial judge on a hotly contested issue at trial. I would grant certiorari to review its judgment.

No. 83–171. TRANSAMERICA COMPUTER CO., INC. *v.* INTERNATIONAL BUSINESS MACHINES CORP. C. A. 9th Cir. Certiorari denied. JUSTICE BLACKMUN took no part in the consideration or decision of this petition. Reported below: 698 F. 2d 1377.

No. 83–418. AFFELDT ET AL. *v.* J. C. PENNEY CO. C. A. 6th Cir. Certiorari denied. JUSTICE BLACKMUN took no part in the consideration or decision of this petition. Reported below: 714 F. 2d 138.

No. 83–190. ABATTI FARMS, INC., ET AL. *v.* AGRICULTURAL LABOR RELATIONS BOARD ET AL. Ct. App. Cal., 4th App. Dist. Motion of Western Growers Association for leave to file a brief as *amicus curiae* granted. Certiorari denied.

No. 83–272. BASIC CONSTRUCTION CO. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. JUSTICE POWELL took no part in the consideration or decision of this petition. Reported below: 711 F. 2d 570.

No. 83–282. WILSON ET AL. *v.* BLOCK, SECRETARY OF AGRICULTURE, ET AL. C. A. D. C. Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 228 U. S. App. D. C. 166, 708 F. 2d 735.

No. 83–388. E–SYSTEMS, INC., ET AL. *v.* DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR, ET AL. C. A. 5th Cir. Motion of respondent Howard R. Clymer for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 694 F. 2d 720.

No. 83–5025. LARSEN *v.* SIELAFF ET AL. C. A. 7th Cir. Certiorari denied. JUSTICE BRENNAN and JUSTICE MARSHALL would grant certiorari. Reported below: 702 F. 2d 116.

No. 83–5329. BUFORD *v.* WAINWRIGHT, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla.; and

No. 83–5354. AMADEO *v.* KEMP, SUPERINTENDENT, GEORGIA DIAGNOSTIC AND CLASSIFICATION CENTER. Sup. Ct. Ga. Certiorari denied. Reported below: No. 83–5329, 428 So. 2d 1389.

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.

NOVEMBER 4, 1983

Dismissal Under Rule 53

No. 83–389. FILCO ET AL. *v.* AMANA REFRIGERATION, INC., ET AL. C. A. 9th Cir. Certiorari dismissed under this Court's Rule 53. Reported below: 709 F. 2d 1257.

NOVEMBER 7, 1983

Appeals Dismissed

No. 83–430. HEIMBACH, COUNTY EXECUTIVE OF ORANGE COUNTY, ET AL. *v.* NEW YORK ET AL. Appeal from Ct. App.

N. Y. dismissed for want of substantial federal question. Reported below: 59 N. Y. 2d 891, 452 N. E. 2d 1264.

No. 83–449. BURKE DISTRIBUTING CORP., DBA B & W TRANSPORTATION, ET AL. *v.* MASSACHUSETTS. Appeal from Sup. Jud. Ct. Mass. dismissed for want of substantial federal question. Reported below: 388 Mass. 799, 448 N. E. 2d 728.

No. 83–467. PAULSON ET AL. *v.* COUNTY OF PIERCE. Appeal from Sup. Ct. Wash. dismissed for want of substantial federal question. Reported below: 99 Wash. 2d 645, 664 P. 2d 1202.

Certiorari Granted—Vacated and Remanded. (See also No. 82–6848, *ante*, p. 44.)

No. 82–1712. SUMNER, WARDEN *v.* MATA. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded with directions to dismiss the appeal as moot. JUSTICE STEVENS would deny certiorari. Reported below: 696 F. 2d 1244.

Miscellaneous Orders

No. A–310 (82–6982). NARCISSE *v.* LOUISIANA, *ante*, p. 865. Application to suspend the effect of the order denying certiorari pending action on the petition for rehearing, addressed to JUSTICE BRENNAN and referred to the Court, denied. JUSTICE BRENNAN and JUSTICE MARSHALL would grant the application.

No. D–345. IN RE DISBARMENT OF WALGREN. Disbarment entered. [For earlier order herein, see 461 U. S. 941.]

No. D–355. IN RE DISBARMENT OF GELB. Disbarment entered. [For earlier order herein, see 462 U. S. 1103.]

No. D–357. IN RE DISBARMENT OF HARTHUN. Disbarment entered. [For earlier order herein, see 462 U. S. 1103.]

No. D–358. IN RE DISBARMENT OF SHEEHAN. Disbarment entered. [For earlier order herein, see 462 U. S. 1103.]

No. D–359. IN RE DISBARMENT OF MCCOMB. Disbarment entered. [For earlier order herein, see 462 U. S. 1104.]

No. D–360. IN RE DISBARMENT OF TABENKEN. Disbarment entered. [For earlier order herein, see 462 U. S. 1114.]

No. D–363. IN RE DISBARMENT OF GIGLIOTTI. Disbarment entered. [For earlier order herein, see 462 U. S. 1128.]

No. D–364. IN RE DISBARMENT OF DOWNES. Disbarment entered. [For earlier order herein, see 463 U. S. 1204.]

No. D–381. IN RE DISBARMENT OF CAIRO. It is ordered that Victor C. Cairo, of Racine, Wis., 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–384. IN RE DISBARMENT OF BIZAR. It is ordered that Philip Harold Bizar, of Highland Park, Ill., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–385. IN RE DISBARMENT OF DRAWDY. It is ordered that J. Wesley Drawdy, 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.

No. D–386. IN RE DISBARMENT OF PERLOW. It is ordered that Solomon Perlow, of Lawrence, 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–387. IN RE DISBARMENT OF MANDELL. It is ordered that Irving Mandell, of Valley Stream, 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. 82–485. KEETON *v.* HUSTLER MAGAZINE, INC., ET AL. C. A. 1st Cir. [Certiorari granted, 459 U. S. 1169.] Treating the telegram of David L. Kahn, Esquire, received November 3, 1983, as a motion of Larry Flynt for leave to present oral argument *pro se*, the motion is denied. Stephen M. Shapiro, Esquire, of Chicago, Ill., is invited to present oral argument as *amicus curiae* in support of the judgment below.

No. 82–940. HISHON *v.* KING & SPALDING. C. A. 11th Cir. [Certiorari granted, 459 U. S. 1169.] Motion of petitioner for leave to file reply brief out of time denied.

No. 83–5384. BOYLAN *v.* UNITED STATES POSTAL SERVICE. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until November 28, 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.

JUSTICE BRENNAN, JUSTICE MARSHALL, and JUSTICE BLACKMUN, dissenting.

For the reasons expressed in *Brown* v. *Herald Co.*, *ante*, p. 928, we would deny the petition for certiorari in this case without reaching the merits of the motion to proceed *in forma pauperis*.

No. 83–5440. IN RE GREEN; and

No. 83–5444. IN RE PERCHARO. Petitions for writs of mandamus denied.

Certiorari Granted

No. 83–18. DUN & BRADSTREET, INC. *v.* GREENMOSS BUILDERS, INC. Sup. Ct. Vt. Certiorari granted. Reported below: 143 Vt. 66, 461 A. 2d 414.

No. 83–317. BLOCK, SHERIFF OF THE COUNTY OF LOS ANGELES, ET AL. *v.* RUTHERFORD ET AL. C. A. 9th Cir. Motion of respondent Dennis Rutherford for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 710 F. 2d 572.

No. 83–321. WALLER *v.* GEORGIA; and

No. 83–322. COLE ET AL. *v.* GEORGIA. Sup. Ct. Ga. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. Reported below: 251 Ga. 124, 303 S. E. 2d 437.

Certiorari Denied

No. 82–538. GODOY, AKA WOOD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 678 F. 2d 84.

No. 82–2082. LARSEN ET AL. *v.* FISHER; and

No. 82–2130. FISHER *v.* LARSEN ET AL. Ct. App. Cal., 4th App. Dist. Certiorari denied. Reported below: 138 Cal. App. 3d 627, 188 Cal. Rptr. 216.

No. 82–6810. MASON *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 429 So. 2d 569.

No. 82–6825. KINNER *v.* MORRIS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 82–6946. FERGUSON *v.* JOHNSON ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 709 F. 2d 1501.

No. 83–22. CITY OF ROCKFORD ET AL. *v.* KASKE ET AL. Sup. Ct. Ill. Certiorari denied. Reported below: 96 Ill. 2d 298, 450 N. E. 2d 314.

No. 83–64. ALVERO CRUZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 698 F. 2d 1148.

No. 83–65. LEASEWAY TRANSPORTATION CORP. ET AL. *v.* UNITED STATES ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 709 F. 2d 1510.

No. 83–71. UNITED PARCEL SERVICE, INC. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 3d Cir. Certiorari denied. Reported below: 706 F. 2d 972.

No. 83–79. JENSEN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 83–90. PORTSMOUTH REDEVELOPMENT AND HOUSING AUTHORITY *v.* PIERCE, SECRETARY OF HOUSING AND URBAN DEVELOPMENT, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 706 F. 2d 471.

No. 83–162. NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE ET AL. *v.* AIR TRANSPORT ASSOCIATION OF AMERICA. Ct. App. N. Y. Certiorari denied. Reported below: 59 N. Y. 2d 917, 453 N. E. 2d 548.

No. 83–179. POSEY *v.* SKYLINE CORP. C. A. 7th Cir. Certiorari denied. Reported below: 702 F. 2d 102.

No. 83–180. SOUTHERN PACIFIC TRANSPORTATION CO. *v.* SECRETARY OF THE INTERIOR ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 700 F. 2d 550.

No. 83–184. HODGES *v.* BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE. Sup. Ct. S. C. Certiorari denied. Reported below: 279 S. C. 128, 303 S. E. 2d 89.

No. 83–278. BOBO *v.* DUCHARME, SUPERINTENDENT, WASHINGTON STATE PENITENTIARY, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 707 F. 2d 516.

No. 83–397. OUIMET CORP. ET AL. *v.* PENSION BENEFIT GUARANTY CORPORATION ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 711 F. 2d 1085.

No. 83–398. MITSUI & CO., LTD., ET AL. *v.* INDUSTRIAL INVESTMENT DEVELOPMENT CORP. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 704 F. 2d 785.

No. 83–408. CANADIAN HIDROGAS RESOURCES, LTD., ET AL. *v.* MGPC, INC. Temp. Emerg. Ct. App. Certiorari denied. Reported below: 725 F. 2d 1376.

No. 83–410. ROTH *v.* PRITIKIN ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 710 F. 2d 934.

No. 83–416. BYRUM ET AL. *v.* LOWE & GORDON, LTD.; and BYRUM ET AL. *v.* PATTERSON, TRUSTEE, ET AL. Sup. Ct. Va. Certiorari denied. Reported below: 225 Va. 362, 302 S. E. 2d 46 (first case).

No. 83–426. SANCHEZ ET AL. *v.* MCFADDEN, ADMINISTRIX OF THE ESTATE OF MCFADDEN. C. A. 2d Cir. Certiorari denied. Reported below: 710 F. 2d 907.

No. 83–437. INFANT DOE *v.* BLOOMINGTON HOSPITAL ET AL. Ct. App. Ind. Certiorari denied.

No. 83–439. SILLER ET AL. *v.* HARTZ MOUNTAIN ASSOCIATES ET AL. Sup. Ct. N. J. Certiorari denied. Reported below: 93 N. J. 370, 461 A. 2d 568.

No. 83–440. SCOTT *v.* SYLVESTER. Sup. Ct. Va. Certiorari denied. Reported below: 225 Va. 304, 302 S. E. 2d 30.

No. 83–448. MACDONALD ET AL. *v.* FERGUSON REORGANIZED SCHOOL DISTRICT R–2 ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 711 F. 2d 80.

No. 83–457. HYDE *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied.

No. 83–462. STURM, RUGER & CO., INC. *v.* ZAHRTE. C. A. 9th Cir. Certiorari denied. Reported below: 709 F. 2d 26.

No. 83–474. STUART-WESTERN, INC. *v.* COOLING SYSTEMS & FLEXIBLES, INC. C. A. 9th Cir. Certiorari denied. Reported below: 711 F. 2d 1062.

No. 83–488. KOZACHENKO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 708 F. 2d 719.

No. 83–522. WALKER *v.* MARSHALL, SUPERINTENDENT, SOUTHERN OHIO CORRECTIONAL FACILITY. C. A. 6th Cir. Certiorari denied. Reported below: 703 F. 2d 959.

No. 83–543. KIRK *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 711 F. 2d 1069.

No. 83–545. SAGAN *v.* U. S. SUPREME COURT ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 716 F. 2d 892.

No. 83–566. WEINER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 723 F. 2d 917.

No. 83–571. ARIAS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 708 F. 2d 732.

No. 83–574. EBOLI ET AL. *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 712 F. 2d 785.

No. 83–584. KRAMER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 711 F. 2d 789.

No. 83–5049. CARPENTER *v.* SCOPPA ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 729 F. 2d 1441.

No. 83–5111. VAN METER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 714 F. 2d 125.

No. 83–5123. WESTON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 708 F. 2d 302.

No. 83–5127. GREEN *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 83–5141. DAVIS *v.* MISSOURI. Ct. App. Mo., Western Dist. Certiorari denied. Reported below: 646 S. W. 2d 871.

No. 83–5179. LARSON *v.* KOTOS ET AL. C. A. 7th Cir. Certiorari denied.

No. 83–5184. AGUIRRE *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 83–5198. WILLIAMS *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 83–5224. THOMPSON *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 83–5274. FITZPATRICK *v.* SMITH, SUPERINTENDENT, ATTICA CORRECTIONAL FACILITY. Ct. App. N. Y. Certiorari denied. Reported below: 59 N. Y. 2d 916, 453 N. E. 2d 547.

No. 83–5283. HOPKINS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 703 F. 2d 1102.

No. 83–5316. OLIVER ET AL. *v.* HUNTINGDON COUNTY COMMISSIONERS ET AL. C. A. 3d Cir. Certiorari denied.

No. 83–5393. DOLLAR ET AL. *v.* HARALSON COUNTY, GEORGIA. C. A. 11th Cir. Certiorari denied. Reported below: 704 F. 2d 1540.

No. 83–5397. ZERMAN *v.* JACOBS ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 729 F. 2d 1443.

No. 83–5404. WEST *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 433 So. 2d 1147.

No. 83–5405. OWENS *v.* BARNES, DAUPHIN COUNTY BUREAU OF ELECTIONS, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 711 F. 2d 25.

No. 83–5425. BRUCE *v.* MCKASKLE, ACTING DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS. C. A. 5th Cir. Certiorari denied. Reported below: 707 F. 2d 155.

No. 83–5426. FINCH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 714 F. 2d 134.

No. 83–5428. BENNETT *v.* TEXAS ET AL. C. A. 5th Cir. Certiorari denied.

No. 83–5429. GADDY *v.* NEW YORK. Ct. App. N. Y. Certiorari denied. Reported below: 59 N. Y. 2d 973, 453 N. E. 2d 557.

No. 83–5430. LAMORE *v.* INLAND DIVISION OF GENERAL MOTORS CORP. ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 714 F. 2d 140.

No. 83–5434. GUY *v.* TIP TOP, FABERGE, INC. C. A. 8th Cir. Certiorari denied. Reported below: 718 F. 2d 1107.

No. 83–5436. FROST *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 720 F. 2d 668.

No. 83–5439. HOSKINS *v.* THOMPSON, GOVERNOR OF ILLINOIS. C. A. 7th Cir. Certiorari denied.

No. 83–5441. MEARES-EL *v.* LANE, DIRECTOR, ILLINOIS DEPARTMENT OF CORRECTIONS, ET AL. C. A. 7th Cir. Certiorari denied.

No. 83–5443. ORENSTEIN ET AL. *v.* HECKLER, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 1st Cir. Certiorari denied.

No. 83–5458. CORTEZ *v.* NEW MEXICO. Ct. App. N. M. Certiorari denied.

No. 83–5481. CASTRO *v.* FEDERAL DEPOSIT INSURANCE CORPORATION, RECEIVER FOR BANCO CREDITO Y AHORRO PONCENO, ET AL. C. A. 1st Cir. Certiorari denied.

No. 83–5503. MOORE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 710 F. 2d 731.

No. 83–5515. PINEDA-CHINCHILLA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 712 F. 2d 942.

No. 83–5518. SAMMONS *v.* LIVESAY, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 711 F. 2d 1059.

No. 83–5520. PIFER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 716 F. 2d 904.

No. 83–5532. HOLLIMAN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 714 F. 2d 785.

No. 83–5535. JENKS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 714 F. 2d 143.

No. 83–5546. HILLYARD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 711 F. 2d 1051.

No. 83–5554. HAMPTON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 704 F. 2d 1250.

No. 83–5555. ZYLSTRA *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 713 F. 2d 1332.

No. 82–1069. PEACOCK ET AL. *v.* UNITED STATES. C. A. 5th Cir. Motion of petitioner Harvey Coleman Peacock for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 654 F. 2d 339 and 686 F. 2d 356.

No. 82–1977. WAINWRIGHT, DIRECTOR, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. *v.* GIARDINO. C. A. 11th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 704 F. 2d 1252.

No. 83–144. VINZANT *v.* KING. C. A. 1st Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 702 F. 2d 18.

No. 82–2148. WHISENHUNT ET VIR *v.* SPRADLIN ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 701 F. 2d 470.

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

This case raises important and recurring questions concerning the due process and privacy rights of public employees, and I therefore dissent from the denial of certiorari. Petitioners, a patrolwoman and a police sergeant, were suspended from their jobs, and the sergeant was demoted to patrolman, because they dated and spent several nights together. These punishments were imposed even though the Department failed to provide petitioners with any reasonable warning that their conduct was prohibited and did not come forward with any evidence that the activity adversely affected their job performance. The Court of Appeals rejected petitioners' contentions that the suspensions and demotion violated their constitutional rights. *Shawgo* v. *Spradlin*, 701 F. 2d 470 (CA5 1983).

Although issues concerning the regulation of the private conduct of public employees arise frequently, the lower courts have divided sharply both in their results and in their analytic approach,[1]

[1] See, *e. g.*, *Andrade* v. *City of Phoenix*, 692 F. 2d 557 (CA9 1982); *Andrews* v. *Drew Municipal Separate School Dist.*, 507 F. 2d 611 (CA5 1975), cert. dism'd as improvidently granted, 425 U. S. 559 (1976); *Fisher* v. *Snyder*, 476 F. 2d 375 (CA8 1973); *Scott* v. *Macy*, 121 U. S. App. D. C. 205, 349 F. 2d 182 (1965); *Drake* v. *Covington County Board of Education*,

and guidance from this Court is unquestionably needed. I would grant certiorari and set the case for oral argument.

I

Petitioners Janet Shawgo[2] and Stanley Whisenhunt met and began dating while both were with the Amarillo, Tex., Police Department.[3] Whisenhunt was a sergeant who had been on the force for 11 years; Shawgo was a patrolwoman who had joined the Department a year earlier. The two worked different shifts, and Shawgo was not under Whisenhunt's supervision. As their relationship developed, Whisenhunt informed his immediate supervisor, Lieutenant Boydston, that he and Shawgo would probably be spending some nights together. The lieutenant told Whisenhunt that that would be "fine, [but] that I didn't want the two of them setting up housekeeping." Petitioners spent an increasing amount of time together but, as directed by Lieutenant Boydston, maintained separate residences.

Sometime thereafter, respondent Chief of Police Lee Spradlin heard rumors about petitioners' relationship. Without confront-

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371 F. Supp. 974 (MD Ala. 1974) (three-judge court); *Briggs* v. *North Muskegon Police Dept.*, 563 F. Supp. 585 (WD Mich. 1983); *Baron* v. *Meloni*, 556 F. Supp. 796 (WDNY 1983); *Swope* v. *Bratton*, 541 F. Supp. 99 (WD Ark. 1982); *Suddarth* v. *Slane*, 539 F. Supp. 612 (WD Va. 1982); *Shuman* v. *City of Philadelphia*, 470 F. Supp. 449 (ED Pa. 1979); *Wilson* v. *Swing*, 463 F. Supp. 555 (MDNC 1978); *Smith* v. *Price*, 446 F. Supp. 828 (MD Ga. 1977), rev'd on other grounds, 616 F. 2d 1371 (CA5 1980); *Hollenbaugh* v. *Carnegie Free Library*, 436 F. Supp. 1328 (WD Pa. 1977), aff'd, 578 F. 2d 1374 (CA3), cert. denied, 439 U. S. 1052 (1978) (MARSHALL, J., dissenting); *Major* v. *Hampton*, 413 F. Supp. 66 (ED La. 1976); *Mindel* v. *U. S. Civil Service Comm'n*, 312 F. Supp. 485 (ND Cal. 1970). See also *Phillips* v. *Bergland*, 586 F. 2d 1007, 1011 (CA4 1978); *Norton* v. *Macy*, 135 U. S. App. D. C. 214, 217, 417 F. 2d 1161, 1164 (1969); *Meehan* v. *Macy*, 129 U. S. App. D. C. 217, 229–230, 232, 392 F. 2d 822, 834–835, 837 (1968), on reconsideration, 138 U. S. App. D. C. 38, 425 F. 2d 469, on rehearing en banc, 138 U. S. App. D. C. 41, 425 F. 2d 472 (1969); *Taylor* v. *U. S. Civil Service Comm'n*, 374 F. 2d 466, 469–470 (CA9 1967).

[2] Subsequent to the decision below, petitioners were married and Shawgo has adopted her husband's last name. For convenience, Mrs. Whisenhunt will be referred to herein by her previous name.

[3] The statement of facts is adopted from the opinion of the Court of Appeals. *Shawgo* v. *Spradlin*, 701 F. 2d 470, 472–474 (CA5 1983).

ing them or their supervisors, Spradlin ordered Department detectives to conduct surveillance of the two police officers during off-duty hours. For 17 days, the detectives monitored Whisenhunt's home from a car parked in front of it and from a nearby apartment rented for that purpose. During that period, they observed Shawgo entering and leaving Whisenhunt's apartment on a number of occasions. The detectives filed an investigative report with Chief Spradlin which detailed the times of Shawgo's off-duty visits but also noted that petitioners had maintained separate residences.

On the Chief's recommendation, the Department disciplined petitioners for their nonmarital "cohabitation." Both were suspended without pay for 12 days; in addition, Whisenhunt was demoted from sergeant to patrolman. When notified of the punishments, petitioners were informed that their relationship violated § 113, Part 8, of Police Department regulations, which prohibits conduct that, "if brought to the attention of the public, could result in justified unfavorable criticism of [an officer] or the department." Whisenhunt was told that his activities also violated § 123 of the regulations, which requires "diligent and competent" performance of duties that are not "otherwise specifically prescribed" in the rules, as well as city personnel Rule XIX, § 108, which proscribes "conduct prejudicial to good order." No Amarillo police officer had ever before been disciplined for dating or "cohabitation" on these or any other grounds.

Petitioners exercised their statutory right to challenge the discipline before the Amarillo Civil Service Commission. The Commission refused to hear evidence of other known but unpunished instances of dating and cohabitation among members of the Police Department. There were no charges, evidence, or findings that the relationship violated any state law;[4] that it affected the performance of petitioners' duties; or that it was known to any members of the public. The Commission nevertheless upheld the discipline. Both officers subsequently resigned from the force

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[4] The Texas Penal Code expressly excludes from its sexual offense provisions "the conduct of persons while cohabitating, regardless of the legal status of their relationship and of whether they hold themselves out as husband and wife." Tex. Penal Code Ann. § 21.12 (1974). In addition, Texas has no statute prohibiting fornication.

because of unsatisfactory working conditions created by the discipline and publicity resulting from the hearing.

Petitioners brought this action in Federal District Court under 42 U. S. C. § 1983 against Chief Spradlin, the city, the Police Department, and members of the Amarillo Civil Service Commission. The complaint alleged that the discipline violated petitioners' rights to privacy and to due process of law. After a trial, the District Court entered judgment in favor of the defendants in an unpublished opinion and the Court of Appeals affirmed. *Shawgo* v. *Spradlin*, 701 F. 2d 470 (CA5 1983).

II

Petitioners contend that, since they had no way of knowing that their private and otherwise lawful behavior violated the regulations quoted above, the discipline was imposed without due process of law. The Court of Appeals characterized this claim as "extremely persuasive":

> "[Whisenhunt] did not receive warning of the consequences of off-duty behavior that was a common practice at the Department and was expressly or tacitly approved by his supervisor. The actual conduct for which he was punished—dating and spending the night with a co-employee—is not self-evidently within the ambit of the regulations and thus does not carry with it its own warning of wrongdoing, as does illegal conduct . . . . In addition, the plaintiff here had no objective indication that his off-duty activities impaired his job effectiveness.
>
> "Moreover, the catchall regulation had not been given content by prior instances of discipline, for 'the conduct resulting in their suspension was virtually identical to conduct previously tolerated.' . . . The plaintiff had no notice, because he was the first officer disciplined for activities that were approved by his supervisor and that he had valid reasons to believe were common in the police force. In addition, by knowingly tolerating similar activities by other individuals, the Department may be seen as sanctioning conduct that could have fallen within the scope of the rule. . . . Whisenhunt's supervisor's express or tacit approval, the implicit sanctioning of similar behavior in the Department, and the absence of warnings or prior instances of punishment, all raised a reason-

able inference contradictory to the scope later ascribed to the general rule." *Id.*, at 478 (citations omitted).

Despite this conclusion, the Court of Appeals held that the rules afforded petitioners constitutionally sufficient notice that their conduct was prohibited. The court apparently believed that, in cases not involving criminal sanctions, formal administrative rulemakings, or activities protected by the First Amendment, the Due Process Clause imposes virtually no requirement of fair warning. See *id.*, at 477–478, 479.

I believe this assumption fundamentally misperceives the purpose of the due process notice requirement. We have long recognized that "a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law." *Connally* v. *General Construction Co.*, 269 U. S. 385, 391 (1926). See also *Kolender* v. *Lawson*, 461 U. S. 352, 357–358 (1983). The requirement that the government afford reasonable notice of the kinds of conduct that will result in deprivations of liberty and property[5] reflects a sense of basic fairness as well as concern for the intrinsic dignity of human beings. Furthermore, the rule is instrumental to the constitutional concept of "ordered liberty." By demanding that government articulate its aims with a reasonable degree of clarity, the Due Process Clause ensures that state power will be exercised only on behalf of policies reflecting a conscious choice among competing social values; reduces the danger of caprice and discrimination in the administration of the laws; and permits meaningful judicial review of state actions. See, *e. g.*, *Grayned* v. *City of Rockford*, 408 U. S. 104, 108–109 (1972); *Giaccio* v. *Pennsylvania*, 382 U. S. 399, 402–404 (1966); *Raley* v. *Ohio*, 360 U. S. 423, 437–439 (1959); *Joseph Burstyn, Inc.* v. *Wilson*, 343 U. S. 495, 532 (1952) (Frankfurter, J., concurring); *Cantwell* v. *Connecticut*, 310 U. S. 296, 307–308 (1940); *Hurtado* v. *California*, 110 U. S. 516, 535–536 (1884). See generally *McGautha* v. *California*, 402 U. S. 183, 248–259 (1971) (BRENNAN, J., dissent-

[5] The Court of Appeals recognized that Whisenhunt, at least, was deprived of a constitutionally protected property interest when he was demoted from sergeant to patrolman. 701 F. 2d, at 476. See also *infra*, at 971–972.

ing), and cases cited therein; Note, The Void-For-Vagueness Doctrine in the Supreme Court, 109 U. Pa. L. Rev. 67, 80–81 (1960).

The concern with arbitrary encroachments on freedom which underlies the notice requirement naturally has special force when the liberty interests at stake are fundamental. For this reason, we have demanded greater precision in laws which render conduct criminal or which may abridge First Amendment rights. See, *e. g.*, *Kolender* v. *Lawson*, *supra*, at 358, and n. 8; *Parker* v. *Levy*, 417 U. S. 733, 756 (1974); *Smith* v. *Goguen*, 415 U. S. 566, 573, n. 10 (1974); *Winters* v. *New York*, 333 U. S. 507, 515 (1948). See *infra*, at 971. But the protections of the Due Process Clause are not limited to the most severe deprivations of liberty and property. As the Court held long ago, the requirement of fair warning does not prohibit particular types of penalties but rather "exaction of obedience to a rule or standard which [is] so vague and indefinite as really to be no rule or standard at all." *A. B. Small Co.* v. *American Sugar Refining Co.*, 267 U. S. 233, 239 (1925). Following the principle of *A. B. Small*, we have frequently entertained claims that regulations of economic and professional activity are unconstitutionally vague, even when the law at issue depends on civil enforcement and has no apparent effect on First Amendment rights. See, *e. g.*, *Hoffman Estates* v. *Flipside, Hoffman Estates, Inc.*, 455 U. S. 489, 497–505 (1982); *Joseph E. Seagram & Sons, Inc.* v. *Hostetter*, 384 U. S. 35, 48–49 (1966); *Barsky* v. *Board of Regents*, 347 U. S. 442, 443, 448 (1954); *Neblett* v. *Carpenter*, 305 U. S. 297, 302–303 (1938).

The unexpected and ad hoc application of the city of Amarillo's vague personnel regulations to petitioners' conduct implicates precisely the concerns underlying the due process requirement of fair warning. There is not the slightest hint in either the language or the prior interpretations of the city's rules that they forbid private, off-duty, lawful, and consensual sexual relations. Whatever policy reasons may have justified the discipline, they had apparently never before been expressed by either the State, the city, or the Police Department. Indeed, as the Court of Appeals explained, petitioners had good reasons to believe that their relationship was *not* so proscribed. Upholding the discipline, therefore, is not merely unfair, it "sanction[s] the most indefensible sort of entrapment by the State." *Raley* v. *Ohio*, *supra*, at 438.

III

For these reasons, I believe the discipline imposed on petitioners would have failed to satisfy the requirements of fair notice even if no fundamental rights had been at stake. But petitioners' lawful, off-duty sexual conduct clearly implicates the "fundamental . . . right to be free, except in very limited circumstances, from unwanted governmental intrusions into one's privacy." *Stanley* v. *Georgia*, 394 U. S. 557, 564 (1969). Without identifying the precise contours of this right, we have recognized that it includes a broad range of private choices involving family life and personal autonomy. See, *e. g.*, *Akron* v. *Akron Center for Reproductive Health, Inc.*, 462 U. S. 416, 426–427 (1983) (abortion); *Santosky* v. *Kramer*, 455 U. S. 745, 753 (1982) (child raising); *Zablocki* v. *Redhail*, 434 U. S. 374, 383–385 (1978) (marriage); *Carey* v. *Population Services International*, 431 U. S. 678, 684–685 (1977) (contraception); *Moore* v. *City of East Cleveland*, 431 U. S. 494, 499 (1977) (plurality opinion) (right to determine family living arrangements); *Cleveland Board of Education* v. *LaFleur*, 414 U. S. 632, 639–640 (1974) (pregnancy); *Roe* v. *Wade*, 410 U. S. 113, 152–153 (1973) (abortion); *Eisenstadt* v. *Baird*, 405 U. S. 438, 453–454 (1972) (contraception); *id.*, at 460, 463–465 (WHITE, J., concurring in result); *Loving* v. *Virginia*, 388 U. S. 1, 12 (1967) (marriage); *Griswold* v. *Connecticut*, 381 U. S. 479, 483–486 (1965) (marital privacy); *Prince* v. *Massachusetts*, 321 U. S. 158, 166 (1944) (family relationships); *Skinner* v. *Oklahoma ex rel. Williamson*, 316 U. S. 535, 541–542 (1942) (procreation); *Pierce* v. *Society of Sisters*, 268 U. S. 510, 535 (1925) (child rearing and education); *Meyer* v. *Nebraska*, 262 U. S. 390, 399 (1923) (same). These and other cases reflect the view that constitutionally protected liberty includes freedom from governmental disclosure of or interference with certain kinds of intensely personal decisions. The intimate, consensual, and private relationship between petitioners involved both the "interest in avoiding disclosure of personal matters, and . . . the interest in independence in making certain kinds of important decisions," *Whalen* v. *Roe*, 429 U. S. 589, 599–600 (1977), that our cases have recognized as fundamental. Therefore, the notice requirement of the Due Process Clause demands particular precision in this case. See *supra*, at 970.

Indeed, because petitioners' conduct involved fundamental rights, it could only be abridged to the extent necessary to achieve

strong, clearly articulated state interests. See, *e. g.*, *Akron* v. *Akron Center for Reproductive Health, Inc.*, *supra*, at 427. The Court of Appeals concluded that petitioners' punishment served a hypothesized interest in "forbidding members of a quasi-military unit, especially those different in rank, to share an apartment or to cohabit." 701 F. 2d, at 483. Even assuming that this concern is sufficiently compelling to support explicit regulation of petitioners' off-duty sexual activities,[6] the city's deterrent purposes obviously cannot be rationally served by regulations that fail to warn officers that such conduct is forbidden. Cf. *Kelley* v. *Johnson*, 425 U. S. 238, 239, n. 1, 247–248 (1976) (promulgation of explicit rule regulating police officers' hairstyles is rationally related to goal of making officers readily recognizable and inculcating esprit de corps); *Arnett* v. *Kennedy*, 416 U. S. 134, 160 (1974) (opinion of REHNQUIST, J.) (longstanding constructions and availability of official interpretations gave content to personnel regulations).

Public employers in general, and police departments in particular, may well deserve considerable latitude in enforcing codes of conduct. See *Arnett* v. *Kennedy*, *supra*; *Parker* v. *Levy*, 417 U. S. 773 (1974). It is hard to understand, however, how such a code can be either fairly or effectively enforced when employees are not told the standards of conduct to which they are expected to conform.

No. 82–6780. MCILWAIN *v.* UNITED STATES; and
No. 82–6997. HINES *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 454 A. 2d 770.

JUSTICE MARSHALL, with whom JUSTICE BRENNAN joins, dissenting.

I

Petitioners, convicted of second-degree burglary while armed, challenge their convictions on the ground that they were denied due process and the right to an impartial jury in violation of the Fifth and Sixth Amendments to the United States Constitution. Their claims stem from the fact that the deliberations of the jury that convicted them were disrupted by the intoxication of the

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[6] As noted above, Whisenhunt was not Shawgo's supervisor.

foreman of the jury. On the second day of deliberations, Friday, July 23, 1981, the trial judge received a note from members of the jury stating that they "'would like to change the foreperson of the jury due to the fact that the present foreperson seems somewhat unable to preside this morning.'" *Lee* v. *United States*, 454 A. 2d 770, 772 (D. C. 1982). That morning, prior to receiving the note, the judge's chambers had received a call indicating that the foreman of the jury would be late. In addition, a marshal suggested to the judge that there might be some question as to whether one of the jurors was intoxicated.

The trial judge held a separate *voir dire* of each member of the jury. The foreman of the jury denied any intoxication, and one juror stated that there was no indication that the foreman had been drinking. Nine members of the jury stated that it was their belief that the foreman had been drinking. Their estimation of her degree of intoxication varied from observations that she appeared to be "a little intoxicated" to claims that she was flatly "drunk."[1]

At the conclusion of the *voir dire* the trial court suggested that the petitioners agree to an arrangement whereby the foreman of the jury would be dismissed and the case would be submitted to the remaining 11 jurors. Petitioners rejected that suggestion and proposed instead that the judge declare a mistrial. The trial judge acknowledged that the juror in question was "somewhat

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[1] "JUROR CURLEY: I will tell it like it is. It seems like she is a little intoxicated. . . .

"JUROR FRAZIER: As far as I am concerned, she had been drinking this morning, Your Honor. . . .

"JUROR TYSON: She is not herself. She is just talking a lot . . . I assume she is under the influence of some kind. . . .

"JUROR FORD: I thought she was incompetent to preside because of the fact that she was a little intoxicated. . . .

"JUROR FLYNN: She did look like she was under the influence of alcohol . . . I do not think she should be a juror on this this morning. . . .

"JUROR JACKSON: She seemed to be under the influence of alcohol, sir . . . I think she still is a little intoxicated, unreasonable . . .

"JUROR WATSON: Well, it seemed like she had been drinking and she wouldn't let anyone else talk; just difficult to accomplish anything. . . .

"JUROR HUNTER: To my knowledge I think she had just a little too much to drink to be in this position that we are in . . .

"JUROR WALL: She is drunk. . . ." Pet. for Cert. of McIlwain 9.

under the influence in a fashion . . . that makes deliberations . . . inappropriate at this time." Pet. for Cert. of McIlwain 11. But the judge nonetheless denied the motion for a mistrial. Instead, he ordered an immediate 3-day recess, noting his hope that the "offending juror [would be] perfectly sober and able to deliberate" on Monday when deliberations would resume. *Lee* v. *United States*, 454 A. 2d, at 773. The judge expressly asked the juror to "come back on Monday refreshed." *Ibid.* Before the jury resumed deliberations on Monday, the trial judge "look[ed] in" on the jurors and informed counsel that he detected no further disability. *Ibid.* The jury acquitted the petitioners of armed robbery but convicted them of second-degree burglary while armed.

The District of Columbia Court of Appeals affirmed the petitioners' convictions on the ground that they had failed to show that they were prejudiced by the juror's intoxication. Justifying this conclusion, the Court of Appeals observed:

> "[O]nly one juror was involved, and only a short period of the deliberations was called into question. There is no evidence that any drinking actually occurred in the jury room or during the course of the trial, and the jury foreperson was not conclusively shown to have been intoxicated at the time of *voir dire*. The recess, coupled with the judge's checking in on the jury on Monday, both of which were done with the concurrence of appellants' counsel, foreclosed the possibility of prejudice. Under these circumstances, it cannot reasonably be said that the appellants were substantially deprived of their right to the judgment of objective and competent jurors." *Id.*, at 774.

This Court should grant certiorari and review the Court of Appeals' decision because it raises serious questions regarding the standard to be applied in determining the conditions under which a juror's misconduct and incapacity deprive a defendant of his Fifth Amendment right to due process and his Sixth Amendment right to an impartial jury.

II

This Court has repeatedly insisted in a wide variety of contexts that the right to be tried before a jury capable and willing to decide a case solely on the evidence before it is a cornerstone of our

criminal justice system. See, *e. g.*, *Irvin* v. *Dowd*, 366 U. S. 717 (1961). This precious right is denigrated when a conviction resting upon deliberations tainted by a juror's gross and debilitating impropriety is allowed to stand.

The issue of juror misconduct usually involves allegations of juror bias. Here, however, the complaint is not that the juror in question was biased against the petitioners. Rather, the complaint is that the juror's drunkeness rendered her incompetent and that a necessary corollary of the right to an impartial jury is the right to a jury in which all of the members are mentally competent. This Court as well as other courts have recognized the right to a mentally competent jury. See, *e. g.*, *Jordan* v. *Massachusetts*, 225 U. S. 167, 176 (1912); *Sullivan* v. *Fogg*, 613 F. 2d 465 (CA2 1980) (trial before jury with an insane juror inconsistent with due process).

It is undisputed that one of the members of the jury—the person chosen to be its foreman—was inebriated during at least part of the deliberations.[2] The trial judge specifically found that the juror was "somewhat under the influence," and recessed the trial so that the offending juror would be able to deliberate after a 3-day respite. The extent of the juror's incapacitation is highlighted by the trial judge's suggestion that he simply dismiss her and allow the remaining jurors to decide the case on their own.

The Court of Appeals finds comfort in the fact that "only" one juror was intoxicated. Yet "only" one juror may be the difference between liberty and imprisonment. Due process requires that *every* member of a jury meet minimal requirements of mental competence and impartiality. The Court of Appeals also finds it relevant that "only a short period of the deliberations was called into question." 454 A. 2d, at 774. But the Court of Appeals cites no facts and gives no reasons which support the notion that the affected period of deliberations was insignificant. Given the delicate dynamics of jury deliberations, it is simply impossible to

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[2] Although the Court of Appeals asserted that there is no evidence that drinking occurred during the course of the trial, two jurors indicated that the offending juror had been drinking during the trial, prior to the day she was examined by the judge. See *Lee* v. *United States*, 454 A. 2d 770, 772–773 (D. C. 1982); Pet. for Cert. of McIlwain 10–11.

know the effects the intoxicated juror had on her fellow jurors. Common sense would seem to indicate, however, that the general effect would not be conducive to the careful and objective deliberations upon which our criminal justice system relies.

In defending the decision of the Court of Appeals, the Government strongly relies upon this Court's holding in *Smith* v. *Phillips*, 455 U. S. 209 (1982). *Smith* involved allegations that a defendant had been denied due process because, during his state-court trial, one of the jurors applied to the prosecutor's office for a job as an investigator. The prosecutor learned of the application during the trial but failed to disclose this information until after the jury had convicted the defendant. The state court conducted a post-trial evidentiary hearing and determined that the juror was not actually biased. The Federal District Court, affirmed by the Court of Appeals, granted habeas corpus relief to the defendant on the ground that the juror's action had deprived the defendant of his constitutional right to an impartial jury. This Court reversed, holding that the post-trial evidentiary hearing provided sufficient protection for the defendant. Establishing a new standard by which to determine disputes over the integrity of jury deliberations, the majority of this Court declared that "the remedy for allegations of juror partiality is a hearing in which the defendant has the opportunity to prove actual bias." *Id.*, at 215.

Smith is a flawed ruling for reasons I have previously articulated. *Smith* v. *Phillips*, 455 U. S., at 224–244 (MARSHALL, J., dissenting). It misrepresents the factual circumstances of the incident that was at issue. *Id.*, at 229. It constitutes a departure from the mainstream of this Court's decisions concerning the integrity of jury deliberations. Cf. *Peters* v. *Kiff*, 407 U. S. 493, 502 (1972) (opinion of MARSHALL, J.) ("[E]ven if there is no showing of actual bias in the tribunal, this Court has held that due process is denied by circumstances that create the likelihood or the appearance of bias"). It posits a standard for challenging juror misconduct that is unrealistically demanding since proof of actual bias is virtually impossible to discover. *Smith* v. *Phillips*, *supra*, at 230–232. In sum, *Smith* was wrongly decided, exerts a baleful influence over this Court's consideration of analogous cases, and should be reconsidered.

Due process requires far more protection against juror misconduct than the "actual bias" test mandated by *Smith*. With respect to the cases at bar, due process may well require the grant-

ing of a mistrial whenever a trial judge finds that a juror, already engaged in deliberations, is so drunk that the deliberations must be recessed. This rule would undoubtedly affect very few trials; drunkenness on the part of active jurors is certainly an aberration. As to objections that this *per se* rule would create inconvenience and pose a drain on judicial resources, the only response is that such costs are what we must pay in order to give more than lip-service to our claim that trial by an impartial and competent jury constitutes a "priceless" right. See *Irvin* v. *Dowd*, *supra*, at 721. Because these cases present important issues implicating the constitutional right to a fair trial, I would grant the petitions.

No. 83–97. NEVADA, BY AND THROUGH THE WELFARE DIVISION OF THE DEPARTMENT OF HUMAN RESOURCES *v.* VINE ET AL. Sup. Ct. Nev. Motion of respondent John Michael Vine for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 99 Nev. 278, 662 P. 2d 295.

No. 83–300. CITY OF LOS ANGELES DEPARTMENT OF WATER AND POWER *v.* NATIONAL AUDUBON SOCIETY ET AL. Sup. Ct. Cal. Certiorari denied. JUSTICE REHNQUIST took no part in the consideration or decision of this petition. Reported below: 33 Cal. 3d 419, 658 P. 2d 709.

No. 83–434. FOOLS CROW ET AL. *v.* GULLET ET AL. C. A. 8th Cir. Motions of Christic Institute et al. and American Civil Liberties Union et al. for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 706 F. 2d 856.

No. 83–465. RONWIN *v.* SUPREME COURT OF ARIZONA. Sup. Ct. Ariz. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 136 Ariz. 566, 667 P. 2d 1281.

No. 83–5153. HILL *v.* MISSISSIPPI. Sup. Ct. Miss.;
No. 83–5389. MINCEY *v.* GEORGIA. Sup. Ct. Ga.;
No. 83–5406. BUNCH *v.* VIRGINIA. Sup. Ct. Va.; and
No. 83–5567. WATERHOUSE *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: No. 83–5153, 432 So. 2d 427; No. 83–5389, 251 Ga. 255, 304 S. E. 2d 882; No. 83–5406, 225 Va. 423, 304 S. E. 2d 271; No. 83–5567, 429 So. 2d 301.

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. 82–1946. OYSTER *v.* OYSTER, *ante*, p. 801;

No. 82–1991. SCHWARZ *v.* COASTAL RESOURCES MANAGEMENT ET AL., *ante*, p. 823;

No. 82–6550. MULLEN *v.* STARR ET AL., 461 U. S. 960;

No. 82–6676. HANNAN *v.* SECRETARY OF THE ARMY ET AL., *ante*, p. 833;

No. 82–6971. HARTFORD *v.* ARIZONA, *ante*, p. 842;

No. 82–7033. PANTER ET AL. *v.* MILLER ET AL., *ante*, p. 845;

No. 83–5. POLSKIE LINIE LOTNICZE (LOT POLISH AIRLINES) *v.* ROBLES ET AL., *ante*, p. 845;

No. 83–93. GEE *v.* FUNG ET AL., *ante*, p. 849;

No. 83–5114. STEVENSON *v.* CONRAD, *ante*, p. 857;

No. 83–5143. HOLLAND *v.* GUEST QUARTERS, *ante*, p. 858;

No. 83–5228. ALEXANDER *v.* ZEANAH ET AL., *ante*, p. 861; and

No. 83–5254. WRIGHT *v.* NEW YORK LIFE INSURANCE CO., *ante*, p. 862. Petitions for rehearing denied.

NOVEMBER 8, 1983

Dismissal Under Rule 53

No. 83–544. DOE *v.* UNITED STATES. C. A. 4th Cir. Certiorari dismissed under this Court's Rule 53. Reported below: 714 F. 2d 347.

NOVEMBER 14, 1983

Appeals Dismissed

No. 83–405. INDIANA UNIVERSITY FOUNDATION ET AL. *v.* REED ET AL. Appeal from Sup. Ct. Kan. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 233 Kan. 531, 664 P. 2d 824.

No. 83–531. GAUNCE *v.* DEVINCENTIS ET AL. Appeal from C. A. 7th 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: 708 F. 2d 1290.

No. 83–5446. TATU ET AL. *v.* DAVIS ET AL. Appeal from Ct. App. Cal., 4th App. Dist., dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 83–5460. BETKA *v.* CITY OF WEST LINN 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.

Certiorari Granted—Vacated and Remanded. (See also No. 83–118, *ante*, p. 67.)

No. 83–253. MOYA *v.* UNITED STATES. C. A. 7th 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: 704 F. 2d 337.

No. 83–453. NATIONAL LABOR RELATIONS BOARD *v.* UNITED PARCEL SERVICE, INC. C. A. 3d Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *NLRB* v. *Transportation Management Corp.*, 462 U. S. 393 (1983). Reported below: 706 F. 2d 972.

No. 83–460. UNITED STATES *v.* MCMANIGAL. C. A. 7th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Russello* v. *United States*, *ante*, p. 16. Reported below: 708 F. 2d 276.

Vacated and Remanded After Certiorari Granted

No. 82–1925. UNITED STATES DEPARTMENT OF STATE ET AL. *v.* WASHINGTON POST CO. C. A. D. C. Cir. [Certiorari granted, *ante*, p. 812.] Judgment vacated and case remanded to the Court of Appeals with directions that it instruct the United States District Court for the District of Columbia to dismiss the complaint as moot.

Miscellaneous Orders

No. A–233 (83–711). NIFONG *v.* UNITED STATES. C. A. 4th Cir. Application for stay, addressed to JUSTICE BRENNAN and referred to the Court, denied.

No. D–361. IN RE DISBARMENT OF MOORE. Disbarment entered. [For earlier order herein, see 462 U. S. 1114.]

No. D–388. IN RE DISBARMENT OF GOLDBURN. It is ordered that Glenn Jermaine Goldburn, of Rockville, 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. 82–1295. ESCAMBIA COUNTY, FLORIDA, ET AL. *v.* MCMILLAN ET AL. C. A. 5th Cir. [Probable jurisdiction noted, 460 U. S. 1080.] Motion of Lawyers' Committee for Civil Rights Under Law for leave to file a brief as *amicus curiae* granted. Motion of appellants for an order maintaining status quo denied.

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, 461 U. S. 925.] Motion of petitioners in No. 82–1453 for leave to file motion for divided argument out of time denied.

No. 82–1474. HOOVER ET AL. *v.* RONWIN ET AL. C. A. 9th Cir. [Certiorari granted, 461 U. S. 926.] Motion of Maryland for leave to participate in oral argument as *amicus curiae*, for divided argument, and for additional time for oral argument denied. JUSTICE O'CONNOR took no part in the consideration or decision of this motion.

No. 83–56. HECKLER, SECRETARY OF HEALTH AND HUMAN SERVICES *v.* COMMUNITY HEALTH SERVICES OF CRAWFORD COUNTY, INC., ET AL. C. A. 3d Cir. [Certiorari granted, *ante*, p. 812.] Motion of the Solicitor General to dispense with printing the joint appendix granted.

No. 83–95. PATTON ET AL. *v.* YOUNT. C. A. 3d Cir. [Certiorari granted, *ante*, p. 913.] Motion of respondent for appointment of counsel granted, and it is ordered that George E. Schumacher, Esquire, of Pittsburgh, Pa., be appointed to serve as counsel for respondent in this case.

No. 83–5338. ANDERSON *v.* VIRGINIA. Sup. Ct. Va. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until December 5, 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.

JUSTICE BRENNAN, JUSTICE MARSHALL, and JUSTICE STEVENS, dissenting.

For the reasons expressed in *Brown* v. *Herald Co.*, *ante*, p. 928, we would deny the petition for certiorari in this case without reaching the merits of the motion to proceed *in forma pauperis*.

No. 82–7027. IN RE ABNEY. Petition for writ of mandamus denied.

Certiorari Granted

No. 83–264. BURNETT ET AL. *v.* GRATTAN ET AL. C. A. 4th Cir. Certiorari granted. Reported below: 710 F. 2d 160.

No. 83–103. WOODKRAFT DIVISION, GEORGIA KRAFT CO. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 11th Cir. Certiorari granted limited to Question 1 presented by the petition. Reported below: 696 F. 2d 931.

Certiorari Denied. (See also Nos. 83–405, 83–531, 83–5446, and 83–5460, *supra.*)

No. 82–1885. TERRAMAR BEACH COMMUNITY IMPROVEMENT ASSN., INC. *v.* CARRITHERS ET AL. Sup. Ct. Tex. Certiorari denied. Reported below: 645 S. W. 2d 772.

No. 82–1990. AUSTIN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 709 F. 2d 1509.

No. 82–1993. JOINER *v.* VASQUEZ. Ct. App. Tex., 5th Sup. Jud. Dist. Certiorari denied. Reported below: 632 S. W. 2d 755.

No. 82–2147. INTERNATIONAL ASSOCIATION OF HEAT & FROST INSULATORS & ASBESTOS WORKERS, LOCAL 17 *v.* YOUNG ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 703 F. 2d 572.

No. 82–6777. WOODS *v.* WAINWRIGHT, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 701 F. 2d 188.

No. 83–6906. KERNS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 711 F. 2d 1060.

No. 83–3. BAGINSKY *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 697 F. 2d 1070.

No. 83–9. NEW MEXICO EX REL. "ONE MINUTE OF SILENCE" STATUTE ET AL. *v.* BURCIAGA, JUDGE, UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO. C. A. 10th Cir. Certiorari denied.

No. 83–106. H. M. TRIMBLE & SONS, LTD. *v.* KINGSLEY & KEITH (CANADA) LTD. ET AL. Sup. Ct. Pa. Certiorari denied. Reported below: 500 Pa. 371, 456 A. 2d 1333.

No. 83–189. LEWALLEN ET AL. *v.* KENTUCKY. Cir. Ct. Ky., Campbell County. Certiorari denied.

No. 83–233. COLORADO RIVER INDIAN TRIBES *v.* ARANSON ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 696 F. 2d 654.

No. 83–260. PETTINEO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 720 F. 2d 666.

No. 83–263. FOGLE *v.* SUPREME COURT OF SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied. Reported below: 279 S. C. 131, 303 S. E. 2d 90.

No. 83–279. PIUS XII ACADEMY, INC. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 6th Cir. Certiorari denied. Reported below: 711 F. 2d 1058.

No. 83–310. RUZICKA *v.* GENERAL MOTORS CORP. ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 707 F. 2d 259.

No. 83–347. LOCKHART, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION *v.* DYAS. C. A. 8th Cir. Certiorari denied. Reported below: 705 F. 2d 993.

No. 83–472. ATCHISON *v.* CAREER SERVICE COUNCIL OF WYOMING. Sup. Ct. Wyo. Certiorari denied. Reported below: 664 P. 2d 18.

No. 83–477. EARLE M. JORGENSEN CO. ET AL. *v.* CITY OF SEATTLE, WASHINGTON. Sup. Ct. Wash. Certiorari denied. Reported below: 99 Wash. 2d 861, 665 P. 2d 1328.

No. 83–486. THOMPSON *v.* MOORMAN ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 709 F. 2d 1509.

No. 83–489. KAZANZAS *v.* WALT DISNEY WORLD CO. C. A. 11th Cir. Certiorari denied. Reported below: 704 F. 2d 1527.

No. 83–500. HARTKE *v.* MCKELWAY. C. A. D. C. Cir. Certiorari denied. Reported below: 228 U. S. App. D. C. 139, 707 F. 2d 1544.

No. 83–501. HAYES *v.* CITY OF BATON ROUGE. 19th Jud. Dist. Ct. La., East Baton Rouge Parish. Certiorari denied.

No. 83–503. RIPPETOE *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 437 So. 2d 383.

No. 83–505. ELECTRONIC CURRENCY CORP. ET AL. *v.* WESTERN STATES BANKCARD ASSN. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 703 F. 2d 574.

No. 83–515. BENALLY ET AL. *v.* UNC RESOURCES, INC., ET AL. C. A. 10th Cir. Certiorari denied.

No. 83–517. CHOCALLO *v.* BUREAU OF HEARINGS AND APPEALS, SOCIAL SECURITY ADMINISTRATION, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 716 F. 2d 889.

No. 83–569. HAGEMAN *v.* HOME INSURANCE CO. ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 742 F. 2d 1430.

No. 83–622. ZUNIGA ET AL. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 714 F. 2d 632.

No. 83–626. KLEINMAN ET UX. *v.* UNITED STATES ET AL. C. A. 11th Cir. Certiorari denied.

No. 83–5030. DANIELS *v.* MINTZES, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 714 F. 2d 139.

No. 83–5043. RHODES *v.* STEWART, TRUSTEE IN BANKRUPTCY, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 705 F. 2d 159.

No. 83–5058. SHARP *v.* WASHINGTON. Sup. Ct. Wash. Certiorari denied.

No. 83–5105. FIELDS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 709 F. 2d 1518.

No. 83–5176. ZAZUETA-LOPEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 711 F. 2d 1067.

No. 83–5177. WHITTINGTON *v.* MCKASKLE, ACTING DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS. C. A. 5th Cir. Certiorari denied. Reported below: 704 F. 2d 1418.

No. 83–5192. HEALY *v.* MAGGIO, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 706 F. 2d 698.

No. 83–5204. GUIGNO ET AL. *v.* HECKLER, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 706 F. 2d 407.

No. 83–5396. MOSLEY *v.* SMITH ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 716 F. 2d 897.

No. 83–5399. HOLMES *v.* KING, SECRETARY, LOUISIANA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 709 F. 2d 965.

No. 83–5447. REDMAN *v.* WAINWRIGHT, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 706 F. 2d 316.

No. 83–5450. SCHWARTZ *v.* MAIDEN ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 729 F. 2d 1443.

No. 83–5452. MCCURDY *v.* LANDMARK FINANCIAL CORPORATION OF GEORGIA ET AL. C. A. 11th Cir. Certiorari denied.

No. 83–5455. SMITH *v.* MORRIS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 714 F. 2d 154.

No. 83–5456. MINGO *v.* MAGGIO, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 83–5459. STINSON *v.* WAINWRIGHT, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 710 F. 2d 743.

No. 83–5461. GREEN *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 433 So. 2d 146.

No. 83–5466. ROBINSON *v.* WARDEN, MARYLAND STATE PENITENTIARY. C. A. 4th Cir. Certiorari denied. Reported below: 714 F. 2d 133.

No. 83–5467. MORENO *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 83–5468. PHILLIPS *v.* ALONZO ET AL. Sup. Ct. Ala. Certiorari denied. Reported below: 435 So. 2d 1266.

No. 83–5471. MORGAN *v.* ZIMMERMAN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 83–5476. JOHN *v.* WILKINSON, WARDEN. C. A. 3d Cir. Certiorari denied. Reported below: 716 F. 2d 890.

No. 83–5478. WASHINGTON ET UX. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 3d Cir. Certiorari denied. Reported below: 716 F. 2d 893.

No. 83–5480. RESEBURG *v.* TEXAS. Ct. App. Tex., 12th Sup. Jud. Dist. Certiorari denied. Reported below: 656 S. W. 2d 84.

No. 83–5485. ASHBY *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 83–5486. DUGAR *v.* MAGGIO, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 710 F. 2d 836.

No. 83–5487. ROBY *v.* KANSAS. Sup. Ct. Kan. Certiorari denied. Reported below: 233 Kan. 1093.

No. 83–5489. CHRISTIANSEN *v.* TEXAS. C. A. 5th Cir. Certiorari denied.

No. 83–5491. BROWN *v.* DOUGLAS, JUDGE. C. A. 4th Cir. Certiorari denied. Reported below: 714 F. 2d 128.

No. 83–5499. MAYES *v.* SOWDERS, WARDEN, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 716 F. 2d 903.

No. 83–5519. POWELL *v.* NUTH ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 707 F. 2d 509.

No. 83–5521. CENICEROS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 708 F. 2d 719.

No. 83–5522. JONES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 716 F. 2d 893.

No. 83–5529. CSERENYI ET AL. *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 96 App. Div. 2d 538, 465 N. Y. S. 2d 99.

No. 83–5531. GOODRIDGE *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 714 F. 2d 162.

No. 83–5556. SALSER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 709 F. 2d 715.

No. 83–5557. JONES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 714 F. 2d 125.

No. 83–5558. WILLIAMS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 711 F. 2d 748.

No. 83–5580. CARTER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 720 F. 2d 668.

No. 83–5584. CHERNACK *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 720 F. 2d 657.

No. 83–5587. MANSAW *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 714 F. 2d 785.

No. 83–5592. WEBBER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 712 F. 2d 1316.

No. 83–5595. AMBROSE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 707 F. 2d 1209.

No. 83–5598. WILLIAMS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 715 F. 2d 1164.

No. 83–153. FAULKNER ET AL. *v.* MERRITT. C. A. 7th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 697 F. 2d 761.

No. 83–483. HYDROCULTURE, INC. *v.* COOPERS & LYBRAND. C. A. 9th Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 711 F. 2d 1063.

No. 83–5339. DICK *v.* KEMP, SUPERINTENDENT, GEORGIA DIAGNOSTIC AND CLASSIFICATION CENTER. Sup. Ct. Ga.;
No. 83–5367. MOORE *v.* LOUISIANA. Sup. Ct. La.;
No. 83–5449. RICHMOND *v.* ARIZONA. Sup. Ct. Ariz.;
No. 83–5454. WOMACK *v.* ALABAMA. Sup. Ct. Ala.;
No. 83–5457. JERNIGAN *v.* TEXAS. Ct. Crim. App. Tex.; and
No. 83–5463. ELLEDGE *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: No. 83–5367, 432 So. 2d 209; No. 83–5449, 136 Ariz. 312, 666 P. 2d 57; No. 83–5454, 435 So. 2d 766; No. 83–5457, 661 S. W. 2d 936; No. 83–5463, 432 So. 2d 35.

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. 83–5438. LEWIS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. JUSTICE WHITE took no part in the consideration or decision of this petition. Reported below: 714 F. 2d 148.

Rehearing Denied

No. 82–6255. SMITH, AKA EL-AMIN *v.* GOVERNMENT OF THE VIRGIN ISLANDS, *ante*, p. 831;

No. 82–6888. KAPLAN *v.* OFFICE OF THE U. S. ATTORNEY FOR THE DISTRICT OF NEW JERSEY ET AL., *ante*, p. 839;

No. 82–6960. CLARK *v.* MARSTON ET AL., *ante*, p. 874;

No. 83–53. CHESAPEAKE & OHIO RAILWAY CO. *v.* SCHAAF, *ante*, p. 848;

No. 83–5107. BROWN *v.* LUTHERAN HOSPITAL SOCIETY OF SOUTHERN CALIFORNIA, DBA SANTA MONICA HOSPITAL MEDICAL CENTER, *ante*, p. 856; and

No. 83–5244. TUCKER *v.* LONDON GOLD EXCHANGE, *ante*, p. 897. Petitions for rehearing denied.

NOVEMBER 28, 1983

Appeals Dismissed

No. 83–451. WILSON *v.* COMMISSIONER OF INTERNAL REVENUE. Appeal from C. A. 10th Cir. dismissed for want of jurisdiction.

No. 83–534. FARBER *v.* OREGON. Appeal from Sup. Ct. Ore. dismissed for want of substantial federal question. Reported below: 295 Ore. 199, 666 P. 2d 821.

No. 83–535. MARSHFIELD FAMILY SKATELAND, INC., ET AL. *v.* TOWN OF MARSHFIELD. Appeal from Sup. Jud. Ct. Mass. dismissed for want of substantial federal question. JUSTICE BRENNAN and JUSTICE WHITE would note probable jurisdiction and set case for oral argument. Reported below: 389 Mass. 436, 450 N. E. 2d 605.

No. 83–555. RUSSELL STOVER CANDIES, INC. *v.* DEPARTMENT OF REVENUE OF MONTANA. Appeal from Sup. Ct. Mont. dismissed for want of substantial federal question. JUSTICE STEVENS would note probable jurisdiction and set case for oral argument. Reported below: —— Mont. ——, 665 P. 2d 198.

No. 83–561. MORETTI ET AL. *v.* MULTI-PAK CORP. ET AL. Appeal from Super. Ct. N. J., App. Div., dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

Certiorari Granted—Reversed and Remanded. (See No. 83–131, *ante*, p. 78.)

Certiorari Dismissed

No. 82–1367. ROADWAY EXPRESS, INC. *v.* WARREN. Ct. App. Ga. [Certiorari granted, 461 U. S. 904.] Writ of certiorari dismissed as improvidently granted.

Miscellaneous Orders

No. A–335. WAINWRIGHT, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS *v.* THOMPSON. C. A. 11th Cir. Application for stay of mandate, addressed to JUSTICE REHNQUIST and referred to the Court, denied.

No. A–358. KNAPP *v.* ARIZONA. Application for stay of execution of sentence of death, presented to JUSTICE REHNQUIST, and by him referred to the Court, denied. JUSTICE BRENNAN, JUSTICE MARSHALL, and JUSTICE STEVENS would grant the application.

No. D–382. IN RE DISBARMENT OF LABER. It is ordered that Henry W. Laber, of Madiera Beach, 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–383. IN RE DISBARMENT OF LOWENTHAL. It is ordered that Franklyn L. Lowenthal, of Yonkers, 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. 82–1295. ESCAMBIA COUNTY, FLORIDA, ET AL. *v.* MCMILLAN ET AL. C. A. 5th Cir. [Probable jurisdiction noted, 460

U. S. 1080.] Motion of American Civil Liberties Union for leave to file a brief as *amicus curiae* granted.

No. 82–1474. HOOVER ET AL. *v.* RONWIN ET AL. C. A. 9th Cir. [Certiorari granted, 461 U. S. 926.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted, and 15 minutes of respondents' time for oral argument is allotted for that purpose. Motion of Maryland et al. for leave to participate in oral argument as *amici curiae* and for divided argument denied. JUSTICE O'CONNOR took no part in the consideration or decision of these motions.

No. 82–1577. MICHIGAN CANNERS & FREEZERS ASSN., INC., ET AL. *v.* AGRICULTURAL MARKETING AND BARGAINING BOARD ET AL. Sup. Ct. Mich. [Probable jurisdiction noted, *ante*, p. 912.] Motion of appellees for divided argument denied.

No. 82–1721. SEATTLE TIMES CO., DBA THE SEATTLE TIMES, ET AL. *v.* RHINEHART ET AL. Sup. Ct. Wash. [Certiorari granted, *ante*, p. 812.] Motion of American Civil Liberties Union et al. for leave to file a brief as *amici curiae* granted.

No. 82–1795. CAPITAL CITIES CABLE, INC., ET AL. *v.* CRISP, DIRECTOR, OKLAHOMA ALCOHOLIC BEVERAGE CONTROL BOARD. C. A. 10th Cir. [Certiorari granted, *ante*, p. 813.] Motion of National League of Cities for leave to file a brief as *amicus curiae* granted.

No. 82–1845. COLORADO *v.* NUNEZ. Sup. Ct. Colo. [Certiorari granted, *ante*, p. 812.] Motion of respondent to dismiss the writ of certiorari for want of jurisdiction denied.

No. 82–1913. GARCIA *v.* SAN ANTONIO METROPOLITAN TRANSIT AUTHORITY ET AL.; and

No. 82–1951. DONOVAN, SECRETARY OF LABOR *v.* SAN ANTONIO METROPOLITAN TRANSIT AUTHORITY ET AL. D. C. W. D. Tex. [Probable jurisdiction noted, *ante*, p. 812.] Motion of the Solicitor General to dispense with printing the joint appendix granted.

No. 82–1998. SECRETARY OF THE INTERIOR ET AL. *v.* COMMUNITY FOR CREATIVE NON-VIOLENCE ET AL. C. A. D. C. Cir. [Certiorari granted *sub nom. Watt* v. *Community for Creative Non-Violence*, *ante*, p. 812.] Motion of respondents to vacate

order staying the mandate of the United States Court of Appeals for the District of Columbia Circuit denied.

No. 83–96. LIMBACH, TAX COMMISSIONER OF OHIO *v.* HOOVEN & ALLISON CO. Sup. Ct. Ohio. [Certiorari granted, *ante*, p. 813.] Motion of International Association of Assessing Officers for leave to file a brief as *amicus curiae* granted.

No. 83–5581. GLOVER ET AL. *v.* ALEXANDER, SECRETARY OF THE ARMY. C. A. 4th Cir. Motion of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until December 19, 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.

JUSTICE BRENNAN, JUSTICE MARSHALL, JUSTICE BLACKMUN, and JUSTICE STEVENS, dissenting.

For the reasons expressed in *Brown* v. *Herald Co.*, *ante*, p. 928, we would deny the petition for certiorari in this case without reaching the merits of the motion to proceed *in forma pauperis*.

No. 83–664. IN RE FREEMAN. Petition for writ of habeas corpus denied.

No. 83–365. IN RE MOORE, BY MOORE ET AL.; and

No. 83–5542. IN RE GILL. Petitions for writs of mandamus denied.

Probable Jurisdiction Noted

No. 83–498. BROWN, DIRECTOR, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, STATE OF NEW JERSEY, ET AL. *v.* HOTEL & RESTAURANT EMPLOYEES & BARTENDERS INTERNATIONAL UNION LOCAL 54 ET AL.; and

No. 83–573. DANZIGER, ACTING CHAIRMAN, CASINO CONTROL COMMISSION OF NEW JERSEY, ET AL. *v.* HOTEL & RESTAURANT EMPLOYEES & BARTENDERS INTERNATIONAL UNION LOCAL 54 ET AL. Appeals from C. A. 3d Cir. Probable jurisdiction noted, cases consolidated, and a total of one hour allotted for oral argument. Reported below: 709 F. 2d 815.

Certiorari Granted

No. 83–436. REGAN, SECRETARY OF THE TREASURY, ET AL. *v.* WALD ET AL. C. A. 1st Cir. Certiorari granted. Reported below: 708 F. 2d 794.

No. 83–458. BLOCK, SECRETARY OF AGRICULTURE, ET AL. *v.* COMMUNITY NUTRITION INSTITUTE ET AL. C. A. D. C. Cir. Certiorari granted. Reported below: 225 U. S. App. D. C. 387, 698 F. 2d 1239.

No. 83–346. UNITED STATES *v.* YERMIAN. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 708 F. 2d 365.

No. 83–712. NEW JERSEY *v.* T. L. O. Sup. Ct. N. J. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 94 N. J. 331, 463 A. 2d 934.

Certiorari Denied. (See also No. 83–561, *supra.*)

No. 82–1983. CALIGURI *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 707 F. 2d 511.

No. 82–6620. BREITEGAN *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 500 Pa. 384, 456 A. 2d 1340.

No. 82–6945. LOE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 701 F. 2d 169.

No. 82–6986. HARDRICH *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 707 F. 2d 992.

No. 82–6992. DURAN *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied. Reported below: 140 Cal. App. 3d 485, 189 Cal. Rptr. 595.

No. 83–28. CINA *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 699 F. 2d 853.

No. 83–61. WILLIAMS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 704 F. 2d 315.

No. 83–73. FERRANTE ET AL. *v.* UNITED STATES; and
No. 83–5083. MERS ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 701 F. 2d 1321.

No. 83–108. SHOPE, EXECUTRIX OF THE ESTATE OF SHOPE *v.* HECKLER, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 4th Cir. Certiorari denied. Reported below: 705 F. 2d 445.

No. 83–139. PEGUES ET AL. *v.* MISSISSIPPI STATE EMPLOYMENT SERVICE ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 699 F. 2d 760.

No. 83–159. GREENMAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 700 F. 2d 1377.

No. 83–166. GUIPPONE ET AL. *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 702 F. 2d 299.

No. 83–176. HERRMANN *v.* UNITED STATES; and
No. 83–5195. ENNIS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 707 F. 2d 362.

No. 83–177. LETNES *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA ET AL. C. A. 9th Cir. Certiorari denied.

No. 83–186. IDAHO EX REL. MOON, TREASURER OF IDAHO *v.* STATE BOARD OF EXAMINERS ET AL. Sup. Ct. Idaho. Certiorari denied. Reported below: 104 Idaho 640, 662 P. 2d 221.

No. 83–203. BARNETT *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 742 F. 2d 1444.

No. 83–205. CITY OF WAUWATOSA FIRE DEPARTMENT *v.* ORZEL. C. A. 7th Cir. Certiorari denied. Reported below: 697 F. 2d 743.

No. 83–216. MCCRANIE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 703 F. 2d 1213.

No. 83–229. WIMMER *v.* LEHMAN, SECRETARY OF THE NAVY, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 705 F. 2d 1402.

No. 83–234. ENNIS *v.* NORTH DAKOTA. Sup. Ct. N. D. Certiorari denied. Reported below: 334 N. W. 2d 827.

No. 83–244. TELEGRAPH SAVINGS & LOAN ASSN. ET AL. *v.* SCHILLING ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 703 F. 2d 1019.

No. 83–296. LEBOVITZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 716 F. 2d 893.

No. 83–299. TILFORD ET AL. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 6th Cir. Certiorari denied. Reported below: 705 F. 2d 828.

No. 83–325. CITY OF EVANSTON ET AL. *v.* LUBAVITCH CHABAD HOUSE OF ILLINOIS, INC., ET AL. App. Ct. Ill., 1st

Dist. Certiorari denied. Reported below: 112 Ill. App. 3d 223, 445 N. E. 2d 343.

No. 83–329. COUNTY OF ROCKLAND *v.* U. S. NUCLEAR REGULATORY COMMISSION ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 709 F. 2d 766.

No. 83–331. SHIRILLA, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF TAYLOR *v.* SMALLWOOD ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 718 F. 2d 1111.

No. 83–336. MAINTENANCE CONTRACTORS, INC. *v.* PIERCE, SECRETARY OF HOUSING AND URBAN DEVELOPMENT. C. A. 6th Cir. Certiorari denied. Reported below: 714 F. 2d 141.

No. 83–338. XHEKA ET AL. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 704 F. 2d 974.

No. 83–353. SALORIO ET AL. *v.* GLASER, DIRECTOR OF THE DIVISION OF TAXATION, DEPARTMENT OF THE TREASURY OF NEW JERSEY; and

No. 83–596. GLASER, DIRECTOR OF THE DIVISION OF TAXATION, DEPARTMENT OF THE TREASURY OF NEW JERSEY *v.* SALORIO ET AL. Sup. Ct. N. J. Certiorari denied. Reported below: 93 N. J. 447, 461 A. 2d 1100.

No. 83–358. MARTORANO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 709 F. 2d 863.

No. 83–361. ERLBAUM, NEW YORK CITY CRIMINAL COURT JUDGE *v.* MORGENTHAU, NEW YORK COUNTY DISTRICT ATTORNEY. Ct. App. N. Y. Certiorari denied. Reported below: 59 N. Y. 2d 143, 451 N. E. 2d 150.

No. 83–368. RUSSO ET AL. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 708 F. 2d 209.

No. 83–425. MANCUSO ET AL. *v.* CITY OF NEW YORK ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 742 F. 2d 1438.

No. 83–463. STERN *v.* SHOULDICE ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 706 F. 2d 742.

No. 83–510. LOCAL UNION 1702, UNITED MINE WORKERS OF AMERICA *v.* CONSOLIDATION COAL CO. C. A. 4th Cir. Certiorari denied. Reported below: 709 F. 2d 882.

No. 83–516. BAER MANUFACTURING, INC., ET AL. *v.* SHEET METAL WORKERS PENSION PLAN OF SOUTHERN CALIFORNIA, ARIZONA, AND NEVADA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 714 F. 2d 154.

No. 83–520. MEYER *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 55 Md. App. 771.

No. 83–521. PLAZA DE LAS ARMAS, INC., ET AL. *v.* CITY OF SAN ANTONIO ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 707 F. 2d 513.

No. 83–526. RICKARDS ET AL. *v.* CANINE EYE REGISTRATION FOUNDATION, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 704 F. 2d 1449.

No. 83–528. COBURN *v.* PAN AMERICAN WORLD AIRWAYS, INC. C. A. D. C. Cir. Certiorari denied. Reported below: 229 U. S. App. D. C. 61, 711 F. 2d 339.

No. 83–536. BARCLAY EQUESTRIAN CENTER, INC. *v.* CONTINENTAL BANK OF PENNSYLVANIA. Sup. Ct. N. J. Certiorari denied. Reported below: 93 N. J. 153, 459 A. 2d 1163.

No. 83–540. WESTBROOK *v.* HUTCHINSON CRANE EXCAVATING CO., INC. Ct. App. D. C. Certiorari denied.

No. 83–549. ABRAMOFF *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 114 Wis. 2d 206, 338 N. W. 2d 502.

No. 83–550. JAMESON *v.* BETHLEHEM STEEL CORP. C. A. 6th Cir. Certiorari denied. Reported below: 714 F. 2d 140.

No. 83–554. UNIVERSITY COLLEGE OF THE UNIVERSITY OF ALABAMA IN BIRMINGHAM ET AL. *v.* JOHNSON ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 706 F. 2d 1205.

No. 83–556. PRESTO CASTING CO. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 9th Cir. Certiorari denied. Reported below: 708 F. 2d 495.

No. 83–557. REGAL ET UX., DBA REGAL CREST VILLAGE OF BROOKFIELD, ET AL. *v.* BEHUL ET UX. C. A. 7th Cir. Certiorari denied. Reported below: 714 F. 2d 149.

No. 83–560. EDWARDS ET AL. *v.* BECHTEL ASSOCIATES PROFESSIONAL CORP., D.C., ET AL. Ct. App. D. C. Certiorari denied. Reported below: 466 A. 2d 436.

No. 83–562. DEAN *v.* TRANS WORLD AIRLINES, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 708 F. 2d 486.

No. 83–564. HAWKINS ET AL. *v.* JNO. MCCALL COAL EXPORT CORP. ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 711 F. 2d 1050.

No. 83–567. HESS *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied. Reported below: 279 S. C. 426, 309 S. E. 2d 741.

No. 83–577. LIONTI ET AL. *v.* LLOYD'S INSURANCE CO. ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 709 F. 2d 237.

No. 83–579. ELKINS *v.* BOARD OF LAW EXAMINERS OF NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 308 N. C. 317, 302 S. E. 2d 215.

No. 83–582. JONES ET UX. *v.* NORTH CAROLINA ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 714 F. 2d 131.

No. 83–604. SANDLIN *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied. Reported below: 61 N. C. App. 421, 300 S. E. 2d 893.

No. 83–609. BLAIR ET AL. *v.* BOULGER. Sup. Ct. N. D. Certiorari denied. Reported below: 336 N. W. 2d 337.

No. 83–615. MARX *v.* CENTRAN CORP. ET AL. C. A. 6th Cir. Certiorari before judgment denied.

No. 83–627. WIGINTON *v.* VETERANS ADMINISTRATION. C. A. Fed. Cir. Certiorari denied. Reported below: 714 F. 2d 162.

No. 83–642. STATE BANK OF ST. CHARLES, AS ADMINISTRATOR OF THE ESTATE OF WARD *v.* CAMIC ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 712 F. 2d 1140.

No. 83–645. PAUL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 705 F. 2d 469.

No. 83–646. SUAREZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 720 F. 2d 669.

No. 83–667. CROSS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 718 F. 2d 1112.

No. 83–680. MOTLAGH *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 230 U. S. App. D. C. 212, 716 F. 2d 16.

No. 83–684. SMITH *v.* LUBBERS, GENERAL COUNSEL, NATIONAL LABOR RELATIONS BOARD. C. A. D. C. Cir. Certiorari denied. Reported below: 230 U. S. App. D. C. 71, 713 F. 2d 865.

No. 83–695. SMITH INTERNATIONAL, INC. *v.* HUGHES TOOL CO. C. A. Fed. Cir. Certiorari denied. Reported below: 718 F. 2d 1573.

No. 83–711. NIFONG *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 716 F. 2d 898.

No. 83–718. BOTTI *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 722 F. 2d 735.

No. 83–5001. MADYUN *v.* FRANZEN ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 704 F. 2d 954.

No. 83–5005. CATANESE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 714 F. 2d 125.

No. 83–5019. ROBERTS *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 430 So. 2d 468.

No. 83–5022. SALAZAR *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 742 F. 2d 1445.

No. 83–5023. BUSTAMANTE-CUADROS *v.* UNITED STATES; and No. 83–5212. GRAVIER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 706 F. 2d 174.

No. 83–5029. LESTER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 706 F. 2d 316.

No. 83–5032. BANUELOS-SANCHEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 709 F. 2d 1518.

No. 83–5061. OLIVER *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 430 So. 2d 650.

No. 83–5064. EWING ET AL. *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 709 F. 2d 1496.

No. 83–5080. TENORIO-BOHOROQUEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 709 F. 2d 1519.

No. 83–5116. HARRIS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 707 F. 2d 653.

No. 83–5151. BELL *v.* MARSHALL, SUPERINTENDENT, SOUTHERN OHIO CORRECTIONAL INSTITUTE. C. A. 6th Cir. Certiorari denied.

No. 83–5178. GODDARD *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 649 S. W. 2d 882.

No. 83–5215. STEEBE *v.* UNITED STATES RAILROAD RETIREMENT BOARD. C. A. 7th Cir. Certiorari denied. Reported below: 708 F. 2d 250.

No. 83–5252. PARKER *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 649 S. W. 2d 46.

No. 83–5259. HORTON ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 705 F. 2d 1414.

No. 83–5266. NARDONE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 706 F. 2d 494.

No. 83–5287. SHEDD *v.* HIGGS. Ct. App. Ga. Certiorari denied. Reported below: 166 Ga. App. 344, 304 S. E. 2d 85.

No. 83–5291. NOE *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 654 S. W. 2d 701.

No. 83–5302. MOORE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 710 F. 2d 270.

No. 83–5309. RICKETT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 708 F. 2d 606.

No. 83–5312. MADERA *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 83–5313. HACHLER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 707 F. 2d 519.

No. 83–5326. FIELDS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 466 A. 2d 822.

No. 83–5330. DUNCAN *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied.

No. 83–5361. MOORE *v.* MICHIGAN DEPARTMENT OF CORRECTIONS ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 714 F. 2d 141.

No. 83–5370. MYERS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 716 F. 2d 905.

No. 83–5374. JONES ET AL. *v.* SUPERIOR COURT OF CALIFORNIA, ORANGE COUNTY. C. A. 9th Cir. Certiorari denied.

No. 83–5394. CALDERON *v.* DEPARTMENT OF THE ARMY ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 711 F. 2d 1049.

No. 83–5415. THOMAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 711 F. 2d 1067.

No. 83–5445. ONDRUSEK *v.* HECKLER, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 3d Cir. Certiorari denied. Reported below: 707 F. 2d 1403.

No. 83–5451. TIJERINA *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 436 So. 2d 121.

No. 83–5464. DAVIS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 720 F. 2d 668.

No. 83–5469. RUSS *v.* UNITED STATES POSTAL SERVICE ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 714 F. 2d 146.

No. 83–5473. MCFADDEN *v.* LUCAS, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 713 F. 2d 143.

No. 83–5474. WHITE *v.* COLORADO ET AL. C. A. 10th Cir. Certiorari denied.

No. 83–5477. YELVERTON *v.* BLUE BELL, INC. C. A. 4th Cir. Certiorari denied. Reported below: 714 F. 2d 135.

No. 83–5490. SILVA *v.* ARIZONA. Ct. App. Ariz. Certiorari denied. Reported below: 137 Ariz. 339, 670 P. 2d 737.

No. 83–5493. HAYNES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 716 F. 2d 898.

No. 83–5495. BIRCHFIELD *v.* GENERAL MOTORS ACCEPTANCE CORP. Ct. App. Okla. Certiorari denied.

No. 83–5497. KISH *v.* BENEDEK ET AL. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 421 So. 2d 75.

No. 83–5498. SMART *v.* RAUP ET AL. C. A. 3d Cir. Certiorari denied.

No. 83–5507. WILSON *v.* DUNN, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 709 F. 2d 1520.

No. 83–5510. SERIO *v.* MAGGIO, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 703 F. 2d 555.

No. 83–5516. TURNER *v.* WAINWRIGHT, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 711 F. 2d 1069.

No. 83–5526. DAVIS *v.* MCKASKLE, ACTING DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS. C. A. 5th Cir. Certiorari denied. Reported below: 711 F. 2d 1053.

No. 83–5534. FILIPAS *v.* AKRON GENERAL HOSPITAL ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 711 F. 2d 1056.

No. 83–5539. ARRUDA *v.* FAIR, COMMISSIONER, MASSACHUSETTS DEPARTMENT OF CORRECTION, ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 710 F. 2d 886.

No. 83–5545. GRAVES *v.* STOCKLEY, CLERK OF CIRCUIT COURT OF LASALLE COUNTY, ILLINOIS. C. A. 7th Cir. Certiorari denied. Reported below: 714 F. 2d 150.

No. 83–5548. KENDRICKS *v.* MOUNT SINAI HOSPITAL MEDICAL CENTER OF CHICAGO. C. A. 7th Cir. Certiorari denied. Reported below: 714 F. 2d 150.

No. 83–5550. FILIPAS *v.* KRAUSE, ADMINISTRATOR, WORKMEN'S COMPENSATION, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 709 F. 2d 1501.

No. 83–5552. TAYLOR *v.* CURRY, WARDEN. C. A. 2d Cir. Certiorari denied. Reported below: 708 F. 2d 886.

No. 83–5559. WALD *v.* INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, COUNCIL NO. 42, LOCAL 357. C. A. 9th Cir. Certiorari denied. Reported below: 716 F. 2d 912.

No. 83–5561. NEAL *v.* HECKLER, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. Fed. Cir. Certiorari denied. Reported below: 723 F. 2d 68.

No. 83–5562. OWENS *v.* MORDER. C. A. 3d Cir. Certiorari denied. Reported below: 723 F. 2d 897.

No. 83–5564. HERSHIPS *v.* MACCLAREN ET AL. Sup. Ct. Cal. Certiorari denied.

No. 83–5568. DAVIS *v.* CLYMER, DEPUTY SUPERINTENDENT, CAMP HILL, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 720 F. 2d 661.

No. 83–5569. LONG *v.* KIRK ET AL. C. A. D. C. Cir. Certiorari denied.

No. 83–5574. UDELL *v.* STATE DEPARTMENT OF MASSACHUSETTS ET AL. C. A. 1st Cir. Certiorari denied.

No. 83–5576. HENSLEY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 716 F. 2d 911.

No. 83–5577. KNIGHTS *v.* WOLFF, WARDEN, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 713 F. 2d 240.

No. 83–5582. BROWN *v.* HOPPER. C. A. 4th Cir. Certiorari denied. Reported below: 716 F. 2d 894.

No. 83–5585. ODOM *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 714 F. 2d 134.

No. 83–5588. POLK *v.* KRAMARSKY, COMMISSIONER OF THE NEW YORK STATE DIVISION OF HUMAN RIGHTS, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 711 F. 2d 505.

No. 83–5600. QUERO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 714 F. 2d 158.

No. 83–5618. FORSYTH *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 742 F. 2d 1443.

No. 83–5619. DAVIS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 710 F. 2d 104.

No. 83–5637. RODMAN *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 714 F. 2d 153.

No. 83–5639. SCHAFER *v.* SHARP, UNITED STATES DISTRICT COURT JUDGE, NORTHERN DISTRICT OF INDIANA. C. A. 7th Cir. Certiorari denied.

No. 83–5640. MCCRAE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 714 F. 2d 83.

No. 83–5645. BARRAGAN-CEPEDA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 718 F. 2d 1112.

No. 83–5648. CORRICELLI *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 720 F. 2d 657.

No. 83–5652. CONLEY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 708 F. 2d 1455.

No. 83–5653. CHERNACK *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 720 F. 2d 657.

No. 83–5654. CROSBY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 713 F. 2d 1066.

No. 83–5669. WINPENNY *v.* MONTEMURO, ADMINISTRATIVE JUDGE OF THE PHILADELPHIA DOMESTIC RELATIONS COURT. Sup. Ct. Pa. Certiorari denied. Reported below: 501 Pa. 330, 461 A. 2d 612.

No. 83–5673. ILLSLEY *v.* UNITED STATES PAROLE COMMISSION ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 720 F. 2d 679.

No. 83–5674. MCMAHON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 715 F. 2d 498.

No. 83–5681. GOODMAN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 82–6729. DAVIS *v.* ILLINOIS. Sup. Ct. Ill. Motion of petitioner to defer consideration of the petition for writ of certiorari

and for other relief denied. Certiorari denied. Reported below: 95 Ill. 2d 1, 447 N. E. 2d 353.

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.

No. 83–113. WAINWRIGHT, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS *v.* PROFFITT. C. A. 11th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 685 F. 2d 1227 and 706 F. 2d 311.

No. 83–200. MCKASKLE, ACTING DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS *v.* TARPLEY. C. A. 5th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 703 F. 2d 157.

No. 83–514. HALL *v.* UNITED STATES ET AL. C. A. 6th Cir. Motion of petitioner to defer consideration of the petition for writ of certiorari denied. Certiorari denied. Reported below: 704 F. 2d 246.

No. 83–539. ARTHUR ANDERSEN & CO. ET AL. *v.* SCHACHT, ACTING DIRECTOR OF INSURANCE OF ILLINOIS AND LIQUIDATOR OF RESERVE INSURANCE CO.; and

No. 83–548. BROWN ET AL. *v.* SCHACHT, ACTING DIRECTOR OF INSURANCE OF ILLINOIS AND LIQUIDATOR OF RESERVE INSURANCE CO. C. A. 7th Cir. Motion of Peat, Marwick, Mitchell & Co. for leave to file a brief as *amicus curiae* in No. 83–539 granted. Certiorari denied. Reported below: 711 F. 2d 1343.

No. 83–547. OHIO-SEALY MATTRESS MANUFACTURING CO. ET AL. *v.* SEALY, INC., ET AL. C. A. 7th Cir. Motion of petitioners to defer consideration of the petition for writ of certiorari denied. Certiorari denied. Reported below: 712 F. 2d 270.

No. 83–583. JOYNER *v.* MOFFORD, SECRETARY OF STATE OF ARIZONA, ET AL. C. A. 9th Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 706 F. 2d 1523.

No. 83–594. PITTS *v.* GAF CORP. ET AL. C. A. 7th Cir. Certiorari denied. JUSTICE BRENNAN took no part in the consideration or decision of this petition. Reported below: 712 F. 2d 276.

No. 83–5509. PROFFITT *v.* WAINWRIGHT, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir.;

No. 83–5530. SCHIRO *v.* INDIANA. Sup. Ct. Ind.;

No. 83–5533. LANEY *v.* TENNESSEE. Sup. Ct. Tenn.;

No. 83–5544. SMITH *v.* KEMP, SUPERINTENDENT, GEORGIA DIAGNOSTIC AND CLASSIFICATION CENTER. C. A. 11th Cir.; and

No. 83–5644. ANTONE *v.* STRICKLAND, SUPERINTENDENT, FLORIDA STATE PRISON, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: No. 83–5509, 685 F. 2d 1227 and 706 F. 2d 311; No. 83–5530, 451 N. E. 2d 1047; No. 83–5533, 654 S. W. 2d 383; No. 83–5544, 715 F. 2d 1459; No. 83–5644, 706 F. 2d 1534.

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. 82–1390. ASHLEY ET AL. *v.* CITY OF JACKSON, MISSISSIPPI, ET AL., *ante*, p. 900;

No. 82–1633. HOSPITAL BUILDING CO. *v.* TRUSTEES OF REX HOSPITAL ET AL., *ante*, p. 904;

No. 82–1914. FALKOWSKI *v.* PERRY ET AL., *ante*, p. 819;

No. 82–1947. KOKER ET UX. *v.* BETTS ET AL., *ante*, p. 803;

No. 82–2044. WESTERN FOOD EQUIPMENT CO. *v.* FOSS AMERICA, INC., *ante*, p. 825;

No. 82–2106. LAMPKIN *v.* NORTH AMERICAN FINANCE CO., *ante*, p. 828;

No. 82–2125. METROPOLITAN PACKAGE STORE ASSN., INC., ET AL. *v.* KOCH, MAYOR OF THE CITY OF NEW YORK, ET AL., *ante*, p. 802;

No. 82–2142. YEE *v.* YEE ET AL., *ante*, p. 829;

No. 82–6487. GADOMSKI *v.* UNITED STATES STEEL CORP., 461 U. S. 946; and

No. 82–6785. RONAN *v.* BRIGGS ET AL., *ante*, p. 836. Petitions for rehearing denied.

No. 82–6822. V. J. S. *v.* ILLINOIS, *ante*, p. 837;

No. 82–6849. REESE *v.* ALABAMA, *ante*, p. 838;

No. 82–6852. WILSON *v.* GEORGIA, *ante*, p. 865;

No. 82–6872. BRIDGES *v.* TEXAS, *ante*, p. 838;

No. 82–6881. FREE *v.* ILLINOIS, *ante*, p. 865;

No. 82–6897. HOLCOMB *v.* CALIFORNIA ET AL., *ante*, p. 840;

No. 82–6898. WILLIAMS *v.* UNITED STATES, *ante*, p. 840;

No. 82–6943. ENGEL *v.* NEW YORK STATE HUMAN RIGHTS APPEAL BOARD ET AL., *ante*, p. 841;

No. 82–6944. ENGEL *v.* NEW YORK STATE HUMAN RIGHTS APPEAL BOARD ET AL., *ante*, p. 841;

No. 82–6973. LINDSEY *v.* LOUISIANA, *ante*, p. 908;

No. 82–6979. LaRETTE *v.* MISSOURI, *ante*, p. 908;

No. 82–6982. NARCISSE *v.* LOUISIANA, *ante*, p. 865;

No. 82–6990. PETERSON *v.* VIRGINIA, *ante*, p. 865;

No. 83–34. STOUFFER CORP. *v.* PRUDENTIAL INSURANCE COMPANY OF AMERICA ET AL., *ante*, p. 846;

No. 83–99. VARKONYI, INDIVIDUALLY, AND DBA METAL RECYCLING CO. *v.* DONOVAN, SECRETARY OF LABOR, *ante*, p. 849;

No. 83–148. JOHNSON *v.* DISTRICT SCHOOL BOARD OF HERNANDO COUNTY, FLORIDA, *ante*, p. 851;

No. 83–152. KARAPINKA *v.* UNION CARBIDE CORP. ET AL., *ante*, p. 892;

No. 83–155. VEENKANT *v.* GURN ET AL., *ante*, p. 851;

No. 83–156. VEENKANT *v.* BLAKE ET AL.; and VEENKANT *v.* CORSIGLIA ET AL., *ante*, p. 874;

No. 83–157. VEENKANT *v.* WESLER ET AL., *ante*, p. 851;

No. 83–167. PFISTER *v.* AMERICAN AIRLINES, INC., ET AL., *ante*, p. 874;

No. 83–178. WESTERN COMPANY OF NORTH AMERICA *v.* UNITED STATES, *ante*, p. 892;

No. 83–187. TSANOS ET AL. *v.* DIVISION OF ADMINISTRATION, FLORIDA DEPARTMENT OF TRANSPORTATION, *ante*, p. 852;

No. 83–192. BOUCLIN *v.* UNITED STATES, *ante*, p. 852;

No. 83–267. BROWNFIELD *v.* CITY OF LAGUNA BEACH ET AL., *ante*, p. 894;

No. 83–5038. BRUCE *v.* UPPER EAST TENNESSEE HUMAN DEVELOPMENT AGENCY, INC., ET AL., *ante*, p. 854;

No. 83–5046. GASTON *v.* UNITED STATES, *ante*, p. 854;

No. 83–5051. WILLIAMS *v.* NORTH CAROLINA, *ante*, p. 865; and

No. 83–5085. PIATKOWSKA *v.* VONS FOODMARKETS, *ante*, p. 856. Petitions for rehearing denied.

No. 83–5095. CONNER *v.* GEORGIA, *ante*, p. 865;
No. 83–5147. GRAHAM *v.* NEW YORK, *ante*, p. 896;
No. 83–5207. MULLIGAN *v.* ARIZONA, *ante*, p. 860;
No. 83–5248. WHEELING *v.* COMMISSIONER OF INTERNAL REVENUE SERVICE, *ante*, p. 862;
No. 83–5279. ATTWELL ET AL. *v.* METROPOLITAN ATLANTA RAPID TRANSIT AUTHORITY ET AL., *ante*, p. 897;
No. 83–5299. FLORES ET AL. *v.* ARANGUREN, *ante*, p. 898;
No. 83–5355. MINYE *v.* UNIVERSITY OF MICHIGAN ET AL., *ante*, p. 899; and
No. 83–5366. JAMES *v.* LOUISIANA, *ante*, p. 908. Petitions for rehearing denied.

DECEMBER 5, 1983

Affirmed on Appeal

No. 83–334. BOARD OF SCHOOL COMMISSIONERS OF MOBILE COUNTY, ALABAMA, ET AL. *v.* BROWN ET AL. Affirmed on appeal from C. A. 11th Cir. Reported below: 706 F. 2d 1103.

Appeal Dismissed

No. 83–280. UTILITY TRAILER SALES CO. *v.* MACHINISTS AUTOMOTIVE TRADES DISTRICT LODGE NO. 190 OF NORTHERN CALIFORNIA ET AL. Appeal from Ct. App. Cal., 1st App. Dist., dismissed for want of substantial federal question. Reported below: 141 Cal. App. 3d 80, 190 Cal. Rptr. 98.

Miscellaneous Orders

No. A–394. IN RE DAWSON. C. A. 11th Cir. Application for certificate of probable cause to appeal, presented to JUSTICE POWELL, and by him referred to the Court, denied.

No. A–408. CHASE MANHATTAN BANK (NATIONAL ASSN.) *v.* SAND, UNITED STATES DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF NEW YORK. Application for stay of an order of the United States District Court for the Southern District of New York, presented to JUSTICE MARSHALL, and by him referred to the Court, denied.

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 the Solicitor General for leave to file a supplemental brief after argument granted.

No. 82–1330. THIGPEN, COMMISSIONER, MISSISSIPPI DEPARTMENT OF CORRECTIONS, ET AL. *v.* ROBERTS. C. A. 5th Cir. [Certiorari granted, 461 U. S. 956.] It appearing that respondent is not represented by a member of the Bar of this Court, it is ordered that Rhesa H. Barksdale, Esquire, of Jackson, Miss., is invited to present oral argument as *amicus curiae* in support of the judgment below. Oral argument in this case, presently scheduled for January 18, 1984, is postponed and the case of *New York* v. *Uplinger*, No. 82–1724 [certiorari granted, *ante*, p. 812], is set for oral argument in its stead.

No. 82–1577. MICHIGAN CANNERS & FREEZERS ASSN., INC., ET AL. *v.* AGRICULTURAL MARKETING AND BARGAINING BOARD ET AL. Sup. Ct. Mich. [Probable jurisdiction noted, *ante*, p. 912.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 83–240. LAWRENCE COUNTY ET AL. *v.* LEAD-DEADWOOD SCHOOL DISTRICT NO. 40–1. Sup. Ct. S. D.;

No. 83–592. OSTROSKY ET AL. *v.* ALASKA. Sup. Ct. Alaska;

No. 83–610. BABBITT FORD, INC. *v.* NAVAJO INDIAN TRIBE ET AL. C. A. 9th Cir.; and

No. 83–640. TEXAS *v.* KVUE–TV, INC., ET AL. C. A. 5th Cir. The Solicitor General is invited to file briefs in these cases expressing the views of the United States.

No. 83–455. MEACHUM, DIRECTOR, OKLAHOMA DEPARTMENT OF CORRECTIONS, ET AL. *v.* BATTLE ET AL. C. A. 10th Cir. Motion of petitioners to defer consideration of the petition for writ of certiorari denied.

No. 83–5634. IN RE BROWN. Petition for writ of habeas corpus denied.

No. 83–576. IN RE AMERICAN BROADCASTING COS., INC.;

No. 83–5589. IN RE GRIFFITH; and

No. 83–5590. IN RE CANION. Petitions for writs of mandamus denied.

Probable Jurisdiction Noted

No. 83–276. SELECTIVE SERVICE SYSTEM ET AL. *v.* MINNESOTA PUBLIC INTEREST RESEARCH GROUP ET AL. Appeal from D. C. Minn. Probable jurisdiction noted. Reported below: 557 F. Supp. 937.

Certiorari Granted

No. 83–630. BERNAL *v.* FAINTER, SECRETARY OF STATE OF TEXAS, ET AL. C. A. 5th Cir. Certiorari granted. Reported below: 710 F. 2d 190.

No. 83–218. REED ET AL. *v.* ROSS. C. A. 4th Cir. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 704 F. 2d 705.

No. 83–620. UNITED STATES *v.* RODGERS. C. A. 8th Cir. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 706 F. 2d 854.

No. 83–558. IRVING INDEPENDENT SCHOOL DISTRICT *v.* TATRO ET UX., INDIVIDUALLY, AND AS NEXT FRIENDS OF TATRO, A MINOR. C. A. 5th Cir. Motion of National School Boards Association for leave to file a brief as *amicus curiae* granted. Certiorari granted. Reported below: 703 F. 2d 823.

Certiorari Denied

No. 82–979. FEDERAL LABOR RELATIONS AUTHORITY *v.* UNITED STATES DEPARTMENT OF AGRICULTURE ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 691 F. 2d 1242.

No. 82–1021. FEDERAL LABOR RELATIONS AUTHORITY *v.* DIVISION OF MILITARY AND NAVAL AFFAIRS OF THE STATE OF NEW YORK ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 683 F. 2d 45.

No. 82–1970. FEDERAL LABOR RELATIONS AUTHORITY *v.* FLORIDA NATIONAL GUARD ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 699 F. 2d 1082.

No. 82–7030. NEWMAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 709 F. 2d 1519.

No. 83–4. PORTER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 701 F. 2d 1158.

No. 83–124. FUSARO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 708 F. 2d 17.

No. 83–256. WILLIAMS *v.* UNITED STATES; and
No. 83–5108. FEINBERG *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 705 F. 2d 603.

No. 83–286. KILLOUGH *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied. Reported below: 434 So. 2d 852.

No. 83–293. CONWAY ET AL. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 711 F. 2d 1060.

No. 83–378. BIG SPRING INDEPENDENT SCHOOL DISTRICT ET AL. *v.* GRIFFEN. C. A. 5th Cir. Certiorari denied. Reported below: 706 F. 2d 645.

No. 83–379. ESTATE OF GRYDER ET AL. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 8th Cir. Certiorari denied. Reported below: 705 F. 2d 336.

No. 83–399. LOVEDAY ET AL. *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 228 U. S. App. D. C. 38, 707 F. 2d 1443.

No. 83–400. J. H. RUTTER REX MANUFACTURING CO., INC. *v.* UNITED STATES ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 706 F. 2d 702.

No. 83–415. HILLER *v.* ALASKA. Super. Ct. Alaska, 3d Jud. Dist. Certiorari denied.

No. 83–427. HALL *v.* NEW JERSEY. Sup. Ct. N. J. Certiorari denied. Reported below: 93 N. J. 552, 461 A. 2d 1155.

No. 83–495. CARROLL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 710 F. 2d 164.

No. 83–523. CUYAHOGA VALLEY HOMEOWNERS & RESIDENTS ASSN. ET AL. *v.* SECRETARY OF THE INTERIOR ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 716 F. 2d 902.

No. 83–563. HENRY S. BRANSCOME, INC., ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 711 F. 2d 570.

No. 83–587. PRUDENTIAL INSURANCE COMPANY OF AMERICA *v.* BENNETT ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 710 F. 2d 1361.

No. 83–590. BAXTER *v.* INDIANA. Ct. App. Ind. Certiorari denied. Reported below: 446 N. E. 2d 376.

No. 83–591. DALTON ET AL. *v.* R. W. T. ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 712 F. 2d 1225.

No. 83–597. DALLAS COUNTY COMMISSIONERS COURT ET AL. *v.* RICHARDSON ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 709 F. 2d 1016.

No. 83–603. KIRKS *v.* KIRKS. Super. Ct. N. C., Wake County. Certiorari denied.

No. 83–611. SCHAEFER *v.* STONE, TRUSTEE. App. Dept., Super. Ct. Cal., County of San Diego. Certiorari denied.

No. 83–612. HAYNES *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 83–635. VEENKANT *v.* COOK ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 720 F. 2d 680.

No. 83–639. BELNAP *v.* CHANG, DIRECTOR, DEPARTMENT OF SOCIAL SERVICES AND HOUSING OF HAWAII, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 707 F. 2d 1100.

No. 83–652. PETERSON *v.* CHICAGO & EASTERN ILLINOIS RAILROAD CO. ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 714 F. 2d 145.

No. 83–653. LEATHERBY INSURANCE CO., AKA WESTERN EMPLOYERS INSURANCE CO. *v.* MERIT INSURANCE CO. C. A. 7th Cir. Certiorari denied. Reported below: 714 F. 2d 673.

No. 83–682. HARRIS *v.* CITY OF NORFOLK, VIRGINIA, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 707 F. 2d 506.

No. 83–709. WALTON *v.* SMALL BUSINESS ADMINISTRATION. C. A. D. C. Cir. Certiorari denied.

No. 83–742. BRADSHAW *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 83–744. FUENTES *v.* MICHIGAN. Ct. App. Mich. Certiorari denied. Reported below: 118 Mich. App. 135, 324 N. W. 2d 782.

No. 83–764. RIVERA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 716 F. 2d 913.

No. 83–5021. DAVIS *v.* MCKASKLE, ACTING DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS. Ct. Crim. App. Tex. Certiorari denied.

No. 83–5308. SALKIL *v.* MISSOURI. Ct. App. Mo., Southern Dist. Certiorari denied. Reported below: 649 S. W. 2d 509.

No. 83–5311. NOGGLE *v.* MARSHALL, SUPERINTENDENT, SOUTHERN OHIO CORRECTIONAL FACILITY. C. A. 6th Cir. Certiorari denied. Reported below: 706 F. 2d 1408.

No. 83–5336. CORREA-DE JESUS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 708 F. 2d 1283.

No. 83–5351. QUINN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 709 F. 2d 1519.

No. 83–5368. ODOM *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 83–5371. STANLEY *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 433 So. 2d 69.

No. 83–5376. MARSHALL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 714 F. 2d 143.

No. 83–5411. BANKS *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied. Reported below: 432 So. 2d 1246.

No. 83–5413. JOHNSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 709 F. 2d 639.

No. 83–5453. CARDILLO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 708 F. 2d 29.

No. 83–5502. FELICIANO *v.* LANE, DIRECTOR, ILLINOIS DEPARTMENT OF CORRECTIONS, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 714 F. 2d 148.

No. 83–5513. STINSON *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 92 App. Div. 2d 676, 460 N. Y. S. 2d 182.

No. 83–5571. TOLK *v.* WEINSTEN ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 742 F. 2d 1431.

No. 83–5572. MCMILLAN *v.* HESTER ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 714 F. 2d 141.

No. 83–5578. HARRIS *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 83–5583. ASHWORTH *v.* LOS ANGELES COUNTY, CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 83–5591. MITCHELL *v.* NOCERA ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 742 F. 2d 1438.

No. 83–5593. JOHNSON *v.* WAINWRIGHT, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 712 F. 2d 1417.

No. 83–5594. JOHNSON *v.* HENRY. App. Sess., Super. Ct. Conn. Certiorari denied. Reported below: 38 Conn. Supp. 718, 461 A. 2d 1001.

No. 83–5597. SPRADLIN ET AL. *v.* NEBRASKA. Sup. Ct. Neb. Certiorari denied. Reported below: 214 Neb. 834, 336 N. W. 2d 563.

No. 83–5599. MEDINA-REYES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 715 F. 2d 575.

No. 83–5605. CUTTS *v.* WYRICK, WARDEN, ET AL. C. A. 8th Cir. Certiorari denied.

No. 83–5607. KING *v.* MCEVERS ET AL. C. A. 7th Cir. Certiorari denied.

No. 83–5617. SMITH-BEY *v.* SABO, JUDGE, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 720 F. 2d 667.

No. 83–5624. MORVAY *v.* MAGHIELSE TOOL & DIE CO., INC. C. A. 6th Cir. Certiorari denied. Reported below: 708 F. 2d 229.

No. 83–5642. MARKS *v.* UNITED STATES POSTAL SERVICE. C. A. D. C. Cir. Certiorari denied.

No. 83–5647. GREATHOUSE *v.* MARSHALL, SUPERINTENDENT, SOUTHERN OHIO CORRECTIONAL FACILITY. C. A. 6th Cir. Certiorari denied. Reported below: 711 F. 2d 1056.

No. 83–5658. HAMPTON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 714 F. 2d 157.

No. 83–5661. RHODES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 713 F. 2d 463.

No. 83–5666. SRUBAR ET UX. *v.* DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE. C. A. 2d Cir. Certiorari denied. Reported below: 729 F. 2d 1442.

No. 83–5685. LEMAIRE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 712 F. 2d 944.

No. 83–5688. MCDANIEL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 710 F. 2d 839.

No. 83–5708. ROJAS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 711 F. 2d 1069.

No. 83–5709. PRUITT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 719 F. 2d 975.

No. 83–5710. TOWNS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 709 F. 2d 1511.

No. 83–438. HENDERSON *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 279 Ark. 414, 652 S. W. 2d 26.

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.

No. 83–572. BALDWIN ET AL. *v.* CITY OF WINSTON-SALEM, NORTH CAROLINA, ET AL. C. A. 4th Cir. Motion of North Carolina Farm Bureau Federation, Inc., et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 710 F. 2d 132.

No. 83–586. SHELL PETROLEUM N.V. *v.* FRANCHETTI ET AL. C. A. 9th Cir. Motions of Belgium et al. and Unitary Tax Campaign Limited for leave to file briefs as *amici curiae* granted. Certiorari denied. JUSTICE POWELL took no part in the consideration or decision of these motions and this petition. Reported below: 709 F. 2d 593.

No. 83–617. WACHSMAN ET AL. *v.* CITY OF DALLAS ET AL. C. A. 5th Cir. Certiorari denied. JUSTICE BRENNAN would grant certiorari. Reported below: 704 F. 2d 160.

No. 83–629. HASBRO INDUSTRIES, INC., ET AL. *v.* A/S GARONNE-GLITTRE ET AL. C. A. 9th Cir. Certiorari denied. JUSTICE BLACKMUN took no part in the consideration or decision of this petition. Reported below: 705 F. 2d 339.

No. 83–5260. WASHINGTON *v.* NEW YORK CITY BOARD OF ESTIMATE. C. A. 2d Cir. Certiorari denied. JUSTICE MARSHALL would grant certiorari. Reported below: 709 F. 2d 792.

No. 83–5273. DELEGAL *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. JUSTICE WHITE took no part in the consideration or decision of this petition. Reported below: 714 F. 2d 146.

Rehearing Denied

No. ——. P STONE, INC. *v.* KOPPERS CO., INC., ET AL., *ante*, p. 879;

No. 82–1718. RANDALL BOOK CORP. *v.* MARYLAND, *ante*, p. 919;

No. 82–6865. MUHAMMAD *v.* FLORIDA, *ante*, p. 865;

No. 83–302. AVEDISIAN *v.* MAY ET AL., *ante*, p. 909; and

No. 83–311. STRASSNER *v.* STRASSNER, *ante*, p. 936. Petitions for rehearing denied.

DECEMBER 12, 1983

Affirmed on Appeal

No. 83–737. CALIFORNIA ET AL. *v.* UNITED STATES ET AL.; and

No. 83–738. NEW YORK STATE DEPARTMENT OF PUBLIC SERVICE *v.* UNITED STATES ET AL. Affirmed on appeals from D. C. D. C. Reported below: 569 F. Supp. 1057.

Appeals Dismissed

No. 82–1848. CHICAGO BRIDGE & IRON CO. *v.* WASHINGTON DEPARTMENT OF REVENUE. Appeal from Sup. Ct. Wash. dismissed for want of substantial federal question. Reported below: 98 Wash. 2d 814, 659 P. 2d 463.

No. 83–655. CROWDER *v.* TEXAS. Appeal from Ct. Crim. App. Tex. dismissed for want of substantial federal question. Reported below: 653 S. W. 2d 823.

No. 83–662. GAINES *v.* MERCHANTS NATIONAL BANK & TRUST CO. Appeal from C. A. 7th 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: 718 F. 2d 1103.

No. 83–5620. DEAN *v.* UNITED STATES. Appeal from D. C. N. D. Ga. dismissed for want of jurisdiction.

Certiorari Granted—Vacated and Remanded. (See No. 82–2083, *ante*, p. 114.)

Certiorari Dismissed

No. 82–1711. COLORADO *v.* QUINTERO. Sup. Ct. Colo. [Certiorari granted, 463 U. S. 1206.] Motion of petitioner to proceed with oral argument and decision denied. The writ of certiorari is dismissed, it appearing that respondent died on November 27, 1983.

Miscellaneous Orders

No. D–389. IN RE DISBARMENT OF COHEN. It is ordered that Ray Jeffrey Cohen, of Chicago, Ill., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–390. IN RE DISBARMENT OF NAGEL. It is ordered that Edward A. Nagel, of Maitland, 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. 82–1295. ESCAMBIA COUNTY, FLORIDA, ET AL. *v.* MCMILLAN ET AL. C. A. 5th Cir. [Probable jurisdiction noted, 460 U. S. 1080.] Further consideration of the notice of substitution of party appellants and motion of certain appellants to dismiss the appeal is deferred to hearing of the case on the merits on January 10, 1984.

No. 82–1474. HOOVER ET AL. *v.* RONWIN ET AL. C. A. 9th Cir. [Certiorari granted, 461 U. S. 926.] Motion of respondent Ronwin for reconsideration of order granting divided argument [*ante*, p. 989] denied. JUSTICE O'CONNOR took no part in the consideration or decision of this motion.

No. 82–1565. BACCHUS IMPORTS, LTD., ET AL. *v.* FREITAS, DIRECTOR OF TAXATION OF HAWAII, ET AL. Sup. Ct. Haw. [Probable jurisdiction noted, 462 U. S. 1130.] Motion of appellee George Freitas, Director of Taxation of the State of Hawaii, to dismiss the appeal or remand the case denied. JUSTICE BRENNAN took no part in the consideration or decision of this motion.

No. 82–1579. HAYFIELD NORTHERN RAILROAD CO., INC., ET AL. *v.* CHICAGO & NORTH WESTERN TRANSPORTATION CO. C. A. 8th Cir. [Probable jurisdiction noted, *ante*, p. 812.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 82–1724. NEW YORK *v.* UPLINGER ET AL. Ct. App. N. Y. [Certiorari granted, *ante*, p. 812.] Motion of respondent Butler for divided argument denied. JUSTICE MARSHALL would grant this motion.

No. 82–1766. SECURITIES INDUSTRY ASSN. ET AL. *v.* BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM ET AL. C. A. D. C. Cir. [Certiorari granted, *ante*, p. 812.] Motion of petitioners for divided argument denied. JUSTICE MARSHALL would grant this motion.

No. 82–1771. UNITED STATES *v.* LEON ET AL. C. A. 9th Cir. [Certiorari granted, 463 U. S. 1206.] Motion of respondents Sanchez et al. for modification of order granting divided argument [*ante*, p. 889] denied.

No. 82–1795. CAPITAL CITIES CABLE, INC., ET AL. *v.* CRISP, DIRECTOR, OKLAHOMA ALCOHOLIC BEVERAGE CONTROL BOARD. C. A. 10th Cir. [Certiorari granted, *ante*, p. 813.] Motion of petitioners for divided argument denied. Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae*, for divided argument, and for additional time for oral argument denied.

No. 82–1860. SCHNEIDER MOVING & STORAGE CO. *v.* ROBBINS ET AL.; and

No. 82–1862. PROSSER'S MOVING & STORAGE CO. *v.* ROBBINS ET AL. C. A. 8th Cir. [Certiorari granted, *ante*, p. 813.] Motion of petitioners in No. 82–1860 for divided argument granted. Motion of petitioners in No. 82–1862 for divided argument granted. Requests for additional time for oral argument denied.

No. 82–1998. CLARK, SECRETARY OF THE INTERIOR, ET AL. *v.* COMMUNITY FOR CREATIVE NON-VIOLENCE ET AL. C. A. D. C. Cir. [Certiorari granted *sub nom. Watt* v. *Community for Creative Non-Violence*, *ante*, p. 812.] Motion of respondents for leave to file supplemental joint appendix not in compliance with this Court's Rule 33 denied. JUSTICE BLACKMUN and JUSTICE STEVENS would grant this motion.

No. 82–6956. CROSS *v.* SECRETARY OF STATE, *ante*, p. 928. Motion of appellant for reconsideration of order denying leave to proceed *in forma pauperis* denied.

No. 83–623. JAMES ET AL. *v.* CLARK, SECRETARY OF THE INTERIOR, ET AL. C. A. 1st Cir. Motion of petitioners to defer consideration of the petition for writ of certiorari denied.

No. 83–5040. ENO ET AL. *v.* UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT ET AL., *ante*, p. 928. Motion of petitioners for reconsideration of order denying leave to proceed *in forma pauperis* denied.

No. 83–5611. WINDSOR *v.* THE TENNESSEAN ET AL. Ct. App. Tenn. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until January 3, 1984, 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.

JUSTICE BRENNAN, JUSTICE MARSHALL, and JUSTICE STEVENS, dissenting.

For the reasons expressed in *Brown* v. *Herald Co.*, *ante*, p. 928, we would deny the petition for certiorari in this case without reaching the merits of the motion to proceed *in forma pauperis*.

No. 83–5601. IN RE WILLIAMS. Petition for writ of mandamus denied.

Probable Jurisdiction Noted

No. 83–297. ARMCO INC. *v.* HARDESTY, TAX COMMISSIONER OF WEST VIRGINIA. Appeal from Sup. Ct. App. W. Va. Probable jurisdiction noted. Reported below: —— W. Va. ——, 303 S. E. 2d 706.

No. 83–490. DAVIS ET AL. *v.* SCHERER. Appeal from C. A. 11th Cir. Probable jurisdiction noted. Reported below: 710 F. 2d 838.

Certiorari Granted

No. 82–2140. HOBBY *v.* UNITED STATES. C. A. 4th Cir. Certiorari granted limited to Question 3 presented by the petition. Reported below: 702 F. 2d 466.

No. 83–328. MABRY, COMMISSIONER, ARKANSAS DEPARTMENT OF CORRECTION *v.* JOHNSON. C. A. 8th Cir. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 707 F. 2d 323.

Certiorari Denied. (See also No. 83–662, *supra.*)

No. 82–7014. THOMPSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 707 F. 2d 514.

No. 83–295. COSTA *v.* MARKEY ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 706 F. 2d 1.

No. 83–320. ANDERSON COUNTY, TENNESSEE, ET AL. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 705 F. 2d 184.

No. 83–359. YAVAPAI-PRESCOTT INDIAN TRIBE *v.* CLARK, SECRETARY OF THE INTERIOR, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 707 F. 2d 1072.

No. 83–484. SLEVIN ET AL. *v.* CITY OF NEW YORK ET AL.; and
No. 83–485. BARRY ET AL. *v.* CITY OF NEW YORK ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 712 F. 2d 1554.

No. 83–588. BERGER *v.* MCMONAGLE, JUDGE, ET AL. Sup. Ct. Ohio. Certiorari denied. Reported below: 6 Ohio St. 3d 28, 451 N. E. 2d 225.

No. 83–647. LUI SU NAI-CHAO, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF LUI CHO-PON, ET AL. *v.* BOEING CO. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 708 F. 2d 1406.

No. 83–657. UNGER *v.* CONSOLIDATED FOODS CORP. C. A. 7th Cir. Certiorari denied.

No. 83–660. KEASLER *v.* GRANAT. Sup. Ct. Wash. Certiorari denied. Reported below: 99 Wash. 2d 564, 663 P. 2d 830.

No. 83–666. HERRING *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 435 So. 2d 865.

No. 83–668. PACE *v.* SOUTHERN RAILWAY CO. C. A. 11th Cir. Certiorari denied. Reported below: 701 F. 2d 1383.

No. 83–670. GUNTER *v.* KENTUCKY. Ct. App. Ky. Certiorari denied.

No. 83–675. MITLO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 714 F. 2d 294.

No. 83–784. BUFFALO FORGE CO. ET AL. *v.* OGDEN CORP. C. A. 2d Cir. Certiorari denied. Reported below: 717 F. 2d 757.

No. 83–792. CALDEVILLA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 716 F. 2d 913.

No. 83–800. CICCONI *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 722 F. 2d 735.

No. 83–813. ALLEN ET AL. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 11th Cir. Certiorari denied. Reported below: 707 F. 2d 522.

No. 83–5306. FINCH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 708 F. 2d 606.

No. 83–5332. WILLIAMSON *v.* WISCONSIN. Sup. Ct. Wis. Certiorari denied. Reported below: 113 Wis. 2d 389, 335 N. W. 2d 814.

No. 83–5410. MILLS *v.* COUNTY OF MONROE. Ct. App. N. Y. Certiorari denied. Reported below: 59 N. Y. 2d 307, 451 N. E. 2d 456.

No. 83–5420. INGRAHAM *v.* MCCARTHY ET AL. C. A. 1st Cir. Certiorari denied.

No. 83–5465. KINCAID *v.* EBERLE. C. A. 7th Cir. Certiorari denied. Reported below: 712 F. 2d 1023.

No. 83–5540. EVANS *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 96 App. Div. 2d 843, 464 N. Y. S. 2d 1020.

No. 83–5543. GENTSCH *v.* LOWE, CLERK, ET AL. C. A. 5th Cir. Certiorari denied.

No. 83–5604. JOHNSON *v.* TENNESSEE DEPARTMENT OF EMPLOYMENT SECURITY ET AL. Sup. Ct. Tenn. Certiorari denied.

No. 83–5608. BEADLE *v.* MCKASKLE, ACTING DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS. C. A. 5th Cir. Certiorari denied. Reported below: 711 F. 2d 1053.

No. 83–5610. PAYNE *v.* JANASZ, CHIEF PROBATION OFFICER, CUYAHOGA COUNTY. C. A. 6th Cir. Certiorari denied. Reported below: 711 F. 2d 1305.

No. 83–5616. IGOE *v.* JONES, DBA G & L INVESTMENTS, INC. C. A. 10th Cir. Certiorari denied.

No. 83–5627. BROWN *v.* WAINWRIGHT, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 712 F. 2d 1417.

No. 83–5628. CHYLICKA ET AL. *v.* UNITED STATES CATHOLIC CONFERENCE "CARITAS" ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 742 F. 2d 1437.

No. 83–5633. BROWN *v.* RICE ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 711 F. 2d 1049.

No. 83–5638. SKAGGS ET AL. *v.* CRAWFORD COUNTY, OHIO, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 708 F. 2d 732.

No. 83–5649. CHAVEZ *v.* BERNALILLO COUNTY DISTRICT COURT. Sup. Ct. N. M. Certiorari denied.

No. 83–5668. NEAL *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied. Reported below: 441 So. 2d 139.

No. 83–5683. BROWN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 709 F. 2d 14.

No. 83–5693. MILLER ET AL. *v.* UNION STATE BANK. Sup. Ct. N. D. Certiorari denied. Reported below: 335 N. W. 2d 807.

No. 83–5704. ESGATE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 718 F. 2d 1109.

No. 83–5726. VANDYKE *v.* WAWRZASZEK, ADMINISTRATOR, ARIZONA STATE PRISON. C. A. 9th Cir. Certiorari denied. Reported below: 714 F. 2d 156.

No. 83–5727. WILLIAMS *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 6 Ohio St. 3d 281, 452 N. E. 2d 1323.

No. 83–5741. LEWIS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 742 F. 2d 1443.

No. 83–5754. PISCANIO *v.* PENNSYLVANIA BOARD OF PROBATION AND PAROLE ET AL. C. A. 3d Cir. Certiorari denied.

No. 83–5758. FORBES *v.* AMERICAN TELEPHONE & TELEGRAPH ET AL. C. A. 9th Cir. Certiorari denied.

No. 83–473 (A–220). OROFINO *v.* UNITED STATES. C. A. 2d Cir. Application for bail and/or stay, addressed to JUSTICE WHITE and referred to the Court, denied. Certiorari denied. Reported below: 742 F. 2d 1443.

No. 83–624. MASHPEE TRIBE ET AL. *v.* CLARK, SECRETARY OF THE INTERIOR, ET AL. C. A. 1st Cir. Motion of Center for Constitutional Rights et al. for leave to file a brief as *amici curiae* granted. Motion of petitioners to defer consideration of the petition for writ of certiorari denied. Certiorari denied. Reported below: 707 F. 2d 23.

No. 83–5106. FIELDS *v.* WYRICK, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 706 F. 2d 879.

JUSTICE MARSHALL, dissenting.

Last Term, this Court summarily reversed a judgment of the United States Court of Appeals for the Eighth Circuit, which ruled that petitioner's 1975 Missouri rape conviction was based on an involuntary statement taken in violation of petitioner's Fifth Amendment rights. *Wyrick* v. *Fields*, 459 U. S. 42 (1982), rev'g 682 F. 2d 154. I dissented from that summary reversal because I do not believe this Court should decide unsettled questions of constitutional law without plenary review. 459 U. S., at 50. In my dissent, I noted that, even if petitioner's statement were voluntary under the Fifth Amendment, the interrogation that produced petitioner's statement might nevertheless have violated petitioner's Sixth Amendment right to counsel. *Id.*, at 52–55.

On remand, the Eighth Circuit considered this issue and concluded that petitioner had knowingly and intelligently waived his Sixth Amendment right to have counsel present during the interrogation. 706 F. 2d 879 (1983). Because I disagree with the manner in which the Eighth Circuit analyzed petitioner's Sixth Amendment claim, I would grant certiorari and set the case for oral argument.

Petitioner, a soldier undergoing basic training in Missouri, was charged with rape. After consulting with counsel, petitioner told his company commander that he wanted to take a polygraph test. Petitioner was under the impression that if he "passed" a polygraph test, the charges against him would be dropped, and he would be permitted to graduate from basic training on schedule. 682 F. 2d, at 160, n. 10. Petitioner's counsel shared this impression and later testified that he thought "'the polygraph would have merely shown deceit or non-deceit and would have been used for the purposes of a possible pretrial negotiation.'" *Id.*, at 160. Accordingly petitioner's counsel advised him to take the test.

Days later when the test was given, petitioner's counsel was not notified. The military officer in charge of the examination simply informed petitioner of his rights to refuse to answer any questions or to have counsel present, and petitioner signed a document[1] waiving those rights. See *State* v. *Fields*, 538 S. W. 2d 348 (Mo. App. 1976). Throughout the polygraph examination, petitioner professed his innocence. After the examination was over, however, the officer administering the test informed petitioner that the machine revealed "some deceit" and asked petitioner for an explanation. The officer did not tell petitioner that the results of polygraph tests were inadmissible in Missouri courts, nor did the officer remind petitioner of his right to have counsel present during this postexamination interrogation. Petitioner then said that he had had consensual sexual relations with the rape victim on the day of the alleged rape. The officer immediately summoned the local Chief of Police. After receiving a *Miranda* warning from the Police Chief, petitioner repeated his statement. At trial, this statement was the heart of the State's successful prosecution.

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[1] Though not identical, the document followed closely the Fifth Amendment waiver form endorsed by this Court in *Miranda* v. *Arizona*, 384 U. S. 436 (1966).

On remand from this Court's previous decision, the Eighth Circuit acknowledged the difference between the policies underlying the Fifth Amendment right to counsel and those informing the Sixth Amendment right to counsel, but asserted that "where the Defendant had previously invoked his right to counsel, it is relatively clear that the validity of any subsequent waiver of *either* the fifth or sixth amendment right to counsel is judged by essentially the same standard." 706 F. 2d, at 881 (emphasis in original). Relying on this Court's finding that petitioner's preexamination waiver of his Fifth Amendment right to counsel covered his postexamination interrogation, the Court of Appeals concluded that petitioner had simultaneously waived any Sixth Amendment right to counsel during the interrogation. *Ibid.*

As I discussed in my dissent last year, a number of courts have come to accept the view that waivers based solely on unembellished *Miranda* warnings do not necessarily satisfy "'the higher standard with respect to waiver of the right to counsel that applies when the Sixth Amendment [right to counsel] has attached.'" 459 U. S., at 55 (quoting *United States* v. *Massimo*, 432 F. 2d 324, 327 (CA2 1970) (Friendly, J., dissenting), cert. denied, 400 U. S. 1022 (1971); see, *e. g.*, *United States* v. *Mohabir*, 624 F. 2d 1140, 1151 (CA2 1980) (Government must show defendant "understood the nature and the importance of the Sixth Amendment right he was giving up"). But see *Blasingame* v. *Estelle*, 604 F. 2d 893 (CA5 1979); *Moore* v. *Wolff*, 495 F. 2d 35 (CA8 1974). In our own opinions, we have strongly intimated that waivers of the Sixth Amendment right to counsel should be measured by a stricter standard. See *United States* v. *Henry*, 447 U. S. 264, 272–273 (1980); *Brewer* v. *Williams*, 430 U. S. 387, 404 (1977); *Faretta* v. *California*, 422 U. S. 806, 835 (1975).[2]

While acknowledging this widely held view of the Sixth Amendment waiver, the Eighth Circuit determined that the higher standard of Sixth Amendment waiver applies only until a defendant has obtained counsel. The Court of Appeals provided no explanation of why the Sixth Amendment waiver standard should decline once counsel is appointed, and I can see no justification in law

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[2] See also Note, Sixth Amendment Right to Counsel: Standards for Knowing and Intelligent Pretrial Waivers, 60 B. U. L. Rev. 738 (1980); Note, Proposed Requirements for Waiver of the Sixth Amendment Right to Counsel, 82 Colum. L. Rev. 363, 365–370 (1982).

or in practice for its ruling.[3] Certainly, the mere appointment of counsel does not significantly affect a criminal defendant's capacity to make an informed choice about waiving the right to counsel. One or two conferences with counsel rarely make a criminal defendant more sophisticated about the importance of obtaining legal advice during the skirmishing antecedent to a criminal prosecution.

In my view, the Eighth Circuit erred in ruling that a criminal defendant waives his Sixth Amendment right to counsel simply by answering questions after being given a *Miranda* warning. Had the Eighth Circuit applied the higher standard of Sixth Amendment waiver endorsed by the Second Circuit in *United States* v. *Mohabir*, *supra*, at 1150, there is a substantial probability that the government would not have been able to show petitioner's implied waiver to be a valid relinquishment based on a full comprehension of the consequences. See *Johnson* v. *Zerbst*, 304 U. S. 458, 464 (1938). Since the Eighth Circuit's decision is inconsistent with the views of several other Circuits and since this inconsistency may have been dispositive in petitioner's case, I would grant the petition.

No. 83–5547. ADAMS *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied. Reported below: 279 S. C. 228, 306 S. E. 2d 208.

JUSTICE MARSHALL, with whom JUSTICE BRENNAN joins, 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 vacate the judgment of the Supreme Court of South Carolina insofar as it left undisturbed the death sentence imposed in this case. *Gregg* v. *Georgia*, 428 U. S. 153, 231 (1976) (MARSHALL, J., dissenting). However, even if I believed that the death penalty could be imposed constitutionally under certain circumstances, I nevertheless would grant certiorari because this petition presents an important issue of federal con-

[3] Indeed, the Seventh Circuit has concluded that "there is a higher standard imposed to show waiver of the presence of counsel once counsel has been appointed." *United States* v. *Springer*, 460 F. 2d 1344, 1352, cert. denied, 409 U. S. 873 (1972); see also *United States* v. *Patman*, 557 F. 2d 1181, 1182, n. 1 (CA5 1977).

stitutional law, upon which State Supreme Courts and a Federal Court of Appeals are divided.

At petitioner's trial, the judge made the following comments on the reasonable-doubt standard:

> "If upon the whole case you have a reasonable doubt as to the guilt of the defendant, he's entitled to that doubt and would be entitled to an acquittal. . . . Now I do not mean, ladies and gentlemen, by the term reasonable doubt that it is some whimsical o[r] imaginary doubt. It is not a weak doubt, it is not a slight doubt. It is a substantial doubt, a doubt for which you give a reason. It is a substantial doubt arising out of the testimony or lack of testimony in the case for which a person honestly seeking to find the truth can give a reason. If you have such a doubt in your mind as to whether the State has proven this defendant guilty, you should resolve that doubt in his favor and write a verdict of not guilty and acquit him.
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> . . . . . .
>
> ". . . I would tell you that the two phrases reasonable doubt and proof to a moral certainty are synonymous and the legal equivalent of each other. These phrases connote, however, a degree of proof distinguished from an absolute certainty. The reasonable doubt that the law gives the accused is not a weak or a slight doubt, but a strong and well-founded doubt as to the truth of the charge."

These instructions guided the jury when it found petitioner guilty of murder and again at the sentencing hearing when it found beyond a reasonable doubt the existence of two statutory aggravating circumstances.

Petitioner objected to the reasonable-doubt instruction at trial and sought to challenge its constitutionality on appeal to the South Carolina Supreme Court.[1] Having recently upheld similar

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[1] The State argues that petitioner waived his right to object to the reasonable-doubt instruction because, following petitioner's initial objection, the trial court issued a supplementary instruction to which petitioner failed to file a second objection. I discount this argument because South Carolina does not strictly enforce its contemporaneous-objection rule to assignment of legal error in capital cases. See *State* v. *Adams*, 277 S. C. 115, 283 S. E. 2d 582 (1981). Indeed, the court in this case ignored petitioner's failure to object to the trial court's supplementary instruction, and dealt with the claim on the

reasonable-doubt instructions in capital cases, see, *e. g.*, *State* v. *Copeland*, 278 S. C. 572, 300 S. E. 2d 63 (1982); *State* v. *Butler*, 277 S. C. 452, 290 S. E. 2d 1, cert. denied, 455 U. S. 945 (1982), the South Carolina Supreme Court denied petitioner an opportunity to brief or argue the issue, and the court's decision affirming petitioner's convictions and death sentence summarily disposed of petitioner's challenge to the trial court's reasonable-doubt instruction. 279 S. C. 228, 306 S. E. 2d 208 (1983).

Last Term, in *Butler* v. *South Carolina*, 459 U. S. 932 (1982) (dissenting from denial of certioriari), I outlined my objections to what apparently has become the standard instruction on reasonable doubt in South Carolina. I continue to believe that trial courts err when they instruct juries that a reasonable doubt means "a substantial doubt" or "a strong and well-founded doubt" or "a doubt for which you give a reason." The Fourteenth Amendment requires prosecutors to prove beyond a reasonable doubt every element of a crime. *In re Winship*, 397 U. S. 358 (1970). When a criminal defendant is convicted by proof beyond a strong or substantial doubt, that defendant has not been afforded the full protections of the Federal Constitution. Moreover, when a jury is told that a reasonable doubt is a doubt that can be articulated, the prosecutor's burden of proof is unconstitutionally eased.

For substantially these reasons, the First Circuit struck down a reasonable-doubt instruction virtually identical to the one given by the trial court in this case. *Dunn* v. *Perrin*, 570 F. 2d 21, cert. denied, 437 U. S. 910 (1978);[2] see also *United States* v. *Flannery*, 451 F. 2d 880, 883 (CA1 1971). The First Circuit noted:

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merits. Under these circumstances, I see no barrier to reviewing South Carolina's disposition of this federal issue.

[2] The instruction at issue in *Dunn* read as follows:

"The term reasonable doubt, as I use it, means just what those words ordinarily imply. It is a doubt which is reasonable and excludes a doubt which is unreasonable. It is such a doubt as for the existence of which a reasonable person can give or suggest a good and sufficient reason. It does not mean a trivial or a frivolous or a fanciful doubt nor one which can be readily or easily explained away, but rather such a strong and abiding conviction as still remains after careful consideration of all the facts and arguments against it and would cause a fair-minded person to refrain from acting in regard to some transaction of importance and seriousness equal to this case." 570 F. 2d, at 23, n. 1.

Although the trial court in *Dunn*, unlike the court at petitioner's trial, likened reasonable doubt to the degree of uncertainty that would cause a prudent per-

> "Th[e] definition of reasonable doubt was the exact inverse of what it should have been. . . . Instead of requiring the government to prove guilt, it called upon petitioners to establish doubt in the jurors' minds. That is an inescapable violation of *In re Winship* . . . ." 570 F. 2d, at 24 (footnote and citations omitted).

Though reviewing a state conviction on collateral review, the *Dunn* panel concluded that the defect in the trial court's instruction was of sufficient magnitude to warrant a retrial. *Id.*, at 25.

The First Circuit's analysis of the reasonable-doubt instructions in *Dunn* directly conflicts with rulings of the South Carolina Supreme Court applied in this case as well as recent decisions of several other State Supreme Courts.[3] Since this conflict is the culmination of chronic disagreement over the correct definition of reasonable doubt,[4] I find this petition an appropriate candidate for review. See this Court's Rule 17.1(b).

I would grant the petition.

No. 83–5833. WEBER *v.* STONY BROOK HOSPITAL ET AL. Ct. App. N. Y. Motion of petitioner to expedite consideration of the

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son to hesitate before making an important personal decision, the First Circuit made clear in its decision that the constitutionally defective portion of the *Dunn* instruction was the equation of a reasonable doubt to a substantial and articulable doubt. *Id.*, at 24–25. In these two respects, the *Dunn* instruction and the instruction given at petitioner's trial are identical. As the instruction in petitioner's case equated reasonable doubt with "a strong and well-founded doubt," the trial court in *Dunn* defined reasonable doubt to be "a strong and abiding conviction." Where petitioner's instruction likened a reasonable doubt to "a doubt for which you can give a reason," the *Dunn* instruction referred to a reasonable doubt as a "doubt as for the existence of which a reasonable person can give or suggest a good and sufficient reason."

[3] See, *e. g.*, *State* v. *Derrico*, 181 Conn. 151, 169–171 434 A. 2d 356, 367–368 (1980); *Stirparo* v. *State*, 287 A. 2d 394 (Del. 1972); *State* v. *Osbey*, 213 Kan. 564, 571–573, 517 P. 2d 141, 148 (1973); *State* v. *Davis*, 482 S. W. 2d 486, 489 (Mo. 1972).

[4] Throughout this century, both federal and state courts have criticized reasonable-doubt instructions similar to the South Carolina charge given in this case. See, *e. g.*, *Taylor* v. *Kentucky*, 436 U. S. 478, 488 (1978); *Pettine* v. *Territory of New Mexico*, 201 F. 489, 495–497 (CA8 1912); *Laird* v. *State*, 251 Ark. 1074, 476 S. W. 2d 811, 813 (1972); *State* v. *Davis*, *supra*, at 490 (Seiler, J., concurring); *Frazier* v. *State*, 117 Tenn. 430, 459–467, 100 S. W. 94, 102–103 (1907); *Owens* v. *Commonwealth*, 186 Va. 689, 704–706, 43 S. E. 2d 895, 902 (1947); *State* v. *McDonald*, 89 Wash. 2d 256, 273–274, 571 P. 2d 930, 940 (1977).

petition for writ of certiorari granted. Certiorari denied. Reported below: 60 N. Y. 2d 208, 456 N. E. 2d 1186.

No. 83–5902 (A–450). WILLIAMS *v.* KING, SECRETARY, LOUISIANA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 5th Cir. Application for stay of execution of sentence of death, addressed to JUSTICE BRENNAN and referred to the Court, denied. JUSTICE BRENNAN and JUSTICE MARSHALL would grant the application for stay. Certiorari denied. Reported below: 719 F. 2d 730.

JUSTICE BRENNAN and JUSTICE MARSHALL, dissenting.

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

Rehearing Denied

No. 82–2116. DALGETY FOODS, INC. *v.* AVINA, *ante*, p. 801;

No. 83–5026. JACKSON *v.* BUTTERWORTH, SHERIFF OF BROWARD COUNTY, FLORIDA, *ante*, p. 916;

No. 83–5104. TORPY *v.* UNITED STATES, *ante*, p. 856;

No. 83–5369. DONNELL *v.* FREEMAN ET AL., *ante*, p. 941;

No. 83–5375. CHAPMAN *v.* BANK OF THE COMMONWEALTH ET AL., *ante*, p. 923; and

No. 83–5481. CASTRO *v.* FEDERAL DEPOSIT ISURANCE CORPORATION, RECEIVER FOR BANCO CREDITO Y AHORRO PONCENO, ET AL., *ante*, p. 964. 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 First Circuit beginning June 4, 1984, and ending June 8, 1984, 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.

DECEMBER 13, 1983

Miscellaneous Order

No. A–455. STEPHENS *v.* KEMP, SUPERINTENDENT, GEORGIA DIAGNOSTIC AND CLASSIFICATION CENTER. Application for stay

of execution of sentence of death set for Wednesday, December 14, 1983, presented to JUSTICE POWELL, and by him referred to the Court, is granted pending the decision of the United States Court of Appeals for the Eleventh Circuit in *Spencer* v. *Zant*, 715 F. 2d 1562 (1983), rehearing en banc granted, *id.*, at 1583, or until further order of this Court.

JUSTICE POWELL, with whom THE CHIEF JUSTICE, JUSTICE REHNQUIST, and JUSTICE O'CONNOR join, dissenting.

This is another capital case in the now familiar process in which an application for a stay is filed here within the shadow of the date and time set for execution.

As summarized by the Court of Appeals the relevant facts are:

> "After escaping from county jail, petitioner was interrupted committing a burglary in Twiggs County by his victim whom he and an accomplice robbed, kidnapped, drove into Bleckley County and brutally killed; he was caught the next morning with the murder weapon in his possession. . . . [H]e confessed and pleaded guilty in Twiggs County to armed robbery, kidnapping with bodily injury, and the theft of a motor vehicle . . . ." 721 F. 2d 1300, 1304 (CA11 1983).

A jury convicted applicant of murder and sentenced him to death in early 1975. In the nearly nine years that since have transpired, Stephens has repetitively moved between state and federal courts in pursuing postconviction remedies. His direct and collateral attacks have taken his case through the state court system three times and through the federal system twice. This Court has considered Stephens' case four times excluding his present proceedings. See *Zant* v. *Stephens*, 462 U. S. 862 (1983); *Stephens* v. *Zant*, 454 U. S. 1035 (1981); *Stephens* v. *Hopper*, 439 U. S. 991 (1978); *Stephens* v. *Georgia*, 429 U. S. 986 (1976).

The case before us today commenced with the filing of a federal habeas petition on November 15, 1983, in the United States District Court for the Middle District of Georgia. The State answered the petition and pleaded that Stephens' petition for a writ of habeas corpus was an abuse of the writ. On November 16, 1983, the District Court held a hearing on the abuse question and five days later, on November 21, 1983, the District Court denied relief. 578 F. Supp. 103. It filed a full opinion in which it concluded that "the claims raised by petitioner in his successive petition under 28 U. S. C. § 2254 constitute an abuse of the writ under

Rule 9(b), Rules Governing Section 2254 cases in the United States District Courts,[1] and are hereby DISMISSED in their entirety." *Id.*, at 108. On December 9, 1983, a panel of the Court of Appeals for the Eleventh Circuit considered Stephens' emergency application for a certificate of probable cause to appeal and a stay of execution. Also in a full opinion, the panel found that the District Court had not erred in finding an abuse of the writ. 721 F. 2d 1300 (1983).

Today, the Court of Appeals denied Stephens' request for a rehearing en banc by an evenly divided vote. 722 F. 2d 627. The six judges who dissented from the denial of rehearing filed a brief opinion expressing the view that Stephens had presented a claim that warranted a stay of his execution. The dissent reasoned that Stephens' claim that the Georgia death penalty statute is being applied in an arbitrary and discriminatory manner is identical to the issue in *Spencer* v. *Zant*, 715 F. 2d 1562 (CA11 1983). The Court of Appeals—apparently also today—granted a rehearing en banc in *Spencer* and the dissent argued that Stephens should receive like treatment. It was suggested that Stephens had not abused the writ with respect to this issue because the statistical study on which he bases his claim did not become available until after he had filed his first federal habeas petition. The fact that 6 of the 12 active judges of the Court of Appeals wished to defer action on Stephens' case prompted this Court to grant Stephens' request for a stay. I dissent from this action.

The Court and the judges in dissent in the Court of Appeals apparently misconstrue, as I view it, the posture of this case. We should now be concerned, as was the panel of the Court of Appeals, with whether the District Court erred in its finding that Stephens is guilty of having abused the writ of habeas corpus. In *Sanders* v. *United States*, 373 U. S. 1 (1963), this Court observed that the "abuse of the writ" doctrine should be governed by "equitable principles." *Id.*, at 17. The Court noted that consideration of abuse normally is left to the "discretion of federal trial

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[1] Rule 9(b) provides:

"Successive petitions. A second or successive petition may be dismissed if the judge finds that it fails to allege new or different grounds for relief and the prior determination was on the merits or, if new and different grounds are alleged, the judge finds that the failure of the petitioner to assert those grounds in a prior petition constituted an abuse of the writ."

judges. Theirs is the major responsibility for the just and sound administration of the federal collateral remedies, and theirs must be the judgment as to whether a second or successive application shall be denied without consideration of the merits." *Id.*, at 18.

In determining whether the District Court properly exercised its discretion in finding an abuse we should look not to the merits of a petitioner's claims but to the petitioner's reasons for not having raised the claims in his first habeas proceeding. As the Court of Appeals noted, "[t]here is no disagreement among the parties as to the standard applicable to second and subsequent petitions for habeas corpus which present wholly new issues. In order to constitute abuse, presentation of such issues must result from (1) the intentional withholding or intentional abandonment of those issues on the initial petition or (2) inexcusable neglect." 721 F. 2d, at 1303. Under this analysis, it is clear that the District Court properly dismissed Stephens' claim of discriminatory application of the Georgia death penalty without holding an evidentiary hearing on the merits of that claim.

Apparently Stephens concedes that the equal protection issue is being raised for the first time, but he alleges that a 1980 study by a Dr. David Baldus supports the claim that Georgia's death penalty statute is discriminatorily administered against black citizens. As his excuse for not having raised this issue in his first habeas petition, Stephens states that the study was not made available to the public until 1982.

Stephens' argument sidesteps the crucial issue. The State having alleged that he had abused the writ, the burden rests on Stephens to explain why he did not raise the constitutionality of the application of the death penalty statute in his earlier petition. See *Stephens* v. *Zant*, 631 F. 2d 397 (CA5 1980), modified on rehearing, 648 F. 2d 446 (1981). He did not satisfy this burden in the District Court, in the Court of Appeals, or here. Although it is possible that Stephens did not know about the Baldus study even though it was published in 1982,[2] this does not explain his

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[2] The Baldus study, relied upon by Stephens, has not been presented to us. It was made in 1980 and apparently has been available at least since 1982. Although characterized by the judges of the Court of Appeals who dissented from the denial of hearing en banc as a "particularized statistical study" claimed to show "intentional race discrimination," no one has suggested that the study focused on this case. A "particularized" showing would require—as I understand it—that there was *intentional* race discrimination in indicting, trying, and convicting Stephens, and presumably in the state appellate and

failure to raise his equal protection claim at all. The availability of such a claim is illustrated by the procedural history in *Spencer* v. *Zant*, *supra*. In *Spencer*, the defendant raised this constitutional challenge to the application of the Georgia death penalty statute in 1978 in his state habeas proceeding and pursued that claim in his first federal habeas petition. *Id.*, at 1579. See also *Ross* v. *Hopper*, 538 F. Supp. 105, 107 (SD Ga. 1982), rev'd and remanded, 716 F. 2d 1528 (CA11 1983).

Stephens simply failed to explain his failure to raise his claim in his first federal habeas petition, and therefore his case comes squarely within Rule 9(b). In addition, Stephens made no factual showing to the District Court that the statistics contained in the Baldus study supported his allegation of particularized discrimination in the imposition of the death penalty in Georgia.

This Court has now stayed Stephens' execution until the Court of Appeals has decided *Spencer*. In my view, for the reasons noted below, I am satisified that the Court will conclude that *Spencer*—however it may come out—will not control this case.[3] It should be apparent from the decisions of this Court since *Gregg* v. *Georgia*, 428 U. S. 153 (1976), was decided that claims based merely on general statistics are likely to have little or no merit under statutes such as that in Georgia.

That Stephens is innocent of the brutal, execution-style murder, after kidnaping and robbing his victim, is not seriously argued.

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state collateral review that several times followed the trial. If the Baldus study is similar to the several studies filed with us in *Sullivan* v. *Wainwright*, *ante*, p. 109, the statistics in studies of this kind, many of which date as far back as 1948, are merely general statistical surveys that are hardly *particularized* with respect to any alleged "intentional" racial discrimination. Surely, no contention can be made that the entire Georgia judicial system, at all levels, operates to discriminate in all cases. Arguments to this effect may have been directed to the type of statutes addressed in *Furman* v. *Georgia*, 408 U. S. 238 (1972). As our subsequent cases make clear, such arguments cannot be taken seriously under statutes approved in *Gregg* v. *Georgia*, 428 U. S. 153 (1976).

[3] With all respect, I disagree with the judges on the Court of Appeals who say that this case presents the "identical issue" to be considered in *Spencer*. That case is readily distinguishable. As noted above, the discriminatory application of capital punishment—the equal protection issue—*was* raised in the first habeas petition in *Spencer*, and has been pressed at all subsequent stages. In this case, it was not raised until last month. In a fundamental sense, therefore, there could have been no abuse of writ issue in *Spencer*. There are other distinguishing factors, but these need not be stated here.

This is a contest over the application of capital punishment—a punishment repeatedly declared to be constitutional by this Court. In the nearly nine years of repetitive litigation by state and federal courts there has been no suggestion that the death sentence would not be appropriate in this case. Indeed, if on the facts here it was not appropriate, it is not easy to think of a case in which it would be so viewed. Once again, as I indicated at the outset, a typically "last minute" flurry of activity is resulting in additional delay of the imposition of a sentence imposed almost a decade ago. This sort of procedure undermines public confidence in the courts and in the laws we are required to follow.

In conclusion, I reiterate what the Court said in the concluding paragraph in our recent *per curiam* in *Sullivan* v. *Wainwright*, *ante*, at 112: We recognize, of course, as do state and other federal courts, that the death sentence is qualitatively different from all other sentences, and therefore special care is exercised in judicial review. In this case, it is perfectly clear to me that this care *has* been exercised in abundance. Accordingly, I would deny the application for a stay.

DECEMBER 14, 1983

Dismissal Under Rule 53

No. 83–836. GLASSEY *v.* UNITED STATES. C. A. 7th Cir. Certiorari dismissed under this Court's Rule 53. Reported below: 715 F. 2d 352.

Rehearing Denied

No. 83–5544 (A–461). SMITH *v.* KEMP, SUPERINTENDENT, GEORGIA DIAGNOSTIC AND CLASSIFICATION CENTER, *ante*, p. 1003. Petition for rehearing denied. Application for stay of execution of sentence of death pending disposition of a petition for rehearing, presented to JUSTICE POWELL, and by him referred to the Court, denied.

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 the application for stay of execution, grant the petition for rehearing, and vacate the death sentence in this case.

JUSTICE STEVENS, dissenting.

In my opinion all executions in Georgia should be postponed until the United States Court of Appeals for the Eleventh Circuit renders its en banc decision in *Spencer* v. *Zant*, 715 F. 2d 1562 (1983). See *Sanders* v. *United States*, 373 U. S. 1, 15–17 (1963). The "ends of justice would not be served" by the execution of this petitioner while the Court of Appeals is deciding the merits of the claim he asserts. I therefore would grant the stay application.

JANUARY 4, 1984

Dismissal Under Rule 53

No. 83–704. FRANKLIN COMPUTER CORP. *v.* APPLE COMPUTER, INC. C. A. 3d Cir. Certiorari dismissed under this Court's Rule 53. Reported below: 714 F. 2d 1240.

JANUARY 6, 1984

No. 82–2042. WESTINGHOUSE ELECTRIC CORP. *v.* VAUGHN ET AL. C. A. 8th Cir. [Certiorari granted, *ante*, p. 913.] Writ of certiorari dismissed as to respondent Marion Gee under this Court's Rule 53.

JANUARY 9, 1984

Appeals Dismissed

No. 83–524. WYNMOOR LIMITED PARTNERSHIP ET AL. *v.* COCONUT CREEK CABLE T.V., INC., ET AL. Appeal from Dist. Ct. App. Fla., 4th Dist., dismissed for want of substantial federal question. Reported below: 434 So. 2d 903.

No. 83–694. GONZALEZ *v.* COMMISSION ON JUDICIAL PERFORMANCE OF CALIFORNIA (CALIFORNIA ET AL., REAL PARTIES IN INTEREST). Appeal from Sup. Ct. Cal. dismissed for want of substantial federal question. Reported below: 33 Cal. 3d 359, 657 P. 2d 372.

No. 83–715. RIO VISTA NON-PROFIT HOUSING CORP. *v.* COUNTY OF RAMSEY. Appeal from Sup. Ct. Minn. dismissed for want of substantial federal question. Reported below: 335 N. W. 2d 242.

No. 83–5517. BLATCHFORD *v.* WINANS, WARDEN. Appeal from Sup. Ct. N. M. dismissed for want of jurisdiction. Treating

the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 100 N. M. 333, 670 P. 2d 944.

Miscellaneous Orders

No. ——. DAVIS *v.* UNITED STATES ET AL. Motion to direct the Clerk to file the petition for writ of certiorari that does not comply with the Rules of this Court denied.

No. A–377. MEADOWS *v.* REDMAN. Application for bail, addressed to THE CHIEF JUSTICE and referred to the Court, denied.

No. A–485. SCIOTO TRAILS CO. ET AL. *v.* OHIO DEPARTMENT OF LIQUOR CONTROL ET AL. Ct. App. Ohio, Franklin County. Application for continuation of stay, addressed to JUSTICE STEVENS and referred to the Court, denied.

No. A–486. WEBB *v.* HUTTO. C. A. 4th Cir. Application for stay, addressed to JUSTICE MARSHALL and referred to the Court, denied.

No. A–490 (83–5958). KEEFE, AS GUARDIAN AD LITEM AND NEXT FRIEND OF THREE JUVENILES *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Application for stay, addressed to JUSTICE BLACKMUN and referred to the Court, denied.

No. D–369. IN RE DISBARMENT OF CANTAGALLO. Phillip John Cantagallo, of Ashtabula, Ohio, 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 October 17, 1983 [*ante*, p. 911], is hereby discharged.

No. 96, Orig. PUERTO RICO *v.* IOWA. Motion for leave to file bill of complaint denied.

No. 82–963. MASSACHUSETTS *v.* SHEPPARD. Sup. Jud. Ct. Mass. [Certiorari granted, 463 U. S. 1205.] Motion of respondent to strike the brief of Illinois State Bar Association as *amicus curiae* denied.

No. 82–1608. SOUTH-CENTRAL TIMBER DEVELOPMENT, INC. *v.* LERESCHE, COMMISSIONER, DEPARTMENT OF NATURAL RESOURCES OF ALASKA, ET AL. C. A. 9th Cir. [Certiorari

granted, *ante*, p. 890.] Motion of Pacific Rim Trade Association et al. for leave to file a brief 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. 82–1724. NEW YORK *v.* UPLINGER ET AL. Ct. App. N. Y. [Certiorari granted, *ante*, p. 812.] Motions for leave to file briefs as *amici curiae* by the following were granted: American Psychological Association et al., Center for Constitutional Rights et al., American Civil Liberties Union et al., Committees on Sex and Law et al. of the Association of the Bar of the City of New York, American Association for Personal Privacy et al., Lambda Legal Defense & Education Fund, Inc., and National Association of Business Councils et al.

No. 82–1734. PALMORE *v.* SIDOTI. Dist. Ct. App. Fla., 2d Dist. [Certiorari granted, *ante*, p. 913.] Motion of Leigh Earls et al. for leave to file a brief as *amici curiae* granted.

No. 82–1913. GARCIA *v.* SAN ANTONIO METROPOLITAN TRANSIT AUTHORITY ET AL.; and

No. 82–1951. DONOVAN, SECRETARY OF LABOR *v.* SAN ANTONIO METROPOLITAN TRANSIT AUTHORITY ET AL. D. C. W. D. Tex. [Probable jurisdiction noted, *ante*, p. 812.] Motion of appellees for divided argument denied.

No. 83–128. UNITED STATES *v.* GOUVEIA ET AL. C. A. 9th Cir. [Certiorari granted, *ante*, p. 913.] Motion for appointment of counsel granted, and it is ordered that Joseph F. Walsh, Esquire, of Los Angeles, Cal., be appointed to serve as counsel for respondent Robert Ramirez in this case. Motion for appointment of counsel granted, and it is ordered that Joel Levine, Esquire, of Los Angeles, Cal., be appointed to serve as counsel for respondent Philip Segura in this case. Motion of respondent William Gouveia for leave to proceed *in forma pauperis* granted. Motion for appointment of counsel granted, and it is ordered that Michael J. Treman, Esquire, of Santa Barbara, Cal., be appointed to serve as counsel for respondent William Gouveia in this case. Motion for appointment of counsel granted, and it is ordered that Charles P. Diamond, Esquire, of Los Angeles, Cal., be appointed to serve as counsel for respondents Robert E. Mills and Richard Raymond Pierce in this case. Motion of respondents Robert

E. Mills and Richard Raymond Pierce for divided argument granted. Motion of respondents William Gouveia et al. for divided argument denied.

No. 83–218. REED ET AL. *v.* ROSS. C. A. 4th Cir. [Certiorari granted, *ante*, p. 1007.] Motion for appointment of counsel granted, and it is ordered that Barry Nakell, Esquire, of Boulder, Colo., be appointed to serve as counsel for respondent in this case.

No. 83–346. UNITED STATES *v.* YERMIAN. C. A. 9th Cir. [Certiorari granted, *ante*, p. 991.] Motion for appointment of counsel granted, and it is ordered that Stephen J. Hillman, Esquire, of Los Angeles, Cal., be appointed to serve as counsel for respondent in this case.

No. 83–595. SNOW ET AL. *v.* QUINAULT INDIAN NATION, AKA QUINAULT TRIBE, ET AL. C. A. 9th Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 83–630. BERNAL *v.* FAINTER, SECRETARY OF STATE OF TEXAS, ET AL. C. A. 5th Cir. [Certiorari granted, *ante*, p. 1007.] Motion of petitioner to dispense with printing the joint appendix granted.

No. 83–778. WAMBHEIM ET AL. *v.* J. C. PENNEY CO., INC. C. A. 9th Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States. JUSTICE BLACKMUN took no part in the consideration or decision of this order.

No. 83–5711. PLATEL *v.* MAGUIRE, VOORHIS & WELLS, P. A., ET AL. Dist. Ct. App. Fla., 5th Dist.; and

No. 83–5725. SWEETMAN *v.* TOWNSHIP OF PENNSAUKEN, NEW JERSEY. Sup. Ct. N. J. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until January 30, 1984, within which to pay the docketing fee required by Rule 45(a) and to submit petitions in compliance with Rule 33 of the Rules of this Court.

JUSTICE BRENNAN, JUSTICE MARSHALL, and JUSTICE STEVENS, dissenting.

For the reasons expressed in *Brown* v. *Herald Co.*, *ante*, p. 928, we would deny the petitions for certiorari in these cases

without reaching the merits of the motions to proceed *in forma pauperis*.

No. 83–5730. MANN *v.* KOOB. Sup. Ct. Colo. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until January 30, 1984, 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.

JUSTICE BRENNAN, JUSTICE MARSHALL, JUSTICE BLACKMUN, and JUSTICE STEVENS, dissenting.

For the reasons expressed in *Brown* v. *Herald Co.*, *ante*, p. 928, we would deny the petition for certiorari in this case without reaching the merits of the motion to proceed *in forma pauperis*.

No. 83–5742. IN RE JACKSON ET AL. Petition for writ of mandamus denied.

No. 83–788. IN RE FLORIDA. Motion of respondent Earl Enmund for leave to proceed *in forma pauperis* granted. Petition for writ of mandamus denied.

Probable Jurisdiction Noted

No. 83–372. FRANCHISE TAX BOARD OF CALIFORNIA *v.* UNITED STATES POSTAL SERVICE. Appeal from C. A. 9th Cir. Probable jurisdiction noted. Reported below: 698 F. 2d 1029.

No. 83–724. GOMEZ-BETHKE, COMMISSIONER, MINNESOTA DEPARTMENT OF HUMAN RIGHTS, ET AL. *v.* UNITED STATES JAYCEES. Appeal from C. A. 8th Cir. Motions of Northwestern Bell Telephone Co. and National Organization for Women et al. for leave to file briefs as *amici curiae* granted. Probable jurisdiction noted. Reported below: 709 F. 2d 1560.

Certiorari Granted

No. 83–305. CALIFORNIA *v.* TROMBETTA ET AL. Ct. App. Cal., 1st App. Dist. Certiorari granted. Reported below: 142 Cal. App. 3d 138, 190 Cal. Rptr. 319.

No. 83–491. IMMIGRATION AND NATURALIZATION SERVICE *v.* LOPEZ-MENDOZA ET AL. C. A. 9th Cir. Certiorari granted. Reported below: 705 F. 2d 1059.

No. 83–710. BERKEMER, SHERIFF OF FRANKLIN COUNTY, OHIO *v.* MCCARTY. C. A. 6th Cir. Certiorari granted. Reported below: 716 F. 2d 361.

No. 83–751. SECURITIES AND EXCHANGE COMMISSION ET AL. *v.* JERRY T. O'BRIEN, INC., ET AL. C. A. 9th Cir. Certiorari granted. Reported below: 704 F. 2d 1065.

No. 83–226. ARIZONA *v.* RUMSEY. Sup. Ct. Ariz. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 136 Ariz. 166, 665 P. 2d 48.

No. 83–5596. SPAZIANO *v.* FLORIDA. Sup. Ct. Fla. Motion of petitioner for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 433 So. 2d 508.

Certiorari Denied. (See also No. 83–5517, *supra.*)

No. 82–6991. REED *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 699 F. 2d 1017.

No. 83–324. MICHAEL CONSTRUCTION CO. *v.* EQUAL EMPLOYMENT OPPORTUNITY COMMISSION. C. A. 8th Cir. Certiorari denied. Reported below: 706 F. 2d 244.

No. 83–356. REY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 706 F. 2d 145.

No. 83–385. CLARK *v.* DOLE, SECRETARY OF TRANSPORTATION. C. A. D. C. Cir. Certiorari denied. Reported below: 230 U. S. App. D. C. 70, 713 F. 2d 864.

No. 83–403. SASSCER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 714 F. 2d 134.

No. 83–411. GULF OIL CORP. *v.* FEDERAL ENERGY REGULATORY COMMISSION ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 706 F. 2d 444.

No. 83–413. CONTINENTAL AIRLINES, INC. *v.* ZIMMERMAN, TRUSTEE OF LUDWIG HONOLD MANUFACTURING CO., DEBTOR. C. A. 3d Cir. Certiorari denied. Reported below: 712 F. 2d 55.

No. 83–419. BOULIN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 707 F. 2d 511.

No. 83–424. PRESLEY *v.* GEOPHYSICAL SERVICE, INC. C. A. 5th Cir. Certiorari denied. Reported below: 709 F. 2d 406.

No. 83–442. HILL *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 716 F. 2d 893.

No. 83–446. AL BRYANT, INC., ET AL. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 3d Cir. Certiorari denied. Reported below: 711 F. 2d 543.

No. 83–447. SEA-LAND SERVICE, INC. *v.* AKERMANIS. C. A. 2d Cir. Certiorari denied. Reported below: 742 F. 2d 1431.

No. 83–450. HULL *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 720 F. 2d 668.

No. 83–464. LEE *v.* MONSEN, DEPUTY CHIEF OF THE ELMHURST POLICE DEPARTMENT, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 714 F. 2d 148.

No. 83–476. IAVARONE *v.* UNITED STATES; and
No. 83–636. BATTISTI *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: No. 83-476, 720 F. 2d 668; No. 83-636, 720 F. 2d 667.

No. 83–479. KAN *v.* LANDON. C. A. 9th Cir. Certiorari denied. Reported below: 711 F. 2d 1065.

No. 83–492. MOBILE HOME ESTATES, INC. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 6th Cir. Certiorari denied. Reported below: 707 F. 2d 264.

No. 83–493. AMERADA HESS CORP. ET AL. *v.* GREEN. C. A. 5th Cir. Certiorari denied. Reported below: 707 F. 2d 201.

No. 83–496. WILFORD ET AL. *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 710 F. 2d 439.

No. 83–497. KALY *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 83–504. FIELD CONTAINER CORP. *v.* INTERSTATE COMMERCE COMMISSION ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 712 F. 2d 250.

No. 83–525. JONES ET AL. *v.* HECKLER, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 9th Cir. Certiorari denied. Reported below: 709 F. 2d 1516.

No. 83–530. THOMPSON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 710 F. 2d 915.

No. 83–537. MASSACHUSETTS LABORERS DISTRICT COUNCIL ET AL. *v.* ABREEN CORP. ET AL.; and

No. 83–693. LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, AFL–CIO *v.* ABREEN CORP. ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 709 F. 2d 748.

No. 83–542. LANGFORD ET AL. *v.* JAMES ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 701 F. 2d 123.

No. 83–546. CLAYCO PETROLEUM CORP. ET AL. *v.* OCCIDENTAL PETROLEUM CORP. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 712 F. 2d 404.

No. 83–551. BRATTON ET AL. *v.* CITY OF DETROIT ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 704 F. 2d 878.

No. 83–553. ARNOLD ET AL. *v.* EASTERN AIR LINES, INC., ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 712 F. 2d 899.

No. 83–559. MASTER PRINTERS ASSN., A DIVISION OF PRINTING INDUSTRY OF ILLINOIS *v.* DONOVAN, SECRETARY OF LABOR. C. A. 7th Cir. Certiorari denied. Reported below: 699 F. 2d 370.

No. 83–565. INGLIS *v.* FEINERMAN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 701 F. 2d 97.

No. 83–578. ALASKA LAND TITLE ASSN. ET AL. *v.* ALASKA ET AL. Sup. Ct. Alaska. Certiorari denied. Reported below: 667 P. 2d 714.

No. 83–580. BRISLAWN *v.* BRISLAWN. Sup. Ct. Ala. Certiorari denied. Reported below: 443 So. 2d 32.

No. 83–598. MAZZOLA ET AL. *v.* DONOVAN, SECRETARY OF LABOR. C. A. 9th Cir. Certiorari denied. Reported below: 716 F. 2d 1226.

No. 83–601. KATSOUGRAKIS ET AL. *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 715 F. 2d 769.

No. 83–602. BRIGGS ET AL. *v.* GOODWIN. C. A. D. C. Cir. Certiorari denied. Reported below: 229 U. S. App. D. C. 412, 712 F. 2d 1444.

No. 83–606. CITY OF MISSION, SOUTH DAKOTA, ET AL. *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 716 F. 2d 907.

No. 83–607. IDAHO *v.* BRADLEY. Sup. Ct. Idaho. Certiorari denied. Reported below: 106 Idaho 358, 679 P. 2d 635.

No. 83–618. SCHMIDT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 711 F. 2d 595.

No. 83–621. CONSTANT *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 714 F. 2d 162.

No. 83–633. ROBERT K. BELL ENTERPRISES, INC. *v.* DONOVAN, SECRETARY OF LABOR, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 710 F. 2d 673.

No. 83–638. ALCAN ALUMINUM LTD. *v.* FRANCHISE TAX BOARD OF CALIFORNIA ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 742 F. 2d 1430.

No. 83–648. ALASKA NORTHERN DEVELOPMENT, INC. *v.* ALYESKA PIPELINE SERVICE CO. Sup. Ct. Alaska. Certiorari denied. Reported below: 666 P. 2d 33.

No. 83–649. TAMILIO *v.* FOGG, SUPERINTENDENT, EASTERN CORRECTIONAL FACILITY, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 713 F. 2d 18.

No. 83–656. CARIBE TUGBOAT CORP. ET AL. *v.* DUFFY. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 427 So. 2d 227.

No. 83–659. PAUL ET AL. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 9th Cir. Certiorari denied. Reported below: 714 F. 2d 153.

No. 83–677. SUPERIOR OIL CO. *v.* PIONEER CORP. C. A. 5th Cir. Certiorari denied. Reported below: 706 F. 2d 603.

No. 83–686. TRAVELERS INDEMNITY CO. *v.* EWING, COLE, ERDMAN & EUBANK. C. A. 3d Cir. Certiorari denied. Reported below: 711 F. 2d 14.

No. 83–687. ERNST *v.* INDIANA BELL TELEPHONE CO., INC., ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 714 F. 2d 150.

No. 83–688. GREENE *v.* WHIRLPOOL CORP. C. A. 4th Cir. Certiorari denied. Reported below: 708 F. 2d 128.

No. 83–689. SOUTH DAKOTA ET AL. *v.* LOWER BRULE SIOUX TRIBE. C. A. 8th Cir. Certiorari denied. Reported below: 711 F. 2d 809.

No. 83–698. BURROUGHS CORP. *v.* A. B. DICK CO. C. A. Fed. Cir. Certiorari denied. Reported below: 713 F. 2d 700.

No. 83–700. INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA *v.* PAWLAK ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 713 F. 2d 972.

No. 83–701. LAREDO JUNIOR COLLEGE ET AL. *v.* PEREZ. C. A. 5th Cir. Certiorari denied. Reported below: 706 F. 2d 731.

No. 83–705. DIRON *v.* CITY OF EASTLAKE ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 718 F. 2d 1098.

No. 83–708. QUINAULT PACIFIC CORP. *v.* BARCLAYS AMERICAN/BUSINESS CREDIT, INC., ET AL. C. A. 11th Cir. Certiorari denied.

No. 83–716. CATON *v.* CATON. Ct. App. Okla. Certiorari denied.

No. 83–720. HUMPHREYS (CAYMAN), LTD., ET AL. *v.* LEHMAN, EXECUTRIX OF THE ESTATE OF LEHMAN. C. A. 8th Cir. Certiorari denied. Reported below: 713 F. 2d 339.

No. 83–721. DAVIDSON *v.* CONNECTICUT BANK & TRUST CO. ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 742 F. 2d 1430.

No. 83–726. FIRST AMERICAN TITLE COMPANY OF SOUTH DAKOTA ET AL. *v.* SOUTH DAKOTA LAND TITLE ASSN. ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 714 F. 2d 1439.

No. 83–729. HANSEN *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied.

No. 83–731. KIZAS ET AL. *v.* UNITED STATES ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 227 U. S. App. D. C. 327, 707 F. 2d 524.

No. 83–732. BOYD *v.* LEHMAN, SECRETARY OF THE NAVY. C. A. 11th Cir. Certiorari denied. Reported below: 709 F. 2d 684.

No. 83–733. ENVIRONMENTAL DESIGNS, LTD., ET AL. *v.* UNION OIL COMPANY OF CALIFORNIA ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 713 F. 2d 693.

No. 83–735. LONGE *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 96 App. Div. 2d 763, 465 N. Y. S. 2d 795.

No. 83–739. THOMPSON, ADMINISTRATRIX OF THE ESTATE OF THOMPSON *v.* INTERNATIONAL HARVESTER CO. ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 703 F. 2d 572.

No. 83–743. ARIZONA PUBLIC SERVICE CO. *v.* NATIONAL LABOR RELATIONS BOARD ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 698 F. 2d 1228.

No. 83–745. RICHARDS *v.* HOWARD UNIVERSITY ET AL. C. A. D. C. Cir. Certiorari denied.

No. 83–746. RICHARDS *v.* HOWARD UNIVERSITY ET AL. Ct. App. D. C. Certiorari denied.

No. 83–749. FAIRDALE FARMS, INC. *v.* YANKEE MILK, INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 715 F. 2d 30.

No. 83–750. CARTER, DBA CARTER ENTERPRISES OF DENVER *v.* SMALL BUSINESS ADMINISTRATION ET AL. Ct. App. Colo. Certiorari denied.

No. 83–752. TRANSOCEAN CONTRACTORS, INC., ET AL. *v.* REED. C. A. 5th Cir. Certiorari denied. Reported below: 712 F. 2d 1414.

No. 83–753. FONTANA *v.* BARHAM ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 707 F. 2d 221.

No. 83–754. MCKAY, EXECUTRIX OF THE ESTATE OF MCKAY, ET AL. *v.* ROCKWELL INTERNATIONAL CORP. C. A. 9th Cir. Certiorari denied. Reported below: 704 F. 2d 444.

No. 83–756. BLEVINS *v.* WASHINGTON. Ct. App. Wash. Certiorari denied.

No. 83–757. McCANN *v.* GEORGIA. Ct. App. Ga. Certiorari denied. Reported below: 167 Ga. App. 368, 306 S. E. 2d 681.

No. 83–759. HURLEY ET AL. *v.* ALBUQUERQUE TITLE CO., INC., ET AL. Ct. App. N. M. Certiorari denied.

No. 83–761. HARRIS ET AL. *v.* FENN ET AL. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 83–762. LaFALCE *v.* HOUSTON ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 712 F. 2d 292.

No. 83–765. DURHAM COUNTY BOARD OF ALCOHOLIC CONTROL *v.* WELLS. C. A. 4th Cir. Certiorari denied. Reported below: 714 F. 2d 340.

No. 83–771. OHIO-SEALY MATTRESS MANUFACTURING CO. ET AL. *v.* SEALY, INC., ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 714 F. 2d 740.

No. 83–775. GUSTINE *v.* GUSTINE. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 83–776. OZIEMKIEWICZ *v.* WASHINGTON, MAYOR OF CHICAGO, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 718 F. 2d 1103.

No. 83–777. CLARK EQUIPMENT CO. *v.* KELLER ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 715 F. 2d 1280.

No. 83–780. DANTZLER *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied.

No. 83–782. DALE *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 2d Cir. Certiorari denied. Reported below: 742 F. 2d 1439.

No. 83–785. CREEL, TRUSTEE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 711 F. 2d 575.

No. 83–787. GINSBURG *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 720 F. 2d 681.

No. 83–794. ERFTMIER *v.* ROWAN COS., INC. C. A. 5th Cir. Certiorari denied. Reported below: 712 F. 2d 1414.

No. 83–811. BRIMM *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 711 F. 2d 1069.

No. 83–815. GRIMM ET AL. *v.* RIZK ET AL. Ct. App. Tex., 14th Sup. Jud. Dist. Certiorari denied. Reported below: 640 S. W. 2d 711.

No. 83–816. MERAZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 719 F. 2d 403.

No. 83–820. PERSONNEL BOARD OF JEFFERSON COUNTY, ALABAMA *v.* MORGADO. C. A. 11th Cir. Certiorari denied. Reported below: 706 F. 2d 1184.

No. 83–828. SHELL OIL CO. *v.* OLSEN ET AL.; and

No. 83–829. MOVIBLE OFFSHORE, INC. *v.* OLSEN ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 708 F. 2d 976.

No. 83–834. SACK *v.* KIMBERLY-CLARK CORP. C. A. 7th Cir. Certiorari denied. Reported below: 714 F. 2d 150.

No. 83–855. WHITE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 715 F. 2d 578.

No. 83–865. CANNON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 715 F. 2d 1228.

No. 83–872. CROSBY *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 714 F. 2d 185.

No. 83–891. CREASON, DBA KANSAS CARTAGE *v.* MO-KAN TEAMSTERS PENSION FUND ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 716 F. 2d 772.

No. 83–901. RUSSO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 722 F. 2d 736.

No. 83–5100. LINFIELD *v.* BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK. C. A. 2d Cir. Certiorari denied. Reported below: 729 F. 2d 1442.

No. 83–5140. SMITH *v.* HEERINGA ET AL. C. A. 7th Cir. Certiorari denied.

No. 83–5188. WASHINGTON *v.* NEW YORK STATE COMMISSIONER OF CORRECTIONAL SERVICES ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 742 F. 2d 1430.

No. 83–5216. SANTIAGO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 711 F. 2d 1052.

No. 83–5282. BYERS *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 229 U. S. App. D. C. 142, 711 F. 2d 420.

No. 83–5289. LAMBERTIS *v.* VIRGIN ISLANDS. C. A. 3d Cir. Certiorari denied. Reported below: 714 F. 2d 122.

No. 83–5317. OWENS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 83–5338. ANDERSON *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 83–5341. GREENE *v.* MASSEY, SUPERINTENDENT, UNION CORRECTIONAL INSTITUTE. C. A. 5th Cir. Certiorari denied. Reported below: 706 F. 2d 548.

No. 83–5357. CASH *v.* BACHTELL, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 714 F. 2d 128.

No. 83–5364. HAMID *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 461 A. 2d 1043.

No. 83–5386. TUREL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 711 F. 2d 1060.

No. 83–5390. GREEN *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied. Reported below: 141 Cal. App. 3d 224, 190 Cal. Rptr. 211.

No. 83–5400. SELLNER *v.* HUDNALL ET AL. Ct. Sp. App. Md. Certiorari denied. Reported below: 53 Md. App. 758.

No. 83–5437. CLAYTON ET AL. *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 652 S. W. 2d 950.

No. 83–5442. ROGERS *v.* RULO ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 712 F. 2d 363.

No. 83–5448. WILLIAMS *v.* PIERCE, SECRETARY OF HOUSING AND URBAN DEVELOPMENT, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 708 F. 2d 57.

No. 83–5470. WEATHERSBY *v.* MORRIS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 708 F. 2d 1493.

No. 83–5508. PATTERSON *v.* KOEHLER, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 718 F. 2d 1100.

No. 83–5511. WALKER *v.* UNITED STATES; and
No. 83–5565. STEARNS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 707 F. 2d 391.

No. 83–5514. MARGOLIS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 706 F. 2d 886.

No. 83–5523. DUNCAN *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 436 So. 2d 883.

No. 83–5524. JOHNSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 718 F. 2d 1102.

No. 83–5536. KAJEVIC *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 711 F. 2d 767.

No. 83–5549. CANTRELL *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 426 So. 2d 1035.

No. 83–5551. WARD *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 114 Wis. 2d 589, 337 N. W. 2d 855.

No. 83–5566. EUGE *v.* UNITED STATES ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 716 F. 2d 908.

No. 83–5570. THOMA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 713 F. 2d 604.

No. 83–5603. KELLY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 714 F. 2d 157.

No. 83–5612. ROBINSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 716 F. 2d 1095.

No. 83–5622. GODEK *v.* UNITED STATES. Sup. Ct. N. Y., Suffolk County. Certiorari denied. Reported below: 113 Misc. 2d 599, 449 N. Y. S. 2d 428.

No. 83–5623. CHAPIN *v.* MARSHALL, SUPERINTENDENT, SOUTHERN OHIO CORRECTIONAL FACILITY. C. A. 6th Cir. Certiorari denied. Reported below: 704 F. 2d 335.

No. 83–5631. LEGRAND *v.* MARSHALL, SUPERINTENDENT, SOUTHERN OHIO CORRECTIONAL FACILITY. C. A. 6th Cir. Certiorari denied. Reported below: 720 F. 2d 679.

No. 83–5632. MALLORY *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 437 So. 2d 595.

No. 83–5635. KEMP *v.* EQUAL EMPLOYMENT OPPORTUNITY COMMISSION ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 714 F. 2d 140.

No. 83–5641. SYDNOR *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 54 Md. App. 749.

No. 83–5643. NEELY *v.* ISRAEL, SUPERINTENDENT, WAUPUN CORRECTIONAL INSTITUTION. C. A. 7th Cir. Certiorari denied. Reported below: 715 F. 2d 1261.

No. 83–5646. WATERS *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 83–5651. DAYE *v.* ATTORNEY GENERAL OF NEW YORK ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 712 F. 2d 1566.

No. 83–5656. JOHNSON *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 438 So. 2d 833.

No. 83–5660. SLOAN *v.* MCKASKLE, ACTING DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS. C. A. 5th Cir. Certiorari denied. Reported below: 710 F. 2d 229.

No. 83–5664. SIKORSKI *v.* DEN NORSKE AMERIKALINJE ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 708 F. 2d 732.

No. 83–5665. SOUZA *v.* ELLERTHORPE, WARDEN, ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 712 F. 2d 1529.

No. 83–5667. MANIS ET AL. *v.* CHIEF JUDGE, CIRCUIT COURT OF GREENE COUNTY, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 711 F. 2d 108.

No. 83–5672. BAKER *v.* MCKASKLE, ACTING DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS. C. A. 5th Cir. Certiorari denied. Reported below: 711 F. 2d 44.

No. 83–5675. KEMP ET AL. *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 713 F. 2d 39.

No. 83–5676. GANT *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 83–5677. MCQUEEN *v.* DIXON ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 716 F. 2d 913.

No. 83–5682. ALDRICH *v.* NATIONAL SOCIETY FOR CHILDREN AND ADULTS WITH AUTISM ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 716 F. 2d 894.

No. 83–5684. HARRIS *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 435 So. 2d 689.

No. 83–5686. INGRAM *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 437 So. 2d 128.

No. 83–5687. MCCRARY *v.* NEW YORK. Ct. App. N. Y. Certiorari denied. Reported below: 60 N. Y. 2d 617, 454 N. E. 2d 947.

No. 83–5690. WILSON *v.* MARYLAND. C. A. 4th Cir. Certiorari denied. Reported below: 714 F. 2d 135.

No. 83–5691. CAMPBELL *v.* HECKLER, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 3d Cir. Certiorari denied. Reported below: 720 F. 2d 660.

No. 83–5692. BUJOL *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 713 F. 2d 112.

No. 83–5694. AIKEN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 83–5698. CONTI *v.* INGERSOLL RAND CO. ET AL. C. A. 3d Cir. Certiorari denied.

No. 83–5700. MOLASKY *v.* MISSOURI. Ct. App. Mo., Eastern Dist. Certiorari denied. Reported below: 655 S. W. 2d 663.

No. 83–5702. BARNETT *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 715 F. 2d 1164.

No. 83–5707. GAMBLES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 717 F. 2d 1400.

No. 83–5712. ROBERSON *v.* MCKASKLE, ACTING DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS. C. A. 5th Cir. Certiorari denied. Reported below: 717 F. 2d 1397.

No. 83–5715. FLESHMAN *v.* HECKLER, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 5th Cir. Certiorari denied. Reported below: 709 F. 2d 999.

No. 83–5719. CONGER *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 441 So. 2d 218.

No. 83–5721. FORDHAM *v.* NATIONAL BANK OF BOYERTOWN. C. A. 3d Cir. Certiorari denied. Reported below: 720 F. 2d 662.

No. 83–5722. HALL *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 54 Md. App. 738.

No. 83–5724. BALTSAVIAS *v.* HECKLER, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 2d Cir. Certiorari denied. Reported below: 742 F. 2d 1433.

No. 83–5731. SUMRALL *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 55 Md. App. 771.

No. 83–5732. VANN *v.* WAINWRIGHT, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 714 F. 2d 158.

No. 83–5734. MARTEL ET AL. *v.* NEW HAMPSHIRE ET AL. Sup. Ct. N. H. Certiorari denied.

No. 83–5738. DE NOBILI ET AL. *v.* CUNNINGHAM & O'CONNOR MORTUARY ET AL. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 83–5740. LAMPKINS *v.* GAGNON, WARDEN, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 710 F. 2d 374.

No. 83–5743. SLAY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 714 F. 2d 1093.

No. 83–5745. THEZAN *v.* MARITIME OVERSEAS CORP. C. A. 5th Cir. Certiorari denied. Reported below: 708 F. 2d 175.

No. 83–5746. WARD *v.* OWENS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 718 F. 2d 1094.

No. 83–5747. VENERI *v.* BRACKMAN, JUDGE, ET AL. C. A. 8th Cir. Certiorari denied.

No. 83–5748. THOMPSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 710 F. 2d 1500.

No. 83–5752. VELLA *v.* UNITED STATES FEDERAL BUREAU OF INVESTIGATION OF TAMPA, FLORIDA, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 716 F. 2d 913.

No. 83–5753. THOMAS *v.* MAGGIO, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 83–5756. REINER *v.* BIDLACK ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 709 F. 2d 1507.

No. 83–5757. CAMPBELL *v.* GUY ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 711 F. 2d 1055.

No. 83–5759. GRAHAM *v.* EAST ORANGE C. E. T. A. C. A. 9th Cir. Certiorari denied.

No. 83–5760. HILLIE *v.* MAGGIO, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 712 F. 2d 182.

No. 83–5762. LILLEY *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 96 App. Div. 2d 714, 465 N. Y. S. 2d 369.

No. 83–5763. GOMEZ-DIAZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 712 F. 2d 949.

No. 83–5766. GENTSCH *v.* CLARK ET AL. C. A. 5th Cir. Certiorari denied.

No. 83–5769. LONG *v.* RISON, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 717 F. 2d 1400.

No. 83–5775. O'BRIEN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 722 F. 2d 742.

No. 83–5777. ANDERSON *v.* DISTRICT COURT, IN AND FOR THE COUNTY OF JEFFERSON, COLORADO. Sup. Ct. Colo. Certiorari denied.

No. 83–5779. THEISEN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 713 F. 2d 394.

No. 83–5781. SMITH *v.* UNITED STATES CIVIL SERVICE COMMISSION ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 716 F. 2d 892.

No. 83–5786. RUFF *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 717 F. 2d 855.

No. 83–5798. ARNOLD *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 83–5800. McKNIGHT *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 83–5801. THOMAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 717 F. 2d 1397.

No. 83–5803. TALBERT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 710 F. 2d 528.

No. 83–5805. HAWKINS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 461 A. 2d 1025.

No. 83–5812. FOSTER *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 436 So. 2d 56.

No. 83–5817. BENDER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 720 F. 2d 681.

No. 83–5822. BLANCO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 714 F. 2d 154.

No. 83–5828. SOWARDS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 722 F. 2d 743.

No. 83–5834. QUINTANA-SAMANIEGO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 718 F. 2d 1095.

No. 83–5839. GODWIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 710 F. 2d 839.

No. 83–207. ARIYOSHI, GOVERNOR OF HAWAII, ET AL. *v.* PEKARSKY ET AL. C. A. 9th Cir. Certiorari denied. JUSTICE BLACKMUN would grant certiorari. Reported below: 695 F. 2d 352.

No. 83–783. DAVIS *v.* GLADSTONE ET AL. C. A. 11th Cir. Certiorari denied. JUSTICE BLACKMUN would grant certiorari. Reported below: 714 F. 2d 512.

No. 83–243. BROWN & ROOT, INC., ET AL. *v.* THORNTON ET AL. C. A. 5th Cir. Motions of respondents Billy Thornton and James Broussard for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 707 F. 2d 149.

No. 83–382. RUSH *v.* UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT ET AL. C. A. D. C. Cir. Motion of peti-

tioner to defer consideration of the petition for writ of certiorari denied. Certiorari denied. Reported below: 227 U. S. App. D. C. 325, 706 F. 2d 1229.

No. 83–459. WASHINGTON STATE CHARTERBOAT ASSN. *v.* BALDRIGE, SECRETARY OF COMMERCE. C. A. 9th Cir. Motion of Quileute Indian Tribe et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 702 F. 2d 820.

No. 83–506. MCKASKLE, ACTING DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS *v.* VELA. C. A. 5th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 708 F. 2d 954.

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

This petition presents the important question whether the exhaustion rule in 28 U. S. C. §§ 2254(b), (c), prohibits federal courts from considering federal habeas corpus petitions that contain specific allegations of error that are integral to the constitutional challenge but were not raised in the state courts. Because the question has great significance for the relations between federal and state courts, I would grant the petition for certiorari.

I

Respondent, Conrado Vela, pleaded guilty to a Texas murder indictment. After a jury found he had killed with malice, respondent was sentenced to 99 years' imprisonment. The conviction was upheld on direct appeal. See *Vela* v. *State*, 516 S. W. 2d 176 (Tex. Crim. App. 1974). Respondent then filed consecutive petitions for writs of habeas corpus in state and federal courts, alleging ineffective assistance of counsel. In both petitions, respondent raised the same three allegations of error as support for his ineffective-assistance-of-counsel claim. Both the state courts and the Federal District Court found that the three errors, when considered in the context of the entire record, were not cumulatively of such magnitude to render counsel's conduct of the trial as a whole constitutionally infirm. The courts also held that respondent was not prejudiced from any inadequacy that could be found. See *Ex parte Vela*, Application No. 9209, pp. 20–22 (June 4, 1980) (state court); Supp. App. to Pet. for Cert. E–1—E–8 (Federal District Court).

Respondent appealed to the Court of Appeals for the Fifth Circuit, presenting the same three allegations of counsel error and, for the first time, raising other allegations of error as well. The Court of Appeals decided that the exhaustion requirement of 28 U. S. C. §§ 2254(b), (c), did not prevent it from considering the additional instances of alleged ineffective assistance. Though these additional instances of ineffectiveness had not specifically been brought to the attention of the state courts, the Court of Appeals noted that the alleged errors were contained in the trial record and that the state courts purportedly had reviewed the entire record in finding counsel's performance adequate in the "totality of the circumstances." Thus, the Court of Appeals concluded that "the alleged 'new facts' [were] not new at all," and that respondent had exhausted all available state remedies. *Vela* v. *Estelle*, 708 F. 2d 954, 960 (1983). On the merits, it found that respondent had received ineffective assistance at trial because his counsel had committed the three "central errors" raised in the state-court petition and "several other serious errors as well." *Id.*, at 961–965. The court concluded that respondent had suffered prejudice of sufficient magnitude to warrant granting a writ of habeas corpus. *Id.*, at 965–966.

II

Whatever the correctness of the Court of Appeals' "ineffective assistance" determination, see Supp. App. to Pet. for Cert. E–2—E–8, this petition raises an issue of considerable importance to the administration of federal habeas corpus. The Fifth Circuit's consideration of factual allegations not specifically raised in the state court undermines the policies behind the requirement that state remedies be exhausted before federal habeas corpus relief becomes available.

The exhaustion rule "reflects a policy of federal-state comity" that is fundamental to our federal system. *Picard* v. *Connor*, 404 U. S. 270, 275 (1971). It "serves to minimize friction between our federal and state systems of justice by allowing the State an initial opportunity to pass upon and correct alleged violations of prisoners' federal rights." *Duckworth* v. *Serrano*, 454 U. S. 1, 3 (1981) *(per curiam)*. For the State to have that opportunity, "the federal claim must be fairly presented to the state courts." *Picard* v. *Connor*, *supra*, at 275. A federal habeas petitioner making a claim critically dependent on specific allegations of error never

brought to the state court's attention has not "fairly presented" that claim. See *Rose* v. *Lundy*, 455 U. S. 509, 526–527, 531–532 (1982) (BLACKMUN, J., concurring in judgment) (interrelated claims requiring exhaustion are those necessitating examination of the entire record). Upsetting a state-court criminal conviction on the basis of such allegations improperly usurps the state courts' role in the enforcement of federal law.

Of course, the state courts have the entire record, and thus the essential facts, before them in *every* constitutional case. But that is obviously beside the point. The exhaustion rule requires that the habeas petitioner do more than make available to the state courts all facts necessary to support a claim. It requires the petitioner to identify for the state courts' attention the constitutional claim alleged to be inherent in those facts. See *Picard* v. *Connor*, *supra*, at 277. Much as with our rules on direct review, the exhaustion rule requires that the habeas petitioner, and not the state-court judges, bear the burden of severing the bad from the good and of raising those errors supportive of an alleged constitutional claim. See *Webb* v. *Webb*, 451 U. S. 493, 499–501 (1981) (principle of comity behind "properly-raised-federal-question" doctrine similar to principle behind exhaustion doctrine). When the state courts are not informed of the specific errors on which a constitutional claim is based, it cannot be said that they were given a fair opportunity to consider the claim in the same posture as was the federal court.

That state courts evaluate the assistance of counsel in the context of the entire trial record cannot mean that the exhaustion requirement is satisfied. In *Rose* v. *Lundy*, *supra*, at 519, we said that an exhausted claim could not be considered by a federal habeas court if the claim depended in part on another claim not raised in the state courts, even if the state courts, in rejecting the exhausted claim, had reviewed the entire record. The exhaustion rule requires that the substance of a federal habeas corpus claim first be presented to the state courts, *Picard* v. *Connor*, *supra*, at 278, and the substance of an ineffective-assistance-of-counsel claim is identified by the list of alleged errors committed by counsel. See *Domaingue* v. *Butterworth*, 641 F. 2d 8, 12–13 (CA1 1981). Unless the state courts have been pointed to a particular error of counsel, a claim based on that error is unexhausted.

A Federal Rule requires habeas petitioners "to set forth in summary form the facts supporting each of the grounds thus speci-

fied." 28 U. S. C. § 2254 Rule 2(c). For federal habeas law to demand less of the petitioner when in state court is inconsistent with the premise of that Rule—that courts are entitled to be notified of the specific basis of a claim, especially if the claim is one for extraordinary relief. See also Fed. Rule Evid. 103(a)(1). It is also inconsistent with the premise of the exhaustion doctrine—that state courts provide the primary forum for the adjudication of claims of even federal error in state criminal proceedings. See *Rose* v. *Lundy*, *supra*.

Ineffective-assistance-of-counsel claims are becoming as much a part of state and federal habeas corpus proceedings as the bailiffs' call to order in those courts. Furthermore, other constitutional claims—for example, the right to confrontation, the right to a fair trial, and the right to an impartial tribunal—likewise rest on specific allegations of error and often require review of the entire record as part of the constitutional examination. The Court of Appeals' questionable approach to the exhaustion rule of 28 U. S. C. §§ 2254(b), (c), would apply to these claims as well. I would grant the petition for certiorari to consider the Court of Appeals' holding in light of its potential for interference with the relations of state and federal courts.

No. 83–533. NICHOLSON *v.* INTERSTATE COMMERCE COMMISSION ET AL. C. A. D. C. Cir. Motions of American Farm Bureau Federation et al. and Louisiana Landmarks Society for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 229 U. S. App. D. C. 86, 711 F. 2d 364.

No. 83–589. HOPI INDIAN TRIBE *v.* BLOCK, SECRETARY OF AGRICULTURE, ET AL.; and

No. 83–669. NAVAJO MEDICINEMEN'S ASSN. ET AL. *v.* BLOCK, SECRETARY OF AGRICULTURE, ET AL. C. A. D. C. Cir. Motion of All Indian Pueblo Council et al. for leave to file a brief as *amici curiae* in No. 83–589 granted. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this motion and these petitions. Reported below: 228 U. S. App. D. C. 166, 708 F. 2d 735.

No. 83–692. LOCAL UNION NO. 47, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL–CIO *v.* PUBLIC UTILITIES COMMISSION OF CALIFORNIA ET AL. Sup. Ct. Cal. Motion of petitioner to dispense with printing the full opinion below

granted. Certiorari denied. JUSTICE REHNQUIST took no part in the consideration or decision of this motion and this petition.

No. 83–725. FREY, SUPERINTENDENT, MISSOURI EASTERN CORRECTIONAL FACILITY *v.* ANDERSON. C. A. 8th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 715 F. 2d 1304.

No. 83–748. IN RE DELGADO. Sup. Ct. S. C. Motion of National Association of Criminal Defense Lawyers, Inc., for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 279 S. C. 293, 306 S. E. 2d 591.

No. 83–830. LIMBACH, TAX COMMISSIONER OF OHIO *v.* BOOTHE FINANCIAL CORP. Sup. Ct. Ohio. Certiorari denied. JUSTICE BLACKMUN took no part in the consideration or decision of this petition. Reported below: 6 Ohio St. 3d 247, 452 N. E. 2d 1295.

No. 83–5365. YOUNG *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 251 Ga. 153, 303 S. E. 2d 431.

JUSTICE MARSHALL, with whom JUSTICE BRENNAN joins, dissenting.

I dissent from the Court's denial of certiorari because it lets stand a ruling of the Georgia Supreme Court which violates the Double Jeopardy Clause of the Fifth Amendment as made applicable to the States through the Fourteenth Amendment, *Benton* v. *Maryland*, 395 U. S. 784, 794 (1969). Because of the Georgia Supreme Court's blatant misreading of a decision by the United States Court of Appeals which granted habeas corpus relief to the petitioner, he will again be subjected to the State's attempt to impose a death sentence upon him even though a Federal District Court has made an undisturbed ruling that a death sentence recommended by a jury was invalid due to insufficiency of the evidence.

In February 1976, the petitioner, Charlie Young, Jr., was convicted of murder, armed robbery, and robbery by intimidation. At the sentencing phase of the trial, the jury condemned the petitioner to death after finding that the murder was accompanied by two statutorily defined aggravating circumstances: the murder was committed while the petitioner was engaged in the commission of another capital felony, Ga. Code Ann. § 17–10–30(b)(2)

(1982), and the petitioner committed the murder for the purpose of receiving money, § 17–10–30(b)(4).[1] The Supreme Court of Georgia affirmed the conviction and the sentence. *Young* v. *State*, 237 Ga. 852, 230 S. E. 2d 287 (1976). Subsequently, the Supreme Court of Georgia affirmed a lower state court's denial of Young's application for habeas corpus relief. *Young* v. *Ricketts*, 242 Ga. 559, 250 S. E. 2d 404 (1978), cert. denied *sub nom. Young* v. *Zant*, 442 U. S. 934 (1979).

Young then initiated habeas corpus proceedings in the United States District Court for the Middle District of Georgia. The District Court rejected Young's challenge to the validity of his conviction but set aside his death sentence. *Young* v. *Zant*, 506 F. Supp. 274 (1980). The District Court's order was based upon two holdings. First, the court held that Young had been denied effective assistance of counsel at the sentencing stage of his trial, in violation of the Sixth and Fourteenth Amendments to the Federal Constitution. *Id.*, at 278.[2] Second, the District Court held that

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[1] In addition to the death sentence, the jury also sentenced Young to life imprisonment for armed robbery and to 20 years' imprisonment for robbery by intimidation.

[2] The District Court found that the petitioner's attorney had no understanding whatsoever of the Georgia capital trial and sentencing procedures. In a capital case in Georgia, there is first a trial to determine the guilt or innocence of the defendant. A separate sentencing hearing follows a determination of guilt. In effect, capital sentencing is a trial on the issue of punishment, embodying the hallmarks of the trial on guilt or innocence. See *infra*, at 1061–1062.

The petitioner's attorney failed to present *any* evidence during the sentencing hearing in mitigation of punishment, and refused to allow the petitioner to take the stand in his own behalf, thereby depriving the petitioner of the only sentencing phase witness for the defense—the petitioner himself. *Young* v. *Zant*, 506 F. Supp., at 278–280.

The District Court rejected the petitioner's claim that he had been deprived of effective assistance of counsel at the guilt-or-innocence phase of the trial, finding that the petitioner's attorney afforded him "reasonably effective assistance." *Id.*, at 278. This finding, however, is inconsistent with the court's observation that the petitioner's attorney "had no apparent understanding whatsoever of the bifurcated nature of the Georgia capital trial and sentencing procedures," *id.*, at 278–279, and that the attorney had used the utterly ridiculous strategy of admitting guilt but pleading for a life sentence at the guilt phase of the trial. *Id.*, at 279. Subsequently, the Court of Appeals reversed this finding, holding instead that the petitioner had also been denied effective assistance at the guilt phase of his trial. *Young* v. *Zant*, 677 F. 2d 792 (CA11 1982).

the evidence presented at trial "was not legally sufficient to support the jury's finding beyond a reasonable doubt that the murder was committed *in the course of* an armed robbery or *for the purpose of* obtaining money." *Id.*, at 280 (emphasis in original).

The United States Court of Appeals reversed the District Court's rejection of Young's challenge to his conviction. *Young* v. *Zant*, 677 F. 2d 792 (CA11 1982). The Court of Appeals held that Young had also been denied effective assistance of counsel at the guilt phase of his trial.[3] Finding the conviction invalid, the appellate court directed the District Court to grant the petitioner habeas corpus relief. The Court of Appeals noted the District Court's holding that Young had been denied effective assistance of counsel at the sentencing phase of the trial, *id.*, at 795, and its holding that insufficiency of the evidence nullified the jury's finding of aggravating circumstances. *Id.*, at 799, and n. 12. However, the Court of Appeals did not discuss either of these holdings.

In the wake of the federal appellate decision, the State reindicted Young for the same offenses. Moreover, the State again sought the death penalty based upon the same two aggravating circumstances previously charged, along with an additional allegation that the murder was "outrageously or wantonly vile, horrible, or inhuman in that it involved torture, depravity of mind, or an aggravated battery to the victim." Ga. Code Ann. § 17–10–30(b)(7) (1982).[4]

Young resisted the State's renewed attempt to impose the death penalty upon him, claiming that such an attempt would expose him to double jeopardy in violation of the Fifth and Fourteenth Amendments. The trial court, however, denied his plea of dou-

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[3] According to the Court of Appeals, the attorney "did not accord Young even a modicum of professional assistance at any time" during the trial. *Id.*, at 794–795.

[4] The District Court practically invited the State to renew its attempt to seek the death penalty against Young by suggesting that "the circumstances of this murder may justify a finding of some other aggravating circumstance, such as aggravated battery." 506 F. Supp., at 281. Subsequent to the District Court's suggestion but prior to the State's decision to seek the death penalty at Young's retrial, this Court held in *Bullington* v. *Missouri*, 451 U. S. 430 (1981), that the Double Jeopardy Clause was applicable to capital sentencing hearings like the one to which the petitioner was subjected at his first trial. See *infra*, at 1061–1062.

ble jeopardy. Young then filed an interlocutory appeal to the Supreme Court of Georgia. That court, with one justice dissenting, affirmed the trial court. 251 Ga. 153, 303 S. E. 2d 431 (1983). The Supreme Court of Georgia ruled that the Double Jeopardy Clause is not implicated by this case because, in its view, the Federal Court of Appeals' decision reversing the District Court vacated not only that part of the District Court's holding which related to Young's conviction, but also that part of the holding which related to the insufficiency of the evidence underlying the jury finding of aggravating circumstances. In the words of the Georgia Supreme Court:

> "Rather than reversing in part and affirming in part, the court of appeals chose to substitute its opinion for that of the district court. . . . [T]he effect of this reversal was to nullify the entire opinion of the district court and to place the parties in the position *quo ante*, subject, of course, to the holdings of the court of appeals." *Id.*, at 155, 303 S. E. 2d, at 433.

In other words, according to the Supreme Court of Georgia, the Court of Appeals' decision wiped away the District Court's holding that the finding of aggravating circumstances was invalid and thus removed that holding as an impediment to a renewed attempt to impose the death penalty.

This Court should review the decision of the Supreme Court of Georgia because it clearly misread the ruling of the Court of Appeals and thereby improperly avoided the petitioner's compelling double jeopardy claim. Purporting to interpret the Court of Appeals' ruling, the Supreme Court of Georgia concluded that the effect of the reversal by the Court of Appeals of *part* of the District Court's holding regarding federal habeas corpus relief was to nullify the *entire* opinion of the District Court. In reality, however, the Court of Appeals' decision related only to the question whether petitioner received effective assistance of counsel at the guilt-or-innocence phase of his trial.[5] Reversing the District

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[5] The Court of Appeals did not review the District Court's finding of insufficiency of the evidence at the sentencing phase of the trial because, having ruled that Young's conviction was illegal, there was no need to review the propriety of the sentence. The Court of Appeals thus left that aspect of the District Court's ruling undisturbed.

Court, the Court of Appeals held that Young had been denied effective assistance at the guilt-or-innocence phase of the trial. The Court of Appeals said nothing, however, to disturb the District Court's holding that the jury's finding of aggravating circumstances was not reasonably supported by the evidence presented at trial. Indeed, the opinion notes the District Court's conclusion with apparent approval because it cites counsel's obliviousness to the clear insufficiency of the evidence as yet another example of counsel's incompetence. 677 F. 2d, at 799, and n. 12.

The Georgia Supreme Court has committed a glaring error by ignoring the Court of Appeals' express limitation of its ruling to the question whether petitioner had been denied effective assistance of counsel at the guilt-or-innocence phase of his trial. The opinion clearly states that "[t]he district court's denial of the writ of habeas corpus *with respect to the guilt phase of Charlie Young's trial* is therefore REVERSED" (emphasis added). *Id.*, at 800. In light of the Court of Appeals' explicit statement that it reversed only with respect to the guilt phase of petitioner's trial, it is inexplicable how the Supreme Court of Georgia could conclude that the effect of the Court of Appeals' holding was "to nullify the entire opinion of the district court." 251 Ga., at 155, 303 S. E. 2d, at 433.

Given appropriate recognition, the District Court's undisturbed ruling that the jury's finding of aggravating circumstances was not rationally supported by the evidence solidly supports the petitioner's claim that the State should be prevented by the Double Jeopardy Clause from seeking to reimpose a death sentence upon him. This conclusion is dictated by this Court's decisions in *Bullington* v. *Missouri*, 451 U. S. 430 (1981), and *Burks* v. *United States*, 437 U. S. 1 (1978).

In *Bullington*, this Court held that the Double Jeopardy Clause was applicable to the sentencing proceeding in a capital case in Missouri because, under the relevant state law, the sentencing proceeding "was itself a trial on the issue of punishment." 451 U. S., at 438. Describing the trial-like features of the sentencing procedure, the Court observed:

> "The jury [in the sentencing phase of the trial] was not given unbounded discretion to select an appropriate punishment from a wide range authorized by statute. Rather, a separate hearing was required and was held, and the jury was

> presented both a choice between two alternatives and standards to guide the making of that choice. Nor did the prosecution simply recommend what it felt to be an appropriate punishment. It undertook the burden of establishing certain facts beyond a reasonable doubt in its quest to obtain the harsher of the two alternative verdicts." *Ibid.*

These features also characterize the sentencing proceeding under which the petitioner was initially sentenced to death. In Georgia, as in Missouri, an accused may be sentenced to death only after a separate sentencing hearing, governed by the beyond-a-reasonable-doubt standard. Indeed, the Georgia Supreme Court has itself noted that the Missouri death penalty statute "is essentially identical to the Georgia statute." *Godfrey* v. *State*, 248 Ga. 616, 617, 284 S. E. 2d 422, 425 (1981), cert. denied, 456 U. S. 919 (1982). Young, then, like the accused in *Bullington*, *supra*, was sentenced in a proceeding that was itself a trial on the issue of punishment and thus a proceeding subject to the Double Jeopardy Clause.

In *Burks*, *supra*, the Court held that an accused may not be subjected to a second trial when conviction in the initial trial is reversed based on insufficiency of evidence. Because the sentencing hearing under Georgia's capital punishment scheme is the equivalent of a trial, at least for the purposes of determining the applicability of the Double Jeopardy Clause, the District Court's holding that the jury's finding of aggravating circumstances is not rationally supported by the evidence should preclude the State from again seeking the death penalty on the basis of those aggravating circumstances.

Moreover, the State should be precluded from seeking the death penalty in this case even though it has alleged a third aggravating circumstance in addition to the two it alleged in the first trial. Having been given one fair chance to prove beyond a reasonable doubt the existence of aggravating circumstances sufficient to justify the execution of Charles Young, Jr., the State should not be allowed a second chance to have him condemned to death. We stated in *Burks*, *supra*, that "[t]he Double Jeopardy Clause forbids a second trial for the purpose of affording the prosecution another opportunity to supply evidence which it failed to muster in the first proceeding." 437 U. S., at 11. Tacking on an additional allegation of an aggravating circumstance is merely a transparent

attempt by the State to create a second opportunity to supply evidence which it failed to muster in the first sentencing hearing. Furthermore, in *Bullington*, *supra*, the Court specifically noted that its decision to prevent a State from seeking the death penalty in a retrial where, in the previous trial, a jury had declined to impose a death sentence did "not at all depend upon the State's announced intention to rely only upon the same aggravating circumstances it sought to prove at [the] first trial or upon its statement that it would introduce no new evidence in support of its contention that [the accused] deserves the death penalty." 451 U. S., at 446.

This Court has indicated in a wide variety of contexts that in matters involving capital punishment, a heightened degree of judicial scrutiny is warranted, given the special nature of the interest at stake: the very life of the accused. Here, however, the Court is willing to allow the State of Georgia to seek anew to impose the death penalty upon Charlie Young, Jr., even though it is almost certainly the case that absent the Georgia Supreme Court's egregious misreading of the United States Court of Appeals' decision in *Young* v. *Zant*, *supra*, the State would be barred from again seeking the death penalty. I therefore dissent from the Court's denial of a writ of certiorari.

No. 83–5659. CHILDRESS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. JUSTICE BRENNAN and JUSTICE MARSHALL would grant certiorari. Reported below: 715 F. 2d 1313.

No. 83–5670. LEVASSEUR *v.* VIRGINIA. Sup. Ct. Va.;

No. 83–5695. DOBARD *v.* ALABAMA. Sup. Ct. Ala.;

No. 83–5701. ADAMS *v.* WAINWRIGHT, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir.; and

No. 83–5705. COE *v.* TENNESSEE. Sup. Ct. Tenn. Certiorari denied. Reported below: No. 83–5670, 225 Va. 564, 304 S. E. 2d 644; No. 83–5695, 435 So. 2d 1351; No. 83–5701, 709 F. 2d 1443; No. 83–5705, 655 S. W. 2d 903.

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. 82–1868. ARNOLD TRANSIT CO., INC., ET AL. *v.* CITY OF MACKINAC ISLAND, *ante*, p. 804;

No. 82–1971. SCHAEFER *v.* NATIONAL LABOR RELATIONS BOARD, *ante*, p. 945;

No. 82–2057. LESIAK *v.* FERGUSON, AUDITOR OF THE STATE OF OHIO, *ante*, p. 826;

No. 82–6744. PRASAD *v.* WASSAIC DEVELOPMENTAL CENTER ET AL., *ante*, p. 834;

No. 82–6768. FINNEY *v.* MICHIGAN DEPARTMENT OF SOCIAL SERVICES, *ante*, p. 923;

No. 82–6922. DE LA ROSA *v.* TEXAS, *ante*, p. 865;

No. 82–6997. HINES *v.* UNITED STATES, *ante*, p. 972;

No. 83–180. SOUTHERN PACIFIC TRANSPORTATION CO. *v.* SECRETARY OF THE INTERIOR ET AL., *ante*, p. 960;

No. 83–279. PIUS XII ACADEMY, INC. *v.* COMMISSIONER OF INTERNAL REVENUE, *ante*, p. 982;

No. 83–296. LEBOVITZ *v.* UNITED STATES, *ante*, p. 992;

No. 83–314. OSTRIC *v.* CORPORATION OF ST. MARY'S COLLEGE, NOTRE DAME, ET AL., *ante*, p. 936;

No. 83–428. BARWICK *v.* SOUTH CAROLINA, *ante*, p. 938;

No. 83–5064. EWING ET AL. *v.* UNITED STATES, *ante*, p. 997;

No. 83–5200. WHAM *v.* UNITED STATES POSTAL SERVICE, *ante*, p. 860;

No. 83–5274. FITZPATRICK *v.* SMITH, SUPERINTENDENT, ATTICA CORRECTIONAL FACILITY, *ante*, p. 963;

No. 83–5291. NOE *v.* TEXAS, *ante*, p. 997;

No. 83–5334. ATTWELL *v.* HECKLER, SECRETARY OF HEALTH AND HUMAN SERVICES, *ante*, p. 941;

No. 83–5339. DICK *v.* KEMP, SUPERINTENDENT, GEORGIA DIAGNOSTIC AND CLASSIFICATION CENTER, *ante*, p. 986;

No. 83–5354. AMADEO *v.* KEMP, SUPERINTENDENT, GEORGIA DIAGNOSTIC AND CLASSIFICATION CENTER, *ante*, p. 956;

No. 83–5389. MINCEY *v.* GEORGIA, *ante*, p. 977;

No. 83–5406. BUNCH *v.* VIRGINIA, *ante*, p. 977;

No. 83–5430. LAMORE *v.* INLAND DIVISION OF GENERAL MOTORS CORP. ET AL., *ante*, p. 963;

No. 83–5491. BROWN *v.* DOUGLAS, JUDGE, *ante*, p. 985; and

No. 83–5644. ANTONE *v.* STRICKLAND, SUPERINTENDENT, FLORIDA STATE PRISON, ET AL., *ante*, p. 1003. Petitions for rehearing denied.

JANUARY 11, 1984

Certiorari Granted. (See No. 81–2159, *ante*, at 248.)

Certiorari Denied

No. 83–6017 (A–533). HUTCHINS *v.* GARRISON, WARDEN, ET AL. C. A. 4th Cir. Application for stay of execution of sentence of death, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied. Certiorari denied. Reported below: 724 F. 2d 1425.

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 the application for stay of execution, grant certiorari, and vacate the death sentence in this case.

JANUARY 12, 1984

Dismissal Under Rule 53

No. A–457. RAJNEESH ET AL. *v.* MCGREER. D. C. Ore. Application for stay dismissed under this Court's Rule 53.

JANUARY 16, 1984

Appeal Dismissed

No. 82–1899. TRANS WORLD AIRLINES, INC. *v.* NEW YORK STATE HUMAN RIGHTS APPEAL BOARD ET AL. Appeal from Ct. App. N. Y. dismissed for want of substantial federal question. Reported below: 58 N. Y. 2d 778, 445 N. E. 2d 220.

Miscellaneous Orders

No. A–470. CLARK, SECRETARY OF THE INTERIOR, ET AL. *v.* CALIFORNIA ET AL.; and

No. A–471. WESTERN OIL & GAS ASSN. ET AL. *v.* CALIFORNIA ET AL. D. C. C. D. Cal. Motion to vacate the stay heretofore entered by JUSTICE REHNQUIST on December 20, 1983 [*post*, p. 1304], denied.

No. A–491. CONSUMER VALUE STORES *v.* BOARD OF PHARMACY OF NEW JERSEY. Super. Ct. N. J., App. Div. Application for stay, addressed to JUSTICE BLACKMUN and referred to the Court, denied.

No. A–498. EDMOND ET AL. *v.* NELSON, COMMISSIONER, UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE, ET AL. Application for stay of deportation, addressed to JUSTICE MARSHALL and referred to the Court, denied.

No. A–519. SOUTHEAST VOLUSIA HOSPITAL DISTRICT ET AL. *v.* FLORIDA PATIENT'S COMPENSATION FUND ET AL. Sup. Ct. Fla. Application for stay, addressed to JUSTICE O'CONNOR and referred to the Court, denied.

No. D–367. IN RE DISBARMENT OF TREUBER. Disbarment entered. [For earlier order herein, see *ante*, p. 911.]

No. D–372. IN RE DISBARMENT OF CHAGRA. Disbarment entered. [For earlier order herein, see *ante*, p. 912.]

No. D–375. IN RE DISBARMENT OF ITALIANO. Disbarment entered. [For earlier order herein, see *ante*, p. 926.]

No. D–380. IN RE DISBARMENT OF DESMOND. Disbarment entered. [For earlier order herein, see *ante*, p. 927.]

No. D–391. IN RE DISBARMENT OF DROBNY. It is ordered that Irving M. Drobny, of Chicago, Ill., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–392. IN RE DISBARMENT OF SINEMA. It is ordered that Dan Alan Sinema, of Tucson, Ariz., 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–393. IN RE DISBARMENT OF MOUSHEY. It is ordered that Charles L. Moushey, of Alliance, 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–394. IN RE DISBARMENT OF SCHLESINGER. It is ordered that Arnold Schlesinger, of Beverly Hills, 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. D–395. IN RE DISBARMENT OF SHAPIRO. It is ordered that Stanley Charles Shapiro, of Los Angeles, Cal., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. 82–2056. ESCONDIDO MUTUAL WATER CO. ET AL. *v.* LA JOLLA BAND OF MISSION INDIANS ET AL. C. A. 9th Cir. [Certiorari granted, *ante*, p. 913.] Motion of the Solicitor General to permit divided argument on behalf of petitioners and on behalf of respondents granted.

No. 83–185. COOPER ET AL. *v.* FEDERAL RESERVE BANK OF RICHMOND. C. A. 4th Cir. [Certiorari granted, *ante*, p. 932.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 83–620. UNITED STATES *v.* RODGERS. C. A. 8th Cir. [Certiorari granted, *ante*, p. 1007.] Motion for appointment of counsel granted, and it is ordered that Albert N. Moskowitz, Esquire, of Kansas City, Mo., be appointed to serve as counsel for respondent in this case.

No. 83–802. BURLINGTON NORTHERN RAILROAD CO. ET AL. *v.* LENNEN, SECRETARY OF REVENUE OF KANSAS, ET AL. C. A. 10th Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States. JUSTICE O'CONNOR took no part in the consideration or decision of this order.

No. 83–851. SOUTH STREET SEAPORT MUSEUM, AS OWNER OF THE BARK PEKING *v.* MCCARTHY ET AL. C. A. 2d Cir. Motion of National Maritime Historical Society et al. for leave to file a brief as *amici curiae* granted.

No. 83–5778. ORDWAY *v.* REGION 13 MENTAL HEALTH-MENTAL RETARDATION COMMISSION, DBA GULF COAST MENTAL HEALTH CENTER, ET AL. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until February 6, 1984, 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.

JUSTICE BRENNAN, JUSTICE MARSHALL, JUSTICE BLACKMUN, and JUSTICE STEVENS, dissenting.

For the reasons expressed in *Brown* v. *Herald Co.*, *ante*, p. 928, we would deny the petition for certiorari in this case

without reaching the merits of the motion to proceed *in forma pauperis*.

No. 83–5796. CROWE *v.* GEORGIA. Sup. Ct. Ga. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until February 6, 1984, 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.

JUSTICE BRENNAN, JUSTICE MARSHALL, and JUSTICE STEVENS, dissenting.

For the reasons expressed in *Brown* v. *Herald Co.*, *ante*, p. 928, we would deny the petition for certiorari in this case without reaching the merits of the motion to proceed *in forma pauperis*.

No. 83–5755. IN RE TARKOWSKI. Petition for writ of mandamus denied.

Certiorari Granted

No. 83–747. WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY *v.* JOHNSON ET AL. C. A. D. C. Cir. Certiorari granted. Reported below: 230 U. S. App. D. C. 297, 717 F. 2d 574.

No. 83–838. UNITED STATES *v.* LORENZETTI. C. A. 3d Cir. Certiorari granted. Reported below: 710 F. 2d 982.

No. 83–850. UNITED STATES *v.* KARO ET AL. C. A. 10th Cir. Certiorari granted. Reported below: 710 F. 2d 1433.

Certiorari Denied

No. 82–1938. CALIFORNIA ET AL. *v.* STANDARD OIL COMPANY OF CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 691 F. 2d 1335.

No. 82–6765. UNTERTHINER *v.* DESERT HOSPITAL DISTRICT OF PALM SPRINGS. Sup. Ct. Cal. Certiorari denied. Reported below: 33 Cal. 3d 285, 656 P. 2d 554.

No. 83–414. GRIGGS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 706 F. 2d 316.

No. 83–432. GULLETT *v.* UNITED STATES; and
No. 83–616. FOX *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 713 F. 2d 1203.

No. 83–435. WICHITA BOARD OF TRADE ET AL. *v.* UNITED STATES ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 706 F. 2d 1067.

No. 83–475. STAHL ET AL. *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 665 P. 2d 839.

No. 83–527. INTERNATIONAL MOORING & MARINE, INC., ET AL. *v.* BERTRAND ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 700 F. 2d 240.

No. 83–575. OLIVER ET AL. *v.* MCCLURE, PROSECUTOR OF BERGEN COUNTY, NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 83–581. HAIMOWITZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 706 F. 2d 1549 and 712 F. 2d 457.

No. 83–605. MILLS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 713 F. 2d 1249.

No. 83–644. HATCH ET AL. *v.* RELIANCE INSURANCE CO. ET AL. C. A. 5th Cir. Certiorari denied.

No. 83–697. BUILDING & CONSTRUCTION TRADES DEPARTMENT, AFL–CIO, ET AL. *v.* DONOVAN, SECRETARY OF LABOR, ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 229 U. S. App. D. C. 297, 712 F. 2d 611.

No. 83–717. MORROW ET AL. *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 717 F. 2d 800.

No. 83–755. LEDESMA *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 251 Ga. 487, 306 S. E. 2d 629.

No. 83–798. QUINTANILLA *v.* SCIENTIFIC-ATLANTA, INC. C. A. 5th Cir. Certiorari denied.

No. 83–799. LEWIS *v.* BROWN & ROOT, INC. C. A. 5th Cir. Certiorari denied. Reported below: 711 F. 2d 1287.

No. 83–801. PICKANDS MATHER & CO., AS MANAGING AGENT FOR ERIE MINING CO. *v.* COMMISSIONER OF REVENUE OF MINNE-

SOTA ET AL. Sup. Ct. Minn. Certiorari denied. Reported below: 334 N. W. 2d 155.

No. 83–803. SCHULTZ *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 437 So. 2d 670.

No. 83–805. WILLIAMS *v.* TEXAS DEPARTMENT OF HUMAN RESOURCES ET AL. Ct. App. Tex., 2d Sup. Jud. Dist. Certiorari denied.

No. 83–814. BERRY & GORE, LTD. *v.* ADMINISTRATOR, ILLINOIS ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION. Sup. Ct. Ill. Certiorari denied.

No. 83–819. METZ *v.* TOOTSIE ROLL INDUSTRIES, INC., ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 715 F. 2d 299.

No. 83–821. WHITE HYDRAULICS, INC., ET AL. *v.* SAUER-GETRIEBE, KG. C. A. 7th Cir. Certiorari denied. Reported below: 715 F. 2d 348.

No. 83–822. WILLIAMS *v.* WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY. C. A. D. C. Cir. Certiorari denied. Reported below: 230 U. S. App. D. C. 297, 717 F. 2d 574.

No. 83–823. CLACKAMAS COUNTY HOUSING AUTHORITY ET AL. *v.* TELFORD. C. A. 9th Cir. Certiorari denied. Reported below: 710 F. 2d 567.

No. 83–827. KAPOCSI *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 668 P. 2d 1157.

No. 83–839. HAWTHORNE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 720 F. 2d 684.

No. 83–842. RUSSELL *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 436 So. 2d 1016.

No. 83–843. RIFE *v.* NEBRASKA. Sup. Ct. Neb. Certiorari denied. Reported below: 215 Neb. 132, 337 N. W. 2d 724.

No. 83–847. KOURAKOS *v.* TULLY ET AL. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 92 App. Div. 2d 1051, 461 N. Y. S. 2d 540.

No. 83–852. BELL *v.* SELLEVOLD ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 713 F. 2d 1396.

No. 83–856. DORIA MINING & ENGINEERING CORP. *v.* CLARK, SECRETARY OF THE INTERIOR, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 718 F. 2d 1109.

No. 83–920. GAMBALE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 742 F. 2d 1443.

No. 83–925. CARRICO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 714 F. 2d 154.

No. 83–939. REDMOND *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 83–940. BEHRING INTERNATIONAL, INC. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 3d Cir. Certiorari denied. Reported below: 714 F. 2d 291.

No. 83–5402. GAERTNER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 705 F. 2d 210.

No. 83–5484. CAVAZOS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 708 F. 2d 719.

No. 83–5488. ARMSTRONG *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 83–5505. YOUNG-BUFFALO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 705 F. 2d 468.

No. 83–5537. HAGGINS *v.* WARDEN, FORT PILLOW STATE FARM. C. A. 6th Cir. Certiorari denied. Reported below: 715 F. 2d 1050.

No. 83–5541. MISHMASH ET AL. *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 423 So. 2d 446.

No. 83–5575. PRICE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 716 F. 2d 899.

No. 83–5581. GLOVER ET AL. *v.* ALEXANDER, SECRETARY OF THE ARMY. C. A. 4th Cir. Certiorari denied. Reported below: 714 F. 2d 129.

No. 83–5621. STRONG *v.* MAGGIO, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 712 F. 2d 1414.

No. 83–5663. WEBB *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 708 F. 2d 444.

No. 83–5749. YU *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 143 Cal. App. 3d 358, 191 Cal. Rptr. 859.

No. 83–5751. PIPINOS *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 83–5770. ANTONELLI *v.* FIELD ENTERPRISES, INC. Sup. Ct. Ill. Certiorari denied.

No. 83–5771. ROYSE *v.* CORHART REFRACTORIES CO. C. A. 6th Cir. Certiorari denied. Reported below: 720 F. 2d 679.

No. 83–5774. ALFORD *v.* ALLSBROOK ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 714 F. 2d 127.

No. 83–5782. ROSE *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 54 Md. App. 747.

No. 83–5783. SIMPSON *v.* ISRINGHAUSEN. C. A. 8th Cir. Certiorari denied. Reported below: 718 F. 2d 1106.

No. 83–5784. MALLY *v.* SHIMER. C. A. 2d Cir. Certiorari denied. Reported below: 722 F. 2d 728.

No. 83–5787. DIXON *v.* MISSOURI. Ct. App. Mo., Eastern Dist. Certiorari denied. Reported below: 655 S. W. 2d 547.

No. 83–5788. WILLIAMS *v.* DEROBERTIS, WARDEN, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 715 F. 2d 1174.

No. 83–5789. SHAFFER-CORONA *v.* SMITH. Ct. App. D. C. Certiorari denied.

No. 83–5791. PARTLOW *v.* INDIANA. Sup. Ct. Ind. Certiorari denied. Reported below: 453 N. E. 2d 259.

No. 83–5793. HOWELL *v.* APPLING. C. A. 4th Cir. Certiorari denied. Reported below: 722 F. 2d 738.

No. 83–5797. MALUMPHY *v.* ARIZONA BOARD OF PARDONS AND PAROLE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 711 F. 2d 1064.

No. 83–5804. NERISON *v.* SOLEM, WARDEN, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 715 F. 2d 415.

No. 83–5827. BROOKS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 718 F. 2d 1093.

No. 83–5845. KIMBLE ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 719 F. 2d 1253.

No. 83–5853. MILLER *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 720 F. 2d 227.

No. 83–5876. OCHS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 742 F. 2d 1444.

No. 82–2128. AMERICAN TELEPHONE & TELEGRAPH CO. ET AL. *v.* LITTON SYSTEMS, INC., ET AL. C. A. 2d Cir. Motion of National Association of Regulatory Utility Commissioners for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 700 F. 2d 785.

No. 83–332. COUNTY OF LOS ANGELES *v.* EQUAL EMPLOYMENT OPPORTUNITY COMMISSION. C. A. 9th Cir. Certiorari denied. JUSTICE O'CONNOR would grant certiorari. Reported below: 706 F. 2d 1039.

No. 83–512. SUTTON ET AL. *v.* BLOOM. C. A. 6th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 710 F. 2d 1188.

No. 83–808. MARYLAND *v.* FOSTER. Ct. App. Md. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 297 Md. 191, 464 A. 2d 986.

No. 83–837. ARIZONA *v.* ROUTHIER. Sup. Ct. Ariz. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 137 Ariz. 90, 669 P. 2d 68.

No. 83–854. NOURSE, CIRCUIT JUDGE OF THE NINETEENTH JUDICIAL CIRCUIT, IN AND FOR ST. LUCIE COUNTY, FLORIDA *v.* FLORIDA DEPARTMENT OF HEALTH AND REHABILITATIVE SERVICES ET AL. Sup. Ct. Fla. Motion of Office of the Public Defender for leave to file a brief as *amicus curiae* granted. Petition for writ of certiorari and/or prohibition denied. Reported below: 441 So. 2d 632.

No. 83–5387. MITCHELL *v.* TEXAS. Ct. Crim. App. Tex.;
No. 83–5737. COOPER *v.* FLORIDA. Sup. Ct. Fla.; and
No. 83–5776. COLEMAN *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: No. 83–5387, 650 S. W. 2d 801; No. 83–5737, 437 So. 2d 1070; No. 83–5776, 668 P. 2d 1126.

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. 83–5768. DAVIS *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied. JUSTICE BRENNAN and JUSTICE MARSHALL would grant certiorari. Reported below: 114 Ill. App. 3d 1160, 459 N. E. 2d 703.

No. 83–5891. CLAXTON *v.* COPELAND, WARDEN. Sup. Ct. Ariz. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition.

Rehearing Denied

No. 83–3. BAGINSKY *v.* UNITED STATES, *ante*, p. 981;
No. 83–635. VEENKANT *v.* COOK ET AL., *ante*, p. 1009;
No. 83–5415. THOMAS *v.* UNITED STATES, *ante*, p. 998;
No. 83–5542. IN RE GILL, *ante*, p. 990; and
No. 83–5618. FORSYTH *v.* UNITED STATES, *ante*, p. 1001. 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 Third Circuit beginning June 14, 1984, and ending June 15, 1984, 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.