SUPREME COURT OF THE UNITED STATES

No. 93–7927

CURTIS LEE KYLES, PETITIONER *v.*
JOHN P. WHITLEY, WARDEN

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

[April 19, 1995]

JUSTICE STEVENS, with whom JUSTICE GINSBURG and JUSTICE BREYER join, concurring.

As the Court has explained, this case presents an important legal issue. See *ante*, at 21–22. Because JUSTICE SCALIA so emphatically disagrees, I add this brief response to his criticism of the Court's decision to grant certiorari.

Proper management of our certiorari docket, as JUSTICE SCALIA notes, see *post*, at 1–6, precludes us from hearing argument on the merits of even a "substantial percentage" of the capital cases that confront us. Compare *Coleman* v. *Balkcom*, 451 U. S. 949 (1981) (STEVENS, J., concurring in denial of certiorari), with *id.*, at 956 (REHNQUIST, J., dissenting). Even aside from its legal importance, however, this case merits "favored treatment," cf. *post*, at 3, for at least three reasons. First, the fact that the jury was unable to reach a verdict at the conclusion of the first trial provides strong reason to believe the significant errors that occurred at the second trial were prejudicial. Second, cases in which the record reveals so many instances of the state's failure to disclose exculpatory evidence are extremely rare. Even if I shared JUSTICE SCALIA's appraisal of the evidence in this case—which I do not—I would still believe we should independently review the record to ensure that the prosecution's blatant and repeated violations of a well-settled constitutional obligation did not deprive petitioner of a fair trial. Third, despite my high regard for the diligence and craftsmanship of the

author of the majority opinion in the Court of Appeals, my independent review of the case left me with the same degree of doubt about petitioner's guilt expressed by the dissenting judge in that court.

Our duty to administer justice occasionally requires busy judges to engage in a detailed review of the particular facts of a case, even though our labors may not provide posterity with a newly minted rule of law. The current popularity of capital punishment makes this "generalizable principle," *post*, at 5, especially important. Cf. *Harris* v. *Alabama*, 513 U. S. ___, ___, and n. 5 (1995) (slip op., at 5–6, and n. 5) (STEVENS, J., dissenting). I wish such review were unnecessary, but I cannot agree that our position in the judicial hierarchy makes it inappropriate. Sometimes the performance of an unpleasant duty conveys a message more significant than even the most penetrating legal analysis.