

ORDERS FROM MARCH 26 THROUGH
MAY 14, 1984

MARCH 26, 1984

Appeals Dismissed

No. 83-1262. SOUTHEAST VOLUSIA HOSPITAL DISTRICT ET AL. v. FLORIDA PATIENT'S COMPENSATION FUND ET AL. Appeal from Sup. Ct. Fla. dismissed for want of substantial federal question. Reported below: 438 So. 2d 815.

No. 83-6251. PRENZLER v. WORKERS COMPENSATION APPEALS BOARD. 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.

Certiorari Granted—Vacated and Remanded

No. 82-1538. HILLSDALE COLLEGE v. DEPARTMENT OF EDUCATION ET AL. C. A. 6th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Grove City College v. Bell*, 465 U. S. 555 (1984). Reported below: 696 F. 2d 418.

Vacated and Remanded After Certiorari Granted

No. 83-103. WOODKRAFT DIVISION, GEORGIA KRAFT CO. v. NATIONAL LABOR RELATIONS BOARD. C. A. 11th Cir. [Certiorari granted, 464 U. S. 981.] Upon consideration of the motion of the Solicitor General and the response filed thereto, that portion of the judgment of the Court of Appeals on which certiorari was granted is vacated, and the case is remanded to the Court of Appeals with directions that the case be remanded to the National Labor Relations Board for further consideration in light of *Clear Pine Mouldings, Inc.*, 268 N. L. R. B. 1044 (1984).

Miscellaneous Orders

No. — — —. IN RE O'BRYAN. Motion for leave to file petition for writ of habeas corpus 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

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and Fourteenth Amendments, *Gregg v. Georgia*, 428 U. S. 153, 227, 231 (1976), we would grant the motion and vacate the death sentence in this case.

No. — — —. PEZ MEX, S. A. *v.* CONSOLIDATED FOODS CORP. ET AL. Motion to direct the Clerk to file the petition for writ of certiorari out of time denied.

No. A-755 (83-6413). BURGER *v.* ZANT, WARDEN. C. A. 11th Cir. Application for stay of execution of sentence of death, presented to JUSTICE POWELL, and by him referred to the Court, is granted pending final disposition of the petition for writ of certiorari.

No. D-374. IN RE DISBARMENT OF MCGHEE. Disbarment entered. [For earlier order herein, see 464 U. S. 926.]

No. D-382. IN RE DISBARMENT OF LABER. Disbarment entered. [For earlier order herein, see 464 U. S. 988.]

No. D-385. IN RE DISBARMENT OF DRAWDY. Disbarment entered. [For earlier order herein, see 464 U. S. 958.]

No. D-391. IN RE DISBARMENT OF DROBNY. Disbarment entered. [For earlier order herein, see 464 U. S. 1066.]

No. D-392. IN RE DISBARMENT OF SINEMA. Disbarment entered. [For earlier order herein, see 464 U. S. 1066.]

No. D-402. IN RE DISBARMENT OF YOUNG. Nancy J. Young, of Cos Cob, Conn., having requested to resign as a member of the Bar of this Court, it is ordered that her name be stricken from the roll of attorneys admitted to practice before the Bar of this Court. The rule to show cause, heretofore issued on February 27, 1984 [465 U. S. 1063], is hereby discharged.

No. D-415. IN RE DISBARMENT OF LUOMA. It is ordered that Robert W. Luoma, of Lansing, Mich., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. 83-1273. LEWIS SERVICE CENTER, INC. *v.* MACK TRUCKS, INC. C. A. 8th Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 83-6197. IN RE JOHNSON. Petition for writ of mandamus denied.

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Probable Jurisdiction Noted

No. 83-240. LAWRENCE COUNTY ET AL. *v.* LEAD-DEADWOOD SCHOOL DISTRICT NO. 40-1. Appeal from Sup. Ct. S. D. Probable jurisdiction noted. Reported below: 334 N. W. 2d 24.

Certiorari Granted

No. 83-1153. MILLS MUSIC, INC. *v.* SNYDER ET AL. C. A. 2d Cir. Certiorari granted. Reported below: 720 F. 2d 733.

No. 83-1266. UNITED STATES *v.* BOYLE, EXECUTOR OF THE ESTATE OF BOYLE. C. A. 7th Cir. Certiorari granted. Reported below: 710 F. 2d 1251.

No. 83-703. FLORIDA POWER & LIGHT CO. *v.* LORION, DBA CENTER FOR NUCLEAR RESPONSIBILITY, ET AL.; and

No. 83-1031. UNITED STATES NUCLEAR REGULATORY COMMISSION ET AL. *v.* LORION ET AL. C. A. D. C. Cir. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. Reported below: 229 U. S. App. D. C. 440, 712 F. 2d 1472.

No. 83-912. LUCE *v.* UNITED STATES. C. A. 6th Cir. Certiorari granted. JUSTICE STEVENS took no part in the consideration or decision of this petition. Reported below: 713 F. 2d 1236.

Certiorari Denied. (See also No. 83-6251, *supra.*)

No. 82-1683. WEST TEXAS STATE UNIVERSITY ET AL. *v.* BENNETT ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 698 F. 2d 1215.

No. 83-824. PATMON, YOUNG & KIRK ET AL. *v.* UNITED STATES ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 718 F. 2d 1101.

No. 83-888. JACOB *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 718 F. 2d 1093.

No. 83-941. IOWA ELECTRIC LIGHT & POWER CO. *v.* NATIONAL LABOR RELATIONS BOARD ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 717 F. 2d 433.

No. 83-975. PATMON, YOUNG & KIRK ET AL. *v.* UNITED STATES ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 718 F. 2d 1101.

No. 83-1012. BAGBEY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 720 F. 2d 680.

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No. 83-1024. *TRIO MANUFACTURING CO. v. UNITED STATES ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 718 F. 2d 1015.

No. 83-1066. *JACK REILLY'S, INC., DBA JACK'S v. THURBER.* C. A. 1st Cir. Certiorari denied. Reported below: 717 F. 2d 633.

No. 83-1077. *PARTEE v. SAN DIEGO CHARGERS FOOTBALL CO.* Sup. Ct. Cal. Certiorari denied. Reported below: 34 Cal. 3d 378, 668 P. 2d 674.

No. 83-1124. *NATIONAL COMMITTEE ET AL. v. MORGENTHAU, DISTRICT ATTORNEY OF NEW YORK COUNTY, ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 742 F. 2d 1438.

No. 83-1143. *CAPTLINE ET AL., CO-EXECUTORS OF THE ESTATE OF MAZZARO v. COUNTY OF ALLEGHENY ET AL.* Pa. Commw. Ct. Certiorari denied. Reported below: 74 Pa. Commw. 85, 459 A. 2d 1298.

No. 83-1260. *PFEIFER ET AL. v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 718 F. 2d 1113.

No. 83-1268. *L. & L. HOWELL, INC. v. CINCINNATI COOPERATIVE MILK SALES ASSN. ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 716 F. 2d 903.

No. 83-1281. *SANCHEZ ET AL. v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 722 F. 2d 1114.

No. 83-1283. *ALEXANDER v. BOARD OF PROFESSIONAL RESPONSIBILITY OF THE DISTRICT OF COLUMBIA COURT OF APPEALS.* Ct. App. D. C. Certiorari denied. Reported below: 466 A. 2d 447.

No. 83-1293. *CARPENTER v. COMMISSIONER OF PUBLIC WORKS OF THE CITY OF RACINE, WISCONSIN.* Ct. App. Wis. Certiorari denied. Reported below: 115 Wis. 2d 211, 339 N. W. 2d 608.

No. 83-1296. *BREEDLOVE v. ALABAMA.* Ct. Crim. App. Ala. Certiorari denied. Reported below: 439 So. 2d 1326.

No. 83-1303. *JONES v. MARSH, SECRETARY OF THE ARMY.* C. A. 6th Cir. Certiorari denied. Reported below: 718 F. 2d 1099.

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No. 83-1305. *BUCHANAN v. MERIT BOARD OF THE STATE UNIVERSITIES CIVIL SERVICE SYSTEM OF ILLINOIS ET AL.* App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 115 Ill. App. 3d 722, 450 N. E. 2d 1298.

No. 83-1306. *BINGHAM v. NEVADA STATE BOARD OF ACCOUNTANCY.* Sup. Ct. Nev. Certiorari denied.

No. 83-1319. *GARAFOLA v. WILKINSON, WARDEN.* C. A. 3d Cir. Certiorari denied. Reported below: 721 F. 2d 420.

No. 83-1354. *SANKARY ET AL. v. COMMISSIONER OF INTERNAL REVENUE.* C. A. 9th Cir. Certiorari denied. Reported below: 722 F. 2d 747.

No. 83-1370. *CHRISTENSEN v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 742 F. 2d 1442.

No. 83-1376. *MARTIN ROOFING, INC. v. GOLDSTEIN.* Ct. App. N. Y. Certiorari denied. Reported below: 60 N. Y. 2d 262, 457 N. E. 2d 700.

No. 83-1384. *TUCKER v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 721 F. 2d 816.

No. 83-1385. *BROWN ET UX. v. SKI ROUNDTOP, INC., TDBA SKI LIBERTY.* C. A. 3d Cir. Certiorari denied. Reported below: 723 F. 2d 896.

No. 83-1388. *ARNOLD v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 742 F. 2d 1444.

No. 83-1404. *PITEO v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 726 F. 2d 50.

No. 83-1415. *GLOVER v. UNITED STATES.* C. A. D. C. Cir. Certiorari denied. Reported below: 233 U. S. App. D. C. 161, 725 F. 2d 120.

No. 83-1417. *LISOTTO ET AL. v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 722 F. 2d 85.

No. 83-1419. *AVERY v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 717 F. 2d 1020.

No. 83-1435. *MARAMONTE v. NEW JERSEY.* Super. Ct. N. J., App. Div. Certiorari denied.

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No. 83-1440. *DOWELL v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 724 F. 2d 599.

No. 83-5736. *SCOTT v. UNITED STATES*. C. A. 1st Cir. Certiorari denied.

No. 83-5806. *TOWNS v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 720 F. 2d 681.

No. 83-5821. *DUARTE ET AL. v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 723 F. 2d 899.

No. 83-5832. *WILLIAMS v. MAGGIO, WARDEN*. C. A. 5th Cir. Certiorari denied. Reported below: 712 F. 2d 1414.

No. 83-5847. *COPPOLA v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 720 F. 2d 757.

No. 83-5985. *SEARLES v. NEBRASKA*. Sup. Ct. Neb. Certiorari denied. Reported below: 214 Neb. 849, 336 N. W. 2d 571.

No. 83-6001. *ALMON v. JERNIGAN, WARDEN*. C. A. 11th Cir. Certiorari denied. Reported below: 715 F. 2d 1505.

No. 83-6147. *ROBINSON v. HADDEN, WARDEN, ET AL.* C. A. 10th Cir. Certiorari denied. Reported below: 723 F. 2d 59.

No. 83-6182. *TILLIS v. JAMES ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 721 F. 2d 820.

No. 83-6183. *SMITH v. MCKASKLE, ACTING DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS*. C. A. 5th Cir. Certiorari denied. Reported below: 711 F. 2d 677.

No. 83-6189. *VAN HOORELBEKE v. CALIFORNIA*. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 83-6201. *SPEARS v. FLORIDA*. Dist. Ct. App. Fla., 4th Dist. Certiorari denied.

No. 83-6203. *PIATKOWSKA v. INTERINSURANCE EXCHANGE OF THE AAA AUTOMOBILE CLUB OF SOUTHERN CALIFORNIA*. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 83-6208. *JUTRAS v. GULF FLEET MARINE CORP. ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 717 F. 2d 1397.

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No. 83-6210. *JOHNSON v. ILLINOIS*. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 115 Ill. App. 3d 1159, 461 N. E. 2d 1087.

No. 83-6212. *HOLSEY v. TINNEY, WARDEN, ET AL.* Ct. Sp. App. Md. Certiorari denied.

No. 83-6219. *KELLEHER v. ILLINOIS*. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 116 Ill. App. 3d 186, 452 N. E. 2d 143.

No. 83-6228. *ROCHE v. MAGGIO, WARDEN*. C. A. 5th Cir. Certiorari denied.

No. 83-6256. *MC FALL v. PARKE, WARDEN, ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 725 F. 2d 684.

No. 83-6267. *BROOKS v. ASHTABULA COUNTY WELFARE DEPARTMENT ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 717 F. 2d 263.

No. 83-6289. *MARTINEZ v. NEW MEXICO*. Sup. Ct. N. M. Certiorari denied.

No. 83-6299. *MULLEN v. BROWN ET AL.* C. A. 10th Cir. Certiorari denied.

No. 83-6301. *MILAN v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 723 F. 2d 905.

No. 83-6304. *WHITE v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 83-6317. *BROWN v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 722 F. 2d 748.

No. 83-6320. *LARSON v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 722 F. 2d 139.

No. 83-6322. *HIBBARD v. KENTUCKY*. Sup. Ct. Ky. Certiorari denied. Reported below: 661 S. W. 2d 473.

No. 83-6330. *RIEGER v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 723 F. 2d 899.

No. 83-6336. *EACOPELLI v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 723 F. 2d 913.

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No. 83-6343. GUERRERO-SERQUEN *v.* UNITED STATES.
C. A. 9th Cir. Certiorari denied.

No. 83-741. FALCONE *v.* INTERNAL REVENUE SERVICE.
C. A. 6th Cir. Certiorari denied. Reported below: 714 F. 2d
646.

JUSTICE WHITE, dissenting.

Petitioner, a tax attorney, requested information from the Internal Revenue Service under the Freedom of Information Act (FOIA), 5 U. S. C. § 552. When the IRS denied the request, petitioner filed an action in Federal District Court under 5 U. S. C. § 552(a)(4)(B). The District Court ordered that certain requested documents be released, and the subsequent appeal was dismissed at the IRS's request.

Petitioner then filed a motion for attorney's fees under 5 U. S. C. § 552(a)(4)(E), which provides for an award of "reasonable attorney fees" to a plaintiff who has "substantially prevailed" in an FOIA case. The District Court denied the motion, finding that although petitioner had prevailed, the IRS had not acted unreasonably in refusing to release the documents. 535 F. Supp. 1313 (ED Mich. 1982). The Court of Appeals for the Sixth Circuit affirmed that ruling but on a different ground, concluding that § 552(a)(4)(E) does not authorize an attorney's fees award for *pro se* attorney plaintiffs. 714 F. 2d 646 (1983).

Most Courts of Appeals, including the Court of Appeals for the Sixth Circuit, have concluded that a nonattorney plaintiff proceeding *pro se* is not entitled to recover attorney's fees under § 552(a)(4)(E) or similar attorney's fees provisions. See, *e. g.*, *Wolfel v. United States*, 711 F. 2d 66, 68 (CA6 1983); *Clarkson v. IRS*, 678 F. 2d 1368, 1371 (CA11 1982); *Cunningham v. FBI*, 664 F. 2d 383, 388 (CA3 1981); *Barrett v. Bureau of Customs*, 651 F. 2d 1087, 1090 (CA5 1981), cert. denied, 455 U. S. 950 (1982); *Crooker v. United States Department of Justice*, 632 F. 2d 916 (CA1 1980); *Burke v. United States Department of Justice*, 559 F. 2d 1182 (CA10 1977), aff'g 432 F. Supp. 251 (Kan. 1976); but see *Cox v. United States Department of Justice*, 195 U. S. App. D. C. 189, 193-194, 601 F. 2d 1, 5-6 (1979). However, the Court of Appeals for the Fifth Circuit has held that, unlike their nonattorney counterparts, FOIA plaintiffs who are attorneys are not precluded from recovering attorney's fees by virtue of their *pro se* status. *Cazalas v. United States Department of Justice*, 709 F. 2d 1051,

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1055-1057 (1983). The decision of the Court of Appeals in this case is in direct conflict with that holding. I would grant the petition for certiorari in order to resolve the conflict.

No. 83-1056. GENERAL MOTORS CORP. *v.* OKLAHOMA COUNTY BOARD OF EQUALIZATION ET AL. Sup. Ct. Okla. Motions of Oklahoma Industries Authority and Bunte Candies, Inc., et al. for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 678 P. 2d 233.

No. 83-1286. DIRECTOR, ILLINOIS DEPARTMENT OF CORRECTIONS *v.* GRAY. C. A. 7th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 721 F. 2d 586.

No. 83-5940. KING *v.* FLORIDA; and

No. 83-6184. WILLIAMS *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: No. 83-5940, 436 So. 2d 50; No. 83-6184, 437 So. 2d 133.

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. 83-5764. FLEMING *v.* STALLER ET AL., 465 U. S. 1031;

No. 83-6004. DAVIS ET AL. *v.* CENTRAL INTELLIGENCE AGENCY ET AL., 465 U. S. 1035;

No. 83-6021. ROGERS *v.* FARQUAR, 465 U. S. 1015; and

No. 83-6111. IN RE BERS, 465 U. S. 1064. Petitions for rehearing denied.

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Miscellaneous Order

No. A-770. EDWARDS, GOVERNOR OF LOUISIANA, ET AL. *v.* VALTEAU ET AL. Application for stay of the order of the United States District Court for the Eastern District of Louisiana, entered March 21, 1984, pending appeal, presented to JUSTICE WHITE, and by him referred to the Court, denied.

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Miscellaneous Orders

No. A-740 (83-1526). KARCHER, SPEAKER, NEW JERSEY ASSEMBLY, ET AL. v. DAGGETT ET AL. D. C. N. J. Application for stay, presented to JUSTICE BRENNAN, and by him referred to the Court, denied.

JUSTICE STEVENS, concurring.

In *Karcher v. Daggett*, 462 U. S. 725 (1983), we held that the reapportionment plan which had been adopted by New Jersey after the 1980 census was unconstitutional. On remand, the parties, by stipulation, asked the three-judge District Court to select which of a number of proposed redistricting plans should be employed in place of the plan which had been adjudicated unconstitutional. The District Court rejected the "Senate Plan," and selected the "Forsythe Plan." The District Court chose the Forsythe Plan because it achieved lower population deviations and more compact districts than the Senate Plan. Appellants claim that the District Court was obligated to accept the Senate Plan because it most closely conformed to the State's original plan while eliminating unconstitutional population variances. They have, accordingly, filed an application for a stay of the District Court's order, as well as an appeal. Since there is currently no apportionment plan in effect in New Jersey and elections are imminent, what appellants really seek is an injunction from this Court ordering use of the Senate Plan pending disposition of the appeal.

Once a constitutional violation has been found, a district court has broad discretion to fashion an appropriate remedy. *E. g.*, *Milliken v. Bradley*, 433 U. S. 267, 280-288 (1977). I do not believe there is a sufficient likelihood that the District Court abused that discretion by selecting the Forsythe Plan to justify the relief appellants seek. Because the Forsythe Plan contained lower population variances, it more completely redressed the constitutional violation. Nor was it an abuse of discretion to consider the fact that the Forsythe Plan created more compact districts; our previous opinion acknowledged that this is a legitimate consideration in reapportionment. See 462 U. S., at 740. We also stated that efforts to inhibit gerrymandering are a legitimate part of the reapportionment process, see *id.*, at 734-735, n. 6; here the

District Court found that the plan advocated by appellants constituted "an intentional gerrymander in favor of certain Democratic representatives." *Daggett v. Kimmelman*, 580 F. Supp. 1259, 1262 (NJ 1984). While a district court should not unnecessarily ignore state policies when fashioning a remedy, *White v. Weiser*, 412 U. S. 783, 795-797 (1973), there the District Court rejected a plan implementing "decision[s] made by the legislature in pursuit of what were deemed important state interests," *id.*, at 796, and did not explain why the plan it had rejected was "unconstitutional or even undesirable." *Id.*, at 797. Here the District Court identified legitimate considerations justifying its choice, and appellants have identified no state policy to which the District Court should have deferred that justifies the bizarre district lines in the original reapportionment plan. See 462 U. S., at 742-744, and n. 12.

Accordingly, I concur in the Court's decision to deny the application for stay.

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

Before the Court is an application seeking to stay an order of a three-judge District Court pending final disposition of an appeal to this Court under 28 U. S. C. § 1253. The challenged order directs the State of New Jersey to conduct upcoming elections for Members of the House of Representatives pursuant to a reapportionment plan adopted by the District Court as a remedy for the constitutional violation found in New Jersey's 1982 reapportionment plan. See *Karcher v. Daggett*, 462 U. S. 725 (1983), *aff'g* 535 F. Supp. 978 (NJ 1982). Because I believe that the District Court has acted beyond the scope of its authority in correcting the relevant constitutional violation, I would grant the application for stay and remand the case to the District Court for implementation of an alternative plan. I therefore dissent.

I

Following the 1980 decennial census, the State of New Jersey was required to decrease its membership in the United States House of Representatives from 15 to 14. To satisfy this requirement, the State enacted a congressional reapportionment scheme in January 1982 (hereinafter referred to as the Feldman Plan) that eliminated one of the State's congressional districts and substantially changed the geographical boundaries used to define the re-

maining districts. Although the Feldman Plan contained the requisite 14 districts, it suffered from significant numerical inequalities in population between each of those districts. In particular, given an "ideal" district population of 526,059, the average deviation from the norm was 0.1384%, or 726 people. Moreover, the difference between the largest district and the smallest district was 3,674 people, or 0.6984% of the average district.

The Feldman Plan was challenged by several interested parties and, primarily because of these population variances, was declared unconstitutional by the District Court. *Daggett v. Kimmelman*, 535 F. Supp. 978 (NJ 1982). That order was stayed pending appeal to this Court, *Karcher v. Daggett*, 455 U. S. 1303 (1982) (BRENNAN, J., in chambers), leaving the plan in effect during the 1982 congressional elections. We noted probable jurisdiction, 457 U. S. 1131 (1982), and subsequently affirmed the decision and order of the District Court, *Karcher v. Daggett*, 462 U. S. 725 (1983).

In *Karcher*, this Court reaffirmed that Art. I, §2, of the Constitution "permits only the limited population variances which are unavoidable despite a good-faith effort to achieve absolute equality, or for which justification is shown." *Id.*, at 730 (quoting *Kirkpatrick v. Preisler*, 394 U. S. 526, 531 (1969)); see *White v. Weiser*, 412 U. S. 783, 790 (1973). Applying that standard to the Feldman Plan, we concluded that the numerical variances described above, when combined with evidence that alternative plans available to the State contained smaller maximum deviations, demonstrated that New Jersey had not come "as nearly as practicable" to population equality among districts. 462 U. S., at 730, 739-740; *Wesberry v. Sanders*, 376 U. S. 1, 7-8, 18 (1964). Nor was the State able to prove that each significant variance among its districts was necessary to achieve some legitimate state objective. 462 U. S., at 740-744. We therefore concluded that the population inequalities existing under the Feldman Plan were both constitutionally significant and unjustified by legitimate state goals. Accordingly, we affirmed the District Court's holding that the plan was unconstitutional.

On remand from our decision, the three-judge District Court allowed the State until February 3, 1984, to enact another re-districting plan that would meet constitutional requirements. Although the state legislature adopted an alternative plan (Senate

Bill 3564, hereinafter referred to as the Senate Plan), it was vetoed by the Governor and had insufficient support for reenactment over that veto. Given this failure by the State's political process, the District Court convened a hearing on February 7, 1984, to choose a proper remedy for the uncorrected constitutional violation. See *Daggett v. Kimmelman*, 580 F. Supp. 1259 (NJ 1984). At that hearing, all parties agreed that the court should select a redistricting plan from among several alternatives offered by interested parties rather than allow the upcoming congressional elections to proceed on an at-large basis. *Id.*, at 1261. Cf. 2 U. S. C. § 2a(c).

At least six separate redistricting proposals were advanced by various parties before the District Court. Most important for present purposes were the Senate Plan and a plan submitted by various Republican congressional candidates who were the original plaintiffs in this litigation (hereinafter referred to as the Forsythe Plan).¹ In its discussion of the Senate Plan, the court first noted that its districts "are virtually identical" to those included in the unconstitutional Feldman Plan. Slight geographical changes had been made, however, resulting in an average deviation from the ideal district of less than 12 people and a maximum variation between the largest and smallest districts of only 67 people. Despite this apparent success in eliminating numerical inequalities, the court refused to accept the Senate Plan as a remedy for the constitutional violation we found last Term in *Karcher v. Daggett*, *supra*. In particular, the court found that the plan not only failed to "achieve as small an overall or mean deviation as other plans," but also retained the "most glaring defects in the Feldman Plan," including "an obvious absence of compactness, and an intentional gerrymander in favor of certain Democratic representatives." 580 F. Supp., at 1262.

¹ Also before the court were two plans submitted by the Taxpayers Political Action Committee and two plans submitted by representatives of the State's executive branch. The former plans were considered only briefly by the District Court, and were rejected because their district population variances were "larger than any which would occur in the plans proposed by other parties." See *Daggett v. Kimmelman*, 580 F. Supp. 1259, 1262 (NJ 1984). The two plans introduced by the executive branch were considered more extensively, but they too were ultimately rejected. See *id.*, at 1263-1264. None of these plans is currently being pressed for consideration by any party before the Court.

In contrast, the Forsythe Plan produced a maximum variation of only 25 people. And, although the plan required the splitting of two municipalities, its "two great advantages . . . over any of the others, are the achievement of smaller population deviations, and the creation of more compact districts." *Id.*, at 1264. Thus, the court concluded, the Forsythe Plan "most nearly fits the appropriate criteria for a court considering a congressional reapportionment plan as a remedy for an unconstitutional reapportionment statute." *Id.*, at 1264-1265. See *infra*, this page and 915.

In sum, the District Court acknowledged that each of the submitted plans improved substantially on the numerical disparities that led us to conclude last Term that the Feldman Plan was unconstitutional. Nonetheless, the District Court chose the Forsythe Plan as the appropriate replacement for the unconstitutional Feldman Plan because it "creat[ed] more compact districts" than the Senate Plan and there was "no evidence" that "it is designed to achieve partisan advantage." 580 F. Supp., at 1264.

II

Before choosing among these alternative plans, the District Court explicitly stated the legal principles that it believed should control its remedial decision. The court first summarized the constitutional standard reaffirmed by this Court in *Karcher v. Daggett*, see *supra*, at 912, and then specifically noted that our opinion in *Karcher* had "declin[ed] to rely, as a constitutional violation, on the obviously partisan purposes behind the Feldman Plan." 580 F. Supp., at 1261. The court nonetheless refused to limit its analysis to the numerical inequalities that triggered our constitutional holding; instead, the court examined the alternative plans using the following principle:

"While *Karcher v. Daggett* considers what interests may be taken into account by state legislatures in justifying deviations from the ideal of district population equality based on the decennial census, it also provides useful instruction to district courts faced, as we are, with selecting a districting plan because of a failure in the legislative process. We may take into account at least those factors which the Court has recognized as legitimate, namely: making districts compact, preserving municipal boundaries, preserving cores of prior districts, avoiding contests between incumbents, and inhibit-

ing gerrymandering. With those factors in mind we turn to the several plans which have been proposed." *Id.*, at 1261-1262.

In my view, the District Court's responsibility in remedying the constitutional violation we found last Term in *Karcher* does not reach that far. Although two Justices wrote separately to note that the political gerrymandering evident from the geographical boundaries included in the Feldman Plan might be worthy of constitutional challenge, see 462 U. S., at 744 (STEVENS, J., concurring); *id.*, at 784 (POWELL, J., dissenting), the Court's finding of a constitutional violation was premised exclusively on numerical inequalities between congressional districts. Once these population disparities are eliminated, our prior cases make clear that the District Court is charged with selecting an alternative plan that accords deference to the policies and preferences that have been expressed previously by the State.

This was precisely the situation presented by *White v. Weiser*, 412 U. S. 783 (1973). After finding that the State's reapportionment plan was unconstitutional because of significant, yet avoidable, population variances between districts, the District Court had to choose among several remedial plans proffered by interested parties. More specifically,

"[t]he District Court properly rejected S. B. 1 [the unconstitutional state plan], but it had before it both Plan B and Plan C, and there remains the question whether the court correctly chose to implement the latter. Plan B adhered to the basic district configurations found in S. B. 1, but adjusted the district lines, where necessary, in order to achieve maximum population equality among districts. Each district in Plan B contained generally the same counties as the equivalent district in S. B. 1. Plan C, on the other hand, was based entirely upon population considerations and made no attempt to adhere to the district configurations found in S. B. 1. . . . After deciding that S. B. 1 was unacceptable, the District Court ordered the implementation of Plan C." *Id.*, at 793-794 (footnotes omitted).

Although the appellees in *White v. Weiser* defended the lower court's selection of Plan C because it was "significantly more compact and contiguous than either S. B. 1 or Plan B" and because its selection was "an exercise of the remedial discretion of the District Court," *id.*, at 794, we rejected the lower court's remedial

choice and remanded for further proceedings. When fashioning a constitutional remedy in this context, we explained, the District Court must defer to any state policies that are "consistent with constitutional norms and . . . not [themselves] vulnerable to legal challenge." *Id.*, at 797.

"From the beginning, we have recognized that 'reapportionment is primarily a matter for legislative consideration and determination, and that judicial relief becomes appropriate only when a legislature fails to reapportion according to federal constitutional requisites in a timely fashion after having had an adequate opportunity to do so.' . . . We have adhered to the view that state legislatures have 'primary jurisdiction' over legislative reapportionment. . . . Just as a federal district court, in the context of legislative reapportionment, should follow the policies and preferences of the State, as expressed in statutory and constitutional provisions or in the reapportionment plans proposed by the state legislature, whenever adherence to state policy does not detract from the requirements of the Federal Constitution, we hold that a district court should similarly honor state policies in the context of congressional reapportionment. In fashioning a reapportionment plan or in choosing among plans, a district court should not pre-empt the legislative task nor 'intrude upon state policy any more than necessary.'" *Id.*, at 794-795 (citations omitted).

See also *Upham v. Seamon*, 456 U. S. 37, 41-43 (1982) (*per curiam*).

Pursuant to these standards, the Court in *White v. Weiser* reversed the lower court's selection of a reapportionment plan, and remanded for the imposition of another plan. This was necessary because the District Court had not chosen that plan which, while eliminating the constitutional violation, would be most in accord with the State's policy preferences. See 412 U. S., at 796 (the District Court "should have implemented [the plan] which most clearly approximated the reapportionment plan of the state legislature, while satisfying constitutional requirements"); *Upham v. Seamon*, *supra*, at 42-43. Significantly, it was irrelevant to our analysis that the last state plan formally adopted to implement those policy judgments had itself been declared unconstitutional. See 412 U. S., at 796 ("even if the districts in [the plan chosen by

the lower court] can be called more compact, the District Court's preferences do not override whatever state goals were embodied in [the unconstitutional plan]”).

Application of these principles to the situation presented by this stay application is relatively straightforward. Given the status of New Jersey's redistricting after the 1980 census, the last formal declaration of the State's policy preferences in congressional reapportionment is contained in the Feldman Plan that we declared unconstitutional last Term. Once the constitutional infirmity in that plan—the unjustified numerical inequality between congressional districts—is remedied, the District Court must choose the alternative plan that remains most faithful to those state policies. We have never concluded, nor in my view should we conclude, that the existence of noncompact or gerrymandered districts is by itself a constitutional violation.² Cf. *Gaffney v. Cummings*, 412 U. S. 735, 752–754, and n. 18 (1973). Therefore, absent unconstitutional population variances, or other findings of unconstitutionality such as discrimination on racial or religious lines, the District Court should implement the alternative plan that is most faithful to the districts included in the most recent plan enacted by the State.³

²Thus, the factors we noted in *Karcher v. Daggett*, 462 U. S., at 740 (“making districts compact, respecting municipal boundaries, preserving the cores of prior districts, and avoiding contests between incumbent Representatives”), should be considered only to the extent that a State might rely on them to justify population variances between districts. Indeed, nothing in our opinion last Term was intended to suggest that these factors would necessarily be relevant to the constitutionality of a State's congressional reapportionment plan in the absence of numerical inequalities that themselves violate the Constitution. If only for this reason, the District Court committed legal error when it adopted these factors as its selection criteria for choosing among alternative remedial plans. Cf. *supra*, at 914–915.

³Hence the District Court also erred when it tried to distinguish this case from *White v. Weiser*, 412 U. S. 783 (1973), on the ground that “[t]he policy dispute in *White v. Weiser* among the competing plans was over the district court's rejection of a state policy of avoiding contests among incumbents,” whereas in this case the Feldman Plan was “designed to produce contests among certain Republican incumbents.” 580 F. Supp., at 1263. As I have noted, n. 2, *supra*, our finding last Term that the Feldman Plan violated Art. I, § 2, of the Constitution was premised on the population disparities found among its districts, and was not intended to suggest that we would reject any of the partisan advantages that may have resulted if the plan were implemented.

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In this case, it is clear that the Senate Plan corrects the constitutional violation we found last Term by reducing the numerical inequality to a maximum deviation between districts of 67 people. Cf. *Karcher v. Daggett*, 462 U. S., at 739-740, n. 10; *Simon v. Davis*, 463 U. S. 1219 (1983), summarily aff'g *In re Pennsylvania Congressional Districts Reapportionment Cases*, 567 F. Supp. 1507 (MD Pa. 1982). Moreover, the District Court found, and all parties agree, that the geographical boundaries included in the Senate Plan are closer than those of any alternative plan to the boundaries contained in the unconstitutional Feldman Plan. See 580 F. Supp., at 1262 (the Senate Plan had districts that were "virtually identical" to the districts included in the Feldman Plan); *id.*, at 1264 (districts in another plan were "considerably more compact than those in the Feldman Plan, and thus also more compact than those in [the] Senate [Plan]"). See also Letter from State Attorney General to District Court, p. 1 (Mar. 9, 1984) ("It is quite true . . . that all the parties agree that [the Senate Plan is closer to the Feldman Plan] than any of the proposed alternatives"). Indeed, the Senate Plan would require less than 10% of New Jersey's residents to change their congressional districts from the 1982 election conducted under the Feldman Plan, whereas the Forsythe Plan adopted by the District Court will require that 31.7% of the State's residents change districts. Under these circumstances, I believe the District Court erred when it adopted the Forsythe Plan under the mistaken belief that it "owe[d] no deference to an unconstitutional state statute." 580 F. Supp., at 1263.

Accordingly, I would grant the application for a stay. Moreover, given the imminence of New Jersey's primary elections, I would remand the case to the three-judge District Court for implementation of the Senate Plan, absent any finding that the Senate Plan, on its own terms, is unconstitutional.

No. A-786. O'BRYAN *v.* MCKASKLE, ACTING DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS; and

No. A-787. O'BRYAN *v.* MCKASKLE, ACTING DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS. Applications for stay of execution of sentence of death, presented to JUSTICE WHITE, and by him referred to the Court, denied. JUSTICE BRENNAN and JUSTICE MARSHALL would grant the applications.

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No. A-791. O'BRYAN *v.* HECKLER, SECRETARY OF HEALTH AND HUMAN SERVICES. Application for emergency relief, with respect to the order of the Court of Appeals for the District of Columbia Circuit, dated this day, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied. JUSTICE BRENNAN and JUSTICE MARSHALL would grant the application.

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Affirmed on Appeal. (See Nos. 83-812 and 83-929, *infra.*)

Appeals Dismissed

No. 83-1323. COX ET AL. *v.* LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT ET AL. Appeal from Sup. Ct. Ky. dismissed for want of substantial federal question. Reported below: 659 S. W. 2d 190.

No. 83-1387. HOLT *v.* COUNTY OF TIOGA, NEW YORK. Appeal from Ct. App. N. Y. dismissed for want of substantial federal question. Reported below: 60 N. Y. 2d 560, 459 N. E. 2d 195.

No. 83-1335. KONIG *v.* ABBOTT. Appeal from App. Dept., Super. Ct. Cal., County of Los Angeles, dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 83-1352. BISCHOFF ET AL. *v.* CITY OF AUSTIN. Appeal from Ct. App. Tex., 3d Sup. Jud. Dist., dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 656 S. W. 2d 209.

No. 83-6264. CHAPMAN *v.* MICHIGAN NATIONAL BANK OF DETROIT. Appeal from D. C. E. D. Mich. 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

No. 82-1787. BUCKINGHAM CORP. *v.* ODOM CORP., DBA ARIZONA DISTRIBUTING Co. C. A. 9th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Monsanto Co. v. Spray-Rite Service Corp.*, 465 U. S. 752 (1984). Reported below: 703 F. 2d 573.

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No. 82-2061. NATIONAL LABOR RELATIONS BOARD *v.* ROADWAY EXPRESS, INC. C. A. 11th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *NLRB v. City Disposal Systems, Inc.*, 465 U. S. 822 (1984). Reported below: 700 F. 2d 687.

Miscellaneous Orders

No. — — —. CUYLER, SUPERINTENDENT, GRATERFORD PRISON *v.* SULLIVAN. Motion to direct the Clerk to file a petition for writ of certiorari with an appendix that does not comply with the Rules of this Court denied.

No. — — —. WARDELL *v.* HOLLER ET AL. Motion to direct the Clerk to file a petition for writ of certiorari that does not comply with the Rules of this Court and is out of time denied.

No. — — —. GAULMON *v.* UNITED STATES. Motion for leave to proceed *in forma pauperis* without filing an affidavit of indigency required by Rule 46 of the Rules of this Court denied.

No. A-709. L. C. *v.* FLORIDA DEPARTMENT OF HEALTH AND REHABILITATIVE SERVICES. Dist. Ct. App. Fla., 2d Dist. Application for stay, addressed to JUSTICE BLACKMUN and referred to the Court, denied.

No. A-739. PORTER *v.* UNITED STATES. Application for bail, addressed to JUSTICE MARSHALL and referred to the Court, denied.

No. A-766. MISSISSIPPI REPUBLICAN EXECUTIVE COMMITTEE *v.* BROOKS ET AL. D. C. N. D. Miss. Application for stay pending appeal, addressed to JUSTICE STEVENS and referred to the Court, denied.

No. A-772 (83-6453). PARKS *v.* OKLAHOMA. Ct. Crim. App. Okla. Application for stay of execution of sentence of death set for April 13, 1984, presented to JUSTICE WHITE, and by him referred to the Court, is granted pending final disposition of the petition for writ of certiorari.

No. A-773 (83-6125). STAFFORD *v.* OKLAHOMA. Ct. Crim. App. Okla. Application for stay of execution of sentence of death set for April 3, 1984, presented to JUSTICE WHITE, and by him referred to the Court, is granted pending final disposition of the petition for writ of certiorari.

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No. D-416. IN RE DISBARMENT OF ROUNDTREE. It is ordered that Dovey J. Roundtree, of Washington, D. C., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring her to show cause why she should not be disbarred from the practice of law in this Court.

No. D-417. IN RE DISBARMENT OF FRIEDLAND. It is ordered that Jacob Friedland, of Jersey City, 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. 86, Orig. LOUISIANA *v.* MISSISSIPPI ET AL. Application of the Special Master for compensation in the amount of \$64,829.50 is hereby granted. One-half of this amount shall be paid to the Special Master by the plaintiff and one-half by the defendants. [For earlier order herein, see, *e. g.*, 464 U. S. 888.]

CHIEF JUSTICE BURGER, dissenting in part.

The Special Master has applied for \$64,829.50 covering fees for himself and six persons who assisted him, only two of whom were lawyers. The total amount requested can be broken down as follows:

Special Master	143.6 hrs. @ \$200	\$28,720.00
Mr. Witt		
(assoc. 4 yrs. +)	240.9 hrs. @ 125	30,112.50
Mr. Amber		
(1st yr. assoc.)	11.6 hrs. @ 70	812.00
Others		
(summer law clerks)	103.7 hrs. @ 50	<u>5,185.00</u>
		<u>\$64,829.50</u>

A Special Master of this Court is a surrogate of the Court and in that sense the service performed is an important public duty of high order in much the same way as is serving in the Judiciary. I do not suggest that Special Masters should serve without compensation, as for example, Senior Federal Judges have done for a number of years in such cases, but I believe the public service aspect of the appointment is a factor that is not to be wholly ignored in determining the reasonableness of fees charged in a case like this.

The parties apparently agreed with the Special Master as to a rate of \$200 per hour for his services; hence no question as to his charge is before the Court. The private defendants and Mississippi have questioned the rates at which the two lawyer associates, and the four nonlawyer assistants were billed, and the total number of hours charged for their services. Mississippi, for example, stated that it has "no objection to the allowance and payment of such fees as this Honorable Court may find equitable . . . taking into consideration the three-day trial and the fact that the legal principles involved in this case have long since been settled by prior decisions of this Court."

I question:

- (1) the \$125-per-hour charge for assistance of a four-year associate;
- (2) the \$70-per-hour charge for a one-year associate; and
- (3) the \$50-per-hour charge for a "summer law clerk."

I assume that the latter is a law student working under the supervision of a member of the Bar. In my view, there is no basis to charge \$50 per hour for a student assistant; it is obviously far more than such a student would be paid.

The associate lawyers, unburdened by the managerial or administrative aspects of group law practice, as partners in a large firm often are, should record 1,600 to 2,000 billable hours a year. At the rates charged here for the "four-year" lawyer, taking the mean figure, 1,800 hours at \$125 per hour would total \$225,000. There is no evidence before us to justify the rate charged. On the same basis, *i. e.*, \$70 per hour, the total for the one-year associate, would be \$126,000.

I am not unaware of the heavy overhead expenses of a modern law firm: office rental, support staff salaries, computer and other equipment, libraries, insurance, all burden the gross income from the firm's practice. In my view, however, even given these expenses, the rates charged for these associates, absent proof, do not appear to be reasonable.

Absent supporting evidence, there may well be questions as to the total number of hours necessarily devoted to this case by the "associates" and the summer law clerks. I do not doubt that those hours were spent, but the need for them is challenged by the States and possibly some supporting evidence is called for.

More than \$5,000 is requested for 100 hours of work by four student clerks. The record shows that almost 60 hours were spent

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by one law clerk researching a motion to intervene; this appears to me to be excessive. It might take a law student that long to understand fully all the problems associated with intervention, but it is not reasonable for the client to be charged that price for this sort of research which, in a sense, is education of the student involved.

The fees and expenses charged by a Special Master when allowed by this Court, represent our assurance to the parties that the charges are reasonable and proper. In light of the obvious concern that the defendants have over the fees and hours, and my own reservations about the rates charged for the hours logged by the staff assistants, I am unwilling to have the record show, *sub silentio*, that I approve all of these charges.

I emphasize that I have no question about the professional quality of the Special Master's services but absent evidence, I cannot approve rates charge for staff assistants which I consider to be excessive.

JUSTICE BLACKMUN dissents. He would allow the Special Master a total fee of \$40,000.

No. 83-558. IRVING INDEPENDENT SCHOOL DISTRICT *v.* TATRO ET UX., INDIVIDUALLY, AND AS NEXT FRIENDS OF TATRO, A MINOR. C. A. 5th Cir. [Certiorari granted, 464 U. S. 1007.] Motions of New York State Commission on the Quality of Care for the Mentally Disabled, Protection and Advocacy System; Association for Persons With Severe Handicaps et al.; and New Jersey Department of the Public Advocate for leave to file briefs as *amici curiae* granted.

No. 83-710. BERKEMER, SHERIFF OF FRANKLIN COUNTY, OHIO *v.* MCCARTY. C. A. 6th Cir. [Certiorari granted, 464 U. S. 1038.] Motion of respondent for divided argument denied.

No. 83-751. SECURITIES AND EXCHANGE COMMISSION ET AL. *v.* JERRY T. O'BRIEN, INC., ET AL. C. A. 9th Cir. [Certiorari granted, 464 U. S. 1038.] Motion of respondents for divided argument denied.

No. 83-1096. GOMEZ-HERMANOS, INC. *v.* SECRETARY OF THE TREASURY OF PUERTO RICO. Appeal from Sup. Ct. P. R. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 83-1526. KARCHER, SPEAKER, NEW JERSEY ASSEMBLY, ET AL. *v.* DAGGETT ET AL. Appeal from D. C. N. J. Motion of

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appellants to expedite consideration of the statement as to jurisdiction denied.

No. 83-6229. *IN RE MUELLER*. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until April 23, 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 and JUSTICE MARSHALL, dissenting.

For the reasons expressed in *Brown v. Herald Co.*, 464 U. S. 928 (1983), we would deny the petition for writ of mandamus without reaching the merits of the motion to proceed *in forma pauperis*.

No. 83-1395. *IN RE RAINERI*. Petition for writ of habeas corpus denied.

Probable Jurisdiction Noted

No. 83-812. *WALLACE, GOVERNOR OF ALABAMA, ET AL. v. JAFFREE ET AL.*; and

No. 83-929. *SMITH ET AL. v. JAFFREE ET AL.* Appeals from C. A. 11th Cir. Probable jurisdiction noted limited to Question 1 in the jurisdictional statements, cases consolidated, and a total of one hour allotted for oral argument. The judgment with respect to the other issues presented by the appeals is affirmed. Reported below: 705 F. 2d 1526 and 713 F. 2d 614.

JUSTICE STEVENS, concurring.

In their amended complaint in this litigation, appellees sought (1) a judgment holding three statutory provisions, Ala. Code §§ 16-1-20, 16-1-20.1, 16-1-20.2 (Supp. 1983), and certain allegedly state-sanctioned, though not statutorily sanctioned, school prayer practices invalid under the Establishment Clause of the First Amendment, applicable to the States under the Fourteenth Amendment, and (2) an injunction against the enforcement of these statutory provisions and nonstatutory practices. The District Court dismissed the amended complaint. 554 F. Supp. 1104 (SD Ala. 1983). The Court of Appeals reversed the District Court's judgment in relevant part. 705 F. 2d 1526 (CA11 1983). It held the challenged statutory provisions and nonstatutory practices unconstitutional and ordered the District Court to enter an injunction. Appellants

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invoke this Court's appellate jurisdiction under 28 U. S. C. § 1254(2) regarding the Court of Appeals' judgments on the statutory provisions.

As I understand it, the order this Court enters today is a holding that Ala. Code § 16-1-20.2 (Supp. 1983) is invalid as repugnant to the Establishment Clause of the First Amendment, applicable to the States under the Fourteenth Amendment. Moreover, the Court's order also affirms the judgment of the Court of Appeals insofar as it directed the District Court to enjoin the appellants from enforcing § 16-1-20.2. The judgment of the Court of Appeals concerning the nonstatutory school prayer practices is not within the appellate jurisdiction of this Court and is challenged in a petition for a writ of certiorari in *Board of School Comm'rs of Mobile County v. Jaffree*, No. 83-804. The Court denies that petition, *post*, p. 926.

The Court's order noting probable jurisdiction is thus limited to the judgment of the Court of Appeals concerning the constitutionality of § 16-1-20.1. Appellants frame the constitutional questions presented by that provision as follows:

"Whether a state statute which permits, but does not require, teachers in public schools to observe up to a minute of non-activity for meditation or silent prayer has the predominant effect of advancing students' liberty of religion and of mind rather than any effect of establishing a religion." Juris. Statement in No. 83-812, p. i.

"Does a moment of silence for individual silent 'prayer or meditation' at the beginning of each school day in a public school classroom violate the Establishment Clause of the First Amendment as interpreted by its language, framers' intent, and history?" Juris. Statement in No. 83-929, p. i.

On the understanding that the Court has limited argument to the question whether § 16-1-20.1 is invalid as repugnant to the Establishment Clause, applicable to the States under the Fourteenth Amendment, I join the Court's order.

Certiorari Granted

No. 83-1007. TIFFANY FINE ARTS, INC., ET AL. *v.* UNITED STATES ET AL. C. A. 2d Cir. Certiorari granted. Reported below: 718 F. 2d 7.

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No. 83-1325. AIR LINE PILOTS ASSN., INTERNATIONAL *v.* THURSTON ET AL. C. A. 2d Cir. Certiorari granted, case consolidated with No. 83-997, *Trans World Airlines, Inc. v. Thurston* [certiorari granted, 465 U. S. 1065], and a total of one hour allotted for oral argument. Reported below: 713 F. 2d 940.

No. 83-1045. UNITED STATES DEPARTMENT OF JUSTICE ET AL. *v.* PROVENZANO. C. A. 3d Cir.; and

No. 83-5878. SHAPIRO ET AL. *v.* DRUG ENFORCEMENT ADMINISTRATION. C. A. 7th Cir. Motion of petitioners in No. 83-5878 for leave to proceed *in forma pauperis* granted. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. Reported below: No. 83-1045, 717 F. 2d 799; No. 83-5878, 721 F. 2d 215.

No. 83-6061. GARCIA ET AL. *v.* UNITED STATES. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 718 F. 2d 1528.

Certiorari Denied. (See also Nos. 83-1335, 83-1352, and 83-6264, *supra.*)

No. 82-1909. NATIONAL LABOR RELATIONS BOARD *v.* SCOOPA MANUFACTURING Co. C. A. 5th Cir. Certiorari denied. Reported below: 694 F. 2d 82.

No. 83-395. DENBERG ET AL. *v.* UNITED STATES RAILROAD RETIREMENT BOARD ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 696 F. 2d 1193.

No. 83-412. ROESCH, INC., ET AL. *v.* STAR COOLER CORP. ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 712 F. 2d 1235.

No. 83-610. BABBITT FORD, INC. *v.* NAVAJO INDIAN TRIBE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 710 F. 2d 587.

No. 83-804. BOARD OF SCHOOL COMMISSIONERS OF MOBILE COUNTY, ALABAMA, ET AL. *v.* JAFFREE ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 705 F. 2d 1526 and 713 F. 2d 614.

No. 83-915. BROOKINS ET AL. *v.* SOUTH BEND COMMUNITY SCHOOL CORP. ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 710 F. 2d 394.

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No. 83-943. *AMERICAN TRUCKING ASSNS., INC., ET AL. v. UNITED STATES ET AL.*;

No. 83-1030. *RYDER/PIE NATIONWIDE, INC. v. UNITED STATES ET AL.*; and

No. 83-1119. *NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS v. UNITED STATES ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 716 F. 2d 1369.

No. 83-946. *KEENE ET AL. v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 710 F. 2d 838.

No. 83-954. *CONFERENCE OF STATE BANK SUPERVISORS ET AL. v. CONOVER, COMPTROLLER OF THE CURRENCY OF THE UNITED STATES.* C. A. D. C. Cir. Certiorari denied. Reported below: 230 U. S. App. D. C. 130, 715 F. 2d 604.

No. 83-1000. *J. D. COURT, INC. v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 712 F. 2d 258.

No. 83-1014. *BLUMENTHAL v. ILLINOIS.* App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 114 Ill. App. 3d 1160, 459 N. E. 2d 703.

No. 83-1090. *PAINTERS & DECORATORS JOINT COMMITTEE EAST BAY COUNTIES, INC. v. PAINTING & DECORATING CONTRACTORS ASSOCIATION OF SACRAMENTO, INC.* C. A. 9th Cir. Certiorari denied. Reported below: 707 F. 2d 1067 and 717 F. 2d 1293.

No. 83-1091. *CAPACI v. KATZ & BESTHOFF, INC., ET AL.*; and

No. 83-1094. *KATZ & BESTHOFF, INC. v. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 711 F. 2d 647.

No. 83-1121. *GRAY v. COMMISSIONER OF INTERNAL REVENUE.* C. A. 6th Cir. Certiorari denied. Reported below: 708 F. 2d 243.

No. 83-1134. *LURCH v. UNITED STATES ET AL.* C. A. 10th Cir. Certiorari denied. Reported below: 719 F. 2d 333.

No. 83-1209. *ANGORA ENTERPRISES, INC., ET AL. v. COLE ET AL.* Sup. Ct. Fla. Certiorari denied. Reported below: 439 So. 2d 832.

No. 83-1294. *AMERICAN MOTORS CORP. ET AL. v. LORD, JUDGE, UNITED STATES DISTRICT COURT FOR THE EASTERN*

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DISTRICT OF PENNSYLVANIA (two cases). C. A. 3d Cir. Certiorari denied.

No. 83-1304. PAUL *v.* HALEY ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 742 F. 2d 1433.

No. 83-1314. GALVIN *v.* HERITAGE FIRST NATIONAL BANK OF LOCKPORT, ILLINOIS, EXECUTOR OF THE ESTATE OF GRABOW, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 723 F. 2d 913.

No. 83-1322. O'BANNON *v.* AZAR. Ct. App. La., 4th Cir. Certiorari denied. Reported below: 435 So. 2d 1144.

No. 83-1328. MOORE *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 441 So. 2d 1003.

No. 83-1331. PINE ET AL. *v.* CREDITRIFT OF AMERICA, INC. C. A. 6th Cir. Certiorari denied. Reported below: 717 F. 2d 281.

No. 83-1333. AMERICAN DREDGING Co. *v.* BERKLEY CURTIS BAY Co., INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 742 F. 2d 1431.

No. 83-1344. INGRAM MANUFACTURING Co. *v.* INTERNATIONAL UNION OF ELECTRICAL, RADIO & MACHINE WORKERS, AFL-CIO-CLC, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 715 F. 2d 886.

No. 83-1347. UNIGARD INSURANCE Co. *v.* FORMICA CORP. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 718 F. 2d 1112.

No. 83-1348. COUNTY OF ST. LOUIS, MINNESOTA, ET AL. *v.* FEDERAL LAND BANK OF ST. PAUL. Sup. Ct. Minn. Certiorari denied. Reported below: 338 N. W. 2d 741.

No. 83-1349. MAGNISEA FISHERIES, INC. *v.* OREGON OYSTER Co. C. A. 9th Cir. Certiorari denied. Reported below: 722 F. 2d 746.

No. 83-1359. LANDFRIED ET AL. *v.* TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS. C. A. 8th Cir. Certiorari denied. Reported below: 721 F. 2d 254.

No. 83-1361. UNITED HOME RENTALS, INC., ET AL. *v.* TEXAS REAL ESTATE COMMISSION ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 716 F. 2d 324.

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No. 83-1383. *KRIEG v. PAUL REVERE LIFE INSURANCE CO.* C. A. 11th Cir. Certiorari denied. Reported below: 718 F. 2d 998.

No. 83-1462. *INTERNATIONAL FIDELITY INSURANCE CO. v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 719 F. 2d 110.

No. 83-1471. *WIRTZ, TRUSTEE, ET AL. v. NORRIS.* C. A. 7th Cir. Certiorari denied. Reported below: 719 F. 2d 256.

No. 83-5671. *JACKSON v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 720 F. 2d 663.

No. 83-5761. *DAVIS v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 714 F. 2d 134.

No. 83-5831. *SOBERAL-PEREZ ET AL. v. HECKLER, SECRETARY OF HEALTH AND HUMAN SERVICES.* C. A. 2d Cir. Certiorari denied. Reported below: 717 F. 2d 36.

No. 83-5870. *DAWSON v. SMITH, ATTORNEY GENERAL OF THE UNITED STATES, ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 720 F. 2d 681.

No. 83-5913. *ETLIN ET AL. v. HORAN, COMMONWEALTH'S ATTORNEY.* Sup. Ct. Va. Certiorari denied.

No. 83-5928. *SEIFUDDIN v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 716 F. 2d 911.

No. 83-5941. *COX v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 719 F. 2d 285.

No. 83-5974. *JONES v. ISRAEL, SUPERINTENDENT, WAUPUN CORRECTIONAL INSTITUTION, ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 723 F. 2d 67.

No. 83-6041. *RUSSOTTO v. SMITH, SUPERINTENDENT, ATTICA CORRECTIONAL FACILITY.* C. A. 2d Cir. Certiorari denied. Reported below: 742 F. 2d 1440.

No. 83-6214. *BROOKS v. ALFORD, WARDEN, ET AL.* C. A. 10th Cir. Certiorari denied.

No. 83-6232. *RUSH v. SPEARS, WARDEN, ET AL.* C. A. 11th Cir. Certiorari denied.

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No. 83-6234. *SANABRIA v. ZIMMERMAN, WARDEN*. C. A. 3d Cir. Certiorari denied. Reported below: 725 F. 2d 670.

No. 83-6242. *KIZZIAR v. MCKASKLE, ACTING DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS*. Ct. Crim. App. Tex. Certiorari denied.

No. 83-6245. *HOWARD v. WYRICK, WARDEN*. C. A. 8th Cir. Certiorari denied. Reported below: 720 F. 2d 993.

No. 83-6246. *CANNON v. DEPARTMENT OF ELECTIONS FOR NEW CASTLE COUNTY ET AL.* C. A. 3d Cir. Certiorari denied.

No. 83-6250. *WADSWORTH v. ALABAMA*. Sup. Ct. Ala. Certiorari denied.

No. 83-6253. *STORMS v. COOKE ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 742 F. 2d 1441.

No. 83-6257. *WAITS v. CARTER ET AL.* C. A. 10th Cir. Certiorari denied.

No. 83-6262. *BROWN v. MCKASKLE, ACTING DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS, ET AL.* C. A. 5th Cir. Certiorari denied.

No. 83-6273. *TARKOWSKI v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 718 F. 2d 1102.

No. 83-6280. *FULTON v. HECKLER, SECRETARY OF HEALTH AND HUMAN SERVICES*. C. A. 5th Cir. Certiorari denied. Reported below: 724 F. 2d 128.

No. 83-6290. *KIRK v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 723 F. 2d 1379.

No. 83-6311. *APONTE v. HECKLER, SECRETARY OF HEALTH AND HUMAN SERVICES*. C. A. 4th Cir. Certiorari denied.

No. 83-6331. *MINOR v. VETERANS ADMINISTRATION ET AL.* C. A. 9th Cir. Certiorari denied.

No. 83-6332. *SCHRAMM v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 715 F. 2d 1253.

No. 83-6357. *WAGONER v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 723 F. 2d 904.

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No. 83-6359. *FIELDS v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 722 F. 2d 549.

No. 83-6365. *MCKOY v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied. Reported below: 233 U. S. App. D. C. 167, 725 F. 2d 126.

No. 83-6372. *DI SILVESTRO v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 742 F. 2d 1436.

No. 83-6376. *LOPEZ-SALAZAR v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 730 F. 2d 771.

No. 82-848. *SERVICE MERCHANDISE CO., INC. v. AMANA REFRIGERATION, INC., ET AL.* C. A. 6th Cir. Certiorari denied. JUSTICE WHITE took no part in the consideration or decision of this petition. Reported below: 686 F. 2d 1190.

No. 83-431. *BATTLE ET AL. v. LUBRIZOL CORP. ET AL.* C. A. 8th Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 712 F. 2d 1238.

No. 83-1327. *CHERRY ET AL. v. STEINER ET AL.* C. A. 9th Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 716 F. 2d 687.

No. 83-1301. *MILGO ELECTRONIC CORP. v. CODEX CORP. ET AL.* C. A. 1st Cir. Motion of Jackson, Jones & Price for leave to file a brief as *amicus curiae* out of time denied. Certiorari denied. Reported below: 717 F. 2d 622.

No. 83-1316. *FLORIDA v. BURWICK*. Sup. Ct. Fla. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 442 So. 2d 944.

No. 83-6258. *SAWYER v. LOUISIANA*. Sup. Ct. La. Certiorari denied. Reported below: 442 So. 2d 1136.

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.

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Rehearing Denied

- No. 83-5549. *CANTRELL v. FLORIDA*, 464 U. S. 1047;
No. 83-5783. *SIMPSON v. ISRINGHAUSEN*, 464 U. S. 1072;
No. 83-5799. *RUSSELL v. TEXAS*, 465 U. S. 1073;
No. 83-5872. *GATES v. HECKLER, SECRETARY OF HEALTH AND HUMAN SERVICES*, 465 U. S. 1031;
No. 83-5975. *SENTI v. SHARMA ET AL.*, 465 U. S. 1034; and
No. 83-6018. *WHITE v. TOPPITZER*, 465 U. S. 1035. Petitions for rehearing denied.

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Dismissal Under Rule 53

- No. 83-6138. *FLASMAN v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 7th Cir. Certiorari dismissed under this Court's Rule 53. Reported below: 723 F. 2d 913.

Certiorari Denied

- No. 83-6532 (A-803). *GOODE v. WAINWRIGHT, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS*. Sup. Ct. Fla. Application for stay of execution of sentence of death, presented to JUSTICE POWELL, and by him referred to the Court, denied. Certiorari denied. JUSTICE REHNQUIST took no part in the consideration or decision of this application and petition. Reported below: 448 So. 2d 999.

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, grant certiorari, and vacate the death sentence in this case.

- No. 83-6533 (A-804). *SONNIER v. MAGGIO, WARDEN*. C. A. 5th Cir. Application for stay of execution of sentence of death, presented to JUSTICE WHITE, and by him referred to the Court, denied. Certiorari denied. JUSTICE REHNQUIST took no part in the consideration or decision of this application and petition.

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

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and Fourteenth Amendments, *Gregg v. Georgia*, 428 U. S. 153, 227, 231 (1976), we would grant the application for stay, grant certiorari, and vacate the death sentence in this case.

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Affirmed on Appeal

No. 83-1422. CITY OF PLEASANTON ET AL. *v.* SMITH ET AL. Affirmed on appeal from D. C. W. D. Tex.

Appeals Dismissed

No. 83-985. SOUTHERN PACIFIC TRANSPORTATION CO. *v.* PUBLIC UTILITIES COMMISSION OF CALIFORNIA ET AL.; and SOUTHERN PACIFIC TRANSPORTATION CO. ET AL. *v.* PUBLIC UTILITIES COMMISSION OF CALIFORNIA ET AL. Appeals from Sup. Ct. Cal. dismissed for want of substantial federal question.

No. 83-1251. NATIONAL LIBERTY LIFE INSURANCE CO. *v.* STATE BOARD OF EQUALIZATION; and

No. 83-1264. ILLINOIS COMMERCIAL MEN'S ASSN. *v.* STATE BOARD OF EQUALIZATION. Appeals from Sup. Ct. Cal. dismissed for want of substantial federal question. Reported below: 34 Cal. 3d 839, 671 P. 2d 349.

No. 83-1397. MINNEAPOLIS POLICE RELIEF ASSN. ET AL. *v.* SUNDQUIST, COMMISSIONER OF EMPLOYEE RELATIONS OF MINNESOTA, ET AL. Appeal from Sup. Ct. Minn. dismissed for want of substantial federal question. Reported below: 338 N. W. 2d 560.

No. 83-1472. HORNE *v.* CHAFIN ET AL. Appeal from Sup. Ct. N. C. dismissed for want of substantial federal question. Reported below: 309 N. C. 813, 309 S. E. 2d 239.

No. 83-1371. PERATI *v.* CUTTER. Appeal from Ct. App. Cal., 1st 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. 83-1409. BERGEN PINES COUNTY HOSPITAL *v.* NEW JERSEY DEPARTMENT OF HUMAN SERVICES 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.

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No. 83-1423. *POINTON v. DONOVAN, SECRETARY OF LABOR*. Appeal from C. A. 10th 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: 717 F. 2d 1320.

No. 83-6297. *UNDERWOOD v. OHIO*. Appeal from Ct. App. Ohio, Franklin County, 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. (See No. 83-181, *ante*, p. 147.)

Certiorari Dismissed

No. 83-6268. *HORINE v. OREGON*. Ct. App. Ore. Certiorari dismissed for want of a final judgment. Reported below: 64 Ore. App. 532, 669 P. 2d 797.

Miscellaneous Orders

No. ———. *EUBANK v. LEE LUMBER CO., LTD., ET AL.*;

No. ———. *GIVENS ET AL. v. UNITED STATES RAILROAD RETIREMENT BOARD*;

No. ———. *LIBERTARIAN PARTY OF LOUISIANA v. BROWN, SECRETARY OF STATE OF LOUISIANA, ET AL.*;

No. ———. *M. W. ZACK METAL CO. v. SUPREME COURT OF NEW YORK, COUNTY OF NEW YORK, ET AL.*; and

No. ———. *SANDUSKY REAL ESTATE, INC., DBA REAL ESTATE ONE, ET AL. v. McDONALD ET UX*. Motions to direct the Clerk to file petitions for writs of certiorari that do not comply with the Rules of this Court denied.

No. ———. *TALAMINI, ADMINISTRATRIX OF THE ESTATE OF TALAMINI v. ALLSTATE INSURANCE CO*. Motion to direct the Clerk to file a jurisdictional statement that does not comply with the Rules of this Court denied.

No. ———. *CUTHBERTSON ET AL. v. BIGGERS BROTHERS, INC*. Motion to direct the Clerk to file a petition for writ of certiorari out of time denied.

No. A-790. *POLIN ET UX. v. JEWS FOR JESUS ET AL*. Sup. Ct. Okla. Application for stay of mandate, addressed to THE CHIEF JUSTICE and referred to the Court, denied.

No. D-418. *IN RE DISBARMENT OF ANDERSON*. It is ordered that Floyd Witherspoon Anderson, of Washington, D. C., be sus-

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pending 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. 82-2113. RICHARDSON *v.* UNITED STATES. C. A. D. C. Cir. [Certiorari granted, 464 U. S. 890.] Motion of petitioner for leave to file a supplemental brief after argument granted.

No. 83-614. SECURITIES INDUSTRY ASSN. *v.* BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM ET AL. C. A. 2d Cir. [Certiorari granted, 465 U. S. 1004.] Motion of Legal Foundation of America for leave to file a brief as *amicus curiae* granted.

No. 83-1368. NORTHWEST WHOLESALE STATIONERS, INC. *v.* PACIFIC STATIONERY & PRINTING CO. C. A. 9th Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 83-1378. KAVANAUGH, SUPERINTENDENT, BLACKBURN CORRECTIONAL COMPLEX, ET AL. *v.* LUCEY. C. A. 6th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted.

Probable Jurisdiction Noted

No. 83-1274. METROPOLITAN LIFE INSURANCE CO. ET AL. *v.* WARD ET AL. Appeal from Sup. Ct. Ala. Probable jurisdiction noted. Reported below: 447 So. 2d 142.

No. 83-1032. FEDERAL ELECTION COMMISSION *v.* NATIONAL CONSERVATIVE POLITICAL ACTION COMMITTEE ET AL.; and

No. 83-1122. DEMOCRATIC PARTY OF THE UNITED STATES ET AL. *v.* NATIONAL CONSERVATIVE POLITICAL ACTION COMMITTEE ET AL. Appeals from D. C. E. D. Pa. Motion of Gulf & Great Plains Legal Foundation et al. for leave to file a brief as *amici curiae* granted. Probable jurisdiction noted, cases consolidated, and a total of one hour allotted for oral argument. Reported below: 578 F. Supp. 797.

Certiorari Granted

No. 83-1334. WINSTON, SHERIFF, ET AL. *v.* LEE. C. A. 4th Cir. Certiorari granted. Reported below: 717 F. 2d 888.

No. 83-1360. WEBB *v.* COUNTY BOARD OF EDUCATION OF DYER COUNTY, TENNESSEE, ET AL. C. A. 6th Cir. Certiorari granted. Reported below: 715 F. 2d 254.

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Certiorari Denied. (See also Nos. 83-1371, 83-1409, 83-1423, and 83-6297, *supra*.)

No. 82-837. *ARTHUR YOUNG & CO. v. UNITED STATES ET AL.* C. A. 2d Cir. *Certiorari denied.* Reported below: 677 F. 2d 211.

No. 83-401. *A. E. STALEY MANUFACTURING CO. v. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.* C. A. 7th Cir. *Certiorari denied.* Reported below: 711 F. 2d 780.

No. 83-625. *GRIFFIN, MAYOR OF BUFFALO, ET AL. v. BOARD OF EDUCATION OF THE CITY OF BUFFALO, NEW YORK, ET AL.* C. A. 2d Cir. *Certiorari denied.* Reported below: 712 F. 2d 809.

No. 83-663. *NEW YORK ET AL. v. UNITED STATES ET AL.* C. A. 2d Cir. *Certiorari denied.* Reported below: 708 F. 2d 92.

No. 83-874. *POE v. UNITED STATES.* C. A. 10th Cir. *Certiorari denied.* Reported below: 713 F. 2d 579.

No. 83-960. *GALAHAD v. WEINSHIENK, JUDGE, UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO, ET AL.* C. A. 10th Cir. *Certiorari denied.*

No. 83-981. *SPENCER ET AL. v. NATIONAL LABOR RELATIONS BOARD.* C. A. D. C. Cir. *Certiorari denied.* Reported below: 229 U. S. App. D. C. 225, 712 F. 2d 539.

No. 83-984. *V. N. A. OF GREATER TIFT COUNTY, INC. v. HECKLER, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL.* C. A. 11th Cir. *Certiorari denied.* Reported below: 711 F. 2d 1020.

No. 83-998. *FOLEY CONSTRUCTION Co. v. U. S. ARMY CORPS OF ENGINEERS ET AL.* C. A. 8th Cir. *Certiorari denied.* Reported below: 716 F. 2d 1202.

No. 83-1040. *SEABOARD SYSTEM RAILROAD, INC., ET AL. v. DONOVAN, SECRETARY OF LABOR, ET AL.* C. A. 6th Cir. *Certiorari denied.* Reported below: 713 F. 2d 1243.

No. 83-1053. *SOUTHERN PACIFIC TRANSPORTATION Co. v. PUBLIC UTILITIES COMMISSION OF CALIFORNIA ET AL.* C. A. 9th Cir. *Certiorari denied.* Reported below: 716 F. 2d 1285.

No. 83-1068. *SPENCER ET AL. v. LOGAN.* C. A. 5th Cir. *Certiorari denied.* Reported below: 711 F. 2d 690.

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No. 83-1145. *SINGER v. GATES, SHERIFF-CORONER, COUNTY OF ORANGE, ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 716 F. 2d 733.

No. 83-1148. *VITTORIO v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 714 F. 2d 157.

No. 83-1178. *AMERICAN AIR PARCEL FORWARDING CO., LTD., ET AL. v. UNITED STATES ET AL.* C. A. Fed. Cir. Certiorari denied. Reported below: 718 F. 2d 1546.

No. 83-1182. *ENSIGN-BICKFORD Co. v. OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 230 U. S. App. D. C. 362, 717 F. 2d 1419.

No. 83-1184. *TENNESSEE WATER QUALITY CONTROL BOARD ET AL. v. TENNESSEE VALLEY AUTHORITY.* C. A. 6th Cir. Certiorari denied. Reported below: 717 F. 2d 992.

No. 83-1191. *GRAZIANO v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 710 F. 2d 691.

No. 83-1198. *STONE BOAT YARD v. NATIONAL LABOR RELATIONS BOARD.* C. A. 9th Cir. Certiorari denied. Reported below: 715 F. 2d 441.

No. 83-1201. *TODD SHIPYARDS CORP. ET AL. v. BLACK ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 717 F. 2d 1280.

No. 83-1226. *GARRETT v. UNITED STATES; and*

No. 83-1227. *MOORE v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 716 F. 2d 257.

No. 83-1255. *HACKER v. FIFTH THIRD BANK.* C. A. 6th Cir. Certiorari denied. Reported below: 723 F. 2d 909.

No. 83-1263. *CONWAY v. CONSOLIDATED RAIL CORPORATION.* C. A. 1st Cir. Certiorari denied. Reported below: 720 F. 2d 221.

No. 83-1353. *HARLAN v. FIRST INTERSTATE BANK OF UTAH.* Sup. Ct. Utah. Certiorari denied. Reported below: 672 P. 2d 73.

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No. 83-1364. *ZILG v. PRENTICE-HALL, INC.* C. A. 2d Cir. Certiorari denied. Reported below: 717 F. 2d 671.

No. 83-1375. *AKIN ET AL. v. DAHL.* Sup. Ct. Tex. Certiorari denied. Reported below: 661 S. W. 2d 914.

No. 83-1379. *DIAMOND M DRILLING CO. ET AL. v. CASON.* Ct. App. La., 1st Cir. Certiorari denied. Reported below: 423 So. 2d 108.

No. 83-1380. *O'QUINN v. WHITNEY NATIONAL BANK OF NEW ORLEANS.* Ct. App. La., 4th Cir. Certiorari denied. Reported below: 436 So. 2d 1185.

No. 83-1390. *BROWN v. BROWN.* Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 83-1399. *PECINA v. ATCHISON, TOPEKA & SANTA FE RAILWAY CO. ET AL.* C. A. 10th Cir. Certiorari denied.

No. 83-1408. *TONER, JUDGE, JUVENILE COURT v. OHIO EX REL. CODY.* Sup. Ct. Ohio. Certiorari denied. Reported below: 8 Ohio St. 3d 22, 456 N. E. 2d 813.

No. 83-1410. *OLIVERA-CHIRINO ET AL. v. UNITED STATES;*

No. 83-1425. *MARINO v. UNITED STATES;*

No. 83-1428. *VALDES v. UNITED STATES;* and

No. 83-1530. *MULE-VASQUEZ v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 721 F. 2d 311.

No. 83-1411. *LUNATI ET AL. v. TENNESSEE.* Ct. Crim. App. Tenn. Certiorari denied. Reported below: 665 S. W. 2d 739.

No. 83-1412. *CITY OF CAMBRIDGE, MASSACHUSETTS v. MESERVE ET AL., REORGANIZATION TRUSTEES OF THE BOSTON & MAINE CORP.* C. A. 1st Cir. Certiorari denied. Reported below: 719 F. 2d 493.

No. 83-1424. *BROCK v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 720 F. 2d 1292.

No. 83-1436. *WHITE v. INTERNATIONAL TELEPHONE & TELEGRAPH CORP. ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 718 F. 2d 994.

No. 83-1483. *SHEPHERD v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 714 F. 2d 316.

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No. 83-1458. *FERREIRA ET AL. v. L&M PROFESSIONAL CONSULTANTS, INC., ET AL.* Ct. App. Cal., 4th App. Dist. Certiorari denied. Reported below: 146 Cal. App. 3d 1038, 194 Cal. Rptr. 695.

No. 83-1461. *GARGALLO v. FRANKLIN COUNTY COURT OF COMMON PLEAS, DIVISION OF DOMESTIC RELATIONS, ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 722 F. 2d 740.

No. 83-1484. *BARBOA v. UNITED STATES.* C. A. 10th Cir. Certiorari denied.

No. 83-1487. *SAWYER v. DUPONT GLORE FORGAN, INC., ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 720 F. 2d 686.

No. 83-1502. *GRAHAM v. THREE OR MORE MEMBERS OF THE ARMY RESERVE GENERAL OFFICER SELECTION BOARD OF 30 NOVEMBER 1979 ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 723 F. 2d 905.

No. 83-1504. *MCLEAN v. UNITED STATES ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 720 F. 2d 418.

No. 83-1507. *DREHER ET UX. v. MORRISON ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 716 F. 2d 889.

No. 83-1512. *IGLESIAS-URANGA v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 721 F. 2d 1512.

No. 83-1523. *WILSON v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 723 F. 2d 899.

No. 83-1546. *ANDERBERG, INDIVIDUALLY, AND AS CONSERVATRIX OF THE ESTATE OF STICHLER v. UNITED STATES.* C. A. 10th Cir. Certiorari denied. Reported below: 718 F. 2d 976.

No. 83-1549. *PARK CORP. v. NATIONAL SAVINGS & TRUST CO.* C. A. 6th Cir. Certiorari denied. Reported below: 722 F. 2d 1303.

No. 83-5384. *BOYLAN v. UNITED STATES POSTAL SERVICE.* C. A. 11th Cir. Certiorari denied. Reported below: 704 F. 2d 573.

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No. 83-5733. *NORMAN v. LUCAS, WARDEN*. C. A. 5th Cir. Certiorari denied.

No. 83-5856. *MOWERY v. OHIO*. Sup. Ct. Ohio. Certiorari denied. Reported below: 1 Ohio St. 3d 192, 438 N. E. 2d 897.

No. 83-5866. *KAJFASZ v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 716 F. 2d 905.

No. 83-5961. *BROUGHTON v. NORTH CAROLINA ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 717 F. 2d 147.

No. 83-5967. *GREEN v. UNITED STATES*;

No. 83-5972. *BEY v. UNITED STATES*; and

No. 83-6026. *BEY v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 723 F. 2d 899.

No. 83-5971. *BOYKINS v. BLACKBURN, WARDEN*. C. A. 5th Cir. Certiorari denied. Reported below: 715 F. 2d 995.

No. 83-5982. *RHODES v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 710 F. 2d 1433.

No. 83-6010. *EDEN v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 723 F. 2d 917.

No. 83-6070. *NICHOLS v. GAGNON, SUPERINTENDENT, FOX LAKE CORRECTIONAL INSTITUTION, ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 710 F. 2d 1267.

No. 83-6075. *MCCOY v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 721 F. 2d 473.

No. 83-6102. *GOOD v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 723 F. 2d 899.

No. 83-6139. *JERMOSEN v. SMITH, SUPERINTENDENT, ATTICA CORRECTIONAL FACILITY*. Ct. App. N. Y. Certiorari denied. Reported below: 61 N. Y. 2d 601, 459 N. E. 2d 1291.

No. 83-6206. *SOUTHWORTH v. TEXAS*. Ct. Crim. App. Tex. Certiorari denied.

No. 83-6241. *LUCIEN v. ILLINOIS*. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 118 Ill. App. 3d 1158, 470 N. E. 2d 658.

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No. 83-6247. *AYERS v. MAINE*. Sup. Jud. Ct. Me. Certiorari denied. Reported below: 468 A. 2d 606.

No. 83-6276. *NEVELS v. TOHEY ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 725 F. 2d 669.

No. 83-6279. *SMITH v. PERINI, SUPERINTENDENT, MARION CORRECTIONAL INSTITUTE*. C. A. 6th Cir. Certiorari denied. Reported below: 723 F. 2d 478.

No. 83-6283. *COLEMAN v. SUSSEX COUNTY ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 723 F. 2d 896.

No. 83-6284. *COLEMAN v. MILLSBORO TOWNSHIP*. C. A. 3d Cir. Certiorari denied. Reported below: 723 F. 2d 896.

No. 83-6287. *HERRINGTON v. MET COAL & COKE CO., INC.* Cir. Ct. W. Va., Monongalia County. Certiorari denied.

No. 83-6291. *SCARSELLI v. FIDUCIARY TRUST COMPANY OF NEW YORK*. C. A. 2d Cir. Certiorari denied.

No. 83-6292. *ROTHSCHILD v. Y. M. C. A.* C. A. 11th Cir. Certiorari denied.

No. 83-6293. *MITCHELL v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 723 F. 2d 905.

No. 83-6294. *WEBSTER v. REES, SUPERINTENDENT, KENTUCKY STATE REFORMATORY, ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 722 F. 2d 743.

No. 83-6295. *QUEEN v. EASLEY*. C. A. 4th Cir. Certiorari denied. Reported below: 725 F. 2d 676.

No. 83-6296. *ROBINSON v. NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PENNSYLVANIA*. Sup. Ct. Tex. Certiorari denied.

No. 83-6302. *TAYLOR v. DEVEREAUX*. C. A. 11th Cir. Certiorari denied.

No. 83-6305. *ZYGADLO v. WAINWRIGHT, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS*. C. A. 11th Cir. Certiorari denied. Reported below: 720 F. 2d 1221.

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No. 83-6306. *WOODBERRY ET AL. v. PIERCE, SECRETARY OF HOUSING AND URBAN DEVELOPMENT*. C. A. 6th Cir. Certiorari denied. Reported below: 720 F. 2d 680.

No. 83-6307. *YOUNG v. WAINWRIGHT, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS*. C. A. 11th Cir. Certiorari denied.

No. 83-6309. *MOORE v. WAINWRIGHT, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS*. C. A. 11th Cir. Certiorari denied. Reported below: 721 F. 2d 820.

No. 83-6310. *ROMERI v. PENNSYLVANIA*. Sup. Ct. Pa. Certiorari denied. Reported below: 504 Pa. 124, 470 A. 2d 498.

No. 83-6314. *BROWN v. CALLAHAN, ASSOCIATE COMMISSIONER, MASSACHUSETTS DEPARTMENT OF CORRECTIONS, ET AL.* C. A. 1st Cir. Certiorari denied. Reported below: 725 F. 2d 664.

No. 83-6316. *DIXON v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 724 F. 2d 517.

No. 83-6324. *THOMAS v. OKLAHOMA*. Ct. Crim. App. Okla. Certiorari denied. Reported below: 675 P. 2d 1016.

No. 83-6325. *WRIGHT v. COOKE ET AL.* C. A. 2d Cir. Certiorari denied.

No. 83-6328. *NORTON v. UTAH*. Sup. Ct. Utah. Certiorari denied. Reported below: 675 P. 2d 577.

No. 83-6329. *SCEIFERS v. INDIANA*. Sup. Ct. Ind. Certiorari denied.

No. 83-6335. *LOWE ET AL. v. CONTINENTAL INSURANCE CO. ET AL.* Sup. Ct. La. Certiorari denied. Reported below: 442 So. 2d 460.

No. 83-6338. *FORT v. HENRY ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 722 F. 2d 745.

No. 83-6349. *MCGLOCKLIN v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 713 F. 2d 627.

No. 83-6351. *LEE v. WINSTON, SHERIFF, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 717 F. 2d 888.

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No. 83-6354. *WRIGHT v. ALABAMA*. Sup. Ct. Ala. Certiorari denied. Reported below: 446 So. 2d 77.

No. 83-6368. *ROTHSCHILD v. LOCKWOOD ET AL.* C. A. 11th Cir. Certiorari denied.

No. 83-6379. *CERVENY v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 725 F. 2d 692.

No. 83-6382. *PIZARRO ET AL. v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 725 F. 2d 671.

No. 83-6383. *ATHERTON v. CIRCUIT COURT OF LOUDOUN COUNTY ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 722 F. 2d 737.

No. 83-6385. *COTE v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 722 F. 2d 478.

No. 83-6393. *CHANYA v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 723 F. 2d 374.

No. 83-6394. *WALKER v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 723 F. 2d 904.

No. 83-6398. *BIRGES v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 723 F. 2d 666.

No. 83-6403. *MILLER v. MICHIGAN*. Ct. App. Mich. Certiorari denied. Reported below: 128 Mich. App. 298, 340 N. W. 2d 858.

No. 83-6408. *SINN v. OWENS*. C. A. 7th Cir. Certiorari denied.

No. 83-6414. *DIGIOVANNI v. NATIONAL TRANSPORTATION SAFETY BOARD ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 742 F. 2d 1440.

No. 83-6415. *CONYERS v. UNITED STATES*. Ct. App. D. C. Certiorari denied.

No. 83-6416. *BROADWAY v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 719 F. 2d 402.

No. 83-6418. *CRITES v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 727 F. 2d 1104.

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No. 83-6426. *YOUNG v. MROCK ET AL.* C. A. 11th Cir. Certiorari denied.

No. 83-6439. *HAWKINS v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 725 F. 2d 677.

No. 83-6445. *ALLEN v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 730 F. 2d 770.

No. 82-716. *EL PASO CO. v. UNITED STATES ET AL.* C. A. 5th Cir. Certiorari denied. JUSTICE POWELL would grant certiorari. Reported below: 682 F. 2d 530.

No. 83-977. *WAINWRIGHT, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS v. HUDGINS.* C. A. 11th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 715 F. 2d 578.

No. 83-1116. *HUNT ET AL. v. TENNESSEE.* Ct. Crim. App. Tenn. Certiorari denied. JUSTICE BRENNAN and JUSTICE MARSHALL would grant the petition for writ of certiorari and reverse the judgments of conviction. Reported below: 660 S. W. 2d 513.

No. 83-1180. *MCDONALD v. UNITED AIR LINES, INC., ET AL.;*
No. 83-1377. *BARR v. UNITED AIR LINES, INC., ET AL.;* and
No. 83-1391. *UNITED AIR LINES, INC. v. MCDONALD ET AL.*
C. A. 7th Cir. Certiorari denied. JUSTICE STEVENS took no part in the consideration or decision of these petitions. Reported below: 717 F. 2d 1140.

No. 83-1222 (A-544). *CALIFORNIA v. WILSON.* Sup. Ct. Cal. Application for stay, presented to JUSTICE O'CONNOR, and by her referred to the Court, denied. Certiorari denied. Reported below: 34 Cal. 3d 777, 670 P. 2d 325.

No. 83-1310. *YOUNG ET AL. v. SOUTHWESTERN COLORADO WATER CONSERVATION DISTRICT ET AL.* Sup. Ct. Colo. Certiorari denied. JUSTICE WHITE and JUSTICE POWELL took no part in the consideration or decision of this petition. Reported below: 671 P. 2d 1294.

No. 83-1336. *JONES ET AL. v. AMALGAMATED WARBASSE HOUSES, INC., ET AL.* C. A. 2d Cir. Motion of NAACP Legal Defense and Educational Fund, Inc., et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 721 F. 2d 881.

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No. 83-1369. *BRYSON v. MACFIELD TEXTURING, INC.* C. A. 4th Cir. Certiorari denied. JUSTICE BRENNAN and JUSTICE MARSHALL would grant certiorari. Reported below: 722 F. 2d 737.

No. 83-1372. *C & H TRANSPORTATION CO., INC. v. JENSEN & REYNOLDS CONSTRUCTION CO. ET AL.* C. A. 5th Cir. Motion of respondent Par Industries, Inc., for damages denied. Certiorari denied. Reported below: 719 F. 2d 1267.

No. 83-6141. *CHEADLE v. NEW MEXICO.* Sup. Ct. N. M.;
No. 83-6215. *GODFREY v. FRANCIS, WARDEN.* Sup. Ct. Ga.;
No. 83-6231. *MEANES v. TEXAS.* Ct. Crim. App. Tex.;
No. 83-6281. *DAUGHERTY v. WAINWRIGHT, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS.* Sup. Ct. Fla.;
No. 83-6285. *GILMORE v. MISSOURI.* Sup. Ct. Mo.; and
No. 83-6318. *FLOWERS v. LOUISIANA.* Sup. Ct. La. Certiorari denied. Reported below: No. 83-6141, 101 N. M. 282, 681 P. 2d 708; No. 83-6215, 251 Ga. 652, 308 S. E. 2d 806; No. 83-6231, 668 S. W. 2d 366; No. 83-6281, 443 So. 2d 979; No. 83-6285, 661 S. W. 2d 519; No. 83-6318, 441 So. 2d 707.

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. 82-827. *MINNESOTA v. MURPHY*, 465 U. S. 420;
No. 82-1041. *DICKMAN ET AL. v. COMMISSIONER OF INTERNAL REVENUE*, 465 U. S. 330;
No. 82-1845. *COLORADO v. NUNEZ*, 465 U. S. 324;
No. 82-1888. *VOLKSWAGENWERK A. G. v. FALZON ET AL., INDIVIDUALLY AND AS NEXT FRIENDS OF FALZON ET AL.*, 465 U. S. 1014;
No. 83-926. *KLEIBOEMER ET AL. v. DISTRICT OF COLUMBIA*, 465 U. S. 1024;
No. 83-1106. *C'EST LA PLACE v. GRONER APARTMENTS*, 465 U. S. 1015; and
No. 83-5352. *MURPHY v. KENTUCKY*, 465 U. S. 1072. Petitions for rehearing denied.

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- No. 83-5662. *PHILLIPS v. KENTUCKY*, 465 U. S. 1072;
No. 83-5679. *HORNICK v. NOYES ET AL.*, 465 U. S. 1031;
No. 83-5772. *MCQUEEN v. RAMSEY, WARDEN*, 465 U. S. 1067;
No. 83-5883. *KEENAN v. ELO ET AL.*, 465 U. S. 1032;
No. 83-5910. *CAYLOR v. MISSISSIPPI*, 465 U. S. 1032;
No. 83-6033. *TUGMAN ET AL. v. HECKLER, SECRETARY OF HEALTH AND HUMAN SERVICES*, 465 U. S. 1036; and
No. 83-6088. *CHRISTENSEN v. COMMISSIONER OF INTERNAL REVENUE*, 465 U. S. 1037. Petitions for rehearing denied.
- No. 83-6122. *KHABIRI v. WALLACE ET AL.*, 465 U. S. 1082; and
No. 83-6220. *DARNELL v. UNITED STATES*, 465 U. S. 1083. Petitions for rehearing denied. JUSTICE MARSHALL took no part in the consideration or decision of these petitions.

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Appeals Dismissed

No. 83-1193. *FORD ET AL. v. DEPARTMENT OF REVENUE OF FLORIDA ET AL.* Appeal from Sup. Ct. Fla. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 438 So. 2d 798.

No. 83-1434. *WILLIAMS ET AL. v. WYCHE*. Appeal from Dist. Ct. App. Fla., 3d Dist., dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 440 So. 2d 364.

No. 83-1454. *CONDICT ET AL. v. COUNTY OF SAN LUIS OBISPO*. Appeal from Ct. App. Cal., 2d 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. 83-1456. *DUGGINS ET UX. v. TOWN OF WALNUT COVE*. Appeal from Ct. App. N. C. dismissed for want of substantial federal question. Reported below: 63 N. C. App. 684, 306 S. E. 2d 186.

No. 83-1465. *FARMER v. BOARD OF PROFESSIONAL RESPONSIBILITY OF THE SUPREME COURT OF TENNESSEE*. Appeal from Sup. Ct. Tenn. dismissed for want of substantial federal question. Reported below: 660 S. W. 2d 490.

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No. 83-1478. *JERSEY CENTRAL POWER & LIGHT CO. v. BOARD OF PUBLIC UTILITIES OF NEW JERSEY*. Appeal from Super. Ct. N. J., App. Div., dismissed for want of substantial federal question.

No. 83-6226. *SPANN v. SOUTH CAROLINA*. Appeal from Sup. Ct. S. C. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 279 S. C. 399, 308 S. E. 2d 518.

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.

Certiorari Granted—Reversed and Remanded. (See No. 83-1279, *ante*, p. 380.)

Certiorari Granted—Vacated and Remanded. (See No. 83-599, *ante*, p. 378.)

Miscellaneous Orders

No. — — —. *INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 675 v. ODOM ET AL.* Motion to direct the Clerk to file a petition for writ of certiorari out of time denied.

No. — — —. *LEIGHTON v. DUBOWSKI ET AL.* Motion of respondent Dubowski to direct the Clerk not to file the petition for writ of certiorari denied. Request to impose sanctions denied.

No. — — —. *SHELBY COUNTY SHERIFF'S DEPARTMENT v. RUIZ*. 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-757. *ASHBY v. TEXAS*. Ct. Crim. App. Tex. Application for stay, addressed to JUSTICE MARSHALL and referred to the Court, denied.

No. A-812. *LAROCHE ET AL. v. NORTH CAROLINA STATE BOARD OF ELECTIONS ET AL.* Application to vacate the stay entered by the United States Court of Appeals for the Fourth

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Circuit, addressed to JUSTICE STEVENS and referred to the Court, denied.

No. D-390. *IN RE DISBARMENT OF NAGEL*. Disbarment entered. [For earlier order herein, see 464 U. S. 1014.]

No. D-399. *IN RE DISBARMENT OF LESESNE*. Thomas Petigru Lesesne III, of Charleston, S. C., having requested to resign as a member of the Bar of this Court, it is ordered that his name be stricken from the roll of attorneys admitted to practice before the Bar of this Court. The rule to show cause, heretofore issued on February 21, 1984 [465 U. S. 1017], is hereby discharged.

No. D-419. *IN RE DISBARMENT OF STEVENS*. It is ordered that Mitchell Lee Stevens, of Lombard, 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-420. *IN RE DISBARMENT OF BROWNLOW*. It is ordered that Jerry D. Brownlow, of Grand Prairie, 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. 94, Orig. *SOUTH CAROLINA v. REGAN, SECRETARY OF THE TREASURY*. It is ordered that Honorable Samuel J. Roberts, of Erie, Pa., be appointed Special Master in this case with authority to fix the time and conditions for the filing of additional pleadings and to direct subsequent proceedings, and with authority to summon witnesses, issue subpoenas, and take such evidence as may be introduced and such as he may deem necessary to call for. The Special Master is directed to submit such reports as he may deem appropriate.

The compensation of the Special Master, the compensation paid to his technical, stenographic, clerical, and legal assistants, the cost of printing his report, and all other proper expenses shall be charged against and be borne by the parties in such proportion as the Court may hereafter direct. [For earlier decision herein, see, *e. g.*, 465 U. S. 367.]

No. 82-1253. *SOLEM, WARDEN, SOUTH DAKOTA STATE PENITENTIARY, ET AL. v. BARTLETT*, 465 U. S. 463. Application of

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Counties of Dewey et al. to direct the Clerk to file a petition for rehearing submitted by *amici curiae* denied.

No. 83-5907. *ISELEY v. PENNSYLVANIA*. Appeal from Sup. Ct. Pa. Motion of appellant for leave to proceed *in forma pauperis* denied. Appellant is allowed until May 14, 1984, within which to pay the docketing fee required by Rule 45(a) and to submit a statement as to jurisdiction in compliance with Rule 33 of the Rules of this Court. JUSTICE BRENNAN, JUSTICE MARSHALL, and JUSTICE STEVENS would dismiss the appeal. *Molinaro v. New Jersey*, 396 U. S. 365 (1970).

No. 83-6342. *IN RE FENTON*. Petition for writ of mandamus denied.

Probable Jurisdiction Noted

No. 83-1466. *SUPREME COURT OF NEW HAMPSHIRE v. PIPER*. Appeal from C. A. 1st Cir. Probable jurisdiction noted. Reported below: 723 F. 2d 110.

Certiorari Granted

No. 83-1378. *KAVANAUGH, SUPERINTENDENT, BLACKBURN CORRECTIONAL COMPLEX, ET AL. v. LUCEY*. C. A. 6th Cir. Certiorari granted. Reported below: 724 F. 2d 560.

No. 83-1437. *MAREK ET AL. v. CHESNY, INDIVIDUALLY, AND AS ADMINISTRATOR OF THE ESTATE OF CHESNY*. C. A. 7th Cir. Certiorari granted. Reported below: 720 F. 2d 474.

Certiorari Denied. (See also Nos. 83-1193, 83-1434, 83-1454, and 83-6226, *supra*.)

No. 83-910. *GENERAL TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS, LOCAL 249 v. PENNSYLVANIA TRUCK LINES, INC.* C. A. 3d Cir. Certiorari denied. Reported below: 720 F. 2d 665.

No. 83-1080. *IOWA POWER & LIGHT CO. v. UNITED STATES ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 712 F. 2d 1292.

No. 83-1117. *LAWSON v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 83-1144. *GARMON ET AL. v. GALVAN*. C. A. 5th Cir. Certiorari denied. Reported below: 710 F. 2d 214.

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No. 83-1176. *DEMAREST v. UNITED STATES ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 718 F. 2d 964.

No. 83-1203. *ALLISON ET AL. v. SECURITIES AND EXCHANGE COMMISSION.* C. A. 9th Cir. Certiorari denied. Reported below: 722 F. 2d 747.

No. 83-1204. *CULTEE ET AL. v. UNITED STATES ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 713 F. 2d 1455.

No. 83-1241. *DAVIS v. UNITED STATES ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 722 F. 2d 1157.

No. 83-1258. *MICHIGAN DEPARTMENT OF MENTAL HEALTH v. RASIMAS.* C. A. 6th Cir. Certiorari denied. Reported below: 714 F. 2d 614.

No. 83-1272. *LEE v. CITY OF KNOXVILLE, TENNESSEE.* C. A. 6th Cir. Certiorari denied. Reported below: 722 F. 2d 741.

No. 83-1282. *SHUTTLEWORTH ET UX. v. CATHOLIC FAMILY SERVICES ET AL.* Ct. Civ. App. Ala. Certiorari denied. Reported below: 439 So. 2d 1292.

No. 83-1285. *FITZGERALD v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 724 F. 2d 633.

No. 83-1289. *HOWELL v. STATE BAR OF TEXAS ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 710 F. 2d 1075.

No. 83-1342. *ALLEN, DBA WILLIE F. ALLEN JANITORIAL SERVICE v. GREENVILLE COUNTY.* C. A. 4th Cir. Certiorari denied. Reported below: 712 F. 2d 934.

No. 83-1358. *DORAN ET AL. v. HOULE ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 721 F. 2d 1182.

No. 83-1392. *LOGIUDICE v. GEORGIA;* and

No. 83-1403. *KARLOVICH ET AL. v. GEORGIA.* Ct. App. Ga. Certiorari denied. Reported below: No. 83-1392, 164 Ga. App. 709, 297 S. E. 2d 499; No. 83-1403, 165 Ga. App. 761, 302 S. E. 2d 396.

No. 83-1439. *HENDERSON v. KATZ ET AL.* Ct. Sp. App. Md. Certiorari denied. Reported below: 55 Md. App. 759.

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No. 83-1448. SEATRAN LINES, INC., ET AL. *v.* CARCICH ET AL. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 95 App. Div. 2d 983, 465 N. Y. S. 2d 96.

No. 83-1453. BOARD OF REVIEW OF WILL COUNTY ET AL. *v.* BEVERLY BANK, TRUSTEE, ET AL. App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 117 Ill. App. 3d 656, 453 N. E. 2d 96.

No. 83-1460. HARVEY *v.* CARPONELLI ET AL. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 117 Ill. App. 3d 448, 453 N. E. 2d 820.

No. 83-1469. SCHWARTZ *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 97 App. Div. 2d 379, 468 N. Y. S. 2d 290.

No. 83-1474. HARRIS-TEETER SUPER MARKETS, INC. *v.* LILLY ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 720 F. 2d 326.

No. 83-1482. WEIL *v.* MCCLOUGH ET AL. Ct. App. N. Y. Certiorari denied. Reported below: 60 N. Y. 2d 859, 458 N. E. 2d 387.

No. 83-1514. COUCH *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 438 So. 2d 769.

No. 83-1524. CORDOVA GONZALEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 726 F. 2d 16.

No. 83-1543. CUNNINGHAM *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 723 F. 2d 217.

No. 83-1579. FIUMARA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 727 F. 2d 209.

No. 83-1586. GRINNELL MUTUAL REINSURANCE CO. *v.* EMPIRE FIRE & MARINE INSURANCE CO. ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 722 F. 2d 1400.

No. 83-5899. WILLIAMS *v.* MAGGIO, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 83-6177. GUZMAN ET AL. *v.* NEW YORK. Ct. App. N. Y. Certiorari denied. Reported below: 60 N. Y. 2d 403, 457 N. E. 2d 1143.

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No. 83-6190. *TALLEY v. UNITED STATES POSTAL SERVICE*. C. A. 8th Cir. Certiorari denied. Reported below: 720 F. 2d 505.

No. 83-6193. *GANT v. UNITED STATES*. Ct. App. D. C. Certiorari denied. Reported below: 467 A. 2d 968.

No. 83-6265. *AARON v. HANRAHAN ET AL.* C. A. 10th Cir. Certiorari denied.

No. 83-6308. *MCPEEK ET AL. v. GREEN ET AL.* Ct. Sp. App. Md. Certiorari denied. Reported below: 55 Md. App. 761.

No. 83-6315. *JAMISON v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 722 F. 2d 748.

No. 83-6327. *MARTIN v. UNEMPLOYMENT COMPENSATION BOARD OF REVIEW*. Sup. Ct. Pa. Certiorari denied. Reported below: 502 Pa. 282, 466 A. 2d 107.

No. 83-6333. *MELCHIOR v. JAGO, SUPERINTENDENT, LONDON CORRECTIONAL INSTITUTION*. C. A. 6th Cir. Certiorari denied. Reported below: 723 F. 2d 486.

No. 83-6341. *DELETTO v. CALIFORNIA*. Ct. App. Cal., 3d App. Dist. Certiorari denied. Reported below: 147 Cal. App. 3d 458, 195 Cal. Rptr. 233.

No. 83-6345. *GREEN v. OKLAHOMA*. Ct. Crim. App. Okla. Certiorari denied.

No. 83-6355. *STEVENSON v. ALFORD, WARDEN*. C. A. 10th Cir. Certiorari denied.

No. 83-6356. *RICHARDSON v. MAGGIO, WARDEN*. C. A. 5th Cir. Certiorari denied. Reported below: 724 F. 2d 129.

No. 83-6360. *GAYLOR v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 716 F. 2d 895.

No. 83-6362. *ROCHON v. MCMANUS*. C. A. 5th Cir. Certiorari denied.

No. 83-6363. *WALLACE v. SEA LAND SERVICE ET AL.* C. A. 2d Cir. Certiorari denied.

No. 83-6364. *JACKSON v. PULLEY, WARDEN*. C. A. 9th Cir. Certiorari denied.

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No. 83-6367. *ROTHSCHILD v. CITY OF FORT LAUDERDALE*. C. A. 11th Cir. Certiorari denied.

No. 83-6373. *BELTON v. LOUISIANA*. Sup. Ct. La. Certiorari denied. Reported below: 441 So. 2d 1195.

No. 83-6374. *ATTWELL ET UX. v. HERITAGE BANK OF MOUNT PLEASANT ET AL.* C. A. 11th Cir. Certiorari denied.

No. 83-6375. *HOLSEY v. INMATE GRIEVANCE COMMISSION*. Ct. Sp. App. Md. Certiorari denied.

No. 83-6386. *ARCHIE v. UNITED STATES*. C. A. 5th Cir. Certiorari denied.

No. 83-6396. *WARD v. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION*. C. A. 9th Cir. Certiorari denied. Reported below: 719 F. 2d 311.

No. 83-6422. *PRICE v. WASHINGTON DEPARTMENT OF FISHERIES*. Sup. Ct. Wash. Certiorari denied. Reported below: 100 Wash. 2d 568, 674 P. 2d 659.

No. 83-6429. *REGISTER v. NEW YORK*. Ct. App. N. Y. Certiorari denied. Reported below: 60 N. Y. 2d 270, 457 N. E. 2d 704.

No. 83-6437. *JOSEPH v. GOVERNMENT OF THE VIRGIN ISLANDS*. C. A. 3d Cir. Certiorari denied. Reported below: 725 F. 2d 667.

No. 83-6446. *LYNK v. LAPORTE SUPERIOR COURT ET AL.* Sup. Ct. Ind. Certiorari denied.

No. 83-6471. *HAYES v. HECKLER, SECRETARY OF HEALTH AND HUMAN SERVICES*. C. A. 11th Cir. Certiorari denied. Reported below: 723 F. 2d 918.

No. 83-6508. *BROOKINS v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 729 F. 2d 1449.

No. 83-1341. *WESTERN COAL TRAFFIC LEAGUE ET AL. v. UNITED STATES ET AL.* C. A. 5th Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. JUSTICE POWELL took no part in the consideration or decision of this petition. Reported below: 719 F. 2d 772.

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No. 83-1444. *MCDERMOTT INC. ET AL. v. EXXON CORP. ET AL.* C. A. 5th Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition.

No. 83-1533. *TOMLIN v. ALABAMA.* Sup. Ct. Ala.;

No. 83-5995. *WILLIAMS v. TEXAS.* Ct. Crim. App. Tex.;

No. 83-6334. *PUTMAN v. GEORGIA.* Sup. Ct. Ga.; and

No. 83-6350. *MCCORQUODALE v. BALKCOM, WARDEN, ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: No. 83-1533, 443 So. 2d 59; No. 83-5995, 668 S. W. 2d 692; No. 83-6334, 251 Ga. 605, 308 S. E. 2d 145; No. 83-6350, 721 F. 2d 1493.

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. 83-833. *TRANS-CANADA ENTERPRISES, LTD., ET AL. v. MUCKLESHOOT INDIAN TRIBE ET AL.*, 465 U. S. 1049;

No. 83-958. *PORT OF TACOMA v. PUYALLUP INDIAN TRIBE*, 465 U. S. 1049;

No. 83-994. *MOLLNOW v. CARLTON ET AL.*, 465 U. S. 1100;

No. 83-5959. *FAHEY v. CODO ET AL.*, 465 U. S. 1033; and

No. 83-6187. *PLATEL v. MAGUIRE, VOORHIS & WELLS ET AL.*, 465 U. S. 1107. Petitions for rehearing denied.

No. 83-949. *STEPNEY v. CONNECTICUT*, 465 U. S. 1084. Petition for rehearing denied. JUSTICE MARSHALL took no part in the consideration or decision of this petition.

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Appeals Dismissed

No. 83-1089. *RACK & BALL CLUB, INC. v. KOREAN PRESBYTERIAN SOUTH CHURCH OF NEW YORK.* Appeal from App. Term, Sup. Ct. N. Y., 2d and 11th Jud. Dists., dismissed for want of substantial federal question.

No. 83-5494. *IN RE STEPHENS.* Appeal from Sup. Ct. Pa. dismissed for want of substantial federal question. Reported below: 501 Pa. 411, 461 A. 2d 1223.

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No. 83-6337. *CORRADO v. GIFFORD*. Appeal from Sup. Ct. R. I. 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. 83-1061. *CATALYTIC, INC. v. NATIONAL LABOR RELATIONS BOARD ET AL.* C. A. 11th Cir. Certiorari granted, the judgment, insofar as it pertains to Samuel Thrach, is vacated, and the case is remanded to the Court of Appeals with directions that the case be remanded to the National Labor Relations Board for further consideration in light of *Clear Pine Mouldings, Inc.*, 268 N. L. R. B. 1044 (1984). Reported below: 714 F. 2d 158.

Miscellaneous Orders

No. A-707. *HECKLER, SECRETARY OF HEALTH AND HUMAN SERVICES v. LOPEZ ET AL.* Application for stay, presented to JUSTICE REHNQUIST, and by him referred to the Court, is denied, insofar as it relates to the claims of respondent class members whose benefits were terminated on or after December 6, 1982, or who completed the administrative appeal process on or after December 6, 1982. As to all other members of the respondent class, the application for stay of judgment of the United States Court of Appeals for the Ninth Circuit is granted, pending the timely filing and final disposition of a petition for writ of certiorari.

No. A-799. *GAUNCE v. NATIONAL TRANSPORTATION SAFETY BOARD ET AL.* C. A. 9th Cir. Application for stay of mandate, addressed to JUSTICE BRENNAN and referred to the Court, denied.

No. D-396. *IN RE DISBARMENT OF MCMORRIS*. Disbarment entered. [For earlier order herein, see 465 U. S. 1002.]

No. D-406. *IN RE DISBARMENT OF GOLDSTEIN*. Disbarment entered. [For earlier order herein, see 465 U. S. 1063.]

No. D-413. *IN RE DISBARMENT OF GOLDSTEIN*. Charles H. Goldstein, of West Islip, N. Y., having requested to resign as a member of the Bar of this Court, it is ordered that his name be stricken from the roll of attorneys admitted to practice before the Bar of this Court. The rule to show cause, heretofore issued on March 19, 1984 [465 U. S. 1096], is hereby discharged.

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No. D-421. *IN RE DISBARMENT OF TAYLOR*. It is ordered that Lloyd Earl Taylor, of Stapleton, Ala., 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-422. *IN RE DISBARMENT OF HARDEN*. It is ordered that Claude McEuen Harden, Jr., of Lakeland, 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-423. *IN RE DISBARMENT OF HEDICKE*. It is ordered that Robert Edward Hedicke, 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. D-424. *IN RE DISBARMENT OF STEWART*. It is ordered that Bobby R. Stewart, of Houston, 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-425. *IN RE DISBARMENT OF DENEND*. It is ordered that William Leonard Denend, of Port Orchard, Wash., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-426. *IN RE DISBARMENT OF PECKRON*. It is ordered that Harold Stephen Peckron, of Houston, 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. 9, Orig. *UNITED STATES v. LOUISIANA ET AL.* Report of the Special Master received and ordered filed. Exceptions to the Report, with supporting briefs, may be filed by the parties within 45 days. Replies thereto, with supporting briefs, may be filed by the parties within 30 days. JUSTICE MARSHALL took no part in the consideration or decision of this order. [For earlier order herein, see, *e. g.*, 464 U. S. 927.]

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No. 83-1032. FEDERAL ELECTION COMMISSION *v.* NATIONAL CONSERVATIVE POLITICAL ACTION COMMITTEE ET AL.; and

No. 83-1122. DEMOCRATIC PARTY OF THE UNITED STATES ET AL. *v.* NATIONAL CONSERVATIVE POLITICAL ACTION COMMITTEE ET AL. D. C. E. D. Pa. [Probable jurisdiction noted, *ante*, p. 935.] Motion of appellants in No. 83-1122 for expedited briefing and oral argument denied.

No. 83-1170. UNITED STATES *v.* 50 ACRES OF LAND ET AL. C. A. 5th Cir. [Certiorari granted, 465 U. S. 1098.] Motion of the Solicitor General to dispense with printing the joint appendix granted.

No. 83-1307. UNITED STATES *v.* POWELL. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted.

No. 83-6404. IN RE McDONALD. Petition for writ of mandamus denied.

Certiorari Granted

No. 82-5920. SHEA *v.* LOUISIANA. Sup. Ct. La. Motion of petitioner for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 421 So. 2d 200.

No. 83-1013. CHEMICAL MANUFACTURERS ASSN. ET AL. *v.* NATURAL RESOURCES DEFENSE COUNCIL, INC., ET AL.; and

No. 83-1373. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY *v.* NATURAL RESOURCES DEFENSE COUNCIL, INC., ET AL. C. A. 3d Cir. Motion of Chamber of Commerce of the United States for leave to file a brief as *amicus curiae* granted. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. Reported below: 719 F. 2d 624.

No. 83-1427. WAINWRIGHT, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS *v.* WITT. C. A. 11th Cir. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 714 F. 2d 1069 and 723 F. 2d 769.

Certiorari Denied. (See also No. 83-6337, *supra*.)

No. 82-976. CALIFORNIA *v.* HOWARD. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 82-6957. WALTON ET AL. *v.* TENNESSEE. Ct. App. Tenn. Certiorari denied.

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No. 83-1047. *JEFFERSON v. MARSH, SECRETARY OF THE ARMY, ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 714 F. 2d 152.

No. 83-1074. *LOCKHART, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION v. WALKER.* C. A. 8th Cir. Certiorari denied. Reported below: 713 F. 2d 1378.

No. 83-1169. *HOLLOMAN ET AL. v. CLARK, SECRETARY OF THE INTERIOR, ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 708 F. 2d 1399.

No. 83-1186. *UNIVERSITY OF ARKANSAS BOARD OF TRUSTEES ET AL. v. GREER ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 719 F. 2d 950.

No. 83-1235. *JUNE OIL & GAS, INC., ET AL. v. CLARK, SECRETARY OF THE INTERIOR, ET AL.* C. A. 10th Cir. Certiorari denied. Reported below: 717 F. 2d 1323.

No. 83-1236. *GRYNBERG ET AL. v. CLARK, SECRETARY OF THE INTERIOR, ET AL.* C. A. 10th Cir. Certiorari denied. Reported below: 717 F. 2d 1316.

No. 83-1259. *CITY OF FAIRMONT v. PITROLO PONTIAC-CADILLAC Co. ET AL.* Sup. Ct. App. W. Va. Certiorari denied. Reported below: — W. Va. —, 308 S. E. 2d 527.

No. 83-1284. *AMERICAN HOSPITAL ASSN. v. HECKLER, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 721 F. 2d 170.

No. 83-1312. *PIPER AIRCRAFT CORP. v. SEVEN BAR FLYING SERVICE, INC.* C. A. 10th Cir. Certiorari denied. Reported below: 716 F. 2d 1322.

No. 83-1357. *AMERICAN DISTRIBUTING Co., INC. v. NATIONAL LABOR RELATIONS BOARD.* C. A. 9th Cir. Certiorari denied. Reported below: 715 F. 2d 446.

No. 83-1446. *McMORRIS v. STATE BAR OF CALIFORNIA.* Sup. Ct. Cal. Certiorari denied. Reported below: 35 Cal. 3d 77, 672 P. 2d 431.

No. 83-1449. *DISTRICT 1199C, NATIONAL UNION OF HOSPITAL & HEALTH CARE EMPLOYEES, DIVISION OF RWDSU, AFL-CIO*

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v. SAUNDERS HOUSE, AKA OLD MAN'S HOME OF PHILADELPHIA. C. A. 3d Cir. Certiorari denied. Reported below: 719 F. 2d 683.

No. 83-1464. *WEST v. NATIONAL TRUST CO.* Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 441 So. 2d 637.

No. 83-1473. *PATROLMEN'S BENEVOLENT ASSOCIATION OF THE CITY OF NEW YORK, INC., ET AL. v. DEMILIA.* App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 97 App. Div. 2d 990, 468 N. Y. S. 2d 962.

No. 83-1475. *KIRALY v. CLARK.* C. A. 6th Cir. Certiorari denied. Reported below: 725 F. 2d 683.

No. 83-1486. *RADIOFONE, INC. v. LOUISIANA PUBLIC SERVICE COMMISSION ET AL.* Sup. Ct. La. Certiorari denied. Reported below: 440 So. 2d 694.

No. 83-1489. *JOHNSON ET AL. v. CITY OF GLENCOE ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 722 F. 2d 432.

No. 83-1491. *SIKES ET AL. v. BOONE ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 723 F. 2d 918.

No. 83-1494. *MONTESANO v. DONREY MEDIA GROUP, DBA LAS VEGAS REVIEW JOURNAL, ET AL.* Sup. Ct. Nev. Certiorari denied. Reported below: 99 Nev. 644, 668 P. 2d 1081.

No. 83-1497. *BARROW v. KANSAS.* Ct. App. Kan. Certiorari denied. Reported below: 9 Kan. App. 2d xxiv, 672 P. 2d 1107.

No. 83-1516. *C & H TRANSPORTATION CO., INC. v. FRONTIER AIRLINES, INC.* C. A. 5th Cir. Certiorari denied. Reported below: 723 F. 2d 905.

No. 83-1531. *DONREY COMMUNICATIONS CO., INC., DBA DONREY OUTDOOR ADVERTISING CO. v. CITY OF FAYETTEVILLE, ARKANSAS.* Sup. Ct. Ark. Certiorari denied. Reported below: 280 Ark. 408, 660 S. W. 2d 900.

No. 83-1542. *POTTS v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 723 F. 2d 20.

No. 83-1553. *FLINN v. VIRGINIA ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 723 F. 2d 901.

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No. 83-1582. *U. S. INDUSTRIES, INC. v. GREGG*. C. A. 11th Cir. Certiorari denied. Reported below: 715 F. 2d 1522 and 721 F. 2d 345.

No. 83-1583. *GRAHAM v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 727 F. 2d 1111.

No. 83-1592. *TRANOWSKI v. UNITED STATES SECRET SERVICE ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 232 U. S. App. D. C. 41, 720 F. 2d 216.

No. 83-1601. *MEYER v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 3d Cir. Certiorari denied. Reported below: 729 F. 2d 1448.

No. 83-1609. *WILSON v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 727 F. 2d 1101.

No. 83-1610. *GROSS ET AL. v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 730 F. 2d 765.

No. 83-1612. *GIBSON v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: 726 F. 2d 869.

No. 83-5835. *STEELE v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 707 F. 2d 1190.

No. 83-6161. *SALES v. MARSHALL, SUPERINTENDENT, SOUTHERN OHIO CORRECTIONAL FACILITY*. C. A. 6th Cir. Certiorari denied. Reported below: 725 F. 2d 684.

No. 83-6216. *FRENCH v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 719 F. 2d 387.

No. 83-6227. *PERKINS v. THOMPSON, GOVERNOR OF ILLINOIS*. C. A. 7th Cir. Certiorari denied. Reported below: 727 F. 2d 1112.

No. 83-6235. *PARKS v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 725 F. 2d 685.

No. 83-6238. *VERNER v. COLORADO*. C. A. 10th Cir. Certiorari denied. Reported below: 716 F. 2d 1352.

No. 83-6313. *CARSWELL v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 742 F. 2d 1442.

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No. 83-6319. *LIPSCOMB v. FIRST INDEPENDENCE NATIONAL BANK*. C. A. 6th Cir. Certiorari denied. Reported below: 727 F. 2d 1109.

No. 83-6347. *HAYES v. PEACHTREE PLAZA HOTEL ET AL.* C. A. 11th Cir. Certiorari denied.

No. 83-6366. *MILLER v. FORESTER*. C. A. 4th Cir. Certiorari denied. Reported below: 725 F. 2d 676.

No. 83-6369. *NEAL v. ALABAMA*. Ct. Crim. App. Ala. Certiorari denied. Reported below: 438 So. 2d 771.

No. 83-6371. *MOORE v. LYNCH ET AL.* C. A. 9th Cir. Certiorari denied.

No. 83-6380. *THOMPSON v. MISSOURI ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 724 F. 2d 1314.

No. 83-6395. *WARD v. GENERAL MOTORS CORP.* C. A. 9th Cir. Certiorari denied. Reported below: 722 F. 2d 749.

No. 83-6400. *BROTHERS v. MARSHALL, SUPERINTENDENT, SOUTHERN OHIO CORRECTIONAL FACILITY*. C. A. 6th Cir. Certiorari denied. Reported below: 727 F. 2d 1108.

No. 83-6401. *FERRIN v. JONES, SUPERINTENDENT, GREAT MEADOWS CORRECTIONAL FACILITY*. C. A. 2d Cir. Certiorari denied.

No. 83-6411. *JONES v. YOUNG, SUPERINTENDENT, WAUPUN CORRECTIONAL INSTITUTION*. C. A. 7th Cir. Certiorari denied. Reported below: 723 F. 2d 914.

No. 83-6412. *ACUFF v. DALLAS LEGAL SERVICES FOUNDATION, INC., ET AL.* Sup. Ct. Tex. Certiorari denied.

No. 83-6460. *HIDALGO v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 725 F. 2d 692.

No. 83-6484. *BRAGGS v. ALABAMA*. Ct. Crim. App. Ala. Certiorari denied. Reported below: 443 So. 2d 66.

No. 83-6485. *ACHARYA v. YOUNG ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 723 F. 2d 913.

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No. 83-6498. *FLICK v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 719 F. 2d 246.

No. 83-6505. *WILLIAMS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 723 F. 2d 906.

No. 83-6507. *HEIMANN v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 742 F. 2d 1443.

No. 83-6511. *BERRIO-CORDOBA ET AL. v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 725 F. 2d 692.

No. 83-6520. *POSTON ET AL. v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 727 F. 2d 734.

No. 83-6521. *SOMMER v. UNITED STATES ET AL.* C. A. 7th Cir. Certiorari denied.

No. 83-6522. *TWYMAN v. UNITED STATES*. Ct. App. D. C. Certiorari denied.

No. 83-6525. *HAFEN v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: 726 F. 2d 21.

No. 83-6531. *MCDUFF v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 729 F. 2d 1464.

No. 83-122. *HYDROKINETICS, INC. v. ALASKA MECHANICAL, INC.* C. A. 5th Cir. Certiorari denied. JUSTICE POWELL would grant certiorari. Reported below: 700 F. 2d 1026.

No. 83-1093. *MICHIGAN v. PARKER*. Sup. Ct. Mich. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 417 Mich. 556, 339 N. W. 2d 455.

No. 83-1421. *WAINWRIGHT, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS v. THOMPSON*. C. A. 11th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 714 F. 2d 1495.

No. 83-1118. *ROCKEFELLER v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. JUSTICE POWELL took no part in the

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consideration or decision of this petition. Reported below: 718 F. 2d 290.

No. 83-1254. VELDE ET AL. *v.* NATIONAL BLACK POLICE ASSN., INC., ET AL. C. A. D. C. Cir. Certiorari denied. JUSTICE POWELL and JUSTICE STEVENS took no part in the consideration or decision of this petition. Reported below: 229 U. S. App. D. C. 255, 712 F. 2d 569.

No. 83-1488. GLOBAL TERMINAL & CONTAINER SERVICES, INC. *v.* COLGATE PALMOLIVE CO. ET AL. C. A. 2d Cir. Motion of New York Shipping Association, Inc., for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 724 F. 2d 313.

No. 83-1551. BROWN BEAR, INC., ET AL. *v.* KENTUCKY. Cir. Ct. Ky., Campbell County. Certiorari denied. JUSTICE BRENNAN and JUSTICE MARSHALL would grant the petition for writ of certiorari and reverse the judgments of conviction.

No. 83-6230. HARRIS *v.* FLORIDA. Sup. Ct. Fla.;

No. 83-6390. JOHNSON *v.* FLORIDA. Sup. Ct. Fla.;

No. 83-6397. HYMAN *v.* SOUTH CAROLINA. Ct. Common Pleas, Charleston County, S. C.; and

No. 83-6456. JOHNSON *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: No. 83-6230, 438 So. 2d 787; No. 83-6390, 442 So. 2d 193; No. 83-6456, 442 So. 2d 185.

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. 83-1081. FINVOLD ET AL. *v.* SAMBS ET AL., 465 U. S. 1056; and

No. 83-6188. VEREEN *v.* NEWSOME, WARDEN, ET AL., 465 U. S. 1107. Petitions for rehearing denied.

No. 83-921. COMMONWEALTH NATIONAL BANK *v.* ASHE ET AL., 465 U. S. 1024. Motion for leave to file petition for rehearing denied.

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Dismissal Under Rule 53

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. Petition for rehearing dismissed under this Court's Rule 53.

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Miscellaneous Order

No. A-910. WAINWRIGHT, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS v. ADAMS. Application of the State of Florida to vacate the order of the United States Court of Appeals for the Eleventh Circuit, dated May 8, 1984, 734 F. 2d 511, staying the execution of sentence of death in case No. 84-5322, presented to JUSTICE POWELL, and by him referred to the Court, granted. JUSTICE BLACKMUN and JUSTICE STEVENS would deny the application to vacate the stay.

JUSTICE MARSHALL, with whom JUSTICE BRENNAN joins, dissenting.

Yesterday, May 8, 1984, a majority of a panel of the Court of Appeals for the Eleventh Circuit stayed the impending execution of James Adams. The Court of Appeals concluded that Adams' petition for federal habeas corpus relief presents the same issues that are currently pending before the Court of Appeals in *Spencer v. Zant*, 715 F. 2d 1562, vacated for rehearing en banc, 715 F. 2d 1583 (1983), and *McCleskey v. Zant*, No. 84-8176 (to be argued in June 1984), and that "the en banc cases [now] pending in the Eleventh Circuit require a stay in this case." 734 F. 2d 511, 513. Adams, like the petitioners in *Spencer* and *McCleskey*, maintains that the death penalty is administered on the basis of impermissible factors, including race and geography. The panel, after full briefing and oral argument, and with the benefit of a record and complete filing of appendices, was satisfied that Adams, an indigent Negro, had raised this issue in state and federal court, but has never been afforded an evidentiary hearing or appointment of experts. The Court of Appeals was also satisfied that evidence on which Adams relies in his second petition for habeas corpus only became available to him after his first federal habeas proceedings.

After having had less than a day to consider the judgment of the Court of Appeals, this Court now vacates that judgment, thereby opening the way to Adams' execution. The haste and confusion surrounding this decision is degrading to our role as judges. We have simply not had sufficient time with which to consider responsibly the issues posed by this case. Indeed, the Court is in such a rush to put an end to this litigation that it has denied my motion to defer its action for 24 hours in order for me to write a more elaborate dissent than that which is now possible given the pressing time restraints within which I have been forced to work.

The Court's jurisprudence is increasingly being marked by an indecent desire to rush to judgment in capital cases. See, *e. g.*, *Autry v. McKaskle*, 465 U. S. 1085 (1984) (MARSHALL, J., dissenting) (criticizing the Court's "unseemly desire to bring litigation in a capital case to a fast and irrevocable end"); *Woodard v. Hutchins*, 464 U. S. 377, 383 (1984) (BRENNAN, J., dissenting) (criticizing "rush to judgment" in decision to vacate stay of execution); *ibid.* (WHITE and STEVENS, JJ., dissenting); *id.*, at 383-384 (MARSHALL, J., dissenting); *Autry v. Estelle*, 464 U. S. 1, 3 (1983) (STEVENS, J., dissenting) (criticizing decision to deny stay of execution pending filing and disposition of petition for certiorari); *Barefoot v. Estelle*, 463 U. S. 880, 914-916 (1983) (MARSHALL, J., dissenting) (criticizing suggestion that courts of appeals may adopt special, summary procedures for cases in which a stay of a death sentence has been requested).

This case, however, is especially egregious. In lifting the stay imposed by the Court of Appeals, the Court has resorted to an exercise of power that is unusual and that should only be resorted to on the rare occasion in which a lower court has flagrantly abused its discretion. Repeatedly, the Justices of this Court have recognized that the power of a single Justice or of the Court as a whole to vacate a stay entered by a lower court should be reserved for exceptional circumstances. See, *e. g.*, *Kemp v. Smith*, 463 U. S. 1344 (1983) (POWELL, J., in chambers); *O'Connor v. Board of Education*, 449 U. S. 1301, 1304 (1980) (STEVENS, J., in chambers) ("A Court of Appeals' decision to enter a stay is entitled to great deference"); *Holtzman v. Schlesinger*, 414 U. S. 1304, 1308 (1973) (MARSHALL, J., in chambers) (power to vacate stay issued by court of appeals should be exercised "with the greatest of caution"); R. Stern & E. Gressman, *Supreme Court Practice* 881-882 (5th ed. 1978) ("[T]he Court is not likely to overturn the order

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of the lower court except for gross abuse of discretion"). Here, however, caution has been thrown to the winds with an impetuosity and arrogance that is truly astonishing. What appears to have been forgotten here is that we are not dealing with mere legal semantics; we are dealing with a man's life. Because the Court has utterly failed to attend to this case with the careful deliberation that it deserves and has thus committed an error with respect to process as well as result, I respectfully dissent.

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Affirmed on Appeal

No. 83-1552. BACON ET AL. *v.* CARLIN, GOVERNOR OF KANSAS, ET AL. Affirmed on appeal from D. C. Kan. JUSTICE BLACKMUN would note probable jurisdiction and set case for oral argument. Reported below: 575 F. Supp. 763.

Appeals Dismissed

No. 83-357. CUNNINGHAM *v.* GOLDEN ET AL. Appeal from Ct. App. Tenn. dismissed for want of substantial federal question. JUSTICE WHITE and JUSTICE BLACKMUN would note probable jurisdiction and set case for oral argument. Reported below: 652 S. W. 2d 910.

No. 83-1346. BAHAM ET AL. *v.* EDWARDS, GOVERNOR OF LOUISIANA, ET AL. Appeal from D. C. M. D. La. dismissed for want of jurisdiction.

No. 83-1505. CITY OF LOS ANGELES ET AL. *v.* COUNTY OF LOS ANGELES ET AL. Appeal from Ct. App. Cal., 2d App. Dist., dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 147 Cal. App. 3d 952, 195 Cal. Rptr. 465.

No. 83-1518. HEILIG ET AL. *v.* MILLER. 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. Reported below: 149 Cal. App. 3d 978, 197 Cal. Rptr. 371.

No. 83-1532. MCFATHER ET AL. *v.* COTTON STATES MUTUAL INSURANCE CO. Appeal from Sup. Ct. Ga. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken

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as a petition for writ of certiorari, certiorari denied. Reported below: 251 Ga. 739, 309 S. E. 2d 799.

No. 83-1562. *BURG v. MUNICIPAL COURT FOR THE SANTA CLARA JUDICIAL DISTRICT OF SANTA CLARA COUNTY ET AL.* Appeal from Sup. Ct. Cal. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 35 Cal. 3d 257, 673 P. 2d 732.

No. 83-6417. *HALL v. TAYLOR.* Appeal from Sup. Ct. Cal. dismissed for want of substantial federal question. Reported below: 35 Cal. 3d 461, 674 P. 2d 245.

Certiorari Granted—Reversed and Remanded. (See No. 83-1202, ante, p. 720; and No. 83-1338, ante, p. 727.)

Miscellaneous Orders

No. — — —. *PROFESSIONAL POSITIONERS, INC., ET AL. v. T. P. LABORATORIES, INC.* Motion to direct the Clerk to file a petition for writ of certiorari with an appendix that does not comply with the Rules of this Court denied. JUSTICE O'CONNOR would grant the motion.

JUSTICE STEVENS, with whom JUSTICE BLACKMUN joins, dissenting.

Rule 33.1(d) generally requires that documents filed with this Court be reproduced on paper 6½ by 9¼ inches in size, with margins of ¼ inch, to be bound along the left margin "so as to make an easily opened volume, and no part of the text shall be obscured by the binding." It provides, however, that "appendices in patent cases may be duplicated in such size as is necessary to utilize copies of patent documents."

Certain patent documents in this case could not be reproduced on paper 6½ by 9¼ inches in size without violating the other requirements of the Rule. Hence, it seems, at least, that petitioner Professional Positioners, Inc., may reproduce those documents on larger paper. Petitioner now moves that "it be permitted to file a single appendix containing both the patent in suit and the decisions of the two courts below rather than preparing separate appendices," arguing that it would be "more convenient for the court to have a single appendix" and would be "unduly clumsy and ex-

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pensive to prepare a separate appendix solely for the opinions below of a size different than the appendix containing the patent.”

No set of procedural rules can anticipate every problem that may arise in litigation. Courts must therefore retain the power to grant exceptions when a litigant's request fully accommodates the court's needs and when strict compliance would be wasteful. This movant's request to submit a single appendix on the same size paper as the patent at issue is perfectly reasonable and should be granted.

Presumably the Court has denied the motion because it believes the value of the time saved by simply requiring literal compliance with all of its Rules in all cases will outweigh the cost of occasional inconvenience and undue expense. My experience has persuaded me, however, that motions of this kind can be fairly processed so rapidly that the cost of exercising judgment and common sense will not only be trivial, but will actually produce a net savings to the Court in the long run. Surely less time would be spent than the Court has recently devoted to a careful scrutiny of every debatable motion to proceed *in forma pauperis*. See generally *Brown v. Herald Co.*, 464 U. S. 928, 931 (1983) (STEVENS, J., dissenting). I would grant petitioner's sensible motion.

I respectfully dissent.

No. A-842. *WILSON ET AL. v. COLORADO*. Ct. App. Colo. Application for stay, addressed to JUSTICE MARSHALL and referred to the Court, denied.

No. D-398. *IN RE DISBARMENT OF ARMENTROUT*. Disbarment entered. [For earlier order herein, see 465 U. S. 1017.]

No. D-400. *IN RE DISBARMENT OF PRACHT*. Andrew White Pracht, of Eglin, Fla., having requested to resign as a member of the Bar of this Court, it is ordered that his name be stricken from the roll of attorneys admitted to practice before the Bar of this Court. The rule to show cause, heretofore issued on February 21, 1984 [465 U. S. 1017], is hereby discharged.

No. D-401. *IN RE DISBARMENT OF BALLARD*. Disbarment entered. [For earlier order herein, see 465 U. S. 1017.]

No. D-405. *IN RE DISBARMENT OF GETTINGER*. Disbarment entered. [For earlier order herein, see 465 U. S. 1018.]

No. D-407. *IN RE DISBARMENT OF CATES*. Disbarment entered. [For earlier order herein, see 465 U. S. 1063.]

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No. D-408. IN RE DISBARMENT OF LEVENSTEIN. Disbarment entered. [For earlier order herein, see 465 U. S. 1076.]

No. D-428. IN RE DISBARMENT OF QUELLO. It is ordered that Allan T. Quello, of Hopkins, Minn., 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-429. IN RE DISBARMENT OF COOPER. It is ordered that Saul J. Cooper, of Miami, 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-431. IN RE DISBARMENT OF WATSON. It is ordered that Norma Mims Watson, of Houston, Tex., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring her to show cause why she should not be disbarred from the practice of law in this Court.

No. 86, Orig. LOUISIANA *v.* MISSISSIPPI ET AL., *ante*, p. 96. Motion of defendant Avery B. Dille, Jr., for clarification of opinion denied.

No. 83-1545. WESTERN AIR LINES, INC. *v.* CRISWELL 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. 83-6323. JONES *v.* EAST BATON ROUGE PARISH SCHOOL BOARD ET AL. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until June 4, 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.*, 464 U. S. 928 (1983), we would deny the petition for writ of certiorari without reaching the merits of the motion to proceed *in forma pauperis*.

No. 83-6451. OMERNICK *v.* RICHARDS ET AL. C. A. 7th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until June 4, 1984, within which to

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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 and JUSTICE MARSHALL, dissenting.

For the reasons expressed in *Brown v. Herald Co.*, 464 U. S. 928 (1983), we would deny the petition for writ of certiorari without reaching the merits of the motion to proceed *in forma pauperis*.

No. 83-6436. IN RE TEPP;

No. 83-6509. IN RE SAYLES; and

No. 83-6535. IN RE JOHNSON. Petitions for writs of mandamus denied.

Certiorari Granted

No. 83-1084. VISTA RESOURCES, INC., ET AL. *v.* SEAGRAVE CORP. C. A. 2d Cir. Certiorari granted. Reported below: 696 F. 2d 227 and 710 F. 2d 95.

No. 83-1416. NATIONAL LABOR RELATIONS BOARD *v.* ACTION AUTOMOTIVE, INC. C. A. 6th Cir. Certiorari granted. Reported below: 717 F. 2d 1033.

Certiorari Denied. (See also Nos. 83-1505, 83-1518, 83-1532, and 83-1562, *supra*.)

No. 83-502. FIELD COMMUNICATIONS CORP. ET AL. *v.* BRAIG, JUDGE, COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY. Super. Ct. Pa. Certiorari denied. Reported below: 310 Pa. Super. 569, 456 A. 2d 1366.

No. 83-619. GRAVES *v.* LEXINGTON HERALD-LEADER CO. Sup. Ct. Ky. Certiorari denied.

No. 83-976. HOSPITAL SERVICE ASSOCIATION OF NEW ORLEANS, INC. *v.* ST. BERNARD GENERAL HOSPITAL, INC. C. A. 5th Cir. Certiorari denied. Reported below: 712 F. 2d 978.

No. 83-1126. MAIER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 720 F. 2d 978.

No. 83-1129. CIAMMITTI ET AL. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 720 F. 2d 927.

No. 83-1162. PICCOLO *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 723 F. 2d 1234.

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No. 83-1164. *PHILLIPS v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 593 F. 2d 553.

No. 83-1216. *JONES ET AL. v. BERRY, DISTRICT DIRECTOR, INTERNAL REVENUE SERVICE, ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 722 F. 2d 443.

No. 83-1219. *MACON TELEGRAPH PUBLISHING CO. v. ELIOTT*. Sup. Ct. Ga. Certiorari denied. Reported below: 251 Ga. 544, 309 S. E. 2d 142.

No. 83-1220. *FARRAH v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 715 F. 2d 1097.

No. 83-1231. *TESLOVICH v. UNITED STATES*; and

No. 83-1291. *SOLOMON v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: No. 83-1231, 725 F. 2d 670; No. 83-1291, 725 F. 2d 671.

No. 83-1232. *MURRAY v. NEW MEXICO*. Ct. App. N. M. Certiorari denied.

No. 83-1237. *SANCHEZ-MARTINEZ v. IMMIGRATION AND NATURALIZATION SERVICE*. C. A. 9th Cir. Certiorari denied. Reported below: 714 F. 2d 72.

No. 83-1242. *SUN MYUNG MOON ET AL. v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 718 F. 2d 1210.

No. 83-1298. *OIL, CHEMICAL & ATOMIC WORKERS INTERNATIONAL UNION ET AL. v. DONOVAN, SECRETARY OF LABOR, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 718 F. 2d 1341.

No. 83-1299. *KAHALEWAI ET AL. v. RODRIGUES* (two cases). Sup. Ct. Haw. Certiorari denied. Reported below: 66 Haw. 675 (first case); 66 Haw. 681 (second case).

No. 83-1302. *NAVA v. MERIT SYSTEMS PROTECTION BOARD*. C. A. Fed. Cir. Certiorari denied.

No. 83-1308. *STRICK CORP. v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 714 F. 2d 1194.

No. 83-1311. *OKLAHOMA EX REL. DEPARTMENT OF HUMAN SERVICES v. WEINBERGER, SECRETARY OF DEFENSE*. C. A. 10th Cir. Certiorari denied.

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No. 83-1315. RIVERBEND FARMS, INC. *v.* AGRICULTURAL LABOR RELATIONS BOARD ET AL.; and

No. 83-1332. RIVCOM CORP. *v.* AGRICULTURAL LABOR RELATIONS BOARD ET AL. Sup. Ct. Cal. Certiorari denied. Reported below: 34 Cal. 3d 743, 670 P. 2d 305.

No. 83-1326. WISSLER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 716 F. 2d 1050.

No. 83-1337. HERO LANDS CO. ET AL. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 727 F. 2d 1118.

No. 83-1339. EISENBERG *v.* UNITED STATES; and
No. 83-1340. DORISON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 723 F. 2d 901.

No. 83-1381. FEINSTEIN ET AL. *v.* NETTLESHIP CO. OF LOS ANGELES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 714 F. 2d 928.

No. 83-1396. EASTERDAY *v.* COYER ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 720 F. 2d 626.

No. 83-1401. FELTON ET AL. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 7th Cir. Certiorari denied. Reported below: 723 F. 2d 66.

No. 83-1405. WEBB *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 723 F. 2d 917.

No. 83-1418. CITY OF LITTLE ROCK ET AL. *v.* GILBERT ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 722 F. 2d 1390.

No. 83-1480. GEOSearch, INC., ET AL. *v.* CLARK, SECRETARY OF THE INTERIOR, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 721 F. 2d 694.

No. 83-1511. STANTON *v.* DISTRICT OF COLUMBIA COURT OF APPEALS. Ct. App. D. C. Certiorari denied. Reported below: 470 A. 2d 281.

No. 83-1521. WEISS *v.* EMPLOYER-SHEET METAL WORKERS LOCAL 544 PENSION TRUST PLAN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 719 F. 2d 302.

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No. 83-1525. *CARROLL v. SCOTT, SHERIFF OF DE KALB COUNTY, ILLINOIS, ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 725 F. 2d 687.

No. 83-1529. *ROBINSON v. MARYLAND.* Ct. Sp. App. Md. Certiorari denied. Reported below: 56 Md. App. 721.

No. 83-1541. *PORTER v. NORTH CAROLINA.* Ct. App. N. C. Certiorari denied. Reported below: 65 N. C. App. 13, 308 S. E. 2d 767.

No. 83-1547. *NOVEL v. LOUISIANA EXPOSITION ET AL.* C. A. 5th Cir. Certiorari denied.

No. 83-1548. *KUSTINA v. CITY OF SEATTLE ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 725 F. 2d 691.

No. 83-1550. *LITTON SYSTEMS, INC. v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 722 F. 2d 264.

No. 83-1556. *ADAMS v. PROVIDENCE & WORCESTER CO.* C. A. 1st Cir. Certiorari denied. Reported below: 721 F. 2d 870.

No. 83-1557. *PACIFIC INTERMOUNTAIN EXPRESS Co. v. JOHNSON ET AL.* Sup. Ct. Mo. Certiorari denied. Reported below: 662 S. W. 2d 237.

No. 83-1568. *COIA ET AL. v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 719 F. 2d 1120.

No. 83-1570. *FOSTER ET AL. v. MILLER, CHAIRMAN, FEDERAL TRADE COMMISSION.* C. A. D. C. Cir. Certiorari denied. Reported below: 232 U. S. App. D. C. 263, 721 F. 2d 1424.

No. 83-1571. *RADIGAN v. SUPREME COURT OF KENTUCKY.* Sup. Ct. Ky. Certiorari denied. Reported below: 660 S. W. 2d 673.

No. 83-1574. *CITY OF PERRYTON, TEXAS v. JACKS ET UX.* C. A. 5th Cir. Certiorari denied. Reported below: 724 F. 2d 128.

No. 83-1575. *AYOUB ET AL. v. MORRISON ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 727 F. 2d 1100.

No. 83-1580. *CITRON ET AL. v. CITRON.* C. A. 2d Cir. Certiorari denied. Reported below: 722 F. 2d 14.

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No. 83-1585. *WOLTERS VILLAGE, LTD. v. VILLAGE PROPERTIES, LTD.* C. A. 5th Cir. Certiorari denied. Reported below: 723 F. 2d 441.

No. 83-1588. *CRAMER v. STATE BAR OF MICHIGAN ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 723 F. 2d 908.

No. 83-1595. *VALERIANO v. CONNECTICUT.* Sup. Ct. Conn. Certiorari denied. Reported below: 191 Conn. 659, 468 A. 2d 936.

No. 83-1603. *BURNWORTH v. BURNWORTH.* Ct. App. Colo. Certiorari denied.

No. 83-1639. *LAFONTAINE v. CHESAPEAKE & OHIO RAILWAY CO.* C. A. 6th Cir. Certiorari denied. Reported below: 725 F. 2d 684.

No. 83-1641. *MULLEN v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 726 F. 2d 751.

No. 83-1644. *MORRIS v. ATTORNEY GRIEVANCE COMMISSION OF MARYLAND.* Ct. App. Md. Certiorari denied. Reported below: 298 Md. 299, 469 A. 2d 853.

No. 83-1665. *BORRELL v. UNITED STATES INFORMATION AGENCY.* C. A. D. C. Cir. Certiorari denied. Reported below: 232 U. S. App. D. C. 263, 721 F. 2d 1424.

No. 83-1694. *PRIMROSE v. UNITED STATES.* C. A. 10th Cir. Certiorari denied. Reported below: 718 F. 2d 1484.

No. 83-1701. *BOSTON v. UNITED STATES.* C. A. 10th Cir. Certiorari denied. Reported below: 718 F. 2d 1511.

No. 83-5869. *CROWDER v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 719 F. 2d 166.

No. 83-6005. *KINDEM v. MINNESOTA.* Sup. Ct. Minn. Certiorari denied. Reported below: 338 N. W. 2d 9.

No. 83-6024. *SANTANA ET AL. v. COLLAZO ET AL.* C. A. 1st Cir. Certiorari denied. Reported below: 714 F. 2d 1172.

No. 83-6057. *MOCK v. UNITED STATES.* Ct. App. D. C. Certiorari denied.

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No. 83-6066. *GLOVER v. NEW YORK*. Ct. App. N. Y. Certiorari denied. Reported below: 60 N. Y. 2d 783, 457 N. E. 2d 783.

No. 83-6130. *MORENO v. MCKASKLE, ACTING DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS*. C. A. 5th Cir. Certiorari denied. Reported below: 717 F. 2d 171.

No. 83-6142. *HUFFMAN v. WAINWRIGHT, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS*. C. A. 11th Cir. Certiorari denied. Reported below: 720 F. 2d 1292.

No. 83-6169. *FERGUSON v. MCCARTHY, SUPERINTENDENT, CALIFORNIA MEN'S COLONY*. C. A. 9th Cir. Certiorari denied. Reported below: 723 F. 2d 915.

No. 83-6181. *HILL v. MCKASKLE, ACTING DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS*. C. A. 5th Cir. Certiorari denied. Reported below: 721 F. 2d 816.

No. 83-6218. *HOCKENBURY v. SMITH, WARDEN*. C. A. 6th Cir. Certiorari denied. Reported below: 718 F. 2d 155.

No. 83-6233. *SHEEHAN ET AL. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 713 F. 2d 1097.

No. 83-6288. *PERKINS v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 723 F. 2d 903.

No. 83-6348. *SHAH v. HUTTO ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 722 F. 2d 1167.

No. 83-6377. *ANDREWS v. LEEKE, COMMISSIONER, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 723 F. 2d 900.

No. 83-6420. *DOUGLAS v. ROBB ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 725 F. 2d 674.

No. 83-6423. *JAMESON v. WAINWRIGHT, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS*. C. A. 11th Cir. Certiorari denied. Reported below: 719 F. 2d 1125.

No. 83-6428. *SCARSELLI v. NEW YORK TELEPHONE CO.* C. A. 2d Cir. Certiorari denied. Reported below: 732 F. 2d 142.

No. 83-6431. *ROGERS v. WAINWRIGHT, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS*. C. A. 11th Cir. Certiorari denied.

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No. 83-6432. *SMITH v. BORDENKIRCHER, WARDEN*. C. A. 4th Cir. Certiorari denied. Reported below: 718 F. 2d 1273.

No. 83-6433. *WILKINS v. LYLES, WARDEN*. C. A. 4th Cir. Certiorari denied. Reported below: 725 F. 2d 678.

No. 83-6434. *SILVER v. MOHASCO CORP.* C. A. 2d Cir. Certiorari denied. Reported below: 742 F. 2d 1435.

No. 83-6441. *LOGAN v. CLERK, SEDGWICK COUNTY CIRCUIT COURT, ET AL.* C. A. 10th Cir. Certiorari denied.

No. 83-6442. *JOHNSON v. CONSOLIDATED FREIGHTWAYS, INC.* C. A. 7th Cir. Certiorari denied.

No. 83-6444. *JONES v. MCKASKLE, ACTING DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS*. C. A. 5th Cir. Certiorari denied. Reported below: 722 F. 2d 159.

No. 83-6448. *HOLMAN v. ALABAMA*. Ct. Crim. App. Ala. Certiorari denied. Reported below: 443 So. 2d 67.

No. 83-6450. *SCHMIDT v. CALIFORNIA*. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 83-6461. *CASTON v. MAGGIO, WARDEN, ET AL.* C. A. 5th Cir. Certiorari denied.

No. 83-6462. *WILSON v. MORRIS, WARDEN, ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 724 F. 2d 591.

No. 83-6464. *MALDONADO v. MCKASKLE, ACTING DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS*. C. A. 5th Cir. Certiorari denied. Reported below: 720 F. 2d 676.

No. 83-6465. *KNIGHT v. ZIMMERMAN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON*. C. A. 3d Cir. Certiorari denied.

No. 83-6472. *SHAW v. NEECE ET AL.* C. A. 10th Cir. Certiorari denied. Reported below: 727 F. 2d 947.

No. 83-6477. *DIAZ v. MARTIN, WARDEN, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 718 F. 2d 1372.

No. 83-6478. *FULLARD v. FLORIDA*. C. A. 11th Cir. Certiorari denied. Reported below: 724 F. 2d 977.

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No. 83-6489. BLAIR *v.* PENNSYLVANIA ET AL. Pa. Commw. Ct. Certiorari denied. Reported below: 78 Pa. Commw. 41, 467 A. 2d 71.

No. 83-6491. CLINTON *v.* ROBLE. C. A. 3d Cir. Certiorari denied.

No. 83-6495. PETTY *v.* PARKE, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 725 F. 2d 684.

No. 83-6499. WOODS *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 319 Pa. Super. 602, 466 A. 2d 709.

No. 83-6517. PUCHALSKI *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 83-6530. BONNER *v.* PHILADELPHIA INTERNATIONAL RECORDS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 730 F. 2d 764.

No. 83-6534. HALL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 729 F. 2d 1462.

No. 83-6553. CASTEEL *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 729 F. 2d 1445.

No. 83-6563. McDONALD *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 723 F. 2d 1288.

No. 83-6566. GOMEZ-SOTO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 723 F. 2d 649.

No. 83-6579. CRISCO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 725 F. 2d 1228.

No. 83-6582. FLOYD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 726 F. 2d 751.

No. 83-6588. ROMAN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 728 F. 2d 846.

No. 82-859. MARSHALL, SUPERINTENDENT, SOUTHERN OHIO CORRECTIONAL FACILITY *v.* CLARK. C. A. 6th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 676 F. 2d 1099.

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No. 83-1519. *FLORIDA v. DRAKE*. Sup. Ct. Fla. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 441 So. 2d 1079.

No. 83-1187. *INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW v. ITT LIGHTING FIXTURES, INC., DIVISION OF ITT CORP., ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 712 F. 2d 40 and 718 F. 2d 201.

JUSTICE WHITE, with whom JUSTICE BRENNAN joins, dissenting.

A majority of the employees at two facilities operated by respondent ITT Lighting Fixtures, Inc., chose petitioner International Union as their bargaining representative in an election conducted under the auspices of the National Labor Relations Board in February 1979. ITT contested the election results, challenging the ballots cast by a number of group leaders on the ground that these employees were supervisors and asserting that they had actively favored the union during the election campaign. The Board held that some of the group leaders were supervisors ineligible to vote but concluded that their pro-union activities did not impermissibly interfere with other employees' free choice because they were only minor supervisors with no substantial authority to affect the employment status of other employees. 249 N. L. R. B. 441 (1980). The International Union was certified as bargaining representative, and, when ITT refused to bargain, the NLRB found that the company had committed an unfair labor practice. 252 N. L. R. B. 328 (1980).

The Court of Appeals for the Second Circuit refused to enforce the NLRB's bargaining order, taking the view that the Board had failed to make sufficient findings concerning the precise supervisory authority of the group leaders and to articulate sufficiently its reasons for concluding that the group leaders' pro-union activities did not impair other employees' free choice. 658 F. 2d 934 (1981). On remand, the NLRB made new findings about each of the group leaders, reaffirmed its certification of the International Union, and ordered ITT to bargain. 265 N. L. R. B. 1480 (1982).

The Court of Appeals again refused enforcement, vacated the NLRB's order, and set aside the election. 712 F. 2d 40 (1983). It concluded that the Board had given insufficient weight to group leaders' power to reward employees in determining whether the

group leaders were major supervisors whose involvement in the union campaign was coercive. Although the Board had concluded that the group leaders lacked the power to reward employees, the Court of Appeals examined the record and concluded that five group leaders possessed more than minimal power to reward employees and that "51 employees could possibly have been influenced by the pro-union activity" of these supervisors. *Id.*, at 45. Since the outcome of the election depended on 12 votes, the court concluded that a new election should be held.

In its submission to this Court, the NLRB has taken the position that the Court of Appeals erred in rejecting its finding that ITT's group leaders possessed insufficient authority over other employees to make their pro-union activities coercive but that review is unnecessary in light of the fact-bound nature of the Court of Appeals' decision. In my view, however, the case warrants this Court's attention. Not only did the Court of Appeals select isolated language from the Board's Supplemental Decision and Order in concluding that the Board had failed to consider the group leaders' power to reward employees as evidence of major supervisory power, but also it appears to have enunciated a standard against which pro-union supervisory conduct is to be judged that differs substantially from the standard adopted by its sister Circuits.

There is no doubt that the participation of supervisors in union elections may in some circumstances so undermine employees' freedom of choice as to warrant setting aside the election. In rejecting ITT's challenge to the election, the Board concluded both that the supervisors who expressed their support for the International Union lacked substantial authority over other employees and that the supervisors' pro-union activities were not such as to give rise to a fear of possible retribution. Although the Court of Appeals recognized the need to consider both the degree of supervisory authority and the extent, nature, and openness of pro-union activity, *e. g.*, 658 F. 2d, at 937, it concentrated its analysis almost exclusively on the former. After concluding that some of the group leaders possessed major supervisory authority, the Second Circuit held, without considering the specific conduct at issue, that the group leaders' activity "could possibly have . . . influenced" some employees. Other Circuits that have addressed this question have concluded that "without evidence of any threats, express or implied, [the fact that certain supervisors favor a union] does

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not compel a finding of coercion." *Fall River Savings Bank v. NLRB*, 649 F. 2d 50, 57 (CA1 1981). See *NLRB v. Manufacturer's Packaging Co.*, 645 F. 2d 223, 226 (CA4 1981); *NLRB v. San Antonio Portland Cement Co.*, 611 F. 2d 1148, 1151 (CA5 1980); *Global Marine Development of California, Inc. v. NLRB*, 528 F. 2d 92, 95 (CA9 1975), cert. denied, 429 U. S. 821 (1976); *Worley Mills, Inc. v. NLRB*, 685 F. 2d 362, 365 (CA10 1982). The First Circuit, in fact, appears to have recognized that the Second Circuit's standard differs from its own. *NLRB v. Northeastern University*, 707 F. 2d 15, 18 (1983). Although the Court of Appeals disavowed this intention, 658 F. 2d, at 937, it is difficult to escape the conclusion that the rule it announced comes close to a *per se* rule against supervisory involvement in union elections. Perhaps it is correct, but its approach seems at odds with that of the Board and other Circuits. I would grant certiorari.

Accordingly, I dissent.

No. 83-1290. *MOBIL OIL CORP. v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY ET AL.* C. A. 7th Cir. Certiorari denied. JUSTICE POWELL took no part in the consideration or decision of this petition. Reported below: 716 F. 2d 1187.

No. 83-6321. *KING v. WILLIAMS INDUSTRIES, INC., ET AL.* C. A. 1st Cir. Certiorari denied. JUSTICE POWELL took no part in the consideration or decision of this petition. Reported below: 724 F. 2d 240.

No. 83-1297. *UNITED STATES v. DAHLSTROM ET AL.* C. A. 9th Cir. Motions of respondents Gaze Durst and Hiram E. Conley for leave to proceed *in forma pauperis* granted. Certiorari denied. JUSTICE BRENNAN would grant certiorari. Reported below: 713 F. 2d 1423.

No. 83-1544. *SIEBERT ET AL. v. CONSERVATIVE PARTY OF NEW YORK STATE ET AL.* C. A. 2d Cir. Motion of Center for Responsive Politics for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 724 F. 2d 334.

No. 83-1561. *COMMISSIONER OF INTERNAL REVENUE v. ESTATE OF VAN HORNE ET AL.* C. A. 9th Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 720 F. 2d 1114.

No. 83-1567. *CROSS v. GENERAL MOTORS CORP.* C. A. 8th Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the

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consideration or decision of this petition. Reported below: 721 F. 2d 1152.

No. 83-5785. *WILLIAMS v. ILLINOIS*. Sup. Ct. Ill.;
No. 83-5966. *DIXON v. ILLINOIS*. App. Ct. Ill., 1st Dist.; and
No. 83-6199. *YATES v. ILLINOIS*. Sup. Ct. Ill. Certiorari
denied. Reported below: No. 83-5785, 97 Ill. 2d 252, 454 N. E.
2d 220; No. 83-5966, 105 Ill. App. 3d 340, 434 N. E. 2d 369;
No. 83-6199, 98 Ill. 2d 502, 456 N. E. 2d 1369.

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 judgments of the Supreme Court of Illinois and the Appellate Court of Illinois insofar as they left undisturbed the death sentences imposed in these three cases. *Gregg v. Georgia*, 428 U. S. 153, 231 (1976) (MARSHALL, J., dissenting). However, even if I believed that capital punishment were constitutional under certain circumstances, I would vote to grant these petitions because they present a substantial constitutional challenge to the Illinois state's attorneys' practice of using peremptory challenges to exclude Negro jurors from participating in capital cases.

Hernando Williams, Wendell Dixon, and Lonnie Yates are Negroes. In unrelated indictments, the people of Illinois charged each of these men with serious felonies, punishable by death under Illinois law. Each was tried by jury, and each now claims that the prosecution violated the Federal Constitution by using peremptory challenges to remove Negroes from the jury venire.¹ In petitioner Dixon's case, 20% of the jury venire were Negroes. The prosecution used five of seven peremptory challenges to exclude the Negro members from the venire. An all-white jury then convicted Dixon and sentenced him to death. In petitioner Williams' case, 22% of the venire were Negroes. The prosecution used 11 of its 20 peremptory challenges to exclude Negroes, and an all-white jury sentenced Williams to death. In petitioner Yates' case, the record does not indicate what percentage of the

¹ Petitioners Dixon and Yates were both convicted and sentenced by a jury. Petitioner Williams pleaded guilty, and a jury heard only the sentencing phase of his trial.

venire were Negroes, but the record does show that the State used 13 of 16 peremptory challenges to remove Negroes from the venire. The jury that convicted Yates and sentenced him to death included a single Negro.

The claim raised in these petitions is distressingly familiar. Whenever a Negro defendant is charged with a capital offense, there is a substantial chance that the prosecution will employ its peremptory challenges to remove Negroes and other minorities from the jury panel. See *Gilliard v. Mississippi*, 464 U. S. 867, 867-868, and n. 3 (1983) (MARSHALL, J., dissenting) (listing cases in 19 different jurisdictions raising the issue since 1979). Illinois provides a striking, but by no means isolated, illustration of the dimensions of the problem. Since 1959, the Supreme Court of Illinois has reviewed at least 33 cases in which criminal defendants have alleged prosecutorial misuse of peremptory challenges to exclude Negro jurors. See *People v. Payne*, 99 Ill. 2d 135, 152-153, 457 N. E. 2d 1202, 1210-1211 (1983) (Simon, J., dissenting) (list of cases). Petitioners in these three cases stand at the end of a long line of Negro criminal defendants who claim that the State of Illinois has denied them trial by a fair cross-section of the community.

The intentional exclusion of Negro jurors is particularly pronounced in capital cases in Illinois. Since the enactment of the latest Illinois Death Act, 29 juries have been empaneled to sentence Negro defendants in capital cases. Nineteen of these juries were all-white, and five had only one Negro juror. Illinois Coalition Against the Death Penalty, *Death Sentences in Illinois* (July 31, 1983). It is simply inconceivable that the racial composition of these juries was the result of statistical anomaly. According to the most recent census figures, 14.65% of the Illinois population is Negro.² If the jury-selection process in Illinois were completely race-blind, roughly 17% of all juries would be expected to have one or no Negro jurors. In fact, more than 80% of the Illinois sentencing juries have had less than two Negro members when the defendant was a Negro.

² Bureau of Census, *County and City Data Book 130* (1983). The 14.65% figure is actually conservative since more than half of the capital cases involving Negro defendants were tried in Cook County, which is more than 25% Negro. *Ibid.*

In reviewing petitioner Williams' appeal, the Illinois Supreme Court reviewed these jury-composition statistics prepared by the Illinois Coalition. 97 Ill. 2d 252, 273, 454 N. E. 2d 220, 230 (1983). Despite the clear import of the figures, the Illinois Supreme Court concluded that the statistics were insufficient to establish prosecutorial misconduct under *Swain v. Alabama*, 380 U. S. 202 (1965).³ Since in Illinois *Swain* presents the only limitations on a prosecutor's use of peremptory challenges, the Illinois Supreme Court concluded that the procedure used to select petitioner Williams' jury, like the procedures used in the trials of petitioners Yates and Dixon, was without constitutional defect.

A majority of this Court has already recognized that the exclusion of minority jurors through peremptory challenges is a significant constitutional issue this Court will some day have to address. *McCray v. New York*, 461 U. S. 961, 961-962 (1983) (opinion of STEVENS, J., joined by BLACKMUN and POWELL, JJ.); *id.*, at 966-967 (MARSHALL, J., joined by BRENNAN, J., dissenting). As the years pass, it becomes increasingly clear that the problem will not be solved until this Court intervenes. See *Gilliard v. Mississippi*, *supra*, at 873. Over the last 12 months, I have twice urged the Court either to reconsider our decision in *Swain v. Alabama*, *supra*, or to address the distinct question whether the Sixth and Fourteenth Amendments prohibit the States from excluding potential jurors solely on the basis of race. See *McCray v. New York*, *supra*, at 963 (MARSHALL, J., dissenting); *Gilliard v. Mississippi*, *supra*. These petitions present the Court with three more opportunities to protect criminal defendants against jury-selection procedures that are clearly racially discriminatory. Again today, I urge my colleagues to grant

³The Illinois Supreme Court was critical of the study prepared by the Illinois Coalition Against the Death Penalty and presented by petitioner Williams during his appeal because the study did not indicate how many times defense counsel and the prosecution employed peremptory challenges to exclude minorities in individual cases covered by the study. 97 Ill. 2d, at 273, 454 N. E. 2d, at 230. This criticism reflects the practical impossibility of obtaining relief under *Swain*, which offers defendants protection only if the prosecutor uses peremptory challenges to exclude Negro jurors in "case after case." Not only does the *Swain* standard make a defendant's constitutional rights contingent upon the facts of previous cases, see *McCray v. New York*, 461 U. S. 961, 964-965 (1983) (MARSHALL, J., dissenting), but a defendant's opportunity to vindicate those rights depends on other defendants' building adequate records in previous cases.

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certiorari on what I believe to be one of the gravest and most persistent problems facing the American judiciary today.

I dissent from the Court's refusal to confront this issue.

No. 83-5808. PORTER v. MCKASKLE, ACTING DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS. C. A. 5th Cir. Certiorari denied. Reported below: 709 F. 2d 944.

JUSTICE MARSHALL, with whom JUSTICE BRENNAN joins, dissenting.

This case presents a recurring question concerning the standard for determining when a trial judge has a constitutional obligation to order a psychiatric examination to determine a defendant's competency to stand trial. Especially because the correct answer to that question determines whether petitioner lives or dies, I would grant the petition.¹

In 1976, petitioner, Henry Martinez Porter, was tried in Texas for the murder of a policeman. He was convicted and sentenced to death. However, the Texas Court of Criminal Appeals overturned his conviction on the ground that petitioner's constitutional right to confront witnesses against him had been violated by the introduction into evidence of materials from a file pertaining to petitioner's conduct while on federal parole during 1973 and 1974. *Porter v. State*, 578 S. W. 2d 742 (1979). Among those materials were various reports that cast doubt on petitioner's sanity and capacity to understand legal proceedings. For example, the director of a drug abuse treatment center described petitioner's debilitating and apparently incurable heroin addiction. The director went on to cite petitioner's "serious mental and emotional handicaps," concluding that petitioner's "[r]ehabilitative rating is very poor." *Id.*, at 745. Another report quoted unnamed psychologists to the effect that petitioner had "a psychopathic personality" and had manifested "paranoid schizophrenic behavior." *Id.*, at 744.

Petitioner was retried before the same judge who had presided over his first trial. After the jury had been selected but before it was empaneled, the prosecutor for the first time discovered a presentence report, prepared in 1959, that described a psychiatric

¹ Adhering to my view that the death penalty is unconstitutional in all circumstances, *Gregg v. Georgia*, 428 U. S. 153, 231 (1976) (MARSHALL, J., dissenting), I would grant the petition and vacate the sentence even if petitioner had not presented the substantial claim discussed in the text.

episode in petitioner's past. The report revealed that, while incarcerated on a robbery charge, petitioner was sent from a reformatory to a psychiatric hospital, "because he had hallucinations of seeing his father and speaking to him." After being held at the hospital for a month, petitioner escaped.

After receiving this report from the prosecutor, petitioner's counsel informed the trial judge that he was concerned about the bearing of the newly revealed evidence on petitioner's competency to stand trial and requested the judge to order a psychiatric examination of petitioner. Counsel also asked for a ruling that the results of such an examination would be admissible only for the purpose of assessing petitioner's competency, and would be excluded from the penalty phase of the trial. The prosecutor acceded to the request for an exam but objected to the proposed limitation on the admissibility of the results thereof. The trial judge ruled with the prosecutor on this issue, indicating that he would grant the request for a psychiatric exam only if the material disclosed thereby were admitted into the record and could be used by either side for any purpose. In the face of this ruling, defense counsel withdrew his request for a competency exam.

At the conclusion of the second trial, petitioner was once again convicted and sentenced to death. The Texas Court of Criminal Appeals affirmed, *Porter v. State*, 623 S. W. 2d 374 (1981), and this Court denied certiorari, 456 U. S. 965 (1982).

After exhausting his state remedies, petitioner brought this suit in Federal District Court, seeking a writ of habeas corpus on the ground, *inter alia*, that the trial judge's ruling on his request for a psychiatric examination violated the Due Process Clause. The District Court denied relief without oral argument or an evidentiary hearing. No. C-82-159 (SD Tex., Oct. 28, 1982). The Court of Appeals for the Fifth Circuit affirmed. *Porter v. Estelle*, 709 F. 2d 944 (1983).

As the Court of Appeals acknowledged, if petitioner's competency was questionable, the trial judge erred in refusing to order a psychiatric examination unless its results could be admitted by the prosecution in the penalty phase of the trial. See *id.*, at 951. It is settled that, if evidence available to a trial judge raises a bona fide doubt regarding a defendant's ability to understand and participate in the proceedings against him, the judge has an obligation to order an examination to assess his competency, even if the defendant does not request such an exam. *Drope v. Missouri*,

420 U. S. 162 (1975); *Pate v. Robinson*, 383 U. S. 375 (1966). It is equally clear that statements made by a defendant in the course of a court-ordered competency exam cannot be used against him in either the liability phase or the penalty phase of his trial unless the defendant makes an intelligent and voluntary waiver of his privilege against self-incrimination. *Estelle v. Smith*, 451 U. S. 454 (1981). A trial judge may not put a defendant to the choice of forgoing either his right to a competency exam or his right to limit the admissibility of statements he makes during such an exam. Cf. *Simmons v. United States*, 390 U. S. 377, 393-394 (1968).

Nevertheless, the Court of Appeals upheld the denial of habeas relief in this case on the ground that the evidence available to the trial judge at the time he made his ruling was insufficient to cast doubt on petitioner's competency. The Court of Appeals made two points in support of this conclusion. First, the trial judge had had an opportunity to observe petitioner in the course of his first trial and in the preliminary stages of the second trial, and petitioner had participated competently in those proceedings. Second, the psychiatric episode that had recently come to the parties' attention had occurred when petitioner was 17, 20 years before the time of the second trial, and thus had little probative value.

In my view, the factors relied upon by the Court of Appeals are insufficient to support its conclusion. In *Drope v. Missouri*, *supra*, at 180, we described as follows the standard to be applied by trial judges in situations of this sort:

"The import of our decision in *Pate v. Robinson* is that evidence of a defendant's irrational behavior, his demeanor at trial, and any prior medical opinion on competence to stand trial are all relevant in determining whether further inquiry is required, but that even one of these factors standing alone may, in some circumstances, be sufficient. There are, of course, no fixed or immutable signs which invariably indicate the need for further inquiry to determine fitness to proceed; the question is often a difficult one in which a wide range of manifestations and subtle nuances are implicated."

At the time he was called upon to assess defense counsel's motion, the trial judge in this case was aware of several reports describing petitioner's "paranoid" and "schizophrenic" behavior.

The judge was also aware that petitioner had a serious and seemingly ineradicable heroin addiction. Petitioner's probation records contained reports from psychiatrists regarding petitioner's "psychopathic personality." Finally, the judge had just been informed that petitioner had been confined in a mental hospital at the age of 17 because of hallucinations. In sum, a substantial body of both medical evidence and evidence pertaining to petitioner's behavior cast doubt upon petitioner's ability to comprehend the proceedings against him.² Surely the Court of Appeals erred in concluding that the cumulation of these data was insufficient to entitle petitioner to a competency exam.

The foregoing conclusion is reinforced by the fact that both the prosecutor and the state trial judge agreed that petitioner should have been given an examination. In response to defense counsel's motion, the prosecutor conceded that, "the way the case law is," both the trial court and defense counsel had an obligation to have petitioner examined. Tr. 1865. The judge thereupon expressed his willingness to order an examination; he simply refused to limit the admissibility of statements made by petitioner during that exam. *Id.*, at 1866.³ In short, the persons best situated to assess petitioner's state of mind were unanimous in their view that a competency examination was warranted.

In elaborating its argument rejecting petitioner's constitutional claim, the Court of Appeals relied in part on this Court's refusal hitherto to "prescribe a general standard with respect to the nature or quantum of evidence necessary to require resort to" a competency exam, *Drope v. Missouri*, *supra*, at 172. See 709

² Cf. *Acosta v. Turner*, 666 F. 2d 949, 954-955 (CA5 1982); *Bruce v. Estelle*, 536 F. 2d 1051, 1062-1063 (CA5 1976) (discussing the potential impact of schizophrenia upon a defendant's capacity to understand judicial proceedings), cert. denied, 429 U. S. 1053 (1977).

³ The Court of Appeals brushed aside these concessions, discounting the judge's expressed willingness to order an exam as irrelevant to the issue of petitioner's right to an exam, and dismissing the prosecutor's judgment as "mistaken." *Porter v. Estelle*, 709 F. 2d 944, 953-954 (1983). Even if one concedes that the trial judge's ruling did not rise to the level of a finding of fact, the judge's receptivity to petitioner's constitutional claim (reflected in the judge's willingness to order a competency exam despite the fact that the jury had already been empaneled) surely is entitled to more weight than it was given by the Court of Appeals.

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F. 2d, at 950, n. 3.⁴ If our failure to clarify this area of the law has the effect of defeating claims as substantial as that made by petitioner, it is time we reconsidered the issue of a defendant's entitlement to a competency exam and set a standard that would provide lower courts better guidance.

I would grant the petition and set the case for argument.

No. 83-6080. RECTOR *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 280 Ark. 385, 659 S. W. 2d 168.

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, *Gregg v. Georgia*, 428 U. S. 153, 231 (1976) (MARSHALL, J., dissenting), I would vacate the judgment of the Supreme Court of Arkansas insofar as it left undisturbed the death sentence imposed in this case. However, even if I believed that capital punishment were constitutional under certain circumstances, I would vote to grant this petition because it raises an important and unresolved question about the composition of juries in capital cases.

Petitioner claims that he was denied his rights under the Sixth and Fourteenth Amendments to have his guilt determined by a fair cross-section of the community. Individuals with conscientious objections to the death penalty were excluded from participating in the liability phase of petitioner's trial. Even if it is permissible for the State to bar such jurors from serving on sentencing juries, see *Witherspoon v. Illinois*, 391 U. S. 510 (1968), there is a substantial question whether they may also be excluded from the guilt-determination process, particularly in light of recently compiled empirical evidence that jurors who favor the death penalty are more likely to vote to convict defendants than jurors who oppose capital punishment. See Berry, Death-Qualification and the "Fireside Induction," 5 UALR L. J. 1 (1982); Winick,

⁴Other Courts of Appeals have also emphasized the absence of any "general standard" enunciated in our two decisions in this field. See, e. g., *Williams v. Bordenkircher*, 696 F. 2d 464, 466 (CA6), cert. denied *sub nom. Williams v. Souders*, 461 U. S. 916 (1983); *United States ex rel. Rivers v. Franzen*, 692 F. 2d 491, 496 (CA7 1982); *Collins v. Housewright*, 664 F. 2d 181, 183 (CA8 1981) (*per curiam*), cert. denied, 455 U. S. 1004 (1982).

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Prosecutorial Peremptory Challenge Practices in Capital Cases: An Empirical Study and a Constitutional Analysis, 81 Mich. L. Rev. 1 (1982).

There can be no doubt that petitioner's claim raises a substantial issue of federal constitutional law. In the past, this Court has acknowledged the potential validity of this issue. See, *e. g.*, *Bumper v. North Carolina*, 391 U. S. 543, 545 (1968); *Witherspoon v. Illinois*, *supra*, at 516-518. Again this Term, the claim has come to the attention of the Court. *Woodard v. Hutchins*, 464 U. S. 377, 379 (1984) (POWELL, J., concurring); *id.*, at 382 (BRENNAN, J., dissenting). Although the Supreme Court of Arkansas rejected the claim in this case, a Federal District Court in that State recently granted a writ of habeas corpus raising precisely the same claim. See *Grigsby v. Mabry*, 569 F. Supp. 1273 (ED Ark. 1983), appeal pending, No. 83-2113 (CA8). These two decisions are squarely in conflict. In light of the conflict, the State of Arkansas "joins petitioner in requesting that this Court grant certiorari to decide this issue as a matter of federal constitutional law." Brief for Respondent 2. Were this not a capital case, I seriously doubt whether this Court would ignore the request of the Arkansas Attorney General to address this unsettled area of federal law.

I dissent.

No. 83-6173. HAMILTON *v.* ZANT, SUPERINTENDENT, GEORGIA DIAGNOSTIC AND CLASSIFICATION CENTER. Sup. Ct. Ga. Certiorari denied. Reported below: 251 Ga. 553, 307 S. E. 2d 667.

JUSTICE MARSHALL, with whom JUSTICE BRENNAN joins, dissenting.

Petitioner, Roland Paul Hamilton, and his friend, Billie Jean Rose, met John Shinall at a bar one evening, took a few drinks and accompanied Shinall to another bar. Later, Shinall suggested that they go to his house to eat, rest, and watch television before visiting more bars. Shinall died from injuries he suffered during this layover at his home. The State's theory was that petitioner went to Shinall's home with the intention of robbing him and killed him in the process. Petitioner claimed that he struck Shinall in order to prevent him from raping Rose and that Rose, too, participated in subduing Shinall by hitting him over the head with a bottle. According to petitioner, he robbed Shinall only as an

afterthought and without knowledge that Shinall's injuries were fatal.

Armed with Rose as its leading witness, the prosecution succeeded in convincing the jury to convict petitioner of felony murder. After a sentencing trial, the jury found that the murder was accompanied by two aggravating circumstances¹ and condemned petitioner to death. On direct appeal to the Georgia Supreme Court, his conviction and sentence were affirmed. *Hamilton v. State*, 244 Ga. 145, 259 S. E. 2d 81 (1979). This Court vacated the sentence and remanded the case for reconsideration in light of *Godfrey v. Georgia*, 446 U. S. 420 (1980). 446 U. S. 961 (1980). On remand, the Georgia Supreme Court reaffirmed the imposition of the death sentence. *Hamilton v. State*, 246 Ga. 264, 271 S. E. 2d 173 (1980). This Court then denied a writ of certiorari. 449 U. S. 1103 (1981).

Petitioner next sought habeas corpus relief in the Superior Court of Butts County, Ga., claiming that at both the guilt-innocence and sentencing phases of his trial he had been denied effective assistance of counsel in violation of the Sixth and Fourteenth Amendments to the United States Constitution. The Superior Court granted a new trial to petitioner based upon evidence produced at five hearings over a span of 18 months.² The Supe-

¹ Pursuant to Ga. Code Ann. §§ 17-10-30(b)(2) and 17-10-30(b)(7) (1982), the jury found 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" and that the murder "was committed while the offender was engaged in the commission of another capital felony." Pet. for Cert. 5

² The Georgia Supreme Court held that the Superior Court's findings were supported by the evidence, 251 Ga. 553, 307 S. E. 2d 667 (1983), and summarized those findings as follows:

"[T]hat although counsel knew only four or five members of the traverse jury panel, he questioned only three jurors on voir-dire examination, and only as to a matter unrelated to capital punishment; that he made no application for investigative funds and conducted no independent investigation; that no witnesses were personally interviewed prior to their testimony; that the autopsy report and other expert medical evidence revealed that two types of wounds, stabbing and tearing, were inflicted upon the deceased; that this supported Hamilton's statement that Billie Jean Rose hit the victim on the head with a bottle; however, defense counsel failed to cross-examine Billie Jean Rose concerning this; that the deceased had a known propensity for violence, which was not investigated; that there was no investigation of grounds on which Billie Jean Rose's testimony and her credibility could have been impeached; that there was no investigation of a prior criminal conviction entered against

rior Court's meticulous review of the pertinent facts revealed that petitioner had been represented by a court-appointed counsel, John F. M. Ranitz, Jr., whose handling of the case fell far below constitutional standards. Counsel failed to pursue *any* independent, pretrial investigation on petitioner's behalf, neglecting even to interview key witnesses. For example, according to the Superior Court, there were elements in the testimony of the medical examiner that corroborated petitioner's account of the killing. Yet, after having failed to interview the medical examiner prior to trial, counsel displayed incompetence during the trial by failing to bring those corroborative facts before the jury.

Counsel's handling of Billie Jean Rose was even more indicative of his inadequate representation. Although he knew prior to trial that the credibility of Rose's testimony against petitioner would constitute a crucial, if not decisive, part of the case, defense counsel failed to investigate whether there were aspects of her background that could serve to impeach her. Nor did he seek to require the State to disclose that it had agreed not to prosecute Rose for her part in the events that led to the victim's death.

Similarly egregious was counsel's failure to develop possibly exculpatory evidence involving the victim's propensity for violence. According to the Superior Court, the victim's relationship with his common-law wife had been "stormy, even violent." Exhibit C, App. to Pet. for Cert. 8. Petitioner's defense relied in large part upon establishing the victim's propensity for violence. Yet at trial counsel failed to inquire into the victim's relationship with his wife.

This pattern of indifference and incompetence continued into the sentencing phase of the trial. In the words of Judge Etheridge of the Superior Court: "The sentencing phase is stark. There exists only the briefest speech on Paul Hamilton's behalf, and no evidence whatever." *Id.*, at 10. According to Judge Etheridge, counsel "had done nothing to attempt to discover evidence that might have afforded the jury a basis for sparing his client's life. Nothing was presented in evidence as a basis for mercy." *Id.*, at

Hamilton when he was 18 years of age, even though defense counsel knew that this would be offered against Hamilton if he was convicted; that no member of Hamilton's family was contacted prior to trial, even though they could have given evidence in mitigation; and that the state had an agreement not to prosecute Billie Jean Rose, which defense counsel did not require the state to disclose." *Id.*, at 554, 307 S. E. 2d, at 688.

11. To put the utter worthlessness of counsel's representation in proper perspective, it should be noted that at the evidentiary hearing that accompanied the habeas corpus proceeding, petitioner's mother testified that she had never been asked to testify on her son's behalf; prior to trial, defense counsel failed to contact any member of his client's family.

On appeal, the Georgia Supreme Court affirmed in part and reversed in part. 251 Ga. 553, 307 S. E. 2d 667 (1983). It affirmed the reversal of the death sentence, concluding that petitioner had been denied effective assistance of counsel at the sentencing phase of the trial. However it reversed the Superior Court's order for a new trial, holding that petitioner had not been denied effective assistance at the guilt-innocence stage of his trial because he had not been prejudiced by his attorney's deficient performance. In the court's view, petitioner had not been prejudiced because the evidence led "inexorably to the conclusion that he is guilty of murder." *Id.*, at 555, 307 S. E. 2d, at 669.

This Court should grant a writ of certiorari to review that part of the Georgia Supreme Court's judgment reversing the order for a new trial because it is clear from the record that defense counsel's substandard performance utterly deprived petitioner of effective assistance of counsel at *both* phases of his trial. In *Strickland v. Washington*, *ante*, p. 668, this Court today holds that in order to successfully advance an ineffective-assistance claim a defendant must show that his attorney's performance fell below constitutional standards and that the deficient performance actually prejudiced his defense. To meet the prejudice prong of the *Strickland* test, "[t]he defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Ante*, at 694. In this case, there exists a reasonable probability that the outcome would have been different but for the substandard performance of petitioner's counsel.³ Had counsel sought to impeach the prosecution's main witness, had he sought from the medical examiner favorable testimony that was later elicited at the habeas corpus hearing, had

³ I continue to disagree with the Court's analysis in *Strickland*. See *ante*, at 710, 712 (MARSHALL, J., dissenting). The point here is that petitioner is entitled to a new trial even under the unduly burdensome test imposed upon defendants by *Strickland*.

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he brought before the jury the victim's propensity towards violence—in short, had defense counsel functioned anywhere within the range of professional conduct expected of attorneys—it is indeed reasonably probable that the jury would have found petitioner guilty of something less serious than capital murder.

Counsel for petitioner displayed the same pattern of incompetence at both the guilt-innocence and sentencing phases of his trial. Yet the Georgia Supreme Court, while willing to recognize that counsel's derelictions prejudiced the defendant at the sentencing phase of the trial, was unwilling to recognize prejudice at the guilt-innocence phase. One expects a court to justify such differences in result, but the Georgia Supreme Court offered no explanation whatever for its divergent conclusions. It simply dictated a holding that suspiciously resembles an arbitrary, ad hoc compromise—one that appears to have traded the vacation of a death sentence for the reinstatement of a murder conviction. Splitting the loaf in two may constitute justice under certain conditions. However, in cases such as the one at bar, such compromise flies in the face of constitutional demands we are not at liberty to ignore. I therefore dissent from the Court's denial of this petition for a writ of certiorari.

No. 83-6346. *TICHNELL v. MARYLAND*; and *CALHOUN v. MARYLAND*. Ct. App. Md.;

No. 83-6430. *HENRY v. WAINWRIGHT, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS*. C. A. 5th Cir.;

No. 83-6459. *LUKE v. ALABAMA*. Sup. Ct. Ala.;

No. 83-6527. *KIRKPATRICK v. LOUISIANA*. Sup. Ct. La.;

No. 83-6568. *BATTLE v. MISSOURI*. Sup. Ct. Mo.; and

No. 83-6583. *FOSTER v. STRICKLAND, WARDEN, ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: No. 83-6346, 297 Md. 432, 468 A. 2d 1 (first case), 297 Md. 563, 468 A. 2d 45 (second case); No. 83-6430, 721 F. 2d 990; No. 83-6459, 444 So. 2d 400; No. 83-6527, 443 So. 2d 546; No. 83-6568, 661 S. W. 2d 487; No. 83-6583, 707 F. 2d 1339.

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.

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Rehearing Denied

No. 82-1256. LYNCH, MAYOR OF PAWTUCKET, ET AL. *v.* DONNELLY ET AL., 465 U. S. 668;

No. 82-5857. APONTE *v.* UNITED STATES, 465 U. S. 1099;

No. 83-888. JACOB *v.* UNITED STATES, *ante*, p. 903;

No. 83-956. BERRYMAN *v.* UNITED STATES, 465 U. S. 1100;

No. 83-1120. SCARSELLETTI *v.* AETNA CASUALTY & SURETY Co., 465 U. S. 1029;

No. 83-1160. MCAULIFFE ET AL. *v.* PENTHOUSE INTERNATIONAL LTD., 465 U. S. 1108;

No. 83-1419. AVERY *v.* UNITED STATES, *ante*, p. 905;

No. 83-5736. SCOTT *v.* UNITED STATES, *ante*, p. 906;

No. 83-5998. MALLY *v.* NEW YORK UNIVERSITY ET AL., 465 U. S. 1035;

No. 83-6121. NELSON *v.* WILLIE, WARDEN, ET AL., 465 U. S. 1105;

No. 83-6228. ROCHE *v.* MAGGIO, WARDEN, *ante*, p. 907;

No. 83-6311. APONTE *v.* HECKLER, SECRETARY OF HEALTH AND HUMAN SERVICES, *ante*, p. 930;

No. 83-6331. MINOR *v.* VETERANS ADMINISTRATION ET AL., *ante*, p. 930; and

No. 83-6372. DI SILVESTRO *v.* UNITED STATES, *ante*, p. 931.
Petitions for rehearing denied.

No. 82-914. MONSANTO Co. *v.* SPRAY-RITE SERVICE CORP., 465 U. S. 752. Petition for rehearing denied. JUSTICE WHITE took no part in the consideration or decision of this petition.

No. 83-851. SOUTH STREET SEAPORT MUSEUM, AS OWNER OF THE BARK PEKING *v.* MCCARTHY ET AL., 465 U. S. 1078. Petition for rehearing denied. JUSTICE MARSHALL took no part in the consideration or decision of this petition.

No. 83-1200. NATIONAL ASSOCIATION OF RECYCLING INDUSTRIES, INC., ET AL. *v.* AMERICAN MAIL LINE, LTD., ET AL., 465 U. S. 1109. Petition for rehearing denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition.