

**SUPREME COURT OF THE UNITED
STATES**

No. 92-7549

THOMAS SCHIRO, PETITIONER v. ROBERT FARLEY,
SUPERINTENDENT, INDIANA
STATE PRISON, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SEVENTH CIRCUIT
[January 19, 1994]

JUSTICE BLACKMUN, dissenting.

I join JUSTICE STEVENS' dissenting opinion. I write separately because I believe *Bullington v. Missouri*, 451 U. S. 430 (1981), provides a compelling alternative ground for vacation of Schiro's death sentence.

In *Bullington*, this Court held that once a capital defendant is acquitted of the death sentence, the Double Jeopardy Clause bars his again being placed in jeopardy of death at a subsequent sentencing proceeding. The majority rejects Schiro's double jeopardy claim on the theory that because "a second sentencing proceeding ordinarily does not violate the double jeopardy clause," it fails to see "how an initial sentencing proceeding could do so." *Ante*, at 8. The essential holding of *Bullington*, however, was that capital sentencing proceedings uniquely *can* constitute a "jeopardy" under the Double Jeopardy Clause. The proceeding examined in *Bullington*