

ORDERS FROM MAY 21 THROUGH
JUNE 26, 1984

MAY 21, 1984

Appeals Dismissed

No. 83-592. OSTROSKY ET AL. *v.* ALASKA. Appeal from Sup. Ct. Alaska dismissed for want of substantial federal question. JUSTICE BLACKMUN and JUSTICE STEVENS would note probable jurisdiction and set case for oral argument. Reported below: 667 P. 2d 1184.

No. 83-1356. REIMER *v.* CALIFORNIA; and

No. 83-6156. ENRIGHT *v.* CALIFORNIA. Appeals from Ct. App. Cal., 2d App. Dist., dismissed for want of jurisdiction. Treating the papers whereon the appeals were taken as petitions for writs of certiorari, certiorari denied.

No. 83-6494. RETTIG *v.* KENT CITY SCHOOL DISTRICT ET AL. Appeal from C. A. 6th Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 720 F. 2d 463.

Certiorari Granted—Vacated and Remanded

No. 82-508. UNITED STATES *v.* DUNN. C. A. 5th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Oliver v. United States*, 466 U. S. 170 (1984). Reported below: 674 F. 2d 1093.

Certiorari Dismissed. (See No. 81-1636, *infra*.)

Vacated and Remanded After Certiorari Granted

No. 81-1636. FLORIDA *v.* BRADY ET AL. Sup. Ct. Fla. [Certiorari granted, 456 U. S. 988.] Motion of California Farm Bureau Federation et al. for leave to file a brief as *amici curiae* granted. Writ of certiorari as to respondent Brady is dismissed, it appearing that the Circuit Court of Florida, Martin County, has accepted the State's *nolle prosequi*. Judgment as to the remaining respondents is vacated, and the case is remanded for further

May 21, 1984

467 U. S.

consideration in light of *Oliver v. United States*, 466 U. S. 170 (1984).

Miscellaneous Orders

No. — — —. *LAUCHLI v. UNITED STATES*. Motion to direct the Clerk to file a petition for writ of certiorari that does not comply with the Rules of this Court denied. JUSTICE BLACKMUN and JUSTICE STEVENS would grant the motion.

No. — — —. *MENOMINEE TRIBE OF INDIANS ET AL. v. UNITED STATES*. Motion to waive the requirement that the trial court opinions be printed as an appendix to the petition for writ of certiorari denied. JUSTICE BLACKMUN, JUSTICE STEVENS, and JUSTICE O'CONNOR would grant the motion.

No. A-852. *VANDROSS v. PALMETTO STATE SAVINGS & LOAN ASSN.* Sup. Ct. S. C. Application for stay and reinstatement of prior order, addressed to JUSTICE MARSHALL and referred to the Court, denied.

No. A-881 (83-6350). *MCCORQUODALE v. BALKCOM, WARDEN, ET AL.*, 466 U. S. 954. Application to suspend the effect of the order denying the petition for writ of certiorari, addressed to JUSTICE BRENNAN and referred to the Court, is granted pending further order of the Court. Execution of the sentence of death, scheduled for May 24, 1984, is stayed pending further order of the Court.

No. D-395. *IN RE DISBARMENT OF SHAPIRO*. Disbarment entered. [For earlier order herein, see 464 U. S. 1067.]

No. D-403. *IN RE DISBARMENT OF CUNNINGHAM*. Disbarment entered. [For earlier order herein, see 465 U. S. 1063.]

No. D-414. *IN RE DISBARMENT OF BLOCK*. Disbarment entered. [For earlier order herein, see 465 U. S. 1096.]

No. D-427. *IN RE DISBARMENT OF STONER*. It is ordered that Jesse Benjamin Stoner, of Marietta, Ga., 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-430. *IN RE DISBARMENT OF LEVINSON*. It is ordered that Robert Charles Levinson, of Indianapolis, Ind., be suspended

467 U. S.

May 21, 1984

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-432. *IN RE DISBARMENT OF GRAFFAGNINO*. It is ordered that Anthony J. Graffagnino, Jr., of Metairie, La., 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-433. *IN RE DISBARMENT OF GRAMZA*. It is ordered that Allen E. Gramza, of Racine, Wis., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. 83-56. *HECKLER, SECRETARY OF HEALTH AND HUMAN SERVICES v. COMMUNITY HEALTH SERVICES OF CRAWFORD COUNTY, INC., ET AL.* C. A. 3d Cir. [Certiorari granted, 464 U. S. 812.] Motion of respondents for leave to file a supplemental brief after argument granted.

No. 83-997. *TRANS WORLD AIRLINES, INC. v. THURSTON ET AL.* C. A. 2d Cir. [Certiorari granted, 465 U. S. 1065]; and

No. 83-1325. *AIR LINE PILOTS ASSN., INTERNATIONAL v. THURSTON ET AL.* C. A. 2d Cir. [Certiorari granted, 466 U. S. 926.] Motion of United Air Lines, Inc., for leave to file a brief as *amicus curiae* granted.

No. 83-1158. *ESTATE OF THORNTON ET AL. v. CALDOR, INC.* Sup. Ct. Conn. [Certiorari granted, 465 U. S. 1078.] Motion of Council of State Governments et al. for leave to file a brief as *amici curiae* granted.

No. 83-6570. *IN RE BUCKMORE*. Petition for writ of mandamus denied.

Certiorari Granted

No. 83-1307. *UNITED STATES v. POWELL*. C. A. 9th Cir. Certiorari granted. Reported below: 708 F. 2d 455 and 719 F. 2d 1480.

No. 83-1330. *UNITED STATES v. HENSLEY*. C. A. 6th Cir. Certiorari granted. Reported below: 713 F. 2d 220.

May 21, 1984

467 U. S.

No. 83-1622. BRANDON ET AL. *v.* HOLT, DIRECTOR OF POLICE FOR THE CITY OF MEMPHIS, ET AL. C. A. 6th Cir. Certiorari granted. Reported below: 719 F. 2d 151.

No. 83-1362. CLEVELAND BOARD OF EDUCATION *v.* LOUDERMILL ET AL.;

No. 83-1363. PARMA BOARD OF EDUCATION *v.* DONNELLY ET AL.; and

No. 83-6392. LOUDERMILL *v.* CLEVELAND BOARD OF EDUCATION ET AL. C. A. 6th Cir. Motions of James Loudermill for leave to proceed *in forma pauperis* granted. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. Reported below: 721 F. 2d 550.

Certiorari Denied. (See also Nos. 83-1356, 83-6156, and 83-6494, *supra.*)

No. 83-1252. NEURO AFFILIATES, DBA CROSSROADS HOSPITAL *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 9th Cir. Certiorari denied. Reported below: 722 F. 2d 746.

No. 83-1257. SAFEWAY STORES, INC. *v.* EQUAL EMPLOYMENT OPPORTUNITY COMMISSION ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 714 F. 2d 567.

No. 83-1350. MOORE ET AL. *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 742 F. 2d 1444.

No. 83-1365. MASTRANGELO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 722 F. 2d 13.

No. 83-1402. CONDON *v.* MAINE. Sup. Jud. Ct. Me. Certiorari denied. Reported below: 468 A. 2d 1348.

No. 83-1414. BROTHERHOOD OF RAILWAY, AIRLINE & STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS & STATION EMPLOYEES *v.* RUSSELL ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 714 F. 2d 1332.

No. 83-1447. BIRMINGHAM LINEN SERVICE *v.* BELL. C. A. 11th Cir. Certiorari denied. Reported below: 715 F. 2d 1552.

No. 83-1467. VAINIO *v.* MAINE. Sup. Jud. Ct. Me. Certiorari denied. Reported below: 466 A. 2d 471.

No. 83-1490. CITY OF ALTOONA, PENNSYLVANIA *v.* EQUAL EMPLOYMENT OPPORTUNITY COMMISSION. C. A. 3d Cir. Certiorari denied. Reported below: 723 F. 2d 4.

467 U. S.

May 21, 1984

No. 83-1493. GENERAL HOSPITALS OF HUMANA, INC. *v.* ARKANSAS STATEWIDE HEALTH COORDINATING COUNCIL ET AL. Sup. Ct. Ark. Certiorari denied. Reported below: 280 Ark. 443 and 281 Ark. 98, 660 S. W. 2d 906.

No. 83-1495. THORSTEINSSON ET AL. *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 9th Cir. Certiorari denied. Reported below: 724 F. 2d 1365.

No. 83-1538. LAFFERTY *v.* ALYESKA PIPELINE SERVICE ET AL. Sup. Ct. Alaska. Certiorari denied.

No. 83-1565. LOMAS *v.* NORTHWESTERN LEHIGH SCHOOL DISTRICT ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 725 F. 2d 669.

No. 83-1566. HUNTER *v.* REARDON SMITH LINES, LTD. C. A. 11th Cir. Certiorari denied. Reported below: 719 F. 2d 1108.

No. 83-1576. SUTTON ET AL. *v.* WEIRTON STEEL DIVISION OF NATIONAL STEEL CORP. ET AL.; and

No. 83-1584. BRUNNER ET AL. *v.* NATIONAL STEEL CORP. ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 724 F. 2d 406.

No. 83-1589. CITY OF NORTH OLMESTEAD, OHIO *v.* GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY. C. A. 6th Cir. Certiorari denied. Reported below: 722 F. 2d 1284.

No. 83-1591. CHARTER CONSOLIDATED, LTD., ET AL. *v.* BARBER ET AL. Super. Ct. Pa. Certiorari denied. Reported below: 317 Pa. Super. 285, 464 A. 2d 323.

No. 83-1594. LASCALE *v.* BURLINGTON NORTHERN INC. Sup. Ct. Minn. Certiorari denied.

No. 83-1597. REES *v.* COUNTY OF LOS ANGELES. Ct. Sp. App. Md. Certiorari denied. Reported below: 57 Md. App. 804, 471 A. 2d 1141.

No. 83-1604. FRANKLIN STONE PRODUCTS, INC. *v.* DAWSON ET AL. Ct. App. Wis. Certiorari denied.

No. 83-1606. KENNEDY *v.* BOARD ON PROFESSIONAL RESPONSIBILITY OF THE SUPREME COURT OF DELAWARE ET AL. Sup. Ct. Del. Certiorari denied. Reported below: 472 A. 2d 1317.

May 21, 1984

467 U. S.

No. 83-1607. *CURLEY v. CURLEY*. Super. Ct. N. J., App. Div. Certiorari denied.

No. 83-1608. *WINSLOW ET AL. v. WILLIAMS ET AL.* C. A. 10th Cir. Certiorari denied.

No. 83-1627. *SAFIR v. DOLE, SECRETARY OF TRANSPORTATION, ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 231 U. S. App. D. C. 63, 718 F. 2d 475.

No. 83-1628. *SHELTON ET AL. v. CARLTON ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 722 F. 2d 203.

No. 83-1630. *SCHWEGMANN, AKA BLACKLEDGE v. SCHWEGMANN ET AL.* Ct. App. La., 5th Cir. Certiorari denied. Reported below: 441 So. 2d 316.

No. 83-1650. *SUTHOFF ET AL. v. YAZOO COUNTY INDUSTRIAL DEVELOPMENT CORP. ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 722 F. 2d 133.

No. 83-1658. *MCMANUS v. VILLAGE OF SOUTHAMPTON, NEW YORK, ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 742 F. 2d 1437.

No. 83-1672. *HEIL CO. v. MELLER*. C. A. 10th Cir. Certiorari denied. Reported below: 745 F. 2d 1297.

No. 83-1674. *YOUNG v. COMMISSIONER OF INTERNAL REVENUE*. C. A. D. C. Cir. Certiorari denied. Reported below: 233 U. S. App. D. C. 167, 725 F. 2d 126.

No. 83-1696. *PITEO v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 726 F. 2d 53.

No. 83-1699. *GIGANTE v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 729 F. 2d 78.

No. 83-1703. *SMITH v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 729 F. 2d 1463.

No. 83-1714. *MUZYCHKA v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 725 F. 2d 1061.

No. 83-1718. *DECARLO v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 729 F. 2d 1449.

467 U. S.

May 21, 1984

No. 83-1737. CONSOLIDATED X-RAY SERVICE CORP. *v.* BUGHER ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 727 F. 2d 1106.

No. 83-5855. MOSS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 83-6053. MAJCINA *v.* MAJCINA ET AL. App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 116 Ill. App. 3d 1176, 462 N. E. 2d 1297.

No. 83-6239. MELCHOR *v.* LOS ANGELES COUNTY DEPARTMENT OF ADOPTIONS. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 83-6249. MILESKI *v.* MARYLAND. C. A. 4th Cir. Certiorari denied. Reported below: 723 F. 2d 902.

No. 83-6254. MALDONADO *v.* NEW YORK. Ct. App. N. Y. Certiorari denied. Reported below: 61 N. Y. 2d 675, 460 N. E. 2d 239.

No. 83-6275. ROBERTS *v.* MARSHALL, SUPERINTENDENT, SOUTHERN OHIO CORRECTIONAL FACILITY. C. A. 6th Cir. Certiorari denied. Reported below: 725 F. 2d 684.

No. 83-6300. WELLS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 722 F. 2d 748.

No. 83-6389. CRAWFORD *v.* MINTZES, WARDEN, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 725 F. 2d 683.

No. 83-6470. MANAGO *v.* OHIO. Ct. App. Ohio, Hamilton County. Certiorari denied.

No. 83-6473. VAUGHN *v.* WHITE ET AL. C. A. 8th Cir. Certiorari denied.

No. 83-6474. SEIBERT *v.* MINTZES, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 725 F. 2d 685.

No. 83-6482. CASEY *v.* SMITH, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 83-6483. BROWN ET AL. *v.* NEWSOME, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

May 21, 1984

467 U. S.

No. 83-6486. *LUCAS v. ILLINOIS*. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 116 Ill. App. 3d 1172, 462 N. E. 2d 1294.

No. 83-6488. *BROWN v. EVANS ET AL.* C. A. 11th Cir. Certiorari denied.

No. 83-6497. *WASHINGTON v. TENNESSEE*. Ct. Crim. App. Tenn. Certiorari denied. Reported below: 661 S. W. 2d 900.

No. 83-6503. *CARLOCK v. ILLINOIS*. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 118 Ill. App. 3d 1168, 470 N. E. 2d 663.

No. 83-6512. *COLUMBO v. ILLINOIS*. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 118 Ill. App. 3d 882, 455 N. E. 2d 733.

No. 83-6513. *MCDONALD v. LEECH, ATTORNEY GENERAL OF TENNESSEE, ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 727 F. 2d 1109.

No. 83-6526. *ASHLEY v. GRANT, WARDEN*. C. A. 6th Cir. Certiorari denied. Reported below: 729 F. 2d 1460.

No. 83-6537. *HOLLAND v. OFFICE OF PERSONNEL MANAGEMENT ET AL.* C. A. D. C. Cir. Certiorari denied.

No. 83-6545. *PAYTON v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 729 F. 2d 1464.

No. 83-6546. *MILLER v. CUYLER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION*. C. A. 3d Cir. Certiorari denied. Reported below: 727 F. 2d 1100.

No. 83-6551. *MA v. FIRST NATIONAL CORPORATION OF APLETON ET AL.* C. A. 7th Cir. Certiorari denied.

No. 83-6584. *GARTH v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 726 F. 2d 751.

No. 83-6587. *SCHRONCE v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 727 F. 2d 91.

No. 83-6593. *RODRIGUEZ-MORA v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 726 F. 2d 753.

No. 83-6600. *GONZALEZ v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 722 F. 2d 1501.

467 U. S.

May 21, 1984

No. 83-6602. *CARDENAS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 726 F. 2d 751.

No. 83-6613. *SAUNDERS v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 727 F. 2d 1114.

No. 83-6620. *SCARBOROUGH v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 727 F. 2d 580.

No. 82-2030. *ANDERSON v. OKLAHOMA*. Ct. Crim. App. Okla. Certiorari denied. JUSTICE MARSHALL would grant certiorari. Reported below: 658 P. 2d 501.

No. 83-67. *INGLE v. ARKANSAS*. Ct. App. Ark. Certiorari denied. JUSTICE MARSHALL would grant certiorari. Reported below: 8 Ark. App. 218, 655 S. W. 2d 2.

No. 83-988. *BERRONG ET AL. v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. JUSTICE MARSHALL would grant certiorari. Reported below: 712 F. 2d 1370.

No. 83-1011. *OLSON v. GEORGIA*. Sup. Ct. Ga. Certiorari denied. JUSTICE MARSHALL would grant certiorari.

No. 83-5027. *BENTLEY v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. JUSTICE MARSHALL would grant certiorari. Reported below: 706 F. 2d 1498.

No. 83-623. *JAMES ET AL. v. CLARK, SECRETARY OF THE INTERIOR, ET AL.* C. A. 1st Cir. Motion of Center for Constitutional Rights et al. for leave to file a brief as *amici curiae* granted. Motion of petitioners to strike brief of Native American Rights Fund for Gay Head Tribe denied. Motion of petitioners to defer consideration of the petition for writ of certiorari denied. Certiorari denied. Reported below: 716 F. 2d 71.

No. 83-892. *CALIFORNIA STATE DEPARTMENT OF EDUCATION ET AL. v. LOS ANGELES BRANCH, NAACP, ET AL.* C. A. 9th Cir. Certiorari denied. JUSTICE MARSHALL took no part in the consideration or decision of this petition. Reported below: 714 F. 2d 946.

No. 83-906. *UNITED STATES v. RYLANDER*. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 714 F. 2d 996.

May 21, 1984

467 U. S.

No. 83-1355. ORANGE COUNTY ET AL. *v.* WOOD ET AL. C. A. 11th Cir. Motion of respondents for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 715 F. 2d 1543.

No. 83-1455. WILK ET AL. *v.* AMERICAN MEDICAL ASSN. ET AL.; and

No. 83-1602. AMERICAN MEDICAL ASSN. ET AL. *v.* WILK ET AL. C. A. 7th Cir. Certiorari denied. JUSTICE WHITE and JUSTICE BLACKMUN took no part in the consideration or decision of these petitions. Reported below: 719 F. 2d 207.

No. 83-1587. NAARTEX CONSULTING CORP. *v.* CLARK, SECRETARY OF THE INTERIOR, ET AL. C. A. D. C. Cir. Certiorari denied. JUSTICE WHITE took no part in the consideration or decision of this petition. Reported below: 232 U. S. App. D. C. 293, 722 F. 2d 779.

No. 83-6312. ANTONELLI *v.* FEDERAL BUREAU OF INVESTIGATION ET AL. C. A. 7th Cir. Certiorari denied. JUSTICE WHITE took no part in the consideration or decision of this petition. Reported below: 721 F. 2d 615.

No. 83-1600. EBERT ET UX. *v.* RITCHEY ET AL. Ct. Sp. App. Md. Motion of respondent for damages denied. Certiorari denied. Reported below: 54 Md. App. 388, 458 A. 2d 891.

No. 83-1712. CO-OPERATIVE LEGISLATIVE COMMITTEE, RAILROAD BROTHERHOODS AND RAILROAD UNIONS, STATE OF OHIO *v.* NORFOLK & WESTERN RAILWAY CO. Sp. Ct. R. R. R. A. Certiorari denied. JUSTICE POWELL took no part in the consideration or decision of this petition. Reported below: 582 F. Supp. 1552.

No. 83-6421. CLARK *v.* FLORIDA. Sup. Ct. Fla.;

No. 83-6453. PARKS *v.* OKLAHOMA. Ct. Crim. App. Okla.;

No. 83-6490. CONE *v.* TENNESSEE. Sup. Ct. Tenn.;

No. 83-6610. BARFIELD *v.* HARRIS, SUPERINTENDENT, NORTH CAROLINA CORRECTIONAL CENTER FOR WOMEN, ET AL. C. A. 4th Cir.; and

No. 83-6625. LAWS *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: No. 83-6421, 443 So. 2d 973; No. 83-6490, 665 S. W. 2d 87; No. 83-6610, 719 F. 2d 58; No. 83-6625, 661 S. W. 2d 526.

467 U. S.

May 21, 29, 1984

JUSTICE BRENNAN and JUSTICE MARSHALL, dissenting.

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

No. 83-6435. CARTER *v.* CITY OF BIRMINGHAM ET AL. Sup. Ct. Ala. Certiorari denied. JUSTICE BRENNAN would grant certiorari. Reported below: 444 So. 2d 373.

Rehearing Denied

No. 83-1000. J. D. COURT, INC. *v.* UNITED STATES, 466 U. S. 927. Petition for rehearing denied.

No. 82-6591. WILSON *v.* UNITED STATES, 464 U. S. 867. Motion for leave to file petition for rehearing denied.

MAY 29, 1984

Appeal Dismissed

No. 83-1320. BELL *v.* TOWNSHIP OF EAGLESWOOD. Appeal from Super. Ct. N. J., App. Div., dismissed for want of substantial federal question.

Vacated and Remanded on Appeal

No. 83-1479. AYERS ET AL. *v.* WINTER ET AL. Appeal from D. C. N. D. Miss. Judgment vacated and case remanded for entry of a fresh judgment from which a timely appeal may be taken to the United States Court of Appeals for the Fifth Circuit.

Certiorari Granted—Vacated and Remanded

No. 83-1287. STRICKLAND, WARDEN, ET AL. *v.* KING. C. A. 11th Cir. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *Strickland v. Washington*, 466 U. S. 668 (1984). Reported below: 714 F. 2d 1481.

No. 83-5500. SOLOMON *v.* HARRIS, WARDEN, ET AL. C. A. 2d Cir. Motion of petitioner for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *Strickland v. Washington*, 466

May 29, 1984

467 U. S.

U. S. 668 (1984). JUSTICE MARSHALL would grant certiorari and set case for oral argument. Reported below: 742 F. 2d 1438.

No. 83-5636. STAFFORD *v.* OKLAHOMA. Ct. Crim. App. Okla. Motion of petitioner for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *Strickland v. Washington*, 466 U. S. 668 (1984). Reported below: 665 P. 2d 1205.

JUSTICE BRENNAN and JUSTICE MARSHALL:

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

No. 83-6125. STAFFORD *v.* OKLAHOMA. Ct. Crim. App. Okla. Motion of petitioner for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *Strickland v. Washington*, 466 U. S. 668 (1984). Reported below: 669 P. 2d 285.

JUSTICE BRENNAN and JUSTICE MARSHALL:

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

No. 83-6413. BURGER *v.* ZANT, WARDEN. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted limited to Question I(B) presented by the petition. The opinion of the United States District Court for the Southern District of Georgia on this question, which the Court of Appeals adopted without separate discussion, may be flawed in at least one respect. In judging the reasonableness of counsel's decision not to present character evidence, the District Court apparently mistook the arguments counsel made at petitioner's *first*, ultimately vacated, sentencing for the arguments counsel made at petitioner's *second* sentencing, the proceeding whose result is challenged in this petition. *Blake v. Zant*, 513 F. Supp. 772, 796-798 (1981). Petitioner is entitled to an assessment of his ineffectiveness claim unaffected by this, as well as by any other, error. Accordingly, the judgment is vacated and the case is re-

467 U. S.

May 29, 1984

manded to the United States Court of Appeals for the Eleventh Circuit with instructions to reconsider the effectiveness of counsel's assistance at petitioner's second sentencing and for further consideration in light of *Strickland v. Washington*, 466 U. S. 668 (1984). JUSTICE MARSHALL would grant certiorari for the reasons stated in the dissenting opinion of Judge Johnson and set the case for oral argument. Reported below: 718 F. 2d 979.

JUSTICE BRENNAN:

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

Miscellaneous Orders

No. — — —. *LAL v. CBS, INC.* Motion to direct the Clerk to file a petition for writ of certiorari that does not comply with the Rules of this Court denied.

No. — — —. *MARSHALL v. BURLINGTON NORTHERN INC.* Motion to accept the petition for writ of certiorari as timely filed, or to waive the Rules of this Court, denied.

No. A-816 (83-1685). *CORBIN v. ALASKA*. Ct. App. Alaska. Application for stay, addressed to JUSTICE MARSHALL and referred to the Court, denied.

No. A-900. *ROBERTSON v. UNITED STATES*. C. A. 5th Cir. Application for stay, addressed to JUSTICE BRENNAN and referred to the Court, denied.

No. 9, Orig. *UNITED STATES v. LOUISIANA ET AL.* Petition for allowance of additional compensation to the Special Master granted, and payments as requested in prayers 1, 2, and 3 are allowed. Further consideration of the remaining prayers deferred until further order of the Court. JUSTICE MARSHALL took no part in the consideration or decision of this matter. [For earlier order herein, see, *e. g.*, 466 U. S. 956.]

No. 83-6536. *CIRILLO v. REPUBLIC STEEL CORP.* C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until June 19, 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.

May 29, 1984

467 U. S.

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*.

Probable Jurisdiction Noted

No. 83-1620. FIRST NATIONAL BANK OF ATLANTA, AS SUCCESSOR IN INTEREST TO FIRST NATIONAL BANK OF CARTERSVILLE, GEORGIA *v.* BARTOW COUNTY BOARD OF TAX ASSESSORS ET AL. Appeal from Sup. Ct. Ga. Probable jurisdiction noted. Reported below: 251 Ga. 831, 312 S. E. 2d 102.

Certiorari Granted

No. 83-1476. UNITED STATES *v.* DANN ET AL. C. A. 9th Cir. Certiorari granted. Reported below: 706 F. 2d 919.

No. 83-1632. HARPER & ROW, PUBLISHERS, INC., ET AL. *v.* NATION ENTERPRISES ET AL. C. A. 2d Cir. Certiorari granted. Reported below: 723 F. 2d 195.

No. 83-1292. WAYTE *v.* UNITED STATES. C. A. 9th Cir. Certiorari granted limited to Question 1 presented by the petition. Reported below: 710 F. 2d 1385.

Certiorari Denied

No. 83-595. SNOW ET AL. *v.* QUINAULT INDIAN NATION ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 709 F. 2d 1319.

No. 83-871. FOSTER, SHERIFF OF ROANOKE COUNTY, VIRGINIA, ET AL. *v.* LANKFORD. C. A. 4th Cir. Certiorari denied. Reported below: 716 F. 2d 896.

No. 83-1067. MADDOX *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 716 F. 2d 905.

No. 83-1155. JACKSON *v.* UNITED STATES;

No. 83-6086. BUMGARDNER *v.* UNITED STATES; and

No. 83-6092. ELEAZAR *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 717 F. 2d 1481.

No. 83-1261. LYDDAN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 721 F. 2d 873.

467 U. S.

May 29, 1984

No. 83-1400. BISCAYNE FEDERAL SAVINGS & LOAN ASSN. ET AL. *v.* FEDERAL HOME LOAN BANK BOARD ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 720 F. 2d 1499.

No. 83-1407. LANGUIRAND *v.* CITY OF PASS CHRISTIAN, MISSISSIPPI. C. A. 5th Cir. Certiorari denied. Reported below: 717 F. 2d 220.

No. 83-1420. GAMMAL *v.* HAMROCK ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 725 F. 2d 664.

No. 83-1426. MCKISSICK PRODUCTS CO. ET AL. *v.* DONOVAN, SECRETARY OF LABOR. C. A. 10th Cir. Certiorari denied. Reported below: 719 F. 2d 350.

No. 83-1445. HAMPSHIRE ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 715 F. 2d 459.

No. 83-1457. RIVERA-RAMIREZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 715 F. 2d 453.

No. 83-1470. MID-SOUTH GRIZZLIES ET AL. *v.* NATIONAL FOOTBALL LEAGUE. C. A. 3d Cir. Certiorari denied. Reported below: 720 F. 2d 772.

No. 83-1536. ELLIOTT ET AL. *v.* GROUP HOSPITAL SERVICE, INC. C. A. 5th Cir. Certiorari denied. Reported below: 714 F. 2d 556.

No. 83-1617. COLEMAN *v.* AMERICAN CYANAMID CO. ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 721 F. 2d 820.

No. 83-1621. DETROIT PLASTIC MOLDING CO. *v.* USM CORP. C. A. 6th Cir. Certiorari denied. Reported below: 720 F. 2d 680.

No. 83-1626. JOHNSON *v.* MONTANA. Sup. Ct. Mont. Certiorari denied. Reported below: — Mont. —, 674 P. 2d 1077.

No. 83-1631. KNEELAND *v.* BLOOM TOWNSHIP HIGH SCHOOL DISTRICT No. 206 ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 718 F. 2d 1104.

No. 83-1637. DRAPER *v.* UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, LOCAL 387, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 725 F. 2d 683.

May 29, 1984

467 U. S.

No. 83-1642. *U. S. ELECTRICAL MOTORS, A DIVISION OF EMERSON ELECTRIC CO. v. NATIONAL LABOR RELATIONS BOARD*. C. A. 6th Cir. Certiorari denied. Reported below: 722 F. 2d 315.

No. 83-1645. *STRUEMPH ET AL. v. MCAULIFFE*. Ct. App. Mo., Eastern Dist. Certiorari denied. Reported below: 661 S. W. 2d 559.

No. 83-1649. *BEIMERT v. BURLINGTON NORTHERN INC.* C. A. 8th Cir. Certiorari denied. Reported below: 726 F. 2d 412.

No. 83-1736. *SEGAL v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 732 F. 2d 142.

No. 83-1741. *HYUN JOON CHUNG ET UX. v. IMMIGRATION AND NATURALIZATION SERVICE*. C. A. 9th Cir. Certiorari denied. Reported below: 720 F. 2d 1471.

No. 83-1746. *SCHWARTZ v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 732 F. 2d 148.

No. 83-1763. *LLAGUNO v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 729 F. 2d 1455.

No. 83-1797. *GRAHAM v. COLORADO*. Ct. App. Colo. Certiorari denied. Reported below: 678 P. 2d 1043.

No. 83-6196. *SCHAFLANDER ET AL. v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 719 F. 2d 1024.

No. 83-6200. *TAYLOR v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 716 F. 2d 864.

No. 83-6243. *CHARLES F. v. NEW YORK*. Ct. App. N. Y. Certiorari denied. Reported below: 60 N. Y. 2d 474, 458 N. E. 2d 801.

No. 83-6340. *BROWN v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 724 F. 2d 599.

No. 83-6344. *DREW ET AL. v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 722 F. 2d 551.

No. 83-6370. *STRONG v. UNITED STATES*; and

No. 83-6378. *REDWINE v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 715 F. 2d 315.

467 U. S.

May 29, 1984

No. 83-6399. *OBERLIN v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 722 F. 2d 748.

No. 83-6406. *VALLEZ v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 720 F. 2d 681.

No. 83-6492. *KNOTT v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 725 F. 2d 692.

No. 83-6514. *TILLI v. CAPOBIANCO ET AL.* C. A. 3d Cir. Certiorari denied.

No. 83-6515. *PERRY v. SUPERINTENDENT, MASSACHUSETTS CORRECTIONAL INSTITUTION AT NORFOLK*. C. A. 1st Cir. Certiorari denied.

No. 83-6523. *KELT, ADMINISTRATOR OF THE ESTATE OF KELT v. QUEZADA ET UX.* C. A. 5th Cir. Certiorari denied. Reported below: 718 F. 2d 121.

No. 83-6529. *JONES v. OKLAHOMA*. Ct. Crim. App. Okla. Certiorari denied.

No. 83-6538. *GRIFFITH v. WAINWRIGHT, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 720 F. 2d 687.

No. 83-6539. *GRECK v. SUPERIOR COURT OF YOLO COUNTY, CALIFORNIA, ET AL.* Sup. Ct. Cal. Certiorari denied.

No. 83-6541. *HARRISON v. GALLAGHER ET AL.* C. A. 7th Cir. Certiorari denied.

No. 83-6544. *VIPPERMAN v. HOUSEWRIGHT, WARDEN*. C. A. 9th Cir. Certiorari denied.

No. 83-6554. *CARNIVALE v. WISCONSIN*. Sup. Ct. Wis. Certiorari denied. Reported below: 114 Wis. 2d 603, 340 N. W. 2d 202.

No. 83-6557. *ANTONELLI v. SCHRYVER ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 723 F. 2d 913.

No. 83-6573. *HOLLOWAY v. HECKLER, SECRETARY OF HEALTH AND HUMAN SERVICES*. C. A. 4th Cir. Certiorari denied. Reported below: 724 F. 2d 1102.

No. 83-6590. *DURHAM v. WYRICK, WARDEN*. C. A. 8th Cir. Certiorari denied. Reported below: 732 F. 2d 161.

May 29, 1984

467 U. S.

No. 83-6599. *BURKS v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 742 F. 2d 1442.

No. 83-6601. *EMERY v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 732 F. 2d 147.

No. 83-6604. *VENKATESAN v. INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO, LOCAL UNION 545-D*. C. A. 2d Cir. Certiorari denied.

No. 83-6606. *HENDERSON v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 721 F. 2d 662.

No. 83-6622. *TERRELL v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 727 F. 2d 1114.

No. 83-6624. *CHILCOTE v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 724 F. 2d 1498.

No. 83-6629. *KAVANAUGH v. SPERRY UNIVAC*. C. A. 7th Cir. Certiorari denied. Reported below: 729 F. 2d 1464.

No. 83-6635. *AISPURO ET AL. v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 732 F. 2d 165.

No. 83-6637. *KOPPE v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 729 F. 2d 780.

No. 83-6639. *JACKSON v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 727 F. 2d 1114.

No. 83-6640. *BEERBOWER v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 6th Cir. Certiorari denied. Reported below: 725 F. 2d 682.

No. 83-6650. *RANDAZZA v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: 729 F. 2d 10.

No. 83-6662. *LININGER v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 732 F. 2d 148.

No. 82-1691. *ILLINOIS v. WILLIAMS*. Sup. Ct. Ill. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. JUSTICE WHITE took no part in the consideration or decision of this motion and this petition. Reported below: 93 Ill. 2d 309, 444 N. E. 2d 136.

467 U. S.

May 29, 1984

No. 83-147. *ILLINOIS v. RAINGE*. App. Ct. Ill., 1st Dist. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. JUSTICE WHITE took no part in the consideration or decision of this motion and this petition. Reported below: 112 Ill. App. 3d 396, 445 N. E. 2d 535.

No. 82-7003. *STANLEY v. KEMP*, SUPERINTENDENT, GEORGIA DIAGNOSTIC AND CLASSIFICATION CENTER. C. A. 11th Cir. Motion of NAACP Legal Defense & Educational Fund, Inc., for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 697 F. 2d 955.

JUSTICE BRENNAN and JUSTICE MARSHALL, dissenting.

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

No. 83-1072. *SOLEM, WARDEN, ET AL. v. LUFKINS*. C. A. 8th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 716 F. 2d 532.

No. 83-1389. *TEXAS v. BENSON*. Ct. Crim. App. Tex. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 661 S. W. 2d 708.

No. 83-1138. *PEED ET AL. v. UNITED STATES*. C. A. 4th Cir. Motion of petitioners to strike brief of the United States denied. Certiorari denied. Reported below: 717 F. 2d 1481.

No. 83-1229. *LONGSTAFF v. IMMIGRATION AND NATURALIZATION SERVICE*. C. A. 5th Cir. Certiorari denied. JUSTICE BRENNAN would grant certiorari. Reported below: 716 F. 2d 1439.

No. 83-1345. *UNION CARBIDE CORP. ET AL. v. NATURAL RESOURCES DEFENSE COUNCIL, INC., ET AL.* C. A. D. C. Cir. Certiorari denied. JUSTICE REHNQUIST and JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 231 U. S. App. D. C. 79, 718 F. 2d 1117.

No. 83-1656. *PEMBAUR v. OHIO*. Sup. Ct. Ohio. Certiorari denied. JUSTICE BRENNAN and JUSTICE WHITE would grant certiorari. Reported below: 9 Ohio St. 3d 136, 459 N. E. 2d 217.

May 29, 31, 1984

467 U. S.

No. 83-5088. *GILBERT v. SOUTH CAROLINA*. Ct. Common Pleas, Lexington County, S. C.;

No. 83-5092. *GLEATON v. AIKEN, WARDEN, ET AL.* Ct. Common Pleas, Lexington County, S. C.;

No. 83-5148. *HIGH v. KEMP, SUPERINTENDENT, GEORGIA DIAGNOSTIC AND CLASSIFICATION CENTER*. Sup. Ct. Ga.;

No. 83-5432. *BALDWIN v. MAGGIO, WARDEN, LOUISIANA STATE PENITENTIARY*. C. A. 5th Cir.;

No. 83-5716. *CORN v. ZANT, WARDEN*. C. A. 11th Cir.;

No. 83-6090. *BERRYHILL v. FRANCIS, WARDEN*. Sup. Ct. Ga.;

No. 83-6519. *MCCALL v. ARIZONA*. Sup. Ct. Ariz.; and

No. 83-6549. *SMITH v. FLORIDA*. Sup. Ct. Fla. Certiorari denied. Reported below: No. 83-5148, 250 Ga. 693, 300 S. E. 2d 654; No. 83-5432, 704 F. 2d 1325; No. 83-5716, 708 F. 2d 549; No. 83-6519, 139 Ariz. 147, 677 P. 2d 920; No. 83-6549, 445 So. 2d 323.

JUSTICE BRENNAN and JUSTICE MARSHALL, dissenting.

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

No. 83-5826. *JOHNSON v. MCKASKLE, ACTING DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS*. Ct. Crim. App. Tex. Certiorari denied. JUSTICE MARSHALL would grant certiorari.

Rehearing Denied

No. 83-1436. *WHITE v. INTERNATIONAL TELEPHONE & TELEGRAPH CORP. ET AL.*, 466 U. S. 938. Petition for rehearing denied.

MAY 31, 1984

Miscellaneous Order

No. A-980. *WAINWRIGHT, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS v. FORD*. Application of the State of Florida to vacate the order of the United States Court of Appeals for the Eleventh Circuit, dated May 30, 1984, staying the execution of sentence of death, presented to JUSTICE POWELL, and by him referred to the Court, denied. JUSTICE BRENNAN and JUSTICE MARSHALL join in the order of the Court. THE CHIEF JUSTICE, JUSTICE REHNQUIST, and JUSTICE O'CONNOR would

1220

POWELL, J., concurring

grant the State's application to vacate the stay of execution of sentence of death.

JUSTICE POWELL, with whom JUSTICE WHITE and JUSTICE BLACKMUN join, and with whom JUSTICE STEVENS joins in Part I, concurring.

On May 30, 1984, the Court of Appeals for the Eleventh Circuit, reversing the judgment of the District Court, granted respondent Ford a stay of execution of the sentence of death set for no later than noon on Friday, June 1, 1984. *Ford v. Strickland*, 734 F. 2d 538. The Court of Appeals granted the stay on two separate grounds. First, it stated that Ford's claim that he is entitled under the Eighth and Fourteenth Amendments to a procedural due process hearing to determine whether he is currently insane (the "competency claim") raises substantial issues that warrant review. Second, the Court of Appeals held that Ford's claim that Florida administers the death penalty in a discriminatory manner on the basis of race and other impermissible factors (the "discrimination claim") should be held pending en banc consideration by the Eleventh Circuit of *Spencer v. Zant*, 715 F. 2d 1562, vacated for rehearing en banc, 715 F. 2d 1583 (1983).

I

The Court of Appeals found that Ford's claim of entitlement to a due process hearing on competency to be executed did not constitute an abuse of the writ of habeas corpus, and held that the District Court had erred in holding to the contrary. On the merits, the Court of Appeals stated that this claim "raises substantial procedural and substantive Eighth and Fourteenth Amendment grounds" that warrant review of Ford's federal habeas petition. The Court of Appeals reviewed the relevant record. In view of its findings, I cannot say in this case that the court abused its discretion in staying Ford's execution on this issue.* I concur, therefore, in the order of the Court denying the State's application to vacate the stay.

II

The Court of Appeals also held that a stay of execution should be granted so that Ford's discrimination claim could be held pend-

*This Court has never determined whether the Constitution prohibits execution of a criminal defendant who currently is insane, and I imply no view as to the merits of this issue.

May 31, June 4, 1984

467 U. S.

ing en banc hearing and decision by that court in *Spencer v. Zant*, *supra*. The District Court had found that Ford had abused the writ by failing to raise this claim in his first federal habeas petition. The Court of Appeals provides no convincing explanation for ignoring that factual determination. Moreover, the Florida Supreme Court held that Ford's discrimination claim was procedurally barred for failure to present it in a motion for postconviction relief as required by Florida Rule of Criminal Procedure 3.850. *Ford v. Wainwright*, 451 So. 2d 471 (1984). Neither the Court of Appeals nor the District Court found cause and prejudice to excuse this procedural bar. See *Engle v. Isaac*, 456 U. S. 107 (1982). Finally, we have held in two prior cases that the statistical evidence relied upon by Ford to support his claim of discrimination was not sufficient to raise a substantial ground upon which relief might be granted. See *Sullivan v. Wainwright*, 464 U. S. 109 (1983); *Wainwright v. Adams*, 466 U. S. 964 (1984). I am of the opinion that the Court of Appeals abused its discretion in also granting a stay of execution on Ford's discrimination claim pending its decision in *Spencer v. Zant*, *supra*.

JUSTICE STEVENS, having joined in Part I above, is of the view that it is unnecessary to consider the discrimination claim presented in Part II.

JUNE 4, 1984

Dismissal Under Rule 53

No. 83-1745. *SULLIVAN v. CONSOLIDATED RAIL CORPORATION*. Sup. Ct. Ohio. Certiorari dismissed under this Court's Rule 53. Reported below: 9 Ohio St. 3d 105, 459 N. E. 2d 513.

Affirmed on Appeal

No. 83-1526. *KARCHER, SPEAKER, NEW JERSEY ASSEMBLY, ET AL. v. DAGGETT ET AL.* Affirmed on appeal from D. C. N. J. Reported below: 580 F. Supp. 1259.

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

For the reasons I stated when the Court denied the appellants' application for a stay of the District Court's order, *Karcher v. Daggett*, 466 U. S. 910, 911 (1984) (dissenting opinion), I would note probable jurisdiction and set the case for oral argument.

467 U. S.

June 4, 1984

No. 83-1677. *BROWN, SECRETARY OF STATE OF OHIO v. BRANDON ET AL.*;

No. 83-1678. *CELESTE, GOVERNOR OF OHIO v. BRANDON ET AL.*; and

No. 83-1679. *FLANAGAN ET AL. v. BRANDON ET AL.* Affirmed on appeals from D. C. S. D. Ohio. JUSTICE POWELL and JUSTICE REHNQUIST would note probable jurisdiction and set cases for oral argument.

Appeals Dismissed

No. 82-1564. *LONEWOLF v. LONEWOLF*. Appeal from Sup. Ct. N. M. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 99 N. M. 300, 657 P. 2d 627.

No. 83-1648. *PICKERING v. CITY OF BUFFALO, NEW YORK*. Appeal from C. A. 2d Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 742 F. 2d 1436.

No. 83-1685. *CORBIN v. ALASKA*. Appeal from Ct. App. Alaska dismissed for want of substantial federal question. Reported below: 672 P. 2d 156.

No. 83-1731. *COHRAN v. STATE BAR OF GEORGIA*. Appeal from Sup. Ct. Ga. dismissed for want of substantial federal question.

Certiorari Granted—Vacated and Remanded

No. 83-277. *WALTERS, ADMINISTRATOR OF VETERANS' AFFAIRS v. HOME SAVINGS & LOAN ASSOCIATION OF LAWTON, OKLAHOMA*. C. A. 10th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Heckler v. Community Health Services of Crawford County, Inc.*, ante, p. 51. Reported below: 695 F. 2d 1251.

No. 83-1149. *HECKLER, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL. v. STARNES ET AL.* C. A. 4th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Heckler v. Ringer*, 466 U. S. 602 (1984). JUSTICE WHITE took no part in the consideration or decision of this case. Reported below: 715 F. 2d 134.

June 4, 1984

467 U. S.

Miscellaneous Orders

No. — — —. *FERNANDEZ v. KINER 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 denied.

No. — — —. *HILL v. WATTS ET AL.* Motion to direct the Clerk to file the petition for writ of certiorari out of time denied.

No. A-959. *MAYORAL ET AL. v. JEFFCO AMERICAN BAPTIST RESIDENCES, INC., ET AL.* The order entered by JUSTICE WHITE on May 25, 1984, is vacated, and the application for stay of mandate of the United States Court of Appeals for the Tenth Circuit is denied.

No. D-411. *IN RE DISBARMENT OF SHEEHY.* Disbarment entered. [For earlier order herein, see 465 U. S. 1096.]

No. D-416. *IN RE DISBARMENT OF ROUNDTREE.* Dovey J. Roundtree, of Washington, D. C., 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 April 2, 1984 [466 U. S. 921], is hereby discharged.

No. D-434. *IN RE DISBARMENT OF SCHETTINO.* It is ordered that John C. Schettino, of Bedford Hills, N. Y., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. 83-997. *TRANS WORLD AIRLINES, INC. v. THURSTON ET AL.* C. A. 2d Cir. [Certiorari granted, 465 U. S. 1065]; and

No. 83-1325. *AIR LINE PILOTS ASSN., INTERNATIONAL v. THURSTON ET AL.* C. A. 2d Cir. [Certiorari granted, 466 U. S. 926.] Motion of Equal Employment Advisory Council for leave to file a brief as *amicus curiae* granted. Motion of the Solicitor General for divided argument granted. Motion of Trans World Airlines, Inc., for divided argument granted, and a total of 15 minutes allotted for that purpose. Motion of Air Line Pilots Association for divided argument granted, and a total of 15 minutes allotted for that purpose.

No. 83-1020. *OHIO v. KOVACS, DBA B & W ENTERPRISES ET AL.* C. A. 6th Cir. [Certiorari granted, 465 U. S. 1078.] Motion of the Solicitor General for leave to participate in oral argument

467 U. S.

June 4, 1984

as *amicus curiae* and for divided argument granted. Motion of Council of State Governments et al. for leave to file a brief as *amici curiae* granted.

No. 83-1158. ESTATE OF THORNTON ET AL. *v.* CALDOR, INC. Sup. Ct. Conn. [Certiorari granted, 465 U. S. 1078.] Motion of National Right to Work Legal Defense Foundation, Inc., for leave to file a brief as *amicus curiae* granted.

No. 83-1386. LEGGETT, COLLECTOR OF REVENUE IN THE CITY OF ST. LOUIS, ET AL. *v.* LIDDELL ET AL.;

No. 83-1721. MISSOURI ET AL. *v.* LIDDELL ET AL.; and

No. 83-1838. NORTH ST. LOUIS PARENTS AND CITIZENS FOR QUALITY EDUCATION ET AL. *v.* LIDDELL ET AL. C. A. 8th Cir. Motion of petitioners in No. 83-1386 and respondents Leggett et al. in Nos. 83-1721 and 83-1838 to expedite consideration of the petitions for writs of certiorari denied.

No. 83-1569. MITSUBISHI MOTORS CORP. *v.* SOLER CHRYSLER-PLYMOUTH, INC.; and

No. 83-1733. SOLER CHRYSLER-PLYMOUTH, INC. *v.* MITSUBISHI MOTORS CORP. C. A. 1st Cir. The Solicitor General is invited to file a brief in these cases expressing the views of the United States.

No. 83-6577. IN RE SOMMER; and

No. 83-6592. IN RE SEITU. Petitions for writs of mandamus denied.

Probable Jurisdiction Noted

No. 83-1394. UNITED STATES ET AL. *v.* LOCKE ET AL. Appeal from D. C. Nev. Probable jurisdiction noted. Reported below: 573 F. Supp. 472.

Certiorari Granted

No. 83-1590. FRANCIS, WARDEN *v.* FRANKLIN. C. A. 11th Cir. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 720 F. 2d 1206 and 723 F. 2d 770.

Certiorari Denied. (See also Nos. 82-1564 and 83-1648, *supra*.)

No. 83-422. GROUP HEALTH INC. *v.* HECKLER, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 742 F. 2d 1434.

June 4, 1984

467 U. S.

No. 83-1128. SEAY, AKA DERRINGER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 718 F. 2d 1279.

No. 83-1273. LEWIS SERVICE CENTER, INC. *v.* MACK TRUCKS, INC. C. A. 8th Cir. Certiorari denied. Reported below: 714 F. 2d 842.

No. 83-1374. CODY *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 722 F. 2d 1052.

No. 83-1406. VANCE *v.* WHIRLPOOL CORP. C. A. 4th Cir. Certiorari denied. Reported below: 707 F. 2d 483 and 716 F. 2d 1010.

No. 83-1413. LEMIRE ET AL. *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 232 U. S. App. D. C. 100, 720 F. 2d 1327.

No. 83-1438. SELMAN, EXECUTRIX OF THE ESTATE OF SELMAN, ET AL. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 723 F. 2d 877.

No. 83-1501. FAUST, ADMINISTRATRIX OF THE ESTATE OF FAUST, ET AL. *v.* SOUTH CAROLINA STATE HIGHWAY DEPARTMENT ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 721 F. 2d 934.

No. 83-1572. FLANNERY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 718 F. 2d 108.

No. 83-1581. WARD *v.* SENTRY TITLE CO., INC. C. A. 5th Cir. Certiorari denied. Reported below: 715 F. 2d 941 and 727 F. 2d 1368.

No. 83-1640. TEMPLETON ET UX. *v.* ARSENAL SAVINGS ASSN. ET AL. Ct. App. Ind. Certiorari denied. Reported below: 451 N. E. 2d 1135.

No. 83-1653. SCRIPPS-HOWARD BROADCASTING CO. *v.* EMBERS SUPPER CLUB, INC. Sup. Ct. Ohio. Certiorari denied. Reported below: 9 Ohio St. 3d 22, 457 N. E. 2d 1164.

No. 83-1661. BROOKLYN PSYCHOSOCIAL REHABILITATION INSTITUTE, INC. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 2d Cir. Certiorari denied. Reported below: 742 F. 2d 1438.

467 U. S.

June 4, 1984

No. 83-1664. BAIRD ET AL. *v.* BELLOTTI, ATTORNEY GENERAL OF MASSACHUSETTS, ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 724 F. 2d 1032.

No. 83-1666. TURNER *v.* MARYLAND ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 723 F. 2d 903.

No. 83-1676. SAUNDERS *v.* MARSH, SECRETARY OF THE ARMY. C. A. 4th Cir. Certiorari denied. Reported below: 723 F. 2d 903.

No. 83-1682. MARTIN STEEL CORP. ET AL. *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA (OWATONNA ELEVATOR CO. ET AL., REAL PARTIES IN INTEREST). C. A. 8th Cir. Certiorari denied. Reported below: 732 F. 2d 161.

No. 83-1686. EASTERN BANCORPORATION *v.* FORMER OFFICERS AND DIRECTORS OF EASTERN BANCORPORATION. C. A. 3d Cir. Certiorari denied. Reported below: 725 F. 2d 667.

No. 83-1761. CORWIN ET AL. *v.* LEHMAN, SECRETARY OF THE NAVY, ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 724 F. 2d 1577.

No. 83-1768. THOMAS ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 729 F. 2d 1455.

No. 83-1772. WOOLARD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 729 F. 2d 1457.

No. 83-1775. BECKER ET AL. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 83-1780. ZIMMERMAN *v.* GRIEVANCE COMMITTEE OF THE FIFTH JUDICIAL DISTRICT OF NEW YORK ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 726 F. 2d 85.

No. 83-1806. MCANLIS *v.* UNITED STATES ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 721 F. 2d 334.

No. 83-1809. RHODES *v.* HOGAN. C. A. 6th Cir. Certiorari denied. Reported below: 725 F. 2d 684.

No. 83-1824. JENNINGS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 724 F. 2d 436.

June 4, 1984

467 U. S.

No. 83-6252. *CARTER v. ALABAMA*. Ct. Crim. App. Ala. Certiorari denied. Reported below: 442 So. 2d 150.

No. 83-6282. *MOTHERSHED v. CALIFORNIA*. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 83-6303. *JOHNSTON v. OKLAHOMA*. Ct. Crim. App. Okla. Certiorari denied. Reported below: 673 P. 2d 844.

No. 83-6358. *WORTHING v. ISRAEL, SUPERINTENDENT, WAUPUN CORRECTIONAL INSTITUTION, ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 715 F. 2d 1124.

No. 83-6387. *HOWELL v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 719 F. 2d 1258.

No. 83-6391. *LACOSTE v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 721 F. 2d 984.

No. 83-6427. *THOMA v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 726 F. 2d 1191.

No. 83-6447. *HALL v. ILLINOIS*. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 117 Ill. App. 3d 788, 453 N. E. 2d 1327.

No. 83-6480. *JONES v. MABRY ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 723 F. 2d 590.

No. 83-6502. *LONDON v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 723 F. 2d 1538.

No. 83-6548. *PALMER v. PERKO, DEPUTY DIRECTOR, COLORADO DEPARTMENT OF CORRECTIONS*. C. A. 10th Cir. Certiorari denied.

No. 83-6550. *PIRES v. GRUMMAN AEROSPACE CO.* C. A. 4th Cir. Certiorari denied. Reported below: 707 F. 2d 509.

No. 83-6556. *BUCHMAN v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 726 F. 2d 753.

No. 83-6558. *GORMON v. FREY*. C. A. 8th Cir. Certiorari denied.

No. 83-6559. *SANFORD v. CALIFORNIA*. Ct. App. Cal., 2d App. Dist. Certiorari denied.

467 U. S.

June 4, 1984

No. 83-6560. MUNOZ *v.* MCKASKLE, ACTING DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS. C. A. 5th Cir. Certiorari denied.

No. 83-6561. ROTHSCCHILD *v.* LETTS ET AL. C. A. 11th Cir. Certiorari denied.

No. 83-6562. SCHMIDT *v.* SCHMIDT. Sup. Ct. Utah. Certiorari denied.

No. 83-6564. SALCEDO *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 98 App. Div. 2d 961, 470 N. Y. S. 2d 58.

No. 83-6569. KOEHLER *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 83-6571. COLEMAN *v.* SPEARS, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 83-6572. HOLLAND *v.* AGRICULTURE FEDERAL CREDIT UNION ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 232 U. S. App. D. C. 263, 721 F. 2d 1424.

No. 83-6576. MOLASKY *v.* WESTFALL ET AL. C. A. 8th Cir. Certiorari denied.

No. 83-6578. PALMER *v.* WAINWRIGHT, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 727 F. 2d 1114.

No. 83-6585. ANTONELLI *v.* ILLINOIS ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 723 F. 2d 66.

No. 83-6586. BAILEY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 728 F. 2d 967.

No. 83-6597. JERMOSEN *v.* SMITH, SUPERINTENDENT, ATTICA CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 742 F. 2d 1432.

No. 83-6598. CRUTCHFIELD *v.* FITZGERALD ET AL. C. A. 11th Cir. Certiorari denied.

No. 83-6605. NOLL *v.* KEOHANE, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 730 F. 2d 768.

June 4, 1984

467 U. S.

No. 83-6619. *SMITH v. BRADFORD ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 727 F. 2d 1110.

No. 83-6627. *ALERS v. PUERTO RICO ET AL.* Sup. Ct. P. R. Certiorari denied.

No. 83-6632. *BARHAM v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 724 F. 2d 1529.

No. 83-6655. *DARDEN v. WAINWRIGHT, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS.* C. A. 11th Cir. Certiorari denied. Reported below: 725 F. 2d 1526.

No. 83-6657. *LANDIS ET AL. v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 726 F. 2d 540.

No. 83-6659. *KAGELER ET AL. v. KEOHANE, WARDEN, ET AL.* C. A. 7th Cir. Certiorari denied.

No. 83-6667. *HILL v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 734 F. 2d 17.

No. 83-6677. *HANSON v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 728 F. 2d 1156.

No. 83-6678. *HUTCHINSON v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 730 F. 2d 771.

No. 83-6681. *RANGEL v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 728 F. 2d 675.

No. 83-6684. *ZULLO v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 732 F. 2d 940.

No. 83-6686. *MORROW v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 731 F. 2d 233.

No. 83-6687. *KELE v. HANBERRY, WARDEN.* C. A. 11th Cir. Certiorari denied. Reported below: 729 F. 2d 780.

No. 83-6692. *RUTLEDGE v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 732 F. 2d 148.

No. 82-1758. *RHINEHART ET AL. v. THE SEATTLE TIMES ET AL.* Sup. Ct. Wash. Certiorari denied. JUSTICE WHITE took no part in the consideration or decision of this petition. Reported below: 98 Wash. 2d 226, 654 P. 2d 673.

No. 83-802. *BURLINGTON NORTHERN RAILROAD CO. ET AL. v. LENNEN, SECRETARY OF REVENUE OF KANSAS, ET AL.* C. A.

467 U. S.

June 4, 1984

10th Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 715 F. 2d 494.

No. 83-1662. LEWIS *v.* BROWN & ROOT, INC. C. A. 5th Cir. Motion of respondent for damages denied. Certiorari denied. Reported below: 722 F. 2d 209.

No. 83-1671. BRASWELL ET AL. *v.* FLINTKOTE MINES, LTD., ET AL. C. A. 7th Cir. Certiorari denied. JUSTICE BRENNAN took no part in the consideration or decision of this petition. Reported below: 723 F. 2d 527.

Rehearing Denied

No. 82-1186. TRANS WORLD AIRLINES, INC. *v.* FRANKLIN MINT CORP. ET AL., 466 U. S. 243;

No. 82-1465. FRANKLIN MINT CORP. ET AL. *v.* TRANS WORLD AIRLINES, INC., 466 U. S. 243;

No. 83-181. BALDWIN COUNTY WELCOME CENTER *v.* BROWN, 466 U. S. 147;

No. 83-1375. AKIN ET AL. *v.* DAHL, 466 U. S. 938;

No. 83-6215. GODFREY *v.* FRANCIS, WARDEN, 466 U. S. 945;

No. 83-6283. COLEMAN *v.* SUSSEX COUNTY ET AL., 466 U. S. 941;

No. 83-6284. COLEMAN *v.* MILLSBORO TOWNSHIP, 466 U. S. 941;

No. 83-6287. HERRINGTON *v.* MET COAL & COKE CO., INC., 466 U. S. 941;

No. 83-6307. YOUNG *v.* WAINWRIGHT, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, 466 U. S. 942;

No. 83-6308. MCPEEK ET AL. *v.* GREEN ET AL., 466 U. S. 952; and

No. 83-6393. CHANYA *v.* UNITED STATES, 466 U. S. 943. Petitions for rehearing denied.

No. 82-708. SUMMA CORP. *v.* CALIFORNIA EX REL. STATE LANDS COMMISSION ET AL., 466 U. S. 198. Petition for rehearing denied. JUSTICE MARSHALL took no part in the consideration or decision of this petition.

No. 83-243. BROWN & ROOT, INC., ET AL. *v.* THORNTON ET AL., 464 U. S. 1052. Motion for leave to file petition for rehearing denied.

June 7, 11, 1984

467 U. S.

JUNE 7, 1984

Miscellaneous Order

No. A-974. WISCONSIN ELECTIONS BOARD ET AL. *v.* REPUBLICAN PARTY OF WISCONSIN ET AL. Application for stay of the mandate of the United States District Court for the Eastern District of Wisconsin, presented to JUSTICE STEVENS, and by him referred to the Court, is granted pending the timely docketing and final disposition of the appeal.

JUNE 11, 1984

Appeals Dismissed

No. 83-1021. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION *v.* ALLSTATE INSURANCE Co. Appeal from D. C. S. D. Miss. dismissed for want of jurisdiction. Reported below: 570 F. Supp. 1224.

CHIEF JUSTICE BURGER, with whom JUSTICE O'CONNOR joins, dissenting.

Without explanation, the Court holds today that we lack appellate jurisdiction under 28 U. S. C. § 1252 to review a judgment of a Federal District Court holding an entire Act of Congress unconstitutional as long as the party seeking review merely purports to challenge only the remedy ordered by the District Court *even though the remedy sought on appeal would necessarily require a reversal of the District Court holding that the Act is unconstitutional*.^{*} The practical effect of this holding is that by merely addressing a challenge only to the remedy provided by the District Court, a direct appeal to this Court from a decision of a Federal District Court holding an Act of Congress unconstitutional can be frustrated. Notwithstanding the burdens on the Court—which have more than doubled in three decades—I am unwilling to say on the basis of the scant information before us that Congress

^{*}Section 1252 provides in relevant part that

“[a]ny party may appeal to the Supreme Court from an interlocutory or final judgment, decree or order of any court of the United States . . . holding any Act of Congress unconstitutional in any civil action, suit, or proceeding to which the United States or any of its agencies, or any officer or employee thereof . . . is a party.”

1232

BURGER, C. J., dissenting

intended our appellate jurisdiction under § 1252 to be so easily circumvented. Because of the significance of not only the jurisdictional but the underlying substantive issues presented by this appeal, I would set the case for argument, and postpone resolution of the jurisdictional question until argument on the merits.

A brief recitation of the procedural history of this case is necessary to put the Court's holding in perspective. In 1963, Congress passed § 6(d) of the Fair Labor Standards Act (FLSA), 29 U. S. C. § 206(d), known as the Equal Pay Act. The Act vested enforcement authority for the Equal Pay Act in the Secretary of Labor. However, in 1978, as part of an overall effort to centralize authority for enforcement of the various sex discrimination statutes, the Secretary's enforcement authority was transferred to the Equal Employment Opportunity Commission by Reorganization Plan No. 1 of 1978, 3 CFR 321 (1979). The Reorganization Plan was implemented pursuant to the Reorganization Act of 1977, 5 U. S. C. § 901 *et seq.*, which conferred on the President authority to reorganize Executive departments and agencies subject to certain specified congressional limitations. The Reorganization Act required the President to transmit any proposed reorganization plan to both Houses of Congress. § 903. Pursuant to 5 U. S. C. § 906(a), any plan submitted by the President became "effective" at the end of 60 days of continuous session of the Congress unless during that time either House passed a resolution of disapproval or its equivalent.

Reorganization Plan No. 1 was submitted to both Houses of Congress as required by the Reorganization Act. The House roundly rejected a resolution of disapproval. H. R. Res. 1049, 95th Cong., 2d Sess. (1978); 124 Cong. Rec. 11336-11337 (1978). Although a resolution of disapproval was not brought to a vote in the Senate, the Senate Committee on Governmental Affairs unanimously recommended against passage of a resolution of disapproval. S. Res. 404, 95th Cong., 2d Sess. (1978); S. Rep. No. 95-750, pp. 6, 10 (1978). Because neither House of Congress vetoed the Reorganization Plan, the Plan and the transfer of enforcement authority to appellant, the Equal Employment Opportunity Commission, became effective.

In April 1982, appellant filed a complaint against appellee in the United States District Court for the Southern District of Mississippi, alleging that appellee was violating the Equal Pay Act by paying lower wages to female unit supervisors and underwriters than to males performing the same duties. Appellee moved for

summary judgment, contending that the transfer of enforcement authority to appellant under Reorganization Plan No. 1 was invalid because the legislative veto provision in the Reorganization Act was unconstitutional. Appellee maintained that the legislative veto provision was not severable from the balance of the Act and, thus, that the entire Act was invalid; that the transfer of enforcement authority to appellant pursuant to the Act was therefore invalid; and that, as a result, appellant was without authority to enforce the Equal Pay Act.

The District Court granted appellee's summary judgment motion and dismissed appellant's enforcement action. 570 F. Supp. 1224 (1983). The court first held that the one-House veto provision in the Reorganization Act, even though not exercised here, was unconstitutional under *INS v. Chadha*, 462 U. S. 919 (1983). 570 F. Supp., at 1229. After a brief inquiry into the legislative history of the Reorganization Act, the court determined that "Congress intended the one-house veto provision to be an integral and inseparable part of the entire Act such that it would limit the power of the President to propose and enact reorganization plans." *Id.*, at 1232. It then concluded that since the legislative veto provision was unconstitutional, "the entire Act must be held unconstitutional," *ibid.*:

"[T]his court must conclude that *the Reorganization Act of 1977 is unconstitutional*. It necessarily follows that the Reorganization Plan 1 of 1978, which contains the provision allowing the EEOC to enforce the Equal Pay Act, is unconstitutional since the plan was adopted pursuant to the Act." *Id.*, at 1234 (emphasis added).

Last, applying the standards set forth by this Court in *Chevron Oil Co. v. Huson*, 404 U. S. 97 (1971), the District Court decided that its decision should be given retroactive effect.

On September 16, 1983, appellant filed in the District Court a notice of appeal to this Court. One month later, appellant filed a notice of appeal to the Court of Appeals for the Fifth Circuit, invoking that court's jurisdiction under 28 U. S. C. § 1291. On November 23, 1983, appellee filed a motion in the Fifth Circuit to dismiss appellant's § 1291 appeal. Appellant filed a memorandum in opposition contending, as the Solicitor General did in *Heckler v. Edwards*, 465 U. S. 870 (1984), that a direct appeal to this Court

1232

BURGER, C. J., dissenting

does not lie where the appellant challenges only the relief provided in the district court, not that court's holding that a particular Act of Congress is unconstitutional. The Fifth Circuit denied appellant's motion to dismiss, but it stayed the appeal pending resolution of the jurisdictional issue by this Court. We in turn held the case pending disposition of *Heckler v. Edwards*, *supra*, in which we held that a direct appeal to this Court under § 1252 does not lie when the appellant challenges only the relief granted, not the district court's holding that an Act of Congress is unconstitutional.

The Solicitor General argues on behalf of appellant that appellant challenges only the relief ordered—dismissal of the enforcement action—not the District Court's holding that the legislative veto provision is unconstitutional. He thus contends, and the Court accepts the argument, that under *Heckler v. Edwards*, *supra*, the appeal should be dismissed for want of jurisdiction. I agree that appellant does not challenge the District Court's holding that the legislative veto provision is unconstitutional. But this is not the question. The controlling question is whether appellant is in fact challenging the District Court's holding that the *entire* Act—not just the legislative veto provision—is unconstitutional.

I see no alternative to the conclusion that appellant is necessarily challenging the constitutional holding. Appellant cannot possibly challenge the dismissal of the enforcement action without at the same time challenging the District Court's holding that the Act in its entirety is unconstitutional. The dismissal and the constitutional holding are inextricably linked; the Act was held unconstitutional, as a result of which appellant was held to be without enforcement authority, and therefore the complaint was dismissed. If the District Court's dismissal is to be overturned, the appellate court must overturn the holding that the Act in its entirety is unconstitutional. In the words of *Heckler v. Edwards*, *supra*, at 880, "the issue on appeal is the holding of statutory unconstitutionality."

The Court purports to rely upon our recent decision in *Heckler* to support its dismissal. However, it is plain that that case is quite different from this one in the most critical respect. In *Heckler*, the Government conceded that it was not challenging the *only* constitutional holding of the District Court in that case. Here, in contrast, while the Government accepts the holding that the legislative veto provision is unconstitutional, it does not con-

cede the correctness of the District Court's holding that the entire Act is unconstitutional. This is precisely the holding it seeks to have reviewed on appeal. Given the obvious difference between this case and *Heckler*, at the very least I am unprepared to say here, without briefing and argument, that jurisdiction does not lie to this Court.

The underlying problem that the Solicitor General's argument is designed to circumvent—and the issue that the Court's unexplained dismissal fails to come to grips with—is that the District Court's invalidation of the Act in its entirety probably could have been—and perhaps should have been—on a statutory, not a constitutional basis. See *INS v. Chadha*, *supra*, at 931–932. The District Court's holding indeed amounts to nothing more than a determination of congressional intent, and it appears to acknowledge as much. 570 F. Supp., at 1230. Had the District Court simply determined, as a matter of statutory construction, that appellant cannot exercise the authority to enforce the Equal Pay Act because Congress did not wish the Act to be operative absent the veto provision, I would agree that dismissal would clearly be compelled under *Heckler v. Edwards*. Under these circumstances, it would be clear, as in *Heckler*, that appellant was not challenging the constitutional holding of the District Court since it concedes the validity of the court's holding on the legislative veto provision. But this is not the holding of the District Court. And the mere assertion now by the Solicitor General, and implicitly by the Court, that the holding was in reality one of statutory construction cannot change the fact that the District Court explicitly and unambiguously held the entire Act *unconstitutional*.

I find the Court's readiness to dismiss this case for want of jurisdiction disturbing particularly in light of the importance of the underlying substantive issues. An entire Act of Congress has been held unconstitutional, which itself raises a question of import. There is the question whether the District Court was correct in its finding that the legislative veto provision is nonseverable. There apparently are also lingering questions after *Chadha* on what a court is to do once it finds a legislative veto provision unconstitutional and nonseverable. Finally, there are the substantial questions whether *Chadha* should be applied retroactively, given that the Reorganization Plan was not vetoed by either House and was implemented before *Chadha* was decided, and whether Congress has in any event ratified the transfer

467 U. S.

June 11, 1984

of enforcement authority to the EEOC through appropriations and other statutes validly passed. These matters are appropriate for resolution by this Court.

No. 83-1700. *BLUM ET AL. v. ROSEWELL, TREASURER OF COOK COUNTY, ILLINOIS*. Appeal from Sup. Ct. Ill. dismissed for want of substantial federal question. Reported below: 99 Ill. 2d 407, 459 N. E. 2d 966.

No. 83-1711. *ALBRECHT, INC., ET AL. v. VILLAGE OF HUDSON*. Appeal from Sup. Ct. Ohio dismissed for want of substantial federal question. Reported below: 9 Ohio St. 3d 69, 458 N. E. 2d 852.

No. 83-6591. *PERSHE v. IRIZARRY ET AL.* Appeal from Super. Ct. P. R. 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. 82-707. *ABERDEEN & ROCKFISH RAILROAD CO. ET AL. v. UNITED STATES ET AL.*; and

No. 82-804. *NATIONAL MOTOR FREIGHT TRAFFIC ASSN., INC. v. UNITED STATES ET AL.* C. A. 5th Cir. Certiorari granted, judgment vacated, and cases remanded for further consideration in light of *ICC v. American Trucking Assns., Inc.*, ante, p. 354. Reported below: 682 F. 2d 1092.

Miscellaneous Orders

No. D-412. *IN RE DISBARMENT OF SPITZNAGEL*. Disbarment entered. [For earlier order herein, see 465 U. S. 1096.]

No. D-418. *IN RE DISBARMENT OF ANDERSON*. Disbarment entered. [For earlier order herein, see 466 U. S. 934.]

No. D-435. *IN RE DISBARMENT OF MANN*. It is ordered that William Davis Mann, of Akron, Ohio, be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-436. *IN RE DISBARMENT OF HOWARD*. It is ordered that Charles P. Howard, Jr., of Baltimore, Md., be suspended from the practice of law in this Court and that a rule issue, return-

June 11, 1984

467 U. S.

able within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-437. *IN RE DISBARMENT OF FEINBERG*. It is ordered that Alexander Feinberg, of Haddonfield, N. J., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-438. *IN RE DISBARMENT OF GUARDINO*. It is ordered that Joseph Richard Guardino, of East Williston, N. Y., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-439. *IN RE DISBARMENT OF GERZOF*. It is ordered that Julius M. Gerzof, of Freeport, N. Y., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. 65, Orig. *TEXAS v. NEW MEXICO*. Motion of New Mexico to remand the case to the Special Master denied. Exception of New Mexico to the Report of the Special Master overruled. Report and Recommendation of the Special Master approved. [For earlier order herein, see, *e. g.*, 465 U. S. 1063.]

No. 82-5920. *SHEA v. LOUISIANA*. Sup. Ct. La. [Certiorari granted, 466 U. S. 957.] Motion for appointment of counsel granted, and it is ordered that Frances Baker Jack, of Shreveport, La., be appointed to serve as counsel for petitioner in this case.

No. 83-727. *ALEXANDER, GOVERNOR OF TENNESSEE, ET AL. v. JENNINGS ET AL.* C. A. 6th Cir. [Certiorari granted, 465 U. S. 1021.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 83-990. *SCHOOL DISTRICT OF THE CITY OF GRAND RAPIDS ET AL. v. BALL ET AL.* C. A. 6th Cir. [Certiorari granted, 465 U. S. 1064.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

467 U. S.

June 11, 1984

No. 83-997. TRANS WORLD AIRLINES, INC. *v.* THURSTON ET AL. C. A. 2d Cir. [Certiorari granted, 465 U. S. 1065]; and

No. 83-1325. AIR LINE PILOTS ASSN., INTERNATIONAL *v.* THURSTON ET AL. C. A. 2d Cir. [Certiorari granted, 466 U. S. 926.] Motion of Chamber of Commerce of the United States of America for leave to file a brief as *amicus curiae* granted.

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. [Certiorari granted, 466 U. S. 957.] Motion of the parties to dispense with printing the joint appendix granted.

No. 83-1158. ESTATE OF THORNTON ET AL. *v.* CALDOR, INC. Sup. Ct. Conn. [Certiorari granted, 465 U. S. 1078.] Motions of Anti-Defamation League of B'nai B'rith, Seventh-Day Adventist Church, and Americans United for Separation of Church and State for leave to file briefs as *amici curiae* granted.

No. 83-1307. UNITED STATES *v.* POWELL. C. A. 9th Cir. [Certiorari granted, *ante*, p. 1203.] Motion for appointment of counsel granted, and it is ordered that John J. Cleary, Esquire, of San Diego, Cal., be appointed to serve as counsel for respondent in this case.

No. 83-5424. AKE *v.* OKLAHOMA. Ct. Crim. App. Okla. [Certiorari granted, 465 U. S. 1099.] Motions of New Jersey Department of the Public Advocate, American Psychiatric Association, and American Psychological Association et al. for leave to file briefs as *amici curiae* granted.

No. 83-6035. TAYLOR *v.* UNITED STATES. C. A. 9th Cir.; and

No. 83-6628. LYONS *v.* U. S. AIR FORCE ET AL. C. A. Fed. Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until July 2, 1984, within which to pay the docketing fee required by Rule 45(a) and to submit petitions in compliance with Rule 33 of the Rules of this Court.

JUSTICE BRENNAN, JUSTICE MARSHALL, and JUSTICE STEVENS, dissenting.

For the reasons expressed in *Brown v. Herald Co.*, 464 U. S. 928 (1983), we would deny the petitions for writs of certiorari

June 11, 1984

467 U. S.

without reaching the merits of the motions to proceed *in forma pauperis*.

No. 83-6061. GARCIA ET AL. *v.* UNITED STATES. C. A. 11th Cir. [Certiorari granted, 466 U. S. 926.] Motion of petitioners to dispense with printing the joint appendix granted.

Certiorari Granted

No. 82-1832. TOWN OF HALLIE ET AL. *v.* CITY OF EAU CLAIRE. C. A. 7th Cir. Certiorari granted. Reported below: 700 F. 2d 376.

No. 82-1922. SOUTHERN MOTOR CARRIERS RATE CONFERENCE, INC., ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari granted. Reported below: 702 F. 2d 532.

No. 83-1708. DEAN WITTER REYNOLDS INC. *v.* BYRD. C. A. 9th Cir. Certiorari granted. Reported below: 726 F. 2d 552.

No. 83-1249. SIMS ET AL. *v.* CENTRAL INTELLIGENCE AGENCY ET AL. C. A. D. C. Cir. Certiorari granted, case consolidated with No. 83-1075, *CIA v. Sims* [certiorari granted, 465 U. S. 1078], and a total of one hour allotted for oral argument. Reported below: 228 U. S. App. D. C. 269, 709 F. 2d 95.

Certiorari Denied. (See also No. 83-6591, *supra*.)

No. 82-1827. AMERICAN TRUCKING ASSNS., INC., ET AL. *v.* INTERSTATE COMMERCE COMMISSION ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 688 F. 2d 1337.

No. 83-154. TITLE INSURANCE RATING BUREAU OF ARIZONA, INC. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 700 F. 2d 1247.

No. 83-1351. ALONSO *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 718 F. 2d 1109.

No. 83-1430. J. BARANELLO & SONS *v.* CITY OF PATERSON ET AL.;

No. 83-1683. CONSOLIDATED PRECAST, INC. *v.* CITY OF PATERSON ET AL.; and

No. 83-1725. INDEPENDENT ELECTRICAL CO., INC. *v.* CITY OF PATERSON ET AL. Super. Ct. N. J., App. Div. Certiorari denied.

467 U. S.

June 11, 1984

No. 83-1463. *LEDESMA v. GEORGIA*; and

No. 83-1578. *MERRITT v. GEORGIA*. Sup. Ct. Ga. Certiorari denied. Reported below: 251 Ga. 885, 311 S. E. 2d 427.

No. 83-1520. *LOCAL 222, INTERNATIONAL LADIES' GARMENT WORKERS' UNION, AFL-CIO v. NATIONAL LABOR RELATIONS BOARD ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 232 U. S. App. D. C. 195, 721 F. 2d 1355.

No. 83-1539. *CARROLL v. UNITED STATES ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 721 F. 2d 155.

No. 83-1577. *DEFIORE v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 720 F. 2d 757.

No. 83-1599. *HOLDER v. ILLINOIS*. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 119 Ill. App. 3d 366, 456 N. E. 2d 628.

No. 83-1652. *PAPAGO TRIBAL UTILITY AUTHORITY v. FEDERAL ENERGY REGULATORY COMMISSION ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 232 U. S. App. D. C. 424, 723 F. 2d 950.

No. 83-1663. *SCHAFER v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 726 F. 2d 155.

No. 83-1668. *MOSKOWITZ ET AL. v. SAUL J. MORGAN ENTERPRISES, INC., ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 725 F. 2d 692.

No. 83-1670. *AMERICAN MOTORS CORP. v. HANNA*. C. A. 7th Cir. Certiorari denied. Reported below: 724 F. 2d 1300.

No. 83-1680. *LAWLESS v. PIERCE ET AL.* App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 118 Ill. App. 3d 747, 455 N. E. 2d 113.

No. 83-1681. *CARON v. BANGOR PUBLISHING CO.* Sup. Jud. Ct. Me. Certiorari denied. Reported below: 470 A. 2d 782.

No. 83-1684. *BRYNER ET AL. v. SECURITY PACIFIC NATIONAL BANK ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 722 F. 2d 746.

June 11, 1984

467 U. S.

No. 83-1689. *BROWN, ADMINISTRATRIX OF THE ESTATE OF BROWN, ET AL. v. BROWN ET AL.* Sup. Ct. Va. Certiorari denied. Reported below: 226 Va. 320, 309 S. E. 2d 586.

No. 83-1690. *GUSTAFSON v. BOARD OF GOVERNORS, FEDERAL RESERVE SYSTEM, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 717 F. 2d 242.

No. 83-1698. *D. E. ROGERS ASSOCIATES, INC., ET AL. v. GARDNER-DENVER CO.* C. A. 6th Cir. Certiorari denied. Reported below: 718 F. 2d 1431.

No. 83-1705. *PEKARSKI ET AL. v. ABRAHAM.* C. A. 3d Cir. Certiorari denied. Reported below: 728 F. 2d 167.

No. 83-1707. *ROTHMANN ET AL. v. M.V. RESOLUTE ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 720 F. 2d 1097.

No. 83-1709. *STEIN v. GAGLIARDO.* C. A. 6th Cir. Certiorari denied. Reported below: 727 F. 2d 1111.

No. 83-1717. *ALABAMA SURFACE MINING RECLAMATION COMMISSION v. COMMERCIAL STANDARD INSURANCE CO.* Ct. Crim. App. Ala. Certiorari denied. Reported below: 443 So. 2d 1245.

No. 83-1720. *KORN ET AL. v. RABBINICAL COUNCIL OF CALIFORNIA ET AL.* Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 83-1724. *GRIFFIS v. DELTA FAMILY-CARE DISABILITY AND SURVIVORSHIP PLAN ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 723 F. 2d 822.

No. 83-1730. *SEA-HIRE SERVICE, S. A. v. TRINIDAD CORP.* C. A. 2d Cir. Certiorari denied. Reported below: 742 F. 2d 1441.

No. 83-1742. *SCOTT ET AL. v. SIEBEL, EXECUTRIX OF THE ESTATE OF SIEBEL, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 725 F. 2d 995.

No. 83-1769. *BURCHE v. WALTERS ET AL.* Ct. App. Iowa. Certiorari denied. Reported below: 355 N. W. 2d 64.

No. 83-1773. *EILERSON ET AL. v. OHIO.* Ct. App. Ohio, Hamilton County. Certiorari denied.

467 U. S.

June 11, 1984

No. 83-1787. *ROBINSON ET VIR v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 727 F. 2d 1100.

No. 83-1795. *TODD PACIFIC SHIPYARDS ET AL. v. DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 722 F. 2d 747.

No. 83-1802. *DANIEL ET AL. v. PETTWAY ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 721 F. 2d 315.

No. 83-1808. *NINETY-TWO POINT SEVEN BROADCASTING, INC., ET AL. v. HANOVER RADIO, INC.* Sup. Ct. Va. Certiorari denied.

No. 83-1810. *MILLER v. PORT OF ILWACO ET AL.* Ct. App. Wash. Certiorari denied. Reported below: 35 Wash. App. 1070.

No. 83-1821. *LEVENSON v. HECKLER, SECRETARY OF HEALTH AND HUMAN SERVICES*. C. A. 5th Cir. Certiorari denied. Reported below: 715 F. 2d 576.

No. 83-1828. *SPERLING v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 726 F. 2d 69.

No. 83-1857. *KAISER ALUMINUM & CHEMICAL CORP. v. PARSON*. C. A. 5th Cir. Certiorari denied. Reported below: 727 F. 2d 473.

No. 83-1861. *ALLEGHENY MUTUAL CASUALTY CO. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 724 F. 2d 975.

No. 83-1866. *ERKINS ET AL. v. UNITED STEELWORKERS OF AMERICA, AFL-CIO-CLC, ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 723 F. 2d 837.

No. 83-5286. *MILLS v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 704 F. 2d 1553.

No. 83-6237. *WALKER v. UNITED STATES PAROLE COMMISSION ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 723 F. 2d 918.

No. 83-6263. *HOOD v. UNITED STATES PAROLE COMMISSION*. C. A. 4th Cir. Certiorari denied. Reported below: 722 F. 2d 738.

No. 83-6270. *HAYES v. MIGNANO*. C. A. 11th Cir. Certiorari denied.

June 11, 1984

467 U. S.

No. 83-6353. *BURY v. MACALUSO ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 724 F. 2d 977.

No. 83-6384. *CHERRY v. MARSHALL, SUPERINTENDENT, SOUTHERN OHIO CORRECTIONAL CENTER.* C. A. 6th Cir. Certiorari denied. Reported below: 722 F. 2d 1296.

No. 83-6409. *RAMOS v. SCULLY, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY, ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 742 F. 2d 1432.

No. 83-6424. *ATALIG v. NORTHERN MARIANA ISLANDS.* C. A. 9th Cir. Certiorari denied. Reported below: 723 F. 2d 682.

No. 83-6438. *FANT v. PENNSYLVANIA.* Sup. Ct. Pa. Certiorari denied. Reported below: 502 Pa. 268, 465 A. 2d 1245.

No. 83-6463. *RIZZIO v. ILLINOIS.* App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 117 Ill. App. 3d 1162, 466 N. E. 2d 417.

No. 83-6476. *GIRDLER v. ARIZONA.* Sup. Ct. Ariz. Certiorari denied. Reported below: 138 Ariz. 482, 675 P. 2d 1301.

No. 83-6594. *VICCARONE v. NORTH OLMSTEAD POLICE DEPARTMENT.* C. A. 6th Cir. Certiorari denied. Reported below: 723 F. 2d 912.

No. 83-6603. *SENA v. WINANS, WARDEN.* C. A. 10th Cir. Certiorari denied.

No. 83-6609. *GEE v. MARYLAND.* Ct. App. Md. Certiorari denied. Reported below: 298 Md. 565, 471 A. 2d 712.

No. 83-6612. *DAWSON v. MAGGIO, WARDEN.* C. A. 5th Cir. Certiorari denied. Reported below: 727 F. 2d 1106.

No. 83-6614. *TILLIS v. COOKE ET AL.* C. A. 11th Cir. Certiorari denied.

No. 83-6615. *HERNANDEZ v. SPENCER ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 724 F. 2d 128.

No. 83-6618. *SMITH v. CARROLL.* Super. Ct. Pa. Certiorari denied. Reported below: 316 Pa. Super. 634, 465 A. 2d 702.

No. 83-6621. *REMSON v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 729 F. 2d 1462.

467 U. S.

June 11, 1984

No. 83-6630. *LIPSCOMB v. MICHIGAN*. Sup. Ct. Mich. Certiorari denied. Reported below: 418 Mich. 911.

No. 83-6643. *REILLY v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 723 F. 2d 903.

No. 83-6664. *BERRY v. FOLTZ, WARDEN*. C. A. 6th Cir. Certiorari denied. Reported below: 726 F. 2d 1142.

No. 83-6669. *BARTELS v. NATIONAL LABOR RELATIONS BOARD*. C. A. 2d Cir. Certiorari denied. Reported below: 742 F. 2d 1439.

No. 83-6682. *PARKER v. PETROVSKY, WARDEN*. C. A. 8th Cir. Certiorari denied.

No. 83-6691. *TAYLOR v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 729 F. 2d 1450.

No. 83-6700. *LEE v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 729 F. 2d 1455.

No. 83-6701. *LAROCHE v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 723 F. 2d 1541.

No. 83-6703. *HILDEBRAND v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 734 F. 2d 8.

No. 83-6705. *BURRIS v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 729 F. 2d 1455.

No. 83-6710. *STINSON v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 732 F. 2d 156.

No. 83-6711. *McKINNESS v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 732 F. 2d 159.

No. 83-6719. *BLAKE v. GOLDMAN ET AL.* Ct. App. N. Y. Certiorari denied. Reported below: 61 N. Y. 2d 601, 459 N. E. 2d 1291.

No. 83-6720. *KING v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 732 F. 2d 148.

No. 83-6721. *CARLUCCI v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 726 F. 2d 753.

No. 83-6725. *WILLIAMS v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 726 F. 2d 661.

June 11, 1984

467 U. S.

No. 83-6726. *PALMER v. UNITED STATES*. Ct. App. D. C. Certiorari denied.

No. 83-6729. *BROWNING v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 725 F. 2d 680.

No. 83-6730. *HINES v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 728 F. 2d 421.

No. 83-6731. *JOURDAN v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 727 F. 2d 1111.

No. 83-6734. *ANTONELLI v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 727 F. 2d 1112.

No. 83-1309. *DOE v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. JUSTICE BRENNAN would grant certiorari. Reported below: 722 F. 2d 303.

No. 83-1468. *DURANT v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. JUSTICE BRENNAN would grant certiorari. Reported below: 723 F. 2d 447.

No. 83-6589. *ROBISON v. OKLAHOMA*. Ct. Crim. App. Okla.; and

No. 83-6736. *SIMS v. FLORIDA*. Sup. Ct. Fla. Certiorari denied. Reported below: No. 83-6589, 677 P. 2d 1080; No. 83-6736, 444 So. 2d 922.

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. 83-998. *FOLEY CONSTRUCTION CO. v. U. S. ARMY CORPS OF ENGINEERS ET AL.*, 466 U. S. 936;

No. 83-1465. *FARMER v. BOARD OF PROFESSIONAL RESPONSIBILITY OF THE SUPREME COURT OF TENNESSEE*, 466 U. S. 946;

No. 83-5995. *WILLIAMS v. TEXAS*, 466 U. S. 954;

No. 83-6297. *UNDERWOOD v. OHIO*, 466 U. S. 934;

No. 83-6397. *HYMAN v. SOUTH CAROLINA*, 466 U. S. 963; and

No. 83-6416. *BROADWAY v. UNITED STATES*, 466 U. S. 943. Petitions for rehearing denied.

467 U. S.

June 11, 13, 18, 1984

No. 83-6485. *ACHARYA v. YOUNG ET AL.*, 466 U. S. 961; and
No. 83-6498. *FLICK v. UNITED STATES*, 466 U. S. 962. Petitions for rehearing denied.

JUNE 13, 1984

Dismissal Under Rule 53

No. 82-1074. *AMERICAN CAST IRON PIPE CO. v. PETTWAY ET AL.* C. A. 11th Cir. Certiorari dismissed under this Court's Rule 53. Reported below: 681 F. 2d 1259.

JUNE 18, 1984

Dismissal Under Rule 53

No. 83-930. *ALYESKA PIPELINE SERVICE CO. v. THE VESSEL BAY RIDGE ET AL.* C. A. 9th Cir. Certiorari dismissed under this Court's Rule 53. Reported below: 703 F. 2d 381.

Appeals Dismissed

No. 83-1096. *GOMEZ-HERMANOS, INC. v. SECRETARY OF THE TREASURY OF PUERTO RICO.* Appeal from Sup. Ct. P. R. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. JUSTICE WHITE, JUSTICE BLACKMUN, and JUSTICE REHNQUIST would postpone further consideration of the question of jurisdiction until a hearing of the case on the merits. Reported below: — P. R. R. —.

No. 83-1196. *AMERICAN TRUCKING ASSNS., INC., ET AL. v. NEW YORK STATE TAX COMMISSION ET AL.* Appeal from Ct. App. N. Y. dismissed for want of substantial federal question. Reported below: 60 N. Y. 2d 745, 457 N. E. 2d 769.

No. 83-1764. *L. D. BUTLER, INC. v. ASHLEY, DBA PHIL ASHLEY TRUCKING.* Appeal from Ct. App. Cal., 2d App. Dist., dismissed for want of substantial federal question.

No. 83-1540. *LESTER ET AL. v. MCGILL.* Appeal from Ct. App. Idaho dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 105 Idaho 692, 672 P. 2d 570.

No. 83-6339. *HANSON v. ILLINOIS.* Appeal from App. Ct. Ill., 5th Dist., dismissed for want of jurisdiction. Treating the

June 18, 1984

467 U. S.

papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 113 Ill. App. 3d 1174, 457 N. E. 2d 175.

Miscellaneous Orders

No. — — —. *AMIDON ET AL. v. WEINBERGER, SECRETARY OF DEFENSE, 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 denied.

No. — — —. *CHEVRON U. S. A., INC. v. HAMMOND ET AL.* Motion to direct the Clerk to file the petition for writ of certiorari out of time denied.

No. A-971 (83-6828). *PEPPER v. SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES (CALIFORNIA, REAL PARTY IN INTEREST).* Ct. App. Cal., 2d App. Dist. Application for stay, addressed to JUSTICE MARSHALL and referred to the Court, denied.

No. 82-976. *CALIFORNIA v. HOWARD*, 466 U. S. 957. Respondent is requested to file a response to the petition for rehearing within 30 days.

No. 83-240. *LAWRENCE COUNTY ET AL. v. LEAD-DEADWOOD SCHOOL DISTRICT No. 40-1.* Sup. Ct. S. D. [Probable jurisdiction noted, 466 U. S. 903.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 83-727. *ALEXANDER, GOVERNOR OF TENNESSEE, ET AL. v. JENNINGS ET AL.* C. A. 6th Cir. [Certiorari granted, 465 U. S. 1021.] Motion of respondents to substitute Hershel Choate for Rosier Jennings, now deceased, is granted.

No. 83-1394. *UNITED STATES ET AL. v. LOCKE ET AL.* D. C. Nev. [Probable jurisdiction noted, *ante*, p. 1225.] Motion of the Solicitor General to dispense with printing the joint appendix granted.

No. 83-1429. *ALABAMA POWER CO. ET AL. v. SIERRA CLUB ET AL.* C. A. D. C. Cir. Motions of Procter & Gamble Paper Products Co., Arizona Electric Power Cooperative, Inc., et al., Associated Industries of Alabama, Inc., National Coal Association, and Ohio Mining and Reclamation Association for leave to file

467 U. S.

June 18, 1984

briefs as *amici curiae* granted. JUSTICE POWELL and JUSTICE O'CONNOR took no part in the consideration or decision of these motions.

No. 83-1620. FIRST NATIONAL BANK OF ATLANTA, AS SUCCESSOR IN INTEREST TO FIRST NATIONAL BANK OF CARTERSVILLE, GEORGIA *v.* BARTOW COUNTY BOARD OF TAX ASSESSORS ET AL. Sup. Ct. Ga. [Probable jurisdiction noted, *ante*, p. 1214.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 83-1747 (A-935). TATE, SUPERINTENDENT, CHILLICOTHE CORRECTIONAL INSTITUTE *v.* ROSE. C. A. 6th Cir. Motion to vacate the stay entered by JUSTICE O'CONNOR [466 U. S. 1301] denied.

No. 83-1840. BERTHELOT *v.* UNITED STATES. C. A. 3d Cir. Motion of petitioner to compel the transmission of presentence report denied.

No. 83-1959. EKLUND *v.* UNITED STATES; and MARTIN *v.* UNITED STATES. C. A. 8th Cir.; and

No. 83-1961. LANDRETH TIMBER CO. *v.* LANDRETH ET AL. C. A. 9th Cir. Motions of petitioners to expedite consideration of the petitions for writs of certiorari denied.

No. 83-5424. AKE *v.* OKLAHOMA. Ct. Crim. App. Okla. [Certiorari granted, 465 U. S. 1099.] Motions of Office of the Public Defender of Oklahoma County, Oklahoma, et al. and National Legal Aid and Defender Association et al. for leave to file briefs as *amici curiae* granted.

No. 83-6634. DAWN ET AL. *v.* H. REX GREENE, M. D., INC., ET AL. Appeal from Ct. App. Cal., 2d App. Dist. Motion of appellants for leave to proceed *in forma pauperis* denied. Appellants are allowed until July 9, 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, dissenting.

For the reasons expressed in *Brown v. Herald Co.*, 464 U. S. 928 (1983), we would dismiss the appeal for want of jurisdiction

June 18, 1984

467 U. S.

and, treating the papers whereon the appeal would be taken as a petition for writ of certiorari, we would deny certiorari without reaching the merits of the motion to proceed *in forma pauperis*.

No. 83-6676. *GARCIA v. INGRAM*. C. A. 10th Cir. Motion of petitioner to consolidate this case with No. 83-1360, *Webb v. County Board of Education of Dyer County, Tennessee* [certiorari granted, 466 U. S. 935], denied.

No. 83-6631. *IN RE DOHM*; and

No. 83-6652. *IN RE YATES*. Petitions for writs of mandamus denied.

Probable Jurisdiction Noted

No. 83-1015. *NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE ET AL. v. HAMPTON COUNTY ELECTION COMMISSION ET AL.* Appeal from D. C. S. C. Probable jurisdiction noted. JUSTICE MARSHALL took no part in the consideration or decision of this case.

Certiorari Granted

No. 82-2157. *CENTRAL STATES, SOUTHEAST & SOUTHWEST AREAS PENSION FUND ET AL. v. CENTRAL TRANSPORT, INC., ET AL.* C. A. 6th Cir. Certiorari granted. Reported below: 698 F. 2d 802.

No. 83-529. *UNITED STATES v. SHARPE ET AL.* C. A. 4th Cir. Certiorari granted. Reported below: 712 F. 2d 65.

No. 83-1623. *ANDERSON v. CITY OF BESSEMER CITY, NORTH CAROLINA.* C. A. 4th Cir. Certiorari granted. Reported below: 717 F. 2d 149.

No. 83-1625. *UNITED STATES v. JOHNS ET AL.* C. A. 9th Cir. Certiorari granted. Reported below: 707 F. 2d 1093.

No. 83-1660. *ATKINS, COMMISSIONER OF THE MASSACHUSETTS DEPARTMENT OF PUBLIC WELFARE v. PARKER ET AL.*; and

No. 83-6381. *PARKER ET AL. v. BLOCK, SECRETARY OF AGRICULTURE, ET AL.* C. A. 1st Cir. Motions of Gill Parker et al. for leave to proceed *in forma pauperis* granted. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. Reported below: 722 F. 2d 933.

467 U. S.

June 18, 1984

No. 83-1878. HECKLER, SECRETARY OF HEALTH AND HUMAN SERVICES *v.* CHANEY ET AL. C. A. D. C. Cir. Motion of respondents for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 231 U. S. App. D. C. 136, 718 F. 2d 1174; and 233 U. S. App. D. C. 146, 724 F. 2d 1030.

No. 83-5954. LINDAHL *v.* OFFICE OF PERSONNEL MANAGEMENT. C. A. Fed. Cir. Motion of petitioner for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 718 F. 2d 391.

Certiorari Denied. (See also Nos. 83-1096, 83-1540, and 83-6339, *supra.*)

No. 82-1699. OAKLAND SCAVENGER CO. *v.* BONILLA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 697 F. 2d 1297.

No. 83-1398. CROCKETT, MEMBER, UNITED STATES HOUSE OF REPRESENTATIVES, ET AL. *v.* REAGAN, PRESIDENT OF THE UNITED STATES, ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 232 U. S. App. D. C. 128, 720 F. 2d 1355.

No. 83-1450. CUNNINGHAM ET AL. *v.* DONOVAN, SECRETARY OF LABOR. C. A. 5th Cir. Certiorari denied. Reported below: 716 F. 2d 1455.

No. 83-1477. NEZOWY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 723 F. 2d 1120.

No. 83-1485. MOLLER ET UX. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 721 F. 2d 810.

No. 83-1496. SHIPPERS NATIONAL FREIGHT CLAIM COUNCIL, INC., ET AL. *v.* INTERSTATE COMMERCE COMMISSION ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 712 F. 2d 740.

No. 83-1503. COCKRELL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 720 F. 2d 1423.

No. 83-1510. FERGUSON ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 723 F. 2d 915.

No. 83-1527. HALL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 716 F. 2d 826.

June 18, 1984

467 U. S.

No. 83-1528. *LANE v. ARKANSAS VALLEY PUBLISHING CO. ET AL.* Ct. App. Colo. Certiorari denied. Reported below: 675 P. 2d 747.

No. 83-1573. *CALANDRA v. UNITED STATES*;

No. 83-1657. *LICAVOLI v. UNITED STATES*; and

No. 83-1801. *LIBERATORE v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 725 F. 2d 1040.

No. 83-1596. *VALENTA v. UNITED STEELWORKERS OF AMERICA, AFL-CIO, ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 721 F. 2d 126.

No. 83-1614. *GOTTFRIED ET AL. v. UNITED STATES ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 719 F. 2d 1017.

No. 83-1636. *PROUD, INDIVIDUALLY, AND AS NEXT FRIEND OF PROUD, A MINOR v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 723 F. 2d 705.

No. 83-1719. *CUSMANO v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 729 F. 2d 380.

No. 83-1728. *HOME BOX OFFICE, INC., ET AL. v. CRIMPERS PROMOTIONS INC.* C. A. 2d Cir. Certiorari denied. Reported below: 724 F. 2d 290.

No. 83-1734. *BALELO ET AL. v. BALDRIGE, SECRETARY OF COMMERCE, ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 724 F. 2d 753.

No. 83-1735. *OREGON v. UNITED STATES ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 723 F. 2d 1394.

No. 83-1740. *SENN TRUCKING CO. v. WASSON ET AL.* Sup. Ct. S. C. Certiorari denied. Reported below: 280 S. C. 279, 312 S. E. 2d 252.

No. 83-1749. *HEINRICH SCHMIDT REEDEREI v. BYRD, AS ADMINISTRATRIX OF THE ESTATE OF BYRD.* C. A. 11th Cir. Certiorari denied. Reported below: 722 F. 2d 114.

No. 83-1765. *BRAY ET AL. v. MICHIGAN ET AL.* Sup. Ct. Mich. Certiorari denied. Reported below: 418 Mich. 149, 341 N. W. 2d 92.

467 U. S.

June 18, 1984

No. 83-1774. RAYMARK INDUSTRIES, INC. *v.* CLAY ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 722 F. 2d 1289.

No. 83-1784. PORT HOUSTON MARINE, INC. *v.* DOCKSIDE TERMINAL SERVICES, INC. Ct. App. Tex., 1st Sup. Jud. Dist. Certiorari denied. Reported below: 658 S. W. 2d 191.

No. 83-1786. AARSVOLD ET AL. *v.* GREYHOUND LINES, INC., ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 724 F. 2d 72.

No. 83-1794. REGAN *v.* TOWN OF BROOKHAVEN. C. A. 2d Cir. Certiorari denied. Reported below: 732 F. 2d 142.

No. 83-1804. SANDUSKY REAL ESTATE, INC., DBA REAL ESTATE ONE, ET AL. *v.* McDONALD ET UX. C. A. 6th Cir. Certiorari denied. Reported below: 725 F. 2d 684.

No. 83-1825. CORD *v.* NEUHOFF ET AL., CO-EXECUTORS OF THE ESTATE OF CORD. Sup. Ct. Nev. Certiorari denied.

No. 83-1837. WATKINS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 723 F. 2d 904.

No. 83-1859. FOTHERGILL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 725 F. 2d 691.

No. 83-1881. M & K FARMS, INC. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 730 F. 2d 767.

No. 83-1883. DOAMAREL *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 729 F. 2d 1449.

No. 83-5846. LEE *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 83-6277. HANDY *v.* PECK. C. A. 4th Cir. Certiorari denied. Reported below: 718 F. 2d 1090.

No. 83-6352. GOLDADE *v.* WYOMING. Sup. Ct. Wyo. Certiorari denied. Reported below: 674 P. 2d 721.

No. 83-6457. LEE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 726 F. 2d 128.

No. 83-6466. WOLF *v.* GARDNER, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 730 F. 2d 772.

June 18, 1984

467 U. S.

No. 83-6469. *HASTINGS v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 729 F. 2d 1462.

No. 83-6475. *CASTELLO v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 724 F. 2d 813.

No. 83-6516. *SCOBLE v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 729 F. 2d 1462.

No. 83-6617. *POWELL v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 708 F. 2d 455 and 719 F. 2d 1480.

No. 83-6626. *COLLINS v. WESTERN ELECTRIC CO., INC.* C. A. 7th Cir. Certiorari denied.

No. 83-6638. *KOENIG v. NEW JERSEY*. Super. Ct. N. J., App. Div. Certiorari denied.

No. 83-6641. *WELLS v. ISRAEL, SUPERINTENDENT, WAUPUN CORRECTIONAL INSTITUTION, ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 727 F. 2d 1112.

No. 83-6642. *SANDERS v. FAIR, COMMISSIONER, MASSACHUSETTS DEPARTMENT OF CORRECTIONS, ET AL.* C. A. 1st Cir. Certiorari denied. Reported below: 728 F. 2d 557.

No. 83-6645. *PHILLIPS v. ALABAMA*. Ct. Crim. App. Ala. Certiorari denied. Reported below: 446 So. 2d 57.

No. 83-6648. *RICHARDSON v. SHERIFF OF JOHNSTON COUNTY ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 723 F. 2d 902.

No. 83-6649. *SLATER v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 727 F. 2d 1110.

No. 83-6651. *NAFF v. OKLAHOMA*. Ct. Crim. App. Okla. Certiorari denied.

No. 83-6658. *FARLEY v. SAUNDERS ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 729 F. 2d 1452.

No. 83-6724. *WABBINGTON v. ALABAMA*. Ct. Crim. App. Ala. Certiorari denied. Reported below: 446 So. 2d 665.

No. 83-6728. *ALLEY v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 729 F. 2d 1455.

467 U. S.

June 18, 1984

No. 83-6735. *PABLO-LUGONES v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 725 F. 2d 624.

No. 83-6737. *THREAT v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 733 F. 2d 1360.

No. 83-6739. *PONCE DE LEON v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 719 F. 2d 1453.

No. 83-6743. *COOPER v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 725 F. 2d 670.

No. 83-6744. *RUSSELL v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 729 F. 2d 780.

No. 83-6745. *McKINNEY v. UNITED STATES*. Ct. App. D. C. Certiorari denied.

No. 83-6747. *ODOM v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 729 F. 2d 1466.

No. 83-6750. *HILL v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 729 F. 2d 1455.

No. 83-6754. *RUSK v. MARYLAND*. C. A. 4th Cir. Certiorari denied. Reported below: 729 F. 2d 1454.

No. 83-6762. *EVANS v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 735 F. 2d 1348.

No. 83-6764. *GARCIA-ARRAY v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 729 F. 2d 1466.

No. 83-778. *WAMBHEIM ET AL. v. J. C. PENNEY CO., INC.* C. A. 9th Cir. Certiorari denied. JUSTICE BLACKMUN took no part in the consideration or decision of this petition. Reported below: 705 F. 2d 1492.

No. 83-1498. *BLACK CITIZENS FOR A FAIR MEDIA ET AL. v. FEDERAL COMMUNICATIONS COMMISSION ET AL.* C. A. D. C. Cir. Certiorari denied. JUSTICE MARSHALL took no part in the consideration or decision of this petition. Reported below: 231 U. S. App. D. C. 163, 719 F. 2d 407.

No. 83-1509. *MURPHY OIL CORP. v. NAPH-SOL REFINING CO.; and*

No. 83-1515. *MOBIL OIL CORP. ET AL. v. UNITED STATES DEPARTMENT OF ENERGY ET AL.* Temp. Emerg. Ct. App. Certio-

June 18, 1984

467 U. S.

rari denied. JUSTICE O'CONNOR took no part in the consideration or decision of these petitions. Reported below: 728 F. 2d 1477.

No. 83-1555. HOOPA VALLEY TRIBE OF INDIANS *v.* SHORT ET AL.; and

No. 83-1638. EDDY ET AL. *v.* UNITED STATES ET AL. C. A. Fed. Cir. Motion of Cherokee Nation of Oklahoma et al. for leave to file a brief as *amici curiae* in No. 83-1555 granted. Certiorari denied. Reported below: 719 F. 2d 1133.

No. 83-1558. ZANT, WARDEN *v.* WILLIS. C. A. 11th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 720 F. 2d 1212.

No. 83-1615. O'ROURKE *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 2d Cir. Motion of petitioner to defer consideration of the petition for writ of certiorari denied. Certiorari denied. Reported below: 742 F. 2d 1438.

No. 83-6425. WAYMENT *v.* REGAN, SECRETARY OF THE TREASURY, ET AL. C. A. 10th Cir. Motion of petitioner to defer consideration of the petition for writ of certiorari denied. Certiorari denied. Reported below: 719 F. 2d 327.

No. 83-1752. HUMPHREY, ATTORNEY GENERAL OF MINNESOTA, ET AL. *v.* NORTHERN STATES POWER CO. ET AL. Sup. Ct. Minn. Motion of National Association of State Utility Consumer Advocates for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 344 N. W. 2d 374.

No. 83-6260. TRAVAGLIA *v.* PENNSYLVANIA. Sup. Ct. Pa.;

No. 83-6266. LESKO *v.* PENNSYLVANIA. Sup. Ct. Pa.;

No. 83-6452. TOKMAN *v.* MISSISSIPPI. Sup. Ct. Miss.;

No. 83-6500. DUTTON *v.* OKLAHOMA. Ct. Crim. App. Okla.;

No. 83-6608. WILLIS *v.* ZANT, WARDEN. C. A. 11th Cir.; and

No. 83-6636. GUZMAN *v.* NEW MEXICO. Sup. Ct. N. M. Certiorari denied. Reported below: Nos. 83-6260 and 83-6266, 502 Pa. 474, 467 A. 2d 288; No. 83-6452, 435 So. 2d 664; No. 83-6500, 674 P. 2d 1134; No. 83-6608, 720 F. 2d 1212; No. 83-6636, 100 N. M. 756, 676 P. 2d 1321.

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,

467 U. S.

June 18, 19, 25, 1984

227, 231 (1976), we would grant certiorari and vacate the death sentences in these cases.

Rehearing Denied

No. 83-122. HYDROKINETICS, INC. *v.* ALASKA MECHANICAL, INC., 466 U. S. 962;

No. 83-1159. KUNTZ *v.* WINTERS NATIONAL BANK & TRUST CO. ET AL., 465 U. S. 1080;

No. 83-6145. PALAZZO *v.* GULF OIL CORP., 465 U. S. 1070;

No. 83-6227. PERKINS *v.* THOMPSON, GOVERNOR OF ILLINOIS, 466 U. S. 960;

No. 83-6494. RETTIG *v.* KENT CITY SCHOOL DISTRICT ET AL., *ante*, p. 1201;

No. 83-6513. McDONALD *v.* LEECH, ATTORNEY GENERAL OF TENNESSEE, ET AL., *ante*, p. 1208; and

No. 83-6530. BONNER *v.* PHILADELPHIA INTERNATIONAL RECORDS ET AL., 466 U. S. 977. Petitions for rehearing denied.

JUNE 19, 1984

Miscellaneous Order

No. A-1030. SHRINER *v.* WAINWRIGHT, DIRECTOR, FLORIDA DEPARTMENT OF CORRECTIONS. Application for stay of execution of sentence of death, presented to JUSTICE POWELL, and by him referred to the Court, is denied for the reasons stated in the opinion of the Court of Appeals for the Eleventh Circuit, 735 F. 2d 1236 (1984). JUSTICE BRENNAN and JUSTICE MARSHALL would grant the application. JUSTICE REHNQUIST took no part in the consideration or decision of this application.

JUNE 25, 1984

Certiorari Granted—Vacated and Remanded

No. 83-507. CARPENTERS PENSION TRUST FOR SOUTHERN CALIFORNIA *v.* SHELTER FRAMING CORP. ET AL. C. A. 9th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Pension Benefit Guaranty Corporation v. R. A. Gray & Co.*, *ante*, p. 717. Reported below: 705 F. 2d 1502.

Miscellaneous Orders

No. A-1019. HOLDERMAN *v.* UNITED STATES. D. C. Conn. Application for stay, addressed to THE CHIEF JUSTICE and referred to the Court, denied.

June 25, 1984

467 U. S.

No. D-409. IN RE DISBARMENT OF MAIER. Disbarment entered. [For earlier order herein, see 465 U. S. 1096.]

No. D-410. IN RE DISBARMENT OF PACOR. Disbarment entered. [For earlier order herein, see 465 U. S. 1096.]

No. D-417. IN RE DISBARMENT OF FRIEDLAND. Disbarment entered. [For earlier order herein, see 466 U. S. 921.]

No. 83-240. LAWRENCE COUNTY ET AL. *v.* LEAD-DEADWOOD SCHOOL DISTRICT No. 40-1. Sup. Ct. S. D. [Probable jurisdiction noted, 466 U. S. 903.] Motion of National Association of Counties et al. for leave to file a brief as *amici curiae* granted.

No. 83-728. HERB'S WELDING, INC., ET AL. *v.* GRAY ET AL. C. A. 5th Cir. [Certiorari granted, 465 U. S. 1098.] Motion of the Solicitor General for divided argument granted.

No. 83-1158. ESTATE OF THORNTON ET AL. *v.* CALDOR, INC. Sup. Ct. Conn. [Certiorari granted, 465 U. S. 1078.] Motion of Connecticut for divided argument granted. Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae*, for divided argument, and for additional time for oral argument denied.

No. 83-1234. ASHLAND OIL, INC., ET AL. *v.* GOOD ET AL.;

No. 83-1248. MOBIL OIL CORP. ET AL. *v.* BATCHELDER ET AL.; and

No. 83-1278. CITIES SERVICE OIL CO. ET AL. *v.* MATZEN ET AL. Sup. Ct. Kan. Motions of the parties to defer consideration of the petitions for writs of certiorari granted. JUSTICE POWELL and JUSTICE O'CONNOR took no part in the consideration or decision of these motions.

No. 83-1427. WAINWRIGHT, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS *v.* WITT. C. A. 11th Cir. [Certiorari granted, 466 U. S. 957.] Motion of Texas District and County Attorneys Association for leave to file a brief as *amicus curiae* granted.

Certiorari Granted

No. 83-1452. MARRESE ET AL. *v.* AMERICAN ACADEMY OF ORTHOPAEDIC SURGEONS. C. A. 7th Cir. Certiorari granted limited to Questions 1, 2, and 3 presented by the petition. JUSTICE POWELL and JUSTICE O'CONNOR took no part in the consideration or decision of these motions.

467 U. S.

June 25, 1984

TICE BLACKMUN and JUSTICE STEVENS took no part in the consideration or decision of this petition. Reported below: 726 F. 2d 1150.

Certiorari Denied

No. 82-1649. MARROQUIN-MANRIGUEZ *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 3d Cir. Certiorari denied. Reported below: 699 F. 2d 129.

No. 83-541. REPUBLIC INDUSTRIES, INC. *v.* TEAMSTERS JOINT COUNCIL NO. 83 OF VIRGINIA PENSION FUND. C. A. 4th Cir. Certiorari denied. Reported below: 718 F. 2d 628.

No. 83-702. G & R ROOFING CO. *v.* CARPENTERS PENSION TRUST FOR SOUTHERN CALIFORNIA. C. A. 9th Cir. Certiorari denied. Reported below: 705 F. 2d 1502.

No. 83-1221. DUNAGIN ET AL. *v.* CITY OF OXFORD, MISSISSIPPI, ET AL.; and

No. 83-1244. LAMAR OUTDOOR ADVERTISING, INC., ET AL. *v.* MISSISSIPPI STATE TAX COMMISSION ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 718 F. 2d 738.

No. 83-1246. PEICK ET AL. *v.* PENSION BENEFIT GUARANTY CORPORATION. C. A. 7th Cir. Certiorari denied. Reported below: 724 F. 2d 1247.

No. 83-1646. SIBLEY, LINDSAY & CURR CO., A DIVISION OF ASSOCIATED DRY GOODS CORP. *v.* BAKERY, CONFECTIONERY & TOBACCO WORKERS INTERNATIONAL UNION OF AMERICA, AFL-CIO, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 725 F. 2d 843.

No. 83-6410. PATTERSON *v.* HEFFRON ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 727 F. 2d 1110.

No. 83-6467. MINER ET AL. *v.* BRACKNEY. C. A. 8th Cir. Certiorari denied. Reported below: 719 F. 2d 954.

No. 83-665. BUFFALO TEACHERS FEDERATION ET AL. *v.* ARTHUR ET AL. C. A. 2d Cir. Motion of American Federation of Teachers, AFL-CIO, for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 712 F. 2d 816.

June 25, 1984

467 U. S.

No. 83-5933. GARCIA v. ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 97 Ill. 2d 58, 454 N. E. 2d 274.

JUSTICE MARSHALL, with whom JUSTICE BRENNAN joins, dissenting.

Petitioner was charged with committing a variety of crimes with an accomplice, including four murders. He was convicted, sentenced to death, and his conviction and sentence were affirmed by the Supreme Court of Illinois. 97 Ill. 2d 58, 454 N. E. 2d. 274 (1983).

According to the Supreme Court of Illinois, the jurors were instructed that they could return guilty verdicts on the charges against petitioner "if they found that [he] had actually committed the crimes, or, alternatively, if they found that he was legally responsible for the conduct of the perpetrator under the Illinois accountability statute." *Id.*, at 83, 454 N. E. 2d, at 284.* The Illinois Supreme Court concluded that the general verdict returned by the jury failed "to reveal whether the jury found him guilty of actually killing anyone or whether he was convicted on the basis of accountability." *Id.*, at 84, 454 N. E. 2d, at 284. The Illinois Supreme Court held, however, that "[e]ven if we were to assume that [petitioner's] murder convictions rested in part or completely on a theory of accountability, the imposition of the death sentence under the circumstances present here was permissible." *Ibid.* The death sentence would be permissible because, in the eyes of the Illinois Supreme Court, "the uncontroverted evidence presented at trial concerning [petitioner's] conduct . . . clearly demonstrates that [petitioner] intended that lethal force would be employed." *Id.*, at 85, 454 N. E. 2d, at 285.

The Illinois Supreme Court was compelled to make this finding in order to preserve the State's imposition of the death penalty upon petitioner. The compulsion derived from this Court's decision in *Enmund v. Florida*, 458 U. S. 782 (1982). In *Enmund* this Court recognized "[s]ociety's rejection of the death penalty for accomplice liability in felony murders," *id.*, at 794, by holding that the Eighth Amendment as incorporated by the Fourteenth Amendment prohibits States from imposing the death penalty in the absence of a finding that a participant in a felony murder

*See Ill. Rev. Stat., ch. 38, ¶¶ 5-1 through 5-3 (1983).

467 U. S.

June 25, 1984

either killed, or attempted to kill, or intended that a killing take place or that lethal force be employed. *Id.*, at 797. Here, the jury made no explicit finding that petitioner engaged in the conduct or possessed the intent which, under *Enmund*, is required for a valid death sentence. Rather, the Illinois Supreme Court supplied this finding.

The action taken by the Illinois Supreme Court contradicts this Court's insistence, articulated in *Enmund*, that capital punishment be tailored to a defendant's own personal responsibility and moral guilt. That tailoring was forsaken here when the jury returned a general verdict that failed to reveal whether petitioner had been convicted for murders he had actually committed himself or whether he had been convicted solely on the basis of his vicarious responsibility for the crimes of his accomplice. The "remedy" the Illinois Supreme Court created to address the ambiguity of the jury's verdict—setting itself up as a finder of fact on the issue of intent—contravenes a related tenet of this Court's death penalty jurisprudence: that the uniquely harsh consequence entailed by capital punishment demands the greatest possible exactitude in the factfinding process. See, e. g., *Beck v. Alabama*, 447 U. S. 625 (1980); *Godfrey v. Georgia*, 446 U. S. 420 (1980). The ruling of the Illinois Supreme Court mocks this standard by attempting to derive from a cold paper record a subtle factual determination best left in the hands of juries or trial courts that have had the opportunity to view witness demeanor and other delicate nuances that cannot be captured by written transcripts. Confronted with "a level of uncertainty [in] the factfinding process that cannot be tolerated in a capital case," *Beck v. Alabama*, *supra*, at 643, this Court should either vacate petitioner's sentence and remand with instructions that he be resentenced in a fashion that excludes the imposition of capital punishment or grant certiorari and give plenary consideration to petitioner's claim. I therefore respectfully dissent.

No. 83-6211. *HARRIS v. TEXAS*. Ct. Crim. App. Tex. Certiorari denied. Reported below: 658 S. W. 2d 180.

JUSTICE MARSHALL, with whom JUSTICE BRENNAN joins, dissenting.

A grand jury in Harris County, Tex., indicted petitioner for the sexual assault of a white woman. Petitioner, a Negro with no

previous criminal record, denied the charge and maintained that he was at home at the time of the crime. There were no witnesses to the assault, and no physical evidence linking petitioner to the offense. From the nature of the State's case, it was clear that petitioner's fate would turn on whether the jury accepted the identification of the white victim or believed the sworn denial of a Negro defendant. After an extensive *voir dire* and for-cause challenges, eight Negroes were left in the jury panel. The prosecution then used eight peremptory challenges to remove these Negroes. With its two remaining peremptories, the prosecution removed the two members of the venire with Hispanic surnames. Over defense counsel's objection, an all-white jury proceeded to convict petitioner of the offense charged. Petitioner was sentenced to 12 years in the Texas Department of Corrections.

This petition presents what I consider to be a *prima facie* violation of the Sixth and Fourteenth Amendments. Petitioner's defense rested entirely on the jury's assessment of the credibility of two witnesses, one Negro and one white. Under these circumstances, when the prosecution challenges every Negro member of the venire, the inescapable implication is that the prosecutor proceeded on the assumption that Negro jurors would be more likely than white jurors to believe a Negro defendant's version of the facts. In *Taylor v. Louisiana*, 419 U. S. 522, 528 (1975), the Court held that criminal defendants are entitled to a jury drawn from a "representative cross section of the community." When the prosecution employs its peremptory challenges to remove from jury participation all Negro jurors, the right guaranteed in *Taylor* is denied just as effectively as it would be had Negroes not been included on the jury rolls in the first place.

Over the past year, I have repeatedly urged my colleagues to grant certiorari in similar cases in which state prosecutors have blatantly employed peremptory challenges to remove Negro jurors. See *Williams v. Illinois*, 466 U. S. 981 (1984) (MARSHALL, J., dissenting); *Gilliard v. Mississippi*, 464 U. S. 867 (1983) (MARSHALL, J., dissenting); *McCray v. New York*, 461 U. S. 961, 963 (1983) (MARSHALL, J., dissenting). The Court, however, remains satisfied that *Swain v. Alabama*, 380 U. S. 202 (1965), adequately protects criminal defendants against prosecutorial misuse of peremptory challenges. As the facts of this case reveal, the Court's reliance on *Swain* is grossly misplaced. If *Swain* protects anyone, it is the prosecution.

1261

MARSHALL, J., dissenting

Under *Swain* it is presumed that prosecutors use peremptory challenges to obtain a fair and impartial jury. *Id.*, at 222. That a prosecutor excludes all Negro jurors in a particular case does not rebut this presumption. To establish a *Swain* violation, a criminal defendant must demonstrate that the State has systematically excluded Negro jurors in case after case over an extended period of time. *Id.*, at 223-224. In this case, petitioner's attorney gamely attempted to satisfy *Swain*'s burden of proof. Defense counsel set out to show that prosecutors in Harris County routinely employ peremptory challenges to exclude Negro jurors in cases involving the credibility of a white complainant and a Negro defendant. At a hearing held before the trial court, Judge Joseph Guarino, a Texas District Judge with 28 years of experience in the county's criminal justice system, testified on behalf of petitioner. Judge Guarino stated he could not recall a single instance in which a Negro juror sat on a petit jury in a criminal case in which the complainant was white and the defendant Negro. Judge Miron Love, another judge from the county, agreed that in "most of those cases" the prosecution "would eliminate most of the black jurors' through the exercise of peremptory challenges." The testimony of Judge Guarino and Judge Love was corroborated by a variety of informed witnesses. Craig Washington, a defense attorney in the county, testified that in the past decade he had participated in roughly 140 criminal cases in which the complaining witness was white and the defendant Negro. In only two of these cases did Negroes ultimately sit on the jury, and in these cases it was only because the prosecution ran out of peremptory challenges. Jacquelyn Miles, a court reporter in Harris County, stated that over the last four years she had transcribed testimony in 20 to 25 criminal cases with white complaining witnesses and Negro defendants, and she could not recollect a single case in which a prospective Negro juror had been empaneled. Other witnesses for petitioner, including lawyers who had served under the county's District Attorney, confirmed that in this class of cases, the exclusion of Negro jurors was "the general rule."

In the face of this well-marshaled evidence, the county brazenly denied that it had a policy of excluding Negro jurors. A supervising attorney for the County District Attorney claimed that he had never advised prosecutors to exclude Negro jurors. In support of the county's claim, several Assistant District Attorneys testified under oath as to trials in which Negroes had served on the jury

June 25, 1984

467 U. S.

even though the case involved Negro defendants and white complainants. A judge testifying on behalf of the county recalled numerous occasions on which Negroes had served on juries. The thrust of the county's rebuttal was that petitioner's witnesses were familiar with only a sampling of the county's criminal docket whereas the county's witnesses were exposed to the District Attorney's entire docket. Apparently, the trial judge found this line of argument convincing because he ruled that petitioner had failed to establish a constitutional violation under *Swain v. Alabama*.

The lesson to be drawn from petitioner's case is that *Swain* is an insurmountable hurdle for criminal defendants. The prosecution will always be able to claim that it has greater familiarity with prosecutorial practices than defense counsel, and the prosecution will always deny that it has a policy of excluding Negro jurors. In even the most discriminatory jurisdictions, there will always be cases in which Negro jurors have at one time or another served on jury panels. If, therefore, an official denial of prosecutorial misuse buttressed by vague recollections of a few Negro jurors who have actually been empaneled is enough to rebut evidence of the quality presented by petitioner in this case, then as a practical matter it is impossible to satisfy the *Swain* standard. Cf. *United States v. Childress*, 715 F. 2d 1313, 1316 (CA8 1983) (en banc) (finding only two reported cases in which defendants had prevailed under *Swain* since 1965), cert. denied, 464 U. S. 1063 (1984).

In the 19 years since *Swain* was handed down, prosecutorial abuse of peremptory challenges has grown to epidemic proportions in certain regions of the country. See also *Williams v. Illinois*, *supra*. I respectfully dissent.

No. 83-6213. *EVANS v. MISSISSIPPI*. Sup. Ct. Miss.; and

No. 83-6419. *DELAP v. FLORIDA*. Sup. Ct. Fla. Certiorari denied. Reported below: No. 83-6213, 441 So. 2d 520; No. 83-6419, 440 So. 2d 1242.

JUSTICE BRENNAN and JUSTICE MARSHALL, dissenting.

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

No. 83-6454. *SANSON v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 727 F. 2d 1113.

467 U. S.

June 25, 1984

JUSTICE WHITE, dissenting.

In *Ohio v. Roberts*, 448 U. S. 56 (1980), the Court held that the introduction of hearsay statements against a criminal defendant will not violate the Confrontation Clause if two requirements are satisfied. First, the prosecution must ordinarily demonstrate the unavailability of the declarant; second, the statements must bear sufficient "indicia of reliability." *Id.*, at 65-66. The Court noted that "[r]eliability can be inferred without more in a case where the evidence falls within a firmly rooted hearsay exception." *Id.*, at 66. The question presented in this case is whether statements that satisfy Federal Rule of Evidence 801(d)(2)(E), which provides for the admissibility of statements of co-conspirators, necessarily satisfy the requirements of the Confrontation Clause.

The Circuits are divided on the question whether co-conspirator statements fall within the "firmly rooted hearsay exception" language of *Roberts* or whether, instead, a case-by-case inquiry into reliability is required. In this case, the Court of Appeals for the Seventh Circuit in an unpublished order held that Rule 801(d)(2)(E) provides adequate assurances of reliability. Likewise, the First, Fourth, and Fifth Circuits have also held that the Rule 801(d)(2)(E) requirements are identical to the requirements of the Confrontation Clause. See *Ottomano v. United States*, 468 F. 2d 269, 273 (CA1 1972), cert. denied, 409 U. S. 1128 (1973); *United States v. Lurz*, 666 F. 2d 69, 80-81 (CA4 1981), cert. denied, 455 U. S. 1005 (1982); *United States v. Peacock*, 654 F. 2d 339, 349-350 (CA5 1981), cert. denied, 464 U. S. 965 (1983). On the other hand, the Second, Third, Eighth, and Ninth Circuits have held that the requirements are not identical and that courts must assess the circumstances of each case to determine whether the statements carry with them sufficient indicia of reliability. See *United States v. Wright*, 588 F. 2d 31, 37-38 (CA2 1978), cert. denied, 440 U. S. 917 (1979); *United States v. Ammar*, 714 F. 2d 238, 254-257 (CA3), cert. denied *sub nom. Stillman v. United States*, 464 U. S. 936 (1983); *United States v. Kelley*, 526 F. 2d 615, 620-621 (CA8 1975), cert. denied, 424 U. S. 971 (1976); *United States v. Perez*, 658 F. 2d 654, 660, and n. 5 (CA9 1981).

Because of the substantial confusion surrounding this frequently recurring issue, I would grant certiorari to resolve the conflict.

No. 83-6567. *ARNOLD v. SOUTH CAROLINA*; and

No. 83-6575. *PLATH v. SOUTH CAROLINA*. Sup. Ct. S. C. Certiorari denied. Reported below: 281 S. C. 1, 313 S. E. 2d 619.

JUSTICE MARSHALL, with whom JUSTICE BRENNAN joins, dissenting.

Petitioners were convicted of murder and sentenced to death. On appeal, the convictions were affirmed but the sentences were reversed due to an improper argument the prosecution made to the jury at the sentencing hearing. 277 S. C. 126, 284 S. E. 2d 221 (1981). On remand, petitioners were again sentenced to death. They challenge that sentence on the ground that the trial court erred by allowing the jury to view the site of the murder without the presence of either the defense or the prosecution attorneys and also by making no arrangements to record what transpired at the jury-viewing. Petitioners claim that the trial court's action denied them their right under the Sixth and Fourteenth Amendments to effective assistance of counsel. *Gideon v. Wainwright*, 372 U. S. 335 (1963).

In rejecting petitioners' claim, the Supreme Court of South Carolina principally relied upon *Snyder v. Massachusetts*, 291 U. S. 97 (1934).^{*} In *Snyder* this Court held that the Due Process Clause of the Fourteenth Amendment was not violated by excluding a defendant from an on-site inspection by a jury. *Snyder*, however, is inapposite to the case at bar. First, *Snyder* involved whether a *defendant* had the right to be present at an on-site inspection by a jury. Here, the issue is whether a defendant had the right to have his *attorney* present at such a viewing. Second, and more importantly, in *Snyder* the defendant's attorney was present and participated, along with the prosecutor, in directing the jury's attention to various aspects of the location under inspection by the jury. *Id.*, at 103-104. Here, all attorneys were excluded. Third, in *Snyder*, "everything that was said or done was taken by the stenographer and made part of the record of the trial." *Id.*, at 123-124 (Roberts, J., dissenting). Here, no record

^{*}The State claims that petitioners' attorneys failed properly to object at trial to their exclusion from the jury inspection. Although petitioners' attorneys do appear to have adequately objected, the South Carolina Supreme Court's ruling on the merits of the federal constitutional issue posed by petitioners removes any procedural bar that might have existed even if counsel had failed to object. See, e. g., *Beecher v. Alabama*, 389 U. S. 35, 37, n. 3 (1967) (ruling by state court on merits of federal constitutional issue preserves issue for federal appellate review); *Indiana ex rel. Anderson v. Brand*, 303 U. S. 95, 98 (1938).

467 U. S.

June 25, 1984

was made of what transpired at the inspection. The importance of a record is clearly indicated in that portion of the *Snyder* opinion in which the Court criticized the trial judge for having made an improper comment to the jury during the inspection. *Id.*, at 118. Although this Court excused the trial judge's impropriety as harmless, the pertinent point is that the Court was at least able in *Snyder* to detect the trial judge's error and measure its severity. By contrast, in this case the trial court's failure to preserve a record has effectively nullified any sort of informed appellate review of the jury inspection.

It is doubtful, then, whether the trial court's actions in this case would even have satisfied the standards prevailing at the time of *Snyder*, over 50 years ago. Far more doubtful is whether the trial court's neglectful failures can satisfy present constitutional standards. By excluding petitioners' attorneys from the jury inspection, the trial court violated petitioners' right to counsel at every critical stage of the proceedings against them. See, e. g., *Estelle v. Smith*, 451 U. S. 454 (1981) (pretrial psychiatric examination); *Mempa v. Rhay*, 389 U. S. 128 (1967) (sentencing); *United States v. Wade*, 388 U. S. 218 (1967) (pretrial identification procedure). Furthermore, the trial judge's failure to keep a record of the jury inspection contravenes this Court's insistence that the unique nature of the death penalty demands uniquely stringent policing of the factfinding process. See *Beck v. Alabama*, 447 U. S. 625 (1980); *Godfrey v. Georgia*, 446 U. S. 420 (1980); *Woodson v. North Carolina*, 428 U. S. 280 (1976).

Because petitioners have raised substantial federal constitutional issues that take on added urgency in light of the death sentences pending against them, I dissent from the Court's denial of certiorari.

Rehearing Denied

No. 82-1246. *BOSE CORP. v. CONSUMERS UNION OF UNITED STATES, INC.*, 466 U. S. 485;

No. 82-1554. *STRICKLAND, SUPERINTENDENT, FLORIDA STATE PRISON, ET AL. v. WASHINGTON*, 466 U. S. 668;

No. 82-2056. *ESCONDIDO MUTUAL WATER CO. ET AL. v. LA JOLLA BAND OF MISSION INDIANS ET AL.*, 466 U. S. 765; and

No. 83-1521. *WEISS v. EMPLOYER-SHEET METAL WORKERS LOCAL 544 PENSION TRUST PLAN ET AL.*, 466 U. S. 972. Petitions for rehearing denied.

June 25, 1984

467 U. S.

No. 83-1547. *NOVEL v. LOUISIANA EXPOSITION ET AL.*, 466 U. S. 973;

No. 83-1574. *CITY OF PERRYTON, TEXAS v. JACKS ET UX.*, 466 U. S. 973;

No. 83-1627. *SAFIR v. DOLE, SECRETARY OF TRANSPORTATION, ET AL.*, *ante*, p. 1206;

No. 83-1701. *BOSTON v. UNITED STATES*, 466 U. S. 974;

No. 83-5785. *WILLIAMS v. ILLINOIS*, 466 U. S. 981;

No. 83-5808. *PORTER v. MCKASKLE, ACTING DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS*, 466 U. S. 984;

No. 83-5855. *MOSS v. UNITED STATES*, *ante*, p. 1207;

No. 83-6249. *MILESKE v. MARYLAND*, *ante*, p. 1207;

No. 83-6346. *TICHNELL v. MARYLAND*; and *CALHOUN v. MARYLAND*, 466 U. S. 993;

No. 83-6430. *HENRY v. WAINWRIGHT, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS*, 466 U. S. 993;

No. 83-6583. *FOSTER v. STRICKLAND, WARDEN, ET AL.*, 466 U. S. 993; and

No. 83-6604. *VENKATESAN v. INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO, LOCAL UNION 545-D*, *ante*, p. 1218. Petitions for rehearing denied.

No. 82-1474. *HOOVER ET AL. v. RONWIN ET AL.*, 466 U. S. 558. Petition for rehearing denied. JUSTICE REHNQUIST and JUSTICE O'CONNOR took no part in the consideration or decision of this petition.

No. 82-6840. *JAMES v. KENTUCKY*, 466 U. S. 341; and

No. 83-1288. *CRIM v. HUNTER, UNITED STATES ATTORNEY FOR THE NORTHERN DISTRICT OF CALIFORNIA*, 465 U. S. 1080. Petitions for rehearing denied. JUSTICE MARSHALL took no part in the consideration or decision of these petitions.

No. 83-5432 (A-1022). *BALDWIN v. MAGGIO, WARDEN, LOUISIANA STATE PENITENTIARY*, *ante*, p. 1220. Application to suspend the effect of the order denying certiorari, presented to JUSTICE WHITE, and by him referred to the Court, denied. JUSTICE BRENNAN and JUSTICE MARSHALL would grant the application. Petition for rehearing denied. JUSTICE BRENNAN would grant rehearing.

No. 83-6296. *ROBINSON v. NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PENNSYLVANIA*, 466 U. S. 941. Motion for leave to file petition for rehearing denied.

467 U. S.

JUNE 26, 1984

Dismissal Under Rule 53

No. 83-1874. *MACDONALD v. SUPERIOR COURT OF CALIFORNIA, MARIN COUNTY (MOUNTANOS, REAL PARTY IN INTEREST)*. Appeal from Ct. App. Cal., 1st App. Dist., dismissed under this Court's Rule 53.

June 25, 1901

52 U. S.

No. 83-1547. *NOTES* v. *WHITNEY*, 456 U. S. 912.

No. 83-1548. *CITY OF PORTLAND* v. *THE PORTLAND TRADING CO.*, 456 U. S. 913.

No. 83-1549. *MACDONALD* v. *THE COURT OF CALIFORNIA*, 456 U. S. 914.

No. 83-1550. *THE MOUNTAIN REAL ESTATE CO.* v. *THE MOUNTAIN REAL ESTATE CO.*, 456 U. S. 915.

No. 83-1551. *UNITED STATES* v. *UNITED STATES*, 456 U. S. 916.

No. 83-1552. *WILLIAMS* v. *WILLIAMS*, 456 U. S. 917.

No. 83-1553. *PORTER* v. *McKAGUE*, 456 U. S. 918.

No. 83-1554. *UNITED STATES* v. *UNITED STATES*, 456 U. S. 919.

No. 83-1555. *HENRY* v. *WAINWRIGHT*, 456 U. S. 920.

No. 83-1556. *FOSTER* v. *STICKLAND*, 456 U. S. 921.

No. 83-1557. *VENKATRAMAN* v. *INTERNATIONAL UNION OF OPERATING ENGINEERS*, 456 U. S. 922.

No. 83-1558. *HOOPER* v. *HOOPER*, 456 U. S. 923.

No. 83-1559. *HOOPER* v. *HOOPER*, 456 U. S. 924.

No. 83-1560. *HOOPER* v. *HOOPER*, 456 U. S. 925.

No. 83-1561. *HOOPER* v. *HOOPER*, 456 U. S. 926.

No. 83-1562. *HOOPER* v. *HOOPER*, 456 U. S. 927.

No. 83-1563. *HOOPER* v. *HOOPER*, 456 U. S. 928.

No. 83-1564. *HOOPER* v. *HOOPER*, 456 U. S. 929.

No. 83-1565. *HOOPER* v. *HOOPER*, 456 U. S. 930.

No. 83-1566. *HOOPER* v. *HOOPER*, 456 U. S. 931.

No. 83-1567. *HOOPER* v. *HOOPER*, 456 U. S. 932.

No. 83-1568. *HOOPER* v. *HOOPER*, 456 U. S. 933.

No. 83-1569. *HOOPER* v. *HOOPER*, 456 U. S. 934.

No. 83-1570. *HOOPER* v. *HOOPER*, 456 U. S. 935.

No. 83-1571. *HOOPER* v. *HOOPER*, 456 U. S. 936.

No. 83-1572. *HOOPER* v. *HOOPER*, 456 U. S. 937.

No. 83-1573. *HOOPER* v. *HOOPER*, 456 U. S. 938.

No. 83-1574. *HOOPER* v. *HOOPER*, 456 U. S. 939.

No. 83-1575. *HOOPER* v. *HOOPER*, 456 U. S. 940.