

ORDERS FROM MAY 24 THROUGH  
JUNE 18, 1979

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MAY 24, 1979

*Miscellaneous Orders*

No. A-1016. SPENKELINK *v.* WAINWRIGHT, SECRETARY, DEPARTMENT OF OFFENDER REHABILITATION OF FLORIDA, ET AL. C. A. 5th Cir. Application for stay of execution, presented to MR. JUSTICE MARSHALL, and by him referred to the Court, denied.

MR. JUSTICE BRENNAN and MR. JUSTICE MARSHALL would grant the application for a stay of execution. Furthermore, they object because the Court announces its action without first affording them an opportunity to prepare, circulate, and file a statement in support of their view.

No. A-1017. FILARTIGA ET AL. *v.* PENNA-IRALA ET AL. D. C. E. D. N. Y. Application for stay of deportation, presented to MR. JUSTICE MARSHALL, and by him referred to the Court, denied.

No. A-1020. WAINWRIGHT, SECRETARY, DEPARTMENT OF OFFENDER REHABILITATION OF FLORIDA *v.* SPENKELINK. C. A. 5th Cir. Motion of the Attorney General of Florida to vacate the order entered by Honorable Elbert Parr Tuttle, Senior Judge of the United States Court of Appeals for the Fifth Circuit, on May 22, 1979, denied. MR. JUSTICE REHNQUIST reserves the right to file a written statement at a future date. [See dissenting opinion, *infra*, filed May 25, 1979.]

MR. JUSTICE REHNQUIST, dissenting.\*

I cannot join the Court's unexplained denial of the State's motion to vacate the stay order entered a few minutes before

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\*The Court's denial of the motion took place on Thursday, May 24. Though the later action of the Court of Appeals for the Fifth Circuit in vacating the stay has robbed this Court's denial of any lasting significance,

midnight on May 22, 1979, by the Honorable Elbert P. Tuttle, Senior Circuit Judge of the United States Court of Appeals for the Fifth Circuit. My difficulty with the Court's action, and with the action of Judge Tuttle in granting a stay in this case, undoubtedly stems from the six years of litigation revolving about the question of whether the State of Florida is entitled to impose the death sentence on respondent. This procedural history is set forth in detail in my May 22 in chambers opinion in which I denied respondent's application for a stay. *Post*, p. 1301. The stay occasioning the instant motion is, in my view, the product of a clear abuse of the writ of habeas corpus, and I am concerned that this Court's action implicitly sanctions the use of such tactics to frustrate the attempts of the State to effectuate the will of its citizens.

Attorneys representing defendants under sentence of death have a difficult and arduous task to perform, but in seeking stays of execution they need devote little time to the oft-litigated issue of "irreparable injury." "[D]eath is a punishment different from all other sanctions in kind rather than degree." *Woodson v. North Carolina*, 428 U. S. 280, 303-304 (1976) (opinion of STEWART, POWELL, and STEVENS, JJ.). The irreversible nature of the penalty makes irreparable by definition any injury inflicted in violation of the United States Constitution. But because imposition of the death penalty is irreversible, I respectfully suggest that there may be a tendency on the part of individual judges or courts exercising the extraordinary-writ authority conferred upon them by 28 U. S. C. § 1651 not merely to resolve all constitutional questions fairly admitting of doubt in favor of a federal habeas petitioner under sentence of death, but to create or assume such doubts where in fact there are none.

My understanding of the principal opinions in *Gregg v. Georgia*, 428 U. S. 153 (1976), *Proffitt v. Florida*, 428 U. S. 242

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the legal questions involved are bound to recur in later cases. I am therefore filing this opinion dissenting from the Court's action.

(1976), *Jurek v. Texas*, 428 U. S. 262 (1976), *Woodson v. North Carolina*, *supra*, and *Roberts v. Louisiana*, 428 U. S. 325 (1976), is that a State whose citizens have expressed through their elected representatives and their judges and juries a will to impose the death penalty for offenses such as murder may do so if the State conforms its trial and sentencing procedures to the requirements enunciated in this Court's cases. Considering, however, that there are several hundred federal judges in the United States who have authority to issue stays under the provisions of 28 U. S. C. § 1651, even the relatively limited authority found open to the States under the Constitution in the above-cited cases could turn out, as a practical matter, to be entirely closed to them. Most, if not all, States provide for some lapse of time between the entry of a final order setting a date for execution and the date itself. Thus, the entry of a stay of execution by a federal court or judge, even though later dissolved, will generally require a State to set a new execution date, often 30 to 60 days after it is released from the constraints of the federal stay. As the new execution date approaches, new claims are conceived and, at the last minute, new stay applications are filed. Understandably, because no mortal can be totally satisfied that within the extremely short period of time allowed by such a late filing he has fully grasped the contentions of the parties and correctly resolved them, judges are inclined to grant such 11th-hour stay applications. Then, again, new execution dates must be set and the process begins anew. This now familiar pattern could in fact result in a situation where States are powerless to carry out a death sentence, even though it has been judicially determined that the sentence was imposed in complete conformity with the United States Constitution.

Thus, it can hardly be said that a State will never be injured by issuance of such last-minute stays of execution. When a State has taken all steps required by our capital cases, its will, as represented by the legislature that authorized the imposition of the death sentence and by the juries and courts that

imposed and upheld it, must be carried out. Constant and repeated frustration of the State's lawful action in such a situation is contrary to the underlying assumptions of our federal system. This Court was faced with a similar problem in *Rosenberg v. United States*, 346 U. S. 273 (1953). There, Mr. Justice Douglas had granted a stay of execution later found by the full Court to have been improvidently granted. The Court said:

"This Court has the responsibility to supervise the administration of criminal justice by the federal judiciary. This includes the duty to see that the laws are not only enforced by fair proceedings, but also that the punishments prescribed by the laws are enforced with a reasonable degree of promptness and certainty. The stay which had been issued promised many more months of litigation in a case which had otherwise run its full course." *Id.*, at 287.

In the same case, Mr. Justice Clark, joined by the Chief Justice, Mr. Justice Reed, Mr. Justice Jackson, Mr. Justice Burton, and Mr. Justice Minton, stated:

"Our liberty is maintained only so long as justice is secure. To permit our judicial processes to be used to obstruct the course of justice destroys our freedom. Over two years ago the Rosenbergs were found guilty by a jury of a grave offense in time of war. Unlike other litigants they have had the attention of this Court seven times; each time their pleas have been denied. Though the penalty is great and our responsibility heavy, our duty is clear." *Id.*, at 296.

Under the present combination of statutes and rules by which stay authority is exercised, however, a result so at odds with a government of law is by no means foreordained. This Court has authority pursuant to 28 U. S. C. § 1651 to vacate any stay granted by any other federal court or judge pursuant

to that same section. And under Rules 50 and 51 of this Court, the Circuit Justice for the Circuit in question may take any action that the full Court might take under § 1651. *Holtzman v. Schlesinger*, 414 U. S. 1304, 1308 (1973) (MARSHALL, J., in chambers). Vacation of a stay order that is palpably erroneous is authorized under § 1651, even though vacation of the stay would result in execution of the death sentence. See *O'Brien v. Brown*, 409 U. S. 1, 5 (1972).

Here, respondent has not had an opportunity to file any response to the motion to vacate the stay. Given the gravity of the consequences of vacation of the stay, only the most demonstrable and self-evident error on the part of the judge or court issuing the stay would lead me to conclude that it should be vacated. Here, the circumstances surrounding issuance of the stay convince me that such error is present.

Respondent's "Original Petition for a Writ of Habeas Corpus by a Person in State Custody," filed with Judge Tuttle six years after respondent's trial and less than nine hours before respondent was scheduled to die, alleged for the first time that respondent's trial attorney had rendered ineffective assistance of counsel. The petition further alleged that respondent's "post-conviction attorneys," who are, incidentally, extraordinarily skilled and experienced in the area of capital punishment cases, rendered ineffective assistance in failing to claim that respondent's trial counsel had been ineffective. It strains credulity to suppose that six years and countless court-houses after his trial, respondent suddenly determined that his trial attorney had been ineffective. Either he does not believe the claim himself or he had held the claim in reserve, an insurance policy of sorts, to spring on the federal judge of his choice if all else fails. This Court has disapproved of such tactics before:

"Thus, for example, if a prisoner deliberately withholds one of two grounds for federal collateral relief at the time of filing his first application, in the hope of being granted

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two hearings rather than one or for some other such reason, he may be deemed to have waived his right to a hearing on a second application presenting the withheld ground. . . . Nothing in the traditions of habeas corpus requires the federal courts to tolerate needless piecemeal litigation, or to entertain collateral proceedings whose only purpose is to vex, harass, or delay." *Sanders v. United States*, 373 U. S. 1, 18 (1963).

See also Federal Habeas Corpus Rule 9 (b).

Moreover, respondent, for unexplained but obvious reasons, presented his original petition not to the United States District Court for the Northern District of Florida, the jurisdiction in which he is detained and which had twice denied him postconviction relief, but to a Senior Circuit Judge residing several hundred miles away in Atlanta, Ga. Title 28 U. S. C. § 2242, designed to deter such forum shopping, requires that petitions for habeas corpus "addressed to the Supreme Court, a justice thereof or a circuit judge . . . shall state the reasons for not making application to the district court of the district in which the applicant is held." Nowhere in respondent's original petition is such an allegation made.

For the foregoing reasons, I am compelled to dissent from the Court's denial of the State's motion.

MAY 25, 1979\*

*Miscellaneous Order*

No. A-1025. SPENKELINK *v.* WAINWRIGHT, SECRETARY, DEPARTMENT OF OFFENDER REHABILITATION OF FLORIDA, ET AL. C. A. 5th Cir. Application for stay of execution, presented to MR. JUSTICE POWELL and by him referred to the Court, denied. MR. JUSTICE BRENNAN and MR. JUSTICE MARSHALL would grant the stay. MR. JUSTICE BLACKMUN took no part in the consideration or decision of this application.

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\*[REPORTER'S NOTE: For dissenting opinion of MR. JUSTICE REHNQUIST in No. A-1020, *Wainwright v. Spenkelnik*, see *ante*, p. 901.]

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*Affirmed on Appeal*

No. 78-1553. *BEGGANS v. PUBLIC FUNDS FOR PUBLIC SCHOOLS OF NEW JERSEY ET AL.*; and

No. 78-1556. *BYRNE, GOVERNOR OF NEW JERSEY, ET AL. v. PUBLIC FUNDS FOR PUBLIC SCHOOLS OF NEW JERSEY ET AL.* Affirmed on appeal from C. A. 3d Cir. THE CHIEF JUSTICE, MR. JUSTICE WHITE, and MR. JUSTICE REHNQUIST would note probable jurisdiction and set case for oral argument. Reported below: 590 F. 2d 514.

*Appeals Dismissed*

No. 78-1516. *WESSEL v. PENNSYLVANIA STATE BOARD OF LAW EXAMINERS.* Appeal from Sup. Ct. Pa. dismissed for want of substantial federal question.

No. 78-1523. *FLOYD v. TEXAS.* Appeal from Ct. Crim. App. Tex. dismissed for want of substantial federal question. Reported below: 575 S. W. 2d 21.

No. 78-1521. *EPSTEIN ET AL. v. ADLER, BARISH, DANIELS, LEVIN & CRESKOFF.* Appeal from Sup. Ct. Pa. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 482 Pa. 416, 393 A. 2d 1175.

No. 78-6238. *JACKSON v. MARTIN, WARDEN.* 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.

No. 78-6547. *STEIN v. ANDRESS ET AL.* Appeal from Ct. Civ. App. Tex., 5th Sup. Jud. Dist., dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 570 S. W. 2d 9.

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No. 78-6405. *LINDEN v. DIAL PRESS ET AL.* 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: 584 F. 2d 973.

No. 78-6474. *MURRAY v. NEW HAMPSHIRE ET AL.* Appeal from C. A. 1st Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

*Certiorari Granted—Reversed and Remanded.* (See No. 78-5944, *ante*, p. 95.)

*Certiorari Granted—Vacated and Remanded.* (See also No. 78-1060, *ante*, p. 92.)

No. 78-1. *CHRYSLER CORP. v. GABRIELE.* C. A. 6th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Oscar Mayer & Co. v. Evans*, 441 U. S. 750 (1979). Reported below: 573 F. 2d 949.

No. 78-53. *WHIRLPOOL CORP. v. SIMPSON.* C. A. 6th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Oscar Mayer & Co. v. Evans*, 441 U. S. 750 (1979). Reported below: 573 F. 2d 957.

No. 78-419. *JOS. SCHLITZ BREWING Co. v. SMITH.* C. A. 3d Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Oscar Mayer & Co. v. Evans*, 441 U. S. 750 (1979). Reported below: 584 F. 2d 1231.

#### *Miscellaneous Orders*

No. D-169. *IN RE DISBARMENT OF CARNOW.* It is ordered that Donald S. Carnow, of Chicago, Ill., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. 82, Orig. *NEW MEXICO v. TEXAS.* The Solicitor General is invited to file a brief in this case expressing the views of the United States.

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*Certiorari Denied.* (See also Nos. 78-1521, 78-6238, 78-6405, 78-6474, and 78-6547, *supra.*)

No. 78-1139. NORTH CAROLINA ET AL. *v.* UNITED STATES. C. A. 4th Cir. *Certiorari denied.* Reported below: 587 F. 2d 625.

No. 18-1231. ATLANTIC RICHFIELD Co. *v.* THIBODAUX, ADMINISTRATRIX. C. A. 5th Cir. *Certiorari denied.* Reported below: 580 F. 2d 841.

No. 78-1263. EAST CARROLL PARISH POLICE JURY ET AL. *v.* MARSHALL. C. A. 5th Cir. *Certiorari denied.* Reported below: 582 F. 2d 927.

No. 78-1310. EPPERSON *v.* MISSOURI. Sup. Ct. Mo. *Certiorari denied.* Reported below: 571 S. W. 2d 260.

No. 78-1346. COOK *v.* UNITED STATES. C. A. 5th Cir. *Certiorari denied.* Reported below: 586 F. 2d 572.

No. 78-1348. SHEAR *v.* UNITED STATES; and

No. 78-1388. LAMORTE *v.* UNITED STATES. C. A. 2d Cir. *Certiorari denied.* Reported below: 598 F. 2d 610.

No. 78-1387. MUNOZ ET AL. *v.* UNITED STATES. C. A. 5th Cir. *Certiorari denied.* Reported below: 589 F. 2d 249.

No. 78-1403. KIRSHNER *v.* UNITED STATES ET AL. C. A. 2d Cir. *Certiorari denied.* Reported below: 603 F. 2d 234.

No. 78-1411. DEL VALLE ET AL. *v.* UNITED STATES ET AL. C. A. 5th Cir. *Certiorari denied.* Reported below: 587 F. 2d 699.

No. 78-1424. SHELTON *v.* UNITED STATES. C. A. 9th Cir. *Certiorari denied.* Reported below: 588 F. 2d 1242.

No. 78-1452. NATIONAL MOTOR FREIGHT TRAFFIC ASSN., INC., ET AL. *v.* INTERSTATE COMMERCE COMMISSION ET AL. C. A. D. C. Cir. *Certiorari denied.* Reported below: 192 U. S. App. D. C. 64, 590 F. 2d 1180.

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No. 78-1461. SAFEGUARD CO. ET AL. *v.* BALDWIN ET AL. Sup. Ct. Pa. Certiorari denied.

No. 78-1514. CHIROLDE *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 78-1515. RICHARDS *v.* COUNTY OF LOS ANGELES. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 78-1519. RAMEY ET AL. *v.* HARBER, SHERIFF, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 589 F. 2d 753.

No. 78-1534. MCMAHON *v.* KENTUCKY BAR ASSN. Sup. Ct. Ky. Certiorari denied. Reported below: 575 S. W. 2d 453.

No. 78-1544. DUNCAN *v.* NEW YORK. Ct. App. N. Y. Certiorari denied. Reported below: 46 N. Y. 2d 74, 385 N. E. 2d 572.

No. 78-1559. BROOKS *v.* WASHINGTON TERMINAL CO. C. A. D. C. Cir. Certiorari denied. Reported below: 193 U. S. App. D. C. 131, 593 F. 2d 1285.

No. 78-1612. NELUMS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 589 F. 2d 236.

No. 78-1629. PETSAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 592 F. 2d 525.

No. 78-1659. HAYES *v.* NATIONAL TRANSPORTATION SAFETY BOARD ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 191 U. S. App. D. C. 225, 590 F. 2d 356.

No. 78-5263. RICHARDSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 577 F. 2d 447.

No. 78-6074. PLEMONS *v.* JONES, SHERIFF, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 586 F. 2d 840.

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No. 78-6239. *WILLIAMS ET AL. v. LEEKE, CORRECTIONS DIRECTOR, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 584 F. 2d 1336.

No. 78-6277. *MATTHEWS v. FLORIDA.* Sup. Ct. Fla. Certiorari denied. Reported below: 363 So. 2d 1066.

No. 78-6282. *WHITEHEAD v. UNITED STATES.* C. A. 5th Cir. Certiorari denied.

No. 78-6336. *FIGUEROA ET AL. v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 588 F. 2d 841.

No. 78-6351. *BELLE v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 593 F. 2d 487.

No. 78-6352. *BAIN v. CALIFANO, SECRETARY OF HEALTH, EDUCATION, AND WELFARE.* C. A. 3d Cir. Certiorari denied. Reported below: 588 F. 2d 819.

No. 78-6357. *PEOPLES v. UNITED STATES.* Ct. App. D. C. Certiorari denied. Reported below: 395 A. 2d 41.

No. 78-6367. *CARELLI v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 595 F. 2d 1222.

No. 78-6380. *TALBERT v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 595 F. 2d 1226.

No. 78-6383. *POWERS v. UNITED STATES.* Ct. Cl. Certiorari denied.

No. 78-6387. *FERNANDEZ v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 589 F. 2d 977.

No. 78-6420. *FRIEDMAN v. AVON PRODUCTS.* C. A. 6th Cir. Certiorari denied. Reported below: 588 F. 2d 830.

No. 78-6483. *THOMAS v. STONE, CORRECTIONAL SUPERINTENDENT.* C. A. 9th Cir. Certiorari denied.

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No. 78-6456. THACKER *v.* ISON, FORESTRY CAMP SUPERINTENDENT; and

No. 78-6502. THACKER *v.* BORDENKIRCHER, PENITENTIARY SUPERINTENDENT. C. A. 6th Cir. Certiorari denied. Reported below: 590 F. 2d 640.

No. 78-6489. SAM *v.* BLACKBURN, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 591 F. 2d 1342.

No. 78-6490. MAXEY ET AL. *v.* MORRIS, WARDEN, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 591 F. 2d 386.

No. 78-6491. MYERS *v.* WASHINGTON. Sup. Ct. Wash. Certiorari denied. Reported below: 91 Wash. 2d 120, 587 P. 2d 532.

No. 78-6497. RINEHART *v.* DURHAM COUNTY BOARD OF EDUCATION ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 590 F. 2d 330.

No. 78-6503. LOCKETT *v.* DIRECTOR, DEPARTMENT OF CORRECTIONS OF ILLINOIS. C. A. 7th Cir. Certiorari denied. Reported below: 590 F. 2d 337.

No. 78-6504. HOLSEY *v.* INMATE GRIEVANCE COMMISSION. Ct. Sp. App. Md. Certiorari denied.

No. 78-6508. DENNIS *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied.

No. 78-6515. DALLAS *v.* HILTON, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied.

No. 78-6526. DRAGON *v.* INDIANA. Sup. Ct. Ind. Certiorari denied. Reported below: 270 Ind. —, 383 N. E. 2d 1046.

No. 78-6557. DINKE *v.* RIGGS NATIONAL BANK OF WASHINGTON, D. C. C. A. D. C. Cir. Certiorari denied. Reported below: 193 U. S. App. D. C. 217, 593 F. 2d 1371.

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No. 78-6580. *MARINOFF v. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE*. C. A. 2d Cir. Certiorari denied. Reported below: 595 F. 2d 1208.

No. 78-6585. *TIBERIO v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 595 F. 2d 1215.

No. 78-6607. *MYERS, AKA COATES v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 595 F. 2d 1217.

No. 78-6608. *MYERS, AKA COATES v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 595 F. 2d 1217.

No. 78-6613. *PEERY v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 594 F. 2d 860.

No. 78-6617. *BARNES v. UNITED STATES*. Ct. App. D. C. Certiorari denied. Reported below: 395 A. 2d 404.

No. 78-6623. *WALLACE ET AL. v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 597 F. 2d 159.

No. 78-6634. *BROWN v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 591 F. 2d 307.

No. 78-6636. *WAUGH v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 594 F. 2d 860.

No. 78-6643. *GOULD v. MEMBERS OF THE NEW JERSEY DIVISION OF WATER POLICY AND SUPPLY ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 595 F. 2d 1212.

No. 78-1495. *RIGGS v. LAURENS DISTRICT 56 ET AL.* Sup. Ct. S. C. Certiorari denied. MR. JUSTICE MARSHALL would grant certiorari. Reported below: 271 S. C. 463, 248 S. E. 2d 306.

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*Affirmed on Appeal*

No. 78-1396. CHARBONNET ET AL. v. BRADEN ET AL. Affirmed on appeal from D. C. E. D. La. MR. JUSTICE BRENNAN would note probable jurisdiction and set case for oral argument.

*Appeals Dismissed*

No. 78-6486. ALEXANDER v. ESTELLE, CORRECTIONS DIRECTOR. Appeal from Ct. Crim. App. Tex. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 78-6646. AHMAD v. RODAK, CLERK, SUPREME COURT OF THE UNITED STATES. Appeal from C. A. D. C. Cir. 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. 78-750. KENTUCKY v. BRANNON. Sup. Ct. Ky. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *Kentucky v. Whorton*, 441 U. S. 786 (1979).

No. 78-1084. KENTUCKY v. WILLIAMS. Sup. Ct. Ky. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *Kentucky v. Whorton*, 441 U. S. 786 (1979). Reported below: 572 S. W. 2d 162.

No. 78-1085. KENTUCKY v. AVERY. Sup. Ct. Ky. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *Kentucky v. Whorton*, 441 U. S. 786 (1979). Reported below: 572 S. W. 2d 162.

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No. 78-1493. *KENTUCKY v. MILLER*. Sup. Ct. Ky. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *Kentucky v. Whorton*, 441 U. S. 786 (1979).

No. 78-1643. *LOMBARD, SHERIFF v. MARCERA ET AL.* C. A. 2d Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Bell v. Wolfish*, 441 U. S. 520 (1979). MR. JUSTICE MARSHALL dissents. Reported below: 595 F. 2d 1231.

### *Miscellaneous Orders*

No. A-958. *WILLIAMS ET AL. v. ZBARAZ ET AL.* D. C. N. D. Ill. Application for stay, addressed to MR. JUSTICE REHNQUIST and referred to the Court, denied.

No. A-1012. *LAMAGNA v. UNITED STATES*. Application for writ of habeas corpus and for bail, presented to MR. JUSTICE MARSHALL, and by him referred to the Court, denied.

No. 78-1453. *UNITED STATES ET AL. v. EUGE*. C. A. 8th Cir. [Certiorari granted, 441 U. S. 942.] Motion for appointment of counsel granted, and it is ordered that James W. Erwin, Esquire, of St. Louis, Mo., be appointed to serve as counsel for respondent in this case provided he applies for admission to the Bar of this Court prior to the commencement of the next Term of Court.

No. 78-1538. *CALLAHAN ET AL. v. KIMBALL ET AL.* C. A. 9th Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 78-1577. *SEARS, ROEBUCK & Co. v. COUNTY OF LOS ANGELES ET AL.* Ct. App. Cal., 2d App. Dist. The Solicitor General is invited to file a brief in this case expressing the views of the United States. MR. JUSTICE STEWART took no part in the consideration or decision of this order.

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No. 78-1545. ZIPES ET AL. v. TRANS WORLD AIRLINES, INC.; and

No. 78-1549. TRANS WORLD AIRLINES, INC. v. ZIPES ET AL. C. A. 7th Cir. Joint motions to defer consideration of petitions for writs of certiorari granted. MR. JUSTICE STEVENS took no part in the consideration or decision of these motions. Reported below: 582 F. 2d 1142.

No. 78-6407. FAGAN v. ROMERO, WARDEN. Motion for leave to file petition for writ of habeas corpus denied.

*Certiorari Granted*

No. 78-1548. CALIFORNIA BREWERS ASSN. ET AL. v. BRYANT ET AL. C. A. 9th Cir. Certiorari granted. MR. JUSTICE STEVENS took no part in the consideration or decision of this petition. Reported below: 585 F. 2d 421.

No. 78-6020. BUSIC v. UNITED STATES; and

No. 78-6029. LARocca v. UNITED STATES. C. A. 3d Cir. Motions of petitioners for leave to proceed *in forma pauperis* and certiorari granted. Cases consolidated and a total of one and one-half hours allotted for oral argument. Reported below: 587 F. 2d 577.

*Certiorari Denied.* (See also Nos. 78-6486 and 78-6646, *supra.*)

No. 78-1249. BORING v. MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 365 So. 2d 960.

No. 78-1325. TYLER v. GEORGIA. Ct. App. Ga. Certiorari denied. Reported below: 147 Ga. App. 394, 249 S. E. 2d 109.

No. 78-1372. ARAMBASICH v. UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 588 F. 2d 839.

No. 78-1383. WEDELSTEDT v. UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 589 F. 2d 339.

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- No. 78-1412. *JAMES v. UNITED STATES*;  
No. 78-6369. *SMITH v. UNITED STATES*; and  
No. 78-6431. *WHITMORE v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 590 F. 2d 575.
- No. 78-1414. *ROBESON v. NATIONAL LABOR RELATIONS BOARD*. C. A. 9th Cir. Certiorari denied.
- No. 78-1420. *GRUMMAN AEROSPACE CORP. v. UNITED STATES*. Ct. Cl. Certiorari denied. Reported below: 218 Ct. Cl. 441, 587 F. 2d 498.
- No. 78-1444. *DECARLO v. NEW JERSEY*. Super. Ct. N. J. Certiorari denied. Reported below: 162 N. J. Super. 174, 392 A. 2d 615.
- No. 78-1463. *ARNONE v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 595 F. 2d 1225.
- No. 78-1465. *SAHARA-TAHOE CORP. v. NATIONAL LABOR RELATIONS BOARD ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 581 F. 2d 767.
- No. 78-1467. *MIDTAUNE v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 589 F. 2d 370.
- No. 78-1474. *FIELDS ET AL. v. UNITED STATES*;  
No. 78-1480. *DAVIS v. UNITED STATES*; and  
No. 78-1483. *FRIEDMAN v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 592 F. 2d 638.
- No. 78-1477. *FORMICA CORP. v. LEFKOWITZ ET AL.* C. C. P. A. Certiorari denied. Reported below: 590 F. 2d 915.
- No. 78-1484. *RUBY CO. ET AL. v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 588 F. 2d 697.
- No. 78-1491. *UNITED TELECOMMUNICATIONS, INC., FORMERLY UNITED UTILITIES, INC. v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 10th Cir. Certiorari denied. Reported below: 589 F. 2d 1383.

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No. 78-1502. *SOLVINO v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 591 F. 2d 1337.

No. 78-1537. *FORMAN v. WOLFF ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 590 F. 2d 283.

No. 78-1542. *AUTOMOBILE CLUB OF MICHIGAN ET AL. v. BELL ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 601 F. 2d 587.

No. 78-1554. *BELL v. NEW JERSEY ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 591 F. 2d 1334.

No. 78-1560. *AVEDISIAN v. HUBBARD ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 588 F. 2d 1347.

No. 78-1564. *BEAUMONT v. MICHIGAN DEPARTMENT OF LABOR ET AL.* Ct. App. Mich. Certiorari denied.

No. 78-1566. *LONG'S HAULING Co., INC. v. HUGE ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 590 F. 2d 457.

No. 78-1575. *LIBERTARIAN PARTY OF ILLINOIS v. BOARD OF ELECTION COMMISSIONERS OF CHICAGO ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 591 F. 2d 22.

No. 78-1582. *HARRIS v. INAHARA ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 587 F. 2d 451.

No. 78-1591. *PAULINSKI ET AL. v. ISAAC ET AL.* Sup. Ct. Pa. Certiorari denied. Reported below: 483 Pa. 467, 397 A. 2d 760.

No. 78-1600. *WELLS v. PIONEER WEAR, INC.* C. A. 10th Cir. Certiorari denied.

No. 78-1601. *MANUFACTURERS SYSTEMS, INC. v. ADM INDUSTRIES, INC., ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 590 F. 2d 338.

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No. 78-1603. *Goss v. Revlon, Inc., et al.* C. A. 2d Cir. Certiorari denied. Reported below: 591 F. 2d 1330.

No. 78-1613. *Air Transport Lodge 1894, International Association of Machinists & Aerospace Workers, AFL-CIO, et al. v. Turner.* C. A. 2d Cir. Certiorari denied. Reported below: 590 F. 2d 409.

No. 78-1649. *Fleener v. United States.* C. A. 9th Cir. Certiorari denied.

No. 78-1660. *U. S. Labor Party v. Whitman.* Ct. Sp. App. Md. Certiorari denied.

No. 78-1666. *Crespo et al. v. United States.* C. A. 2d Cir. Certiorari denied. Reported below: 592 F. 2d 1219.

No. 78-1675. *Lujan et al. v. United States.* C. A. 9th Cir. Certiorari denied. Reported below: 589 F. 2d 436.

No. 78-1678. *Bomber v. United States.* C. A. 3d Cir. Certiorari denied. Reported below: 591 F. 2d 1337.

No. 78-1712. *Rose v. Carter, President of the United States, et al.* C. A. D. C. Cir. Certiorari denied.

No. 78-6237. *Phillips v. Louisiana.* Sup. Ct. La. Certiorari denied. Reported below: 365 So. 2d 1304.

No. 78-6264. *Rehbein v. Illinois.* Sup. Ct. Ill. Certiorari denied. Reported below: 74 Ill. 2d 435, 386 N. E. 2d 39.

No. 78-6322. *Hill v. United States.* C. A. 8th Cir. Certiorari denied. Reported below: 589 F. 2d 1344.

No. 78-6329. *Kirkham v. Overberg, Correctional Superintendent.* C. A. 6th Cir. Certiorari denied. Reported below: 590 F. 2d 335.

No. 78-6345. *Harbolt v. Hanberry, Warden, et al.* C. A. 5th Cir. Certiorari denied. Reported below: 590 F. 2d 332.

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No. 78-6362. *QUINONES v. UNITED STATES*. C. A. 2d Cir. Certiorari denied.

No. 78-6368. *STEINKOETTER v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 595 F. 2d 1226.

No. 78-6384. *DEFILLIPO v. UNITED STATES*; and

No. 78-6411. *DEFILLIPO v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 590 F. 2d 1228.

No. 78-6391. *VALENZUELA-LOPEZ v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 78-6397. *OROZCO ET AL. v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 590 F. 2d 789.

No. 78-6517. *JOINER v. WYRICK, WARDEN, ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 591 F. 2d 65.

No. 78-6527. *TUBBS v. BLACKBURN, WARDEN*. C. A. 5th Cir. Certiorari denied.

No. 78-6528. *HOSKINSON v. ENGLE ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 595 F. 2d 1223.

No. 78-6530. *CHASE v. REDMAN, CORRECTIONAL SUPERINTENDENT*. C. A. 3d Cir. Certiorari denied. Reported below: 591 F. 2d 1334.

No. 78-6538. *WILLIAMS v. SMITH, CORRECTIONAL SUPERINTENDENT*. C. A. 2d Cir. Certiorari denied. Reported below: 591 F. 2d 169.

No. 78-6540. *JOHNSON v. CALIFORNIA*. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 78-6541. *REECE v. CALIFORNIA*. Sup. Ct. Cal. Certiorari denied.

No. 78-6542. *WELCH v. FALKE, MONTGOMERY COUNTY PROSECUTING ATTORNEY*. C. A. 6th Cir. Certiorari denied. Reported below: 594 F. 2d 865.

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No. 78-6545. *KELSO v. NEVADA*. Sup. Ct. Nev. Certiorari denied. Reported below: 95 Nev. 37, 588 P. 2d 1035.

No. 78-6556. *BOOTHE v. GREATER NEW YORK SAVINGS BANK*. C. A. 2d Cir. Certiorari denied. Reported below: 595 F. 2d 1208.

No. 78-6630. *WITH HORN v. UNITED STATES*; and

No. 78-6631. *WOUNDED KNEE v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 596 F. 2d 790.

No. 78-6640. *MCMAHON v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 592 F. 2d 871.

No. 78-6648. *COOK v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 592 F. 2d 877.

No. 78-6658. *MOREE v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 595 F. 2d 1226.

No. 78-1379. *TAHOE NUGGET, INC., DBA JIM KELLEY'S TAHOE NUGGET, ET AL. v. NATIONAL LABOR RELATIONS BOARD*. C. A. 9th Cir. Certiorari denied. MR. JUSTICE WHITE would grant certiorari. Reported below: 584 F. 2d 293.

No. 78-1529. *HUNT ET AL. v. COMMODITY FUTURES TRADING COMMISSION*. C. A. 7th Cir. Certiorari denied. MR. JUSTICE BLACKMUN and MR. JUSTICE POWELL would grant certiorari. Reported below: 591 F. 2d 1234.

No. 78-1558. *IOWA BEEF PROCESSORS, INC., ET AL. v. HAWKINS ET AL.* C. A. 8th Cir. Certiorari denied. MR. JUSTICE STEVENS took no part in the consideration or decision of this petition. Reported below: 596 F. 2d 254.

No. 78-1650. *INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS, AFL-CIO, SILVERGATE DISTRICT LODGE 50 v. ANDERSON*. C. A. 9th Cir. Certiorari denied. MR. JUSTICE BRENNAN and MR. JUSTICE WHITE would grant certiorari. Reported below: 589 F. 2d 397.

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No. 78-6067. GOULDEN *v.* OLIVER ET AL. C. A. 5th Cir. Certiorari denied.

MR. JUSTICE BLACKMUN, with whom MR. JUSTICE BRENNAN joins, dissenting.

Petitioner Dudley Dee Goulden asserts that he is an Orthodox Jew, and that the Alabama prison authorities have forced him to shave and cut his hair, which is contrary to his religious beliefs. He filed this suit under 42 U. S. C. § 1983 alleging that the prison's grooming regulations violated his rights under the First and Fourteenth Amendments. The District Court dismissed his complaint, reasoning that the prison regulations promoted cleanliness and personal identification and that those valid objectives outweighed any religious freedom petitioner was entitled to enjoy under the Constitution. By a single-judge order and without opinion, the United States Court of Appeals for the Fifth Circuit denied petitioner's *pro se* application for leave to appeal *in forma pauperis*. To support these rulings, respondents rely on *Brooks v. Wainwright*, 428 F. 2d 652 (CA5 1970), which upheld the dismissal of a somewhat similar complaint.<sup>1</sup> See also *Brown v. Wainwright*, 419 F. 2d 1376 (CA5 1970).

In *Cruz v. Beto*, 405 U. S. 319 (1972), this Court held that a complaint that challenged restrictions on an inmate's practice of Buddhism stated a claim upon which relief could be granted. Ruling that "reasonable opportunities must be afforded to all prisoners to exercise the religious freedom guaranteed by the First and Fourteenth Amendments without fear of penalty," *id.*, at 322 n. 2, the Court remanded the case for a hearing on the merits. See also *Cooper v. Pate*, 378 U. S. 546 (1964).

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<sup>1</sup>The District Court cited three decisions involving personal lifestyle claims. *Hill v. Estelle*, 537 F. 2d 214 (CA5 1976); *Rinehart v. Brewer*, 491 F. 2d 705 (CA8 1974); *Daugherty v. Reagan*, 446 F. 2d 75 (CA9 1971). None of these, however, dealt with religious rights under the Free Exercise Clause. *Hill* did discuss *Brooks*.

Whatever validity the Fifth Circuit's *Brooks* rule may once have had, it has been severely undercut by *Cruz* and the subsequent cases that have reaffirmed the principle that prison regulations are subject to constitutional scrutiny. See *Jones v. North Carolina Prisoners' Union*, 433 U. S. 119 (1977); *Bounds v. Smith*, 430 U. S. 817 (1977); *Procunier v. Martinez*, 416 U. S. 396 (1974). Citing *Cruz* and *Martinez*, the Second Circuit has rejected *Brooks* and held that a prisoner challenging prison grooming regulations on free exercise grounds is entitled to a hearing on the reasonableness of the prison's regulations. *Burgin v. Henderson*, 536 F. 2d 501, 504, and n. 8 (1976). Accord: *Jihaad v. Carlson*, 410 F. Supp. 1132, 1134 (ED Mich. 1976); *Wright v. Raines*, 1 Kan. App. 2d 494, 500-501, 571 P. 2d 26, 31-32 (1977), cert. denied, 435 U. S. 933 (1978). Similarly, the Eighth Circuit has rejected the contention that such regulations are valid as a matter of law, and has affirmed a decision finding violative of the Free Exercise Clause an Iowa rule that prevented an American Indian prisoner from wearing long braided hair. *Teterud v. Burns*, 522 F. 2d 357, 362 (1975) (rejecting language in *Proffitt v. Ciccone*, 506 F. 2d 1020 (CA8 1974)). Other courts have upheld similar free exercise claims. See *Wright v. Raines*, 457 F. Supp. 1082 (Kan. 1978); *Moskowitz v. Wilkinson*, 432 F. Supp. 947 (Conn. 1977) (Orthodox Jew); *Monroe v. Bombard*, 422 F. Supp. 211, 217-218 (SDNY 1976); *Maguire v. Wilkinson*, 405 F. Supp. 637 (Conn. 1975).

While a decision based on evidentiary proof may well result in a finding that petitioner's religious beliefs are not sincere,<sup>2</sup> or that the State's interests are sufficient to justify the restriction imposed on petitioner's professed religious practice, I am

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<sup>2</sup> Respondents, citing two suits in which other allegations made by petitioner proved untrue, contend that the District Court could have dismissed the complaint as an abuse of process. Respondents, however, do not challenge the facts as stated by petitioner, and do not contend that the question presented has been previously litigated. The District Court's opinion rejects petitioner's claim on the merits and does not question his good faith.

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not yet prepared to say that there is no set of facts that would entitle him to relief. I would permit petitioner to proceed *in forma pauperis*, grant the petition, vacate the order of the Court of Appeals, and remand the case with instructions to allow petitioner an adjudication on the merits of his complaint.

No. 78-6187. *MUNIZ v. TEXAS*. Ct. Crim. App. Tex; and No. 78-6500. *WAYE v. VIRGINIA*. Sup. Ct. Va. Certiorari denied. Reported below: No. 78-6187, 573 S. W. 2d 792; No. 78-6500, 219 Va. 683, 251 S. E. 2d 202.

MR. JUSTICE BRENNAN and MR. 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. 78-6549. *GULLY ET AL. v. KUNZMAN, JUDGE, ET AL.* C. A. 6th Cir. Certiorari denied. MR. JUSTICE BRENNAN and MR. JUSTICE MARSHALL would grant certiorari. Reported below: 592 F. 2d 283.

### *Rehearing Denied*

No. 78-1284. *BUB DAVIS PACKING CO., INC. v. UNITED STATES*, 441 U. S. 931;

No. 78-1367. *COOK v. MUSKINGUM WATERSHED CONSERVANCY DISTRICT*, 441 U. S. 924; and

No. 78-6472. *DISILVESTRO v. VETERANS' ADMINISTRATION*, 441 U. S. 936. Petitions for rehearing denied.

No. 78-6206. *MUNDY v. DIRECTOR, DEPARTMENT OF CORRECTIONS, TAZEWELL, VIRGINIA*, 441 U. S. 910. Petition for rehearing denied. MR. JUSTICE POWELL took no part in the consideration or decision of this petition.

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No. 78-5950. HAYWOOD *v.* ILLINOIS, 440 U. S. 948. Motion for leave to file petition for rehearing denied.

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*Dismissal Under Rule 60*

No. 78-874. ROTH ET AL. *v.* BANK OF THE COMMONWEALTH. C. A. 6th Cir. [Certiorari granted, 440 U. S. 944.] Writ of certiorari dismissed under this Court's Rule 60. Reported below: 583 F. 2d 527.

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*Appeals Dismissed*

No. 78-1482. MEYERS *v.* CHILCOTE. Appeal from Ct. App. Ohio, Hamilton County, dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 78-1590. JONES *v.* COMMITTEE OF LEGAL ETHICS OF THE WEST VIRGINIA STATE BAR. Appeal from Sup. Ct. App. W. Va. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 78-6553. LUPERT *v.* COLLEGE OF LAW OF SYRACUSE UNIVERSITY. Appeal from Ct. App. N. Y. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 78-6581. CROSS *v.* CHURCH, COUNTY CLERK-RECORDER OF SAN MATEO COUNTY, ET AL. Appeal from Sup. Ct. Cal. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

*Certiorari Granted—Vacated and Remanded*

No. 77-6855. HARDWICK *v.* REESE. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for

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further consideration in light of *Greenholtz v. Nebraska Penal Inmates*, ante, p. 1. Reported below: 573 F. 2d 83.

No. 78-950. MISSOURI BOARD OF PROBATION AND PAROLE ET AL. v. WILLIAMS ET AL. C. A. 8th Cir. Motion of respondent Williams for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *Greenholtz v. Nebraska Penal Inmates*, ante, p. 1. Reported below: 585 F. 2d 922.

No. 78-1282. WILLIAMS ET AL. v. PHILLIPS. Sup. Ct. Okla. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *Greenholtz v. Nebraska Penal Inmates*, ante, p. 1. Reported below: 583 P. 2d 488.

No. 78-1533. CONNECTICUT BOARD OF PARDONS ET AL. v. DUMSCHAT ET AL. C. A. 2d Cir. Motion of respondents for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *Greenholtz v. Nebraska Penal Inmates*, ante, p. 1. Reported below: 593 F. 2d 165.

No. 78-5419. VAN CUREN v. JAGO, CORRECTIONAL SUPERINTENDENT. C. A. 6th 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 *Greenholtz v. Nebraska Penal Inmates*, ante, p. 1. Reported below: 578 F. 2d 1382.

No. 78-5551. SMITH v. WOODARD ET AL. C. A. 4th 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 *Greenholtz v. Nebraska Penal Inmates*, ante, p. 1. Reported below: 584 F. 2d 978.

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*Miscellaneous Orders*

No. A-1042. *REGA v. CURIOS, CORRECTION COMMISSIONER*. C. A. 2d Cir. Application for stay of execution of sentence, presented to MR. JUSTICE MARSHALL, and by him referred to the Court, denied. MR. JUSTICE BRENNAN and MR. JUSTICE MARSHALL would grant the application.

No. D-158. *IN RE DISBARMENT OF HERMAN*. Disbarment entered. [For earlier order herein, see 440 U. S. 933.]

No. 78-432. *UNITED STEELWORKERS OF AMERICA, AFL-CIO-CLC v. WEBER ET AL.*;

No. 78-435. *KAISER ALUMINUM & CHEMICAL CORP. v. WEBER ET AL.*; and

No. 78-436. *UNITED STATES ET AL. v. WEBER ET AL.* C. A. 5th Cir. [Certiorari granted, 439 U. S. 1045.] Motion of Rudy Gorden et al. for leave to intervene and for an order vacating the judgment below and remanding cases for a new trial with intervenors as party defendants, denied. MR. JUSTICE POWELL and MR. JUSTICE STEVENS took no part in the consideration or decision of this motion.

No. 78-1143. *VANCE, SECRETARY OF STATE v. TERRAZAS*. C. A. 7th Cir. [Probable jurisdiction noted, 440 U. S. 970.] Motion of the Solicitor General to dispense with printing appendix granted.

No. 78-1202. *CHIARELLA v. UNITED STATES*. C. A. 2d Cir. [Certiorari granted, 441 U. S. 942.] Motion of petitioner to dispense with printing appendix granted.

No. 78-1604. *CENTRAL MACHINERY CO. v. ARIZONA STATE TAX COMMISSION*. Sup. Ct. Ariz. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 78-6604. *RAITPORT v. CLERK OF THE SUPREME COURT OF THE UNITED STATES*. Motion for leave to file petition for writ of mandamus denied.

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No. 78-1611. REICHEL *v.* SUPREME COURT OF CALIFORNIA ET AL. Motion for leave to file petition for writ of mandamus and/or prohibition denied.

No. 78-6609. FRANKS *v.* DELAWARE. Motion for leave to file petition for writ of mandamus and/or petition for writ of certiorari denied.

*Probable Jurisdiction Noted*

No. 78-1369. COMMITTEE FOR PUBLIC EDUCATION AND RELIGIOUS LIBERTY ET AL. *v.* REGAN, COMPTROLLER OF NEW YORK, ET AL. Appeal from D. C. S. D. N. Y. Probable jurisdiction noted. Reported below: 461 F. Supp. 1123.

No. 78-1588. VANCE ET AL. *v.* UNIVERSAL AMUSEMENT CO., INC., ET AL. Appeal from C. A. 5th Cir. Probable jurisdiction noted. Reported below: 587 F. 2d 159.

*Certiorari Granted*

No. 78-1472. COSTLE, ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY *v.* PACIFIC LEGAL FOUNDATION ET AL. C. A. 9th Cir. Certiorari granted. Reported below: 586 F. 2d 650.

No. 78-1522. ANDRUS, SECRETARY OF THE INTERIOR *v.* UTAH. C. A. 10th Cir. Certiorari granted. Reported below: 586 F. 2d 756.

*Certiorari Denied.* (See also Nos. 78-1482, 78-1590, 78-6553, and 78-6581, *supra.*)

No. 78-910. OCCIDENTAL OF UMM AL QAYWAYN, INC. *v.* CITIES SERVICE OIL Co. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 577 F. 2d 1196.

No. 78-1328. BEECH AIRCRAFT CORP. *v.* BRABAND ET AL. Sup. Ct. Ill. Certiorari denied. Reported below: 72 Ill. 2d 548, 382 N. E. 2d 252.

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No. 78-1334. *WEISS v. PATRICK ET AL.* C. A. 1st Cir. Certiorari denied. Reported below: 588 F. 2d 818.

No. 78-1338. *COLEMAN-AMERICAN COS., INC. v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 594 F. 2d 869.

No. 78-1344. *VRINER v. ILLINOIS.* Sup. Ct. Ill. Certiorari denied. Reported below: 74 Ill. 2d 329, 385 N. E. 2d 671.

No. 78-1357. *BASCIANO v. HERKIMER, EXECUTIVE DIRECTOR, NEW YORK CITY EMPLOYEES RETIREMENT SYSTEM, ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 605 F. 2d 605.

No. 78-1366. *COSTELLO ET AL. v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 587 F. 2d 424.

No. 78-1428. *BUTLER, DISTRICT ATTORNEY OF BEXAR COUNTY, ET AL. v. DEXTER.* C. A. 5th Cir. Certiorari denied. Reported below: 587 F. 2d 176.

No. 78-1435. *LOCAL 336, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO v. GTE-AUTOMATIC ELECTRIC Co.* C. A. 7th Cir. Certiorari denied. Reported below: 588 F. 2d 839.

No. 78-1440. *ROSE ET AL. v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 590 F. 2d 232.

No. 78-1479. *PEOPLES v. JUDICIAL STANDARDS COMMISSION OF NORTH CAROLINA.* Sup. Ct. N. C. Certiorari denied. Reported below: 296 N. C. 109, 250 S. E. 2d 890.

No. 78-1492. *GUTTMAN, T/A LIBERTY NURSING CENTER v. NATIONAL LABOR RELATIONS BOARD ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 591 F. 2d 1335.

No. 78-1500. *CITICORP v. BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.* C. A. 2d Cir. Certiorari denied. Reported below: 589 F. 2d 1182.

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No. 78-1541. *HOWELL v. GATES ET AL.* Ct. App. Colo. Certiorari denied.

No. 78-1576. *TEXAS STATE OPTICAL CO. ET AL. v. ROYAL INTERNATIONAL OPTICAL CO., DBA TEXAS OPTICAL.* Ct. App. N. M. Certiorari denied. Reported below: 92 N. M. 237, 586 P. 2d 318.

No. 78-1579. *CHARTER ET AL. v. OHIO.* Ct. App. Ohio, Highland County. Certiorari denied.

No. 78-1580. *BROOKS ET AL. v. ANKER ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 595 F. 2d 1208.

No. 78-1587. *LEVESON v. FLORIDA.* Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 361 So. 2d 764.

No. 78-1589. *TOM BENSON CHEVWAY RENTAL & LEASING, INC. v. ALLEN ET UX.* Ct. Civ. App. Tex., 8th Sup. Jud. Dist. Certiorari denied. Reported below: 571 S. W. 2d 346.

No. 78-1598. *CLARK, COUNTY EXECUTIVE, ET AL. v. O'BRIEN, JUDGE, ET AL.* Sup. Ct. N. J. Certiorari denied.

No. 78-1599. *SIMPSON ET AL. v. MISSISSIPPI.* Sup. Ct. Miss. Certiorari denied. Reported below: 366 So. 2d 1085.

No. 78-1605. *JACOBSON ET AL. v. ROSE, DISTRICT ATTORNEY OF WASHOE COUNTY, NEVADA, ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 592 F. 2d 515.

No. 78-1615. *GRAYHILL, INC. v. AMF INC. ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 591 F. 2d 1335.

No. 78-1683. *O'HAIR ET AL. v. BLUMENTHAL, SECRETARY OF THE TREASURY, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 588 F. 2d 1144.

No. 78-1728. *SOTO ET AL. v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 591 F. 2d 1091.

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No. 78-6236. *EDWARDS v. ILLINOIS*. Sup. Ct. Ill. Certiorari denied. Reported below: 74 Ill. 2d 1, 383 N. E. 2d 944.

No. 78-6286. *STOWE v. DEVOY, U. S. MARSHAL*. C. A. 2d Cir. Certiorari denied. Reported below: 588 F. 2d 336.

No. 78-6287. *LUNDY v. WARDEN, EL RENO FEDERAL CORRECTIONAL INSTITUTION, ET AL.* C. A. 5th Cir. Certiorari denied.

No. 78-6294. *JACKSON v. UNITED STATES*. Ct. App. D. C. Certiorari denied.

No. 78-6335. *FLEMING v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 594 F. 2d 598.

No. 78-6337. *BRENNEMAN v. ARKANSAS*. Sup. Ct. Ark. Certiorari denied. Reported below: 264 Ark. 460, 573 S. W. 2d 47.

No. 78-6422. *SEWARD v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 594 F. 2d 855.

No. 78-6428. *MINER v. CALIFANO, SECRETARY OF HEALTH, EDUCATION, AND WELFARE*. C. A. 2d Cir. Certiorari denied. Reported below: 582 F. 2d 1271.

No. 78-6437. *POWERS v. UNITED STATES*. C. A. 8th Cir. Certiorari denied.

No. 78-6447. *BREEST v. NEW HAMPSHIRE*. Sup. Ct. N. H. Certiorari denied. Reported below: 118 N. H. 416, 387 A. 2d 643.

No. 78-6450. *LYMAN v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 592 F. 2d 496.

No. 78-6466. *GRANT v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 591 F. 2d 1337.

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No. 78-6496. *SMITH v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 594 F. 2d 855.

No. 78-6524. *GREEN v. UNITED STATES ET AL.* C. A. 5th Cir. Certiorari denied.

No. 78-6548. *JOHNSON v. MEACHAM, WARDEN*. Sup. Ct. Wyo. Certiorari denied. Reported below: 592 P. 2d 285.

No. 78-6551. *WELLS v. NORTH DAKOTA*. Sup. Ct. N. D. Certiorari denied. Reported below: 276 N. W. 2d 679.

No. 78-6555. *SANDOVAL v. UTAH*. Sup. Ct. Utah. Certiorari denied. Reported below: 590 P. 2d 346.

No. 78-6564. *BAKER v. ESTELLE, CORRECTIONS DIRECTOR*. Ct. Crim. App. Tex. Certiorari denied.

No. 78-6566. *FERNANDEZ v. WASHINGTON*. Ct. App. Wash. Certiorari denied.

No. 78-6571. *NAJERA v. CALIFORNIA*. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 78-6575. *SMITH v. VIRGINIA*. Sup. Ct. Va. Certiorari denied.

No. 78-6576. *WATKINS v. MASSACHUSETTS*. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 377 Mass. 385, 385 N. E. 2d 1387.

No. 78-6586. *HARRELL v. HUFF, ASSISTANT HOSPITAL ADMINISTRATOR, ET AL.* C. A. 10th Cir. Certiorari denied.

No. 78-6600. *KANTORSKI ET AL. v. COMMISSIONER OF CORPORATIONS AND TAXATION OF MASSACHUSETTS ET AL.* C. A. 1st Cir. Certiorari denied. Reported below: 595 F. 2d 1206.

No. 78-6618. *COOK v. HANBERRY, WARDEN*. C. A. 5th Cir. Certiorari denied. Reported below: 596 F. 2d 658.

No. 78-6622. *WILLIAMS v. TENNESSEE*. Sup. Ct. Tenn. Certiorari denied. Reported below: 575 S. W. 2d 948.

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No. 78-6625. *HO YIN WONG v. BELL, ATTORNEY GENERAL, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 591 F. 2d 100.

No. 78-6628. *SILVERS v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 601 F. 2d 593.

No. 78-6632. *HOMEL v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 595 F. 2d 1230.

No. 78-6642. *RODRIGUEZ v. SECRETARY OF HEALTH, EDUCATION, AND WELFARE.* C. A. 1st Cir. Certiorari denied. Reported below: 595 F. 2d 1206.

No. 78-6667. *SULLIVAN v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 595 F. 2d 7.

No. 78-6672. *KILLEBREW v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 594 F. 2d 1103.

No. 78-6673. *FARRIS v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 591 F. 2d 101.

No. 78-6674. *COX v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 594 F. 2d 243.

No. 78-6675. *APOSTOL v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 601 F. 2d 595.

No. 78-6682. *NOLEN v. BROWN, SECRETARY OF DEFENSE.* C. A. 5th Cir. Certiorari denied. Reported below: 592 F. 2d 1189.

No. 78-6698. *FORTES v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 598 F. 2d 610.

No. 78-6705. *HOLLAND v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 595 F. 2d 1226.

No. 78-6707. *RAMOS-CHACON v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 597 F. 2d 1389.

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No. 78-1390. ILLINOIS CENTRAL GULF RAILROAD CO. v. CLAIBORNE ET AL. C. A. 5th Cir. Motion of Chamber of Commerce of the United States for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 583 F. 2d 143.

No. 78-1583. ALLSTATE INSURANCE CO. v. KELLEY, ATTORNEY GENERAL OF MICHIGAN, ET AL. Sup. Ct. Mich. Motion of National Association of Independent Insurers et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 402 Mich. 554, 267 N. W. 2d 72.

No. 78-1610. UNITED AIR LINES, INC. v. McDONALD. C. A. 7th Cir. Certiorari denied. MR. JUSTICE STEVENS took no part in the consideration or decision of this petition. Reported below: 587 F. 2d 357.

No. 78-1618. SOUTHERN RAILWAY CO. ET AL. v. YAWN ET AL. C. A. 5th Cir. Certiorari denied. MR. JUSTICE POWELL took no part in the consideration or decision of this petition. Reported below: 591 F. 2d 312.

No. 78-6375. FERGUSON v. TEXAS. Ct. Crim. App. Tex.;

No. 78-6462. REDD v. GEORGIA. Sup. Ct. Ga.; and

No. 78-6561. YOUNG v. ZANT, WARDEN. Sup. Ct. Ga. Certiorari denied. Reported below: No. 78-6375, 573 S. W. 2d 516; No. 78-6462, 242 Ga. 876, 252 S. E. 2d 383; No. 78-6561, 242 Ga. 559, 250 S. E. 2d 404.

MR. JUSTICE BRENNAN and MR. JUSTICE MARSHALL, dissenting.

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

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*Rehearing Denied*

No. 78-707. *ATKINS v. LOUISIANA*, 441 U. S. 927;  
No. 78-1385. *LEBOWITZ v. FLORIDA*, 441 U. S. 932;  
No. 78-1473. *PACKARD v. CITY OF VALLEJO*, 441 U. S. 933;  
No. 78-6316. *GIBSON v. LOUISIANA*, 441 U. S. 926; and  
No. 78-6425. *GORDON v. UNITED STATES*, 441 U. S. 936.  
Petitions for rehearing denied.

No. 78-1236. *ARNOLD ET UX. v. JOHNSON ET AL.*, 440 U. S. 981; and

No. 78-6082. *THORNTON v. UNITED STATES*, 440 U. S. 983. Motions for leave to file petitions for rehearing denied. MR. JUSTICE POWELL took no part in the consideration or decision of these motions.

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*Appeals Dismissed*

No. 78-1527. *LUNA v. SECRETARY OF HEALTH, EDUCATION, AND WELFARE*. Appeal from C. A. 1st Cir. dismissed for want of substantial federal question. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 588 F. 2d 817.

No. 78-6409. *BELLO v. TEXAS*. Appeal from Ct. Crim. App. Tex. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 78-1546. *MONTANA CONTRACTORS' ASSN. ET AL. v. KREPS, SECRETARY OF COMMERCE, ET AL.* Appeal from D. C. Mont. dismissed for want of jurisdiction. Reported below: 460 F. Supp. 1174.

No. 78-1626. *ROSENBAUM v. ROSENBAUM*. Appeal from App. Ct. Ill., 1st Dist., dismissed for want of substantial federal question. Reported below: 65 Ill. App. 3d 228, 382 N. E. 2d 270.

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No. 78-1684. FAHEY, DBA CASTLE REST NURSING HOME *v.* HYNES, DEPUTY ATTORNEY GENERAL OF NEW YORK. Appeal from App. Div., Sup. Ct. N. Y., 4th Jud. Dept., dismissed for want of substantial federal question. Reported below: 63 App. Div. 2d 1119, 406 N. Y. S. 2d 712.

*Vacated and Remanded on Appeal*

No. 78-931. BABBITT, GOVERNOR OF ARIZONA, ET AL. *v.* UNITED FARM WORKERS NATIONAL UNION ET AL. Appeal from D. C. Ariz. Judgment vacated and case remanded for further consideration in light of *Babbitt v. Farm Workers*, ante, p. 289. Reported below: 449 F. Supp. 449.

*Certiorari Granted—Vacated and Remanded*

No. 78-5693. ROSS *v.* BYRD ET AL. C. A. 4th 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 *Greenholtz v. Nebraska Penal Inmates*, ante, p. 1. MR. JUSTICE STEWART, MR. JUSTICE BLACKMUN, MR. JUSTICE REHNQUIST, and MR. JUSTICE STEVENS dissent. Reported below: 586 F. 2d 838.

No. 78-6095. GRIFFITH *v.* ARIZONA. Sup. Ct. Ariz. Motion of petitioner for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *Greenholtz v. Nebraska Penal Inmates*, ante, p. 1. MR. JUSTICE STEWART, MR. JUSTICE BLACKMUN, MR. JUSTICE REHNQUIST, and MR. JUSTICE STEVENS dissent.

No. 78-6232. WHITE *v.* ARIZONA. Sup. Ct. Ariz. Motion of petitioner for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *Greenholtz v. Nebraska Penal Inmates*, ante, p. 1. MR. JUSTICE STEWART, MR. JUSTICE BLACKMUN, MR. JUSTICE REHNQUIST, and MR. JUSTICE STEVENS dissent.

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*Miscellaneous Orders*

No. A-1026. UNIVERSITY OF TENNESSEE ET AL. *v.* GEIER ET AL.; and

No. A-1051. TENNESSEE HIGHER EDUCATION COMMISSION *v.* GEIER ET AL. C. A. 6th Cir. Applications for stay, presented to MR. JUSTICE STEWART, and by him referred to the Court, denied. MR. JUSTICE MARSHALL took no part in the consideration or decision of these applications.

No. A-1067. HENRY ET AL. *v.* MISSISSIPPI. D. C. D. C. Application for stay, or in the alternative for advancement of appeal, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied.

No. D-166. IN RE DISBARMENT OF KAUFMAN. Disbarment entered. [For earlier order herein, see 441 U. S. 920.]

No. 27, Orig. OHIO *v.* KENTUCKY. Exceptions to Report of Special Master set for oral argument in due course. [For earlier order herein, see, *e. g.*, 439 U. S. 1123.]

No. 67, Orig. IDAHO EX REL. EVANS, GOVERNOR OF IDAHO, ET AL. *v.* OREGON ET AL. Exceptions to Report of Special Master set for oral argument in due course. [For earlier order herein, see, *e. g.*, 440 U. S. 943.]

No. 83, Orig. MARYLAND ET AL. *v.* LOUISIANA. Motion for leave to file bill of complaint granted and defendant shall have 60 days to answer.

No. 84, Orig. UNITED STATES *v.* ALASKA. Motion for leave to file bill of complaint granted and defendant shall have 60 days to answer.

No. 77-1724. BURKS ET AL. *v.* LASKER ET AL., 441 U. S. 471. Motion of respondents to be relieved of costs denied. MR. JUSTICE REHNQUIST took no part in the consideration or decision of this motion.

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No. 78-253. *ESTES ET AL. v. METROPOLITAN BRANCHES OF THE DALLAS NAACP ET AL.*;

No. 78-282. *CURRY ET AL. v. METROPOLITAN BRANCHES OF THE DALLAS NAACP ET AL.*; and

No. 78-283. *BRINEGAR ET AL. v. METROPOLITAN BRANCHES OF THE DALLAS NAACP ET AL.* C. A. 5th Cir. [Certiorari granted, 440 U. S. 906.] Motion of Dallas Alliance et al. for leave to file a brief as *amici curiae* granted. Motion of petitioners Brinegar et al. for additional time for oral argument granted, and 15 additional minutes allotted for that purpose. Respondents also allotted 15 additional minutes for oral argument. MR. JUSTICE MARSHALL took no part in the consideration or decision of these motions.

No. 78-630. *WASHINGTON ET AL. v. CONFEDERATED TRIBES OF THE COLVILLE INDIAN RESERVATION ET AL.*; and *WASHINGTON v. UNITED STATES ET AL.* D. C. E. D. Wash. [Probable jurisdiction postponed, 440 U. S. 905.] Motion of the Solicitor General for additional time for oral argument granted, and 15 additional minutes allotted to the appellees. Appellants also allotted 15 additional minutes for oral argument.

No. 78-857. *NATIONAL LABOR RELATIONS BOARD v. YESHIVA UNIVERSITY*; and

No. 78-997. *YESHIVA UNIVERSITY FACULTY ASSN. v. YESHIVA UNIVERSITY.* C. A. 2d Cir. [Certiorari granted, 440 U. S. 906.] Motion of the Solicitor General for divided argument granted.

No. 78-911. *INDUSTRIAL UNION DEPARTMENT, AFL-CIO v. AMERICAN PETROLEUM INSTITUTE ET AL.*; and

No. 78-1036. *MARSHALL, SECRETARY OF LABOR v. AMERICAN PETROLEUM INSTITUTE ET AL.* C. A. 5th Cir. [Certiorari granted, 440 U. S. 906.] Motion of the Solicitor General for additional time for oral argument granted, and 15 additional minutes allotted to petitioners. Respondents also allotted 15 additional minutes for oral argument.

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No. 78-952. RUSH ET AL. *v.* SAVCHUK. Sup. Ct. Minn. [Probable jurisdiction noted, 440 U. S. 905.] Motion of New York State Trial Lawyers Assn. for leave to file a brief as *amicus curiae* denied.

No. 78-1183. CARBON FUEL CO. *v.* UNITED MINE WORKERS OF AMERICA ET AL. C. A. 4th Cir. [Certiorari granted, 440 U. S. 957.] Motions of Chamber of Commerce of the United States, Washington Legal Foundation, and Bituminous Coal Operators' Association, Inc., for leave to file briefs as *amici curiae* granted.

No. 78-1418. BLOOMER *v.* LIBERTY MUTUAL INSURANCE CO. C. A. 2d Cir. [Certiorari granted, 441 U. S. 942.] Motion of petitioner to dispense with printing appendix granted.

No. 78-1653. NORTH CAROLINA WILDLIFE RESOURCES COMMISSION ET AL. *v.* EASTERN BAND OF CHEROKEE INDIANS. C. A. 4th Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 78-5705. TRAMMEL *v.* UNITED STATES. C. A. 10th Cir. [Certiorari granted, 440 U. S. 934.] Motion of Michigan Bar Association Standing Committee on Civil Procedure for leave to file a brief as *amicus curiae* granted.

No. 78-6386. RUMMEL *v.* ESTELLE, CORRECTIONS DIRECTOR. C. A. 5th Cir. [Certiorari granted, 441 U. S. 960.] Motion for appointment of counsel granted, and it is ordered that Scott J. Atlas, Esquire, of Houston, Tex., be appointed to serve as counsel for petitioner in this case.

No. 78-6748. FRIED *v.* WARDEN, NEW YORK STATE CORRECTIONAL FACILITY AT ELMIRA, ET AL. Motion for leave to file petition for writ of habeas corpus denied.

*Certiorari Granted*

No. 78-1595. LEWIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari granted. Reported below: 591 F. 2d 978.

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No. 78-1651. SEATRAN SHIPBUILDING CORP. ET AL. *v.* SHELL OIL CO. ET AL. C. A. D. C. Cir. Certiorari granted. Reported below: 194 U. S. App. D. C. 7, 595 F. 2d 814.

No. 78-1756. UNITED STATES *v.* MITCHELL ET AL. Ct. Cl. Certiorari granted. Reported below: 219 Ct. Cl. 95, 591 F. 2d 1300.

No. 78-1261. CARLSON, DIRECTOR, FEDERAL BUREAU OF PRISONS, ET AL. *v.* GREEN, ADMINISTRATRIX. C. A. 7th Cir. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 581 F. 2d 669.

No. 78-1487. FORD MOTOR CREDIT CO. ET AL. *v.* MILHOLLIN ET AL. C. A. 9th Cir. Motion of respondents for leave to proceed *in forma pauperis* and certiorari granted. The Solicitor General is invited to file a brief in this case expressing the views of the United States. Reported below: 588 F. 2d 753.

No. 78-1557. NACHMAN CORP. *v.* PENSION BENEFIT GUARANTY CORPORATION ET AL. C. A. 7th Cir. Certiorari granted limited to Question 2 presented by the petition. Reported below: 592 F. 2d 947.

*Certiorari Denied.* (See also Nos. 78-1527 and 78-6409, *supra.*)

No. 78-1303. CHISNELL *v.* CHISNELL. Ct. App. Mich. Certiorari denied. Reported below: 82 Mich. App. 699, 267 N. W. 2d 155.

No. 78-1397. MALLERY *v.* BLACKBURN, WARDEN. Sup. Ct. La. Certiorari denied. Reported below: 364 So. 2d 1283.

No. 78-1457. RICHARDSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 588 F. 2d 1353.

No. 78-1486. MITCHELL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 588 F. 2d 481.

No. 78-1505. GIACALONE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 587 F. 2d 5.

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No. 78-1524. *JACKSON v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 588 F. 2d 1046.

No. 78-1535. *BROWARD v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 594 F. 2d 345.

No. 78-1536. *HART ET AL. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 585 F. 2d 1280.

No. 78-1550. *THOMAS v. KENTUCKY*. Ct. App. Ky. Certiorari denied.

No. 78-1552. *COHRAN v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 591 F. 2d 1342.

No. 78-1555. *MUNIZ v. UNITED STATES*. C. A. 2d Cir. Certiorari denied.

No. 78-1578. *LOSEGO ET AL. v. GUERNSEY COUNTY BOARD OF EDUCATION ET AL.* Ct. App. Ohio, Guernsey County. Certiorari denied.

No. 78-1592. *SHARON ET UX. v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 9th Cir. Certiorari denied. Reported below: 591 F. 2d 1273.

No. 78-1593. *HINCHMAN v. COLORADO*. Sup. Ct. Colo. Certiorari denied. Reported below: 196 Colo. 526, 589 P. 2d 917.

No. 78-1619. *MOSHER v. SAALFELD ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 589 F. 2d 438.

No. 78-1621. *VESCO v. INTERNATIONAL CONTROLS CORP.* C. A. 2d Cir. Certiorari denied. Reported below: 593 F. 2d 166.

No. 78-1622. *HIGHSAW v. INDIANA*. Sup. Ct. Ind. Certiorari denied. Reported below: 269 Ind. 458, 381 N. E. 2d 470.

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No. 78-1630. *CONSOLIDATED RAIL CORP. v. ILLINOIS ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 589 F. 2d 1327.

No. 78-1635. *TIVIAN LABORATORIES, INC. v. UNITED STATES.* C. A. 1st Cir. Certiorari denied. Reported below: 589 F. 2d 49.

No. 78-1636. *GOICHMAN v. DISCIPLINARY BOARD OF THE SUPREME COURT OF PENNSYLVANIA.* Sup. Ct. Pa. Certiorari denied.

No. 78-1640. *BELL & HOWELL Co. v. NATIONAL LABOR RELATIONS BOARD ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 194 U. S. App. D. C. 217, 598 F. 2d 136.

No. 78-1645. *DAVIS ET AL., TRUSTEES v. PIMA COUNTY, ARIZONA, ET AL.* Ct. App. Ariz. Certiorari denied. Reported below: 121 Ariz. 343, 590 P. 2d 459.

No. 78-1655. *INSURANCE COMPANY OF NORTH AMERICA v. FARMER'S HOME MUTUAL INSURANCE Co.* Ct. App. Wash. Certiorari denied. Reported below: 20 Wash. App. 815, 583 P. 2d 644.

No. 78-1657. *PENNSYLVANIA HUMAN RELATIONS COMMISSION v. PITTSBURGH PRESS Co.* Sup. Ct. Pa. Certiorari denied. Reported below: 483 Pa. 314, 396 A. 2d 1187.

No. 78-1664. *ALLUSTIARTE ET UX. v. PETERS ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 594 F. 2d 242.

No. 78-1680. *WASHINGTON v. NORTON MANUFACTURING Co.* C. A. 5th Cir. Certiorari denied. Reported below: 588 F. 2d 441.

No. 78-1703. *FREEDSON v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 595 F. 2d 1229.

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No. 78-1704. CALIFORNIA INSPECTION RATING BUREAU *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 9th Cir. Certiorari denied. Reported below: 591 F. 2d 56.

No. 78-1713. ALSTON *v.* ALLEGHENY-LUDLUM STEEL CORP., A DIVISION OF ALLEGHENY-LUDLUM INDUSTRIES, INC. C. A. 3d Cir. Certiorari denied. Reported below: 594 F. 2d 854.

No. 78-1718. POE *v.* KUYK ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 591 F. 2d 1336.

No. 78-1723. STATES STEAMSHIP CO. ET AL. *v.* ZIRPOLI, U. S. DISTRICT JUDGE (R. J. REYNOLDS TOBACCO CO. ET AL., REAL PARTIES IN INTEREST). C. A. 9th Cir. Certiorari denied.

No. 78-1735. FABSTEEL COMPANY OF LOUISIANA *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 5th Cir. Certiorari denied. Reported below: 587 F. 2d 689.

No. 78-1736. MIGELY *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 596 F. 2d 511.

No. 78-1750. TUSSEL *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 595 F. 2d 1215.

No. 78-1762. GONZALEZ-PEREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 426 F. 2d 1283.

No. 78-1763. MCBREARTY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 78-1772. UNITED ARTISTS CORP. *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 603 F. 2d 216.

No. 78-5996. ANZALDUA *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 78-6396. FARMER *v.* UNITED STATES PAROLE COMMISSION. C. A. 4th Cir. Certiorari denied. Reported below: 588 F. 2d 54.

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No. 78-6432. *ROBY v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 592 F. 2d 406.

No. 78-6459. *GAINES v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 594 F. 2d 541.

No. 78-6468. *HANER v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 594 F. 2d 243.

No. 78-6469. *CLARK v. UNITED STATES*. Ct. App. D. C. Certiorari denied. Reported below: 394 A. 2d 1.

No. 78-6480. *SNELL v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 592 F. 2d 1083.

No. 78-6482. *AGEE v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 597 F. 2d 350.

No. 78-6488. *DELPIANO v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 593 F. 2d 539.

No. 78-6495. *STINE v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 594 F. 2d 242.

No. 78-6505. *NOLES v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 594 F. 2d 865.

No. 78-6516. *DARBY ET AL. v. INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION No. 1547, ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 587 F. 2d 1379.

No. 78-6521. *SIGGERS v. OHIO*. Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 78-6532. *COLON v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 594 F. 2d 867.

No. 78-6589. *BURSON v. ENGLE, CORRECTIONAL SUPERINTENDENT*. C. A. 6th Cir. Certiorari denied. Reported below: 595 F. 2d 1222.

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No. 78-6591. *TRICE v. MISSOURI*. Ct. App. Mo., St. Louis Dist. Certiorari denied. Reported below: 575 S. W. 2d 739.

No. 78-6594. *MATTINGLY v. WAINWRIGHT, SECRETARY, DEPARTMENT OF OFFENDER REHABILITATION OF FLORIDA, ET AL.* C. A. 5th Cir. Certiorari denied.

No. 78-6599. *PARRIS v. WYRICK, WARDEN*. C. A. 8th Cir. Certiorari denied.

No. 78-6602. *HELLER v. CONSOLIDATED RAIL CORP.* C. A. 3d Cir. Certiorari denied. Reported below: 594 F. 2d 854.

No. 78-6606. *TONEMAN v. MARYLAND*. Ct. Sp. App. Md. Certiorari denied.

No. 78-6610. *WILSON v. HENDERSON, CORRECTIONAL SUPERINTENDENT*. C. A. 2d Cir. Certiorari denied. Reported below: 584 F. 2d 1185.

No. 78-6616. *ALEXANDER v. ILLINOIS*. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 65 Ill. App. 3d 559, 382 N. E. 2d 519.

No. 78-6619. *WIENER v. CALIFORNIA*. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 78-6666. *COLLINS v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 594 F. 2d 854.

No. 78-6690. *BROWN v. UNITED STATES*. Ct. App. D. C. Certiorari denied.

No. 78-6708. *WALTERS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 591 F. 2d 1195.

No. 78-6713. *WOOD v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 78-6715. *KRIZ v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 586 F. 2d 1178.

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No. 78-6720. WILLIAMS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 596 F. 2d 44.

No. 78-6724. REEVES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 594 F. 2d 536.

No. 78-6725. RISCO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 595 F. 2d 1215.

No. 78-6726. HOWARD *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 78-6734. DOLLIOLLE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 597 F. 2d 102.

No. 78-6746. LEWIS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 78-6747. DAVIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 592 F. 2d 1325.

No. 78-25. BROKENLEG *v.* BUTTS ET UX. Ct. Civ. App. Tex., 8th Sup. Jud. Dist. Motions of Rosebud Sioux Tribe, American Academy of Child Psychiatry, and National Indian Youth Council, Inc., et al., for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 559 S. W. 2d 853.

No. 78-685. ABERDEEN & ROCKFISH RAILROAD CO. ET AL. *v.* UNITED STATES ET AL. C. A. D. C. Cir. Motions of PPG Industries, Fort Howard Paper Co., and Allied Chemical Corp. et al. for leave to intervene denied. Certiorari denied. MR. JUSTICE POWELL took no part in the consideration or decision of these motions and this petition.

No. 78-1399. CHICAGO-MIDWEST MEAT ASSN. *v.* CITY OF EVANSTON ET AL. C. A. 7th Cir. Certiorari denied. MR. JUSTICE BRENNAN and MR. JUSTICE WHITE would grant certiorari. Reported below: 589 F. 2d 278.

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No. 78-1454. TRAGESER *v.* LIBBIE REHABILITATION CENTER, INC., T/A LIBBIE CONVALESCENT HOME. C. A. 4th Cir. Certiorari denied. MR. JUSTICE STEWART and MR. JUSTICE MARSHALL would grant certiorari. Reported below: 590 F. 2d 87.

No. 78-1470. LOPEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. MR. JUSTICE WHITE and MR. JUSTICE MARSHALL would grant certiorari. Reported below: 588 F. 2d 450.

No. 78-1688. CITY COUNCIL OF THE CITY OF PHILADELPHIA ET AL. *v.* RESIDENT ADVISORY BOARD OF PHILADELPHIA ET AL. C. A. 3d Cir. Motion of respondent Nellie Reynolds for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 595 F. 2d 1211.

No. 78-6699. GOODWIN *v.* HOPPER, WARDEN. Sup. Ct. Ga. Certiorari denied. Reported below: 243 Ga. 193, 253 S. E. 2d 156.

MR. JUSTICE BRENNAN and MR. 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.

#### *Rehearing Denied*

No. 78-385. VOLPE ET AL. *v.* UNITED STATES, 441 U. S. 930;

No. 78-1179. GRANT ET AL. *v.* UNITED STATES, 441 U. S. 931;

No. 78-1222. WESTERN COMMUNICATIONS, INC. *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL., 441 U. S. 931; and

No. 78-1437. GOTTESMAN ET AL. *v.* GENERAL MOTORS CORP. ET AL., 441 U. S. 932. Petitions for rehearing denied.

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- No. 78-6204. CLAYTON v. UNITED STATES, 441 U. S. 962;
  - No. 78-6318. APONTE v. SECRETARY OF HEALTH, EDUCATION, AND WELFARE, 441 U. S. 934; and
  - No. 78-6416. HARRISON v. ILLINOIS ET AL., 441 U. S. 949.
- Petitions for rehearing denied.