

The Burger Court Opinion Writing Database

Turner v. Murray

476 U.S. 28 (1986)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

April 16, 1986

84-6466 - Turner v. Murray

Dear Byron:

Please show me as concurring in the judgment.

Regards,

A handwritten signature in black ink, appearing to be 'W. White', written in a cursive style.

Justice Byron White

Copies to the Conference

10 24 01

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

January 7, 1986

Turner v. Sielaff
No. 84-6646

Dear Byron:

As I indicated at Conference, I agree that the trial judge in the above committed reversible error at the voir dire by refusing to question potential jurors on racial prejudice. However, because I do not agree that the risk of racial prejudice is, to a constitutionally significant degree, of less concern at the guilt phase than at the sentencing phase of a capital trial, and because I remain persuaded by Thurgood's dissent from denial (on direct review) in Ristaino v. Ross, 414 U.S. 1080 (1973), I will be circulating a partial concurrence and partial dissent in the above.

Sincerely,

Justice White

Copies to the Conference

21:11-1 01:12

2025 DECEMBER 11 11:48 AM

To: The Chief Justice
 Justice White
 Justice Marshall ✓
 Justice Blackmun
 Justice Powell
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

From: **Justice Brennan**

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-6646

WILLIE LLOYD TURNER, PETITIONER *v.* EDWARD
 W. MURRAY, DIRECTOR, VIRGINIA DEPART-
 MENT OF CORRECTIONS

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

[March —, 1986]

JUSTICE BRENNAN, concurring in the judgment in part and
 dissenting in part.

The Court's judgment vacates petitioner's sentence of death while refusing to disturb his conviction. 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) (BRENNAN, J., dissenting), I agree that the death sentence in this case must be vacated. But even if I did not hold that view, I would still find that the sentence was unconstitutionally imposed in this case. In my view, the constitutional right of a defendant to have a trial judge ask the members of the venire questions concerning possible racial bias is triggered whenever a violent interracial crime has been committed. See *Ross v. Massachusetts*, 414 U. S. 1080 (1973) (MARSHALL, J., dissenting from denial of certiorari). The reality of race relations in this country is such that we simply may not presume impartiality, and the risk of bias runs especially high when members of a community serving on a jury are to be confronted with disturbing evidence of criminal conduct that is often terrifying and abhorrent. In analyzing the question of when the Constitution requires trial judges to accommodate defendants' requests for inquiries into racial prejudice, I, like the Court am influenced by what the Court

137
~~W. M. Murray~~
 17-111

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

April 4, 1986

Turner v. Murray
84-6646

Dear Thurgood:

Please join me.

Sincerely,

Bill

84-6646-100

APR 11 1986

STYLISH CHANGES THROUGHOUT
SEE PAGES

To: The Chief Justice
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Brennan**

Circulated: _____

Recirculated: **APR 10 1986**

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-6646

**WILLIE LLOYD TURNER, PETITIONER v. EDWARD
W. MURRAY, DIRECTOR, VIRGINIA DEPART-
MENT OF CORRECTIONS**

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

[April —, 1986]

JUSTICE BRENNAN, concurring in the judgment in part and dissenting in part.

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To: The Chief Justice
 Justice Brennan
 Justice Marshall
 Justice Blackmun
 Justice Powell
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

From: **Justice White**

Circulated: JAN 2 1986

Recirculated: _____

BRV
Sumner
1/1

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-6646

WILLIE LLOYD TURNER, PETITIONER *v.* ALLYN R. SIELAFF, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS

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

[January —, 1986]

JUSTICE WHITE delivered the opinion of the Court.

Petitioner is a black man sentenced to death for the murder of a white storekeeper. The question presented is whether the trial judge committed reversible error at *voir dire* by refusing petitioner's request to question prospective jurors on racial prejudice.

I

On July 12, 1978, petitioner entered a jewelry store in Franklin, Virginia, armed with a sawed-off shotgun. He demanded that the proprietor, W. Jack Smith, Jr., put jewelry and money from the cash register into some jewelry bags. Smith complied with petitioner's demand, but triggered a silent alarm, alerting the police department. When Alan Bain, a police officer, arrived to inquire about the alarm, petitioner surprised him and forced him to surrender his revolver.

Having learned that Smith had triggered a silent alarm, petitioner became agitated. He fired toward the rear wall of the store and stated that if he saw or heard any more police officers, he was going to start killing those in the store.¹ When a police siren sounded, petitioner walked to where

¹In addition to Smith and Bain, a store employee and two customers were present at this time.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

January 7, 1986

Turner v. Sielaff
No. 84-6646

Dear Byron:

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Sincerely,

Bill

Justice White

Copies to the Conference

—Justice Marshall
 Justice Blackmun
 Justice Powell
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

From: **Justice White**

Circulated: FEB 21 1986

Recirculated: ↓

— Stylistic changes
 and pp. 5, 7-8

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-6646

WILLIE LLOYD TURNER, PETITIONER *v.* ALLYN R.
 SIELAFF, DIRECTOR, VIRGINIA DEPART-
 MENT OF CORRECTIONS

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

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Having learned that Smith had triggered a silent alarm, petitioner became agitated. He fired toward the rear wall of the store and stated that if he saw or heard any more police officers, he was going to start killing those in the store.¹ When a police siren sounded, petitioner walked to where

¹In addition to Smith and Bain, a store employee and two customers were present at this time.

Justice Marshall
 Justice Blackmun
 Justice Powell
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

From: **Justice White**

Circulated: _____

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Stephens

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-6646

WILLIE LLOYD TURNER, PETITIONER *v.* EDWARD
 W. MURRAY, DIRECTOR, VIRGINIA DEPARTMENT
 OF CORRECTIONS

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

[March —, 1986]

JUSTICE WHITE delivered the opinion of the Court.

Petitioner is a black man sentenced to death for the murder of a white storekeeper. The question presented is whether the trial judge committed reversible error at *voir dire* by refusing petitioner's request to question prospective jurors on racial prejudice.

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On July 12, 1978, petitioner entered a jewelry store in Franklin, Virginia, armed with a sawed-off shotgun. He demanded that the proprietor, W. Jack Smith, Jr., put jewelry and money from the cash register into some jewelry bags. Smith complied with petitioner's demand, but triggered a silent alarm, alerting the Police Department. When Alan Bain, a police officer, arrived to inquire about the alarm, petitioner surprised him and forced him to surrender his revolver.

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¹In addition to Smith and Bain, a store employee and two customers were present at this time.

Justice Brennan
 Justice Marshall
 Justice Blackmun
 Justice Powell
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

From: **Justice White**

Circulated: _____

Recirculated: _____ 1986

STYLISTIC CHANGES THROUGHOUT.

9

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-6646

WILLIE LLOYD TURNER, PETITIONER *v.* EDWARD
 W. MURRAY, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS

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

[April —, 1986]

JUSTICE WHITE delivered the opinion of the Court.

Petitioner is a black man sentenced to death for the murder of a white storekeeper. The question presented is whether the trial judge committed reversible error at *voir dire* by refusing petitioner's request to question prospective jurors on racial prejudice.

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On July 12, 1978, petitioner entered a jewelry store in Franklin, Virginia, armed with a sawed-off shotgun. He demanded that the proprietor, W. Jack Smith, Jr., put jewelry and money from the cash register into some jewelry bags. Smith complied with petitioner's demand, but triggered a silent alarm, alerting the Police Department. When Alan Bain, a police officer, arrived to inquire about the alarm, petitioner surprised him and forced him to surrender his revolver.

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¹In addition to Smith and Bain, a store employee and two customers were present at this time.

To: The Chief Justice
 Justice Brennan
 Justice Marshall
 Justice Blackmun
 Justice Powell
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

From: **Justice White**

Circulated: _____

Recirculated: APR 21 1986

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-6646

**WILLIE LLOYD TURNER, PETITIONER v. EDWARD
 W. MURRAY, DIRECTOR, VIRGINIA DEPART-
 MENT OF CORRECTIONS**

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

[April —, 1986]

JUSTICE WHITE announced the judgment of the Court and delivered an opinion, in which JUSTICE BLACKMUN, JUSTICE STEVENS, and JUSTICE O'CONNOR joined.

Petitioner is a black man sentenced to death for the murder of a white storekeeper. The question presented is whether the trial judge committed reversible error at *voir dire* by refusing petitioner's request to question prospective jurors on racial prejudice.

I

On July 12, 1978, petitioner entered a jewelry store in Franklin, Virginia, armed with a sawed-off shotgun. He demanded that the proprietor, W. Jack Smith, Jr., put jewelry and money from the cash register into some jewelry bags. Smith complied with petitioner's demand, but triggered a silent alarm, alerting the Police Department. When Alan Bain, a police officer, arrived to inquire about the alarm, petitioner surprised him and forced him to surrender his revolver.

Having learned that Smith had triggered a silent alarm, petitioner became agitated. He fired toward the rear wall of the store and stated that if he saw or heard any more police

Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice White**

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Recirculated: _____ APR 1986

STENOGRAPHIC CHANGES THROUGHOUT.
PAGES 1, 8-9

5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-6646

**WILLIE LLOYD TURNER, PETITIONER v. EDWARD
W. MURRAY, DIRECTOR, VIRGINIA DEPART-
MENT OF CORRECTIONS**

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

[April —, 1986]

JUSTICE WHITE announced the judgment of the Court and delivered the opinion of the Court with respect to Parts I and III, and an opinion with respect to Parts II and IV, in which JUSTICE BLACKMUN, JUSTICE STEVENS, and JUSTICE O'CONNOR join.

Petitioner is a black man sentenced to death for the murder of a white storekeeper. The question presented is whether the trial judge committed reversible error at *voir dire* by refusing petitioner's request to question prospective jurors on racial prejudice.

I

On July 12, 1978, petitioner entered a jewelry store in Franklin, Virginia, armed with a sawed-off shotgun. He demanded that the proprietor, W. Jack Smith, Jr., put jewelry and money from the cash register into some jewelry bags. Smith complied with petitioner's demand, but triggered a silent alarm, alerting the Police Department. When Alan Bain, a police officer, arrived to inquire about the alarm, petitioner surprised him and forced him to surrender his revolver.

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 7, 1986

Re: No. 84-6646-Turner v. Sielaff

Dear Byron:

I await the dissent.

Sincerely,



T.M.

Justice White

cc: The Conference

To: The Chief Justice
 Justice Brennan
 Justice White
 Justice Blackmun
 Justice Powell
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

From: Justice Marshall

Circulated: APR 4 1986

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-6646

WILLIE LLOYD TURNER, PETITIONER *v.* EDWARD
 W. MURRAY, DIRECTOR, VIRGINIA DEPARTMENT
 OF CORRECTIONS

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

[April —, 1986]

JUSTICE MARSHALL, concurring in the judgment in part
 and dissenting in part.

For the reasons stated in my opinion in *Ross v. Massachusetts*, 414 U. S. 1080 (1973) (MARSHALL, J., dissenting from denial of certiorari), I believe that a criminal defendant is entitled to inquire on *voir dire* about the potential racial bias of jurors whenever the case involves a violent interracial crime. As the Court concedes, "it is plain that there is some risk of racial prejudice influencing a jury whenever there is a crime involving interracial violence." *Ante*, at 8, n. 8. To my mind that risk plainly outweighs the slight cost of allowing the defendant to choose whether to make an inquiry concerning such possible prejudice. This Court did not identify in *Ristaino v. Ross*, 424 U. S. 589 (1976), nor does it identify today, any additional burdens that would accompany such a rule. I therefore cannot agree with the Court's continuing rejection of the simple prophylactic rule proposed in *Ristaino*.

Even if I agreed with the Court that a *per se* rule permitting inquiry into racial bias is appropriate only in capital cases, I could not accept the Court's failure to remedy the denial of such inquiry in this capital case by reversing petitioner's conviction. Henceforth any capital defendant accused of an interracial crime may inquire into racial prejudice on *voir*

Justice Brennan
 Justice White
 Justice Blackmun
 Justice Powell
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

From: **Justice Marshall**

Circulated: _____

Recirculated: **APR 8 1986**

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-6646

WILLIE LLOYD TURNER, PETITIONER *v.* EDWARD
 W. MURRAY, DIRECTOR, VIRGINIA DEPARTMENT
 OF CORRECTIONS

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

[April —, 1986]

JUSTICE MARSHALL, with whom JUSTICE BRENNAN joins, |
 concurring in the judgment in part and dissenting in part.

For the reasons stated in my opinion in *Ross v. Massachusetts*, 414 U. S. 1080 (1973) (dissenting from denial of certiorari), I believe that a criminal defendant is entitled to inquire on *voir dire* about the potential racial bias of jurors whenever the case involves a violent interracial crime. As the Court concedes, "it is plain that there is some risk of racial prejudice influencing a jury whenever there is a crime involving interracial violence." *Ante*, at 8, n. 8. To my mind that risk plainly outweighs the slight cost of allowing the defendant to choose whether to make an inquiry concerning such possible prejudice. This Court did not identify in *Ristaino v. Ross*, 424 U. S. 589 (1976), nor does it identify today, any additional burdens that would accompany such a rule. I therefore cannot agree with the Court's continuing rejection of the simple prophylactic rule proposed in *Ristaino*.

Even if I agreed with the Court that a *per se* rule permitting inquiry into racial bias is appropriate only in capital cases, I could not accept the Court's failure to remedy the denial of such inquiry in this capital case by reversing petitioner's conviction. Henceforth any capital defendant accused of an interracial crime may inquire into racial prejudice on *voir dire*. When, as here, the same jury sits at the guilt phase



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 17, 1986

Re: No. 84-6646, Turner v. Sielaff

Dear Byron:

Please join me.

Sincerely,

Justice White

cc: The Conference

SI:GA T1 M1 28

2 1 1986

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

January 22, 1986

84-6646 Turner v. Sielaff

Dear Byron:

In reviewing my file on this case, apparently I have not advised that I will write a dissenting opinion.

This is to confirm that I certainly will.

Sincerely,

Lewis

Justice White

lfp/ss

cc: The Conference

02 11 55 110:00

2000

02/24

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall ✓
Justice Blackmun
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Powell

Circulated: FEB 24 1986

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-6646

WILLIE LLOYD TURNER, PETITIONER *v.* ALLYN R. SIELAFF, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS

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

[February —, 1986]

JUSTICE POWELL, dissenting.

The Court today adopts a *per se* rule applicable in capital cases, under which "a capital defendant accused of an interracial crime is entitled to have prospective jurors informed of the race of the victim and questioned on the issue of racial bias." *Ante*, at 8. This rule is certain to add to the already heavy burden of habeas petitions filed by prisoners under sentence of death¹ without affording any real protection be-

¹This case has traveled through each layer of review provided to capital defendants in our state and federal systems. On July 12, 1978, petitioner committed the murder underlying this petition. Trial commenced on December 3, 1979, and the jury convicted petitioner on capital murder and other charges on December 4, 1979. Following the jury's recommendation, the trial judge sentenced petitioner to death on February 6, 1980. The Supreme Court of Virginia affirmed the convictions and sentences. *Turner v. Commonwealth*, 221 Va. 513, 273 S. E. 2d 36 (1980). This Court denied a petition for a writ of certiorari. 451 U. S. 1011 (1981). Petitioner then filed a petition for a writ of habeas corpus in the Circuit Court for the County of Southampton. That court denied relief, and the Supreme Court of Virginia denied review. We denied a petition for a writ of certiorari. *Turner v. Morris*, 462 U. S. 1112 (1983). Then, petitioner filed a petition for a writ of habeas corpus in the United States District Court for the Eastern District of Virginia. By order entered May 23, 1984, the District Court denied the writ. The Court of Appeals for the Fourth Circuit affirmed. *Turner v. Bass*, 753 F. 2d 342 (1985). This Court granted certiorari, 471 U. S. — (1985), and today reverses.

B/B/
Ward
W-E

02/26

To: The Chief Justice

Justice Brennan
 Justice White
 Justice Marshall
 Justice Blackmun
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

From: **Justice Powell**

Circulated: _____

Recirculated: _____

p. 1, 7

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-6646

**WILLIE LLOYD TURNER, PETITIONER v. ALLYN R.
 SIELAFF, DIRECTOR, VIRGINIA DEPART-
 MENT OF CORRECTIONS**

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

[March —, 1986]

JUSTICE POWELL, with whom JUSTICE REHNQUIST joins,
 dissenting.

The Court today adopts a *per se* rule applicable in capital cases, under which "a capital defendant accused of an interracial crime is entitled to have prospective jurors informed of the race of the victim and questioned on the issue of racial bias." *Ante*, at 8. This rule is certain to add to the already heavy burden of habeas petitions filed by prisoners under sentence of death¹ without affording any real protection be-

¹This case has traveled through each layer of review provided to capital defendants in our state and federal systems. On July 12, 1978, petitioner committed the murder underlying this petition. Trial commenced on December 3, 1979, and the jury convicted petitioner on capital murder and other charges on December 4, 1979. Following the jury's recommendation, the trial judge sentenced petitioner to death on February 6, 1980. The Supreme Court of Virginia affirmed the convictions and sentences. *Turner v. Commonwealth*, 221 Va. 513, 273 S. E. 2d 36 (1980). This Court denied a petition for a writ of certiorari. 451 U. S. 1011 (1981). Petitioner then filed a petition for a writ of habeas corpus in the Circuit Court for the County of Southampton. That court denied relief, and the Supreme Court of Virginia denied review. We denied a petition for a writ of certiorari. *Turner v. Morris*, 462 U. S. 1112 (1983). Then, petitioner filed a petition for a writ of habeas corpus in the United States District Court for the Eastern District of Virginia. By order entered May 23, 1984, the District Court denied the writ. The Court of Appeals for the

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

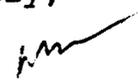
February 26, 1986

Re: No. 84-6646 Turner v. Sielaff

Dear Lewis,

Please join me in your dissent in this case.

Sincerely,



Justice Powell

cc: The Conference

RECEIVED
FEB 26 1986

RECEIVED
FEB 26 1986

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 3, 1986

Re: 84-6646 - Turner v. Sielaff

Dear Byron:

Please join me.

Respectfully,



Justice White

Copies to the Conference

RECEIVED MAR 3 1986



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

January 3, 1986

No. 84-6646 Turner v. Sielaff

Dear Byron,

Please join me.

Sincerely,

Justice White

Copies to the Conference

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JAN 4 1986